

MISUSE OF DRUGS AMENDMENT BILL (NO. 2)

AS REPORTED FROM THE COMMITTEE OF THE WHOLE HOUSE

This bill was formerly part of the Harassment and Criminal Associations Bill as reported from the Justice and Law Reform Committee. The committee of the whole House has divided the bill as follows:

- The Harassment Bill, comprising Parts 1 to 4
 - The Crimes Amendment Bill (No. 2), comprising Part 5 and Schedule 1A
 - The Criminal Justice Amendment Bill (No. 2), comprising Part 6
 - The Local Government Amendment Bill (No. 4), comprising Part 7
 - This bill, comprising Part 8
 - The Summary Offences Amendment Bill, comprising Part 9 and Schedules 2A and 3
 - The Telecommunications Amendment Bill, comprising Part 10
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KEY TO SYMBOLS USED IN REPRINTED BILL
AS REPORTED FROM A SELECT COMMITTEE

Struck Out (Majority)

Subject to this Act,

Text struck out by a majority

New (Majority)

Subject to this Act,

Text inserted by a majority

<Subject to this Act,>

Words struck out by a majority

<Subject to this Act,>

Words inserted by a majority

Hon. D. A. M. Graham

MISUSE OF DRUGS AMENDMENT (NO. 2)

ANALYSIS

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A BILL INTITULED

An Act to amend the Misuse of Drugs Act 1975

BE IT ENACTED by the Parliament of New Zealand as follows:

5 **1. Short Title and commencement**—(1) This Act may be cited as the Misuse of Drugs Amendment Act (No. 2) 1997, and is part of the Misuse of Drugs Act 1975.

(2) This Act comes into force on 1 February 1998.

10 **68. Meaning of "Amendment Act"**—In this Part, unless the context otherwise requires, the term "the Amendment Act" means the Misuse of Drugs Amendment Act 1978.

69. Interpretation—(1) Section 10 (1) of the Amendment Act is amended by inserting in the definition of the term “interception warrant”, after the expression “section 15”, the expression “or **section 15b**”.

(2) Section 10 (1) of the Amendment Act is amended by inserting, in their appropriate alphabetical order, the following definitions: 5

“‘Dealing in cannabis on a substantial scale’ means—

“(a) Dealing (in any of the ways referred to in section 6 (1) of the principal Act) with a substantial amount of a controlled drug in respect of which a prescribed cannabis offence may be committed: 10

“(b) Cultivation of a prohibited plant (being a prohibited plant in respect of which a prescribed cannabis offence may be committed) on a substantial scale: 15

“‘Organised criminal enterprise’ means a continuing association of 3 or more persons having as its object or as one of its objects the acquisition of substantial income or assets by means of a continuing course of criminal conduct: 20

“‘Prescribed cannabis offence’ means an offence against—

“(a) Section 6 of the principal Act in relation to a Class C controlled drug specified or described in Part I of the Third Schedule of the principal Act (other than catha edulis plant or <coco> <cocā> leaf); 25
or

“(b) Section 9 of the principal Act in relation to a prohibited plant of the genus *Cannabis*.”. 30

70. New heading substituted—The Amendment Act is amended by repealing the heading immediately before section 14, and substituting the heading “*Applications for Interception Warrants in Relation to Drug Dealing Offences*”.

71. Matters on which Judge must be satisfied in respect of applications—(1) Section 15 (d) of the Amendment Act is amended by omitting the expression “section 8 of the Evidence Act 1908”, and substituting the expression “any of the provisions of Part III of the Evidence Amendment Act (No. 2) 1980”. 35
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(2) Section 15 of the Amendment Act is amended by adding, as subsection (2), the following subsection:

“**(2)** Without limiting subsection (1), in determining whether or not to issue an interception warrant under this section, the Judge must consider the extent to which the privacy of any person or persons would be likely to be interfered with by the interception, under the warrant, of private communications.”

