



ANALYSIS

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1982, No. 157

An Act to amend the Crimes Act 1961

[17 December 1982]

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 and commencement—(1) This Act may be cited as the Crimes Amendment Act (No. 2) 1982, and shall be read together with and deemed part of the Crimes Act 1961 (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the 1st day of July 1983.

2. New sections substituted—(1) The principal Act is hereby amended by repealing section 78, and substituting the following sections:

“78. **Espionage**—Every one is liable to imprisonment for a term not exceeding 14 years who, being a person who owes allegiance to the Queen in right of New Zealand, within or outside New Zealand,—

- “(a) With intent to prejudice the security or defence of New Zealand, communicates information or delivers any object to a country or organisation outside New Zealand or to a person acting on behalf of any such country or organisation; or
- “(b) With intent to prejudice the security or defence of New Zealand and with the intention of communicating information or delivering any object to a country or organisation outside New Zealand or to a person acting on behalf of any such country or organisation,—
- “(i) Collects or records any information; or
 - “(ii) Copies any document; or
 - “(iii) Obtains any object; or
 - “(iv) Makes any sketch, plan, model, or note; or
 - “(v) Takes any photograph; or
 - “(vi) Records any sound or image; or
 - “(vii) Delivers any object to any person,—

if the communication or delivery or intended communication or intended delivery under paragraph (a) or paragraph (b) of this section is likely to prejudice the security or defence of New Zealand.

“78A. Wrongful communication, retention, or copying of official information—(1) Every one is liable to imprisonment for a term not exceeding 3 years who, being a person who owes allegiance to the Queen in right of New Zealand, within or outside New Zealand,—

- “(a) Knowingly or recklessly, and with knowledge that he is acting without proper authority, communicates any official information or delivers any object to any other person knowing that such communication or delivery is likely to prejudice the security or defence of New Zealand; or
- “(b) With intent to prejudice the security or defence of New Zealand, retains or copies any official document—
- “(i) Which he knows he does not have proper authority to retain or copy; and
 - “(ii) Which he knows relates to the security or defence of New Zealand; and
 - “(iii) Which would, by its unauthorised disclosure, be likely to prejudice the security or defence of New Zealand; or

“(c) Knowingly fails to comply with any directions issued by a lawful authority for the return of an official document—

“(i) Which is in his possession or under his control; and

“(ii) Which he knows relates to the security or defence of New Zealand; and

“(iii) Which would, by its unauthorised disclosure, be likely to prejudice seriously the security or defence of New Zealand.

“(2) In this section,—

“‘Department’ means a Government Department named in Part I of the First Schedule to the Ombudsmen Act 1975:

“‘Object’ means any object which—

“(a) A Department; or

“(b) A Minister of the Crown in his official capacity; or

“(c) An organisation; or

“(d) An officer or employee of any Department or organisation in his capacity as such an officer or employee or in his capacity as a statutory officer; or

“(e) An independent contractor engaged by any Department or Minister of the Crown or organisation in his capacity as such contractor; or

“(f) A branch or post, outside New Zealand, of a Department or organisation; or

“(g) An unincorporated body (being a board, council, committee, subcommittee, or other body)—

“(i) Which is established for the purpose of assisting or advising, or performing functions connected with, any Department or Minister of the Crown or organisation; and

“(ii) Which is so established in accordance with the provisions of any enactment or by any Department or Minister of the Crown or organisation,—

is entitled to have in its or his possession by virtue of its or his rights as the owner, hirer, lessee, bailee, or custodian of that object:

“‘Official information’—

“(a) Means any information held by—

“(i) A Department; or

“(ii) A Minister of the Crown in his official capacity; or

“(iii) An organisation; or

“(iv) An officer or employee of any Department or organisation in his capacity as such an officer or employee or in his capacity as a statutory officer; or

“(v) An independent contractor engaged by any Department or Minister of the Crown or organisation in his capacity as such contractor; and

“(b) Includes any information held outside New Zealand by any branch or post—

“(i) A Department; or

“(ii) An organisation; and

“(c) Includes any information held by an unincorporated body (being a board, council, committee, subcommittee, or other body)—

“(i) Which is established for the purpose of assisting or advising, or performing functions connected with, any Department or Minister of the Crown or organisation; and

“(ii) Which is so established in accordance with the provisions of any enactment or by any Department or Minister of the Crown or organisation:

“ ‘Organisation’ means—

“(a) An organisation named in Part II of the First Schedule to the Ombudsmen Act 1975:

“(b) An organisation named in the First Schedule to the Official Information Act 1982:

“ ‘Statutory officer’ means a person—

“(a) Holding or performing the duties of an office established by an enactment; or

“(b) Performing duties expressly conferred on him by virtue of his office by an enactment.

“78B. Consent of Attorney-General to proceedings in relation to espionage or wrongful communication, retention, or copying of official information—(1) No information shall be laid against any person for—

“(a) An offence against section 78 or section 78A (1) of this Act; or

“(b) The offence of conspiring to commit an offence against section 78 or section 78A (1) of this Act; or

“(c) The offence of attempting to commit an offence against section 78 or section 78A (1) of this Act,— except with the consent of the Attorney-General:

“Provided that a person alleged to have committed any offence mentioned in this subsection may be arrested, or a warrant for his arrest may be issued and executed, and any such person may be remanded in custody or on bail, notwithstanding that the consent of the Attorney-General to the laying of an information for the offence has not been obtained, but no further or other proceedings shall be taken until that consent has been obtained.

“(2) The Attorney-General may, before deciding whether or not to give his consent under subsection (1) of this section, make such inquiries as he thinks fit.

