

NORTHERN TERRITORY OF AUSTRALIA

COMMISSION OF INQUIRY (DEATHS IN CUSTODY) ACT 1987

As in force at 15 June 1989

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COMMISSION OF INQUIRY (DEATHS IN CUSTODY) ACT 1987

An Act to appoint and provide for the appointment of a Commissioner or Commissioners to inquire into, and report and make recommendations to the Administrator on, the death of certain persons in custody, and for related purposes

WHEREAS:

1. The Honourable Elliott Frank Johnston was, by Letters Patent issued in the name of the Queen by the Governor-General on 27 April 1989 (a copy of which is contained in the Schedule to this Act), appointed to be a Commissioner to perform the functions and exercise the powers referred to in the Letters Patent.
2. The Letters Patent, authorize the Commissioner to conduct that inquiry in combination with any inquiry into the same or related matters under State law or authority or a law of the Territory.
3. The Governor-General may, by Letters Patent issued in the name of the Queen, appoint another Commissioner or other Commissioners to inquire into the same matters.
4. The Territory has agreed to facilitate the inquiry as far as possible by authorizing the Commissioner or Commissioners, by Territory legislation, to inquire into the same matters in the Territory.

1 Short title

This Act may be cited as the *Commission of Inquiry (Deaths in Custody) Act 1987*.

2 Commencement

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

3 Expiration

- (1) This Act shall expire on a date to be fixed by the Administrator by notice in the *Gazette*.

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- (2) For the avoidance of doubt, section 12 of the *Interpretation Act 1978* applies to and in relation to the expiration of this Act as if it were the repeal of this Act by a law made by the Legislative Assembly.

4 Definition

In this Act **Commissioner** includes a Commissioner appointed by Letters Patent issued by the Administrator to be an additional Commissioner for the purposes of this Act.

5 Appointment of Commissioner

- (1) The Honourable Elliott Frank Johnston is hereby appointed as a Commissioner to inquire into, and to report and make such recommendations as he considers appropriate in the light of his findings to the Administrator on, the matters referred to in the letters Patent copied in the Schedule in so far as they relate to deaths which occurred or occur in the Territory.
- (2) The report and recommendations referred to in subsection (1) shall be made, and a copy of any report or recommendation of any relevant Commissioner that has been forwarded to the Commissioner shall be forwarded to the Administrator, not later than the time fixed by or under the Letters Patent for the Commissioner to furnish to the Governor-General the report of his findings.

6 Additional Commissioner

The Administrator may, by Letters Patent in the name of the Queen, issue to a person who is appointed by Letters Patent issued by the Governor-General as a Commissioner to inquire into the matters referred to the Letters Patent copied in the Schedule, a commission to be an additional Commissioner for the purpose of this Act.

7 Powers, &c., of Commissioner and applicable law

A Commissioner appointed by or in pursuance of this Act has all the powers, privileges and protection in relation to his or their inquiry, report and recommendations under this Act as he has or they have by virtue of his or their appointment by the Letters Patent referred to in the preamble to this Act, and the *Royal Commissions Act 1902* of the Commonwealth, with the necessary changes, applies to and in relation to that inquiry by, and the subsequent report and recommendations, if any, of, the Commissioner or Commissioners as if that Act were a law made by the Legislative Assembly and the Commissioner or Commissioners were appointed to conduct the inquiry, and make his or their report and recommendations, under that law.

Schedule

Preamble clause 1

COMMONWEALTH OF AUSTRALIA

ELIZABETH THE SECOND, by the Grace of God, Queen of Australia and Her other Realms and Territories, Head of the Commonwealth:

TO:

THE HONOURABLE ELLIOTT FRANK JOHNSTON, QC

GREETING:

WE DO by these Letters Patent issued in Our name by Our Governor-General of the Commonwealth of Australia on the advice of the Federal Executive Council and pursuant to the Constitution of the Commonwealth of Australia, the *Royal Commissions act 1902* and every other enabling power, appoint you with effect on and from 12 o'clock noon on 28 April 1989 to be a Commissioner to inquire into:

- (a) the deaths in Australia since 1 January 1980 of Aboriginals and Torres Strait Islanders (including any such death that may occur after the date of these Our Letters Patent but not including any such death that occurs after the expiration of 31 May 1989) whilst in police custody, in prison or in any other place of detention, but not including such a death occurring in a hospital, mental institution, infirmary or medical treatment centre unless injuries suffered while in police custody, in prison or in any place of detention caused or contributed to that death; and
- (b) any subsequent action taken in respect of each of those deaths including, but without limiting the generality of the foregoing, the conduct of coronial, police and other inquiries and any other things that were not done but ought to have been done:

AND We declare that you are authorised to conduct your inquiry into any matters under these Our Letters Patent in combination with any inquiry into the same or related matters that you are directed or authorised to make by any Commission issued, or pursuant to any order or appointment made, by any of Our Governors of the States or under the law of the Northern Territory of Australia:

