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Baggage examination at the border (s186 Customs Act)

Procedural Instruction

This procedural instruction applies to baggage examinations conducted by Australian Border Force (ABF) officers at the border.

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1. Introduction

1.1. Background

ABF officers can question arriving and departing crew and travellers and examine their baggage to detect breaches of the *Customs Act 1901* (Customs Act), the *Biosecurity Act 2015* (Biosecurity Act) and other Commonwealth legislation. Such breaches include the importation and exportation of prohibited or restricted goods. The power in section 186 of the Customs Act permits ABF officers to conduct baggage examinations.

An ABF officer may examine goods subject to Customs control, and may as a part of this process:

- open any package in which goods are or may be contained
- use a device such as an x-ray machine, ion scanning equipment or available technologies on the goods
- test or analyse the goods
- measure or count the goods
- if the goods are a document, read the document either directly or with the use of an electronic device
- use detector dogs to assist in examining the goods.

In the course of an examination ABF officers may, in some circumstances, make a copy of, or take an extract from, a document (section 186A of the Customs Act). The circumstances where this is permitted are where the ABF officer is satisfied that the document, or part of the document, may contain information relevant to:

- an importation or exportation, or a proposed importation or exportation, of prohibited goods
- the commission or attempted commission of any other offence against the Customs Act or of any offence against a prescribed Act
- the performance of functions under section 6 of the Intelligence Services Act 2001 (the Intelligence Act)
- the performance of functions under section 17 of the Australian Security Intelligence Organisation Act 1979 (the Australian Security Intelligence Organisation Act)
- security (within the meaning of section 4 of the Australian Security Intelligence Organisation Act).

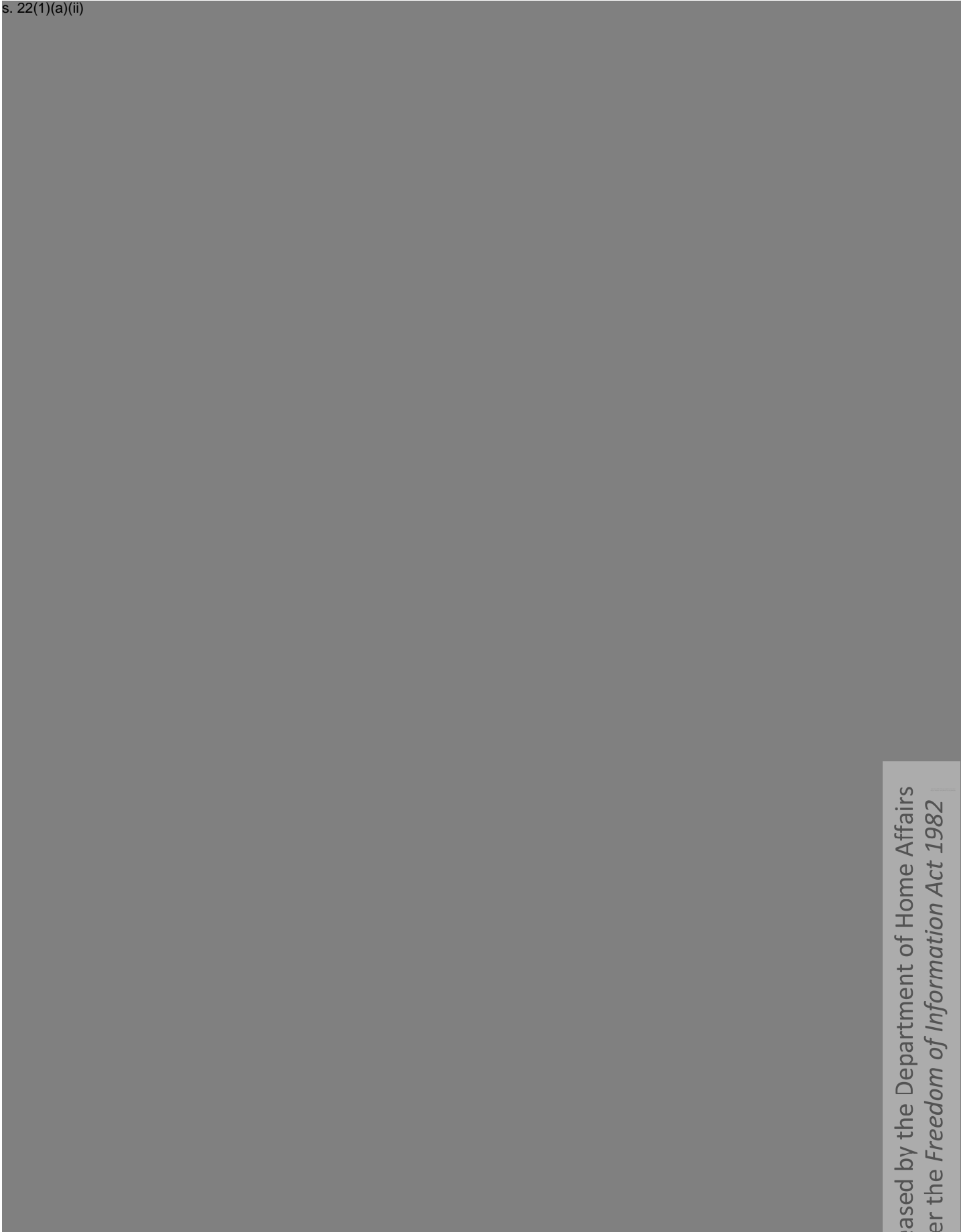
2. Scope

2.1. In Scope

This procedural instruction applies to staff in the aviation and maritime environments conducting baggage examinations under section 186 of the Customs Act.

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4.2. Baggage examination overview

