



Australian Government

Department of Immigration and Border Protection

Submission

For decision

PDMS Ref. Number MS15-022907

To Minister for Immigration and Border Protection

Subject *Migration Amendment (Special Category Visas and Special Return Criterion 5001) Regulation 2015*

Timing Please action by 12pm 8 October 2015 in order for documents to be lodged by the deadline of 5pm 8 October 2015 for the Federal Executive Council meeting on 15 October 2015. This timeframe has been discussed with s. 22(1)(a)(ii)

Recommendations

That you:

1. approve the text of the *Migration Amendment (Special Category Visas and Special Return Criterion 5001) Regulation 2015*, and the accompanying Explanatory Memorandum, Minute Paper and Explanatory Statement at Attachments A, B, C & D; and
2. sign and initial (where indicated) the text of the *Migration Amendment (Special Category Visas and Special Return Criterion 5001) Regulation 2015*, and the accompanying Explanatory Memorandum and Minute Paper where indicated at Attachments A, B & C.

☒ approved / not approved

☒ signed and initialed / not signed and not initialed

Minister for Immigration and Border Protection

Signature.....

Date: 06/10/2015

Received

- 1 OCT 2015

Minister for Immigration
and Border Protection
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Minister's Comments				
Rejected Yes/No	Timely Yes/No	Relevance <input type="checkbox"/> Highly relevant <input type="checkbox"/> Significantly relevant <input type="checkbox"/> Not relevant	Length <input type="checkbox"/> Too long <input type="checkbox"/> Right length <input type="checkbox"/> Too brief	Quality Poor 1.....2.....3.....4.....5 Excellent Comments:

Key Issues

1. We seek your approval of the text of the *Migration Amendment (Special Category Visas and Special Return Criterion 5001) Regulation 2015* (the Amendment Regulation), and accompanying explanatory material. The Amendment Regulation would make changes to the *Migration Regulations 1994* (the Migration Regulations) to allow certain New Zealand citizens whose visa cancellation decision has been revoked to return to Australia on a special category visa. It would also strengthen refusal grounds based on past visa cancellation.

2. We propose that the Amendment Regulation be considered at the Federal Executive Council meeting on 15 October 2015. The amendments would commence on the day after they are registered on the Federal Register of Legislative Instruments. Registration is likely to occur on 16 October 2015.

3. The documents for your approval, signature and initials (where indicated) are:

- *Migration Amendment (Special Category Visas and Special Return Criterion 5001) Regulation 2015* (Attachment A);
- Explanatory Memorandum (Attachment B);
- Minute Paper (Attachment C); and
- Explanatory Statement (Attachment D).

4. You provided policy approval for these amendments on 19 August 2015 (at Attachment E).

Background

5. The Amendment Regulations would give effect to the following two measures.

Facilitating travel for New Zealand citizens where cancellation has been revoked

6. In December 2014, a new mandatory cancellation ground was introduced in relation to non-citizens in prison. A significant portion of those who have been subject to this mandatory cancellation are New Zealand citizens who hold Special Category visas. If such a New Zealand citizen was removed or deported from Australia, and their visa cancellation was subsequently revoked, they will require another visa to return to Australia. The Migration Regulations do not currently permit the grant of another Special Category visa.

7. The Amendment Regulation would allow a new Special Category visa to be granted to a New Zealand citizen in this situation, thereby enabling them to travel back into Australia.

Preventing the grant of further visas

8. Special Return Criterion 5001 prevents the grant of a visa (where it is a criterion of that visa) if the person has previously had their visa cancelled (and not revoked) under sections 501, 501A or 501B (character grounds). The proposed amendment would add a reference to section 501BA (national interest ground) to ensure that a cancellation under this ground would also prevent the grant of a further visa, unless you decide to personally grant the person a permanent visa.

Consultation – internal/external

9. The details of consultation in relation to these amendments are set out in the attached policy approval submission.

Consultation – Secretary/Commissioner

10. Neither the Secretary nor the Commissioner was consulted in relation to this submission.

Client service implications

11. Client service implications are set out in the attached policy approval submission.

Sensitivities

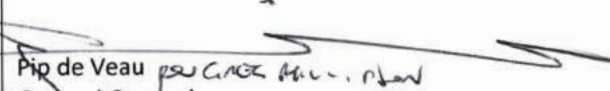
12. Any identified sensitivities are set out in the attached policy approval submission.

Financial/systems/legislation/deregulation implications

13. The financial, systems and other implications are addressed in the attached policy approval submission.

Attachments

- Attachment A** *Migration Amendment (Special Category Visas and Special Return Criterion 5001) Regulation 2015*
- Attachment B** *Explanatory Memorandum for Migration Amendment (Special Category Visas and Special Return Criterion 5001) Regulation 2015*
- Attachment C** *Minute Paper for Migration Amendment (Special Category Visas and Special Return Criterion 5001) Regulation 2015*
- Attachment D** *Explanatory Statement for Migration Amendment (Special Category Visas and Special Return Criterion 5001) Regulation 2015*
- Attachment E** *MS15-018637 – Policy approval for consequential changes to the Migration Regulations 1994 to improve and strengthen the Migration Amendment (Character and General Visa Cancellations) Act 2014*

Authorising Officer
Cleared by:

Pip de Veau <i>PSU CANCE</i> General Counsel Legal Division
Date: 30 September 2015 Ph: s. 22(1)(a)(ii)

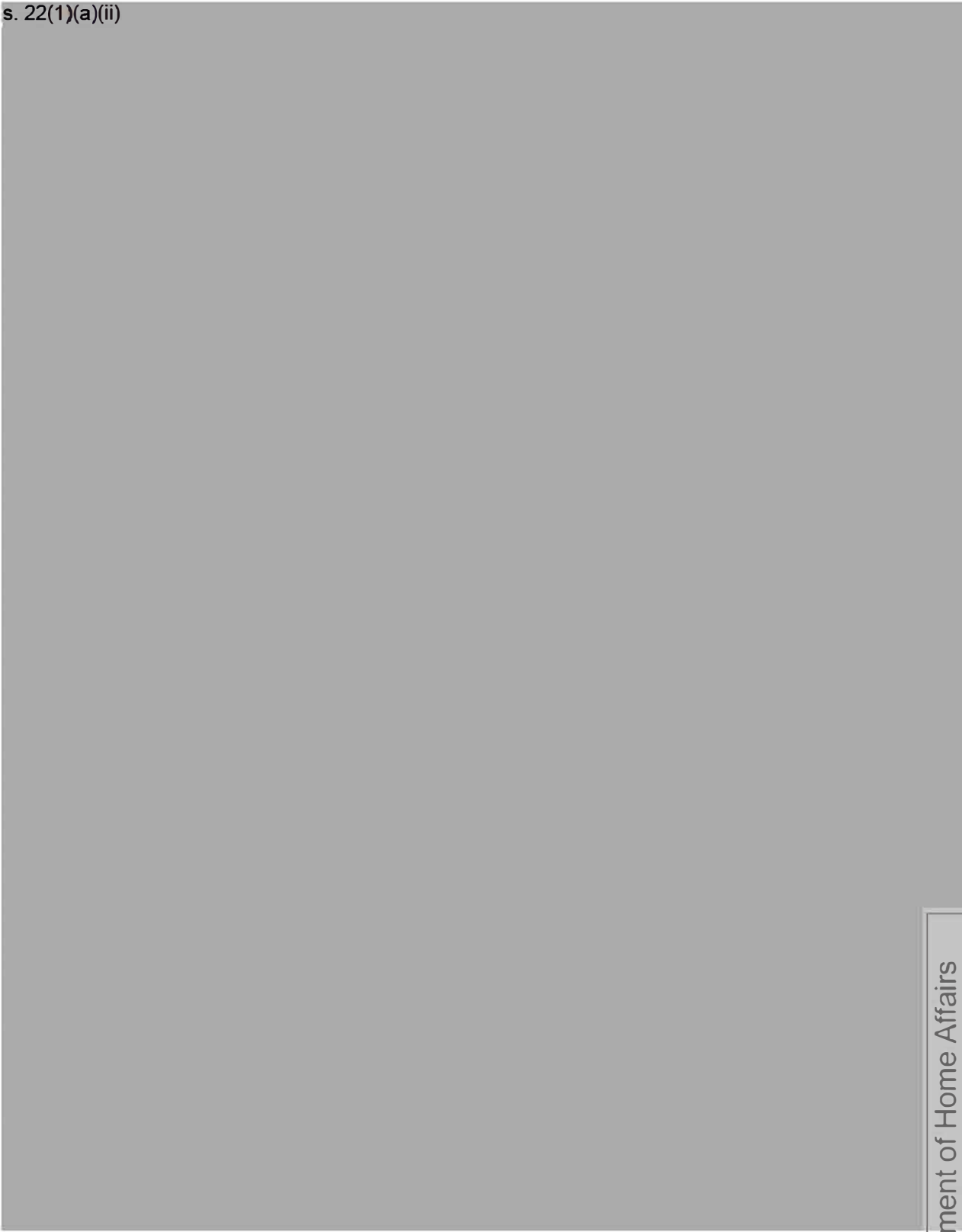
Contact Officer s. 22(1)(a)(ii) A/g Principal Legal Officer, Legislation – Regulations Section, Ph: s. 22(1)(a)(ii)

Through Greg Phillipson, Assistant Secretary, Legislation and Framework Branch, Ph: s. 22(1)(a)(ii)

CC Secretary
Australian Border Force Commissioner
Deputy Secretary Noble
First Assistant Secretary, Community Protection Division
First Assistant Secretary, Immigration and Citizenship Policy Division
Assistant Secretary, Community Protection and Border Policy Branch

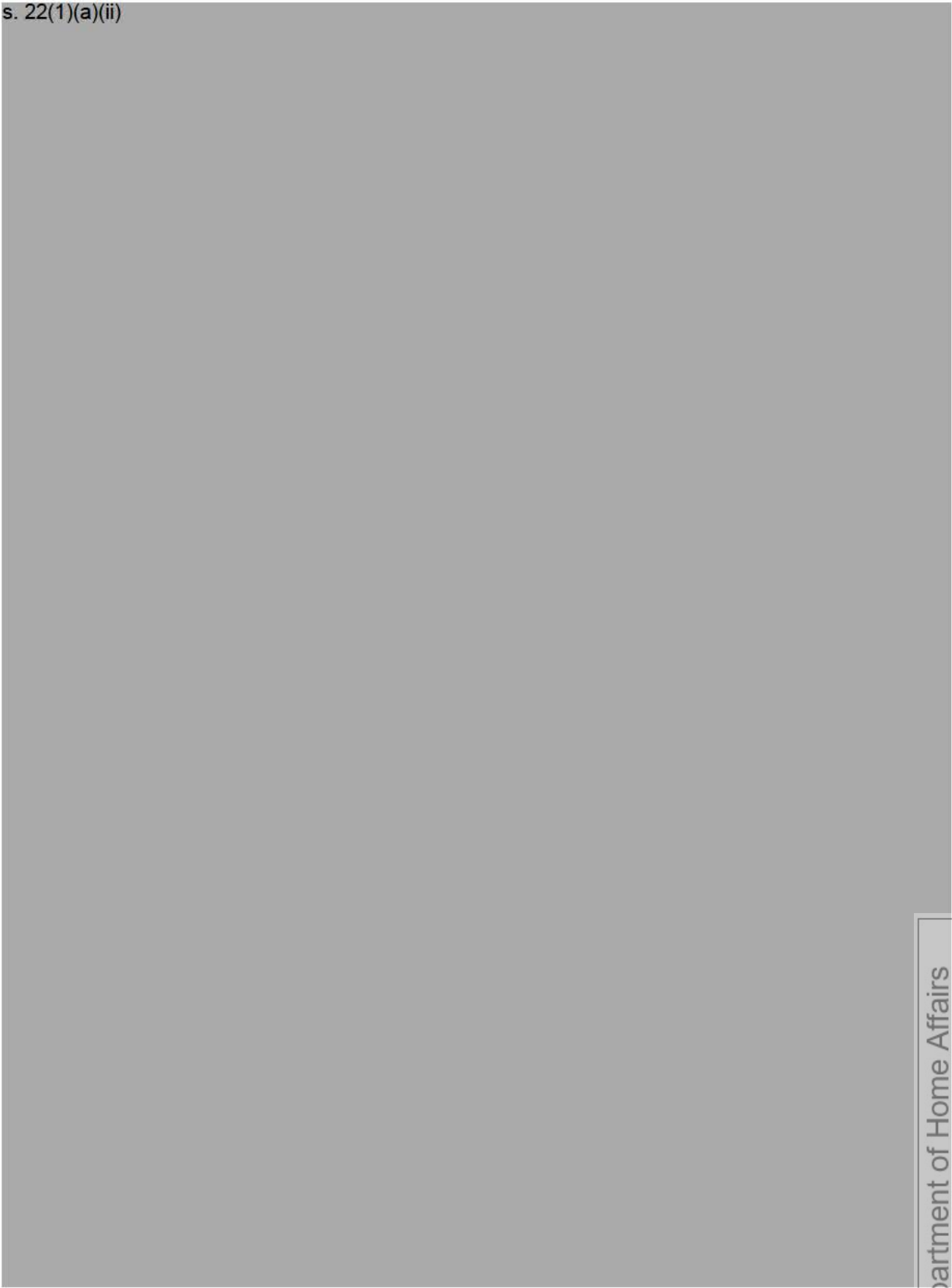
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s. 22(1)(a)(ii)



