

NATIONAL FLAG PROTECTION BILL 2015
(BILL NO. 4 OF 2015)

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BILL NO. 4 OF 2015

A BILL

FOR AN ACT TO MAKE PROVISION FOR THE NATIONAL FLAG OF THE
REPUBLIC OF FIJI AND TO PROVIDE FOR ITS USE AND PROTECTION

ENACTED by the Parliament of the Republic of Fiji—

PART 1—PRELIMINARY

Short title and commencement

- 1.—(1) This Act may be cited as the National Flag Protection Act 2015.
- (2) This Act shall come into force on a date appointed by the Minister by notice in the Gazette.

Interpretation

2. In this Act, unless the context otherwise requires—

“Disciplined Forces” means the Republic of Fiji Military Forces, Fiji Police Force, **Fiji Navy** and Fiji Corrections Service;

“former Flag” means the national flag of the Republic of Fiji in use immediately prior to the commencement of this Act;

“Flag” means the national flag of the Republic of Fiji as declared in accordance with section 4;

“Minister” means the Prime Minister;

“person” means a natural or legal person, including a company or association or body of persons whether corporate or unincorporated; and

“premises” means any land, building, vessel, vehicle, government department, school or place whatsoever.

Objective

3. The objective of this Act is to—

- (a) provide for the declaration of a new Fijian national flag;
- (b) defend the dignity of the Flag;
- (c) reflect Fiji’s status as a truly independent and sovereign nation; and
- (d) promote patriotism.

PART 2—THE NATIONAL FLAG

Declaration of the Flag

4.—(1) The Minister shall by notice in the Gazette declare a flag as the national flag of the Republic of Fiji ~~before 10th October, 2015~~.

(2) ~~Once a declaration has been made by the Minister under subsection (1) then no further declarations can be made under the same subsection.~~

~~(3)~~ (3) The Flag shall be a symbol of the State, the Government and the citizens of Fiji.

~~(4)~~ (4) The Flag shall be the—

- (a) national flag of Fiji for—
 - (i) general use within Fiji or outside of Fiji; and
 - (ii) official purposes internationally; and
- (b) proper national colours to be flown by all Fiji ships and by such other ships as may be authorised from time to time under the Ship Registration Decree 2013.

Respect for the Flag

5. The Flag shall be respected by every citizen of Fiji.

Flying of the Flag

6.—(1) The Flag may be hoisted or displayed ~~on any premises including at~~ any school, home, institution, building or event.

(2) The Flag may be used or worn as part of any attire or costume at any national, sporting or entertainment event, or for everyday use.

(3) The Flag whether displayed on a public or private premises, shall be displayed in a place of prominence.

(4) Subject to section 10 the Flag may be used or displayed for any other purposes in the media.

PART 3—PROHIBITIONS ON THE USE OF THE FLAG

Misuse of the Flag

7.—(1) Any person who uses the Flag or associates the use of the Flag with any action, speech, writing, or any other means, to demean, disrespect or insult the State or the Government ~~or the State, or any member of Government or the general public~~, commits an offence.

(2) Any person who uses the former Flag for any purpose under subsection (1) commits an offence.

Desecration of the Flag

~~8.—Except in accordance with section 12(3), any person who desecrates, or performs other acts including—~~

~~(a) tearing;~~

~~(b) burning; or~~

~~(c) throwing;~~

~~of the Flag, commits an offence.~~

Desecrating, altering or dishonouring the Flag

8.9. Any person who—

(a) for the purposes of dishonouring ~~or insulting~~ the Flag, ~~or the State~~, modifies the Flag by placement of any emblem, letters, slogans, words or representation on it; or

(b) in or within view of any public place, uses, displays, destroys, ~~burns, mutilates, tears~~ or damages the Flag in any manner with the intention of dishonouring it,

commits an offence.

Actions promoting violence

9.10. Any person who displays, destroys, damages or burns the Flag—

(a) with the intent to incite violence or any breach of peace; or

(b) under circumstances in which that person knows it is reasonably likely to ~~produce~~ ~~incite or promote~~ violence or a breach of peace,

commits an offence.

Commercial use of the Flag

10. 11.—(1) A person shall not use the Flag or any part of the Flag—

- (a) in any trademark or logo;
- (b) for any advertising purpose; or
- (c) for any commercial purpose,

except with the prior written approval of the Minister.

(2) Any person who uses the Flag for any purpose set out under subsection (1), without the prior written approval of the Minister, commits an offence.

Production and disposal of the Flag

11. 12.—(1) It shall be an offence to produce, depict, engrave or emboss the Flag or any part of the Flag onto any commercial medium or merchandise, uniform, attire or any other wear for that matter, unless authorised by the Minister in writing.

