



**LEGISLATIVE ASSEMBLY**  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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STANDING COMMITTEE ON ENVIRONMENT AND TRANSPORT AND CITY SERVICES  
Ms Suzanne Orr MLA (Chair), Miss Candice Burch MLA (Deputy Chair), Mr James Milligan MLA

## Submission Cover Sheet

### Inquiry into a Territory Coat of Arms

**Submission Number: 065**

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Legislative Assembly of the Australian Capital Territory  
Standing Committee on Environment and Transport and City Services

**Inquiry into Territory Coat of Arms**

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Consider and consult on a new Territory Coat of Arms, with particular interest in hearing views on:

1. Whether there should be a Coat of Arms for the Australian Capital Territory (in addition to the Canberra City Coat of Arms).
2. What symbols might be included in the design of an ACT Coat of Arms.

When suggesting images and symbols, the Committee invites people to describe how they are significant to or representative of the people, history or landscape of the ACT.

## **Please note**

This submission may cover a lot of ground, past, present and potential future, which is not described here in sufficient detail or easily accessible to members of the Committee for the purposes of this Inquiry. I am willing to provide further information or appear before this Committee in person to do so, as far as I am able to, with further guidance and at the discretion of the Committee.

Please also note:

- The views expressed in this submission are my own. They are not endorsed in any way by my employer, the National Archives of Australia and the Commonwealth Government; nor the Australian Society of Archivists (of which I am a professional member), or the Community and Public Sector Union (of which I am a member and lead workplace delegate representing members employed by the National Archives of Australia).
- I am not, and never have been, a member of a political party.
- I fully support the selection of new insignia of the ACT for the ACT by the citizens of the ACT.
- The English laws of arms are of England, not Scotland, nor Ireland (or Northern Ireland), nor the United Kingdom. References to 'England' or 'English' in this submission only relate to England, not any other part of the United Kingdom or its whole.
- I use the term 'Monarch' here to refer to Australia's Constitutional Head of State at any particular time, whose status in relation to Australia has changed over time from Sovereign of the United Kingdom to the distinct and separate Sovereign of Australia.
- I do not support the use of heraldic devices in Australia that are not controlled or regulated by Australian laws and institutions but depend on their official legitimacy and 'protection' from an English institution or laws of England. Even though I am a student of the historical use of heraldry in Britain, and a current member of The Heraldry & Genealogy Society of Canberra, I do not support the establishment of an Australian Heraldic Authority.

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ATTACHMENT 1 – The Grant documentation of 1928 deconstructed

ATTACHMENT 2 - The 1927 FCC Competition for the design of a coat of arms for the City of Canberra - Key documents

ATTACHMENT 3 – The coat of arms design of 1928 submitted to the English College of Arms

ATTACHMENT 4 – Letter to the Editor of the Canberra Times, 2018, and supporting information provided to the ACT Bar Association and ACT Supreme Court Chief Justice.

ATTACHMENT 5 – Thistleton, John, ‘What’s wrong with Canberra’s coat of arms’, *The Canberra Times*, 4 December 2014

## Overview

The three arms of the ACT Government - the Executive (including the ACT Public Service), the Judiciary (including the ACT Courts), and the Legislative Assembly of the ACT (including the elected representatives of the citizens of the ACT) - all need a common emblem or insignia that uniquely identifies and visually conveys and demonstrates the authority, property and independence of the ACT's jurisdiction.

### *Summary of the present situation<sup>1</sup>*

- The present coat of arms in use by the ACT Government was granted to the 'Federal Capital Commissioners Australia and their successors in their corporate capacity'. (here referred to as the 'FCC', the 'FCCers' and the 'FCC arms'). ([see 1.](#))
- The FCC was responsible for the municipal government of the whole of the ACT. ([see 2.](#))
- The ACT Government legitimately uses the FCC arms as its official insignia and in doing so represents the whole jurisdiction of the ACT. ([see 3.](#))
- The FCC process that resulted in the grant of arms to the FCCers from the Monarch was not accountable (neither public nor transparent) in the ways that the citizens of the ACT would rightfully expect today. ([see 4.](#))
- The FCC arms do not evoke an instant recognition of the ACT, do not illustrate anything particularly representative of the ACT and show very little that is recognisably Australian within them. ([see 5.](#))
- The ACT Government has the power to democratically decide new insignia for the ACT and all its citizens without reference to a foreign institution or their laws that are not enforceable in the ACT or Australia. ([see 6.](#))

### **Recommendations for the Committee to consider**

- A. I recommend that the ACT Government initiate a new public competition and transparent Australian process, to develop, approve and acclaim new official insignia by, of and for the ACT and all its citizens, without reference (and deference) to the English College of Arms and the laws of arms of England.
- B. If this Committee chooses not to recommend that the ACT Government should have new official insignia, then I recommend that the usefulness of amending the existing visual depiction of the FCC arms be explored to better represent the ACT and all its citizens, consistent with the existing grant without seeking a new grant from the English College of Arms.
- C. In any case, I recommend that any ACT official insignia be provided with stronger regulation and outright protection by the ACT Legislative Assembly and the ACT Executive to ensure that the official insignia of the ACT Government and all its citizens are only used by, for and on behalf of, all the citizens of the ACT.



## The present situation

### 1. *Who were Canberra's coat of arms granted to?*

The present coat of arms in use by the ACT Government was granted to the 'Federal Capital Commissioners Australia and their successors in their corporate capacity'. (here referred to as the 'FCC', the 'FCCers' and 'FCC arms').

Things to note about 'City grants of arms':

- Under the English laws of arms, coats of arms are always granted to an individual person or persons, and that may be in a personal or corporate capacity.
- Cities and Towns of England have been granted coats of arms, consistent with the indigenous governance ('corporateness') of those City or Town administrations. Those administrations had defined boundaries, sometimes physical (think 'walled-in'), and were distinctly separate from, and sometimes independent of larger administrative or governance structures, such as a Shire or County or larger territorial unit.
- Generally, a coat of arms for a City has been granted to its principal representatives of its government in their corporate capacity. The modern day example is a Town or City Council, with the elected representatives of its citizens led by a Mayor or equivalent, such as the City of Sydney. Practically, the grant of arms are held by those individuals while they hold office, on behalf of the City and its people.<sup>2</sup>

The FCC arms are not a typical example of a City coat of arms and the differences, not the similarities, matter in this instance. The FCCers petition to the Monarch for a coat of arms, recited in the first two pages of the Royal Warrant (see Attachment 1), made accurate references to the legislative basis for the national capital and its territory in which it was located. However, the petition's particular description of the FCC's responsibilities were made to fit the documentary form for a petition seeking the grant of arms to a City, by referring to 'the management of the City' rather than accurately represent the whole scope of the FCC, 'the management of the Territory' (see 2. below). And, all three FCCers were at the time all appointed by the Governor-General, not chosen or elected by the citizens of the Territory - there is no reference to the citizens of Canberra or the Territory in the petition. To put this another way, this Australian entity did not easily fit the established English mould for a City at least in terms of a grant of arms.<sup>3</sup>

Nonetheless, the petition to the Monarch is not the grant made by the Monarch. For a closer look at the form of the three grant documents in full, please refer to Attachment 1.

