

Gangs Legislation Amendment Bill

Government Bill

Explanatory note

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 the number of gang members and the associated escalation in gang-related violent crime. Public confidence in law and order is undermined by highly visible instances of gang crime and antisocial 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 Bill is to improve public confidence in law and order through creating new offences and Police powers targeting gangs.

The Bill gives effect to the Government's 100-day plan to restore law and order and ensure that 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 crack down on gang crime. The Bill—

- prohibits the display of gang insignia in public places by creating 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 with each other 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 lead to 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 co-ordination and planning among the relevant gang members. The Bill provides for a non-consorting order to be made by the District Court to prevent specified gang offenders from communicating and associating with each other 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.

Departmental disclosure statement

The Ministry of Justice is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2024&no=23>

Regulatory impact statement

The Ministry of Justice produced a regulatory impact statement on 14 February 2024 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact statement can be found at—

- <https://www.justice.govt.nz/justice-sector-policy/regulatory-stewardship/regulatory-impact-assessments/>
- <https://treasury.govt.nz/publications/informationreleases/ris>

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause. It provides that the Bill comes into force 6 months after Royal assent.

Part 1

Preliminary provisions

Clause 3 sets out the purpose of the Bill.

Clause 4 defines terms used in the Bill. Key terms defined include—

- gang, which re-enacts the current definition of that term set out in section 4 of the Prohibition of Gang Insignia in Government Premises Act 2013 (the **2013 Act**), except that the Bill sets out the list of identified gangs in a schedule:
- gang insignia, which re-enacts the current definition of that term set out in section 4 of the 2013 Act and specifically excludes tattoos:
- gang member, which shifts the definition of that term currently set out in section 18A of the Search and Surveillance Act 2012 into the Bill and specifically includes any individual who is a prospective member or nominee of a gang:
- public place, which is based on the definition of that term set out in section 2 of the Summary Offences Act 1981, but excludes an online place (for example, an Internet site or online application):
- specified gang offender, which means a person who is a gang member and who is subject to a firearms prohibition order under the Arms Act 1983 or is convicted of a serious offence.

Clause 5 provides for the transitional, savings, and related provisions (if any) set out in *Schedule 1*.

Clause 6 provides that the Bill, when enacted, binds the Crown.

Part 2

Prohibition on display of gang insignia in public places

Part 2 (clauses 7 and 8) sets out the prohibition on the display of gang insignia in public places.

Clause 7 provides that it is an offence to display gang insignia at any time in a public place. A person who commits the offence is liable on conviction to a term of imprisonment not exceeding 6 months or a fine not exceeding \$5,000. *Clause 7(3)* re-enacts

section 7(2) and (3) of the 2013 Act and provides that if a person pleads guilty to, or is convicted of, an offence against this clause, the gang insignia concerned is forfeited to the Crown and may be destroyed or disposed of as the court directs.

Clause 8 provides that the offence set out in *clause 7* is not committed if the display of gang insignia in a public place was for or relates to specified purposes and was, in the circumstances, reasonable for that purpose.

Part 3

Dispersal notices and non-consorting orders

Part 3 (clauses 9 to 26) sets out provisions to stop gang members from gathering in public places and prevent specified gang offenders from consorting with each other.

Subpart 1—Dispersal notices

Clause 9 provides a constable with the power to issue a dispersal notice to a person if they have reasonable grounds to suspect the person is one of 3 or more gang members who are gathering in a public place and reasonable grounds to believe that issuing the notice is necessary to avoid disrupting activities of other members of the community. A dispersal notice may be issued while the gathering is taking place or after it has ended. *Clause 9(3)* limits the power to issue a dispersal notice in relation to any group of persons who are gathering in a public place for the primary purpose of demonstrating support for, or opposition to, or otherwise publicising, any point of view, cause, or campaign.

Clause 10 sets out requirements relating to the service of dispersal notices.

