

# GENEALOGICA & HERALDICA XXXV

REFORMATION REVOLUTION RESTORATION



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Correspondence to [coatofarms@theheraldrysociety.com](mailto:coatofarms@theheraldrysociety.com)

[www.theheraldrysociety.com](http://www.theheraldrysociety.com)

# HERALDIC DEVELOPMENTS IN THE COMMONWEALTH OF NATIONS – MALTA AND AUSTRALIA

RICHARD D'APICE, A.M., A.I.H.

## **Introduction**

The right to regulate heraldry (and honours and awards) is an aspect of the power of a sovereign State, although a State may limit or even prohibit its exercise, or may simply decide not to exercise it. This may be done by provision in its constitution, or in a law, or by ministerial or bureaucratic activity (or inactivity). Even the most artistically satisfying coat of arms does not exist in a legal vacuum. Those who want their countries to embark *de novo* on the exercise heraldic power must ensure that their proposals are structured in a manner which conforms with the law of the land and the political mood of the times. Malta and Australia provide confirmation of that reality, and this is an heraldic *Tale of Two Cities*: Valetta, the capital of Malta (a republic), and Canberra, the capital of the Australia (a monarchy). Both are members of the Commonwealth of Nations, and both formerly subject to the Crown of the United Kingdom.

The Commonwealth of Nations, formerly known as the British Commonwealth of Nations, and generally simply called the Commonwealth, is a free political association of 54 sovereign member states, almost all of which are former territories of the former British Empire and which, at present, acknowledge Queen Elizabeth II as symbolic head of their association.<sup>1</sup> Numbering 41, less than half of the nation States which were formerly part of the British Empire continue as monarchies; not all have joined the Commonwealth; and not all have created separate heraldic authorities, although at least one monarchy (Canada) and a number of republics (Ireland, South Africa, Zambia, Zimbabwe and now Malta) have done so. This paper is intended to explore heraldic developments in two of those sovereign nation States, Malta and Australia, which have taken radically different heraldic paths.

## **Evolution**

Until the 1920s, the British Empire was a single indivisible monarchy headed by the sovereign of the United Kingdom of Great Britain and Ireland (later Northern Ireland). By a slow process of constitutional evolution, many of its constituent parts have become sovereign nation States separate from, but coequal with, the United Kingdom. The important feature of these nation States is that they are sovereign and separate from the United Kingdom and from each other so that, even though they share the same individual as their head of state, many (although, not all) are in no way dependent on, or subject to, the United Kingdom out of which they have evolved. The Queen of the United Kingdom has no power in Canada or Australia and nor does her U.K. Prime Minister, or any of the other officers to whom she has delegated the exercise of her U.K. powers.<sup>2</sup> Malta and Australia both had histories of heraldry and symbolism before the advent of British power.



Figure 1: Memorials to knights of Malta on the floor of St John’s Co-Cathedral in Valetta. Photographs by Paul A. Fox.

In the case of Malta, no place is richer in heraldic display, in large part associated with the Order of Malta.<sup>3</sup> Much of this is the hereditary heraldry of the knights of the various Langues<sup>4</sup>; some is derived from the nation states which held or exercised sovereignty over the country both before the arrival of the Order, and since its departure; some was granted by the Grand Masters pursuant to the sovereign powers which they exercised (and continue to and exercise, although no longer over Malta itself). It can be expected that there will be an increasing amount of heraldry granted in exercise of the sovereign powers of the Republic of Malta.<sup>5</sup>

In Australia, First Nations’ totems (or heraldry as recent arrivals would call it) is very visible but the right of our indigenous peoples in their heraldry has not been formally recognised in the same way as indigenous land rights have been recognised. This occurred as recently as 30 years ago after more than 200 years of denial and suppression under the asserted belief (in the face of the physical reality) that, at the time of arrival of the British, Australia was *terra nullius* or nobody’s land with no existing law which needed to be recognised.<sup>6</sup>

## MALTA

**Malta's Heraldic Inheritance**

This paper is about recent events, but these cannot be divorced from Malta's heraldic past, dominated by its historical position as the possession and headquarters of the Order of Malta from 1530 until 1798. Hospitaller heraldry is omnipresent in Malta, most wondrously in the memorial slabs of the knights of the Order in the Co-Cathedral of St John in Valetta (**Figure 1**) and in the Metropolitan Cathedral of Saint Paul in Mdina. Other heraldry is also much in evidence (**Figure 2**).



Figure 2: Left: The arms of Malta (1975–1988); Right: the arms of Archbishop Paul Cremona of Malta. Photographs by the author.