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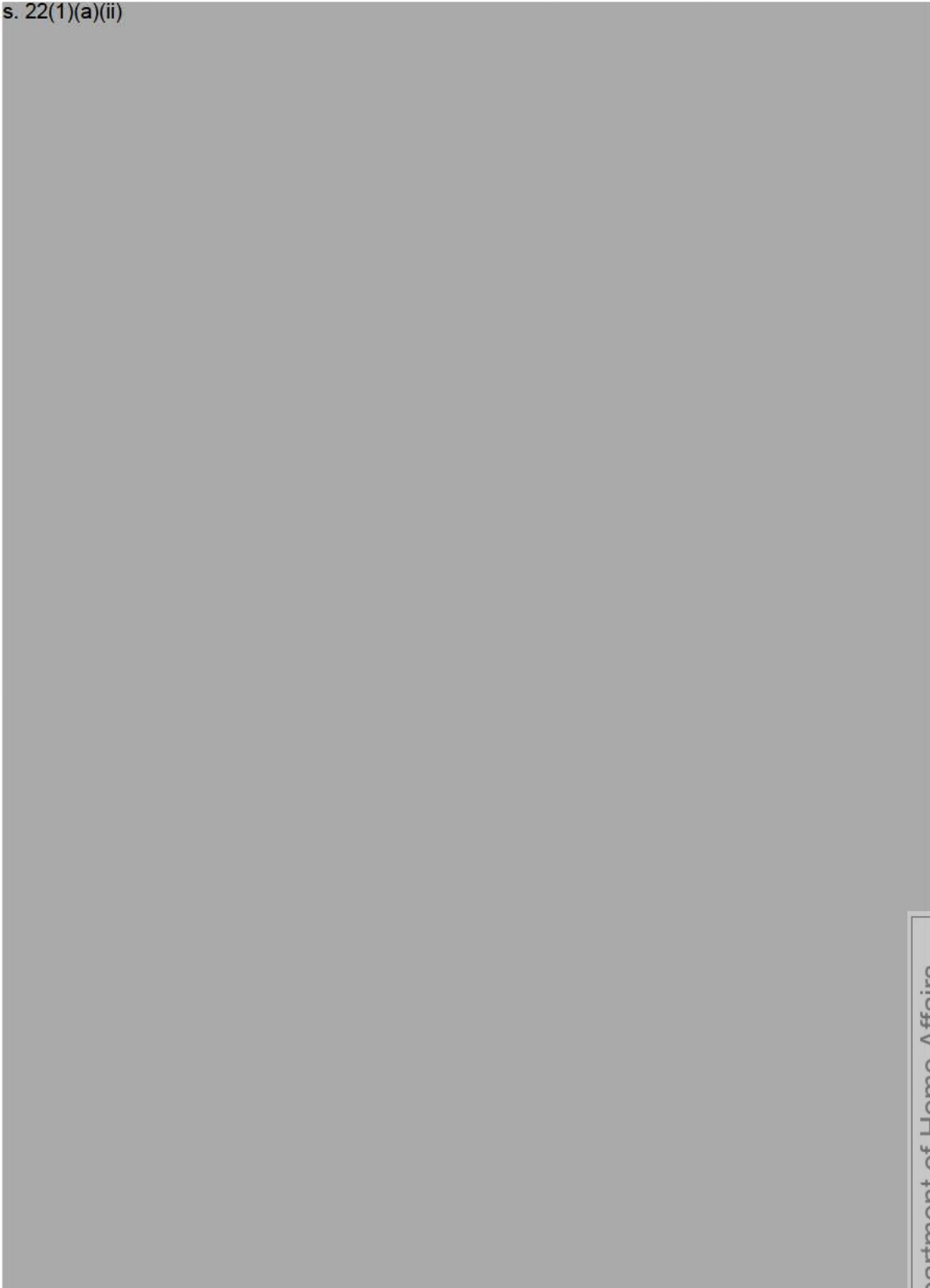
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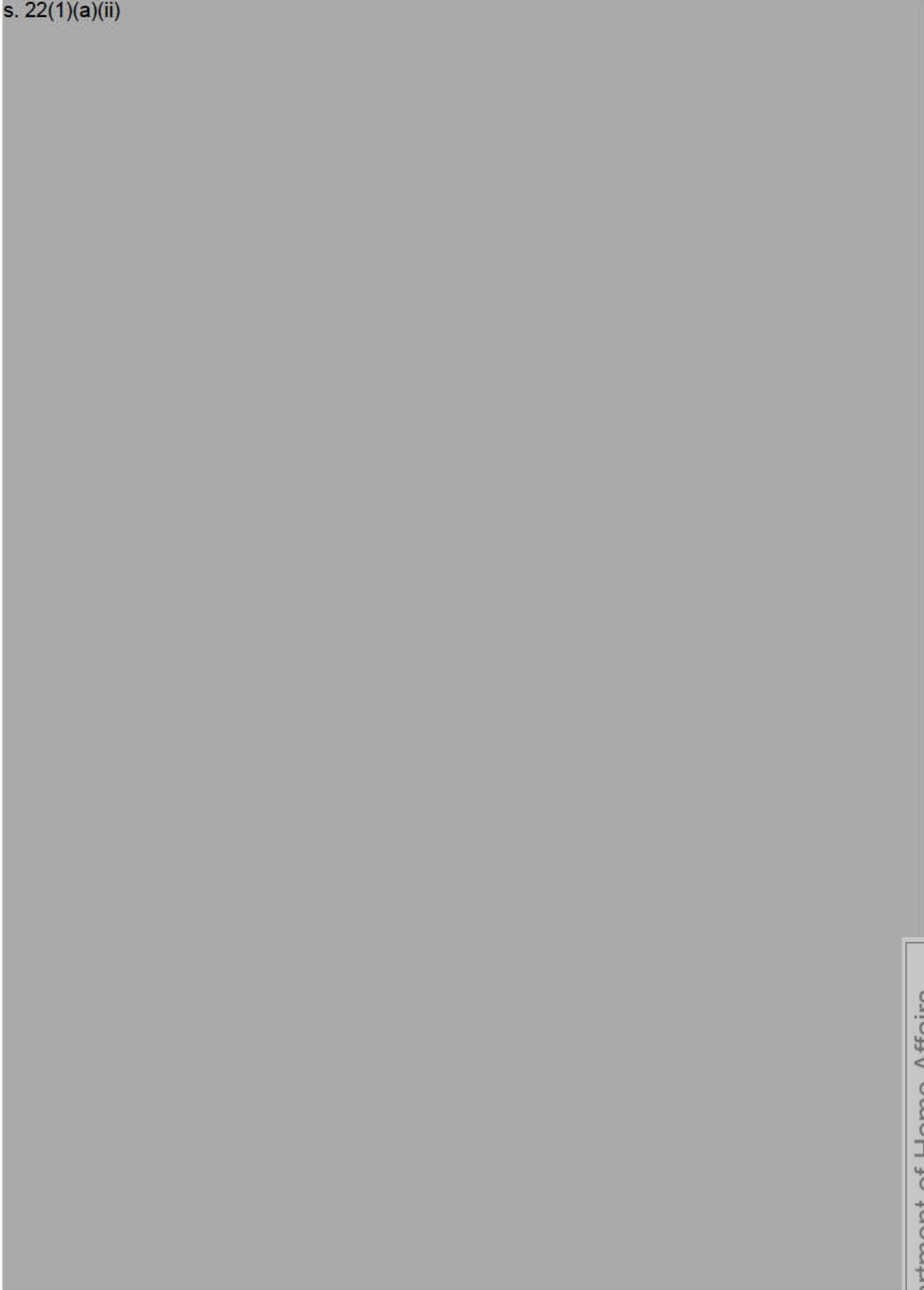
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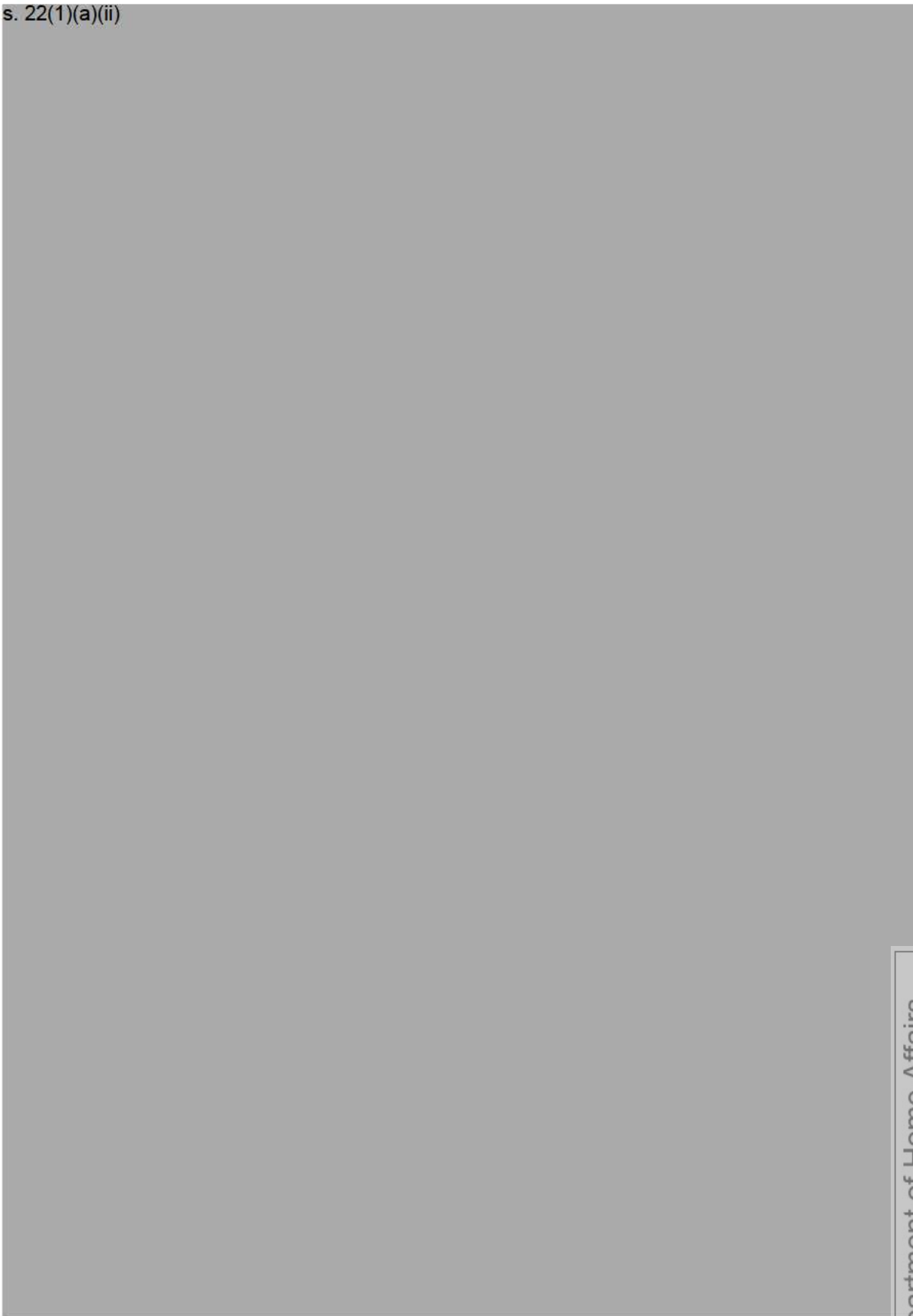