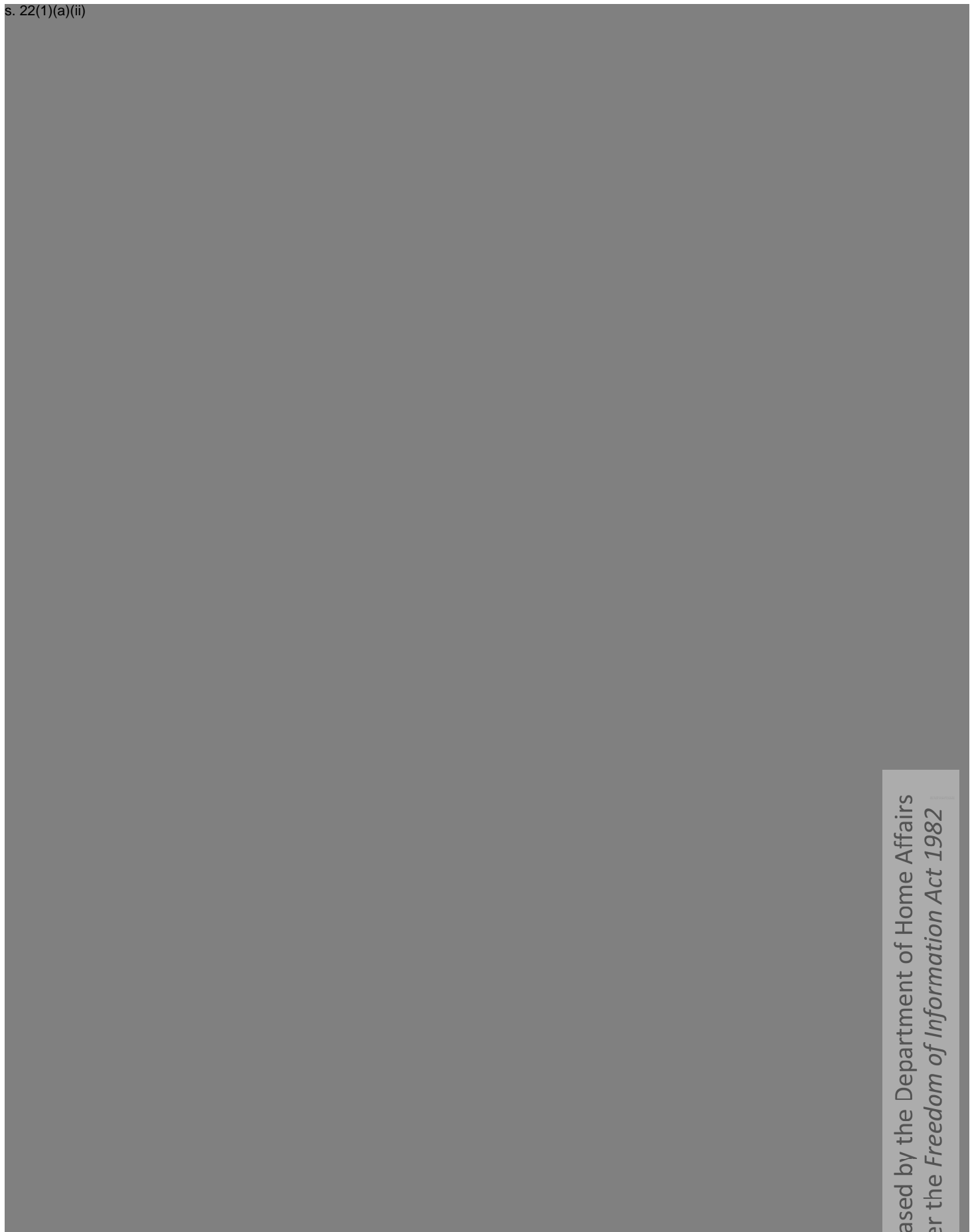
ABF officers conduct baggage examinations and question travellers to identify any breaches of the Customs Act, Biosecurity Act or other Commonwealth legislation, including the importation and exportation of prohibited or restricted goods.

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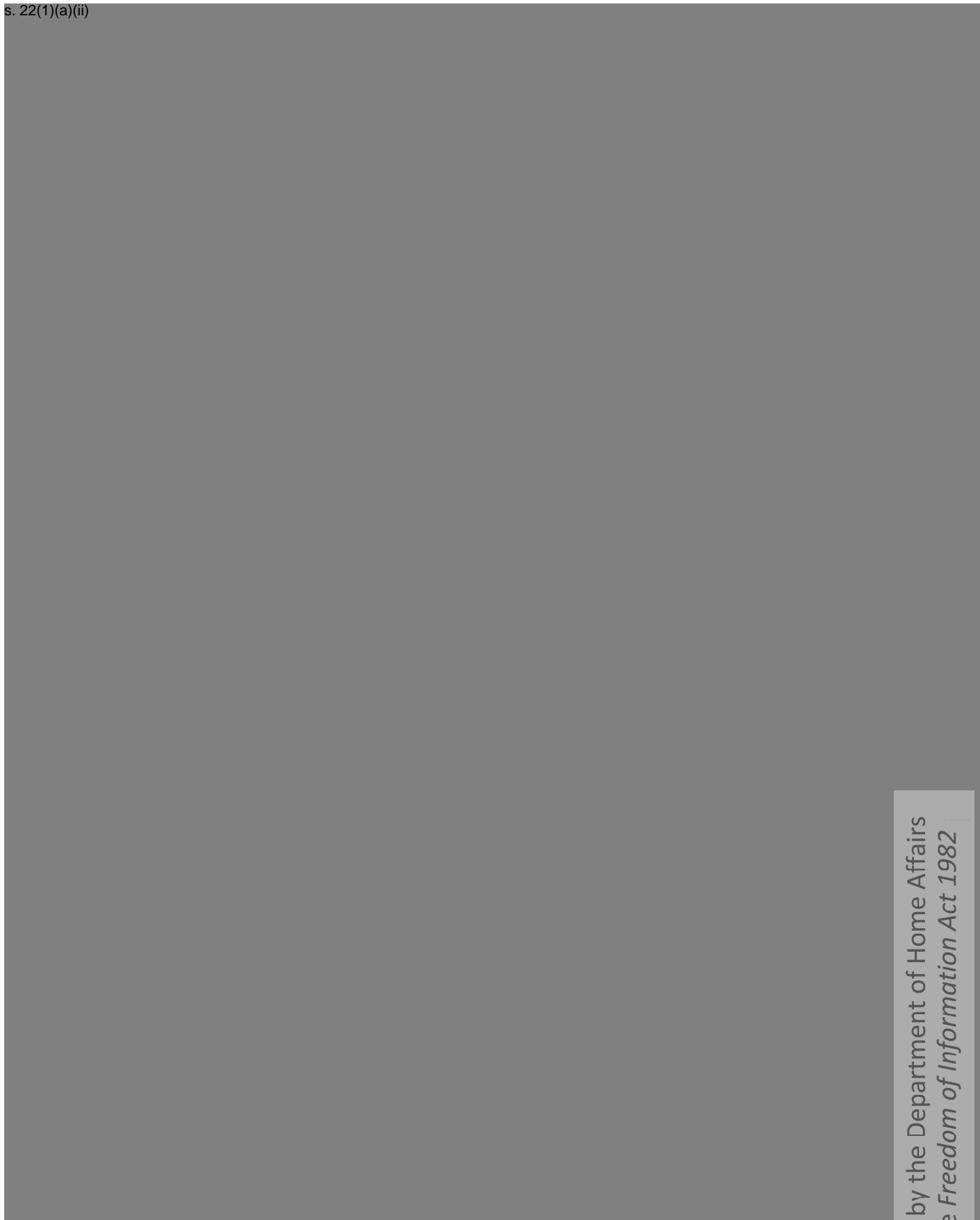
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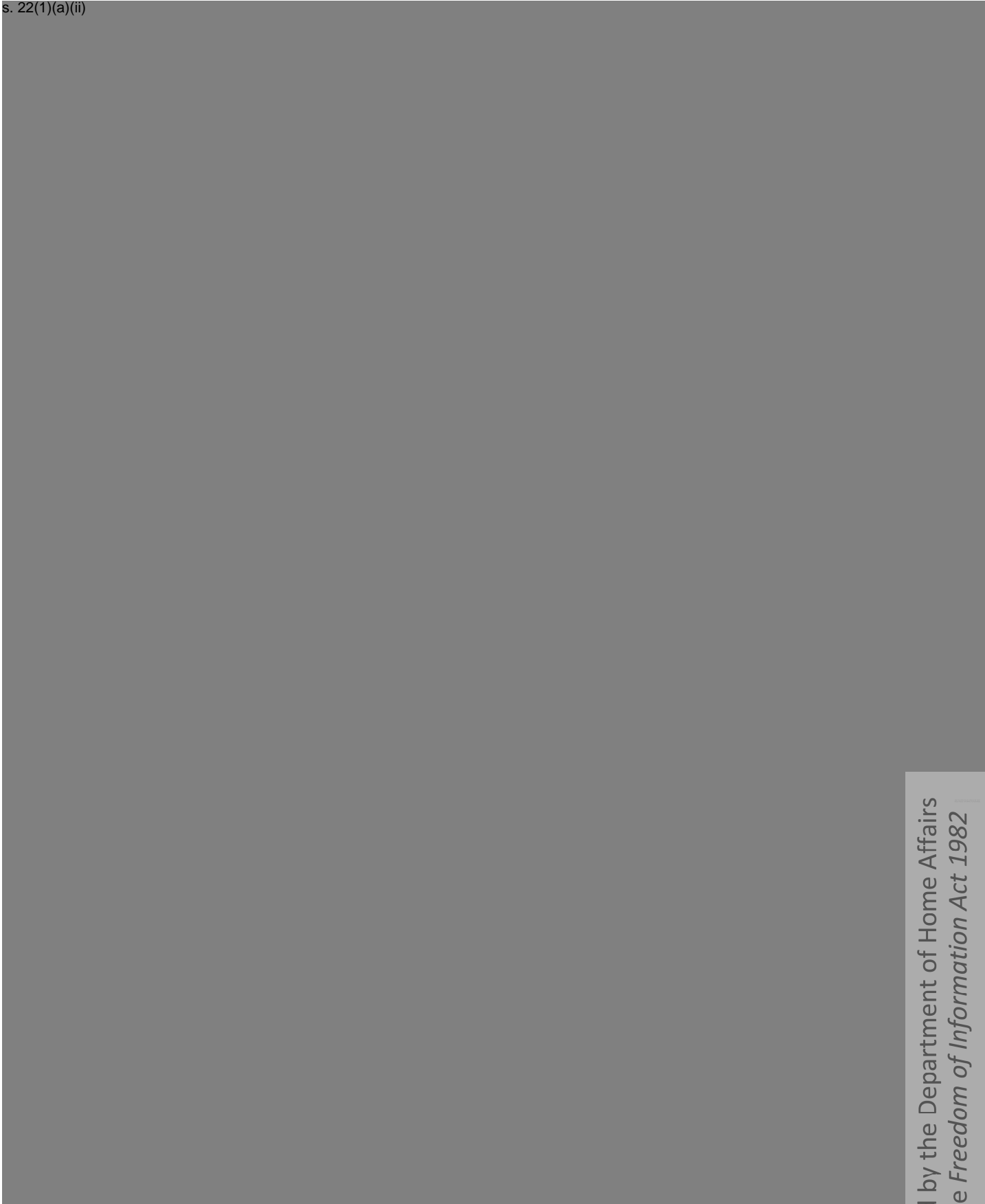
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4.8. Refusal to participate in a baggage examination

