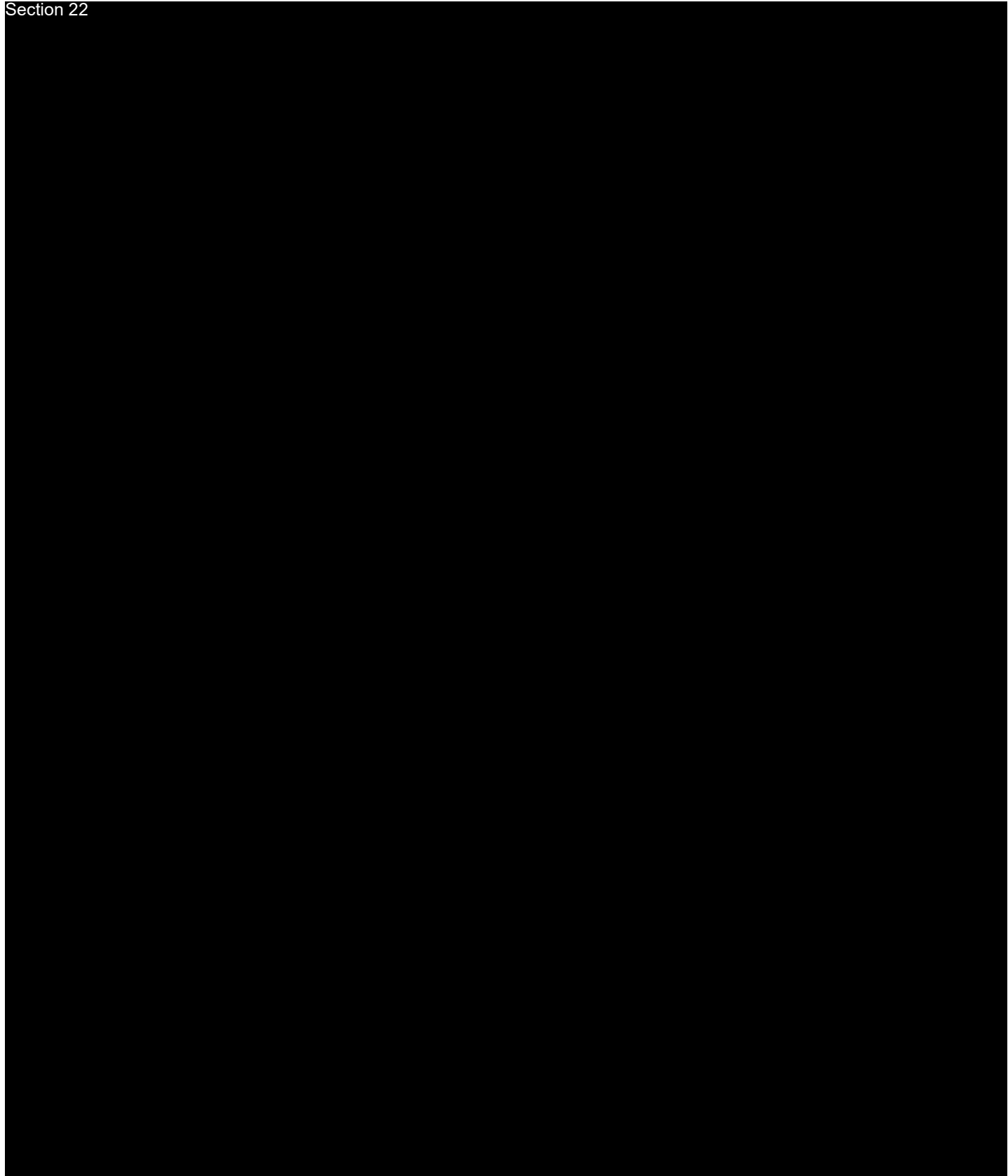


July 2022

Static polling

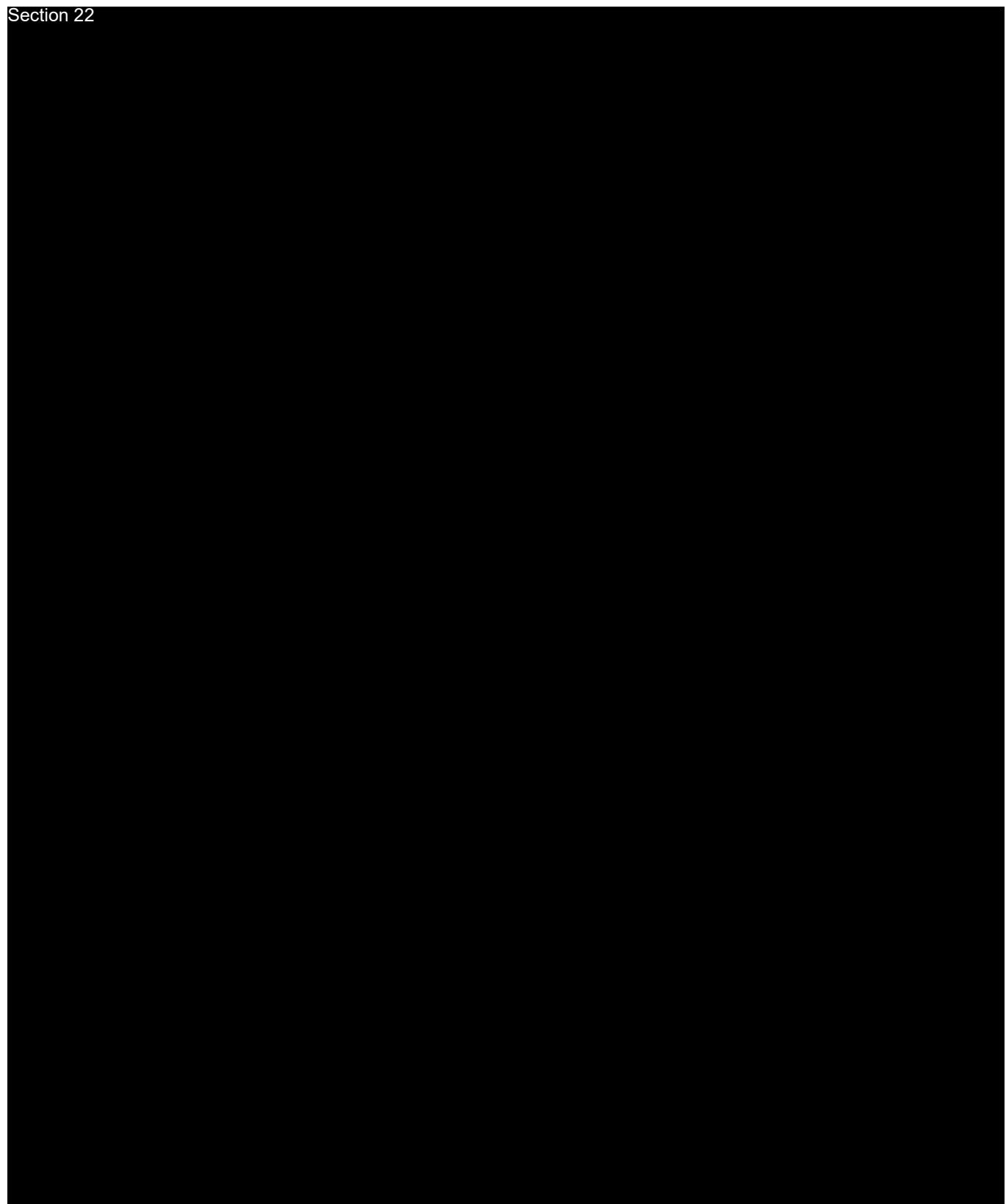
Ballot paper scrutiny

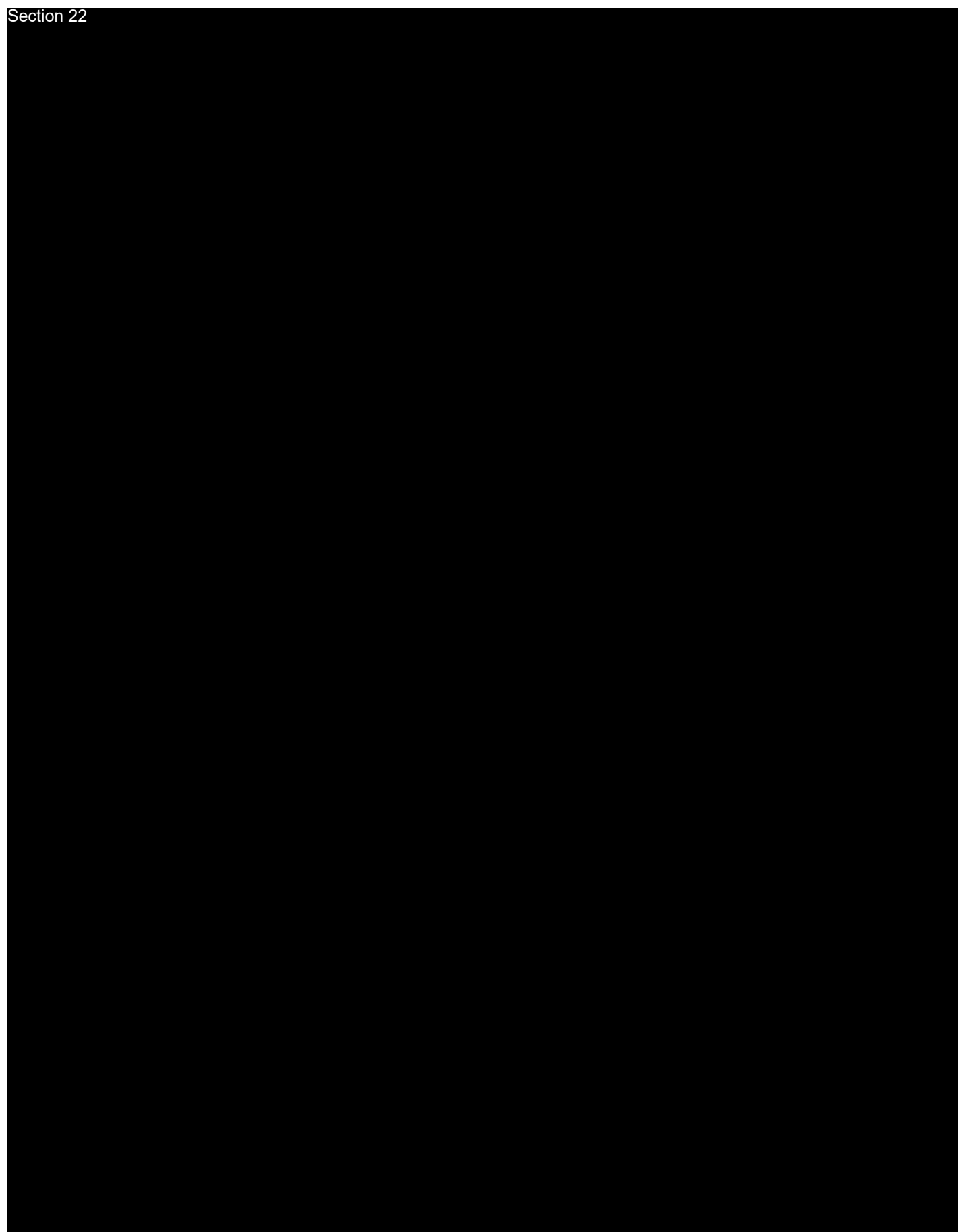


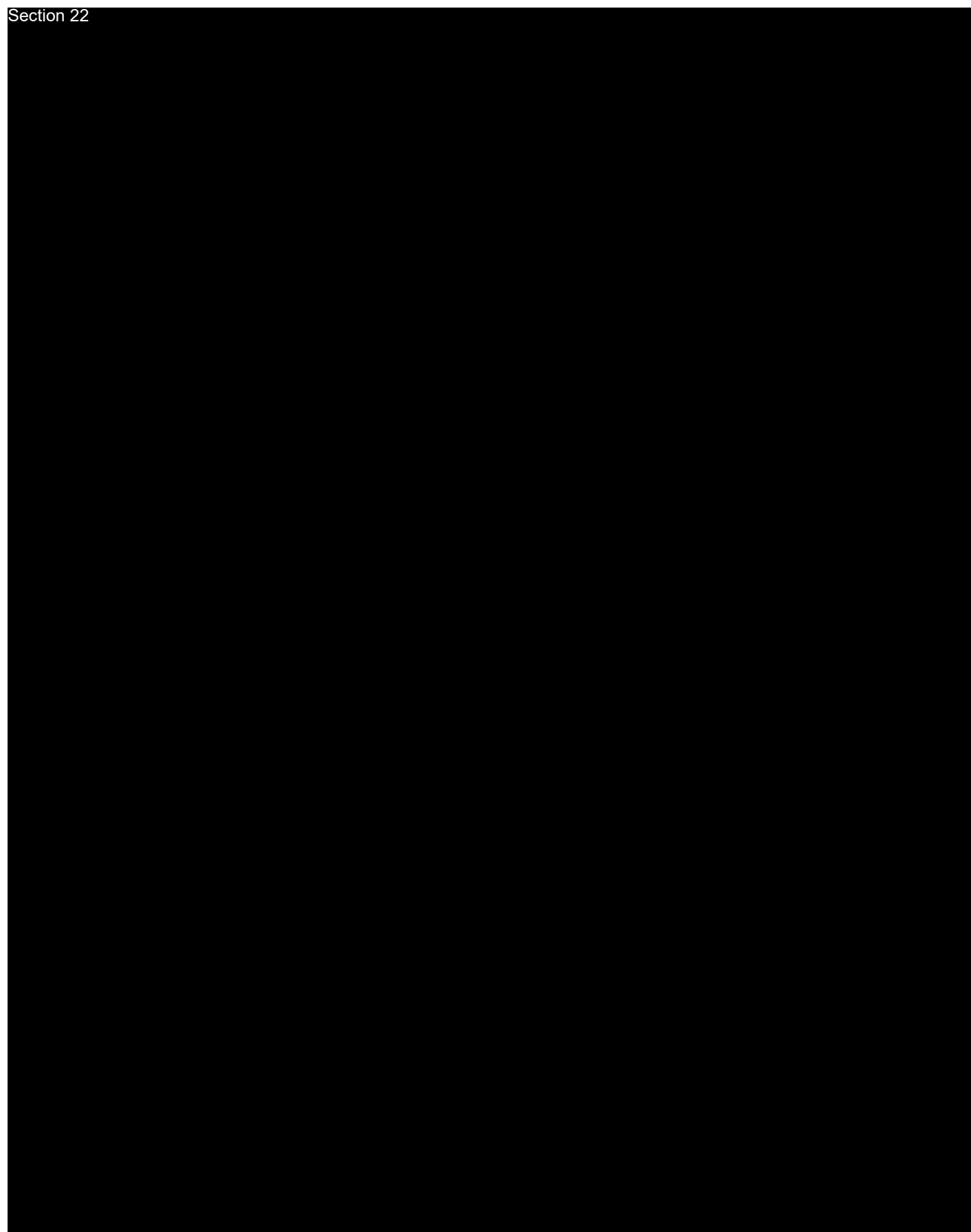
Contents

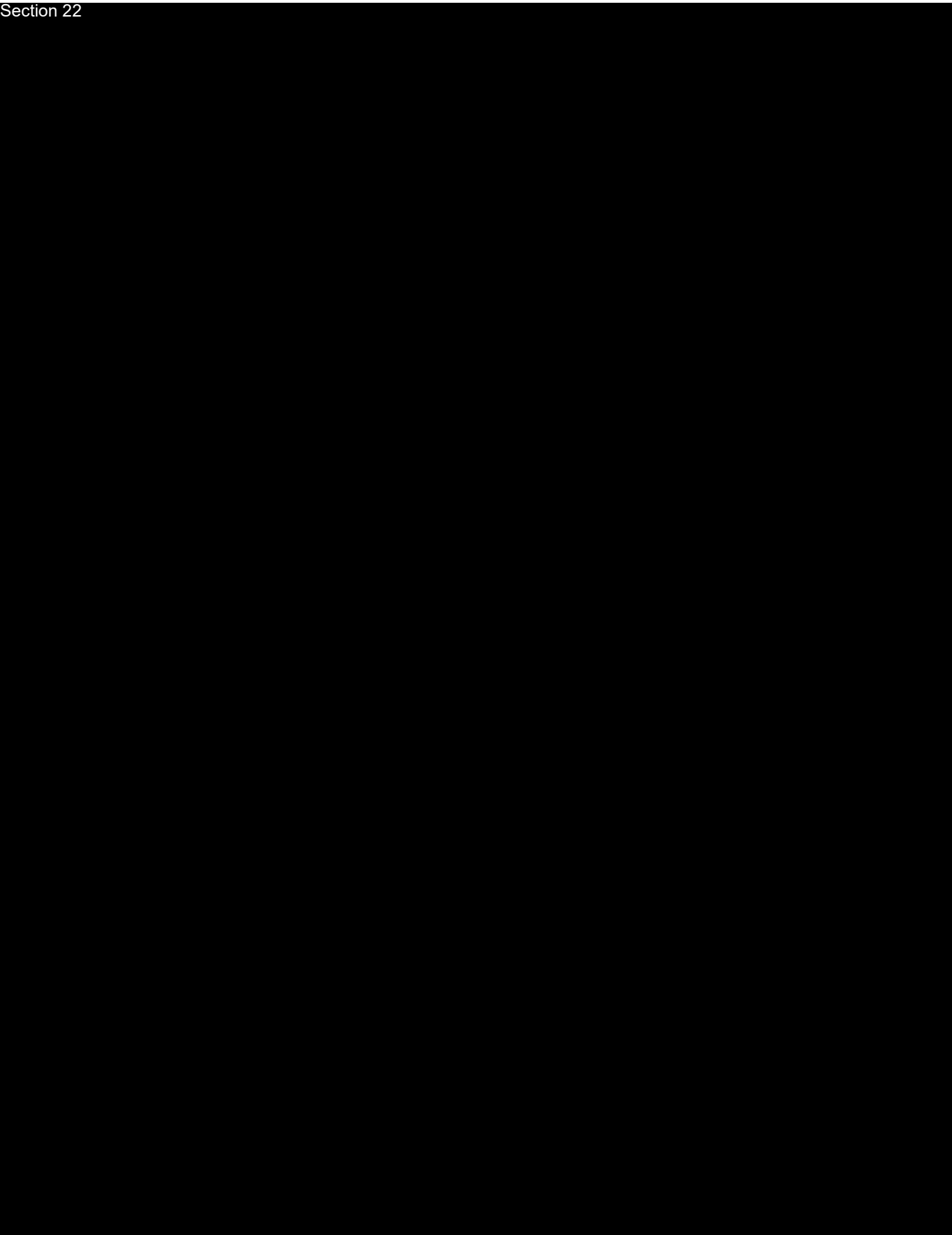
Section 22







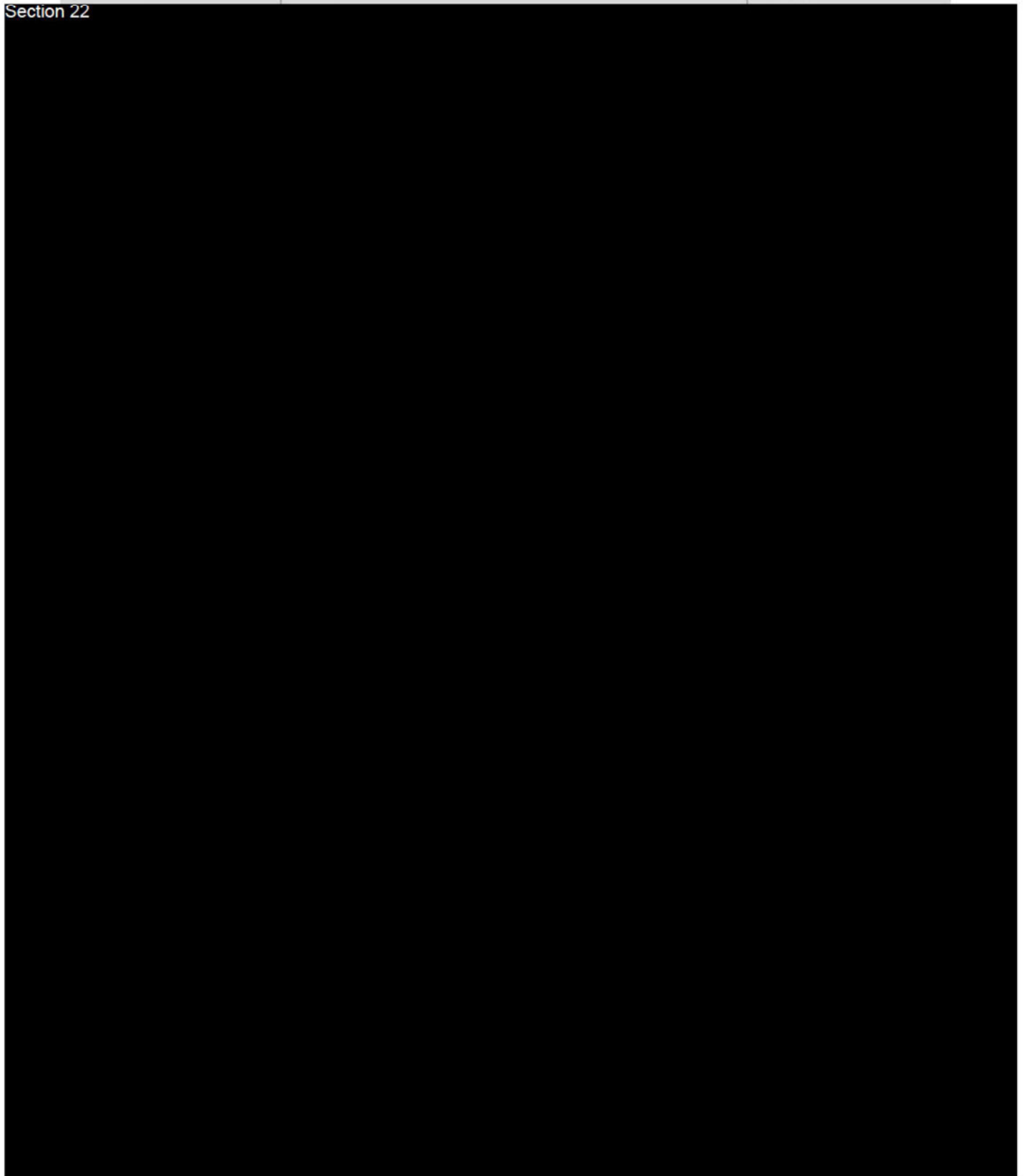






Tab title	Text	Image
A tick	A tick is a formal vote in a referendum. It indicates approval for the proposed change.	<div>Asset79.png</div>  <div>Asset 79.png</div>
A cross	A cross is not a formal vote on referendum ballot papers as in isolation it can indicate a yes or a no. A cross on a ballot paper will result in informality.	<div>Asset87.png</div>  <div>Asset 87.png</div>

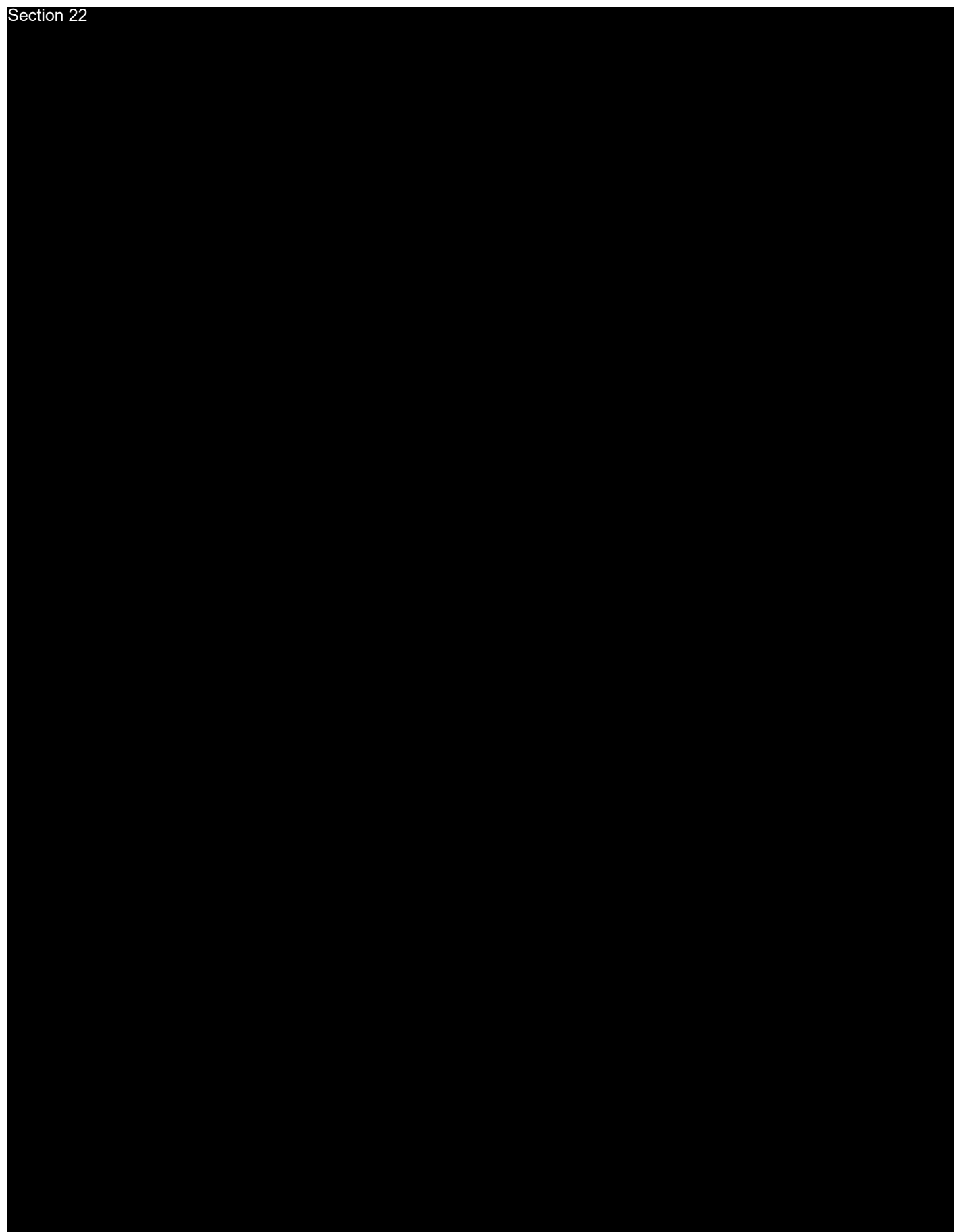
Section 22

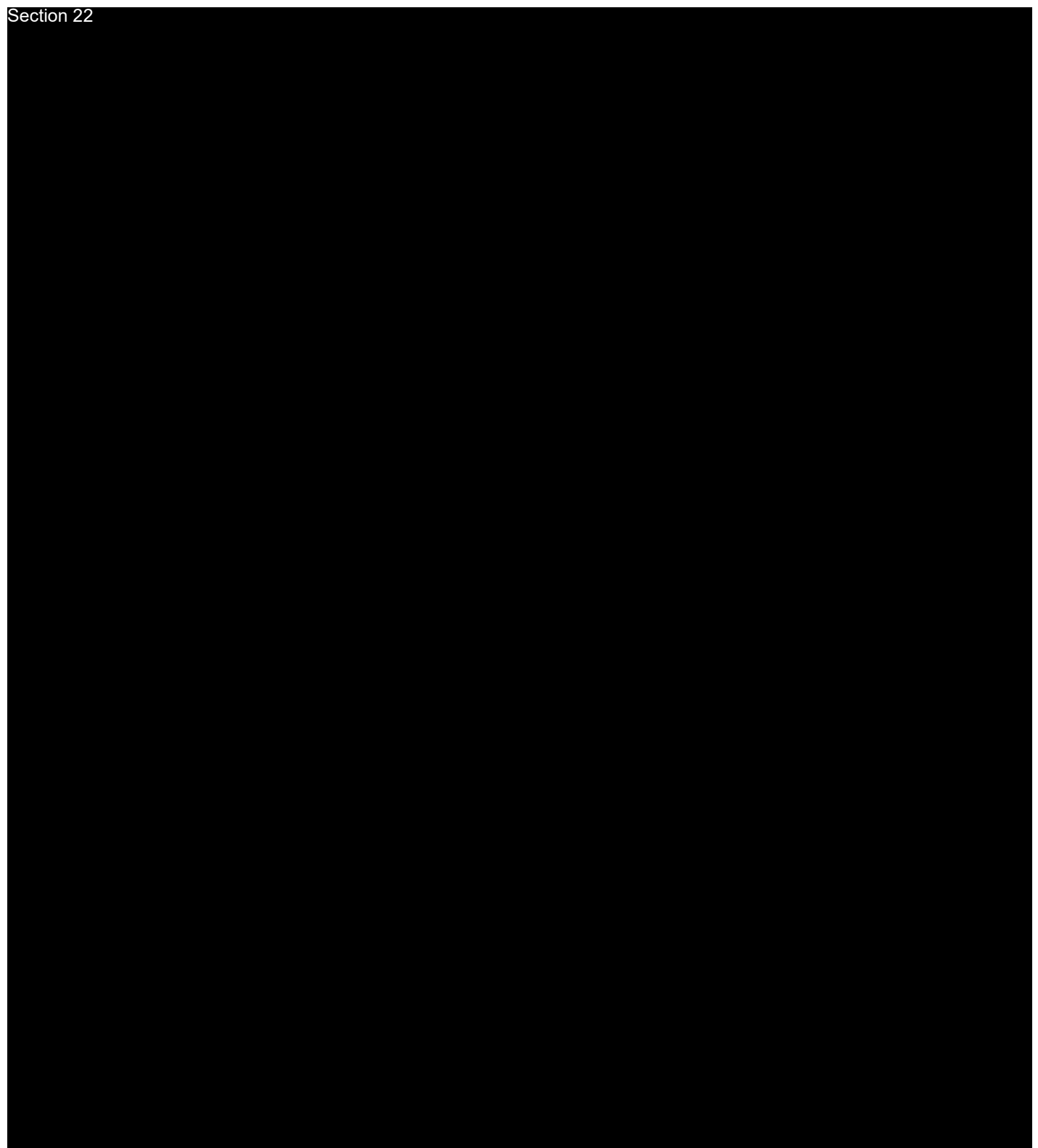


Example 3 Asset79.png



A tick is a valid yes response to the question.
A cross would be considered informal, in isolation it can indicate a yes or a no.

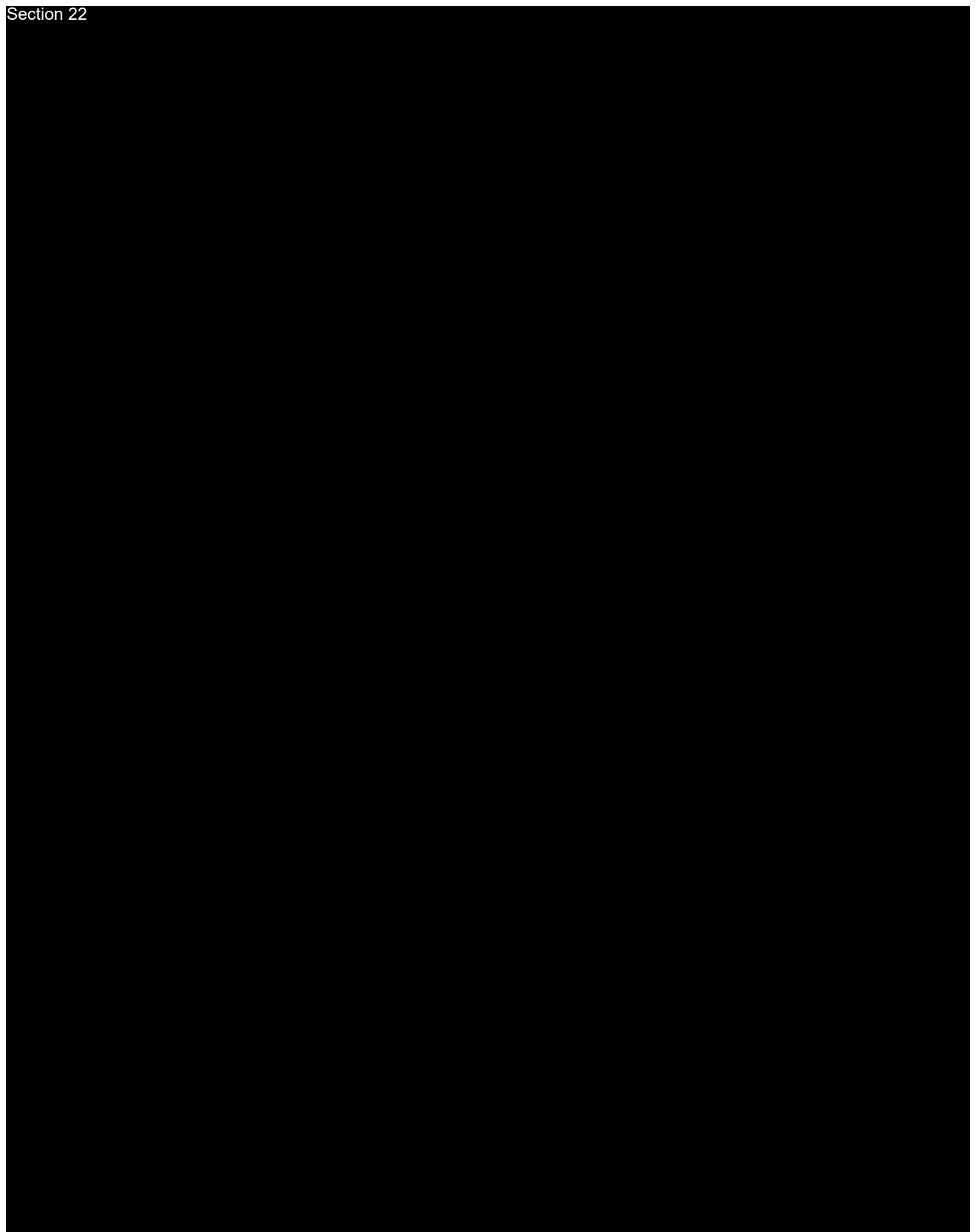




6 July 2023

Working in an out-posted centre

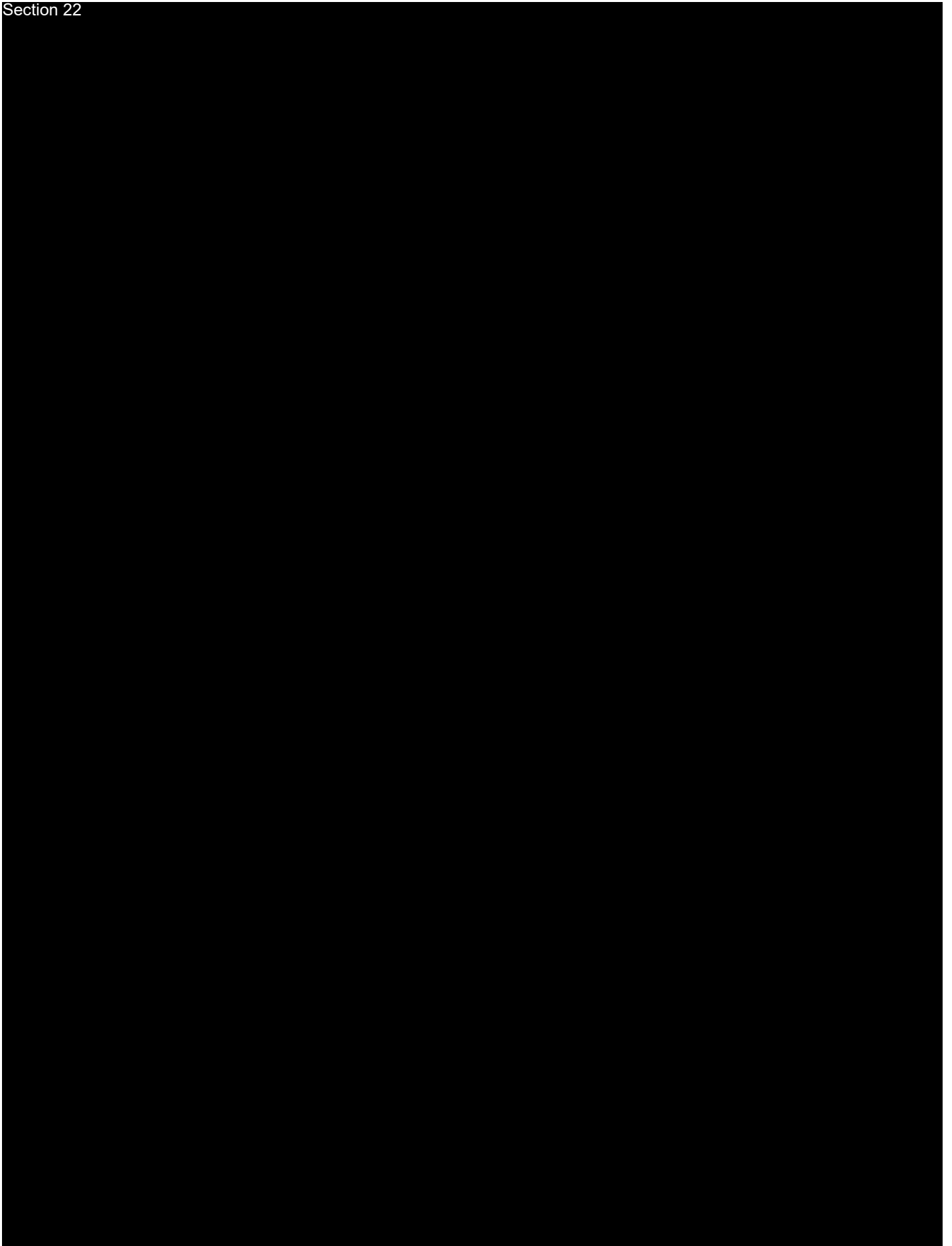
REF614 Initial scrutiny count supervisor

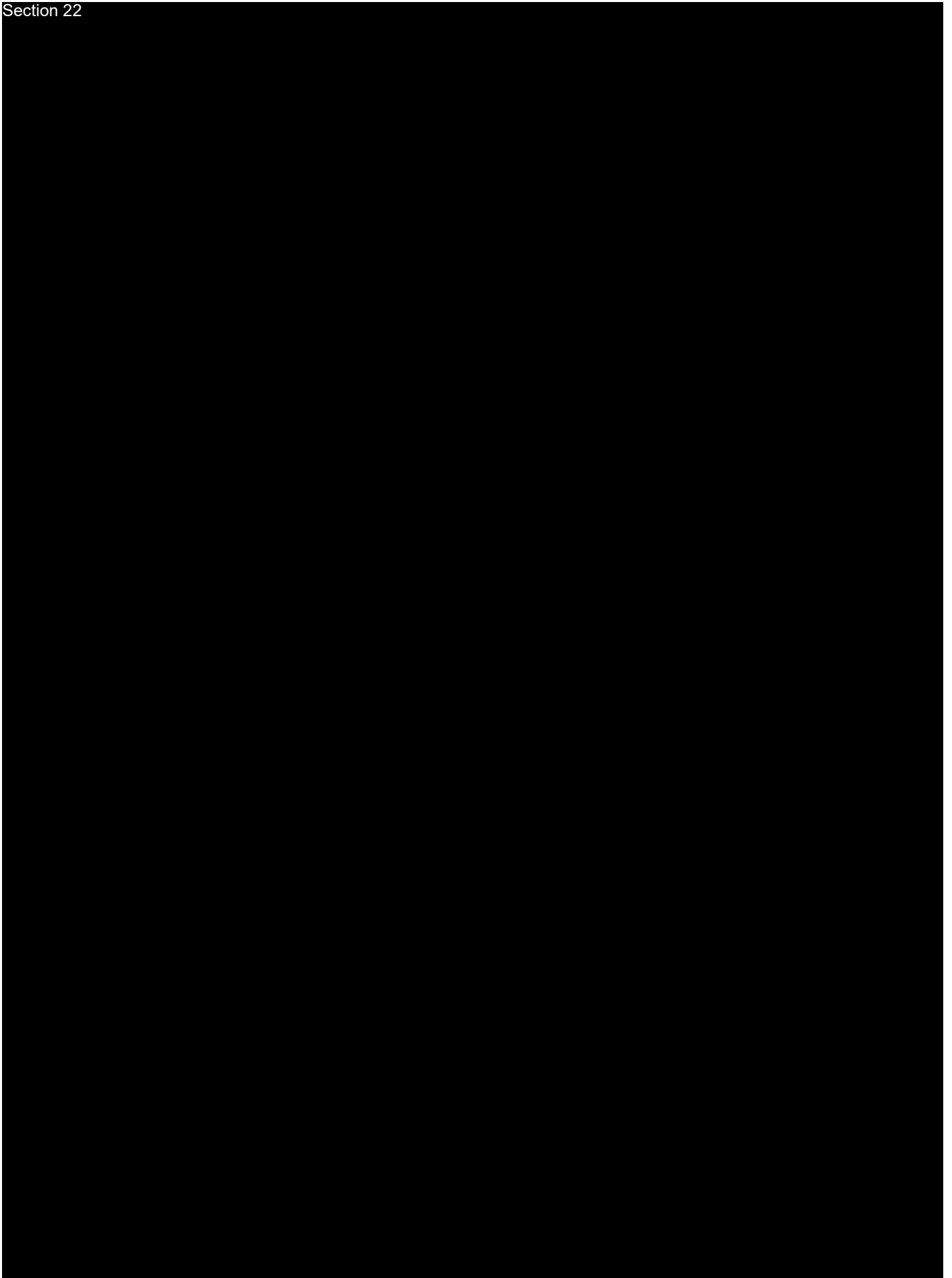


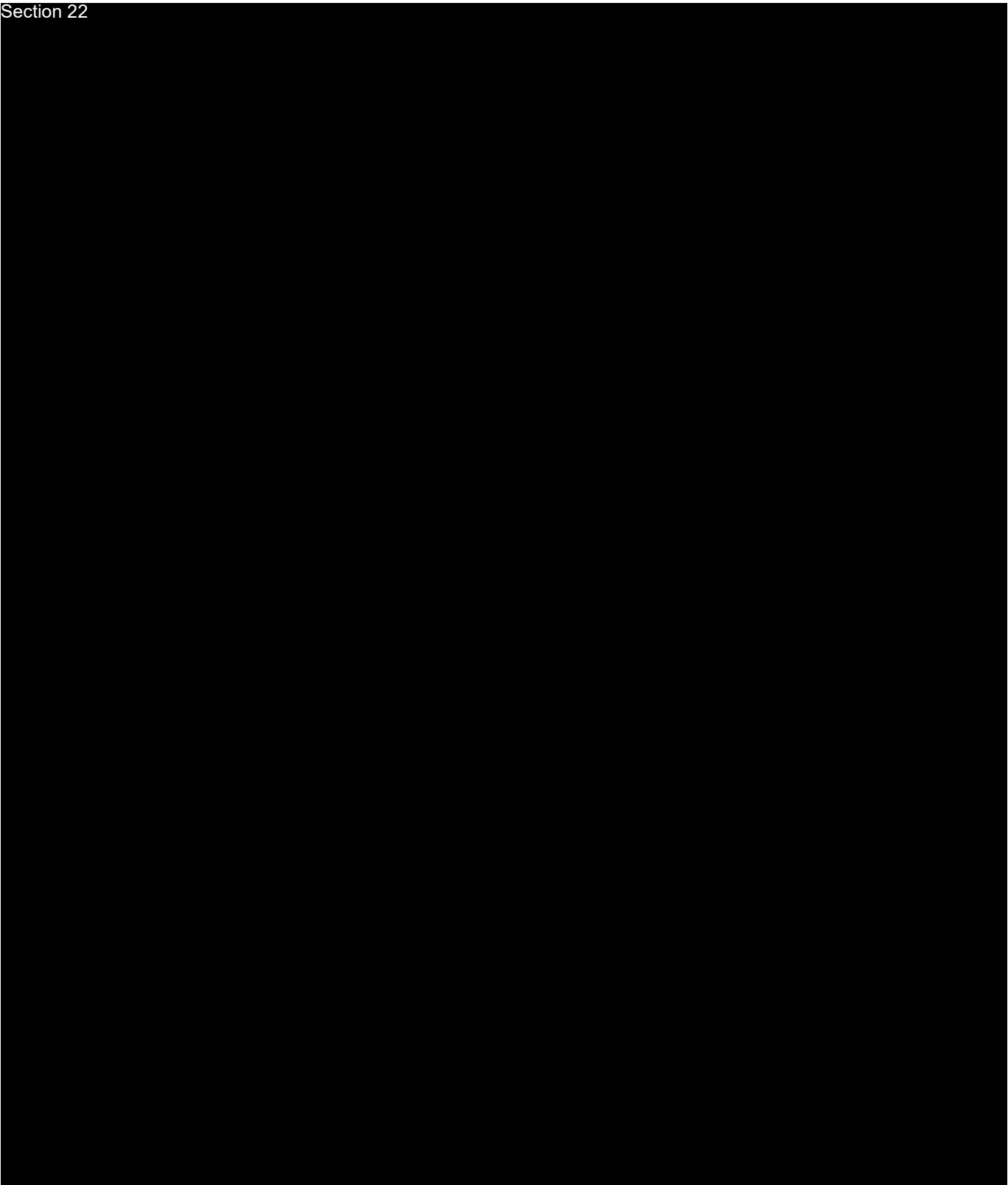
Contents

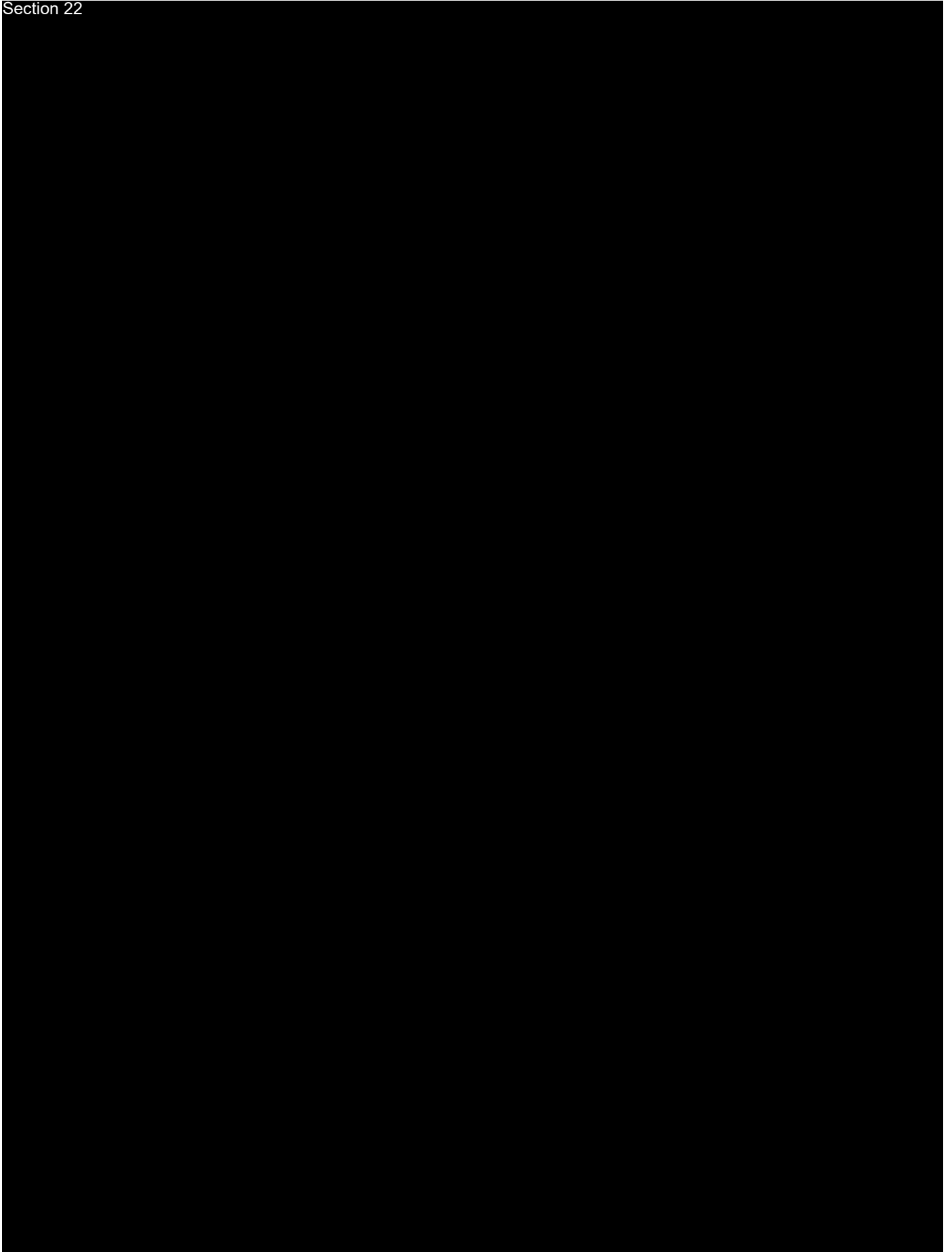
Section 22

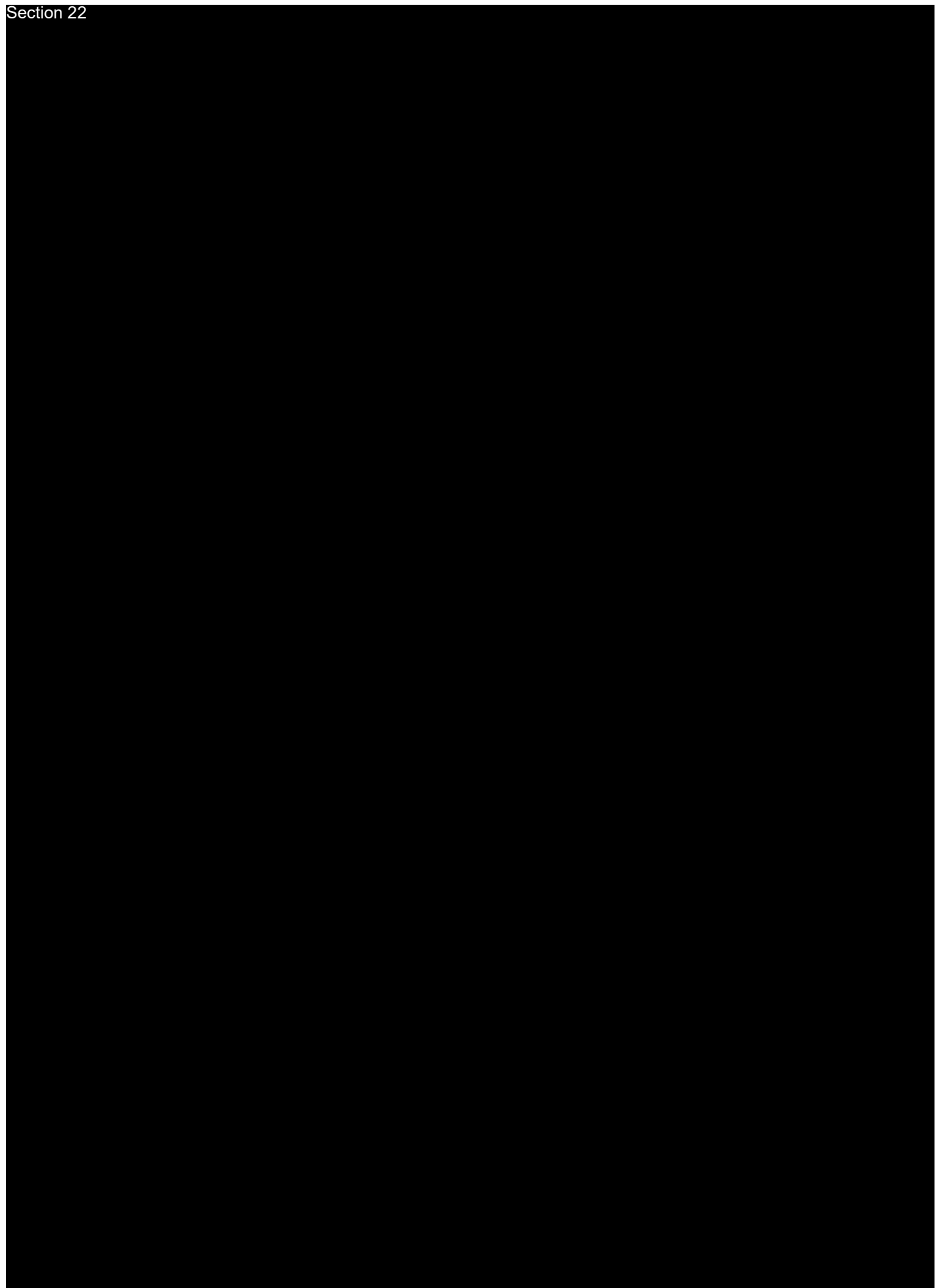


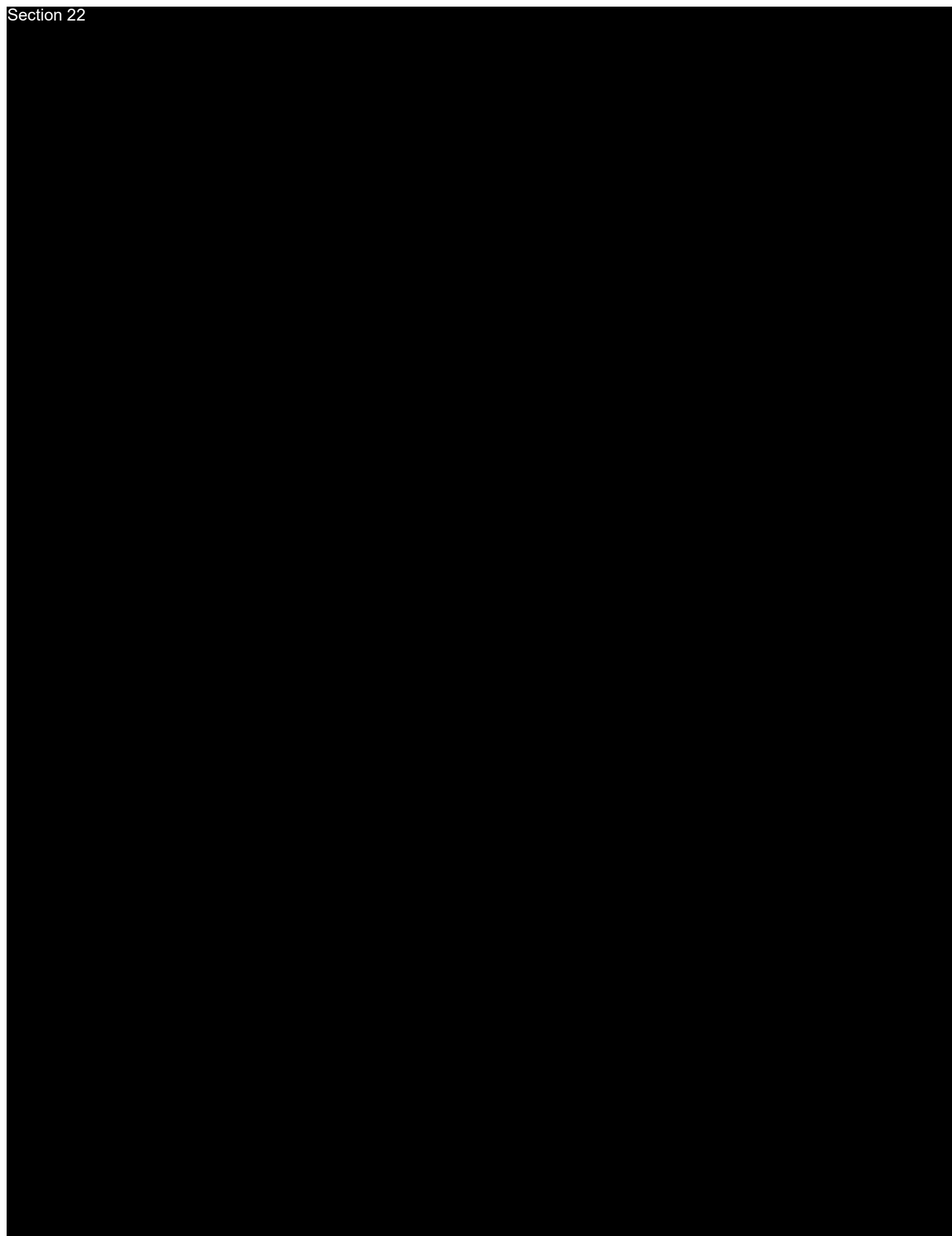














Tab title	Text	Image
Formal ballot papers	<p>Section 22 [redacted]</p> <ul style="list-style-type: none"> ■ [redacted] ■ [redacted] <p>Ballot papers must be admitted where the voter's intention is clear. For example:</p> <ul style="list-style-type: none"> ■ Section 22 [redacted] ■ [redacted] ■ ticks. 	<p>Asset 28.png</p>  <p>Asset 28.png</p>
Informal ballot papers	<p>A ballot paper will be informal if any of the following apply:</p> <ul style="list-style-type: none"> ■ Section 22 [redacted] ■ [redacted] ■ [redacted] ■ a cross is used on a referendum ballot paper which has only one question, since a cross on its own may mean either 'Yes' or 'No'. <p>Section 22 [redacted]</p>	<p>Asset 49.png</p>  <p>Asset 49.png</p>

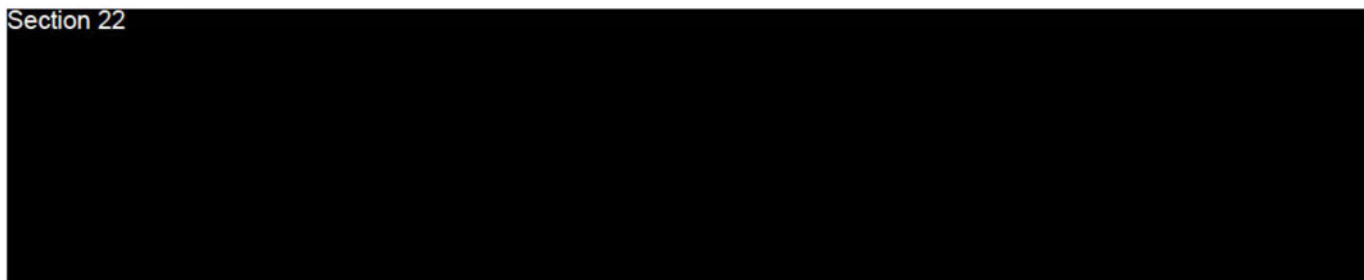
3.2. Use of multiple marks

Static standard

If a voter has made numerous marks on a ballot paper with no conflicting answers given, the vote is formal. For example, a tick and a 'Yes' in the one box will be formal, as the intention of the voter is to indicate approval for the question. If the voter's intention is clear, the ballot paper will be considered formal.

