

POWERS OF SEARCH (INTERNAL CONCEALMENT) BILL

EXPLANATORY NOTE

THIS Bill amends the Customs Act 1966 and the Misuse of Drugs Act 1975 to allow officers of Customs and members of the Police to detain persons who are believed to have drugs or other goods secreted within their bodies for unlawful purposes.

The Bill deals with the problem highlighted in *R v Hannah, Parker, and Van Ommeren*. In that case, officers of Customs suspected that the 3 accused, who had just flown into New Zealand from Singapore, had drugs secreted within their bodies. They detained the accused under section 213 of the Customs Act 1966. That section provides for the detention of a person who is suspected of having drugs secreted within his or her body cavities. However, Mr Justice Casey held that the sole purpose of this detention is to enable a search of that person's body cavities to be carried out, and this must be done reasonably promptly.

This raises 2 difficulties. First, although the section expressly authorises the use of reasonable force to effect the search, it also requires every such search to be conducted by a medical practitioner. In practice, medical practitioners will not conduct such a search without the consent of the person concerned.

Secondly, as with the case referred to above, some persons do not secrete the drugs in their body cavities, but swallow them in appropriate containers with a view to recovering them ultimately by excretion or regurgitation. Thus, a search of the body cavities would not reveal anything, at least until Nature was about to take its course.

Section 18A of the Misuse of Drugs Act 1975 goes some way to meeting the problem. It provides that where a person is arrested for an offence against the Act, and is suspected of having swallowed or secreted drugs, that person may be denied bail for up to 48 hours. Thus, the principle underlying the Bill is already established in law: instead of forcible search, the emphasis is placed on continuing detention pending further developments.

However, section 18A has one serious drawback, in the sort of case illustrated by *R v Hannah, Parker, and Van Ommeren*. It only comes into play following arrest. The difficulty in many of these cases is that, while the officer of Customs or member of the Police may have very good grounds for suspecting that a person has something secreted within his or her body, the officer may not know what that something is. Thus, no arrest can be made because it is not known what offence is being committed.

The essence of the scheme established by this Bill is this: it allows the enforcement officers to detain the suspect while there continues to be good grounds for believing that the suspect has drugs or other goods secreted within

his or her body for any unlawful purpose. (It is extended, in the context of the Customs Act 1966, beyond drugs because some persons have used this method for the unlawful importation of gemstones.) It extends to cases where it is thought that the drugs or other goods have been swallowed. And it sets up a system of judicial review and supervision to protect the rights of the detained person.

Clause 1 relates to the Short Title and commencement.

PART I

AMENDMENTS OF CUSTOMS ACT 1966

Clause 2 is a machinery provision.

Clause 3 is consequential upon the introduction of the new scheme. It makes it clear that section 213 of the Customs Act 1966 no longer applies to internal searches.

Clause 4 implements the new scheme by inserting into the Customs Act 1966 new sections 213A to 213J.

Section 213A prescribes the circumstances in which the new power to detain may arise. It arises where a person is believed to have secreted within his or her body, for any unlawful purpose, any dutiable, restricted, or uncustomed goods, or any controlled drugs or other forfeited goods.

Subsection (2) makes it clear that the section covers cases of swallowing, as well as those involving secretion in body cavities.

The term "unlawful purpose" is defined in *subsection (3)*. Broadly, it means importation or exportation in circumstances involving a breach of the Customs Acts or the Misuse of Drugs Act 1975, and concealment of the commission of any such offence.

Section 213B sets out the duties of the detaining officer. The officer must inform the detained person of the reason for the detention, and hand to the detained person a copy of a Statement of Rights in the prescribed form.

The remaining 2 matters require a little more explanation. First, the purpose of the detention must always be borne in mind: that is, to determine whether or not the detained person does have drugs or other goods secreted within his or her body. For that reason, the detained person is to be given an opportunity to undergo certain examinations that may determine the matter one way or the other. The types of examination are listed in *section 213c (1)*. Broadly, they are, a manual examination, an X-ray examination, and an ultrasound scan. Because these are seen as offering protection to the innocent, the detaining officer is required to arrange for a medical practitioner to see the detained person as soon as possible to discuss the possibility of undergoing one or more of these examinations.

