



## ANALYSIS

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## 2004, No. 17

An Act to amend the law relating to the importation, exportation, manufacture, sale, distribution, use and possession of narcotics and to make provision for the prevention of misuse of drugs and narcotics

(14 June 2004)

BE IT ENACTED by the Parliament of the Cook Islands in Session assembled, and by the authority of the same as follows:

1. Short Title - This Act may be cited as the Narcotics and Misuse of Drugs Act 2004.

2. Interpretation - (1) In this Act, unless the context otherwise requires, -

"carrier" includes every person engaged in carrying goods for hire or reward by any means, and whether by land, water, or air;

"controlled drug" means any substance, preparation, mixture or article specified or described in the First Schedule, the Second Schedule, or the Third Schedule to this Act, and "Class A controlled drug", "Class B controlled drug", and "Class C controlled drug" mean respectively the controlled drugs specified or described in the said First Schedule, the said Second Schedule, or the said Third Schedule;

"controlled drug analogue" means any substance, such as the substances specified or described in Part VII of the Third Schedule to this Act, that has a structure substantially similar to that of any controlled drug; but does not include -

(a) any substance specified or described in the First Schedule or the Second Schedule or Parts I to VI of the Third Schedule to this Act; or

- (b) any pharmacy-only medicine or prescription medicine or restricted medicine prescribed by way of regulations made under section 41;

"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;

"dentist" means a person for the time being registered as a dentist under Medical and Dental Practices Act 1976;

"dependent" means being in a state of periodic or chronic intoxication, produced by the repeated consumption, smoking, or other use of a controlled drug detrimental to the person in relation to whom the word is used, and involving a compulsive desire to continue consuming, smoking, or otherwise using the drug or a tendency to increase the dose of the drug; and "dependency" has a corresponding meaning;

"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 are recorded, stored, or embodied so as to be capable, with or without the aid of some other equipment, of being reproduced therefrom; 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; or
- (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;

"export" means to take, or cause to be taken, out of the Cook Islands;

"import" means to bring or cause to be brought, into the Cook Islands and is a continuing process 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, making an illicit drug into dosage form, and packing;

"Medical and Dental Council" means the Medical and Dental Council established under the Medical and Dental Practices Act 1976;

"medical practitioner" means a person for the time being registered as a medical practitioner under the Medical and Dental Practices Act 1976 and, subject to the limitations imposed by that Act, includes a person conditionally registered, and a holder of a certificate of temporary registration, under that Act;

"Minister" means the Minister of Health;

"Ministry" means the Ministry of Health;

"pharmacist" means a person for the time being registered by the Ministry as a pharmacist, and who -

- (a) keeps, in accordance with the requirements of this Act and any regulations made pursuant to this or any other Act, an open shop or place of business for the compounding or dispensing of prescriptions, or is employed in any such shop or place of business so kept; or
- (b) is employed in any hospital in the Cook Islands under the control of the Ministry;

"produce", includes compound; and "production" has a corresponding meaning;

"prohibited plant" means -

- (a) any plant of the genus *cannabis* (commonly known as "marijuana");
- (b) any plant of the species *Papaver somniferum* (commonly known as "poppy");
- (c) *Erythroxylon coca* and *Erythroxylon novagranatense* (syn. *E. truxillense*) commonly known as "cocaine" and every other species of the genus *Erythroxylon* from which a controlled drug can be produced;
- (d) any plant of the species *Lophophora williamsii* or *Lophophora lewinii* (commonly known as dumpling cactus);
- (e) any fungus of the genera *Conocybe*, *Panaeolus*, or *Psilocybe* from which a controlled drug can be produced or which contains a controlled drug;
- (f) any other plant, which is declared to be a prohibited plant by regulations, made under this Act;

"Secretary" means the Secretary of Health;

"supply" includes distribute, give, sell and offer to supply;

"utensils" includes any article associated with the manufacture or administration of an illicit drug.

(2) For the purposes of this Act, the things that a person has in his possession include anything subject to his control that is in the custody of another.

(3) In calculating for the purposes of this Act the percentage of any substance present in a preparation, the percentage in the case of a liquid preparation shall, unless otherwise prescribed, be calculated on the basis that a preparation

containing one part percent of any substance means a preparation in which one gram of the substance, if a solid, or one millilitre of the substance, if a liquid, is contained in every hundred millilitres of the preparation and so in proportion for any greater or less percentage.

(4) In calculating for the purposes of this Act the percentage of morphine present in a preparation it shall be calculated as in respect of anhydrous morphine.

(5) For the purposes of this Act, a salt of any controlled drug shall be deemed to contain that drug.

3. Act to bind the Crown - (1) Subject to subsection (2), this Act shall bind the Crown.

(2) The Queen's Representative, by Order in Executive Council, may exempt any instrument of the Executive Government of the Cook Islands, either absolutely or to such extent and subject to such conditions as may be specified in the Order in Executive Council, from all or any of the provisions of this Act, and in that event, or to that extent and subject to compliance with any such conditions, this Act, or the provisions of this Act so specified, as the case may require, shall not bind the Crown in right of that instrument.

4. Amendment of First, Second, and Third Schedules - (1) The Queen's Representative may from time to time, by Order in Executive Council, amend the name or description of any substance, preparation, mixture, or article included in the First, Second or Third Schedule to this Act where such an amendment is necessary to render that name or description consistent with international scientific usage.

(2) The Queen's Representative may from time to time, by Order in Executive Council made on the advice of the Minister, -

(a) add the name or description of any substance, preparation, mixture or article to any Part of the Third Schedule to this Act;

(b) remove the name or description of any substance, preparation, mixture, or article from any Part of that Schedule and add it to any other Part of that Schedule.

(3) In determining whether or not he should recommend the making of an Order under subsection (2) of this section in respect of any particular substance, preparation, mixture, or article, the Minister shall have regard to the degree of need that exists, bearing in mind the chemical, biochemical, or other properties of the substance, preparation, mixture, or article, for controls to be imposed in accordance with this Act in respect of that substance, preparation, mixture, or article.

5. Functions of the Minister - For the purposes of this Act the functions of the Minister, on behalf of the Crown, shall include the provision and publication of reports, information, and advice concerning the misuse of drugs and the treatment and rehabilitation of persons suffering from the misuse of drugs.

**PART 1**  
**DEALING WITH AND POSSESSION AND USE**  
**OF, CONTROLLED DRUGS**

6. Dealing with controlled drugs - (1) Except as provided in section 8 of this Act, or pursuant to a licence under this Act, or as otherwise permitted by regulations made under this Act, no person shall -

- (a) import into or export from the Cook Islands any controlled drug, other than a controlled drug specified or described in Part IV of the Third Schedule to this Act; or
- (b) produce or manufacture any controlled drug; or
- (c) supply or administer, or offer to supply or administer, any Class A controlled drug or Class B controlled drug to any other person, or otherwise deal in any such controlled drug; or
- (d) supply or administer, or offer to supply or administer, any Class C controlled drug to any person; or
- (e) sell, or offer to sell, any Class C controlled drug to any person; or
- (f) have any controlled drug in his possession for any of the purposes set out in paragraphs (c), (d), or (e) of this subsection.

(2) Every person who contravenes subsection (1) where a Class A controlled drug was the controlled drug or one of the controlled drugs in relation to which the offence was committed, commits an offence against this Act and is liable on conviction to a term of imprisonment of up to 20 years.

(3) Every person who contravenes subsection (1) where any controlled drug other than a Class A controlled drug was the controlled drug or one of the controlled drugs in relation to which the offence was committed, commits an offence against this Act and is liable on conviction to -

- (a) imprisonment for a term of up to 15 years where subsection (2) of this subsection does not apply but a Class B controlled drug was the controlled drug or one of the controlled drugs in relation to which the offence was committed;
- (b) imprisonment for a term of up to 10 years in any other case.

(4) Every person who conspires with any other person to commit an offence against subsection (1) of this section commits an offence against this Act and is liable on conviction to imprisonment for -

- (a) a term of up to 20 years where a Class A controlled drug was the controlled drug or one of the controlled drugs in relation to which the offence was committed;
- (b) a term of up to 15 years where paragraph (a) of this subsection does not apply but a Class B controlled drug was the controlled drug or one of the controlled drugs in relation to which the offence was committed;
- (c) a term of up to 10 years in any other case.

(5) Where any person is convicted of an offence relating to any controlled drug (other than a Class A controlled drug) against any of paragraphs (a), (b), (c), and (f) of subsection (1), the Judge in deciding to impose a custodial sentence, shall consider whether or not to also impose a fine.

(6) In imposing any fine under subsection (5), the Judge shall take into account the seriousness of the offending and the value of the controlled drugs in respect of which the offence is committed, and may impose a fine of up to \$750,000.

(7) For the purposes of subsection (1)(e), if it is proved that a person has supplied a controlled drug to another person that person shall until the contrary is proved be deemed to have sold that controlled drug to that other person.

(8) For the purposes of subsection (1)(f), a person shall until the contrary is proved be deemed to be in possession of a controlled drug for a purpose set out in paragraphs (c), (d), or (e), as the case may require, of that subsection if that person is in possession of any of the following -

- (a) five grams or more of morphine, whether contained in a substance, preparation, or mixture, or not;
- (b) half a gram or more of cocaine or heroin, whether contained in a substance, preparation, or mixture, or not;
- (c) two and half milligrams or more of lysergide, or 25 or more flakes, tablets, capsules, or other drug forms each containing some quantity of lysergide;
- (d) one hundred milligrams or more of 4-bromo-2, 5 dimethoxyamphetamine, or 25 or more flakes, tablets, capsules, or other drug forms each containing some quantity of 4-bromo-2, 5-dimethoxyamphetamine;
- (e) two hundred and fifty milligrams or more of a tetrahydrocannabinol, as described in the First Schedule to this Act whether contained in a substance, preparation, or mixture, or not;
- (f) five grams or more of any cannabis preparation as described in the Second Schedule to this Act, or 28 grams or more of cannabis plant as described in the Third Schedule to this Act, or 100 or more cigarettes containing any cannabis preparation or cannabis plant as so described.

7. Possession and use of controlled drugs - (1) Except as provided in section 8, or pursuant to a licence under this Act, or as otherwise permitted by regulations made under this Act, no person shall -

- (a) procure or have in his possession, or consume, smoke, or otherwise use, any controlled drug; or
- (b) supply or administer, or offer to supply or administer, any Class C controlled drug to any other person, or otherwise deal in any such controlled drug.

(2) Subject to subsection (3), but without prejudice to any liability under section 6, every person who contravenes subsection (1) commits an offence against this Act and is liable on conviction to imprisonment -

- (a) for a term up to 5 years or to a fine not exceeding \$10,000 or to both where a Class A controlled drug was the

controlled drug or one of the controlled drugs in relation to which the offence was committed;

- (b) for a term up to 2 years or to a fine, not exceeding \$5,000 or to both in any other case.

(3) In any proceedings for an offence against this section in respect of the possession of a controlled drug, in which it is proved that the defendant had a controlled drug in his possession, it shall be a defence for the defendant to prove -

- (a) that, knowing or suspecting it to be a controlled drug, he took possession of it for the purpose of preventing another from committing or continuing to commit an offence in connection with that drug and that as soon as possible after taking possession of it he took all reasonable steps to deliver the drug into the possession of a person lawfully entitled to have possession of it; or
- (b) that, knowing or suspecting it to be a controlled drug, he took possession of it for the purpose of delivering it into the possession of a person lawfully entitled to have possession of it and that as soon as possible after taking possession of it he took all reasonable steps to deliver it into the possession of such a person.

(4) Nothing in subsection (3) shall prejudice any defence which is open to a person charged with an offence against this section to raise apart from that subsection.

8. Exemptions from sections 6 and 7 - (1) In subsection (2), references to a medical practitioner, dentist, or pharmacist means a medical practitioner, dentist, or pharmacist, acting as such in the course of his or her practice or employment, and references to the supply of controlled drugs include an offer to supply controlled drugs.

(2) Notwithstanding anything in section 6 or 7, but subject to sections 23 to 26 and any prohibitions, limitations, restrictions, or conditions, imposed thereby or thereunder or by or pursuant to any regulations under this Act, -

- (a) any medical practitioner, dentist or pharmacist may prescribe, produce, manufacture, supply, or administer controlled drugs;
- (b) any pharmacist may produce, manufacture, or supply controlled drugs for the purposes of the hospital in which he is employed or pursuant to a prescription or order issued by a medical practitioner, dentist; or
- (c) any person for whom a controlled drug is supplied by a medical practitioner or dentist, or prescribed by a medical practitioner or dentist and lawfully supplied, may administer that drug to himself in accordance with the advice of the medical practitioner or dentist who supplied or prescribed it;
- (d) any person having the care of a patient for whom a controlled drug is supplied by a medical practitioner or dentist, or prescribed by a medical practitioner or dentist and lawfully supplied, may administer that drug to that patient in accordance with the advice of the medical practitioner or dentist who supplied or prescribed it;

- (e) any hospital board having the care of patients for whom controlled drugs are lawfully prescribed or supplied, may possess those drugs for the purposes of the treatment of those patients;
- (f) any person in the service of the Crown, or any Medical Officer of Health or any pharmacist employed by the Ministry, may procure and possess a controlled drug for the purposes of and in connection with his official duties;
- (g) any carrier may possess a controlled drug in the course of carriage to such extent as is necessary or incidental to his business;
- (h) any person who is permitted by or under this Act to import, export, supply, or administer a controlled drug may procure that drug from a person lawfully entitled to supply it and may possess that drug in the manner and for the purposes expressed or implied in that authority;
- (i) any person who is licensed or otherwise permitted under this Act to cultivate a prohibited plant may possess any controlled drug derived from that plant in the manner and for the purposes expressed or implied in that authority;
- (j) any person who is permitted by or under this Act to possess a controlled drug may procure that drug from a person lawfully entitled to supply it, and may supply or use that drug in the manner and for the purposes expressed or implied in that authority.

(3) Subject to section 23 and to any regulations prescribed under this Act and to any other enactment or rule of law prohibiting, restricting, or regulating the import, export, supply, or administration of drugs, any person may -

- (a) import or export any controlled drug specified or described in Part IV, Part V, of Part VI of the Third Schedule to this Act;
- (b) supply or administer any controlled drug specified or described in the said Part VI.

9. Cultivation of prohibited plants - (1) Except pursuant to a licence under this Act, or as otherwise permitted by regulations made under this Act, no person shall cultivate any prohibited plant.

(2) Subject to subsection (3), every person who contravenes subsection (1) commits an offence against this Act and is liable on conviction to imprisonment for a term up to 20 years.

10. Aiding offences against corresponding law of another country - (1) Every person commits an offence against this Act who, in the Cook Islands aids, incites, counsels, or procures the doing or omission in any place outside the Cook Islands of any act, or that act or omission -

- (a) is punishable under the provisions of any law corresponding to section 6 or 9 and in force in that place; or
- (b) would be done or omitted in the Cook Islands constitute an offence against section 6 or 9.

(2) Every person who commits an offence against this section is liable on conviction to imprisonment for a term -

- (a) up to 20 years where the relevant act or omission is punishable under the provisions of any law corresponding to section 6 or would if done or omitted in the Cook Islands constitute an offence against that section;
- (b) not exceeding 10 years in any other case.

(3) It is a defence to a charge under subsection (1)(b) if the person charged proves that the doing or omission of the act to which the charge relates was not an offence under the law of the place where it was, or was to be done or omitted.

(4) Nothing in this section shall derogate from any provision in the Crimes Act 1969.

11. Theft, etc. of controlled drugs - (1) Every person commits an offence against this Act and is liable on conviction to imprisonment for a term up to 10 years who -

- (a) steals a controlled drug; or
- (b) with intent to defraud by any false pretence, either directly or through the medium of any contract obtained by the false pretence, obtains possession of or title to a controlled drug, or procures a controlled drug to be delivered to any person other than himself; or
- (c) receives a controlled drug obtained by any crime, or by any act wherever committed which, if committed in the Cook Islands would constitute a crime, knowing that controlled drug to have been dishonestly obtained.

(2) Sections 281(2) and (3) of the Crimes Act, 1969 shall apply in respect of any proceedings for an offence against subsection (1)(c).

(3) The definitions in sections 242, 244, 247, 248, 268, 282, 283 and 284 of the Crimes Act 1969 shall apply, with such modifications as may be necessary, for the purpose of construing subsection (1).

12. Use of premises or vehicle - (1) Every person commits an offence against this Act who knowingly permits any premises or any vessel, aircraft, hovercraft, motor vehicle, or other mode of conveyance to be used for the purpose of the commission of an offence against this Act.

(2) Every person who commits an offence against this section is liable on conviction to imprisonment for a term -

- (a) up to 15 years where a Class A controlled drug was the controlled drug or one of the controlled drugs in relation to which the offence was committed;
- (b) up to 10 years where paragraph (a) of this subsection does not apply but a Class B controlled drug was the controlled drug or one of the controlled drugs in relation to which the offence was committed;
- (c) up to 5 years in any other case.

