



ANALYSIS

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1987, No. 167

An Act to amend the Crimes Act 1961

[17 July 1987]

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

1. Short Title and commencement—(1) This Act may be cited as the Crimes Amendment Act (No. 2) 1987, 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 August 1987.

2. Possession of knife in public place—(1) Section 202A of the principal Act (as inserted by section 48 (1) of the Summary Offences Act 1981) is hereby amended by inserting in subsection (4) (a), before the words “offensive weapon”, the words “knife or”.

(2) Section 202B of the principal Act (as inserted by section 48 (1) of the Summary Offences Act 1981) is hereby amended—

- (a) By omitting from subsection (1) (a) the words “offensive weapon”, and substituting the words “knife, offensive weapon,”;
- (b) By omitting from subsection (1) (b) the words “offensive weapon”, and substituting the words “knife, offensive weapon,”;
- (c) By omitting from subsection (1) the words “offensive weapon” where they thirdly occur, and substituting the words “knife, offensive weapon,”;
- (d) By omitting from subsection (3) the word “weapon”, and substituting the words “knife, offensive weapon,”.

3. Sentencing for second crime against section 202A (4)—The principal Act is hereby amended by inserting, after section 202B (as inserted by section 48 (1) of the Summary Offences Act 1981), the following section:

“202BA. Where—

- “(a) Any person is convicted of a crime against paragraph (a) or paragraph (b) of section 202A (4) of this Act; and
- “(b) That person has previously been convicted on at least 1 occasion within the preceding 2 years of a crime against either of those paragraphs,—

the Court shall impose a full-time custodial sentence (within the meaning of the Criminal Justice Act 1985) on the offender unless the Court is satisfied that, because of the special circumstances of the offence or of the offender, the offender should not be so sentenced.”

4. New Part (relating to obtaining evidence by listening devices) inserted in principal Act—The principal Act is hereby amended by inserting, after section 312, the following Part:

“PART XIA

“OBTAINING EVIDENCE BY LISTENING DEVICES

“312A. **Meaning of ‘organised criminal enterprise’**—In this Part of this Act, the term ‘organised criminal enterprise’ means a continuing association of 6 or more persons having as

its object or as one of its objects the acquisition of substantial income or assets by means of a continuing course of criminal conduct.

“312B. Application by Police for warrant to intercept private communications—(1) An application may be made in accordance with this section to a Judge of the High Court for a warrant for any member of the Police to intercept a private communication by means of a listening device in any case where there are reasonable grounds for believing that—

“(a) Any member of an organised criminal enterprise is planning, participating in, or committing, or has planned, participated in, or committed, criminal offences of which at least one is—

“(i) An offence punishable by a period of imprisonment for a term of 10 years or more; or

“(ii) An offence punishable under section 227 (ba) of this Act; or

“(iii) An offence against section 258 of this Act,— as part of a continuing course of criminal conduct planned, organised, or undertaken by members of that enterprise; and

“(b) It is unlikely that the Police investigation of the case could be brought to a successful conclusion without the grant of such a warrant.

“(2) Every application under subsection (1) of this section shall be made by a commissioned officer of Police, in writing, and on oath, and shall set out the following particulars:

“(a) The facts relied upon to show that there are reasonable grounds for believing that—

“(i) There is an organised criminal enterprise; and

“(ii) Any member of that enterprise is planning, participating in, or committing, or has planned, participated in, or committed, criminal offences of which at least one is an offence described in subsection (1)(a) of this section as part of a continuing course of criminal conduct planned, organised, or undertaken by members of that enterprise; and

“(b) A description of the manner in which it is proposed to intercept private communications; and

“(c) The name and address, if known, of the suspect whose private communications there are reasonable grounds for believing will assist the Police investigation of the case, or, if the name and address

of the suspect are not known, a general description of the premises or place in respect of which it is proposed to intercept private communications, being premises or a place believed to be used for any purpose by any member of the organised criminal enterprise; and

“(d) The period for which a warrant is requested; and

“(e) Whichever of the following is applicable:

“(i) The other investigative procedures and techniques that have been tried but have failed to facilitate the successful conclusion of the Police investigation of the case, and the reasons why they have failed in that respect; or

“(ii) The reasons why it appears that other investigative procedures and techniques are unlikely to facilitate the successful conclusion of the Police investigation of the case, or are likely to be too dangerous to adopt in the particular case; or

“(iii) The reasons why it is considered that the case is so urgent that it would be impractical to carry out the Police investigation using only investigative procedures and techniques other than the interception of private communications.

