

ILLICIT DRUGS CONTROL ACT 2004

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ACT NO. 9 OF 2004



I assent.

[L.S.]

J. I. ULUIVUDA
President

[7th July 2004]

AN ACT

TO REGULATE AND CONTROL THE CULTIVATION, MANUFACTURE,
IMPORTATION, EXPORTATION, SALE, SUPPLY, POSSESSION, AND USE
OF ILLICIT DRUGS AND CONTROLLED CHEMICALS AND FOR RELATED
MATTERS

ENACTED by the Parliament of the Fiji Islands—

PART 1—PRELIMINARY

Short title and commencement

1.—(1) This Act may be cited as the Illicit Drugs Control Act 2004.

(2) This Act comes into force on a date appointed by the Minister by notice in the *Gazette*.

Interpretation

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

“authorised officer” means a person or class of persons appointed under section 29;

“cultivate” includes planting, sowing, scattering the seed, growing, nurturing, tending or harvesting, and also includes the separating of opium, coca leaves, cannabis and its extracts from the plants from which they are obtained; and

“cultivation” has a corresponding meaning;

“document” means any record or information and includes—

- (a) any paper, parchment, or other material used for writing or printing, carrying mark of any type capable of being read;
- (b) any photograph, or any photographic negative, plate, slide, film, or microfilm, or any photo static negative;
- (c) any disc, tape, wire, sound track, card, or other material or device in or on which information, sounds, or other data are recorded, stored, or embodied so as to be capable, with or without the aid of some other equipment, of being reproduced therefrom;
- (d) any material by means of which information is supplied, whether directly or by means of any equipment, to any device used for recording or storing or processing information;
- (e) any material derived, whether directly or by means of any equipment, from information recorded or stored or processed by any device used for recording or storing or processing information;

“controlled chemical” means a controlled chemical listed in Schedule 2 and includes preparation of those controlled chemicals;

“controlled equipment” means anything listed in Schedule 3;

“craft” means any aircraft, ship, boat or other machine or vessel used or capable of being used for the carriage or transportation of persons or goods, or both, by air or water or over or under water;

“customs controlled area” has the same meaning given to “customs area” in the Customs Act;

“evidence”, in relation to commission of an offence, includes any information, documents or goods that may assist with the investigation of an offence against this Act, and is not restricted to evidence that is to be produced in court;

“export” means to take, or cause to be taken, out of the Fiji Islands;

“exclusive economic zone” has the meaning given in the Marine Spaces Act (Cap. 158A);

“goods” includes all kinds of movable property including animals;

“illicit drug” means any drug listed in Schedule 1;

“import” means to bring or cause to be brought, into the Fiji Islands and is a continuing process including any stage thereof until any item reaches the intended recipient;

“manufacture” means to carry out any process by which an illicit drug or controlled chemical is produced, and includes extracting, refining, formulating, preparing, mixing, compounding, transforming it into another drug or chemical, making an illicit drug or controlled chemical into dosage form, and packing;

“place” includes any land whether vacant, enclosed or built upon or not and any premises;

“property” includes currency and all other real or personal property of every description, whether situated in the Fiji Islands or elsewhere and whether tangible or intangible, and includes an interest in any such property;

“supply” includes distribute, give, sell and offer to supply;

“utensil” includes any article associated with the manufacture or administration of an illicit drug or controlled chemical;

“vehicle” includes any type of conveyance for transport by land.

Extended application of this Act

3. Notwithstanding section 5 of the Penal Code, this Act extends to the exclusive economic zone.

PART 2—OFFENCES

Unlawful importation and exportation

4.—(1) Any person who without lawful authority (proof of which lies upon that person) imports or exports an illicit drug commits an offence and is liable upon conviction to a fine not exceeding \$1,000,000 or to imprisonment for life or both.

(2) In any proceedings under this Part, proof of lawful authority lies upon the accused person.

Unlawful possession, manufacture, cultivation and supply

5. Any person who without lawful authority—

(a) acquires, supplies, possesses, produces, manufactures, cultivates, uses or administers an illicit drug; or

(b) engages in any dealings with any other person for the transfer, transport, supply, use, manufacture, offer, sale, import or export of an illicit drug;

commits an offence and is liable on conviction to a fine not exceeding \$1,000,000 or imprisonment for life or both.

Controlled chemicals and equipment

6. Any person who without lawful authority imports, exports, manufactures, possesses, or supplies any controlled chemical or controlled equipment—

(a) knowing that the chemical or equipment is to be used in, or for, the commission of an offence under section 5; or

(b) being reckless as to whether that chemical or equipment is to be used in or for the commission of an offence under section 5;

commits an offence and is liable to a fine not exceeding \$1,000,000 or imprisonment for life or both.

Parties to offences

7. Without prejudice to Chapter V of the Penal Code, any person is a party to an offence against this Act and is deemed to have committed that offence if that person enables any other person to escape punishment or to dispose of the proceeds of the offence.

Conspiracy

8. Without prejudice to Chapter XLII of the Penal Code, a person may be found guilty of conspiracy, even though commission of the principal offence was impossible.

