

Parliament of the Commonwealth of Australia

The Use of the Coat of Arms

Armed with national pride

A report of the inquiry into the
use of the Commonwealth Coat of Arms

House of Representatives
Standing Committee on Legal and Constitutional Affairs

December 1994

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*Cover: A representation of the Commonwealth Coat of Arms
granted by Royal Warrant in 1912. The design was gazetted in the
Commonwealth of Australia Gazette of 15 January 1913.*

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Foreword

This report is a review of the use of the Commonwealth Coat of Arms which was granted to the Commonwealth in 1912. The Australian Parliament, Government and Federal Courts, have displayed the Arms proudly for some 80 years, a symbol of authority and ownership. In the case of sporting bodies who have been authorised users, they have relied on the symbol with its uniquely Australian animals, to make a declaration of national identity to the international community.

The 1912 Arms was a symbol of the new nation, incorporating a shield with six parts, each containing the badge of a state. The distinctive composition of Australia's Coat of Arms, shaped by the dominant figures of the indigenous animals, the kangaroo and the emu, underlies the wide appeal of the Arms.

In recent times, the Arms have increasingly been used without authority. Unauthorised use has usually been for commercial purposes. This is a situation which has developed slowly over the years.

As Australia moves towards its centenary of federation its social and cultural environment now contrasts strongly with that of the early 20th century when the Arms were first granted. Despite this the respect for the authority of our national identity has not diminished.

The Committee has analysed evidence to consider the appropriate uses of the Coat of Arms and how best to protect it. The result is a number of recommendations aimed at supporting both Commonwealth and non-Commonwealth use of the Arms, and the continued dignity and authority of the Coat of Arms. This will protect its special values for future generations of Australians.

Daryl Melham MP
Chair
House of Representatives Standing Committee
on Legal and Constitutional Affairs

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Terms of reference

Inquiry into the use of the Commonwealth Coat of Arms

The Commonwealth Coat of Arms was granted to the Commonwealth in 1912. It is used to identify Commonwealth property and authority. The use of the Coat of Arms is managed by the Commonwealth Department of Administrative Services. The Coat of Arms is used on legal tender, on the letterhead of Commonwealth government departments and authorities and on passports, official publications and documents. Permission to reproduce the Coat of Arms may be granted on a case by case basis to non-Commonwealth bodies, for example to sporting teams representing Australia in international competition and for use in certain educational publications.

The Committee will inquire into and report on matters relating to the use of the Commonwealth Coat of Arms with particular reference to:

1. the adequacy of existing practices relating to the Commonwealth Coat of Arms and whether they meet contemporary needs;
2. whether the use of the Commonwealth Coat of Arms should be extended to non-Commonwealth bodies and in what circumstances and under what conditions this extension should be granted;
3. whether legislation should be enacted to govern the use of the Commonwealth Coat of Arms.

For the purposes of the foregoing inquiry the Committee will take account of the practices of the states and territories in regulating the use of their own Coats of Arms.

Standing Committee on Legal and Constitutional Affairs

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Deputy Chairman – Mr Alan Cadman MP

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Hon Wendy Fatin MP
Hon Clyde Holding MP
Mr Mark Latham MP (from 9 February 1994)
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Ms Mary Crawford MP (until 9 February 1994)
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Use of the Coat of Arms Sub-committee

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Rt Hon Ian Sinclair MP
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Abbreviations and acronyms

ACS	Australian Customs Service
ABS	Australian Bureau of Statistics
AGPS	Australian Government Publishing Service
AIPO	Australian Industrial Property Organisation
AOCA	Australian Owned Companies Associations
Arms	Commonwealth Coat of Arms
Coat of Arms	Commonwealth Coat of Arms
DAS	Department of Administrative Services
TPC	Trade Practices Commission

Glossary

armorial – that which relates to the arms

badge – an emblem of heraldry, which is not a coat of arms, but which the holder of a coat of arms may allow to be used by others

blazon – the official description in words of a coat of arms

crest – an emblem which in the past was displayed upon a helmet, and is an accessory to a coat of arms

heraldry – the art of arranging the elements of arms in a systematic way to express identity

shield – the central feature of a coat of arms on which a design is displayed

supporters – the creatures that support the shield in a coat of arms – they are accessories to a coat of arms

Summary and recommendations

The inquiry

1. This review of the use of the Commonwealth Coat of Arms was prompted by the high incidence of unauthorised commercial use of the Coat of Arms and the unsatisfactory administrative basis for regulating its use.

Scope and structure of the report

2. The report begins with a description of the inquiry process. The introduction also outlines the structure of the report. This is followed by a short history of the Coat of Arms and its use. The report then discusses the possible uses of the Coat of Arms and finally examines the regulatory regime that should be used to support adequately the recommended uses.

History of the Coat of Arms (chapter 2)

3. A coat of arms is a pictorial identification which dates from the eleventh century. It was originally worn on a tunic over the armour of a medieval knight. The complex system of expressing identity which developed from this practice is called heraldry.

4. King Edward VII made the first official grant of a coat of arms to the Commonwealth of Australia by Royal Warrant of 7 May 1908. This arms included a symbol of national unity in the Commonwealth Star, but lacked a specific reference to the states. A new design was approved by King George V by Royal Warrant of 19 September 1912. This Coat of Arms includes not only the Commonwealth Star but also a shield having six quarters, each representing a state of Australia.

5. The Coat of Arms is used by each of the three arms of Commonwealth government – the legislature, the judiciary and the executive – to mark authority and ownership. It is used on buildings, for example Parliament House Canberra and the federal courts, departmental correspondence, legal tender and official publications and certificates, for example passports.

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6. The Commonwealth Government has undertaken to control the use of the Arms. Today this function is performed by the Department of Administrative Services (DAS). Authorisation has been given for non-Commonwealth use of the Arms on a case by case basis. Such non-official use has been strictly limited.

7. Exceptions have been made for its use in educational publications, and on souvenirs to commemorate occasions such as coronations, royal visits, the Silver Jubilee of Queen Elizabeth II in 1977 and the Australian Bicentenary in 1988. Since 1922 permission has also been granted to sporting teams representing Australia in international competition to display the Arms on their official uniforms.

8. Unauthorised use of the Coat of Arms has increased in recent years. While Australian manufacturers that DAS has notified have ceased to use the Arms, some imports have continued to be available for sale. This has led to the misunderstanding by some in the community that overseas manufacturers have been allowed to use the Arms while Australian manufacturers have been denied such use.

Authorised use of the Coat of Arms (chapter 3)

9. DAS has based its management of the Coat of Arms on heraldic principles, which restrict the use of coats of arms to their holders. An examination of evidence from persons with expertise in heraldry has suggested that the Commonwealth can authorise non-Commonwealth use of the Coat of Arms and the Committee agrees that the Commonwealth has such a power.

10. Some persons expressed strong objections to anything other than official use of the Coat of Arms and suggest that because it is a national symbol, the Arms should be restricted to official use by the government, the parliament and the federal courts. The Committee recognises and supports the continued use of the Coat of Arms for official Commonwealth use, including on uniforms where Commonwealth officials are engaged in official Commonwealth activity.

Recommendation 1

The Committee recommends that the main use of the Coat of Arms should continue to be the identification of Commonwealth property and the mark of Commonwealth authority.

11. Various sporting bodies support the continued access to the use of the Coat of Arms on the official uniforms worn by Australian national representative sportspeople. The Committee considers that the Coat of Arms should be available for use on the non-playing uniforms of national representative sportspeople, but not on clothes worn playing sport.

12. Australian importers and manufacturers argued in favour of being able to sell and manufacture items bearing the Coat of Arms. Several claimed that such products have been commercially available in Australia for at least the past 20 years. While some suggested that only Australian manufacturers should be able to use the Coat of Arms, others argued that its use should also be open to overseas manufacturers.

13. The main reason advanced against wide non-Commonwealth use was that the Arms was in the first instance a national symbol that might be exploited by the creation of a false impression that an item or activity carries the authority of the Commonwealth. There was general support for use of the Arms on souvenirs to commemorate specific important occasions in Australia, such as the forthcoming centenary of federation.

14. Without exception where the quality of the items was mentioned all agreed that the representation of the Arms on the items should be of the highest quality.

15. The Committee considers that it would be appropriate to authorise the use of the Coat of Arms for the commemoration of special events taking place within Australia. The Australian Bicentenary 1988 was one suitable occasion in the past where souvenirs bore the Coat of Arms. However, the Committee believes it would not be appropriate for the Arms to be used as a mere marketing ploy to create the impression that an item or activity was more official than it actually was. Important criteria to be applied to such use are that the use does not give the impression that the items have the authority of the

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Commonwealth, and that the representation is accurate and of acceptable quality.

16. The Committee feels it is not appropriate to exclude in principle non-Australian manufacture and that a consumer will be able to make up her or his own mind about whether to buy an item bearing the Arms that is made by an Australian or a non-Australian manufacturer.

17. The Committee considers that pride in Australia's national symbols is important and that this pride should be nurtured by the use of such symbols where appropriate. The Committee agrees that an Australian heraldic badge should be developed as an alternative symbol for use where the Arms is not appropriate. The badge should be selected by the Government by way of a popular competition in which all Australians may take part.

Recommendation 2

The Committee recommends that a badge be developed for Australia.

Legal protection for the Commonwealth Coat of Arms (chapter 4)

18. Although it is likely that the feudal law of arms was part of the English law which was brought to Australia at the time of English settlement, there has not yet been an Australian case on such matters. The Attorney-General's Department has advised DAS that the English Court of Chivalry has no jurisdiction in Australia.

19. It was suggested that, like other Commonwealth countries an indigenous heraldic authority be established in Australia to grant, register and have jurisdiction over heraldic achievements within Australia. The Committee does not recommend that this suggestion be taken up because it is not appropriate in terms of the present inquiry.

20. Industrial property law offers only limited protection for the Coat of Arms, and the Committee considers that undue reliance on industrial property law might create the impression that the Coat of Arms is like a logo or trade mark bereft of the dignity that a symbol of national status deserves.

Summary and recommendations

21. Trade practices legislation and the *Crimes Act 1914* offer only limited protection for the Coat of Arms, and their application to matters involving the unauthorised use of the Arms are largely untested. The *Customs (Prohibited Imports) Regulations* also provide only partial protection against unauthorised use on imported items.

22. The Committee agrees that the current legislation seems inadequate to enforce a system of authorised use of the Coat of Arms.

Recommendation 3

The Committee recommends that specific legislation be drafted to protect the Commonwealth Coat of Arms.

23. The Committee considers that there is a weakness in the current administration of the Arms that imposes unequal sanctions on unauthorised users. The proposed specific legislation should impose sanctions on any person found guilty of unauthorised use of the Arms.

Recommendation 4

The Committee recommends that the proposed specific legislation should provide for penalties which are able to be imposed on any person found guilty of unauthorised use of the Arms. The penalties should include money fines and forfeiture of unauthorised items.

24. The Committee considers that it would be appropriate to extend the scope of the legislation to include protection for the proposed Australian badge.

Recommendation 5

The Committee recommends that the proposed Australian badge also be protected by the proposed specific legislation.

25. The Committee considers that the Minister for Administrative Services should have the power to authorise the importation of goods bearing the Coat of Arms.

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Recommendation 6

The Committee recommends that the importation of items bearing the Coat of Arms be prohibited unless authorised by the Minister for Administrative Services.

26. The Committee considers that it is desirable to have comprehensive legislation providing for items bearing the Coat of Arms regardless of origin, and that the legislation should expressly provide for customs enforcement.

