

1993-94-95

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
THE SENATE

Presented and read a first time

(Aboriginal Affairs)

**ABORIGINAL LAND GRANT AND MANAGEMENT (JERVIS
BAY TERRITORY) LEGISLATION AMENDMENT BILL 1995**

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A BILL

FOR

An Act to amend the *Aboriginal Land Grant (Jervis Bay Territory) Act 1986* to enable land within the Jervis Bay National Park and the Jervis Bay Botanic Gardens to be granted to the Wreck Bay Aboriginal Community Council, to amend the *National Parks and Wildlife Conservation Act 1975* to enable the Council to participate in the management of the Park and the Gardens, and to amend the *Commonwealth Grants Commission Act 1973* to enable the Commission to inquire into, and report on, the granting of financial assistance to, or the financing of works and services in, certain Territories

2 *Aboriginal Land Grant and Management (Jervis Bay
Territory) Legislation Amendment No. , 1995*

The Parliament of Australia enacts:

Short title

1. This Act may be cited as the *Aboriginal Land Grant and Management (Jervis Bay Territory) Legislation Amendment Act 1995*.

Commencement

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2. This Act commences on the day on which it receives the Royal Assent.

Schedule

3. The Acts specified in the Schedules to this Act are amended in accordance with the applicable items in the Schedules, and the other items in the Schedules have effect according to their terms.

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SCHEDULE 1

Section 3

AMENDMENTS OF THE
ABORIGINAL LAND GRANT (JERVIS BAY TERRITORY) ACT 1986

1. Objects

The objects of this Schedule are:

- (a) to enable land within the Jervis Bay National Park and the Jervis Bay Botanic Gardens to be granted to the Wreck Bay Aboriginal Community Council; and
- (b) to provide for any land so granted to be leased back to the Director of National Parks and Wildlife.

2. Subsection 2(1):

Insert:

“Australian National Botanic Gardens means the areas declared to be a reserve, and to which that name was assigned, by Proclamation under subsection 7(2) of the *National Parks and Wildlife Conservation Act 1975*. **Director** has the same meaning as in the *National Parks and Wildlife Conservation Act 1975*.

Note: The Director is an Authority within the meaning of the definition of **Authority**.

Jervis Bay Botanic Gardens means the part of the Australian National Botanic Gardens that is in the Jervis Bay Territory.

Jervis Bay National Park means the area of the Jervis Bay Territory declared to be a park, and to which that name was assigned, by Proclamation under subsection 7(2) of the *National Parks and Wildlife Conservation Act 1975*. **land**, unless the contrary intention appears, includes any seabed or any subsoil.”.

3. After section 9:

Insert:

Grants of land within Jervis Bay National Park etc. to Council

“9A.(1) The Minister may declare in writing that land within the Jervis Bay National Park or the Jervis Bay Botanic Gardens is Aboriginal Land if he or she is satisfied that:

- (a) the land is of significance to the Aboriginals who are members of the Community; and
- (b) it would be appropriate to grant the land to the Council.

“(2) The Minister may not make a declaration under subsection (1) unless the Council and the Director have entered into an agreement under which the Council agrees to grant to the Director a lease of all land that is to become Aboriginal Land under the declaration. The terms and conditions of the lease are to be set out in the agreement.

SCHEDULE 1—continued

“(3) If the Minister proposes to make a declaration under subsection (1), the Minister must publish a notice in the *Gazette*:

- (a) stating his or her intention to do so; and
- (b) describing the land that would become Aboriginal Land under the declaration.

“(4) The Minister’s declaration is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.”.

4 Section 10:

Omit “or 9”, substitute “, 9 or 9A”.

5. Subsection 38(2):

After “Aboriginal Land” insert “(other than land within the Jervis Bay National Park or the Jervis Bay Botanic Gardens)”.

6. Subsection 38(4):

Add at the end “(other than land within the Jervis Bay National Park or the Jervis Bay Botanic Gardens)”.

7. Subsection 38(5):

After “Authority” insert “under this section”.

