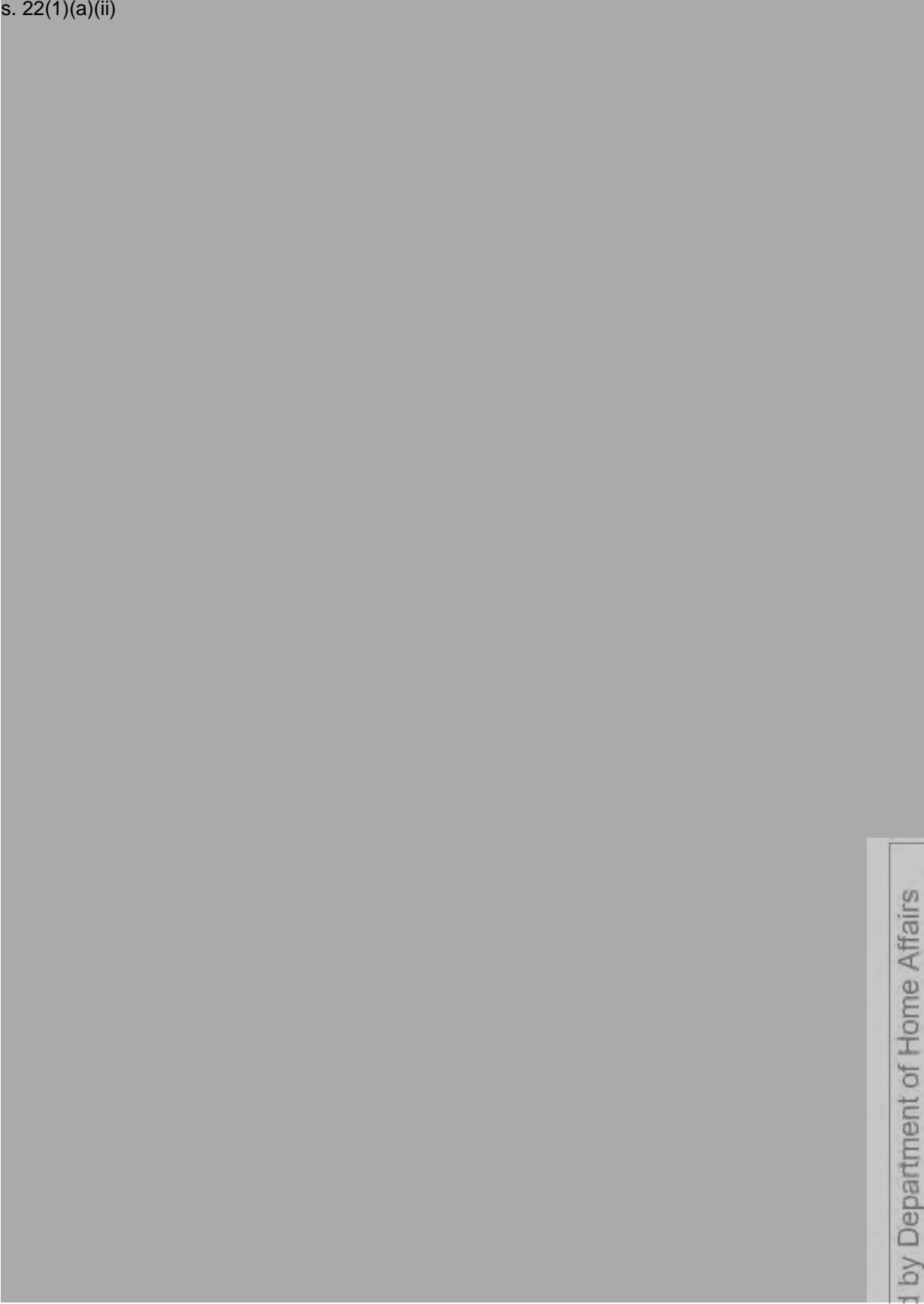


**AUSTRALIAN LAW REFORM COMMISSION INQUIRY INTO
FAMILY VIOLENCE AND COMMONWEALTH LAWS**

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



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Overview of the Final Report Recommendations


A full list of all recommendations relevant to migration law is attached at the end of this document.

The Department agrees in principle with most of the recommendations made by the ALRC. However, the recommendations will need to be examined closely by the Department to ensure that the best possible approach is taken to achieve the outcomes desired by the ALRC. This will ensure that the results can be achieved in the most efficient and cost-effective way possible.

The Department is currently examining all the recommendations relevant to migration law and will prepare a more detailed submission for the Government addressing each recommendation in detail in due course.


There are however, some aspects of the Final Report which we believe should be highlighted at this initial stage.

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Australian Government
Department of Immigration
and Border Protection