13. Miscellaneous offences - (1) Every person commits an offence against this Act who -

- (a) has in that person's possession any pipe or other utensil (not being a needle or syringe) for the purpose of the commission of an offence against this Act; or
- (b) except as may be provided by regulations made under this Act, has in that person's possession any needle or syringe for the purpose of the commission of an offence against this Act; or
- (c) except as may be provided by regulations made under this Act, has in his possession the seed or fruit (not in either case being a controlled drug) of any prohibited plant which he is not authorised under this Act to cultivate.

(2) Every person who commits an offence against this section is liable to imprisonment for a term up to 5 years or to a fine up to \$5,000 or to both.

14. Licences - (1) Licences granted under this Act shall be in such form and be subject to such conditions as may be prescribed, or permitted to be designed or imposed, and shall be issued by such persons as may be prescribed, by regulations made under this Act.

(2) No licence to import into or export from the Cook Islands, opium prepared for smoking shall be granted under this Act.

(3) Except in the case of a licence issued for the purpose of research or study, no licence granted under this Act shall authorise the consumption, injection, or smoking of any controlled drug.

(4) Except with the approval of the Minister, no licence shall be granted under this Act to any person who has been convicted of an offence against this Act or any Act repealed by this Act or whose licence under any such Act has been revoked by reason of his failure to comply with the conditions thereof or by reason of the breach of the provisions of any such Act or of any regulation made thereunder.

15. False statements - Every person commits an offence against this Act and is liable to imprisonment for a term up to 5 years or to a fine not exceeding \$5,000 or to both who, for the purpose of obtaining, whether for himself or any other person, the grant or renewal of any licence under this Act or for any other purpose in relation to this Act, -

- (a) makes any declaration or statement which to his knowledge is false in any particular; or
- (b) utters, produces, or makes use of any declaration or statement which to his knowledge is false in any particular; or
- (c) knowingly utters, produces, or makes use of any document that is not genuine.

16. Obstruction of officers - Every person commits an offence against this Act who wilfully obstructs, incites others, resists, or deceives any other person in the execution of any powers conferred on that other person by or pursuant to this Act.

17. Liability of principal for acts of agent, etc. - (1) Where an offence is committed against this Act or against any regulation made under this Act by any person acting as the agent or servant of another person, or being otherwise subject to the supervision or instructions of another person for the purposes of any employment in the course of which the offence was committed, that other person shall, without prejudice to the liability of the first mentioned person, be liable under this Act in the same manner and to the same extent as if he had personally committed the offence if it is proved that the act which constituted the offence was committed with his consent or connivance or that it was attributable to any neglect on his part.

(2) Where any body corporate is convicted of an offence against this Act or against any regulation made under this Act, every director and every person concerned with the management of the company shall be guilty of a like offence if it is proved that the act which constituted the offence was committed with his consent or connivance or that it was attributable to any neglect on his part.

18. Search and seizure - (1) Where a search warrant is issued under section 96 of the Criminal Procedure Act 1980-81 in respect of an offence which has been or is suspected to have been committed against this Act or which is believed to be intended to be so committed, any constable executing the warrant or any of his assistants may search any person found in or on the building, aircraft, ship, hovercraft, carriage, vehicle, premises, or place which may be entered and searched under the authority of the warrant.

(2) Where any member of the Police has reasonable grounds for believing that there is in or on any building, aircraft, ship, hovercraft, carriage, vehicle, premises, or place any controlled drug specified or described in the First Schedule or in Part I of the Second Schedule or in Part I of the Third Schedule to this Act and that an offence against this Act has been or is suspected of having been committed in respect of that drug, he, and any assistants who accompany him, may enter and search the building, aircraft, or place and any person found therein or thereon as if authorised to do so by a search warrant issued under section 96 of the Criminal Procedure Act, 1980-81 and by subsection (1).

(3) Where any member of the Police has reasonable grounds for believing that any person is in possession of any controlled drug specified or described in the First Schedule or in Part 1 of the Second Schedule or in Part 1 of the Third Schedule to this Act and that an offence against this Act has been or is suspected of having been committed in respect of that drug, he may search and detain that person for the purpose of search and may take possession of any controlled drug found. Nothing in this subsection shall limit the provisos of subsections (1) and (2) or authorise any member of the Police to enter and search any building, aircraft, ship, hovercraft, carriage, vehicle, premises, or place otherwise than in accordance with the provisions of those subsections.

(4) Every member of the Police exercising the power of entry and search conferred by subsection (2) or the power conferred by subsection (3) shall identify himself to every person searched, and also to any person in or on the building, aircraft, ship, hovercraft, carriage, vehicle, premises, or place who questions his right to enter and search the same, and shall also tell those persons that the search is being made pursuant to the authority of that subsection. He shall also, if not in uniform and if so required, produce evidence that he is a member of the Police.

(5) Any officer of Customs, or the Secretary or any pharmacist employed by the Ministry, or any member of the Police, with such assistants as he thinks necessary, may seize and destroy any prohibited plant except where it is being cultivated either in accordance with the conditions of a licence granted under this Act or in accordance with regulations made under this Act, and may also seize and destroy the seed of any prohibited plant except where that seed is in the possession of any person who is either authorised under this Act to cultivate the plant or who is permitted by regulations made under this Act to have the seed in his possession.

(6) Where any member of the Police exercises the power of entry and search conferred by subsection (2) or the power conferred by subsection (3), he shall, within 3 days after the day on which he exercises the power, furnish to the Commissioner of Police a written report on the exercise of the power and the circumstances in which it came to be exercised.

19. Internal search of person under arrest - (1) Notwithstanding anything in or any enactment or rule of law to the contrary, no member of the Police shall conduct an internal search of any part of the body of any person nor, except in accordance with subsection (2), shall he cause any other person to conduct such a search, Provided that, with the consent of the person concerned, a member of the Police may search that person's mouth.

(2) Where any person (in this section referred to as the suspect) is arrested for any offence against section 6, 7 or 11, a commissioned officer of the Police who has reasonable ground for believing that the suspect has secreted within his body any property that may be evidence of the offence with which the suspect is charged, or any property the possession of which by the suspect constitutes any other offence against any of the said provisions, may require the suspect to permit a medical practitioner, nominated for the purpose by the officer, to conduct an internal examination of any part of the suspect's body by means of an X-ray machine or other similar device, or by means of a manual or visual examination (whether or not facilitated by any instrument or device) through any body orifice.

(3) Notwithstanding anything in subsection (2) or the terms of any requirement made under that section, no medical practitioner shall conduct any such internal examination if he considers that to do so may be prejudicial to the suspect's health, or if he is satisfied that the suspect is not prepared to permit an internal examination to be conducted.

(4) Where the suspect fails to permit an internal examination to be conducted under this section and subsequently applies for bail, the Court may (without limiting its discretion to refuse bail) decline to consider the application until the expiry of 2 days after the day on which the requirement to do so was made or until the suspect sooner permits such an examination to be conducted, if the Court is satisfied that the requirement was properly made on reasonable grounds; and, in any such case, the Court may order that the suspect, shall continue to be detained in police custody until the expiry of that period or until the suspect sooner complies, as the case may be.

(5) Nothing, in this section shall limit or affect the provisions of sections 45 to 57.

*Regulating the administration of controlled drugs*

20. Power to demand production of records and to inspect stocks of controlled drugs - (1) Any member of the Police or any other person authorised by the Minister shall for the purposes of the provisions of this Act have power to enter the premises of any person who carries on the business of a producer, manufacturer, seller, or distributor of any controlled drug, or who otherwise undertakes the supply or administration of any controlled drug, or who otherwise undertakes the supply or administration of any controlled drug, and to demand the production of and to inspect any books or documents relating to dealings in any controlled drug, and to inspect, weigh, measure, and record the stocks of controlled drugs.

(2) If in the opinion of the Secretary there is reasonable grounds for suspecting that any person is in possession of any controlled drug for the purpose of sale, or for use in connection with his profession, trade, or calling, or any occupation whether paid or unpaid in breach of this Act or of any regulations made under this Act, the Secretary may require that person to produce for his inspection or to produce to any person specially authorised by the Secretary in that behalf, any books or documents dealing with the reception, possession, purchase, sale, or delivery of the controlled drug.

(3) Any person acting under, or pursuant to an authority under, subsections (1) or (2) may make copies of or extracts from any such books or documents, and the copies or extracts, certified as such by that person, shall be deemed to be true and correct copies or extracts, unless the contrary is proved.

(4) Every person commits an offence against this Act who refuses or neglects to comply with any demand or requisition made pursuant to this section.

21. Statements regarding drug dependent persons - (1) If the Secretary has reason to believe that any person is or is likely to become dependent on any controlled drug, he may, for the purpose of preventing or restricting the supply of controlled drugs to that person, or of assisting in the cure or mitigation or the dependence of that person, publish statements relating to that person to all or any of the members of all or any of the classes of persons set out in subsection (3).

(2) Every statement made under subsection (1) shall be privileged unless the publication is proved to be made with malice.

(3) The classes of persons referred to in subsection (1) are as follows

- (a) employees of the Ministry;
- (b) Superintendent of Prisons within the meaning of the Prisons Act 1967;
- (c) medical practitioners;
- (d) dentists;
- (e) members of the Police;
- (f) persons who deal in controlled drugs in the course of business.

(4) Nothing in subsections (1) or (2) shall limit or affect any right or duty that the Secretary may otherwise possess to publish a statement to any person.

(5) Every person commits an offence against this Act who, except in the course of duty as a member of a class set out in subsection (3) or as an officer or servant of the Crown, publishes, any information obtained, whether by him or any other person, from a statement made pursuant to subsection (1), or any comment on any such statement.

22. Power of the Court to restrict publication of name of controlled drug - (1)

Where, in the course of proceedings in any Court or before a Coroner, reference is made to any controlled drug, the Court or Coroner may in its or his discretion order that the name of that drug shall not be published in relation to those proceedings at any time before the expiration of a period of 5 years from the date of the final disposal of those proceedings:

Provided that no order made under this subsection shall apply to the publication of that name to scientists or to members of the legal, medical, dental, nursing, or pharmaceutical professions or to persons studying to become scientists or members of those professions or in any publication of a scientific or technical character solely or mainly intended for circulation among scientists or members of those professions or persons so studying or in any publication published by or on behalf of the Crown.

(2) Where the publication of the name of a controlled drug is prohibited under this section in relation to any proceedings every person commits an offence against this Act who, within the said period of 5 years, publishes the name of that drug or any name or particulars likely to lead to the identification of that drug as the controlled drug to which reference was made in those proceedings.

(3) Nothing in this section shall be construed to limit the provisions of any other enactment relating to the prohibition or regulation of the publication of reports or particulars relating to any judicial proceedings.

23. Powers to prohibit importation, etc., of controlled drugs - (1) The

Queen's Representative may from time to time, by Order in Executive Council made on the recommendation of the Minister, prohibit the importation, manufacture, production, procuring, possession, supply, administration or other use of any specified controlled drug, either absolutely or subject to such conditions as he thinks fit, for any specified period not exceeding one year:

Provided that this power shall not be exercised more than once in respect of any controlled drug so specified.

(2) The Queen's Representative may from time to time, by Order in Executive Council made on the recommendation of the Minister prohibit the importation or supply of any class of pipe or other utensil, not being a needle or syringe, that may be used for administering any controlled drug or in the preparation of any controlled drug to be administered, either absolutely or subject to such conditions as the Minister thinks fit.

(3) Every person commits an offence against this Act who, being a person permitted by or under this Act to import, manufacture, produce, procure, possess, supply, administer, or otherwise use, as the case may require, a controlled drug specified in a notice under subsection (1) or any pipe or other utensil of a class specified in a notice under subsection (2), unless prohibited from so doing by any such notice, contravenes or fails to comply with any such notice.

24. Powers to prohibit prescribing, etc. - (1) Subject to subsection (2), the Queen's Representative may at any time, by Order in Executive Council made on the recommendation of the Minister -

- (a) prohibit any specified medical practitioner, or dentist from prescribing controlled drugs;
- (b) prohibit any specified person from exercising all or any of the rights conferred by section 8, whether those rights are

so conferred on persons generally or on a particular class of person to which that person belongs.

(2) No such Order in Executive Council shall be made pursuant to subsection (1) -

- (a) in the case of a medical practitioner, except on the recommendation of the Medical and Dental Council to the Minister;
- (b) in the case of a dentist, except on the recommendation of the Medical and Dental Council to the Minister.

(3) Notwithstanding anything in any other Act, the Medical and Dental Council shall, for the purpose of considering and determining whether or not to make a recommendation to the Minister under that subsection, have jurisdiction to inquire into any prescribing of or dealing in controlled drugs by a member of the profession with which it is concerned, and any matter incidental thereto, when such prescribing or dealing has been brought or otherwise comes to its attention.

(4) For the purposes of subsection (3) the Medical and Dental Council shall have and may exercise any powers with respect to summoning witnesses, administering oaths, hearing evidence, and other matters of procedure, and with respect to the payment and receiving of costs and expenses conferred on it, in relation to disciplinary proceedings by the Medical and Dental Practices Act 1976, but it shall not be necessary, unless the Medical and Dental Council so requires, for any other body to conduct an investigation or inquiry or to be represented at the inquiry conducted by the Medical and Dental Council.

(5) Without prejudice to the liability of any person under any other provision of this Act, every medical practitioner, or dentist who prescribes any controlled drug in contravention of an order under subsection (1) commits an offence against this Act and is liable -

- (a) to imprisonment for a term up to 5 years or to a fine up to \$5,000 or to both, where a Class A controlled drug or a Class B controlled drug was the controlled drug or one of the controlled drugs in relation to which the offence was committed;
- (b) to imprisonment for a term up to 3 years or to a fine up to \$2,000 or to both, in any other case.

25. Treatment of persons dependent on controlled drugs - (1) Every medical practitioner commits an offence against this Act who, except as provided in subsection (2), prescribes, administers, or supplies any controlled drug for or to any person, whom the practitioner has reason to believe is dependent on that or any other controlled drug, in the course, or for the purpose, of treatment for dependency.

(2) A medical practitioner may prescribe, administer, or supply any controlled drug for or to any such person if the medical practitioner -

- (a) is for the time being a medical practitioner specified by the Minister under subsection (5); or
- (b) is an employee of the Ministry and is authorised in writing by a medical practitioner working in the Ministry to prescribe controlled drugs; or
- (c) is acting in his capacity as a medical officer employed in the Ministry and is authorised in writing by the Secretary to prescribe controlled drugs; or

- (d) is acting, with the permission in writing of any such specified medical practitioner or authorised medical officer, in relation to a particular patient, and during such period and in accordance with such terms and conditions, as the medical practitioner or medical officer may in writing specify or impose.

(3) Except with the concurrence of the Secretary, no permission given under subsection (2)(d) shall be expressed to apply for any period longer than 3 months, but any such permission may from time to time be renewed by the specified medical practitioner or by the authorised medical officer, or any other medical officer similarly authorised and employed in the Ministry for a period not exceeding, except as aforesaid, 3 months at any one time.

(4) Any authority or permission given or renewed pursuant to subsections (2) or (3) may, by notice in writing to the person to whom the authority or permission was given, be withdrawn at any time by the person who gave or renewed the authority or permission, and shall be deemed to have been so withdrawn when the notice specifying the hospital, Health centre, clinic, or place, in or from which the authority or permission was given or renewed, or specifying the medical practitioner by whom the authority or permission was given, as the case may require, is revoked, or, in the case of an authority under the said subsection (2)(b), such medical practitioner dies or ceases to work in the Ministry or place to which the authority relates.

(5) The Minister may from time to time, by notice in the *Gazette*, specify -

- (a) by name, any medical practitioner as a medical practitioner who may prescribe, administer, or supply controlled drugs for the purposes of this section;
  - (b) by name or description, any hospital carried on by the Ministry or any hospital, health centre, clinic, or other place in which a medical practitioner, for the time being specified by the Minister under paragraph (a), works, as a hospital, Health centre, clinic, or place at which controlled drugs may be prescribed, administered, or supplied for the purposes of this section and may in like manner revoke or amend any such notice.
- (6) Nothing in the preceding provisions of this section shall apply to
- (a) the emergency treatment of a patient in any hospital for a period not exceeding 3 days;
  - (b) the treatment of any restricted person within the meaning of section 26.

26. Restrictions on supply to particular persons - (1) In this section "restricted person" means a person who is the subject of a notice given under subsection (3) and for the time being in force.

- (2) Every person commits an offence against this Act who -
- (a) in contravention of a notice which has been served on him pursuant to subsections (3) or (4), or which has otherwise come to his attention, prescribes for or supplies to a restricted person, knowing him to be a restricted person, any controlled drug; or

(b) knowing himself to be a restricted person, procures or attempts to procure a prescription or a controlled drug from a person who is for the time being prohibited by a notice under subsections (3) or (4), from issuing the prescription or supplying the controlled drug to him.