8. After section 38:

Insert:

Agreement to lease land within Jervis Bay National Park etc. to Director

“38A. If a notice is published in the *Gazette* under subsection 9A(3), the Council and the Director must, as soon as practicable after the notice is published, enter into an agreement under which the Council agrees to grant to the Director a lease of the land described in the notice so as to enable the Director to hold the land for the purposes of the *National Parks and Wildlife Conservation Act 1975*.

Lease of Jervis Bay National Park etc. to Director

“38B.(1) As soon as practicable after a declaration by the Minister under subsection 9A(1) has come into force, the Council must grant to the Director a lease of the land that has become Aboriginal Land under the declaration.

“(2) The terms and conditions of the lease are those set out in the agreement between the Council and the Director under section 38A.

SCHEDULE 1—continued

“(3) Except with the consent of the Minister, the term of a lease must not be more than 99 years.

Minister may grant lease

“38C. If the Minister is satisfied that the Council has refused, or is unwilling, to grant to the Director a lease of Aboriginal Land within the Jervis Bay National Park or the Jervis Bay Botanic Gardens as required under the agreement entered into with the Director under section 38A, the Minister may, on behalf of the Council, grant the lease to the Director as set out in the agreement.”.

SCHEDULE 2

Section 3

**AMENDMENTS OF THE NATIONAL PARKS AND WILDLIFE
CONSERVATION ACT 1975**

**PART 1—AMENDMENTS RELATING TO THE MANAGEMENT
OF JERVIS BAY NATIONAL PARK AND JERVIS BAY
BOTANIC GARDENS**

1. Object

The object of this Schedule is to enable the Wreck Bay Aboriginal Community Council to participate in the management of:

- (a) the Jervis Bay National Park; and
- (b) the part of the Australian National Botanic Gardens that is in the Jervis Bay Territory;

if the Park and that part of the Gardens are declared to be Aboriginal Land under the *Aboriginal Land Grant (Jervis Bay Territory) Act 1986*.

2. Subsection 3(1) (paragraph (a) of the definition of “prescribed park or reserve”):

After the paragraph insert:

- “(ab) the Jervis Bay National Park; and
- (ac) the Jervis Bay Botanic Gardens; and”.

3. Subsection 3(1) (definition of “Aboriginal land”):

Omit the definition, substitute:

“*Aboriginal land* means:

- (a) land situated in the Region, and in which an Aboriginal Land Trust established under the *Aboriginal Land Rights (Northern Territory) Act 1976* holds an estate in fee simple; or
- (b) if the Jervis Bay National Park has been declared to be Aboriginal Land under the *Aboriginal Land Grant (Jervis Bay Territory) Act 1986*—the Jervis Bay National Park; or
- (c) if the Jervis Bay Botanic Gardens have been declared to be Aboriginal Land under the *Aboriginal Land Grant (Jervis Bay Territory) Act 1986*—the Jervis Bay Botanic Gardens.”.

4. Subsection 3(1) (definition of “traditional Aboriginal owners”):

Omit the definition, substitute:

“*traditional Aboriginal owners*:

- (a) in relation to Aboriginal land in the Region—has the same meaning as in the *Aboriginal Land Rights (Northern Territory) Act 1976*; or

SCHEDULE 2—continued

(b) in relation to the Jervis Bay National Park or the Jervis Bay Botanic Gardens—means the members of the Wreck Bay Aboriginal Community Council.”.

5. Subsection 3(1):

Insert:

“*Australian National Botanic Gardens* means the areas declared to be a reserve, and to which that name was assigned, by Proclamation under subsection 7(2).

Jervis Bay Botanic Gardens means the part of the Australian National Botanic Gardens that is in the Jervis Bay Territory.

Jervis Bay National Park means the part of the Jervis Bay Territory declared to be a park, and to which that name was assigned, by Proclamation under subsection 7(2).

Wreck Bay Aboriginal Community Council means the council established by section 4 of the *Aboriginal Land Grant (Jervis Bay Territory) Act 1986*.”.

6. Subsection 11(3):

Omit “Commission and” (first occurring), substitute “Commission,”.

7. Subsection 11(3):

After “1976” insert “or the Chairperson of the Wreck Bay Aboriginal Community Council”.