Consider whether the ballot papers below are formal or not before clicking on them to see their formality.

Section 22



3.4. Use of symbols on ballot paper

Static standard

If a voter marks a ballot paper with words, symbols or figures or a language other than English, the ballot paper can be accepted if it is established that the voter’s intention is clear.

Consider whether the ballot papers below are formal or not before clicking on them to see their formality.

Image	Answer
Asset 43.png	This ballot paper is informal. A cross can be construed as a yes or no, therefore the intention of the voter is unclear.



Asset 43.png

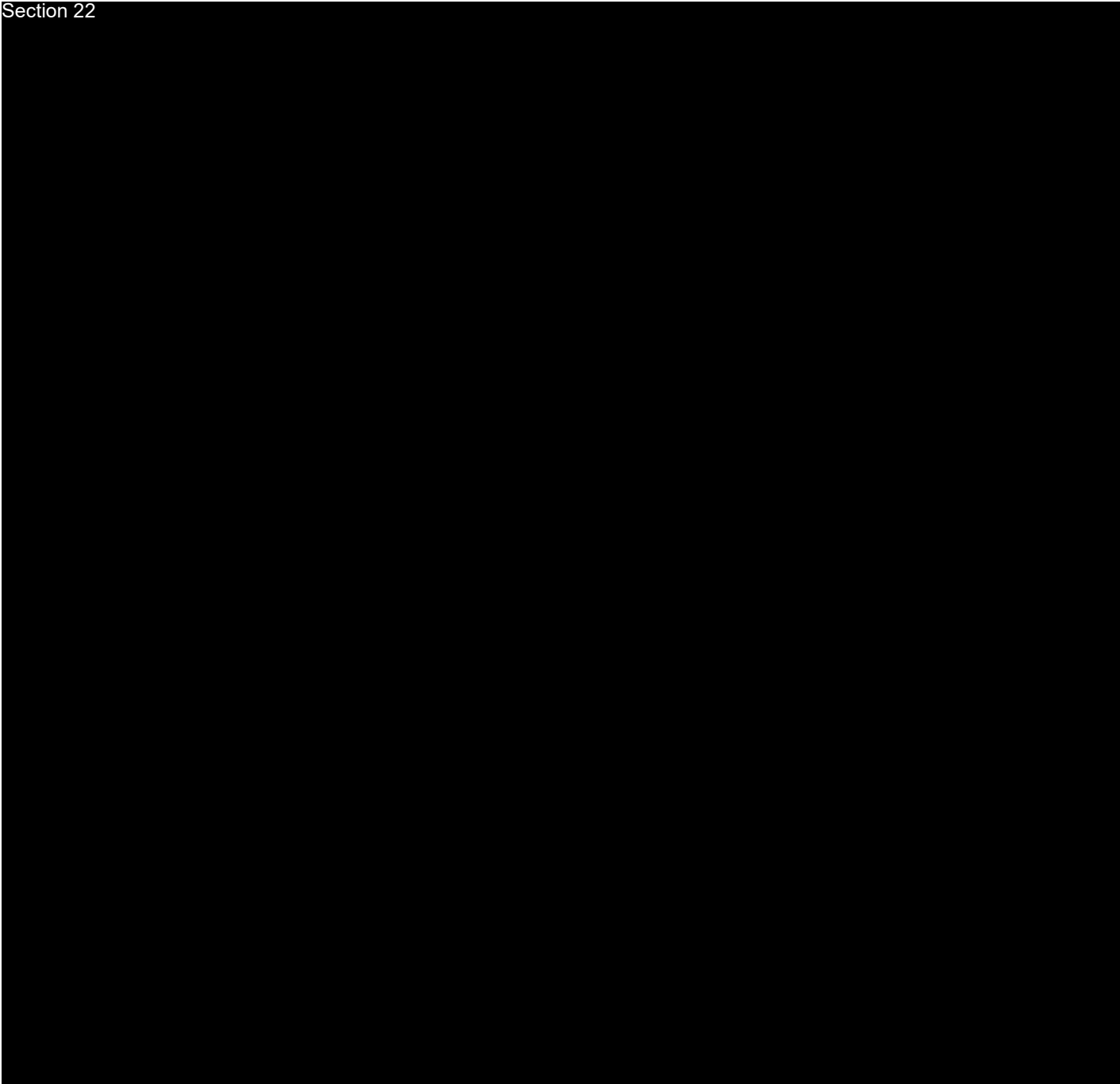
Asset 35.png

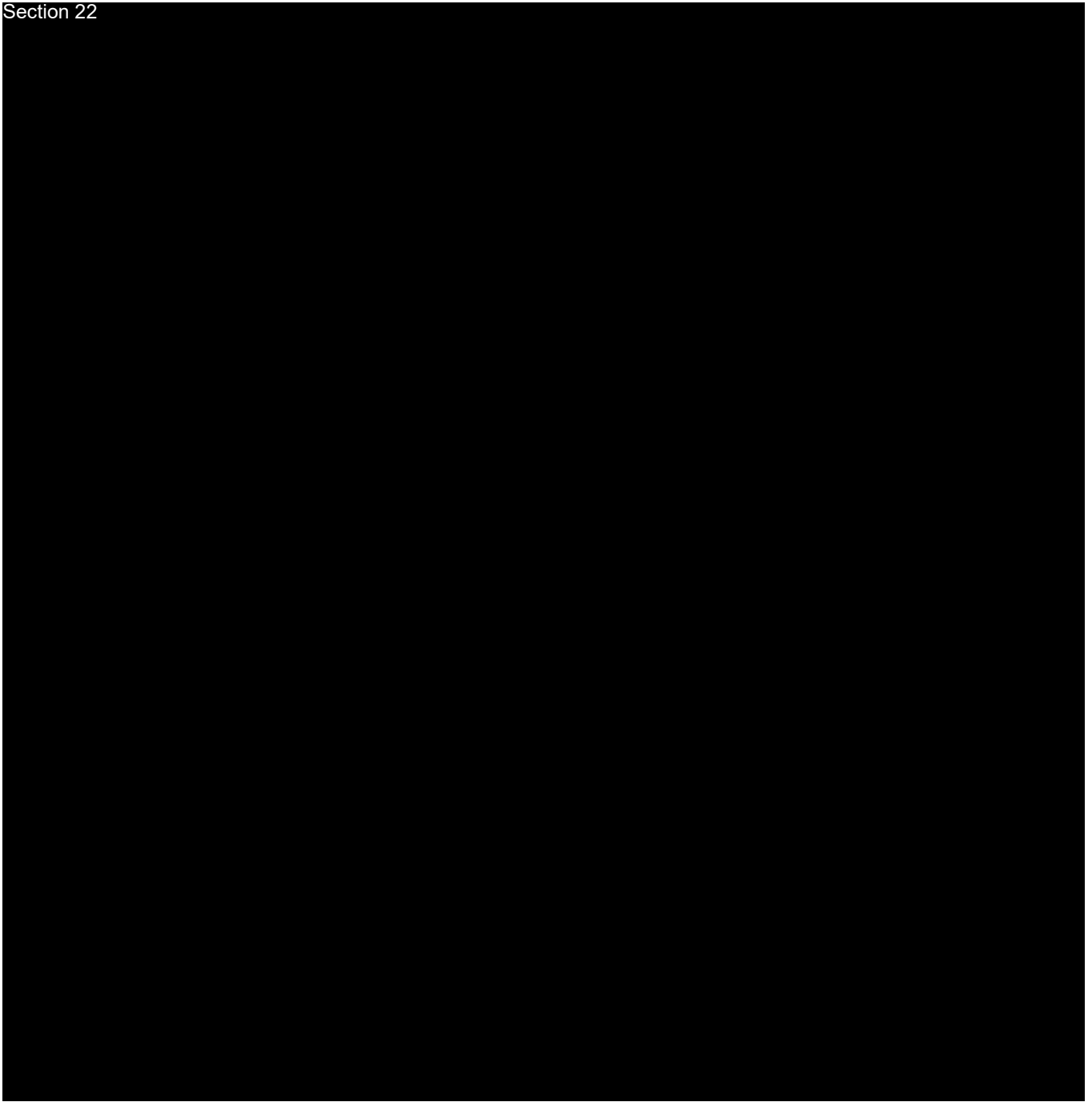


Asset 35.png

This ballot paper is formal. A tick can be construed as a yes.

Section 22

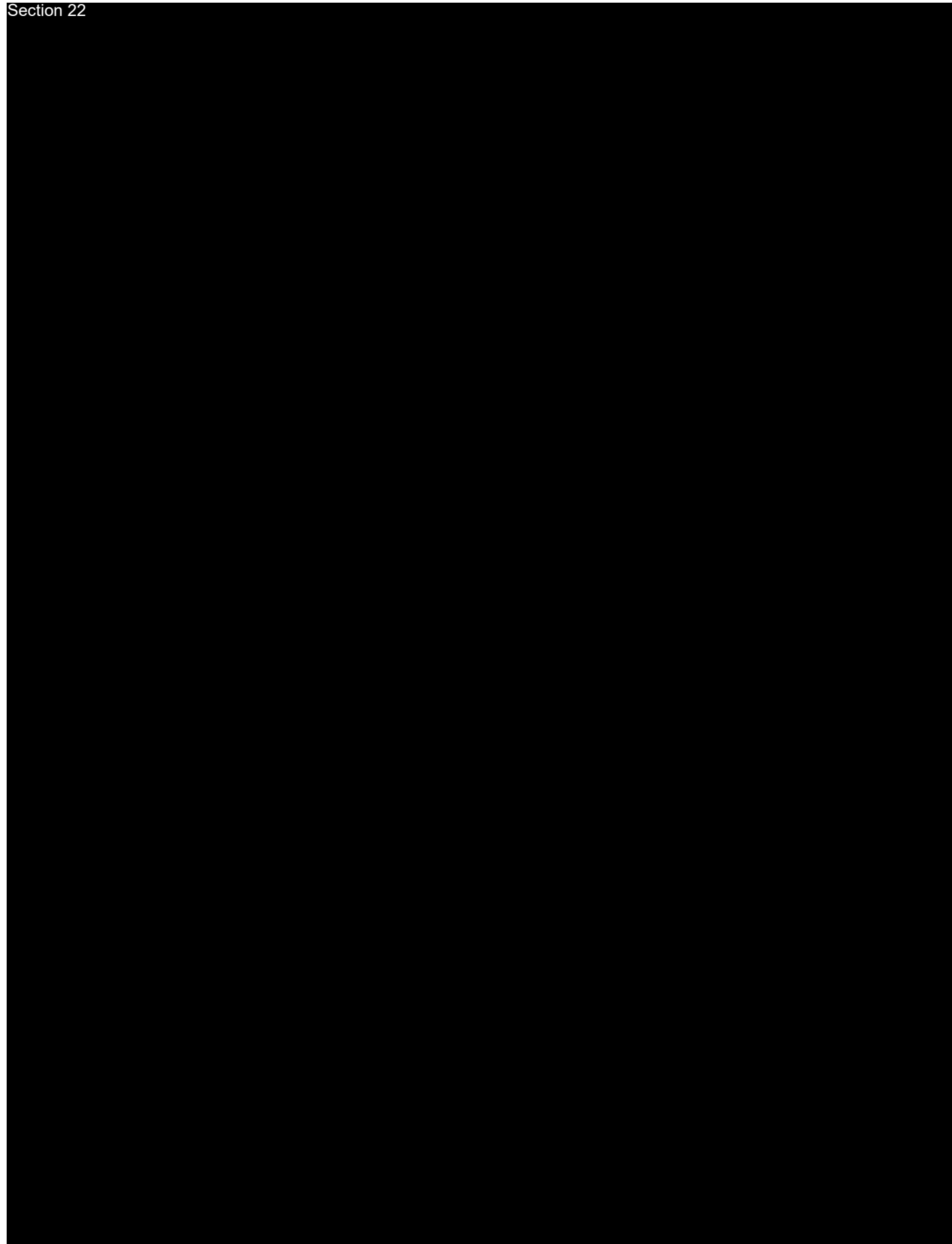




5 July 2023

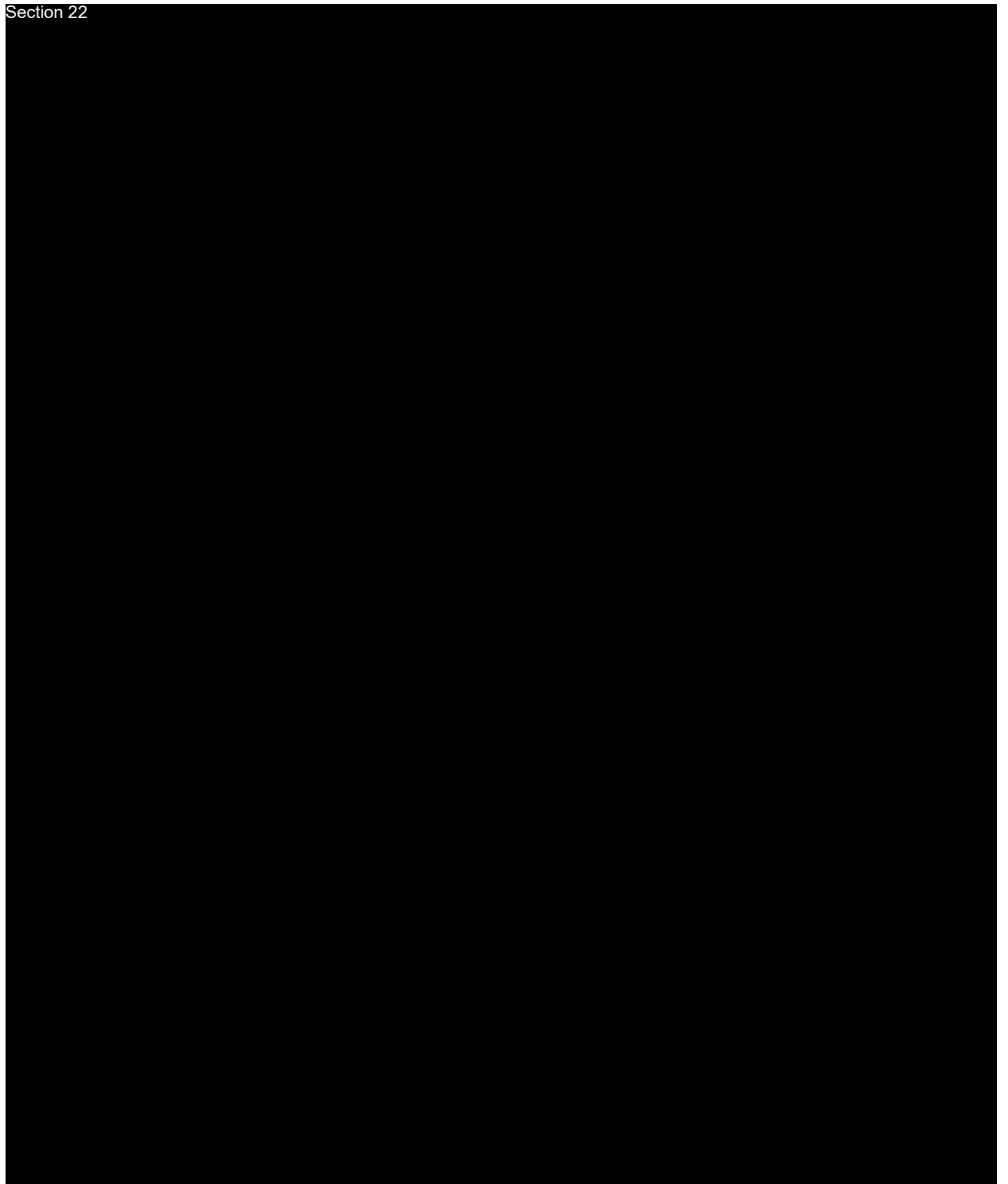
Working in an out-posted centre

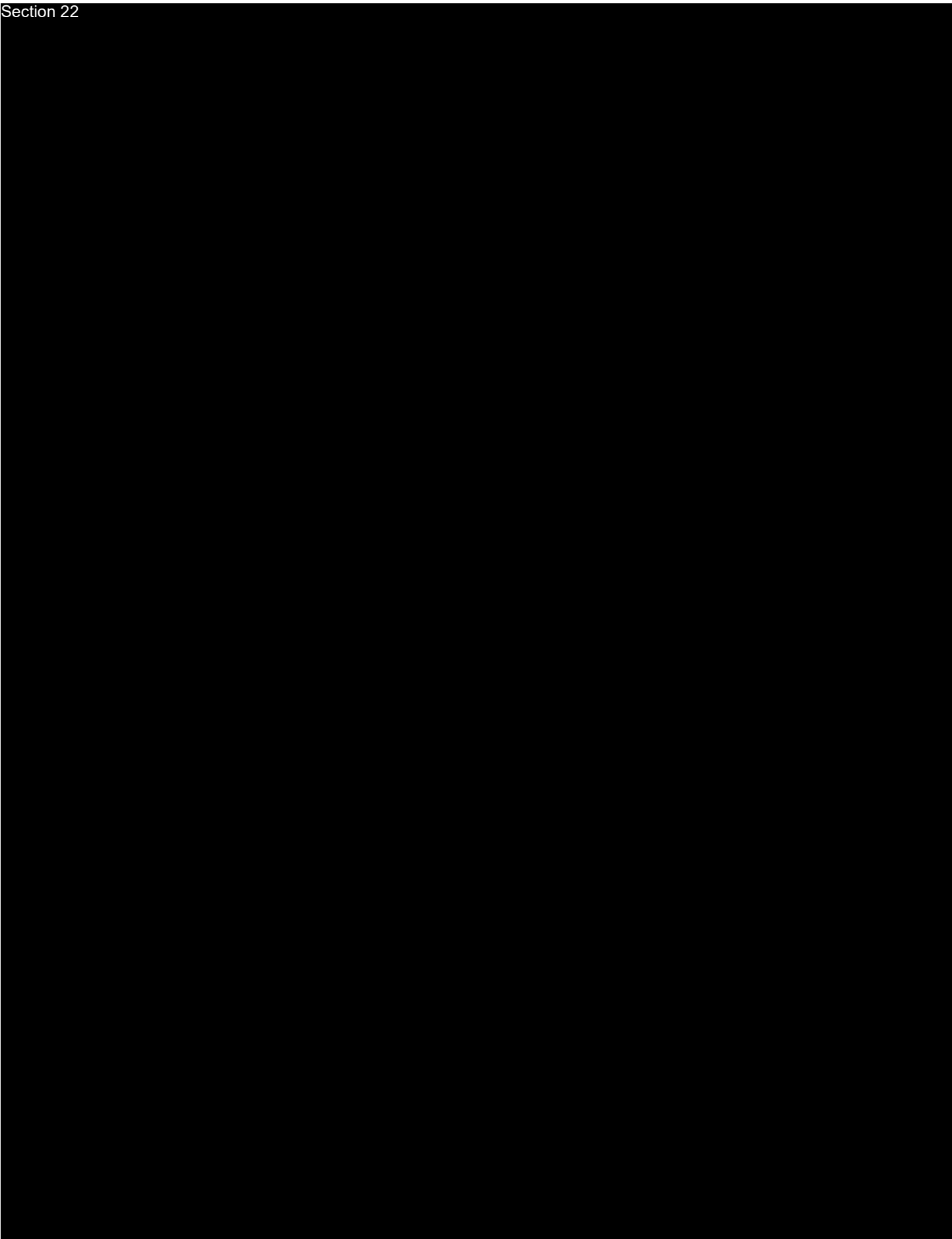
REF615 Further scrutiny count supervisor

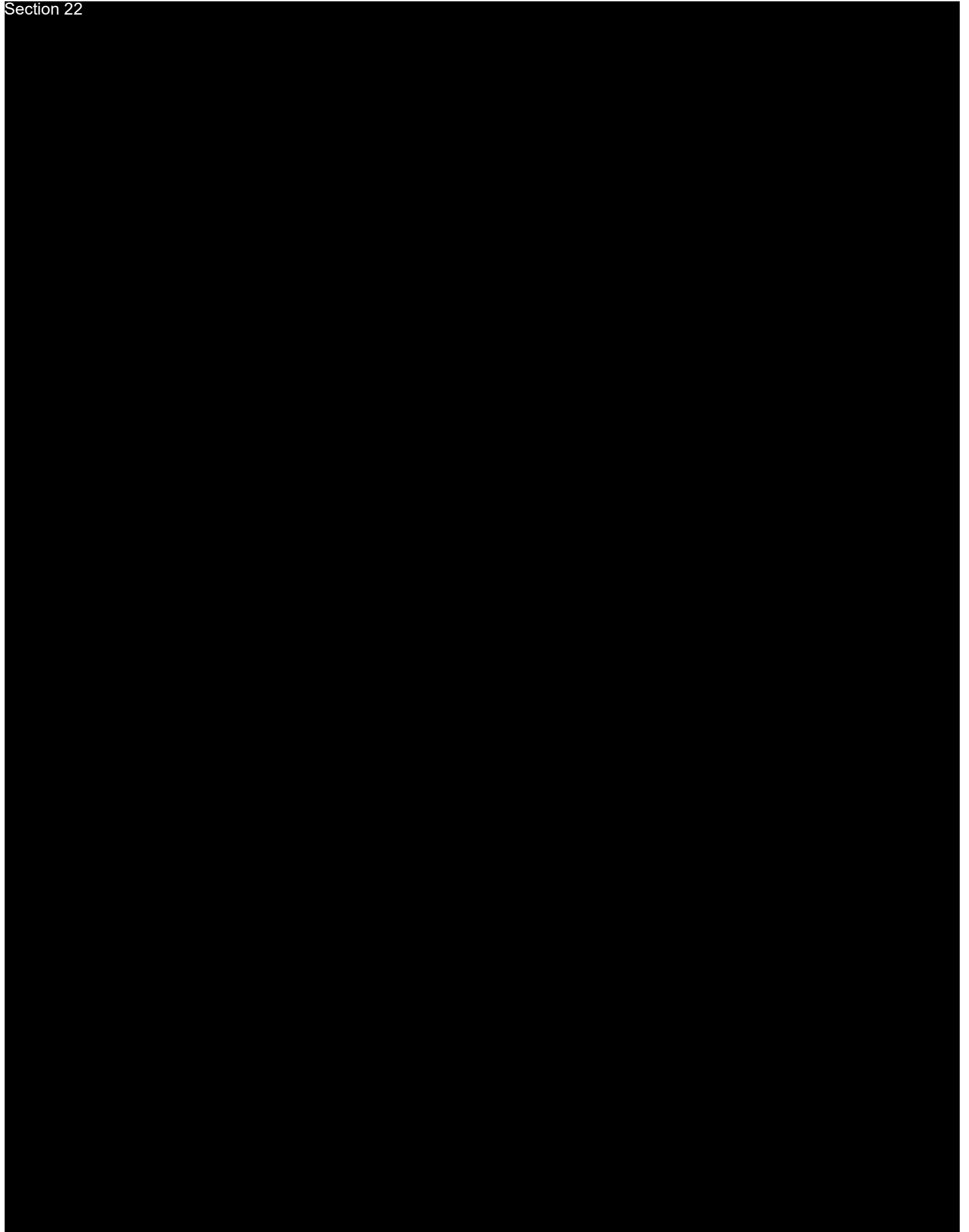


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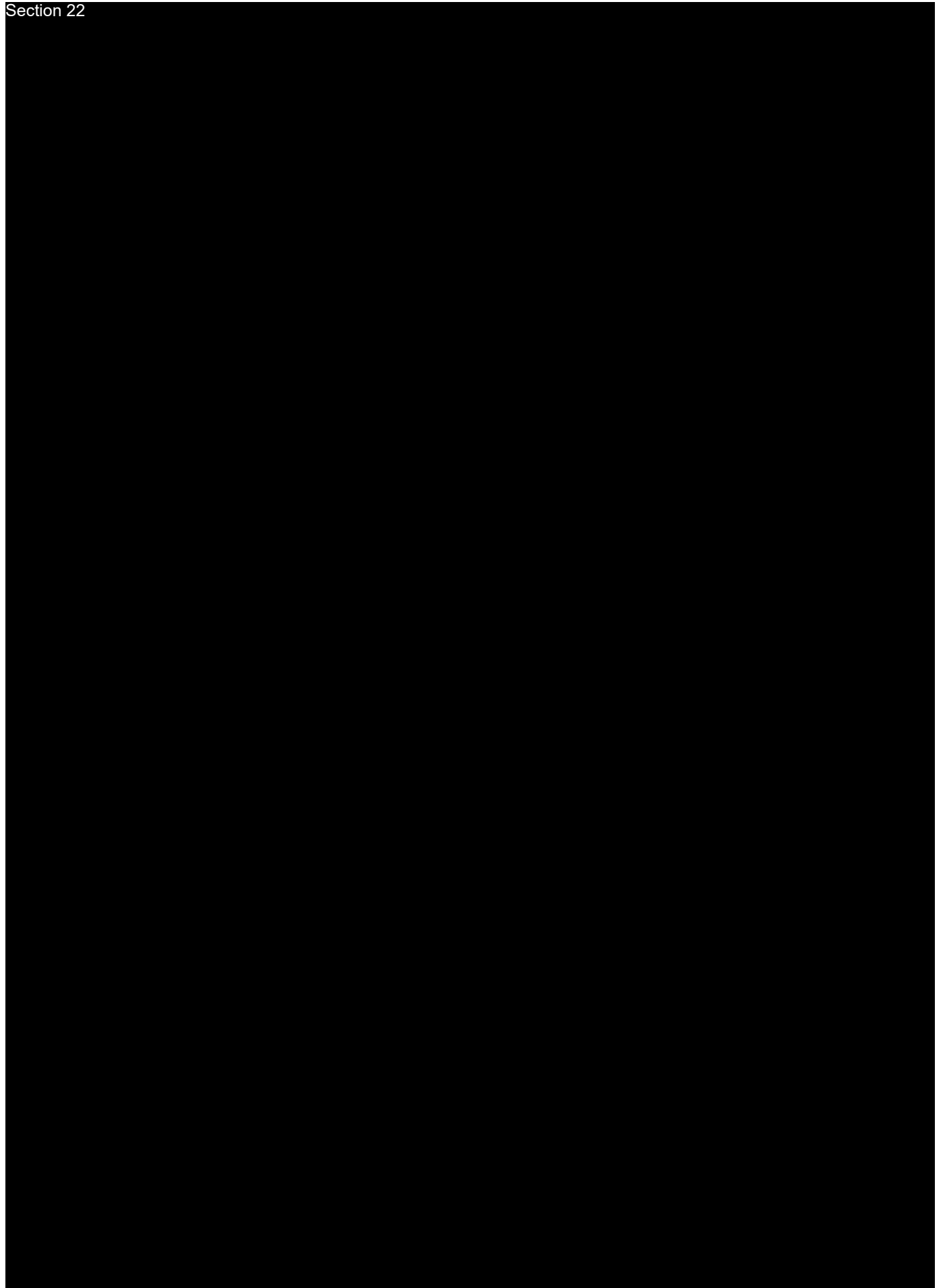
Section 22

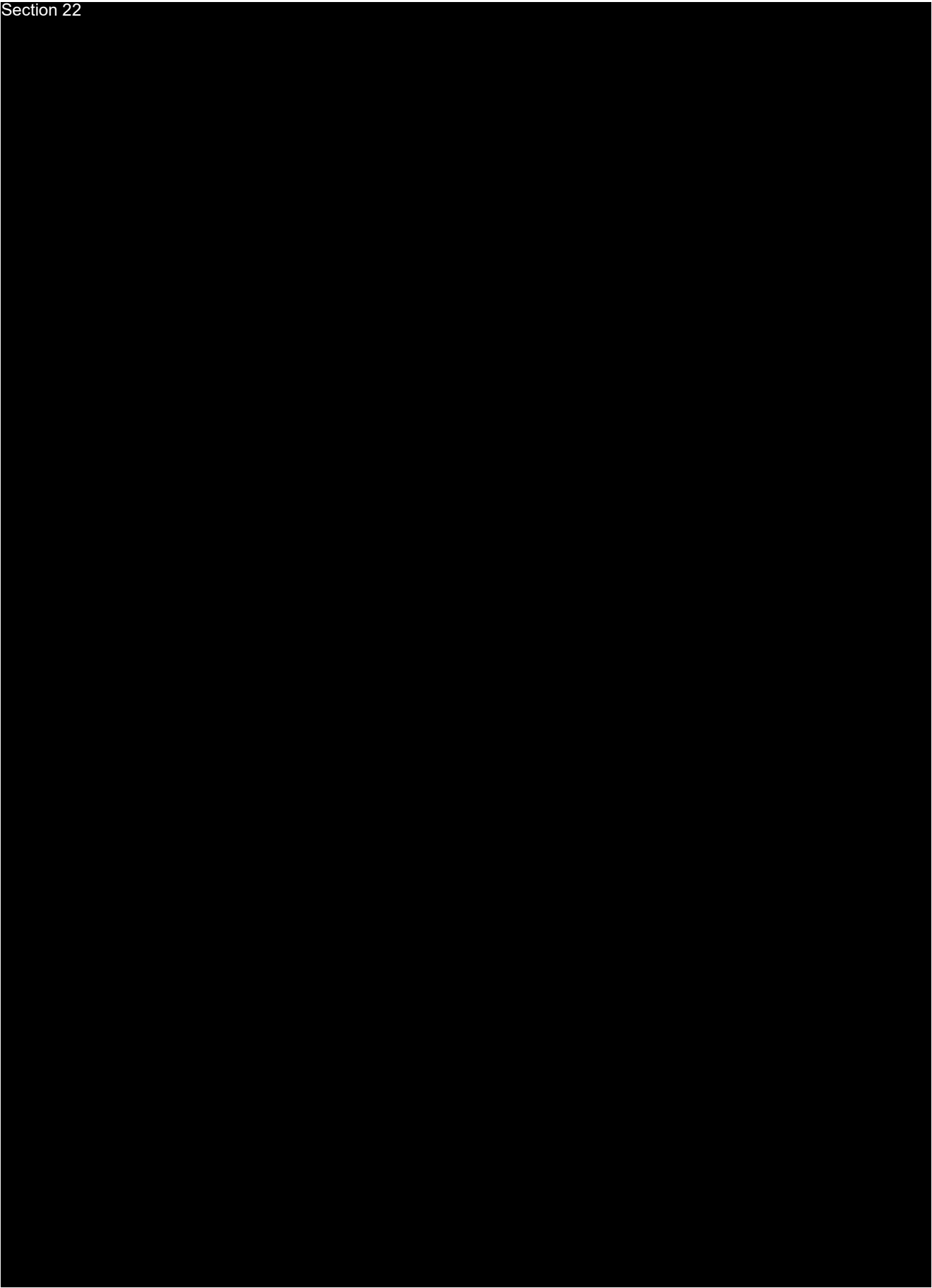


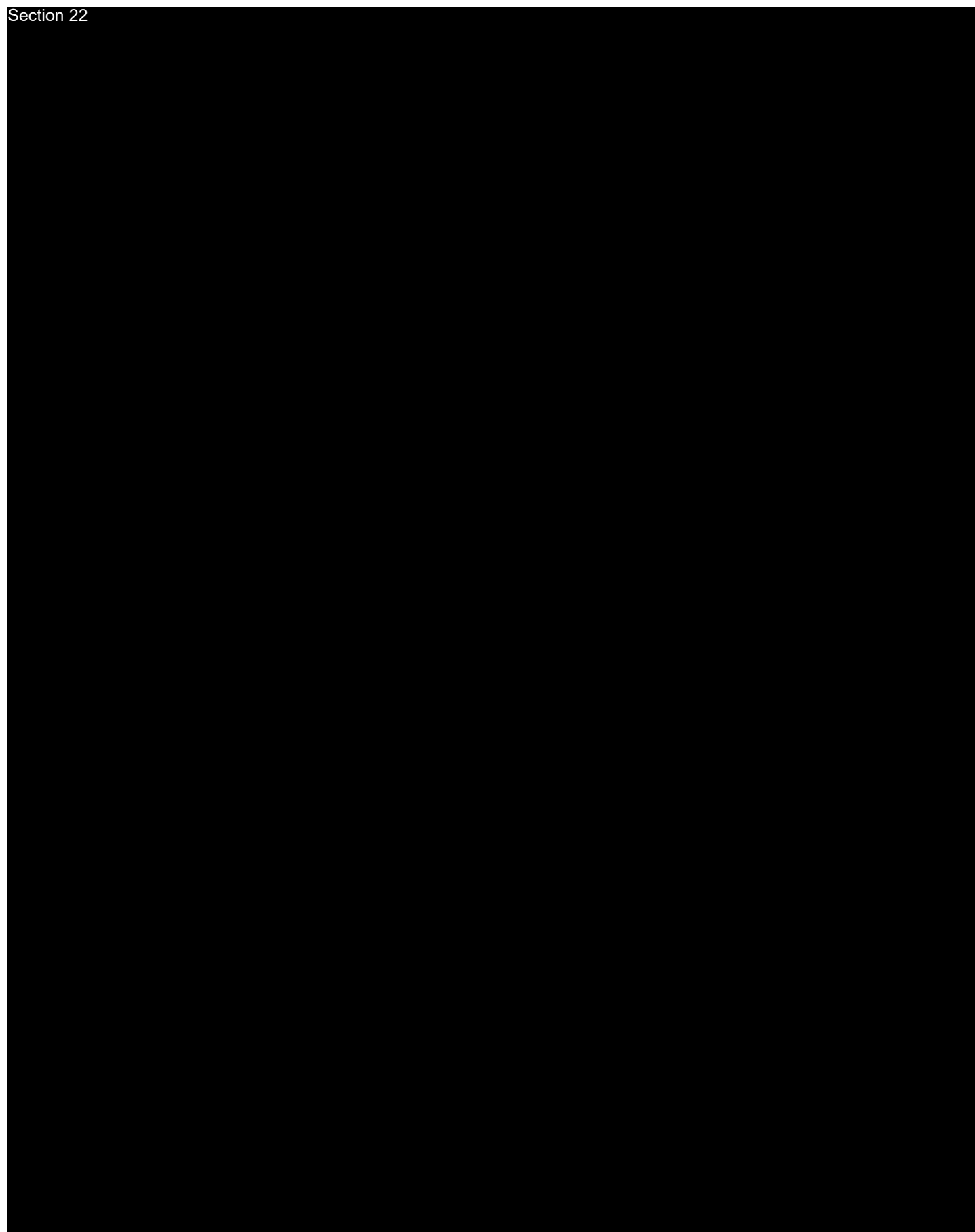


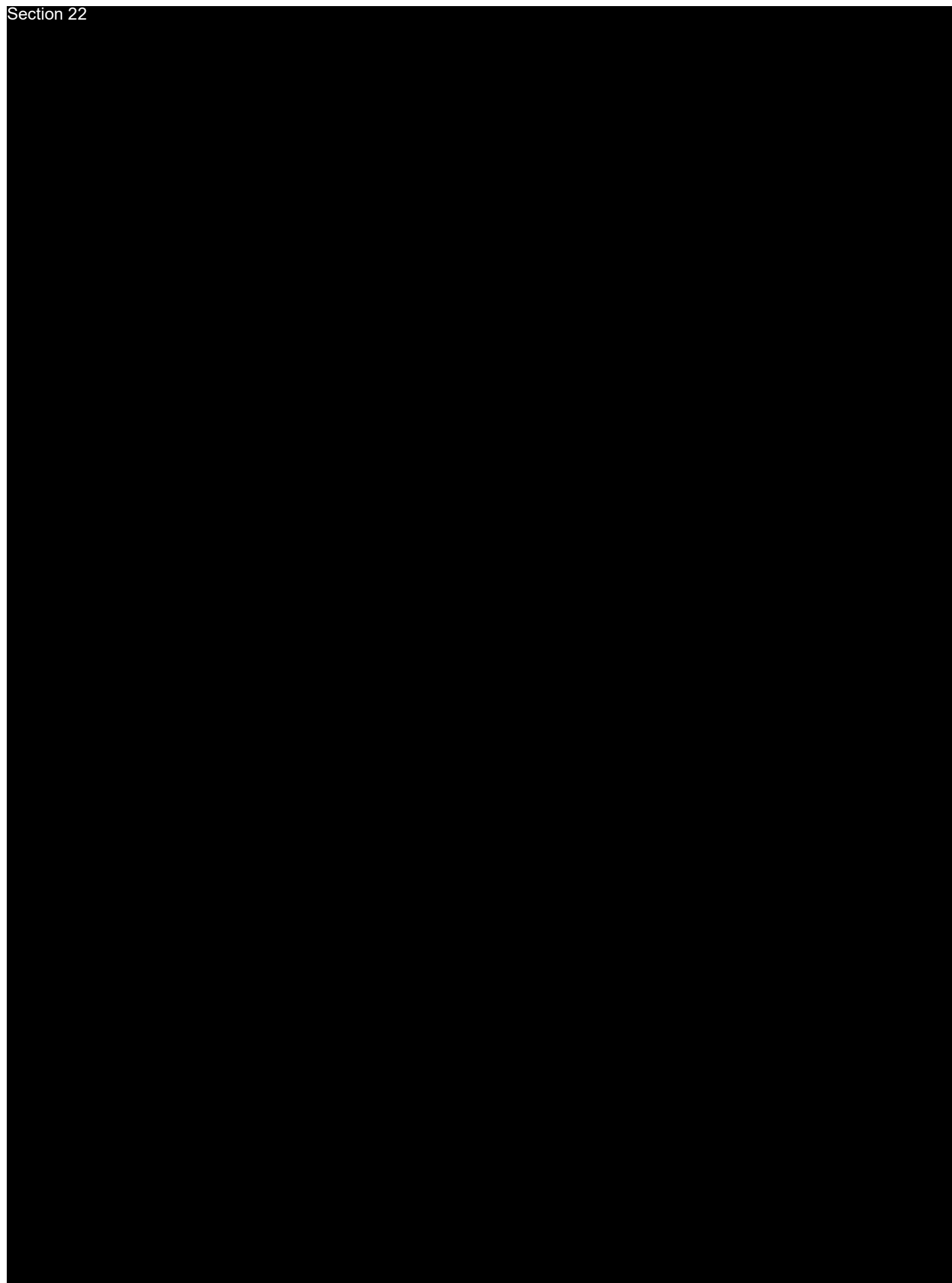


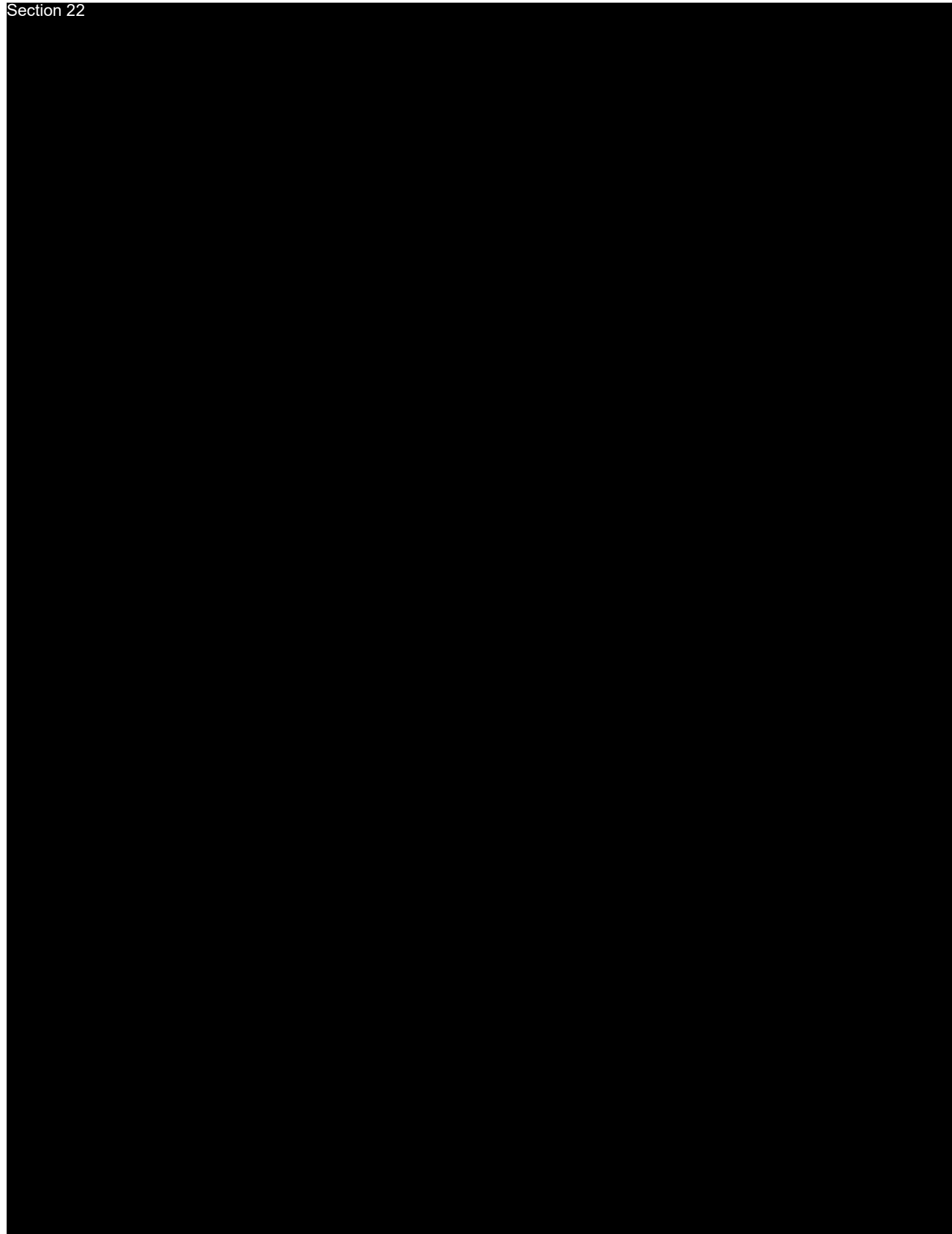












Informal ballot papers

Informal ballot papers

A ballot paper will be informal if any of the following apply:

- Section 22 [REDACTED]
- [REDACTED]
- a cross is used on a referendum ballot paper which has only one question, since a cross on its own may mean either 'Yes' or 'No'.

Section 22 [REDACTED]

Asset 49.png



Asset 49.png



Section 22

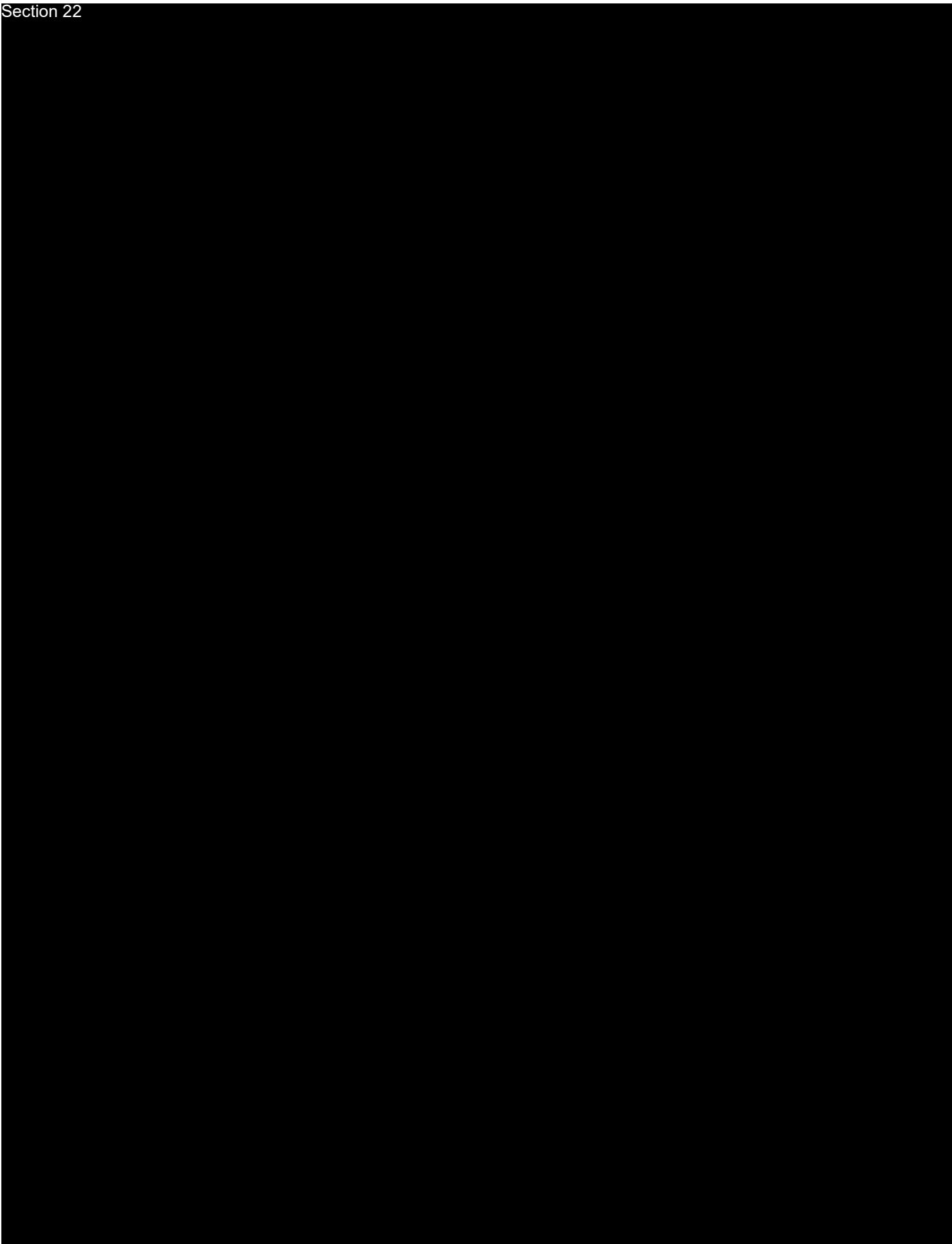
3.4. Use of symbols on ballot paper

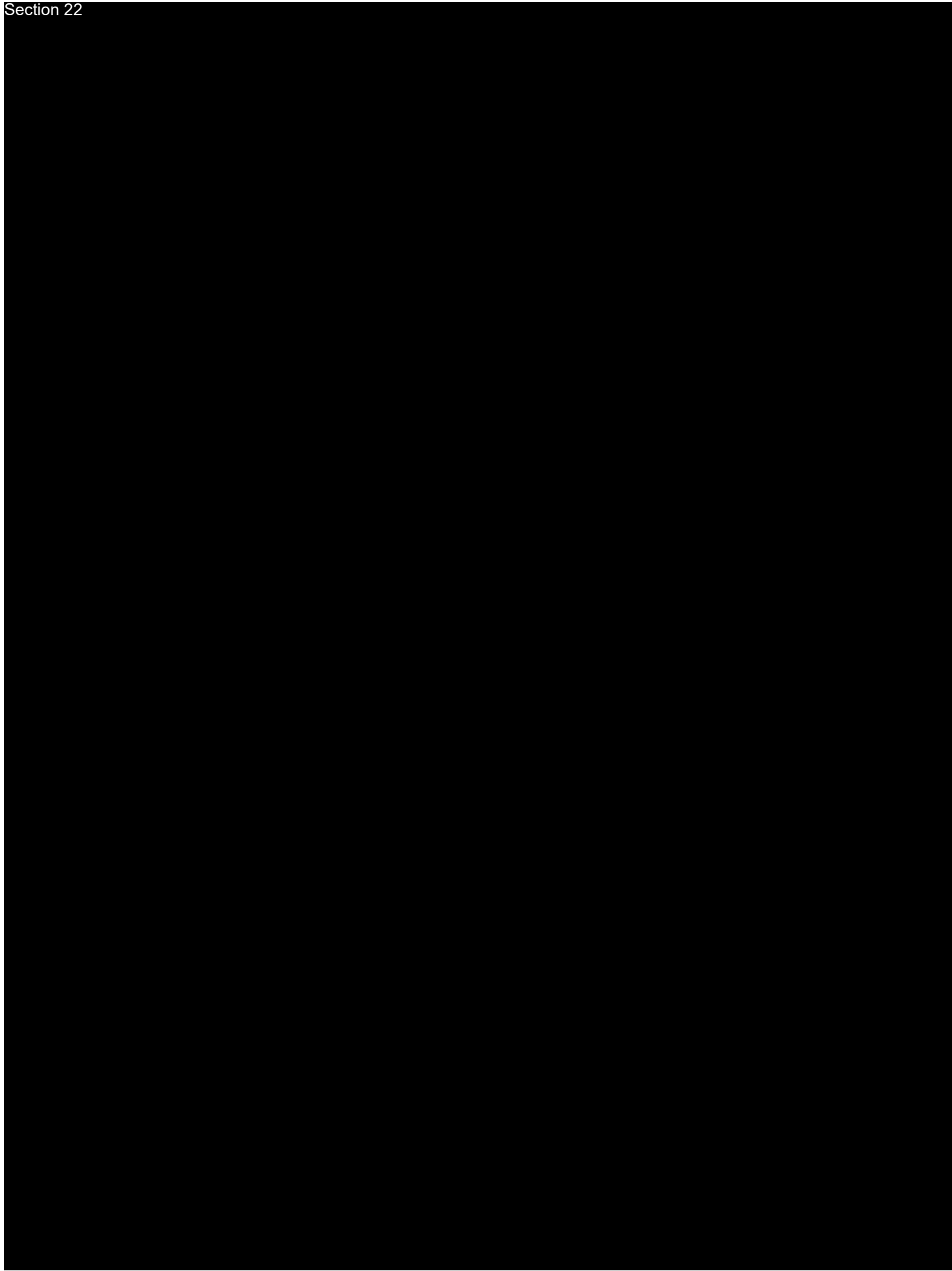
Static w image – hot spot(?) question mark with the answer

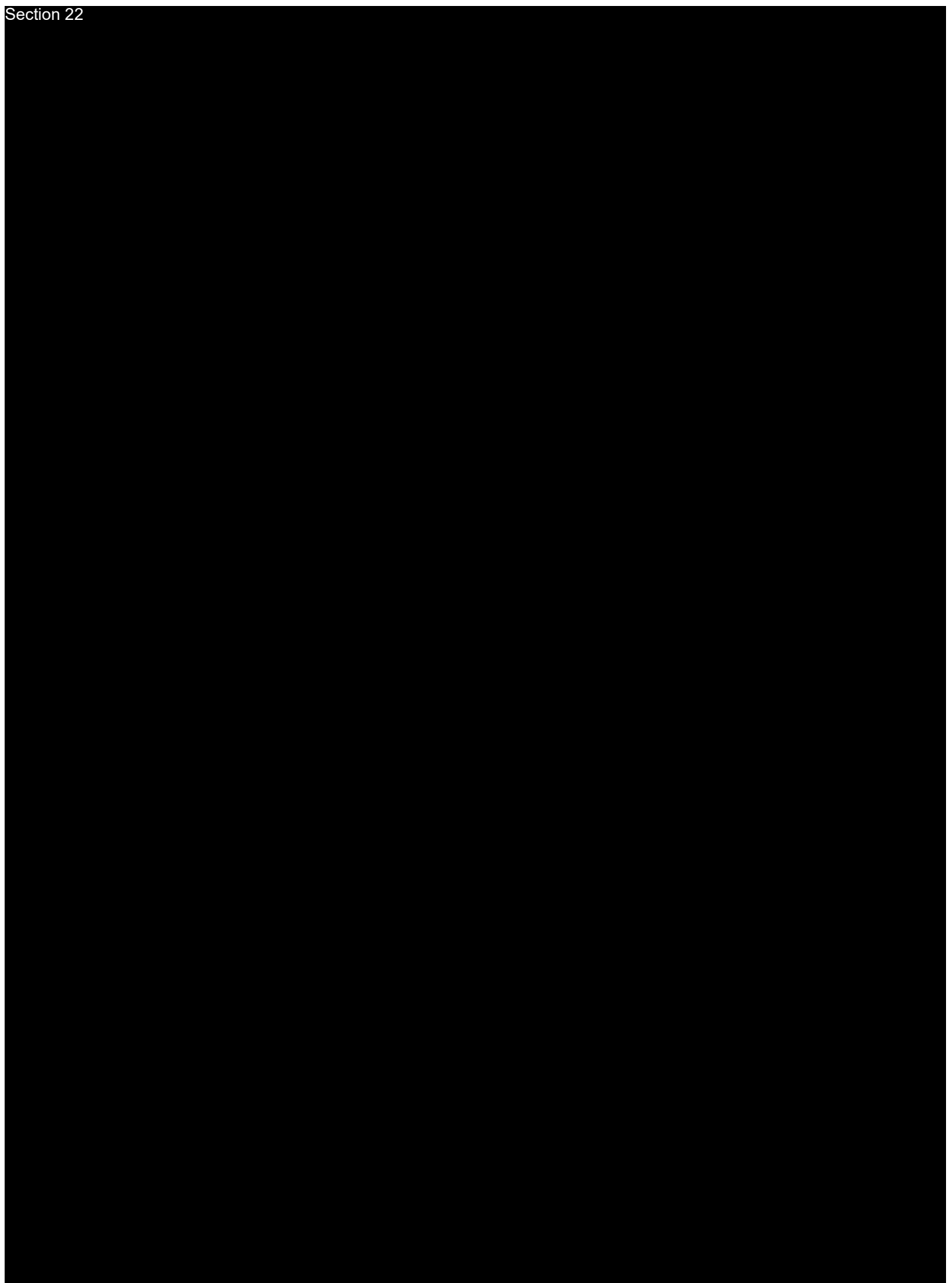
If a voter marks a ballot paper with words, symbols or figures or a language other than English, the ballot paper can be accepted if it is established that the voter's intention is clear.

Consider whether the ballot paper below is formal or not before clicking on them to see their formality.

