



ANALYSIS

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1998, No. 14

An Act to amend the Misuse of Drugs Act 1975

[11 May 1998

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

1. Short Title and commencement—(1) This Act may be cited as the Misuse of Drugs Amendment Act 1998, and is part of the Misuse of Drugs Act 1975 (“the principal Act”).

(2) Except as provided in subsection (3), this Act comes into force on the day after the date on which it receives the Royal assent.

(3) Sections 9 and 10 come into force on a date to be appointed by the Governor-General by Order in Council.

2. Interpretation—Section 2 (1) of the principal Act is amended by inserting, in their appropriate alphabetical order, the following definitions:

“‘Precursor substance’ means any substance specified or described in Part 1 or Part 2 of Schedule 4:

“‘Vienna Convention’ means the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances adopted in Vienna on 19 December 1988.”

3. Amendment of First, Second, and Third Schedules, and of Schedule 4—Section 4 of the principal Act (as substituted by section 2 of the Misuse of Drugs Amendment Act 1982) is amended by adding the following subsection:

“(4) The Governor-General may from time to time, by Order in Council,—

“(a) Amend the name or description of any substance included in Schedule 4 if the amendment is necessary for the purposes of rendering that name or description consistent with international scientific usage:

“(b) Add to or remove from Schedule 4 the name or description of any substance included in that schedule if the amendment is necessary for the purposes of giving effect to any changes to the Annex to the Vienna Convention.”

4. Aiding offences against corresponding law of another country—Section 10 (4) of the principal Act is amended by omitting the words “the person charged proves that”.

5. New sections inserted—The principal Act is amended by inserting, after section 12, the following sections:

“12A. Equipment, material, and substances used in production or cultivation of controlled drugs—(1) Every person commits an offence against this Act who supplies, produces, or manufactures—

“(a) Any equipment or material that is capable of being used in, or for, the commission of an offence against section 6 (1) (b) or section 9; or

“(b) Any precursor substance—
knowing that the equipment, material, or substance is to be used in, or for, the commission of an offence against those provisions.

“(2) Every person commits an offence against this Act who has in his or her possession—

“(a) Any equipment or material that is capable of being used in, or for, the commission of an offence against section 6 (1) (b) or section 9; or

“(b) Any precursor substance—
with the intention that the equipment, material, or substance is to be used in, or for, the commission of an offence against that provision.

“(3) Every person who commits an offence against this section is liable on conviction on indictment,—

“(a) In the case of an offence against subsection (1), to imprisonment for a term not exceeding 7 years:

“(b) In the case of an offence against subsection (2), to imprisonment for a term not exceeding 5 years.

“(4) If a person is summarily convicted of an offence against this section,—

“(a) The Court may sentence the person to imprisonment for a term not exceeding 1 year or to a fine not exceeding \$1,000, or to both; and

“(b) The sentencing limits contained in section 7 of the Summary Proceedings Act 1957 do not apply.

“12B. **Laundering proceeds of drug offences**—(1) In this section,—

“ ‘Conceal’, in relation to property,—

“(a) Means to conceal or disguise the property; and

“(b) Includes (without limitation)—

“(i) To convert the property from one form to another:

“(ii) To conceal or disguise the nature, source, location, disposition, or ownership of the property or of any interest in the property:

“ ‘Deal with’, in relation to property,—

“(a) Means to deal with the property in any manner and by any means; and

“(b) Includes (without limitation)—

“(i) To dispose of the property, whether by way of sale, purchase, gift, or otherwise:

“(ii) To transfer possession of the property:

“(iii) To bring the property into New Zealand:

“(iv) To remove property from New Zealand:

“‘Interest’, in relation to property, means—

“(a) A legal or equitable estate or interest in the property:

“(b) A right, power, or privilege in connection with the property:

“‘Proceeds’, in relation to a specified drug offence, means any property that is derived or realised, directly or indirectly, by any person from the commission of the offence:

“‘Property’—

“(a) Means real or personal property of any description, whether situated in New Zealand or elsewhere and whether tangible or intangible; and

“(b) Includes an interest in any such real or personal property:

“‘Serious offence’ has the same meaning as it has in section 257A of the Crimes Act 1961:

“‘Specified drug offence’—

“(a) Means an offence against section 6 or section 9 or section 12A; and

“(b) Includes any act, wherever committed, which if committed in New Zealand would constitute an offence against any of those sections.

“(2) Subject to subsections (6) to (8), every person commits an offence and is liable on conviction on indictment to imprisonment for a term not exceeding 7 years who, in respect of any property that is the proceeds of a specified drug offence, engages in a money laundering transaction, knowing or believing that all or part of the property is the proceeds of a specified drug offence.