Attempts

9. Without prejudice to Chapter XLI of the Penal Code, any person who, having an intent to commit an offence against this Act, does or omits to do an act for the purpose of accomplishing his or her object, commits the offence of attempt to commit the offence intended, whether or not in the circumstances it was possible to commit the offence and is liable on conviction to a fine not exceeding \$500,000 or imprisonment not exceeding 14 years or both.

Aiding offences against corresponding law of another country

10. A person who in the Fiji Islands aids, incites, counsels, or procures the doing of an act in another country or place, if that act—

(a) is punishable under the law corresponding to this section and in force in that country or place; or

(b) would, if done in the Fiji Islands, constitute an offence against this section, commits an offence and is liable to a fine not exceeding \$750,000 or imprisonment not exceeding 20 years or both.

Exempted persons

11.—(1) The following persons are exempted from this Act—

(a) a person undergoing treatment of a medical condition, who is entering, leaving or transiting through the Fiji Islands, may possess such quantities of an illicit drug that have been lawfully prescribed or supplied to that person or person under his or her care for the purpose of treating a medical condition for a period of not more than one month;

(b) a person whose lawful occupation or profession involves the possession, supply, or administration of an illicit drug, controlled chemical or controlled equipment is exempted from the offences contained in sections 5 and 6 if such possession, supply, or administration is for the specific purpose of his or her lawful occupation; and

(c) any person may possess such quantities of an illicit drug that have been lawfully prescribed or provided for the purpose of treating a medical condition to that person or person under his or her care.

(2) The Minister for Health, in consultation with the Pharmacy and Poisons Board established under the Pharmacy and Poisons Act, may issue a licence with or without conditions for the lawful import, export, or manufacture of an illicit drug, controlled chemical or controlled equipment.

PART 3 INVESTIGATION, SEARCH AND SEIZURE

Division 1—Powers of police officers and customs officers

Interception warrants

12.—(1) A High Court Judge may, upon written application—

- (a) from a police officer of or above the rank of inspector stating that the police officer has reasonable grounds to suspect or believe that a person has committed, is committing or is about to commit any offence against this Act;
- (b) from a customs officer of or above senior customs officer stating that the customs officer has reasonable grounds to suspect or believe that a person has committed, is committing or is about to commit an offence against section 4,

if satisfied that there are reasonable grounds for that suspicion or belief, issue a warrant authorising the covert monitoring and recording, by any means, of the conduct and communications, including telecommunications, of the person.

(2) A warrant issued under this section may be renewed by further application.

(3) A warrant issued under this section authorises all police officers or, in the case of an application under subsection (1)(b), all customs officers together with any assistants appointed under section 23 and authorised officers appointed under section 29—

- (a) to overtly or covertly enter or, in the case of a renewed warrant, re-enter any place specified in the warrant, by force if necessary, for the purpose of executing the warrant; and
- (b) in the case of a renewed warrant, to continue monitoring and recording pursuant to the original warrant subject to any variation specified in accordance with subsection (7)(g).

(4) If the circumstances are such that a written application under subsection (1) is not reasonably practicable, an application may be made orally, including by telephone.

(5) An application, whether in writing or made orally, must particularise the following—

- (a) the facts relied upon to show reasonable grounds for suspicion or belief;
- (b) the manner by which it is proposed to undertake the monitoring;
- (c) the name or names of the person or persons to be monitored, if known;
- (d) the place at which it is intended to monitor the person;
- (e) the identity of any person who may be required by the court to provide assistance for the purpose of giving effect to the warrant;

- (f) the requested duration of the warrant; and
 - (g) where the application is oral, the circumstances said to render a written application not reasonably practicable.
- (6) In determining whether a warrant should be granted under this section, the High Court Judge shall have regard to the following—
- (a) the nature and gravity of the offence in respect of which the warrant is sought;
 - (b) the extent to which the privacy of any person is likely to be affected;
 - (c) alternative means of obtaining the information or evidence sought and the extent to which employing these means could prejudice the investigation, through delay or any other reason;
 - (d) the extent to which information that may be obtained is likely to assist the investigation of the offence;
 - (e) the evidentiary value of any information sought to be obtained;
 - (f) any previous warrant sought or issued in connection with the same offence;
 - (g) in the case of an oral application, the circumstances that render a written application not reasonably practicable.
- (7) A warrant issued under this section shall—
- (a) specify the manner by which monitoring is authorised;
 - (b) if known, specify the name of any person or persons who may be monitored;
 - (c) specify the place or places at which monitoring is authorised;
 - (d) specify any conditions subject to which premises may be entered pursuant to the warrant;
 - (e) specify any person required to provide assistance for the purpose of giving effect to the warrant and order that person to provide such assistance;
 - (f) specify the duration of the warrant;
 - (g) in the case of a renewed warrant, specify any variation to the authority conferred by the previous warrant; and
 - (h) authorise and require the retrieval of the monitoring and recording device.
- (8) A warrant issued pursuant to an oral application is valid for 48 hours.
- (9) Where—
- (a) in the case of a warrant issued under subsection(1)(a), the Commissioner of Police; or
 - (b) in the case of a warrant issued under subsection (1)(b), the Comptroller of Customs;

is satisfied that the grounds upon which a warrant was issued have ceased to exist, the Commissioner or the Comptroller, as the case may be, must, if the warrant is still in force, cancel the warrant in writing.

