

**REPORT OF PROCEEDINGS BEFORE**

**STANDING COMMITTEE ON LAW AND JUSTICE**

**INQUIRY INTO REGULATING THE USE OF COATS OF ARMS  
IN NEW SOUTH WALES**

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**At Sydney on Thursday 15 August 2002**

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**The Committee met at 10.00 a.m.**

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**PRESENT**

The Hon. Ron Dyer (Chair)

The Hon. Peter Breen  
The Hon. John Hatzistergos  
The Hon. John Ryan

**FREDERICK JOHN NILE**, Member of the Legislative Council and Honorary National President of the Christian Democratic Party, Parliament House, Macquarie Street, Sydney, before the Committee:

**CHAIR:** Thank you for agreeing to give evidence to the Committee this morning and for the submission that you have made to this inquiry. Are you conversant with the terms of reference of the inquiry?

**Reverend the Hon. FRED NILE:** Yes, I am.

**CHAIR:** Will you outline briefly your qualifications and experience as they are relevant to the terms of reference of this inquiry?

**Reverend the Hon. FRED NILE:** That is a good question. My answer is that I have served for 21 years in the Legislative Council and looked each day at the Royal Coat of Arms above the President's chair, and the Queen's and the Governor's chair whenever they are present.

**CHAIR:** I invite you to make a brief opening statement to the Committee in general terms before we ask you some questions.

**Reverend the Hon. FRED NILE:** I thank the Committee for this opportunity to appear before it to make further points and to answer any questions. I also thank the Committee for forwarding to me some proposed questions so that I could prepare some answers. I thank the Committee for that spirit of co-operation. I refer to my submission to the Committee—without repeating all of it—and indicate that 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". I made that point in my earlier submission to the Committee.

I also pointed out that the use of the Royal Coat of Arms dates back to the inception of New South Wales as the original Australian colony in 1788. The Royal Coat of Arms is symbolic of our heritage and history as a State and our New South Wales Constitution recognises that the Queen of Australia is the official head of state in New South Wales. The definition in part 1.3 states: "The Legislature means His Majesty, with the advice and consent of the Legislative Council and Legislative Assembly." That definition was obviously drafted when there was a king; of course we now have Queen Elizabeth II. Committee members and the general public will know that there is often some controversy in both the upper and lower houses about the oath that members of Parliament must take that is clearly an oath of loyalty to the Queen and her successors. That is the current position, although it has been questioned by some members in debate.

I point out in my original submission that some people who would like Australia to become a republic find it either offensive or disagreeable to see symbols that relate to the monarchy. However, Australia is a constitutional monarchy and the Queen remains the head of state both federally and in New South Wales. Because of the debate about whether Australia should remain a constitutional monarchy or become a republic, those who support the republican position often propose removing signs or symbols that relate back to the constitutional monarchy. That debate surrounds the oath that members of Parliament must take and organisations that have the word "Royal" in their title. Some members of such organisations have moved—I know that this has happened in one or two cases—to remove the word "Royal" from their titles. However, the majority of organisations with the word "Royal" in their title have retained it.

I believe even this proposal to remove the Royal Coat of Arms represents the republican point of view. I say in my submission that it could be described as "creeping republicanism". My point is that until the people of New South Wales—and/or the Commonwealth if it is a Commonwealth referendum—vote to remove the Queen as our head of state no changes should be made that undermine the position that the Crown holds in our culture, conventions and parliamentary activities.

That may or may not happen in the future—I hope that it will not—but until that change comes I believe this proposal is premature. It anticipates something that has not yet happened. If a change occurs, we can work backwards and remove the coat of Arms, change the oath and so on. I think it is premature to do that at this stage.

I have also made a second brief submission. I contacted the Garter Principal King of Arms in the United Kingdom—I know that sounds a strange title—who gives official advice on interpretations of coats of Arms. I submitted to the Committee the correspondence that I received from him, dated 20 May 2002, as a supplementary submission. In the submission I quote from his letter to me dated 8 May 2002 in which the Garter Principal King of Arms states "The Royal Arms displayed in Australia are the Arms of the Queen as sovereign of Australia." That statement is quite clear. He is obviously an authority on the matter and I believe the Committee should take note of his advice. I believe I have covered the main points in my original and supplementary submissions and am happy to proceed to questioning.

**CHAIR:** Reverend Nile, I must ask you the same question that I asked each witness who appeared before the Committee last Monday: What do you consider to be the function and purpose of a coat of Arms in today's society?

**Reverend the Hon. FRED NILE:** It is interesting to note that the New South Wales parliamentary Internet has the answer to that question. It says, "The function of the Royal Coat of Arms is to identify the person who is the head of state—in the case of New South Wales, the Queen or her representative in the State, the Governor". It then goes on to state, "The coat of Arms reminds us of the history and traditions on which the current workings of our system of parliamentary government are based". That is from our own parliamentary Internet page.

**CHAIR:** I notice on page two of your submission you state that the New South Wales coat of Arms are generic in their symbolism. Could you explain what you mean by that?

**Reverend the Hon. FRED NILE:** Yes. The *Australian Concise Oxford Dictionary* defines "generic" as "characteristic of all, relating to a class, general not specific or special". The New South Wales coat of Arms is representative of the State, but not the Head of State. It is a generic in that its characteristic is not specific in its identity of government, that is, the Head of State. For all its beauty and complexity, coat of Arms were devised to serve one purpose—identification. As our submission stated, the Royal Coat of Arms represents Her Majesty Queen Elizabeth, Queen of Australia, as Head of State in the New South Wales. The New South Wales coat of Arms is generic in that it is not specific in its representation of government. It does not represent our Head of State. The New South Wales State coat of Arms generally represents the State, its history, its industry, et cetera, yet no-one in particular. In contrast, traditionally, coats of Arms represent the person to whom they were granted. As I said earlier, the grant from the Garter Principal King of Arms of the College of Arms, London, stated:

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.

**CHAIR:** On page 3 of your submission I notice that you state that the "Christian Democratic Party does not support these republican moves to replace the Royal Coat of Arms with the New South Wales State Arms". A little farther down the page you also state, "The changes proposed by the Breen bill have been described as creeping republicanism so as to bring in a republic by stealth". You correctly say at the very commencement of your submission that the New South Wales coat of Arms was granted by King Edward VII on 11 October 1906. Although I can understand that you might argue that one coat of Arms might be preferred over another on various grounds, I find it very difficult to understand how any move to substitute the New South Wales State Arms for what is described as the Royal Coat of Arms could be described as "these republican moves", given that they were granted by King Edward VII not much short of 100 years ago.

**Reverend the Hon. FRED NILE:** I imagine that the State coat of Arms would not be legitimate under our Constitution if they were not granted by some person such as King Edward VII.

**The Hon. JOHN HATZISTERGOS:** No. Other States have had them established under law.

**Reverend the Hon. FRED NILE:** They could be established under law.

**The Hon. JOHN HATZISTERGOS:** Ours have actually been granted by the king.

**Reverend the Hon. FRED NILE:** I acknowledge that and I am not introducing a bill to remove the New South Wales coat of Arms, or in any way undermine it, or criticise it, or indicate that it has no significance. I think it is quite an important coat of Arms in its place. I suppose you could say that if it has been given, as it has, by King Edward VII that that gives it certain authority, but that does not mean that automatically it replaces the Royal Coat of Arms.

**CHAIR:** No. I can see what you say when you say that it does not automatically replace another coat of Arms. However, 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.

**The Hon. JOHN HATZISTERGOS:** I wonder about that. We have had a submission from Mr d'Apice who has given us a history of the Royal Coat of Arms. Contrary perhaps to the impression that you and your members might have, the fact of the matter is that it is never been the same; it has changed. At one stage it looked like illustration 4 and at one stage it looked like illustration 5, then illustration 6 and then illustration 7. When the French were involved, it took on a different appearance. It continually changes to reflect the position of the United Kingdom. What is so sacrosanct about it? What is so special about it? It has never changed to reflect the situation of Australia or the sovereign's position in Australia. It has only ever changed to reflect the position of the United Kingdom. Indeed the Queen has a personal flag for Australia.

**Reverend the Hon. FRED NILE:** You could actually argue that it does not reflect the changes in the United Kingdom. It reflects the changes that applied to the Royal authority, that is, of the Queen or the king at those various points in history. I do not know whether the Parliament has ever sat down and had a debate in the House of Commons, saying "We would like to change the coat of Arms for the Queen."

**The Hon. JOHN HATZISTERGOS:** What part of the Royal Coat of Arms reflects Australia or the sovereignty of Australia?

**Reverend the Hon. FRED NILE:** It reflects the Queen who is the Head of State.

**The Hon. JOHN HATZISTERGOS:** What aspect of it reflects the Australian realm? It reflects the British realm, I can see that. It reflects Scotland and Ireland and all of that, but where would I find a little hint of Australia in it?

**Reverend the Hon. FRED NILE:** I indicated in my earlier submission that Australia has a similar history to the United Kingdom under the reign of the various either kings or queens. A lot of that history is part of Australia. I indicated, for example, that on the Royal Coat of Arms it has the harp of David, which is a Christian symbol, and had also has the lion and with a crown on the head of the lion which refers to the Lion of Judah, which is taken to represent the Lord Jesus Christ. So Australia, as I said, is basically a Christian country and the Royal Coat of Arms is quite a fitting coat of Arms and does relate to our Australian society. It may not have an emu on it or a kangaroo or wheat or wattle.

**The Hon. JOHN HATZISTERGOS:** Do you think it should?

**Reverend the Hon. FRED NILE:** I do not think that is relevant.

**CHAIR:** Several submissions made to the Committee argue that the Australia Acts of 1986 which remove the residual powers of the British Government in Australia and also in the Australian States make it constitutionally inappropriate to display the Royal Arms because there is no longer any British sovereignty in Australia. How would you respond to that argument?

**Reverend the Hon. FRED NILE:** 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."

**CHAIR:** I will put one matter to you for reasons of clarification. According to the evidence we took last Monday, the Royal Arms are not in fact the personal Arms of the Queen. They are the Arms of the Queen in the United Kingdom of Great Britain and Northern Ireland. In that regard I point out that we have been told that the Queen does have different Arms in different realms, for example, Scotland and Canada. Do you agree that that is the position, that there is a distinction between the Queen's personal Arms and Royal Arms relating to various jurisdictions?

**Reverend the Hon. FRED NILE:** I am aware that there are different forms of coats of Arms. As I was advised that the Committee was relating some of its concerns back to the situation in Canada, I have a copy of the Canadian Royal Coat of Arms as used in Canada which, following up on the earlier questions I was being asked, is even more Royal than anything we have Australia.

**The Hon. JOHN HATZISTERGOS:** Is that your complaint?

**Reverend the Hon. FRED NILE:** No.

**The Hon. JOHN HATZISTERGOS:** Is that your complaint—that the Arms of New South Wales are not Royal enough? Is that what you are saying?

**Reverend the Hon. FRED NILE:** No.

**The Hon. JOHN HATZISTERGOS:** If they were Royal-ised, would you be happy?

**Reverend the Hon. FRED NILE:** No, I am not making that point at all. There was implication by references to Canada that Canada somehow had moved away from using the Royal Coat of Arms so I thought I had better get a copy of the Canadian coat of Arms to tender it and probably pass it round. You will see—and this surprised me—that the current coat of Arms for Canada is virtually the same as ours, but you will note that it has one or two Canadian references on it. It actually has the Union Jack and other flags as part of the code of Arms which are not on our Royal Coat of Arms. In other words they have even made it more Royal, if you like, if anything, while still keeping all the other symbols that I have referred to, and with a different oath or motto at the bottom.

**CHAIR:** In my question I was simply seeking to draw the distinction between the personal Arms of the Queen and Arms she bears in relation to different sovereignties, whether they are Canada, Australia, the United Kingdom or wherever.

**Reverend the Hon. FRED NILE:** I accept that. As I have just pointed out, there are some variations between the Australian Royal Coat of Arms and the Canadian one, and the Canadian one, if anything, is more Royal, if you like, in a sense than is our Australian Royal Coat of Arms. I accept also that each Royal person has their personal coat of Arms. The Queen has hers and that might be slightly different to what King George had, and the next king, whoever that may be—Prince Charles or the grandchildren—may decide to pick their own coat of Arms. You would not want to have a system where, as each change occurred in the line through the accession process, you changed all the coats of Arms in our Parliament and everywhere else. There must be a standard Royal Coat of Arms, and that is what we have in fact here in Australia.

