

First print



New South Wales

Crimes Amendment (Child Pornography) Bill 1995

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Crimes Act 1900* to prohibit the possession of films, computer games and publications containing child pornography. The Bill also amends the *Film and Computer Game Classification Act 1984* and the *Indecent Articles and Classified Publications Act 1975* in related respects as described below, and the *Search Warrants Act 1985*.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides that the proposed Act will commence on a day or days to be proclaimed.

Clause 3 gives effect to the Schedule of amendments to the *Crimes Act 1900*.

Clause 4 gives effect to the Schedule of amendments to the *Film and Computer Game Classification Act 1984*, the *Indecent Articles and Classified Publications Act 1975* and the *Search Warrants Act 1985*.

Schedule 1 (1) and (2) contain consequential amendments to the *Crimes Act 1900*.

Schedule 1 (3) inserts proposed section 310A into the *Crimes Act 1900*. The proposed section makes it an offence (penalty of 12 months imprisonment or a fine of \$10,000, or both) for a person to possess child pornography. This is defined to mean:

- any film that has been, or that is subsequently, refused classification under the *Film and Computer Game Classification Act 1984* because it is a child abuse film (ie a film which depicts a child in a manner likely to cause offence to a reasonable adult), or
- any computer game that has been, or that is subsequently, refused classification under the *Film and Computer Game Classification Act 1984* because it depicts in any form a child (whether engaged in sexual activity or otherwise) in a manner that is likely to cause offence to a reasonable adult, or
- any publication (eg a book, newspaper, magazine, photograph or other pictorial matter) that has been, or that is subsequently, classified as a prohibited publication under the *Indecent Articles and Classified Publications Act 1975* because it contains indecent matter that depicts a child engaged in an activity of a sexual nature (including posing) or who is in the presence of another person who is so engaged.

Proposed section 310A provides that proceedings for an offence under the section must be commenced not later than 6 months after the date of the alleged offence (ie when the person was in possession of the child pornography). Certain defences are also provided, in particular, that the person depicted or described in the material was of or above the age of 16 when the material was made, taken, produced or published.

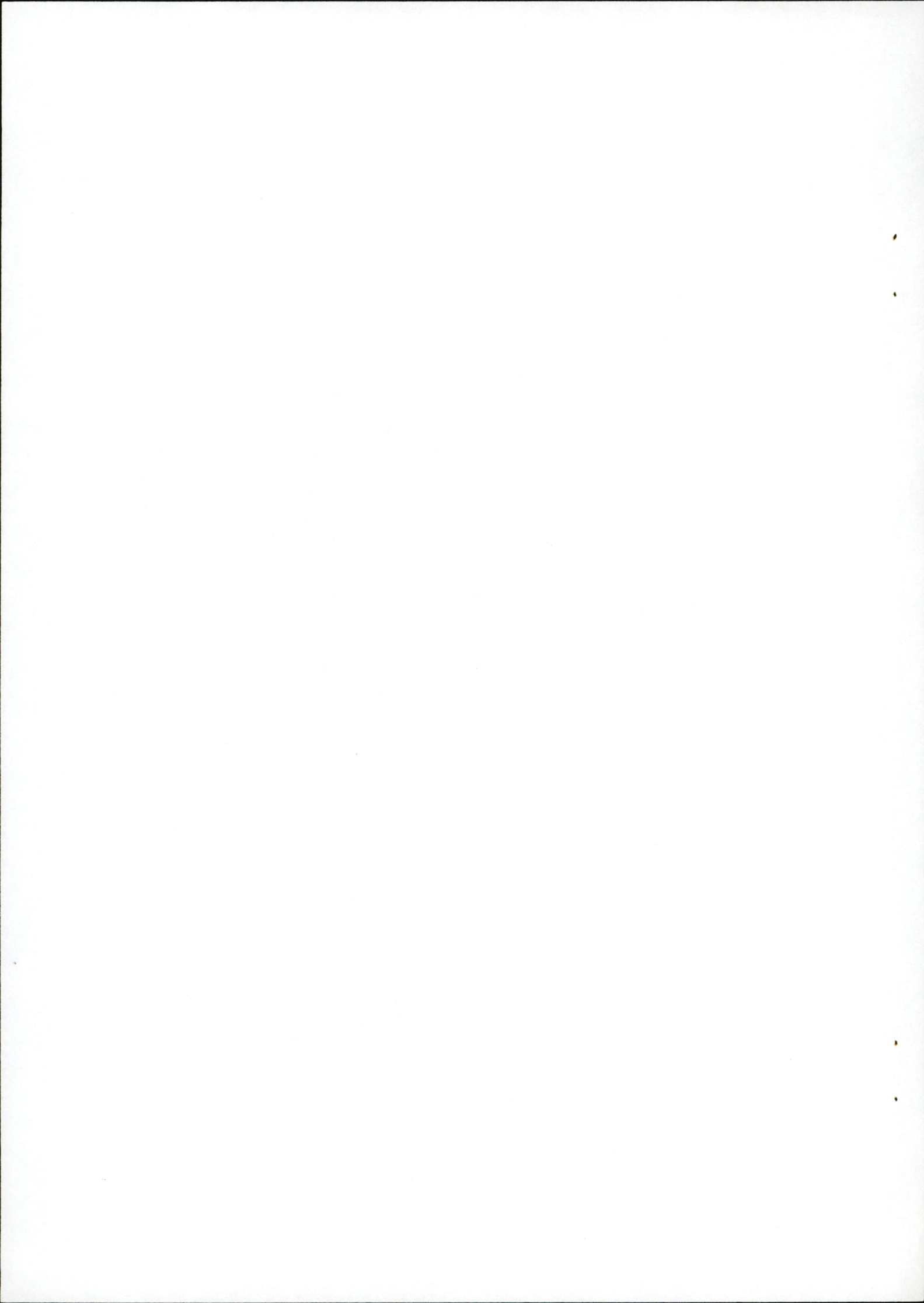
Crimes Amendment (Child Pornography) Bill 1995

Explanatory note

Schedule 1 (4) inserts proposed section 357EB into the *Crimes Act 1900*. The proposed section empowers a police officer to apply for a search warrant authorising the entry and search of premises in respect of which the officer believes an offence under proposed section 310A is being committed.

Schedule 2 amends the *Film and Computer Game Classification Act 1984* and the *Indecent Articles and Classified Publications Act 1975*. The definition of a "child" for the purposes of classifying a film, computer game or publication is amended so that it will cover a person who is a child or who, in the opinion of the censor, looks like a child. This is a modification of the present test of assessing whether the person depicted or described is a child.

Schedule 2 also amends the *Search Warrants Act 1985* as a consequence of the insertion of proposed section 357EB into the *Crimes Act 1900*.



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New South Wales

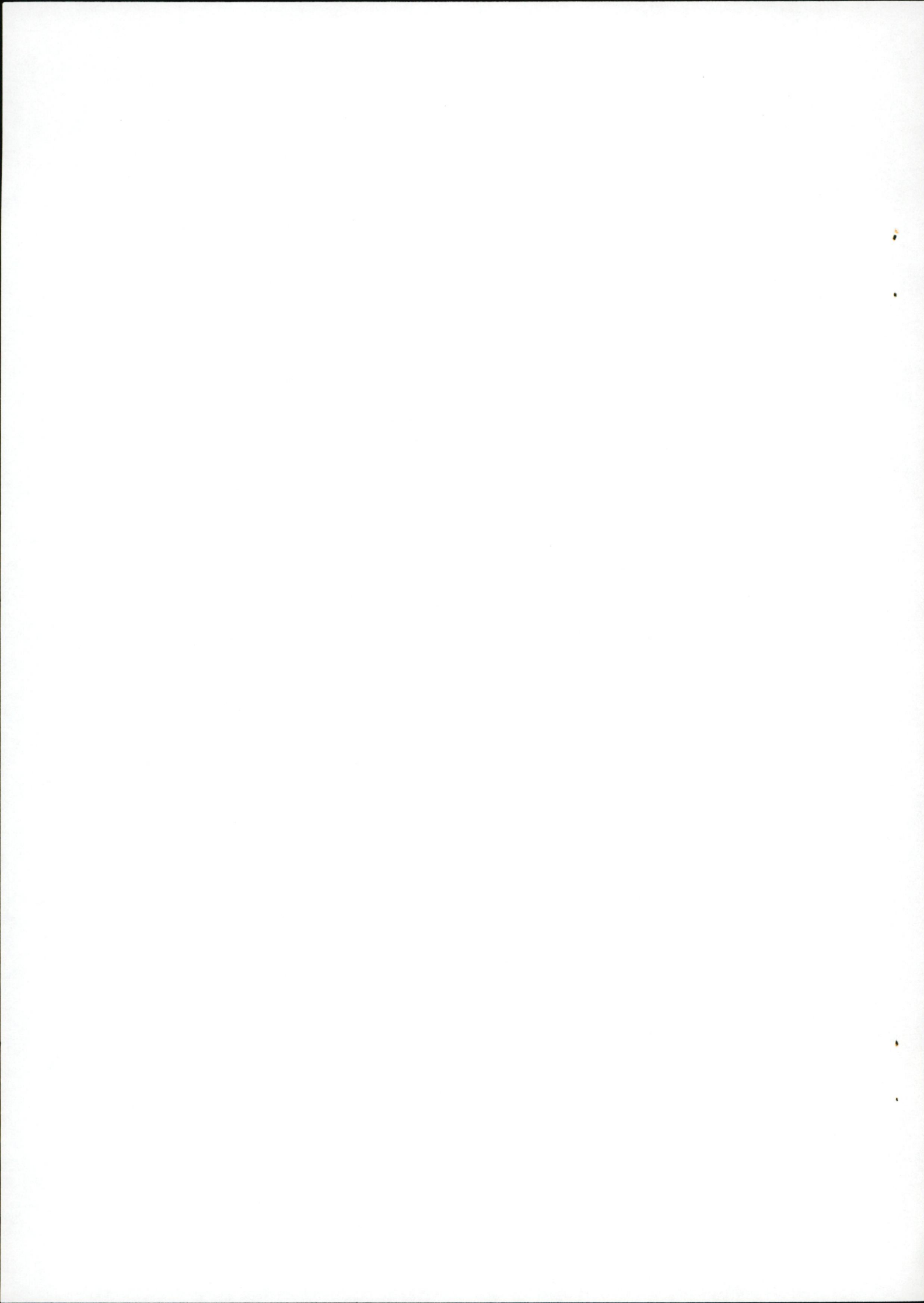
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New South Wales

Crimes Amendment (Child Pornography) Bill 1995

No. , 1995

A Bill for

An Act to amend the *Crimes Act 1900* with respect to the possession of child pornography; to amend the *Film and Computer Game Classification Act 1984* and the *Indecent Articles and Classified Publications Act 1975* for related purposes; and to consequentially amend the *Search Warrants Act 1985*.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Crimes Amendment (Child Pornography) Act 1995*.