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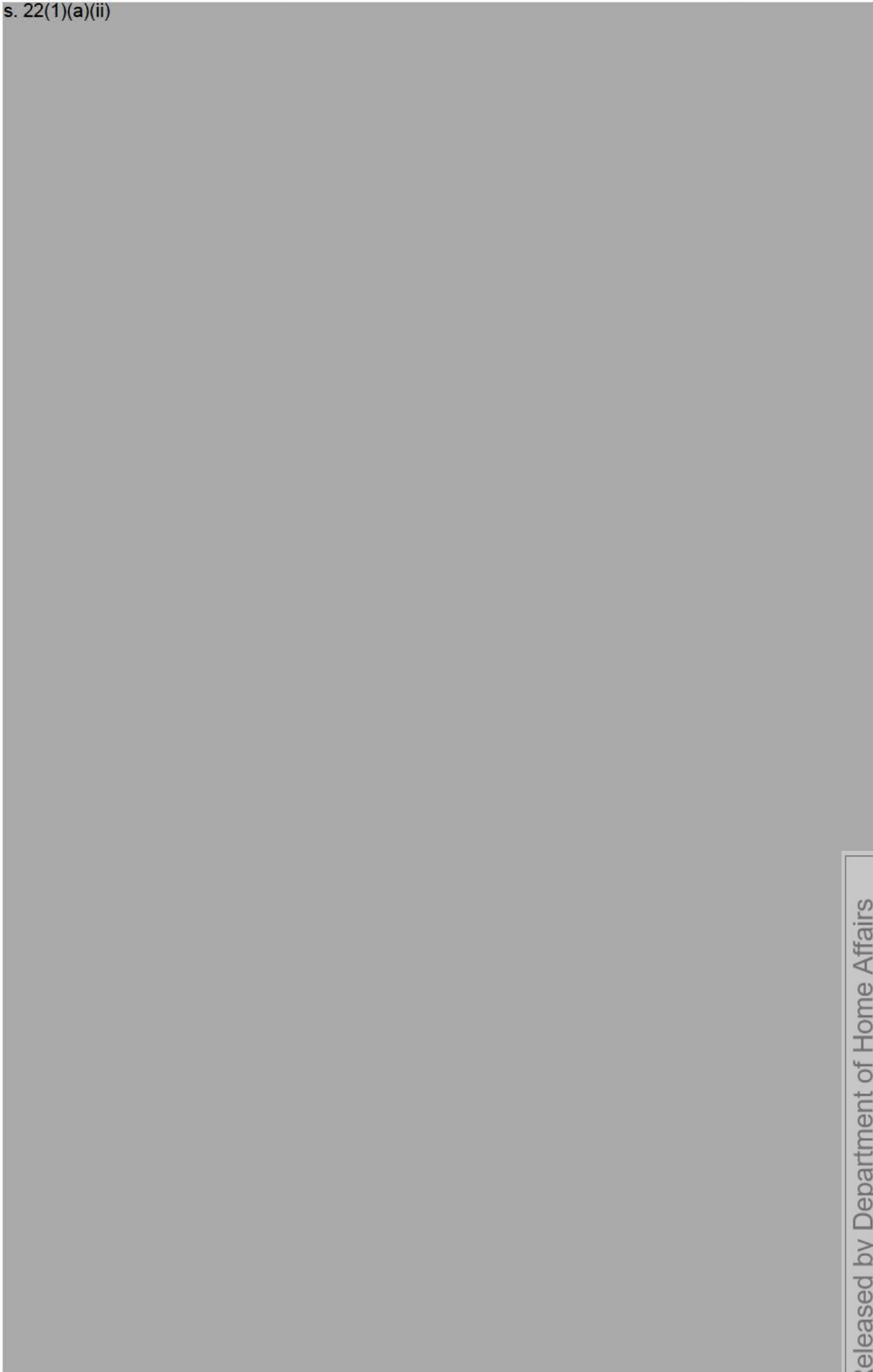
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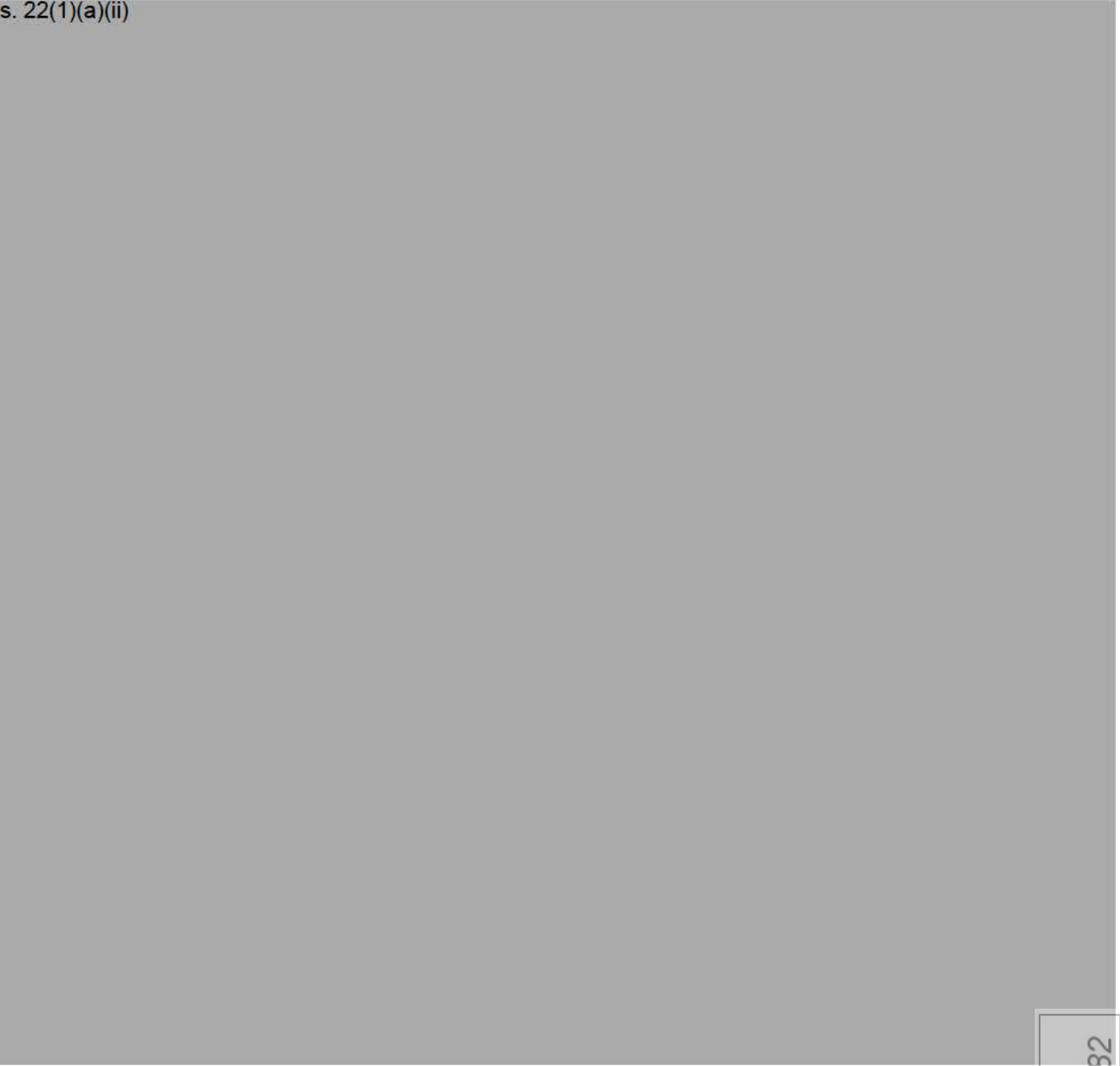
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s. 22(1)(a)(ii)