Image	Answer
<p>Asset 43.png</p>  <p>Asset 43.png</p>	<p>This ballot paper is informal. A cross can be construed as a yes or no, therefore the intention of the voter is unclear.</p>
<p>Asset 35.png</p>  <p>Asset 35.png</p>	<p>This ballot paper is formal. A tick can be construed as a yes.</p>



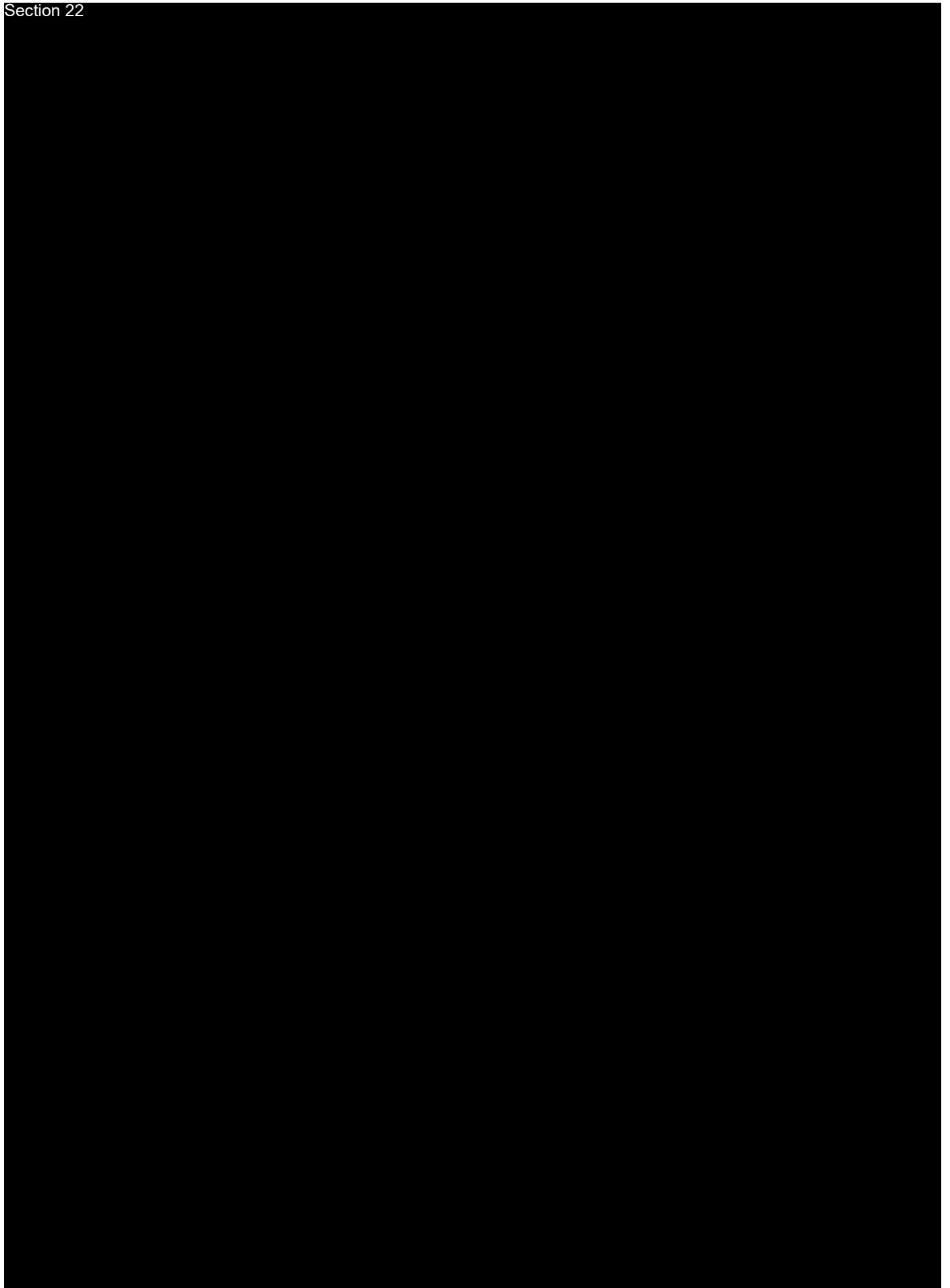


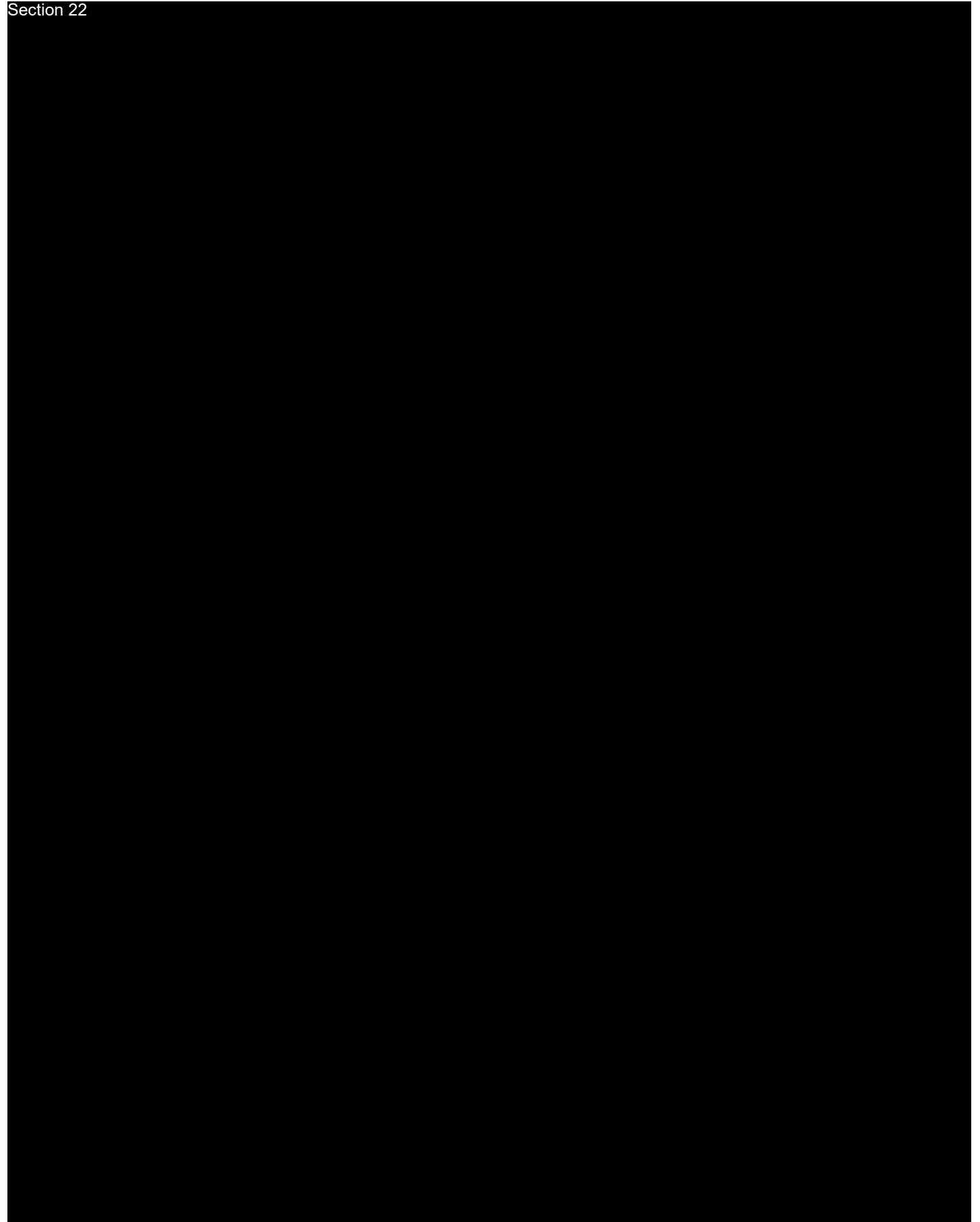


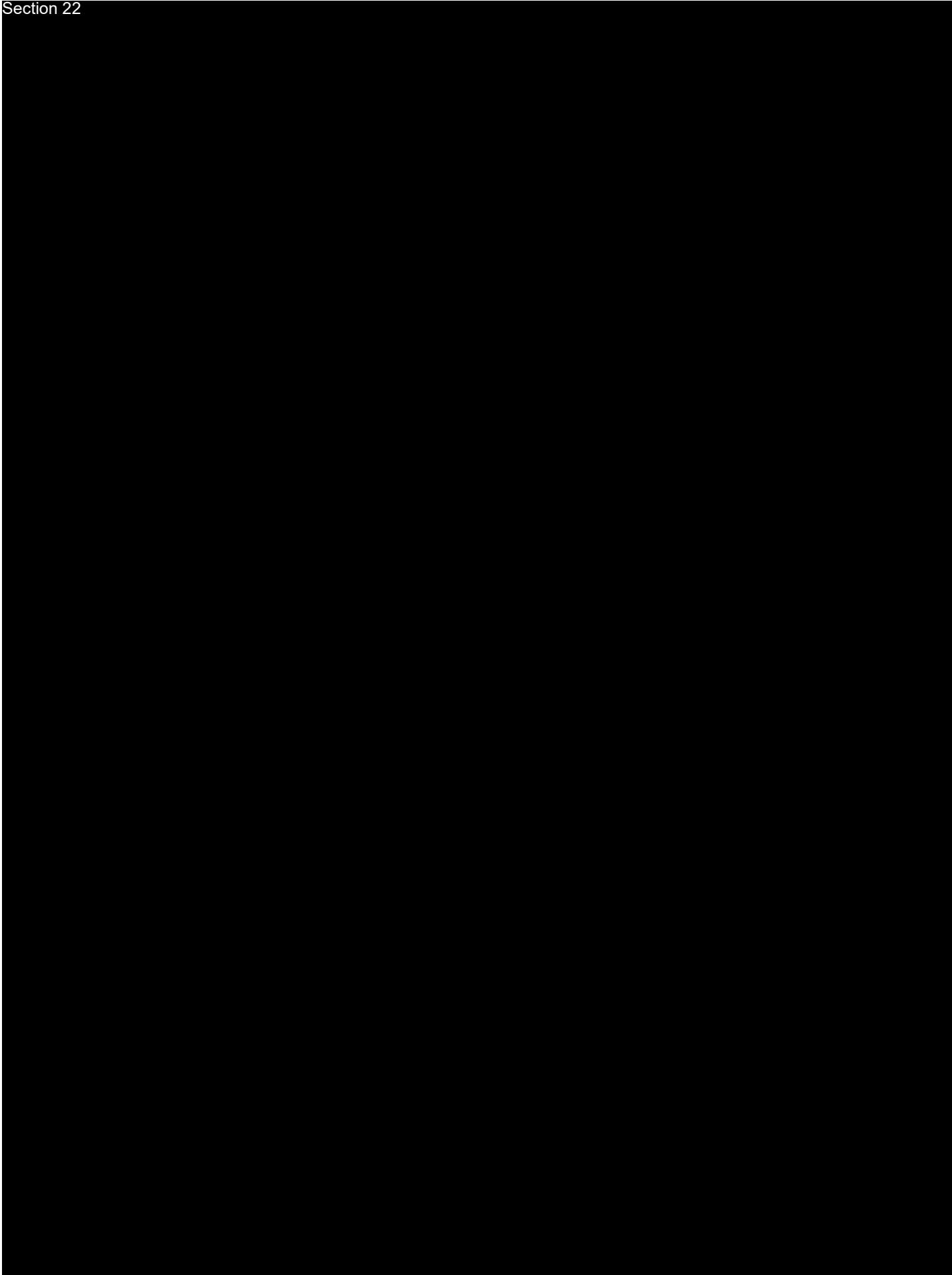
5 July 2023

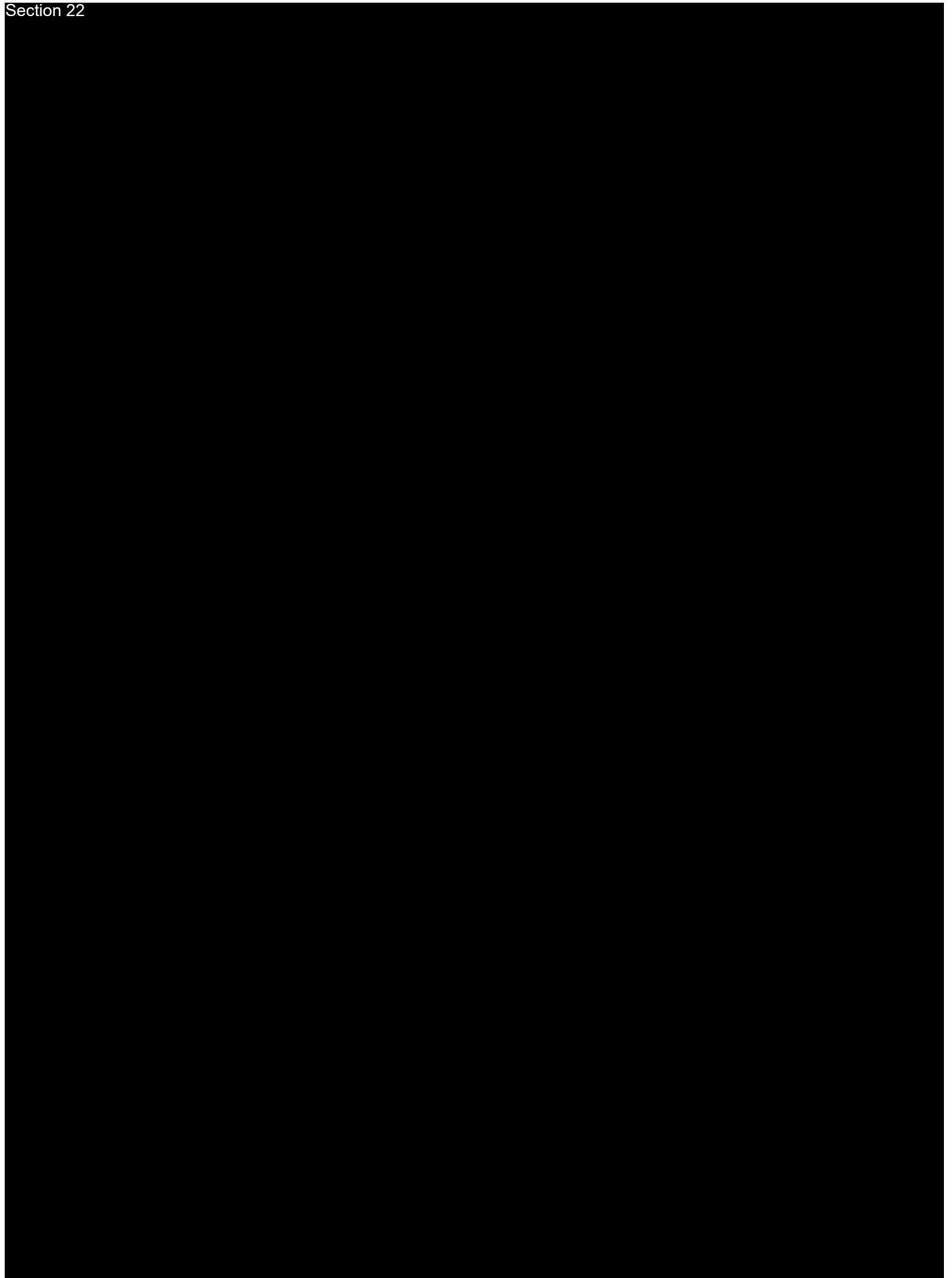
Working in an out-posted centre

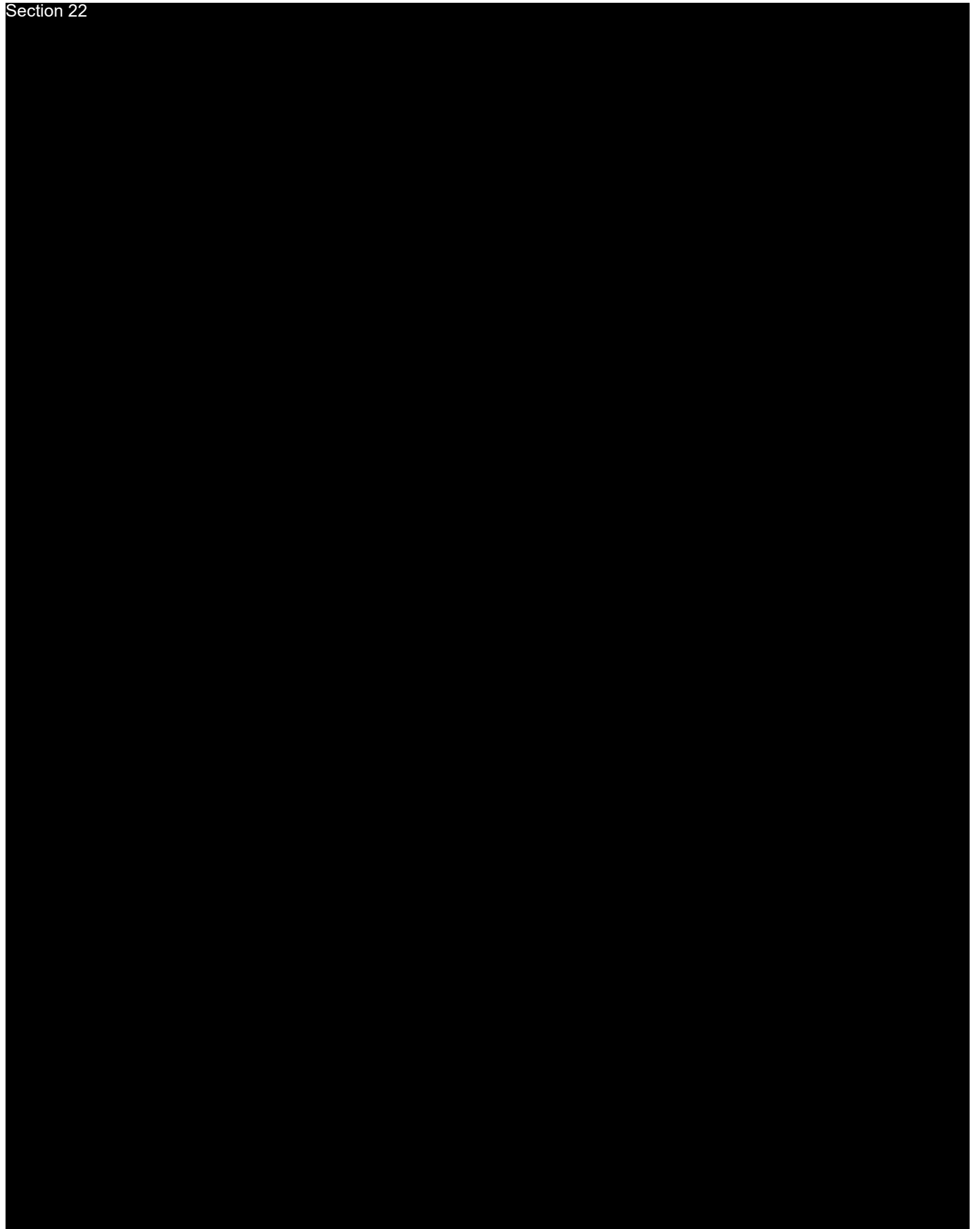
REF616 Fresh scrutiny count supervisor

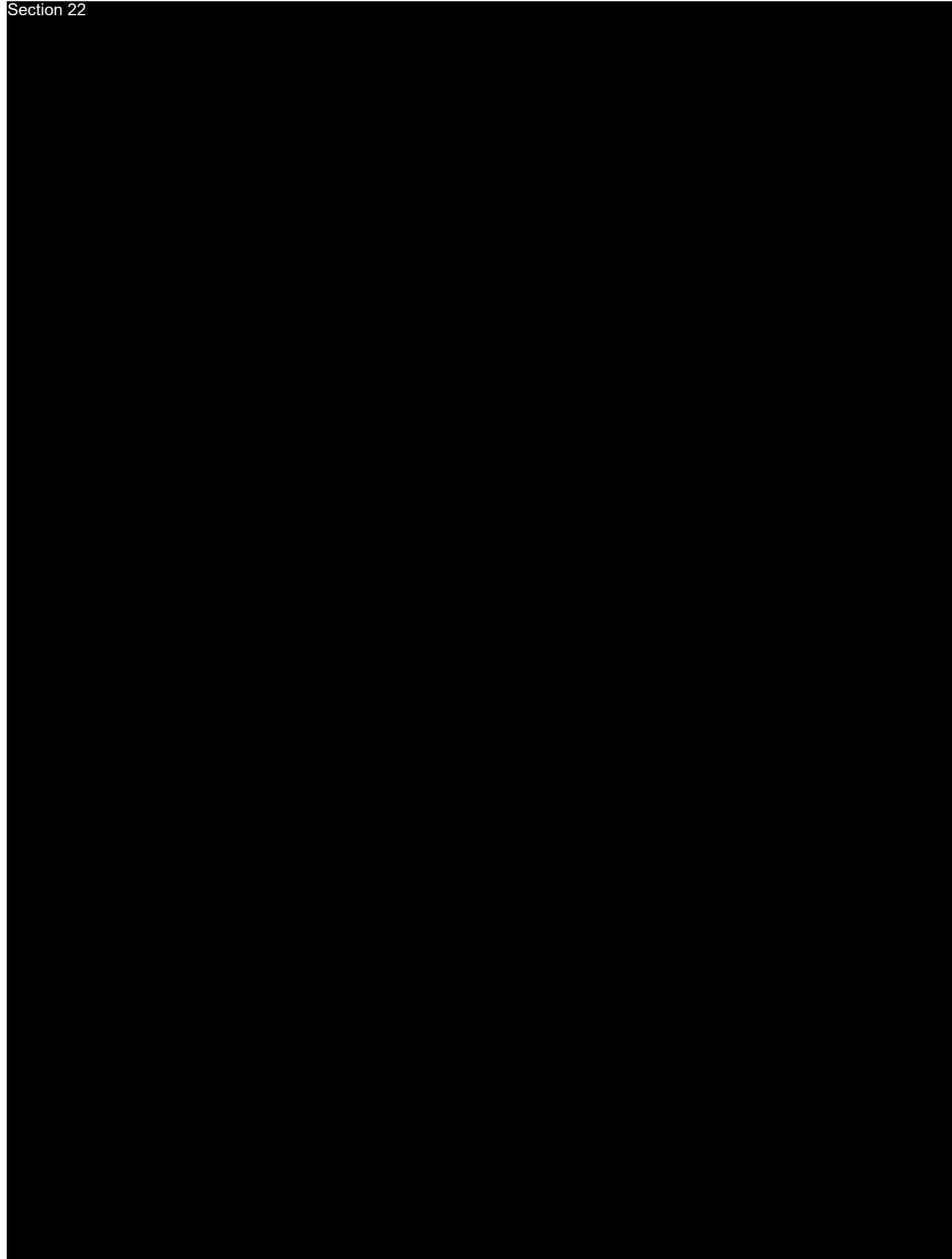


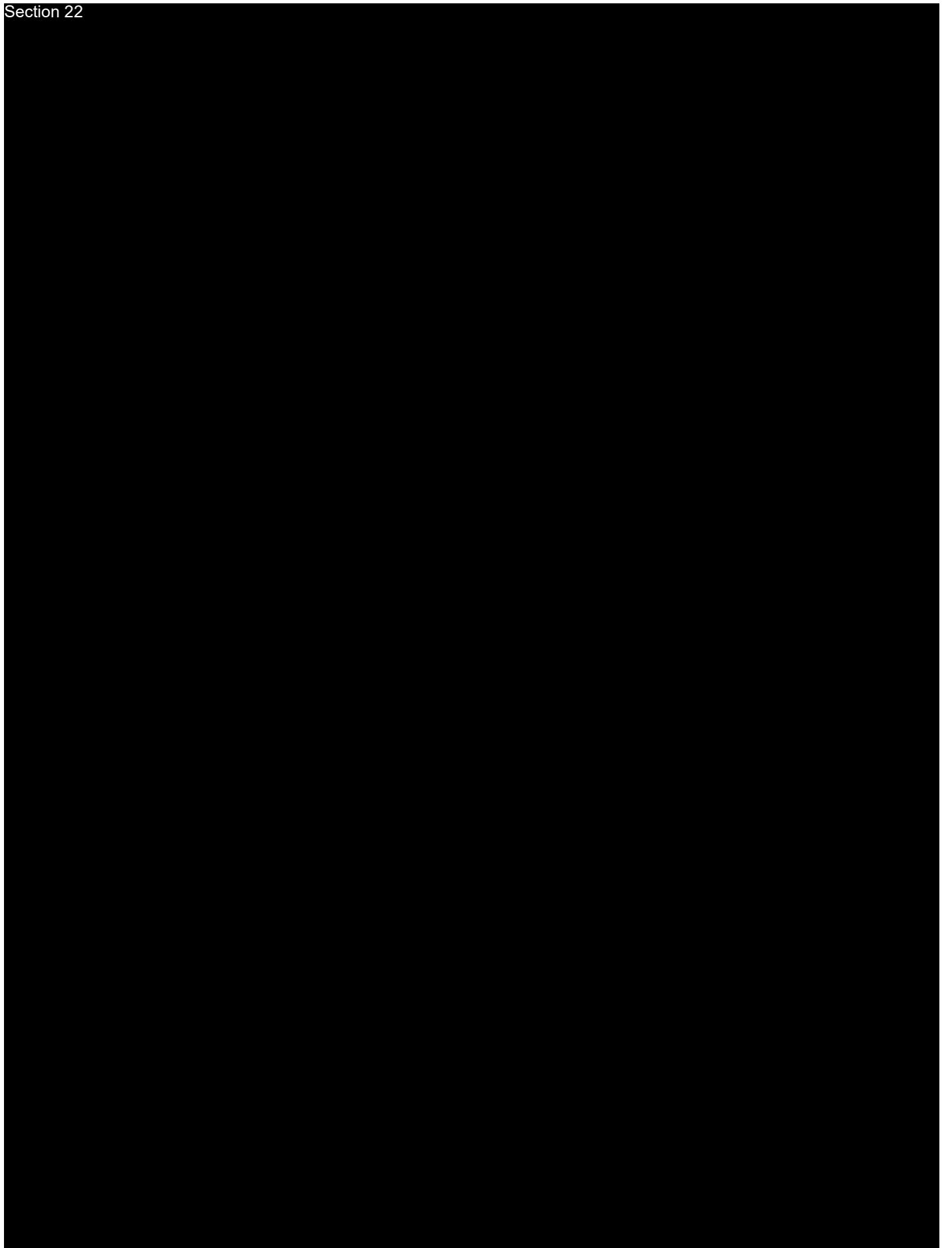


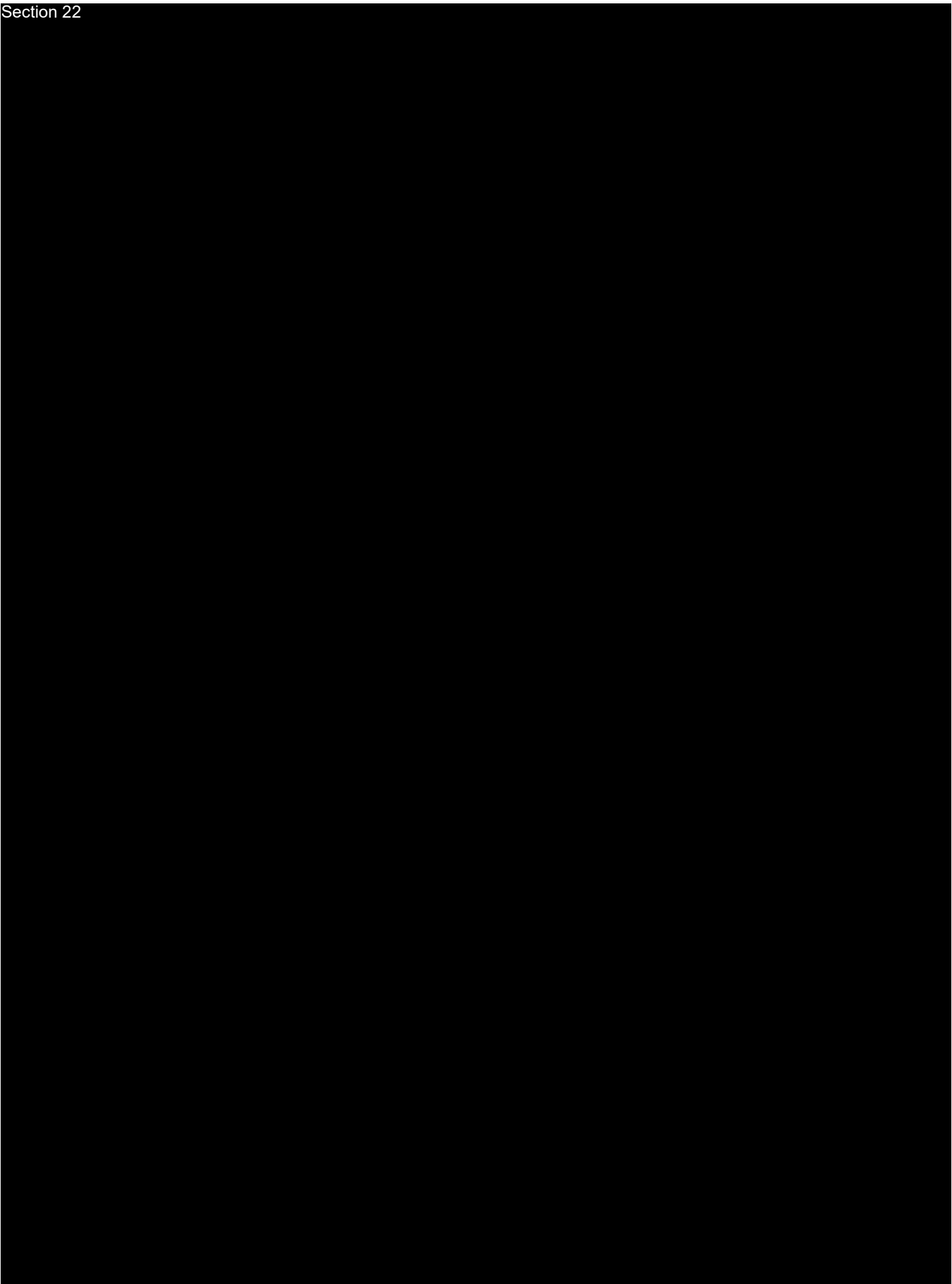


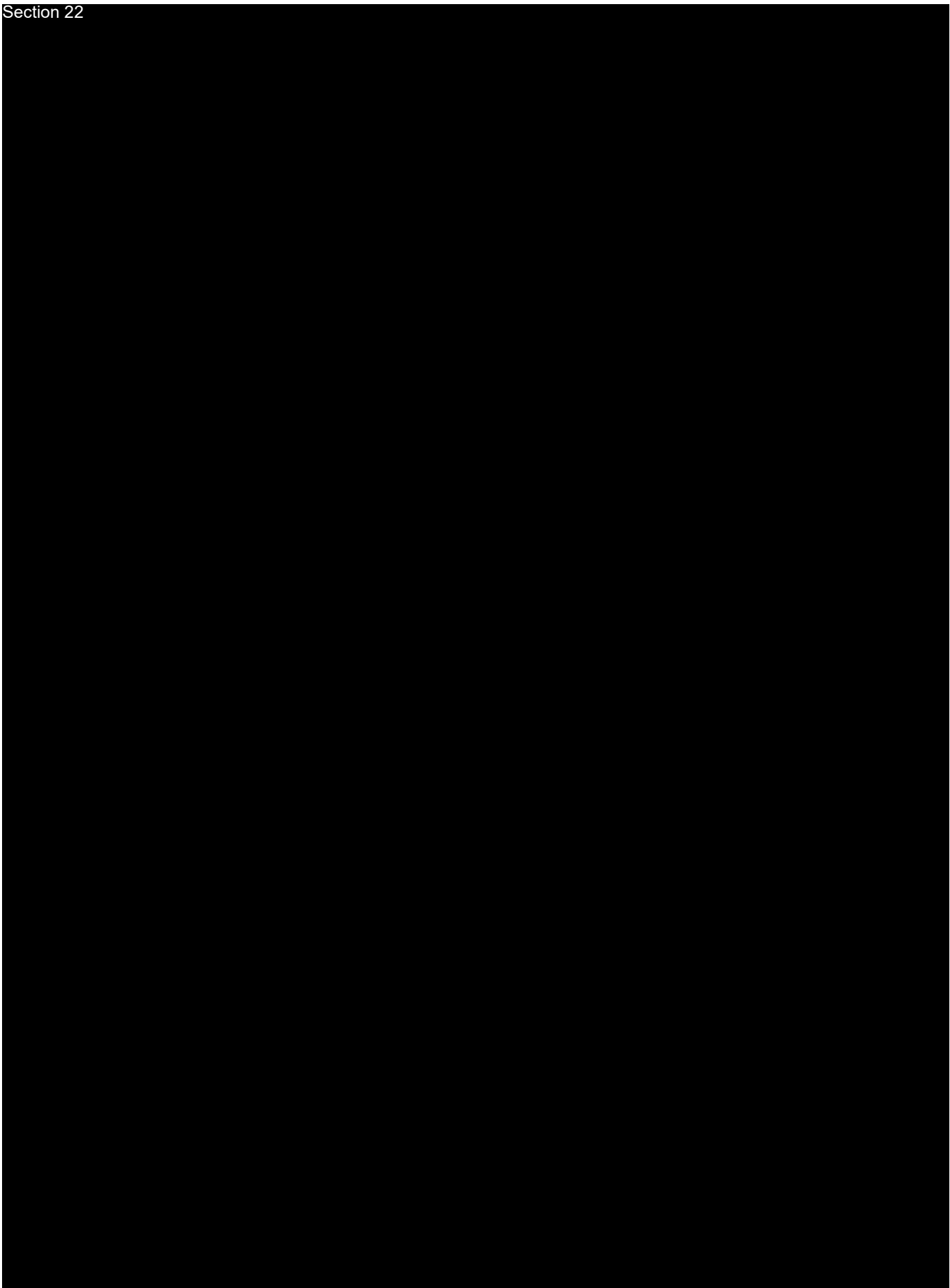


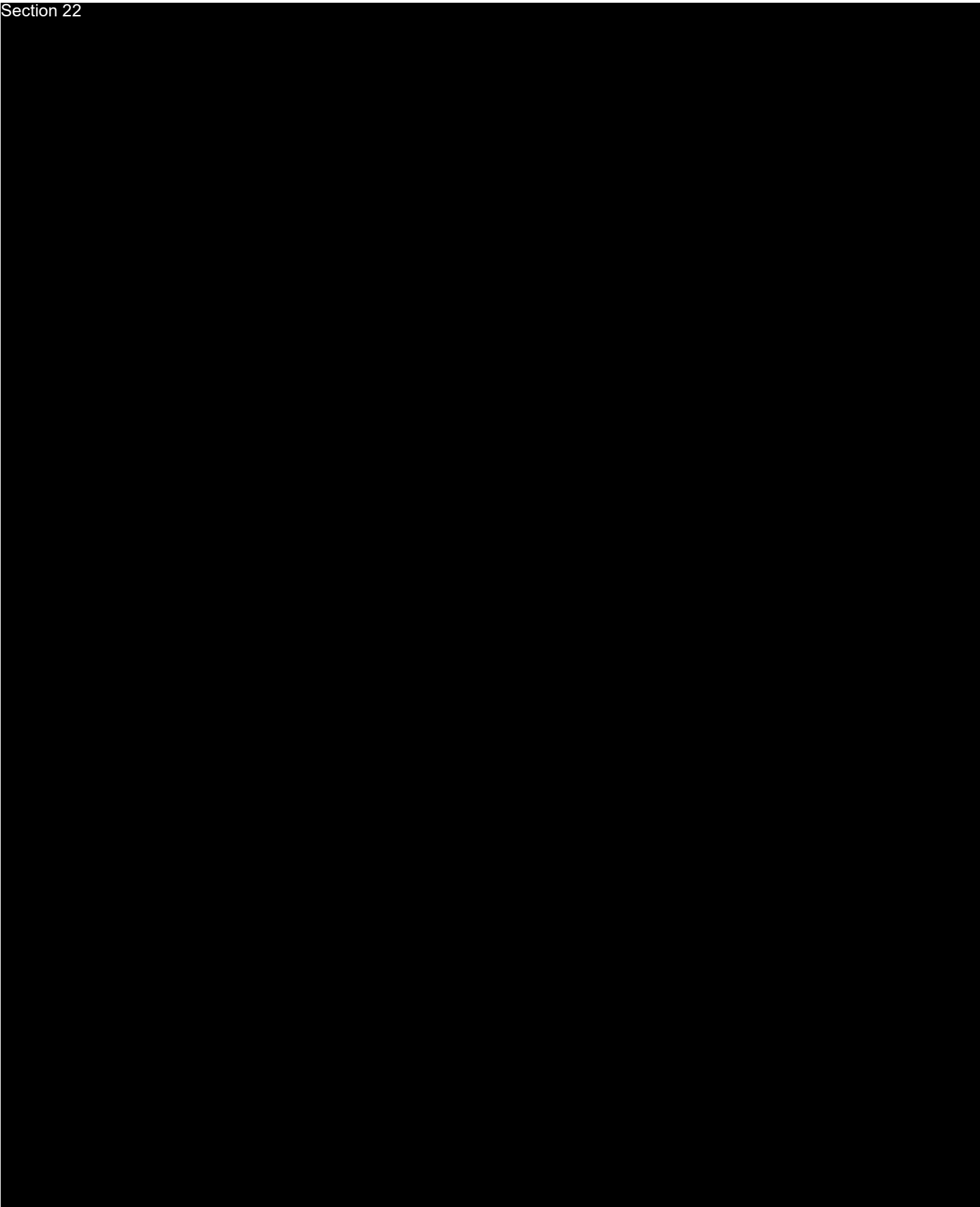













Informal ballot papers	A ballot paper will be informal if any of the following apply:	Asset 49.png
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	<p>Section 22</p> <p>■ [REDACTED]</p> <p>■ a cross is used on a referendum ballot paper which has only one question, since a cross on its own may mean either 'Yes' or 'No'.</p> <p>Section 22</p> <p>[REDACTED]</p>	 <p>Asset 49.png</p>
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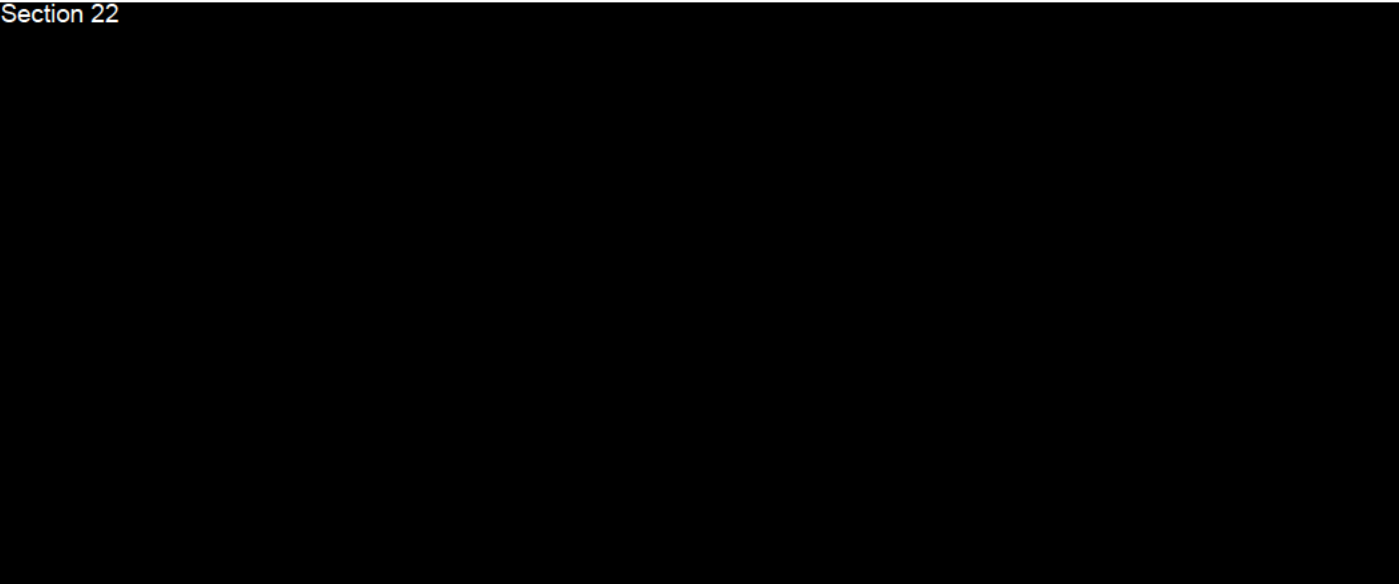
3.2. Use of multiple marks

Static standard

If a voter has marked a ballot paper in numerous ways with no conflicting answers given, the vote is formal. For example, a tick and a 'Yes' in the one box will be formal, as the intention of the voter is to indicate agreement for the question. If the voter's intention is clear, the ballot paper can still be considered formal.

Section 22

[REDACTED]





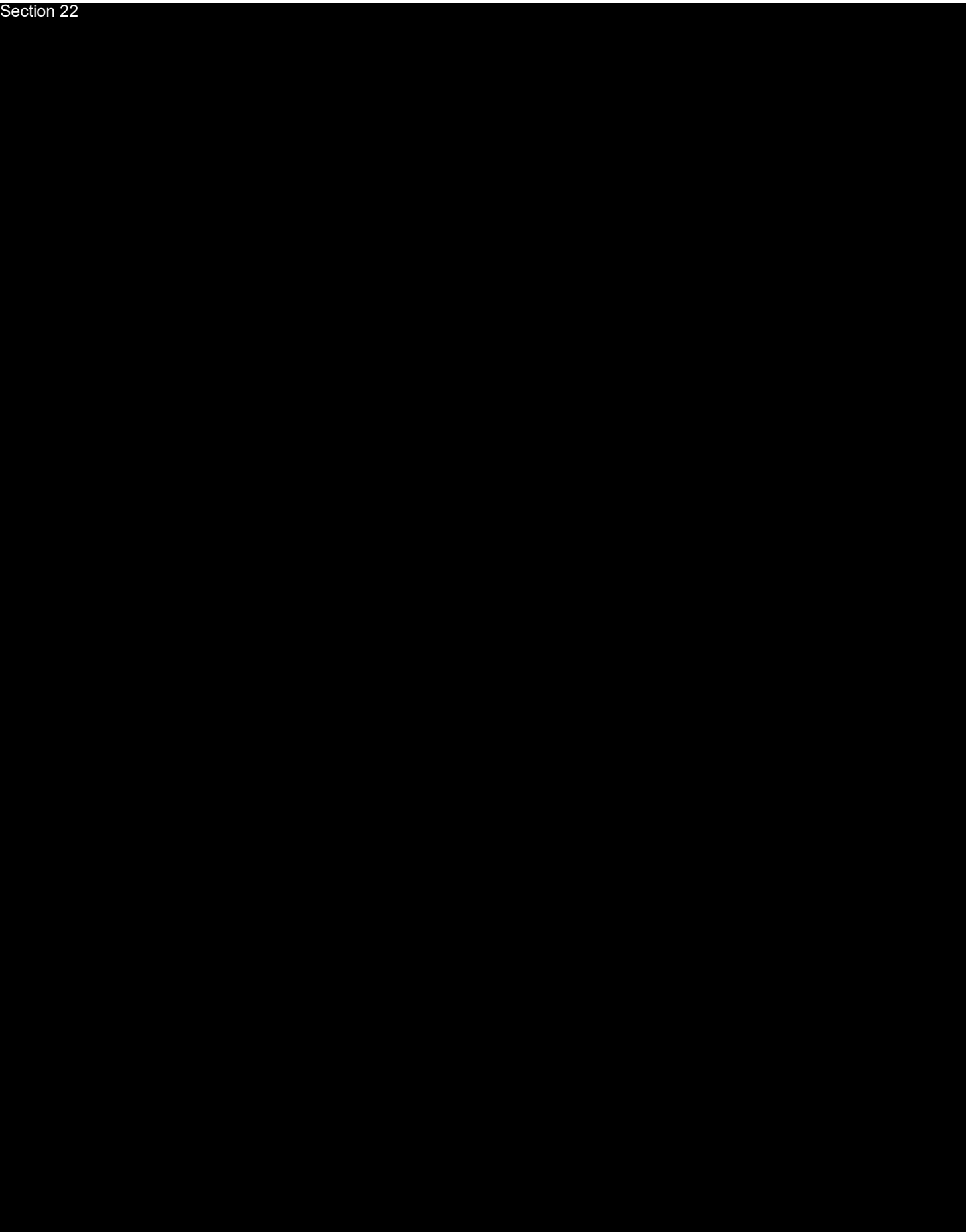
3.4. Use of symbols on ballot paper

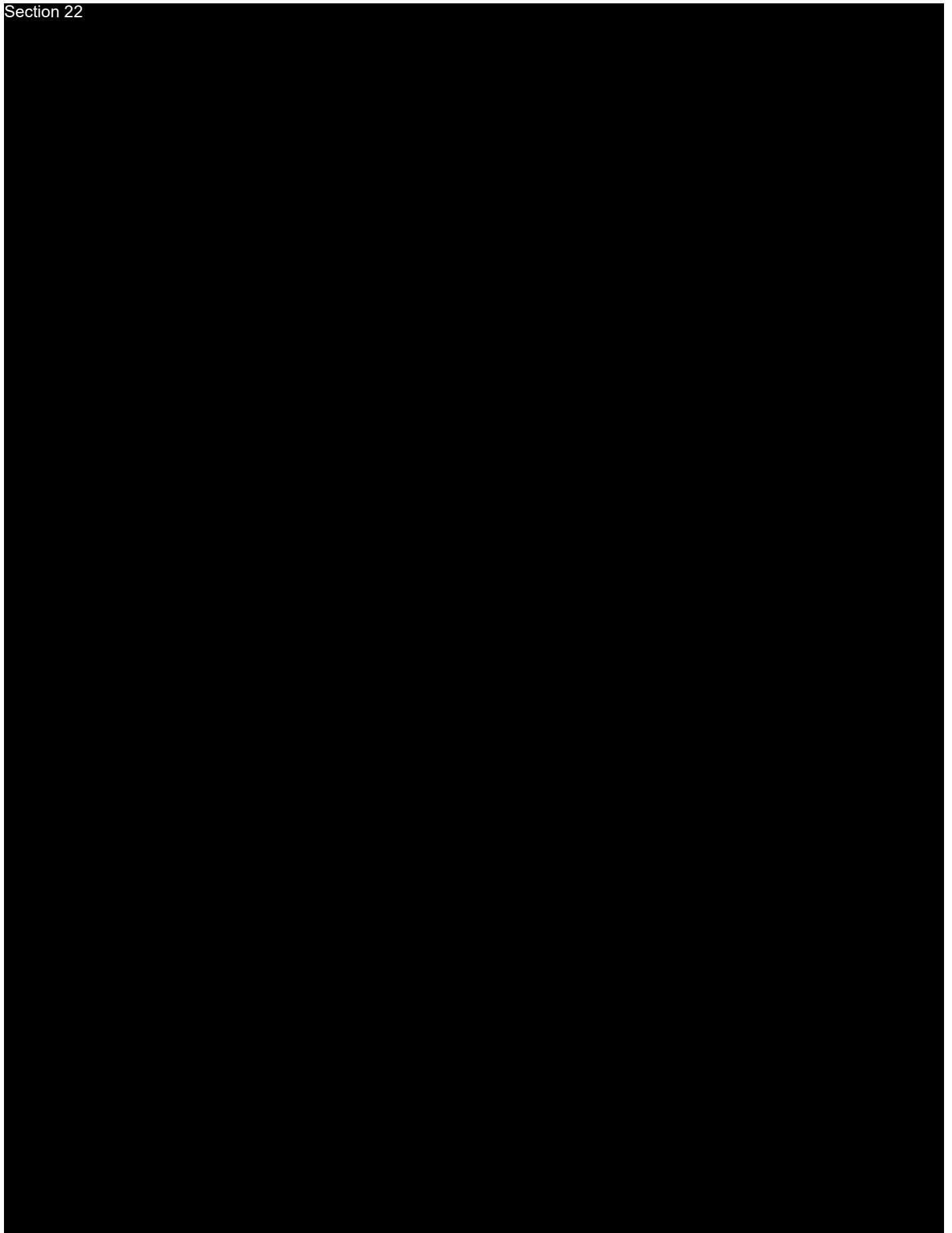
Static standard

If a voter marks a ballot paper with words, symbols or figures or a language other than English, the ballot paper can be accepted if it is established that the voter’s intention is clear.

Consider whether the ballot papers below are formal or not before clicking on them to see their formality.

Image	Alt text
<div>Asset 43.png</div> <div></div> <div>Asset 43.png</div>	This ballot paper is informal. A cross can be construed as a yes or no, therefore the intention of the voter is unclear.
<div>Asset 35.png</div> <div></div> <div>Asset 35.png</div>	This ballot paper is formal. A tick can be construed as a yes.





