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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**CUSTOMS AND EXCISE LEGISLATION
AMENDMENT BILL (NO. 3) 1997**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Customs and Consumer Affairs,
the Hon Warren Truss MP)

CUSTOMS AND EXCISE LEGISLATION AMENDMENT BILL (NO. 3) 1997

OUTLINE

The purpose of the Customs and Excise Legislation Amendment Bill (No. 3) 1997 is to:

1. amend the *Customs Act 1901* to clarify that the Customs Act does not extend to the Australian external Territories and that, in the Customs Act, Australia does not include the external Territories (items 1 and 2 of Schedule 1 refer);
2. amend the *Customs Amendment Act (No. 1) 1997*, which was one of three Acts which introduced the cost recovery regime for the provision of certain import related services, to defer by 6 months the commencement of the reduced entry threshold for goods imported by the post (item 7 of Schedule 1 refers);
3. amend the *Australian Postal Corporation Act 1989* to correct an anomaly in the exercise of Customs' powers of examination of mail arriving into Australia from the external Territories (Schedule 2 refers).

This Bill will also make several minor technical amendments to the *Customs Act 1901* and the *Excise Act 1901*.

FINANCIAL IMPACT STATEMENT

The proposed deferral of the reduction in the threshold value of goods imported through the post (item 7 of Schedule 1 refers) will result in a small percentage of low value import transactions being exempt from import entry charges for a period of six months. This is expected to have a minor financial impact.

The other amendments proposed in this Bill have no financial impact.

CUSTOMS AND EXCISE LEGISLATION AMENDMENT BILL (NO. 3) 1997

NOTES ON CLAUSES

Clause 1 - Short Title

This clause provides for the Bill to be cited as the "*Customs and Excise Legislation Amendment Act (No. 3) 1997*".

Clause 2 - Commencement

Subclause 2(1) provides that, subject to subclauses (2) to (5), the Bill commences on the day on which it receives the Royal Assent. Items 1, 2 and 7 of Schedule 1 and Schedule 2 will commence on that day.

Items 1 and 2 of Schedule 1 contain the proposed amendments to the *Customs Act 1901* (the Customs Act) to clarify that the Customs Act does not extend to the Australian external Territories and that, in the Customs Act, Australia does not include the external Territories.

Item 7 of Schedule 1 contains the proposed amendment to the *Customs Amendment Act (No. 1) 1997*. This amendment will defer by 6 months the commencement of amendments to section 68 of the Customs Act to decrease the entry threshold for goods imported by post from \$1,000 to \$250.

Schedule 2 contains proposed amendments to the *Australian Postal Corporation Act 1989* (the Postal Corporation Act) to enable Customs to examine mail being imported into Australia from the external Territories.

Subclause 2(2) provides that items 3 and 4 of Schedule 1 are taken to have commenced on 1 August 1997, immediately after the commencement of item 11 of Schedule 1 to the *Customs and Excise Legislation Amendment Act (No. 1) 1997* (CELA No. 1). Items 3 and 4 contain minor technical amendments to the provisions of the Customs Act that govern the Diesel Fuel Rebate Scheme and which were amended by CELA No. 1.

Subclause 2(3) provides that items 5 and 6 of Schedule 1 are taken to have commenced on 1 July 1995. Items 5 and 6 contain minor technical amendments to sections 209 and 229A of the Customs Act. These amendments were originally included in the *Customs, Excise and Bounty Legislation Amendment Bill 1995* but were misdescribed and did not take effect. It is therefore proposed that they commence on the same date that that Act commenced, being 1 July 1995.

Subclause 2(4) provides that item 8 of Schedule 1 commences, or is taken to have commenced, immediately after the commencement of item 10 of Schedule 2 to CELA No. 1. Subclause 2(5) provides that item 9 of Schedule 1 commences, or is taken to have commenced, immediately after the commencement of item 15 of Schedule 2 to CELA No. 1. Similar to items 3 and 4 of Schedule 1, items 8 and 9 contain minor technical amendments to the provisions of the *Excise Act 1901* (Excise Act) that

govern the Diesel Fuel Rebate Scheme and which were amended by CELA No. 1. At the time of introduction of this Bill, the amendments in items 10 and 15 of Schedule 2 to CELA (No.1) had not yet commenced.