**The Hon. PETER BREEN:** The submission of the Flag Society of Australia to this Committee noted that the Royal Arms of the United Kingdom should not be used in New South Wales because New South Wales is not part of the United Kingdom. Could you comment on this argument?

**Reverend the Hon. FRED NILE:** Yes. At the moment I am seeking to have discussions with the Flag Society of Australia in New South Wales because I support the Flag Society and I believe—although I do not have confirmation of this—that the way in which the question was posed, "Should we retain the UK Coat of Arms?", could have caused some confusion, as I said in my opening statement in the minds of people, maybe even in the minds of the Flag Society of Australia in New South Wales. As I said, I am seeking to get clarification from them as to whether they fully understood the proposal. They may have; I am not questioning their intelligence, but I was concerned when I noted that in their submission, their proposition. I was surprised by it because the Flag Society is very closely associated with the Australians for Constitutional Monarchy, and they interact together.

**The Hon. PETER BREEN:** I notice that the Flag Society does not have any British symbols in its proposal for an Australian flag. It has a kangaroo.

**Reverend the Hon. FRED NILE:** I may be getting mixed up then, sorry.

**The Hon. PETER BREEN:** Yes.

**Reverend the Hon. FRED NILE:** I thought the Flag Society was the one that was actually supporting the Australian flag.

**The Hon. PETER BREEN:** I do not think so.

**Reverend the Hon. FRED NILE:** If this is the group that is promoting a new flag, I accept they would have this position. I was not sure from the reference "Flag Society of New South Wales". I took that to mean the organisation that is promoting the Australian flag. Apparently it is not, so therefore I am not surprised if that is their view. They may want to change all our traditional symbols—the flag, the Queen, coats of Arms and so on. I know there are movements that are seeking to do that.

**The Hon. PETER BREEN:** Is not the problem they are alluding to this: that the Royal Arms are the Arms of the dominion and sovereignty of the Queen and the United Kingdom and Northern Ireland and are not the Arms that represent the sovereignty of the Australian people? Is not that the problem?

**Reverend the Hon. FRED NILE:** This goes back to my opening remarks as to what a coat of Arms represents.

**The Hon. PETER BREEN:** Should it not represent the sovereignty of the Australian people, or the New South Wales people in the case of the New South Wales Arms?

**Reverend the Hon. FRED NILE:** We do have a State coat of Arms. I am not trying to have that removed. I am not agitating and we do have an Australian coat of Arms.

**The Hon. PETER BREEN:** But should we not use the State Arms?

**Reverend the Hon. FRED NILE:** And they 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.

**The Hon. PETER BREEN:** Let us assume that we built a new court tomorrow over the road in Macquarie Street and in the door of the court we put a representation of the Royal Arms rather than the New South Wales State Arms. Do you not think that is inappropriate?

**Reverend the Hon. FRED NILE:** No, because I see the court as operating under the authority of the Crown and, in fact, the person who acts in the court is called the Crown prosecutor and the Ministers of the Government are called Ministers of the Crown.

**The Hon. JOHN HATZISTERGOS:** The Crown in the right of New South Wales?

**Reverend the Hon. FRED NILE:** Yes. I am just saying that is the term that is used. It would not be inappropriate and I would not be against having the State coat of Arms displayed at some place in the building as well. They are not in conflict. There is not a competition between the two coats of Arms.

**The Hon. PETER BREEN:** No, but if there is a choice to be made between the two coats of Arms would you agree with me that is more appropriate to use the State Arms, which represents the sovereignty of the Australian people?

**Reverend the Hon. FRED NILE:** No. I think in places where there is an authority that derives from the Crown, it would be more appropriate to have some representation which is the Royal Coat of Arms above the judge's head and so on in that court but it may not apply to the letterhead of the Minister for Transport or the Minister for Education and Training.

**The Hon. JOHN HATZISTERGOS:** It does not even apply to the Governor-General. He does not even use it. He uses a piece of wattle and the Crown.

**Reverend the Hon. FRED NILE:** Yes?

**The Hon. JOHN HATZISTERGOS:** Is the Governor-General's office more republican?

**Reverend the Hon. FRED NILE:** I am not suggesting that everything done in Australia is logical or consistent. A lot of things happen in Australia where nobody—and maybe in the Governor-General's case—had a long discussion as to what the change meant and should the change have been made. Maybe the Governor-General just decided to start doing it and maybe had no authority. I do not know; I have not investigated that but I am happy to do it if the Committee wants me to.

**The Hon. PETER BREEN:** Returning to the hypothetical situation of the new court being built over the road. There is a choice to be made as to which Arms should be put on the wall. Would it not be appropriate to put up Arms that represent the Queen of Australia in the right of New South Wales rather than Queen of England and the United Dominions of Northern Ireland?

**Reverend the Hon. FRED NILE:** No, she is the Queen of Australia and she is also the Queen of the United Kingdom, Canada and other countries.

**The Hon. PETER BREEN:** But there are two representations. One is a representation of the Queen of Australia in the right of New South Wales, which is the State Arms, and the other one is the Queen of England and the United Northern Ireland. Do you not think it is more appropriate to put on the wall of the court we have just built the representation of the Queen of Australia in the right of New South Wales in preference to the Queen of England and the Dominions of Northern Ireland and Scotland?

**Reverend the Hon. FRED NILE:** I do not accept the proposition in the way you are drafting the question.

**The Hon. PETER BREEN:** But that is the reality.

**Reverend the Hon. FRED NILE:** It is not the reality.

**The Hon. PETER BREEN:** Tell me where I am wrong?

**Reverend the Hon. FRED NILE:** The Royal Coat of Arms represents the Crown, the Queen and that is what we have in Australia until such time as we become a republic.

**The Hon. JOHN RYAN:** I was tending to agree with your position when the issue was first raised. However, it has been put to the Committee by people with heraldic experience that it is actually inappropriate to use in New South Wales what we refer to as the Royal Arms. It is a misnomer. In fact, the New South Wales coat of Arms can justifiably be referred to as the Royal Arms as well because it represents the Queen's authority in New South Wales. Apparently in each jurisdiction in which the Queen has the authority, in whichever manner she holds that authority, it is usual for each jurisdiction to create a coat of Arms that represents her authority in that jurisdiction.

The habit in New South Wales for constantly using the United Kingdom coat of Arms does not occur anywhere else in the world. The version we use specifically refers to her Majesty's exercise of authority in England, not even Wales or Scotland where the coat of Arms is marginally changed to reflect the fact that it is a different jurisdiction. We have been advised that what we refer to as the Royal Arms is a misnomer and it is not done anywhere else in the world and that we should be using, as a matter of course without even this bill becoming an Act, a State Arms which was granted by Edward VII to New South Wales as the Royal Arms in New South Wales. Therefore, the use of the other coat of Arms, whilst it has grown up by usage, is not something that people with heraldic experience and expertise regard as appropriate.

I refer you to the document from Canada you handed to Committee members which you explain looks similar to what we refer to in New South Wales as the Royal Arms. I draw your attention to significant areas of dissimilarity, which helps make the point. The coat of Arms includes a flag bearing three fleur de lis, which reflects the French influence and heritage in Canada. Apparently there is some question as to whether they should be using that. That particular coat of Arms is a specific adaptation of what we refer to as the Royal Arms for Canada. In New South Wales we have added a kangaroo but essentially that is the appropriate Royal Arms to be used in New South Wales.

Has that been explained to you? Given the explanation that the coat of Arms we commonly refer to as the New South Wales Arms, if that is appropriately called the Royal Arms of New South Wales, is it not appropriate, according to that heraldic advice, to start doing that? Do you accept it is possible that the habit of using what we refer to as the Royal Arms is inappropriate and given that advice we should stop doing it anyway?

**Reverend the Hon. FRED NILE:** You are quoting advice you have heard but the advice I read earlier from the world authority—

**The Hon. PETER BREEN:** What is the world authority?

**Reverend the Hon. FRED NILE:** The College of Arms, the Garter King of Arms, which I have made as a second submission to the Committee. It made it quite clear that it is correct and proper to be using the Royal Coat of Arms.

**CHAIR:** When you say it is a world authority, it is really a British authority, is it not?

**Reverend the Hon. FRED NILE:** That is the source of the authority for coats of Arms as used through the British Commonwealth.

**CHAIR:** Not in Canada. They have established their own.



**Reverend the Hon. FRED NILE:** I know they have established their own now. Yes, I accept that, but we do not have our own one here so we are still dependent on that advice.

**The Hon. JOHN HATZISTERGOS:** Should we be?

**CHAIR:** Supposing we were to set up our own heraldic authority in New South Wales or in Australia, as has been suggested to us earlier in the week. What would you say to that?

**Reverend the Hon. FRED NILE:** 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. In fact, I do not argue that it would help remove the coat of Arms but it may help clarify what happened with the Governor-General. In other words, there has to be some authority and no individual or even a State could decide to do something. There would have to be some reference back to tradition and the meaning of a coat of Arms and, as I said, the purpose of a coat of Arms is identification. I do not think it is a matter of the sovereignty of people, as Mr Breen raised. This is not a clash between the Royal Coat of Arms and the people of New South Wales. I do not see it in the way at all. The Queen protects the sovereignty of the people, that is the point.

**The Hon. JOHN HATZISTERGOS:** If the Queen were to be advised to accept the New South Wales coat of Arms as her Royal Coat of Arms for New South Wales, so that she would use the New South Wales coat of Arms for the purposes in New South Wales in the same way she uses a different coat of Arms for Scotland and a different one for Canada, would you accept the legitimacy of that action?

**Reverend the Hon. FRED NILE:** Yes. One of the problems in seeking the Queen's opinion or advice is that the Queen has made it very clear that even if Australia wanted to become a republic she would accept the will of the people. If that were a proposition put up by the State Government I assume she would agree to it because she understands a constitutional monarchy. She would not oppose what a legitimate authority wished to do. Therefore, I do not think it would help us. If you wrote and said this is what we want to do, she would write back saying she has no disagreement with it. She may personally be deeply offended by it and feel that it was a slap in the face to her as Queen but in her understanding of constitutional monarchy she would never express a personal opinion contrary to elected governments.

**The Hon. JOHN HATZISTERGOS:** I do not see how she would be offended by it because it has so much British heraldry in it anyway—a couple of lions and the St George cross, which represents British heritage. The point I am trying to make is that if she accepted and adopted it as her personal coat of Arms for New South Wales, whether on advice or whatever, it would take away from your argument that the New South Wales coat of Arms does not reflect the monarchy and, furthermore, it would detract from your argument that this would be creeping republicanism because, to the contrary, it would be adopted and recognised by the Queen as a symbol that reflects her sovereignty in New South Wales, would it not?

**Reverend the Hon. FRED NILE:** I accept that historically there can be changes in the future that could even be originated by the Queen or the Crown. Obviously, you could hardly have a conflict if you are trying to support the recognition of the Queen as Queen of Australia and Queen of New South Wales. If she proposed something then obviously you would accept it. However, I doubt that that would happen and if King Edward VII had received a little note saying, "We want the coat of Arms for New South Wales but we are also going to remove every sign and symbol that relates back to the Royal Coat of Arms", I think there may have been some controversy at that point.

**CHAIR:** But that did not happen?

**Reverend the Hon. FRED NILE:** No, it did not happen because he never envisaged that this was some act of disloyalty. If the Parliament now voted to remove it 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.

**The Hon. PETER BREEN:** How are we being disloyal to the Queen if we are using the representation, a coat of Arms which is the Queen in the right of Australia or in the right of New South Wales?

**Reverend the Hon. FRED NILE:** I accept that it is quite suitable for a State to have a State coat of Arms but it was not meant to take the place of the Royal Coat of Arms and obviously it did not because the Royal Coat of Arms was not removed.

**The Hon. JOHN HATZISTERGOS:** I think what Mr Breen is putting to you is if it became the Royal Coat of Arms for New South Wales.