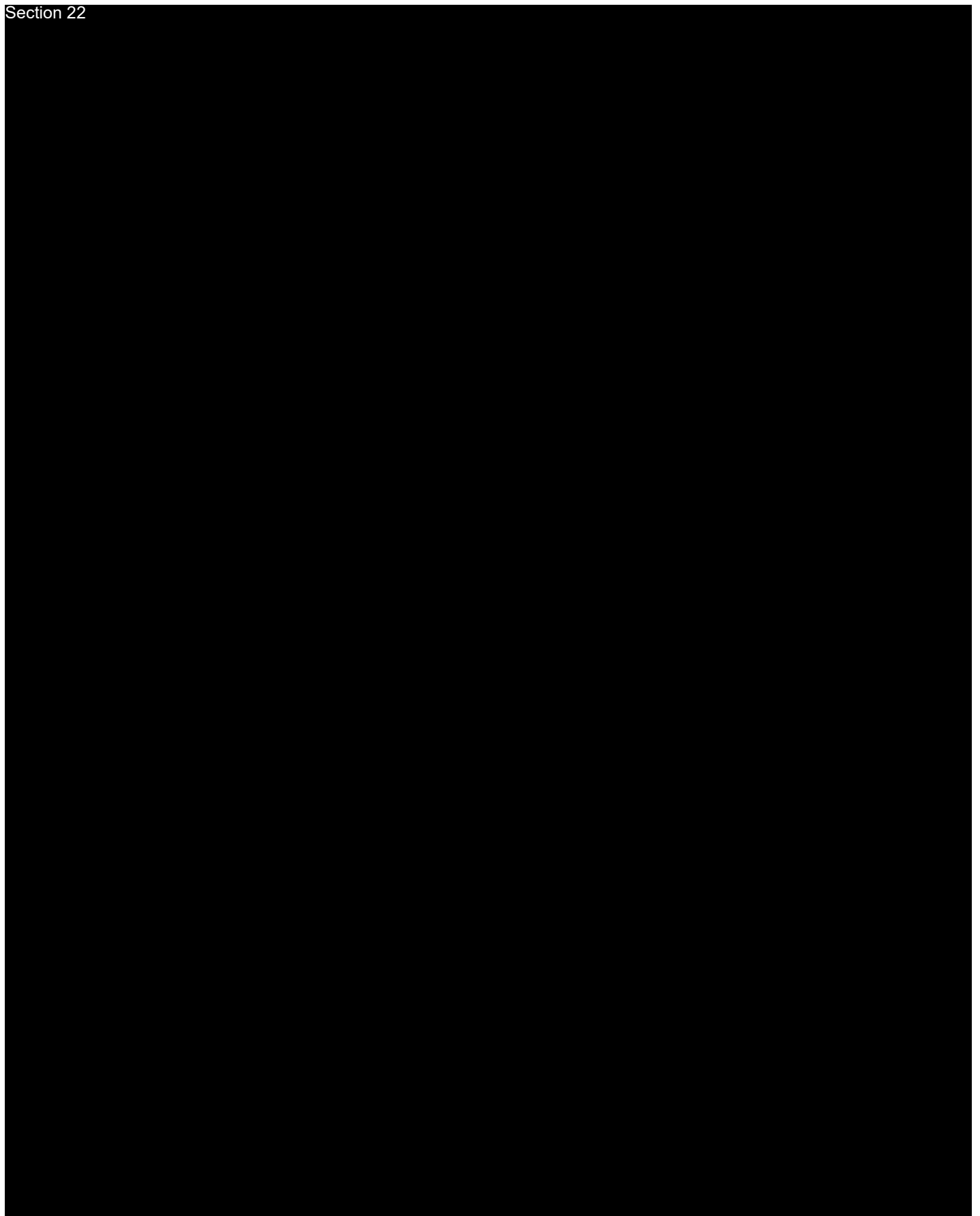


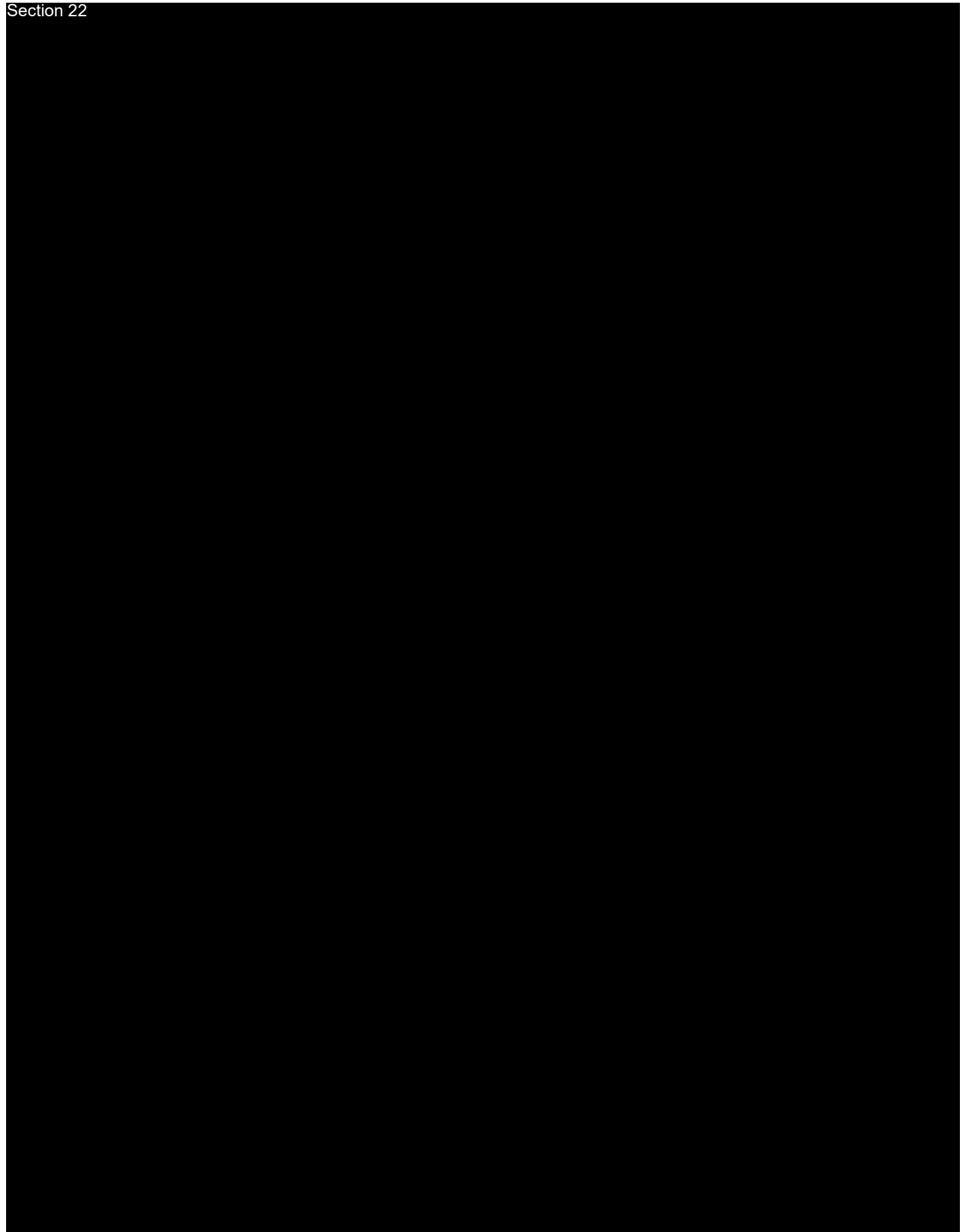
August 2023

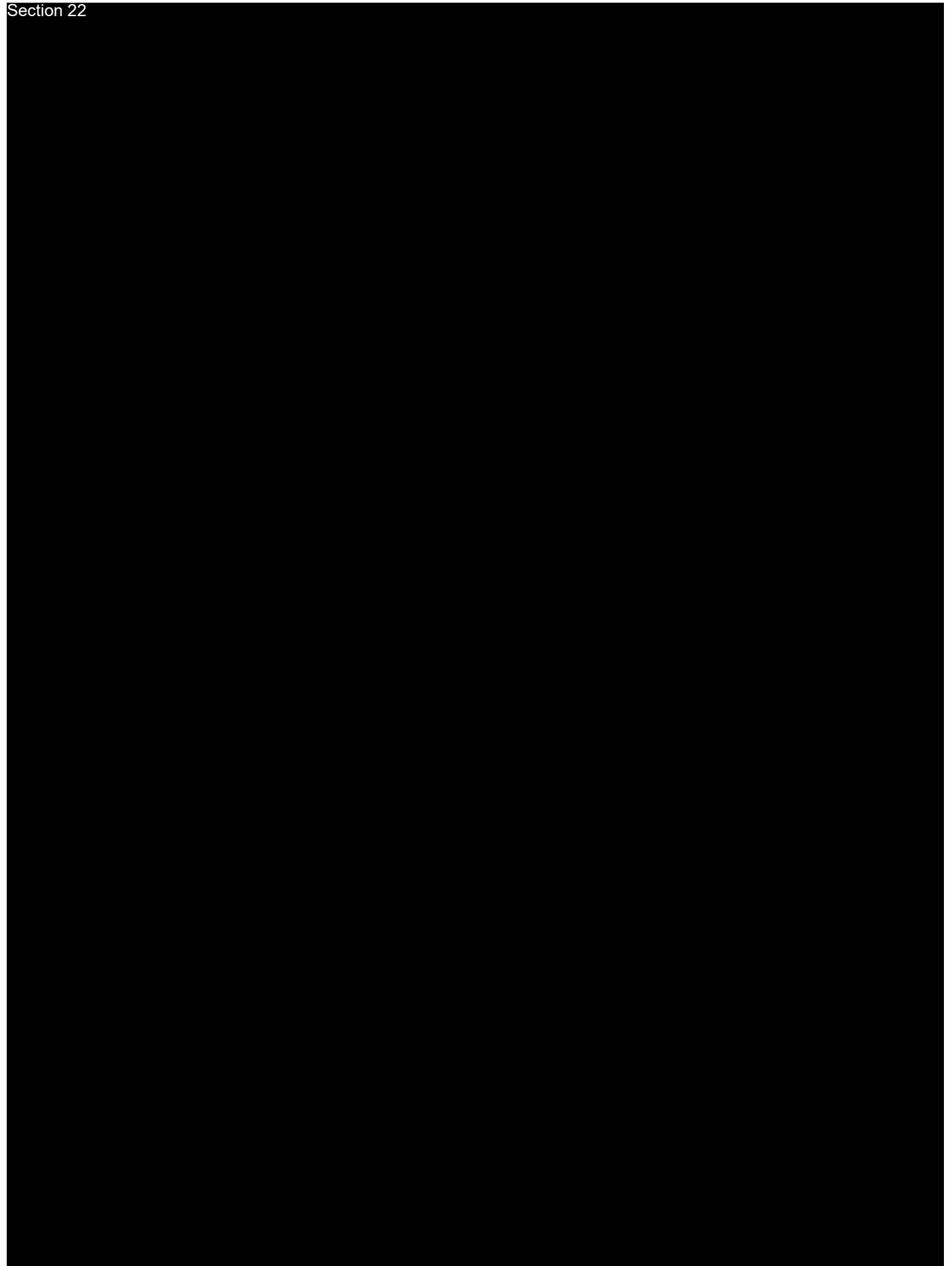
Remote mobile

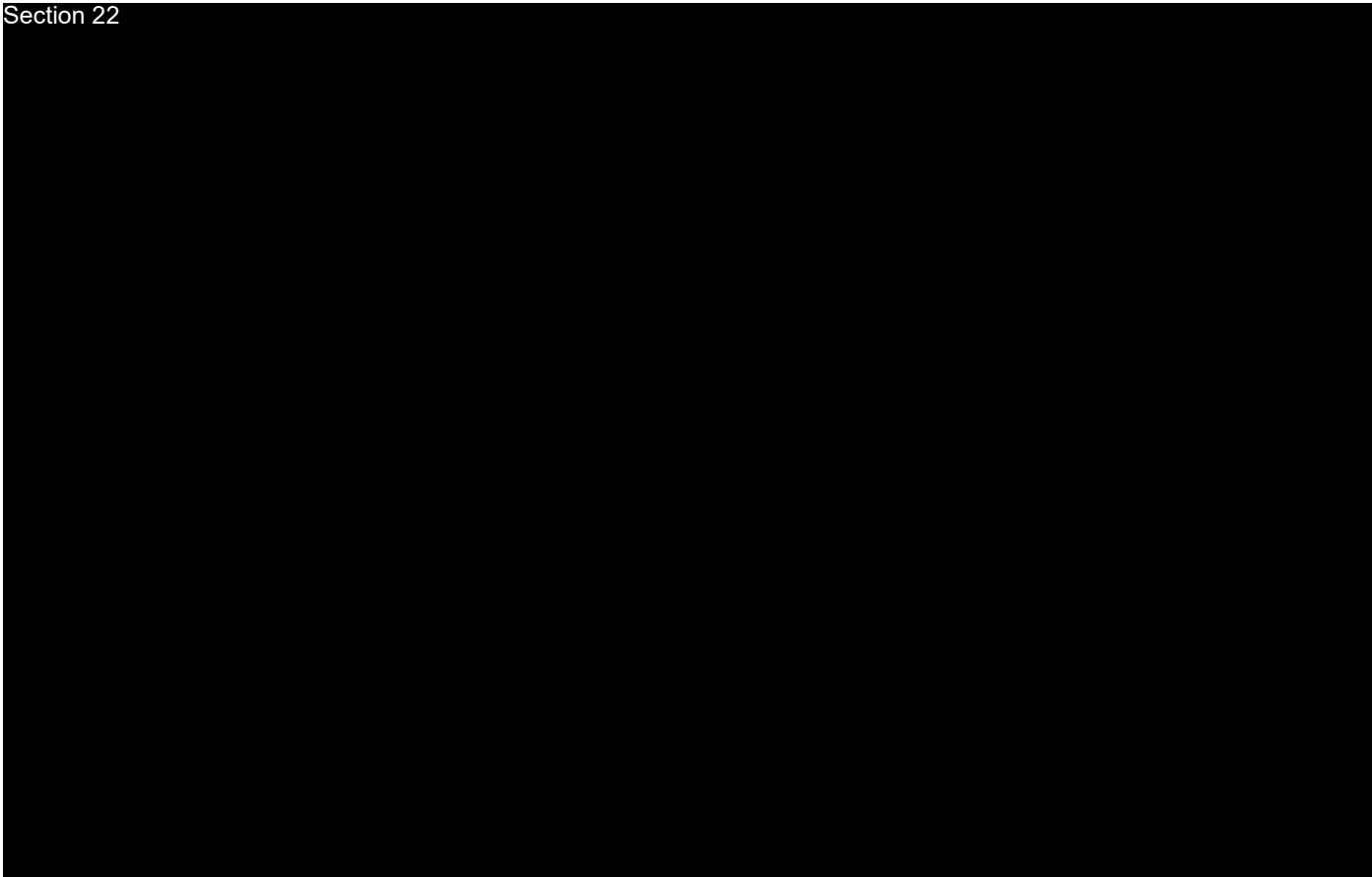
Training session plan

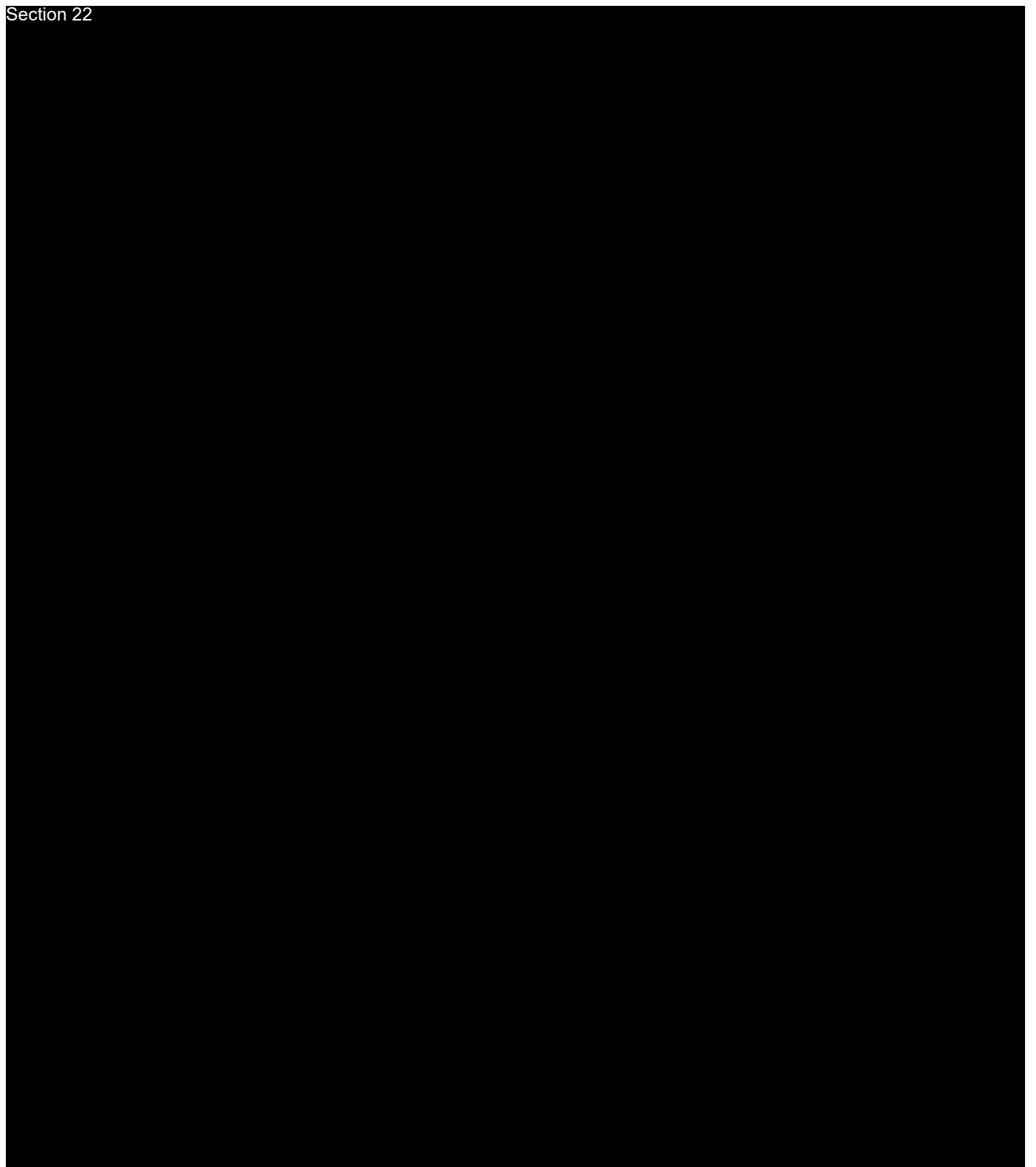
Referendum instructional training

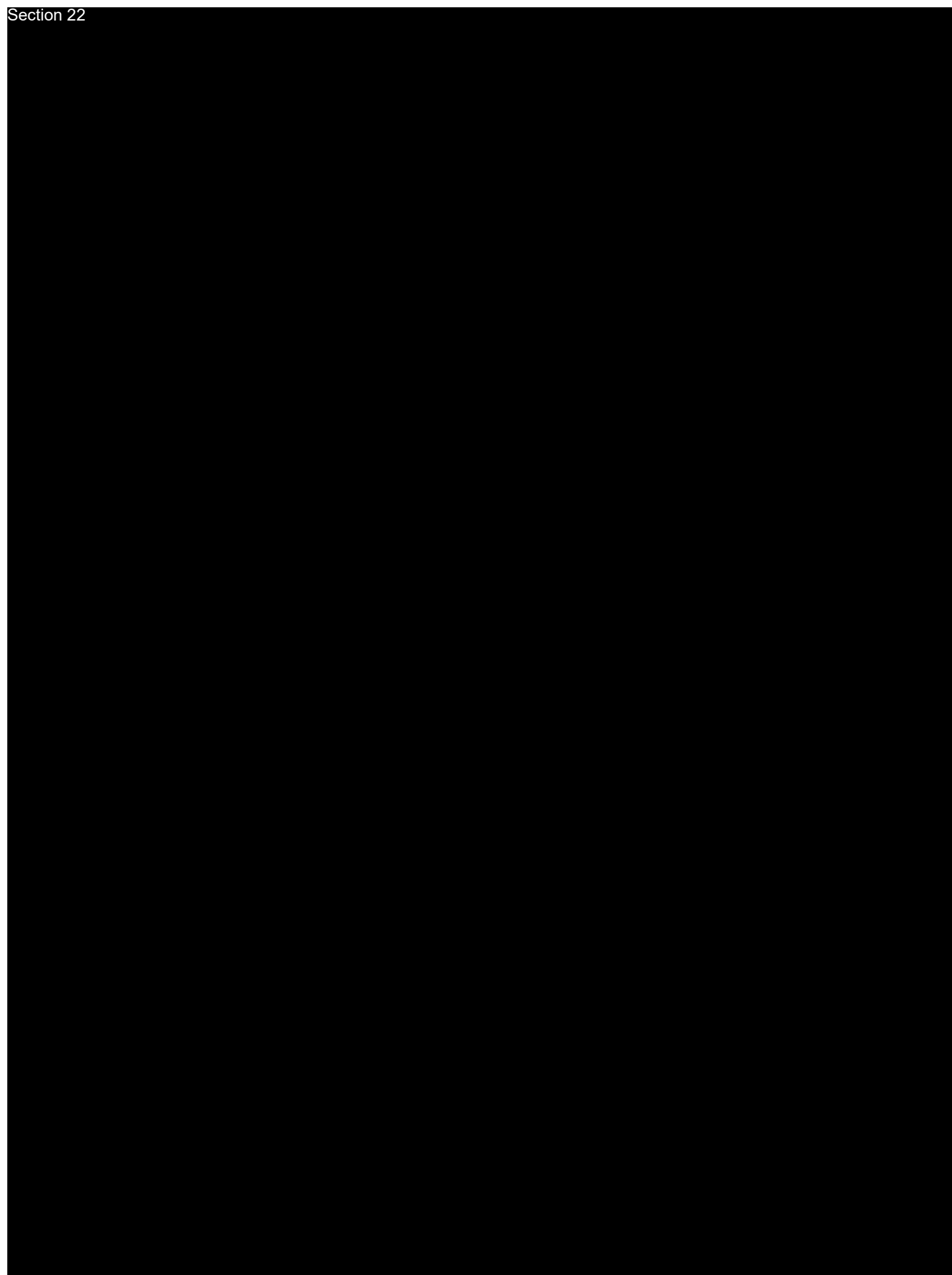




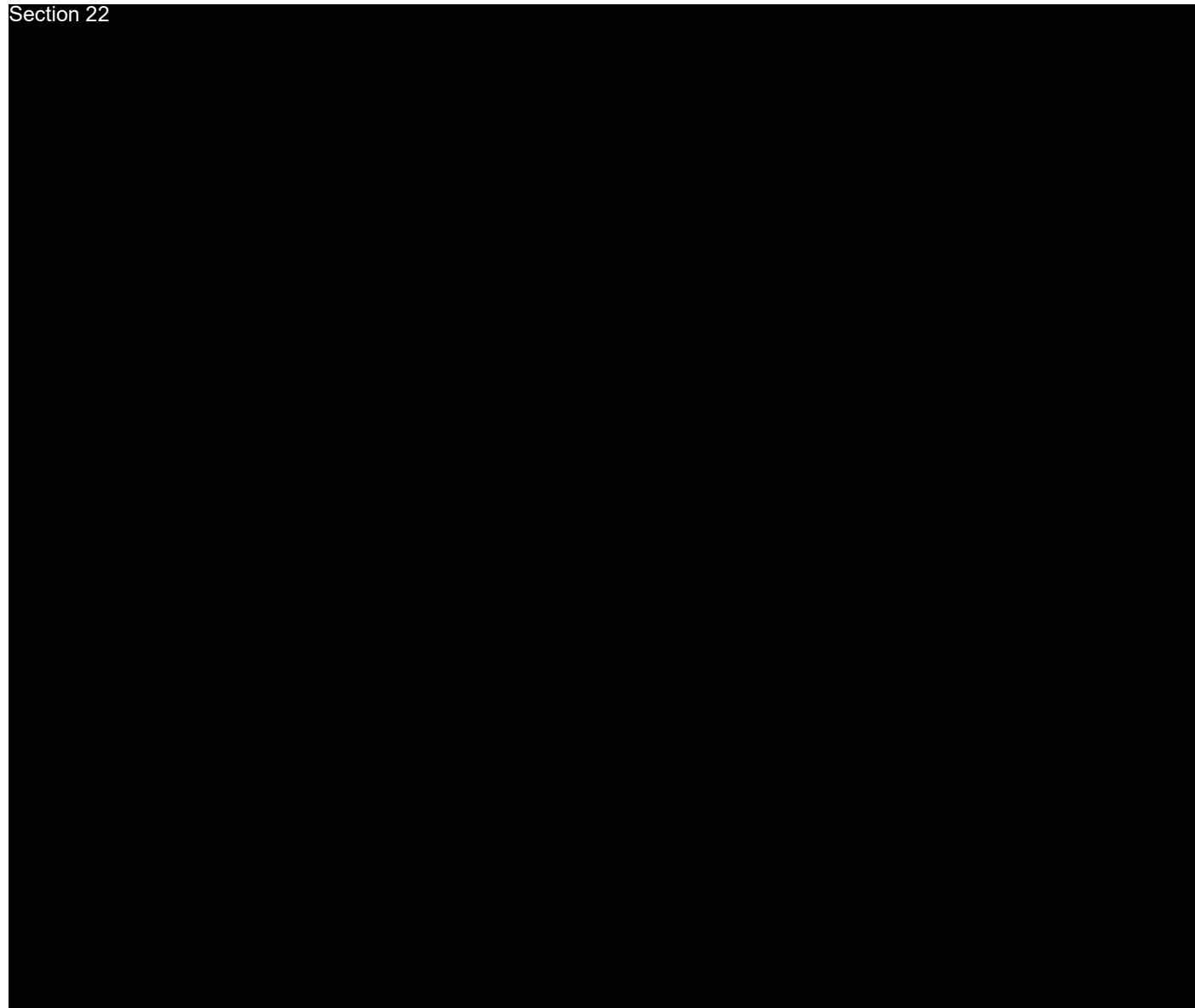


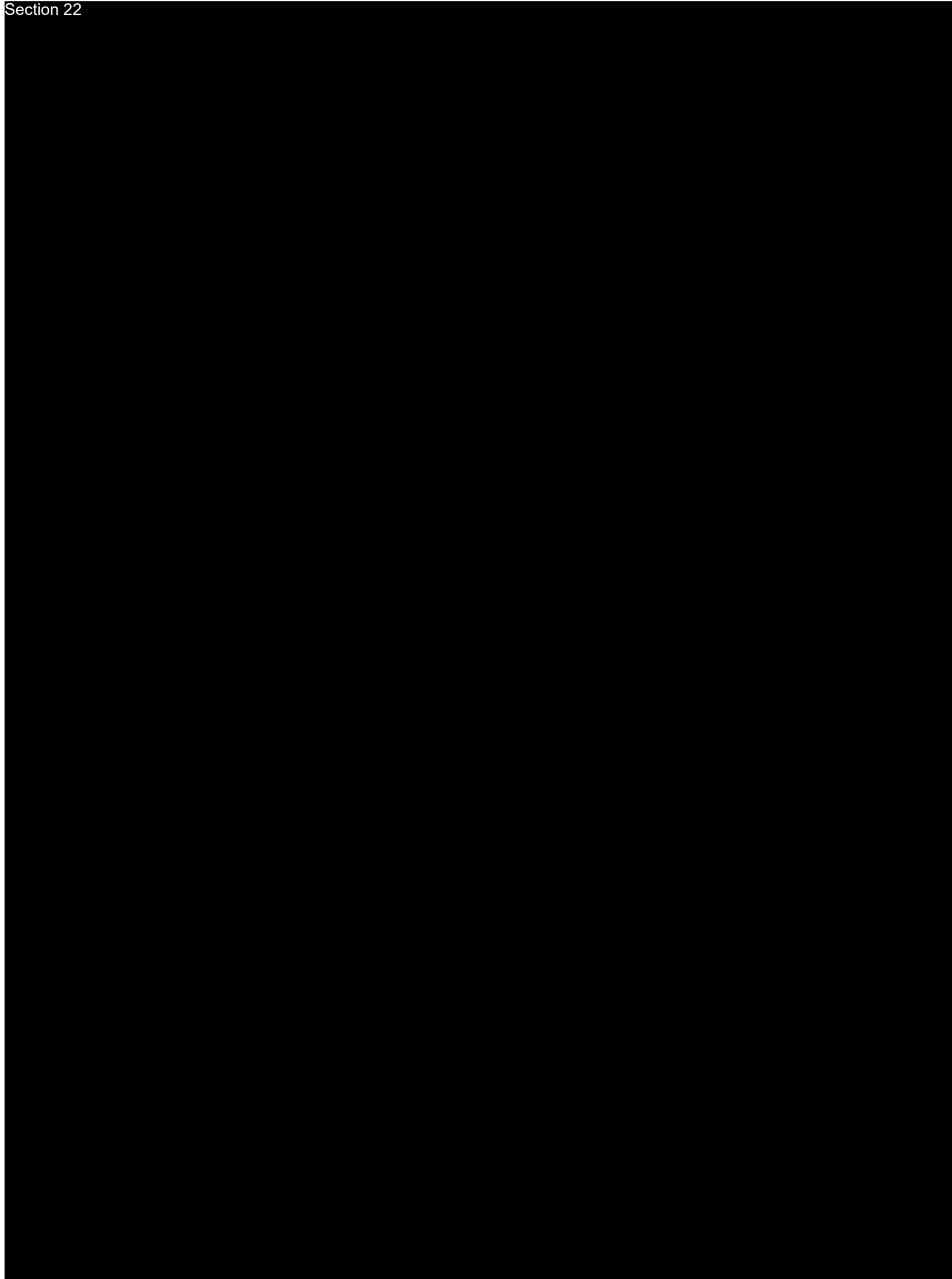


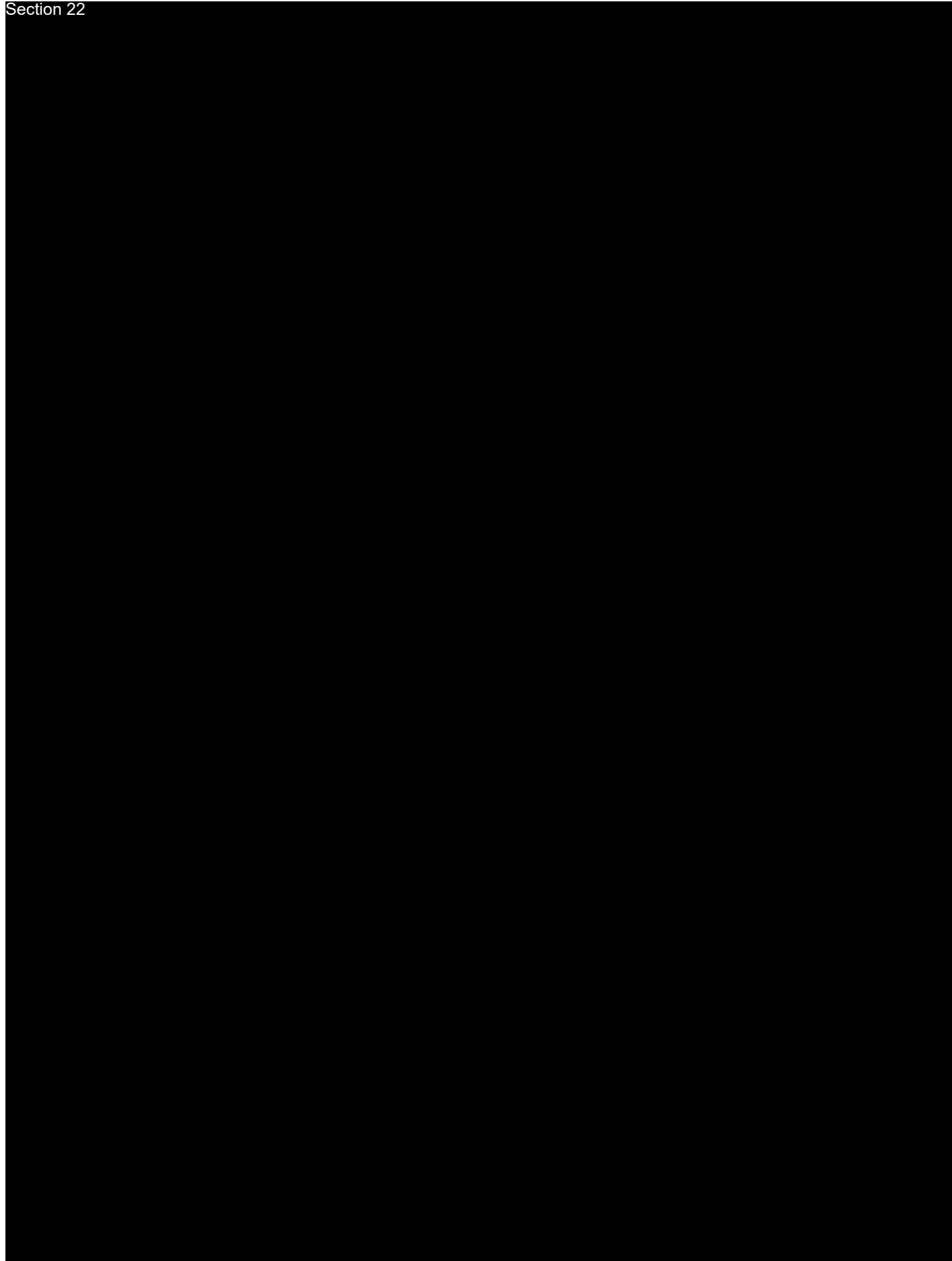


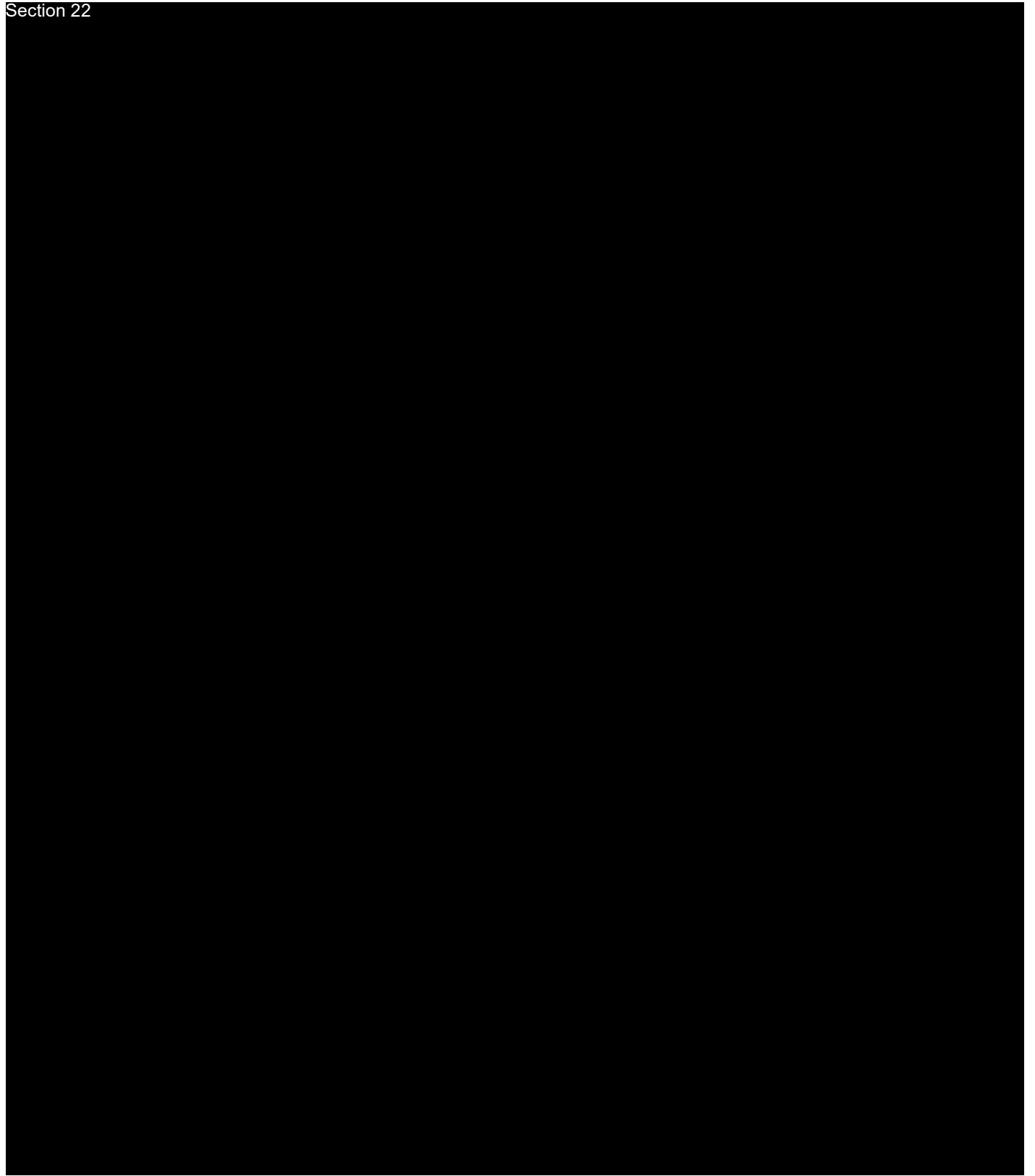


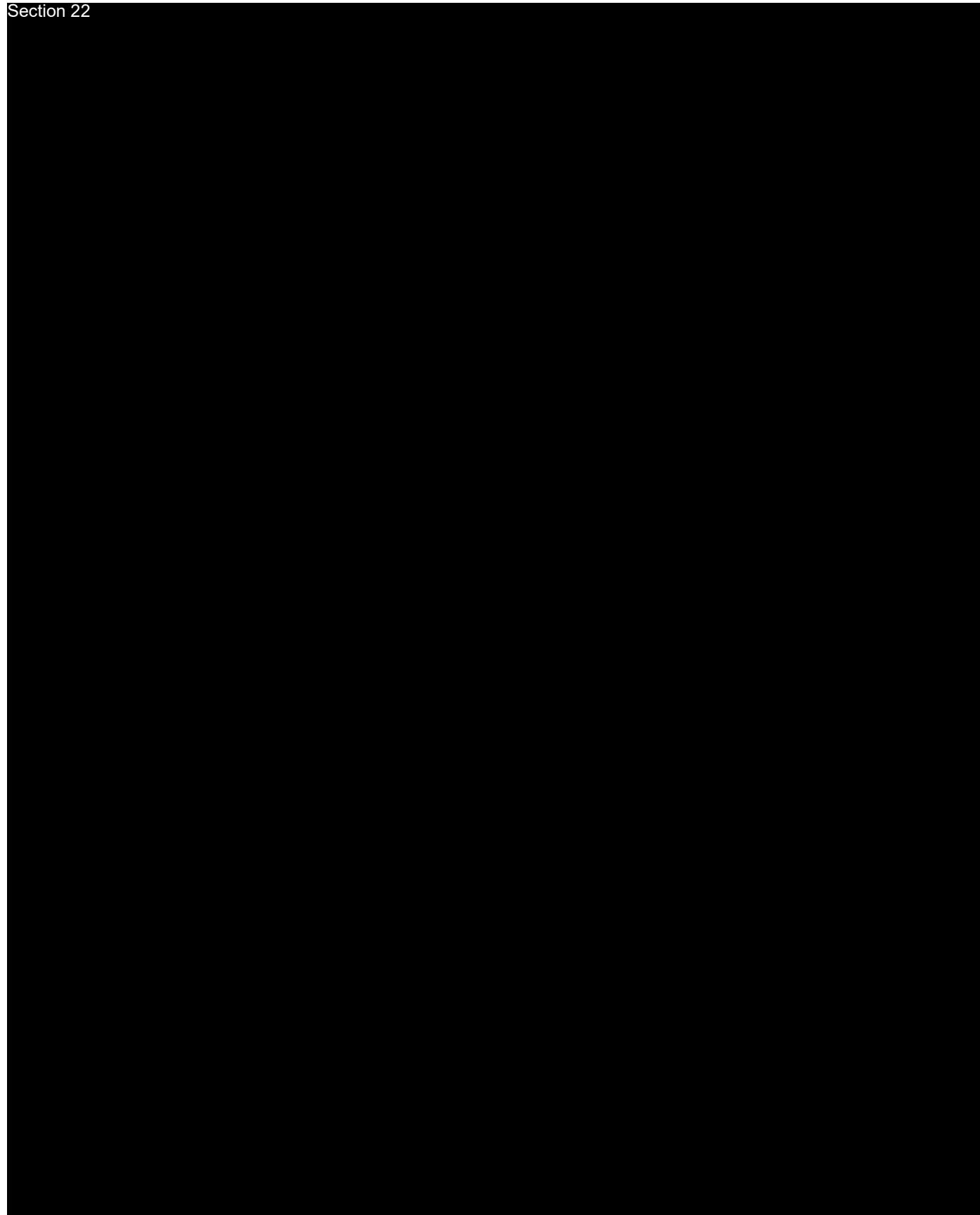


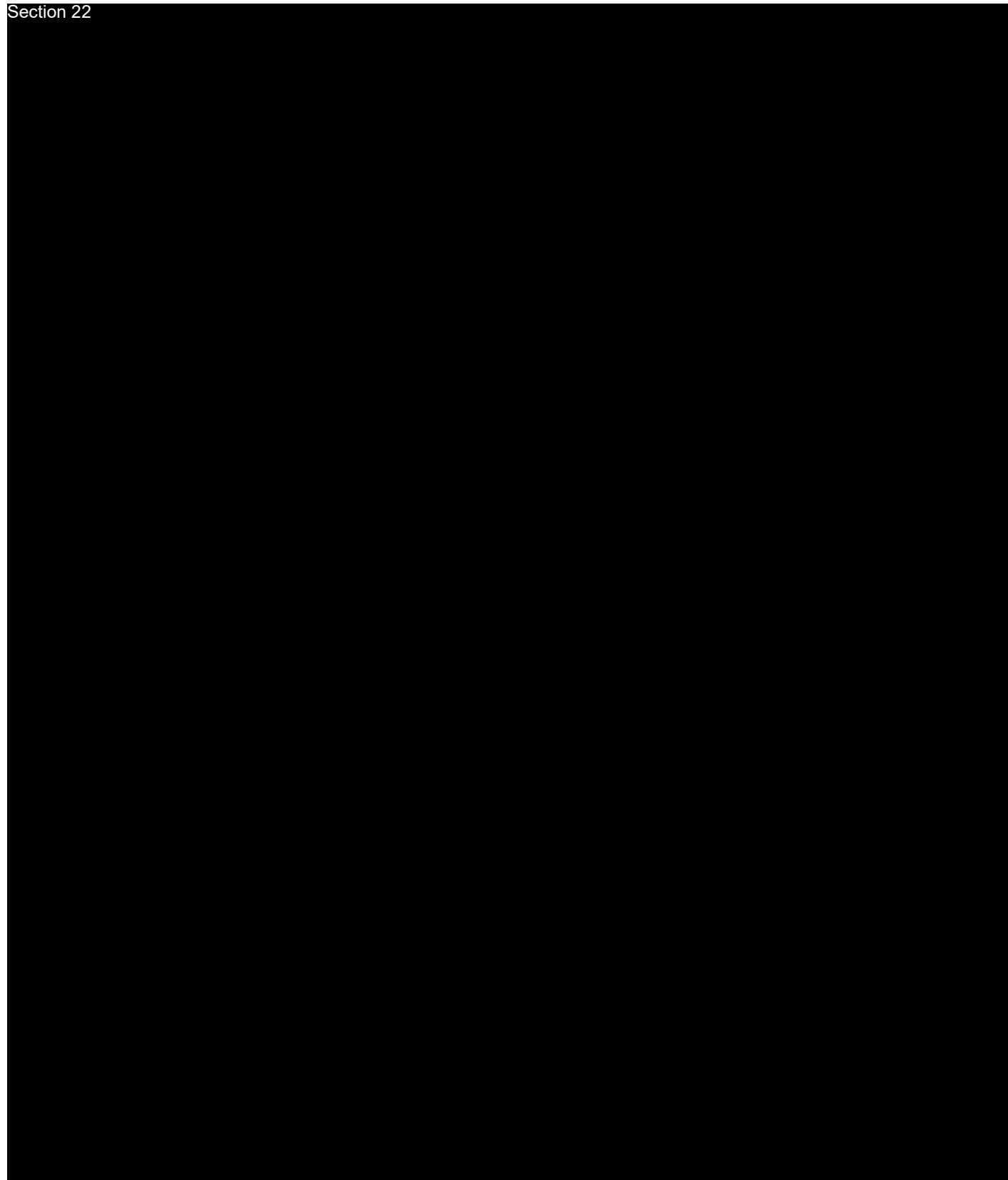


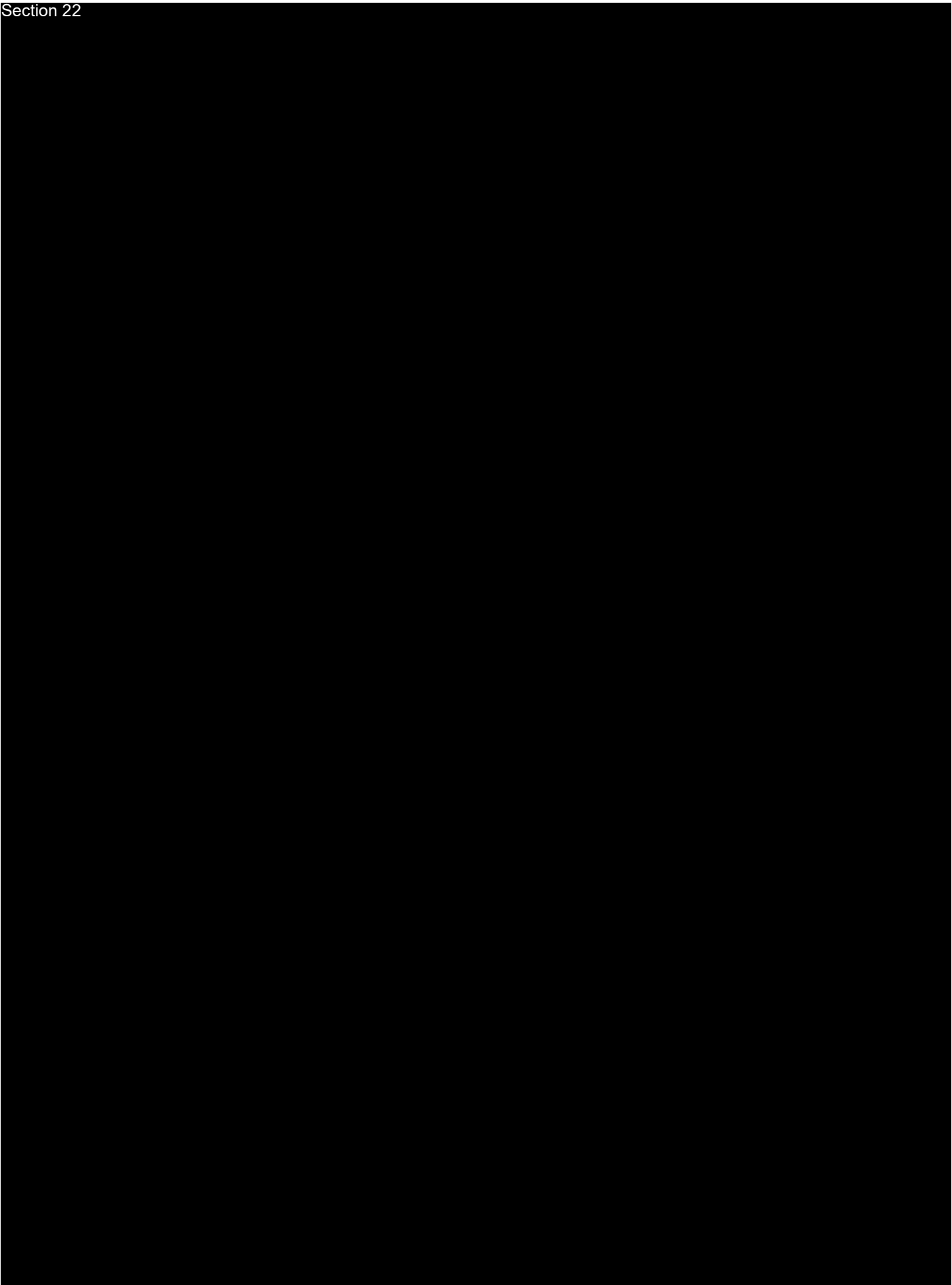


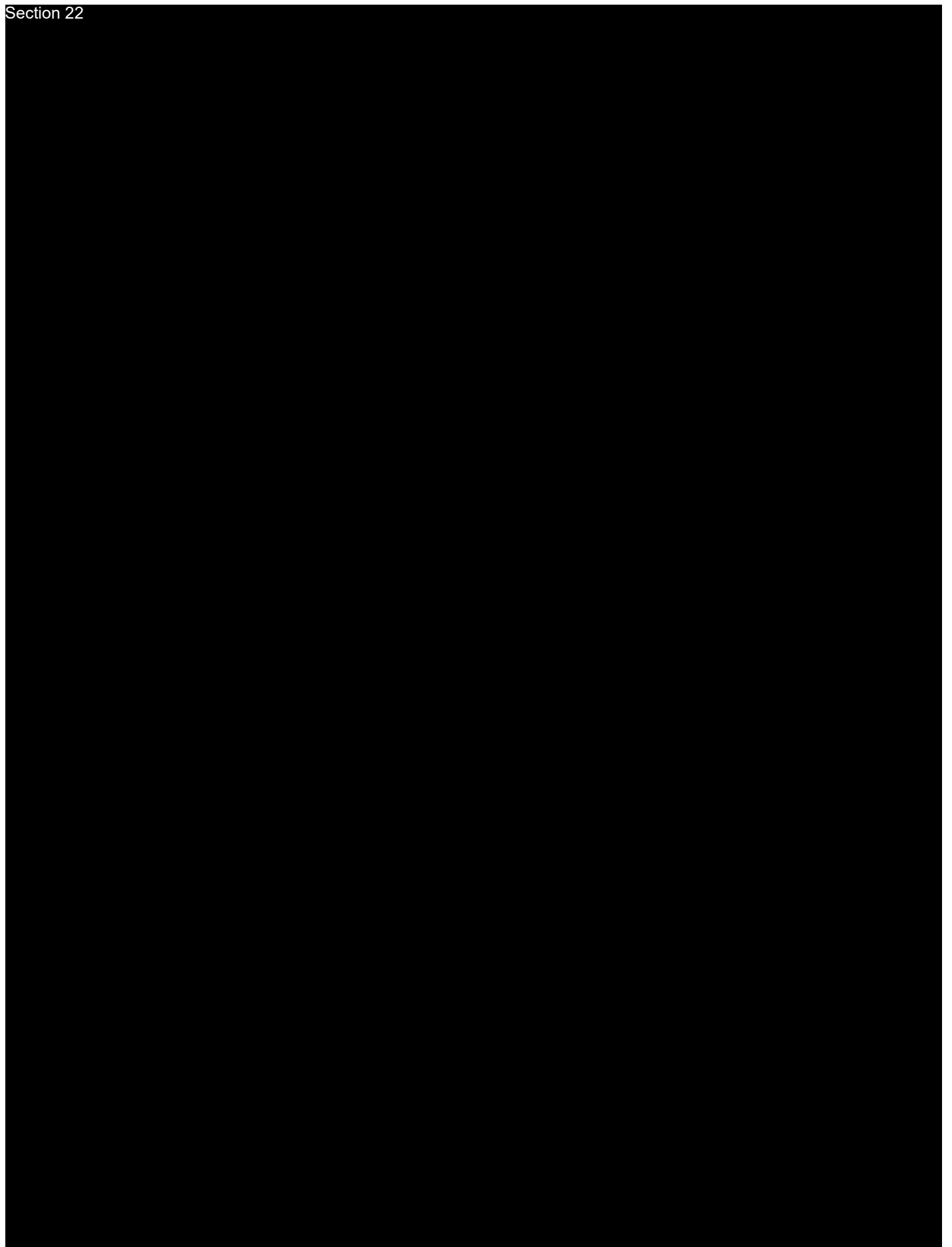


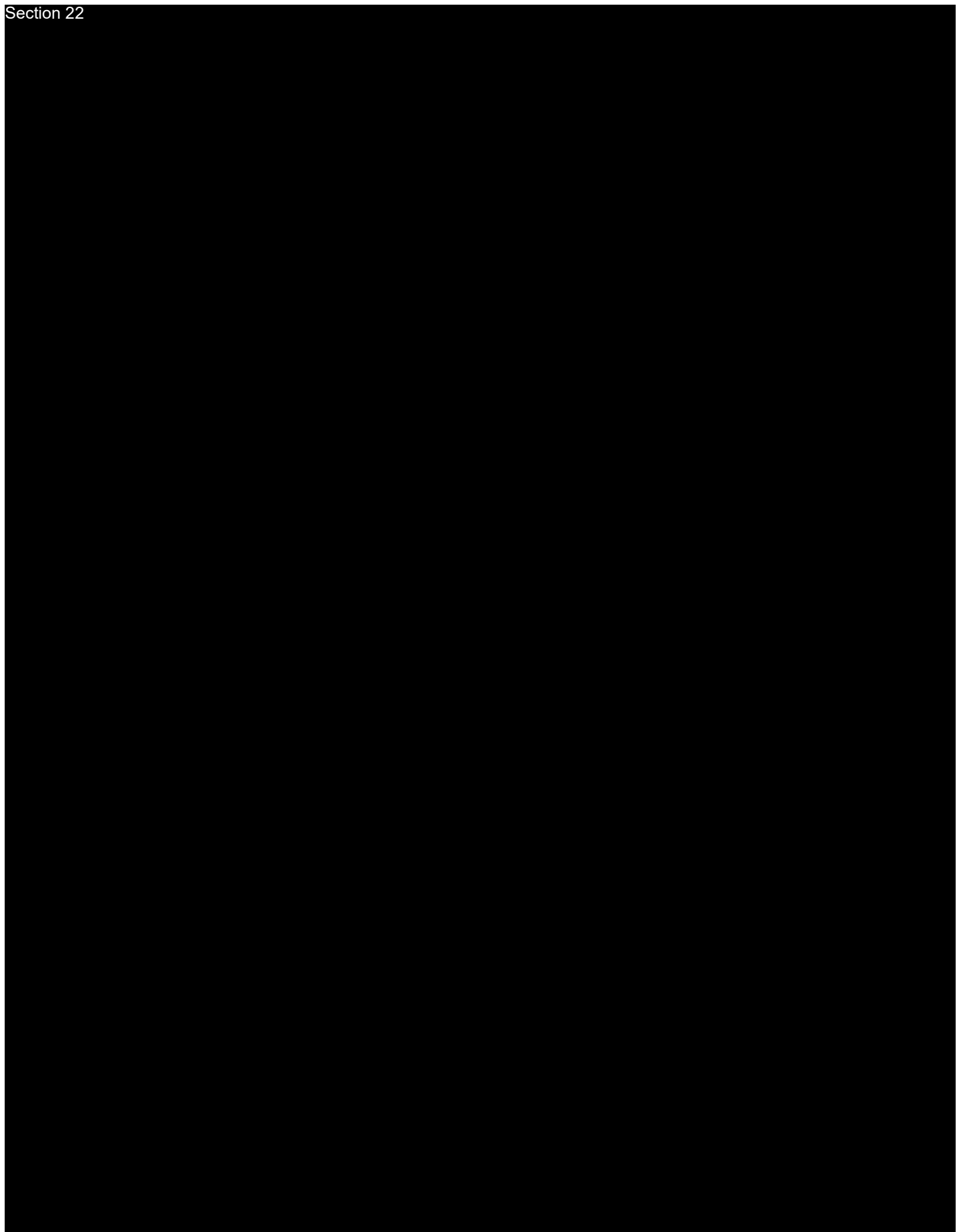


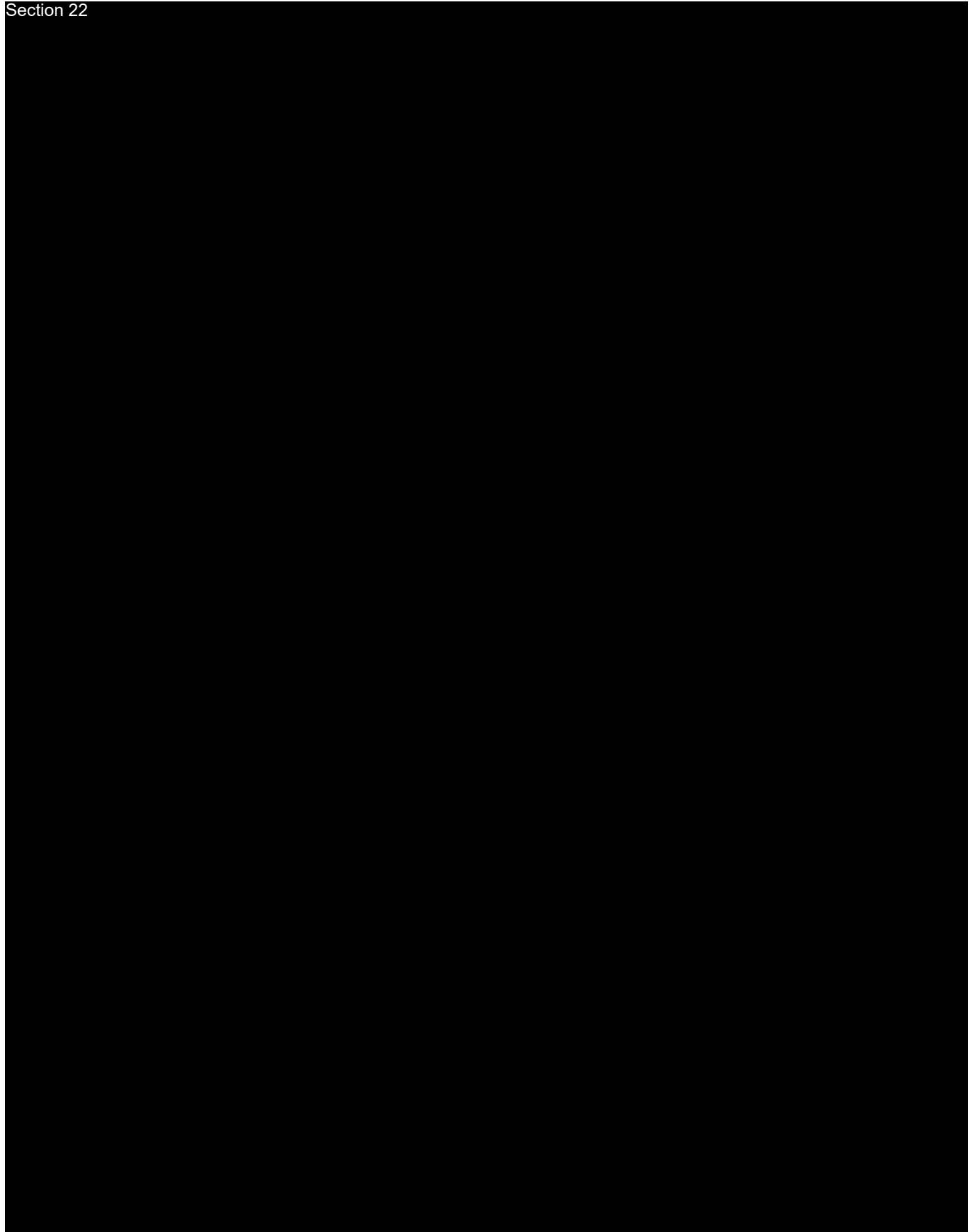


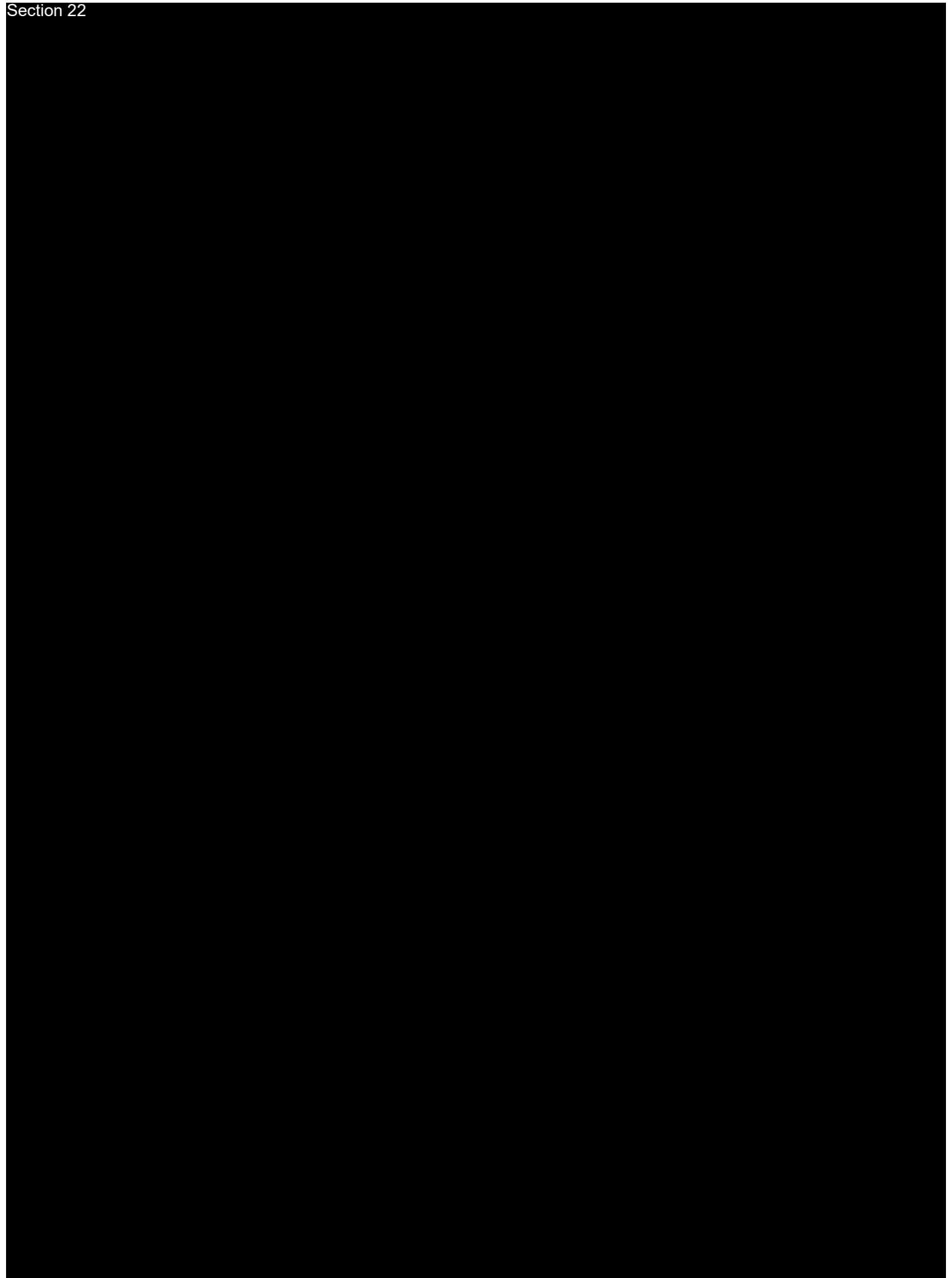


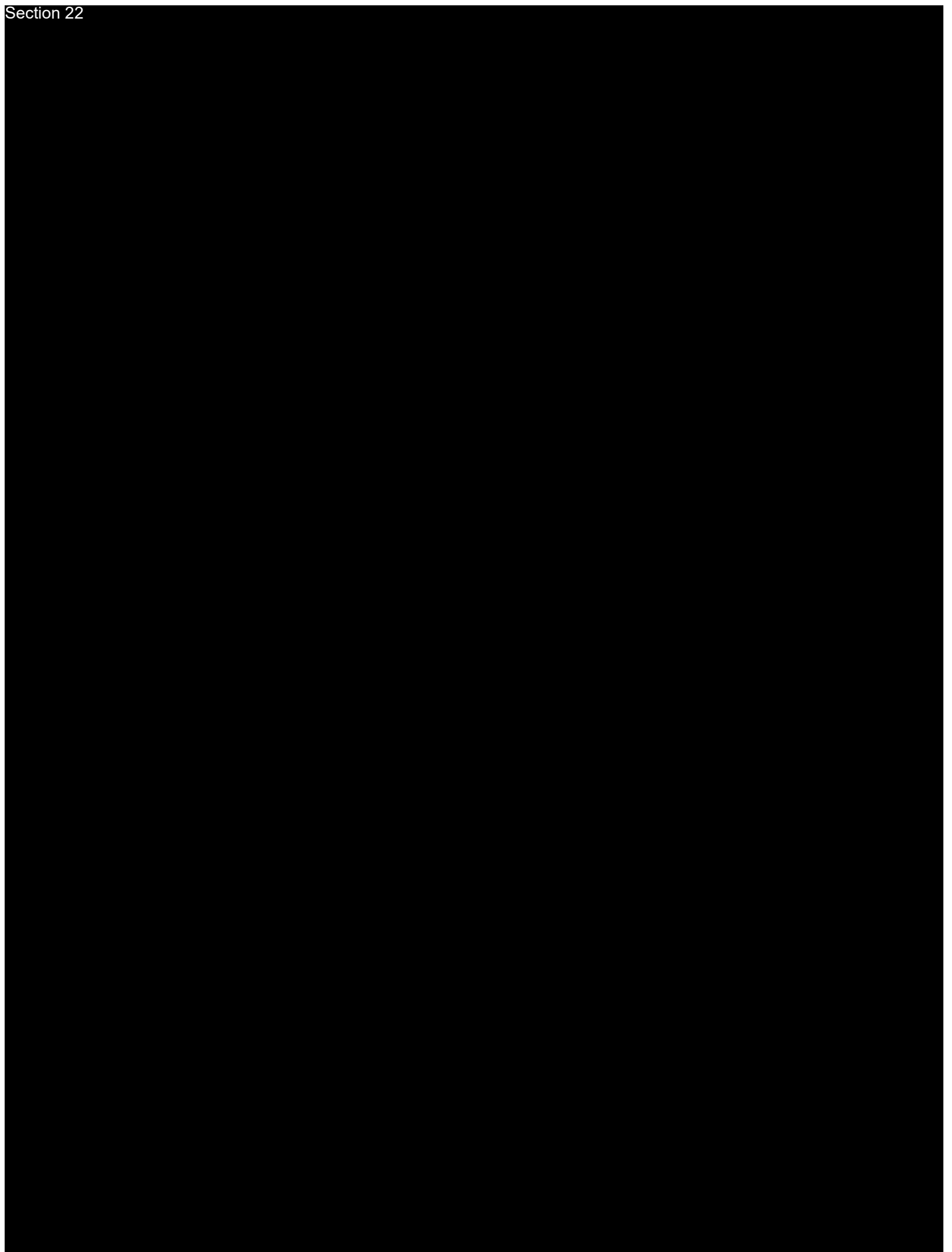


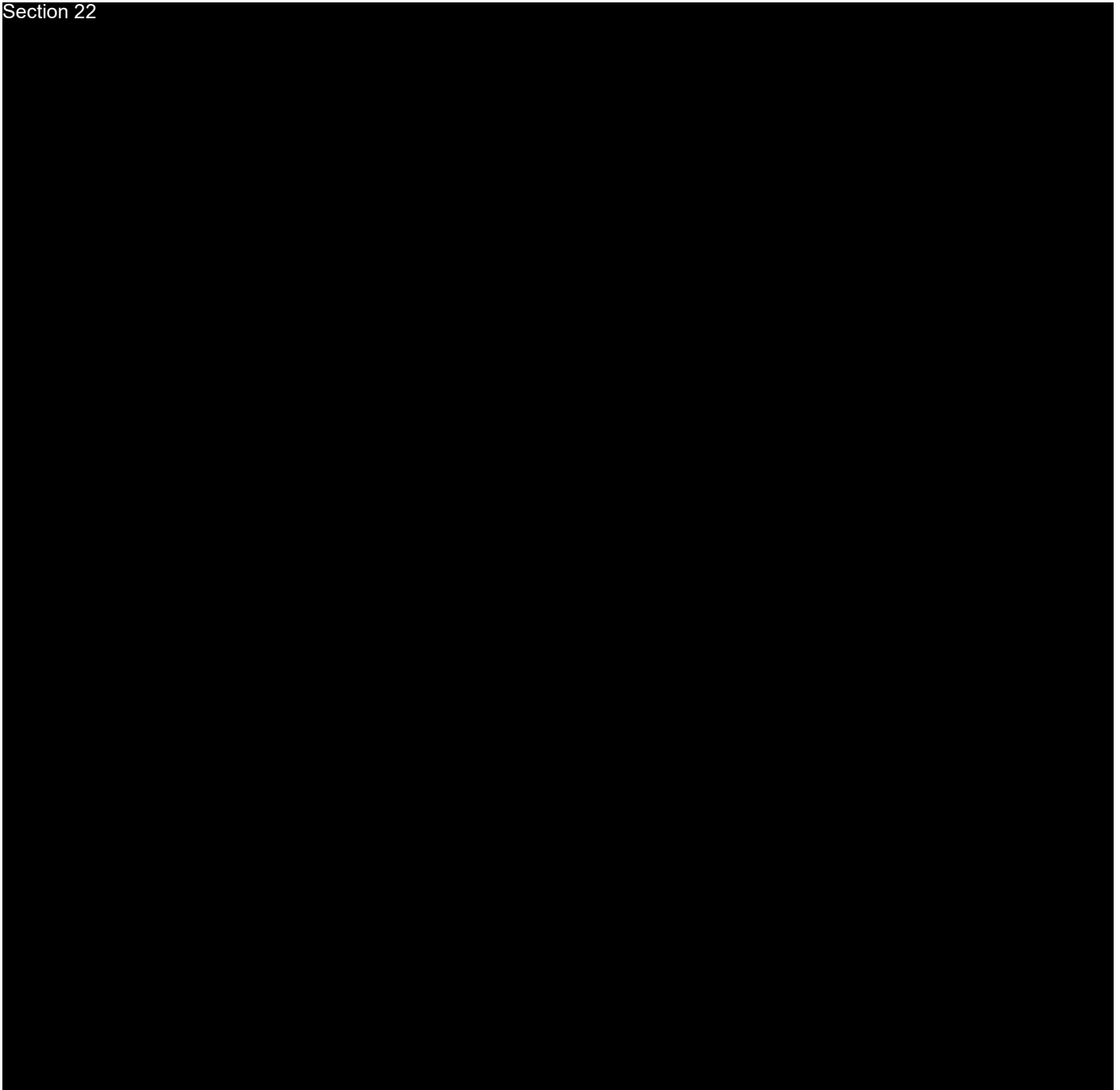


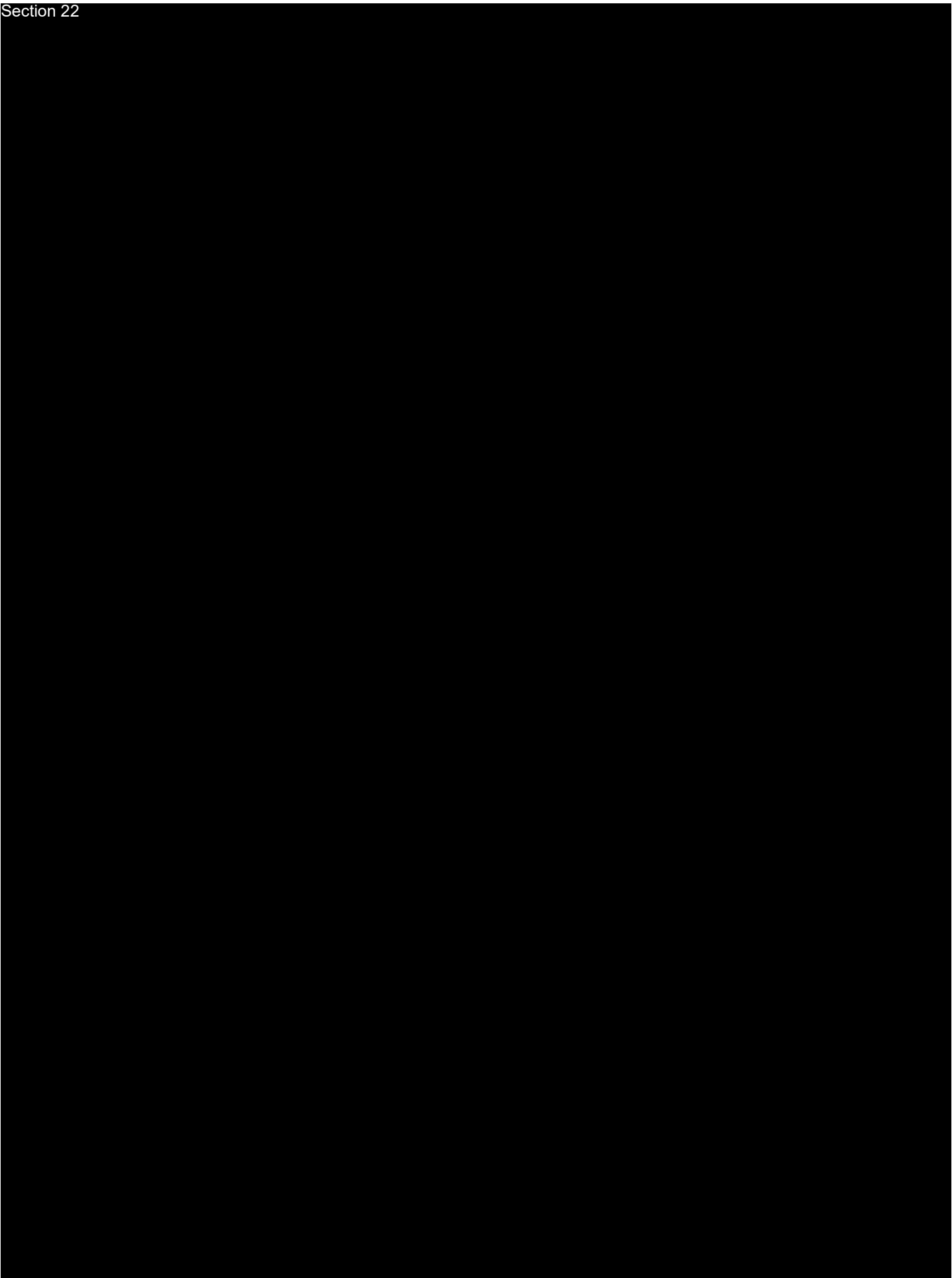


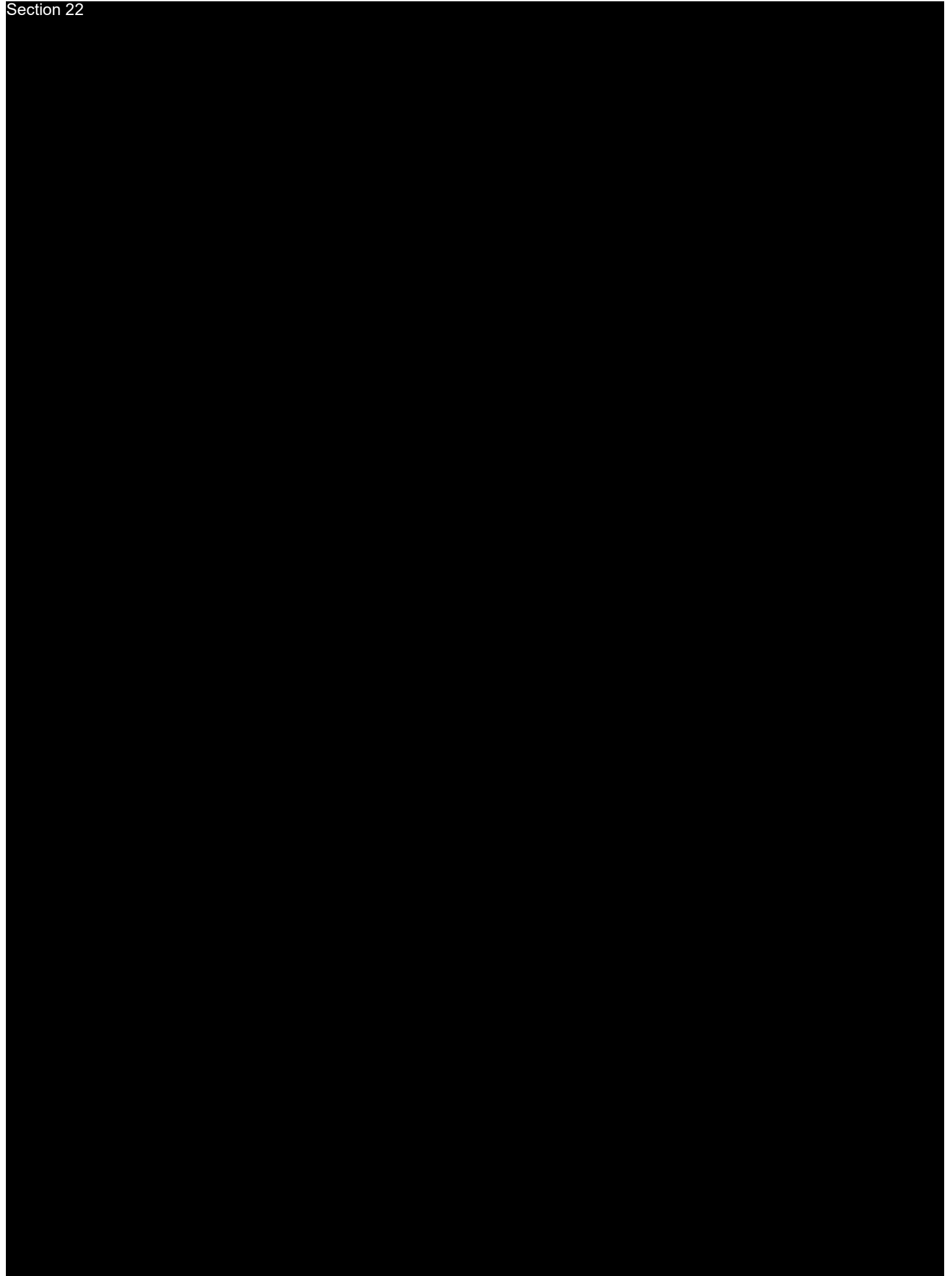


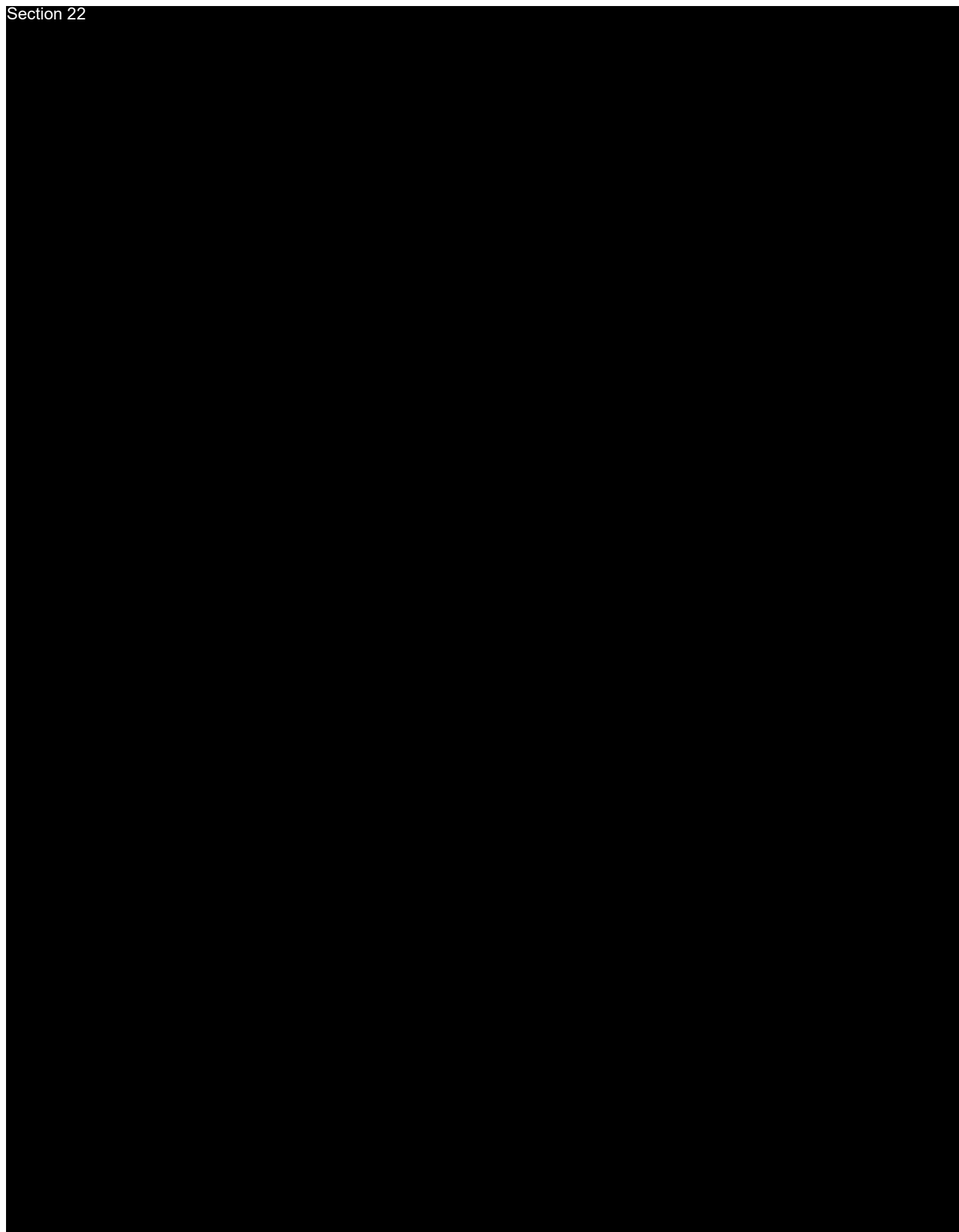


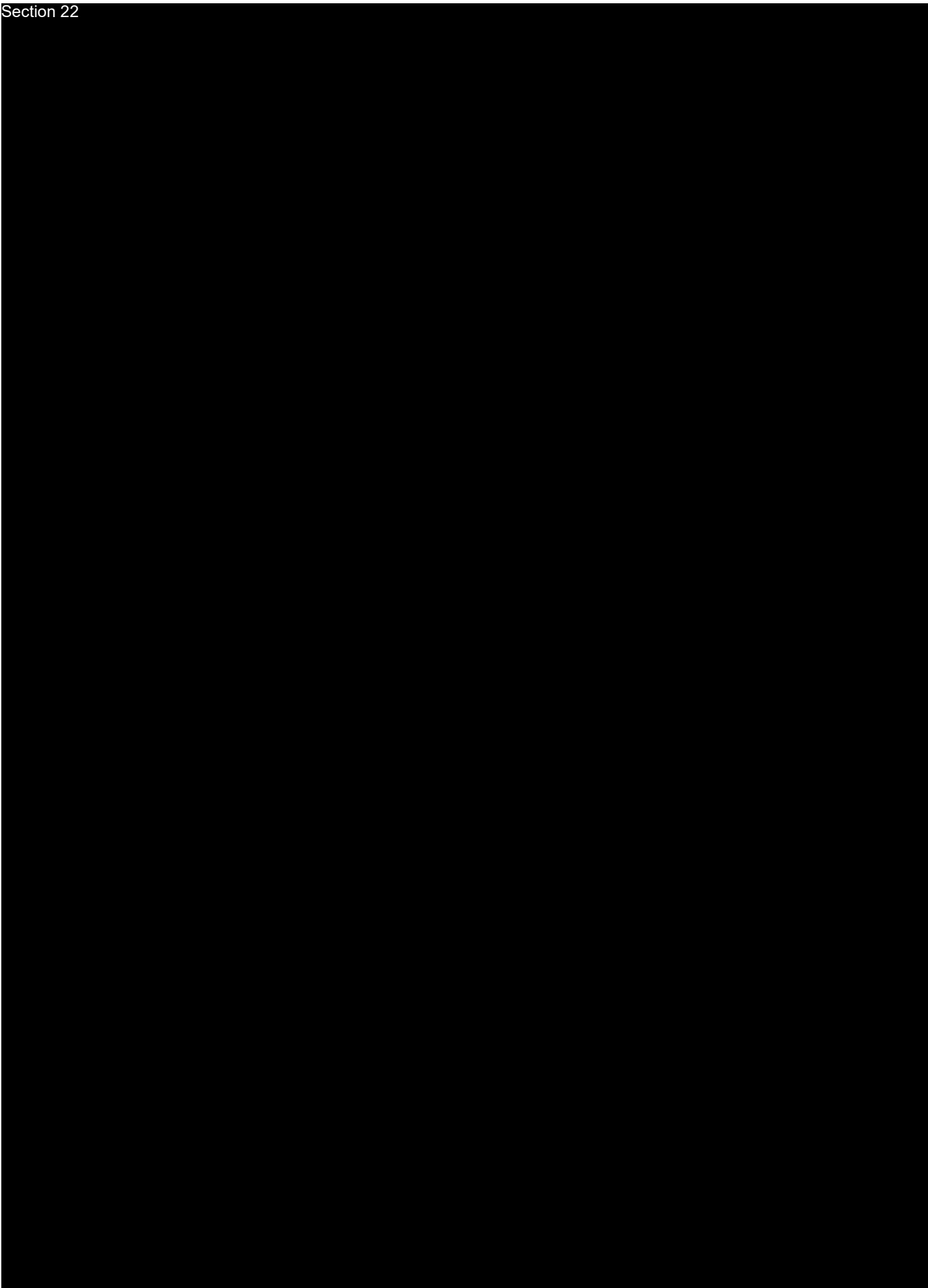


