

FIRST PRINT

MAINTENANCE AND CHAMPERTY ABOLITION BILL 1993

NEW SOUTH WALES



EXPLANATORY NOTE

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

This Bill is cognate with the Legal Profession Reform Bill 1993.

Maintenance and champerty are common law crimes and they are at present also a basis for civil action for damages.

“Maintenance” comprises the giving of assistance or encouragement to one of the parties in civil proceedings by a person who has neither an interest in the proceedings nor any other motive recognised by law as justifying the assistance or encouragement.

“Champerty” is a particular form of maintenance in which legal proceedings are maintained in consideration of a promise to give the maintainer a share of the subject-matter or proceeds.

The objects of this Bill are:

- (a) to abolish the common law crimes of maintenance and champerty; and
- (b) to abolish maintenance and champerty as grounds for actions in tort.

However the abolition will not affect any rule of law as to the illegality of a contract (e.g. a contract that is illegal on grounds of public policy). The Legal Profession Reform Bill 1993 (Schedule 2) preserves the possibility that maintenance and champerty may be professional misconduct by a legal practitioner except in connection with a conditional costs agreement under that Bill.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the proposed Act to commence on a day to be appointed by proclamation.

Clause 3 abolishes the common law crimes of maintenance and champerty.

Clause 4 abolishes civil liability in tort for the common law crimes of maintenance and champerty.

Maintenance and Champerty Abolition 1993

Clause 5 is a transitional provision.

Clause 6 excludes from abolition by the proposed Act any rule of law as to the cases in which a contract is illegal, whether the contract was made before, or is made after, the commencement of the proposed Act.

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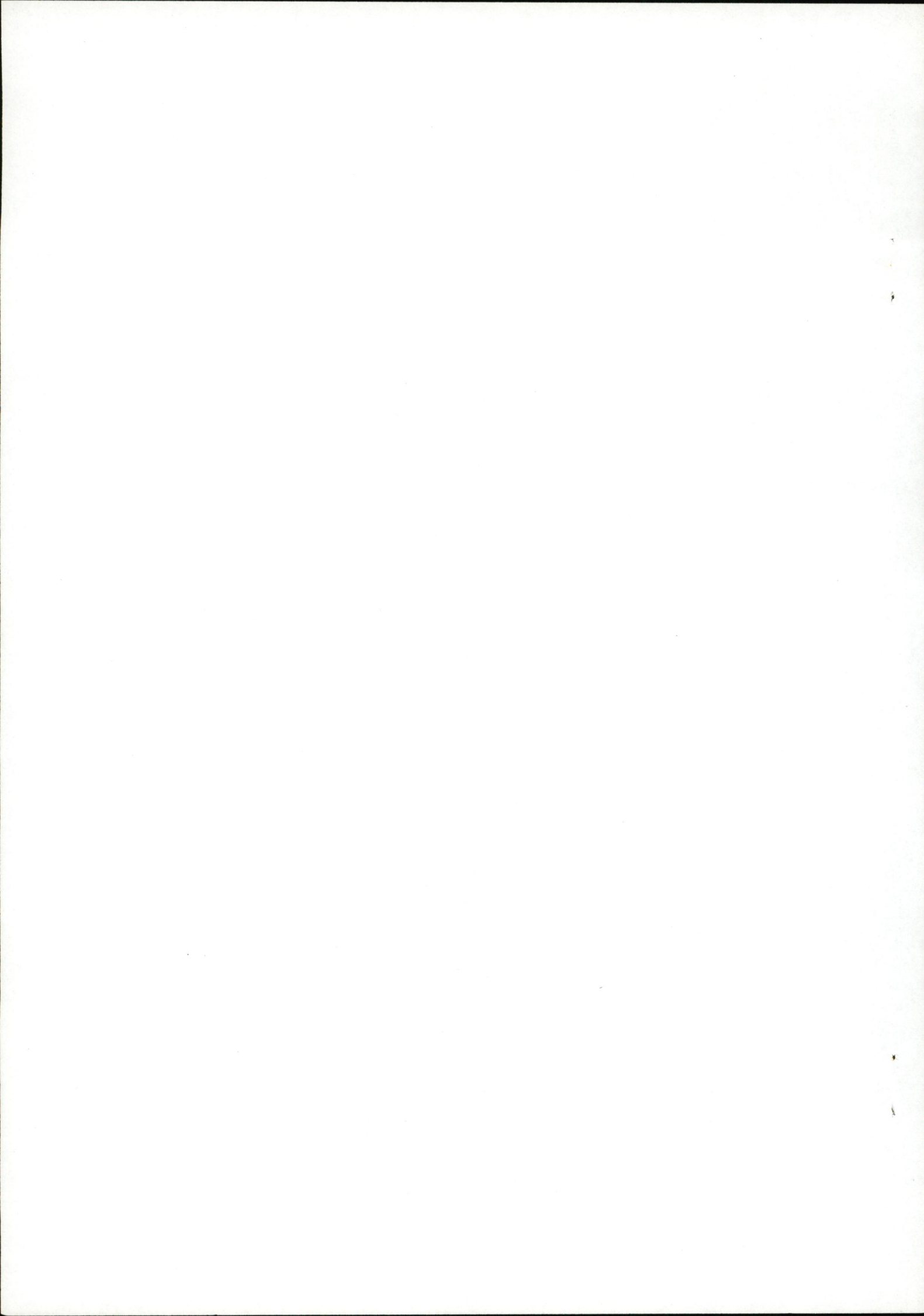
MAINTENANCE AND CHAMPERTY ABOLITION BILL 1993