**Reverend the Hon. FRED NILE:** He did not say that.

**The Hon. JOHN HATZISTERGOS:** Assume that he did.

**Reverend the Hon. FRED NILE:** You are ad-libbing now for him. He did not say that. He is saying as it now stands.

**The Hon. PETER BREEN:** Let me ask the question again. I tried to ask it before in the context of the new building going up and the opportunity of putting up two representations. What do you think are the Arms of the Queen of Australia?

**Reverend the Hon. FRED NILE:** The Royal Coat of Arms are the ones that are displayed in the Legislative Council.

**The Hon. PETER BREEN:** You do not agree that they are the Royal Coat of Arms of the Arms of Dominion and Sovereignty of the Queen of United Kingdom and Northern Ireland?

**Reverend the Hon. FRED NILE:** No, I do not. I believe that they are the Royal Coat of Arms.

**The Hon. PETER BREEN:** Do you mean as in the Queen's personal Arms?

**Reverend the Hon. FRED NILE:** No, as a Royal Coat of Arms that has been used here and in our Parliament and at Government House, and in other parts of what was the British Empire and now is the British Commonwealth.

**The Hon. PETER BREEN:** What Arms are do you think are the Arms of the Queen of Australia in the right of New South Wales?

**Reverend the Hon. FRED NILE:** I do not understand. The way you are wording that question, you are now trying to make the State coat of Arms a Royal Coat of Arms. I do not envisage it is that.

**The Hon. JOHN RYAN:** My advice is that it is.

**Reverend the Hon. FRED NILE:** That may be, but it is contrary to advice that I have. I grant that it has Royal authority. I am not questioning that. I say in my submission that King Edward VII gave it that authority.

**The Hon. PETER BREEN:** I go back to advice you were given from the Garter Principal King of Arms, which you quoted in your letter of 20 May.

**Reverend the Hon. FRED NILE:** I have attached his letter to my submission.

**The Hon. PETER BREEN:** Yes, that is right. In your letter dated 20 May you said that the Garter Principal King of Arms states, "The Royal Arms displayed in Australia are the Arms of The Queen as Sovereign of Australia." What Arms do you understand that represents?

**Reverend the Hon. FRED NILE:** The Royal Coat of Arms.

**The Hon. PETER BREEN:** The one with the unicorn and the lion on it?

**Reverend the Hon. FRED NILE:** Yes.

**The Hon. PETER BREEN:** What if I suggested to you that the advice from the Garter Principal King of Arms was incorrect?

**Reverend the Hon. FRED NILE:** I am not surprised that you would say that. I do not accept that proposition.

**The Hon. PETER BREEN:** What if the Committee were able to provide you with evidence that that advice from the Garter Principal King of Arms is incorrect? Would you accept that and, therefore, would you also accept that the appropriate Arms that represents the Queen as Sovereign of Australia in the right of New South Wales are the current State Arms with the lion and kangaroo, as opposed to the lion and unicorn? If we were to get that advice would you agree with me that it would be more appropriate to use that representation for the people of New South Wales rather than the representation of the people of the United Kingdom and Northern Ireland?

**Reverend the Hon. FRED NILE:** I disagree with the proposition. This is the whole confusion in your bill where you keep calling it the United Kingdom coat of Arms. That is what has confused people making submissions. All I am saying is that the letter to me from the Garter Principal King of Arms supports our position. If he is shown to be wrong that does not change our position, it is only evidence that supports our position. If we have to get other evidence to support our position then we will make further inquiries if necessary. I thought that going to the source of authority was sufficient. You are now saying that there is more than one authority, apparently.

**The Hon. PETER BREEN:** It has been put to me that that advice from the Garter Principal King of Arms is incorrect. I certainly intend to check that. But it certainly detracts from your argument if it turns out that the advice is incorrect.

**Reverend the Hon. FRED NILE:** It would, but in my opinion his statement supports not just our view but the view of many other organisations in Australia. His view confirms our understanding of the Royal Coat of Arms. It is not the United Kingdom coat of Arms. Tomorrow the United Kingdom Parliament could have a bill put up by Mr Blair to adopt a British coat of Arms. There would be a Royal Coat of Arms and a United Kingdom coat of Arms. For convenience the United Kingdom uses the Royal Coat of Arms, but that does not make it the United Kingdom coat of Arms, which is the false proposition in your draft bill.

**The Hon. PETER BREEN:** But there is a general understanding from other evidence before the Committee that the Royal Arms are the Arms of the Dominion of the Sovereignty of the Queen of the United Kingdom and Northern Ireland, they are not the Queen's personal Arms. Do you think they are the Queen's personal Arms?

**Reverend the Hon. FRED NILE:** No, I did not say that. They are the Royal Coat of Arms. I can understand that there would be variations and changes as each person holds that position as King or Queen. You could not keep changing codes of Arms all around the British Commonwealth of Nations that use the Royal Coat of Arms. 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 believes it is a further argument for retaining it.

**The Hon. PETER BREEN:** I put it to you that your understanding about the Christian symbolism is also incorrect. Your extrapolating to your own purposes those symbols is, in fact, quite misleading and misrepresents the true symbolism. For example, the use of the lion in English Royal heraldry dates from the time of King Richard I of England without any unicorn. The use of the unicorn in Scots Royal heraldry dates from the time of King James III of Scotland. They were first used together when King James VI of Scotland became, in addition, King James I of England. The

harp was associated with Ireland by King Henry VIII when he raised the lordship to a kingdom. You can say that they are comparable to representations and passages in Scripture, but that is not their origin.

**Reverend the Hon. FRED NILE:** All you have stated is the history of when it was put there, but you have not actually stated the symbolism, what it meant and why the person to whom you referred put it there.

**The Hon. PETER BREEN:** But there is no authority for your proposition. You are the one who is giving it the authority.

**Reverend the Hon. FRED NILE:** No, there are other people who have given those interpretations to me. It is widespread knowledge as to what those symbols mean. I take your point. I would have to go to the actual historical reference as to when the unicorn was put there. You just quoted the date, but you do not state the reason it was put there. I am stating that the only reason it would be put there is that it has a Christian or biblical significance.

**The Hon. PETER BREEN:** Do you agree with me that there could be another reason it is there, apart from a reference in the *Bible*?

**Reverend the Hon. FRED NILE:** It is very hard to realise what it would be when the Christian heritage was so strong in the United Kingdom.

**The Hon. PETER BREEN:** I accept that.

**Reverend the Hon. FRED NILE:** Thank you, I am glad you do.

**The Hon. PETER BREEN:** I do. But do you also accept—

**Reverend the Hon. FRED NILE:** The harp of David comes from the conversion of Ireland under St Patrick. People could say that they put a harp there because it came from the Opera House, but that is not correct.

**The Hon. PETER BREEN:** Unfortunately, my knowledge is lacking as to where exactly the harp came from. But a witness who gave evidence on Monday told us that the harp belongs to a different root of Irish history altogether to the Christian heritage of Ireland. Unfortunately, I cannot tell you exactly what it is.

**Reverend the Hon. FRED NILE:** It could still be pre-Christian coming from David. That is the whole point: it is David's harp, David of the Old Testament. There could be tradition in Ireland even preceding the Christian religion through the Judaic religion. But the Christian one re-emphasised it.

**The Hon. PETER BREEN:** I go back to a question I asked you earlier about the proposed court being built with the new representation of either the Royal Arms or the New South Wales State Arms. The question arises about the use by the judiciary of different Arms. For example, in some court you will find Royal Arms and in others you will find State Arms. In my opinion it is quite confusing. Would you agree with me that there ought to be some uniform principle in place in the judiciary in relation to the Arms? In the interest of justice in New South Wales it would be better if the same symbolism were used in all the courts.

**Reverend the Hon. FRED NILE:** I accept that the Royal Coat of Arms should appear above where the judges sit, and the State coat of Arms could still be used on the glass doors at the entrance to the court. I do not see any problem with that.

**The Hon. PETER BREEN:** You base that on the fact that that is where judicial authority is derived from?

**Reverend the Hon. FRED NILE:** From the Crown. In our society that is the protector of citizens' rights, even over and above what Parliament does

**The Hon. JOHN HATZISTERGOS:** Is that right? Where do I find that in the High Court building in Canberra or the Federal Court?

**Reverend the Hon. FRED NILE:** That is what I said, there may be many inconsistencies depending on which government or which political party was in power when certain decisions were made.

**The Hon. JOHN HATZISTERGOS:** The High Court building was opened by the Queen.

**Reverend the Hon. FRED NILE:** That is no point. The Queen would open a building without having any idea what was on the walls.

**The Hon. JOHN HATZISTERGOS:** Would she open a building that she found offensive?

**Reverend the Hon. FRED NILE:** They would not send a diagram and layout of a building to the Queen and ask her whether she agreed with it before she opened it. She would have no idea until she walked into the building what was on the wall. Under different political parties, probably more under the Labor Party, of which you would be aware, which has a strong support for a republic, if they had any power over putting up new buildings, and I would have to check the dates—

**The Hon. JOHN HATZISTERGOS:** The building was constructed under a Liberal Government.

**Reverend the Hon. FRED NILE:** There are also people in the Liberal Party who have republican tendencies, and they may be offended by the Royal Coat of Arms and deliberately leave it off the building. If I were the Attorney General or the Prime Minister I would put it there. It should be there.

**The Hon. PETER BREEN:** It is odd that it is inconsistent.

**Reverend the Hon. FRED NILE:** Yes. A lot of things in Australia are inconsistent. We are a bit of a happy-go-lucky society and in some ways that is one of the problems. There is not consistency. Perhaps in a democracy you have to accept that there will be some inconsistencies.

**The Hon. PETER BREEN:** Do you think that the bill will promote the idea of greater consistency?

**Reverend the Hon. FRED NILE:** No, I see it as an offensive bill that originated as a provocative move when there is no real desire by the people for such change to take place, so far as I can tell. As you initiated it, you would have some support for the bill. I accept, in many ways, the will of the people. As was demonstrated during the republican debate a group of people wanted a change, but the majority of do not want the change. It does not change those who want the change. You may be looking at this as a technical issue, but I see it as part of the bigger battle as to whether we retain and respect the authority and position of the Crown and Queen Elizabeth II as Queen of Australia and Queen of New South Wales. As I said, I thought the Australia Act strengthened the Queen as Queen of New South Wales. The direct relationship between the Queen and the State Government was made even stronger.

**The Hon. PETER BREEN:** I am not trying to diminish the role of the Queen.

**Reverend the Hon. FRED NILE:** That is the point I am making, that is the interpretation that many people, including me, have placed on the intentions of the bill. That may not be your intention, but that is the interpretation placed on the bill.

**The Hon. PETER BREEN:** I put it to you that the main purpose of the bill is to get it right. If we are going to use the symbolism of the sovereignty of the Queen of Australia in the right of New South Wales we ought to use the correct emblem. That is not unreasonable, is it?

**Reverend the Hon. FRED NILE:** But your argument in introducing the bill was that we have a foreign coat of Arms, the United Kingdom coat of Arms. That was the way in which you were driving it in the beginning. You have now made a switch.

**The Hon. PETER BREEN:** No, I have not made a switch.

**Reverend the Hon. FRED NILE:** Now you claim we actually have a State coat of Arms, which is the Royal Coat of Arms. It was the Royal Coat of Arms after all.

**The Hon. PETER BREEN:** It is no switch.

**Reverend the Hon. FRED NILE:** I think you are redrafting your argument.

**The Hon. PETER BREEN:** No, I am not. I am simply saying to you that the advice you got from the Garter Principal King of Arms, that the Royal Arms displayed in Australia as the Arms of the Queen as sovereign of Australia, is wrong. That advice is simply incorrect.

**Reverend the Hon. FRED NILE:** So you say.

**The Hon. PETER BREEN:** Yes. The purpose of the bill is to correct the error.

**Reverend the Hon. FRED NILE:** Did you know that that was an error? Did you have a copy of a letter from the—

**The Hon. PETER BREEN:** That is not a fair question.

**Reverend the Hon. FRED NILE:** No. Did you?

**The Hon. PETER BREEN:** That is not a fair question.

**Reverend the Hon. FRED NILE:** No, you did not.

**The Hon. PETER BREEN:** I do not have—

**Reverend the Hon. FRED NILE:** You cannot say to me now that you are trying to correct it as a mistaken view because you had no idea what his view was.