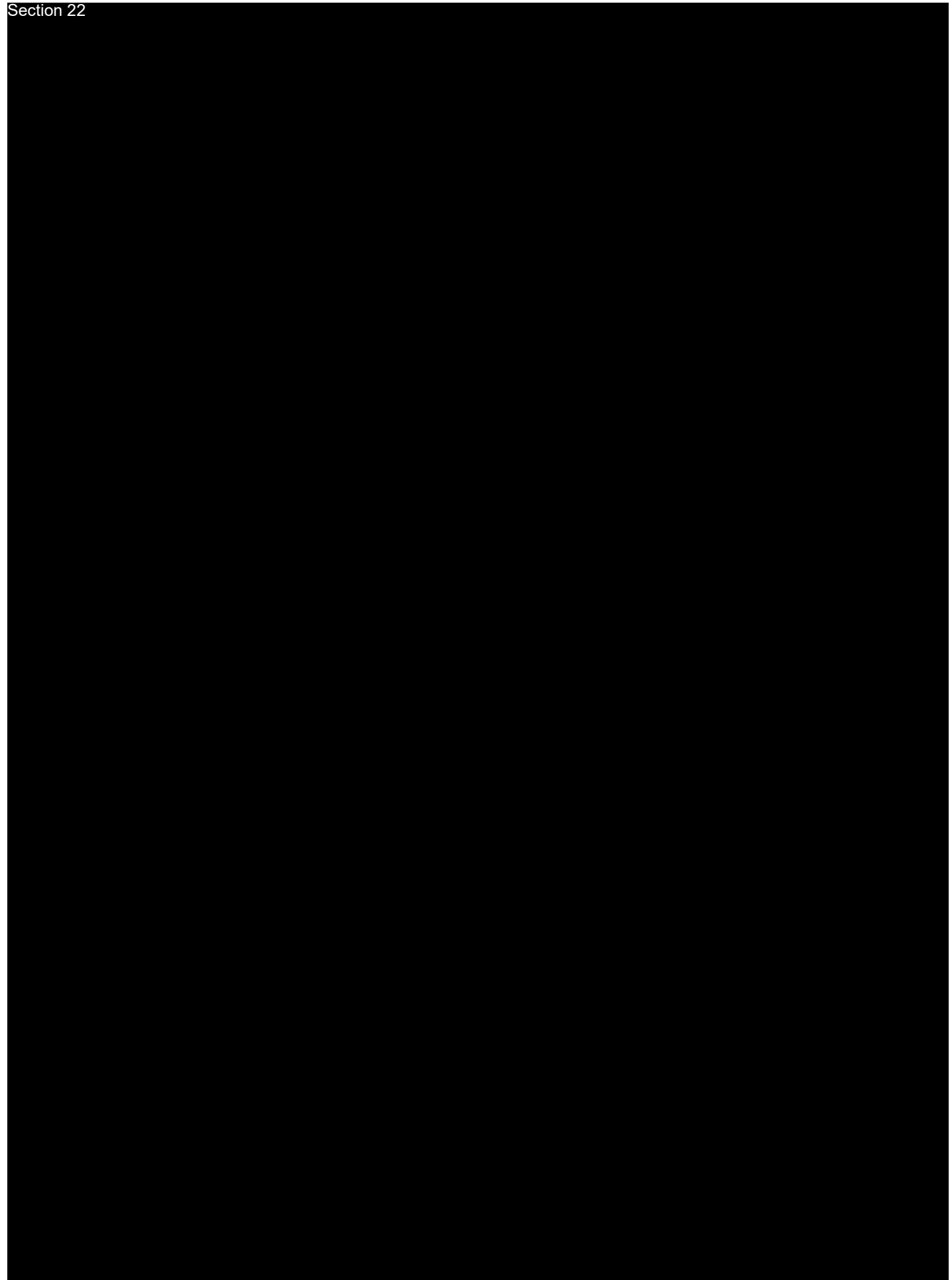


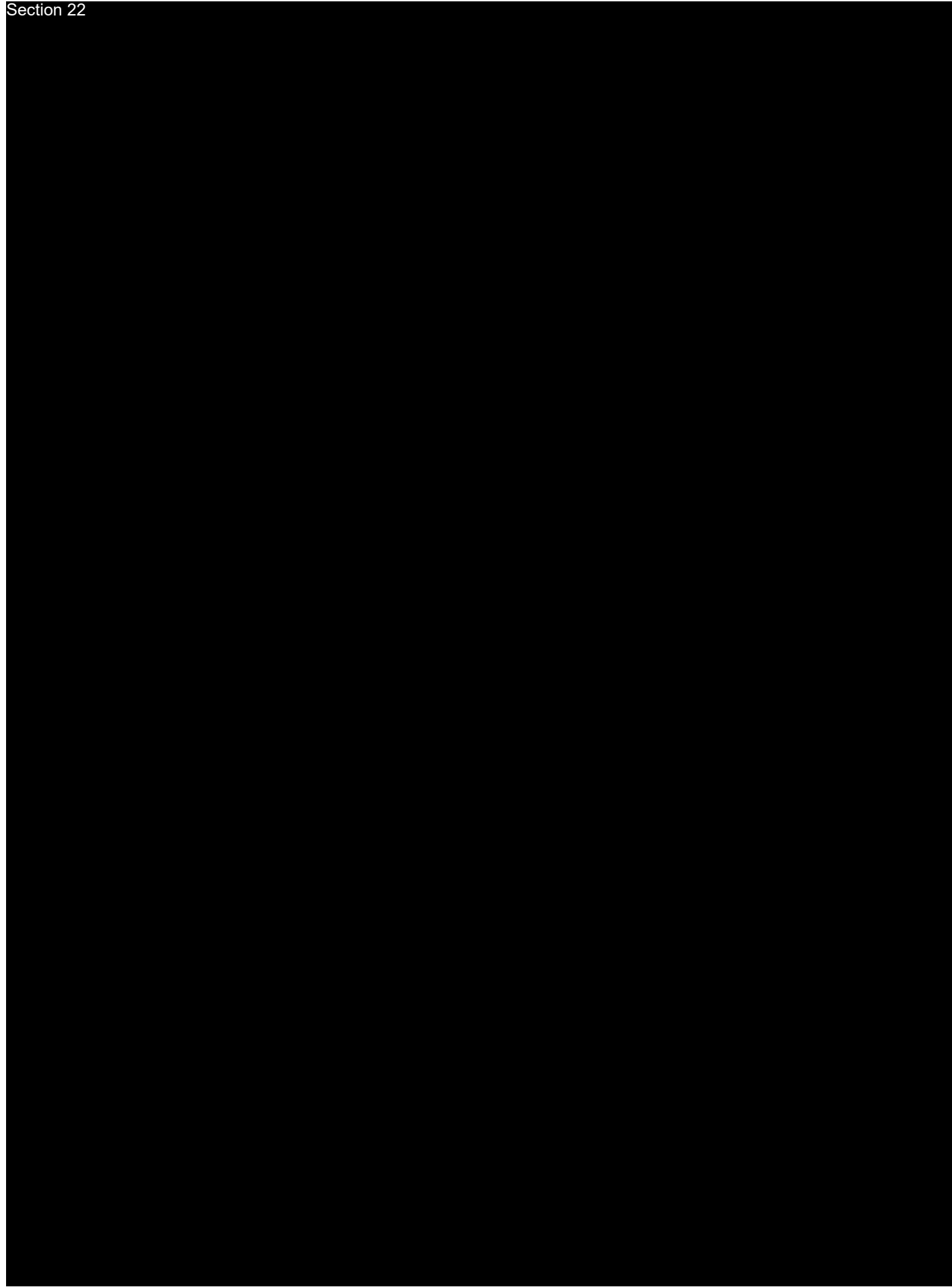


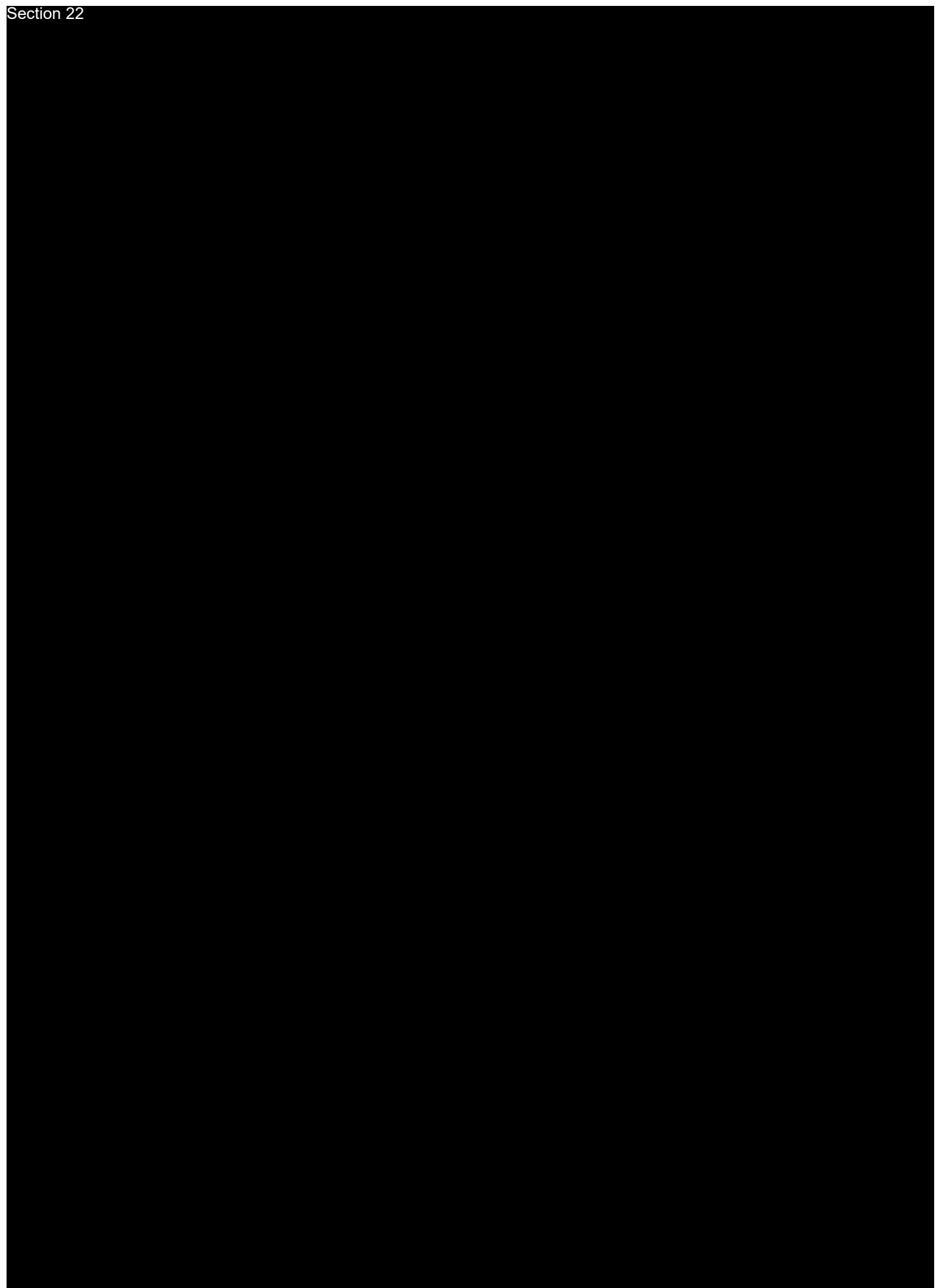


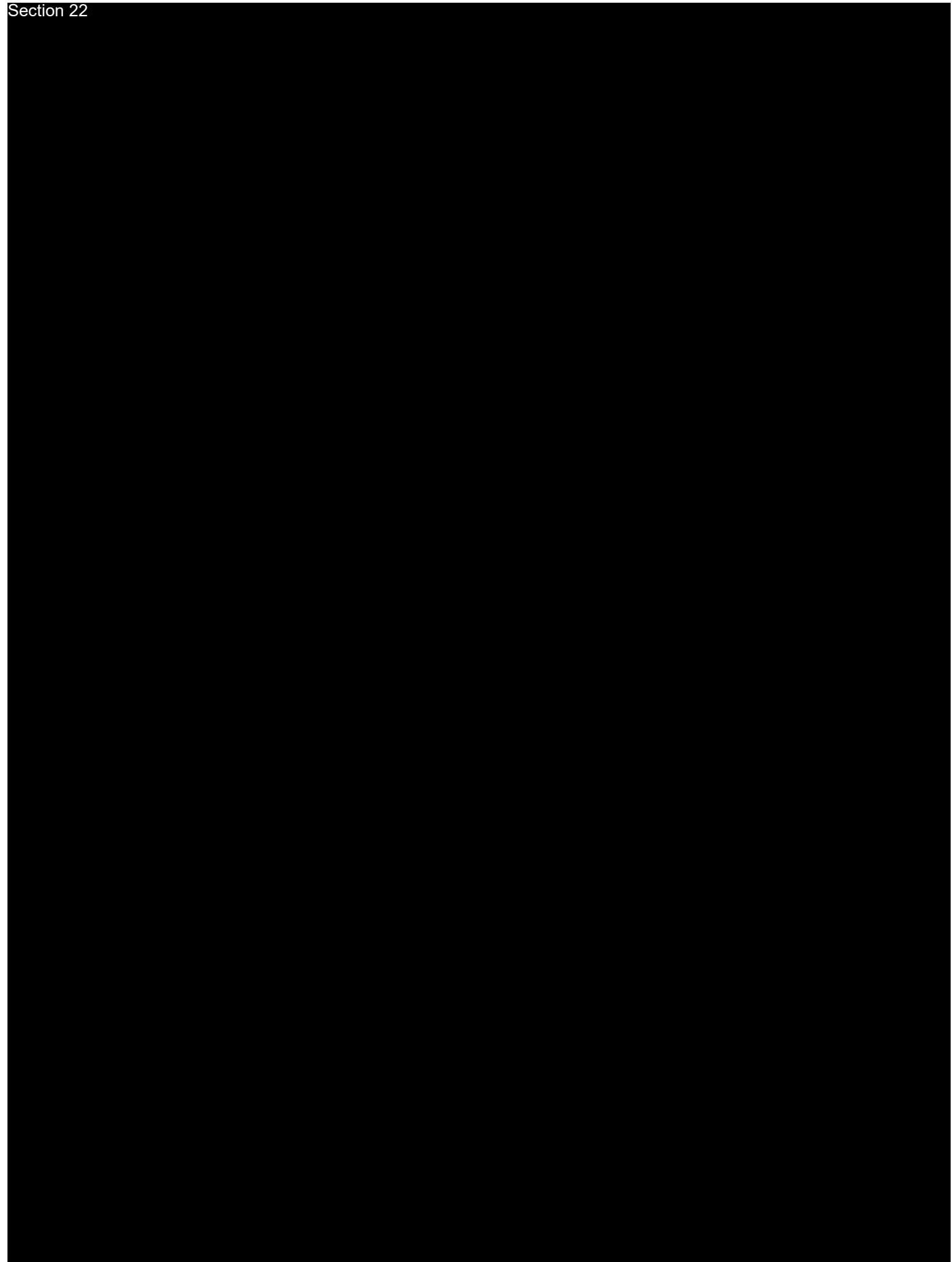


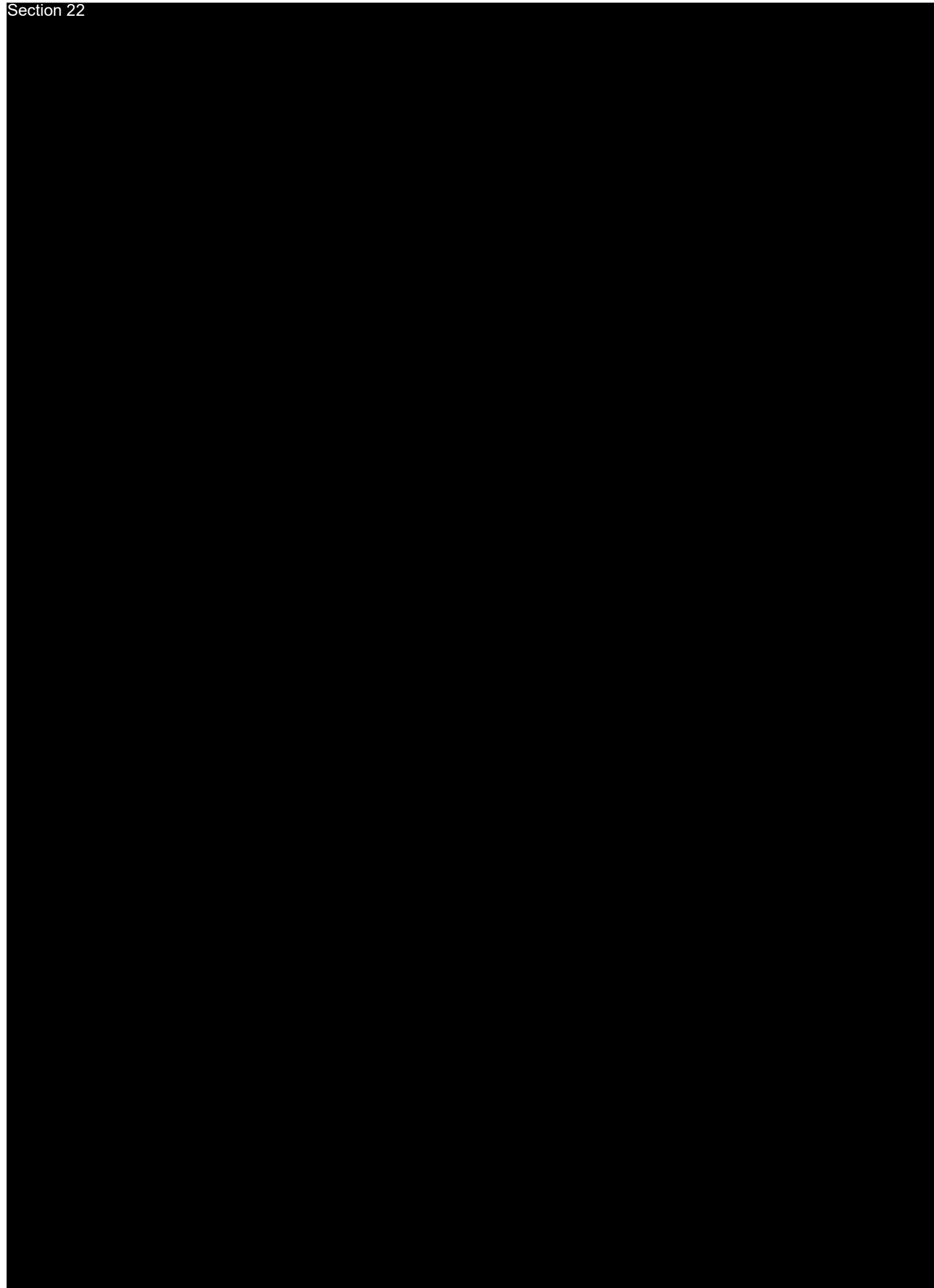


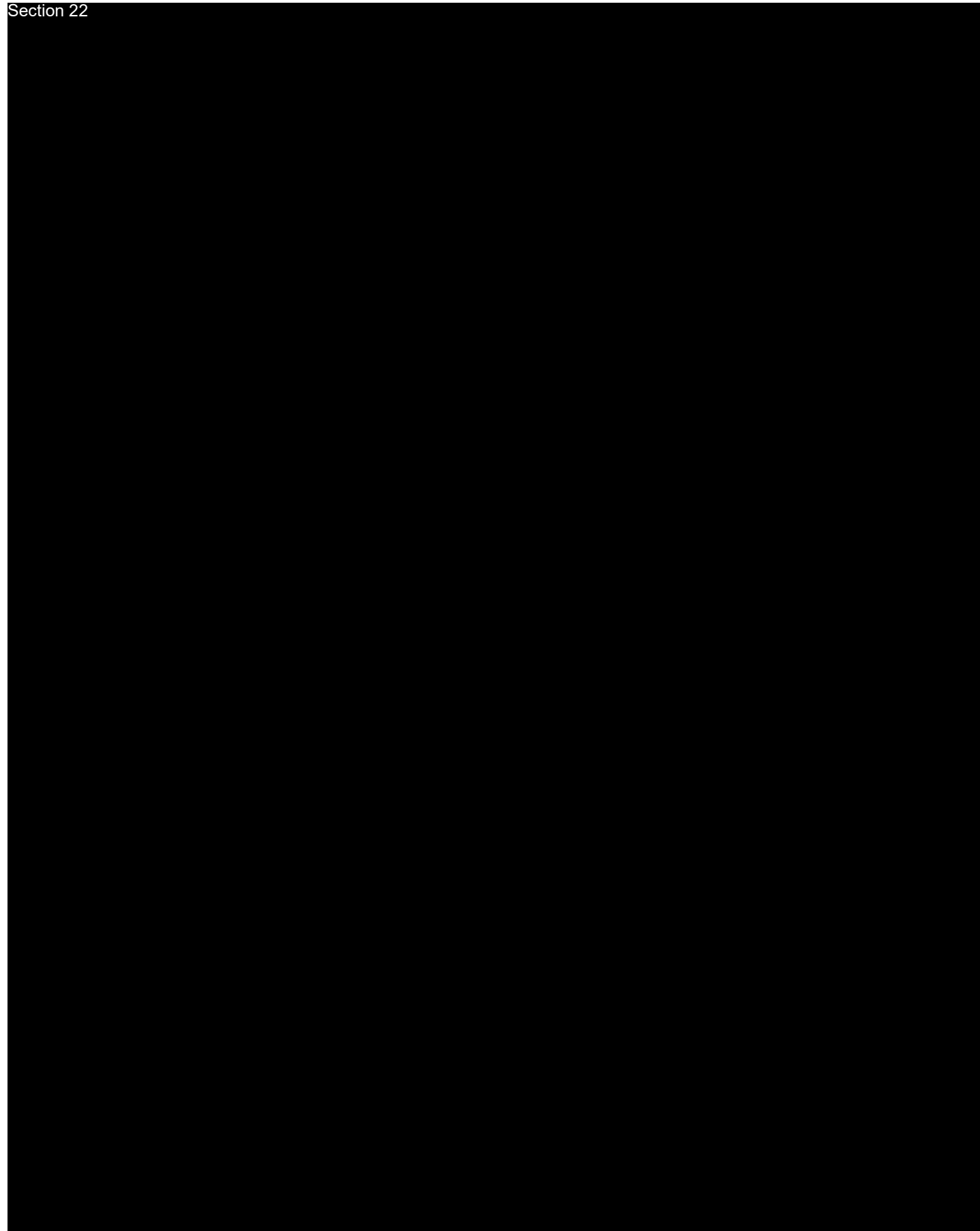


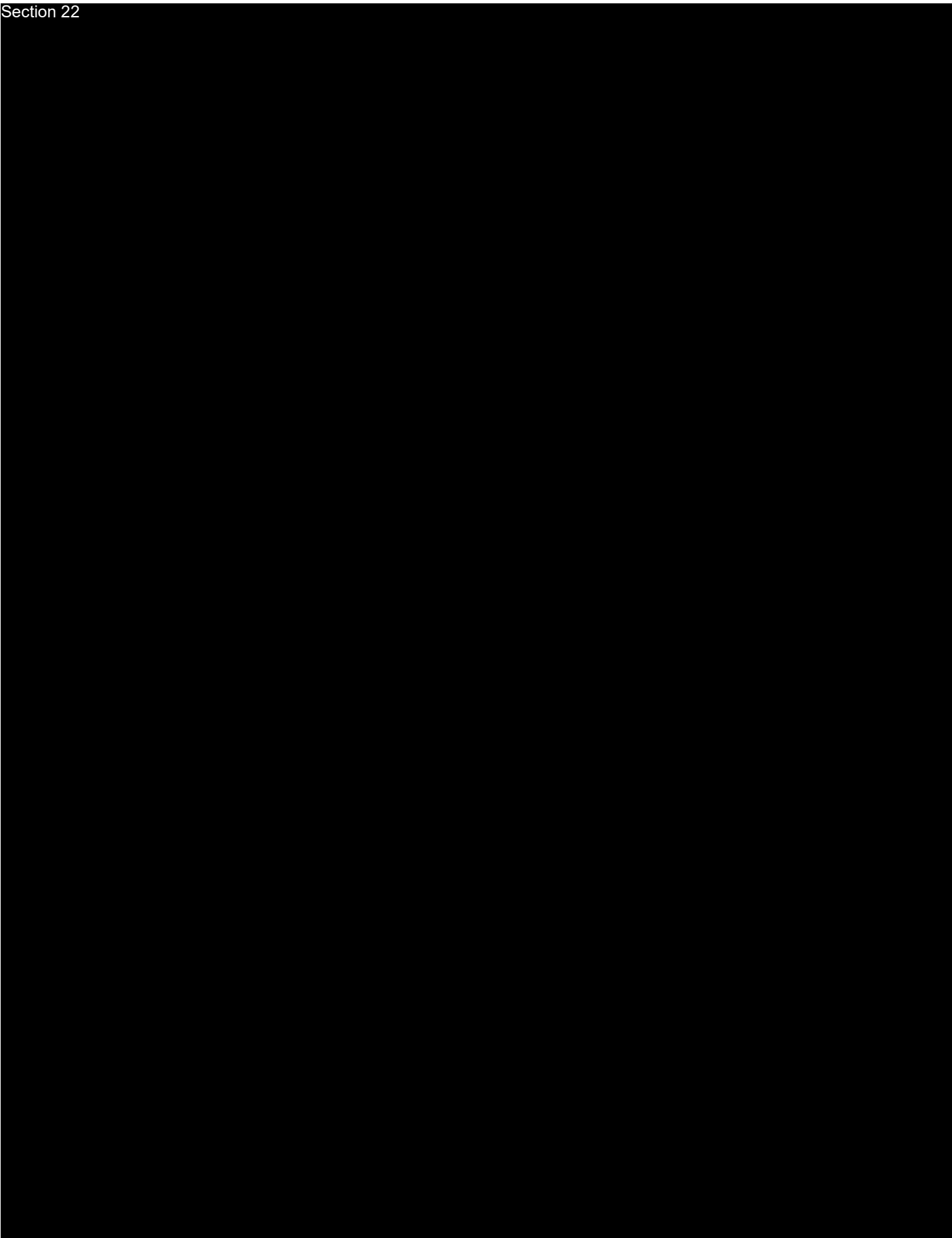




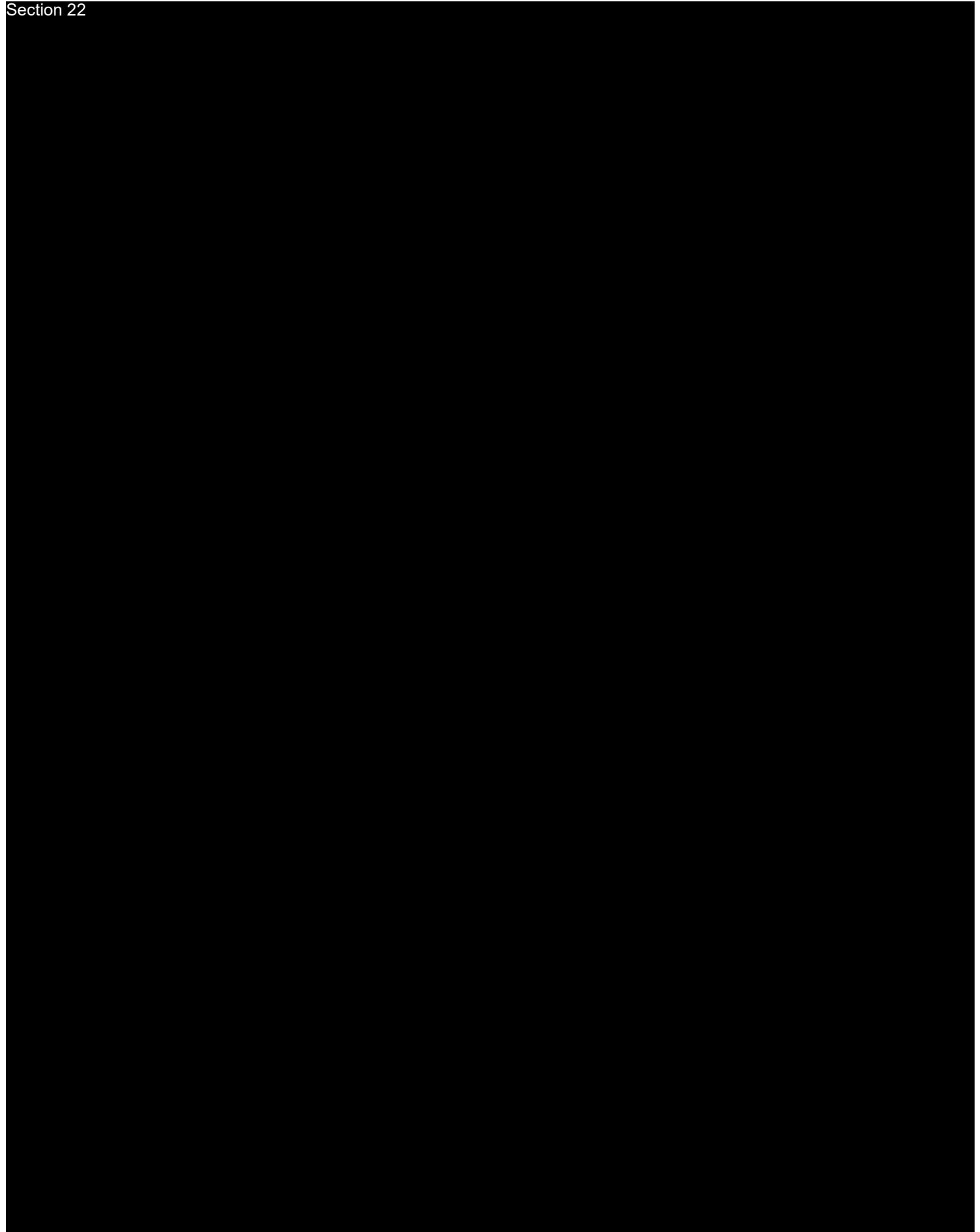


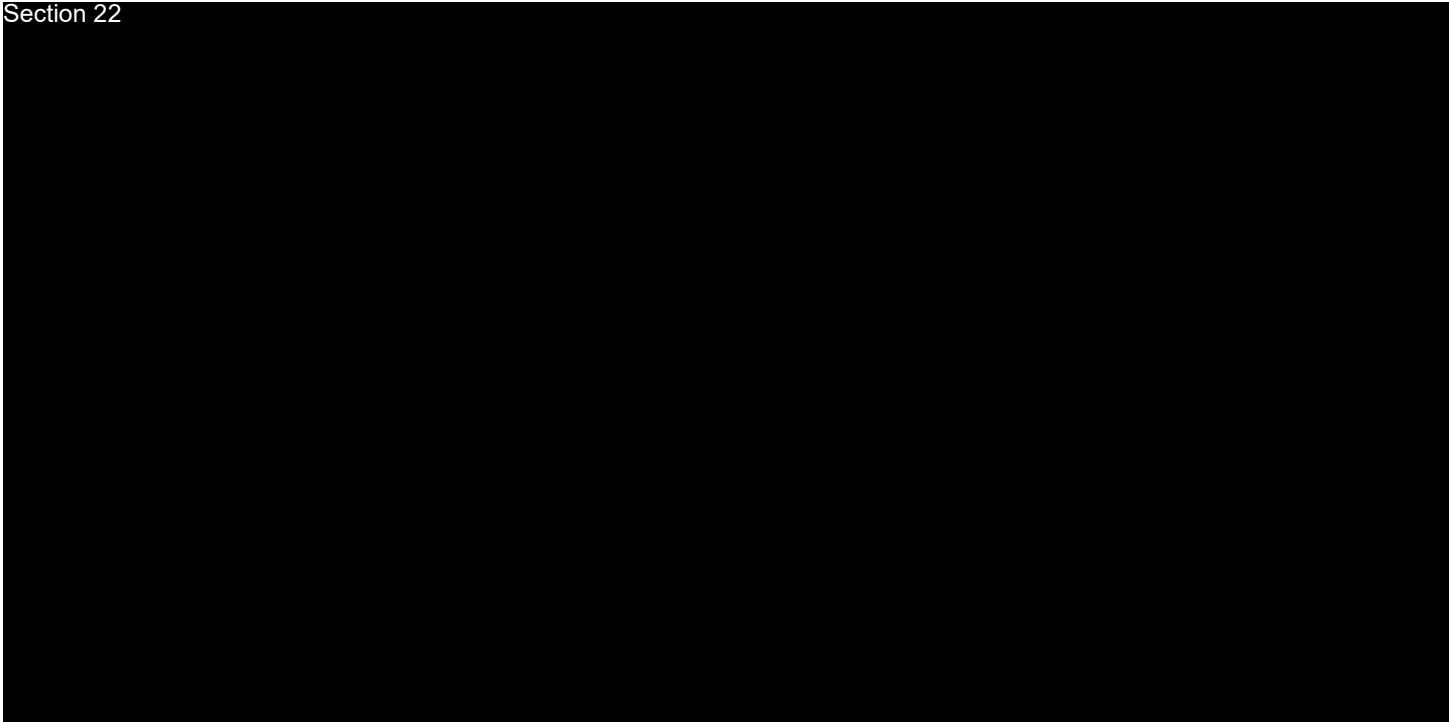












Formality of the vote

Duration	10 minutes
Lead	Facilitator
Delivery	Discussion



Learning outcome

9. Identify a formal vote

Slide 51

What makes a vote formal for the referendum?

Draw out and emphasise:

A vote at a referendum is formal if:

The word 'YES' or 'NO' is written in the square on the ballot paper next to the referendum question.

Ballot papers must be admitted where the voter's intention is clear. The following can be formal if they demonstrate the voters intention:

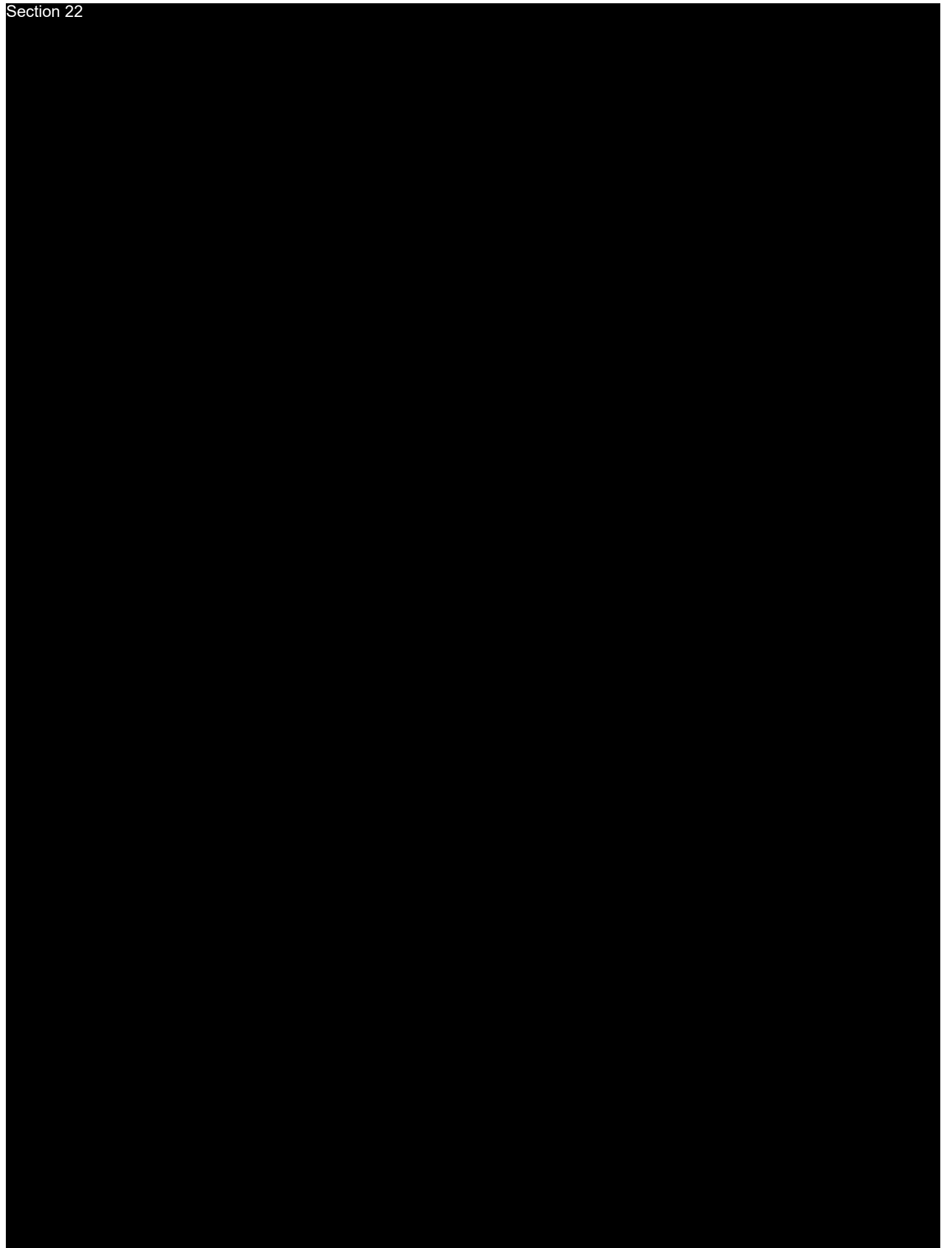
- Words with the same meaning as 'YES' or 'NO' (e.g. 'definitely' or 'never')
- an indication of either 'Y' or 'N'
- a tick
- votes can be made with a pencil, pen, marker or stamp.