“312C. Matters on which Judge must be satisfied in respect of applications—On an application made in accordance with section 312B of this Act, the Judge may grant an interception warrant if the Judge is satisfied that it would be in the best interests of the administration of justice to do so, and that—

“(a) There are reasonable grounds for believing that—

“(i) There is an organised criminal enterprise; and

“(ii) Any member of that organised criminal enterprise is planning, participating in, or committing, or has planned, participated in, or committed, criminal offences of which at least one is an offence described in section 312B (1) (a) of this Act, as part of the continuing course of criminal conduct planned, organised, or undertaken by members of that enterprise; and

“(b) There are reasonable grounds for believing that evidence relevant to the investigation of the case will be obtained through the use of a listening device to intercept private communications; and

“(c) Whichever of the following is applicable:

“(i) Other investigative procedures and techniques have been tried but have failed to facilitate the successful conclusion of the Police investigation of the case; or

“(ii) Other investigative procedures and techniques are unlikely to facilitate the successful conclusion of the Police investigation of the case, or are likely to be too dangerous to adopt in the particular case; or

“(iii) The case is so urgent that it would be impractical to carry out the Police investigation using only investigative procedures and techniques other than the interception of private communications; and

“(d) The private communications to be intercepted are not likely to be privileged in proceedings in a Court of law by virtue of any of the provisions of Part III of the Evidence Amendment Act (No. 2) 1980 or of any rule of law that confers privilege on communications of a professional character between a barrister or solicitor and a client.

“312D. **Contents and term of warrant**—(1) Every interception warrant shall be issued in the form set out in the Sixth Schedule to this Act, and shall—

“(a) State the offence or offences in respect of which the warrant is granted; and

“(b) State the name and address of the suspect, if known, whose private communications may be intercepted, or, where the suspect’s name and address are not known, the premises or place in respect of which private communications may be intercepted, being premises or a place believed to be used for any purpose by any member of the organised criminal enterprise; and

“(c) Specify the commissioned officer of Police who (with any other member of the Police for the time being assisting the commissioned officer) may intercept the private communications; and

“(d) Where the Judge considers it necessary, contain express authority to enter (with force, where necessary) any aircraft, ship, hovercraft, carriage, vehicle, or premises for the purpose of placing, servicing, or retrieving a listening device; and

“(e) Contain such additional terms and conditions as the Judge considers advisable in the public interest.

“(2) Without limiting subsection (1) of this section, where it is proposed to place a listening device in the residential or business premises of a person who is a barrister or solicitor, or a clergyman, or a registered medical practitioner, the Judge shall prescribe such conditions (if any) as the Judge considers desirable to avoid so far as practicable the interception of communications of a professional character to which the barrister or solicitor or clergyman or registered medical practitioner is a party.

“(3) Every interception warrant shall be valid for such period, not exceeding 30 days, as the Judge shall specify in the warrant.

“312E. **Effect of warrant**—Every interception warrant shall have effect, according to its terms, to authorise the interception of private communications by means of a listening device.

“312F. **Renewal of warrants**—(1) Any Judge of the High Court may from time to time grant a renewal of an interception warrant upon application made at any time before the warrant (or any current renewal of the warrant) has expired.

“(2) Every application for the renewal of an interception warrant shall be made in the manner provided by section 312B of this Act, and shall give—

“(a) The reason and period for which the renewal is required; and

“(b) Full particulars, together with times and dates, of any interceptions made or attempted under the warrant, and an indication of the nature of the information that has been obtained by every such interception.

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

“(4) A renewal of an interception warrant may be granted under this section if the Judge is satisfied that the circumstances described in section 312C of this Act still obtain.

