



### ANALYSIS

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1979, No. 5

### An Act to amend the Crimes Act 1961

[6 August 1979]

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

**1. Short Title**—This Act may be cited as the Crimes Amendment Act 1979, and shall be read together with and deemed part of the Crimes Act 1961 (hereinafter referred to as the principal Act).

**2. New Part (relating to crimes against personal privacy) inserted**—The principal Act is hereby amended by inserting, after Part IX, the following Part:

## “PART IXA

### “CRIMES AGAINST PERSONAL PRIVACY

“216A. Interpretation—(1) In this Part of this Act, unless the context otherwise requires,—

“‘Intercept’, in relation to a private communication, includes hear, listen to, record, monitor, or acquire the communication while it is taking place:

“‘Listening device’ means any electronic, mechanical, or electromagnetic instrument, apparatus, equipment, or other device that is used or is capable of being used to intercept a private communication; but does not include a hearing aid or similar device used to correct subnormal hearing of the user to no better than normal hearing; and does not include a device exempted from the provisions of this Part of this Act by the Governor-General by Order in Council, either generally, or in such places or circumstances or subject to such other conditions as may be specified in the order:

“‘Private communication’ means any oral communication made under circumstances that may reasonably be taken to indicate that any party to the communication desires it to be confined to the parties to the communication; but does not include such a communication occurring in circumstances in which any party ought reasonably to expect that the communication may be intercepted by some other person not having the express or implied consent of any party to do so.

“(2) A reference in this Part of this Act to a party to a private communication is a reference to—

“(a) Any originator of the communication and any person intended by the originator to receive it; and

“(b) A person who, with the express or implied consent of any originator of the communication or any person intended by the originator to receive it, intercepts the communication.

**"216B. Prohibition on use of listening devices—**(1) Subject to subsections (2) and (3) of this section, every one is liable to imprisonment for a term not exceeding 2 years who intentionally intercepts any private communication by means of a listening device.

"(2) Subsection (1) of this section does not apply where the person intercepting the private communication—

"(a) Is a party to that private communication; or

"(b) Does so pursuant to, and in accordance with the terms of, any authority conferred on him by or under—

"(i) The Post Office Act 1959; or

"(ii) The New Zealand Security Intelligence Service Act 1969; or

"(iii) The Misuse of Drugs Amendment Act 1978.

"(3) Subsection (1) of this section does not apply to the interception by any member of the Police of a private communication, other than a telephonic communication, by means of a listening device where—

"(a) An emergency has arisen in which there are reasonable grounds for believing that any person (in this section referred to as the suspect) is threatening the life of, or serious injury to, any other person in his presence or in the immediate vicinity; and

"(b) The use of the listening device by that member of the Police is authorised by a commissioned officer of the Police who believes on reasonable grounds that the use of the listening device to intercept any private communication (other than a telephonic communication) to which the suspect is a party during the emergency will facilitate the protection of any person who is threatened by the suspect.

**"216C. Prohibition on disclosure of private communications unlawfully intercepted—**(1) Subject to subsection (2) of this section, where a private communication has been intercepted in contravention of section 216B of this Act, every one is liable to imprisonment for a term not exceeding 2 years who intentionally—

“(a) Discloses the private communication, or the substance, meaning, or purport of the communication, or any part of it; or

“(b) Discloses the existence of the private communication,—

if he knows that it has come to his knowledge as a direct or indirect result of a contravention of section 216B of this Act.

“(2) Subsection (1) of this section does not apply where the disclosure is made—

“(a) To a party to the communication, or with the express or implied consent of such a party; or

“(b) In the course, or for the purpose, of—

“(i) An investigation by the Police into an alleged offence against this section or section 216B of this Act; or

“(ii) Giving evidence in any civil or criminal proceedings relating to the unlawful interception of a private communication by means of a listening device or the unlawful disclosure of a private communication unlawfully intercepted by that means; or

“(iii) Giving evidence in any other civil or criminal proceeding where that evidence is not rendered inadmissible by the Evidence Act 1908 or section 25 of the Misuse of Drugs Amendment Act 1978 or any other enactment or rule of law; or

“(iv) Determining whether the disclosure is admissible in any civil or criminal proceedings.