Recommendation 7

The Committee recommends that the proposed specific legislation provide expressly for the prevention of unlawful entry into Australia of unauthorised items bearing the Coat of Arms.

27. The legislation controlling the use of the Arms should permit such use at the discretion of the Minister.

Recommendation 8

The Committee recommends that the Minister for Administrative Services have a discretion to approve requests to use the Coat of Arms.

28. The Committee considers that the dignity and status of the Arms should be specifically addressed when applications to use the Coat of Arms for a commercial purpose are assessed.

Recommendation 9

The Committee recommends that in exercising her or his discretion in relation to permitting the use of the Coat of Arms in a commercial merchandising environment, the Minister take account of the need to protect the dignity and status of the Arms as a national symbol.

29. The Committee also considers that the dignity and status of the Arms should be specifically addressed when applications to use the Coat of Arms for national representative sporting purposes are assessed.

Recommendation 10

The Committee recommends that in exercising her or his discretion in relation to permitting the use of the Coat of Arms for national representative sporting bodies, the Minister for Administrative Services take account of the need to protect the dignity and status of the Arms as a national symbol by restricting such use to dress uniforms or their equivalent and by disallowing the use of the Arms where the placement or content of other signs or symbols are not in keeping with the dignity of the Coat of Arms.

30. The Committee considers it would be appropriate for the Minister to consult with the Australian Sports Commission when considering requests for use of the Arms by sports bodies.

Recommendation 11

The Committee recommends that the Minister for Administrative Services consults with the Australian Sports Commission when considering requests for use of the Coat of Arms by national representative sportspersons.

31. The Committee considers that a registration process should be implemented as part of the protection of the Coat of Arms and that a public register should be kept to provide certainty and information to those interested in the Arms.

Recommendation 12

The Committee recommends that the Minister for Administrative Services have the power to grant approval to use the Arms to particular persons for particular purposes. The results of this process should be made available through a public register and gazettal.

32. The Committee considers that the administration should operate with clear and effective guidelines that are capable of being well known to all potential users. The report offers some general principles on which the guidelines could be based.

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Recommendation 13

The Committee recommends that clear and effective guidelines be developed by the Minister for Administrative Services. The guidelines should be made by way of regulation under the proposed specific legislation. They should be made freely and widely available.

33. The Committee considers that the guidelines should be comprehensive and that they should include the following matters which were highlighted during the inquiry.

Recommendation 14

The Committee recommends that the guidelines provide for representations of the Coat of Arms to be accurate and of a suitably high quality.

34. The Committee notes the provisions of the Trade Practices Act relating to misleading and deceptive impressions and considers that the guidelines should provide that the use of the Arms should not result in any misleading or deceptive impressions.

Recommendation 15

The Committee recommends that the guidelines provide that the use of the Coat of Arms does not result in any misleading or deceptive impressions being given.

35. The Committee notes that there is a need for an ongoing information program to provide all interested persons with accurate and current information about the use of the Coat of Arms.

Recommendation 16

The Committee recommends that the Department of Administrative Services devise and implement an information program about the use of the Coat of Arms. The program should cover the legislative, protection and registration aspects of the Department's management of the use of the Coat of Arms.

Chapter 1

Introduction

The inquiry was referred to the Committee by the Minister for Administrative Services on 1 September 1994. Fifty-six submissions were received and oral evidence was taken from 25 persons.

The main impetus for the inquiry was the increasing number of unauthorised commercial uses of the Coat of Arms which were brought to the notice of the Government's manager of the use of the Coat of Arms, the Awards and National Symbols Branch of the Department of Administrative Services (DAS). DAS no longer considers the administrative basis supporting this management to be satisfactory because it lacks legal certainty.

The chapter concludes with a brief survey of the contents of the report.

1.1 The inquiry process

1.1.1 The House of Representatives Standing Committee on Legal and Constitutional Affairs commenced its inquiry into the use of the Commonwealth Coat of Arms on 1 September 1994 at the request of the Minister for Administrative Services, the Hon Frank Walker, QC, MP.

1.1.2 The terms of reference were advertised in September 1994 in the national press. Invitations to prepare submissions were sent to authorised and unauthorised users of the Arms, potential users of the Arms, sporting associations, business associations, heraldry societies, government agencies, state premiers and ministers of law departments, federal ministers, federal leaders of political parties and other interested persons. The greatest levels of interest in the inquiry were expressed by Australian manufacturers, sporting associations and heraldry societies.

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1.1.3 The Committee made available to interested parties the submissions authorised for publication, and in turn, requested comments on the proposals contained in the submissions.

1.1.4 Fifty-six submissions were received from individuals and organisations including Australian manufacturers, importers, sporting associations, heraldry societies, persons who have designed or manufactured items bearing the Coat of Arms for official use, and federal government agencies.¹ Oral evidence was taken from 25 persons during public hearings in Canberra, Melbourne, Perth and Sydney.²

1.2 Background to the inquiry

1.2.1 The inquiry was undertaken for two main reasons. First, the Department of Administrative Services (DAS) expressed concern about the high incidence of unauthorised commercial use of the Coat of Arms. DAS claimed that such unauthorised commercial use was likely to increase because of the Sydney 2000 Olympics and the centenary of federation.³

1.2.2 The second reason for conducting the inquiry is that DAS considers that the administrative basis for managing and protecting the use of the Arms, which has developed since 1912, has become unsatisfactory because it lacks legal certainty.⁴

1.2.3 The DAS submission reveals that during 1994 it has been pursuing actively the restrictions which it applies to its

1 A list of persons and organisations who made submissions is at Appendix A, and a list of exhibits is at Appendix B.

2 A list of witnesses who appeared at public hearings is at Appendix C.

3 DAS, *Submissions*, p. S179.

4 DAS, *Submissions*, p. S179.

management of the use of the Coat of Arms.⁵ DAS has found that Australian manufacturers who were not authorised to use the Arms ceased once DAS asked them to, although they complained to DAS about the restrictions and their adverse effects on their businesses.

1.2.4 When seeking to apply the restrictions to unauthorised imported items bearing the Arms, DAS has had considerably greater difficulty. The consequence has been that items manufactured overseas and using the Arms are still being sold in Australian shops, and this has been a second area of complaint by Australian manufacturers. An article in the July–September 1994 newsletter of the Australian Owned Companies Association (AOCA) focuses on this area of complaint:

The Australian Government has stopped The Australian Bush Hat Company (a WA owned and operated company) from embroidering the Coat of Arms on their range of hats. The Australian Coat of Arms is only available to be used by the Australian Government and, in some exceptional cases, on uniforms of sporting teams representing Australia. This would seem reasonable – except that thousands of imported items freely enter Australia each year bearing the Coat of Arms, and the Government does nothing about it.⁶

1.2.5 The Committee notes that publicity surrounding complaints from Australian manufacturers about this situation has led to the misunderstanding by some persons that such overseas manufacture is authorised. The Committee recognises that no manufacturers whether in Australia or overseas have been authorised to use Coat of Arms on products for general sale.

⁵ DAS, *Submissions*, pp. S177–S277.

⁶ Australian Owned Companies Association (AOCA), *Submissions*, p. S53.

1.3 Scope of the inquiry

1.3.1 There are two main aspects of the inquiry:

- whether authorised use of the Commonwealth Coat of Arms should be extended to non-Commonwealth bodies; and
- whether legislation is needed to protect the Arms.

1.3.2 It was suggested during the course of the inquiry that the scope of the inquiry should have been broader than the use of the Commonwealth Coat of Arms. Some suggestions were made that the Australian flag, state coats of arms, and other Australian symbols, icons and logos should also have been included in the scope of this inquiry.⁷ While these other symbols might be referred to because they were mentioned in the evidence, they are not a focus of this report.

1.3.3 The report commences with a short history of the Coat of Arms and its use, and includes a review of the practices and underlying policy relating to the use of the Arms (chapter 2).

1.3.4 The report then discusses the possible uses of the Coat of Arms (chapter 3), and finally the regulatory measures that should be used to support adequately the recommended uses are also examined (chapter 4).

⁷ For example: AOCA, *Submissions*, p. S48.

Chapter 2

A history of the Commonwealth Coat of Arms

This chapter introduces some of the heraldic terms relevant to the inquiry and reveals the granting of arms as a mark of royal favour of long standing. The Government has sought to both protect and control the use of the Coat of Arms granted to Australia in 1912 and this management is the focus of the current report. The increasing incidence of unauthorised use over the years has led to uncertainty about this administration.

2.1 Heraldry

2.1.1 A number of submissions⁸ provided information on the heraldry aspects of the inquiry and the Committee considers it would be useful to include brief notes on heraldry in the report.

2.1.2 A 'coat of arms' is a pictorial identification which was originally used to identify an individual. It refers to the custom dating from the 11th century of displaying an emblem on a tunic or coat worn over the armour of a medieval knight. The crest, was originally displayed on the helmet of the knight and the shield he carried provided a good surface for the display of a design. The emblems and designs were also used on banners and flags. Each design was unique so the armoured wearers could be accurately identified and distinguished one from the other.

2.1.3 The grant of arms to persons or organisations became a mark of royal favour. The complex system of expressing identity on arms is known as heraldry, and heralds have expertise in

⁸ For example: Strath Hunter Heraldry, *Submissions*, pp. S38–S45; R. Num, *Submissions*, pp. S64–S112; Heraldry Australia Inc., *Submissions*, pp. S115–S121; Australian Heraldry (Victoria) Ltd, *Submissions*, pp. S174–S175; and G. Gill, *Submissions*, pp. S371–S378.

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interpreting and designing the displays applying rules of form and display that have developed since the 12th century. The description in words of a coat of arms is called the blazon and the pictorial representation derives from the blazon.

2.1.4 Today armorial symbolism is used throughout the world. In the 20th century, the designs are used to identify countries, regions, cities, organisations, companies and individuals.

2.2 Coat of Arms for Australia

2.2.1 The first official grant of a Coat of Arms to the Commonwealth of Australia was made by King Edward VII by Royal Warrant of 7 May 1908 (the 1908 Arms).⁹

2.2.2 The 1908 Arms included a symbol of national unity in the Commonwealth Star six of whose points represented the six states – the seventh point representing the territories. The lack of specific references to the states in the shield of the 1908 Arms led the Commonwealth Government to propose substantial alterations to its design. King George V granted arms by Royal Warrant of 19 September 1912, which was gazetted in the Commonwealth of Australia Gazette of 15 January 1913 (the Coat of Arms).¹⁰ The 'quarters' of the shield represent the six states of the Commonwealth. It is this Coat of Arms that is used by the Commonwealth today and is the subject of this inquiry.

9 Refer to the DAS submission at p. S234 for a description and representation of the 1908 Arms.

10 Refer to the DAS submission at p. S237 for the text of the Royal Warrant.

2.3 Royal Warrant of 1912

2.3.1 Although an artist may from time to time provide a drawing that is an interpretation of the blazon, which is the only binding description of the Arms granted. The features of the Arms specified in the warrant are:

- the crest – for the Crest On a Wreath Or and Azure 'A Seven pointed Star Or'; and

- the shield – 'Quarterly of six, the first quarter Argent a Cross Gules charged with a Lion passant guardant between on each limb a Mullet of eight points Or; the second, Azure five Mullet, one of eight, two of seven, one of six and one of five points of the first (representing the Constellation of the Southern Cross) ensigned with an Imperial Crown proper; the third of the first, a Maltese Cross of the fourth, surmounted by a like Imperial Crown; the fourth of the third, on a Perch wreathed Vert and Gules an Australian Piping Shrike displayed also proper; the fifth also Or a Swan naiant to the sinister Sable; the last of the first, a Lion passant of the second, the whole within a Bordure Ermine';

- the supporters – for Supporters 'dexter A Kangaroo, sinister An Emu, both proper'.

