

NORTHERN TERRITORY OF AUSTRALIA

MINING AMENDMENT BILL 1994

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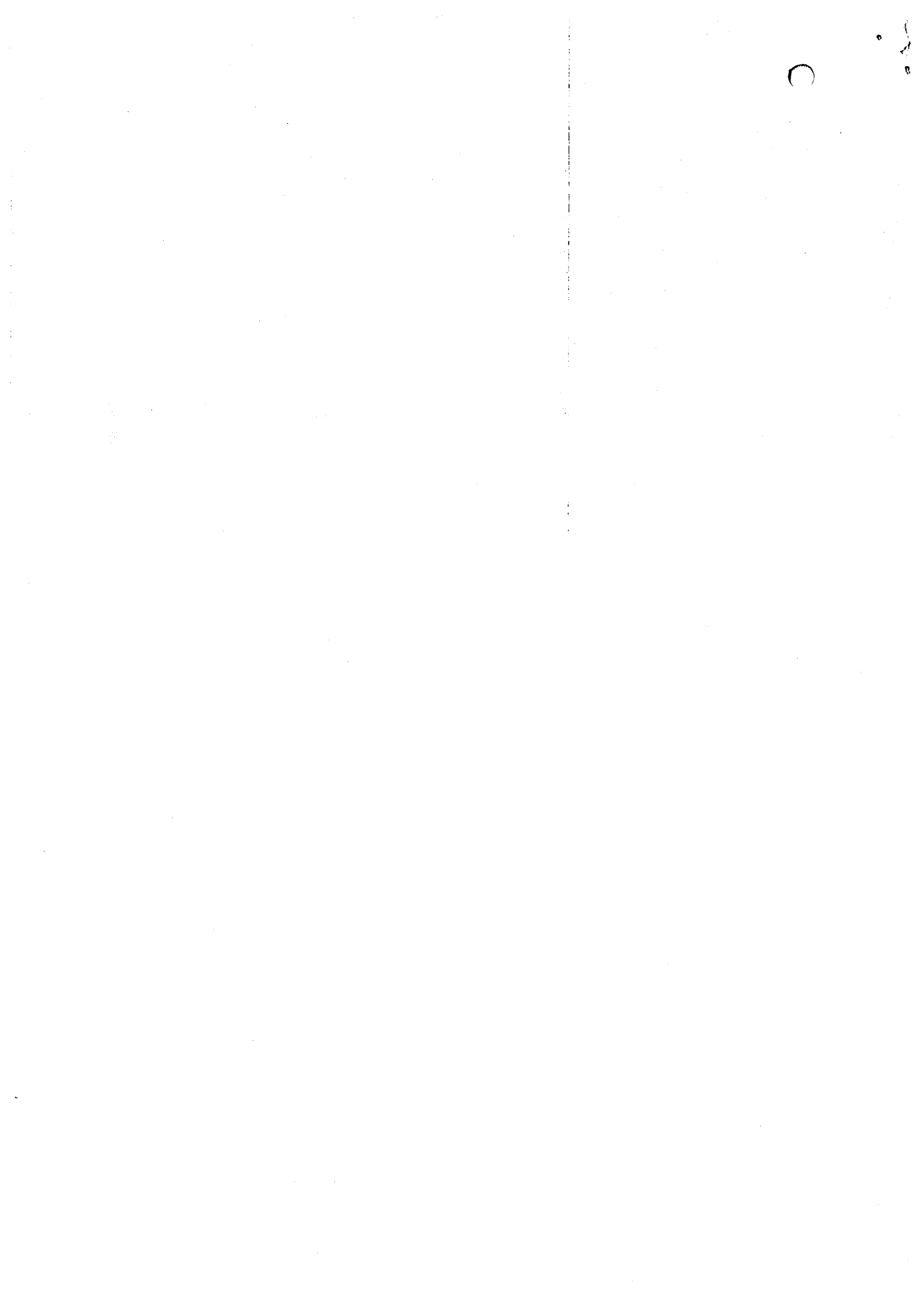
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NORTHERN TERRITORY OF AUSTRALIA

A BILL for AN ACT

to amend the *Mining Act*

BE it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

1. SHORT TITLE

This Act may be cited as the *Mining Amendment Act 1994*.

2. COMMENCEMENT

This Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

3. PRINCIPAL ACT

The *Mining Act* is in this Act referred to as the Principal Act.

