

Standing Committee on Law and Justice

Report on the Proposed State Arms Bill

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Terms of Reference

The Committee is to inquire into and report upon a proposal to introduce a State Arms Bill to regulate the use of coats of arms in connection with the Parliament, the courts, the office of the Governor and State instrumentalities. In conducting its inquiry, the Committee should have regard to:

- 1. Whether the provisions of the proposed State Arms Bill 2002 meet its stated policy objectives; and*
- 2. Any related matter.*

These terms of reference were referred to the Committee by the Attorney General, the Hon Bob Debus MP, on 5 February 2002.

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The Hon John Ryan MLC Liberal Party *Deputy Chair*

The Hon Peter Breen MLC Reform the Legal System

The Hon John Hatzistergos MLC Australian Labor Party

The Hon Peter Primrose MLC Australian Labor Party¹

¹ The Hon P Primrose MLC replaced the Hon J Saffin MLC on 28 August 2002 (NSW Legislative Council Minutes No. 27)

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Chair's Foreword

In this report, the Committee has made a comprehensive analysis of the issues relating to the use of the State Arms and the Royal Arms of the United Kingdom in relation to official purposes of the New South Wales Government. The level of public interest in this inquiry – as evidenced by phone calls, submissions and attendance at the hearings – indicates that the subject of the use of coat of arms is a concern to many in New South Wales and elsewhere in Australia. Opinions as to the most appropriate arms to use in relation to official purposes are strongly held and expressed.

In 1906, King Edward VII granted the State of New South Wales its own arms by way of Royal Warrant, advising that the arms were to be used by the State on seals, shields, banners and flags according to the laws of arms as the State saw fit. Use of the State Arms in New South Wales to represent the authority of the State has, however, been erratic, with the use of the Royal Arms of the United Kingdom retained in many instances, particularly by the courts. By contrast, the Commonwealth Arms granted by Royal Warrant in 1908 and amended in 1912, are used consistently and without controversy by the Commonwealth, including in the new Parliament and in the High Court, the Federal Courts and the Family Court.

The Committee has been thorough in its consideration of the expert heraldic advice offered to it in the course of this inquiry, and has been persuaded by the arguments explaining that the State Arms are the correct arms to use to represent the authority of the State. The Committee has been conscious of the historical context of the use of the Royal Arms of the United Kingdom and the heritage value inherent in the various renditions of the Royal Arms in use in New South Wales. In such circumstances, it is clearly important to consider heritage values when decisions about removal of coats of arms are made, and to ensure the preservation of any arms that are removed.

I would like to thank my colleagues on the Committee for their participation in the Inquiry. I would also like to thank the Committee Secretariat for its assistance. Thanks are also due to the participants in the Inquiry who made submissions and gave evidence.

The Hon Ron Dyer MLC
Committee Chair

Executive Summary

Introduction (Chapter 1)

On 5 February 2002, the Attorney General, the Hon Bob Debus MP, requested the Standing Committee on Law and Justice to inquire into and report on a proposal to introduce a State Arms Bill to regulate the use of coats of arms in connection with the Parliament, the courts, the office of the Governor and State instrumentalities. In conducting its inquiry, the Committee was to have regard to whether the provisions of the proposed State Arms Bill 2002 meet its stated policy objectives and any related matters. The Committee received 57 submissions as well as several supplementary submissions. Ten witnesses gave evidence over two days of public hearings.

Proposed State Arms Bill 2002 (Chapter 2)

The Hon Peter Breen MLC of the Reform the Legal System party, gave notice of his intention to move a motion to bring in the proposed State Arms Bill 2002 on 12 March 2002. The Bill requires that, whenever in a Parliamentary building, a courthouse, an office or official residence of the Governor or a Government office, in any other building or place, or on any official seal or document, or in any other connection, arms representing the authority of the State are to be displayed for any official purpose, the State Arms are to be displayed and not the Royal Arms of the UK. Mr Breen argued that since the State of New South Wales received its own coat of arms from King Edward VII in 1906, for 'the honour and distinction' of the State, there is no excuse for continuing to use the Royal Arms of the UK.

The Bill also requires the removal of Royal Arms of the UK that purport to represent the authority of the State and their replacement with State Arms within three years of the commencement of the Bill. An exemption from this requirement is provided in relation to Royal Arms of the UK that form 'an integral part of an item of the environmental heritage of the State'. A depiction of the State Arms is set out in a schedule to the Bill and the Bill purports to confer upon the Governor the power to amend the Schedule to add other State Arms, specify alternative forms of State Arms, or omit or replace any State Arms, or part of any State Arms.

Background (Chapter 3)

Heraldry is the ancient practice of using designs and symbols, according to the 'laws of arms', as a form of visual identification of individuals, groups, corporations and sovereign States. Coats of arms are the most common heraldic device. Many Australian individuals and other legal entities are the bearers of personal or corporate arms granted by foreign heraldic authorities, particularly the College of Arms in England. Arms have also been granted, by way of Royal Warrant, to each Australian jurisdiction, including New South Wales and the Commonwealth.

The Royal Arms of the UK are the arms of dominion and sovereignty of the United Kingdom of Great Britain and Northern Ireland. The State Arms were granted to New South Wales by King Edward VII on 11 October 1906 by way of Royal Warrant. Depictions of both the Royal Arms of the UK and State Arms are used in public buildings and by government offices in New South Wales. While the

Committee was unable to ascertain exactly how many Royal Arms of the UK are used, the Committee was informed that the Royal Arms of the UK are used commonly in the courts and also in both chambers of Parliament, located above the Speaker's and the President's chairs.

The Committee was advised that Government policy in relation to the use of arms to represent the authority of the State in public buildings is that the appropriate arms to be used in relation to any aspect or function of government is, since the *Australia Act 1986* (Cth), the State Arms. Pursuant to the policy, new buildings are to display the State Arms and where a reproduction of the Royal Arms of the UK is intrinsic to the historic nature of a courthouse or building, it will be retained and if appropriate the State Arms can be introduced in a sympathetic manner when buildings are renovated or refurbished.

Arguments For and Against the Proposed Bill (Chapter 4)

In general, two types of arguments were presented to the Committee for and against the general policy objective of the Bill to require that the State Arms should be used rather than the Royal Arms of the UK to represent the authority of the State. The first type of argument are those based in constitutional law and the law of arms regarding which arms are the correct arms to use. The second type of argument relate to the preferred arms to use with regard to symbolism, history, society and culture.

Strong arguments were made that the State Arms, rather than the Royal Arms of the UK, are the correct arms to use to identify the authority of the sovereign State of New South Wales, particularly considering the effect of the *Australia Act 1986* (Cth) in severing the remaining legal ties between Australia and the United Kingdom. Other arguments emphasised the symbolic significance of using the State Arms. For example, it was argued that pride in New South Wales necessitated the use of arms that represented the sovereignty of New South Wales rather than the arms which represent the sovereignty of the United Kingdom.

The rationale for opposition to the Bill was varied. Some argued that the Royal Arms of the UK are the correct arms to use rather than the State Arms, while others focused on the importance of maintaining our historical connection to the United Kingdom and the heritage value of reproductions of the Royal Arms of the UK used in New South Wales. Several detractors of the Bill also warned that it represented a form of 'creeping republicanism', and that it would place an unnecessary cost burden on the State.

The Committee considered the argument that it has been constitutionally appropriate to use the State Arms since the passing of the *Australia Acts* in 1986, and possibly since the grant of the State Arms in 1906, to be particularly persuasive. While the Committee agrees that it is important to respect our heritage and our historical connection to the United Kingdom, it does not believe this to be a sufficient reason to retain the use of the Royal Arms of the UK in places where they can be perceived to represent the authority of the State of New South Wales. The Committee concluded that it supports the general policy objective of the Bill to require that where arms representing the authority of the State are used the State Arms should be used rather than the Royal Arms of the UK.

Specific Issues Regarding the Provisions of the Bill (Chapter 5)

Many concerns were raised about various provisions of the proposed Bill. The Committee examined these matters in the context of its obligation to determine whether the Bill meets its stated policy objectives. The Committee examined the concerns expressed regarding the terminology and definitions used in the Bill, particularly with regard to the term 'United Kingdom arms'. The Committee made appropriate recommendations in order to clarify these issues. In particular, it recommended that the expression 'Royal Arms of the United Kingdom' be used in the Bill and the definition of these arms set out in the Bill be reconsidered.

Several inquiry participants disputed the application of the requirement to use the State Arms rather than the Royal Arms of the UK to represent the authority of the Government to specific aspects of government. The Bill's application to the Parliament building and courthouses was the focus of much attention. With regard to the Committee's support of the policy objective of the Bill, the Committee believes that the State Arms should be used consistently across all aspects of Government. The Committee was not persuaded that any particular aspect of Government is so distinct so as to require the display of the Royal Arms of the UK.

Differing views were expressed to the Committee about the proposal to remove Royal Arms of the UK purporting to represent the authority of the State and their replacement with the State Arms. While the Committee does not object to the Royal Arms of the UK being *displayed* in or on any public buildings for decoration or interest, there are some situations where the Royal Arms of the UK are presently being *used* to represent the authority of the State, such as in the chambers of Parliament and above judicial officers in many courts. The Committee does not believe that it is appropriate to continue this practice. The Committee is of the view that in *all* cases where Royal Arms of the UK are used to represent the authority of the State they should (subject to a limited exemption) be removed and replaced with the State Arms.

The Committee shares the view of many inquiry participants, both in favour and against the Bill, of the importance of heritage conservation in this context. The Committee also shares the concern of the Heritage Council that the three year time limit may cause unreasonable difficulties in some circumstances. The Committee has recommended that the Bill be amended to require that Royal Arms of the UK be removed 'as soon as practicable', rather than within three years. The Committee has taken the view that where Royal Arms of the UK used to represent the authority of the State are also covered by a heritage listing, relevant processes of the Heritage Council should be followed to determine how the arms can be removed from the position in which they purport to represent the authority of the State, with the least disruption to the integrity of the heritage environment. A limited exemption should apply in circumstances where the Heritage Council deems that it would destroy the integrity of the heritage environment to remove Royal Arms of the UK.

Much consternation was caused by the provision of the Bill that proposes to confer upon the Governor the power to amend Schedule 1 and the depiction of the State Arms therein. The Committee has concerns that this provision seems to confer upon the Governor the power to alter the State Arms as blazoned in the original Royal Warrant and to add new forms of the State Arms. While the Committee considers Parliament to be within its powers to legislate in this regard, it favours the more traditional method of alteration, which is to seek a grant of new arms by way of Royal Warrant as occurred at the Commonwealth level in 1912 and in South Australia in 1984. Intrinsic to the symbolic

strength of the State Arms is that it has been validly conferred on the State of New South Wales by way of Royal Warrant in accordance with the laws of arms. The Committee also queries the appropriateness of enabling the Governor to amend an act of Parliament in this way. The Committee has recommended this aspect of the Bill be removed.

The inclusion of the simple depiction of the State Arms in Schedule 1 itself was also raised as a matter of concern during inquiry. All those who addressed the matter concurred that some indication of what the State Arms look like should be included in the Bill. There were differences of opinion, however, as to the best method of doing so. While some argued that only the blazon for the State Arms should be included in the Schedule, others saw merit in including the blazon and the depiction. Few thought the depiction alone was adequate. The Committee has concluded that the most effective manner of including a reference to what the State Arms look like in the Bill is to include both the blazon and the depiction of the State Arms set out in the Royal Warrant of 1906 in Schedule 1.

Related Matters (Chapter 6)

During the course of the inquiry several issues related to the use of coats of arms in New South Wales were brought to the Committee's attention. While the proposed State Arms Bill 2002 does not concern these matters, the Committee took the view that it is within the terms of reference of the inquiry to examine them, as related matters, and to make appropriate recommendations.

The first issue concerned the proposal to establish an heraldic authority in Australia. There was general support among inquiry participants for the establishment of an Australian heraldic authority so that Australians did not have to seek grants of arms from heraldic authorities in other countries. It was also argued that an Australian authority would facilitate the development of a uniquely Australian heraldry, as has developed in Canada since the establishment of the Canadian Heraldic Authority. There was a general consensus that such an authority should be established at the national level, but that in the interim, the New South Wales Government should consider establishing an heraldic authority. The Committee concluded that such an authority could usefully, and at little or no cost, undertake the functions of granting and registering arms in Australia. The Canadian approach, in which the heraldic authority is situated in the Governor-General's office, could serve as an appropriate model.

Several inquiry participants argued that the Government should move to regulate the commercial use of the State Arms and personal and corporate arms. It was also suggested to the Committee that the State Arms should be modified to render it more reflective of New South Wales society and culture by, for example, including use of aboriginal imagery. The Committee has recommended that the Government examine the need for further regulation of the use of arms in New South Wales and consider the suggestions regarding changing the State Arms.

Summary of Recommendations

Recommendation 1 **page 47**

The Committee recommends that the preamble in the proposed State Arms Bill be removed.

Recommendation 2 **page 48**

The Committee recommends that the term 'United Kingdom Arms' be replaced with the term 'Royal Arms of the United Kingdom' where it appears throughout the proposed State Arms Bill.

Recommendation 3 **page 51**

The Committee recommends that the definition of the term 'United Kingdom arms' (to be called 'Royal Arms of the United Kingdom' pursuant to Recommendation 2) in clause 3 of the Bill be amended to ensure that it accurately identifies the arms that the Bill applies to. Consideration of this recommendation should take into account the comments set out in paragraphs 5.14-5.18 regarding the difficulties with the present definition.

Recommendation 4 **page 52**

The Committee recommends that part (b) of the definition of State Arms in clause 3 of the Bill be deleted.

Recommendation 5 **page 54**

The Committee recommends that the word 'displayed' be replaced with the word 'used' throughout the proposed State Arms Bill.

Recommendation 6 **page 61**

The Committee finds that the State Arms are the appropriate arms to be used to represent the authority of the State of New South Wales. The Committee recommends that the State Arms should be used consistently across all aspects of Government.

Recommendation 7 **page 69**

The Committee recommends that all Royal Arms of the UK used to represent the authority of the State of New South Wales should be removed and replaced with the State Arms or, if their removal is opposed on heritage grounds, State Arms should also be erected and used in a prominent position.

Recommendation 8 **page 69**

The Committee recommends that the bracketed words 'but in any event within 3 years' be removed from clause 6(1) of the proposed State Arms Bill to remove the deadline for changes.

Recommendation 9 **page 70**

The Committee recommends that a limited exemption to the requirement to replace Royal Arms of the UK should be incorporated into the Bill to the effect that, in circumstances where the Heritage Council deems that it would destroy the integrity of the heritage environment to remove Royal Arms of the UK, then they should be retained and the State Arms should also be erected and used in a prominent position.

Recommendation 10 page 76

The Committee recommends that clause 5 of the proposed State Arms Bill be deleted.

Recommendation 11 page 83

The Committee recommends that Schedule 1 of the Bill be amended to include two parts. Part One should set out the blazon for the State Arms, as worded in the Royal Warrant by which the arms were granted. Part Two should set out the depiction of the State Arms included in the Royal Warrant.

Recommendation 12 page 83

The Committee recommends that the Premier's Department produce a guideline document similar to the *Guidelines on the Use of the Commonwealth Coat of Arms* produced by the Department of Prime Minister and Cabinet to provide interested people with examples of appropriate renditions of the State Arms and to set out other information regarding the appropriate use of the State Arms.

Recommendation 13 page 98

The Committee recommends that the Premier consult with the Commonwealth Government with a view to promoting favourable consideration of the establishment of a Commonwealth heraldic authority to grant and register arms and to regulate heraldic usage in states and territories in Australia.

Recommendation 14 page 98

The Committee recommends that the Premier favourably consider the establishment of a New South Wales heraldic authority to grant and register arms and to regulate heraldic usage in New South Wales, until such a time as any Commonwealth heraldic authority is established.

Recommendation 15 page 102

The Committee recommends that the Premier examine the need for further regulation of the use of State Arms and arms borne by individuals and other legal entities in New South Wales.

Recommendation 16 page 105

The Committee recommends that the New South Wales Government consider the suggestions regarding amendment of the State Arms outlined in paragraphs 6.52-6.59 of this report.

Terminology

ACM	Australians for Constitutional Monarchy
Arms	Heraldic bearings, or shield, of a person, family or organisation.
Armorial bearings	Heraldic arms, or shield, of a person, family or organisation. ⁰
Badge	A type of heraldic device, 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 written description, in heraldic language, of a coat of arms.
CDP	Christian Democratic Party (Fred Nile group).
Coat of arms	Heraldic bearings, or shield, of a person, family or organisation.
College of Arms	A branch of the English Royal Household and the official repository of the coats of arms and pedigrees of English, Welsh, Northern Irish and some Commonwealth families and their descendants. The officers of the College, known as heralds, specialize in genealogical and heraldic work.
Crest	A device that, in the days of chivalry, was displayed upon a knight's helmet, and which is now part of the heraldic achievement.
Device	A figure or design used as an heraldic bearing.
Dexter	Right as opposed to left when describing representations on a coat of arms. Blazonry assumes one is standing behind the shield, therefore, to the spectator, the dexter half of the shield is the left-hand side.
Flag Society	Flag Society of Australia Inc
Heraldic achievement	Collection of features on a coat of arms that may incorporate various elements including: shield; crest; wreath; mantling; helmet; and supporters.
Heraldry	Science and art of blazoning armorial bearings, of settling the right of persons to bear arms or to use certain bearings, of tracing and recording genealogies, of recording honours and of deciding questions of precedence.
HAGSOC	The Heraldry and Genealogy Society of Canberra Incorporated.
Royal Arms of the UK	Royal Arms of the United Kingdom of Great Britain and Northern Ireland
Shield	Central feature of a coat of arms on which a design is displayed.
Sinister	Left as opposed to right when describing representations a coat of arms. Blazonry assumes one is standing behind the shield, therefore, to the spectator the sinister half of the shield is the right-hand side.
Sovereign	A group, body of persons or a state possessing sovereign authority ie supreme and independent power or authority.
State Arms	The Armorial Ensigns and Supporters for the State of New South Wales.
Supporters	Creatures or figures depicted on each side of a shield supporting it.

Chapter 1 Introduction

Reference from the Attorney General

- 1.1** On 5 February 2002, the Attorney General, the Hon Bob Debus MP, wrote to the Chair of the Standing Committee on Law and Justice requesting that the Committee investigate a proposal to introduce a State Arms Bill. The terms of reference are as follows:

The Committee is to inquire into and report upon a proposal to introduce a State Arms Bill to regulate the use of coats of arms in connection with the Parliament, the courts, the office of the Governor and State instrumentalities. In conducting its inquiry, the Committee should have regard to:

- 1. Whether the provisions of the proposed State Arms Bill 2002 meet its stated policy objectives; and*
- 2. Any related matter.*

- 1.2** The proposal to introduce a State Arms Bill has been developed by the Hon Peter Breen MLC of the Reform the Legal System party.² The draft of the proposed Bill is reproduced as Appendix 1.
- 1.3** The Committee notes that the terms of reference relate specifically to the proposed Bill. The Committee therefore views its primary task to be limited to examining the proposed Bill's key proposal – namely using the State Arms of New South Wales ('State Arms') rather than the Royal Arms of the United Kingdom ('Royal Arms of the UK') to represent the authority of the State of New South Wales. Other aspects of the proposed Bill are also to be examined.
- 1.4** Several issues were raised during the course of this inquiry that are not covered by the proposed Bill, such as the establishment of an heraldic authority in New South Wales and proposals to regulate the commercial use of arms in New South Wales. The Committee believes that, while these matters are not dealt with in the proposed Bill, they fall within the second part of the terms of reference as 'related matters'. The Committee has, therefore, also examined the arguments put to the Committee on these matters.

Conduct of this Inquiry

- 1.5** The Committee placed advertisements in newspapers on 2 March 2002 calling for written submissions. The Committee received 57 submissions as well as several supplementary submissions. A list of the individuals and organisations who made submissions is contained in Appendix 2. The Committee held two days of public hearings, on 12 and 15 August 2002, at which a total of ten witnesses gave evidence. A list of witnesses is set out in Appendix 3.

² Mr Breen is also a member of the Standing Committee on Law and Justice.

- 1.6** The Chair's draft report was prepared in October and November and was circulated for consideration at a deliberative meeting on 29 November 2002. Relevant minutes of proceedings are set out in Appendix 4.

Structure of this Report

- 1.7** This report is divided into six chapters. This initial chapter contains introductory material to this report, including the terms of reference and information about the conduct of the inquiry and the structure of this report.
- 1.8** **Chapter 2** sets out the provisions of the proposed State Arms Bill 2002.
- 1.9** **Chapter 3** provides background information to the subject matter of this report. It explores relevant aspects of heraldry, including its history and the function of coats of arms. The chapter also examines the two coats of arms that are the focus of the Committee's inquiry: the Royal Arms of the United Kingdom of Great Britain and Northern Ireland; and the Armorial Ensigns and Supporters for the State of New South Wales. The use of these arms in New South Wales is then examined. The chapter concludes with an overview of the use of arms in other Australian jurisdictions.
- 1.10** **Chapter 4** examines the arguments for and against the policy objective of the proposed Bill, as presented to the Committee throughout this inquiry. Upon consideration of the various arguments presented, and additional research, the Committee has concluded that it supports the general policy objective of the proposed Bill.
- 1.11** **Chapter 5** explores the provisions of the proposed Bill, in light of the Committee's finding in Chapter 4 and the views expressed to the Committee in submissions and in evidence. The perceived problems with the proposed Bill and the suggested methods of ensuring that it meets its stated policy objectives are analysed and appropriate recommendations made.
- 1.12** **Chapter 6** examines related matters raised during the course of the inquiry. The first matter is the proposal to establish an heraldic authority in New South Wales. The second concerns suggestions that the Government should regulate the commercial use of arms in New South Wales. The third matter relates to various proposals to alter the State Arms.

Chapter 2 Proposed State Arms Bill 2002

The Proposal

- 2.1** On 12 March 2002, the Hon Peter Breen MLC gave notice of his intention to move a motion to bring in a Bill for an Act with respect to the display of the coat of arms of the State. A copy of the draft of the proposed State Arms Bill is reproduced as Appendix 1. Mr Breen commented on the nature of the proposal as follows:

New South Wales received its own coat of arms from Edward VII in 1906 and there is no excuse for continuing to use the royal arms. Approximately 500 representations of the royal arms appear in courts throughout New South Wales compared with just ten representations of the State Arms. Even courts established in the last few years such as the Land and Environment Court include the royal arms nailed to the wall. The High Court decided in 1999 that Great Britain is now a foreign power for the purposes of the Australian Constitution when it ruled that One Nation representative Heather Hill could not take her seat in the Senate because she was a British citizen. It is an odd thing that we continue to display the arms of a foreign country in our public buildings. In the New South Wales Parliament for example, the royal arms appear above the Speaker in the Legislative Assembly and the President in the Legislative Council.³

Objects of the Proposed Bill

- 2.2** The objects of the proposed Bill are stated in the Explanatory Note:
- (a) to cause the practice of displaying the United Kingdom arms in connection with Parliament, the courts, the office of Governor and State instrumentalities to be discontinued, and to require the State Arms to be displayed instead; and
 - (b) to provide for the adoption of additional symbols representing the authority of the State.

Provisions

Preamble

- 2.3** The preamble to the proposed Bill provides further insight to the nature of the proposal. It states:

Following the establishment of the Commonwealth of Australia, a coat of arms was by Royal warrant assigned to New South Wales, for 'the greater honour and distinction' of the State. This coat of arms is the proper representation of the authority of the State and distinguishes the sovereign authority of the State from the other regalities enjoyed by Her Majesty the Queen.

³ Breen P, 'Royal Arms Inquiry', *Media Release*, 6 March 2002.

It is appropriate to recognise the fact that New South Wales became an original State when the people of Australia united in a Federal Commonwealth on 1 January 1901, by providing for the display, in connection with Parliament, the courts, the office of Governor, and other instrumentalities and offices of the State, of the State Arms to the exclusion of the United Kingdom arms.⁴

Definitions

2.4 The terms 'Heritage Council', 'official purpose', 'State Arms' and 'United Kingdom Arms' are defined in clause 3 of the proposed Bill. The definitions of State Arms and United Kingdom Arms are as follows:

State arms means:

- (a) unless omitted, replaced, or altered under section 5, the armorial ensigns and supporters assigned for New South Wales by Royal warrant of His Majesty King Edward VII on 11 October 1906 and depicted in Schedule 1; or
- (b) such symbols and other matter as may be depicted for the time being in Schedule 1 as State arms pursuant to section 5.

United Kingdom arms means:

the arms of sovereignty and dominion borne by her Majesty Queens Elizabeth II in her capacity as Queen of the United Kingdom of Great Britain and Northern Ireland, also known as the Royal Arms, and includes any arms that replace those arms and any partial representation of those arms or any replacement arms.

State Arms to be used for all official purposes

2.5 Clause 4 of the proposed Bill provides that when arms representing the authority of the State of New South Wales are to be displayed, it is the State Arms that must be displayed rather than the United Kingdom Arms:

Whenever, in a Parliamentary building, a courthouse, and office or official residence of the Governor or a Government office, in any other building or place, or on any official seal or document, or in any other connection, arms representing the authority of the State are to be displayed for any official purpose, the State arms are to be displayed and not the United Kingdom arms.

Additional, alternative and replacement State Arms

2.6 Clause 5 of the proposed Bill confers upon the Governor of New South Wales the power to, from time to time, by proclamation, add other State Arms, specify alternative forms of State Arms (such as forms exhibiting colours), or omit or replace any State Arms, or part of any State Arms.

⁴ Proposed State Arms Bill 2002, Preamble.

Replacement of United Kingdom Arms

2.7 Clause 6(1) of the proposed Bill requires the removal of United Kingdom Arms and their replacement with State Arms within three years of the commencement of the Bill:

As soon as practicable (but in any event within 3 years) after the commencement of this Act, any United Kingdom arms displayed in or on any public building or public place and that purport to represent the authority of the State, or displayed on any seal or other object that is the property of the Crown and is intended to be used to represent the authority of the State, are to be removed and replaced by the State arms.

2.8 Clause 6(2) provides for an exemption on the grounds of heritage conservation:

Subsection (1) does not apply in relation to a building or place in respect of which the Premier, after consultation with the Heritage Council, determines that the United Kingdom arms there displayed form an integral part of an item of the environmental heritage of the State. However, nothing prevents the display of the State arms at the building or place while it is being used for an official purpose, whether or not so as to obscure, or during the temporary removal of the United Kingdom arms.

2.9 Clause 6(3) of the proposed Bill provides for the housing of United Kingdom Arms that are removed under direction from the Premier and in consultation with the Heritage Council:

Sculpted arms, or arms in any durable form, that are removed in accordance with this section are to be housed or otherwise dealt with in such a manner as the Premier, after consultation with the Heritage Council, may direct.

2.10 With regard to consultation with the Heritage Council, clause 6(4) states:

Consultation with the Heritage Council is sufficient for the purpose of these provisions if the Premier has requested advice from the Council about the matter concerned and has taken into consideration any response received from the Council within 60 days of making the request.

Schedule 1 The State Arms

2.11 Schedule 1 contains a black and white line drawing of the State Arms. In clauses 3 and 5 of the proposed Bill references are made to the depiction of the State Arms in Schedule 1.

Chapter 3 Background

This chapter provides background information to the subject matter of this report. It explores relevant aspects of heraldry, including its history and the function of coats of arms. The chapter also examines the two coats of arms that are the focus of the Committee's inquiry: the Royal Arms of the United Kingdom of Great Britain and Northern Ireland; and the Armorial Ensigns and Supporters for the State of New South Wales. The use of these arms in New South Wales is then examined. The chapter concludes with an overview of the use of arms in other Australian jurisdictions.

Heraldry

What is heraldry?

3.1 Heraldry is the practice of using designs and symbols, according to the long-established but fluid 'laws of heraldry', as a form of visual identification of individuals, groups, corporations and sovereign States. Thus, an heraldic device, the most common of which are 'coats of arms', is invested with meaning or symbolism relating to the bearer of the device.

3.2 Heraldry is often described as 'an ancient art' and, indeed, its origins lie in the 1100s when mediaeval knights wore closed helmets and engaged in mock warfare tournaments. According to Mr K Greaves, the author of a book on Canadian heraldry, '...[the] knights started painting things on their shields to identify themselves, and these 'devices' tended to become permanently associated with the individual knight...'⁵ These shields, with their distinctive design, became known as 'arms'. Later, the hereditary nature of shields developed, as did other 'laws of arms'. As for the term 'coat of arms', Greaves states:

[a]s heraldry became more and more popular, the shield-design was frequently used on other parts of a knights accoutrements, as for example on the cloth surcoat that he wore over his armour (which accounts for the term 'coat of arms').⁶

3.3 The role of the herald has been described as follows:

In the early mediaeval period the proclamation and organisation of tournaments was the chief function of heralds. They marshalled and introduced the contestants and kept a tally of the score. From this derives both their modern roles of organising ceremonies and of being expert in armory. The knights taking part in tournaments were recognised by the arms they bore on their shields and the crests they wore on their helmets. Heralds soon acquired an expert knowledge of these and became responsible for recording arms, and then later for controlling their

⁵ Greaves K, *A Canadian Heraldic Primer*, Heraldry Society of Canada, 2000, p 2 (tendered by Mr d'Apice, 12 August 2002).

⁶ Greaves, op cit, p 5.

use. As coats of arms were hereditary heralds soon came to add expertise in genealogy to their skills.⁷

The laws of arms

- 3.4** The 'laws of arms', also referred to as the 'laws of heraldry' or 'heraldic law', relates to various aspects of the practice of heraldry. For example, according to the laws of arms, a coat of arms may be inherited or varied for different individuals within a particular family so that each individual is readily identified and not confused with another. Examples of other laws were provided to the Committee by Mr R Num, a South Australian heraldic enthusiast:

Such "laws" include provisions for effective signification of identity (the same design may not be used by more than one entity or person) and effective and easy recognition (a design should show neither a colour upon a colour nor a metal upon a metal) etc.⁸

- 3.5** The former Solicitor General of New South Wales, the Hon Keith Mason QC, in advice to the Attorney General's Department in 1995, traced the origins of the laws of arms to '...the customs and usages of the High Court of Chivalry, a civil court that last sat in 1954 but until then had not sat in over 200 years.'⁹ Mr C Lindesay, a member of the Heraldry and Genealogy Society of Canberra Inc explained the meaning of the term 'laws of arms', in evidence before the Committee:

As a general comment it must be noted from the outset that much of the confusion about heraldic terminology and practice stems from the catch-all phrase "law of Arms". In general, the administration of heraldry is an exercise of the Royal prerogative and it is not justiciable by the law courts, although many aspects of the administration of the heraldry, as well as its extent, are, or may be, subject to common law. The phrase "law of Arms" encompasses two laws: One spelt L-A-W and the other spelt L-O-R-E. Many heraldic writers confuse the two and treat "lore" as though it is "law".¹⁰

Heraldry in Australia

- 3.6** It became apparent through this inquiry that heraldry has a strong following in Australia, with several associations and many learned individuals dedicated to the study and practice of heraldry. For example, Heraldry Australia Incorporated ('Heraldry Australia') is a national association formed in 1973 to 'increase and extend interest in and knowledge of

⁷ College of Arms web site: www.college-of-arms.gov.uk/about/1.htm (accessed 1 November 2002).

⁸ Submission 42, 6 May 2002.

⁹ Mr Mason's advice was provided to the Committee by the Attorney General, the Hon Bob Debus MP: Submission 55, 5 August 2002.

¹⁰ Evidence, 15 August 2002, p 17.

heraldry and allied subjects and promoting good use of heraldry in Australia.¹¹ The Heraldry and Genealogy Society of Canberra Inc ('HAGSOC') promotes and encourages the study and preservation of family history, genealogy and allied subjects such as heraldry.¹² HAGSOC was founded in 1964 and has over 1600 members.¹³ The Committee benefited from the participation of these organisations, as well as from several individuals with an abiding interest in heraldry, during this inquiry.

- 3.7** Other fields of interest related to heraldry include iconography (the study of artistic images or symbols), vexillology (the study of flags) and genealogy (the study of lines of descent). The Committee is grateful for the participation of the Australian Iconography Foundation, the Flag Society of Australia Inc and the Society of Australian Genealogists in this inquiry, for illuminating the breadth of issues invoked by the proposed Bill.
- 3.8** As discussed in paragraph 3.19, many Australian individuals and other legal entities are the bearers of arms granted by foreign heraldic authorities. The legal status of those arms in Australia appears to be uncertain, as is the application of the laws of arms in Australia and the claimed jurisdiction of the English College of Arms.
- 3.9** The 1994 House of Representatives inquiry into the use of the Commonwealth Coat of Arms (see paragraph 3.64) examined the issue of heraldic law in Australia. It concluded that, although it is likely that the law of arms was part of the English law brought to Australia, there has not yet been an Australian case on the application of the law of arms in this country:

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. This inference, it is claimed, is not contradicted by specific legislation. 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. 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 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. The opinion has been expressed that it is unlikely to sit again. 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.¹⁴

¹¹ Submission 34, 17 May 2002.

¹² HAGSOC web site: www.hagsoc.org.au (accessed 24 October 2002).

¹³ Submission 39, 30 April 2002.

¹⁴ Parliament of the Commonwealth of Australia, *The Use of the Coats of Arms – Armed With National Pride*, House of Representatives Standing Committee on Legal and Constitutional Affairs, December 1994, pp xii and 25-26.

- 3.10** Australia and its States became finally and definitively independent of the United Kingdom Parliament, government and bureaucracy on the passing of the Australia Acts in 1986, although most commentators agree that the Statute of Westminster Adoption Act 1942 represents our act of independence from Great Britain. The opportunity now exists to adapt any inherited English law to our own circumstances.

Coats of Arms

- 3.11** Coats of arms are the main focus of heraldry and are commonly referred to simply as 'arms'. Both terms shall be used throughout this report.

Function and permitted uses of coats of arms

- 3.12** The Committee asked all those witnesses who appeared before it what they considered to be the function of a coat of arms. While the answers were varied, the common thread was that of identity. By way of example, the Committee quotes Mr R d'Apice, who describes himself as having a 'life long interest in heraldry and the symbols by which states represent their sovereign personalities', and who stated:

...the function and purpose of the coat of arms in today's society continues, as it has in the past, to symbolise, represent and identify the sovereign, person, family or body using those arms; so essentially their purpose is identification, representation and symbolising.¹⁵

- 3.13** Mr d'Apice's quote refers to another common thread that emerged during the inquiry regarding the function of arms: symbology. In this regard, the Committee notes that Mr A Murray, an individual with a long-term interest in national symbology, stressed the importance of symbology for nations and the entities that comprise those nations. He identified arms as one symbol that can be used among others such as flags, postage stamps and currencies.¹⁶

- 3.14** Essentially (and most importantly for this inquiry), when arms are shown they identify the bearer of those arms. Depending on the way in which they are shown, arms may also be used to represent the authority or endorsement of the bearer, or the authenticity of the thing that the arms are displayed on or in. Alternatively, arms may merely be displayed as items of historical interest or decoration.

