



Tasmanian Small Business Council


Uniting Small Business

Tasmanian Small Business Council Inc

116 Bathurst Street Hobart TAS 7000

GPO Box 224 Hobart TAS 7001

Ph (03) 62319174


www.tsbc.org.au

Royal Commission into Misconduct

26 October 2018

In the Banking, Superannuation and

Financial Services Industry

By email to: FSRCenquiries@royalcommission.gov.au

Response to Draft Report

The Tasmanian Small Business Council (TSBC) has, for some years, been researching the performance and effectiveness of the Australian Banking Industry's Code of Banking Practice (the Code). It makes certain promises to bank's customers and in part legally binding commitments by those banks that adopted the Code.

Research undertaken for the TSBC has revealed numerous deficiencies. More recently this research has been backed with solicitor's opinions that certain activities, particularly dispute resolution, should be considered more carefully by the Banking Royal Commission in its public hearings as the practices appear not to comply with applicable law or requirements defined by the Australian Securities and Investments Commission (ASIC).

Further it is clearly stated in the 2003 Code that dispute resolution procedures will comply with specified Australian Standard AS4269-1995, and more recently AS ISO 10002:2006 or AS/NZS 10002:2014.

The practices adopted by the Code Compliance Monitors do not comply.

In raising this matter with the Banking Royal Commission, we note that the Interim Report states "the chief protection for small business borrowers ... has been and remains the Code." (p.167)

It is concerning that without any public examination of the failures of the Code that it should carry such a strong endorsement.

The information accompanying this submission, on behalf of small businesses, details the concerns and indeed the obvious failures. It raises numerous questions that require an answer.

We believe that these matters deserve public examination and warrant thorough investigation.



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It appears that bankers and their associates have engaged in misleading practices to enable them to use their vast persuasive muscle to convince various lower Courts to find against small business borrowers thus causing them a financial disadvantage, while the banks themselves were in breach of their own contractual agreements.