A traveller may refuse to participate in a baggage examination. It should be explained to the traveller that the ABF has the authority to examine the baggage and it will be held until the ABF has completed the examination. The traveller should be encouraged to remain for the examination.

Where a traveller refuses to participate, the ABF officer's supervisor must be informed and should attempt to determine why the traveller does not wish to participate.

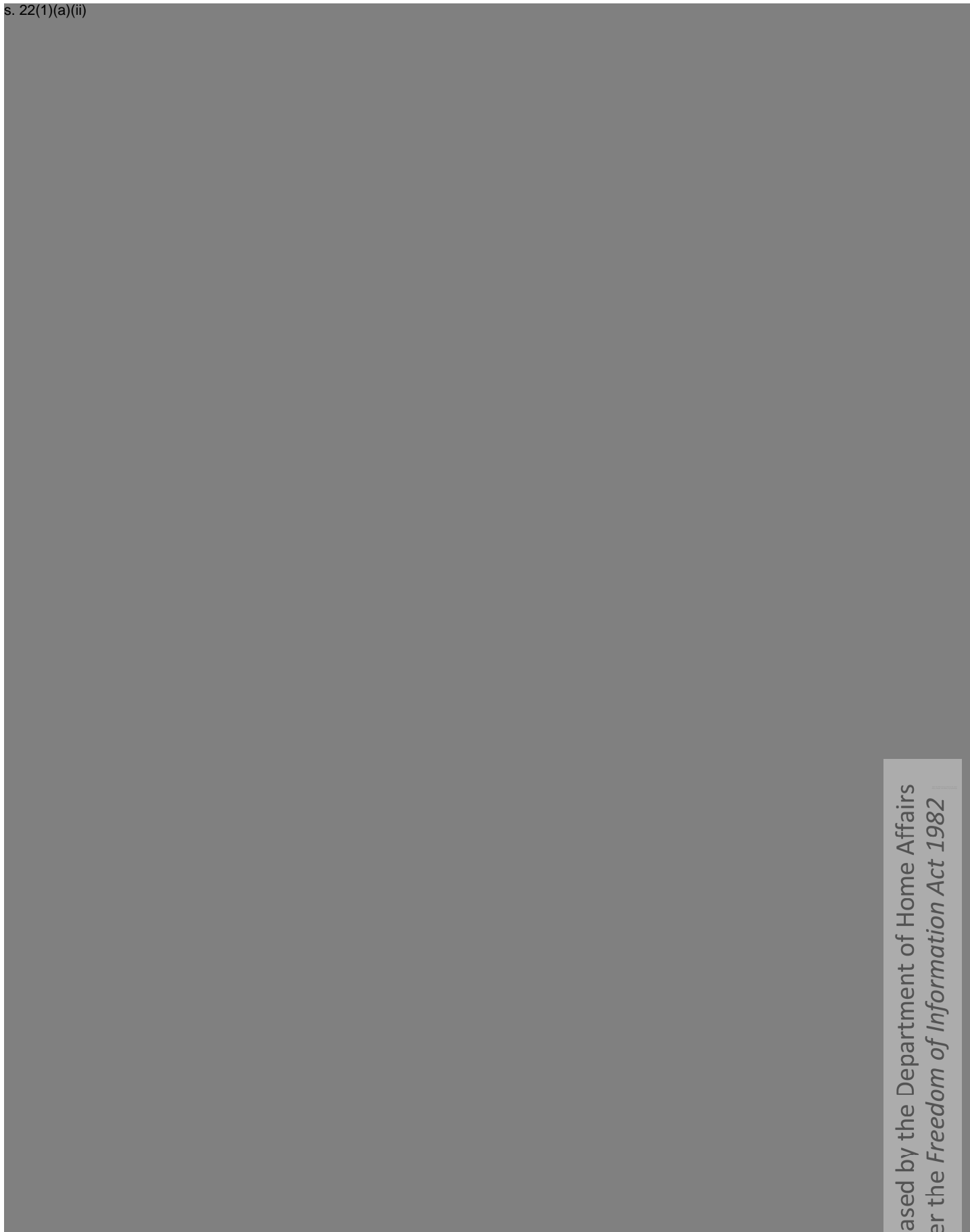
If the traveller continues to refuse participation, the traveller's unusual behaviour (i.e. wishing to depart the baggage area without their possessions) may, in some instances, constitute reasonable grounds for the person to be detained in accordance with Division 1B of Part XII (Detention and Search of Suspects) of the Customs Act. For further details, see the Procedural Instruction: Detention and search (s.219 Customs Act).

