

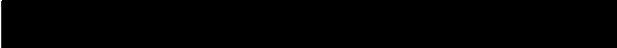

Documents 29-34 are exempt under section 42  
of the *Freedom of Information Act 1989*.

Hancock, Carly

---

**From:** Whitten, Meredith  
**Sent:** Saturday, 11 March 2017 3:48 PM  
**To:** Howson, Natalie; Tanton, Graham; Whybrow, Mark  
**Subject:** FW: Min to CM School cleaning contracts [Sensitive: Commercial: Legal  
**Attachments:** Min to CM School cleaning contracts.DOC; Att A - Brief to Minister Rattenbury - EDU Cleaners June 2016.docx

Hi Natalie and Graham

Please find attached a copy of the CMTEDD brief on cleaning.   


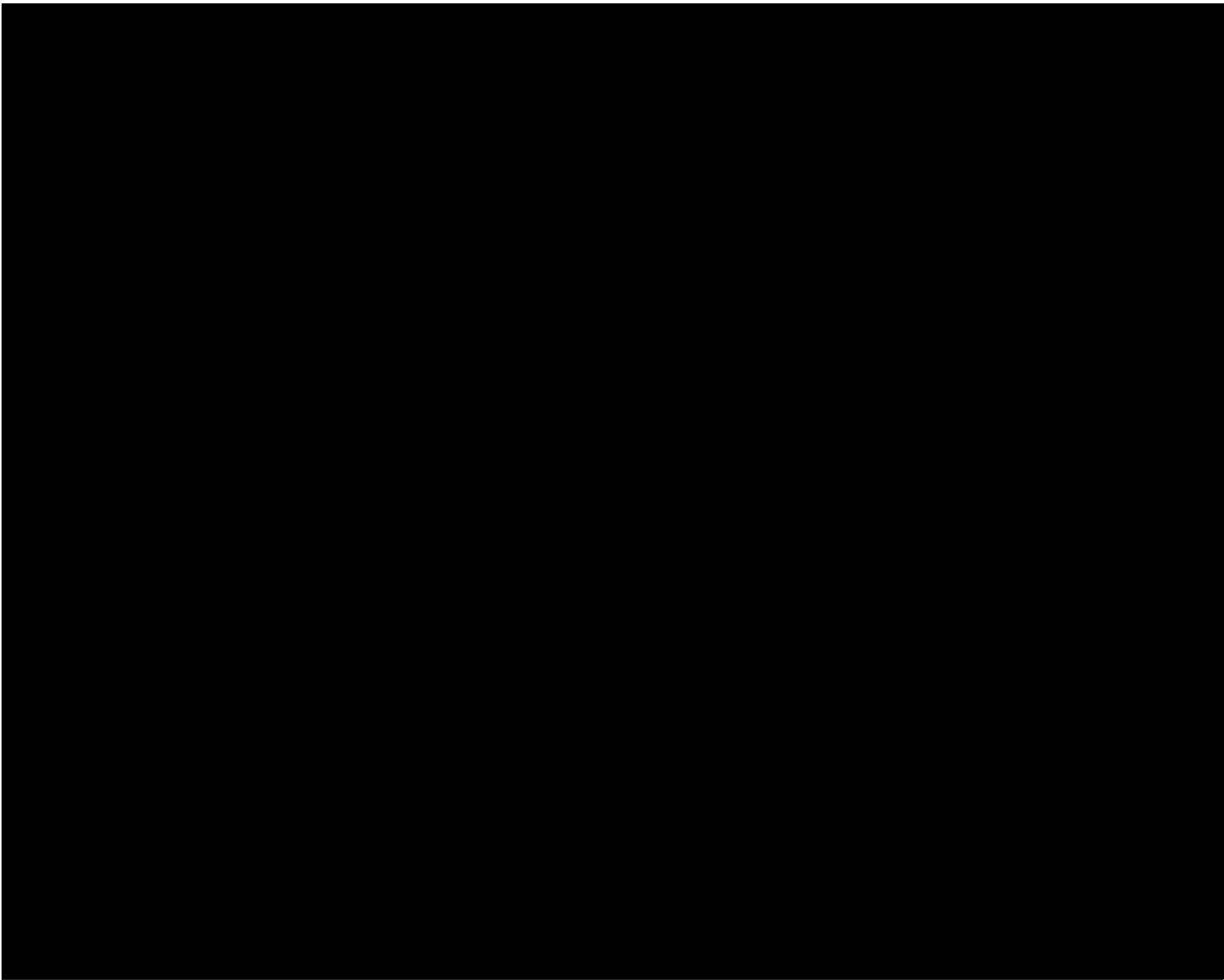
  
For your information.

Meredith Whitten | Deputy Director-General |

Phone 620 70384 | Mobile 0419 426 308

Business Services Division | Education Directorate | ACT Government

Level 1 Annex 220 Northbourne Avenue Braddon ACT 2601 | GPO Box 158 Canberra ACT 2601 | [www.act.gov.au](http://www.act.gov.au)  
<<http://www.act.gov.au/>> | [www.det.act.gov.au](http://www.det.act.gov.au) | Facebook <<http://www.facebook.com/pages/ACT-Public-Schools/94038489456?ref=ts>> | Twitter <<https://twitter.com/ACTEducation>> | Pinterest  
<<http://pinterest.com/acteducation/>> | LinkedIn <<http://www.linkedin.com/company/706896?trk=tyah>> |  
Google+ <<https://plus.google.com/103779771541941617837/posts#103779771541941617837/posts>>





Chief Minister, Treasury and Economic  
Development Directorate

SENSITIVE

To: Chief Minister

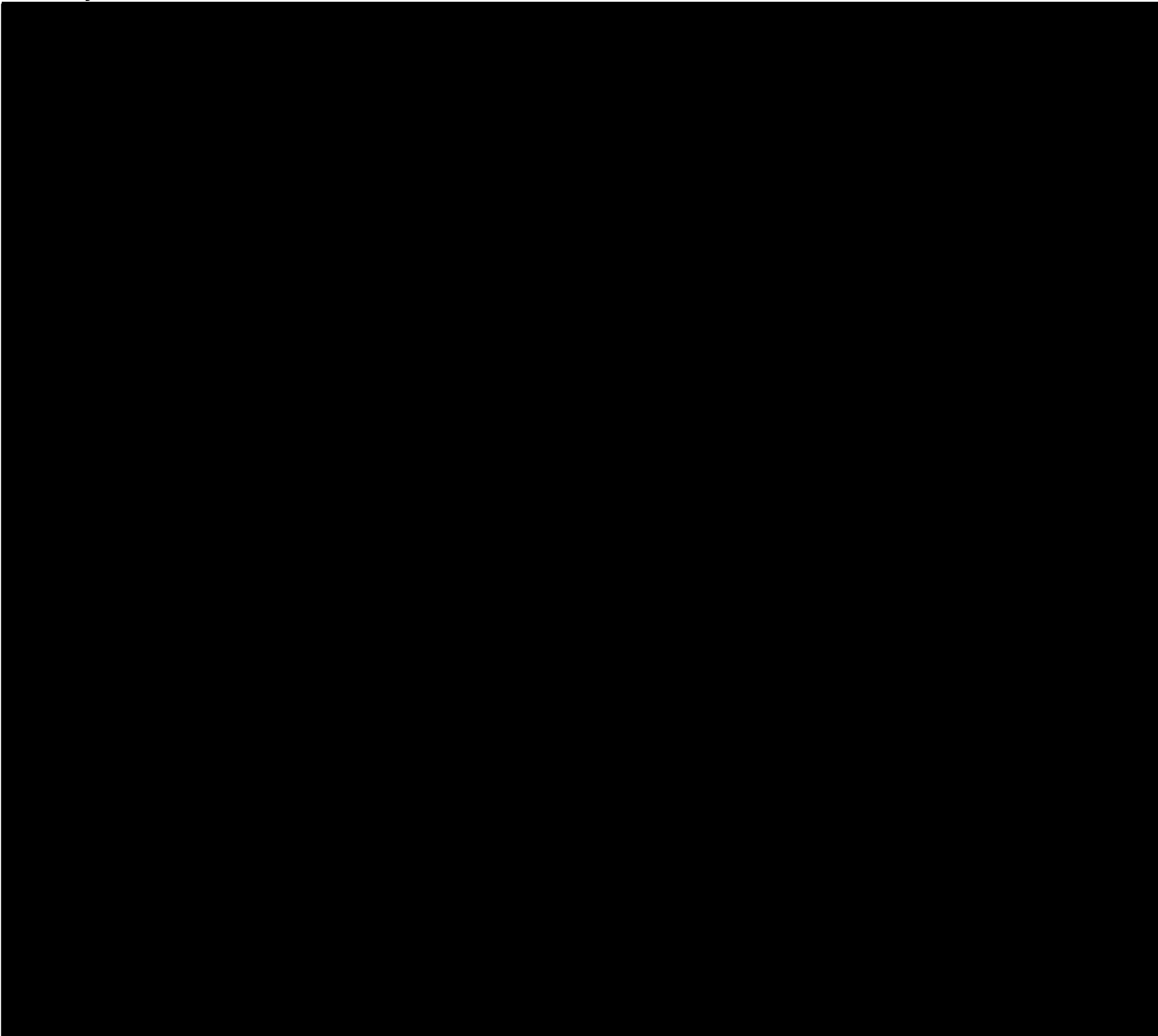
Tracking No.: 2017/564.

CC Director-General, CMTEDD

From: Executive Director, Strategic Policy and Cabinet

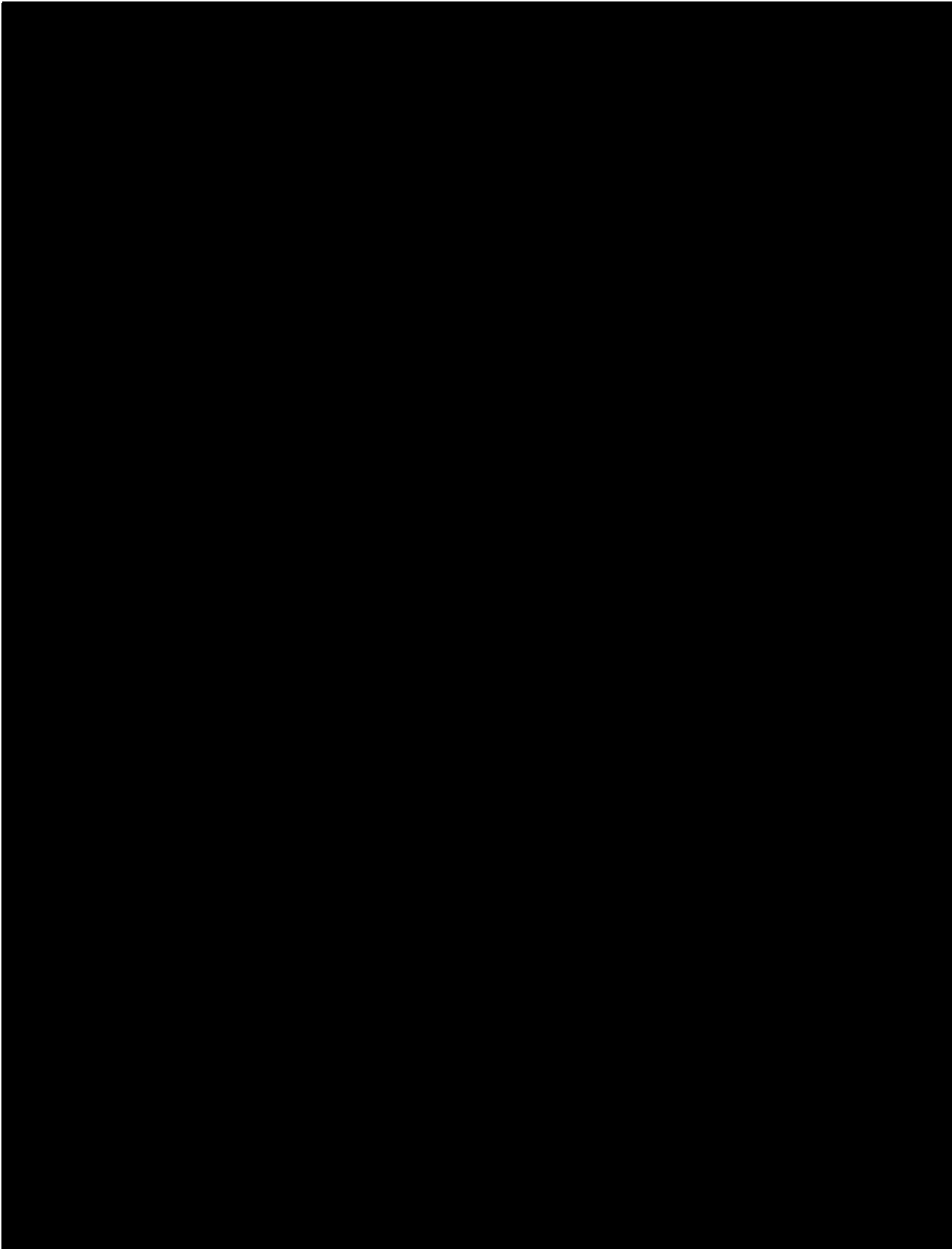
Date 8 March 2017

Subject: School cleaning contracts



SENSITIVE

SENSITIVE



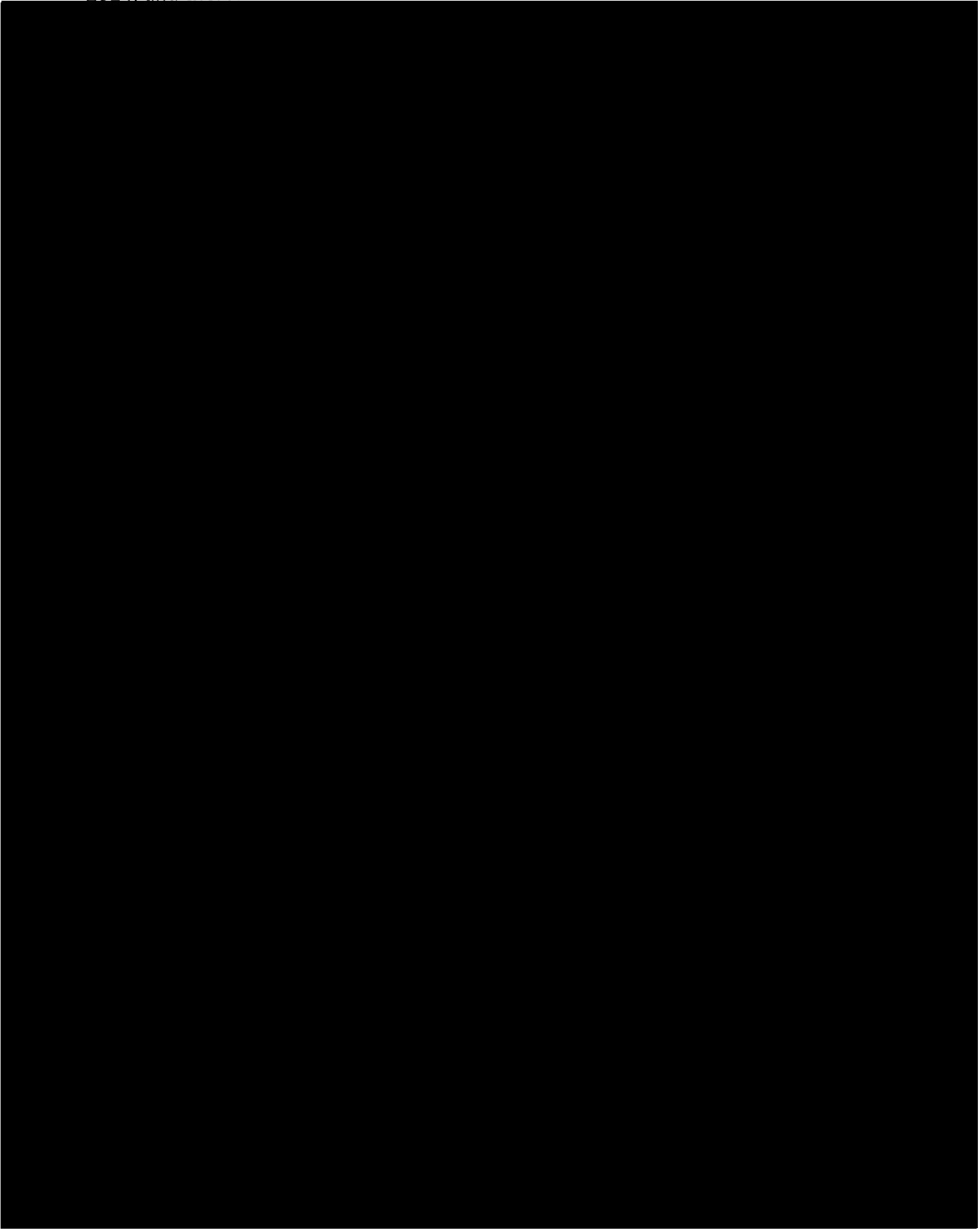
Setting pay rates and hours

8. Under the current contracts Education sets the hourly cleaning rate, which is adjusted to stay in line with market conditions. The hourly rate is set based on the CleanStart template enterprise agreement (which offers above award wages). Similar

SENSITIVE

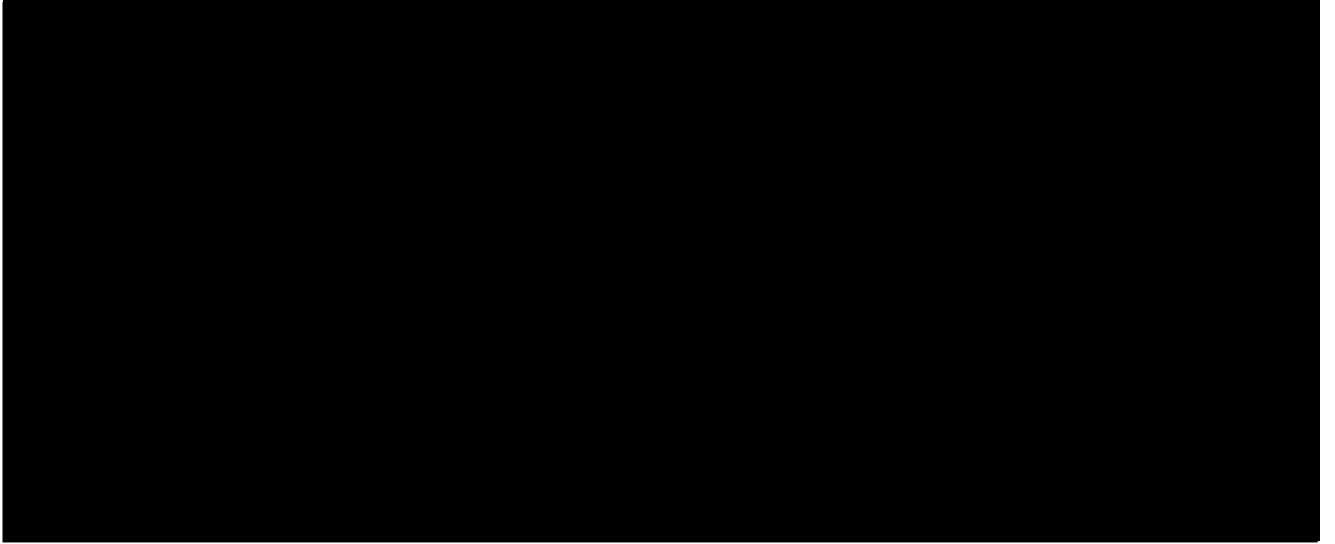
SENSITIVE

arrangements were in place across the city, as the Commonwealth Government had implemented similar contracts under Commonwealth Government Cleaning Guidelines. The *Commonwealth Government Cleaning Guidelines* were removed in 2014, and therefore new Commonwealth contracts are not setting a wage rate.