The grant made by the Monarch and recorded in the Royal Warrant (also repeated in the exemplification of the arms and crest), says this:

Know Ye that We of Our Princely Grace and Special Favour have given and granted and by these Presents do give and grant unto the Federal Capital Commissioners Australia and their successors in their corporate capacity Our Royal Licence and Authority to bear and use on their Common Seal and upon the Common Seal of the City of Canberra and upon Shields or otherwise according to the Laws of Arms... [the text continues, describing the official heraldic form of the grant specifying the arms and crest, called a 'verbal blazon']<sup>4</sup>

The second grant, of supporters to the FCC arms, says this:

Know Ye therefore that I the said Garter by virtue of my office and with the consent and approbation of the said Deputy Earl Marshal do by these Presents grant and assign unto the said Federal Capital Commissioners Australia ...[the text continues, stating the official verbal blazon for the supporters as granted] ... as the same are in the margin hereof more plainly depicted to be borne and used forever hereafter by the said Federal Capital Commissioners Australia and their Successors in their corporate capacity on their Common Seal and upon the Common Seal of the City of Canberra according to the Laws of Arms.<sup>5</sup>

Yes, these grants refer to the City of Canberra, but only in the context of the grant of arms - according to the English laws of arms - to the FCCers in their corporate capacity (and their successors). After all, there was then (as now) no body politic of the 'City of Canberra' separate or distinct from the body politic of the whole Territory. Chief Commissioner Sir John Butters also recognised this in 1929, when discussing the design of the new Common Seal for the FCC, over the question of making one or two Common Seals implied by the grant, with C R Wylie:

There is no authority needing a seal merely for the City of Canberra, and the Commission does not wish to distinguish between its authority in the City of Canberra and its authority in other parts of the Federal Capital Territory.<sup>6</sup>

Similarly, new flags for the FCC representing the whole Territory were also developed, but the flags themselves did not arrive for official use until after Chief Commissioner Butters had resigned.<sup>7</sup> However, the FCC arms were clearly initiated, referred to and promoted as belonging to the 'the City of Canberra', at the time most visible in the widely distributed lithographic printing made by the FCC of the arms, crest and supporters as granted, including the verbal blazon and motto, based on the certified copy made and endorsed by the Garter King of Arms.<sup>8</sup>

*What are the English laws of arms?*

The English laws of arms are a part of English law that govern the authorised use of armorial bearings (that became) within the 'royal prerogative'<sup>9</sup> of the Monarch to grant. In other words, these laws are about who (male-biased) is entitled to bear arms, and who inherits what arms in which circumstances in England.

These laws are administered by its own Court, usually referred to as the Court of Chivalry, or the Earl Marshal's Court (and the Duke of Norfolk Earl Marshal - an hereditary title - and a member of the Royal Household, is the sole judge).<sup>10</sup> Generally, the officers of arms (also

members of the Royal Household) attached to the English College of Arms, interpret and apply the English laws of arms, but judicial proceedings for these laws are not a recent phenomena in England. The last time this Court sat was in 1954, and that was for the first time in 230 years.

While in theory the English laws of arms, like all other English law, were initially inherited by Australian colonial jurisdictions (and consequently the Commonwealth), several heraldry experts in Australia have noted that the Earl Marshal's Court's Judicial power, necessary to apply the English laws of arms in Australia, was not transferred to the relevant Courts at the time (*Australian Courts Act 1828* (UK)). This has meant while these laws of arms technically exist in Australia, they cannot be enforced by an Australian Court. Such 'legal limbo' has been reinforced by the *Australia Act 1986* (Commonwealth).<sup>11</sup> Does that matter? It would if armigerous persons (or their corporations) wish to protect their rights to arms in Australia under the English laws of arms, because coats of arms have quite limited protection under Australian law, including Trade Mark law.<sup>12</sup> Generally, the solution adopted by Australian governments has been to pass their own laws or simply rely on centralised permissions with administrative guidance to protect their official coats of arms and heraldic devices made under English laws of arms.<sup>13</sup>

*What is an exemplification of arms and can it be amended?*

An exemplification is simply a typical illustration, an example, of its written description. So, the 'official illustration' as it appears on the official documents that record the grant can be amended when it is reproduced, within limits.

While the 'verbal blazon' or written description of the arms is written into the grant made by the Monarch (with a whole raft of particular heraldic jargon, some of it peculiar to English practice), the illustration of the arms in the grant record is simply a typical example, not an absolutely unalterable pictorial translation, of how the written description might be drawn, according to the conventions and practices (and artistic styles of the day) of the English laws of arms. To put this another way, while some elements of the verbal blazon are precise in terms of what has to be drawn, it may also be imprecise as to how it is to be drawn, often for the same object! For example, 'a gum tree issuant from a mount proper' specifies a gum tree, but doesn't say in what form or type of gum tree should be drawn; similarly, a mount (or small hill) is specified with its form to be 'proper' (natural state rather than abstract), but otherwise leaves to the artist's imagination how it is to be drawn.<sup>14</sup> So it is easy to see how the illustration of arms described by blazon lead to misconceptions of what is supposed to have been depicted, particularly if the artist is not familiar with the object described in the blazon. Just what does a dragon or wyvern look like?!<sup>15</sup>

In the English laws of arms, what is not stated in the verbal blazon is free to be artistically interpreted, changed, or left out altogether without reference to the College of Arms (see Attachment 1, page 1 for the names of parts of a coat of arms; and see 5. below for the verbal blazon of the FCC arms). So, there is no mention of the compartment or the motto (or motto scroll) in the FCC arms blazon, and it is also silent on mantling or a helmet (which thankfully

were not drawn by the College artist, as those elements generally did not appear on corporate arms in England). As Wylie put it,

Provided you comply with the verbal blazon there is no obligation on your part to follow their [College of Arms] drawing for public use.<sup>16</sup>

In short, the FCC arms as drawn by the English College of Arms can be amended, so long as the new drawing is consistent with the verbal blazon granted. See 5. below.

## ***2. The Federal Capital Commission's (FCC) responsibilities***

The FCC was generally responsible for the municipal government of the whole of the ACT, amongst many functions needed to expedite the development of Canberra and facilitate the transfer of parts of the Commonwealth Government to Canberra, including the opening of Parliament in 1927.<sup>17</sup>

'Canberra' is only mentioned once in the FCC legislation - in association with the Minister's obligation to publish in the Gazette the plan of the layout for the City of Canberra and its environs. This plan was referred to in both the first petition made to the Monarch and in the second petition to the Duke of Norfolk Earl Marshal, for the FCC arms (see Attachment 1 - blue markup).<sup>18</sup> This was why the Portcullis Pursuivant officer of arms took some persuading by the Official Secretary to the High Commissioner London that Canberra was actually a city (see endnote 3.).

Then, as now, the city of Canberra is not separable, nor has ever been separate from the administration and governance of the whole of the ACT. (See 1. above). By making a grant of arms to the FCCers, the authorised (Monarch's) license to bear and use arms applied to the whole of the Territory for which the FCCers were responsible, not simply 'the city of Canberra'. Technically, in an official-heraldic-English laws of arms sense, the arms were not granted and assigned to the Territory of the Seat of Government of the Commonwealth of Australia by Royal Warrant, but a grant by Royal Warrant to the FCCers amounted to the same thing in practice.<sup>19</sup>

## ***3. The ACT Government's use of the FCC arms***

The ACT Government legitimately uses the FCC arms as its official insignia and in doing so represents the whole jurisdiction of the ACT.

The ACT is a body politic under the Crown and its Legislative Assembly is responsible for making laws for the peace, order and good government of the ACT. With the exception of land management in part, there is a broad alignment of the FCCs Territory powers with that of the ACT Government.<sup>20</sup>

With the demise of the FCC in 1930, the Commonwealth Government thought it might be necessary to seek a new grant of arms for Canberra, and sought the advice of the College of Arms in 1931. The College however confirmed that (according to the English laws of arms) the corporate successor to the FCC could continue to use the FCC arms without a further grant being necessary, and, the corporate successor was the Commonwealth Government (at that time).<sup>21</sup> With that same logic, under the English laws of arms, a reasonable person would conclude that following the establishment of ACT self-government, the corporate successor to the FCC is now at least shared between the ACT and Commonwealth governments (by reason of the partial land control in the ACT exercised by the Commonwealth).