Signed on behalf of

Tasmanian Small Business Council

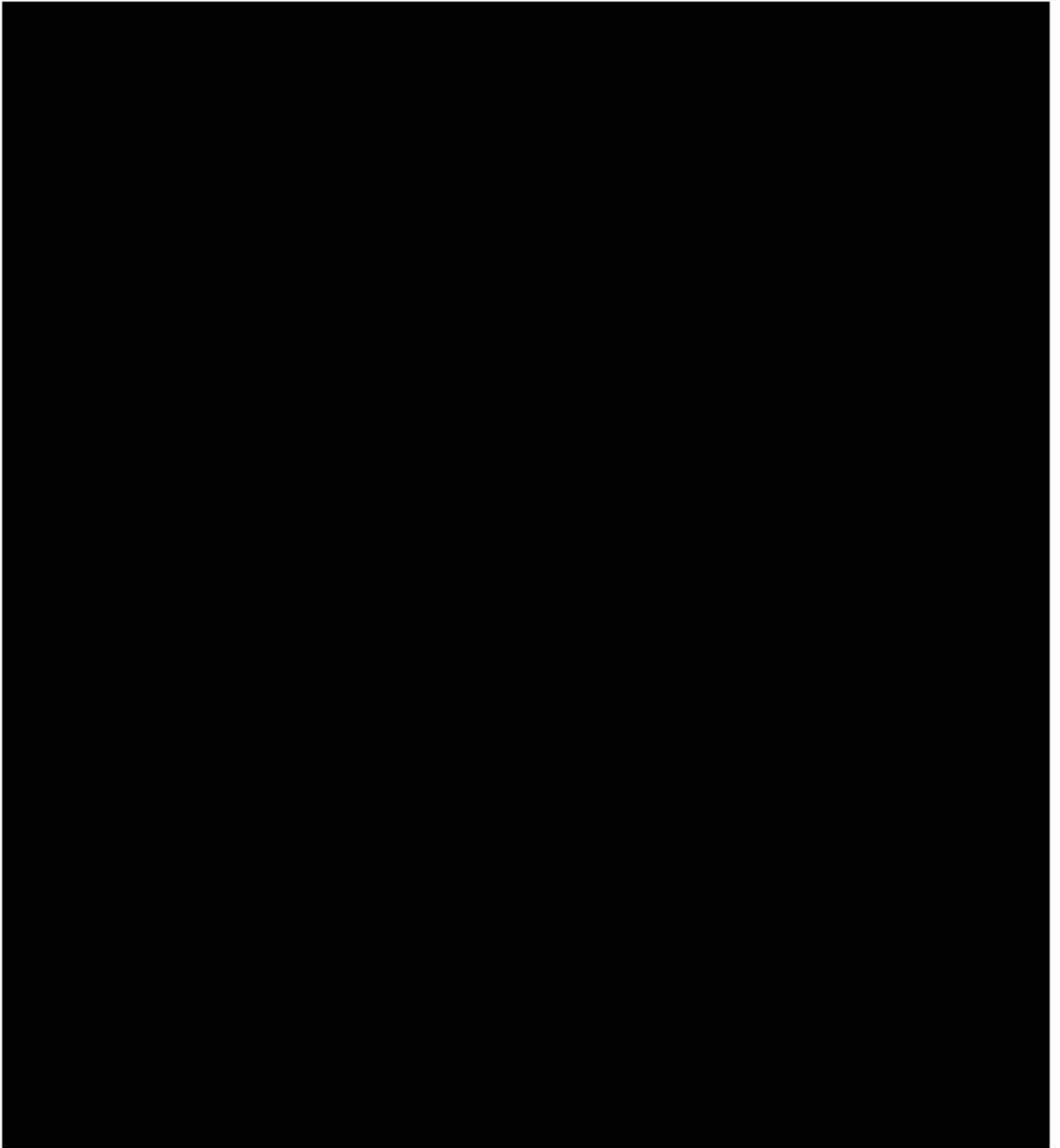
Geoff Eader,

Chairperson

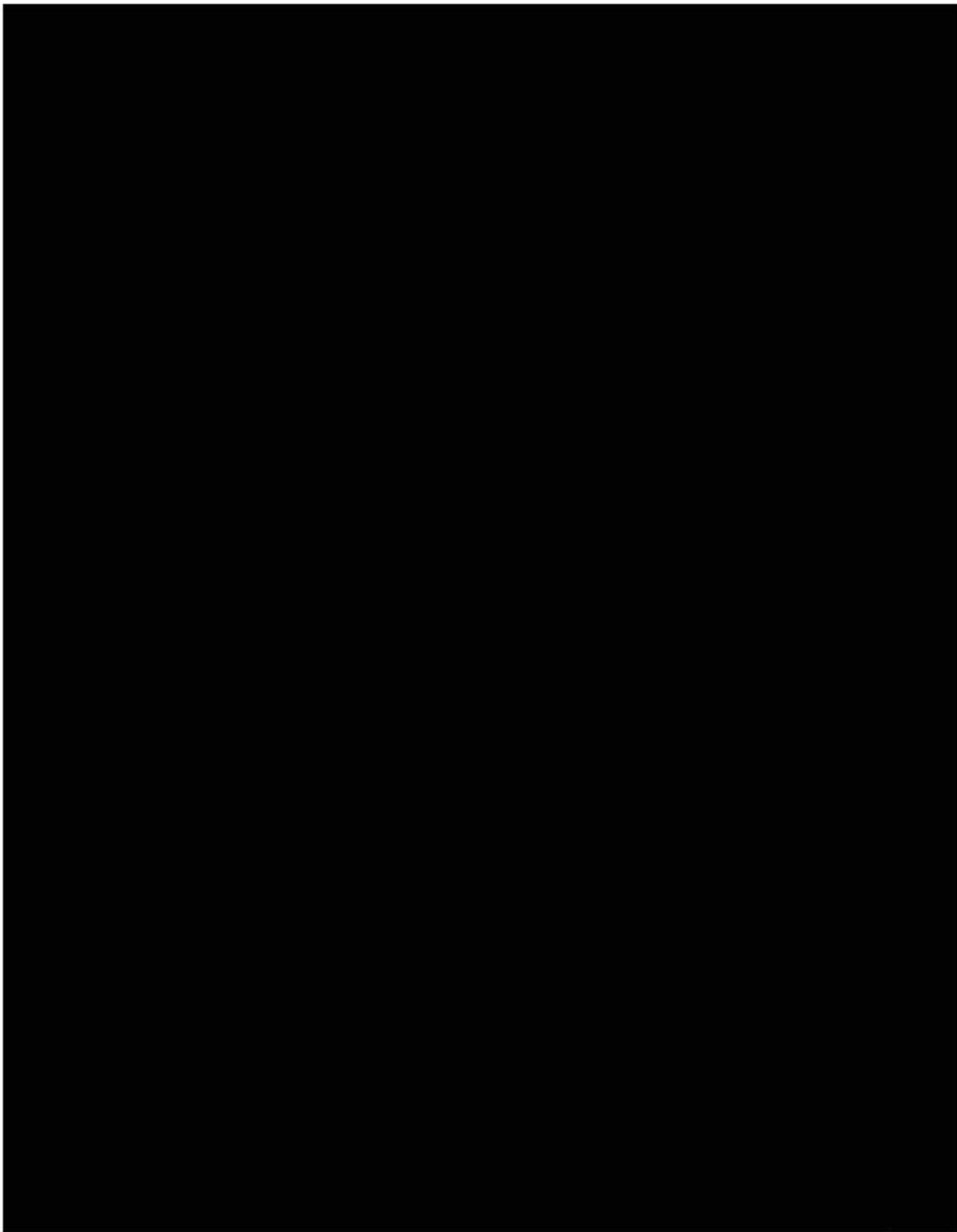
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