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THE HONOURABLE MARGARET WILSON QC, Commissioner

MR P. FREEBURN QC, Counsel Assisting

MS C. MUIR, Counsel Assisting

IN THE MATTER OF THE COMMISSIONS OF INQUIRY ACT 1950

COMMISSIONS OF INQUIRY ORDER (No. 4) 2015

BARRETT ADOLESCENT CENTRE COMMISSION OF INQUIRY

BRISBANE

9.29 AM, THURSDAY, 3 MARCH 2016

Continued from 2.3.16

DAY 19

RESUMED

[9.29 am]

5 COMMISSIONER WILSON: Good morning everyone. Yes, Mr Freeburn.

MR FREEBURN: Commissioner, there are no housekeeping matters for today, or for this morning. And we have Mr McGrath in the witness box.

10 COMMISSIONER WILSON: Thank you.

PADRAIG McGRATH, AFFIRMED

[9.30 am]

15 **EXAMINATION BY MR FREEBURN**

MR FREEBURN: Mr McGrath, I first of all want to deal with a topic that involves Vanessa Clayworth and the transition arrangements?---Yes.

20 You deal with that in your witness statement at about 14.6 or 14.7. Now, for the operators, this is WMS.9000.0012.00001 at page 16, please.

25 Now, perhaps if you could – now, you explained that Vanessa Clayworth, you provided her with professional supervision and advice on how to navigate her new responsibilities?---Yes.

And then 14.8 you say that you advised her in relation to the process?---Yes.

30 Do you recall referring Ms Clayworth to any official policies or official processes?---Not that I recall. No.

35 So I take it what you were referring her to was how things were done and what your advice was about the process?---Yes.

Can I take you to a document, it's TSK.900.001.0001. I don't think you need a redacted version. If we just go to page .01328. So that particular page, we run into a problem. That's it.

40 Now, Mr McGrath, have you seen that document before?---Not that I recall.

Thank you?---It's the old Darling Downs, West Moreton District document.

45 Yes. It's a policy document?---Yes.

It may be it may have stayed in somebody's bottom drawer. Now, can I just go back to Ms Clayworth. She was facing particular issues and challenges with transition planning for the patients. Do you recall that?---Yes.

5 What type of challenges do you recall her facing or her telling you that she
faced?---To my recollection, she had a number of challenges. There was a difficulty
in trying to look at what would be appropriate accommodation or finding
accommodation that was available for the cohort of patients within Barrett. There is
often the challenge between trying to meet the needs of the consumer, the
10 consumer's family, the needs of the receiving service, a range of competing
demands. There's often challenges where these are not like lineal processes so often
you have a transition plan in place and a component of it changes and you have to go
back and start again or alter your strategies. And challenges in terms of ensuring that
all parties involved were on the same page and working towards the same direction.
15 So broadly in that type of area the challenges were.

Were you able to assist her in that process?---I believe so. Yes.

20 How? Are you able to remember - - -?---Generally in terms of: (a) in providing
support and allowing her to discuss what she felt were challenges, where she felt she
was doing well, where she felt perhaps she was having some difficulty. Providing
support for the role that she was doing and recognising and reinforcing where she
was doing good – good work, assisting her with thinking through the process in a
structured manner because often there's a lot of, like you'd appreciate at the time, a
25 lot of pressure on the people involved in terms of getting the transitions in place. So,
broadly, it was about supporting her, I guess, in the professional sense.

30 Alright. But, practically speaking, one of the first things you mentioned as one of
her challenges was finding accommodation for these patients?---Yes.

I gather that was still a matter for her to find an accommodation for them that fitted
the patient and the family?---Her role was to start exploring a range of
accommodation options and then, in conjunction with the transition team, look at
whether these were viable options and, if so, what the process would be; would they
35 meet the needs of the consumer and the family? Yep.

Now, I'm going to deal with another topic now, nursing resources?---Yes.

40 You were – just to put us in the time zone, you were appointed acting nursing
director, secure services, in March 2012?---Correct.

And the – and you got the permanent position in a month or so later?---Yes. In – the
permanent position, I think it was about a year later.

45 A year later?---I was acting in it for about a year. Yep.

Alright. And one of the units that you were responsible for within that position was the Barrett Adolescent Centre?---Correct.

5 And so I think you say in your statement that a part of your responsibility included ensuring that the nursing services in the Barrett Adolescent Centre were – and I think this is your words – “appropriately staffed”?---Yes.

10 Now, that I gather involves two concepts, does it? It involves the number of staff?---Yes.

And appropriately qualified staff?---Absolutely. Yes.

15 The skill mix that was in the Barrett Adolescent Centre, do I take it that because these were particularly challenged young people, that it was essential to have experienced, well qualified nurses?---As per most mental health units, yes, it's important you have sufficient experienced, qualified staff. You would – in a normal – as normal units, you would have a combination of new graduate staff coming in and obviously a combination of people who are developing skills, so having moved from being a new graduate towards a more accomplished practitioner.

20 But are you able to say whether the skill mix for these 15 or so full time inpatients did require at least some adolescent child psychiatric experience?---Yes.

25 What – I think when you arrived, was there an anticipated move to Redlands?---Yes. When I arrived in March 2012 there was an anticipated move that the unit would be located to Redlands Hospital.

30 You may have just caught the end of it but – well, no, it probably occurred on your – while you were there but there was then a decision made that that move to Redlands was not going to happen?---That's correct.

Did that have an effect on the staff who were available to allocate to the Barrett Adolescent Centre or the staffing mix?---No.

35 No?---No.

40 At some point was this – did the staffing mix change later in August 2013 when there was an announcement of a proposed closure of the Barrett Adolescent Centre?---The – the staffing mix in terms of the staffing profile didn't change. The staffing mix in the sense that some staff then started to seek other positions and leave Barrett then gradually over the months after August it started to change, yes.

45 COMMISSIONER WILSON: When did that start to change? I didn't catch what you said?---Around about August 2013 or shortly thereafter.

Thank you.

MR FREEBURN: And is it then that you would have had to rely on – and I think we've heard various expressions but casual or pool or other sorts of nursing staff?---There was a range of casual staff. The Park as a facility has a casual pool
- - -

5

Yes?--- - - - and all of the nursing staff in the casual pool are orientated, undertake the same mandatory training, are interviewed by The Park and are appropriately qualified to work. What we had done and continued to do would be to – if people had a particular interest such as Barrett Adolescent, for example, they would normally work within that unit – not – not exclusively but largely. So that pool of staff was still available as people – as regular staff took on other positions.

10

COMMISSIONER WILSON: I'm sorry, I didn't catch what you said again. Was this a pool of permanent staff or a pool of casual staff?---It's a pool of casual staff.

15

Thank you?---Yeah.

So we've heard – in the Commission we've heard expressions like casual, pool and agency - - -?---Yes.

20

Are you saying that casual and pool are likely to be the same – the same - - -?---There is a small pool which is a small number of permanent staff which move around different units. There is a large casual cohort of staff which are brought in on an as required basis and then the third option is agency staff.

25

Yes. Alright. And am I right in thinking that those three categories that you just mentioned don't necessarily have training or experience in adolescent mental health?---The majority of our staff don't – didn't have training in adolescent mental health. People have experience in working on the unit certainly but not necessarily specific training.

30

Thank you. Now, can I take you to an email. It's WMS.0012.0001.15700. Now, you see it's up on the screen?---Yes.

35

And at this stage – later on you do a direct response but at this stage you were only copied in on this email from Dr Sadler to Ms Kelly. Do you see that?---Yes.

And this is about a month or so before the announcement of the closure. You'll see below the numbered paragraphs – the paragraphs at number 2 – Dr Sadler talks of staffing is precarious at present?---I see that, yes.

40

Does that accord with your recollection that even before the announcement there was, I suppose, tight margins or difficulty getting staff to the Barrett Adolescent Centre or some other problem?---Not as I recall, no.

45

Alright. And you will see that the paragraph at the very bottom of the screen at the moment which starts:

I write with regards to –

5 You'll see he's attached a document and if we go to the attachment which should be the next page in that document. It should end 15701. There it is. Now, I realise, Mr McGrath, this is not your document and I'm going to take you to an email where you actually look at - - -?---Yes.

- - - a couple of the figures in here?---Yes.

10 But I just really want to identify it as the note that Dr Sadler had attached to his email?---Yes.

15 Now, you'll see there that he's put – effectively done a historical comparison of nursing staff levels or actually of all staff levels?---Yes, I see that. Yes.

Now, I'll take you to the email where you respond - - -?---Yes.

20 - - - and ask you a question about it. It's WMS.0011.0001.18549. So this is you responding direct to Ms Kelly about those staffing issues raised by Dr Sadler. And I just need to get something clarified?---Sure.

25 You'll see you, I think, set out roughly the same figures but then you add a third row of figures called BPF222011. What is BPF?---BPF is the business planning framework which is a component of enterprise bargaining for nursing staff which was brought in by the Queensland Nurses Union in consultation with the State government a number of years back. It outlines a formula for staffing nursing units or medical, surgical or mental health so it's an agreed process that is done in conjunction with the QNU. It looks at the staffing needs of a unit, takes on board the need for ADOs, annual leave, training, a range of options that would impact to ensure that the unit has sufficient nursing staff to be able to not only carry out the duties required but to allow staff to be able to access leave and training as required.

35 And is BPF a document created by West Moreton within West Moreton or is it a wider document or is it a joint - - -?---It's – the BPF is – is a process – it's a statewide process so each unit within West Moreton would – would do its BPF and then it would go through to the executive for sign off. It's considered in terms of funding and looking at your funding needs for the future year and certainly it goes through the QNU who have a very strong oversight ensuring that their members' needs are looked after.

40 Yes. So it has union input - - -?---Yes.

45 - - - and it also is an assessment of what is necessary to properly run – the staffing level that is necessary to properly run that unit?---Yes. And it involves staff feedback and – you know, from the grade 5, grade 6s and the nurse unit managers, yes.

Alright. And do I take that because of the difference between – you see that 24.2 is the figure – the BPF figure - - -?---Yes.

5 - - - and Dr Sadler’s current figure is 20.9. Do I take it that the Barrett Adolescent Centre at least at this point is operating at a point below the staffing levels that were planned for under the BPF?---I’m – I’m not sure why he has put the figures down. I mean, the – the figures aren’t – I’m aware of the BPF. He may be referring to people who were permanently appointed and some positions may have been in recruitment. He may not have included those. I don’t know.

10 Yeah. What you’re saying is you can’t verify his figure - - -?---No.

15 - - - but if his figure is right the Centre is operating at about three – a bit more than three people below its BPF. Correct?---If his figure is right, correct. But that would be most unusual. The industrial bodies are very, very adamant about us staffing to our BPF.

20 Do you know whether at this point the Barrett Adolescent Centre was operating above or below its budget?---I – I don’t know.

If Dr Sadler is right it would be operating below its budget, wouldn’t it, because there’d be less staff than anticipated?---Not – not necessarily.

25 MS McMILLAN: Well, I object to the question. I don’t think that’s a proper premise to say that if that figure is not right it’s operating below its budget because clearly the budget is a lot more than just simply nursing figures.

COMMISSIONER WILSON: Mr Freeburn.

30 MR FREEBURN: I’m happy to clarify?---Yeah.

Is the budget upon which – because part of your responsibility is control of the nursing part of the budget?---Correct.

35 And is the budget based upon the BPF figures?---The nursing budget is based upon the BPF figures. The BPF figures, though, are the minimum numbers of staff so there’s times we would have had far more staff in all of our units not just Barrett than the BPF.

40 Thank you. So I wanted to return to a topic that we mentioned a few minutes ago, that is, the effect of the closure decision on the staffing. Now, if I can take you to a specific paragraph of your – from your affidavit; it’s 20.2. So if we can go to – it should be WMS90000012000 – sorry – it’s at page 1, but I want to go to page 23, please. So if we scroll down a little, see there, that you deal with this topic about
45 once there was an announcement, naturally enough, staff wanted to go somewhere else, where they had a career; correct?---Yes, some staff. Yes.

And you say that that led to a loss of staff in that period, from 6 August onwards; is that right?---About that period, yes.

5 And when you say that there's a consequent loss of collective knowledge, that meant that the experienced staff were being replaced by less experienced or pool staff?---Not – not all the staff were left were experienced or long-term staff members.

10 I see. So the proportion – the various people left - - -?---Yes.

- - - including experienced and inexperienced?---Yes.

15 I see. And there, again, you talk about the casual staff, which is casual staff from the pool; is that right?---The casual [indistinct] casual pool, and pool – pool, as I said, were a small group of permanent staff, but these were from the casual pool, so people are brought up on a contractual or as required basis.

20 Right. How did you replace – so say amongst the people who left in the first couple of months two experienced staff members left, how do you replace them with like for like? How do you replace them with experienced staff?---You can't replace a like for like in those situations. What you replace with is out of the casual pool you identify other staff who have worked in a significant amount of time in that unit over the last year or couple of years, and we use their [indistinct] as a contract – you know, temporary contract basis or you – they're brought in on a casual basis. You
25 bring them only into Barrett to maintain consistency and continuity.

30 Yes. I'm interested in your expression about collective knowledge. Did you think that it was a realistic thing to make some specific arrangements with the staff who possessed that collective knowledge, that really experienced staff, to say to them we'd like you to stay until the end and make specific arrangements about that?---There was an option with all staff to look at what – some people were – some staff were keen to stay to the end. Some staff were very keen to exit quite quickly. A number of people were – staff were unclear and, sort of – it fluctuated a bit
35 between their desire to stay and then, perhaps, opportunities that they were interested in came up.

40 But my question really is did you think that it might be a wise thing to do to make – take measures to secure the really experienced staff who were there?---There were some experienced staff who indicated that once the unit was closed that they wished to continue working in mental health within West Moreton. So in those circumstances, yes, they were able to stay until the end. There was other staff that said look, I need to work, I need to find alternative employment. So their choice – which we supported – was to look at finding another position outside of West
45 Moreton.

What you're effectively saying back to me is in a large sense it was dictated by what those staff wanted to do; is that right?---To a degree, yes, absolutely.

I want to take you to a BAC transition care planning meeting held on 11 December. Now, this is towards the end of the Barrett Adolescent Centre. The document is WMS.90000012.00001, and I want to go to pages 49 and 50. First of all, did you go to many of the transition care planning meetings?---I believe I attended some of
5 them, yes.

I take it from that answer you don't have a great recollection?---I don't have a clear recollection of how many, no.

10 Thank you. Now, I can see you there as a participant or as an attendee?---Yes.

And if we go to the next page, please, page 50 – it's not very good – can we have the – sorry – we can deal with it. Other actions for follow-up: you see that there?---Yes.

15 And see there an item – the second item is:

Adequate nursing staff is a major risk to be added to risk register.

?---Yes.

20

What was that risk?---The risk was – I believe that meeting was 11 December.

Yes?---Then, normally, what we have coming up to the holiday period is our casual pool in particular – people work casual so they're often to have holiday periods off.
25 So for all of our services, staffing is always a challenge coming into the Christmas/New Year period.

30 So apart from adding it to the register, do you know what was done about that risk?---The normal stuff we would do would be to work – and I don't specifically recall this – but, normally, what we'd do is identify that our casual staff, those who are available over Christmas. We look at our commitments to leave. We have conversations with the agencies around what staff they have available over the Christmas/New Year period.

35 Alright. Now, if we can go back to your witness statement and paragraph 22.3 on page 25 of your witness statement, you refer to a concept – scroll down a little bit further, please – sorry, scroll up a bit – yes – you refer to a concept called workforce team?---Yes.

40 Who were they?---The workforce team were – the workforce, basically, was the HR department within West Moreton, and there was identified staff within the workforce team which were supporting staff in terms of looking at alternative employment, be that within or external to West Moreton. So they're available to provide assistance
45 with curriculum vitas, interviewing practice, that general kind of thing.

Are you able to identify who is, for example, leader of the HR workforce team?---From memory, I think, Katherine White, but I can't recall the other person's name.

5 I see. We'll come to an email which – so maybe this accords with your recollection. Katherine White initially was the leader of that team that looked at redundancy and alternative employment?---To the best of my recollections, yes.

10 And at about this point, December 2013, the – there was a change to Ms Kerry Parkin; remember that?---Not particularly, no.

Alright. Can the witness please see WMS.0026.0009.00784. We've got – Mr McGrath, there's another version of this who identifies who - - -?---Yes.

15 - - - all are, but it went fairly widely?---Yep.

But, in essence, Ms White is saying I'm heading on leave. From now on, the responsibility is Ms Parkin's?---Yes.

20 Does that identify for you the date that that happened?---Yes.

25 Would that have created a problem, the transferring from one leader of this team organising redundancies and new employment to another team member fairly late in the piece? Would that have created a problem with the continuing arrangements?---Not to my knowledge.

30 I want to take you now to another page in your – to exhibit PM8 to your statement; it's at page 60 of your statement. Now, this is after the closure. There's a debriefing; do you remember that?---Yes.

35 And I think Dr Geppert sends some follow-up notes to you and a number of others. And if we can go to the follow-up notes, which are – the next page should be page – one page further on, 62. Okay. Now, I just want to ask you about – now, I realise at the outset these are not your words; you were sent these notes after the meeting?---That is correct.

40 But it may be that these notes will refresh your memory about the topics that were discussed. So the next page down should be page 63. See there's three items on the right there. Let's deal with the first one:

Insecurity amongst affected staff transferred to workplace behaviours.

45 Do you recall what that meant and what was discussed at the meeting about that?---I – I don't recall the discussion at the – at the – the debriefing meeting, no. I could speculate as to what it's about.

I don't think I need you to speculate. What about the next item:

No firm agreement to HR process.

?---I – I don't recall.

5 And:

Collateral damage by HR mopped up by leadership.

?---Again, I'm – I'm unsure of what that refers to.

10

Thank you. Excuse me, Commissioner. If we go back to paragraph 25.5 of your witness statement, which is on page 28 – 29 – so 25.8, if we can scroll down a bit further, please – next page – I just want to ask you about that paragraph. Just read it to yourself?---Yes.

15

Is that, in essence, this proposition, that you had a full workload as it was?---Correct.

And this process of closing down the Barrett and dealing with the issues that arose out of that had to be dealt with on top of your normal full workload?---That is correct.

20

Thank you, Commissioner. That's all I have.

25

COMMISSIONER WILSON: Yes. Who wishes to cross-examine? Anyone? Do you wish to, Ms Rosengren?

MS ROSENGREN: No. Thank you, Commissioner.

30

COMMISSIONER WILSON: Does anyone from West Moreton wish to ask any questions?

MS McMILLAN: Yes, I do.

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COMMISSIONER WILSON: Ms McMillan.

EXAMINATION BY MS McMILLAN

[10.05 am]

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MS McMILLAN: Mr McGrath, I'll ask you in a moment for some responses in relation to the statement of a Ms Glubb. But before I do, are you able to tell the Commission having been at The Park now since, I think, March 2012; correct?---Correct.

45

So you've been there, obviously, four years?---Yes.

Do you have any view about the risks or if there are any in your view, of a collocation of Barrett on the same site as the other units, including, obviously, what became EFTRU?---Yes, I do.

5 What are they, Mr McGrath?---I think they – they – there were some inherent risks in having a child and adolescent unit, particularly one that had a large number of teenage female patients, on a unit closely adjacent to a state-wide forensic high secure service. The – there was also, apart from the high secure, The Park site is an open site. We consistently and continually have issues with people accessing the site
10 out of hours, general vandalism, people driving at high speed through the grounds, coming in attempting to sell drugs - - -

Obviously, you mean illicit drugs?---Illicit drugs, yes.

15 Yes?---So – and this has been a continual – and remains an issue. So I think the risk for having a child and adolescent unit is it is not necessarily for my opinion to save the site.

And can I ask you: has there been any recent external review in relation to The Park and security issues?---I recall we reviewed it about – I can't remember the specific
20 date – 18 months to two years back. And one of the recommendations was that West Moreton consider external fencing in terms of making the site secure from external access to the site.

25 So not so much internal, it was external. If - - -?---No. It was looking at, perhaps, a fence of about six feet. That would – not easily, but would prevent people from easily accessing the site.

Right. And do you know who carried out the external review?---I – I can't recall.
30

Okay. Now, I want to ask you a few issues that arose out of the cross-examination of my learned friend. Is it – is there specific nursing training in child and adolescent mental health?---Not that I'm aware of, no.

35 So what is it in terms of – clearly, there's training in mental health issues?---Yes.

But you say there's not specific training?---No. Currently, all nurses undergo a nursing degree and then undertake a year as transition to practice, which is mental health, surgery or medicine nursing, as the case may be. Within that, people get a
40 broad range of experience. In the past, people trained hospital-based training as mental health nurses and then would have gained expertise professionally in the area that they worked in the majority of the time.

Right. And in terms of the casuals used at The Park - - -?---Yes.
45

- - - is it the case that they were always utilised, and I mean by that since you've been there and prior to the August announcement?---Sorry, I'm not sure - - -

So that – can I put it this way – was it unusual for casuals to be utilised, say, at the Barrett in any case? And this is apart from the announcement to close?---No. The usual – usual practice was casuals were used where we had unexpected leave, sick leave, or where we had areas of high acute where we urgently required extra staff.

5

So might that be, for instance, if it was directed that a young patient be on special - - -?---Yes.

--- observations? Could you just explain to the Commissioner what specials are?---A special is where it is determined that a patient is at risk, usually of harm to self. So a category 1 or a special means to have a nurse in attendance at all times not more than arm's length away.

10

So just as an example and I'm not taking you to any specifics but say for instance it was directed by someone such as Dr Sadler: I want three patients on specials - - -?---Correct.

15

--- would you need to perhaps at times or quite frequently use casuals in order to staff that?---Typically what would happen is the requirement for a special would be a result of some kind of, perhaps, incident or deterioration in a patient's mental state. We will require then fairly urgently to find extra staff to do specials.

20

Right.

COMMISSIONER WILSON: So the specials were one-on-one?---One-on-one, correct.

25

For periods of high acuity?---For periods of high acuity, yes.

And do I understand that it was not unusual for there to be a number of, say, young people in the Barrett Centre who were on a what we call specials?---I – I can recall three to four patients at a time being on specials in the Barrett unit. Yes.

30

So that would, I take it, stretch beyond the – if I can put it – permanent staff who were rostered on?---Yes. These required extra staffing above the normal BPF. Yes.

35

Right. And I suppose specials are just one example of where you might need to utilise casuals?---Correct.

And when we say casuals, how many days a week or over what length of time might a casual contract endure?---If a person was brought in on a contract they would work usually about three to six months. It depended on the requirement and they worked the normal 40 hours per week.

40

Thank you. Now, you were asked about your recollection of these transition panel meetings and you say you didn't have particular specific recollection but how often,

45

for instance, would you talk to someone such as Mr Brennan?---I would have spoken to Mr Brennan on a daily basis.

5 Alright. What about Dr Brennan – Dr Anne Brennan – when she arrived. How often would you be talking to her on average?---Average once or twice a week.

And what about Sharon Kelly?---Probably somewhere in between depending on what was happening work-wise but at least twice-three times a week.

10 Right. And what about Dr Stedman?---Similar, yeah.

Right. Okay. Thank you. And you may not be able to comment but by Christmas 2013 is it correct to say that quite a number of the 15 young patients had been transitioned out by that time?---My – I went on leave just before Christmas and my
15 recollection I think there was four maybe five patients still – still on the unit at that time.

Right. Now, I want to take you to Ms Glubb’s statement, please. This is
20 FAM.900.019.001. Now, Mr McGrath, this is a statement by Ms Glubb in which she said she gave the information to the Commission on 16 October. Now, the statement was produced last Friday so I understand you’ve only seen it within the last hour or so. Is that correct?---That is correct.

25 Alright. You’ve perused it. Correct?---I have perused it. Yes.

Alright. Can I take you, please – do you know Ms Glubb?---I do, yes.

Alright. She was the after hours manager at The Park, wasn’t she?---That is correct.

30 Right. As she says. Her husband is who?---I believe Ms Glubb’s husband is Mr Robert Ollier.

COMMISSIONER WILSON: Is who?---A Mr Robert Ollier.

35 Ollier?

MS McMILLAN: How do you spell that?---O-l-l-i-e-r, I believe.

40 Right. Okay. And was he employed also at The Park?---He was employed at The Park, yes.

And did he leave – he left The Park?---Yes, he left The Park around – just before I commenced at The Park I understand he left. Yes.

45 Did you understand he left on good terms?---My understanding is it wasn’t on good terms, no.

And in terms, then, of the statement specifically, if we can go to paragraph 17, please. Right. Just read paragraph 17 to yourself, Mr McGrath?---I've done so, yes.

5 Yes. Do you have any comment to make in relation to what she sets out there?---My experience of my time at The Park was that probably I don't recall seeing psychotic disorders. Most patients would have had a range of other disorders but I don't recall psychotic disorders per se. I am not – do not believe that people hadn't been given a formal diagnosis it would be quite difficult to institute a treatment plan without

10

Because you don't know what you're treating otherwise?---That would be the implication from that paragraph, yes.

15 Alright. Thank you. Now, coming to paragraph 19, if you would read that to yourself. Perhaps we could just scroll down?---Yes.

Now, just before I ask you about that paragraph, in your experience how mobile a workforce is nursing?---Generally speaking, quite a mobile workforce. There's many opportunities particularly in – in mental health so my experience is it's a fairly

20

Alright. And are you able to comment on how easy it is to engage mental health nurses?---There is a – a shortage of mental health nurses. The average age in Queensland of mental health nurses, I believe, is somewhere in the mid-50s. Most –

25

Right. Thank you. Now, paragraph 19 – do you have a comment in relation to what Ms Glubb writes there?---I can only comment from the time I began in March '12 but I'm certainly not aware of people being transferred so I'm not sure what she refers to there. In the normal course of any unit I would expect some staff in a period of four years would have retired. Absolutely. Frequently new nurses who replaced them – the – the recent graduates are specific positions identified within the BPF so there was from memory two graduate positions. So they weren't used to replace

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And I suppose for that you have them with an experienced nurse which enables them to gain some training and experience?---They're actually part of a formal transition to practice program within - - -

45

Right?--- - - - within West Moreton.

Okay. Thank you?---And they attend lectures, supervision, a range of things to support them in their training. Yes.

5 Thank you. Can we go down to 20. Now, in terms of – and I’m asking you to comment from a nursing perspective, of course, Mr McGrath, were you notified – from the time I understand it when you started – notified by nursing staff of routine practices occurring which were clinically inappropriate, negligent, unprofessional and ethically unsound?---No. I was not notified by Ms Glubb of any of these.

10 Right. Okay?---In my role I provide a out of hours on-call. At that time it was approximately once every three or four weeks. Ms Glubb was – position worked exclusively from 4 pm to 12 pm as the after hours manager so I would have had frequent contact – or she would have frequent contact with me during that period of time. I do not recall any of these issues being raised.

15 Alright. Now, (a) if – I want you to read that to yourself and then over the page. Let me know when you’ve finished that?---Yeah. I’m finished.

20 Do you – was it ever mentioned to you any issue with Dr Sadler behaving in such a manner?---No. The first time I’ve been aware of it was when I read this statement approximately an hour ago.

25 Right. Thank you. (b) I take it that – are you aware of this incident, if I can put it this way, in relation to the nurse mentioned?---Yes.

And do you know whether anything – firstly, are you aware of that incident as described there?---Just – yeah, the general gist of it. Yes.

30 Right. And do you know whether any steps were taken in relation to that nurse?---Yes.

What were they to your knowledge?---He had a – a performance interview with the then director of nursing.

35 Is that Mr Brennan?---Mr William Brennan. Correct.

Right. Okay. And (c), if you just read that to yourself?---Yes. I’ve read it.

40 Do you have any knowledge of that?---No, no knowledge.

Right. Thank you. Now, paragraph 21, please. She says there that she:

...began to have overarching concerns about BAC’s failure to broker community service for patients.

45

Can I ask you, in her role as an after hours manager from 4 pm to 12 am, would she have had a role in that, to your knowledge?---It was not a component of her role.
No.

5 Thank you. In terms of paragraphs 26 – if I can get you to look at this. This is about voluntary redundance, early redundancies?---Yes.

Now, you've looked at these paragraphs?---Yes.

10 In short detail, there seems to be the thrust of it that, in effect, staff who were speaking out were encouraged to take VERs. What do you say about that?---Not true.

15 What, to your knowledge, is – was the process, if I can put it that way, that you were aware of with nurses accepting VERs?---The VER was part of the broader West Moreton HHS turnaround plan which was – came in in, I can't remember the exact date, 2013. There was a formal call for expressions of interest and staff who were interested in applying for VERs. They were targeted for particular positions. So you could not replace – if a nurse took a VER, we could not replace like with like. So
20 there were some constraints around who could have VERs. So, for example, a nurse unit manager couldn't because obviously we would need to replace a nurse unit manager with a nurse unit manager. And under a VER, you couldn't. What we were doing at The Park at the time was we had a capacity to change our staffing profile. Our profile at the time was very, very heavily biased towards registered nurses with a
25 much smaller number of enrolled nurses. So there was an opportunity where registered nurses indicated an interested in a VER to – and, again, in consultation with the industrial bodies – replace them at a grade lower at an EN level.

30 Right. And was there some career path for the ENs?---There's a couple of career paths for the EN. There's an endorsed [indistinct] endorsed nursing role and [indistinct]

Just so we're clear, RNs are registered nurses?---RN are registered nurses.

35 And ENs are enrolled nurses?---Enrolled nurses.

40 Right. Can you just explain to the Commissioner the difference between the two?---Registered nurses undertake a three year degree course in university and have certain roles that it is medication, taking blood, etcetera, more broadly. And enrolled nurses have a two year course, not to the same level of training, and have to work under a higher degree of supervision. So registered nurses generally can work with less – far less degrees of supervision.