**The Hon. PETER BREEN:** No, that is correct, because his view had not been made known. It so happens that he has now made his view known and it is incorrect.

**Reverend the Hon. FRED NILE:** That is your argument.

**The Hon. PETER BREEN:** It does not become an issue once he has made his view known.

**Reverend the Hon. FRED NILE:** I do not accept your position that it is wrong.

**The Hon. JOHN RYAN:** You got a letter from the Garter Principal King of Arms and his advice matches your submission. Nevertheless, for various reasons there are people who beg to differ. His letter refers to a letter that you wrote to him on 11 April. His letter purports to answer the questions. Could we at least find out what the questions were that he has answered? That may better define what he means.

**Reverend the Hon. FRED NILE:** I would be happy to do that.

**The Hon. JOHN RYAN:** The letter states that grants of Arms have been made. I get the impression that no other grants, other than the Royal Arms, have been made. It makes no reference to the specific status of the Arms granted by King Edward VII, which he referred to as the New South Wales Arms. There is no reference to the 1912 grant of Arms to Australia, which are the ones used by the Commonwealth Department. It would be fair to say that before we could take this as being final

advice from the Garter King of Arms we would need to find out what status he accords to the other Coats of Arms. That would be fair, would it not?

**Reverend the Hon. FRED NILE:** Yes. I did indicate that the question was about the role and place of the Arms in New South Wales and in his reply to me he says in the last paragraph, "The Arms of New South Wales might not be appropriate, notwithstanding the fact that the courts are in New South Wales". He is well aware there was a State Coat of Arms and he would obviously know that they were granted by King Edward VII. But I will give you my letter. I think I attached the Bill and a lot of material to him and to a number of other authorities that we were writing to. It took a while to even find out who he was. We wrote to various people. The whole question is a new debate and a new debate for me personally. I am no expert on Royal Coats of Arms or New South Wales Coats of Arms, so I had to do a lot of investigation. I am not saying I am an expert but I have amassed a great deal of information. I am still amassing information too. I will forward to you any further correspondence I receive.

**The Hon. JOHN RYAN:** Part of the documents were returned that you have attached to your submission. First is a letter by Mr Lawrie, the Manager of the Parliamentary Archives, and he says, "I strongly recommend that you contact the Clerk of Parliaments. Other people may be able to assist like the Protocol Section of the Premier's Department and the Garter King of Arms at the College of Arms in London". You have obviously done the last one. Did you make any inquiries of the Clerk of Parliaments and the Premiers Department and, if so, what response did you get from them?

**Reverend the Hon. FRED NILE:** I would have to check our files of all the correspondence that I have received. From memory we received no correspondence back from the Clerk, which is disappointing, but whether the Clerk regards this as a matter to be decided by the House— sometimes he does not give advice and I have not received a letter from him. We did receive correspondence back from the archives officer, from memory.

**CHAIR:** Reverend Nile, is there anything you would like to say before we conclude?

**Reverend the Hon. FRED NILE:** I disagree obviously with the bill but one positive thing has happened. It has, I guess, forced us to examine our own history, our own heritage, and I suppose even if I was a republican I would still not remove the New South Wales Coat of Arms from the Legislative Council because I regard that as an act of vandalism then and changing the historical nature of that House.

**The Hon. JOHN HATZISTERGOS:** It was not part of the House. It was never part of the House. Those Arms were actually put up there by edicts of previous speakers. They were never part of the original configuration of the building.

**CHAIR:** I think in the case of the Legislative Council that is actually incorrect. In the case of the Legislative Council it has been there since 1856.

**Reverend the Hon. FRED NILE:** That's right. I have confirmed that but I do accept that in the lower House, and again there could be reasons for that. I am actually checking every photograph I can find in all the records, but it certainly always appeared in the Legislative Council but it did not appear in some of the photographs of the Legislative Assembly as it was displayed in the Legislative Assembly at some historical point. They did not remove any other Coat of Arms. There wasn't one there.

**CHAIR:** It was first displayed in the Legislative Assembly on 17 August 1937.

**Reverend the Hon. FRED NILE:** That is the advice I have received but, as I said, we are now doing an historical check of every photograph to see whether there were any other Coats of Arms on the walls of the Legislative Assembly before that date. I think the point of that letter, which we have a copy of, is that is the only evidence they can find as to when it was agreed to put it there and I think there was even a motion in the House, from memory. Wasn't there some reference in the *Hansard*?

**CHAIR:** The answer you have received from parliamentary archives appears to indicate that it was done on the initiative of the Speaker at the time.

**Reverend the Hon. FRED NILE:** But there is some reference in the *Hansard*. Whether he just simply announced it and the House agreed or the House voted, it is not clear; whether he needed the authority of the House to put it up.

**CHAIR:** Reverend Nile, thank you very much for your assistance to the Committee this morning.

**Reverend the Hon. FRED NILE:** I hope it is of assistance. I genuinely mean that. But I think, again, it has been a constructive issue to debate and to update our position on these matters rather than never questioning them. I am not against questioning things as long as you get the right answer at the end.

**CHAIR:** We all know a lot more about Coats of Arms than before this inquiry commenced. Thank you very much.

**Reverend the Hon. FRED NILE:** The comments I was making to you in answer to some of the questions, I did draft copies of it. If I could hand that up so you have got dates and references that I was making. Could I seek the Committee's co-operation in tabling the documents?

**CHAIR:** Yes, we will accept those as tendered documents.

**(The witness withdrew)**



**JOHN ARTHUR THOMPSON**, Retired public servant, 9 Renmark Street, Duffy, Canberra, and

**CHRISTOPHER JOHN LINDESAY**, Principal Systems Officer, Australian Maritime Safety Authority, 21 Alexandria Street, Hawker, Canberra, sworn and examined:

**CHAIR:** Mr Thompson, in what capacity are you appearing before the Committee?

**Mr THOMPSON:** I am representing, along with Mr Lindesay, The Heraldry & Genealogy Society of Canberra Inc. I am also, to show my interest in heraldry, a member of Heraldry Australia and the Heraldry Society, England.

**CHAIR:** Did you receive a summons issued under my hand in accordance with the provisions of the Parliamentary Evidence Act?

**Mr THOMPSON:** I did.

**CHAIR:** Are you conversant with the terms of reference for this inquiry?

**Mr THOMPSON:** Yes.

**CHAIR:** Could you please briefly outline your qualifications and experience as they are relevant to the terms of reference for this inquiry?

**Mr THOMPSON:** As I mentioned before, I am a member of three societies interested in heraldry and I have been asked to represent the Heraldry and Genealogy Society of Canberra Inc.

**CHAIR:** The society has made a written submission to the inquiry for which we are very grateful. Is it your wish that be included as part of your sworn evidence?

**Mr THOMPSON:** Yes, with some changes because we realised as we were making our opening statement that we were rather cryptic in our comments and it could be left to open interpretation. We should have been more expansive in our reasoning.

**CHAIR:** So the changes you wish to make you will outline as you answer our questions, I take it?

**Mr THOMPSON:** Yes, thank you.

**CHAIR:** Mr Lindesay, in what capacity are you appearing before the Committee?

**Mr LINDESAY:** I was the coordinating member compiling the HAGSOC's submission and represent HAGSOC before this Committee— HAGSOC is The Heraldry & Genealogy Society of Canberra Inc.

**CHAIR:** Did you receive a summons issued under my hand in accordance with the provisions of the Parliamentary Evidence Act?

**Mr LINDESAY:** I did.

**CHAIR:** Are you conversant with the terms of reference for this inquiry?

**Mr LINDESAY:** I am.

**CHAIR:** Could you please briefly outline your qualifications and experience as they are relevant to the terms of reference for this inquiry?

**Mr LINDESAY:** Since my university days I have developed a keen interest in heraldry. At that time I became a member of the Heraldry Society of England and since immigrating to Australia about nine years ago I have joined HAGSOC and am an officer of Heraldry Australia.

**CHAIR:** The society, as you are well aware, has made a written submission to this inquiry. Is it your wish that that submission be included as part of your sworn evidence?

**Mr LINDESAY:** It is.

**CHAIR:** If either of you should consider at any stage during your evidence that in the public interest certain evidence or documents you may wish to present should be heard or seen only by the Committee, the Committee will be willing to accede to your request. However, the Legislative Council does have the right, if it so decides, to override any decision we might make in that regard.

Mr Lindesay, I understand it is your wish to make a brief opening statement to the Committee?

**Mr LINDESAY:** It is. On behalf of the Heraldry & Genealogy Society of Canberra Inc, known as HAGSOC, we would like to thank the committee of inquiry into regulating the use of Coats of Arms in New South Wales for inviting us to make an oral presentation in support of HAGSOC's written submission. In our submission we deliberately refrain from making any comment on the desirability or otherwise of the Bill on the grounds that it is the prerogative of Parliament to legislate on matters it so wishes. Our submission was written with the intent to improve some aspects of the Bill and to clarify those clauses that we thought were ambiguous. Since making our submission we have seen some of the other submissions and we would like to make some general comments about the Bill. We also would like to say that in reading other submissions, and with the benefit of hindsight, we realise that we are a little too cryptic in our written submissions. This may have led to some misinterpretation.

In our submission we suggested that the Garter King of Arms be invited to make some clarifying comments about some provisions of the Bill under consideration. While some people may question the right of the English College of Arms to have any armorial jurisdiction in Australia we nevertheless believe it is only right as a matter of common courtesy that they be invited to do so. This is because they were the people who created the current Arms of New South Wales and which formed the basis of the original Royal warrants. The extension of this courtesy in no way implies any recognition of jurisdiction or otherwise in the current circumstances.

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 maybe, 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". With this in mind it is not surprising that there will be some differences between submissions on various aspects of the Bill in relation to the use and display of armorial ensigns as well as over the question of heraldic jurisdiction. That said, we note that the general thrust of many of the submissions is in the same direction, namely, the need for the establishment of an Australian heraldic authority that would do away with many of the issues which are now in dispute.

**CHAIR:** I indicate in commencing the questioning that any question I or my colleagues might ask may be responded to by either or both of you, should you so choose. What do you consider to be the function and purpose of a coat of Arms in today's society?

**Mr LINDESAY:** By way of a preface in answering that question we would like to say that we are not surprised that it has been asked. It has been frequently asked before in other forms about symbols and ceremony, which are themselves a form of symbolism. Many individuals have said that symbols and rituals have no relevance or part to play in today's ever-changing materialistic world. That is not so. One has only to look at the symbolism on our coins and bank notes, on letterheads, on billboards and in other advertising mediums to see that. The coat of Arms is an internationally recognised symbol of corporate and individual identity. Unlike other logos, badges and other emblems, it instantly conveys a visual message of authority, authenticity and legitimacy.

Symbols, be they coats of Arms, badges, or logos, are visual marks of identity and serve to identify a group, tribal association or community. For example, churches display various forms of the cross, masons are identified by the square and compasses, and football clubs, universities and schools use their badges, many of a heraldic appearance. Coats of Arms are only one form of symbolism and fill the same needs and perform the same functions as those I have outlined. In saying that symbols no longer have a part to play, people ignore the fact that symbolism and ritual are a part of everyday life, so much so that familiarity has led many people to take no notice of their existence. It is only in their absence or removal that they become noticed.

The number of written submissions received by this Committee in relation to the bill under consideration attest to the importance that many people place on coats of Arms and other forms of symbolism. It is important to remember that a coat of Arms is a very visual symbol as well as being a graphic form of identity, which is formulated according to a certain set of rules which have evolved over centuries. In so far as the public perception of their use and display are concerned, a coat of Arms is no different to a trademark, brand name or logo. Many commercial concerns and individual government agencies go to great lengths and expense to consult graphic artists to devise logos to project a certain image, which highlights the fact that symbolism is still important in today's society. The logo devised for the amalgamation of BHP and Billiton is a case in point.