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
 2. Commencement
 3. Abolition of crime of maintenance (including champerty)
 4. Abolition of liability in tort for maintenance (including champerty)
 5. Transitional provision
 6. Preservation of liability under certain contracts
-



MAINTENANCE AND CHAMPERTY ABOLITION BILL 1993

NEW SOUTH WALES



No. , 1993

A BILL FOR

An Act to abolish the common law crimes of maintenance and champerty; to exclude liability in tort for the common law crimes of maintenance and champerty; and for other purposes.

Maintenance and Champerty Abolition 1993

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Maintenance and Champerty Abolition Act 1993.

5 Commencement

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

Abolition of crime of maintenance (including champerty)

3. The offence of maintenance (including champerty) that but for this section would be punishable by the common law is abolished.

10 Abolition of liability in tort for maintenance (including champerty)

4. An action in tort no longer lies on account of conduct known as maintenance (including champerty).

Transitional provision

15 5. Section 30 of the Interpretation Act 1987 applies to the abolition of an offence or an action in tort by this Act in the same way as it applies to the repeal of a provision establishing an offence under an Act.

Preservation of liability under certain contracts

20 6. This Act does not affect any rule of law as to the cases in which a contract is to be treated as contrary to public policy or as otherwise illegal, whether the contract was made before, or is made after, the commencement of this Act.

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**MAINTENANCE AND CHAMPERTY ABOLITION BILL
1993 (No. 2)**

NEW SOUTH WALES



EXPLANATORY NOTE

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

This Bill is cognate with the Legal Profession Reform Bill 1993.

Maintenance and champerty are common law crimes and they are at present also a basis for civil action for damages.

“Maintenance” comprises the giving of assistance or encouragement to one of the parties in civil proceedings by a person who has neither an interest in the proceedings nor any other motive recognised by law as justifying the assistance or encouragement.

“Champerty” is a particular form of maintenance in which legal proceedings are maintained in consideration of a promise to give the maintainer a share of the subject-matter or proceeds.

The objects of this Bill are:

- (a) to abolish the common law crimes of maintenance and champerty; and
- (b) to abolish maintenance and champerty as grounds for actions in tort.

However the abolition will not affect any rule of law as to the illegality of a contract (e.g. a contract that is illegal on grounds of public policy). The Legal Profession Reform Bill 1993 (Schedule 2) preserves the possibility that maintenance and champerty may be professional misconduct by a legal practitioner except in connection with a conditional costs agreement under that Bill.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the proposed Act to commence on a day to be appointed by proclamation.

Clause 3 abolishes the common law crimes of maintenance and champerty.

Clause 4 abolishes civil liability in tort for the common law crimes of maintenance and champerty.

Maintenance and Champerty Abolition 1993 (No. 2)

Clause 5 is a transitional provision.

Clause 6 excludes from abolition by the proposed Act any rule of law as to the cases in which a contract is illegal, whether the contract was made before, or is made after, the commencement of the proposed Act.