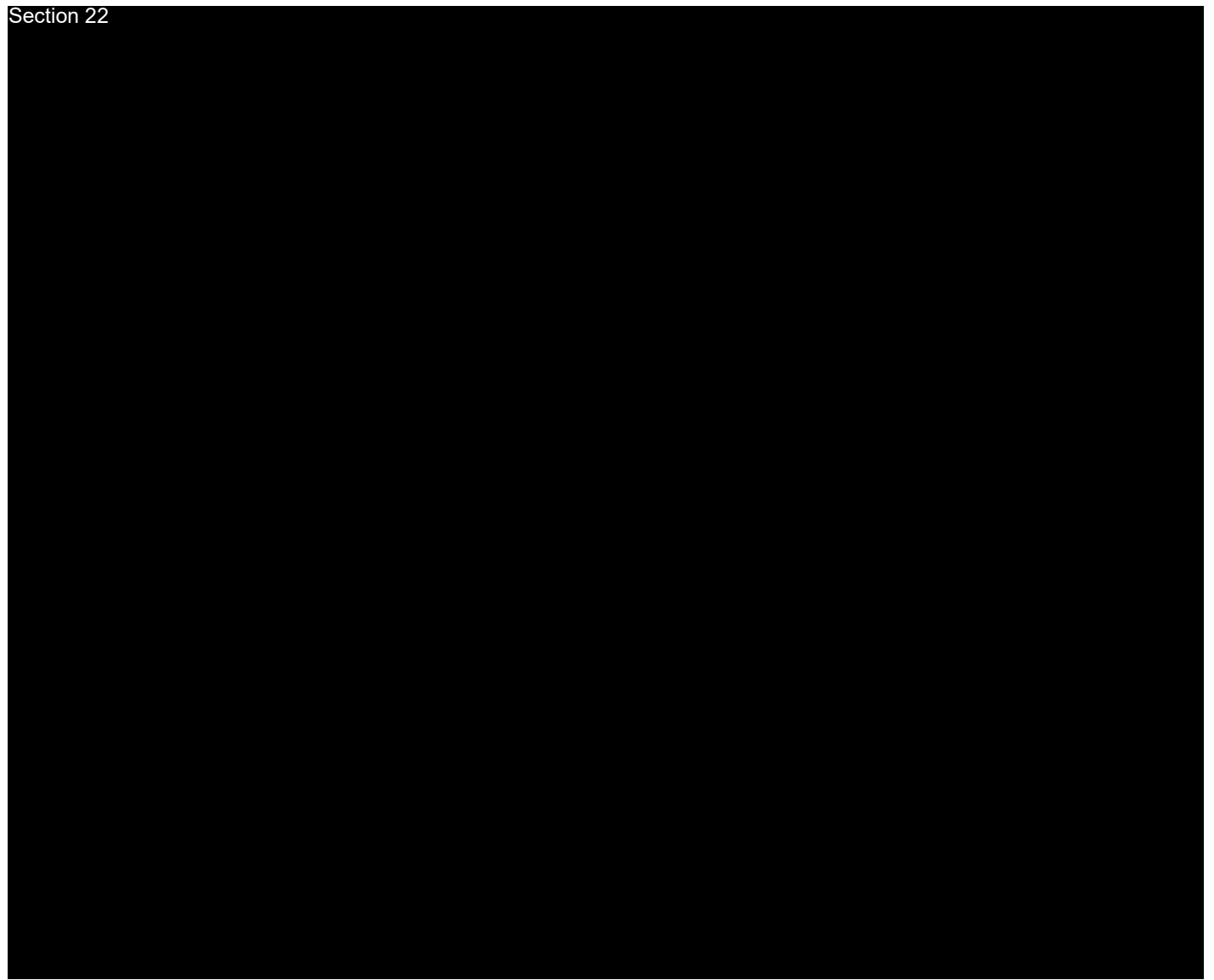
A vote at a referendum will be informal if any of the following apply:

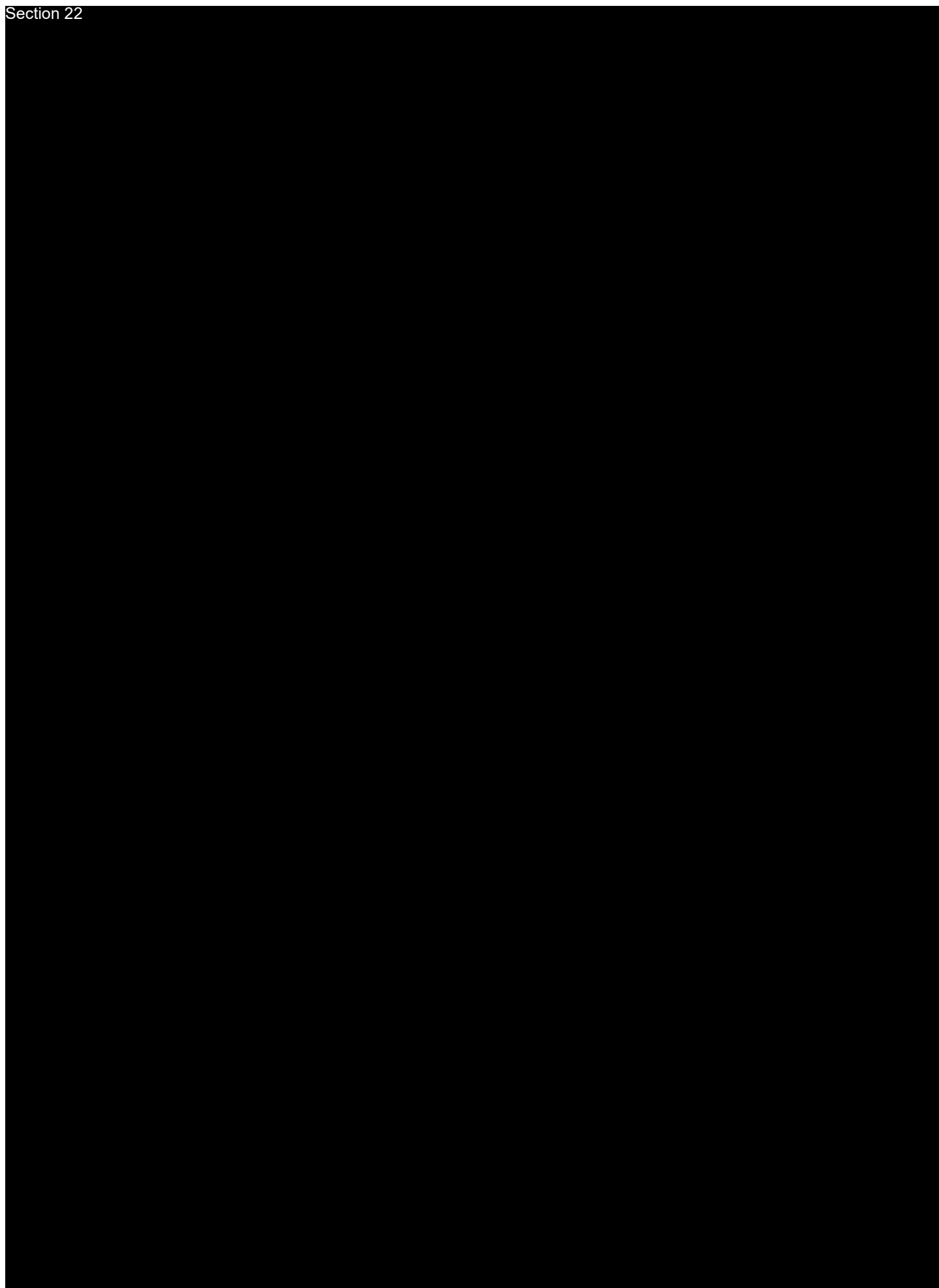
Section 22

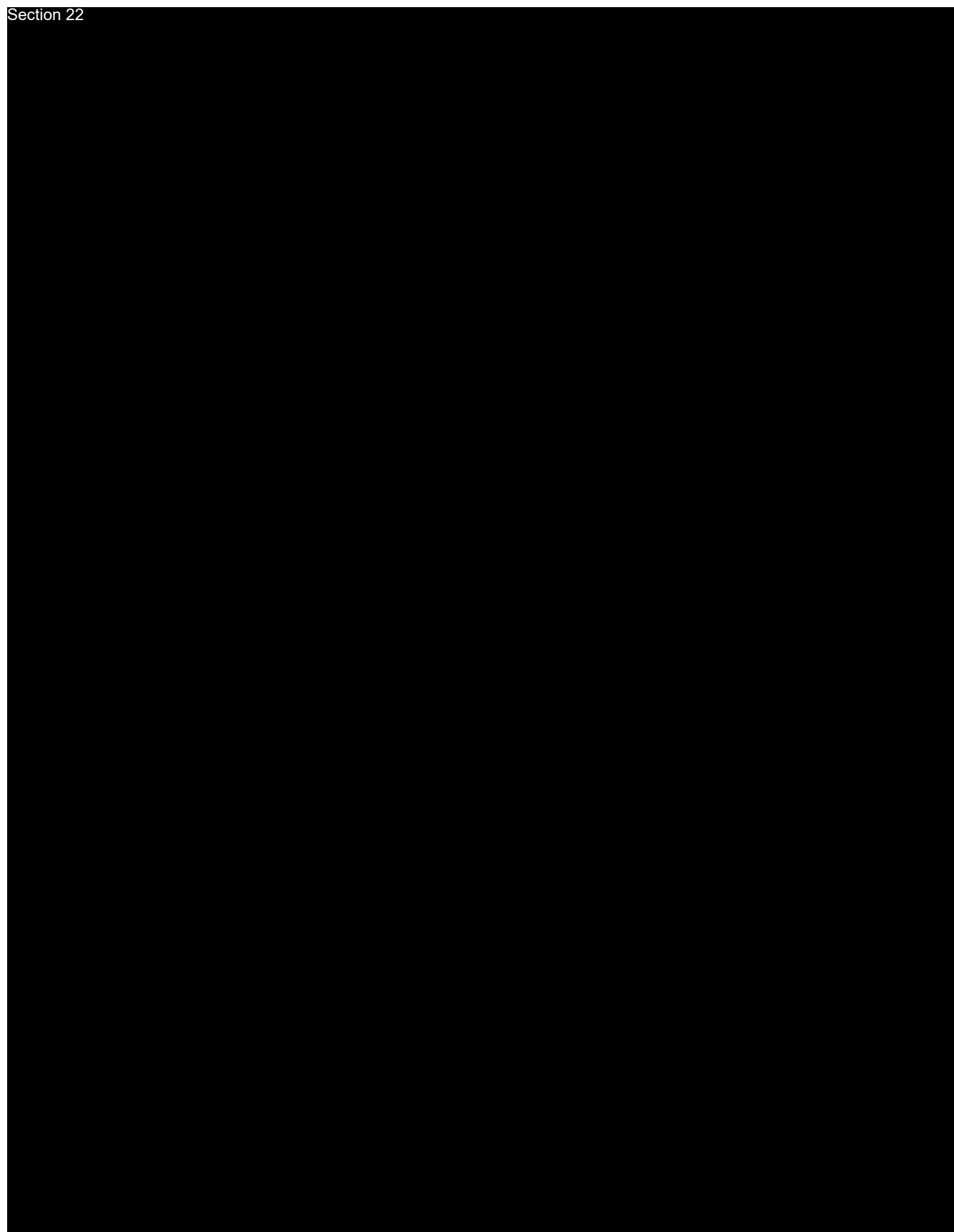
- a 'cross' is used since a cross on its own may mean either 'yes' or 'no'.

