

Emblems of Queensland Bill 2004

Explanatory Notes

General Outline

Objective of the Bill

The objective of the Bill is to effect the adoption of the Barrier Reef Anemonefish (*Amphiprion akindynos*) as the State's official aquatic emblem and to modernise statutory provisions regulating the assumption, use or publication of the State arms and badge.

Reasons for the Objectives and how they will be Achieved

Queensland currently has four State emblems: the Cooktown orchid (the floral emblem); the koala (the faunal emblem); the brolga (the bird emblem); and the sapphire (the gem emblem) as prescribed by the *Badge, Arms, Floral and Other Emblems of Queensland Act 1959*. However, despite its unique and diverse aquatic life, Queensland does not have an aquatic emblem.

A community consultation process was undertaken from 30 May to 19 July 2004 to assist in choosing a species suitable for adoption as the State aquatic emblem.

Following this process and further consultation with Aboriginal and Torres Strait Islander community representative bodies on potential cultural sensitivities with particular species, the Barrier Reef Anemonefish (*Amphiprion akindynos*) was selected as the State aquatic emblem.

As the adoption of the State aquatic emblem requires legislative amendment, the modernisation of the *Badge, Arms, Floral and Other Emblems of Queensland Act 1959* was proposed. Accordingly, the Bill modernises the provisions of the Act which prohibit the unauthorised assumption, use or publication of the State arms and badge and inserts a new provision effecting the adoption of the Barrier Reef Anemonefish as the State aquatic emblem.

The modernisation of the Act has resulted in some minor modifications to the position of the original Act to align the Bill with current drafting practice and reflect the contemporary environment.

Administrative Costs to Government of Implementation

There will be minimal costs to the Government of implementing this legislation. Printed and electronic publications will be progressively updated to reflect the adoption of the aquatic emblem; costs will be met from within existing budgetary allocations.

Consistency with Fundamental Legislative Principles

Although the Bill was drafted with regard to fundamental legislative principles, it is noted that two clauses may be considered not to have sufficient regard to the rights and liberties of individuals as they effectively reverse the onus of proof.

Clause 4(2) of the Bill retains a provision of the original Act that requires an accused person to prove lawful authority to assume, use or publish the State arms or badge. Although this provision reverses the onus of proof, it accords with the common law principle that the burden of proving or negating a state of affairs should rest on the person who has superior or peculiar knowledge of the essential facts. In this situation, it would be within the knowledge of an alleged offender to prove the existence of a lawful authority, whereas it would be difficult for the State to prove such an absence, potentially complicating the prospects of any future prosecutions.

Clause 5 of the Bill requires executive officers of a corporation to ensure the corporation complies with the clause relating to the unauthorised assumption, use or publication of the State arms or badge. As such, if a corporation commits an offence under the Bill, each executive officer commits the offence of failing to ensure that the corporation complies with the clause. While such provisions are considered to reverse the onus of proof, an executive officer liability is considered necessary in this instance to ensure that individuals are unable to escape prosecution by acting through corporations which would bear legal responsibility for their actions. A defence against liability is provided for under the Bill, if executive officers are able to prove that they took all reasonable precautions and exercised due diligence to ensure the corporation complied with the clause or that they were not in a position to influence the conduct of the corporation in relation to the offence. It is also noted that the Bill

alters the situation currently in operation under the Act by limiting liability to executive officers of corporations, rather than any person connected with an unincorporated club, body or association, and providing less stringent requirements in establishing a defence against liability.

Consultation

All Queenslanders were afforded the opportunity to have input into the selection of the State's aquatic emblem through the community consultation process undertaken from 30 May to 19 July 2004. The public was able to nominate one of eleven species shortlisted by an expert panel or to nominate any other species of their choice.

Representatives of the Queensland Museum, the Indigenous community, James Cook University, the University of Queensland, the Australian Marine Conservation Society, the Freshwater Fishing and Stocking Association of Queensland, Sea World, the Australian Underwater Federation, the Queensland Seafood Industry Association, Sunfish Queensland and the Museum of Tropical Queensland participated on the expert panel which shortlisted the species for consideration as the aquatic emblem.

Aboriginal and Torres Strait Islander representative bodies were consulted regarding potential cultural sensitivities with the three species that received the most nominations from the public.

