



New South Wales

Photo Card Act 2005 No 20

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New South Wales

Photo Card Act 2005 No 20

Act No 20, 2005

An Act to make provision for the issue of the New South Wales Photo Card; and for other purposes. [Assented to 18 May 2005]

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Photo Card Act 2005*.

2 Commencement

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

3 Definitions

(1) In this Act:

authorised officer means:

- (a) a police officer, or
- (b) a person who is appointed for the time being by the Authority as an authorised officer for the purposes of the provision in which the expression is used, or
- (c) a person (or a person belonging to a class or description of persons) prescribed by the regulations.

Authority means the Roads and Traffic Authority.

Photo Card means a New South Wales Photo Card issued under this Act.

photograph includes a digitised, electronic or computer generated image, and electronic data and other information used to create or generate a photograph.

Register means the Photo Card Register maintained by the Authority under this Act.

(2) Notes included in this Act do not form part of this Act.

4 Functions of the Authority

The Authority has the function of administering the scheme established by this Act for the New South Wales Photo Card and has such other functions as are conferred or imposed by or under this Act.

Part 2 Issue of Photo Card

5 Photo Card to be issued by Authority

- (1) The Authority is to issue the New South Wales Photo Card as provided by this Act.
- (2) A Photo Card is to be in such form as the Authority determines.
- (3) The Authority may charge a fee prescribed by the regulations for the issue of a Photo Card.
- (4) A Photo Card is valid for the period for which it is issued, as determined by the Authority and specified on the Photo Card.
- (5) A Photo Card is and remains the property of the Authority.

6 Eligibility for Photo Card

- (1) A person is eligible for the issue of a Photo Card only if the Authority is satisfied that the person:
 - (a) is ordinarily resident in this State, and
 - (b) is at least 16 years of age, and
 - (c) is not the holder of a driver licence under the *Road Transport (Driver Licensing) Act 1998*, and
 - (d) satisfies such other eligibility criteria as may be prescribed by the regulations.
- (2) If a person has lost custody of his or her driver licence (other than by reason of the licence being lost, stolen or destroyed), the person is regarded as not being the holder of a driver licence for the purposes of this section.

Note. For example, the person's driver licence may have been suspended and surrendered under section 33 or 34 of the *Road Transport (General) Act 1999*.
- (3) A regulation for the purposes of subsection (1) (d) is not to be made except on the recommendation of the Minister made after consultation with the Attorney General.

7 Grounds for refusal to issue Photo Card

- (1) The Authority must refuse to issue a Photo Card to a person if the person is not eligible for the issue of a Photo Card.
- (2) The Authority may refuse to issue a Photo Card to a person if the Authority is of the opinion that the person is not a fit and proper person to be in possession of a Photo Card because the person has been convicted of (or found guilty of or a guilty plea has been accepted for) any of the following offences:

- (a) an offence under this Act,
 - (b) an offence involving fraud or dishonesty,
 - (c) an offence prescribed by the regulations.
- (3) The Authority may refuse to issue a Photo Card on such other grounds as may be prescribed by the regulations.
- (4) A regulation for the purposes of subsection (2) (c) or (3) is not to be made except on the recommendation of the Minister made after consultation with the Attorney General.

8 Application for Photo Card

An application for the issue of a Photo Card is to be made to the Authority in the form and manner required by the Authority and supported by such information as the Authority may reasonably require to establish or verify the eligibility, identity and residential address of the applicant.

9 Photograph to be provided

- (1) An applicant for a Photo Card must provide a photograph of the applicant that is suitable for use on the Photo Card.
- (2) The applicant can provide the photograph only:
- (a) by authorising the Authority to use any existing database photograph of the applicant that the Authority determines to be suitable for use on a Photo Card to be issued to the applicant, or
 - (b) if the Authority determines that there is no existing database photograph of the applicant that is suitable, by having his or her photograph taken by the Authority in accordance with arrangements made by the Authority for the purpose.