2.3.2 Usually the Arms are represented with wattle tied with ribbon and with a scroll having the word 'Australia' at the base. The wattle, the scroll and the brackets under the supporters are not mentioned in the blazon.

2.4 Official use of the Coat of Arms

2.4.1 The guidance for use of the Coat of Arms provided by the Prime Minister, Mr Fisher in 1915 was in general terms. He reminded officials that the Arms were intended to be used

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whenever it was necessary to denote Commonwealth property, and that the Arms were to be used where it was appropriate that such emblems be used.¹¹

2.4.2 The Coat of Arms is used by the Commonwealth on buildings – for example Parliament House Canberra and the federal courts – departmental correspondence, legal tender and official publications and certificates – for example passports.¹²

2.5 Government control of the use of the Coat of Arms

2.5.1 The Commonwealth Government has undertaken to control the use of the Arms. Currently, the Awards and National Symbols Branch of DAS oversees the use of the Arms and the Australian Government Publishing Service (AGPS) in DAS also plays a role.

A. Australian Government Publishing Service

2.5.2 AGPS is responsible for ensuring that the Coat of Arms appears correctly on publications and other material prepared by Commonwealth agencies and the Commonwealth Parliament.¹³ AGPS provides advice on the use of the Arms including correct reproductions, correct position of precedence in relation to state and territory coats of arms, and correct terminology.

2.5.3 AGPS supervises reproduction of the Arms so that they appear technically correct, and where possible, in colour. Where colour is not used, a stylised form in a single colour may be used.¹⁴

11 DAS, *Submissions*, p. S182.

12 DAS, *Submissions*, p. S181.

13 DAS, *Submissions*, pp. S179–S180.

14 *Style Manual*, Fifth Edition, AGPS Canberra 1994.

B. Awards and National Symbols Branch

2.5.4 The Awards and National Symbols Branch provides advice relating to the Commonwealth Coat of Arms, and more specifically, it is the government authority responsible for assessing applications and granting approval to use the Coat of Arms.

2.5.5 DAS has stated that the protocols governing the use of the Arms have been based on heraldic principles which restrict the use of coats of arms to their holders. As a consequence, the Awards and National Symbols Branch and earlier managers have taken a restrictive view of what use of the Arms is to be authorised, and the use has been managed on a case by case basis. There has not been a consolidation of administrative protocols governing the circumstances under which the Arms may or may not be used, although a detailed register of decisions has been maintained since 1913, 'to serve as a record of precedents in guiding decisions in relation to the Coat of Arms'.¹⁴

2.6 Non-Commonwealth use of the Coat of Arms

2.6.1 As stated above, authorised use of the Arms by non-Commonwealth bodies has been strictly limited. Exceptions have been made for the Arms to be used on souvenirs to commemorate occasions such as coronations, royal visits, the Silver Jubilee of Queen Elizabeth II in 1977 and the Australian Bicentenary in 1988.¹⁵ Controls were applied in these instances to ensure the correct design was used, that souvenirs were in 'good taste' and that the use of the Arms carried no implication of Government approval. For the Australian Bicentenary, a licensing system was established under the *Australian Bicentennial*

¹⁴ DAS, *Submissions*, p. S182.

¹⁵ DAS, *Submissions*, p. S182.

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Authority Act 1980 for the production of '... souvenirs of a permanent nature'. The authority to make souvenirs using the Coat of Arms under this Act ceased on 31 December 1988 and the Act was repealed with effect from 30 June 1990.

2.6.2 Since 1922 permission has also been granted to sporting teams representing Australia in international competition to display the Arms on their official uniforms.¹⁶ DAS requires that permission should be sought for each separate occasion, although some sporting bodies have wrongly taken one grant of approval to be a blanket approval for all time. The practice is for sporting bodies which are recognised by the Australian Sports Commission to be authorised to use the Coat of Arms on their uniform, but not on their playing clothes or on replica uniforms for sale to the general public.

2.6.3 DAS has also authorised the use of the Coat of Arms in educational publications such as encyclopaedias and textbooks.

2.6.4 Sometimes the Coat of Arms is used without permission and this unauthorised use can even involve Commonwealth officials and bodies. The Arms is used without authority by Australian and overseas manufacturers on souvenirs such as tea towels, hats, badges, drink coasters, jumpers and chocolates.¹⁷ These souvenirs are sold by Australian retailers, including the Parliament Shop.¹⁸ DAS also claims the Australian Bureau of Statistics (ABS) is using the Coat of Arms in ways that offend the principles it has applied to the management of the Arms. It is used on ABS products sold for commercial gain, on t-shirts worn

16 DAS, *Submissions*, pp. S182–S183.

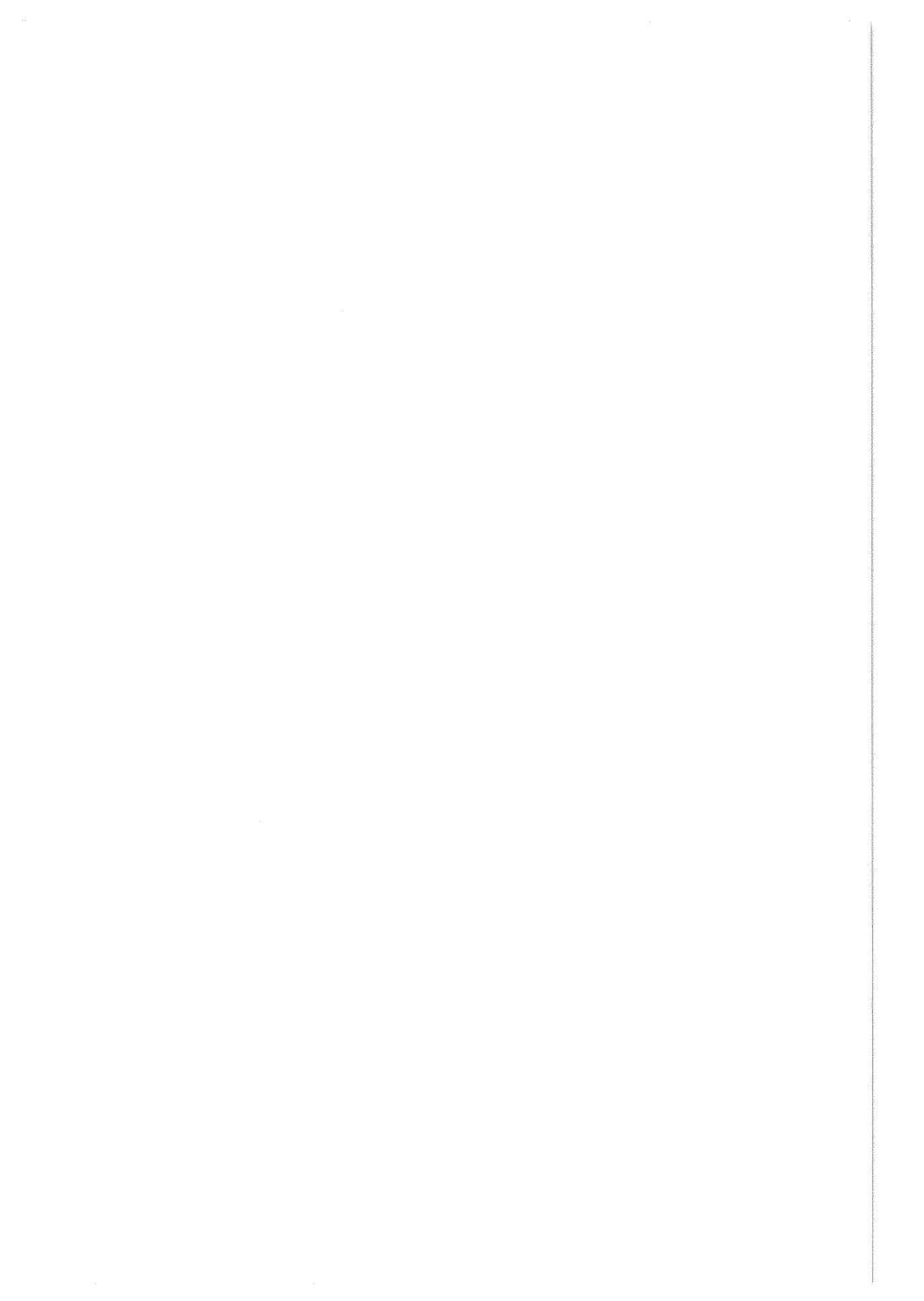
17 DAS, *Submissions*, p. S184.

18 The Parliament Shop is a fully costed commercial enterprise of the Joint House Department of the Parliament of Australia which sells 'only high quality and tasteful items of Australian manufacture'. Parliament of Australia, *Submissions*, p. S292.

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by ABS staff participating in inter-departmental competitions and is proposed to be used on uniforms for ABS staff.¹⁹

¹⁹ DAS, *Submissions*, p. S185.



Chapter 3

Authorised use of the Coat of Arms

This chapter reviews suggestions for the scope of authorised use of the Arms. The Committee considers that the Minister for Administrative Services should have the power to grant approval to use the Arms to particular persons for particular purposes and that the use of the Coat of Arms on the uniforms of national representative sportspersons should continue to be permitted. The Department of Administrative Services in managing the use of the Coat of Arms should implement a system of registration for approved users of the Coat of Arms. An Australian heraldic badge should also be developed for more general use by those wishing to display a national symbol of Australia.

3.1 Heraldry principles and the use of the Coat of Arms

3.1.1 The Government has taken a restrictive view of what use of the Coat of Arms should be authorised, and DAS has stated that this view has been based mainly on heraldic principles, which restrict the use of coats of arms to their holders.²⁰

3.1.2 The evidence to the inquiry which refers to heraldry reflects the view that the right to use the Coat of Arms belongs to the Commonwealth, which comprises the Queen of Australia (as represented by the Governor-General), the legislature, the judiciary and the executive.²¹ The Commonwealth can then use the Arms as it sees fit including authorising other persons to use them, as long as those persons do not use the Arms as a mark of authority as if the Arms were their own.²² This view seems to be consistent with the approach taken by DAS and earlier administering authorities.

20 Refer page 9.

21 For example: Society of Australian Genealogists, *Submissions*, p. S317.

22 For example: G. Jebb, *Transcript*, pp. 84–85.

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A. An example from Norfolk Island

3.1.3 The Government of Norfolk Island provided evidence to the inquiry about its own coat of arms which was granted by Royal Warrant in 1980.²³ Of particular interest to this inquiry was the advice that government received from the Garter King of Arms when it wrote about a local souvenir shop owner who wanted permission to use the arms on souvenirs such as t-shirts, place mats and tea towels. The response included the following passages:

It is not within the Laws of Arms for Norfolk Island to grant and assign its Armorial Bearings to anyone else, it is only the territory of Norfolk Island which by the Laws of Arms "bears and uses" the granted Coat of Arms.

The Government of Norfolk Island might without breach of the Laws of Arms permit a stranger to the Grant of Norfolk Island's Armorial Bearings to display them but the circumstances and context of such display would of necessity need to be closely restricted.

