

NORTHERN TERRITORY OF AUSTRALIA

COMMISSION OF INQUIRY (CHAMBERLAIN CONVICTIONS) ACT 1986

As in force at 1 April 1986

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NORTHERN TERRITORY OF AUSTRALIA

As in force at 1 April 1986

COMMISSION OF INQUIRY (CHAMBERLAIN CONVICTIONS) ACT 1986

An Act to provide for a Commission of Inquiry in relation to certain criminal convictions

WHEREAS:

1. On 29 October 1982, in the Supreme Court of the Northern Territory:
 - (a) Alice Lynne Chamberlain was convicted on a charge of murdering her daughter Azaria at Ayers Rock on 17 August 1980; and
 - (b) Michael Leigh Chamberlain was convicted of being an accessory after the fact to that murder.
2. Doubts or questions have arisen as to their guilt or as to evidence in the trial leading to their conviction.

1 Short title

This Act may be cited as the *Commission of Inquiry (Chamberlain Convictions) Act 1986*.

2 Definitions

In this Act, unless the contrary intention appears:

Commission means the Commission of Inquiry established pursuant to this Act.

Commissioner means the Commissioner appointed under section 3.

document includes a book, register or other record of information, however compiled, recorded or stored.

reasonable excuse, in relation to an act or omission by a witness or a person summoned as a witness before the Commission, means an excuse which would excuse an act or omission of a similar nature by a witness or a person summoned as a witness

before the Supreme Court.

3 Establishment of Commission

- (1) There shall be a Commission of Inquiry having the purpose specified in section 4.
- (2) The Commission shall be constituted by a judge or former judge of the Supreme Court or the Federal Court or of the Supreme Court of a State or another Territory of the Commonwealth, appointed by the Attorney-General as the Commissioner.
- (3) The Attorney-General may make an appointment for the purposes of subsection (2).

4 Inquiry and report

- (1) The Commission shall, as it thinks fit, but subject to this Act, examine all persons who and all documents and things which, in the opinion of the Commissioner, are likely to be able to give or provide material information on the matters set forth in the recitals to this Act, and shall report to the Administrator on the conclusions to be drawn from the evidence and material information received by it.
- (2) In determining the nature and the scope of the inquiry the Commission shall be guided by the meaning given to like terms in subsection 475(1) of the *Crimes Act 1900* of the State of New South Wales.
- (3) Subject to section 12, proceedings of the Commission shall be in public but the Commissioner may exclude any person for reasons he thinks fit.
- (4) The Attorney-General shall cause a copy of a report under subsection (1) to be laid before the Legislative Assembly within 6 sitting days of the Legislative Assembly after the report is received by the Administrator.

5 Commission may sit at any place

The Commission may sit at any place in Australia and, with the consent of the Attorney-General, elsewhere.

6 Power to summon witnesses and take evidence

- (1) The Commissioner may summon a person to appear at a hearing before the Commission to give evidence and to produce such documents or other things (if any) as are referred to in the summons.

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- (2) The Commissioner may require a person appearing at the hearing to produce a document or other thing.
 - (3) The Commission may, at a hearing, take evidence on oath or affirmation and for that purpose:
 - (a) the Commissioner may require a person appearing at the hearing to give evidence either to take an oath or to make an affirmation in a form approved by the Commissioner; and
 - (b) the Commissioner, or a person so authorized in writing by the Commissioner, may administer an oath or affirmation to a person so appearing at the hearing.

7 Failure of witnesses to attend or produce documents

- (1) A person served, as prescribed, with a summons to appear as a witness at a hearing before the Commission who, without reasonable excuse:

- (a) fails to attend as required by the summons; or
- (b) fails to attend from day to day unless excused, or released from further attendance, by the Commissioner,

is guilty of a regulatory offence.

Penalty: \$1,000 or imprisonment for 6 months.

- (2) A person appearing as a witness at a hearing before the Commission who, without reasonable excuse, refuses or fails to produce a document or other thing that he was required to produce by a summons under this Act served on him as prescribed or that he was required by the Commissioner to produce, is guilty of a regulatory offence.

Penalty: \$1,000 or imprisonment for 6 months.

- (3) It is a defence to a prosecution for an offence against subsection (2) constituted by a refusal or failure to produce a document or other thing to the Commission if it is proved that the document or other thing was not relevant to the matters into which the Commission was inquiring.

8 Penalty for refusing to be sworn or to give evidence

A person appearing as a witness before the Commission who refuses to be sworn or to make an affirmation or to answer a question relevant to the inquiry put to him by the Commissioner is guilty of a regulatory offence.

Penalty: \$1,000 or imprisonment for 6 months.

9 Self-incrimination

- (1) It is not a reasonable excuse for the purposes of section 7(2) for a person to refuse or fail to produce a document or other thing that he was required to produce at a hearing before the Commission that the production of the document or other thing might tend to incriminate him.
- (2) A person is not entitled to refuse or fail to answer a question that he is required to answer by the Commissioner on the ground that the answer to the question might tend to incriminate him.