Finally, the detaining officer must apply to a District Court Judge for a warrant authorising the continuance of the detention.

Section 213c relates to the examinations that a detained person may be asked to undergo. Before giving his or her consent to any such examination, the detained person must be told by the medical practitioner just what is involved in the examination. Any such consent must be recorded in writing and signed by the detained person, and the medical practitioner must endorse on the written consent a certificate to the effect that he or she is satisfied that the detained person, when giving consent, understood what is involved in the examination.

Section 213D requires the person who conducts any such examination to record the results of the examination in 1 of 3 ways, definitely negative, definitely positive, or inconclusive. If it is definitely negative, the detention must be brought to an end (see *section 213H (b)*).

Section 213E sets out the procedure to be followed on an application for a detention warrant.

Subsection (1) requires the application to be in writing and on oath, and sets out the particulars required to be supplied in support of the application.

Subsection (2) allows an application to be made orally where urgency so requires.

Subsection (3) allows the Judge to consider any material that he or she considers relevant whether or not it would be admissible in a court of law.

Subsection (4) sets out the matters of which the Judge must be satisfied before issuing a warrant.

Subsection (5) provides that a detention warrant shall authorise the continued detention of the detained person for a period of 7 days (commencing with the day on which the detention begins), or such shorter period as the Judge specifies in the warrant.

Section 213F requires the Judge, on issuing a detention warrant, to appoint a solicitor and a medical practitioner to perform the functions specified in *subsections (2) and (3)*. Briefly, their role is to act as the Court's watchdog to ensure that the detained person is looked after properly, and that the detention is conducted in accordance with the law.

Section 213G relates to access to the detained person. The solicitor and the medical practitioner appointed by the Judge are entitled to have access to the detained person at all times. If the detained person has a solicitor or medical practitioner of his or her own, that person is entitled to have access to the detained person at all reasonable times, as is anyone else that the detained person reasonably requests.

Subsection (3) ensures that access is to be subject to reasonable requirements of security.

Section 213H sets out the circumstances in which detention is to cease, and *section 213I* provides for the renewal of a detention warrant in appropriate cases.

Section 213J relates to confessions and admissions made by the detained person while the detention is continuing. It provides, in effect, that no such confession or admission shall be admissible in any proceedings unless it relates to the drugs or goods then secreted within the detained person's body. If the confession or admission relates, for example, to an illegal importation on a previous occasion, it will be inadmissible.

PART II

AMENDMENTS OF MISUSE OF DRUGS ACT 1975

This Part makes broadly the same amendments in respect of the Misuse of Drugs Act 1975, but limited, of course, to drugs.

Hon. Geoffrey Palmer

POWERS OF SEARCH (INTERNAL CONCEALMENT)

ANALYSIS

Title
1. Short Title and commencement

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AMENDMENTS OF CUSTOMS ACT 1966

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PART II

AMENDMENTS OF MISUSE OF DRUGS ACT 1975

5. Part to be read with Misuse of Drugs Act 1975
6. New heading and sections (relating to detention on belief of internal concealment) inserted

Internal concealment

- 13A. Power to detain on belief of internal concealment
- 13B. Duties of officer in ordering detention
- 13C. Internal examination of detained persons
- 13D. Certificate by person conducting examination
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- 13F. On grant of warrant, Judge to appoint solicitor and medical practitioner
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- 13H. Expiry of detention
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- 13J. Inadmissibility of certain confessions or admissions by detained person

A BILL INTITULED

An Act to amend the Customs Act 1966 and the Misuse of Drugs Act 1975 to define the circumstances in which persons may be detained on belief of concealing controlled drugs or other goods within their body

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No. 99—1

cavities for unlawful purposes, to define the rights and obligations of persons while so detained, and to define the powers and duties of the Police and Customs officers in respect of such detained persons

BE IT ENACTED by the General Assembly of New Zealand 5
in Parliament assembled, and by the authority of the same, as follows:

1. Short Title and commencement—(1) This Act may be cited as the Powers of Search (Internal Concealment) Act 1985.

(2) This Act shall come into force on the 1st day of October 10
1985.