8. After paragraph 11(8)(ba):

Insert:

“(bb) in the case of the Jervis Bay National Park or the Jervis Bay Botanic Gardens—the interests of the traditional Aboriginal owners of the land;”.

9. Subsection 11(10):

Omit all the words after paragraph (d).

10. After subsection 11(10):

Insert:

“(10A) If the plan of management mentioned in subsection (10) is in respect of a park or reserve wholly or partly within the Northern Territory, the Minister must, at least 14 days before the date of publication of the notice in the *Gazette*, serve a copy of the plan and notice:

SCHEDULE 2—continued

- (a) on the Conservation Commission; and
- (b) if the park or reserve is also wholly or partly within a prescribed area—on the relevant Chairperson.

“(10B) If the plan of management mentioned in subsection (10) is in respect of the Jervis Bay National Park or the Jervis Bay Botanic Gardens, the Minister must, at least 14 days before the date of publication of the notice in the *Gazette*, serve a copy of the plan and notice on the Chairperson of the Wreck Bay Aboriginal Community Council.”.

11. Subsection 11(11):

Omit “Commission and” (first occurring), substitute “Commission,”.

12. Subsection 11(11):

After “1976” insert “or the Chairperson of the Wreck Bay Aboriginal Community Council”.

13. After subsection 11(14):

Insert:

“(14A) If, under subsection (13), the Minister refers to the Director a plan of management in respect of the Jervis Bay National Park or the Jervis Bay Botanic Gardens, the Minister must serve on the Chairperson of the Wreck Bay Aboriginal Community Council a copy of the suggestions that he or she referred to the Director with the plan. The Chairperson may, within 14 days after receiving a copy of the suggestions, make representations to the Director in relation to the suggestions.”.

14. Paragraph 11(21)(b):

Omit all the words after “Director”, substitute:
“and:

- (i) in the case of a plan of management in respect of a park or reserve wholly or partly within the Northern Territory:
 - (A) by the Conservation Commission; and
 - (B) if the park or reserve is also wholly or partly within a prescribed area—by the relevant Chairperson; and
- (ii) in the case of a plan of management in respect of the Jervis Bay National Park or the Jervis Bay Botanic Gardens—by the Chairperson of the Wreck Bay Aboriginal Community Council.”.

SCHEDULE 2—continued

15. Subsection 11(22):

Omit the subsection, substitute:

“(22) In this section:

prescribed area means:

- (a) an area situated wholly or partly within the Region, and for which an Aboriginal Land Council has been established under the *Aboriginal Land Rights (Northern Territory) Act 1976*; or
- (b) the Jervis Bay National Park or the Jervis Bay Botanic Gardens.

relevant Chairperson means:

- (a) in relation to a prescribed area wholly or partly within the Region—the Chairperson of the Aboriginal Land Council for the area; or
- (b) in relation to the Jervis Bay National Park or the Jervis Bay Botanic Gardens—the Chairperson of the Wreck Bay Aboriginal Community Council.”.

16. After subsection 14(2):

Insert:

“(2A) If, in respect of the Jervis Bay National Park or the Jervis Bay Botanic Gardens, a difference of opinion arises between the Chairperson of the Wreck Bay Aboriginal Community Council and the Director as to whether the Director is performing functions or exercising powers in accordance with a plan of management, the Minister must appoint a person (whom the Minister considers to be suitably qualified and in a position to deal with the matter impartially) to inquire into the matter.”.

17. Section 14B (definition of “relevant Land Council”):

Omit the definition.

18. Section 14B:

Insert:

“*relevant Council* means:

- (a) in relation to Aboriginal land in the Region—the Aboriginal Land Council established under the *Aboriginal Land Rights (Northern Territory) Act 1976* for the area in which the land is situated; or
- (b) in relation to the Jervis Bay National Park or the Jervis Bay Botanic Gardens—the Wreck Bay Aboriginal Community Council.”.

19. Paragraph 14C(1)(b):

Omit “relevant Land Council”, substitute “relevant Council”.

SCHEDULE 2—continued

20. Subsection 14C(6):

Omit “relevant Land Council”, substitute “relevant Council”.