Clause 11 allows a constable, for the purposes of issuing a dispersal notice while a gathering is taking place, to detain a person at the place in order to take the person's biographical details and issue and serve the dispersal notice on the person. A person may be arrested without warrant if, after being cautioned, the person fails or refuses to remain at the place where the person is detained or fails or refuses to give their biographical details on demand or gives biographical details that the constable reasonably believes to be false.

Clause 12 requires that if a dispersal notice is issued and served on a person while a gathering is taking place, the person issued with the notice and all or any of the named persons specified in the notice (**named persons**) must disperse by immediately leaving the public place (or part of the public place) specified by the constable or go beyond a reasonable distance from the public place.

Duration and terms of notice

Clause 13 provides that a dispersal notice issued to a person takes effect when it is served and remains in effect (unless sooner revoked) for a period of 7 days starting on the day on which the gathering to which it relates took place.

Clause 14 sets out the terms of a dispersal notice.

Clause 15 limits dispersal notices. It provides that a dispersal notice may not prevent any of the persons subject to the notice from associating with each other in a public place if they are members of the same immediate family or are doing so for certain purposes.

Clause 16 enables a person issued with a dispersal notice to apply for a variation of the notice to allow the person to associate with a named person in a public place to attend a specified tangi or funeral or to participate in any other specified lawful activity.

Offence

Clause 17 sets out an offence for breaching a dispersal notice. A person who commits the offence is liable on conviction to a term of imprisonment not exceeding 6 months or a fine not exceeding \$5,000.

Review of notice

Clause 18 enables a person issued with a dispersal notice to apply to the Commissioner of Police (the **Commissioner**) for a review of the notice if the person believes that the notice was not validly issued. If, after reviewing the notice, the Commissioner is satisfied that the dispersal notice was not validly issued, the Commissioner must revoke the notice.

Subpart 2—Non-consorting orders

Clause 19 provides that the District Court may, on hearing an application by the Commissioner, make non-consorting orders in respect of specified gang offenders in certain circumstances.

Duration and terms of order

Clause 20 provides that a non-consorting order applies for 3 years starting on the date on which it is made.

Clause 21 sets out the terms of non-consorting orders.

Clause 22 limits non-consorting orders. It provides that a non-consorting order may not prevent a specified gang offender from consorting with another specified gang offender if they are members of the same immediate family or are doing so for certain purposes.

Offence

Clause 23 sets out an offence for breaching a non-consorting order. A person who commits the offence is liable on conviction to a term of imprisonment not exceeding 5 years or a fine not exceeding \$15,000.

Variation and discharge of order

Clause 24 provides that the District Court may vary or discharge a non-consorting order on application by the Commissioner or a person subject to the order.

Clause 25 provides that the District Court may, on application from a person subject to a non-consorting order, vary the order to allow the person to attend a specified tangi or funeral or to participate in any other specified lawful activity.

Proceedings

Clause 26 clarifies that proceedings in respect of non-consorting orders are civil proceedings.

Part 4 **Miscellaneous provisions**

Part 4 (clauses 27 to 34) contains miscellaneous provisions.

Standard of proof

Clause 27 provides that the standard of proof with respect to certain questions of fact must be decided on the balance of probabilities.

Filing charging document

Clause 28 re-enacts section 9 of the 2013 Act, which provides that only a constable may file a charging document for an offence against *Parts 1 to 4* of the Bill.

Application of Evidence Act 2006

Clause 29 re-enacts section 6(3) of the 2013 Act, which provides that a Judge may apply section 128 of the Evidence Act 2006 (which relates to notice of uncontroverted facts) in deciding whether a sign, symbol, or representation is gang insignia.

Secondary legislation

Clause 30 re-enacts (with modification) section 5 of the 2013 Act, which provides that the Governor-General may, by Order in Council made on the recommendation of the Minister of Police, amend the list of gangs set out in *Schedule 2* to add or remove the name of an organisation, association, or group of persons identified as a gang for the purposes of the Bill. *Clause 30(2) and (3)* sets out the criteria for making a recommendation to add or remove a gang from the list.

Clause 31 provides for regulations to be made for the purposes of the Bill.