Notes on Provisions

Part 1 Preliminary

Clause 1 states the short title of the Bill.

Clause 2 states that words used in the Bill are defined in the dictionary at Schedule 5.

Part 2 State arms, State badge and State flag

Clause 3 states that descriptions of the State arms, State badge and State flag are set out in Schedule 1, Schedule 2 and Schedule 3 respectively.

Clause 4 prohibits the unauthorised assumption, use or publication of the State arms or State badge. A person is prohibited from assuming, using or publishing the State arms or State badge in connection with a relevant enterprise, namely activities performed in connection with a club or association, business, profession, trade or calling unless lawful authority has been obtained. Lawful authority may be obtained from the Queen, the Governor in Council, the responsible Minister, an Act or a law of the Commonwealth. A person is also prohibited from otherwise assuming, using or publishing the State arms or State badge without reasonable excuse.

The prohibition on the assumption, use or publication of the State badge does not extend to instances where the State badge appears as part of the State flag; there are no restrictions imposed on the flying of the State flag and all Queenslanders are encouraged to do so. However, the prohibition on assumption, use or publication of the State arms or State badge includes anything that depicts or substantially resembles the State arms or State badge. If a person contravenes this clause, they are liable to a maximum fine of 50 penalty units.

Clause 5 requires executive officers of a corporation to ensure that the corporation complies with the Bill. Accordingly, if a corporation commits an offence under the Bill, each executive officer will have committed the offence of failing to ensure that the corporation complies with the clause. However, the clause provides a defence against liability for executive officers if they are able to prove that they took reasonable precautions and exercised due diligence to ensure the corporation complied with the clause, or that they were not in a position to influence the conduct of the corporation in relation to the offence. For the purposes of the clause, an executive officer means any person concerned with or who takes part in the management of the corporation, whether or not they are a director or their position is given the name of executive officer.

Clause 6 provides that offences against the Bill may be prosecuted summarily under the *Justices Act 1886* on the complaint of a person authorised in writing by the responsible Minister to make the complaint. Further, a person is able to be charged for one or more complaints during

the period that the offence continues, and is liable to a continuing penalty of 10 penalty units per day for each day the offence continues.

Clause 7 provides that the responsible Minister is able to delegate the Minister's authority to authorise assumption, use or publication of the State arms or badge to an appropriately qualified officer of the administering department.

Clause 8 applies where an Act prescribes that an armorial insignia be used on a document or seal, or for any other purpose, as a mark of authority relating to the State. The clause provides that the use of a representation of the State arms for this purpose would comply in law with that prescription.

Part 3 Other State emblems

Clause 9 states that other State emblems are set out in Schedule 4.

Part 4 General

Clause 10 provides the Governor in Council with a regulation-making power under the Bill.

Part 5 Repeal and transitional provisions

Clause 11 repeals the *Badge, Arms, Floral and Other Emblems of Queensland Act 1959*.

Clause 12 provides that a reference to the repealed Act, either in another Act or in any other document, may be taken as a reference to the Bill if the context permits.

Clause 13 provides for the continued validity of lawful authorities that were granted under the repealed Act. Accordingly, following commencement, any lawful authority granted under the repealed Act is taken to be a lawful authority under clause 4 of the Bill.

Schedule 1 – State arms

Schedule 1 sets out the heraldic and monochrome pictorial description of the State arms. This description reflects the arms which were assigned to the State by Royal Warrant in 1977.

Schedule 2 – State badge

Schedule 2 sets out the heraldic and monochrome pictorial description of the State badge. This description reflects the badge which was assigned to the State by notification in the Government Gazette in 1979.

Schedule 3 – State flag

Schedule 3 sets out a written and monochrome pictorial description of the State flag. This description reflects the flag which was assigned to the State by notification in the Government Gazette in 1876.

Schedule 4 – Other State emblems

Schedule 4 sets out the other emblems of the State, namely the floral emblem (the Cooktown orchid); the faunal emblem (the koala), the bird emblem (the brolga), the gem emblem (the sapphire) and the aquatic emblem (the barrier reef anemonefish).

Schedule 5 – Dictionary

Schedule 5 defines the terms used in the Bill.