



NORTHERN TERRITORY OF AUSTRALIA

No. 17 of 1989

AN ACT

to amend the *Commission of Inquiry
(Deaths in Custody) Act*

[Assented to 15 June 1989]

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 *Commission of Inquiry (Deaths in Custody) Amendment Act 1989*.

2. PRINCIPAL ACT

The *Commission of Inquiry (Deaths in Custody) Act* is in this Act referred to as the Principal Act.

3. PREAMBLE

The preamble to the Principal Act is amended -

- (a) by omitting clause 1 and substituting the following:

"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.";

- (b) by omitting from clause 2 "and those Letters Patent as subsequently varied,"; and

- (c) by omitting clause 3A.
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4. APPOINTMENT OF COMMISSIONER

(1) Section 5 of the Principal Act is amended -

(a) by omitting from subsection (1) "James Henry Muirhead" and substituting "Elliott Frank Johnston";

(b) by omitting from subsection (1) "clause 1 of the preamble to this Act, as varied as described in the Schedule," and substituting "the Letters Patent copied in the Schedule"; and

(c) by omitting from subsection (2) "referred to in clause 3A of the preamble to this Act".

(2) The appointment of the Honourable James Henry Muirhead as a Commissioner by section 5 of the Principal Act as in force immediately before the commencement of this Act is hereby revoked.

(3) Anything done by the Honourable Elliott Frank Johnston between 12 o'clock noon on 28 April 1989 and the commencement of this Act which, after that commencement, he would be permitted or required to do by virtue of his appointment as a Commissioner by section 5 of the Principal Act as amended by this Act, is as valid and effectual as if this Act had commenced at 12 o'clock noon on 28 April 1989.

5. ADDITIONAL COMMISSIONERS

Section 6 of the Principal Act is amended by omitting all words after "referred to in" and substituting "the Letters Patent copied in the Schedule, a commission to be an additional Commissioner for the purposes of this Act".

6. SCHEDULE

The Schedule to the Principal Act is repealed and the following substituted:

"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:

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TO:

THE HONOURABLE ELLIOTT FRANK JOHNSTON, QC

GREETING:

WE DO by these Our 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 deaths 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 other 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 We 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

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- (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 the Honourable James Henry Muirhead and each relevant Commissioner, and to consult with each of those relevant 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:

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AND We require you as expeditiously as practicable to make your inquiry and, not later than 31 December 1990 or such later day 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