(10) A High Court Judge may revoke a warrant issued under this section that is in force.

Tracking warrants

13.—(1) A police officer of or above the rank of inspector who suspects or believes on reasonable grounds that it is expedient for the investigation of an offence against this Act or if a customs officer of or above the rank of senior customs officer suspects or believes on reasonable grounds that it is expedient for the investigation of an offence against section 4, the police officer or the customs officer may authorise the placement of a tracking device in or on any craft, vehicle or goods and may subsequently service or retrieve that device.

(2) If placement, service or retrieval of the tracking device requires covert or forcible entry onto or into any premises, the police officer or customs officer must apply in writing to a High Court Judge for a warrant to so enter.

(3) If the circumstances are such that a written application under subsection (1) is not reasonably practicable, an application may be made orally, including by telephone.

(4) Upon application pursuant to this section, a High Court Judge may, if satisfied that there are reasonable grounds to believe that the tracking device will yield information or evidence relating to the commission of an offence against this Act, issue a warrant authorising covert or forcible entry, or both covert and forcible entry, for the purpose of placing, servicing and retrieving the device.

(5) A warrant issued under this section may be renewed by further application.

(6) A renewed warrant authorises—

- (a) covert or forcible entry or both covert and forcible entry for the purpose of placing, servicing and retrieving the tracking device; and
- (b) the continued use of any tracking device pursuant to the original warrant subject to any variation specified in accordance with subsection (9)(f).

(7) An application, whether in writing or made orally, must particularise the following—

- (a) the facts relied upon to show reasonable grounds for the suspicion or belief referred to in subsection (1);
- (b) the manner by which it is proposed to undertake the tracking;
- (c) the craft, vehicle or goods to be tracked;
- (d) the requested duration of the warrant; and

(e) where the application is oral, the circumstances said to render a written application not reasonably practicable.

(8) In determining whether a warrant should be granted under this section, the High Court Judge shall have regard to—

(a) the nature and gravity of the offence in respect of which the warrant is sought;

(b) alternative means of obtaining the information or evidence sought, the reliability of those alternative means and the resources required to employ them;

(c) the extent to which information that may be obtained is likely to assist the investigation of the offence;

(d) the evidentiary value of any information sought to be obtained;

(e) any previous warrant sought or issued in connection with the same offence; and

(f) in the case of an oral application, the circumstances said to render a written application not reasonably practicable.

(9) A warrant issued under this section shall—

(a) specify the manner by which tracking is authorised;

(b) specify the craft, vehicle or goods that may be tracked;

(c) specify the premises, vehicle or craft that may be entered pursuant to the warrant;

(d) specify any conditions subject to which premises, vehicle, craft or goods may be entered pursuant to the warrant;

(e) specify the duration of the warrant;

(f) in the case of a renewed warrant, specify any variation to the authority conferred by the previous warrant; and

(g) authorise and require the retrieval of the tracking device.

(10) A warrant issued pursuant to an oral application is valid for 48 hours.

(11) Where the Commissioner of Police or, in the case of a warrant obtained by a customs officer, the Director General of Customs is satisfied that the grounds upon which a warrant was issued have ceased to exist, the Commissioner or Director General must, if the warrant is still in force, cancel the warrant by instrument in writing.

(12) A warrant issued under this section and still in force may be revoked by a High Court Judge.

(13) Mere external placement of a tracking device upon any craft, vehicle or goods does not constitute entry requiring a warrant.

Controlled delivery

14.—(1) If a police officer of or above the rank of inspector suspects on reasonable grounds that any person has committed, is committing or is about to commit an offence against this Act or a customs officer of or above the position of senior customs officer suspects on reasonable grounds that any person has committed, is committing or is about to commit an offence against section 4, the officer may authorise the conveyance of an illicit drug, controlled chemical or controlled equipment or of property suspected to be directly or indirectly derived from the commission of an offence against this Act (hereinafter referred to as a “controlled delivery”).

(2) Notwithstanding any other written law, authorisation of a controlled delivery includes authorisation of—

- (a) the arrival into, departure from or transit through the Fiji Islands of any craft, vehicle or person undertaking the controlled delivery;
- (b) forcible and covert entry into any craft or vehicle and into anything containing the items subject to the controlled delivery for the purpose of replacing all or any part of those items or placing a tracking device upon them;

(3) The placement of a tracking device pursuant to subsection (2)(b) does not require a warrant under section 13.

Power to search crafts

15.—(1) Where a police officer or a customs officer has reasonable cause to suspect that there is in or on any craft, or vehicle that is within any customs controlled area—

- (a) an illicit drug, controlled chemical or controlled equipment;
- (b) any evidence relating to any offence under this Act.

the police officer or customs officer may search that craft or any vehicle, person or goods within the area and may stop and detain the craft or any vehicle or person for that purpose.