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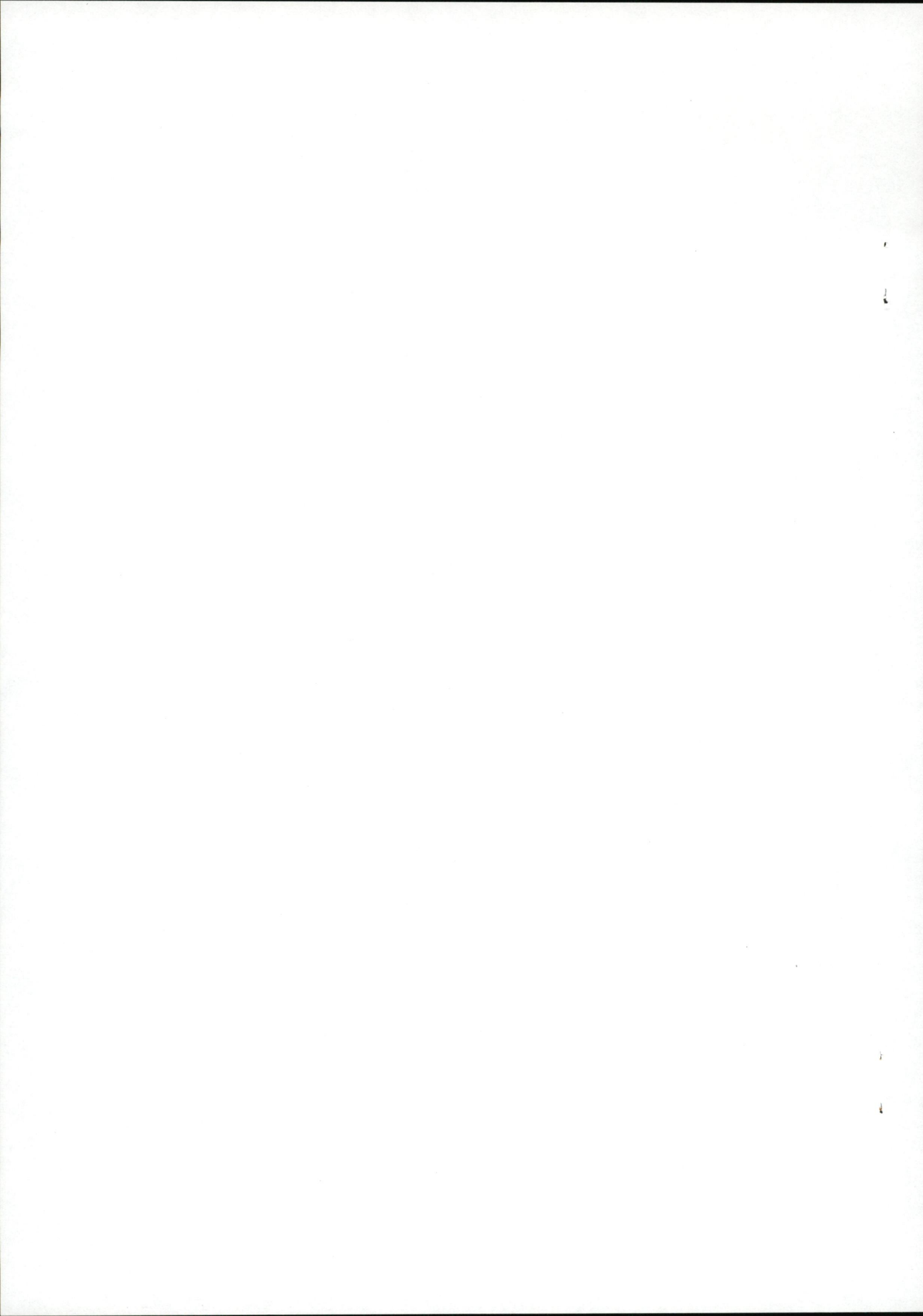
**MAINTENANCE AND CHAMPERTY ABOLITION BILL
1993 (No. 2)**

NEW SOUTH WALES



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**MAINTENANCE AND CHAMPERTY ABOLITION BILL
1993 (No. 2)**

NEW SOUTH WALES



No. , 1993

A BILL FOR

An Act to abolish the common law crimes of maintenance and champerty; to exclude liability in tort for the common law crimes of maintenance and champerty; and for other purposes.