The principal difference between a coat of Arms and a logo is that the former is devised according to a long-established set of rules and has a timeless and enduring identity. On the other hand, logos and the like are devised in a rule-free zone. They are ephemeral. They are of a temporary nature and can be changed at will and have the appearance of reflecting current fashion at that time. In so far as government authorities of all kinds are concerned, coats of Arms are very relevant in today's society as they are ensigns of public authority and impress on the people that the government of the day is the legitimate inheritor of the legacy of authority of previous governments.

It is here that a definition of heraldry becomes important, namely, it is an ordered system of personal and corporate symbolism following certain rules. It is hereditary in character. Bearing the Arms is in the nature of honour and the principal vehicle for the display of Arms is the shield. In conclusion we would like to bring to the Committee's attention the fact that the Russian federation has established a college of Arms and has been, or is currently, restoring the old symbolic emblems of pre-communist Russia. These symbols that are being replaced are those of a particular philosophy, that is, communism, and are not those of the nation and its people. The current Government of Russia has recognised the importance of restoring the Arms and other symbols of pre-communist Russia because they indicate the legitimate inheritance of government authority.

**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—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.

**CHAIR:** I refer to a comment that is made on page 6 of the society's submission. You appear to be advocating that, in regard to buildings erected after 1986, it may be appropriate to replace the Royal Arms with the Australian Royal Arms, conceivably, you say, the Arms of the Australian Government as on the Royal Australian standard, with emu and kangaroo supporters surmounted by the St Edwards Crown. The reference to 1986 is clearly a reference to the enactment of the Australia Acts.

**Mr THOMPSON:** Yes.

**CHAIR:** Why do you make that comment in your submission?

**Mr THOMPSON:** We must apologise in that we were rather cryptic. 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.

**CHAIR:** Which was 1906?

**Mr THOMPSON:** Yes. 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.

**The Hon. JOHN HATZISTERGOS:** I do not think they were, were they?

**Mr THOMPSON:** We have more detail, which I can submit to you later. It was open to New South Wales to display the Arms of the State of New South Wales from the very beginning.

**CHAIR:** Do you wish to table any written material at this stage?

**Mr THOMPSON:** Yes.

**CHAIR:** In 1988 the Queen did devolve the power to grant Arms to the Governor-General of Canada and a Canadian Heraldic Authority was set up. Earlier in the week some witnesses to this inquiry suggested to us, both in their submissions and in their oral evidence, that we ought to give consideration to recommending that there ought to be an heraldic authority in New South Wales, or alternatively, in Australia. 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 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. If it is of interest to the Committee, we have some additional comments to make on the Canadian experience and its relevance to Australia.

**CHAIR:** We would be interested in hearing what you have to say about that.

**Mr LINDESAY:** In the introduction to a publication issued in December 1988, by the newly established Canadian Heraldic Authority, the following words were used:

A wise nation encourages the development and use of symbols of sovereignty, community, family life and individual achievement. Over time these devices become an important element in bringing the nation together through recognition of a shared heritage, through the colour and meaning added to public celebration, through the decoration of public buildings, through the acknowledgment of contributions made by individuals and groups in the nation's story, and through the enrichment of a nation's art and literature.

An historic Canadian cultural initiative unfolded on June 4, 1988, with the establishment of the Canadian Heraldic Authority within the office of Her Excellency the Governor-General. By the creation of this new activity Canada recognised the important parts that heraldic symbols have played in fostering the Canadian identity and in visually dramatising its history, geography and aspiration.

The authority provides, for the first time, an indigenous mechanism for the granting of new coats of Arms to Canadian communities, corporations, associations and individuals. It also offers a unique way of honouring the symbols of Canada's native peoples and ethnic groups and a method of recording the hundreds of historically and artistically important heraldic symbols which form part of the Canadian heritage. The authority gives us all a unique way of shaping new symbols for ourselves, individually and collectively, so that we are brought closer together even as we seek our individual destinies.

Those words, used in Canada in 1988, we believe are applicable today in Australia. 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. 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.

**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.

**The Hon. JOHN HATZISTERGOS:** The Supreme Court of New South Wales argues that because the charter which established the Supreme Court of New South Wales stated that it could use the Royal Coat of Arms with an inscription "Supreme Court of New South Wales" around it, that it must continue to use the Royal Coat of Arms until its charter is altered.

**Mr THOMPSON:** Well, that is the opinion of the judiciary.

**The Hon. JOHN HATZISTERGOS:** That is how they argue their case.

**Mr THOMPSON:** That is right. But has anyone challenged them?

**The Hon. JOHN HATZISTERGOS:** You could pass legislation or you could do something to change it but what I am saying is that that is where it appears the continued use of the Royal Coat of Arms evolves from.

**Mr THOMPSON:** I am not going to argue with a judge or anything like that. I am not a legal expert. That is up to the Committee. We are just saying that you had the right from the very beginning to do it. Whether the Government gets into a dispute with a judge or judges, it is up to you to decide as to how far you go.

**The Hon. PETER BREEN:** There is an observation in your submission that the words "United Kingdom" should be replaced by "Royal". Can you explain that a bit further?

**Mr THOMPSON:** Yes. 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, the definition implied. 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.

**The Hon. JOHN HATZISTERGOS:** Making explicit which version, the English version of 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.

**The Hon. PETER BREEN:** My understanding of the Royal Arms is that they are the Arms of the dominion and sovereignty of the Queen of the United Kingdom and Northern Ireland. Is that your understanding as well?

**Mr THOMPSON:** We stand by that one, yes.

**The Hon. PETER BREEN:** If we were to use the expression "United Kingdom Arms" as opposed to the "Royal Arms" what would they mean?

**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.

**The Hon. PETER BREEN:** Yes, the point is taken. Thank you very much.

**The Hon. JOHN RYAN:** Are you familiar with a letter which has been given to the Committee by Reverend the Hon. Fred Nile which he says—and I have no reason to doubt—is a letter from the Garter Principal King of Arms. The letter largely concludes that the Arms which we refer to as the Royal Arms are in fact the appropriate Arms to be used in New South Wales in referring to the jurisdiction of the Queen? Are you familiar with that advice?

**Mr THOMPSON:** I have not seen that letter. All I can say is that that is an expression by a heraldic authority in England within the United Kingdom. That is simply an expression of belief. It is also a continuation of that belief that the English College of Arms have jurisdiction within Australia.

**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 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.

**The Hon. JOHN RYAN:** One of the statements made by Sir Gwynn Jones—I cannot quite read the photocopy—is that no such suggestion for a specific grant of Arms for Australia has ever been made. Is that true, because the Committee understands that the coat of Arms currently being used by the Commonwealth Government does have the support of a Royal warrant, and the New South Wales coat of Arms was specifically granted by Edward VII? Is there a sense in which Arms can be granted in some sort of hierarchy, or does the grant of a specific coat of Arms then become a code of Arms representing the sovereign in that jurisdiction to which it is created override any other prior usages?

**Mr THOMPSON:** We see the grant of Arms to the Commonwealth as a grant of Arms to the Commonwealth of Australia in right of the Commonwealth. It would be appropriate to use the Commonwealth Arms for Commonwealth purposes as distinct from State purposes. We do not see any hierarchy. You might see some sense of that in the old parliament house. 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.

**The Hon. JOHN RYAN:** Which do you believed to be the appropriate Arms to be using the on new court buildings and new public buildings, or in fact to have in use in the Parliament of New South Wales as representing the Crown in New South Wales?

**Mr THOMPSON:** Are you just talking about new buildings?

**The Hon. JOHN RYAN:** New buildings or even existing buildings. Let us take the two questions separately. Should we discontinue using the Royal Arms in New South Wales given that, according to advice given to the Committee, they largely represent the Royal authority within the United Kingdom? Is it appropriate to continue to use it in New South Wales under those circumstances?

**Mr THOMPSON:** We believe it appropriate to use the State Arms as such as you see them. It is up to you really whether you want to continue to display the Arms.

**The Hon. JOHN RYAN:** It has been suggested to us that it is in fact a misnomer that has grown up from use, that it was never really appropriate to use what we understand to be the Royal Arms because they really were only applicable within England, within the United Kingdom. Do you agree with that assertion or not?

**Mr THOMPSON:** We have never really discussed that. We cannot speak as individuals; we are representing HAGSOC. What we are saying is that from now on you can use the coat of Arms as granted to New South Wales. On whether to continue it is appropriate we have an open mind.

**CHAIR:** Why do you say "from now on" given that King Edward VII granted that coat of Arms in 1906?

**Mr THOMPSON:** 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.

**CHAIR:** It has never been my understanding that the Hon. Peter Breen casts himself in the mould of the Taliban in Afghanistan. There is a carved coat of Arms set in a brick wall outside the Supreme Court in St James Road. As I understand the Hon. Peter Breen's bill, it provides for coats of Arms to be conserved where appropriate, either in situ or elsewhere.

**Mr THOMPSON:** All of us are bureaucrats of one kind or another and we know how bureaucrats operate. 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 cultural values? That is what we are getting at. We thought there would be some guidelines.

**The Hon. JOHN RYAN:** I want to ask about another issue that has been raised with the Committee. Should the bill contain what is generally known as blazon instead of a line drawing? Is it possible to render the blazon in common or everyday English rather than in the traditional heraldic form?

**Mr THOMPSON:** We are not interested in specifics; 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. Since then there have been many advances in artistic renditions—some more robust and some quite attractive. The one we saw is a rather anaemic line drawing without colours or tinctures. 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.

**CHAIR:** This is a black and white line drawing. I imagine that the Hon. Peter Breen and Parliamentary Counsel did that because never in the history of the State to my knowledge has anything been rendered in colour in a bill or statute—but I suppose there is always a first time.

**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.

**CHAIR:** Are you saying that the blazon is more definitive than any form of illustration?

**Mr LINDESAY:** Yes.

**Mr THOMPSON:** Any illustration would just be supportive.

**The Hon. JOHN HATZISTERGOS:** I have noticed that the Queensland legislation has a form of prescription of alternative versions of the blazon.

**Mr THOMPSON:** I have not seen that.

**The Hon. JOHN HATZISTERGOS:** There is a pictorial description in schedule 1 and there is a condensed version of the badge of the State. There is also a power in section 6 for the substitute

use of the Queensland coat of Arms and it talks about being able to prescribe alternatives that bear some resemblance to the ones that have been reproduced. That is just one method.

**CHAIR:** Do you wish to add anything before we conclude?

**Mr THOMPSON:** We would like to tender some additional written material to the Committee.

**CHAIR:** Thank you. Thank you for your evidence this morning. It is very much appreciated.

**(The witnesses withdrew)**

**DAVID EDWARD FLINT**, National Convenor, Australians for Constitutional Monarchy, 201 Sussex Street, Sydney, and

**JOHN EDWARD ARMFIELD**, Director, Australians for Constitutional Monarchy, Second Floor, Wentworth Chambers, 180 Phillip Street, Sydney, sworn and examined:

**CHAIR:** Did you each receive a summons issued under my hand in accordance with the provisions of the Parliamentary Evidence Act and are you conversant with the terms of reference of this inquiry?

**Professor FLINT:** Yes.

**Mr ARMFIELD:** Yes.

**CHAIR:** Will you each outline briefly your qualifications and experience as they are relevant to the terms of reference of this inquiry?

**Professor FLINT:** I am national convenor of an organisation, Australians for Constitutional Monarchy, which has as its mission to preserve, protect and defend the constitutional system, the role of the Crown in it, the national flag and our heritage.

**Mr ARMFIELD:** I am a director of Australians for Constitutional Monarchy and accordingly, like Professor Flint, a member of an organisation that has the objects that he has outlined. To some limited extent, my legal qualifications as a barrister are also relevant.

**CHAIR:** Australians for Constitutional Monarchy has made a written submission to the inquiry, for which we are grateful. Do you each wish that to be included as part of your sworn evidence?

**Professor FLINT:** Yes.

**Mr ARMFIELD:** Yes.

**CHAIR:** If either of you should consider at any stage during your evidence that in the public interest certain evidence or documents that you may wish to present should be heard or seen only by the Committee, the Committee will be willing to accede to your request. However, the Legislative Council has the right if it chooses to override our decision in that regard. Professor Flint, I invite you to make a brief oral opening statement to the Committee.