“(3) Subject to subsections (6) to (8), every person commits an offence and is liable on conviction on indictment to imprisonment for a term not exceeding 5 years who obtains or has in his or her possession any property (which property is the proceeds of a specified drug offence committed by another person)—

“(a) With intent to engage in a money laundering transaction concerning that property; and

“(b) Knowing or believing that all or part of the property is the proceeds of a specified drug offence.

“(4) For the purposes of this section, a person engages in a money laundering transaction if that person—

- “(a) Deals with any property; or
- “(b) Assists any other person, whether directly or indirectly, to deal with any property—
for the purpose of—
 - “(c) Concealing that property; or
 - “(d) Enabling another person to conceal that property.
- “(5) In any prosecution for an offence against subsection (2) or subsection (3),—
 - “(a) It is not necessary for the prosecution to prove that the accused knew or believed that the property was the proceeds of a particular specified drug offence or a particular class of specified drug offence:
 - “(b) It is no defence that the accused believed any property to be the proceeds of a particular specified drug offence, when in fact the property was the proceeds of another specified drug offence.
 - “(6) It is a defence to a charge under this section if the act to which the charge relates was done by that person, in good faith, for the purpose of or in connection with—
 - “(a) The enforcement or intended enforcement of this section or any other provision of this Act or any other enactment relating to a specified drug offence or any other serious offence; or
 - “(b) The enforcement or intended enforcement of the Proceeds of Crime Act 1991; or
 - “(c) The enforcement or intended enforcement of the Financial Transactions Reporting Act 1996.
 - “(7) Subject to subsection (8), this section does not apply if—
 - “(a) Any property is alleged to be the proceeds of a serious offence; and
 - “(b) The act that is alleged to constitute that serious offence was committed outside New Zealand; and
 - “(c) The act was not, at the time of its commission, an offence under the law of the place where the act was done.
 - “(8) If a person is charged with an offence against this section and the act that is alleged to constitute the serious offence resulting in proceeds was committed outside New Zealand, it is to be presumed, unless the person charged puts the matter at issue, that the act was an offence under the law of the place where the act was done.
 - “(9) Nothing in this section limits or restricts the operation of any other provision of this Act or any other enactment.

“12C. Commission of offences outside New Zealand—
(1) Subject to subsection (2), every person commits an offence against this Act who, outside New Zealand, does or omits to do any act that would, if done or omitted in New Zealand, constitute an offence against—

“(a) Section 6; or

“(b) Section 9; or

“(c) Section 12A; or

“(d) Section 12B.

“(2) No proceedings for an offence against subsection (1) may be brought unless—

“(a) The person to be charged is a New Zealand citizen; or

“(b) The person to be charged is present in New Zealand.

“(3) Every person who commits an offence against this section is liable on conviction on indictment to the same penalty to which the person would have been liable had that person committed the offence in New Zealand.

“(4) Subsection (1) does not apply if the doing or omission of the act to which the charge relates was not an offence under the law of the place where the act was done or omitted.

“(5) Despite subsection (4), if a person is charged with an offence against this section, it is to be presumed, unless the person charged puts the matter at issue, that the doing or omission of the act to which the charge relates was an offence under the law of the place where the act was done or omitted.

“(6) Section 28A applies to proceedings for offences against this section.”

6. Consent of Attorney-General required in proceedings under section 12C—The principal Act is amended by inserting, after section 28, the following section:

“28A. (1) No information may be laid for an offence against section 12C except with the consent of the Attorney-General.

“(2) A person who is alleged to have committed an offence against section 12C may be arrested, or a warrant for the arrest of the person may be issued and executed, and any such person may be remanded in custody or on bail, even if the Attorney-General’s consent to the laying of the information has not been obtained, but no further or other proceedings may be taken until that consent has been obtained.

“(3) The Attorney-General may, before deciding whether or not to give his or her consent under subsection (1), make such inquiries as he or she thinks fit.”

7. Mistake as to nature of controlled drug or precursor substance—Section 29 of the principal Act is amended—

- (a) By inserting, after the expression “section 7”, the expression “or section 12A”;
- (b) By inserting, after the words “controlled drug” wherever they occur, the words “or precursor substance”.

8. Evidence of analysis—Section 31 (2) of the principal Act is amended by inserting, after the words “controlled drug”, the words “or precursor substance”.

9. Crimes deemed to be included in extradition treaties—Section 35 (1) of the principal Act is amended by omitting the words “A certificate given under the hand of the Minister of Foreign Affairs that any foreign country is a party as aforesaid shall be sufficient evidence of that fact.”

10. New sections inserted—The principal Act is amended by inserting, after section 35, the following sections:

“35A. **Further provision on crimes to be treated as included in extradition treaties**—(1) For the purposes of the Extradition Act 1965 and every Order in Council made under section 3 of that Act or referred to in section 21 of that Act, every offence described in any of sections 6, 9, 12A, 12B, and 12C (including attempting or conspiring to commit that offence, aiding, abetting, inciting, counselling, or procuring any person to commit that offence) and every offence described in section 10, if not already described in the treaty, is to be treated as being an offence described in any extradition treaty concluded before the commencement of this section and for the time being in force between New Zealand and any foreign country which is a party to the Vienna Convention.