Maintenance and Champerty Abolition 1993 (No. 2)

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Maintenance and Champerty Abolition Act 1993.

5 Commencement

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

Abolition of crime of maintenance (including champerty)

3. The offence of maintenance (including champerty) that but for this section would be punishable by the common law is abolished.

10 Abolition of liability in tort for maintenance (including champerty)

4. An action in tort no longer lies on account of conduct known as maintenance (including champerty).

Transitional provision

15 5. Section 30 of the Interpretation Act 1987 applies to the abolition of an offence or an action in tort by this Act in the same way as it applies to the repeal of a provision establishing an offence under an Act.

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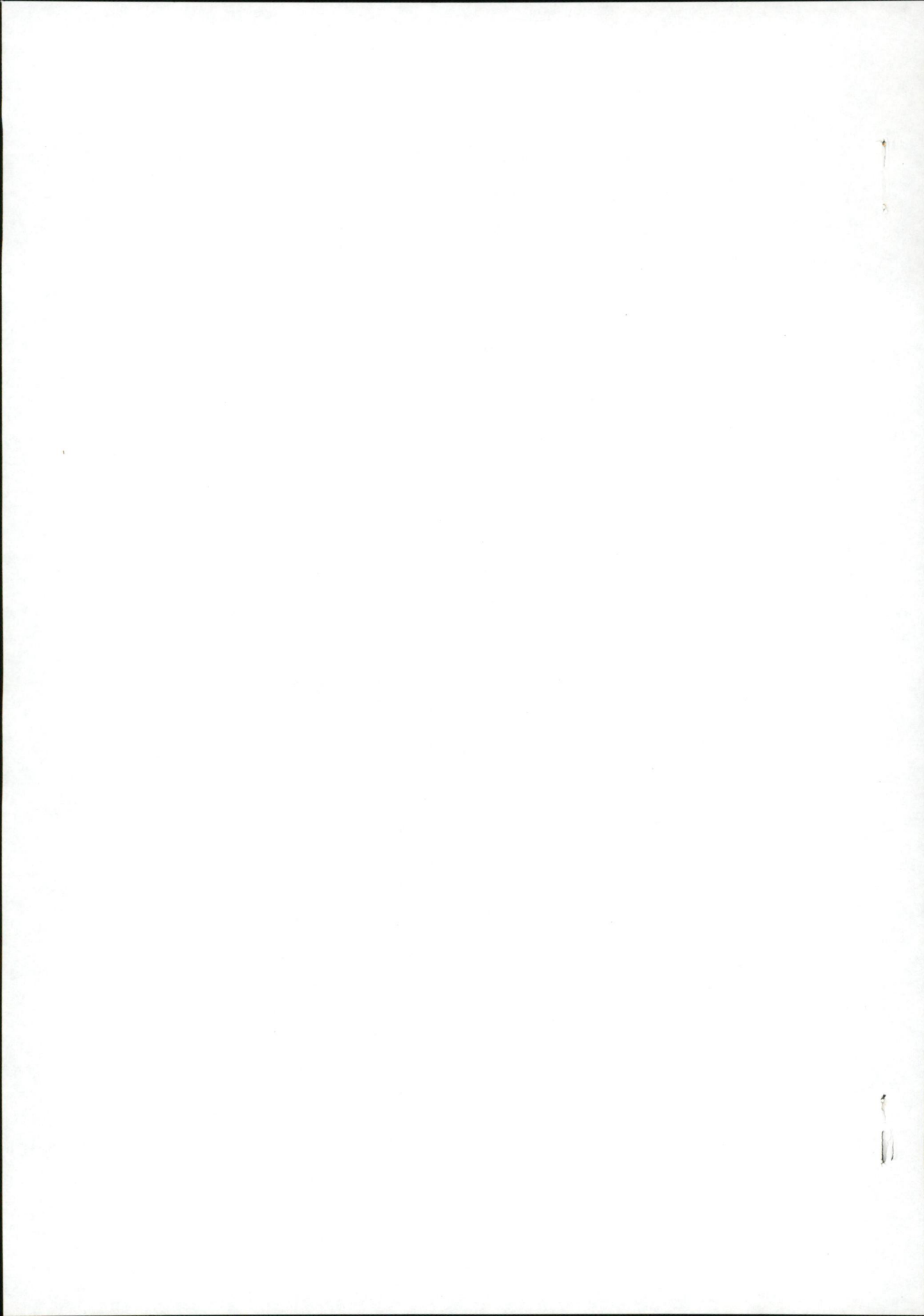
**MAINTENANCE AND CHAMPERTY ABOLITION
ACT 1993 No. 88**