The starting point of the coat of arms of Malta was the National Flag of Malta which was established by article 3 of the *Constitution of Malta Act 1964* in these terms:

- (1) The National Flag of Malta consists of two equal vertical stripes, white in the hoist and red in the fly.
- (2) A representation of the George Cross awarded to Malta by His Majesty King George the Sixth on the 15th April, 1942 is carried, edged with red, in the canton of the white stripe.

Being established and regulated by subject specific legislation, the coat of arms of Malta (referred to in the *Emblem and Public Seal of Malta Act 1975* (Chapter 254) as the Emblem of Malta<sup>7</sup>) is outside the jurisdiction of the new Office of the Chief Herald of Malta. The present coat of arms or emblem (the third since independence) was designed by the great Maltese heraldist and diplomat, Adrian Strickland. Since it became independent of the United Kingdom as a constitutional monarchy in 1964, and as a republic in 1974, Malta has been a fully sovereign nation state with the power to grant and regulate coats of arms and honours.

The indigenous exercise of heraldic power in Malta has been long delayed, and it has had a difficult gestation and birth. Its legitimacy was initially challenged, but its standing has since been placed beyond challenge or doubt by both primary and secondary legislation. Malta first exercised its heraldic power in 2019 when the Government of Malta created the Office of Chief Herald of Arms of Malta in what was understood to be an exercise of powers under the Cultural Heritage Act 2002. The Government proceeded on the basis that heraldry was an “intangible cultural asset” and consequently “cultural heritage” and that its regulation was within the functions of Heritage Malta, an operating agency created by that Act. Contemporaneously with the establishment of the Office of the Chief Herald of Arms of Malta, Dr Charles Anthony Gauci was appointed as the first Chief Herald of Malta (**Figure 3**).<sup>8</sup> The Chief Herald soon entered on the duties of his office, commencing to grant and register arms (**Figure 4**).

Doubt was subsequently raised as to whether the *Cultural Heritage Act 2002* was expressed in terms sufficiently clear to provide an unchallengeable basis for those actions, and the matter was taken up by the Ombudsman for investigation and report. A review was conducted over the period from mid-2020 until a final report was issued in mid-2021. That was a period of intense review and consideration by and between the Government of Malta, the Office of the Chief Herald and the Ombudsman, and, during its course, the Government put the matter beyond doubt or contention. In 2021, the Parliament of Malta passed Government-proposed amendments to the *Cultural Heritage Act* which provided a specific power for Heritage Malta “to set up and manage the Office of the Chief Herald of Arms of Malta”<sup>9</sup>. The amendment was gazetted on the day before the Ombudsman’s final report issued.

That was as far as the amending legislation needed to go, since the Act already provided that the Minister “may make regulations to give effect to any of the ... provisions of this Act, or to regulate or otherwise provide for any matter relating to activities affecting cultural property, and may in particular, but without prejudice to the generality of the foregoing, make regulations for” a long list of purposes.<sup>10</sup> In exercise of that power, the Minister made the *Heraldry and Genealogy Regulations, 2021* (which came into effect on 21 January 2022<sup>11</sup>) “for the establishment of the Office of the Chief Herald of Arms of Malta and relative functions, duties and powers, and to establish procedures for the delivery of heraldic, genealogical and vexillological services”. I deal later in this paper with the content and effect of those regulations.

The earlier appointment of Dr Gauci as Chief Herald of Arms of Malta was confirmed by the Minister on 31 January 2022.<sup>12</sup> On 22 April 2022, pursuant to his power under Articles 8 and 13 of the Regulations, the Chief Herald published guidelines on the provision of heraldic services by the name of *Criteria for the Grant and Registration of Arms*.<sup>13</sup> I will deal later with the content and effect of those guidelines. The Regulations implemented that power in a detailed and structured manner. It provided, in nine parts, “for the establishment of the Office of the Chief Herald of Arms of Malta and relative functions, duties and powers, and to establish procedures for the delivery of heraldic, genealogical and vexillological services.”<sup>14</sup>



Figure 3: Arms of the Office of the Chief Herald of Malta, courtesy of the Chief Herald.

It is appropriate to first consider the last Articles of Part IX of the Regulations which establish who the Chief Herald is, and what Maltese heraldry is not, under the heading “Ancillary Matters”. The Office of the Chief Herald is intimately linked to and part of the Maltese State by Article 19 which specifically permits the office to use the Arms of Malta.

Article 18 provides “All grants and registrations of Arms including the mention of honours and titles shall be without prejudice to the *Ġieh ir Repubblica Act 1975* and are made solely for historical purposes.” The *Ġieh ir Repubblica Act*<sup>15</sup> is the basis of Malta’s system of honours, awards and decorations. The Regulations specifically reference

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Articles 28 and 29 of that Act which deal with titles of nobility and foreign honours and decorations and provide as follows:

28. (1) Titles of nobility are not recognised and any privilege or other right ancillary to any such title shall cease to have effect.

