

Mutual Assistance in Criminal Matters Amendment Act 2002

Public Act 2002 No 23
Date of assent 17 June 2002

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The Parliament of New Zealand enacts as follows:

1 Title

- (1) This Act is the Mutual Assistance in Criminal Matters Amendment Act 2002.
- (2) In this Act, the Mutual Assistance in Criminal Matters Act 1992 is called “the principal Act”.

2 Commencement

- (1) Sections 15 to 17 come into force on a date appointed by the Governor-General by Order in Council; and different dates may be appointed for different provisions.
- (2) Section 18 comes into force on the later of—
 - (a) the day after the date on which this Act receives the Royal assent;
 - (b) the commencement of section 1 of the Parole Act 2002.
- (3) The rest of this Act comes into force on the day after the date on which it receives the Royal assent.

Amendments to principal Act

3 Interpretation

- (1) Section 2(1) of the principal Act is amended by omitting from the definition of **convention country** the expression “specified

in Schedule 1:”, and substituting the expression “referred to in column 1 of the table in the Schedule”.

- (2) Section 2(1) of the principal Act is amended by repealing the definition of **foreign serious offence**, and substituting the following definition:

“**foreign serious offence**—

“(a) means an offence under the law of a foreign country punishable by imprisonment for a term of 5 years or more; and

“(b) after the commencement of section 15 of the Mutual Assistance in Criminal Matters Amendment Act 2002, includes an offence under the law of a foreign country that is a party to the United Nations Convention against Transnational Organised Crime, done at New York on 15 November 2000 if—

“(i) it is punishable by imprisonment for a term of 4 years or more; and

“(ii) there are reasonable grounds to suspect that it is transnational in nature (as defined in articles 3(2) and 18(1) of that convention) and involves an organised criminal group (as defined in article 2(a) of that convention)”.

- (3) Section 2 of the principal Act is amended by adding the following subsection:

“(6) In this Act, a reference to an offence of a political character does not include—

“(a) an offence—

“(i) that is constituted by conduct of a kind referred to in a multilateral treaty to which New Zealand is a party; and

“(ii) for which parties have an obligation to provide to one another assistance in criminal matters; or

“(b) any offence in relation to which New Zealand has agreed in writing with another country that the offence will not be treated as a political offence for the purposes of the provision of assistance in criminal matters between New Zealand and that country.”

4 **New section 24A substituted**

The principal Act is amended by repealing section 24A, and substituting the following section:

“24A Limitations on requests by convention countries

If a convention country requests assistance under this Part in accordance with a convention referred to in column 1 of the table in the Schedule, the request must relate to criminal matters arising from the commission or suspected commission of an offence that, if committed within the jurisdiction of New Zealand, would correspond to an offence listed or described in column 2 of that table in the same row as the reference to the convention.”

5 Further limitations on requests by convention countries

- (1) Section 24B(1)(a) of the principal Act is amended by omitting the expression “Schedule 1”, and substituting the words “column 1 of the table in the Schedule”.
- (2) Section 24B(2)(b) of the principal Act is amended by omitting the expression “Schedule 2 or section 24A(3) or section 24A(4) or section 24A(6) or section 24A(7) or section 24A(7) sic”, and substituting the words “column 2 of the table in the Schedule”.
- (3) Section 24B(3) of the principal Act is amended by omitting the expression “Schedule 2 or section 24A(3) or section 24A(4) or section 24A(6) or section 24A(7) or section 24A(7) sic”, and substituting the words “column 2 of the table in the Schedule”.

6 Form of request

Section 26(bb) of the principal Act is amended by omitting the expression “Schedule 1”, and substituting the words “column 1 of the table in the Schedule”.

7 Assistance in arranging attendance of person to give evidence in foreign country

The heading to section 37 of the principal Act is amended by omitting the words “give evidence”, and substituting the words “give or provide evidence or assistance in relation to criminal matter”.

8 Assistance in arranging attendance of prisoner

- (1) The heading to section 38 of the principal Act is amended by adding the words “in foreign country for specified purposes”.
- (2) Section 38(1) of the principal Act is amended by inserting, after the words “that country,”, the words “for either or both of the purposes specified in subsection (1A),”.
- (3) Section 38(1) of the principal Act is amended by repealing paragraph (e) and the words after it, and substituting the following paragraph:
“(e) subject to a community-based sentence (within the meaning of section 4(1) of the Sentencing Act 2002).”
- (4) Section 38 of the principal Act is amended by inserting, after subsection (1), the following subsection:
“(1A) The purposes referred to in subsection (1) are—
 - “(a) for giving evidence in relation to any criminal proceedings in the foreign country;
 - “(b) for assistance in relation to a criminal matter in respect of a foreign serious offence.”
- (5) Section 38 of the principal Act is amended by repealing subsection (2), and substituting the following subsection:
“(2) The Attorney-General may authorise, in writing, assistance in accordance with this section if, on receipt of a request under subsection (1) by a foreign country, the Attorney-General is satisfied—
 - “(a) that the request relates to the attendance of the person concerned in connection with a criminal matter in the foreign country; and
 - “(b) that there are reasonable grounds for believing that the person concerned could give or provide evidence or assistance relevant to that criminal matter; and
 - “(c) that the person concerned has freely consented to attend as requested; and
 - “(d) that the foreign country has given adequate undertakings in respect of the matters specified in section 39.”