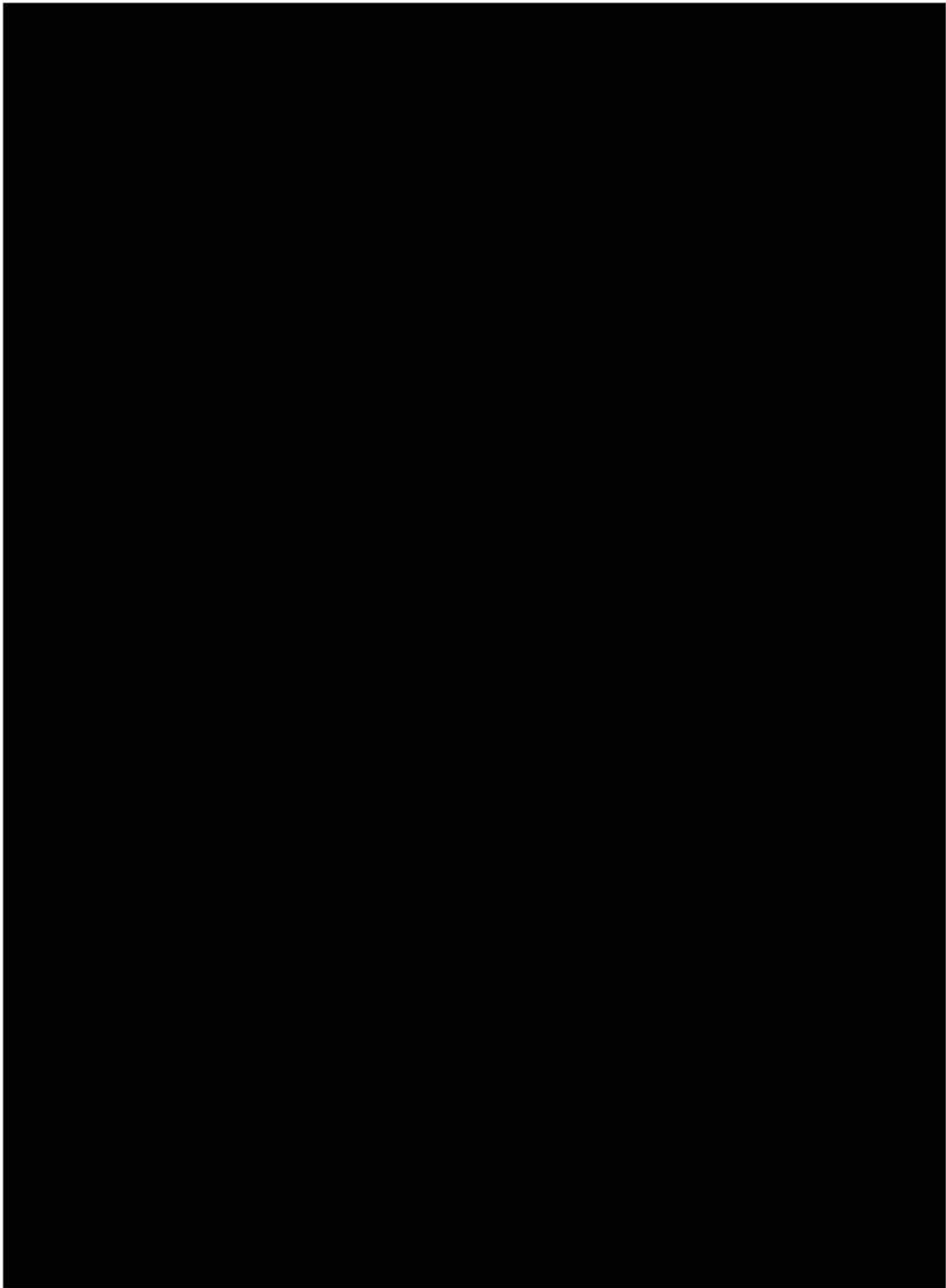
Correspondence from Tee Legal

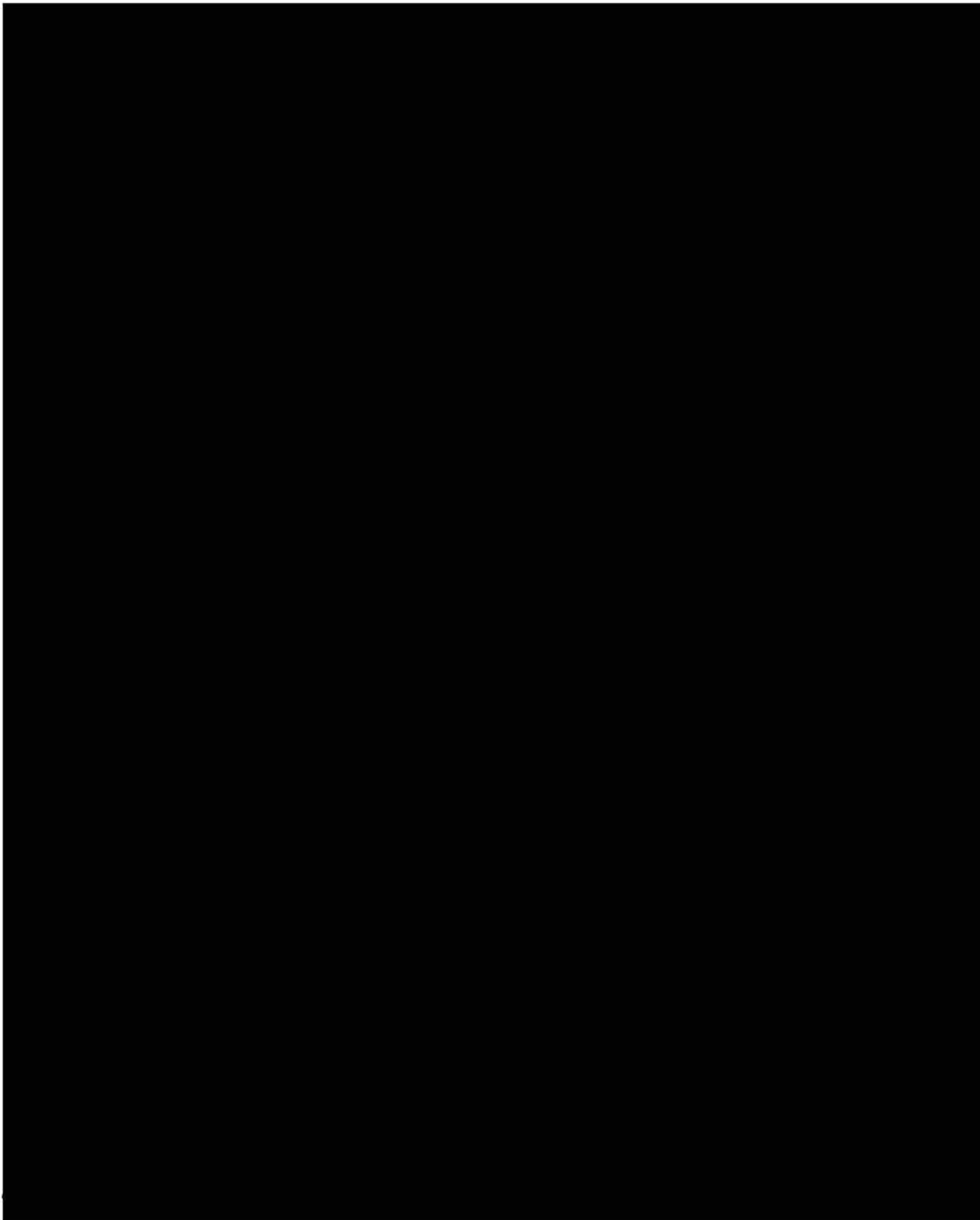
ASIC Guidelines for IDR procedures and extract from Code of Banking Practice