- (3) In this section:

existing database photograph means a photograph of the applicant taken and kept by the Authority in the exercise of any function under this Act, the *Road Transport (Driver Licensing) Act 1998*, the *Licensing and Registration (Uniform Procedures) Act 2002* or any other Act.

10 Inclusion of other identity verification information on Photo Card

- (1) The Authority may include on or otherwise as part of a Photo Card any identifying information about the person to whom the Photo Card is to be issued (in addition to a photograph of the person) that the Authority considers necessary or useful for verifying the identity of the person to whom the Photo Card is issued.

- (2) An applicant for a Photo Card must provide, in the manner determined by the Authority, any information that the Authority decides to include under this section.

11 Cancellation of Photo Card

- (1) The Authority may cancel a Photo Card issued to a person by notice in writing to the person on any of the following grounds:
- (a) the person is not eligible for the issue of a Photo Card,
 - (b) the Photo Card was issued in error,
 - (c) the photograph on the Photo Card is no longer a true likeness of the person,
 - (d) the Photo Card is incorrect in any respect,
 - (e) such other grounds as may be prescribed by the regulations.
- (2) The Authority may, by the notice cancelling a Photo Card or by subsequent notice in writing to the person, direct the person to return a cancelled Photo Card to the Authority.
- (3) A person who is given a direction under this section to return a Photo Card must return the Photo Card to the Authority within 14 days after the direction is given or such longer period as the direction may allow.
Maximum penalty: 20 penalty units.
- (4) The Authority may decide to cancel a person's Photo Card under this section without the person having been provided an opportunity to show cause why the Photo Card should not be cancelled.
- (5) If a person's Photo Card is cancelled under this section, the Authority may refuse to issue the person with any further Photo Card for such reasonable period as the Authority may determine and specify in a notice served on the person by the Authority.

12 Damaged, lost, stolen or destroyed Photo Cards

The person to whom a Photo Card has been issued must notify the Authority as soon as practicable if the Photo Card is damaged, stolen, lost or destroyed during the period for which the Photo Card is valid.
Maximum penalty: 10 penalty units.

13 Review of decision to refuse or cancel Photo Card

A person aggrieved by a decision of the Authority to refuse to issue or to cancel a Photo Card may apply to the Administrative Decisions Tribunal for a review of the decision.

Part 3 Photo Card Register

14 Keeping the Register

- (1) The Authority is to maintain a Photo Card Register in the form of, or as part of, one or more computer databases or in such other form as the Authority considers appropriate.
- (2) The following matters are to be recorded in the Register in respect of each person who holds a Photo Card:
 - (a) the identification number allocated to the person to whom the Photo Card was issued,
 - (b) the full name of the person (and any former name),
 - (c) the person's gender and date of birth,
 - (d) the person's residential address and address for service of notices (if any),
 - (e) the commencement and expiry date of the period for which the Photo Card is valid,
 - (f) such other information as the Authority may include on or otherwise as part of a Photo Card.
- (3) The Authority may record in the Register other information for:
 - (a) the purposes of this Act or the regulations, or
 - (b) the purposes of another Act, or
 - (c) other purposes, as the Authority considers appropriate.
- (4) The Authority may correct any mistake or error in, or omission of, matter recorded in the Register.
- (5) The Register may be kept as part of or in conjunction with any register kept by the Authority under the *Road Transport (Driver Licensing) Act 1998*.
- (6) The regulations may make provision for or with respect to requiring notice to be given to the Authority of a change of address or other particulars in respect of a person to whom a Photo Card has been issued.

15 Security of information on Register

The Authority must ensure that information contained in the Register that is of a personal nature or that has commercial sensitivity for the person about whom it is kept is not released except as provided by the regulations or under another law.