PART I

AMENDMENTS OF CUSTOMS ACT 1966

2. Part to be read with Customs Act 1966—This Part of this Act shall be read together with and deemed part of the 15
Customs Act 1966* (hereafter in this Part referred to as the principal Act).

*R.S. Vol. 2, p. 57

Amendments: 1979, No. 7; 1981, No. 20; 1982, No. 126

3. Searching person—(1) Section 213 of the principal Act is hereby amended by repealing subsection (1) (as substituted by section 8 (1) of the Customs Acts Amendment Act (No. 2) 1978), 20
and substituting the following subsection:

“(1) Subject to this section, if any officer of Customs or any member of the Police has reasonable cause to suspect that any person has unlawfully secreted about his or her person any dutiable, restricted, or uncustomed goods, or any controlled 25
drugs or other forfeited goods, the officer of Customs or member of the Police may detain and search that person, and may use such force as may be reasonably necessary against that person to effect such detention or search.”

(2) Section 213 of the principal Act is hereby further amended 30
by omitting from subsection (7) (as added by section 8 (2) of the Customs Acts Amendment Act (No. 2) 1978) the words “uncustomed, or forfeited goods”, and substituting the words “or uncustomed goods, or any controlled drugs or other 35
forfeited goods,”.

(3) Section 213 of the principal Act is hereby further amended by repealing subsection (8) (as added by section 8 (2) of the Customs Acts Amendment Act (No. 2) 1978).

(4) Section 8 (1) of the Customs Acts Amendment Act (No. 2) 1978 is hereby consequentially repealed. 40

4. New sections (relating to detention on belief of internal concealment) inserted—The principal Act is hereby amended by inserting, after section 213 (as amended by section 8 (2) of the Customs Acts Amendment Act (No. 2) 1978 and by **section 3** of this Act), the following sections:

“213A. Power to detain on belief of internal concealment—(1) If any officer of Customs or any member of the Police has reasonable cause to believe that any person has, for any unlawful purpose, secreted within that person’s body—

“**(a)** Any dutiable, restricted, or uncustomed goods; or

“**(b)** Any controlled drugs or other forfeited goods,—
that officer of Customs or member of the Police may cause that person to be detained under this section.

(2) For the purposes of **subsection (1)** of this section, a person has any controlled drugs or other goods secreted within that person’s body if—

“**(a)** The drugs or goods are within any of that person’s body cavities; or

“**(b)** That person has swallowed the drugs or goods in such a manner that they may pass through the body, or be regurgitated, intact, but the drugs or goods are still within the body at the material time.

“(3) In **subsection (1)** of this section,—

“‘Controlled drug’ has the same meaning as it has in section 2 (1) of the Misuse of Drugs Act 1975:

“‘Unlawful purpose’ means—

“**(a)** Importation or exportation in circumstances constituting an offence against any of the provisions of the Customs Acts or the Misuse of Drugs Act 1975; and

“**(b)** Concealment of the commission of any such offence.

“213B. Duties of officer in ordering detention—On causing any person to be detained under **section 213A** of this Act, an officer of Customs or a member of the Police shall, as soon as possible,—

“**(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 prescribed form; and

“(c) Arrange for a medical practitioner to attend, and, in the presence of that medical practitioner, ask the detained person if he or she will consent to undergo an examination of one or more of the kinds specified in **section 213C (1)** of this Act; and 5

“(d) Apply to a District Court Judge, in accordance with **section 213E** of this Act, for a warrant authorising the continued detention of the detained person.

“**213C. Internal examination of detained person**—(1) The kinds of examination that a person who is detained under **section 213A** of this Act may be asked to consent to undergo are as follows: 10

“(a) A manual examination to be conducted by a medical practitioner nominated or approved for the purpose by the Comptroller of Customs or the Commissioner of Police, either generally or in any particular case or class of case: 15

“(b) An X-ray examination:

“(c) An ultrasound scan.

