

FIRST PRINT

**COURTS LEGISLATION (CONTEMPT) AMENDMENT
BILL 1991**

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to amend the District Court Act 1973 to enable the Court to impose a penalty of up to 28 days imprisonment for contempt of court as an alternative to a monetary penalty. The Bill also amends the following Acts to make uniform as between the courts to which those Acts apply the penalties for contempt in certain proceedings:

Children's Court Act 1987
Coroners Act 1980
Justices Act 1902
Local Courts (Civil Claims) Act 1970.

Clause 1 specifies the short title of the proposed Act.

Clause 2 gives effect to the Schedule of amendments.

SCHEDULE 1—AMENDMENTS

The District Court Act 1973 currently enables the District Court to impose a monetary penalty of up to \$2,000 for contempt of court. Schedule 1 amends that Act to enable the District Court to impose that monetary penalty or a penalty of imprisonment for a period of up to 28 days.

The other Acts referred to above have differing penalties for contempt in proceedings to which they relate. Schedule 1 amends those Acts to provide that the penalty that may be imposed for contempt is up to \$1,000 or imprisonment for a period of up to 14 days. The penalty for contempt in proceedings before a registrar under the Local Courts (Civil Claims) Act 1970 is not changed.

FIRST PRINT

**COURTS LEGISLATION (CONTEMPT) AMENDMENT
BILL 1991**

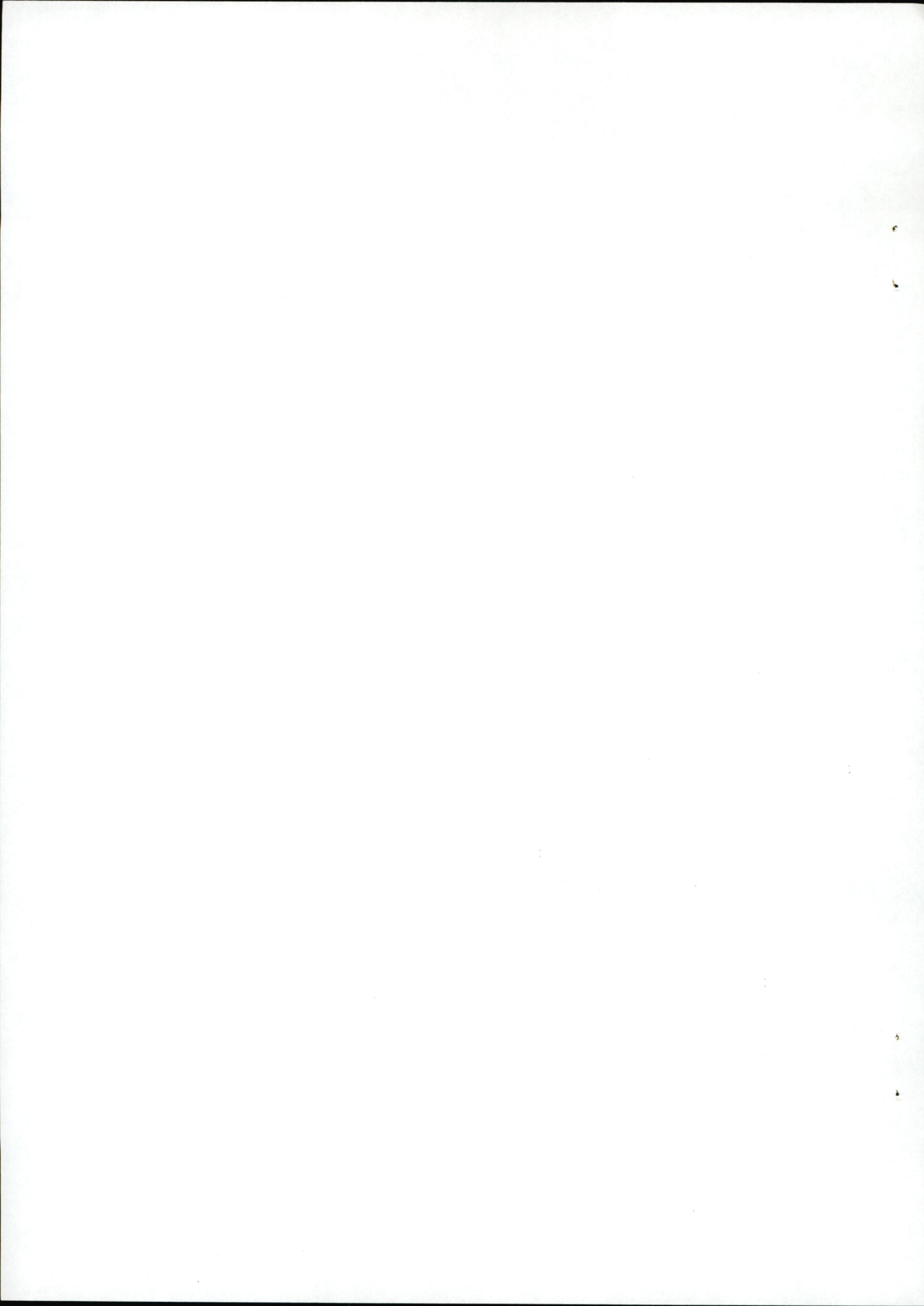
NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Amendments

SCHEDULE 1—AMENDMENTS



**COURTS LEGISLATION (CONTEMPT) AMENDMENT
BILL 1991**

NEW SOUTH WALES



No. , 1991

A BILL FOR

An Act to amend certain Acts with respect to penalties for contempt.