Evaluation of the Family Violence Provisions

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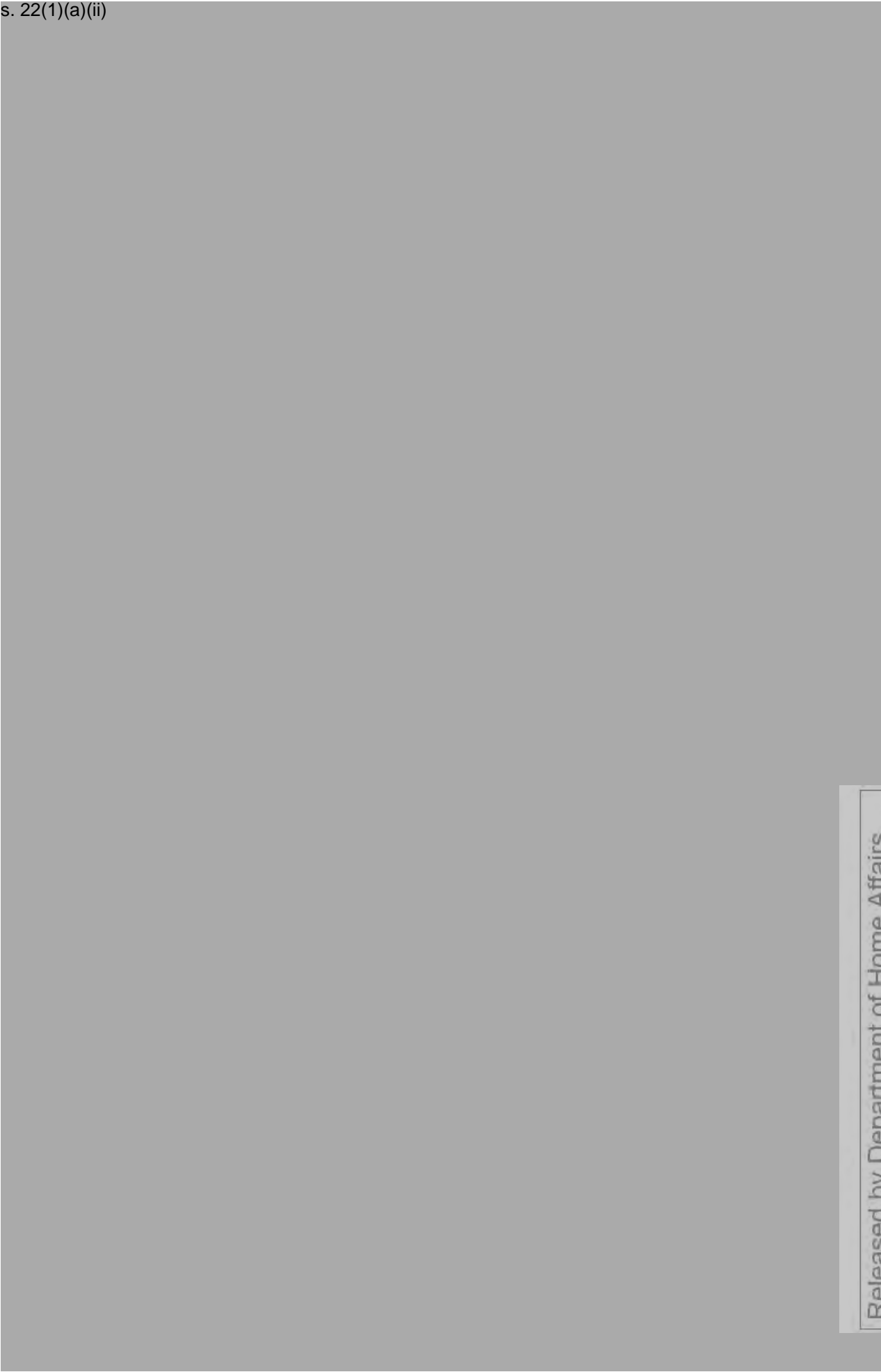
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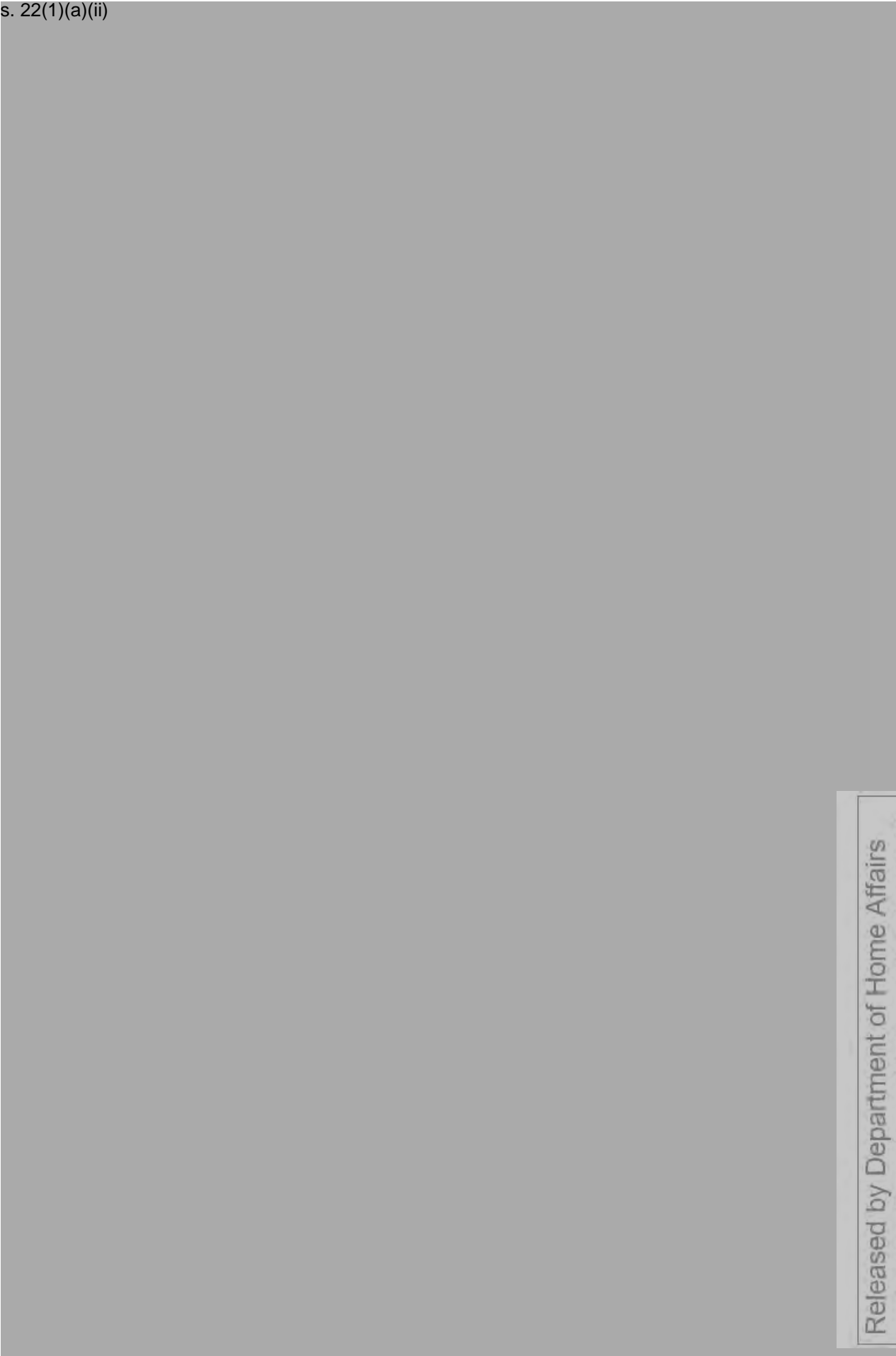
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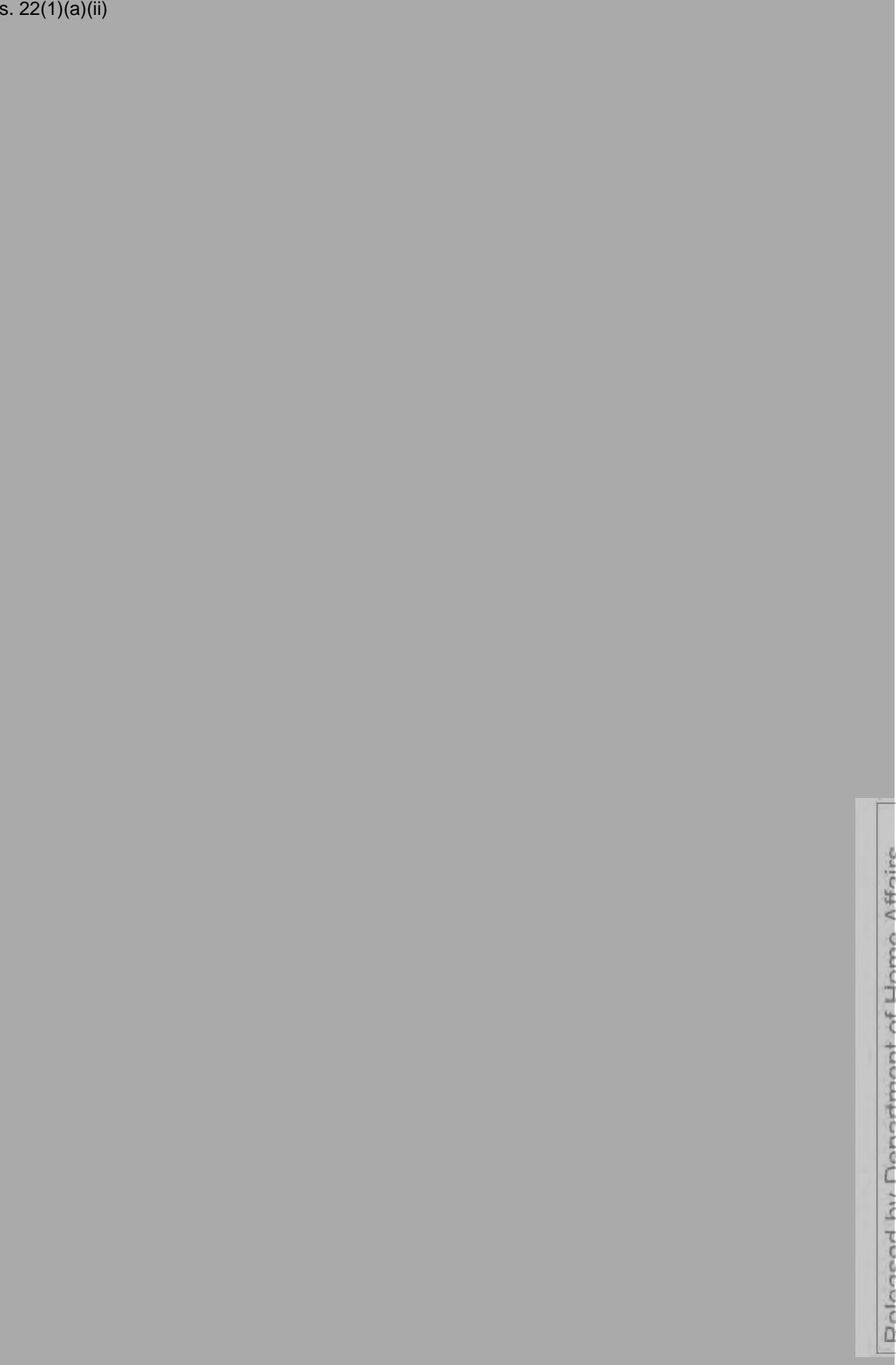
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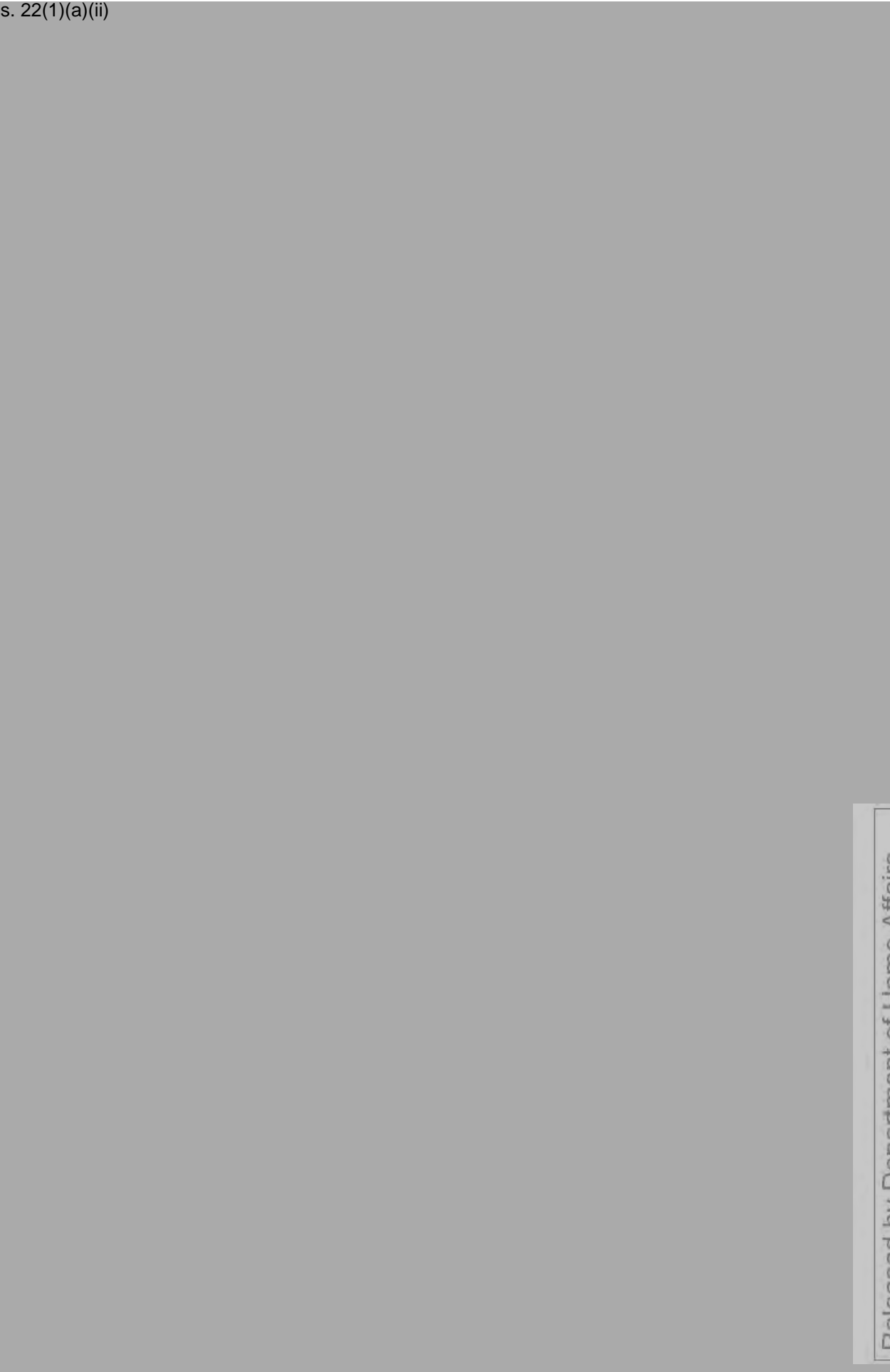
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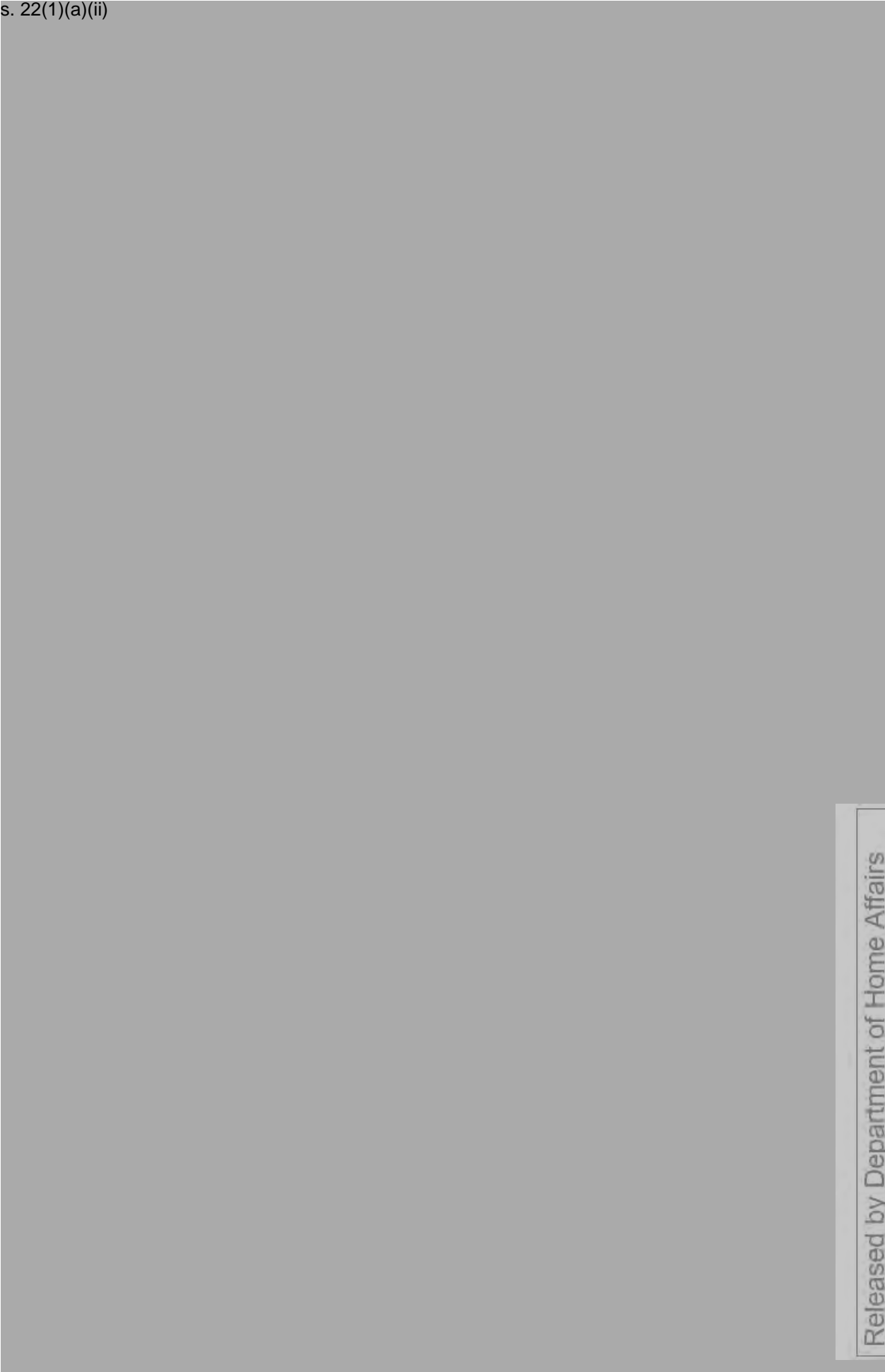
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Recommendation 3