“(5) Every renewal of an interception warrant shall be valid for such period, not exceeding 30 days, as the Judge shall specify in the renewal.

“(6) A renewal of an interception warrant may be granted upon an application made within the time prescribed by subsection (1) of this section notwithstanding that the warrant

(or any renewal of the warrant) has expired before the application is determined.

“(7) Nothing in this section shall prevent a Judge from granting a second or subsequent renewal of an interception warrant upon an application duly made.

“312G. **Emergency permits**—(1) In any case where a Judge is satisfied that circumstances exist that would justify the grant of an interception warrant under section 312C of this Act, but the urgency of the situation requires that the interception should begin before a warrant could with all practicable diligence be obtained, the Judge may, orally or in writing, grant an emergency permit for the interception of private communications in respect of particular premises or a particular place and in a particular manner.

“(2) No emergency permit shall authorise the interception of telephonic communications.

“(3) Any application for an emergency permit may be made orally, but otherwise every such application shall comply with the requirements of section 312B of this Act.

“(4) Where the Judge grants the application for an emergency permit, the Judge shall forthwith make a note in writing of the particulars of the application. The note shall be filed in the High Court Registry nearest to where the application is made, and shall, for the purposes of section 312H (1) of this Act, be deemed to be a document relating to the application for the permit. The Judge shall also make a note of the terms of the permit.

“(5) The provisions of section 312D of this Act, so far as they are applicable and with the necessary modifications, shall apply to emergency permits in the same manner as they apply to interception warrants.

“(6) Every emergency permit shall remain valid for 48 hours from the time when it is given, and shall then expire.

“(7) On filing the report required by section 312F of this Act, the member of the Police who applied for the emergency permit (or, if that member is not the member filing the report, then the member who is filing the report) may apply to the Judge who granted the permit (or, if that Judge is not the Judge receiving the report, then the Judge who is receiving the report) for a certificate confirming the permit pursuant to subsection (9) of this section.

“(8) Where the Police, within the period of 48 hours during which the emergency permit is valid, apply for an interception warrant in place of the permit, the member of the Police

applying for the warrant may also apply for a certificate confirming the permit pursuant to subsection (9) of this section.

“(9) The Judge to whom an application is made pursuant to subsection (7) or subsection (8) of this section shall issue a certificate confirming the permit if the Judge is satisfied, having regard to the requirements of section 312C of this Act, that if the original application for the emergency permit had been an application for an interception warrant, the Judge would have granted a warrant.

“(10) For the purposes of section 312M of this Act, an interception of a private communication pursuant to an emergency permit shall be deemed to have been made unlawfully unless the Judge to whom an application is made in accordance with subsection (7) or subsection (8) of this section issues a certificate confirming the permit pursuant to subsection (9) of this section.

“**312H. Security of applications**—(1) As soon as an application for an interception warrant or for a renewal of an interception warrant or for an emergency permit or for a certificate confirming an emergency permit has been determined by the Judge, the Registrar shall place all documents relating to the application (except the warrant or renewal or permit or certificate itself) in a packet, seal the packet, and thereafter keep it in safe custody, subject to the succeeding provisions of this section.

“(2) Notwithstanding any enactment or rule of law or rules of Court entitling any party to any proceedings to demand the production of any documents, no such party shall be entitled to demand the production of any documents held in safe custody pursuant to subsection (1) of this section, except in accordance with the succeeding provisions of this section.

“(3) Every such party who requires the production of any document held in safe custody pursuant to subsection (1) of this section shall, except in a case to which subsection (9) or subsection (10) of this section applies, apply in writing to the Registrar, who shall forthwith notify the senior Police officer in the district.

“(4) If, within 3 days after notice is given to the senior Police officer in the district under subsection (3) of this section, that officer gives written notice to the Registrar that that officer intends to oppose the production of the documents, the Registrar shall refer the matter to a Judge.

“(5) Where the senior Police officer in the district does not give such written notice to the Registrar, the Registrar shall produce the documents to the party applying for production.