**Professor FLINT:** Thank you. The organisation is grateful to the Committee for the invitation to attend before it today. We are a non-political organisation and our support base extends across the political spectrum. We are concerned with matters relating to the Constitution. Hence our role in the referendum when, without the support of the major political parties and at times opposition, we were able to extend our support base to more than 50,000 people across the Commonwealth who came out in support of the no case. We are also concerned about the use of Government House and in 1996 we organised a large, very successful and peaceful assembly of people in Macquarie Street in that regard.

The matter before the Committee relates to our heritage, which we see as an important symbol. A convention or custom has grown up in this State whereby judges sit under the Royal Arms in the form in which they appear today—although they have changed from time to time. This is a valuable custom in this State. Hence the State coat of Arms has tended to be associated with the executive government of this State and its public service whereas the Royal Arms is associated with the judiciary and the Governor—so much so that when Justice Kirby was elevated to the High Court he lamented in his address that he would no longer sit under the Royal Arms. This is a matter of custom in this State. The heraldic opinions that appear in the submission are very learned and no doubt will be very useful, but the matter still relates to the custom that applies in this State.

Our organisation is also concerned about cost and we note that Mr Justice Handley has suggested that the Committee call on the government architect to ascertain the cost of this proposal. The cost of the republicanism proposal in the past decade has resulted in the diversion of many millions of dollars from worthwhile core activities of executive governments and has been a substantial distraction for those in government and in parliaments from the core functions of government, which we think is unfortunate. 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.

**CHAIR:** I will commence questioning by asking a now standard question that I put to all witnesses appearing at this inquiry. What do you consider to be the function and purpose of a coat of Arms in today's society?

**Mr ARMFIELD:** Mr Chairman, can I summarise our position on that in the following terms: Arms symbolise matters of the past which have contributed to our present identity. Australians for Constitutional Monarchy comes at the position somewhat differently from those who are experts in heraldry. As we see the position it may well be, and probably is, that the Arms will include reference to other countries and other times: in this particular coat of Arms, to Britain. The fact that something came from Britain does not make it, of itself, un-Australian because there are many illustrations of things which are used in Australia today that have come from other places—for example, the language, the names of cities, the Union Jack on the flag, et cetera. Essentially, what we see as the function of the Arms is to set out those matters of our past which have contributed to what we are today.

**CHAIR:** In Professor Flint's opening remarks, he referred a number of times to the expression "creeping republicanism", and I notice in the written submission that the Committee has received, it is stated at page 4, "The reality behind this proposal is that it is another example of creeping republicanism or republicanism by stealth. Such a change is inherently undemocratic." It is of course a notorious and undoubted fact that King Edward VII did grant the State Arms to this State in 1906. I would have thought that whatever arguments can be advanced in favour of a given coat of Arms—a Royal Coat of Arms or the State coat of Arms—that republicanism was not even a glint in King Edward VII's eye in 1906. Can you explain to the Committee how a reference to republicanism can be relevant to this inquiry when we are inquiring into the use of one or other coat of Arms, both of which have Royal origins?

**Mr ARMFIELD:** Yes. The Royal Arms by custom and usage in this State have been identified with the sovereign and, in particular, the sovereign's role in the administration of justice in the courts and also in the form of the Governor. In particular, in the case of the courts, the Supreme Court was created largely, if not exclusively, by an exercise of the Royal Prerogative. In the Third Charter of Justice there was a provision that the Royal Arms should be used, together with the words referring to the Supreme Court, as the Arms of the court essentially for the reason of emphasising the fact that the judges were exercising the powers of the Crown in the context of justice in the State and, as far as the Governor was concerned, as the representative of the Crown.

By custom and usage since that time, we have had a situation where on the one hand the Royal Arms have been used to emphasise the role of the sovereign in the administration of justice and in the role of the Governor, and the State Arms have been used essentially to represent the Executive arm of government, narrowly construed. That practice seems to have the continued right throughout, notwithstanding—and in fact, in the knowledge of—the direction that it was a matter within the discretion of Ministers after 1912 to adopt what form they may have seen fit in relation to the use of the State Arms. By custom and usage, we have this distinction. It seems to me that to remove the Royal Arms now is essentially to diminish and to remove the role of the sovereign, both in the context of the courts and also of the Governor.

**CHAIR:** I would like to put to you a short passage from some evidence given to the committee last Monday by Mr d'Apice who said, "The Queen of Australia in right of New South Wales is a sovereign and the purpose of this Bill is to ensure that she is represented in the sovereignty by symbols of the 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." I ask you to comment on those observations.

**Mr ARMFIELD:** My observation would be that these Arms, as they have changed from 1788—and I think they have been three examples of some minor changes which have occurred but the last change was in 1837—have developed a local identity. Anyone who sees them when they walk past the Supreme Court, as I do on every day of the week, does not see them as representing the sovereign right of the United Kingdom but rather the sovereign of Australia in right of New South Wales. They have their own local roots and I think that is the expression which I have pinned to our submission. As I said earlier, the fact that they may contain portions which heraldically refer to the United Kingdom to my mind does not diminish the fact that we are referring to the sovereign in right of Australia. No-one thinks that the sovereign in right of the United Kingdom exercises any judicial or political power in relation to this State.

**Professor FLINT:** The analogy is, Mr Chairman, the flag—the national flag on which the Union flag is quite predominant. It still is the Australian flag, and most of us look at it and see Australia and do not think of England when we look at that flag.

**The Hon. JOHN RYAN:** Some of us.

**The Hon. JOHN HATZISTERGOS:** Where is Australia represented in the Royal Coat of Arms? Where can we see the hint of Australia?

**Professor FLINT:** It is represented by the fact that we have adopted it. It is there, as Mr Justice Kirby said.

**The Hon. JOHN HATZISTERGOS:** You draw the analogy of the flag and you say that we can see that that is the Australian flag. We can see the Southern Cross and the Federation Star. Where do we see it in the coat of Arms?

**Professor FLINT:** You could say the same of the Parliament of this State. It is a parliament based on Westminster.

**The Hon. JOHN HATZISTERGOS:** But where do we see it in the Royal Coat of Arms? Where is the bit of Australia represented?

**Professor FLINT:** It is something which we recognise—lawyers recognise, for example—and they know instantly it symbolises the Royal authority. The judges are exercising the Royal Prerogative of mercy and justice.

**The Hon. JOHN HATZISTERGOS:** Answer my question: where do we see Australia in that?

**Professor FLINT:** Where do we see Australia in the English language?

**The Hon. JOHN RYAN:** Mate, g'day.

**Professor FLINT:** Where do we see Australia in this Parliament based on Westminster?

**The Hon. JOHN HATZISTERGOS:** I think we see it every day.

**The Hon. JOHN RYAN:** I will ask the Chair's question in another way. What heraldic authority have you got for saying that the use of what you call the Royal Arms is now a legitimate representation of Her Majesty's sovereignty in New South Wales? We have been advised it is otherwise. The people with the relevant experience believe it to be something of a misnomer that we have developed this tradition of the Royal Arms because the Royal Arms are in fact a representation of Her Majesty's sovereignty in the United Kingdom and, specifically, the representation of her sovereignty in England alone. The coat of Arms that we call the Royal Arms is adapted when it appears in Scotland and apparently when it appears even in Wales. The particular version we have, its

blazon as opposed to its artistic representation, is identical to what the Queen uses and only uses in the United Kingdom in England. The experts have said to us that this is a misnomer and that what we should be using is the Royal Coat of Arms which represents New South Wales, the one granted by King Edward VII. In other words, this is not an argument about republicanism at all. It is a matter that should be determined by heraldic experts who are expert in what we should be using and the appropriate use of this particular coat of Arms.

I further say that in order to make sure and that there are not difficulties of this nature in the future, Her Majesty's prerogative to grant future coats of Arms should be vested in some local heraldic authority, as occurs in Canada and I believe in South Africa and other places, although South Africa does not of course refer to Her Majesty and that that would settle it once and for all. This is not a matter of republicanism; it is a matter about correct interpretation and correct understanding of how to use and display our coat of Arms. Although you are quite right, that what we call the Royal Arms is commonly used in various places, according to the best heraldic expertise that has been given to this Committee, that is a misnomer. Even without the bill becoming an Act, we ought to be using Her Majesty's Royal Coat of Arms as representative of what we understand is the New South Wales Arms. Should we determine those by virtue of people's opinions, or should we go to heraldic authority to get what is the best possible advice and then adopt that advice for the future, rather than make this a republican versus constitutional monarchy question at all?

**Mr ARMFIELD:** I will try to respond to some of those points. Firstly, I do not agree that the proposition that is merely a matter of heraldry. I am not going to get involved in an argument with those who are experts in heraldry. I do not profess any qualifications beyond those of a lay person in that. To my mind, that is not the issue. The issue is one of custom and usage and what, to the average person, to the extent that they have turned their mind to it, these things mean. The second point is that, as I understand the position, in many realms of the Queen these Arms have been used. It is correct to say on the researches that I have made that different Arms have been used in Scotland and I believe that there are different Arms in Canada.

**The Hon. JOHN RYAN:** And in New Zealand.

**Mr ARMFIELD:** I will accept your word. I have not made that research but certainly I am aware that in other realms of the Queen, the Royal Arms which have been used here have been employed. To my mind, in those circumstances it is not merely a matter of their being English Arms; it is a matter of their being used, where I understood the position historically, where a specific set of Arms had not been designated. The next point I would pick up from what you have put to me is that I do not agree with the proposition that the State Arms are the Royal Arms in right of New South Wales. In that regard I refer you to the warrant or proclamation that was issued by King Edward VII which apparently is found as part of the submission made by Mr d'Apice, I think. You will see in the warrant of Arms which was issued—I am sorry, it is in the—

**CHAIR:** It was in Reverend the Hon. Fred Nile's submission perhaps?

**Mr ARMFIELD:** I am sorry, it is appendix B to the then Solicitor-General's opinion where you will see that appendix A is headed "History of New South Wales Coat of Arms", and appendix B is the *Government Gazette* of 23 February 1907. In both, the Arms are referred to as Arms of the State of New South Wales, and are not referred to as Arms which are personal to the sovereign. In further support of the proposition, I think in Reverend the Hon. Fred Nile's evidence he referred to a letter, which I believe was tendered before you, dated 8 May from the Garter King of Arms. On the second page of the letter in the last paragraph the Arms are referred to as referring specifically to the Government of New South Wales as opposed to the sovereign. To that extent—and, with respect, it seems to me to be a very significant extent—there is a distinction drawn firstly of usage and secondly by the Garter King of Arms, who at the very least has to be regarded as an authority on these matters, as the distinction between the government's Arms on the one hand and the sovereign's Arms on the other.

**The Hon. JOHN RYAN:** I do not want to argue too much also, but I do not think that is the case. As I understand it there are no personal Arms of Her Majesty. If Her Majesty has them, they are of her family and she does not use them for reasons that have been outlined to the Committee. There are no personal Arms of the sovereign. The sovereign simply has Arms in each jurisdiction, as that has

been determined by Royal warrant. The appropriate personal Arms for Her Majesty in New South Wales is what we understand as the State Arms. What you have just read does not contradict the advice that has been given to us. Your reference to something called personal Arms of Her Majesty is a term which does not have any legal definition at all. Much of your observations, while there are valuable, have the difficulty that there is no other heraldic authority. Since we are discussing a herald in essence, there is no heraldic authority, other than a single letter that we got from the Garter King of Arms tendered by Reverend the Hon. Fred Nile. Other than that—and it has to be said that the material is not exactly complete—there is no other heraldic authority giving your submission any authority. In the absence of that, do we not really have to go to people who have heraldic expertise to solve the question?

**Mr ARMFIELD:** As I think I said before—and I, too, do not want to get into an argument about it—I do not agree that it is simply a matter of heraldry. I understand the proposition, but I do not regard it as simply being a matter of heraldry.

**CHAIR:** I turn to the matter of the heritage value of Arms. This is a matter referred to in your submission on page 3. You point out correctly that the Royal Coat of Arms is displayed in many buildings and in particular in courts and at Government House. You say, and I certainly agree with you, that they have great heritage value. You appear to take the view that there is some concern in regard to the provisions of the Hon. Peter Breen's bill regarding the preservation of what is commonly referred to as the Royal Coat of Arms. For example, there is reference in the bill to the Premier and to the Heritage Council. Would you like to tell us what your concerns are in that regard?