(2) Any person who prevents or obstructs the exercise of the powers conferred by this section commits an offence and may be arrested without warrant, and is liable on conviction to a fine not exceeding \$10,000 or imprisonment not exceeding 6 months or both.

Power to search persons

16. If a police officer has reasonable cause to suspect that any person has committed an offence against this Act or is in possession of an illicit drug, controlled chemical or controlled equipment that officer may detain and search that person and may seize any item that the officer reasonably suspects relates to the commission of an offence against this Act.

Internal examination orders

17.—(1) If a police officer or a customs officer has reasonable cause to suspect that a person is transporting an illicit drug by concealing it inside that person’s body, the officer

may cause that person to be detained for the purpose of search and internal examination of that person's body.

(2) An officer detaining any person under subsection (1) must—

- (a) inform the detained person of the reason for the detention in words sufficient to reasonably provide notice of the reason for detention; and
- (b) ask the detained person for consent to undergo internal examination.

(3) If the detained person refuses to consent to an internal examination, a High Court Judge may upon oral application, including application by telephone, grant an order authorising the internal examination and continued detention of the detained person for a period not exceeding 10 days.

(4) An internal examination order also authorises the seizure and analysis of anything discharged from the body of the person detained.

(5) A person subject to an internal examination order is required to submit to such examination by a registered medical practitioner as is reasonably necessary to establish whether that person is internally concealing an illicit drug and, in the absence of such submission, may be subject to such force as is reasonable to undertake such examination.

(6) An internal examination order may be renewed upon further application.

(7) Where an internal examination order is in force and the Commissioner of Police or, if the officer detaining the person is a customs officer, the Director General of Customs is satisfied that there is no cause for further detention, the detained person must be released from detention under the order.

Division 2—Powers of customs officers

Boarding, search and detention of craft

18.—(1) A customs officer may stop and board a craft—

- (a) at any time while the craft is in the Fiji Islands;
- (b) that is in the exclusive economic zone; or
- (c) that is registered in the Fiji Islands and that is not within the territorial sea of any country;

if the officer has reason to suspect that the craft is or has been involved in the commission of an offence against this Act.

(2) A customs officer may, when necessary for the exercise of his or her functions under this Act, direct the craft be taken to a suitable place and detain it for the purpose of search.

(3) On boarding a craft, a customs officer may search and detain the craft, anyone on it and anything on it including its cargo and may undertake tests and take samples of anything on the craft.

(4) A customs officer may question any person on board the craft or require the production of any documents relating to the craft or anything on the craft and may copy any documents produced.

(5) A customs officer may seize and detain anything found on the craft which appears upon reasonable grounds to be evidence of an offence against this Act.

(6) A customs officer boarding a craft may remain on the craft for such time as is reasonably necessary for the purpose of boarding, searching and detaining the craft.

(7) If a craft fails to stop at the request of a customs officer, it may be pursued into international waters and such action as is reasonably necessary may be undertaken to stop the craft provided that reasonable steps have first been taken to communicate the request.

(8) The master or commander of the craft must provide any customs officer who remains on board the craft with proper and sufficient food and suitable accommodation and no charge is to be levied.

(9) A customs officer may require the master, a member of the crew or any person on board to take such action as may be reasonably incidental to the exercise of any of the powers in subsections (1) to (8).

(10) A master or commander of a craft or any other person who contravenes a provision of this section commits an offence and is liable on conviction to a fine not exceeding \$250,000 or to imprisonment not exceeding 7 years or both and for the forfeiture of the craft.

Powers of search and seizure

19.—(1) A customs officer who has reasonable cause to suspect that a person has committed an offence against this Act or is in possession of an illicit drug, controlled substance or controlled equipment may stop, detain and search that person if the person—

- (a) has arrived in, or is intending to depart from, the Fiji Islands as a passenger or a crew member of a craft;
- (b) is the master or commander of a craft that has arrived in, or is about to depart from, the Fiji Islands; or
- (c) is arriving in, departing from or is within a customs controlled area.

(2) A customs officer may seize any evidence reasonably suspected to relate to the commission or intended commission of an offence against this Act.

Arrest without warrant within customs controlled area

20. If a customs officer has reasonable grounds to suspect that a person within a customs controlled area has committed an offence against this Act, the officer may arrest the person without warrant and must deliver the person into the custody of the police as soon as practicable.

*Division 3—Search and seizure**Search warrants*

21.—(1) A Magistrate may, upon written application—

- (a) from a customs officer stating that the customs officer has reasonable grounds to suspect or believe that an offence against section 4 has been committed; or
- (b) from a police officer stating that the police officer has reasonable grounds to suspect or believe that an offence against this Act has been committed;

and stating that there is in or on any place evidence or information relating to the commission of that offence, if he or she is satisfied that there are such reasonable grounds, issue a warrant authorising the search of that place.