The committee recommends that:

- ***the Australian Government amend the Migration Regulations 1994 to allow Prospective Marriage visa holders to have access to the family violence exceptions, as recommended by the Australian Law Reform Commission (ALRC) in its report, Family Violence and Commonwealth Laws – Improving Legal Frameworks; and***
- ***the Department of Immigration and Citizenship investigate and implement appropriate integrity measures to facilitate the application of the family violence exception to Prospective Marriage visa holders.***

In its formal response to the ALRC recommendations, the Government committed to take action to further consider this recommendation, in recognition of the difficulties faced by Prospective Marriage visa holders who suffer family violence.

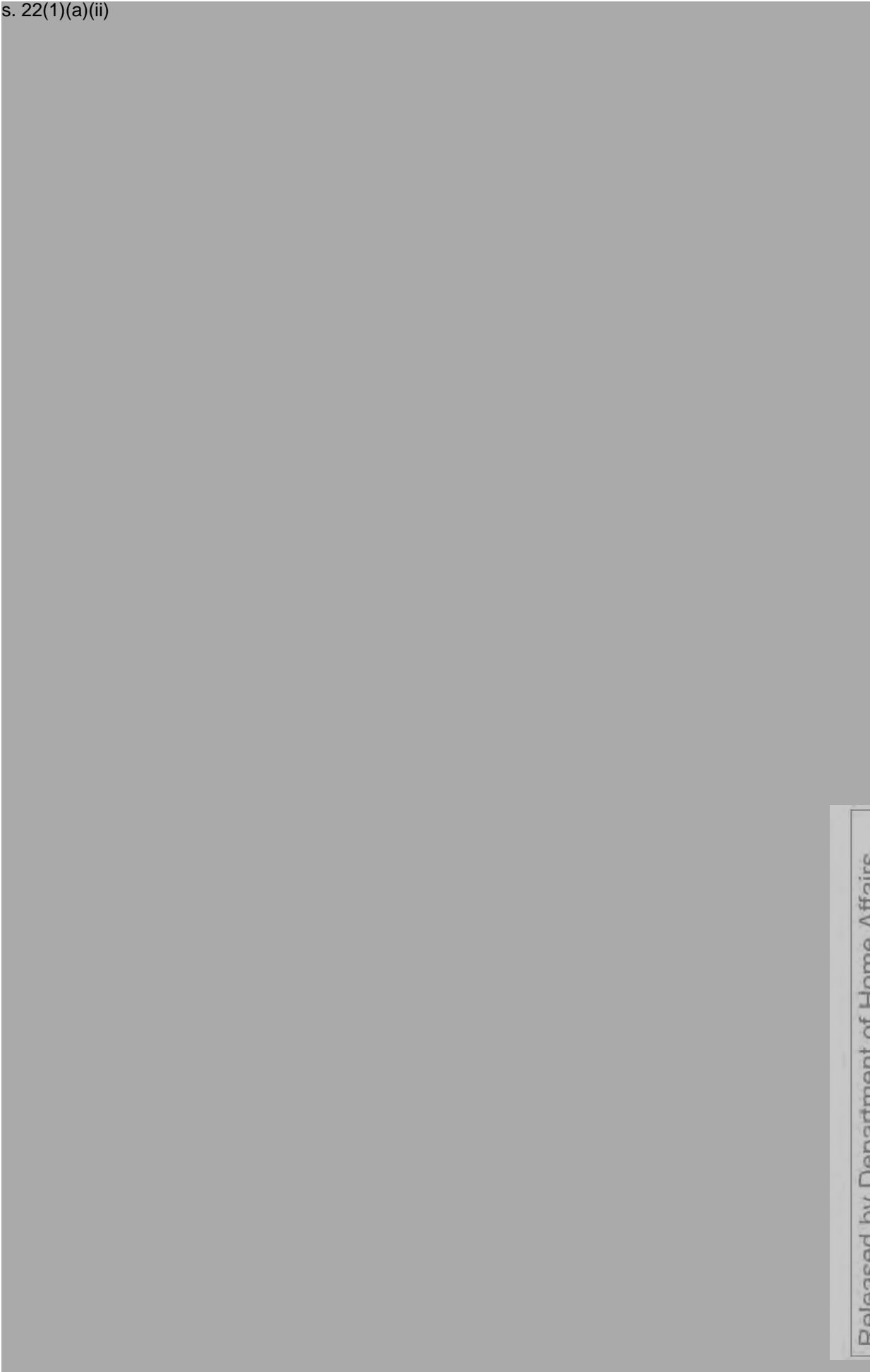
The Government noted its commitment to strengthening support services for overseas spouses by requiring additional information disclosure by the Australian husband or fiancé applying for an overseas spouse visa, and by ensuring these visa holders have access to pre-departure information about essential services and emergency contacts in Australia. This work is currently underway, and once implemented may help deter some Prospective Marriage visa applicants from continuing with their application where the sponsor has a criminal history of family and sexual violence.

The department also noted in its response that it is undertaking broader work in relation to the migration pathways of fiancés which includes examining how the family violence provisions work for this cohort. It is important that a balance is struck between support for family violence victims and the integrity of the family violence provisions. This is considered on page 57 of this report.

