

REPUBLIC OF NAURU

(No. 12 of 2004)

AN ACT

To make provision for ways and means to check and prohibit the abuse of dangerous drugs, narcotics, intoxicants and other psychotropic substances on the Island of Nauru.

(Certified: 6th September, 2004)

ILLICIT DRUG CONTROL ACT, 2004

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A BILL
For
AN ACT

(No. 12 of 2004)

To make provision for ways and means to check and prohibit the abuse of dangerous drugs, narcotics, intoxicants and other psychotropic substances on the Island of Nauru. Enacted by the Parliament of Nauru

(Certified: 06/09/2004)

PART I – PRELIMINARY

Short title

1. This Act may be cited as Illicit Drugs Control Act 2004 and shall come into force on a date to be notified by the Minister in the Gazette.

Jurisdiction

2. This Act is applicable throughout the territory of Republic of Nauru

Definitions

3. In this Act, unless the Context otherwise requires
 - (i). “airport” means the Nauru International Airport;
 - (ii). “authorized officer” means a person or class of persons appointed by the (Director of Police or the Director of Customs) pursuant to section 33;
 - (iii). “cognizable offence” means an offence for which the person committing can be arrested without warrant;
 - (iv). “controlled chemical” means controlled chemicals listed in Schedule II of this Act or anything from time to time prescribed by way of regulation to be a controlled chemical and also includes an illicit drug or controlled equipment
 - (v). “controlled delivery” means the investigative technique described in Section 17 of allowing an unlawful or suspect consignment of illicit drugs, controlled chemicals, or controlled equipment to enter, leave or transit through Nauru with the approval of a senior ranking police or customs officer with a view to gathering evidence to identify any person involved in any offence or to facilitate prosecution of that offence;
 - (vi). “craft” includes 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;
 - (vii). “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;
 - (viii). “customs controlled area” means any area as defined in the Customs Act of Nauru and Custom Officer means an officer authorized by Director of Customs.
 - (ix). “document” means;-
 - (a). any paper, parchment, or other material used for writing or printing, marked with matter capable of being read; or
 - (b). any photograph, or any photographic negative, plate, slide, film, or microfilm, or any photo static negative; or
 - (c). any disc, tape, wire, sound track, card, or other material or device in or on which information, sounds, or other data recorded, stored, or embodied so as to be capable, with or without the aid of some other equipment, of being reproduced, including computer printout thereon; or

- (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.
- (x). "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;
- (xi). "export" means to take, or cause to be taken, out of Nauru;
- (xii). "goods" includes all kinds of movable property including animals;
- (xiii). "illicit drugs" mean any drugs listed in Schedule I, II and III of this Act or anything listed from time to time and prescribed by way of regulation to be illicit drugs.
- (xiv). "import" means to bring or cause to be brought, into Nauru and is a continuing process until any item reaches the intended recipient;
- (xv). "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;
- (xvi). "person" means any natural or legal person;
- (xvii). "Police Officer" shall mean members of the Nauru Police Force
- (xviii). "place" includes any land whether vacant, enclosed or built upon or not and any premises;
- (xix). "premises" includes the whole or any part of a structure, building, craft or vehicle;
- (xx). "supply" includes distribute, give, sell and offer to supply;
- (xxi). "utensils" includes any article associated with the manufacture or administration of an illicit or controlled chemical;
- (xxii). "vehicle" means a conveyance for use on land, whether or not it is also capable of being used on or over water.

PART 2 – OFFENCES

4. Unlawful import

Any person, who without authority, proof whereof shall lie upon that person, imports any illicit drugs into Nauru, is guilty of an offence, and is liable to imprisonment for 10 years and fine not exceeding \$50,000.00

5. Unlawful export

Any person, who without lawful authority, proof whereof shall lie upon that person, exports any illicit drug from Nauru, is guilty of an offence, and is liable to imprisonment for 10 years and fine not exceeding \$50,000.00

6. Unlawful possession, manufacture, cultivation and supply

Any person who without lawful authority;

(a) acquires, sells, supplies, possess, produces, manufactures, cultivates, uses or administers any illicit drug; or

(b) engages in any dealings with any other person for the transfer, transport, supply, use, manufacture, offer, sell, agree to sell, offer for sale or have possession for sale, import or

export of any illicit drug.

Is guilty of an offence and is liable to imprisonment for 10 years and fine not exceeding \$50,000.00.

7. Controlled Chemicals and Equipment

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 6 of this Act; 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 6 of this Act;

is guilty of an offence and liable to imprisonment for a term not exceeding 10 years and fine of \$50,000.00.