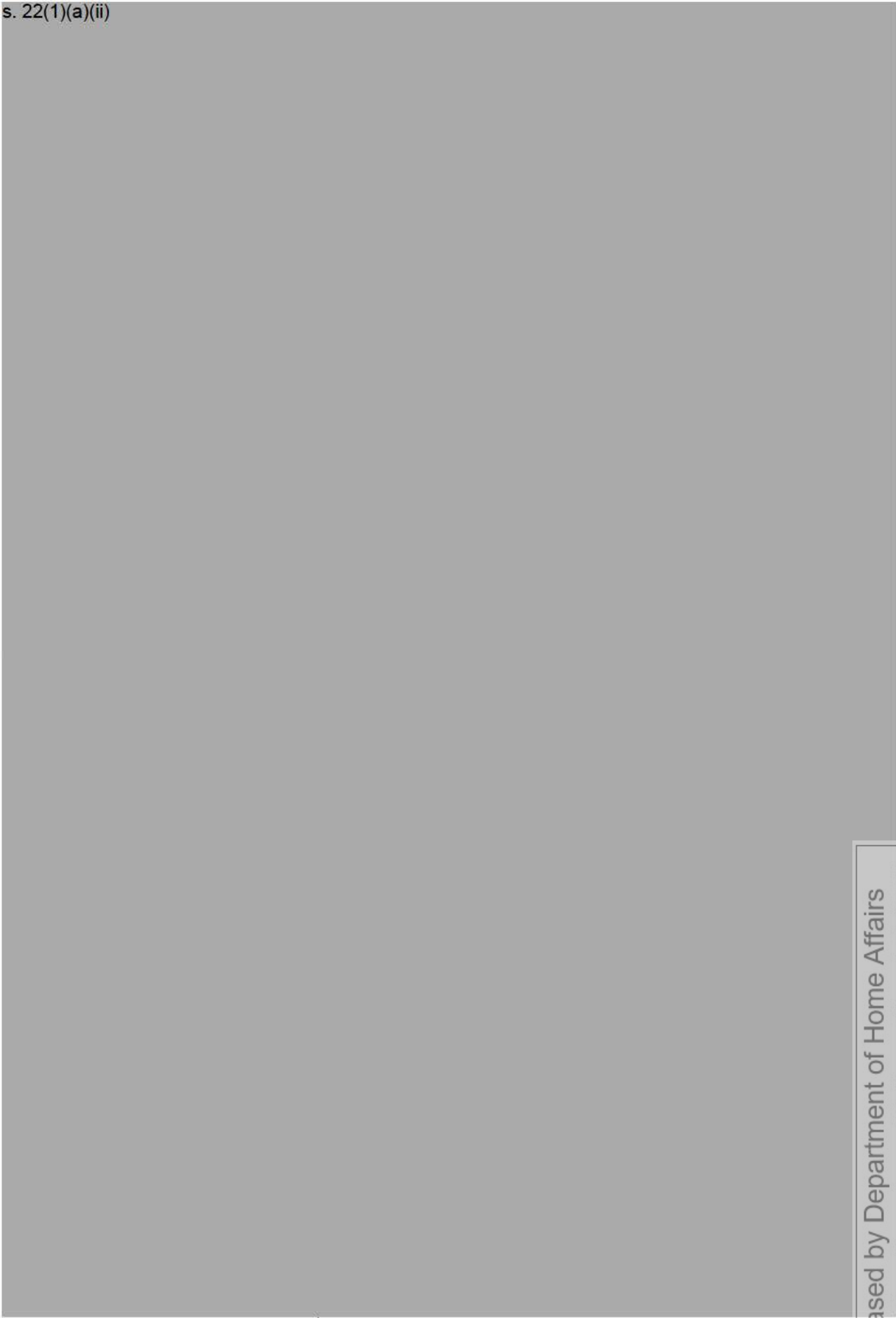
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s. 22(1)(a)(ii)