9 Undertakings required from foreign country

Section 39(a)(i) of the principal Act is amended by inserting, before the word “; or”, the words “, other than an offence in

respect of which the Attorney-General consents to the person's being so detained, prosecuted, or punished"

10 New sections 41A and 41B inserted

The principal Act is amended by inserting, after section 41, the following sections:

“41A Effect of transfer to foreign country pursuant to request under section 38 on remand prisoner's sentence

“(1) If a prisoner who is charged with or convicted of an offence against the law of New Zealand (the **New Zealand offence**) is transferred to a foreign country pursuant to a request by that country under section 38, section 41B of this Act and section 90 of the Parole Act 2002 apply to any period that the person spends in custody outside New Zealand in connection with the request before sentence is imposed for the New Zealand offence.

“(2) Nothing in this section affects section 41.

“41B Information about time remand prisoner spent in custody overseas pursuant to request under section 38

“(1) If a prisoner who is charged with or convicted of an offence against the law of New Zealand (the **New Zealand offence**) is transferred to a foreign country pursuant to a request by that country under section 38 before sentence is imposed for the New Zealand offence, the Attorney-General may request the foreign country to provide a certificate recording the total period during which the prisoner was detained outside New Zealand in connection with the request until sentence was imposed for the New Zealand offence.

“(2) A certificate obtained under subsection (1) is presumed to be accurate, unless the contrary is proved.

“(3) The Attorney-General may issue a certificate setting out the date and period referred to in subsection (1) if—

“(a) the foreign country does not provide a certificate within a reasonable time after the Attorney-General makes a request under subsection (1); and

“(b) the Attorney-General is satisfied from the information that the Attorney-General has that an accurate calcula-

tion can be made of the period referred to in subsection (1).

- “(4) For the purposes of section 91(4A) of the Parole Act 2002, a certificate given by the Attorney-General under subsection (3) has the same effect as a certificate under subsection (1).
- “(5) Subsection (6) applies if, after the Attorney-General has given a certificate under subsection (3),—
- “(a) a certificate requested under subsection (1) is obtained from the foreign country; and
 - “(b) the period specified in that certificate is different from that specified in the Attorney-General’s certificate.
- “(6) If this subsection applies, the new certificate is a substitute certificate for the purposes of section 91(4A) of the Parole Act 2002.”

11 Request for production order

Section 61(2) of the principal Act is amended by repealing paragraph (a), and substituting the following paragraph:

- “(a) that the request—
- “(i) relates to a criminal matter in the foreign country in respect of a foreign drug-dealing offence; or
 - “(ii) is made after the commencement of section 15 of the Mutual Assistance in Criminal Matters Amendment Act 2002, and relates to a foreign serious offence within the meaning of paragraph (b) of the definition of that term in section 2(1); and”.

12 Certificates relating to convention countries

Section 64A(1) of the principal Act is amended by omitting the words “specified in Schedule 1”, and substituting the words “referred to in column 1 of the table in the Schedule”.

13 Amendment of Schedule 1

Section 64B of the principal Act is repealed.

14 Schedules 1 and 2 and heading repealed and new Schedule substituted

- (1) The principal Act is amended by repealing Schedules 1 and 2 and the heading immediately before them, and substituting the schedule set out in the Schedule of this Act.
- (2) The following enactments are consequentially repealed:
- (a) section 11 of the Crimes (Bribery of Foreign Public Officials) Amendment Act 2001 (2001 No 28), and the heading immediately before that section; and
 - (b) the Mutual Assistance in Criminal Matters Amendment Act 2001 (2001 No 72).

15 Schedule amended to refer to United Nations Convention against Transnational Organised Crime

The Schedule of the principal Act (as substituted by section 14(1)) is amended by inserting, in its appropriate numerical order, the following row:

20	The United Nations Convention against Transnational Organised Crime, done at New York on 15 November 2000.	An offence against any of the following sections of the Crimes Act 1961
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*sec-
tion* *subject matter*

98A participation in organised criminal group

100 judicial corruption

101 bribery of judicial officer, etc.