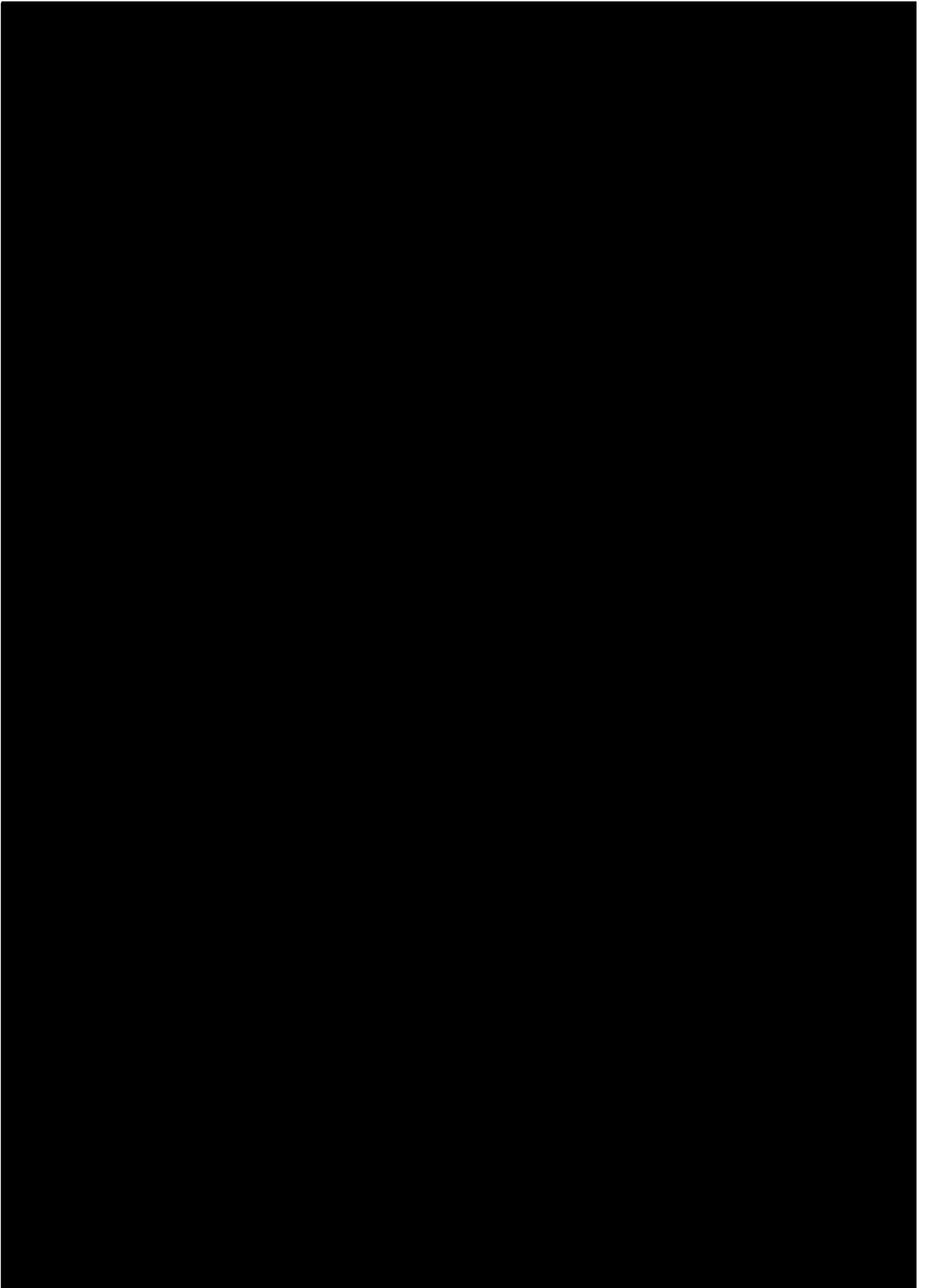


SENSITIVE

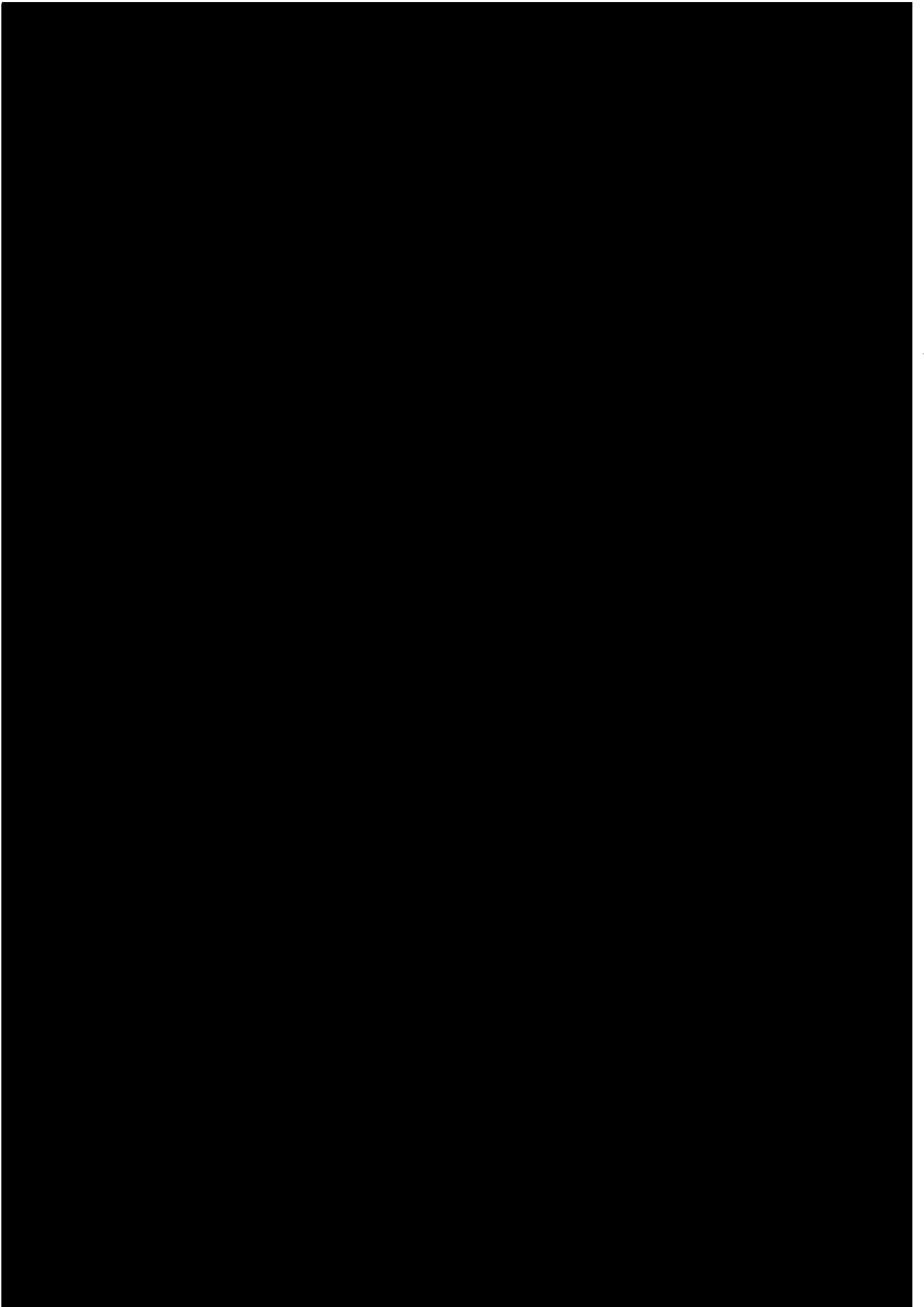
SENSITIVE

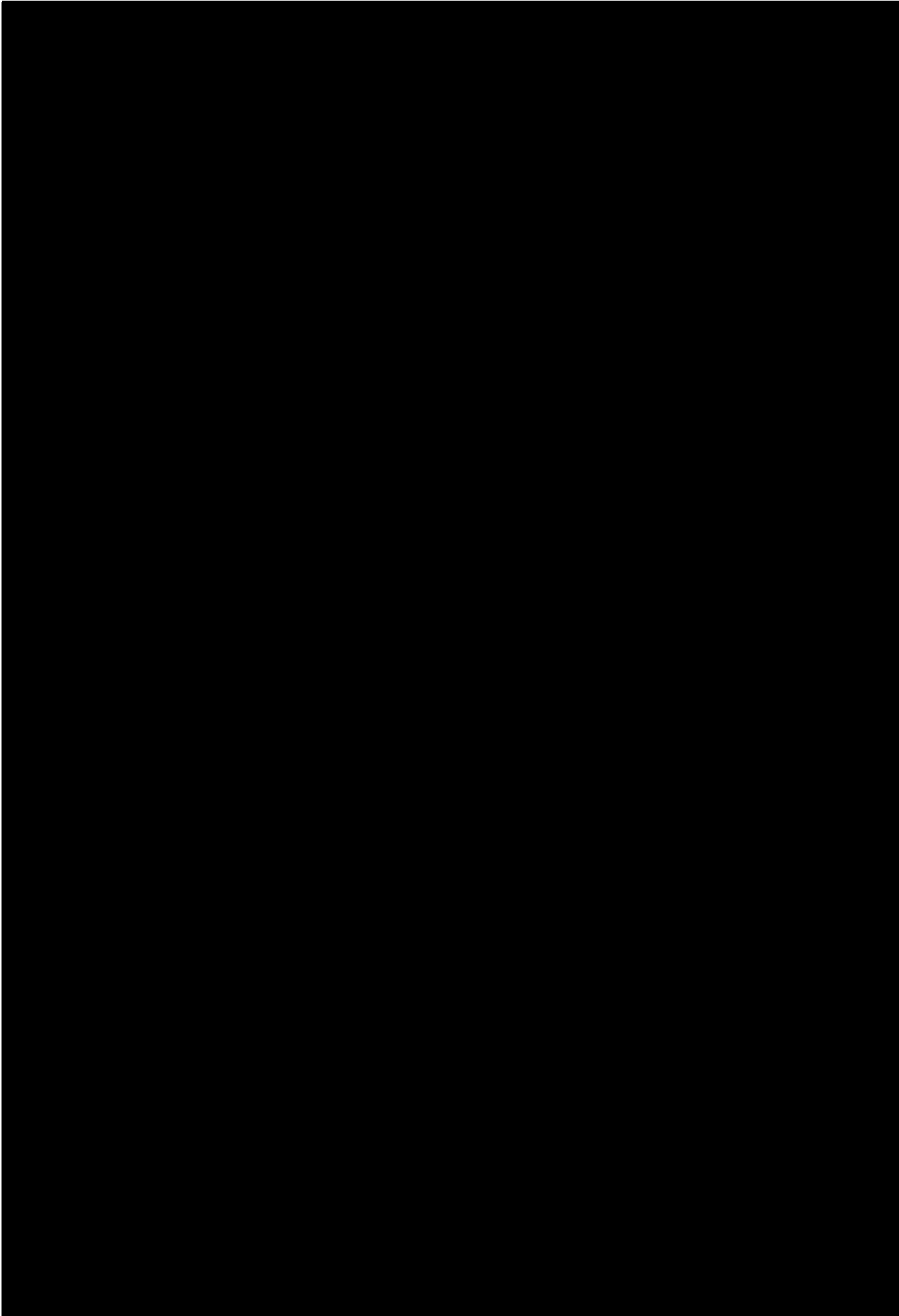


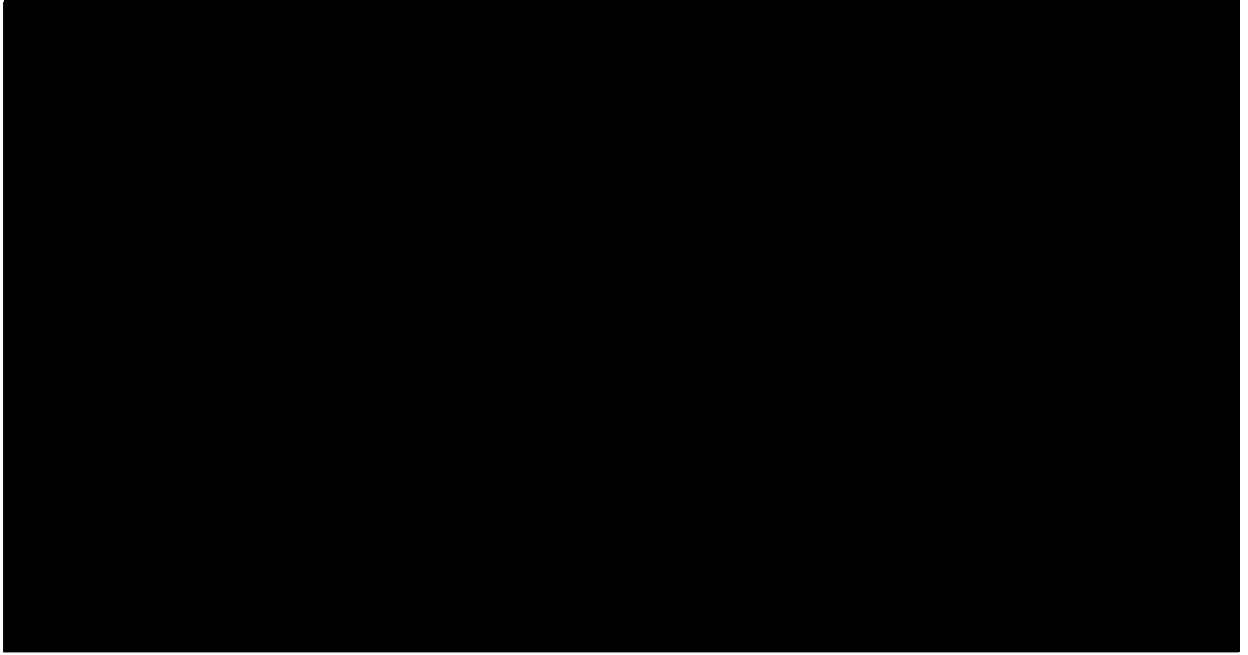
SENSITIVE

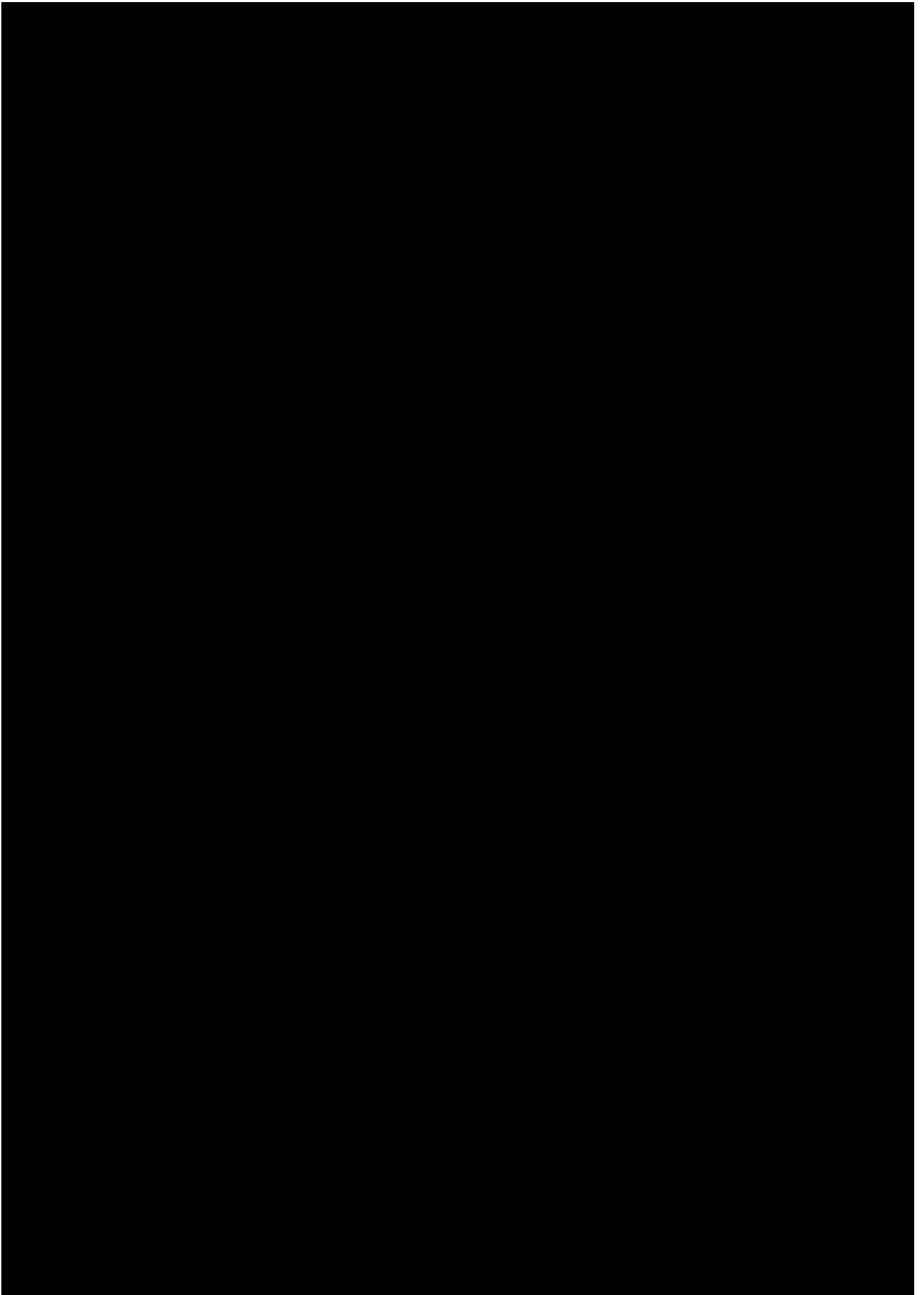


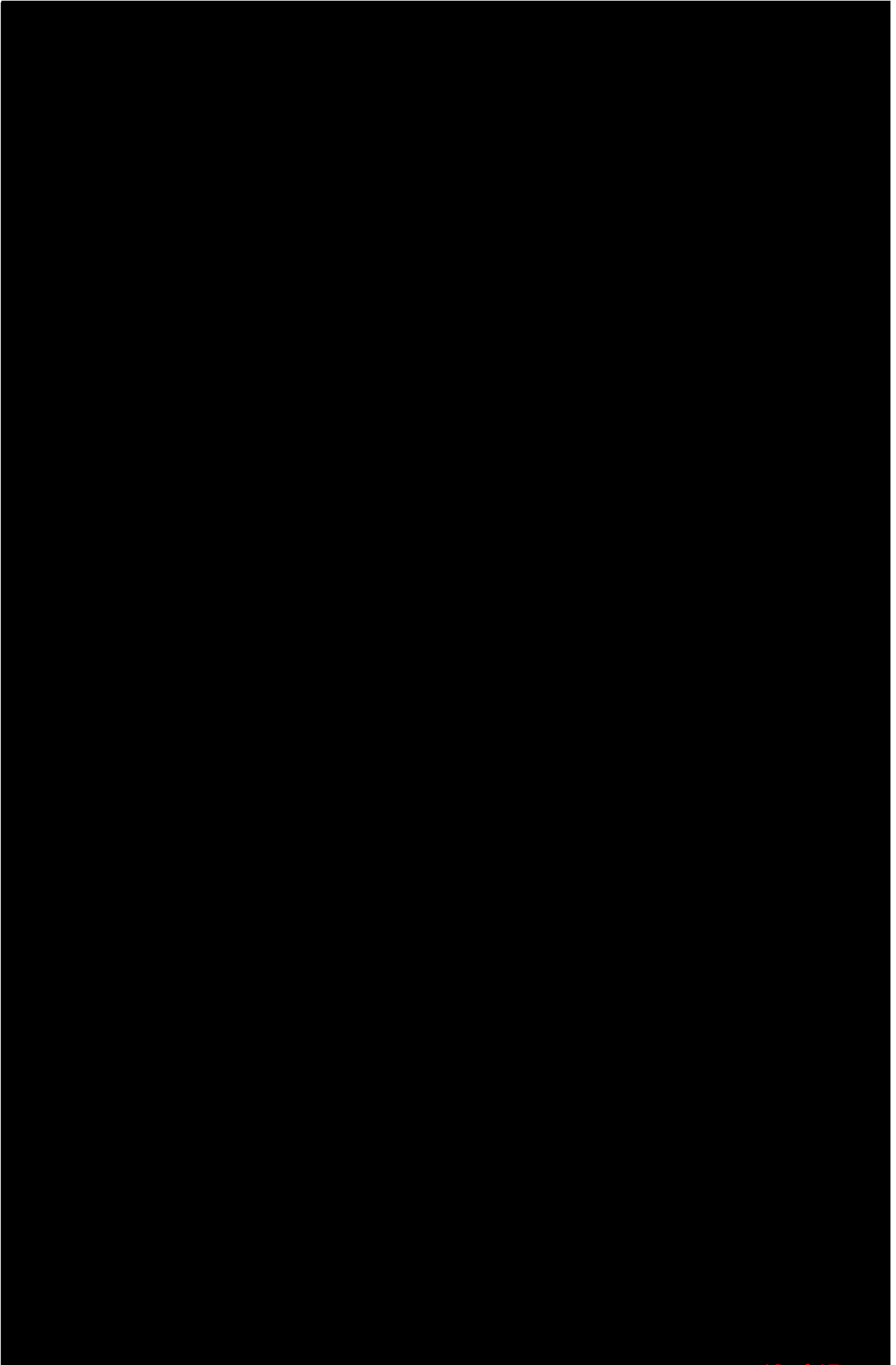


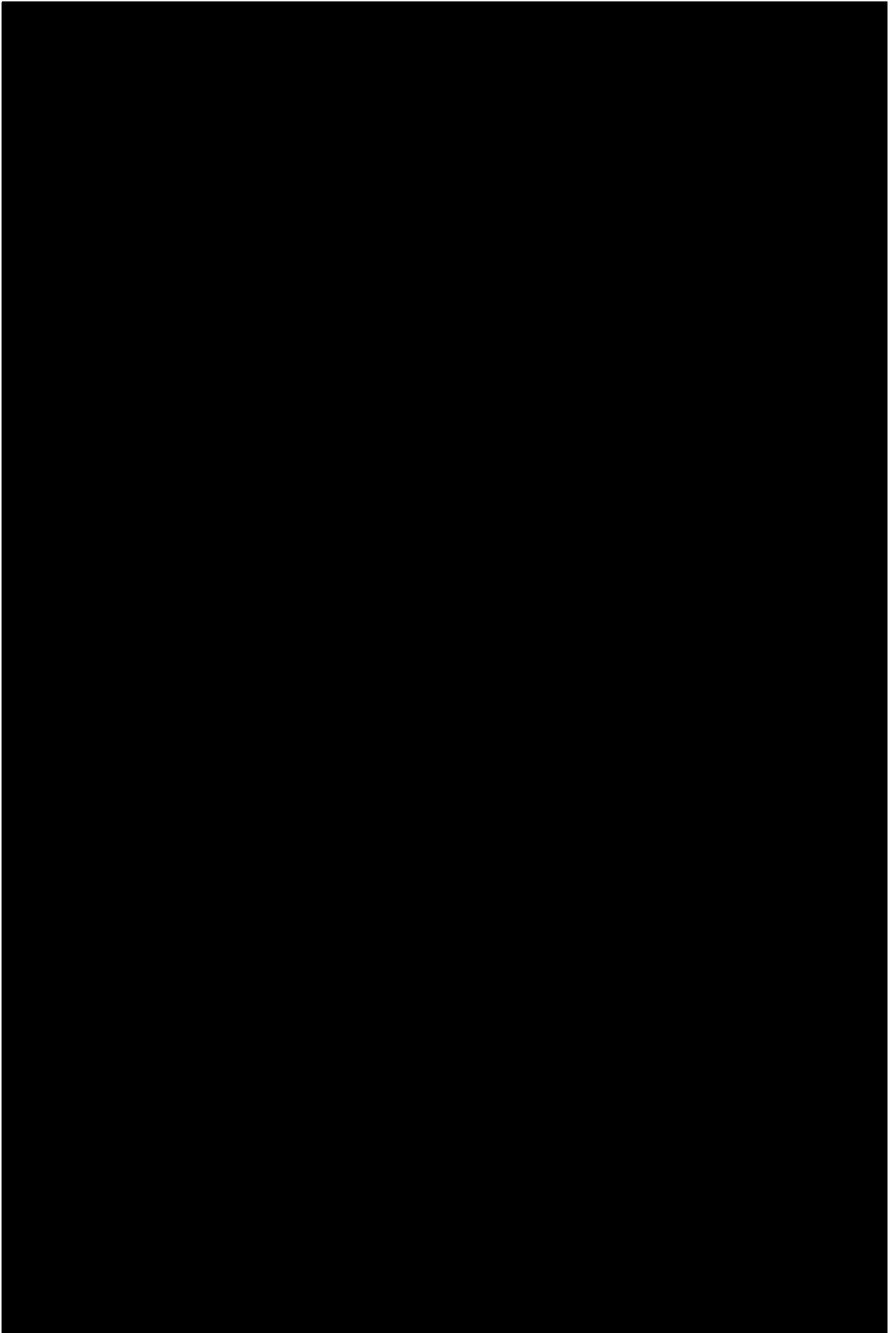


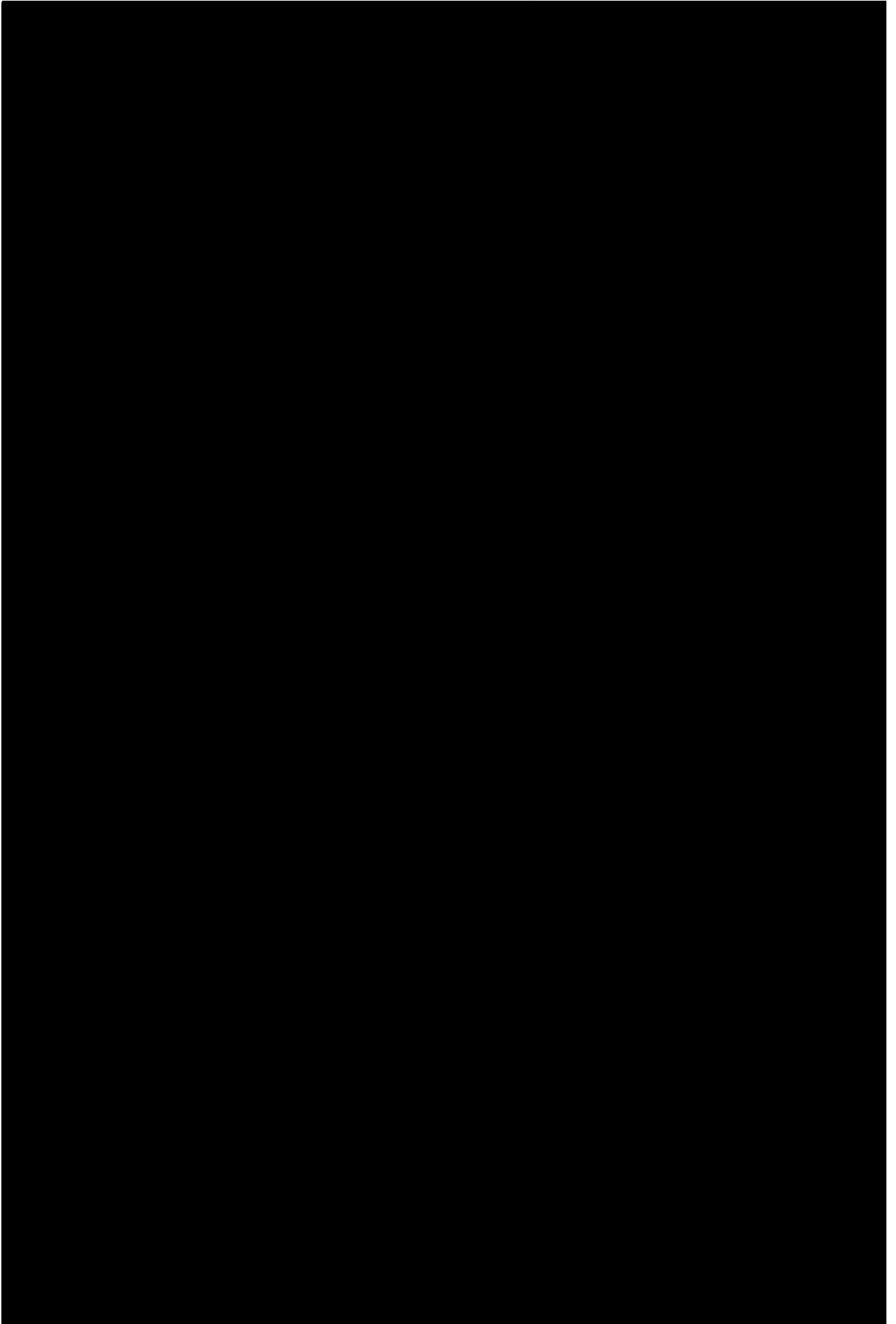


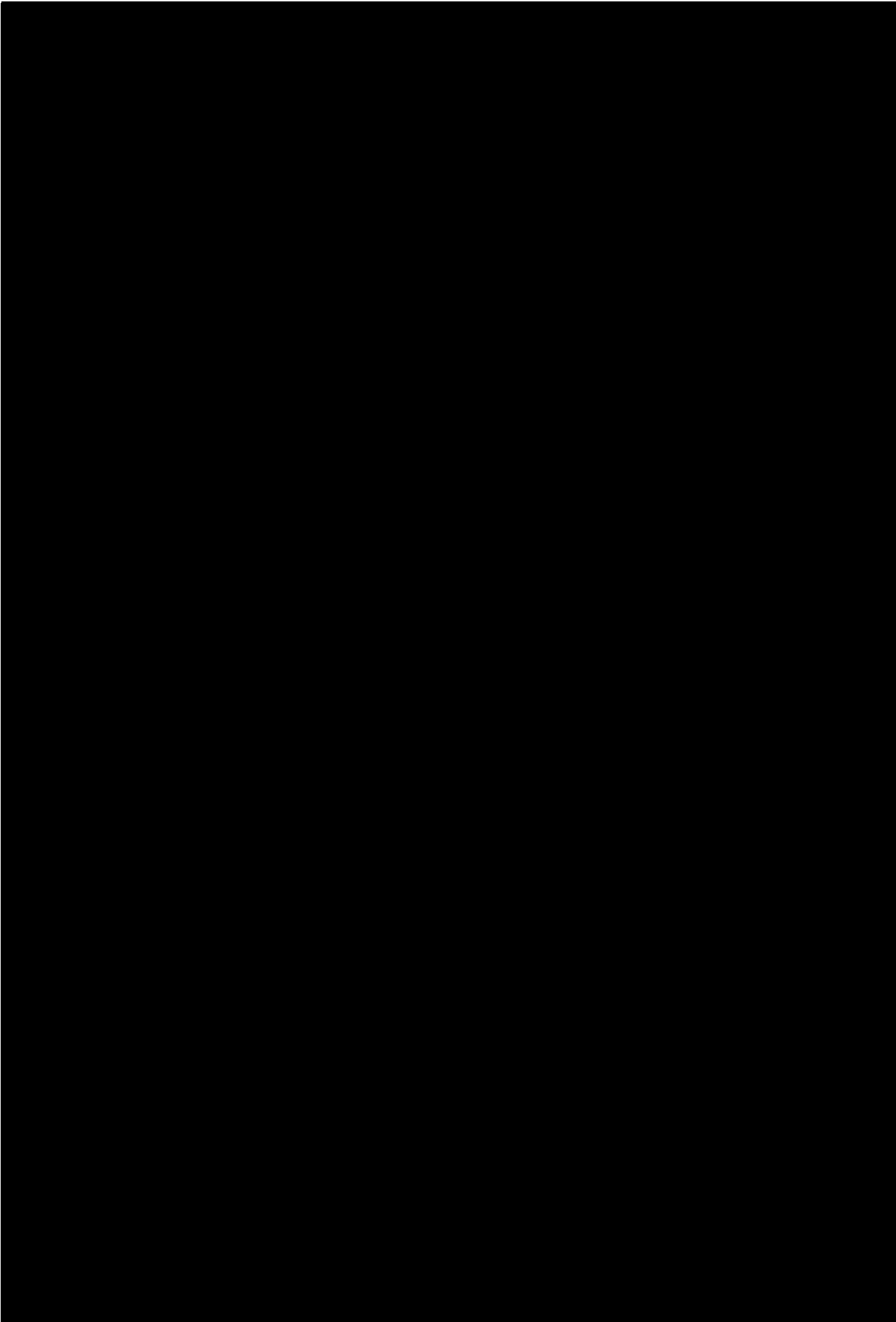




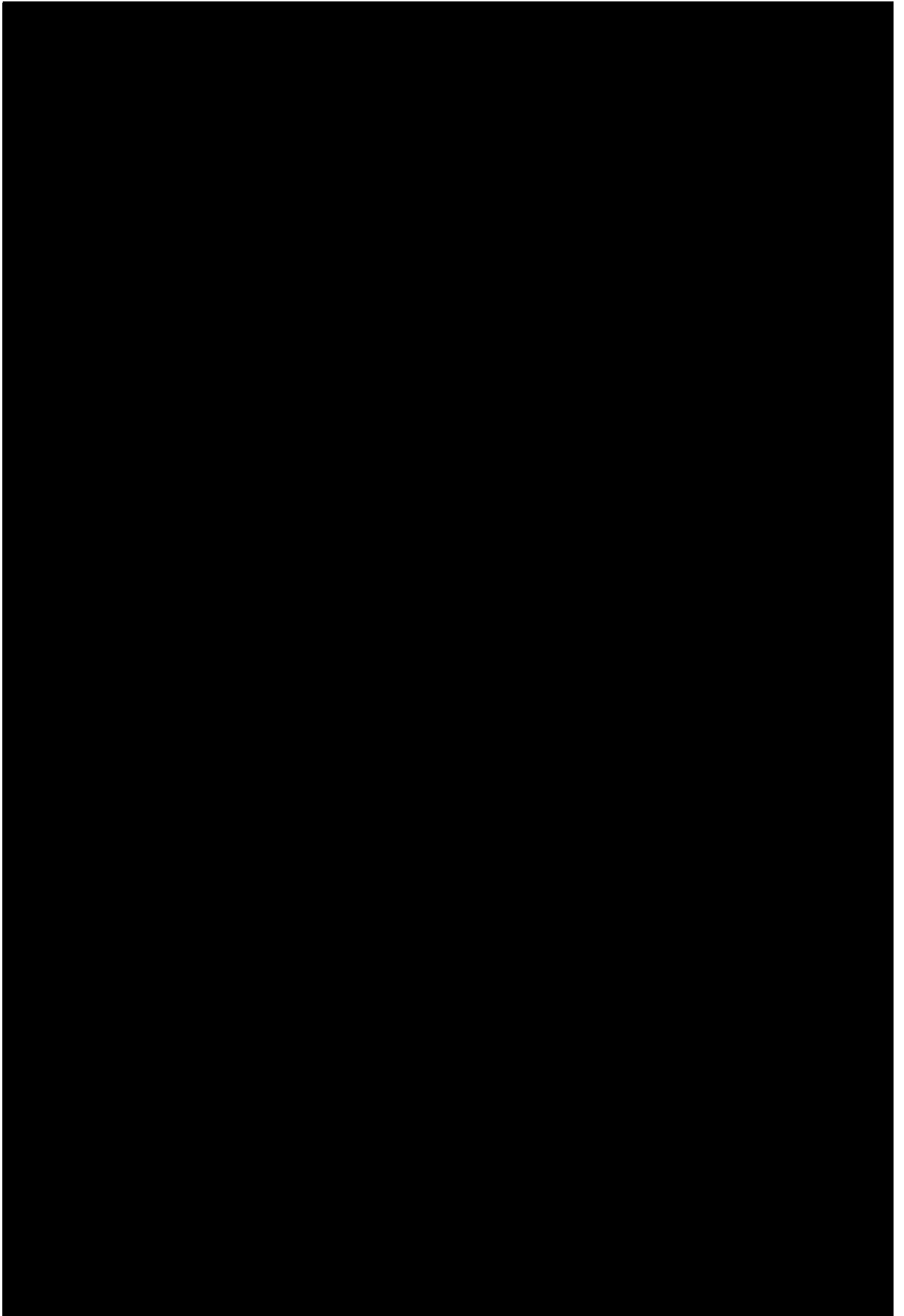


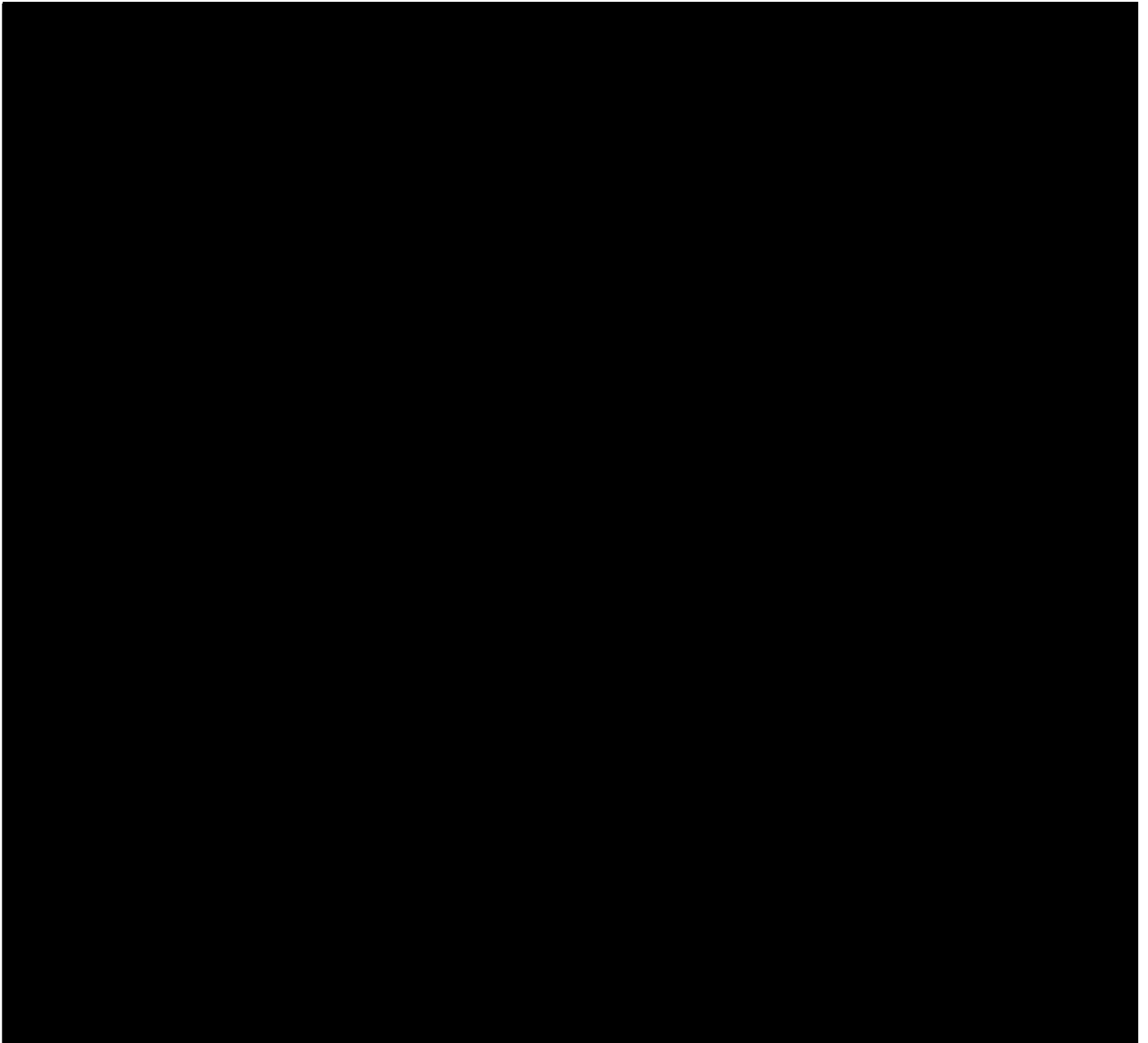












Documents 36-37 are exempt under section 42  
of the *Freedom of Information Act 1989*.

**Hancock, Carly**

---

**From:** Whitten, Meredith  
**Sent:** Sunday, 23 July 2017 3:25 PM  
**To:** Howson, Natalie; Hughes, Rebecca; Whybrow, Mark  
**Subject:** FW: ACD132/2015 United Voice v Phillips Cleaning Services Pty Ltd [SEC=UNCLASSIFIED]  
**Attachments:** ACD132-2015 - United Voice v Phillip Cleaning Service - Order-3062017-Jagot J.pdf

Natalie and Bec

**Federal Court of Australia Order of 30 June 2017 – United Voice ACT Branch (applicant) and Phillips Cleaning Services Pty Ltd (First respondent) and Angelo Di Dio (second Respondent)**

First Respondent and Second Respondent have contravened:

- Section 50 of the *Fair Work Act 2009* by:
  - Failing to pay employees their **ordinary rate of pay for their usual hours worked during each period of school holidays**;
  - Failing to have regard to the **language skills** of four applicants in preparing their letters of appointment;
  - **Not providing any employee with an off-site induction**;
  - **Not paying the six applicants a 17.5% loading on their ordinary pay in respect of the annual leave** which they took in December 2015.
- S 345 of the Act by knowingly making a false and misleading representation to four applicants in their letters of appointment about their workplace rights.
- S 536 (2)(b) of the Act by **not providing employees with a payslip identifying their employer and employer's ABN** in the periods 26/10/10 19/12/11, 08/12 and 06/13 and 2/12/14 and 24/02/15.

**Order**

- First Respondent pay each employee listed within 7 days;
- The respondents pay 60% of the applicants costs of the proceedings;
- The respondents are to file and serve any affidavits on which they rely in relation to penalty by 21 July 2017.
- **The applicants are to file and serve any affidavits on which they rely in relation to penalty by 28 July 2017.**
- **The matter is listed for hearing in relation to penalty at 10.15am on 3 August 2017.**

Key message from UV in the email below:

..... see attached the order for compensation in the Phillips claim for \$251,519. Costs and penalties are yet to be determined. Without putting too fine a point on it every cent of this was paid to Phillips for work not performed but invoiced for by the company.

We also warned the Territory, repeatedly, that it was doing business with a company which was defrauding it and its workforce. Here's hoping that the next time we warn the Territory about a company it deals with our concerns are taken seriously.

Meredith Whitten | Deputy Director-General |

Phone 620 70384 | Mobile 0419 426 308

Business Services Division | Education Directorate | ACT Government

Level 1 Annex 220 Northbourne Avenue Braddon ACT 2601 | GPO Box 158 Canberra ACT 2601 | [www.act.gov.au](http://www.act.gov.au)

[www.det.act.gov.au](http://www.det.act.gov.au) | [Facebook](#) | [Twitter](#) | [Pinterest](#) | [LinkedIn](#) | [Google+](#)

**From:** Noud, Russell  
**Sent:** Friday, 30 June 2017 4:49 PM  
**To:** Whitten, Meredith <Meredith.Whitten@act.gov.au>; Whybrow, Mark <Mark.Whybrow@act.gov.au>  
**Cc:** Overton-Clarke, Bronwen <Bronwen.OvertonClarke@act.gov.au>  
**Subject:** FW: ACD132/2015 United Voice v Phillips Clearing Services Pty Ltd [SEC=UNCLASSIFIED]

Another snarky 'I told you so' from Stefan.

The fact is that I did agree with most of what UV was saying – we just couldn't say so without being seen to try to unduly influence the court.

Regards

Russell

**Russell Noud**

Director Public Sector Industrial Relations | Convenor of Appeals  
Workforce Capability and Governance Division  
Chief Minister and Treasury Directorate | ACT Government  
Level 5, Canberra Nara Centre | GPO Box 158 Canberra City ACT 2601 | Web: [www.act.gov.au](http://www.act.gov.au)  
Phone: (02) 6207 6019 | Fax: (02) 6205 0334 | Mobile: 0413 153433 | Email: [russell.noud@act.gov.au](mailto:russell.noud@act.gov.au)

Please consider the environment before printing this email

---

**From:** Stefan Russell-Uren [<mailto:Stefan.Russell-Uren@unitedvoice.org.au>]  
**Sent:** Friday, 30 June 2017 4:35 PM  
**To:** Noud, Russell  
**Subject:** FW: ACD132/2015 United Voice v Phillips Clearing Services Pty Ltd

Russell,