- 3.15** The distinction between the *use* and *display* of arms was identified as being particularly important in submissions and evidence in this inquiry.¹⁷ Broadly, arms are *used* when they are placed in a position so as to identify or symbolise the person or entity, or the authority of the person or entity, in relation to which it is used. Mr R d'Apice informed the Committee that an example of a *use* of the Royal Arms of the UK, is '...where they appear

¹⁵ Evidence, 12 August 2002, p 12.

¹⁶ Submission 13, 26 March 2002.

¹⁷ See paragraphs 5.23-5.29.

above the Speaker's chair or the President's chair or above judges in courts'.¹⁸ Arms are *displayed* when they are merely shown as objects of interest or decoration, for example, as an historical display in a building or in a book. Arms that are merely displayed do not purport to represent the authority of the bearer in the context of their display. Dr N Cox, a law lecturer and barrister from New Zealand with an interest in heraldry, provided the Committee with further information on the distinction:

...There has been a debate for many years over the distinction between the display of armorial bearings for decorative purposes, and their use for official purposes. Just what constitutes official use rather than display was arguably the crux of the Manchester Palace of Varieties Case in the High Court of Chivalry in 1954. This question also arose with respect to the use of the (United Kingdom) royal arms in English churches. Do the use of these arms imply some official status. The issue for New South Wales would be the difficulty in distinguishing between decorative use – as in much architectural usage, and official use (which is clearly the purpose when arms are used as letterheads)...¹⁹

3.16 The Heraldry Australia submission drew the Committee's attention to the same case:

The last case to come before the English High Court of Chivalry makes the point clearly. In *The Lord Mayor, Alderman and Citizens of Manchester v The Manchester Place of Varieties Limited* (1954) the Court found that use of the arms of the Plaintiff on the common seal of the defendant was wrong but the display of those arms as decoration and embellishment in the theatre auditorium was unobjectionable.²⁰

3.17 As to the legitimate uses of coats of arms, the laws of arms provides that arms may only be used by the entity to which it belongs, in other words, the 'bearer' of the arms. The bearer can, however, permit others to use them.

Types of coats of arms

3.18 There are two main types of arms: arms of dominion and sovereignty; and personal and corporate arms. Generally, arms of dominion and sovereignty are borne by sovereign authorities in order to identify their authority and jurisdiction. The Committee notes that the two arms that are the focus of the proposed Bill are examples of arms of dominion and sovereignty. The nature of arms of dominion and sovereignty is explained by Mr C Swan, York Herald of Arms:

The basic function of arms is identification. The arms of sovereign authorities – known technically as arms of dominion and sovereignty – are borne in order to identify armorially their authority and jurisdiction. While sovereignty is considered classically as, in the first instance, based on territory, nevertheless the arms of sovereign states identify not a given geographical arms but rather that intangible

¹⁸ Evidence, 12 August 2002, p 7.

¹⁹ Submission 53, 30 April 2002.

²⁰ Submission 43, 3 May 2002.

supreme authority – sovereignty vested in one person, persons, or institutions of the state concerned, depending upon its particular constitution.²¹

3.19 Personal and corporate arms are borne by individuals and other legal entities such as corporations, organisations and schools. The Committee is aware that many individuals, families in New South Wales have personal arms, most commonly granted by the College of Arms. While several New South Wales based corporate entities have corporate arms, very few New South Wales Government offices or bodies have arms. The Committee was advised that only two State instrumentalities, Sydney Water and the Maritime Services Board have been granted arms (from the College of Arms), although their use now is obsolete.²²

Granting coats of arms – heraldic authorities

3.20 Coats of arms are granted by heraldic bodies or authorities that exist in many countries, including England, Scotland, Northern Ireland, Ireland, Canada, South Africa and Spain.²³ As the English and Canadian authorities are particularly relevant to this inquiry they are briefly outlined further below.

3.21 New grants of arms are made upon application and in accordance with eligibility criteria. For example, grants of arms from the Canadian Heraldic Authority are considered to be honours from the Canadian Crown in recognition of the applicant's contribution to the community, therefore, information about an applicant's achievements, such as details of community service, is required to assess the applicant's eligibility. While the Canadian authority stipulates that only Canadian citizens and corporate entities are eligible, other authorities will grant arms to descendants who live in other countries.

3.22 With regard to the design of new arms, eligible persons or entities generally consult with the relevant heraldic authority to design a suitable coat of arms. Once a design is settled, the arms can be granted. The grant is then recorded or registered in the records of the granting authority.

3.23 Currently, an Australian resident or a legal entity based in Australia wanting a grant of arms must apply to an heraldic authority in another country, as no such authority exists in Australia. Since the descent of many early migrants to Australia can be traced to England, Ireland and Scotland, the heraldic authorities in these countries are the most common

²¹ Swan C, *Canada: Symbols of Sovereignty*, University of Toronto Press 1977, p 3 (as mentioned in Submission 42, 6 May 2002).

²² Szabo, Evidence, 12 August 2002, pp 11-12. Sydney Water, a statutory state-owned corporation, was granted arms by the College of Arms, in 1965 and is said to be the first semi-governmental corporate body to be granted arms. Sydney Water advises that by the mid-1980s use of the arms had been discontinued: correspondence from Mr M North, *Sydney Water*, 7 November 2002. The Maritime Services Board was subsumed by other statutory bodies in the mid 1990s and its coat of arms is no longer used.

²³ Note that an hereditary right to bear an existing coat of arms can also be determined by an heraldic authority in accordance with the laws of arms. The fact that people and organisations can and have assumed arms of their own design is examined in Chapter 6.

source of arms held by Australian individuals and entities. By way of example, the Committee was advised that the former Governor-General of Australia, Sir William Deane, was granted personal arms by the Chief Herald of Ireland.²⁴ The Committee also notes that the arms of dominion and sovereignty granted to the Commonwealth of Australia and the States and Territories were granted by the English College of Arms.

College of Arms

3.24 The College of Arms in England is a branch of the Royal Household and is the official repository of the coats of arms and pedigrees of English, Welsh, Northern Irish and Commonwealth families and their descendants. It has been described as the only surviving 'fully fledged College of Arms of the medieval model' in Europe.²⁵ Professor G de Q Walker advised the Committee of the nature of the College of Arms as follows:

The Earl Marshal and the Kings of Arms who constitute the College are Ministers of the Crown of the United Kingdom. They are part of the UK executive Government ("Her Majesty's Government") and are appointed under the royal prerogative. There has been little use of statute in this area of law. The College owes its existence to a succession of royal declarations and proclamations, though in past centuries some of its powers have been clarified or extended by Acts of Parliament. Nevertheless, it is as much a part of the British Government as the Ministry of Defence.²⁶

3.25 The granting of arms by the College of Arms has been described as follows:

Coats of arms have been and still are granted by Letters Patent from the senior heralds, the Kings of Arms. A right to arms can only be established by the registration in the official records of the College of Arms of a pedigree showing direct male line descent from an ancestor already appearing therein as entitled to arms, or by making application through the College of Arms for a grant of arms. Grants are made to corporations as well as to individuals.²⁷

Canadian Heraldic Authority

3.26 Several inquiry participants who advocated the establishment of a New South Wales heraldic authority (see chapter 6) identified the Canadian Heraldic Authority as an appropriate model. The Canadian Heraldic Authority was established in 1998 after Her Majesty Queen Elizabeth II, Queen of Canada, authorized the Governor General of Canada to exercise, in Canada, one of her Royal prerogatives, the right to grant arms in Canada.²⁸ Canada thereby definitively withdrew from the claimed Imperial Jurisdiction of the Queen of the United Kingdom's Officers of Arms of the College of Arms, as well as

²⁴ Submission 42, 6 May 2002.

²⁵ Woodcock T and Robinson JM, *The Oxford Guide to Heraldry*, Oxford University Press, 1988, p 139.

²⁶ Submission 1, supplementary submission, 7 August 2002.

²⁷ College of Arms web site: www.college-of-arms.gov.uk/ (accessed 1 November 2002).

²⁸ Greaves, op cit, p 25.

the Court of Lord Lyon, Scotland, and became the first Commonwealth nation to institute its own heraldic authority.²⁹ Previously, Canadians who wished to acquire arms from a lawfully established authority under the Crown were obliged to apply to one of the two heraldic bodies in the United Kingdom: the College of Arms or the Court of the Lord Lyon in Edinburgh, Scotland.³⁰

3.27 The Canadian Heraldic Authority operates beneath the powers invested in the Office of the Governor General of Canada and is entitled to grant arms in the name of the Sovereign of Canada. It is headed by the Governor General and consists of a Herald Chancellor, a Deputy Herald Chancellor, a Chief Herald of Canada and four Heralds.³¹ All Canadian citizens or corporate bodies (municipalities, societies, associations, institutions, etc) may petition to receive a grant of armorial bearings. The process is described as follows:

Requests for new arms or registrations of existing arms take the form of a "petition" addressed to the Chief Herald of Canada, who must assess and approve the request before a warrant for the grant can be signed by the Herald Chancellor or the Deputy Herald Chancellor. A herald then works with the petitioner to create a design, which is then rendered artistically, in two separate stages, by an artist assigned by the Authority. Completed grant or registration documents are recorded in the Public Register of Arms, Flags and Badges of Canada, and the notice of the grant or registration is published in the *Canada Gazette*.³²

Elements of a coat of arms – the heraldic achievement

3.28 The term 'heraldic achievement' is used to describe the collection of features on a coat of arms, including the shield, crest, wreath, mantling, helmet, coronet, supporters, motto scroll and compartment. A particular coat of arms can contain some or all of these elements. An illustration of a full heraldic achievement is set out below.



²⁹ Information tendered by Reverend the Hon Fred Nile MLC, 15 August 2002.

³⁰ Canadian Heraldic Authority web site: www.gg.ca/heraldry/cha-history_e.asp (accessed 5 November 2002).

³¹ Greaves, op cit, p 25.

³² Canadian Heraldic Authority web site: www.gg.ca/heraldry/cha-history_e.asp (accessed 5 November 2002).

Blazonry and representations of coats of arms

- 3.29** Blazonry is the language of heraldry. It is used to describe coats of arms and includes terms for all aspects of the heraldic achievement, including depictions and colours. Blazonry is a mixture of Norman-French and mediaeval English and is unique in many ways. For example, the words used to denote the left and right sides of a coat of arms are 'sinister' and 'dexter' respectively.³³ Colours for coats of arms include: 'or' for gold; 'argent' for silver; 'gules' for red; and 'azure' for blue.³⁴ As stated by Greaves, the 'jargon may be archaic but it has one great advantage – it is extremely precise'.³⁵
- 3.30** A full written description of a coat of arms is called a 'blazon'. By way of example, the blazon for the State Arms is set out in paragraph 3.38. A blazon is issued with a grant of arms and enables an heraldic artist to accurately depict a coat of arms that she or he may never have seen.³⁶ The bearer of arms is free to choose the way in which the blazon is visually represented. The blazon determines the design that can be rendered in different (but not improper) ways, according to the interpretation of an individual artist.
- 3.31** Arms can also be represented in a myriad of forms, for example, sculptures, carvings or engravings utilising a variety of material including the stone walls of buildings or the wrought iron of gates. Most commonly, arms are printed on documents, and more recently, on Internet pages.

Royal Arms of the United Kingdom of Great Britain and Northern Ireland

- 3.32** The Royal Arms of the UK are used by the United Kingdom monarchy and are the arms of dominion and sovereignty of the United Kingdom of Great Britain and Northern Ireland.³⁷ They are not the personal arms of Queen Elizabeth II. For the sake of brevity, and also pursuant to common usage, the term 'Royal Arms of the UK' will be used throughout this report.
- 3.33** The Royal Arms of the UK incorporate various emblems of the United Kingdom, including the three British lions, the lion of Scotland and the Irish Harp. The shield

³³ Note that 'sinister' and 'dexter' are considered from the point of view of the bearer of the arms, not that of the observer. To the observer, therefore, the sinister half of the shield is the right-hand side.

³⁴ Greaves, op cit, p 23. There are no fixed shades for heraldic colours. For example, if the blazon gives its tinctures as Gules (red), Azure (blue) and Argent (white or silver) then, as long as the blue is not too light and the red not too orange, etc, it is up to the artist to decide which particular shades they think are appropriate: College of Arms web site: www.college-of-arms.gov.uk/faq.htm (accessed 20 September 2002).

³⁵ Greaves, op cit, p 23.

³⁶ *ibid.*

³⁷ Submission 5, 27 March 2002 and Friar S, ed, *A New Dictionary of Heraldry*, Alphabooks, 1987, p 7. An examination of the history of the Royal Arms of the UK is unfortunately beyond the scope of this report. A concise history of the Royal Arms of the UK is contained I: Woodcock, op cit, Appendix A.

supporters are the English lion and the Scottish unicorn and the shield is surmounted by St Edward's Crown. Around the base of the shield are the shamrock, thistle and rose, the floral emblems of Ireland, Scotland and England, respectively.



Royal Arms of the UK³⁸

- 3.34** The Royal Arms of the UK represent and identify the sovereign of the United Kingdom. As arms of sovereignty and dominion (see paragraph 3.17), the Royal Arms of the UK are borne by virtue of sovereignty in all places under the authority and jurisdiction of the sovereign of the United Kingdom in respect of which no other arms have been specifically assigned. It is in this respect that the Royal Arms of the UK were originally used in the colony of New South Wales and this also represents the source of contention as to the correct arms to represent the authority of the State of New South Wales today – as discussed in chapter 4. Other issues relating to the nature of the Royal Arms of the UK were raised during this inquiry and are also dealt with in Chapter 4.
- 3.35** It was also pointed out to the Committee that different versions of the Royal Arms of the UK are in use or on display New South Wales. The difference relates to the fact that a number of English monarchs have reigned during the period that the present Royal Arms of the UK have been used in New South Wales (since 1837) and is evidenced by slightly different crowns depicted on the arms.³⁹
- 3.36** The Royal Arms of the UK have developed since 1788 displaying, exclusively, the European possessions or claims of the UK sovereign including (at times) France, Hanover, Brunswick, Luneburg, Westphalia and The Holy Roman Empire. They contain no heraldic reference to Australia or New South Wales.

³⁸ 'Regulating the Use of Coats of Arms in NSW', *LawQuick Newsletter*, Autumn 2002, p 5.

³⁹ For example, Submission 14, 12 April 2002.

Armorial Ensigns and Supporters for the State of New South Wales

3.37 The State Arms are formally called, in the Royal Warrant by which it was granted, the ‘Armorial Ensigns and Supporters for the State of New South Wales’. For the sake of brevity, and also pursuant to common usage, the term ‘State Arms’ will be used throughout this report.⁴⁰

Grant of the State Arms

3.38 The State Arms were granted by King Edward VII on 11 October 1906 by way of Royal Warrant: the Warrant Granting Armorial Ensigns and Supporters for the State of New South Wales.⁴¹ A copy of the warrant was published in the New South Wales Government Gazette on 22 February 1907 and the relevant pages of the Gazette are reproduced as Appendix 5. The warrant contains the blazon for the State Arms, which describes what the State Arms look like. The relevant extract from the warrant (with the blazon in bold) is as follows:

Know ye therefore that We of Our Princely Grace and Special Favour have granted and assigned and by these Presents do grant and assign the following Armorial Ensigns and Supporters for the said State of New South Wales that is to say for **Arms “Azure a Cross Argent voided Gules charged in the centre chief point with a Lion passant guardant and on each member with a Mullet of eight points Or between in the first and fourth quarters a Fleece of the last banded of the second, and in the second and third quarters a Garb also Or: And for the “Crest on a Wreath of the Colours A Rising Sun, each Ray tagged with a Flame of fire proper: And for the Supporters On the dexter side A Lion rampant guardant: And on the sinister side “A Kangaroo both Or,” together with this Motto, “Orta Recens Quam Pura Nites,”** as the same are in the painting hereunto annexed more plainly depicted to be borne for the said State on Seals, Shields, Banners, Flags or otherwise according to the Laws of Arms.⁴²

3.39 A depiction of the State Arms is set out on the following page.

⁴⁰ The Committee notes that in the only New South Wales legislation that mentions the State Arms it is referred to simply as ‘the arms of the State’: *Unauthorised Documents Act 1922* (NSW), s 3.

⁴¹ There is an interesting history behind the development of the State Arms that, unfortunately, cannot be explored in this report. The Committee is grateful however, for the information provided to it in this regard.

⁴² Royal Warrant Granting Armorial Ensigns and Supporters for the State of New South Wales, October 1906.



State Arms⁴³

- 3.40** As to the nature of the State Arms, the terms of the warrant require the State Arms to be 'borne for the said State on Seals, Shields, Banners, Flags or otherwise according to the Laws of Arms.' Mr CRP George, an individual with a 'deep personal interest in history and heraldry' informed the Committee of information received by the New South Wales Government in 1912 regarding the use of the new State Arms in relation to the Royal Arms of the UK:

The State Government received additional confirmation of this in 1912 when it enquired of the Colonial Office in London who wrote: 'The extent to which the use of these Arms shall replace the use of the Royal Arms is a matter within the discretion of your Ministers'.⁴⁴

- 3.41** Mr R Num described the nature of the State Arms to the Committee as follows:

These armorial ensigns are in the nature of arms of sovereignty and Dominion of particular purpose borne by Her Majesty the Queen of Australia in right of the State of New South Wales.⁴⁵

Statutory regulation of the use of the State Arms

- 3.42** While there is no specific legislation governing the use of arms in New South Wales, some measure of statutory protection is provided to the State Arms through the *Unauthorised Documents Act 1922*, as confirmed by the Attorney General, the Hon Bob Debus MP:

⁴³ 'Regulating the Use of Coats of Arms in NSW', *LawQuick Newsletter*, Autumn 2002, p 5.

⁴⁴ Submission 38, 6 May 2002. This quote is taken from: State Records NSW, Governor's Dispatches, 7/1554, volume 4, 1913, as quoted in Gullick WA, *The Seals of New South Wales* Sydney: Government Printer, 1914, p 12.

⁴⁵ Submission 42, 6 May 2002.

Although the legal standing of armorial insignia is uncertain in New South Wales, section 3 of the *Unauthorised Documents Act 1922* provides some protection to the State Coat of Arms and regulates its use. It only applies to the arms – the badge and the flag may be used uncontrolled.⁴⁶

3.43 Section 3 of the *Unauthorised Documents Act 1922* states:

Any person who, without the authority of the Governor or of the Attorney-General (proof whereof shall lie upon the person accused), prints, issues, or uses in connection with any trade, business, calling, or profession, or the collection of debts, the arms of the State, or arms so nearly resembling such arms as to be likely to deceive, shall be liable to a penalty not exceeding 4 penalty units.⁴⁷

3.44 Authorisation to use the State Arms in a specific way must be sought by writing to the Attorney General and each application is assessed on its merits (although the Government can freely use the Arms in its official capacity and is not required to seek permission). The Attorney General advised that once an application is received a submission is prepared by the Department setting out the application and, if the use would not contravene the generally accepted principles for use, a recommendation is made that the Attorney General approve the application. The use must not be linked to commercial or private gain and 'must be an appropriate matter for connection with the State Arms'.⁴⁸ A further consideration is whether the venture is likely to cause confusion to members of the public as to the position of the Government in relation to the user of the Arms. The Attorney General further advised that:

The Crown Solicitor has previously indicated that the question is not a legal one but is a matter of the Attorney General's personal opinion, reflecting the ambit of the Royal Warrant. However, he has cautioned against the Attorney General approving the use of the Arms for commercial purposes.⁴⁹

3.45 The Attorney General informed the Committee that applications to use the State Arms are fewer than ten per year and provided three examples:

An application by the producers of the 'All Saints' television program to film the Coat of Arms in the Hornsby Court House – approved.

An application to reproduce the State Arms on the back of a medallion – the medallion was to commemorate the applicant's 50th year as a Justice of the Peace and would feature the applicant's portrait on one side and the Arms on the other and was being commissioned by the applicant – declined.

⁴⁶ Correspondence from the Attorney General, the Hon Bob Debus MP, 19 November 2002.

⁴⁷ Four penalty units currently represents a fine of \$440.00.

⁴⁸ Correspondence from the Attorney General, the Hon Bob Debus MP, 19 November 2002.

⁴⁹ *ibid.*

An application by the Royal Australian Mint to reproduced the Arms on a series of coins as part of the Centenary of Federation celebrations in 2002 – approved.⁵⁰

3.46 The Committee was also advised that there have been no prosecutions under section 3 of the *Unauthorised Documents Act 1922*:

The Attorney General's Department does not appear to have considered any matters for prosecution under the *Unauthorised Documents Act 1922* in relation to misuse of the State Arms in the last 5 years... Two State Arms matters have recently been referred to the Department which have not proceeded to prosecution are:

- A Justice of the Peace whose stamp included a reproduction of the NSW State Arms. The Justice was advised that it was not appropriate for a Justice of the Peace to reproduce the State Coat of Arms on a stamp and use it in carrying out the duties of a Justice of the Peace. The Justice was directed to cease using the stamp forthwith and advised that further use would result in 'disciplinary action (although it was not necessary to consider whether this impacted prosecution under the Act or discipline as a Justice of the Peace as the practice ceased).
- The Department was informed that the State Arms appeared in advertising material for the Government Who's Who...The publishers were advised that use of the Arms without permission was an offence under the Act, and the Editors undertook to remove the Coat of Arms from the next edition of the volume and from all advertising material.⁵¹

3.47 The Committee notes that some degree of statutory protection of the State Arms may also lie in trademark or trade practices legislation, although the Committee was not provided with any information in this regard.⁵²

Use of the Royal Arms of the UK and the State Arms in New South Wales

3.48 This subsection examines the ways in which the Royal Arms of the UK and the State Arms are currently used in New South Wales to represent the authority of the State. In doing so it examines the aspects of Government included in clause 4 of the proposed Bill: Parliament buildings, courthouses, offices or the official residence of the Governor, Government offices, other buildings or places and official seals or documents. The Committee has been unable to ascertain the exact number of Royal Arms of the UK and State Arms that are used in New South Wales, however, information provided to the Committee in regard to their use is set out in the following paragraphs. First, Government policy with regard to the use of the Royal Arms of the UK and the State Arms in New South Wales is reviewed.

⁵⁰ *ibid.*

⁵¹ *ibid.*

⁵² The existence of such protection at the Commonwealth level is noted in paragraph 3.62.

Government policy

3.49 The Committee has been advised of Government policy in relation to the use of coats of arms to represent the authority of the State of New South Wales in public buildings in New South Wales. The Attorney General informed the Committee that, at present, Coats of Arms are installed and displayed in New South Wales public buildings in accordance with the principles agreed upon between the then Attorney General, the Hon Jeff Shaw QC MLC, and the Premier on 31 August 1995:

With the enactment of the *Australia Act 1986*, the question of which arms are the most appropriate for display in NSW buildings was reconsidered. In the view of the Hon K Mason QC, then Solicitor General, in a 1995 advice provided to the then Attorney General concerning the proper use and display of coats of arms in NSW courts and other public buildings ... it is 'no longer constitutionally appropriate to display the Royal Coats of Arms in NSW courts or public buildings' and that 'the appropriate coat of arms to be used in relation to any aspect or function of NSW Government is, since the *Australia Act 1986* the NSW Coat of Arms.

The Asset Management Division of the Attorney General's Department has advised that new buildings display the NSW Coat of Arms. Where the Royal Coat of Arms is intrinsic to the historic nature of a courthouse or building, it will be retained and if appropriate the State Coat of Arms can be introduced in a sympathetic manner when buildings are renovated or refurbished.⁵³

Parliament building and official seals and documents

3.50 The Legislature uses both the Royal Arms of the UK and the State Arms. The Royal Arms of the UK are displayed in the Legislative Council and Legislative Assembly chambers, above the President's and the Speaker's chairs, respectively. Advice from the Manager of Parliamentary Archives, Mr R Lawrie, states that, on the basis of available evidence, it appears the Royal Arms of the UK were placed in the Legislative Council as part of the original furnishings of the Chamber at the beginning of 1856, when the first Council met there.⁵⁴ In regard to authorisation to install the Royal Arms of the UK in the chamber, Mr Lawrie stated:

...I would contend that the Legislative Council one was placed there as a matter of course (as all authority emanated from the Crown), by people who did not think they needed permission. In the same way, the Royal Arms were used on New South Wales Government and Parliamentary writing paper; and on front of Acts of Parliament.⁵⁵

⁵³ Correspondence from the Attorney General, the Hon Bob Debus MP, 19 November 2002.

⁵⁴ This advice was requested, and provided to the Committee, for the purpose of this inquiry by Reverend the Hon Fred Nile MLC: Submission 4, supplementary submission, 20 May 2002.

⁵⁵ *ibid.*

- 3.51** As for the Legislative Assembly, advice from the Sergeant-at-Arms and Clerk of Select Committees, dated 25 August 1937, details the history of the use of the Royal Arms of the UK in that chamber:

The Coat of Arms was first placed in the Legislative Assembly, over the Speaker's Chair, on Tuesday 17th August [1937], by direction of Mr Speaker (the Hon R.W.D. Weaver, M.L.A.). Apparently, the only other occasion when the Coat of Arms was placed in the Assembly Chamber was on 26th August 1924, when the Coat of Arms was used in the decoration of the Chamber in honour of the Centenary of the Establishment of Parliamentary Institutions in New South Wales. Its hanging in the Chamber on that occasion, however, was only temporary.⁵⁶

- 3.52** The Committee is aware that the use of the Royal Arms of the UK on official documentation of the New South Wales Parliament ceased in the 1970s. Legislation passed by the New South Wales Parliament included a depiction of the Royal Arms of the UK on the front cover until 1986. Since then the State Arms have been used. Official documentation and stationery of the Parliament has incorporated the Parliamentary badge, which has the State Arms in the centre, for many decades.

Courthouses and official court seals and documents

- 3.53** In New South Wales there are approximately 160 court buildings, with varying numbers of courtrooms. The judicial arm of Government historically used the Royal Arms of the UK however, since the development of the Government policy described in paragraph 3.49, the State Arms have been used in some refurbished or newly built courts.
- 3.54** In June 1999, then Attorney General, the Hon Jeff Shaw QC MLC, estimated the number of Royal Arms of the UK in and on New South Wales court buildings to be approximately 500.⁵⁷ By way of example, the Supreme Court of New South Wales uses the Royal Arms of the UK on the Seal of the Court, on official correspondence and judgements, and on the new and old Supreme Court Building in Queens Square, Sydney.⁵⁸ The District Court of New South Wales also uses the Royal Arms of the UK, although the Committee notes that the Chief Judge of the District Court of New South Wales, the Honourable Justice RO Blanch uses official stationery with the State Arms centred at the top.⁵⁹ As noted in paragraph 3.34, some reproductions of the Royal Arms of the UK used in New South Wales do not reflect the current monarch but, rather, earlier monarchs. In this regard, the Committee notes the comments of the Honourable Mr Justice Dunford of the Supreme Court of New South Wales:

⁵⁶ Submission 4, 28 March 2002.

⁵⁷ NSWPD (LC), 29 June 1999, p 1542. See also, 'State courts change to coat of arms as republic poll nears', *The Newcastle Herald*, 1 July 1999.

⁵⁸ Submission 41, 2 May 2002.

⁵⁹ Submission 49, 13 May 2002.

Actually I understand that the painted and carved Coats of Arms displayed in some of our court rooms above the Bench are not the arms of the current Queen, but those of her predecessors, e.g. Queen Victoria or King Edward VII, or whoever happened to be the sovereign when the particular courthouse was built, and who had no connection with the issue of the Third Charter of Justice.⁶⁰

- 3.55** In June 1999, Mr Shaw advised Parliament that, by the end of the previous year, ten State Arms had been installed in New South Wales courts.⁶¹ For example, the new Children's Court at Campbelltown, located in a building refurbished in 1998, has the State Arms on the inside and outside of the building. The Committee also notes that the new Toronto courthouse built in 2000 uses the State Arms. The Orange courthouse complex, which was finished in 2001, includes the existing heritage listed court in which the Royal Arms of the UK were retained and two new courtrooms which incorporate the State Arms.
- 3.56** The Committee is aware that the policy of installing State Arms, described in paragraph 3.49, has not been consistently applied, as some refurbished court buildings have had the Royal Arms of the UK installed, including the current refurbishment of the old Supreme Court in Queens Square. The Committee also notes that by July 1999 there had been no instance of the State Arms being installed in *conjunction* with existing Royal Arms of the UK. The Committee is unaware of this occurring since that time.⁶²

Office and official residence of the Governor

- 3.57** The Committee has been advised by the Office of the Governor of New South Wales that it uses only a depiction of St Edward's Crown on official documentation to represent the Office and the official capacity of the Governor, Professor Marie Bashir AC.⁶³ The Committee notes that Government House contains several representations of the Royal Arms of the UK but that, as the Governor no longer resides there, arguably these arms are removed from the 'use' category into the 'display' category.

Government offices, other buildings and places or any other connection

- 3.58** As far as the Committee has been able to ascertain, Government offices and Departments across New South Wales use the State Arms where it is desirable to represent the authority of the State, or their own logos. For example, the State Arms are included on the New South Wales Government web site and have been used on the front of the Government Gazette since the early 1900s. The Committee is also aware that the executive consistently uses only the State Arms.

⁶⁰ Submission 14, 12 April 2002.

⁶¹ NSWPD (LC), 29 June 1999, p 1542.

⁶² Departmental Briefing Note, 8 July 1999, supplied to the Committee by the Premier's Department, 28 October 2002.

⁶³ Communication with the Office of the Governor, 5 November 2001. The St Edward's Crown symbolises the sovereignty of the United Kingdom: Submission 5, 27 March 2002.

Arms in other Australian Jurisdictions

3.59 This section provides a brief overview of the existence and regulation of arms in other Australian jurisdictions. While the Committee did not receive comprehensive information on the use of the Royal Arms of the UK in other Australian jurisdictions, some relevant information has been noted in the following paragraphs. As far as the Committee is aware, Victoria and Western Australia appear to be the only jurisdictions that officially require State Arms to be displayed instead of the Royal Arms of the UK, although by way of administrative action rather than legislation.

Commonwealth

3.60 The first official grant of arms to the Commonwealth of Australia was made by King Edward VII, by way of Royal Warrant, on 7 May 1908. The absence of specific references to the States in the design of the 1908 arms led to a number of alterations that were approved by King George V in a Royal Warrant of 19 September 1912.

3.61 Use of the Commonwealth Arms, alternatively known as the Australian Arms, is controlled through the Awards and National Symbols Branch of the Department of Prime Minister and Cabinet.⁶⁴ The Branch has produced guidelines on the use of the Commonwealth Arms that set out, among other things, suitable depictions of the Arms and the appropriate uses of the Arms in documents and on buildings and currency etc.⁶⁵ The Branch advises that, on average, it is contacted once a week by sporting bodies or publishers seeking advice or requesting use of the Arms. The Branch also advised that permission to use the Arms is rarely granted to private individuals and organisations, with two exceptions: Australian sporting teams engaged in international competition; and in relation to books and related material for educational purposes.

3.62 While there is no specific legislation governing the use of the Commonwealth Arms, the use of the Arms without permission may be in breach of specific (and limited) provisions of industrial property law, trade practices law, criminal law and customs law.⁶⁶ The Committee notes that similar legislation may be applicable to State and Territory Arms in other Australian jurisdictions, including New South Wales.

3.63 The Committee was informed that the Commonwealth Arms are used in all cases to represent the authority of the Federal Government of Australia, including in the High Court, the Federal Court and Federal Parliament.⁶⁷ Mr M McCarthy advised the Committee

⁶⁴ Parliament of the Commonwealth of Australia, *op cit*, p x.

⁶⁵ *Guidelines on the Use of the Commonwealth Coat of Arms*. The guidelines can be viewed at: www.dpmc.gov.au/docs/displaycontents1.cfm?&ID=122 (accessed 16 October 2002).

⁶⁶ *Trade Practices Act 1974* (Cth), sections 53 (c) (d) and (e); *Criminal Code Act 1995* (Cth), section 145.1; *Trade Marks Act 1995* (Cth), section 39(2); *Customs (Prohibited Imports) Regulations* (Cth) Item 15, Schedule 2; Parliament of the Commonwealth of Australia, *op cit*, Chapter 4.

⁶⁷ Professor G de Q Walker advised the Committee that the High Court and other federal courts sat under the Royal Arms of the UK until Sir Garfield Barwick as Attorney-General directed that the Commonwealth Arms be used: Submission 1, supplementary submission, 7 August 2002.

that '[e]ven the Governor-General does not use the Royal Arms on correspondence, he uses the badge but does not use the Royal Arms of Great Britain.'⁶⁸ While the Royal Arms of the UK do not appear to be *used* in the Commonwealth sphere at all, they are still *displayed* in some buildings. For example, the Committee was informed by Mr J Thompson, a representative of HAGSOC that the Royal Arms of the UK are displayed on the front of Old Parliament House in Canberra:

There are two coats of Arms on the front on the opposite sides of the entrance. One is the Royal Arms as we now know them and the other is the Australian Arms, simply to indicate that we were a sovereign power within the then empire. Whether you want to do the same in New South Wales is up to you. You can have the Australian Arms or the New South Wales Arms. It is your property and you can do what you like with it.⁶⁹

- 3.64** The Committee notes that a review of the use of the Commonwealth Arms was undertaken by the House of Representatives Standing Committee on Legal and Constitutional Affairs in 1994. The review was prompted by the high incidence of unauthorised commercial use of the Commonwealth Arms and the unsatisfactory administrative basis for regulating its use.⁷⁰ The Committee concluded that the existing laws that could be utilised to protect the Commonwealth Arms against unauthorised use (referred to in paragraph 3.62) were inadequate to enforce a system of authorised use of the Arms. This is discussed further in Chapter 6.

Queensland

- 3.65** The first coat of arms granted to an Australian colony was granted to Queensland by Queen Victoria in 1893. The arms were given a more modern rendering when the supporters - the red deer and the brolga - were assigned in 1977.⁷¹ The use of the Queensland State Arms is regulated by the *Badge, Arms, Floral and Other Emblems of Queensland Act 1959* (Qld). The Act provides that the Arms cannot be used without lawful authority and imposes a fine for unauthorised use.⁷² Application to use the Queensland State Arms must be made in writing to the Director of the Protocol Branch of the Queensland Department of Premier and Cabinet.⁷³ Schedule 1 of the Act sets out the blazon for the Arms in heraldic language and also includes a black and white 'pictorial description' of the Arms. The Act also enables the prescription of alternative arms that bear some resemblance to the ones that have been reproduced.⁷⁴

⁶⁸ Evidence, 12 August 2002. Mr McCarthy is a professional heraldic painter and author and publisher of heraldic works.

⁶⁹ Evidence, 15 August 2002, p 15.

⁷⁰ Parliament of the Commonwealth of Australia, op cit, p ix.

⁷¹ Information provided in Submission 3, 20 March 2002.

⁷² Section 4.

⁷³ *Australian Symbols*, Commonwealth of Australia, 2000, p 31.

⁷⁴ Section 6.