(2) Notwithstanding subsection (1), a patch of the Flag or a badge depicting the Flag, may be affixed or printed onto the uniforms of Disciplined Forces.

(3) Where the Flag is in such condition that renders it no longer fit for display or use, the Flag shall be disposed of in a dignified way by burning in private.

PART 4—FLYING OF THE FLAG AND CHANGES TO THE FLAG

Flying the Flag at half-mast

12. 13. The Flag shall be lowered to half-mast as a token of mourning and to commemorate the funerals of the following—

- (a) the President;
- (b) the Prime Minister; and
- (c) such other persons, as may be approved by the Minister from time to time.

Other flags

13. 14. This Act shall not affect the flying of other flags or ensigns belonging to the Disciplined Forces for national or State purposes.

Changes to the Flag

14. 15.—(1) Where the Flag has been declared in accordance with section 4, that Flag may only be amended or altered in accordance with the procedures prescribed in this section and may not be amended or altered in any other way.

(2) An amendment or alteration of the Flag must be expressed as a Bill for an Act to amend this Act.

(3) A Bill under subsection (2) must be passed by Parliament in accordance with the following procedure—

- (a) the Bill is read three times in Parliament;

- (b) at the second and third readings, it is supported by the votes of at least three quarters of the members of Parliament;
- (c) an interval of at least 30 days elapses between the second and third readings and each of those readings is preceded by full opportunity for debate; and
- (d) the third reading of the Bill in Parliament does not take place until after the relevant committee of Parliament has reported on the Bill to Parliament.

(4) If a Bill is passed by Parliament in accordance with subsection (3), then the Speaker shall notify the President accordingly, who shall then refer the Bill to the Electoral Commission, for the Electoral Commission to conduct a referendum for all registered voters in Fiji to vote on the Bill.

(5) The referendum for the purposes of subsection (4) shall be conducted by the Electoral Commission in such manner as prescribed by written law.

(6) The Electoral Commission shall, immediately after the referendum, notify the President of the outcome and shall publish the outcome of the referendum in the media.

(7) If the outcome of the referendum is that three-quarters of the total number of the registered voters have voted in favour of the Bill, then the President must assent to the Bill, which shall come into force on the date of the Presidential assent or on such other date as prescribed in the Bill.

PART 5—GENERAL OFFENCES AND PENALTIES

General offences and penalties

15. 16. Any person who contravenes or fails to comply with any provision under this Act commits an offence and shall be liable upon conviction—

- (a) in the case of a natural person – to a fine not exceeding ~~\$20,000~~ \$5,000 or to a term of imprisonment not exceeding ~~10~~ 3 years, or to both; or
- (b) in the case of a company, association or body of persons, non-governmental organisation, Statutory Authority or entity – to a fine not exceeding ~~\$500,000~~ \$50,000 and in the case of a continuing offence, to a fine not exceeding \$5,000 per day, and for the Director, Chief Executive Officer, Manager or officer in charge for the time being, to a fine not exceeding ~~\$100,000~~ \$10,000 or to a term of imprisonment not exceeding ~~10~~ 5 years, or to both.

Burden of proof

16. 17. In the prosecution for an offence under this Act, the onus of proof shall be on the Defendant to prove his or her innocence.

PART 6—MISCELLANEOUS

Rules and Regulations

17. 18.—(1) The Minister may, from time to time, make Rules or Regulations prescribing the—

- (a) forms, procedures and fees to be used or levied under this Act;
- (b) days or occasions during which the Flag shall be flown;
- (c) manner in which the Flag is to be flown; and
- (d) standard sizes, proportions and dimensions of the Flag for any or all purposes.

(2) The Minister may by way of notice in the Gazette set out guidelines prescribing the procedures to be followed in flying, handling or using the Flag.

Transitional

18. 19.—(1) Any person using the former Flag at the commencement of this Act—

- (a) in any trademark or logo;
- (b) for any advertising purpose;
- (c) for any commercial purpose; or
- (d) for any manufacturing or production purpose,

shall have 31 days from that date to cease such use.

(2) Any person who contravenes subsection (1) commits an offence.

(3) Notwithstanding subsection (1), any person in possession of—

- (a) any item or attire which depicts the former Flag may continue to use such item or attire; or
- (b) any stock existing immediately prior to the commencement of this Act, which contains merchandise depicting the former Flag may sell such stock until it is exhausted.

Consequential amendments

19. 20.—(1) The Ship Registration Decree 2013 is amended in—

- (a) section 2 by deleting the definition of—
 - (i) “Fiji flag” and substituting with the following new definition—
 - “Fiji flag” means the national flag of the Republic of Fiji declared under section 4 of the National Flag Protection Act 2015;”;

- (ii) “Fiji national colours” and substituting with the following new definition—

“Fiji national colours” means the white ensign of Fiji Navy ships, the dark blue ensign for Fiji Government ships and the red ensign for Fiji ships, as approved by the Prime Minister;” and

- (iii) “National Flag”;

- (b) by deleting “National Flag” and substituting with “Fiji national colours” wherever it appears; and

- (c) deleting the Schedule.