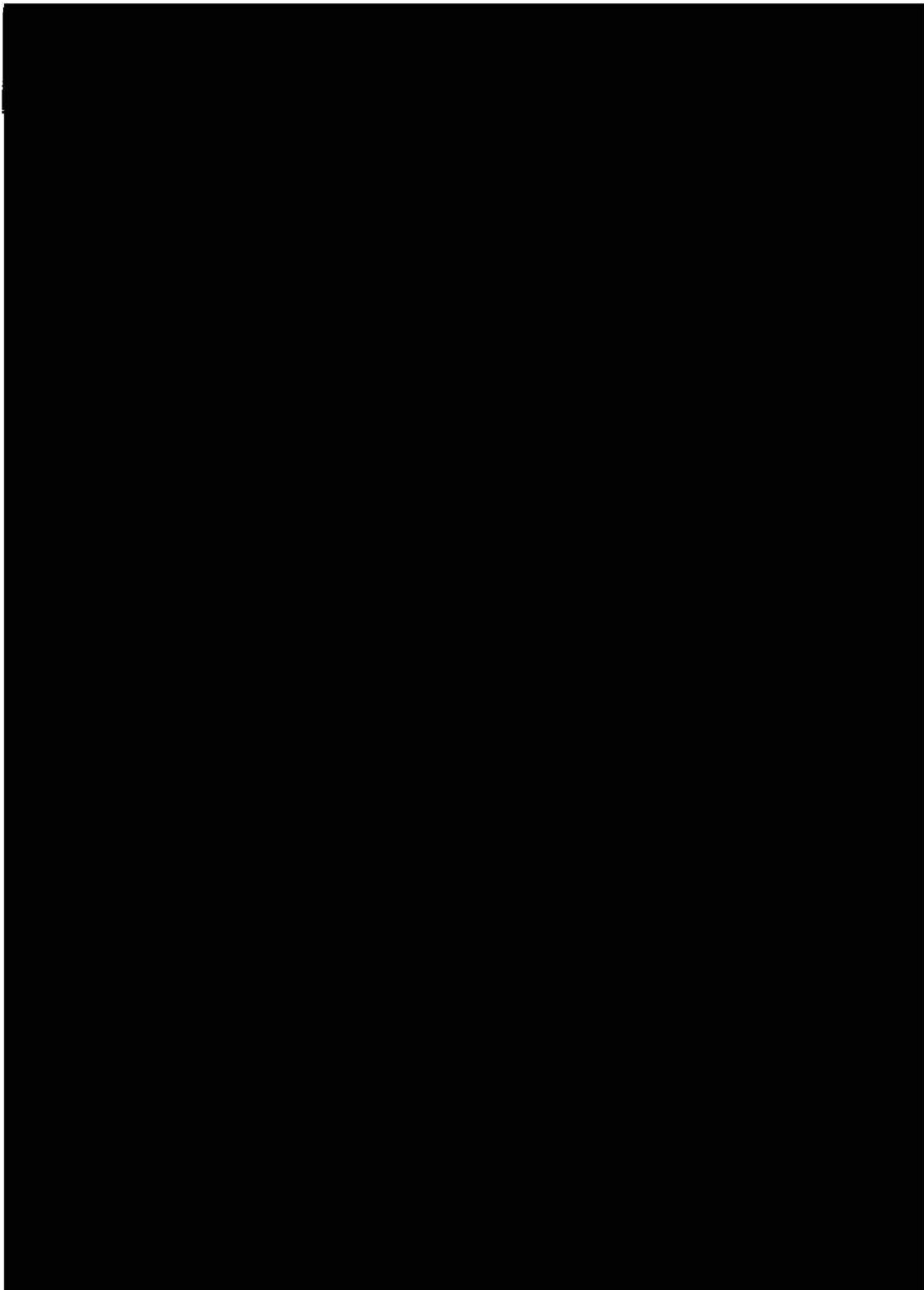


Our Ref: 181023 TSBC Submission





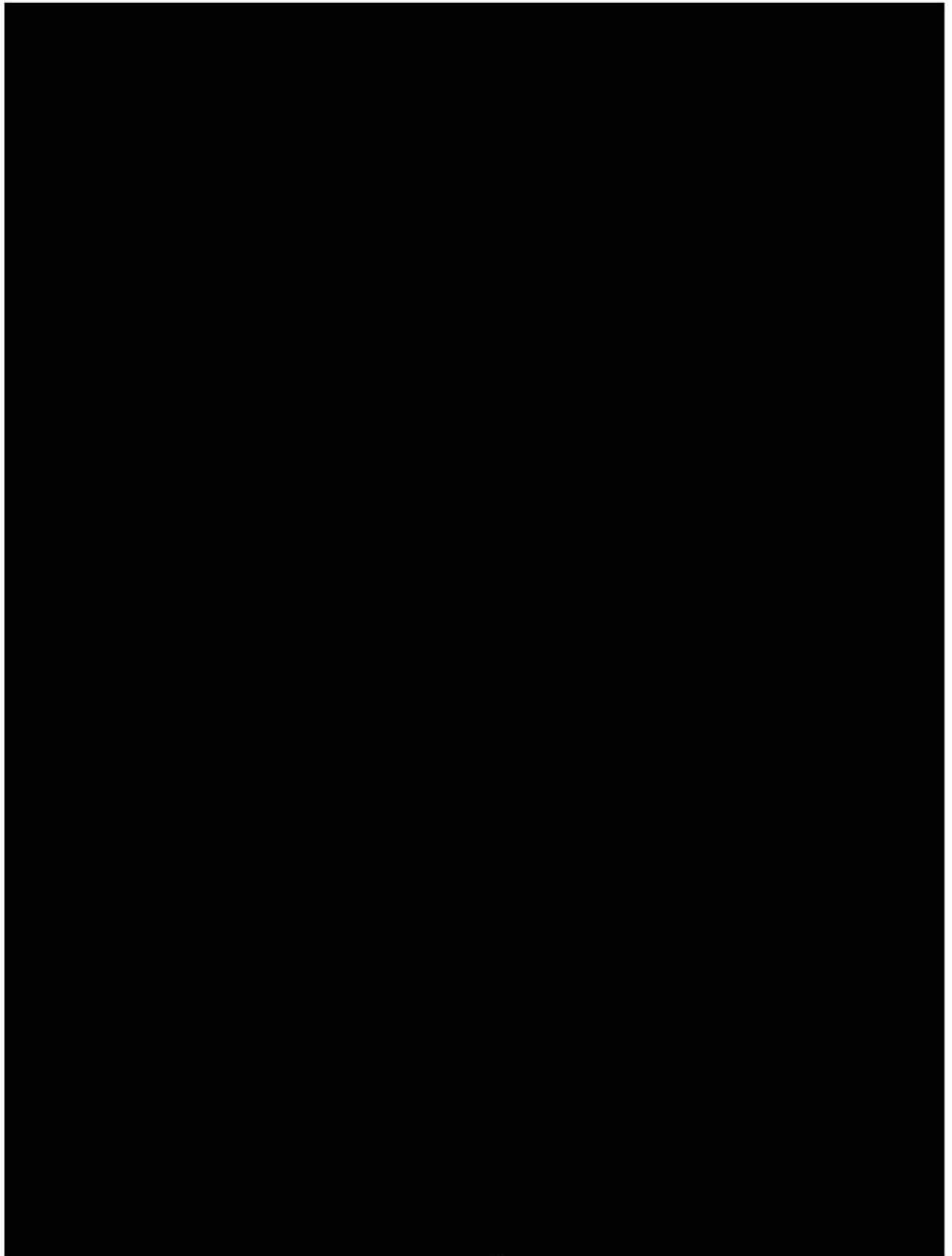






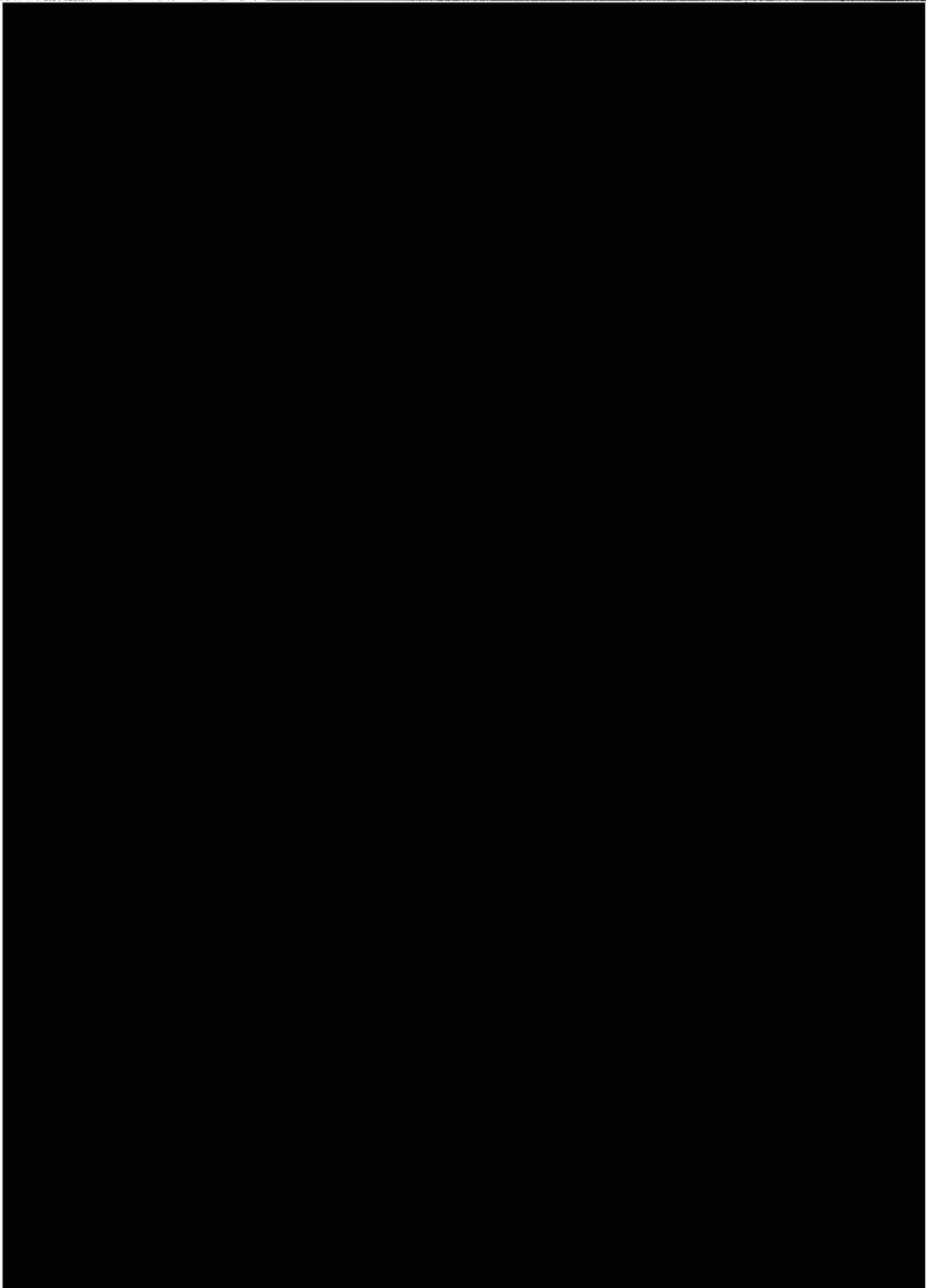


Telephone 0449 782 840
Website www.teelgal.com.au
Email info@teelgal.com.au
ABN 21 714 057 595
Postal Address P O Box 144 Adamstown 2289 NSW

