



Heraldic Authority Creation

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Introduction

1. Any nation which prides itself as an independent nation and values its past encourages the development and use of distinctive symbols of sovereignty in its community and family life, and as a mark of individual achievement. Over time these symbols become an important element in bringing the nation together through recognition of a shared heritage and through the acknowledgement of contributions made by persons either individually or in association with each other, and through the enrichment of a nation's art and literature.

The Historical Context of Heraldry

2. Heraldry in the European tradition began as an emblematic form of individual identification, first appearing in western Europe in the 12th century. The art and science of heraldry that developed over the next several centuries, was centred around devices painted on the shields of warrior knights; the resulting coats of arms or armorial bearings being inherited by their descendants. The beauty and utility of heraldry soon ensured its spread to other sections of medieval society – the church, secular corporations and the merchant class of towns and cities.

3. Gradually, control over the granting and use of arms was assumed by monarchs and sovereign princes, who appointed knowledgeable professionals known as heralds to administer this authority in their name. Coats of arms came to be viewed as grants of honour received from a Sovereign exercising his or her personal prerogative to create honours.

4. In spite of the vast changes which have taken place throughout the world since the 12th century, heraldry has continued to evolve and flourish and is part of daily use in many countries. Heraldry still serves its original function of identifying nations and their constituent parts, municipalities, corporations and individuals. The fact that symbols created within this tradition are artistically powerful and rich with historical associations accounts for heraldry's continued popularity. The best heraldry has a timeless quality that sets it apart from the logos, corporate symbols and wordmarks of a particular time and place.

Present Position of Heraldry in Australia

5. Within the British Commonwealth in countries where The Queen is Head of State, all matters relating to Heraldry fall under the Royal Prerogative. In Australia (and until recently all such countries) Armorial Bearings are granted and/or confirmed by the Sovereign by Letters Patent or by one of Her Majesty's Officers of Arms who has been delegated to exercise this power. Australians who wish to acquire Arms from a lawfully established authority under the Crown are obliged to obtain them from one of Her Majesty's two offices in the United Kingdom, that is, The College of

Arms in London presided over by Garter Principal King of Arms and The Court of the Lord Lyon in Edinburgh.

Precedent for Delegating the Royal Prerogative

6. The only Commonwealth country to whom The Queen has delegated her Heraldic Prerogative is Canada which Her Majesty did by Letters Patent on the advice of her Canadian Privy Council on 4 June 1988. By these Letters Patent the Queen passed the exercise of her Heraldic Prerogative as Queen of Canada to the Governor-General of Canada and to all future Governors-General. By this means Canada has obtained an indigenous mechanism for granting new Coats of Arms to Canadian communities, corporations, associations and individuals. (Reference A). It has also achieved a method whereby hundreds of historically and artistically important symbols can be recorded.

7. Since the 1970s many residual matters concerning relations between the Commonwealth of Australia (and the States) and the United Kingdom (e.g. Appeals to the Privy Council) have been resolved in Australia's favour. Since 1953 (and modified in 1973) The Queen's Style and Title in Australia has included the term "Queen of Australia" and Her Majesty has delegated to the Governor-General of the Commonwealth of Australia many matters normally falling under the Royal prerogative. These include the approval of Battle Honours for the Defence Force and awards of certain medals in the Australian honours system.

8. There is every reason for Australia to recognise the important part that indigenous heraldic symbols play in fostering the Australian identity and for consideration to be given to the delegation of the Royal prerogative in heraldic matters also.

Grantees of Arms in Australia

9. The Commonwealth and all States and Territories (excluding the Australian Capital Territory but including Norfolk Island) have been granted Arms as have all capital cities; including Canberra. Since Federation more and more heraldry has been created for and used by Australians, and the designs of these Arms have incorporated Australian flora and fauna and in some cases Aboriginal devices. The continuing validity of heraldic form has been emphasised, especially since the 1950s and 1960s with the granting of Arms to many cities and municipalities (Reference B). In addition, Corporations and instrumentalities in increasing numbers, which include universities and educational establishments, banks, professional associations, hospitals have sought and obtained Grants of Arms to symbolise their authority, history and identity (Reference C for grants up to 1969). Increasing numbers of individuals have also sought heraldic recognition from Her Majesty's Officers of Arms in the United Kingdom. [The only way of discovering how many Australian individuals and corporations have been granted Arms in the last 20 years would be to seek this information from Garter King of Arms and Lord Lyon].

10. It is surely time for an Australian Heraldic Authority to be established so that this important form of art and honour can evolve in an Australian environment and be more readily accessible to all Australians.

Proposal for the Establishment of an Heraldic Authority in Australia

11. It is proposed that:

- a) Letters Patent be sought from Her Majesty The Queen on the advice of the Governor-General in Council to authorise and empower the Governor-General of the Commonwealth of

Australia to exercise or provide for the exercise of all powers and authorities lawfully belonging to Her Majesty as Queen of Australia in respect of granting Armorial Bearings in Australia, and

- b) The Governor-General should authorise the creation of an Australian Heraldic Authority, of which His Excellency would be Head, to provide for the administration of the new Vice-Regal responsibilities.

12. **Objectives of the Australian Heraldic Authority.** The principal objective would be to ensure that all Australians wishing to use heraldry will be able to have access to it. The Authority would also be required to work to the highest standards of heraldic practice and to develop research and registration procedures that will reflect an international standard of excellence. Most of the records of the Australian Heraldic Authority should be accessible to the public.