8. Parties to offences – Any person is party to an offence under this Act and is deemed to have committed that offence;

- (a) who aids, incites, abets, counsels or procures or is by act or omission. In any way indirectly involved in the commission of any offence under this Act; or
 - (b) enables any other person to escape punishment or to dispose of the proceeds of the offence;
- and is liable to same punishment as provided for Principal Offender

9. Conspiracy

(1) Any person who:

- (a) conspires with any person to commit an offence under this Act; or
- (b) conspires to do or omit, in any part of the world, anything of which the doing or omission would be an offence in Nauru;

Is punishable as if the offence to which the conspiracy relates had been committed and is liable to same punishment as provided for Principal offender.

- (2) A person may be found guilty of conspiracy, even though commission of the principal offence was impossible.

10. Attempts

Any person who, having an intent to commit an offence under this Act, does or omits to do an act for the purpose of accomplishing his object, is guilty of an attempt to commit the offence intended, whether in the circumstances it was possible to commit the offence

or not and is punishable as if the offence attempted had been committed and liable to same punishment as provided for Principal offender.

11. Aiding offences against corresponding law of another country

A person commits an offence under this Act who in Nauru aids, incites, counsels, or procures the doing or omission in any place outside Nauru of any act, if that act or omission.

- (a) is punishable under the provision of any law corresponding to this section of the Act and in force in that place; or
- (b) would, if done or omitted in Nauru, constitute an offence under this section of the Act; and is liable for punishment to 20 years or fine not exceeding \$100,000.00, or both.

12. Cognizable Offence – All offences under the Act are cognizable offences.

13. International traveller's exemption

Notwithstanding anything contained in this Act, any person undergoing treatment of a medical condition, who is entering leaving or transiting through Nauru, may possess such quantities of an illicit drug that have been lawfully prescribed or supplied to that person or person under their care for the purpose of treating a medical condition for a period of not more than one month.

14. General exemption

- (1) Any person whose lawful occupation or profession involves the possession, supply or administration of an illicit drug, controlled chemical or controlled equipment does not commit any offence under Section 6 and 7 of the Act.
- (2) The Minister may issue a license for the lawful import, export, or manufacture of any illicit drug, controlled chemical or controlled equipment.
- (3) Any person may possess such quantities of an illicit drug that has been lawfully prescribed or provided for the purpose of treating a medical condition to that person or person under his care.

PART 3 – INVESTIGATION, SEARCH AND SEIZURE

DIVISION 1 Powers of a police officer and a customs officer

15. Interception of communications

- (1) If a police officer, of the rank of Sergeant and above, suspects on reasonable grounds that a person has committed, is committing or is about to commit an offence under this Act. That officer may for the purpose of investigation:
 - (a) make a written application to the Magistrate for the express authority to enter a place to covertly monitor and record, by any means, the conduct and communications including telecommunications, of the person; or
 - (b) if the circumstances are such that time does not allow for written application, may enter a place to covertly monitor and record, by any means, the conduct and communications, including telecommunications, of the persons or and send written report in this regard to the Magistrate immediately thereafter.
- (2) Every application or report, as the case may be, must state;
 - (a) the facts relied upon to show reasonable grounds;

- (b) a description of the manner by which it is proposed to monitor the person or how the person was monitored;
 - (c) the name and address of the suspects if known and, if not known, then the premises, or place or device where it is intended to monitor the person, or where it was used to monitor
 - (d) the identity of any person who may be required by the court to provide assistance for the purpose of giving effect to the monitoring order;
 - (e) the period for which the authority to monitor is required in case of application only.
- (3). An authority to monitor any person issued pursuant to paragraph (1)(a) may;
- (a) authorize the police officer and any assistant to enter, by force if necessary, any place specified in the authority;
 - (b) identify any person who is required to provide assistance, free of any charge, for the purpose of giving effect to the monitoring order; and
 - (c) enable the police officer to obtain assistance from any person for the purpose of giving effect to the monitoring order
- (4). Any person who fails to provide such assistance as required under the terms of the monitoring authority is guilty of an offence and is liable to imprisonment for a term not exceeding one year or fine not exceeding \$10,000.00 or both.

16. Tracking devices

- (1) If Director of Police or Director of Customs in his absence any officer authorized by the Minister, considers it necessary for the investigation of an offence under this Act, that officer may authorize the placing of a tracking device in or on any place or goods.
- (2) If placement, service or retrieval of the tracking device requires entry onto or into private property or business premises, the police or so authorized officer, shall apply to Magistrate for authority to enter, by force if necessary.