NEW SOUTH WALES



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**MAINTENANCE AND CHAMPERTY ABOLITION
ACT 1993 No. 88**

NEW SOUTH WALES



Act No. 88, 1993

An Act to abolish the common law crimes of maintenance and champerty; to exclude liability in tort for the common law crimes of maintenance and champerty; and for other purposes. [Assented to 29 November 1993]

Maintenance and Champerty Abolition Act 1993 No. 88

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Preservation of liability under certain contracts

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[*Minister's second reading speech made in—*
Legislative Council on 27 October 1993
Legislative Assembly on 9 November 1993]

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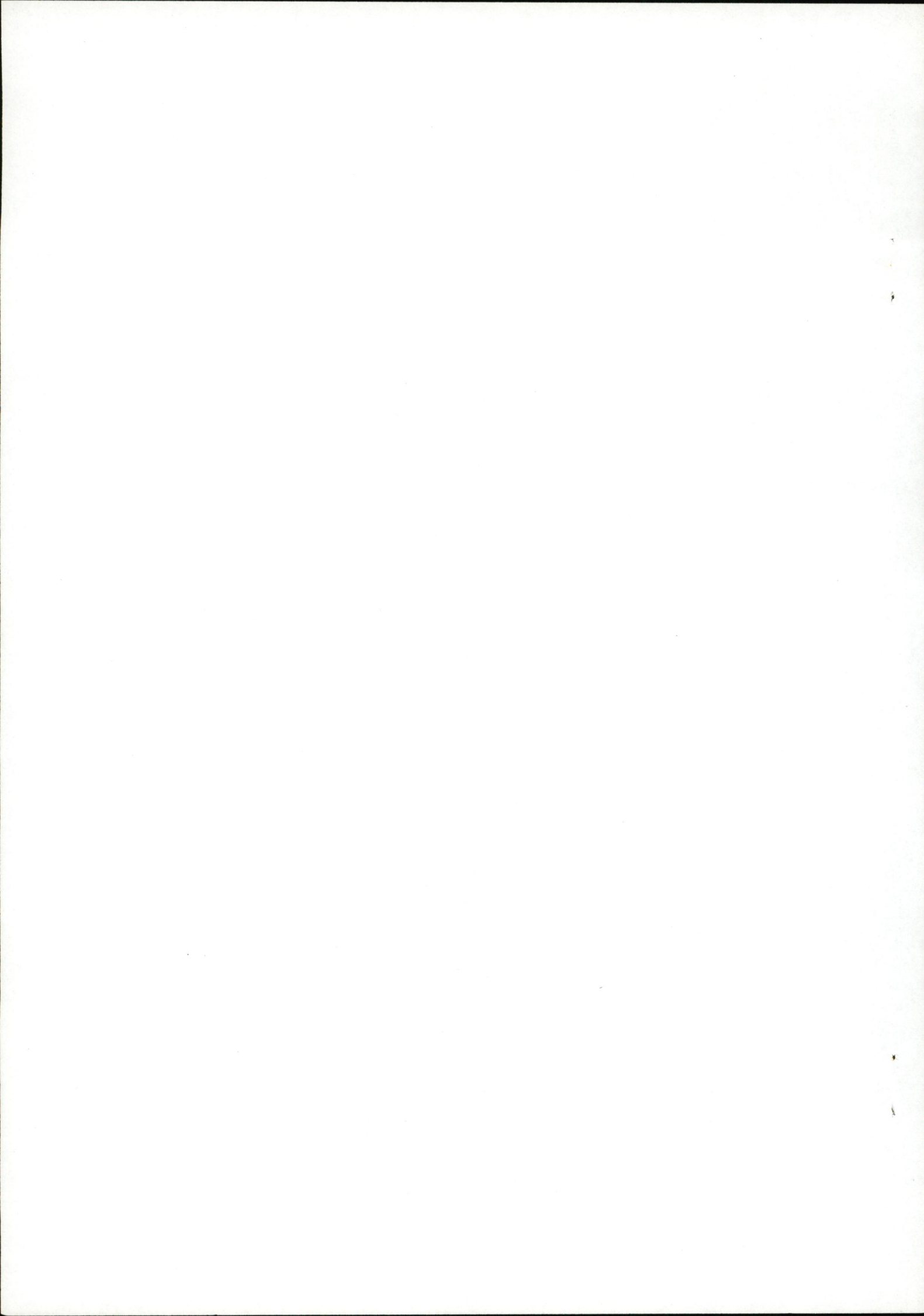