South Australia

- 3.66** The current South Australian State Arms were granted and assigned by way of Royal Warrant by Queen Elizabeth II on 1 February 1984, in place of that previously granted by King Edward VIII in 1936.⁷⁵ According to a newspaper report at the time, the new coat of arms were requested after complaints were made about the original arms being ‘outdated’:

The new coat of arms completes a long saga in search of a new coat after complaints about the outdated appearance of the original State coat, which featured a hefty shearer holding a fleece and a busty woman with a cornucopia of fruits, on either side of a shield with a rising sun and wheat sheaf emblems, capped by a stylised lion. Complaints included that the man’s shear’s were held dangerously close to his lower regions; the woman needed a brassiere, and the two looked as though they were “chatting by the fire”.⁷⁶

- 3.67** Under the *Unauthorised Documents Act 1916* (SA) no person can print, publish or manufacture the Arms without permission and the symbol cannot be used for commercial purposes.⁷⁷ There is no depiction or description of the South Australian State Arms in that Act.
- 3.68** The Committee was advised that at least one courtroom of the South Australian Supreme Court has the South Australian Arms displayed above the bench and that the stationery used by the Court in correspondence also displays the South Australian State Arms and not the Royal Arms of the UK.⁷⁸

Tasmania

- 3.69** The State Coat of Arms of Tasmania was granted and assigned by way of Royal Warrant by King George V in May 1917.⁷⁹ The Committee is not aware of the existence of legislation governing the use of the State Arms in Tasmania. Permission to reproduce Tasmania’s insignia must be sought from the Secretary of the Department of Premier and Cabinet.⁸⁰ The Committee was informed that while the Supreme Court of Tasmania uses the Tasmanian State Arms on official stationery, the Royal Arms of the UK appear above the judge’s seat in each courtroom.⁸¹

⁷⁵ *South Australian Government Gazette*, 19 April 1984, pp 950-951.

⁷⁶ ‘New coat of arms is still bearing fruit’, *The Advertiser*, 15 September 1983.

⁷⁷ Section 3.

⁷⁸ Submission 14, supplementary submission, 9 August 2002.

⁷⁹ *Tasmanian Government Gazette*, 11 March 1919, p 608.

⁸⁰ *Australian Symbols*, op cit, p 47.

⁸¹ Submission 14, supplementary submission, 9 August 2002.

Victoria

- 3.70** Victoria was granted its coat of arms by King George V by way of Royal Warrant in 1910.⁸² Unauthorised use of the Arms is prohibited under the *Unauthorised Documents Act 1958* (Vic). An application for permission to use the arms must be made in writing to the Chief of Protocol of the Victorian Department of Premier and Cabinet.⁸³ The Act does not contain a description or depiction of the Arms.
- 3.71** The Committee is aware of Victorian Government policy, stated in 1984, to progressively replace the use of the Royal Arms of the UK of the United Kingdom with the Victorian State Arms:

It is Government policy that the use of the Royal Coat of Arms will be progressively replaced by the use of the Victorian Coat of Arms. This has already occurred in relation to the Coats of Arms appearing on the Government Gazette and also Acts of the Victorian Parliament. There is no intention to remove the Royal Coat of Arms from public buildings. However, where new buildings are acquired by the Government, the Victorian Coat of Arms will be displayed on that building where such an adornment would be appropriate. Where new court rooms are established, the Victorian Coat of Arms will be displayed rather than the Royal Coat of Arms. However, there is no intention to remove the Royal Coat of Arms from existing buildings or Court rooms until such times as major remodelling or renovation takes place when substitution of the Victorian Coat of Arms would be appropriate.⁸⁴

Western Australia

- 3.72** Western Australia has used the black swan as an unofficial coat of arms since early settlement. It was given official sanction on the State Coat of Arms granted by Queen Elizabeth II in 1969.⁸⁵ Under the *Armorial Bearings Protection Act 1979* (WA) Royal, State and other Arms are protected against use associated with commercial interests, inaccuracy of presentation and unofficial use. The Act does not contain a depiction or description of the Arms.
- 3.73** The Protocol Branch of the Department of Premier and Cabinet has developed guidelines for the use of the State Arms of Western Australia. In accordance with the guidelines, the Arms are normally restricted to use by authorised Western Australian Government Departments and Agencies to authenticate documents, to show ownership of property and to signify Government projects or publications.⁸⁶

⁸² Information provided in Submission 3, 20 March 2002.

⁸³ *Australian Symbols*, op cit, p 25.

⁸⁴ Department of the Premier and Cabinet, Legislative Assembly, 10 September 1984. Answer to Question No 3093.

⁸⁵ Information provided in Submission 3, 20 March 2002.

⁸⁶ *Guidelines for the Correct Use and Depiction of the Coat of Arms of the State of Western Australia*, Protocol Branch, Department of Premier and Cabinet.

Australian Capital Territory

- 3.74** The 'City of Canberra Arms' were granted by King George V in 1928.⁸⁷ The arms were granted by Royal Warrant to the Federal Capital Commissioners appointed under the *Seat of Government (Administration) Act 1924-1928* and their successors in their corporate capacity.⁸⁸ The arms are protected against unauthorised use by the *City of Canberra Arms Act 1932* (ACT). Under the Act, any person who, without the authority of the Minister assumes or uses in connexion with any trade, business, calling or profession, the Arms or any device or design so nearly resembling the Arms is guilty of an offence punishable by a fine.⁸⁹ There is no written description of the Arms, nor depiction of the Arms, in the Act.

Northern Territory

- 3.75** The Northern Territory Coat of Arms was granted by Queen Elizabeth II when the Northern Territory achieved self-government in 1978.⁹⁰ The *Flag and Emblem Act* (NT) prohibits the unauthorised use of the 'Arms of the Territory'. A written description of the Arms of the Territory is contained in Schedule 1 of the Act and a 'reproduction' of the Arms of the Territory is set out in Schedule 2.
- 3.76** The Committee notes that in the official version of the Act a colour reproduction of the Arms is contained in the Schedule, as is a colour reproduction of the Northern Territory flag. Other versions of the Act, such as that displayed on the Northern Territory Parliament's web page, the picture is not reproduced. Instead, a reference is made to the fact that the reproduction is contained in 'the pamphlet copy'. The Committee has been advised that at the time the Act was introduced that a special arrangement was made between Parliamentary Counsel and the Protocol Section for the pamphlet copy to be produced and made available to interested parties.⁹¹

⁸⁷ Information provided in Submission 3, 20 March 2002.

⁸⁸ *City of Canberra Arms Act 1932* (ACT), s 3.

⁸⁹ *City of Canberra Arms Act 1932* (ACT), s 4.

⁹⁰ Information provided in Submission 3, 20 March 2002.

⁹¹ Communication with the Northern Territory Parliament Procedure Office, 28 October 2002.

Chapter 4 Arguments For and Against the Proposed Bill

This chapter examines the arguments for and against the general policy objective of the proposed State Arms Bill 2002, as presented to the Committee in submissions and in evidence. Particular aspects of the Bill are examined in the following chapter. The general policy objective of the Bill is to require that, where arms representing the authority of the State of New South Wales are to be used, it is the State Arms that are to be used and not the Royal Arms of the UK. Two general types of arguments were presented to the Committee during the inquiry. These were: first, arguments based in constitutional law and the law of arms regarding which arms are the *correct* arms to use to represent the authority of the State of New South Wales; and second, arguments regarding the *preferred* arms to use, drawing on symbolism, history, society and culture.

Arguments Supporting the Proposed Bill

- 4.1** Support for the general policy objective of the proposed Bill was expressed by several individuals, many with considerable knowledge of heraldry, as well as by organisations including Heraldry Australia, the Flag Society of Australia (Flag Society) and the Society of Australian Genealogists. Strong arguments were made that the State Arms, rather than the Royal Arms of the UK, are the *correct* arms to use to identify the authority of the State of New South Wales. Other arguments emphasised the symbolic significance of using the State Arms, for example, that pride in New South Wales necessitated the use of arms that represented the New South Wales Government rather than the Royal Arms of the UK.

State Arms are the correct arms to use

- 4.2** Several inquiry participants argued that the sovereign status of New South Wales, as separate from the United Kingdom, warrants the use of arms that reflects that status.⁹² Therefore, since the State Arms are the Arms of dominion and sovereignty of the State of New South Wales, the Royal Arms of the UK should not be used.⁹³ On the basis of this argument, the State Arms have been the correct arms to use since they were granted in 1906. For example, the Flag Society commented:

As to TOR 1, the circumstances of Federation in 1901 and Royal Warrant of Arms to NSW in 1906 are justification to display the same State Arms in preference to the Royal Arms of the United Kingdom. NSW is not part of the United Kingdom...The 1906 Arms represent sovereignty of the state of New

⁹² The Committee notes on announcing the proposed Bill Mr Breen stated: "New South Wales received its own coat of arms from Edward VII in 1906 and there is no excuse for continuing to use the royal arms...I am hoping to secure Government support for the bill, which is a logical consequence of our independence from the United Kingdom of Great Britain and Northern Ireland": Breen P, 'Royal Arms Inquiry', *Media Release*, 6 March 2002.

⁹³ The Committee notes that the State Arms may be considered to be the 'NSW Royal Arms' in the sense that they were granted by way of Royal Warrant.

South Wales and are of equal status with those granted to the Commonwealth of Australia (within its jurisdiction) and (within the United Kingdom) the Royal Arms.⁹⁴

- 4.3** The Society of Australian Genealogists also supports the use of State Arms rather than the Royal Arms of the UK on the basis that the State Arms are representative of New South Wales being a separate sovereign state:

The Society is of the strong view that all limbs of the government of the Sovereign State of New South Wales (legislative, judicial and executive) should be represented by a coat of arms which uniquely represents its separate sovereign status...The Society believes that the "Royal Arms" represent the sovereignty of the United Kingdom, our former Sovereign, and that those historical arms no longer represent the sovereignty of the State of New South Wales. The NSW State Arms are widely and appropriately used to represent the sovereignty of the State of New South Wales. We believe that they should be the only arms used for that purpose and that the UK Royal Arms should not be used for that purpose. The historic Royal Arms should continue to be displayed except where that display is a use of the Arms as representing our sovereign eg in Parliament, the Courts etc.⁹⁵

- 4.4** Heraldry Australia similarly emphasized that the sovereign status of the State of New South Wales requires the State Arms to be displayed:

Heraldry Australia agrees that the use of the Royal Arms of the UK to represent the sovereignty of the Queen of Australia for the general purpose of Australia or for the particular purposes of any of the States (including NSW) is anachronistic and no longer representative of the true sovereign of those various sovereignties.

Heraldry Australia supports the stated objective of the Bill which is to provide for the use of the Arms of the State of NSW to represent the sovereignty of the State in Parliament, courts, the office of the Governor, and other instrumentalities and offices of the State to the exclusion of the Royal Arms of the UK.

Heraldry Australia accepts that the proper representation of the present sovereign of NSW will involve the discontinuance of the use of the UK Royal Arms on documents, seals etc and that there will be some limited occasions which will require the removal or obscuring of existing representations of the UK Royal Arms which are in positions of pre-eminence (e.g above the chairs of the presiding officers of Parliament so as to permit the use of the State Arms) and are part of the historic fabric of structures and institutions.⁹⁶

- 4.5** Others concurred that since the Arms were granted in 1906 it has been constitutionally appropriate to use them to represent the authority of the State of New South Wales. In this regard, Mr J Thompson of HAGSOC stated before the Committee:

⁹⁴ Submission 43, 3 May 2002.

⁹⁵ Submission 57, 15 August 2002.

⁹⁶ Submission 34, 17 May 2002.

Mr THOMPSON:...First, we would like to say that it is our belief that it was constitutionally appropriate and always open to New South Wales to use the Arms as granted, as ensigns of public authority at the very time they were granted to you.

...

It is open to you. That is to say, the Arms could be placed in prominent and pre-eminent places such as courtrooms and other public venues. The New South Wales Government did not need the Australia Acts of 1986 to do it; it already had that power. Concerning the question of pre-1986 and post 1986 effects on the use and display of Arms we believe that the Royal Arms continue to be used because a lot of notice was taken of past comments and views expressed by members of the judiciary at both Federal and State levels. As we understand it, many members of the bench insisted on the continual display of Royal Arms in court so long as constitutional links in general remained and appeals to the Privy Council, in particular, were retained.

We believe that these and similar comments were simply assertions of belief and were never publicly challenged. It is our contention that, because of the pre-eminent position of members of the judiciary, these Arms continue to be displayed. We got an example of this in the 1970s when the High Court was built. Sir Garfield Barwick, the then Chief Justice, also insisted on the Royal Arms to be displayed as well as the Australian Arms because of this continued belief.⁹⁷

The Hon. JOHN HATZISTERGOS: You have argued that the power always existed for us to use the New South Wales Coat of Arms in place of the so-called Royal Coat of Arms. When the State Coat of Arms was granted the advice that was given with the grant from the Colonial Office in 1912 was that "the extent to which the use of these Arms shall replace the use of the Royal Arms is a matter within the discretion of Ministers". So it was up to Ministers in New South Wales to determine the extent to which they were to be used in place of the Royal Arms. Is that the situation as you understand it?

Mr THOMPSON: Yes.

The Hon. JOHN HATZISTERGOS: To that extent, is it a fact that the Australia Acts make no difference?

Mr THOMPSON: That is correct. The Australia Acts make no difference. You had the power from the very beginning because the Arms granted were the property, if you like, as well as a mark of identity of the State of New South Wales. You could have done it way back then. It was only because of the views of the judiciary at the time, and other prominent people, that the Royal Arms continued to be displayed.⁹⁸

4.6 The point raised by the Hon John Hatzistergos MLC in the transcript extract above regarding the British Colonial Office was also noted in paragraph 3.40. The above extract also refers to the passing of the Australia Acts in 1986 and this significant point in

⁹⁷ Evidence 15 August 2002, p 19.

⁹⁸ Evidence, 15 August 2002, pp 20-21.

Australia's constitutional history was raised by others during the inquiry. Mr d'Apice addressed the effect of the Australia Acts on Australia's legal relationship with the United Kingdom in evidence to the Committee:

That is an Act which was passed by the United Kingdom Parliament and the Commonwealth Parliament on the advice and at the request of the Commonwealth and the States and it was intended to clarify the sovereign and independent status of Australia and its various States. The preamble to the Act says: "The Prime Minister of the Commonwealth and the Premiers of the States in conference on various dates agreed on taking certain measures to bring the constitutional arrangements affecting the Commonwealth and the States into conformity with the status of the Commonwealth of Australia as a sovereign independent and Federal nation", and it goes on to make various provisions which exclude any legislation passed thereafter by the United Kingdom Parliament from having any effect in either the Commonwealth or the States. It also says in section 10: "After the commencement of this Act, Her Majesty's Government in the United Kingdom shall have no responsibility for the government of any State". It is quite clear from the legislation that, whatever may have been the position before 1986, certainly there is no power in any aspect of the sovereignty of the United Kingdom over either the Commonwealth of Australia or the State of New South Wales.⁹⁹

- 4.7** Several inquiry participants identified the passing of the Australia Acts as the point at which it was no longer *constitutionally appropriate* to use the Royal Arms of the UK to represent the authority of the State of New South Wales. For example, Justice Dunford argued that as the passing of the Australia Acts rendered the Commonwealth of Australia completely independent from the United Kingdom, it is not longer appropriate to use the Royal Arms of the UK:

The use of the United Kingdom arms (then commonly referred to as the Imperial arms) was undoubtedly appropriate in colonial times and, it could be argued, continued to be appropriate notwithstanding the Statute of Westminster 1931, having regard to the continued authority of the United Kingdom Parliaments in respect of the State governments. However, since the passing of the Australia Acts 1986, the Australian states, as well as the Commonwealth, are completely independent of the United Kingdom parliament and government (ss 7-10); and in these circumstances, the continued use of the United Kingdom arms is, I suggest, anomalous and inappropriate.¹⁰⁰

- 4.8** Justice Dunford's view supports the advice of former Solicitor General, Mr Keith Mason QC, mentioned previously in this report, regarding the proper use of coats of arms in New South Wales courts and other government buildings. In that advice Mr Mason concluded that:

In my view it is no longer *constitutionally appropriate* to display the Royal Arms in New South Wales courts and other public buildings. The appropriate coat of arms

⁹⁹ Evidence, 12 August 2002, p 3.

¹⁰⁰ Submission 14, 12 April 2002.

to use in relation to *any* aspect of the function of New South Wales government is, since the *Australia Act 1986* (Cth), the New South Wales Coat of Arms.¹⁰¹

4.9 It is argued that since 1986, the Royal Arms of the UK have only an historical connection to New South Wales, and that to display them would be the same as displaying the arms of any other foreign power, such as the United States. In proposing the Bill, the Hon Peter Breen MLC stated:

It is an odd thing that we continue to display the arms of a foreign country in our public buildings.¹⁰²

4.10 This point was emphasised during the inquiry by reference to a 1999 High Court of Australia case in which the Court described Great Britain for the first time as a *foreign power* for the purposes of the Australian Constitution.¹⁰³ Mr R d'Apice commented on the case in relation to the display of arms in the chambers of Parliament:

The Hon. JOHN RYAN: You would seem to be suggesting - I might have it wrong - that in relation to existing Arms which are in use, those for example that appear above the President's and the Speaker's chairs in New South Wales, given, they are not correct Arms to be in use and there is possibly a strong case to remove and replace those?

Mr d'APICE: I think that there probably is, but the decision may ultimately be made to leave them in place because of their heritage value and to put somewhere else, but still above the Speaker and above the President, a representation of the State Arms, which are the current Arms. Their functions should not continue to be exercised solely under a representation of the Arms of a foreign country. The High Court in the case of *Sue v Hill*... The High Court held that she was the subject of a foreign power; that the United Kingdom was, since 1986, a foreign power. It is inappropriate that the Speaker and the President exercise their functions under representations which say: I am here exercising a foreign power. It may be from a heritage point of view that those representations should stay there, but they certainly should be supplemented by the Arms of the State of New South Wales. I think that that would be clumsy and unfortunate. I think that they could be removed but, as I say, respectfully conserved, displayed, interpreted, not thrown away, which is what happened on various occasions with those old Arms that I have illustrated here. They were displayed in New South Wales and in use and the great seal of New South Wales displayed them, the judges sat under them, but when they moved on they were just taken down and disposed of and I do not think you will find a single representation of any of the others except the current Royal Arms anywhere.¹⁰⁴

¹⁰¹ Mr Mason's advice was provided to the Committee by the Attorney General, the Hon Bob Debus MP: Submission 55, 5 August 2002.

¹⁰² 'Regulating the Use of Coats of Arms in NSW', *LawQuick Newsletter*, Autumn 2002, p 5.

¹⁰³ *Sue v Hill* [1999] HCA 30 (23 June 1999). In this case the Court ruled that One Nation representative, Ms Heather Hill, could not take her seat in the Senate because she was a British citizen (as well as an Australian citizen) and so 'a subject or citizen of a foreign power' within the meaning of section 44(1) of the Constitution.

¹⁰⁴ Evidence, 12 August 2002, p 8.

- 4.11** The Committee notes that New South Wales is not alone in dealing with these issues. The debate arose in the early 1990s in South Australia. In the context of that debate, the former Crown Solicitor of South Australia, Mr BM Selway expressed the view that the *Australia Act 1986* (Cth) is the basis for displaying State Arms rather than the Royal Arms of the UK and that this applies to the courts just as it does to other arms of Government:

Following the passage of the Australia Act in 1986, the Crown in right of the State of South Australia is now legally separate and distinct from the Crown of Great Britain. The current position is that the monarch is the Queen of Australia. The State and the Commonwealth are separate agents of the one and indivisible Crown. That Crown is legally and constitutionally separate from the United Kingdom Crown (although the same person wears both). The Coat of Arms of the Crown in right of the State of South Australia is the “piping shrike” Coat of Arms granted by Her Majesty on 1 February 1984. Since the passage of the Australia Act it is constitutionally inappropriate to use the Royal Coats of Arms. Since the passage of the Act, the appropriate coat of arms for matters relating to the Crown in right of the State of South Australia is the “piping shrike” Coat of arms...

Against this background it can be seen that the change in the Coat of Arms in or Courts has nothing whatever to do with republicanism. Nor does it have anything to do with judicial independence (the Executive and the Legislature also use the “Royal” Coat of Arms). The change is merely a reflection that the Queen of Australia is now constitutionally separate and distinct from the Queen of the United Kingdom.¹⁰⁵

Symbolic importance of the State Arms

- 4.12** The Committee was also informed of the view that the use of the State Arms was necessary to reflect and promote civic pride in the State of New South Wales. For example, Professor G de Q Walker argued:

We are one of the world’s oldest continuing democracies, having had full adult suffrage much longer than the United States, Britain or Canada, not to mention the rest of the world. We should be proudly displaying our own symbols, not feebly continuing in the shadow of someone else’s.¹⁰⁶

- 4.13** In a similar vein, the New South Wales Government Architect, Mr Chris Johnson, stated:

I can understand the objectives of the Bill to reinforce the importance of the state of New South Wales through the use of state arms rather than that of the United Kingdom.¹⁰⁷

¹⁰⁵ “Piping Shrike In”, Letters to the Editor, *Law Society Bulletin*, July 1992, document tendered by Mr d’Apice, 12 August 2002.

¹⁰⁶ Submission 1, 6 March 2002.

¹⁰⁷ Correspondence from Mr C Johnson, 14 November 2002.

4.14 Mr CRP George emphasised the strength of the State Arms in symbolising the role of the State and creating a cohesive society:

The display of [State] Arms provides a powerful, but inexpensive and peaceful, symbolism of the role of the State in society. It provides a source of pride and inspiration to those who recognise the advantages that the activities of the State government afford them in their everyday lives. It suggests to those who may contemplate offending against State laws that there is continuity and permanence in NSW institutions that they will have difficulty evading. It gives reassurance to those who may find themselves victims of crime – or who fear becoming victims – that instrumentalities of the State exist to protect and support them. Such symbolism is particularly valuable when a society, such as the NSW community at the present time is striving to accommodate many disparate groups from diverse backgrounds. Individuals soon come to recognise a symbol that identifies the unity of the society in which they live. The more widely the talisman of NSW appears in the community the more effective its symbolism is likely to become. The colourful display on buildings and stationery of the existing State Arms would offer the government an inexpensive way to strengthen and unify society.¹⁰⁸

4.15 The Flag Society argued that the State Arms more effectively symbolises the State's history than the Royal Arms of the UK:

The NSW Coat of Arms is more effective in symbolising our heritage and history as a state than the English Royal Arms. The formal adoption of a Coat of Arms in 1906 symbolically marked the change of status from colony to state and with a 96 year history has a proven heritage in its own right.

If the elements of the Arms are considered, then they provide necessary and sufficient linkages to the older British heritage – the red Cross of St George, the English Royal Leopard and the British Lion Supporter.

The elements also have local heritage beyond 1906. The Southern Cross on a red cross also dates to the 1823 national Colonial Flag for Australia. The Arms are similarly styled to the unofficial Arms of Australia that date from at least 1853, with its golden fleece and sheaves of wheat; similar elements are also found in the Arms of the University of Sydney dating from 1858. These elements represent more effective local symbols of heritage than the continued use of the Coat of Arms of the British Monarch....¹⁰⁹

4.16 Mr A Murray saw the Bill as strengthening the symbolism of our State:

It is appalling that for over 100 years, as a State of the Commonwealth of Australia, the key elements of the Government of NSW (the Governor, the Parliament and the courts) have chosen as their symbol the Coat of Arms of another nation...The proposed Bill is long overdue. It is a further chipping away

¹⁰⁸ Submission 38, 6 May 2002.

¹⁰⁹ Document tendered by Mr Burton, 12 August 2002. This position was expressed in response to the argument that the Royal Arms of the UK should be retained because of it is symbolic of our heritage and history (see paragraphs 4.25 - 4.29).

at the legacy of an Australian mind set that delivered ambiguous symbols to our nation and its States.¹¹⁰

4.17 Finally, Mr R Henshaw informed the Committee that:

I feel that it is long overdue that we assume our own identity. We are no longer a colony of the British Empire, but a strong, forward looking State with our own destiny. The British Coat of Arms is fine for Buildings and offices in Britain, but not for our State buildings.¹¹¹

Other arguments

4.18 Mr M McCarthy pointed out to the Committee that the Royal Arms of the UK are not used in other countries of the Commonwealth:

In almost all of the Commonwealth, even today, they use the coat of arms of the place of which she is sovereign and never the royal arms; they do not use it in Canada, the Commonwealth never uses it; some of the States use it here... It is akin to New South Wales suddenly using the coat of arms of Tasmania. The Queen is certainly sovereign of Tasmania as well, but the Parliament of New South Wales does not act in any way for Tasmania.¹¹²

4.19 Professor G de Q Walker suggested that another reason to use the State Arms is that its use promotes the federal structure of government in Australia:

There is a further reason for the exclusive use of the State arms. Political power in the Australian Commonwealth has become highly centralised, especially since the 1970s, as a result of certain constitutional decisions of the High Court. At the very time when many countries overseas are rediscovering the advantages of competitive and co-operative federalism, Australia is still throwing those benefits away... There are several practical steps that could be taken to achieve a more balanced federal structure, and one that should not be overlooked is the appropriate use of symbols... The point here is that the State should be strengthening public awareness of the constitutional institutions of New South Wales by substituting its own arms in those buildings where the UK arms are still in use, such as the courts. Our court system is something of which the people of New South Wales can be proud. The Supreme Court is one of the world's oldest courts and the Court of Appeal can hold its own with any appellate court in the common law world. There should be no confusion or ambiguity about who owns and runs them: the people of New South Wales, not in some vague and undefined sense the Crown of the United Kingdom of Great Britain and Northern Ireland. This is inescapably true since the Australia Act 1986. Some justices of the High Court have held (and none denied) that as a result of those Acts, legal sovereignty must now be taken to flow from the people, not from the Crown. Proper

¹¹⁰ Submission 13, 26 March 2002.

¹¹¹ Submission 54, 23 April 2002.

¹¹² Evidence, 12 August 2002, p 35.

symbolic recognition of these truths will strengthen Australia as a sovereign federal nation.¹¹³

Arguments Against the Bill

4.20 General objection to the Bill was expressed by many individuals who made submissions to the inquiry, as well as by organisations such as the Australians for Constitutional Monarchy ('ACM') and the Christian Democratic Party ('CDP'). The rationale for opposition to the Bill was varied. Some argued that the Royal Arms of the UK are the correct arms to use and not the State Arms, while others focused on the importance of maintaining our historical connection to the United Kingdom and the concomitant heritage value of the Royal Arms of the UK. Some inquiry participants resolutely rejected the Bill suggesting, for example, that it would amount to vandalism to remove Royal Arms of the UK. Several detractors of the Bill also warned that it represented a form of 'creeping republicanism', and that it would place an unnecessary cost burden on the State.

Royal Arms of the UK are the correct arms to use

4.21 Several submissions argued that the Royal Arms of the UK are being used correctly in New South Wales, rather than the State Arms. For example, the CDP argued that, as Queen Elizabeth II is New South Wales' 'official head of state', it is appropriate and correct to use the Royal Arms of the UK to represent the Government:

The Christian Democratic Party supports the continued use of the Royal Coat of Arms as they best represent our head of state, Her Majesty Queen Elizabeth II. As pointed out the Royal Coat of Arms in actual fact are a better representation of our national and state founding, our culture, our history and our heritage. The Breen Bill is designed around the false premise that the Royal Coat of Arms are representative of another national government, eg. The United Kingdom, and are not relational in modern day Australia. As the Monarch is our head of state this is a false premise.¹¹⁴

4.22 In evidence before the Committee, the Reverend the Hon Fred Nile MLC reiterated the view held by his party:

And [the State Arms] represent the sovereignty of the people but also we have a constitutional monarchy where we have the Queen, Queen Elizabeth II, the Crown as head of State. Until that is changed then the Royal Coat of Arms should not be removed.¹¹⁵

4.23 In response to a question about the effect of the Australia Acts, Rev Nile maintained that as Queen Elizabeth II is Australia's Head of State, the Royal Arms of the UK should be displayed:

¹¹³ Submission 1, supplementary submission, 7 August 2002.

¹¹⁴ Submission 4, 28 March 2002.

¹¹⁵ Evidence 15 August 2002, p 6.

I appreciate that there has been some confusion—I am not indicating by this Committee, but in the community—as to what really did happen with the Australia Acts of 1986. My view, and I believe the correct view, is that the *Australia Acts 1986* did not remove Her Majesty Queen Elizabeth as Queen of Australia and as the Australian Head of State. It did remove the power of the British Parliament to legislate with regard to Australia. There are two separate issues. The Australia Acts of 1986 also clarified the powers and functions of Her Majesty and Governors in respect of the States. In fact, because it is a recent piece of legislation, it supports the argument that I am presenting to this Committee. It reaffirmed—I think, in some ways, in a stronger way—the role of the Crown as represented by Queen Elizabeth and the Governors in respect of Australia and each of the States.

It is therefore appropriate to display the Royal Coat of Arms as they represent the Australian Head of State, Her Majesty. Since 1982 the Queen has been referred to as the Queen of Australia, and as we know the Australian military is still referred to as the Royal Australian Navy, Royal Australian Air Force and the Royal Australian Army. British sovereignty is not the issue. Australia is a sovereign nation under the Crown. As stated by the Garter Principal King of Arms, who is the foremost authority on coats of Arms in the world, in correspondence dated 8 May 2002 to me, “The Royal Arms displayed in Australia are the Arms of the Queen as Sovereign of Australia. They are used throughout the Commonwealth where the Queen is Head of State.”¹¹⁶

4.24 Other submissions relied on the fact that Australia remains a constitutional monarchy to justify the continuing use of the Royal Arms of the UK:

Until the people of New South Wales and Australia vote in a referendum in accordance with Commonwealth and State Constitutions to become a republic, No change should be made to the use of the Royal Coat of Arms by being replaced in the respective Houses of New South Wales Parliament, the Legislative Council or the Legislative Assembly.¹¹⁷

Cultural and historical significance of the Royal Arms of the UK

4.25 Several submissions argued against the Bill by stressing the cultural and historical significance of the Royal Arms of the UK as a symbol of Australia’s British heritage.¹¹⁸ For example, the Hon Justice K R Handley AO of the Supreme Court of New South Wales Court of Appeal stated, with regard to the use of the Royal Arms of the UK in the courts:

The State has sought to protect its physical heritage in its many fine old buildings of architectural merit and has legislated for that purpose. Many of its fine old heritage buildings are owned by the State Government or its instrumentalities, and

¹¹⁶ Evidence, 15 August 2002, p 4.

¹¹⁷ Submission 21, 20 April 2002. See also Submission 11, 5 April 2002 and Submission 17, 15 April 2002.

¹¹⁸ For example, Submission 9, 5 April 2002; Submission 10, 10 April 2002; Submission 12, 5 April 2002; Submission 19, 19 April 2002; Submission 20, 29 April 2002; and Submission 33, 29 April 2002.

many of those buildings are courts. These old courts in Sydney, and in the long settled parts of the State, stand as memorials to the Government Architects of the day and their staff who designed the buildings, and the Public Works Department and their staff who built them. The Royal Coat of Arms built into the fabric of the large number of heritage courthouses in this State, which are still in use as courts, are as much a part of the fabric of those buildings as any column, ceiling or façade. It would be an act of barbarism for these coats of arms to be removed, akin to the recent destruction of the Buddhist statues in Afghanistan by the Taliban, and you didn't have to be a Buddhist at the time to think that.

The Royal Coats of Arms in these fine old court buildings are doing no one any harm. No one thinks they represent the current power of the Sovereign or of the United Kingdom in this State. As the Committee will know there is no such power. They are there as part of our architectural and legal history. No one has yet suggested that we change the names of States, cities or streets named after Kings, Queens or UK politicians, or that we pull down their statues. They exist as reminders of our history.¹¹⁹

- 4.26** The CDP identified the removal of Royal Arms of the UK as an act of vandalism because of their historical significance:

Leaving aside these historical considerations the Royal Coat of Arms should also be retained for heritage and aesthetic reasons. Removal of the Royal Coat of Arms would be an act of vandalism.¹²⁰

- 4.27** The ACM argued that the Royal Arms of the UK form part of the social and physical heritage of the State and should not be discarded:

The Royal Coat of Arms has developed a local identity and for the reasons set out below has become identified with the Sovereign in her capacity as Queen of Australia. This is because they have been used in this State since 1788. Accordingly they have enjoyed a continuous use for over two hundred years. They form part of the social and physical heritage and history of this State. In these circumstances they should not be discarded...As an independent and mature nation we should be proud to keep symbols which originated in the past and other places. It does us no credit to disown these symbols. We value our language, the Common Law, traditions and values which we have inherited and Australianised. Similarly we should value the symbolism of the Royal Coat of Arms. Many nations have evolved from a colonial to a sovereign status and not felt the need to desecrate their heritage.¹²¹

- 4.28** Mr D McGuire emphasised the cultural significance of the Royal Arms of the UK:

They are magnificent pieces of sculpture, art and craftsmanship and have great cultural significance not only for NSW, but for the whole of Australia. They represent the earliest institutions of law and order and European life and culture

¹¹⁹ Submission 41, 2 May 2002.

¹²⁰ Submission 4, 28 March 2002. Submission 15, 12 April 2002, also warned that the removal of Royal Arms of the UK would be an act of vandalism.

¹²¹ Submission 36, 6 May 2002.

on this continent and have been proudly displayed by these same institutions ever since.¹²²

4.29 Ms L Crisp expressed similar views:

I would like to strongly protest against any such step being taken to remove our wonderful Coat of Arms. It is part of our heritage and its removal from any building would be taking away part of our history, which needs to be left to tell the story of our country to future generations.¹²³

‘Creeping republicanism’

4.30 Several inquiry participants viewed the proposed Bill as a form of ‘creeping republicanism’, a mechanism designed to encourage and perhaps precipitate Australia’s becoming a republic.¹²⁴ For example, the ACM submission stated:

The reality behind this proposal is that it is another example of creeping republicanism or republicanism by stealth. Such a trend is inherently undemocratic. The issue of whether Australia should or should not become a republic was put to referendum in 1999. It was decisively rejected by all six States. The ‘No’ vote in New South Wales was 53.57%. There is no mandate from the community to make this change.¹²⁵

4.31 Professor D Flint of the ACM warned that the Bill may lead to the removal of other symbols of the United Kingdom:

We see this—consciously or probably unconsciously—as change for the sake of change and part of creeping republicanism. We suspect—it appears in some of the submissions—that this will lead to a changing of the State Arms, for which at least one submission calls, and changes in the State flag and the national flag. We do not think we should turn our backs on our history. We think it not appropriate to proceed by way of legislation.¹²⁶

4.32 The CDP also argued that the Bill was motivated by republicanism:

The Christian Democratic Party does not support these republican moves to replace the Royal Coat of Arms with the NSW State Arms...Until the people of NSW and Australia vote in a referendum in accordance with the Commonwealth and State constitutions and not a plebiscite to become a republic NO change should be made to the use of the Royal Coat of Arms by being replaced in the

¹²² For example, Submission 51, 3 June 2002.

¹²³ Submission 7, 10 April 2002.

¹²⁴ For example, Submission 4, 28 March 2002, Submission 6, 5 April 2002, Submission 10, 10 April 2002, Submission 21, 20 April 2002, Submission 22, 23 April 2002, Submission 23, 5 April 2002, Submission 24, 20 April 2002 and Submission 36, 6 May 2002.

¹²⁵ Submission 36, 6 May 2002.

¹²⁶ Evidence, 15 August 2002, p 27.

respective Houses of the NSW Parliament, the Legislative Council or the Legislative Assembly.¹²⁷

4.33 Rev Nile expanded on the CDP position in response to a question from the Chair of the Committee:

CHAIR: ... in terms of the State of New South Wales, King Edward VII granted these Arms and I am just having difficulty appreciating how that can be said to be associated with republicanism. I doubt that republicanism was even a glint in King Edward VII's eye at the time he made the grant.