I know it's been a long day but please see attached the order for compensation in the Phillips claim for \$251,519. Costs and penalties are yet to be determined. Without putting too fine a point on it every cent of this was paid to Phillips for work not performed but invoiced for by the company.

We also warned the Territory, repeatedly, that it was doing business with a company which was defrauding it and its workforce. Here's hoping that the next time we warn the Territory about a company it deals with our concerns are taken seriously.

It was good to see you this morning. Have a nice weekend.

Kind Regards

---

Stefan Russell – Uren

*Legal Officer*  
**United Voice**

(02) 61 201 203 – 0478 729 215

---

**From:** Associate ACT Listings [<mailto:Associate.ACTListings@fedcourt.gov.au>]  
**Sent:** Friday, 30 June 2017 4:00 PM  
**To:** Erryn Cresshull; 'Jim Kekatos'  
**Cc:** [Damien.allen@statechambers.net](mailto:Damien.allen@statechambers.net); Oshie Fagir ([oshie.fagir@greenway.com.au](mailto:oshie.fagir@greenway.com.au)); Stefan Russell-Uren  
**Subject:** RE: ACD132/2015 United Voice v Phillips Clearning Services Pty Ltd

**UNCLASSIFIED**

Dear Parties,

Please find **attached** an amended set of Orders from the hearing in the above matter this morning before Justice Jagot. The previous orders neglected to include the Schedule A amounts to which the orders refer. I apologise for the error and for any confusion caused.

Yours sincerely,

**Lindi Renier Todd | Associate to The Honourable Justice J M Jagot**  
Federal Court of Australia | NSW District Registry  
Level 20, Law Courts Building, Queens Square, Sydney NSW 2000  
T +61 2 9230 8418

---

**From:** Associate ACT Listings  
**Sent:** Friday, 30 June 2017 12:13 PM  
**To:** 'Erryn Cresshull'; 'Jim Kekatos'  
**Cc:** [Damien.allen@statechambers.net](mailto:Damien.allen@statechambers.net); Oshie Fagir ([oshie.fagir@greenway.com.au](mailto:oshie.fagir@greenway.com.au)); Stefan Russell-Uren  
**Subject:** ACD132/2015 United Voice v Phillips Clearning Services Pty Ltd

**UNCLASSIFIED**

Dear Parties,

Following the directions hearing this morning in this matter, the **attached** orders have been made. Accordingly, the matter will be listed for hearing on **3 August 2017 at 10:15am**.

Yours sincerely,

**Lindi Renier Todd | Associate to The Honourable Justice J M Jagot**  
Federal Court of Australia | NSW District Registry  
Level 20, Law Courts Building, Queens Square, Sydney NSW 2000  
T +61 2 9230 8418



Federal Court of Australia

District Registry: Australian Capital Territory

Division: Fair Work

No: ACD132/2015

**UNITED VOICE ACT BRANCH** and others named in the schedule  
Applicant

**PHILLIPS CLEANING SERVICES PTY LTD** and another named in the schedule  
Respondent

### ORDER

**JUDGE:** JUSTICE JAGOT

**DATE OF ORDER:** 30 June 2017

**WHERE MADE:** Canberra

#### THE COURT DECLARES THAT:

1. The First Respondent and Second Respondent have each contravened:

(a) s 50 of the *Fair Work Act 2009* (Cth) by:

- i. failing to pay employees their ordinary rate of pay for their usual hours worked during each period of school holidays;
- ii. failing to have regard to the language skills of the fourth to sixth and eighth applicants in preparing their letters of appointment;
- iii. not providing any employee with an off-site induction; and
- iv. not paying the third, fourth, tenth, fourteen, fifteenth and twenty-second applicants a 17.5% loading on their ordinary pay in respect of the annual leave which they took in December 2015,

in breach of a provision or provisions of the Phillip Cleaning Services and LHMU Clean Start Union Collective Agreement 2010 for ACT Government Schools which is an enterprise agreement within the meaning of s 50 of the Fair Work Act;

(b) s 345 of the Fair Work Act by knowingly making a false and misleading representation to the fourth to sixth and eighth applicants in their letters of appointment about their workplace rights; and

(c) s 536(2)(b) of the Fair Work Act by not providing employees with a payslip identifying their employer and employer's ABN in the periods of about 26 October 2010 and 19



December 2011, August 2012 and June 2013, and 2 December 2014 and 24 February 2015.

**THE COURT ORDERS THAT:**

2. The First Respondent is to pay each of the employees listed in Schedule A the amounts specified in Schedule A within 7 days of this order.
3. The respondents are to pay 60% of the applicants' costs of the proceedings to date on the indemnity basis.
4. The respondents are to file and serve any affidavits on which they rely in relation to penalty by 21 July 2017.
5. The applicants are to file and serve any affidavits on which they rely in relation to penalty by 28 July 2017.
6. The matter is listed for hearing in relation to penalty at 10:15am on 3 August 2017.
7. The parties have liberty to restore the matter to the list on three days' notice.