The entitlement to bear and use Armorial Bearings is an honour in the nature of a Dignity and this applies as much to a Corporate or like body as in the case of an individual with a right to family Armorial Bearings. Certainly it applies in the case of a Coat of Arms which has received the sanction of the Crown and I would observe that whoever it is who enjoys such a Dignity would not be or ought not to be anxious to detract from it by permitting a semblance of it to others, who might wish to put the Arms in question to an undignified or commercial purpose.²⁴

3.1.4 The advice of the Garter King of Arms supports the view that a holder is able to permit others to display that holder's arms but only in limited circumstances. The tone of the advice is one of urging caution when assessing the applications of would-be users, and the need to uphold the dignity and integrity of the arms.

23 Government of Norfolk Island, *Submissions*, pp. S21–S33.

24 Government of Norfolk Island, *Submissions*, pp. S32–S33.

Comments

3.1.5 The Committee agrees that the Commonwealth has the power to authorise non-Commonwealth use of the Coat of Arms.

3.2 Official Commonwealth use

3.2.1 Even Government users have used the Arms without authorisation. But while the use of the Arms on the proposed uniforms and sports clothes for ABS staff may be questionable²⁵, there would seem to be no question about its use on the uniforms of Parliament House attendants and uniforms of the armed forces.²⁶

3.2.2 The evidence reveals that there are strong objections by some persons to the Coat of Arms being used for anything other than official use. It was suggested that the Arms should be restricted to official use by the three arms of Commonwealth authority – the government, the parliament and the federal courts.²⁷ One submission argued that the Arms were an important symbol of our history, and the writer felt that with so much change in modern life '[t]here is going to be very little of our old Australian way of life left, for anyone to respect.'²⁸

3.2.3 This view that the Arms was an important national symbol was echoed by others. Home Yardage, a manufacturer stressed that it should not be possible to profit from a national symbol.²⁹ Others argued that it was not appropriate for the national Arms

25 DAS, *Submissions*, p. S185.

26 Department of Defence, *Submissions*, pp. S353–S355.

27 For example: M. D'Arcy, *Submissions*, p. S2; D. Morris, *Submissions*, p. S10; Clerk of the Senate, *Submissions*, p. S61; R. Num, *Submissions*, p. S66; and Minale, Tattersfield, Bryce & Partners Pty Ltd, *Submissions*, p. S136.

28 M. Drury, *Submissions*, p. S9.

29 Home Yardage (NSW) Pty Ltd, *Submissions*, p. S148.

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to be used or displayed by non-Commonwealth bodies, because it was felt that the Arms would lose their effectiveness as a symbol of the Commonwealth if they were to be used by non-government organisations or to appear on privately owned property.

3.2.4 However, while some urge that current restrictive practices should be maintained and more strongly policed,³⁰ others seeking to use the Coat of Arms consider existing practices to be too restrictive.

3.2.5 The states and territories permit restricted use of their coats of arms and applications for their use are considered on a case by case basis.³¹ Like the Commonwealth, some have made exceptions for educational and commemorative purposes. The ACT Government has also extended permission to use the City of Canberra Arms to representative sporting groups.

Comments

3.2.6 The Committee recognises and supports the continued use of the Coat of Arms for official Commonwealth use. The Committee considers that it is appropriate for Commonwealth service personnel and for Commonwealth officials to wear uniforms displaying the Coat of Arms where those officials are engaged in official Commonwealth activity. Its use on the sports clothes of officials is however not appropriate.

Recommendation 1

The Committee recommends that the main use of the Coat of Arms should continue to be the identification of Commonwealth property and the mark of Commonwealth authority.

30 For example: Australian Rugby Football Union Ltd, *Submissions*, p. S145.

31 DAS, *Submissions*, pp. S274–S277.

3.2.7 Much evidence argued in favour of non-Commonwealth use of the Coat of Arms and numerous suggestions were made about the scope of such use. The case for sporting use was strongly argued.

3.3 National representative sporting use

3.3.1 Minale, Tattersfield, Bryce & Partners Pty Ltd, a design consultant company, argued that the use of the Coat of Arms in sport contributed to the respect for the Arms because the '... aspirations of national representation include wearing the coat of arms on your cap or pocket.'³² In its submission, the Australian Sports Commission put the view that representative athletes '... deserve to be accorded status that the Coat of Arms provides them.'³³

3.3.2 Others were not in favour of use in a sporting context. Mr D'Arcy, who has expertise in heraldry, felt that the use of the Coat of Arms on playing uniforms was particularly inappropriate because the uniforms '... inevitably get soiled in the mud or even ripped off in play.'³⁴ Although DAS has stated that use on playing clothes is not authorised, the Australian Rugby Football Union Ltd has advised that the Arms appears on the playing jersey as well as the uniform blazer, tie and pullover.³⁵

3.3.3 Mr D'Arcy felt that the first approval for the Australian Bowling Team given in 1922, was based on the mistaken belief that the Australian Cricket Team had already been authorised to use the Arms on its baggy green cap when in fact the arms used

32 Minale, Tattersfield, Bryce & Partners Pty Ltd, *Submissions*, p. S135.

33 Australian Sports Commission, *Submissions*, p. S176.

34 M. D'Arcy, *Submissions*, p. S2.

35 Australian Rugby Football Union Ltd, *Submissions*, p. S144.

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by the Cricket Team is not the Commonwealth Coat of Arms. The submission from the Australian Cricket Board offers support for this interpretation.³⁶ The letterhead on the submission, bears a design which can be distinguished from the Coat of Arms because the shield and the supporters are different, and the Board states that its use pre-dated Federation, and thereby the grant of Arms to Australia.

3.3.4 As an alternative to using the Coat of Arms for expressing Australian identity, Mr D'Arcy suggests the use of another symbol. He provides examples of symbols used by other countries:

- New Zealand – silver fern;
- England – rose, or two lions;
- Canada – maple leaf;
- France – crowing cock; and
- South Africa – springbok.³⁷

Mr D'Arcy reasons that Australia already has an official floral emblem, the golden wattle, which he believes should be developed as the nation's symbol for use by national sporting teams. Similarly, Home Yardage (NSW) Pty Ltd also suggested that a national badge could be used by sporting teams.³⁸

3.3.5 Although the historical development of the practice of permitting national sporting teams to use the Coat of Arms may be uncertain, today various persons and sporting bodies support the continued access to the use of the Coat of Arms on the official uniforms of Australian national sportspersons.³⁹ The support comes most notably from sports bodies who argue that

36 Australian Cricket Board, *Submissions*, p. S146.

37 M. D'Arcy, *Submissions*, p. S2.

38 Home Yardage (NSW) Pty Ltd, *Submissions*, p. S148.

39 For example: Archery Association of Australia Inc., *Submissions*, p. S63; Australian Gymnastic Federation, *Submissions*, p. S113; Australian Rugby Football Union Ltd, *Submissions*, p. S144–S145; Australian Olympic Committee Inc., *Submissions*, p. S165; and Australian Sports Commission, *Submissions*, p. S176.

the opportunity for sportspersons to wear a uniform bearing the Coat of Arms is considered to be a privilege and a reward for achievement.

3.3.6 As a related matter, the souvenir clothing sold by sporting teams is another way in which the Arms might be used for items for general use. Most sports bodies who gave evidence to the inquiry, thought this was not an appropriate use.

Comments

3.3.7 The Committee considers that in principle the Coat of Arms should be available for use on the uniforms of national representative sportspersons. The Committee also notes that there has been an increasing trend for national sportspersons to wear the names of sponsors on their playing clothes. The Coat of Arms must not be compromised by the placement or character of a sponsor's name or symbol on the same article of clothing. A suitable place to display the Coat of Arms would be a blazer, or similar non playing item of clothing. The playing clothes of national representative sportspersons are not appropriate for the display of the Arms. The Committee also considers that souvenir clothing produced for sale by sporting teams is not an appropriate use of the Coat of Arms. The Committee makes a recommendation on this matter at paragraph 4.8.5.

3.4 Other non-Commonwealth uses

3.4.1 The Committee was again presented with opposing arguments about other non-Commonwealth use. An Australian importer of products would like to be able to have products made overseas bearing the Coat of Arms.⁴⁰ Some Australian manufacturers argued in favour of being able to use the Arms,

⁴⁰ Headmaster Hats and Caps Company, *Submissions*, p. S123.

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particularly on souvenirs and other items used for display.⁴¹ It was widely reasoned that the national Arms are a symbol of pride that all should have access to.⁴²

3.4.2 The focus on indigenous animals made the Arms readily recognisable as Australian and highly attractive to overseas tourists and Australians alike.⁴³ This use promotes a positive attitude toward Australia.⁴⁴ Moreover it was claimed that products bearing the Arms have been commercially available in Australia for the past 20 years.⁴⁵ One firm states it has been selling such products for approximately 30 years.⁴⁶

3.4.3 Some evidence suggested that one criterion to be applied to authorisation of use should be that manufacturers are in Australia or are Australian owned.⁴⁷ It was argued that whether used at official functions or for souvenirs for overseas tourists, Australian made products with Australian symbols should be available in preference to non-Australian made products. The Australian Owned Companies Association claimed that there was a problem with regard to Australian flags, natural features, flora, fauna etc:

Almost always the use of these Australian symbols is intended to mislead Australian consumers into believing that they are genuinely Australian – that is, made in Australia by Australian owned companies.⁴⁸

41 For example: The Australian Bush Hat Company, *Submissions*, p. S35; G. Nelson, *Submissions*, p. S114; Astor Base Metals Pty Ltd, *Submissions*, p. S137; and Ace Souvenirs, *Submissions*, p. S138.

42 G. Nelson, *Submissions*, p. S114.

43 AOCA, *Submissions*, p. S48.

44 Nucolorvue Productions Pty Ltd, *Submissions*, p. S169.

45 For example: The Australian Bush Hat Company, *Submissions*, p. S35; and Gold Medal Logos & Badges, *Submissions*, p. S37.

46 Nucolorvue Productions Pty Ltd, *Submissions*, p. S168.

47 AOCA, *Submissions*, p. S49; and Ace Souvenirs, *Submissions*, p. S138.

48 AOCA, *Submissions*, p. S50.

3.4.4 In opposition, some urged the Government not to weaken its control over the use of the Arms because it is a national symbol. As Australian Heraldry (Victoria) Inc. observed, although such use looks reasonable, the use might be open to abuse.⁴⁹ Minale, Tattersfield, Bryce & Partners Pty Ltd expressed the opinion that '[n]o country can have respect in the eyes of its neighbours or its citizens if it allows its symbols to be exploited by others.⁵⁰ This exploitation might occur through the simple act of placing the Arms on an item if it created a false impression of authority of the Commonwealth.⁵¹

3.4.5 While some rejected wide non-Commonwealth use, there was general support for use of the Arms on souvenirs to commemorate specific occasions such as the forthcoming centenary of federation.⁵² Authorisation could be given to high quality items of accurate representation.

Comments

3.4.6 The Committee notes that one reason for the popularity of the Coat of Arms with potential users is that the Arms are an attractive national symbol that is distinctively Australian. The Committee also notes that the concerns expressed by those suggesting the Arms not be available for authorised use by non-Commonwealth bodies, stem from the fact that such use is likely to create a false impression of sponsorship or approval by the Commonwealth.

3.4.7 As stated above, the Committee considers that in principle the Coat of Arms should be available to be used by persons other than official Commonwealth users. The important criteria are that

49 Australian Heraldry (Victoria) Inc., *Submissions*, p. S175.

50 Minale, Tattersfield, Bryce & Partners Pty Ltd, *Submissions*, p. S136.

51 Heraldry Australia Inc., *Submissions*, p. S118.

52 Heraldry Australia Inc., *Submissions*, p. S118.

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the use of the Coat of Arms does not give the impression that the items have the authority of the Commonwealth and that the representation of the Arms be accurate and of a suitable quality.