Where a traveller refuses to participate in a baggage examination and departs from the examination area the baggage must remain with the ABF officer within the customs controlled area; therefore the baggage remains subject to Customs control. A 'Receipt for Goods' form (Appendix B) for the baggage must be made. If it cannot be provided to the traveller prior to their departure it must be posted to the address listed by the traveller on the IPC, as soon as possible.

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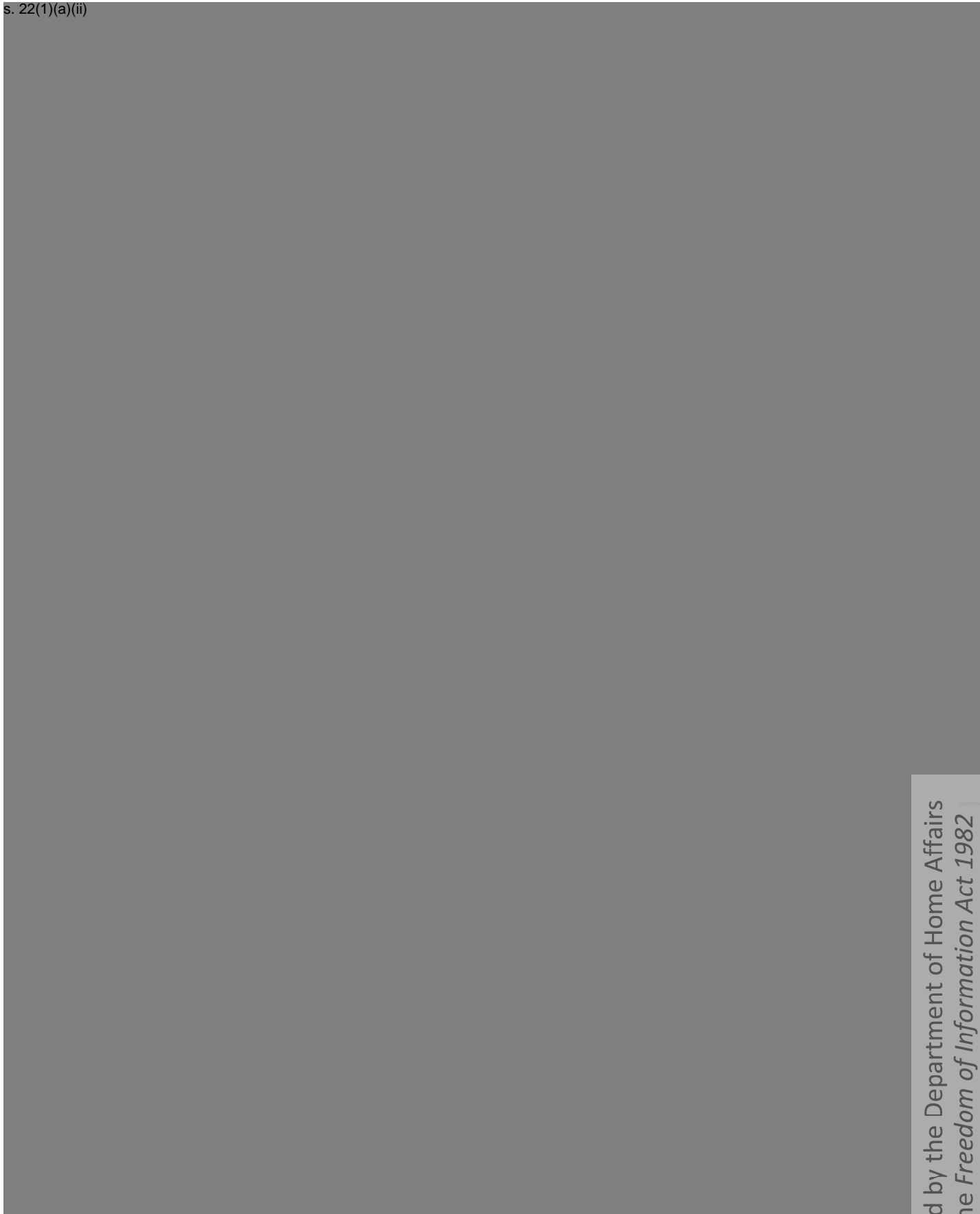
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4.11. Copying of documents during a baggage examination

Section 186A of the Customs Act, provides ABF officers with the power to copy documents found during an examination of goods subject to Customs control in certain circumstances.

A 'document' is defined in section 4 of the Customs Act and includes but is not restricted to mobile and other phones, sim cards for such phones, all forms of personal electronic recording apparatus, computers of all kinds, as well as written material and photographic images.

To copy a document, the ABF officer must be satisfied that the document, or part of it, may contain information relevant to:

- an importation or exportation, or a proposed importation or exportation, of prohibited goods; or
- the commission or attempted commission of any other offence against the Customs Act or any offence against a prescribed Act; or
- the performance of functions under section 6 of the Intelligence Services Act 2001; or
- the performance of functions under section 17 of the Australian Security Intelligence Organisation Act; or
- security (within the meaning of section 4 of the Australian Security Intelligence Organisation Act).

Once the ABF officer is satisfied that the document does or may contain information relevant to one of the above matters, the ABF officer may make a copy of the document, or take an extract from it. Each document should be considered for relevance. **An ABF officer must not simply copy all documents in the traveller's possession.**

In the case of a foreign language document, the ABF officer will generally be unable to make a full assessment of the document before it is translated. In such cases the ABF officer should copy the document if they have a reasonable basis for believing it may relate to a relevant offence.

If an ABF officer has a reasonable belief that the document/electronic equipment may contain information and the goods cannot be appropriately examined or copied, the goods may be held on a Receipt for Goods form (Appendix B) pending examination.

An ABF officer who is satisfied that documents may be copied under section 186A of the Customs Act can enlist the assistance of another ABF officer to undertake the task of copying the documents while they continue with the examination.

There is no requirement on the ABF under section 186A of the Customs Act or elsewhere for the traveller carrying the documents to be present when they are copied.

If any copying is conducted under section 186A of the Customs Act, ABF officers should either at the time of the examination or afterwards as a post entry, utilise the free text field in BAGS to record the number of documents copied and the reason.