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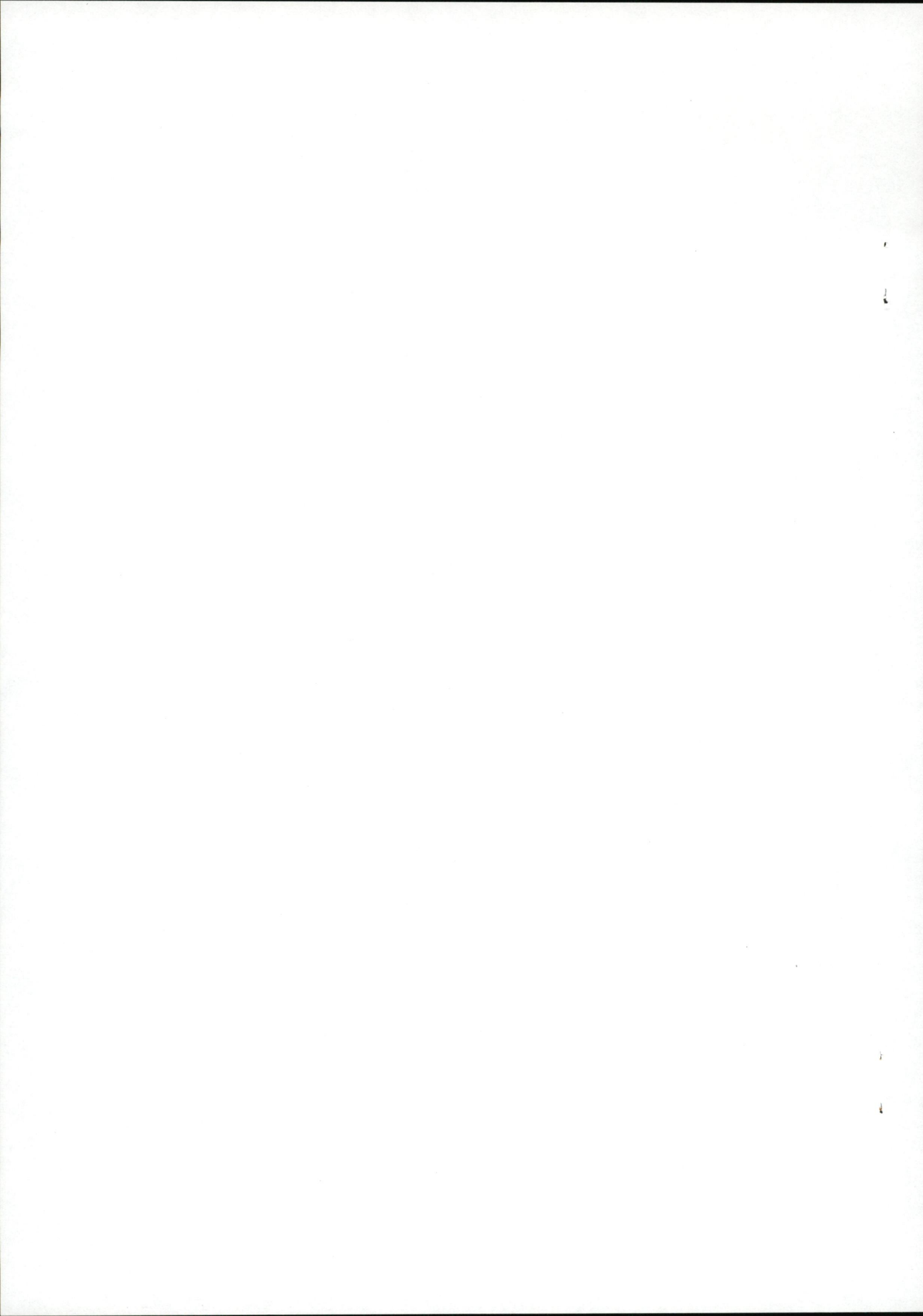
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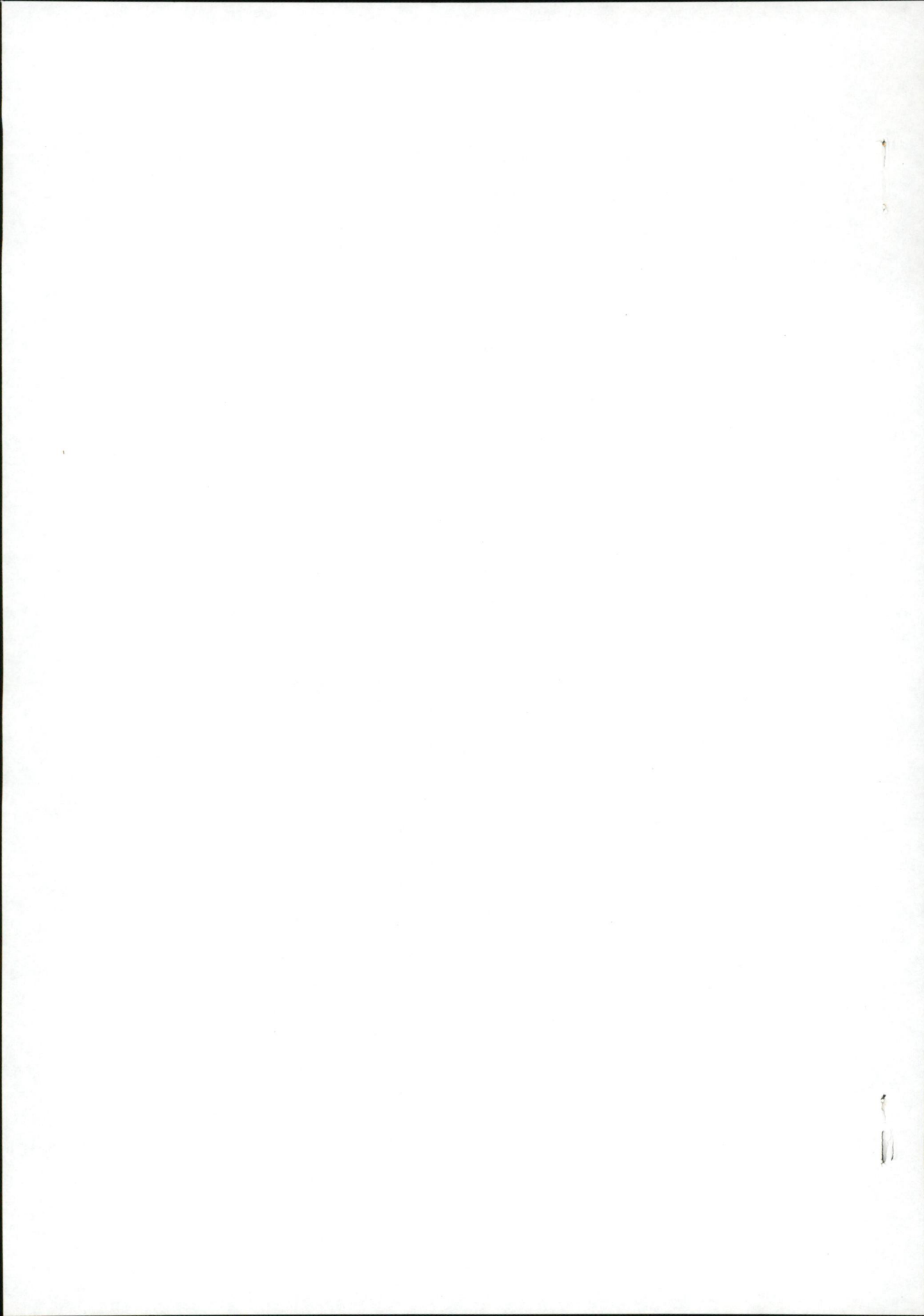
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[*Minister's second reading speech made in—
Legislative Council on 27 October 1993
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