Amendment to Legal Services Act 2011

Clause 32 provides that *clause 33* amends the Legal Services Act 2011.

Clause 33 amends the definition of specified application set out in section 4(1). The effect of the amendment is to ensure that a person who is the respondent to an application for a non-consorting order or subject to a non-consorting order can access legal aid in relation to the application or proceedings.

Repeals, revocation, and consequential amendments

Clause 34 repeals the 2013 Act and the Wanganui District Council (Prohibition of Gang Insignia) Act 2009. *Clause 34(3)* revokes the regulations made under the 2013 Act, which identified further gangs for the purposes of the 2013 Act. The gangs previously identified in those regulations are included in *Schedule 2* of the Bill.

Clause 35 consequentially amends the legislation specified in *Schedule 3* as set out in that schedule.

Part 5**Amendments to Sentencing Act 2002**

Part 5 (clauses 36 to 38) makes related amendments to the Sentencing Act 2002.

Clause 36 provides that *Part 5* amends the Sentencing Act 2002.

Clause 37 amends section 9, which sets out aggravating and mitigating factors a court must take into account when sentencing or otherwise dealing with an offender. The amendment replaces the aggravating factor set out in section 9(1)(hb) with a new provision that removes the requirement for the court to establish the nature and extent of any connection between the offender and the offender's participation in an organised criminal group (within the meaning of section 98A of the Crimes Act 1961) to ensure that consideration of a person's gang membership as an aggravating factor in sentencing is not unduly limited.

Clause 38 and *Schedule 4* insert *new Part 5* into Schedule 1AA, which contains transitional, savings, and related provisions. *New Part 5* provides that *new section 9(1)(hb)* of the Sentencing Act 2002 applies only to proceedings commenced on or after *clause 37* comes into force.

Hon Paul Goldsmith

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Contents

		Page
1	Title	3
2	Commencement	3
Part 1		
Preliminary provisions		
3	Purpose	3
4	Interpretation	3
5	Transitional, savings, and related provisions	6
6	Act binds the Crown	6
Part 2		
Prohibition on display of gang insignia in public places		
7	Prohibition on display of gang insignia in public place	6
8	Exceptions to prohibition	6
Part 3		
Dispersal notices and non-consorting orders		
Subpart 1—Dispersal notices		
9	Power to issue dispersal notice	7
10	Service of dispersal notice	7
11	Power to detain for purposes of issuing and serving notice	7
12	Requirement to disperse	8
<i>Duration and terms of notice</i>		
13	Duration of dispersal notice	8
14	Terms of dispersal notice	8
15	Limits on dispersal notices	9
16	Variation of dispersal notice for specified reasons	9

Gangs Legislation Amendment Bill

	<i>Offence</i>	
17	Breach of dispersal notice	10
	<i>Review of notice</i>	
18	Review of dispersal notice	10
	Subpart 2—Non-consorting orders	
19	Power to make non-consorting orders	10
	<i>Duration and terms of order</i>	
20	Duration of non-consorting order	11
21	Terms of non-consorting order	11
22	Limits on non-consorting orders	11
	<i>Offence</i>	
23	Breach of non-consorting order	11
	<i>Variation and discharge of order</i>	
24	Variation or discharge	12
25	Variation of non-consorting order for specified reasons	12
	<i>Proceedings</i>	
26	Civil proceedings	12
	Part 4	
	Miscellaneous provisions	
	<i>Standard of proof</i>	
27	Standard of proof	12
	<i>Filing charging document</i>	
28	Filing charging document for offence	13
	<i>Application of Evidence Act 2006</i>	
29	Application of Evidence Act 2006	13
	<i>Secondary legislation</i>	
30	Power to amend Schedule 2 by Order in Council	13
31	Regulations	13
	<i>Amendment to Legal Services Act 2011</i>	
32	Principal Act	14
33	Section 4 amended (Interpretation)	14
	<i>Repeals, revocation, and consequential amendments</i>	
34	Repeals and revocation	14
35	Consequential amendments	14