17. Controlled delivery

- (1). If Director of Police or in his absence any officer authorized by the Minister suspects on reasonable grounds that any person has committed, is committing or is about to commit an offence under this Act, he may give written approval for;
 - (a) a controlled delivery to be carried out; and
 - (b) specify persons to carry out or participate in the controlled delivery.
- (2). Notwithstanding any law to the contrary, the activities which may be undertaken in the course of and for the purposes of a controlled delivery include the following:

- (a) allowing any craft, vehicle or other means of transport or conveyance to enter, leave, or transit through Nauru;
- (b) allowing delivery of any;
 - (i) Illicit drugs, controlled chemicals or controlled equipment, in or on the craft, vehicle or other means of transport or conveyance,
 - (ii) Property suspected to be derived directly or indirectly from any offence against this Act or any other Act;
- (c) leaving or replacing any portion of that illicit drugs or controlled chemical.
- (d) using such force as may be reasonable in the circumstances to enter and search the craft, vehicle or other means of transport, or other conveyance;
- (e) placing a tracking device on board the craft, vehicle or other means of transport, or other conveyance;
- (f) allowing any person who has possession, custody or control of the illicit drug, controlled chemicals or controlled equipment to enter, leave or transit through Nauru.

18. Power to search vehicles

- (1) If customs officer has reasonable cause to suspect that:-
 - (a) there is in or on any vehicle that is within any customs area any illicit drugs, controlled chemicals or controlled equipment; or
 - (b) there is evidence relating to illicit drugs, controlled chemicals or controlled equipment; or
 - (c) there is any other evidence relating to any offence under this Act,
- (2) the customs officer may do all or any of the following:-
 - (a) stop and detain any vehicle for the purpose of searching that vehicle;
 - (b) detain and search any person in that vehicle for such period as may be reasonable necessary for that purpose.
 - (c) search any goods carried within the vehicle
 - (d) send a report about his assessment to the Director of Police.
- (3) A police officer may give effect to subsections (1) and (2) above if the vehicle is outside a customs controlled area.
- (4) Any person who fails to comply with an officer's request under this section commits an offence and may be arrested without warrant and is liable to term of imprisonment not exceeding two years and fine up to \$20,000.00.

19. Power to search a person

- (1) If a police officer has reasonable cause to suspect that any person has committed an offence under this Act or is in possession of any illicit drug or controlled chemical, the officer may search and detain that person for the purpose of search.
- (2) The police officer may seize any evidence relating to the commission of an offence under this Act

20. **Internal concealment**

- (1) If a police officer has reason to suspect that a person is transporting any illicit drug by concealing them inside that person's body, the officer may cause that person to be detained for the purpose of search.
- (2). A police officer detaining any person must:
 - (a) inform the detained person of the reason for the detention in words sufficient to give that person notice of the true reason for detention .
 - (b) provide the detained person with a written statement setting out person's right;
 - (c) arrange for the attendance of a medical practitioner;
 - (d) ask the detained person for their consent to undergo a medical examination; and
 - (e) in the event that the detain person refuses to consent to a medical examination under paragraph (c), apply to Magistrate for an order authorizing the continued detention of the person.
- (3). A detention order issued pursuant to subsection (2) must,
 - (a) authorized the detention of that person for a period not exceeding 14 days;
 - (b) direct the detained person to submit to such medical examination as may reasonable be necessary to establish whether the person is internally concealing illicit drugs; and
 - (c) authorized any medical practitioner to carry out such examination and to provide such medical treatment as maybe reasonable and appropriate in the circumstances.
- (4) A police officer who obtains an order for the detention of any person pursuant to subsection (2) may apply to the magistrate for renewal of the detention order.
- (5) If a police officer is satisfied that there are no further grounds to detain the person ,the officer may release that person from detention.
- (6) A customs officer may give effect to subsections (1) to (5) above if the person is in any place subject to customs control and send a report to the Director of Police

PART 3 DIVISION 2 POWERS OF A CUSTOM OFFICER

21. **Boarding ,Search and Detention of a Craft.**

- (1) Any customs officer may stop and board a craft:
 - (a) at any place at any time while the craft is in Nauru;
 - (b) that is in the contiguous zone of the state;
 - (c) that is registered in Nauru where that craft is outside the territorial sea of any foreign country;

if the officer has reason to suspect that the craft is carrying illicit drugs,controlled chemicals or controlled equipment.

