

Second print



New South Wales

Criminal Legislation Further Amendment Bill 1995

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This PUBLIC BILL, originated in the LEGISLATIVE ASSEMBLY and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

*Clerk of the Legislative Assembly.
Legislative Assembly*



New South Wales

Criminal Legislation Further Amendment Bill 1995

Act No , 1995

An Act to amend the *Crimes Act 1900* and certain other Acts to make miscellaneous amendments relating to criminal law and procedure, and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Criminal Legislation Further Amendment Act 1995*.

2 Commencement

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

3 Amendment of Acts

Each Act specified in Schedule 1 is amended as set out in that Schedule.

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Schedule 1 Amendment of Acts

(Section 3)

1.1 Children (Criminal Proceedings) Act 1987 No 55

[1] Section 11 Publication and broadcasting of names

Omit section 11 (3). Insert instead:

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- (3) A person who publishes or broadcasts the name of any child the publication or broadcasting of which is prohibited by subsection (1) is guilty of an offence.

Maximum penalty: 500 penalty units (in the case of a corporation) or 50 penalty units or imprisonment for 12 months, or both, in any other case.

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[2] Section 12A

Insert after section 12:

12A Bail applications

Sections 10 and 11 apply to a child who appears or is brought before a court in relation to a bail application in the same way as the sections apply to a child appearing or brought before a court in any criminal proceeding.

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[3] Section 49 Proceedings for offences

Insert "and subsection (2)" after "Part 3".

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Schedule 1 Amendment of Acts

[4] Section 49 (2) and (3)

Insert at the end of section 49:

- (2) Proceedings for an offence against section 11 may be dealt with by the Supreme Court in its summary jurisdiction. 5
- (3) If proceedings for an offence against section 11 are brought before a Local Court, the maximum penalty that the Local Court may impose on a corporation is 50 penalty units.

1.2 Crimes Act 1900 No 40 10

[1] Section 1 Short title and contents of Act

Insert after the matter relating to Part 1 (3A):

- (3B) *Misuse of public property by public officials outside the State—s 3B*

[2] Section 1 15

Omit “56–60” from the matter relating to item 7 of Part 3.
Insert instead “56–59”.

[3] Section 1

Insert at the end of the matter relating to Part 10:

- (5) *Offence relating to escaped prisoners—s 358C* 20

[4] Section 1

Insert “**Part 11A Intoxication—ss 428A–428I**” after the matter relating to Part 11.

[5] Section 3B

Insert after section 3A:

Misuse of public property by public officials outside the State

3B Misuse of public property by public officials outside the State

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(1) A public official commits an offence under section 178BA or 178BB if:

(a) the public official does, or omits to do, outside the State any act or thing that constitutes the offence, and

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(b) (apart from this section) the act or omission would have constituted the offence had it been done, or omitted to be done, within the State, and

(c) the offence involves public money of the State or other property held by any person for or on behalf of the State.

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(2) A public official who commits an offence by the operation of this section may be dealt with, and is liable to the same punishment, as if the public official had committed the offence within the State.

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(3) A sufficient nexus exists between the State and an element of an offence to which this section applies if the offence is committed by a public official and involves the misuse of public money of the State or other property held by any person for or on behalf of the State.

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(4) The other provisions of this Act, the provisions of other Acts and the common law, in so far as these are applicable, apply to an offence to which this section applies as if it had been committed within the State (for example, section 344A and the rules of law relating to attempts to commit offences apply to such an offence).

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- (5) Nothing in this section prevents or affects any other punishment, or any forfeiture, provided under any Act. In particular, nothing in this section prevents or affects any other punishment for a breach of discipline by a public official. 5
- (6) This section applies only to acts or omissions occurring after the commencement of this section.
- (7) This section is in addition to and does not derogate from any other basis on which the courts of the State may exercise criminal jurisdiction. 10
- (8) In this section:
public official has the same meaning as it has in the *Independent Commission Against Corruption Act 1988*.
the State includes:
(a) the territorial sea adjacent to the State, and 15
(b) the sea on the landward side of the territorial sea that is not within the limits of the State.

[6] **Sections 52B and 52BA**

Omit section 52B. Insert instead:

52B Dangerous navigation: substantive matters 20

(1) **Dangerous navigation occasioning death**

A person is guilty of the offence of dangerous navigation occasioning death if the vessel navigated by the person is involved in an impact occasioning the death of another person and the person navigating the vessel was, at the time of the impact, navigating the vessel: 25

- (a) under the influence of intoxicating liquor or of a drug, or
(b) at a speed dangerous to the public, or
(c) in a manner dangerous to the public. 30

A person convicted of an offence under this subsection is liable to imprisonment for 10 years.

(2) **Aggravated dangerous navigation occasioning death**

A person is guilty of the offence of aggravated dangerous navigation occasioning death if the person commits the offence of dangerous navigation occasioning death in circumstances of aggravation. A person convicted of an offence under this subsection is liable to imprisonment for 14 years. 5

(3) **Dangerous navigation causing grievous bodily harm**

A person is guilty of the offence of dangerous navigation causing grievous bodily harm if the vessel navigated by the person is involved in an impact occasioning grievous bodily harm to another person and the person navigating the vessel was, at the time of the impact, navigating the vessel: 10

- (a) under the influence of intoxicating liquor or of a drug, or
- (b) at a speed dangerous to the public, or
- (c) in a manner dangerous to the public. 15

A person convicted of an offence under this subsection is liable to imprisonment for 7 years. 20

(4) **Aggravated dangerous navigation occasioning grievous bodily harm**

A person is guilty of the offence of aggravated dangerous navigation occasioning grievous bodily harm if the person commits the offence of dangerous navigation occasioning grievous bodily harm in circumstances of aggravation. A person convicted of an offence under this subsection is liable to imprisonment for 11 years. 25 30

(5) **When vessel is involved in impact—generally**

For the purposes of this section, the circumstances in which a vessel is involved in an impact occasioning the death of, or grievous bodily harm to, a person include if the death or harm is occasioned through any of the following: 5

- (a) the vessel overturning or running aground while the person is being conveyed in or on the vessel (whether as a passenger or otherwise),
- (b) an impact between any object and the vessel while the person is being conveyed in or on that vessel (whether as a passenger or otherwise), 10
- (c) an impact between the person and the vessel,
- (d) the impact of the vessel with another vessel or an object in, on or near which the person is at the time of the impact, 15
- (e) an impact with anything on, or attached to, the vessel,
- (f) an impact with anything that was in motion through falling from the vessel. 20

(6) **When vessel is involved in causing other impacts**

For the purposes of this section, a vessel is also involved in an impact occasioning the death of, or grievous bodily harm to, a person if the death or harm is occasioned through the vessel causing an impact between other vessels or between another vessel and any object or person or causing another vessel to overturn or run aground. 25

(7) **Circumstances of aggravation**

In this section, *circumstances of aggravation* means any circumstances at the time of the impact occasioning death or grievous bodily harm in which: 30

- (a) the prescribed concentration of alcohol was present in the accused's blood, or

- (b) the accused was navigating the vessel at a speed that exceeds the speed limit (if any) applicable to the person navigating the vessel, or to the navigable waters, on which the vessel was navigated at the time of the impact, or 5
- (c) the accused was navigating the vessel in an attempt to escape pursuit by a police officer.

(8) **Defences**

It is a defence to any charge under this section if the death or grievous bodily harm occasioned by the impact was not in any way attributable (as relevant): 10

- (a) to the fact that the person charged was under the influence of intoxicating liquor or of a drug, or
- (b) to the speed at which the vessel was navigated, or
- (c) to the manner in which the vessel was navigated. 15

(9) **Definitions**

In this section:

drug has the meaning it has in section 2 (1) of the *Traffic Act 1909*.

object includes a pier, wharf, jetty, pontoon, buoy, breakwater, bridge, support, mooring post or platform, navigation aid, retaining wall, marina, boatshed, slipway or swimming enclosure. 20

prescribed concentration of alcohol means a concentration of 0.15 grams or more of alcohol in 100 millilitres of blood. 25

vessel means a vessel within the meaning of the *Marine (Boating Safety—Alcohol and Drugs) Act 1991*.

52BA Dangerous navigation: procedural matters

(1) **Presumption as to intoxication**

For the purposes of section 52B, the accused is conclusively presumed to be under the influence of liquor if the prosecution proves that the prescribed concentration of alcohol was present in the accused's blood at the time of the impact occasioning death or grievous bodily harm. 5

(2) **Evidence of intoxication**

For the purposes of section 52B, evidence may be given of the concentration of alcohol present in the accused's blood at the time of the impact occasioning death or grievous bodily harm as determined by a blood analysis carried out in accordance with Part 3 of the *Marine (Boating Safety—Alcohol and Drugs) Act 1991*. 10
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(3) **Time of intoxication**

A concentration of alcohol determined by the means referred to in subsection (2) is taken to be the concentration of alcohol in the accused's blood at the time of the impact occasioning death or grievous bodily harm: 20

- (a) if the blood sample that was analysed was taken within 2 hours after the impact, and
- (b) unless the accused proves that the concentration of alcohol in the accused's blood at that time was less than the prescribed concentration of alcohol. 25

(4) **Alternative verdicts**

If on the trial of a person who is indicted for murder or manslaughter or for an offence under section 54 the jury is satisfied that the person is guilty of an offence under section 52B, it may find the accused guilty of the offence under section 52B, and the accused is liable to punishment accordingly. 30

(5) **Question of aggravation**

If on the trial of a person for an offence under section 52B (2) or (4) the jury is not satisfied that the accused is guilty of the offence charged, but is satisfied on the evidence that the accused is guilty of an offence under section 52B (1) or (3), it may find that the accused is guilty of the offence under section 52B (1) or (3), and the accused is liable to punishment accordingly. 5

(6) **Double jeopardy**

This section does not take away the liability of any person to be prosecuted for or found guilty of murder, manslaughter or any other offence or affect the punishment that may be imposed for any such offence. However, a person who: 10

(a) has been convicted or acquitted of an offence under section 52B cannot be prosecuted for murder or manslaughter or for any other offence under this Act on the same, or substantially the same, facts, or 15

(b) has been convicted or acquitted of murder or manslaughter or of any other offence under this Act cannot be prosecuted for an offence under section 52B on the same, or substantially the same, facts. 20

(7) **Definition** 25

In this section:

prescribed concentration of alcohol means a concentration of 0.15 grams or more of alcohol in 100 millilitres of blood.

[7] **Section 60 Assault by husband on wife** 30

Omit the section.

[8] Section 302A

Insert after section 302:

302A Making or possession of implements for making false instruments

A person who makes, or who has in his or her custody or under his or her control, a machine or implement, or paper or other material, that is, and that the person knows to be, specially designed or adapted for the making of a false instrument, with the intention that he or she or another person will use it to induce another person: 5
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- (a) to accept the instrument as genuine, and
- (b) because of that acceptance, to do or not do some act to that other person's or to another person's prejudice, 15

is liable to penal servitude for 10 years.

[9] Section 358C

Insert after section 358B:

Offence relating to escaped prisoners

358C Harboursing escapee from another State or Territory 20

Any person who, in this State, knowingly harbours, maintains or employs a prisoner who has escaped from lawful custody in another State or a Territory is liable to penal servitude for 3 years.

[10] Part 11A

Insert after Part 11:

Part 11A Intoxication

428A Definitions

In this Part:

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drug includes a drug within the meaning of the *Drug Misuse and Trafficking Act 1985* and a poison, restricted substance or drug of addiction within the meaning of the *Poisons Act 1966*.

intoxication means intoxication because of the influence of alcohol, a drug or any other substance. 10

offence includes an attempt to commit the offence.

offence of specific intent is defined in section 428B.

relevant conduct means an act or omission necessary to constitute the actus reus of an offence. 15

self-induced intoxication means any intoxication except intoxication that:

- (a) is involuntary, or
- (b) results from fraud, sudden or extraordinary emergency, accident, reasonable mistake, duress or force, or 20
- (c) results from the administration of a drug for which a prescription is required in accordance with the prescription of a medical practitioner or dentist, or of a drug for which no prescription is required administered for the purpose, and in accordance with the dosage level recommended, in the manufacturer's instructions. 25

428B Offences of specific intent to which Part applies

- (1) An *offence of specific intent* is an offence of which an intention to cause a specific result is an element.
- (2) Without limiting the generality of subsection (1), the offences referred to in the Table to this section are examples of offences of specific intent. 5

Table

(a)	an offence under the following provisions of this Act:	
19A	Murder	
27	Acts done to the person with intent to murder	10
28	Acts done to property with intent to murder	
29	Certain other attempts to murder	
30	Attempts to murder by other means	
33	Wounding etc, with intent to do bodily harm or resist arrest	15
33A	Discharging loaded arms with intent	
33B	Use of weapon to resist arrest etc	
36	Causing a grievous bodily disease	
37	Attempts to choke etc (garrotting)	20
38	Using chloroform etc to commit an offence	
41	Administering poison etc with intent to injure or annoy	
41A	Poisoning etc of water supply	
47	Using etc explosive substance or corrosive fluid etc	25
48	Placing gunpowder near a building etc	
49	Setting trap etc	
55	Possessing etc gunpowder etc with intent to injure the person	30
61K	Assault with intent to have sexual intercourse	

Table—continued

82	Administering drugs etc to herself by woman with child	
83	Administering drugs etc to woman with intent	
86	Abduction of woman against her will	5
87	The like against the will of parent etc	
89	Forcible abduction of a woman	
90A	Kidnapping	
99	Demanding money with intent to steal	
100A	Blackmail by threat to publish etc	10
101	Threatening letters	
102	Accusing or threatening to accuse of crime to extort money etc	
103	Causing a person by violence or threats to execute deeds etc	15
110	Breaking, entering and assaulting with intent to murder etc	
111	Entering dwelling-house	
113	Breaking etc into any house etc with intent to commit felony	20
114 (a) (c) (d)	Being armed etc with intent to commit offence	
145	Miners removing ore with intent to defraud	
147	Fraud on partners in mines etc	
158	Destruction, falsification of accounts etc by clerk or servant	25
172	Trustees fraudulently disposing of property	
174	Directors etc omitting certain entries	
175	Director etc wilfully destroying etc books of company etc	30
176	Director or officer publishing fraudulent statements	
178BB	Obtaining money etc by false or misleading statements	
179	False pretences etc	35

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Table—continued

180	Causing payment etc by false pretences etc	
181	False pretence of title	
184	Fraudulent personation	
185	Inducing persons by fraud to execute instruments	5
190	Receiving etc cattle feloniously killed, or carcass etc	
196	Maliciously destroying or damaging property with intent to injure a person	10
198	Maliciously destroying or damaging property with the intention of endangering life	
199	Threatening to destroy or damage property	
200	Possession, custody or control of an article with intent to destroy or damage property	15
202 (c)	Interfering or damaging etc bed or bank of river with intent of obstructing etc navigation	
205	Prejudicing the safe operation of an aircraft or vessel	
210 (b)	Acting with intention of destroying etc aids to navigation	20
211	Criminal acts relating to railways	
249C	Misleading documents or statements used or made by agents	
249D	Corrupt inducements for advice	25
298	Demanding property on forged instruments	
300	Making or using false instruments	
301	Making or using copies of false instruments	
302	Custody of false instruments etc	
302A	Making or possession of implements for making false instruments	30
309 (2)	Unlawful access to data in computer	
314	False accusations etc	
315	Hindering investigation etc	
317	Tampering etc with evidence	35