Consequently, the ACT Government in 'bearing and using' the FCC arms according to the English laws of arms (see 1. above), is, like the FCC, appropriately using the FCC arms to represent the whole of the ACT Government jurisdiction. For example, the FCC arms are legitimately used as the formal header of all ACT legislation made by the ACT Legislative Assembly.

This FCC corporate succession is also reflected in the ordinance protecting the use of the FCC arms. First legislated in 1929, the FCC arms were referred to as 'Arms of the Commission', meaning 'the arms of the Federal Capital Commissioners Australia and the City of Canberra'. After the FCC was wound up, the legislation was re-made in 1932, and the FCC arms were referred to as 'City of Canberra arms', meaning 'the Arms and Crest of the City of Canberra granted by Royal Warrant to the Federal Capital Commissioners Australia, appointed under the *Seat of Government (Administration) Act 1924-1928*, and their successors in their corporate capacity and includes the Supporters to those Arms'. This was not changed when this Commonwealth Ordinance was made into ACT law (no longer Commonwealth law) following ACT Self-Government as the *City of Canberra Arms Act 1932*.<sup>22</sup>

#### ***4. Was the design process for the FCC arms public and transparent?***

The FCC process that resulted in the grant of arms to the FCC from the Monarch was not accountable (neither public nor transparent) in the ways that the citizens of the ACT would rightfully expect today.

(Note: I have left out a lot of detail about the design process in this submission. The main sources for the administrative traces of what actually happened are five key records held by the National Archives of Australia:

- CRS A1, 1932/215 (Department of Home and Territories file);
- CRS A431, 1951/1694 (FCC file);
- CRS A461, D396/1/10 (Prime Minister's Department file); and
- CRS A2910, 410/1/53 (High Commissioner London file).
- CP205/1, 1 (Chief Commissioner Butters' bundle of design papers).

Two of these records are available online at present (CRS A1, 1932/215 - refer <http://recordsearch.naa.gov.au/scripts/AutoSearch.asp?O=I&Number=1166400> ; and CP205/1, 1 - refer <http://recordsearch.naa.gov.au/scripts/AutoSearch.asp?O=I&Number=353696>), though the others are viewable

in person at the National Archives in Canberra. Here, I focus on aspects of the design process that demonstrate that it was neither public nor transparent which should inform any new process for designing new insignia for the Territory. Further details are in the attachments:

- Attachment 1 shows some of the details of the grant documentation at the end of the process in 1928 and 1929 (and these documents are in the custody of the ACT Government);
- Attachment 2 shows some of the key documents about the design competition in 1927 and its 'notable entrants'; and
- Attachment 3 shows the process of submitting the finalised design – not actually part of the competition at all – to the English College of Arms in 1928).

While a public competition was held for the design of a City of Canberra coat of arms, there was no declared winner (despite what *The Canberra Times* claimed at the time – see Attachment 2). The FCC's Chief Commissioner, Sir John Butters, wrote the final draft report for the two person panel appointed (by the Chief Commissioner) to judge the competition, recommending three entrants receive recognition for their efforts, though none deserving of the competition prize money. When the results of the competition were announced to the public a week later, two of those three entrants were deemed worthy of 'special merit' and were awarded equal third prize with £5 each. A fourth mysteriously anonymous entrant (absent from the judges report and from the official record) who did not wish to receive a prize rated a 'most pleased' mention along with the third entrant, without meeting the essential requirements of the competition to attract a prize. Such a ruse was likely used to avoid the awarding of 1st or 2nd prize, as well as avoid being tied in any significant way to a specific competition entry design. The third entrant mentioned was one of two competition entrants who would otherwise have been judging the competition, and was subsequently hired by the Commissioner to make a revised design more to the liking of the FCC (and the Chief Commissioner), and the competition judges. (See Attachments 2 and 3).

The designer hired was Charles Roxburgh WYLIE, a recent migrant from England,<sup>23</sup> and a fine arts illustrator with English heraldry expertise. Despite the public announcement, Wylie's competition entry design bore very little resemblance to the designs he was commissioned to work on after the competition under the direction of Chief Commissioner Butters. The form of the design that was eventually sent to the English College of Arms was made by Wylie under the explicit direction of Butters, in regular contact with the Prime Minister, Stanley Bruce, without any public involvement or endorsement whatsoever. (See Attachments 2 and 3).

The College of Arms further altered the submitted design to conform with their view of how the English laws of arms should apply to the proposed design, in discussion with the FCC (through the High Commissioner London and the Prime Minister's Department), though those alterations did not detract from the overall design submitted. They later admitted however, that they had not reproduced the black swan provided to them by the FCC (and painstakingly drawn by Wylie at the insistence of Chief Commissioner Butters), instead using

'an ordinary black swan as it appears in the arms of Perth', as a template, and that had led to some obvious errors in the exemplification (not only the white wing tips!),

*If however there is any point [my italics] in the tips of the black swans wings being white the alteration can easily be made by us, and might be made in Australia by a local artist.<sup>24</sup>*

clearly showing that such an alteration was of no consequence or substance to the College or the laws of arms of England.

After the approved design was released to the Australian public in late April 1929 (see 5. below), Wylie disassociated himself from the choice of the motto,

*...although I designed the arms I have had nothing whatever to do with the choice of the motto. This was selected and definitely decided upon by the Federal Capital Commissioners themselves.<sup>25</sup>*

By that time however, the Chief Commissioner had already ensured that the more expansive translation of the latin motto '*pro rege lege et grege*' had been immortalised in the naming of the three avenues that surround the Parliamentary Triangle, as 'King's', 'Constitution' and 'Commonwealth', presented and approved at the first meeting of the Canberra National Memorials Committee in December 1927.<sup>26</sup>

## 5. *The symbology of the FCC arms*

The FCC arms do not evoke an instant recognition of the ACT, do not illustrate anything particularly representative of the ACT and show very little that is recognisably Australian within them.

The verbal blazon of the FCC arms, crest and supporters as granted by the Monarch describes what is deliberately in the FCC arms by design (I hope the reader can recognise the heraldic objects in the drawings from their written description, bolded here, and see Attachment 1 and Attachment 3):

Arms: Azure a triple towered **Castle** between in chief a **Sword** of Justice point upwards to the sinister Argent Pomel and Hilt Or surmounted by a Parliamentary **Mace** head upwards to the dexter Gold in saltire charged at their point of intersection with a representation of the Imperial **Crown** proper and in base a **Rose** also Argent barbed and seeded proper (being the Badge of York).

