



SUBMISSION ON THE SEARCH & SURVEILLANCE BILL

**This submission is from the
National Organisation for the Reform of Marijuana Laws
(NORML New Zealand Inc).**

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We would like to appear before the Committee to explain our views and answer any questions.

1. NORML New Zealand was founded in 1979 as a non-profit incorporated society that campaigns for an end to marijuana prohibition. We support the right of all adults to use, possess and grow their own cannabis. We recognise that some commercial market for marijuana will always exist, and we therefore promote ways to best to control that market.

1.1. Our aims are to:

- Reform New Zealand's marijuana laws
- Provide neutral, unbiased information about cannabis and its effects
- Engage in political action appropriate to our aims
- Inform people of their rights
- Give advice and support to victims of prohibition

1.2. We believe drug policy and associated laws should:

- have realistic goals;
- be regularly evaluated, be shown to be effective or be changed;
- take account of the different patterns and types of harms caused by specific drugs;
- separate arguments about the consequences of drug use from arguments about morals;
- be developed in the light of the costs of control as well as the benefits;
- ensure that the harms caused by the control regimes themselves do not outweigh the harms prevented by them;
- provide the greatest level of harm reduction for drug users, their families and their communities;
- minimise the number of drug users who experience problems from their drug use;
- be evidence based, as well as having the support of the community.

2. We do not believe the bill as proposed meets these criteria.
3. NORML opposes the bill, as it will abolish two rights fundamental to our norms of justice: the right to silence, and the right to not incriminate oneself.
 - 3.1. We oppose the end to the right to silence through the use of production and examination orders.
 - 3.2. We oppose the ability to compel individuals to provide computer access information.
4. The bill also extends the powers of the State to search and surveil people and places, which we oppose.
 - 4.1. We oppose any expansion of police or other agency powers of search without warrant.
 - 4.2. We oppose the conferring of police powers onto 70+ other government agencies.
 - 4.3. The bill makes ongoing 24/7 surveillance equivalent to a one-off search. The two are actually very different, so we also oppose this.
 - 4.4. The bill makes video and audio surveillance the first and primary means of law enforcement and crime solving. The current law says audio surveillance can be used for serious or violent offences as a last resort when other methods have not worked or are not available. We believe that even this tight restriction is currently being abused by police.
 - 4.5. The bill makes no differentiation between video and audio surveillance, but we believe video surveillance is far more intrusive and a bigger breach of citizen's right to privacy.
 - 4.6. We oppose the use of 'plain view' searches to seize computer systems and data.
 - 4.7. We oppose the ability to conduct remote computer searches.
5. NORML believes drug legislation and associated laws should be better aligned with a policy of harm minimization, and should respect human diversity and fundamental human rights.
 - 5.1. Possession or use of drugs should not result in any penalties, and should not require any special search or surveillance powers. Protections should be built into the law so that search and surveillance powers are no longer misused.
 - 5.2. State/Police involvement should be limited to facilitating treatment or drug education for people experiencing problems caused by over-use or addiction. There should be no other role for the State/Police.
 - 5.3. Individuals have a basic right to alter their consciousness, either by using drugs, meditating, fasting, finding religion, watching television, long-distance running, or any other means available. Drug use should not be discriminated against as being bad, wrong, or immoral, any more than driving a car or skiing should be; all these activities have inherent risks.
 - 5.4. This bill claims to balance citizen's human and civil rights with the rights of the State to interfere with them. But as the author and enforcer of the Bill, there is no 'balance'.

When our rights are not convenient for the Police or Customs, they are simply ignored, or officers conspire to work around them.

- 5.5. Over the years activists involved with NORML have heard many accounts of police abuse of their search powers and the protections guaranteed by the Bill of Rights.
- 5.6. As just one example, we have recently learned the following. Gearing up for their Operation Lime raids on gardening stores earlier this year, Police wanted more information on the wife of the owner of the Switched On Gardener shops. They had no evidence to get a search warrant, so they asked Customs to “randomly” search her the next time she travelled overseas, and to use that apparently random search to scan and download all the data on her mobile phone. This person was never charged with any crime, and only learned her phone had been copied (and possibly bugged) when her husband recently got disclosure from the police.
- 5.7. It doesn’t matter what people think about cannabis or drug prohibition, or the motivation of certain gardening stores. The important fact is that Police and Customs knowingly bend the rules for each other, and conspire to avoid the protections guaranteed under New Zealand’s Bill of Rights.
- 5.8. How can anyone trust they won’t do the same with their greatly-expanded powers, should this Bill become law?
6. NORML has run a help line for people facing cannabis charges, since about 1990. In that time we have received literally thousands of calls. It is our experience from listening to these people that it is common for police to misuse their current search and surveillance powers. In fact, it is more than common; it is routine, and they are unapologetic about that.
 - 6.1. It is very common for callers to our help line to complain of police misusing their so-called “emergency” search powers conferred by section 18 of the Misuse of Drugs Act.
 - 6.2. When that law was passed, assurances were made in Parliament and by police at the time that this special power – which breaches the Bill of Rights – would only be used in emergency situations and only for large-scale traffickers.
 - 6.3. Instead, as the Health Select Committee noted in 2003, it is routinely abused by Police on a regular basis:
 - 6.3.1. *This was intended by Parliament to be used primarily for serious trafficking and supply offences, not for personal possession charges... Today these powers are used as part of routine activities or street patrols... The Police Association president admitted that the police have targeted people on the basis of their dress.*¹
 - 6.4. Our experience with marijuana law enforcement is that police often operate based on stereotypes. People who fit the description tend to be searched and prosecuted, while middle-class pakeha seldom come to their attention. Maori, Pacific Islanders and young males wear the brunt of searches, arrests, prosecutions, convictions and sentences, irrespective of their rates of use.