(2) Any warrant issued pursuant to subsection (1) authorises any customs officer, any police officer, any assistants appointed under section 23 and any persons authorised under section 29—

- (a) at any time to enter upon and search the place,
- (b) to search and detain for the purpose of search—
 - (i) any person found at or in the place;
 - (ii) any person about to enter the place; and
 - (iii) any goods at the place, including any goods in the apparent control of any person referred to in paragraphs (i) and (ii); and
- (c) to seize—
 - (i) any evidence or information reasonably suspected to relate to the commission of the offence;
 - (ii) any illicit drug, controlled chemical or controlled equipment;
 - (iii) any goods reasonably suspected to have derived from an offence against this Act.

Search and seizure without warrant in emergencies

22. A police officer may exercise any of the powers in section 21 without a warrant if the grounds for obtaining a warrant under that section exist and the officer believes on reasonable grounds that it is necessary to do so in order to prevent the concealment, loss or destruction of anything connected with an offence against this Act.

Division 4—Enforcement powers

Assistance and use of aids

23. In exercising any power of monitoring, surveillance, inspection, examination, controlled delivery, boarding, entry or search conferred by this Act, a police officer, a customs officer or authorised officer may use such assistance and aids as the officer considers necessary.

Use of reasonable force

24. A police officer, customs officer or authorised officer may use such force as is reasonably necessary in the discharge of the powers conferred by this Act.

Evidence of authority

25. In exercising any powers under this Act, a police officer, a customs officer, any assistant under section 23 or an authorised officer under section 29 must, if required, produce as soon as practicably possible his or her official identification or authority.

Protection of officers

26. A police officer, a customs officer, any assistant under section 23 or an authorised officer under section 29 is not liable in any civil or criminal proceedings for anything done in the purported performance of his or her lawful duties under this Act if the act was done in good faith and there were reasonable grounds for doing so.

Offences against officers

27. A person who—

- (a) resists arrest by or threatens or intentionally obstructs, assaults or intimidates a police officer, a customs officer or an authorised officer in the performance of his or her lawful duties under this Act; or
- (b) fails to comply with any lawful request from a police officer, a customs officer or an authorised officer acting in the performance of his or her duties under this Act; or
- (c) in purporting to give information required by a police officer, customs officer or an authorised officer acting in the performance of his or her duties under this Act—
 - (i) makes a statement which the person knows to be false in a material particular;
 - (ii) recklessly makes a statement which is false in a material particular; or
 - (iii) intentionally fails to disclose any material particular,

commits an offence and is liable to a fine not exceeding \$10,000 or imprisonment not exceeding 3 years or both.

Protection of informers and undercover police officers

28.—(1) Subject to subsection (3), no witness in any proceedings under this Act is obliged—

(a) to disclose—

- (i) the name or address of any informant or undercover police officer who has given information with respect to an offence against this Act; or
- (ii) the name and address of any person who has assisted in detecting, investigating or assisting with respect to the due administration or enforcement of this Act; or

(b) to answer any question if the answer would lead, or would tend to lead, to the discovery of the name, address or identity of such informant or undercover police officer, and the informant or undercover police officer is not a witness in the proceedings.

(2) If any record which is in evidence or liable to inspection in any proceedings contains an entry in which any such informant or undercover police officer is named or described or which might lead to his or her discovery, the court must cause all such entries to be concealed from view or to be obliterated so far as may be necessary to protect the information or such person from discovery.

(3) If in any proceedings before the court under this Act, the court, after full enquiry into the case, is satisfied that an informer wilfully made a material statement which the informer knew to be false or did not believe to be true, the court may permit enquiry and require full disclosure concerning the informer.

(4) If any other proceedings the court is of the opinion that justice cannot be fully done between the parties without disclosure of the name of an informer or another person who assisted in any investigation or the proceedings under this Act, the court may permit enquiry and require full disclosure concerning the informer or the other person.

Authorised officers

29.—(1) The Commissioner of Police or the Comptroller of Customs may authorise a suitably qualified and trained person who is not a police officer or a customs officer to perform or exercise any function or power that may be performed or exercised by a police officer or a customs officer.

(2) The authorisation must be made in writing (including any writing in electronic form) and must specify—

- (a) the function or the power that may be performed or exercised by the authorised person; and
- (b) the term of the authorisation not exceeding 3 years, as the Commissioner or the Comptroller determines.

(3) The Commissioner or the Comptroller may extend any authorisation for a further term not exceeding 3 years.

(4) A person who is authorised under this section is taken to be a police officer or a customs officer for the purposes of this Act during the term of that person's authorisation.

(5) The Commissioner or Comptroller may revoke an authorisation for any of the following reasons—

- (a) incapacity;
- (b) neglect of duty;
- (c) misconduct;
- (d) if the authorised person gives written notice to the Commissioner or Comptroller that the person wishes the authorisation to be revoked; or
- (e) in any other circumstances where, in the opinion of the Commissioner or Comptroller, the authorisation is no longer necessary.