2 Commencement

5

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Crimes Act 1900 No 40

The *Crimes Act 1900* is amended as set out in Schedule 1.

4 Amendment of other Acts

10

Each Act specified in Schedule 2 is amended as set out in that Schedule.

Schedule 1 Amendment of Crimes Act 1900

(Section 3)

[1] Section 1 Short title and contents of Act

Insert after the matter relating to Part 6:

Part 6A Possession of Child Pornography—s. 310A 5

[2] Section 1

Insert after item (2AA) of the matter relating to Part 10:

(2AB) *Powers of entry and search in relation to child pornography—s. 357EB*

[3] Part 6A 10

Insert after Part 6:

Part 6A Possession of Child Pornography

310A Possession of child pornography

- (1) A person is guilty of an offence if the person has in his or her possession any child pornography, and is liable, on summary conviction before a Magistrate, to imprisonment for 12 months, or to a fine of 100 penalty units, or both. 15
- (2) For the purposes of this section, *child pornography* means: 20
 - (a) a film that has been refused classification under the 1984 Act, or that is subsequently refused classification under that Act, because it is a child abuse film, or
 - (b) a computer game that has been refused classification under the 1984 Act, or that is subsequently refused classification under that Act, because it is a computer game referred to in section 9AA (2) (b) of that Act, or 25

Crimes Amendment (Child Pornography) Bill 1995

Schedule 1 Amendment of Crimes Act 1900

- (c) a publication that has been classified as a prohibited publication under the 1975 Act, or that is subsequently classified as a prohibited publication under that Act, because it is a publication referred to in section 13 (3) (a) of that Act. 5
- (3) A police officer may seize:
- (a) any film or computer game that the officer reasonably suspects would be refused classification under the 1984 Act as child pornography, or 10
- (b) any publication that the officer reasonably suspects would be prohibited under the 1975 Act as child pornography,
- for the purpose of having it classified under the relevant Act. 15
- (4) Nothing in this section makes it an offence:
- (a) for any member or officer of a law enforcement agency to have any child pornography in his or her possession in the exercise or performance of a power, function or duty conferred or imposed on the member or officer by or under any Act or law, or 20
- (b) for any person to have any child pornography in his or her possession in the exercise or performance of a power, function or duty relating to the classification of such material conferred or imposed on the person by or under any Act or law, or 25
- (c) for a person to have in his or her possession any film that has been classified under the *Classification of Publications Ordinance 1983* of the Australian Capital Territory. 30
- (5) Proceedings for an offence under this section cannot be commenced later than 6 months after the date of the alleged offence. 35

-
- (6) It is a defence to a prosecution under this section to prove:
- (a) that the defendant did not know, or could not reasonably be expected to have known, that the material concerned had been refused classification or had been prohibited, or 5
 - (b) that the defendant could not reasonably have been expected to suspect that the material concerned would be likely to be refused classification or would be likely to be prohibited, or 10
 - (c) that the person depicted in the material was of or above the age of 16 at the time when the film, computer game or publication was made, taken, produced or published.
- (7) In any proceedings for an offence under this section: 15
- (a) a certificate signed or purporting to be signed by the censor stating that a film has been refused classification under the 1984 Act because it is a child abuse film is conclusive evidence of the matter stated in the certificate, and 20
 - (b) a certificate signed or purporting to be signed by the censor stating that a computer game has been refused classification under the 1984 Act because it is a computer game referred to in section 9AA (2) (b) of that Act is conclusive evidence of the matter stated in the certificate, and 25
 - (c) a copy of a notification under section 14 (1) of the 1975 Act which specifies that a publication has been classified as a prohibited publication under that Act because it is a publication referred to in section 13 (3) (a) of that Act is conclusive evidence that the publication has been so classified. 30
- (8) A court that convicts a person of an offence under this section may order that any child pornography in respect of which the offence was committed is to be destroyed or otherwise disposed of as the court thinks fit. 35

(9) In this section:

censor, child abuse film, computer game and film have the same meanings as in the 1984 Act.

law enforcement agency has the same meaning as in section 13 of the *Criminal Records Act 1991* , and includes a person or body prescribed by the regulations for the purpose of this definition. 5

publication has the same meaning as in the 1975 Act.

the 1975 Act means the *Indecent Articles and Classified Publications Act 1975* . 10

the 1984 Act means the *Film and Computer Game Classification Act 1984* .

[4] **Section 357EB**

Insert after section 357EA:

Powers of entry and search in relation to child pornography 15

357EB Police may enter and search premises for child pornography

- (1) A police officer may apply to an authorised justice for the issue of a search warrant if the police officer believes on reasonable grounds that an offence against section 310A is being committed on any premises. 20
- (2) An authorised justice to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising a police officer: 25
- (a) to enter and search the premises concerned for evidence of an offence against section 310A, and
- (b) to seize any film, computer game or publication (as referred to in section 310A) that may be evidence of such an offence. 30
- (3) Part 3 of the *Search Warrants Act 1985* applies to a search warrant issued under this section.
- (4) In this section, *authorised justice* has the same meaning as in the *Search Warrants Act 1985* .

Schedule 2 Amendment of other Acts

(Section 4)

2.1 Film and Computer Game Classification Act 1984 No 155

[1] Section 3 Definitions

5

Omit “, or who is apparently, a child” from the definition of *child abuse film* in section 3 (1).

Insert instead “a child (or who looks like a child)”.

[2] Section 9 Classification of films

Omit section 9 (2) (b). Insert instead:

10

(b) is, in the opinion of the censor, a child abuse film,

[3] Section 9AA Classification of computer games

Omit “, or who is apparently, a child” from section 9AA (2) (b).
Insert instead “a child (or who, in the opinion of the censor, looks like a child)”.

15

2.2 Indecent Articles and Classified Publications Act 1975 No 32

Section 13 Classification of publications

Omit “, or who is apparently, under” from section 13 (3) (a).
Insert instead “under (or, in the opinion of the classifying authority, is under)”.

20

Crimes Amendment (Child Pornography) Bill 1995

Schedule 2 Amendment of other Acts

2.3 Search Warrants Act 1985 No 37

Section 10 Definitions

Omit the matter relating to the *Crimes Act 1900* from the definition of *search warrant*.

Insert instead:

5

sections 357EA and 357EB of the *Crimes Act 1900*,

LEGISLATIVE COUNCIL

CRIMES AMENDMENT (CHILD PORNOGRAPHY) BILL 1995

First Print

Amendments to be moved in Committee

No. 1 Page 2. Insert after line 12:

- 5 Certain other amendments relating to age**
Each Act specified in Schedule 3 is amended as set out in that Schedule.

No. 2 Page 8. Insert after line 6:

Schedule 3 Certain other amendments relating to age (Section 5)

3.1 Crimes Act 1900 No 40

Section 310A Possession of child pornography

Omit "16" from section 310 (6) (c) (as inserted by the *Crimes Amendment (Child Pornography) Act 1995*).

Insert instead "18".

3.2 Film and Computer Game Classification Act 1985 No 155

Omit "16" from the definition of *child* in section 3.

Insert instead "18".

3.3 Indecent Articles and Classified Publications Act 1975 No 32

Omit "16" from section 13 (3) (a).

Insert instead "18".

Tick

C-003
Opp (Lib)

LEGISLATIVE COUNCIL

CRIMES AMENDMENT (CHILD PORNOGRAPHY) BILL 1995

First Print

Amendments to be moved in Committee

-
- No. 1. Page 3, Schedule 1, line 5. Omit "Child Pornography". Insert instead "Certain Films, Computer Games and Publications".
 - No. 2. Page 3, Schedule 1, lines 8 and 9. Omit "*child pornography*". Insert instead "*certain films, computer games and publications*".
 - No. 3. Pages 3 and 4, Schedule 1, lines 12 on page 3 to line 16 on page 4. Omit all words on those lines. Insert instead:

Part 6 Possession of Certain Films, Computer Games and Publications

310A Possession of certain films, computer games and publications

- (1) A person is guilty of an offence if the person has in his or her possession a film or computer game:
 - (a) that has been refused classification under the 1984 Act, or
 - (b) that is subsequently refused classification under that Act,and is liable, on summary conviction before a Magistrate, to imprisonment for 12 months, or to a fine of 100 penalty units, or both.
- (2) A person is guilty of an offence if the person has in his or her possession a publication:
 - (a) that has been classified as a prohibited publication under the 1975 Act, or
 - (b) that is subsequently classified as a prohibited publication under that Act,and is liable, on summary conviction before a Magistrate, to imprisonment for 12 months, or to a fine of 100 penalty units, or both.

- (3) A police officer may seize:
 - (a) any film or computer game that the officer reasonably suspects would be refused classification under the 1984 Act, or
 - (b) any publication that the officer reasonably suspects would be prohibited under the 1975 Act,
 for the purpose of having it classified under the relevant Act.