72. New heading and sections inserted—The Amendment Act is amended by inserting, after section 15, the following heading and sections:

“*Applications for Interception Warrants in Relation to Prescribed Cannabis Offences*”

15A. Application by Police for warrant to intercept private communications in relation to prescribed cannabis offences—(1) An application may be made in accordance with this section to a Judge of the High Court 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) Any member of an organised criminal enterprise is planning, participating in, or committing, or has planned, participated in, or committed, a prescribed cannabis offence; and

“(b) The prescribed cannabis offence involves dealing in cannabis on a substantial scale; and

“(c) 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)** must be made by a commissioned officer of Police, in writing, and on oath, and must set out the following particulars:

“(a) The facts relied upon to show that there are reasonable grounds for believing that—

“(i) There is an organised criminal enterprise; and

“(ii) Any member of that enterprise is planning, participating in, or committing, or has planned, participated in, or committed, a prescribed cannabis offence; and

“(iii) The prescribed cannabis offence involves dealing in cannabis on a substantial scale; 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 place in respect of which it is proposed to intercept private communications, being premises or a place believed to be used for any purpose by any member of the organised criminal enterprise; and 5

“(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 10

“(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 15

“(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. 20

“15B. **Matters on which Judge must be satisfied in respect of applications relating to prescribed cannabis offences**—(1) On an application made in accordance with section 15A, the Judge may grant an interception warrant if the Judge is satisfied that it would be in the best interests of the administration of justice to do so, and that— 25 30

“(a) There are reasonable grounds for believing that—

“(i) There is an organised criminal enterprise; and

“(ii) Any member of that enterprise is planning, participating in, or committing, or has planned, participated in, or committed, a prescribed cannabis offence; and 35

“(iii) The prescribed cannabis offence involves dealing in cannabis on a substantial scale; and

“(b) There are reasonable grounds for believing that evidence relevant to the investigation of the case will be obtained through the use of a listening device to intercept private communications; and 40

“(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

5 “(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

10 “(iii) 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

15 “(d) The private communications to be intercepted are not likely to be privileged in proceedings in a court of law by virtue of any of the provisions of Part III of the Evidence Amendment Act (No. 2) 1980 or of any rule of law that confers privilege on communications of a professional character between a barrister or solicitor and a client.

20 “(2) Without limiting subsection (1), in determining whether or not to issue an interception warrant under this section, the Judge must consider the extent to which the privacy of any person or persons would be likely to be interfered with by the interception, under the warrant, of private communications.”

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30 **73. New heading inserted**—The Amendment Act is amended by inserting, immediately before section 16, the heading “*General Provisions Relating to Interception of Private Communications*”.

74. Contents and term of warrant—

Struck Out (Majority)

35 (1) Section 16 of the Amendment Act is hereby amended by inserting in subsection (1), before the word “form”, the word “appropriate”.

New (Majority)

(1) Section 16 (1) of the

New (Majority)

Amendment Act is amended by omitting the words “form set out in the Schedule to this Act”, and substituting the words “prescribed form”.

(2) Section 16 of the Amendment Act is amended by repealing subsection (1) (b), and substituting the following paragraph:

“(b) State,—

“(i) In the case of a warrant granted under section 15, the name and address of the suspect, if known, whose private communications may be intercepted, or, where the suspect’s name and address are not known, the premises or place in respect of which private communications may be intercepted, being premises or a place believed to be used for any purpose by any person involved in the drug dealing offence; or

“(ii) In the case of a warrant granted under section 15B, the name and address of the suspect, if known, whose private communications may be intercepted, or, where the suspect’s name and address are not known, the premises or place in respect of which private communications may be intercepted, being premises or a place believed to be used for any purpose by any member of the organised criminal enterprise; and”.

75. Renewal of warrants—Section 18 of the Amendment Act is amended—

(a) By inserting in subsection (2), after the expression “section 14”, the expression “or, as the case requires, section 15A”:

(b) By inserting in subsection (4), after the expression “section 15”, the expression “or, as the case requires, section 15B”.