Clause 3 - Schedule(s)

This clause is the formal enabling provision for the Schedule to the Bill, providing that each Act specified in a Schedule is amended or repealed in accordance with the applicable items of the Schedule. The clause also provides that any other item in a Schedule has effect according to its terms. This is a standard enabling clause for transitional, savings and application items in amending legislation.

Schedule 1 - Miscellaneous amendments of customs and excise legislation

Customs Act 1901

Item 1 - Section 4 (definition of *Australia*)

This item amends section 4 by repealing the present definition of Australia and substituting a new definition, which provides that "*Australia* does not include the external Territories".

The present definition of Australia in the *Customs Act 1901* (the Customs Act) provides that Australia does not include the Territory of Christmas Island or the Territory of Cocos (Keeling) Islands. The definition of Australia in section 17 of the *Acts Interpretation Act 1901* provides that Australia excludes all external Territories except Christmas Island and the Cocos (Keeling) Islands. The combined effect of these two definitions is that, for the purposes of the Customs Act, Australia does not include any of the external territories.

The purpose of the new definition in section 4 of the Customs Act is to state this position with greater clarity than at present.

Item 2 - Section 6

This item repeals section 6 and substitutes new section 6 into the Customs Act.

New subsection 6(1) provides that subject to subsection (2), the Customs Act does not extend to the external Territories. New subsection (2) provides that regulations may be made to extend the whole or a part of this Act (with or without modifications) to the Territory of Ashmore and Cartier Islands.

The Ashmore and Cartier Islands are a group of islands and reefs 500 nautical miles west of Darwin and 80 nautical miles south of Timor. They are uninhabited islands but are an external Territory of Australia administered by the Department of Transport and Regional Development.

In recent times, there has been an increase in the number of landings by illegal immigrants on Ashmore and Cartier Islands. Previously, there were very limited legislative powers to deal with these landings under customs, immigration and quarantine regimes. Amendments were recently made to the Customs Act, the *Migration Act 1958* and the *Quarantine Act 1908* by the *Environment, Sport and Territories Legislation Amendment Act 1997* to enable certain powers under these regimes to be extended to these islands. The Customs Act, as amended, presently states that, subject to subsection 6(2), the Customs Act does not extend to the Territory of Ashmore and Cartier Islands. Subsection 6(2) provides that regulations can be made to extend the whole or a part of the Customs Act to these islands.

The present wording of subsection 6(1), however, does not make it clear that the Customs Act also does not extend to all the other external Territories. It is therefore proposed to amend subsection 6(1) to state that the Customs Act does not extend to

the external Territories. This amendment, in combination with the proposed new definition of Australia (item 1 above) will clearly state that the Customs Act does not apply in, or in relation to, the external Territories (except in the circumstances in subsection 6(2)).

Item 3 - Subsection 164(7) (note to paragraph (b) of the definition of *mining operations*)

This item repeals the note to the definition of *mining operations* (for the purposes of the Diesel Fuel Rebate Scheme) and substitutes a new note. This note was inserted by the *Customs and Excise Legislation Amendment Act (No. 1) 1997* to indicate that the meaning of paragraph (b) of this definition is affected by other subsections of section 167, being subsections 167(7A), (7B) and (7C). The original note referred to subsection (7A) only and the purpose of the new note is to insert references to subsection (7B) and (7C). This is a technical amendment only.

Item 4 - Paragraph 164(9)(b)

This item amends paragraph 164(9)(b) of the Customs Act by omitting the reference to subsection 164(8). Paragraph 164(9)(b) sets out provisions which also assist in the interpretation of *mining operations* for the purposes of the Diesel Fuel Rebate Scheme. Subsection 164(8), however, applies to the definition of *agriculture* for the purposes of this Scheme and its inclusion in paragraph (b) of subsection 167(9) is superfluous. This is a technical amendment only.

Item 5 - Subsection 209(3A)

This item amends subsection 209(3A) by omitting the phrase "in lieu of seizing goods under that section" and substitutes "instead of seizing goods under a seizure warrant".

The purpose of this amendment is to give effect to a misdescribed amendment to section 209(3A) which was included in the *Customs, Excise and Bounty Legislation Amendment Act 1995*. This Amendment Act implemented the new customs search and seizure regime. Section 209 deals with the circumstances where goods can be impounded in lieu of seizure under a seizure warrant. The purpose of the original amendment was to make a technical amendment to subsection 209(3A) to delete the reference to the section under which seizures used to be made and insert a reference to a seizure warrant. This item gives effect to the original amendment and is a technical amendment only.