**Date that entry is stamped: 30 June 2017**

*David Soden*  
Registrar





### Schedule

No: ACD132/2015

Federal Court of Australia  
 District Registry: Australian Capital Territory  
 Division: Fair Work

Second Applicant	NEEKA MWEE
Third Applicant	EH HTOO GYI
Fourth Applicant	JOHNSON MOE JOE
Fifth Applicant	SAW KYAW MYINT SAW
Sixth Applicant	BO RA KHAY YU
Seventh Applicant	BRUCE KELTIE
Eighth Applicant	HTOO YWAI
Ninth Applicant	SAW LAY GAY SOE
Tenth Applicant	JULIA DAH
Twelfth Applicant	JIRAYU MANEESIRAWONG
Thirteenth Applicant	THA WEIN KHAY YU
Fourteenth Applicant	PAW PA YWEL
Fifteenth Applicant	TAR WAR
Sixteenth Applicant	NAY KER PAH EH
Eighteenth Applicant	KAW MU TAW GAY
Nineteenth Applicant	EH TAR MOO
Twentieth Applicant	EH KEH LER
Twenty First Applicant	EH BAW MU SOE KYI PAY
Twenty Second Applicant	LYDIA UTTING
Twenty Third Applicant	GORDANA MARIN



Second Respondent      ANGELO DI DIO

**ASSISTED DISPUTE RESOLUTION**

Applicant                      UNITED VOICE ACT BRANCH

Respondent                      PHILLIPS CLEANING SERVICES PTY LTD

**SCHEDULE A**

<b>Name</b>	<b>School holidays</b>	<b>Leave Loading</b>	<b>Total due</b>
Neeka Mwee	\$12,735.11	-	\$12,735.11
Eh Htoo Gyi	\$20,434.46	\$1,005.37	\$21,439.83
Johnson Moe Joe	\$28,622.22	\$754.03	\$29,376.25
Saw Kyaw Myint Saw	\$11,870.48	-	\$11,870.48
Bo Ra Khay Yu	\$14,666.27	-	\$14,666.27
Bruce Keltie	\$11,075.34	-	\$11,075.34
Htoo Ywai	\$8,102.40	-	\$8,102.40
Julia Dah	\$6,080.98	\$502.80	\$6,583.78
Eh Dah	\$13,070.06	-	\$13,070.06
Jirayu Maneesirawong	\$1,481.45	-	\$1,481.45
Tha Wein Khay Yu	\$6,216.84	-	\$6,216.84
Paw Pa Ywel	\$13,676.75	\$628.50	\$14,305.25
Tar War	\$15,006.79	\$502.80	\$15,509.59
Nay Ker Pah Eh	\$3,119.28	-	\$3,119.28
Kaw Mu Taw Gay	\$18,650.12	-	\$18,650.12
Eh Tar Moo	\$2,732.77	-	\$2,732.77
Eh Keh Ler	\$14,617.82	-	\$14,617.82
Eh Baw Mu Soe Kyi Pay	\$7,481.55	-	\$7,481.55
Lydia Utting	\$19,122.32	\$502.80	\$19,625.12
Gordana Marin	\$22,756.61	-	\$22,756.61



Hancock, Carly

---

**From:** Howson, Natalie  
**Sent:** Sunday, 23 July 2017 4:02 PM  
**To:** Whitten, Meredith; Hughes, Rebecca; Whybrow, Mark  
**Subject:** RE: ACD132/2015 United Voice v Phillips Cleaning Services Pty Ltd [SEC=UNCLASSIFIED]

Thanks Meredith

It is not the most important matter at this point but the UV claim that Phillips was "was defrauding it"(Gov) warrants a response.

Can you add this to the list to follow up. Happy to discuss .

**Natalie Howson** | Director-General **Education Directorate** | ACT Government

T: 02 6205 9158 | M: 0408 291 084 | E: [natalie.howson@act.gov.au](mailto:natalie.howson@act.gov.au)

Level 6, 220 Northbourne Ave Braddon | GPO Box 158 Canberra ACT 2601 | [www.det.act.gov.au](http://www.det.act.gov.au)



*acknowledge the traditional custodians of the lands and waters where we live and work and pay my respects to elders past, present and future.*

---

**From:** Whitten, Meredith  
**Sent:** Sunday, 23 July 2017 3:25 PM  
**To:** Howson, Natalie; Hughes, Rebecca; Whybrow, Mark  
**Subject:** FW: ACD132/2015 United Voice v Phillips Cleaning Services Pty Ltd [SEC=UNCLASSIFIED]

Natalie and Bec

**Federal Court of Australia Order of 30 June 2017 – United Voice ACT Branch (applicant) and Phillips Cleaning Services Pty Ltd (First respondent) and Angelo Di Dio (second Respondent)**

First Respondent and Second Respondent have contravened:

- Section 50 of the *Fair Work Act 2009* by:
  - Failing to pay employees their **ordinary rate of pay for their usual hours worked during each period of school holidays**;
  - Failing to have regard to the **language skills** of four applicants in preparing their letters of appointment;
  - **Not providing any employee with an off-site induction**;
  - **Not paying the six applicants a 17.5% loading on their ordinary pay in respect of the annual leave** which they took in December 2015.
- S 345 of the Act by knowingly making a false and misleading representation to four applicants in their letters of appointment about their workplace rights.
- S 536 (2)(b) of the Act by **not providing employees with a payslip identifying their employer and employer's ABN** in the periods 26/10/10 19/12/11, 08/12 and 06/13 and 2/12/14 and 24/02/15.

**Order**

- First Respondent pay each employee listed within 7 days;
- The respondents pay 60% of the applicants costs of the proceedings;
- The respondents are to file and serve any affidavits on which they rely in relation to penalty by 21 July 2017.

- The applicants are to file and serve any affidavits on which they rely in relation to penalty by 28 July 2017.
- The matter is listed for hearing in relation to penalty at 10.15am on 3 August 2017.

Key message from UV in the email below:

..... see attached the order for compensation in the Phillips claim for \$251,519. Costs and penalties are yet to be determined. Without putting too fine a point on it every cent of this was paid to Phillips for work not performed but invoiced for by the company.

We also warned the Territory, repeatedly, that it was doing business with a company which was defrauding it and its workforce. Here's hoping that the next time we warn the Territory about a company it deals with our concerns are taken seriously.

Meredith Whitten | Deputy Director-General |  
Phone 620 70384 | Mobile 0419 426 308  
Business Services Division | Education Directorate | ACT Government  
Level 1 Annex 220 Northbourne Avenue Braddon ACT 2601 | GPO Box 158 Canberra ACT 2601 | [www.act.gov.au](http://www.act.gov.au)  
[www.det.act.gov.au](http://www.det.act.gov.au) | [Facebook](#) | [Twitter](#) | [Pinterest](#) | [LinkedIn](#) | [Google+](#)

**From:** Noud, Russell  
**Sent:** Friday, 30 June 2017 4:49 PM  
**To:** Whitten, Meredith <[Meredith.Whitten@act.gov.au](mailto:Meredith.Whitten@act.gov.au)>; Whybrow, Mark <[Mark.Whybrow@act.gov.au](mailto:Mark.Whybrow@act.gov.au)>  
**Cc:** Overton-Clarke, Bronwen <[Bronwen.OvertonClarke@act.gov.au](mailto:Bronwen.OvertonClarke@act.gov.au)>  
**Subject:** FW: ACD132/2015 United Voice v Phillips Clearing Services Pty Ltd [SEC=UNCLASSIFIED]

Another snarky 'I told you so' from Stefan.

The fact is that I did agree with most of what UV was saying – we just couldn't say so without being seen to try to unduly influence the court.

Regards

Russell

**Russell Noud**  
Director Public Sector Industrial Relations | Convenor of Appeals  
Workforce Capability and Governance Division  
Chief Minister and Treasury Directorate | ACT Government  
Level 5, Canberra Nara Centre | GPO Box 158 Canberra City ACT 2601 | Web: [www.act.gov.au](http://www.act.gov.au)  
Phone: (02) 6207 6019 | Fax: (02) 6205 0334 | Mobile: 0413 153433 | Email: [russell.noud@act.gov.au](mailto:russell.noud@act.gov.au)

Please consider the environment before printing this email

---

**From:** Stefan Russell-Uren [<mailto:Stefan.Russell-Uren@unitedvoice.org.au>]  
**Sent:** Friday, 30 June 2017 4:35 PM  
**To:** Noud, Russell  
**Subject:** FW: ACD132/2015 United Voice v Phillips Clearing Services Pty Ltd

Russell,

I know it's been a long day but please see attached the order for compensation in the Phillips claim for \$251,519. Costs and penalties are yet to be determined. Without putting too fine a point on it every cent of this was paid to Phillips for work not performed but invoiced for by the company.

We also warned the Territory, repeatedly, that it was doing business with a company which was defrauding it and its workforce. Here's hoping that the next time we warn the Territory about a company it deals with our concerns are taken seriously.

It was good to see you this morning. Have a nice weekend.

Kind Regards

Stefan Russell – Uren

*Legal Officer*  
**United Voice**

(02) 61 201 203 – 0478 729 215

---

**From:** Associate ACT Listings [<mailto:Associate.ACTListings@fedcourt.gov.au>]  
**Sent:** Friday, 30 June 2017 4:00 PM  
**To:** Erryn Cresshull; 'Jim Kekatos'  
**Cc:** [Damien.allen@statechambers.net](mailto:Damien.allen@statechambers.net); Oshie Fagir ([oshie.fagir@greenway.com.au](mailto:oshie.fagir@greenway.com.au)); Stefan Russell-Uren  
**Subject:** RE: ACD132/2015 United Voice v Phillips Clearing Services Pty Ltd

**UNCLASSIFIED**

Dear Parties,

Please find **attached** an amended set of Orders from the hearing in the above matter this morning before Justice Jagot. The previous orders neglected to include the Schedule A amounts to which the orders refer. I apologise for the error and for any confusion caused.

Yours sincerely,

**Lindi Renier Todd | Associate to The Honourable Justice J M Jagot**  
Federal Court of Australia | NSW District Registry  
Level 20, Law Courts Building, Queens Square, Sydney NSW 2000  
T +61 2 9230 8418

---

**From:** Associate ACT Listings  
**Sent:** Friday, 30 June 2017 12:13 PM  
**To:** 'Erryn Cresshull'; 'Jim Kekatos'  
**Cc:** [Damien.allen@statechambers.net](mailto:Damien.allen@statechambers.net); Oshie Fagir ([oshie.fagir@greenway.com.au](mailto:oshie.fagir@greenway.com.au)); Stefan Russell-Uren  
**Subject:** ACD132/2015 United Voice v Phillips Clearing Services Pty Ltd

**UNCLASSIFIED**

Dear Parties,

Following the directions hearing this morning in this matter, the **attached** orders have been made. Accordingly, the matter will be listed for hearing on **3 August 2017** at **10:15am**.

Yours sincerely,

**Lindi Renier Todd | Associate to The Honourable Justice J M Jagot**  
Federal Court of Australia | NSW District Registry  
Level 20, Law Courts Building, Queens Square, Sydney NSW 2000  
T +61 2 9230 8418



Document 40 is exempt under section 36 of  
the *Freedom of Information Act 1989*.

Hancock, Carly

---

**From:** Whybrow, Mark  
**Sent:** Monday, 24 July 2017 9:44 PM  
**To:** Whitten, Meredith; Howson, Natalie; Hughes, Rebecca  
**Subject:** RE: ACD132/2015 United Voice v Phillips Clearing Services Pty Ltd [SEC=UNCLASSIFIED]

Please note advice I receive today was that UV was seeking this expanded this finding, like the first finding for it to be made not only against the Company but Mr Angelo Di Dio personally.

Cheers  
 Mark

Mark Whybrow | Chief Finance Officer | <mailto:mark.whybrow@act.gov.au>  
 Phone: 02 62052685 | Fax: 02 62055472 | Mobile: 0434537612 |  
 Education | ACT Government |  
 Level 1 Annex, 220 Northbourne Avenue, Braddon | GPO Box 158 Canberra ACT 2601 |  
<http://www.education.act.gov.au/>

---

**From:** Whitten, Meredith  
**Sent:** Sunday, 23 July 2017 3:25 PM  
**To:** Howson, Natalie; Hughes, Rebecca; Whybrow, Mark  
**Subject:** FW: ACD132/2015 United Voice v Phillips Clearing Services Pty Ltd [SEC=UNCLASSIFIED]

Natalie and Bec

**Federal Court of Australia Order of 30 June 2017 – United Voice ACT Branch (applicant) and Phillips Cleaning Services Pty Ltd (First respondent) and Angelo Di Dio (second Respondent)**

First Respondent and Second Respondent have contravened:

- Section 50 of the *Fair Work Act 2009* by:
  - Failing to pay employees their **ordinary rate of pay for their usual hours worked during each period of school holidays;**
  - Failing to have regard to the **language skills** of four applicants in preparing their letters of appointment;
  - **Not providing any employee with an off-site induction;**
  - **Not paying the six applicants a 17.5% loading on their ordinary pay in respect of the annual leave** which they took in December 2015.
- S 345 of the Act by knowingly making a false and misleading representation to four applicants in their letters of appointment about their workplace rights.
- S 536 (2)(b) of the Act by **not providing employees with a payslip identifying their employer and employer's ABN** in the periods 26/10/10 19/12/11, 08/12 and 06/13 and 2/12/14 and 24/02/15.

**Order**

- First Respondent pay each employee listed within 7 days;
- The respondents pay 60% of the applicants costs of the proceedings;
- The respondents are to file and serve any affidavits on which they rely in relation to penalty by 21 July 2017.
- **The applicants are to file and serve any affidavits on which they rely in relation to penalty by 28 July 2017.**
- **The matter is listed for hearing in relation to penalty at 10.15am on 3 August 2017.**

Key message from UV in the email below:

..... see attached the order for compensation in the Phillips claim for \$251,519. Costs and penalties are yet to be determined. Without putting too fine a point on it every cent of this was paid to Phillips for work not performed but invoiced for by the company.

We also warned the Territory, repeatedly, that it was doing business with a company which was defrauding it and its workforce. Here's hoping that the next time we warn the Territory about a company it deals with our concerns are taken seriously.

Meredith Whitten | Deputy Director-General |

Phone 620 70384 | Mobile 0419 426 308

Business Services Division | Education Directorate | ACT Government

Level 1 Annex 220 Northbourne Avenue Braddon ACT 2601 | GPO Box 158 Canberra ACT 2601 | [www.act.gov.au](http://www.act.gov.au)

[www.det.act.gov.au](http://www.det.act.gov.au) | [Facebook](#) | [Twitter](#) | [Pinterest](#) | [LinkedIn](#) | [Google+](#)

From: Noud, Russell

Sent: Friday, 30 June 2017 4:49 PM

To: Whitten, Meredith <[Meredith.Whitten@act.gov.au](mailto:Meredith.Whitten@act.gov.au)>; Whybrow, Mark <[Mark.Whybrow@act.gov.au](mailto:Mark.Whybrow@act.gov.au)>

Cc: Overton-Clarke, Bronwen <[Bronwen.OvertonClarke@act.gov.au](mailto:Bronwen.OvertonClarke@act.gov.au)>

Subject: FW: ACD132/2015 United Voice v Phillips Clearing Services Pty Ltd [SEC=UNCLASSIFIED]

Another snarky 'I told you so' from Stefan.

The fact is that I did agree with most of what UV was saying – we just couldn't say so without being seen to try to unduly influence the court.

Regards

Russell

Russell Noud

Director Public Sector Industrial Relations | Convenor of Appeals

Workforce Capability and Governance Division

Chief Minister and Treasury Directorate | ACT Government

Level 5, Canberra Nara Centre | GPO Box 158 Canberra City ACT 2601 | Web: [www.act.gov.au](http://www.act.gov.au)

Phone: (02) 6207 6019 | Fax: (02) 6205 0334 | Mobile: 0413 153433 | Email: [russell.noud@act.gov.au](mailto:russell.noud@act.gov.au)

Please consider the environment before printing this email

---

**From:** Stefan Russell-Uren [<mailto:Stefan.Russell-Uren@unitedvoice.org.au>]

**Sent:** Friday, 30 June 2017 4:35 PM

**To:** Noud, Russell

**Subject:** FW: ACD132/2015 United Voice v Phillips Clearing Services Pty Ltd

Russell,

I know it's been a long day but please see attached the order for compensation in the Phillips claim for \$251,519. Costs and penalties are yet to be determined. Without putting too fine a point on it every cent of this was paid to Phillips for work not performed but invoiced for by the company.

We also warned the Territory, repeatedly, that it was doing business with a company which was defrauding it and its workforce. Here's hoping that the next time we warn the Territory about a company it deals with our concerns are taken seriously.

It was good to see you this morning. Have a nice weekend.

Kind Regards

Stefan Russell – Uren

*Legal Officer*  
**United Voice**

(02) 61 201 203 – 0478 729 215

---

**From:** Associate ACT Listings [<mailto:Associate.ACTListings@fedcourt.gov.au>]  
**Sent:** Friday, 30 June 2017 4:00 PM  
**To:** Erryn Cresshull; 'Jim Kekatos'  
**Cc:** [Damien.allen@statechambers.net](mailto:Damien.allen@statechambers.net); Oshie Fagir ([oshie.fagir@greenway.com.au](mailto:oshie.fagir@greenway.com.au)); Stefan Russell-Uren  
**Subject:** RE: ACD132/2015 United Voice v Phillips Clearing Services Pty Ltd

**UNCLASSIFIED**

Dear Parties,

Please find **attached** an amended set of Orders from the hearing in the above matter this morning before Justice Jagot. The previous orders neglected to include the Schedule A amounts to which the orders refer. I apologise for the error and for any confusion caused.

Yours sincerely,

**Lindi Renier Todd | Associate to The Honourable Justice J M Jagot**  
Federal Court of Australia | NSW District Registry  
Level 20, Law Courts Building, Queens Square, Sydney NSW 2000  
T +61 2 9230 8418

---

**From:** Associate ACT Listings  
**Sent:** Friday, 30 June 2017 12:13 PM  
**To:** 'Erryn Cresshull'; 'Jim Kekatos'  
**Cc:** [Damien.allen@statechambers.net](mailto:Damien.allen@statechambers.net); Oshie Fagir ([oshie.fagir@greenway.com.au](mailto:oshie.fagir@greenway.com.au)); Stefan Russell-Uren  
**Subject:** ACD132/2015 United Voice v Phillips Clearing Services Pty Ltd

**UNCLASSIFIED**

Dear Parties,

Following the directions hearing this morning in this matter, the **attached** orders have been made. Accordingly, the matter will be listed for hearing on **3 August 2017 at 10:15am**.

Yours sincerely,

**Lindi Renier Todd | Associate to The Honourable Justice J M Jagot**  
Federal Court of Australia | NSW District Registry  
Level 20, Law Courts Building, Queens Square, Sydney NSW 2000  
T +61 2 9230 8418

Hancock, Carly

---

**From:** Gstrein, Kylie  
**Sent:** Friday, 28 July 2017 10:10 AM  
**To:** Ceramidas, Joshua; Howson, Natalie  
**Cc:** Whybrow, Mark; Whitten, Meredith  
**Subject:** MIN17/731: Cleaning Services at ACT Public Schools – Services Agreement [SEC=UNCLASSIFIED]  
**Attachments:** MIN17371 MinBrief Cleaning Services Agreement.docx; MIN17731 Attachment A - Summary of Significant Contract Requirements.docx

Good morning Josh and Natalie,

Please see the attached brief and attachments for MIN17/731: Cleaning Services at ACT Public Schools – Services Agreement, provided to you on behalf of Mark Whybrow Director, Strategic Finance.

