

AUTONOMOUS REGION OF BOUGAINVILLE

Bougainville Flag, Emblem and Anthem (Protection) Bill 2018

EXPLANATORY NOTE

This Bill is intended to strengthen the legal protection of the Bougainville flag, emblem and anthem. While the flag and the emblem are presently covered by the *Provincial Symbols Act 1978* (a law of the North Solomons Provincial Government), the provisions are outdated and the penalties for breaches of the Act are inadequate. Furthermore, no provision is made in the 1978 law for the Bougainville anthem.

PART 1 — PRELIMINARY

Clauses 1 and 2 are formal.

PART 2 — BOUGAINVILLE FLAG

Clause 3 declares that the flag described and depicted in Schedule 1 of the Act is the Bougainville flag. This is the same flag as was declared to be the provincial flag in the 1978 law.

Clause 4 empowers the Bougainville Executive Council to make regulations prescribing rules to be observed and the etiquette to be followed when flying or using the Bougainville flag. It is not proposed that such rules be adopted at this time.

Clause 5 creates 2 separate offences involving the Bougainville flag. The first is the offence of displaying, destroying or damaging the flag with the intention of dishonouring it, the maximum penalty for which is a K10,000 fine. There is no corresponding offence under the 1978 law.

The second offence is the use of the flag for a commercial or advertising purpose, or in a trademark or logo, without the prior written approval of the responsible Minister. The offence also covers the use of any part of the flag, or an image or representation of the flag. Any person wishing to reproduce an image of the flag on, for example, an item of clothing or footwear for sale will be required to first obtain the approval of the Minister. The maximum fine for this offence is K100,000 for corporations and K10,000 for individuals. Under the corresponding provision in the 1978 law, the maximum penalty is a K50 fine.

PART 3 — BOUGAINVILLE EMBLEM

Clause 6 declares that the emblem described and depicted in Schedule 2 of the Act is the Bougainville emblem. This is similar to the emblem that was adopted as the provincial emblem in the 1978 law, however it incorporates the change adopted in 2017 of including a depiction of the bundle of sticks used for striking the *garamut*. The words 'Autonomous Region of Bougainville' are used (rather than 'Autonomous Bougainville Government') to facilitate use of the emblem by all official organs (following the practice adopted at the National level, where 'Papua New Guinea' is used on the National emblem, rather than 'Government of Papua New Guinea').

Clause 7 creates an offence of unauthorised use of the Bougainville emblem, the maximum penalty for which is a fine of K100,000 for corporations and K10,000 for individuals. Under the corresponding provision in the 1978 law, the maximum penalty is a K50 fine.

PART 4 — BOUGAINVILLE ANTHEM

Clause 8 declares the song *My Bougainville* to be the Bougainville anthem. The words and music are set out in Schedule 3 of the Act. This will be the first time there has been official recognition of this song as the Bougainville anthem.

Clause 9 creates an offence of dishonouring the Bougainville anthem, the maximum penalty for which is a fine of K10,000.

PART 5 — MISCELLANEOUS

Under **Clause 10**, the consent of the Principal Legal Adviser will be required for the prosecution of any offence under the Act. This is to guard against the possibility of frivolous prosecutions.

Clause 11 sets out how the officers of a corporation may be held liable for the acts of the corporation.

Clause 12 addresses the constitutional requirement whenever a qualified human right is restricted by an Act. As there are constraints imposed on the right to freedom of expression, the Constitution requires a statement to the effect that the House of Representatives considers that the restriction is necessary.

Clause 13 provides that the Act binds the Autonomous Bougainville Government.

Clause 14 provides general regulation-making power to the Bougainville Executive Council for the purposes of the Act..

Clause 15 repeals the *Provincial Symbols Act 1978*.