- 102 corruption and bribery of
Minister of the Crown
- 103 corruption and bribery of
member of Parliament
- 104 corruption and bribery of
law enforcement officer
- 105 corruption and bribery of
official
- 116 conspiring to defeat justice
- 117 corrupting juries and
witnesses

257A money laundering

Any offence against any Act if-

(a) it is punishable by
imprisonment for a term of 4
years or more; and

(b) there are reasonable grounds
to suspect that it is transnational
in nature (as defined in articles
3(2) and 18(1) of the convention
referred to in column 1) and
involves an organised criminal
group (as defined in article 2(a) of
that convention)

**16 Schedule amended to refer to Protocol on the Smuggling
of Migrants by Land, Sea and Air**

The Schedule of the principal Act (as substituted by section 14(1)) is amended by inserting, in its appropriate numerical order, the following row:

- 21 The Protocol against the Smuggling of Migrants, by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organised Crime done at New York on 15 November 2000.
- An offence against the, following section of the Crimes Act 1961
- sec- subject matter
tion*
- 98C smuggling migrants
- An offence against any of the following sections of the Passports Act 1992
- 29A Forged and false New Zealand travel documents
- 30 Offences relating to passport information and material
- 30A Improper issue of New Zealand travel document
- 31(1) Other offences
- 31(2) Defacing or destroying document
- 32 False representations

17 Schedule amended to refer to Protocol on the Trafficking of Persons, especially Women and Children

The Schedule of the principal Act (as substituted by section 14(1)) is amended by inserting, in its appropriate numerical order, the following row:

22	The Protocol to Prevent, Suppress and Punish Trafficking of Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime, done at New York on 15 November 2000.	An offence against the following section of the Crimes Act 1961
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*sec- subject matter
tion*

98D trafficking in people by means of coercion or deception

Amendments to Parole Act 2002**18 Amendments to Parole Act 2002**

(1) Section 91 of the Parole Act 2002 is amended by inserting, after subsection (4), the following subsection:

“(4A) In the case of a MACM offender (as defined in section 93), **pre-sentence detention** includes detention in custody overseas, as recorded on a certificate obtained under section 41B of the Mutual Assistance in Criminal Matters Act 1992 (including any substitute certificate obtained under that section).”

- (2) Section 92(5) of the Parole Act 2002 is amended by inserting, after the expression “ICC offender”, the words “or a MACM offender”.
- (3) The heading to section 93 of the Parole Act 2002 is amended by adding the words “and MACM offender”.
- (4) Section 93 of the Parole Act 2002 is amended by adding the following subsection:
“(3) An offender is a **MACM offender** if—
“(a) section 41A of the Mutual Assistance in Criminal Matters Act 1992 applies to the offender; and
“(b) a certificate was obtained under section 41B of the Mutual Assistance in Criminal Matters Act 1992 showing the total period during which the offender was held in custody overseas in relation to a request by a foreign country before the imposition of sentence in New Zealand.”

Schedule s 14(1)
New schedule of principal Act substituted
Schedule ss 2(1), 24A, 24B, 26
Limitations on requests by convention countries

Convention under which request made	New Zealand offence that Convention country offence would correspond to
1 The Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents, opened for signature at New York on 14 December 1973	An offence against any of the following sections of the Crimes Act 1961:

Schedule—*continued*

<i>or</i>	<i>section</i>	<i>subject matter</i>
2 The Convention on the Safety of United Nations and Associated Personnel, opened for signature at New York on 9 December 1994	128	sexual violation
	129	attempt to commit sexual violation
	142A	compelling indecent act with animal
	167, 168	murder
	171	manslaughter
	173	attempt to murder
	174	counselling or attempting to procure murder
	176	accessory after the fact to murder
	188(1)	wounding with intent to cause grievous bodily harm
	188(2)	wounding with intent to injure
	189(1)	injuring with intent to cause grievous bodily harm

Schedule—*continued*

189(2)	injuring with intent to injure, or with reckless disregard for the safety of others
191(1)	aggravated wounding
191(2)	aggravated injury
192	aggravated assault
197	disabling
198	discharging firearm or doing dangerous act with intent
199	acid throwing
200	poisoning with intent
201	infecting with disease
209	kidnapping
294	arson
295	attempted arson
296	damage to other property by fire or explosive
297	attempt to damage property by fire or explosive
298	wilful damage
300	interfering with means of transport