21. After subsection 16(4):

Insert:

“(4A) When performing functions and exercising powers with respect to the Jervis Bay National Park or the Jervis Bay Botanic Gardens, the Director must, from time to time, consult with, and have regard to the views of, the Chairperson of the Wreck Bay Aboriginal Community Council.”.

22. Subsection 36(5):

Omit the subsection, substitute:

“(5) An arrangement under this section must not be inconsistent with:

(a) any law; or

(b) any agreement between the Commonwealth and an Aboriginal Land Council established under the *Aboriginal Land Rights (Northern Territory) Act 1976* or between the Director and any such Land Council; or

(c) any agreement between the Commonwealth and the Wreck Bay Aboriginal Community Council or between the Director and the Council.”.

SCHEDULE 2—continued

**PART 2—AMENDMENTS SUBSTITUTING “CHAIRPERSON”
FOR “CHAIRMAN”**

23 Substitution of “Chairperson” for “Chairman”

Omit “Chairman” (wherever occurring) from each of the following provisions and substitute “Chairperson”:

paragraph 8D(3)(b)

subsections 11(2A), (3) and (11)

paragraph 11(13)(a)

subsections 11(14), (16) and (17)

subsection 14(2)

subsection 16(4).

SCHEDULE 3

Section 3

**AMENDMENTS OF THE COMMONWEALTH GRANTS
COMMISSION ACT 1973**

**PART 1—AMENDMENTS RELATING TO THE FUNCTIONS OF
THE COMMISSION**

1. Object

The object of this Schedule is to extend the functions of the Commission to include inquiring into, and reporting to the Minister upon, matters relating to:

- (a) grants of financial assistance by the Commonwealth to Norfolk Island; and
- (b) the financing of works and services in respect of the Jervis Bay Territory and certain external Territories.

2. Section 4:

Insert the following definition:

“*special assistance* has the meaning given by section 5.”.

3. Section 5:

Add at the end:

“(3) References in this Act to the grant of special assistance to the Territory of Norfolk Island are references to the grant of financial assistance to that Territory for the purpose of making it possible for that Territory, by reasonable effort, to function, in respect of matters for which the Ministers of that Territory have executive authority, at standards not appreciably below the standards of the States.”.

4. Section 6:

Repeal the section, substitute:

Extension of Act to external Territories

“6. This Act extends to:

- (a) the Territory of Heard Island and McDonald Islands; and
- (b) the Territory of Norfolk Island; and
- (c) each of the other external Territories.”.

5. Section 16C:

Repeal the section, substitute:

SCHEDULE 3—continued**Inquiries relating to Jervis Bay Territory**

“16B. The Commission must inquire into and report to the Minister upon any matters, being matters relating to the financing of works and services provided by the Commonwealth or an authority of the Commonwealth in respect of the Jervis Bay Territory, that are referred to the Commission by the Minister.

Inquiries relating to Norfolk Island

“16C. The Commission must inquire into and report to the Minister upon:

- (a) any application made by the Territory of Norfolk Island to the Commission for a grant of special assistance to that Territory; and
- (b) any matters, being matters relating to a grant of financial assistance made by the Commonwealth to the Territory of Norfolk Island, that are referred to the Commission by the Minister; and
- (c) any matters, being matters relating to the making of a grant of financial assistance by the Commonwealth to the Territory of Norfolk Island, that are referred to the Commission by the Minister.

Inquiries relating to other external Territories

“16D. The Commission must inquire into and report to the Minister upon any matters, being matters relating to the financing of works and services provided by the Commonwealth or an authority of the Commonwealth in respect of a particular external Territory (other than the Territory of Norfolk Island), that are referred to the Commission by the Minister.”.

6. Subsection 25(1):

After “16C” insert “, 16D”.

7. Subsection 25(2):

Omit “16C”, substitute “16AA, 16B, 16C, 16D”.

8. Title

Omit all the words after “States”, substitute “**and autonomous Territories and the financing of works and services in respect of the other Territories**”.