Crest: On a **Wreath** of the Colours In front of a **Gum Tree** issuant from a **Mount** proper a **Portcullis chained** Or ensigned with the Imperial **Crown** also proper <sup>27</sup>

Supporters: On the dexter side a **Swan Sable** beaked Gules and on the sinister side a **White Swan** proper <sup>28</sup>

*What was the intention of the designers of the FCC arms?*

With some input from the judges of the initial competition (see 4. above), and in frequent consultation with Prime Minister Bruce, Chief Commissioner Butters drove the form and design of the FCC arms in directing C R Wylie (along with Wylie's heraldic expertise) to draw the desired design.<sup>29</sup>

### Chief Commissioner Butters

...considered the design selected to be particularly appropriate for the purpose. The Australian Parliament, the Australian Government, and the Australian Crown were represented in the form of the mace, sword, and crown. As a matter of history it was considered desirable to associate the Badge of York with the coat of arms, as a reminder of the part played by the son of the King in the establishment of the city. The association of the portcullis of the City of Westminster, the capital city of the British Empire, with the crest of the new capital city, was also considered of some value... [for the supporters] Neither the kookaburra nor the lyre bird had been used for obvious reasons. Other Australian animals were considered and those finally selected were black swans which were peculiarly Australian...[as] an alteration of the preliminary design was found necessary it was decided to substitute a white swan to suggest the introduction of the white race into Australia. The mace, sword, crown, rose and the black swan were either Australian or Australian by adoption....<sup>30</sup>

The illustrator, Charles Roxburgh Wylie, had this to say:

...Looking at things from the point of view of an heraldic designer, it is an unfortunate fact that, with one or two exceptions, the heraldic ensigns for the Commonwealth are about as crude and inartistic as they could very well be...not realising that the perfection of heraldry lies in its simplicity... When designing the Canberra shield, the idea kept in view was of a great city, the seat of Federal parliamentary authority and justice. The crossed parliamentary mace and the sword of justice, upon which was the Imperial Crown, conveying the administrative side of the idea, the white triple-towered castle represented, as it has done for ages, a great city; whilst the white rose beneath was a reminder of the visits to the city on historical occasions of Princes of the House of York, whose badge it is. When designing the crest...simplicity was again essential. An ancient heraldic device, the portcullis, suggesting the entrance to a great city, was adopted, behind which appeared a gumtree, expressive of a garden city, and the wooded lands of the Federal Capital Territory. The Royal city of Westminster bears for arms a portcullis above the arms of Edward the Confessor; ...The supporters were the most difficult part of the achievement to evolve. Something Australian was required, there a lion...would not do. The Australian [wedge tail] eagle was rejected as being too bellicose; kookaburras, lyre birds, parrots, goannas, mopokes, and platypuses all lacked dignity; kangaroos and emus had been ruled out as overdone, and there seemed to be little left of Australia's fauna to suggest, when an inspiration came in the shape of the swans. The white swan, a Royal bird for ages, has been greatly employed in heraldry, whilst its black brother, that rara avis, has, as a well-known bird lover says, done more to advertise Australia than any other of its natural productions. The black and white swans were therefore selected as the guardians of the arms and symbolise practically the same idea as do the aborigine and white sailor which support the arms of the city of Sydney...<sup>31</sup>

and also made highly positive references in correspondence with Chief Commissioner Butters about the shield design:

This is a remarkably happy combination and I do not think it will ever be possible to get anything so purely heraldic and so expressive

and

...as the arms are now composed, they compare more than favourably with those of any other city in the world<sup>32</sup>

Officially, the explanation of the heraldic symbology behind the FCC arms was formally presented to the Territory Advisory Council in January 1932, and since then has changed very little.<sup>33</sup>

#### *The 'Australian-ness' of the design*

Putting aside the heraldic imagery used in the design of the FCC arms, there is very little in the design that could be called Australian, or even anything that reminds the viewer of the Territory itself. This was something that was picked up at the time, and continues today.

The only things that were clearly Australian (or could be seen as Australian) in the design were the gum tree (and that was obscured and poorly drawn) and the black swan (which had not been drawn correctly by the College of Arms). While the Parliamentary mace was supposed to be the one used by the (Commonwealth) House of Representatives at the time, as drawn by Wylie, this was not reflected in the verbal blazon, nor in the drawings done by the College of Arms.

The then leader of the (Labor) Opposition, James Scullin, 'waxing sarcastic' noted:

No wave of Australian sentiment will sweep over the Commonwealth nor will our spirit of nationhood be stirred by the official description of Canberra's coat of arms. There is a triple towered castle, a sword, and a crown supported by the white rose of York, a representation of Westminster, and then some more crowns. The Australian touch is given by a lonely gum tree and a solitary black swan. A white swan is introduced into the scheme to represent White Australia, the idea being that the white swan typifies imported whites and the black swan our native blacks. Truly a noble conception. It was really thoughtful and generous of the designer - with so many imported ideas to cram in - to allot Australia one whole gum tree and a black swan all to itself.<sup>34</sup>

And officers of the Australian Natives Association said:

W T Page (General Manager) - 'Rather feeble. Could have been more distinctive of Australia. The public should have chosen from several designs.'

H Hayes (Organising Secretary) - 'The portcullis and chains are too emblematic of earlier days. But there is very little Australian in the design. These things should be open to more popular approval through the press.'

A G Byrne (President) - 'As usual, everything imported. I regret that the designers should have sacrificed Australian sentiment as they have done.'<sup>35</sup>

Even one of the prospective judges of the initial design competition, E Wilson Dobbs, had this to say to Chief Commissioner Butters, while admiring the draughtsmanship,

I...regret that - apparently - no more definite Australian 'flair', could be added thereto...I should have liked more 'Australiana' - so to speak.<sup>36</sup>

And then there was the latin motto itself which attracted much public semantic debate, of considerable surprise to the Chief Commissioner as the motto had been in use by the FCC since 1925. This aspect is worthy of a whole story all to itself, but is not all that relevant to this submission and this Inquiry (refer end notes 8 and 16 for some sources for this story).

For a very useful commentary on the relevance of the symbology of the FCC arms, here and now, please refer to Dr David Headon's remarks on the coat of arms as reported by John Thistleton in *The Canberra Times* (Attachment 5).<sup>37</sup>

*What could be amended in the FCC arms without needing a new grant?*

- You could delete or alter the compartment, motto and motto scroll.
- You could change the relative sizes of the 'charges' on the shield, the parts of the crest, and the supporters without changing their specified colour, relative positions, or any form specified in the verbal blazon.<sup>38</sup>

For example, you could make the triple towered castle a whole lot smaller, and give it a different design and colour too; you could make the portcullis in the crest all but transparent to display a larger gum tree more prominently (though it would still have to appear to be behind the portcullis). These design alterations could be done without reference to the College of Arms.

This changeability has been demonstrated by the changes made by the FCC in their official use of the FCC arms, changing the motto to english and more correctly representing the white and black swans in 1929 (refer end notes 8, 15 and 16). And later, the Commonwealth also changed the motto to reflect the gender of the current Monarch. While on both occasions the respective government sought the permission and advice of the College of Arms, such permission was not actually necessary to make such changes (see 1. above).

*What can't be changed in the FCC arms?*

All of the heraldic objects as described in the blazon have to appear in any drawing of the arms and crest, and in their relative positions as written. So, there must be a blue shield (though the form of the shield is not stated) that has:

- at the bottom, a white rose that looks like a Badge of York (there are many forms of such), appropriately 'barbed and seeded', at the bottom,
- in the middle, a castle that has three towers (any form and detail, colour and size), and
- at the top, a mace (any Parliamentary<sup>39</sup> one, and yellow) crossed as described with the 'sword of justice' (white and yellow as described) with the 'Imperial crown' (as is) in the middle.

And for the Crest,

- the colours of the wreath are made from the main colours of the shield, so would have to include blue, and the other colour would either be white, if the white rose dominated the castle in relative size, or, the colour of the castle chosen if it wasn't white but much larger than the white rose, and
- on top of the wreath, any gum tree in any form, sitting on a natural looking hillock, with

- in front of and covering both, of any thickness, a yellow portcullis chained to its base, with
- an Imperial crown (as is) sitting on top.

For the Supporters, there has to be a black swan with a red beak on the left (dexter) and a white swan on the right (sinister), both in their natural state (not stylised, but otherwise the artist is free to choose how they are posed or drawn, as their written description is not explicit).

## ***6. Does the ACT Government have the power to democratically decide new insignia for the ACT?***

The ACT Government - the ACT Executive together with the ACT Legislative Assembly - has the power to democratically decide new insignia for the ACT and all of its citizens without reference to a foreign institution or their laws that are not enforceable in the ACT or Australia.