4. INTERPRETATION

Section 4(1) of the Principal Act is amended -

- (a) by inserting at the end of the definition of "owner" and "occupier" the words "or of the National Native Titles Register established under section 192 of the *Native Titles Act 1993* of the Commonwealth"; and



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- (b) by omitting the definition of "private land" and substituting the following:

"'private land' means -

- (a) land (other than Aboriginal land and land held for an estate in fee simple, or on lease from the Crown, by the Conservation Land Corporation established by section 27 of the *Conservation Commission Act*) that is alienated from the Crown for an estate of freehold or is the subject of a conditional purchase agreement or of a lease or concession, with or without a right of acquiring the fee simple (other than a lease or concession for pastoral or timber purposes); or
- (b) land in respect of which a determination of native title has been made and registered in the National Native Titles Register established under section 192 of the *Native Titles Act 1993* of the Commonwealth,

but does not include land held or occupied for mining purposes under this Act or the repealed Act;"

5. NEW PART

The Principal Act is amended by inserting after Part II the following:

"PART IIA - SPECIAL PROVISIONS RELATING TO CERTAIN ACTS AFFECTING NATIVE TITLE

"8A. INTERPRETATION

"(1) In this Part 'Commonwealth Act' means the *Native Titles Act 1993* of the Commonwealth.

"(2) Unless the contrary intention appears, a word or expression used in the Commonwealth Act has the same meaning in this Part (and in the remainder of this Act for the purposes of the application of this Part) as it has in the Commonwealth Act.

"8B. CERTAIN PROPOSED ACTS TO BE REFERRED TO WARDEN

"(1) Notwithstanding this or any other Act, if and to the extent that an act under this Act would amount to a permissible future act covered by subsection 26(2) of the Commonwealth Act, it shall not be performed -

- (a) until it has been referred to a warden's court constituted by a warden who is a magistrate; and

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(b) unless it is performed in accordance with the directions, if any, given by the court.

"(2) A person requested to perform an act referred to in subsection (1) shall, in the prescribed form and manner, refer the request to the warden's court.

B "8d. WARDEN'S COURT MAY BE "ARBITRAL BODY" FOR PURPOSE OF COMMONWEALTH ACT

"(1) If the Commonwealth Minister determines that the warden's court is a recognised State/Territory body, that court as constituted as provided in this Part is, and in pursuance of section 27 of the Commonwealth Act is hereby allowed and has the necessary jurisdiction to be, an arbitral body under Subdivision B of Division 3 of Part 2 of that Act.

"(2) Notwithstanding subsection (1), the warden's court does not have the power to make a determination of native title but may act on any approved determination of native title as though it were lawfully made by the warden's court.

C "8d. OTHER PROVISIONS OF THIS ACT TO CONTINUE TO APPLY

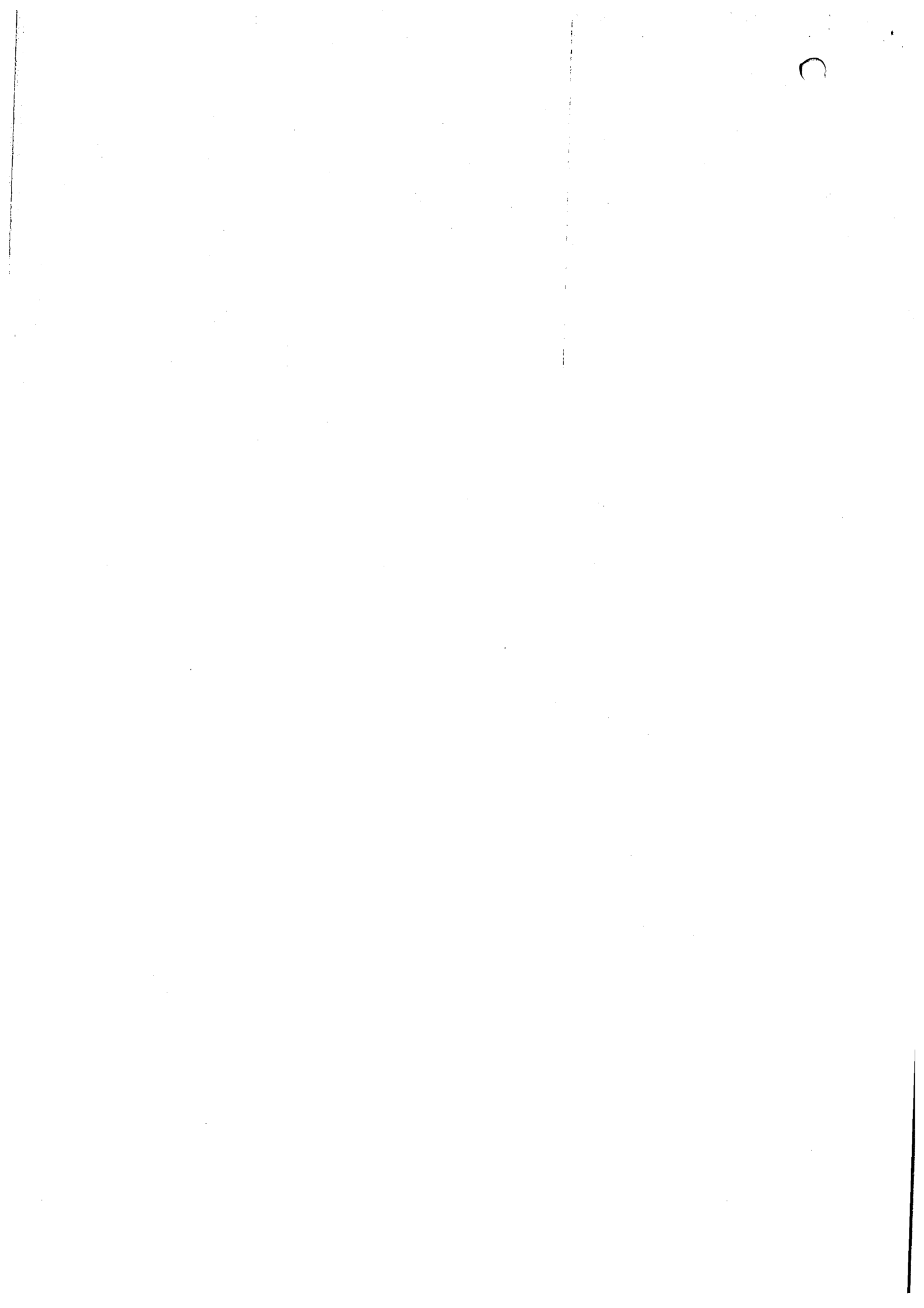
"Except to the extent that they are inconsistent with this Part and the Commonwealth Act, the other provisions of this Act continue to apply to and in relation to a permissible future act covered by subsection 26(2) of the Commonwealth Act according to their tenor.