(3) Where the Secretary is satisfied that any person has been obtaining a controlled drug over a prolonged period and is likely to seek further supplies of a controlled drug, or prescriptions for the supply of a controlled drug, he may from time to time, by notice in such form as he thinks fit, given generally or to any person authorised by or under this Act to supply controlled drugs, prohibit every medical practitioner and dentist from issuing prescriptions for the supply of, and every person from supplying, any controlled drugs to the first-mentioned person, subject to such exceptions, relating to particular medical practitioners or dentists or sources of supply, or particular controlled drugs, or the frequency or quantity of prescriptions or supply, as may be specified in the notice.

(4) The Secretary may at any time by a like notice revoke, or vary, or modify any prohibition, condition, or exception contained in a notice given by him under this section.

(5) A copy of any notice under subsections (3) or (4) shall be served, either personally or by registered post, on the restricted person, but failure to comply with this requirement shall not invalidate the notice.

(6) Any person who is aggrieved by the issue of a notice under this section, or by the refusal of the Secretary to revoke, vary, or modify, any prohibition, condition or exception contained in any such notice, may appeal in writing to the Minister whose decision shall be final.

27. Arrest by Customs Officers - If any officer of Customs has reasonable cause to believe or suspect that any person, in contravention of this Act, has imported into or exported from the Cook Islands any controlled drug, or has been concerned in such import or export, he may arrest that person without a warrant.

28. General Penalty - Every person who commits an offence against this Act for which no penalty is provided elsewhere than in this section, upon conviction is liable to imprisonment for a term up to 5 years or to a fine up to \$5,000 or to both.

#### *Legal proceedings and forfeiture*

29. Legal proceedings - (1) Except where this Act otherwise provides, every offence against this Act or against any regulations made under this Act shall be punishable on conviction.

(2) Notwithstanding anything in any enactment to the contrary any information in respect of any offence against this Act or against any regulation made under this Act may be laid at any time within 5 years from the time when the matter of the information arose.

(3) Notwithstanding anything in any enactment to the contrary or subsection (2), any information in respect of any offence against sections 6, 9 or 10 may be laid at any time.

30. Mistake as to nature of controlled drug - Where in any proceedings for an offence against any of the provisions of sections 6 or 7, it is necessary, if the defendant is to be convicted of the offence charged, for the prosecution to prove that some substance, preparation, mixture, or article involved in the alleged offence was the controlled drug which the prosecution alleges it to have been, and it is proved that the substance, preparation, mixture, or article was that controlled drug, the defendant shall not be acquitted of the offence charged by reason only of the fact that he did not know or may not have known that the substance, preparation, mixture, or article in question was the particular controlled drug alleged.

31. Issue of usable quantity - (1) On the trial of any person charged with an offence against this Act in which it is alleged that the defendant had in his possession any controlled drug in contravention of this Act, it shall not be necessary for the prosecution to prove that the amount of the controlled drug in the defendant's possession was of a usable quantity, unless the defendant puts the matter in issue.

(2) Where, in the course of a trial, the defendant puts in issue the question of whether or not the amount of any controlled drug alleged to have been in his possession was of a usable quantity, the Court shall, if requested to do so by the prosecutor, adjourn the hearing for such period as is considered sufficient to enable the prosecutor to arrange for the attendance in Court of a witness or witnesses to adduce evidence that that amount was of a usable quantity; and if the prosecutor has closed his case before the said question is put in issue, the Court shall also grant the prosecutor leave to re-open his case for the purpose of adducing evidence that the amount of the drug was of a usable quantity.

32. Special provisions where offence relating to cannabis preparations alleged - For the purposes of any proceedings for an offence against any of the provisions of sections 6 or 7 in relation to any cannabis preparation the following provisions shall apply -

- (a) it shall be for the prosecution to prove that the preparation to which the charge relates contains any *tetrahydrocannabinol*;
- (b) subject to paragraph (a), the preparation shall be deemed to have been produced by subjecting cannabis plant material to some kind of processing unless it is in a form that is clearly recognisable as plant material;
- (c) "plant material" means the whole or any part of the leaf, flower, or stalk of any plant (of whatever species);
- (d) the question of whether or not any preparation is in a form that is clearly recognisable as plant material shall, in the event of dispute between the prosecutor and the defendant, be determined by the jury (or, if there is no jury, by the Judge as a question of fact) by means of a visual inspection unaided by any microscope or magnifying glass (other than spectacles ordinarily worn) or by any other evidence.

33. Special provisions where offence relating to controlled drug analogues alleged - It shall be a defence to a charge relating to the possession of any controlled drug analogue in contravention of any of the provisions of this Act if the defendant proves that he or she had the substance -

- (a) for some purpose other than -
  - (i) consuming, smoking, snorting, or injecting by any person, or using in any other manner intended to have a pharmacological effect on the user; and
  - (ii) supplying or administering it to any other person; or
- (b) for the purpose of supplying or administering it to any other person in accordance with any procedure approved by the Secretary.

34. Burden of proof - In any proceedings against any person in respect of any offence against this Act or against any regulations made under this Act in which it is proved that he had in his possession any controlled drug, or did any act in relation to a controlled drug which would have amounted to that offence if such act were not done pursuant to section 8 or to a licence under this Act or as otherwise permitted by regulations under this Act, the burden of proving that he had such controlled drug in his possession, or did such act, pursuant to the said section 8 or to any such licence or as so permitted shall lie on him.

35. Evidence of analysis - (1) For the purposes of this section the term "analyst" means an employee of the Institute of Environmental Science and Research Limited of New Zealand ("ESR") and suitably qualified in the field of narcotics and drugs.

(2) Subject to subsections (3) and (4), in any proceedings for an offence against this Act, a certificate purporting to be signed by an analyst, and certifying that, on a date stated in the certificate, the substance, preparation, mixture, or article to which the certificate relates was received by the signatory personally in any case or (where the substance, preparation, mixture, or article was delivered in a sealed package or by registered post) by any other employee of the ESR, from or on behalf of the member of the Police or employee of the Police Department or officer of Customs named in the certificate, and that upon analysis that substance, preparation, mixture, or article was found to be or to contain a particular controlled drug (whether of a specified or an unspecified weight) or a particular prohibited plant, or a particular part of a particular prohibited plant, or a seed or fruit of a particular prohibited plant, specified or described in the certificate, shall until the contrary is proved be sufficient evidence -

- (a) of the qualifications and authority of the person by whom the analysis was carried out; and
- (b) of the authority of the person who signed the certificate to sign that certificate; and
- (c) of the facts stated in the certificate.

(3) Where the substance, preparation, mixture, or article was delivered in a sealed package or by registered post and received by any employee of the ESR, from or on behalf of any person referred to in subsection (2), the person who made the analysis may give evidence of receipt by that employee of the substance, preparation, mixture, or article that is the subject of that analysis. Such evidence shall, in the absence of evidence to the contrary, be admissible as sufficient proof of the

proper receipt of the substance, preparation, mixture, or article by the person who made the analysis.

(4) A certificate referred to in subsection (2) shall be admissible in evidence only if -

- (a) at least 28 clear days before the hearing at which the certificate is tendered, a copy of that certificate is served, by or on behalf of the prosecutor, on the defendant, and the defendant is at the same time informed in writing that the prosecutor does not propose to call the person who made the analysis as a witness at the hearing; and
- (b) the defendant does not, by notice in writing given to the prosecutor at least 21 clear days before the hearing, require the person who made the analysis to be called by the prosecutor as a witness at the hearing.

36. Forfeiture - (1) Every person convicted of an offence against this Act shall, in addition to any penalty imposed pursuant to this Act, forfeit to the Crown, by virtue of such conviction, all property (as that term is defined in the Proceeds of Crime Act 2003), if any, in respect of which the offence was committed and in the possession of such person.

(2) Property forfeited under the provisions of this section shall be dealt with in accordance with the provisions of the Proceeds of Crime Act 2003.

#### *Notification of conviction*

37. Notification of conviction of medical practitioners, etc. Where any person being a medical practitioner, pharmacist, or dentist is convicted of any offence against this Act or against any regulations made under this Act, the Court shall cause particulars of the conviction to be sent to the person charged with the duty of keeping the register on which the name of the convicted person appears as a medical practitioner, pharmacist, or dentist, as the case may be.

#### *Protection of officers*

38. Protection of persons acting under authority of Act - A person who does any act in pursuance or intended pursuance of any of the functions conferred on him by or under this Act shall not be under any civil or criminal liability in respect thereof, whether on the ground of want of jurisdiction, or mistake of law or fact, or on any other ground, unless he has acted in bad faith or without reasonable care.

39. Protection of Police officers - In this section the term "undercover officer" means a member of the Police whose identity is for the time being concealed for the purpose of a particular investigation of any suspected offence against this Act or of any person suspected of such an offence; and includes any other member of the Police who is for the time being directing or assisting that member in the course of that investigation.

(2) No prosecution for an offence against this Act, or against any regulations made under this Act, shall be commenced or continued against any member of the Police in respect of any act committed by him at a time or during a period when he was acting as an undercover officer except with the leave of the Attorney-General.

(3) A certificate signed by the Commissioner of Police to the effect that, at any specified time or during any specified period, the member of the Police named in the certificate was acting as an undercover officer shall, for the purposes of subsection (2), be conclusive evidence of that fact.

#### *Extraditable offence*

40. Crimes deemed to be included in extradition treaties - (1) For the purposes of the Extradition Act 2003 and every Order in Executive Council made under section 3 of that Act or referred to in section 21 of that Act, every crime described in section 6 or 9 (including attempting or conspiring to commit that crime, aiding, abetting, inciting, counselling, or procuring any person to commit that crime) and every crime described in section 10 shall, if not already described in the treaty, be deemed to be an offence described in any extradition treaty concluded before the commencement of this section and for the time being in force between the Cook Islands and any foreign country which is a party to the Single Convention on Narcotic Drugs 1961, as amended by the Protocol amending that Convention, done at Geneva on 25 March 1972. A certificate given under the hand of the Minister of Foreign Affairs that any foreign country is a party as foreshaid shall be sufficient evidence of that fact.

(2) Where, pursuant to the provisions of subsection (1) of this section, any crime is deemed to be an offence described in an extradition treaty, a person whose surrender is sought under the Extradition Act 2003 in respect of an act or omission which amounts to that crime shall be liable to be surrendered in accordance with the provisions of that Act, whether the act or omission occurred before or after the date on which the crime was deemed to be an offence described in the extradition treaty.

(3) For the purposes of this section, the expression "foreign country" includes any territory for whose international relations the Government of a foreign country is responsible and to which extradition treaty and the Single Convention on Narcotic Drugs as amended by the Protocol amending that Convention.

#### *Regulations*

41. Regulations - (1) The Queen's Representative may from time to time, by Order in Executive Council, make regulations for all or any of the following purposes -

- (a) providing for the issue of licences for the import, export, possession, production, manufacture, procuring, supply, administration, or use of controlled drugs and cultivation of prohibited plants;
- (b) prescribing the form, duration, terms, and conditions of any licence under this Act and enabling additional conditions to be imposed;
- (c) prescribing the fees payable for licences under this Act and providing for the cancellation and suspension of such licences;
- (d) permitting the import, export, possession, production, manufacture, procuring, supply, administration, or use of controlled drugs, and the cultivation of prohibited plants, otherwise than pursuant to licence under this Act but

- subject to such conditions or restrictions as may be prescribed by or imposed under the regulations;
- (e) prohibiting, limiting, restricting, and imposing conditions on, either generally or in relation to particular cases or classes of case or particular classes of person, the prescribing, production, manufacture, procuring, supply, use, or possession of controlled drugs pursuant to any provision of section 7;
  - (f) requiring persons who are engaged in the import, export, production, manufacture, procuring, supply, or administration of any controlled drug, or who utilise with their profession, trade, or calling, or any occupation whether paid or unpaid, or who otherwise undertake the supply or administration of any controlled drug, to keep records in such form and manner and to furnish information with respect to such matters as may be prescribed;
  - (g) regulating the issue by medical practitioners and dentists, of prescriptions for the supply of any controlled drug, and requiring persons issuing or dispensing prescriptions in respect of any such drug to furnish such information relating to those prescriptions as may be prescribed;
  - (h) prescribing the circumstances in which, and the conditions under which, any person or class of persons may possess needles or syringes notwithstanding that those needles or syringes may be intended to be used for the purpose of the commission of offences against this Act;
  - (i) regulating the sale, exchange, or supply of needles or syringes -
    - (i) by medical practitioners or pharmacists generally, or by those approved for the purpose by the Secretary; or
    - (ii) by authorised representatives of any agency, association, or body approved for the purpose by the Secretary, -notwithstanding that those needles or syringes may be intended by the persons to whom they are sold or supplied, or with whom they are exchanged, to be used for the commission of offences against this Act;
  - (j) requiring any medical practitioner who attends a person whom he considers, or has reasonable grounds to suspect, is dependant on controlled drugs of any description to furnish such particulars with respect to that person as may be prescribed;
  - (k) prohibiting, regulating, or restricting the supply of controlled drugs to any person so dependent and the issue of prescriptions for such supply;
  - (l) regulating the dispensing and compounding of controlled drugs;

- (m) regulating the packing, labelling, storage, carriage, and destruction of controlled drugs;
  - (n) declaring plants to be prohibited plants;
  - (o) controlling or restricting the cultivation and destruction of prohibited plants and the sale, distribution, possession, and destruction of seeds or fruit of prohibited plants;
  - (p) providing for the weighing, counting, measuring, sealing, seizing, and taking of samples of controlled drug;
  - (q) prohibiting, regulating, or restricting advertisements for controlled drugs and statements made in any such advertisement;
  - (r) providing for the waiver of fees in whole or in part in particular cases or classes of cases and for the total or partial refund of fees;
  - (s) prescribing offences in respect of the contravention of or non-compliance with any regulations made under this Act, and the amounts of fines that may be imposed in respect of any such offences, which fines shall be an amount not exceeding \$2,000 and, where the offence is a continuing one, a further amount not exceeding \$100 for every day or part of a day during which the offence has continued;
  - (t) exempting, or providing for the exemption of, any persons or classes of persons, or excepting any controlled drugs, from any provision of any regulation made under this Act which imposes conditions or obligations;
  - (u) generally for prohibiting, controlling, or restricting the import, export, possession, production, manufacture, procuring, supply, administration, and use of controlled drugs;
  - (v) providing for such matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for its due administration.
- (2) Any regulations made under subsection (1) may -
- (a) be expressed to apply to controlled drugs generally, or to particular controlled drugs or classes of controlled drugs specified or described in the regulations, and may make different provision for different controlled drugs or classes of controlled drugs so specified or described;
  - (b) provide for depriving persons of any rights, privileges, or exemptions, conferred on any class of person to which those persons belong, by any such regulations.

**PART 2**  
**SPECIAL PROVISIONS RELATING TO DETECTION,**  
**ENFORCEMENT, AND SENTENCING**

42. Interpretation - (1) In this Part, unless the context otherwise requires -
- "drug dealing offence" means any offence against section 6 in relation to a Class A controlled drug or a Class B controlled drug;
- "emergency permit" means a permit granted under section 63 to intercept a private communication by means of a listening device;
- "intercept", in relation to a private communication, includes hear, listen to, record, monitor, or acquire the communication while it is taking place;
- "interception warrant" means a warrant granted under section 60 of this Act to intercept a private communication by means of a listening device;
- "listening device" means any electronic, mechanical, or electromagnetic instrument, apparatus, equipment, or other device that is used or is capable of being used to intercept a private communication; but does not include a hearing aid or similar device used to correct subnormal hearing of the user to no better than normal hearing;
- "Private communication" means -
- (a) any oral communication made under circumstances that may reasonably be taken to indicate that any party to the communication desires it to be confined to the parties to the communication; but
  - (b) does not include such a communication occurring in circumstances in which any party ought reasonably to expect that the communication may be intercepted by some other person not having the express or implied consent of any party to do so; and
- a reference to a party to a private communication is a reference to -
- (c) any originator of the communication and any person intended by the originator to receive it; and
  - (d) a person who, with the express or implied consent of any originator of the communication or any person intended by the originator to receive it, intercepts the communication;
- "proper officer of Customs" in relation to any power conferred by or under section 44, 45 and 60, means any officer of Customs exercising or authorised to exercise that power by the order or with the concurrence (whether precedent or subsequent) of the Minister of Customs or the Comptroller of Customs or in pursuance of any other lawful authority;
- "tracking device" means a device capable of transmitting a signal to a receiver for the purpose of indicating the location of the device.
- (2) For the purposes of sections 43 and 44 -

"boat", "bulk cargo container", "goods", "package", "pallet", "ship", and "vehicle" have the same meaning as in section 2 of the Customs Act 1913;

"Postal packet" has the same meaning as in the Customs Act 1913.

#### *Controlled delivery*

43. Allowing delivery of unlawfully imported drugs for the purpose of detection, etc - (1) Where any proper officer of Customs acting in the course of his official duties believes on reasonable grounds that there is in or on any aircraft, boat, any controlled drug that has been imported into the Cook Islands in contravention of section 6, he may, for the purpose of his investigation of the matter, leave or replace that drug, or any portion of it, in or on the aircraft, boat, bulk cargo container, package, pallet, postal packet, ship, vehicle or goods and may, in the same manner as if there had been delivery from Customs control, -

- (a) allow the aircraft, boat, ship, or vehicle to leave; or
- (b) allow the bulk cargo container, package, pallet, or goods to be collected by or delivered to or on behalf of the consignee; or
- (c) return the postal packet to the Cook Islands postal office for delivery to the addressee -

(as the case may require).