3.4.8 There is no reason why souvenirs should not have accurate representations. Without exception where the quality of the items was mentioned all witnesses and submissions agreed that the representation of the Arms on the items should be of the highest quality.

3.4.9 In particular, the Committee considers that it would be appropriate to authorise the use of the Arms for the commemoration of special events taking place within Australia. The Australian Bicentenary 1988 was one suitable occasion in the past where commemorative souvenirs were produced, and the centenary of federation is a future occasion when the production of commemorative souvenirs would be appropriate. The Committee makes a recommendation about this matter at paragraph 4.8.4.

3.4.10 On the matter of Australian or non-Australian manufacture, while it may in some circumstances be appropriate to consider a particular application of the use, the particular origin of a user or some other characteristics, the Committee feels it is not appropriate to exclude as a matter of principle non-Australian manufacturers. The consumer will be able to make up her or his own mind about whether to buy an item that is made by an Australian or a non-Australian manufacturer.

3.4.11 For those cases where the use of the Coat of Arms is not appropriate, it was suggested that an alternative symbol should be developed in the form of an heraldic badge.

3.5 A new symbol – an Australian badge

3.5.1 Another visual symbol of identity might be created in the form of an extract of the Arms or an heraldic badge. A badge is usually of relatively simple design, and under the law of Arms may be worn or displayed by persons other than the holder.⁵³ Mr Num suggested that a badge could be devised ' . . . to symbolise the fresh aspects of contemporary Australia, and help to bind many peoples into one nation, just as the Commonwealth Coat of Arms with its ermine border symbolises the federation of the States.'

3.5.2 The Commonwealth does not have an heraldic badge, unlike the states which each have one. The states encourage the use of their badges in enforcing control over their coats of arms.⁵⁴

3.5.3 The use of a badge was supported by many persons.⁵⁵

Comments

3.5.4 The Committee believes that pride in Australia's national symbols is important and that this pride should be nurtured by the use of such symbols where appropriate. The Committee agrees with the development of a badge for Australia. The Committee supports the suggestion that the Government should hold a competition for the design of a badge, as proposed by Mr Suur of DAS:

It might capture the public imagination and allow the public to participate in designing their badge so that the sense of ownership is established early on between the community and the object being created. It will also allow different elements in our community, such as Aboriginal Australians, people from a

53 R. Num, *Submissions*, p. S66.

54 DAS, *Submissions*, pp. S274–S277.

55 Nucolorvue Productions Pty Ltd, *Submissions*, p. S171; Acting Clerk of the House, *Submissions*, p. S143; and Minale, Tattersfield, Bryce & Partners Pty Ltd, *Submissions*, p. S136.

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non-English speaking background and so on, to participate in creating a design that was appropriate for Australia for now.⁵⁶

Recommendation 2

The Committee recommends that a badge be developed for Australia.

3.5.5 The Committee agrees that the use of the Arms should not be limited to official Commonwealth use, and that non-Commonwealth uses should continue to be authorised. However the Coat of Arms is a symbol of Commonwealth authority and because it may be put to inappropriate use, including by Commonwealth users, a system of authorisation and regulation is vital. The next chapter considers the various regulatory issues of a regime to protect the Coat of Arms.

⁵⁶ *Transcript*, p. 210.

Chapter 4

Legal protection for the Coat of Arms

The Department of Administrative Services and other managers of the use of the Coat of Arms have applied heraldic principles. This practice has resulted in restricted use of the Arms and yet the legislative basis for protection of the Arms is uncertain. There has never been an Australian case brought before the English Court of Chivalry, and in Australia industrial property, trade practices and customs legislation offers limited protection for the Arms.

The Committee concludes that specific legislation is the best way to protect the Arms. The Committee also recommends that the Minister for Administrative Services have a discretion to approve requests for using the Arms, and the power to grant approval to particular persons for particular purposes. Guidelines should be developed by the Minister for the administration of the protection of the Coat of Arms. They should be issued by way of regulation.

4.1 Heraldic law in Australia

4.1.1 Heraldry Australia Inc. points out that the logical implication of the acceptance of a British king's Grant of Arms by the states and the Commonwealth is that they recognise the authority of the sovereign and the delegate, the Duke of Norfolk, in administering armorial matters.⁵⁷ This inference, it is claimed, is not contradicted by specific legislation.

4.1.2 The College of Arms was established in 1483 as a branch of the Royal Household to exercise heraldic authority. This authority is exercised today with the College issuing arms for some Commonwealth countries including Australia.⁵⁸

57 Heraldry Australia Inc., *Submissions*, p. S116.

58 DAS, *Submissions*, p. S226.

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4.1.3 Armorial insignia are notionally regulated by the feudal law of arms which is part of the law of England. Under the law of arms, arms might be borne by virtue of ancestral right or of a grant made under lawful authority. Although it is likely that the feudal law of arms was part of the English law which was brought to Australia, there has not yet been an Australian case considered by the Court of Chivalry. In fact the Court of Chivalry sat in 1954 for the first time since 1737 and the Attorney-General's Department has advised DAS that the Court has not exercised any jurisdiction or powers within Australia.⁵⁹ The opinion has been expressed that it is unlikely to sit again.⁶⁰ The conclusion seems to be that the law of heraldry is notoriously weak so far as the control of unauthorised use of arms is concerned.⁶¹

4.1.4 Despite this, some submissions urged that the Government should continue to rely on heraldic principles as the approach to managing the use of the Arms.⁶²

4.1.5 One way to overcome the practical difficulty of how to enforce heraldic law in Australia would be to establish an indigenous Australian heraldry authority, which could grant, register and have jurisdiction over heraldic achievements within Australia.⁶³ Mr Num argues that an Australian heraldic authority would fit well with Australia's multicultural society and offer an official means of registering individual and clan group arms.

4.1.6 There are examples of heraldic authorities in many countries. The New Zealand Government appoints its own Herald Extraordinary to act for the College of Arms in London. Germany

59 DAS, *Submissions*, p. S269.

60 R. Num, *Submissions*, p. S65.

61 Australian Heraldry (Victoria) Inc., *Submissions*, p. S174.

62 Minale, Tattersfield, Bryce Pty Ltd, *Submissions*, p. S136.

63 Strath Hunter Heraldry, *Submissions*, p. S38.

and Russia control civil and government arms. Switzerland and Portugal are examples of republics with heraldic authorities to deal with corporate and individual grants.⁶⁴

4.1.7 Mr Num suggested that:

A study of the Canadian and Scottish models would be well worth official consideration, particularly if it is desired to reinvigorate the nation by creating new symbols to accompany the old.⁶⁵

4.1.8 Mr See suggested the Canadian experience in this regard would be a relevant precedent for Australia.⁶⁶ Mr Num preferred that Australia could institute a system of heraldic jurisdiction based on the model of the Scottish Court of the Lord Lyon in Edinburgh which has power to enforce compliance with the proper use of all Arms in Scotland:

The Lyon Court is a ~~revenue-earning~~ Government Department with ministerial and judicial functions, exercising both a civil and a penal jurisdiction.⁶⁷

4.1.9 Canada recently established an heraldic authority within the Governor-General's Office. The authority has since registered devices for indigenous peoples, people of non-English speaking backgrounds as well as those of Anglo-Celtic background. The advantage for Canadian citizens is that they no longer have to approach London, Edinburgh or Dublin for a grant of arms. Although like England, South Africa, Zimbabwe and Sweden there is no regularly constituted court.

Comments

4.1.10 The Committee notes the arguments presented which support the establishment of an indigenous heraldic authority. As

⁶⁴ Australian Heraldry (Victoria) Inc., *Submissions*, p. S175.

⁶⁵ R. Num, *Submissions*, p. S68.

⁶⁶ Strath Hunter Heraldry, *Submissions*, p. S39.

⁶⁷ R. Num, *Submissions*, p. S67.

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the focus of this inquiry is the use of the current Coat of Arms, the Committee has set aside for the time being the question of the establishment of an indigenous heraldic authority. The Committee sees merit in a more detailed consideration of this matter as a separate exercise.

4.1.11 In the absence of a separate heraldic authority, the Committee does not question the location of the administering authority within the executive. For the purposes of the report the Committee presumes that DAS will continue to be the administering department.

4.1.12 The Committee agrees with the opinions expressed in the evidence and concludes that the law of arms is not adequate to protect the Commonwealth Coat of Arms. It is necessary to look to other areas of the law for protection for the Coat of Arms. To date they have been the law of industrial property, trade practices, customs and passing off⁶⁸.

4.2 Limited protection under industrial property law

4.2.1 A trade mark is a name, word, symbol or device that is used to distinguish the commercial or trade origin of goods or services. A registered trade mark gives the registered proprietor the right to the exclusive use of the mark for those goods or services. The registration of a trade mark may continue indefinitely.⁶⁹

A. Trade Marks Act 1905 repealed

4.2.2 The *Trade Marks Act 1905* provided that the Coat of Arms was not to be used in connection with any trade, business, calling

68 Passing off is an area of the common law where a person has misrepresented goods, usually of an inferior quality, and a consumer has suffered actual damage.

69 AIPO, *Submissions*, p. S345.

or profession without the authority of the King, the Royal Family, the Governor-General or the Department responsible for administering the Arms. In 1919 that Act was amended to provide for a penalty to be imposed if any person so used the Arms without proper authority. These provisions were omitted from the *Trade Marks Act 1955* because that Act was considered an inappropriate context for such legal protection.⁷¹

B. *Trade Marks Act 1955*

4.2.3 The Australian Industrial Property Organisation (AIPO) advised the Committee that protection for the Arms under the current *Trade Marks Act 1955* is minimal.⁷² Section 29 of that Act requires the Registrar of Trade Marks not to register a trade mark which contains or consists of, amongst other things, a representation of the Arms.

C. *Paris Convention*

4.2.4 In 1991 the Commonwealth Government registered the Coat of Arms as a trademark of the Commonwealth of Australia under Article 6ter of the *Paris Convention for the Protection of Intellectual Property*, which is administered by the World Intellectual Property Organization. Registration affords the Arms international protection within the territories of member states to the convention. Member states are obliged to prevent the Arms, or any part of the Arms to be used or registered as a trade mark or as part of a trade mark. The treaty does not prevent the use of the Arms for decorative purposes.⁷³

4.2.5 AIPO concludes that the existing industrial property system provides limited protection for the Arms but does not allow the Commonwealth to obtain protection for, or exclusive control over,

71 DAS, *Submissions*, p. S186.

72 AIPO, *Submissions*, p. S345.

73 AIPO, *Submissions*, pp. S345–S346.

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the Arms.⁷³ If specific legislation is recommended, AIPO suggests that legislation like the *Olympic Insignia Protection Act 1987* should be considered. It cautions that the Commonwealth, as the owner of rights in the Arms, bears the onus for enforcing those rights by instituting proceedings.

Comments

4.2.6 The Committee agrees that the existing industrial property system provides limited protection for the Arms. The Committee also considers that reliance on industrial property law might create the impression that the Coat of Arms is like a logo or trade mark bereft of the dignity that a symbol of national status deserves.

4.3 Limited protection under the *Trade Practices Act 1974*

4.3.1 Where a user engages in misleading or deceptive conduct the *Trade Practices Act 1974* may apply. The Trade Practices Commission has advised the Committee that the Trade Practices Act contains both general and specific prohibitions on misleading or deceptive conduct which might apply even to authorised use of the Coat of Arms.⁷⁴ Section 52(1) provides that:

A corporation shall not, in trade or commerce, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.