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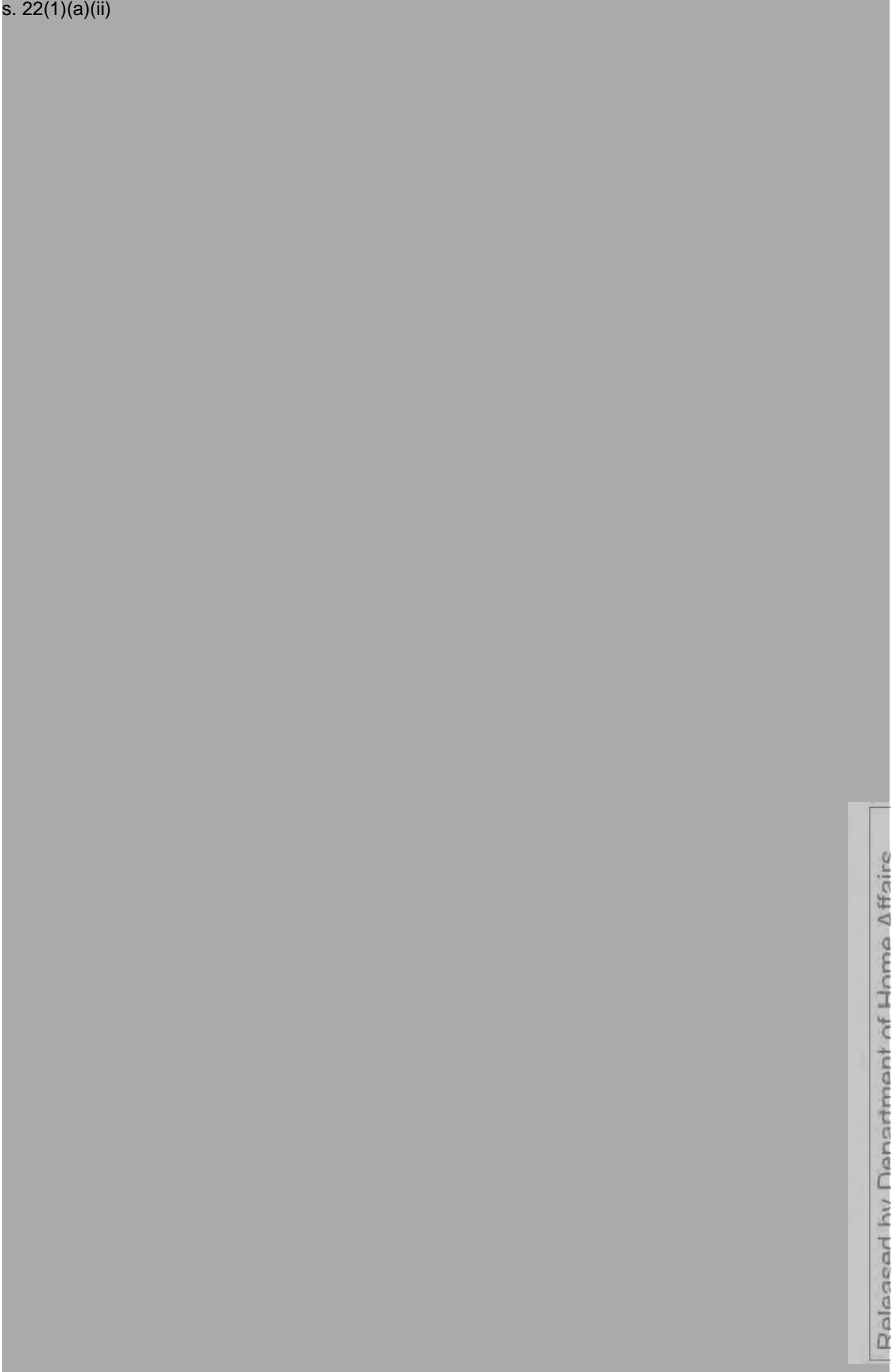
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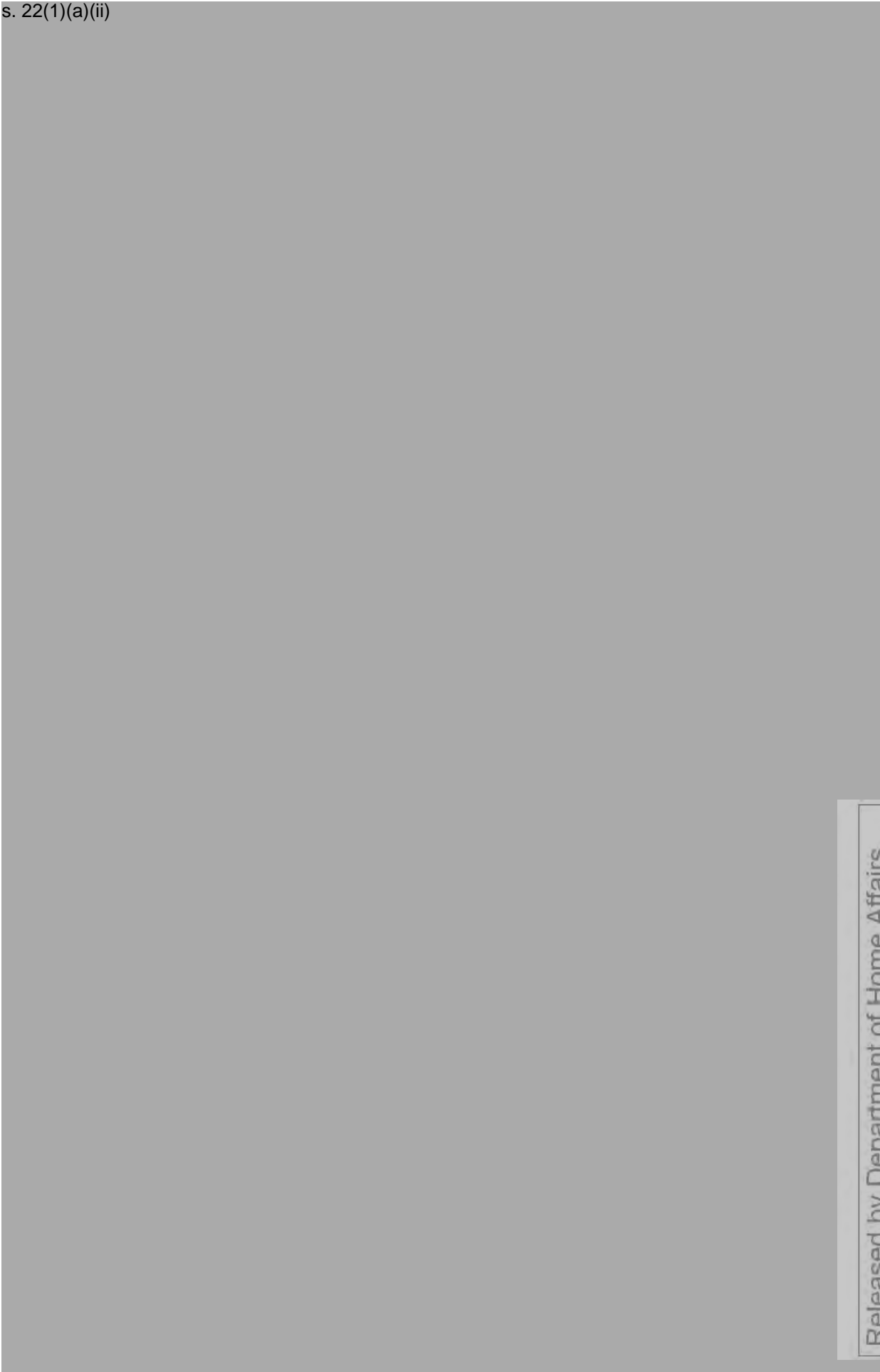