(2) No proper officer of Customs who exercises any power conferred by subsection (1), and no officer or employee of any Cook Islands postal office who, in the course of his duties, does anything in respect of any postal packet returned to the any Cook Islands postal office in accordance with that subsection (whether or not he knows that the postal packet contains a controlled drug), shall be under any criminal or civil liability in respect thereof.

44. Use of tracking devices by Police and Customs officers - (1) Where any member of the Police or proper officer of Customs believes on reasonable grounds that -

- (a) a drug dealing offence has been or is being or is about to be committed; and
- (b) the drug is in or on any aircraft, boat, bulk cargo container, package, pallet, ship, vehicle, or goods, or any person involved or suspected to be involved in the offence is in or on any aircraft, boat, ship, or vehicle, -

he may, for the purpose of his investigation of the matter, place a tracking device in or on that aircraft, boat, bulk cargo container, package, pallet, ship, vehicle, or goods.

(2) The power conferred by subsection (1) may be exercised in respect of any postal packet that any proper officer of Customs intends to return to the Cook Islands postal office pursuant to section 43(1)(c), but shall not be exercisable in respect of any other postal packet.

(3) Within 3 days of having placed a tracking device in or on any object pursuant to subsection (1), the member of the Police or proper officer of Customs shall lodge a written report on the exercise of the power, and the circumstances in which

it came to be exercised, with the Registrar of the High Court, who shall, as soon as reasonably practicable, bring the report to the notice of a Judge.

(4) If the Judge to whom the report is referred pursuant to subsection (3) considers that the circumstances so warrant, he shall refer a copy of the report to the Commissioner of Police or the Comptroller of Customs, as the case may require, with such recommendations as he thinks fit. In any such case, the Judge may also refer a copy of his report to the Minister of Police, or, as the case may require, the Minister of Customs.

(5) No report made under subsection (3) shall form part of the Court records, but the Registrar shall cause every such report to be kept in safe custody for at least 6 years. At the expiration of that period, the Registrar may destroy the report.

#### *Powers to detain*

45. Power to detain on belief of internal concealment - (1) If any member of the Police or officer of Customs has reasonable cause to believe that any person has any Class A controlled drug or Class B controlled drug secreted within that person's body for any unlawful purpose, the member of the Police or officer of Customs may cause that person to be detained under this section.

(2) For the purposes of subsection (1), a person has any Class A controlled drug or Class B controlled drug secreted within that person's body if -

- (a) the drug is within any of that person's body cavities; or
- (b) that person has swallowed the drug in such a manner that it may pass through the body, or be regurgitated, intact, but the drug is still within the body at the material time.

(3) In subsection (1), "unlawful purpose" means the commission of an offence against this Act, and the concealment of the commission of any such offence.

46. Duties of officer in ordering detention - On causing any person to be detained under section 45, a member of the Police or an officer of Customs shall as soon as possible, unless the detention sooner ceases in accordance with section 52(a), (b) or (c), -

- (a) inform the detained person of the reason for the detention, in words sufficient to give the detained person notice of the true reason for the detention; and
- (b) hand to the detained person a Statement of Rights in the form set out in the Schedule to this Act; and
- (c) arrange for the attendance of a medical practitioner (who shall be nominated or approved for the purpose by the Commissioner of Police or the Comptroller of Customs, either generally or in any particular case or class of case), and, in the presence of that medical practitioner, ask the detained person if he or she wishes to undergo an examination of one or more of the kinds specified in section 47; and
- (d) apply to a Judge, in accordance with section 49, for a warrant authorising the continued detention of the detained person under section 45.

47. Internal examination of detained person - (1) The kinds of examination that a person who is detained under section 45 may undergo are as follows -

- (a) a physical examination (whether or not facilitated by an instrument or device) to be conducted by a medical practitioner nominated or approved for the purpose by the Commissioner of Police or the Comptroller of Customs, either generally or in any particular case or class of case;
- (b) an X-ray examination with or without a contrast agent;
- (c) an ultrasound scan.

(2) Except in a case where the detained person immediately makes it clear that he or she does not wish to undergo any examination, the medical practitioner called under section 46(c) shall explain to the detained person what is involved in each kind of examination.

(3) If the detained person wishes to undergo an examination of a kind described in subsection (1), the detained person shall sign a written statement to the effect that he or she consents to the examination, and the medical practitioner shall endorse on the written consent a certificate to the effect that the medical practitioner has advised the detained person of what is involved in the examination and is satisfied that the detained person, when giving consent, understood what is involved in that examination.

(4) Notwithstanding that any such detained person states that he or she does not wish to undergo any examination of a kind described in subsection (1), the detained person may subsequently, at any time while the detention is continuing, advise any member of the Police or officer of Customs that he or she now wishes to undergo such an examination, in which case the provisions of subsections (2) and (3) shall apply with any necessary modifications.

(5) As soon as practicable after any such detained person has consented to undergo any such examination, a member of the Police or an officer of Customs shall make all necessary arrangements for that examination to take place.

(6) Notwithstanding any of the foregoing provisions of this section, no such detained person shall be entitled to insist on undergoing an examination of a particular kind if the necessary equipment is not reasonably available for the purpose.

(7) Nothing in the foregoing provisions of this section shall preclude the detained person from requesting or consenting to the administration to him or her of a laxative or any other similar substance; and, where the detained person makes any such request or gives any such consent, a member of the Police or an officer of Customs shall record the particulars of the case and those particulars shall be supplied to the Judge whenever an application for the grant or renewal of a detention warrant is made.

48. Certificate by person conducting examination - (1) The medical practitioner or other person who conducts an examination of any person detained under section 45 shall, on concluding the examination, certify the results of the examination in which ever of the following forms is appropriate -

- (a) that, in his or her professional judgement, the detained person has nothing secreted within that person's body, or within that part of the body to which the examination related, that could be or contain a Class A controlled drug or a Class B controlled drug;
- (b) that, in his or her professional judgment, the detained person has something secreted within that person's body

- that could be or contain a Class A controlled drug or a Class B controlled drug;
- (c) that the results of the examination are inconclusive.
- (2) A copy of every certificate given under subsection (1) shall be given to the -
- (a) detained person; and
- (b) barrister or solicitor appointed under section 50; and
- (c) medical practitioner appointed under that section.

49. Detention warrant - (1) Subject to subsection (2), every application for a warrant authorising the continued detention of any person under section 45 shall be made by a member of the Police or an officer of Customs in writing and on oath, and it shall set out, or be accompanied by, the following particulars -

- (a) the facts relied upon to show that there is reasonable cause to believe that the detained person has any Class A controlled drug or Class B controlled drug secreted within that person's body for any unlawful purpose;
- (b) the time at which, the date on which, and the place at which the detention commenced under section 45;
- (c) the address, and a description of the nature, of the premises in which the detained person is being detained, and, if it is proposed that the detained person be moved to any other premises for the purposes of the detention, the address, and a description of the nature, of those other premises;
- (d) the time or times at which, and the date or dates on which, the detained person was asked if he or she wished to undergo any examination of a kind described in section 47(1), and the detained person's response to any such question, including the reasons given by the detained person for any negative response;
- (e) if any such examination has been conducted, the results of that examination as set out in the certificate given under section 48(1).

(2) In any case where, because of the urgency of the matter or for any other sufficient cause, it seems proper to do so, a Judge may permit an application under this section to be made on oath orally, but in that event the Judge shall make a note in writing of the particulars referred to in paragraphs (a) to (e) of subsection (1) of this section.

(3) In considering an application made under this section, the Judge may take into account any oral or documentary material that the Judge considers relevant, whether or not it would be admissible in a court of law.

- (4) If, on an application made under this section, a Judge is satisfied -
- (a) that there has been reasonable compliance with the requirements of section 47; and
- (b) that there is reasonable cause to believe that the detained person has secreted within that person's body any Class A controlled drug or Class B controlled drug for any unlawful purpose; and

(c) that the premises in which the detained person is being detained, or any other premises in which it is proposed to detain that person, are suitable for the purpose,  
 the Judge may grant a detention warrant in the prescribed form authorising the continued detention of the person to whom it relates under section 45.

(5) A detention warrant issued under subsection (4) shall authorise the continued detention of the person named in it in the premises specified in it until -

- (a) the expiry of the period of 7 days commencing with the date on which the detention under section 45 commenced, or such shorter period as the Judge may specify in the warrant; or
  - (b) the detention is sooner brought to an end in any of the circumstances described in section 52.
- (6) On granting a detention warrant under this section, a Judge -
- (a) shall record in writing his or her reasons for granting the warrant; and
  - (b) may impose all such conditions relating to the circumstances and conduct of the detention as the Judge thinks fit.

50. On grant of warrant, Judge to appoint barrister or solicitor and medical practitioner - (1) On granting a detention warrant under section 49, a Judge shall appoint, or arrange for the appointment of, a barrister or solicitor and a medical practitioner to report to the Court on the matters referred to in subsections (2) and (3).

(2) The function of the barrister or solicitor appointed under this section shall be to satisfy him or herself -

- (a) that the detention is being conducted in accordance with the provisions of this Act, the terms of the detention warrant, and any directions given by the Judge; and
- (b) that the detained person is aware of his or her rights in relation to the detention, and that the exercise of any of those rights by that person is not being interfered with unreasonably,

and to report to the Judge if the barrister or solicitor is not so satisfied in any particular respect.

(3) The function of the medical practitioner appointed under this section shall be to satisfy himself or herself -

- (a) that the detained person is being accommodated, fed, and generally cared for in a reasonable and proper manner; and
- (b) that the detained person is being offered all such medical care (if any) as may seem to the medical practitioner to be necessary or desirable in the interests of that person,

and to report to the Judge if the medical practitioner is not so satisfied in any particular respect.

(4) Notwithstanding anything in subsection (2) or (3), where -

- (a) the detained person consults a barrister or solicitor of that person's choosing and that barrister or solicitor agrees to act for that person, the barrister or solicitor appointed under subsection (1) shall not be responsible for any

matter falling within the normal responsibilities of a barrister or solicitor acting for a client; or

- (b) the detained person consults a medical practitioner of that person's choosing and that medical practitioner agrees to attend that person as a patient, the medical practitioner appointed under subsection (1) shall not be responsible for any matter falling within the normal responsibilities of a medical practitioner attending a patient.

(5) On appointing a barrister or solicitor or a medical practitioner under this section, or at any time thereafter while the detention continues, a Judge may give to the barrister or solicitor or medical practitioner all such directions relating to the functions of the barrister or solicitor or medical practitioner as the Judge thinks fit.

51. Rights of access to person in detention - (1) The following persons shall at all times have the right of access to any person who is being detained under section 45 -

- (a) any barrister or solicitor appointed under section 50;
- (b) any medical practitioner appointed under that section.

(2) The following persons shall at all reasonable times have the right of access to any person who is being detained under section 45 -

- (a) any barrister or solicitor who is acting for the detained person;
- (b) any medical practitioner who is attending the detained person as a patient;
- (c) any other person whom the detained person reasonably wishes to see.

(3) Nothing in subsection (2), or any other enactment or rule of law, shall entitle any person to have access to the detained person -

- (a) in the absence of any member of the Police or officer of Customs who is for the time being guarding the detained person; or
- (b) otherwise than subject to such reasonable conditions as may be necessary to ensure the safety of the detained person or to avoid the frustration of the purpose of the detention.

52. Expiry of detention - The detention of any person under section 45 shall cease in each of the following circumstances -

- (a) where the detained person is arrested;
- (b) where a certificate is given under section 48(1)(a);
- (c) where the member of the Police or officer of Customs who is in charge of the case forms the view that there is no longer reasonable cause to believe that the detained person has any Class A controlled drug or Class B controlled drug secreted within that person's body for any unlawful purpose;
- (d) where an application to a Judge for a detention warrant, or for the renewal of a detention warrant, in respect of the detained person is declined;
- (e) where the warrant is cancelled on appeal under section 56.

53. Renewal of warrant - (1) Any Judge may from time to time grant a renewal of a detention warrant upon application made at any time before the warrant (or any current renewal of the warrant) has expired.

(2) Every application for renewal of a detention warrant shall be made by a member of the Police or an officer of Customs in writing and on oath, and shall set out, or be accompanied by, the following particulars -

- (a) the facts relied upon to show that there is still reasonable cause to believe that the detained person has any Class A controlled drug or Class B controlled drug secreted within that person's body for any unlawful purpose;
- (b) the date or dates on which the detained person was asked to consent to undergo any examination of a kind described in section 47, and the detained person's response to that request, including any reasons given by the detained person for any negative response;
- (c) if any such examination has been conducted, the results of that examination as set out in the certificate given under section 48(1);
- (d) any matters that the barrister or solicitor appointed under section 50 wishes to draw to the attention of the Judge who is to consider the application for renewal;
- (e) any matters that the medical practitioner appointed under that section wishes to draw to the attention of that Judge;
- (f) any matters that any barrister or solicitor who is acting for the detained person, or any medical practitioner who is attending the detained person as a patient, wishes to draw to the attention of the Judge.

(3) Every such application shall be supported by such other information as the Judge may require.

(4) Notice of every such application shall be given to the barrister or solicitor appointed under section 50 and to any barrister or solicitor who is acting for the detained person.

(5) Notwithstanding any of the preceding provisions of this section or any enactment or rule of law to the contrary, neither the detained person nor any person referred to in any of paragraphs (d) to (f) of subsection (2) shall be entitled to see or hear evidence that was adduced in support of the original application for the grant of the detention warrant, or any evidence adduced in support of the application for the renewal of the warrant and relating to any matter other than to which paragraph (b) or paragraph (c) of that subsection applies; and for the purposes of this subsection, every such person shall be excluded from the hearing while any such evidence is being given.

(6) In considering an application made under this section, the Judge may take into account any oral or documentary material that the Judge considers relevant, whether or not it would be admissible in a Court of law.

(7) Without limiting subsection (3) of this section, a Judge may -

- (a) call for a report from the barrister or solicitor referred to in subsection (2)(d), or from the medical practitioner referred to in subsection (2)(e), on any matter relating to the detention or to the application for renewal of the detention warrant; and

(b) hear any person referred to in any of paragraphs (d) to (f) of subsection (2) in respect of the application.

(8) A renewal of a detention warrant may be granted under this section if the Judge is satisfied that the circumstances described in section 45 still remain.

(9) Every renewal of a detention warrant shall be valid for a period of 7 days commencing with the date on which it is granted, or such shorter period as the Judge may specify in the renewal.

(10) Where an application for the renewal of a detention warrant is duly made before the expiration of the warrant (or of any current renewal of the warrant), the warrant shall continue in force until the application is determined notwithstanding the expiration of the period for which the warrant was issued or last renewed.

(11) Nothing in this section shall prevent a Judge from granting a second or subsequent renewal of a detention warrant upon an application duly made under this section:

Provided that no detention under section 45 shall continue for longer than 21 days.

(12) On granting a renewal of a detention warrant under this section a Judge -

(a) shall record in writing his or her reasons for granting the renewal; and

(b) may impose all such conditions relating to the circumstances and conduct of the detention as the Judge thinks fit.

54. Powers of officers of Customs - The powers conferred by sections 45 to 53 may be exercised by any officer of Customs only in respect of offences against this Act involving the importation into or exportation from the Cook Islands of any Class A controlled drug or any Class B controlled drug.

55. Inadmissibility of certain confessions or admissions by detained person - (1) Where any person who is being detained under section 45 makes any confession or admission in respect of any offence other than a relevant offence, no evidence of that confession or admission, or of its substance, meaning, or purport, shall be given in any Court.

(2) For the purposes of this section, a relevant offence is one with which the detained person may be liable to be charged by virtue of having any controlled drug secreted within that persons' body at any time during the detention.

56. Appeal against grant or renewal of detention warrant, etc - (1) Where a Judge grants a detention warrant under section 49, or grants a renewal of a detention warrant under section 53, or imposes any condition under either of those sections relating to the circumstances or conduct of the detention, the detained person may appeal to the Court of Appeal against that decision.

(2) Where a notice of appeal is filed in the Court of Appeal under this section, the Registrar or the Court in which the decision under appeal was made shall forward the Court file to the Court of Appeal.

(3) The fact that an appeal is lodged or is pending under this section shall not affect the detention, which, subject to section 53, shall continue pending the determination of the appeal.

(4) The detained person shall not have the right to attend or be heard personally in respect of the appeal, but may be represented by counsel.

(5) Notwithstanding any of the provisions of this section or any enactment or rule of law to the contrary, neither the detained person nor his or her counsel shall be entitled to see or hear any evidence that was adduced in support of the original application for the grant of the detention warrant, or any evidence adduced in opposition to the appeal and relating to any matter other than one referred to in section 53(2)(b) or (c); and for the purposes of this subsection, any counsel representing the detained person shall be excluded from the hearing while any such evidence is being given.