“(2) Except in a case where the detained person immediately makes it clear that he or she will not consent to undergo any examination, the medical practitioner called under **section 213B (c)** of this Act shall explain to the detained person what is involved in each kind of examination that the detained person is being asked to consent to undergo. 25

“(3) If the detained person consents to undergo an examination of a kind described in **subsection (1)** of this section, that consent shall be recorded in writing and signed by the detained person, 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. 30

“(4) Notwithstanding that any such detained person refuses to consent to undergo any examination of a kind described in **subsection (1)** of this section, the detained person may subsequently, at any time while the detention is continuing, advise any officer of Customs or any member of the Police that he or she is now willing to consent to undergo such an examination, in which case the provisions of **subsections (2) and (3)** of this section shall apply with any necessary modifications. 35 40

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

5 “(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.

10 “(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 an emetic or a laxative or any other similar substance; and, where the detained person makes any such request or gives any such consent, an officer of Customs or a member of the Police shall record the
15 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.

“213D. **Certificate by person conducting examination—**

20 (1) The medical practitioner or other person who conducts an examination of any person detained under **section 213A** of this Act shall, on concluding the examination, certify the results of the examination in whichever of the following forms is appropriate:

25 “(a) That it is beyond clinical doubt that the detained person has no drugs or other goods secreted within that person’s body in circumstances that would justify detention under **section 213A** of this Act:

30 “(b) That it is beyond clinical doubt that the detained person has something secreted within that person’s body, and that that thing could be drugs or other goods referred to in that section:

“(c) That the results of the examination are inconclusive.

“(2) A copy of every certificate given under **subsection (1)** of this section shall be given to—

35 “(a) The detained person; and

“(b) The solicitor appointed under **section 213F** of this Act; and

“(c) The medical practitioner appointed under that section.

“213E. **Detention warrant**—(1) Subject to **subsection (2)** of this section, every application for a warrant authorising the continued detention of any person under **section 213A** of this Act shall be made by an officer of Customs or a member of the Police in writing and on oath, and shall set out, or be accompanied by, the following particulars: 5

“(a) The facts relied upon to show that there is reasonable cause to believe that the detained person has, for any unlawful purpose, secreted within that person’s body any controlled drugs or other goods described in **section 213A (1)** of this Act: 10

“(b) The time at which, the date on which, and the place at which the detained person was ordered to be detained under **section 213A** of this Act:

“(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: 15 20

“(d) The time or times at which, and the date or dates on which, the detained person was asked to consent to undergo any examination of a kind described in **section 213c (1)** of this Act, and the detained person’s response to any such request, including any reasons given by the detained person for any negative response: 25

“(e) If any such examination has been conducted, the results of that examination as set out in the certificate given under **section 213D (1)** of this Act. 30

“(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 District Court 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. 35

“(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 proceedings in a court of law. 40

“(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 213B** of this Act; and

5 “(b) That there is reasonable cause to believe that the detained person has, for any unlawful purpose, secreted within that person’s body any controlled drugs or other goods described in **section 213A (1)** of this Act; and

10 “(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
15 form authorising the continued detention of the person to whom it relates.

“(5) A detention warrant issued under **subsection (4)** of this section shall authorise the continued detention of the person named in it in the premises specified in it until—

20 “(a) The expiry of the period of 7 days commencing with the date on which the detention under **section 213A** of this Act commenced, or such shorter period as the Judge may specify in the warrant; or

25 “(b) The detention is sooner brought to an end in any of the circumstances described in **section 213H** of this Act.

“**213F. On grant of warrant, Judge to appoint solicitor and medical practitioner**—(1) On granting a detention warrant under **section 213E** of this Act, a District Court Judge
30 shall appoint, or arrange for the appointment of, a solicitor and a medical practitioner to report to the Court on the matters referred to in **subsections (2) and (3)** of this section.

“(2) The function of the solicitor appointed under this section shall be to satisfy himself or herself—

35 “(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 solicitor is not so satisfied in any particular respect. 5

“(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 10

“(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,— 15

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 **subsection (3)** of this section, where—

“(a) The detained person consults a solicitor of that person’s choosing and that solicitor agrees to act for that person, the solicitor appointed under **subsection (1)** of this section shall not be responsible for any matter falling within the normal responsibilities of a solicitor acting for a client; or 20 25

“(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)** of this section shall not be responsible for any matter falling within the normal responsibilities of a medical practitioner attending a patient. 30

“(5) On appointing a solicitor or a medical practitioner under this section, or at any time thereafter while the detention continues, a District Court Judge may give to the solicitor or medical practitioner all such directions relating to the functions of the solicitor or medical practitioner as the Judge thinks fit. 35

“213G. **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 213A** of this Act:

5 “(a) The solicitor appointed under **section 213F** of this Act:

“(b) The 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 213A** of this Act:

10 “(a) Any 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.