Item 6 - Subsection 229A(8)

This item amends subsection 229A(8) by omitting the phrase "under section 203" (wherever occurring) and substituting "under a seizure warrant".

The purpose of this amendment is also to give effect to a misdescribed amendment to section 229A(8) which was included in the *Customs, Excise and Bounty Legislation Amendment Act 1995*. The purpose of the original amendment was to make a technical amendment to subsection 229A(8) to delete the reference to the section

under which seizures used to be made and insert a reference to a seizure warrant. This item gives effect to the original amendment and is a technical amendment only.

Customs Amendment Act (No. 1) 1997

Item 7 - Subsection 2(4)

This item amends the *Customs Amendment Act (No. 1) 1997* by repealing subsection 2(4) and substituting a new subsection 2(4) which provides that item 12 of Schedule 1 commences on 1 October 1998. The *Customs Amendment Act (No. 1) 1997* was one of three Acts which introduced the cost recovery regime for the provision of certain import related services. The cost recovery regime commenced on 1 April 1997, *except* the amendment to section 68 of the Customs Act outlined below.

As part of this package, amendments were made to section 68 of the Customs Act, which specifies those goods in relation to which an import entry is required in accordance with section 71A. Certain exceptions to this requirement are also specified in section 68, which includes goods in a consignment consigned through the Post Office (paragraph 68(1)(e)). Such goods are only required to be entered in accordance with section 71A if their value is more than \$1,000.

An amendment was made to paragraph 68(1)(e) to decrease this threshold to \$250 to make the exception similar to the exception in paragraph 68(1)(f) (item 12 of Schedule 1 of the *Customs Amendment Act (No. 1) 1997* refers). Under that exception, goods that are transported to Australia by ship or aircraft and that have a value not exceeding \$250 are not required to be entered in accordance with section 71A. Therefore, all goods in a consignment imported into Australia through the Post Office of a value of more than \$250 will be required to be entered in accordance with section 71A and will also be liable to pay import entry processing charge. This amendment is due to commence on 1 April 1998 (subsection 2(4) of the *Customs Amendment Act (No. 1) 1997* refers).

It is proposed to amend this commencement date to 1 October 1998. A significant number of representations have been received by Government concerning the impact that the decrease in the threshold will have on small to medium business. In response to this, the Australian Customs Service is examining options to simplify the entry procedures for the goods imported by post which will become subject to the entry requirements. The deferral of the commencement date by 6 months will allow this exercise to continue and be implemented before the threshold is changed.

Excise Act 1901

Item 8 - Subsection 78AB(4)

This item amends subsection 78AB(4) by omitting the phrase "paragraph (5)(a)" and substituting "subsection (5)". This is a technical amendment only to correct a cross reference.

Item 9 - Subdivision C of Division 1 of Part IX (heading)

This item amends Division 1 of Part IX of the Excise Act by repealing the heading to Subdivision C. The only section in Subdivision C was section 99A and this section was repealed by the *Customs and Excise Legislation Amendment Act (No. 1) 1997*. It is therefore proposed the repeal the heading to Subdivision C.

Schedule 2 - Amendment of the Australian Postal Corporation Act 1989 affecting the exercise of Customs' powers

Item 1 - Before subsection 90S(1)