“(6) Where a matter is referred to a Judge pursuant to subsection (4) of this section, both the person requesting production of the documents and the member of the Police opposing production shall be given an opportunity to be heard.

“(7) If the Judge is satisfied that information in any document the production of which is in dispute identifies or is likely to lead to the identification of a person who gave information to the Police, or of any member of the Police whose identity was concealed for the purpose of any relevant investigation and has not been subsequently revealed, the Judge may, if the Judge believes it in the public interest to do so, order that the whole or any specified part of the document be not produced.

“(8) Subject to the provisions of subsection (7) of this section, the Judge shall order the production of the documents to the party requesting it.

“(9) Where a request for the production of any document kept in safe custody pursuant to subsection (1) of this section is made in the course of any proceedings presided over by a Judge and the request is opposed, the Judge shall adjudicate upon the matter as if it had been referred to the Judge pursuant to subsection (4) of this section.

“(10) Where such a request is made in the course of any other proceedings, the presiding judicial officer shall forthwith refer the matter to a Judge for adjudication.

“(11) Notwithstanding anything in this section, every Judge who is presiding over any proceedings in which the issue of an interception warrant or emergency permit is in issue shall be entitled to inspect any relevant document held under subsection (1) of this section.

“312i. Destruction of irrelevant records made by use of listening device—(1) Every person who intercepts a private communication in pursuance of an interception warrant or any emergency permit shall, as soon as practicable after it has been made, destroy any record, whether written or otherwise, of the information obtained by that interception if none of the information directly or indirectly relates to the commission of an offence described in section 312B (1) (a) of this Act or a conspiracy to commit such an offence, or a drug dealing offence (within the meaning of section 10 of the Misuse of Drugs Amendment Act 1978).

“(2) Every person who fails to comply with subsection (1) of this section commits an offence and is liable on summary conviction to a fine not exceeding \$500.

“312j. **Destruction of relevant records made by use of listening device**—(1) The Commissioner of Police shall ensure that every record, whether written or otherwise, of the information obtained by the Police from the interception of a private communication in pursuance of an interception warrant or an emergency permit, being information that relates wholly or partly and directly or indirectly to the commission of an offence described in section 312B(1)(a) of this Act or a conspiracy to commit such an offence, or a drug dealing offence (within the meaning of section 10 of the Misuse of Drugs Amendment Act 1978), is destroyed as soon as it appears that no proceedings, or no further proceedings, will be taken in which the information would be likely to be required to be produced in evidence.

“(2) Nothing in subsection (1) of this section shall apply to—

“(a) Any record of any information adduced in proceedings in any Court, or (in any case where the defendant pleads guilty) of any record of any information that, in the opinion of the Judge to whom the report referred to in subsection (3) of this section is made, would have been adduced had the matter come to trial:

“(b) Any record of any information contained in any transcript or written statement given to any person in accordance with section 312L(a) of this Act.

“(3) Every report made to a Judge in accordance with section 312P of this Act shall state whether or not subsection (1) of this section has yet been complied with, and, if it has not, the Judge shall give such directions relating to the eventual destruction of the record as the Judge thinks necessary to ensure compliance with that subsection, including a requirement that the Judge be advised when the record has been destroyed.

“312k. **Prohibition on disclosure of private communications lawfully intercepted**—(1) No person who—

“(a) Intercepts or assists in the interception of a private communication in pursuance of an interception warrant or emergency permit; or

“(b) Acquires knowledge of a private communication as a direct or indirect result of that interception—

shall knowingly disclose the substance, meaning, or purport of that communication, or any part of that communication, otherwise than in the performance of that person's duty.

“(2) Every person who acts in contravention of subsection (1) of this section commits an offence and is liable on summary conviction to a fine not exceeding \$500.

“**312L. Notice to be given of intention to produce evidence of private communication**—Particulars of a private communication intercepted pursuant to an interception warrant or an emergency permit shall not be received in evidence by any Court against any person unless the party intending to adduce it has given to that person reasonable notice of that person's intention to do so, together with—

“(a) A transcript of the private communication where that person intends to adduce it in the form of a recording, or a written statement setting forth the full particulars of the private communication where that person intends to adduce oral evidence of it; and

“(b) A statement of the time, place, and date of the private communication, and of the names and addresses of the parties to the communication, if they are known.