**Mr ARMFIELD:** As I read the draft legislation it is a matter for the Premier, after consultation with the Heritage Council, as to the fate of these particular Arms. 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.

By way of example, I have seen many Arms which form part of the subject matter of a building that I hope will not be removed, such as those that are engraved into a building. They are obvious examples of ones that I expect would not be, but at the moment there is no such protection in the legislation. Other Arms are often seen in our Local Courts, which used to be courts of Petty Sessions, which are very old and whilst they do not form part of the fabric in that they are physically sculpted into the building, they certainly would be fixtures in the sense that they are affixed to the building by more than their natural weight and have been there for many years. I think it would be very regrettable if they were removed because they form part of the intrinsic part of the building and no matter what policy is ultimately adopted, they are worthy of some kind of protection, which can be enforced via the Parliament.

**The Hon. JOHN HATZISTERGOS:** Is there not a distinction to be drawn between use of the Arms and displaying the Arms?

**Mr ARMFIELD:** Yes.

**The Hon. JOHN HATZISTERGOS:** The genealogy people from Canberra made that point.

**Mr ARMFIELD:** Yes.

**The Hon. JOHN HATZISTERGOS:** You are arguing we should display the Arms where there is some historical reason to display them but you are going beyond that, are you not? You say we should use them?

**Mr ARMFIELD:** Yes, I am saying both. I understand the distinction you make as I understand it, and please correct me if I am wrong because I do not purport to be an expert in the field,

the difference between using Arms is to hold them out as something to which you are entitled as a person to use, as opposed to "display" them, which means to say that these are fine pieces of artistic representation. I do not purport to have a right to them as a person but I might have them in my chambers, for example, as a piece of artwork. We submit they should be used in the sense that they should be the symbol of the judiciary and should also be the symbol of the Crown in the right of the Governor. Whatever occurred, without using overly emotive language, I agree with Mr Justice Handley's submission that it would be an act of vandalism to remove these Arms. The Arms that are there should remain in situ. Many of them are very old and very historic and they should not be removed under any circumstances.

**CHAIR:** I refer to the provisions in the bill dealing with the heritage aspect. The bill provides that in appropriate circumstances there is consultation with the Heritage Council and that it can determine that the United Kingdom Arms displayed in a particular place form an integral part of an item of the environmental heritage of the State. I put it to you that the Heritage Council itself is set up under statute—there is a Heritage Act—and it has clear legal and other obligations to the State in regard to our environmental and historic heritage. Is it seriously suggested, taking the carved Royal Coat of Arms at the St James Court set in the wall outside the court, that anyone would in any way seek to interfere with something such as that?

**Mr ARMFIELD:** I do not know whether it is seriously suggested that someone might. My point is that section 6 (2) of this draft bill does not stop anyone who would wish to do that from doing it or make them subject to parliamentary perusal. The legislation talks about section 6 (1) and as I construe it, says there is a three-year time limit to remove Arms. There is then a proviso or qualification in section 6 (2), which says that it does not apply "where the Premier, after consultation with the council." There are no guidelines set down and it is not reviewable. I do not want to make a drama out of the point. What I am saying is that I would hope that no-one would wish to remove such Arms and I am not making any specific assertion by saying someone will, but my point is that this legislation as presently drafted leaves that wide open and it should not.

**CHAIR:** In regard to the drafting of bills that eventually become statutes in the usual case it is not possible to specify in legislation what will happen to matters of such particularity as a given coat of Arms at a given location. All legislation can reasonably be expected to do is to specify that those who have expertise in such an area—in this case the Heritage Council—can make an order under their legislation preserving that part of the heritage. Do you follow what I am putting?

**Mr ARMFIELD:** I do indeed.

**CHAIR:** It is not customary or even possible in a statute to set out the details of every coat of Arms in the State according to a particular locality.

**Mr ARMFIELD:** I do not dissent from what you say; I agree with it. I am sorry to be a pedantic lawyer on this point but it talks about "after consultation". With respect it does not even say what you have just said, Mr Chairman, namely, the Heritage Council has a statutory power to make an order that it remain there, it does not even set out that subsection (1) will not apply to Arms of a type which are referred to in regulations. 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.

**Professor FLINT:** Under the present policy I have seen a coat of Arms of some antiquity in good condition, I did not see where it was removed from but I have seen the coat of Arms. I do not know what the practice is in relation to the disposal of coats of Arms and what the policy is in relation to the present consultation, but it surprised me because it was a perfectly good coat of Arms, which must have graced a building of some antiquity, wooden, but removed from that building and taken as a souvenir or for some other purposes. That is to be regretted and obviously in that case the Heritage Council was not consulted.

**The Hon. PETER BREEN:** It would be protected under this bill, presumably.



**Professor FLINT:** Not protected.

**The Hon. JOHN RYAN:** There is no protection now. They could be ripped off.

**Professor FLINT:** Perhaps that is something—and it is in Mr Justice Handley's submission—that evidence should be given by the Government about protection in relation to both costs and the heritage value of the present coats of Arms.

**CHAIR:** I point out that clause 6 (3) of the bill states that "sculpted Arms or Arms in any durable form that are removed in accordance with the section are to be housed or otherwise dealt with in such manner as the Premier, after consultation with the Heritage Council, may direct." I refer to Arms that are displayed in a courtroom and can be fairly readily removed as distinct from Arms set in a wall or something of that sort, housed and appropriately interpreted and preserved. At the moment there may well be a legal void in regard to the matter.

**Mr ARMFIELD:** I do not disagree with that proposition. The existing situation may not be satisfactory. 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.

**CHAIR:** I would like to clarify another matter. Is your objection to displaying the State Arms limited to the courts and Government House or is it rather that you also clearly consider it inappropriate to display the State Arms on government buildings?

**Mr ARMFIELD:** Can I clarify one thing because I think the point was made to me earlier, that is, the difference between display and use. Do I interpret the question as the use of the Arms as opposed to display?

**CHAIR:** Yes.

**Mr ARMFIELD:** Well then the answer to your question is, I think, yes. The position is that they should be used in relation to the courts and the Governor. There is no objection at all to them being used in relation to Executive Government and, indeed, I think that has been practice for a very long period of time.

**CHAIR:** I must say I really do not readily understand the point that is being made in your submission that the use of the State coat of Arms—and I think you are referring to courtrooms here?

**Mr ARMFIELD:** Yes.

**CHAIR:** Would suggest that judges are the servants of the Executive Government. How can that be said? King Edward VII granted the Arms to New South Wales in 1906 for use in right of the Crown in New South Wales. I would have thought that would govern any branch of government, the Legislature, the Executive or the judiciary?

**Mr ARMFIELD:** I would respectfully disagree with that. I think that the grant was to the State of New South Wales and certainly the practice, as I think referred to not only in our submission but in some of the other submissions, for example Dr George's submission where he referred to the continuing long history of the dual display of the Arms has been, as I said before, that the courts continue to use the Royal Arms and they have come, in the minds of most people to represent their independence, whereas the State Arms refer to government departments, public servants and such like. To my mind if the courts exhibit those State Arms what one is, in effect, saying is that the judges or the Governor, in relation to the Government, are nothing more than servants of the Executive Government.

**The Hon. JOHN HATZISTERGOS:** Does that happen in the United Kingdom where they use one set of Arms for the Government and the courts? Do people believe the courts there are part of the apparatchik of the Government or Cabinet?

**Mr ARMFIELD:** I would not presuppose to assume what people in the United Kingdom would think, but in support of what I say, can I direct you to a submission by Mr Maguire, Tab 51, on page 3, in which he says:

The display of the Royal Arms in the Supreme Court I think are of particular significance. A recently widowed relative with four children aged from one year to 13 years had acquired a drug problem unknown to her family and had fallen seriously into arrears to her landlord, the New South Wales Department of Housing. She and her children were evicted onto the street. She did not know what to do or where to go until advised to go to the Supreme Court of New South Wales where the duty judge issued an order which required she be given back possession of the house and set a date for the hearing of the case. When the matter was satisfactorily settled an arrangement was made to prevent the situation recurring. The point of my anecdote is that the Supreme Court was seen by her—and I pause to emphasise it—as totally independent and impartial. The guarantee of both of these qualities was symbolised and evidenced by the majestic Royal Coat of Arms on the ground floor and above the bench indicating both the Supreme Court and the Crown's independence. The respondent on the other hand was the New South Wales Housing Commission [a government department] created and administered by the New South Wales Government and was seen as receiving no advantage over the applicant.

It is a handwritten submission, and the point I make is that he is a member of the public who is saying exactly what I, as an individual, have always thought they represented.

**The Hon. JOHN HATZISTERGOS:** I am not sure that that individual is actually saying that. You are reading from the submission and you are interpreting what someone else thinks about what that person perceived as a result of that hearing. The United Kingdom uses one set of coat of Arms in England for both monarchy and judiciary. Where is that place falling apart because of people's lack of confidence in the judiciary? Where is it happening in Canada, where one coat of Arms represents the sovereign, Executive and the Federal Court? Why do we need separate coat of Arms? Why is there something intrinsic in the British coat of Arms that, all of a sudden, gives confidence to people that there is some independence? What do you say about people who, for example, currently go before the Independent Commission against Corruption, which has the New South Wales coat of Arms displayed, or some district courts and some local courts where the New South Wales coat of Arms are displayed? Do you think that they do not get a fair go, that they perceive themselves as not having a fair go? Where is the research for these sorts of conclusions?

**Professor FLINT:** You said "all of a sudden", but it is not all of a sudden. We have a longstanding usage or practice here. We say there is a virtue in having a separate coat of Arms, the Royal Coat of Arms for the Governor and the courts. People know that. It is recognised in the State. It is not done in every jurisdiction, we agree with you, but this is something that has grown up. It is a custom in this State. If it is suddenly changed by legislation that is to take effect in three years, the message going out to the people of New South Wales is that the Executive Government of this State is taking over the courts. That is one message you are sending out. You have the coat of Arms that everybody knows is the coat of Arms of the public service. You move that across and you make the judges sit under that coat of Arms, which they do not want, apparently.

**The Hon. JOHN RYAN:** This is the only jurisdiction of Her Majesty that has access to two coats of Arms. I refer you to the warrant given by His Majesty King Edward VII in which he said:

Our Will and Pleasure therefore is that you Henry Duke of Norfolk to whom the cognisance 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 respective departments. And for so doing this shall be your Warrant.

It was intended by the Royal warrant that this should replace. It says "all other public functions". It is meant to replace, it is not meant to add.

**Mr ARMFIELD:** I do not agree with that at all because that would be inconsistent, firstly, with the terms of the warrant which, speaking of being of Arms for New South Wales, appears in the second paragraph and also inconsistent with the advice that has been referred to both in evidence and the submissions from the Colonial Office that it was a matter of discretion for Ministers. It certainly was not intended that there should be a mandatory replacement of these Arms.

**The Hon. JOHN RYAN:** In any event, where is your authority? This would be the only jurisdiction in Her Majesty's jurisdiction anywhere that has two coats of Arms that mean what you have suggested they mean.

**Mr ARMFIELD:** With great respect, that is not so because many of the other Supreme Courts, and Mr Justice Handley refer to this in his submission, were not created by Royal Charter and they use Royal Arms in the other States.

**The Hon. JOHN RYAN:** Do they?

**Mr ARMFIELD:** That is my understanding. That is what he says in his submission. If you go to Mr Justice Handley's submission, which is at 41—

**The Hon. JOHN HATZISTERGOS:** I want to clarify that. Are you saying that the only court that should be allowed to use the Royal Coat of Arms are those courts that have been created by Royal Charter, with the use has been specifically authorised?

**Mr ARMFIELD:** No.

**The Hon. JOHN HATZISTERGOS:** It seems to me that a lot of courts are not established by Royal Charter in New South Wales and elsewhere, where there is no authority to use the Royal Coat of Arms but they continue to use them.

**Mr ARMFIELD:** I am not sure, with respect, that that is right.

**The Hon. JOHN HATZISTERGOS:** The District Court has them, but they were never established by Royal Charter.

**Mr ARMFIELD:** They are a statutory court, I accept that, but nonetheless the reason they are there is the use and custom to which I referred earlier.