“78c. Questions of law in relation to espionage or wrongful communication of information—(1) It is a question of law, in the case of—

“(a) An offence against section 78 or section 78A (1) (a) of this Act; or

“(b) The offence of conspiring to commit an offence against section 78 or section 78A (1) (a) of this Act; or

“(c) The offence of attempting to commit an offence against section 78 or section 78A (1) (a) of this Act,—

whether the communication or delivery or intended communication or intended delivery was or would have been, at the time of the alleged offence, likely to have prejudiced the security or defence of New Zealand.

“(2) It is a question of law, in the case of,—

“(a) An offence against section 78A (1) (b) or (c) of this Act; or

“(b) The offence of conspiring to commit an offence against section 78A (1) (b) or (c) of this Act; or

“(c) The offence of attempting to commit an offence against section 78A (1) (b) or (c) of this Act,—

whether the document would, by its unauthorised disclosure at the time of the alleged offence, have been likely to have prejudiced or to have prejudiced seriously, as the case may require, the security or defence of New Zealand.

“(3) Where the decision on any question of law to which this section applies depends on any questions of fact, the prosecutor or the accused may adduce, and the Judge may hear, in addition to the evidence heard by the jury, any evidence relevant to those questions of fact.

“78D. **Search without warrant**—(1) Where a commissioned officer of the Police is satisfied that there is reasonable ground for believing—

“(a) That there is in any building, aircraft, ship, hovercraft, carriage, vehicle, box, receptacle, premises, or place—

“(i) Any thing upon or in respect of which an offence against section 78 of this Act has been or is suspected of having been committed; or

“(ii) Any thing which there is reasonable ground to believe will be evidence as to the commission of any such offence; or

“(iii) Any thing which there is reasonable ground to believe is intended to be used for the purpose of committing any such offence; and

“(b) That the case is one of great emergency and that immediate action is necessary,—

he may by a written order signed by him give to any member of the Police the like authority that may be given by a search warrant issued under section 198 of the Summary Proceedings Act 1957, and the provisions of that section shall apply accordingly with all necessary modifications.

“(2) Every member of the Police exercising the authority conferred by an order made under subsection (1) of this section shall identify himself to any person in or on the building, aircraft, ship, hovercraft, carriage, vehicle, premises, or place who questions his right to enter and search it, and shall also tell such person that the search is being made pursuant to that subsection. He shall also, if not in uniform and if so required, produce evidence that he is a member of the Police.

“(3) Any commissioned officer of Police who exercises the power conferred by subsection (1) of this section shall, within 3 days after the day on which he exercises the power, furnish to the Commissioner of Police a written report on the exercise of the power and the circumstances in which it came to be exercised.”

(2) Section 69 (1) of the principal Act is hereby amended by omitting the words “communicating secrets”, and substituting the word “espionage”.

3. Corrupt use of official information—(1) The principal Act is hereby amended by inserting, after section 105, the following section:

“105A Every official is liable to imprisonment for a term not exceeding 7 years who, whether within New Zealand or elsewhere, corruptly uses any information, acquired by him in his official capacity, to obtain, directly or indirectly, an advantage or a pecuniary gain for himself or any other person.”

(2) Section 106 (1) of the principal Act is hereby amended by omitting the words “and 105”, and substituting the words “105, and 105A.”

4. Power to clear Court and forbid report of proceedings—(1) The principal Act is hereby amended by repealing section 375, and substituting the following section:

“375. (1) Where in any proceedings in respect of any offence the Court is of opinion that the interests of justice, or of public morality, or of the reputation of any victim of any alleged sexual crime or crime of extortion, or of the security or defence of New Zealand so require, and in no other case, it may make any one or more of the following orders:

“(a) An order forbidding publication of any report or account of the whole or any part of—

“(i) The evidence adduced; or

“(ii) The submissions made;

“(b) An order forbidding the publication of the name of any witness or witnesses, or any name or particulars likely to lead to his or their identification:

“(c) An order excluding all or any persons other than the prosecutor, the accused, any barrister or solicitor engaged in the proceedings, and any officer of the Court from the whole or any part of the proceedings:

“Provided that the power conferred by paragraph (c) of this subsection shall not, except where the interests of security or defence so require, be exercised so as to exclude any barrister or solicitor or any accredited news media reporter.

“(2) Any order made under paragraph (a) or paragraph (b) of subsection (1) of this section—

“(a) May be made for a limited period or permanently; and

“(b) If it is made for a limited period, may be renewed for a further period or periods by the Court; and

“(c) If it is made permanently, may be reviewed by the Court at any time.

“(3) Notwithstanding that an order is made under subsection (1) (c) of this section, the announcement of the verdict and the passing of sentence shall in every case take place in public:

“Provided that, if the Court is satisfied that exceptional circumstances so require, it may decline to state in public all or any of the facts, reasons, or other considerations which it has taken into account in reaching its verdict or in determining the sentence passed by it on any accused person.

“(4) The breach of any order made under subsection (1) of this section, or any evasion or attempted evasion of it, may be dealt with as contempt of Court.

“(5) Nothing in this section shall limit the power of the Court under section 46 of the Criminal Justice Act 1954 to prohibit the publication of any name.”

(2) Section 19 (3) of the Summary Proceedings Amendment Act 1976 is hereby consequentially repealed.

5. Summary jurisdiction—Part I of the First Schedule to the Summary Proceedings Act 1957 is hereby amended by inserting, in their appropriate numerical order, the following items:

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| “78A | Wrongful communication, retention, or copying of official information. |
| “105A | Corrupt use of official information.” |

This Act is administered in the Department of Justice.