Kind regards,

Kylie

Kylie Gstrein | Executive Support Officer to

Meredith Whitten, Deputy Director-General

Business Services Division

Education Directorate | ACT Government

T: 02 6207 1278 | E: [kylie.gstrein@act.gov.au](mailto:kylie.gstrein@act.gov.au)

Level 1, 220 Northbourne Ave Braddon | GPO Box 158, Canberra, ACT 2601 | [www.education.act.gov.au](http://www.education.act.gov.au)  
<http://www.act.gov.au/>>

UNCLASSIFIED

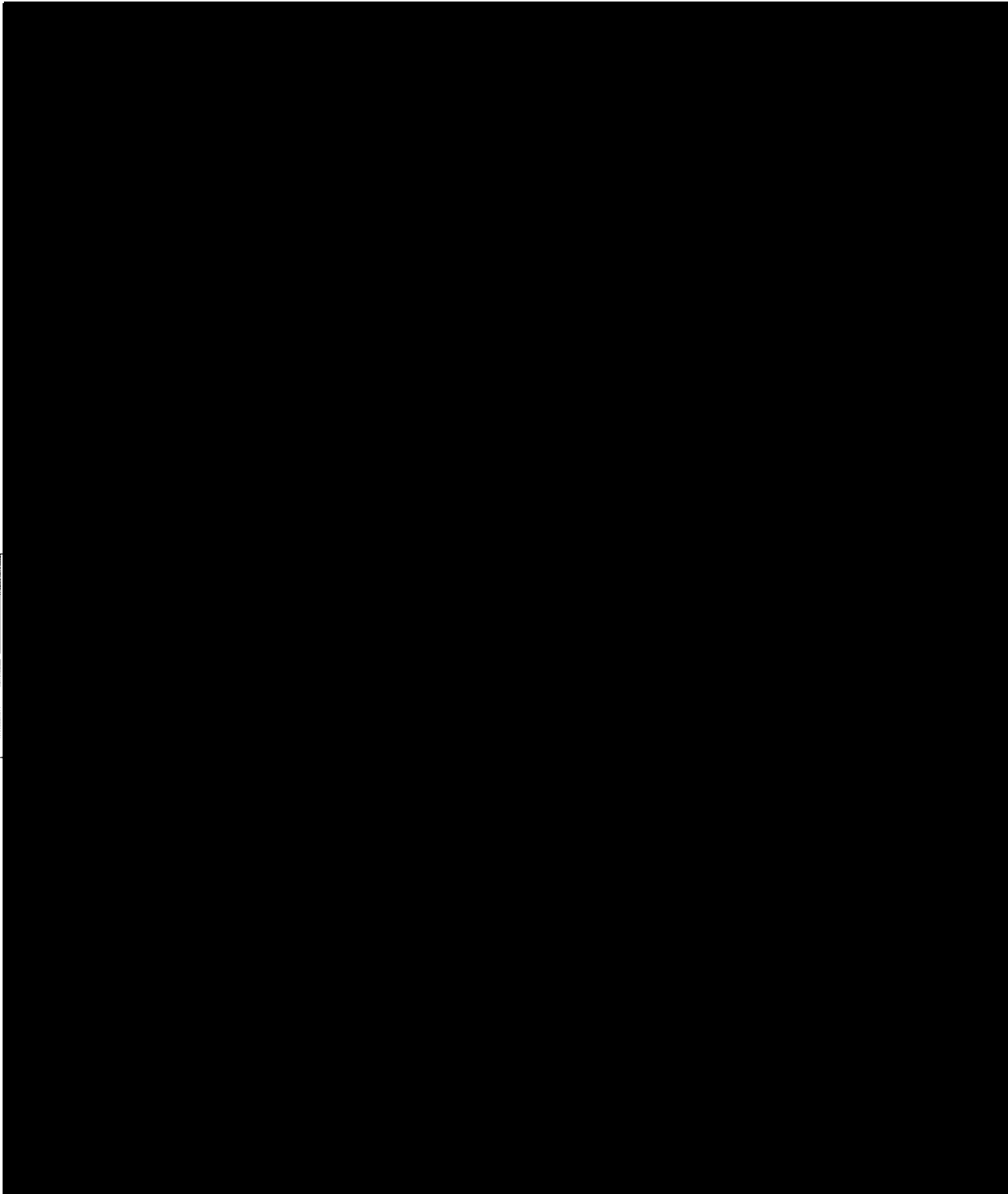
**To:** Minister for Education and Early Childhood  
Development

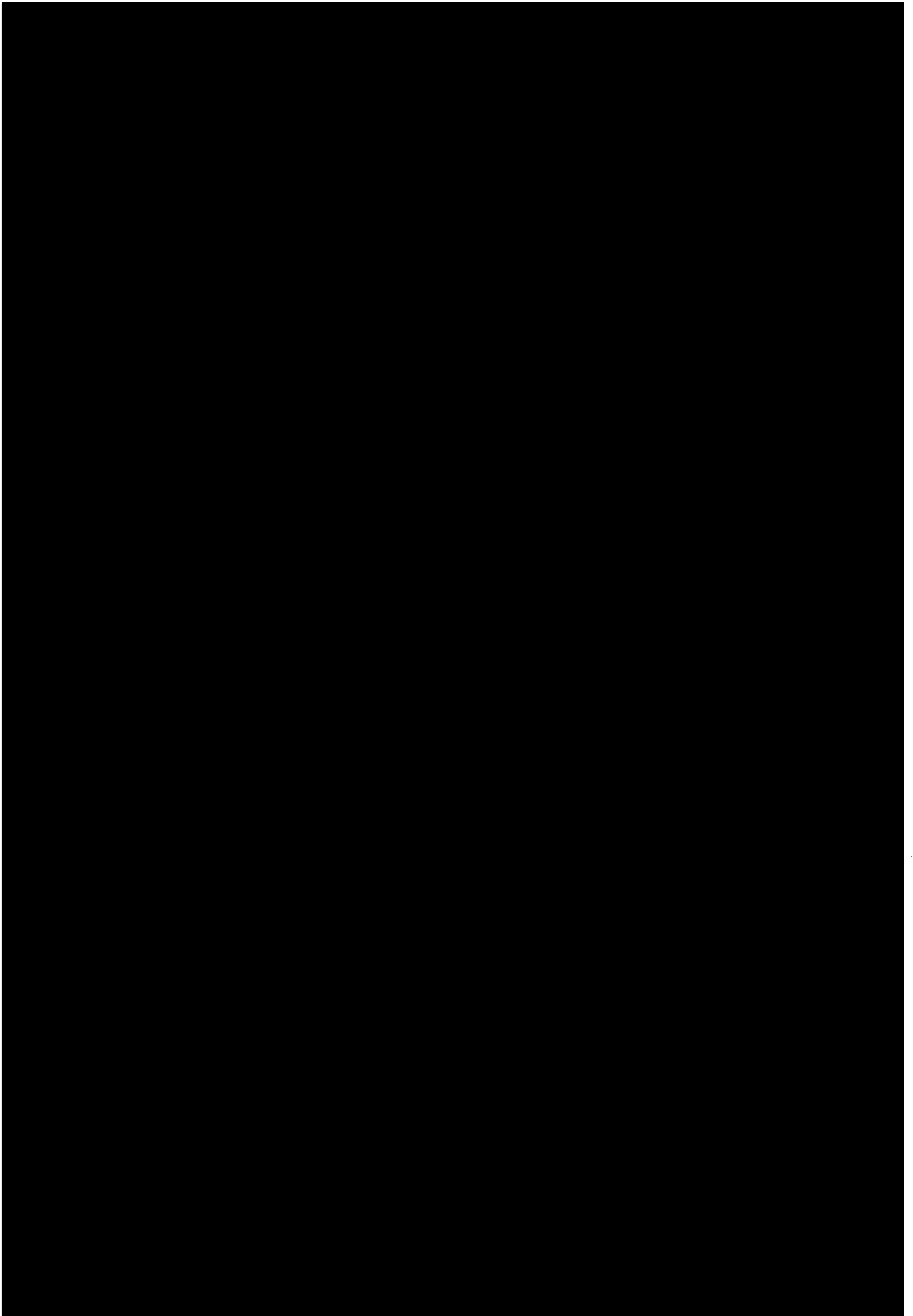
TRIM No: MIN17/731

**From:** Director-General

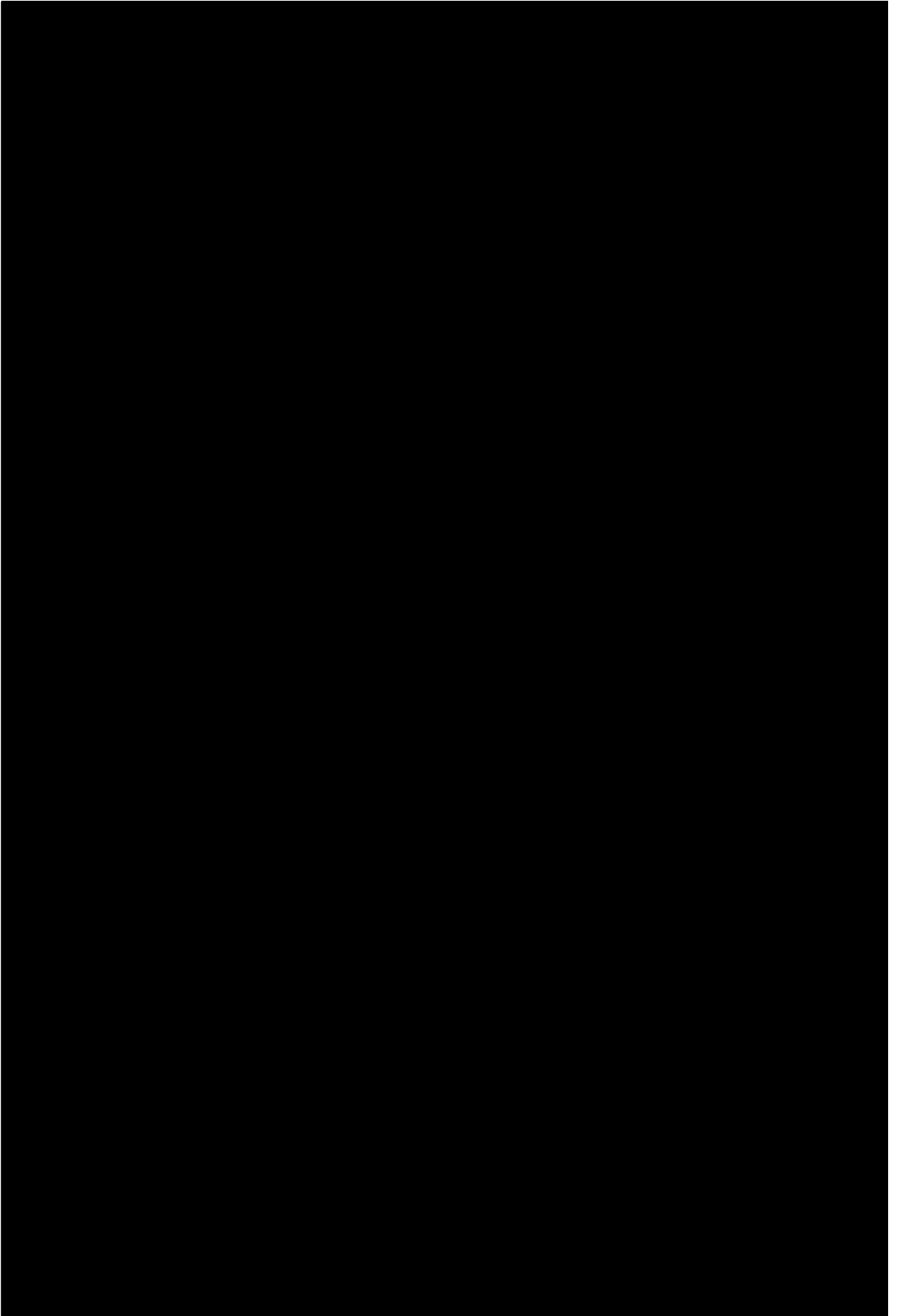
**Date:** 25 July 2017

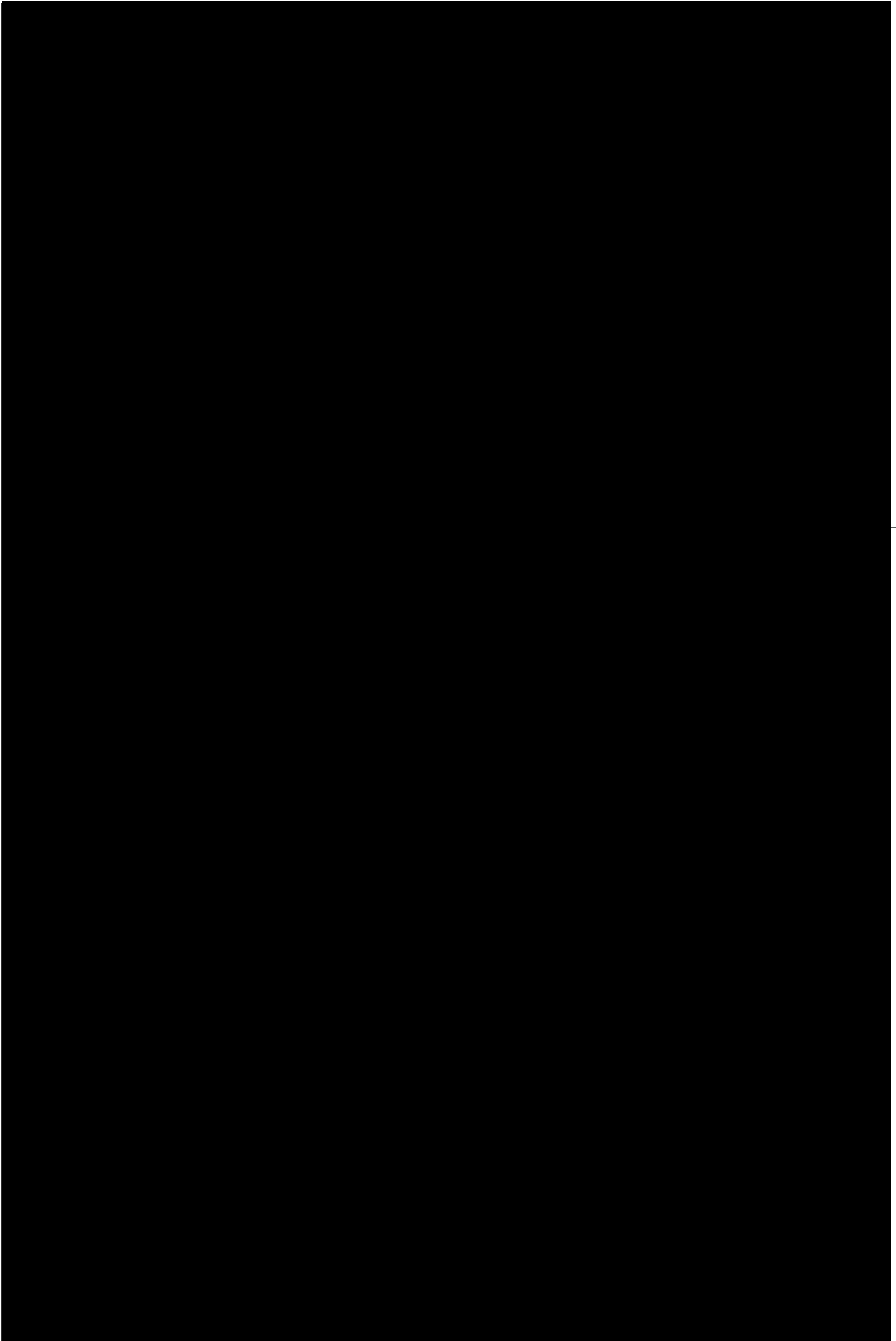
**Subject:** Cleaning Services at ACT Public Schools – Services Agreement

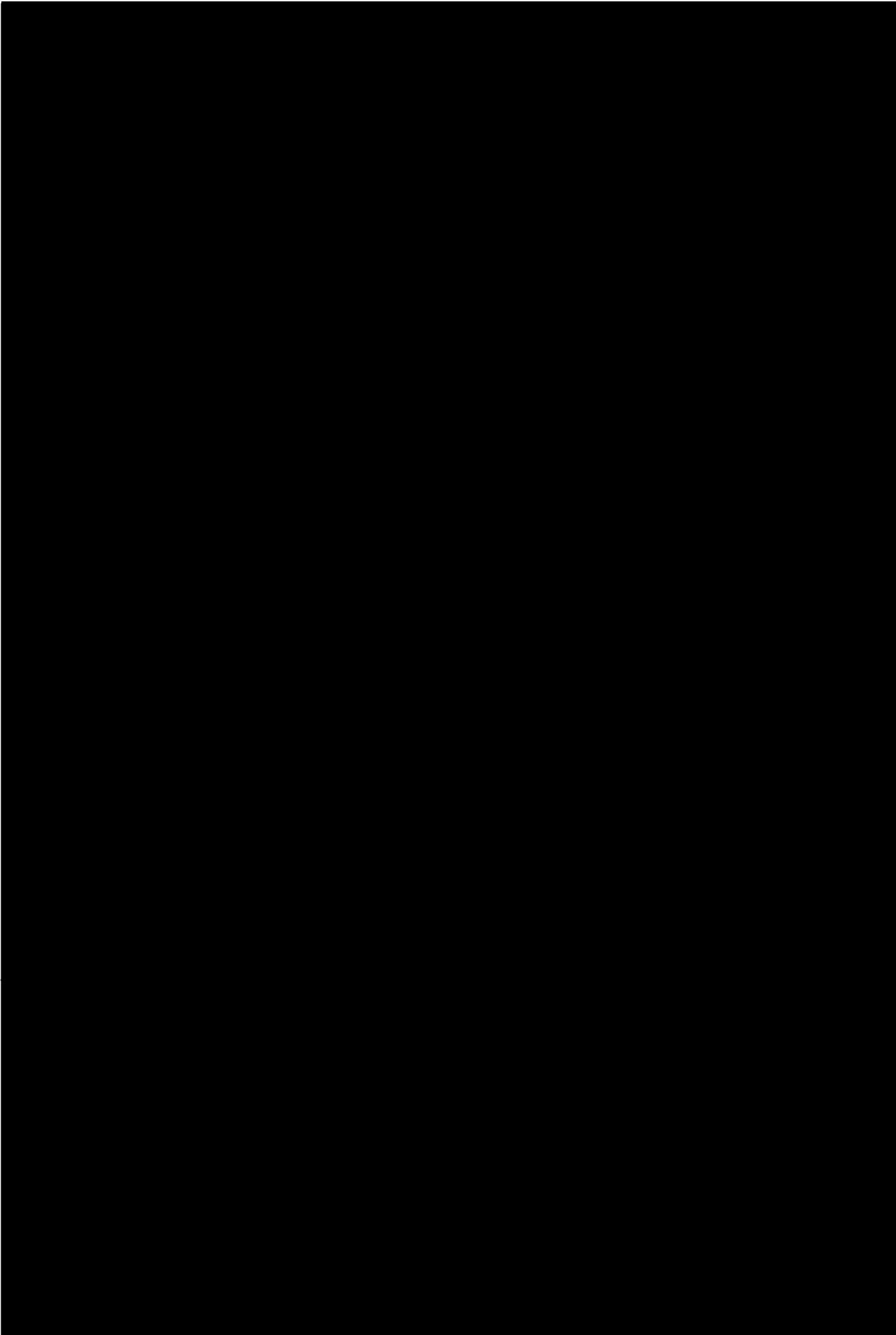












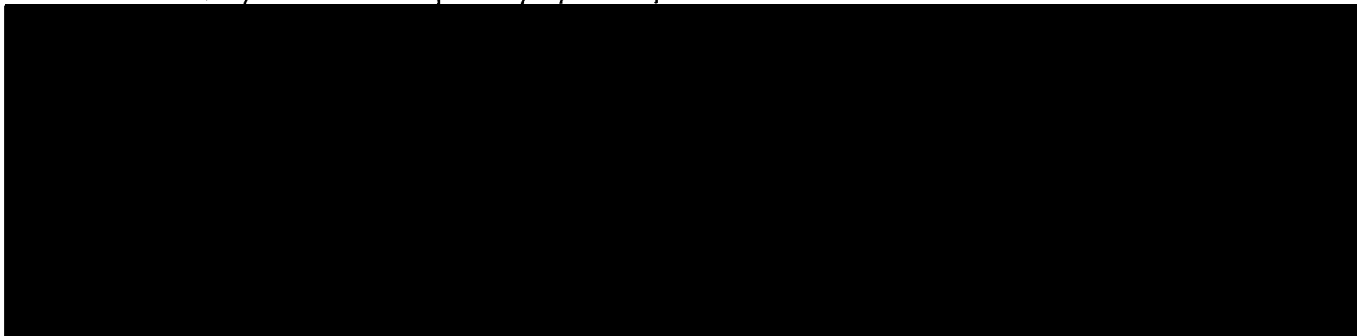


*Federal Court of Australia Order of 30 June 2017 – United Voice ACT Branch (applicant) and Phillips Cleaning Services Pty Ltd (First respondent) and Angelo Di Dio (Second Respondent)*

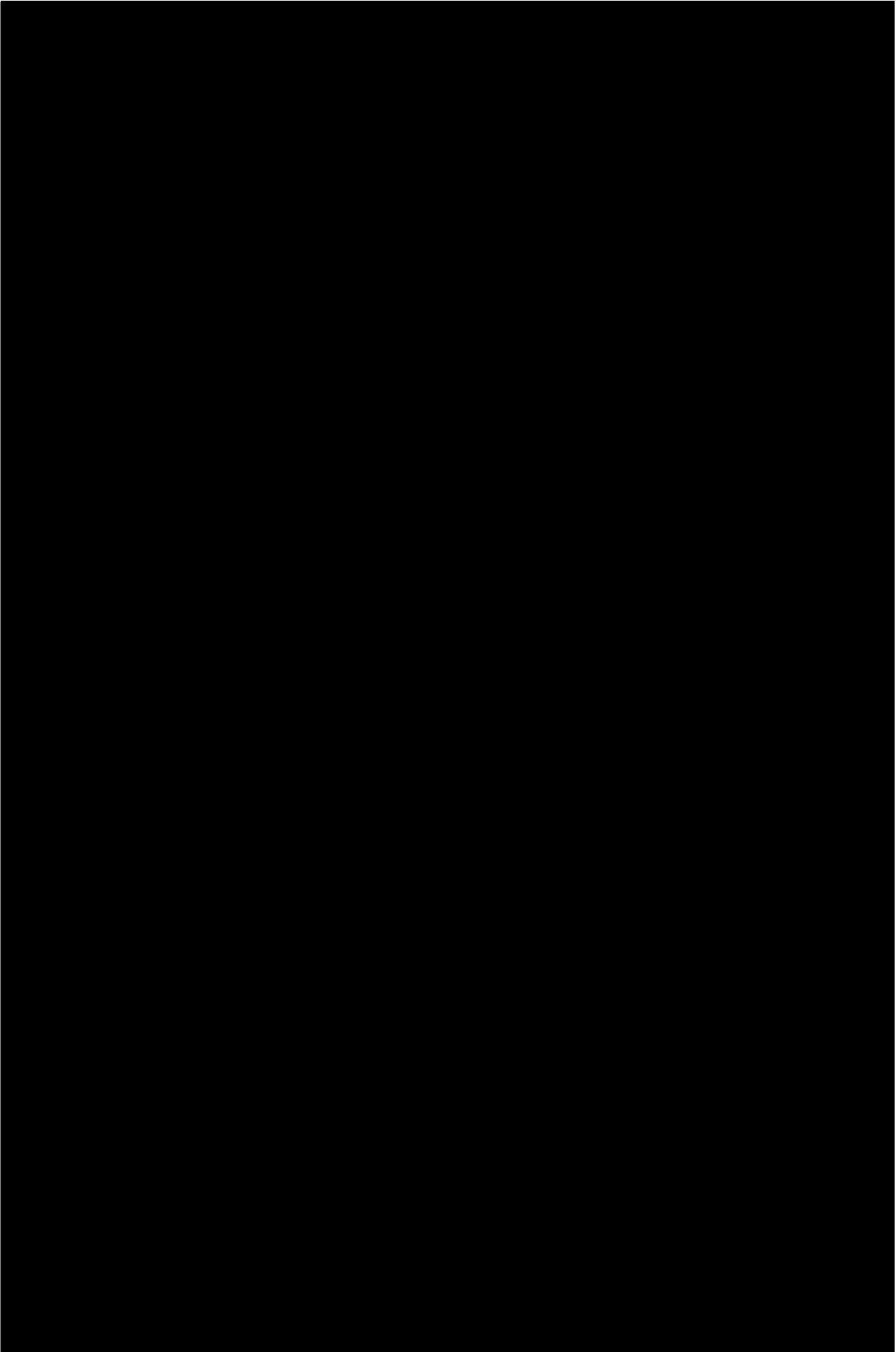
42. On 30 June 2017, the Federal Court found the First and Second Respondent contravened:

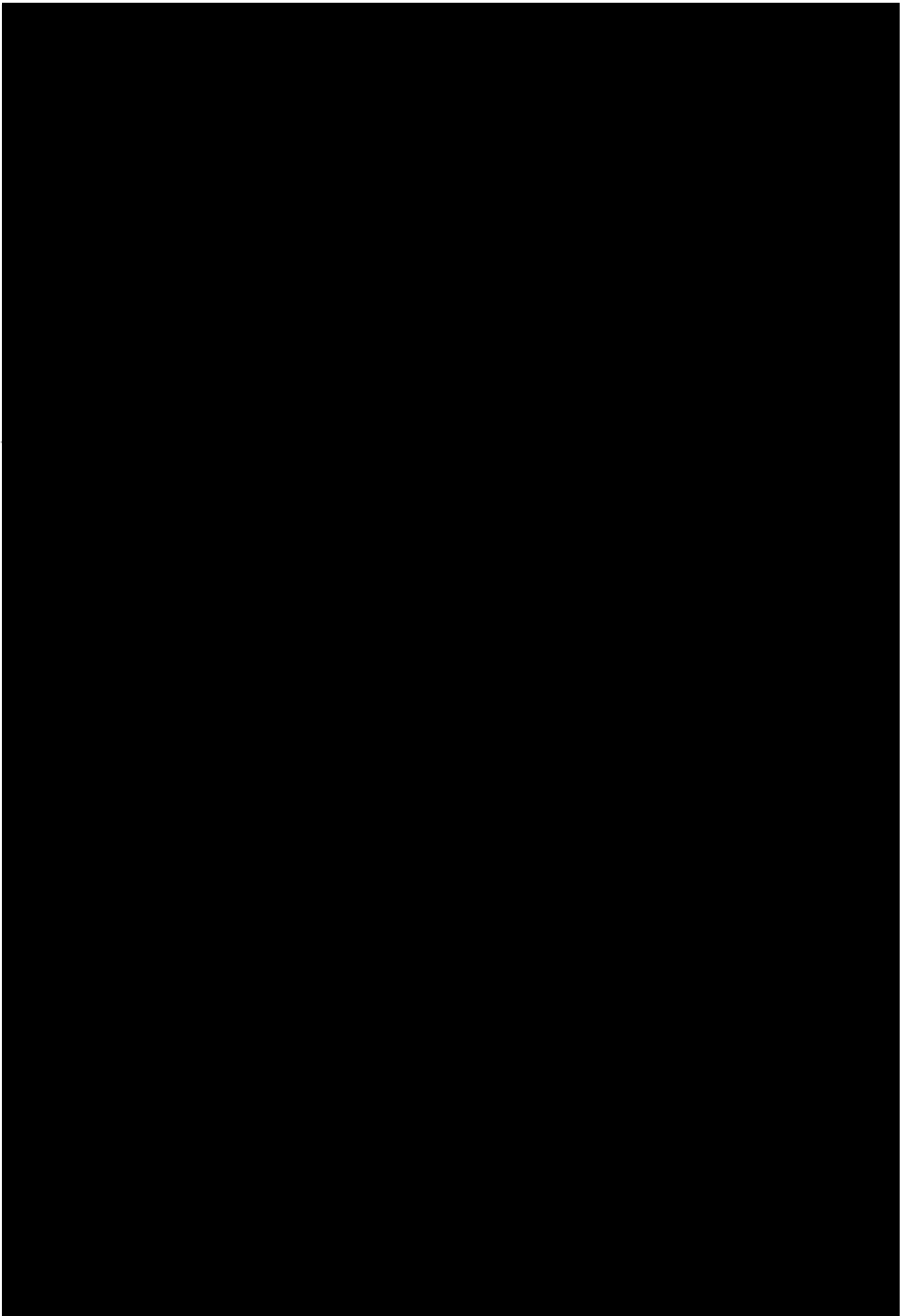
- a. Section 50 of the *Fair Work Act 2009* (the Act) by:
  - i. Failing to pay employees their ordinary rate of pay for their usual hours worked during each period of school holidays;
  - ii. Failing to have regard to the language skills of four applicants in preparing their letters of appointment;
  - iii. Not providing any employee with an off-site induction;
  - iv. Not paying the six applicants a 17.5% loading on their ordinary pay in respect of the annual leave which they took in December 2015.
- b. Section 345 of the Act by knowingly making a false and misleading representation to four applicants in their letters of appointment about their workplace rights.
- c. Section 536 (2)(b) of the Act by not providing employees with a payslip identifying their employer and employer's ABN in the periods 26/10/10 19/12/11, 08/12 and 06/13 and 2/12/14 and 24/02/15.