“(2) When subsection (1) requires any offence to be treated as being an offence described in an extradition treaty, a person whose surrender is sought under the Extradition Act 1965 in respect of an act or omission which amounts to that offence is 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 offence became, by virtue of subsection (1), an offence described in the extradition treaty.

“(3) Nothing in this section applies in respect of an act or omission that was not an offence under New Zealand law when it occurred.

“(4) For the purposes of this section, ‘foreign country’ includes any territory for whose international relations the

Government of a foreign country is responsible and to which the extradition treaty and the Vienna Convention extend.

“35B. Surrender of offenders—(1) If the surrender of a person is sought under either the Extradition Act 1965 or the Fugitive Offenders Act 1881 in respect of any act or omission—

“(a) That amounts to any offence described in any of sections 6, 9, 12A, 12B, and 12C (including attempting or conspiring to commit that offence, aiding, abetting, inciting, counselling, or procuring any person to commit that offence) or any offence described in section 10; and

“(b) For which the person whose surrender is sought could be tried and punished in the country seeking surrender, which country is a party to the Vienna Convention,—

that act or omission is to be treated as having been committed within the jurisdiction of that country even though it was committed outside the territory of that country.

“(2) Without limiting subsection (1), if any act or omission to which that subsection applies occurred in New Zealand, the Extradition Act 1965 and the relevant extradition treaty, or (as the case may require) the Fugitive Offenders Act 1881, applies with any necessary modifications as if the act or omission had occurred outside New Zealand.

“(3) In this section, ‘country’ includes any territory for whose international relations the Government of a country is responsible and to which the extradition treaty (if any) and the Vienna Convention extend.

“35C. Restrictions on surrender of offenders—(1) Despite section 35A or section 35B, or the Extradition Act 1965 or the Fugitive Offenders Act 1881, a person whose surrender is sought in respect of any act or omission that amounts to an offence against any of sections 6, 9, 10, 12A, 12B, and 12C must not be surrendered from New Zealand to another country if it appears to the Minister of Justice, or to the Court before which that person is brought, or to any Court or Judge on an application for a writ of habeas corpus, that—

“(a) The surrender of the accused, although purporting to have been sought in respect of such an offence, was sought for the purpose of prosecuting or punishing the accused on account of his or her race, ethnic origin, religion, nationality, or political opinions; or

“(b) If the accused is surrendered, the accused may be prejudiced at his or her trial, or punished, detained, or restricted in his or her personal liberty, because of his or her race, ethnic origin, religion, nationality, or political opinions.

“(2) Despite section 35A or section 35B, or the Extradition Act 1965 or the Fugitive Offenders Act 1881, no person may be surrendered from New Zealand to another country in respect of any act or omission that amounts to an offence described in any of sections 6, 9, 10, 12A, 12B, and 12C if proceedings have been brought in New Zealand against that person in respect of the act or omission.

“(3) Despite section 35A or section 35B, or the Extradition Act 1965 or the Fugitive Offenders Act 1881, but subject to subsection (4), no Court in New Zealand may order the surrender, or the committal for the purposes of surrender, of a person to another country in respect of any act or omission that amounts to an offence described in any of sections 6, 9, 10, 12A, 12B, and 12C if the Attorney-General certifies that the case is being or is about to be considered to determine whether or not proceedings should be brought in New Zealand against that person in respect of the act or omission.

“(4) If, in any case to which subsection (3) applies, it is subsequently determined that proceedings should not be brought in New Zealand against the person in respect of the act or omission, the Attorney-General must advise the Court accordingly, and the Court must proceed with the matter as if the Attorney-General’s certificate had never been given.

“35D. **Evidence**—For any purpose in connection with this Act, a certificate given by the Secretary of Foreign Affairs and Trade certifying—

“(a) That any country is or is not, or was or was not at any material time, a party to—

“(i) The Single Convention on Narcotic Drugs 1961, as amended by the Protocol amending that Convention, done at Geneva on 25 March 1972; or

“(ii) The Convention on Psychotropic Substances 1971; or

“(iii) The Vienna Convention; or

“(b) That the Government of any country is or is not, or was or was not, at any material time, responsible for the international relations of any territory,—
is sufficient evidence of that fact.”

11. Application of Customs and Excise Act 1996—Section 36 of the principal Act (as substituted by section 289 (1) of the Customs and Excise Act 1996) is amended by omitting the expression “Part IV, Part V, or”.

12. New Schedule 4 added—The principal Act is amended by adding the Schedule 4 set out in Schedule 1.

13. Consequential amendments to other enactments—The enactments specified in Schedule 2 are amended in the manner indicated in that schedule.