Courts Legislation (Contempt) Amendment 1991

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Courts Legislation (Contempt) Amendment Act 1991.

Amendments

2. Each Act specified in Schedule 1 is amended in the manner set out in that Schedule.

SCHEDULE 1—AMENDMENTS

(Sec. 2)

Children's Court Act 1987 No. 53

Section 21 (Contempt):

From section 21 (1), omit "Penalty: \$200 or imprisonment for 10 days.", insert instead "Maximum penalty: 10 penalty units or imprisonment for 14 days."

Coroners Act 1980 No. 27

Section 43 (Contempt):

From section 43 (1), omit "\$500", insert instead "10 penalty units".

District Court Act 1973 No. 9

Section 199 (Contempt):

From section 199 (7), omit "\$2,000", insert instead "20 penalty units or by imprisonment for a period not exceeding 28 days".

Justices Act 1902 No. 27

Section 152 (Contempt of Court):

From section 152, omit "four dollars, or by imprisonment for a period not exceeding fourteen days", insert instead "10 penalty units or by imprisonment for a period not exceeding 14 days".

Courts Legislation (Contempt) Amendment 1991

SCHEDULE 1—AMENDMENTS—*continued*

Local Courts (Civil Claims) Act 1970 No. 11

Section 76 (Contempt of court):

Omit "Penalty: 10 penalty units.", insert instead "Maximum penalty: 10 penalty units or imprisonment for 14 days, in the case of contempt in the face of a court, or, in any other case, 10 penalty units."

114

114

SECOND READING SPEECH
LEGISLATIVE COUNCIL
COURTS LEGISLATION (CONTEMPT)
AMENDMENT BILL 1991

(PRESIDENT CALLS NOTICE OF MOTION IN NAME
OF MINISTER)

MINISTER TO SAY:

MR PRESIDENT, I MOVE THAT LEAVE BE GIVEN
TO BRING IN A BILL FOR AN ACT TO AMEND
CERTAIN ACTS WITH RESPECT TO PENALTIES
FOR CONTEMPT.

(PRESIDENT PUTS QUESTION THAT LEAVE BE
GIVEN - NO DEBATE ALLOWED)

(WHEN AGREED TO)

MINISTER TO SAY:

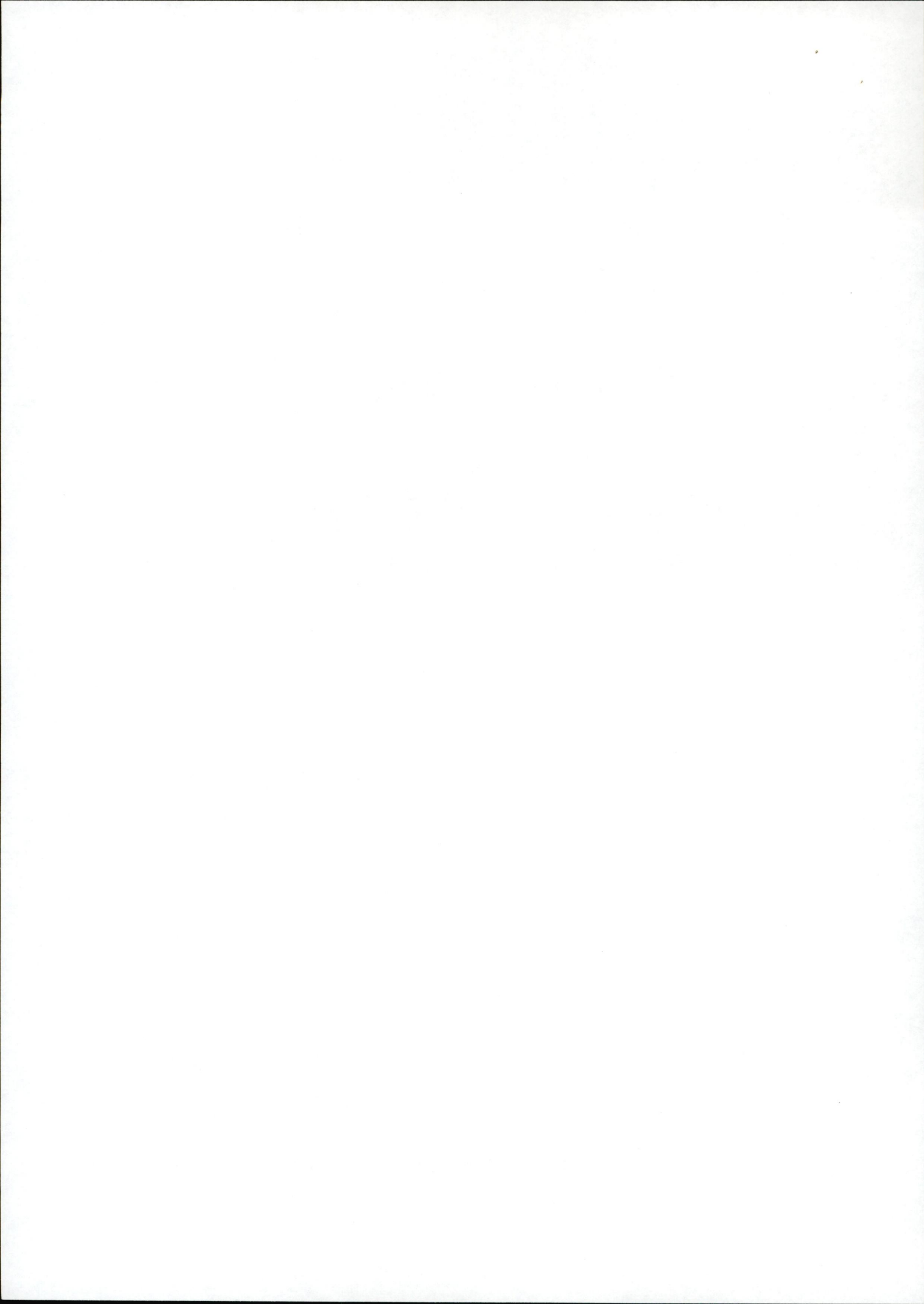
MR PRESIDENT, I BRING UP THE BILL.