Reverend the Hon. FRED NILE: Yes, but I am not suggesting that. I am saying that the move now to remove the Royal Coat of Arms could be described as republicanism by stealth, the current move. Again, when King Edward VII granted it, I would assume that if someone had also attached—I do not have the correspondence—something that suggested, "We want to replace the Royal Coat of Arms with this one", I think you might have found that there would have been a point of controversy about that.¹²⁸

4.34 Counter-arguments suggested that the Bill is not republican motivated, that it merely seeks to require that the arms that most accurately reflect the sovereign of the State of New South Wales are used. In this regard, Mr R d'Apice stated:

Could I first say that the purpose of this Bill and the motivation behind it is in no way republican or anti-monarchist in its intent. Really it should have the opposite effect. The Queen of Australia in the right of New South Wales is our sovereign and the purpose of this Bill is to ensure that she is represented in this sovereignty by symbols of this sovereignty. We would consider it quite eccentric if she were to be represented by the Royal Arms of Canada or of New Zealand and we should think it equally eccentric that she is represented here by the Royal Arms of the United Kingdom of Great Britain and Northern Ireland.¹²⁹

4.35 The Committee notes that the advice of the former Solicitor General referred to earlier in this report rejected the type of arguments put by the ACM and the CDP:

Displaying the State Coat of Arms in State courts is not to engage in the "creeping republicanism" decried in South Australia. That suggestion confuses the desire to display a particular symbol of the State's relationship to Her Majesty with a desire to sever ties altogether. For those eager to maintain symbolic links with the United Kingdom, the use of the State Coat of Arms surely is sufficient'.¹³⁰

¹²⁷ Submission 4, 28 March 2002. See also Christian Democratic Party, 'Republican' plan to remove Royal Coat of Arms – Insult to Queen', *Media Release*, 2 April 2002. Proposals to alter the State Arms are examined in Chapter 6.

¹²⁸ Evidence, 15 August 2002, p 3.

¹²⁹ Evidence 12 August 2002, pp 1-2.

¹³⁰ Mr Mason's advice was provided to the Committee by the Attorney General, the Hon Bob Debus MP: Submission 55, 5 August 2002.

Cost

- 4.36** The potential cost of the proposal to replace Royal Arms of the UK with State Arms was also raised as an argument against the Bill.¹³¹ In this regard, the ACM argued that the proposal would involve ‘substantial, unnecessary and unwarranted’ cost:

The removal of the existing Royal Coat of Arms and its replacement by the State Coat of Arms would involve a substantial, unnecessary and unwarranted monetary cost. This must be met by the taxpayer. The expenditure will confer a detriment not a benefit. It cannot be justified.¹³²

- 4.37** Justice Handley expressed similar concerns, querying whether funds should be spent on ‘purely cosmetic’ changes:

The legislation would impose costs on the State budget. These may not be great, but would be appreciable and are quite unnecessary. The State budgets for police, health, education, youth and community services and the courts are all under pressure. There are real practical problems in each of these areas which need to be addressed, and this will require resources. Money should not be wasted on purely cosmetic changes to parts of our architectural and legal heritage which do no harm to anyone, which are supported by law, and which emphasise the continuity and stability of our judicial institutions.¹³³

- 4.38** The Australiana Society, which objected to the proposal to remove any ‘historical coats of arms’ (but did not object to new buildings using the State Arms), also raised the issue of cost:

A search and destroy mission to identify Royal coats of arms, assess their heritage significance, remove them, replace them with new State coats of arms and store them seems to us to be profligate use of resources in the New South Wales Justice system. It would be far preferable and economical in our view to identify these objects, assess them and preserve them as a proud part of our Colonial heritage.¹³⁴

- 4.39** The Committee was not provided with sufficient information to ascertain the potential cost of the proposal to replace Royal Arms of the UK with State Arms in New South Wales. The Committee notes however, that in June 1999, the former Attorney General, the Hon Jeff Shaw MLC, stated that the cost in relation to the courts alone could exceed \$300,000:

...as at July 1995 there were about 500 coats of arms in New South Wales courtrooms. It was estimated that the cost of providing new coats of arms for those courts could exceed \$300,000.¹³⁵

¹³¹ For example, Submission 2, 12 March 2002; Submission 19, 19 April 2002; Submission 29, 29 April 2002; Submission 36, 6 May 2002; Submission 41, 2 May 2002; Submission 46, 7 May 2002; and Submission 51, 3 June 2002.

¹³² Submission 36, 6 May 2002.

¹³³ Submission 41, 2 May 2002.

¹³⁴ Submission 46, 7 May 2002.

¹³⁵ NSWPD (LC), 29 June 1999, p 1542.

Other arguments

- 4.40** Mr CRP George noted that the Bill may not be *necessary* since the Government already has the power to use the State Arms rather than the Royal Arms of the UK:

I would suggest to the Committee that the NSW Parliament need not proceed with this Bill if the principal purposes are to replace 'the United Kingdom arms' with the NSW ones, since Ministers have had the power to use the NSW arms alone for almost a century and presumably would have done so if they perceived public advantage in so doing...I would suggest however, that, passage of the Bill in its present form could oblige Ministers to carry out the as yet incompletely fulfilled desires of King Edward VII when he granted the existing arms in 1906.¹³⁶

- 4.41** Rev Nile drew the Committee's attention to what he sees as the Christian symbolism of the Royal Arms of the UK as a further argument for retaining its use in New South Wales:

...That is an historical coat of Arms, called the Royal Coat of Arms. That has in it, as I said in my submission, tremendous symbolism. Even the unicorn, as you would know, is not a real animal but a biblical animal. It is referred to in the *Bible* and perhaps other writings. Again, it is part of our Christian heritage. That Royal Coat of Arms embodies a great deal of Christian symbolism, which is another reason why we as a Christian political party believe it is a further argument for retaining it.¹³⁷

Conclusion

- 4.42** The Committee has carefully considered the arguments presented to it in submissions and in evidence and expounded in this chapter. Leaving aside the specifics of the Bill, which are examined in the following chapter, the Committee has concluded that it supports the general policy objective of the Bill to require that where arms representing the authority of the State are used the State Arms should be used rather than the Royal Arms of the UK.
- 4.43** With regard to the dispute as to the correct arms to use, the Committee considers the argument that it has been constitutionally appropriate to use the State Arms since the passing of the Australia Acts to be particularly persuasive. The Committee does not rule out, however, the possibility that it has been constitutionally appropriate to display the State Arms since they were granted in 1906.
- 4.44** Some arguments presented in submissions and in evidence to the inquiry drew loosely on the 'laws of arms' in support of the proposition that the Royal Arms of the UK are the correct arms to use. As noted in chapter 3 the status of the laws of arms in Australia is uncertain and the matter has not been judicially considered. Since the State Arms were conferred in accordance with the laws of arms it seems nonetheless appropriate to consider whether the laws of arms require one or other of the arms to be displayed. For even if New South Wales is not bound by the laws of arms, the use of arms granted by a recognised

¹³⁶ Submission 38, 6 May 2002. In regard to the latter comment see paragraph 3.40. The Committee notes that Mr George did not specifically raise this point as an argument against the Bill.

¹³⁷ Evidence, 15 August 2002, p 10.

heraldic authority, with the attendant authenticity and meaning that such arms carry, requires that some deference be paid to the laws, or lores, by which they were granted. Unfortunately, the Committee received some contradictory information as to the application of the laws of arms in this matter and the Committee is unable to settle the matter beyond doubt.¹³⁸

- 4.45** The Committee notes that there is latitude for the Government to display whatever symbol it chooses to represent the authority of the State, even a simple logo of its own design. The Committee considers it to be a matter for the Government which arms it chooses to display and notes that the Bill generally gives legislative force to current Government policy (see paragraphs 3.49).
- 4.46** The Committee agrees that it is important to respect our heritage and our historical connection to the United Kingdom. However, it does not believe this to be a sufficient reason to retain the use of the Royal Arms of the UK in places where they can be perceived to represent the authority of the State of New South Wales. The Committee notes the concerns of Rev Nile and other inquiry participants that the Bill has republican undertones. The Committee does not agree that legislating to ensure that the State Arms is used for the purpose for which it was granted can be viewed as republican. The State Arms was granted in 1906 by King Edward VII through an exercise of a Royal prerogative at a time when an Australian republic was not on the agenda.
- 4.47** With regard to cost, while the Committee was unable to ascertain the likely cost of the Bill's proposal, the Committee envisages that it is likely to amount in the hundreds of thousands, rather than millions. The Committee is mindful of the Government's responsibility to allocate taxation revenue appropriately and believes this to be a suitable purpose, particularly in relation to the symbolic strength of the State Arms in promoting pride and respect for the State and its institutions.
- 4.48** The function of coats of arms was examined in Chapter 3 where it was noted that when arms are 'used' they identify the bearer of those arms and the authority of the bearer in relation to the thing or context in which it is used. For example, if arms are used on a document they identify the authority by which the document is produced, or if displayed on a building they identify the authority by which the business within that building is conducted. In this respect, the Committee believes that as all actions of the State of New South Wales and its various offices and institutions are conducted under its own authority, the arms that most accurately and symbolically represent that authority should be used. The Committee has concluded that the State Arms, as the arms of dominion and sovereignty of the State of New South Wales are the appropriate arms in this regard.
- 4.49** With regard to heritage conservation and fears of 'vandalism and wholesale destruction', the Committee is of the view that we should not destroy our cultural, legal or heraldic heritage. Instead we should use symbols accurately representing our present sovereignty. Indeed, neither the Bill nor any of the supporters of the Bill suggested anything approaching 'vandalism or wholesale destruction' of the Royal Arms of the UK and many witnesses emphasised the need for their conservation and continued historical display.

¹³⁸ See, for example, correspondence from the Garter Principal King of Arms to the Hon Rev Fred Nile MLC: Submission 4, supplementary submission 20 May 2002.

Chapter 5 **Specific Issues Regarding the Provisions of the Bill**

The Committee concluded in the previous chapter that it supports the general policy objective of the proposed State Arms Bill 2002 to require the State Arms to be used instead of the Royal Arms of the UK to represent the authority of the State of New South Wales. This chapter therefore deals with particular provisions of the Bill to determine whether it meets its policy objective. The Committee has approached this task by examining in detail each provision of the Bill and considering the issues raised in submissions and in evidence, to determine whether there are any amendments that could be made to the Bill so that it can better meet its policy objectives.

Title of the Bill

5.1 The Short Title of the Bill is 'State Arms Bill' and the Long Title is 'An Act with respect to the display of the coat of arms of the State.' A few submissions queried whether the wording of the Short Title was satisfactory.¹³⁹ For example, Ms D Moss suggested that the title was 'unfortunate' and could easily be misconstrued as having a connection with munitions.¹⁴⁰ HAGSOC submitted that the title of the Bill is misleading:

The present wording is misleading as it suggests that the Act also deals with wider heraldic issues, such as the granting and protection of civic and civilian coats of arms. It is suggested that the wording be along the lines 'Arms of New South Wales Act'.¹⁴¹

5.2 Mr S Szabo also viewed the title as inadequately reflecting the purpose of the Bill:

The name of the Act should properly reflect the purpose, which is to regulate the use of the Arms of the State of New South Wales, not to regulate the general use of arms within the state. It is suggested that the name of the Act should be the *Arms of the State of New South Wales Act 2002*.¹⁴²

5.3 The Committee acknowledges that the title of a bill should, as accurately as is possible, reflect its subject matter, so as to avoid any unnecessary confusion. The Committee believes that the present title is adequate.

¹³⁹ The use of the word 'display' in the Long Title was queried and this issue is examined in the context of clause 4 of the Bill (paragraphs 5.23-5.29).

¹⁴⁰ Submission 30, 2 May 2002.

¹⁴¹ Submission 39, 30 April 2002, p 2.

¹⁴² Submission 37, 5 May 2002. Note that Mr Szabo is the Honorary Secretary of Heraldry Australia and gave evidence to the Committee on behalf of the organisation. He also made a submission (no. 37) in his personal capacity.

Inclusion of a Preamble

5.4 The preamble to the proposed Bill is set out in paragraph **2.3**. As the use of preambles in legislation today is somewhat anachronistic, the Committee has briefly explored the inclusion of the preamble in the Bill.

5.5 Preambles are located after the long title and before the enacting words and substantive sections of an act. The purpose of a preamble is to reflect the intentions of the drafters, to explain the reasons, purpose, object or scope of an act and to recite any facts that may be relevant.¹⁴³ Preambles are considered to be part of an act, but not a law-making part. They can, however, assist in interpreting the meaning of ambiguous parts of the substantive, law-making parts of an act.¹⁴⁴ Preambles are different from explanatory notes or memoranda as they do not form part of a bill, but can be used as extrinsic material in statutory interpretation.

5.6 The preamble was not raised as subject of contention in this inquiry and few participants made reference to it. The Committee notes, however, that the use of preambles in legislation in New South Wales and in other jurisdictions in Australia is no longer common. The Committee refers, in this context, to the comments of Australia's eminent statutory interpretation experts, DC Pearce and RS Geddes:

Preambles usually commence with the word 'Whereas'. They are commonly found in old Acts. There the intention was to provide a reader with some information relating to the reason for the enactment of the legislation. So it is common to find in those Acts a reference to the conduct that the Act was intended to proscribe or to actions of government that needed parliamentary approval. As these matters could only be background information and were not essential to the validity of the Act, the practice of including them in a preamble was gradually discontinued. For many years, preambles were included only occasionally in Australian statutes. In recent years they have been included in statutes a little more frequently. They can be of assistance in ascertaining underlying purpose or object of an Act.¹⁴⁵

5.7 While the above extract identifies a recent rise in the use of preambles, the Committee is unaware of any empirical evidence of this resurgence. The Committee approves of the general trend that has developed over the last century to not include preambles in legislation.¹⁴⁶ In the Committee's view the inclusion of background information to a bill in an explanatory note is sufficient and preferable. The Committee notes that there is some

¹⁴³ Winckel A, 'So what exactly is a preamble?', *Alternative Law Journal*, Vol 25, No 2, April 2002, pp 85 and 87.

¹⁴⁴ *ibid.* See also Pearce D and Geddes R, *Statutory Interpretation in Australia*, 5th Edition, Butterworths 2001, pp 121-122.

¹⁴⁵ Pearce and Geddes *op cit*, pp 15-16.

¹⁴⁶ The increased use of preambles was also noted by Cook et al who state that 'the use of preambles is increasing, mostly for legislation with a social purpose': Cook C, Creyke R, Geddes R and Holloway I, *Laying Down The Law*, 5th Ed, Butterworths 2001, p 166.

debate as to the role of preambles in statutory interpretation.¹⁴⁷ The Committee also notes that the preamble does not contribute in any significant way to the Bill meeting its policy objective. The Committee recommends, therefore, that the preamble be removed.

Recommendation 1

The Committee recommends that the preamble in the proposed State Arms Bill be removed.

Definitions and Terminology

5.8 Throughout the Bill the terms ‘United Kingdom Arms’ and ‘State Arms’ are used. Both terms are defined in clause 3 of the Bill (and set out at paragraphs 2.4). The use of these terms and their definitions were criticised by several participants in the inquiry. The other terms defined in the Bill, ‘Heritage Council’ and ‘official purpose’, were not raised during the inquiry.

Use of the term ‘United Kingdom Arms’

5.9 The term ‘United Kingdom Arms’ is used in the preamble to the Bill and in clauses 4, 6(1) and 6(2). Several inquiry participants queried the accuracy of this term. For example, Reverend the Hon Fred Nile MLC argued that the term ‘United Kingdom Arms’ was confusing and should be exchanged with the term ‘Royal Coat of Arms’:

...there seems to be some confusion about the description of the Coat of Arms as the United Kingdom Coat of Arms. I think this has helped to confuse even some of those who have made submissions to the inquiry. The term "United Kingdom Coat of Arms" is emotive because we regard ourselves as an independent nation. We are no longer under the control of the United Kingdom Parliament, which has no authority over the Federal or State parliaments. Therefore, it is far better for clarification to refer to the Coat of Arms that is the basis of this inquiry as the "Royal Coat of Arms"...¹⁴⁸

5.10 In a further submission Rev Nile stated, with reference to correspondence received from the Garter King of Arms, that:

The Garter King of Arms states that, “*the Royal Arms displayed in Australia are the Arms of The Queen as Sovereign of Australia.*” Based on this clarification I reaffirm the position of the Christian Democratic Party that the State Arms Bill is flawed in its reference to the Royal Arms as being the United Kingdom arms.¹⁴⁹

¹⁴⁷ Winckel A, ‘The contextual role of a preamble in statutory interpretation’, (1999) 23 *Melbourne University Law Review* 184, p 185. See also Pearce and Geddes, *op cit*, pp 121-122.

¹⁴⁸ Evidence, 15 August 2002, p 1.

¹⁴⁹ Submission 4, supplementary submission, 20 May 2002.

- 5.11** HAGSOC similarly suggested that the term ‘Royal Arms’ be used rather than ‘United Kingdom Arms’, although for different reasons than those expressed by Rev Nile:

In reference to the definition of the ‘United Kingdom arms’ in line 1, the wording as currently drafted is misleading. There is no such thing as the United Kingdom arms. What has usually been depicted (on and in government buildings etc) are the ‘Royal Arms’ as used in England (and Wales and Northern Ireland).¹⁵⁰

- 5.12** Other submissions used either the same terminology as the Bill, or a variety of other terms including: ‘Royal Arms’; ‘Royal Coat of Arms’; ‘Royal Arms of the UK’; ‘UK Royal Arms’; and ‘Royal Arms of the United Kingdom of Great Britain and Northern Ireland’ without explaining their choice.

- 5.13** The Committee is concerned that the correct terminology be used in the Bill so as to enable it to most accurately identify the arms it seeks to remove and replace and thereby to fulfil its objectives. The Committee notes in paragraph 3.32 that the arms used by the United Kingdom monarchy that are the subject of the Bill are the arms of dominion and sovereignty of the United Kingdom of Great Britain and Northern Ireland.¹⁵¹ The Committee believes that that the term ‘Royal Arms of the United Kingdom’ most accurately reflects the nature of the Royal Arms and recommends that this term be used in the Bill.

Recommendation 2

The Committee recommends that the term ‘United Kingdom Arms’ be replaced with the term ‘Royal Arms of the United Kingdom’ where it appears throughout the proposed State Arms Bill.

Definition of ‘United Kingdom Arms’

- 5.14** Several inquiry participants also queried the *definition* of ‘United Kingdom Arms’ incorporated in the Bill. For example, in response to questioning by the Committee, the representatives of HAGSOC expressed the view that the definition of ‘United Kingdom Arms’ requires amendment:

Mr THOMPSON: ...There are two versions of the United Kingdom Arms used, one for England and one for Scotland. While most people would have a fair idea which one you are referring to.... We are suggesting that you make explicit which version you are referring to, expand the definition. Once you have done that, for the purposes of that Bill, we have no objection to the rest of it. The definition itself needs to be expanded.

¹⁵⁰ Submission 39, 30 April 2002, p 3.

¹⁵¹ As noted in the following subsection, different versions of the Royal Arms of the UK are used in England and Scotland. The version used in Australia is the Royal Arms of the UK as used in England.

The Hon. JOHN HATZISTERGOS: Making explicit which version, the English version or the Scottish version.

Mr THOMPSON: The English version is—

The Hon. JOHN HATZISTERGOS: It is the one that is commonly used. We should specify instead of "United Kingdom".

Mr THOMPSON: Yes, make it explicit instead of what is implied.

The Hon. PETER BREEN: The Committee has received evidence that the use of the expression "Royal Arms" is a wider umbrella that covers various uses of the Arms including for England and for Scotland and so forth. My observation would be that changing the words "United Kingdom" to "Royal" would not actually make any difference.

Mr THOMPSON: It would not make any difference so long as you define what you mean by United Kingdom Arms. It is the definition that is the problem. At the moment you are implying which version you are talking about.

The Hon. PETER BREEN: Both the English version and the Scottish version are described as Royal Arms, unless I am incorrect.

Mr THOMPSON: They are usually described within the United Kingdom as "Royal Arms for England" and "Royal Arms for Scotland". It is outside the United Kingdom that the confusion of the terminology arises. We have no problem with whether you want to describe them as the Royal Arms for the United Kingdom so long as your definition in the Bill makes it quite clear what you are saying, because you are defining the terminology for the purposes of the Bill.

...

Mr THOMPSON: In your definition in the Bill you have defined what you think are the United Kingdom Arms. As I read it, you are implying that the version you are referring to is to Arms used in England, Wales and overseas. That is only by implication. What we are saying is that you should expand the definition to make explicit that it means the Arms as used in England, Wales and overseas, just to make that clear. Otherwise you will get arguments over which version you are talking about. It may be pedantic on our part but I think it would then be clear.¹⁵²

5.15 Mr CRP George expressed similar views about the definition in his submission and suggested a way to remedy the situation:

The definition that the Bill provides for 'United Kingdom arms' implies the Queen has a single armorial achievement 'in her capacity as Queen of Great Britain and Northern Ireland'. This is incorrect as the sovereign uses different arms in the different political entities that comprise the United Kingdom. Compare, for example, the arms used by the Queen in England with those she uses in Scotland and in Ireland...

¹⁵² Evidence, 15 August 2002, pp 21-22.

The present draft Bill refers to displaying the ‘United Kingdom arms’ in NSW. The question arises as to what arms these are to which it refers. An armorial achievement that one sometimes notices displayed on certain government buildings in NSW (for example, on the doors of the court buildings in Elizabeth St, Sydney) is or quite closely resembles that of the Queen’s arms for England. Whether these are the only others of the Queens armorial achievements apart from the NSW State Arms displayed on public buildings in NSW would require examination of all such buildings throughout the state...The intention of the Bill, however, is presumably to require the use on public buildings in NSW of the NSW arms rather than those of various other dominions of the Queens, or indeed of other political jurisdictions.¹⁵³

I would respectfully suggest that, if this is so, the Bill might more effectively achieve its desired end if it were to use a term such as *the arms of any other jurisdiction* in all places where the present draft uses the term *the United Kingdom arms*. It need not then attempt to define *United Kingdom arms*...¹⁵⁴

5.16 Dr N Cox also argued that the definition needs to be altered and also expressed concern about the use of the phrase ‘any partial representation of those arms’ in the definition:

This would mean that this Bill would not prohibit the use of the pre-1952 royal arms (provided they were dissimilar to those of Her Majesty – though this is unclear). Prior to 1952 there were various forms of royal arms used, the evolution of which is lengthy study in its own right. The effect of the interpretation clause and clause 4 is that any arms dating, for instance, from 1788, would be preserved. Perhaps that was the intention of the drafters of the Bill, perhaps not.

I would also point out that “any partial representation of those arms” could cause difficulties. This could, if interpreted widely, prohibit the display of the Crown. If the word ‘partial’ were removed this would be avoided.¹⁵⁵

5.17 Justice Dunford suggested the following amendment to the definition:

I suggest that the definition of United Kingdom arms in clause 3 of the Bill be amended to include “*the arms of any predecessor of Her Majesty*”, or words to a similar effect.¹⁵⁶

5.18 The Committee is concerned that, while there does not seem to be confusion about which arms the Bill intends to replace with the State Arms, there is disagreement about the appropriate definition of those arms. While the Committee agrees that the amendment suggested by Mr CRP George (paragraph 5.15) would simplify matters, it does not believe the Bill should shy away from specifying the exact arms in purports to address because of definitional difficulties. The Committee therefore recommends that the definition of

¹⁵³ Submission 38, 6 May 2002.

¹⁵⁴ *ibid.*

¹⁵⁵ Submission 53, 30 April 2002.

¹⁵⁶ Submission 14, 12 April 2002.

United Kingdom Arms, or rather, the 'Royal Arms of the United Kingdom' as the Committee prefers, be amended with regard to the comments set out in this subsection.

Recommendation 3

The Committee recommends that the definition of the term 'United Kingdom arms' (to be called 'Royal Arms of the United Kingdom' pursuant to Recommendation 2) in clause 3 of the Bill be amended to ensure that it accurately identifies the arms that the Bill applies to. Consideration of this recommendation should take into account the comments set out in paragraphs 5.14-5.18 regarding the difficulties with the present definition.

Definition of 'State Arms'

- 5.19** HAGSOC suggested to the Committee that the definition of 'State Arms' (see paragraph 2.4) ought to be amended because of confusion created by part (b) of the definition:

Regarding 3(b), this should be deleted as the 'State Arms' are what is depicted on the shield itself. To define 'State Arms' to cover any other emblems or symbols which are not contained on the shield itself but are additional to it, would be incorrect usage.¹⁵⁷

- 5.20** Heraldry Australia also suggested an amendment to the definition for similar reasons:

This definition inappropriately combines the concepts of the arms properly defined and other symbols of the State (such as the badge, State flower etc.) Both should be dealt with but they are different and should be dealt with separately. We propose that there be two definitions as follows:

State Arms means, unless omitted, replaced or altered under section 5, the armorial ensigns and supporters assigned for New South Wales by Royal Warrant of His Majesty King Edward VII on 11 October 1906 the blazon of which is set out in the first part of Schedule 1 and an indicative monochrome depiction of which is set out in the second part of Schedule 1. The State Arms may be depicted in the colours set out in the blazon or in monochrome.

State symbols means, unless omitted, replaced, or altered under section 5, the State (formerly Colonial) badge adopted in by the Governor by notification in the Government Gazette on 15 February 1876 the blazon of which is set out in Part 1 of Schedule 2 and an indicative monochrome depiction of which is set out on Part 2 of Schedule 2 and any other symbol or matter the blazon of which is added to Part 1 of Schedule 2 and an indicative monochrome depiction of which is added to Part 2 of Schedule 2. A State symbol may be depicted in the colours set out in the blazon or in monochrome.¹⁵⁸

¹⁵⁷ Submission 39, 30 April 2002.

¹⁵⁸ Submission 34, 17 May 2002.

- 5.21** Clause 5 of the Bill is examined later in this chapter. With regard to the above comments, and the findings of the Committee in relation to clause 5 (paragraph 5.99), the Committee recommends that part (b) of the definition of State Arms in clause 3 of the Bill be deleted.
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Recommendation 4

The Committee recommends that part (b) of the definition of State Arms in clause 3 of the Bill be deleted.

State Arms to be Used for Official Purposes Instead of Royal Arms of the UK

- 5.22** Clause 4 of the Bill requires that when arms representing the authority of the State of New South Wales are to be displayed, it is the State Arms that are to be displayed rather than the Royal Arms of the UK (see paragraph 2.5). This clause implements the general policy objective of the Bill. Comments on this provision focused on the use of the term 'displayed' and also its application to the various aspects of Government noted in the clause.

Use of the term 'displayed'

- 5.23** Several inquiry participants raised the use of the term 'displayed' in clause 4 as an issue of concern. The distinction between displaying and using arms was explained in paragraph 3.14. The Committee notes that the term 'displayed' is also used in the Explanatory Note, the Preamble, the long title and in clause 6 of the Bill. The following discussion therefore relates to the use of the term 'displayed' throughout the Bill.

- 5.24** Dr N Cox identified the issue to be the difficulty in distinguishing between decorative display and official use:

Clause 4 also uses the expression "arms representing the authority of the State are to be displayed for any official purpose". What is meant by "Displayed for official purpose[s]"? ... The issue for New South Wales would be the difficulty in distinguishing between decorative use - as in much architectural usage, and official use (which is clearly the purpose when arms are used as letter heads). Perhaps the expression "otherwise than for decorative effect or display" could be added.¹⁵⁹

- 5.25** Heraldry Australia stated that the term 'displayed' is used inappropriately in the Bill:

This clause [clause 4], and others, use the words "display" and "use" interchangeably and occasionally inappropriately. Heraldically, the words have different meanings as is consistent with the appropriate use, in clause 6 of the expression "used to represent the authority of the State". The State should be the

¹⁵⁹ Submission 53, 30 April 2002.

only body to “use” the State Arms. There will be occasions where the “display” of the State Arms by others will not be inappropriate.¹⁶⁰

5.26 Mr S Szabo also raised the issue of the distinction between ‘use’ and ‘display’ in the context of the Preamble and clause 4:

In line 9 the word ‘display’ should be replaced with the word **use**. Arms may be displayed as long as it is clear that they belong to a person or entity other than the person or entity displaying them. Use is made of arms by the person or entity to whom the arms were granted. For example, as a graduate of the University of Sydney, I might display the arms of the university on a plaque in my home. It would, however, be misleading if I were to use those same arms on my letterhead or business documents, as that would imply that I were acting with the authority of the university.

...

The heading of this clause [4] indicates that ‘State Arms [are] to be used for all official purposes’. The body of the clause speaks of “display” of arms, but does not mention “use” of arms. I would suggest the clause be amended to read: “Whenever...Arms representing the authority of the State are to be used for any official purpose, the State Arms are to be used and not the United Kingdom arms”.¹⁶¹

5.27 Mr R d’Apice argued that Royal Arms of the UK that are merely displayed should be retained but that the *use* of Royal Arms of the UK should be discontinued:

I think you must draw a distinction between display in an historic sense and use in the present day sense. As for display, I think that most of the representations of the United Kingdom Royal Arms should be retained. As for use - and examples of use are where they appear above the Speaker's chair or the President's chair or above judges in courts - I do not think it is appropriate that heritage should be used to display our current sovereign.¹⁶²

5.28 Mr J Thompson of HAGSOC also noted the distinction between display and use, stating:

We make a distinction between the use of Arms and their display. Many buildings have the old Royal Arms engraved in their facades; they are works of art. You must be very careful because if you remove them willy-nilly you could be guilty of architectural vandalism; they are part and parcel of the building. If plaques are screwed onto walls, that is fine, no problem. However, if they are works of art you must be very careful.¹⁶³

5.29 The main policy objective of the Bill is to require that arms used to represent the authority of the State of New South Wales should be the State Arms rather than the Royal Arms of

¹⁶⁰ Submission 43, 3 May 2002.

¹⁶¹ Submission 37, 5 May 2002.

¹⁶² Evidence, 12 August 2002, p 7.

¹⁶³ Evidence, 15 August 2002, pp 23-24.

the UK. In this respect it is the *use* of the Arms that is at issue. There seems to be general agreement that the Bill should not seek to, and is not intended to, apply to the decorative display of the Royal Arms of the UK. The Committee agrees that the inclusion of the word 'displayed' in clause 4 and elsewhere in the Bill is misleading and does not further the objective of the Bill. The Committee recommends therefore that the word 'displayed' be replaced with the word 'used' throughout the Bill.

Recommendation 5

The Committee recommends that the word 'displayed' be replaced with the word 'used' throughout the proposed State Arms Bill.

Application of the Bill to specific aspects of Government

- 5.30** Some submissions supported the application of the Bill to 'all official purposes', in other words, in *all cases* where the Royal Arms of the UK are still used to represent the authority of the State.¹⁶⁴ For example, Justice Dunford stated:

I support the reasoning behind, and the objects of, the Bill, and agree that the time has come when any continued use of the United Kingdom Coat of Arms on or in public buildings, including courthouses, in this State should be replaced with the State Arms.¹⁶⁵

- 5.31** Others, however, disputed the application of the Bill to specific aspects of government, in particular, to the Parliament building, courthouses and the Office of the Governor.

Parliament building

- 5.32** Some inquiry participants singled out the application of the Bill to the 'Parliament building' for particular comment. As noted in paragraph 3.50, both chambers of the New South Wales Parliament display the Royal Arms of the UK above the Speaker and President's chairs. For example, Rev Nile argued that it is appropriate to display the Royal Arms of the UK in the chambers of Parliament:

Although the Government of New South Wales has Arms in its own right the Committee may wish to consider that the use of these Arms are for government agencies and buildings associated with the State government. Not the courts or the Parliament. As Parliament is the highest Court of the State and established by the Head of State, i.e. the Crown, I would argue that it is inappropriate that the State Arms, especially in the Legislative Council chamber, which has historically represented the head of State, replace the Royal Arms.¹⁶⁶

¹⁶⁴ For example, Submission 1, 6 March 2002.

¹⁶⁵ Submission 14, 12 April 2002.

¹⁶⁶ Submission 4, supplementary submission, 20 May 2002.

5.33 Rev Nile also suggested that it would be contrary to the oath of allegiance undertaken by Members of Parliament to vote for a Bill to remove the Royal Arms of the UK from Parliament:

If the Parliament now voted to remove it [the Royal Coat of arms] from the Parliament, I believe it could be interpreted as a very significant act of disloyalty and opposite to the oath of allegiance to the Queen that members take if we voted to do something that downgrades that oath.¹⁶⁷

5.34 The Committee notes that Members are required by the *Constitution Act 1902* to take the oath of allegiance (or affirmation¹⁶⁸) to Her Majesty Queen Elizabeth II before they are permitted to sit and vote in a House of Parliament.¹⁶⁹ The form of oath is prescribed by the *Oaths Act 1900* and is currently as follows:

“I [name] do swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth, Her Heirs and Successors according to law. So help me God.”¹⁷⁰

5.35 The Committee does not consider that this oath currently refers to the sovereign of the United Kingdom of Great Britain and Northern Ireland but to the Queen of Australia in the right of New South Wales. It does not have any impact on the consideration of the State Arms Bill as no disloyalty to the Queen of Australia in right of New South Wales is implied by it.

5.36 Other comments expressly supported the replacement of the Royal Arms of the UK in the chambers with the State Arms. In this regard, Mr R d’Apice argued that it was inappropriate that the Speaker and the President continue to exercise their functions under representations of a foreign power:

Their functions should not continue to be exercised solely under a representation of the Arms of a foreign country. The High Court in the case of *Sue v Hill*... The High Court held that she was the subject of a foreign power; that the United Kingdom was, since 1986, a foreign power. It is inappropriate that the Speaker and the President exercise their functions under representations which say: I am here exercising a foreign power. It may be from a heritage point of view that those representations should stay there, but they certainly should be supplemented by the Arms of the State of New South Wales. I think that that would look clumsy and unfortunate. I think that they could be removed but, as I say, respectfully conserved, displayed, interpreted, not thrown away, which is what happened on various occasions with those old Arms that I have illustrated here. They were displayed in New South Wales and in use and the great seal of New South Wales displayed them, the judges sat under them, but when they moved on they were

¹⁶⁷ Evidence, 15 August 2002, p 8. The oath was also raised in the context of the courts by Justice Handley, paragraph 5.39.

¹⁶⁸ The affirmation, like the oath, requires the Member to declare allegiance to the Sovereign of the United Kingdom of Great Britain and Ireland: *Oaths Act 1900*, sections 4, 6 and 12 and Second Schedule; *Constitution Act 1902*, section 12.

¹⁶⁹ Section 12.