SCHEDULES**SCHEDULE 1**

Section 12

NEW SCHEDULE 4 ADDED TO MISUSE OF DRUGS ACT 1975

“SCHEDULE 4

Section 2 (1)

PRECURSOR SUBSTANCES**PART 1**

1. The following substances:

N-ACETYLANTHRANILIC ACID

EPHEDRINE

ERGOMETRINE

ERGOTAMINE

ISOSAFROLE

LYSERGIC ACID

3, 4,-METHYLENEDIOXYPHENYL-2-PROPANONE

1-PHENYL-2 PROPANONE

PIPERONAL

PSEUDOEPHEDRINE

SAFROLE

2. The salts of the substances listed in clause 1 whenever the existence of such salts is possible.

PART 2

1. The following substances:

ACETIC ANHYDRIDE

ACETONE

ANTHRANILIC ACID

ETHYL ETHER

HYDROCHLORIC ACID

METHYL ETHYL KETONE

PHENYLACETIC ACID

PIPERIDINE

POTASSIUM PERMANGANATE

SULPHURIC ACID

TOLUENE

2. The salts of the substances listed in clause 1 (other than the salts of hydrochloric acid and of sulphuric acid) whenever the existence of such salts is possible.”

Section 13

SCHEDULE 2
CONSEQUENTIAL AMENDMENTS

Enactment	Amendment
1947, No. 16—The District Courts Act 1947 (R.S. Vol. 28, p. 57)	By adding to Part B of Part II of Schedule 1A (as inserted by section 20 of the District Courts Amendment Act 1991), in the appropriate columns, the following entry: “12C Commission of offences outside New Zealand, other than offences against subsection (1) (a)”.
1957, No. 87—The Summary Proceedings Act 1957 (R.S. Vol. 9, p. 583)	By adding to the item relating to the Misuse of Drugs Act 1975 (as substituted by section 25 (2) of the Summary Proceedings Amendment Act 1980), in the appropriate columns in Part II of the First Schedule, the following entries: “12A Equipment, material, and substances used in production or cultivation of controlled drugs “12B Laundering proceeds of drug offences”.
1961, No. 43—The Crimes Act 1961 (R.S. Vol. 1, p. 635)	By omitting from section 344AA (1) (as inserted by section 6 of the Crimes Amendment Act 1995) the words “(which relates to money laundering)”, and substituting the words “or subsection (2) or subsection (3) of section 12B of the Misuse of Drugs Act 1975 (which sections relate to money laundering and laundering the proceeds of offences)”. By adding to section 344AA (3) (as so inserted) the words “and in section 12B of the Misuse of Drugs Act 1975, respectively”.
1965, No. 44—The Extradition Act 1965 (R.S. Vol. 18, p. 113)	By adding to the item relating to the Misuse of Drugs Act 1975 (as substituted by section 10 (6) of the Misuse of Drugs Act 1975), in the appropriate columns in Part II of the First Schedule, the following entries: “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”.
1978, No. 65—The Misuse of Drugs Amendment Act 1978 (R.S. Vol. 26, p. 618)	By repealing the definition of the term “drug dealing offence” in section 10 (1), and substituting the following definition: “Drug dealing offence” means,— “(a) In sections 30, 34, 38 to 41, 43, 46, and 47, any offence

SCHEDULE 2—*continued*
CONSEQUENTIAL AMENDMENTS—*continued*

Enactment	Amendment
<p>1978, No. 65—The Misuse of Drugs Amendment Act 1978 (R.S. Vol. 26, p. 618)—<i>continued</i></p>	<p>against section 12C (1) (a) of the principal Act: “(b) Any offence against section 6 of the principal Act— in relation to a Class A controlled drug or a Class B controlled drug:”.</p> <p>By repealing section 30, and substituting the following sections:</p> <p>“30. Bail allowable for drug dealing offence only by order of Judge—(1) A person who is charged with or convicted of a drug dealing offence may be granted bail,—</p> <p>“(a) In any case, by order of a High Court Judge; or</p> <p>“(b) If the person does not have any previous convictions for a drug dealing offence, by order of a District Court Judge.</p> <p>“(2) A person who is charged with or convicted of a drug dealing offence may not be granted bail otherwise than under subsection (1).</p> <p>“30A. Bail may be continued or renewed by District Court—A District Court may, despite the limitations imposed on District Court Judges by section 30 (1) (b) but without limiting the powers of the High Court, continue or renew any bail granted under that section (whether granted by a High Court Judge or a District Court Judge)—</p> <p>“(a) On the same or substantially the same conditions as were imposed under that section; or</p> <p>“(b) With the consent of the person bailed and the prosecution, on any conditions.”</p>

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This Act is administered in the Ministry of Health.

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