- (2) A customs officer may, when necessary for the exercise of his or her functions, direct the craft to be taken to a suitable place in Nauru 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 undertake tests and to 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 to him or her to be evidence of an offence under this Act.
- (6) A customs officer boarding a craft, may remain on the craft for such time as he or she thinks necessary for the purpose of boarding and searching the craft.
- (7) Where a craft fails to stop at the request of a customs officer, it may be pursued into international waters and such action as is necessary may be undertaken to stop the craft.
- (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 may be levied.
- (9) For any of the purposes of this section, a customs officer may require the master, member of the crew or any person on board to take such action as may be directed by that customs officer.
- (10) The Custom Officer shall send a detailed report to the Director of Police for enabling him to charge the offender before the Court of Law
- (11) A master, commander or any person who contravenes these provisions is guilty of an offence and is liable to imprisonment for a term up to 20 years imprisonment and a fine not exceeding \$250,000 and also forfeiture of the craft.

22 Access to Customs controlled area

A Customs officer may refuse access to any person from:

- (a) a craft that has arrived in or is about to depart from Nauru; or
- (b) a Customs controlled area.

23 Questioning

- (1) A police officer outside Customs Area or a customs officer in Custom area may stop and question any person who:
 - (a) has arrived in, or is intending to depart from Nauru as a passenger or crew member or
 - (b) is the master or commander of a craft that has just arrived in, or is about to depart from Nauru; or
 - (c) is arriving in, or departing from or within any customs controlled area.
- (2) A person shall answer question put to him or her in pursuance of subsection (1)
- (3) A person who fails to answer any questions pursuant to subsection (1) commits an offence

and is liable to pay a fine not exceeding \$10,000

24 Search and examination of baggage

A customs officer or a police officer may search and examine baggage, packages or other goods carried by a person or belonging to the person if he or she:

- (a) has arrived in, or is intending to depart from Nauru as a passenger or a crew member of a craft; or
- (b) is the master or commander of craft that has arrived in, or is about to depart from Nauru; or
- (c) is arriving in, departing from or within a customs controlled area.
- (d) And send a report to the Director of Police where detection of incriminating material is found during the search and examination of baggage in accordance with this section.

25 Searching person

(1) Any customs officer who has reasonable cause to suspect that any person has committed an offence under this Act may stop, detain and search any person if that person:

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

(2) When conducting a search under this Act of a female person such search shall be conducted by a female customs officer or female police officer.

(3) Any customs officer may seize any evidence relating to the commission of an offence against this Act and send a report to Director of Police in case of seizure of incriminating material

26 Arrest without warrant

Any customs officer who has reasonable grounds to suspect that a person has committed an offence under this Act, may arrest the person without warrant and shall deliver the person into the custody of the police as soon as practicable.

27 Entry and search without warrant

A customs officer may, at any time and without a search warrant, enter and search any place subject to customs control.

28 Entry and search with warrant

(1) If a customs officer has reasonable grounds to suspect that an offence against section 4 and 5 of this Act has been committed in a Customs area and that there is or on any place evidence relating to the commission of an offence against those provisions, the officer may make a declaration on oath to the effect, before a magistrate.

(2) Upon the declaration made under subsection (1), the magistrate may issue a warrant authorizing the officer:

- (a) to enter upon; and
- (b) search the place, with such force as may be reasonably necessary, by day or night; and
- (c) search and detain for the purpose of search:
 - (i) any person found at or in the place; or
 - (ii) any person whom the officer suspects is about to enter or leave the place; or
 - (iii) goods in the apparent control of any person at that place; and
 - (iv) Seize, and preserve any evidence relating to the commission of an offence under section 4 and 5 of this Act, and
- (d) Send a report to the Director of Police with seized material and detained person to enable him to charge the person before Magistrate.

PART 3 DIVISION 3 Warrants

29. Search warrants

- (1) If the Magistrate is satisfied, by information on oath, that there are reasonable grounds to suspect that there is in or on any place
 - (a) an illicit drug, controlled chemical or controlled equipment; or
 - (b) any evidence relating to the commission of an offence under this Act; or
 - (c) any property derived from an offence under this Act,

the Magistrate may issue a warrant empowering a police officer at any time, or at such time as the Magistrate may specify in the warrant, to enter the place, search for any illicit drug or thing and if found, seize it.

- (2) a police officer who executes a warrant under subsection (1) may:
 - (a) enter any place named or described in the warrant;
 - (b) search and detain for the purpose of search:
 - (i) any person found at or in the place; or
 - (ii) any person whom the officer suspects about to enter or leave the place; or
 - (iii) goods in the apparent control of the person.
 - (c) seize any:
 - (i) illicit drug, controlled chemical or controlled equipment; or
 - (ii) any evidence relating to the commission of an offence against this Act; or
 - (iv) any property derived from an offence under this Act.