Table—continued

318	Making or using false official instrument to pervert the course of justice	
319	General offence of perverting the course of justice	5
321 (1)	Corruption of witnesses and jurors	
322	Threatening or intimidating judges, witnesses, jurors etc	
323	Influencing witnesses and jurors	
328	Perjury with intent to procure conviction or acquittal	10
333 (2)	Subornation of perjury	
(b)	an offence under the following provisions of this Act to the extent that an element of the offence requires a person to intend to cause the specific result necessary for the offence:	15
57	(assault on persons preserving wreck)	
58	(assault with intent to commit felony on certain officers)	
66B	(assaulting with intent to have sexual intercourse with child under 10)	20
66D	(assaulting with intent to have sexual intercourse with child between 10 and 16)	
78I	(assault with intent to have homosexual intercourse with male under 10)	
78L	(assault with intent to have homosexual intercourse with male between 10 and 18)	25
78O	(assault with intent to have homosexual intercourse with pupil etc)	
91	(taking child with intent to steal)	
94	(assault with intent to rob person)	30
95	(assault with intent to rob in circumstances of aggravation)	
96	(assault with intent to rob with wounding)	
97	(assault with intent to rob with arms)	
98	(assault with intent to rob)	35
109	(entering with intent, or stealing etc in dwelling-house and breaking out)	

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Table—continued

126	(killing with intent to steal)	
139	(destroys, damages, breaks with intent to steal)	
140	(destroys, damages, breaks with intent to steal)	5
144	(severs with intent to steal)	
146	(concealing royalty with intent to defraud)	
197	(dishonestly destroying or damaging property with a view to gain)	10
204	(destruction of, or damage to, an aircraft or vessel with intent)	
(c)	any other offence by or under any law (including the common law) prescribed by the regulations.	
428C	Intoxication in relation to offences of specific intent	15
(1)	Evidence that a person was intoxicated (whether by reason of self-induced intoxication or otherwise) at the time of the relevant conduct may be taken into account in determining whether the person had the intention to cause the specific result necessary for an offence of specific intent.	20
(2)	However, such evidence cannot be taken into account if the person:	
(a)	had resolved before becoming intoxicated to do the relevant conduct, or	25
(b)	became intoxicated in order to strengthen his or her resolve to do the relevant conduct.	
428D	Intoxication in relation to other offences	
	In determining whether a person had the mens rea for an offence other than an offence of specific intent, evidence that a person was intoxicated at the time of the relevant conduct:	30
(a)	if the intoxication was self-induced—cannot be taken into account, or	
(b)	if the intoxication was not self-induced—may be taken into account.	35

428E Intoxication in relation to murder and manslaughter

If evidence of intoxication at the time of the relevant conduct results in a person being acquitted of murder:

- (a) in the case of intoxication that was self-induced—evidence of that intoxication cannot be taken into account in determining whether the person had the requisite mens rea for manslaughter, or 5
- (b) in the case of intoxication that was not self-induced—evidence of that intoxication may be taken into account in determining whether the person had the requisite mens rea for manslaughter. 10

428F Intoxication in relation to the reasonable person test

If, for the purposes of determining whether a person is guilty of an offence, it is necessary to compare the state of mind of the person with that of a reasonable person, the comparison is to be made between the conduct or state of mind of the person and that of a reasonable person who is not intoxicated. 15

428G Intoxication and the actus reus of an offence 20

- (1) In determining whether a person has committed an offence, evidence that the intoxication was self-induced cannot be taken into account in determining whether the relevant conduct was voluntary.
- (2) However, a person is not criminally responsible for an offence if the relevant conduct resulted from intoxication that was not self-induced. 25

428H Abolition of common law relating to self-induced intoxication

The common law relating to the effect of intoxication on criminal liability is abolished.

428I Application of Part

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This Part applies to any offence (whether under this Act or otherwise) committed after the commencement of this Part.

[11] Section 545B Intimidation or annoyance by violence or otherwise

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Omit section 545B (1) (iv).

[12] Section 545B (2)

Omit the definition of *Watches or besets*.

[13] Section 573 Provision for wife where husband convicted of aggravated assault

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Omit the section.

[14] Second Schedule Application of certain Parts and sections of Act

Omit "Section 3A to 10".

Insert instead "Section 3A, 4 to 10".

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1.3 Criminal Appeal Act 1912 No 16

Section 14A

Omit the section. Insert instead:

14A Crown appeals—absence of respondent

An appeal under section 5C, 5D or 5DA may be dealt with, and the court may pass any sentence under this Act, in the absence of the respondent if the court is satisfied: 5

(a) that:

(i) the respondent has been given notice of the date on which the appeal is to be heard, or 10

(ii) although the notice of appeal was served on the respondent, the respondent has not been given notice of the date on which the appeal is to be heard because the respondent's whereabouts are unknown, and 15

(b) that it would not be unjust to deal with the appeal, and pass sentence, in the absence of the respondent.

1.4 Criminal Procedure Act 1986 No 209 20

[1] Section 33K Maximum penalties for Table 2 offences

Insert at the end of section 33K (2):

(f) for an offence under section 562AB of the *Crimes Act 1900*—imprisonment for 2 years, or a fine of 50 penalty units, or both. 25

[2] Section 33L Jurisdiction of Local Court

Insert at the end of section 33L:

- (2) Despite subsection (1), the jurisdiction of a Local Court under section 33F or 33H may also be exercised by an authorised justice. 5

- (3) In this section:

authorised justice means:

- (a) a justice of the peace who is a Clerk of a Local Court, or
- (b) a justice of the peace who is employed in the Local Courts Administration of the Attorney General's Department and who is declared (whether by name or by reference to the holder of a particular office), by the Attorney General by instrument in writing or by order published in the Gazette to be an authorised justice for the purposes of this section. 10
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[3] Part 9A, Table 1 Indictable offences that are to be dealt with summarily unless prosecuting authority or person charged elects otherwise 20

Omit "section 125" from clause 3 (c) of Part 2.

Insert instead "section 3B, 125".

[4] Part 9A, Table 1, Part 2

Omit "114" from clause 9. Insert instead "114 (1) (a), (c) and (d)".

[5] Part 9A, Table 1, Part 3 25

Omit "or 302" from clause 13. Insert instead ", 302 or 302A".

[6] Part 9A, Table 1, Part 3

Insert at the end of clause 16:

- (2) An offence under section 358C of the *Crimes Act 1900*.

[7] Part 9A, Table 2 Indictable offences that are to be dealt with summarily unless prosecuting authority elects otherwise

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Insert "or the damage," after "property" in clause 3 of Part 2.

[8] Part 9A, Table 2, Part 2

Omit "section 125" from clause 3 (c).
Insert instead "section 3B, 125".

[9] Part 9A, Table 2, Part 2

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Insert after clause 3:

3A Possession of implement of housebreaking

An offence under section 114 (1) (b) of the *Crimes Act 1900*.

1.5 Justices Act 1902 No 27

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[1] Section 131AB Appeal by Crown to District Court against sentence

Insert after section 131AB (5):

- (6) This section does not apply to an appeal referred to in section 131ACA.

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[2] Section 131AC Procedure

Insert "except as provided by section 131ACA" after "must" in section 131AC.

[3] Section 131ACA

Insert after section 131AC:

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131ACA Appeal by Crown against reduced sentence for assistance to authorities

- (1) The Director of Public Prosecutions may appeal to the District Court against any sentence imposed on a person that was reduced because the person undertook to assist law enforcement authorities if the person fails wholly or partly to fulfil the undertaking. 10
- (2) On such an appeal the District Court may, if satisfied that the person has failed wholly or partly to fulfil the undertaking, vary the sentence and impose such sentence as it thinks fit. 15
- (3) An appeal under this section may be lodged within such period after the date the Justice or Justices imposed the sentence as the District Court may allow.

1.6 Listening Devices Act 1984 No 69

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[1] Section 14 Admissibility of evidence of private conversation when obtained inadvertently pursuant to warrant

Omit "complaint" from section 14 (2) (b).
Insert instead "application".

[2] Section 15 Definitions

Omit the definition of *prescribed offence*. Insert instead:

prescribed offence means an offence (including an offence under a law of the Commonwealth or of another State or Territory) that:

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- (a) is punishable on indictment, or
- (b) is of a class or description prescribed for the purposes of this Part (whether or not it is punishable on indictment).

[3] Section 16 Warrants authorising use of listening devices

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Omit "complaint" from section 16 (1).
Insert instead "application".

[4] Section 17 Particulars of warrant sought under section 16 to be notified to Attorney General

Omit "subsection (1)" from section 17 (2) (a).
Insert instead "this section".

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[5] Section 17 (3)

Insert after section 17 (2):

(3) A notice required by this section to be served on a person may be served:

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- (a) by delivering it personally to the person, or
- (b) by sending it by facsimile transmission to a number specified by the person (in correspondence or otherwise) as a number to which facsimile transmissions to that person may be sent.

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[6] Section 18 Radio/telephone warrants

Omit "complaint" from section 18 (2). Insert instead "application".

[7] Section 18 (4)

Omit "A complaint". Insert instead "The application".

[8] Section 18

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Omit "the complaint" wherever occurring.
Insert instead "the application".

[9] Section 18 (5)

Omit "a complaint". Insert instead "an application".

[10] Section 18 (7)

10

Omit "the complainant" wherever occurring.
Insert instead "the applicant".

[11] Section 20A

Insert after section 20:

20A Use of assumed names or code-names in warrants

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(1) The Court may grant a warrant under this Part that refers to a person by an assumed name or code-name if the Court is satisfied that it is necessary to do so to protect the safety of the person.

(2) A person may be referred to by an assumed name or code-name in a notice under section 17 or report under section 5 (4) or 19 if the person who furnishes the notice or report believes on reasonable grounds that use of the assumed name is necessary to protect the safety of the person referred to.

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- (3) The only persons who may be referred to by assumed names or code-names are persons who are referred to as participants or potential participants in a conversation to which the warrant, notice or report relates.

[12] Section 21 Proceedings under this Part

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Omit "complaints" from section 21 (2) (a).
Insert instead "applications".

[13] Schedule 1 Savings and transitional provisions

Insert after clause 4:

5 Change in nomenclature

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A warrant issued under section 16 or 18 before the commencement of Schedule 1.6 [3] or [6] to the *Criminal Legislation Further Amendment Act 1995* is taken to be a warrant issued under those sections as amended by that Act.

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1.7 Summary Offences Act 1988 No 25

[1] Section 6A

Insert after section 6:

6A Unauthorised entry of vehicle or boat

A person must not, without reasonable excuse (proof of which lies on the person), enter any vehicle or boat in a public place without the consent of the owner or lawful occupier of the vehicle or boat.

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Maximum penalty: 4 penalty units.

[2] Section 10 Custody of offensive implement

Omit "10 penalty units or imprisonment for 6 months" from section 10 (1).

Insert instead "20 penalty units or imprisonment for 12 months".

1.8 Supreme Court Act 1970 No 52

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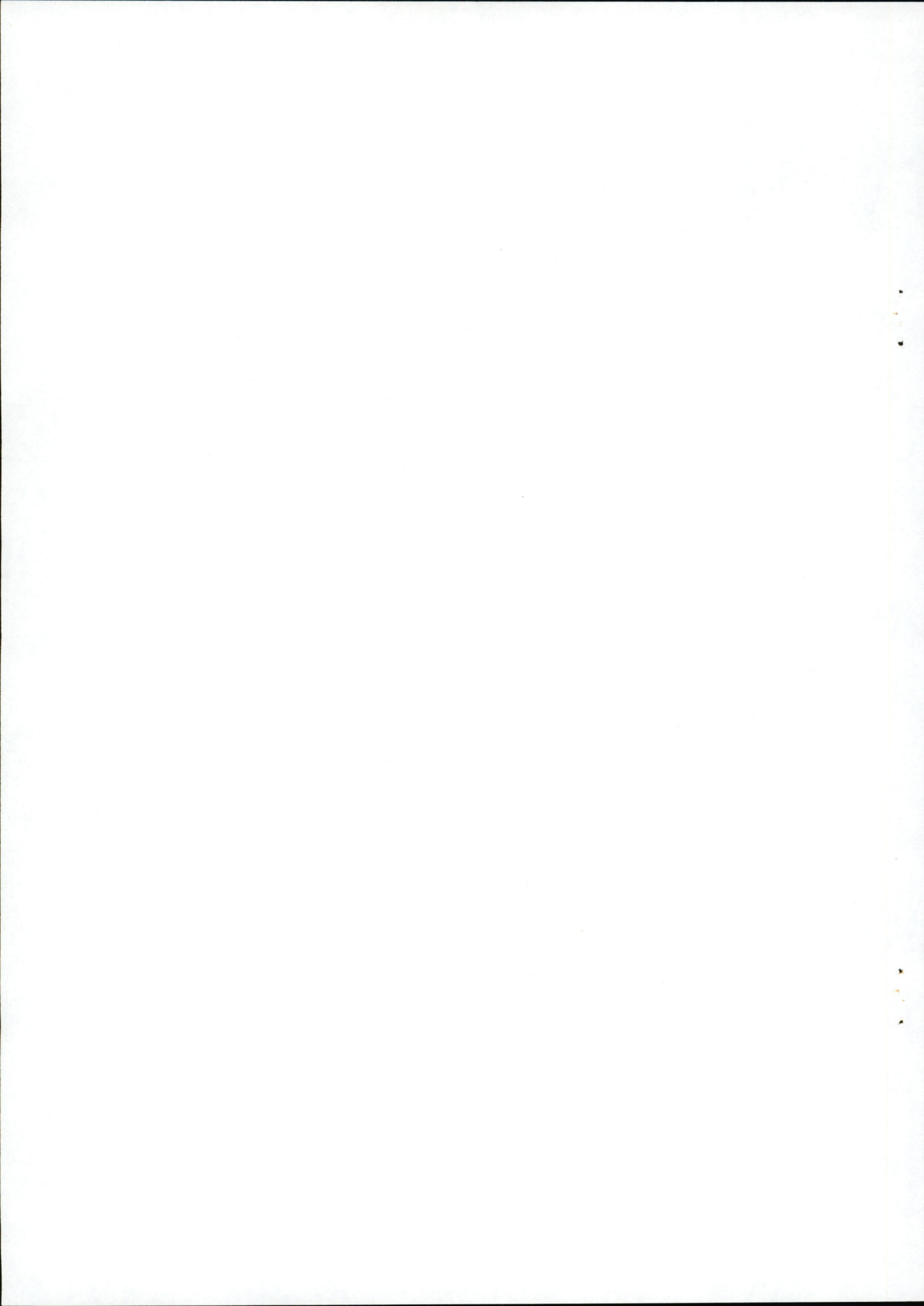
Section 69A and 69B

Insert after section 69:

69A Release on bail and custody of claimants seeking judicial review of conviction or sentence

- (1) This section and section 69B apply to proceedings in the Court by a convicted person (*the claimant*) seeking judicial review in relation to a conviction or sentence for an offence. 10
- (2) A claimant who is not released on bail must, pending the determination of the proceedings, be treated in such manner as may be directed by regulations made under the *Prisons Act 1952* (which is referred to in this section as *special treatment*). 15
- (3) The time during which a claimant is at liberty on bail (pending the determination of the proceedings for review) does not count as part of any term of imprisonment or penal servitude under the claimant's sentence. 20
- (4) The time during which an appellant receives special treatment counts as part of any term of imprisonment or penal servitude under the claimant's sentence. However, if the Court is satisfied that the claim was unarguable or frivolous, the Court may order that the time in custody with special treatment does not count. 25
- (5) In determining proceedings for judicial review, the Court may order that the imprisonment under the original sentence of imprisonment or penal servitude is to commence or recommence on a day specified by the Court. 30

-
- (6) Provision is to be made in regulations made under the *Prisons Act 1952* for:
- (a) the manner in which a claimant, when in custody, is to be brought to any place where the claimant is entitled to be present, or ordered to be taken, for the purposes of this Act, and 5
 - (b) the manner in which the appellant is to be kept in custody whilst absent from prison for the purpose.
- (7) A claimant while in custody in accordance with those regulations is taken to be in legal custody. 10
- 69B Other powers in relations to claimants for judicial review of convictions and sentences**
- (1) In determining proceedings for judicial review in relation to a conviction or sentence for an offence, the Court may make an order quashing either the conviction of, or the sentence imposed on, the claimant, or quash both the conviction and the sentence. 15
 - (2) This section applies to judicial review of orders made by a Local Court or the District Court despite anything contained in the *Justices Act 1902*. 20



CRIMINAL LEGISLATION FURTHER AMENDMENT BILL 1995

SECOND READING SPEECH

LEGISLATIVE COUNCIL

(MR PRESIDENT CALLS NOTICE OF MOTION IN NAME OF MINISTER)

THE ATTORNEY GENERAL TO SAY:

MR PRESIDENT,

I MOVE THAT LEAVE BE GIVEN TO BRING IN A BILL TO AMEND VARIOUS CRIMINAL LAW STATUTES.