As then Prime Minister Malcolm Turnbull described the situation in 2018, on the advice of the (Commonwealth) Department of Prime Minister and Cabinet, and still current today,

The practice of the College of Arms in England granting armorial bearings to Australians is well established as one way Australians can obtain heraldic insignia if they wish to do so. There is nothing preventing any person or organisation from commissioning a local artist, graphics studio or heraldry specialist to design and produce a coat of arms or identifying symbol. Those arms would have the same standing and authority in Australia as arms prepared by the College of Arms in England.<sup>40</sup>

Some things to note:

- The ACT Executive have demonstrated their existing power to define the insignia (official symbols and emblems) of the Territory, for instance when the ACT Flag was acclaimed by the ACT Legislative Assembly. This power is also consistent with exercising the prerogatives of the Crown within the existing array of ACT Executive responsibilities.<sup>41</sup>
- Since 2011, the enactments of the ACT Legislative Assembly are no longer subject to disallowance or recommendation for amendment by the Governor-General in Council, with some limits.<sup>42</sup>
- Practically it is up to the ACT Government to decide what democratic process should be adopted should a decision be made to create and adopt new insignia for the Territory.
- The ACT Government already has the necessary power, through the ACT Legislative Assembly and the ACT Judicial system to protect the official emblems and insignia of the ACT in use today, or in the future.

### *The design process to be democratic and Australian*

The adoption of new insignia for the Territory is not a simple Executive or Legislative Assembly decision alone to make. All citizens of the ACT should have an opportunity to say how new insignia are developed. To be truly democratic, all citizens of the ACT should have the opportunity to participate in and engage with the final decision making, to own the insignia of the ACT made by, for, and on behalf of all the citizens of the ACT. This process needs to be open and transparent, and above all accountable to the citizens of the ACT if the ACT Government is to avoid the undemocratic and unrepresentative processes that led to the existing FCC arms, with all the public criticism of it that has carried on to this day.

Simply put, the process of choosing a new design for the insignia of the Territory needs to be public, and it needs to be Australian. There is no need or cause for an Australian government to refer a chosen design for a new insignia to a foreign institution that issues 'coats of arms' under a foreign law.<sup>43</sup> And an English institution, with unenforceable English laws could not be less relevant to our thriving multicultural Australian society we all enjoy in the Territory today. For the same (or less) cost, without an additional foreign hurdle to clear, all the citizens of ACT could and should have an opportunity (or several!) to participate, engage with and approve of a new insignia for the Territory.

The ACT Government, if it chooses to do so, has a once in a generation opportunity to create and adopt new Territory insignia for, by and on behalf of all citizens of the Territory: 'to boldly go' and break free of the English laws of arms and its practices. If it did, it would be leading all other Australian governments on this issue (though there are many local councils that are already there)! How to do that?

- ignore the English College of Arms' self-proclaimed authority for Australia<sup>44</sup>; and
- avoid creating the impression of plagiarism or mimicry of the Royal prerogative power (see 1. above) by simply not having a shield or any other chivalric gear as the main elements of any new insignia. After all, is there anything more mediaeval than a triangular shield and a jousting helmet?

Doing these two simple things would open up a world of design possibilities which simply do not exist within the English laws of arms straightjacket.

### *A new design chosen deserves protection in the public interest*

The current Parliamentary regulation that protects the use of the FCC arms is an ACT law, the [City of Canberra Arms Act 1932](#) (ACT). As such it is the choice of the ACT Legislative Assembly and its elected representatives to improve this regulation, particularly if a decision is made to create and adopt new insignia for the Territory.

This ACT regulation prevents, by the application of a punitive fine, the inappropriate use of the FCC arms (or something that looks like it) by any trade, business, calling or profession, including if the FCC arms are displayed on any goods sold or for sale except where otherwise approved by the Chief Minister; but it is silent about:

- what the insignia actually is – there’s no written description of it, such as a verbal blazon, or a visual representation of it in the regulation;
- what the insignia should be used for, in a positive way - the objective or purpose for having official insignia in the first place is missing;
- how the insignia is allowed to change by some democratic mechanism or other process – this is missing too.

While there is administrative guidance publicly available for the use of the ACT Flag, there is no such public guidance on the use of the FCC arms itself, except as used by the ACT Government within its official business logo as an inseparable component of its design and branding guidelines (where it is very briefly referred to as the ‘ACT coat of arms’, once, within a lengthy document).<sup>45</sup>

Examples of how this regulatory silence might be addressed can be seen in the [Flags Act 1953 \(Commonwealth\)](#), and the [State Arms, Symbols and Emblems Act 2004 No.1 \(NSW\)](#). I encourage the Committee to examine these Acts in some detail. In the end, however, there is no substitute for a democratic check and balance across all arms of government, without one arm dominating, whether that be by regulation or administrative fiat, for the care and maintenance of the official insignia of the Territory, for and on behalf of the citizens of the ACT.

### **Ideas for new insignia for the ACT**

For a new insignia for the whole of the ACT, I think the following should be considered, not having any useful graphic design skills myself:

- The circular band around the coat of arms as used by the ACT Government today has practically been in use since 1925, and immediately brings to mind the history of the administration of the ACT, particularly for the longer term residents. This can be represented as one band, or two concentric circles, with ‘Australian Capital Territory’ written inside it, to surround a new design.
- Of things most intrinsic to the ACT since European settlement, you can go no further than the winning national capital plan design of Walter and Marion Burley Griffin. Putting aside the Parliamentary Triangle, which is clearly too ‘Federal’ (much like the ubiquitous ‘flag pole on the Hill’ design element), there is one element of the Griffin design that could be used graphically to evoke the ACT – a representation of City Hill, complete with its geometric planting of trees and surrounding streets. This could usefully combine and represent the ACT as a City Territory (which it is), but not necessarily Canberra (a simplification). By tastefully combining this with the official floral emblem of the ACT - *Wahlenbergia gloriosa* – and perhaps the official faunal emblems too, you could produce a new insignia that shouts ACT.
- Our indigenous brothers and sisters are a part of deciding any new insignia for the Territory. To that end, how this should happen is something that indigenous people through new or existing communication pathways can work with the ACT Government to inform and confirm what is required.

## Acknowledgements

I wish to thank all the staff of the National Archives of Australia who provided valuable assistance with my public research on Canberra's coat of arms. Without you, the research supporting this submission would not have been possible. Thanks also to the staff of the Canberra Museum and Gallery for starting me on this journey of inquiry in 2012 – the journey continues!

I thank the Committee for this opportunity to briefly describe the historical circumstances that produced Canberra's coat of arms, and what this means today.

## End Notes

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<sup>1</sup> I wrote a similar summary in a letter to the editor of the Canberra Times in November 2018. See Attachment 4.

<sup>2</sup> Refer to the City of Sydney grant of arms as published in the NSW Government Gazette no.150, 30 December 1908, pp.7115-7116. Online at <http://nla.gov.au/nla.news-article226597299>

<sup>3</sup> One of the first questions that the Portcullis Pursuivant Officer of Arms asked of the Official Secretary to the High Commissioner London (the authorised Australian agent for the FCC in the United Kingdom on this matter) was whether or not Canberra was actually a city – a valid question since the population of Canberra at the time was apparently less than 10,000 people! Refer National Archives of Australia: CRS A2910, 410/1/93, folio 10, letter Official Secretary Duffy to Butler, Portcullis, 5 July 1928; Stonham, J (ed.) *Official Year Book of the Commonwealth of Australia, no. 26 – 1933*. Canberra: Commonwealth Bureau of Census and Statistics. p. 761.

Online at

[http://www.abs.gov.au/ausstats/free.nsf/log?openagent&13010\\_1933%20section%2025.pdf&1301.0&Publication&AB0F7F5ADDF9F0C6CA257AF000163300&0&1933&01.01.1933&Previous](http://www.abs.gov.au/ausstats/free.nsf/log?openagent&13010_1933%20section%2025.pdf&1301.0&Publication&AB0F7F5ADDF9F0C6CA257AF000163300&0&1933&01.01.1933&Previous) .