29. (1) No honour, award or decoration, other than a university degree honoris causa, a prize, or an award for bravery, and no membership of, or office in, any order, shall be recognized unless it is conferred under this Act or any other law for the time being in force or it has been or is conferred by a foreign State or a Sovereign Order having diplomatic relations with Malta or any international organisation of which Malta is a member and, in respect of any honour, award, decoration, membership or office conferred to any person in Malta or to any citizen of Malta by any such State, Sovereign Order or any international organisation after the commencement of this Act, unless it is conferred with the written authority of the President of Malta given on the written advice of the Prime Minister.

Maltese titles of nobility have existed from at least the fourteenth century.<sup>16</sup> These provisions do not abolish them; they withdraw official recognition, as is laid out in Article 4:

(4) It shall be the duty of every public officer or authority, and of every body established or recognised by law and of every member thereof, to refrain from recognising in any way, and from doing anything which could imply recognition of, any title of nobility or any honour, award, decoration, membership or office which is not recognised in accordance with the foregoing provisions of this article.

These are not provisions fundamental to the structure of the Maltese State (as is the case with the comparable provisions in the Constitution of Ireland which prohibit the creation of titles of nobility by the State and the acceptance of such titles by its citizens (without the prior approval of the Government)).<sup>17</sup> In Malta, these are not constitutional but limitations self-imposed under Maltese legislation which may be amended or repealed by subsequent legislation. Whether the prohibitions can be amended by subsidiary legislation and whether the *Heraldry and Genealogy Regulations, 2021* purport to do so are questions for the Parliament of Malta and its politicians and tribunals.

Acknowledging the provisions of Part IX, the Regulations are structured in this manner:

Part	Subject Heading	Regulation
I.	Preliminary	1–2
II.	Appointment and Functions of the Chief Herald, and the Constitution and Composition of the Office of the Chief Herald	3–5
III.	Administrative and Personnel Provisions	6–7
IV.	Register of Arms	8
V.	All Applications	9–13
VI.	Registration of other Arms	14
VII.	Letters Patent and Certificates of Registration	15
VIII.	Genealogical Records and Services	16
IX.	Ancillary Matters	17–19



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This paper is limited to a general review of the various regulations, descending into detail only where that is warranted for an understanding of the system which they establish. Some of the definitions in Regulation 2 are worthy of note, particularly:

“Arms” includes Badges and all heraldic devices;

“Certificate of Registration” means the document issued in terms of regulation 14; (which relates to Arms granted or certified by a foreign state-authorised body and personal Arms which have been in uninterrupted use for a considerable period of time by the applicant’s ancestors. Arms falling into the latter category would be registered *tale quale* – “as they stand”.)

“Honour” includes:

(a) all honours and decorations granted or recognized from time to time under the Ġieħ ir-Repubblika Act including the relative insignia;

(b) all honours, hereditary or otherwise, created, granted or recognized during the government of the Malta by the Grand Masters of the Order of Saint John between the years 1530 and 1798 as resultant from the Record;

(c) other honours, of local or foreign origin, hereditary or otherwise deemed to be of cultural or historical value by the Chief Herald of Arms of Malta;

“Letters Patent” includes Certificate of Grant;

“record” means the acts relative to honours as preserved at the National Library of Malta;

Part II provides for the appointment and functions of the Chief Herald:

- A Chief Herald of Arms of Malta is to be appointed by the Minister on recommendation of the Heritage Malta under such terms and conditions as established in the letter of appointment.
- The primary function of the Chief Herald shall be to deal with Heraldry in Malta with due regard also to Vexillology and Genealogy.
- The Chief Herald will be a public employee, appointed “from amongst persons holding the necessary competences” for renewable terms of three (3) years.
- He signs all acts in the name of the Office
- With the approval in writing of Heritage Malta, he appoints a Deputy Herald and a Registrar (called Heraldic Agents). They, together with the Genealogical Registrar appointed under Regulation 16, form part of the Office of the Chief Herald.



Figure 4: Arms of Dr. George Vella, President of Malta, courtesy of The Chief Herald of Malta (grant individual).