(MINISTER HANDS 2 COPIES OF BILL TO CLERK
WHO READS IT A FIRST TIME)

MINISTER TO SAY:

MR PRESIDENT, I MOVE THAT THIS BILL BE NOW
READ A SECOND TIME.

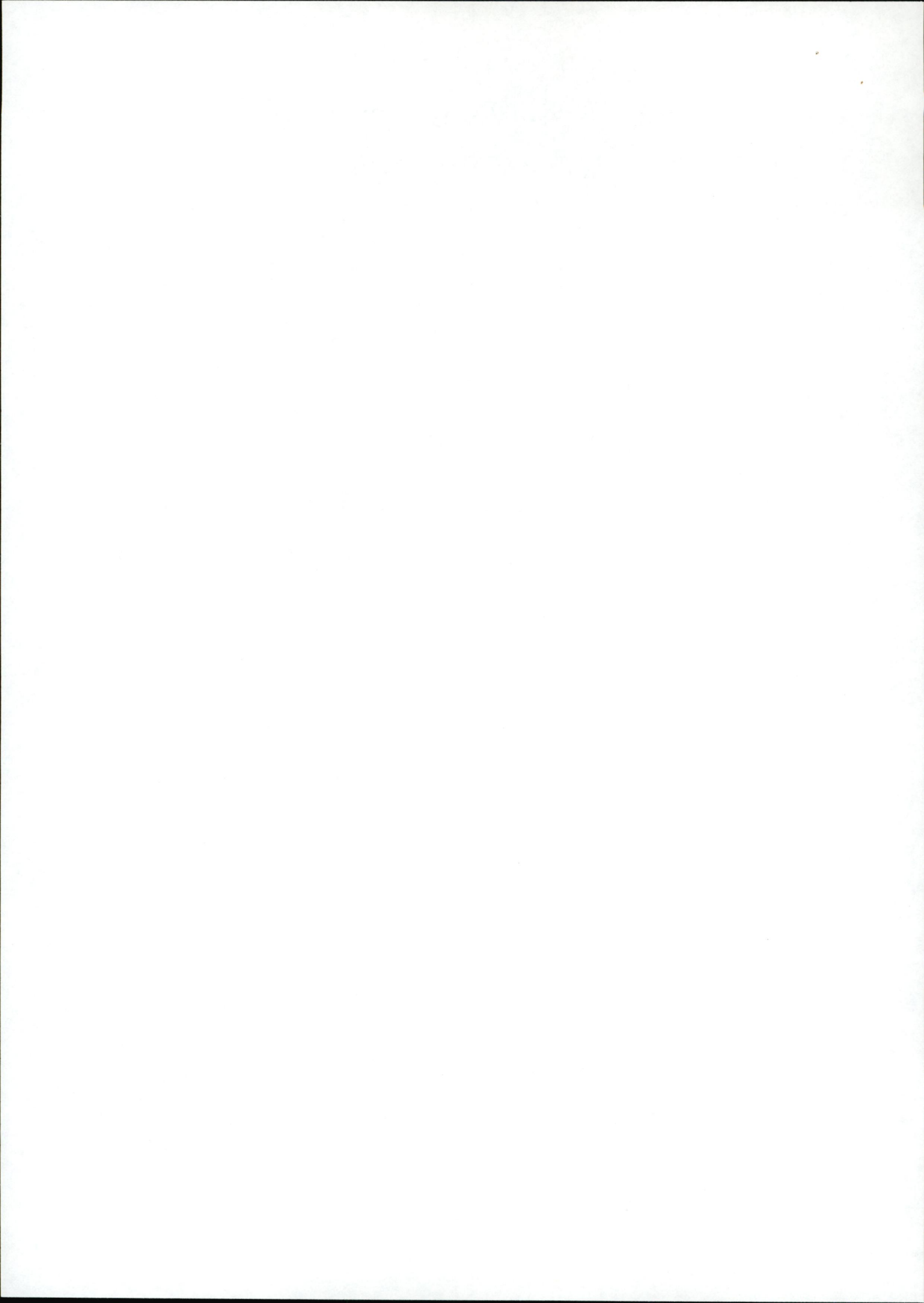
THE PURPOSE OF THIS BILL IS TO STANDARDISE
THE PENALTIES FOR CONTEMPT IN COURTS
PRESIDED OVER BY MAGISTRATES, AND TO
PROVIDE THE DISTRICT COURT WITH LIMITED