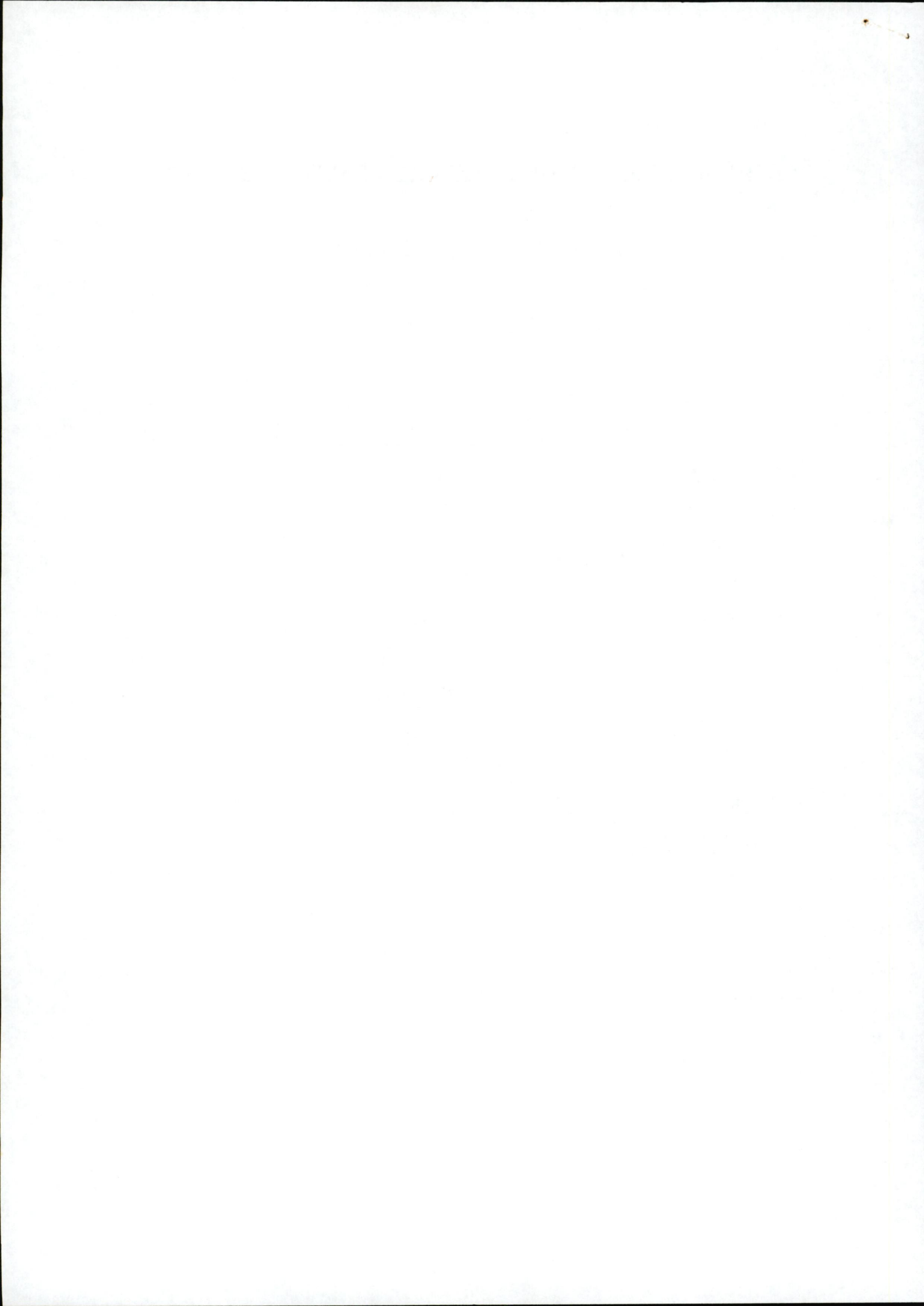
(MR PRESIDENT PUTS QUESTION THAT LEAVE BE GIVEN - NO DEBATE ALLOWED)

(WHEN AGREED TO)

THE ATTORNEY GENERAL TO SAY:

MR PRESIDENT,

I BRING UP THE BILL



**(MINISTER HANDS TWO COPIES OF THE BILL TO CLERK
WHO READS IT A FIRST TIME)**

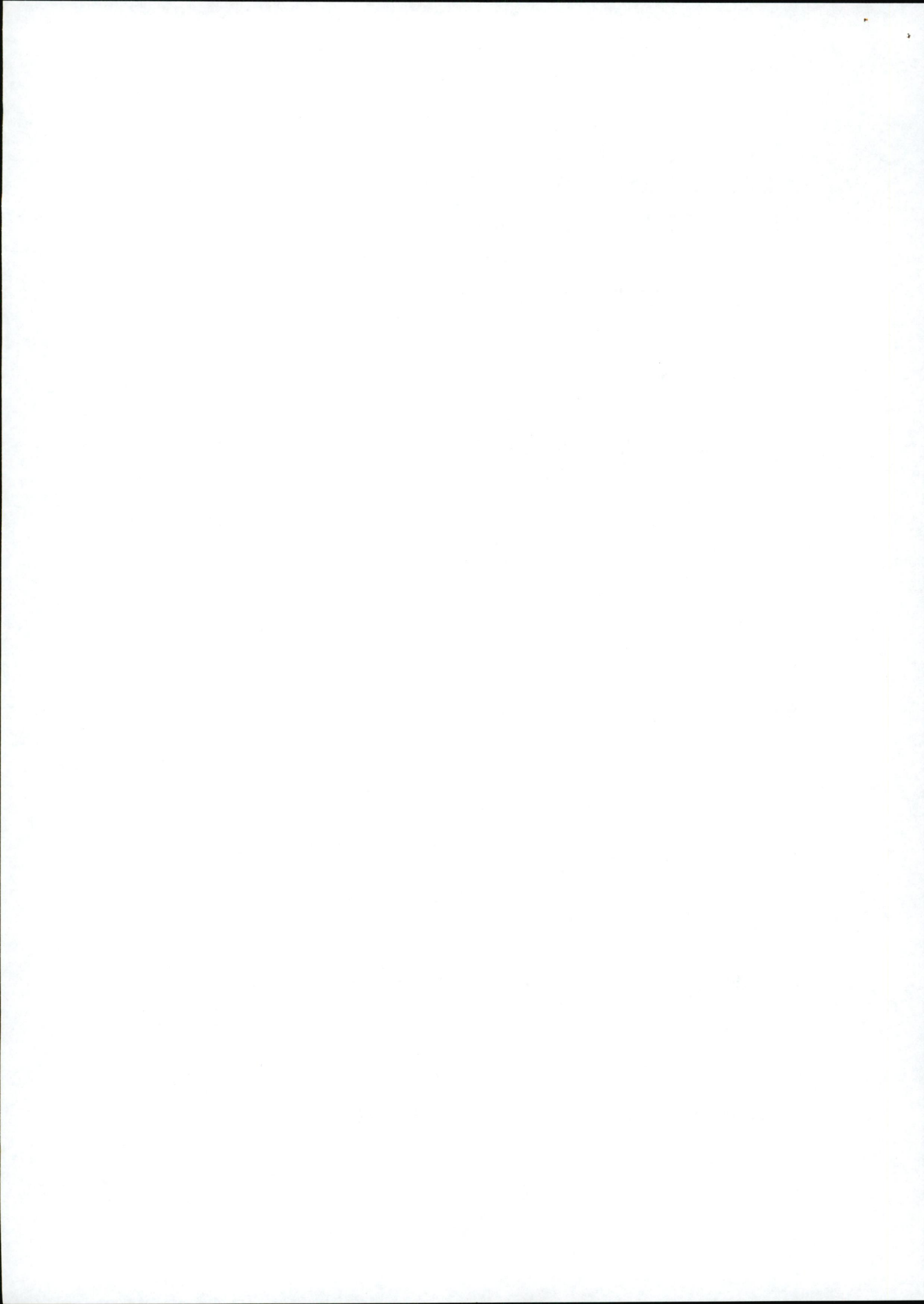
THE ATTORNEY GENERAL TO SAY:

MR PRESIDENT,

I MOVE THAT THIS BILL BE READ A SECOND TIME

THE GOVERNMENT IS PLEASED TO INTRODUCE THIS BILL WHICH SEEKS TO IMPLEMENT FURTHER CHANGES TO THE CRIMINAL LAW. THE BILL FOLLOWS THE CRIMINAL LEGISLATION AMENDMENT ACT 1995 WHICH WAS INTRODUCED AND PASSED DURING THE LAST PARLIAMENTARY SESSION. THE BILL IS AIMED AT FURTHER RECTIFYING AND IMPROVING UPON MATTERS RELATING TO CRIMINAL PROCEDURE, AND ALSO CREATES CERTAIN NEW OFFENCES. I WILL REFER TO THESE PROPOSALS SHORTLY.

THE MOST IMPORTANT PROPOSAL IN THE BILL IS SET OUT AT SUBCLAUSE 10 OF CLAUSE 1.2. THE PROPOSAL CONCERNS THE LAW OF INTOXICATION AND CRIMINAL LIABILITY. A NEW PART 11A WILL BE INSERTED INTO THE CRIMES ACT 1900, THE EFFECT OF WHICH WILL BE

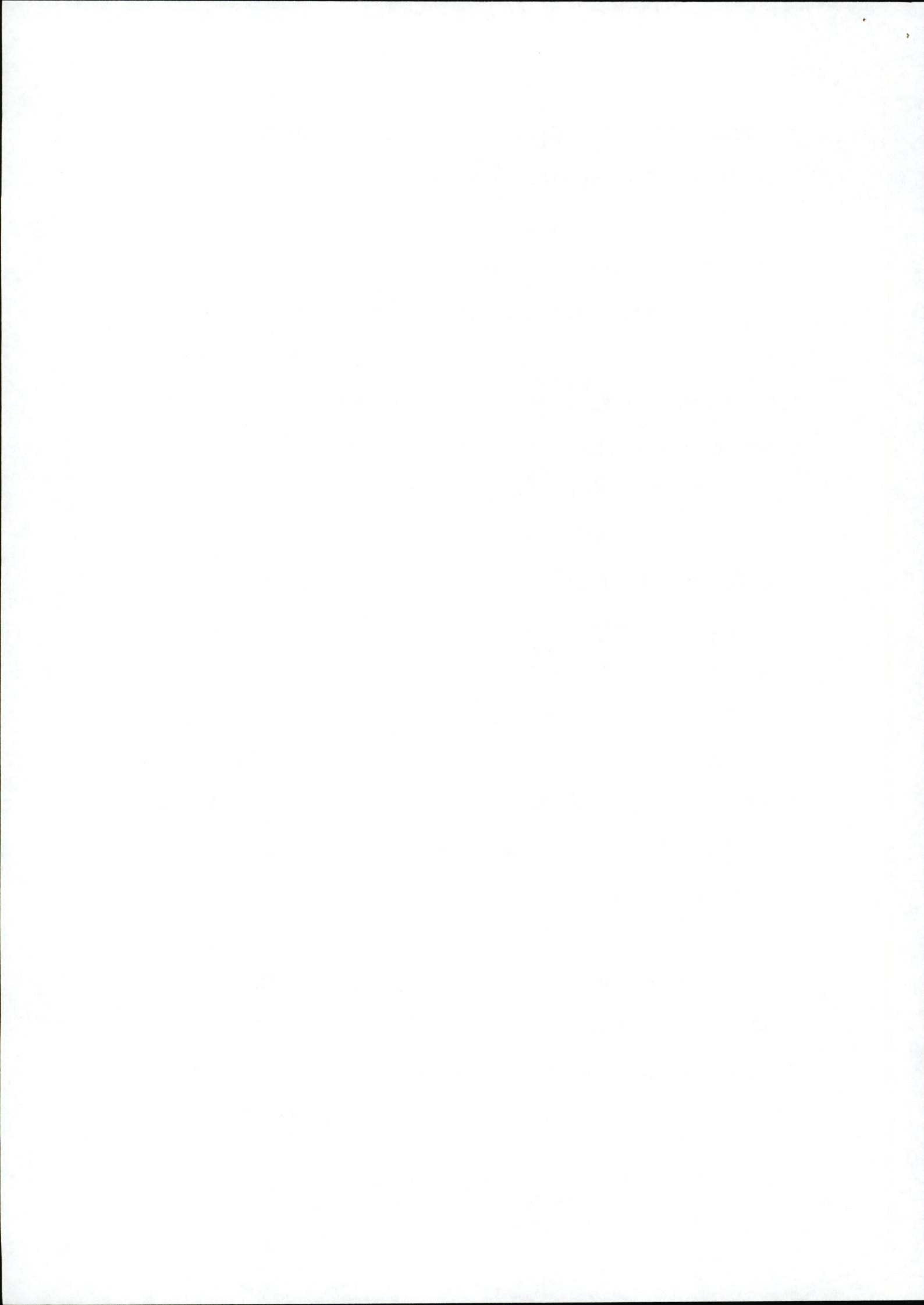


TO REMOVE SELF-INDUCED INTOXICATION AS A BASIS FOR ESCAPING LIABILITY IN RELATION TO CERTAIN OFFENCES.

THE PRESENT LAW IN NEW SOUTH WALES IS THAT A PERSON CHARGED WITH A CRIMINAL OFFENCE, INCLUDING MURDER, MIGHT BE ACQUITTED ALTOGETHER IF THERE IS EVIDENCE THAT THE ACCUSED WAS SO INTOXICATED AT THE TIME OF COMMITTING THE ACT THAT THERE WAS A REASONABLE DOUBT WHETHER THE ACCUSED HAD ACTED INTENTIONALLY OR VOLUNTARILY.

THIS REFLECTS THE COMMON LAW AS STATED BY THE HIGH COURT IN *THE QUEEN V O'CONNOR* (1981) 146 CLR 64. IT REFLECTS THE PRINCIPLE THAT A PERSON SHOULD NOT BE HELD CRIMINALLY RESPONSIBLE FOR AN ACT IN THE ABSENCE OF PROOF THAT THE ACCUSED ACTED VOLUNTARILY AND WITH THE REQUIRED MENTAL ELEMENT FOR AN OFFENCE. THIS IS ALSO THE LAW IN THE OTHER COMMON LAW JURISDICTIONS OF VICTORIA, SOUTH AUSTRALIA AND THE AUSTRALIAN CAPITAL TERRITORY.

BY CONTRAST, IN THE CASE OF *MAJEWSKI* [1977] AC 443, THE HOUSE OF LORDS IN ENGLAND HELD THAT EVIDENCE OF SELF-INDUCED INTOXICATION MAY BE CONSIDERED IN RELATION TO OFFENCES OF 'SPECIFIC INTENT' ONLY, AND CANNOT BE CONSIDERED IN RELATION



TO OFFENCES OF 'BASIC INTENT'. THE *MAJEWSKI* APPROACH REFLECTS GENERALLY THE POSITION IN THE CODE JURISDICTIONS, AS WELL AS CANADA AND THE UNITED STATES OF AMERICA.