No. 4 Page 4, Schedule 1, line 19. Omit "child pornography". Insert instead "any such film, computer game or publication".

No. 5 Page 4, Schedule 1, line 24. Omit "child pornography". Insert instead "any such film, computer game or publication".

No. 6 Page 5, Schedule 1, lines 11 and 12. Omit "that the person depicted in the material was of or above the age of 16". Insert instead "in the case of material that depicts a person who looks like a child, that the person depicted was of or above the age of 18".

No. 7 Page 5, Schedule 1, lines 16-33. Omit all words on those lines. Insert instead:

- (a) a certificate signed or purporting to be signed by the censor stating that a film or computer game has been refused classification under the 1984 Act is conclusive evidence of the matter stated in the certificate, and
- (b) a copy of a notification under section 14 (1) of the 1975 Act which specifies that a publication has been classified as a prohibited publication under that Act is conclusive evidence that the publication has been so classified.

No. 8 Page 5, Schedule 1, line 35. Omit "child pornography". Insert instead "film, computer game or publication".

No. 9 Page 6, Schedule 1, line 2. Omit "*child abuse film*".

No. 10 Page 6, Schedule 1, line 15. Omit "*child pornography*". Insert instead "*certain films, computer games and publications*".

No. 11 Page 6, Schedule 1, lines 16 and 17. Omit "*child pornography*". Insert instead "**certain films, computer games and publications**".

No. 12 Page 7, Schedule 2. Insert after line 4:

[1] **Section 3 Definitions**

Omit "16" from the definition of *child* in section 3 (1).
Insert instead "18".

No. 13 Page 7, Schedule 2. Insert after line 11:

[3] Section 9 (2) (d)

Omit the paragraph. Insert instead:

(d) promotes, incites or instructs in matters of crime or violence.

No. 14 Page 7, Schedule 2. Insert after line 21:

[2] Section 13 Classification of publications

Omit "16" from section 13 (3) (a).

Insert instead "18".

No. 15 Page 7, Schedule 2. Insert after line 21:

[2] Section 13 (3) ~~(d) (e)~~ set

Omit the paragraph. Insert instead:

(f) promotes, incites or instructs in matters of crime or violence,

No. 16 Page 1, Long title. Omit "child pornography". Insert instead "certain films, computer games and publications".

CRIMES (CHILD PORNOGRAPHY) AMENDMENT BILL 1995

SECOND READING

MR PRESIDENT, I MOVE, THAT THIS BILL BE NOW READ A SECOND TIME.

THE CRIMES (CHILD PORNOGRAPHY) AMENDMENT BILL 1995 PROHIBITS THE POSSESSION OF FILMS, COMPUTER GAMES AND PUBLICATIONS WHICH CONTAIN CHILD PORNOGRAPHY.

THE INTRODUCTION OF AN OFFENCE FOR THE POSSESSION OF CHILD PORNOGRAPHY ACCORDS WITH THE RECOMMENDATIONS OF THE AUSTRALIAN BUREAU OF CRIMINAL INTELLIGENCE IN ITS 1993 REPORT "PAEDOPHILES AND CHILD SEXUAL ABUSE".

THE PROPOSED OFFENCE PROVIDES FOR A PENALTY OF UP TO \$10,000, TWELVE MONTHS IMPRISONMENT, OR BOTH. THE PROPOSED LEGISLATION WILL COMPLEMENT EXISTING PROVISIONS CONTAINED IN THE NEW SOUTH WALES CRIMES

ACT, WHICH MAKE IT AN OFFENCE TO EMPLOY OR PROCURE A CHILD TO BE EMPLOYED FOR PORNOGRAPHIC PURPOSES.

MORE IMPORTANTLY, THE PROPOSED LEGISLATION WILL ASSIST POLICE IN TAKING ACTION AGAINST PAEDOPHILES. PREVIOUSLY, POLICE HAVE LARGELY RELIED UPON POWERS IN CUSTOMS LEGISLATION TO SEIZE CHILD PORNOGRAPHY AND OTHER REFUSED CLASSIFICATION MATERIAL, WHERE IT COULD BE PROVEN THAT THE MATERIAL HAD BEEN ILLEGALLY IMPORTED INTO AUSTRALIA. HOWEVER, THESE POWERS ARE LIMITED AS IT IS NOT POSSIBLE TO PROSECUTE FOR POSSESSION OF COPIES OF IMPORTED MATERIAL. REPEAT OFFENDERS HAVE THEREFORE NOT BEEN DETERRED BY EXISTING LAWS.

THE BILL PROVIDES THAT MATERIAL SUSPECTED OF FALLING WITHIN THE REFUSED CLASSIFICATION CATEGORY ON THE GROUNDS THAT IT CONTAINS CHILD PORNOGRAPHY MUST BE CLASSIFIED BY THE OFFICE OF FILM AND LITERATURE CLASSIFICATION BEFORE POLICE CAN BRING A PROSECUTION.

THAT OFFICE CURRENTLY CLASSIFIES MATERIAL IN RELATION TO THE SALE, ADVERTISING OR PUBLICATION OF FILMS, VIDEOS, PUBLICATIONS AND COMPUTER GAMES AND IT IS CONSIDERED PREFERABLE THAT THE OFFICE CONTINUE THIS ROLE IN RELATION TO POSSESSION. THIS WILL MEAN THAT THE COURTS WILL NOT BE PLACED IN THE POSITION OF HAVING TO ACT AS CENSOR. THIS APPROACH ALSO ENSURES THERE IS A DEGREE OF CONSISTENCY IN DETERMINING WHETHER MATERIAL FALLS WITHIN THE PROHIBITED CATEGORY.

THE BILL ALSO AMENDS EXISTING CENSORSHIP LEGISLATION IN NEW SOUTH WALES FOR THE PURPOSE OF CLARIFYING THE CENSOR'S DISCRETION IN DETERMINING WHETHER MATERIAL CONSTITUTES CHILD PORNOGRAPHY.

THE PRESENT LEGISLATION REFERS TO MATERIAL WHICH DEPICTS "A PERSON WHO IS, OR IS APPARENTLY, UNDER THE AGE OF 16 YEARS". THESE WORDS HAVE BEEN REPLACED WITH A REFERENCE TO "A CHILD, OR A PERSON, WHO IN THE

OPINION OF THE CENSOR, LOOKS LIKE A CHILD". THIS CHANGE IS INTENDED TO CLARIFY THE CENSOR'S DISCRETION IN REFUSING MATERIAL WHERE IT IS DIFFICULT TO DETERMINE THE AGE OF THE PERSON DEPICTED. THIS PROVISION IS PARTICULARLY RELEVANT IN LIGHT OF THE INCREASING AMOUNT OF MATERIAL OF THIS NATURE WHICH IS BEING IMPORTED FROM OVERSEAS.

I COMMEND THE BILL TO THE HOUSE.

CRIMES (CHILD PORNOGRAPHY) AMENDMENT BILL 1995

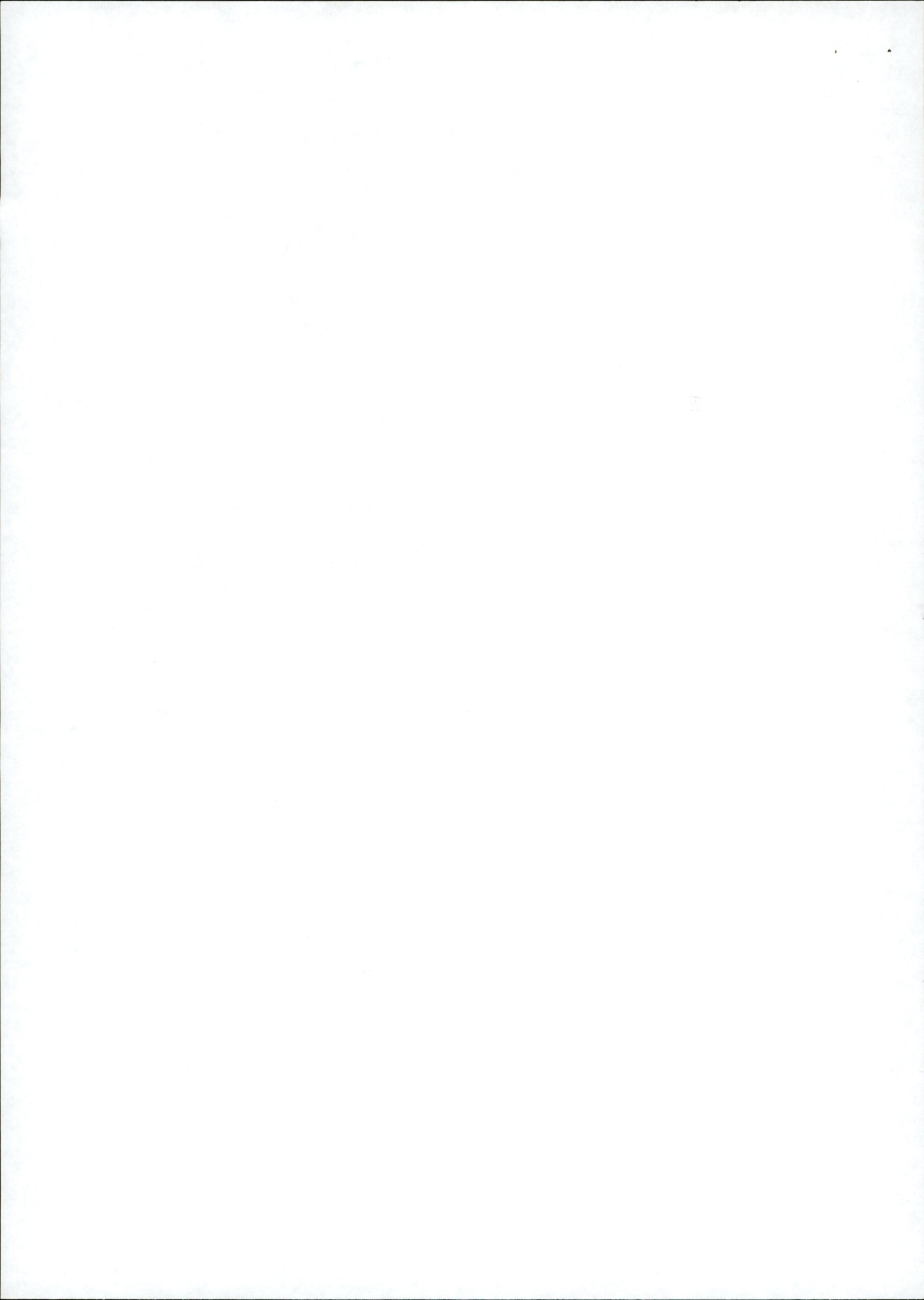
SECOND READING

MR PRESIDENT, I MOVE, THAT THIS BILL BE NOW READ A SECOND TIME.