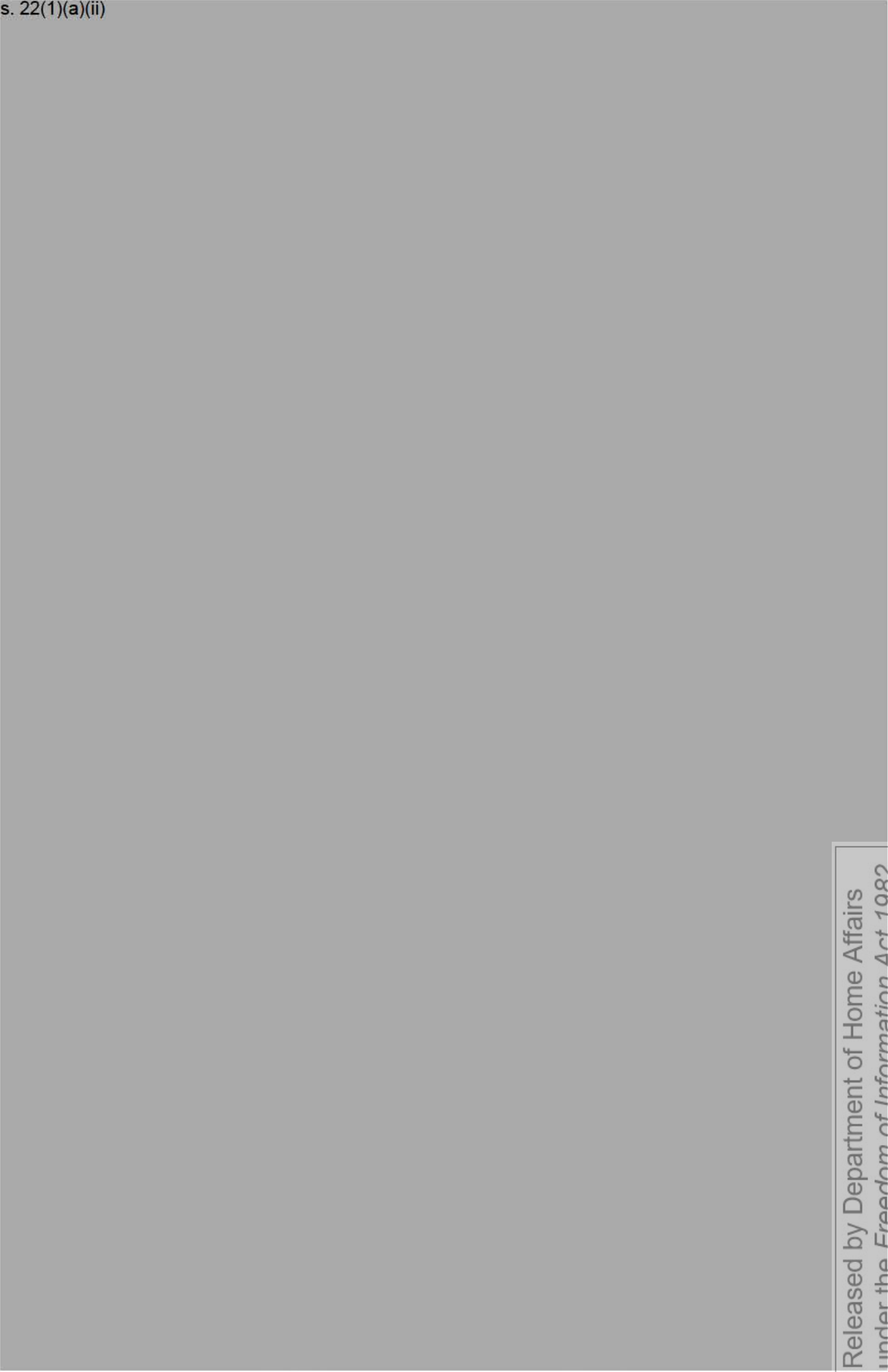
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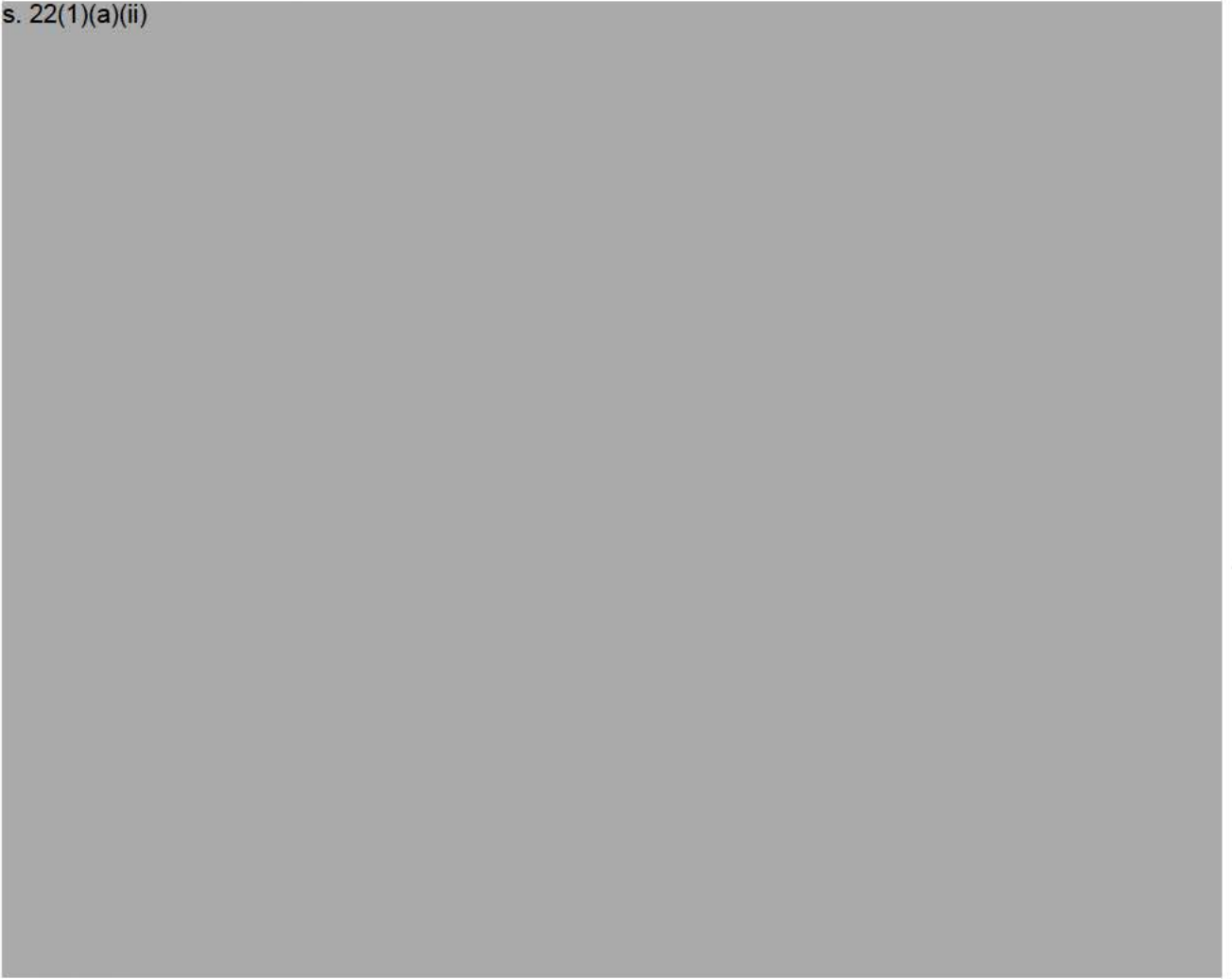
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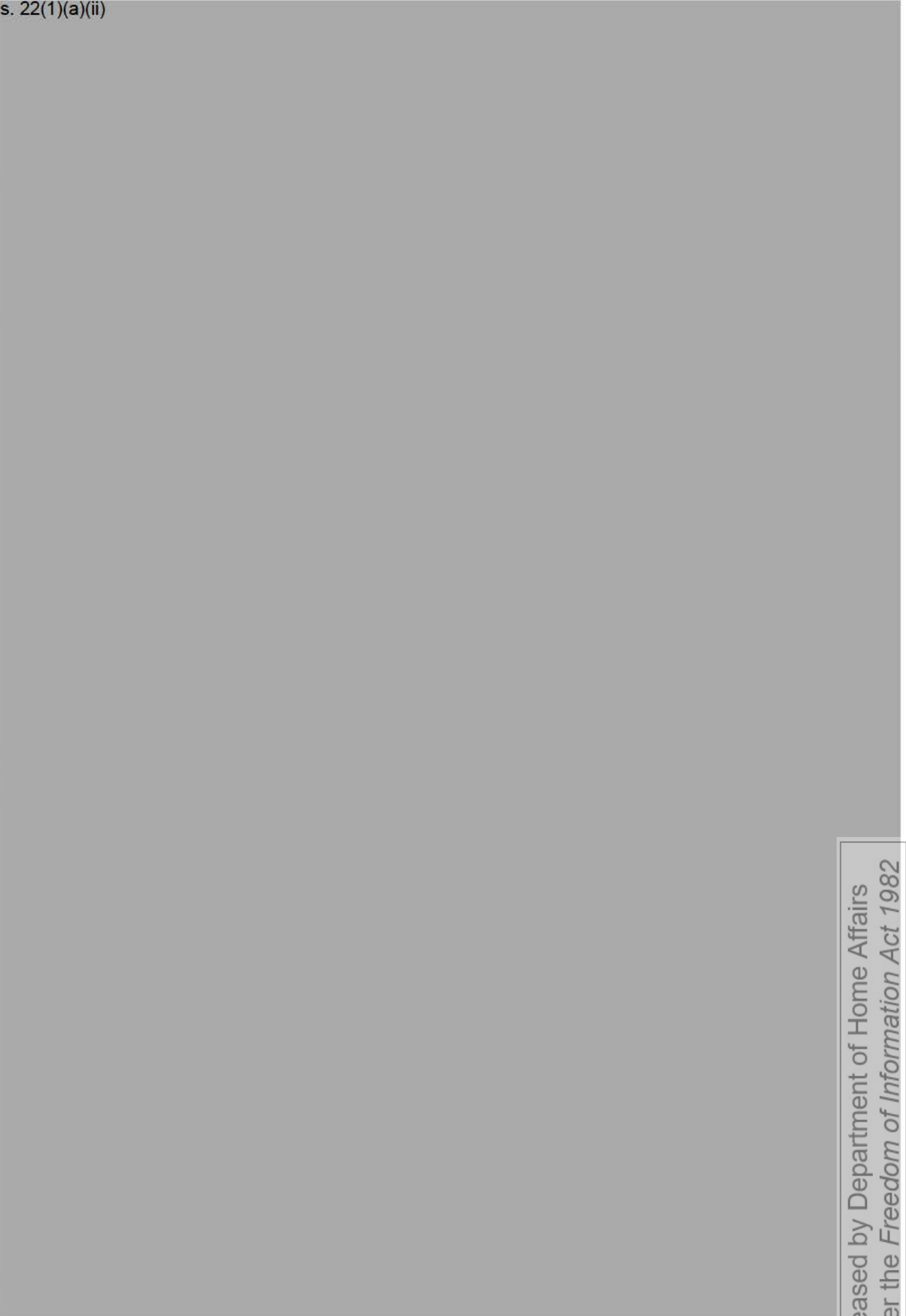
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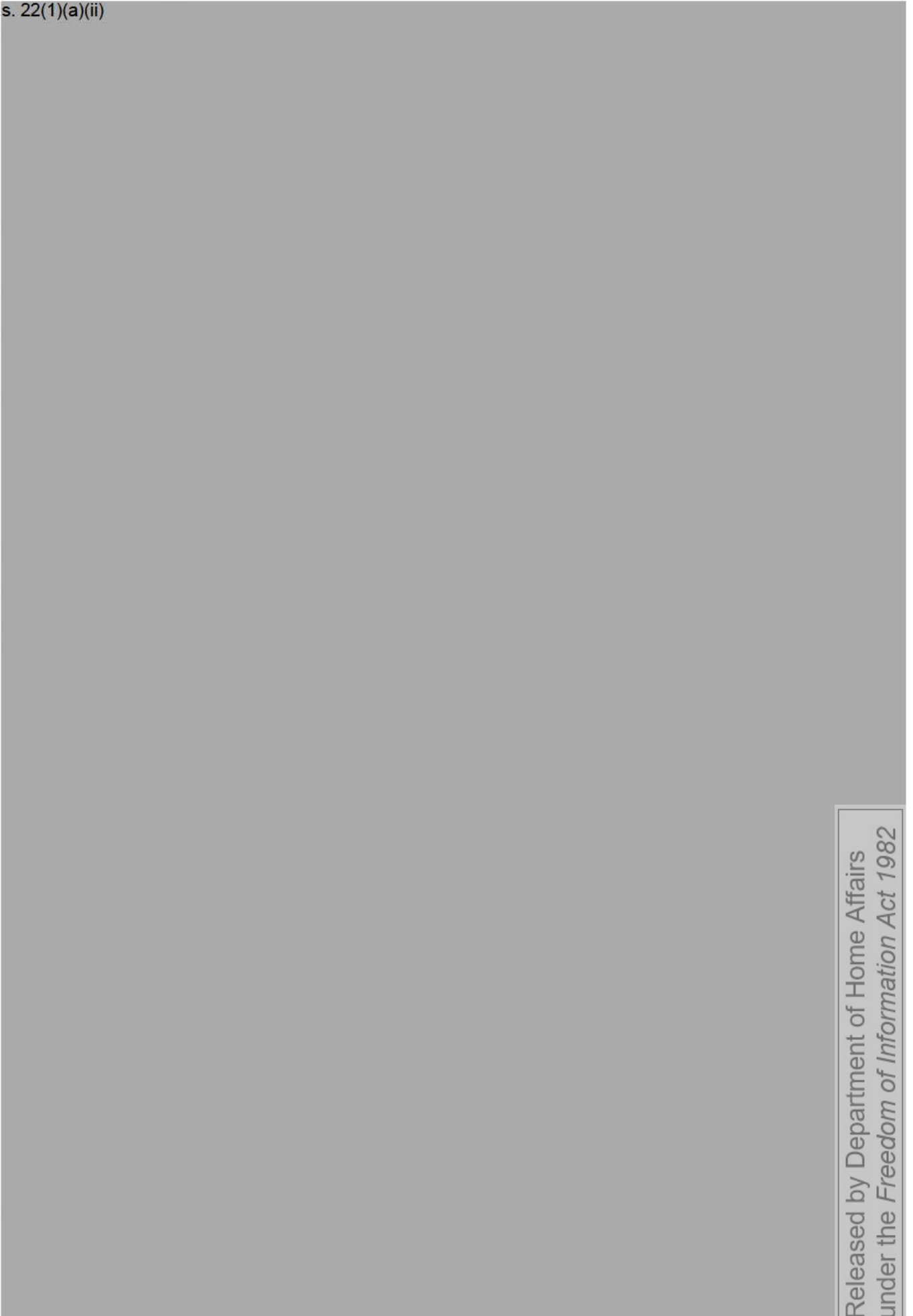
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s. 22(1)(a)(ii)