13. **The Structure of the Australian Heraldic Authority.**

- a) The Governor-General's Office at present has a unit, the Honours Secretariat. With the new responsibilities another unit would be required – the Heraldry Secretariat. The Australian Heraldic Authority would be headed by the Governor-General in the same way as His Excellency is Chancellor of the Order of Australia. He would have three principal officers to assist him:
 - (i) The Official Secretary – as Herald Secretary
 - (ii) The Deputy Official Secretary – as Deputy Herald Secretary
 - (iii) The Principal Heraldic Adviser – The Chief Herald of Australia
- b) The Chief Herald would administer the Heraldry Secretariat which would include other officers and support staff. The officers should be termed Heralds with an appropriate prefix (such as Phillip, Bennelong and Eureka) and responsible for:
 - (i) Herald: responsible for policies and promotion.
 - (ii) Herald: Registrar and Custodian of the Authority's Seal
 - (iii) Herald: The Authority's Principal Artist

14. Because of the diverse nature and structure of the Commonwealth of Australia, and to provide appropriate representation and ongoing advice to the Chief Herald and other officers of the Authority, an Advisory Committee on Australian Heraldry with representation from appropriate Commonwealth departments, the States and Territories should be appointed by the Governor-General. This Committee should be chaired by the Herald Secretary with the Chief Herald serving as Secretary.

15. **Operation of the Australian Heraldic Authority:**

- a) This can only be referred to in general terms, but when the Authority is fully operational its major activities would include:
 - (i) Dealing with Petitions for Grants of Arms
 - (ii) Registration of new Grants
 - (iii) Registration of existing Arms, Flags and Badges
 - (iv) Provision of information on correct heraldic practice
 - (v) Registration of genealogical information relating to inheritance of Arms.
- b) The principal long-term task of the Authority would be to build up a national register – the "Public Register of Arms, Flags and Badges of Australia". This will be a cumulative index that

will record pictorially and in writing all armorial grants and registrations once they have been approved.

16. Numbers of Grantees using the Authority. In the Heraldry Council of Australia 1972 Report on Heraldry in Australia (Section 6) it was estimated that in the event of an Australian Heraldic Authority being established, applications for Grants of Arms would increase dramatically from the then 20 or so annually to a figure perhaps double, treble, or even four times that amount (paragraph 28 of Reference D). In view of the numbers of municipalities alone seeking Grants of Arms from the United Kingdom since 1972 (Reference B), it would not appear that their figure is an underestimate.

17. Charges by the Australian Heraldic Authority. Fees would be charged by the Authority. It would have to be determined whether fees should be charged for the actual Grant or Registration, or only for the heraldic research, design and artwork involved. However, unlike the College of Arms which has to be entirely self-supporting as no Government assistance is received, it is not envisaged that the emoluments of the staff employed by the Governor-General's Office in the Heraldry Secretariat would differ from the emoluments received by the staff in the Honours Secretariat.

Some Notes on Possible Objections

18. It may be argued that in establishing the Australian Heraldic Authority under the Royal Prerogative no provision is made within any legal framework for the protection of personal or corporate Arms against misappropriation or misuse by another person or corporation. There is no specific Federal legislation other than the Trade Marks Act (or possibly the Copyright Act) under which only certain limited categories of misuse are covered. It may be argued that an Act such as in force in Zimbabwe (Reference E) should be negotiated by the Commonwealth with the States and Territories.

19. It is considered that any legislation which in future might be considered necessary should follow, and not precede the setting up of the Australian Heraldic Authority. In any case, as has already been pointed out, the inauguration of the Authority is entirely within the Royal Prerogative and is not amenable to legislation.

20. The "problem" of misuse of personal and corporate Arms has been greatly exaggerated and no specific Act in the United Kingdom has been introduced to deal with this matter. Only an archaic High Court of Chivalry exists which has been used once in over 200 years (Reference F). It is highly unlikely that this Court will ever be used again. Experience over a number of years following the inauguration of the Australian Heraldic Authority should guide future examination of this matter.

Recommendations

21. It is recommended that:

- a) The Governor-General in Council should seek The Queen's agreement for Her Majesty's Heraldic Prerogative as Queen of Australia to be exercised by the Governor-General of the Commonwealth of Australia.
- b) A Working Party under the Chairmanship of the Official Secretary to the Governor-General be established to plan the administrative details for the establishment of The Australian Heraldic Authority.

References:

A: Brochure on The Canadian Heraldic Authority.

- B. Extract from *Australian Municipal Arms* compiled by J.P. Morton for the Heraldry Society (Australian Branch) in 1988.
- C. List of Corporate Arms (excluding Municipalities) extracted from *A Roll of Australian Arms* by Charles Low 1970.
- D. Summary and Recommendations from The Heraldry Council of Australia 1972 Report on Heraldry (paragraph (28) refers to Section 6.2).
- E. The Armorial Bearings, Names, Uniforms and Badges Act (Chapter 2) of Rhodesia/Zimbabwe.
- F. The High Court of Chivalry by G.D. Squibb, QC, published 1959.
- G. Correspondence and Enclosures from Robert D. Watt, Chief Herald of Canada.