15 “3) Nothing in **subsection (2)** of this section, 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 officer of Customs or member of the Police who is for the time being guarding the detained person; or

20 “b) Otherwise than subject to such reasonable supervision as may be necessary to ensure the safety of the detained person or to avoid the frustration of the purpose of the detention.

25 “213H. **Expiry of detention**—The detention of any person under **section 213A** of this Act shall cease in each of the following circumstances:

“a) Where the detained person is arrested:

30 “b) Where a certificate is given under **section 213D** of this Act, following an examination, to the effect that it is beyond clinical doubt that the detained person has no controlled drugs or other goods secreted within that person’s body in circumstances that would justify continued detention under **section 213A** of this Act:

35 “c) Where the officer of Customs or the member of the Police who is in charge of the case forms the view that there is no longer reasonable cause to believe that the detained person has, for any unlawful purpose, secreted within that person’s body any controlled drugs or other goods described in **section 213A (1)** of this Act:

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“(d) Where an application to a District Court Judge for a detention warrant, or for the renewal of a detention warrant, in respect of the detained person is declined.

“213i. **Renewal of warrants**—(1) Any District Court Judge 5
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 an officer of Customs or a member of the 10
Police 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, for any unlawful purpose, secreted within that person’s 15
body any controlled drugs or other goods described in **section 213A (1)** of this Act:

“(b) The date or dates on which the detained person was asked to consent to undergo any examination of a kind described in **section 213c** of this Act, and the 20
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 25
under **section 213D (1)** of this Act:

“(d) Any matters that the solicitor appointed under **section 213F** of this Act wishes to draw to the attention of the Judge who is to consider the application for renewal: 30

“(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 solicitor who is acting for the detained person, or any medical practitioner who 35
is attending the detained person as a patient, wishes to draw to the attention of that Judge.

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

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

“(5) Without limiting **subsection (3)** of this section, before determining an application for the renewal of a detention warrant under this section, a District Court Judge may—

10 “(a) Call for a report from the solicitor referred to in **paragraph (d)** of **subsection (2)** of this section, or from the medical practitioner referred to in **paragraph (e)** of that subsection, on any matter relating to the detention or to the application for the renewal of
15 the detention warrant; and

“(b) May hear any person referred to in any of **paragraphs (d) to (f)** of that subsection in respect of the application.

“(6) A renewal of a detention warrant may be granted under this section if the Judge is satisfied that the circumstances
20 described in **section 213A** of this Act still obtain.

“(7) 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.

25 “(8) 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
30 warrant was issued or last renewed.

“(9) 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.

35 “**213J. Inadmissibility of certain confessions or admissions by detained person**—(1) Where any person who is being detained under **section 213A** of this Act 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
40 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 secreted within that person’s body, at any time during the detention, any controlled drugs or other goods
45 of a kind described in **section 213A (1)** of this Act.”

PART II

AMENDMENTS OF MISUSE OF DRUGS ACT 1975

5. Part to be read with Misuse of Drugs Act 1975—This Part of this Act shall be read together with and deemed part of the Misuse of Drugs Act 1975*.

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*1975, No. 116

Amendments: 1978, No. 65; 1979, No. 2; 1979, No. 132; 1980, No. 64; 1982, No. 151

6. New heading and sections (relating to detention on belief of internal concealment) inserted—The Misuse of Drugs Amendment Act 1978 is hereby amended by inserting, after section 13, the following heading and sections:

“Internal Concealment

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“13A. Power to detain on belief of internal concealment—(1) If any member of the Police has reasonable cause to believe that any person has any controlled drug secreted within that person’s body for any unlawful purpose, the member of the Police may cause that person to be detained under this section.