Schedule—*continued*

		An offence against any of the following sections of the Crimes (Internationally Protected Persons, United Nations and Associated Personnel, and Hostages) Act 1980:
		<i>section subject matter</i>
		3 crimes against persons
		4 crimes against premises or vehicles
		5 threats against persons
		6 threats against premises or vehicles
3	The Convention Against the Taking of Hostages, opened for signature at New York on 18 December 1979	An offence against the following section of the Crimes (Internationally Protected Persons, United Nations and Associated Personnel, and Hostages) Act 1980:
		<i>section subject matter</i>
		8 hostage taking
4	The United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, adopted in Vienna on 19 December 1988	An offence against any of the following sections of the Misuse of Drugs Act 1975:
		<i>section subject matter</i>

Schedule—*continued*

		6	dealing with controlled drugs
		9	cultivation of prohibited plants
		10	aiding offences against corresponding law of another country
		12A	equipment, material, and substances used in production or cultivation of controlled drugs
		12B	laundering proceeds of drug offences
		12C	commission of offences outside New Zealand
5	The Single Convention on Narcotic Drugs, done at New York on 30 March 1961 <i>or</i>	An offence against any of the following sections of the Misuse of Drugs Act 1975: <i>section subject matter</i>	
6	The Protocol to the Single Convention on Narcotic Drugs, done at Geneva on 25 March 1972 <i>or</i>	6	dealing with controlled drugs
		9	cultivation of prohibited plants

Schedule—*continued*

7	The Convention on Psychotropic Substances, done at Vienna on 21 February 1971	
8	The Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, adopted by the General Assembly of the United Nations on 10 December 1984	<p>An offence against the following section of the Crimes of Torture Act 1989:</p> <p><i>section subject matter</i></p> <p>3 acts of torture</p>
9	The Convention for the Suppression of Unlawful Seizure of Aircraft, done at the Hague on 16 December 1970	<p>An offence against any of the following sections of the Aviation Crimes Act 1972:</p> <p><i>section subject matter</i></p> <p>3 hijacking</p> <p>4 crimes in connection with hijacking</p>

Schedule—*continued*

<p>10 The Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, done at Montreal on 23 September 1971</p>	<p>An offence against the following section of the Aviation Crimes Act 1972:</p> <p><i>section subject matter</i></p> <p>5 other crimes relating to aircraft</p>
<p>11 The Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, done at Montreal on 24 February 1988</p>	<p>An offence against the following section of the Aviation Crimes Act 1972:</p> <p><i>section subject matter</i></p> <p>5A crimes relating to international airports</p>
<p>12 The Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, done at Rome on 10 March 1988</p>	<p>An offence against the following section of the Maritime Crimes Act 1999:</p> <p><i>section subject matter</i></p> <p>4 crimes relating to ships</p>

Schedule—*continued*

<p>13 The Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on 10 March 1988</p>	<p>An offence against the following section of the Maritime Crimes Act 1999:</p> <p><i>section subject matter</i></p> <p>5 crimes relating to fixed platforms</p>
<p>14 The Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, done at Paris on 17 December 1997</p>	<p>An offence against any of the following sections of the Crimes Act 1961:</p> <p><i>section subject matter</i></p> <p>105C bribery of foreign public official</p> <p>105D bribery outside New Zealand of foreign public official</p>

Schedule—*continued*

<p>15 The Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, adopted at Geneva on 12 August 1949</p>	<p>An offence against the following section of the Geneva Conventions Act 1958:</p> <p><i>section subject matter</i></p> <p>3 punishment for grave breaches of Conventions or First Protocol</p>
<p>16 The Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, adopted at Geneva on 12 August 1949</p>	<p>An offence against the following section of the Geneva Conventions Act 1958:</p> <p><i>section subject matter</i></p> <p>3 punishment for grave breaches of Conventions or First Protocol</p>
<p>17 The Geneva Convention Relative to the Treatment of Prisoners of War, adopted at Geneva on 12 August 1949</p>	<p>An offence against the following section of the Geneva Conventions Act 1958:</p>

Schedule—*continued*

	<i>section</i>	<i>subject matter</i>
	3	punishment for grave breaches of Conventions or First Protocol
18 The Geneva Convention Relative to the Protection of Civilian Persons in Time of War, adopted at Geneva on 12 August 1949		An offence against the following section of the Geneva Conventions Act 1958:
	<i>section</i>	<i>subject matter</i>
	3	punishment for grave breaches of Conventions or First Protocol
19 The Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, adopted at Geneva on 8 June 1977		An offence against the following section of the Geneva Conventions Act 1958:
	<i>section</i>	<i>subject matter</i>
	3	punishment for grave breaches of Conventions or First Protocol

Legislative history

11 June 2002

Divided from Transnational Organised Crime Bill
(Bill 201–2), third reading

17 June 2002

Royal assent