45 COMMISSIONER WILSON: So if registered nurses were being replaced with enrolled nurses - - -?---Yes.

- - - was that not a downgrading in the level of expertise and potentially the level of service that was being offered to the patients?---Not necessarily. Some enrolled nurses had many, many years' experience and a high level of knowledge and expertise.

5

I see. And what you're talking of related to The Park as a whole?---To The Park as a whole, not specifically to Barrett. From my - - -

10 Can you relate it specifically to Barrett?---My recollection is that Barrett we didn't because at the time the belief had been that Barrett was going to move at some stage so we didn't change the staffing profile. Largely, my recollection is that the changes in enrolled nurses came into the other units within The Park, not into Barrett.

Thank you.

15

MS McMILLAN: Thank you, Commissioner.

20 Thirty-three, Ms Glubb says that based on her interactions, she remained of the understanding the driver behind the decision to close the BAC was most likely funding. Can you comment on that?---I have no idea why she believes that.

And 34:

25

I'm aware the BAC was an expensive unit to run.

30 What would you say about that?---All of our units from time to time were expensive. Only, the units within a high secure setting, there are major issues around ensuring that this is a safe and secure environment. They are a challenging population, obviously, so there's often requirements to utilise extra staff. A common example is where we have patients who require medical interventions and need to go to a public hospital. We often require to have four staff per shift with them. So there are expensive challenges in running these types of services. Barrett was no more expensive. In fact, by recollection, it was probably less expensive in terms of utilising staff than many of the high secure units.

35

Right. Thank you. Could you read paragraph 38 to yourself?---I've done so. Yes.

40 Yes. Do you want to make a comment about that?---A couple of comments. We had no excess staff. As I said, it was within the BPF. So there was no exact numbers. We didn't reduce the numbers of nurses. The VERs changed the grades of nurses from grade 5s to grade 4s but we did not reduce the overall numbers. I'm not too sure what she means by targeting staff members to apply. People had to apply for a VER. They weren't - they weren't targeted. So people had to voluntarily apply, fill in paperwork and make an application for a VER.

45

For example, staff who'd spoken up to their manager and declined to do something unsafe, she said these were staff that were targeted. Can you comment on

that?---Yeah. We couldn't target people for a VER. For a VER, you had to make an application. In fact, we had more applications than we initially thought we would have because people took the opportunity to, you know, change career, do other things. But in terms of targeting people who speak up, it is not unusual for staff to,
5 in my individual meetings with them or through the LCF which is a local consultative forum with the unions, for people to be very vocal and upfront about issues within the workplace.

10 Is it fair to say nurses are not known for being backward in terms of expressing views?---I think it's safe to say – and I say this as one – mental health nurses are not known for being particularly reticent, no.

15 Right. Thank you. Now, I just want to, lastly, ask you about paragraph 44 and 45?---Yep.

Do you know anything personally about this?---No.

20 If that had been the case, would that be unusual that they would've been escorted in by security officers?---That would be normal practice for people accessing any area that was closed within – from an occupational health and safety point of view.

25 Right?---Unless they were either required to be there, such as maintenance staff. But if you were not there in a role related to working in it then, no, security would normally escort people in.

Right. Thank you. Just excuse me. Yes. Thank you. I have nothing further, Commissioner.

30 COMMISSIONER WILSON: Thanks, Ms McMillan. Mr Freeburn.

EXAMINATION BY MR FREEBURN

[10.27 am]

35 MR FREEBURN: Just one aspect.

40 Mr McGrath, you were asked some questions initially by Ms McMillan about the risks posed by the co-location of the Barrett Adolescent Centre and other forensic units?---Yes.

And I want to deal with that topic?---Sure.

45 Are you aware that there was – whether there was a risk analysis or some sort of process which analysed the risks posed by – what were the risks posed to those Barrett Adolescent Centre patients?---Not in a general sense. No. There wasn't one.

If risks are identified – and I think we took you to one of those risks which went into a risks register - - -?---Yes.

5 If risks are identified in The Park, the normal governance would require some sort of documentation or some sort of assessment of that risk?---Yes.

And so do I take it from your answer that you're not aware of a risk analysis of the risk posed to the Barrett Adolescent Centre patients?---That's correct.

10 And that may be because of the nature of your position. Is that right?---It could be. Yes.

Thank you. That's all I have, Commissioner. May Mr McGrath stand down?---Thank you.

15

COMMISSIONER WILSON: There's one question that I have of Mr McGrath and if counsel wish to ask anything arising out of it, that'll be fine.

20 Mr McGrath, you've been asked questions about the risk to adolescent patients of the Barrett Adolescent Centre from being co-located with a forensic unit, a high security forensic unit?---Yes, yes.

25 You were aware, are you, that another forensic unit opened on the site in about August 2013 referred to as EFTRU?---Correct.

25

Now, that was an extended forensic treatment rehabilitation unit, was it not?---Yes, it was.

30 Different in physical character from the high secure unit - - -?---Yes.

30

- - - in some respects - - -?---Yes.

35 - - - in that it was more open?---It was more open and didn't have a large security fence around its perimeter, yes.

35

Are you aware of any assessment being undertaken of risks that the opening of that unit may have posed to the Barrett Adolescent population?---Not in the time when – when I was there. Most of the planning had occurred prior to my arrival, so I'm not aware - - -

40

I see?--- - - - of a broader assessment of it. No.

Thank you very much?---You're welcome.

45 Does anyone have anything arising out of that?

MS McMILLAN: No. Might Mr McGrath be stood down?

COMMISSIONER WILSON: Yes. Thank you very much, Mr McGrath?---Thank you.

You can stand down.

5

WITNESS STOOD DOWN

[10.30 am]

10 COMMISSIONER WILSON: Yes, Mr Freeburn.

MR FREEBURN: Commissioner, I call Dr Elisabeth Hoehn.

COMMISSIONER WILSON: Thank you.

15

ELISABETH HOEHN, AFFIRMED

[10.32 am]

20 **EXAMINATION BY MR FREEBURN**

MR FREEBURN: Dr Hoehn, can I, first of all, ask you some questions about – sorry - - -

25

MS WILSON: Commissioner, there's one correction - - -

COMMISSIONER WILSON: Yes, Ms Wilson.

30 MS WILSON: - - - that Dr Hoehn would wish to make.

EXAMINATION BY MS WILSON

[10.32 am]

35

MS WILSON: Can I take you to, Dr Hoehn, paragraph 38 of your statement, which we can find at CHS.900.001.0010; you see that, Doctor - - -?---Yes.

- - - paragraph 38? If I can take you to that first line, which reads:

40

My understanding is that the name of the clinical care transitional panel –

Do you wish to replace clinical care transitional panel with clinical consumer transitional panel?---No, I don't. What I'd like to do is take the last part of that sentence out.

45

Okay. So where do you – when do you - - -?---Sorry, I've confused you.

5 No?---I've confused myself, I think. Initially, the name of the care transition panels in the documents I have was the consumer transitional panel, and the final name was clinical care transition panel. Initially, I had confused the complex care review panel with that as well, and that's the part I wish to remove, which comes up again in paragraph 40.

Okay. So after – on the third line we see “consumer transitional panel”. Do you wish a full stop to go there - - -?---That's correct.

10 - - - and the rest of the sentence to be deleted?---Yes. Thank you.

And just to be sure, you're then happy with that paragraph?---Yes.

15 COMMISSIONER WILSON: Ms Wilson, I may have misheard you, but I thought you were saying transitional rather than transition.

MS WILSON: I did. I did. So it should read as the clinical consumer transition panel - - -

20 COMMISSIONER WILSON: Thank you.

MS WILSON: - - - full stop. Thank you. Thank you, Commissioner.

25 COMMISSIONER WILSON: Yes, Mr Freeburn.

EXAMINATION BY MR FREEBURN

[10.34 am]

30 MR FREEBURN: Dr Hoehn, I want to take you to soon after Dr Sadler was stood down, you and Dr Brennan are effectively appointed to assist with this process; is that right, on about 11 September?---Yes, in that week. That's correct.

35 11 September 2013?---Yes.

40 What was your role and what was – we know what Dr Brennan's role was. What was your role in that – from that date on, from 11 September 2013 onwards in relation to the Barrett Adolescent Centre?---So I think in my evidence there's actually an email that I received from Dr John Wakefield, who was my executive director of medical services, and in that he describes my role as providing support and backup to the – to the – making sure that ongoing business was backed up.

45 And that doesn't sound to me as if it – as if you sit below Dr Brennan in a hierarchy. It sounds like a – that you're sitting beside her, assisting where necessary; is that the way - - -?---Yeah.

- - - you saw the role?---That was correct. In that first week, it was about establishing, I think, our roles and how things would move forward. Dr Brennan was clearly appointed by West Moreton to become the acting clinical director of the unit, so to take Dr Trevor Sadler's place.

5

Yes?---Dr Sadler had providing all of his own after hours on-call. Dr Brennan was initially only appointed part-time into that role, so that there were other processes that needed to be put into place to ensure that there was adequate clinical coverage of the unit. So one of the things that I did at that time was to organise – Children's Health Queensland at the time – and as we'd been asked to provide assistance, had an after hours on-call roster, where we had clinicians on-call regularly assigned already. And those clinicians would provide on-call during the day as well as overnight and on weekends if that was required. So we used that on-call roster to actually provide additional psychiatric input and backup to Dr Brennan. And so in those early days I spent time setting that up - - -

10

15

Right?--- - - - as well as supporting the establishment of governance processes to support Dr Brennan and the processes around that.

20

Right. Good. Okay. Now, within a week or so being appointed – that is, within a week or so of 11 September 2013 – it was clear to you, I gather, that there was no clear transitions – transition plans in place for any of the patients at the Barrett Adolescent Centre?---No. At that point in time, my understanding was that that process hadn't really commenced.

25

And so Dr Brennan's role, once that – once you both realised that, was to not only look after the patients, but also to devise and implement, effectively from scratch, some clear transition arrangements for these patients?---Yes.

30

And I think you mentioned earlier that Dr Brennan was originally appointed, effectively, as a – to a part-time position, half hours?---I think my recollection was that, initially, he was appointed half-time. Yes.

35

And subsequently, it became a full-time job?---It very quickly became evidence that she was working outside of that range of hours, and it wasn't possible to do the job that was required in that timeframe.

40

And was that then your role, to try and organise for that – for her position to be changed from part-time to full-time?---The way we ended up setting things up was that I provided support to her. Because it was incredibly busy on the ward, there was much to do; as you've already stated, that – the process was quite complex. But if things like that arose, we met once a week. I would go out on a Wednesday morning to meet with her, and she would identify issues that were causing concern, and then together we would escalate those up to West Moreton. So I provided support to her to do that.

45

Can I take you to an email, it's QHD.002.002.8981. Now, this – I don't think this is the original email that you got from Mr Wakefield. It's – you can see it's 9 October. So it's a little way into your role. Correct?---Yes. I think I have a version that's earlier than that.

5

Yes?---No. That's – okay. Sorry.

I see?---I've always read it as 10th of the 9th.

10 You might be right. I think it might have adopted the American – the horrible American system of - - -?---Yes. That's actually how I've always read that email.

Yes. Okay. So it, in fact, is 10 September 2013. So it's at the beginning?---Yes. So I had had a phone call the evening before which was the first where I had been
15 involved in the process. And in my understanding, this was a follow up the next day. And it talks about the fact that Dr Brennan and I were going out to West Moreton the following day which was the 11th.

Yes. Okay. And you will see paragraph 2 talks about it being – her position being
20 part time?---Yes.

And paragraph 3 talks about on call arrangements and you effectively saying that the Barrett Adolescent Centre should be plugged into this on call arrangement?---Yeah.

25 Alright. Thank you. So you then went on – with Dr Brennan on a tour on 11 September. What do you recall about the patients that – on that tour?---So this was in the afternoon so that there were patients on the ward. There was a lounge area where people were sitting. Some of the – I have a memory that one of the patients was quite distressed and was on increased observations. But, generally, the young
30 people were very unsettled.

Alright. And the staff?---And that was my recollection of the staff as well.

35 Alright. Now, you were responsible for starting an issues and risks register. Do you remember that?---The – the issues and risks register was part of the governance that was set up at the weekly meetings where Dr Brennan and I met with the West Moreton Mental Health Executive to review the process of how things were going. So the issues register was part of that governance process. I certainly added items to it and that's clear from the risks register. There are a number of items there that say
40 Anne and Elisabeth. I was usually – as I had said already, Dr Brennan and I would meet before that meeting and at times ad hoc outside of our weekly meeting where issues would come up and then I would be the one to escalate those up and put them on to the registrar on our behalf – on behalf of both of us.

45 So I'm right in thinking, am I, that your role essentially involved being a liaison from Dr Brennan to things that needed to be escalated up. And Dr Brennan's primary responsibility was dealing with staff and patients?---Yes. It wasn't always quite that

clear cut. And, clearly, Dr Brennan had the capacity to escalate things herself. It was just at times there was just so much happening on the ward day to day, minute by minute, hour by hour that at times she would flag them with me and it was easier for me to deal with that part of it while she was trying to manage issues on the ward.

5

Alright. Can I just take you to that issues register. I just want to deal with a couple of items. It's DAB.004.001.0037. Now, I just want to quickly deal with item 7 which I think is an item you've noted within the first week – or, sorry, it may not necessarily be you as having noted it. Is that right?---I think both Dr Brennan and I noted it very quickly in that first week and so we felt it was very important to put that on the issues register as quickly as possible.

10

Yes. And if we try and scroll across, actually on this document we can't really – it will be the next page but we will see an item that – if we go seven down there's an item called:

15

Regular clinical review and risk assessments and emotional containment of patients by Anne.

20 That seems to be the response?---Yes.

And then if we go – if we just do this in reverse. If we go two items down:

Increase Anne's hours to 36 per week.

25

?---Yes.

And if we look at the corresponding item, it should be item 9. So we go back to the first page. The first page – item 9 has 0.5 – FTE stands for full time employee?---Full time equivalent.

30

Full time equivalent. So essentially you were both saying there is insufficient psychiatric medical expertise here?---Yes. I think we were saying that really to replace the position that Dr Sadler had, Dr Brennan needed extra hours. But that was also in the context that she was unfamiliar with the actual patients. There was a lot of work for her to do for her to orientate. And as you'd already identified, she was needing to not only manage them on the day to day but then the whole issue of how the transition plans were going to be developed. So it was a very large job.

35

40 Yes. And much bigger than you both had anticipated?---Yes. I think that would be fair to say.

I won't bother with the rest of those items. We can read them. The original – just going back to – because it was a bigger job, was it – can I just ask, do you know why it was proposed to replace Dr Sadler with somebody who was part time? Why the -- --?---No, I have no idea.

45

Alright?---I think – no. I don't know how that came about. It was Dr Brennan that negotiated her hours with West Moreton and so I really can't comment on that.

5 Alright. Now, I'm going to go onto a different topic. There was, when you got there, a registrar, Dr Tom Pettet?---That's correct.

And you've got a note in one of the documents – I might take you to it, CHS.900.001.0037. If you scroll down a little. There we go. Second bottom item:

10 *Registrar junior. Is this an appropriate placement?*

?---Yes.

15 So these are your notes. And do I take it that what you're saying is, is it appropriate to have this registrar in a place where – about to close?---The issue around that is registrars have particular training requirements that they have to meet so that they can satisfactorily complete that term and therefore move on in their training. The question about was this an appropriate placement was around was this placement actually going to meet those training requirements that that registrar had? It
20 would've been under normal circumstances anyway. He was – you'll look at the line above, it says he's a junior registrar.

25 Yes?---So that means he's relatively early in his training and this particular term in his overall training would require him to see children and adolescents. So he would be required to see children across the whole age range.

30 Right?---And under normal circumstances, an additional component would've been arranged for him anyway. My understanding as I – I started to look into this that generally there was an agreement with the Inala Child and Youth Mental Health Service and the registrars from the Barrett Centre would – some of their time in the week go to Inala Child and Youth Mental Health Service to complete the more child part of their training placement. So for me it was really – it was going to be my responsibility to ensure that his training was adequate and we need to think about what needed to go into that so that it was an appropriate placement for him.

35 So what happened to him? What did you arrange?---Right. So initially he did stay at the Barrett Centre. And that was, really, to assist with the continuity of care. He had already been there. He had commenced as a placement with Dr Sadler. He had some understanding of the client – the young people at the Centre and so that
40 provided some additional support to Dr Brennan and provided a transition for the young people. And initially there was still adequate training opportunities in that placement. In the meantime I sent emails and correspondence to the director of training and we started a process of trying to find a way to enhance that placement. As that sort of progressed what ended up happening is he had the first part of his
45 placement at the Barrett Adolescent Centre until the beginning of December and then from December on he actually finished his placement at the child and family therapy

unit which was an inpatient unit for children under 14 years of age. So he then had that opportunity to complete his training placement with a different age group.

5 If one of the reasons for keeping him on was that he was a medical practitioner with knowledge of these patients why stop that in December? Was that a decision related to his professional development?---Well, I think whenever you have registrars in these employment situations there is a constant tension between the fact that they are employed in that situation and it's about the service they can deliver. On the other hand, the other tension to that is that they have training requirements that need to be
10 met and so for of us that have registrars there's this constant tension of managing those two aspects. In this particular situation by the time we got to December the number of young people had been reduced quite significantly in the inpatient unit. There were no longer enough opportunities for him actually to meet his training requirements and on the other hand by then Dr Brennan was very familiar with all
15 the families and with the young people and that transition period had passed.

I understand. Very well. Now, I gather you weren't a formal member of the clinical care transition panel?---No. I wasn't.

20 But you did attend the meetings - - -?---No.

- - - well, I think the – you didn't attend the meetings at all?---I was never involved in the actual panels. I would receive an update from Dr Brennan as to the progress of the panels on Wednesday morning and also when she informed the West Moreton executive on the Wednesday review meetings.
25

Right. And was that where the risks issues register formed the basis of the discussions or at least part of the discussions?---We would add to the risk register
- - -

30 As you - - -?--- - - - both at the meeting and afterwards it would be circulated for other things to be added.

35 Alright. Just let me see if you agree with this: one of the admission criteria for patients who were admitted to the Barrett Adolescent Centre was that the patient had severe and persistent mental health problems. Correct?---I can't directly comment on the admission criteria because I didn't work on the ward. I would think, however, that would be a significant component because generally public child and youth mental health services – the – whoever is admitted or treated under those services
40 needs to have severe and complex issues. It's about severity and it's about complexity but I can't specifically speak about what the admission criteria were for the adolescent – for Barrett.

45 Right. Can I just put another thing – and you may again say that this is beyond your knowledge – was one of the other at least common features of the Barrett adolescent patients or an admission criteria that they had effectively exhausted other mental health services?---I don't know that exhausted is the right word. I think when we

work to try and achieve the best outcome for young people there are times when –
the – it was a statewide service so there would be many places around the state where
there would be very limited services so exhausted wouldn't be the right word I would
use. It would be about trying to work out, given that it was a statewide service, was
5 this the most appropriate option and for – and you would very quickly have limited
options in various parts of Queensland. In the more central Brisbane area they – they
would certainly have had previous input from other services.

10 Yes?--Both private and public practitioners. But it would be about thinking about
does this inpatient unit environment milieu have something to offer that would be
useful and helpful for that young person.

15 Alright. Commissioner, there's some confidential matters relating to a particular
patient that I wish to take Dr Hoehn to. Do you mind if we close the hearing?

COMMISSIONER WILSON: No. The live streaming will have to go off and those
in the back of the courtroom who are not legal representatives or parties should
leave. Dr Brennan may remain, of course.

