

Short-Form Supplementary Departmental Disclosure Statement

Gangs Legislation Amendment Bill

A short form supplementary disclosure statement for proposed government amendments to a Bill seeks to bring together in one place some selected information to support and enhance the Parliamentary and public scrutiny of those proposed amendments.

It highlights certain significant powers or features in the proposed amendments that might be of particular Parliamentary or public interest and warrant an explanation.

It provides a limited supplement to the original disclosure statement for the Gangs Legislation Amendment Bill, dated 19 February 2024, which can be found at this link <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2024&no=23>

This supplementary disclosure statement was prepared by the Ministry of Justice.

The Ministry of Justice certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

22 July 2024.

Significant Legislative Features

Offences, penalties and court jurisdictions

1. Do the proposed amendments create, amend, or remove:	
(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalties)?	YES
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	NO
Clause 8A creates an offence of intentionally contravening a gang insignia prohibition order, with a maximum penalty of 1 year imprisonment.	

1.1. Was the Ministry of Justice consulted about these provisions?	YES
The Ministry of Justice led the policy development in the Amendment Paper.	

Privacy issues

2. Do the proposed amendments create, amend, or remove any provisions relating to the collection storage, access to, correction of, use or disclosure of personal information?	YES
The Police will be able to get a search warrant to investigate suspected breaches of the possession ban in the Amendment Paper. This is a consequence of the provisions at clause 8A, using the existing law in the Search and Surveillance Act 2012.	
2.1. Was the Privacy Commissioner consulted about these provisions?	YES
<p>Yes. The Privacy Commissioner has significant concerns about the introduction of escalating penalties and the effect that the possession ban will have of significantly widening the availability of search powers. The Privacy Commissioner has not yet seen any evidence to suggest that this is necessary and proportionate. He is particularly concerned about the disproportionate affect this proposal will have on Māori and the privacy impacts on vulnerable population groups who may not be involved in any criminal activity but who will likely be caught up in invasive and traumatic searches.</p> <p>As a minor mitigation to the concerns set out in the Cabinet policy paper for these proposals, the Privacy Commissioner suggests the addition of a provision allowing for a gang insignia prohibition order to be revoked sooner than 5 years.</p>	

Compulsory acquisition of private property

3. Do the proposed amendments contain any provisions that could result in the compulsory acquisition of private property?	NO
--	----

Charges in the nature of a tax

4. Do the proposed amendments create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
--	----

Retrospective effect

5. Do the proposed amendments affect rights, freedoms, or impose obligations, retrospectively?	NO
---	----

Strict liability or reversal of the burden of proof for offences

6. Do the proposed amendments:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for any offence or civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

7. Do the proposed amendments create or amend a civil or criminal immunity for any person?	NO
---	----

Significant decision-making powers

8. Do the proposed amendments create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	YES
<p>Clause 8A creates a requirement that the court make an order in respect of a person after three convictions for breach of the public insignia display prohibition within a five-year period. If a person becomes eligible for another order while an existing order is in force, the court must extend the original order by 5 years.</p> <p>The power is constrained by the requirement that the three convictions must have been entered within a five-year period, demonstrating a pattern of persistent reoffending.</p>	

Powers to make delegated legislation

9. Do the proposed amendments create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO
10. Do the proposed amendments create or amend any other powers to make delegated legislation?	NO

Any other unusual provisions or features

11. Do the proposed amendments contain any provisions (other than those noted above) that are unusual or call for special comment?	YES
<p>The Amendment Paper creates an escalating penalties regime for those convicted of three violations of the offence of displaying a gang insignia in public within 5 years. These repeat offenders will be subject to a mandatory court order prohibiting possession of any gang insignia for 5 years, whether public or private.</p> <p>This proposal is to address the Police concerns that the existing penalty will not effectively deter repeated breaches of the gang insignia public display ban. Repeated breaches will undermine public trust and confidence in the law and will contribute to operational resourcing challenges for Police.</p>	