

Departmental Disclosure Statement

Gangs Legislation Amendment Bill

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.

19 February 2024.

Contents

Contents..... 2
Part One: General Policy Statement..... 3
Part Two: Background Material and Policy Information 5
Part Three: Testing of Legislative Content..... 7
Part Four: Significant Legislative Features 9

Part One: General Policy Statement

The Gangs Legislation Amendment Bill (the **Bill**) aims to reduce the harm caused by gangs and make communities safer. Gangs engage in criminal activities, such as drug trafficking and violence as part of inter-gang rivalries. This Bill responds to the recorded growth in gang members and the associated escalation in gang related violent crime. Public confidence in law and order is undermined by high-visibility instances of gang-crime and anti-social behaviour, such as public intimidation during gang runs.

This Bill is an omnibus Bill introduced under Standing Order 267(1)(a). That Standing Order provides that an omnibus Bill to amend more than 1 Act may be introduced if the amendments deal with an interrelated topic that can be regarded as implementing a single broad policy. The single broad policy implemented by the amendments in this Bill is to improve public confidence in law and order through new offences and police powers targeting gangs.

The Bill gives effect to the Coalition government 100-day plan to restore law and order and ensure New Zealanders are safer in their communities. The focus of the Bill is to reduce the harmful behaviours engaged in by gangs and disincentivise gang membership. It will give police a range of new powers to disrupt and crackdown on gang crime. The Bill—

- prohibits the display of gang insignia in public, with a new criminal offence; and
- creates a new dispersal power to stop gang members gathering in public, which requires specified people to leave an area and not associate in public for 7 days; and
- creates a new non-consorting order to stop specified gang offenders from consorting, which requires specified people not to associate or communicate for 3 years; and
- amends the Sentencing Act 2002 to make gang membership an aggravating factor at sentencing.

Gang insignia displayed in public may cause some people to feel fearful or intimidated. The display of gang insignia as a status symbol may also assist gangs in marketing themselves to potential prospects and future recruits. As gang members are readily identifiable by their insignia, the display of insignia may exacerbate inter-gang rivalries that eventuate into gang violence in public spaces.

The Bill provides for the issue of dispersal notices, which are a tool that can be utilised by the Police to disrupt gatherings that may escalate into criminal behaviour. Gangs gathering in public places can cause fear in communities and risk harm to the public, both of which can undermine public confidence in law and order.

Offending such as drug trafficking or violent inter-gang conflict (including assaults or shootings) are often preceded by coordination and planning among the relevant gang members. The Bill provides for a non-consorting order to be made by the court to prevent specified gang offenders communicating and associating to plan and commit crimes.

Making gang membership an aggravating factor at sentencing is intended to make sentences more severe for gang members. The increase in punishment is intended to publicly denounce and deter harmful gang behaviour and gang membership.

It is intended that this Bill be divided into separate Bills at the committee of the whole House stage, as follows:

- *Parts 1 to 4* will become the Gangs Bill:
- *Part 5*, which amends the Sentencing Act 2002, will become the Sentencing Amendment Bill.

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?	YES
<ul style="list-style-type: none"> • Toward an understanding of Aotearoa New Zealand’s adult gang environment, full report, Prime Minister’s Chief Science Advisor, June 2023. • The rise and development of gangs in New Zealand, PhD Thesis, Jarrod Gilbert, University of Canterbury – Sociology, 2010. • Making Gang Laws in a Panic: Lessons from the 1990s and Beyond, full report, Jarrod Gilbert, New Zealand Law Foundation, May 2022. • Towards a Humane and Effective Criminal Justice System: Evidence and Issues Paper, Ministry of Justice, 2017 internal report. • The consorting law: Report on the operation of Part 3A, Division 7 of the Crimes Act 1900, Ombudsman, New South Wales, April 2016. • Report of the Queensland Organised Crime Commission of Inquiry, Chapter 2.2: Outlaw motorcycle gang criminal activity, October 2015. • Proactive release of: the Implementation of the Transnational Organised Crime Strategy (2020-2025) (December 2022), and Resilience to Organised Crime in Communities papers (September 2020), New Zealand Police. • The last defence against gang crime: Exploring community approaches to gang member reintegration – part I, Armon J. Tamatea, Practice: The New Zealand Corrections Journal, November 2017. • “I know our people”: Exploring community approaches to gang member reintegration II, Armon Tamatea, Practice: The New Zealand Corrections Journal, Volume 6 Issue 1, July 2018. • New Zealand gang membership: A snapshot of recent trends, Paul Bellamy, Parliamentary Library research paper, July 2022. • Using evidence to build a better justice system: The challenge of rising prison costs, full report, Prime Minister’s Chief Science Advisor, March 2018. • Australian outlaw motorcycle gang involvement in violent and organised crime, Morgan et al., 5 February 2020, Trends & Issues in Crime and Criminal Justice (Issue 586), Australian Institute of Criminology. • The Dutch approach to outlaw motorcycle gangs, Teun van Ruitenburg and Arjan Blokland, Australian Institute of Criminology, Trends and issues in crime and criminal justice, No. 655 September 2022. • Cross-jurisdictional review of Australian legislation governing outlaw motorcycle gangs. Bartels, Henshaw, & Taylor, 2021, <i>Trends in Organized Crime</i>, 24(3), 343–360. • An examination of outlaw motorcycle gangs and their involvement in the illicit drug market and the effectiveness of anti-association legislative responses, Goldsworthy & McGillivray, March 2017, <i>The International Journal of Drug Policy</i>, Vol 41, 110-117. • The use and impact of dispersal orders: Sticking plasters and wake-up calls, Adam Crawford and Stuart Lister, Joseph Rowntree Foundation, January 2007. • Police move-on powers: A CMC review of their use, Queensland Crime and Misconduct Commission, December 2010. • Move-on powers: New paradigms of public order policing in Queensland, Helen Punter, January 2011, <i>Criminal Law Journal</i> 35 (6) pgs 386-397. • All The Right Moves? Police ‘move-on’ powers in Victoria, James Farrell, 1 March 2009, <i>Alternative Law Journal</i>, Volume 34, Issue 1. 	