POWER TO IMPRISON PERSONS GUILTY OF CONTEMPT IN THE FACE OF THE COURT.

COURTS ARE EMPOWERED TO SUMMARILY PUNISH CONTEMPTS COMMITTED IN THE FACE OF THE COURT. THE COURT HAS THIS POWER IN ORDER TO VINDICATE THE INTEGRITY OF THE COURT AND TO PRESERVE ITS AUTHORITY WHEN THAT AUTHORITY AND CONTROL IS THREATENED.

THE COURT'S CONTEMPT POWER HAS TRADITIONALLY BEEN USED SPARINGLY, AND ONLY AS A LAST RESORT. ITS EXISTENCE, HOWEVER, ACTS AS A STRONG DETERRENT TO CONTUMACIOUS ACTS. NEVERTHELESS OCCASIONS DO ARISE IN WHICH A COURT MUST USE ITS SUMMARY POWER TO QUELL A THREATENED DISRUPTION OF THE COURT. TO



DO SO EFFECTIVELY, COURTS MUST HAVE AVAILABLE THE POWER TO IMPOSE A SUBSTANTIAL FINE AS WELL AS THE OPTION OF IMPRISONING THE CONTEMNOR FOR A LIMITED PERIOD OF TIME.

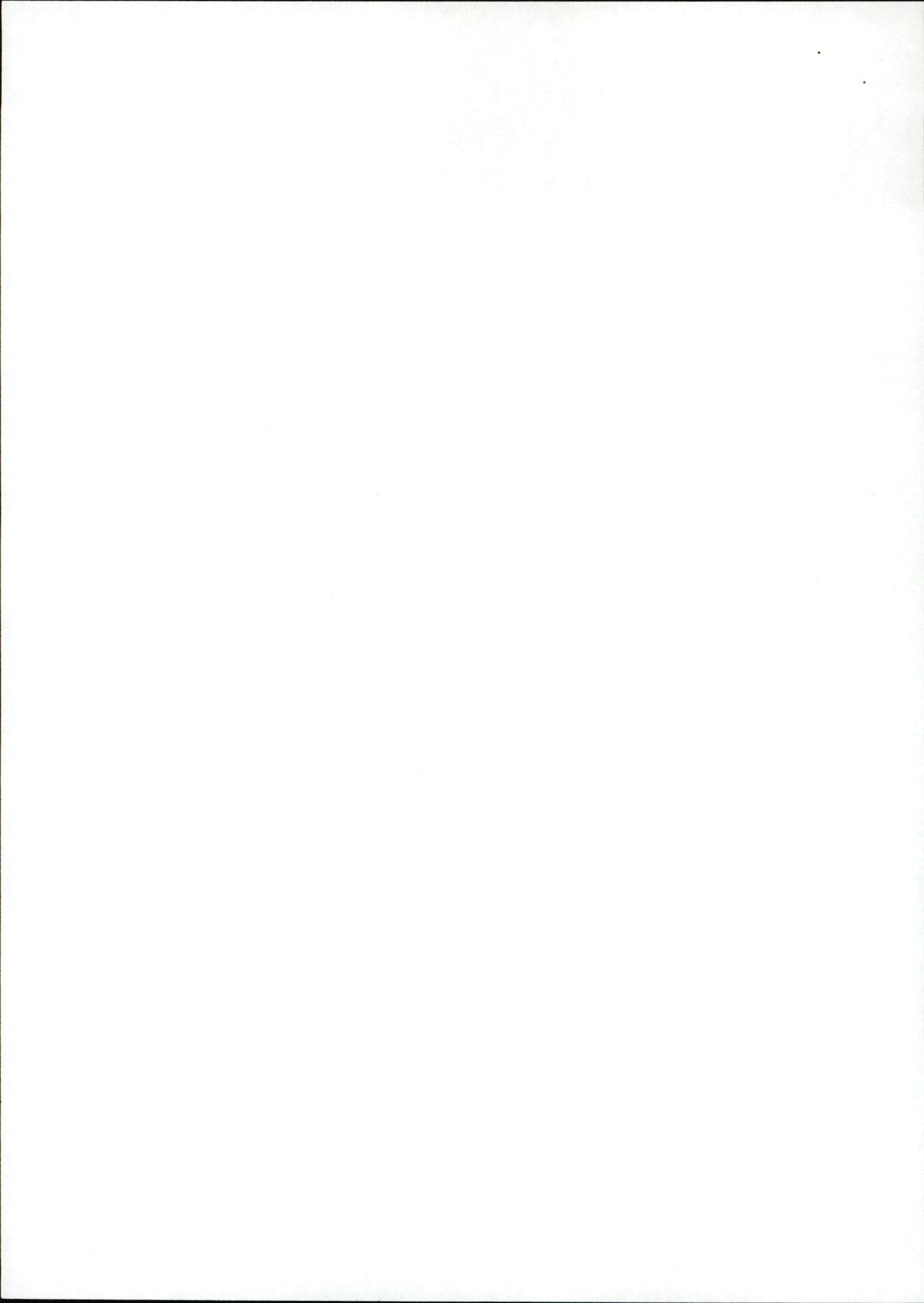
A RECENT STATED CASE TO THE SUPREME COURT HIGHLIGHTED THE INADEQUACY OF A MAGISTRATE'S POWER UNDER THE JUSTICES ACT 1902, TO PENALIZE A PERSON GUILTY OF CONTEMPT IN THE FACE OF THE COURT. SECTION 152 OF THE JUSTICES ACT CURRENTLY PROVIDES FOR A MONETARY PENALTY OF \$4 OR IMPRISONMENT OF 14 DAYS.