20

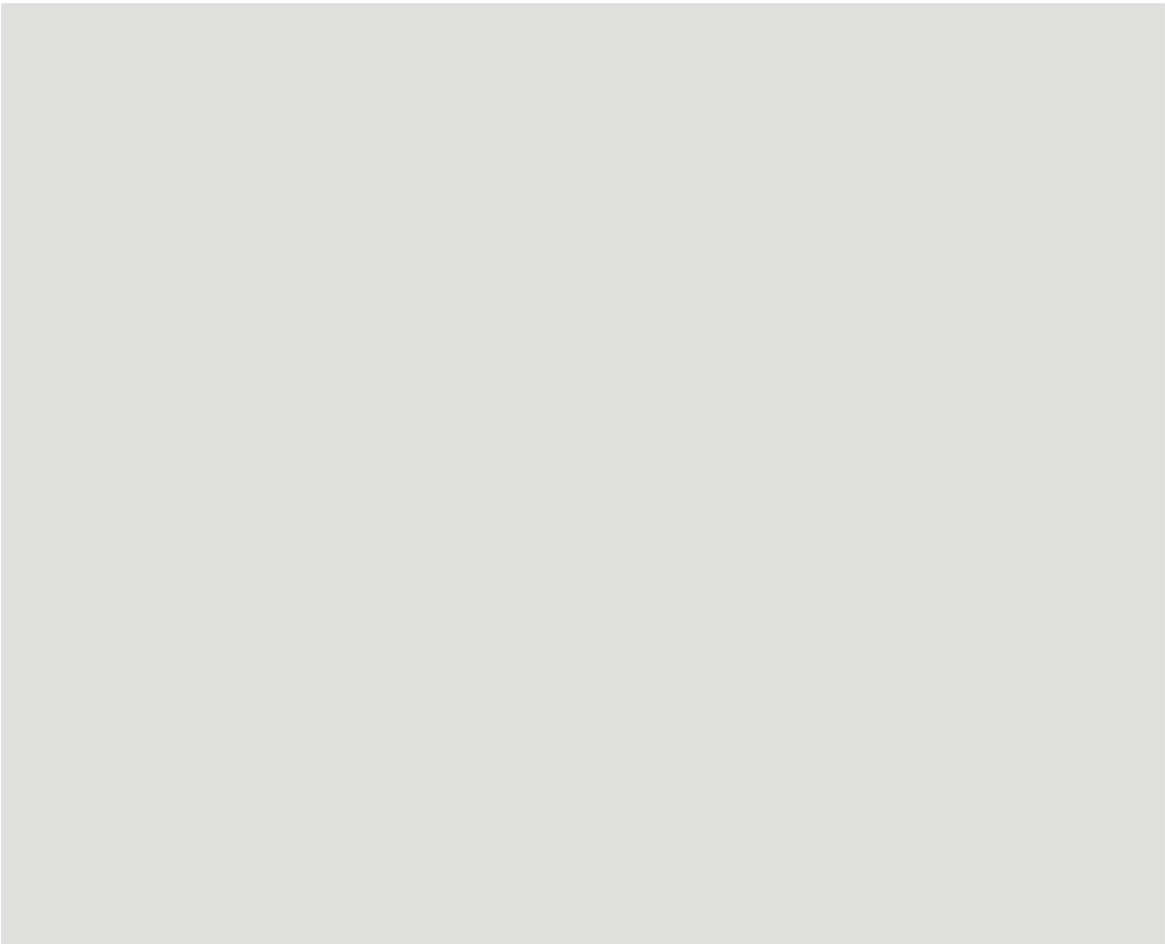
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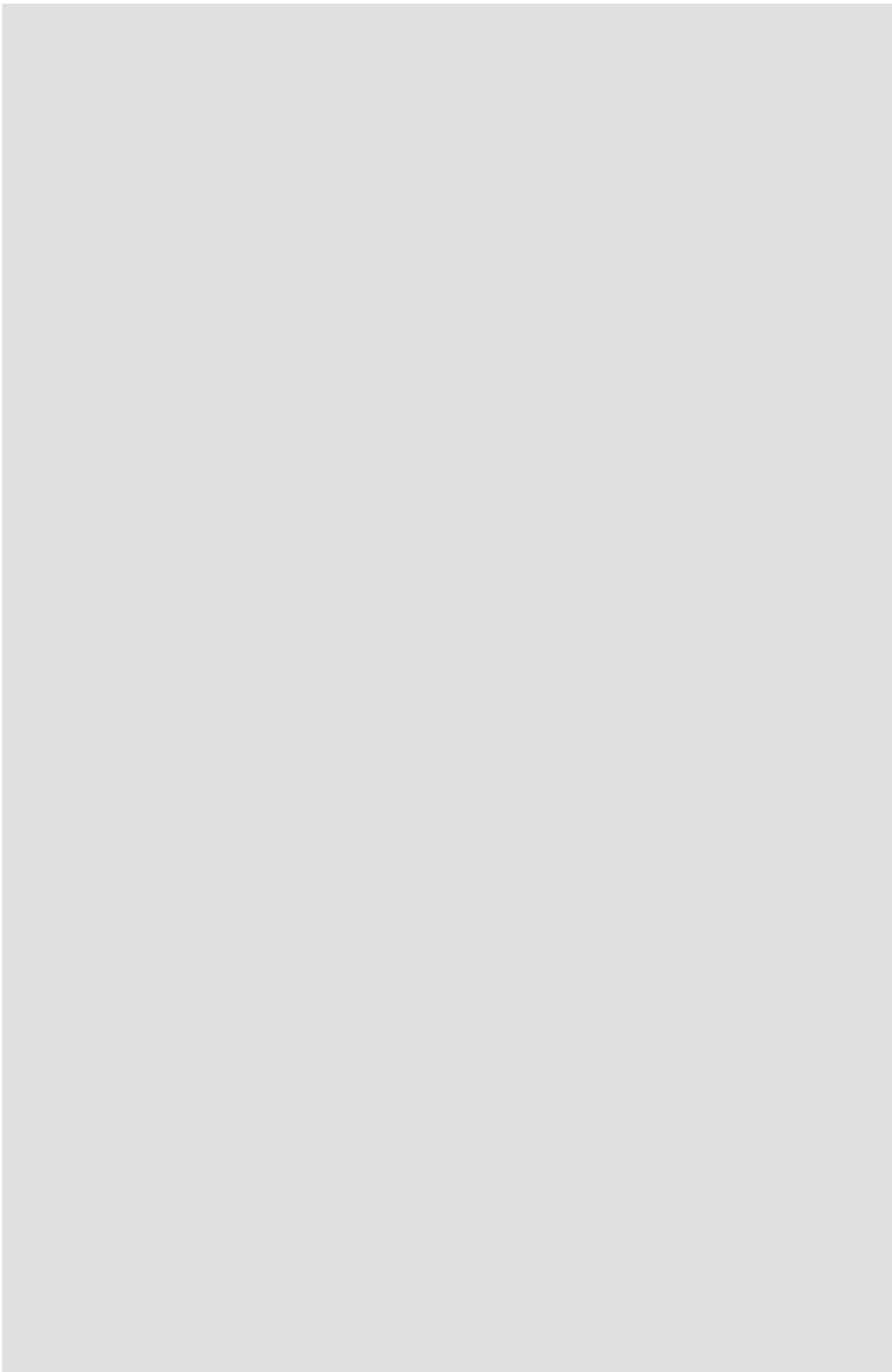
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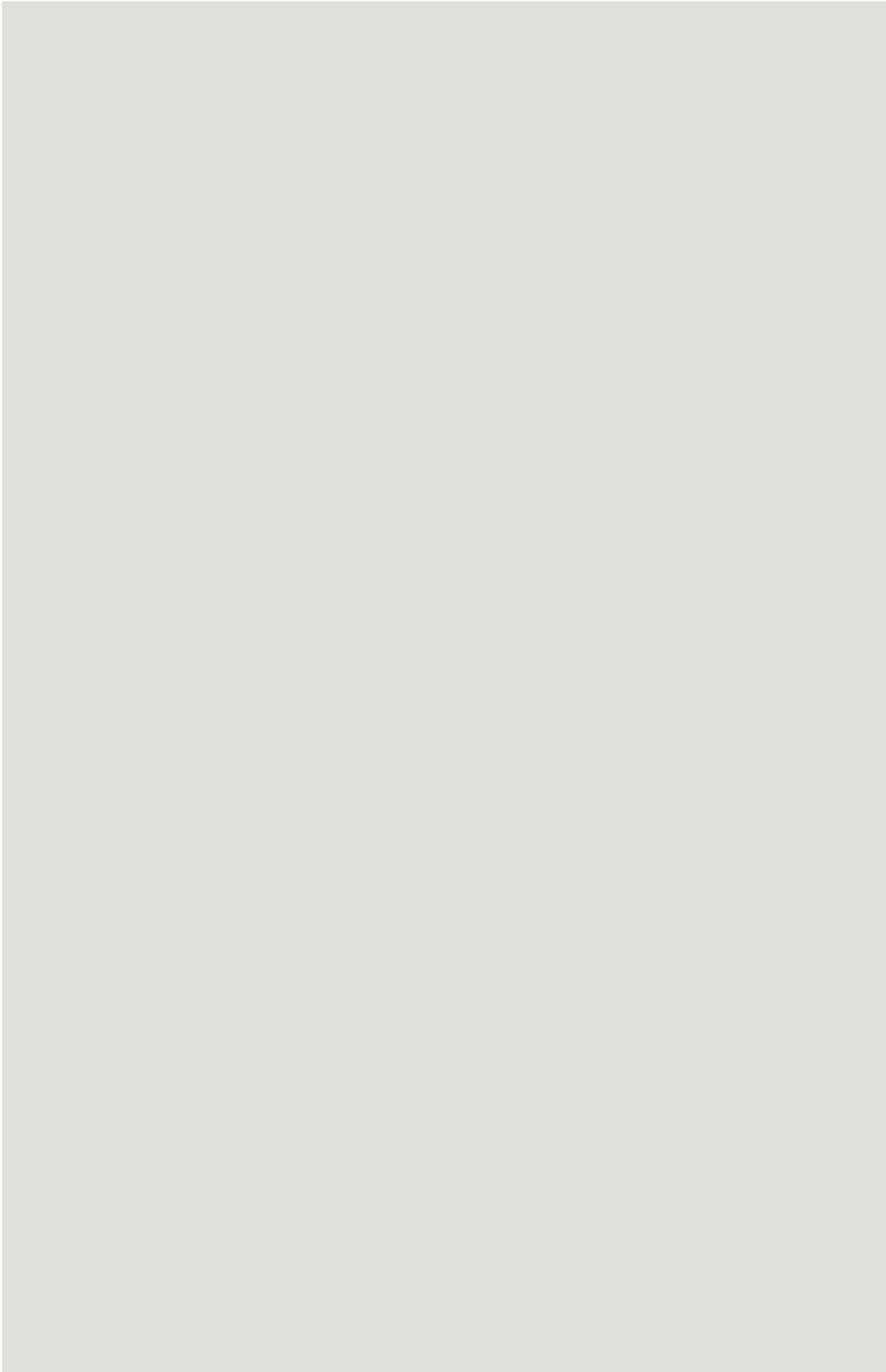
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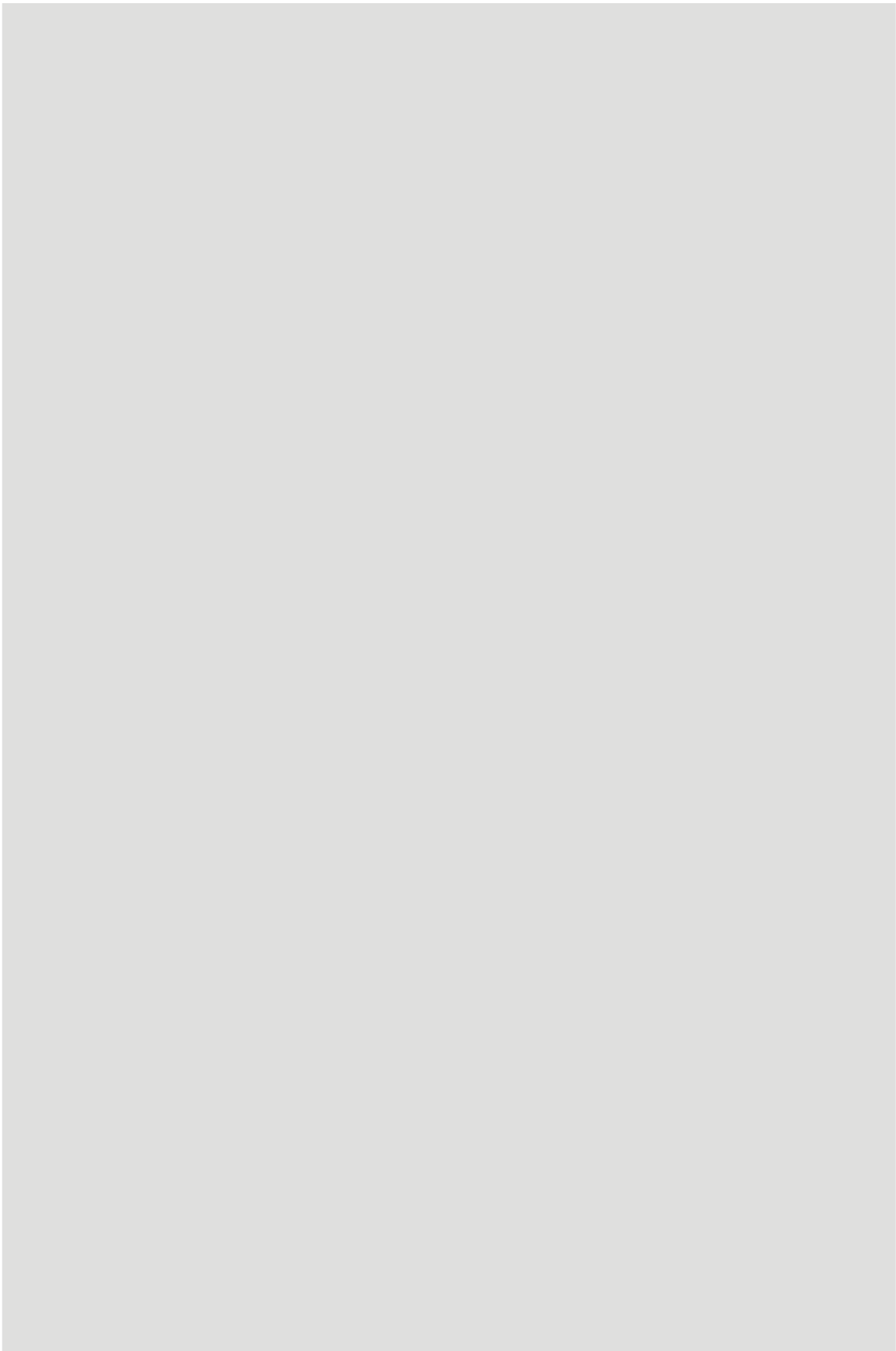
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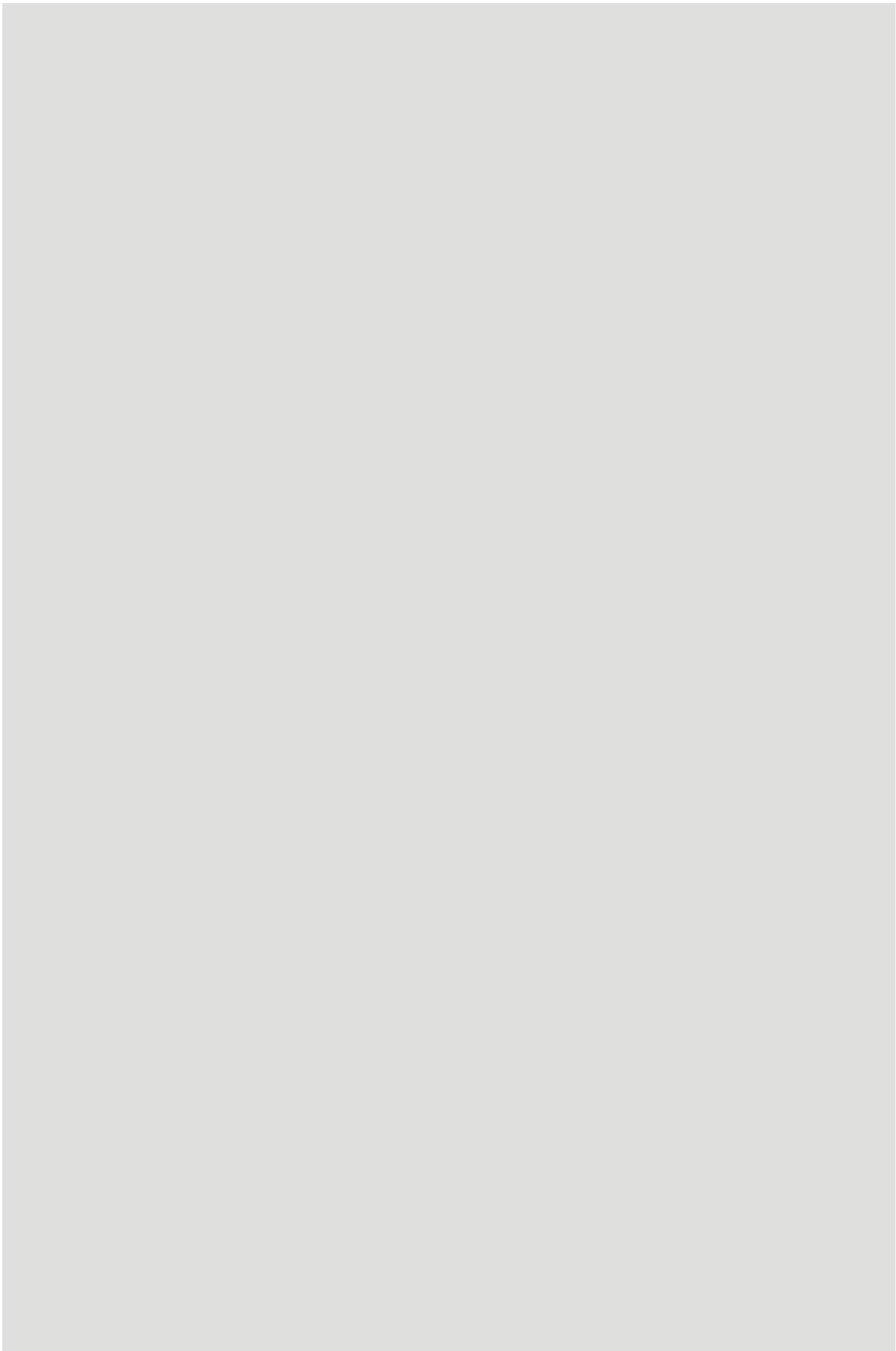
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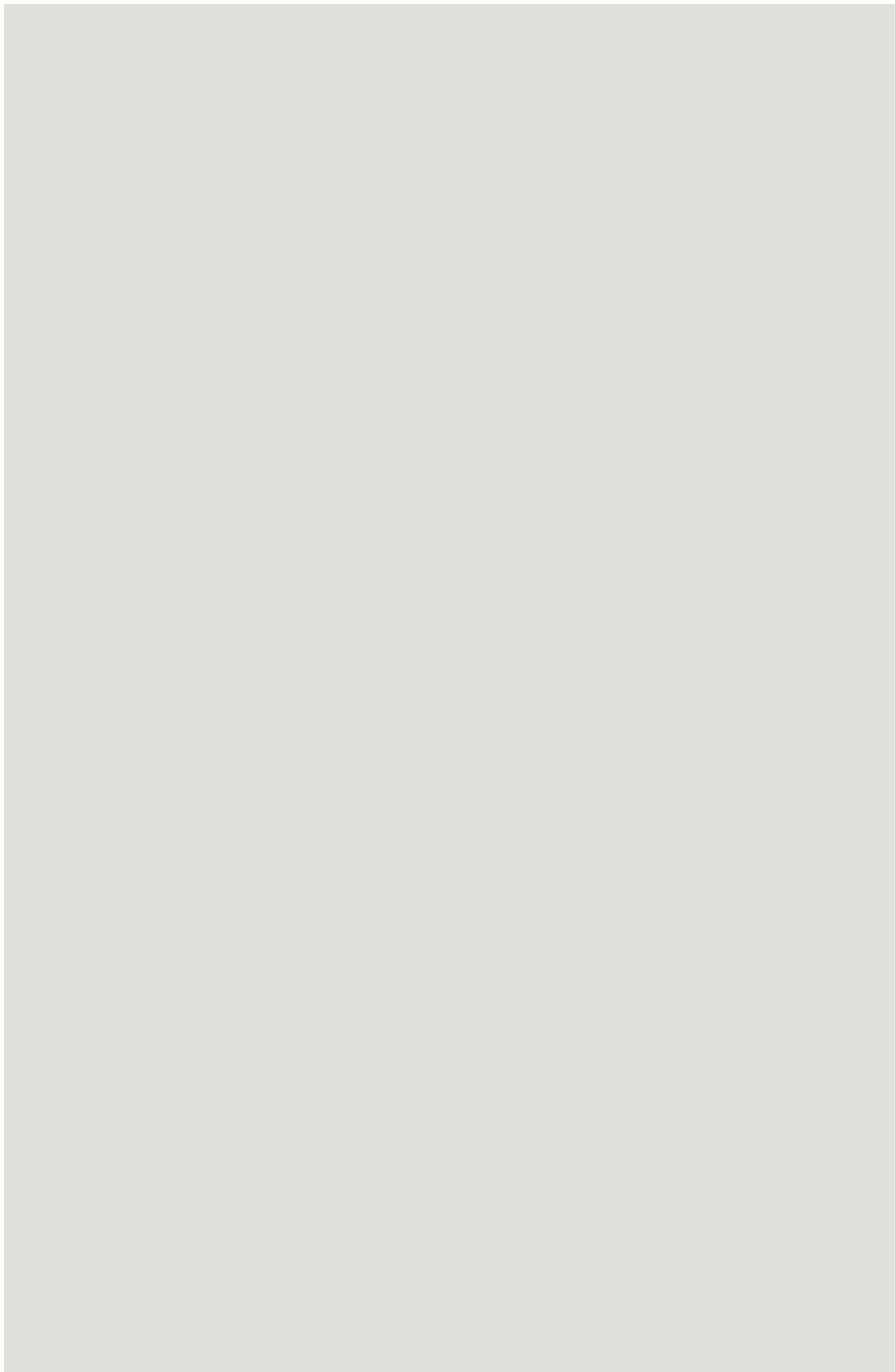
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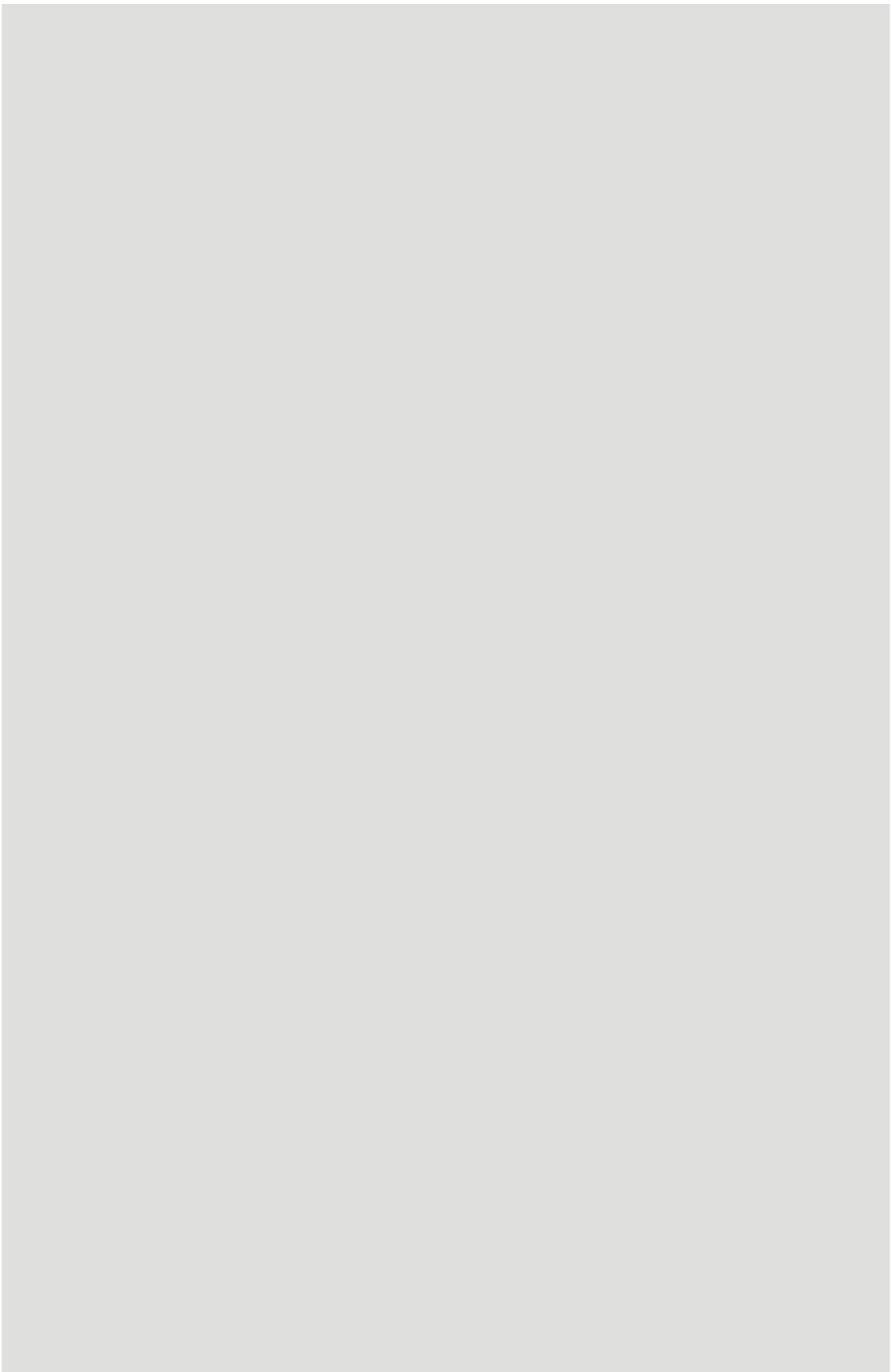
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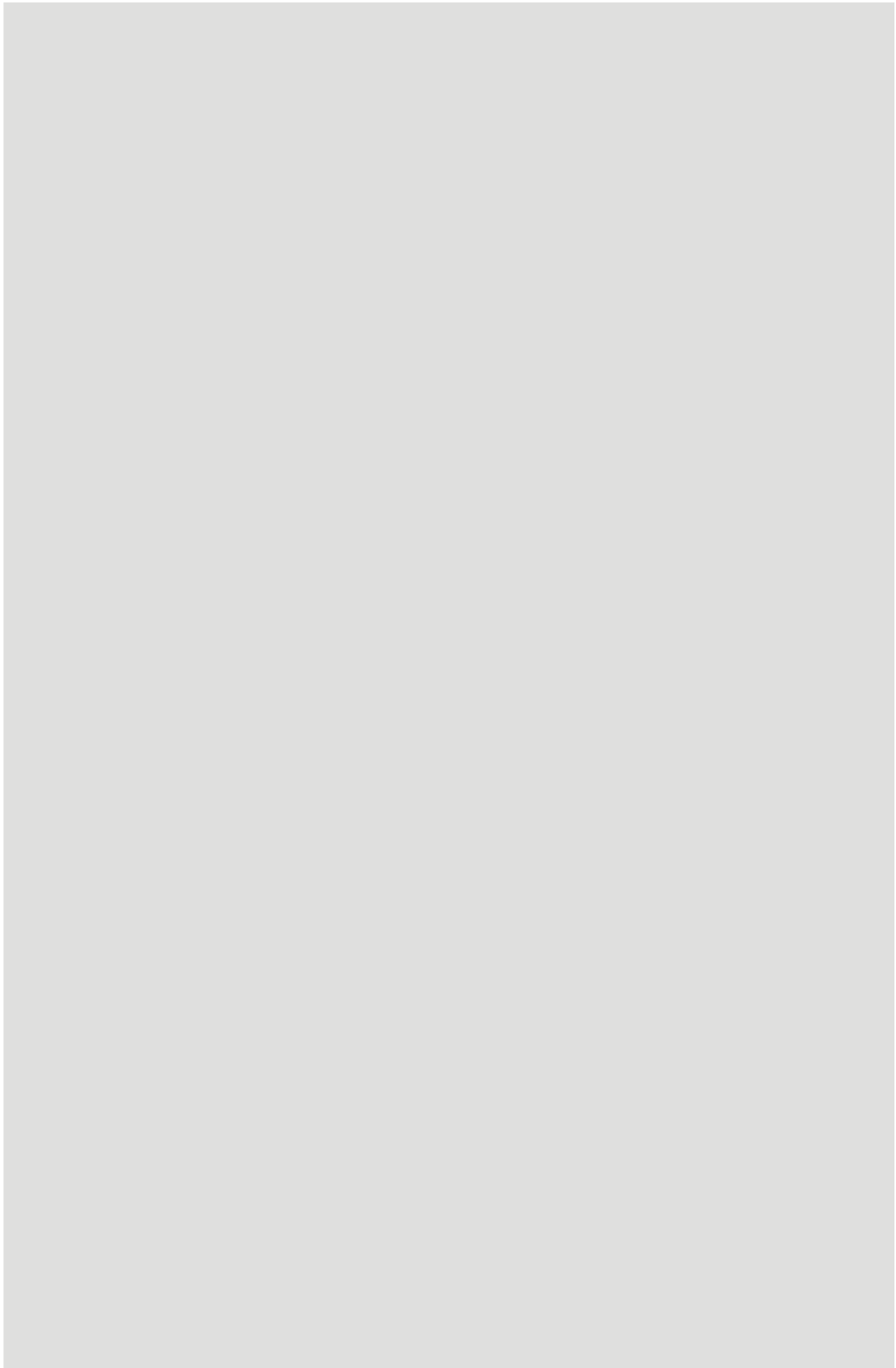
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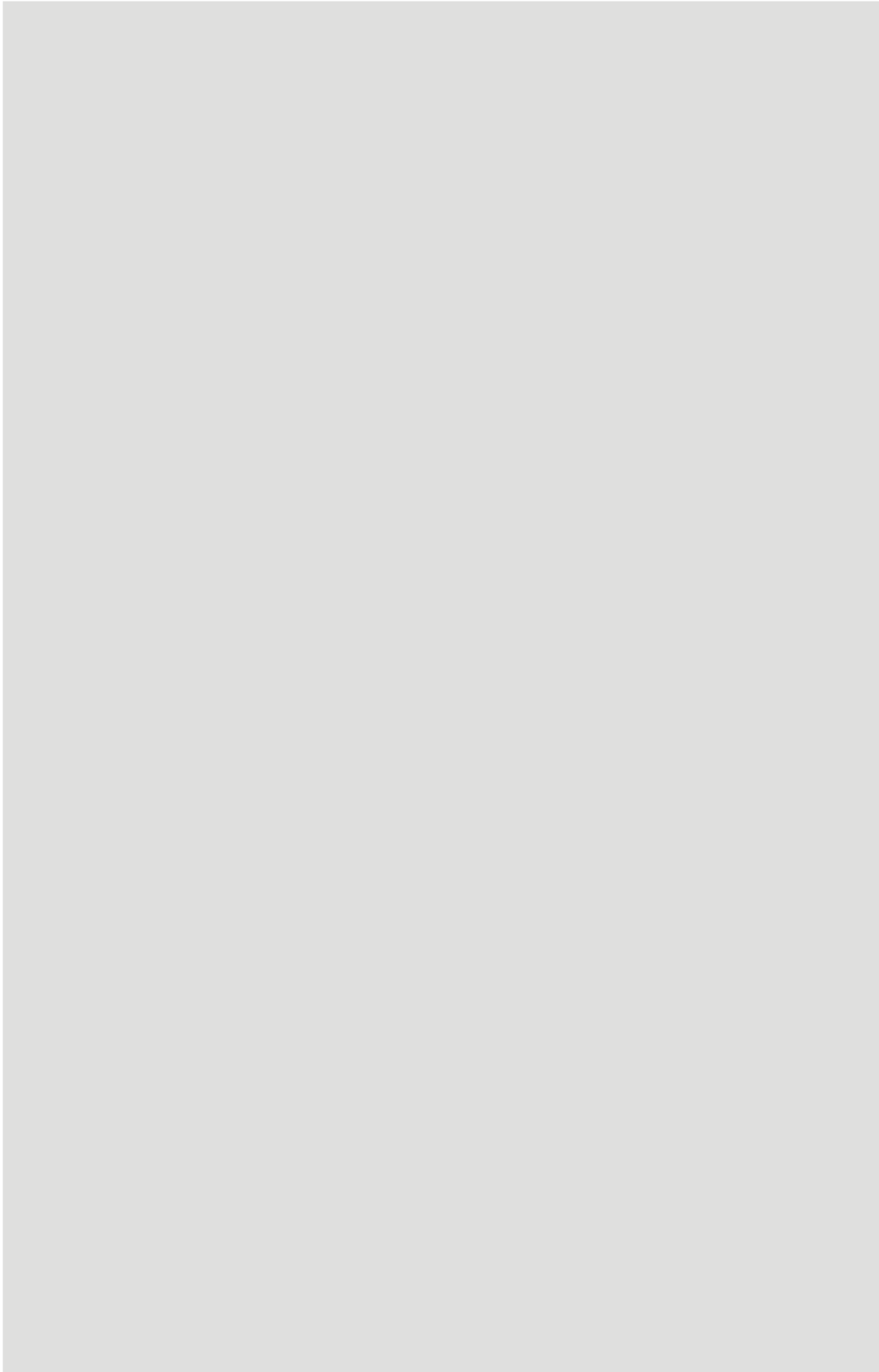
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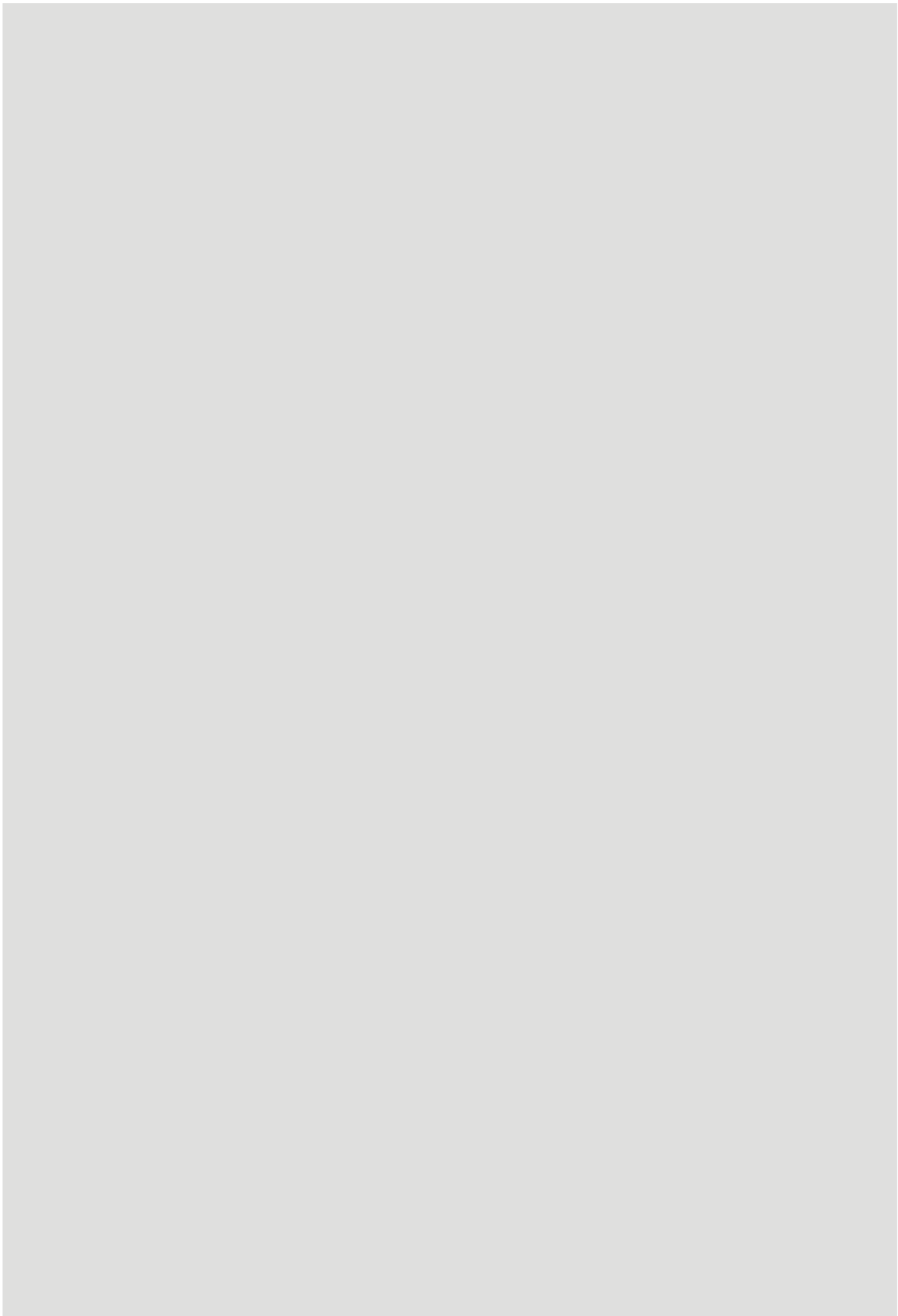
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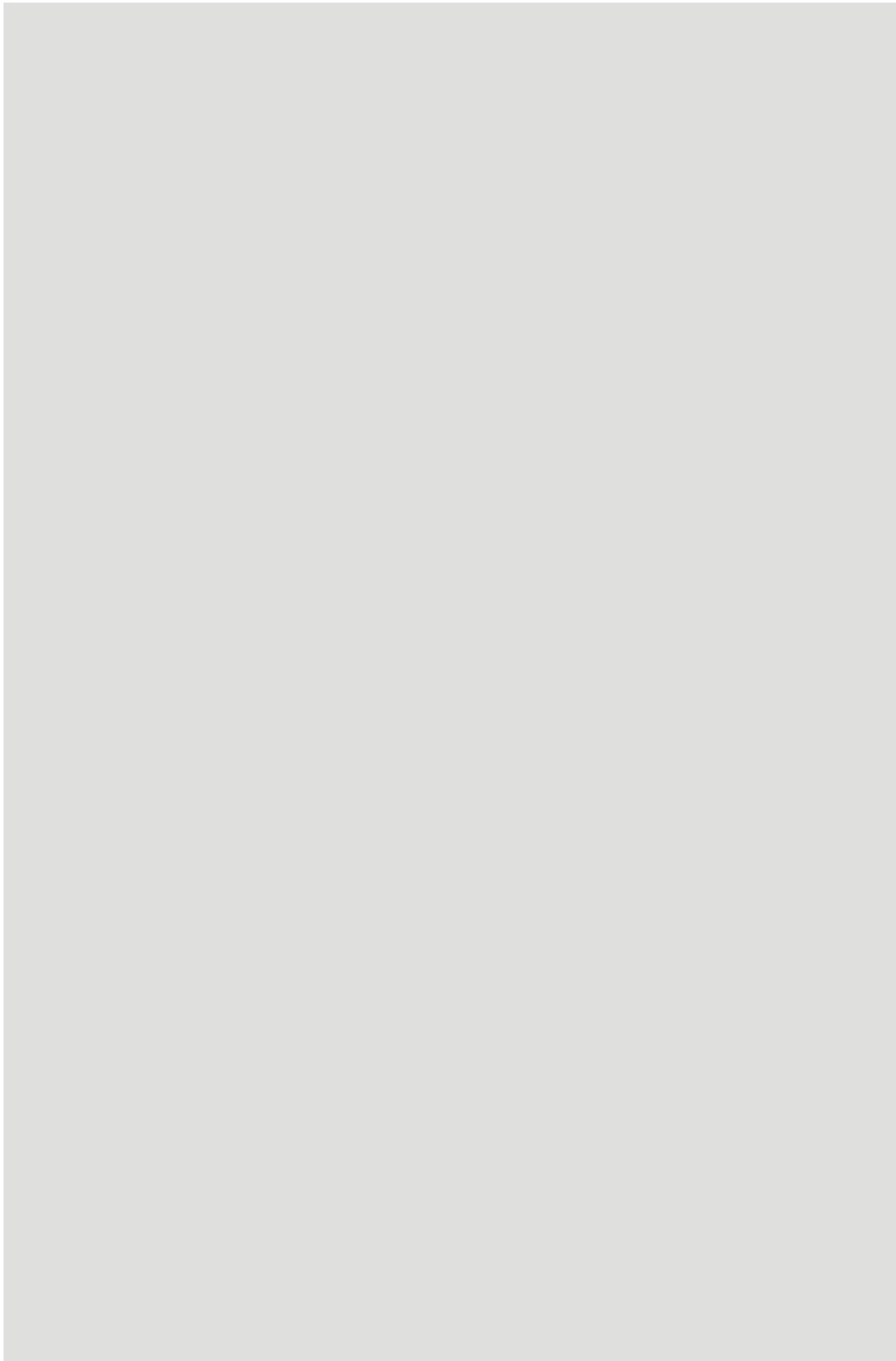
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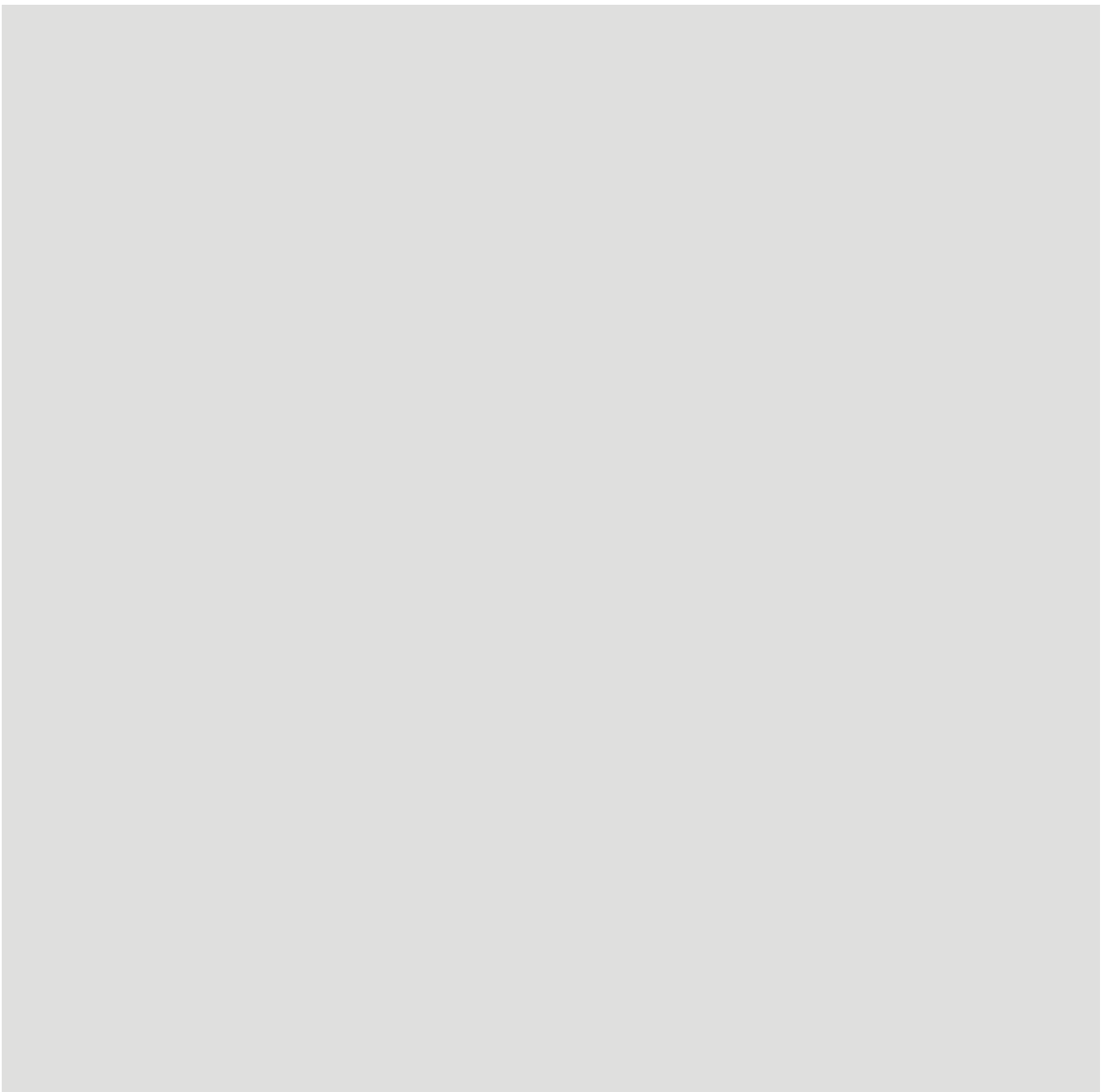
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EXAMINATION BY MR DIEHM