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“(2) For the purposes of **subsection (1)** of this section, a person has any 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.

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“(3) In **subsection (1)** of this section, ‘unlawful purpose’ means the commission of an offence against the principal Act, and the concealment of the commission of any such offence.

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“13B. Duties of officer in ordering detention—On causing any person to be detained under **section 13A** of this Act, a member of the Police shall, as soon as possible,—

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“(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 prescribed form; and

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“(c) Arrange for a medical practitioner to attend, and, in the presence of that medical practitioner, ask the detained person if he or she will consent to undergo an examination of one or more of the kinds specified in **section 13c (1)** of this Act; and

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“(d) Apply to a District Court Judge, in accordance with **section 13E** of this Act, for a warrant authorising the continued detention of the detained person.

“13c. **Internal examination of detained person**—(1) The
5 kinds of examination that a person who is detained under **section 13A** of this Act may be asked to consent to undergo are as follows:

10 “(a) A manual examination to be conducted by a medical practitioner nominated or approved for the purpose by the Commissioner of Police, either generally or in any particular case or class of case:

“(b) An X-ray examination:

“(c) An ultrasound scan.

15 “(2) Except in a case where the detained person immediately makes it clear that he or she will not consent to undergo any examination, the medical practitioner called under **section 13B (c)** of this Act shall explain to the detained person what is involved in each kind of examination that the detained person is being asked to consent to undergo.

20 “(3) If the detained person consents to undergo an examination of a kind described in **subsection (1)** of this section, that consent shall be recorded in writing and signed by the detained person, and the medical practitioner shall endorse on the written consent a certificate to the effect that the medical
25 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.

30 “(4) Notwithstanding that any such detained person refuses to consent to undergo any examination of a kind described in **subsection (1)** of this section, the detained person may subsequently, at any time while the detention is continuing, advise any member of the Police that he or she is now willing to consent to undergo such an examination, in which case the
35 provisions of **subsections (2) and (3)** of this section 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 shall make all necessary arrangements for that
40 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 an emetic or 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 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. 5

“13D. **Certificate by person conducting examination—** 10

(1) The medical practitioner or other person who conducts an examination of any person detained under **section 13A** of this Act shall, on concluding the examination, certify the results of the examination in whichever of the following forms is appropriate: 15

“(a) That it is beyond clinical doubt that the detained person has no controlled drug secreted within that person’s body in circumstances that would justify detention under **section 213A** of this Act:

“(b) That it is beyond clinical doubt that the detained person has something secreted within that person’s body, and that that thing could be a controlled drug: 20

“(c) That the results of the examination are inconclusive.

“(2) A copy of every certificate given under **subsection (1)** of this section shall be given to— 25

“(a) The detained person; and

“(b) The solicitor appointed under **section 13F** of this Act; and

“(c) The medical practitioner appointed under that section.

“13E. **Detention warrant—**(1) Subject to **subsection (2)** of this section, every application for a warrant authorising the continued detention of any person under **section 13A** of this Act shall be made by a member of the Police in writing and on oath, and shall set out, or be accompanied by, the following particulars: 30

“(a) The facts relied upon to show that there is reasonable cause to believe that the detained person has any controlled drug secreted within that person’s body for any unlawful purpose: 35

“(b) The time at which, the date on which, and the place at which the detained person was ordered to be detained under **section 13A** of this Act: 40

5 “(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:

10 “(d) The time or times at which, and the date or dates on which, the detained person was asked to consent to undergo any examination of a kind described in **section 13c (1)** of this Act, and the detained person’s response to any such request, including the reasons given by the detained person for any negative response:

15 “(e) If any such examination has been conducted, the results of that examination as set out in the certificate given under **section 13D (1)** of this Act.

20 “(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 District Court 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.

25 “(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—

30 “(a) That there has been reasonable compliance with the requirements of **section 13B** of this Act; and

“(b) That there is reasonable cause to believe that the detained person has secreted within that person’s body any controlled drug for any unlawful purpose; and

35 “(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,—

40 the Judge may grant a detention warrant in the prescribed form authorising the continued detention of the person to whom it relates.