Part 5		
Amendments to Sentencing Act 2002		
36	Principal Act	14
37	Section 9 amended (Aggravating and mitigating factors)	14
38	Schedule 1AA amended	15
Schedule 1		16
Transitional, savings, and related provisions		
Schedule 2		17
Identified gangs		
Schedule 3		19
Consequential amendments		
Schedule 4		20
New Part 5 inserted into Schedule 1AA of Sentencing Act 2002		

The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Gangs Legislation Amendment Act **2024**.
- 2 Commencement**
This Act comes into force on the day that is 6 months after Royal assent. 5

Part 1
Preliminary provisions

- 3 Purpose**
The purpose of this Act is to reduce the ability of gangs to operate and cause fear, intimidation, and disruption to the public by— 10
- (a) prohibiting the display of gang insignia in public places:
 - (b) providing for the issue of dispersal notices to stop gang members from gathering in public places:
 - (c) providing for the making of non-consorting orders to prevent specified gang offenders from associating or communicating with each other for 3 years. 15
- 4 Interpretation**
In this Act, unless the context otherwise requires,—
associate, with another person, means to be in the company of the other person

- communicate**, with another person, means to communicate directly or indirectly with the other person by any means (for example, telephone, email, or any other form of electronic communication)
- consort**, in respect of a person who is a specified gang offender, means to associate or communicate (or both) with another specified gang offender or offenders 5
- constable** has the same meaning as in section 4 of the Policing Act 2008
- criminal activity** means an activity that constitutes the commission of an offence
- electronic address** includes an email address 10
- gang** means any organisation, association, or group of persons that is specified by a name that is the same as, or substantially similar to, that of any organisation, association, or group of persons identified in **Schedule 2**
- gang insignia**—
- (a) means a sign, symbol, or representation commonly displayed to denote membership of, an affiliation with, or support for a gang, not being a tattoo; and 15
- (b) includes any item or thing to which a sign, symbol, or representation referred to in **paragraph (a)** is attached or affixed (for example, clothing or a vehicle) 20
- gang member** includes the following:
- (a) an individual who is a prospective member or nominee:
- (b) an individual who demonstrates affiliation to a gang by displaying the gang’s insignia:
- (c) an individual who is involved in the affairs of a gang for the likely purpose of participating in a criminal activity 25
- (d) an individual who is involved in the affairs of a gang for the likely purpose of participating in a criminal activity
- government agency** means—
- (a) a public service agency (as defined in section 5 of the Public Service Act 2020):
- (b) a Crown entity (within the meaning of section 7 of the Crown Entities Act 2004): 30
- (c) the New Zealand Police:
- (d) the New Zealand Defence Force
- immediate family**, in relation to a person,—
- (a) means a member of the person’s family, whānau, or other culturally recognised family group, who is in a close relationship with the person; and 35
- (b) to avoid doubt, includes—

- (i) a spouse, civil union partner, or de facto partner:
- (ii) a child, whāngai, or stepchild:
- (iii) a brother, sister, stepbrother, or stepsister:
- (iv) a parent, person who acts as parent of a whāngai, or step-parent:
- (v) a grandparent: 5
- (vi) a parent of the person's child

local authority has the same meaning as in section 5(1) of the Local Government Act 2002

named person means a person named in a dispersal notice as a person with whom the person issued with the notice must not associate in a public place while the notice is in effect 10

personal service, in relation to a dispersal notice, means serving the notice by handing it to the person or, if the person refuses to accept it, leaving the notice near the person and bringing it to the person's attention

place includes any land, building, premises, or vehicle 15

prospective member or nominee, of a gang, means a person who is a gang member but who does not have full membership status

public place—

- (a) means a place that, at any material time, is open to or is being used by the public, whether or not on payment of a charge, and whether or not any owner or occupier of the place is lawfully entitled to exclude or reject any person; and 20
- (b) includes any vehicle, craft, or vessel that carries or is available to carry passengers for reward (for example, an aircraft, a hovercraft, a ship, a ferry, a train, or a motor vehicle); but 25
- (c) does not include any publicly accessible online place (for example, an Internet site or an online application or similar)

qualified constable means a constable who is of or above the level of position of sergeant

serious offence means a category 3 offence or a category 4 offence (as defined in section 6(1) of the Criminal Procedure Act 2011) 30

specified gang offender means a person—

- (a) who is a gang member; and
- (b) who, on or after the commencement of this Act,—
 - (i) is made subject to a firearms prohibition order under section 39A of the Arms Act 1983; or 35
 - (ii) is convicted of—
 - (A) a serious offence; or