**“216D. Prohibition on dealing, etc., with listening devices—**

(1) Every one is liable to imprisonment for a term not exceeding 2 years who—

“(a) Invites any other person to acquire from him; or

“(b) Offers or exposes for sale or supply to any other person; or

“(c) Agrees to sell or supply or sells or supplies to any other person; or

“(d) Has in his possession for the purpose of sale or supply to any other person,—

any listening device—

“(i) The sole or principal purpose of which he knows to be the surreptitious interception of private communications; or

“(ii) That he holds out as being useful for the surreptitious interception of private communications (whether or not he also holds it out as being useful for any other purpose).

“(2) It is a defence to a charge under this section if the person charged proves either—

“(a) That at the time he did any act referred to in any of paragraphs (a) to (d) of subsection (1) of this section he believed that the other person referred to in the relevant paragraph was a member of the Police, or an officer of the New Zealand Security Intelligence Service, acting in the course of his official duties; or

“(b) Where the charge relates to the supply of a listening device otherwise than for valuable consideration, that—

“(i) He supplied the listening device to the other person referred to in paragraph (c) or paragraph (d) of subsection (1) of this section for the purpose of any proceeding or of any investigation or examination preliminary or incidental to any proceeding; or

“(ii) Being a member of the Police or an officer of the New Zealand Security Intelligence Service, he supplied the listening device in the course of his official duties to the other person referred to in the said paragraph (c) or the said paragraph (d) for any lawful purpose.

**“216E. Forfeiture**—Where any person is convicted of a crime against section 216B or section 216D of this Act in respect of any listening device the sole or principal purpose of which is the surreptitious interception of private communications, the Court may, as part of the sentence, order that the listening device shall be forfeited; and, in such a case, the listening device shall thereupon become forfeited to the Crown accordingly, and may be disposed of in such manner as the Commissioner of Police directs.”

**3. Evidence Act 1908 consequentially amended**—The Evidence Act 1908 is hereby consequentially amended by inserting, after section 23A (as inserted by the Evidence Amendment Act 1977), the following section:

**"23B. Admissibility of evidence obtained by means of listening device in certain emergencies—**(1) Notwithstanding anything in section 25 of the Misuse of Drugs Amendment Act 1978, where any member of the Police intercepts any private communication by means of a listening device in proper reliance on section 216B (3) of the Crimes Act 1961, evidence so obtained of that communication, or of its substance, meaning, or purport, shall, subject to subsection (2) of this section, be admissible in evidence—

- “(a) In any criminal proceeding in which a charge is brought against any person involved in the emergency;
  - “(b) In any civil proceeding in which the conduct of any member of the Police involved in the emergency is in issue;
  - “(c) At any inquest conducted by a Coroner in respect of the death of any person involved in the emergency;
  - “(d) Before any inquiry conducted under the Police Act 1958 or the Commissions of Inquiry Act 1908 into the conduct of any member of the Police involved in the emergency.
- “(2) Subsection (1) of this section shall not render admissible any evidence that is inadmissible by virtue of any enactment, other than the said section 25 of the Misuse of Drugs Amendment Act 1978, or of any rule of law.”

**4. Police Act 1958 consequentially amended—**The Police Act 1958 is hereby amended by adding to section 65 the following subsection:

“(3) The Commissioner shall include in every annual report prepared by him for the purposes of this section the number of occasions on which, during the period under review, the Police used a listening device in reliance on section 216B (3) of the Crimes Act 1961.”

**5. Principal Act consequentially amended—**Section 1 (3) of the principal Act is hereby consequentially amended by inserting, after the item relating to Part IX, the following item:

“Part IXA—Crimes Against Personal Privacy (sections 216A to 216E).”

**6. Summary Proceedings Act 1957 consequentially amended**—The Summary Proceedings Act 1957 is hereby consequentially amended by inserting in Part I of the First Schedule, in their appropriate numerical order, the following heading and items:

***"Part IXA—Crimes Against Personal Privacy***

"216B	.....	.....	Prohibition on use of listening devices.
"216C	....	....	Prohibition on disclosure of private communications unlawfully intercepted.
"216D	.....	....	Prohibition on dealing with listening devices."

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This Act is administered in the Department of Justice.

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