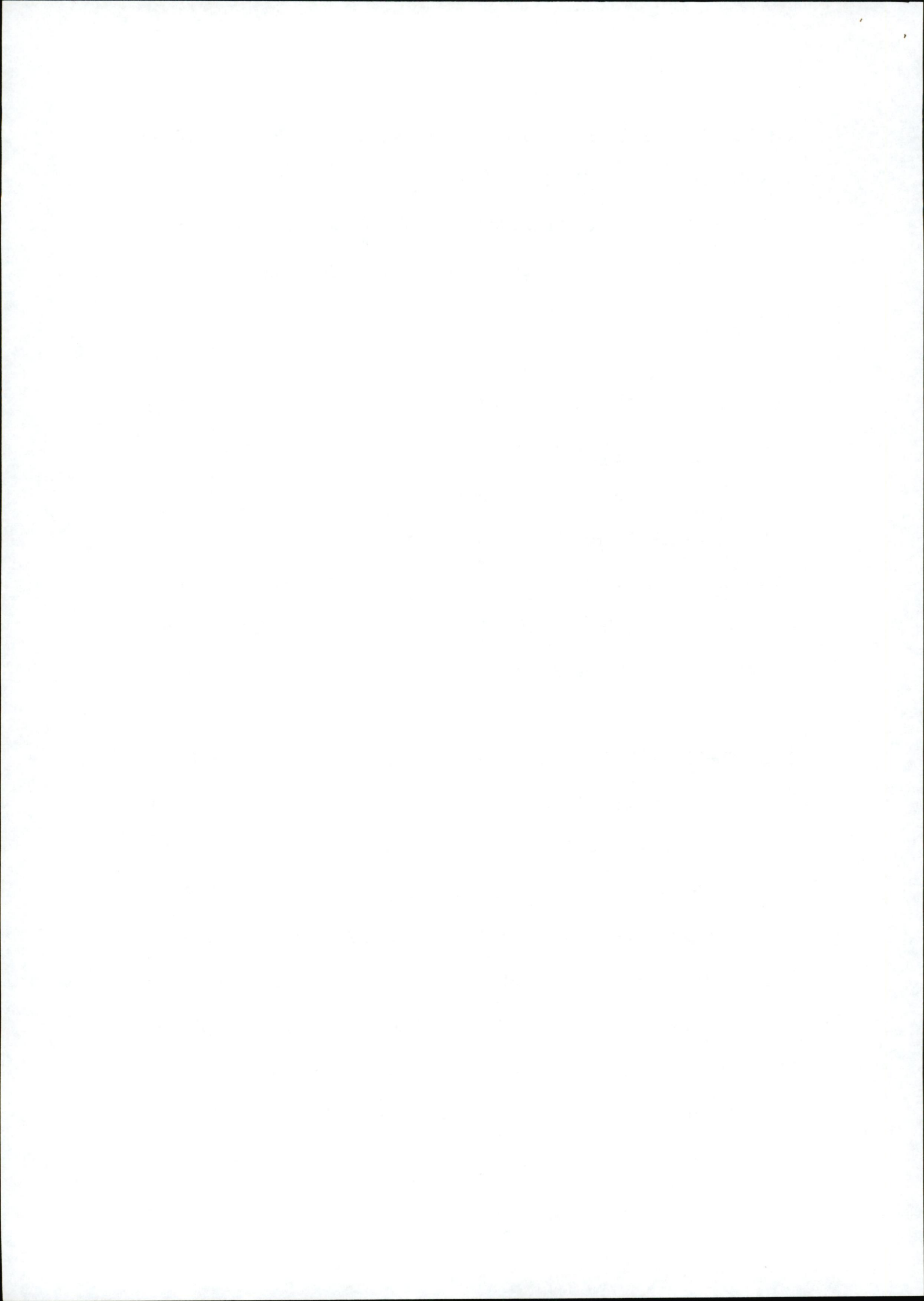
AN OFFENCE OF 'BASIC INTENT' IS AN OFFENCE WHICH SIMPLY REQUIRES AN INTENTION TO PERFORM SOME ACT (SUCH AS STRIKING A PERSON) RATHER THAN ONE REQUIRING AN INTENTION TO BRING ABOUT SOME CONSEQUENCES (SUCH AS STRIKING A PERSON WITH INTENT TO CAUSE GRIEVOUS BODILY HARM). AN OFFENCE OF 'SPECIFIC INTENT' IS THUS ONE INVOLVING AN ADDITIONAL PURPOSEIVE ELEMENT, THAT IS, A SPECIFIC PURPOSE OR AN INTENTION TO ACHIEVE A PARTICULAR RESULT. MURDER IS SUCH AN OFFENCE. IT REQUIRES PROOF THAT THE ACCUSED ACTED WITH AN INTENTION TO KILL OR INFLICT GRIEVOUS BODILY HARM. BY CONTRAST, AN OFFENCE OF 'BASIC INTENT' REQUIRES PROOF ONLY THAT THAT THE ACCUSED INTENDED TO COMMIT THE ACT PROSCRIBED. MANSLAUGHTER IS SUCH AN OFFENCE. IT REQUIRES PROOF ONLY THAT THE ACCUSED COMMITTED AN UNLAWFUL OR DANGEROUS ACT.

THE EFFECT OF *MAJEWSKI* IS THAT A PERSON WHO KILLS ANOTHER WHILE IN A STATE OF GROSS INTOXICATION MAY BE FOUND NOT GUILTY OF MURDER BUT MIGHT STILL BE GUILTY OF MANSLAUGHTER. FOR THE PURPOSE OF DETERMINING GUILT ON A MANSLAUGHTER

CHARGE, THE ACCUSED'S INTOXICATION WOULD NOT BE ABLE TO BE TAKEN INTO ACCOUNT. THE EFFECT OF *O'CONNOR*, ON THE OTHER HAND, IS THAT INTOXICATION MAY BE CONSIDERED IN RELATION TO BOTH OFFENCES SUCH THAT A PERSON MIGHT BE ACQUITTED OUTRIGHT.

IN 1994, THE STANDING COMMITTEE OF ATTORNEYS-GENERAL ENDORSED THE *MAJEWSKI* APPROACH IN PREFERENCE TO THE *O'CONNOR* APPROACH FOR INCORPORATION IN THE MODEL CRIMINAL CODE. *MAJEWSKI* HAS CONSEQUENTLY BEEN ADOPTED BY THE COMMONWEALTH IN THE *CRIMINAL CODE ACT 1995*, WHICH CODIFIES CHAPTER 2 OF THE MODEL CRIMINAL CODE ON THE 'GENERAL PRINCIPLES OF CRIMINAL RESPONSIBILITY'.

THE PREFERENCE FOR THE *MAJEWSKI* APPROACH IS BASED ON IMPORTANT PUBLIC POLICY CONSIDERATIONS. THE STANDING COMMITTEE OF ATTORNEYS-GENERAL, IN PARTICULAR, TOOK THE VIEW THAT TO EXCUSE OTHERWISE CRIMINAL CONDUCT IN RELATION TO SIMPLE OFFENCES OF 'BASIC INTENT' - SUCH AS ASSAULT -BECAUSE THE ACCUSED IS INTOXICATED TO SUCH AN EXTENT, IS TOTALLY UNACCEPTABLE AT A TIME WHEN ALCOHOL AND DRUG ABUSE ARE SUCH SIGNIFICANT SOCIAL PROBLEMS. THE STANDING COMMITTEE CONSIDERED THAT IF A PERSON VOLUNTARILY TAKES THE RISK OF

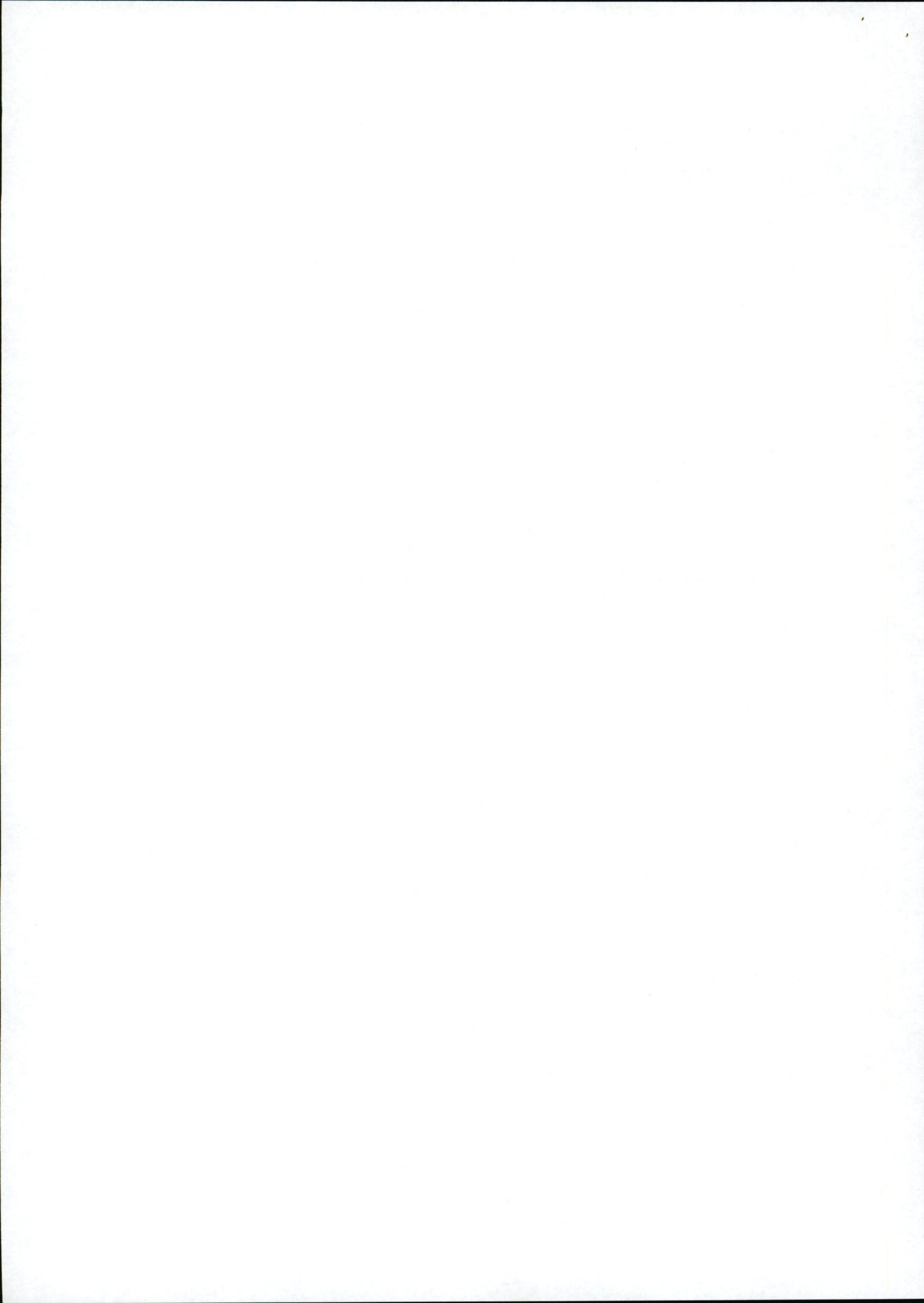


GETTING INTOXICATED THEN HE OR SHE SHOULD BE RESPONSIBLE FOR HIS OR HER ACTIONS.

THIS GOVERNMENT AGREES WITH, AND STRONGLY SUPPORTS, THIS APPROACH. THE PROPOSED AMENDMENTS THEREFORE ESSENTIALLY REFLECT THE APPROACH TAKEN IN *MAJEWSKI*, AS WELL AS THAT TAKEN BY THE COMMONWEALTH CRIMINAL CODE ACT 1995 WHICH ENACTS THE PRINCIPLES OF THE MODEL CRIMINAL CODE.

UNDER THE PROPOSAL, INTOXICATION WILL MEAN INTOXICATION WHETHER BY MEANS OF ALCOHOL OR DRUGS. THE INTOXICATION MUST BE SELF-INDUCED. CLEARLY IT WOULD BE UNFAIR FOR INTOXICATION TO BE DISREGARDED WHERE A PERSON BECOMES INTOXICATED DUE TO FRAUD, REASONABLE MISTAKE, DURESS OR FORCE. FOR EXAMPLE, IT WOULD BE UNFAIR NOT TO ALLOW EVIDENCE OF INTOXICATION TO BE CONSIDERED WHERE A PERSON MAY UNKNOWINGLY HAVE HAD HIS OR HER DRINKS SPIKED.

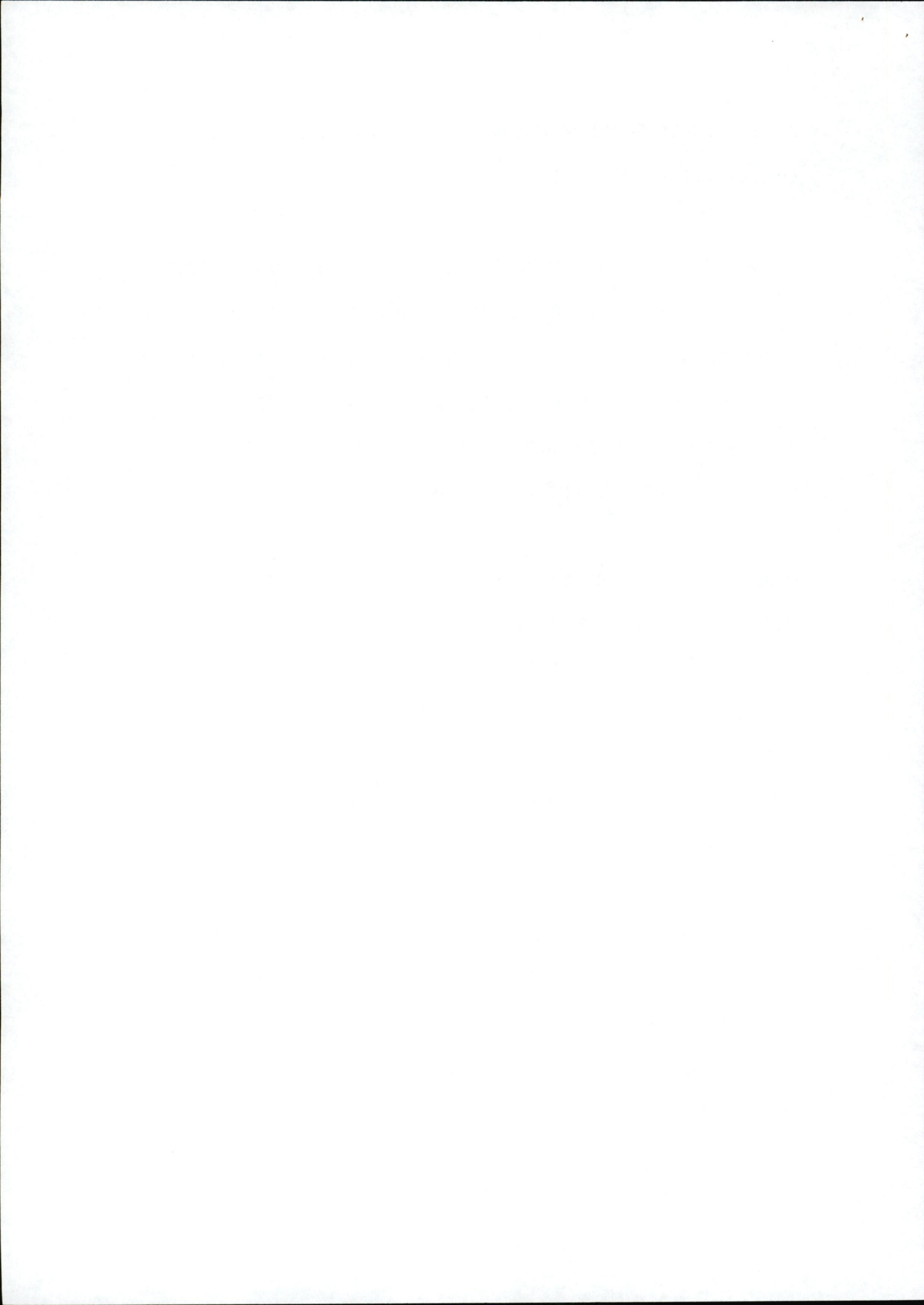
THE PROPOSED SECTION 428B LISTS EXAMPLES OF OFFENCES IN THE CRIMES ACT WHICH ARE OFFENCES OF SPECIFIC INTENT FOR WHICH EVIDENCE OF INTOXICATION MAY BE TAKEN INTO ACCOUNT. MURDER IS LISTED AS AN OFFENCE OF SPECIFIC INTENT. IN CONFORMITY WITH



MAJEWSKI, INTOXICATION WILL NOT BE ABLE TO TAKEN INTO ACCOUNT ON A CHARGE OF MANSLAUGHTER.

