

CONFIDENTIAL

CABINET DECISION


No. **4530**

Submission No.: 3892

Title: COMMISSION OF INQUIRY
(CHAMBERLAIN CONVICTIONS) BILL

Cabinet approved -

- (a) the Commission of Inquiry (Chamberlain Convictions) Bill for introduction in the next sittings of the Legislative Assembly; and
- (b) the Second Reading Speech, Explanatory Memorandum and Committee Notes to the Bill.



A. G. MORRIS
Secretary to Cabinet.

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FOR CABINET

SUBMISSION No:3892.....

Title:	<u>COMMISSION OF INQUIRY (CHAMBERLAIN CONVICTIONS) BILL</u>
Minister	Hon. M. B. Perron, M.L.A. Attorney-General
Purpose:	To enact legislation to allow for an inquiry into the Chamberlain convictions.
Relation to existing policy:	Follows from Attorney-General's statement that inquiry be held.
Timing/ legislative priority:	For introduction on first sitting day of March Sittings.
Announcement of decision, tabling, etc:	At time of Cabinet decision.
Action required before announcement:	Nil
Staffing implications, numbers and costs, etc:	Will involve participation of some staff of Department of Law to provide administrative support to the Commission and others to assist in representation of the N.T. Crown before the Commission.
Total cost:	To be accounted for in budget process.

THE ISSUE

1. Whether to approve the annexed Commission of Inquiry (Chamberlain Convictions) Bill, marked "A", for introduction at the next sittings of the Legislative Assembly.

BACKGROUND TO THE ISSUE

2. Cabinet has previously considered issues relating to the matter and has approved the drafting of the Bill.
3. The purpose of the Bill is to establish an inquiry into the Chamberlain convictions.

OPTIONS

4. Cabinet might -
 - (a) approve the Bill for introduction in the next sittings;
 - (b) not approve the Bill.

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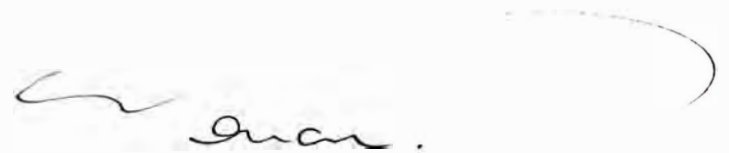
- 2 -

ATTACHMENTS

5. A draft Second Reading Speech, Explanatory Memorandum and Committee Notes are annexed and respectively marked Attachment "B", Attachment "C" and Attachment "D".

RECOMMENDATIONS

6. It is recommended that Cabinet approve the Bill for introduction in the next sittings (subject to such minor drafting amendments as may be required).

A handwritten signature in dark ink, appearing to read "Marshall Perron", with a large, sweeping flourish extending to the right.

DATE:

MARSHALL PERRON

CONFIDENTIAL

NORTHERN TERRITORY OF AUSTRALIA
COMMISSION OF INQUIRY (CHAMBERLAIN
CONVICTIONS) BILL 1986

Serial 172
Commission of Inquiry
(Chamberlain
Convictions)
Mr Perron

TABLE OF PROVISIONS

Clause

1. Short title
2. Definitions
3. Establishment of Commission
4. Inquiry and report
5. Commission may sit at any place
6. Power to summon witnesses and take evidence
7. Failure of witnesses to attend or produce documents
8. Penalty for refusing to be sworn or to give evidence
9. Self-incrimination
10. Arrest of witness failing to appear
11. Acts or omissions on different days to constitute separate offences
12. Rights of witness
13. Statements made by witness not admissible in evidence against him
14. Power of Commission in relation to documents and other things
15. Examination of witnesses by counsel, &c.
16. Witness to be paid expenses
17. False or misleading evidence
18. Bribery of witness
19. Fraud on witness
20. Destroying documents or other things
21. Preventing witness from attending
22. Injury to witness
23. Dismissal by employers of witness
24. Contempt of Commission
25. Incidental powers
26. Protection to Commissioner, &c.
27. Commission may have concurrent functions and powers under Commonwealth Royal Commission
28. Regulations



NORTHERN TERRITORY OF AUSTRALIA

A BILL for AN ACT

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.

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 (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;

Commission of Inquiry (Chamberlain Convictions)

"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.

(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.