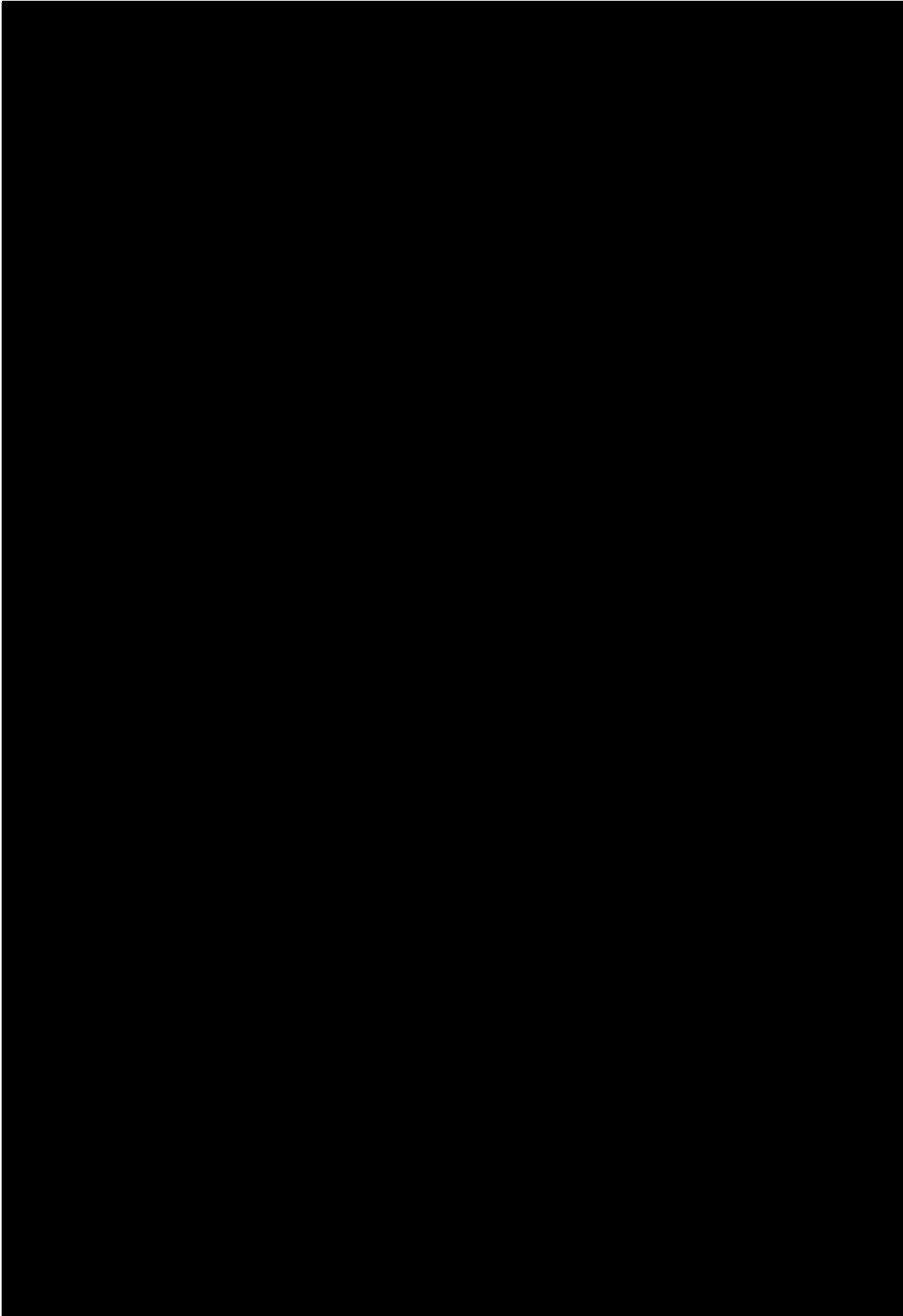
43. The Court ordered the:

- a. First Respondent to pay each employee within 7 days;
  - b. The respondents pay 60% of the applicants costs of the proceedings;
  - c. The respondents are to file and serve any affidavits on which they rely in relation to penalty by 21 July 2017.
  - d. The applicants (United Voice) are to file and serve any affidavits on which they rely in relation to penalty by 28 July 2017.
- 

UNCLASSIFIED

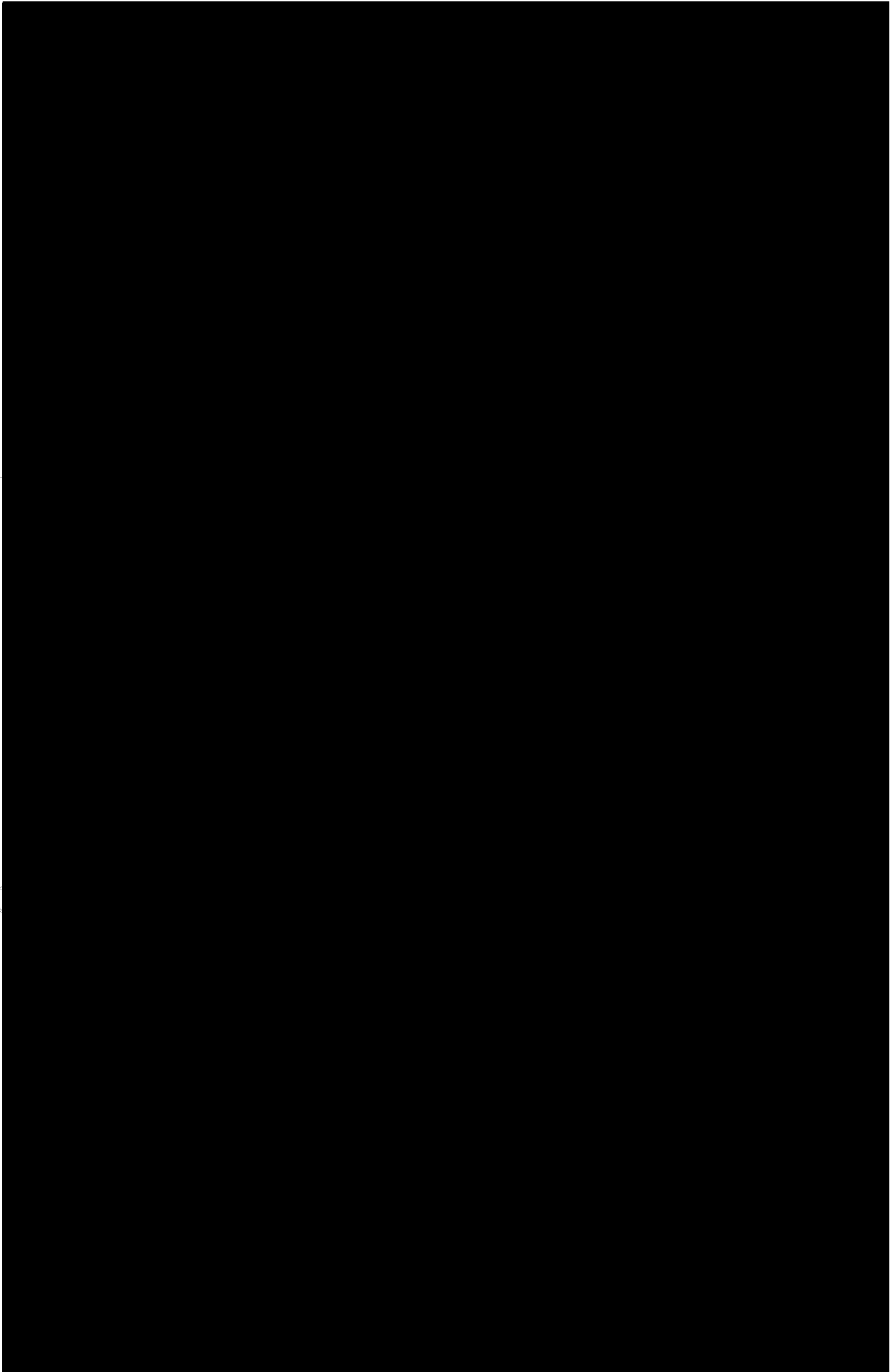


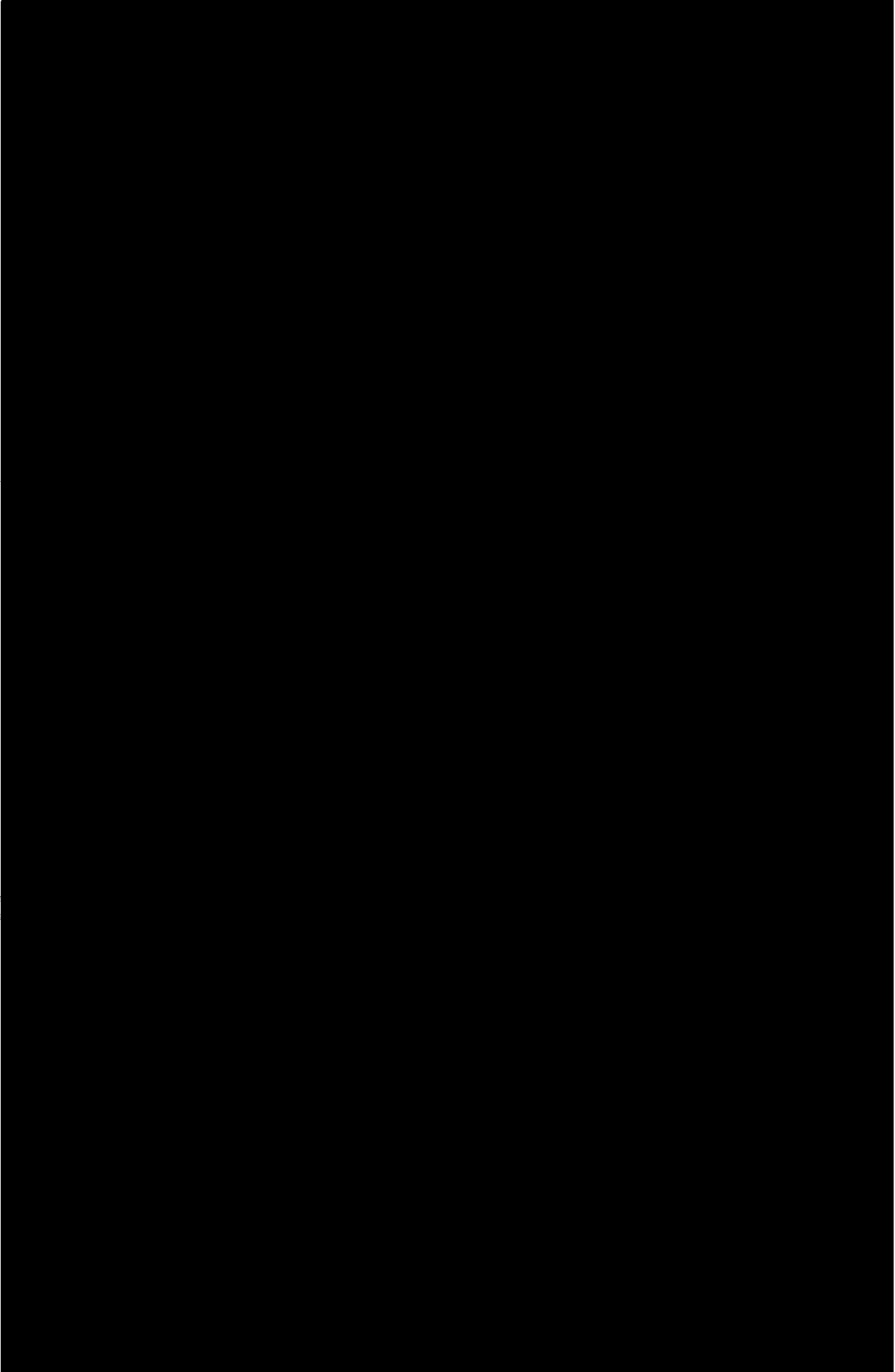


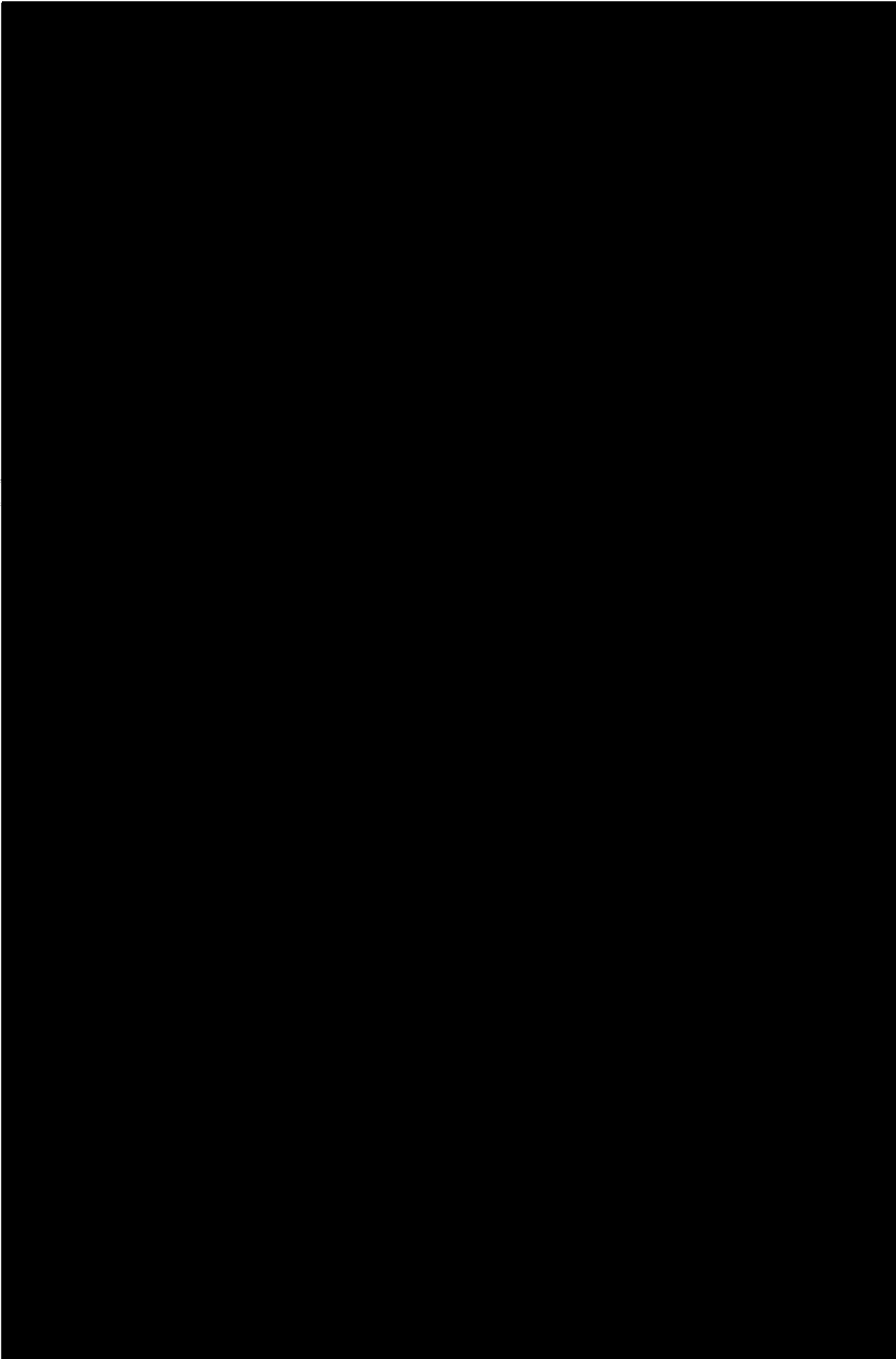


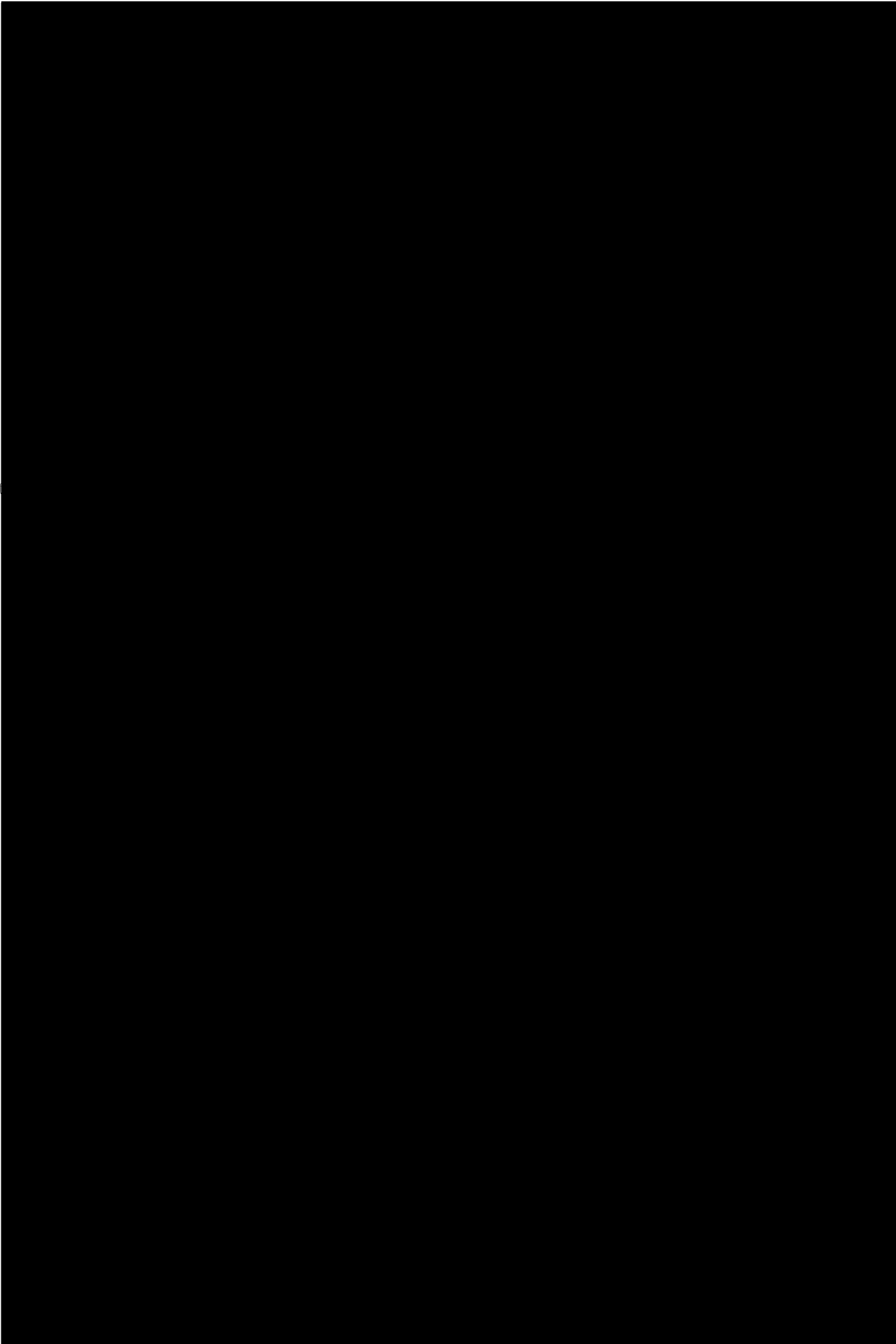












Hancock, Carly

---

**From:** Whybrow, Mark  
**Sent:** Friday, 1 September 2017 11:48 AM  
**To:** Whitten, Meredith  
**Subject:** FW: United Voice v Phillips Cleaning Service - Penalty decision [SEC=UNCLASSIFIED, DLM=For-Official-Use-Only]  
**Attachments:** 17.9.1 Phillips Cleaning Penalty decision.pdf

FYi

Cheers

Mark

Mark Whybrow | Chief Finance Officer | <mailto:mark.whybrow@act.gov.au> <<mailto:mark.whybrow@act.gov.au>>

Phone: 02 62052685 | Fax: 02 62055472 | Mobile: 0434537612 |

Education | ACT Government |

Level 1 Annex, 220 Northbourne Avenue, Braddon | GPO Box 158 Canberra ACT 2601 |

<http://www.education.act.gov.au/>

**From:** Stefan Russell-Uren [<mailto:Stefan.Russell-Uren@unitedvoice.org.au>]  
**Sent:** Friday, 1 September 2017 11:16 AM  
**To:** Oshie Fagir ([oshie.fagir@greenway.com.au](mailto:oshie.fagir@greenway.com.au))  
**Cc:** Noud, Russell; Whybrow, Mark; [zsmith@act.cfmeu.asn.au](mailto:zsmith@act.cfmeu.asn.au); [ghamilton@act.cfmeu.asn.au](mailto:ghamilton@act.cfmeu.asn.au); [Jacqui.Agius@aeuact.org.au](mailto:Jacqui.Agius@aeuact.org.au)  
**Subject:** United Voice v Phillips Cleaning Service - Penalty decision

Please see the enclosed.