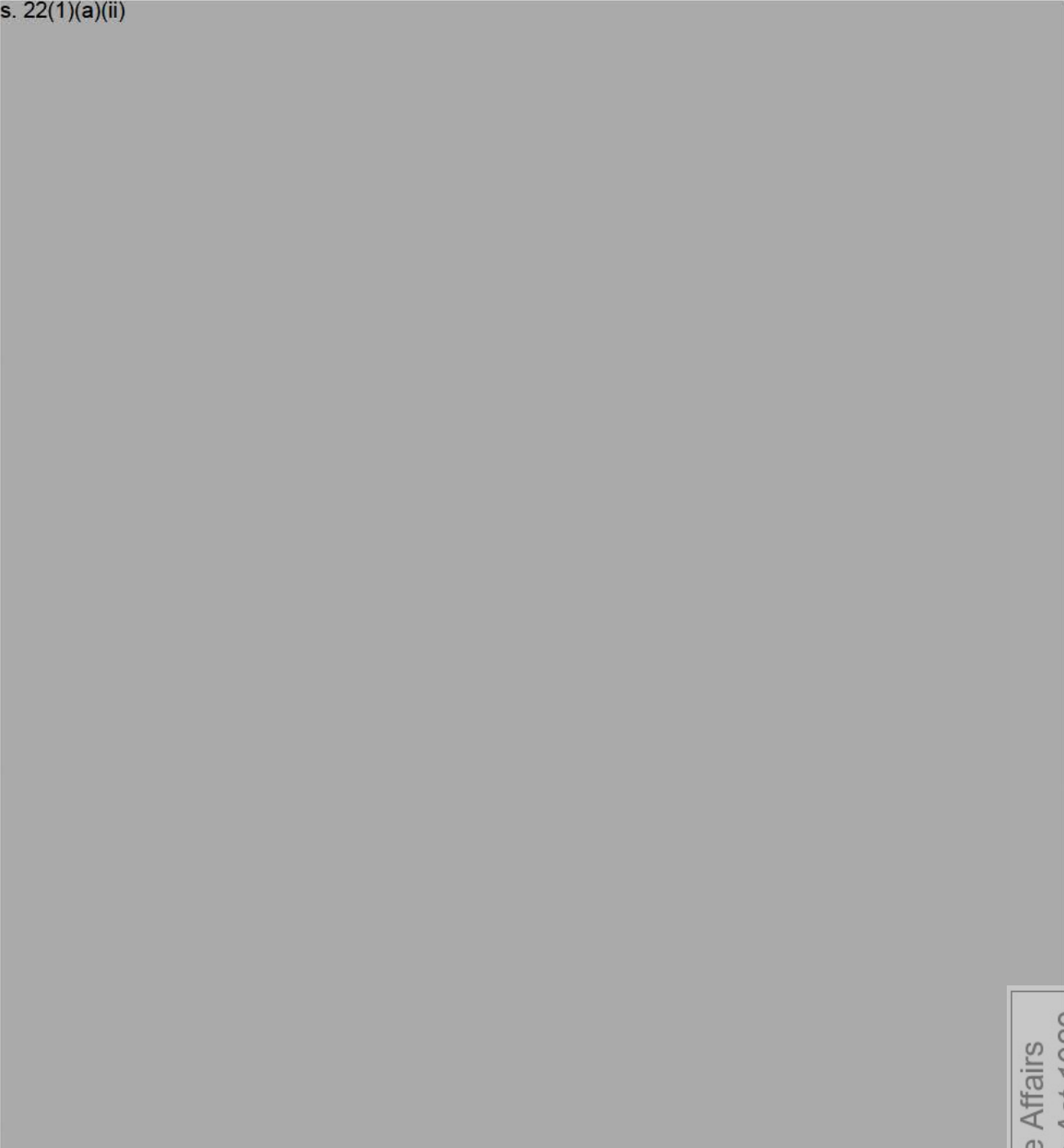
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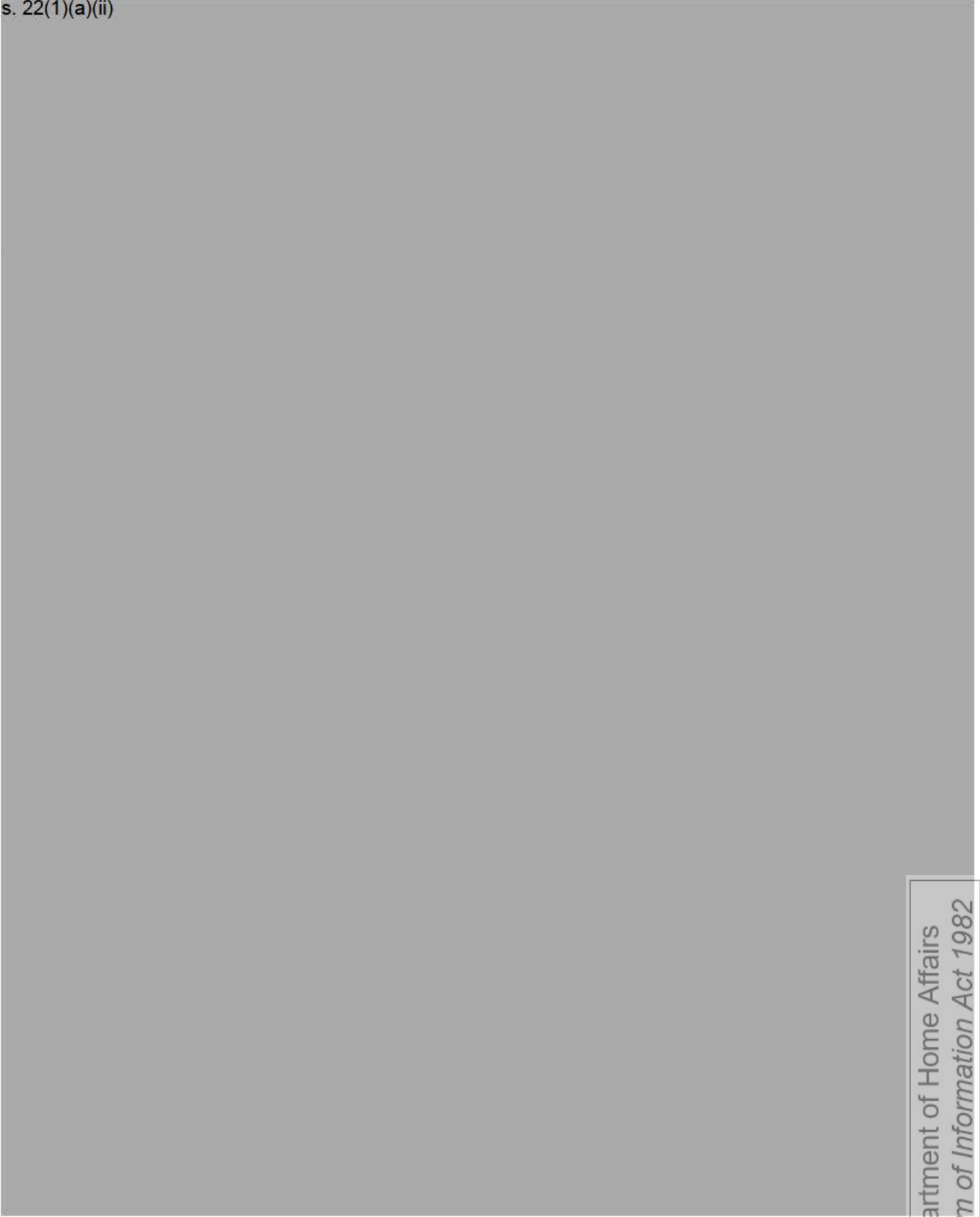
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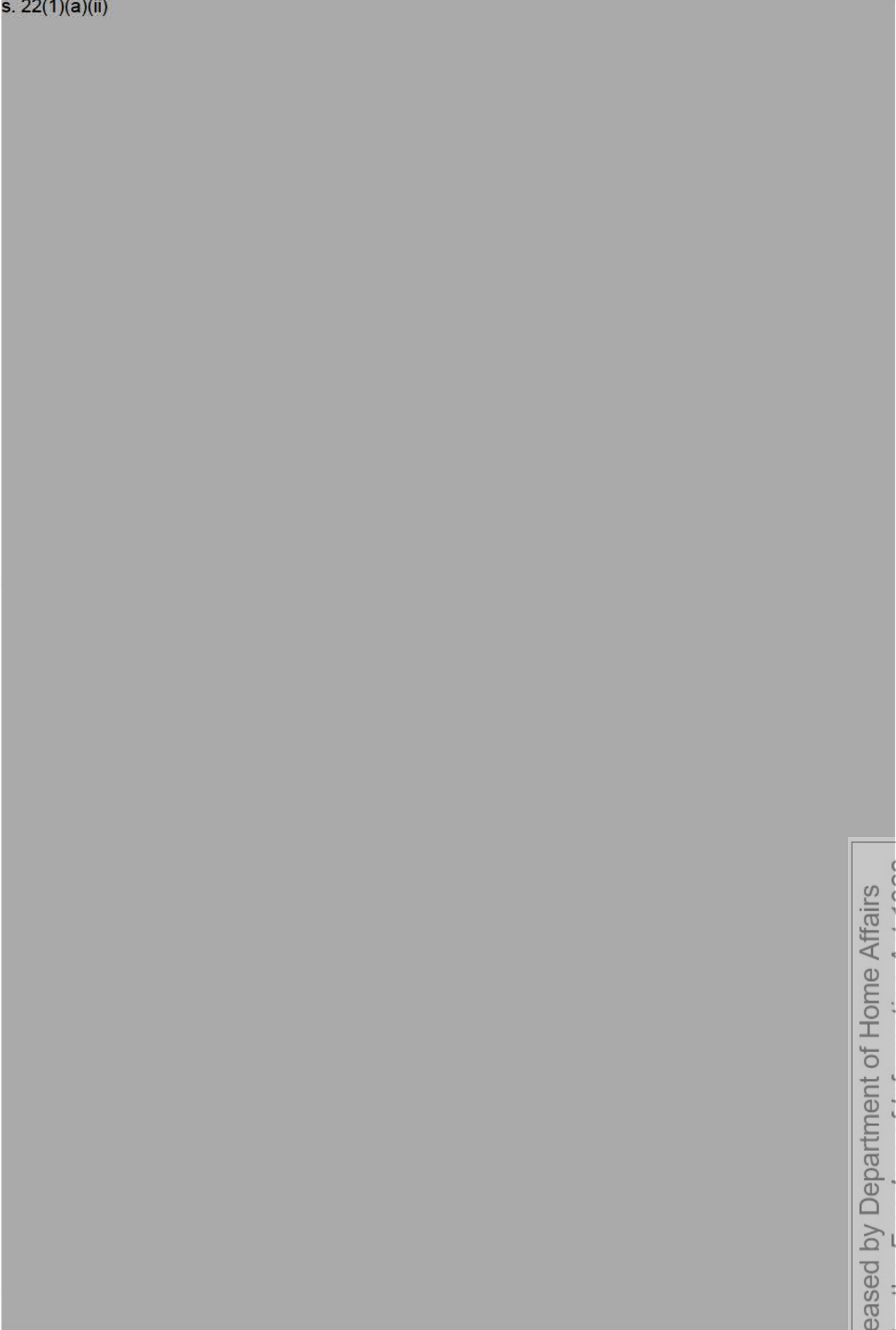
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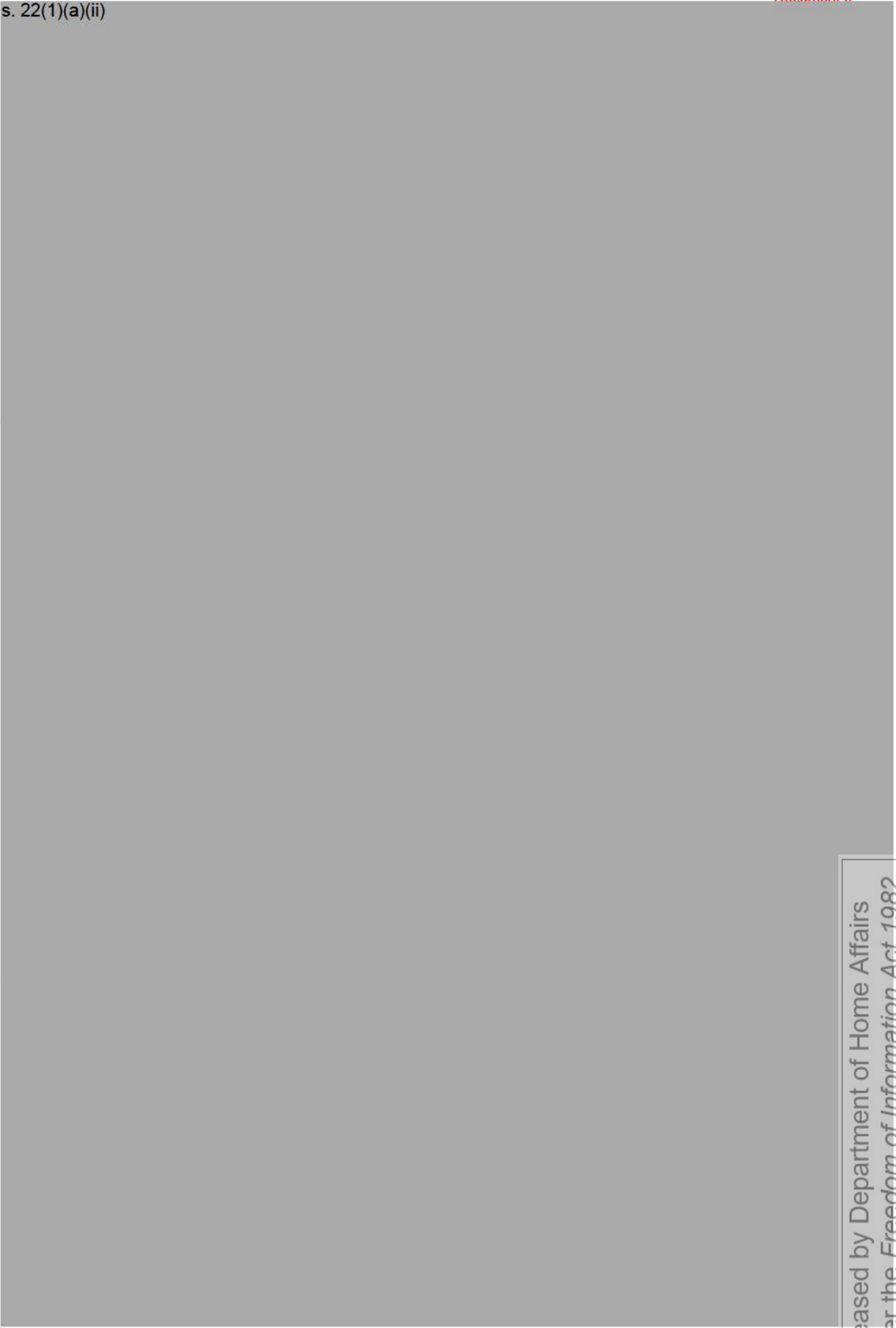
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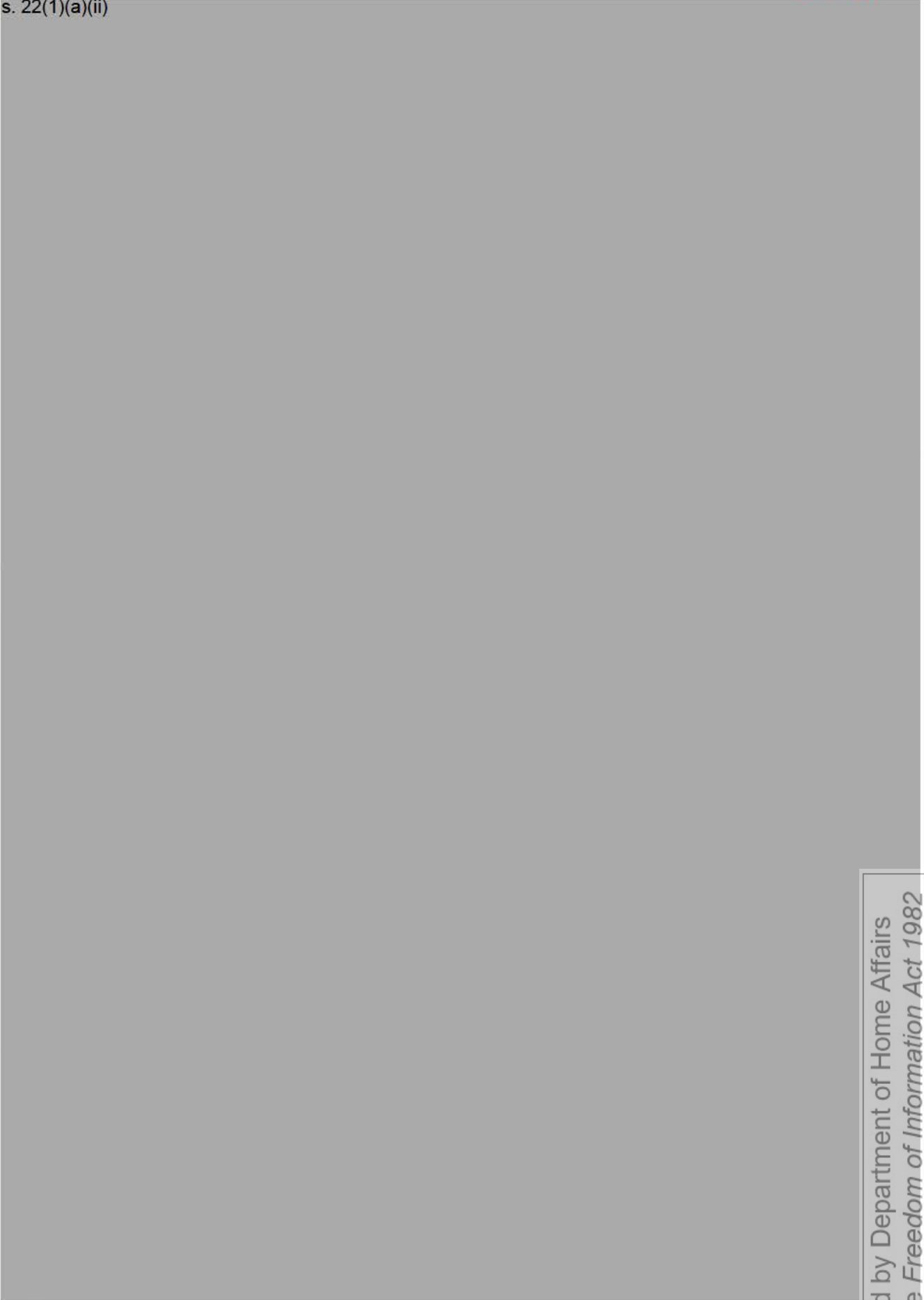
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Attachment A