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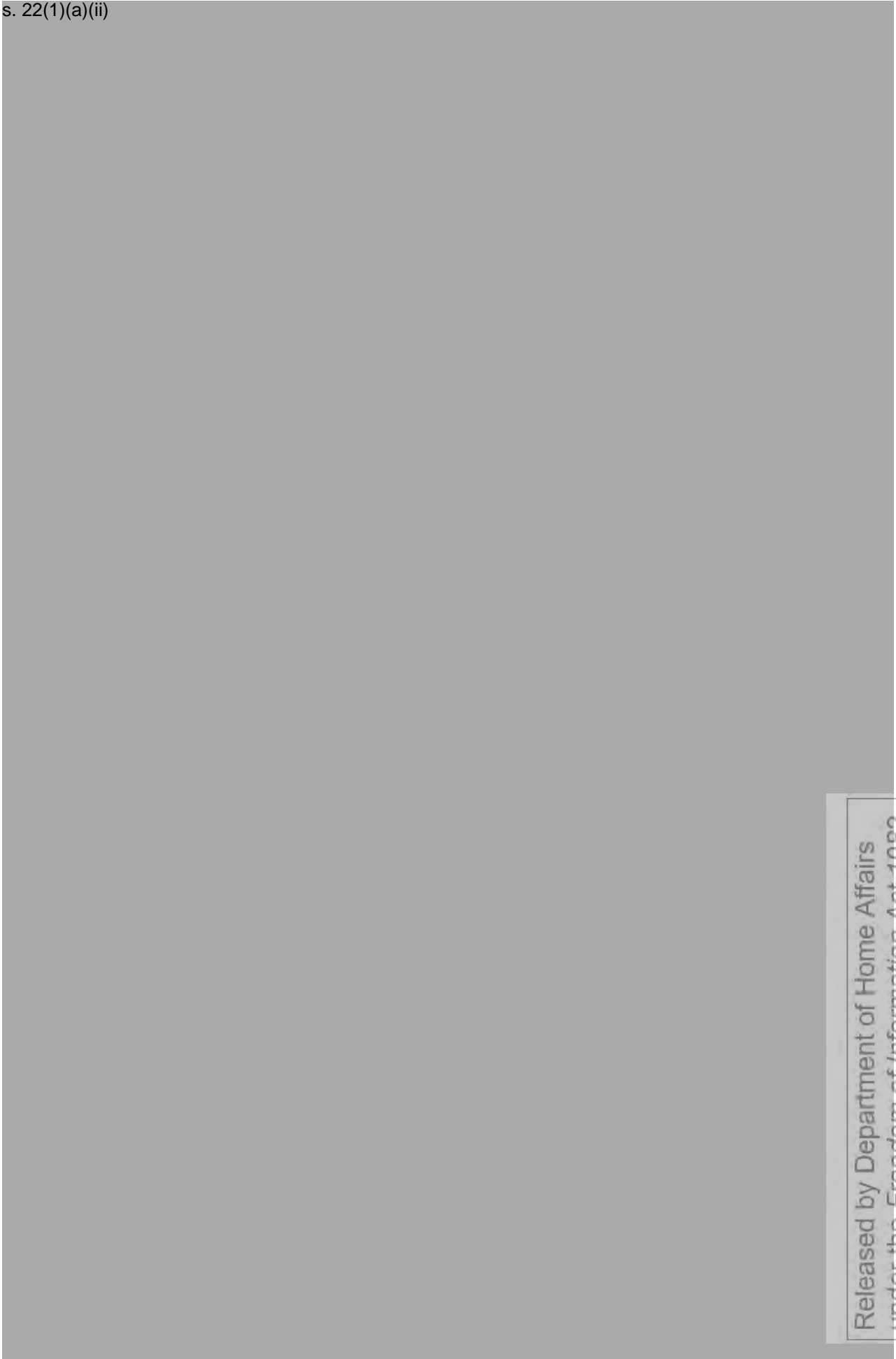
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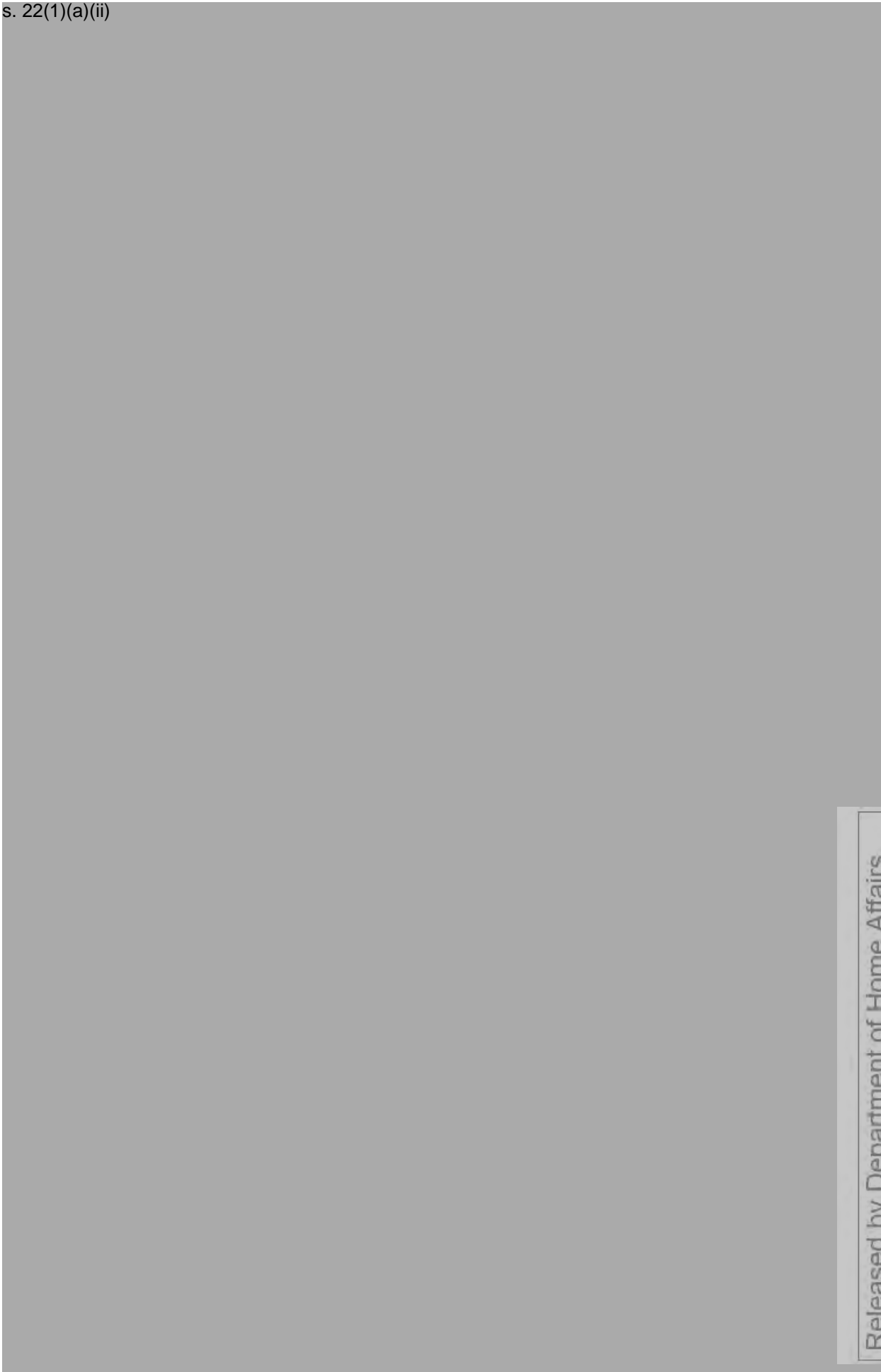
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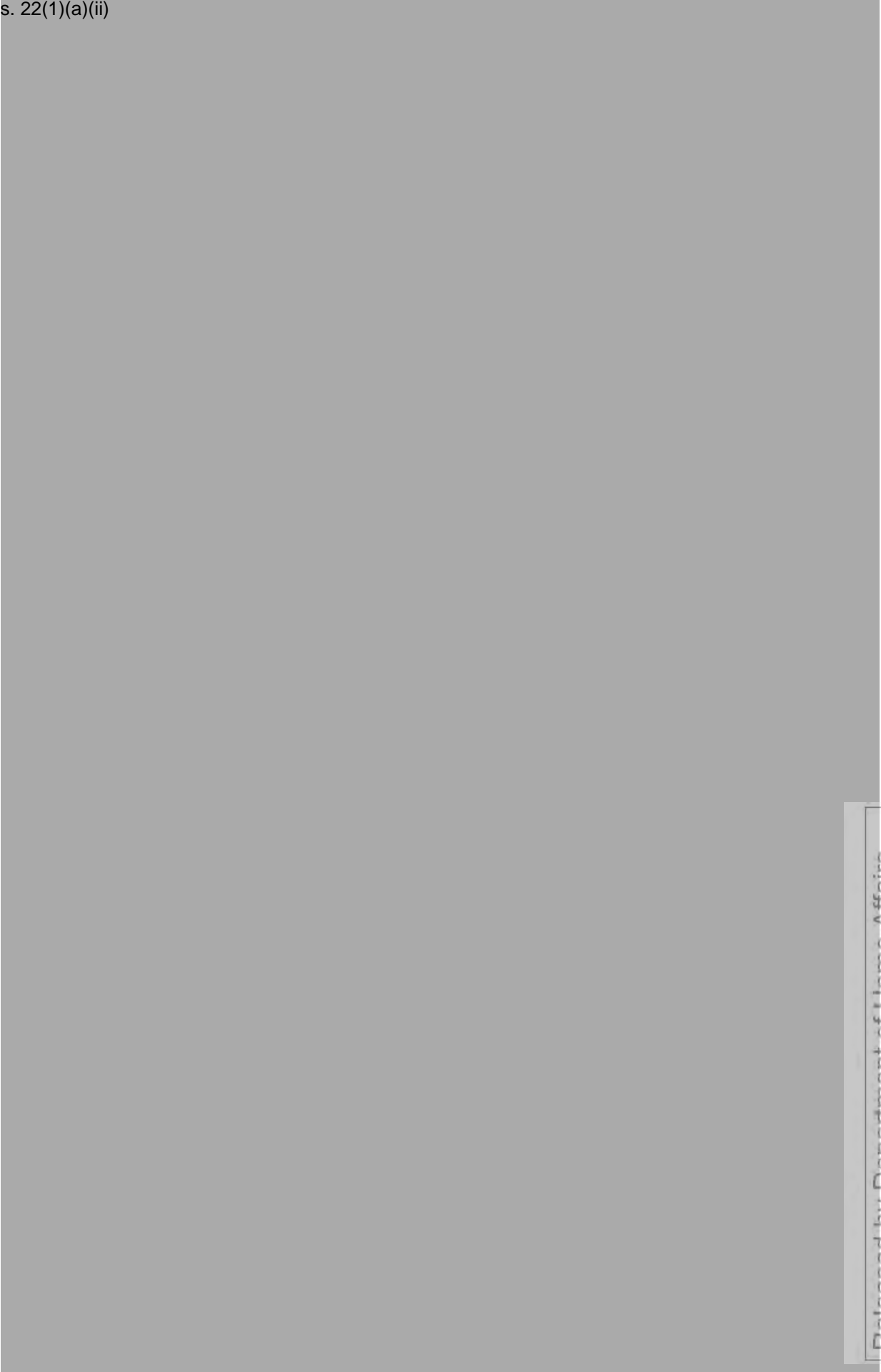
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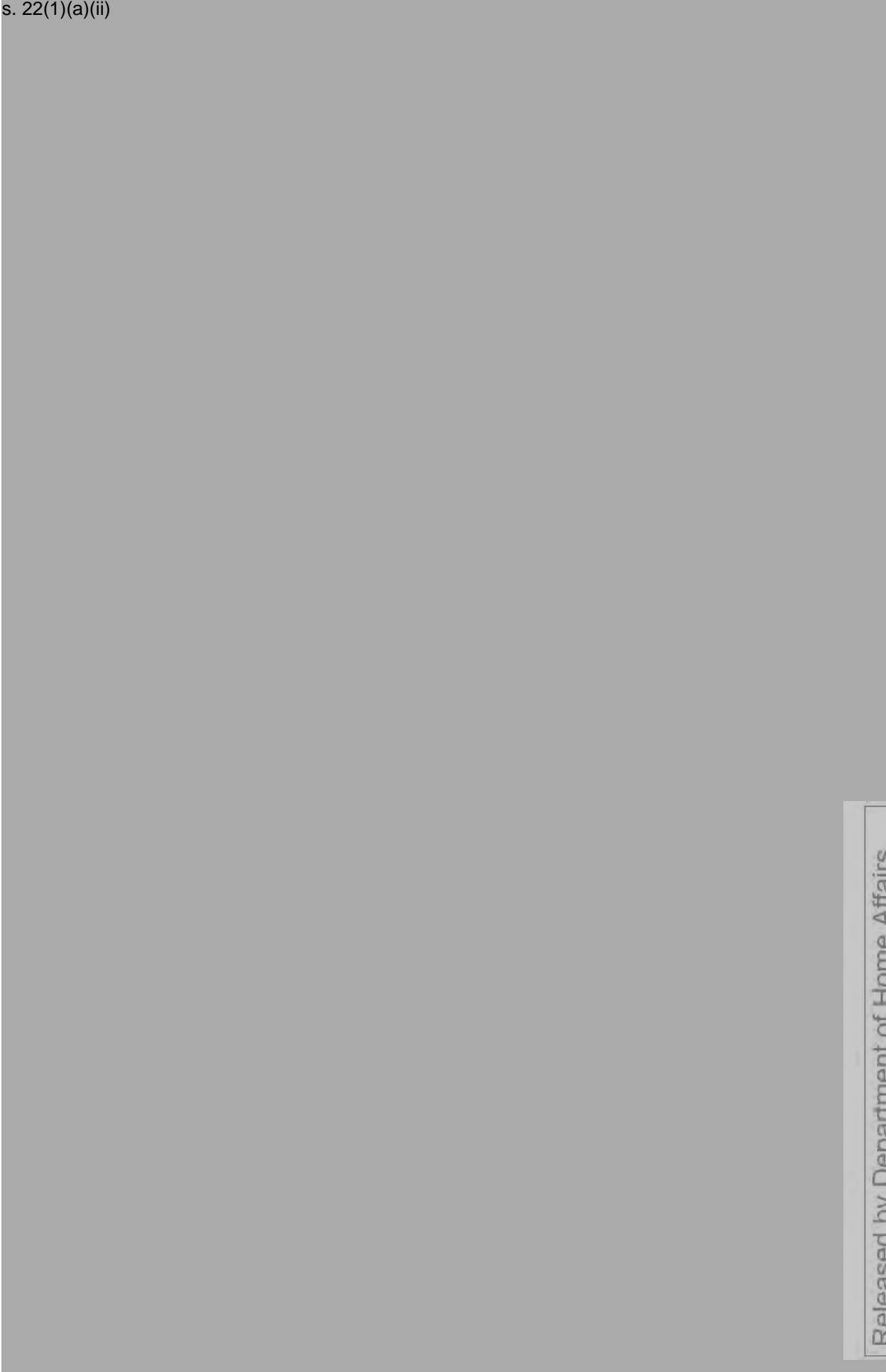
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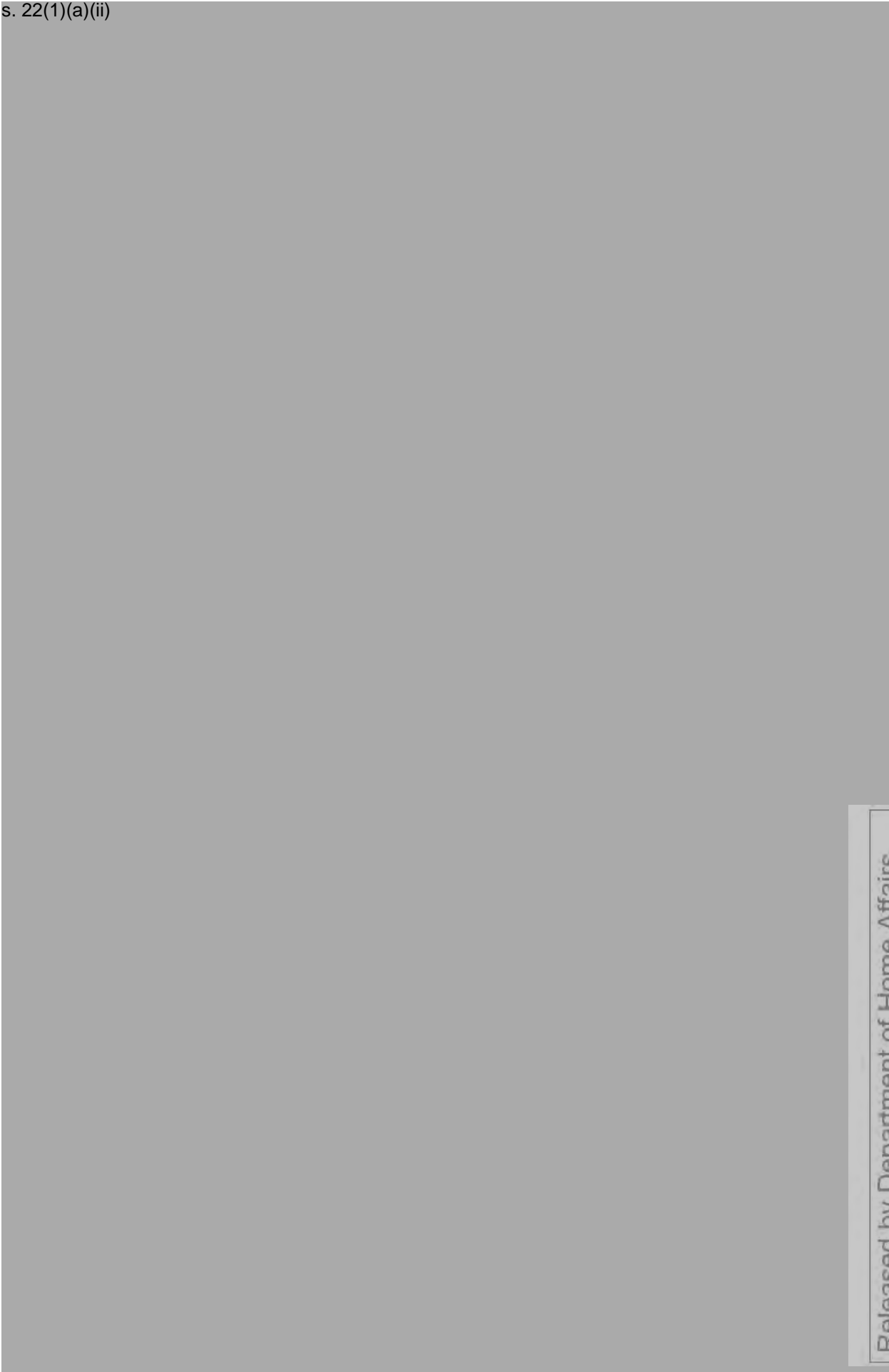
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Consider whether new evidence exists that may warrant opening family violence provisions to Prospective Marriage visa holders, noting the integrity risks of doing so