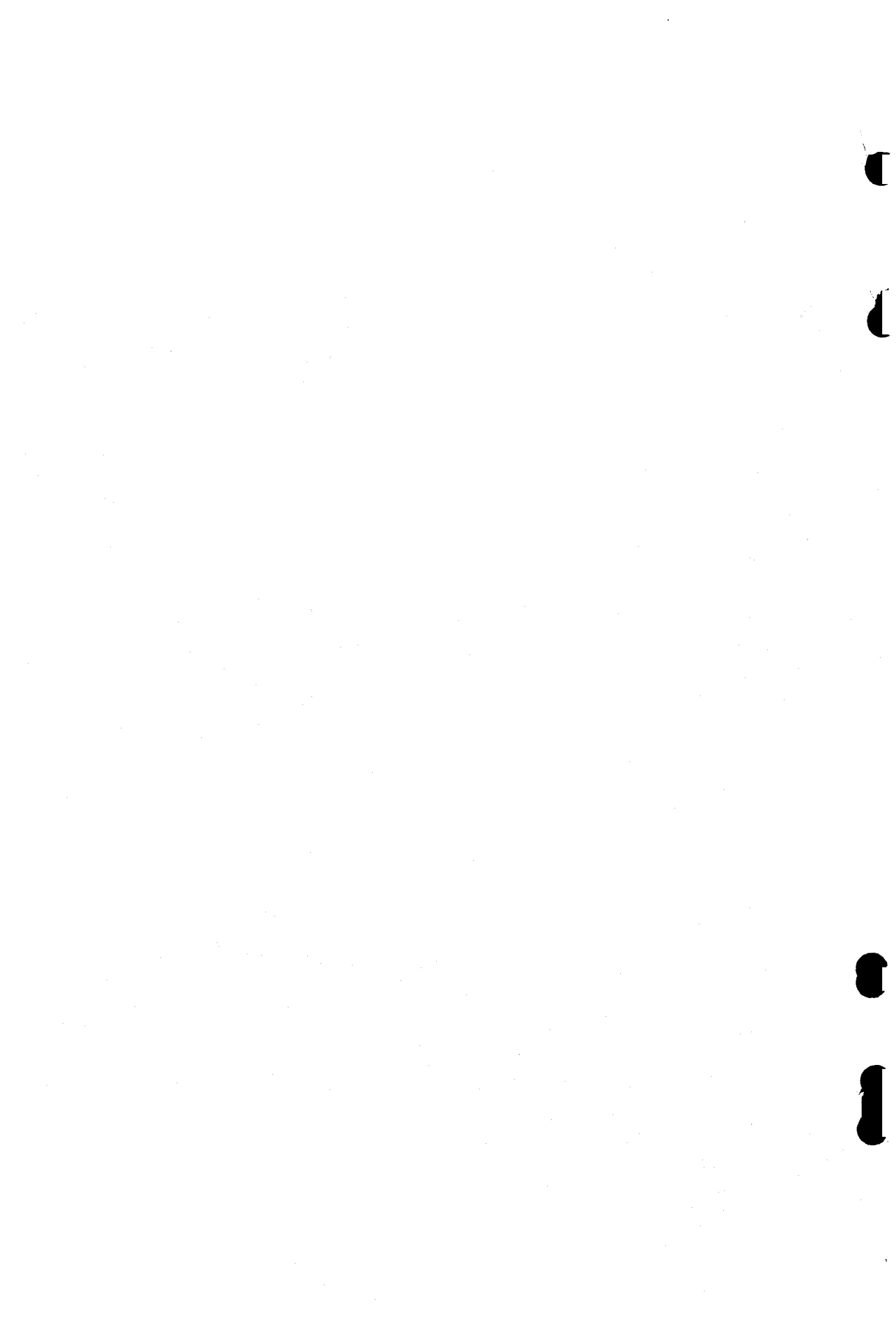
This item amends section 90S of the *Australian Postal Corporation Act 1989* (the Postal Corporation Act) by inserting new subsection (1A), which provides that, in section 90S, *Australia* does not include the external Territories.

The purpose of this amendment is to correct an anomaly in the exercise of Customs' powers of examination of mail arriving into Australia from the external Territories. Under section 30 of the Customs Act, all goods imported into Australia are under Customs control and under section 35, goods imported by post are subject to the control of Customs equally with goods otherwise imported. Section 32 of the Customs Act provides that the control of Customs includes the right to examine all goods subject to such control. The effect of the definition of Australia in the Customs Act, which is to be clarified by item 1 of Schedule 1 to this Bill, is that mail imported into Australia from the external Territories is subject to Customs control and liable to examination by Customs.

A restriction is placed upon Customs' power to examine mail from the external Territories by section 90S of the Postal Corporation Act. The effect of section 90S is that where an article of mail is in the course of the post between Australia, and a place outside Australia and Customs wishes to examine the article, this can only occur if certain conditions are satisfied. These conditions are either a customs officer requests an authorised examiner of Australia Post to first open the article for examination or if there are reasonable grounds to believe the article contains anything subject to customs duty or sales tax or that is being carried in contravention of laws governing importation or exportation.

A difficulty has arisen in the application of this provision due to the definition of *Australia* in the Postal Corporation Act. Whereas in the Customs Act, Australia does not include the external Territories, under the Postal Corporation Act Australia includes the external Territories (being all external Territories except Norfolk Island). The effect of this difference in the definition of Australia is that mail that is in the course of the post between any external Territory and Australia cannot be examined by Customs. Section 90S does not apply to this mail because the external Territories are not a place outside Australia under the Postal Act.