76. Emergency permits—Section 19 of the Amendment Act is amended—

(a) By inserting in subsection (1), after the expression “section 15”, the expression “or, as the case requires, section 15B”:

(b) By repealing subsection (2):

(c) By inserting in subsection (3), after the expression “section 14”, the expression “or, as the case requires, section 15A”:

5 (d) By inserting in subsection (9), after the expression “section 15”, the expression “or, as the case requires, section 15B”.

77. Destruction of irrelevant records made by use of listening device—Section 21 of the Amendment Act is amended by repealing subsection (1), and substituting the following subsection:

10 “(1) Every person who intercepts a private communication in pursuance of an interception warrant or any emergency permit must, as soon as practicable after it has been made, destroy any record, whether written or otherwise, of the information
15 obtained by that interception if none of the information directly or indirectly relates to—

“(a) The commission of a drug dealing offence or a prescribed cannabis offence; or

20 “(b) The commission of a specified offence or a serious violent offence (as those terms are defined in section 312A of the Crimes Act 1961), or a conspiracy to commit such an offence.”

78. Destruction of relevant records made by use of listening device—Section 22 of the Amendment Act is amended by repealing subsection (1), and substituting the following subsection:

25 “(1) The Commissioner of Police must ensure that every record, whether written or otherwise, of the information obtained by the Police from the interception of a private
30 communication in pursuance of an interception warrant or an emergency permit, being information that relates wholly or partly and directly or indirectly to—

“(a) The commission of a drug dealing offence or a prescribed cannabis offence; or

35 “(b) The commission of a specified offence or a serious violent offence (as those terms are defined in section 312A of the Crimes Act 1961), or a conspiracy to commit such an offence,—

40 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.”

Struck Out (Majority)

79. Inadmissibility of evidence of private communications unlawfully intercepted—Section 25 (2) of the Amendment Act is hereby amended by inserting, after the words “drug dealing offence”, the words “or a prescribed cannabis offence”. 5

New (Majority)

79. Inadmissibility of evidence of private communications unlawfully intercepted—Section 25 of the Amendment Act is amended by repealing subsection (2), 10 and substituting the following subsection:

“(2) Even though certain evidence is inadmissible in criminal proceedings by virtue of subsection (1), a Court may admit that evidence if the following conditions are satisfied:

“(a) The proceedings are for— 15

“(i) A drug dealing offence; or

“(ii) A prescribed cannabis offence; and

“(b) The evidence is relevant; and

“(c) The evidence is inadmissible by virtue of subsection (1) merely because of a defect in form, or an irregularity in procedure, in— 20

“(i) The application for or the granting of the interception warrant or emergency permit; or

“(ii) The manner in which the evidence was obtained; and 25

“(d) The defect in form or irregularity in procedure—

“(i) Was not substantive; and

“(ii) Was not the result of bad faith.”

80. Inadmissibility of evidence of private communications lawfully intercepted—(1) Section 26 (1) of the Amendment Act is amended by inserting, after the words “drug dealing offence”, the words “or a prescribed cannabis offence”. 30

Struck Out (Majority)

(2) Section 26 (2) of the Amendment Act is hereby amended by omitting the words “any offence described in section 312B of the Crimes Act 1961”, and substituting the words “a specified offence or a serious violent offence (as those terms are defined in **section 312A** of the Crimes Act 1961)”.

(3) Section 26 of the Amendment Act hereby amended by adding the following subsections:

“(3) Where, in any proceedings for a specified offence (as so defined), it is necessary to determine, pursuant to subsection (2) of this section, whether or not evidence relating to that offence may be admitted, paragraph (b) (i) of that subsection shall be applied as if a warrant or permit could be issued under section 312C or section 312G of the Crimes Act 1961 in respect of such an offence whether or not there are reasonable grounds for believing—

“(a) That there is an organised criminal enterprise; and

“(b) A person who is planning, participating in, or committing, or who has planned, participated in, or committed, such an offence is a member of such an enterprise; and

“(c) Such an offence is part of a continuing course of criminal conduct planned, organised, or undertaken by members of such an enterprise.