10 Arrest of witness failing to appear

- (1) If a person served with a summons to attend the Commission as a witness fails to attend the Commission in answer to the summons, the Commissioner may, on proof by statutory declaration of the service of the summons, issue a warrant for his apprehension.
- (2) A warrant issued under subsection (1) shall authorize the apprehension of the witness and his being brought before the Commission, and his detention in custody for that purpose, until he is released by order of the Commissioner.
- (3) A warrant issued under subsection (1) may be executed by a member of the Police Force or a member of the Australian Federal Police or the Police Force of a State or another Territory of the Commonwealth, or by a person to whom it is addressed, and the member or person executing it shall have power to break and enter any premises, vessel, aircraft or vehicle for the purpose of executing it.
- (4) The apprehension of a witness under this section shall not relieve him from any liability incurred by him by reason of his non-compliance with the summons.

11 Acts or omissions on different days to constitute separate offences

Where a person has on any day done or omitted to do something, and his act or omission amounts to an offence against section 8,

and does or omits to do the same thing at a hearing before the Commission held on some other day, each such act or omission shall be a separate offence.

12 Rights of witness

- (1) Nothing in this Act shall make it compulsory for a witness at a hearing before the Commission to disclose to the Commission a secret process of manufacture.
- (2) If a witness at a hearing before the Commission requests that his evidence relating to a particular subject be taken in private on the ground that the evidence relates to the profits or financial position of a person, and that the taking of the evidence in public would be unfairly prejudicial to the interests of that person, the Commission may, if the Commissioner thinks fit, take that evidence in private, and no person who is not expressly authorized by the Commissioner to be present shall be present during the taking of that evidence.
- (3) The Commissioner may direct that:
 - (a) any evidence given before the Commission;
 - (b) the contents of a document, or a description of a thing, produced before, or delivered to, the Commission; or
 - (c) any information that might enable a person who has given evidence at a hearing before the Commission to be identified,shall not be published, or shall not be published except in such manner, and to such persons, as the Commissioner specifies.
- (4) A person who contravenes or fails to comply with a direction given under subsection (3) is guilty of a regulatory offence.

Penalty: \$2,000 or imprisonment for 12 months.

13 Statements made by witness not admissible in evidence against him

A statement or disclosure made by a witness in the course of giving evidence at a hearing before the Commission is not (except in proceedings for an offence against this Act) admissible in evidence against that witness in any civil or criminal proceedings.

14 Power of Commission in relation to documents and other things

The Commissioner or a person who is authorized by the Commissioner for that purpose, may:

- (a) inspect a document or other thing produced before, or delivered to, the Commission or Commissioner;
- (b) retain the document or other thing for so long as is reasonably necessary for the purposes of the inquiry; and
- (c) in the case of a document produced before, or delivered to, the Commission or Commissioner – make copies of matter contained in the document, being matter that is relevant to a matter into which the Commission is inquiring.

15 Examination of witnesses by counsel, &c.

A legal practitioner appointed by the Attorney-General to assist the Commission, a person authorized by the Commission to appear before it, or a legal practitioner authorized by the Commission to appear before it for the purpose of representing a person, may, so far as the Commissioner thinks proper, examine or cross-examine a witness on a matter which the Commissioner considers relevant to the inquiry, and a witness so examined or cross-examined shall have the same protection, and be subject to the same liabilities, as if examined by the Commissioner.

16 Witness to be paid expenses

- (1) A witness appearing at a hearing before the Commission shall be paid a reasonable amount for the expenses of his attendance in accordance with the prescribed scale.
- (2) In the absence of a prescribed scale, the Commissioner may authorize the payment of such amount as he thinks reasonable.

17 False or misleading evidence

- (1) A person who, at a hearing before the Commission, knowingly gives false or misleading evidence about a matter, being a matter that is material to the inquiry, is guilty of a crime.

Penalty: \$20,000 or imprisonment for 5 years.

- (2) Notwithstanding that an offence against subsection (1) is a crime, the court of summary jurisdiction may hear and determine proceedings in respect of such an offence if it is satisfied that it is proper to do so and the defendant and the prosecutor consent.

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- (3) Where, in accordance with subsection (2), the court of summary jurisdiction convicts a person of an offence against subsection (1), the penalty that the court may impose is a fine of \$2,000 or imprisonment for 12 months.

18 Bribery of witness

A person who:

- (a) gives, confers, or procures, or promises or offers to give or confer, or to procure or attempt to procure, property or a benefit of any kind to, on, or for, a person, on an agreement or understanding that a person called or to be called as a witness at a hearing before the Commission shall give false testimony or withhold true testimony;
- (b) attempts by any means to induce a person called or to be called as a witness at a hearing before the Commission to give false testimony or to withhold true testimony; or
- (c) asks, receives or obtains, or agrees or attempts to receive or obtain property or a benefit of any kind for himself, or any other person, on an agreement or understanding that a person shall, as a witness at a hearing before the Commission, give false testimony or withhold true testimony,

is guilty of a crime.