It is therefore proposed to introduce the new subsection 90S(1A) into the Postal Act which states that in section 90S, Australia does not include the external Territories. This will then be the same as the definition of Australia in the Customs Act and will enable customs officers to examine postal articles from any external Territory where the conditions referred to above have been satisfied.



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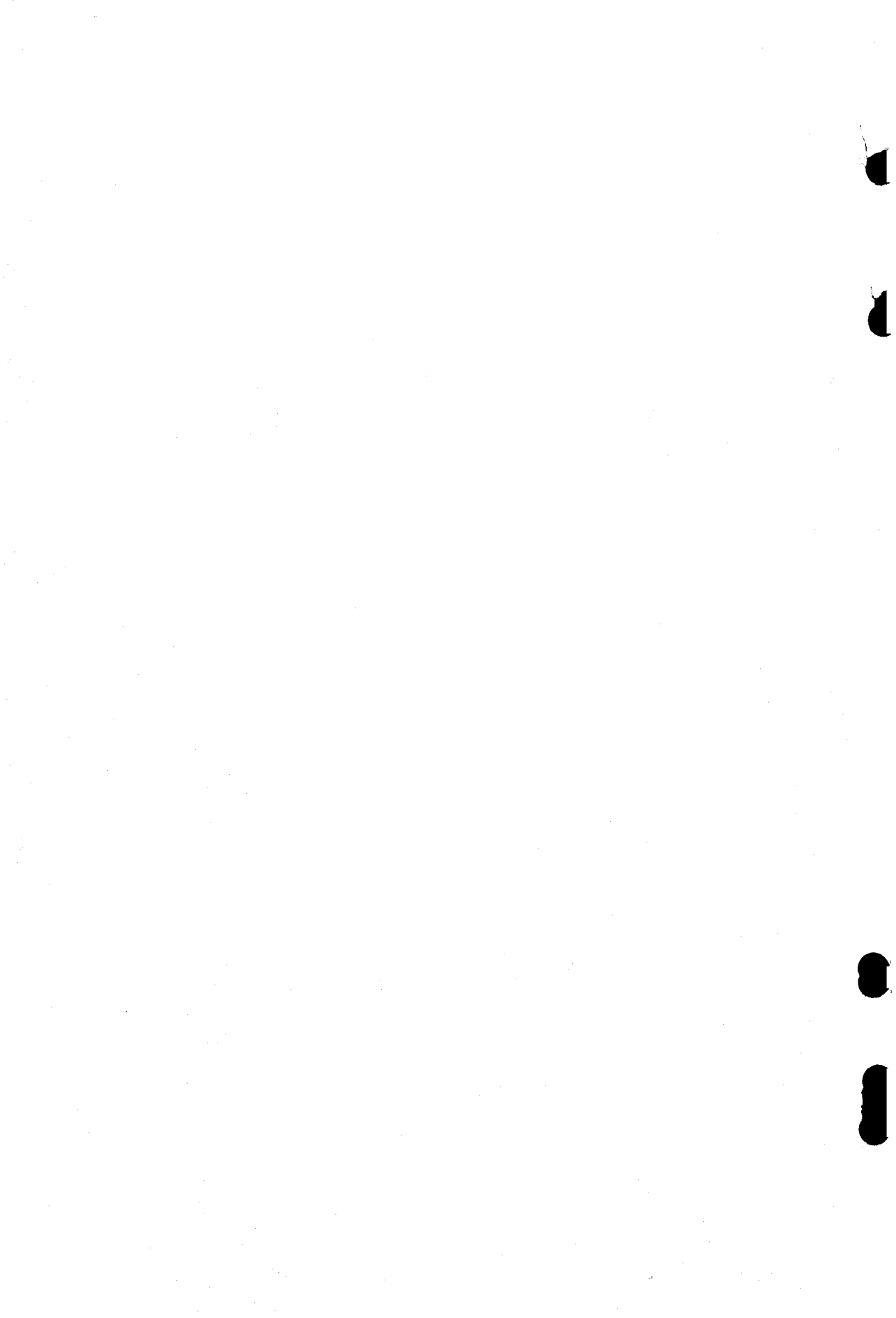


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