D "8e. POWERS, &c.

"(1) To ensure that this Act is consistent with and gives effect to the objects and provisions of the Commonwealth Act, this Act, with the prescribed changes, applies to native title.

"(2) Without limiting subsection (1), this Act applies to native title with the changes, if any, prescribed by the Regulations that, in the opinion of the Administrator, are necessary or convenient to ensure that -

- (a) warden's courts as constituted as provides in this Part become recognised State/Territory bodies and arbitral bodies;
- (b) this Act may be excluded from the coverage of subsection 26(3) (which deals with acts excluded from the right to negotiate) of the Commonwealth Act in appropriate cases;
- (c) the expedited procedure in section 32 of the Commonwealth Act may apply in appropriate cases; and



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- (d) this Act may comply with subsection 43(2) (which deals with alternative right to negotiate provisions) of the Commonwealth Act."

6. JURISDICTION

Section 145 of the Principal Act is amended by omitting all words after paragraph (j) and substituting the following:

- "(k) the recovery of penalties for a breach of a provision of this Act or the Regulations or any other law in force in the Territory in respect of which a warden or warden's court has jurisdiction,

and such other jurisdiction as is conferred on it by or under this Act or any other law in force in the Territory."

7. PROCEEDINGS

Section 146(2) of the Principal Act is amended by omitting "In any proceeding" and substituting "Subject to Part IIA, in any proceeding".

8. COMPENSATION PAYABLE

Section 174B(1) of the Principal Act is amended by omitting "The owner and occupier" and substituting "Subject to section 174DA, the owner and occupier".

9. MINISTER TO BE SATISFIED WITH ARRANGEMENTS

Section 174C(2) of the Principal Act is amended -

- (a) by inserting after "section 174B" the words "or on compensation in a form other than money";
- (b) by inserting after "compensation to be paid" the words "or arrangements to be made"; and
- (c) by inserting after "amount so determined shall be payable" the words "or the arrangement made".

10. COMPENSATION IN RESPECT OF ADJOINING LAND

Section 174D of the Principal Act is amended -

- (a) by inserting in subsection (1), after "entitled to be paid compensation", the words "or to be otherwise compensated in pursuance of section 174DA";
- (b) by inserting in subsection (3), after "amount to be paid under", the words "or arrangement to be made in pursuance of"; and



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- (c) by inserting in subsection (3), after "compensation already paid", the words "or other benefit provided in lieu of compensation in money".

11. NEW SECTION

The Principal Act is amended by inserting after section 174D the following:

"174DA. COMPENSATION, OTHER THAN MONEY, IN RESPECT OF
NATIVE TITLE

"Where private land in respect of which compensation is payable under section 174C or 174D comprises native title rights or interests, the person or persons who may be entitled to compensation may request that the compensation should be in a form other than money and the other party involved in the negotiations -

- (a) must consider the request; and
 - (b) must negotiate in good faith in relation to the request."
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