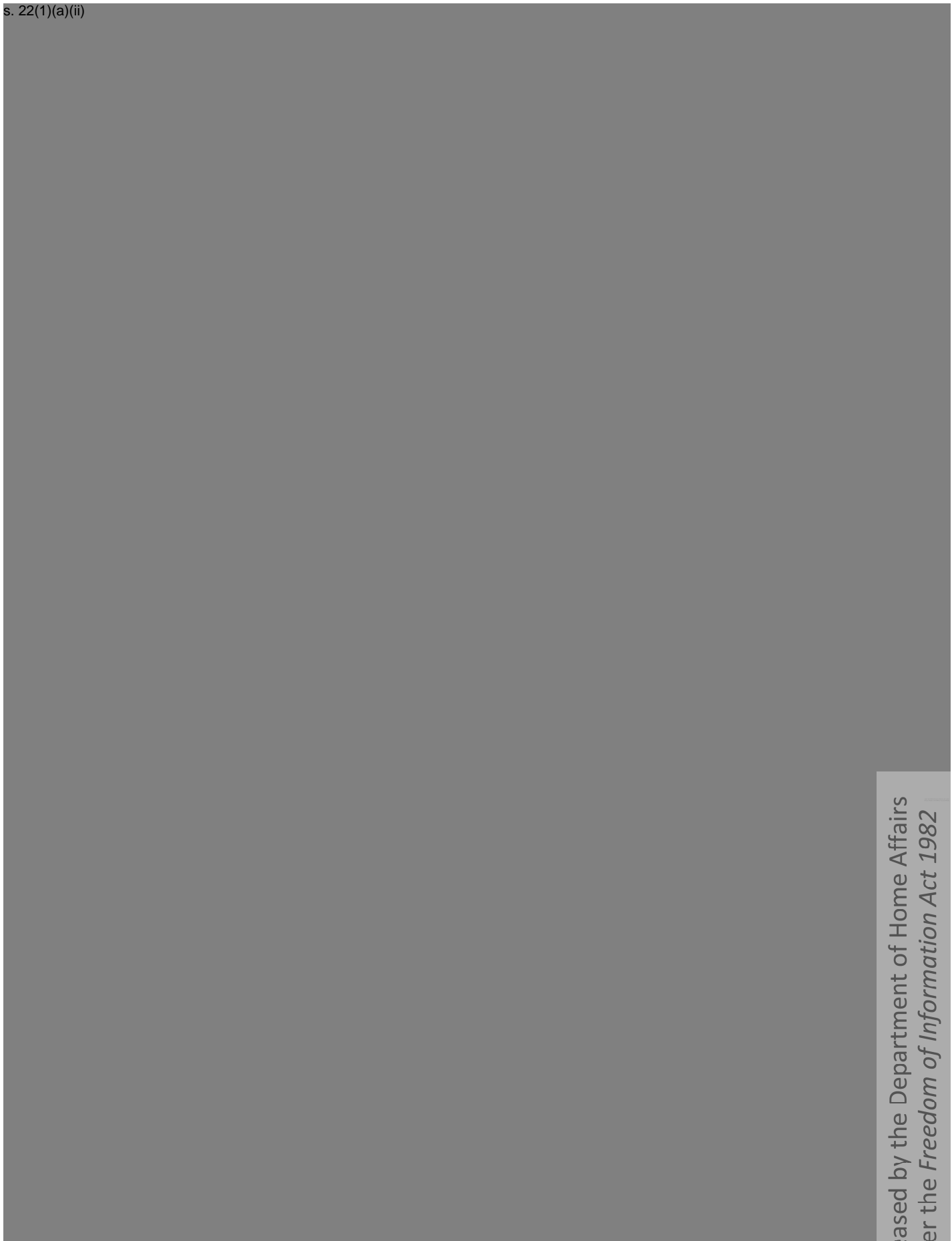
Where it is impractical to detail each individual document, ABF officers should include a notation, for example "10 commercial documents re: shipping container ABCD 1234567 Suspected importation of prohibited imports etc.", is to be recorded in the free text field of the BAGS record.

The ABF officer must also record the relevant details of the documents copied in their official notebook. If the documents copied are to be used for evidential purposes for a prosecution the detail/description written in the ABF officers notebook must be as precise as possible.

If the copied documents form part of a National Intelligence System (NIS) report, ABF officers should include a more detailed description of the documents, and the justification for the documents being copied in the body of the NIS report. All copies of documents are to be attached to the NIS report. Subsequently, if a copied document is later determined as not relevant, that copy should be shredded/destroyed and the NIS report updated to reflect this action.

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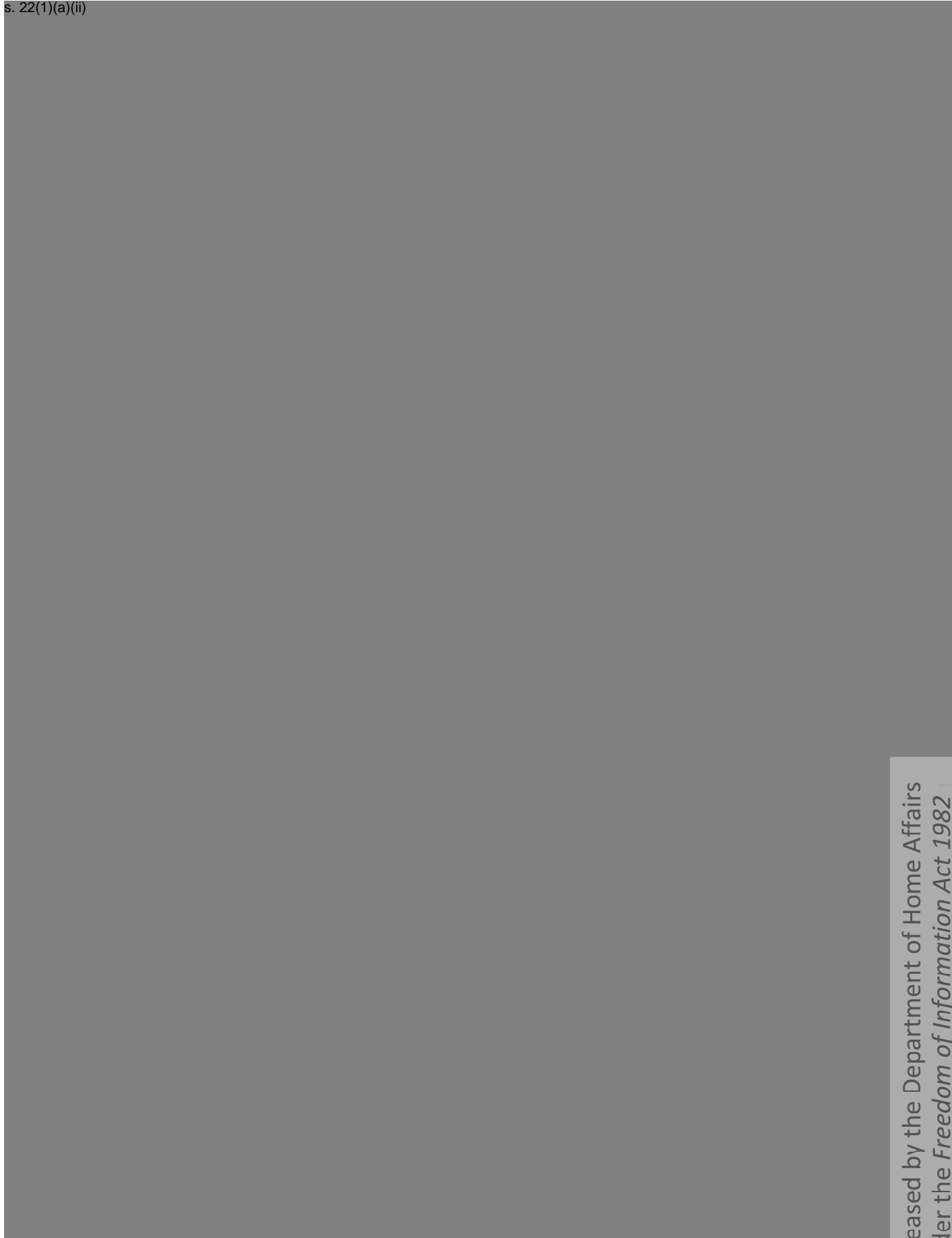
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4.19. Record keeping

The examining ABF officer must record the relevant details of all examinations in BAGS and save the completed record at the conclusion of the baggage examination activity.