30. **Search and seizure without warrant in emergencies**

(1) A police officer may exercise any or the powers in section 29 without a warrant, if the grounds for obtaining a warrant under section 29 exist and the officer suspects on reasonable grounds, that:

- (a) it is necessary to do so in order to prevent the concealment, loss or destruction of anything connected with an offence under this Act: and
- (b) the circumstances are of such seriousness and urgency as to require the immediate exercise of the power without the authority of a warrant issued under section 29.

(2) Police officer acting pursuant to subsection (1) may:

- (a) search any person or the clothing that is being worn by, and goods in the apparent control of a person: or
- (b) enter and search any place at or in which the police officer suspects on reasonable grounds that anything connected with an offence is situated: or
- (c) seize any evidence relating to the offence that the officer finds in the course of that search.

(3) A police officer may, for the purpose of this section, detain any person the officer suspects on reasonable grounds is carrying without lawful authority anything connected with an offence under this Act.

(4) A police officer may, for the purposes of this section, stop any vehicle or craft where the officer suspect on reasonable grounds that anything connected with an offence under this Act is upon or in the vehicle or craft.

PART 3 DIVISION 4 Enforcement powers

31. **Assistance and use of aids**

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

32. **Reasonable force**

A police officer, or a customs officer may use such reasonable force deemed necessary in the performance of the officer's lawful duties

33. **Evidence of authority**

A police officer, or a customs officer or an authorized officer must, if required, produce the officer's identification and authority in the exercise of any powers under this Act.

34. **Protection of officers**

A police officer, or a customs officer or an authorized officer are not liable in any civil or criminal proceedings for anything done in the purported performance of the officer's lawful duties

pursuant to this Act, if the act was done believing in good faith and that there were reasonable grounds for doing so.

35. Offences against officers

A person commits an offence if he or she:

- (1) (a) Intentionally obstructs, assaults, or threatens a police officer, a customs officer or an authorized officer in the performance of the officer's lawful duties pursuant to this Act:
or
- (b) fails without reasonable excuse to comply with the requirements made by a police officer, a customs officer or an authorized officer in the performance of those functions: or
- (c) in purporting to give information required by a police officer, customs officer or an authorized officer in the performance of those functions:
 - (i) makes a statement he or she knows to be false in a material particular, or
 - (ii) recklessly makes a statement which is false in material particular,
 - (iii) intentionally fails to disclose any material particular.

such a person is liable to term of imprisonment not exceeding 3 years and fine not exceeding \$30,000 or both.

36. Protection of informants and undercover Police officer / Customs Officer

- (1) Subject to subsection (3), no witness in any proceedings under this Act is obliged:
 - (a) to disclose the name or address of any informant or undercover police officer or Custom Officer who has given information with respect to an offence under this Act, or of any person who has assisted in detecting, investigating or otherwise assisting with respect to the due administration or enforcement of this Act; or
 - (b) to answer any question if the answer thereto would lead, or would tend to lead, to the discovery of the name, address or identity of such informant or undercover police officer, if the informant or person 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 information or undercover police officer is named or described or which might lead to his or her discovery, the Magistrate 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 Magistrate under this Act the Magistrate, after full enquiry into the case, is satisfied that:
 - (a) an informer willfully made a material statement which he or she knew to be false or did not believe to be true; or
 - (b) in any other proceedings the Magistrate is of the opinion that justice cannot be fully done between the parties thereto without disclosure of the name of the informer or another person who assisted in any investigations or the proceedings under this Act,

the Magistrate may permit enquiry and require full disclosure concerning the informer or person.

37. Authorised officers

- (1) The Director of Police or the Director of Customs as the case maybe, 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 under subsection (1) 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, which shall be such period, not exceeding 3 years, as the Director thinks fit.
- (3) The Director of Police or the Director of Customs may renew any authorisation for such further period, not exceeding 3 years as deemed fit.
- (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 for the duration for the term of that person's authorisation.
- (5) The Director of Police or Director of Customs may revoke an authorisation given under this section for any of the following reason:
 - (a) incapacity;
 - (b) neglect of duty;
 - (c) misconduct;
 - (d) if the authorised person gives written notice to the Director that he or she wishes the authorisation to be revoked
 - (e) in any other circumstances where in the opinion of the Director, the authorisation is no longer necessary.
 - (f) If the person ceases to be an authorised person under this section, that person must surrender to the Director of Police or Customs as the case maybe, all articles and documents received by him or her in the relation to the authorisation.
 - (g) The Director of Police or Customs, as the case maybe, 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 customs officer under this Act.