“(5) A detention warrant issued under **subsection (4)** of this section 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 13A** of this Act commenced, or such shorter period as the Judge may specify in the warrant; or 5

“(b) The detention is sooner brought to an end in any of the circumstances described in **section 13H** of this Act.

“**13F. On grant of warrant, Judge to appoint solicitor and medical practitioner**—(1) On granting a detention warrant under **section 13E** of this Act, a District Court Judge shall appoint, or arrange for the appointment of, a solicitor and a medical practitioner to report to the Court on the matters referred to in **subsections (2) and (3)** of this section. 10 15

“(2) The function of the solicitor appointed under this section shall be to satisfy himself 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 20

“(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 solicitor is not so satisfied in any particular respect. 25

“(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 30

“(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,— 35

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 **subsection (3)** of this section, where—

“(a) The detained person consults a solicitor of that person’s choosing and that solicitor agrees to act for that person, the solicitor appointed under **subsection (1)** of this section shall not be responsible for any matter falling within the normal responsibilities of a solicitor acting for a client; or 40 45

5 “(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)** of this section shall not be responsible for any matter falling within the normal responsibilities of a medical practitioner attending a patient.

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

15 “**13G. 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 13A** of this Act:

“(a) The solicitor appointed under **section 13F** of this Act:

“(b) The medical practitioner appointed under that section.

20 “(2) The following persons shall at all reasonable times have the right of access to any person who is being detained under **section 13A** of this Act:

“(a) Any solicitor who is acting for the detained person:

“(b) Any medical practitioner who is attending the detained person as a patient:

25 “(c) Any other person whom the detained person reasonably wishes to see.

“(3) Nothing in **subsection (2)** of this section, or any other enactment or rule of law, shall entitle any person to have access to the detained person—

30 “(a) In the absence of any member of the Police who is for the time being guarding the detained person; or

“(b) Otherwise than subject to such reasonable supervision as may be necessary to ensure the safety of the detained person or to avoid the frustration of the purpose of the detention.

35 “**13H. Expiry of detention**—The detention of any person under **section 13A** of this Act shall cease in each of the following circumstances:

“(a) Where the detained person is arrested:

40 “(b) Where a certificate is given under **section 13D** of this Act, following an examination, to the effect that it is beyond clinical doubt that the detained person has no controlled drug secreted within that person’s body in circumstances that would justify continued detention under **section 13A** of this Act:

45

- “(c) Where the member of the Police 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 controlled drug secreted within that person’s body for any unlawful purpose: 5
- “(d) Where an application to a District Court Judge for a detention warrant, or for the renewal of a detention warrant, in respect of the detained person is declined.
- “13I. **Renewal of warrants** —(1) Any District Court Judge 10
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 in writing and on 15
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 controlled drug secreted within that person’s body 20
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 13c** of this Act, and the 25
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 13d (1)** of this Act: 30
- “(d) Any matters that the solicitor appointed under **section 13f** of this Act 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 35
under that section wishes to draw to the attention of that Judge:
- “(f) Any matters that any solicitor who is acting for the detained person, or any medical practitioner who is attending the detained person as a patient, wishes 40
to draw to the attention of that Judge.
- “(3) Every such application shall be supported by such other information as the Judge may require.

“(4) 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 proceedings in a court of law.

5 “(5) Without limiting **subsection (3)** of this section, before determining an application for the renewal of a detention warrant under this section, a District Court Judge may—

10 “(a) Call for a report from the solicitor referred to in **paragraph (d) of subsection (2)** of this section, or from the medical practitioner referred to in **paragraph (e)** of that subsection, on any matter relating to the detention or to the application for the renewal of the detention warrant; and

15 “(b) May hear any person referred to in any of **paragraphs (d) to (f)** of that subsection in respect of the application.

“(6) A renewal of a detention warrant may be granted under this section if the Judge is satisfied that the circumstances described in **section 13A** of this Act still obtain.

20 “(7) 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.

25 “(8) 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.

30 “(9) 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.

35 “**13j. Inadmissibility of certain confessions or admissions by detained person**—(1) Where any person who is being detained under **section 13A** of this Act 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.

40 “(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 person’s body at any time during the detention.”