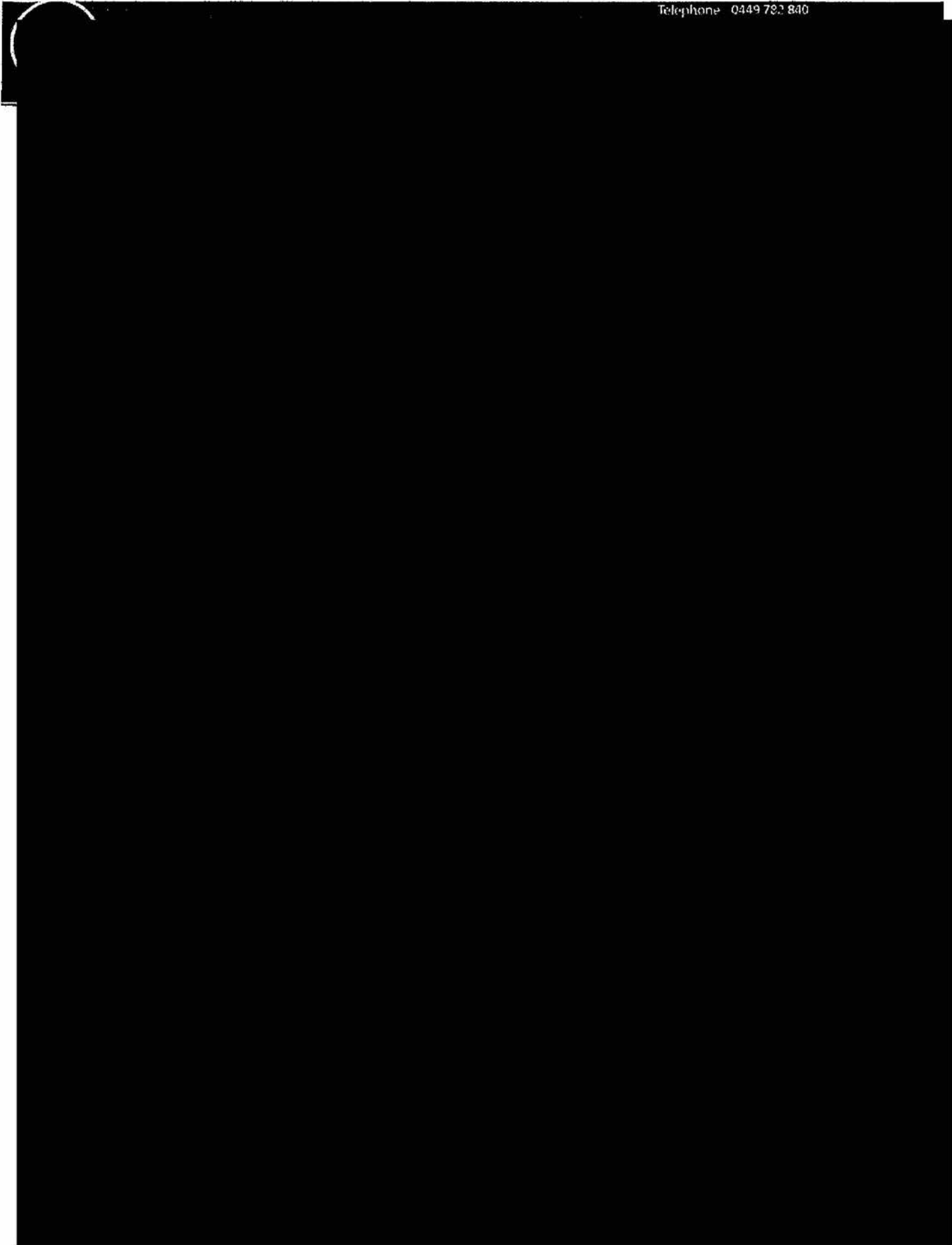


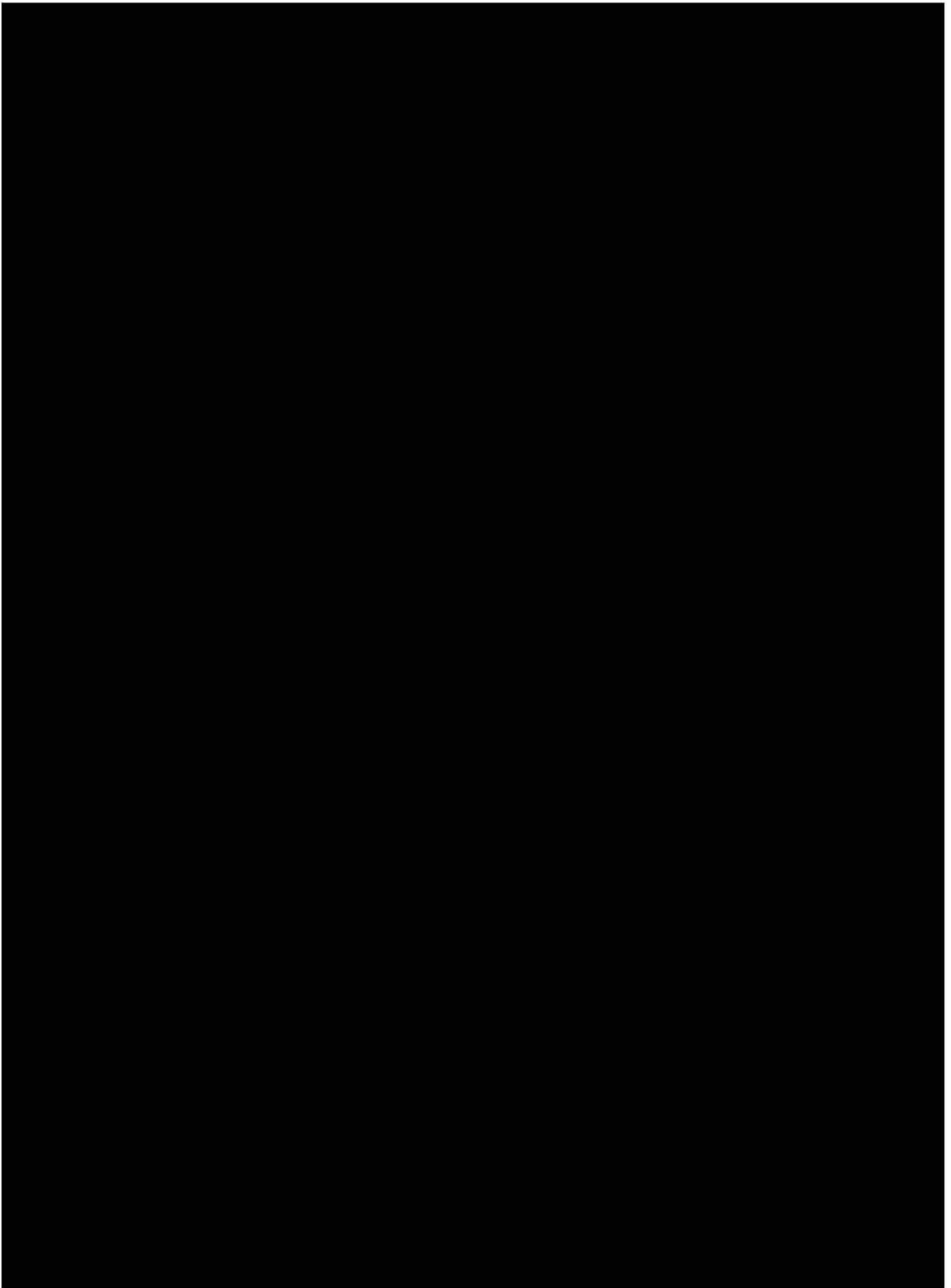


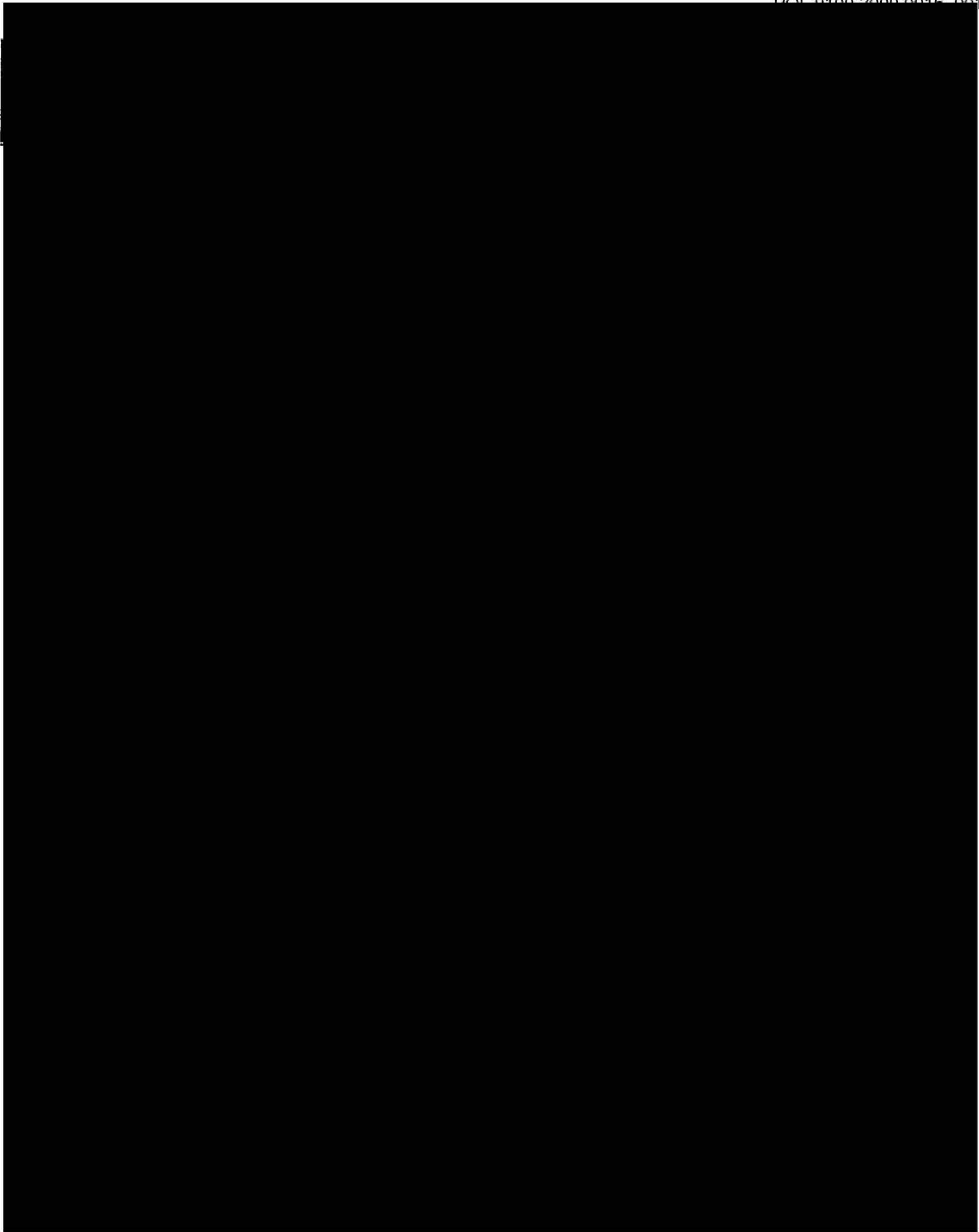
Telephone 0449 732 840
Website www.teellegal.com.au
Email info@teellegal.com.au
ABN 21 714 057 595
Postal Address P O Box 144 Adamstown 2289 NSW