(2) All references to “National Flag” or “Fiji Flag” in all written laws shall be construed as references to the Flag declared in accordance with section 4 of this Act.

NATIONAL FLAG PROTECTION BILL 2015

EXPLANATORY NOTE

(This note is not part of the Bill and is intended only to indicate its general effect)

1.0 BACKGROUND

- 1.1 Fiji gained independence in 1970 and was declared a republic in 1987. Since that time the Fijian Flag has not changed and continues to carry symbols of our colonial past that has been marred by injustice and oppression.
- 1.2 The Union Jack, including the Cross of Saint George and the golden lion on the Coat of Arms are symbols which belong to our former colonial ruler, the United Kingdom.
- 1.3 These symbols are prominently featured on the Fijian Flag and do not represent Fiji's status as a truly independent and sovereign nation and at the same time allude to Fiji being a colony or dependency.
- 1.4 After 45 years it is time to move beyond our colonial connections and adopt a flag that reflects our national aspirations in the 21st century, a new national flag that will represent our nation and resonate with Fijians of our present and future.
- 1.5 A new national flag that will reflect our present state as a nation and will include truly Fijian symbols of identity that we can all honour and defend.
- 1.6 This Bill is intended to provide for the introduction and adoption of the new Fijian Flag (**'Flag'**) and to protect and regulate the use of that Flag.

2.0 PROVISIONS OF THE BILL

- PART 1 Provides for the short title and the commencement provision.
- PART 2 Provides for the declaration of the Flag. The Flag will be declared by the Prime Minister by notice in the Gazette. **and hoisted on 10th October, 2015 at the Independence Day celebrations.**

Part 2 also makes provision for the respect which should be accorded to the Flag by every citizen and states that the Flag may be flown at any public or private place whether it is a school, building, home or at an event.

Additionally, Part 2 provides for the freedom to use the Flag and states that the Flag may be flown or worn as part of an attire or costume at any national, sporting or entertainment event, or for everyday use.

PART 3 Part 3 provides for the prohibitions placed on the use of the Flag. Under Part 3 a person is prohibited from desecrating, altering or dishonouring the Flag.

To further elaborate, Part 3 prohibits the use of the Flag in a manner which may promote violence or any breach of peace. These provisions are envisaged to deter the desecration of the Flag by those seeking to incite violence and disorder by conducting flag burning or tearing at any protests or riots.

Additionally, Part 3 also provides prohibitions on the commercial use of the Flag on trademarks, logos or for any commercial or advertising purpose, unless authorised by the Prime Minister.

Part 3 also prohibits a person from producing, depicting or engraving the Flag on any commercial medium or merchandise without the prior approval of the Prime Minister.

PART 4 Part 4 provides for the flying of the Flag and the procedures through which changes may be made to the Flag. Under this Part the ways in which the Flag may be altered or amended have been set out.

Part 4 also provides for the occasions at which the Flag must be flown or hoisted at half-mast.

PART 5 Part 5 provides for general offences and penalties. Under this Part, the penalties for the offences committed under this Act range from ~~\$20,000~~ ~~\$5,000~~ to ~~\$500,000~~ ~~\$50,000~~ and include a term of imprisonment of up to ~~10~~ 5 years.

Where companies are involved, these penalties **including an additional penalty for any continuing offence** will **also** apply. **Additionally**, the Director, Chief Executive Officer, Manager or officer in charge of these companies at the time the offence was committed **will also be liable to a penalty**.

PART 6 Part 6 provides for miscellaneous provisions. This Part gives the Prime Minister the power to make rules and regulations relating to the Flag and caters for the transitioning of the use of the old to the new Flag.

Part 6 also sets out consequential amendments which make necessary amendments to other laws to ensure their consistency with the adoption of the new Flag.

As per Part 6, amendments are proposed to all written laws which provide for events, State assets, seals or Government forms upon which the Flag must be hoisted or depicted.

Amendments are also proposed for the Ship Registration Decree 2013 which governs the national colours flown by all registered Fiji ships.

Conclusively, to further elaborate under the transitional provisions in Part 6, any person in possession of any stock existing immediately prior to the commencement of this Act, which contains merchandise depicting the former Flag may sell such stock until it is exhausted.

Additionally, any person in possession of any item or attire which depicts the former Flag may continue to use such item or attire.

3.0 MINISTERIAL RESPONSIBILITY

3.1 The Act comes under the responsibility of the Prime Minister.

A. SAYED-KHAIYUM
Attorney-General