4.3.2 A contravention of this provision may lead to civil proceedings for an injunction to restrain the conduct, an order to disclose information or to publish corrective advertisements and to a private action to recover damages.

73 AIPO, *Submissions*, p. S347.

74 TPC, *Submissions*, pp. S321–S333.

4.3.3 Section 53(eb) of the Trade Practices Act makes it a specific offence for a firm to:

make a false or misleading representation concerning the place of origin of goods.

4.3.4 Section 53(c) and (d) of the Trade Practices Act makes it a specific offence for a firm to:

- (c) represent that goods or services have sponsorship, approval, performance characteristics, accessories, uses or benefits they do not have; and
- (d) represent that the corporation has sponsorship, approval or affiliation it does not have.

4.3.5 A contravention of these provisions is a criminal offence and carries maximum fines of \$200,000 for corporations and \$40,000 for individuals. The court may make other orders it thinks appropriate including corrective advertising, disclosure of information and payment of compensation. Remedies available in respect of private actions for contravention of this section are restricted to damages, injunctions and other remedial orders.

4.3.6 The TPC stressed that the Trade Practices Act would only apply if the use of the Coat of Arms was shown to be misleading. If unauthorised use was not misleading the Trade Practices Act does not apply.⁷⁵ The TPC also advised that state and territory fair trading legislation contains similar provisions that apply to unincorporated traders operating within a state.

4.3.7 On 1 November 1994, during the course of the inquiry, DAS made its first reference of a matter to the TPC. When such a reference is made the TPC has stated that it will take action only ' . . . where there is a persistent or blatant breach of the Act and the conduct results in considerable consumer detriment.'⁷⁶

⁷⁵ D. Rickard, *Transcript*, p. 213.

⁷⁶ TPC, *Submissions*, p. S326.

4.4 Limited protection under the *Crimes Act 1914*

4.4.1 Section 68 of the *Crimes Act 1914* may also apply to uses of the Coat of Arms where a person intends to deceive by using any authorised stamp or mark of a Commonwealth authority. This provision was invoked in a successful prosecution in the Melbourne Magistrates' Court in 1993. However Mr Suur of DAS has commented that the Crimes Act and the Trade Practices Act are largely untested because DAS has been able to negotiate a reasonable solution before the matters got to court.⁷⁷

4.5 Limited protection under the *Customs (Prohibited Imports) Regulations*

4.5.1 Since 1928 Australia has had controls on the importation of goods bearing a representation of the Commonwealth Coat of Arms. The controls were introduced ' . . . with the principal objective of preventing the assumption of the Arms by overseas manufacturers as a brand for their goods.'⁷⁸ Item 15 of Schedule 2 of the *Customs (Prohibited Imports) Regulations* prohibits the importation of certain goods without the prior written permission of the Minister for Customs:

Goods to which, or to the coverings of which, there is applied a representation of the Arms, a flag or a seal of the Commonwealth or of a State or Territory of the Commonwealth or a representation so nearly representing the Arms, a flag or a seal of the Commonwealth or of a State or Territory of the Commonwealth as to be likely to deceive.⁷⁹

4.5.2 The ACS has stated that it does not physically examine all imported goods because it would be an impossible task. Nor is it necessary for manifests or documents accompanying imports to

⁷⁷ *Transcript*, p. 196.

⁷⁸ ACS, *Submissions*, p. S289.

⁷⁹ DAS, *Submissions*, p. S188.

include information about the existence of marks or designs such as the Coat of Arms on goods.⁸⁰ The ACS has concluded that the detection of imported goods bearing the Coat of Arms is likely to occur very occasionally, in the absence of direct information about shipments. The ACS has targeted specific consignments where DAS has provided information about a matter.

4.5.3 The ACS has highlighted the difference in sanctions applying under the Customs Regulations to those available under other legislation. The ACS argues that customs measures should not be the only means of preventing the distribution of unauthorised goods bearing the Arms, although it should continue to be a supplementary means of control.⁸¹

4.5.4 The ACS suggested in a supplementary submission that rather than relying on the Customs Regulations, there would be an advantage in dealing with all use of the Arms under one Act. This would provide for an even handed treatment of users, and ensure that the administration of control of the Arms is less fragmented.⁸² While this would obviate the need for Customs Regulations to apply to imported goods bearing the Coat of Arms, the proposed legislation could expressly provide for ACS officers to have a role. The Committee makes a recommendation on this matter at paragraph 4.7.8 and 4.7.9.

4.6 Current practices

4.6.1 Where DAS is aware of an unauthorised use of the Arms, it has usually written to the offending party indicating that party

80 J. Jeffery, *Transcript*, p. 219.

81 J. Jeffery, *Transcript*, p. 224.

82 ACS, *Submissions*, pp. S359–S360.

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may be in breach of section 68 of the *Crimes Act 1914* and section 53 (c) and (d) of the Trade Practices Act. The offender is asked to stop reproducing the Coat of Arms. Where imported goods are involved, DAS has advised the ACS.

4.6.2 DAS concludes that the current mix of legislation is inadequate to enforce correct usage of the Coat of Arms. DAS has relied mainly on administrative precedent and the goodwill of the community and its respect towards the Coat of Arms. It states that there is a need for ' . . . unambiguous legislative authority so that the rules are clear and enforceable.'⁸³

Comments

4.6.3 The Committee agrees that the current legislation seems inadequate to enforce a system of authorised use of the Arms. During the course of the inquiry the Committee was made aware of many different items which were not authorised to bear the Coat of Arms.⁸⁴ The Committee notes that DAS has exercised its role with mixed success.

4.6.4 The Committee notes that each individual area of law affords only limited protection to the Coat of Arms. The cumulative effect of the different laws is that like unauthorised users would be treated differently dependant upon which law could be successfully invoked. Different sanctions apply – for example injunctions and money fines under the Trade Practices Act, and seizure of goods under Customs Regulations. The Committee considers that there is a weakness in the current legislative structure that imposes unequal sanctions on unauthorised users. The Committee agrees that sanctions should apply uniformly.

83 DAS, *Submissions*, p. S194.

84 R. Murrie, *Transcript*, p. 4.

4.7 Specific legislation to protect the Coat of Arms

4.7.1 All states and territories, except Tasmania, have legislation that protects the use of their coats of arms. Tasmania advised DAS that it is contemplating introducing such legislation. The only state or territory that has used its legislation in prosecuting an offender in relation to its coat of arms, is Victoria.⁸⁵

4.7.2 Several organisations from different standpoints favoured specific legislation for the Coat of Arms.⁸⁶ Much evidence contained arguments that the Arms are not sufficiently protected against improper use.⁸⁷ Specific legislation seemed to be the preferred approach rather than an amendment to an existing Act such as the Copyright Act or Trade Marks Act, because the Arms by their nature do not fit suitably into either of the other Acts. The scope of the legislation should cover not only the blazon and the official representations of the blazon but any like representation that could be mistaken for it.⁸⁸ It was also suggested that a specific Act might in future be able to include state symbols should they so wish. This would provide an increased level of protection for state symbols where unauthorised use takes place outside the respective state borders.

4.7.3 The Archery Association of Australia Inc. cautioned that any regulations should not be ' . . . overly cumbersome . . . !'⁸⁹ Headmaster Hats and Caps Company suggested that legislation would not be required if DAS had firm guidelines to apply.⁹⁰

85 DAS, *Submissions*, pp. S274–S277.

86 For example: Australian Olympic Committee Inc., *Submissions*, p. S165.

87 For example: D. Morris, *Submissions*, p. S10; Heraldry Australia Inc., *Submissions*, p. S119; and Australian Heraldry (Victoria) Inc., *Submissions*, p. S174.

88 Acting Clerk of the House, *Submissions*, p. S143.

89 Archery Association of Australian Inc., *Submissions*, p. S63.

90 Headmaster Hats and Caps Company, *Submissions*, p. S124.

Comments

4.7.4 The Committee agrees with Heraldry Australia Inc.'s conclusion that the legal position of Australia's armorial bearings is uncertain.⁹¹ There has been no evidence of a case in Australian courts concerning Arms. The Committee considers that specific legislation is the best way to protect the Commonwealth Coat of Arms.

4.7.5 The Committee notes that a cooperative scheme would be required should states wish to extend protection for their symbols outside their respective state borders. Because of its jurisdiction, Commonwealth legislation could provide increased protection for the coats of arms and symbols of states. The Committee agrees that a cooperative scheme could be devised if the states were to make a proposal.

Recommendation 3

The Committee recommends that specific legislation be drafted to protect the Commonwealth Coat of Arms.

4.7.6 The Committee considers that there is a weakness in current legislation because it imposes unequal sanctions for unauthorised use depending on what legislation is applied to particular circumstances. The proposed legislation should impose sanctions on any person found guilty of unauthorised use of the Arms, with similar breaches being subject to similar penalties.

⁹¹ Heraldry Australian Inc., *Submissions*, p. S117.

Recommendation 4

The Committee recommends that the proposed specific legislation should provide for penalties which are able to be imposed on any person found guilty of unauthorised use of the Arms. The penalties should include money fines and forfeiture of unauthorised items.

4.7.7 The Committee considers that it would be appropriate to extend the scope of the legislation to include protection for the proposed Australian badge. In this context it is worth noting that state legislation often covers the range of symbols including badges.

Recommendation 5

The Committee recommends that the proposed Australian badge also be protected by the proposed specific legislation.

4.7.8 The Committee considers that there is an ongoing need to prohibit the importation of items bearing the Coat of Arms which have not been authorised by the Minister for Administrative Services.

Recommendation 6

The Committee recommends that the importation of items bearing the Coat of Arms be prohibited unless authorised by the Minister for Administrative Services.

4.7.9 The Committee agrees with the suggestion by the ACS that it would be desirable to have comprehensive legislation providing for items bearing the Coat of Arms regardless of origin and that the legislation should expressly provide for customs enforcement.

Recommendation 7

The Committee recommends that the proposed specific legislation provide expressly for the prevention of unlawful entry into Australia of unauthorised items bearing the Coat of Arms.

4.7.10 The Committee has agreed in principle with non-Commonwealth use of the Coat of Arms. While guidelines could be provided, it is not appropriate or possible to compile a list of all possible uses of the Arms. A system of authorisation is needed that provides both certainty and flexibility.

4.8 A discretionary approach to use of the Coat of Arms

4.8.1 DAS has argued in favour of a case by case approach for several reasons. One is that the ABS example shows that even Commonwealth use may not be appropriate⁹², and another is that some sporting use may not be appropriate.⁹³ A case by case approach was also favoured by some contributors to the inquiry particularly where non-Commonwealth use is sought.⁹⁴

4.8.2 Mr Suur of DAS has commented that the authorisation process in the past has been ". . . a pretty routine process."⁹⁵

92 DAS, *Submissions*, pp. S184–S185.

93 L. Suur, *Transcript*, p. 206.

94 For example: Astor Base Metals Pty Ltd, *Submissions*, p. S137; and Australian Heraldry (Victoria) Inc., *Submissions*, p. S175.

95 *Transcript*, p. 207.

Comments

4.8.3 The Committee considers that the Government should retain the discretion to permit others to use the Coat of Arms, and should vest it in the Minister for Administrative Services.

Recommendation 8

The Committee recommends that the Minister for Administrative Services have a discretion to approve requests to use the Coat of Arms.

4.8.4 The Committee considers that the dignity and status of the Coat of Arms are matters that should be specifically addressed in the assessment of an application to use the Arms in a commercial environment.

Recommendation 9

The Committee recommends that in exercising her or his discretion in relation to permitting the use of the Coat of Arms in a commercial merchandising environment, the Minister take account of the need to protect the dignity and status of the Arms as a national symbol.