- (B) an offence under the law of another jurisdiction that, if committed in New Zealand, would be a serious offence.

Compare: 2012 No 24 s 18A; 2013 No 56 s 4

5 Transitional, savings, and related provisions

The transitional, savings, and related provisions (if any) set out in **Schedule 1** have effect according to their terms. 5

6 Act binds the Crown

This Act binds the Crown.

Part 2

Prohibition on display of gang insignia in public places 10

7 Prohibition on display of gang insignia in public place

- (1) A person commits an offence if the person, without reasonable excuse, displays gang insignia at any time in a public place.
- (2) A person who commits an offence against **subsection (1)** is liable on conviction to a term of imprisonment not exceeding 6 months or a fine not exceeding \$5,000. 15
- (3) If a person pleads guilty to, or is convicted of, an offence against **subsection (1)**, the gang insignia concerned—
- (a) is forfeited to the Crown; and
 - (b) may be destroyed or otherwise disposed of as the court, either at the time of the conviction for the offence or on a subsequent application, directs. 20

Compare: 2009 No 1 (L) ss 12, 13; 2013 No 56 ss 6, 7(2), (3)

8 Exceptions to prohibition

Section 7 does not apply if the display of gang insignia in a public place—

- (a) was for or relates to— 25
 - (i) a genuine artistic or educational purpose:
 - (ii) media reporting of news, observations on news, or current affairs:
 - (iii) the broadcast of a documentary:
 - (iv) law enforcement:
 - (v) providing training or information to persons carrying out work for a government agency or local authority; and 30
- (b) was, in the circumstances, reasonable for that purpose.

Part 3 Dispersal notices and non-consorting orders

Subpart 1—Dispersal notices

- 9 Power to issue dispersal notice**
- (1) A constable may issue a dispersal notice to a person if they have reasonable grounds— 5
- (a) to suspect that the person is one of 3 or more gang members who are gathering in a public place; and
 - (b) to believe that the issue of the notice is necessary to avoid disrupting activities of other members of the community. 10
- (2) The dispersal notice—
- (a) must be in writing; and
 - (b) may be issued to any of the gang members attending the gathering—
 - (i) while the gathering is taking place; or
 - (ii) after the gathering has ended. 15
- (3) Nothing in this section applies in respect of any group of persons who are gathering in a public place for the primary purpose of demonstrating support for, or opposition to, or otherwise publicising, a point of view, cause, or campaign.
- Compare: 1981 No 113 s 5A(3)
- 10 Service of dispersal notice** 20
- (1) If a dispersal notice is issued to a person while the gathering to which it relates is taking place, the notice must be served on the person by personal service.
- (2) If a dispersal notice is issued to a person after the gathering to which it relates has ended, the notice may be served on the person by any of the following means: 25
- (a) personal service:
 - (b) sending it to a physical address or electronic address supplied by the person.
- 11 Power to detain for purposes of issuing and serving notice**
- (1) A constable who is proposing to issue a dispersal notice to a person under **section 9** while a gathering is taking place may detain the person at the place where the gathering is occurring for the period that is reasonably necessary to do 1 or more of the following: 30
- (a) take the person’s biographical details:
 - (b) issue the notice: 35
 - (c) serve the notice.

- (2) A person who is detained under **subsection (1)** may, after being cautioned, be arrested without warrant if the person—
- (a) fails or refuses to remain at the place where the person is detained; or
 - (b) fails or refuses to give their biographical details on demand, or gives any biographical details that the constable reasonably believes to be false. 5
- (3) In this section, **biographical details**, in relation to a person, means the person's—
- (a) name; and
 - (b) date of birth; and
 - (c) physical address; and 10
 - (d) electronic address (if available).