Commission of Inquiry (Chamberlain Convictions)

(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.

Commission of Inquiry (Chamberlain Convictions)

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.

Commission of Inquiry (Chamberlain Convictions)

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.

Commission of Inquiry (Chamberlain Convictions)

(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;
- (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 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.

ATTACHMENT "B"

Serial 172

Commission of Inquiry
(Chamberlain Convictions)

Mr. Perron

SECOND READING SPEECH

Mr. Speaker, I move that the Bill be now read a second time.

Mr. Speaker, on the 2nd of February this year a baby's matinee jacket and other items were found at the base of Ayers Rock not far from the place where clothing, identified as that of Azaria Chamberlain's, was found in August 1980.

On the 5th of February 1986 Mrs. Chamberlain said that she believed the jacket was that worn by the infant at the time of her disappearance.

Much of the evidence at the trial of Mr. and Mrs. Chamberlain, at which Mrs. Chamberlain was found guilty of the murder of her daughter Azaria at Ayers Rock on the 17th August 1980 and Mr. Chamberlain guilty of being an accessory after the fact, was directed to the condition of clothing.

Mrs Chamberlain has maintained that the infant was wearing a matinee jacket at the time of her disappearance and it may be that the fact of the finding of the jacket and other items in the place where it was found and its condition will throw additional light upon the circumstances of the child's disappearance.

After consulting with my Cabinet colleagues I therefore decided on 7 February 1986 that an inquiry should be held as to the relevance of the jacket and other items. Given other doubts and questions in the minds of some of the public it was also decided that any inquiry should not be limited to that subject. At the same time the balance of Mrs Chamberlain's term of imprisonment was remitted and she was forthwith released from gaol so that she could have unfettered access to her legal advisers for the purposes of the inquiry.

No inquiry of this nature has been previously conducted in the Northern Territory and there have been few elsewhere. On occasions when a Government has decided that an inquiry into the guilt of a convicted person should be held, different procedures have been used. In some cases such as Splatt in South Australia and Thomas in New Zealand, the powers under general legislation relating to Royal Commissions have been used with the terms of reference being

determined by the Executive. In others use has been made of provisions in Criminal Codes enabling a case or part of a case the subject of a petition of mercy to be referred to the Supreme Court of the State by a Crown Law Officer.

In New South Wales there is a special provision in the Crimes Act which is not to be found elsewhere. It has been there for about 100 years and has often been used. It provides that where a doubt or question arises concerning the guilt of a person or any mitigating circumstances in the case, or any part of the evidence thereon, the Governor on the petition of the person convicted, or some person on his behalf, representing such doubt or question, may direct any Justice to examine on oath all persons likely to give material information on the matter suggested.

The Justice is directed to prepare a report to the Governor as to the conclusions to be drawn therefrom and the matter is dealt with thereafter as appears to be just.

There is no Territory Royal Commissions Act. The Inquiries Act enacted in 1945 is not entirely suitable for the purposes of the proposed inquiry concerning the Chamberlain case.

Mr. Speaker, this Bill is therefore a special piece of legislation dealing only with the Chamberlain matter. It

establishes a Commission of Inquiry, sets the scope of the inquiry, gives the Commission adequate powers to perform its tasks in the Territory and requires a report to His Honour the Administrator and the tabling of that report in this Assembly.

Honourable Members will note from the preamble and clause 4 of the Bill that the nature and scope of the inquiry is modelled on section 475 of the New South Wales Crimes Act. It is as wide as could be. Unlike other inquiries into convictions for murder it is not limited to terms of reference touching upon specific aspects of evidence. It is open to those assisting the inquiry and any given leave to appear before it to raise any relevant doubt or question for inquiry and report. Any limitation on the matters to be inquired into will be in the hands of the Commission.

The powers of the Commission are detailed in clauses 5 to 25. These powers are taken directly from the Commonwealth Royal Commissions Act in so far as they are relevant to this inquiry and include provisions enabling the Commissioner to ensure the attendance of witnesses and production of documents and other things.