(6) Every appeal under this section shall be by way of rehearing.

(7) On hearing any such appeal, the High Court may take into account any oral or documentary material that the Court considers relevant, whether or not it would otherwise be admissible.

(8) Without limiting subsection (7), before determining an appeal under this section, the Court may -

- (a) call for a report from the barrister or solicitor or the medical practitioner appointed under section 50 on any matter relating to the detention or to the appeal; and
- (b) hear any such barrister or solicitor or medical practitioner, or any other medical practitioner who is attending the detained person as a patient.

(9) On hearing any appeal under this section, the Court may confirm, reverse, or modify the decision under appeal.

(10) Where the Court reverses the decision to grant a detention warrant or the renewal of a detention warrant, it shall cancel the warrant.

(11) The decision of the Court on an appeal under this section shall be final.

57. Commissioner of Police and Comptroller of Customs to report to Parliament - The Commissioner of Police shall include in every annual report prepared by the Commissioner for the purposes of section 50 of the Police Act 1981, and the Comptroller of Customs shall include in every annual report prepared by the Comptroller for submission to Parliament the following information in respect of the period under review -

- (a) the number of applications for detention warrants made under section 49 by any member of the Police or (as the case may require) any officer of Customs;
- (b) the number of applications for renewals of detention warrants made under section 53 by any member of the Police or (as the case may require) any officer of Customs;
- (c) the number of such applications referred to in each of the preceding paragraphs of this section that were granted and the number that were refused;
- (d) the average duration of the detention warrants (including renewals) granted on applications by members of the Police or (as the case may require) officers of Customs;
- (e) the number of prosecutions that have been instituted in which have been adduced evidence obtained directly

during the detention of any persons pursuant to detention warrants granted on applications by members of the Police or (as the case may require) officers of Customs, and the results of those prosecutions.

*Powers to intercept private communications*

58. Application by Police for warrant to intercept private communications -

(1) An application may be made in accordance with this section to a Judge for a warrant for any member of the Police to intercept a private communication by means of a listening device in any case where there are reasonable grounds for believing that -

- (a) a person has committed, or is committing, or is about to commit, a drug dealing offence; and
- (b) it is unlikely that the police investigation of the case could be brought to a successful conclusion without the grant of such a warrant.

(2) Every application under subsection (1) shall be made by a commissioned officer of Police, in writing, and on oath and shall set out the following particulars -

- (a) the facts relied upon to show that there are reasonable grounds for believing that a person has committed, or is committing, or is about to commit, a drug dealing offence; and
- (b) a description of the manner in which it is proposed to intercept private communications; and
- (c) the name and address, if known, of the suspect whose private communications there are reasonable grounds for believing will assist the Police investigation of the case, or, if the name and address of the suspect are not known, a general description of the premises or private communications, being premises or a place believed to be used for any purpose by any person involved in the drug dealing offence, and;
- (d) the period for which a warrant is requested; and
- (e) whichever of the following is applicable:
  - (i) the other investigative procedures and techniques that have been tried but have failed to facilitate the successful conclusion of the Police investigation of the case, and the reasons why they have failed in that respect; or
  - (ii) the reasons why it appears that other investigative procedures and techniques are unlikely to facilitate the successful conclusion of the Police investigation of the case, or are likely to be too dangerous to adopt in the particular case; or
  - (iii) the reasons why it is considered that the case is so urgent that it would be impractical to carry out the Police investigation using only investigative procedures and techniques other than the interception of private communications.

59. Matters on which Judge must be satisfied in respect of applications - On an application made to him in accordance with section 58, the Judge may grant an interception warrant if he is satisfied that it would be in the best interests of the administration of justice to do so, and that -

- (a) there are reasonable grounds for believing that a person has committed, or is committing, or is about to commit a drug dealing offence; and
- (b) there are reasonable grounds for believing that evidence relevant to the investigation of the offence will be obtained through the use of a listening device to intercept private communications; and
- (c) whichever of the following is applicable:
  - (i) other investigative procedures and techniques have been tried but have failed to facilitate the successful conclusion of the Police investigation of the case; or
  - (ii) other investigative procedures and techniques are unlikely to facilitate the successful conclusion of the Police investigation of the case, or are likely to be too dangerous to adopt in the particular case; or
  - (iii) the case is so urgent that it would be impractical to carry out the Police investigation using any investigative procedures and techniques other than the interception of private communications; and
- (d) the private communications to be intercepted are not likely to be privileged in proceedings in a Court of law by virtue of the Evidence Act 1968 or of any rule of law that confers privilege on communications of a professional character between a barrister or solicitor and his client.

60. Contents and terms of warrant - (1) Every interception warrant shall be issued in the form set out in the Fourth Schedule to this Act, and shall -

- (a) state the offence in respect of which the warrant is granted; and
- (b) state the name and address of the suspect, if known, whose private communications may be intercepted, or, where his name and address are not known, the premises or place in respect of which private communication may be intercepted, being premises or a place believed to be used for any purpose by any person involved in the drug dealing offence; and
- (c) specify the Commissioned Officer of Police who (with any other member of the Police or proper officer of Customs for the time being assisting him) may intercept the private communications; and
- (d) where the Judge considers it necessary, contain express authority to enter (with force, where necessary) any aircraft, ship, hovercraft, carriage, vehicle, or premises, for the purpose of placing, servicing, or retrieving a listening device; and

(e) contain such additional terms and conditions as the Judge considers advisable in the public interest.

(2) Without limiting subsection (1), where it is proposed to place a listening device in the residential or business premises of a person who is a barrister or solicitor, or clergy man, or a registered medical practitioner, the Judge shall prescribe such conditions (if any) as he considers desirable to avoid so far as practicable the interception of communications of a professional character to which the barrister or solicitor or clergyman or registered medical practitioner is a party.

(3) Every interception warrant shall be valid for such period, not exceeding 30 days, as the Judge shall specify in the warrant.

61. Effect of warrant - Every interception warrant shall have effect, according to its terms, to authorise the interception of private communications by means of a listening device.

62. Renewal of warrants - (1) A Judge may from time to time grant a renewal of an interception warrant upon application made to him at any time before the warrant (or any current renewal thereof) has expired.

(2) Every application for the renewal of an interception warrant shall be made in the manner provided by section 58, and shall give -

(a) the reason and period for which the renewal is required; and

(b) full particulars, together with times and dates, of any interceptions made or attempted under the warrant, and an indication of the nature of the information that has been obtained by every such interception.

(3) Every such application shall be supported by such other information as the Judge may require.

(4) A renewal of an interception warrant may be granted under this section if the judge is satisfied that the circumstances described in section 59 still remain.

(5) Every renewal of an interception warrant shall be valid for such period, not exceeding 30 days, as the Judge shall specify in the renewal.

(6) A renewal of an interception warrant may be granted upon an application made within the time prescribed by subsection (1) notwithstanding that the warrant (or any renewal thereof) has expired before the application is determined.

(7) Nothing in this section shall prevent a Judge from granting a second or subsequent renewal of an interception warrant upon an application duly made to him.

63. Emergency permits - (1) In any case where a Judge is satisfied that circumstances exist that would justify the grant of an interception warrant under section 59, but the urgency of the situation requires that the interception should begin before a warrant could with all practicable diligence be obtained, the Judge may, orally or in writing, grant an emergency permit for the interception of private communications in respect of particular premises or a particular place and in a particular manner.

(2) Any application for an emergency permit may be made orally, but otherwise every such application shall comply with the requirements of section 58.

(3) Where the Judge grants the application for an emergency permit, he shall forthwith make a note in writing of the particulars of the application. The note shall be filed in the High Court Registry nearest to where the application is made, and shall, for the purposes of section 64(1), be deemed to be a document relating to the application for the permit. The Judge shall also make a note of the terms of the permit.

(4) The provisions of section 60, so far as they are applicable and with the necessary modifications, shall apply to emergency permits in the same manner as they apply to interception warrants.

(5) Every emergency permit shall remain valid for 48 hours from the time when it is given, and shall then expire.

(6) On filing the report required by section 72, the member of the Police who applied for the emergency permit (or, if he is not the member filing the report, then that member) may apply to the Judge who granted the permit (or, if he is not the Judge receiving the report, then that Judge) for a certificate confirming the permit pursuant to subsection (8).

(7) Where the Police, within the period of 48 hours during which the emergency permit is valid, apply for an interception warrant in place of the permit, the member of the Police applying for the warrant may also apply for a certificate confirming the permit pursuant to subsection (8).

(8) The Judge to whom an application is made pursuant to subsection (6) or (7) shall issue a certificate confirming the permit if he is satisfied, having regard to the requirements of section 59, that if the original application for the emergency permit had been an application for an interception warrant, he would have granted a warrant.

(9) For the purposes of section 69, an interception of a private communication pursuant to an emergency permit shall be deemed to have been made unlawfully unless the Judge to whom an application is made in accordance with subsection (6) or (7) issues a certificate confirming the permit pursuant to subsection (8).

64. Security of applications - (1) As soon as an application for an interception warrant or for a renewal of an interception warrant or for an emergency permit or for a certificate confirming an emergency permit has been determined by the Judge, the Registrar shall place all documents relating to the application (except the warrant or renewal or permit or certificate itself) in a packet, seal the packet, and thereafter keep it in safe custody, subject to the succeeding provisions of this section.

(2) Notwithstanding any enactment or rule of law or rules of Court entitling any party to any proceedings to demand the introduction of any documents, no such party shall be entitled to demand the production of any documents held in safe custody pursuant to subsection (1), except in accordance with the succeeding provisions of this section.

(3) Every such party who requires the production of any document held in safe custody pursuant to subsection (1) shall, except in a case to which subsection (9) and (10) applies, apply in writing to the Registrar, who shall forthwith notify the Commissioner of Police.

(4) If, within 3 days after notice is given to the Commissioner of Police under subsection (3), the Commissioner gives written notice to the Registrar that he intends to oppose the production of the documents, the Registrar shall refer the matter to a Judge.

(5) Where the Commissioner of Police does not give written notice to the Registrar as aforesaid, the Registrar shall produce the documents to the party applying for production.

(6) Where a matter is referred to a Judge pursuant to subsection (4), both the person requesting production of the documents and the Commissioner of Police opposing production shall be given an opportunity to be heard.

(7) If the Judge is satisfied that the information in any document the production of which is in dispute identifies or is likely to lead to the identification of a person who gave information to the Police, or of any member of the Police whose identity was concealed for the purpose of any relevant investigation and has not been subsequently revealed, he may, if he believes it in the public interest to do so, order that the whole or any specified part of the document be not produced.

(8) Subject to the provisions of subsection (7), the Judge shall order the production of the documents to the party requesting it.

(9) Where a request for the production of any document kept in safe custody pursuant to subsection (1) is made in the course of any proceedings presided over by a Judge and the request is opposed, the Judge shall adjudicate upon the matter as if it had been referred to him pursuant to subsection (4).

(10) Where such a request is made in the course of any other proceedings, the presiding judicial officer shall forthwith refer the matter to a Judge for adjudication as aforesaid.

(11) Notwithstanding anything in this section, every Judge who is presiding over any proceedings in which the issue of an interception warrant or emergency permit is in issue shall be entitled to inspect any relevant document held under subsection (1).

65. Destruction of irrelevant records made by use of listening device - (1) Every person who intercepts a private communication in pursuance of an interception warrant or any emergency permit shall, as soon as practicable after it has been made, destroy any record, whether written or otherwise, of the information obtained by that interception if none of the information directly or indirectly relates to the commission of the drug dealing offence.

(2) Every person who fails to comply with subsection (1) of this section commits an offence and is liable on conviction to a fine not exceeding \$1,000.

66. Destruction of relevant records made by use of listening device - (1) The Commissioner of Police shall ensure that every record, whether written or otherwise, of the information obtained by the Police from the interception of a private communication in pursuance of an interception warrant or an emergency permit, being information that relates wholly or partly and directly or indirectly to the commission of a drug dealing offence, is destroyed as soon as it appears that no proceedings, or no further proceedings, will be taken in which the information would be likely to be required to be produced in evidence.

(2) Nothing in subsection (1) of this section shall apply to -

- (a) any record of any information adduced in proceedings in any Court, or (in any case where the defendant pleads guilty) of any record of any information that, in the opinion of the Judge to whom the report referred to in subsection (3) is made, would have been adduced had the matter come to trial;

- (b) any record of any information contained in any transcript or written statement given to any person in accordance with section 68(a).

(3) Every report made to a Judge in accordance with section 71 shall state whether or not subsection (1) has yet been complied with, and, if it has not, the Judge shall give such directions relating to the eventual destruction of the record as he thinks necessary to ensure compliance with that subsection, including a requirement that he be advised when the record has been destroyed.

67. Prohibition on disclosure of private communications lawfully intercepted

(1) No person who -

- (a) intercepts or assists in the interception of a private communication in pursuance of an interception warrant or emergency permit; or
- (b) acquires knowledge of a private communication as a direct or indirect result of that interception -

shall knowingly disclose the substance, meaning, or purport of that communication, or any part of that communication, otherwise than in the performance of his duty.

(2) Every person who acts in contravention of subsection (1) commits an offence and is liable on conviction to a fine not exceeding \$1,000.

68. Notice to be given of intention to produce evidence of private communication - Particulars of a private communication intercepted pursuant to an interception warrant or an emergency permit shall not be received in evidence by any Court against any person unless the party intending to adduce it has given to that person reasonable notice of his intention to do so, together with -

- (a) a transcript of the private communication where he intends to adduce it in the form of a recording, or a written statement setting forth the full particulars of the private communication where he intends to adduce oral evidence of it; and
- (b) a statement of the time, place, and date of the private communication, and of the names and addresses of the parties to the communication, if they are known.

69. Inadmissibility of evidence of private communications unlawfully intercepted - (1) Subject to subsections (2) to (4), where a private communication intercepted by means of a listening device otherwise than in pursuance of an interception warrant or emergency permit issued under this Act or of any authority conferred by or under any other enactments has come to the knowledge of a person as a direct or indirect result of that interception or its disclosure, no evidence so required of that communication, or of its substance, meaning, or purport, and no other evidence obtained as a direct or indirect result of the interception or disclosure of that communication, shall be given against any person, except in proceedings relating to the unlawful interception of a private communication by means of a listening device or the unlawful disclosure of a private communication unlawfully intercepted in that manner.

(2) Where in any criminal proceedings for a drug dealing offence, the Court is of the opinion that any evidence that is inadmissible by virtue of subsection (1)

- (a) is relevant; and

- (b) is inadmissible by virtue of that subsection merely because of a defect of form or an irregularity in procedure, not being a substantive defect or irregularity, in the application for or the granting of the interception warrant or emergency permit, or in the manner in which the evidence was obtained,

and that the defect in form or irregularity in procedure was not the result of bad faith, the Court may admit that evidence.

(3) Subsection (1) shall not render inadmissible against any party to a private communication evidence of that communication that has, in the manner referred to in that subsection, come to the knowledge of the person called to give evidence, if all the parties to the communication consent to that person giving the evidence.

(4) Subsection (1) shall not render inadmissible evidence of a private communication by any person who intercepted that communication by means of a listening device with the prior consent of any party to the communication.

70. Privileged evidence - Where evidence obtained by the interception of a private communication would, but for the interception, have been privileged by virtue of

- (a) the Evidence Act 1968; or  
(b) any rule of law that confers privilege on communications of a professional character between a barrister or solicitor and his client,

such evidence shall remain privileged and shall not be given in any Court, except with the consent of the person entitled to waive that privilege.

71. Report to be made to Judge on use of warrant or permit - (1) As soon as practicable after an interception warrant or an emergency permit has expired, the member of the Police who applied for it, or (if he is unable to act) another commissioned officer of Police, shall make a written report to the Judge who granted the warrant or permit, or (if he is unable to act) to another Judge, on the manner in which the power conferred by the warrant or permit has been exercised and the results obtained by the exercise of that power.

(2) Notwithstanding anything in section 64, the Judge who receives a report under subsection (1) shall be entitled to inspect any relevant document held under section 64(1).

(3) Without limiting the generality of subsection (1), every report made for the purposes of that subsection shall contain the following information -

- (a) where the listening device was placed;  
(b) the number of interceptions made by means of the listening device;  
(c) whether any relevant evidence was obtained by means of the listening device;  
(d) whether any relevant evidence has been, or is intended to be, used in any criminal proceedings;  
(e) whether any records of a private communication intercepted pursuant to the warrant or permit have been destroyed in accordance with section 65 or 66, and, if not, why they have not been destroyed;  
(f) whether the listening device has been retrieved, and, if not, why it has not been retrieved.

(4) On receiving a report under this section, the Judge may require such further information relating to the matter as he thinks fit, and (in addition to any directions he gives for the purposes of section 66(3)) he may give such directions as he thinks desirable, whether relating to the retrieval of the listening device, or otherwise.