[11.54 am]

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MR DIEHM: Thank you, Commissioner. Dr Hoehn, I wonder if the operator could take you to page 51 – the Delium reference within your statement, please. You see that's an email from Ms Kelly that you are a cc recipient of. I just invite you to read down to the sentence that commences "confirmation" nearly halfway through. Just to yourself?---Yes.

40

Now, you will see that, again, this email adopts the American system so that we should read it - - -?---Yes.

45

- - - as being 12 September in context?---Yes.

And in that email Ms Kelly recounts in the second paragraph after referring to yourself and Dr Brennan apparently to her awareness of there being a very poor reception for the two of you from the education staff by this your second day at the Barrett following Dr Sadler's being stood down?---Yes. That's correct.

5

Do you have a recollection of there having been a poor reception from the education staff to you and Dr Brennan?---Yes.

10 Were you – so did you know by that time the principal at the BAC School, Mr Rodgers?---I – no, I didn't know him. That was my first meeting with him.

Alright. But you had met with him over those two days?---I don't actually have a recollection of meeting with him on the Wednesday. My recollection is of meeting him on the Thursday - - -

15

I see?--- - - - which is day 2.

Alright. Was Mr Rodgers one of the education staff who gave you a poor reception?---Yes.

20

Did you have dealings with Mr Rodgers, that is, interactions with him from time to time over the next few weeks?---No.

25 Would you describe Mr Rodgers' interaction with yourself on that second day as being confrontational?---It wasn't pleasant. I think he was very distressed. Was he being deliberately confrontational – he was angry.

Apart from being angry what else was it about his particular behaviour that you would - - -?---He - - -

30

- - - describe as being a poor reception to you?---He expressed his anger through verbal aggression.

Thank you. Thank you, Commissioner.

35

COMMISSIONER WILSON: Ms Wilson, do you have any questions?

MS WILSON: No, Commissioner.

40 COMMISSIONER WILSON: Do you have anything else, Mr Freeburn?

MR FREEBURN: No, Commissioner. May Dr Hoehn stand down.

45 COMMISSIONER WILSON: Yes. Thank you very much, Dr Hoehn. You can stand down?---Thank you.

WITNESS STOOD DOWN

[11.57 am]

COMMISSIONER WILSON: Yes, Mr Freeburn.

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MR FREEBURN: I call Dr Stedman.

TERRY STEDMAN, AFFIRMED

[11.58 am]

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EXAMINATION BY MR FREEBURN

15 MR FREEBURN: Dr Stedman, there was a panel run by Dr Brennan called the transition care panel or something similar?---Yes.

But I gather you weren't a formal member of that panel?---I – I'm not entirely sure. I was on leave for much of the period from August to November so - - -

20

I have you noted as being on leave from 20 August 2013 to 15 November 2013?---Yes. That would be right.

But you did attend some Barrett Adolescent Centre weekly update meetings?---Yes.

25

And they were obviously when you returned from leave, were there, between – in December and January two thousand - - -?---Yes.

30 - - - '13/14. So I gather from all that that you had quite a limited involvement in the transition plans for these particular patients?---I wasn't extensively involved in creating them. I was the – my role in the meetings was to kind of assist where there were blockages or issues that needed attention at a higher level than Dr Brennan and – could manage.

35 So there's an expression called escalation. You were the escalation expert?---I was part of the escalation. Yes.

40 So do I take it that your direct involvement in the transition plans was limited to discussions with Dr Brennan to try to progress the transition plans that she'd devised for particular patients?---That's essentially it. Yes.

And where it was necessary, the escalation of a recommendation that a particular placement occur, you would progress that?---Only if she needed my assistance to progress it.

45

Now, can I take you to paragraph 14.2 of your witness statement, please. It should be on – it straddles pages 8 and 9, operator.

You talk about this flexible closure date. And then you say at the top of page 9, if we just scroll to that:

5 *In my clinical opinion, it was reasonable to expect that safe and effective transition of patients would be achieved within that timeframe.*

Now, can I first of all ask you, what do you mean by that timeframe? You mean the period from the announcement in August 2013 to the anticipated flexible closure date of January 2014?---Yes. Yeah.

10

And dealing with the other aspect of that that you're giving a clinical opinion, I take it that you're not a child and adolescent psychiatrist?---No.

Your specialty is adult forensic psychiatry?---Just adult psychiatry.

15

Adult psychiatry. Have you – did you have experience of transitioning any adolescent patients from any facility before?---I've been working at The Park for a long period of time. And over that time we've transitioned – closed and transitioned many services but not adolescent services.

20

And you, I gather, knew nothing in – sorry, you had not clinically treated and you knew very little about these particular patients and their symptoms and diagnoses?---That's true.

25 That makes it – all of those things make it hard to express a clinical opinion about what's appropriate as the proper timeframe, doesn't it?---I think that there's a general view that for longer term, long stay treatment plans that six months is a reasonable target for most people and most programs. So that's that kind of timeframe. So I just think if – if a program was working in a kind of contemporary way with a lot of
30 attention to progressing things, I think five or six months should be reasonable.

So rather than expressing a specific clinical view, you're really expressing a more general view?---Yes.

35 Thank you. Now, I wanted to take you to a document that's exhibited to your statement. It's a document called an issues register. Do you remember that?---Yes.

40 Can you tell me who created the document? Sorry, whilst it's getting up, the document is WMS.9000.0005.00325?---Can you tell me what annexure it is? I can probably open it.

It should be – we'll get the exhibit number so you can have the hard copy. TGS14?---Fourteen. Thanks.

45 There's a number of documents in that section. It should be the second document, I'm told. Yes. So you see it's on the screen?---Yes.

Have you found it in your hard version?---Yes.

So there are a number of items. If we take you, first of all, to item number 19?---Yes.

5

Increased support for nursing staff. So can you explain how this register came to operate and who contributed to it? I gather it's one of those documents that various people contributed to?---I can't directly. It looks like it was created as part of the transition process while I was on leave. It looks to be like a version of a risk register.

10

That number 19 was in September when I was on leave. So – but I imagine that these were some of the items picked up from a transition meeting and some actions and responsibilities were generated and then it was recorded when it was considered to be complete.

15

Yes. Now, look, I'm going to try and cut this short. You expressed the view in paragraph 23.1 of your statement that:

There were no circumstances of urgency or pressure in which I operated in relation to the transition arrangements.

20

?---Yes.

But for a significant period, you were on leave?---Yep.

25

And you would accept, don't you, that the issues register records contemporaneously what was happening with the transition process?---Yes.

30

And so your comment that there was no pressure within which you operated is, first of all, limited to you and, secondly, mostly doesn't take into account the things that are happening as recorded in the issues register?---My sense of that question was that it followed on from a series of other questions which had a presumption that the hospital was pushing people towards a particular date. And my answers to all those questions were that there was no particular push towards a particular date. And so I was saying that there's no urgency or pressure generated to create an outcome by a certain date. That's what I was attempting to indicate with that response.

35

Right?---It was a very stressful time for staff. I understand that absolutely.

40

Thank you. The – certainly resources were stretched. Nursing and administrative resources were stretched?---Well, as I said, I wasn't there for a lot of it but my sense of it from what I'm – what I've seen and what I saw when I came back was that there was no intention to reduce resources, that there – everybody was happy to provide whatever was needed to make the transition progress smoothly. What did happen was that resources in terms of experienced staff were stretched so that's quite – and so the kind of average level of experience for staff in Barrett and – and the kind of familiarity with the issues may have gone down over that time but there was no –

45

there was – the intention was always to provide whatever was necessary to make it work properly.

5 Dr Brennan had a very significant workload. Were you - - -?---Yes.

- - - conscious of that at the time?---Yes. I'm very conscious of that.

10 And there were difficulties in arrangements to allocate these particular inpatients to different services?---It was a lengthy process that required lots of – exploring lots of options, yes.

And the staff were distressed?---It – it was a – a stressful time for staff.

15 Now, can I ask you about EFTRU. Were you involved in the planning of the redevelopment of The Park so that it became essentially an adult forensic facility?---Yes.

And that included the opening of a unit called the Kuranda unit. That's - - -?---Yes.

20 - - - K-u-r-a-n-d-a?---Mmm.

25 And what was that unit?---That was a – a ward within the high security program for – which provided a very high level of security and intervention for people with severe and persistent aggressive behaviour.

And EFTRU – can you explain just quickly the nature of that facility because that, I gather, went into an existing building but the building was renovated for the purposes of EFTRU. Was that right?---That's true.

30 So what was EFTRU?---So the purpose of EFTRU was to act as a step down from the high security program for people who were well-advanced towards resuming living in the community.

35 Now, we know from documents – and tell me if this doesn't accord with your recollection – that EFTRU actually opened for its first patients or consumers on 29 July 2013. Does that accord with your recollection?---I – I don't recall the date specifically but that's about right, I think.

40 Had there been dates where that – had that opening been put back to your knowledge or do you not recall the detail of it?---Yes. I think it was put back a couple of times.

45 And do you know the reasons for that? Were there reasons why it was put back?---I – I can't remember specifically but that's – it's normal for – for – for buildings not to – or programs not to open when people thought that they would.

It wasn't – the dates weren't put back for reasons related to the Barrett Adolescent Centre, were they?---No.

Now, can the witness please see a document – it's WMS.0011.0001.14684. Now, I think we should identify what precisely this is. This is the West Moreton Hospital and Health Board and this is a board agenda paper. Is that correct?---Yes. That's what it appears to be.

5

And – I think I should check this against your – you may have - - -?---No, I've got a hard copy here.

Yes. So you may have been on leave at this time, were you?---Yes.

10

Can I just ask you if we go to the next page and see if – I appreciate you weren't at the meeting – but see if you can refresh your memory about what was going on at the time. See – read item 6?---Mmm.

15

MS McMILLAN: Commissioner, can I just clarify from my learned friend he's not contending this is a document produced by this witness, I imagine.

MR FREEBURN: No.

20

MS McMILLAN: No.

MR FREEBURN: So Dr Stedman, can I ask you a few questions about that paragraph. First of all, that confirms that it opened – it had opened on 29 July which was a few weeks?---Yeah.

25

And the consumers were being added to the EFTRU in tranches?---Mmm.

MS McMILLAN: Well, Commissioner, I object. I don't know that there's much utility in asking this witness to read from a document at a meeting he wasn't at and asking him to agree line by line whether it appears there. But my objection – if my learned friend wants to put the factual propositions, that's a different matter.

30

COMMISSIONER WILSON: Perhaps you can rephrase the question, Mr Freeburn.

35

MR FREEBURN: That's exactly where I was getting to. It's exactly where I was going.

So do you recall that as the fact that the EFTRU was gradually – and it's awful to talk of people in tranches but people were added to EFTRU in tranches?---Yes.

40

Now, there's talk there of each consumer being risk-assessed. Can I ask you about the fact of that. Did you have knowledge that EFTRU consumers or patients were people who had come from a high secure environment and they needed to have their individual risks assessed. Is that - - -?---Yes.

45

- - - correct?---Yes.

Can I ask you was there a wider risk analysis, that is, did you or part of your organisation do an analysis of what risks are associated with the other components of The Park and the nearby golf course and the surrounding community?---I'm sorry, I'm not sure what you're asking. You mean in relation to EFTRU?

5

Yes. As a part of the planning for EFTRU are you aware of there being a risk analysis or some sort of study of what risks might be posed to the other components of The Park or the wider community?---I'm -- I'm aware that a series of briefings were required at various times to reassure a succession of ministers about the function and the role of EFTRU that would have addressed those. My -- my view is that the -- all of the people that have gone to EFTRU are people that could be managed readily in a community setting and pose no real risk to anybody anywhere so I -- I think they're saying there that the -- you know, a risk assessment was conducted on each person so -- and -- and that they wouldn't have transferred to EFTRU if there was a -- significant level of -- of risk in any kind of setting -- any domain.

10

15

Okay. So, Dr Stedman, am I right in thinking from that answer that the risk analysis was done individually for each patient who went to EFTRU - - -?---Yes.

20

- - - correct? And if that process detected that there was some risk, they wouldn't end up -- that patient wouldn't end up at - - -?---Yes.

You see the last item:

25

Adolescent consumers are not allowed ground access without escort during this transition phase.

?---Yes.

30

Is that referring to the Barrett Adolescent Centre consumers?---Yes.

So is that a risk measure?---It's a risk mitigation strategy, I would think; don't know if it measures anything.

35

So there must have been some appreciation of some risk in order to have that strategy in place, wasn't there?---I -- there was a high level of sensitivity about managing the risk that's posed by opening EFTRU in all kinds of realms. So the initial group of people that went there were selected for being very, very settled and very unlikely to cause problems for the community, that there was a lot of attention given to making sure that the -- the opening of EFTRU went well and there was no incidents to, kind of -- kind of interfere with the process.

40

Dr Stedman, I'm just trying to understand this process. You've told me first that the process involves an individual assessment of the particular consumers?---Yes.

45

And that process ensures that any consumer – any patient who is – went to EFTRU, there was no appreciable risk?---Yes.

5 This item about adolescent consumers not being allowed ground access without escort during the transition phase: isn't that appreciating that there is, at least, some level of risk?---Well, there's never no risk, so there's always a level of risk.

10 So – alright. But there is no comprehensive study or analysis or identification of the risks posed around EFTRU; correct?---I – I – I'm not – I'm aware that quite a range of documents were created at times. I – I don't know; some of them may fall into that category. I just - - -

15 I think, to be fair, you mentioned there may be briefing notes and things like that which addressed what level of risk there was. But is it something that you – you would understand that there are experts in this field, the people that assess risks and reports can be done?---Like occupational health and safety people? We would have had an occupational health and safety risk assessment for the EFTRU - - -

20 Right?--- - - - process.

But nothing - - -?---The clinician – the clinician's, kind of, running the process from high security or experts in risk management, individual level risk – clinical risk management.

25 The clinicians running EFTRU?---Well, the clinicians running high secure and – and EFTRU. So there was - - -

30 See, occupational health and safety would really look at the internal risks within the Centre. Is – what you're saying, I gather, is you're not able to identify a report or another analysis for external risks?---No, not specifically.

Thank you. Now, I gather you've spoken this morning to Commission staff about statistics?---Yes.

35 And Mr McCarthy, to my right, had a conversation with you about statistics and what was useful and what – where you got to in the statistics?

40 COMMISSIONER WILSON: Mr Freeburn, before you go any further I don't know what evidence is likely to be led on this topic. Is this something that ought to be in closed hearing?

MS McMILLAN: I think it should, Commissioner. I think it's not worth taking the risk – sorry, that was a bad turn of phrase – but I don't think it's a good idea.

45 COMMISSIONER WILSON: Mr Freeburn's looking a little puzzled.

MR FREEBURN: I'm not sure I understand why statistics will be necessarily confidential, but I don't have any objection to it.

5 COMMISSIONER WILSON: Well, my concern at some of the evidence led from another witness was that the material may not, for various reasons, to be able to be reliable, and that to put into circulation or to open the potential for the circulation of evidence of this nature that's not necessarily reliable might cause alarm and other concern in the community unnecessarily.

10 MR FREEBURN: I'm comfortable. The next topic I'm going to go definitely is closed – is a closed hearing matter, so I'm comfortable.

15 COMMISSIONER WILSON: Does any counsel wish to take a contrary view? Alright. Well, the hearing will be closed, the live streaming off, please, and those who are not legal representatives or parties, other than Dr Brennan, should leave. Yes, Mr Freeburn.