In cases where a BAGS terminal was not available at the time of the baggage examination (such as outward examination activity, a BAGS system outage or the examination was conducted somewhere other than an airport terminal) the examining ABF officer must record the relevant details in their official notebook and complete a Post Entry BAGS record before the end of their shift. For further detail refer to the *Procedural Instruction: Official diaries and notebooks*.

For each baggage examination with the exceptions of situations outlined in the back of the passenger card or crew declaration must be endorsed with:

- the examining ABF officer's User ID e.g. c2abc
- the BAGS record number.


Refer to the *Procedural Instruction: Passenger card coding* for further details on endorsements and coding of Passenger Cards.

For baggage examinations where documents were copied under section 186A of the Customs Act, refer to 4.11.


For a recorded baggage examination, the ABF officer must ensure that on completion of the baggage examination all DVDs and CDs are appropriately sealed, labelled and stored. For further details, refer to *Procedural Instruction: Electronic recording of external search, baggage examination and record of interview in airports*.

For positive detections and/or incidents that occur during a baggage examination, ABF officers must ensure that detection and incident reporting requirements are completed. Refer to *Procedural Instruction: Airport operations detection and incident reporting* for further details.

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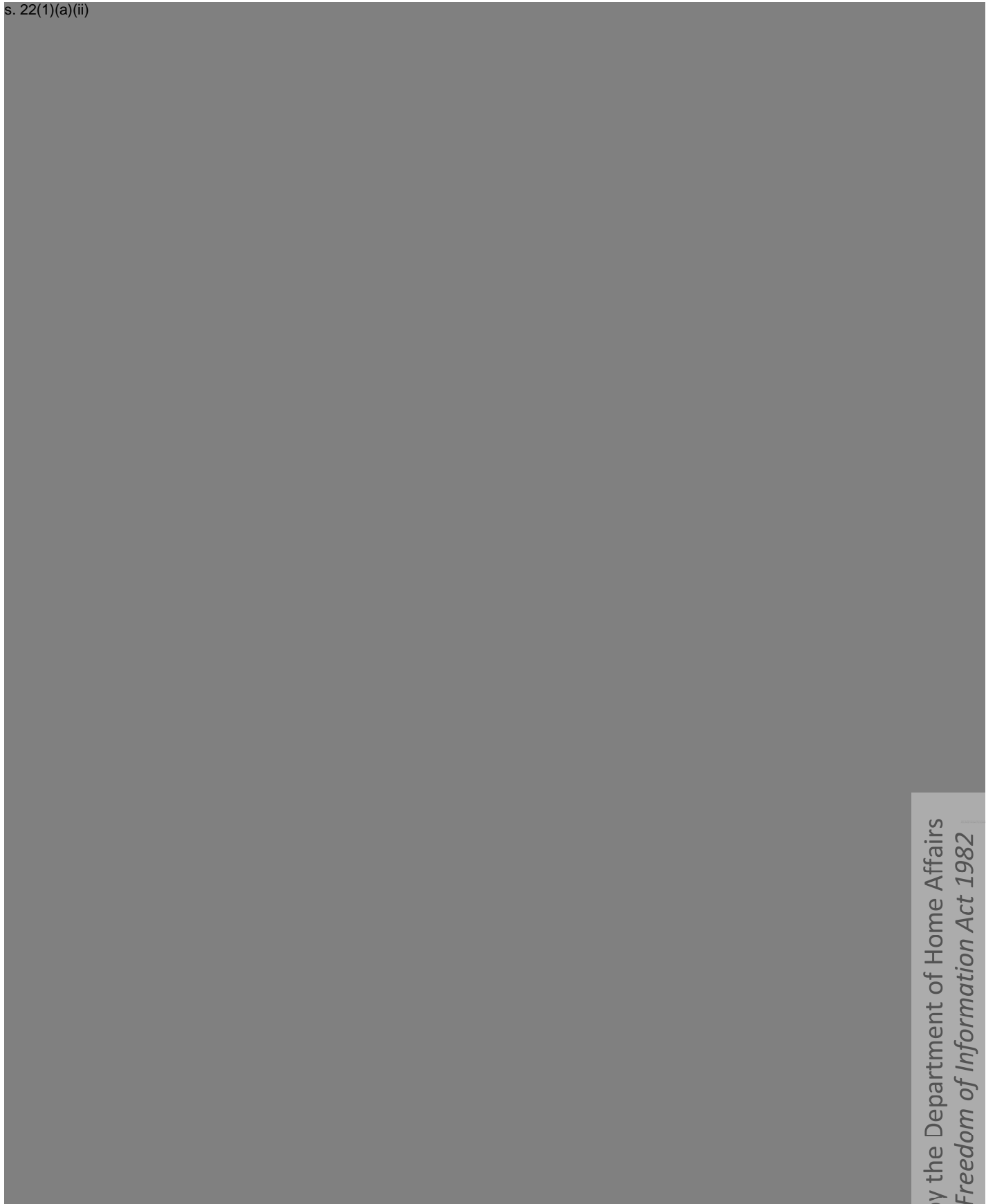