As Honourable Members are aware the witnesses for the Crown and defence at trial came from all parts of Australia and overseas. Assuming that the Commission may wish to hear

from some or all of them and perhaps others, I think it likely that the Commission may wish to sit outside of the Northern Territory. The power to do so is contained in clause 5 but it raises legal problems concerning the coercion of witnesses and the usual protections given to a Commission, witnesses and counsel. To obviate that problem I have sought and obtained an undertaking from the Commonwealth Attorney-General that, when the Commission is established under Northern Territory law, the Governor-General of the Commonwealth of Australia will be requested to execute Letters Patent with identical terms of reference under the Commonwealth Royal Commissions Act.

The flow of powers and protections then accrued will, I believe, enable the Commission to effectively discharge its function when sitting outside the Northern Territory. The terms of reference under that Commission will be the same as those in the Territory legislation. Mr. Speaker, Honourable Members should refer to the provisions of clauses 25 and 27 in this regard.

Mr. Speaker, I am pleased to be able to announce that the Honourable Mr Justice Trevor Morling of the Federal Court of Australia is prepared to accept appointment as the person to comprise the Commission. His Honour's agreement to accept the appointment was with the concurrence of the Commonwealth Attorney-General and the Chief Judge of the Federal Court of Australia and after the consideration of this Bill. I appreciate and acknowledge the assistance of the Commonwealth with thanks.

Mr. Speaker, the finalising of arrangements for the conduct of the inquiry is well under way but has been complicated by the broad net of suspicion cast upon so many people who have been previously engaged in the matter on the part of the Crown. Whether or not the allegations giving rise to those suspicions are relevant to the inquiry and, if so, sustainable remains to be seen. However, in order to avoid any further criticisms I have decided that solicitors in Sydney who have never previously acted on behalf of the Territory in any matter shall be engaged, at Territory expense, as solicitors to counsel assisting the Commission. Those counsel will be chosen by those solicitors in consultation with the Commissioner.

The Territory will engage such staff and provide such services as are required to provide administrative support to the Commissioner but under his direction.

Mr. Speaker, it is not possible to say when the Commission is likely to commence hearings, how it will progress or when it will conclude. Those are matters properly left to the Commissioner.

I do not propose to say anything more concerning the reasons for the decision to establish the inquiry nor regarding the matters which may be drawn to its attention. To do so would be quite wrong. Those matters will be in the hands of the Commission assisted by independently instructed counsel and such other interested parties as may be given leave to appear.

Mr. Speaker I commend the Bill to Honourable Members.

ATTACHMENT "C"

Serial 172
Commission of Inquiry
(Chamberlain Convictions)

Mr. Perron

EXPLANATORY MEMORANDUM

The Bill provides for an inquiry into the convictions of Alice Lynne Chamberlain and Michael Leigh Chamberlain.

The Bill sets out the terms of reference and details of the powers and functions of the Commission of Inquiry and the Commissioner.

The Bill provides that the Commission shall, in determining the nature and scope of the inquiry, be guided by like terms as used in section 475 of the Crimes Act of New South Wales.

The Commission is required to report to the Administrator on the conclusions to be drawn from the evidence and the material information received by the Commission. The Attorney-General is required to cause a copy of the report given to the Administrator by the Commission to be laid before the Legislative Assembly within 6 sitting days of the first sittings of the Legislative Assembly after the report is received by the Administrator.

The Bill also allows the Governor-General to confer functions and powers on the Commission or the Commissioner, and further provides that the Commission or Commissioner may perform those functions or exercise those powers so conferred.

ATTACHMENT "D"

Serial 172
Commission of Inquiry
(Chamberlain Convictions)

Mr. Perron

COMMITTEE NOTES

Clause 1. Short Title.

Clause 2. Definitions.

In this clause, common terms used throughout the document are defined for convenience purposes.

Clause 3. Establishment of Commission.

- (1) By this provision the Commission of Inquiry is established.
- (2) The Commission may be constituted by a judge or former judge of the Federal Court of Australia or the Supreme Court of a State or another Territory of the Commonwealth, appointed by the Attorney-General as the Commissioner.
- (3) The sub-clause specifically provides that the Attorney-General may make an appointment as Commissioner.

Clause 4. Inquiry and Report.