“**312M. Inadmissibility of evidence of private communications unlawfully intercepted**—(1) Subject to subsections (2) to (4) of this section, where a private communication intercepted by means of a listening device otherwise than in pursuance of an interception warrant or emergency permit issued under this Part of this Act or of any authority conferred by or under any other enactment has come to the knowledge of a person as a direct or indirect result of that interception or its disclosure, no evidence so acquired of that communication, or of its substance, meaning, or purport, and no other evidence obtained as a direct or indirect result of the interception or disclosure of that communication, shall be given against any person, except in 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 in that manner.

“(2) Where, in any criminal proceedings for an offence described in section 312B (1) (a) of this Act or a conspiracy to commit such an offence, the Court is of the opinion that any evidence that is inadmissible by virtue of subsection (1) of this section—

“(a) Is relevant; and

“(b) Is inadmissible by virtue of that subsection merely because of a defect of form or an irregularity in procedure, not being a substantive defect or irregularity, in the application for or the granting of the interception warrant or emergency permit, or in the manner in which the evidence was obtained,— and that the defect in form or irregularity in procedure was not the result of bad faith, the Court may admit that evidence.

“(3) Subsection (1) of this section shall not render inadmissible against any party to a private communication evidence of that communication that has, in the manner referred to in that subsection, come to the knowledge of the person called to give evidence, if all the parties to the communication consent to that person giving the evidence.

“(4) Subsection (1) of this section shall not render inadmissible evidence of a private communication by any person who intercepted that communication by means of a listening device with the prior consent of any party to the communication.

“312N. Inadmissibility of evidence of private communications lawfully intercepted—(1) Subject to subsection (2) of this section, where a private communication intercepted in pursuance of an interception warrant or an emergency permit discloses evidence relating to any offence other than an offence described in section 312B(1)(a) of this Act or a conspiracy to commit such an offence, no evidence of that communication, or of its substance, meaning, or purport, shall be given in any Court.

“(2) If, in any proceedings for a drug dealing offence (within the meaning of section 10 of the Misuse of Drugs Amendment Act 1978),—

“(a) Evidence is sought to be adduced of a private communication intercepted in pursuance of an interception warrant or an emergency permit issued under this Part of this Act; and

“(b) The Judge is satisfied, on the evidence then before the Judge,—

“(i) That a warrant or permit could have been issued under Part II of the Misuse of Drugs Amendment Act 1978; and

“(ii) That the evidence sought to be adduced would have been admissible if the warrant or permit had been issued under that Part of that Act,—

the evidence may be admitted notwithstanding subsection (1) of this section.

“312O. **Privileged evidence**—Where evidence obtained by the interception of a private communication would, but for the interception, have been privileged by virtue of—

“(a) Any of the provisions of Part III of the Evidence Amendment Act (No. 2) 1980; or

“(b) Any rule of law that confers privilege on communications of a professional character between a barrister or solicitor and a client,—

such evidence shall remain privileged and shall not be given in any Court, except with the consent of the person entitled to waive that privilege.

“312P. **Report to be made to Judge on use of warrant or permit**—(1) As soon as practicable after an interception warrant or an emergency permit has expired, the member of the Police who applied for it, or (if that member is unable to act) another commissioned officer of Police, shall make a written report to the Judge who granted the warrant or permit, or (if that Judge is unable to act) to another Judge, on the manner in which the power conferred by the warrant or permit has been exercised and the results obtained by the exercise of that power.

“(2) Notwithstanding anything in section 312H of this Act, the Judge who receives a report under subsection (1) of this section shall be entitled to inspect any relevant document held under subsection (1) of that section.

“(3) Without limiting the generality of subsection (1) of this section, every report made for the purposes of that subsection shall contain the following information:

“(a) Where the listening device was placed:

“(b) The number of interceptions made by means of the listening device:

“(c) Whether any relevant evidence was obtained by means of the listening device:

“(d) Whether any relevant evidence has been, or is intended to be, used in any criminal proceedings:

“(e) Whether any records of a private communication intercepted pursuant to the warrant or permit have been destroyed in accordance with section 312I or section 312J of this Act, and, if not, why they have not been destroyed:

“(f) Whether the listening device has been retrieved, and, if not, why it has not been retrieved.