¹⁷⁰ *Oaths Act 1900*, ss 4 and 6 and Second Schedule.

just taken down and disposed of and I do not think you will find a single representation of any of the others except the current Royal Arms anywhere.¹⁷¹

5.37 Heraldry Australia recognised the necessity of removing or at least obscuring the Royal Arms of the UK in Parliament:

Heraldry Australia accepts that the proper representation of the present sovereign of NSW will involve the discontinuance of the use of the UK Royal Arms on documents, seals etc and that there will be some limited occasions which will require the removal or obscuring of existing representations of the UK Royal Arms which are in positions of pre-eminence (e.g above the chairs of the presiding officers of Parliament so as to permit the use of the State Arms) and are part of the historic fabric of structures and institutions.¹⁷²

Courthouses

5.38 One particular topic of contention throughout the inquiry was the application of the Bill to Royal Arms of the UK used in courts, particularly the Supreme Court. The use of the Royal Arms of the UK in courthouses in New South Wales was examined in paragraphs 3.53-3.56. Several inquiry submissions argued that the courts are different from other aspects of New South Wales Government and should be exempt from the Bill. For example, Rev Nile argued:

Although the Government of New South Wales has Arms in its own right the Committee may wish to consider that the use of these Arms are for government agencies and buildings associated with the State government. Not the courts or the Parliament.¹⁷³

5.39 Justice Handley pointed to the oaths of office taken by judicial officers, in support of his view that the Royal Arms of the UK should be used in the Supreme Court, a point that applies to other courts in New South Wales:

Judges, on their appointment to office, take an Oath of Allegiance and the Judicial Oath. These are required by ss 3-9 of the *Oaths Act 1900* which itself consolidated earlier legislation, and the forms of these Oaths are prescribed by the Second and Fourth Schedules of the Act and incorporate the name of the current Sovereign (s 6). All the Judges in this State have sworn allegiance to the Queen and have also sworn to “well and truly serve our Sovereign Lady Queen Elizabeth II in the Office of a Judge...”

Judges do not swear to serve the Governor or the Premier, but the Sovereign. This emphasises their independence from the legislative and executive branches of government. The Royal Coat of Arms on the wall behind each Judge as he or she sits in open court is a symbol of the Sovereign that he or she has sworn to serve as a Judge, and of his or her independence from the other branches of government. The Royal Coat of Arms is therefore an appropriate and relevant part of the

¹⁷¹ Evidence, 12 August 2002, p 8.

¹⁷² Submission 34, 17 May 2002.

¹⁷³ Submission 4, supplementary submission, 20 May 2002.

furniture of our higher courts which include the District Court, the Land & Environment Court, and the Industrial Commission and the Supreme Court.¹⁷⁴

5.40 The Committee acknowledges the strongly held views of some members of the judiciary about this matter. However, the Committee is not convinced that the oath of allegiance sworn to the sovereign by the judiciary necessitates the use of the Royal Arms of the UK in courts in New South Wales. As has been previously discussed, the Royal Arms of the UK are the Arms of dominion and sovereignty of the United Kingdom and are not the personal arms of the sovereign.

5.41 Mr J Armfield of the ACM stressed that the independence of the judiciary from the Executive supported the use of Royal Arms of the UK in the courts:

The Governor and the Judges are not the servants of the Executive Government. They are independent. That independence is symbolized by the fact that they are appointed by the Sovereign on the advice of the Government. Once appointed they are independent and free from interference by the Executive Government. The use of the State Coat of Arms would suggest that they are servants of the Executive Government. This is not the case and any suggestion to this effect is completely inappropriate.¹⁷⁵

5.42 Justice Blanch also expressed the view that the Royal Arms of the UK are the appropriate arms to be used in the courts:

I advise that the criminal business of this Court is conducted, under the present constitutional arrangements, on behalf of the Crown. For that reason, it is my view that the coats of arms as presently used are appropriate and the use of the State coat of arms would be inappropriate. Of course, if the constitutional arrangements were to change, that matter would have to be reviewed but it appears to me that the primary issues is that of the constitutional arrangements.¹⁷⁶

5.43 Mr Mason QC rejected the reliance on the independence of the judiciary to justify the use of the Royal Arms of the UK in his 1995 advice to the Government:

I do not agree with the opinion that the display of the Royal Coat of Arms is able to be justified as an “outward and visible sign of the independence of the judiciary and the separation of powers”. The judiciary in New South Wales is indeed an independent and separate arm of government. But it is nevertheless an arm of government of New South Wales. In my view, the use of the Royal Coat of Arms distorts the true meaning and significance of the independence of the judiciary and the separation of powers in this State.

...It is no longer constitutionally appropriate to display the Royal Coat of Arms in New South Wales courts. New South Wales courts are not Royal Courts of Justice. It is true that judicial officers are commissioned by the Governor, but the

¹⁷⁴ Submission 41, 6 May 2002.

¹⁷⁵ Submission 36, 6 May 2002. Submission 31, 3 May 2002 argued that the use of the Royal Arms of the UK in the Supreme Court is an indication of the independence of the court.

¹⁷⁶ Submission 49, 13 May 2002.

jurisdiction they administer is defined by the Australian Constitution and the New South Wales Parliament. The *Australia Act 1986* (UK) and the *Australia Act 1986* (Cth) operate to sever irreversibly any and all jurisdictional control over the legislature and courts of new South Wales previously available to the United Kingdom legislature or courts. The justice done in New South Wales courts is Australian and New South Wales justice.¹⁷⁷

5.44 The application of the Bill to the Supreme Court was particularly contentious. For example, Justice Handley advised the Committee of his view that the Royal Arms of the UK are the correct arms to be used in relation to the Supreme Court. He argued that the *Charter of Justice* is the continuing legal basis for the use of the Royal Arms of the UK by the Supreme Court:

The Supreme Court of New South Wales uses the Royal Arms...because of the terms of the Charter of Justice on 13 October 1823 executed under the Great Seal of Great Britain pursuant to the Imperial Act IV Geo IV c.96. By this Charter, George IV established the Supreme Court of New South Wales. Clause IV of the Charter of Justice, which is still in force, provides:

“And We do further grant, ordain and appoint, that the same Supreme Court of New South Wales shall have and use, as Occasion may require, a Seal, **bearing a device and Impression of Our Royal Arms**, within an Exergue or Label surrounding the same, with this inscription – “The Seal of the Supreme Court of New South Wales”. And We do hereby grant, ordain and appoint, that the said Seal shall be delivered to, and kept in the Custody of, the said Chief Justice”.

Clause IV of the Charter of Justice is the continuing legal basis for the use of the Royal Coat of Arms by the Court. Section 20 of the Supreme Court Act 1970 provides:

“The Supreme Court of New South Wales as formerly established as the superior Court of Record in New South Wales is hereby continued”.

Thus, as provided by this Act of the State Parliament, the Supreme Court today is the same Court established by the Charter of Justice which commenced to function in 1824.¹⁷⁸

5.45 The ACM submission also identified the Charter of Justice as the basis for using the Royal Arms of the UK in the Supreme Court:

The Royal Arms symbolise the Sovereign. The State Coat of Arms has always symbolized the Executive Government of the State. It is for this reason that the State Coat of Arms is used on the letterhead of Government Departments and the Royal Coat of Arms is used on judicial letterhead. Further, the Supreme Court

¹⁷⁷ Mr Mason’s advice was provided to the Committee by the Attorney General, the Hon Bob Debus MP: Submission 55, 5 August 2002.

¹⁷⁸ Submission 41, 2 May 2002.

owes its existence to the exercise of the Royal prerogative in the form of the Charter of Justice which expressly authorises the use of the Royal Coat of Arms.¹⁷⁹

5.46 Mr R d’Apice expressly disagreed with the ACM’s position in evidence tendered to the Committee:

The Third Charter of Justice of 1823 authorises the use of “a seal bearing a device and impression of our Royal Arms” (clause 4) This was the UK Royal Coat of Arms as in use from 1816 until 1837...The use of the expression “our Royal Arms” must be interpreted as meaning “the Royal Arms of myself and my successors as the sovereign of New South Wales from time to time”. In fact the arms originally used were changed in 1837 to reflect the change in the arms of the new sovereign of NSW. I refer to Mr Justice John Dunford’s Submission 14 in support of this view.

The use of the State Arms would not in any way imply that the judges are the “servants of the Executive Government” The independence of the judiciary would not in any way be lessened or compromised by their use of the present arms of their present sovereign. Their independence is not in any way preserved by their use of the arms of the sovereign of what the High Court in *Sue vs Hill* has identified as a “foreign power”.¹⁸⁰

5.47 As indicated by Mr R d’Apice, Justice Dunford took a different view to his judicial colleagues. He argued that, since the passing of the Australia Acts in 1986, it is no longer appropriate to use the Royal Arms of the UK in the Supreme Court. He also rejected the argument based on the Charter of Justice:

One argument which I understand is sometimes used to support the continued use of the United Kingdom Arms by the Supreme Court is that the Court was established, not by an Act of Parliament, but by an Order in Council made in exercise of the Royal Prerogative: the Third Charter of Justice 1823. However, it was an Act of Parliament, 4 George IV c 96, which authorised the making of the Order in Council, and I cannot see any good reason why this feature of the establishment of the Court should perpetuate the anomalous use by the Court of the United Kingdom Arms nearly one hundred and eighty years later. I acknowledge that it is most worthwhile to remember our past and heritage, but it is, I submit, more important to recognise the present.

If the establishment of the Court by Royal Prerogative is the only basis justifying the continued use of Arms other than the State Arms, the Court should not be displaying arms of the current Queen, but those of King George the Fourth (which were different). Actually I understand that the painted and carved Coats of Arms displayed in some of our court rooms above the Bench are not the arms of the current Queen, but those of her predecessors, e.g. Queens Victoria or King Edward VII, or whoever happened to be the sovereign when the particular

¹⁷⁹ Submission 36, 6 May 2002.

¹⁸⁰ ‘Submission 36 – Australians for Constitutional Monarchy, response by Richard d’Apice’, p 1, document tendered by Mr d’Apice, 12 August 2002.

courthouse was built, and who had no connection with the issue of the Third Charter of Justice.¹⁸¹

5.48 Justice Dunford's view is shared by the former Crown Solicitor of South Australia, Mr BM Selway, who examined the matter in 1992 when similar issues arose in that state:

Following the passage of the Australia Act in 1986, the Crown in right of the State of South Australia is now legally separate and distinct from the Crown of Great Britain. The Current position is that the monarch is the Queen of Australia. The State and the Commonwealth are separate agents of the one and indivisible Crown. That Crown is legally and constitutionally separate from the United Kingdom Crown (although the same person wears both). The Coat of Arms of the Crown in right of the State of South Australia is the "piping shrike" Coat of Arms granted by Her Majesty on 1 February 1984. Since the passage of the Australia Act it is constitutionally inappropriate to use the Royal Coats of Arms. Since the passage of the Act, the appropriate coat of arms for matters relating to the Crown in right of the State of South Australia is the "piping shrike" Coat of Arms...

Against this background it can be seen that the change in the Coat of Arms in or Courts has nothing whatever to do with republicanism. Nor does it have anything to do with judicial independence (the Executive and the Legislature also use the "Royal" Coat of Arms). The change is merely a reflection that the Queen of Australia is now constitutionally separate and distinct from the Queen of the United Kingdom.¹⁸²

Office of the Governor

5.49 Some inquiry participants specifically questioned the application of the Bill to the Governor and her office. For example, Mr J Armfield's comments, noted in paragraph 5.41, also apply to the Governor's office. The CDP submission stated:

...The proposal in the Breen Bill to remove the Royal Coat of Arms from the office of the Governor, who is in fact the representative of the Queen shows how ill-informed and illogical is the whole Breen Bill.¹⁸³

5.50 Justice Handley also stated his view that the Royal Arms of the UK are the correct arms for the Governor:

S 7 (1) to (4) of the Australia Act are relevant to the position of the Governor. That section provides:

(1) Her Majesty's representative in each State shall be the Governor.

¹⁸¹ Submission 14, 12 April 2002.

¹⁸² "Piping Shrike In", Letters to the Editor, *Law Society Bulletin*, July 1992, document tendered by Mr d'Apice, 12 August 2002.

¹⁸³ Submission 4, 28 March 2002.

- (2) Subject to sub section (3) and (4) below, all powers and functions of Her Majesty in respect of a State are exercisable only by the Governor of the State.
- (3) Sub section (2) above does not apply in relation to the power to appoint, and the power to terminate the appointment of the Governor of a State.
- (4) While Her Majesty is personally present in a State, Her Majesty is not precluded from exercising any of her powers and function in respect of the State that are the subject of sub section (2) above.

The Continued use of the Royal Coat-of-Arms by the Governor and at Government House are therefore entirely appropriate and accurately reflect the current constitutional position.¹⁸⁴

5.51 The Committee points out that, as noted in paragraph 3.57, the Royal Arms of the UK are not used by the Governor or Her Excellency's office.

Conclusion

5.52 For the reasons expressed in Chapter 4, the Committee believes that the State Arms are the appropriate arms to be used to represent to authority of the State of New South Wales. The Committee also believes that the State Arms should be used consistently across all aspects of Government. The Committee has not been persuaded that any particular aspect of Government is so distinct as to require the display of the Royal Arms of the UK. In the Committee's view, clause 4 of the Bill (with the amendment identified in Recommendation 5) is drafted sufficiently to meet the objective of the Bill.

Recommendation 6

The Committee finds that the State Arms are the appropriate arms to be used to represent the authority of the State of New South Wales. The Committee recommends that the State Arms should be used consistently across all aspects of Government.

Removal of Royal Arms of the UK and Replacement with State Arms

5.53 As set out in paragraph 2.7, the Bill provides that any Royal Arms of the UK displayed in or on any public building or public place *that purport to represent the authority of the State*, or displayed on any seal or other object that is the property of the Crown and is intended to represent the authority of the State, are to be removed and replaced by the State Arms. The Bill proposes that this is to occur as soon as practicable, or at the very least within three years of the commencement of the Bill. The Bill also provides an exemption from this requirement where particular reproductions of the Royal Arms of the UK form an integral part of the environmental heritage of the State.

¹⁸⁴ Submission 41, supplementary submission, 23 August 2002.

Removal and replacement

- 5.54** The Committee notes that it is important to understand the distinction between use and display of arms as examined earlier in this chapter, in the context of this clause. The intention of clause 6(1) is to require the removal of Royal Arms of the UK that are *used* to represent the authority of the State.
- 5.55** As noted in other parts of this report, some inquiry participants maintained that the Royal Arms of the UK are the appropriate arms to use to represent the authority of the State and therefore rejected the replacement of any Royal Arms of the UK with State Arms outright.
- 5.56** Other inquiry participants agreed that the State Arms should be displayed on new buildings but rejected the idea that existing Royal Arms of the UK should be removed and replaced with the State Arms. For example, the Australiana Society argued that the ‘symbolic’ heritage arms should not be removed, but did not object to new public buildings displaying the State Arms:

...the Australiana Society wishes to object to the removal of any historical coats of arms from the New South Wales Parliament, Government House, the Courts and other public buildings. Before Federation it was customary to install the royal coat of arms. Some timber coats of arms in Government House, the Supreme Court, Kempsey, Darlinghurst and other courthouses were carved by Sydney woodcarver James Cunningham (1841-1903)...These are integral parts of the fabric, design and symbolism of the buildings and should be retained intact....The Australiana Society has no objection to new buildings displaying any coats of arms you choose.¹⁸⁵

- 5.57** Others argued that *all* Royal Arms of the UK that purport to represent the authority of the State should be removed and replaced with State Arms. For example, Justice Dunford stated:

I support the reasoning behind, and the objects of, the Bill, and agree that the time has come when any continued use of the United Kingdom Coat of Arms on or in public buildings, including courthouses, in this State should be replaced with the State Arms.¹⁸⁶

Time limit

- 5.58** The Committee received few comments on the time limit of three years set in clause 6(1) of the Bill for the replacement of Royal Arms of the UK with State Arms. Of those comments that were made, the reaction was mixed. The Heritage Council advised the Committee of its view that:

The Bill requires that Royal Arms be replaced with State Arms within three years. There is concern about the possibilities for physical damage to occur to significant fabric in any hurried program – it would be preferable to allow this process to

¹⁸⁵ Submission 46, 7 May 2002.

¹⁸⁶ Submission 14, 12 April 2002.

occur as circumstances determined rather than set a tight time frame. This could occur, for example, as part of a regular maintenance program or a conservation or adaptive re-use strategy.

It is acknowledged that there may be a case for requiring the display and use of the State Arms exclusively in places and objects representing the highest levels of State authority within a restricted time frame, such as offices and buildings of the Parliament, Ministers, the Governor and the Supreme Court – this distinction could be reflected in the Bill.¹⁸⁷

5.59 Mr T Alonzo, who expressed support for the Bill that he saw as ‘long overdue’, queried: ‘why, after the Act is commenced, a further three years is extended.’¹⁸⁸

5.60 Professor D Flint, National Convenor of ACM, suggested that the three year time limit was ‘too sudden’:

The proposal is to change quite suddenly what is accepted custom and usage in the State. Three years is sudden...¹⁸⁹

5.61 HAGSOC argued that the time frame should be removed:

We do not know the significance of the three-year period. It would be better to omit any time frame and let any replacement take place on an at-need basis.¹⁹⁰

Exemption

5.62 As set out in paragraph 2.8, the Bill provides for an exemption to the requirement that Royal Arms of the UK used to represent the authority of the State be replaced with State Arms, in the name of heritage conservation. The exemption is intended to apply in relation to a building or place in respect of which the Premier, after consultation with the Heritage Council, determines that the Royal Arms of the UK there displayed form an *integral part of an item of the environmental heritage of the State*.¹⁹¹

5.63 The Committee notes the likelihood that many reproductions of the Royal Arms of the UK used in New South Wales are located in buildings that may *already* be on the State Heritage Register. The Committee notes in particular that many courthouses across New South

¹⁸⁷ Correspondence from Ms S MacDonald, Heritage Council, 26 November 2002.

¹⁸⁸ Submission 18, 18 April 2002.

¹⁸⁹ Evidence, 15 August 2002, p 38.

¹⁹⁰ Submission 39, 30 April 2002, p 7.

¹⁹¹ The Heritage Council of New South Wales is a statutory authority established under the *Heritage Act 1977*. It is an advisory body that includes members of the community, the government, the conservation profession and representatives of organisations such as the National Trust of Australia (NSW). The Heritage Council makes decisions about the care and protection of heritage places and items identified as being significant to the people of New South Wales and recommends items to be listed on the State Heritage Register.

Wales are included on the Register and that the Parliament House Precinct was officially added to the State Heritage Register in May this year.¹⁹² Currently, removal of a representation of the Royal Arms of the UK located in a building on the Register must be approved through the processes of the Heritage Office.

5.64 The Committee notes that submissions and evidence received during the course of the inquiry generally supported the retention of Royal Arms of the UK with appropriate heritage value.¹⁹³ For example, the Government Architect, Mr Chris Johnson stated:

A number of our most impressive buildings have coats of arm carved in stone or timber within the fabric of the buildings themselves. I would be most concerned if the Bill led to the destruction of significant components of heritage buildings. I see that one of the objects of the Bill is to provide exemptions in the name of heritage conservation and I assume that this will cover the concern that I have raised.

In heritage terms, coats of arms of government heritage buildings often form an integral part of the building and contribute to the cultural significance of the place. The physical location may also be of considerable significance to the building. The removal of any items including the coats of arms from any heritage buildings must not reduce the cultural significance of the building. In many cases it may be preferable to keep heritage coats of arms and provide another method of interpreting the state of New South Wales arms within the heritage context.¹⁹⁴

5.65 The Heritage Council advised the Committee of its view that:

The provisions relating to consultation with the Heritage Council should be consistent with approaches in the Heritage Act – that is,

- all three dimensional representations of Royal Arms and State Arms used or displayed for an official purpose should be treated as items listed on the SHR, and
- any proposal to remove, obscure or replace three dimensional Royal Arms or State Arms should be referred to the Heritage Council with an assessment of significance and an application for approval to undertake such work.¹⁹⁵

5.66 The Heritage Council made the following comments about the consultative role of the Heritage Council in the Bill:

The Bill provides a consultative role for the Heritage Council when considering the removal or obscuring of Royal arms in favour of the State arms, but not an approval role.

¹⁹² NSWPD (LA) 7 May 2002, p 1597.

¹⁹³ For example, Submission 13, 26 March 2002 and Submission 46, 7 May 2002.

¹⁹⁴ Correspondence from Mr C Johnson, 14 November 2002.

¹⁹⁵ Correspondence from Mr C White, Heritage Council, 1 November 2002.

Section 57 of the Heritage Act already requires Heritage Council approval for any works to an item on the State heritage Register (such as removing, obscuring or replacing coats of arms that form part of the physical fabric of an item; or a three dimensional coat of arms detached from a building and which could be considered as a movable object or relic.

The Bill involves the establishment of new assessment and approval processes that would, in effect duplicate the existing processes available under the Heritage Act.

It would be preferable for these provisions of the Bill to be consistent with the Heritage Act requirements (ie any proposal to remove, obscure or replace a three dimensional coat of arms should be referred to the Heritage Council by the proponent with an assessment of significance and an application for approval to undertake such work – in accordance with existing provisions of the Heritage Act).

In summary, the Council's resolution advises that treating all Royal and State Arms as being of state significance, for the purposes of the Bill, would provide the trigger for existing assessment and approvals processes to be brought into action as changes to Arms are being considered and planned. This would be consistent with treating three dimensional representations of coats of arms as being of state significance, and would utilise a well established process for dealing with proposed changes to state significant fabric – the Bill could simply refer to Part 4 generally or section 57 specifically of the Heritage Act 1977 rather than establish a separate approvals process.¹⁹⁶

5.67 Those who supported the general objective of the Bill also generally acknowledged the historical significance of the Royal Arms of the UK. For example, Mr R d'Apice stated:

They certainly are Arms of great historical significance. The United Kingdom is certainly where our sovereignty derives from, but it is not where our present sovereignty is. Our present sovereignty is in the Queen of Australia and particularly in the Queen of Australia in the right of New South Wales and it is that outcome which the Bill is intended to achieve. It is certainly not intended to vandalise any of the current representations of the Royal Arms. Far from it. They should be preserved and conserved and properly displayed and interpreted for the benefit of those who are interested in them, but they should not have that position of pre-eminence which they currently have in certain places, which misrepresents the sovereignty under which both justice and law are being administered.

5.68 There was some suggestion that guidelines should be developed to inform decision making regarding which Royal Arms of the UK fall within the exemption in clause 6(2). For example, Mr J Thompson representing HAGSOC stated:

...We were surprised to see no regulation-making power in the Bill that would lay down procedures as to how public officials would go about doing their job. You give them a deadline but what procedures will they follow? Will you delegate down the line for some people who may or may not be aware of historical and

¹⁹⁶ Correspondence from Ms S MacDonald, Heritage Council, 26 November 2002.

cultural values? That is what we are getting at. We thought there would be some guidelines.¹⁹⁷

5.69 Mr J Armfield, Director of ACM, expressed similar concerns about the lack of guidelines or regulations. He argued that the Bill as presently drafted allowed an 'unqualified and absolute discretion' to determine which arms fall within the exemption:

... As I read the Bill it is an unqualified and absolute discretion, one which is not laid down by guidelines, regulation or any other controlling factor. It would seem to me that whatever position ultimately occurred—and I do not mean this in a disrespectful way—it should not be left to the whim of someone within a department because I would not expect the Premier to personally determine these things. Presumably it would be on advice and recommendation from a department. I would have thought it appropriate that the fate of any of these Arms, if legislation were enacted, should be the subject of proper guidelines or regulations, which can be disallowed by the Parliament so that we do not have a situation where some of the Arms are inappropriately removed.¹⁹⁸

... There are no guidelines set down and it is not reviewable... I do not suggest for a moment that it would be practical or appropriate to include in the legislation reference to individual Arms but what one would normally expect is that there would be a regulation which would set out in some detail the criteria relevant to the exercise of the discretion. That would have two effects: firstly, it would make it legally enforceable and, secondly, it would be much more transparent so that people could find out what the criteria are. It seems to me that at the moment, with respect, it is very loosely drafted.¹⁹⁹

... My point is that the proposal is not satisfactory. What should occur is that in any legislation we should have protection for the present Arms so they cannot be removed simply by executive decision and certainly if contrary to my primary decision there was a change, I do not think that there should be an uncontrolled discretion to remove those Arms which are presently in existence.²⁰⁰

5.70 The ACM was also concerned about the inconsistency that this exemption may create:

There is no guarantee as to how that discretion would be exercised. It will lead to a situation where the [Royal] Arms would continue to be displayed in some buildings and not in others. Thus in the case of the courts, one will have the position where some judicial Officers would perform their judicial duty under the Royal Coat of Arms and others under the State Coat of Arms depending on which Court Building they were sitting in! This is inappropriate because they are administering the same set of laws.²⁰¹

¹⁹⁷ Evidence, 15 August 2002, p 24.

¹⁹⁸ Evidence, 15 August 2002, p 30.

¹⁹⁹ Evidence, 15 August 2002, p 31.

²⁰⁰ Evidence, 15 August 2002, p 32.

²⁰¹ Submission 36, 6 May 2002.

Temporary display of State Arms

5.71 Clause 6(2) of the Bill provides that nothing is to prevent ‘...the display of the State Arms at the building or place while it is being used for an official purpose, whether or not so as to obscure, or during the temporary removal of the United Kingdom Arms’ (see paragraph 2.8). The Committee is unaware of any examples of the State Arms currently installed in conjunction with existing Royal Arms of the UK (see paragraph 3.56).

5.72 The Committee did not receive many comments on this aspect of the Bill. Mr R d’Apice provided the Committee with an example of a situation where this clause could apply:

I think that there probably is, but the decision may ultimately be made to leave them in place because of their heritage value and to put somewhere else, but still above the Speaker and above the President, a representation of the State Arms, which are the current Arms. Their functions should not continue to be exercised solely under a representation of the Arms of a foreign country. The High Court in the case of *Sue v Hill*... held that she was the subject of a foreign power; that the United Kingdom was, since 1986, a foreign power. It is inappropriate that the Speaker and the President exercise their functions under representations which say: I am here exercising a foreign power. It may be from a heritage point of view that those representations should stay there, but they certainly should be supplemented by the Arms of the State of New South Wales. I think that that would look clumsy and unfortunate. I think that they could be removed but, as I say, respectfully conserved, displayed, interpreted, not thrown away, which is what happened on various occasions with those old Arms that I have illustrated here. They were displayed in New South Wales and in use and the great seal of New South Wales displayed them, the judges sat under them, but when they moved on they were just taken down and disposed of and I do not think you will find a single representation of any of the others except the current Royal Arms anywhere.²⁰²

5.73 The Government Architect also alluded to the possibility of displaying both arms:

In many cases it may be preferable to keep heritage coats of arms and provide another method of interpreting the state of New South Wales arms within the heritage context.²⁰³

Preservation of Royal Arms of the UK that are removed

5.74 Clause 6(3) of the Bill provides that sculpted arms, or arms in any durable form, that are removed are to be housed or otherwise dealt with in such a manner as the Premier, after consultation with the Heritage Council, may direct (see paragraph 2.9). This provision was generally endorsed by inquiry participants. For example, the Society of Australian Genealogists, which generally supported the use of State Arms rather than the Royal Arms of the UK stated:

²⁰² Evidence, 12 August 2002, p 8.

²⁰³ Correspondence from Mr C Johnson, 14 November 2002.

...in the very few cases where a representation of the UK Royal Arms will need to be appropriately removed from use in its present position, it should be preserved and conserved as an important and respected part of our heritage.²⁰⁴

5.75 Heraldry Australia stated that it:

...strongly supports the conservation and protection of representations of the arms of the sovereign of the United Kingdom, erected at a time when that sovereign was also the sovereign of NSW, as essential parts of our heritage.²⁰⁵

5.76 Mrs P Wagstaff suggested that Royal Arms of the UK that are removed could be displayed as a tourist attraction:

If the Government enacts the State Arms Bill 2002, resulting in the removal of Royal Arms, I would suggest that they consider placing the Royal Arms in a display case within the building from which they were removed. The Royal Arms history plus the history of the building where it would be displayed could be a valuable tourist attraction...²⁰⁶

5.77 The Government Architect stated that the Heritage Council should be involved in consultations regarding the removal and housing of Royal Arms of the UK:

Where inappropriate coats of arms can be removed from government buildings I see that this has been covered in your object of the Bill to have the heritage council involved in consultation in relation to the removal and the housing of these arms. In these circumstances the coats of arms should be catalogued and protected in accordance with their cultural significance. Where possible removed significant items should be kept at the place.²⁰⁷

5.78 With regard to the Royal Arms of the UK used in the chambers of Parliament, the Manager of Parliamentary Archives, Mr Lawrie made the following suggestion:

If they were removed, I would recommend to the Presiding Officers that they be placed in the Parliamentary Archives.²⁰⁸

Conclusion

5.79 The Committee concluded in Chapter 4 that it supports the general policy objective of the Bill to require that when arms representing the authority of the State are used the State Arms should be used rather than the Royal Arms of the UK. As noted earlier in this chapter, the Committee endorsed clause 4 of the Bill as affecting this objective and

²⁰⁴ Submission 57, 15 August 2002.

²⁰⁵ Submission 34, 17 May 2002.

²⁰⁶ Submission 29, 29 April 2002.

²⁰⁷ Correspondence from Mr C Johnson, 14 November 2002.

²⁰⁸ Submission 4, supplementary submission, 20 May 2002.

expressed its view that the State Arms should be used consistently across all aspects of Government (paragraph 5.52).

- 5.80** While the Committee does not object to the Royal Arms of the UK being *displayed* in or on any public buildings there are some situations where the Royal Arms of the UK are presently being *used*, such as in the chambers of Parliament and above judicial officers in many courts. The Committee does not believe that it is appropriate to continue this practice. The Committee is of the view that in *all* cases where Royal Arms of the UK are used to represent the authority of the State of New South Wales they should (subject to the limited exemption set out below) be removed and replaced with the State Arms. The Committee believes that clause 6(1) of the Bill is drafted effectively to meet this aim (subject to Recommendation 8).

Recommendation 7

The Committee recommends that all Royal Arms of the UK used to represent the authority of the State of New South Wales should be removed and replaced with the State Arms or, if their removal is opposed on heritage grounds, State Arms should also be erected and used in a prominent position.

- 5.81** The Committee is concerned that the three year time limit may cause unreasonable difficulties in some circumstances. It recommends, therefore, that clause 6(1) be amended to require that Royal Arms of the UK be removed 'as soon as practicable' by removing the bracketed words 'but in any event within 3 years' from clause 6(1).

Recommendation 8

The Committee recommends that the bracketed words 'but in any event within 3 years' be removed from clause 6(1) of the proposed State Arms Bill to remove the deadline for changes.

- 5.82** The Committee shares the view of many inquiry participants, those both in favour and against the Bill, of the importance of heritage conservation in this context. The competing policy, however, is that the correct arms should be used to represent the authority of the State of New South Wales.

- 5.83** The Committee has taken the view that where Royal Arms of the UK used to represent the authority of the State are also covered by a heritage listing, relevant processes of the Heritage Office should be followed to determine how the Arms can be removed from the position in which they purport to represent the authority of the State of New South Wales, with the least disruption to the integrity of the environment. Where it is possible to display Royal Arms of the UK elsewhere within the same heritage environment that should be done. For example, Royal Arms of the UK could be displayed in the foyer of a court

building. In relation to Royal Arms of the UK not currently the subject of heritage listing, the Heritage Council should also be consulted.

- 5.84** The Committee agrees that a limited exemption to the requirement to replace Royal Arms of the UK should be incorporated into the Bill to the effect that, in circumstances where the Heritage Council deems that it would destroy the integrity of the heritage environment to remove Royal Arms of the UK, they should be retained, but that the State Arms should be also used in conjunction with the Royal Arms of the UK. In this circumstance, the State Arms should be used in such a manner as to indicate that it is the State Arms that represent the authority of the State of New South Wales and not the Royal Arms of the UK. The Bill stipulates that the exemption is to be exercised by the 'Premier after consultation with the Heritage Council'. The Committee believes that, with regard to the limited exemption it recommends, the already established procedures of the Heritage Office are adequate. Clause 6(2) should be redrafted to set out this limited exemption.

Recommendation 9

The Committee recommends that a limited exemption to the requirement to replace Royal Arms of the UK should be incorporated into the Bill to the effect that, in circumstances where the Heritage Council deems that it would destroy the integrity of the heritage environment to remove Royal Arms of the UK, then they should be retained and the State Arms should also be erected and used in a prominent position.

Ability to Create Additional, Alternative and Replacement State Arms

- 5.85** Clause 5 of the Bill proposes to confer upon the Governor the power to: 'amend Schedule 1 to add other State Arms, to specify alternative forms of State Arms (such as forms exhibiting colours), or to omit or replace any State Arms, or part of any State Arms'. The Governor is to exercise this power by way of proclamation.

Nature of clause 5

- 5.86** There is some confusion as to the exact intent of clause 5. One interpretation is that it enables the Governor to simply change the rendition of the State Arms included in Schedule 1, that is, to endorse alternative forms or styles of the State Arms while remaining true to the blazon. Comments made by the Flag Society drew the Committee's attention to the possibility that, pursuant to this interpretation, the Governor may include a simplified version of the Arms that Her Excellency deems appropriate for use for promotional purposes.²⁰⁹
- 5.87** Most inquiry participants who addressed this issue, however, have interpreted this clause as enabling the Governor to fundamentally change the State Arms as established by the blazon included in the Royal Warrant by which the Arms were granted in 1906, or to add

²⁰⁹ Document tendered by Mr Burton, 12 August 2002.

entirely new State Arms. Both interpretations raise the question of validity of conferring on the Governor the power to amend legislation. The latter interpretation also raises the issue of the desirability of conferring on the Governor the power to amend the State Arms as granted by the Royal Warrant in 1906. These issues are examined in this section.

Conferring power on the Governor to amend an act of Parliament

5.88 Clause 5 clearly purports to allow the Governor to amend part of an act of Parliament. HAGSOC expressed concerns about the validity of this provision:

This needs to be looked at very carefully from a constitutional and legal point of view, as this is an enabling power being delegated to the Governor. As a general principle once legislation has been enacted by Parliament it becomes a creature of the Legislature and therefore only that body can alter or amend the Act either in whole or in part. This also includes any Schedule that may be attached to the legislation and thus becomes an integral part of the Act.

The present wording gives the Governor by way of proclamation the power to amend this legislation, Schedule 1 in particular. This power should be reserved to the NSW Legislature alone and not be delegated to any other person or body.²¹⁰

5.89 Mr J Thompson of HAGSOC elaborated on this issue in response to questioning by the Committee:

CHAIR: At page 4 of the Society's submission the point is made that the manner in which the Hon. Peter Breen's Bill is drawn at the moment—and I am referring specifically to clause 5 of his Bill—affords the Governor, by way of proclamation, the power to amend the legislation in schedule 1 in particular. The submission states:

This power should be reserved to the New South Wales Legislature alone and not be delegated to any other person or body.

I have some sympathy for the point that you are making. Speaking for myself, I am not in favour of what are commonly called Henry VIII clauses. Would you like to say something to the Committee about that?

Mr THOMPSON: First, we want to try to make a distinction between the delegation of powers and the actual amending of what is printed in legislation. While we are not familiar with New South Wales practice we, being in Canberra, come from the Commonwealth. We have all had some dealings with drafting legislation or giving drafting instructions and speaking to Parliamentary Counsel. What is actually printed in the Bill, whether it be the provisions of the Bill, the footnote or the attached schedules, they are integral parts of the Act. They are Acts of Parliament and, therefore, only Parliament can change them. You do not delegate to the Executive Government to change the Act. That is where we are coming from.