SOME OF THE SPECIFIC INTENT OFFENCES ARE VERY SERIOUS OFFENCES, FOR EXAMPLE, ASSAULT WITH INTENT TO HAVE SEXUAL INTERCOURSE. IT SHOULD BE NOTED, OF COURSE, THAT ALTHOUGH EVIDENCE OF INTOXICATION CAN BE TAKEN INTO ACCOUNT ON SUCH AN OFFENCE, SUCH EVIDENCE WILL NOT BE ABLE TO BE CONSIDERED IN RELATION TO A BASIC OFFENCE OF ASSAULT.

CLAUSE 1.1 AMENDS SECTIONS 10 AND 11 OF THE CHILDREN (CRIMINAL PROCEEDINGS) ACT 1987 TO APPLY TO AN APPLICATION FOR BAIL. SECTION 10 PROVIDES FOR THE EXCLUSION OF THE PUBLIC FROM A COURT HEARING CRIMINAL PROCEEDINGS TO WHICH A CHILD IS A PARTY. SECTION 11 PREVENTS THE PUBLICATION OF THE NAME OR OF ANYTHING ELSE WHICH IS LIKELY TO LEAD TO THE IDENTIFICATION OF A CHILD TO WHOM CRIMINAL PROCEEDINGS RELATE. THE PROTECTION AFFORDED BY THESE PROVISIONS DO NOT PRESENTLY APPLY TO BAIL APPLICATIONS. FOR EXAMPLE, WHILE THE SUPREME COURT DOES HAVE THE POWER TO EXCLUDE THE PUBLIC FROM BAIL APPLICATIONS WHICH MIGHT PREVENT THE MEDIA FROM PUBLISHING WHAT IS SAID DURING THE PROCEEDINGS, THERE IS NOTHING TO PREVENT THE MEDIA FROM PUBLISHING THE RESULT (SUCH AS THAT BAIL HAS BEEN

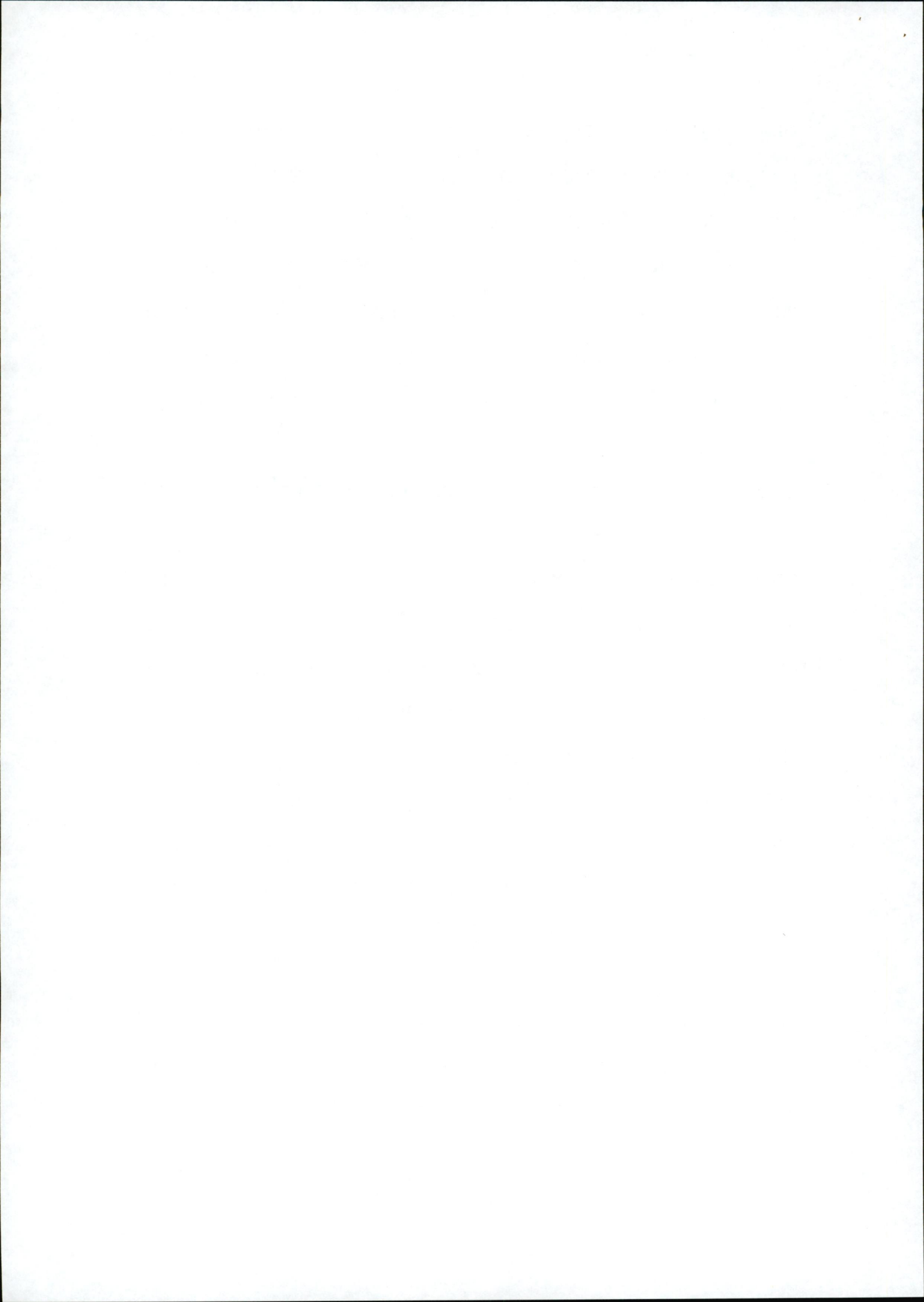


GRANTED) AND NOR IS THERE ANY RESTRICTION UPON IDENTIFICATION. THE PROPOSED AMENDMENT WILL ENSURE THAT THE PROTECTION OFFERED TO CHILDREN BY THE LEGISLATION APPLIES IN BAIL APPLICATIONS. FOR THE PURPOSE OF DETERRENCE, IT IS ALSO PROPOSED TO INCREASE THE PENALTY FOR A BREACH OF SECTION 11 FROM A FINE OF \$1000 TO \$5000 OR - IN THE CASE OF A CORPORATION - TO \$50,000.

CLAUSE 1.2 OUTLINES VARIOUS AMENDMENTS TO THE CRIMES ACT 1900.

SECTIONS 178BA AND 178BB OF THE CRIMES ACT ARE TO BE AMENDED SO AS TO ENABLE THE PROSECUTION IN NEW SOUTH WALES OF CERTAIN FRAUD OFFENCES COMMITTED OUTSIDE THE STATE, WHERE THE OFFENCES INVOLVE MISUSE OF PUBLIC MONEY OR PUBLIC PROPERTY BY PUBLIC OFFICIALS. SECTIONS 178BA AND 178BB PROVIDE OFFENCES WHERE A PERSON DISHONESTLY GAINS FOR HIMSELF OR ANY OTHER PERSON ANY MONEY, VALUABLE THING OR FINANCIAL ADVANTAGE BY DECEPTION OR BY MAKING OR PUBLISHING A FALSE OR MISLEADING STATEMENT.

THIS PROPOSAL STEMS FROM A 1993 REPORT OF THE AUDITOR-GENERAL INTO THE LONDON OFFICE OF THE AGENT-GENERAL WHICH REVEALED A NEED TO AMEND THE CRIMES ACT TO PERMIT THE PROSECUTION OF



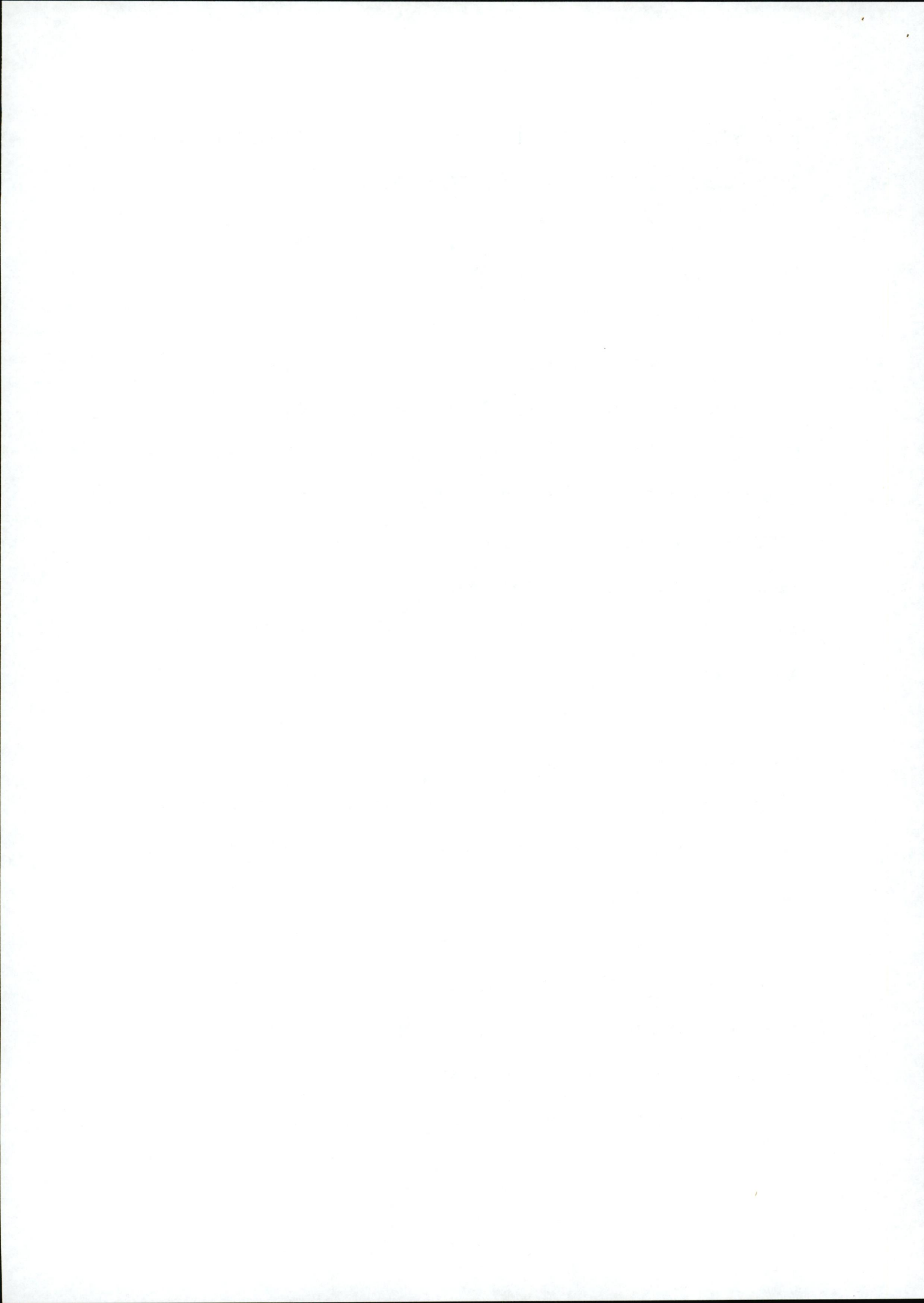
PERSONS WHO MISUSE PUBLIC FUNDS WHILST IN PUBLIC OFFICE OVERSEAS. THE DEFINITION OF "PUBLIC OFFICIAL" IS CONSISTENT WITH THAT FOUND IN SECTION 3 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT 1988 AND IS CONSIDERED SUFFICIENTLY WIDE TO COVER THE RANGE OF OFFICIALS WHO MAY BE IN A POSITION TO MISUSE PUBLIC FUNDS OUTSIDE NEW SOUTH WALES. THE PROPOSED MAXIMUM PENALTY FOR THE OFFENCE IS 5 YEARS' IMPRISONMENT, CONSISTENT WITH THE PRESENT PENALTIES UNDER SECTIONS 178BA AND 178BB OF THE ACT.

SUBCLAUSE 6 OF CLAUSE 1.2 PROVIDES THAT THE OFFENCE OF "CULPABLE NAVIGATION" CONTAINED IN SECTION 52B OF THE CRIMES ACT BE AMENDED TO BE CONSISTENT WITH THE OFFENCE OF "DANGEROUS DRIVING" CONTAINED IN SECTION 52A. IN NOVEMBER 1994, SECTION 52A (FORMERLY KNOWN AS 'CULPABLE DRIVING') WAS AMENDED FOLLOWING RECOMMENDATIONS MADE BY THE STAYS SAFE COMMITTEE. THE OFFENCE WAS RENAMED, THE MAXIMUM PENALTIES APPLICABLE WERE INCREASED, CIRCUMSTANCES OF AGGRAVATION WERE INTRODUCED AND THE SCOPE OF THE SECTION WAS WIDENED. THIS PROPOSED AMENDMENT WILL RENDER SECTION 52B CONSISTENT WITH SECTION 52A AS AMENDED. HISTORICALLY, BOTH SECTIONS CONTAINED THE SAME MAXIMUM PENALTIES AND VARIED ONLY IN SO

FAR AS WAS NECESSARY TO REFLECT DIFFERENCES BETWEEN DRIVING ON ROADS AND NAVIGATING ON WATERWAYS.

CLAUSE 1.2 ALSO REPEALS SECTIONS 60 AND 573 OF THE CRIMES ACT. SECTION 60 PROVIDES THAT WHERE A HUSBAND HAS BEEN CONVICTED OF ASSAULT UPON HIS WIFE, THE JUDGE MAY MAKE A DECLARATION THAT SHE SHALL NO LONGER BE BOUND TO COHABIT WITH HER HUSBAND. SUCH A DECLARATION SHALL HAVE THE EFFECT OF A 'DECREE OF JUDICIAL SEPARATION' ON THE GROUND OF CRUELTY. SECTION 573 PROVIDES THAT WHERE A DECLARATION IS MADE UNDER SECTION 60, A JUDGE MAY ALSO MAKE ORDERS AS TO THE CUSTODY AND MAINTENANCE OF CHILDREN. THESE SECTIONS WERE ORIGINALLY A CRIMINAL LAW REMEDY FOR CASES OF "DOMESTIC ASSAULT." THEY ARE OF LITTLE CURRENT RELEVANCE NOW THAT DECREES OF JUDICIAL SEPARATION ARE NO LONGER AVAILABLE IN AUSTRALIA DUE TO THE FAMILY LAW ACT 1975. MOREOVER, THE POWERS OF THE COURTS TO MAKE ORDERS IN DOMESTIC VIOLENCE MATTERS CAN NOW BE FOUND IN PART 15A OF THE CRIMES ACT.