Behaviour Concern Non-Citizen

Behaviour Concern Non-Citizen means a non-citizen who:

- (a) has been convicted of a crime and sentenced to death or to imprisonment, for at least one year; or
- (b) has been convicted of 2 or more crimes and sentenced to imprisonment, for periods that add up to at least one year if:
 - (i) any period concurrent with part of a longer period is disregarded; and
 - (ii) any periods not disregarded that are concurrent with each other are treated as one period;

whether or not:

- (iii) the crimes were of the same kind; or
 - (iv) the crimes were committed at the same time; or
 - (v) the convictions were at the same time; or
 - (vi) the sentencings were at the same time; or
 - (vii) the periods were consecutive; or
- (c) has been charged with a crime and either:
 - (i) found guilty of having committed the crime while of unsound mind; or
 - (ii) acquitted on the ground that the crime was committed while the person was of unsound mind;
- (d) has been removed or deported from Australia or removed or deported from another country; or
- (e) has been excluded from another country in prescribed circumstances;

where **sentenced to imprisonment** includes ordered to be confined in a corrective institution.

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s. 47C(1)



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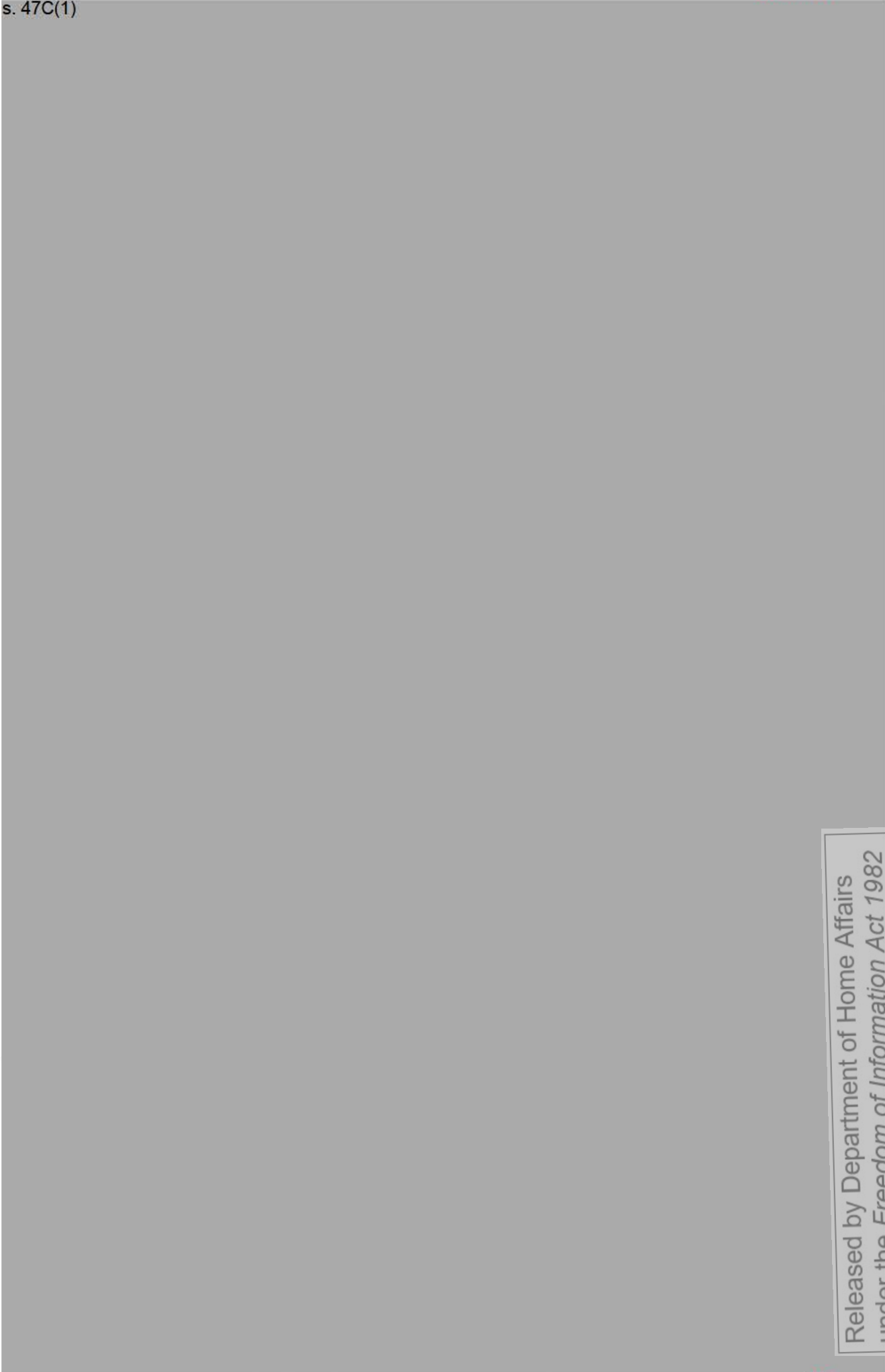
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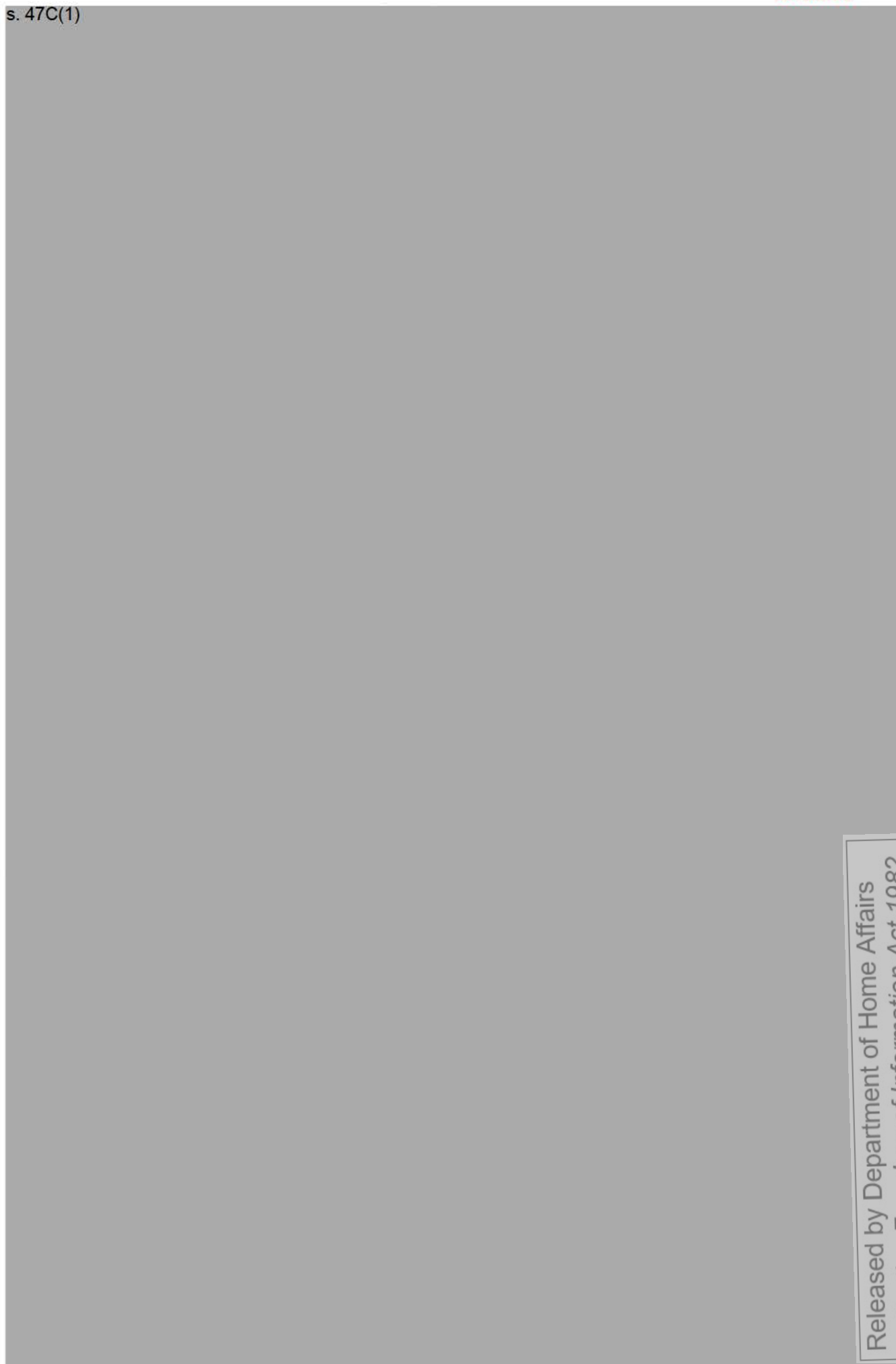
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s. 47C(1)



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Australian Government
Department of Immigration and Border Protection

Submission

For decision

PDMS Ref. Number MS15-026175

To Minister for Immigration and Border Protection

Subject Impact of the 2014 reforms to the character decision-making framework.

Timing Please sign by 15 May 2016.

Recommendations

That you:

s. 47C(1)

agree / disagree / please discuss

2. note that the ongoing deterrent effect of Australia's character cancellation framework will be assessed as part of an evaluation of the mandatory cancellation framework currently being undertaken.

noted / please discuss

Minister for Immigration and Border Protection

Signature.....

Date: 04/05/2016

Received

29 APR 2016

Minister for Immigration
and Border Protection

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Minister's Comments				
Rejected Yes/No	Timely Yes/No	Relevance <input type="checkbox"/> Highly relevant <input type="checkbox"/> Significantly relevant <input type="checkbox"/> Not relevant	Length <input type="checkbox"/> Too long <input type="checkbox"/> Right length <input type="checkbox"/> Too brief	Quality Poor 1.....2.....3.....4.....5 Excellent Comments:

Key Issues

1. You previously requested information on the deterrent effect of the character cancellation framework, s. 22(1)(a)(ii)

s. 22(1)(a)(ii)

2. The purpose of the *Migration Amendment (Character and General Visa Cancellation) Act 2014* (the Character Act), which commenced on 11 December 2014 was to strengthen the character and general visa cancellation provisions in the Migration Act. Deterrence was not a key policy driver for these changes, however, the introduction of the mandatory visa cancellation and revocation regime has had a significant impact on the complexion of the character caseload and public awareness of your ability to cancel the visas of non-citizens who have committed criminal offences. A comprehensive evaluation of the impact of the Character Act, including the effectiveness and appropriateness of mandatory cancellation, is currently underway. It is possible that evidence of a deterrent effect may be found once the measures have been implemented for a longer period.

Impact of the new character provisions

3. Since the 2014 reforms, there has been an increase in both the number of cases referred to the Department for character cancellation and the number of non-citizens found liable for visa cancellation or refusal. This outcome is consistent with the lowering of the threshold of some elements of the character test, and the addition of new grounds in the character test that occurred as a result of the reforms.

s. 47C(1)

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Mandatory cancellation

5. Since its introduction in December 2014, the mandatory visa cancellation and revocation regime has resulted in a substantial increase in the number and breadth of non-citizens who have their visa cancelled under section 501. s. 47C(1)

s. 47C(1)

6. Consequently, there has been significant public and media attention on mandatory cancellation, particularly in relation to the cancellation and detention of New Zealand citizen visa holders. Further, on 25 February 2016, the Commonwealth Ombudsman Mr Colin Neave, wrote to advise that he has decided to conduct an own motion investigation into the department's current administration of section 501 of the Migration Act.