I do not know whether it is New South Wales practice to delegate that authority to the Executive. If you have something in the schedule describing the blazon—

²¹⁰ Submission 39, 30 April 2002.

an illustration or something like that—that is part of the Act and only Parliament itself can change that. That is what we are getting at. So we were surprised to see that you were delegating the power to the Government to change what is in the schedule. Is that the practice in New South Wales? Can you do that?

CHAIR: It is certainly not common practice; it is most unusual.

Mr THOMPSON: That is why we were surprised with that.

The Hon. JOHN HATZISTERGOS: It is common in relation to statutes that protect coats of Arms in other States. It is a practice that has been used in other States that have statutes protecting their flags, emblems and matters of that nature.

Mr THOMPSON: What we were getting at is that we would have thought there would have been a regulation-making power in the Bill to enable the Government to make regulations with respect to giving further effect to this Act and that that would then be attached to the regulations rather than the Act itself.

CHAIR: Are you saying that is preferable in the sense that the regulation is subject to disallowance by either House of Parliament?

Mr THOMPSON: Yes. That is the practice in the Commonwealth. I do not know whether you have regulations disallowed by the Parliament in New South Wales.

CHAIR: In my view, even that is hardly desirable. It is preferable that the statute is amended by Parliament.

Mr THOMPSON: Yes. We are saying that, if you want to amend the statute, Parliament alone should have that power. Regulations, as we see it, are Acts of the Executive, which are open to be disallowed by either House of Parliament.²¹¹

Conferring power on Governor to amend the State Arms as blazoned in the Royal Warrant

5.90 The second issue concerns the validity of the conferring on the Governor the power to change the State Arms as blazoned in the Royal Warrant of 1906 or create new or alternative State Arms. Mr S Szabo argued that this would represent a derivation of the powers of the Queen:

Clause 5 is extremely interesting from the point of view of heraldic law, as it effectively gives the Governor the power to grant and regulate arms. Such definition of the powers of the Governor is, to the best of my knowledge, unprecedented in Australia... Examination of Clause 5 in some detail raises some concerns: 'to add other State Arms' suggests that there may be more than one coat of arms used to represent the lawful authority of the State of New South Wales. This could create some confusion then as to which particular State Arms would be used in particular situations. If the intention here is to suggest that there be other arms to represent specific instrumentalities, then that is another matter.

²¹¹ Evidence, 15 August 2002, pp 18-19.

The phrase “to specify alternative forms of State Arms (such as forms exhibiting colours)” suggests that it is possible for any colour scheme to be adopted as desired. For example, if the Governor-In-Council decided to make the Cross Or (gold) instead of Argent (silver)...that would be contrary to the laws and traditions of heraldry, as the colours of the Arms are specified in the blazon (written description) in the Royal Warrant granting the Arms...²¹²

5.91 Mr S Szabo expanded on his view in evidence, arguing that if the Governor is to be given the power to amend the State Arms, the conferral of power should be made in accordance with the laws of arms:

The Hon. PETER BREEN: You also expressed concern about the devolving of the power to grant Arms to the Governor. I think you said that was perhaps unique in heraldic law. Can you perhaps explain that a bit further?

Mr SZABO: Certainly within this country I believe I said it would be a unique situation that that prerogative to grant Arms would be devolved to the Governor. It is not inappropriate, but I believe it must be done in accordance with the tradition of Arms, which is that the monarch would provide the Governor with letters patent delegating that power. This is what was done in Canada in 1988 with the Governor-General. Letters patent were presented to the Governor-General of Canada by Prince Edward, who was acting on behalf of Elizabeth II as sovereign, and obviously that was the trigger then for the establishment of the Canadian heraldic authority. I believe that if those powers were to be exercised by the Governor of New South Wales to grant Arms a similar mechanism should be carried out.

The Hon. JOHN RYAN: That would simply be a matter of the Government of New South Wales instructing the sovereign to grant the letters patent. It does not sound particularly complex.

Mr SZABO: No, not at all, and of course constantly our sovereign has stated that she will accede to the wishes of her people - we saw that with the constitutional referendum and in so many other aspects - so the establishment of that body I think would certainly not provoke any controversy at the level of the sovereign if it is the wish of the people.²¹³

5.92 Mr S Szabo also suggested that ‘consultation and canvassing of views’ should occur before changes are made to the State Arms.²¹⁴ In his submission, he suggested that the Bill be amended to establish a ‘State Heraldry Advisory Committee’ to advise the Governor in this context:

²¹² Submission 37, 5 May 2002.

²¹³ Evidence, 12 August 2002, p 15. Mr Szabo gave evidence in his capacity as the representative of Heraldry Australia.

²¹⁴ Evidence, 12 August 2002, p 15.

New Clause 7:

A new definition should be added to define the composition of a State Heraldry Advisory Committee and to provide that it should be consulted in the circumstances envisaged by clauses 5, 6(2) and 6(3). This Committee need not be large but should comprise a majority of members expert in heraldic law and usage.²¹⁵

5.93 Mr M McCarthy similarly suggested 'an advisory committee and the opportunity for public input before changes to the State Arms and symbols are implemented.'²¹⁶

5.94 HAGSOC expressed similar concerns as Mr Szabo. The organisation suggested that the most appropriate way to change the State Arms is seek a new grant of arms:

As Coats of Arms are historic markers their blazon (and designs conforming to it) cannot be changed unless replaced by a new Coat of Arms. The new Coat of Arms must be issued by Royal Warrant or possibly by an Act of Parliament with the Royal Assent (or Vice-Regal Assent, on the assumption that the Queen's representative in a Nation State is the local Fount of Honour). The New South Wales Coat of Arms was granted by Royal warrant of His Majesty King Edward VII on 11 October 1906. Changes to or abandonment of parts of these Arms are not within the prerogative of the Governor or of the NSW Legislature. Any changes to the New South Wales arms granted under the Sovereign's Royal Warrant would require the Sovereign's agreement through Garter King of Arms with the concurrence of the Earl Marshall.²¹⁷

5.95 The Committee notes that a precedent for this can be found at the Commonwealth level and in South Australia where subsequent grants of arms replaced the original grants (see paragraphs 3.60 and 3.66).

5.96 HAGSOC canvassed the possibility that, given that acts of Parliament require Royal assent, an act conferring power on the Governor to change the State Arms may overrule the Royal Prerogative exercised when the State Arms were granted:

The Statute of Westminster of 1931 makes no reference to armorial matters and certainly does not diminish the Royal Prerogative in relation to the granting of Arms. This continues as it was before the Statute came into effect. It is conceivable that an Act of Parliament, which requires the Royal Assent, could overrule the Royal Prerogative. The Government of New South Wales may wish to clarify this issue by seeking advice from the Garter King of Arms as to whether an Act of Parliament identifying changes to arms to produce new arms is appropriate. To our knowledge a proclamation by the Governor is not appropriate for the intended purpose.²¹⁸

²¹⁵ Submission 34, 17 May 2002.

²¹⁶ Submission 20, 15 April 2002.

²¹⁷ Submission 39, 30 April 2002.

²¹⁸ *ibid.*

5.97 The Flag Society also queried the appropriateness of legislating to confer power upon the Governor to change the State Arms:

Whilst it seems appropriate to permit a range of artistic renditions, the current phrasing of Clause 5 would permit a complete change – indeed, replacement – of the Arms, going well beyond changes to individual elements of the Arms (such as changing the *dexter* supporter – the Lion rampant – to another device, such as the original Emu). Any such changes to Arms granted directly by the Sovereign in 1906 may require Royal Assent from the Sovereign personally. That view pertained in having the Royal Assent to the *Commonwealth Flags Act of 1953* reserved for the personal signature of Queen Elizabeth II, rather than by her vice-regent, the Governor-General.²¹⁹

5.98 Mr R Kelly of the Flag Society expanded on this view in response to questioning by the Committee:

In doing research on the *Flags Act 1953* I became aware that the Federal Government had legal advice preparatory to that Act which called into question the legal power of the Commonwealth Government to pass legislation in respect to a matter which had been the subject of the Royal Prerogative, that is the approval of the Australian Flag in 1903. The same situation applies here though with a different constitutional framework. I am not clear as to what the constitutional position in Australia is, but the New South Wales Arms are derived from a grant of Arms from King Edward VII and, as such, this was an exercise of the Royal Prerogative in 1906. Therefore, it is a question mark we raised in our submission as to whether anything which had the effect through the Bill of altering the effect of the original warrant might require a reservation to the Sovereign specifically if there were similar provisions or restrictions on the power of the State legislature. As I say, the analogy is based on the Federal position which is fundamentally a different constitutional arrangement, but that was the origin of the question mark which centres around the status of a Royal Warrant given that the Bill would give the power to the Governor to make alterations or complete replacement, of something which was the subject of the grant of Arms.²²⁰

Conclusion

5.99 The Committee has concerns with the intent of clause 5, which seems to be to confer upon the Governor the power to alter the State Arms as blazoned in the original Royal Warrant or to add new forms of the State Arms. While the Committee considers Parliament to be within its powers to legislate in this regard, it favours the more traditional method of alteration, which is to seek a grant of new arms by way of Royal Warrant as occurred at the Commonwealth level in 1912 and in South Australia in 1984 (see paragraphs 3.61 and 3.67 respectively). Intrinsic to the symbolic strength of the State Arms is that it has been validly conferred on the State of New South Wales by way of Royal Warrant in accordance with the laws of arms. Until an heraldic authority is established in this country (see Chapter 6) the Committee is of the view that the State should follow heraldic traditions with regard to

²¹⁹ Submission 43, 3 May 2002.

²²⁰ Evidence, 12 August 2002, p 24.

changes to the State Arms. The Committee also shares the concerns expressed by HAGSOC regarding the appropriateness of enabling the Governor to amend an act of Parliament in this way. The Committee therefore recommends that clause 5 of the Bill be deleted.

Recommendation 10

The Committee recommends that clause 5 of the proposed State Arms Bill be deleted.

- 5.100** The Committee agrees however, that alternative forms of the State Arm that reflect the blazon, such as simple or stylised versions should be able to be used and in this regard, the Committee notes Recommendation 12 regarding the production of a guideline document including appropriate renditions of the State Arms.

Inclusion of a Depiction of the State Arms in Schedule 1

- 5.101** This section examines the inclusion of a depiction of the State Arms in Schedule 1 of the Bill. Schedule 1 contains a simple line drawing of the State Arms titled 'The State Arms'. Schedule 1 is referred to twice in the Bill. First, clause 3 defines 'State Arms' and notes that the State Arms are 'depicted in Schedule 1'. Second, clause 5 states that the Governor 'may from time to time, by proclamation, amend Schedule 1...'.
- 5.102** The depiction of the State Arms in Schedule 1 was raised as a matter of concern by several participants in the inquiry. All those who addressed the matter concurred that some indication of what the State Arms look like should be included in the Bill. There were differences of opinion, however, as the best method of doing so. While some argued that only the blazon for the State Arms should be included in the Schedule, others saw merit in including the blazon and the depiction. Few thought the depiction alone was adequate.

Blazon only

- 5.103** The blazon for the State Arms, as contained in the Royal Warrant by which the Arms were granted, is set out in paragraph 3.38. The function and nature of the blazon in heraldry was described in paragraphs 3.29-3.31. The Committee notes in particular that a blazon precisely describes the specifications for what a coat of arms looks like and is included in the grant of arms. It is also important to reiterate that as heraldry permits scope for artistic rendition of arms in accordance with the blazon, the depiction of the State Arms in Schedule 1 is just one of many possible renditions.
- 5.104** HAGSOC argued in its submission that the depiction of the State Arms in Schedule 1 should be replaced with the blazon for the State Arms:

The blazon is the description of the arms in precise heraldic language and is readily understood by anyone with knowledge of heraldry. It describes the precise form of the arms, including the tinctures (colours). Furthermore it allows the heraldic artist to interpret the blazon on an individual basis. The merits of this are

readily appreciated when one views the various styles of the Royal Arms on public buildings in Australia and elsewhere. The use of the graphic without explanation or proper heraldic description will cause the particular graphic depiction to become law, and to permit no other interpretations to be used in the future. The particular depiction of the arms as printed in the Schedule was produced when heraldic painting did not achieve the high professionalism and artistic standard that it has today. By today's standards the graphic in Schedule 1 appears somewhat crude and child like. It would be regrettable to enshrine this, or any other particular depiction of the arms in law. The blazon and not this or any other graphic should be included in Schedule 1.²²¹

5.105 Mr J Thompson and Mr C Lindesay of HAGSOC commented further on this issue in evidence before the Committee:

Mr THOMPSON:...we propose the heraldic terminology because it is very concise and can be interpreted easily by someone who is knowledgeable in that area. If you tried to convert some blazons into common language you would end up with several paragraphs; it would be a real mouthful. Blazons are concise, specific and easily recognised. We want the blazon rather than an illustration because the present draft as given to us contains one artist's interpretation ... If it was in the Bill people would think that was the only interpretation allowed.

CHAIR: Are you saying that the State Arms would be defined more satisfactorily if there were a blazon in the Bill and/or a colour depiction?

Mr THOMPSON: We must make sure that that depiction is not the only version: it is an illustration for illustrative purposes only; it is not the definitive interpretation of the blazon. Once you stick it in legislation someone will say that this is the only way it can be drawn. The current version is anaemic and pretty weak looking. Some of the other submissions have much more robust and attractive illustrations of the Arms of New South Wales.

...

Mr LINDESAY: We suggest that the blazon should be included because there can be only one blazon to describe the Arms. However, there could be literally an infinite number of representations and artistic interpretations of it. If you include any one interpretation in the Bill there may be some difficulty if it is enshrined in law.²²²

5.106 Mr S Szabo thought the use of the depiction in Schedule 1 to be 'restrictive' and recommended that the blazon be used instead:

If passed into law it would immediately restrict how the arms would be depicted. The traditions and usages of heraldry provide a verbal or written description of the arms that gives precise technical details of how the arms are to be depicted. This can then be interpreted by an heraldic artist or craftsperson in order to

²²¹ Submission 39, 30 April 2002, p 8.

²²² Thompson and Lindsey, Evidence, 15 August 2002, p 24.

prepare a representation of the arms. Schedule 1 should omit the illustration and insert the blazon...[as set out in the Royal Warrant].²²³

5.107 Mr CRP George expressed similar ideas:

I would suggest that a written description would be a more appropriate way to convey the present NSW arms rather than the picture in the Schedule to the draft Bill. I would suggest furthermore that the description should be as contained in the original grant...I believe that the written description is more appropriate than the picture for inclusion in a Bill for at least three reasons. Firstly, this is usually the most accurate way to convey the content of arms: the picture given in the Schedule to the draft Bill lacks much important detail. Secondly, the NSW arms are quite colourful, yet the picture in the draft Bill gives no indication of the tinctures (metals, colours and furs) involved, so future heraldic artists could legitimately use quite different tinctures to those originally intended...and so quite altering the symbolism. Thirdly, and in contrast, a verbal description would permit future heraldic artists to make intriguing and pleasing changes to the style of the original – perhaps by modernising its artwork – without altering the symbolism.²²⁴

A plain English blazon?

5.108 As the blazon is written in heraldic language, it could be argued that this makes it incomprehensible to the general public. The President of the Flag Society of Australia Inc ('Flag Society'), Mr C Burton put forward the idea of including a blazon worded in 'plain English':

...we think that what is generally referred to as a blazon ought to be expressed in plain English. Let me give you as an example the language of blazonry particularly as related to the 1906 Coat of Arms of New South Wales. Yes, a description of the matrix, the fundamental, the approved design is very desirable. Heraldry has a technical term for this, blazonry. It tends to use language that is rather special, some would even say precious; but the point is that it is highly precise language. You have to know the rules to understand the language. For example, it is a convention in blazonry to refer to colours by the order of their first appearance, so that if the first colour mentioned is blue and blue appears further on, the reference is to the "first", meaning to the first colour mentioned. If the next colour is yellow, that is the second and so on.

In the case of the blazonry of the Arms of New South Wales - and we are arguing against blazonry of an archaic kind - there is a reference to "of the last banded of the second". We presume we are talking about the edging on the shield, but it is not clear, and I hear rumblings from my left to suggest I may have that wrong. The Flag Society is recommending there should be a description but not a blazon; there ought to be a description in plain English that every man and woman can understand.²²⁵

²²³ Submission 37, 5 May 2002.

²²⁴ Submission 38, 6 May 2002.

²²⁵ Evidence, 12 August 2002, p 22.

- 5.109** At the invitation of the Chair, the Flag Society submitted a plain English version of the blazon for the Committee's consideration.²²⁶ The plain English version and a version in 'partially heraldic language', also developed by the Flag Society, is reproduced as Appendix 6.
- 5.110** In evidence before the Committee, Mr M McCarthy rejected the suggestion of using a plain English version of the blazon:

First, blazoning is not a precise science. The things the Flag Society of Australia were talking about are extreme forms of blazon. There are simpler ways to blazon abiding by the rules; using terms of the first and the second is an extreme form of blazon which tends no longer to be used. I publish all my books in English for an international audience a large part of which is not English. The blazons are always given in English; nobody, no matter who they are and what language they speak has any trouble understanding what they are. Even though words can change - for instance, in Italian the words are not the same for red and blue - the sense is the same and there are ways of finding out. If you do not understand a term in one language or in another language, there are compendiums which list the terms in about ten different European languages. The notion that you solve a problem by rendering it in a language which is not precise and does not have the same precise meaning is to my mind not accurate.

The only way to define something is to use the language you define it in; in the same way you use the language in chemistry and lawyers use their own language. It is counter productive to simplify something so that you understand it and you have guarantee that anyone else can interpret the way you interpret it to mean what it should mean. Whereas if you use an old and established codified system to describe something the chances are most people will understand and get it right even if they have to resort to an heraldic dictionary to get it right.²²⁷

- 5.111** Mr McCarthy also suggested that, in the context of using a blazon to identify the State Arms in the Bill, a glossary could be placed in the Act to define heraldic terms:

Mr McCARTHY:...The thing that you should perhaps attach if people have trouble with heraldic terms is a glossary which sets out what they mean in plain English as an addendum to the Act, which has been done in the past in situations like this where the word "azure" is heraldic for blue and you put a glossary at the end setting out exactly what all those terms mean, which is the normal way of doing it if you want to clarify it for people who do not understand heraldic language.

The Hon. PETER BREEN: Is there a precedent for putting it in the definition part of the legislation?

Mr McCARTHY: You could put it in the definition part if you like, yes, that would be another place to put it.

²²⁶ Submission 43, supplementary submission, 31 August 2002.

²²⁷ Evidence, 12 August 2002, pp 29-30.

The Hon. JOHN RYAN: If you defined them differently, though, would you change their meaning?

Mr McCARTHY: I am not talking about defining. Heraldically there is a different name for every colour. You would simply say that where you see "azure" it means blue, not a defined colour blue because there is no such thing as a defined colour, or if you come across something that is an heraldic term which is not the same in English, I mean a cross is a cross in English and in heraldry it would become something like a bend and you describe what a bend is, a vertical bar across a shield. Those places where the term is different, and there are not that many that are different from English in fact. The colours are different and some of the technology. A lion rampant means a lion standing on one leg waving the others in the air. In effect, that is what it means.²²⁸

- 5.112** The Committee notes that definition sections are generally included at the start of an Act and that complex legislation may include a dictionary as a schedule, rather than having a very large definition section.²²⁹ The purpose of a definition section or dictionary is to define the terms used in the Act. They are not to be treated as substantive provisions and do not define words for general usage.²³⁰

Depiction and the blazon

- 5.113** Ms V Keevers, a member of HAGSOC who made a separate submission to the inquiry, advocated the incorporation of the blazon *as well as* the depiction.²³¹ Similarly, Heraldry Australia argued that Schedule 1 should be divided into two parts, with the first setting out the blazon and the second containing the depiction.²³² Mr McCarthy recommended 'the addition to the Schedule of a blazon describing the Arms in colour heraldic terms'.²³³
- 5.114** The importance of ensuring that people are aware that any depiction of the State Arms in the Bill is but one possible rendition in accordance with the blazon was stressed to the Committee. In this regard, Mr R d'Apice, who also advocated the use of both blazon and depiction, raised the issue of how the depiction should be referred to in the Bill. As previously noted, clause 3 uses the phrase 'depicted in the Schedule'. Mr R d'Apice suggests that the phrase 'a representation of which appears in the second half of the Schedule' should be used instead.²³⁴ He elaborated on this view in evidence:

²²⁸ Evidence, 12 August 2002, p 29.

²²⁹ Examples of NSW legislation that contains a dictionary include: *Crimes Act 1900*; *Evidence Act 1995*; *Local Government Act 1933*; and *Mental Health Act 1990*.

²³⁰ Pearce and Geddes, *op cit*, p 198.

²³¹ Submission 56, 1 July 2002.

²³² Submission 34, 17 May 2002.

²³³ Submission 20, 15 April 2002.

²³⁴ Submission 5, 27 March 2002.

Traditionally a Coat of Arms would be granted by any granting authority in words and then go on to say, "A representation of which appears in the margin". It is the words that are the Arms. The representation is merely one way that it can look. It does not need to be fixed. The Bill should say that principally the Arms are as set out in the blazon, the words describing the Arms, then "a representation of which appears in the second half of the schedule". Any other representation would validly be the Arms.²³⁵

- 5.115** Mr S Szabo was also concerned about the terminology used to describe the depiction of the State Arms. He suggested that if the depiction is included it should be referred to in the Bill as 'an acceptable representation of the Arms of New South Wales'.²³⁶
- 5.116** The Committee notes that of the four Australian jurisdictions that have specifically legislated with regard to arms, only the Queensland and Northern Territory Acts include references to what the arms of those jurisdictions look like and they include both blazon and depiction. The Queensland Act contains both the blazon, titled 'Heraldic Description', and a black and white 'pictorial description' of the Queensland State Arms.²³⁷ Similarly, the Northern Territory Act contains both the blazon for the Arms of the Territory, titled 'Description of Arms of the Territory' and a 'reproduction of the Arms of the Territory'.²³⁸

Colour depiction

- 5.117** Another issue raised in relation to the inclusion of the depiction of the State Arms in Schedule 1 was whether it should be rendered in colour. Some participants in the inquiry suggested that the depiction should be in colour so as to ensure that people know the correct colours of the State Arms. For example, the representatives of the Flag Society, Mr Burton and Mr R Kelly made the following comments:

Mr KELLY: In that context we think a colour version with plain English would be the better approach; and then you simplify down from that, rather than have a simple version in the Act, then complicate it in other or variant renditions.

Mr BURTON: Mr Chairman may I add that another concern in that context was that if you had a line drawing based on the original warrant and that is taken out of context there is nothing to prevent anyone not understanding the blazon, and colouring the Arms in, say, the Aboriginal colours on the shield or in some other sectarian or idiosyncratic way. That is what we are getting at when we say that having a line drawing in the Act without colour drawing or specification invites variation upon a device which is the property of the State. That is it in sum. The choices are a very clear: concise, precise description of how that line drawing should look if it were to be in colour; or a blazon only, and leave it to the heraldists to correct and sort out the obscurities; or, thirdly, a coloured page inserted into the Act.

²³⁵ Evidence, 12 August 2002, p 9.

²³⁶ Submission 37, 5 May 2002.

²³⁷ *Badge, Arms, Floral and Other Emblems of Queensland Act 1959* (Cth), Schedule 1, Parts 1 and 2.

²³⁸ *Flag and Emblem Act* (NT) Schedules 1 and 2.

CHAIR: If we can persuade the Parliamentary Counsel to include a colour depiction in the Bill and ultimately the Act that would be sufficient identification?

Mr KELLY: Yes.²³⁹

5.118 As the Committee noted in paragraph 3.29, while the colours of arms are described in the blazon, there are no fixed shades of those colours. Therefore, if a blazon gives the tinctures of a coat of arms as Azure (blue) and Gules (red) then, as long as the blue is not too light and the red not too orange, purple or pink, it is up to the artists to decide which particular shades they think are appropriate.²⁴⁰

5.119 The Committee notes that while it is possible to incorporate colour into legislation it has rarely been done in Australia and never in New South Wales. One example of the use of colour brought to the Committee's attention by Mr R Kelly is the *Flags Act 1953* (Cth). That Act includes a colour depiction of the Australian National Flag and the Australian Red Ensign in Schedule 2.²⁴¹ A further example is the depiction of the Arms of the Territory in the Northern Territory *Flag and Emblem Act*, as discussed in paragraphs 3.75 and 3.76. The Committee notes however that the most readily available copies of that Act, obtained from Internet resources such as the Northern Territory Parliament's web page and the *Austlii* legal resources database, do not include the depiction.

Conclusion

5.120 The Committee acknowledges that the blazon is the primary heraldic description of a coat of arms and that grants and assignment of arms traditionally also include a depiction of the arms. The Committee also notes that the depiction is only one version of how the blazon may be graphically shown. The Committee does not believe that potential confusion as to the true status of a depiction incorporated into an act necessitates a change in the useful heraldic tradition of using both blazon and a depiction. The Committee has concluded that the most effective manner of including a reference to what the State Arms look like in the Bill is to incorporate the blazon and depiction of the State Arms, as set out in the Royal Warrant, into Schedule 1. The Committee therefore recommends, that Schedule 1 of the Bill be amended to include two parts. Part One should set out the blazon for the State Arms, as worded in the Royal Warrant by which the arms were granted (see paragraph 3.38 and Appendix 5). Part Two should set out the depiction of the State Arms included in the Royal Warrant (see Appendix 5). The Committee does not believe that it is necessary to include a glossary in the Bill.

²³⁹ Evidence, 12 August 2002, p 23. In his submission, Mr Poulos expressed support for the Flag Societies suggestion that the State Arms should be rendered in colour: Submission 3, supplementary submission, 25 August 2002.

²⁴⁰ As per Greaves, op cit, p 23.

²⁴¹ Evidence, 12 August 2002, p 22. *Flags Act 1953* (Cth), Schedule 2.

Recommendation 11

The Committee recommends that Schedule 1 of the Bill be amended to include two parts. Part One should set out the blazon for the State Arms, as worded in the Royal Warrant by which the arms were granted. Part Two should set out the depiction of the State Arms included in the Royal Warrant.

- 5.121** The Committee also recommends that the Premier's Department produce a guideline document similar to that produced by the Department of Prime Minister and Cabinet (referred to in paragraph 3.61) to provide interested people with examples of appropriate renditions of the State Arms. The document should also provide information (see paragraphs 3.42-3.46) regarding the application of section 3 of the *Unauthorised Documents Act 1922* and appropriate uses of the State Arms and any other relevant matter. This recommendation is made whether or not the State Arms Bill proceeds through Parliament.
- 5.122** The guidelines should note that the external ornaments of the Arms (eg the symbols of their sovereign nature) are additional to the blazon and not precluded by it and that the depiction or representation is indicative only and is not the only acceptable representation.
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Recommendation 12

The Committee recommends that the Premier's Department produce a guideline document similar to the *Guidelines on the Use of the Commonwealth Coat of Arms* produced by the Department of Prime Minister and Cabinet to provide interested people with examples of appropriate renditions of the State Arms and to set out other information regarding the appropriate use of the State Arms.

Chapter 6 Related Matters

During the course of the inquiry, several issues related to the use of coats of arms in New South Wales were brought to the Committee's attention. While the proposed State Arms Bill 2002 does not concern these matters, the Committee is of the view that it is within the terms of reference of the inquiry to examine them and make appropriate recommendations. The following issues are therefore examined in this final chapter. First, the Committee considers a proposal to establish an heraldic authority in New South Wales. Second, the need to regulate the commercial use of coats of arms in New South Wales is examined. Third, the Committee assesses various proposals to alter the State Arms.

An Heraldic Authority for New South Wales?

6.1 The function and purpose of heraldic authorities was examined in Chapter 3 of this report (paragraphs 3.20-3.27). Several participants in the inquiry argued that a local heraldic authority should be established. Most argued for the establishment of a Federal authority but advocated in the alternative for an heraldic authority to be established in New South Wales.

Proposal to establish a New South Wales heraldic authority

6.2 Heraldry Australia has long championed the establishment of an heraldic authority in Australia and, in the context of this inquiry, submitted that an heraldic authority should be established at the national level and, in the interim, at the State level in New South Wales:

HA has long promoted the desirability of the establishment of an Australian Heraldic Authority to grant and register arms and to promote and regulate heraldic usage...An Australian Heraldic Authority would also be able to foster and regulate the very extensive (and sometimes improper) use of heraldry which occurs throughout Australia by all three tiers of Government, by professional, sporting and other associations, by Churches and by private individuals. It could operate at little or no cost to the Commonwealth and the States and would fill the gap in the exercise of the prerogative powers of the Queen of Australia which does not exist in other major parts of the Commonwealth...HA urges that the Committee, in its report, supports the creation, at a national level, of an Australian Heraldic Authority and the creation, at a NSW state level on an interim basis, of a NSW Heraldic Authority.²⁴²

6.3 The proposal was supported by many of the individuals and organisations that supported the Bill, including the Australian Iconography Foundation, the Flag Society, HAGSOC and the Society of Australian Genealogists.²⁴³ For, example, the Society of Australian Genealogists expressed support for the establishment of an heraldic authority, preferably at the Federal level, but in the absence of that, in New South Wales:

²⁴² Submission 34, 17 May 2002.

²⁴³ Submission 3, supplementary submission, 25 August 2002; Submission 27, 2 May 2002; Submission 42, 6 May 2002; Submission 43, supplementary submission, 31 August 2002.

The absence of an Australian Heraldic Authority is a matter of regret to the Society and it strongly supports the creation of an Heraldic Authority at a Federal level. However, in the absence of an Australian Heraldic Authority and, as an interim measure until the creation of such an authority, the Society strongly supports the proposal for the creation of a New South Wales Heraldic Authority.²⁴⁴

6.4 Mr R d'Apice also argued in favour of establishing a New South Wales authority:

In my view creation of a NSW Heraldic Authority would be desirable as an interim measure pending the creation of an Australian Heraldic Authority by the Commonwealth. Many state instrumentalities and corporations, local Government authorities and corporations and associations and members of the general public use arms and other heraldic symbols in everyday life. A NSW Heraldic Authority would provide them with an appropriate local body to which they could have resort to meet their heraldic needs and would remove recourse to the College of Arms or other foreign heraldic authorities as now undesirably occurs...²⁴⁵

6.5 Mr M McCarthy also saw the need for an heraldic authority in Australia:

...I would make the point that in the absence of any authorised body or any Heraldic Authority in this country, the only bodies able to make grants of arms, which is a sovereign power, are the Governor General and the State Governors in Council. This situation leaves the good order and management of Heraldic usage and the regulation and registration of coats of arms in limbo. In addition a large percentage of our people are from non Anglo-Celtic backgrounds and these are ill served by this void. Many of these citizens would like to publicly use their inherited arms but most do not because of a mistaken belief, induced by an anglocentric view of heraldic usage, that their arms are not legitimate because they have not been granted or otherwise recognised by British authorities who unjustifiably claim some exhaustive jurisdiction over us. It should be possible for them to register them, as they currently exist, for use in Australia. There is no way they would approach the College of Arms in London to do this especially as the College would insist on differencing them and charge them a fortune for something that was already theirs.²⁴⁶

6.6 In evidence before the Committee Mr C Lindsay of HAGSOC also expressed support for a local heraldic authority and argued that it could clarify some of the difficult legal and jurisdictional issues of heraldry in Australia, some of which have been canvassed in this report:

CHAIR: ...Are you aware of any practical problems or concerns that have arisen out of the Canadian experience following the establishment of an heraldic authority in that jurisdiction?

Mr LINDESAY: No, we are not aware of any problems whatsoever. On the contrary, and according to one of our Canadian colleagues in the Heraldry Society

²⁴⁴ Submission 57, 15 August 2002.

²⁴⁵ Submission 5, 27 March 2002.

²⁴⁶ Submission 20, 15 April 2002.

of Canada, the establishment of the Canadian Heraldic Authority has been a "howling success". The fact that it is a national body rather than a provincial one has had immense advantages, some of which we have mentioned and which we can cover. Another advantage is that because it is at a national level, the establishment of the authority resolved any outstanding questions concerning jurisdiction...

... The various submissions made to this Committee highlight that fact. Given the question of a possible legal vacuum in respect to all matters armorial in Australia, as well as the lack of protection to those Arms granted by overseas heraldic authorities, the need for an indigenous authority with national coverage becomes obvious.²⁴⁷

6.7 The Flag Society argued that a local authority should be established in conjunction with the Federal Government:

If such a local Heraldic Authority be established, on balance it would seem better for it to be established as a collective initiative of the State and Commonwealth, rather than as a purely New South Wales entity. Similarly, the potential conflict between the procedures of Trade Mark registration and Design copyright would need to be assessed and avoided.²⁴⁸

6.8 The Committee did not receive any strong objections to the proposal to establish a local heraldic authority. However, the Committee points out the suggestion arose through submissions and only those who made subsequent submissions or gave evidence before the Committee had the opportunity to comment on the proposal. The Committee does note that even those most stridently against the Bill were somewhat receptive to the proposal. For example, Reverend the Hon Fred Nile MLC stated:

I would have to give some thought to that but on hearing it proposed, I do not see what objections there would be to it...²⁴⁹

6.9 Mr J Armfield of the ACM stated:

...The question of heraldry and the grants of Arms is something outside the Charter of Australians for Constitutional Monarchy. What I am about to say should not be taken as an official announcement of their view. It is my personal view. My personal view is that I do not have a problem in principle with the idea of there being a local heraldic authority. My only comments would be: one, I would like to see the specific detail before I supported it or opposed it; secondly, if Australian citizens wish to get their Arms from the College of Arms in London or Dublin or some other place, I do not think they should be stopped from doing it. I think that if it is established it will be a very good idea and I think it should be under the control of either the Governor General or the Governor and I must admit the only knowledge I have of the Canadian authority is once I read the questions I went to the Governor General's web site in Canada and read what

²⁴⁷ Evidence, 15 August 2002, p 20.

²⁴⁸ Submission 43, supplementary submission, 31 August 2002

²⁴⁹ Evidence, 15 August 2002, p 8.

passages there are there. I cannot pretend, and I do not pretend to have any knowledge of how it works but so far as the information shows, there does not seem to have been any problem and I think you have had evidence earlier that it has apparently been quite successful. So I cannot really make a positive contribution. But on a purely personal level I do not have any objection to the principle.²⁵⁰

Demand for coats of arms in New South Wales

6.10 The Committee was interested to ascertain the likely demand for grants of arms from a New South Wales heraldic authority. Unfortunately, little information was provided to the Committee in this regard, although the Committee does interpret the enthusiasm for a local heraldic authority expressed throughout the inquiry as indicative of a reasonable level of demand.

6.11 The Committee briefly surveyed the available information from other heraldic authorities. For example, the Chief Herald of Ireland granted 23 arms in 1999 and 20 in 2000.²⁵¹ Approximately 100 corporations, towns, groups and individuals apply to the Canadian Heraldic Authority for coats of arms each year.²⁵² The Committee was also informed that in its first six years of operation, approximately 500 grants of arms had been issued by the Canadian authority, including innovations that signalled the evolution of distinctly Canadian heraldry.²⁵³ The English College of Arms granted 120 arms in 2001.²⁵⁴ The diversity of those individuals and entities that seek grants of arms is illustrated by the breakdown of the Arms granted by the College of Arms in 2001:

In 2001, 120 grants and transfers of armorial bearings were made by the English Kings of Arms, of which 15 were to corporate bodies and 105 to individuals (including 15 life peers and 11 knights). Of the 120 grantees, 102 were in England, Wales or Northern Ireland, 9 in the U.S.A., 3 in Australia, 2 in Hong Kong, 1 in the Bahamas, 1 in Guernsey, 1 in the Isle of Man, and 1 in Scotland. They included John Major, Cardinal Murphy O'Connor, John Birt, St. Paul's Cathedral and the Institute of Indirect Taxation.²⁵⁵

²⁵⁰ Evidence, 15 August 2002, p 36.