Kind Regards

Stefan Russell – Uren

Legal Officer

United Voice

(02) 61 201 203 – 0478 729 215

## FEDERAL COURT OF AUSTRALIA

## United Voice v Lloyds Services ACT Pty Ltd [2017] FCA 1007

File number(s): ACD 132 of 2015

Judge(s): JAGOT J

Date of judgment: 1 September 2017

Catchwords: **INDUSTRIAL LAW** – first and second respondents contravened provisions of the *Fair Work Act 2009* (Cth) – pecuniary penalties under the *Fair Work Act 2009* (Cth)

Legislation: *Fair Work Act 2009* (Cth) ss 50, 536, 345, 557

Cases cited: *Commonwealth v Director, Fair Work Building Industry Inspectorate* [2015] HCA 46; (2015) 326 ALR 476  
*Fair Work Ombudsman v Grouped Property Services Pty Ltd (No 2)* [2017] FCA 557  
*Sayed v Construction, Forestry, Mining and Energy Union* (2016) 239 FCR 336; [2016] FCAFC 4  
*United Voice v Phillip Cleaning Service Pty Ltd* [2017] FCA 392

Date of hearing: 3 August 2017

Registry: Australian Capital Territory

Division: Fair Work Division

National Practice Area: Employment & Industrial Relations

Category: Catchwords

Number of paragraphs: 19

Counsel for the Applicants: Mr O Fagir

Counsel for the Respondents: Mr D Allen

Solicitor for the Applicants: Mr S Russell-Uren of United Voice

Solicitor for the Respondents: Kekatos Lawyers

**ORDERS**

ACD 132 of 2015

**BETWEEN:**            **UNITED VOICE**  
First Applicant

**NEEKA MWEE**  
Second Applicant

**EH HTOO GYI** (and others named in the Schedule)  
Third Applicant

**AND:**                 **LLOYDS SERVICES ACT PTY LTD**  
First Respondent

**ANGELO DI DIO**  
Second Respondent

**JUDGE:**             **JAGOT J**

**DATE OF ORDER:**  **1 SEPTEMBER 2017**

**THE COURT ORDERS THAT:**

1. The first respondent pay a pecuniary penalty of \$110,000 for its contraventions of ss 50, 345(1) and 536(2)(b) of the *Fair Work Act 2009* (Cth).
2. The second respondent pay a pecuniary penalty of \$20,000 for his contraventions of ss 50, 345(1) and 536(2)(b) of the *Fair Work Act 2009* (Cth).
3. The pecuniary penalties be paid to the first applicant, United Voice, within 28 days.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.



## REASONS FOR JUDGMENT

### JAGOT J:

1 These reasons for judgment concern penalties to be imposed on the respondents for contraventions of the *Fair Work Act 2009* (Cth) as found in my **principal judgment**, *United Voice v Phillip Cleaning Service Pty Ltd* [2017] FCA 392. At [50] of my principal judgment I found that:

PCS and Mr Di Dio have each contravened:

(1) s 50 of the Fair Work Act by:

- (a) failing to pay employees their ordinary rate of pay for their usual hours worked during each period of school holidays;
- (b) failing to have regard to the language skills of the fourth to sixth and eighth applicants in preparing their letters of appointment;
- (c) not providing any employee with an off-site induction; and
- (d) not paying the third, fourth, tenth, fourteen, fifteenth and twenty-second applicants a 17.5% loading on their ordinary pay in respect of the annual leave which they took in December 2015,

in breach of a provision or provisions of the *Phillip Cleaning Services and LHMU Clean Start Union Collective Agreement 2010 for ACT Government Schools* which is an enterprise agreement within the meaning of s 50 of the Fair Work Act;

(2) s 345 of the Fair Work Act by knowingly making a false and misleading representation to the fourth to sixth and eighth applicants in their letters of appointment about their workplace rights;

(3) s 536(2)(b) of the Fair Work Act by not providing employees with a payslip identifying their employer and employer's ABN in the periods of about 26 October 2010 and 19 December 2011, August 2012 and June 2013, and 2 December 2014 and 24 February 2015.

2 These reasons are to be read with my principal judgment. I continue to use the terms defined in the principal judgment in these reasons, albeit recognising that the first respondent has since changed its name to Lloyd's Cleaning ACT Pty Ltd.

3 Subsequent to the principal judgment the respondents have carried out or failed to carry out certain acts which persuade me that the considerations of deterrence, both specific and general, are of particular significance in the present case. They also persuade me that the respondents continue to refuse to acknowledge their responsibility for the contraventions or any obligation to rectify them. As such, it is not merely that the respondents cannot be found to be contrite; the respondents may be inferred to have deliberately taken steps to place their

- 2 -

assets beyond the reach of the applicants who have been systematically underpaid as a result of Mr Di Dio's view, as found at [14] of the principal judgment, that he "felt entitled to run PCS as he thought fit irrespective of any legal obligations of PCS to its employees".

4 Given their conduct it may come as no surprise that the respondents have not paid the moneys found to be owed to the applicants. Further, as the applicants submitted, the additional evidence establishes that:

- (a) On 27 May 2016, immediately before the filing of the defence, charges over all PCS property were registered in favour of two Cassiniti entities, Accolade Advisory and Reliance Financial Services.
- (b) On 22 June 2016, immediately after filing the defence, a further charge over all PCS property was registered in favour of Reliance Financial Services.
- (c) On 21 April 2017, that is the date of the Decision, Mr Di Dio transferred real estate owned by him to his wife. The transfer instrument was witnessed by Mr Cassiniti.
- (d) On 1 May 2017 Mr Di Dio changed the name of the first respondent to "Lloyd's Cleaning ACT Pty Ltd".
- (e) On 18 July 2017 a caveat over real estate owned by Mr Di Dio and his wife as joint tenants was registered in in favour of Accolade Advisory.

5 The evidence also establishes that Accolade Advisory and Reliance Financial Services are two of the Cassiniti organisations who are alleged to have been owed substantial debts by the corporations which Mr Di Dio established in a failed attempt to maintain that PCS did not employ the employees. As explained in the principal judgment at [9]:

I do not accept that Mr Di Dio thought that a company other than PCS employed the employees at any time. I consider that the objective evidence discloses that Mr Di Dio knew at all material times that PCS employed the employees. At best, Mr Di Dio might have hoped that the structure he created using other companies might have shielded PCS from its obligations as an employer and that he was willing to see if this strategy would work if tested. If it worked, it would best serve his purposes and those of PCS to avoid legal obligations to the employers by PCS. If it did not work, PCS and he were in no different a position from that which they otherwise would have been in. In other words, Mr Di Dio's use of labour hire companies in an attempt to shield PCS from its obligations as an employer is an example of opportunism which, I am satisfied, Mr Di Dio was willing to extend to the respondents' defence of these proceedings.

6 As the applicants also submitted, the respondents may be inferred to have disregarded the findings against them in the principal judgment at [42]-[46] for issuing payslips which did not identify PCS as the employee and failing to pay the correct leave loading to some employees because:

On around 28 June 2017 PCS issued to its employees payslips and group certificates.

- 3 -

Each employee apparently received two group certificates, the first nominating as their employer the "Phillips Cleaning Trust" and the second the "Phillips Cleaning No. 1 Dis Trust" [sic]. At around the same time PCS paid its employees accrued annual leave. The leave was paid for at the base rate of pay applicable under the Agreement...No redundancy payments have been made.

7 The principles relevant to the assessment of a civil penalty were not in issue. The orthodox approach to a civil penalty recognises that the primary object is deterrence which means that the penalty must be fixed at a level which ensures that it cannot be regarded as a mere cost of doing business (*Commonwealth v Director, Fair Work Building Industry Inspectorate* [2015] HCA 46; (2015) 326 ALR 476; at [55]).

8 Otherwise, I accept the following submissions for the applicants:

- (1) Not only have the respondents failed to demonstrate contrition or cooperation but the case falls at the extreme opposite end of the spectrum. The respondents relied on untenable defences, unnecessarily extended the length and expense of the hearing, have failed to pay what they owe the applicants as a result of systematic underpayments, and took steps after the principal judgment consistent with an intention to place assets beyond the applicants' reach.
- (2) Mr Di Dio appears wholly unrepentant. He did not take the opportunity to give evidence and thus it must be inferred that any evidence which he could give would not have assisted him.
- (3) "...the contraventions involved the exploitation and underpayment of vulnerable workers. The Employees are the archetype of vulnerable employees. They have limited English and limited insight into the workings of the Australian industrial system. Having obtained asylum in Australia they should have enjoyed the benefits of the Australian system of workplace laws, designed as they are to prevent exploitation and ensure a measure of wage justice to all workers".
- (4) "...the failure to pay for school holidays occurred in circumstances where the Respondents, the union and the ACT Government had cooperated to address an issue caused by the introduction of the modern award. As part of that arrangement, the cleaning contracts were restructured and the ACT Government paid PCS an amount sufficient to ensure that employees were paid during the school holidays...[this] was a deliberate effort to arrogate to the respondents public money intended to be paid to the employees".

- 4 -

- (5) "...the financial contraventions involved the underpayment of some \$250,000. They were, in the context of a low-paid part-time workforce, substantial".
- (6) The respondents' defence "was fundamentally dishonest. It relied on a proposition [which] the respondents did not believe to be true, viz, that PCS was not the employer of the employees".
- (7) "...there is a need for general deterrence both having regard to the nature of the contraventions and the character of the industry".

9 While I accept that the non-financial contraventions were also serious given that they involved repeated breaches of provisions designed to educate workers about their industrial rights, which are of particular importance "in the context of the contract cleaning industry typically populated by workers who are ill-informed as to their industrial rights", I am not satisfied those breaches may be described as "contumelious" if, by that, any colour of deliberate intent to flout the authority of the court is intended. The same cannot be said of the failure to pay the amounts owed and subsequent steps taken to place assets beyond the reach of the applicants, which must be intended to undermine the authority of the court.

10 Given that the respondents adduced no evidence in relation to the assessment of penalty, I accept the applicants' submission that the only potentially mitigating factors are that PCS is a relatively small enterprise in which Mr Di Dio was responsible for all decisions, PCS has no record of prior contraventions, and it appears that it has no active cleaning contracts.

11 The applicants' submissions also conveniently summarised the circumstances relevant to the maximum penalties for the contraventions, which I adopt (subject to some minor corrections):

- (a) The applicable rate of penalty unit is that applying at the time of the contravention: *Fair Work Ombudsman v Grouped Property Services Pty Ltd (No 2)* [2017] FCA 557 at [394]–[395] (*GPS No. 2*).
- (b) Where a contravention occurred both before and after an increase in the amount of a penalty unit, the higher amount is apt: *GPS No. 2* at [396]–[398].
- (c) A penalty unit was \$170 from 28 December 2012 [*Crimes Legislation Amendment (Serious Drugs, Identity Crime and Other Measures) Act 2012* (Cth), Schedule 3 Part 2] and \$180 from 31 July 2015 [*Crimes Legislation Amendment (Penalty Unit) Act 2015* (Cth), Schedule 1].
- (d) The maximum penalties for an individual for each contravention are set out in the table in s539 of the FW Act. The maximum penalty for a corporation is five times the maximum payable by an individual: s546(2)(b).
- (e) The effect of s557(1) of the FW Act is that contraventions of the kinds listed

- 5 -

in s557(2) which affect multiple employees are to be treated as a single contravention: *GPS No. 2* at [394]–[395].

- (f) The s345 contraventions (Contravention 2) are not subject to “grouping”: s557(2).
- (g) In the present case, the holiday underpayments (Contravention 1) and payslip contraventions (Contravention 5) occurred before and after 31 July 2015 and the penalty unit amount in respect of those contraventions is \$180. The contraventions related to letters of appointment (Contraventions 2 and 3) inductions (Contravention 4) and leave loading (Contravention 6) all occurred before 31 July 2015 and the applicable penalty unit amount in respect of those contraventions is \$170.

12 Accordingly, the maximum penalties are as follows for the contraventions (based on the submissions for the applicants, which the respondents did not contradict):

- (1) s 50 Fair Work Act: failing to pay employees their ordinary rate of pay for their usual hours worked during each period of school holidays – 21 contraventions required to be grouped by s 557(2): 300 units for PCS (\$54,000) and 60 units for Mr Di Dio (\$10,800).
- (2) s 50 Fair Work Act: failing to have regard to the language skills of the fourth to sixth and eighth applicants in preparing their letters of appointment – 4 contraventions required to be grouped by s 557(2): 300 units for PCS (\$51,000) and 60 units for Mr Di Dio (\$10,200).
- (3) s 50 Fair Work Act: not providing any employee with an off-site induction– 13 contraventions required to be grouped by s 557(2): 300 units for PCS (\$51,000) and 60 units for Mr Di Dio (\$10,200).
- (4) s 50 Fair Work Act: not paying the third, fourth, tenth, fourteen, fifteenth and twenty-second applicants a 17.5% loading on their ordinary pay in respect of the annual leave which they took in December 2015 – 6 contraventions required to be grouped by s 557(2): 300 units for PCS (\$51,000) and 60 units for Mr Di Dio (\$10,200).
- (5) s 345(1) Fair Work Act: knowingly making a false and misleading representation to the fourth to sixth and eighth applicants in their letters of appointment about their workplace rights – 4 contraventions not required to be grouped by s 557(2): 300 units for PCS per contravention ( $\$51,000 \times 4 = \$204,000$ ) and 60 units for Mr Di Dio per contravention ( $\$10,200 \times 4 = \$40,800$ ).
- (6) s 536(2)(b) Fair Work Act: not providing employees with a payslip identifying their employer and employer’s ABN in the periods of about 26 October 2010 and 19

- 6 -

December 2011, August 2012 and June 2013, and 2 December 2014 and 24 February 2015 – 21 contraventions required to be grouped by s 557(2): 150 units for PCS (\$27,000) and 30 units for Mr Di Dio (\$5,400).

13 The applicants submit that the penalties should be imposed as follows:

Contravention	PCS	Mr Di Dio
s 50: ordinary rate of pay	\$45,900 85% maximum	\$10,800 100% maximum
s 50: letters of appointment	\$30,000 59% maximum	\$6,630 65% maximum
s 50: no off-site induction	\$30,000 59% maximum	\$6,630 65% maximum
s 50: incorrect leave loading	\$30,000 59% maximum	\$5,100 50% maximum
s 345(1): workplace rights misrepresentation	\$101,000 49.5% maximum	\$20,400 50% maximum
s 536(2)(b): payslips	\$25,000 91% maximum	\$4,860 90% maximum
Total before totality principle	\$261,900	\$54,420
Total after totality principle	<b>\$220,000</b>	<b>\$54,420</b>

- 7 -

- 14 While I accept that some of the contraventions are serious and the respondents can give be given no credit for any ameliorating conduct on their part, I consider a number of these penalties to be too severe for a number of reasons.
- 15 **First**, while I cannot find that PCS is simply Mr Di Dio's alter ego there is a close relationship between them. While the penalties imposed must be appropriate to the objective seriousness and circumstances of each respondent, this relationship is not irrelevant.
- 16 **Second**, not all of the contraventions are of equal severity.
- (1) I accept that the failure to pay the employees during school holidays is objectively serious and warrants a penalty at the higher end of the scale.
  - (2) The contraventions relating to the preparation of the letters of appointment are explained at [29]-[30] of the principal judgment. The difficulty I have in characterising these contraventions as serious is that the obligation in cl 16.1 of the Agreement, to have regard to the language skills of the employee in preparing any letter of appointment, is itself vague. The clause did not require the letter to be written in the employee's first language. It did not require the letter to be translated for the employee. It did not require PCS to offer a translation service at the employee's election. As such, it is difficult to gauge the adverse consequences of the contraventions.
  - (3) The respondents' failure to provide an off-site induction to any employee should not be regarded as a serious contravention. It was not apparent from the evidence that this caused any particular hardship to any employee. It is an example of Mr Di Dio doing as he saw fit regardless of his obligations but the contraventions have had no adverse consequence. While not a mere technical or minor breach, the penalties should reflect the relative lack of seriousness of these contraventions.
  - (4) The incorrect leave loading, as the applicants acknowledged, was based on a view of the Agreement that was reasonably open. While I found in the applicants' favour the operation of the Agreement in respect of payment of leave loading, as explained at [45] of the principal judgment, was ambiguous. As such, I do not consider these contraventions to be approaching or at the serious end of the scale.
  - (5) The workplace rights misrepresentations are explained at [33] of the principal judgment. The respondents knew the letters of appointment were inaccurate in referring to the Cleaning Services Award 2010 after the Agreement came into force

on 1 May 2011 but I cannot go so far as to infer that the inaccuracy was intended to give the respondents an illegitimate advantage. The inaccuracy was a reflection of Mr Di Dio's overall high handed approach and indifference to his employees' rights but I do not judge the objective seriousness of the contravention as grave as the applicants would have it. It is true that identification of the Agreement as the source of workplace rights and obligations was fundamental to the employment relationship but as I said at [35] of the principal judgment "Mr Di Dio's explanations of mistake, oversight or error on his part may be accepted to the extent that he knew the information in the letters was wrong from 1 May 2011 but did not change the information because he did not bother to focus on the error and correct it until recently".

- (6) The payslips contraventions were part of a failed scheme by the respondents to enable PCS to avoid its responsibilities as an employer. As noted at [43] of the principal judgment, the payslips did not identify PCS as the employer as a result of PCS's self-interest irrespective of its legal obligations. I accept these contraventions are serious.

17 Having regard to these considerations, I consider that the following penalties reflect the objective seriousness of the contraventions and the overall circumstances of each respondent:

Contravention	PCS	Mr Di Dio
s 50: ordinary rate of pay	\$27,000 50% maximum	\$5,400 50% maximum
s 50: letters of appointment	\$5,100 10% maximum	\$1,020 10% maximum
s 50: no off-site induction	\$7,650 15% maximum	\$1,530 15% maximum
s 50: incorrect leave loading	\$5,100 10% maximum	\$1,020 10% maximum




- 9 -

s 345(1): workplace rights misrepresentation	\$51,000  25% maximum	\$10,200  25% maximum
s 536(2)(b): payslips	\$18,900  70% maximum	\$3,780  70% maximum
Total before totality principle	<b>\$114,750</b>	<b>\$22,950</b>

- 18 I accept that, in respect of each respondent, the principle of totality should be applied. As a result, it is necessary to consider whether the penalties in total properly reflect and do not exceed the overall culpability of the respondents. This is particularly important in a case such as the present where all of the contraventions relate to the same employment relationships between PCS and its employees. Taking this into account, I consider that there should be a relatively small adjustment of the total penalties, so that PCS will be subject to a penalty for all contraventions in the sum of \$110,000 and Mr Di Dio \$20,000.
- 19 The first applicant, United Voice, sought payment of the penalties to it, relying on *Sayed v Construction, Forestry, Mining and Energy Union* (2016) 239 FCR 336; [2016] FCAFC 4 at [89]-[112] and s 546(3)(b) of the Fair Work Act. Consistent with the principles in *Sayed*, this is not a case where United Voice might gain a windfall by being paid the penalty. It has prosecuted the proceeding, at no doubt great expense, to enforce the law on behalf of a group of employees vulnerable to exploitation. The penalties should be paid to the first applicant.

I certify that the preceding nineteen (19) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Jagot.