7. Given the public scrutiny of mandatory cancellation and concern expressed in the media and elsewhere about whether the triggers for mandatory cancellation are appropriate, the Department has undertaken a deep-dive collection of criminal history data for all non-citizens mandatorily cancelled in the 2015 calendar year. This data is being used in the context of an internal evaluation to assess and analyse the impact of mandatory cancellation, including whether the current legislative thresholds are appropriate.

s. 47C(1)

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s. 47C(1)



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s. 22(1)(a)(ii)

Background

16. Significant changes were made to the character and general visa cancellation framework in late 2014 by the Character Act, to ensure that non-citizens who commit crimes in Australia, pose a risk to the Australian community, or represent an integrity concern are appropriately considered for visa refusal or cancellation. The amendments included prescribing certain cohorts of non-citizens, such as those who have a charge proven for a sexual offence against a child, and persons involved in criminal conduct or activities such as people smuggling or war crimes, as not passing the character test. Additionally, amendments were made to ensure that any non-citizen convicted of a crime or crimes, who receives a sentence totalling twelve months, regardless of how that total is reached, will not pass the character test.

17. The Character Act also introduced a new two-stage process for character cancellations, for non-citizens who objectively do not pass the character test and are in prison. The mandatory cancellation and revocation regime removed the requirement to provide lengthy up-front natural justice to non-citizens being considered for visa cancellation, and ensures that non-citizens who pose a risk to the community will remain in either criminal or immigration detention until their suitability for remaining in the Australian community has been assessed.

Consultation – internal/external

18. No external consultation. A number of Departmental stakeholders were consulted on the content of this submission, including Policy Research and Statistics Branch, Character Assessment and Cancellation Branch, Organised Crime Branch and Communication and Media Branch.

Consultation – Secretary/Commissioner

19. The Secretary and Commissioner were not consulted.

Client service implications

20. Nil.

Sensitivities

21. Visa cancellation is often controversial and elicits a wide range of views in the Australian community, particularly as it relates to long-term Australian permanent residents. In recent months, mandatory cancellation of the visas of New Zealand citizens has gained significant attention both in the media and in the New Zealand political field.

Financial/systems/legislation/deregulation implications

22. Nil.

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Attachments

Attachment A Preliminary analysis of mandatory cancellation criminality data

Attachment B s. 22(1)(a)(ii)

Authorising Officer
Cleared by:
 David Wilden First Assistant Secretary Immigration and Citizenship Policy Division
Date: 26/04/2016 Ph: s. 22(1)(a)(ii)

Contact Officer s. 22(1)(a)(ii) Compliance and Enforcement Framework section, Community Protection and Border Policy Branch, Ph: s. 22(1)(a)(ii)

CC

- Secretary
- Commissioner
- Deputy Secretary Policy Group
- Deputy Secretary Visa and Citizenship Group
- First Assistant Secretary, Immigration and Citizenship Policy Division
- First Assistant Secretary, Community Protection Division
- First Assistant Secretary International Division
- Assistant Commissioner Border Management
- Assistant Secretary, Community Protection and Border Policy Branch
- Assistant Secretary Character Assessment and Cancellation Branch
- Assistant Secretary Policy research and Statistics Branch
- Assistant Secretary Communication and Media Branch

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Attachment A

s. 47C(1)



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s. 47C(1)



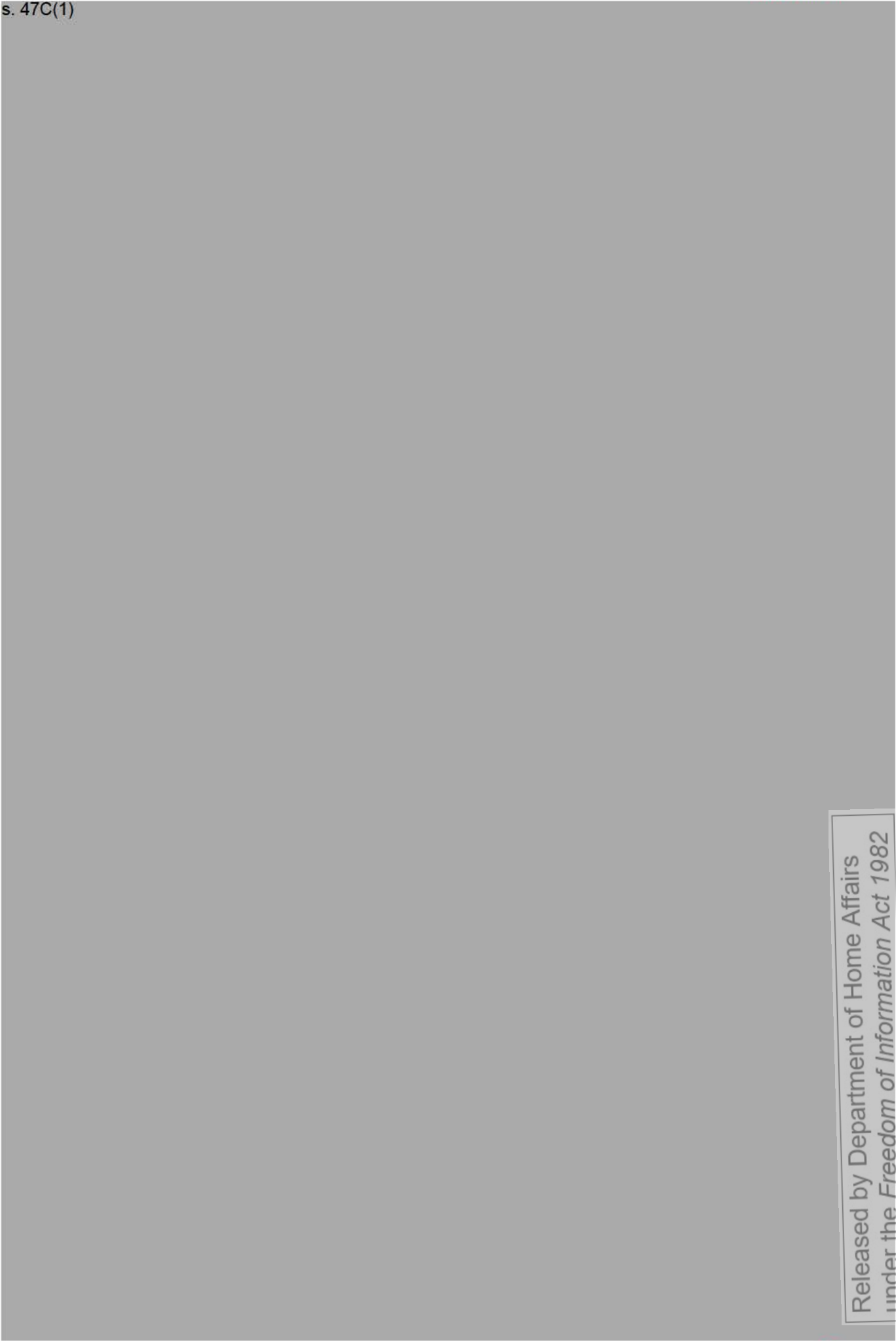
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s. 47C(1)



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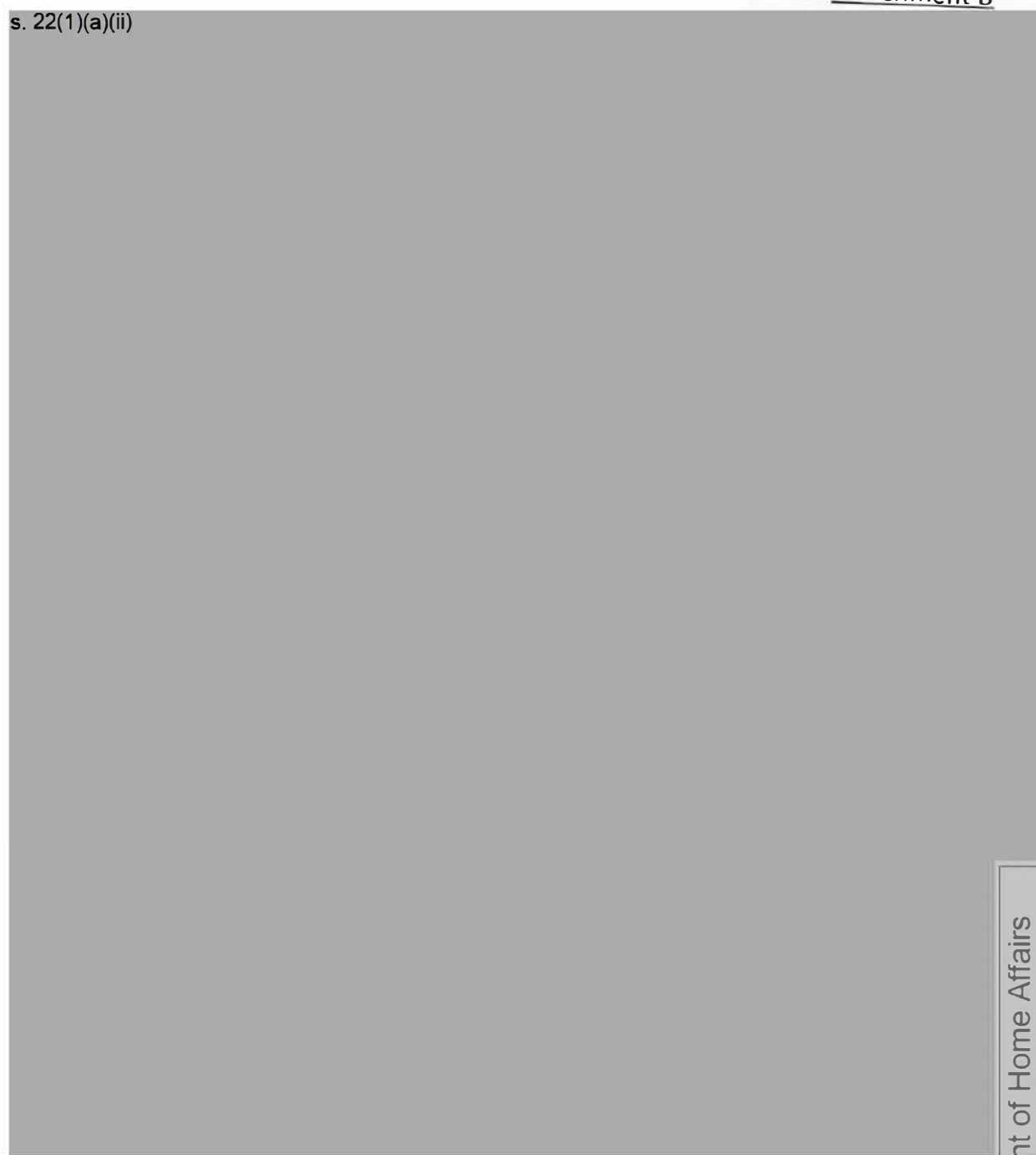
s. 47C(1)



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Attachment B

s. 22(1)(a)(ii)



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Freedom of Information Request FA 19/08/00982

- 1) *the number of non-citizens who have had their visas cancelled after failing to pass the character test due to criminal convictions, since 2014, broken down by year*

Count of Character cancellations between 11 Dec 2014 and 31 July 2019	
Year	
2014	68
2015	911
2016	1058
2017	1211
2018	885
2019	551
Total	4684

- 2) *How many of those citizens have been deported to NZ*

Count of New Zealanders removed after character cancellation *
1514

- 3) *Of those deported to NZ, can you provide a breakdown of the offences committed*

Offences committed by New Zealanders that have been removed after character cancellation *	Count
Assault	350
Other Violent Offence	197
Drug Offences	178
Armed Robbery	161
Theft, Robbery, Break Enter	128
Other Non-Violent Offence	122
Child Sex Offences	100
GBH, Reckless Injury	98
Rape, Sexual Offences	42
Fraud, Deception, White Collar	39
Domestic Violence	26
Manslaughter	15
Use Threat Intent Weapon	14
Murder	13
Child Pornography	12
Other Offences**	20
Total	1514

* This count is of removed New Zealanders whose visas were cancelled under section 501 between 11 December 2014 and 31 July 2019 only.

** "Other Offences" includes offences such as Kidnapping, Organised crime, and Driving Offences.