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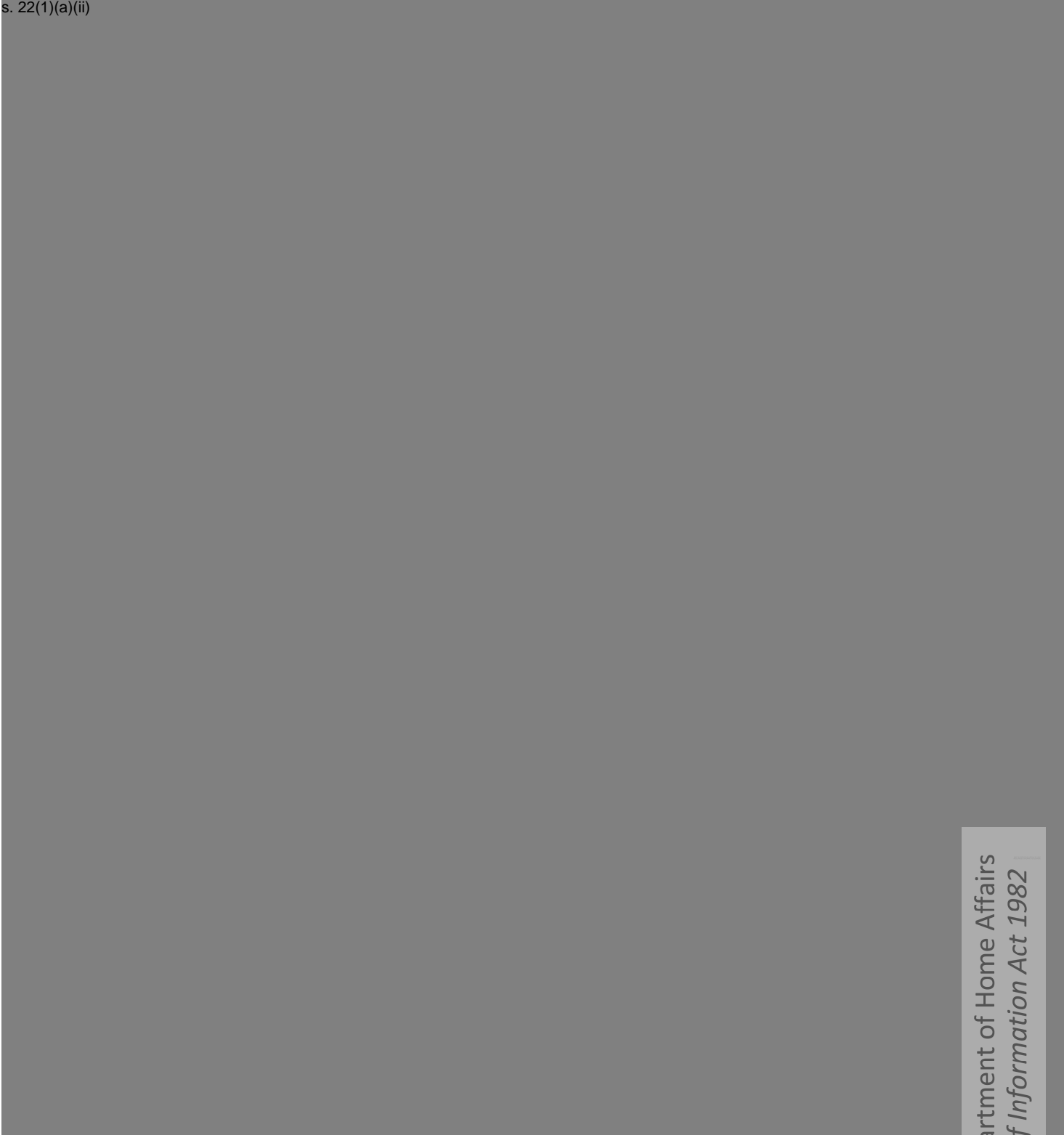