AND We further declare that, for the purpose of reporting on any underlying issues associated with such deaths, you are authorised to take account of social, cultural and legal factors which, in your judgment, appear to have a bearing on those deaths:

AND W further declare that for the purposes of expediting your inquiry and the inquiries of relevant Commissioners, you are authorised in the course of your inquiry:

- (c) to refer to a relevant Commissioner for inquiry by that Commissioner in accordance with his or her Commission of inquiry, as you may determine, any particular death; and
- (d) to request a relevant Commissioner not to undertake inquiry, or further inquiry, into any particular death;

being a death to which these Our Letters Patent relate:

AND We direct you to consult generally in the course of your inquiry with each relevant Commissioner with regard to the methods and procedures to be followed in relation to your and their inquiries in order to establish a uniform approach to those inquiries and authorise you, following such consultation, to issue guidelines or make recommendations, or both, to each of those Commissioners in relation to those methods and procedures:

AND We further direct you to have regard to the reports and recommendations (if any) of Honourable James Henry Muirhead and each relevant Commissioner, and to consult with each of those Commissioners, in relation to the preparation of your report or reports and your recommendations:

AND We further declare that, for the purpose of conducting your inquiry, you are authorised to have regard to:

- (e) any evidence received by, and any matters submitted to, you under the Commission of inquiry issued to you on 6 May 1988 by Our Governor-General of the Commonwealth of Australia by Letters Patent (as subsequently varied); and
- (f) any evidence received by, and any matters submitted to, the Honourable James Henry Muirhead under the Commission of inquiry issued to him on 16 October 1987 by Our Administrator of the Government of the Commonwealth of Australia by Letters Patent (as subsequently varied);

as if that evidence had been received by you, or those matters had been submitted to you, as the case may be, for the purposes of our inquiry and any report or reports under these Our Letters Patent:

AND We further declare that in these Our Letters Patent, the expression "relevant Commissioner" means a person other than yourself to whom a Commission of inquiry relating to the deaths of Aboriginals and Torres Strait Islanders has been or is issued by Our Governor-General of the Commonwealth of Australia, or a person administering the Government of the Commonwealth of Australia, by Our Letters Patent, not being a person in relation to whom such a Commission of inquiry has been or is revoked:

AND We require you as expeditiously as practicable to make your inquiry and, not later than 31 December 1990 or such later date as We may be pleased to fix, to furnish to Our Governor-General of the Commonwealth of Australia:

- (g) a report or reports of the findings of your inquiry; and
- (h) the reports and any recommendations of relevant Commissioners that have been forwarded to you;

and to make such recommendations as you consider appropriate.'

WITNESS His Excellency the Honourable William George Hayden, Companion of the Order of Australia, Governor-General of the Commonwealth of Australia.

Dated this 27th day of April 1989.

BILL HAYDEN
Governor-General

ENDNOTES
1 KEY

Key to abbreviations

amd = amended	od = order
app = appendix	om = omitted
bl = by-law	pt = Part
ch = Chapter	r = regulation/rule
cl = clause	rem = remainder
div = Division	renum = renumbered
exp = expires/expired	rep = repealed
f = forms	s = section
Gaz = <i>Gazette</i>	sch = Schedule
hdg = heading	sdiv = Subdivision
ins = inserted	SL = Subordinate Legislation
lt = long title	sub = substituted
nc = not commenced	

2 LIST OF LEGISLATION***Commission of Inquiry (Deaths in Custody) Act 1987 (Act No. 57, 1987)***

Assent date	4 December 1987
Commenced	21 December 1987 (<i>Gaz</i> S79, 15 December 1987)

Commission of Inquiry (Deaths in Custody) Amendment Act 1988 (Act No. 21, 1988)

Assent date	15 June 1988
Commenced	15 June 1988

Commission of Inquiry (Deaths in Custody) Amendment Act 1989 (Act No. 17, 1989)

Assent date	15 June 1989
Commenced	15 June 1989

3 SAVINGS AND TRANSITIONAL PROVISIONS

s 4(2) and (3) of the *Commission of Inquiry (Deaths in Custody) Amendment Act 1989* (Act No. 17, 1989)

4 GENERAL AMENDMENTS

General amendments of a formal nature (which are not referred to in the table of amendments to this reprint) are made by the *Interpretation Legislation Amendment Act 2018* (Act No. 22 of 2018) to: ss 1 and 3.

5 LIST OF AMENDMENTS

Preamble	
cl 1	sub No. 17, 1989, s 3
Preamble	
cl 2	amd No. 21, 1988, s 3; No. 17, 1989, s 3
Preamble	
cl 3A	ins No. 21, 1988, s 3 rep No. 17, 1989, s 3

ENDNOTES

s 5 amd No. 21, 1988, s 4; No. 17, 1989, s 4
s 6 amd No. 21, 1988, s 5; No. 17, 1989, s 5
sch ins No. 21, 1988, s 6
 sub No. 17, 1989, s 6