The only known trace in Australia of the whole content of the two petitions made through the College of Arms by the High Commissioner London are their recitations in the Royal Warrant, and Patent of supporters documents. See Attachment 1. The first petition for arms and crest was required to be made to the Monarch as the proposed design included a representation of the Imperial Crown. Such a petition would otherwise have been made to the delegated authority of the Monarch, the Duke of Norfolk Earl Marshal, as was the case for the second petition for the grant of supporters. Refer National Archives of Australia: CRS A2910, 410/1/93, folio 10, letter Official Secretary Duffy to Butler, Portcullis, 5 July 1928, and response, folio 5, letter from Butler, Portcullis to V C Duffy, Official Secretary to the High Commissioner, 5 July 1928.

For the legislation governing the appointments of the Commissioners and later limited election of the third Commissioner, refer to the principal Act establishing the FCC – the *Seat of Government (Administration) Act 1924* (Commonwealth), section 6, <https://www.legislation.gov.au/Details/C1924A00008> effective from January 1925, and as amended by <https://www.legislation.gov.au/Details/C1928A00044> , effective from at least October 1928.

<sup>4</sup> National Archives of Australia: CP188/1, 1 (page 2). And see Attachment 1, page 3.

<sup>5</sup> National Archives of Australia: CP188/1, 3. And see Attachment 1, page 8

<sup>6</sup> National Archives of Australia: CRS A431, 1951/1694. Letter, 26 February 1929, from Chief Commissioner Butters to C R Wylie.

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<sup>7</sup> The development of a new Territory flag in 1929 is documented across a number of records held by the National Archives of Australia. One of the new flags made at the time is now held by the Canberra Museum and Gallery (previously illustrated on CMAGs website <https://web.archive.org/web/20120321134327/http://www.museumsandgalleries.act.gov.au/cmag/AnActOfSurrender.html>). The earlier (and first) flag occasionally used by the FCC for the Territory was simply a blue ensign displaying a coloured version of the original FCC Seal without the motto. Refer mainly, National Archives of Australia: CRS A1, 1936/2207; CRS A431, 1951/1694; CRS A461, D396/1/10; and CRS A6266, G1925/2327. You can see a drawing of the original FCC Common Seal in the Commonwealth of Australia Gazette, no.103 of 3 December 1925, p.2477, <https://www.legislation.gov.au/file/1925GN103>, and its replacement which has the FCC arms, in the Commonwealth of Australia Gazette, no.50 of 23 May 1929, p.1283, <https://www.legislation.gov.au/file/1929GN50>. The FCC was formally wound up in 1930 with the passage of the *Seat of Government (Administration) Act 1930* <https://www.legislation.gov.au/Details/C1930A00002>

<sup>8</sup> There were hundreds of copies of the lithographic print commissioned and paid for by the FCC, and now held by various institutions across the ACT. The printer proofs were recently acquired by the National Archives of Australia, and the final proof can be viewed online here: <http://recordsearch.naa.gov.au/scripts/AutoSearch.asp?O=I&Number=32716547> National Archives of Australia: CRS B6739, 1. These prints reproduce the certified copy made by Garter, dated 28 November 1928, but added the text of the verbal blazon and motto on the left hand side. As the first printer's proof, it replicated an error of the College of Arms that was corrected: the mace crossing behind instead of on top of the sword. This was noted by Wylie in a letter to Chief Commissioner Butters of 29 April 1929 (National Archives of Australia: CRS A431, 1951/1694). The certified copy, corrected by the FCC, is held by the Canberra Museum and Gallery and can be viewed online here: <http://www.cmag.com.au/collection/items/armorial-bearings/detail>. (For the provenance of this, refer National Archives of Australia: CRS A2910, 410/1/93, folios 34-39, and contemporaneous correspondence in CRS A431, 1951/1694, and CRS A461, D396/1/10). The motto was hurriedly (and legitimately) altered from the latin to an acceptable english translation, following the first public exposure and publication of the approved FCC arms in May 1929. While some of the original (and numbered) print run of lithographic prints survive with the original latin, most were amended with a 'stick over' of the english version, and the second much larger print run planned was made with the english version. The certified copy was appropriately altered - not only the motto - by C R Wylie at the direction of Chief Commissioner Butters. Refer National Archives of Australia: CRS A431, 1951/1694; and CRS A2910, 410/1/93.

<sup>9</sup> For a solid overview of the royal prerogative as developed in the United Kingdom (and applicable to Australia in many ways), refer Bartlett, G. and Everett, M. 2017. *The Royal Prerogative*. House of Commons Library Briefing Paper Number 03861, 17 August 2017. Online at <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN03861>

<sup>10</sup> For more information about the English Court of Chivalry, see Squibb, 1953 <https://www.theheraldrysociety.com/articles/the-law-of-arms-in-england/>; College of Arms, 'The law of arms' <https://www.college-of-arms.gov.uk/resources/the-law-of-arms> and 'Court of Chivalry' <https://www.college-of-arms.gov.uk/resources/court-of-chivalry> and other information available at these two websites.

<sup>11</sup> Refer for example, d'Apice, R, 2001. 'Heraldic Jurisdiction in Australia'. *Heraldry News – the Journal of Heraldry Australia Inc.* No. 25, March 2001: 9-12; Thompson, J. 'Why an Australian heraldry authority?' [http://familyhistoryact.org.au/images/Australian\\_Heraldic\\_Authority.pdf](http://familyhistoryact.org.au/images/Australian_Heraldic_Authority.pdf); York, Barry, 2010. 'Australian Courts Act 1828' <https://www.moadoph.gov.au/blog/australian-courts-act-1828/>, Museum of Australian Democracy Blog; Coltheart, L (curator), 2011. 'Australian Courts Act 1828 (UK)' <https://www.foundingdocs.gov.au/item-did-39.html>, Commonwealth of Australia.; Crawford, J, Gunson, W & Mackay, A. 1973. *Report on Heraldry in Australia, 1927. A case for heraldic control in the Commonwealth of Australia.*

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Melbourne: Heraldry Council of Australia. Volume 1, Section 3, 'Aspects of Australian Law related to heraldic control', pp.38-46; Walsh, J. 1987. 'Impersonal arms', in *Debrett's Handbook of Australia* (James Orton and Nicole Roxburgh, eds. 3<sup>rd</sup> edition.) Sydney: Debrett's Peerage (Australasia) and William Collins. p.117; Cox, Noel, 1998. 'The Law of Arms in New Zealand' ALRS 2; (1998) 18(2) *New Zealand Universities Law Review* 225-256. <http://classic.austlii.edu.au/cgi-bin/sinodisp/au/journals/ALRS/1998/2.html>

<sup>12</sup> Refer particularly *The use of the Coat of Arms: Armed with national pride*. 1994. Report of the Standing Committee on Legal and Constitutional Affairs, Parliamentary paper 460/1994. Chapter 4, 'Legal protection for the Commonwealth coat of arms', [https://www.aph.gov.au/Parliamentary\\_Business/Committees/House\\_of\\_Representatives\\_Committees?url=reports/1994/1994\\_pp460.pdf](https://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=reports/1994/1994_pp460.pdf); and also Cox, Noel, 2001. 'The intellectual property laws and the protection of armorial bearings' ALRS 5; (2001) 12(1) *Australian Intellectual Property Journal* 143-152. <http://classic.austlii.edu.au/au/journals/ALRS/2001/5.html>;

The current reference to government arms in Australian Trade Mark law is Regulation 4.15 of the [Trade Mark Regulations 1995](#) from section 39(2) of the [Trade Marks Act 1995](#), which prevents anyone registering a trade mark that is a representation of the Arms or emblem of a city or town in Australia or of a public authority or public institution in Australia. This regulation does not refer to the English College of Arms.