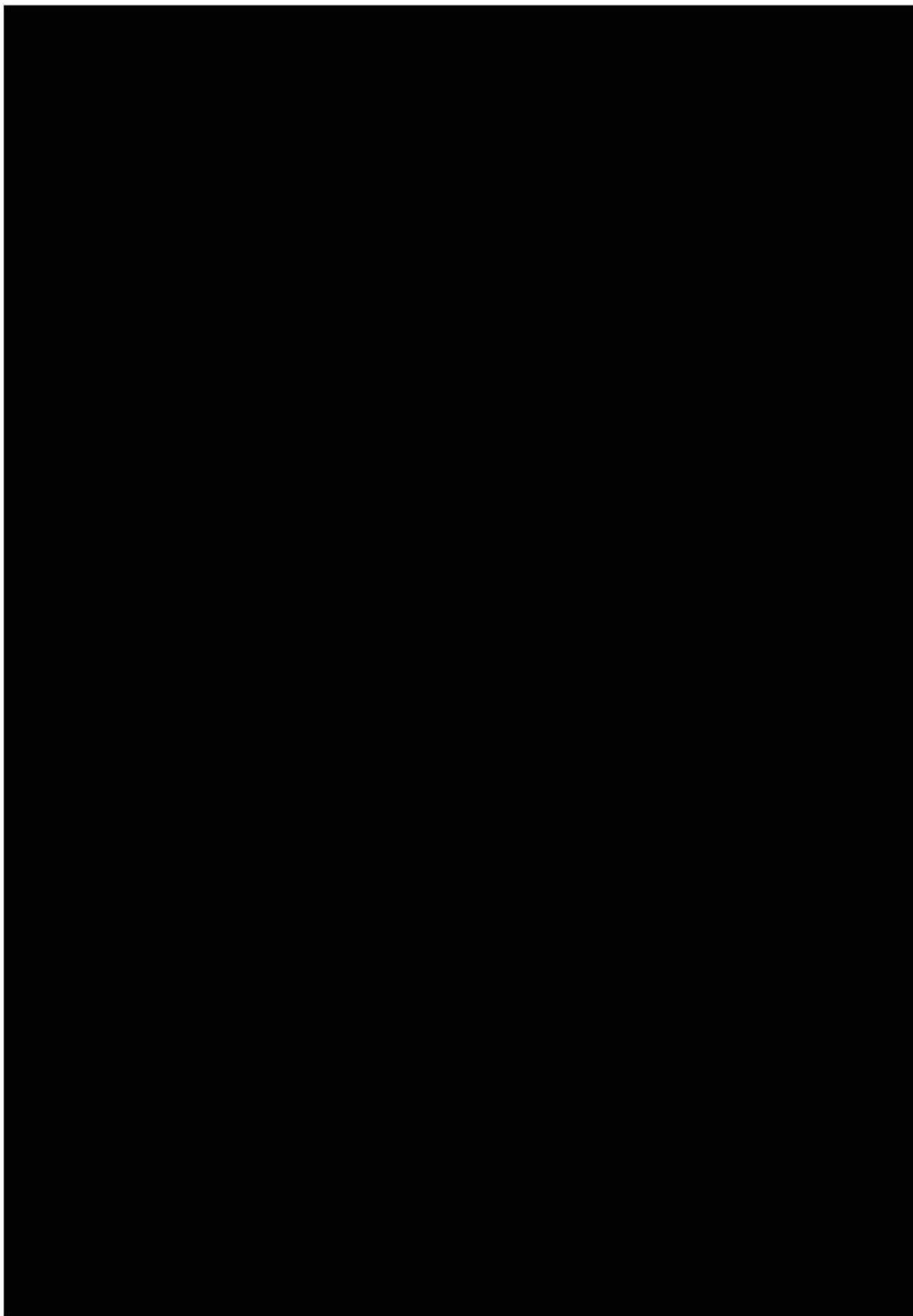


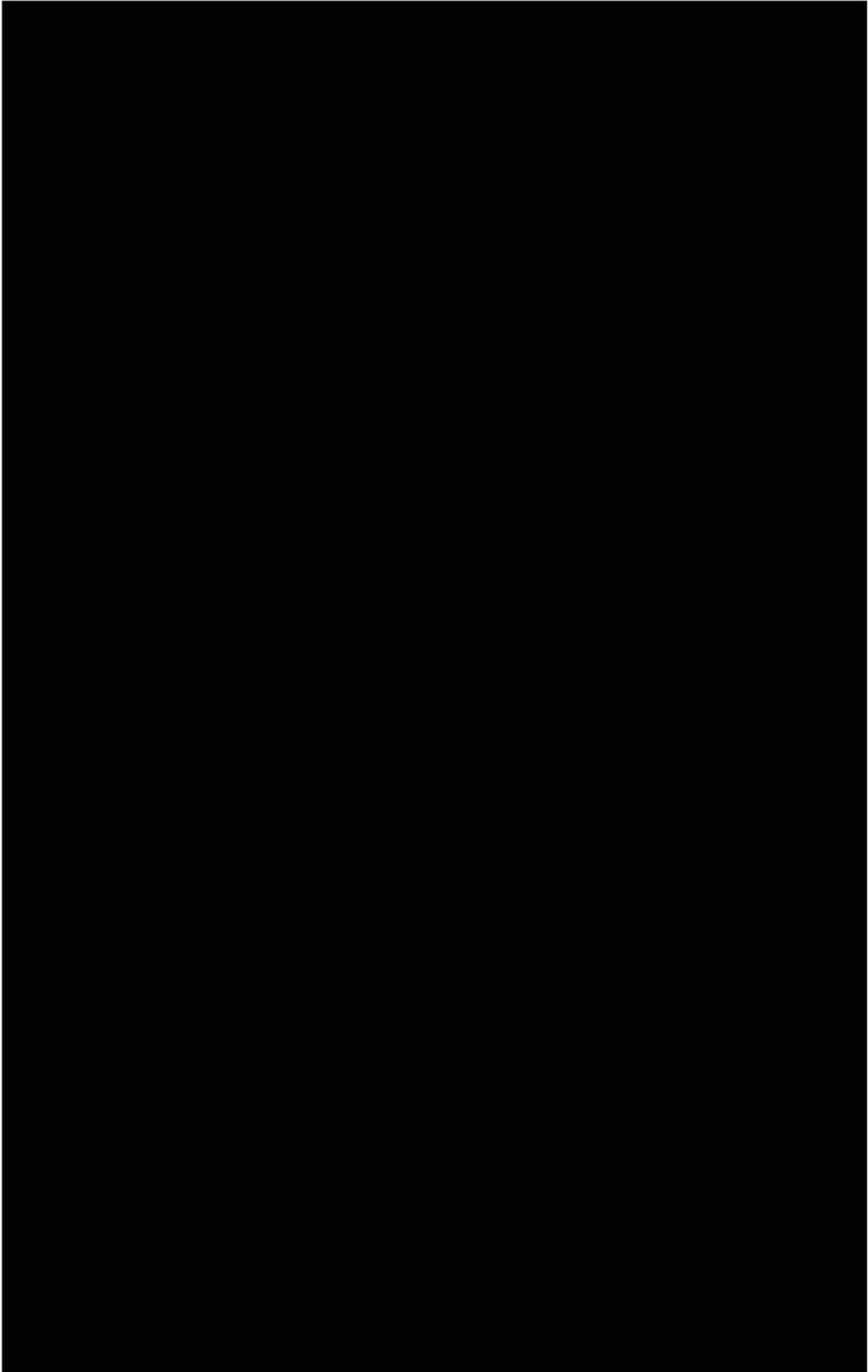
Telephone 0449 723 840

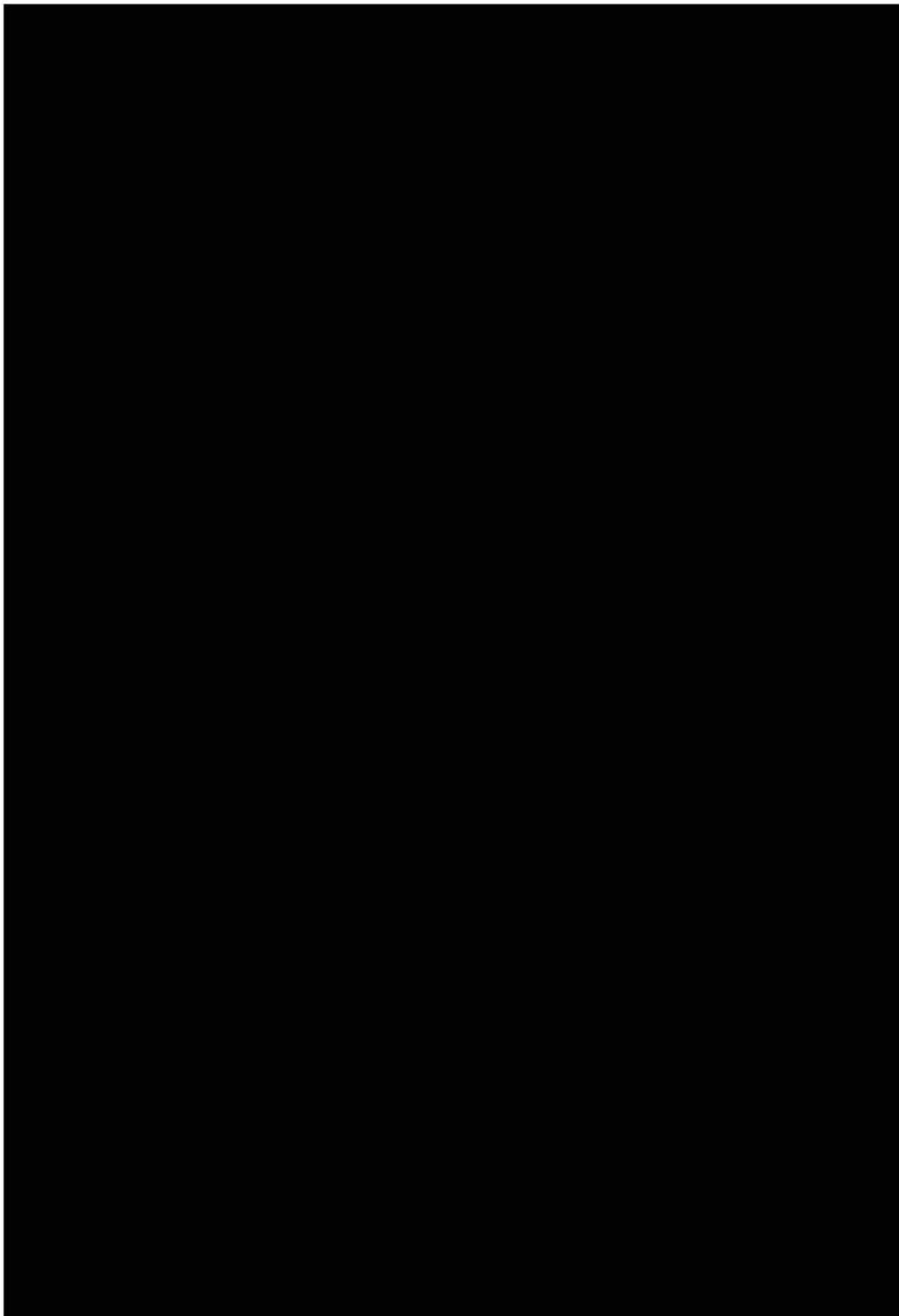


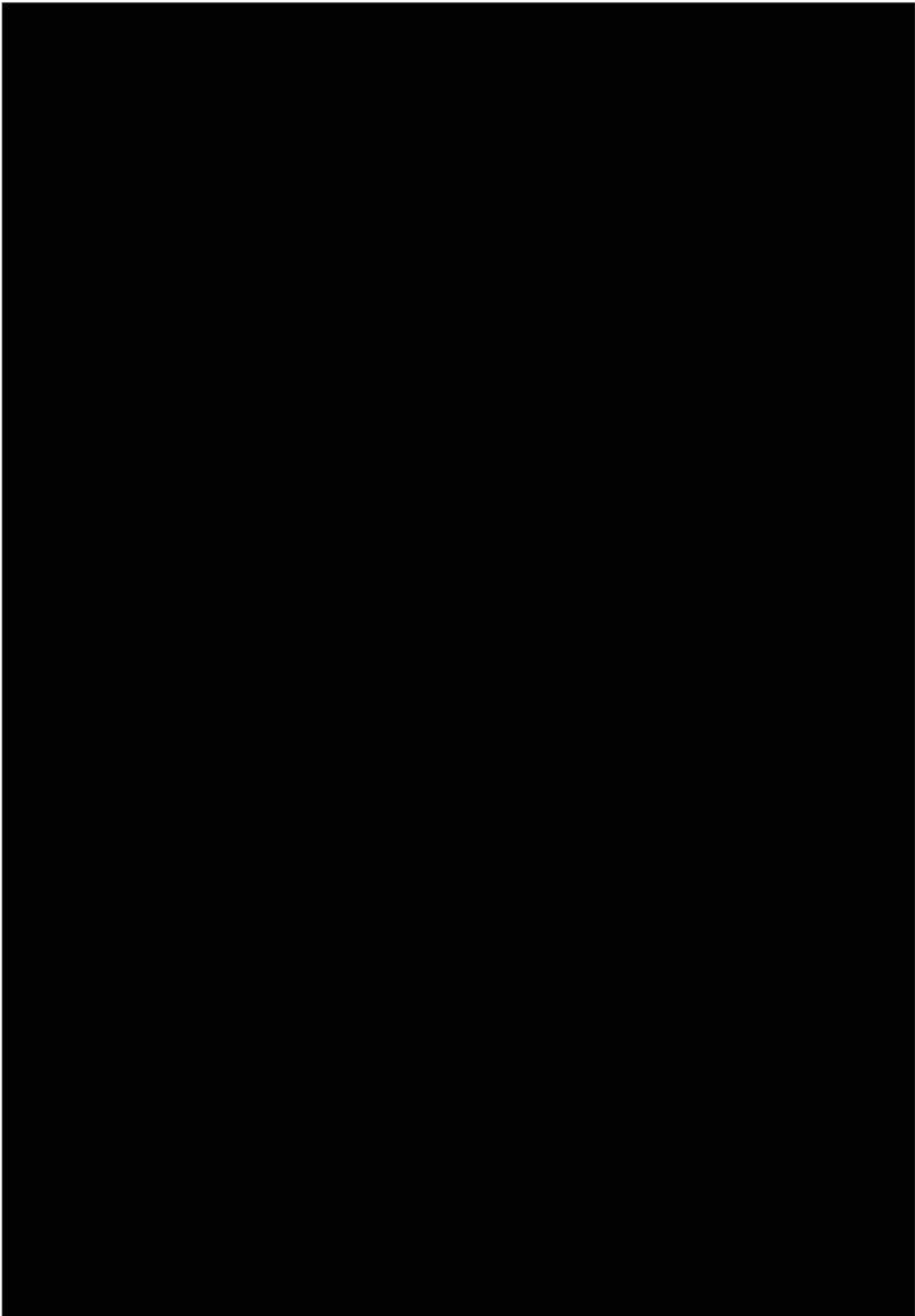


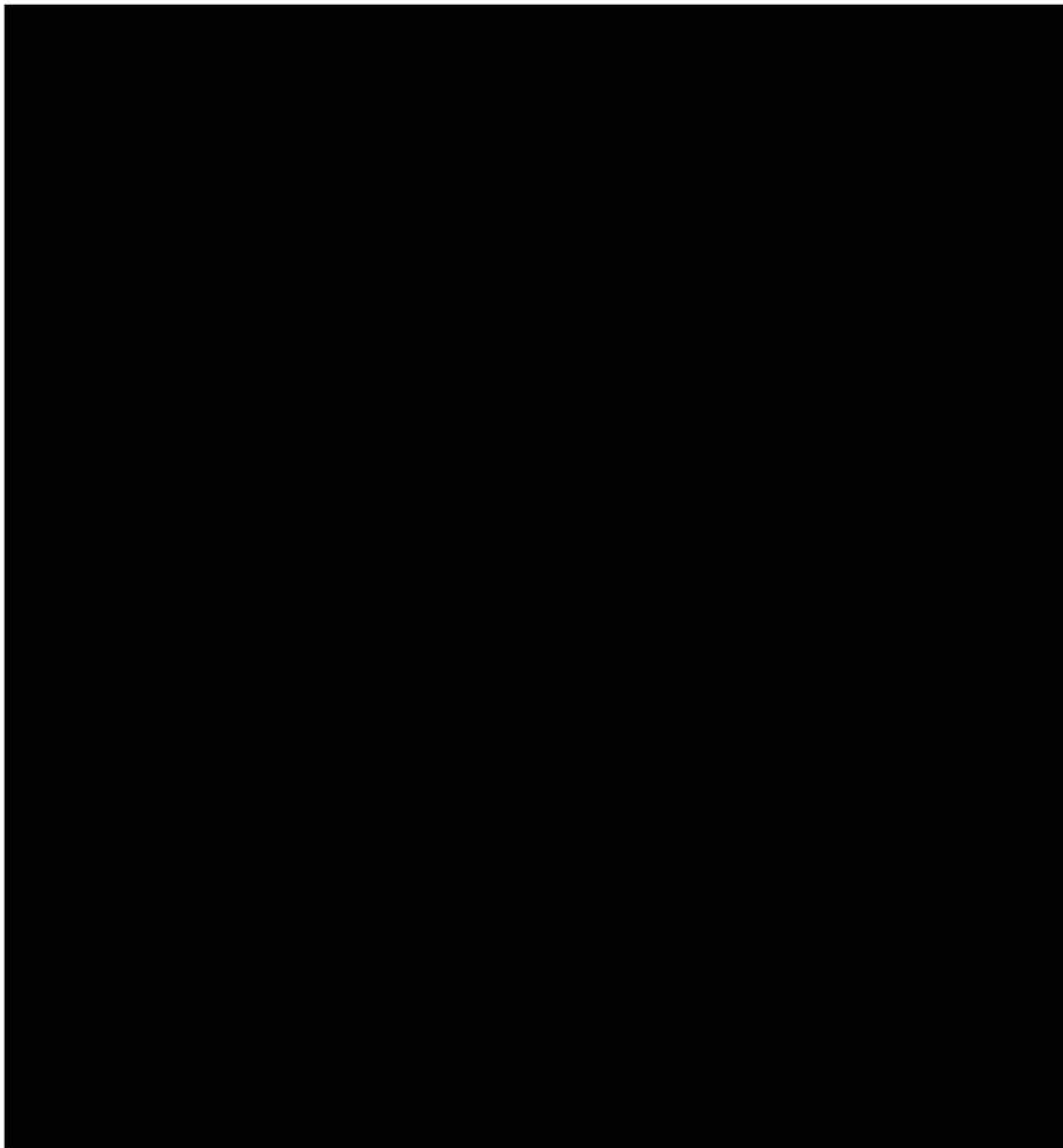












B Guidelines for IDR procedures

Key points

ASIC is required to take into account AS ISO 10002–2006, and any other matter we consider relevant, when considering whether to make or approve standards or requirements relating to IDR.

This section outlines our requirements for IDR procedures, including requirements for unlicensed COI lenders and those engaging in credit activities or providing traditional services.

Interpreting these guidelines

RG 165.56 Table 1 summarises the principles and requirements discussed in this regulatory guide and highlights whether financial service providers, credit licensees, credit representatives or unlicensed COI lenders are responsible for meeting a particular requirement or aspect of a requirement.

Note: Unless otherwise mentioned, references to unlicensed COI lenders also include reference to prescribed unlicensed COI lenders.

Table 1: IDR requirements in this guide

IDR requirements	Reference in this regulatory guide	Persons responsible for meeting the requirements
Tailoring IDR procedures	RG 165.68	Financial service providers, credit licensees and unlicensed COI lenders
Coverage and benefit of IDR procedures	RG 165.69–RG 165.75	Financial service providers, credit licensees and unlicensed COI lenders
Outsourcing	RG 165.76–RG 165.77	Financial service providers, credit licensees and unlicensed COI lenders