(6) If the person ceases to be an authorised person under this section, that person must surrender to the Commissioner or Comptroller all articles and documents received by the person in relation to the authorisation.

(7) The Commissioner or the Comptroller may authorise any suitably qualified person from any other country to perform or exercise any function or power that may be performed or exercised by a police officer or a customs officer under this Act.

Division 5—Post seizure procedures

Disposal and storage of seized illicit drugs

30.—(1) If scientific analysis of a sample indicates that it is a seized illicit drug, controlled chemical or controlled equipment, the seizing officer must forward a copy of the scientific analysis report to the Director of Public Prosecution.

(2) If the Commissioner of Police, in consultation with the Director of Public Prosecution, is of the opinion that proceedings are likely to be brought against any person and—

- (a) physical preservation of all the seized illicit drugs, controlled chemicals or controlled equipment is not necessary for the purposes of any actual or contemplated proceedings under this Act;
- (b) the seized drugs cannot be safely, securely or conveniently stored until the final determination of such proceedings; or
- (c) the seized drugs may properly be used in the Fiji Islands for medical or scientific purposes, or in small amounts for the training of personnel responsible for carrying out functions under this Act;

the Commissioner of Police may apply to the court for an order for disposal of any part of the seized illicit drug, controlled chemical or controlled equipment or samples as they determine are not necessary to retain for the due administration of justice.

(3) If the Commissioner of Police, in consultation with the Director of Public Prosecution is satisfied that—

- (a) the seized illicit drug, controlled chemical or controlled equipment is illegal property liable to forfeiture under this Act;
- (b) the provisions of this section relating to the taking and analysis of samples have been complied with;
- (c) sufficient samples have been taken, analysed and preserved to enable all material questions relating to the seized illicit drug, controlled chemical or controlled equipment to be properly determined in any actual or contemplated proceedings under this Act; and
- (d) any suspect or accused person in relation to the seizure has had reasonable opportunity to have samples independently analysed at that person's expense;

the Commissioner of Police may apply to the court for an order for disposal of the illicit drug, controlled chemical or controlled equipment.

(4) If, in relation to any seized illicit drug or controlled chemical, and after reasonable investigatory efforts, the Commissioner of Police in consultation with the Director of Public Prosecutions is—

- (a) of the opinion that proceedings are not likely to be brought against any person for the reason only that no suspect has been identified or located; and
- (b) satisfied that sufficient samples have been taken, analysed and preserved to enable all material questions relating to the seized illicit drug, controlled chemical or controlled equipment to be properly determined should any suspect be ultimately identified and proceedings be brought;

the Commissioner of Police may apply to the court for an order for disposal of such part of the seized illicit drug, controlled chemical or controlled equipment or samples that are not necessary to retain for the purposes of the due administration of justice.

(5) An illicit drug, controlled chemical or controlled equipment subject to an authorisation under subsection (3) or (4) must be disposed of only—

- (a) by delivery to the Minister of Health for use exclusively in meeting the lawful medical, scientific or training needs; or
- (b) by incineration, or such other safe means of destruction.

(6) Subject to this section, in any prosecution for an offence against this Act, a certificate or report—

- (a) purporting to be signed by the officer in charge of carrying out a disposal order made under subsection (3) or (4) and two witnesses to the disposal; and

- (b) stating that the illicit drug, controlled chemical or controlled equipment, the subject of an order, has been disposed of in accordance with the order;

is admissible in evidence.

(7) In the absence of evidence to the contrary, a certificate or report is admissible under subsection (6) as proof of the statements contained therein, without proof of the signature, expertise or official capacity of the person appearing to have signed it.

Forfeiture

31. All goods, premises, craft, vehicle or any other property used in the commission of an offence against this Act shall, upon conviction of the owner, be forfeited to the State.

PART 4—EVIDENTIARY MATTERS

Factual presumption relating to possession of illicit drugs

32. Where in any prosecution under this Act it is proved that any illicit drug, controlled chemical or controlled equipment was on or in any premises, craft, vehicle or animal under the control of the accused, it shall be presumed, until the contrary is proved, that the accused was in possession of such illicit drug, controlled chemical or controlled equipment.

Factual presumption relating to samples

33. If in any prosecution for an offence against this Act it is proved that a sample which was taken from any illicit drug or controlled chemical possesses particular properties, it is presumed that any such illicit drug or controlled chemical possesses the same properties.

Admissibility of official records

34.—(1) A copy—

- (a) of any record of a Ministry, Department, agency, municipality or other body established by or under a written law; or
(b) of any statement containing information from the records kept by any such Ministry, Department, agency, municipality or other body;

purporting to be certified by an official having custody of that document or those records, is admissible in evidence in any prosecution for an offence against this Act.

(2) In the absence of evidence to the contrary, the copy is proof of the facts contained in the document, without proof of the signature or official character of the person purporting to have certified it.

Proof of prohibited import or export of an illicit drug under the laws of another country

35. A certificate purporting to be issued by or on behalf of another country to the effect that the import or export of an illicit drug, controlled chemical or controlled equipment is prohibited by the law of that country is for the purpose of any proceedings under this Act, *prima facie* evidence of the matters stated in the certificate.