16 Verification of information on Register

- (1) If there are reasonable grounds for believing that information contained in the Register is inaccurate or misleading, the Authority may by written notice require the holder of a Photo Card to provide evidence to the Authority, in a form specified by the Authority, relating to anything relevant to the issuing of the Photo Card, including:
 - (a) the holder's personal details, and
 - (b) the holder's residential address.
- (2) For the purposes of this section, the Authority may require the holder of a Photo Card:
 - (a) to provide specified documents for inspection, and
 - (b) to attend at a reasonable time and place specified by the Authority for identification.
- (3) If a person who is required to attend for identification requests a change to the time or place specified in the notice, the Authority must give consideration to that request and may change the time or place in accordance with the request.
- (4) A person who fails without reasonable excuse to comply with a requirement imposed under this section is guilty of an offence.
Maximum penalty: 20 penalty units.

Part 4 Security arrangements for photographs

17 Photographs to which this Part applies

This Part applies to photographs taken or provided in relation to applications for the issue of a Photo Card.

18 Purposes for which photographs may be kept and used

- (1) A photograph to which this Part applies may be kept and used by the Authority only for one or more of the following purposes:
 - (a) to reproduce the likeness of a person on a Photo Card,
 - (b) to assist in determining the identity of any person in the course of determining whether or not to issue or replace a Photo Card,
 - (c) in connection with an investigation relating to or leading to criminal proceedings against a person under any provision of this Act or under a provision of Division 2 or 3 of Part 5 (Forgery and false instrument offences) of the *Crimes Act 1900* in relation to a Photo Card,
 - (d) for the conduct of criminal proceedings under this Act,
 - (e) any purpose for which a photograph to which Part 5 (Protection of stored photographs) of the *Road Transport (Driver Licensing) Act 1998* applies may be kept and used by the Authority under that Part,
 - (f) any purpose for which a photograph to which Division 3 (Security and protection of photographs) of Part 4A of the *Licensing and Registration (Uniform Procedures) Act 2002* applies may be kept and used by the Authority under that Division,
 - (g) for any other purpose prescribed by the regulations.
- (2) A photograph may be used for a purpose set out in this section at the time that the photograph is provided or taken or at any later time.

19 Release of photographs prohibited

- (1) The Authority must ensure that a photograph to which this Part applies, and any photographic image or other matter contained in any database of such photographs, is not released except:
 - (a) to NSW Police, or
 - (b) to a driver licensing authority of another State or Territory, or

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- (c) for the purpose of the conduct of any criminal proceedings under this Act or under a provision of Division 2 or 3 of Part 5 (Forgery and false instrument offences) of the *Crimes Act 1900* in relation to a Photo Card, or
 - (d) to the Sheriff, for the purpose of any fine recovery proceedings, or
 - (e) as provided under any other law, or
 - (f) to the person whose likeness is shown in the photograph or on the database, or
 - (g) as authorised or required under Part 5 (Protection of stored photographs) of the *Road Transport (Driver Licensing) Act 1998* in respect of the release of photographs to which that Part applies, or
 - (h) as authorised or required under Division 3 (Security and protection of photographs) of Part 4A of the *Licensing and Registration (Uniform Procedures) Act 2002* in respect of the release of photographs to which that Division applies, or
 - (i) in accordance with the regulations.
- (2) Any release authorised by subsection (1) (a)–(d), or authorised by regulations made under subsection (1) (i), must be in accordance with any protocol approved by the Privacy Commissioner.

Part 5 Prevention of fraud

20 Obtaining Photo Card by false statements

- (1) A person must not:
- (a) by a false statement or any misrepresentation or other dishonest means, obtain or attempt to obtain a Photo Card, or
 - (b) without lawful authority or reasonable excuse, possess a Photo Card obtained using those means.

Maximum penalty: 20 penalty units.

- (2) A Photo Card obtained in contravention of this section is void, and the Authority may alter the Register accordingly.

21 Unlawful possession of Photo Card

A person must not have in his or her possession without lawful authority or reasonable excuse:

- (a) a Photo Card, or
- (b) any article resembling a Photo Card and calculated to deceive.

Maximum penalty: 20 penalty units.

