

WHAT IS THE STATUS OF THE FLAG OF THE ABORIGINAL PEOPLES OF AUSTRALIA?

There are many flags of Australia – but only one Australian National Flag.



The Australian Flag was the first flag ever chosen in an open public competition, and flew from 1901 on September 3 (officially proclaimed as “*Australian National Flag Day*” to “*commemorate the day in 1901 on which the Australian national flag was first flown*”)



The ‘Australian Aboriginal Flag’ was appointed as the “*flag of the Aboriginal peoples of Australia*” on 14 July 1995*

On 25 January 2022, it was announced that the Aboriginal Flag copyright had been transferred to the Commonwealth. As part of the copyright transfer, Harold Thomas retains his moral rights over the flag; and also, Carroll and Richardson Flagworld remain the exclusive licensed manufacturer and provider of Aboriginal Flags and bunting.

What is the background to this announcement?

Section 5 of the Flags Act 1953 (headed “Other Flags”) provides that “*The Governor-General may, by Proclamation, appoint such other flags and ensigns of Australia as he or she thinks fit.*” In 1967 pursuant to this provision, the Australian White Ensign was proclaimed to be the ensign of the Royal Australian Navy, and in 1982 the Royal Australian Air Force ensign was proclaimed to be the RAAF ensign. It was also under this provision that the ‘Australian Aboriginal Flag’ was appointed as the “*flag of the Aboriginal peoples of Australia*” on 14 July 1995. (It appears that this step was taken without consulting or acknowledging the designer of the flag, or even seeking to ascertain his or her identity.)

At the time Pat Dodson (Chair of the Council for Aboriginal Reconciliation) noted that: “*Official recognition doesn’t mean that these flags have equal status to the national flag,*

still less supplant it [emphasis added] ... It does not create 'nations within a nation'. It does mean that the Aboriginal and Torres Strait Islander flags –among the most popular and recognisable flags in Australia –have legal status and protection... Most importantly, the Government's decision says to Aboriginal and Torres Strait Islander people: 'You are a valued and unique part of the fabric of our nation'" (Sydney Morning Herald 6 July 1995.

Not all flags in Australia are established under the *Flags Act 1953*. In 1995, the Commonwealth Government estimated that there were over twenty other official flags. Official flags may be established in a number of ways including by Commonwealth, State or Territory legislation, by legislative instrument, by proclamation or by the use of the Royal Prerogative. These official flags include the Australian Defence Force Ensign, the Australian Federal Police Flag, the Customs Flag, the Civil Air Ensign, the Norfolk Island Flag, the Flags of the States and the State Governors, the Flags of the Northern Territory and the ACT, the Governor-General's Flag and the Queen's Personal Flag.

The Australian Government advises that *"The Australian National Flag takes precedence in Australia over all other flags when it is flown in company with other flags... it should be flown in the position of honour."* Further, the official order of precedence for flags flown in the Australian community is:

- *Australian National Flag
- *national flag of other nations
- *state and territory flags
- *other Australian flags prescribed under the *Flags Act 1953* (eg the Australian Aboriginal and Torres Strait Islander Flags and Defence ensigns)
- *other ensigns and pennants (eg from local government, Commonwealth, state and territory agencies, and non-government organisations)

Because of a lack of awareness of flag protocol, there are many breaches of flag etiquette in Australia. For example, some seem to believe that the Australian Aboriginal Flag is an alternative national flag, with the same status as the Australian Flag.

As noted, the proclamation under the *Flags Act* did not affect the rights of the copyright holder, established by the Federal Court in 1997 to be Mr Harold Thomas. However the Commonwealth then negotiated with Mr Thomas to ensure that any Australian was entitled to fly or display the Australian Aboriginal Flag without permission. This left unresolved the issue of commercial reproduction of the Australian Aboriginal flag, which was addressed with the announcement of the transfer of copyright to the Commonwealth.

(*The Commonwealth owns the copyright of the Australian Aboriginal Flag. Carroll & Richardson-Flagworld Pty Ltd is the exclusive licensed manufacturer and provider of the Australian Aboriginal Flag on flags and pennants, banners and bunting. Requests for permission to reproduce the Australian Aboriginal Flag on those mediums should be addressed to Carroll & Richardson-Flagworld Pty Ltd.

Note that also in 1995, the Torres Strait Islander Flag was proclaimed as the *"Flag of the Torres Strait Islander people of Australia"*. The Torres Strait Island Regional Council holds copyright in the Torres Strait Islander Flag. Requests for permission to reproduce the Torres Strait Islander Flag should be addressed to the Records Officer of the Island Regional Council.)

For further information, go to www.australianflag.net.au .