THE CRIMES (CHILD PORNOGRAPHY) AMENDMENT BILL 1995 PROHIBITS THE POSSESSION OF FILMS, COMPUTER GAMES AND PUBLICATIONS WHICH CONTAIN CHILD PORNOGRAPHY.

THE INTRODUCTION OF AN OFFENCE FOR THE POSSESSION OF CHILD PORNOGRAPHY ACCORDS WITH THE RECOMMENDATIONS OF THE AUSTRALIAN BUREAU OF CRIMINAL INTELLIGENCE IN ITS 1993 REPORT "PAEDOPHILES AND CHILD SEXUAL ABUSE".

THE PROPOSED OFFENCE PROVIDES FOR A PENALTY OF UP TO \$10,000, TWELVE MONTHS IMPRISONMENT, OR BOTH. THE PROPOSED LEGISLATION WILL COMPLEMENT EXISTING PROVISIONS CONTAINED IN THE NEW SOUTH WALES CRIMES



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MORE IMPORTANTLY, THE PROPOSED LEGISLATION WILL ASSIST POLICE IN TAKING ACTION AGAINST PAEDOPHILES. PREVIOUSLY, POLICE HAVE LARGELY RELIED UPON POWERS IN CUSTOMS LEGISLATION TO SEIZE CHILD PORNOGRAPHY AND OTHER REFUSED CLASSIFICATION MATERIAL, WHERE IT COULD BE PROVEN THAT THE MATERIAL HAD BEEN ILLEGALLY IMPORTED INTO AUSTRALIA. HOWEVER, THESE POWERS ARE LIMITED AS IT IS NOT POSSIBLE TO PROSECUTE FOR POSSESSION OF COPIES OF IMPORTED MATERIAL. REPEAT OFFENDERS HAVE THEREFORE NOT BEEN DETERRED BY EXISTING LAWS.

THE BILL PROVIDES THAT MATERIAL SUSPECTED OF FALLING WITHIN THE REFUSED CLASSIFICATION CATEGORY ON THE GROUNDS THAT IT CONTAINS CHILD PORNOGRAPHY MUST BE CLASSIFIED BY THE OFFICE OF FILM AND LITERATURE CLASSIFICATION BEFORE POLICE CAN BRING A PROSECUTION.

THAT OFFICE CURRENTLY CLASSIFIES MATERIAL IN RELATION TO THE SALE, ADVERTISING OR PUBLICATION OF FILMS, VIDEOS, PUBLICATIONS AND COMPUTER GAMES AND IT IS CONSIDERED PREFERABLE THAT THE OFFICE CONTINUE THIS ROLE IN RELATION TO POSSESSION. THIS WILL MEAN THAT THE COURTS WILL NOT BE PLACED IN THE POSITION OF HAVING TO ACT AS CENSOR. THIS APPROACH ALSO ENSURES THERE IS A DEGREE OF CONSISTENCY IN DETERMINING WHETHER MATERIAL FALLS WITHIN THE PROHIBITED CATEGORY.

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I COMMEND THE BILL TO THE HOUSE.

CRIMES (CHILD PORNOGRAPHY) AMENDMENT BILL 1995

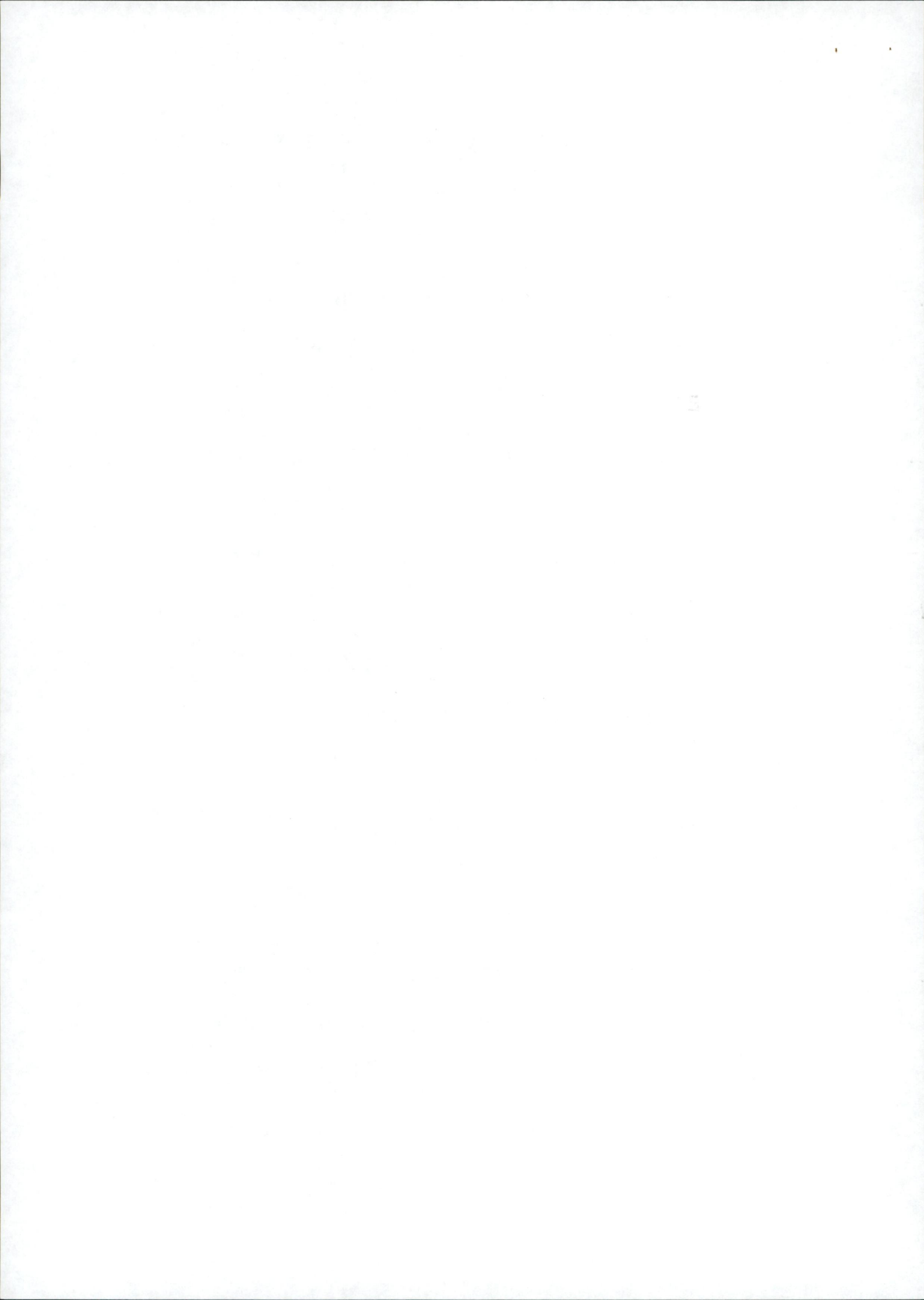
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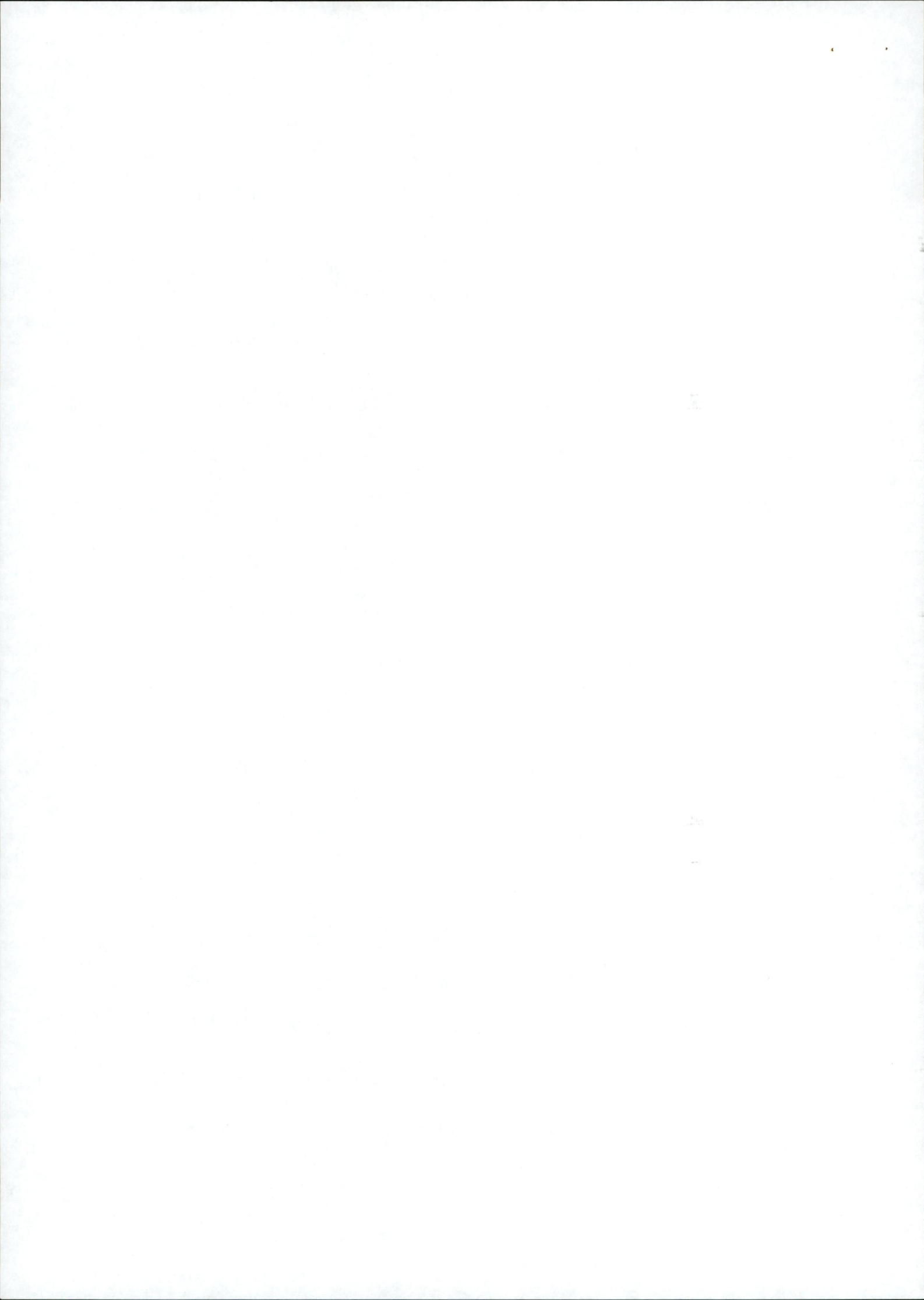
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CRIMES (CHILD PORNOGRAPHY) AMENDMENT BILL 1995

