

Aboriginal flag quietly turns 50 amid last-minute date change and copyright dispute

Federal government now says true birthday of the 'powerful design' is 9 July, despite being celebrated for many decades on 12 July



The red, black and yellow Aboriginal flag first flown at a land rights rally in Adelaide in July, 1971.

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The Aboriginal flag just turned 50, but it's an anniversary that has so far passed without fanfare.

A last-minute date change and an ongoing copyright dispute appear to have stifled any celebrations of the well-known symbol synonymous with Indigenous rights campaigns.

The red, black and yellow flag was first flown at a land rights rally in Adelaide in July, 1971. For many decades the anniversary of its creation by Luritja artist Harold Thomas has been celebrated on 12 July. But late on Friday, the federal government released a short statement acknowledging that date is wrong. The flag's true birthday is 9 July.

“Over the last half-century, [the flag] has grown in prominence and stands as an enduring symbol of Aboriginal strength, representing Aboriginal people and their ongoing spiritual connection to the land,” the minister

for Indigenous Australians, Ken Wyatt, said. “Harold Thomas, a Luritja man from central Australia, gave all Australians a gift with his powerful design that helped Aboriginal Australians unite under a single flag.

“From flying over the Aboriginal tent embassy in Canberra to Cathy Freeman wrapping herself in it after her win at the 2000 Sydney Olympics, and being carried at countless marches for Aboriginal rights, the flag has become inextricably linked with our history and the colours and design have become iconic.”

But below that was a “note to media”: “The date of the first flying of the flag is incorrectly recorded as 12 July in a number of places, including the 2008 Explanatory Statement for the Official Proclamation of the Aboriginal Flag. The Australian Government is working to have these updated to reflect the true anniversary of 9 July.”

So the iconic flag, seen in the crowd at Ash Barty’s legendary Wimbledon win on the weekend, just had its 50th birthday on Friday and nobody was there to celebrate. Why not?

Copyright negotiations continue

The symbol’s recent past has been full of controversy.

In 1997 the federal court officially recognised Harold Thomas as the design’s sole author. As such, Thomas can grant licences to other parties to make copies of the flag, or refuse permission entirely.

In November 2018, Thomas granted an exclusive licence to a non-Indigenous company, WAM Clothing, to reproduce the flag design on clothing, physical and digital media. WAM Clothing issued infringement notices to the AFL and NRL, as well as many small non-profit Aboriginal organisations for their past use of the design.

Amid mounting distress and confusion over who was able to use the design freely, a parliamentary inquiry was set up to look into the copyright and licensing arrangements. Its final report labelled WAM Clothing’s actions as “heavy-handed”.

“WAM Clothing’s conduct, in particular its approach to enforcing its rights as a licensee, was raised throughout the course of the inquiry,” the report, released in October last year, said.

WAM Clothing is part-owned by Ben Wooster, whose previous company, Birubi Art, was fined a record \$2.3m by the federal court after finding it had breached consumer law by selling fake Aboriginal art.

The minister for Indigenous Australians, Ken Wyatt, has long said his agency is in “quiet discussions” with parties involved, including Thomas, about ways to resolve the issue but has said it is “extremely complicated”.

These “negotiations” have been under way for more than two years.

“The Australian government is continuing its negotiations with Mr Thomas and the licensees of the Aboriginal flag to resolve public concerns relating to its use, so that all Australians can freely celebrate and honour the integrity of the flag,” Wyatt said on Friday.

The lack of resolution has been a source of frustration to those who say the longer the issue is drawn out, the deeper the damage to the Aboriginal flag’s “deep and intrinsic significance to Aboriginal people and their lives”.

“At present, the extent to which the distress and anguish voiced by many Aboriginal people about the flag, its use and its future are being weighed in negotiations is opaque,” the parliamentary report said.

Labor senator Malarndirri McCarthy said she was deeply disappointed by the lack of progress to date.

“I had hoped this would be sorted by the 50th anniversary of the Aboriginal flag but the copyright issues surrounding the reproduction of the Aboriginal flag remain. I’m deeply disappointed as chair of the Senate Select Committee on the Aboriginal Flag at the failure to resolve this, especially by the 50th anniversary.

“There has been little update from minister Wyatt and the NIAA on where negotiations are at, despite a Senate inquiry into the matter and questions put at Senate Estimates.”

Most submissions to the parliamentary inquiry suggested that the preferred outcome was one in which Thomas voluntarily allowed the commonwealth government to acquire the copyright and/or existing licences through a process of negotiation. But there was no clear consensus about what to do in the event that a negotiated outcome could not be achieved.