

Departmental Disclosure Statement

Criminal Activity Intervention Legislation Bill

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This 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.

13 September 2022

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Part One: General Policy Statement

The Criminal Activity Intervention Legislation Bill provides measures to address the harm caused by criminal activity, including that caused by gangs, and make communities safer. The Bill creates new powers and offences to better prevent and respond to harm caused by criminal offending, including that commonly associated with gang activities such as money laundering and dangerous behaviour on our roads. The targeted measures in the Bill are ultimately designed to make Aotearoa a safer place to live.

It is important that New Zealand's legislative framework supports the management of risks and prevention of the escalation of criminal activity, including that caused by gangs, and provides the New Zealand Police (the **Police**) with appropriate tools to respond to firearms offending and other criminal activities. It is also important that any new powers are focussed and proportionate to the behaviours that the Bill responds to.

The public have a right to feel safe and the provisions in this Bill should give New Zealanders confidence that the Police have appropriate powers to respond to gang and other criminal activity in a manner that is reasonable and having regard to the harm presented by such activities.

This Bill is introduced under Standing Order 267(1)(c), which permits a bill to be introduced as an omnibus bill if, as is the case, the Business Committee has agreed to the bill's introduction as an omnibus bill.

The amendments give effect to the Labour Party's 2020 election manifesto to, amongst other things, keep the pressure on tackling organised crime and gangs by ensuring Police and other enforcement agencies have the resources and powers to disrupt and prosecute relevant offending and seize the proceeds of crime.

All the proposed new powers are designed to deal with activities carried out by gangs, although some of the proposals are of wider application to other organised criminal groups or individuals engaging in unlawful activity.

The Bill amends:

- the Search and Surveillance Act 2012 to provide—
 - a new warrant power to search for and seize weapons during a gang conflict:
 - a new seizure power for cash found in suspicious circumstances believed to be over \$10,000:
- the Crimes Act 1961 to include a new offence of discharging a firearm with intent to intimidate:
- the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 by prohibiting cash payments over a specified value for certain high value goods:
- the Land Transport Act 1998 to extend the circumstances in which vehicles can be impounded to respond to conduct that occurs during gang convoys, but also to apply more generally to other drivers reasonably believed to have committed a relevant offence.

The Police need effective, but proportionate, powers to disrupt criminal activity, including that perpetuated by gangs. This Bill responds to that need and will enhance community safety by providing clear legal authority for Police to intervene in and disrupt relevant criminal activity.

The Bill responds in a practical and meaningful way to criminal activities that are considered unacceptable by New Zealanders but does so in a way that is targeted and appropriately framed to counter the unlawful conduct that the Bill is designed to address.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	NO
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Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
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Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<p>The urgency given to the development of legislative proposals to address gang harm meant that a Regulatory Impact Analysis was not able to be provided when policy decisions were agreed by Cabinet. Accordingly, a Supplementary Analysis Report was prepared for consideration by Ministers.</p> <p>The Supplementary Analysis Report: Criminal Activity Interventions Legislation Bill was developed by the Ministry of Justice, New Zealand Police, and Ministry of Transport (on the transport specific options) in August 2022.</p> <p>This report will be published here: https://www.justice.govt.nz/justice-sector-policy/regulatory-stewardship/regulatory-impact-assessments/</p>	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	NO
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2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	NO
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Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO
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2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
<p>The Supplementary Analysis Report: Criminal Activity Interventions Legislation Bill discusses the potential costs and benefits of the provisions in the Bill.</p> <p>The marginal costs have been analysed to have a low overall impact, resulting in only a minimal increase in financial costs falling on government departments and the judiciary. One-off costs associated with being searched and responding to the exercise of the search power were identified as potentially having a medium impact due to likely legal costs and engagement in court proceedings.</p> <p>Identified benefits would be increased public safety from a reduction in the harm caused by organised crime, and more effective and efficient policing.</p>	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	YES
(b) the nature and level of regulator effort put into encouraging or securing compliance?	YES
<p>In relation to the Part 4 amendments prohibiting people conducting cash transactions over a threshold value for certain items, the potential costs and benefits will be impacted by the level of compliance and the nature and level of regulator effort put into encouraging or securing compliance.</p> <ul style="list-style-type: none"> • With respect to high-value dealers, we anticipate that compliance levels will increase in line with the level of effort that the relevant regulator (DIA) puts into supervising the prohibition and thus the overall benefits. However, regulator effort will also increase the costs borne by the regulator, particularly given the inherent difficulties associated with supervising the high-value dealer sector resulting from the opacity of the sector. • With respect to other persons in trade, the level of compliance with the prohibition will directly impact the potential benefits of the policy. However, these persons will not meet the definition of reporting entity in the AML/CFT Act, and there will be no expectation or requirement for DIA to supervise these persons. Nevertheless, we anticipate that the level of enforcement of the obligation will impact the extent to which these persons comply with the prohibition. <p>For more information about DIA's approach to supervision, please see: https://www.dia.govt.nz/diawebsite.nsf/Files/AML-CFT-2022/\$file/DIA%E2%80%99s-approach-to-regulation-of-AML-CFT.pdf. See also: https://www.dia.govt.nz/diawebsite.nsf/Files/AML-CFT-2020/\$file/AML-CFT-DIA-Regulatory-Framework-February-2020.pdf</p> <p>For other provisions in the Bill, it is more difficult to assess, as the relationship between the regulator and the nature of offending addressed by the Bill is not comparable with typical regulatory systems.</p>	