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><i>Regulatory Impact Statement: Responding to Gang Harms</i>, Ministry of Justice, 14 February 2024. This impact analysis is available on:</p> <ul style="list-style-type: none"> the Ministry of Justice's website: https://www.justice.govt.nz/justice-sector-policy/regulatory-stewardship/regulatory-impact-assessments/ and The Treasury's website: http://www.treasury.govt.nz/publications/informationreleases/ris. 	

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
<p>The RIS identified above did not meet the threshold for receiving an independent opinion on the quality of the RIS from the RIA Team based in the Treasury. The Ministry of Justice provided an internal quality assurance panel.</p>	

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>Analysis of the expected benefits and costs for the policy is available in the RIS.</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>As noted in the RIS, the cumulative effect may not be easily captured when analysing the proposals in isolation. For example, compliance with the insignia ban could make it harder to enforce the dispersal notices, whereas defiance of the ban may lead to more prosecutions. Compliance will be affected by Police's operational priorities and how they use the powers.</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?
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Crown Law will vet the Bill for consistency with the New Zealand Bill of Rights Act 1990 (NZBORA). If the vet, or subsequently the courts, determine that there is an inconsistency, this is likely to impact New Zealand's compliance with our international commitments under the International Covenant on Civil and Political Rights (which NZBORA affirms).
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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, 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.
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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
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Advice provided to the Attorney-General, or a section 7 report of the Attorney-General, is expected to be available on the Ministry of Justice's website upon introduction of a Bill at:
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- [Advice on consistency of Bills with the Bill of Rights Act](#); or
- [Section 7 reports](#).

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
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(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	YES
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(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	NO
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Offences are found in clauses 7, 17, and 23.
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3.4.1. Was the Ministry of Justice consulted about these provisions?	NO
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The Ministry of Justice led the policy development of the Bill.

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
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Clause 11 authorises the Police to obtain biographical details.

3.5.1. Was the Privacy Commissioner consulted about these provisions?	NO
<p>The Privacy Commissioner was not consulted during the policy approval process, but he has been able to review the draft Bill.</p> <p>The Privacy Commissioner had noted concerns about the privacy impacts of this Bill. In particular, monitoring compliance of non-consorting order provisions risk infringing on privacy of communications not covered by the non-consorting order, such as the communications with whānau and family members. These primarily relate to New Zealand Police's implementation of the proposals, which will be subject to the relevant requirements of the Privacy Act 2020. The Commissioner has indicated that his Office is available to support officials in the implementation process, to ensure privacy rights are appropriately safeguarded.</p>	

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?	NO
<p>There has been no external consultation on the Bill as it forms part of the Government's 100-Day Plan.</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
<p>Officials have worked closely with relevant agencies to address any implementation issues arising from the provisions in the Bill that give effect to the policies.</p>	

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?	YES
The Bill provides for gang insignia that are used in breach of the display of gang insignia in public places offence to be forfeited to the Crown and destroyed or otherwise disposed of as directed by the court (clause 7).	

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?	YES
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO
The prohibition on the display of gang insignia in public place in clause 7 is a strict liability offence.	

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
The Bill provides: <ul style="list-style-type: none">• Police with the ability to issue a dispersal notice. The criteria for making this decision are set out in legislation and a review mechanism is included.• the Court with the power to make a non-consorting order. Existing appeal rights in the court apply.• the Governor-General to make regulations, on recommendation of the Minister of Police, to amend Schedule 2 to keep up-to-date the list of identified gangs that can be subject to the powers in the Bill.	

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?	YES
Clause 30 authorises Schedule 2 of the Act to be amended by Order in Council. This is necessary to ensure that the list of gangs identified by the Act can be kept up to date.	

4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
Clause 31 is a regulation making power for matters that the Act says may be provided for by regulations or anything necessary for carrying out, or giving full effect to, this Act. This includes prescribing any other information that must be included in a dispersal notice when issued by Police, beyond that provided in the statute.	

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?	NO
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