72. Commissioner of Police to give information to Parliament - The Commissioner of Police shall include in every annual report prepared by him for the purposes of section 50 of the Police Act 1981 the following information in respect of the period under review -

- (a) the number of applications for warrants made under section 58; and
- (b) the number of applications for renewals of warrants made under section 62; and
- (c) the number of applications for emergency permits made under section 63; and
- (d) the number of such applications referred to in each of the preceding paragraphs of this subsection that were granted, and the number that were refused; and
- (e) the average duration of warrants (including renewals); and
- (f) the number of prosecutions that have been instituted in which evidence obtained directly or indirectly from an interception carried out pursuant to a warrant or permit has been adduced, and the result of those prosecutions.

#### *Bail for drug dealing offence*

73. Bail not allowable in certain cases without order of Judge - No person who is charged with or convicted of a drug dealing offence shall be granted bail, except by order of a Judge.

74. Judge may impose conditions of bail - (1) Whenever a Judge grants a defendant bail under section 73, he may impose as a condition of the defendant's release

- (a) a condition that the defendant shall report to the Police at such time or times and at such place or places as the Judge orders;
- (b) any other condition that appears to the Judge to be likely to result in the defendant attending personally at the time and place, or times and places, to which the hearing of the charge against the defendant or the passing of sentence on the defendant or the hearing of an appeal by or against the defendant is or may be from time to time adjourned;
- (c) any other condition that appears to the Judge to be necessary or desirable in the interests of justice or for the prevention of crime.

(2) Where a Judge imposes any condition of bail pursuant to subsection (1)(b) or (c), he shall not require any surety to be found in respect of that condition.

75. Arrest of defendant who has absconded or is about to abscond while on bail - (1) Notwithstanding anything in section 90 of the Criminal Procedure Act 1980-81, where a defendant has been released on bail pursuant to section 73, any member of the Police may arrest that person without warrant if -

- (a) the member of the Police believes, on reasonable grounds, that the defendant has absconded or is about to abscond for the purpose of evading justice; or
- (b) the Police have been notified in writing by any surety for the defendant that the surety believes that the defendant has absconded or is about to abscond for the purpose of evading justice, and the member of the Police is satisfied that there are reasonable grounds for that belief.

(2) Every defendant who has been arrested pursuant to subsection (1) shall be brought before a Judge as soon as practicable, and in any event not later than 48 hours.

(3) Where any defendant is brought before a Judge pursuant to subsection (2), the Judge shall, on being satisfied that the defendant had absconded or was about to abscond, remand the defendant in custody.

76. Arrest of defendant who fails to comply with any conditions of bail - (1) Where a defendant has been released on bail pursuant to section 73, and any condition was imposed by the Judge on the grant of bail pursuant to section 74, any member of the Police may arrest that person without warrant if -

- (a) the member of the Police believes, on reasonable grounds, that the defendant has broken, is breaking, or is about to break, any such condition of bail; or
- (b) the Police have been notified in writing by any surety for the defendant that the surety believes that the defendant has broken, is breaking, or is about to break, any such condition of bail, and the member of the Police is satisfied that there are reasonable grounds for that belief.

(2) Every defendant who has been arrested pursuant to subsection (1) shall be brought before a Judge as soon as practicable, and in any event not later than 48 hours.

(3) Where a defendant is brought before a Judge pursuant to subsection (2), the Judge may -

- (a) on being satisfied that the defendant has broken, was breaking, or was about to break any condition of bail, remand the defendant in custody; or
- (b) release the defendant, in which case the defendant shall continue to be on bail and his bail bond shall continue in force in all respects as if he had not been arrested pursuant to this section.

(4) Notwithstanding anything in subsection (3)(b), in any case where the defendant was arrested pursuant to subsection (1)(b), the Judge shall release the defendant pursuant to the said subsection (3)(b) only if the surety consents in writing to the release.

(5) Where the surety does not consent in writing to the release, the Judge shall release the defendant pursuant to subsection (3)(b) only on a fresh bail bond.

77. Appeals against decisions of Judge relating to bail - (1) Every person who applies for but is refused bail under section 73 may appeal to the Court of Appeal against that refusal.

(2) Every person who is granted bail pursuant to section 73 subject to any condition imposed under section 74 may appeal to the Court of Appeal against the imposition of that condition.

(3) Where any person is granted bail pursuant to section 73, the Crown may appeal to the Court of Appeal against that grant, or against any failure or refusal to impose any condition that could have been imposed under section 74.

(4) Every person wishing to appeal under this section against any decision of a Judge made pursuant to section 73 or 74 shall file notice of his intention to appeal with the Registrar of the Court of Appeal within 10 days after the date of the decision to be appealed against.

(5) Every appeal under this section that is not heard before the date on which the decision appealed against ceases to be of any effect shall lapse on that date, and shall be deemed to have been dismissed by the Court of Appeal for want of prosecution.

(6) No decision of a Judge appealed against under this section shall be suspended merely because that notice of appeal has been given.

78. Court of Appeal to hear and determine Appeal - (1) The Court of Appeal shall hear and determine every appeal under this section, and may confirm the decision appealed against or, if it is satisfied that the Judge in making that decision exercised his discretion wrongly, it may reverse or modify that decision.

(2) Where, on any appeal under section 77 against a refusal to grant bail, the Court of Appeal determines that bail shall be granted, it shall have the same powers to impose any condition of bail that a Judge has under section 74.

79. Execution of decision of Court of Appeal - (1) Where, on any appeal under section 77 against a refusal to grant bail, the Court of Appeal determines that bail shall be granted, the Judge whose decision was appealed against, or, if he is unable to act, another Judge of the High Court, shall, on being informed of the decision of the Court of Appeal, order that the defendant be released on bail, subject to such condition as the Court of Appeal may have specified in its decision.

(2) Where, on an appeal under section 77 against a condition of bail, the Court of Appeal cancels or amends that condition or substitutes any other condition, the Registrar of the Court whose decision was appealed against shall send written notice to the defendant and to every surety requiring them to attend at a specified time and place for the execution of a fresh bail bond containing the conditions (if any) required to give effect to the Court of Appeal's decision.

(3) If, in any case to which subsection (2) applies, the defendant fails without reasonable excuse to attend at the time and place required, or fails to enter into a fresh bail bond as aforesaid, the Registrar shall refer the matter to a Judge, who may issue a warrant for the arrest of the defendant.

(4) If, on an appeal under section 77 against a grant of bail, the Court of Appeal determines that bail shall not be granted, and the defendant is not then in custody, the Registrar of the Court whose decision was appealed against shall issue a warrant for the arrest of the defendant, and when the defendant is brought before the Court pursuant to the warrant, he shall be remanded in custody.

(5) For the purpose of giving full effect to any decision of the Court of Appeal under section 78, the provisions of section 75 and 76, so far as they are applicable and with the necessary modifications, shall apply as if the decision were made by a Judge of the High Court under sections 73 and 74.

### *Fines*

80. Fine may reflect illicit gains - In any case where any person is convicted of a drug dealing offence and the Court by which that person is convicted is satisfied on the balance of probabilities that any money or assets owned by the offender at the date of his trial has or have been acquired by him directly or indirectly from the offence, the Court may, having regard to the amount of such money or the value of such assets, impose a fine greater than it would otherwise have imposed on the offender for the offence.

81. Court may impose greater fine having regard to previous dealings - (1) In any case where any person is convicted of a drug dealing offence (in this section referred to as the primary offence) and the Court by which he is convicted is, on the application of the Crown -

- (a) satisfied beyond reasonable doubt that, before the commission of the primary offence, the offender had engaged in any conduct (other than conduct that constituted the primary offence) that constitutes a drug dealing offence; and
- (b) satisfied on the balance of probabilities that any money or assets owned by the offender at the date of his trial has or have been acquired by him directly or indirectly from such conduct, -

the Court may, having regard to the amount of such money or the value of such assets, impose a fine greater than it would otherwise have imposed on the offender for the primary offence.

(2) Where the prosecutor intends to seek leave to adduce evidence of the matters referred to in subsection (1), he shall give written notice of his intention and of the particulars of the evidence to be adduced to the Court and to the defendant as soon as practicable after the conviction is entered, and in any event not later than 5 days before the date set for sentencing.

(3) Notwithstanding anything in subsection (2), where the Court is satisfied that the information on which such an application for the exercise of the Court's powers could be based has come into the prosecutor's hands too late for him to give 7 days notice as required by that subsection, the Court may allow the prosecutor to give such shorter notice as may be necessary in the circumstances, but shall, if requested to do so by the defendant, postpone sentencing to a date not earlier than 7 days after the prosecutor gives such notice.

82. Court's power not to be exercised in certain cases - (1) The power conferred by section 81(1) shall not be exercised by any Court -

- (a) in respect of any conduct in relation to which the defendant has been charged with a drug dealing offence but acquitted of that charge;

(b) in respect of any money or assets in relation to which the power has been previously exercised by any Court.

(2) The powers conferred by sections 80 and 81(1) shall not be exercised by any Court so as to impose a fine greater than the maximum prescribed by section 7(2)(b).

83. Inability of offender to explain source of money or assets may be evidence - (1) Where, in any case to which section 80 applies, the offender fails to explain to the Court's satisfaction the source of any money or assets owned by him, the Court may accept that as evidence that the money or assets was or were derived by the offender from the offence.

(2) Where, on any application for the exercise of the Court's power under section 81, the Court is satisfied in accordance with subsection (1)(a) of that section that the offender has committed any previous drug dealing offence, and the offender fails to explain to the Court's satisfaction the source of any money or assets owned by him, the Court may accept that as evidence that the money or assets was or were derived by the offender from that previous drug dealing offence.

84. Court may treat alienated property as offender's - Where, in any case to which section 80 or 81 applies, it appears to the Court that any disposition of money or assets has been made, whether for value or not, by or on behalf of or by direction of or in the interests of the defendant to defeat the exercise of the Court's power under those sections, the Court may, on the application of the prosecutor or of its own motion, treat the money or assets as belonging to the offender for the purposes of those sections.

85. Enforcement of fines imposed in Court - Where the Court sentences an offender on conviction on indictment of a drug dealing offence to pay a fine and that fine is not paid within 14 days thereafter, or within such further time as may be allowed or fixed for the payment thereof, the following provisions shall apply -

- (a) the Registrar shall inquire into the means of the offender and shall -
- (i) where, the offender is detained in a penal institution, issue a warrant to produce the offender; or
  - (ii) issue a summons requiring the offender, unless he sooner pays the amount outstanding under the conviction, to appear at the time and place appointed in the summons; or
  - (iii) if in the opinion of the Registrar a warrant is necessary to compel the attendance of the defendant, issue a warrant to arrest him and bring him before the Court to enable the offender to be orally examined as to means;
- (b) on completion of his inquiry, the Registrar shall make a report as to the offenders means, so far as he has been able to ascertain them, to the Judge who imposed the fine or, if that Judge is unable to act, any other Judge;
- (c) the Judge to whom a report is made under paragraph (d) shall consider the report, and may make such order as he thinks fit. including an order -

- (i) for the remission of either the whole or part of the fine; or
  - (ii) for the issue of a writ of sale; or
  - (iii) for the immediate imprisonment of the offender; or
  - (iv) allowing time for payment or allowing payment by instalments;
- (d) any money or assets treated as the offender's pursuant to section 84 shall be deemed to be property of the offender and amenable as such to any order of the Judge under paragraph (c).

86. Garnishee proceedings - (1) For the purpose of enforcing the payment of any fine imposed by any court on conviction of the offender of a drug dealing offence, a sum that stands to the credit of the offender with any person (including a bank or savings bank) and that is on deposit with that person or is held by him in a current or other account (including a deposit account) shall be deemed to be a sum due or accruing to the Registrar enforcing the fine and shall be attachable accordingly, notwithstanding that any of the following conditions applicable to the deposit or account, that is to say -

- (a) any condition that notice is required before any money is withdrawn;
- (b) any condition that a demand for payment must be made;
- (c) any condition that a personal application must be made before any money is withdrawn;
- (d) any other condition (other than a condition that a deposit book, receipt for money deposited, or other like document must be produced before any money is withdrawn), has not been satisfied.

(2) In exercising his powers under section 85 the Registrar may require any person who has in his possession or knows the whereabouts of any deposit book, receipt for any money deposited, or other like document relating to the deposit or account of the offender to deliver that book, receipt, or document to the Court or to disclose its whereabouts to the Court, as the case may require; and for that purpose the Registrar may summon any such person to appear before him at such time and place as he may specify, or issue a warrant for the arrest of that person so that he may be brought before the Registrar.

#### *Exemption of Crown*

87. Exemption of Crown from sections 6 and 7 of the Act - The Crown and any servant of the Crown is hereby exempted from the provisions of sections 6 and 7 to the extent necessary to enable the Crown -

- (a) to receive and keep in safe custody any sealed package purporting or alleged to contain any controlled drug, if that package is deposited with the Crown by any person believed on reasonable grounds by the officer or employee of the Crown accepting the package to be employed or engaged by the Crown and acting in the course of his official duties;

- (b) to supply a controlled drug to any person if -
  - (i) that drug is contained in a sealed package that has been held in safe custody by the Crown pursuant to paragraph (a) of this clause; and
  - (ii) the person to whom the drug is supplied is a person believed on reasonable grounds by the officer or employee of the Crown handling over the package to be employed or engaged by the Crown and acting in the course of his official duties.

*Application of Customs Act*

88. Application of Customs Act 1913 - Sections 172 to 174, 249, 251, 252 to 259 and 261 to 245, of the Customs Act 1913 shall apply in relation to the importation and exportation of controlled drugs, except controlled drugs specified or described in Part IV, Part V, or Part VI of the Third Schedule to this Act, as if such controlled drugs were restricted goods within the meaning of that Act.

*Consequential amendments and repeals*

89. Consequential amendments - The First Schedule to the Cook Islands Amendment Act 1964 is hereby amended by deleting in the appropriate columns thereof, the words, "1965 No.45 - The Narcotics Act 1965 - The whole Act."

90. Repeals - The Narcotics Act 1965, an enactment of the Parliament of New Zealand, is declared to be no longer in force in the Cook Islands.

91. Regulations and Orders saved - (1) The Regulations and Orders set out in the Sixth Schedule shall continue in force in the Cook Islands as if such regulations and Orders were made under this Act.

(2) Where there is any conflict between the Regulations and Orders set out in the Sixth Schedule and the provisions of this Act, the provisions of this Act shall prevail.

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This Act is administered by the Ministry of Health

SCHEDULESFIRST SCHEDULECLASS A CONTROLLED DRUGS

1. The following substances, namely:

- ACETORPHINE (*O*<sup>3</sup>-acetyl-7, 8-dihydro-7 [1(*R*)-hydroxy-1-methyl-butyl]-*O*<sup>6</sup>-methyl-6, 14-endoethenomorphine).
- AMPHETAMINE (2-amino-1-phenylpropane).
- BENZPHETAMINE (2-benzylmethylamino-1-phenylpropane).
- 4-BROMO-2, 5-DIMETHOXYAMPHETAMINE (2-amino-1-(4-bromo-2, 5-dimethoxyphenyl) propane).
- BUFOTENINE (3-(2-dimethylaminoethyl)-5hydroxyindol).
- CANTHARIDIN (hexahydro-3a, 7a-dimethyl-4, 7-epoxyisobenzofuran-1, 3-dione).
- COCAINE (methyl ester of benzoylecgonine), except when contained in a Class C controlled drug:
- CESOMORPHINE (dihydrodeoxymorphine).
- DET (*N,N*-diethyltryptamine).
- 2, 5- DIMETHOXYAMPHETAMINE (2-amino-1-(2, 5- dimethoxyphenyl) propane).
- DMHP (3-(dimethylheptyl)-1-hydroxy-7, 8, 9, 10-tetrahydro-6, 6, 9-trimethyl-6*H*-dibenzo[*b,d*] pyran).
- DMT (*N,N*-dimethyltryptamine).
- ETORPHINE (7,8-dihydro-7 -[1 (*r*)-hydroxy-1-methylbutyl]-*O*<sup>6</sup>-methyl-6, 14-endoethenomorphine).
- HEROIN (diacetylmorphine).
- KETOBEMIDONE (4-*meta*hydroxyphenyl-1-4-propionylpiperidine).
- LYSERGIDE (*N,N*-diethyllysergamide or lysergic acid diethylamide).
- MDA (2-amino-1-(3,4-methylenedioxyphenyl) propane).
- MESCALINE (3,4,5-trimethoxyphenethylamine).
- METHAMPHETAMINE (2-methylamino-1-phenylpropane).
- 4-METHOXYAMPHETAMINE (2-amino-1-(4-methoxyphenyl) propane).
- 5-METHOXYDIMETHYLTRYPTAMINE (5-methoxy-*N,N*-dimethyltryptamine).
- 3-METHOXY-4, 5-METHYLENEDIOXYAMPHETAMINE (2-amino-1-(3-methoxy-4, 5-methylenedioxyphenyl) propane).
- MPTP (1-methyl-4-phenyl-1,2,5,6-tetrahydropyridine).
- N-ETHYLAMPHETAMINE (2-ethylamino-1-phenylpropane).
- PARAHEXYL(3-hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6*H*-dibenzo[*b,d*] pyran).
- PCE (*N*-ethyl-1-phenylcyclohexylamine).
- PCPY (1-(1-phenylcyclohexyl) pyrrolidine).
- PHP (1-(1-phenylcyclohexyl) pyrrolidine).
- PEPTP (1-(2-phenylethyl)-4-phenyl-1,2,5,6-tetrahydropyridine).
- PHENCYLIDINE (1-(1- phenylcyclohexyl) piperidine).
- PIPERIDYL BENZILATES (*N*-methylpiperidyl benzilates and *N*-ethylpiperidyl benzilates but excluding the methobromide salts).
- PSILOCINE (3-(dimethylaminoethyl)-4-hydroxyindole).
- PSILOTSIN (3-(dimethylaminoethyl)-4-hydroxyindole).
- PSILOCYBINE (3-(2-dimethylaminoethyl) indol-4-yl dihydrogen phosphate).