<sup>13</sup> For example, the [City of Canberra Arms Act 1932](#) (ACT); the [State Arms, Symbols and Emblems Act 2004](#) (NSW); and the [Commonwealth coat of arms information and guidelines](#)

<sup>14</sup> For an easily accessible description of English laws of arms practice, see Fox-Davies, Arthur. *Complete Guide to Heraldry*, various editions and reprints, available online [https://en.wikisource.org/wiki/A\\_Complete\\_Guide\\_to\\_Heraldry](https://en.wikisource.org/wiki/A_Complete_Guide_to_Heraldry) and an illustrated version here <https://archive.org/details/artofheraldryenc00foxd/>.

<sup>15</sup> A number of errors were made in the illustration of the arms and crest painted in the Royal Warrant (see Attachment 1), inconsistent with their verbal blazon granted in the same document. One noticeable error was the failure to correctly paint the mace crossing on top of the sword behind the crown on the shield, and this was subsequently fixed in the exemplifications issued by the College of Arms. Still another 'error' was the failure to paint the white flashes on the wings of the black swan. Evidently the heraldic artist employed by the College of Arms disregarded the correct model of an Australian black swan that had been painstakingly painted by Wylie and provided by the FCC, and instead used 'an ordinary black swan' as used in the City of Perth (Australia) coat of arms which the College itself had designed in 1926, including a number of species specific errors in it. While those species errors were corrected for the certified copy and lithographic prints by Wylie and Butters (see endnote 8), the Patent of supporters exemplification was never amended. Refer National Archives of Australia: CRS A431, 1951/1694; CRS A2910, 410/1/93.

A dragon and wyvern are 'types' of 'monsters' commonly occurring in English and other heraldic art. However, as there are no real-life examples for such monsters, their form as drawn in heraldry has been dependent on the artistic style of the day, and the inclinations of the individual making the illustration.

<sup>16</sup> National Archives of Australia: CRS A2910, 410/1/93. Folio 47, Portcullis to Duffy, Official Secretary, High Commissioner London, 29 January 1929; see also National Archives of Australia: CRS A431, 1951/1694, where Wylie makes several references to following the verbal blazon rather than simply copying the exemplification, after receipt of the second certified copy made by the College of Arms in January 1929. Wylie's quote given here was made in his letter to Chief Commissioner Butters, dated 9 January 1929. Wylie discusses the use of the helmet in subsequent potential reproductions of the FCC arms in his letter to Chief Commissioner Butters of 5 February 1929.

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<sup>17</sup> Gibbney, J. 1988. *Canberra 1913-1953*. Canberra: Australian Government Publishing Service. p.111; Linge, G J R, 1979. 'Butters, Sir John Henry (1885-1969)', *Australian Dictionary of Biography*. Volume 7. Melbourne: Melbourne University Press. Available online – National Centre of Biography, Australian National University - <http://adb.anu.edu.au/biography/butters-sir-john-henry-5454> ; The functions of the FCC were described in the *Seat of Government (Administration) Act 1924* (and subsequent amendments to 1929), section 14(1), and s14(1)(m) notes general responsibility for the municipal government of the Territory (as a whole, as defined in the same Act). See <https://www.legislation.gov.au/Details/C1924A00008> .

<sup>18</sup> Refer to section 4(1) of the *Seat of Government (Administration) Act 1924*, <https://www.legislation.gov.au/Details/C1924A00008> ; while there was a second mention of Canberra in a 1928 amendment <https://www.legislation.gov.au/Details/C1928A00044> , this was an FCC exemption from liabilities for costs associated with survey, construction and maintenance of railways reaching outside the Territory from Canberra.

<sup>19</sup> At the time, the Territory was formally known as the 'Territory for the Seat of Government of the Commonwealth of Australia' (usually shortened unofficially to the 'Federal Capital Territory'), and was not named the Australian Capital Territory until 1938 (see *Commonwealth of Australia Gazette*, no.53, Thursday 8<sup>th</sup> September 1938, p.2181 <https://www.legislation.gov.au/file/1938GN53> ). Compare the Royal Warrants for the arms of New South Wales, Victoria, and South Australia with the Royal Warrant for the FCC arms in Attachment 1.

- For NSW, see *Supplement to the Government Gazette of New South Wales*, no.24, 22 February 1907, pp1345-1346, available online at <http://nla.gov.au/nla.news-article226577762>
- For Vic, see 'Victoria's Arms – new coat granted', *The Argus*, Thursday 25 August 1910, p.8 <http://nla.gov.au/nla.news-article10455542>
- For SA, see *South Australian Government Gazette*, no.18, 19 April 1984, pp950-951 available online at [http://classic.austlii.edu.au/au/other/sa\\_gazette/1984/18.pdf](http://classic.austlii.edu.au/au/other/sa_gazette/1984/18.pdf)

<sup>20</sup> The powers of the FCC were described in section 14 of the *Seat of Government (Administration) Act 1924* and as amended in 1926 and 1928 – see <https://www.legislation.gov.au/Details/C1924A00008>, <https://www.legislation.gov.au/Details/C1926A00032>, and <https://www.legislation.gov.au/Details/C1928A00044>. The powers of the ACT Executive are listed in Schedule 4 of the *Australian Capital Territory (Self Government) Act 1988*, <https://www.legislation.gov.au/Details/C2016C00802> and are otherwise limited by the National Capital Plan and the administration of national land by the National Capital Authority under the *Australian Capital Territory (Planning and Land Management) Act 1988*. <https://www.legislation.gov.au/Details/C2018C00316> . Also in operation in the ACT are the various pieces of legislation that govern the Parliamentary precincts and Parliamentary Privilege of the Commonwealth Parliament.

<sup>21</sup> National Archives of Australia: CRS A2910, 410/1/93. Folios 83-87.

<sup>22</sup> The 1929 Ordinance – *The Federal Capital Commissions Arm's Ordinance 1929* (Commonwealth Government Gazette no.54 6 June 1929 p.1359 <https://www.legislation.gov.au/file/1929GN54> ); the 1932 Ordinance - *The City of Canberra Arms Ordinance 1932* (<https://www.legislation.act.gov.au/View/a/1932-3/19320211-48848/PDF/1932-3.PDF> ); the ACT law - *The City of Canberra Arms Act 1932* (<https://www.legislation.act.gov.au/View/a/1932-3/current/PDF/1932-3.PDF>)

<sup>23</sup> For a short but accurate biography of Charles Roxburgh Wylie see AustLit entry for C R Wylie, 2018, University of Queensland <https://www.austlit.edu.au/austlit/page/6181716> ; a more detailed biography dating from before the design competition, and likely supplied by C R Wylie himself, was published in 1926: 'Commander Wylie and Heraldry', *The Home – the Australian Journal of Quality*. Sydney: Art in Australia Limited. Vol 7 No 3, 1 March 1926, p.6 available online <http://nla.gov.au/nla.obj-380943726> ; this latter source

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claims Wylie had his early childhood in Australia, but I have been unable to substantiate this in the time available to me.

<sup>24</sup> National Archives of Australia: CRS A2910, 410/1/93. Folio 48, Portcullis to Duffy, Official Secretary, High Commissioner London, 29 January 1929. Refer previous end notes 8, 15 and 16.

