

BILL NO. 41 OF 2022

A BILL

FOR AN ACT TO AMEND THE ILLICIT DRUGS CONTROL ACT 2004

ENACTED by the Parliament of the Republic of Fiji—

Short title and commencement

1.—(1) This Act may be cited as the Illicit Drugs Control (Budget Amendment) Act 2022.

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

(3) In this Act, the Illicit Drugs Control Act 2004 is referred to as the “Principal Act”.

Section 32A inserted

2. The Principal Act is amended after section 32 by inserting the following new section—

“Factual presumption relating to THC concentration in Cannabis

32A. Where in any prosecution under this Act, a person claims that a substance, plant or part of a plant is hemp and contains a *Tetrahydrocannabinol* concentration that does not exceed 1%, it shall be presumed that the substance, plant or part of the plant is Cannabis and that the *Tetrahydrocannabinol* concentration exceeds 1% until the contrary is proved by the person.”.

Schedule 1 amended

3. Schedule 1 to the Principal Act is amended after the preambular paragraph by inserting the following new paragraph—

“In this Schedule, references to the Cannabis plant (or any part of the Cannabis plant) do not include hemp, or parts of the plant derived from hemp, with the *Tetrahydrocannabinol* concentration not exceeding 1%.”.

July 2022

ILLICIT DRUGS CONTROL (BUDGET AMENDMENT) BILL 2022

EXPLANATORY NOTE

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

1.0 BACKGROUND

- 1.1 The Illicit Drugs Control Act 2004 (**‘Act’**) was enacted in 2004 to regulate and control the cultivation, manufacture, importation, exportation, sale, supply, possession and use of illicit drugs and controlled chemicals, and for related matters.
- 1.2 Part 2 of the Act prohibits the importation, cultivation, manufacture, exportation, sale, supply, possession and use of illicit drugs. Schedule 1 to the Act lists Cannabis and Cannabis resin, Cannabis fruit, Cannabis plant, Cannabis seed and Cannabis oil as illicit drugs.
- 1.3 The Illicit Drugs Control (Budget Amendment) Bill 2022 (**‘Bill’**) seeks to amend the Act to pave the way for the establishment of the industrial hemp industry in Fiji. Industrial hemp is a lucrative and largely untapped resource in the global economy due to popular misconceptions linking it to Marijuana. Hemp and Marijuana both derive from the *Cannabis sativa* plant but they are cultivated differently, possess different chemical attributes and are used for different reasons. A defining difference between the two is also the level of *Tetrahydrocannabinol* (**‘THC’**) present in industrial hemp. THC is the psychoactive substance that produces the “high” associated with smoking Marijuana. Industrial hemp contains less than 1% of THC and, as such, cannot be used as a recreational drug in the way that Marijuana is used.
- 1.4 Industrial hemp is one of the most versatile crops, with more than 50,000 uses including food, nutrition, personal care, health and wellness, paper, textiles, building materials, medicines, pet bedding, plastic alternatives, biofuels, and energy. It has immense potential for the Fijian economy.
- 1.5 The Bill seeks to amend Schedule 1 to the Act to remove industrial hemp and all of its extracts with no more than 1% THC concentration from the list of illicit drugs to allow for the importation, possession, cultivation, sale and supply of industrial hemp. All other forms of Cannabis remain a Schedule 1 illicit drug.

2.0 CLAUSES

- 2.1 Clause 1 of the Bill provides for the short title and commencement. If passed by Parliament, the amending legislation will come into force on a date or dates appointed by the Minister by notice in the Gazette.
- 2.2 Clause 2 of the Bill amends the Act to insert section 32A after section 32. The new section establishes the legal presumption that a Cannabis substance or plant will be presumed to have a THC concentration of above 1% until the contrary is proved by the cultivator, importer, supplier or owner of the plant. This places the burden of proof on the person charged with an offence under the Act for possession etc., of Cannabis to prove that it does not have a THC concentration above 1%.
- 2.3 Clause 3 of the Bill amends Schedule 1 to the Act to provide for the exclusion of hemp, with a THC concentration not exceeding 1%, from the meaning of Cannabis plant (or any part of the Cannabis plant).

3.0 MINISTERIAL RESPONSIBILITY

- 3.1 The Act comes under the responsibility of the Minister responsible for justice.

A. SAYED-KHAIYUM
Attorney-General