



CRIMES (EXEMPTION OF LISTENING DEVICE) ORDER 1997

MICHAEL HARDIE BOYS, Governor-General

ORDER IN COUNCIL

At Wellington this 28th day of July 1997

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to section 216A (1) of the Crimes Act 1961, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, makes the following order.

ORDER

1. Title and commencement—(1) This order may be cited as the Crimes (Exemption of Listening Device) Order 1997.

(2) This order comes into force on the 28th day after the date of its notification in the *Gazette*.

2. Interpretation—In this order, unless the context otherwise requires,—

“Foreign intelligence” means information relating to the capabilities, intentions, or activities of—

- (a) Any foreign state or group of foreign states; or
- (b) Any foreign organisation; or
- (c) Any foreign person:

“Foreign organisation” means—

- (a) Any company or body corporate that is incorporated outside New Zealand; or

(b) Any company within the meaning of the Companies Act 1955 or the Companies Act 1993, as the case may be, that is, for the purposes of the Companies Act 1955 or the Companies Act 1993, a subsidiary of any company or body corporate incorporated outside New Zealand; or

(c) Any unincorporated body of persons that carries on activities outside New Zealand (not being an unincorporated body of persons that is a New Zealand person under paragraph (a) (iii) of the definition of the term “New Zealand person” in section 2 (1) of the Inspector-General of Intelligence and Security Act 1996):

“Foreign person” means a natural person who is neither—

(a) A New Zealand citizen; nor

(b) A person ordinarily resident in New Zealand:

“Intercept” and “listening device” have the same meaning as in section 216A (1) of the Crimes Act 1961:

“Ordinarily resident in New Zealand” has the meaning given to it by section 4 of the Crimes Act 1961:

“Private communication” has the same meaning as in section 216A (1) of the Crimes Act 1961.

3. Exemption of listening device—The listening device consisting of all apparatus installed, operated, or used for the reception of radio communications and telecommunications at the Defence Satellite Communications Unit (Blenheim) (which Unit is operated by the Government Communications Security Bureau and located in the Marlborough District) is, by this order, exempted from the provisions of Part IXA of the Crimes Act 1961.

4. Condition of exemption—The exemption effected by clause 3 is subject to the condition that, in relation to the interception of private communications, the listening device exempted by that clause may be used only for the purpose of intercepting private communications that are both—

(a) Private communications of—

(i) A foreign state, foreign organisation, or foreign person; or

(ii) A representative or agent of a foreign state, foreign organisation, or foreign person; and

(b) Private communications that contain, or may reasonably be expected to contain, foreign intelligence.

MARIE SHROFF,
Clerk of the Executive Council.

EXPLANATORY NOTE

This note is not part of the order, but is intended to indicate its general effect.

This order exempts the listening device at the Defence Satellite Communications Unit (Blenheim) from the provisions of Part IXA of the Crimes Act 1961. That Unit, which is operated by the Government Communications Security Bureau, is located in the Marlborough District.

Intentional interception of private communications, namely, private oral communications, by means of listening devices is, subject to certain exceptions, an offence against Part IXA of the Crimes Act 1961. Intentional disclosure of private oral communications obtained in contravention of the provisions of that Part of that Act is, subject to certain exceptions, also an offence.

The order accordingly creates a further exception to those provisions. The exception so created is subject to the condition that, in relation to the interception of private oral communications, the listening device exempted by the order may be used only for the purpose of intercepting private oral communications that are both—

- (a) Private oral communications of—
 - (i) A foreign state, foreign organisation, or foreign person; or
 - (ii) A representative or agent of a foreign state, foreign organisation, or foreign person; and
- (b) Private oral communications that contain, or may reasonably be expected to contain, foreign intelligence.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 31 July 1997.
This order is administered in the Ministry of Justice.