APART FROM THE CONVERSION TO DECIMAL CURRENCY, THIS PENALTY HAS REMAINED UNCHANGED SINCE 1909 WHEN IT WAS FIRST INSERTED INTO THE JUSTICES ACT.

THE CURRENT PROVISION PLACES MAGISTRATES IN A DIFFICULT POSITION. AS A RESULT OF THE INADEQUACY OF THE MONETARY PENALTY THERE IS LITTLE CHOICE BUT TO IMPRISON A PERSON GUILTY OF CONTEMPT OF COURT IF A REALISTIC PENALTY IS TO BE IMPOSED.

THE GOVERNMENT PROPOSES TO RECTIFY THIS PROBLEM BY INCREASING THE MONETARY PENALTY FOR THIS OFFENCE TO THE MORE REALISTIC MAXIMUM OF \$1000.

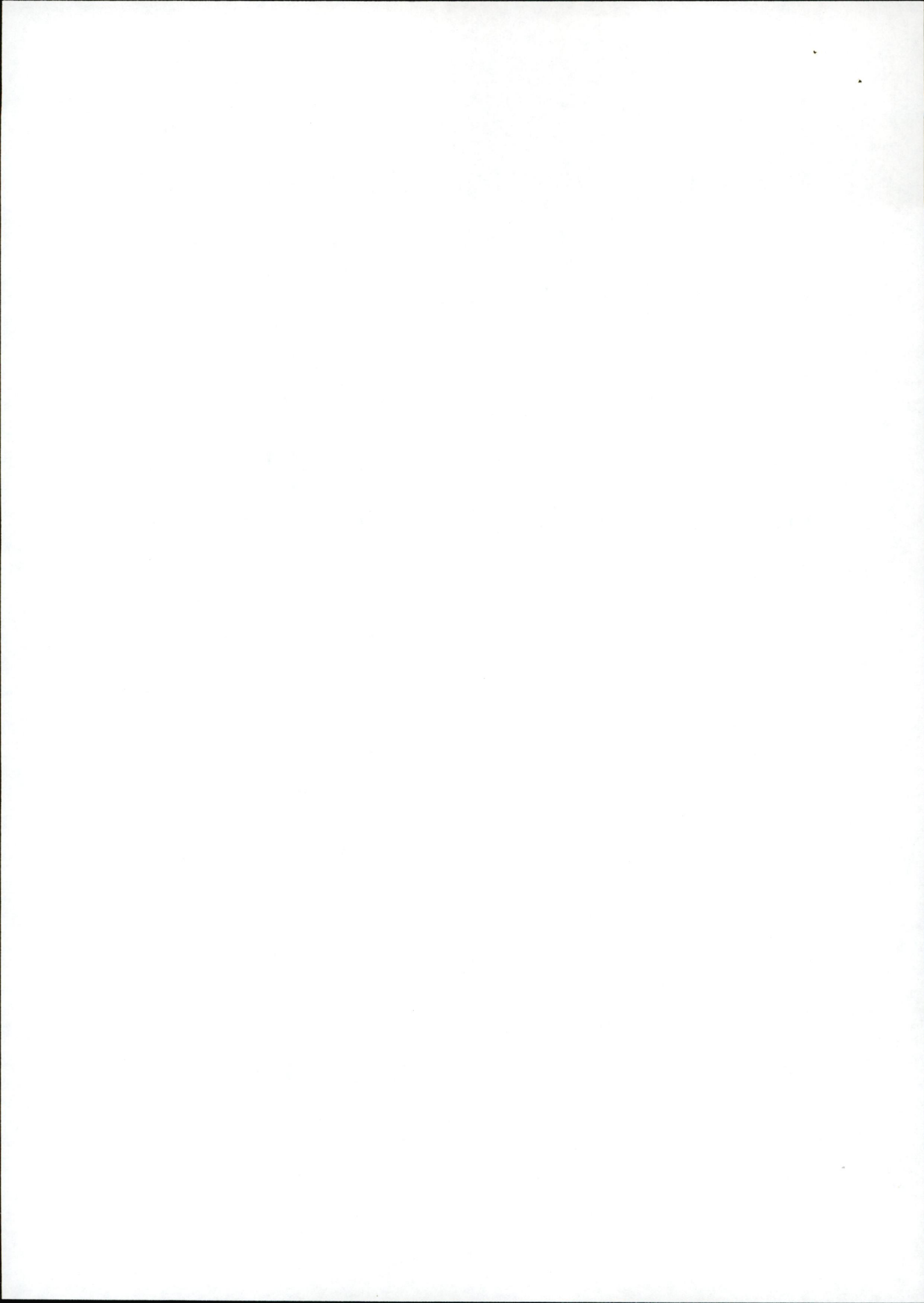
IN ADDITION, THE NEED TO STANDARDISE THE PENALTY THAT MAY BE IMPOSED BY A MAGISTRATE FOR THIS OFFENCE UNDER ACTS OTHER THAN THE JUSTICES ACT HAS BEEN RECOGNISED. PRESENTLY, THE MONETARY PENALTIES IN OTHER ACTS FOR CONTEMPT IN THE FACE OF COURTS PRESIDED OVER BY