<sup>25</sup> C R Wylie, 'Canberra's motto – to the editor of the Herald', *The Sydney Morning Herald*, Friday 3 May 1929, p.6 <http://nla.gov.au/nla.news-article16555655>

<sup>26</sup> National Archives of Australia: CRS A461, D412/1/7. Minutes of the first meeting of the Canberra National Memorials Committee, Thursday 1<sup>st</sup> December 1927, pp.2-3. The decisions of this meeting, subsequently approved by Parliament, were published in the Gazette in September 1928. See *Commonwealth of Australia Gazette*, no.99, Thursday 20<sup>th</sup> September 1928, <https://www.legislation.gov.au/file/1928GN99> The King's, Constitution and Commonwealth Avenue entries are on pages 2639 and 2641, referencing the latin of 'Canberra's motto'.

<sup>27</sup> National Archives of Australia: CP188/1, 2. See Attachment 1, page 7

<sup>28</sup> National Archives of Australia: CP188/1, 3. See Attachment 1, page 8

<sup>29</sup> National Archives of Australia: CRS A431, 1951/1694; CRS A461, D396/1/10; CP205/1, 1.

<sup>30</sup> 'Canberra coat of arms – reply to criticism', *The Argus* (Melbourne), Friday 3 May 1929, p.10. Online at <http://nla.gov.au/nla.news-article4003163> This response of Chief Commissioner Butters was widely published in newspapers across Australia, including for example, the *Sydney Morning Herald* <http://nla.gov.au/nla.news-article16555812>

<sup>31</sup> Wylie, C R, 'Canberra's Arms – The Chosen Design', *The Sydney Morning Herald*, Saturday 4 May 1929, p.13. Online at <http://nla.gov.au/nla.news-article16561933> . Wylie is similarly dismissive of a larger array of Australian fauna in his letter to Chief Commissioner Butters of 30 November 1927. National Archives of Australia: A431, 1951/1694.

<sup>32</sup> National Archives of Australia: CRS A431, 1951/1694, C R Wylie to Chief Commissioner Butters, 19 November 1927 and 27 January 1928.

<sup>33</sup> National Archives of Australia: CRS A1, 1932/215, Explanatory memorandum no.16 relating to the significance of the armorial bearings of the City of Canberra, 28 January 1932. Viewable online, pages 8-12, <http://recordsearch.naa.gov.au/scripts/AutoSearch.asp?O=I&Number=1166400> . A more recent copy of this explanation, published by the (Commonwealth) Department of the Capital Territory in the 1970s, can be viewed at [https://www.archives.act.gov.au/find\\_of\\_the\\_month/2008/november\\_2008/previous\\_find\\_of\\_the\\_month](https://www.archives.act.gov.au/find_of_the_month/2008/november_2008/previous_find_of_the_month)

<sup>34</sup> 'Canberra's coat of arms – Mr Scullin waxes sarcastic – un-Australian', *The Daily Standard* (Brisbane), Monday 6 May 1929, p.12 <http://nla.gov.au/nla.news-article192371851> Scullin's comments were widely reported in many newspapers from 2 May 1929. This article is the most complete reporting of Scullin's comments.

<sup>35</sup> 'Our National coat-of-arms – critics agree it is feeble', *Daily Telegraph* (Sydney), Thursday 2 May 1929, p.5 <http://nla.gov.au/nla.news-article245642539> ; 'Hostile Critics – Canberra Coat of Arms – National Pride unaroused', *Advocate* (Burnie), Thursday 2 May 1929, p.5 <http://nla.gov.au/nla.news-article67812415> ; and 'Canberra coat of arms – description criticised', *The Recorder* (Port Pirie), Thursday 2 May 1929, p.1 <http://nla.gov.au/nla.news-article96065571> ; Mr Byrne (President of ANA) is quoted in several newspapers on or after this date.

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<sup>36</sup> National Archives of Australia: CRS A431, 1951/1694, E Wilson Dobbs to Chief Commissioner Butters, 21 May 1929.

<sup>37</sup> 'What's wrong with Canberra's coat of arms', *The Canberra Times*, 4 December 2014, 4:11pm. This was available less than a month ago at <https://www.canberratimes.com.au/national/act/whats-wrong-with-canberras-coat-of-arms-20141204-12067m.html> but it is no longer accessible online. I have attached to this submission, for the Committee's information, a copy of this very relevant article by John Thistleton (see Attachment 5).

<sup>38</sup> Such alterations were considered and some adopted by C R Wylie when designing the new Common Seal of the FCC. Refer National Archives of Australia: CRS A431, 1951/1694, Wylie to Chief Commissioner Butters, 7 February 1929.

<sup>39</sup> The Parliamentary mace illustrated by Wylie in the design submitted to the College of Arms is a drawing of the actual mace in use in the Commonwealth Parliament at the time. Refer National Archives of Australia: CP205/1, 1, page 66, view online at <http://recordsearch.naa.gov.au/scripts/AutoSearch.asp?O=I&Number=353696> The mace as drawn by the College of Arms is not quite the same as Wylie's, so the assumption is it is still Parliamentary.

<sup>40</sup> Response to Question on Notice no.806, delivered in the House of Representatives by Prime Minister Malcolm Turnbull on 7 February 2018, House of Representatives Hansard online <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansard%2F8f7b4904-e5ab-452a-8736-6158744bd454%2F0301%22>

<sup>41</sup> See the ACT Government guidelines on the use of the ACT Flag [https://www.cmtedd.act.gov.au/\\_data/assets/pdf\\_file/0020/114815/Flag-Guidelines-2018.pdf](https://www.cmtedd.act.gov.au/_data/assets/pdf_file/0020/114815/Flag-Guidelines-2018.pdf) ; and see various provisions in the *Australian Capital Territory (Self Government) Act 1988* <https://www.legislation.gov.au/Details/C2016C00802>

<sup>42</sup> The *Territories Self-Government Legislation Amendment (Disallowance and Amendment of Laws) Act 2011* <https://www.legislation.gov.au/Details/C2011A00166>

<sup>43</sup> Yes, the United Kingdom has been confirmed as a foreign power, at least in terms of the application of section 44 of the Australian Constitution, when the High Court decided a dual citizenship issue in 1999 (refer *Sue v Hill* [1999] HCA 30 <http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/1999/30.html> and various easily accessible commentaries on this case).

From 1. above, this submission also confirms that the English laws of arms are practically a foreign law as they cannot be enforced in Australia.

<sup>44</sup> See the basic claim to Australia made on the College of Arms homepage <https://www.college-of-arms.gov.uk>

<sup>45</sup> *Guidelines for Flying the ACT Flag* (March 2018) [https://www.cmtedd.act.gov.au/\\_data/assets/pdf\\_file/0020/114815/Flag-Guidelines-2018.pdf](https://www.cmtedd.act.gov.au/_data/assets/pdf_file/0020/114815/Flag-Guidelines-2018.pdf) ; *The ACT Government Design and Brand Guidelines* (September 2018) [https://www.act.gov.au/\\_data/assets/pdf\\_file/0010/1106110/ACTGov-WHOG-Brand-Guidelines.pdf](https://www.act.gov.au/_data/assets/pdf_file/0010/1106110/ACTGov-WHOG-Brand-Guidelines.pdf) , p.9. Of the variations of the ACT Government logo in this Guideline, one stands out as odd: the 'reverse' logo creates a false impression of which swan in the FCC arms is black or white, and as such is likely not consistent with the English laws of arms. Such a representation is quite different from a black and white (colourless) die outline as used in the FCC common seal as designed by Wylie - see National Archives of Australia: CRS A3560, 5175 online here <http://recordsearch.naa.gov.au/scripts/AutoSearch.asp?O=I&Number=3150769> , or a simple

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'negative' line drawing of the FCC arms itself – see National Archives of Australia: CRS A1200, L47790 online here <http://recordsearch.naa.gov.au/scripts/AutoSearch.asp?O=I&Number=11729888>