- (1) This provision allows the Commission, as it thinks fit, to examine persons who and documents and things which, in the opinion of the Commissioner, are likely to be able to give or provide information on the matters concerning the Chamberlain convictions and doubts or questions arising as to their guilt or as to evidence in the trial leading to their conviction. The provision requires the Commissioner to report to the Administrator on the conclusions to be drawn from the evidence and the material information received by it. Read with the recital to the Act, this provision gives the Commission wide-ranging powers of investigation.
- (2) The sub-clause provides that the Commission, in determining the nature and scope of the inquiry, shall be guided by like terms used in section 475(1) of the Crimes Act 1900 of New South Wales. Section 475(1) of the New South

Wales Crimes Act has been the subject of litigation such that there is a body of law available so as to provide assistance in the interpretation of the section. Further, the practice and procedure of inquiries held under section 475(1) of the New South Wales Crimes Act is now settled and understood. With the Commission being required to be guided by section 475 of the New South Wales Crimes Act, a sound basis is set up for its operation.

- (3) The sub-clause provides that the Commission shall be in public; however, there is provision for the Commissioner to exclude any persons for reasons he thinks fit.
- (4) By this provision the Attorney-General is required to lay a copy of the report under sub-clause (1) before the Legislative Assembly within 6 sitting days of the first sittings of the Assembly after the report is received by the Administrator.

Clause 5. Commission May Sit at Any Place.

This provision allows the Commission to sit in any part of Australia and, with the consent of the Attorney-General, to sit overseas.

Clause 6. Power to Summon Witnesses and Take Evidence.

- (1) By this provision the Commissioner is allowed to summons persons to appear before the Commission to give evidence and to produce documents or other things as referred to in a summons.
- (2) By this provision the Commissioner may require a person appearing at the inquiry to produce a document or other thing.
- (3) The provision allows the Commission to take evidence on oath or affirmation and for that purpose to require persons appearing before the hearing to give evidence on oath or affirmation in a form approved by the Commissioner. It also allows the Commissioner or person authorized in writing by the Commissioner to administer that oath or affirmation.

Clause 7. Failure of Witnesses to Attend or Produce Documents.

- (1) By this provision a person (served with a summons to appear as a witness) who, without reasonable excuse, fails to attend as required, commits a regulatory offence punishable by 6 months' imprisonment.

- (2) Similarly to sub-clause (1), a person appearing as a witness who, without reasonable excuse, refuses or fails to produce a document or thing as required, commits a regulatory offence punishable by 6 months' imprisonment.
- (3) This sub-clause provides a defence to a prosecution under sub-clause (2) if it is proved that the document or thing the party had failed or refused to produce was not relevant to the inquiry.

Clause 8. Penalty for Refusing to be Sworn or to Give Evidence.

A person who refuses to be sworn, or to give evidence, or to answer relevant questions commits a regulatory offence punishable by 6 months' imprisonment.

Clause 9. Self-incrimination.

- (1) This provision sets out that it is not a reasonable excuse, for the purposes of clause 7(2), for a person to refuse or fail to produce a document on the grounds that the document might tend to incriminate him.
- (2) In similar terms to sub-clause (1), this provision provides that 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 incriminate him.

Clause 10. Arrest of Witness Failing to Appear.

- (1) Where a person who has been served with a summons fails to attend before the Commission, the Commissioner may, on proof of service of the summons, issue a warrant for apprehension of the witness.
- (2) Where a warrant is issued under sub-clause (1), it authorizes the apprehension of the witness and his being brought before the Commission, and for his detention in custody, until such time as he is released by the Commissioner.
- (3) This provision provides for service of the warrant referred to in sub-clause (1) by the various members of the Police Forces throughout Australia. It also gives such persons certain powers of entry for the purposes of executing the warrant.
- (4) The apprehension of a witness pursuant to a warrant under this part does not relieve the person so apprehended from complying with the

summons, i.e. giving evidence or producing documents.

Clause 11. Acts or Omissions on Different Days to Constitute Separate Offences.

For each day a person does an act or makes an omission such as to constitute an offence against clause 8 (refusing to be sworn or to give evidence), that person commits a separate offence, i.e. where a person refuses to give evidence for 3 days in a row, that person commits an offence of refusing to give evidence on each of those 3 days.

Clause 12. Rights of Witness.