MAGISTRATES VARY FROM ACT TO ACT AND ALL BUT THE LOCAL COURT (CIVIL CLAIMS) ACT 1970 PROVIDES FOR IMPRISONMENT.

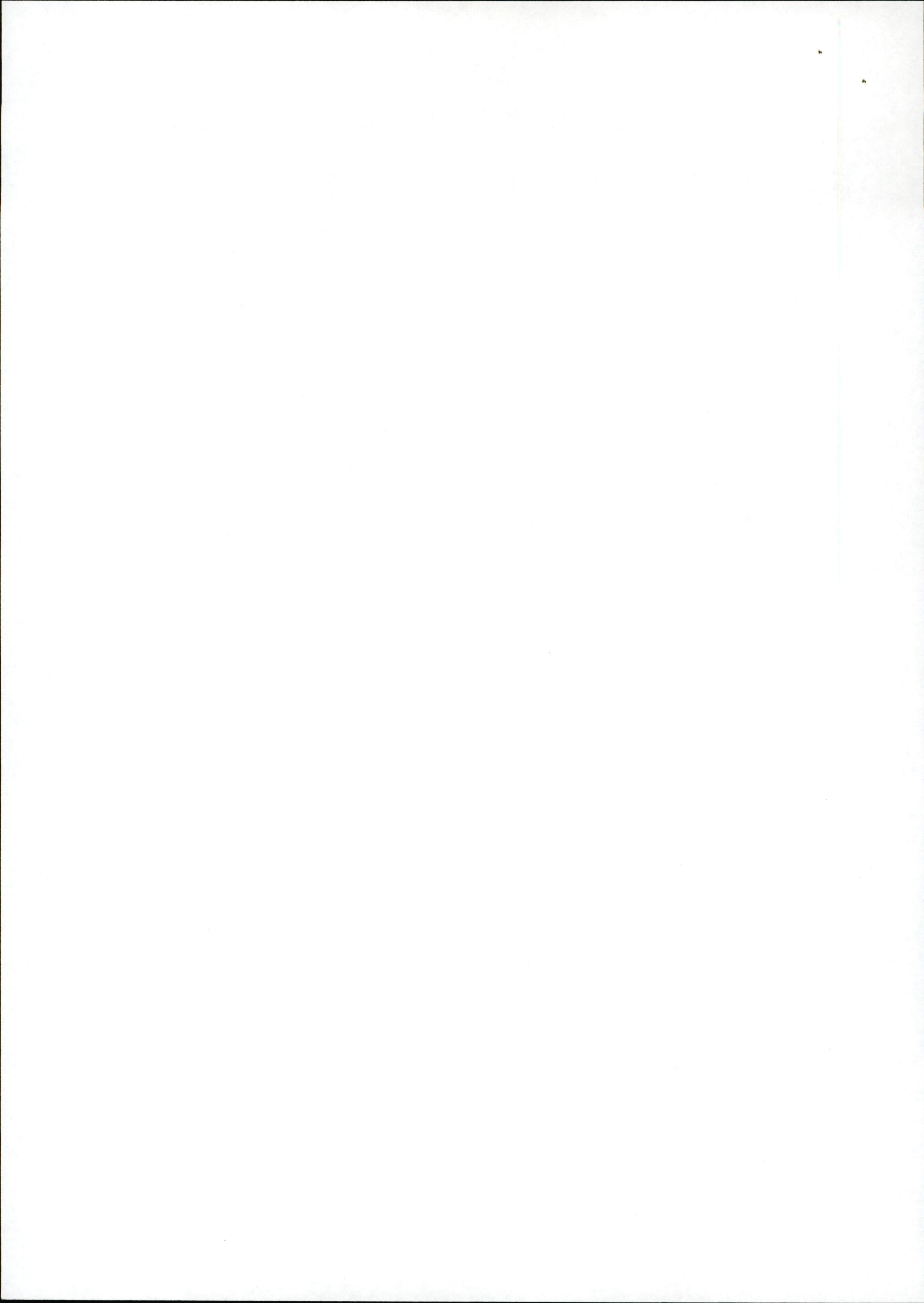
IN ORDER TO HAVE CONSISTENT PENALTIES FOR THE SAME OFFENCE, THE GOVERNMENT PROPOSES THAT ALL THE RELEVANT PROVISIONS IN THE LOWER COURT JURISDICTION BE STANDARDISED AND PROVIDE FOR A FINE OF \$1,000 OR 14 DAYS IMPRISONMENT. THIS IS THE PENALTY FOR CONTEMPT THAT CURRENTLY APPLIES IN THE LIQUOR LICENSING COURT WHICH IS PRESIDED OVER BY MAGISTRATES.