STP,DOM (2-amino-1-(2,5-dimethoxy-4-methyl) phenylpropane).

TCP (1-[1-(2-thienyl) cyclohexyl]piperidine).

TETRAHYDROCANNABINOLS, except when contained in a Class B or a Class C controlled drug.

THALIDOMIDE ( phthalimidoglutarimide).

3, 4, 5-TRIMETHOXYAMPHETAIME (2-amino-1-(3, 4, 5-trimethoxyhenyl) propane).

2. The isomers of the substances mentioned in this Schedule whenever the existence of such isomers is possible within the specific chemical designation.

3. The esters and ethers of the substances mentioned in this Schedule and the esters and the ethers of the isomers mentioned in clause 2 of this Schedule whenever the existence of such esters or esters is possible.

4. The salts of the substances mentioned in this Schedule and the salts of the isomers, esters, and ethers mentioned in clause 2 or clause 3 of this Schedule.

5. Substances containing any proportion of a substance mentioned in clause 1, clause 2, clause 3, or clause 4 of this Schedule.

SECOND SCHEDULECLASS B CONTROLLED DRUGS*Part I*

1. The following substances, namely:

CANNABIS preparations: that is, any preparation containing any tetrahydrocannabinols, including cannabis resin (commonly known as hashish) and cannabis oil (commonly known as hash oil), produced by subjecting cannabis plant material to any kind of processing.

MORPHINE.

OPIUM.

2. The isomers of the substances mentioned in this Part of this Schedule whenever the existence of such isomers is possible within the specific chemical designation.

3. The esters and ethers of the substances mentioned in this Part of this Schedule and the esters and ethers of the isomers mentioned in clause 2 of this Part of this Schedule whenever the existence of such esters or ethers is possible.

4. The salts of the substances mentioned in this Part of this Schedule and the salts of the isomers, esters and ethers mentioned in clause 2 or clause 3 of this Part of this Schedule.

5. Substances containing any proportion of a substance mentioned in clause 1, clause 2, clause 3 or clause 4 of this Part of this Schedule.

*Part II*

1. The following substances, namely:

CATHINONE (2-amino-1-phenylpropan-1-one)

DOET (2-amino-1-(2,5-dimethoxy-4-ethylphenyl) propane).

FENCAMFAMINE (N-ethyl-3-phenylbicyclo[2.2.1]heptan-2-amine).

FENETHYLLINE (3,7-dihydro-1,3-dimethyl-7-[2-[(1-methyl-2-phenylethyl)-amino]ethyl]-1H-purine-2,6-dione).

FENPROPorex (2-(2-cyanoethylamino)-1-phenylpropane).

MDMA (2-methylamino-1-(methylenedioxyphenyl) propane).

MEFENorex (2-(3-chloropropylamino)-1-phenylpropane).

METHAQUALONE (2-methyl-3-(2-methylphenyl)-4(3h)-quinazolinone

METHYLPHENIDATE (-phenyl-2-piperidineacetic acid methyl ester).

NORPSEUDOEPHEDRINE (threo-2-amino-1-hydroxy-1-phenylpropane).

PROPYLHEXEDRINE (1-cyclohexyl-2-methylaminopropane).

PYROVALERONE (1-(4-methylphenyl)-2-(1-pyrrolidinyl)-1-pentanone).

2. The isomers of the substance mentioned in this Part of this Schedule whenever the existence of such isomers is possible within the specific chemical designation.

3. The esters and ethers of the substances mentioned in this Part of this Schedule and the esters and ethers of the isomers mentioned in clause 2 of this Part of this Schedule whenever the existence of such esters or ethers is possible.

4. The salts of the substances mentioned in this Part of this Schedule and the salts of the isomers, esters, and ethers mentioned in clause 2 or clause 3 of this Part of this Schedule.

5. Substances containing any proportion of a substance mentioned in clause 1, clause 2, clause 3, or clause 4 of this Part of this Schedule.

### Part III

1. The following substances, namely:

ACETYLMETHADOL (3-acetoxy-6-dimethylamino-4,4-diphenylheptane).  
 ALFENTANIL (N-[1-[2-(4-ethyl-4,5-dihydro-5-oxo-1H-(tetrazol-1-yl)ethyl]-4-(methoxymethyl)-piperidinyl]-N-phenylpropanamide).  
 ALLYLPRODINE (3-allyl-1-methyl-4-phenyl-propionoxypiperidine).  
 ALPHACETYLMETHADOL (-3-acetoxy-6-dimethylamino-4,4-diphenylheptane).  
 ALPHAMEPRODINE (-3-ethyl-1-methyl-4-phenyl-4-propionoxypiperidine).  
 ALPHAMETHADOL (-6-dimethylamino-4,4-diphenyl-3-heptanol).  
 ALHAPRODINE (-1,3-dimethyl-4-phenyl-4-propionoethyl-1-methyl-4-phenyl-4-xy-piperidine).  
 ANILERIDINE (1-*para*-aminophenethyl-4-phenylpiperidine-4-carboxylic acid ethyl ester).  
 BENZETHIDINE (1-(2-benzyloxyethyl)-4-phenylpiperidine-4-carboxylic acid ethyl ester).  
 BENZYMORPHINE (3-benzylmorphine)  
 BETACETYLMETHADOL (-3-acetoxy-6-dimethylamino-4,4-diphenyl-heptane).  
 BETAMEPRODINE (-3-ethyl-1-methyl-4-phenyl-4-propionoxypiperidine).  
 BETAMETHADOL (-6-dimethylamino-4,4-diphenyl-3-heptanol).  
 BETAPRODINE (-1,3-dimethyl-4-phenyl-4-propionoxypiperidine).  
 BEZITRAMIDE (1-(3-cyano-3,3-diphenylpropyl)-4-(2-oxo-3-propionyl-1-benzimidazoliny) piperidine).  
 CLONITAZENE (2-*para*-chlorbenzyl-diethylaminoethyl-5-nitrobenzimidazole).  
 CODOXIME (dihydrocodeinone-6-carboxymethyloxime).

CONCENTRATE OF POPPY STRAW - that is, the material arising when parts of any plant of the species *Papaver somniferum* have entered a process for the concentration of the alkaloids.

DEXTROMORAMIDE ((+)-4-[2-methyl-4-oxo-3,3-diphenyl-4-(1-pyrrolidinyl) butyl] morpholine).

DIAMPROMIDE (*N*-[2-(methylphenethylamino) propyl] propionanilide).

DIETHYLTHIAMBUTENE (3-diethylamino-1,1-di-(2'-thienyl)-1-butene).

DIFENOXIN (1-(3-cyano-3,3-diphenylpropyl)-4-phenylisonipectic acid).

DIHYDROMORPHINE.

DIMENOXADOL (2-dimethylaminoethyl 1-ethoxy-1, 1-diphenylacetate).

DIMEPHEPTANOL (6-dimethylamino-4,4-diphenyl-3-heptanol).

DIMETHYLTHIAMBUTENE (3-dimethylamino-1,1-di-(2'-thienyl)-1-butene).

DIOXAPHETYL BUTYRATE (ethyl 4-morpholino-2,2-diphenylbutyrate).

DIPHENOXYLATE (1-(3-cyano-3,3-diphenylpropyl)-4-phenylpiperidine-4-carboxylic acid ethyl ester).

DIPIPANONE (4,4-diphenyl-6-piperidine-3-heptanone).

DROTEBANOL (3,4-dimethoxy-17-methylmorphinan-6B, 14-diol).

EGGONINE, its esters and derivatives which are convertible to ecgonine and cocaine, except when contained in a Class C controlled drug.

ETHYLMETHYLTHIAMBUTENE (3-ethylmethylamino-1,1-di-(2'-thienyl)-1-butene).

ETONITAZENE (1-diethylaminoethyl-2-*para*-ethoxybenzyl-5-nitro-benzimidazole).

ETOXERIDINE (1-[2-(2-hydroxyethoxy)ethyl]-4- phenylpiperidine-4-carboxylic acid ethyl ester).

FENTANYL (1-phenethyl-4-(*n*-propionylanilino)piperidine).

FURETHIDINE (1-(2-tetrahydrofurfuryloxyethyl)-4-phenylpiperidine-4-carboxylic acid ethyl ester).

HYDROCODONE (dihydrocodeinone).

HYDROMORPHINOL (14-hydroxydihydromorphine).

HYDROMORPHONE (dihydromorphinone).

HYDROXPETHIDINE (4-*meta*-hydroxyphenyl-1-methylpiperidine-4-carboxylic acid ethyl ester).

ISOMETHADONE (6-dimethylamino-5-methyl-4,4diphenyl-3-hexanone).

LEVOMETHORPHAN ((-)-3-methoxy-*N*-methylmorphinan) but not including dextromethorphan ((+)-3-methoxy-*N*-methylmorphinan) and dextrorphan ((+)-3-hydroxy-*N*- methylmorphinan).

LEVOMORAMIDE ((-)-4-[2-methyl-4-oxo-3,3-diphenyl-4-(1-pyrrolidinyl) butyl] morpholine).

LEVOPHENACYLMORPHAN ((-)-3-hydroxy-*N*-phenacylmorphinan).

LEVORPHANOL ((-)-3- hydroxy-*N*-methylmorphinan).

MECLOQUALONE (3-(2-chlorophenyl)-2-methyl-4-(3H)-quinazolinone).

METAZOCINE (2'-hydroxy-2,5,9-trimethyl-6,7-benzomorphan).

METHADONE (6-dimethylamino-4,4-diphenyl-3-heptanone).

METHADONE-INTERMEDIATE (4-cyano-2-dimethylamino-4,4-diphenylbutane).

METHYLDESORPHINE (6-methyl-<sup>6</sup>-deoxymorphine)

METHLDIHYDROMORPHINE (6- methldihydromorphine).

METOPON (5-methyldihydromorphinone)

MORAMIDE-INTERMEDIATE (2-methyl-3-morpholino-1, 1-diphenyl-propanecarboxylic acid).

MORPHERIDINE (1-(2-morpholinoethyl)-4-phenylpiperidine-4-carboxylic acid ethyl ester).

MORPHINE METHOBROMIDE and other pentavalent nitrogen morphine derivatives.  
MORPHINE-N-OXIDE.  
MYRORPHINE (myristylbenzylmorphine).  
NABILONE (*trans*-3-(1-(1-dimethylheptyl)-6,6a,7,8,10,10a-hexahydro-1-hydroxy-6,6-dimethyl-9H-dibenzo[b,d]pyran-9-one).  
NICOMORPHINE (3,6-dinicotinylmorphine).  
NORACY METHADOL (-3-acetoxy-6-methylamino-4,4-diphenyl-heptane).  
NORLEVORPHANOL ((-)-3-hydroxymorphinan).  
NORMETHADONE (6-dimethylamino-4,4-diphenyl-3-hexanone).  
NORMORPHINE (demethylmorphine).  
NORPIANONE (4,4-diphenyl-6-piperidine-3-hexanone).  
OXYCODONE (14-hydroxydihydrocodeinone).  
OXYMORPHINE (14-hydroxydihydromorphinone).  
PETHIDINE (1-methyl-4-phenylpiperidine-4-carboxylic acid ethyl ester).  
PETHIDINE-INTERMEDIATE-A (4-cyano-1-methyl-4-phenylpiperidine).  
PETHIDINE-INTERMEDIATE-B (4-phenylpiperidine-4-carboxylic acid ethyl ester).  
PETHIDINE-INTERMEDIATE-C (1-methyl-4-phenylpiperidine-4-carboxylic acid).  
PHENADOXONE (6-morpholino-4,4-diphenyl-3-heptanone).  
PHENAMPROMIDE (*N*-(1-methyl-2-piperidinoethyl) propionilide).  
PHENAZOCINE (2'-hydroxy-5,9-dimethyl-2-phenethyl-6,7-benzomorphan).  
PHENDIMETRAZINE (3,4-dimethyl-2-phenylmorpholine).  
PHENMETRAZINE (3-methyl-2-phenylmorpholine).  
PHENOMORPHAN (3-hydroxy-*N*-phenethylmorphinan).  
PHENOPERIDINE (1-(3-hydroxy-3-phenylpropyl)-4-phenylpiperidine-4-carboxylic acid ethyl ester).  
PIMINODINE (4-phenyl-1-(3-phenylaminopropyl)piperidine-4-carboxylic acid ethyl ester).  
PIRITRAMIDE (1-(3-cyano-3,3-diphenylpropyl)-4-(1-piperidino)piperidine-4-carboxylic acid amide).  
PROHEPYAZINE (1,3-dimethyl-4-phenyl-4-propionoxyazacycloheptane).  
PROPERIDINE (1-methyl-4-phenylpiperidine-4-carboxylic acid isopropyl ester).  
RACEMETHORPHAN ((+)-3-methoxy-*N*-methylmorphinan).  
RACEMORAMIDE ((+)-4-[2-methyl-4-oxo-3,3-diphenyl-4-(1-pyrrolidiny) butyl]morpholine).  
SUFENTAIL (N-[4-(methoxymethyl)-1-[2-(2-thienyl)ethyl]-4-piperidyl]propionanilide).  
THEBACON (acetyldihydrocodeinone).  
THEBAINE.  
TILIDINE ((+)-ethyl *trans*-2-(dimethylamino)-1-phenyl-3-cyclohexene-1-carboxylate).  
TRIMEPERIDINE (1,2,5-trimethyl-4-phenyl-4-propionoxypiperidine).

2. The isomers of the substances mentioned in this Part of this Schedule whenever the existence of such isomers is possible within the specific chemical designation.

3. The esters and ethers of the substances mentioned in this Part of this Schedule and the esters and ethers of the isomers mentioned in clause 2 of this Part of this Schedule whenever the existence of such esters or ethers is possible.

4. The salts of the substances mentioned in this Part of this Schedule and the salts of the isomers, esters, and ethers mentioned in clause 2 or clause 3 of this Part of this Schedule.

5. Substances containing any proportion of a substance mentioned in clause 1, clause 2, clause 3, or clause 4 of this Part of this Schedule.

**THIRD SCHEDULE****CLASS C CONTROLLED DRUGS*****Part I***

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.

CATHA EDULIS PLANTS.

COCA LEAF - That is, the leaf of any plant of any species of the genus *Erythroxylon*, except a leaf from which all ecgonine, cocaine, and any other ecgonine alkaloids have been removed.

***Part II***

CODEINE (3-methylmorphine); its isomers, esters, and ethers, if any; its salts, and the salts of its isomers, esters, and ethers, if any; and any substance, preparation or mixture containing any proportion of the said substance or of any such isomer, ester, ether, or salt, other than a preparation or mixture named or described in Part VI of this Schedule.

PROPOXYPHENE (4-(N, N-dimethylamino)-1, 2-diphenyl-3-methyl-2-propionyxybutene); its isomers, ester, and ethers, if any; its salts and the salts of its isomers, esters, or ethers, if any; except in preparations of propoxyphene described in Clause 6 of Part V of this Schedule.

***Part III***

1. The following substances, namely:

ACETYLDIHYDROCODEINE.

DIHYDROCODEINE.

ETHYLMORPHINE (3-ethylmorphine)

NICOCODINE (6-nicotinylcodeine).

NICODICODINE (6-nicotinyldihydrocodeine or nicotinic acid ester of dihydrocodeine).

NORCODEINE (*N*-demethylcodeine).

PHOLCODINE (morpholinylethylmorphine)

PROPIRAM (*N*-(1-methyl-2-piperidinoethyl)-*N*-2-pyridylpropionamide).

2. The isomers of the substances mentioned in this Part of this Schedule whenever the existence of such isomers is possible within the specific chemical designation.

3. The esters and ethers of the substances mentioned in this Part of this Schedule and the esters and ethers of the isomers mentioned in clause 2 of this Part of this Schedule whenever the existence of such esters or ethers is possible.

4. The salts of the substances mentioned in this Part of this Schedule and the salts of the isomers, esters, and ethers mentioned in clause 2 or clause 3 of this Part of this Schedule.

5. Substances containing any proportion of a substance mentioned in clause 1, clause 2, clause 3, or clause 4 of this Part of this Schedule, other than a preparation or mixture named or described in Part IV of this Schedule.