²⁵¹ Office of the Chief Herald of Ireland web site: www.nli.ie (accessed 13 October 2002).

²⁵² Governor General of Canada web site: www.gg.ca/heraldry/hldcan_e.asp (accessed 13 October 2002).

²⁵³ Information tendered by the Hon Fred Nile MLC, 15 August 2002.

²⁵⁴ College of Arms web site: www.college-of-arms.gov.uk/about/8.htm#a (accessed 13 October 2002).

²⁵⁵ *ibid.*

Revenue potential

6.12 Two witnesses before the Committee discussed the fees charged by various heraldic authorities for granting or registering coats of arms.²⁵⁶ In this context it was pointed out to the Committee that the establishment of an heraldic authority in New South Wales would provide a source of revenue for the State. While the likely extent of this revenue is difficult to determine, the Committee acknowledges that potential does exist. The Committee canvassed the sorts of fees charged by established authorities and three examples are set out in the following paragraphs.

6.13 English College of Arms:

- personal grant of arms - £3,150 (approx. A\$8,440);
- grant to an impersonal but non-profit making body - £6,925 (approx. A\$18,550);
- grant to a commercial company - £10,375 (approx. A\$27,800).²⁵⁷

6.14 Canadian Heraldic Authority:

- A fixed processing fee and the variable costs of artwork, research and letters patent preparation is charged. The minimum cost of a grant of arms is approximately \$1,900 in Canadian dollars (approx. A\$2,050).²⁵⁸

6.15 Chief Herald of Ireland:

- personal grant of arms = €2,794 (approx. A\$4,660);
- grant of arms to a local authority = €4,444 (approx. A\$7,400);
- grant of arms to schools, clubs etc = €2,794 to €5,080 (approx A\$4,660–8,460);
- grant to other corporate bodies and organisations = €8,890 (approx. \$14, 570).²⁵⁹

²⁵⁶ Szabo, Evidence, 12 August 2002, pp16-17 and McCarthy, Evidence, 12 August 2002, pp 30-31.

²⁵⁷ Where a grant of a badge or supporters, or the exemplification of a standard is also made a further fee is payable: College of Arms web site: www.college-of-arms.gov.uk/about/8.htm#a (accessed 13 October 2002). The fees are effective 1 January 2002. Exchange rates were calculated using the currency exchange calculator on the Commonwealth Bank of Australia web site.

²⁵⁸ Governor General of Canada web site: www.gg.ca/heraldry/armorial/armorial-grant_e.asp (accessed 13 October 2002). The exchange rates were calculated using the currency exchange calculator on the Commonwealth Bank of Australia web site.

²⁵⁹ Office of the Chief Herald of Ireland we site: www.nli.ie (accessed 13 October 2002). The exchange rates were calculated using the currency exchange calculator on the Commonwealth Bank of Australia web site.

- 6.16** The Committee also notes that the Flag Society, which generally supported the establishment of a New South Wales heraldic authority, expressed its view that a local heraldic authority is *unlikely* to generate profits:

In broad terms the Flag Society of Australia supports such a development and notes the successful establishment of such bodies in Canada and South Africa...However, we express some caution about the practicalities of such a suggestion. The economics of such an authority would be unlikely to be a net profit generator. The cost of the grant of Arms is high – reflective of the high labour costs involved in the craftsmanship of the herald, the heraldic artist and the calligrapher, whilst the relatively low volume of activity would result in comparatively high fixed annual costs. Nonetheless, the concentration of design excellence in such a body would be worthwhile relative to the relatively small cost to government in absolute terms (hundreds of thousands of dollars, rather than millions).²⁶⁰

Creation of a uniquely Australia form of heraldry

- 6.17** Some argued that the creation of a local heraldic authority would facilitate the development of a uniquely Australian heraldry and that in particular, it could foster the use of aboriginal imagery as has occurred in Canada. For example, Mr R d'Apice endorsed the use of images important to indigenous Australians (with sensitivity to the use of imagery to preclude offending the indigenous community):

...Certainly the Indigenous images should be used in Indigenous Australian heraldry. Kangaroos have been used not of course by Australians but granted by the College of Arms and other heraldic authorities to Australians for about 130 years I think. I think it is highly desirable that we develop an Indigenous form of heraldry with Indigenous images, but in doing so we must make certain that we do not offend Indigenous people...²⁶¹

- 6.18** Mr R d'Apice elaborated in evidence:

The Hon. JOHN RYAN: In the material you gave to us from Canada it says that heraldry in Canada includes symbols of Aboriginal people, native images such as eagles and feathers are included in Coats of Arms to honour their traditions and contributions. Are there any examples of that in Australian coats of Arms and, if so, is it advisable to start including Indigenous peoples in our Coats of Arms?

Mr d'APICE: It is a very sensitive issue with our Indigenous peoples. You might recall about six months ago they decided to chip one off the gates of old Government House on the basis that it represented a kangaroo and the kangaroo was a sacred image. Certainly the Indigenous images should be used in Indigenous Australian heraldry. Kangaroos have been used not of course by Australians but granted by the College of Arms and other heraldic authorities to Australians for about 130 years I think. I think it is highly desirable that we develop an Indigenous form of heraldry with Indigenous images, but in doing so we must

²⁶⁰ Submission 43, supplementary submission, 31 August 2002.

²⁶¹ Evidence, 12 August 2002, pp 8-9.

make certain that we do not offend Indigenous people. It is a difficult question. It does not seem to have arisen in the same way in Canada because most of the grants have been to the Inuit or bodies of persons associated with them.²⁶²

Heraldic jurisdiction in Australia

6.19

Several inquiry participants noted that the claim of the College of Arms that it has heraldic jurisdiction in Australia is disputed and uncertain. For example, Mr Num describes this claims as ‘dubious legally and constitutionally.’²⁶³ Mr J Thompson of HAGSOC commented on the claim as follows:

The Hon. JOHN RYAN: Do you agree that they have jurisdiction within Australia?

Mr THOMPSON: That is an open question because they are exercising the Royal prerogative. The Royal prerogative is not subject to law courts as such, although the extent of the prerogative may be subject to the common law. From the earliest time with the colonies they started granting Arms to Americans before the War of Independence and to other people in North America and they were extending the Royal prerogative. But they were allowed to do that. There was no interference with the Royal prerogative. So they continued to do so. With the passage of time over the centuries they came to believe—it is understandable—that they had jurisdiction. We recognise it as a nice debatable point as to whether being allowed to exercise prerogative constitutes jurisdiction. You can argue endlessly over that.

The fact is there are two ways of looking at this question. If people in Australia, because of the absence of a heraldic authority here, want Arms they can apply to England, Lord Lyon in Scotland or the Chief Herald in Ireland and it could be argued that they are conceding heraldic jurisdiction. But that may not necessarily be the case. They probably just recognise that they are the repository of knowledge and expertise of heraldic matters. If they apply a fee you can interpret that as their entering a normal contractual situation—service provider and client situation. To our belief the question of jurisdiction is rather academic and arid because it does not matter whether you cede jurisdiction *de facto* or whether you are entering into commercial relationships. It is simply because they are the only places you can go. So to that extent we believe it is rather arid and we see no problem with people continuing to do this so long as there is a vacuum here in Australia.

The real question here is protection of the Arms given to Australian citizens. That can be readily adjusted or fixed up by a heraldic authority. It would wipe away all the arguments about jurisdiction and also give them protection in the same way as trademarks and logos have under intellectual property, IP Australia, the successor to the Patent Office. There is a dispute even within the United Kingdom over who has jurisdiction. There is the English College of Arms at London. Lord Lyon thinks he can do it. The Chief Herald thinks it can do it. If you have a look at the web site of the College of Arms or even the web site of the Heraldry Society you

²⁶² Evidence, 12 August 2002, pp 8-9.

²⁶³ Submission 42, 6 May 2002.

will see that they recognise that there is a turf fight going on between the three jurisdictions—all of which supports our contention that we need an Australian heraldic authority.²⁶⁴

6.20 Heraldry Australia also questioned the College of Arms' jurisdiction in Australia:

HA recognises that the College of Arms in London claims to exercise heraldic jurisdiction in relation to Australia on behalf of the Queen of Australia, a claim of uncertain and disputed present validity...²⁶⁵

6.21 Professor D Flint from ACM suggested that the College of Arms was operating to fill a void, rather than exercising 'jurisdiction':

The Hon. PETER BREEN: I am also anxious to explore just for a moment the heraldic authority. I know that is generally outside the ambit of Australians for Constitutional Monarchy but one issue that has come up in submissions relates to whether the English College of Arms has what has been called imperial jurisdiction over Australia or Australians, which it apparently claims to have. Do you have a view about that and whether that might be a problem in the event that we were to establish a New South Wales heraldic authority?

Professor FLINT: I do not think that they claim imperial jurisdiction. That letter says acquiescence. In other words, it has been accepted that there being no authority here, you went to the continuing authority. I doubt if they would want any authority here that we did not want to give them. I expect that they are just acting as experts in that regard, not claiming any firm legal authority but giving expert advice on matters heraldic. I am no expert in these matters as some of your witnesses certainly are.²⁶⁶

6.22 Similar views were expressed by Mr M McCarthy:

...The College of Arms has, as far as I can see, no more authority in this country than any other British instrumentality, like the milk board or the local police, and for people in this country to throw their money away has always amazed me, but it is something that has been done in the absence of any government in this country assuming their undoubted right to be a font of honour and to have left it in abeyance more out of colonial clings than anything else and I really do think it is time that we, as a nation, decided that this is something that we should regulate. Symbols are one of the oldest - much older than heraldries - forms of recognition that societies have and people, like the honour system, would do almost anything to get one, in addition to which it adds to the cultural traditions and heritage of the nation that we represent.²⁶⁷

²⁶⁴ Evidence, 15 August 2002, p 15.

²⁶⁵ Submission 34, 17 May 2002.

²⁶⁶ 15 August 2002, p 38.

²⁶⁷ Evidence, 12 August 2002, p 37.

Legal basis for establishing an heraldic authority in New South Wales

6.23 It is clear to the Committee that the State Parliament has the power to pass a law to establish an heraldic authority in New South Wales and to legislate with regard to armorial bearings in general. Former Solicitor General, Mr Keith Mason QC quoted Renfree who noted in his text, 'The Executive Power of the Commonwealth of Australia', that:

If the matter were not anachronistic, at least so far as Australia is concerned, it might be an interesting speculation to consider whether the Commonwealth parliament could pass a law relating to armorial bearings. Presumably State Parliaments could do so and confer jurisdiction on State courts with respect to matter arising under that law. No direct power on the subject has been given to the Commonwealth parliament, but it may be able to claim some power as incidental to another power, for example copyright.²⁶⁸

6.24 The Committee received evidence relating to the processes that would be necessary to facilitate the establishment of an heraldic authority. Mr C Lindesay of HAGSOC suggested that, for a national body to be established:

The first and the easiest step would be for the Prime Minister to request the Queen to devolve her prerogative to the Governor-General, just as it was done in Canada.²⁶⁹

6.25 Mr R d'Apice considers that the honours awards could serve as an appropriate precedent:

Subject to any contrary effect of the Constitution of the Commonwealth of which I am unaware, I believe that it would be possible for the State to create a NSW Heraldic Authority in similar manner to its exercise of its undoubted power in relation to other aspects of the Sovereign's functions as 'Font of Honour' in respect of NSW by creating awards.²⁷⁰

6.26 ACM's Professor D Flint commented on how an Heraldic Authority could be established, in answer to questions from the Hon Peter Breen MLC:

The Hon. PETER BREEN: We have heard evidence, for example, that they do claim authority on their web sites over Australia and if that is true, if they do have authority over Australia—and in the absence of any other authority they may well have authority—if we were to establish an heraldic authority presumably we would do it by Act of Parliament.

Professor FLINT: Yes. When I was a young solicitor or articled clerk, if you wanted to become a notary public you had to go to the Court of Arches of the Archbishop of Canterbury to get that. That was only because we continued to do

²⁶⁸ Mr Mason's advice was provided to the Committee by the Attorney General, the Hon Bob Debus MP: Submission 55, 5 August 2002.

²⁶⁹ Evidence, 15 August 2002, p 20.

²⁷⁰ Submission 5, 27 March 2002.

that, and that has been changed. There is no reason why following the Canadian provision you necessarily need an Act because it is a prerogative matter. The Queen could devolve the power to the Governor General. I doubt whether the English would claim any authority over Australia if there were an heraldic body here.

The Hon. PETER BREEN: If there were an heraldic body would you prefer to see it done by Royal prerogative rather than by an Act of Parliament?

Professor FLINT: I would see advantages in that and I suspect that it probably would be better to do it at the Federal level rather than having eight heraldic authorities in this country. I think it would create confusion and there might be a shortage of experts to work on them.

The Hon. PETER BREEN: In the interim though if we were to initiate some idea and if it were to take on, like personalised number plates, for example, we might have people queuing up to get their badges and their heralds and their Coat of Arms and somebody in the Federal government might see that as a good revenue raiser. It has to begin somewhere and I am just interested from that point of view whether you would think that Royal prerogative might be a better idea than an Act of Parliament.

Mr ARMFIELD: I think the Royal prerogative is the better way to go for two reasons: it is essentially something which is connected with the sovereign and, just speaking on a purely personal level, I would rather see it connected with the sovereign. So I think that would be the better way to go. I think also it could be made clear in any warrant which was issued that it does not have to remove the right or privilege of someone if they want it. If they want to go and get one from the College of Arms, let them. That is a matter of their individual contract. I think one of your earlier witnesses talked of just a service provider, and that is their right if they want to. But if they wish, as the Canadians have done, to get it from a local authority cheaper, I do not personally have any problem with that.²⁷¹

Issues regarding the possible nature of a New South Wales heraldic authority

- 6.27** In this subsection the Committee has reviewed some of the issues raised in submissions and evidence regarding the possible nature of a new heraldic authority for New South Wales. Several inquiry participants favoured the establishment of an authority modelled on the Canadian Heraldic Authority.²⁷²

Funding

- 6.28** The question of funding for any new statutory authority is an important issue to explore. The Committee notes, the comments outlined above, regarding the fees charged by heraldic authorities and the potential demand for grants of arms in New South Wales. The Committee also notes the views expressed by Mr R d'Apice with regard to funding in response to a question from the Hon John Ryan MLC:

²⁷¹ Evidence, 15 August 2002, pp 38-39.

²⁷² For example, Submission 42, 6 May 2002.

The Hon. JOHN RYAN: ... Are you aware of how the cost is met, for example, of the Canadian Heraldic Authority and, if the people of New South Wales were to pay the cost, what is the value of doing such a thing given other priorities of Government?

Mr d'APICE: Certainly if you take the United Kingdom College of Arms as an example, it is entirely self-funding. I do not know of the funding of the Canadian heraldic authority, but I imagine that it is capable of being self-funding as well. Applications for grants and matriculations and various other uses of the authority obtain fees and that would be on a full cost recovery basis, much as is the policy of our Government here. I do not imagine that it should result in much, if any, burden on revenue - it certainly would not be intended to do so - and I do not think there is any reason why a balanced outcome cannot be achieved. There would obviously be some set-up costs but beyond that I think that it ought to be made to fund itself and I think it would be capable of doing so.²⁷³

6.29 The College of Arms describes its self-supporting nature as follows:

The College of Arms, although a branch of the Royal household, is self-supporting. It has always been the case (and continues to be so) that the funds needed for the maintenance of the College building, and the preservation of its records are derived from the fees payable upon grants of arms, and not from public funds.²⁷⁴

6.30 With regard to the Canadian Heraldic Authority, Mr M McCarthy stated:

Their organisation is more than cost effective. They grant a sufficient number of Arms to keep them going. Here given the vastness of our ethnic make-up we could do better than they do. A Coat of Arms buys respectability. You would be surprised who wants to spend their money.²⁷⁵

Structure

6.31 Several inquiry participants commented on the possible structure of a New South Wales authority. For example, Mr R d'Apice suggested to the Committee that such an authority should be run out of the Governor's office, as occurs in Canada and England:

You will see that in Canada, as is the case in the United Kingdom, the heraldic authority is part of the Governor-General's household, and I believe that that is the appropriate course of action here. It should form part of the Governor's establishment, much as the Australian Honours Secretariat forms part of the Governor-General's establishment, and if a Commonwealth heraldic authority were to be formed that should also form part of the Governor-General's establishment. It should be kept as simple as possible and I think you will see that the Canadian authority has a fairly clear system. It is not a system which has caused, as far as I can understand, any difficulties in Canada and in fact it has been enormously popular from a nationalist point of view in Canada. The Queen of

²⁷³ Evidence, 12 August 2002, p 7.

²⁷⁴ College of Arms web site: www.college-of-arms.gov.uk/about/2.htm (accessed 1 November 2002).

²⁷⁵ Evidence, 12 August 2002, pp 33 and 34.

Canada still remains at the head of their honour system and the head of their heraldic system. I believe something along the lines of that body would be useful both to Australia and, in the limited field that this Committee is investigating, to New South Wales.²⁷⁶

Scope

- 6.32** If an heraldic authority were established in New South Wales, there are several aspects with regard to its scope that would need to be settled. For example: Who is eligible for a grant of arms? Would such an authority register arms granted in other jurisdictions? Would the authority have the power to protect the rights of bearers of arms? Suggestions as to the potential scope of a New South Wales heraldic authority were also proffered throughout the inquiry. For example, Mr P MacDonald Trebilco suggested that an heraldic authority should be able to *register* arms granted by *other authorities*:

I would also submit that the Government seriously considers setting up some Register and Registrar of Coats of Arms, so that those already adopted or granted by foreign sources could be recorded and regularised. This would not be an expensive procedure, and would give an example to the other States and to the commonwealth. Canada and the Republic of Ireland already have such a system.²⁷⁷

- 6.33** The Flag Society similarly stated:

A question would however arise as to the extent to which registration become mandatory, and the extent to which registration was available to designs which were created by persons other than the officially designated Australian Herald, or which had overseas origin, usage or registration.²⁷⁸

- 6.34** Mr R Num argued that an heraldic authority should also be able to protect the rights of bearers of arms:

It is doubtful whether the right of corporations and individuals to enjoy unimpeded use of their armorial bearings has any legal protection in Australia. The use of State and other public symbols of authority may be protected by specific statutes, but there has been no attempt to protect the rights of individuals or of non-public corporations against the use of their armorial bearings by those not lawfully entitled thereto. Establishment of an official heraldic authority in Australia (along the lines of the Canadian Heraldic Authority which is based in the Office of the Governor General of Canada) could afford a means of protection of the rights of the State or other Public authority.²⁷⁹

²⁷⁶ Evidence, 12 August 2002, p 4.

²⁷⁷ Submission 27, 2 May 2002.

²⁷⁸ Submission 43, supplementary submission, 31 August 2002. The Flag Society argued that a New South Wales authority should also recognise and register flags and insignia as well as arms.

²⁷⁹ Submission 42, 6 May 2002.

Expertise

- 6.35** The question of the appropriate people to work within a new heraldic authority who had expertise in heraldry would also have to be resolved. The Committee notes that there is, among citizens of New South Wales and other States (several of whom provided submissions and evidence to the Committee during this inquiry), a considerable wealth of knowledge of heraldry. Heraldry Australia offered its assistance:

HA and many other interested persons would be prepared to provide assistance and advice to ensure that such an authority would operate successfully and at minimal costs.²⁸⁰

- 6.36** In regard to expertise in staffing a new heraldry authority, Mr R d'Apice made the following comments, in response to a question from the Hon John Ryan MLC

The Hon. JOHN RYAN: Where would it get its expertise of the sort of nature that you have provided? Obviously there is not anyone within the Government of New South Wales who has the expertise that you have otherwise there would not be such confusion in our use of Arms. Where do they obtain that sort of expertise and knowledge of the heritage of various Arms?

Mr d'APICE: I think it is important that the head of an heraldic authority be an experienced bureaucrat without the necessity to have himself experience. The Chief Herald of Ireland is in fact the State Librarian of Ireland and he has various deputies and heralds who have expertise in the field, and that I think could occur here. Similarly, the recently appointed Lord Lyon of Scotland was a Writer to the Signet and had considerable legal experience and considerable experience within the Presbyterian Church in Scotland, but had no particular heraldic experience. He has been a very successful Lord Lyon, so I do not think that expertise in the subject matter is essential for the head of the organisation, he just needs to know where to go, whose brains to pick, and I think that if there is an heraldic authority in place then the expertise will follow. There will be a need for expertise; there will be a use for having it and it will be utilised.²⁸¹

- 6.37** Mr M McCarthy commented that the Canadian Heraldic Authority could be consulted in relation to the establishment of a heraldic authority in New South Wales:

There are sufficient people in this country who have sufficient knowledge to do what is necessary. I know the Chief Herald of Canada, Mr Robert Watt, who is quite prepared to come officially to this country to advise, if requested, how they set up the Canadian heraldic authority; and is prepared to give the value of his experience and expertise to us. As President of the Heraldic Society of Canada he set up the heraldic authority in Canada. His experience and knowledge would be of great use to us if we wanted to set up a similar body here.²⁸²

²⁸⁰ Submission 34, 17 May 2002.

²⁸¹ Evidence, 12 August 2002, p 7.

²⁸² Evidence, 12 August 2002, p 32

Conclusion

- 6.38** The Committee notes the strong support for the establishment of an heraldic authority in Australia, as expressed during this inquiry and outlined above. The Committee considers that such an authority could usefully, and at little or no cost, undertake the functions of granting and registering arms and regulating heraldic usage. In practical terms, it would be preferable for the proposed heraldic authority to be a federal body, and to have jurisdiction over each state and territory. The Canadian approach, in which the heraldic authority is situated in the Governor-General's office, would serve as an appropriate model.
- 6.39** With regard to a Federal heraldic authority, the Committee notes that during the 1994 House of Representatives inquiry into the use of the Commonwealth Coat of Arms, it was suggested that a national heraldic authority be established to grant, register and have jurisdiction over arms in Australia. That Committee concluded that, as the focus of the inquiry was the use of the Federal Coat of Arms, it was inappropriate to examine this issue, but the Committee saw merit in a detailed consideration of this matter as a separate exercise.²⁸³ The Committee is aware that the establishment of a Federal heraldic authority is not current Federal Government policy.
- 6.40** As the Committee is not empowered to make recommendations to the Commonwealth Government, it suggests that the Premier consult with the appropriate Commonwealth Minister, with a view to promoting favourable consideration of the establishment of a Commonwealth heraldic authority. In the interim, the Committee suggests that the New South Wales Government consider the merits of establishing a state Heraldic Authority, pending the establishment of any Commonwealth heraldic body.

Recommendation 13

The Committee recommends that the Premier consult with the Commonwealth Government with a view to promoting favourable consideration of the establishment of a Commonwealth heraldic authority to grant and register arms and to regulate heraldic usage in states and territories in Australia.

Recommendation 14

The Committee recommends that the Premier favourably consider the establishment of a New South Wales heraldic authority to grant and register arms and to regulate heraldic usage in New South Wales, until such a time as any Commonwealth heraldic authority is established.

²⁸³ Parliament of the Commonwealth of Australia, *op cit*, p 28, para 4.1.10.

Regulating the Commercial Use of the State Arms and Personal Arms

During the course of the inquiry, several individuals and organisations raised the issue of protecting the State Arms and personal arms granted by foreign heraldic authorities from unauthorised or inappropriate use. Some suggested that the proposed State Arms Bill 2002 should include provisions to regulate the commercial use of arms.

Current regulation

- 6.41** As outlined in paragraphs 3.42-3.47, currently there is only minimal statutory regulation of the use of the State Arms, in the form of the *Unauthorised Documents Act 1922* that prevents the 'unauthorised' use of the State Arms. As noted, the Attorney General seldom receives applications for authorisation to use the State Arms and no prosecutions have been made under the Act.
- 6.42** No specific statutory protection exists however, for arms borne by individuals or other legal entities. The *Unauthorised Documents Act 1922* only applies to the State Arms. The potential for heraldic law to offer protection of personal arms is minimal. As noted in paragraph 3.9 and 3.10, the application of the laws of arms in Australia is uncertain and in any case they have seldom been applied in the United Kingdom in regard to unauthorised use.
- 6.43** The Committee notes that it is possible that some degree of statutory protection of arms may also lie in trademark or trade practices legislation, although the Committee was not provided with any information in this regard.

Reform suggestions

- 6.44** Mr R d'Apice expressed the view that '[i]t would be desirable for additions to be made to the Bill so as to provide protection for the State Arms from commercial, inappropriate or unauthorised use.'²⁸⁴ He elaborated on this view in evidence before the Committee:

Mr d'APICE: As I understand the position, there is some suggestion that - I think it probably came from Parliamentary Counsel - that the Unauthorised Documents Act gives adequate protection to the State Arms, but I think one thing that needs to be done is to enable the State to stop use of the State Arms by persons it considers to be inappropriate, or if somebody suddenly started reproducing the State Arms and selling them - in America you can put the Arms on everything, they encourage nationalism by the use of the State symbols, but there are some uses which they would consider to be inappropriate.

CHAIR: So it is your view that there ought to be an appropriate amendment developed to confer that protection from inappropriate exploitative use?

²⁸⁴ Submission 4, 27 March 2002. Mr M McCarthy expressed support for Mr d'Apice's view in his submission: Submission 20, 15 April 2002.

Mr d'APICE: Yes, I think that is the case.²⁸⁵

6.45 Mr R d'Apice suggested that this role not be one conferred upon a new heraldic authority, but rather on the Government to enforce through the courts:

The Hon. PETER BREEN: Would you need an authority as well or can you just simply include a provision in the Bill?

Mr d'APICE: You would not need an authority. I do not envisage a State heraldic authority as having any policing role, I think it should be a granting, registering an administrative role. And if there were additions to this Bill, which gave someone a right in their own Arms, then they would quite individually go off and pursue it in order to protect their Arms. But here I think that the State should have the right to prevent inappropriate use of its Arms and I would not envisage an heraldic authority, even if it existed, to be the one who would do the enforcing. The State owns the Arms, the State has the right to enforce it and the State would go to the ordinary courts and do so.²⁸⁶

6.46 Heraldry Australia recommended that the Bill '...should limit the use (as distinct from the patriotic display) of the State Arms to the State and its instrumentalities and those authorised by the State eg sporting teams representing the State.'²⁸⁷ In this regard, the organisation recommended that a new clause be inserted into the Bill:

A new clause should be added to prohibit the use of the State Arms and the State symbols by any person or body other than the State and its instrumentalities and by those authorised by the State. It should provide for the Governor to identify by Proclamation persons, bodies or instrumentalities by which, and circumstances in which, the State Arms may not be used or displayed.²⁸⁸

6.47 The Flag Society similarly stated in its submission that:

It would be appropriate for the Bill to include provisions that confirm that the design copyright of the NSW Coat of Arms rests with the Government of NSW and that permission is required for reproduction. Such permission should be automatically given for reference works and some limited souvenir purposes (eg where Arms of all states are to appear together as a set of, say, coins, stamps, spoons posters etc). But the usage should be explicitly restricted where the reproduction or positioning of the Arms is in such a manner as to give a false impression of Government endorsement or representation.²⁸⁹

6.48 Mr R Num, in his submission to the inquiry, suggested that some form of protection should be afforded to *individuals and corporations* who bear arms:

²⁸⁵ Evidence, 12 August 2002, p 9.

²⁸⁶ *ibid.*

²⁸⁷ Submission 34, 17 May 2002.

²⁸⁸ *ibid.*

²⁸⁹ Submission 43, 6 March 2002.

It is doubtful whether the right of corporations and individuals to enjoy the unimpeded use of their armorial bearings has any legal protection in Australia. The use of State and other public symbols of authority may be protected by specific statutes, but there has been no attempt to protect the rights of individuals or of non-public corporations against the use of their armorial bearings by those not lawfully entitled to do so.²⁹⁰

- 6.49** As noted in paragraph 3.64, the House of Representatives Standing Committee on Legal and Constitutional Affairs reviewed the use of the Commonwealth Coat of Arms in 1994. The review was prompted by the high incidence of unauthorised commercial use of the Commonwealth Arms and the unsatisfactory administrative basis for regulating its use.²⁹¹ At the Federal level there is no legislation comparable to the *Unauthorised Documents Act 1922* (NSW). Instead there are several disparate pieces of legislation that could potentially provide some protection and the review concluded that the existing law was inadequate to enforce a system of authorised use of the Arms:

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 [the Department of Administrative Services] that the English Court of Chivalry has no jurisdiction in Australia...

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.

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.

The Committee agrees that the current legislation seems inadequate to enforce a system of authorised use of the Coat of Arms.²⁹²

- 6.50** The Commonwealth Committee recommended that specific legislation be drafted to protect the Commonwealth Coat of Arms. While the former Labor Government, in response to the review, announced its intention to legislate to regulate the use of the Commonwealth Arms, no such legislation was enacted.

Conclusion

- 6.51** The Committee did not receive sufficient information establishing a need to regulate the commercial use of the State Arms or personal or private arms. The Committee recommends, therefore, that the Premier examine the need for further regulation in this

²⁹⁰ Submission 42, 6 May 2002.

²⁹¹ Parliament of the Commonwealth of Australia, op cit, p ix.

²⁹² Parliament of the Commonwealth of Australia, op cit, pp xii-xiii.

area, perhaps in the context of consideration of the recommendation regarding the establishment of a New South Wales heraldic authority. The Committee accepts that the State should have the power to regulate the use of the State Arms especially in a commercial context.

Recommendation 15

The Committee recommends that the Premier examine the need for further regulation of the use of State Arms and arms borne by individuals and other legal entities in New South Wales.

Proposals for Changing the State Arms

6.52 There is a complex and interesting history behind the development of the State Arms that, unfortunately, cannot be explored in this report. The Committee is grateful however, for the information provided to it in this regard. Several participants in the inquiry suggested that the State Arms should be modified. The views expressed in the submissions and evidence to the inquiry in this regard are briefly canvassed in the following paragraphs.

6.53 Mr G Poulos of the Australian Iconography Foundation argued that the State Arms, with its 150 year old design, should be updated to reflect the changes that have occurred in New South Wales in the 20th century. He argued that:

...there is a 'danger that the State Arms Bill 2002 will entrench even further an outdated and inappropriate NSW arms.'²⁹³

6.54 Mr Poulos helpfully compared the arms of all Australian jurisdictions and concluded that the New South Wales State Arms are 'iconographically the least 'native' and intrinsic to its State, the least Australian and the most British.'²⁹⁴ Mr Poulos suggested an alternative State Arms containing symbols to make the arms more 'intrinsically New South Welsh. The Committee notes that Mr Poulos has also recommended that New South Wales adopt two further symbols and a State colours: the colours Cambridge Blue and White; the NSW indigenous star; and the blue nosed dolphin.'²⁹⁵

6.55 Mr M McCarthy proposed that the State Arms should be amended to include a 'sovereign helm', as he explained in evidence before the Committee:

Mr McCARTHY: As part of my submission I make the suggestion that as New South Wales is a sovereign State the symbol of a sovereign State should be included and the symbol of a sovereign State is a sovereign helm. A great many

²⁹³ Submission 3, 20 March 2002.

²⁹⁴ *ibid.*

²⁹⁵ *ibid.*

organisations use coats of Arms with supporters - councils, companies - but to distinguish a legislative authority, a sovereign State, the symbol that is used is the sovereign's helm. It has been used by both monarchies and republics. Oliver Cromwell used the sovereign's helm, for instance. I think that is also in my submission. It merely states that the user has sovereign power.

The Hon. JOHN RYAN: Would it be different from the Coat of Arms which was issued by Edward VII?

Mr McCARTHY: No, because the Coat of Arms consists of the blazon which consists of the shield, the crest and the supporters. The insignia of office, which this is, is assumed, but never in the blazon, in the same way if a bishop gets a Coat of Arms. All that will be blazoned is what is on the shield and the insignia of office that go around the shield are assumed given the rank of the bearer. Blazons are particular to an individual. The rank is assumed and, for instance, you will never find in the Royal Arms anywhere the blazon for the Crown, it is just assumed that the Crown is there because the Queen is the sovereign. New South Wales could also use a crown if it chose to, but in the current political climate that would seem probably less than useful.

The Hon. JOHN RYAN: Is there anything inadequate by rendering the State Arms without the helmet?

Mr McCARTHY: No, in heraldry, especially in the period that that was designed which was the best part of 100 years ago, Royal Warrants tended not to use helms of any sort and they simply gave a shield and a crest and the rest was up to the user as to how they wanted them to be used. The only limitation, if you like, is the crest is suspended in midair, which from the point of view of gravity would suggest a few problems. Helms are part of the whole process which, for simplicity, for a long period of time, the College of Arms did not use. If you look at all the grants, from about 1700 right up until the first world war, helms were often not included in grants. They were simply an assumed, a given.²⁹⁶

6.56 Mr McCarthy further commented on the issue in response to a question from the Hon Peter Breen MLC noting that the addition of a helm would not require any action from the College of Arms:

The Hon. PETER BREEN: You spoke earlier about the addition of the helm to the State Arms. Did you say we could leave the existing warrant there is no need to go back to England?

Mr McCARTHY: Yes that is what is called in heraldry an entitlement of rank. Bishops have insignia, peers have insignia which are crowns, coronets; you never find any of them in a warrant. The warrant says what the Coat of Arms particular to them is. The insignia that goes with their rank is assumed that they will use.

The Hon. PETER BREEN: Once we pass this Bill that situation would change?

²⁹⁶ Evidence, 12 August 2002, p 30.

Mr McCARTHY: No it would not. The rules of heraldry would still stay the same. If the blazon was in the Bill that is all that would be there. The notion entitlements go, in this case, with sovereignty would not be changed.

The Hon. PETER BREEN: Once the line drawing goes in the Bill without the helm is it not a fact you would need amendment to the legislation?

Mr McCARTHY: The blazon should be specifically stated, a representation of which is attached in the appropriate drawing. That is all it is, a representation; it does not alter the laws of Arms or the sense of what does exist.²⁹⁷

6.57 Heraldry Australia also suggested an amendment to the State Arms to include a helm:

[Heraldry Australia] believes that the Australian and State Arms (the present representations of which predate the independent sovereign status of Australia and the States) should ultimately be amended by the addition of a sovereign's helmet or crown, as is the case in many other sovereign Commonwealth countries and various provinces of Canada, so as to emphasise their sovereign nature. This could be affected, in relation to the NSW State Arms, by an amendment under the terms of clause 5 of the Bill.²⁹⁸

6.58 The Committee notes that various participants in the Inquiry had strong views about the inclusion of indigenous representations on the State Arms. For example, the Flag Society stated:

The current state Arms portray sufficient symbols of European provenance but none specifically of the original peoples, in the manner for example that the Sydney City Arms and those of Parramatta, or of the Arms of the Territory do.