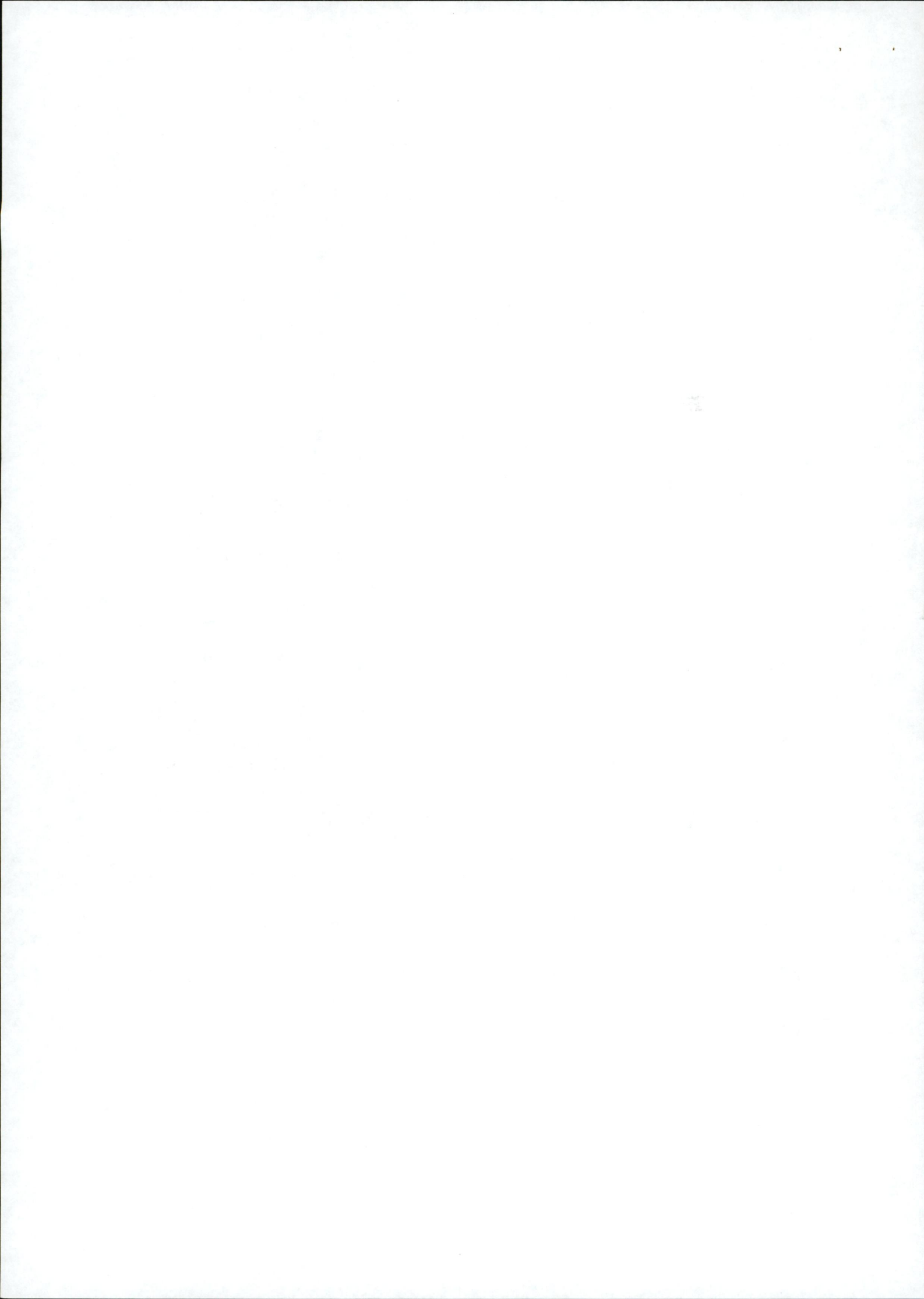
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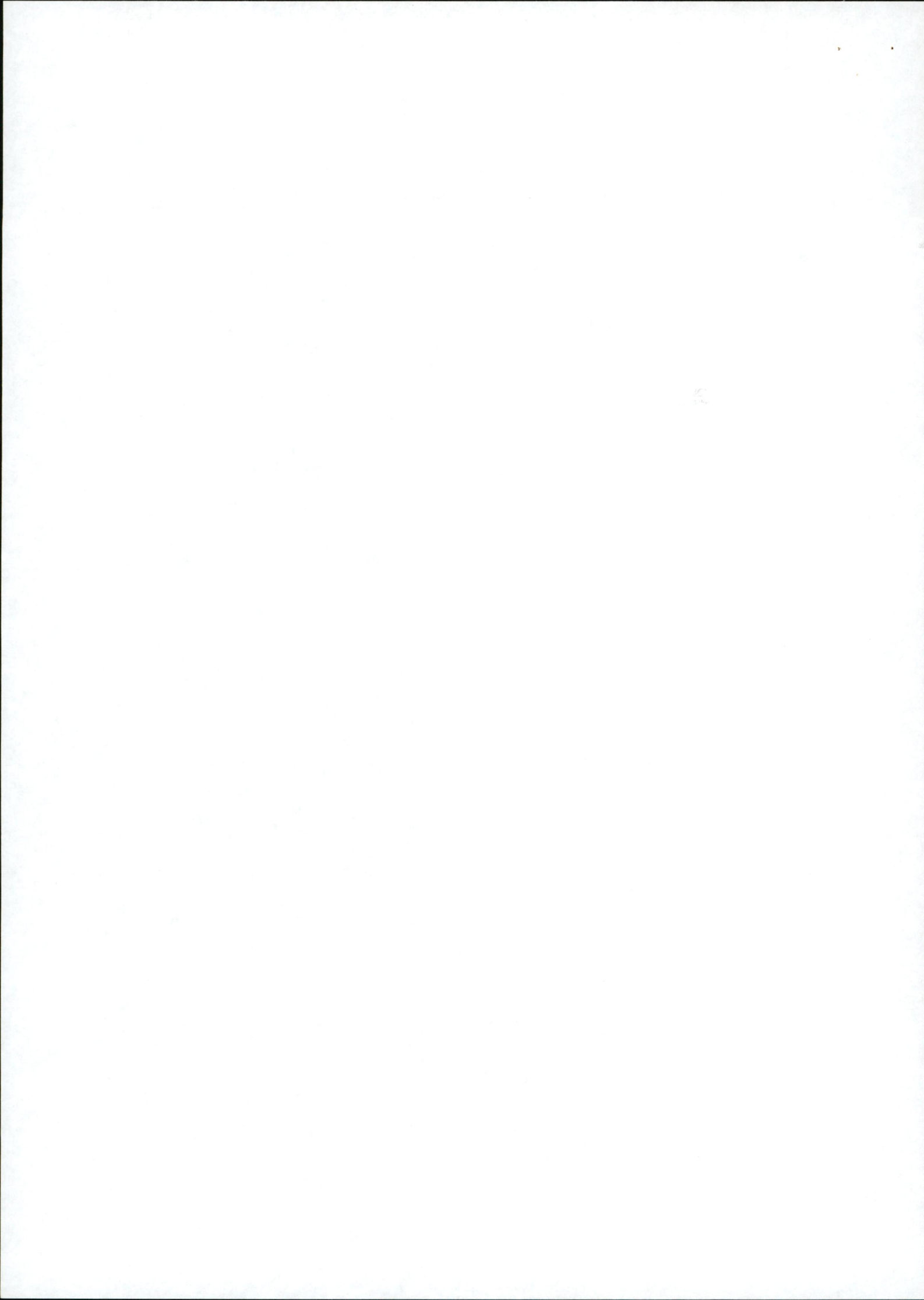
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THAT OFFICE CURRENTLY CLASSIFIES MATERIAL IN RELATION TO THE SALE, ADVERTISING OR PUBLICATION OF FILMS, VIDEOS, PUBLICATIONS AND COMPUTER GAMES AND IT IS CONSIDERED PREFERABLE THAT THE OFFICE CONTINUE THIS ROLE IN RELATION TO POSSESSION. THIS WILL MEAN THAT THE COURTS WILL NOT BE PLACED IN THE POSITION OF HAVING TO ACT AS CENSOR. THIS APPROACH ALSO ENSURES THERE IS A DEGREE OF CONSISTENCY IN DETERMINING WHETHER MATERIAL FALLS WITHIN THE PROHIBITED CATEGORY.