“(4) Where, in any proceedings for a serious violent offence (as so defined), it is necessary to determine, pursuant to subsection (2) of this section, whether or not evidence relating to that offence may be admitted, paragraph (b) (i) of that subsection shall be applied as if a warrant or permit could be issued under **section 312CB** or section 312G of the Crimes Act 1961 in respect of such an offence whether or not there are reasonable grounds for believing that 3 or more people were involved, or are involved, or will be involved, in the commission of such an offence.”

New (Majority)

(2) Section 26 (2) of the Amendment Act is amended by omitting the words “any offence described in section 312B (1) (a) of the Crimes Act 1961”, and substituting

New (Majority)

the words “a specified offence or a serious violent offence (as those terms are defined in section 312A of the Crimes Act 1961)”.

(3) Section 26 of the Amendment Act is amended by adding the following subsections:

“(3) **Subsection (4)** applies where,—

“(a) In any proceedings for a specified offence (as so defined), a Judge has to decide whether or not evidence relating to the offence can be admitted under subsection (2); and

“(b) In order to make that decision, the Judge has to decide the issue of whether or not a warrant or permit could have been issued under Part XIA of the Crimes Act 1961 in respect of the specified offence.

“(4) Where this section applies, the Judge must decide the issue referred to in subsection (3) (b) as if a warrant or permit could be issued under section 312C or section 312G of the Crimes Act 1961 in respect of a specified offence regardless of whether or not there are reasonable grounds for believing—

“(a) That there is an organised criminal enterprise; and

“(b) That a person who is planning, participating in, or committing, or who has planned, participated in, or committed, such an offence is a member of such an enterprise; and

“(c) That such an offence is part of a continuing course of criminal conduct planned, organised, or undertaken by members of such an enterprise.”

81. Privileged evidence—Section 27 of the Amendment Act is amended by repealing paragraph (a), and substituting the following paragraph:

“(a) Any of the provisions of Part III of the Evidence Amendment Act (No. 2) 1980; or”.

Struck Out (Majority)

82. Commissioner of Police to give information to Parliament—(1) Section 29 of the Amendment Act is hereby amended by inserting, after paragraph (a), the following paragraph:

Struck Out (Majority)

“(aa) The number of applications for warrants made under section 15A of this Act; and”.

5 (2) Section 29 of the Amendment Act is hereby amended by inserting, after paragraph (c), the following paragraph:

“(ca) The number of occasions on which telephonic communications were intercepted pursuant to an emergency permit granted pursuant to section 19 of this Act; and”.

10 **83. New First Schedule substituted**—(1) The Amendment Act is hereby amended by repealing the First Schedule (as amended by section 289 (1) of the Customs and Excise Act 1996), and substituting the Schedule set out in the **Second** Schedule to this Act.

15 (2) The Fifth Schedule to the Customs and Excise Act 1996 is hereby consequentially amended by omitting, from the item relating to the Amendment Act, the item relating to the First Schedule to the Amendment Act.

New (Majority)

20 **82. Commissioner of Police to give information to Parliament**—The Amendment Act is amended by repealing section 29, and substituting the following section:

25 “29. The Commissioner of Police must include in every annual report prepared by the Commissioner for the purposes of section 65 of the Police Act 1958 the following information in respect of the period under review:

“(a) The number of applications for warrants made under section 14; and

30 “(b) The number of applications for warrants made under section 15A; and

“(c) The number of applications for renewals of warrants made under section 18; and

“(d) The number of applications for emergency permits made under section 19; and

35 “(e) The number of applications referred to in each of paragraphs (a) to (d) that were granted, and the number that were refused; and

New (Majority)