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?

The policies in relation to banning cash transactions for all persons in trade, including high value dealers, relate to Recommendations 22 and 23 of the Financial Action Task Force's (FATF) *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation* ("FATF Recommendations"). Recommendations 22 and 23 requires that dealers in precious metals and stones (which have certain AML/CFT obligations) conduct customer due diligence on cash transactions exceeding USD/EUR 15,000, keep records of transactions, and report suspicious activities or transactions.

The FATF assessed New Zealand to partially comply with Recommendations 22 and 23 during [New Zealand's Mutual Evaluation](#). If the value of the prohibition is set at NZD 10,000 or lower, the prohibition on banning cash transactions has the potential to address some of the deficiencies identified by the FATF by preventing the risky transactions from occurring in the first place.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

Although there was no consultation with Māori on the proposals in the Bill due to time constraints, officials consulted with relevant government agencies and analysed the proposals in this Bill against the principles of the Treaty of Waitangi and the Crown's Treaty obligations.

Officials have identified strong Māori interests in some of the proposals, particularly those which target gang activity. Māori are likely to be disproportionately affected by the proposals as they are both more likely to be gang members (three-quarters of known adult gang members in Aotearoa are Māori men) and the victims of gang harm. Furthermore, the fundamental rights involved necessarily impact the relationship between Māori and the Crown.

As such, the proposals potentially support the Crown's duty to actively protect Māori from harm, while potentially undermining the principle of equity. Further consultation would provide greater certainty that any potential positive effects for Māori are likely to outweigh the negative.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?

YES

Advice provided to the Attorney-General, or a section 7 report of the Attorney-General, is generally expected to be available on the Ministry of Justice's website upon introduction of a Bill. Such advice, or reports, will be accessible on the Ministry's website at <https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/section-7-reports/>

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	YES
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	YES
<p>(a) New section 308A creates a new offence in the Crimes Act 1961 of up to five years' imprisonment for discharging a firearm with the intent to intimidate. Consequential amendments are made to the Arms Act 1983 and Sentencing Act 2002 to disqualify a person from holding a firearms licence if within the previous 10 years they have been convicted, or been released from custody after being convicted, of an offence against new section 308A of the Crimes Act 1961. A firearms prohibition order may also be made against the offender. A further consequential amendment is made to the Criminal Investigations (Bodily Samples) Act 1995 to require any person (including a young person) who is being detained for committing, or who is suspected of having committed, an offence against new section 308A of the Crimes Act 1961, to give a bodily sample for the purpose of confirming or disproving their involvement in the commission of the offence.</p> <p>Section 96 of the Land Transport Act 1998 is being amended to require an enforcement officer to seize and impound a motor vehicle involved in reckless or dangerous driving.</p> <p>Amendments to the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 provide that it is an offence to contravene new section 67A (prohibiting certain cash transactions), and a person may be subject to a civil pecuniary penalty for failing to comply with new section 67A. People are also criminally liable, under section 91 of the principal Act, if they knowingly or recklessly engaged in the conduct that constituted the failure (however, a court may not impose both civil and criminal penalties on a person in relation to the same or substantially similar conduct).</p> <p>(b) The new gang conflict warrant, to search for weapons, under the Search and Surveillance Act 2012 requires the authorisation of a District Court or High Court Judge before any of the powers may be exercised by Police.</p> <p>The new cash seizure power under the same Act provides for a District Court Judge to (i) approve Police holding cash for specified periods for investigative purposes and (b) to consider applications from people claiming to be entitled to the cash for its return.</p>	