AS ISO 10002–2006	RG 165.78–RG 165.85	Financial service providers, credit licensees and unlicensed COI lenders
IDR timeframes		
• Maximum timeframes at IDR	RG 165.86–RG 165.101	Financial service providers, credit licensees and unlicensed COI lenders
• Timeframes for certain types of credit disputes	RG 165.102–RG 165.120	Credit licensees and unlicensed COI lenders
Multi-tiered IDR procedures	RG 165.121–RG 165.123	Financial service providers, credit licensees and unlicensed COI lenders
Other matters—Documenting IDR procedures	RG 165.126–RG 165.129	Financial service providers, credit licensees and unlicensed COI lenders

- (e) to include in the **CCMC Mandate** an indemnity by **us** to release and indemnify the **CCMC**, its officers and employees (**CCMC's** personnel) in respect of their **Code** compliance monitoring activities;
- (f) to annually lodge with the **CCMC** (in a form acceptable to the **CCMC**) an annual compliance statement on **our** compliance with this **Code**;
- (g) to co-operate and comply with all reasonable requests of the **CCMC** in pursuance of its functions;
- (h) to require the **CCMC** to arrange a regular independent review of its activities and to ensure a report of that review is lodged with **ASIC**. This review is to coincide with the periodic reviews of this **Code** (see clause 6 unless the **ABA** determines otherwise);
- (i) to empower the **CCMC** to carry out its functions and to set operating procedures dealing with the following matters, first having regard to the operating procedures of the **FOS** and then consulting with the **FOS** and the **ABA**:
 - i. receipt of complaints;
 - ii. privacy requirements;
 - iii. civil and criminal implications;
 - iv. timeframes for acknowledging receipt of a complaint, its progress, responses from the parties to the complaint and for recording the outcome;
 - v. use of external expertise; and
 - vi. fair recommendations, undertakings and reporting.
- (j) to empower the **CCMC** to name **us** on the **CCMC's** website, in the next **CCMC** annual report, or both, in connection with a breach of this **Code**, where it can be shown that **we** have:
 - i. been guilty of serious or systemic non-compliance;
 - ii. ignored the **CCMC's** request to remedy a breach or failed to do so within a reasonable time;
 - iii. breached an undertaking given to the **CCMC**; or
 - iv. not taken steps to prevent a breach reoccurring after having been warned that **we** might be named.

37. Internal dispute resolution

37.1. **We** will have an internal process for handling **disputes** with **you** which is free and accessible.

37.2. If **you** are:

- (a) an individual, and not a **small business**; or,
- (b) a **small business** to which any relevant internal complaints handling standard or guideline which **ASIC** publishes for application to Australian financial services and credit licensees ("**Approved Standard**") applies,

our internal process will meet the standards set out in the **Approved Standard** (for example, as at the date of the publication of this **Code**, Regulatory Guide 165).