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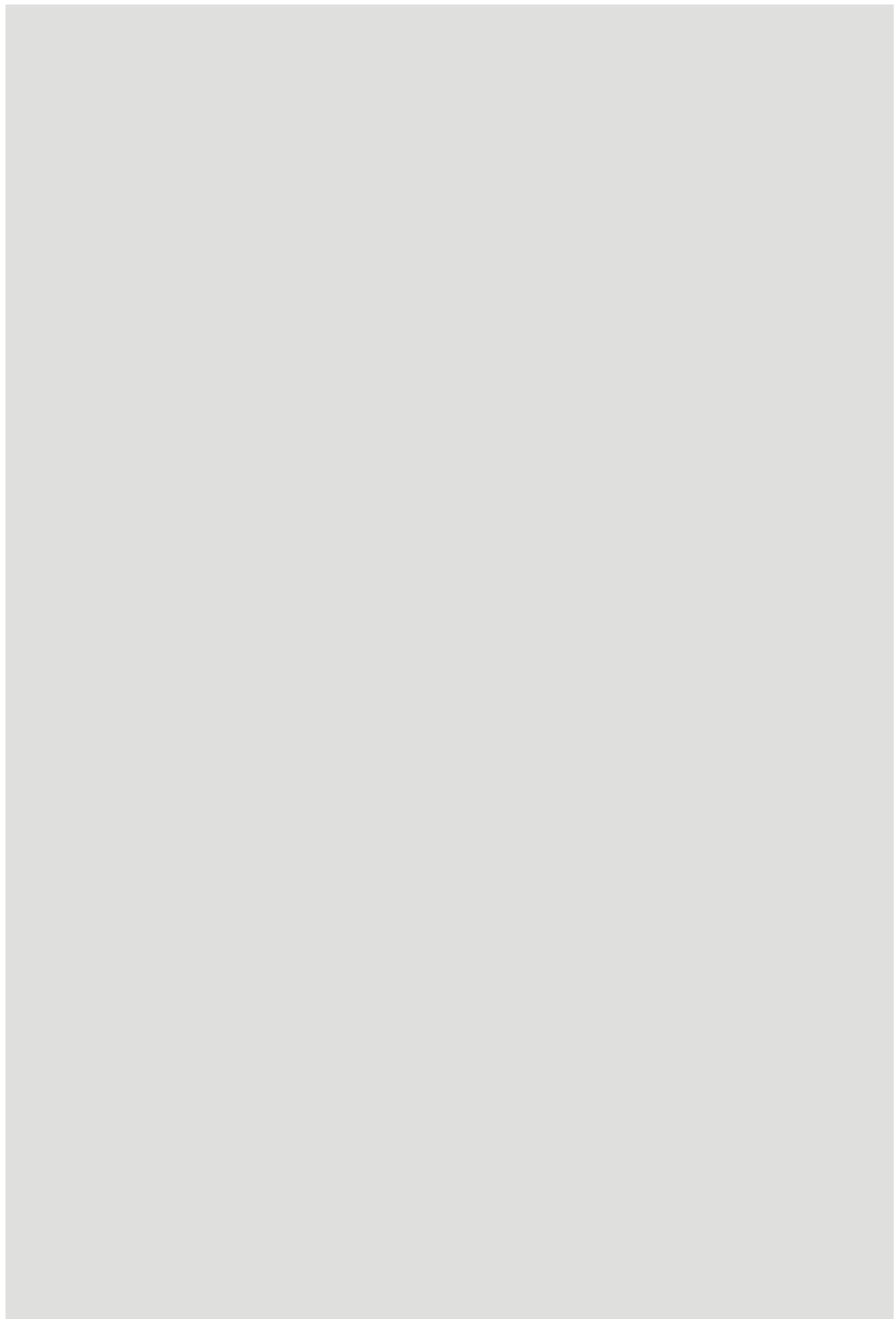
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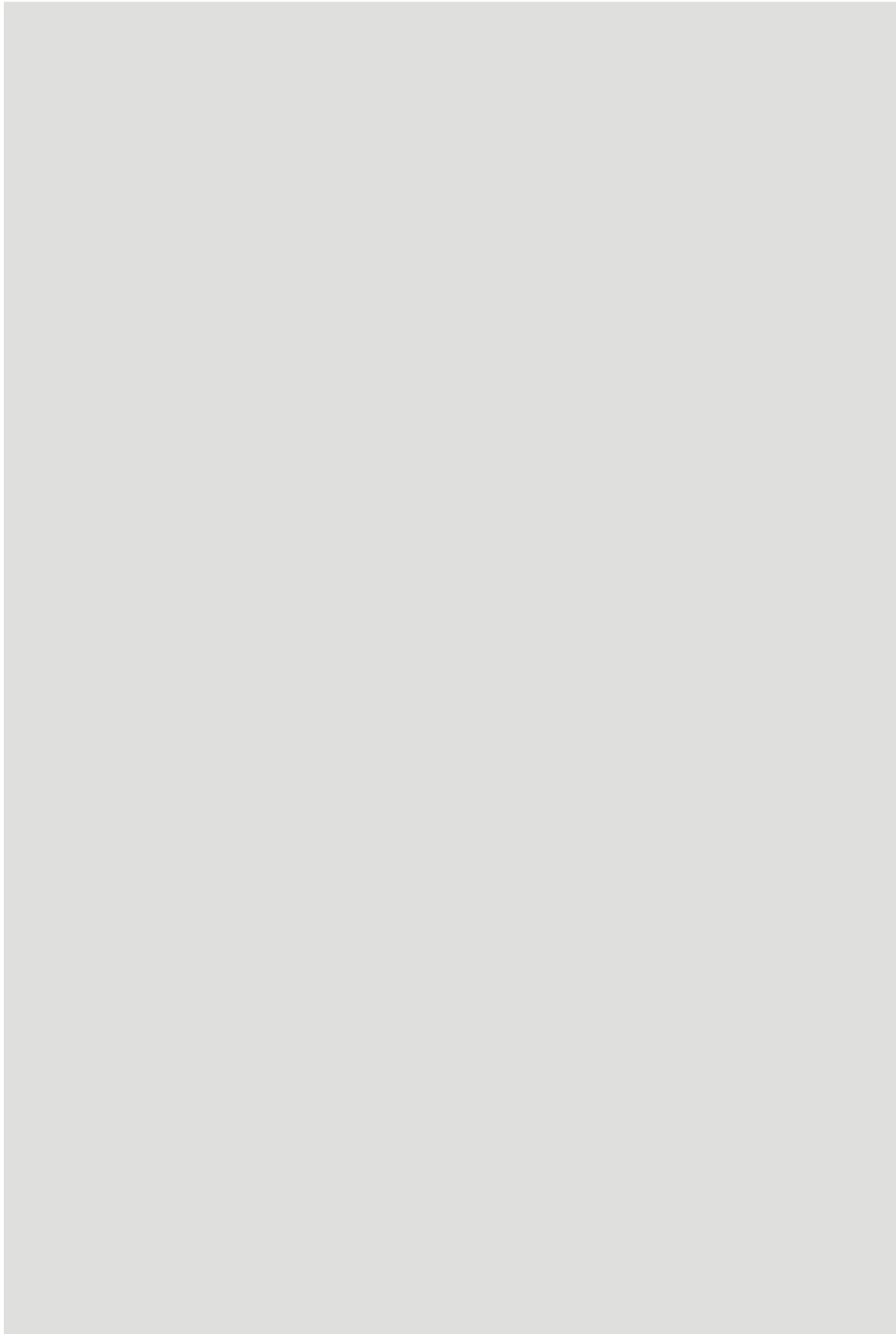
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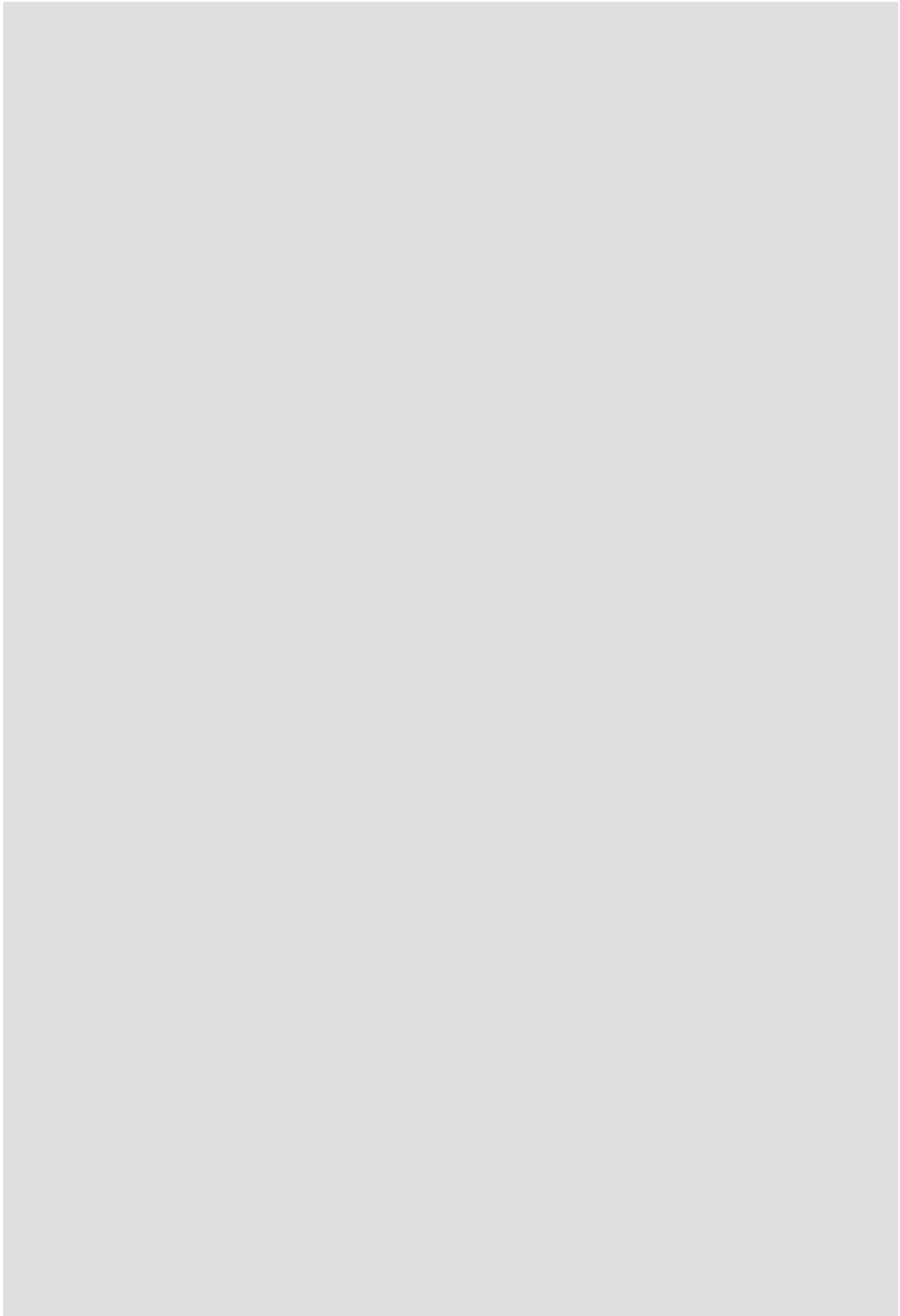
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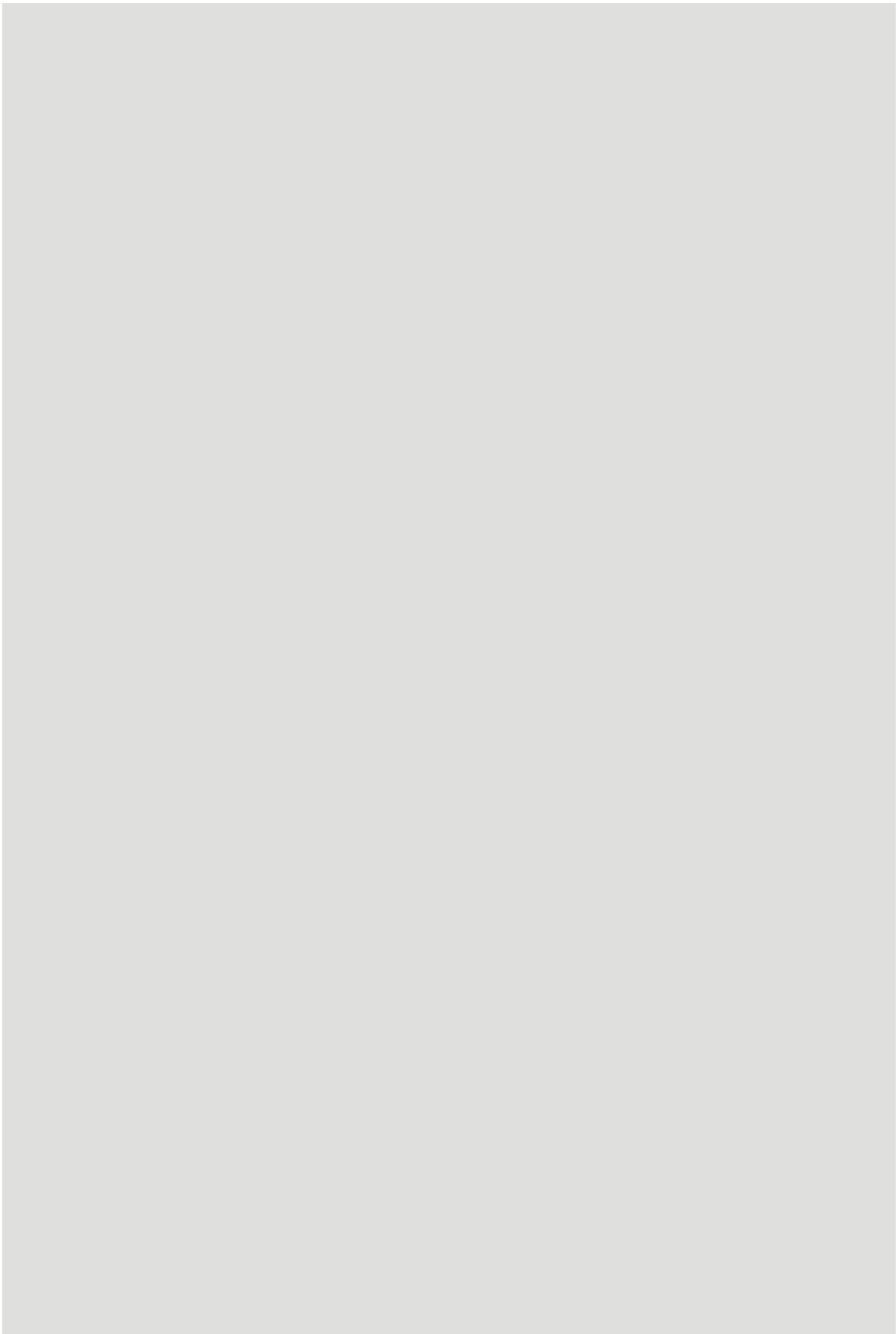
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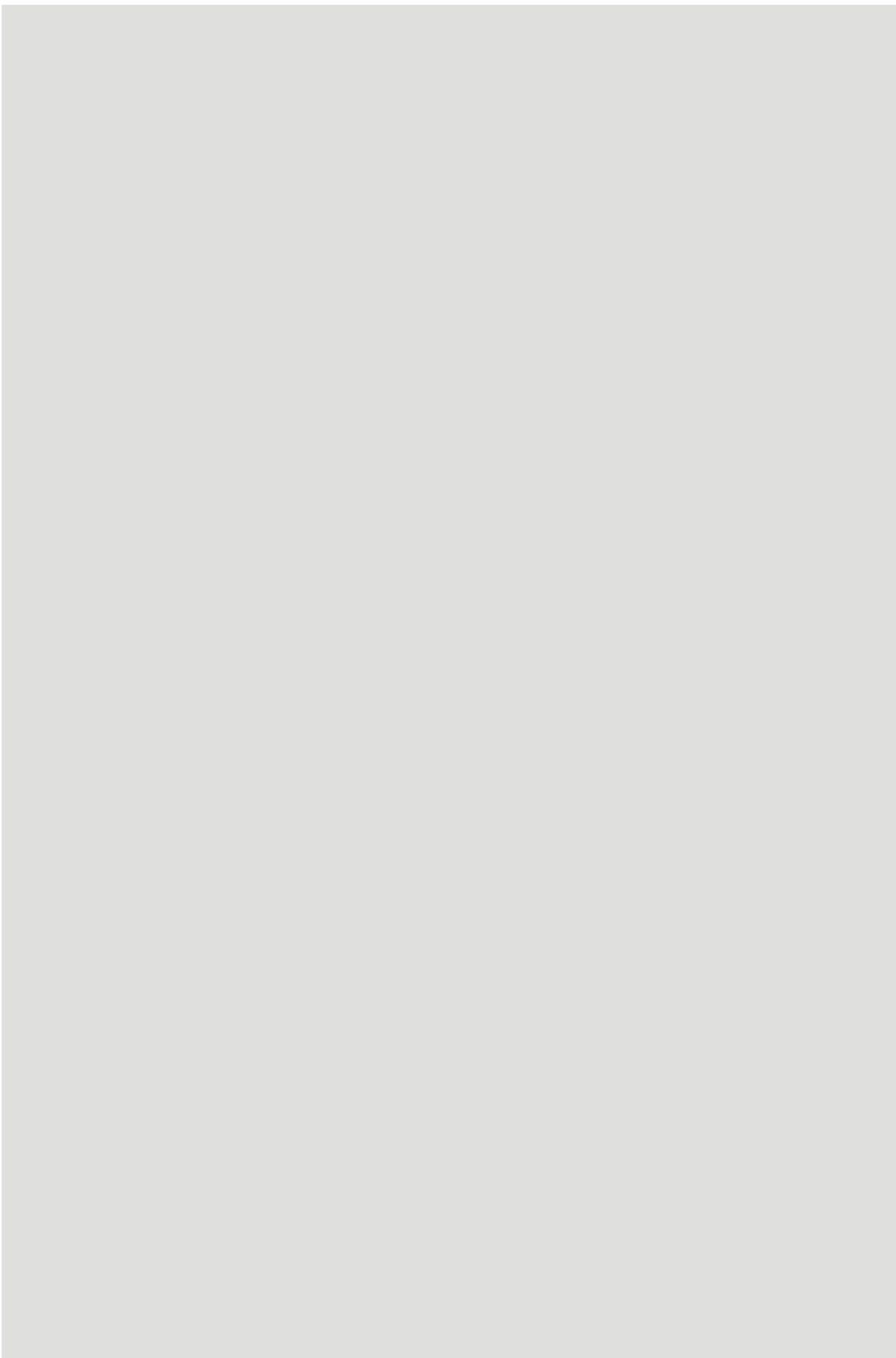
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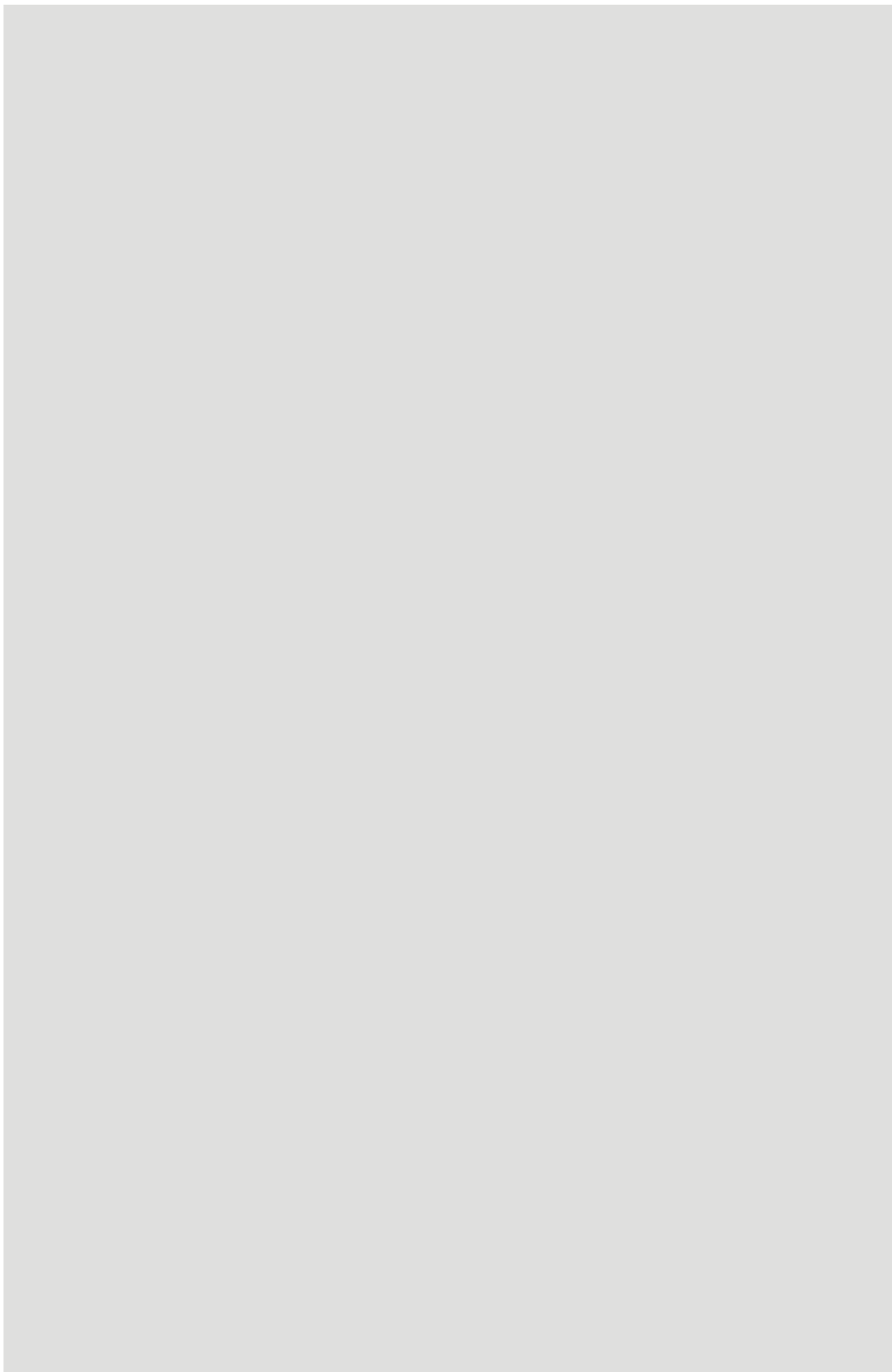
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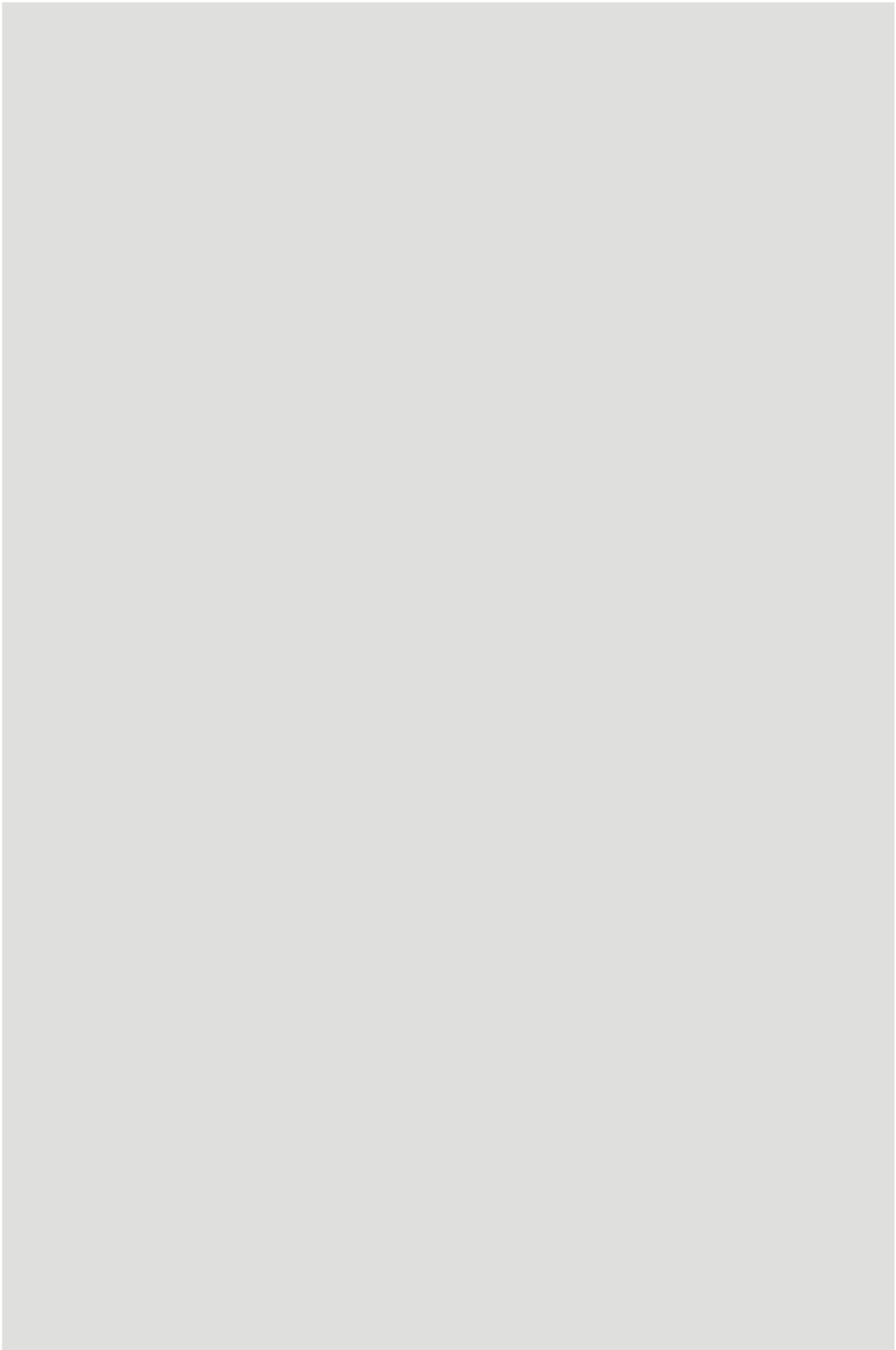
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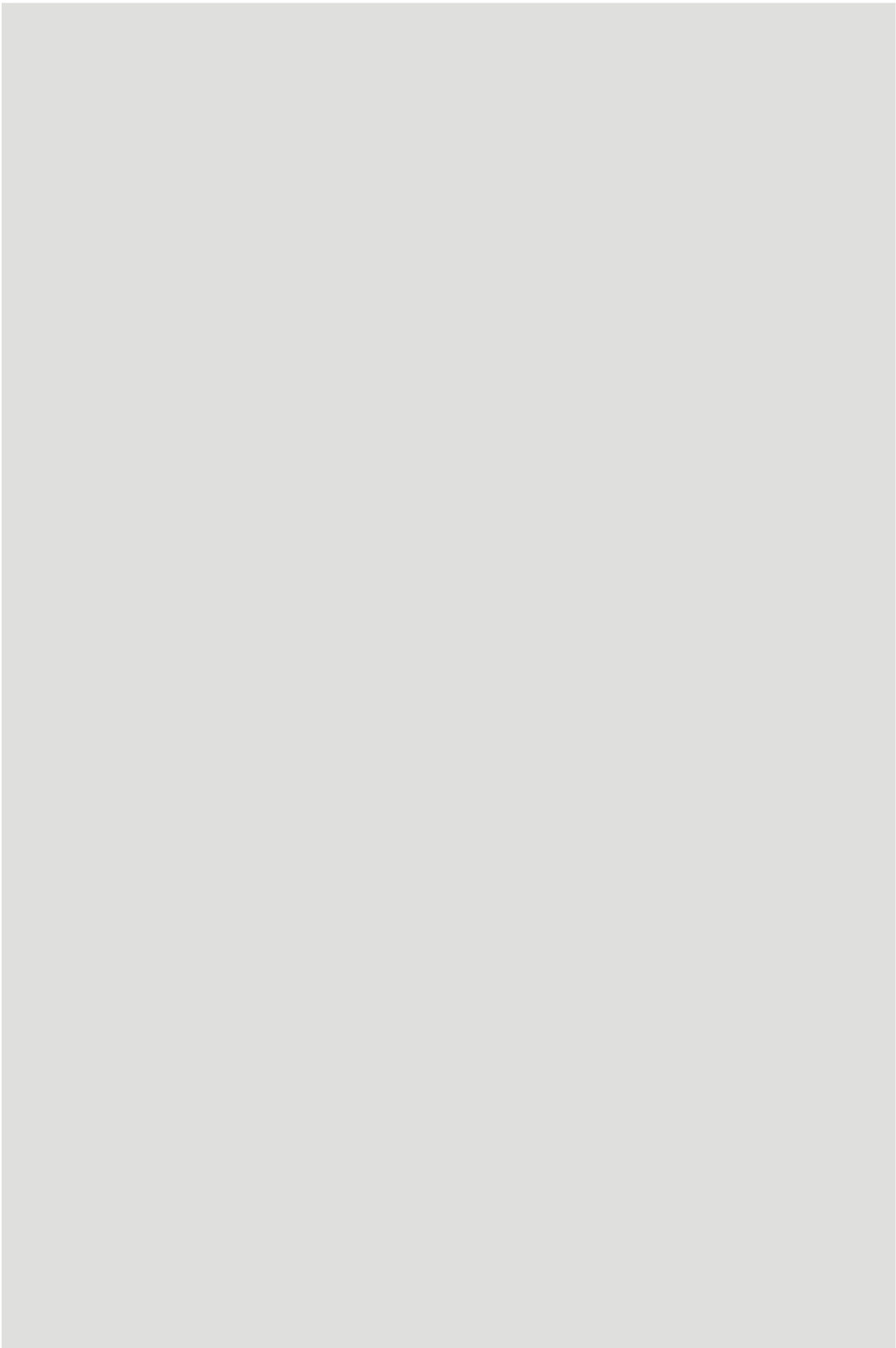
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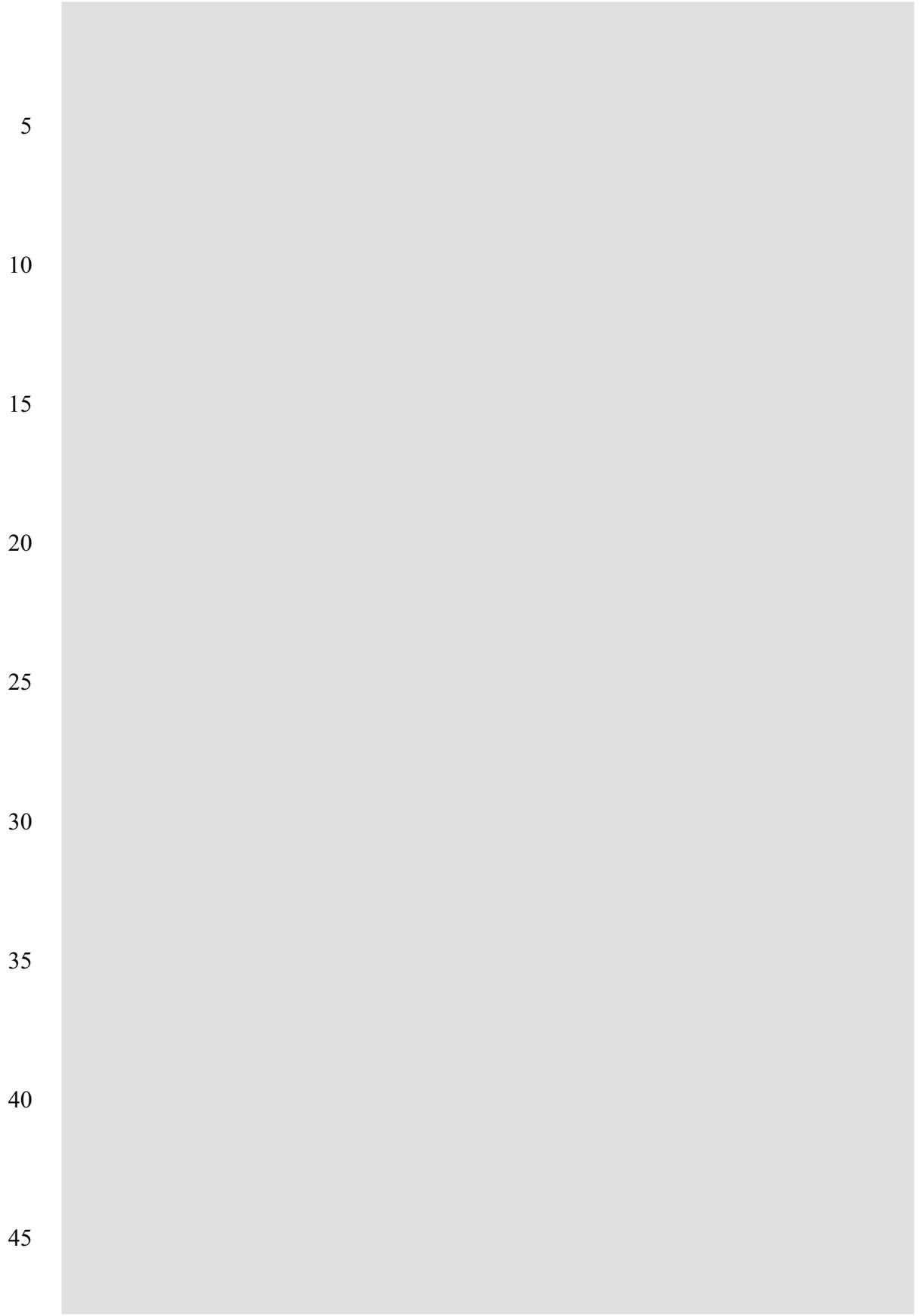
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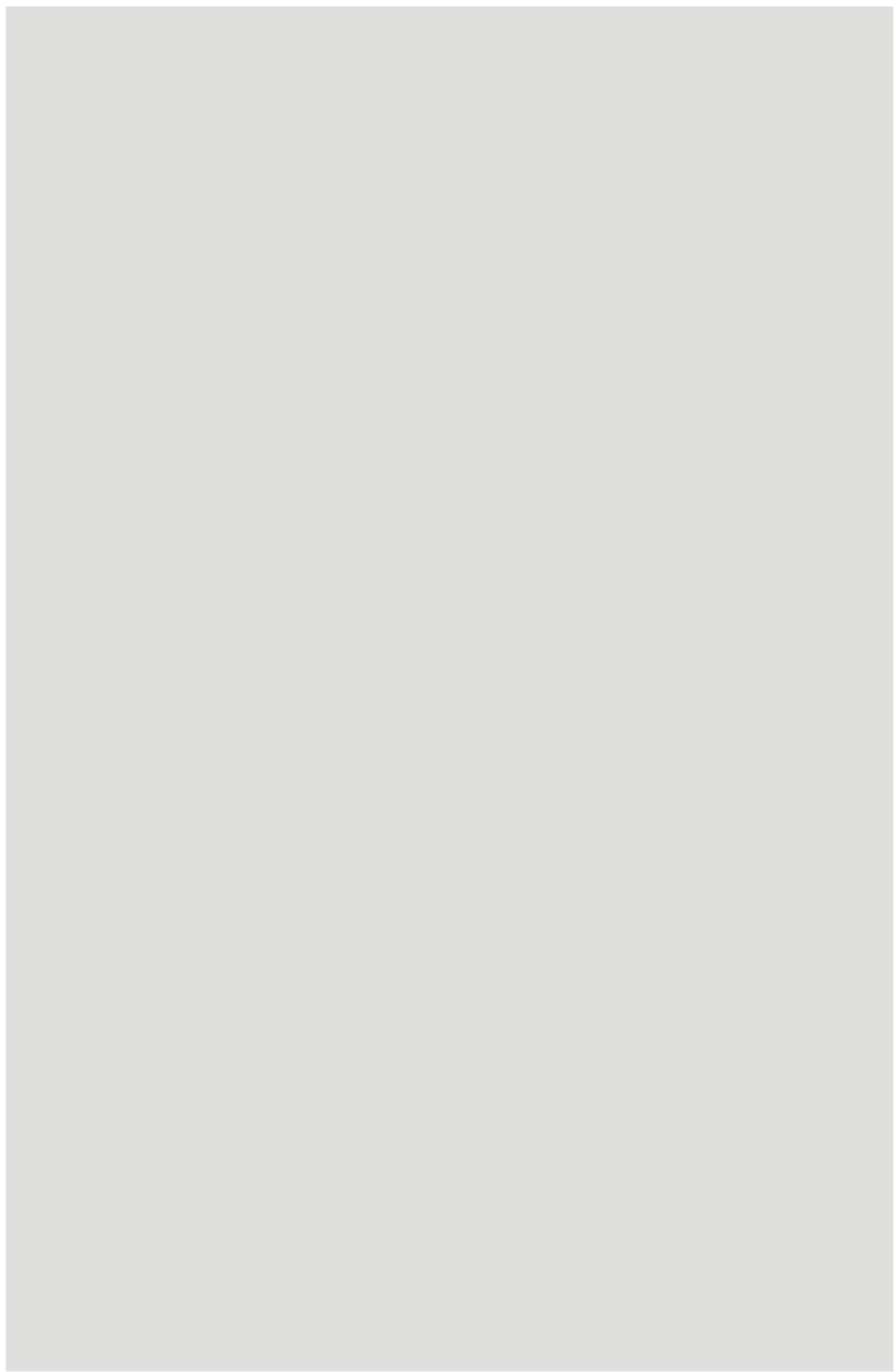




