

SUBMISSION BY AUSTRALIAN NATIONAL FLAG ASSOCIATION TO THE SENATE
SELECT COMMITTEE ON THE ABORIGINAL FLAG (SEPTEMBER, 2020) Page 1

- (1) We note that the Senate resolved to establish this Select Committee on September 3; which as all parliamentarians would know, is '*Australian National Flag Day*' (as proclaimed by then Governor-General Sir William Deane in 1996 to "*to commemorate the day in 1901 on which the Australian National Flag was first flown...* ").
- (2) The Australian Flag Association does not have fixed views on the complex copyright issues to be addressed by the Committee. However given a deal of confusion expressed about recognition of the 'Australian Aboriginal Flag', we thought it would be helpful to highlight some relevant background about Australian flags. As the Australian Aboriginal Flag was proclaimed under Section 5 of the Flags Act 1953, we also set out below the history of that legislation to assist in consideration of item (c) of the Terms of Reference.
- (3) Shortly after federation, the official Commonwealth Government Gazette (No. 27) on 29 April 1901 announced the world's first ever flag design competition: "*The Government of the Commonwealth of Australia invite competitive designs for a Federal Flag...Each competitor will be required to forward two coloured sketches – one for the merchant service, and one for naval or official use ...All designs must be indorsed on the cover 'Commonwealth Flag' ...* "
- (4) Following the receipt of entries from 1% of the Australian population at that time, on 3 September 1901 the judges chosen by the Commonwealth Government announced the winning design. The Australian National Flag is the same flag we fly today. (In 1903 and 1908 there were some very subtle variations made to the number of points on stars, but the concept and basic appearance of the flag design is unchanged.)
- (5) The official confirmation of the flag design came in the Commonwealth Government Gazette on 20 February 1903, which referred to approval of the design "*... for the Flag of the Commonwealth of Australia*"
- (6) A subsequent Gazette on 15 August 1903 identified the 'red ensign' as "*... the Flag adopted as the Merchant Flag of the Commonwealth of Australia, to be flown by vessels registered in the Commonwealth...*"
- (7) Then the House of Representatives resolved on 2 June 1904 that "*the Australian flag as officially selected should be flown upon all forts, vessels, saluting places and public buildings of the Commonwealth upon all occasions when flags are used*" [emphasis added]
- (8) A Military Order in April 1911 directed that "*in future the Australian Flag is to be used as the saluting flag at all reviews and ceremonial parades*"
- (9) In the same year Naval Order 78/1911 directed "*all ships and vessels of the Royal Australian Navy*" to fly "*at the Jack Staff the distinctive flag of the Australian Commonwealth.*"
- (10) In fact, the federal Government was perhaps too zealous in asserting the official status of the Australian National Flag. For several decades the Commonwealth insisted that no one else was authorised to fly it. On 19th January 1918 the Secretary of the Prime Minister's Department advised in response to a query that "*the blue ensign ... should be flown by Departments, establishments or vessels of the Government only*".

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- (11) Even state governments were rebuffed - eg when they sought permission to fly the Australian National Flag at state schools. In frustration some patriotic individuals, schools, and other institutions began flying the “red ensign” on land to show their national pride.
- (12) To encourage proper practice, Prime Minister Menzies issued this statement on 15 March 1941: “*The Official view is that there should be no unnecessary restriction placed on the flying of the Blue Ensign on shore. Its use on public buildings, by schools, and by the public generally would not only be permitted but appreciated, provided it is flown in a manner appropriate to the use of a **national emblem** [emphasis added] ...Australian merchant vessels will, of course, continue to fly the Commonwealth Red Ensign*”
- (13) On 24 Feb 1947 Prime Minister Chifley issued a statement in similar terms: “*For many years the Commonwealth Blue Ensign was reserved for use on vessels of the Royal Australian Navy and on Commonwealth Government buildings. There is, however, no restriction on the flying of the Commonwealth Blue Ensign on shore...*”
- (14) However confusions still abounded, until legislation in 1953 resolved any doubt through the passage of Flags Act; which also set out the exact dimensions of the flag, plus the position and size of the various stars etc
- (15) Introducing this legislation into Parliament, PM Menzies declared that it... “*is very largely a formal measure which puts into legislative form what has become almost the established practice in Australia. At the inauguration of the Commonwealth of Australia, the attention of the Australian Government was directed to the necessity to adopt **an Australian flag** [emphasis added] ... no legislative action has ever been taken to determine the precise form of the flag or the circumstances of its use, and this bill has been brought down to produce that result ... the bill will set out legislatively something that represents common practice and a common view in our country...*”
- (16) Section 5 of the Flags Act 1953 (headed “Other Flags”) provides that “*The Governor-General may, by Proclamation, appoint such other flags and ensigns of Australia as he or she thinks fit.*” It was under this provision that the ‘Australian Aboriginal Flag’ was appointed as the “flag of the Aboriginal peoples of Australia” on 14 July 1995 (see copy of Gazette attached). It appears that this step was taken without consulting or acknowledging the designer of the flag, or even seeking to ascertain his or her identity.
- (17) Similarly, the Torres Strait Islander Flag was proclaimed on the same date. Other flags proclaimed under Section 5 of the Flags Act include the Australian White Ensign, the Royal Australian Air Force Ensign, and the Australian Defence Force Ensign.
- (18) However in 2008 it was discovered that due to an administrative oversight, these proclamations had not been lodged in accordance with the requirements of the Legislative Instruments Act 2003 to ensure they remained in force. Hence on 25 January 2008 the various proclamations were re-issued, with effect from 1 January 2008.