22 Manufacturing false Photo Cards

- (1) A person must not make a false document that could reasonably be taken to be a Photo Card with the intent that the document be used by any person as a Photo Card.

Maximum penalty: 20 penalty units.

- (2) A person (*the offender*) must not give to another person a false document that could reasonably be taken to be a Photo Card with the intent that the document be used by any person as a Photo Card, if the offender knows or could reasonably be expected to know that the document is false.

Maximum penalty: 20 penalty units.

- (3) A person is guilty of an offence under this subsection if the person commits an offence under subsection (1) or (2) in circumstances of aggravation.

Maximum penalty: 50 penalty units.

- (4) For the purposes of this section, a person commits an offence in circumstances of aggravation if:

- (a) the offence involved a high degree of planning, or

- (b) the offence involved the use of other people acting at the direction of the person convicted of the offence in the commission of the offence, or
- (c) the person committed the offence solely or principally for financial reward, or
- (d) the offender has a previous conviction for an offence under this section or under section 117EB (Manufacturing false proof of age cards) of the *Liquor Act 1982*.

23 Giving or lending Photo Card

A person must not give or lend the person's Photo Card to another person if the person giving or lending the Photo Card knows or could reasonably be expected to know that the Photo Card may be used:

- (a) by the person to whom the Photo Card was given or lent, or by any other person, to provide proof of his or her age or identity, or
- (b) to obtain a Photo Card for the person to whom the Photo Card was given or lent, or any other person.

Maximum penalty: 20 penalty units.

24 Improper use of Photo Card

- (1) A person must not fraudulently use or allow another person to use a Photo Card.

Maximum penalty: 50 penalty units.

- (2) A person must not use a Photo Card:

- (a) that the person knows has been forged, fraudulently altered or altered in a manner that is calculated to deceive, or obtained by a false statement or misrepresentation or other dishonest means, or
- (b) that the person knows has been cancelled.

Maximum penalty: 20 penalty units.

- (3) In this section, *use* a Photo Card means use the Photo Card as proof of age or identity.

25 Altering or tampering with Photo Card

- (1) A person must not forge or fraudulently alter a Photo Card or alter a Photo Card in a way that is calculated to deceive.

Maximum penalty: 20 penalty units.

- (2) A person must not for an improper purpose wilfully or negligently alter, deface, or otherwise interfere with a Photo Card or with any of the material particulars contained on the Photo Card.

Maximum penalty: 20 penalty units.

26 Unauthorised reproduction of photographs

A person employed or engaged in connection with any aspect of the production of Photo Cards, or otherwise concerned in the administration of this Act or the regulations, who, otherwise than in the administration of this Act or the *Road Transport (Driver Licensing) Act 1998* or the regulations under those Acts:

- (a) reproduces, by photographic or other means, the likeness of a person that is depicted, or is to be depicted, on a Photo Card, or
 - (b) causes or permits another person to do so,
- is guilty of an offence.

Maximum penalty: 50 penalty units.

27 Expired Photo Cards

The regulations may make provision for or with respect to expired Photo Cards (that is, Photo Cards that are no longer valid because the period for which they were issued has expired), including provision for or with respect to any of the following:

- (a) regulating or prohibiting the use for any or specified purposes of an expired Photo Card,
- (b) regulating or prohibiting the possession of an expired Photo Card,
- (c) requiring the surrender to the Authority of an expired Photo Card,
- (d) requiring notice to be given to the Authority if an expired Photo Card is damaged, stolen, lost or destroyed,
- (e) authorising the confiscation by an authorised officer of an expired Photo Card.

Part 6 Enforcement

28 Requirement to produce Photo Card

- (1) An authorised officer may direct a person who is in possession of a Photo Card, or thing resembling a Photo Card, to produce the Photo Card or thing to the officer if the officer reasonably suspects that the Photo Card or thing:
 - (a) is not the person's Photo Card or contains information that is false or misleading as to that person's age or identity, or
 - (b) has been forged or fraudulently altered or altered in a way that is calculated to deceive, or obtained by a false statement or misrepresentation or other dishonest means, or
 - (c) is being used in contravention of any provision of this or any other Act or law.
- (2) A person must comply with a direction given to the person under this section.
Maximum penalty: 20 penalty units.
- (3) A person is not guilty of an offence of failing to comply with a direction under this section unless the person was warned by the authorised officer when the direction was given that a failure to comply is an offence.