**The Hon. JOHN HATZISTERGOS:** But they have no authority to use them.

**Mr ARMFIELD:** I do not think that is right.

**The Hon. JOHN HATZISTERGOS:** Where is the District Court's source of authority to use the Royal Coat of Arms? They were never established by Royal Charter.

**Professor FLINT:** Nor was the *Age* newspaper and on the front page, a republican newspaper, is the Royal Coat of Arms.

**The Hon. JOHN HATZISTERGOS:** We are talking about courts. You have mentioned the courts. Where is the authority for the District Court?

**Mr ARMFIELD:** The authority is the judges exercising the Royal powers of mercy and also administering the law. That is the source of the custom in relation to statutory courts. In relation to the Supreme Court there is that prerogative right and there is also the specific terms of the Charter of Justice. But to come back to the question I was asked, Mr Justice Handley's submission in paragraph 3 on the second page says that the Supreme Court of the other States also owe their origins to Royal Charters and they also use the coat of Arms on their seals and official correspondence. With respect, I do not think it is correct that we are the only jurisdiction.

**The Hon. JOHN HATZISTERGOS:** And they were all granted before coats of Arms for the States were granted.

**Mr ARMFIELD:** Yes, and they continue to use them.

**CHAIR:** I would like to deal further with judicial independence. I put to you a short passage from an opinion furnished by Mr Keith Mason, QC, as he then was, Solicitor General of this State, now President of the Court of Appeal, on 25 May 1995 which states:

I do not agree with the opinion that the display of the Royal Coat of Arms is able to be justified as the 'outward and visible signs of the independence of the judiciary and the separation of powers.' The judiciary in New South Wales is, indeed, an independent and second 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 the State.

I invite you to comment on that.

**Mr ARMFIELD:** With great respect to Mr Justice Mason, I have read his opinion and I do not agree with what he has said. He does not, in his opinion, set out a legal analysis for that expression of opinion. As I read the opinion he seems to suggest that the passing of the Australia Acts may have had some significance on this point. As I understand the Australia Acts they abolished appeals to the Privy Council and they removed any residual responsibility of the United Kingdom Government in relation to New South Wales, but they certainly had no direct bearing on this issue. With respect, his opinion does not seem to set out a reasoned analysis of why these Arms are constitutionally inappropriate, to paraphrase his words. Certainly, his view does not appear to be shared either by Mr Justice Handley or, for that matter, Judge Blanch, Chief Judge the District Court, who, in his submission, refers to the fact that he thinks it is appropriate that the Royal Arms should continue to be used, particularly in relation to criminal business in the District Court. Although there is an expression of opinion, it does not appear to have had any analysis as to the basis for it.

**CHAIR:** I will put another short passage to you from the advice of Mr Mason as he then was, where he said:

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 jurisdiction they administer defined by the Australian Constitution and the New South Wales Parliament. The Australia Act 1986 (UK) and the Australian Act 1986 (Commonwealth) 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.

**Mr ARMFIELD:** I agree with the last portion, and I agree that the effect of the Australia Act is to remove any residual responsibility the United Kingdom ministers in relation to New South Wales. My point of disagreement with His Honour is, firstly, his proposition that they are not Royal Courts. They are Royal Courts in the sense that they continue to exercise matters that belong to the prerogative of the Queen in right of Australia. I do not think that anyone would suggest that these courts are purely statutory courts, particularly the Supreme Court. They are superior courts of record and they exercise both statutory and non-statutory jurisdiction. My point of disagreement with Mr Justice Mason, and in this regard I suppose I find myself in agreement with Mr Justice Handley and Judge Blanch, is that I do not see the use of the Arms in the heraldic sense of symbolising the sovereignty and dominion of the sovereign of the United Kingdom in the right of New South Wales. That is the fundamental point. He appears to approach it on the basis that that is what it represents and I, with great respect to him, disagree.

**CHAIR:** There appears to be a difference of judicial opinion about the use of coats of Arms within a courtroom environment. You have not mentioned Mr Justice Dunford, for example, who appears to be of the view that the use of the State Arms is appropriate in courtrooms. It is common ground between us, I would think, that there is a difference of judicial opinion about the matter.

**Mr ARMFIELD:** One often finds that, I know, particularly appearing in the Court of Appeal. It is not uncommon.

**The Hon. JOHN HATZISTERGOS:** I notice in paragraph 4 of your submission you contrast the situation that exists outside of New South Wales and you say that different considerations apply to the Commonwealth of Australia, which was formally created by Imperial statute and which is never used in the Royal Coat of Arms. The Commonwealth courts do not owe their existence to any Charter of Justice granted under Imperial legislation or pursuant to an exercise of Royal prerogative. That exists similarly in New South Wales in the case of every court except the Supreme Court.

**Mr ARMFIELD:** I think that is probably right, so far as the prerogative point is concerned.

**The Hon. JOHN HATZISTERGOS:** When you are talking about stealth, you have had courts adopt the Royal Coat of Arms by stealth, have you not?

**Mr ARMFIELD:** No. With great respect, there has been a logical leap. The problem with that is that it just ignores the fact that for the best part of 200 years these Arms have been used in courts and it is a matter of custom and usage. The idea that for 200 years you can act by stealth strikes me as a bit odd, with respect.

**The Hon. JOHN HATZISTERGOS:** If I wanted to I could put the Royal Coat of Arms on my letterhead, could I?

**Mr ARMFIELD:** You could put it there by way of display, but not by use. With respect, are you suggesting to me that the sovereign has somehow not authorised the use of the Arms by, for example, the District Court or the Industrial Commission? It seems to me, with respect, artificial to make that proposition.

**The Hon. JOHN HATZISTERGOS:** I am wondering how they are differently placed in terms of your submission to the Commonwealth courts that, you say, have different considerations.

**Mr ARMFIELD:** Yes, they do because the Commonwealth was originally established by an Imperial statute and the courts that are established under it, for example the High Court is established under the Constitution.

**The Hon. JOHN HATZISTERGOS:** Imperial statute.

**Mr ARMFIELD:** Yes, and not an exercise of the prerogative. The other Federal courts are also statutory courts. That is my point. The only relevance is to explain that, in New South Wales, there was the creation of the Supreme Court. I think there is a bit of a legal argument about this, but some people say that it is all created by prerogative and others say that it is part prerogative and part statute. But, basically, the relevant thing is the Charter of Justice, which was an exercise of the prerogative albeit the charter itself may have been authorised by an Imperial statute.

**Professor FLINT:** Apart from the High Court we have had very few Federal courts until recent years. The High Court itself usually sat in borrowed buildings owned by the State Government. The new Federal courts were created under new statutes and took the Federal coat of Arms. But we have this longstanding custom and usage that seems to have a virtue in it of distinguishing between the Executive Government and the judges. Why take that away? Our position is you have this custom and usage, why change it? What advantage would there be in changing that? You may say that that Royal Coat of Arms, which we have taken as our Royal Coat of Arms in this country, may need some changes. That is another question and another issue for another day. But we think there is an advantage in the distinction in the public seeing a different code of Arms from that which they associate with the Executive Government of this State.

**CHAIR:** I would like to ask you about another matter. In 1988 Her Majesty the Queen devolved the power to grant Arms to the Governor General of Canada and the Canadian Heraldic Authority. Is it your view that Her Majesty engaged in a revolutionary act in doing that? Are you aware of any practical difficulties that might have ensued as a result of the Queen doing that?

**Mr ARMFIELD:** I certainly do not think that she engaged in a revolutionary act in doing it. 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 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.

**Professor FLINT:** I am not aware of any difficulties with that. It was a nationwide measure, the Queen acted on advice and it seems to have worked well and they have separate Coats of Arms.

**The Hon. JOHN HATZISTERGOS:** To follow on from the Chairman's question, if these Arms were adopted as Royal Coats of Arms in New South Wales, a New South Wales Coat of Arms was adopted as a Royal Coat of Arms like the Canadian Coat of Arms was, you would feel comfortable with that, would you? If you went to the Queen and said to her, "Look, I want you to adopt this Coat of Arms for New South Wales"?

**Mr ARMFIELD:** I think the problem with that would be that the present Arms do not contain any reference in them to the sovereign. I saw in, is it Mr McCarthy's submission—

**The Hon. JOHN HATZISTERGOS:** A couple of lines in there. There is a St George's Cross.

**Mr ARMFIELD:** With respect, I do not think that is my point.

**The Hon. JOHN HATZISTERGOS:** Intimately connected with the English realm.

**Mr ARMFIELD:** Mr Hatzistergos, I think you and I will have to agree to disagree on that. The point I want to make is that Mr McCarthy makes it well, even though I disagree with his conclusion. He is at tab 20 of the submissions and he talks about a Royal Coat of Arms in relation to Australia and he puts up a proposal and makes the point that the Arms that we were looking at do not fall into that category. I think as an organisation our first position is we say we are quite happy with the existing custom and usage, we think it is good, and we think it should remain. If there was any change then I would certainly wish to retain the distinction which exists between Royal Arms on the one hand and Arms which are related to the executive government. If there was a Coat of Arms which was adopted in right of New South Wales which distinctly referred to the sovereign in a heraldic sense then that is something we would look at and consider on its merits. It is not a blanket opposition to the idea of a New South Wales Arms which clearly maintained the distinction we referred to but I do not believe the existing State Arms do.

**The Hon. JOHN HATZISTERGOS:** Contrary to what happens in England where there is an unwritten constitution, a lot of what happens in our courts involves challenges to legislation signed by the Governor on behalf of the Queen and regulations proclaimed by the government; there are challenges to the validity of legislation and subordinate legislation as to whether it fits within the legislation. Do you really think, bearing in mind the sovereign's connection to legislative Acts, that people who are challenging those laws in our courts feel somehow the courts will be sufficiently independent if they use the court's Coat of Arms, to follow your logic?

**Mr ARMFIELD:** I'm sorry, I do not quite follow your point.

**The Hon. JOHN HATZISTERGOS:** You argue that the courts are somehow independent of the executive?

**Mr ARMFIELD:** Yes.

**The Hon. JOHN HATZISTERGOS:** But the fact of the matter is that the Governor in the name of the Queen passes, for example, subordinate legislation?

**Mr ARMFIELD:** The Governor in the right of the Queen is part of the legislature in New South Wales. There are three elements, as no doubt you are aware: the Queen represented by the Governor who enacts legislation, and of course the two houses of Parliament. But the point I am making is by custom and usage these Coats of Arms have come to represent the fact that the Governor

on the one hand and the courts on the other are independent of the executive arm of government. That is the gravamen of my point.

**The Hon. JOHN HATZISTERGOS:** The point I am trying to make is that the Governor, the Queen, is part of the executive of government.

**Mr ARMFIELD:** Not in the sense that I am referring to.

**The Hon. JOHN HATZISTERGOS:** Some of the Governor's actions may in fact be challenged in the courts.

**Mr ARMFIELD:** Of course. But that does not make the Governor part of the executive arm of government, for example, in the sense of the Department of Lands or other statutory offices of the executive government. There is quite a clear distinction there.

**Professor FLINT:** The proposal is to change quite suddenly what is accepted custom and usage in the State. Three years is sudden and it has lasted for a long time in this State.

**The Hon. PETER BREEN:** Professor Flint, do you think that the average person would be able to understand that distinction between the Royal Arms representing one arm of government and the State Arms representing another arm or do you think that is something that only people in the business, such as us, might know?

**Professor FLINT:** I notice that the submissions that came from the general public were overwhelmingly against change so I suspect that ordinary citizens probably see some difference with the Coat of Arms they are used to in courts, or they were used to in magistrates courts—they are being weaned out of that, I suppose. There is a knowledge of that I think. I do not think it is restricted just to lawyers and members of Parliament.

**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 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.

**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 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 queueing 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.

**CHAIR:** Is there anything either of you would wish to say before we conclude?

**Mr ARMFIELD:** No, other than to thank you for giving us the opportunity to come and give evidence before you.

**Professor FLINT:** Thank you.

**CHAIR:** Thank you very much for giving evidence and also for your submission.

**(The witnesses withdrew)**

**(The Committee adjourned at 12.55 p.m.)**