



ANALYSIS

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2003, No. 4

An Act to amend the Criminal Procedure Act 1980-81

BE IT ENACTED by the Parliament of the Cook Islands in Session, and by the authority of the same, as follows:

1. Short Title - This Act may be cited as the Criminal Procedure Amendment Act 2003 and shall be read together with and deemed part of the Criminal Procedure Act 1980-81 ("the principal Act").

2. Interpretation - (1) Section 2(1) of the principal Act is amended by –

(a) inserting immediately after the definition "Informant" the following new definition -

""Intercept", in relation to a private communication, includes hear, listen to, record, monitor, or acquire the communication while it is taking place;"

(b) inserting immediately after the definition "Justice", the following new definition –

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““Listening device” means -

- (a) 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
- (b) does not include a hearing aid or similar device used to correct subnormal hearing of the user to no better than normal hearing;”

- (c) inserting immediately after the definition “Prison”, the following new definition -

““Private communication” means -

- (a) 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
- (b) 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; and

a reference to a party to a private communication is a reference to -

- (c) any originator of the communication and any person intended by the originator to receive it; and
- (d) 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.”;

- (d) inserting immediately after the definition “Offence”, the following new definition -

““Organised criminal group” shall have the same meaning as in section 109A of the Crimes Act 1969;”.

3. Interception of private communications - The principal Act is amended by inserting after section 96, the following new sections -

“96A. 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 any member of an organised criminal group is planning, participating in, or committing, or has planned, participated in, or committed, criminal offences of which at least one is an offence of the kind referred to in section 109A(2) of the Crimes Act 1969, as part of a

continuing course of criminal conduct planned, organised, or undertaken by members of that group.

(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 group; and
 - (ii) any member of that group is planning, participating in, or committing, or has planned, participated in, or committed, criminal offences of which at least one is an offence of a kind referred to in section 109A(2) of the Crimes Act 1969 as part of a continuing course of criminal conduct planned, organised, or undertaken by members of that group; 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 group; 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.

96B. Matters on which Judge must be satisfied in respect of applications -

(1) On an application made in accordance with section 96A, 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 group; and
 - (ii) any member of that organised criminal group is planning, participating in, or committing, or has planned, participated in, or committed, criminal offences of which at least one is an offence of a kind referred to in section 109A(2) of the Crimes Act 1969 as part of the continuing course of criminal conduct planned, organised, or undertaken by members of that group; 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 are likely to be too dangerous to adopt in the particular 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 sections 7, 8 or 9 of the Evidence Act 1968 or of any rule of law that confers privilege on communications of a professional character between a barrister or solicitor and a client.
- (2) Without limiting subsection (1), in determining whether or not to issue an interception warrant under this section, the Judge must consider the extent to which the privacy of any person or persons would be likely to be interfered with by the interception, under the warrant, of private communications.”

4. Consequential amendment to Telecommunications Act – Section 41(1) of the Telecommunications Act 1989 is amended, by adding after paragraph (l), the following paragraph –

“(m) Paragraph (g) shall not apply to an interception made pursuant to an order of a Judge under section 96A of the Criminal Procedure Act 1980-81.”.

This Act is administered by the Ministry of Justice