Compare: 1981 No 113 s 39(2); 1998 No 110 s 114(3), (6); 2018 No 46 s 32(1), (2)(b)

12 Requirement to disperse

- (1) This section applies if a dispersal notice is issued and served on a person while the gathering to which it relates is taking place. 15
- (2) A constable may require the person issued with the notice and all or any of the named persons—
- (a) to immediately leave the public place (or part of the public place) specified by the constable; or
 - (b) to go beyond a reasonable distance from the public place (or part of the public place) specified by the constable. 20

Duration and terms of notice

13 Duration of dispersal notice

- (1) A dispersal notice issued to a person takes effect when it is served on the person. 25
- (2) A dispersal notice remains in effect for a period of 7 days starting on the day on which the gathering to which it relates took place, unless the notice is sooner revoked under **section 18(4)**.

14 Terms of dispersal notice

- A dispersal notice must— 30
- (a) state the following information:
 - (i) the name and date of birth of the person to whom the notice is issued;
 - (ii) the date on which the notice was issued;
 - (iii) the date on which the gathering to which the notice relates took place: 35

- (iv) the address or location where the gathering to which the notice relates took place; and
 - (b) specify the name of each named person with whom the person must not associate in a public place while the notice is in effect; and
 - (c) include the following information: 5
 - (i) a statement that, unless sooner revoked, the notice remains in effect for a period of 7 days starting on the day on which the gathering to which it relates took place;
 - (ii) a statement that the notice does not prevent the person from associating with a named person in a public place if any of the circumstances specified in **section 15** apply: 10
 - (iii) a statement that associating with a named person in a public place while the notice is in effect constitutes an offence against **section 17**;
 - (iv) a statement that the person may apply for a review of the notice under **section 18**: 15
 - (v) the contact details of New Zealand Police where the person may apply for a review of the notice or for any variations to the notice to be considered:
 - (vi) any other information required by regulations. 20
- 15 Limits on dispersal notices**
- A dispersal notice may not prevent any of the persons subject to the notice from associating in a public place if they are—
- (a) members of the same immediate family; or
 - (b) doing so— 25
 - (i) because they are in legal custody, serving a sentence, appearing in court, subject to a court order, or subject to an order or conditions imposed by or under legislation; or
 - (ii) for work, education, or health care purposes.
- 16 Variation of dispersal notice for specified reasons** 30
- (1) A person issued with a dispersal notice may apply to a qualified constable to vary the terms of the notice to allow the person to associate with a named person in a public place in order to—
 - (a) attend a specified tangi or funeral; or
 - (b) participate in any other specified lawful activity. 35
 - (2) The application must be made—
 - (a) in writing; and
 - (b) during the period in which the dispersal notice is in effect.

- (3) The application must be decided and the decision must be communicated to the applicant within 72 hours after the application is made.

Offence

17 Breach of dispersal notice

- (1) A person commits an offence if the person— 5
- (a) has been served with a dispersal notice; and
- (b) knowingly, and without reasonable excuse, associates with a named person in a public place during the period in which the notice is in effect.
- (2) A person who commits an offence against **subsection (1)** is liable on conviction to imprisonment for a term not exceeding 6 months or a fine not exceeding \$5,000. 10

Review of notice

18 Review of dispersal notice

- (1) A person issued with a dispersal notice may apply to the Commissioner of Police for a review of the notice if the person believes that the notice was not validly issued in accordance with the requirements of this Act. 15
- (2) The application must be made—
- (a) in writing; and
- (b) during the period in which the dispersal notice is in effect.
- (3) The application must be decided and the decision must be communicated to the applicant within 72 hours after the application is made. 20
- (4) If, after reviewing the notice, the Commissioner of Police decides that the notice was not validly issued, the Commissioner must revoke the notice by giving written notice to the applicant.
- (5) The revocation takes effect on the date and at the time specified in the revocation notice. 25
- (6) A dispersal notice ceases to have effect if a decision is not made or is not communicated within the time frame specified in **subsection (3)**.