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THE PRESENT LEGISLATION REFERS TO MATERIAL WHICH DEPICTS "A PERSON WHO IS, OR IS APPARENTLY, UNDER THE AGE OF 16 YEARS". THESE WORDS HAVE BEEN REPLACED WITH A REFERENCE TO "A CHILD, OR A PERSON, WHO IN THE



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I COMMEND THE BILL TO THE HOUSE.

CRIMES (CHILD PORNOGRAPHY) AMENDMENT BILL 1995

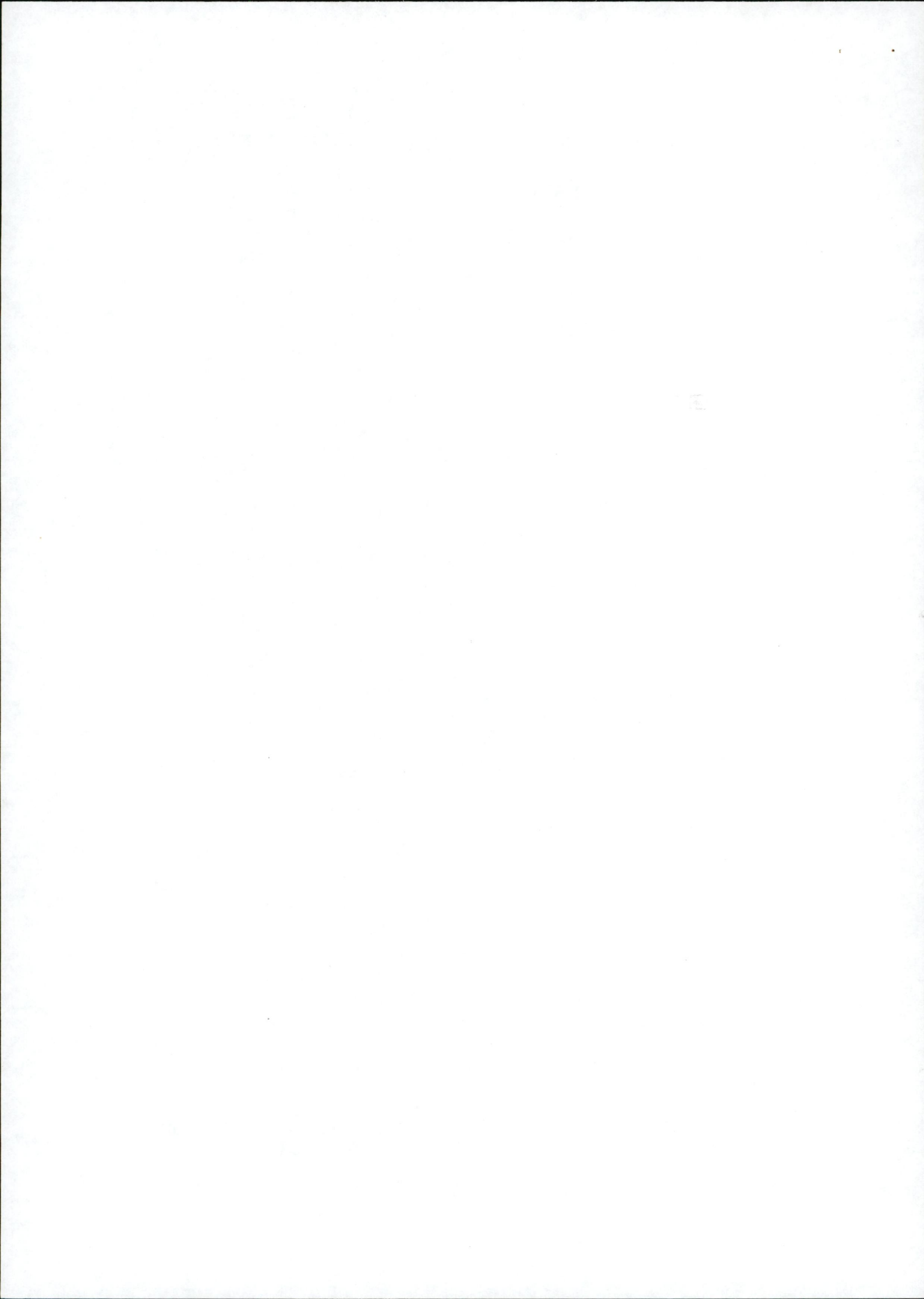
SECOND READING

MR PRESIDENT, I MOVE, THAT THIS BILL BE NOW READ A SECOND TIME.

THE CRIMES (CHILD PORNOGRAPHY) AMENDMENT BILL 1995 PROHIBITS THE POSSESSION OF FILMS, COMPUTER GAMES AND PUBLICATIONS WHICH CONTAIN CHILD PORNOGRAPHY.

THE INTRODUCTION OF AN OFFENCE FOR THE POSSESSION OF CHILD PORNOGRAPHY ACCORDS WITH THE RECOMMENDATIONS OF THE AUSTRALIAN BUREAU OF CRIMINAL INTELLIGENCE IN ITS 1993 REPORT "PAEDOPHILES AND CHILD SEXUAL ABUSE".

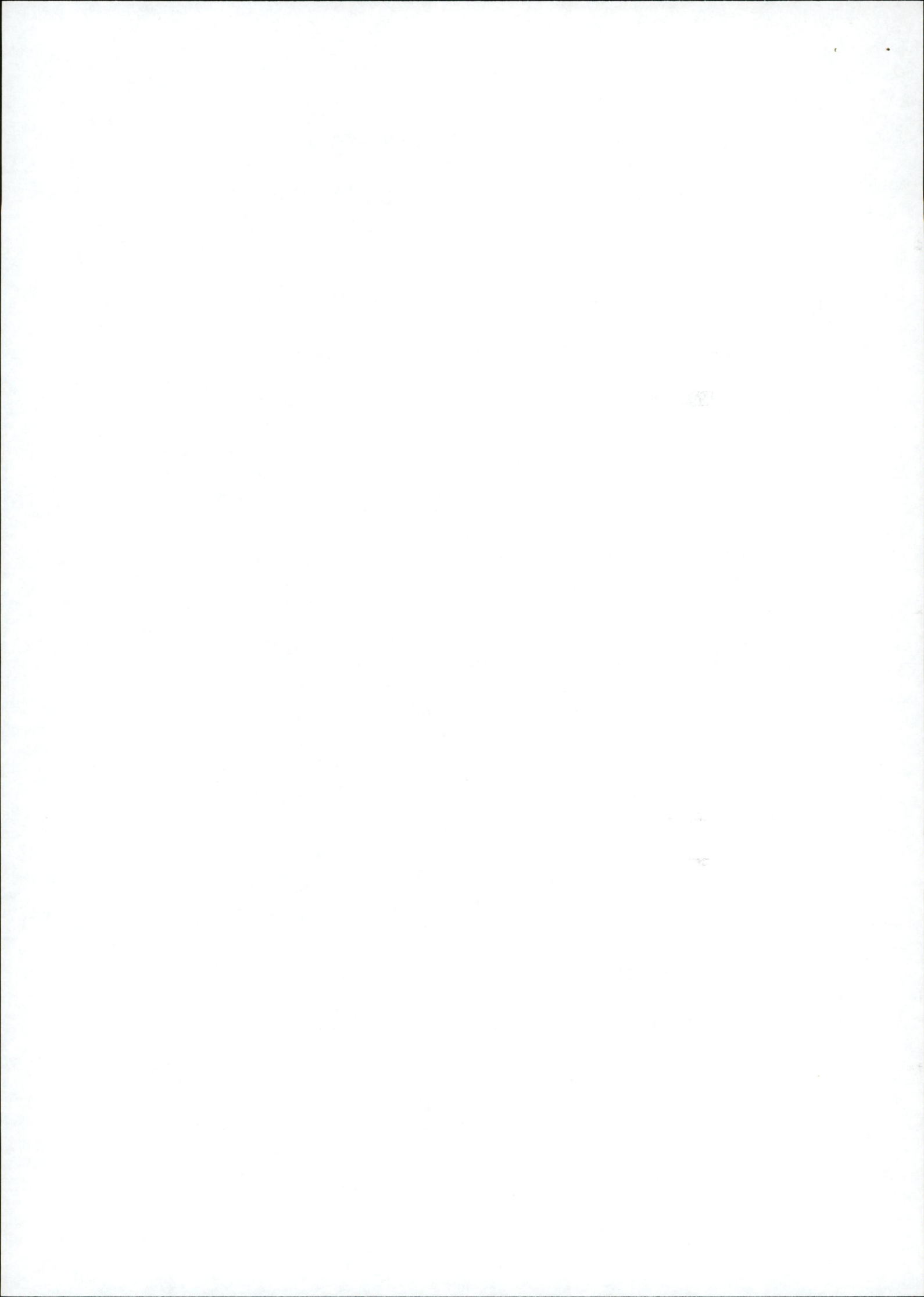
THE PROPOSED OFFENCE PROVIDES FOR A PENALTY OF UP TO \$10,000, TWELVE MONTHS IMPRISONMENT, OR BOTH. THE PROPOSED LEGISLATION WILL COMPLEMENT EXISTING PROVISIONS CONTAINED IN THE NEW SOUTH WALES CRIMES



ACT, WHICH MAKE IT AN OFFENCE TO EMPLOY OR PROCURE A CHILD TO BE EMPLOYED FOR PORNOGRAPHIC PURPOSES.