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- (19) In regard to “matters relevant to the enduring and fair use of the Aboriginal Flag design by the Aboriginal and Australian community”, it should be noted that the Australian Government advises that *“The Australian National Flag takes precedence in Australia over all other flags when it is flown in company with other flags... it should be flown in the position of honour.”* (a)

Further, the official order of precedence for flags flown in the Australian community is:

- *Australian National Flag
 - *national flag of other nations
 - *state and territory flags
 - *other Australian flags prescribed by the Flags Act 1953 (eg the Australian Aboriginal and Torres Strait Islander Flags and Defence ensigns)
 - *other ensigns and pennants (eg from local government, Commonwealth, state and territory agencies, and non-government organisations).
- (20) Because of a lamentable lack of awareness of flag protocol, there are many breaches of flag etiquette in Australia. For example, some seem to believe that the Australian Aboriginal Flag is an alternative national flag, with the same status as the Australian Flag. At the public hearing on 14 September, Senator Dodson declared that he was *“chair of the reconciliation council that wrote to Prime Minister Keating at the time seeking the registration of the flag under the Flags Act.”* Thus it is important to record the explanation Senator Dodson gave at the time: *“Official **recognition doesn’t mean that these flags have equal status to the national flag, still less supplant it** (emphasis added). It does not create ‘nations within a nation’. It does mean that the Aboriginal and Torres Strait Islander flags – among the most popular and recognisable flags in Australia – have legal status and protection... Most importantly, the Government’s decision says to Aboriginal and Torres Strait Islander people: ‘You are a valued and unique part of the fabric of our nation’”* (Sydney Morning Herald 6 July 1995)
- (22) As noted, the proclamation under the Flags Act did not affect the rights of the copyright holder, established by the Federal Court in 1997 to be Mr Harold Thomas. However the Commonwealth then negotiated with Mr Thomas to ensure that any Australian was entitled to fly or display the Australian Aboriginal Flag without permission.
- (23) The dispute about commercial use of the Australian Aboriginal Flag has led to a wider recognition of its unique copyright status, but has also highlighted the need for a major awareness campaign about flag protocol more generally. The Australian National Flag Association **RECOMMENDS** the establishment of an official ‘homepage’ or portal for the Australian flag – eg *flag.gov.au*. Currently there is no stand-alone and user-friendly reference point or source of official advice regarding our flag and flag protocols. Those seeking this information have to navigate through sections of the Prime Minister & Cabinet website, which is not intuitively where people would look – as evidenced by the number of flag queries directed to the (voluntary) Flag Associations from local councils, federal and state government agencies, community groups and RSL clubs, as well as the general public.

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(24) The same site could provide appropriate information about the Australian Aboriginal Flag and other flags proclaimed under the Flags Act, and perhaps link to dedicated sites that describe how they should be used and flown. It could also promote the availability of the “Australian Flags” publication that is currently distributed through the Constituent Request Programme.

(25) The site could also promote a “**Flag Code**” outlining flag protocol and (for the first time) publishing the “rules” of flag etiquette in an accessible and ‘official’ format.

[a] Except where otherwise attributed, all references are to the official Australian Government publication “*Australian Flags*” issued by the Department of Prime Minister and Cabinet (copyright Commonwealth of Australia, 2006)

ABOUT THE AUSTRALIAN NATIONAL FLAG ASSOCIATION

The Australian National Flag Association is the umbrella national body representing voluntary community groups formed to promote a wider appreciation of the history and significance of the Australian flag. We publish information about our flag and its history, and arrange ceremonies to celebrate Australian National Flag Day (September 3).

We think the unique and inspiring story of the Australian flag deserves to be better known: in other countries the world’s first “flag design competition” would be part of national folklore, and the five competition winners would be household names! Yet Leslie Hawkins, Annie Dorrington, Egbert Nuttall, William Stevens and Ivor Evans have been airbrushed from Australian history. These five ordinary men and women, who had the extraordinary honour of designing a nation’s flag, have to date received virtually no acknowledgement or official recognition.

As former state Governor and diplomat Penelope Wensley, AC has observed, our flag’s history *“from the very beginning has asserted our distinctive Australian identity ... in the very way it was conceived - through a novel competition, a democratic and inclusive process that made it truly the people’s flag”*. Former Governor-General Dame Quentin Bryce AD notes: *“Since it was first unfurled from the Royal Exhibition Building in 1901, our Australian flag has been an icon of our shared identity, of what it means to belong to our country. It is much loved, worn and flown by Australians here and across the world ... Wherever it is raised, it stirs in us a sense of unity...”*

For more information go to www.australianflag.net.au