“(4) On receiving a report under this section, the Judge may require such further information relating to the matter as the Judge thinks fit, and (in addition to any directions the Judge gives for the purposes of section 312J (3) of this Act) the Judge may give such directions as the Judge thinks desirable, whether relating to the retrieval of the listening device, or otherwise.

“312Q. **Commissioner of Police to give information to Parliament**—The Commissioner of Police shall include in every annual report prepared by the Commissioner for the purposes of section 65 of the Police Act 1958 the following information in respect of the period under review:

“(a) The number of applications for warrants made under section 312B of this Act; and

“(b) The number of applications for renewals of warrants made under section 312F of this Act; and

“(c) The number of applications for emergency permits made under section 312G of this Act; and

“(d) The number of such applications referred to in each of the preceding paragraphs of this subsection that were granted, and the number that were refused; and

“(e) The average duration of warrants (including renewals); and

“(f) The number of prosecutions that have been instituted in which evidence obtained directly or indirectly from an interception carried out pursuant to a warrant or permit has been adduced, and the result of those prosecutions.”

5. New Sixth Schedule added to principal Act—The principal Act is hereby amended by adding the Sixth Schedule set out in the Schedule to this Act.

Section 5

SCHEDULE

NEW SIXTH SCHEDULE ADDED TO PRINCIPAL ACT

Section 312D (1)

"SIXTH SCHEDULE

"INTERCEPTION WARRANT

(Sections 312B to 312D, Crimes Act 1961)

1. To [Full name of commissioned officer of Police] and every other member of the Police for the time being assisting you.

2. I am satisfied on an application made to me in writing and on oath that—

(a) There are reasonable grounds for believing that—

(i) There is an organised criminal enterprise; and

(ii) A member of that organised criminal enterprise is planning, participating in, or committing, or has planned, participated in, or committed, criminal offences of which at least one is an offence described in section 312B (1) (a) of the Crimes Act 1961, as part of a continuing course of criminal conduct planned, organised, or undertaken by members of that enterprise; and

(b) There are reasonable grounds for believing that evidence relevant to the investigation of the offence will be obtained through the use of a listening device to intercept private communications; and

(c) [Whichever of the following is applicable]:

* Other investigative procedures and techniques have been tried but have failed to facilitate the successful conclusion of the Police investigation of the case; and

or

* Other investigative procedures and techniques are unlikely to facilitate the successful conclusion of the Police investigation of the case, or are likely to be too dangerous to adopt in the particular case; and

or

* The case is so urgent that it would be impractical to carry out the Police investigation using only investigative procedures and techniques other than the interception of private communications; and

(d) The private communications to be intercepted are not likely to be privileged in proceedings in a Court of law by virtue of any of the provisions of Part III of the Evidence Amendment Act (No. 2) 1980 or of any rule of law that confers privilege on communications of a professional character between a barrister or solicitor and a client; and

(e) It would be in the best interests of the administration of justice to grant an interception warrant.

3. The offence in respect of which the warrant is granted is
(being an offence described in section 312B (1) (a) of the Crimes Act 1961).

4. This is to authorise you at any time or times within days from the date of this warrant—

SCHEDULE—continued

* To use a listening device to intercept the private communications of [Name and address of suspect];

or

* To intercept private communications at [Premises or place, being premises or a place believed to be used for any purpose by any member of the organised criminal enterprise];

or

* To enter, with force where necessary, [State vehicle, place, or premises that may be entered] for the purpose of placing, servicing, or retrieving the listening device.

*5. The following terms and conditions are imposed in the public interest:

.....
*6. The following conditions are imposed to avoid so far as practicable the interception of communications of a professional character:
.....

Dated at this day of 19 .

.....
Judge of the High Court.

* To be deleted where not applicable.”

This Act is administered in the Department of Justice.