*Illicit Drugs Control—9 of 2004**Analyst certificate as evidence*

36.—(1) In any proceedings under this Act, the production of a certificate purporting to be signed by a Government analyst is *prima facie* evidence of the facts stated in the certificate.

(2) A copy of the analyst certificate must be served by or on behalf of the prosecutor on the accused or his or her defence counsel at least 42 working days before the hearing at which the certificate is to be tendered as evidence and the accused must be informed in writing that the prosecutor does not propose to call the person who made the analysis as a witness.

(3) If the accused intends to cross-examine the analyst, the accused must, in writing give the prosecution at least 21 working days' notice of his or her intention to do so to enable the prosecution to produce the analyst at the hearing.

Offence of interfering with evidence

37. Any person who—

- (a) unlawfully interferes with, uses, takes or disposes of an seized illicit drug, controlled chemical or controlled equipment or any sample thereof;
- (b) unlawfully interferes with or falsifies the results of any analysis with the intention of interfering with the proper course of justice; or
- (c) without lawful authority, removes, alters, destroys, or in anyway interferes with any seized document,

commits an offence and is liable on conviction to a fine not exceeding \$250,000 or imprisonment not exceeding 7 years or both.

PART 5 MISCELLANEOUS

Regulations

38.—(1) The Minister may make regulations to give effect to the provisions of this Act, in particular to prescribe forms necessary for the purpose of this Act.

(2) The Minister may amend any Schedule by regulations.

Repeal

39. The provisions of the Dangerous Drugs Act (Cap. 114) which are substituted or replaced by the provisions of this Act are repealed.

SCHEDULE 1
(Section 2)

ILLICIT DRUGS

This Schedule includes—

- (a) the following illicit drugs, designated by their international non-proprietary names or the names used in international conventions in force;
- (b) their isomers, unless specifically exempted, whenever the existence of such isomers is possible within the specific chemical or designation;
- (c) their esters and ethers, unless specifically excepted, whenever the existence of such esters and ethers is possible;
- (d) their salts, including the salts of esters, ethers and isomers, whenever the existence of such salts is possible;
- (e) preparations of illicit drugs unless exempted by law.

PART 1—DRUGS LISTED IN SCHEDULE IV OF THE CONVENTION
ON NARCOTIC DRUGS 1961

Acetorphine	Acetyl-alpha-methyl-	Methyl-3fentanyl
Cannabis and cannabis resin	fentanyl	Methyl-3thio-
Desomorphine	Alphacetylmethadol	fentanyl
Etorphine	Alpha-methylfentanyl	MPPP
Heroin	Beta-hydroxyfentanyl	Para-fluorofentanyl
Ketobemidone	Beta-hydroxy-methyl-3-	PEPAP
	fentanyl	Thiofentanyl

PART 2—DRUGS LISTED IN SCHEDULE I OF THE CONVENTION ON
PSYCHOTROPIC SUBSTANCES 1971

Brolamphetaimine	Etryptamine	Parahexyl
Cathinone	Lysergide	PMA
DET	MDA	Psilocine, psilotsin
DMA	Mescaline	Psilocybine
DMHP	Methcathinone	Rolicyclidine
DMT	Methyl-4 anuinorex	STP, DOM
DOET	MMDA	Tenamphetamine

Eticyclidine	MDMA	Tenocyclidine
	N-ethyl MDA	Tetrahydrocannabinol
	N-hydroxy MDA	TMA

*PART 3—DRUGS LISTED IN SCHEDULE I OF THE CONVENTION
ON NARCOTIC DRUGS 1961*

Acetylmethadol	Ethylmethyl-	Normorphine
Alfentanil	thiambutene	Norpipanone
Allylprodine	Etonitazene	Opium
Alphameprodine	Etoxeridine	Oxycodone
Alphamethadol	Fentanyl	xymorphone
Alphamethylthio-	Furethidine	Pethidine
fentanyl	Hydrocodone	Pethidine
Alphaprodine	Hydromorphanol	intermediate A
Anileridine	Hydromorphone	(4-cyano-1methyl-
Benzethidine	Hydroxypethidine	4-phenyl-piperidine)
Benzylmorphine	Isomethadone	Pethidine
Betacetylmethadol	Levomethorphan	intermediate B
Betameprodine	Levomoramide	(4phenylpiperidine-4-
Bethamethadol	Levophenacymorphan	carboxylic acid
Betaprodine	Levorphanol	ethylester)
Bezitramide	Metazocine	Pethidine
Clonitazene	Methadone	intermediate C
Coca (leaf)	Methadone intermediate	(1-methyl-4-
Cocaine	(4-cyano-2-dimethyl-	phenylpiperidine-
Codoxime	amino-4,4-diphenyl	4-carboxylic acid)
Concentrate of poppy	butane)	Phenadoxone
straw	Methyl-desorphine	Phenampramide
Dextromoramide	Methyldihydromorphine	Phenazocine
Diampramide	Metopon	Phenomorphan
Diethylthiambutene	Moramide	Phenoperidine
Difenoxin	Morpheridine	Piminodine