PART 3 DIVISION 5

Post seizure procedures

38. Disposal and storage of seized illicit drugs

- (1) If scientific analysis of a sample indicates that a seized illicit drug, controlled chemical or controlled equipment is in fact so, the seizing officer must forward a copy of any scientific analysis report to the Director of Public Prosecution
- (2) If the Director of Public Prosecution, in consultation with the Director of Police, is of the opinion that
 - (a) proceedings are likely to be brought against any person; or

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

The Director of Public Prosecutions in consultation with the Director of Police may authorise the disposal of any part of the seized illicit drugs, controlled chemical or controlled equipment or samples as they determine are not necessary to retain for the due administration of justice.

(3) If the Director of Public Prosecutions in consultation with the Director of Police has authorised the disposal under subsection (2) in relation to a seizure and they are satisfied that:

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

(c) The Director of Public Prosecution in consultation with Director of Police may authorise the disposal of the illicit drug, controlled chemical or controlled equipment.

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

- (a) of the opinion that proceedings are not likely to be brought against any person of 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 Director of Public Prosecutions, in consultation with the Director of Police, may order the disposal of such part of the seized illicit drug, controlled chemicals or controlled equipment or samples as are not necessary to retain for the purposes of the due administration of justice.

(5) Illicit drug, controlled chemical or controlled equipment subject to an authorisation under subsection (3) or (4) shall be disposed of only:

- (a) by delivery to the Director of Health for use exclusively in meeting the lawful medical, scientific or training needs of Nauru; or
 - (b) by incineration, or such other safe means of destruction.
- (6) Subject to this section, in any prosecution for an offence under this Act or regulations, a certificate 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:
 - (i) that the illicit drug, controlled chemicals or controlled equipment, the subject or an order, has been disposed of in accordance with the order; and
 - (ii) the identity and quantity of the illicit drug, controlled chemicals or controlled equipment disposed of;
- is admissible in evidence.
- (7) In the absence of evidence to the contrary, a certificate or report is admissible under subsection (6) as proof to the statements contained therein, without proof of the signature, expertise or official character of the person appearing to have signed it.

39. Collection and processing of evidence at seizure

- (1) The officer in charge at the seizure scene shall ensure that all material evidence is collected and processed, and in particular that any seized illicit drug, controlled chemical or controlled equipment is properly marked for identification, weighed, counted, sampled, sealed, labelled and, until destroyed or otherwise disposed of in accordance with section 38, preserved for evidentiary purpose.
- (2) Where any illicit drug, controlled chemicals or controlled equipment that has been seized pursuant to this Act was found in packages or containers of similar size and weight and bearing identical markings, and colour testing of the contents of a representative number of them yields similar results for each, the seizing officer shall cause all such packages or containers to be classified, serially numbered and separated into lots ready for weighing, counting, sampling, sealing and labeling.
- (3) Where it is physically possible to count and weigh the seizure as a complete entry, the seizing officer shall cause it to be counted and weighed. Where it is not physically possible to count and weigh the seizure as a complete entry, the seizing officer may estimate the gross and net weight as the case may be.
- (4) The seizing officer shall also prepare a report of the seizure as soon as practicable but no later than 24 hours after seizure which includes particulars of :-
 - (a) the time, place and date of seizure;
 - (b) the identification of the seizing officer and all persons present;
 - (c) the circumstances in which seizure took place;

- (d) a description of the vehicle, craft, place or person searched and the location where the illicit drug, controlled chemicals or controlled equipment was found;
 - (e) a description of the illicit drug, controlled chemicals or controlled equipment found;
 - (f) a description of the packaging, seals, and other identifying features;
 - (g) a description of quantity, volume and units and the measurement method employed
 - (h) a description of any preliminary identification test used and results;
 - (i) all subsequent movements of the seized illicit drug, controlled chemicals or controlled equipment;
 - (j) any other prescribed matter.
- (5) The officer in charge of an investigation following a seizure shall ensure that all items of evidentiary value are stored in appropriate conditions for the prevention of loss, theft or any other form of misappropriation, as well as accidental or accelerated deterioration.

40. Forfeiture.— Every person convicted of an offence against this Act shall, in addition to any penalty imposed pursuant to this Act, forfeit to Nauru, by virtue of such conviction, all goods, articles and moveable property if any, in respect to which the offence was committed and in the possession of such person.

PART 4 EVIDENTIARY MATTERS

41. Presumption relating to possession of illicit drugs

If in the prosecution of a person for an offence under this Act or the regulations, it is proved that an illicit drug, controlled chemical or controlled equipment was found:

- (a) in the immediate vicinity of the accused; or
- (b) on any animal, vehicle, craft and that the accused was at the time on or in charge of, or that he or she accompanied, any such animal, vehicle or craft;

It is presumed, until the contrary is proved, that the accused was found in possession of the illicit drug, controlled chemical or controlled equipment.