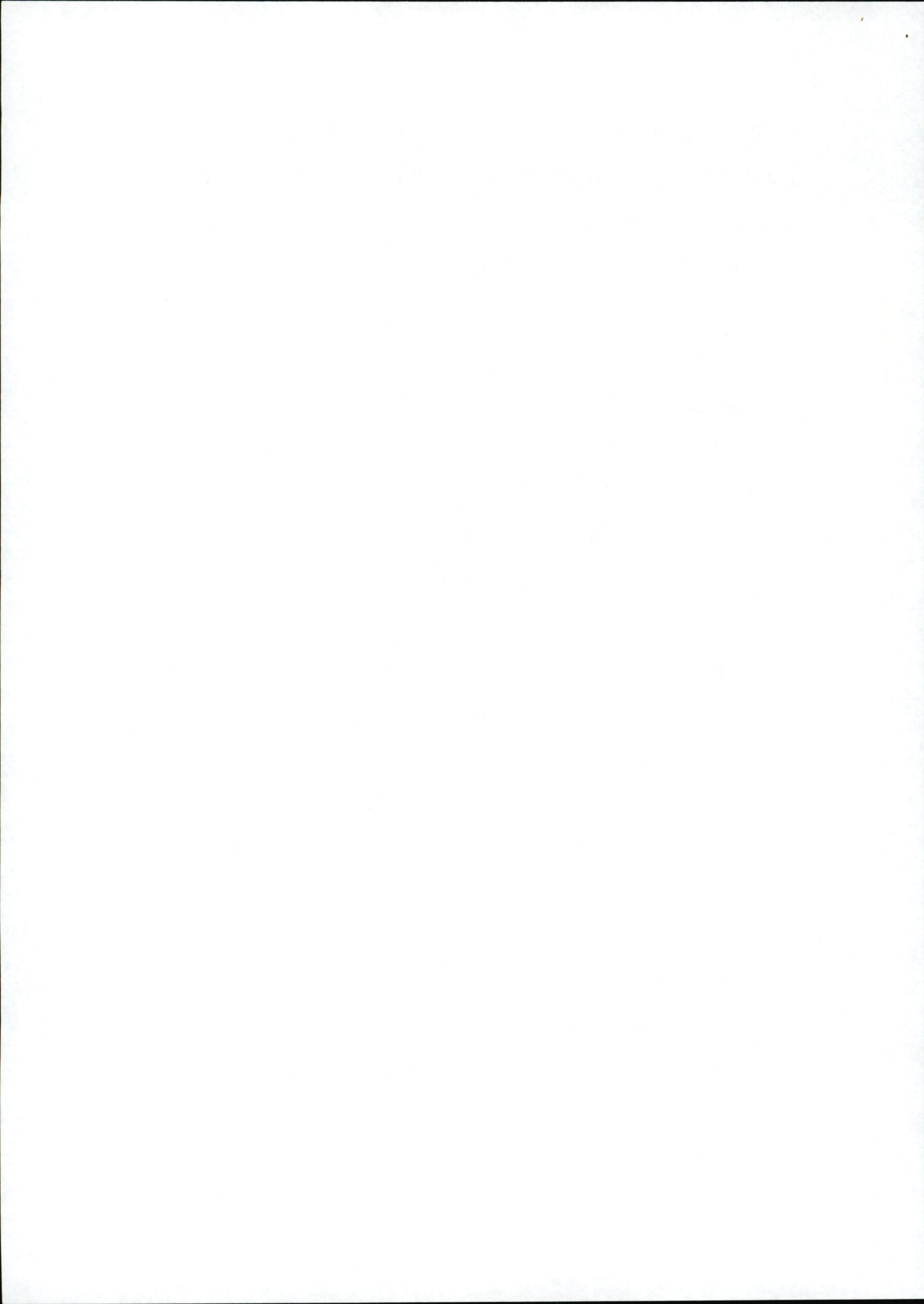
SUBCLAUSE 8 OF CLAUSE 1.2 PROPOSES THAT THE CRIMES ACT BE AMENDED TO PROVIDE FOR A NEW OFFENCE OF POSSESSION OF IMPLEMENTS FOR MAKING FALSE INSTRUMENTS. THE CRIMES ACT DOES NOT PRESENTLY MAKE IT AN OFFENCE FOR A PERSON TO MAKE



OR BE IN POSSESSION OF A DEVICE FOR THE PURPOSE OF MAKING A FALSE DOCUMENT. THE LACK OF SUCH AN OFFENCE IN THE CRIMES ACT CAN BE PARTICULARLY PROBLEMATIC IN RELATION TO THE POSSESSION OF SUCH DEVICES FOR THE PURPOSES OF CREDIT CARD FRAUD.

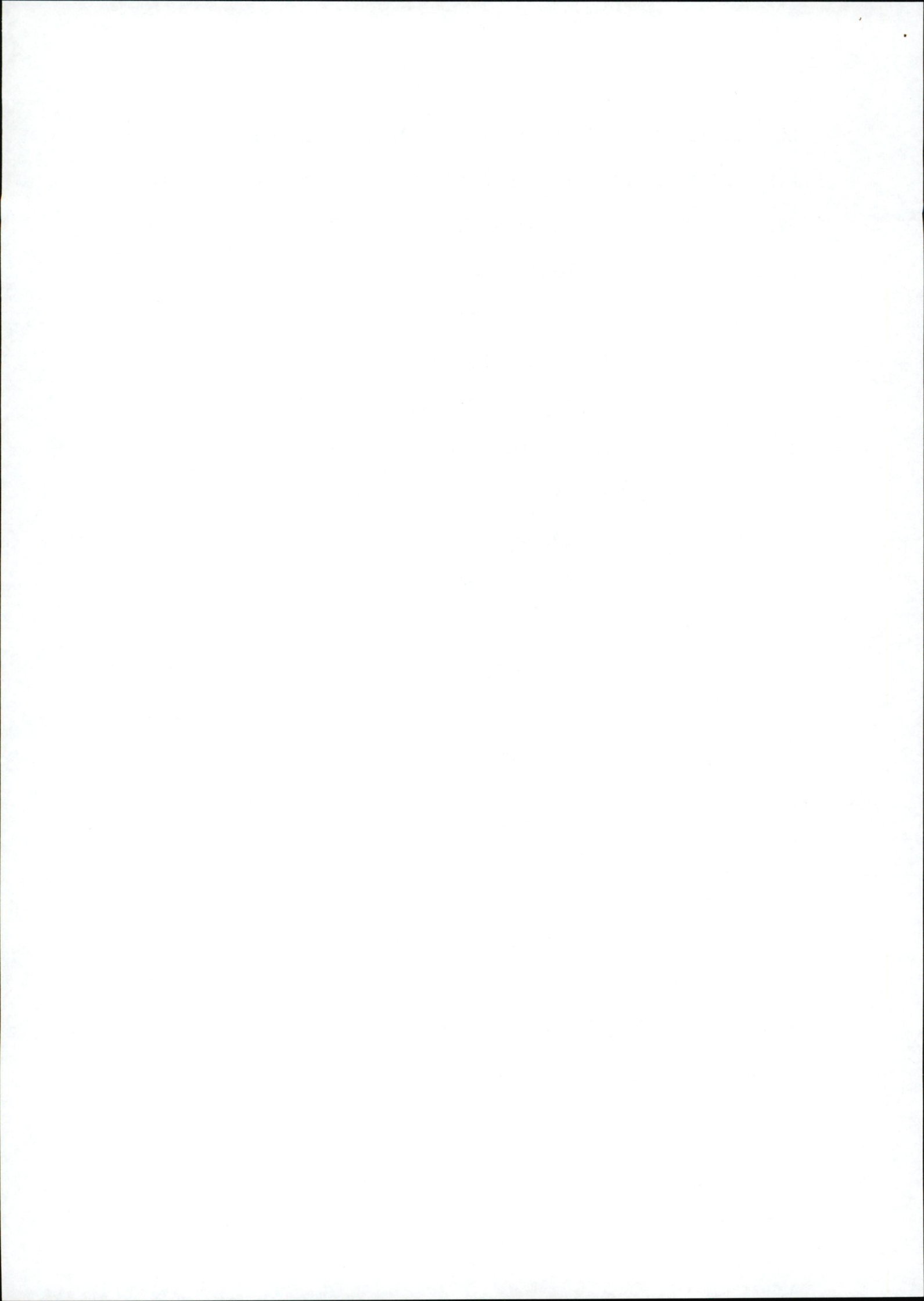
A CASE RECENTLY CAME BEFORE THE COURTS IN WHICH THE DEFENDANT WAS ARRESTED AT SYDNEY AIRPORT IN POSSESSION OF A MACHINE DESIGNED TO ENCODE CARDHOLDER DETAILS IN THE MAGNETIC STRIPE OF CREDIT CARDS AND A NUMBER OF BLANK WHITE PLASTIC CARDS EACH BEARING A MAGNETIC STRIPE, ONE OF WHICH HAD BEEN ENCODED WITH A GENUINE MASTERCARD CREDIT CARD ACCOUNT NUMBER. THE DEFENDANT COULD ONLY BE CHARGED WITH COMMON LAW CONSPIRACY AND WAS ACQUITTED OF THIS CHARGE.

IN VICTORIA, BY CONTRAST, THERE ARE VARIOUS OFFENCES TO DEAL WITH THIS ACTIVITY. THE MODEL CRIMINAL CODE HAS ALSO ADOPTED A SIMILAR PROVISION. CLEARLY CREDIT CARD FRAUD IS A SERIOUS CRIMINAL ACTIVITY FROM WHICH CITIZENS IN THIS STATE OUGHT TO BE PROTECTED. THE PROPOSED PENALTY WILL BE A MAXIMUM TERM OF TEN YEARS' IMPRISONMENT CONSISTENT WITH OTHER PROVISIONS IN THE CRIMES ACT RELATING TO FALSE INSTRUMENTS.



SUBCLAUSE 9 OF CLAUSE 1.2 INSERTS A NEW OFFENCE OF HARBOURING AN ESCAPEE FROM ANOTHER STATE OR TERRITORY. SECTION 36 OF THE PRISONS ACT 1952 PRESENTLY PROVIDES FOR AN OFFENCE OF HARBOURING AN ESCAPED PRISONER. HOWEVER, THE APPLICATION OF THIS SECTION IS RESTRICTED TO ESCAPES WHICH OCCUR WITHIN THE JURISDICTIONAL BOUNDARIES OF NEW SOUTH WALES. SOME TIME AGO, FOLLOWING AN INCIDENT INVOLVING THE LEASING OF PREMISES IN THIS STATE TO TWO ESCAPEES FROM VICTORIA, THE POLICE RAISED CONCERN THAT THERE IS NO PROVISION TO DEAL WITH HARBOURING A PRISONER WHO HAS ESCAPED IN ANOTHER STATE OR TERRITORY. THIS PROPOSAL SEEK TO COVER THIS TYPE OF CASE.

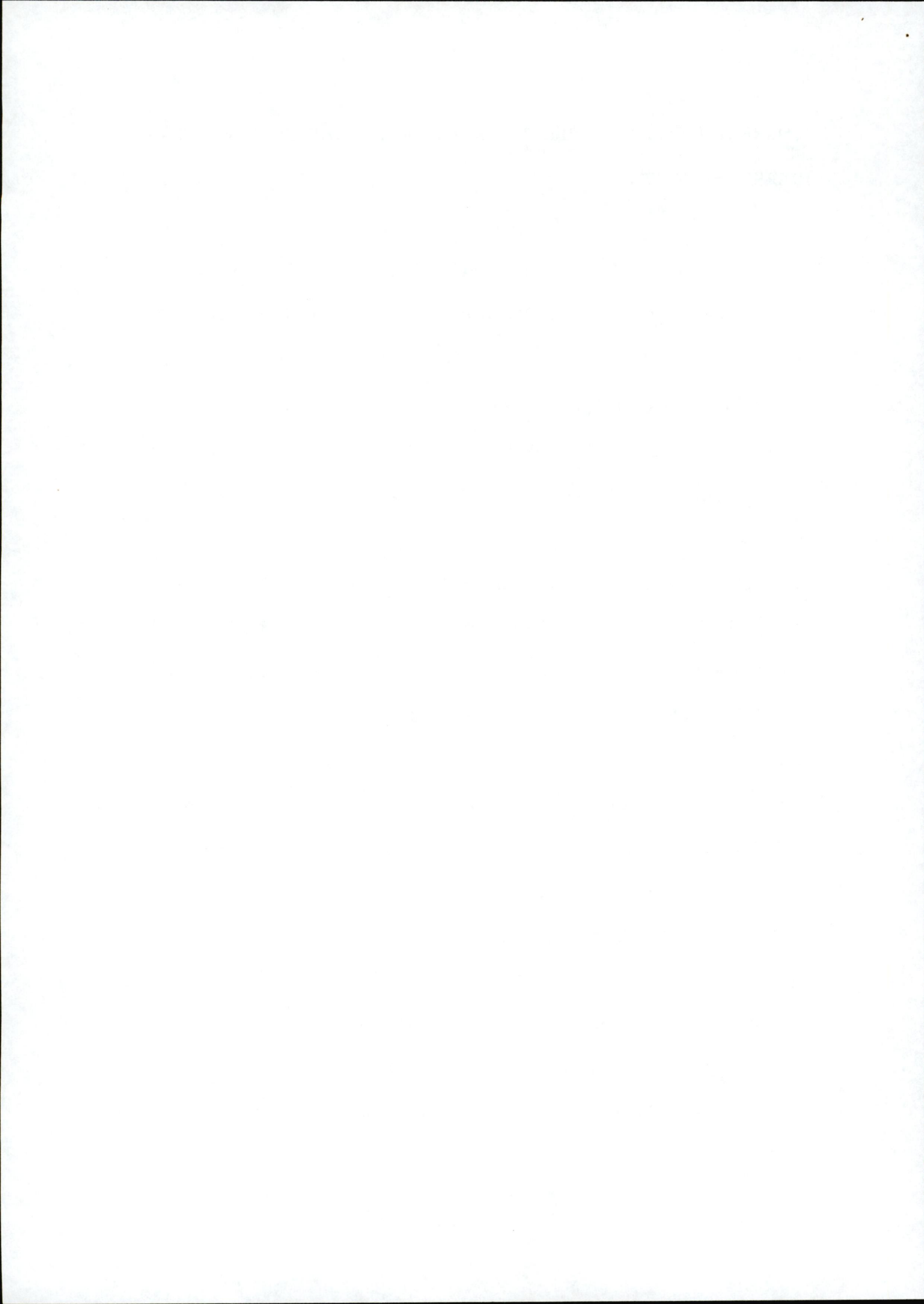
CLAUSE 1.2 ALSO REPEALS THE OFFENCE OF "WATCHES OR BESETS" IN SUB-SECTION 545B(1)(IV) OF THE CRIMES ACT. SECTION 545B WAS INTRODUCED IN 1929 AND FOLLOWED SIMILAR LEGISLATION IN THE UNITED KINGDOM WHICH WAS DESIGNED TO REGULATE PICKETING IN THE COURSE OF LABOUR DISPUTES. "WATCHES OR BESETS" IS DEFINED TO INCLUDE ATTENDING AT OR NEAR ANY PLACE IN SUCH NUMBERS OR IN SUCH MANNER AS IS CALCULATED TO INTIMIDATE ANY PERSON, OR OBSTRUCT ENTRY OR EXIT, OR TO LEAD TO A BREACH OF THE PEACE. IT TARGETS BEHAVIOUR WHICH IS TYPICALLY ASSOCIATED WITH PEACEFUL INDUSTRIAL DISPUTES AND IS THEREFORE AT ODDS WITH



CURRENT INDUSTRIAL RELATIONS PRACTICE. THE PROVISION HAS RARELY BEEN USED.