29 Seizure of Photo Card

- (1) An authorised officer to whom a Photo Card, or thing resembling a Photo Card, is produced by a person representing it to be the person's Photo Card or in response to a direction under section 28 may, with no authority other than this section, seize the Photo Card or thing if the officer reasonably suspects that the Photo Card or thing:
 - (a) is not the person's Photo Card or contains information that is false or misleading as to that person's age or identity, or
 - (b) has been forged or fraudulently altered or altered in a way that is calculated to deceive, or obtained by a false statement or misrepresentation or other dishonest means, or
 - (c) is being used in contravention of any provision of this or any other Act or law.
- (2) A Photo Card or thing seized under this section is to be forwarded to the Authority. The Authority must cause the Photo Card or thing to be returned (by delivery or by post) to the person who produced it unless subsection (3) applies.

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Part 6 Enforcement

- (3) The Authority may retain possession of and deal with a Photo Card or thing forwarded to the Authority in such manner as the Authority thinks fit if satisfied that the Photo Card or thing:
- (a) is not the Photo Card of the person from whom it was seized or contains information that is false or misleading as to that person's age or identity, or
 - (b) has been forged or fraudulently altered or altered in a way that is calculated to deceive, or obtained by a false statement or misrepresentation or other dishonest means, or
 - (c) is being used in contravention of any provision of this or any other Act or law.

Part 7 Miscellaneous

30 Unauthorised demand for production of Photo Card

- (1) A person must not, in connection with the supply of goods or services by the person, demand production by another person of that other person's Photo Card.
Maximum penalty: 20 penalty units.
- (2) This section does not prohibit a request for production of a Photo Card:
 - (a) as a means of evidencing the identity or age of a person where it is reasonable for the person making the request to require evidence of the other person's identity or age, or
 - (b) where the person making the request is authorised by law to require its production.
- (3) For the purposes of this section, the making of a statement that could reasonably be understood, by a person to whom the statement is made, as indicating that the person is being required to produce his or her Photo Card is taken to be a demand for its production.

31 Delegation by Authority

- (1) The Authority may delegate the exercise of any function of the Authority under this Act (other than this power of delegation) to:
 - (a) any member of staff of the Authority, or
 - (b) any person, or any class of persons, authorised for the purposes of this section by the regulations.
- (2) Nothing in this section affects any other power or delegation that the Authority has under any other Act.

32 Protection from liability

- (1) An individual does not incur civil liability for an act or omission done honestly and in good faith in the course of his or her duties under this Act.
- (2) A liability that would, apart from subsection (1), attach to an individual because of an act or omission done honestly and in good faith in the course of his or her duties attaches instead to the Authority.
- (3) The Authority is not liable for any loss or damage resulting from the fraudulent or other improper use of a Photo Card (or thing that resembles a Photo Card) unless the liability results from the negligence of the Authority or a member of staff of the Authority. This subsection extends to a liability that attaches to the Authority under subsection (2).

33 Unpaid fees and charges

An amount of any unpaid fees or charges payable under this Act or the regulations is a debt due to the Authority and may be recovered in a court of competent jurisdiction.

34 Penalty notices

- (1) An authorised officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence against this Act or the regulations, being an offence prescribed by the regulations as a penalty notice offence.
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person can pay, within the time and to the person specified in the notice, the amount of the penalty prescribed by the regulations for the offence if dealt with under this section.
- (3) A penalty notice may be served personally or by post.
- (4) If the amount of penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (5) Payment under this section is not to be regarded as an admission of liability for the purpose of, and does not in any way affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.
- (6) The regulations may:
 - (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and
 - (b) prescribe the amount of penalty payable for the offence if dealt with under this section, and
 - (c) prescribe different amounts of penalties for different offences or classes of offences.
- (7) The amount of a penalty prescribed under this section for an offence is not to exceed the maximum amount of penalty that could be imposed for the offence by a court.
- (8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.