Subpart 2—Non-consorting orders

19 Power to make non-consorting orders 30

- (1) The District Court must, on hearing an application by the Commissioner of Police, make a non-consorting order in respect of a person if it—
- (a) has given notice of the application and the hearing to the person; and
- (b) is satisfied that—
- (i) the person is a specified gang offender; and 35

- (ii) the order would specify another specified gang offender or offenders with whom the person may not consort; and
 - (iii) the order would assist in disrupting or restricting the capacity of the person to engage in conduct that amounts to a serious offence.
- (2) The District Court may not make a non-consorting order in respect of a person if satisfied that the person has shown that its detrimental effects on the person outweigh its societal benefits. 5

Duration and terms of order

20 Duration of non-consorting order

A non-consorting order applies for 3 years starting on the date on which it is made. 10

21 Terms of non-consorting order

A non-consorting order must specify—

- (a) the name of the person to whom the order applies; and
- (b) the name of each specified gang offender with whom the person may not consort; and 15
- (c) the duration of the order.

22 Limits on non-consorting orders

A non-consorting order may not prevent a specified gang offender from consorting with another specified gang offender if they are— 20

- (a) members of the same immediate family; or
- (b) doing so—
 - (i) because they are in legal custody, serving a sentence, appearing in court, subject to a court order, or subject to an order or conditions imposed by or under legislation; or 25
 - (ii) for work, education, or health care purposes.

Offence

23 Breach of non-consorting order

- (1) A person commits an offence if the person—
- (a) is subject to a non-consorting order; and 30
 - (b) knowingly, and without reasonable excuse, breaches the order.
- (2) A person who commits an offence against **subsection (1)** is liable on conviction to imprisonment for a term not exceeding 5 years or a fine not exceeding \$15,000.

Compare: 2021 No 36 s 171; 2015 No 70 s 47 35

*Variation and discharge of order***24 Variation or discharge**

- (1) The District Court may vary or discharge a non-consorting order on application by—
- (a) the Commissioner of Police; or 5
 - (b) a person subject to the order.
- (2) The District Court must discharge a non-consorting order in respect of a person if satisfied that the person is no longer—
- (a) a gang member; and
 - (b) considered at risk of committing a serious offence. 10
- (3) A varied non-consorting order takes effect and expires, and may be varied or discharged, in the same way as one that has not been varied.
- Compare: 2019 No 79 s 27; 2002 No 10 s 107M(1), (4)

25 Variation of non-consorting order for specified reasons

- (1) The District Court may, on application by a person subject to a non-consorting order, vary the terms of the order to allow the person to— 15
- (a) attend a specified tangi or funeral; or
 - (b) participate in any other specified lawful activity.
- (2) The application must be determined as soon as practicable. 20
- Compare: 2019 No 79 s 15(4)

*Proceedings***26 Civil proceedings**

Proceedings in respect of non-consorting orders, other than those under **section 23**, are civil proceedings.

Part 4

25

Miscellaneous provisions*Standard of proof***27 Standard of proof**

- (1) This section applies to a question of fact arising in a proceeding—
- (a) that is a proceeding under this Act; and 30
 - (b) that is not a proceeding for an offence against this Act.
- (2) The question must be decided on the balance of probabilities.
- Compare: 2019 No 79 s 31

*Filing charging document***28 Filing charging document for offence**

Only a constable may file a charging document for an offence against this Act.

Compare: 2009 No 1 (L) s 15; 2013 No 56 s 9

Application of Evidence Act 2006

5

29 Application of Evidence Act 2006

(1) A Judge may apply section 128 of the Evidence Act 2006 in deciding whether a sign, symbol, or representation is gang insignia for the purposes of this Act.

(2) **Subsection (1)** is to avoid doubt and does not limit section 128 of the Evidence Act 2006.