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The Chief Herald's primary function of dealing with heraldry in Malta as set out in regulation 3 is amplified in regulation 5 to include:

- (a) representing the Office in Malta and internationally;
- (b) advising Heritage Malta;
- (c) maintaining the Register of Arms in ... and establishing and maintaining such other registers, inventories and indexes as may be required in connection with the good maintenance of the Register of Arms;
- (d) promoting Malta's heraldic, vexillological and genealogical heritage;
- (e) safeguarding, promoting and promulgating heraldic, vexillological and genealogical heritage as an intrinsic part of Malta's heritage;
- (f) participating and promoting participation in international collaborative heraldic, vexillological or genealogical projects, and entering into agreements with similar bodies outside the Maltese Islands with prior approval of Heritage Malta;
- (g) compiling, publishing and distributing books, magazines, journals, reports or other printed matter, including aural, visual, computerised and internet accessible material as may be appropriate;
- (h) undertaking research and consulting Government departments, public and private organisations and international organisations and other persons as may be required in the discharge of its duties under the regulations;
- (i) appointing and accrediting monitors and experts as necessary for the purposes of the regulations with prior approval of Heritage Malta;
- (j) publishing guidelines on the provision of heraldic services and establishing and maintaining standards in the preparation and depiction of Arms and Flags; *(These guidelines are dealt with later in this paper).*
- (k) guiding, advising, warning and consulting, particularly where arms unofficially in use may not be conducive to the harmonious rules of heraldry and or vexillology, and offering solutions;
- (l) devising and granting new Arms, both personal and corporate *(The granting or registering arms is a discretionary power which reduces the possibility of litigation by disgruntled applicants<sup>18</sup>);*
- (m) maintaining, managing and controlling the application process for persons and Bodies Corporate desirous of acquiring or registering Arms;

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- (n) granting Arms by Letters Patent including issuing an official blazon without artwork; (*Letters Patent are to be co-signed by the Registrar who is to certify that they have been duly registered.*)
- (o) registering other Arms including issuing an official blazon without artwork;
- (p) monitor the operation of the Regulations on behalf of Heritage Malta and prepare an annual report on its operation;
- (q) performing any matter conducive towards the attainment of these functions.

By Part III, the Chief Herald is empowered, with the approval of Heritage Malta, to appoint up to three Pursuivants of Arms solely for the purpose of providing advice and assistance to applicants and liaising between them and the Chief Herald. Although they serve within the Office and are remunerated, they are not considered to be employees and may not sign in the name of the Office.

The Register of Arms is established by Part IV. It is divided into four sections:

- (a) a record of all Letters Patent (or grants) issued in favour of individuals;
- (b) a record of all Letters Patent (or grants) issued in favour of bodies corporate;
- (c) a record of all Registration of other Arms, and
- (d) a record of all honours (subject to provisos).

The Chief Herald is required to “ensure that the Register of Arms is maintained in a transparent and orderly manner” and to publish each year by 31 January on the website of the Office or Heritage Malta and in the Gazette full lists of grants by Letters Patent and of Registrations containing particulars of the individual or body corporate and the blazon (but publication of an emblazonment is not required).<sup>19</sup> Part V sets out the requirements for all applications as to form, fees, processes, etc.

Within 21 days after the Chief Herald makes a grant, an entry is to be made in the Register.

The Chief Herald is empowered to establish the procedures and requirements (including eligibility criteria) and relevant fees for individuals and bodies corporate applying to the Office for a Grant of Arms under the regulations.<sup>20</sup> The power to register (as distinct from the power to grant) arms is limited to arms granted or certified by “a foreign state-authorized body to the satisfaction of the Chief Herald” and to personal arms “in uninterrupted use for a considerable period of time by the applicant’s ancestors, which are to be registered *tale quale* (i.e. as they stand). The registration of arms does not result in the issue of Letters Patent but to the issue of a Certificate of Registration.<sup>21</sup>

Part VII deals with the descent and suspension of arms. Arms granted to an individual “devolve to the grantee’s descendants and where appropriate, in accordance

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with the principles, traditions and rules of heraldry in respect of the use of cadency and differencing.” Cadency has not been a feature of Maltese heraldry and the Regulations are silent as to where these “principles, traditions and rules” of cadency are to be found. Arms granted to a body corporate are suspended on its dissolution, abolition, wind-up or bankruptcy “pending cancellation by the Chief Herald”. Certificates of Registration serve only as proof of registration, which rather limits their utility and attractiveness. Part VIII of the Regulations go on to provide for a Genealogical Registrar to be appointed by Heritage Malta and for the Chief Herald to allocate genealogical responsibilities and functions to that officer.

The final Part IX of the Regulations includes a variety of provisions. Although Maltese is the National Language of Malta, both it and English are Official Languages<sup>22</sup>. There is a wide power to prescribe the use of English in a particular case which the Regulations have done in relation to the operations of the Office of the Chief Herald<sup>23</sup>.