#### *Part IV*

1. The following substances, namely:

AMOBARBITAL (5-ethyl-5-(3-methylbutyl) barbituric acid).  
BUPRENORPHINE (17-cyclopropylmethyl-7, 8-dihydro-7(1-hydroxy-1,2,2-trimethylpropyl)-6-0-methyl-6, 14-ethano-17-normorphine).  
BUTOBARBITONE (5-butyl-5-ethylbarbituric acid).  
CYCLOBARITAL (5-(1-cyclohexen-1-yl)-5-ethylbarbituric acid).  
GLUTETHIMIDE (2-ethyl-2-phenylglutarimide).  
NEALBARBITONE (5-allyl-5-neopentylbarbituric acid).  
PENTOBARBITAL (5-ethyl-5-(1-methylbutyl) barbituric acid).  
SECOBARBITAL (5-allyl-5-(1-methylbutyl) barbituric acid).

2. The isomers of the substances mentioned in this Part of this Schedule whenever the existence of such isomers is possible within the specific chemical designation.

3. The esters and ethers of the substances mentioned in this Part of this Schedule and the esters and ethers of the isomers mentioned in clause 2 of this Part of this Schedule whenever the existence of such esters or ethers is possible.

4. The salts of the substances mentioned in this Part of this Schedule and the salts of the isomers, esters, and ethers mentioned in clause 2 or clause 3 of this Part of this Schedule.

5. Substances containing any proportion of a substance mentioned in clause 1, clause 2, clause 3, or clause 4 of this Part of this Schedule, except a mixture of a derivative of barbituric acid named or described in Clause 1 of this Part of this Schedule compounded with one or more other pharmacologically active ingredients not named or described in Clause 1 of this Part of this Schedule.

#### *Part V*

1. The following substances, namely:

MFEPARAMONE (2-(diethylamino) propiophenone).  
ARBITAL (5,5-diethylbarbituric acid).  
CHLORVYNOL (ethyl-2-chlorovinylethynyl-carbinol).  
CHINAMATE (1-ethylcyclohexanol carbamate).  
AZINDOL (5-(4-chlorophenyl)-2, 5-dihydro-3H-imidazo [2,1-a]-isoindol-5-ol).  
EPROBAMATE (2-methyl-2-propyl-1,3-propanediol dicarbamate).

METHYLPHENOBARBITAL (5-ethyl-1-methyl-5-phenylbarbituric acid).  
METHYLPRYLON (3,3-diethyl-5-methylpiperidine-2,4-dione).  
PHENOBARBITAL (5-ethyl-5-phenylbarbituric acid).  
PHENTERMINE (2-amino-2-methyl-1-phenylpropane).  
PIPRADROL (1,1-diphenyl-1-(2-piperidyl)methanol).  
SPA ((-)-1-dimethylamino-1,2-diphenylethane).

2. The isomers of the substances mentioned in this Part of this Schedule whenever the existence of such isomers is possible within the specific chemical designation.

3. The esters and ethers of the substances mentioned in this Part of this Schedule and the esters and ethers of the isomers mentioned in clause 2 of this Part of this Schedule whenever the existence of such esters or ethers is possible.

4. The salts of the substances mentioned in this Part of this Schedule and the salts of the isomers, esters, and ethers mentioned in clause 2 or clause 3 of this Part of this Schedule.

5. Mixtures of a derivative of barbituric acid named or described in Part IV of this Schedule compounded with one or more other pharmacologically active ingredients not named or described in Part IV of this Schedule.

6. Preparations of propoxyphene, its isomers, esters, and ethers, if any, its salts, and the salts of its isomers, esters, or ethers, if any, for oral use containing not more than the equivalent of 135 milligrams of propoxyphene base per dosage unit or with a concentration of not more than 2.5 percent in undivided preparations, being preparations whereof none of the other ingredients is a substance named or described in the First or Second Schedules to this Act or in Parts I to V of this Schedule.

7. Substances containing any proportion of a substance mentioned in Clause 1 to Clause 6 of this Part of this Schedule, other than a preparation or mixture named or described in Part VI of this Schedule.

#### *Part VI*

The following preparations and mixtures, namely:

- (a) Preparations containing any proportion of the following substances or of any salt of any such substance, namely, acetyldihydrocodeine, codeine, dihydrocodeine, ethylmorphine, and pholcodine when:
- (i) Compounded with one or more other pharmacologically active ingredients in such a way that the substance cannot be recovered by readily applicable means or in a yield which would constitute a risk to health; and
  - (ii) Containing not more than 100 milligrams of the substance in each dosage unit and with a concentration of not more than 2.5 percent in undivided preparations:

(b) Preparations containing a derivative of barbituric acid named or described in Part IV or Part V of this Schedule, in solutions containing not more than 0.5 percent of that derivative of barbituric acid:

(c) Preparations of cocaine containing not more than 0.1 percent of cocaine base, being preparations compounded with one or more other pharmacologically active ingredients (none of which are substances named or described in the First or Second Schedules to this Act or in Parts I to V of this Schedule) in such a way that the preparation has no, or a negligible, risk of abuse, and in such a way that the cocaine cannot be recover by ready applicable means or in a yield which would constitute a risk to health:

(d) Preparations of difenoxin containing, per dosage unit, not more than 0.5 mg of difenoxin and a quantity of atropine sulphate equivalent to at least 5 percent of the dose of difenoxin:

(e) Preparations of opium or morphine containing not more than 0.2 percent of morphine, being preparations compounded with one or more other pharmacologically active ingredients (none of which are substances named or described in the First or Second Schedules to this Act or in Parts I to V of this Schedule) in such a way that the opium and morphine, as the case may be, cannot be recovered by readily applicable means or in a yield which would constitute a risk to health:

(f) Single dosage units of diphenoxylate containing in each unit not more than 2.5 milligrams of diphenoxylate calculated as base and not less than 25 micrograms of atropine sulphate:

(g) Liquid preparations of diphenoxylate containing, in each millilitre, not more than 0.5 milligrams of diphenoxylate calculated as base and not less than 5 micrograms of atropine sulphate:

(h) Preparations of propiram containing not more than 100 mg of propiram per dosage unit and compounded with at least the same amount of methylcellulose:

(i) Ipecacuanha and opium powder containing 10 percent of opium in powder and 10 percent of ipecacuanha root in powder intimately mixed with finely powdered lactose:

(j) Mixtures containing not more than one of the preparations specified in paragraphs (a) to (g) of this Part of this Schedule, being mixtures whereof none of the other ingredients is a substance named or described in the First or Second Schedules to this Act or in Part I to V of this Schedule.

### *Part VII*

AMPHETAMINE ANALOGUES, in which the 1-amino-2-phenylethane nucleus carries any of the following radicals, either alone or in combination:

(a) 1 or 2 alkyl radicals, each with up to 6 carbon atoms, attached to the nitrogen atom:

(b) 1 or 2 methyl radicals, or an ethyl radical, attached to the carbon atom adjacent to the nitrogen atom:

(c) A hydroxy radical, attached to the carbon atom adjacent to the benzene ring:

(d) Any combination of up to 5 alkyl radicals and/or alkoxy radicals and/or alkylamino radicals (each with up to 6 carbon atoms, including cyclic radicals) and/or halogen radicals and/or nitro radicals and/or amino radicals, attached to the benzene ring.

PETHIDINE ANALOGUES in which a 4-phenylpiperidine nucleus carries any of the following radicals, either alone or in combination:

- (a) An alkyl radical, with up to 6 carbon atoms, attached to the nitrogen atom:
- (b) A phenalkyl radical, with up to 12 carbon atoms, attached to the nitrogen atom:
- (c) A phenalkyl radical, as in paragraph (b), with 1 or more alkyl radicals, each with up to 6 carbon atoms, attached to the benzene ring in the phenylalkyl radical:
- (d) An alkylcarbonoxy or alkoxy carbonyl or hydroxy radical, with up to 6 carbon atoms, attached to the 4 position in the piperidine ring:
- (e) Any combination of up to 5 alkyl radicals and/or alkoxy radicals (each with up to 6 carbon atoms, including cyclic radicals) and/or halogen radicals, attached to the benzene ring.

PHENCYCLIDINE ANALOGUES, being chemical compounds with the 1-alkylamino-1-arylcyclohexane structure, with any combination of the following alkylamino and aryl radicals:

- (a) The alkylamino radical is 1-piperidinyl, 1-pyrrolidinyl, 4-morpholinyl, or other radical with up to 6 carbon atoms in the alkyl portion:
- (b) The aryl radical is phenyl, thienyl, pyridinyl, or pyrrolidinyl:
- (c) The aryl radical, as described in paragraph (b), carries any combination of up to 5 alkyl radicals and/or alkoxy radicals (each with up to 6 carbon atoms, including cyclic radicals) and/or halogen radicals.

FENTANYL ANALOGUES, in which the N-[1-(2-phenethyl)-4-piperidyl]aniline nucleus has additional radicals, either alone or in combination, attached as follows:

- (a) An acetyl, propionyl, butenoyl or butanoyl radical, attached to the aniline nitrogen atom:
- (b) One or more alkyl radicals, with up to 10 carbon atoms in total, attached to the ethyl moiety:
- (c) Any combination of up to 5 alkyl radicals and/or alkoxy radicals (each with up to 6 carbon atoms, including cyclic radicals) attached to each of the benzene rings.

METHAQUALONE ANALOGUES, in which the 3-arylquinazolin-4-one nucleus has additional radicals, either alone or in combination, attached as follows:

- (a) An alkyl radical, with up to 6 carbon atoms, attached at the two positions:
- (b) Any combination of up to 5 alkyl radicals and/or alkoxy radicals (each with up to 6 carbon atoms, including cyclic radicals) and/or halogen radicals, attached to each of the aryl rings.

DMT (9-DIMETHYLTRYPTAMINE) ANALOGUES, in which the 3-(2-aminoethyl)indole nucleus has additional radicals, either alone or in combination, attached as follows:

- (a) 1 or 2 alkyl radicals, each with up to 6 carbon atoms, including cyclic radicals, attached to the amino nitrogen atom:
- (b) 1 or 2 methyl groups, or an ethyl group, attached to the carbon atom adjacent to the amino nitrogen atom:

(c) Any combination of up to 5 alkyl radicals and/or alkoxy radicals (each with up to 6 carbon atoms, including cyclic radicals) and/or halogen radicals, attached to the benzene ring.

**FOURTH SCHEDULE****INTERCEPTION WARRANT**

*(Sections 58 to 60 of the Narcotics and Misuse of Drugs Act 2004)*

1. To [*Full name of commissioned officer of Police*] and every other member of the Police or proper officer of Customs for the time being assisting you.

2. I am satisfied on an application made to me in writing and on oath that -

(a) There are reasonable grounds for believing that a person has committed, or is committing, or is about to commit a drug dealing offence; and

(b) There are reasonable grounds for believing that evidence relevant to the investigation of the offence will be obtained through the use of a listening device to intercept private communications; and

(c) [*Whichever of the following is applicable*]:

\*Other investigative procedures and techniques have been tried but have failed to facilitate the successful conclusion of the Police investigation of the case; and

*or*

\*Other investigative procedures and techniques are unlikely to facilitate the successful conclusion of the Police investigation of the case, or are likely to be too dangerous to adopt in the particular case; and

*or*

\*The case is so urgent that it would be impractical to carry out the Police investigation using only investigative procedures and techniques other than the interception of private communications; and

(d) The private communications to be intercepted are not likely to be privileged in proceedings in a Court of law by virtue of the Evidence Act 1968 or of any rule of law that confers privilege on communications of a professional character between a barrister or solicitor and his client; and

(e) It would be in the best interests of the administration of justice to grant an interception warrant.

3. The offence in respect of which the warrant is granted is .....(*being an offence against section 6 of the Narcotics and Misuse of Drugs Act 2004 in relation to a Class A or Class B controlled drug*).

4. This is to authorise you at any time or times within ..... days from the date of this warrant-

\*To use a listening device to intercept the private communications of  
[*Name and address of suspect*]:

**FOURTH SCHEDULE** *continued**or*

\*To intercept private communications at [*Premises or place, being premises or a place believed to be used for any purpose by a person involved in the drug dealing offence*]:

\*To enter, with force where necessary, [*State vehicle, place, or premises that may be entered*] for the purpose of placing, servicing, or retrieving the listening device:

5. The following terms and conditions are imposed in the public interest:
6. The following conditions are imposed to avoid so far as practicable the interception of communications of a professional character:

Dated at

this

day of

20

---

Judge of the High Court

**FIFTH SCHEDULE****STATEMENT OF RIGHTS**

You have been detained under section 45 of the Narcotics and Misuse of Drugs Act 2004 because it is believed that you have secreted within your body any Class A controlled drugs or Class B controlled drugs for an unlawful purpose.

READ THIS NOTICE CAREFULLY, IT TELLS YOU WHAT RIGHTS YOU HAVE WHILE THE DETENTION CONTINUES

**MEDICAL EXAMINATIONS:**

You will be asked if you wish to undergo certain types of medical examination that may help to determine whether or not you have any Class A controlled drugs or Class B controlled drugs secreted within your body.

For this reason, a doctor will be asked to see you to explain just what is involved in each type of examination.

**NO SUCH EXAMINATION MAY TAKE PLACE WITHOUT YOUR CONSENT**

If you do wish to undergo an examination, you will be asked to put your consent to the examination in writing.

If you refuse your consent, you may change your mind later. Just tell one of the officers supervising your detention.

If you decide not to have an examination, that fact, and any reasons you give for it, may be put before the Judge in any further proceedings.

**DETENTION WARRANT:**

As soon as possible after detaining you, the officer must apply to a Judge for a warrant to authorise your continued detention.

If the Judge grants the warrant, you may be detained for up to 7 days or such shorter period as the Judge may order. However, a warrant may be renewed by a Judge for further periods of up to 7 days each, if the Judge is satisfied that there are still reasonable grounds for believing that you have any Class A controlled drugs or Class B controlled drugs secreted within your body. You may not be detained for longer than 21 days.

**SUPERVISING LAWYER AND DOCTOR:**

If the Judge issues a detention warrant, he or she must appoint a lawyer and a doctor to see that your rights are protected and that you are properly cared for while you are being detained. These people are NOT there as part of the team detaining you: they are there

as agents of the Court to ensure fair play. You should consult them on any legal or medical matter that is worrying you.

However, you are also entitled to arrange for your own lawyer or doctor to visit and advise you.

#### RIGHT OF APPEAL:

You may appeal to the Court of Appeal against the issue or renewal of a detention warrant, or against any condition of detention imposed by the High Court Judge. If you wish to appeal, consult the Court lawyer or your own lawyer.

#### VISITING RIGHTS:

While you are detained, the Court lawyer and the Court doctor may visit you at any time. Your own lawyer, your own doctor, and any other person you may reasonably wish to see may call on you at any reasonable time.

#### END OF DETENTION:

You must be released if the Judge refuses to grant a detention warrant, or refuses to renew it, or the warrant is cancelled by the Court on appeal.

You must also be released if a medical examination shows that you do not have any Class A controlled drugs or Class B controlled drugs secreted within your body, or if the officers detaining you cease to believe that you have any such drugs secreted within your body.

If you are arrested, your detention under section 45 of the Narcotics and Misuse of Drugs Act 2004 will cease, and you will then be detained under arrest. From then on, you will have all the rights of an arrested person.

#### COURT ACCESS:

You will not be entitled to appear in Court while you are in detention. However, the Court lawyer and your own lawyer will be entitled to address the Court on appeal against a detention warrant or a condition of detention, or where an application is made for a renewal of the warrant.

#### FURTHER ADVICE:

This is only a brief summary of your rights. If there is anything you do not understand, talk to the Court lawyer or your own lawyer.

**SIXTH SCHEDULE****REGULATIONS AND ORDERS CONTINUED IN FORCE**

Narcotics Regulations (S.R. 1966/82)

Amendment No. (S.R. 1967/173)

Amendment No.2 (S.R. 1968/179)

Amendment No.3 (S.R. 1971/123)

Narcotics Order (S.R. 1966/154)

Narcotics Order (S.R. 1967/30)

Narcotics Order (No.2) (S.R. 1967/156)

Narcotics Order (S.R. 1968/178)

Narcotics Order (S.R. 1969/129)

Narcotics Order (S.R. 1971/122)

Examined and certified by:



Clerk of the Parliament

In the name and on behalf of Her Majesty Queen Elizabeth the Second I hereby assent to  
this Act this 13<sup>th</sup> day of February 2009



Sir F. Goodwin, KBE  
Queen's Representative

## ANALYSIS

1. Short title

2. Amendment

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**2009, No. 4****An Act to amend the Narcotics and Misuse of Drugs Act 2004**

**BE IT ENACTED** by the Parliament of the Cook Islands in Session assembled, and by the authority of the same, as follows:

1. **Short title** - This Act may be cited as the Narcotics and Misuse of Drugs Amendment Act 2009, and shall be read together with and deemed part of the Narcotics and Misuse of Drugs Act 2004 (the "principal Act").

2. **Amendment** - Subsection (2) of section 9 of the principal Act is hereby amended by deleting the words "Subject to subsection (3), every" and substituting the word "Every".

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This Act is administered by the Police Department