“(f) In relation to each of the types of warrant referred to in paragraphs (a) and (b) that were issued,—	
“(i) The number of warrants that authorised the use of a listening device to intercept the private communications of a named individual:	5
“(ii) The number of warrants that authorised the use of a listening device to intercept private communications at specified premises or a specified place:	10
“(iii) The number of warrants that authorised entry onto private premises; and	
“(g) The number of occasions on which telephonic communications were intercepted under an emergency permit granted under section 19; and	15
“(h) The average duration of warrants (including renewals); and	
“(i) 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; and	20
“(j) The number of prosecutions that have been instituted against members of the Police (including former members of the Police where the prosecution relates to behaviour occurring while they were members of the Police) for offences against section 23 (prohibition on disclosure of private communications lawfully intercepted).”	25
83. First Schedule repealed— (1) The Amendment Act is amended by repealing the First Schedule.	30
(2) The Fifth Schedule of the Customs and Excise Act 1996 is consequentially amended by omitting, from the item relating to the Amendment Act, the item relating to the First Schedule of the Amendment Act.	35

SCHEDULE

Struck Out (Majority)

SECOND SCHEDULE

Section 83

NEW FIRST SCHEDULE SUBSTITUTED IN MISUSE OF DRUGS AMENDMENT ACT 1978

“FIRST SCHEDULE

Section 16 (1)

FORMS

Form 1

INTERCEPTION WARRANT IN RELATION TO DRUG DEALING OFFENCE

(Section 14, Misuse of Drugs Amendment Act 1978)

1. To [Full name of commissioned officer of Police] and every other member of the Police or 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 (within the meaning of section 10 of the Misuse of Drugs Amendment Act 1978); 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) [Whichsoever 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 any of the provisions of Part III of the Evidence Amendment Act (No. 2) 1980 or of any rule of law that confers privilege on communications of a professional character between a barrister or solicitor and a client; and

SCHEDULE—continued

Struck Out (Majority)

SECOND SCHEDULE—continued

NEW FIRST SCHEDULE SUBSTITUTED IN MISUSE OF DRUGS AMENDMENT ACT 1978—continued

“FIRST SCHEDULE—continued

Form 1—continued

(e) Having considered the extent to which the privacy of any person or persons would be likely to be interfered with by the interception, 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 Misuse of Drugs Act 1975 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]:

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 a drug dealing offence]:

or

*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 19 .

.....
Judge of the High Court.

*To be deleted where not applicable.

SCHEDULE—*continued*

Struck Out (Majority)

SECOND SCHEDULE—*continued*

NEW FIRST SCHEDULE SUBSTITUTED IN MISUSE OF DRUGS AMENDMENT ACT
1978—*continued*

“FIRST SCHEDULE—*continued*

Form 2

INTERCEPTION WARRANT IN RELATION TO PRESCRIBED CANNABIS OFFENCE

(Section 15A, Misuse of Drugs Amendment Act 1978)

1. To [Full name of commissioned officer of Police] and every other member of the Police or 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—

(i) There is an organised criminal enterprise; and

(ii) A member of that enterprise is planning, participating in, or committing, or has planned, participated in, or committed, a prescribed cannabis offence (within the meaning of section 10 of the Misuse of Drugs Amendment Act 1978); and

(iii) The prescribed cannabis offence involves dealing in cannabis on a substantial scale; and

(b) There are reasonable grounds for believing that evidence relevant to the investigation of the case 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 any of the provisions of Part III of the Evidence Amendment Act (No. 2) 1980 or of any rule of law that confers privilege on communications of a professional character between a barrister or solicitor and a client; and

SCHEDULE—continued

Struck Out (Majority)

SECOND SCHEDULE—continued

NEW FIRST SCHEDULE SUBSTITUTED IN MISUSE OF DRUGS AMENDMENT ACT 1978—continued

“FIRST SCHEDULE—continued

Form 2—continued

(e) Having considered the extent to which the privacy of any person or persons would be likely to be interfered with by the interception, 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 Misuse of Drugs Act 1975 in relation to a Class C controlled drug specified or described in Part I of the Third Schedule to that Act (other than *catha edulis* plant or *coco* leaf), or an offence against section 9 of that Act in relation to a prohibited plant of the genus *Cannabis*):

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]:

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 a prescribed cannabis offence]:

or

*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 19 .

Judge of the High Court.

*To be deleted where not applicable.”