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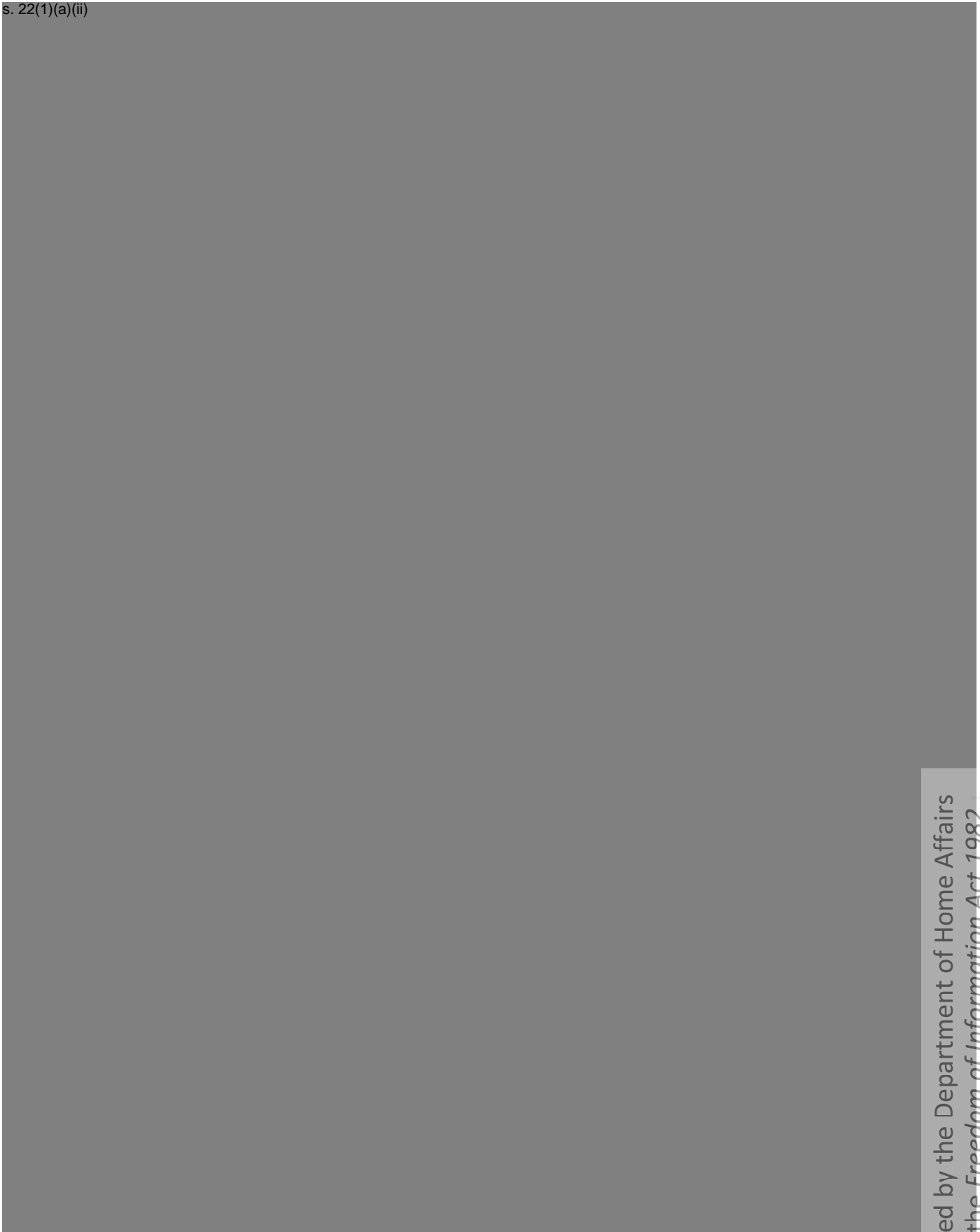
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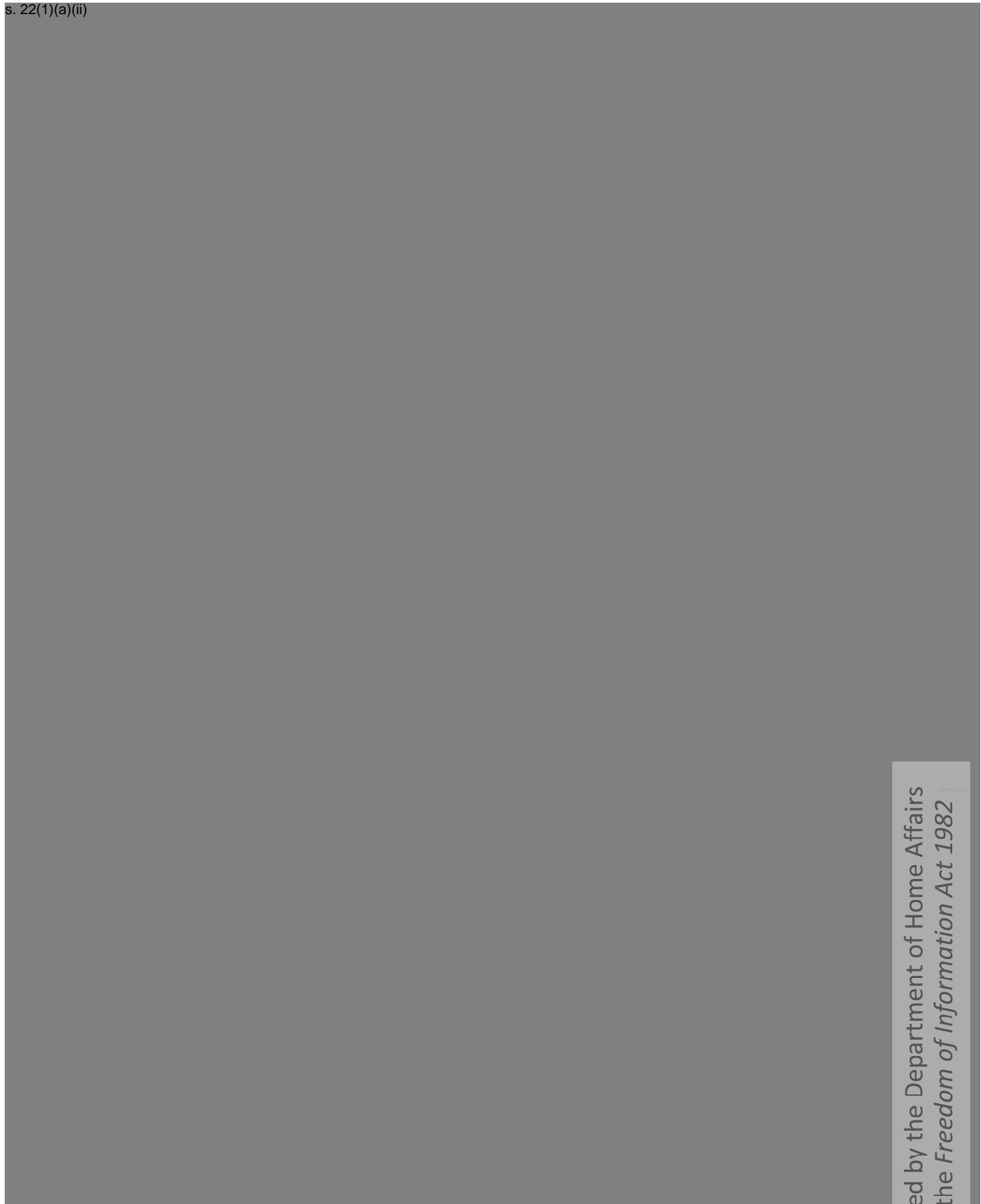
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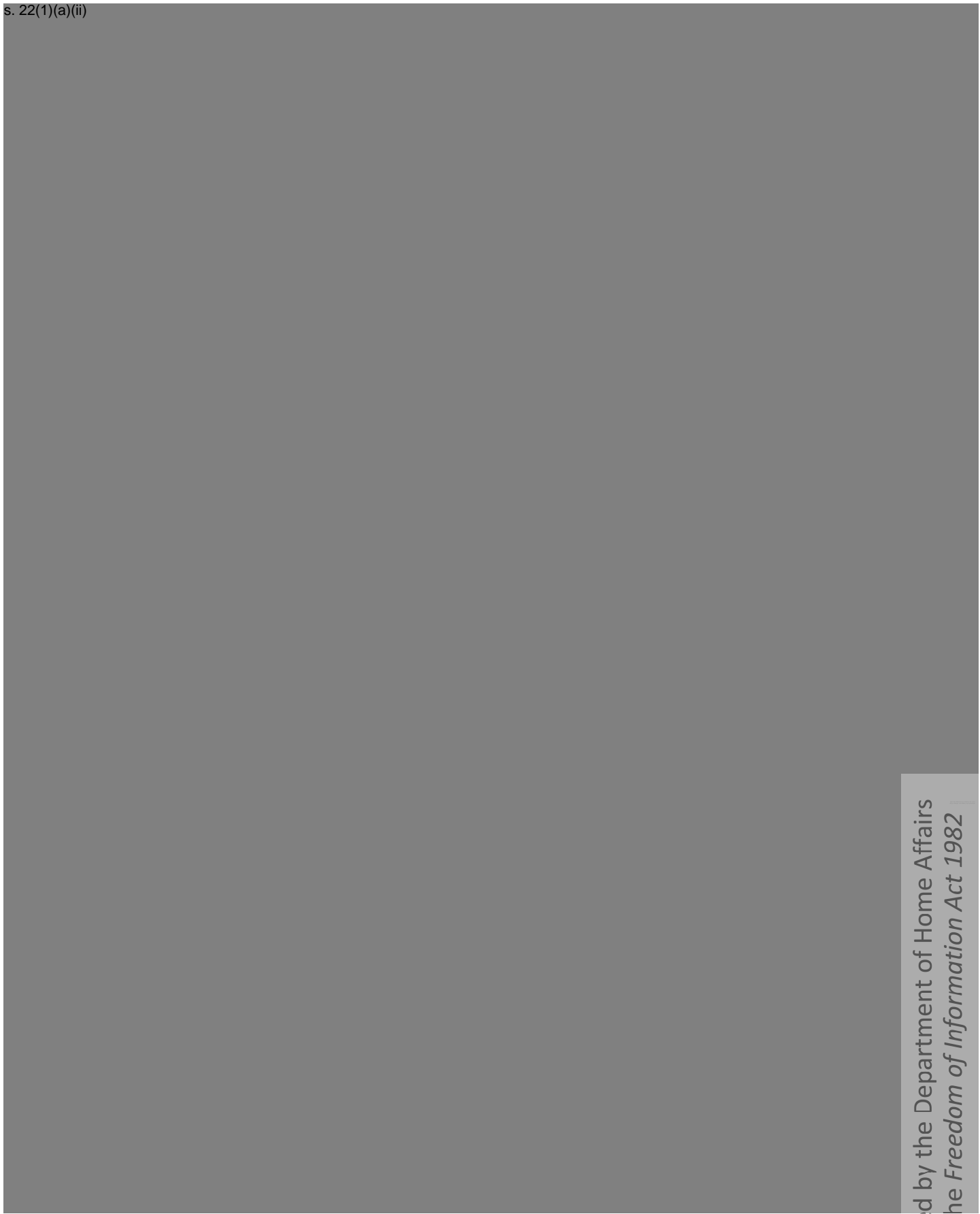
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