¹ New Zealand Parliamentary Health Select Committee, 2003: “Inquiry into the public health strategies related to cannabis use and the most appropriate legal status”, page 35. Available at <http://tinyurl.com/277l4jk>

6.5. In 2001, Maori made up 14.5 percent of the population, and use cannabis at only slightly higher rates than non-Maori, but received 43 percent of convictions of cannabis use and 55 percent of convictions for cannabis dealing.²

6.6. The effect of police routinely abusing their powers in order to harass or intimidate people who they believe use drugs – mostly because of the colour of their skin or the way they dress – is that most young people today do not trust the police. They certainly do not regard police as their friends.

6.7. This in turn impacts on police's ability to solve other crimes. It also fosters widespread disrespect for the law and for state agencies.

6.8. The author of this submission has some personal experience with this. In 2001 I was detained by police on Auckland's Karangahape Road for no reason, searched against my will, forced to drop my pants in public, and arrested for less than a gram of cannabis that I did not even know was in my pocket. In court it was obvious that the three police officers involved, who all told different versions of the event, were lying. Officers also admitted that on orders from superiors they were conducting a "sweep" of K Road, searching anyone they came across, and misusing s18 "emergency" powers to do so. The Health Select Committee found:

6.8.1. Judge Gittos tested the reasonableness of the section 18 search of CW Fowlie by Auckland police on 17 June 2001. The judge was highly critical of police practice in this regard, stating that the police search breached Mr Fowlie's Bill of Rights protections. He gave his opinion that the search was unreasonable, and dismissed the charges... The police stated that Mr Fowlie was not approached because of any conduct issue, but as part of a police exercise to engage people... We consider the right to challenge the admissibility of a search under section 18 in court to be inadequate protection. Most members of the public have little understanding of their legal rights with regard to search powers of the police, or their rights under the New Zealand Bill of Rights Act. Legal costs also mean that most people will not challenge these powers, in particular because of the practice of the Legal Services Agency to not give legal aid where imprisonment is unlikely.³

7. Parliament's Health Select Committee was so concerned about the routine breach of rights by police that it recommended:

7.1. We recommend to the House that the Justice and Electoral Committee consider the use of search without warrant powers by police under the Misuse of Drugs Act 1975.⁴

7.2. The Justice and Electoral Committee failed to conduct this proposed inquiry. It also failed to review the legal status of cannabis, another recommendation from the Health Select Committee.

7.3. In the time since the HSC report, we estimate around 30,000 warrantless searches have been conducted by police using their s18 "emergency" search powers.

² New Zealand Parliamentary Health Select Committee, 2003: "Inquiry into the public health strategies related to cannabis use and the most appropriate legal status", page 28. Available at <http://tinyurl.com/27714jk>

³ Ibid, page 36.

⁴ Idem.

8. The current law pays only lip-service to the concept of harm minimization. The Misuse of Drugs Act – and associated Police & Customs search powers - maximises harm in a number of ways:
 - 8.1. The creation of an uncontrolled, lucrative and often violent black market, that reaches into every pocket of New Zealand society.
 - 8.2. Minors can access cannabis and other drugs as easily as pizza; tinny shops are in most suburbs and towns and sell to anyone, at any time.
 - 8.3. Drugs sold through the black market are sometimes of dubious quality, purity or safety; occasionally black market drugs are laced with toxins (chemicals, sprays, etc). Every summer the police deliberately poison marijuana supplies with Round-Up, some of which still makes it to the market.
 - 8.4. The black market gives casual soft drug users (i.e. cannabis smokers) the chance of being introduced to more dangerous drugs like 'P'. Tinny shops mostly cater to teenagers or casual users and have been used by gangs to introduce meth to new customers. The 2001-2 Health Select Committee cannabis inquiry noted:
 - 8.4.1. *“The current prohibition regime is not effective in limiting cannabis use. Prohibition results in high conviction rates for a relatively minor offence, which inhibits people’s education, travel and employment opportunities. Prohibition makes targeting education, prevention, harm minimisation and treatment measures difficult because users fear prosecution. It also facilitates the black market, and potentially exposes cannabis users to harder drugs”*⁵
 - 8.5. Due to our high rate of arrest and the threat of imprisonment, those with drug use problems are reluctant to seek help.
 - 8.6. Public resources diverted away from effective treatment and education, to fund law enforcement. Treatment facilities for people wanting help are often not available or are under-resourced.
 - 8.7. New Zealand has the world’s highest rate of arrest for marijuana offences. Our police arrest more people per head of population than even the United States. Police time is diverted away from serious crimes (assaults, burglaries, etc) because it is spent on criminalising drug users or 'social suppliers' of drugs.
9. The current approach of a strictly-enforced prohibition rests on the assumption that law-enforcement efforts to reduce the availability of drugs - by increasing prices and decreasing supplies - also have the effect of reducing drug harms. But this is a myth: not only has prohibition been found to be ineffective with regard to both demand and supply, a recent study by the International Centre for Science in Drug Policy (ICSDP)⁶ shows how significant a role it plays in the causation of violence. Evidence now suggests that police crackdowns aimed at stopping trade in illegal drugs actually have the opposite effect to that intended.