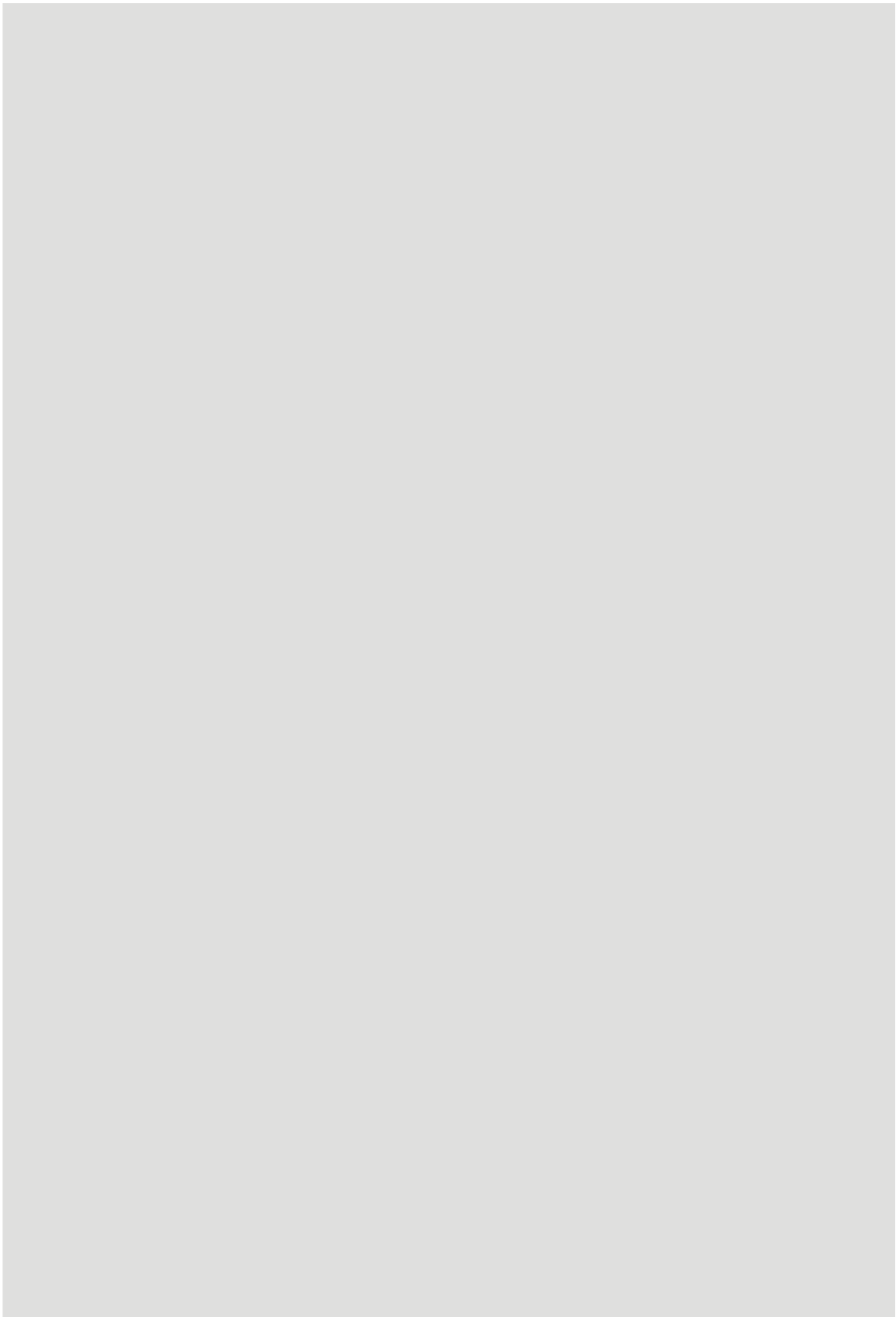
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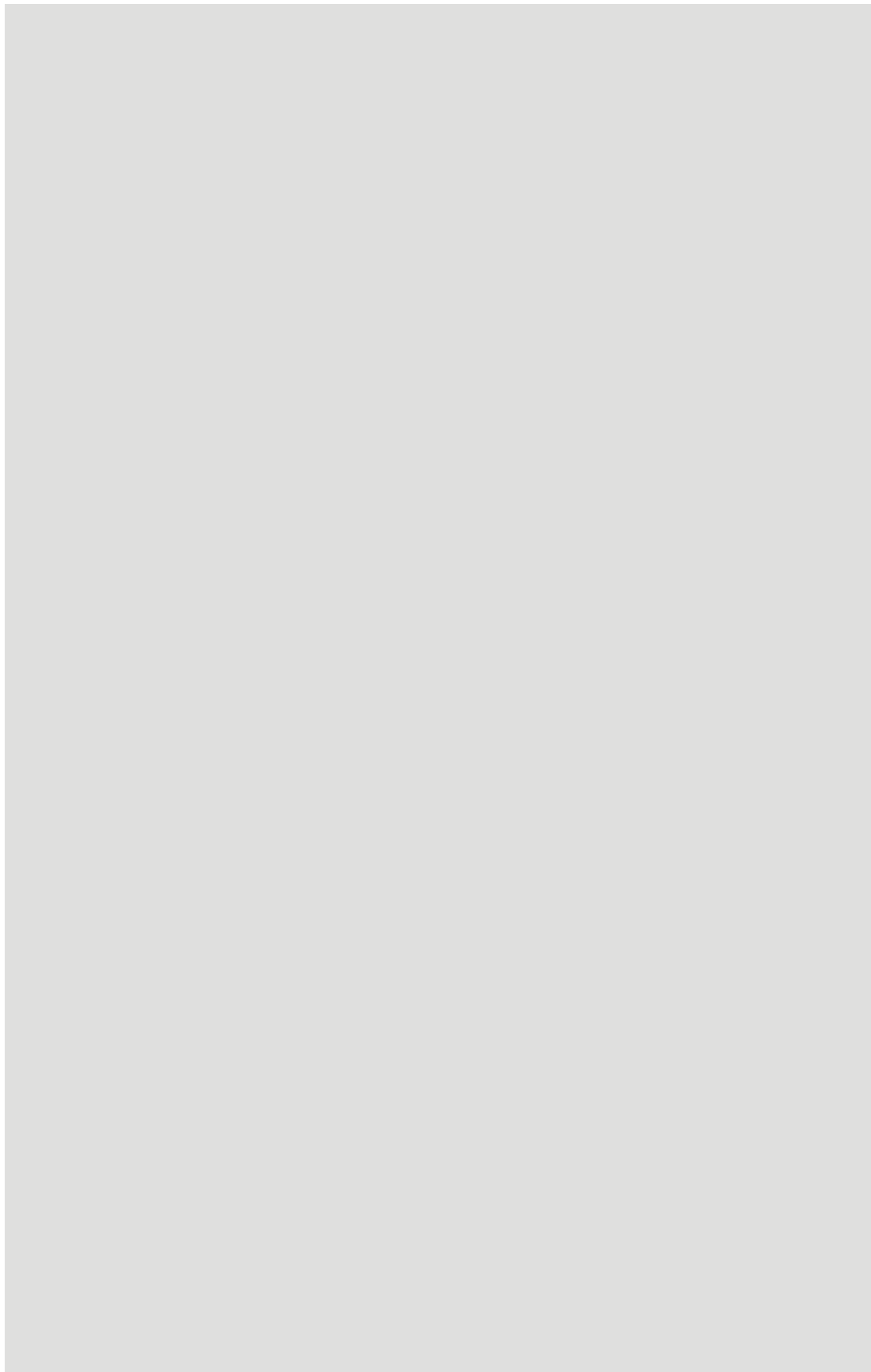
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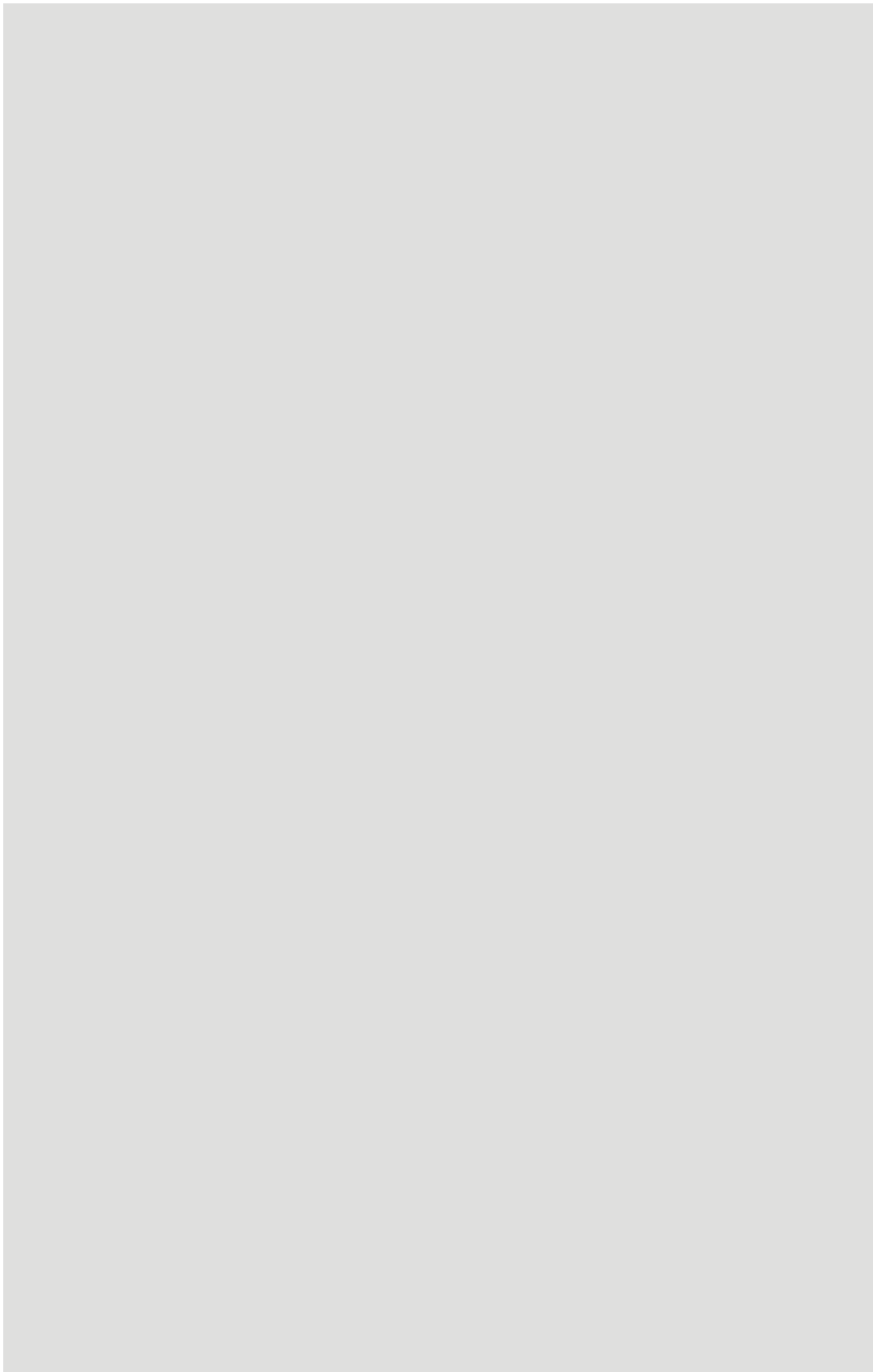
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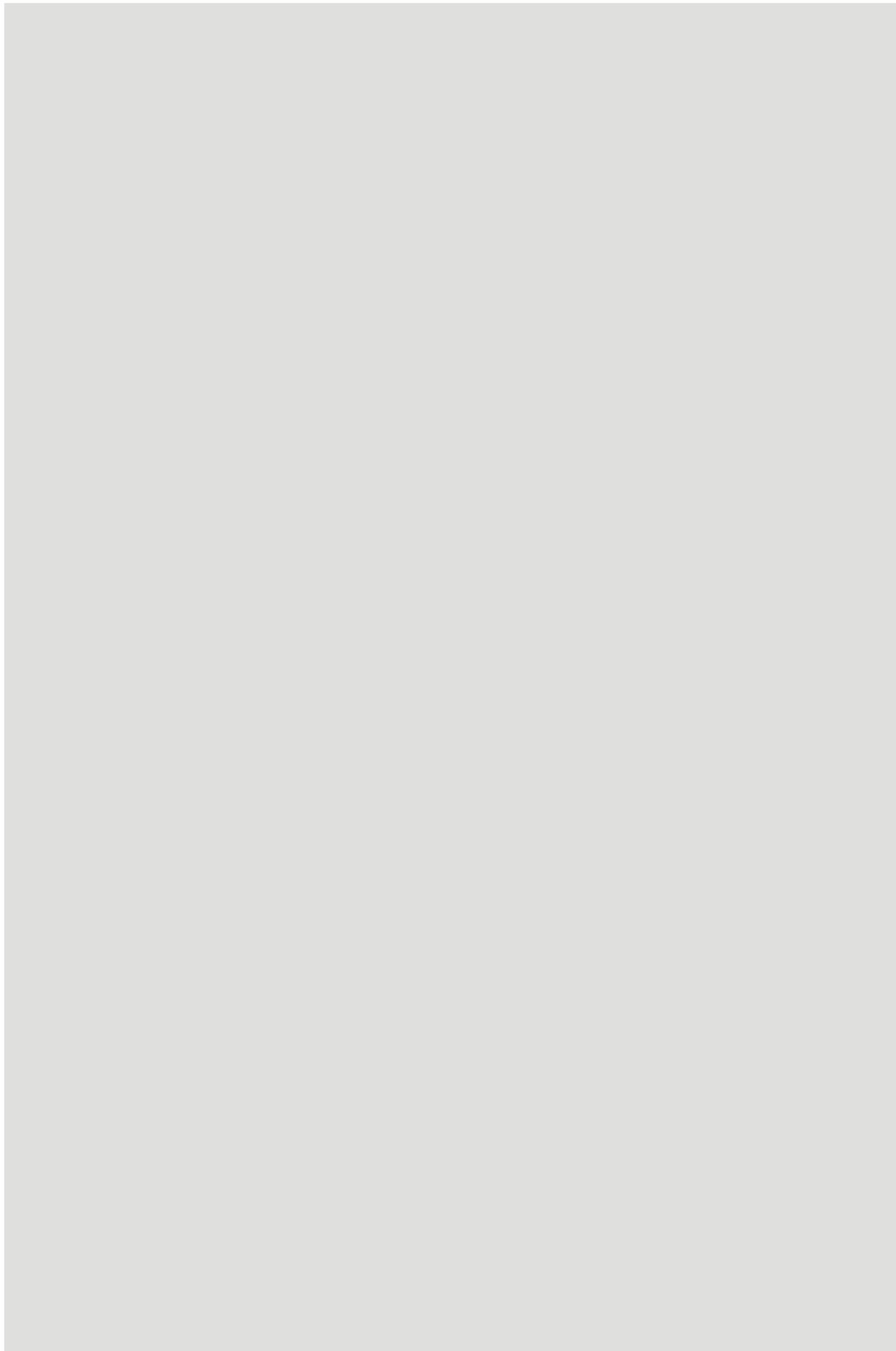
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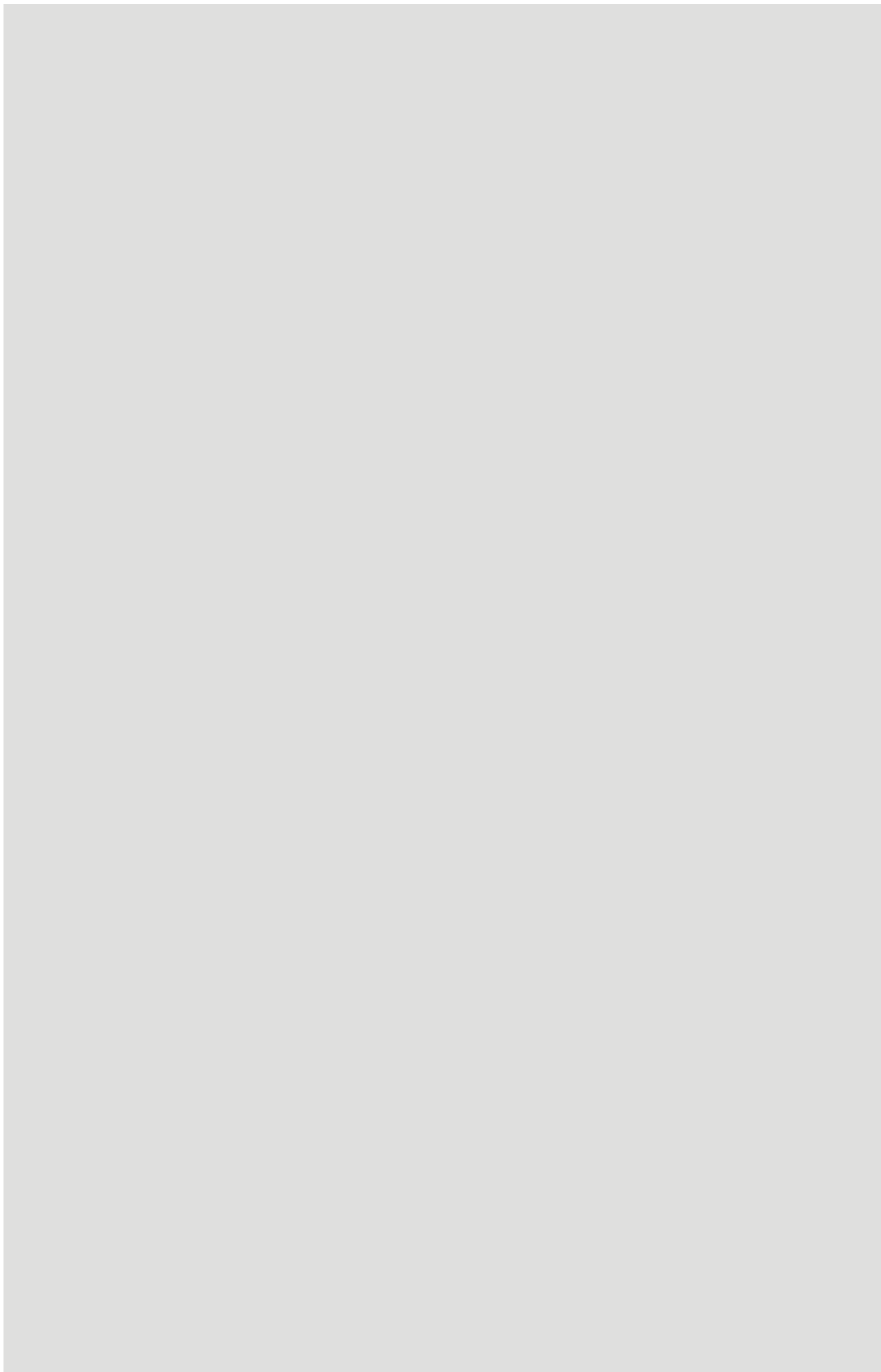
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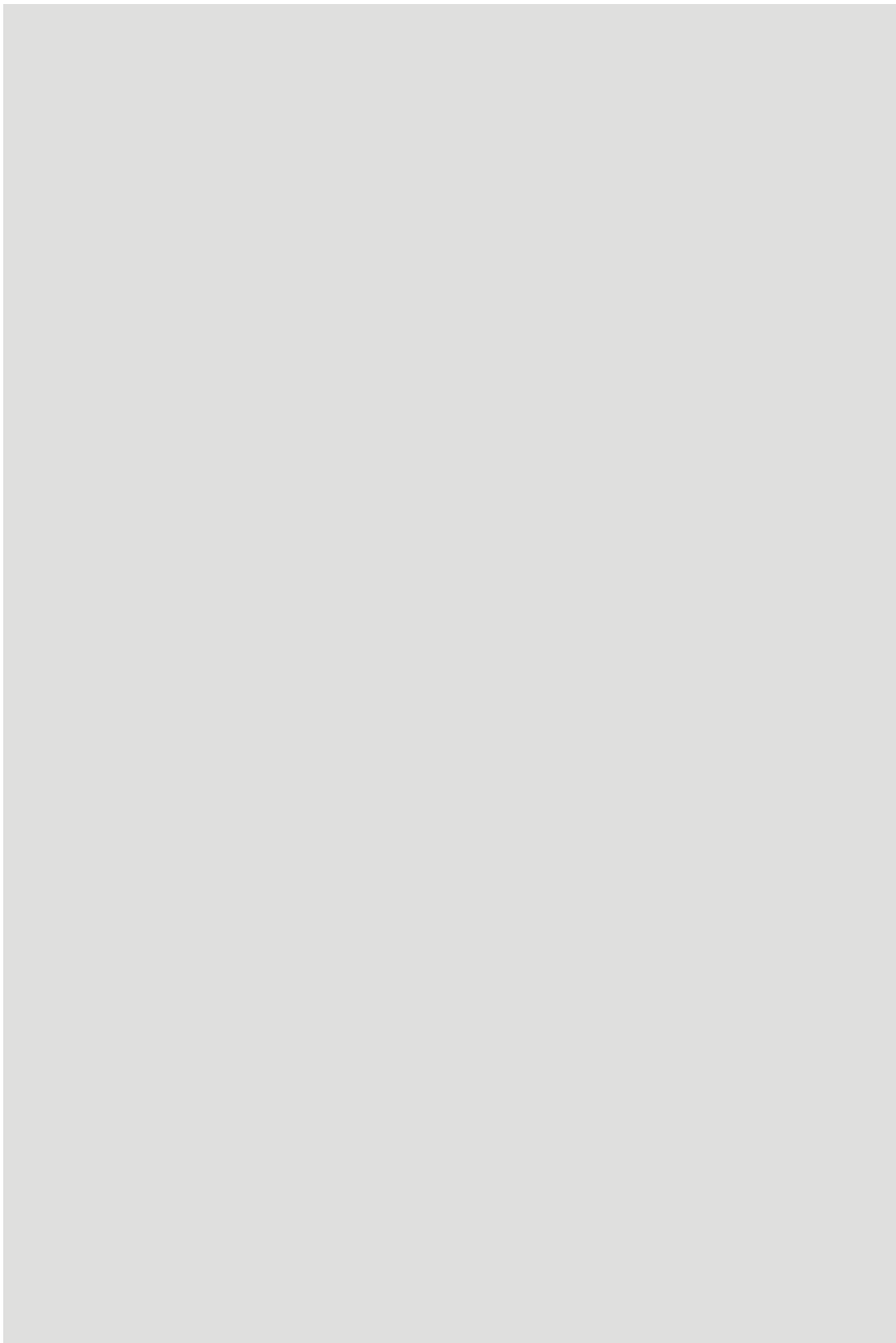
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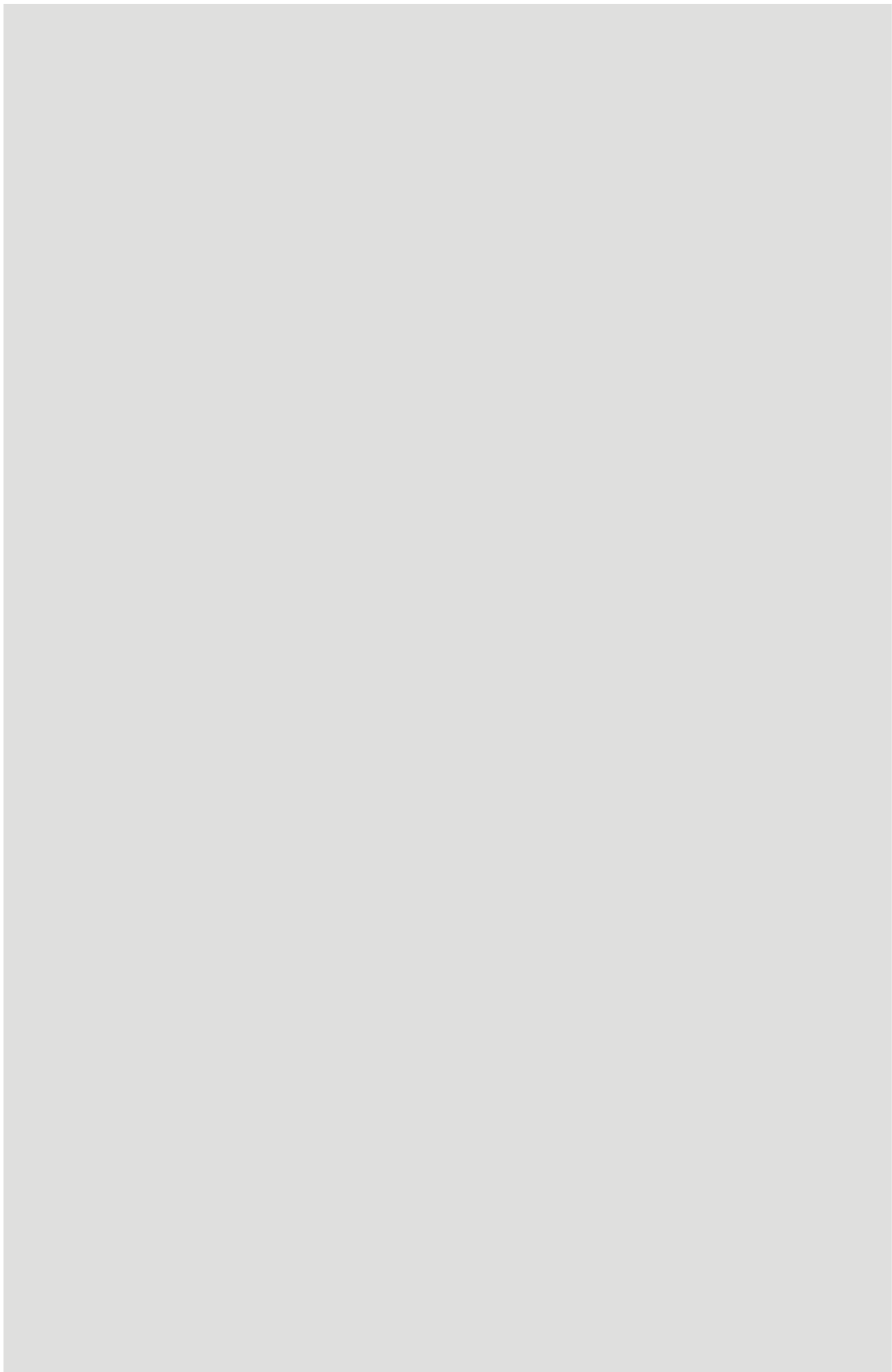
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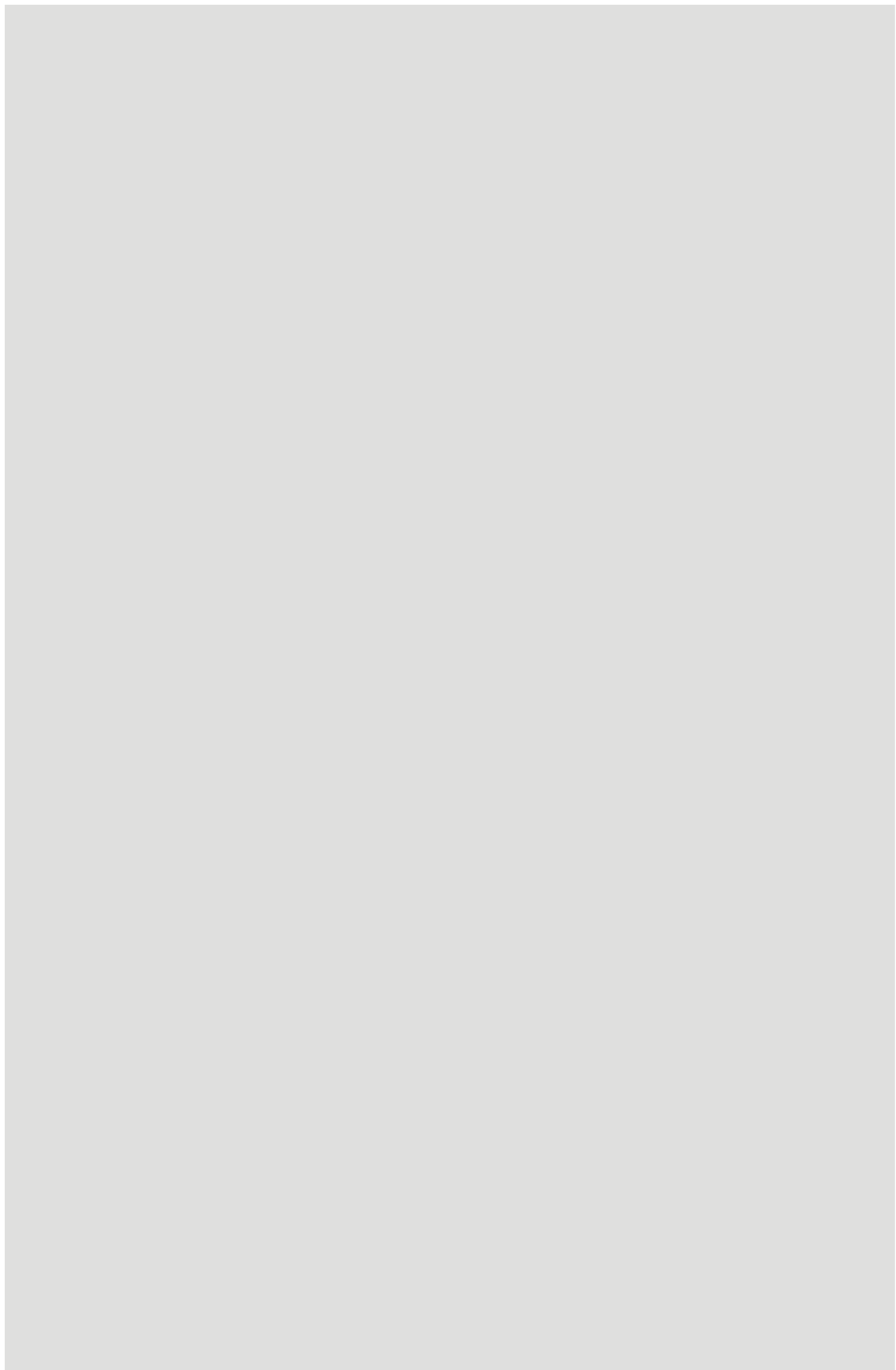
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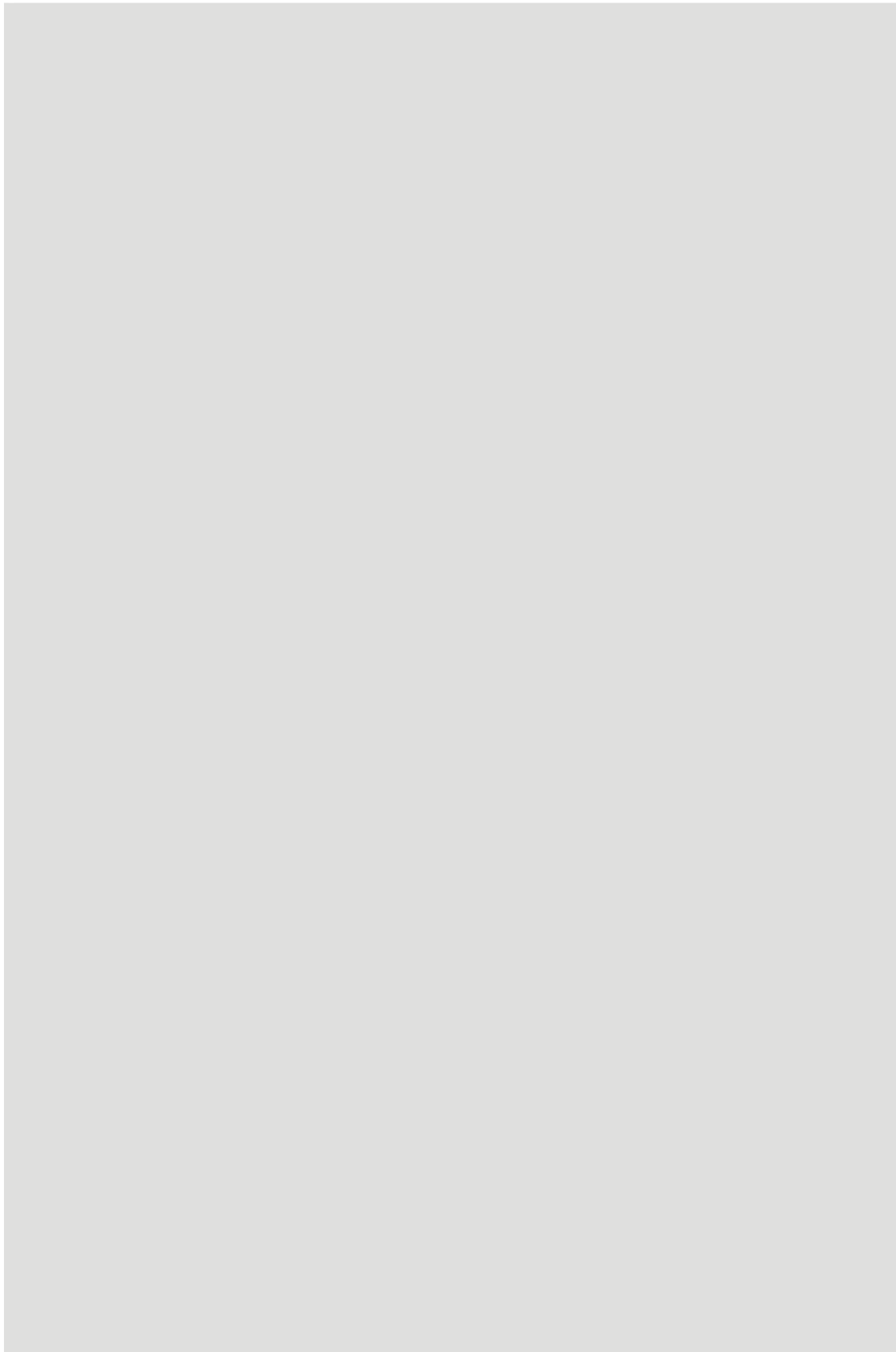
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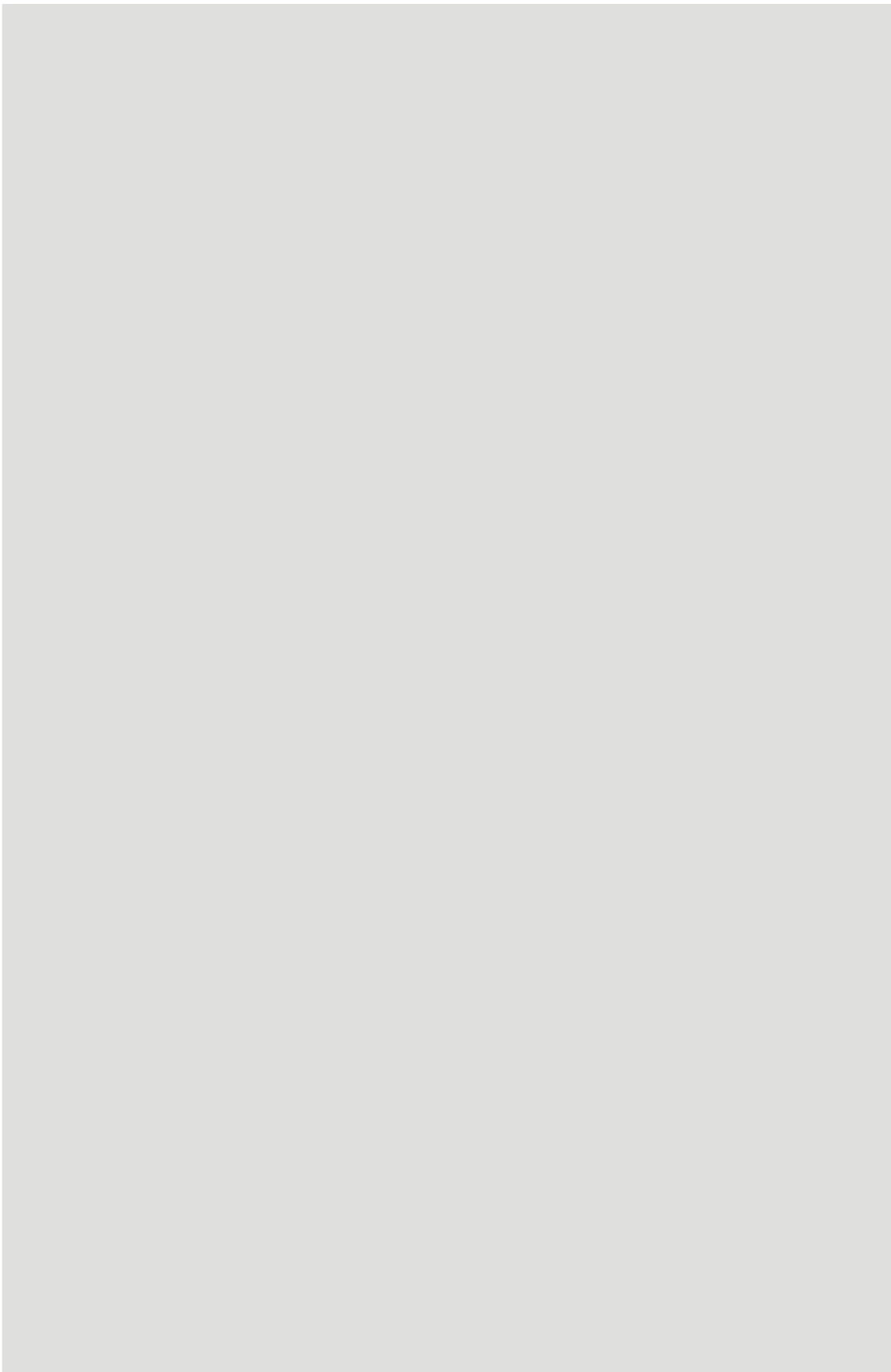
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CAROL ANN HUGHES, SWORN