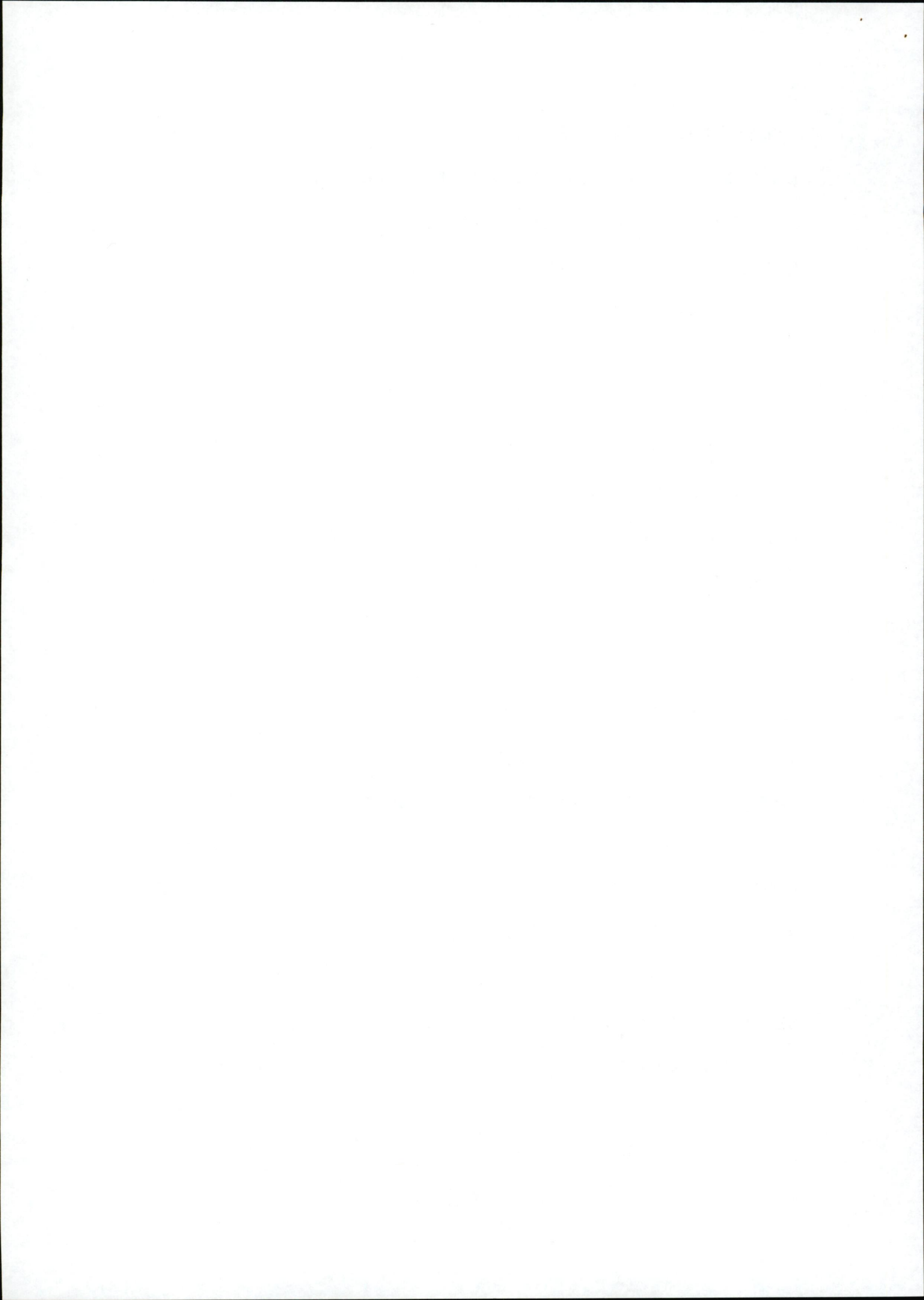
IT IS IMPORTANT TO NOTE THAT BEHAVIOUR WHICH IS INTIMIDATING OR VIOLENT WILL STILL BE PROHIBITED. THUS THE REMAINDER OF SECTION 545B IS TO REMAIN INTACT SUCH THAT A PERSON WILL STILL BE LIABLE TO PROSECUTION WHERE THAT PERSON USES VIOLENCE OR INTIMIDATION, FOLLOWS A PERSON FROM PLACE TO PLACE, HIDES A PERSON'S TOOLS OR HINDERS THE PERSON IN THE USE OF TOOLS.

CLAUSE 1.3 AMENDS SECTION 14A OF THE CRIMINAL APPEAL ACT 1912 TO CLARIFY WHEN THE COURT MAY SENTENCE A RESPONDENT TO A CROWN APPEAL IN HIS OR HER ABSENCE. SECTION 14A PRESENTLY ENABLES A RESPONDENT TO A CROWN APPEAL TO BE SENTENCED IN HIS OR HER ABSENCE AS LONG AS THE COURT IS SATISFIED THAT THE RESPONDENT HAS BEEN GIVEN NOTICE OF THE APPEAL AND THAT IT WOULD NOT BE UNJUST TO DEAL WITH THE APPEAL IN THE ABSENCE OF THE RESPONDENT. THE PROPOSAL ADDRESSES AN AMBIGUITY IN SECTION 14A WHERE IT REFERS TO THE RESPONDENT HAVING BEEN GIVEN "NOTICE OF THE APPEAL", IN THAT IT COULD REFER TO NOTICE OF THE FACT THAT AN APPEAL HAS BEEN FILED OR TO NOTICE OF THE DATE UPON WHICH THE APPEAL IS TO BE HEARD. THE AMENDMENT WILL CLARIFY THAT SENTENCING MAY TAKE PLACE IF THE COURT IS



SATISFIED THAT THE RESPONDENT HAS BEEN GIVEN NOTICE OF THE DATE ON WHICH THE APPEAL IS TO BE HEARD; OR, ALTHOUGH THE NOTICE OF APPEAL HAS BEEN SERVED ON THE RESPONDENT, THE RESPONDENT HAS NOT BEEN GIVEN NOTICE OF THE DATE ON WHICH THE APPEAL IS TO BE HEARD BECAUSE THE RESPONDENT'S WHEREABOUTS ARE UNKNOWN.

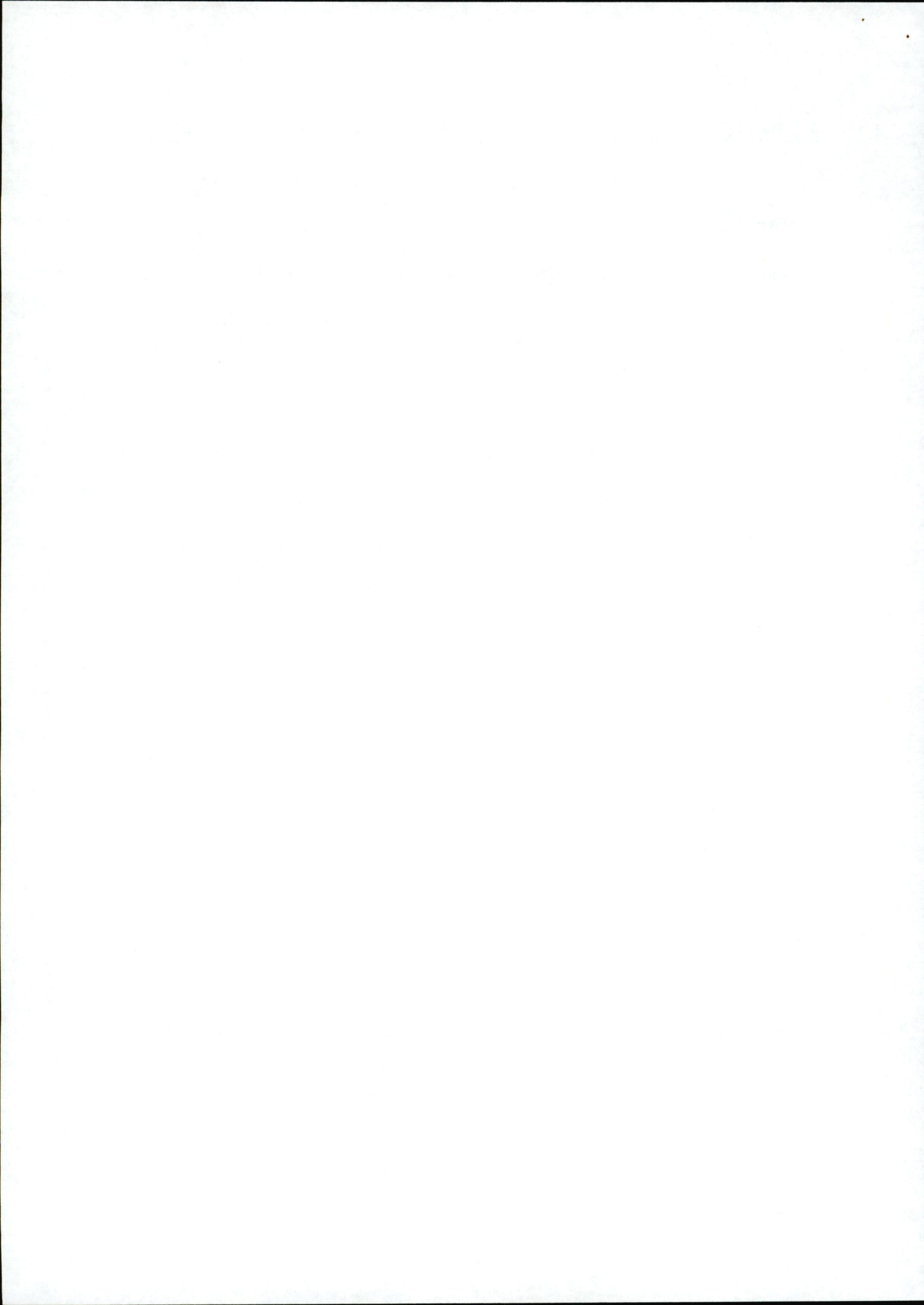
CLAUSE 1.4 MAKES PROCEDURAL AMENDMENTS TO THE CRIMINAL PROCEDURE ACT 1986. TABLE 1 OF THE ACT CONTAINS SPECIFIED INDICTABLE OFFENCES TO BE DEALT WITH SUMMARILY UNLESS THE PROSECUTION OR THE DEFENDANT ELECTS TO HAVE THE OFFENCE DEALT WITH ON INDICTMENT. THESE ARE GENERALLY THE MORE SERIOUS OFFENCES. TABLE 2 CONTAINS INDICTABLE OFFENCES TO BE DEALT WITH SUMMARILY UNLESS THE PROSECUTION ELECTS TO HAVE THE MATTER DEALT WITH ON INDICTMENT. IT IS CONSIDERED THAT THE OFFENCE OF "POSSESS ANY IMPLEMENT OF HOUSEBREAKING OR ANY IMPLEMENT CAPABLE OF BEING USED TO ENTER OR DRIVE A CONVEYANCE" IN SECTION 114(1)(B) OF THE CRIMES ACT IS MORE SUITABLE FOR PLACEMENT IN TABLE 2. THE OFFENCE CARRIES A MAXIMUM PENALTY OF SEVEN YEARS IMPRISONMENT. HOWEVER, THE SENTENCE INVARIABLY RECEIVED FOR THIS OFFENCE IS WITHIN LOCAL COURT JURISDICTION, THAT IS, LESS THAN TWO YEARS IMPRISONMENT.



SECTION 33L WILL BE AMENDED TO EXTEND JURISDICTION TO CLERKS OF THE COURT OR JUSTICES OF THE PEACE EMPLOYED IN THE LOCAL COURTS ADMINISTRATION OF THE ATTORNEY GENERAL'S DEPARTMENT. THIS AMENDMENT WILL ENABLE CERTAIN PROCEDURAL MATTERS TO BE ATTENDED TO BY THESE PERSONNEL, RATHER THAN WASTING VALUABLE COURT TIME.

CLAUSE 1.5 AMENDS THE JUSTICES ACT 1902 TO PROVIDE THAT AN APPEAL BY THE DIRECTOR OF PUBLIC PROSECUTIONS AGAINST A SENTENCE IN THE LOCAL COURT MAY BE LODGED LATER THAN THE REQUIRED TIME WHERE THE SENTENCE WAS REDUCED BECAUSE THE PERSON UNDERTOOK TO ASSIST LAW ENFORCEMENT AUTHORITIES AND THE PERSON FAILED WHOLLY OR PARTLY TO FULFIL THE UNDERTAKING.

WHERE A PERSON HAS RECEIVED A REDUCED SENTENCE IN THE DISTRICT COURT OR SUPREME COURT BUT LATER FAILS TO FULFIL HIS OR HER UNDERTAKING, THE DIRECTOR OF PUBLIC PROSECUTIONS MAY LODGE AN APPEAL AGAINST THAT SENTENCE TO THE COURT OF CRIMINAL APPEAL UNDER SECTION 5DA OF THE CRIMINAL APPEAL ACT 1912. THERE IS NO LIMITATION ON THE TIME IN WHICH SUCH AN APPEAL MUST BE LODGED. THERE IS PRESENTLY NO EXPRESS CORRESPONDING PROVISION FOR A REDUCED SENTENCE GIVEN IN THE

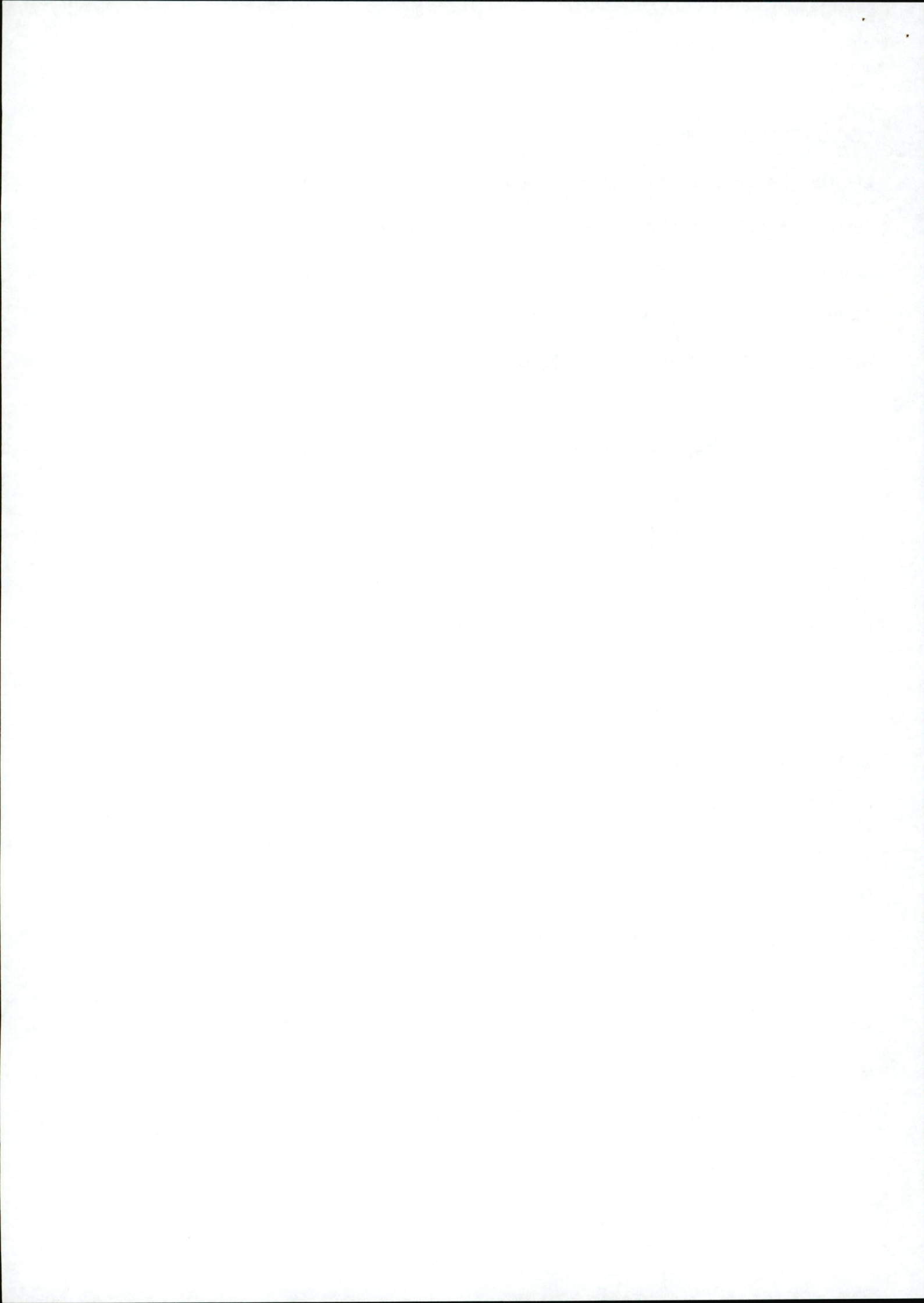


LOCAL COURT. IT IS PROPOSED TO ALLOW SUCH AN APPEAL TO BE LODGED LATER THAN THE 28 DAY PERIOD WHICH PRESENTLY APPLIES TO CROWN APPEALS AGAINST SENTENCE IN THE DISTRICT COURT. THIS IS BECAUSE IT IS TYPICALLY SOME TIME AFTER A PERSON HAS BEEN GRANTED A REDUCED SENTENCE THAT IT COMES TO LIGHT THAT AN UNDERTAKING HAS NOT BEEN FULFILLED.