3.4.1. Was the Ministry of Justice consulted about these provisions?	NO
The provisions were developed by the Ministry of Justice, in conjunction with New Zealand Police and the Ministry of Transport.	

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	YES
Consequential amendments to the Criminal Investigations (Bodily Samples) Act 1995 by clauses 13–14 of the Bill create provisions related to the collection and storage of a bodily sample for the purpose of confirming or disproving involvement in an offence. Any DNA profile derived from the bodily sample may be stored at a DNA profile databank.	

3.5.1. Was the Privacy Commissioner consulted about these provisions?	YES
The Office of the Privacy Commissioner was informed about this consequential amendment.	

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
<p>The following departments have been involved in developing the policy and have been consulted: New Zealand Police, Ministry of Transport, and Crown Law. The Department of the Prime Minister and Cabinet (DPMC) was consulted on the new warrant and search powers only. There has been minimal consultation with other agencies on this part due to time constraints.</p> <p>Due to time constraints, consultation has been limited to government officials. Officials will consult with key Māori organisations and communities throughout the progression of this legislation, particularly throughout the select committee process.</p>	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	NO
Officials have worked closely with relevant agencies to ensure that the provisions in the Bill are workable and can be operationalised.	

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
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Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
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Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
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Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO
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Significant decision-making powers

4.6. Does this Bill 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>Part 2 of the Bill expands the powers of enforcement officers to seize and impound a motor vehicle where the driver is involved in reckless or dangerous driving. This is required to ensure the safety of other road users. Clause 17, amending section 102 of the Land Transport Act 1998, would mitigate potential adverse effects (the owner did not know and could not reasonably be expected to know that the operator of the vehicle would drive recklessly/dangerously, or the owner took all reasonable steps to prevent the operator of the vehicle from driving recklessly/dangerously).</p> <p>Part 3 of the Bill, amending the Search and Surveillance Act 2012, enables Police to apply for a warrant to search and seize weapons from specified places and vehicles where a gang conflict exists or where a gang conflict is likely to occur. This is necessary to reduce the risk of harm to people or property. A warrant may only be granted if a Judge is satisfied that a gang conflict exists and/or is likely to occur in the specified area, and the issuing of a warrant may reduce the risk of harm to people or property. A warrant to search non-private premises may only be granted if a Judge is satisfied that there are reasonable grounds to suspect that the premises are being used by gang members to conduct gang-related activities involving weapons. The exercise of the powers authorised by warrant may result in the seizure and destruction of lawfully possessed weapons used in the gang conflict.</p> <p>Part 5 of the Bill, also amending the Search and Surveillance Act 2012, enables the seizure of cash found in suspicious circumstances which is believed to be of or over \$10,000 in value. This power is necessary to intercept the unlawful proceeds of crime and prevent money laundering. Police have a defined period of time in which to conclude their investigation (or request an extension to investigate) the origins of the cash. Cash with legitimate origin must be returned. The person from whom the cash was seized, or the owner of the cash, may also apply to the District Court for the return or release of the cash.</p>	

Powers to make delegated legislation

4.7. Does this Bill 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
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4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
The Bill provides a new regulation-making power under the Search and Surveillance Act 2012 to enable the Governor-General to adjust the \$10,000 NZD 'cash seizure threshold amount' (in new proposed section 123A(1)).	

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	YES
The new gang conflict warrant is novel in that it does not require any suspicion as to the criminal conduct of any individual or that evidential material of any offending will be found by exercising the permitted search powers. The nature of the new warrant powers is to search for and seize weapons to prevent harm from escalating.	