[3.43 pm]

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EXAMINATION BY MS MUIR

MS MUIR: Mrs Hughes, you've got your hard copy statement in front of you; is that right?---Yes, thank you.

30 You were on secondment to the Barrett Centre from June 2013 until December 2013, and you were employed as a social worker/family counsellor there in a temporary full-time capacity; is that right?---That's correct.

35 And I understand from your statement you interviewed for the position in May 2013?---Yes.

How did you come to be contacted about the position at the Barrett Centre?---An expression of interest was sent around for staff to consider.

40 And prior to that interview and then your subsequent work there, had you had any involvement at all with the Barrett Centre?---No.

45 Okay. In your CV, you describe your position at the Centre as one where you provided social work services to adolescents and their families so as to facilitate the transition of adolescent patients to the community and that you developed and facilitated awareness groups for adolescents?--- [indistinct]

What's an awareness group? What was the awareness group that you developed and facilitated?---Well, I was interested in being part of a group that Angela, the speech pathologist, normally ran. And I had communicated that to her earlier on when I first went there. And she normally ran a group which focused on social skills and communication. And, basically, at the time we were aware that the adolescents would be leaving. And I was concerned that they had some sense of understanding being resourced and being aware of when their emotional state may change. And so we called a particular group that we ran the awareness group. Now, that was a bit of a mystery to everyone. In the first session we explained to them that what we were going to do over the time was help them with relapse prevention skills and also tuning in with mindfulness to try and notice when things were changing in their emotional state and then to be able to use some ways to help reduce that.

So when you started in June 2013, you – if I understand your evidence, you had been told at the time of the interview that there was some uncertainty about the Centre staying open?---That's correct.

But you didn't know when it was going to close?---That's correct. No. There was – I was told in the interview that it may – it may be closing. There was nothing – nothing confirmed.

And had you ever been involved in transitioning adolescents? Had you ever been involved in the transitioning process where an adolescent transferred or transitioned from one service to another?---Well, in my present position I'm a senior social worker in a community mental health service. And that has a time limit to it. So eventually there is a transition but it's an adult service. The other experience I've had, I worked in residential rehab, Logan House, for 22 months. And as part of that, the residents undertake – there was a cognitive behavioural program at the time and they reside in a community and learn relapse prevention skills and a range of social skills, relationship skills. And eventually – I was the after care coordinator which meant that my role was to transition people – and they were generally adults, the youngest was 18 – transition them to the community by looking at a whole range of needs that they had. So in terms of transition experience, I've had that experience for 18 months which has got commonalities in terms of transition.

At the time you started at the Barrett though, did you have that experience?---Yes. That was in 2000 and – 2000. The year 2000 to 2002 I worked at Logan House, drug and alcohol residential rehab.

And you were a member of the multidisciplinary clinical care transition panel --?---Yes.

-- at the Barrett Centre. Can I take you to – can we go to document COI.018.0002.9540. Scroll down.

This is a letter that you wouldn't have seen before. It's a letter of 19 September 2014 regarding the Health Service investigation into the closure of the Barrett Centre. And I can tell you that Ms Kelly states in this letter that:

5 *There were no specific policies, procedures or statements of duties put in place for the transition coordination between August 2013 and January 2014. And all staff involved in the transition were expected to employ business as usual transition practices, policies and procedures. And the business as usual policy said to be in effect at the time is an attachment to this letter.*

10

If we could go to .9612.

I just want to ask you, Ms Hughes - - -?---Yeah.

15 Have you seen this document – attachment 7? Have you seen this document before? So this was the inter-district transfer of mental health consumers within South Queensland health service districts, effective at 8 November 2011?---Look, I can't recall reading it. I may have read it.

20 And when you say you may have read it, are you saying you may have read it recently due to your involvement in the inquiry or back in 2013 when you were involved in the transition process at the Barrett Centre?---I'm not aware of being specifically referred to that at the time but I like to read procedures and documents that are part of Queensland Health policy and West Moreton policy so I do spend
25 time reading things.

In your evidence you talk about what you had to do to try and gather information and doing research on the internet relevant to the transition?---Yes.

30 In paragraph 11 of Dr Sadler's most recent statement – and we don't need to go there – Dr Sadler gives some evidence that there was a green folder containing details of referring agencies and the alternative services that were available that was kept at the nurses station. Did you know about this folder at the time?---Well, yes. Now that you've mentioned it, I do remember it. Yes.

35

And can you recall accessing that folder during the transition process to get some information about services?---Yes, I can.

40 And Dr Sadler also says that there was a list of services that may have been maintained on the West Moreton G drive in the sub-directory, Barrett Adolescent. Did you know about this G drive at the time?---I'm aware of – I read all the documents that related to Barrett. That was one of the first things I did to orientate myself when I went there. So when – during the transition time, the document in the nurses station was one resource and I can't recall but I – knowing me – I would've
45 looked at what was available. It was looking at the totality of available resources, including the internet.

5 So it wasn't the case that there was no information available to you when you were looking at what services you might need to access for the young people that you were assisting in transitioning?---It's not an all or nothing. No. It wasn't as if there was nothing. There were some things. In terms of their currency, some things were current and up to date, and some things needed to be researched for the most current information. So there was certainly resources but we also had to look sometimes between the broad statements that might be part of a referring agency's details.

10 So you knew the agency, you knew some overall information. But then you'd – once you identified that that service might be one that would be – might be available to a young person, you'd look – you'd have to then make some more inquiries?---Absolutely.

15 And Dr Sadler also says in his recent statement that there were some comprehensive notes available for each of the young people prepared – that had been prepared for the care planning workshops and that these notes summarised the interventions and progress of adolescents over the previous three months. Did you know about these months?---I'm not sure what that document's called. I mean, I had access to the files or the charts and information. I'm not sure what that document is called. I would've seen whatever was available. It was on CIMHA. On the computer system there was certain assessments, progress notes, up to date case review summaries. So there was a certain currency of information and that particular document, I'm not sure what it's called, but I would've seen it if it was available. I can't – it needs to have a name. Most documents have got a – you know.

25 I'd love to be able to help you. But I'm – the description in Dr Sadler's statement is that there were comprehensive notes?---I'm sure I would've seen them. I read the charts. When I first went there to orient myself I went and read every adolescent's chart or file to try and find out what the situation was, where we were, who we were looking at, what the diagnosis was, what interventions had taken place.

30 And from your perspective, Ms Hughes, when you went to access that information, did you feel that it was up to date and all the information you needed was there?---I did. Yes.

35 I just want to ask you some questions about communications with families because in your statement you say much of your role also involved contact with the families?---Mmm.

40 And was this a role that you were assigned by Dr Brennan or someone else?---Well, it was two stages, really. First of all, when I first went there what they were wanting was a social worker who was able to communicate with families, relate to families, understand systemically – you know, the adolescent lives within the family, community, society – so I think the fact that I had qualifications in family therapy was an advantage. And then in terms of working there, Dr Brennan specifically asked me to be part of the transition panel and also there was a sense that this was

my role as well as other people. I wasn't the only person who spoke to the families but it is to – to ensure that there was inclusion and participation of families.

5 So were there two aspects to your role then, the first being when you first started at the Barrett Centre in June 2013 at that point the closure announcement hadn't been made - - -?---That's right.

10 - - - so you were only involved in family counselling to the extent that it was business as usual at the Barrett Centre. Would that be a fair assessment?---That's – yes. That's correct. I mean, if you're in the particular role I was in then you would be involved at the assessment stage when an adolescent is arriving and also see the family at that stage. So when I arrived in June we had a group of people who had been there for quite a while and – or different lengths of time – and so the previous social worker who had left earlier in the year had been involved in those initial stages
15 of engagement with the families and so when I came along it was about assessing who was connected with the families and beginning to, like, find my feet in the role in a sense so I offered support to the care coordinators or something like that in terms of trying to engage with family members.

20 And then did that role change slightly after August - - -?---Yes.

25 - - - because the announcement had occurred and then there were, obviously, we've had a lot of evidence about young people being distressed, families being upset and were you specifically then having to be in a role that you offered some support to those young people and the families?---Yes. I mean, things changed when the announcement was made. And I mean, basically in terms of the relationships in the unit, the care coordinators for each person had a lot of contact – would have contact with families. So they – they had, you know, quite a strong involvement with the young person and would have contact with families. And then there was – in terms
30 of records, there would be a – like a review meeting quite regularly and forms were sent out to the families to complete in terms of outcomes and the young people were also asked to complete those forms so they could be included and discussed in the meetings. And then I gradually engaged with the families as was needed, like for example, if one of the care coordinators might have an issue or something I would
35 help with assistance of it.

Did that mean you were dealing directly with the families, like, you would phone them or write to them?---Yes.

40 How did you go about contacting – you know, making this contact with the families?---Well, we would have regular meetings in which the progress of the young person was discussed and if there was an issue that related to working with the family, visiting the family then that would be – it would be acknowledged that that's what I would do that. Like, for example, one of the young people - - -

45 If there's - - -?---Yeah. No, sorry.

If we're going to mention any specific names I can ask you about, I have got a question that I - - -?---I did home visits – that's all I'm saying – with a particular young person.

5 And otherwise would you use telephone calls, emails and did you - - -?---Mainly telephone calls.

Mainly telephone calls. And just roughly, how many families did you contact during this process?---Well, the intention was in terms of the transition that all families
10 would be contacted so – I mean, it was – I mean there was several layers of communication going on, like, at the time when – when the closure was announced. Dr Sadler contacted – there communications coming out from some of the executive to the families and then in terms of back down in – in the unit there'd be weekly meetings. There'd be review meetings and there would be a need identified for
15 including the family in the next meeting or discussing with them and then how we were going to do so - - -

Look, the reason I was asking you these question is in your statement you say – you talk about – this is at paragraph 8.4 at 0010 – you talk about the panel meetings and the information gathering and that you made contact with housing and support
20 agencies but what you do say is:

Much of my role also involved contact with the families.

25 So I was understanding in that – I was trying to understand in that sense what you meant by contact with the families?---Well, basically, I contacted the family by phone and inviting them to meetings with Dr Brennan which I was part of as well. Yeah. And once or twice sending an email.

30 Okay. I might ask you a couple of questions about that in closed court. Just I have one more question in – that I can deal with in open court, Commissioner.

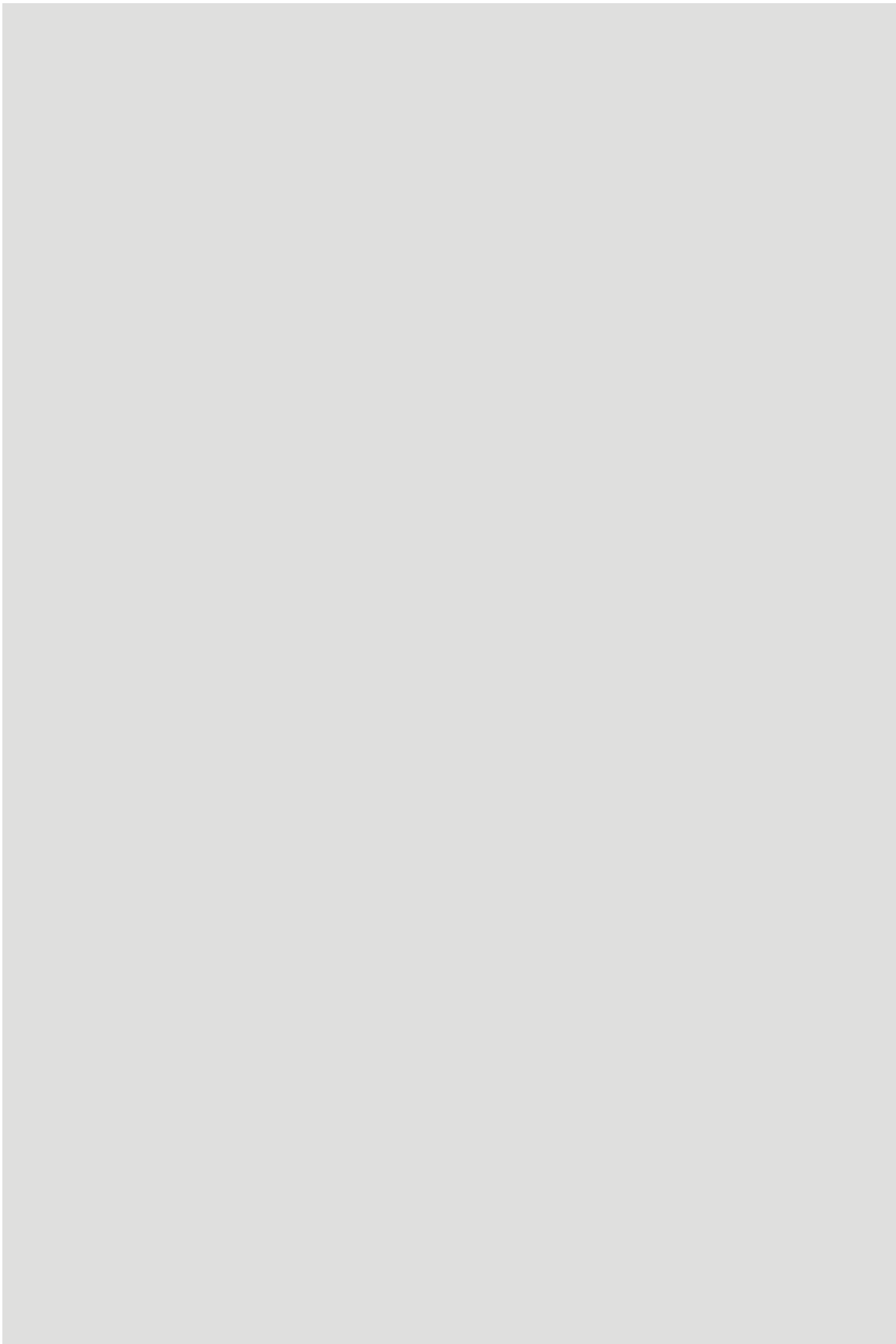
If we could go to paragraph 6.1 of your statement at 0004. You outline the reasons you were told on 6 August for the closure decision and if you could just read 6.1(a)
35 to yourself. So I just wanted to ask you, in relation to the extended forensic treatment and rehabilitation unit which is EFTRU can you recall EFTRU opening at the end of July 2013?---I can't remember the date but I'm aware of it opening. Yes.

40 And can you recall there being any discussions about extra precautions or risks about – surrounding the opening of EFTRU at that time?---No, I don't recall.

Commissioner, I just have two more questions for Mrs Hughes but I think they should be dealt with in closed court.

45 COMMISSIONER WILSON: Alright. I'll close the court again – close the hearing. Live streaming off, please, and those who are not legal representatives or parties should leave. Yes, Ms Muir.

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EXAMINATION BY MR DIEHM

[4.13 pm]

40 MR DIEHM: Ms Hughes, my name is Diehm, and I appear on behalf of Dr
Brennan. Ms Muir asked you a question about a green folder containing information
about services that was available that was present on the ward for you to access. I
just wanted to be clear about it because of the way the evidence came out, I thought.
The – the folder containing this information about the services was somewhat out of
45 date; is that so?---Look, I really wouldn't want to state that. I mean, the – the folder
– I'm aware of the folder and I've looked through it, and it was in the ward, and I
was located in a different building. And without seeing the folder right now, I think I

formed an opinion that it might have needed to do an update on the phone number or something like that. That's what I mean by out of date. I mean – I don't mean that we have this thing that's completely, you know, useless.

5 I'm not suggesting - - -?---You.

- - - that to you. But what I wanted to clarify with you was that to the extent that you can recall this sort of information, that there were some services that were no longer available or the details about them were no longer current?---Look, I really am not
10 the best person to speak on that. I mean, this is not unusual. Where I work, I mean, things change their names, they update, they change phone numbers quite regularly. It's just not unusual for something to need a regular update.

Of course?---My impression is that, you know, it covered the youth services and
15 things that are needed by the nursing staff, the care coordinators to make contact. But, I mean, I don't recall picking it up thinking this is out of date. My first impression was, good, here's a resource.

Yes?---And I – I really couldn't comment on any agency or any number but I think –
20 I think maybe one thing was out of date. I – look, I really am not the expert on the question.

Thank you. Thank you, Commissioner.

25 COMMISSIONER WILSON: Is that it, Mr Diehm? And no one else wishes to ask any questions? Ms Muir, anything in reply?

MS MUIR: No, Commissioner.

30 COMMISSIONER WILSON: Thank you very much, Ms Hughes. You can stand down.

35 **WITNESS STOOD DOWN** **[4.16 pm]**

COMMISSIONER WILSON: I'm sure Mr Dunning won't stand on ceremony. He won't mind where he sits.

40 MR DUNNING: No. I don't mind at all. I'm assured there are some swing seats, which is what I was looking for.

COMMISSIONER WILSON: Now, for the sake of the record, I'd better take the
45 appearances on this argument. Mr Dunning.

MR DUNNING: May it please the court, my name is Dunning. I appear with my learned friend, MR KEYES, for the State of Queensland but limited solely to making

submissions of the parliamentary privilege issue. Otherwise, as your Honour knows, carriage for the State [indistinct]

5 COMMISSIONER WILSON: Thanks, Mr Dunning.

MR DUNNING: Thank you, your Honour – Commissioner.

COMMISSIONER WILSON: Mr O’Sullivan.

10 MR O’SULLIVAN: May it please the Commission. My name is O’Sullivan. I appear with MR O’REGAN on behalf of the Honourable Lawrence Springborg.

COMMISSIONER WILSON: Thanks, Mr O’Sullivan. Mr Freeburn.

15 MR FREEBURN: Freeburn, initials P.A. Queen’s Counsel. I appear with MS MUIR as Counsel Assisting.

20 COMMISSIONER WILSON: Thank you. Mr O’Sullivan, it’s your – I’m sorry. There’s someone else. Mr O’Brien.

MR O’BRIEN: I don’t expect to take much part in this, Commissioner, but my name is O’Brien, initial D. of Queen’s Counsel. I appear for Mr Ian Maynard, former Director General.

25 COMMISSIONER WILSON: Thank you.

MR O’BRIEN: I am instructed by Herbert Smith Freehills.

30 COMMISSIONER WILSON: Are there any other appearances on this argument? No. Mr O’Sullivan.

35 MR O’SULLIVAN: Commissioner, there’s been a reasonable amount of work that has gone on in the background about this issue. And what I propose to do is to identify for you the real question and how we think it should be dealt with.

COMMISSIONER WILSON: Very well.

40 MR O’SULLIVAN: The conclusion we will reach is that, in our submission, it – you are, if you so choose, entitled to take no further step in terms of parliamentary privilege. But before you make that election, it’s – in our submission, it’s appropriate that you understand what the issue is.

COMMISSIONER WILSON: Very well.

45 MR O’SULLIVAN: Is that convenient, Commissioner?

COMMISSIONER WILSON: Yes, it is.

MR O’SULLIVAN: Now, the starting point is the Act, Commissioner. May I hand up a copy of the *Parliament of Queensland Act 2001*.

5 COMMISSIONER WILSON: Yes, please.

MR O’SULLIVAN: I’ll hand up a bundle but I’ll only go to one case in that bundle as well if that’s convenient.

10 COMMISSIONER WILSON: That’s fine.

MR O’SULLIVAN: There’s a spiral bound copy of the *Parliament of Queensland Act*, Commissioner.

15 COMMISSIONER WILSON: Yes.

MR O’SULLIVAN: If you turn to section 6, Commissioner, you’ll see that the Act doesn’t derogate from any powers, rights or immunities of the assembly.

20 COMMISSIONER WILSON: Yes.

MR O’SULLIVAN: Paragraph 8 – I’m sorry, section 8(1), Commissioner, is the critical provision.

25 COMMISSIONER WILSON: Yes.

MR O’SULLIVAN: The language of impeached we’ll come to in a moment. That’s the critical word in section 8(1). Commissioner, section 9(2) defines what are proceedings in the assembly in an inclusive way. Relevantly for your purposes, subsection (e), Commissioner.

30 COMMISSIONER WILSON: Yes.

MR O’SULLIVAN: Section 36 you would note in passing - - -

35 COMMISSIONER WILSON: You mean 30(6) or - - -

MR O’SULLIVAN: Thirty-six, Commissioner.

40 COMMISSIONER WILSON: Thirty-six.

MR O’SULLIVAN: Three six.

COMMISSIONER WILSON: Yes. I’ve got that.

45 MR O’SULLIVAN: You would note that in passing that, in our submission, is not engaged. But you would note that express prohibition. Then you would note also section 37(1). Now, the quickest way to identify the issue is to take up the

submissions of the State of Queensland. They were in the bundle you have but you may have a working copy, Commissioner.

COMMISSIONER WILSON: It's alright. I have a copy.

5

MR O'SULLIVAN: Thank you. Commissioner, if you could turn to paragraph 49 of the submissions of my learned friend Mr Dunning and of Mr Keyes. Could I ask you to read paragraphs 49 to 53, please.

10 COMMISSIONER WILSON: Yes.

MR O'SULLIVAN: We can put to one side paragraph 53. In our respectful submission, that can't be right that the privilege is only engaged where a member objects. That can't be right, in our respectful submission. It doesn't matter because the evidence that I'll come to in a moment is that that is not the position here. The evidence I'll show you is that there has been consents from members of parliament. So we can put 53 to one side. The critical paragraph – the critical issue is paragraph 50 which is where we diverge from our learned friends. But we don't think it matters. 50 – 49, in our respectful submission, is absolutely right. And the position is that estimates, briefings and PPQs are produced to you. Prima facie, the production of them to you is a breach of parliamentary privilege and that assertion in paragraph 49, in our respectful submission, is consistent with the decision in which we'll come to shortly.

25 The issue is paragraph 50. Now, that is the key issue arising because the evidence we'll come to in a minute is that, in fact, there have been consents from the relevant members of parliament who have prepared the estimates, including the estimates briefing note that's the subject of the evidence of Dr Young, 25.7. I'll come to – the evidence is that there has been a consent. Now, if what appears at paragraph 50 is correct, then there's no trouble. There's no problem. There's no problem if what appears at 50 is correct. Now, the question, in our respectful submission, is: is paragraph 50 correct? And if there's any doubt about it, what should you do? Now, the proposition that's advanced is that, to take an estimates brief as the relevant example, if the Minister or member for whom the estimates brief is prepared consents to it being provided to you, Commissioner, then there's no impeachment within the meaning of section 8. That's the proposition.

COMMISSIONER WILSON: That's the argument.

40 MR O'SULLIVAN: We draw attention to the fact that, with respect, we agree that there's no authority in favour of that proposition as is set out in 51 and also that on one reading of the reason of his Honour Justice McPherson in Rowley and O'Chee that's not the case and we'll come to Rowley in a minute. However, there is important support for that proposition in the position of the clerk of Parliament. There's a document I won't take you to but he has published an opinion where he essentially adopts the approach at paragraph 50. We say that's important. That's

Neil Laurie who remains the clerk of Parliament and he was clerk at the time he wrote the relevant opinion or article.

5 Now, you need next to look at, if I may take you to O'Chee where all of this debate centres. It's in your bundle at tab 6, Commissioner. And Commissioner, you will see this was a decision of the Court of Appeal constituted by President Fitzgerald their Honours Justices McPherson and Moynihan. Relevantly, the key passage is at the end and I take you just to the parts of the reasons that lead up to it. It's the reasons of his Honour Justice McPherson that of particular interest at page 222,
10 Commissioner, at line 35. His Honour Justice McPherson speaks of the meaning of impeach and if you read 35 to 45 you will see that his Honour says that the old meaning of the word that existed as at 1688 is appropriate to have regard to. Commissioner, you will see at 45 to 52 he summarises how he sees the words having effect today.