IT SHOULD BE NOTED THAT SUB-SECTION (3) OF THE PROPOSED SECTION 131AC MERELY PRESERVES A CORRESPONDING DISCRETION IN THE DISTRICT COURT WHICH THE COURT OF CRIMINAL APPEAL PRESENTLY EXERCISES ON THE HEARING OF A SIMILAR APPEAL. IT ALLOWS THE DISTRICT COURT TO DISMISS AN APPEAL BY REASON OF UNDUE DELAY BY THE CROWN ON THE HEARING OF THE APPEAL.

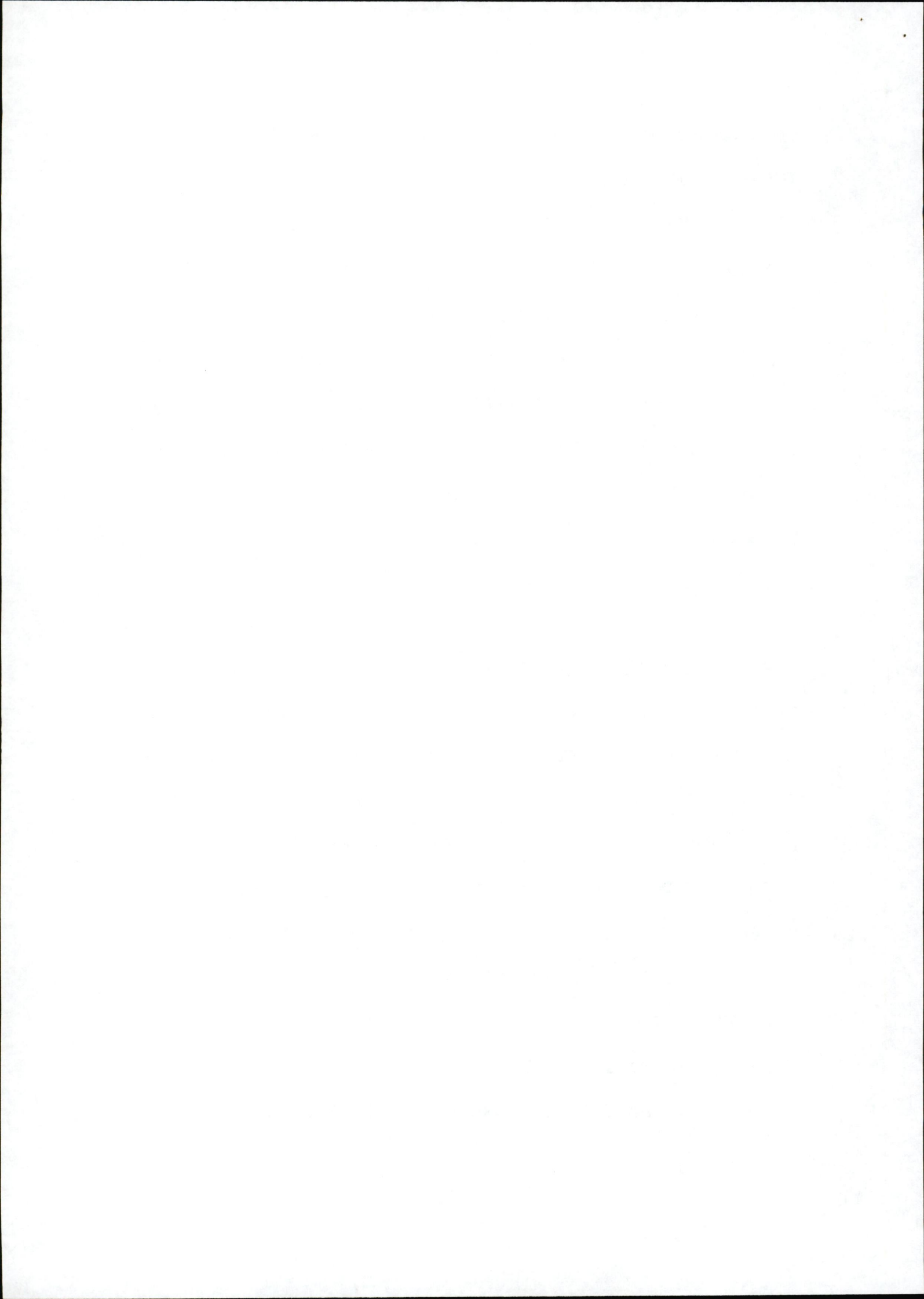
CLAUSE 1.6 PROPOSES VARIOUS AMENDMENTS TO THE LISTENING DEVICES ACT 1984. THESE PROPOSALS ARISE FROM A MEETING OF AGENCIES INVOLVED IN THE ADMINISTRATION OF THE LISTENING DEVICES ACT, CONVENEED BY THE SOLICITOR-GENERAL, WHICH CONFIRMED THE NEED FOR THESE AMENDMENTS.

SECTION 15 OF THE ACT WILL BE AMENDED SO AS TO ENABLE WARRANTS TO AUTHORISE THE USE OF LISTENING DEVICES FOR THE INVESTIGATION OF OFFENCES UNDER THE LAWS OF THE



COMMONWEALTH AND OTHER STATES AND TERRITORIES. OFTEN THERE ARE MATTERS WHICH INVOLVE BOTH NEW SOUTH WALES AND FEDERAL POLICE OFFICERS IN THE INVESTIGATION OF COMMONWEALTH AND STATE OFFENCES. IT IS CONSIDERED PRUDENT TO AMEND THE DEFINITION SO AS TO EXPRESSLY STATE THAT IT INCLUDES THE LAW OF THE COMMONWEALTH OR ANOTHER STATE OR TERRITORY. THIS WOULD FACILITATE CO-OPERATION BETWEEN NEW SOUTH WALES AND OTHER POLICE FORCES. IT REMOVES AN ARTIFICIAL BARRIER TO SUCH CO-OPERATION, WHICH IS REGRETTABLY NECESSARY TO MEET THE GROWING SOPHISTICATION OF CRIMINAL ACTIVITY.

THE OTHER MAJOR AMENDMENT IS THE INSERTION OF A NEW SECTION 20A WHICH WILL ALLOW FOR THE USE OF ASSUMED NAMES OR CODE NAMES IN WARRANTS IF IT IS TO PROTECT THE SAFETY OF THE PERSONS CONCERNED. THE AMENDMENT AIMS TO ENSURE ADEQUATE PROTECTION MAY BE GIVEN TO LAW ENFORCEMENT OFFICIALS UNDER THE ACT. FROM TIME TO TIME, NOTICES SERVED ON THE ATTORNEY GENERAL IN ADVANCE OF THE APPLICATION FOR A WARRANT GIVE A CODE-NAME IN RELATION TO ONE OF THE PERSONS WHOSE PRIVATE CONVERSATION IS INTENDED TO BE RECORDED OR LISTENED TO. USUALLY, THIS OCCURS WHEN AN UNDERCOVER POLICE AGENT IS PROPOSING TO HAVE A CONVERSATION WITH A SUSPECT. CONCERN



FOR THE SAFETY OF THE AGENT HAS LED TO A RELUCTANCE TO STATE THE PERSON'S TRUE NAME IN ANY OF THE RELEVANT DOCUMENTATION, IN THE EVENT THAT THE PRODUCTION OF THE DOCUMENTS IN LEGAL PROCEEDINGS BECOMES NECESSARY. THE USE OF CODE NAMES WILL BE SUBJECT TO STRICT GUIDELINES AS WELL AS FORMAL REVIEW IN TWELVE MONTHS TO ENSURE THE USE OF CODE NAMES IS NOT ABUSED.

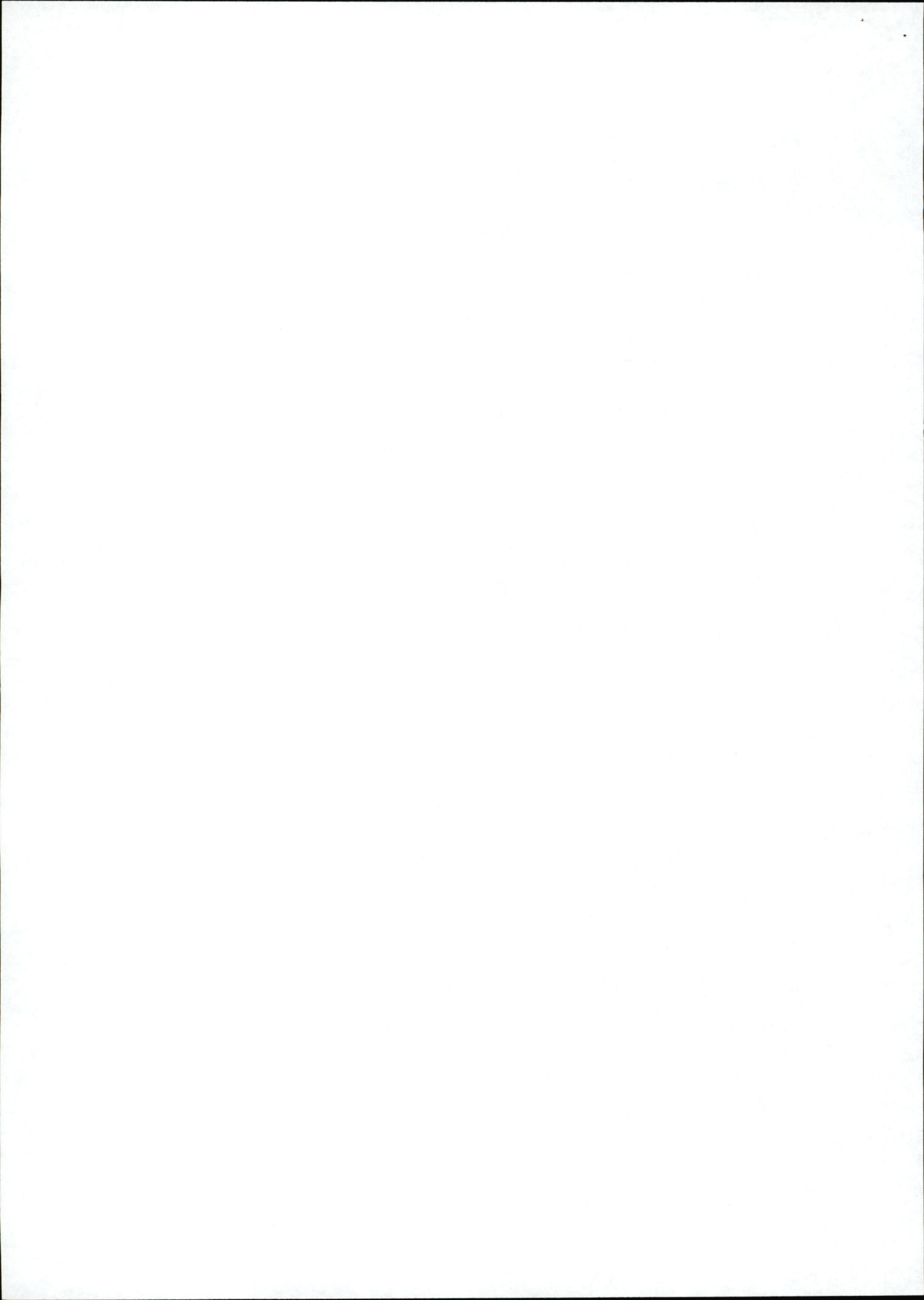
CLAUSE 1.7 MAKES TWO CHANGES TO THE SUMMARY OFFENCES ACT 1988. FIRST, IT INSERTS A NEW OFFENCE OF UNAUTHORISED ENTRY INTO A BOAT, CAR OR CARAVAN. THIS PROPOSAL STEMS FROM A CONCERN RAISED BY POLICE THAT COMPLAINTS ARE OFTEN RECEIVED FROM BOAT OWNERS CONCERNING INTRUDERS ON THEIR BOATS. IN RESPONDING TO SUCH A COMPLAINT, POLICE ARE EMBARRASSED TO ADMIT THAT THEY HAVE NO POWER TO REQUIRE SUCH INTRUDERS TO LEAVE, SINCE A PERSON CAN OCCUPY A BOAT WITHOUT COMMITTING AN OFFENCE. IT IS NOT A TRESPASS SINCE THE BOAT IS NOT INCLOSED LANDS. ONLY IF A PERSON ATTEMPTS TO REMOVE THE BOAT, OR CAUSES DAMAGE TO IT, CAN ANY ACTION BE TAKEN. THE PROPOSED MAXIMUM PENALTY FOR THE OFFENCE IS \$400.

THE SECOND CHANGE WILL BE TO INCREASE THE PENALTY FOR THE OFFENCE OF HAVING AN OFFENSIVE IMPLEMENT IN A PUBLIC PLACE

FROM \$1000 OR 6 MONTHS IMPRISONMENT TO \$2000 OR 12 MONTHS IMPRISONMENT. THIS OFFENCE COVERS THE POSSESSION OF OBJECTS SUCH AS KNIVES. THE AMENDMENT REFLECTS THE GROWING SERIOUSNESS WITH WHICH THIS TYPE OF OFFENCE IS VIEWED.

CLAUSE 1.8 AMENDS THE SUPREME COURT ACT 1970 TO ENABLE THE COURT OF APPEAL TO RE-COMMENCE AN ORIGINAL SENTENCE FROM A FRESH DATE AND TO PROVIDE THAT ANY PERIOD WHICH A PERSON HAS SPENT ON BAIL WHILST AWAITING DETERMINATION OF AN APPLICATION BEFORE THE COURT OF APPEAL BE REFLECTED IN THE SENTENCE TO BE SERVED. THIS PROPOSAL ADDRESSES A NUMBER OF COMMENTS MADE BY THE COURTS AS TO THE PRESENT LACK OF SUCH A POWER.

CLAUSE 1.8 ALSO AMENDS THE SUPREME COURT ACT TO ENABLE THE COURT OF APPEAL TO TREAT DIFFERENTIALLY THE VARIOUS DECISIONS OF THE DISTRICT COURT WHEN DETERMINING AN APPLICATION FOR JUDICIAL REVIEW. THE AMENDMENT SEEKS TO OVERCOME PROCEDURAL DIFFICULTIES ENCOUNTERED BY THE COURT OF APPEAL IN GRANTING RELIEF WHEN REVIEWING ORDERS OF THE DISTRICT COURT IN APPEALS FROM CONVICTIONS AND SENTENCES DETERMINED BY MAGISTRATES. AT PRESENT, THE COURT MUST EITHER UPHOLD OR QUASH BOTH THE CONVICTION AND SENTENCE ORDERED BY THE



DISTRICT COURT IN ORDER TO GRANT RELIEF IN RESPECT OF AN
ERRONEOUS DECISION OF THE DISTRICT COURT CONCERNING
SENTENCE ALONE. THE AMENDMENT WILL ENABLE THE COURT TO
QUASH THE SENTENCE WITHOUT AFFECTING THE CONVICTION IN SUCH
CASES.

I COMMEND THE BILL TO THE HOUSE.