SCHEDULE 3—continued

**PART 2—AMENDMENTS SUBSTITUTING “CHAIRPERSON”
FOR “CHAIRMAN”**

9. Substitution of “Chairperson” for “Chairman”:

Omit “Chairman” (wherever occurring) from each of the following provisions and substitute “Chairperson”:

section 4

subsection 8(1)

paragraph 8(6)(a)

subsection 8(6A)

section 9

subsections 13(1) and (1A)

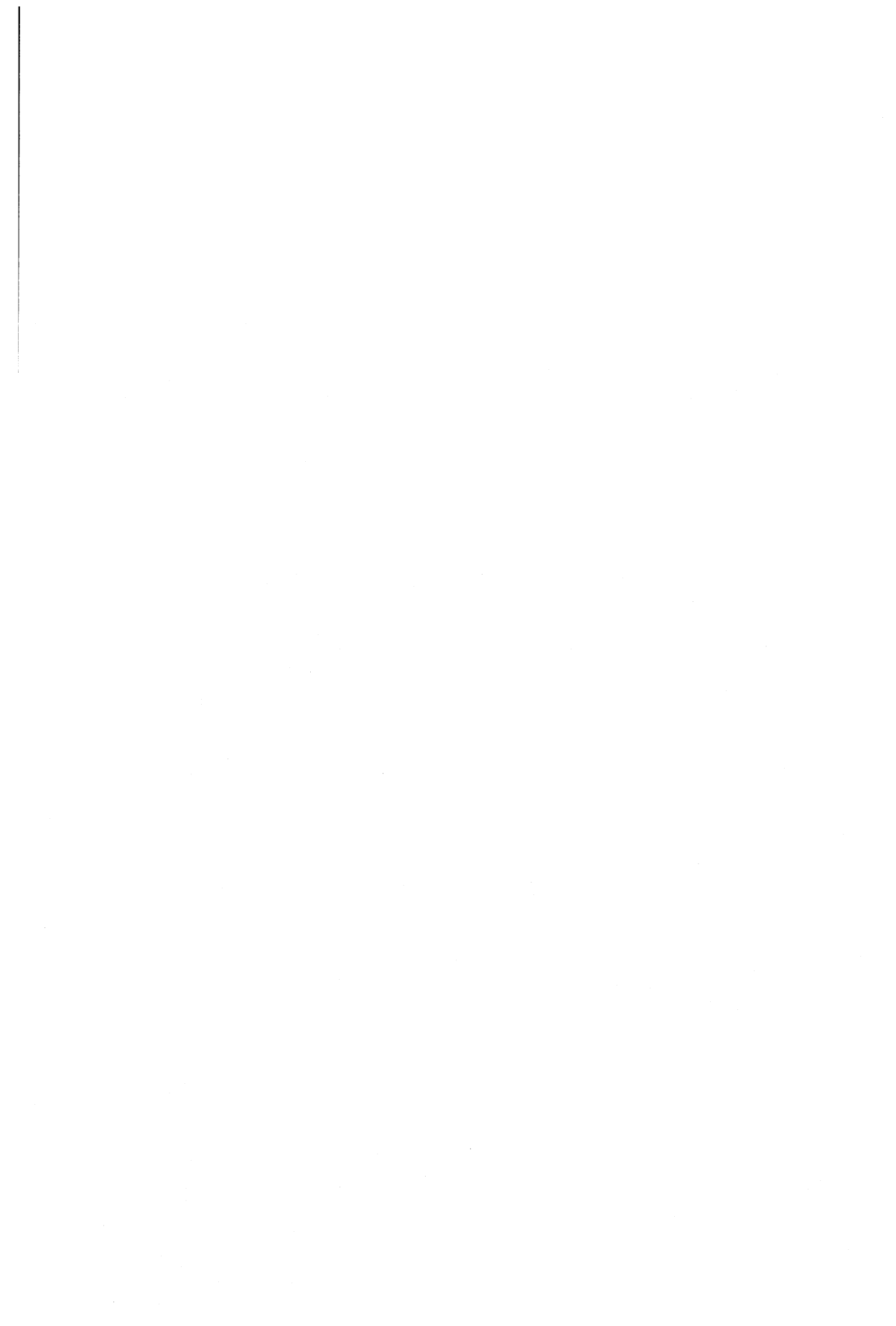
paragraphs 13(2)(a) and (b)

subsections 14(2), (3), (5), (6), (8) and (9)

subsections 15(1) and (2)

subsections 19(1), (2), (3), (5) and (7).