IT SHOULD BE NOTED, HOWEVER, THAT THIS PENALTY WILL NOT EXTEND TO CONTEMPT COMMITTED BEFORE A REGISTRAR UNDER THE LOCAL COURT (CIVIL CLAIMS) ACT 1970. THE



PENALTY FOR THAT OFFENCE WILL REMAIN A MONETARY PENALTY OF 10 PENALTY UNITS (\$1,000), AND NO POWER TO IMPRISON WILL BE AVAILABLE.

SECTION 199 OF THE DISTRICT COURT ACT 1973, CURRENTLY PROVIDES FOR A MAXIMUM MONETARY PENALTY OF \$2,000, WITH NO POWER TO IMPRISON. IN RESULT, A DISTRICT COURT JUDGE IS UNABLE TO IMPOSE A CUSTODIAL SENTENCE IN CIRCUMSTANCES WHICH WOULD ALLOW AN INFERIOR COURT TO ORDER UP TO 14 DAYS IMPRISONMENT. TO ADDRESS THIS ANOMALY AND TAKE INTO ACCOUNT THE GRAVITY OF PROCEEDINGS DETERMINED BY THIS COURT, IT IS PROPOSED THAT A MAXIMUM PENALTY OF 28 DAYS IMPRISONMENT SHOULD BE INCLUDED AS AN ALTERNATIVE TO THE EXISTING \$2,000 FINE FOR CONTEMPT BEFORE THE DISTRICT COURT. THIS PROPOSAL HAS THE



SUPPORT OF THE CHIEF JUDGE OF THE DISTRICT COURT, HIS HONOUR JUDGE STAUNTON.

IT SHOULD AGAIN BE EMPHASISED THAT THE SUMMARY PUNISHMENT FOR CONTEMPT COMMITTED IN THE FACE OF THE COURT IS A POWER WHICH IS USED SPARINGLY AND ONLY IN SERIOUS CASES. THE CONTEMPT POWER IS EXERCISED TO VINDICATE THE INTEGRITY OF THE COURT AND ITS PROCEEDINGS. IT IS NOT A POWER TO BE USED TO VINDICATE THE PERSONAL DIGNITY OF THE JUDGE OR MAGISTRATE CONCERNED. MOREOVER, IN MOST CASES, MERELY THE THREAT OF ITS USE WILL SERVE TO RESTORE THE AUTHORITY OF THE COURT, WHEN THAT AUTHORITY IS THREATENED, WITHOUT NEED FOR FURTHER ACTION.

I COMMEND THE BILL TO THE HOUSE.