MORE IMPORTANTLY, THE PROPOSED LEGISLATION WILL ASSIST POLICE IN TAKING ACTION AGAINST PAEDOPHILES. PREVIOUSLY, POLICE HAVE LARGELY RELIED UPON POWERS IN CUSTOMS LEGISLATION TO SEIZE CHILD PORNOGRAPHY AND OTHER REFUSED CLASSIFICATION MATERIAL, WHERE IT COULD BE PROVEN THAT THE MATERIAL HAD BEEN ILLEGALLY IMPORTED INTO AUSTRALIA. HOWEVER, THESE POWERS ARE LIMITED AS IT IS NOT POSSIBLE TO PROSECUTE FOR POSSESSION OF COPIES OF IMPORTED MATERIAL. REPEAT OFFENDERS HAVE THEREFORE NOT BEEN DETERRED BY EXISTING LAWS.

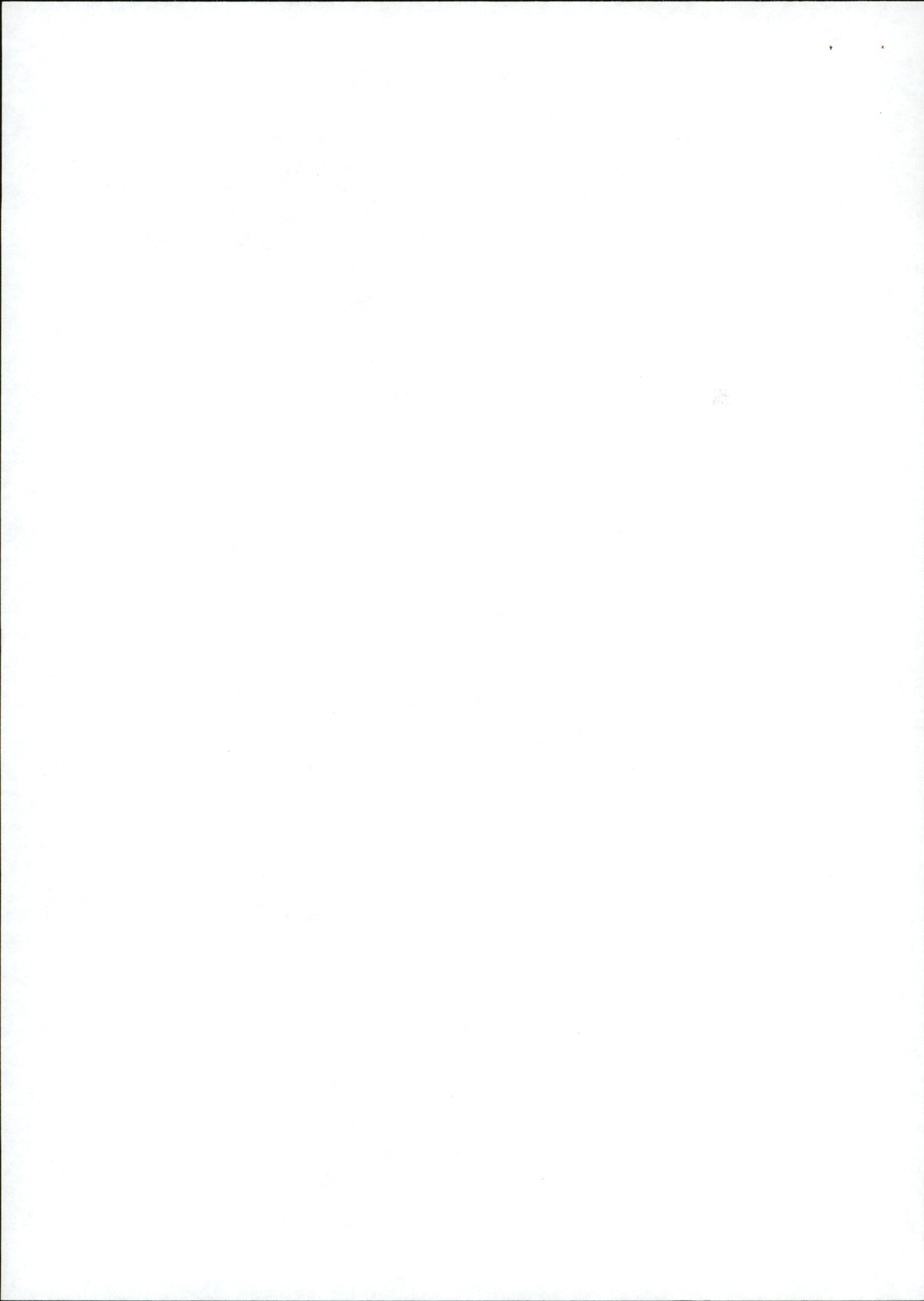
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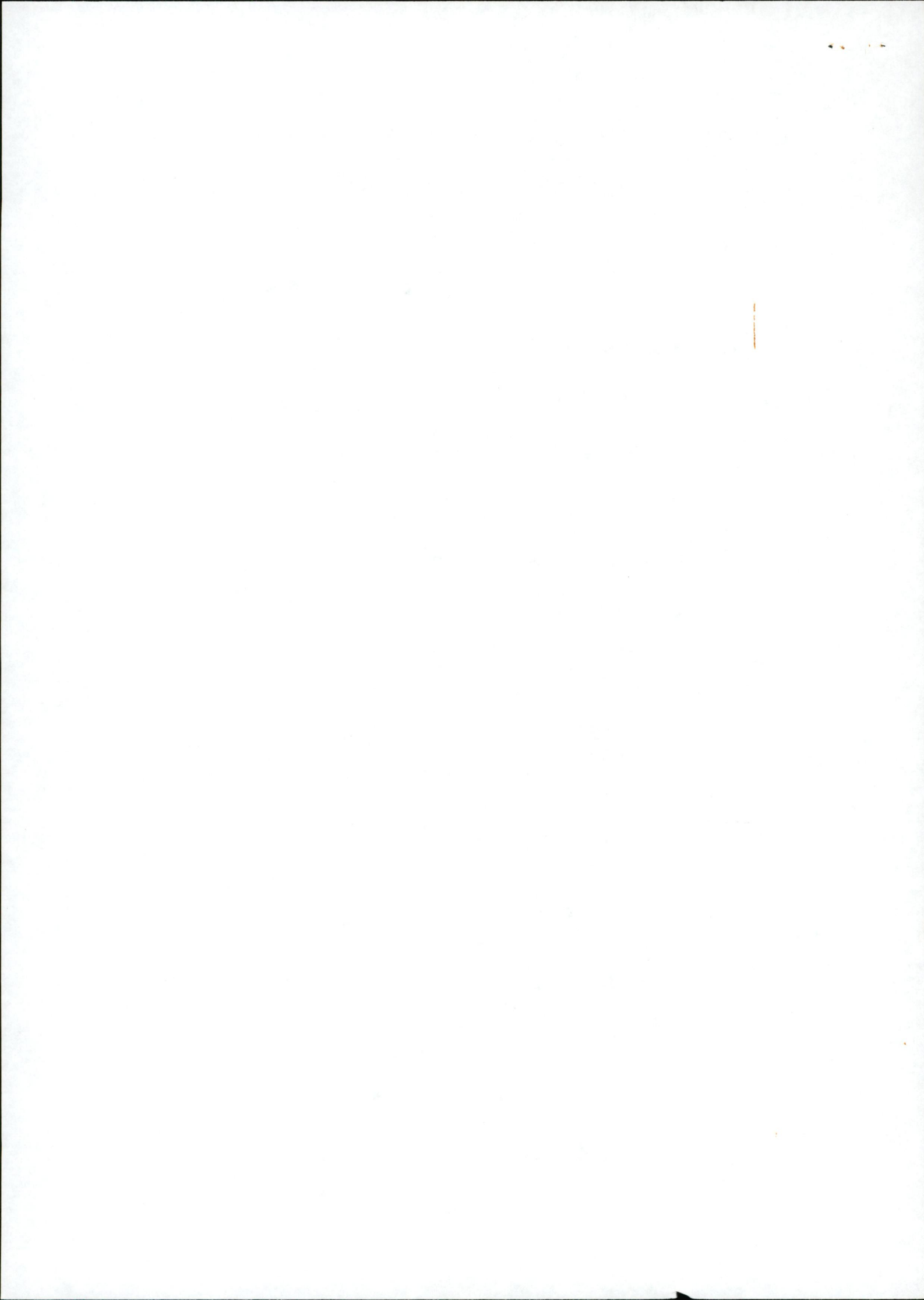
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I COMMEND THE BILL TO THE HOUSE.