4.8.5 The Committee considers that the dignity and status of the Coat of Arms are matters that should be expressly addressed in the assessment of an application for national representative sports bodies to use the Arms.

Recommendation 10

The Committee recommends that in exercising his or her discretion in relation to permitting the use of the Coat of Arms for national representative sporting bodies, the Minister for Administrative Services take account of the need to protect the dignity and status of the Arms as a national symbol by restricting such use to dress uniforms or their equivalent and by disallowing the use of the Arms where the placement or content of other signs or symbols are not in keeping with the dignity of the Coat of Arms.

4.8.6 The Committee considers that the Minister should consult with the Australian Sports Commission when considering applications for national representative sportspersons to use the Arms.

Recommendation 11

The Committee recommends that the Minister for Administrative Services consult with the Australian Sports Commission when considering requests for use of the Coat of Arms by national representative sportspersons.

4.8.7 Contributors to the inquiry suggested that the legislation should establish a licensing scheme for the Coat of Arms.

A. Registration of authorised users

4.8.8 Many intending non-Commonwealth users believed there was a need for a system of licence or registration for the purpose of ensuring the suitability of products using the Arms. The licence should also cover the integrity of the design and ensure a high standard of representations are used. Such use would not imply Commonwealth authorisation of the items.

4.8.9 Persons from many different standpoints considered a licence system might be appropriate for some uses of the Arms, and that the payment of royalties or fees may also be appropriate. They included those interested in the heraldry aspects of the inquiry.⁹⁶ An importer of hats made under licensing agreements would like to be able to have hats with the Coat of Arms also produced under licence.⁹⁷ Some Australian manufacturers who would like to be able to use the Arms on their products, also favoured a licensing system. The Australian Bush Hat Company suggested that a requirement would be that the manufacturer could have to be able to produce high quality products that ' . . . would reflect the importance of the symbol . . . ' .⁹⁸ The system could be supported by self-regulation, together with powers to enable the Australian Federal Police to confiscate unlicensed products.⁹⁹

4.8.10 There were suggestions that the licensing system encompass:

- the nature of the product;
- the quality of representation;
- distribution restrictions;
- a specified term of agreement;
- royalties.¹⁰⁰

It was also a common expectation of manufacturers that a licence fee might be payable.¹⁰¹

4.8.11 The Australian Owned Companies Association suggested that the Government appoint an Australian owned and controlled organisation, such as itself, to licence all non-Government

96 For example: Strath Hunter Heraldry, *Submissions*, p. S38.

97 Headmaster Hats and Caps Company, *Submissions*, pp. S123–S134.

98 The Australian Bush Hat Company, *Submissions*, p. S36.

99 The Australian Bush Hat Company, *Submissions*, p. S36.

100 Headmaster Hats and Caps Company, *Submissions*, p. S124.

101 Gold Medal Logos & Badges, *Submissions*, p. S37.

The Use of the Coat of Arms

commercial use of the Australian Coat of Arms and other Australian names, symbols, logos and natural features. It also suggested that the licensing organisation be able to charge a nominal fee to cover administrative costs for all community non-commercial use of the Arms, and an administrative fee as well as a percentage of the sales price for all commercial use of the Arms. The AOCA accepts that the licensing organisation should be required to provide the service at minimum cost, and that it would not be appropriate for the Government to make large financial gains from the scheme.¹⁰²

4.8.12 The evidence also provided criticism of a licensing approach, with Nucolorvue Productions, a manufacturer, claiming licensing would be impossible to police.¹⁰³ Another agreed with the need for case by case assessment of requests to use the Arms, stating that they belonged to the people and that it was not appropriate for revenue to be made from them.¹⁰⁴ Yet another manufacturer mentioned the need for a system that would ensure the high quality of representations, but that would not disadvantage registered users who might not be able to afford high fees.¹⁰⁵

4.8.13 The TPC also suggested that an assessment process for considering applications to use the Coat of Arms be established. In its view, such an assessment process would need to take account of the impression given by the use of the Arms. It would need to ensure that the use did not result in any misleading or deceptive impressions being given.¹⁰⁶

102 AOCA, *Submissions*, p. S52.

103 Nucolorvue Productions Pty Ltd, *Submissions*, pp. S168–S171.

104 Astor Base Metals Pty Ltd, *Submissions*, p. S137.

105 G. Nelson, *Submissions*, p. S114.

106 TPC, *Submissions*, p. S327.

Comments

4.8.14 The Committee considers that a registration process should be implemented as part of the protection of the Coat of Arms. Licensing is not appropriate because charging fees and paying royalties in relation to the use of the Coat of Arms is not in keeping with its status as a national symbol. Registration would however provide a means of controlling the use of the Coat of Arms and would also provide a reliable record of its use. In addition, a public register would provide certainty and information to those interested in the use of the Coat of Arms.

4.8.15 The Committee notes the suggestion of the Australian Sports Commission that sporting teams should not have to apply each time to use the Arms on their uniforms.¹⁰⁷ The Committee considers that registration might be possible for manufacturing and sporting use, but that this should be a matter within the discretion of the Minister for Administrative Services.

4.8.16 The Committee notes that the issues of quality of representation and misleading impressions are relevant to the process of authorisation and registration, and should be dealt with by way of guidelines.

Recommendation 12

The Committee recommends that the Minister for Administrative Services have the power to grant approval to use the Arms to particular persons for particular purposes. The results of this process should be made available through a public register and gazettal.

107 Australian Sports Commission, *Submissions*, p. S176.

4.9 Administrative guidelines

4.9.1 The impression by some was that there was not a great deal of difficulty with the administration of the Arms.¹⁰⁸ Some evidence however, mentioned the importance of having and making available clear guidelines for applications to use the Coat of Arms.¹⁰⁹

Comments

4.9.2 The Committee considers that the administration of the use of the Coat of Arms should operate with clear and effective guidelines that are well known to all potential users.

Recommendation 13

The Committee recommends that clear and effective guidelines be developed by the Minister for Administrative Services. The guidelines should be made by way of regulation under the proposed specific legislation. They should be made freely and widely available.

4.9.3 The Committee considers that the guidelines should be comprehensive. One matter that should be addressed in the guidelines is that the representations used be of a sufficiently high quality such that the Coat of Arms is accurately represented at all times.

Recommendation 14

The Committee recommends that the guidelines provide for representations of the Coat of Arms to be accurate and of a suitably high quality.

108 Minale, Tattersfield, Bryce & Partners Pty Ltd, *Submissions*, p. S135.

109 For example: Archery Association of Australia Inc., *Submissions*, p. S63;

4.9.4 The Committee considers that the use of the arms should not result in any misleading or deceptive impressions being given.

Recommendation 15

The Committee recommends that the guidelines provide that the use of the Coat of Arms does not result in any misleading or deceptive impressions being given.

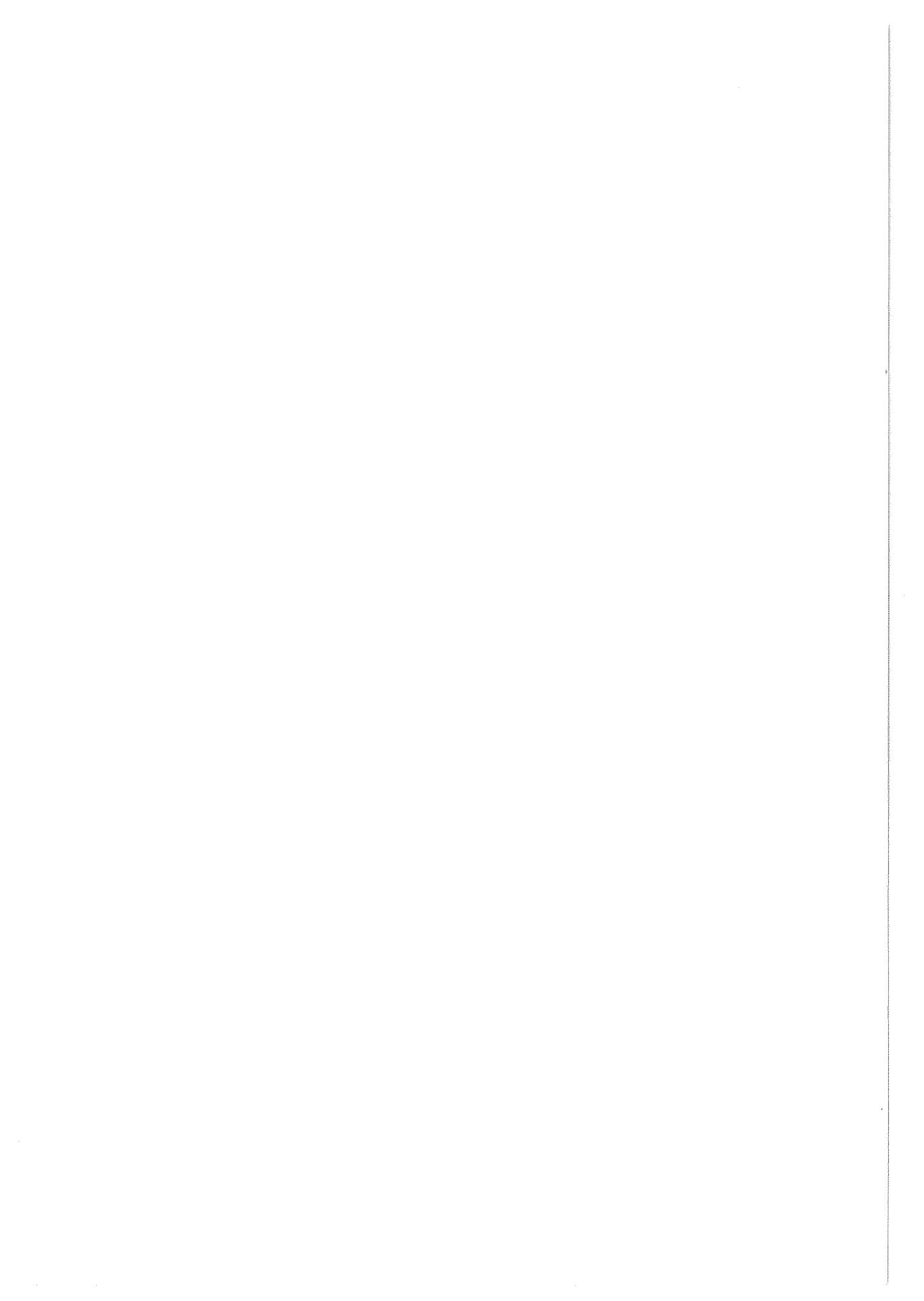
4.9.5 The Committee also notes that there is a need for an ongoing information program to provide all interested persons with accurate and current information about the use of the Coat of Arms. The program should cover the legislative, protection and registration aspects of the regime of administration. This information program should extend where possible to importers who may be affected.

Recommendation 16

The Committee recommends that the Department of Administrative Services devise and implement an information program about the use of the Coat of Arms. The program should cover the legislative, protection and registration aspects of the Department's management of the use of the Coat of Arms.