Currently, approximately 34 Prospective Marriage visa holders access the family violence provisions each year. These applicants must have married their sponsor in order to be eligible to apply under the provisions. Opening the provisions to all Prospective marriage visa holders would result in an increase of approximately 48 applicants a year, based on current programme statistics.

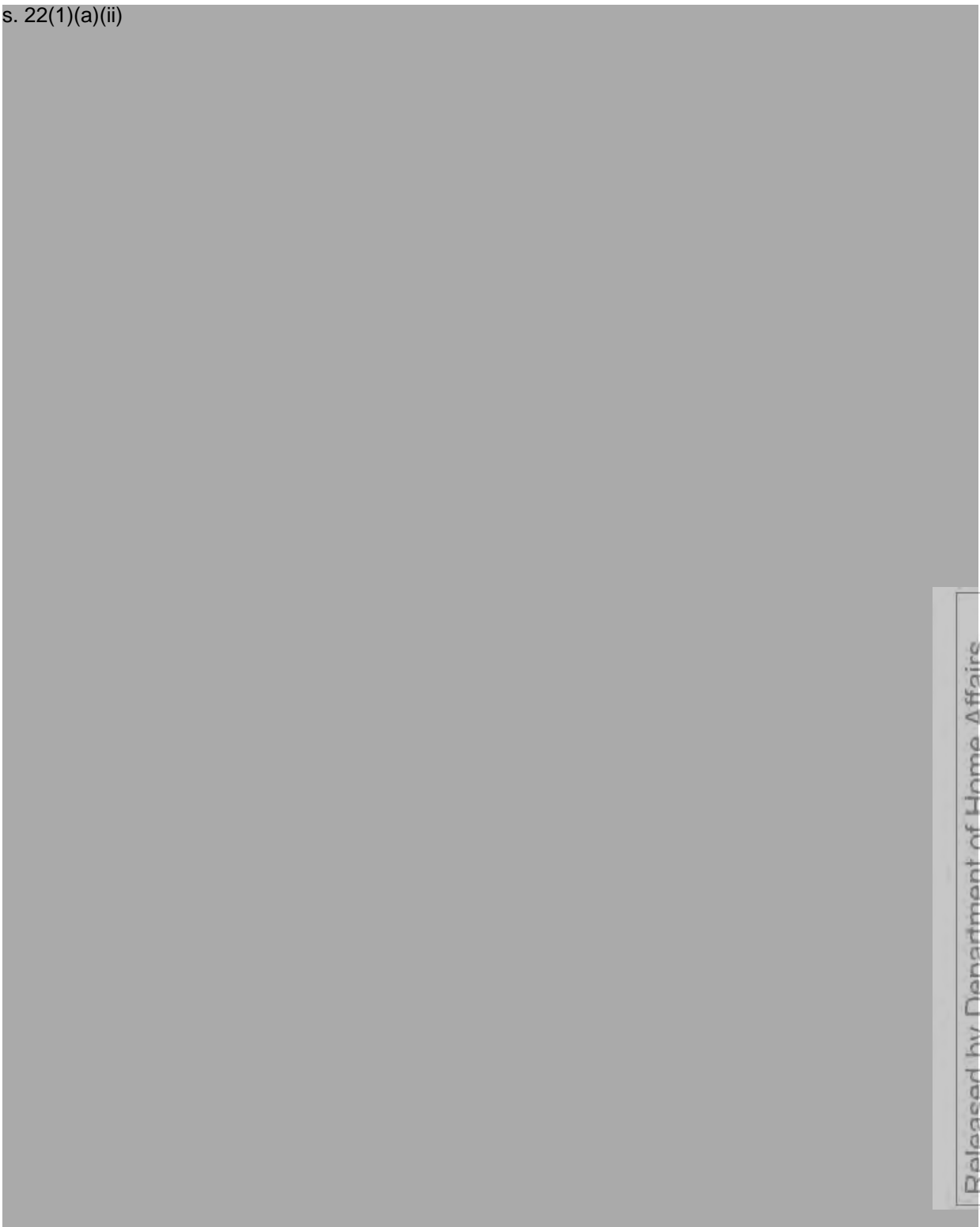
There is little appetite within the department to extend the family violence provisions to Prospective Marriage visa holders who have not married their sponsor, as it provides a pathway to permanent residency without further testing the genuineness of the relationship. There is also no new evidence that an extension of the provisions to this cohort is required. It should be noted while the department allows married Prospective Marriage visa holders to apply under the family violence provisions, the eligibility bar has already been lowered for this cohort, as they do not meet the definition of 'spouse' that is applied to other partner visa holders. Prospective Marriage visa holders do not have to live with their sponsor, and as such they do not meet the cohabitation requirements in the definition.

-
9. Australia's National Research Organisation for Women's Safety 2014, *National Research Agenda to Reduce Violence Against Women and their Children*, www.anrows.org.au




Opening the family violence provisions to all Prospective Marriage visa holders could invite an increase in non-genuine applications which would be difficult to refuse because of the paucity of evidence regarding the genuineness of the relationship once the applicant arrived in Australia. Additional integrity measures for this cohort, as recommended by the ALRC, are not cost effective given the small number of people that these measures would apply to. When weighing up the small number of 300 visa holders that would benefit by having access to the provisions, with the potential for abuse of the provisions and the cost of increased integrity measures this cohort would require, opening the provisions to prospective marriage visa holders does not seem warranted.

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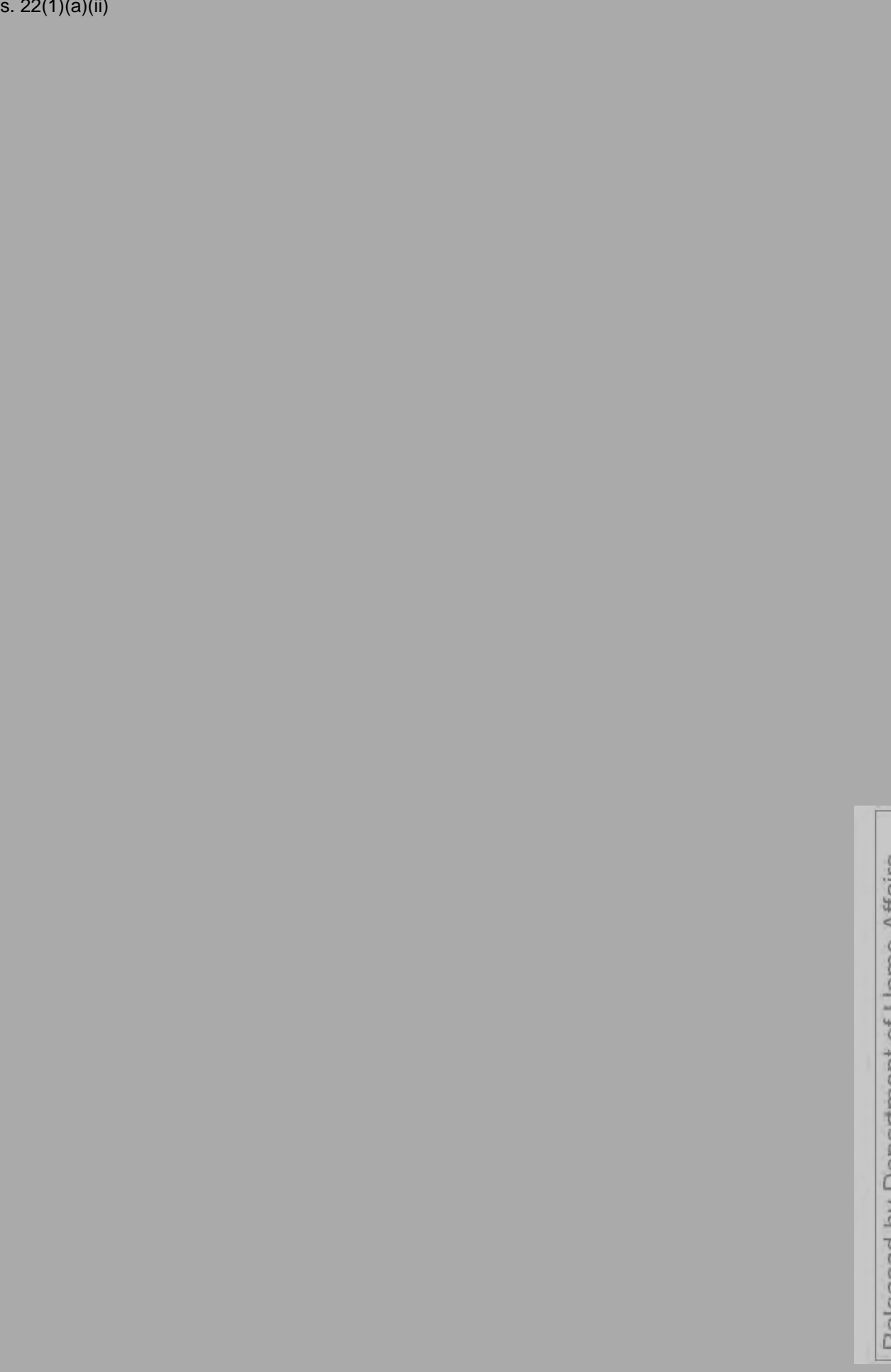