**COURTS LEGISLATION (CONTEMPT) AMENDMENT
ACT 1991 No. 71**

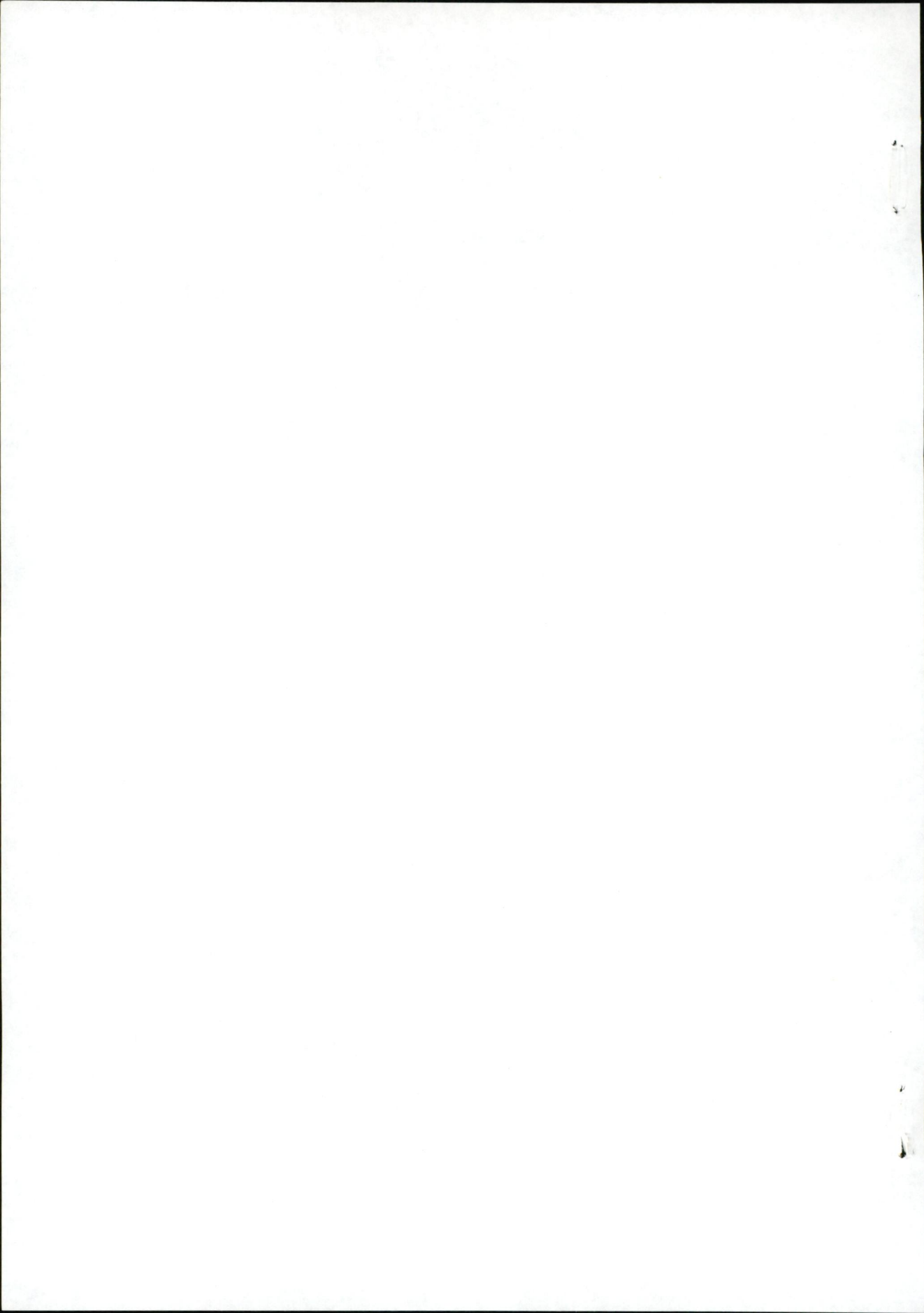
NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Amendments

SCHEDULE 1—AMENDMENTS



**COURTS LEGISLATION (CONTEMPT) AMENDMENT
ACT 1991 No. 71**

NEW SOUTH WALES



Act No. 71, 1991

An Act to amend certain Acts with respect to penalties for contempt.
[Assented to 17 December 1991]

Courts Legislation (Contempt) Amendment 1991

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Courts Legislation (Contempt) Amendment Act 1991.

Amendments

2. Each Act specified in Schedule 1 is amended in the manner set out in that Schedule.

SCHEDULE 1—AMENDMENTS

(Sec. 2)

Children's Court Act 1987 No. 53

Section 21 (**Contempt**):

From section 21 (1), omit "Penalty: \$200 or imprisonment for 10 days.", insert instead "Maximum penalty: 10 penalty units or imprisonment for 14 days."

Coroners Act 1980 No. 27

Section 43 (**Contempt**):

From section 43 (1), omit "\$500", insert instead "10 penalty units".

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Section 199 (**Contempt**):

From section 199 (7), omit "\$2,000", insert instead "20 penalty units or by imprisonment for a period not exceeding 28 days".

Justices Act 1902 No. 27

Section 152 (**Contempt of Court**):

From section 152, omit "four dollars, or by imprisonment for a period not exceeding fourteen days", insert instead "10 penalty units or by imprisonment for a period not exceeding 14 days".

Courts Legislation (Contempt) Amendment 1991

SCHEDULE 1—AMENDMENTS—*continued*

Local Courts (Civil Claims) Act 1970 No. 11

Section 76 (Contempt of court):

Omit "Penalty: 10 penalty units.", insert instead "Maximum penalty: 10 penalty units or imprisonment for 14 days, in the case of contempt in the face of a court, or, in any other case, 10 penalty units."

[*Minister's second reading speech made in—
Legislative Assembly on 24 October 1991
Legislative Council on 10 December 1991*]