15 Commissioner, over at 223 if you read lines 1 to 10 he poses the question whether the mere production – the mere production of these documents would impair proceedings in Parliament. He says on one view, plainly it would not. That's not the view he comes to which we'll see in a moment. At page 224 there's a discussion of
20 the historical background which is inevitable which we can pass over see at line 5 he talks about the chilling effect, language he comes back to. At 35 on page 224, line 35, Commissioner, he makes the first plank in his reasons where the judge says:

25 *Requiring the senator to produce for inspections documents of the kind listed for which privilege is claimed has an obvious potential to deter him and other parliamentarians from preparing and assembling documents.*

COMMISSIONER WILSON: What were the documents in O'Chee?

30 MR O'SULLIVAN: They were a range of documents and they were concerned – they were not estimates brief, Commissioner. They were notes and other memoranda which dealt with longline tuna fishing in north Queensland. They included correspondence he had had with a game fishing association in north Queensland. I can take you to - - -

35 COMMISSIONER WILSON: I can see page 214 and following. Is that the list?

MR O'SULLIVAN: That's so, Commissioner.

40 COMMISSIONER WILSON: Well, that's quite different material from what's in issue here.

45 MR O'SULLIVAN: That's right. That's right. The material here is much more plainly the subject of parliamentary privilege because it was a document produced for an estimates hearing.

COMMISSIONER WILSON: I don't have any difficulty with that. I think it clearly is within in the category but his Honour said at page 224, about 36 that:

5 *requiring O'Chee to produce for inspection documents of the kind listed in section B of his affidavit, for which the privilege is claimed has an obvious potential to deter him and other parliamentarians from preparing or assembling documentary information for future debates and questions in the House.*

10 My question, really, is how could you argue that this estimates brief has that obvious potential?

MR O'SULLIVAN: Well, because of precisely the reasons that his Honour gives later that what's at issues is the principle of whether compulsory disclosure itself is a
15 breach of the privilege because it impairs and the conclusion he comes to is that making members of Parliament or others who can claim the privilege amenable to a compulsory process – that very fact has the potential to deter. In that case the events had already long concluded, Commissioner. They had concluded. There was no suggestion in that case, as I understand it from the reasons, that there was going to be
20 some further use of the material. It was really the question of principle. That's why the judge spoke of retrospective and prospective operation and immunity.

COMMISSIONER WILSON: So is your submission that mere production of any document which comes within the scope of the privilege has this potential?

25 MR O'SULLIVAN: That's right.

COMMISSIONER WILSON: I see.

30 MR O'SULLIVAN: And that is common ground.

COMMISSIONER WILSON: Is it? Okay.

35 MR O'SULLIVAN: As I understand it. Now, can I just take you to the end of O'Chee.

COMMISSIONER WILSON: Yes. Go on.

40 MR O'SULLIVAN: I should say common ground with the State. What his Honour says over at 226 is he looks at some American decisions and at line 30 to 35 he refers to some American decisions where subpoenas to members of Congress were quashed at 40 to 44. His reasons start coalescing into his decision at 227, Commissioner. Could I ask you to read lines 1 through to 10. He again uses this metaphor of
45 chilling that making documents otherwise protected by privilege amenable to a compulsory process has a chilling effect and we'll come back, if I may, to the observations you made, Commissioner. He makes the general proposition at lines 8 to 10 that:

Sources of confidential information quickly dry up when confronted by the prospect of compulsory disclosure in legal proceedings.

His Honour then says:

5

I nevertheless prefer to base my decision on the particular wording of the statutory language.

May I ask you to read, Commissioner, lines 10 through to 25 of page 227.

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COMMISSIONER WILSON: Yes. I see that.

MR O'SULLIVAN: The critical aspect of his reasons, Commissioner, is the passage at about 33 to 37 where his Honour says:

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Proceedings in Parliament will inevitably be hindered, impeded or impaired if members realise that acts of the kind done here for purposes of parliamentary debates at question time are vulnerable to compulsory process of that kind –

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and it's a state of affairs which he's persuaded the Bill of Rights was intended to prevent. In our submission, the gravamen of his reasoning is this: the mere fact that documents produced for use in the assembly are amenable to compulsory process itself has the capacity to have a chilling effect on freedom of debate and discussion in the House, and for that reason, for that reason, the privilege that exists in them extends to an immunity from compulsory process. That's the – in our submission, the key rate appears his Honour's reasoning.

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The only other point to make before we move on is that part of his Honour's reasons, where he spoke of whose privilege this is – and his Honour said he may have seen, Commissioner, in the learned submissions from the Solicitor-General – he said that well, at the top of page 225, bottom of page 224, line 52, Commissioner, his Honour says:

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The privilege he claims –

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Rolly, Commissioner, is the plaintiff in the defamation suit, you'll see at the bottom of 224:

...belong not to his informants –

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Those are the people who tell him about the long line tuna fishing issue:

...nor even solely to the Senate itself, but to Parliament.

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and cites the decision of Justice Gibbs in *Sankey and Whitlam*. If it extends to the matters for which it is claimed here, it may be doubted whether an individual member of the House has authority to waive it unilaterally.

Now, the position, as we understand it, that is adopted by the State is – as I said in paragraph 49, it's accepted that estimates brief of this kind, the privilege that hears in them in favour of the House confers them to being the subject of compulsory process from any court or a Commission. However – here's the critical point – it's said that
5 if the relevant member of Parliament consents, then there is no impeachment and there's no difficulty with the document being received and relied upon. The evidence that we have is that that has been done. May I hand up a letter which we received earlier today, Commissioner, which helpfully confirms the factual position.

10 COMMISSIONER WILSON: Thank you.

MR O'SULLIVAN: It's the third paragraph.

COMMISSIONER WILSON: Yes.

15

MR O'SULLIVAN: We tender that letter. Now, the - - -

COMMISSIONER WILSON: That'll be marked as an exhibit in due course.

20 MR O'SULLIVAN: Thank you, Commissioner. The – we make just three short points, Commissioner. Firstly, it would seem, in our respectful submission, that there's a respectable argument that if the reason for the privilege, relevantly, is to prevent the chilling effect on the freedom of debate in the assembly, the mere fact that one member of Parliament who has a particular interest in the document
25 consents to its disclosure to you or to a court, it seems, in our respectful submission, to be at least arguable that that does not answer the underlying reason for the privilege, because it can well be imagined that the chilling effect will continue notwithstanding that consent. For example, the other members of the estimates committee may well know that the Minister has in his power to allow the document
30 to pass out of Parliament into the hands of court or a Commission.

The second issue is that there, at the moment, doesn't seem to be any authority in favour of it in any court. However, in our respectful submission, you would properly – you can properly and ought properly to give substantial weight to the views of the
35 Solicitor-General and substantial weight to the views of the Clerk of Parliament. And their view, as expressed, is that it is sufficient to overcome any – the problem that admittedly exists. It is sufficient for the relevant Member to provide his or her consent, and the evidence is that the consent has been given.

40 And, in our respectful submission, notwithstanding that there are some – you might say some doubts about it, it would be a proper and appropriate course that you act in accordance with the advice and opinions of the Solicitor-General and the clerk, and to, on the evidence you've got, proceed on the basis that there is no impeachment of the freedom of assembly pursuant to section – which is prohibited by section 8, by
45 reason of the production of estimates brief 25.7 or, indeed, by the production of the array of other estimates briefs and PPQs that appear to have been delivered up. If that's - - -

5 COMMISSIONER WILSON: Mr O'Sullivan, can I clarify precisely what your stance is in relation to this. You are submitting, I think, that the view put forward by the Solicitor-General, which accords with that of the Clerk of the Parliament, is not correct, but nevertheless, this being a Commission of Inquiry, it would be justified in acting in accordance with that view.

10 MR O'SULLIVAN: No, I don't submit it's not correct. I submit that there's a doubt, and I've attempted to expose, to the best I can, the doubts. I don't submit it's wrong. I submit there's simply a doubt, and I submit that I would be acting properly if you were to act in accordance with the views of the Solicitor-General and the Clerk, which are to the effect I have explained. I don't for a minute submit it's wrong. I simply submit that there's some doubt, and it seems, in our respectful submission, the doubt is evident in the submissions of the Solicitor-General, that there is some doubt about it. But - - -

15 COMMISSIONER WILSON: Well, what I'm having trouble identifying in my own mind is, really, why you're putting forward this argument. I take it the argument doesn't affect your client personally.

20 MR O'SULLIVAN: Well, it might when I come to cross-examine Dr Young. Yes. The only reason, the only reason, the only reason is so that you're appraised of the issue, Commissioner, and you indicate that you are content with the course which has been adopted, notwithstanding doubts that have been raised by me – which I freely acknowledge – in a submission that we submitted on Friday in accordance with your
25 direction.

COMMISSIONER WILSON: Well, I don't have power to determine whether there has been a breach.

30 MR O'SULLIVAN: No.

COMMISSIONER WILSON: Only Parliament has that power.

35 MR O'SULLIVAN: That's so.

COMMISSIONER WILSON: So what powers are you submitting I do have?

40 MR O'SULLIVAN: I'm not submitting, Commissioner, that you have power to do anything other than control your own procedures, and at the moment, in our submission, the choice you have is to go and take the step of asking the Speaker to provide is imprimatur to the provision of these documents. That's the choice you have. The other choice you have is to do nothing on the basis that's unnecessary because the steps that have been taken and established before you and based upon the arguments before you that's unnecessary, and the status quo is acceptable. I'm not
45 suggesting that you need do anything other than accept the status quo. All I'm simply doing, Commissioner, is exposing the issue to you and asking that you note it, and if you're content with this course, to adopt it.

COMMISSIONER WILSON: So if I thought this – if I thought this course was clearly correct, you would submit that I should do nothing.

5 MR O’SULLIVAN: You should do nothing, and in particular, take no step to approach the Speaker in the way that I’ve indicated. That’s so, Commissioner.

COMMISSIONER WILSON: If I thought it were clearly wrong - - -

10 MR O’SULLIVAN: Yes.

COMMISSIONER WILSON: - - - I should approach the Speaker.

MR O’SULLIVAN: That’s our submission, yes.

15 COMMISSIONER WILSON: But if I acknowledge that there’s doubt about it what should I do?

MR O’SULLIVAN: If you acknowledge there’s a doubt and you are sufficiently concerned about that doubt, in our submission, the appropriate course is to approach the Speaker and confirm that the Assembly has no concern about you receiving and using these documents. That would be the appropriate course. And the position that we are identifying to you is that there are these choices, and we submit that you should give substantial weight to the views of the Clerk and the Solicitor-General, which is the status quo is perfectly acceptable.

25 COMMISSIONER WILSON: I understand that. Thanks.

MR O’SULLIVAN: Thank you, Commissioner.

30 COMMISSIONER WILSON: Thanks. Who’s next? Mr Dunning.

MR DUNNING: Thank you, Commissioner. Commissioner, beyond we said in writing I’d really like to only make - - -

35 COMMISSIONER WILSON: I’m sorry, you’ll have to speak up.

MR DUNNING: Certainly. Beyond what we’ve submitted in writing I’d really like to only make these points, I hope, fairly briefly. The first is – and I’m not critical of the language of course but in the end neither myself nor is the Crown giving advice or expressing views. We are making submissions on what we say the state of the law and how it might affect the conduct of the Commission.

45 In our respectful submission, when one talks of parliamentary privilege one needs to understand the concept that’s engaged and in particular we would draw attention to what we say in paragraph 11 of our outline that draws attention to the fact that it’s a composite, really, of rights and powers and also certain immunities. In paragraph 13, first dot point we make the point that chief among them is the privilege of freedom of

5 speech that's so conferred. In paragraph 22 we emphasise that point but ultimately, in terms of the matter that you, Commissioner, are concerned with, what we've set out at paragraphs 36 to 39 is the most helpful. We accept that this is an area that is not free from doubt and understandably it is fairly lightly litigated so there's often not a lot of guidance for that reason. Professor Campbell - - -

COMMISSIONER WILSON: Nevertheless, it's a very old privilege that we've inherited from Britain so there may well be some authority on it.

10 MR DUNNING: There's certainly some authority on it, yes. Yes. But in our submission, the dichotomy that Professor Campbell has identified is a correct one reflecting that is – when we speak of parliamentary privilege we are in fact speaking of composite entitlements and we're concerned here with the second of those – this exclusionary rule of evidence and the extent to which it is engaged in a particular
15 case. Where we differ from the position taken by the legal representatives of Mr Springborg is in relation to whether there is this conception of waiver when it comes to parliamentary privilege and whether ultimately a later Parliament can waive the privilege.

20 Now, we plainly take a different view on that though it seems we don't get to that point although on the hypothesis that your Honour had from my learned friend if you got to the point of it's plainly wrong and you'd want to approach the speaker we would have some submissions at that point to say, well, you'd be inviting the speaker to do that which – or invite the Parliament to do that which it didn't have power to
25 do, that is, a later Parliament waive the privilege. And can I shed a little bit of light on why that is so by – O'Chee is the most recent decision of the Queensland Court of Appeal so it's useful in this regard. As your Honour is aware the president was in dissent and Justice Moynihan concurred on the reasons of Justice McPherson. And I'll take your Honour to some passages really to demonstrate what the purpose of the privilege and ultimately why it doesn't admit of this conception of waiver. Can I
30 first of all ask your Honour, please, to go to page 218 in his Honour's reasons. His Honour's reasons start at the top of 216 but at 218 at about line 43, having referred to Justice Davies' decision in Laurance and Katter which was about seven years earlier, his Honour goes on:

35 *The enactment of the Bill of Rights was the culmination of a long struggle with the executive over the right to freedom of speech in Parliament in England. Its primary purpose was to ensure that members were not subjected to pains and penalties for what they said in the course of debate or other proceedings in
40 either of the Houses.*

And it goes on to say for that reason it has been considered the bulwark of representative government in English-speaking societies, perhaps not limited only to English-speaking ones. One only needs to see that to appreciate that that protection
45 would be rendered at nought if a differently-constituted Parliament, by the slimmest of majorities, might revoke that privilege. And I take you to some other passages that indicate the same thing, and, really, I'd make the same commentary. His

Honour then goes on to cite Prebble and Television New Zealand, which had only been decided a couple of years earlier. And at the top of page 219 - - -

COMMISSIONER WILSON: Yes.

5

MR DUNNING: And, again, the most important of those protections identified by their Lordships, again, would be compromised if it could be waived by somebody else. Can I then ask your Honour – Commissioner, if you would go, please, to page 224 of his Honour’s reasons. And at the foot of 224, Justice McPherson, about line

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52, says:

But the privilege he claims belongs not to his informants or even solely to the Senate itself, but to Parliament.

15

And gives a reference to Sankey and Whitlam. If it extends to the matters for which it is claimed here, it may be doubted whether an individual member of the House has authority to waive it unilaterally.

20

Now, when one goes to that passage in Sankey and Whitlam – I appreciate your Honour doesn’t have it in front of you – but might I just read the relevant passage from the then-Acting Chief Justice Gibbs. His Honour referred to a passage out of May to Justice Towney, the Queensland Supreme Court, in Plunkett and Corbett, and then goes on to say:

25

The law as stated in these authorities is that a Member of Parliament is not compellable to give the evidence without the permission of the House. Rather, that he is not competent to give it without that permission. And the reports of the two English cases cited make it clear that it was there considered necessary that the witness should take an objection before the privilege could be granted.

30

No doubt the privilege is that of the House rather than that of the individual member, but the circumstances of the present case do not make it necessary to consider what the position would be if it appeared that the House wished to insist upon the privilege, but the Member took no objection.

35

Now, when you understand that that’s what Sankey and Whitlam is referring to in the passage Justice McPherson identifies, what becomes clear is that far from Justice McPherson hinting at the suggestion it’s something that might be capable of waiver by that House or a differently-constituted House in the following year, he is simply observing, as is the case, that it is a privilege that an individual member cannot

40

wave. It’s not suggesting that the House could.

45

Now, your Honour, when one understands what the privilege is directed to, for reasons I’ve said – that is, to encourage that debate – if we take it to the matter that’s presently at hand, can I ask your Honour then to go to page 220, at about line 15 of Justice McPherson’s reasons. And his Honour had interpellated there the – in effect, a recomposed version of section 9 relevant to a document. And you’ll see there at lines 15 he said:

It would appear in the following form the preparation of a document for the purposes of or incidental to the transaction of any business of a House shall not be impeached or questioned in any court.

5 We don't need to worry about out of parliament, as his Honour points out, because none of the Australian Parliaments have courts. That is the ultimate question that's provoked by the controversy that has arisen around this issue. It is not correct, in our respectful submission, to speak of the document attracting parliamentary privilege because that ultimately assumes that to which an inquiry is required. Rather the
10 question is, is the production of that document under compulsion going to be something that will impeach its preparation. Now, that then takes me - - -

COMMISSIONER WILSON: Do you mean is it something that will impeach the preparation of subsequent documents of the same character?

15 MR DUNNING: No. That document itself.

COMMISSIONER WILSON: Okay.

20 MR DUNNING: And when I use the expression impeach its preparation I'm using that, really, as a compendious expression to deal with the fact that would the production of that document allow some challenge that were to be made to its preparation. The motives that lay behind it, the accuracy of the material contained in it. And it's really at this point that we differ in principle with our learned friend for
25 Mr Springborg but it's seemingly with no particular differences to the ultimate outcome. If I may ask you, Commissioner, to take up our written submissions again and go to paragraph 48. There seems to be no particular controversy about 48.

In relation to 49, can I draw attention to this, the submission is made on behalf of Mr
30 Springborg that it's common cause what's set out in 49 and to the extent it's agreed to what's said in 49, that's right, but it's description I'm not sure I would necessarily agree with. What we say there is where there's a document that has a possible a parliamentary question or estimate brief procured by a minister in the expectation it would remain confidential a requirement to produce the document is likely to amount
35 to impeachment. It won't always amount to impeaching it but it would be right to say that its confidential character would mean that its compulsory production would like to be to impeach it and I will conclude when I come to deal with the documents that were before Justice McPherson. But 49 can't be - - -

40 COMMISSIONER WILSON: I'm sorry, what did you say about the documents before Justice McPherson?

MR DUNNING: I will come to show your Honour why, in relation to Justice
45 McPherson, the mere production of them was impeachment itself and his reasoning for that. But the submission we make in 49 can't be divorced from the submission we make in 50 and can I invite you, Commissioner, to read that. And the critical point we make starts from the sentence:

In giving consent –

5 Because our submission is the individual member does not waive parliamentary privilege. In fact we go so far as to say the House cannot but rather the fact that if the person for whom it was prepared consents to its production then the mere production is inapt to have the effect of hindering the procurement or preparation of such documents.

10 COMMISSIONER WILSON: Well, this brings me back to a question I asked before and one that you posed rhetorically. I asked Mr O’Sullivan whether it was his submission that the mere production of any document which is within the subject matter of privilege had the potential to deter, etcetera, and he said yes. Now, I take from what you’ve said in 48 and 49 that that’s not your position.

15 MR DUNNING: Correct.

20 COMMISSIONER WILSON: But then you pose the question: is the production of the document under compulsion something that will impeach its preparation. And you clarified that as the preparation of the document itself. Did you mean by that is the production of the document under compulsion something that would have impeached its preparation if the person producing it had known it might be the subject of compulsory production?

25 MR DUNNING: No. The position we would take is that if it was a confidential document of this character and compulsory steps were taken to acquire it, if it had the concurrence of the person for whom it had been prepared, then that would be a reason for saying though that mere production would add more – would not impeach it. If that person withheld consent then there would still remain a question to be answered: is the mere production an impeachment? And, really, that’s where we get to at 49. That’s to say that it’s likely that it would be.

COMMISSIONER WILSON: Well, let me put that into my own words and see if we’re on the same page.

35 MR DUNNING: Of course.

40 COMMISSIONER WILSON: What you’re saying is if the member who produced the document consents to its production, that would be some evidence that the production would not tend to hinder the preparation of such documents.

MR DUNNING: That’s so.

COMMISSIONER WILSON: I see. It’s not conclusive.

45 MR DUNNING: No. It’s not conclusive.

COMMISSIONER WILSON: There could be many reasons why he's changed his mind in the meantime.

5 MR DUNNING: Correct. Now – and if we test the proposition by an extreme case, there could be a quite cynical motive to change your attitude down the track. But if we return to a more customary situation, it is – and we'd adopt, if we might, Commissioner, your words – some evidence but not conclusive evidence.

10 COMMISSIONER WILSON: And in the absence of any other evidence.

MR DUNNING: That's correct. That's exactly right. And, also, the character of the document itself would inform such matters. And it answers the concerns that are raised by our learned friends in this regard because it said, well, the production of any document would have a chilling effect but it does not have a chilling effect if in reality a relevant consideration as to whether it would impeach or not is that the person for whom it was produced can be asked. Because if we take a classic example of where it might impeach, so that is where there was something in the nature of the document itself which would reveal confidential informants, now, there's a case where it would strike at the very purpose for which the protections exist so that somebody could, under the assurance and the confidence that they could tell a member of parliament something so that that member could prosecute that concern in the parliament, if that could be acquired by compulsory production it would have the chilling effect that's described.

25 If, in fact, it is something that might properly be described as a document produced in part of – as part of the normal operation of executive government looking to the parliament for that which the legislature has to supply, then provided the person for whom it was prepared has no objection, production alone won't have that chilling effect. And I preface all of these things by saying production alone. It's a quite separate issue as to what you might do once the document is produced.

30 Might I give an illustration of the other extreme to make the point that mere production cannot have this sort of blanket chilling consequence. Production by compulsion, let's say, of what the vote was on a particular day, the record of a vote in the assembly. Now, that would be to compel the production of something that plainly recorded an activity within the walls of the assembly. But it wouldn't have any chilling effect. It would simply be extracting an historical fact. And the question, document by document, is where it fits on each occasion.

40 It follows, Commissioner, that, in our submission, whilst it can't be said to be free from doubt – and in part because of the relative paucity of authority – as a matter of logic and as a matter of principle, that which we call parliamentary privilege in respect of a document produced of the character with which we're concerned here requires an assessment on a document by document basis and requires an inquiry as to whether its production would have that consequence of impeaching. If it enjoys the support of the person who produced it and was – you rightly, with respect, pointed out earlier in the absence of any competing evidence that would be a sound

basis for saying the production of this document will not have that impeaching quality. Thereafter - - -

5 COMMISSIONER WILSON: So just if I can make a note of what you said.

MR DUNNING: Of course.

10 COMMISSIONER WILSON: You said it requires an assessment on a document by document basis of - - -

MR DUNNING: Of whether the production of the document would have the consequence of impeaching it.

15 COMMISSIONER WILSON: And the other point you've made, I think, is that where there is the consent of the relevant member, that is some evidence that it does not have that effect.

MR DUNNING: That's correct. Yes.

20 COMMISSIONER WILSON: And the character of the document, well, is also relevant, surely, to whether it has that effect.

MR DUNNING: Absolutely.

25 COMMISSIONER WILSON: Yes, Mr Dunning.

30 MR DUNNING: And then it would be a separate issue, Commissioner, on a question by question basis as to whether any question in respect of the document would be to impeach it. We're not troubled with that issue at the moment but one could readily see that there might be a significant class of documents that their mere production would not impeach them. But there would be very limited scope to ask questions about them about without entering into that territory.

35 COMMISSIONER WILSON: And there's no suggestion that there have been questions of that type asked so far.

40 MR DUNNING: No. I'm not wishing to be [indistinct] otherwise. Then can I finally, Commissioner, take you to – back to O'Chee without rehearsing all of the history. The then Senator O'Chee had made a number of statements in parliament about Mr Rowley who was involved in fishing. He'd also given a radio interview. And it's in respect of the radio interview that the defamation proceedings were advanced. He had had – sorry, and the – by this stage there was a defence in and the defence denied much of what was said in the statement of claim or what was alleged in the statement of claim. Disclosure had occurred. There were a list of documents
45 over which parliamentary privilege was asserted. And they were a range of different things, including correspondence with third parties, some material prepared. So that

was the backdrop to it. If I can invite your Honour, please, to go to page 227 of Justice McPherson's reasons. At about line 8 he has a heading Conclusions.

COMMISSIONER WILSON: Yes.

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MR DUNNING: And he first of all speaks of the consequences on sources of confidential information but then says:

10 *I nevertheless prefer to base my decision on the particular wordings of the statutory language in this case.*

And refers to article 9, preventing proceedings from being hindered or impaired. And then at about line 22 or 23:

15 *To order him –*

being a reference to Senator O'Chee –

20 *to produce these documents would be to hinder or impede the doing of such acts for those purposes.*

And then the next paragraph starting at about line 28 – and can I ask you, Commissioner, to read the whole of that paragraph.

25 COMMISSIONER WILSON: Yes. I've read that.

30 MR DUNNING: Thank you. Now, when you see it in the context in which it arises there, that was a case where mere production was going to impeach the parliamentary proceedings because it was manifestly part of a means by which access would be obtained to the documents to then further the challenge to them and what Mr O'Chee had done in reliance upon them. Commissioner, unless we can assist any further, they are our submissions.

35 COMMISSIONER WILSON: Thanks, Mr Dunning.

MR DUNNING: Thank you, Commissioner.

COMMISSIONER WILSON: Mr O'Brien, do you want to say anything?

40 MR O'BRIEN: No submissions, Commissioner.

COMMISSIONER WILSON: Mr Ben McMillan. No. Mr Freeburn.

45 MR FREEBURN: Commissioner, I'll be very short. The only issue I wish to address is a practical one. As I apprehend the submissions, you're not urged to make any specific order or any specific determination. You're not urged to refer the matter

to parliament. The one matter that you're urged to do is to make a direction which is reflected in paragraph 73 of Mr Dunning's submissions and Mr Keyes' submissions.

5 COMMISSIONER WILSON: What paragraph?

MR FREEBURN: Seventy-three.

COMMISSIONER WILSON: Seventy-three. Yes.

10 MR FREEBURN: And that is to the effect that you should make a direction under section 17 of the *Commissions of Inquiry Act* to the effect that Counsel Assisting or a person with leave to appear must not ask a question of a witness about the content of a document that is a proceeding in the assembly without first obtaining leave of the Commission. And the purpose of that order obviously is to effectively provide some
15 sort of time for review that enables you to assess whether the question is likely to venture into the territory of parliamentary privilege.

COMMISSIONER WILSON: And what's your submission in relation to that?

20 MR FREEBURN: We agree with that proposed order. In our submission, it's a sound practical approach.

COMMISSIONER WILSON: Does anyone else want to say anything about that?

25 MR O'SULLIVAN: We agree. We agree and it will bite on Monday with Dr Young comes along. It will bite then because I'll be asking questions around that. Others may, so it will bite then. It will also bite if any counsel seeks to put estimates or PPQs before the witness. It will bite on those occasions, Commissioner.

30 COMMISSIONER WILSON: I'm sure, Mr O'Sullivan, given that you've raised this issue, you'll be particularly careful not to - - -

MR O'SULLIVAN: I will.

35 COMMISSIONER WILSON: - - - ask questions that might impeach the document.

MR O'SULLIVAN: Yes.

40 COMMISSIONER WILSON: Alright. Just give me a moment. So the document was produced to the Commission in response to a notice issued to the Director General of Health. Is that correct?

MR DUNNING: Yes. Yes, Commissioner.

45 COMMISSIONER WILSON: In response to a notice to produce documents issued by the Commission pursuant to section 5 of the *Commissions of Inquiry Act 1950*, the Director General of Health produced Estimates Brief Number 25.7. That estimates

brief was prepared by staff supervised by the Chief Health Officer, Dr Jeannette Young. She was ultimately responsible for its production. By section 8(1) of the *Parliament of Queensland Act 2001*:

5 *The freedom of speech and debates or proceedings in the Assembly cannot be impeached or questioned in any court or place out of the Assembly.*

The estimates brief comes within the inclusive definition of “proceedings in the Assembly” in section 9 of that Act.

10

Counsel appearing for Mr Springborg has drawn the matter to the attention of the Commission, expressing concern that mere production of this document to the Commission may amount to a breach of parliamentary privilege. This afternoon I have heard submissions on the point from Mr O’Sullivan for Mr Springborg, from
15 the learned Solicitor General Mr Dunning and from Mr Freeburn, Senior Counsel Assisting.

Only Parliament can determine whether there has been a breach of parliamentary privilege. To impeach in this context means, in effect, to allow some challenge to be
20 brought to the preparation of the document. I refer to the discussion by McPherson JA in *Rowley v O’Chee*. It is reported in [2000] 1 Qd R 207 at pages 222 to 223.

The question has been raised by Mr O’Sullivan whether the matter is in sufficient doubt for me to feel I should refer it to the House. In this context, I note that it is
25 debatable whether a subsequent Parliament could “waive” the privilege.

Be that as it may, I accept the submissions of the Solicitor General that the matter would have to be considered on a document by document basis. It is relevant to look at the character of the document and at the fact that the relevant member consented to
30 its production to the Commission. The document in question here is very different from the correspondence in question in *Rowley v O’Chee*. Moreover, here there is the consent of the member which is some evidence that mere production to the Commission would not have the chilling effect of impeachment.

35 I am satisfied that it is sufficiently clear that mere production to the Commission would not have that detrimental effect, for it not to be necessary to refer the matter to the House.

40 Of course, the use that may be made of the document which has been produced to the Commission is a different matter. In relation to that, pursuant to section 17 of the *Commissions of Inquiry Act*, I direct that Counsel Assisting or any person with leave to appear not ask a question of a witness about the content of the document without first obtaining my leave.

45 Is there anything else, gentlemen?

MR DUNNING: Might Mr Keyes and I be excused from further appearance, Commissioner?

COMMISSIONER WILSON: I think so, Mr Dunning.

MR DUNNING: Thank you.

COMMISSIONER WILSON: Does anyone else want to say anything?

UNIDENTIFIED SPEAKER: No, Commissioner.

- 5 COMMISSIONER WILSON: No. Very well. I think we can adjourn for the evening. 9.30 in the morning, please, Mr Bailiff.

MATTER ADJOURNED at 5.32 pm UNTIL FRIDAY, 4 MARCH 2016