42. Presumption relating to samples

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

43. Admissibility of official records

A copy of any record of a ministry, department, agency, corporation or other body established by or pursuant to a law of Nauru or 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 under this Act, and in the absence of evidence to the contrary, 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.

44. Proof of prohibited import or export of an illicit drug under foreign law

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

45. Analyst certificate

- (1) In any proceedings under this Act the production of a certificate purporting to be signed by a government analyst shall be prima facie evidence of the facts therein stated.
- (2) A copy of the analyst certificate shall be served by or on behalf of the prosecutor on the defendant or that person's defence counsel at least 10 working days before the hearing at which the certificate is to be tendered as evidence and the defendant shall be informed in writing that the prosecutor does not propose to call the person who made the analysis as a witness.
- (3) The defendant shall give written notice to the prosecutor at least 3 working days before the hearing that he or she requires the person who made the analysis to be called by the prosecutor as a witness.

46. Interfering with evidence

Any person who unlawfully interferes with, uses, takes or disposes of any seized illicit drug, controlled chemical or controlled equipment or any sample thereof, or who unlawfully interferes with, or falsifies the results of any analysis with the intention of interfering with the proper course of justice, commits an offence and is liable to a term of imprisonment not exceeding 10 years and fine not exceeding of \$20,000.

PART 5 - MISCELLANEOUS

47. Investigative abilities of overseas law enforcement agencies.

The Director Public Prosecutions of Nauru may authorise any person from a law enforcement agency of Director of Public Proceeds another state, to exercise and give effect to the relevant legal powers within Nauru for the purpose of the investigation of any offence under this Act.

48. Non-obstante clause

Notwithstanding anything contained in any other Act, the offender shall not be released on bail if Director of Public Prosecution opposes the bail and the Court is satisfied that the accused has not prima facie committed the offence or is not likely to commit such an offence in future.

49. Provisions of Criminal Procedure Act, 1972

In all other matters not provided for, the provisions of Criminal Procedure Act 1972, shall apply.

50. Repeal

The Dangerous Act 1952-1968 is hereby repealed.

51. Savings

Notwithstanding the provisions of section 50, every order of a court lawfully made, and every summon, warrant and other process of any court lawfully issued, in Nauru, in exercise of such Courts Criminal Jurisdiction before the commencement of this Act shall continue to have full force and effect as though the written law under which it was made or issued were still in force in Nauru.

52. Regulations

The Cabinet may make regulations, not inconsistent with this Act, prescribing all matters necessary or convenient for giving effect to it.

SCHEDULE 1 – ILLICIT DRUGS

This Schedule includes:

The following illicit drug, chemicals or controlled equipments, designated by their international non-proprietary names or the names used in international conventions in force;

Their isomer, unless specifically excepted, whenever the existence/of/such isomers is possible within the specific chemical/designation;

Their esters and ethers, unless specifically excepted, whenever /the/existence of such esters and ethers is possible;

Their salts, including the salts of esters ethers and isomers, /whenever the existence of such salts is possible;

Preparations of these illicit drug, controlled chemicals or controlled equipments, unless exempted by law.

(FROM SCHEDULE IV OF THE CONVENTION ON NARCOTIC DRUGS, 1961)

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

(FROM SCHEDULE 1 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

(FROM SCHEDULE 1 of the Convention on Narcotic Drugs, 1961)

Acetylmethadol	Ethylmethyl-	Normorphine
Alfentanil	thiambutene	Norpipanone
Allyprodine	Etonitazene	Opium
Alphameprodine	Etoxicidone	Oxycodone
Alphamethadol	Fentanyl	Oxymorphone
Alphamethylthio-	Furethidine	Pethidine