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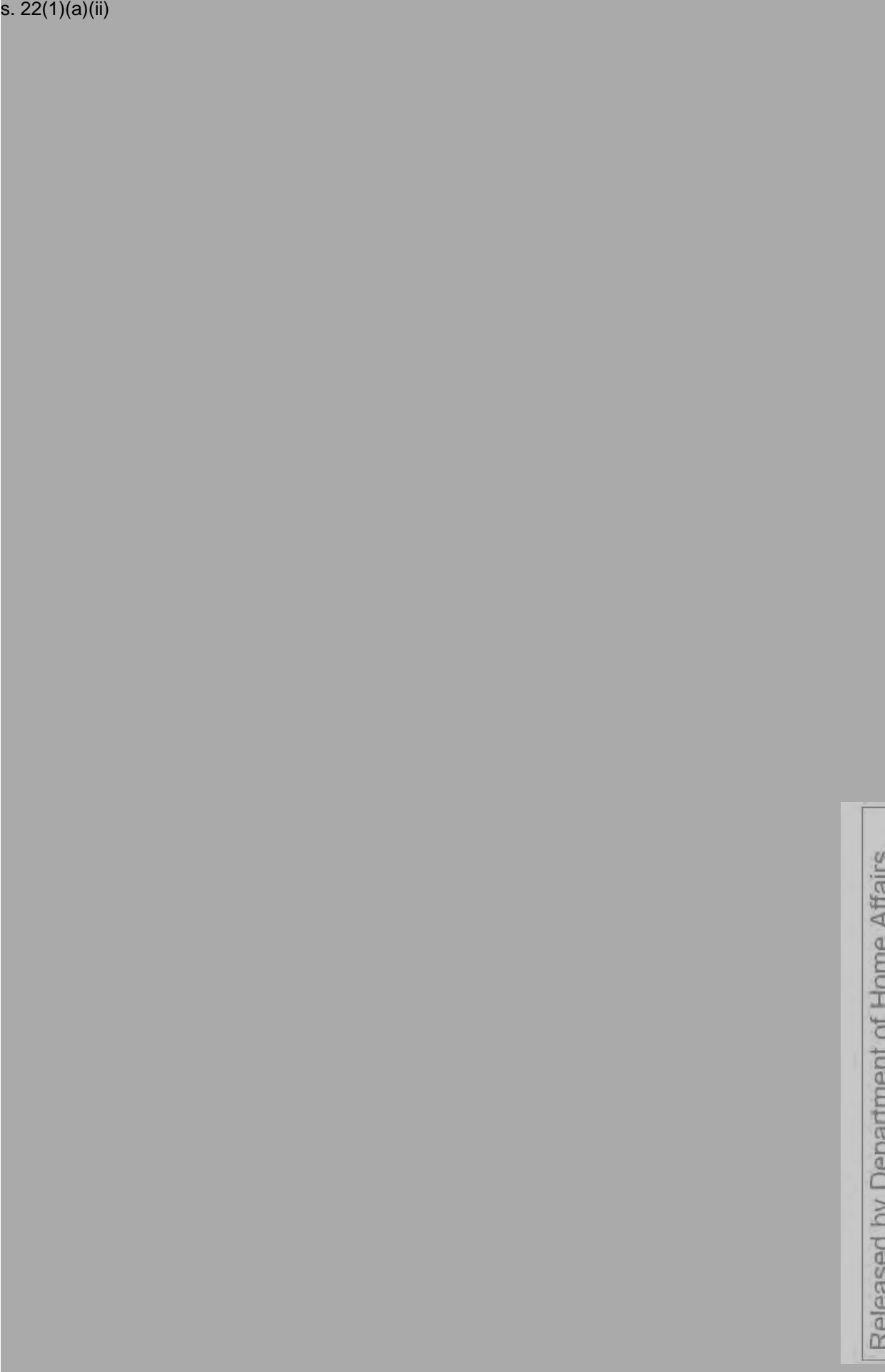
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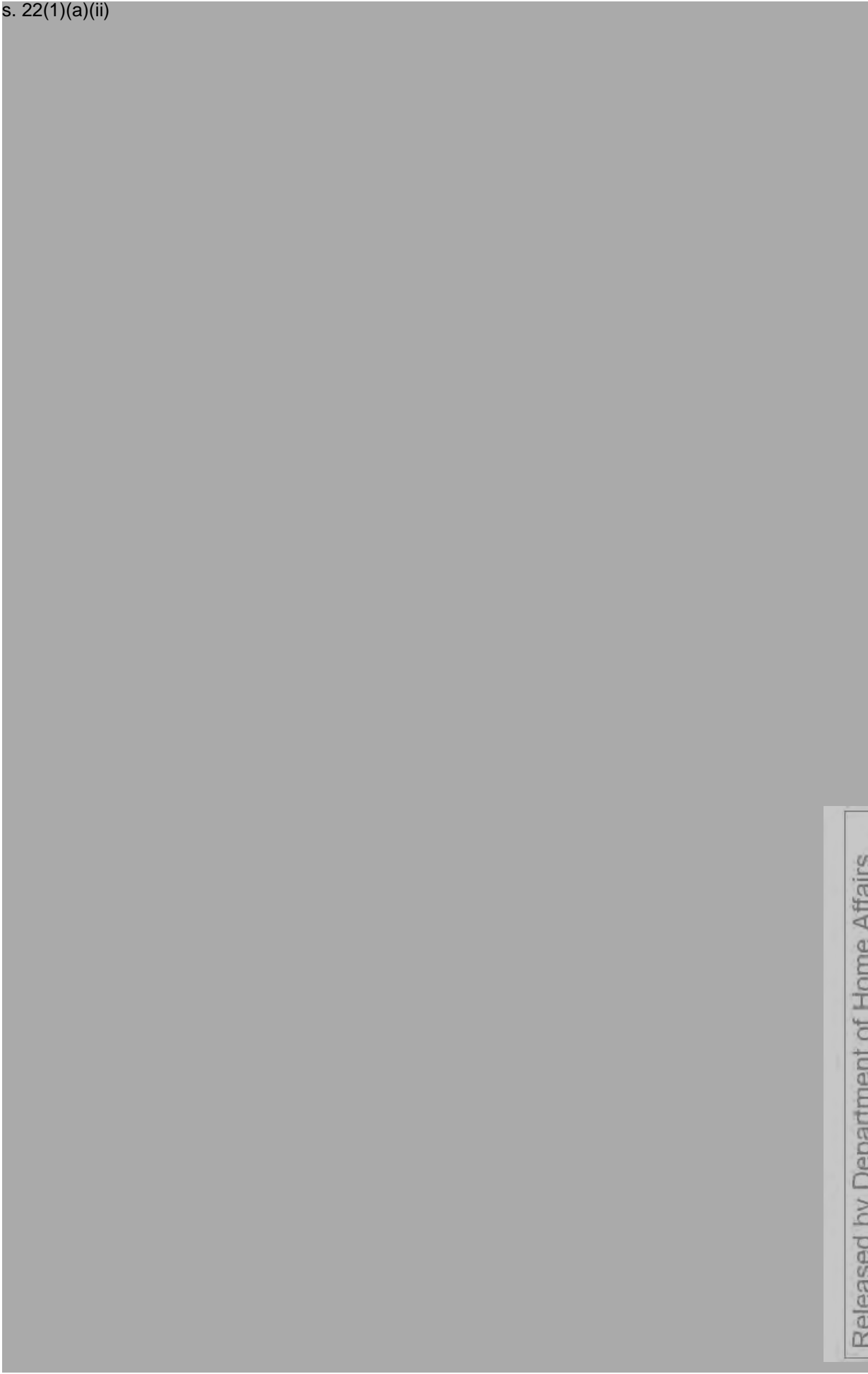