In exercise of his power under the Regulations to publish Guidelines on the provision of heraldic services, on 22 April 2022, the Chief Herald established *Criteria for the Grant and Registration of Arms*<sup>24</sup>. These are worthy of detailed review if apace permitted. They include:

- Based on the founding principles of the Republic of Malta, all citizens of Malta are entitled to apply for a grant of Arms. However, a grant of Arms should be considered as a singular honour, issued at the discretion of the Chief Herald of Arms and based on a number of criteria.
- Citizens of other countries also have the right to apply for a grant of Arms, based on the above criteria at the complete discretion of the Chief Herald.
- Many other detailed provisions are included.

On 24 January 2022, the Chief Herald confirmed all of his previous grants and registrations and on 22 April 2022, together with the Guidelines, he published a list and blazons of all of the arms which has been granted or registered by him in conformity with the requirements of the Regulations.<sup>25</sup> At the same time pursuant to Regulation 17, he published the Seal of the Office of the Chief Herald of Arms of Malta and his personal Seal as Chief Herald.<sup>26</sup> Thus was brought into existence the world’s newest heraldic authority. It was an eventful but successful birth. Its first Chief Herald of Arms was appointed (and reconfirmed) and he made (and remade) his first grants and registrations of arms. I take the opportunity to congratulate Malta on this act and the Chief Herald on his work and to express the envy of an Australian heraldist on what has been achieved. The criticism has not abated but the creation of a new heraldic authority should be applauded and encouraged whatever its faults may appear to be in the minds of “experts”.

## AUSTRALIA

Australia has followed a different path. The approximately 500 separate First Nations' peoples of Australia had strong traditions, laws and customs relating to their totems and symbols (or heraldry in the eyes of the more recent arrivals) which long predated British settlement, or, as the indigenous people view it, invasion and occupation. **(Figure 5)**. In the same manner as the High Court of Australia has recognised the existence and survival of First Nations' land rights, there is every reason to be believed that the laws and customs of the First Nations' peoples in relation to their heraldry also survive. This reality was long smothered by the misapplication of the legal principle of *terra nullius* to the occupied land mass of Australia as if it were vacant land without an owner. These totems and symbols have found a place in English/Australian heraldry on the form of the arms assigned to the Northern Territory by the Queen of Australia in 1978 **(Figure 6)**.



*Figure 5:* Top left: Australian Aboriginal Flag designed by Harold Thomas, Source, Commonwealth of Australia ; bottom left: Torres Strait Islander Flag designed by the late Bernard Namok of Thursday Island, Source, Torres Strait Island Regional Council; right: Sea and the Sky totem, 1948, source, Laterthanyouthink, Wikimedia Commons.

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Figure 6: Arms of the Northern Territory of Australia. Source, squiresy92, Wikimedia Commons.

Its occupants unaware and their rights ignored, Australia became a *de facto* possession of the Kingdom of Great Britain (later the United Kingdom) and part of the British Empire and subject to the Crown of the United Kingdom (Figure 7). It followed an almost imperceptibly slow path from being the subject of an indivisible Crown to separate sovereignty. By the tardy adoption of the 1931 Statute of Westminster in 1942<sup>27</sup>, the federal nation of Australia became a separate sovereign nation and its Crown gradually separated entirely from that of the United Kingdom. The process was visibly finalised by the Royal Style and Titles Act 1953<sup>28</sup>, which adopted an identifiably Australian title for the Queen which was changed to Queen of Australia in 1973<sup>29</sup>.

Extraordinarily, while the federal Commonwealth of Australia became a separate sovereign nation by the end of 1942, its constituent parts (called States in the Australian Constitution, but really colonies) remained subject to the Queen of the United Kingdom until 1986 when they were separated from the U.K.<sup>30</sup> and arguably became separate monarchies, although this is not the universally accepted view. The English heralds of the Queen of the United Kingdom undoubtedly had jurisdiction over Australia (or, at least, over its constituent Colony/States) until the Australia Acts (of the U.K. and Australian



*Figure 7:* Coat of Arms of Australia. Souce, bySodacan, based on the painting at the National Archives of Australia, Wikimedia Commons.