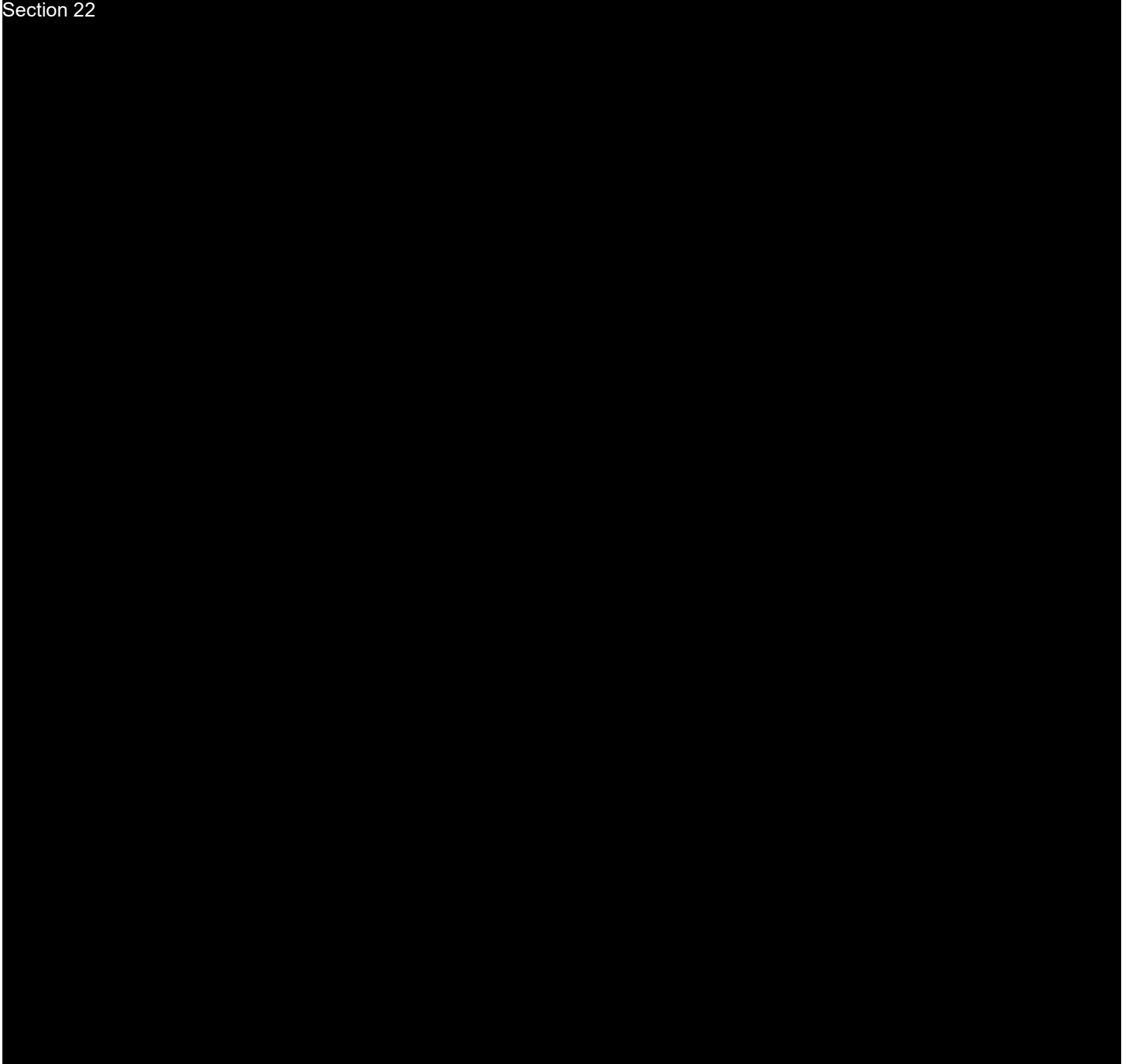
Section 22

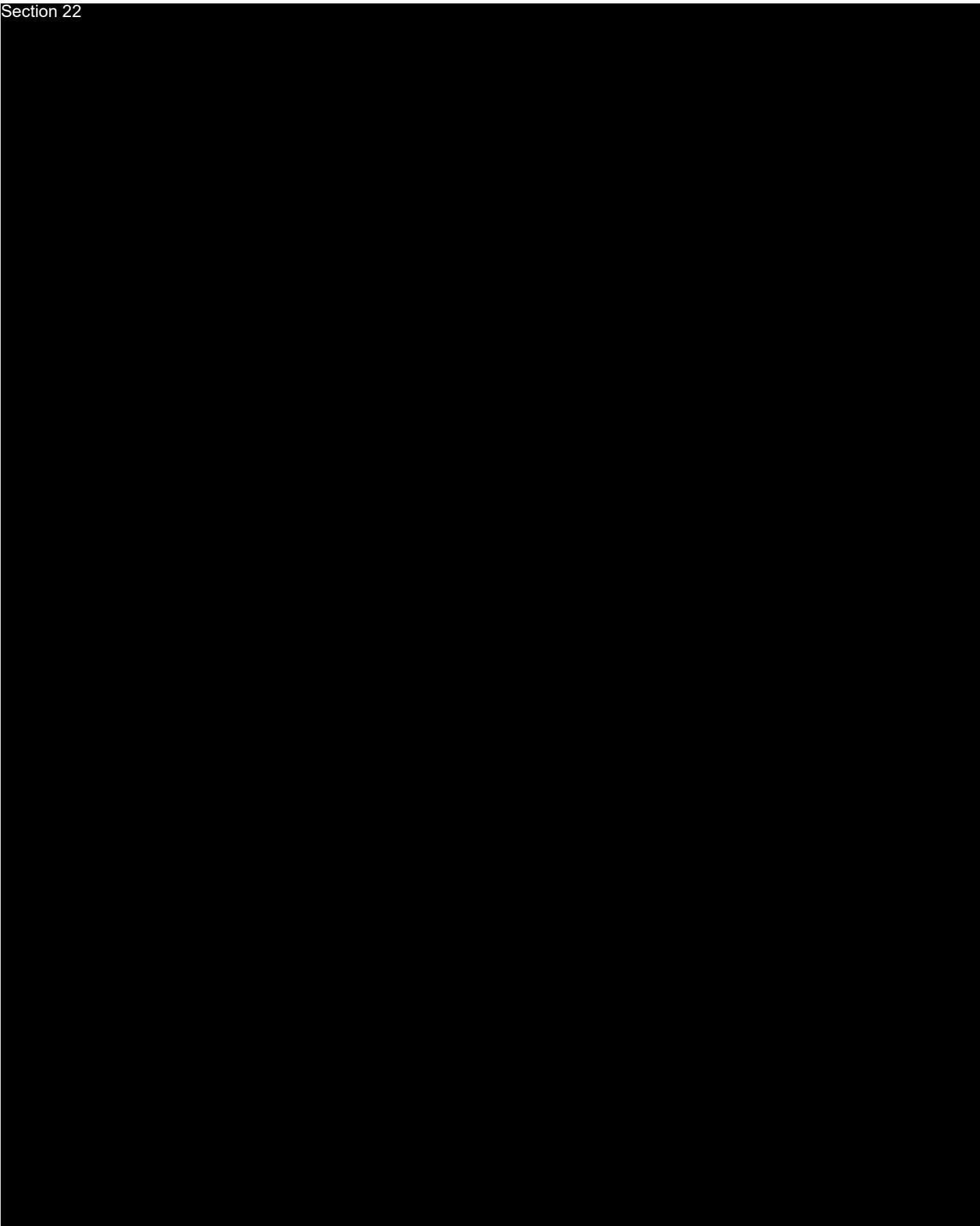


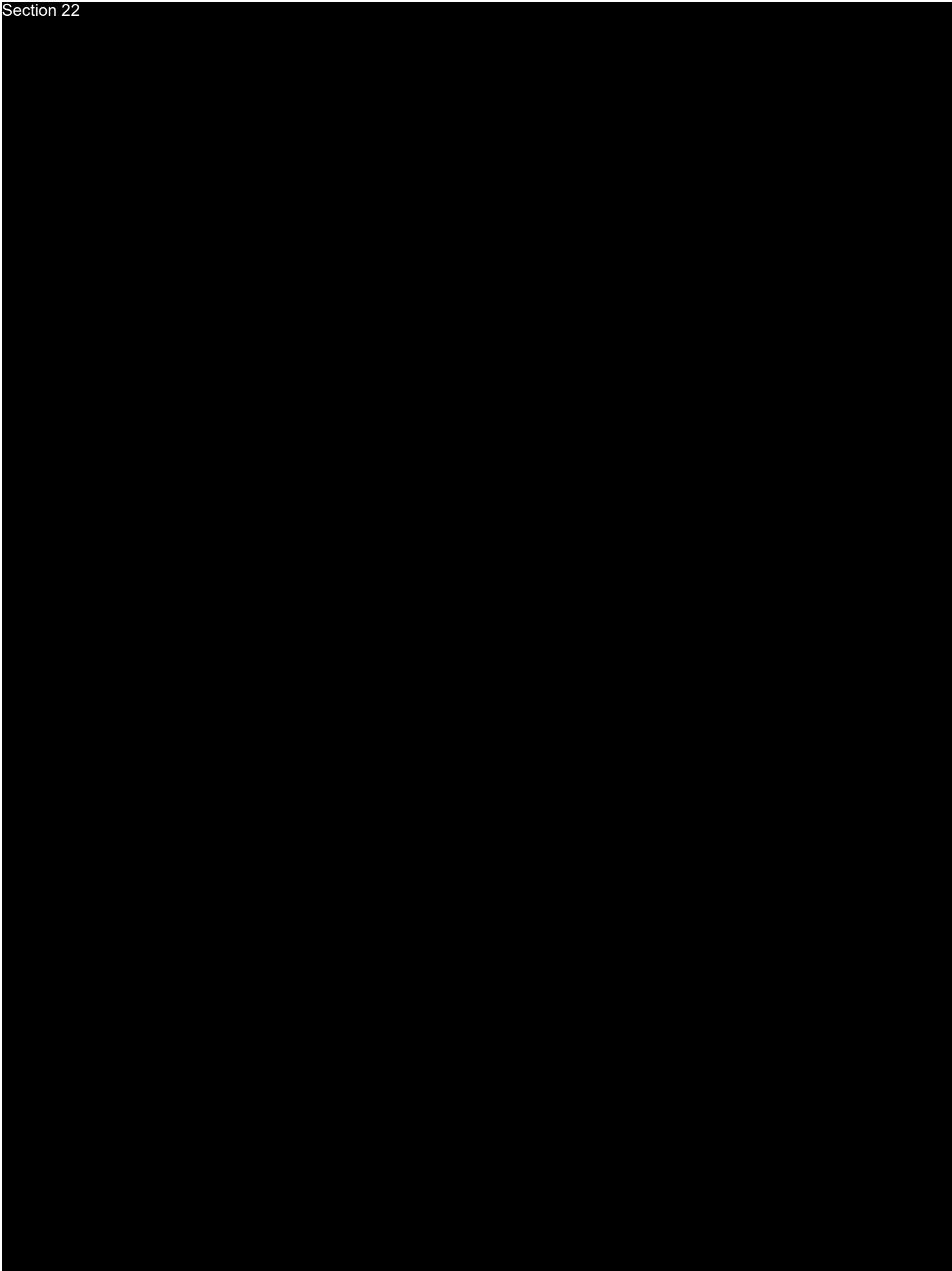


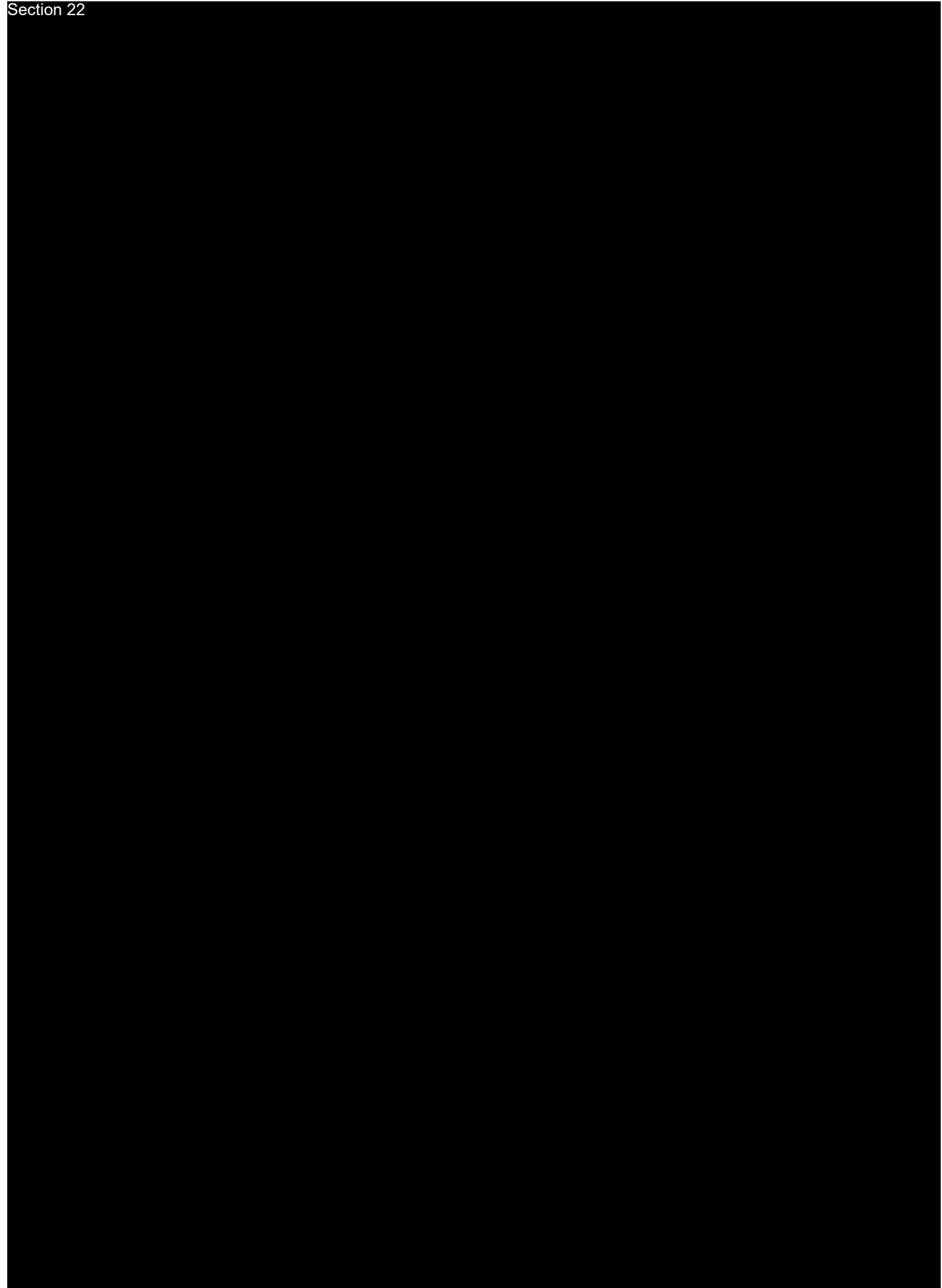


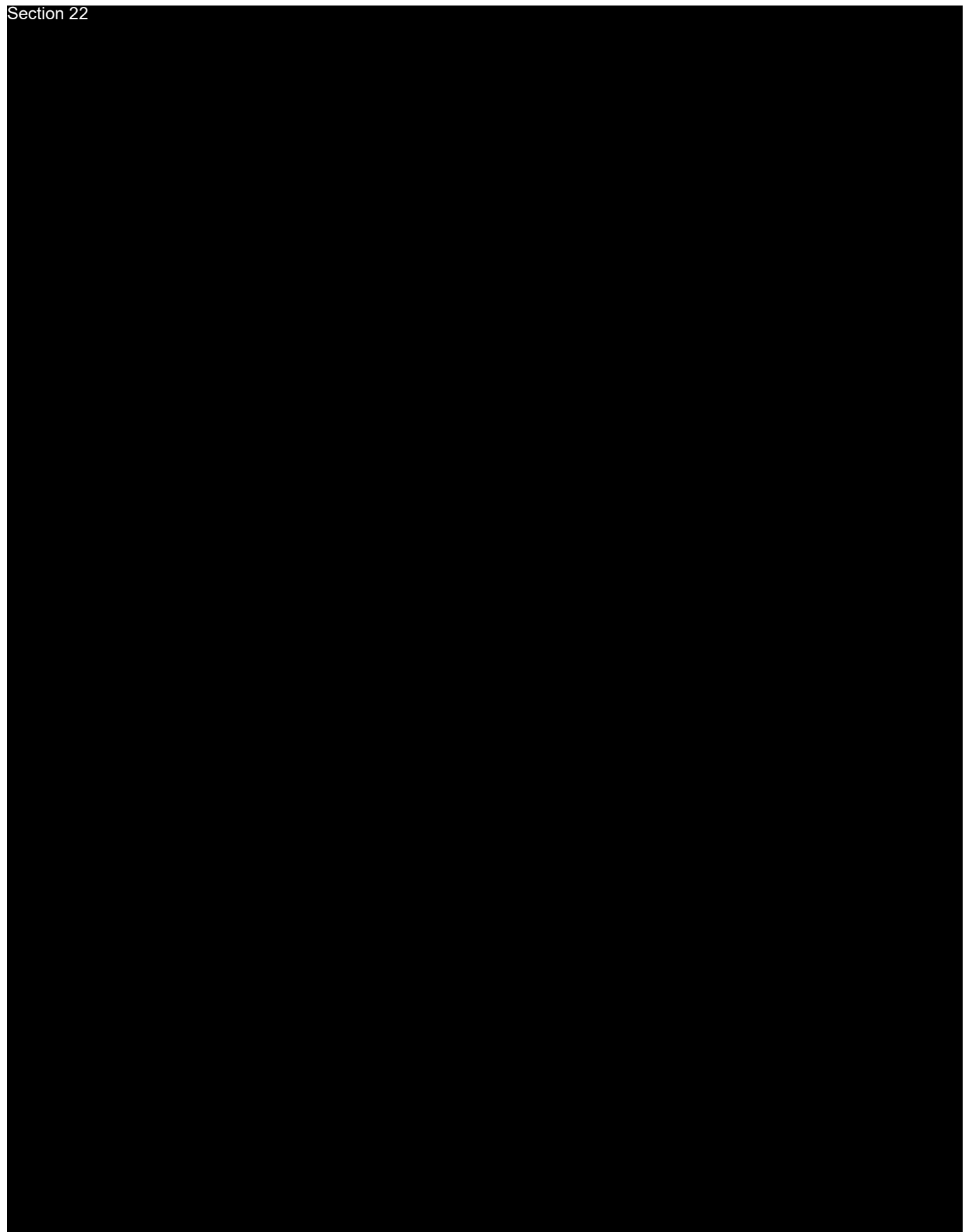


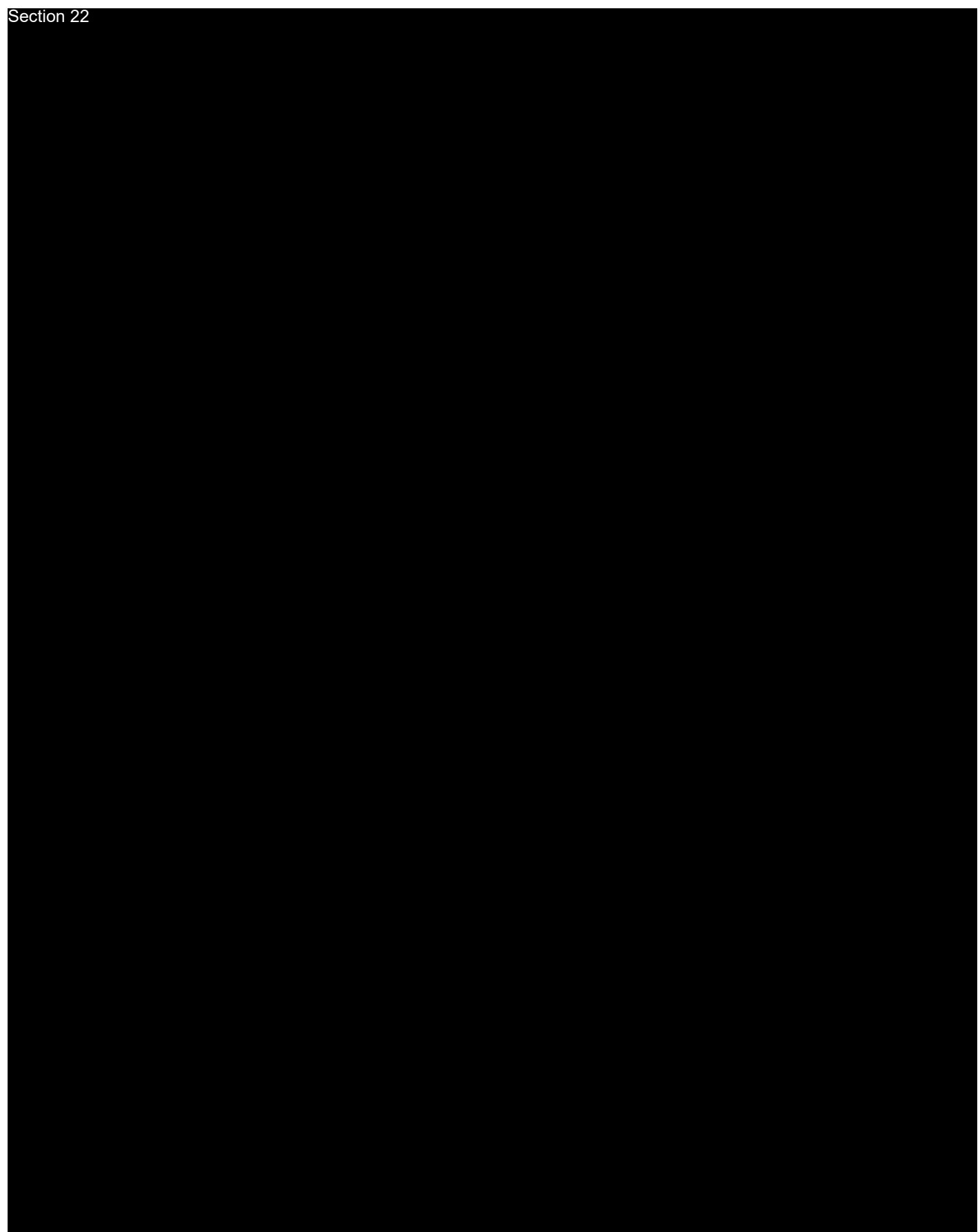


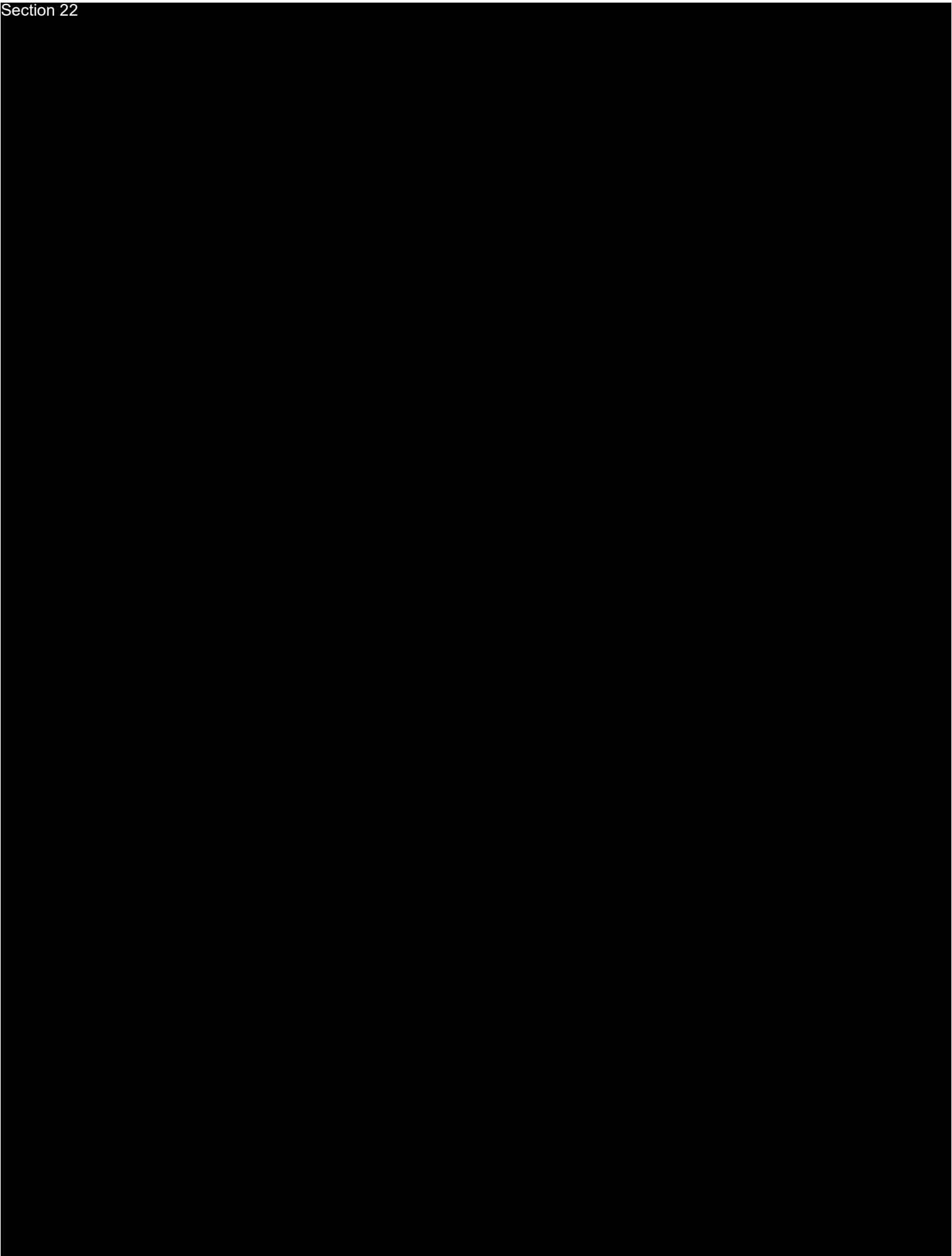


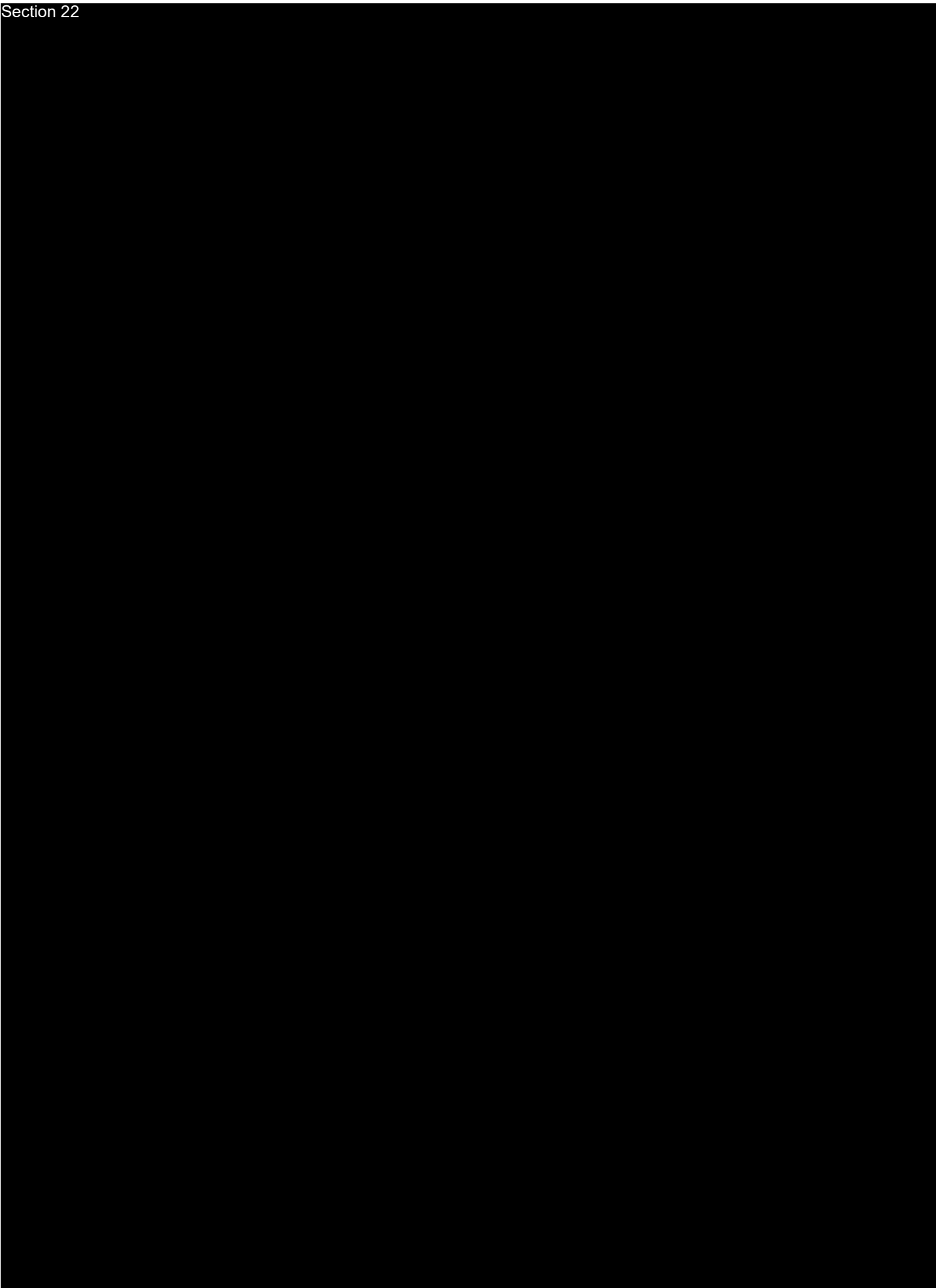


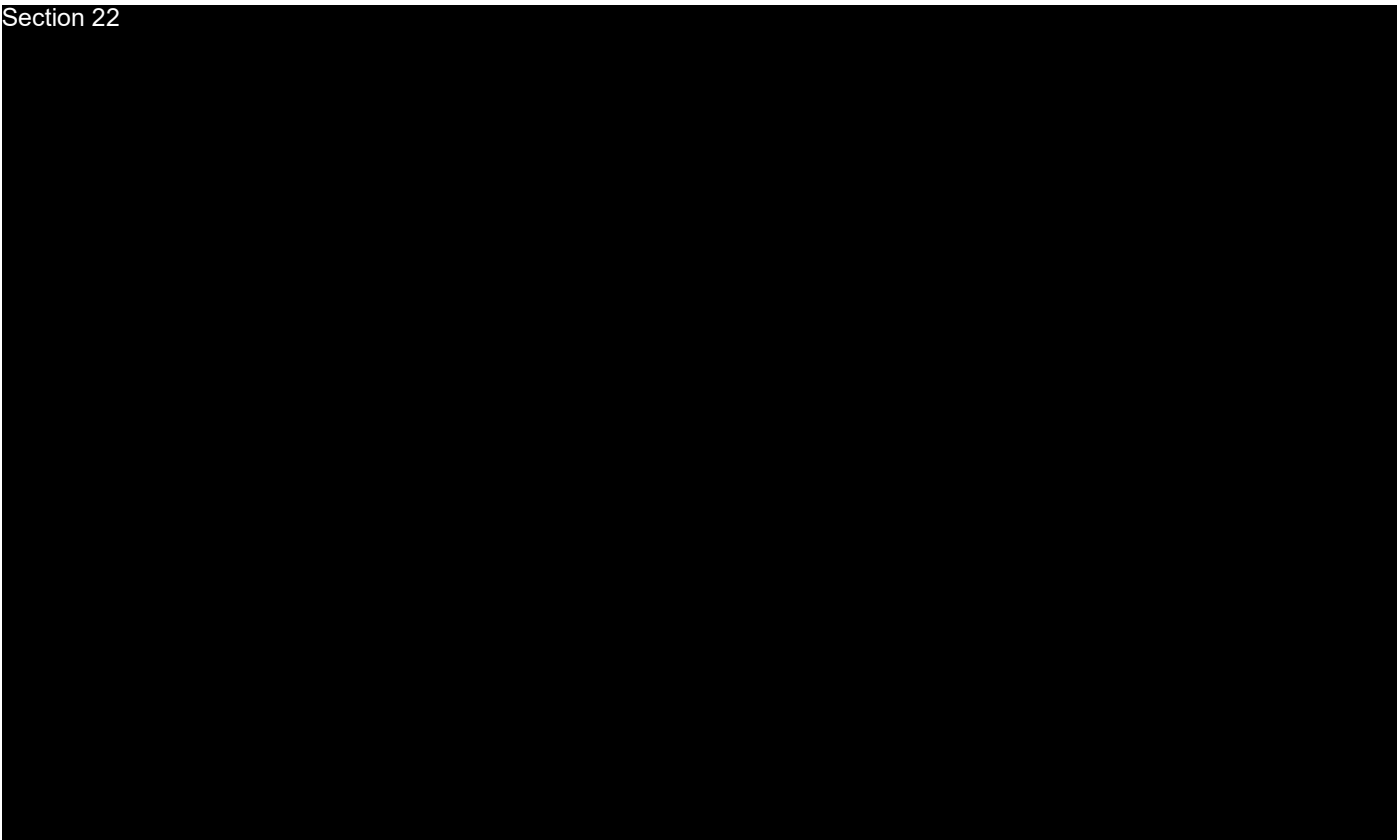


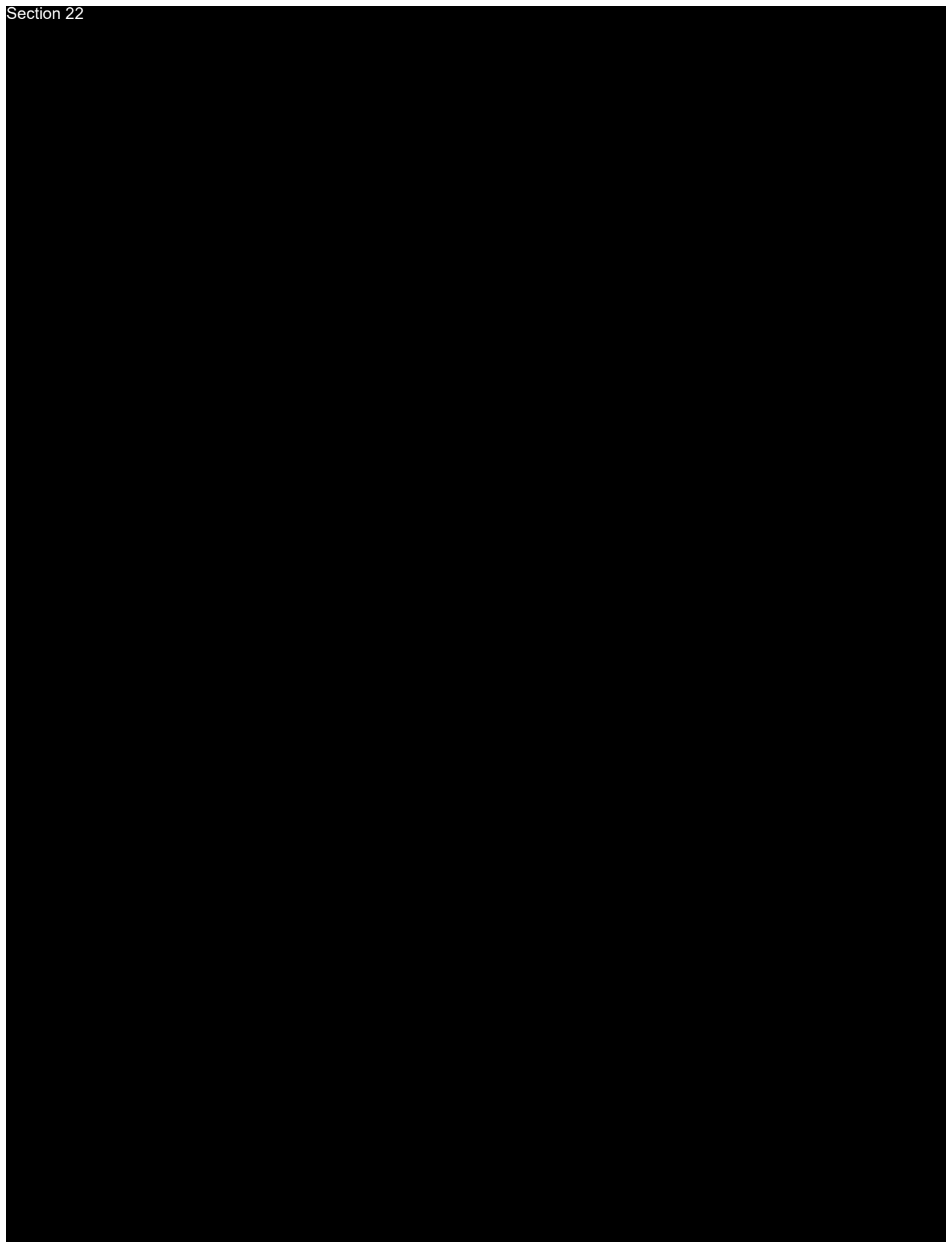


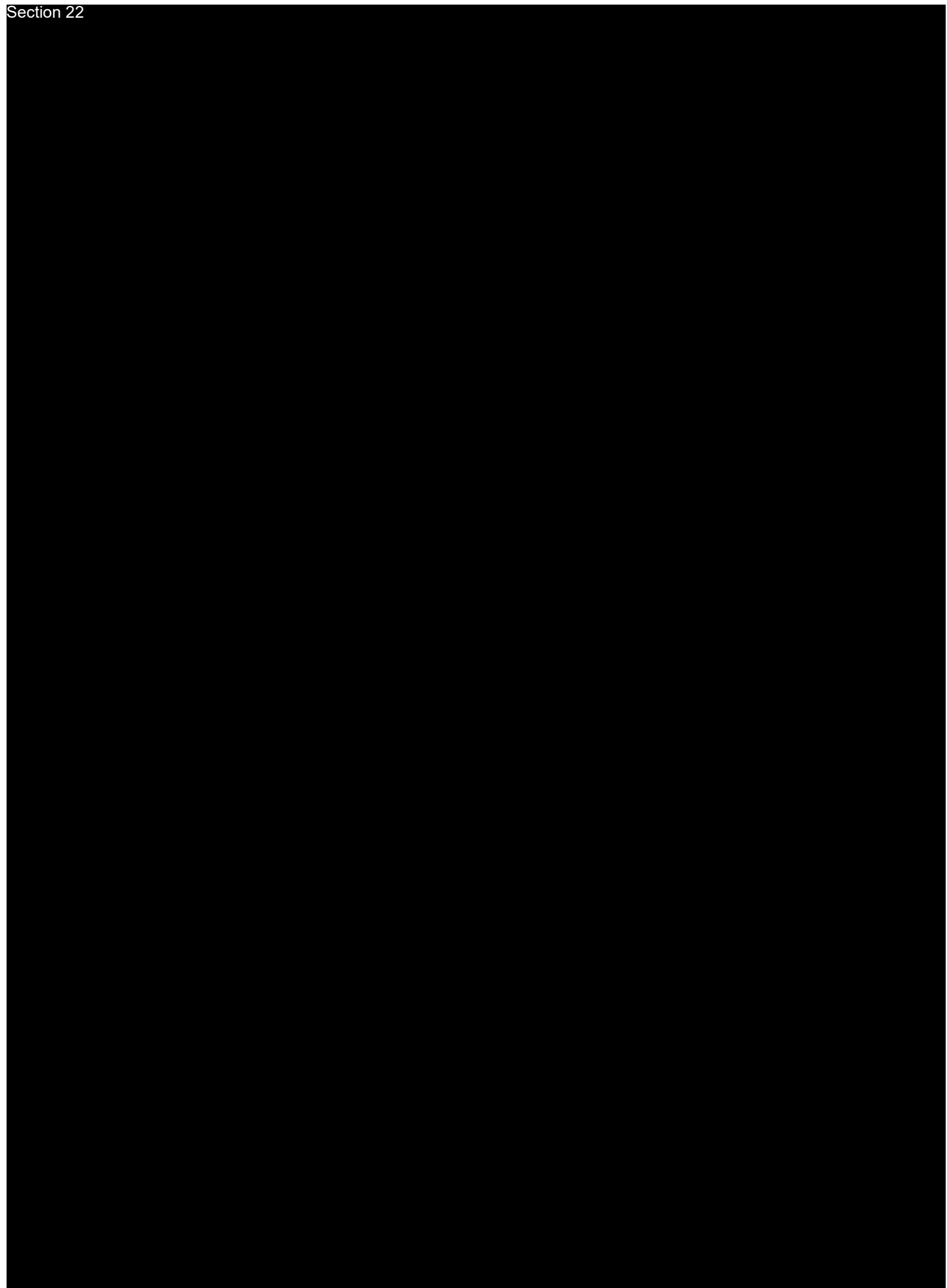


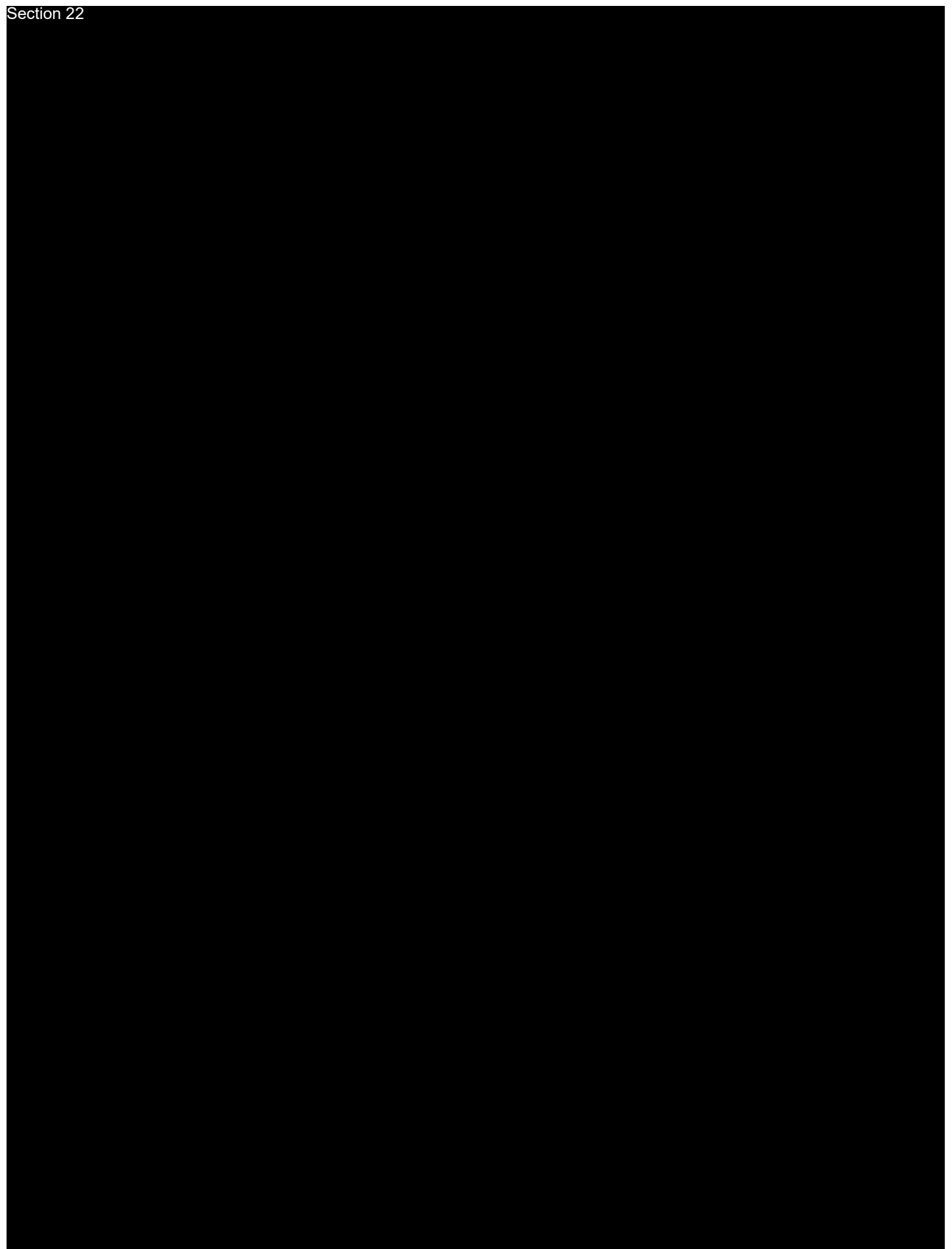


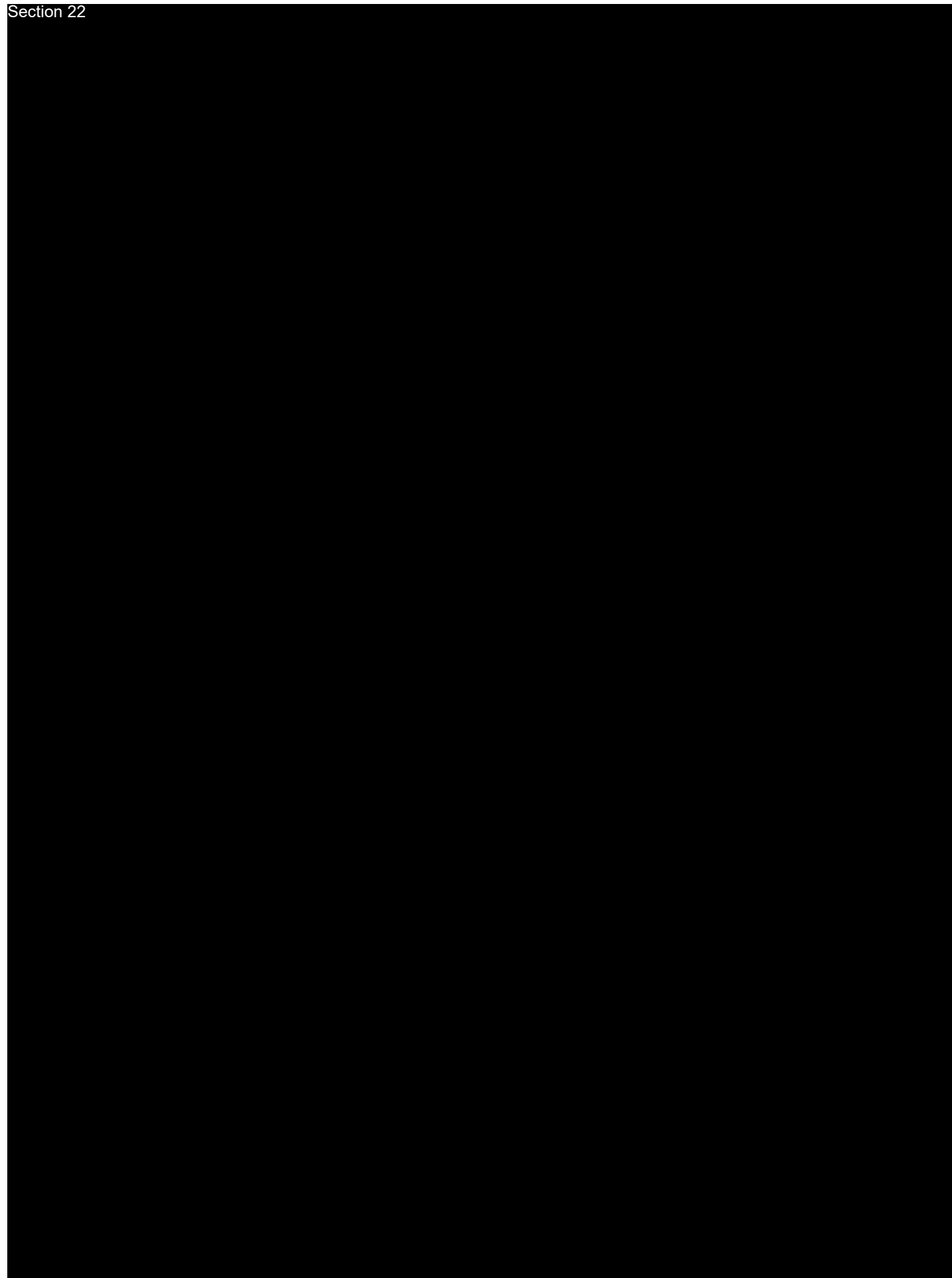




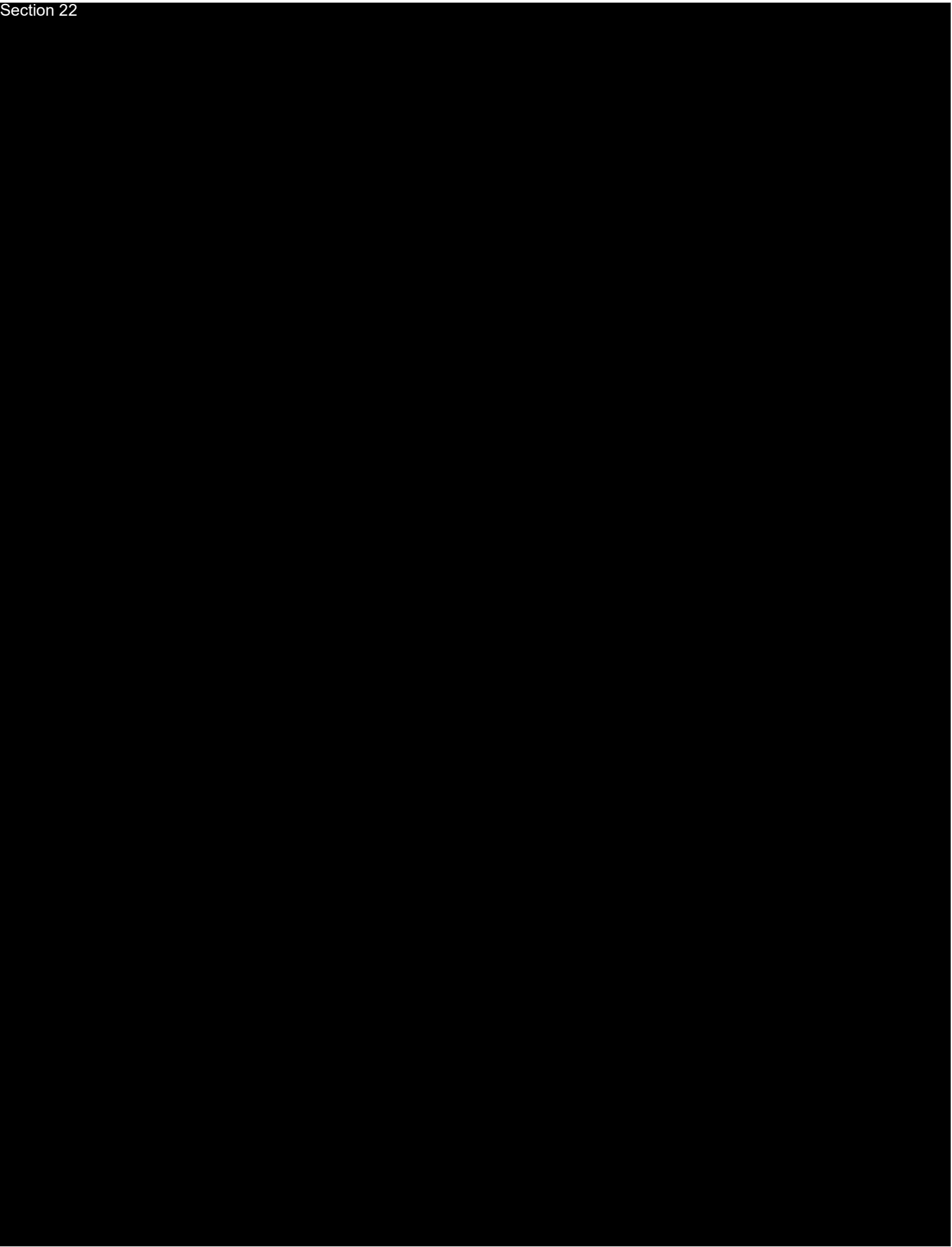


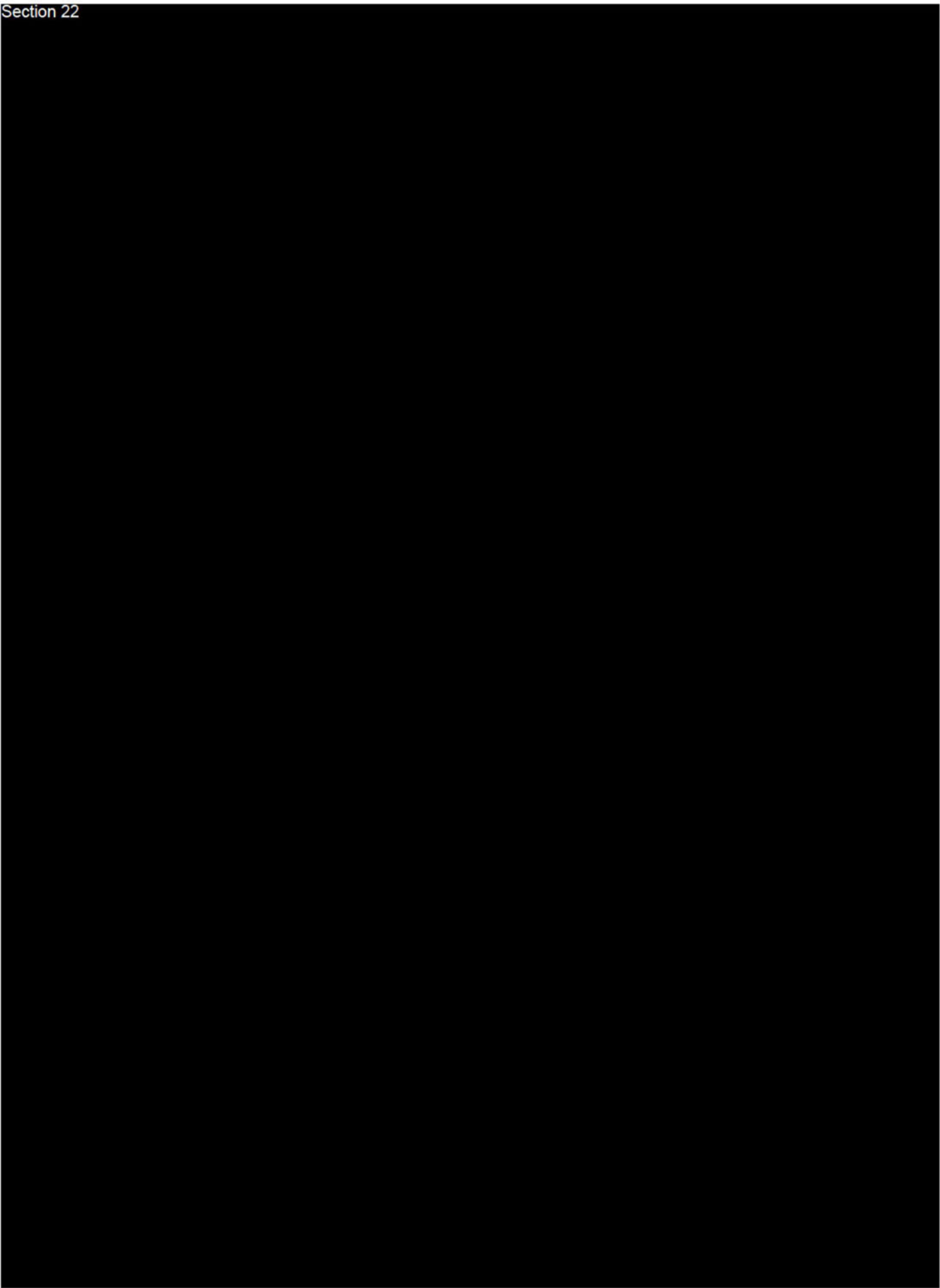


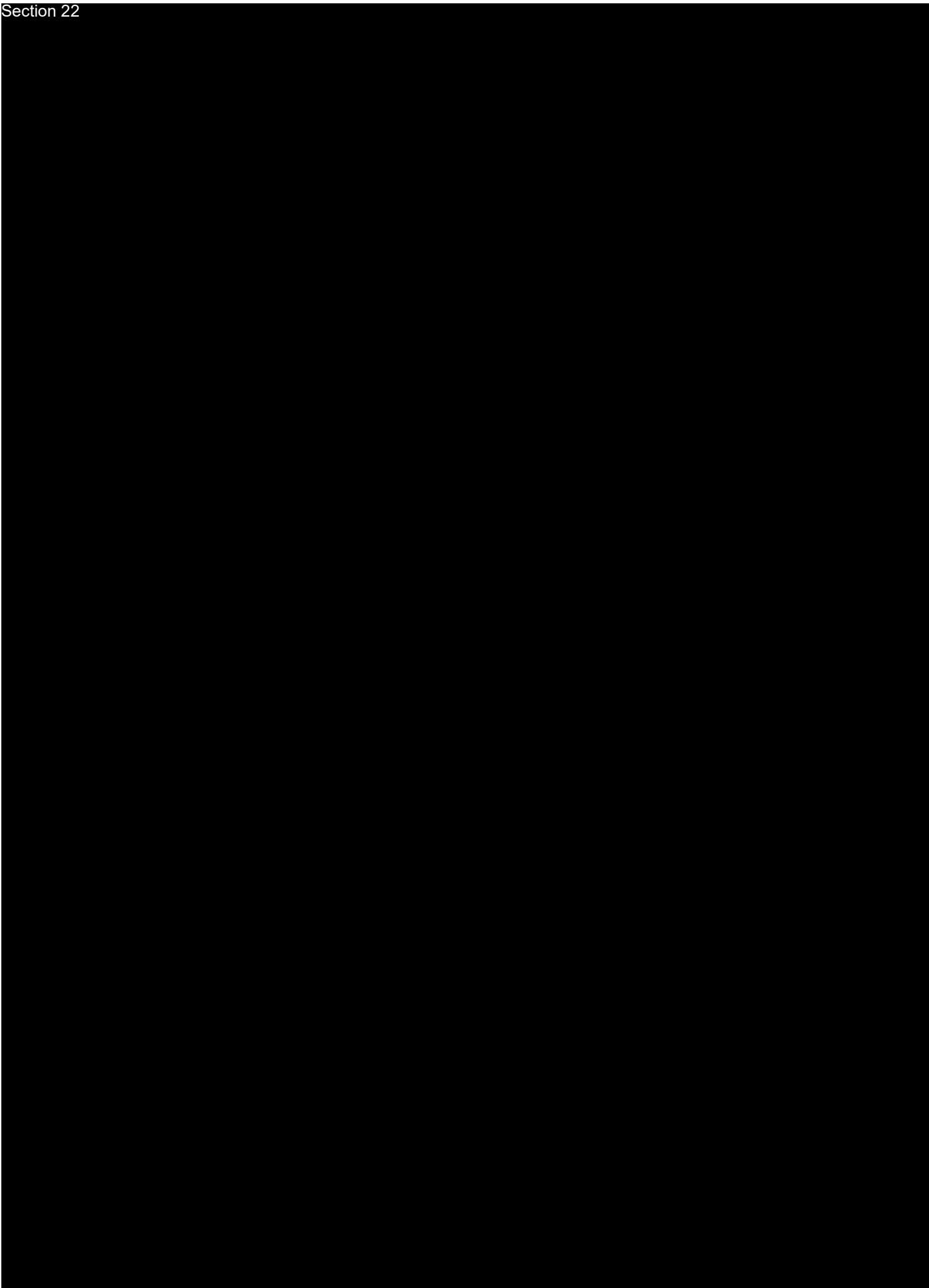


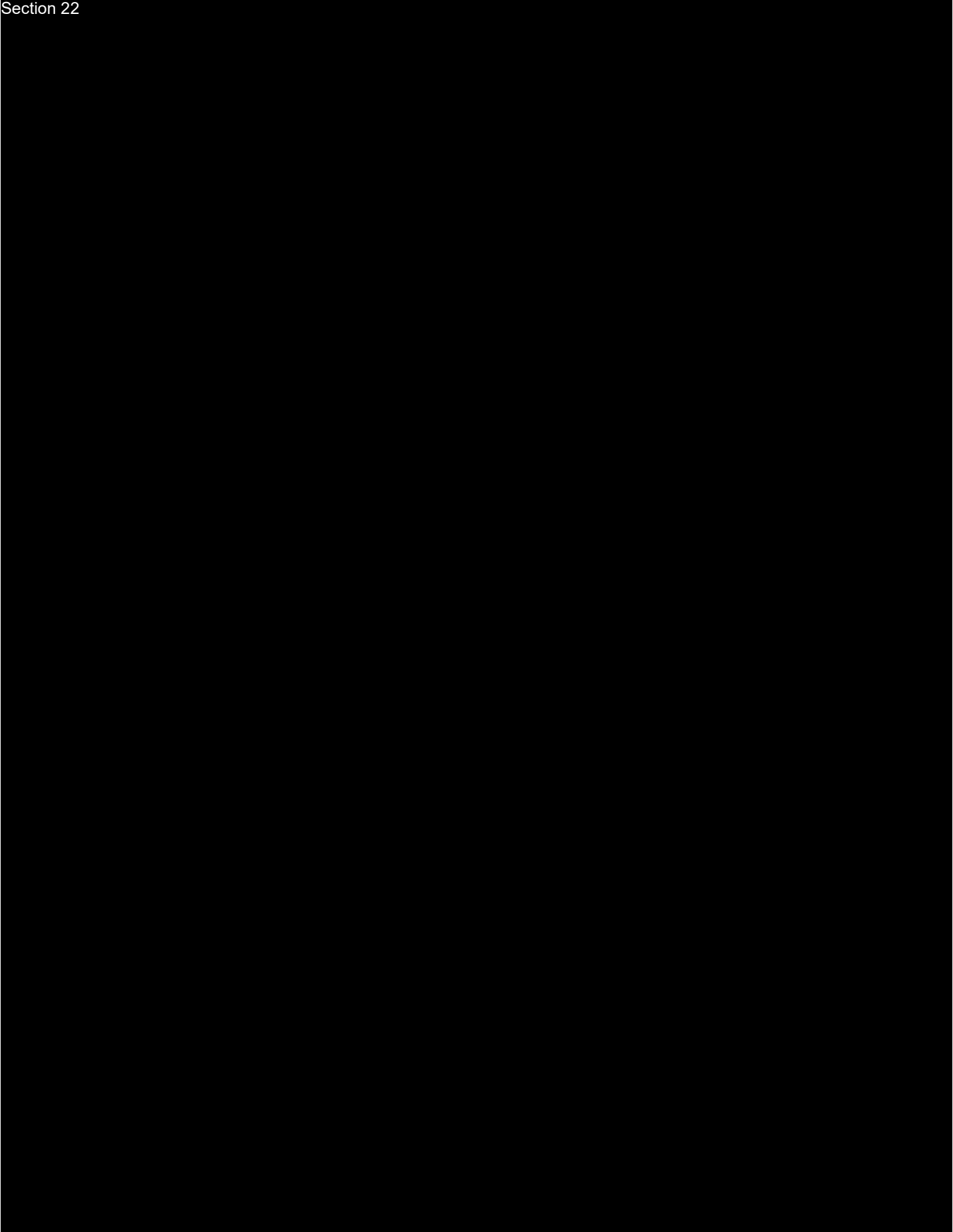




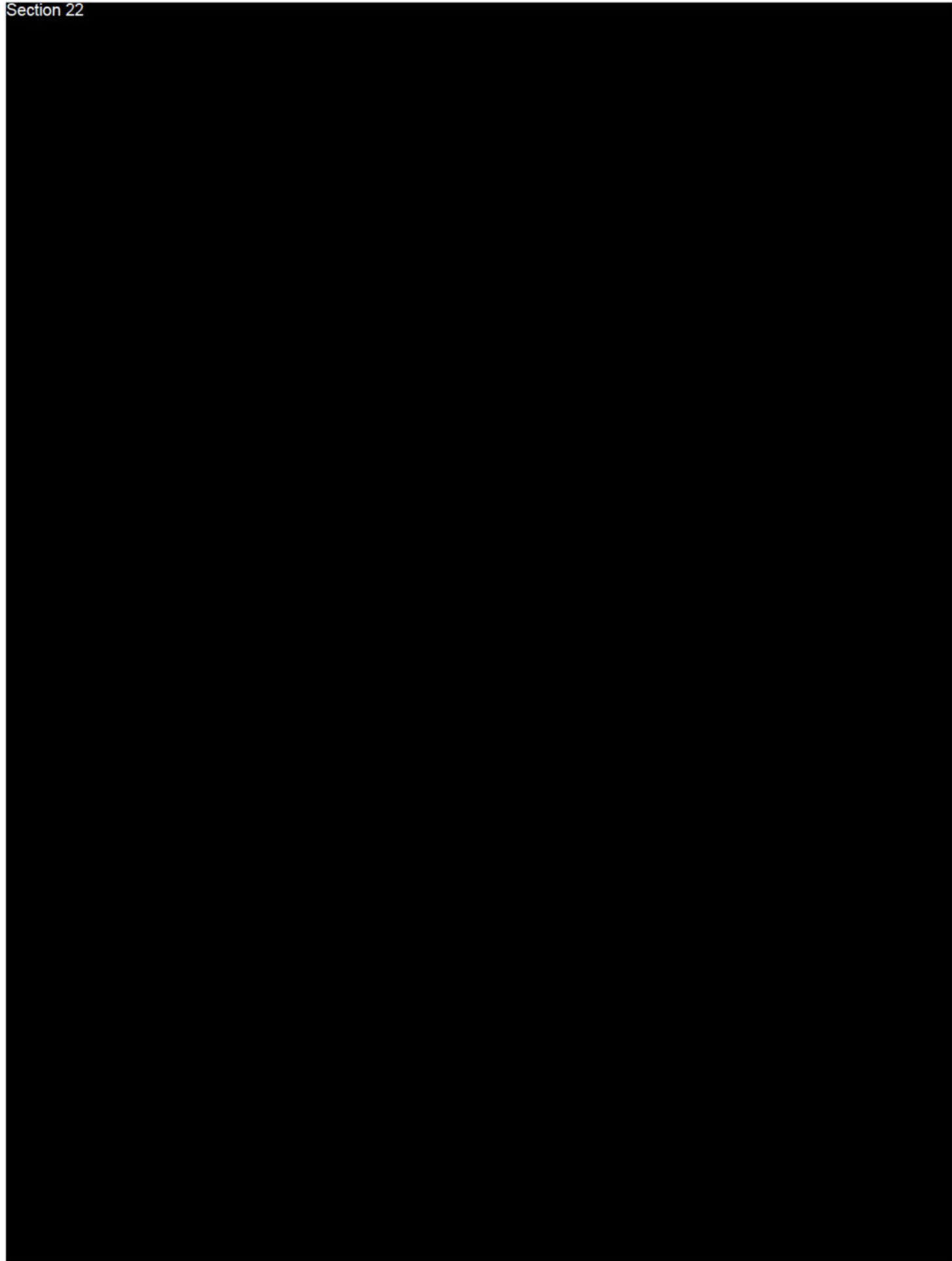


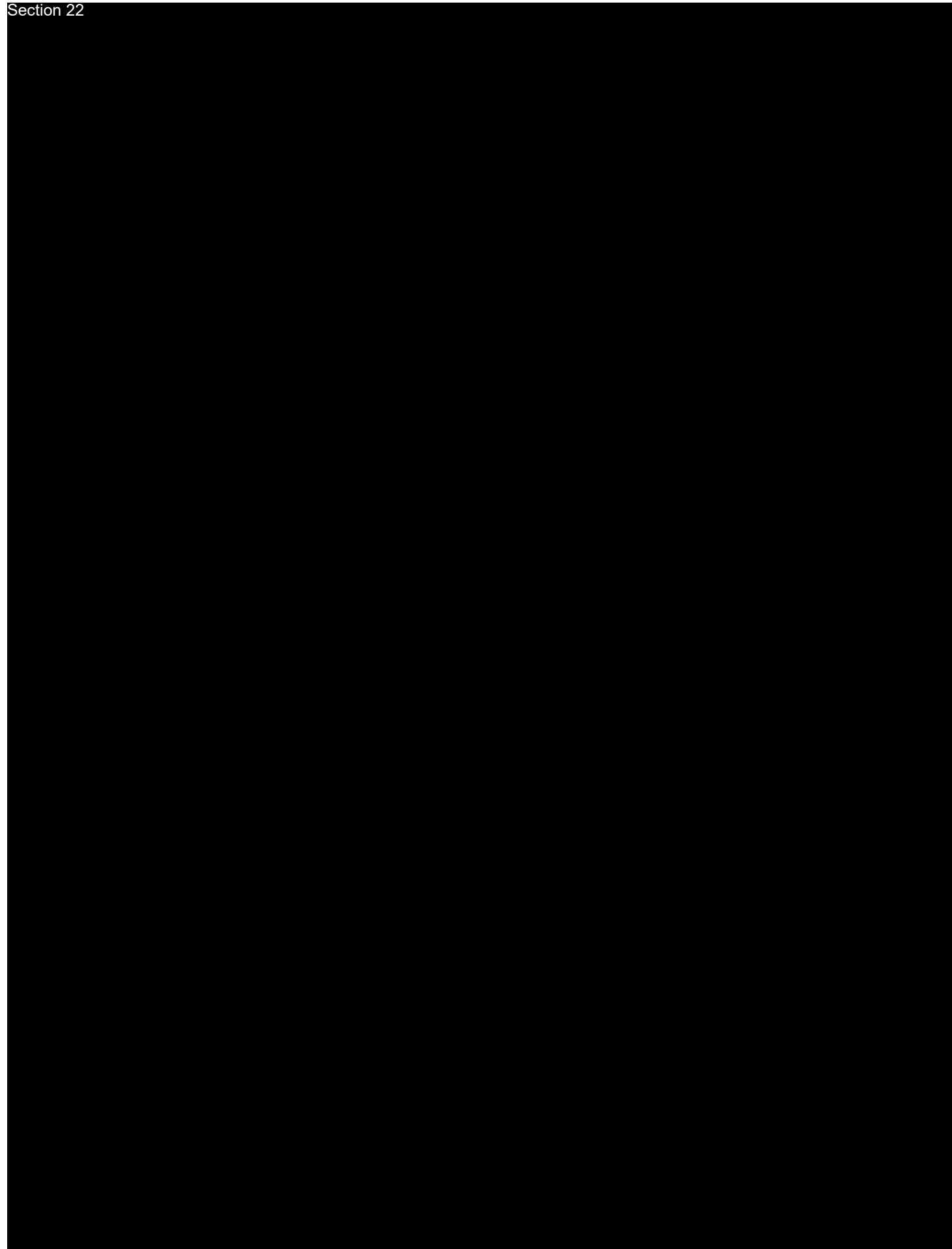


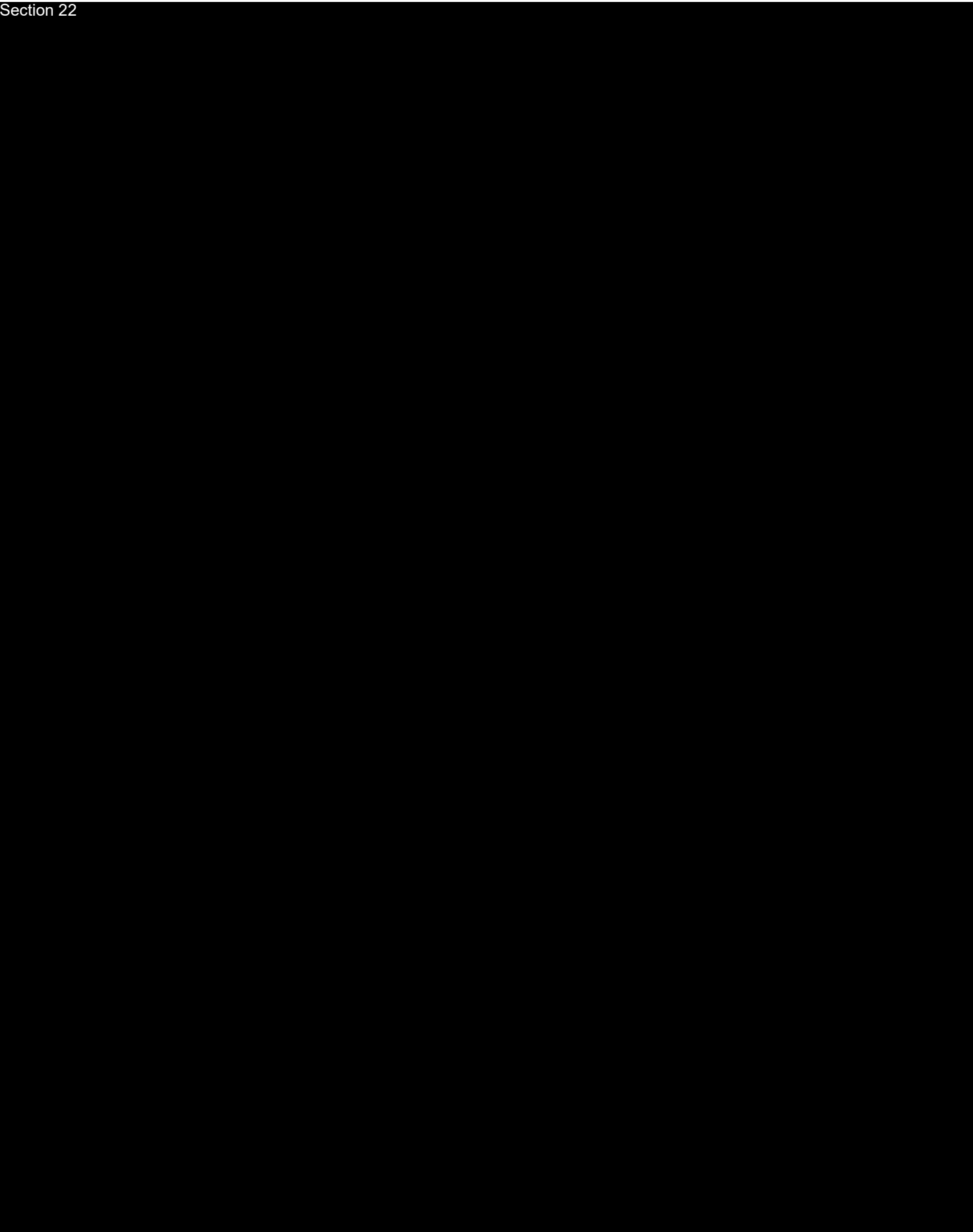












Remote Mobile Polling

Remote services delivery team

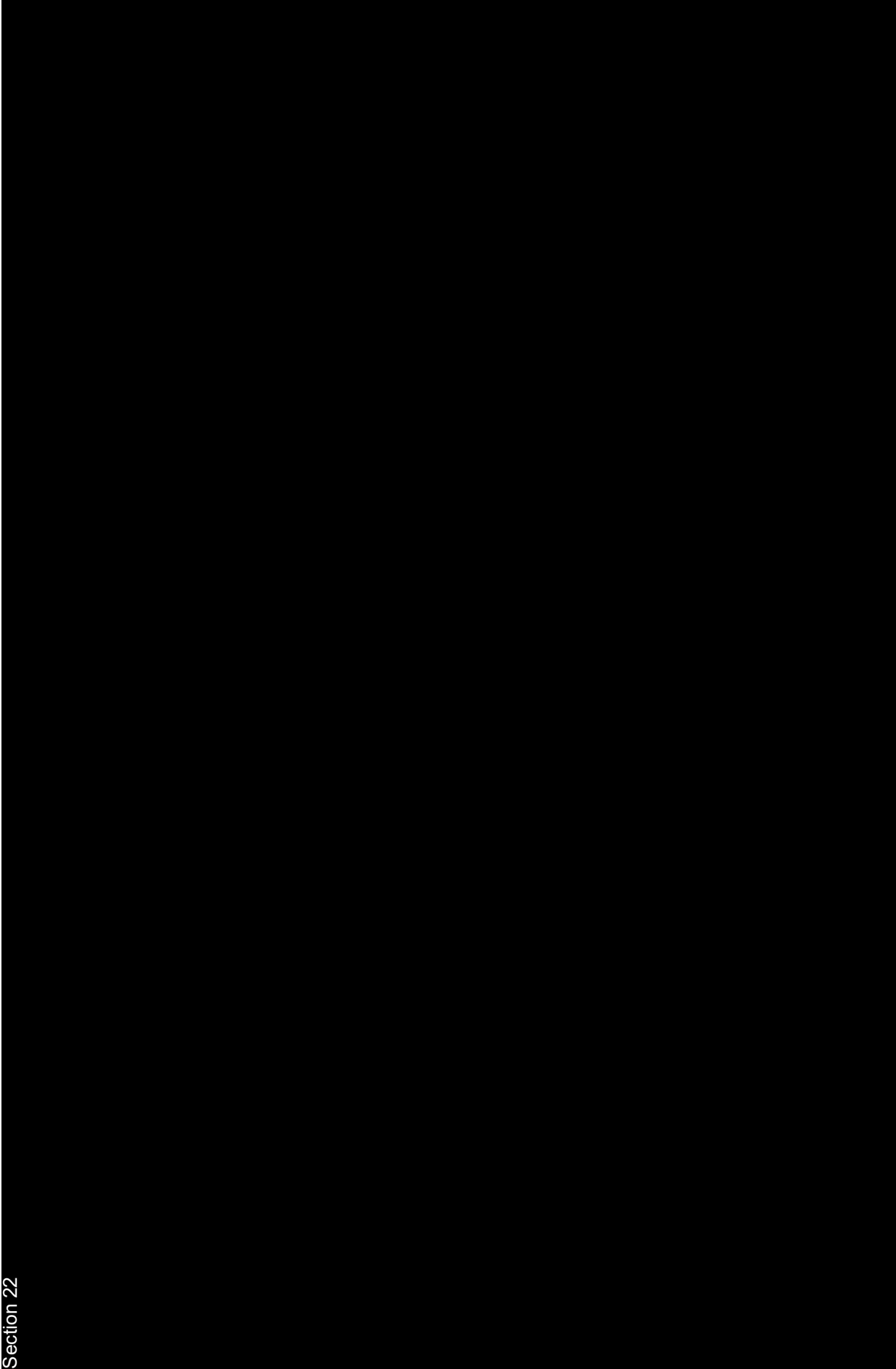


AEC

Australian Electoral Commission

Election Procedures Handbook







Commonwealth of Australia
BALLOT PAPER
Australian Capital Territory

**Referendum on proposed
Constitution alteration**

DIRECTIONS TO VOTER:
Write "YES" or "NO" in the
space provided opposite the
question set out below.

A PROPOSED LAW:
**Description of the proposed
constitutional change.**

Do you approve
this proposed
alteration?

YES
WRITE "YES"
OR "NO"

AEC
AUSTRALIAN ELECTORAL COMMISSION

Commonwealth of Australia
BALLOT PAPER
Australian Capital Territory

**Referendum on proposed
Constitution alteration**

DIRECTIONS TO VOTER:
Write "YES" or "NO" in the
space provided opposite the
question set out below.

A PROPOSED LAW:
**Description of the proposed
constitutional change.**

Do you approve
this proposed
alteration?

NO
WRITE "YES"
OR "NO"

AEC
AUSTRALIAN ELECTORAL COMMISSION

Commonwealth of Australia
BALLOT PAPER
Australian Capital Territory

**Referendum on proposed
Constitution alteration**

DIRECTIONS TO VOTER:
Write "YES" or "NO" in the
space provided opposite the
question set out below.

A PROPOSED LAW:
**Description of the proposed
constitutional change.**

Do you approve
this proposed
alteration?

YES
WRITE "YES"
OR "NO"

AEC
AUSTRALIAN ELECTORAL COMMISSION

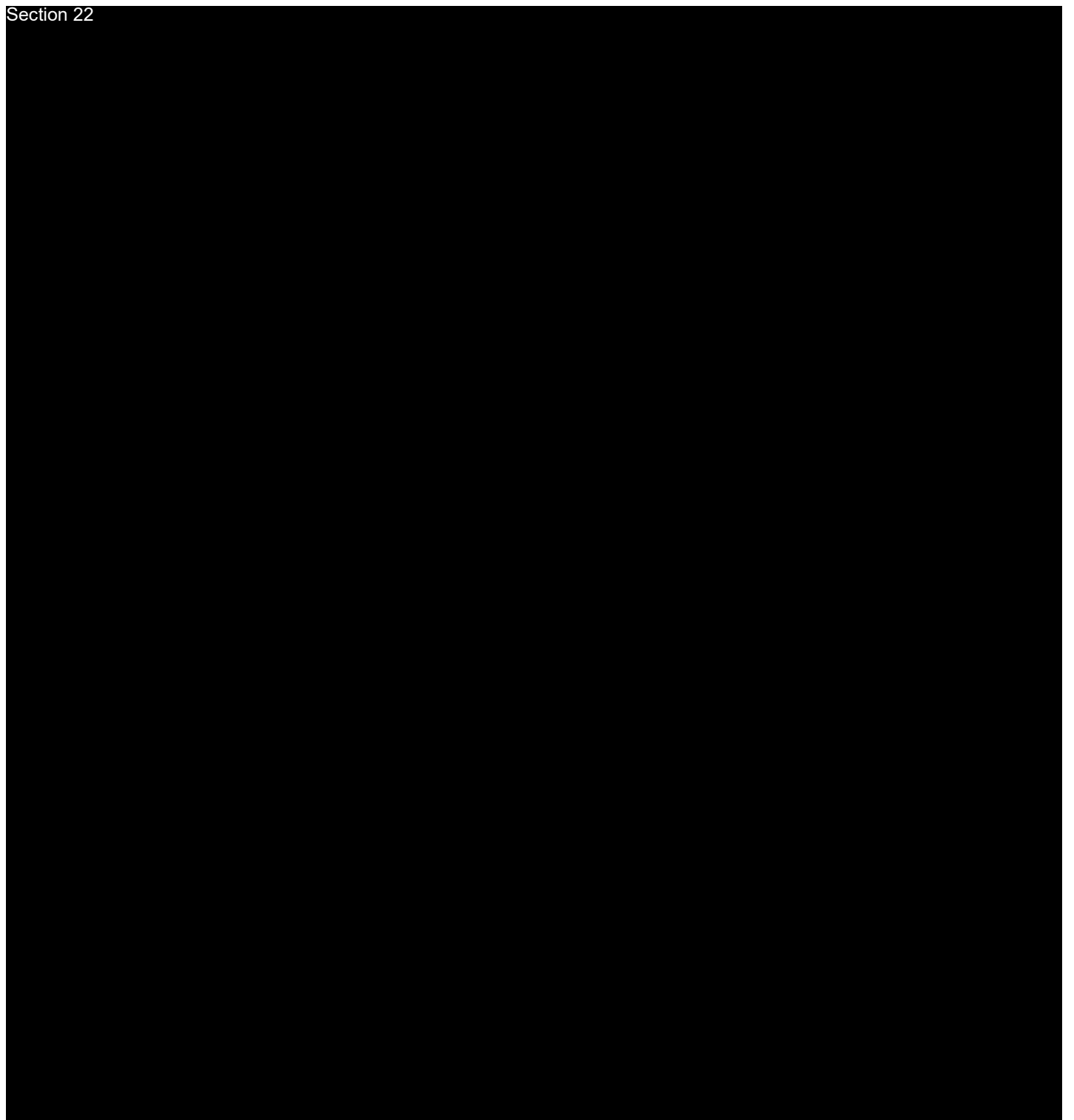
September 2022

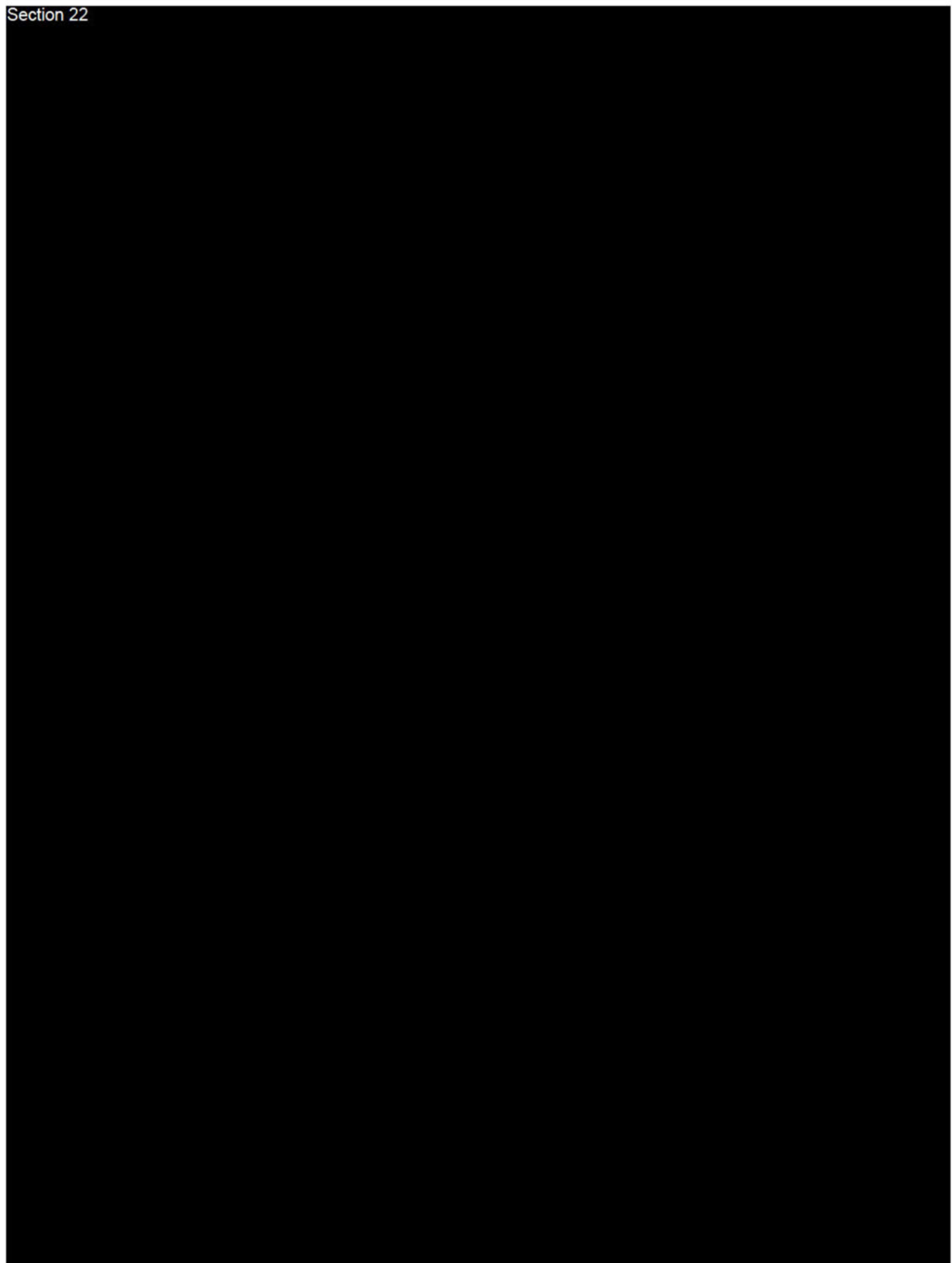
ET701 Ballot paper scrutiny

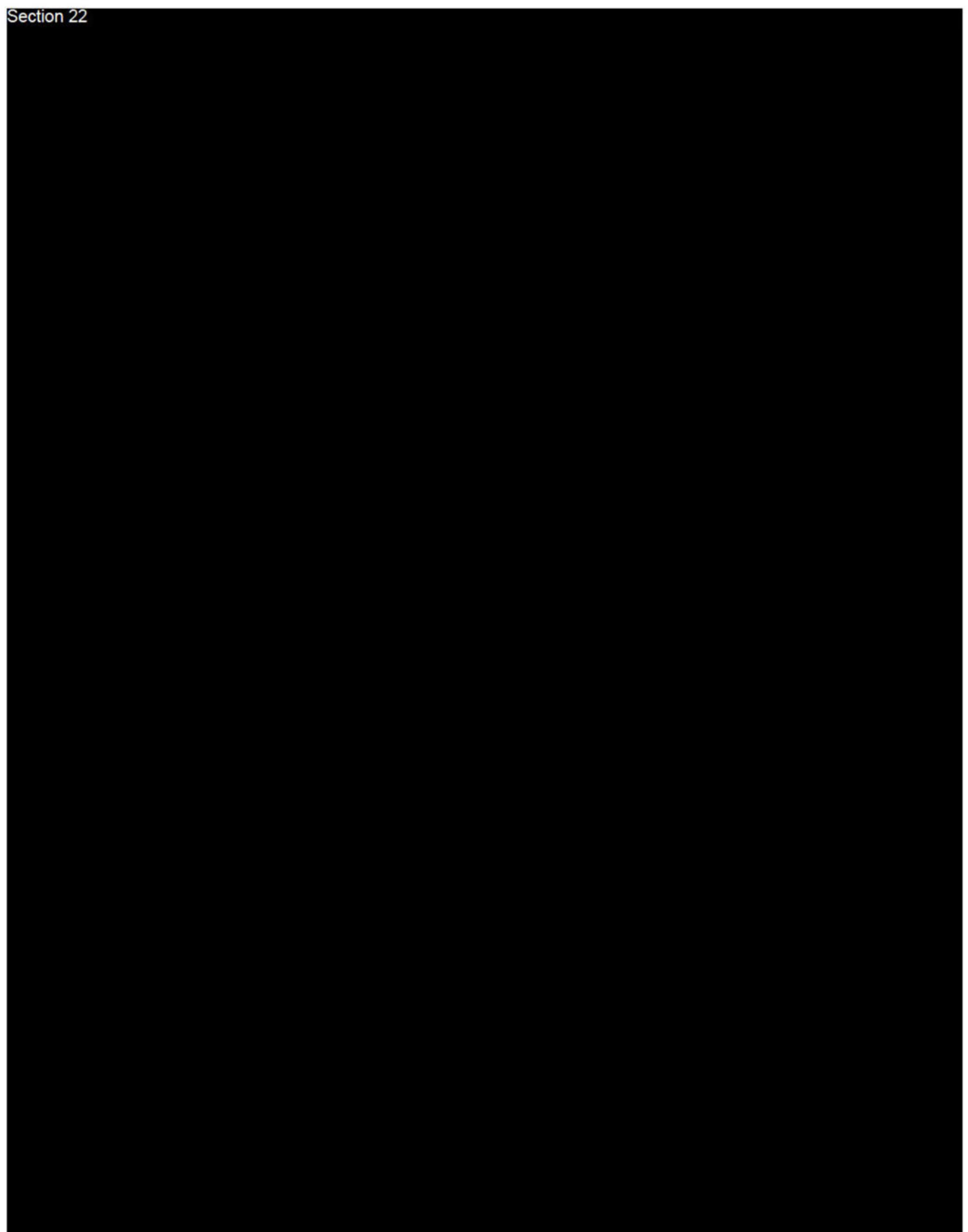
Module 2 Conducting a scrutiny

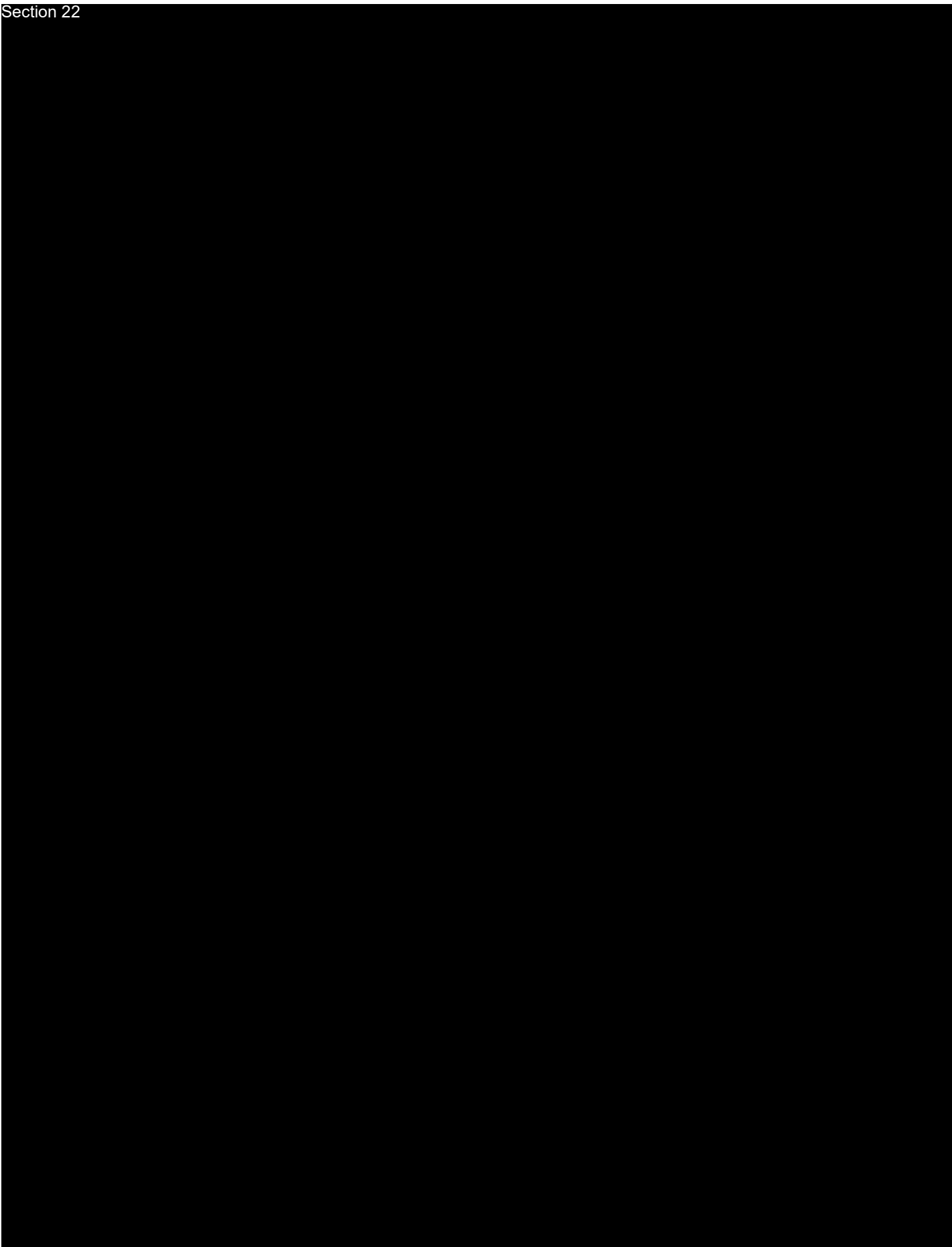


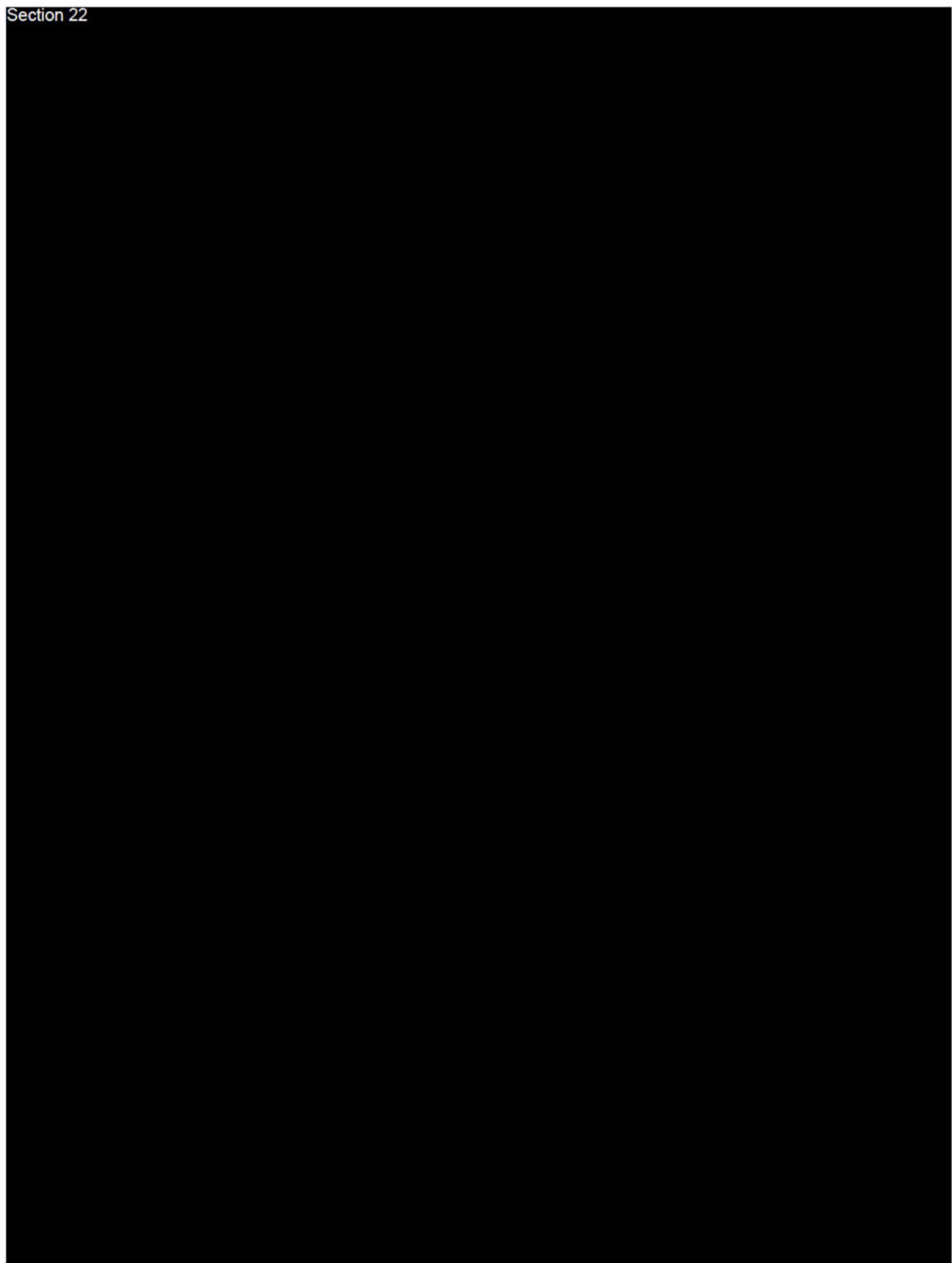


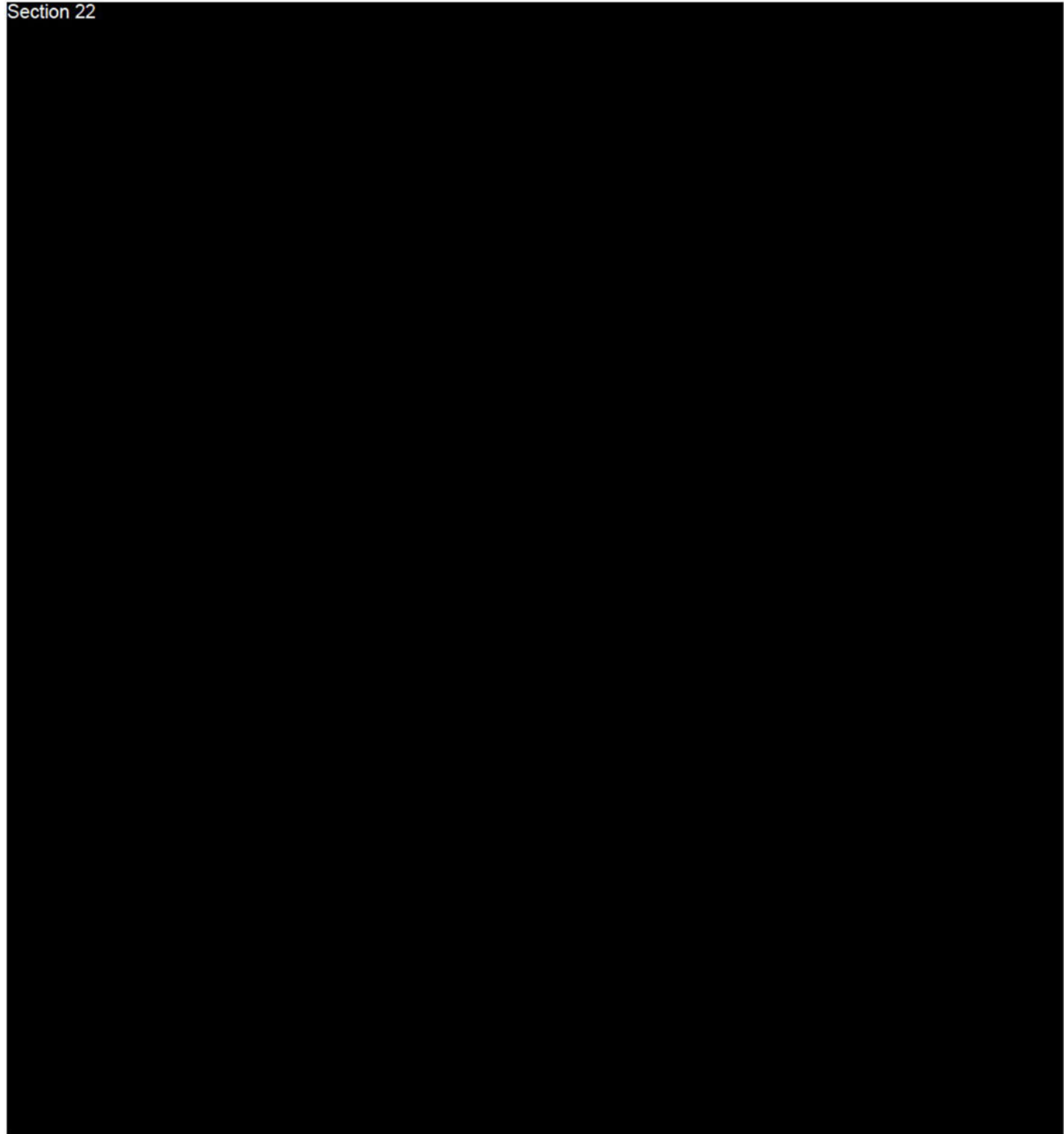


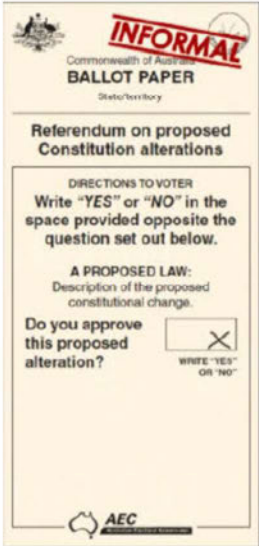
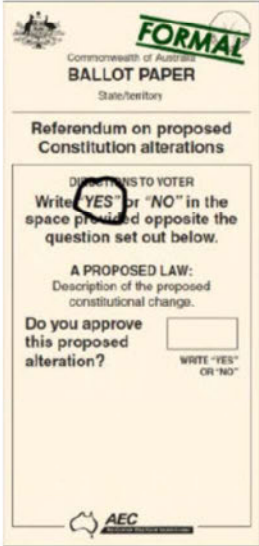


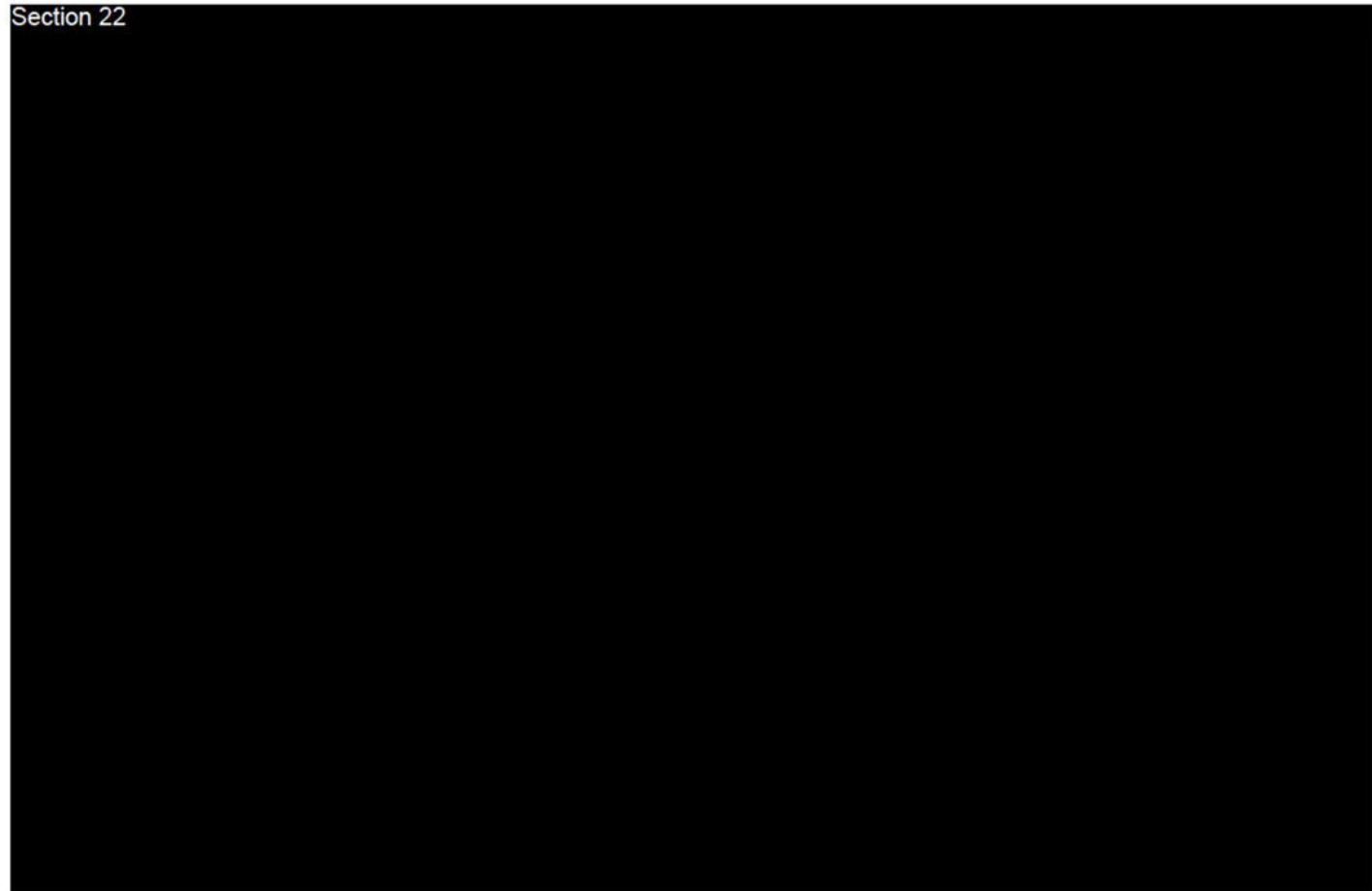


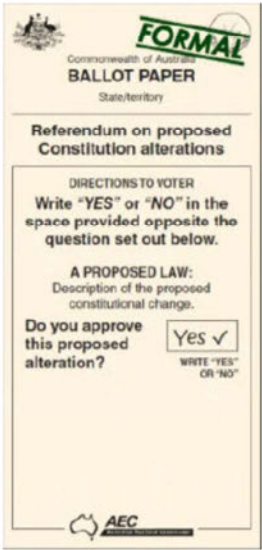
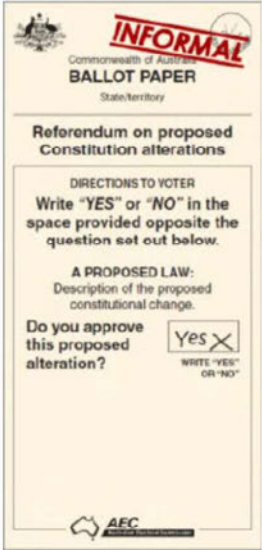


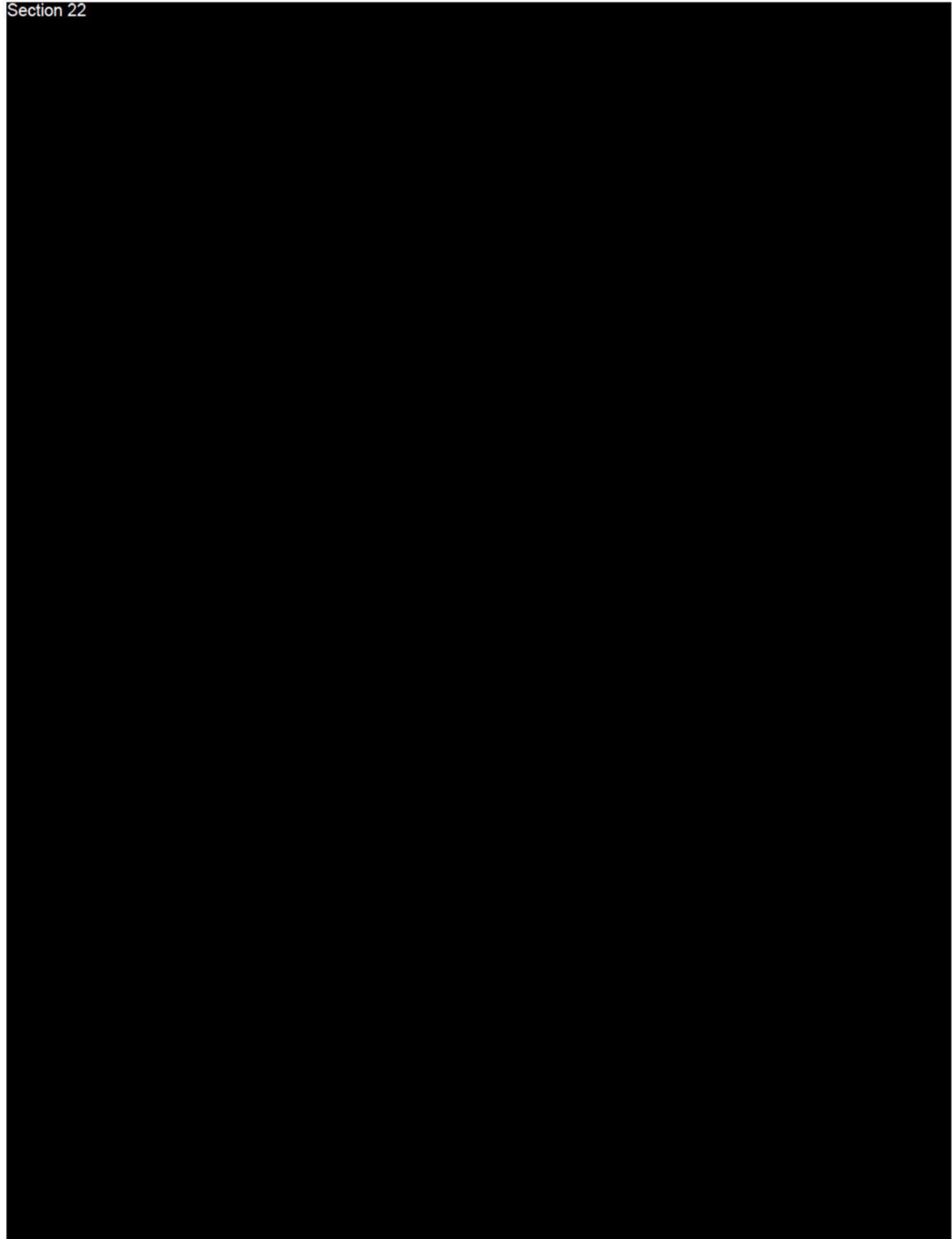




Tab title	Text	Image
Acceptable markings	<p>Voters filling in a referendum ballot paper are obliged to indicate their vote by either writing the word 'yes' or 'no' on the ballot paper.</p> <ul style="list-style-type: none"> Words with the same meaning as 'yes' or 'no', such as 'definitely', 'never', an indication of either 'Y' or 'N', as well as tick marks, are all capable of clearly demonstrating the voter's intention. The vote is informal if a term is used that conveys indecision and uncertainty, such as 'I guess so' or 'not sure', or a cross is used on a referendum ballot paper which has only one question, since a cross on its own may mean either 'yes' or 'no'. 	<p>[Image: ref informal x.png]</p>  <p>[Image: ref formal circle.png]</p> 



Tab title	Text	Image
Multiple marks	<p>If a voter marks a referendum ballot paper in numerous ways, the vote is formal as long as conflicting answers have not been given. For example, a tick and a 'yes' in the one box will be formal, as the intention of the voter is to indicate approval for the question.</p>	<p>[Image: 1-19-bg.png]</p>  <p>[Image 1-19-informal.png]</p> 



3.3. Multiple questions


Static standard

On a referendum ballot paper with more than one question, each question should be scrutinised independently of the other questions. It is possible for the answer to one question to be formal and the answer to another question to be informal.