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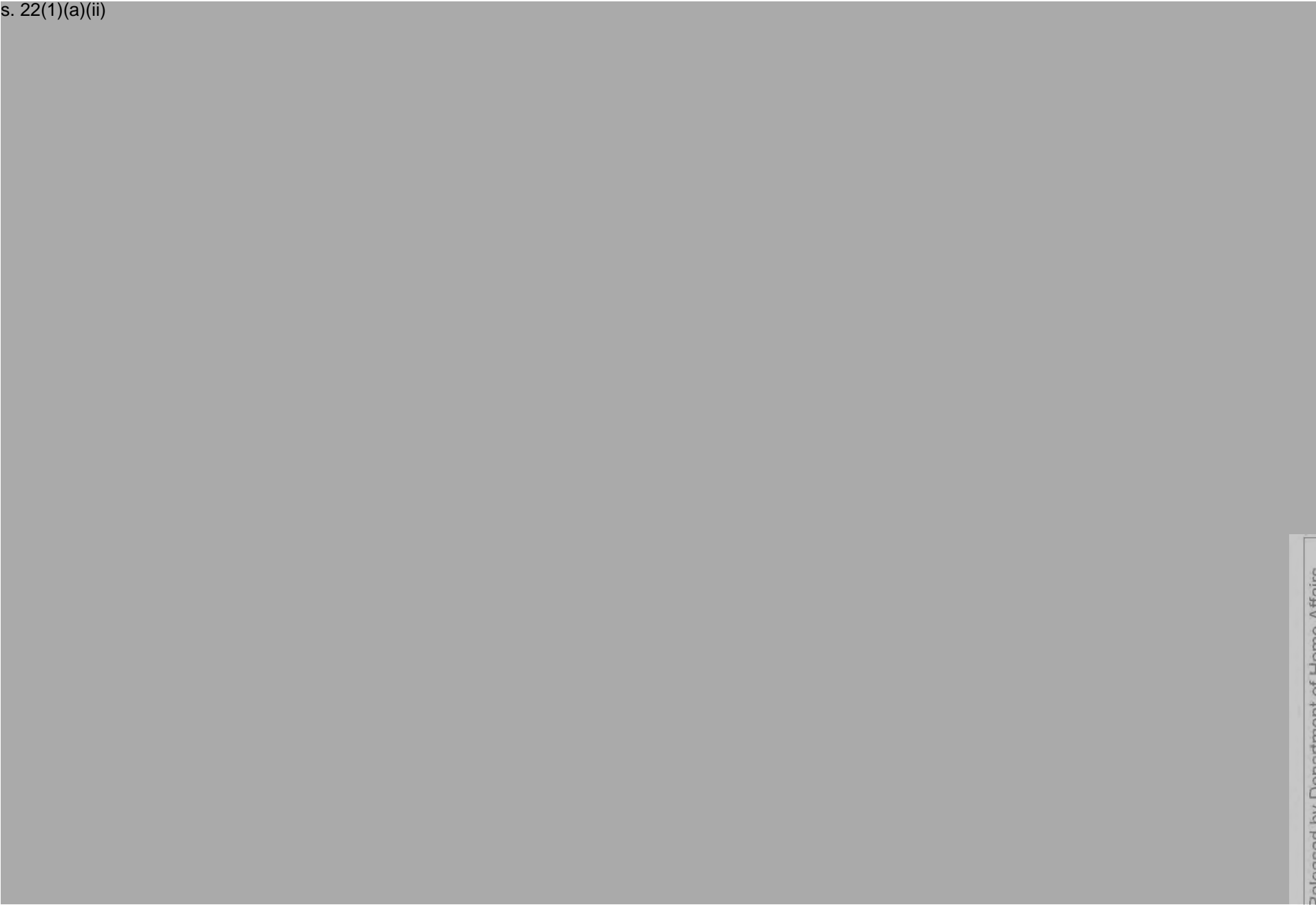



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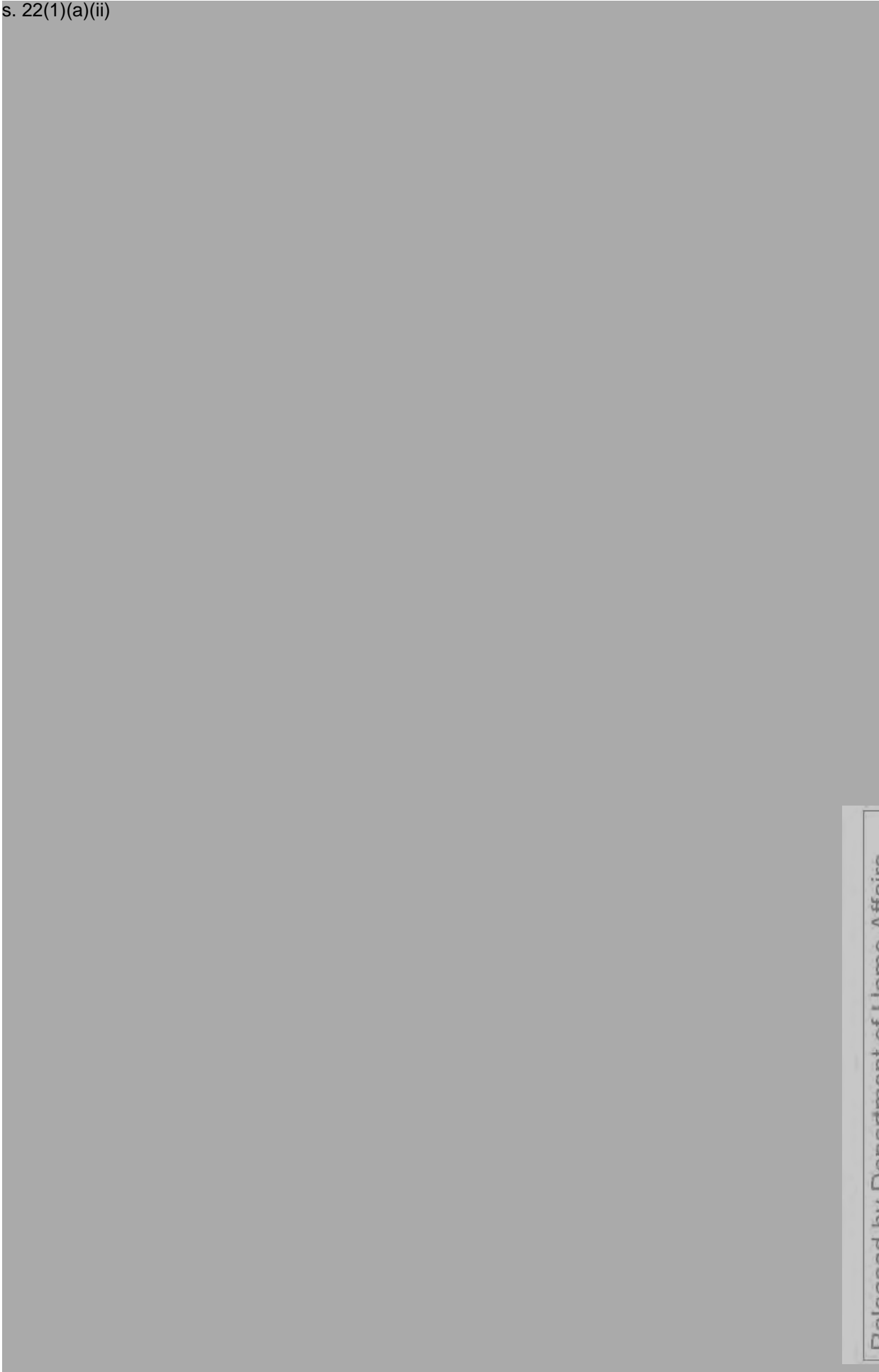




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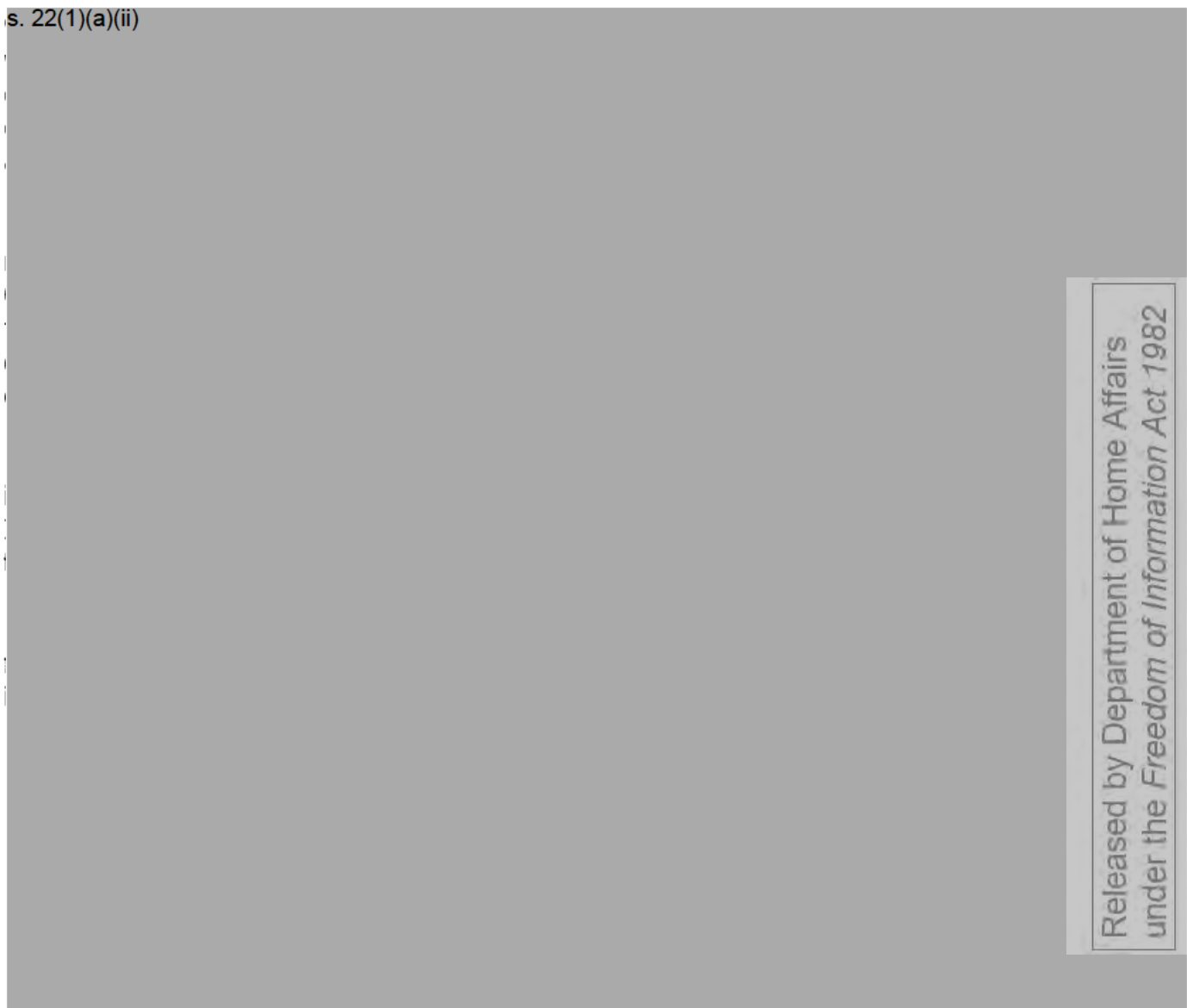


7. The Department agrees with the principles which inform most of the recommendations made by the Commission. However, the recommendations will need to be examined closely by the Department to ensure that the best possible approach is taken to achieve the outcomes desired by the Commission. This will ensure that the results can be achieved in the most efficient and cost-effective way possible.

8. We cannot guarantee at this time that the Department will advise that all recommendations should be accepted. This is because some of the recommendations:

- require a whole of government approach;
- depend on the outcomes of other ongoing inquiries; or
- need to be worked through to ensure their practicality.

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With regard to extending the family violence provisions to Prospective Marriage visa holders, the Department believes such changes should also be informed by a number of other ongoing inquiries addressing the Prospective Marriage visa. This includes the Senate Inquiry into Prospective Marriage visas, which is due to hand down its report on 3 May 2012, and the ongoing Australian Institute of Criminology study into marriage and exploitation associated with trafficking in persons.

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