And so, it seems appropriate that the NSW State Arms in some part of their appurtenances might reflect these realities. With judicious combination of colour, this can be effected by amending even the existing Arms simply, and in conformity with the visual grace of heraldic protocols, and without the clutter of additional new devices.²⁹⁹

6.59 Mr P MacDonald Trebilco suggested that changes to the State Arms should involve public consultation:

...such a coat of arms and badge as it sees fit, and that, to further this, a public advertisement be made inviting designs from any citizen. This then could be used in courtrooms, on official documents, letterheads and the like.³⁰⁰

²⁹⁷ Evidence, 12 August 2002, p 33.

²⁹⁸ Submission 34, 17 May 2002. Mr d'Apice also expressed support for the inclusion of a sovereign's helm in the State Arms; Submission 5, supplementary submission, 2 September 2002.

²⁹⁹ Submission 3 May 2002.

³⁰⁰ Submission 27, 2 May 2002.

Conclusion

- 6.60** The Committee agrees that any changes to the State Arms should involve public consultation. The Committee also agrees that any changes to the State Arms should take into consideration the indigenous peoples of New South Wales, in the spirit of reconciliation. The Committee recommends that the Government consider the views expressed in paragraphs 6.52-6.59 about changing the State Arms.

Recommendation 16

The Committee recommends that the New South Wales Government consider the suggestions regarding amendment of the State Arms outlined in paragraphs 6.52-6.59 of this report.

Appendix 1

Proposed State Arms Bill 2002

Proposed State Arms Bill 2002

Appendix 2

Submissions Received

Submissions Received

No	Author
1	Professor Emeritus Geoffrey de Q Walker
2	NAME SUPPRESSED
3	Mr George POULOS (Australian Iconography Foundation)
4	Rev The Hon Fred NILE MLC (Christian Democratic Party – Fred Nile Group)
5	Mr Richard D'APICE AM LLB
6	Ms Gwen GRIFFIN
7	Mrs Louise CRISP
8	Mr William ROBB
9	Mr K J HAMILTON
10	NAME SUPPRESSED
11	Mr D and Mrs M F RUGLESS
12	Miss M ALEXANDER
13	Mr Allan A MURRAY
14	The Hon Justice DUNFORD (Supreme Court of New South Wales)
15	Ms Jean M SULIMA
16	Mrs Gwen BEALE
17	NAME SUPPRESSED
18	Mr Trevor ALONZO
19	J A KIRKPATRICK
20	Mr Michael Francis McCARTHY
21	Mrs Lilian M McBRIDE
22	R DRUMMOND
23	Mrs Phyllis and Mr George STEPHENSON
24	Mr John PHILLIPS
25	Miss A J FAWSITT
26	Mr Robert PHILLIPS
27	Mr Peter MacDONALD TREBILCO
28	D S CAMPBELL
29	Mrs Patricia WAGSTAFF
30	Ms Dawn MOSS
31	Mrs Pam SPURR
32	Miss Goma CURRY
33	NAME SUPPRESSED

34	Mr Stephen Michael SZABO (Heraldry Australia Incorporated)
35	Mrs Laurel and Mr Raymond YOUNG
36	Mr J E ARMPFIELD (Australians for Constitutional Monarchy)
37	Mr Stephen Michael SZABO
38	Mr C R P GEORGE
39	Mrs Jan GRANT (The Heraldry & Genealogy Society of Canberra Inc)
40	The PIERCY FAMILY
41	The Hon Justice K R HANDLEY (Supreme Court of New South Wales)
42	Mr Richard NUM
43	Mr A BURTON & Mr R KELLY (Flag Society of Australia Inc)
44	Mrs Jean SHEPPARD
45	Ms Thea RIMMER
46	Mr John WADE (The Australiana Society)
47	Dr Richard MOHR (University of Wollongong)
48	Ms Suzanne GARTNER
49	The Hon Justice R O BLANCH (District Court of New South Wales)
50	Mr Robert DORAN
51	Mr Donald McGUIRE
52	Mrs Margaret FRASER
53	Dr Noel COX (Auckland University of Technology)
54	Mr Ron HENSHAW
55	The Hon R J DEBUS MP (Attorney General of New South Wales)
56	Ms Valerie KEEVERS
57	Mr Martyn KILLION (Society for Australian Genealogists)

Appendix 3

Witnesses at Hearings

Witnesses at Hearings

Monday, 12 August 2002

Mr Richard John William d'Apice	Solicitor
Mr Stephen Michael Szabo	Honorary Secretary, Heraldry Australia Incorporated
Mr Anthony Colin Burton	President, Flag Society of Australia
Mr Ralph Douglas Kelly	Treasurer, Flag Society of Australia
Mr Michael Francis McCarthy	Administrator, Sydney University

Thursday, 15 August 2002

Reverend The Hon Fred Nile MLC	Member of the Legislative Council and Honorary National President, Christian Democratic Party
Mr John Arthur Thompson	The Heraldry and Genealogy Society of Canberra Inc
Mr Christopher Lindsey	The Heraldry and Genealogy Society of Canberra Inc
Professor David Edward Flint	National Convenor, Australians for Constitutional Monarchy
Mr John Edward Armfield	Director, Australians for Constitutional Monarchy

Appendix 4

Minutes of Proceedings

Minutes of Proceedings

Meeting No 56
3:05 pm, 13 February 2002
Room 1153, Parliament House, Sydney

1. MEMBERS PRESENT

Mr Dyer (in the Chair)
Mr Breen
Mr Hatzistergos
Mr Ryan

Also in attendance: Director, Ms Tanya Bosch

2. APOLOGIES

Ms Saffin

3. MINUTES

The minutes of meeting number 55 were adopted on the motion of Mr Ryan.

4. ***

5. NEW REFERENCE

The Chair briefed the Committee on the referral by the Attorney General of a new reference for an Inquiry into Regulating the Use of Coats of Arms in NSW.

Resolved, on the motion of Mr Ryan, that the Committee endorse the call for submissions advertisement tabled by the Chair.

The Committee agreed that the closing date for submissions would be 29 April 2002, unless the prorogation of Parliament delays the advertisement, in which case the closing date would be 6 May 2002.

6. ADJOURNMENT

The Committee adjourned at 3.50pm, *sine die*.

Tanya Bosch
Director

Meeting No 71
2.40pm, 6 August 2002
Room 1043, Parliament House, Sydney

1. MEMBERS PRESENT

Mr Dyer (in the Chair)
Mr Breen
Mr Hatzistergos

Also in attendance: Director, Ms Tanya Bosch; Senior Project Officer, Ms Rachel Callinan.

2. APOLOGIES

Mr Ryan

3. MINUTES

Resolved, on the motion of Mr Hatzistergos, that the minutes of meetings number 66, 67, 68, 69 and 70 be adopted.

4. INQUIRY INTO REGULATING THE USE OF COATS OF ARMS

Resolved, on the motion of Mr Breen, that in order to better inform all those who are participating in the inquiry process, the Committee make use of the powers granted under paragraph 25 of the resolutions establishing the Standing Committees, and section 4(2) of the *Parliamentary Papers (Supplementary Provisions) Act 1975*, to publish submissions numbered 1, 3 – 9, 11 – 16, 18 – 32, and 34 – 55.

Resolved, on the motion of Mr Breen, that in order to better inform all those who are participating in the inquiry process, the Committee make use of the powers granted under paragraph 25 of the resolutions establishing the Standing Committees, and section 4(2) of the *Parliamentary Papers (Supplementary Provisions) Act 1975*, to publish submissions numbered 2, 10, 17 and 33, whilst suppressing the names of the authors.

5. ***

6. ADJOURNMENT

The Committee adjourned at 2.50pm, to reconvene at 2:00pm on Thursday 8 August 2002.

Tanya Bosch
Director

Meeting No 73
10:00am, 12 August 2002
Room 814/815, Parliament House, Sydney

1. MEMBERS PRESENT

Mr Dyer (in the Chair)
Mr Breen
Mr Ryan

Also in attendance: Director, Ms Tanya Bosch

2. APOLOGIES

Mr Hatzistergos

3. PUBLIC HEARING

The Committee sat as a sub-committee pursuant to the resolution of 9 July 2002.
The Committee began the first hearing of the Inquiry into Regulating the Use of Coats of Arms.

The public was admitted.

Mr Richard d'Apice was sworn and examined.

Mr d'Apice tendered documents: Response to Submission 4 and Response to Submission 36; "A Canadian Heraldic Primer", "Supreme Court of NSW Courtlist", "International Civic Heraldry", "New Zealand Herald of Arms Extraordinary", "The Arms of Her Majesty the Queen", "Police Agree with Minorities that Not All Should have a Cross to Bear", "Letters to the Editor".

The witness withdrew.

Mr Stephen Szabo was sworn and examined.

The witness withdrew.

Mr Anthony Burton was affirmed and examined.

Mr Ralph Kelly was sworn and examined.

Mr Burton tendered "Further Remarks by the Flag Society of Australia", "Crux Australis Vol 13/2" and "Crux Australis Vol 15/3"

The witnesses withdrew.

Mr Michael McCarthy was sworn and examined. Mr McCarthy tendered a document of designs for potential coats of arms; and an envelope from the Scottish National Library.

The witness and the public withdrew.

4. PUBLICATION OF PROCEEDINGS

The Committee resolved, on the motion of Mr Ryan, that in order to better inform all those who are participating in the inquiry process, the Committee make use of the powers granted under paragraph 25 of the resolutions establishing the Standing Committees, and section 4(2) of the *Parliamentary Papers (Supplementary Provisions) Act 1975*, to publish transcripts and tabled documents tendered at the public hearing held on 12 August 2002.

5. ADJOURNMENT

The Committee adjourned at 1:05pm, to reconvene at 10.00 am on Thursday 15 August 2002.

Tanya Bosch
Director

Meeting No 74
10:00am, 15 August 2002
Room 1108, Parliament House, Sydney

1. MEMBERS PRESENT

Mr Dyer (in the Chair)
Mr Breen
Mr Hatzistergos
Mr Ryan

Also in attendance: Director, Ms Tanya Bosch

2. APOLOGIES

None

3. PUBLIC HEARING

The Committee began the second hearing of the Inquiry into Regulating the Use of Coats of Arms.

The public was admitted.

Rev the Hon Fred Nile MLC was examined.

Rev Nile tendered a document entitled "Canadian Heraldry" and his written answers to questions provided by the Committee.

The witness withdrew.

Mr Thompson was sworn and examined.

Mr Lindesay was sworn and examined.

Mr Thompson tendered a document entitled "Question of Royal Arms"

Mr Lindesay tendered a document entitled "Inquiry into Regulating the Use of Coats of Arms", which were answers to questions provided to the Committee.

The witnesses withdrew.

Professor Flint was sworn and examined.

Mr Armfield was sworn and examined.

The witnesses and the public withdrew.

4. PUBLICATION OF PROCEEDINGS

The Committee resolved, on the motion of Mr Breen, that in order to better inform all those who are participating in the inquiry process, the Committee make use of the powers granted under paragraph 25 of the resolutions establishing the Standing Committees, and section 4(2) of the *Parliamentary Papers (Supplementary Provisions) Act 1975*, to publish transcripts and tabled documents tendered at the public hearing held on 15 August 2002.

5. ADJOURNMENT

The Committee adjourned at 1:00pm, *sine die*.

Tanya Bosch
Director

Meeting No 75
11:10am, 26 August 2002
Room 1108, Parliament House, Sydney

1. MEMBERS PRESENT

Mr Dyer (in the Chair)
Mr Breen
Mr Hatzistergos
Mr Ryan

Also in attendance: Director, Ms Tanya Bosch; Senior Project Officer, Ms Rachel Callinan.

2. MINUTES

Resolved, on the motion of Mr Hatzistergos, that the minutes of meetings numbered 71, 72, 73 and 74 be adopted.

3. INQUIRY INTO REGULATING THE USE OF COATS OF ARMS

Resolved, on the motion of Mr Breen, that in order to better inform all those who are participating in the inquiry process, the Committee make use of the powers granted under paragraph 25 of the resolutions establishing the Standing Committees, and section 4(2) of the Parliamentary Papers (Supplementary Provisions) Act 1975, to publish submissions numbered 55, 56, 57, Supplementary submission 1, Supplementary submission 14 and supplementary submission 41.

The Committee discussed the inquiry program. Resolved, on the motion of Mr Breen, that the Committee considers the evidence-taking to have been completed for the Coat of Arms Inquiry.

4. ***

5. ***

6. ADJOURNMENT

The Committee adjourned at 1:00pm, *sine die*.

Tanya Bosch
Director

Meeting No 78
2:40 pm, 29 November 2002
Room 1136, Parliament House, Sydney

1. MEMBERS PRESENT

Mr Dyer (in the Chair)

Mr Breen

Mr Hatzistergos

Mr Primrose

Mr Ryan

Also in attendance: Director, Ms Tanya Bosch; and Senior Project Officer, Ms Rachel Callinan

2. APOLOGIES

None

3. MINUTES

Resolved, on the motion of Mr Breen, that the minutes of meeting number 77 be adopted.

4. ***

5. ***

6. CONSIDERATION OF CHAIR'S DRAFT REPORT FOR THE INQUIRY INTO REGULATING COATS OF ARMS

The Chair submitted his draft Report on the Proposed State Arms Bill which, having been circulated to Members of the Committee, was accepted as being read.

The Committee considered the draft report.

Terminology, p xiii, read.

Resolved, on the motion of Mr Breen, to remove the last two terms: 'United Kingdom Arms'; and 'UK' from the terminology section, to add the words 'of the UK' to the term 'Royal Arms' and to insert the word 'some' after the word 'and' at the end of the second line of the definition of the term 'College of Arms'.

Terminology, p xiii, as amended, agreed to.

Chapter One read and agreed to.

Chapter Two read and agreed to.

Chapter Three read.

Resolved, on the motion of Mr Breen, to insert the words 'but fluid' after the word 'established' in the first line of paragraph 3.1.

Resolved, on the motion of Mr Breen, to insert the word 'claimed' before the word 'jurisdiction' in the last line of paragraph 3.8.

Resolved, on the motion of Mr Breen, to insert the following new paragraph after paragraph 3.9:

Australia and its States became finally and definitively independent of the United Kingdom Parliament, government and bureaucracy on the passing of the Australia Acts in 1986, although most commentators agree that the Statute of Westminster Adoption Act 1942 represents our act of independence from Great Britain. The opportunity now exists to adapt any inherited English law to our own circumstances.

Resolved, on the motion of Mr Breen, to insert the word 'historical' before the word 'interest' in the last line of paragraph 3.13.

Resolved, on the motion of Mr Breen, to insert the word 'Ireland' after the words 'Northern Ireland' in the second line of paragraph 3.19.

Resolved, on the motion of Mr Breen, to replace the first sentence of paragraph 3.23 with the following sentence:

The College of Arms in England is a branch of the United Kingdom Royal Household in England and is the official repository of the coats of arms and pedigrees of English, Welsh, Northern Irish and some Commonwealth families and their descendants.

Resolved, on the motion of Mr Breen, that the second and third sentences of paragraph 3.25 be replaced with the following sentences:

The Canadian Heraldic Authority was established in 1998 after Her Majesty Queen Elizabeth II, Queen of Canada, authorized the Governor General of Canada to exercise, in Canada, one of her Royal prerogatives, the right to grant arms in Canada.³⁰¹ Canada thereby definitively withdrew from the claimed Imperial Jurisdiction of the Queen of the United Kingdom's Officers of Arms of the College of Arms, as well as the Court of Lord Lyon, Scotland, and became the first Commonwealth nation to institute its own heraldic authority.³⁰²

Resolved, on the motion of Mr Breen, to insert the following sentence after the first sentence in paragraph 3.31:

They are not the personal arms of Queen Elizabeth II.

Resolved, on the motion of Mr Breen, to insert a new paragraph after paragraph 3.33 as follows:

The Royal Arms of the UK have developed since 1788 displaying exclusively, the European possessions or claims of the UK sovereign including (at times) France, Hanover, Brunswick, Luneburg, Westphalia and The Holy Roman Empire. They contain no heraldic reference to Australia or New South Wales.

Resolved, on the motion of Mr Breen, to insert the words 'or on display in' after the word 'use' in the first sentence of paragraph 3.34.

³⁰¹ Greaves, op cit, p 25.

³⁰² Information tendered by Reverend the Hon Fred Nile MLC, 15 August 2002.

Resolved, on the motion of Mr Breen, that the second sentence of paragraph 3.52 be replaced with the following sentence:

By way of example, the Supreme Court of New South Wales uses the Royal Arms of the UK on the Seal of the Court, on official correspondence and judgements, and on the new and old Supreme Court Building in Queens Square, Sydney.³⁰³

Resolved, on the motion of Mr Breen, to insert the words 'including the current refurbishment of the old Supreme Court in Queens Square' to the end of the first sentence in paragraph 3.54.

Resolved, on the motion of Mr Breen, to replace the heading above paragraph 3.55 with the following heading: 'Office of the Governor and Government House'.

Resolved, on the motion of Mr Hatzistergos, to delete the subheading 'Trend Toward Replacing the Royal Arms with the State Arms', and paragraphs 3.57, 3.58 and 3.59 from the report.

Chapter Three, as amended, agreed to.

Chapter Four, read.

Resolved, on the motion of Mr Breen, that the following words be inserted as a footnote after the second sentence of paragraph 4.2:

The Committee notes that the State Arms may be considered to be the 'NSW Royal Arms' in the sense that they were granted by way of Royal Warrant.

Resolved, on the motion of Mr Breen, to add the following words to the end of footnote 102:

(as well as an Australian citizen) and so 'a subject or citizen of a foreign power' within the meaning of section 44(1) of the Constitution.

Resolved, on the motion of Mr Breen, to delete the two sentences at the end of paragraph 4.43.

Resolved, on the motion of Mr Breen, to substitute the word 'some' for the word 'much' in the last sentence of paragraph 4.44 and to add the following footnote to that sentence:

See, for example, correspondence from the Garter Principal King of Arms to the Hon Rev Fred Nile MLC: Submission 4, supplementary submission 20 May 2002.

Resolved, on the motion of Mr Breen, to insert a new paragraph after paragraph 4.48:

With regard to heritage conservation and fears of 'vandalism and wholesale destruction', the Committee is of the view that we should not destroy our cultural, legal or heraldic heritage. Instead we should use symbols accurately representing our present sovereignty. Indeed, neither the Bill nor any of the supporters of the Bill suggested anything approaching 'vandalism or wholesale destruction' of the Royal Arms of the UK and many witnesses emphasised the need for their conservation and continued historical display.

Resolved, on the motion of Mr Ryan, to amend paragraph 4.46 to read as follows:

The Committee agrees that it is important to respect our heritage and our historical connection to the United Kingdom. However, it does not believe this to be a sufficient reason to retain the use of the Royal Arms of the UK in places where they can be perceived to represent the authority of the State of New South Wales. The Committee notes the concerns of Rev Nile

³⁰³ Submission 41, 2 May 2002.

and other inquiry participants that the Bill has republican undertones. The Committee does not agree that legislating to ensure that the State Arms is used for the purpose for which it was granted can be viewed as republican. The State Arms was granted in 1906 by King Edward VII through an exercise of a Royal prerogative at a time when an Australian republic was not on the agenda.

Chapter Four, as amended, agreed to.

Chapter Five read.

Resolved, on the motion of Mr Hatzistergos, to insert the following footnote to the second sentence of paragraph 5.13:

As noted in the following subsection, different versions of the Royal Arms of the UK are used in England and Scotland. The version used in Australia is the Royal Arms of the UK as used in England.

Resolved, on the motion of Mr Hatzistergos, to amend Recommendation 3 to state as follows:

The Committee recommends that the definition of the term 'United Kingdom arms' (to be called 'Royal Arms of the United Kingdom' pursuant to Recommendation 2) in clause 3 of the Bill be amended to ensure that it accurately identifies the arms that the Bill applies to. Consideration of this recommendation should take into account the comments set out in paragraphs 5.14-5.18 regarding the difficulties with the present definition.

Resolved, on the motion of Mr Breen, to replace paragraph 5.35 with the following paragraph:

However, the Committee does not consider that this oath currently refers to the sovereign of the United Kingdom of Great Britain and Northern Ireland but to the Queen of Australia in the right of New South Wales. It does not have any impact on the consideration of the State Arms Bill as no disloyalty to the Queen of Australia in right of New South Wales is implied by it.

Resolved, on the motion of Mr Hatzistergos to replace the word 'recommend' in the first sentence of Recommendation 6 with the word 'finds'.

Resolved, on the motion of Mr Hatzistergos, to replace the quote in paragraph 5.58 with the following quote:

The Bill requires that Royal Arms be replaced with State Arms within three years. There is concern about the possibilities for physical damage to occur to significant fabric in any hurried program – it would be preferable to allow this process to occur as circumstances determined rather than set a tight time frame. This could occur, for example, as part of a regular maintenance program or a conservation or adaptive re-use strategy.

It is acknowledged that there may be a case for requiring the display and use of the State Arms exclusively in places and objects representing the highest levels of State authority within a restricted time frame, such as offices and buildings of the Parliament, Ministers, the Governor and the Supreme Court – this distinction could be reflected in the Bill.³⁰⁴

Resolved, on the motion of Mr Hatzistergos to insert a new paragraph after paragraph 5.65 as follows:

The Heritage Council made the following comments about the consultative role of the Heritage Council in the Bill:

The Bill provides a consultative role for the Heritage Council when considering the removal or obscuring of Royal arms in favour of the State arms, but not an approval role.

Section 57 of the Heritage Act already requires Heritage Council approval for any works to an item on the State heritage Register (such as removing, obscuring or replacing coats of arms that

³⁰⁴ Correspondence to the Committee, 26 November 2002.

form part of the physical fabric of an item; or a three dimensional coat of arms detached from a building and which could be considered as a movable object or relic.

The Bill involves the establishment of new assessment and approval processes that would, in effect duplicate the existing processes available under the Heritage Act.

It would be preferable for these provisions of the Bill to be consistent with the Heritage Act requirements (ie any proposal to remove, obscure or replace a three dimensional coat of arms should be referred to the Heritage Council by the proponent with an assessment of significance and an application for approval to undertake such work – in accordance with existing provisions of the Heritage Act).

In summary, the Council's resolution advises that treating all Royal and State Arms as being of state significance, for the purposes of the Bill, would provide the trigger for existing assessment and approvals processes to be brought into action as changes to Arms are being considered and planned. This would be consistent with treating three dimensional representations of coats of arms as being of state significance, and would utilise a well established process for dealing with proposed changes to state significant fabric – the Bill could simply refer to Part 4 generally or section 57 specifically of the Heritage Act 1977 rather than establish a separate approvals process.³⁰⁵

Resolved, on the motion of Mr Breen, to insert the following word to the end of Recommendation 7:

or, if their removal is opposed on heritage grounds, State Arms should also be erected and used in a prominent position.

Resolved, on the motion of Mr Breen, that Recommendation 9 should be amended to read:

The Committee recommends that a limited exemption to the requirement to replace Royal Arms of the UK should be incorporated into the Bill to the effect that, in circumstances where the Heritage Council deems that it would destroy the integrity of the heritage environment to remove Royal Arms of the UK, then they should be retained and the State Arms should also be erected and used in a prominent position.

Resolved, on the motion of Mr Breen, to replace paragraph 5.119 and Recommendation 11 with the following paragraph and recommendation:

The Committee acknowledges that the blazon is the primary heraldic description of a coat of arms and that grants and assignment of arms traditionally also include a depiction of the arms. The Committee also notes that the depiction is only one version of how the blazon may be graphically shown. The Committee does not believe that potential confusion as to the true status of a depiction incorporated into an act necessitates a change in the useful heraldic tradition of using both blazon and a depiction. The Committee has concluded that the most effective manner of including a reference to what the State Arms look like in the Bill is to incorporate the blazon and depiction of the State Arms, as set out in the Royal Warrant, into Schedule 1. The Committee therefore recommends, that Schedule 1 of the Bill be amended to include two parts. Part One should set out the blazon for the State Arms, as worded in the Royal Warrant by which the arms were granted (see paragraph 3.36). Part Two should set out the depiction of the State Arms included in the Royal Warrant. The Committee does not believe that it is necessary to include a glossary in the Bill.

³⁰⁵ Correspondence to the Committee, 26 November 2002.

Recommendation 11

The Committee recommends that Schedule 1 of the Bill be amended to include two parts. Part One should set out the blazon for the State Arms, as worded in the Royal Warrant by which the arms were granted. Part Two should set out the depiction of the State Arms included in the Royal Warrant.

Resolved, on the motion of Mr Breen, to insert the following paragraph after paragraph 5.120:

The guidelines should note that the external ornaments of the Arms (eg the symbols of their sovereign nature) are additional to the blazon and not precluded by it and that the depiction or representation is indicative only and is not the only acceptable representation.

Chapter Five, as amended, agreed to.

Chapter Six read.

Resolved, on the motion of Mr Breen, to replace the second and third sentences of paragraph 6.39 with the following paragraph:

That Committee concluded that, as the focus of the inquiry was the use of the Federal Coat of Arms, it was inappropriate to examine this issue, but the Committee saw merit in a detailed consideration of this matter as a separate exercise.

Resolved, on the motion of Mr Breen, to insert the word 'favourably' after the word 'Premier' in Recommendation 14.

Resolved, on the motion of Mr Breen, to replace paragraph 6.51 with the following paragraph:

The Committee did not receive sufficient information establishing a need to regulate the commercial use of the State Arms or personal or private arms. The Committee recommends, therefore, that the Premier examine the need for further regulation in this area, perhaps in the context of consideration of the recommendation regarding the establishment of a New South Wales heraldic authority. The Committee accepts that the State should have the power to regulate the use of the State Arms especially in a commercial context.

Chapter Six, as amended, agreed to.

Executive Summary, as amended, agreed to.

Resolved, on the motion of Mr Hatzistergos, that the draft report (as amended) be the Report of the Committee and that the Chairman, Director and the Senior Project Officer be permitted to correct stylistic, typographical and grammatical errors.

Resolved, on the motion of Mr Breen that the report, together with the transcripts of evidence, submissions, documents and correspondence in relation to the inquiry, be tabled and made public.

7. ADJOURNMENT

The Committee adjourned at 4.35 pm, to reconvene at 2:00 pm, 2 December 2002.

Tanya Bosch
Director

Appendix 5

**Warrant Granting Armorial
Ensigns and Supporters for
the State of New South
Wales, New South Wales
Government Gazette, 22
February 1907, pp 1345-1346**

**Warrant Granting Armorial Ensigns and Supporters
for the State of New South Wales, New South
Wales Government Gazette, 22 February 1907, pp
1345-1346**

APPENDIX B



SUPPLEMENT

TO THE

Government Gazette

OF THE STATE OF

NEW SOUTH WALES.

PUBLISHED BY AUTHORITY.

[REGISTERED AT THE GENERAL POST OFFICE, SYDNEY, FOR TRANSMISSION BY POST AS A NEWSPAPER.]

No. 24.]

FRIDAY, 22 FEBRUARY.

[1907.]

The Treasury, New South Wales,
19th February, 1907.

HIS Excellency the Governor directs the publication, for general information, of the following Despatch received from the Secretary of State for the Colonies, and the enclosures thereto.

J. H. CARRUTHERS.

New South Wales—Miscellaneous.

Sir,

Downing-street, 23rd November, 1906.

With reference to your Despatch No. 16 of the 20th March last, I have the honour to transmit to you herewith a certified copy of the *Royal Warrant granting Armorial Ensigns and Supporters for the State of New South Wales*.

2. A second certified copy has been filed for record in this Department. The College of Arms has been informed that an account of the fees due should be forwarded to the Agent General.

I have, &c.,

ELGIN.

Governor Sir Harry Rawson, G.C.B., &c., &c.

1

WARRANT GRANTING ARMORIAL ENSIGNS AND SUPPORTERS FOR THE STATE OF NEW SOUTH WALES.

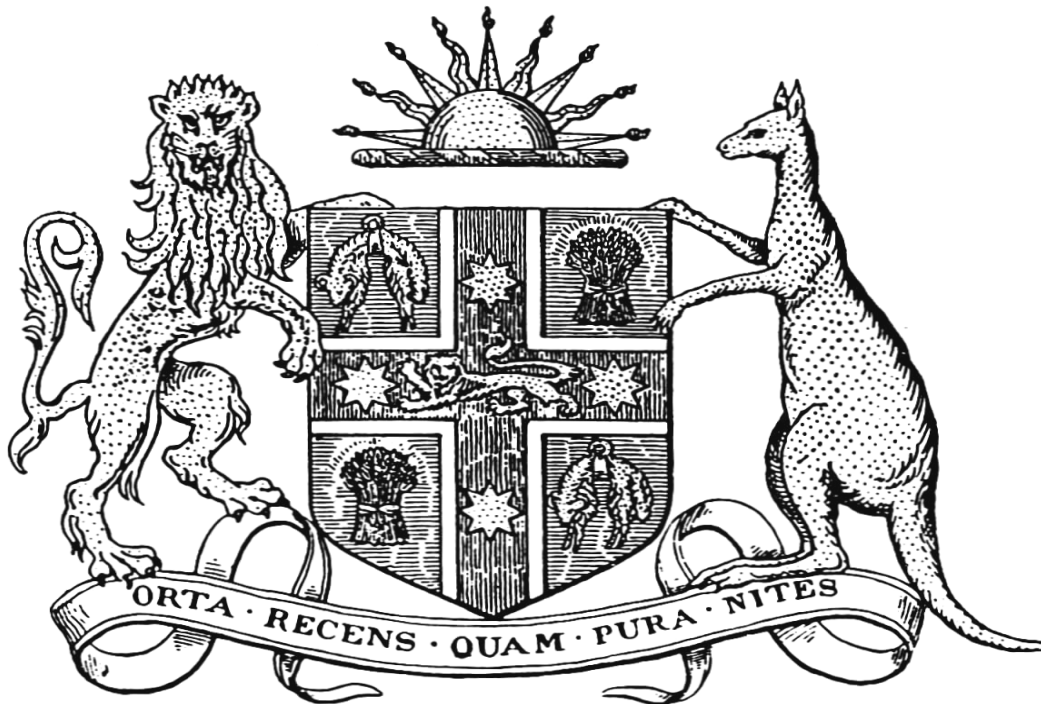


EDWARD R. & I.

EDWARD the Seventh by the Grace of God of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, King, Defender of the Faith, To Our Right Trusty and Right Entirely beloved Cousin and Councillor Henry, Duke of Norfolk Earl Marshal and Our Hereditary Marshal of England, Knight of Our Most Noble Order of the Garter, Knight Grand Cross of Our Royal Victorian Order, Greeting: WHEREAS, for the greater honor and distinction of Our State of New South Wales, We are desirous that Armorial Ensigns and Supporters should be assigned for that State.

Know ye therefore that We of Our Princely Grace and Special Favour have granted and assigned and by these Presents do grant and assign the following Armorial Ensigns and Supporters for the said State of New South Wales that is to say for Arms "Azure a Cross Argent voided Gules charged in the centre chief point with a Lion passant guardant, and on each member with a Mullet of eight points Or between in the first and fourth quarters a Fleece of the last banded of the second and in the second and third quarters a Garb also Or: And for the "Crest on a Wreath of the Colours A Rising Sun each Ray tagged with a Flame of fire proper: And for the Supporters On the dexter side A Lion rampant guardant: And on the sinister side "A Kangaroo both Or," together with this Motto, "Orta Recens Quam Pura Nites," as the same are in the painting hereunto annexed more plainly depicted to be borne for the said State on Seals, Shields, Banners, Flags or otherwise according to the Laws of Arms.

Our Will and Pleasure therefore is that you Henry Duke of Norfolk to whom the cognizance of matters of this nature doth properly belong do require and command that this Our Concession and Declaration be recorded in Our College of Arms in order that our Officers of Arms and all other Public Functionaries whom it may concern may take full notice and have knowledge thereof in their several and respective departments. And for so doing this shall be your Warrant.



GIVEN at Our Court at St. James's this eleventh day of October, 1906, in the Sixth year of Our Reign

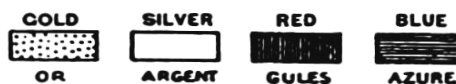
By His Majesty's Command,
(Signed) ELGIN.

I hereby Certify that the foregoing Copy of the Royal Warrant assigning Armorial Ensigns and Supporters for the State of New South Wales is faithfully extracted from the Records of the College of Arms, London.

As witness my hand at the said Collège this twentieth day of November, 1906.

A. S. SCOTT-GATTY, Garter.

EXPLANATORY NOTE.



SYDNEY:

Printed and Published by WILLIAM APPELGATE GULLACK, Government Printer and Publisher of the State of New South Wales, at Phillip-street, 22nd February, 1907.

[Price, 6d.]

Appendix 6

Plain English Version of the Blazon for the State Arms, provided to the Committee by the Flag Society of Australia Inc

Plain English Version of the Blazon for the State Arms, provided to the Committee by the Flag Society of Australia Inc.

	Heraldic – per Grant of Arms	Partially Heraldic	Plain English
Shield	Arms Azure a Cross Argent voided Gules charged in the centre chief point with a Lion passant guardant, and on each member with a Mullet of eight points Or between in the first and fourth quarters a Fleece of the last banded of the second and in the second and third quarters a Garb also Or	Blue a Cross white filled Red, charged in the centre point with a Lion passant guardant, and on each arm with a Star of eight points Yellow between in the first and fourth quarters a Fleece Yellow banded white and in the second and third quarters a Wheat Sheaf also Yellow.	The Shield is blue with a cross overall, which is coloured red with a narrow white edging. In the centre of the cross is a yellow lion advancing to the observer's left with its head turned towards the observer and right paw raised. On each arm of the cross is an eight-pointed yellow star. On the blue background in each of the top left and bottom right corners is a yellow sheep hanging from a white band and in each of the top right and bottom left corners is a sheaf of wheat in yellow.
Crest	And for the Crest on a Wreath of the Colours a Rising Sun each Ray tagged with a Flame of fire proper	On a Wreath of Blue and White a Rising Sun each Ray tagged with a Flame of fire Red.	The Crest is above the shield and consists of a band of six twister strands coloured alternately white and blue, above which is a half risen Sun with nine yellow rays which alternate straight and wavy with each ray tipped by a red flame.
Supporters	And for the Supporters On the dexter side a Lion rampant quadrant: And on the sinister side A Kangaroo both Or,	On the heraldic right side a Lion rampant guardant, And on the heraldic left side a Kangaroo both Yellow.	The Supporters are, from the perspective of the viewer, to the left of the shield, a lion, and to the right of the shield, a kangaroo. Both supporters are loured in shades of yellow. The lion is standing vertically on its hind legs facing the shield with its head turned towards the observer displaying a red tongue. The kangaroo is standing facing the shield with its head facing forward to the shield. The paws of each supporter are positioned as if they are holding the shield by its tops and side edges.

	Heraldic – per Grant of Arms	Partially Heraldic	Plain English
Motto	Together with this Motto, “Orta Recens Quam Pura Nites”	“Orta Recens Quam Pura Nites”.	The motto is on a pink and yellow ribbon below the shield on which are written the Latin words “ Orta Recens Quam Pura Nites” which translates into English as “Newly risen, how brightly you shine”. ³⁰⁶

³⁰⁶ Submission 43, supplementary submission, 31 August 2002.