- (1) A witness appearing before the Commission is not required to disclose a secret process of manufacture.
- (2) A witness appearing before the Commission may request his evidence relating to a particular subject be taken in private on the ground that the evidence relates to financial matters relating to a person and that that evidence would be unfairly prejudicial to the interests of that person. It further allows the Commission to take that evidence in private.
- (3) The Commissioner, by this provision, may restrict publication of evidence, documents or information put before the Commission.
- (4) A person who contravenes sub-clause (3) commits a regulatory offence punishable by 12 months' imprisonment.

Clause 13. Statements Made by Witness Not Admissible in Evidence Against Him.

A statement made by a witness in evidence before the Commission is not admissible against that witness in any civil or criminal proceedings.

Clause 14. Power of Commission in Relation to Documents and Other Things.

This provision allows the Commissioner to inspect, retain, or copy documents or things produced for or delivered to the Commission or Commissioner.

Clause 15. Examination of Witnesses by Counsel, Etc.

By this provision 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 to represent any person, may, so far as the Commissioner thinks proper, examine and cross-examine witnesses.

Clause 16. Witness to be Paid Expenses.

- (1) This provision allows for witnesses to be paid witness expenses in accordance with the prescribed scale.
- (2) In the event there is no prescribed scale, the Commissioner may authorize a payment such as he thinks reasonable.

Clause 17. False or Misleading Evidence.

- (1) A person who knowingly gives false or misleading evidence before the Commission commits a crime punishable by a fine of \$20,000 or imprisonment for 5 years.
- (2) Notwithstanding that the offence mentioned in sub-clause (1) is a crime (normally punishable only before a jury), the offence may be dealt with in a court of summary jurisdiction if the defendant and the prosecutor so consent.
- (3) Where an offence against sub-clause (1) is tried before the court of summary jurisdiction, the penalty is then a fine of \$2,000 or imprisonment for 12 months.

Clause 18. Bribery of Witness.

A person who bribes or attempts to bribe a witness commits a crime punishable by imprisonment for 5 years. The provision sets out what conduct amounts to an offence against this clause.

Clause 19. Fraud on Witness.

A person who commits a fraud before the Commission commits a crime punishable by imprisonment for 2 years.

Clause 20. Destroying Documents or Other Things.

A person who destroys documents or other things required to be in evidence before the Commission commits a crime punishable by imprisonment for 2 years.

Clause 21. Preventing Witness from Attending.

A person who wilfully prevents or endeavours to prevent a witness from attending before the Commission or producing anything in evidence before the Commission commits an offence punishable by imprisonment for 12 months.

Clause 22. Injury to Witness.

A person who causes injury, either personal or financial, to a witness commits a crime and is liable for punishment for 12 months.

Clause 23. Dismissal by Employers of Witness.

(1) An employer who dismisses an employee on account of his having given evidence before the Commission commits a regulatory offence punishable by imprisonment for 12 months.

(2) The onus in relation to proving that the employee mentioned in sub-clause (1) was not dismissed by reason of his having given evidence before the Commission rests with the employer.

Clause 24. Contempt of Commission.

(1) The provision sets out that certain acts such as insults or interruptions of the Commission amount to an offence punishable by imprisonment for 3 months.

(2) This clause provides that, in relation to offences against sub-clause (1) committed in the face of the Commission, the Commissioner shall 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 shall not exceed the punishment provided by sub-clause (1).

Clause 25. Incidental Powers.

In addition to the powers given to the Commissioner by this Act or by or under any law of the Commonwealth or a State or another Territory of the Commonwealth, the Commissioner is to have all the powers of the Supreme Court and a judge of the Supreme Court in that Court's criminal jurisdiction, including the power to dispose of documents.

Clause 26. Protection to Commissioner, Etc.

(1) In the performance of his functions, the Commissioner is given all the protection and immunity of a judge of the Supreme Court.

(2) A witness appearing before the Commission has the same protection and is subject to the same liability in any civil or criminal proceedings 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 the hearing before the Commission, has the same protection and immunity as a barrister appearing for a party in proceedings in the Supreme Court.

Clause 27. Commission May Have Concurrent Functions and Powers Under Commonwealth Royal Commission.

With the consent of the Attorney-General, the Commissioner may perform any power or function conferred on the Commission or Commissioner by the Governor-General. That power or function may be performed in conjunction with the performance or exercise of a power or function given to the Commissioner under this Act.

Clause 28. Regulations.

This provision allows the Administrator to make regulations.