New South Wales

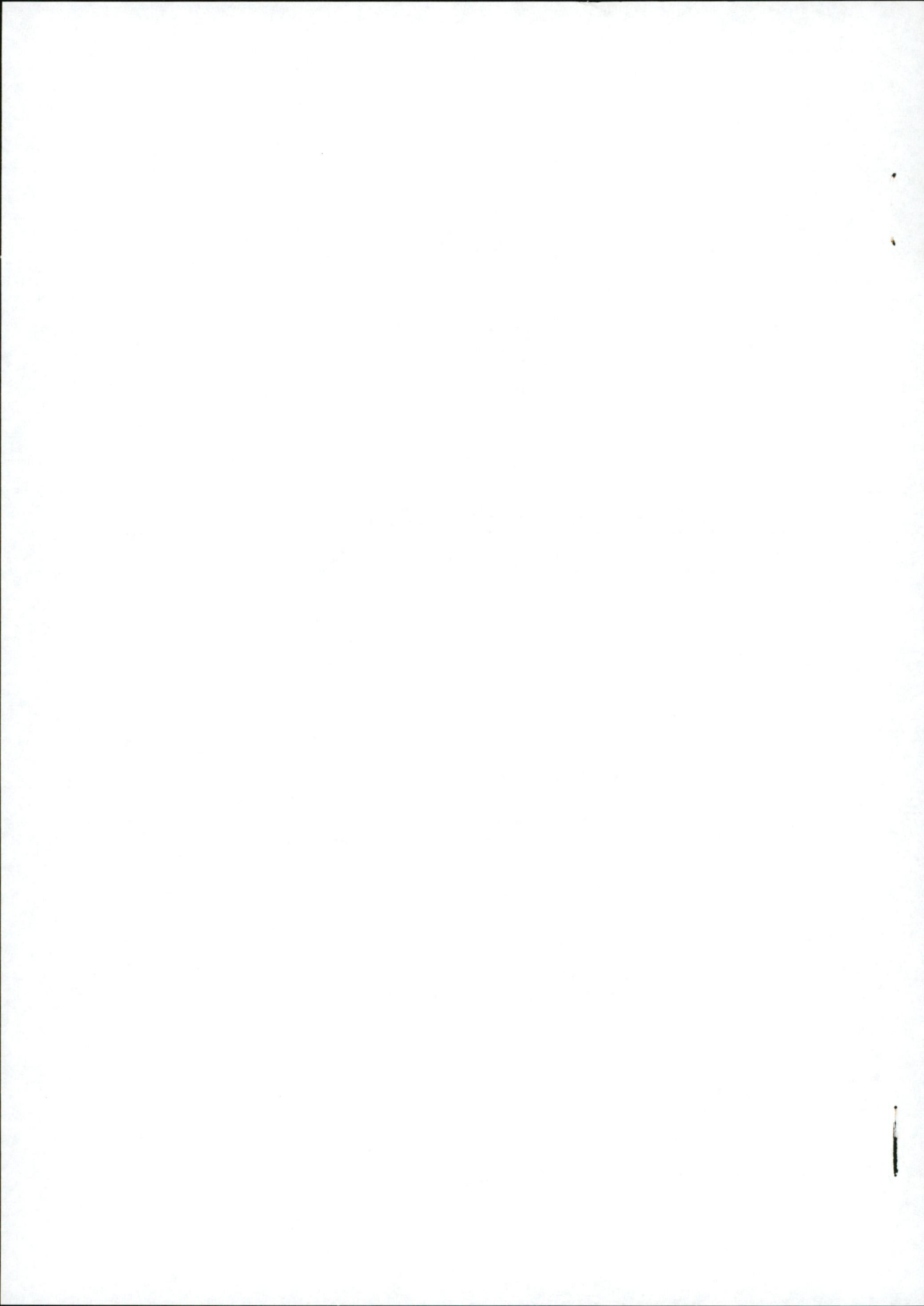
Crimes Amendment (Child Pornography) Act 1995 No 49

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New South Wales

Crimes Amendment (Child Pornography) Act 1995 No 49

Act No 49, 1995

An Act to amend the *Crimes Act 1900* with respect to the possession of child pornography; to amend the *Film and Computer Game Classification Act 1984* and the *Indecent Articles and Classified Publications Act 1975* for related purposes; and to consequentially amend the *Search Warrants Act 1985*. [Assented to 2 November 1995]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Crimes Amendment (Child Pornography) Act 1995*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Crimes Act 1900 No 40

The *Crimes Act 1900* is amended as set out in Schedule 1.

4 Amendment of other Acts

Each Act specified in Schedule 2 is amended as set out in that Schedule.

5 Certain other amendments relating to age

Each Act specified in Schedule 3 is amended as set out in that Schedule.

Schedule 1 Amendment of Crimes Act 1900

(Section 3)

[1] Section 1 Short title and contents of Act

Insert after the matter relating to Part 6:

Part 6A Possession of Child Pornography—s. 310A

[2] Section 1

Insert after item (2AA) of the matter relating to Part 10:

(2AB) *Powers of entry and search in relation to child pornography—s. 357EB*

[3] Part 6A

Insert after Part 6:

Part 6A Possession of Child Pornography

310A Possession of child pornography

- (1) A person is guilty of an offence if the person has in his or her possession any child pornography, and is liable, on summary conviction before a Magistrate, to imprisonment for 12 months, or to a fine of 100 penalty units, or both.
- (2) For the purposes of this section, *child pornography* means:
 - (a) a film that has been refused classification under the 1984 Act, or that is subsequently refused classification under that Act, because it is a child abuse film, or
 - (b) a computer game that has been refused classification under the 1984 Act, or that is subsequently refused classification under that Act, because it is a computer game referred to in section 9AA (2) (b) of that Act, or

- (c) a publication that has been classified as a prohibited publication under the 1975 Act, or that is subsequently classified as a prohibited publication under that Act, because it is a publication referred to in section 13 (3) (a) of that Act.
- (3) A police officer may seize:
 - (a) any film or computer game that the officer reasonably suspects would be refused classification under the 1984 Act as child pornography, or
 - (b) any publication that the officer reasonably suspects would be prohibited under the 1975 Act as child pornography,for the purpose of having it classified under the relevant Act.
- (4) Nothing in this section makes it an offence:
 - (a) for any member or officer of a law enforcement agency to have any child pornography in his or her possession in the exercise or performance of a power, function or duty conferred or imposed on the member or officer by or under any Act or law, or
 - (b) for any person to have any child pornography in his or her possession in the exercise or performance of a power, function or duty relating to the classification of such material conferred or imposed on the person by or under any Act or law, or
 - (c) for a person to have in his or her possession any film that has been classified under the *Classification of Publications Ordinance 1983* of the Australian Capital Territory.
- (5) Proceedings for an offence under this section cannot be commenced later than 6 months after the date of the alleged offence.

- (6) It is a defence to a prosecution under this section to prove:
- (a) that the defendant did not know, or could not reasonably be expected to have known, that the material concerned had been refused classification or had been prohibited, or
 - (b) that the defendant could not reasonably have been expected to suspect that the material concerned would be likely to be refused classification or would be likely to be prohibited, or
 - (c) that the person depicted in the material was of or above the age of 16 at the time when the film, computer game or publication was made, taken, produced or published.
- (7) In any proceedings for an offence under this section:
- (a) a certificate signed or purporting to be signed by the censor stating that a film has been refused classification under the 1984 Act because it is a child abuse film is conclusive evidence of the matter stated in the certificate, and
 - (b) a certificate signed or purporting to be signed by the censor stating that a computer game has been refused classification under the 1984 Act because it is a computer game referred to in section 9AA (2) (b) of that Act is conclusive evidence of the matter stated in the certificate, and
 - (c) a copy of a notification under section 14 (1) of the 1975 Act which specifies that a publication has been classified as a prohibited publication under that Act because it is a publication referred to in section 13 (3) (a) of that Act is conclusive evidence that the publication has been so classified.
- (8) A court that convicts a person of an offence under this section may order that any child pornography in respect of which the offence was committed is to be destroyed or otherwise disposed of as the court thinks fit.

(9) In this section:

ensor, child abuse film, computer game and *film* have the same meanings as in the 1984 Act.

law enforcement agency has the same meaning as in section 13 of the *Criminal Records Act 1991*, and includes a person or body prescribed by the regulations for the purpose of this definition.

publication has the same meaning as in the 1975 Act. *the 1975 Act* means the *Indecent Articles and Classified Publications Act 1975*.

the 1984 Act means the *Film and Computer Game Classification Act 1984*.

[4] **Section 357EB**

Insert after section 357EA:

Powers of entry and search in relation to child pornography

357EB Police may enter and search premises for child pornography

- (1) A police officer may apply to an authorised justice for the issue of a search warrant if the police officer believes on reasonable grounds that an offence against section 310A is being committed on any premises.
- (2) An authorised justice to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising a police officer:
 - (a) to enter and search the premises concerned for evidence of an offence against section 310A, and
 - (b) to seize any film, computer game or publication (as referred to in section 310A) that may be evidence of such an offence.
- (3) Part 3 of the *Search Warrants Act 1985* applies to a search warrant issued under this section.
- (4) In this section, *authorised justice* has the same meaning as in the *Search Warrants Act 1985*.

Schedule 2 Amendment of other Acts

(Section 4)

2.1 Film and Computer Game Classification Act 1984 No 155

[1] Section 3 Definitions

Omit “, or who is apparently, a child” from the definition of *child abuse film* in section 3 (1).

Insert instead “a child (or who looks like a child)”.

[2] Section 9 Classification of films

Omit section 9 (2) (b). Insert instead:

(b) is, in the opinion of the censor, a child abuse film,

[3] Section 9AA Classification of computer games

Omit “, or who is apparently, a child” from section 9AA (2) (b).

Insert instead “a child (or who, in the opinion of the censor, looks like a child)”.

2.2 Indecent Articles and Classified Publications Act 1975 No 32

Section 13 Classification of publications

Omit “, or who is apparently, under” from section 13 (3) (a).

Insert instead “under (or, in the opinion of the classifying authority, is under)”.

2.3 Search Warrants Act 1985 No 37

Section 10 Definitions

Omit the matter relating to the *Crimes Act 1900* from the definition of *search warrant*.

Insert instead:

sections 357EA and 357EB of the *Crimes Act 1900*,

**Schedule 3 Certain other amendments relating to
age**

(Section 5)

3.1 Crimes Act 1900 No 40

Section 310A Possession of child pornography

Omit "16" from section 310 (6) (c) (as inserted by the *Crimes Amendment (Child Pornography) Act 1995*).

Insert instead "18".

**3.2 Film and Computer Game Classification Act 1985 No
155**

Omit "16" from the definition of *child* in section 3.

Insert instead "18".

**3.3 Indecent Articles and Classified Publications Act 1975
No 32**

Omit "16" from section 13 (3) (a). Insert instead "18".

[Minister's second reading speech made in—
Legislative Assembly on 23 May 1995
Legislative Council on 19 September 1995]