On referendum ballot papers with two or more questions, crosses are capable of clearly demonstrating the voter's intention, but are only formal if at least one other question on the same ballot paper is answered with a tick.

In this example, the top preference can be considered as a 'no' vote, while the bottom preference can be considered a 'yes' vote.

[Image: ref two questions.png]

 **FORMAL**
Commonwealth of Australia
BALLOT PAPER
State/Territory

**Referendum on proposed
Constitution alterations**


DIRECTIONS TO VOTER
Write "YES" or "NO" in the
space provided opposite the
question set out below.

PROPOSED LAW:
Description of the proposed
constitutional change.

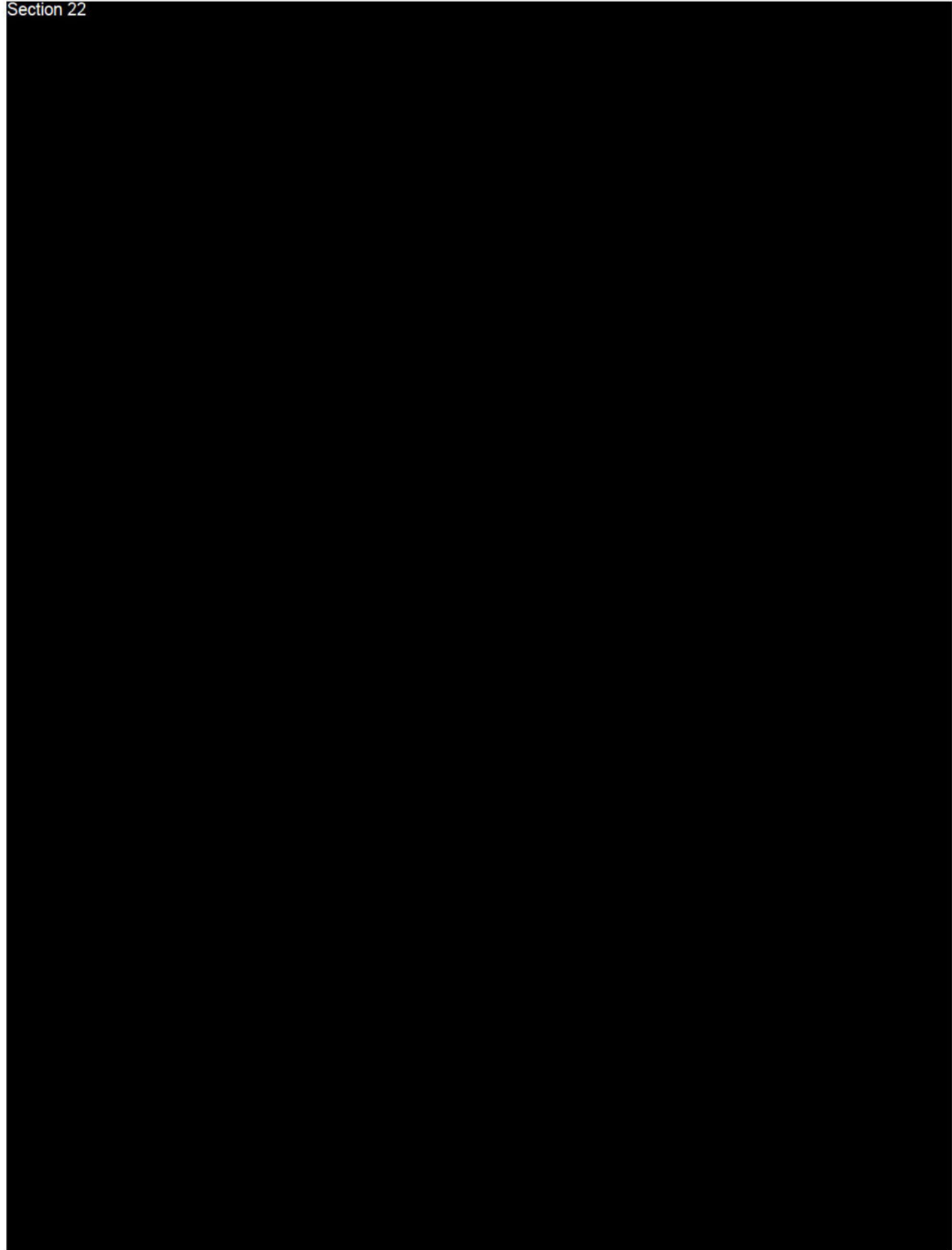
Do you approve
this proposed
alteration? ☒ X
WRITE "YES"
OR "NO"

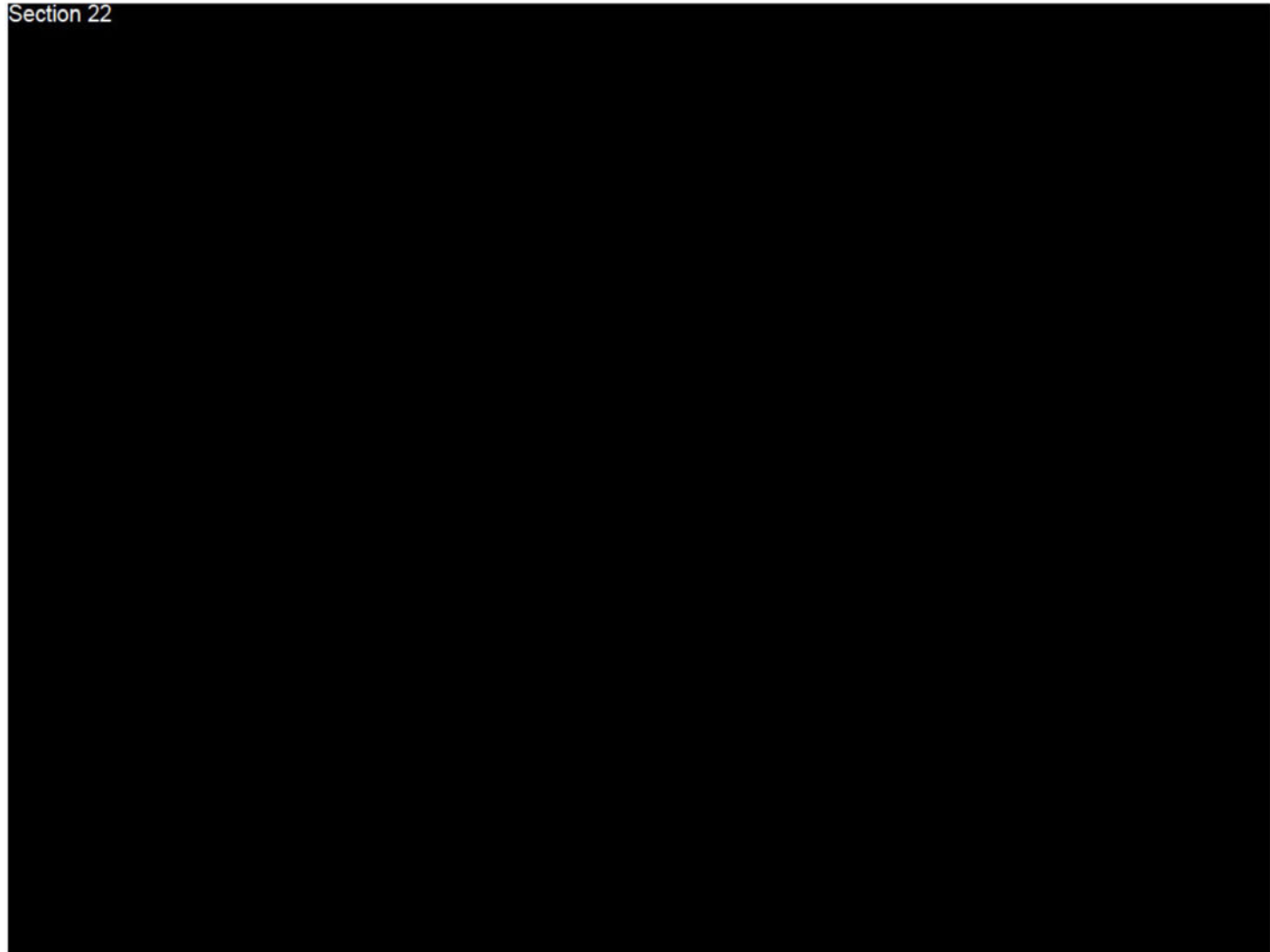
PROPOSED LAW:
Description of the proposed
constitutional change.

Do you approve
this proposed
alteration? ☒ ✓
WRITE "YES"
OR "NO"

 **AEC**
Australian Electoral Commission

Section 22





From: Section 47F
To: Section 47F
Cc: NTU; Section 47F
Subject: RE: Apparent contradiction in formality process as presented in ET701 [SEC=OFFICIAL]
Date: Tuesday, 22 August 2023 10:51:39 AM
Attachments: [image003.gif](#)

Good morning Section 47F

Thanks for your email.

The training is inline with the ballot paper formality guidelines that state, on a single question Ref BP, a cross may mean a yes or a no.

To say that a 'Yes X' answer means Yes and Yes' is assuming that in this case the cross means yes, and we cannot make any assumptions on what the voter means.

We can only follow the guidelines which state we don't know if this answer is 'Yes/Yes' or 'Yes/No'.

Sections 22,47E(d)

Kind regards

Section 47F

| Assistant Director
National Training Unit | People Branch
Australian Electoral Commission

Section 47F

From: Section 47F

Sent: Tuesday, August 22, 2023 9:52 AM

To: NTU <NTU@aec.gov.au>

Subject: Apparent contradiction in formality process as presented in ET701 [SEC=OFFICIAL]

Hi there

I've just completed the ET701 learning module, and there's a contradiction. I don't know if this is just in the material or in the actual scrutiny process but, on the principle of supporting the voter's intentions, I thought I should mention this.

So, in course ET701, Module 2 Formality Guidelines, the tab for 'acceptable markings' says that "a cross on its own can mean yes or no" but the tab for 'Multiple markings' regards the entry 'Yes x' as a contradiction, ie now the 'x' means 'no' even though it's accompanied by a 'yes'.

These two slides cannot both be right. There's another place where 'x' is regarded as 'no' but this is the clearest hiccup.

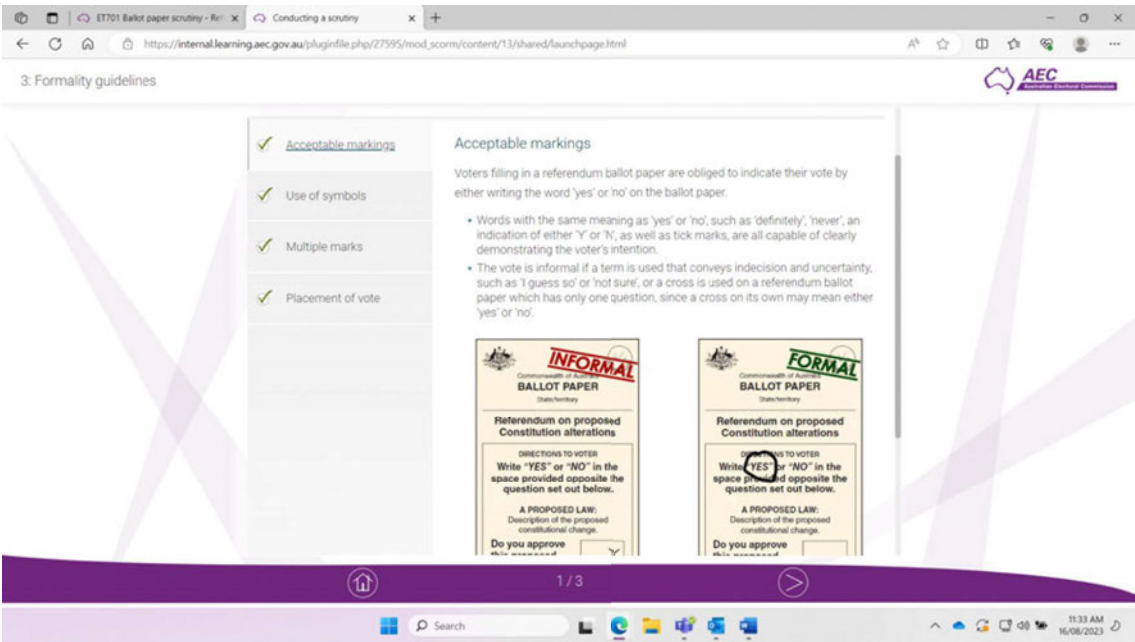
Please can you check this and clarify on the training. Or...

I've attached screen shots for ease of finding what I'm talking about.

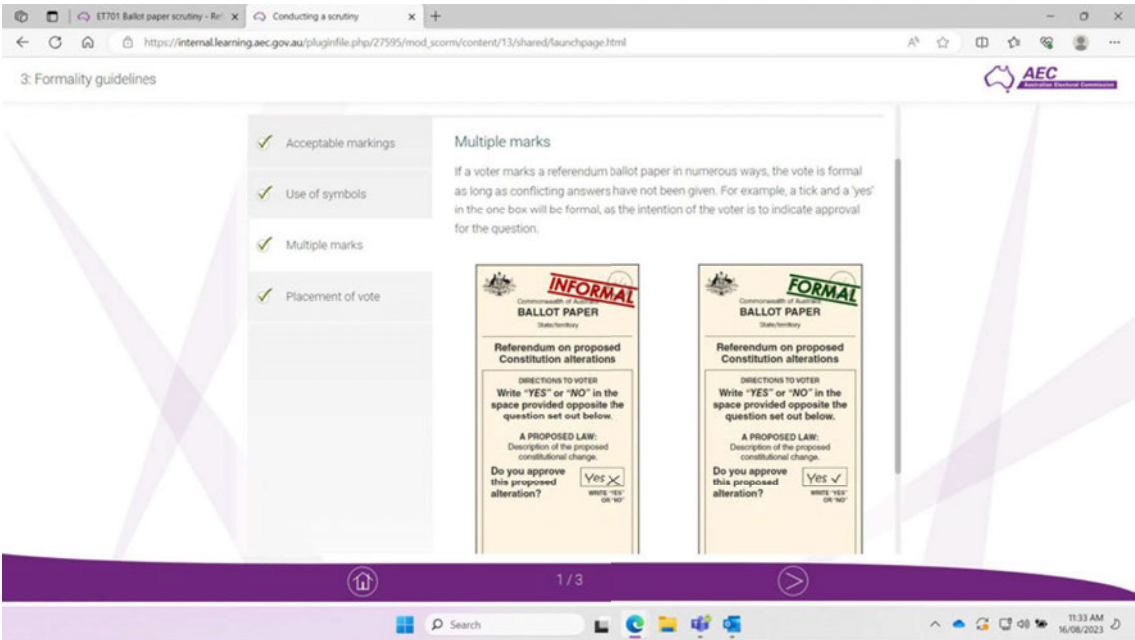
Kind regards

Section 47F

Slide for tab 1: states ‘a cross on its own can mean yes or no’



Slide for tab3 ‘Multiple Marks’ states that the x contradicts the Yes... so here the ‘x’ means no. Which is a direct contradiction to the slide above.



Referendum formality: Vote saving provisions - legal advice

To ensure a voter casts a formal vote the *Referendum (Machinery Provisions) Act 1984* requires voters to write 'Yes' or 'No' in full, in English, in the space provided on the referendum ballot paper. Voting instructions will clearly advise voters to write either 'yes' or 'no' on the ballot paper. This is what the vast majority of Australians have done for federal referendums previously – federal referendums have a much lower informal voting rate than federal elections (0.86% at the 1999 federal referendum).

Below are extracts from legal advice relating to the formality of a tick or cross on a federal referendum ballot paper.

Vote saving provisions have been in referendum legislation for more than 100 years to ensure a vote can be counted if the voter's intention is clear. The two separate pieces of legal advice provided to the AEC are consistent. Relevant extracts are provided below. This has resulted in the same treatment of a tick or cross on a federal referendum ballot paper during at least the six previous federal referendum questions dating back more than 30 years.

Legal advice often includes details of individuals and/or advice surrounding several matters. This is why the AEC is publishing extracts from the advice that are relevant to ticks and crosses only.

1988 legal advice

In 1988, the Attorney-General's Department (now the Australian Government Solicitor) advised the AEC:

6. Deviations from what is prescribed by s.24 will not render the ballot-paper informal if the ballot-paper satisfies the requirements of 2.93(8) by a clear indication of the voter's intention. In relation to analogous provisions concerning Senate elections, the High Court has said that the voter's intention must be expressed or indicated in a way that leaves it indisputable; it must not be left to inference or conjecture (Kane v. McClelland (1962) 111 CLR 518 at p.527).

7. In the first place, I confirm your understanding that ballot-papers marked with ticks only would be formal, the ticks denoting approval in each case. However, ballot-papers marked with crosses only would be informal as there would be no clear indication of the voter's intention. A cross may be used, by itself, variously to denote approval or disapproval.

2023 legal advice

Earlier this year, in 2023, the Australian Government Solicitor confirmed the 1988 advice in advice to the AEC:

24. A referendum ballot paper posing only one question marked with a tick should be treated as formal. This is because it is equivalent to a ballot paper marked 'Yes'. However, a ballot paper posing only one question marked with a cross should be treated as informal because it provides no clear indication of the voter's intention. This is because a cross may be used, by itself, variously to denote approval or disapproval. We note that AGS has advised in the past that a cross will not be informal where used in juxtaposition to a tick on a multi-question ballot paper.

Agenda Paper cover sheet



Meeting date: 7 August 2023

Executive Leadership Team (ELT)

Referendum ballot paper formality

Purpose

For information

The purpose of this paper is to seek approval to update the referendum formality guidelines and training to ensure they are fit for purpose for the referendum noting updated legal advice.

Background

1. s 22 [REDACTED]
2. AGS advice from 1988, s 41(1) [REDACTED], is that a cross should be regarded as informal as it provides no clear indication of the voter's intention. Unlike a tick that can be regarded as the equivalent of a 'Yes' and so can be treated as formal, a cross could support or oppose the question.

s 47C [REDACTED]

4. AGS has provided further advice on examples of ballot papers (see [Attachment C](#)). The latest advice:
 - confirms previous AGS advice regarding Section 22 [REDACTED], ticks and crosses
 - s 22 [REDACTED]
 - s 22 [REDACTED]

Key issues

Current situation

5. Decisions on whether a ballot paper is formal or informal are made by:
 - the officer-in charge, in static polling places on polling night

- the count supervisor, for pre-poll and mobile counts on polling night
 - the Divisional Returning Officer, during fresh scrutiny
 - the Australian Electoral Officer, for recounts.
6. Staff are instructed to refer to the [Ballot Paper Formality Guidelines](#) (see Attachment D) when making decisions on formality. This document is publicly available on the AEC website, and relevant sections are replicated in the Scrutineers Handbook and Election Procedures Handbook (for polling staff). The guidelines list the principles to be applied when making formality decisions, along with some specific examples of formal and informal ballot papers.
7. The guidelines state:
If a voter marks a ballot paper with words, symbols or figures or a language other than English, the ballot paper can be accepted if it is established that the voter's intention is clear to the DRO as the decision maker.
- s 42(1)**
8. Training materials include:
- Divisional Returning Officers and other identified staff undertake the Operational Leaders Program (OLP). As part of this training, staff complete training exercises covering ballot paper formality including practical simulations using examples of formal and informal ballot papers.
 - Polling staff complete mandatory training including content on ballot paper formality, with examples of formal and informal ballot papers.
 - Count supervisors complete online training and receive a briefing, both of which include content on ballot paper formality.
 - Standard operating procedures, election procedures handbooks, task briefings and staff briefs include instructions for staff to apply the Ballot Paper Formality Guidelines.
9. Education and communication materials include:
- Campaign advertisements and website content which say "To vote, write either 'Yes' or 'No' inside the box on your ballot paper".
 - Translated fact sheets which include the additional line "Your answer should be written in English".
 - A "[Practise voting – Referendum](#)" tool on the AEC's website that allows voters to submit an answer to a referendum ballot paper and see if it will result in a formal vote.
 - Media talking points (delivered by an AEC spokesperson) including:
 - voting instructions for a referendum are to write either 'yes' or 'no' in English in the box opposite the question
 - **s 22**

s 22

- s 22 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Key risks

- s 22 [REDACTED]
[REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

s 22

[REDACTED]

[REDACTED]

[REDACTED]

Consultation

Electoral Law Section

National Training Unit

Communications Section

Strategic Communications and Education Taskforce

Indigenous Electoral Participation Program

Recommendations

1. Amend the Ballot Paper Formality Guidelines as described above.
2. Retain the operational procedures that decision makers refer to the Ballot Paper Formality Guidelines and apply the principles when making decisions on ballot paper formality, including referring to the specific examples.
3. NTU to deliver a training session to DROs on making formality decisions.
4. s 22

[REDACTED]

Prepared by: s 47F, Assistant Director, Doctrine Planning and Quality

25 July 2023

Cleared by: s 47F, Director, Doctrine Planning and Quality

25 July 2023

Cleared by: Tania Wilson, AC Service Design and Foundations

28 July 2023

Cleared by ELT: Kath Gleeson, FAC and NEM

2 August 2023

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■ [REDACTED]

24 July 2023

Ballot paper formality guidelines

Federal Elections
By-Elections
Referendums



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Contents

Introduction	1	Senate guidelines	14
House of Representatives or Referendum Scrutiny	1	Consecutive sequence of numbers	14
Senate Scrutiny Processes	1	Overwriting	17
		Acceptable forms of numbering	18
		Missing or repeated numbers	21
Ballot paper formality tests	2	Placement of votes	24
Authentic ballot papers	2	Variations in handwriting	26
Ballot paper alteration by polling officials	2	Group or candidate name substitution	27
Alteration by polling officials	3		
Ballot paper formality principles	5	Referendum guidelines	30
Lawful numbering sequence	5	Referendum ballot paper tests	30
		Use of multiple marks	31
House of Representatives guidelines	6	Change to wording on ballot paper	32
Consecutive sequence of numbers	6	Use of symbols on ballot paper	32
Overwriting	7	Ballot papers with more than one question	33
Acceptable forms of numbering	8		
Empty boxes	10	Feedback	34
Placement of votes	11		
Variations in handwriting	12	Glossary	35
Candidate name substitution	13		

Section 22

Section 22

Section 22

Section 22

Section 22

Section 22

Section 22

Section 22

Section 22

Section 22

Section 22

Section 22

Section 22

Section 22

Section 22

Section 22

Section 22

Section 22

Section 22

Section 22

Section 22

Section 22

Section 22

Section 22

Section 22

Section 22

Section 22

Section 22

Section 22

Referendum guidelines

Referendum ballot paper tests

A voter filling in a referendum ballot paper is obliged to indicate their vote by either:

- writing the word 'yes' on the ballot paper in the space provided if the voter approves the proposed law, or
- writing the word 'no' on the ballot paper in the space provided if the voter does not approve the proposed law.

The prescribed method of recording a vote in a referendum is to use the words 'yes' or 'no' written alone (i.e. without qualification). In all cases, however, ballot papers must be admitted where the voter's intention is clear (s.93(8) R(MP)A). Words, stickers or stamps with the same meaning as 'yes' or 'no' (e.g. 'definitely' or 'never'), an indication of either 'Y' or 'N', as well as ticks ✓ are all capable of clearly demonstrating the voter's intention.

A vote at a referendum will be informal if any of the following apply:

- no vote is marked on the ballot paper (s.93(1)(b) R(MP)A)
- it has more than one vote mark on the ballot paper (s.93(1)(c) R(MP)A)
- terms are used that convey indecision and uncertainty, such as 'not sure', or
- a cross ✕ is used on a referendum ballot paper which has only one question, since a cross on its own may mean either 'yes' or 'no'.

A ballot paper is not informal merely because a ballot paper with the wrong state or territory was issued to the voter.

Use of multiple marks

Where a voter has marked a ballot paper in numerous ways, the vote is formal as long as conflicting answers have not been given. For example, a tick and a 'yes' in the one box will be formal, as the intention of the voter is to indicate approval for the question.

Example – use of multiple marks

The image displays three identical sample ballot papers from the Commonwealth of Australia, each titled "Referendum on proposed Constitution alterations". Each paper includes the following text:

DIRECTIONS TO VOTER
Write "YES" or "NO" in the space provided opposite the question set out below.

A PROPOSED LAW:
Description of the proposed constitutional change.

Do you approve this proposed alteration?

The three papers show different markings in the response box:

- Left paper:** The box contains "Yes" followed by a checkmark (✓). Below the box, it says "WRITE 'YES' OR 'NO'".
- Middle paper:** The box contains "No" followed by an 'x' (x). Below the box, it says "WRITE 'YES' OR 'NO'".
- Right paper:** The box contains "OK" followed by an 'x' (x). Below the box, it says "WRITE 'YES' OR 'NO'".

Each paper also features the Australian Electoral Commission (AEC) logo and a "SAMPLE" watermark.

This ballot paper is formal

The intention of the voter is clear that they approve.

This ballot paper is formal

The intention of the voter is clear that they disapprove.

This ballot paper is informal

The intention of the voter is not clear.

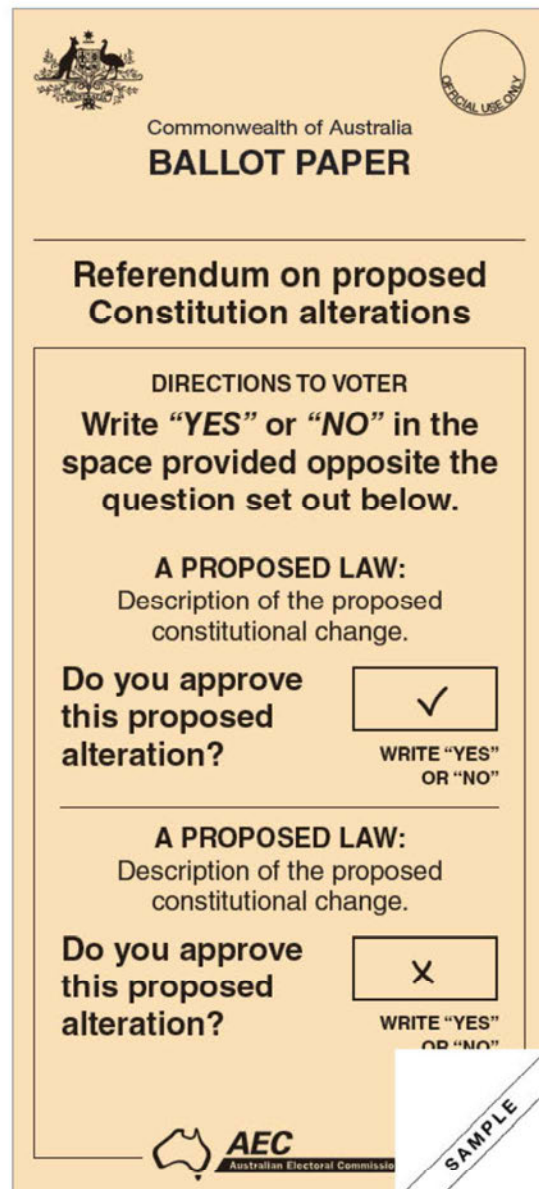
Section 22

Ballot papers with more than one question

Referendum ballot papers with more than one question require each question to be considered as if it was on a standalone ballot paper, i.e. it is possible for the answer to one question to be formal and the answer to another question to be informal.

On referendum ballot papers with two or more questions, crosses are also capable of clearly demonstrating the voter's intention, but are only formal if at least one other question on the same ballot paper is answered with a tick.

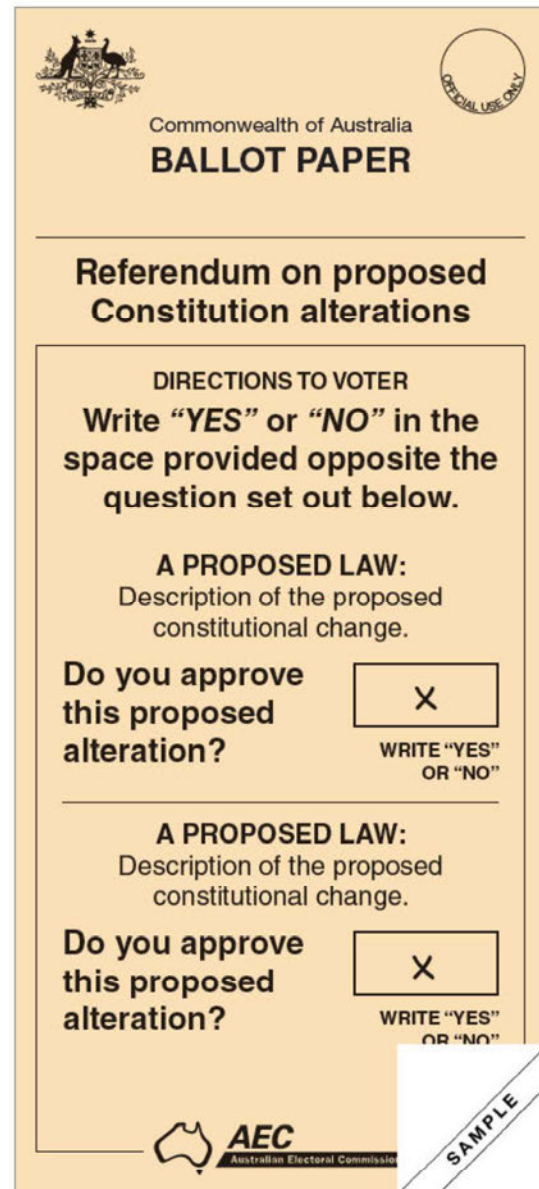
Example – ballot paper with more than one question



The image shows a sample formal ballot paper for the Commonwealth of Australia. It features the Australian coat of arms and the text "Commonwealth of Australia" and "BALLOT PAPER". A circular stamp in the top right corner reads "OFFICIAL USE ONLY". The main heading is "Referendum on proposed Constitution alterations". Below this, a box contains "DIRECTIONS TO VOTER" and instructions to write "YES" or "NO". The first question is "Do you approve this proposed alteration?" with a box containing a tick mark and the text "WRITE 'YES' OR 'NO'". The second question is "Do you approve this proposed alteration?" with a box containing a cross mark and the text "WRITE 'YES' OR 'NO'". The bottom of the page features the AEC logo and the text "Australian Electoral Commission". A diagonal "SAMPLE" watermark is visible in the bottom right corner.

This ballot paper is formal for both questions

The voter's intention is clear having used a tick and a cross.



The image shows a sample informal ballot paper for the Commonwealth of Australia. It features the Australian coat of arms and the text "Commonwealth of Australia" and "BALLOT PAPER". A circular stamp in the top right corner reads "OFFICIAL USE ONLY". The main heading is "Referendum on proposed Constitution alterations". Below this, a box contains "DIRECTIONS TO VOTER" and instructions to write "YES" or "NO". The first question is "Do you approve this proposed alteration?" with a box containing a cross mark and the text "WRITE 'YES' OR 'NO'". The second question is "Do you approve this proposed alteration?" with a box containing a cross mark and the text "WRITE 'YES' OR 'NO'". The bottom of the page features the AEC logo and the text "Australian Electoral Commission". A diagonal "SAMPLE" watermark is visible in the bottom right corner.

This ballot paper is informal for both questions

The voter's intention is not clear having used two crosses.

Section 22

Section 22

Section 22

Section 22

Section 22

Section 22

Section 22

BP formality at a referendum

Key resources

- [Ballot paper formality policy](#)
- [Ballot paper guidelines](#)

Key provisions in the Act

Section 24 of the [*Referendum \(Machinery Provisions\) Act*](#)

[*1984*](#) (RMPA) sets out the manner of voting:

The voting at a referendum shall be by ballot and each elector shall indicate his or her vote:

- (a) if the elector approves the proposed law—by writing the word “**Yes**” in the space provided on the ballot paper;
- (b) if the elector does not approve the proposed law—by writing the word “**No**” in the space so provided.

Key provisions in the Act

Section 93 of the RMPA sets out the formality requirements in the following terms:

(1) A ballot paper is informal if:

(a) ...[no official mark]

(b) it has no vote marked on it or the voter's intention is not clear;

(c) it has more than one vote marked on it;

(d) it has upon it any mark or writing (not authorized by this Act or by

the regulations to be put upon it) by which, in the opinion of a Divisional Returning Officer, the voter can be identified.

Key provisions in the Act cont.


Section 93(8)-(9) also provide:


(8) Effect shall be given to a ballot paper of a voter according to the voter's intention, so far as that intention is clear.

(9) For the purposes of subsection (8):

- (a) a voter who writes the letter "Y" in the space provided on the ballot paper is presumed to have intended to approve the proposed law; and
- (b) a voter who writes the letter "N" in the space provided on the ballot paper is presumed to have intended to not approve the proposed law.

Examples of formal ballot papers

 Commonwealth of Australia
BALLOT PAPER



**Referendum on proposed
Constitution alterations**


DIRECTIONS TO VOTER
Write "YES" or "NO" in the
space provided opposite the
question set out below.

A PROPOSED LAW:
Description of the proposed
constitutional change.


Do you approve
this proposed
alteration?


☒ **Yes** ✓

WRITE "YES"
OR "NO"

 **AEC**
Australian Electoral Commission

SAMPLE

 Commonwealth of Australia
BALLOT PAPER



**Referendum on proposed
Constitution alterations**


DIRECTIONS TO VOTER
Write "YES" or "NO" in the
space provided opposite the
question set out below.

A PROPOSED LAW:
Description of the proposed
constitutional change.

Do you approve
this proposed
alteration?


☐ **No** x


WRITE "YES"
OR "NO"

 **AEC**
Australian Electoral Commission

SAMPLE

Examples of informal ballot papers

 Commonwealth of Australia
BALLOT PAPER



Referendum on proposed Constitution alterations


DIRECTIONS TO VOTER
Write "YES" or "NO" in the space provided opposite the question set out below.

A PROPOSED LAW:
Description of the proposed constitutional change.


Do you approve this proposed alteration?


☒ **OK X**

WRITE "YES" OR "NO"

 **AEC**
Australian Electoral Commission

This ballot paper is informal
The intention of the voter is not clear.

 Commonwealth of Australia
BALLOT PAPER



Referendum on proposed Constitution alterations

DIRECTIONS TO VOTER
Write "YES" or "NO" in the space provided opposite the question set out below.


A PROPOSED LAW:
Description of the proposed constitutional change.

Do you approve this proposed alteration?


☐ **Yes**


WRITE "YES" OR "NO"

Do you want a free meal?

 **AEC**
Australian Electoral Commission

This ballot paper is informal
Change to the wording on the ballot paper that makes the voter's intention unclear.

 Commonwealth of Australia
BALLOT PAPER




Referendum on proposed Constitution alterations


DIRECTIONS TO VOTER
Write "YES" or "NO" in the space provided opposite the question set out below.

A PROPOSED LAW:
Description of the proposed constitutional change.

Do you approve this proposed alteration?

☐ 

WRITE "YES" OR "NO"

 **AEC**
Australian Electoral Commission

This ballot paper is informal
The intention of the voter is not clear.

Extract from guidelines

Ballot paper formality guidelines

Updated: 18 October 2019

The Ballot paper formality guidelines provide detailed information on how polling place officials determine formality of ballot papers.

Download

> Ballot paper formality guidelines [PDF 3.2MB] 

Section 22

Formality principles

1. Start from the assumption that the voter has intended to vote formally
2. Establish the intention of the voter and give effect to this intention
3. Err in favour of the franchise
4. Only have regard to what is written on the ballot paper
5. The ballot paper should be construed as a whole

Section 22

Ticks and crosses



Ticks are formal
for 'Yes'



Crosses are
informal – could be
'Yes' or 'No'

Section 22

Section 22

Section 22

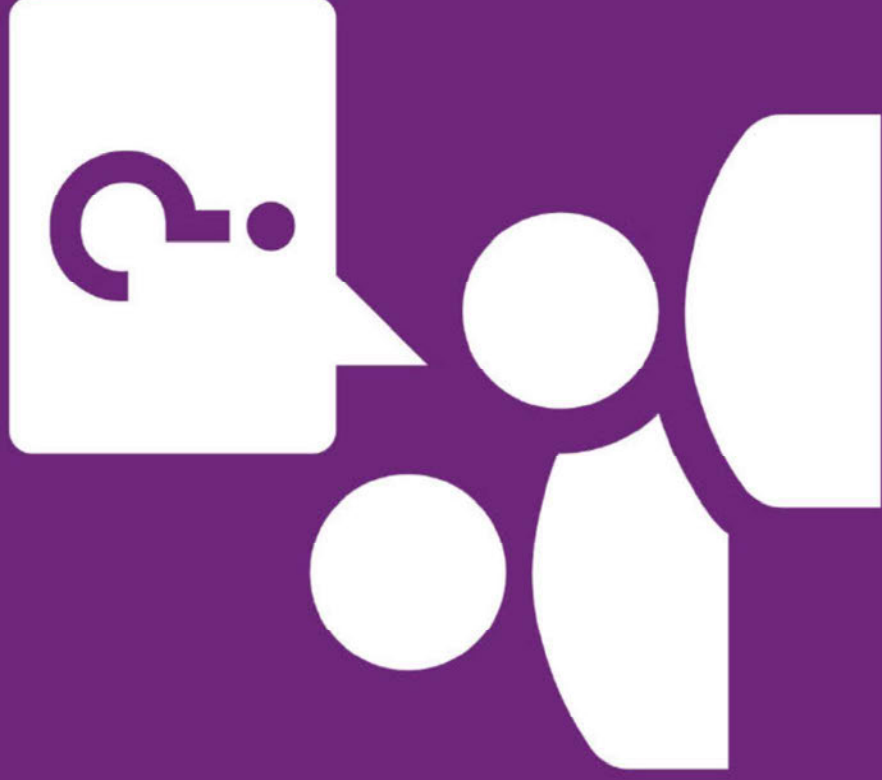
Section 22

Section 22

Section 22

Section 22

Any questions?



Section 22

Section 22

Media Release

25 August 2023

Media advice: Referendum voting instructions

Australian voters are rightly proud of their electoral system – one of the most transparent and robust voting systems in the world. As a result, there is an intense, and highly appropriate level of public interest in all aspects of that system, and associated commentary online and in mainstream media. Sometimes this commentary is immediate and based on emotion rather than the reality of the law which the AEC must administer.

There has been intense commentary online and in mainstream media regarding what will and will not be a formal vote for the 2023 referendum; specifically around whether or not a ‘tick’ or a ‘cross’ will be able to be counted. Much of that commentary is factually incorrect and ignores:

- the law surrounding ‘savings provisions’,
- the longstanding legal advice regarding the use of ticks and crosses, and
- the decades-long and multi referendum history of the application of that law and advice.

The AEC completely and utterly rejects the suggestions by some that by transparently following the established, public and known legislative requirements we are undermining the impartiality and fairness of the referendum.

As has been the case at every electoral event, the AEC remains totally focussed on electoral integrity. Indeed, electoral integrity is a central part of the AEC’s published values; underpinned by, and supported through, complete adherence to all relevant laws and regulations.

How to cast a formal vote

The formal voting instructions for the referendum are to clearly write either ‘yes’ or ‘no’, in full, in English.

It is that simple: given the simplicity, the AEC expects the vast, vast majority of Australians to follow those instructions and cast a formal vote.

Previous levels of formality

It is important to keep scale, or a lack of it in this instance, and precedent in mind when discussing this matter.

More than 99% of votes cast at the 1999 federal referendum were formal. Even of the 0.86% of informal votes, many would have had no relevance to the use of ticks or crosses.

Media Release

AEC communication

Instructions for casting a formal vote – to write either yes or no in full, in English, will be:

- part of the AEC's advertising campaign,
- on [the AEC website](#),
- in the guide delivered to all Australian households,
- an instruction by our polling officials when people are issued with their ballot paper,
- on [posters in polling places](#), and
- on the ballot paper itself.

This is why the level of formal voting at previous referendums has been so high and why the AEC expects the vast, vast majority of voters to follow those instructions.

The law

Like an election, the *Referendum (Machinery Provisions) Act 1984* includes 'savings provisions' - the ability to count a vote where the instructions have not been followed but the voter's intention is clear.

- **The AEC does not have discretion to simply ignore the law.**

The law regarding formality in a referendum is long-standing and unchanged through many governments, Parliaments, and multiple referendums. Legal advice regarding the application of savings provisions to 'ticks' and 'crosses' has been in place for that time - decades. This is not new, nor a new AEC determination of any kind for the 2023 referendum. It is the law and has been for 30 years and 6 referenda.

The longstanding legal advice provides that a cross can be open to interpretation as to whether it denotes approval or disapproval: many people use it daily to indicate approval in checkboxes on forms. The legal advice provides that a clear 'tick' should be counted as formal and a 'cross' should not.

s 47F

From: s 47F
Sent: Thursday, 24 August 2023 9:26 AM
To: Andrew Johnson
Cc: s 47F
Subject: AGS Advice - 1988 - ticks and crosses [SEC=OFFICIAL]

Hi Andrew,

Please see from paragraph 6 of this AGS advice:

[1988.06.17 - Referendum \(Machinery Provisions\) Act 1984 \(The Act\) ss.24, 25 and 93 \(A254772\)](#)

In particular at paras 7 and 8:

7. In the first place, I confirm your understanding that ballot- papers marked with ticks only would be formal, the ticks denoting approval in each case. However, ballot-papers marked with crosses only would be informal as there would be no clear indication of the voter's intention. A cross may be used, by itself, variously to denote approval or disapproval.

s 42

If you need anything else please let us know.

Kind regards,
s 47F | **Senior Government Lawyer**
Electoral Law Section | Legal Services Branch
Australian Electoral Commission
s 47F



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s 47F

From: Andrew Johnson
Sent: Monday, 22 May 2023 5:47 PM
To: Kath Gleeson
Cc: Natasha Scandrett; s 47F
Subject: AGS advice - Referendum BP formality - LEX4039 [SEC=OFFICIAL:Sensitive]
Attachments: Advice - Referendum ballot paper formality issues(47991834.7).docx

Hi Kath

s 42

s 42

1. A ballot paper marked with a tick is formal.
2. A ballot paper marked with a cross is informal

Section 42

Section 42

s 42

Section 42

s 42

Section 22

We have been working with Section 47F team on a brief to ELT in relation to formality. We will continue to work with them on the brief and on updating the guidelines.

Regards
Andrew

Chief Legal Officer
Legal Services Branch

s 47F

From: s 47F

Sent: Monday, May 22, 2023 12:55 PM

To: s 47F

Cc: s 47F

Subject: RE: Request for urgent estimate - Referendum question - LEX4039 [SEC=OFFICIAL:Sensitive]

Hi s 47F

s 42

Regards

s 47F

s 47F

A/g Senior General Counsel
Australian Government Solicitor

s 47F

s 47F

Find out more about AGS at <http://www.ags.gov.au>

Important: This message may contain confidential or legally privileged information. If you think it was sent to you by mistake, please delete all copies and advise the sender. For the purposes of the *Spam Act 2003*, this email is authorised by AGS.

ive

Section 42

Q3

Are ticks in relation to one question (as opposed to the four that were considered in the '88 advice) formal?

Q4

Are crosses in relation to one question (as opposed to the four that were considered in the '88 advice) formal?

4. A referendum ballot paper posing only one question:
- marked with a tick should be treated as formal, and
 - marked with a cross should be treated as informal.

Section 42

Section 42

Section 42

Section 42

- [REDACTED]
- [REDACTED]
- [REDACTED]
24. A referendum ballot paper posing only one question marked with a tick should be treated as formal. This is because it is equivalent to a ballot paper marked 'Yes'. However, a ballot paper posing only one question marked with a cross should be treated as informal because it provides no clear indication of the voter's intention. This is because a cross may be used, by itself, variously to denote approval or disapproval. We note that AGS has advised in the past that a cross will not be informal where used in juxtaposition to a tick on a multi-question ballot paper.

Section 42

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s 42

24. A referendum ballot paper posing only one question marked with a tick should be treated as formal. This is because it is equivalent to a ballot paper marked 'Yes'. However, a ballot paper posing only one question marked with a cross should be treated as informal because it provides no clear indication of the voter's intention. This is because a cross may be used, by itself, variously to denote approval or disapproval. We note that AGS has advised in the past that a cross will not be informal where used in juxtaposition to a tick on a multi-question ballot paper.

s 42

s 42

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s 42

Deviations from what is prescribed by s.24 will not render the ballot-paper informal if the ballot-paper satisfies the requirements of s.93(8) by a clear indication of the voter's intention. In relation to analogous provisions concerning Senate elections, the High Court has said that the voter's intention must be expressed or indicated in a way that leaves it indisputable; it must not be left to inference or conjecture (Kane v. McClelland (1962) 111 C.L.R. 518 at p.527).

7. In the first place, I confirm your understanding that ballot-papers marked with ticks only would be formal, the ticks denoting approval in each case. However, ballot-papers marked with crosses only would be informal as there would be no clear indication of the voter's intention. A cross may be used, by itself, variously to denote approval or disapproval.

S 42

s 42

S 42

s 42

s 42

s 47F

From: s 47F
Sent: Friday, 25 August 2023 10:17 AM
To: s 47F
Cc: Social Media; Public Engagement; Section 47F Legal Services Mailbox; Rachael Spalding; Andrew Johnson
Subject: FW: Voice Ballot Paper Legal enquiry

s 47E(d)

s 47F | Principal Government Lawyer
Electoral Law Section | Legal Services Branch
Australian Electoral Commission
s 47F



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From: s 47F
Sent: Thursday, August 24, 2023 7:02 PM
To: Legal Services Mailbox <Legal@aec.gov.au>
Cc: s 47F
Subject: Voice Ballot Paper Legal enquiry

CAUTION: This email originated from outside of the Australian Federal Government. Do not click links or open attachments unless you recognise the sender and know the content is safe.

s 47F
Director Legal Services
Australian Electoral Commission
Locked Bag 4007
Canberra ACT 2601

Dear s 47F
The guide received in the mail from AEC showing how to complete the referendum ballot paper, details that writing either "Yes" or "No" in the applicable box will constitute a valid vote.

Today, I have learned from Hon Barnaby Joyce's social media video posting that the AEC will consider a tick in the Yes box a valid "Yes" vote, however a "X" recorded in the no box will be considered an invalid vote.

This is at odds in terms of:

1. Congruence in language and symbol association, where a tick is universally accepted as Yes and the X symbol is used for the concept of error and rejection. **Reference "The Subtle Influence of Check and X Marks: How Symbolic Markings Influence Judgment", Gunwoo Yoon, Patrick Vargas 30 March 2018, Journal of Consumer Psychology**
2. The concept of "intent of the voter" applied by the AEC (as witnessed as a scrutineer), that if the voter intent was clear a technical deficiency on the ballot paper did not invalidate the vote in the Federal election. Based on normal language concepts, an "X" in the No box is a clear indication of the voter intent to record a No vote.

I am seeking a formal response on the following:

1. Why is the AEC proposing an approach in the referendum that clearly ignores the "voter intent concept" that the AEC so readily applied in the general election for the Federal government?
2. Why has the AEC not included this requirement of a "tick" being acceptable in the Yes box, and a "X" not being acceptable in the No box in the referendum booklet distributed recently to the Australian public?
3. What legal basis has the AEC used to make the determination that a mark used in the No box must be a "tick" for the vote to be valid. Please provide copies of the legislative basis on which you rely in making that determination or the legal case precedent upon which you rely?

I look forward to your formal response.

Yours Faithfully

s 47F

s 47F

From: s 47F
Sent: Friday, 25 August 2023 11:46 AM
To: Tom Rogers; Thomas Ryan; Michael Lynch; Kath Gleeson; Executive Leadership Team; s 47F; Andrew Johnson
Cc: s 47F
Subject: RE: Draft MR [SEC=OFFICIAL:Sensitive]

Thanks all – going out at midday. Social post simply pointing to it at the same time, and I'll ping it to a few contacts.

Cheers

s 47F

s 47F | Director
Media & Digital Engagement
Australian Electoral Commission
s 47F



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From: Tom Rogers <Tom.Rogers@aec.gov.au>
Sent: Friday, August 25, 2023 11:28 AM
To: s 47F; Thomas Ryan; s 47F; Michael Lynch
s 47F; Kath Gleeson; s 47F; Executive Leadership Team
s 47F; s 47F
s 47F; Andrew Johnson
Cc: s 47F
Subject: RE: Draft MR [SEC=OFFICIAL:Sensitive]

OK – let's get it out (noting Thomas suggestion – easy rather than simple).

Tom Rogers | Electoral Commissioner
Australian Electoral Commission
s 47F



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From: s 47F
Sent: Friday, August 25, 2023 11:26 AM

To: Thomas Ryan s 47F ; Michael Lynch s 47F ; Kath Gleeson s 47F ; Tom Rogers s 47F ; Executive Leadership Team s 47F ; Matthew Haigh s 47F ; Andrew Johnson s 47F

Subject: RE: Draft MR [SEC=OFFICIAL:Sensitive]

Standing by for the instruction to go with a final, approved copy. The earlier the better in terms of getting into stories that are being prepared on a Friday.

s (d)

- A few notables on social, among many.
 - o **Warren Mundine:** <https://twitter.com/nyunggai/status/1694596970709651568>
 - o **Malcolm Roberts:** <https://twitter.com/MRobertsQLD/status/1694613550474633649>
 - o **Michaela Cash:** <https://www.facebook.com/778639520289769/posts/845025460317841>
 - o **James McGrath:** <https://www.facebook.com/774945867328912/posts/839656870857811>

Cheers

s 47F

s 47F | Director
Media & Digital Engagement
Australian Electoral Commission
s 47F



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From: Thomas Ryan s 47F
Sent: Friday, August 25, 2023 11:02 AM
To: Michael Lynch s 47F ; Kath Gleeson s 47F ; Tom Rogers s 47F ; Executive Leadership Team s 47F ; Matthew Haigh s 47F ; Andrew Johnson s 47F

Subject: RE: Draft MR [SEC=OFFICIAL:Sensitive]

s 47C(1)

Thomas

Thomas Ryan | First Assistant Commissioner
Executive Leadership Team
Australian Electoral Commission

s 47F

s 47F

INDIGO T1 Launch 14 August 2023 – ServiceNow is here!



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From: Michael Lynch s 47F
Sent: Friday, August 25, 2023 10:56 AM
To: Kath Gleeson s 47F ; Tom Rogers s 47F ; Executive Leadership Team s 47F
Matthew Haigh s 47F
Andrew Johnson s 47F
Subject: RE: Draft MR [SEC=OFFICIAL:Sensitive]

Same from me. Thanks

Michael Lynch | First Assistant Commissioner
Electoral Integrity and Operations Group
Chief Security Officer
Australian Electoral Commission
s 47F



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From: Kath Gleeson s 47F
Sent: Friday, August 25, 2023 10:56 AM
To: Tom Rogers s 47F ; Executive Leadership Team s 47F
Matthew Haigh

s 47F

Andrew Johnson

<Andrew.Johnson@aec.gov.au>

s 47F

No changes from me. JP has also looked and said all g

Kath Gleeson | First Assistant Commissioner & National Election Manager

Service Delivery Group

Executive Leadership Team

Australian Electoral Commission

s 47F



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From: Tom Rogers s 47F

Sent: Friday, August 25, 2023 10:41 AM

To: Executive Leadership Team s 47F

Matthew Haigh s 47F

Andrew Johnson s 47F

Subject: RE: Draft MR [SEC=OFFICIAL:Sensitive]

Importance: High

Section 22

Tom Rogers | Electoral Commissioner

Australian Electoral Commission

s 47F



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Work at the referendum

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today



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Commissioner, Canberra

From: Tom Rogers s 47F

Sent: Friday, August 25, 2023 10:33 AM

To: Executive Leadership Team s 47F

Matthew Haigh s 47F

Andrew Johnson s 47F

Subject: Draft MR [SEC=OFFICIAL:Sensitive]

Team – have been working through this draft MR with EES and HCC. Here it is – comments please: I'd like to get it out at around lunch.

Tom Rogers | Electoral Commissioner
Australian Electoral Commission

s 47F



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Visit www.aec.gov.au

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Authorised by the Electoral
Commissioner, Canberra

Section 47F

From: Kath Gleeson
Sent: Friday, 25 August 2023 10:14 PM
To: Executive Leadership Team; Section 47F
Subject: FW: Scripts re ticks and crosses [SEC=OFFICIAL]

FYI below re feedback on ticks and crosses today to the complaints team.

Section 47E(d)

[REDACTED]

[REDACTED]

[REDACTED]

Kath Gleeson | First Assistant Commissioner & National Election Manager
Service Delivery Group
Executive Leadership Team
Australian Electoral Commission

[REDACTED]

Section 47F

[REDACTED]



From: Section 47F
Sent: Friday, August 25, 2023 4:27 PM
To: Kath Gleeson; Section 47F
Cc: Tania Wilson <Tania.Wilson@aec.gov.au>; Section 47F
Subject: RE: Scripts re ticks and crosses [SEC=OFFICIAL]

Section 47E(d)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Section 47E(d)

Section 47F | Director
Operational Services Strategy, Design and Data
Service Design & Foundations Branch
Australian Electoral Commission
Section 47F



From: Kath Gleeson Section 47F
Sent: Friday, August 25, 2023 8:53 AM
To: Section 47F
Cc: Tania Wilson Section 47F; Cathie Kennedy Section 47F; Michael Lynch
Section 47F; Section 47F
Subject: RE: Scripts re ticks and crosses [SEC=OFFICIAL]

Section 47E(d)

ECCA script (approved by SDFB):

The prescribed method of voting is to write 'yes' or 'no' on a referendum ballot paper. If the voter's intention is not clear, ballot papers will not be counted as formal. As ticks alone are capable of clearly

demonstrating a voter's intention, they are counted as formal for 'yes'. As crosses can mean either 'yes' or 'no', they are not counted as formal.

To this:

The prescribed method of voting is to write 'yes' or 'no' on a referendum ballot paper. If the voter's intention is not clear, ballot papers will not be counted as formal. As ticks alone are capable of clearly demonstrating a voter's intention, they **may be** counted as formal for 'yes'. As crosses can mean either 'yes' (for example, on many forms people in Australia use in daily life, and in some other languages, a cross represents a 'check mark' indicating yes) or 'no', they are not counted as formal.

Many thanks,

Kath Gleeson | First Assistant Commissioner & National Election Manager
Service Delivery Group
Executive Leadership Team
Australian Electoral Commission

Section 47F



From: Section 47F
Sent: Friday, August 25, 2023 8:47 AM
To: Kath Gleeson; Section 47F; Section 47F
Cc: Tania Wilson; Section 47F; Cathie Kennedy; Section 47F; Michael Lynch
Section 47F

Subject: RE: Scripts re ticks and crosses [SEC=OFFICIAL]

Section 47E(d)

Section 47E(d)

[REDACTED]

[REDACTED]

[REDACTED] | Director
Operational Services Strategy, Design and Data
Service Design & Foundations Branch
Australian Electoral Commission
Section 47F



From: Kath Gleeson [REDACTED] Section 47F
Sent: Friday, August 25, 2023 7:57 AM
To: [REDACTED] Section 47F
Cc: Tania Wilson [REDACTED] Section 47F, Cathie Kennedy [REDACTED] Section 47F, Michael Lynch [REDACTED]
Section 47F
Subject: Scripts re ticks and crosses [SEC=OFFICIAL]

Section 47E(d)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]