Daryl Melham MP
Committee Chair

December 1994



APPENDIX A

List of submissions

**Submission Individual/Organisation
No.**

- 1 Mr Michael D'Arcy, FHGSC
- 2 M Drury
- 3 Mr D J Morris
- 4 Mr & Mrs N J & K G Potter
- 5 Mr D J Morris
Secretary to Government
The Government of Norfolk Island
- 6 Mr R K Murrie
Managing Director
The Australian Bush Hat Co
Exhibit 3
- 7 Mr Ean McDonald
Proprietor
Gold Medal Logos & Badges
- 8 Mr Hugh See
Strath Hunter Heraldry
- 9 Mr Harry Wallace
President
Australian Owned Companies
Association
Exhibit 7
- 10 Mr Harry Evans
Clerk of the Senate
Australian Senate
- 11 Mr Donald McLeish
Executive Director
Archery Association of Australia Inc
- 12 Mr Richard Num
Exhibit 1

**Submission Individual/Organisation
No.**

- 13 Ms Peggy Browne
Executive Director
Australian Gymnastic Federation
- 14 Mr Grahame Nelson
Director
Bretrow Pty Ltd
- 15 Mr Graeme R Jebb Hon FHS
Hon Secretary
Heraldry Australia Incorporated
Exhibit 5
- 16 Mr Maurice Green
- 17 Mrs Pamela J Humphries
Finance and Administration Controller
Head Master Hats & Caps
- 18 Mr Michael Bryce
Managing Director
Minale Tattersfield Bryce & Partners
Pty Ltd
- 19 Mr C P Gavrilis
Managing Director
Astor Base Metals Pty Ltd
- 20 Mr W G Alexander
Director
Alexander Chapple Enterprises Pty Ltd
- 21 Mrs Frances M Martin
- 22 Mrs J V Harvey
- 23 Mr I C Harris
Acting Clerk of the House

**Submission Individual/Organisation
No.**

- 24 Mr B G Hayman
Chief Executive Officer
Australian Rugby Football Union Ltd
- 25 Mr Graham Halbish
Chief Executive Officer
Australian Cricket Board
- 26 Mr Paul G Fudge
Managing Director
Home Yardage (NSW) Pty Ltd
- 27 Mr Richard Num
(Supplementary Submission to No.12)
Exhibit 1
- 28 Mr Perry Crosswhite
Secretary-General
Australian Olympic Committee
Exhibit 8
- 29 Mr Albert R Mewett
Public Officer
Bowls Australia Inc
- 30 Mr John Hanstein
General Manager
Nucolorvue Productions Pty Ltd
- 31 Mr William Angus Davie
D & G Insignia Jewellery
- 32 Mr J G Somerville AM ASA
- 33 Associate Professor Anthony C Bailey
Chairman
Australian Heraldry (Victoria) Inc

**Submission Individual/Organisation
No.**

- 34 Mr Steve Arnaudon
Director
Sports Development
Australian Sports Commission
- 35 Mr Michael Clarke
Executive General Manager
Corporate
Department of Administrative Services
Exhibit 9, 11, 13 and 14
- 36 Mr Peter Farrell
Director
Department of the Chief Minister
Protocol and Public Relations Branch
- 37 Ms Rosemary Follett MLA
Chief Minister
Australian Capital Territory
- 38 Mr Richard Bingham
Secretary
Department of Justice
- 39 Mr John Jeffery
National Manager
Executive Support
Australian Customs Service
Exhibit 10
- 40 The Hon Stephen Martin MP
Speaker of the House of
Representatives

Senator the Hon Michael Beahan
President of the Senate

**Submission Individual/Organisation
No.**

- 41 Mr Ron Barry
Manager
Corporate Affairs
Gold Corporation
Exhibit 2
- 42 Mr R J W d'Apice
- 43 Ms Delia Rickard
Senior Assistant Commissioner
Trade Practices Commission
Exhibit 12
- 44 Hon Peter Foss, MLC
Minister For Fair Trading
- 45 Mr Perry Crosswhite
Secretary-General
Australian Olympic Committee
(Supplementary Submission to No.28)
Exhibit 8
- 46 Senator the Hon Chris Schact
Minister for Small Business, Customs
and Construction
- 47 Mr Harry Wallace
President
Australian Owned Companies
Association
(Supplementary Submission to No.9)
- 48 Mr M F Domney
Assistant Secretary
Policy Coordination
Department of Defence
- 49 Mr Allan Handberg
National Chief Executive
Australian Chamber of Manufactures

**Submission Individual/Organisation
No.**

- 50 Mr John Jeffery
National Manager
Executive Support
Australian Customs Service
(Supplementary Submission to No.39)
Exhibit 10
- 51 Mr Michael D'Arcy
(Supplementary Submission to No.1)
- 52 Mr D J Morris
(Supplementary Submission to No.3)
- 53 Mr Ean McDonald
Proprietor
Gold Medal Logos & Badges
(Supplementary Submission to No.7)
- 54 Mr Richard Num
(Supplementary Submission to No.12
and 27)
Exhibit 1
- 55 Mr G B Gill
- 56 Mr Hugh See
Strath Hunter Hearldry
(Supplementary Submission to No.8)

APPENDIX B

List of exhibits

**Exhibit
Number**

Exhibit

- 1 (i) Photocopy from *Scots Heraldry*, Sir Thomas Innes of Learney Lord Lyon King of Arms G.C.V.O., Advocate, F.S.A.SCOT. Revised by Malcolm R. Innes of Edingight, Marchmont Herald, W.S., F.S.A.SCOT, presented by Mr Richard Num.
- (ii) Photocopy from *The Coat of Arms*, an heraldic quarterly magazine published by The Heraldry Society, presented by Mr Richard Num.
- 2 (i) Pamphlet - *The Australian Bullion Coin Collection*, presented by Gold Corporation.
- (ii) Pamphlet - *The Aussie*, presented by Gold Corporation.
- 3 (i) Letter from Tri Sewn Industry Co. Ltd. to Club Class Embroidery, presented by Mr Robert Murrie.
- (ii) Copies of letters from The Australian Bush Hat Co., the Hon Ian Taylor, MLA and the Hon Frank Walker, QC MP, presented by Mr Robert Murrie.
- (iii) Catalogue, *Mooroombah*, from the Australian Bush Hat Co., presented by Mr Robert Murrie.
- 4 *Insignia State of Western Australia*, contents - Coat of Arms, State Flag, Floral Emblem, Faunal Emblem I, Faunal Emblem II and Personal Flag of the Governor of Western Australia, presented by Mr Hugh Samson, Ministry of the Premier and Cabinet.
- 5 (i) *Heraldry and Copyright*, extract from Editorial, *Coat of Arms magazine No. 154*, Summer 1991 written by J P Brooke-Little Esq. Norroy and Ulster King of Arms, presented by Mr Graeme Jebb.

- (ii) *Arms and Trade Marks* text of a letter to the Editor, *The Coat of Arms magazine No. 166*, Summer 1994 written by Dr Bernard A. Jubby, presented by Mr Graeme Jebb.
 - (iii) *Presentation of Arms*, part of an Editorial in *The Coat of Arms magazine Vol IX No. 158*, Summer, 1992, written by J P Brooke-Little, Norroy and Ulster King of Arms, presented by Mr Graeme Jebb.
 - (iv) Photocopy *The Control of Heraldry in Australia Some Legal Aspects*, by Dr J Michael Crawford, presented by Mr Graeme Jebb.
 - (v) Photocopy *Heraldic Authority in the British Commonwealth*, by G.D. Squibb, QC, FSA, *Norfolk Herald Extraordinary*, presented by Mr Graeme Jebb.
 - (vi) *A Verbatim Report of the Case in The High Court of Chivalry of The Lord Mayor, Aldermen and Citizens of Manchester versus The Manchester Palace of Varieties Limited on Tuesday, 21st December, 1954*, published by The Heraldry Society, East Knoyle, Wiltshire, May 1955, presented by Mr Graeme Jebb.
 - (vii) *Report on Heraldry in Australia, 1972. A Case for Heraldic Control in the Commonwealth of Australia*, published by The Heraldry Council of Australia Melbourne, 1973, presented by Mr Graeme Jebb.
 - (viii) *Report on Heraldry in Australia, 1972. A Case for Heraldic Control in the Commonwealth of Australia*, published by The Heraldry Council of Australia Melbourne 1973, presented by Mr Graeme Jebb.
- 6 *Insignia State of Victoria Australia*, contents - Armorial Ensign, The State Flag, Floral Emblem, Faunal Emblem I, Faunal Emblem II, presented by Mr David Ford.

- 7 (i) Newsletter *AusBuy Connection*, presented by Mr Harry Wallace.
- (ii) Australian Owned Companies Association *The AusBuy Kit*, presented by Mr Harry Wallace.
- 8 Samples of letterhead used by the Australian Olympic Committee, presented by Mr Perry Crosswhite.
- 9 (i) Copies of letters from the Department of Administrative Services and the Department of Foreign Affairs and Trade, presented by the Department of Administrative Services.
- (ii) AGB McNair *National Symbols October 1994* survey results, presented by the Department of Administrative Services.
- 10 Photocopies of T-shirts with Coat of Arms embroidery, presented by Australian Customs Service.
- 11 Photocopies of letters between the Department of Administrative Services, Trade Practices Commission and Information Australia and photocopy of pages from *Who's Who in Business in Australia 1992*, presented by Mr Semmens, Department of Administrative Services.
- 12 Pamphlet - *Labelling the origin of goods April 1990*, presented by the Trade Practices Commission.
- 13 Photocopies of letters between the Department of Administrative Services, the Attorney-General, Minister for Justice, Joint House Department, Minister for Administrative Services and the Speaker of the House of Representatives and President of the Senate, presented by the Department of Administrative Services.
- 14 Copy of letter from Chantal Confectionery to Australian Customs Service, presented by the Department of Administrative Services.

APPENDIX C

List of witnesses

Perth, 26 October 1994

Gold Corporation

Mr R J Barry, Manager

The Great Australian Hat Company

Mr C F Gannon, Director

Gold Medal Logos & Badges

Mr E L McDonald, Proprietor

The Australian Bush Hat Co. Pty Ltd

Mr R K Murrie, Managing Director

Ministry of the Premier and Cabinet

Mr H Samson, Protocol & Security Services Branch
Office of State Administration

Melbourne, Wednesday 2 November 1994

Australian Heraldry (Victoria) Inc

Associate Professor Anthony C Bailey, President

Department of Premier and Cabinet

Mr David W Ford, Chief of Protocol

Nucolorvue Productions Pty Ltd

Mr John Hanstein, Manager

Heraldry Australia Inc

Mr Graeme Jebb, Honorary Secretary-Treasurer

Clubknit Pty Ltd

Mr G D Kelly, Managing Director

Sydney, 4 November 1994

Astor Base Metals Pty Ltd

Mr Ross Mitchell, Senior Executive, Sales

Australian Owned Companies Association Ltd

Mr Harry Wallace, President

Head Master Hats & Caps

Mrs Pamela Humphries, Finance and Administration Controller

Appearing in a personal capacity

Mr Richard d'Apice,

Bretrow Pty Ltd

Mr Grahame Nelson, Director

Myosin Pty Ltd trading as "To You"

Mr M Khanpour, Managing Director

Australian Olympic Committee

Mr Perry Crosswhite, Secretary-General

Canberra, 10 November 1994

*Department of Administrative
Services*

Mr Graham Semmens, Acting
General Manager,
Corporate Policy and
Government Relations

Mr Lembit Suur, Assistant
General Manager,
Awards and National Symbols
Branch

*Australian Government
Publishing Service*

Mr Eric Webb, Editor of Design

AGB McNair

Mr Robert White, General
Manager, Canberra

Trade Practices Commission

Ms Delia Rickard, Senior
Assistant Commissioner

Mr Noel Gallagher, Project
Officer

Australian Customs Service

Mr John Jeffery, National
Manager
Executive Support

Mr Peter Gulbransen, Acting
National Manager
Cargo Facilitation