35 Nature of proceedings for offences

Proceedings for an offence under this Act or the regulations may be dealt with summarily before a Local Court.

36 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The regulations may create offences punishable by a penalty not exceeding 20 penalty units.

37 Savings, transitional and other provisions

Schedule 1 has effect.

38 Amendment of Acts

The Acts specified in Schedule 2 are amended as set out in that Schedule.

39 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

Schedule 1 Savings, transitional and other provisions

(Section 37)

Part 1 General

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:
this Act
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Schedule 2 Amendment of Acts

(Section 38)

2.1 Fines Act 1996 No 99

Schedule 1 Statutory provisions under which penalty notices issued

Insert in appropriate order:

Photo Card Act 2005, section 34

2.2 Licensing and Registration (Uniform Procedures) Act 2002 No 28

[1] Section 80C Arrangements for the provision of photographs of applicants

Omit section 80C (3).

[2] Section 80H Keeping and use of photographs

Insert after section 80H (1) (e):

- (f) any purpose for which a photograph to which Part 5 (Protection of stored photographs) of the *Road Transport (Driver Licensing) Act 1998* applies may be kept and used by the RTA under that Part,
- (g) any purpose for which a photograph to which Part 4 (Security arrangements for photographs) of the *Photo Card Act 2005* applies may be kept and used by the RTA under that Part.

[3] Section 80I Release of photographs

Insert at the end of section 80I (1) (e):

, or

- (f) as authorised or required under Part 5 (Protection of stored photographs) of the *Road Transport (Driver Licensing) Act 1998* in respect of the release of photographs to which that Part applies, or
- (g) as authorised or required under Part 4 (Security arrangements for photographs) of the *Photo Card Act 2005* in respect of the release of photographs to which that Part applies.

2.3 Liquor Act 1982 No 147

[1] Section 117EA Proof of age cards

Insert after section 117EA (1):

- (1A) A proof of age card is not to be issued under this section after the commencement of this subsection (as inserted by the *Photo Card Act 2005*). A proof of age card issued under this section ceases to be valid for any purpose 3 years after the commencement of this subsection.

[2] Section 152A Confiscation of proof of age cards

Insert “a Photo Card (under the *Photo Card Act 2005*) or” after “means” in the definition of *proof of age card* in section 152A (2).

2.4 Road Transport (Driver Licensing) Act 1998 No 99

[1] Section 40 Purposes for which photographs may be kept and used

Omit “or a ‘proof of age’ card” from section 40 (1) (a) and (b) wherever occurring.

[2] Section 40 (1) (f1) and (f2)

Insert after section 40 (1) (f):

- (f1) any purpose for which a photograph to which Part 4 (Security arrangements for photographs) of the *Photo Card Act 2005* applies may be kept and used by the Authority under that Part,
- (f2) any purpose for which a photograph to which Division 3 (Security and protection of photographs) of Part 4A of the *Licensing and Registration (Uniform Procedures) Act 2002* applies may be kept and used by the Authority under that Division,

[3] Section 41 Release of photographs prohibited

Omit section 41 (1) (c) (ii).

[4] Section 41 (1) (f1) and (f2)

Insert after section 41 (1) (f):

- (f1) as authorised or required under Part 4 (Security arrangements for photographs) of the *Photo Card Act 2005* in respect of the release of photographs to which that Part applies, or

- (f2) as authorised or required under Division 3 (Security and protection of photographs) of Part 4A of the *Licensing and Registration (Uniform Procedures) Act 2002* in respect of the release of photographs to which that Division applies, or

[Second reading speech made in—
Legislative Assembly on 8 December 2004
Legislative Council on 7 April 2005]

BY AUTHORITY