Associate: 

Dated: 1 September 2017

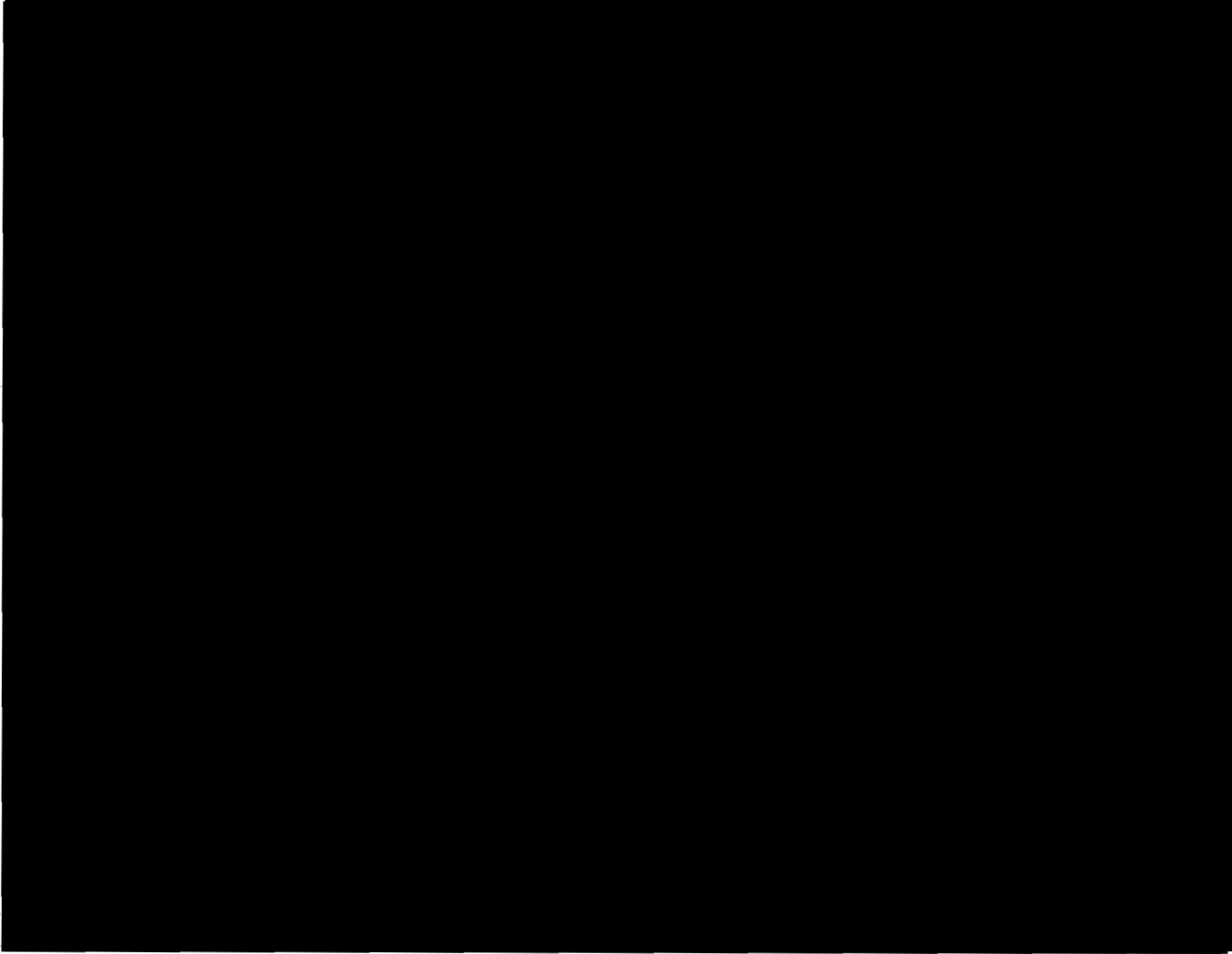
**SCHEDULE OF PARTIES****ACD 132 of 2015****Applicants**

Fourth Applicant:	JOHNSON MOE JOE
Fifth Applicant:	SAW KYAW MYINT SAW
Sixth Applicant:	BO RA KHAY YU
Seventh Applicant:	BRUCE KELTIE
Eighth Applicant:	HTOO YWAI
Ninth Applicant:	SAW LAY GAY SOE
Tenth Applicant:	JULIA DAH
Eleventh Applicant:	EH DAH
Twelfth Applicant:	JIRAYU MANEESIRAWONG
Thirteenth Applicant:	THA WEIN KHAY YU
Fourteenth Applicant:	PAW PA YWEL
Fifteenth Applicant:	TAR WAR
Sixteenth Applicant:	NAY KER PAH EH
Eighteenth Applicant:	KAW MU TAW GAY
Nineteenth Applicant:	EH TAR MOO
Twentieth Applicant:	EH KER LER

Hancock, Carly

---

**From:** Whybrow, Mark  
**Sent:** Friday, 22 September 2017 5:58 PM  
**To:** Whitten, Meredith; Ceramidas, Joshua  
**Subject:** Cleaning Hours [SEC=UNCLASSIFIED, DLM=For-Official-Use-Only]  
**Attachments:** Cleaning Hours.docx



MINISTERIAL BRIEF

UNCLASSIFIED

**To:** Minister for Education and Early Childhood  
Development

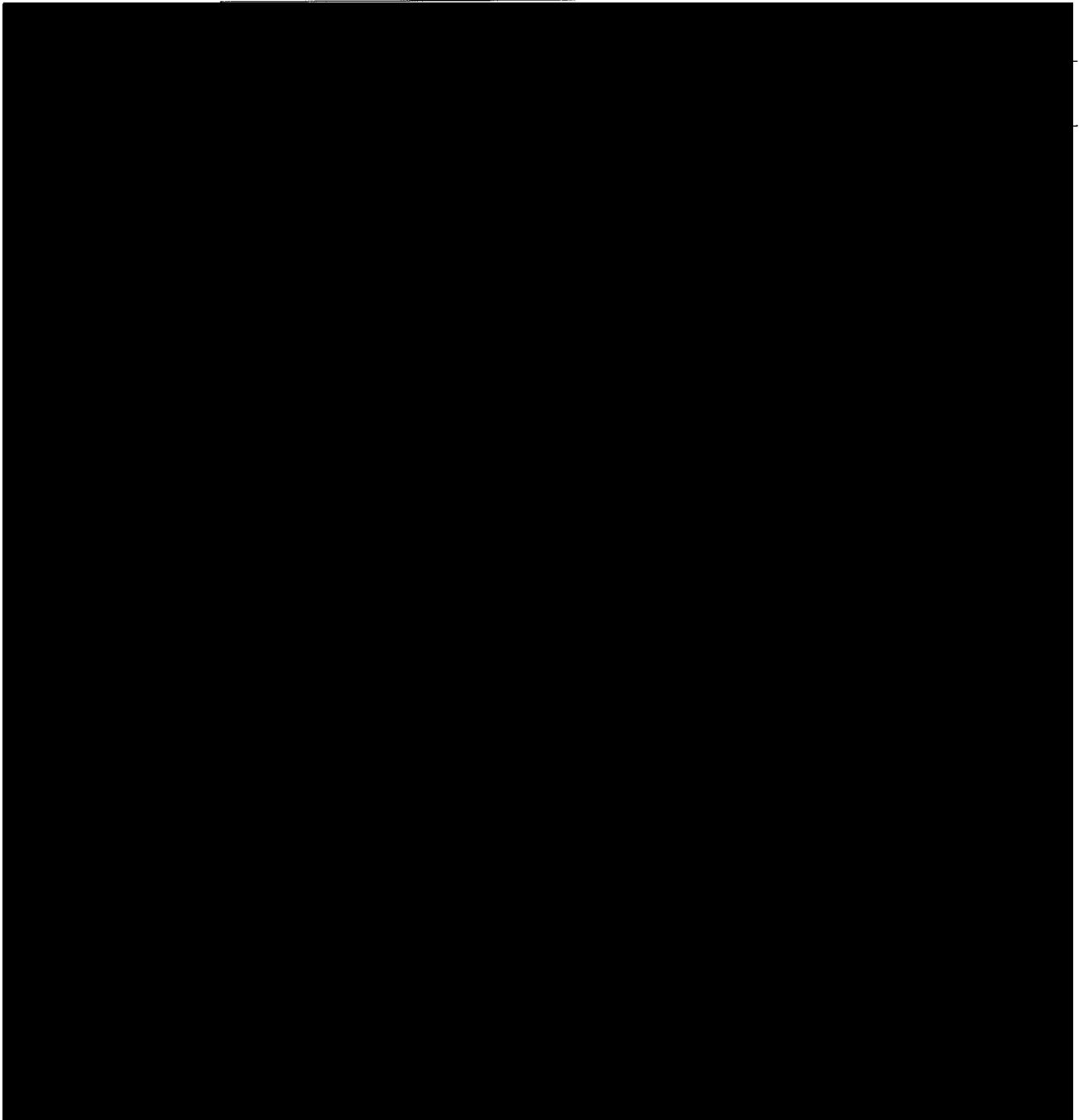
TRIM No: Click here to enter text.

**CC:**

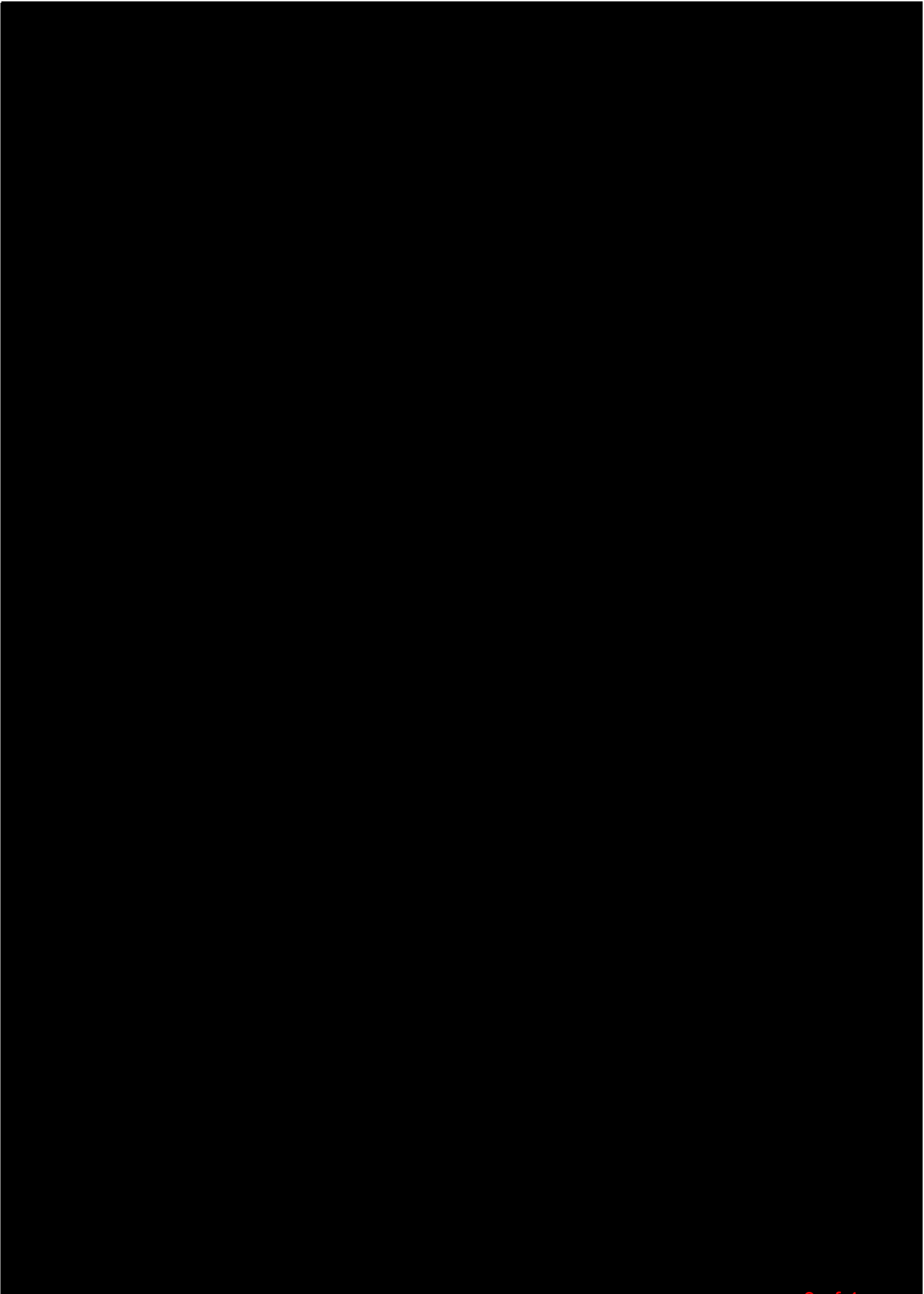
**From:** Director-General

**Date:** September 2017

**Subject:** Cleaning Services – Additional Hours – Updated



Noted / Please Discuss



**Media Implications**

18. There is potential for this matter to be a media issue. The Federal Court judgment (ACD 132 of 215) in relation to Phillips Cleaning Services referred to the stand down practices of that company where employees were not paid for school holiday periods.

Natalie Howson  
Director-General

Deputy Director-General, Business Services Division: Meredith Whitten	Phone:	62070834
Director, Strategic Finance: Mark Whybrow	Phone:	62052685

UNCLASSIFIED

Documents 45-47 are exempt under section 36  
of the *Freedom of Information Act 1989*.

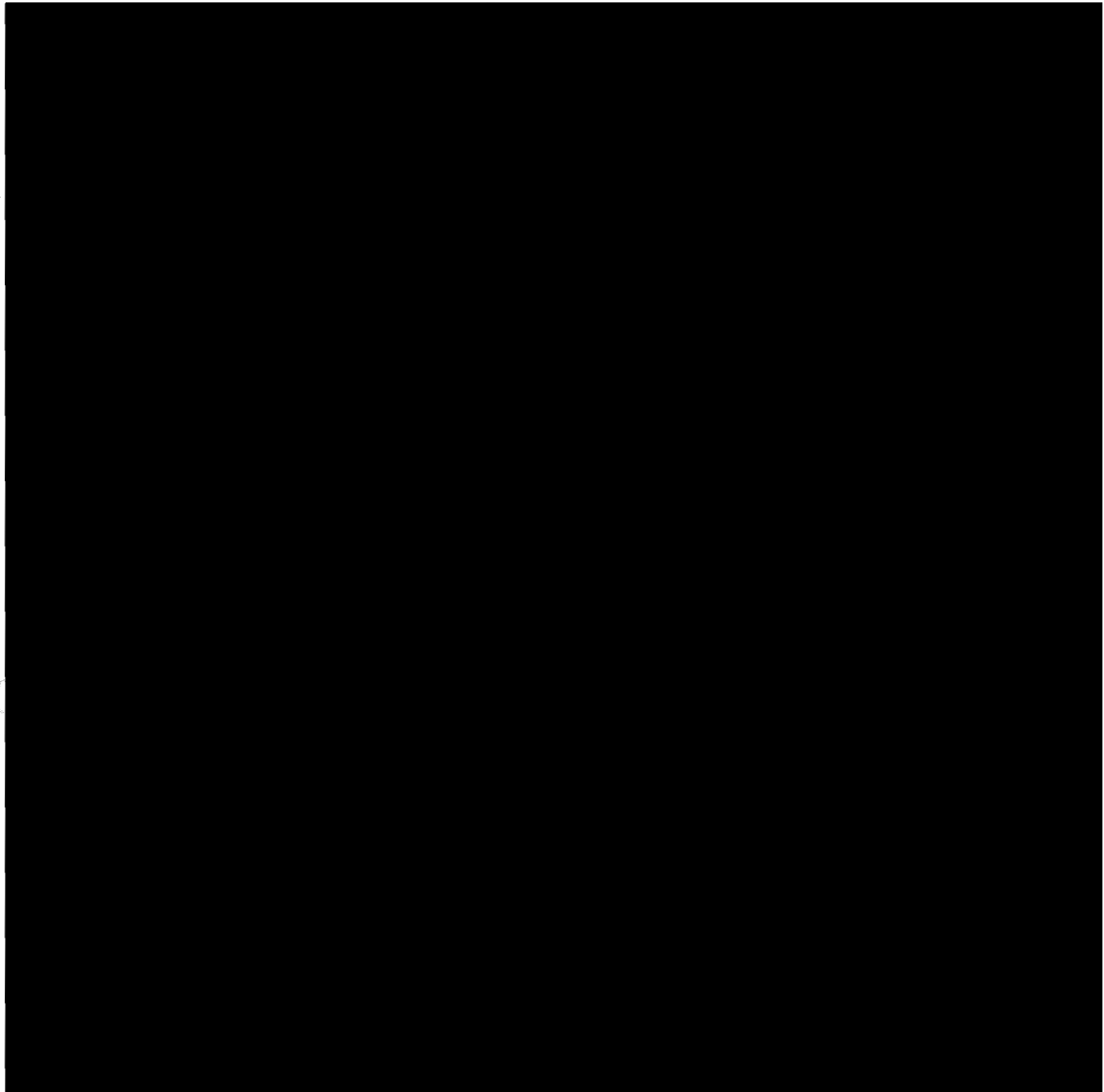


**Hancock, Carly**

---

**From:** Whitten, Meredith  
**Sent:** Tuesday, 3 October 2017 8:10 AM  
**To:** Howson, Natalie; Brighton, Meg; Efthymiades, Deb; Whybrow, Mark  
**Subject:** FW: Cleaning Hours 270917 [SEC=UNCLASSIFIED]  
**Attachments:** Cleaning Hours 270917.docx

This is the brief for discussion with the Minister today.





MINISTERIAL BRIEF

UNCLASSIFIED

**To:** Minister for Education and Early Childhood  
Development

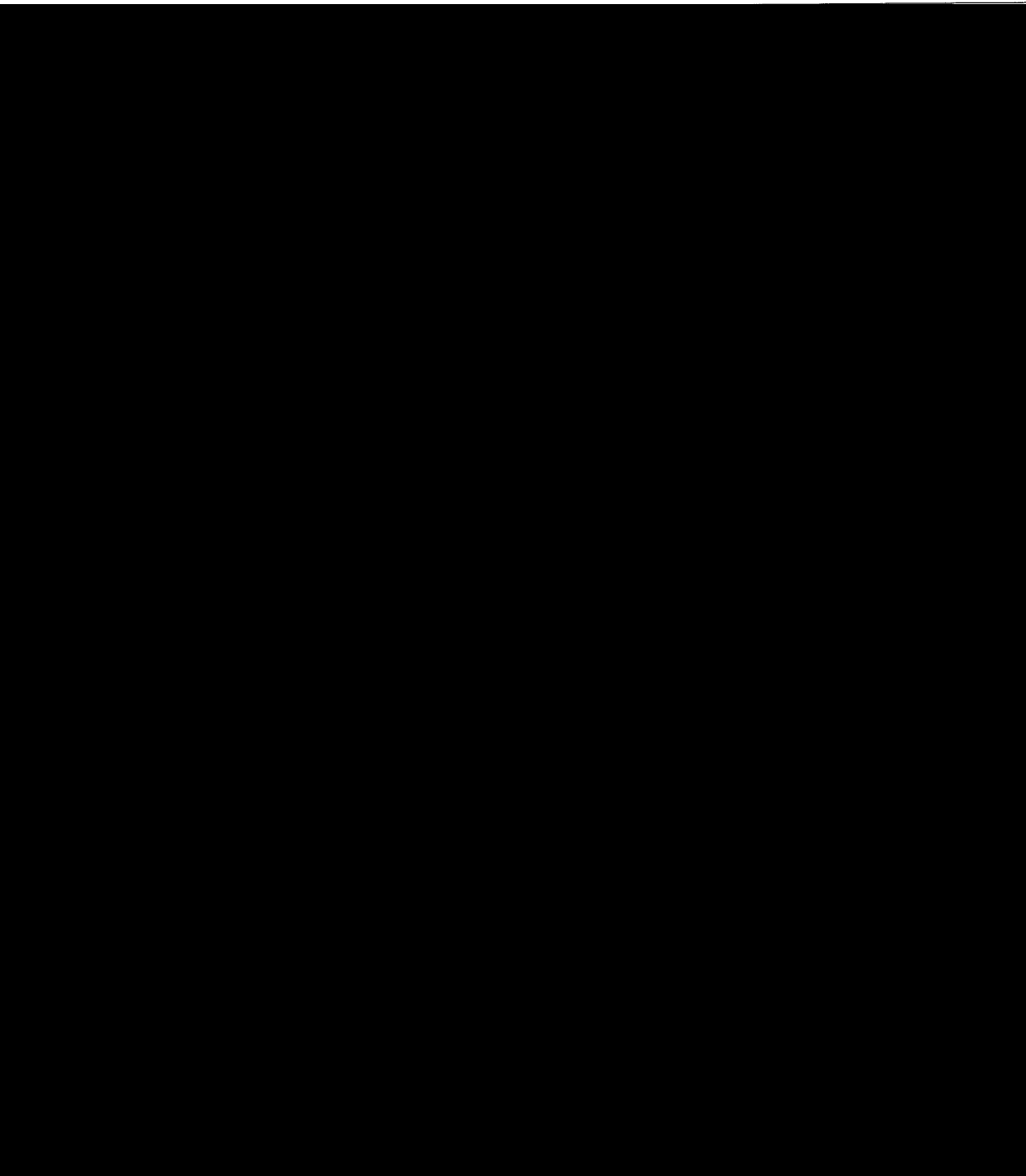
TRIM No: [Click here to enter text.](#)

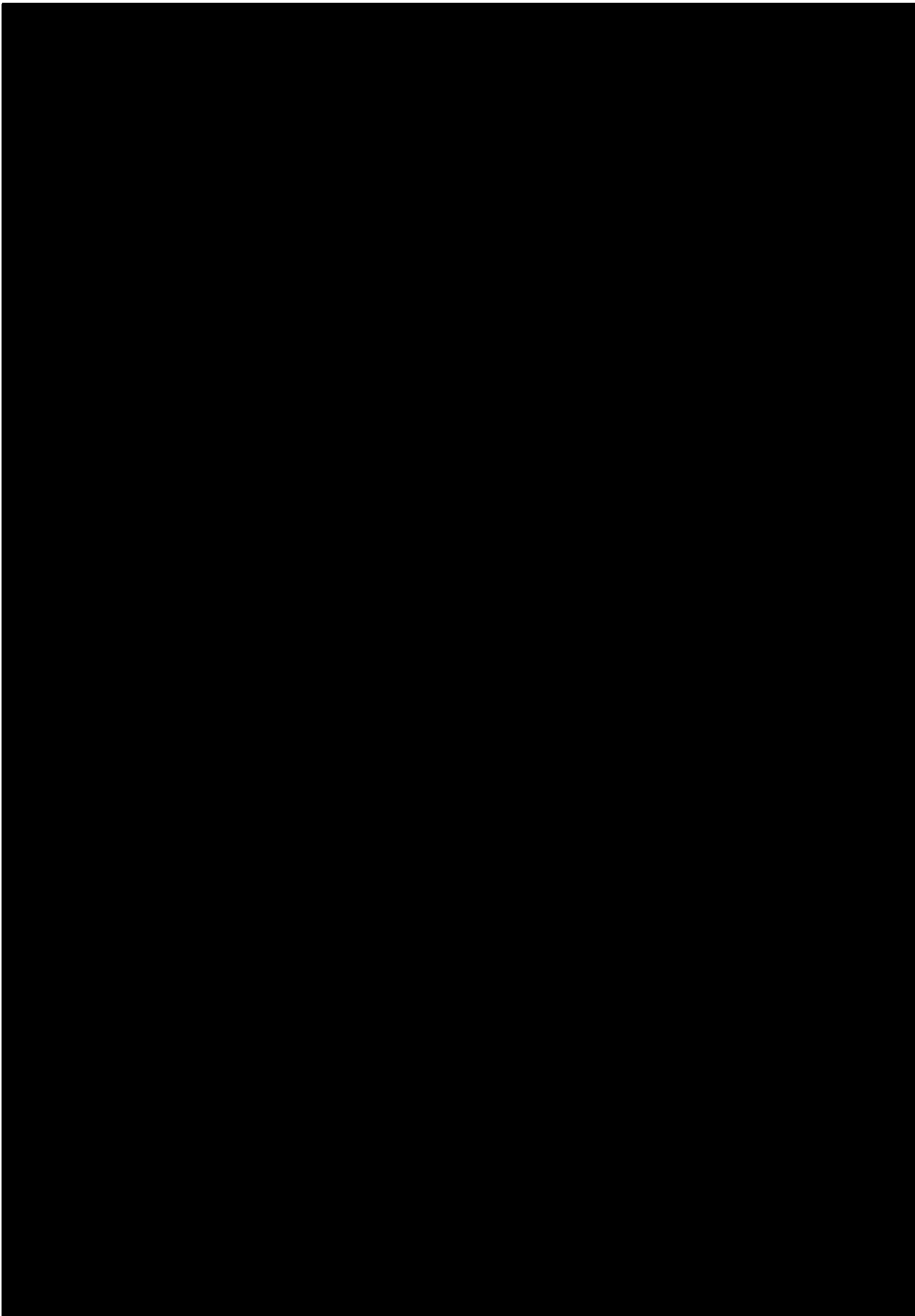
MIN17/986

**From:** Director-General

**Date:** 27 September 2017

**Subject:** Cleaning Services – Additional Hours – Updated





**Media Implications**

23. There is potential for this matter to be a media issue. The Federal Court judgment (ACD 132 of 215) in relation to Phillips Cleaning Services referred to the stand down practices of that company where employees were not paid for school holiday periods.

Natalie Howson  
Director-General

Deputy Director-General, Business Services: Meredith Whitten	Phone:	62070834
Director, Strategic Finance: Mark Whybrow	Phone:	62052685

UNCLASSIFIED

TRIM No: [Click here to enter text.](#)