⁵ New Zealand Parliamentary Health Select Committee, 2003: “Inquiry into the public health strategies related to cannabis use and the most appropriate legal status”, page 57. Available at <http://tinyurl.com/277l4jk>

⁶ Effect of Drug Law Enforcement on Drug-Related Violence: Evidence from a Scientific Review, <http://www.icsdp.org/docs/ICSDP-1%20-%20FINAL.pdf>

- 9.1. The ICSDP review of 20 years research into drug enforcement found that the imprisonment of dealers and criminal bosses actually leads to greater drug-related violence as vacuums in the black market are rapidly filled by competitors eager to fight each other for the newly-vacated territory.⁷
 - 9.2. The ICSDP meta-analysis of 15 separate reports on the relationship between violence and drug enforcement found that 87 per cent of studies reported that police seizures and arrests led directly to increased violence.
 - 9.3. The evidence suggests that any disruption of drug markets through drug-law enforcement has the perverse effect of creating more financial opportunities for organised crime groups.
 - 9.4. Announcements by the government that the current approach is “balanced” between three equally important areas of supply control, demand reduction and problem limitation are simply propaganda. Supply is completely uncontrolled, all the evidence shows demand has nothing to do with the law, and problem limitation services are drastically underfunded.
10. Drug prohibition has been a complete failure, and this Bill will only make it worse.
- 10.1. As the Health Select Committee noted:
 - 10.1.1. *The 21-year CHDS found that the administration of current cannabis laws is inefficient ... It is also discriminatory against males, Māori, and former offenders, and is ineffective in deterring users from cannabis use. Ninety-five percent of the cohort arrested or convicted for cannabis use continued with or increased their use of cannabis.*⁸
 - 10.2. The US drug czar recently admitted to Associated Press that after 40 years and us\$1 trillion, the Drug War has failed to meet any of its goals:
 - 10.2.1. *In the grand scheme, it has not been successful. Forty years later, the concern about drugs and drug problems is, if anything, magnified, intensified.*⁹
 - 10.3. New Zealand should take the best bits from the Dutch approach. Their coffeeshops have successfully separated cannabis smokers from suppliers of hard drugs, and by enforcing a legal age limit of 18 years to buy cannabis, access by minors is made more difficult: only 7% of Dutch teens under 16 have tried marijuana, compared with 27% here.¹⁰
11. A World Health Organization study established that countries with get-tough policies, notably the U.S. and New Zealand, now lead the rest of the world in rates of cannabis use. The 2008 report found:

⁷ Effect of Drug Law Enforcement on Drug-Related Violence: Evidence from a Scientific Review, <http://www.icsdp.org/docs/ICSDP-1%20-%20FINAL.pdf>

⁸ ⁸ New Zealand Parliamentary Health Select Committee, 2003: “Inquiry into the public health strategies related to cannabis use and the most appropriate legal status”, p32. Available at <http://tinyurl.com/27714jk>

⁹ Associated Press, 13 May 2010: After 40 years, \$1 trillion, US War on Drugs has failed to meet any of its goals, available at <http://www.foxnews.com/world/2010/05/13/ap-impact-years-trillion-war-drugs-failed-meet-goals>

11.1. *“Globally, drug use is not distributed evenly, and is simply not related to drug policy ... The U.S. ... stands out with higher levels of use of alcohol, cocaine, and cannabis, despite punitive illegal drug policies. ... The Netherlands, with a less criminally punitive approach to cannabis use than the U.S., has experienced lower levels of use, particularly among younger adults. Clearly, by itself, a punitive policy towards possession and use accounts for limited variation in national rates of illegal drug use.”¹¹*

12. In conclusion, why persist with more of the same failed policies? A complete rethink is needed of all drug control laws, policies and associated search powers.

13. Appendices

13.1. These should be considered to be part of our submission together with this document.

13.1.1. Effect of Drug Law Enforcement on Drug-Related Violence: Evidence from a Scientific Review, ICSDP, 2010.

14. Appearance if oral hearing held

14.1. We would very much like to appear before the Committee to explain our views, answer any questions, and/or provide additional information. For more information, or to discuss anything contained in our submission, please contact us.

Yours sincerely,

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on behalf of the Board of Directors,
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¹⁰ Degenhardt et al. 2008. Toward a global view of alcohol, tobacco, cannabis, and cocaine use: findings from the WHO world mental health surveys. PLOS Medicine 5: 1053-1067.

¹¹ *ibid*