
Morrison government in talks to buy rights to Indigenous flag



Indigenous Australians Minister Ken Wyatt is adamant the government will respect all parties and he rejects calls for the government to compulsorily acquire rights to the flag

By Paige Taylor

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The Morrison government is in negotiations to potentially buy the commercial rights to the Aboriginal flag from non-Indigenous licensees and the flag's Indigenous designer, in a move that would allow the design to be used freely.

The vexed issue of who can use the Aboriginal flag design may be resolved in a series of voluntary and commercial transactions that ultimately leave the commonwealth as the copyright owner.

The Australian has learned this is one of several options being considered as the Morrison government quietly begins “delicate and sensitive” talks with non-Indigenous licensees and Harold Thomas, the Indigenous artist who designed the flag in 1971.

If the commonwealth is to become the copyright holder, it must first compensate the licence holders, then purchase the copyright from Mr Thomas.

Representatives for Mr Thomas and the licensees held their first meeting with senior bureaucrats from the National Indigenous Australians Agency in an online environment on August 28.

This followed months of preliminary discussions.

Indigenous Australians Minister Ken Wyatt, who is responsible for the NIAA, is adamant the government will respect all parties and he rejects calls for the government to compulsorily acquire rights to the flag.

The process of exploring options for free use of the flag began in June 2019 when Mr Wyatt met Mr Thomas, whose copyright over the flag design was recognised by the Federal Court in 1997. “I commit to doing everything I can to bring about a resolution that respects not only the artist of the flag, but a resolution that respects the rights, enterprise and opportunity of all Australians,” Mr Wyatt writes in an online essay for *The Australian*.

In June 1995, then governor-general Bill Hayden proclaimed the Aboriginal flag a “flag of significance to the Australian nation”. This means under the Flags Act of 1953, anyone is free to display the Aboriginal flag.

However, Mr Thomas is entitled to strike deals with businesses to reproduce his design and he has done so. A parliamentary hearing last November was told Mr Thomas had three commercial agreements: one with Flagworld for the manufacture and sale of the Aboriginal flag, another with Gifts Mate for the sale of products bearing a reproduction of the flag, and a third deal with WAM Clothing to reproduce the flag on clothing.



June 1995, then governor-general Bill Hayden proclaimed the Aboriginal flag a ‘flag of significance to the Australian nation’. Picture: Scott Powick

This year, AFL star Buddy Franklin followed the correct legal steps to feature the flag on his line of clothing, paying fees to Mr Thomas’s chosen licensee, but the Sydney Swans forward faced a backlash for dealing with a non-Indigenous company that made profits from the Indigenous design. Franklin was stung by the criticism and withdrew the clothing from sale.

A Free the Flag movement has gained momentum in recent months and on Thursday night the Senate was predicted to establish a select committee to examine licensing

arrangements for the Aboriginal flag, including compulsory acquisition.

Mr Wyatt said a parliamentary inquiry would not be helpful and “we should not bully our way to a satisfactory outcome”.

“We do not want to see efforts of the government, which are currently under way to resolve the matter and address community concern, jeopardised in any way,” Mr Wyatt writes.

“In doing so, we all need to be very aware of the role of government; particularly in relation to the rights of individuals, and in this instance the rights of an Indigenous artist who is protected by Australian law.

“Legal protections for copyright speaks to our nation’s entrepreneurship and the ambition of economic empowerment that we know is fundamental to providing greater opportunities and security for Aboriginal and Torres Strait Islander people.

“We must delicately balance the wishes of all Australians for free use of the Australian Aboriginal Flag with the law of our land, designed to uphold and protect the intellectual property of every Australian.

“To put on trial individuals who are exercising their legal rights and asking them to act in good faith presents a risk to the protections we all hold dear. Those who seek to force an outcome are disrespecting both the copyright holder and the basis in which we legally protect the intellectual property of Australians.”

The NIAA is prepared for the possibility that its long-planned talks with representatives of Mr Thomas and the licensees may not result in the copyright for the flag design resting with the commonwealth. The Australian has been told another option that parties may be prepared to consider is for the copyright to be held by a statutory body or other organisation. In the Torres Strait, the copyright for the island flag — designed by the late Bernard Namok of Thursday Island — is held by the Torres Strait Island Regional Council.

Paige Taylor

Indigenous Affairs Correspondent, Wa Bureau Chief