Parliaments) of 1986 but from that point the sovereign of the U.K. had no power over Australia and her English heralds had no power by virtue of their British offices. Nor has there ever been a delegation of heraldic power from the Queen of Australia. Consistently since at least 2006, the advice from Ministers and bureaucrats to every question on the subject remains the same:

2006: I am advised that there is nothing preventing any person or organisation from commissioning a local artist, graphics studio or heraldic 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 London.<sup>31</sup>

2017: Question No. 806. Mr Zimmerman asked the Prime Minister, in writing, on 4 September 2017:

(1) Is it the Government's official policy to accept and accede to the claim made by the English College of Arms that it possesses 'official heraldic authority' over Australia; if so,

(a). when was this policy determined,



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- (b). when and how was it made public,
  - (c). is there an official Commonwealth record of this policy decision being determined, and
  - (d). was it determined by a decision
    - (i) of the Parliament,
    - (ii) of the Cabinet, or
    - (iii) by some other authority.
- (2) If the above is not the official policy of the Government, has the Government delegated heraldic authority to the sovereign of the United Kingdom or any of her officers; if so,
- (a). when was this delegation made,
  - (b). when and how was it made public,
  - (c). is there an official Commonwealth record of this delegation being made, and
  - (d). was it made by a decision
    - (i) of the Parliament,
    - (ii) of the Cabinet, or
    - (iii) by some other authority.

(3) Is the Government aware that Canada and South Africa have established their own heraldic authorities independent of the English College of Arms.

Mr Turnbull: I am advised by the Department of the Prime Minister and Cabinet that the answer to the honourable member's question is as follows:

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>32</sup>

Consistently, neither politicians or bureaucrats will address the fact that the English Kings of Arms use the style and titles of the sovereign of Australia in the dating clause of their grants to Australians, implying if not directly stating, that they are validly exercising the authority of that sovereign who is a foreigner to them and their only sovereign. Nor have the Kings of Arms of England been any more forthcoming about the authority for this apparent usurpation of the power of the Queen of Australia.

Commencing in 2008 with the adoption of arms by the Honourable Gordon Samuels a former Judge of the New South Wales Court of Appeal and former Governor of New South Wales, I have utilised the execution of a Deed Poll (a deed to which there is only one party such as is used for changes of name) and its registration in the General Register of Deeds of the State of New South Wales as a public record of what would otherwise be an act which would leave little record and none of it a public record. Registration does not provide any State sanction for the adoption but provides a permanent public record. Mr Samuels, although British by birth, was unwilling to seek a grant from the Queen of the U.K. through the College of Arms as was my first proposal. He listened respectfully to the arguments of a solicitor (a long way down the legal pecking order from the exalted

positions he had occupied), expressed himself satisfied with the legality and propriety of adoption of arms and with the expedient of making a public record of his adoption by executing and registering a Deed Poll of Adoption of Arms.

Following this, his arms joined the unbroken heraldic record of the Governors of New South Wales in the Main Hall of Government House, Sydney, and later a stone carving of the arms was erected on the exterior. In this manner the practice of adoption of arms was established which has been followed by the two successive Governors who have completed their terms of office. His immediate successor, Dame Marie Bashir, added a level of formality to her adoption in 2014 by reporting it to the Executive Council and including reference to it and a copy of the registered deed in the Executive Council's minutes (**Figure 8a**). Her successor, General David Hurley, followed the path of adoption in 2019 and took the arms with him when he assumed office as the current Governor-General of Australia (**Figure 8b**). Extraordinarily, it took a Prime Minister, Malcolm Turnbull, to breath fresh life into this practice. He was a lawyer who had previously been the Chairman of the Australian Republican Movement. In responding to a Written Question on Notice, Turnbull informed the Australian Parliament on 7 February 2018 that:

*The practice of the College of Arms in England granting armorial bearings to Australians is well established as one way that Australians can obtain heraldic insignia if they wish to do so.*



Figure 8: Left: Arms of Honourable Dame Marie Bashir; right: Arms of the Honourable General David Hurley in Government House, Sydney. Photographs by the author.

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*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>33</sup>*

In addition to muddying the sovereignty waters, Prime Ministers Turnbull and Albanese, in an apparent ministerial exercise of the Royal Prerogative of Australia, recognised as legitimate the acquisition of arms by an act of self-adoption. This statement gave us the worst of both worlds. It implicitly declined to create an Australian heraldic authority whilst at the same time allowing some role for a foreign heraldic authority (whose own sovereign makes no claim to jurisdiction over Australia) and virtually free rein for those who want to adopt arms. Viewed from another perspective, the statement merely puts arms designed by the Kings of Arms of England on the same level as those of local artists, graphics studios and heraldry specialists in designing coats of arms for Australians.

A referendum on the conversion of the form of government from monarchy to republic having failed in 1999, little has happened in the intervening years. The traditionally republican Labour Party, however, was returned to Government in May 2022 and, alert to the opportunities it saw in an anticipated change of monarch, the new Government commenced preparation for another referendum by the appointment of an Assistant Minister for the Republic. None of this is a rejection of our British heritage or the law (including the Law of Arms) which we have inherited from England. Nor is it a rejection of grants to Australians by the heraldic officers of the Queen of the United Kingdom for England or Scotland acting clearly and exclusively in her name, and not in the name of the Queen of Australia, whose authority they do not have.