Note: The heading to section 15 is replaced by the heading “**Duties of Chairperson**”.



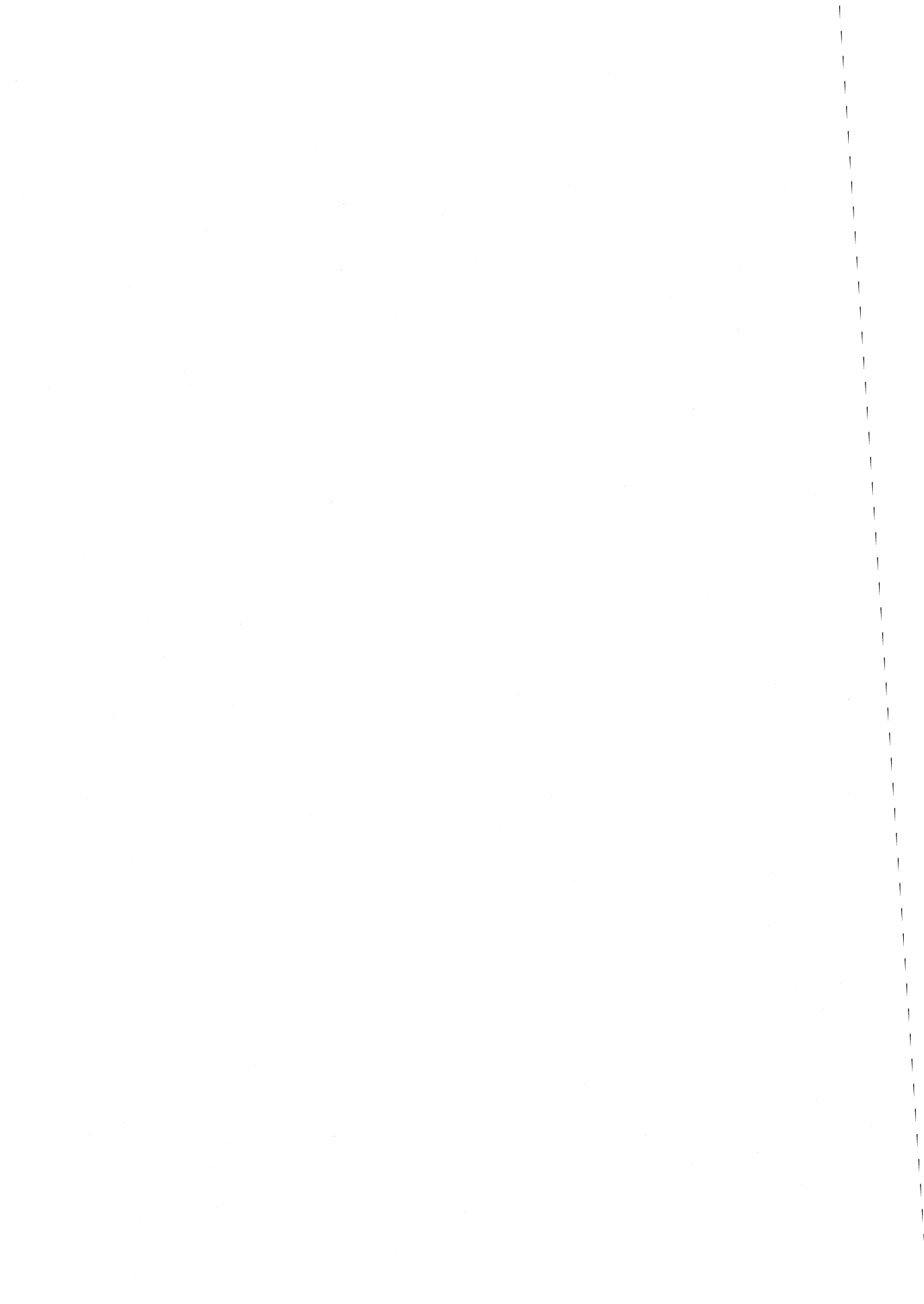


















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