fentanyl	Hydrocodone	Pethidine
Alphaprodine	Hydromorphenol	intermediate A
Anileridine	Hydromorphone	(4-cyano-1 methyl-4-phenyl-piperidine)
Benzethidine	Hydroxypethidine	Pethidine
Benzylmorphine	Isomehtadone	intermediate B
Betacetylmethadol	Levomethorphan	(4-phenylpiperidine-4-carboxylic acid ethylester)
Betamerprodine	Levomoramide	Pethidine
Bethamethadol	Levorphanol	intermediate C
Betaprodine	Levorphanol	(1-methyl-4-phenylpiperidine-4-carboxylic acid)
Bezimatrimide	Metazocine	Phenadoxone
Clonitazene	Methadone	Phenampromide
Coca (leaf)	Methadone intermediate	Phenampromide
Cocaine	(4-cyano-2-dimethyl-amino-4,4-diphenylbutane)	Phenazocine
Codoxime	Mehtyldesorphine	Phenomorphane
Concentrate of poppy Straw	Methylhydromorphone	Phenoperidine
Dextromoramide	Metopon	Piminodine
Difenoxin	Moramide	Piritramide
Dihydromorphine	Morpheridine	Proheptazine
Dimepheptanol	Morpheridine	Propoperidine
Diapromide	Morphine methobromide and other pentavalent nitrogen morphine derivatives	Racemethorphan
Dimethylthiambutene	Morphine-N-oxide	Racemoramide
Dimenaxadol	Myrophine	Racemorphan
Dioxaphetyl butyrate	Nicomorphine	Sufentanil
Diphenoxylate	Noracymethadol	Thebacon
Dipipanone	Norlevorphanol	Thebaine
Drotebanol	Nornmethadone	Tilidine
Ecgonine, Its ester and derivatives	Morphine	Trimeperidine

(FROM SCHEDULE II of the Convention of Narotic Drugs, 1961)

Acetyldihydrocodeine	Ethylmorphine	Pholcodine
Codeine	Nicodicodine	Propiram
Dextropropoxyphene	Nicocodine	
Dihydrocodeine	Norcodeine	

(FROM SCHEDULE II of the Convention on Psychotropic Substances, 1971)

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

SCHEDULE III of the Convention on Psychotropic Substances, 1971

Amobarbital	Cathine	Pentazocine
Buprenorphine	Cyclobarbital	Pentobarbital
Butalbital	Glutethimide	Flunitrazepam
Allobarbital	Ethinamate	Methylprylon
Alprazolam	Ethyl loflazepate	Midazolam
Aminorex	Etilamphetamine	Nimetazepam
Amphetamine	Fencamfamin	Nimetazepam
Barbital	Fenproporex	Nitrazepam
Benzphetamine	Fludiazepam	Oxasepam
Bromazepam	Flurazepam	Oxazolam
Brotizolam	Halazepam	Pemoline
Butobarbital	Haloxazolam	Phendimetrazine
Camazepam	Ketazolam	Phenobarbital
Chlordiazepoxide	Lefetamine	Phentermine
Clobazam	Loprasolam	Pinasepam
Clonazepam	Lorazepam	Pipradol
Clorazepate	Lormetazepam	Prazepam
Clotiazepam	Mazindol	Pyrovalerone
Clozazolam	Medazepam	Secbutabarbital
Delorazepam	Mefenorex	Temazepam
Diazepam	Meprobamate	Tetrazepam
Estazolam	Mesocarb	Trazolam
Ethchlorvynol	Methylpheno-barbital	Vinylbital

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 dimethoxamphetamine (Bromo DMA)

SCHEDULE II – CONTROLLED CHEMICALS

This annex includes:

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

Ephedrine
Ergometrine
Ergotamine
Lysergic acid
1-phenyl-2propanone
Pseudoephedrine
Norephedrine

N-acetylanthranilic acid
Isosafrole
3,4 methylenedioxyphenyl-
2-propanone
Piperonal
Safrole

Acetic anhydride
Acetone
Anthranilic acid
Ethylether
Phenylacetic acid
Piperidine

Hydrochloric acid
Methylethyl
Ketone
Potassium permanganate
Sulphuric acid
Toluene

SCHEDULE III - CONTROLLED EQUIPMENT

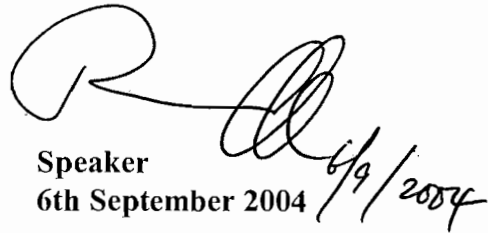
Encapsulating machines
Tabletting machines
Rotary evaporators
Laboratory equipment with a capacity for large volume production (eg round bottom flasks of 25 litres or above and related condensers, separating funnels and heating apparatus)

I hereby certify that the above is a fair print of a Bill for an Act entitled **Illicit Drugs Control Act 2004**, has been passed by Parliament of Nauru and is now presented to the Speaker for his Certificate under Article 47 of the Constitution.



Clerk of Parliament
6th September 2004

Pursuant to Article 47 of the Constitution, **I, RUSSELL KUN**, Speaker of Parliament, **hereby certify** that the **Illicit Drugs Control Act 2004**, has been passed by Parliament of Nauru.



Speaker
6th September 2004