The acknowledgement of the right to assume arms validates the longstanding practice of the Australian Heraldry Society which has been exercised at the highest level by State Governors and also by citizens, including the prelates of the Catholic Church. Having a generations old family and professional connection with the hierarchy of the Catholic Church in Australia, my firm has acted for the Church since the 1850s. My first introduction to Church heraldry was a request in 1960 for assistance in the design of the arms of the newly created Australian Episcopal Conference of the Roman Catholic Church, now the Australian Bishops Conference (**Figure 9**). Thereafter there was a 35 year hiatus until I received my first commission from a bishop which was the beginning of what is now a thriving practice conducted by the Ecclesiastical Working Party of the Australian Heraldry Society, which designs the arms of almost every newly appointed bishop of the Australian Church, as well as others from New Zealand and Oceania (**Figure 10**).

The work of the Society is greatly assisted by the participation of the eminent American Catholic priest heraldist, Father Guy Selvester, and a Salvationist digital artist, Sandy Turnbull. By and large, the adoption of arms by prelates and Church bodies is evidenced by the execution and registration of civil law Deeds Poll which are also canonical acts under ecclesiastical law.<sup>34</sup>

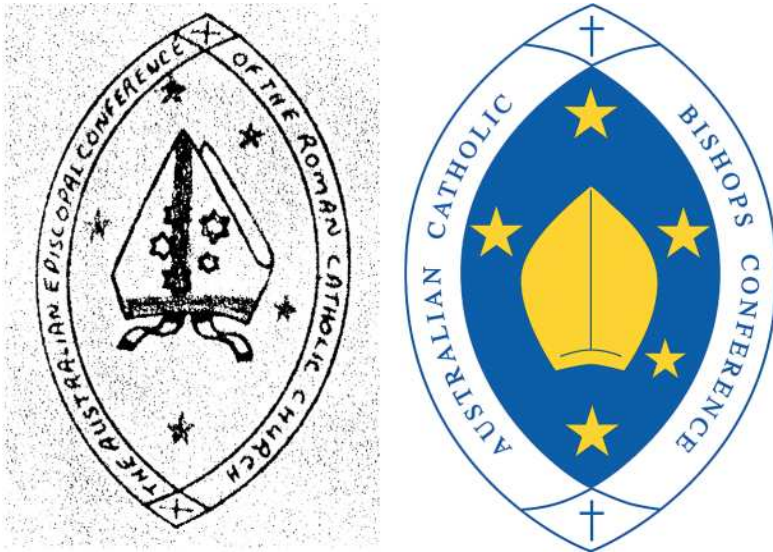


Figure 9: Left: Design for seal of the arms of the Australian Catholic Bishops Conference by the Author; right Seal of the arms of the Australian Catholic Bishops Conference in current usage, Wikimedia Commons.

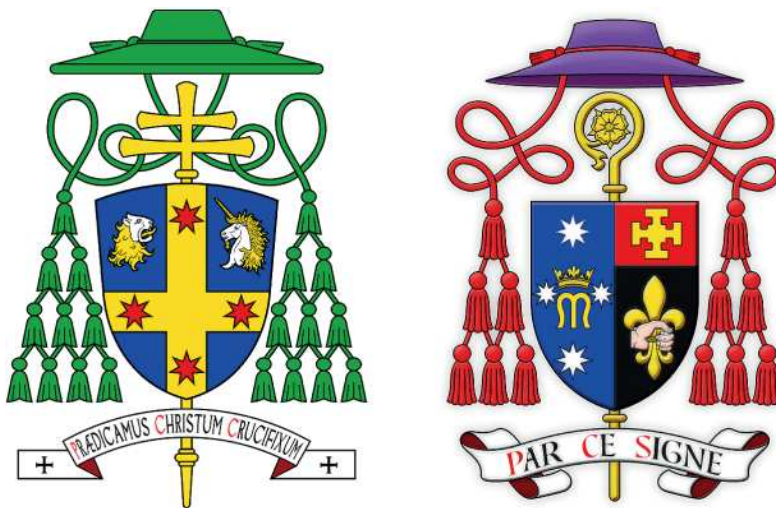


Figure 10: Arms designed by the author. Left: Arms of Archbishop Peter Comensoli of Melbourne; right: arms of Monsignor Harry Entwistle.