Penalty: Imprisonment for 5 years.

19 Fraud on witness

A person who practises fraud or deceit, or knowingly makes or exhibits a false statement, representation, token, or writing, to a person called or to be called as a witness at a hearing before the Commission with intent to affect the testimony of that person as a witness, is guilty of a crime.

Penalty: Imprisonment for 2 years.

20 Destroying documents or other things

A person who, knowing or having reasonable grounds to believe that a document or other thing is or may be required in evidence at a hearing before the Commission, wilfully:

- (a) conceals, mutilates or destroys the document or other thing;
- (b) renders the document or other thing incapable of identification;
or

(c) in the case of a document, renders it illegible or indecipherable,

is guilty of a crime.

Penalty: \$10,000 or imprisonment for 2 years.

21 Preventing witness from attending

A person who wilfully prevents or wilfully endeavours to prevent a person who has been summoned to attend as a witness at a hearing before the Commission from attending as a witness or from producing anything in evidence pursuant to the summons to attend, is guilty of an offence.

Penalty: Imprisonment for 12 months.

22 Injury to witness

A person who uses, causes, inflicts, or procures any violence, punishment, damage, loss or disadvantage to a person for or on account of his having appeared as a witness at a hearing before the Commission, or for or on account of any evidence given by him before the Commission, is guilty of a crime.

Penalty: \$1,000 or imprisonment for 12 months.

23 Dismissal by employers of witness

- (1) An employer who dismisses an employee from his employment, or prejudices an employee in his employment, for or on account of the employee having appeared as a witness at a hearing before the Commission, or for or on account of the employee having given evidence before the Commission, is guilty of a regulatory offence.

Penalty: \$1,000 or imprisonment for 12 months.

- (2) In a proceeding for an offence against subsection (1), it shall lie on the employer to prove that an employee shown to have been dismissed or prejudiced in his employment was so dismissed or prejudiced for some reason other than the reasons mentioned in subsection (1).

24 Contempt of Commission

- (1) A person who:
- (a) wilfully insults or disturbs;
 - (b) interrupts the proceedings of;

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- (c) uses insulting language towards;
 - (d) by writing or speech uses words false and defamatory of; or
 - (e) is in any manner guilty of a wilful contempt of,
- the Commission, is guilty of an offence.

Penalty: \$200 or imprisonment for 3 months.

- (2) The Commissioner shall, in relation to an offence against subsection (1) committed in the face of the Commission, have all the powers of a Judge of the Supreme Court sitting in open court in relation to a contempt committed in the face of the court, except that any punishment inflicted shall not exceed the punishment provided by subsection (1).

25 Incidental powers

In addition to any other powers it or he may have under this or any other Act or under a law of the Commonwealth or a State or another Territory of the Commonwealth, the Commission and the Commissioner have, respectively, in relation to a hearing conducted or to be conducted for the purposes of this Act, except to the extent that the matter is specifically provided for under this Act, all the powers of the Supreme Court and a Judge of the Supreme Court in that Court's criminal jurisdiction, including the power to order the disposal of documents or other things produced before, or delivered to, the Commission or the Commissioner.

26 Protection to Commissioner, &c.

- (1) The Commissioner shall, in the exercise of his powers and performance of his functions as Commissioner, have the same protection and immunity as a Judge of the Supreme Court.
- (2) Every witness summoned to attend or appearing at a hearing before the Commission shall have the same protection and shall, in addition to the penalties provided by this Act, be subject to the same liabilities in any civil or criminal proceeding, as a witness in a case tried in the Supreme Court.
- (3) A legal practitioner assisting the Commission or appearing on behalf of a person at a hearing before the Commission has the same protection and immunity as a barrister has in appearing for a party in proceedings in the Supreme Court.

27 Commission may have concurrent functions and powers under Commonwealth Royal Commission

If with the consent of the Attorney-General, a function or power is conferred on the Commission or the Commissioner by the Governor-General, the Commission or the Commissioner may perform that function or exercise that power in conjunction with the performance or exercise by it or him, as the case may be, of a function or power under this Act.

28 Regulations

The Administrator may make regulations, not inconsistent with this Act, prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

ENDNOTES

1 KEY

Key to abbreviations

amd = amended
app = appendix
bl = by-law
ch = Chapter
cl = clause
div = Division
exp = expires/expired
f = forms
Gaz = Gazette
hdg = heading
ins = inserted
lt = long title
nc = not commenced

od = order
om = omitted
pt = Part
r = regulation/rule
rem = remainder
renum = renumbered
rep = repealed
s = section
sch = Schedule
sdiv = Subdivision
SL = Subordinate Legislation
sub = substituted

2 LIST OF LEGISLATION

Commission of Inquiry (Chamberlain Convictions) Act 1986 (Act No. 1, 1986)

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