Dihydromorphine	Morphine	Piritramide
Dimenoxadol	Morphine methobromide	Proheptazine
Dimepheptanol	and other pentavalent	Properidine
Dimethylthiambutene	nitrogen morphine	Racemethorphan
Dioxaphetyl butyrate	derivatives	Racemoramide
Diphenoxylate	Morphine-N-oxide	Racemorphan
Dipipanone	Myrophine	Sufentanil
Drotebanol	Nicomorphine	Thebacon
Ecgonine,	Noracymethadol	Thebaine
its esters and	Norlevorphanol	Tilidine
derivatives	Normethadone	Trimeperidine

*PART 4—DRUGS LISTED IN SCHEDULE II OF THE CONVENTION
OF NARCOTIC DRUGS 1961*

Acetyldihydrocodeine	Ethylmorphine	Pholcodine
Codeine	Nicodicodine	Propiram
Dextropropoxyphene	Nicocodine	
Dihydrocodeine	Norcodeine	

*PART 5—DRUGS LISTED IN SCHEDULE II OF THE CONVENTION
ON PSYCHOTROPIC SUBSTANCES 1971*

Amphetamine	Methamphetamine	Phenmetrazine
Dexamphetamine	Methamphetamine racemate	Secobarbital
Fenetylline	Methaqualone	Zipeprol
Levamphetamine	Methylphenidate	
Mecloqualone	Phencyclidine	

*PART 6—DRUGS LISTED IN SCHEDULE III OF THE CONVENTION
ON PSYCHOTROPIC SUBSTANCES 1971*

Amobarbital	Cathine	Pentazocine
Buprenorphine	Cyclobarbital	Pentobarbital
Butalbital	Glutethimide	Flunitrazepam

PART 7—DRUGS LISTED IN SCHEDULE IV OF THE CONVENTION
ON PSYCHOTROPIC SUBSTANCES 1971

Allobarbital	Ethinamate	Methylprylon
Alprazolam	Ethyl loflazepate	Midazolam
Aminorex	Etilamphetamine	Nimetazepam
Amphetamine	Fencamfamin	Nitrazepam
Barbital	Fenproporex	Nordazepam
Benzphetamine	Fludiazepam	Oxazepam
Bromazepam	Flurazepam	Oxazolam
Brotizolam	Halazepam	Pemoline
Butobarbital	Haloxazolam	Phendimetrazine
Camazepam	Ketazolam	Phenobarbital
Chlordiazepoxide	Lefetamine	Phentermine
Clobazam	Loprazolam	Pinazepam
Clonazepam	Lorazepam	Pipradrol
Clorazepate	Lormetazepam	Prazepam
Clotiazepam	Mazindol	Pyrovalerone
Clozazolam	Medazepam	Secbutabarbital
Delorazepam	Mefenorex	Temazepam
Diazepam	Meprobamate	Tetrazepam
Estazolam	Mesocarb	Triazolam
Ethchlorvynol	Methylpheno-barbital	Vinylbital

PART 8—OTHER ILLICIT DRUGS

Ketamine
Khat
Gamma-hydroxybutyrate (GHB)
Gamma-butyrolactone (GBL)
1,4-butanediol (tetramethylene glycol)
Anabolic and androgenic substances
Growth hormones
Cannabis fruit

Cannabis plant (whether fresh, dried, or otherwise) – that is, any part of any plant of the genus *cannabis* except a part from which all the resin has been extracted.

Cannabis seed

Cannabis oil

4-bromo 2,5 dimethoxyamphetamine (Bromo DMA)

SCHEDULE 2
(Section 2)

CONTROLLED CHEMICALS

This Schedule includes—

- (a) the following substances designated by their international non-proprietary names used in the international conventions in force;
- (b) the salts of these substances, whenever the existence of such salts is possible, with the exception of sulphur acid and hydrochloric acid.

Part 1:

Ephedrine	N-acetylanthranilic acid
Ergometrine	Isosafrole
Ergotamine	3, 4 methylenedioxyphenyl-
Lysergic acid	2-propanone
1-phenyl 1-2 propanone	Piperonal
Pseudoephedrine	Safrole
Norephedrine	

Part 2:

Acetic anhydride	Hydrochloric acid
Acetone	Methylethyl
Anthranilic acid	Ketone
Ethylether	Potassium permanganate
Phenylacetic acid	Sulphuric acid
Piperidine	Toluene

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SCHEDULE 3

(Section 2)

CONTROLLED EQUIPMENT

The following are controlled equipment—

- (a) Encapsulating machines
- (b) Machines used to prepare, make, manufacture or produce tablets
- (c) Rotary evaporators
- (d) Laboratory equipment with a capacity for large volume production (eg round bottom flasks of 25 litres or above and related condensers, separating funnels and heating apparatus)

Passed by the House of Representatives this 16th day of June 2004.

Passed by the Senate this 25th day of June 2004.