## MALTA AND AUSTRALIA

<sup>1</sup> Encyclopaedia Britannica: *Commonwealth* (2022). The last two countries to join the Commonwealth, Rwanda and Mozambique, have no historical ties to the British Empire. This paper was delivered before the death of Queen Elizabeth II and the accession of King Charles III.

<sup>2</sup> *Imperial Conference, 1926. Summary of Proceedings*: Journals of the [New Zealand] House of Representatives. Wellington. Session I, Appendix, A-06. 1927.

<sup>3</sup> The complete name of the Order is the Sovereign Military Hospitaller Order of Saint John of Jerusalem, of Rhodes and of Malta.

<sup>4</sup> Groupings of members of the Order according to the languages they spoke.

<sup>5</sup> As of April 2022, 32 Letters Patent granting arms and 20 Certificates of Registration of arms granted or certified by a foreign state-authorised body had been registered in the national Register of Arms of Malta: Government Gazette of Malta 20,842 dated 22 April 2022, pp. 7186–7218. In each case, the grant or registration was effected before the amending legislation and was confirmed contemporaneously with the gazettal of the coming into effect of the *Heraldry and Genealogy Regulations, 2021* on 24 January 2022. All of these grants were reconfirmed by the Chief Herald of Malta on 24 January 2022 following those changes.

<sup>6</sup> *Mabo v Queensland (No 2)*, High Court of Australia, [1992] HCA 23, 175 CLR 1 (3 June 1992).

<sup>7</sup> Emblem and Public Seal of Malta Act 1975 (Chapter 254), section 2.

<sup>8</sup> Government Gazette of Malta 20.219 dated 25 June 2019, pp. 18,832 in the style “Lt Colonel Dr Chev. the Count Charles A. Gauci, OLM, KHS, MD, FRCA, FIPP, FPPMRCA, FSA.Scot, RAMC (Retd).”

<sup>9</sup> Cultural Heritage (Amendment) Act, 2021 (No. XLI of 2021), Article 5(a)(ii).

<sup>10</sup> Cultural Heritage Act, 2002 (Chapter 445), Article 55 (see footnote 10)

<sup>11</sup> Government Gazette of Malta L.N. 489 of 2021; S.L. 445.07; L.N. 10 of 2019 dated 25 June 2019, pp. 18,832.

<sup>12</sup> Letter dated 31 January 2022 from Dr José Herrera, Minister for the National Heritage, the Arts and Local Government addressed to “Dr. Charles A Gauci, Count Gauci, Chief Herald of Malta”.

<sup>13</sup> Government Gazette 22 April, 2022, 7157, GN No. 417.

<sup>14</sup> Regulation 1 (2).

<sup>15</sup> <https://legislation.mt/eli/cap/251/eng/pdf>

<sup>16</sup> *Correspondence and Report of the Commission appointed to enquire into the claims and grievances of the Maltese Nobility presented to both Houses of Parliament by Command of Her Majesty (C.-2033.)*, May 1878,

<sup>17</sup> Constitution of Ireland, 1939, Article 40 (2).

<sup>18</sup> Regulation 12

<sup>19</sup> Regulation 8 (4) and (5)

<sup>20</sup> Regulations 8 and 13

<sup>21</sup> Regulation 14

<sup>22</sup> Constitution of Malta 1964, section 5.

<sup>23</sup> Regulation 17.

<sup>24</sup> Government Gazette 22 April, 2022, 7157, GN No. 417, 7157.

<sup>25</sup> Government Gazette 20,842 dated 22 April 2022, 7186–7218.

<sup>26</sup> *Ibid*, 7218

<sup>27</sup> Statute of Westminster Adoption Act 1942.

<sup>28</sup> Royal Style and Titles Act 1953, No. 32.

<sup>29</sup> Royal Style and Titles Act 1973, No. 114.

<sup>30</sup> Australia Act 1986.

<sup>31</sup> Peter Rush, Assistant Secretary, Awards and Culture Branch, Department of the Prime Minister and Cabinet to Geoff Kingman-Sugars, letter dated 23 June 2006 (copy in possession of the author);

<sup>32</sup> Hansard (House of Representatives) 07.02.2018, 700.

<sup>33</sup> Hansard, House of Representatives, 07.02.2018, 700. This statement reinforced statements to the same effect from the Department of Prime Minister and Cabinet, the earliest recorded of which is a letter dated 23 June 2006 from the then (and continuing) Assistant Secretary, Awards and Culture Branch, DPMC to Geoff Kingman-Sugars (copy in the possession of the author courtesy of Me Kingman-Sugars).

<sup>34</sup> Acknowledgements (in alphabetical order): Dr Paul Fox, Dr Charles Gauci, Chief Herald of Malta, Laird Sky, Sandy Turnbull.