10

Compare: 2013 No 56 s 6(3)

*Secondary legislation***30 Power to amend Schedule 2 by Order in Council**

(1) The Governor-General may, by Order in Council made on the recommendation of the Minister of Police, amend **Schedule 2** to—

15

(a) add the name of an organisation, association, or group of persons identified as a gang for the purposes of this Act to the schedule:

(b) remove the name of an organisation, association, or group of persons identified as a gang for the purposes of this Act from the schedule.

(2) The Minister of Police may not make a recommendation under **subsection (1)(a)** unless satisfied on reasonable grounds that the organisation, association, or group proposed to be identified has the following characteristics:

20

(a) a common name or common identifying signs, symbols, or representations; and

(b) its members, associates, or supporters individually or collectively promote, encourage, or engage in criminal activity.

25

(3) The Minister of Police may not make a recommendation under **subsection (1)(b)** unless satisfied on reasonable grounds that the organisation, association, or group previously identified no longer has the characteristics specified in **subsection (2)**.

30

(4) An order made under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Compare: 2013 No 56 s 5

31 Regulations

(1) The Governor-General may, by Order in Council, make regulations for all or any of the following purposes:

35

- (a) providing for anything that this Act says may or must be provided for by regulations; and
 - (b) providing for anything incidental that is necessary for carrying out, or giving full effect to, this Act.
- (2) Regulations made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements). 5

Amendment to Legal Services Act 2011

32 Principal Act

Section 33 amends the Legal Services Act 2011.

33 Section 4 amended (Interpretation) 10

In section 4(1), definition of **specified application**, after paragraph (cb), insert:

- (cc) by a person who is a respondent to an application under **subpart 2 of Part 3** of the **Gangs Legislation Amendment Act 2024**, or who is subject to an order under that Act, in respect of an application under that Act; or 15

Repeals, revocation, and consequential amendments

34 Repeals and revocation

- (1) The Prohibition of Gang Insignia in Government Premises Act 2013 (2013 No 56) is repealed.
- (2) The Wanganui District Council (Prohibition of Gang Insignia) Act 2009 (2009 No 1) (L) is repealed. 20
- (3) The Prohibition of Gang Insignia in Government Premises Regulations 2018 (LI 2018/64) are revoked.

35 Consequential amendments

Amend the legislation specified in **Schedule 3** as set out in that schedule. 25

Part 5

Amendments to Sentencing Act 2002

36 Principal Act

This **Part** amends the Sentencing Act 2002.

37 Section 9 amended (Aggravating and mitigating factors) 30

Replace section 9(1)(hb) with:

- (hb) that the offender was, at the time of the offending,—

-
- (i) a participant in an organised criminal group (within the meaning of section 98A of the Crimes Act 1961); or
 - (ii) involved in any other form of organised criminal association:

38 Schedule 1AA amended

In Schedule 1AA, after Part 4, insert the **Part 5** set out in **Schedule 4** of this Act. 5

Schedule 1
Transitional, savings, and related provisions

s 5

Part 1
Provisions relating to this Act as enacted

5

There are no transitional, savings, or related provisions in this Act as enacted.

Schedule 2 Identified gangs

ss 4, 30

1	Aotearoa Natives	
2	Bandidos MC	5
3	Black Power	
4	Comanchero Motorcycle Club	
5	Crips	
6	Devils Henchmen MC	
7	Epitaph Riders	10
8	Filthy Few MC	
9	Finks Motorcycle Club	
10	Forty-Five MC	
11	Full Blooded Islanders or by the abbreviation of that name, FBI (not being a branch, or an associated organisation, of the United States Federal Bureau of Investigation, also known as the FBI)	15
12	Greasy Dogs MC	
13	Head Hunters MC	
14	Hells Angels MC	
15	Highway 61 MC	20
16	Hu-Hu MC	
17	Killerbeez	
18	King Cobras	
19	Kuki Squad	
20	Lone Legion MC	25
21	Lost Breed MC	
22	Magogs MC	
23	Mangu Kaha	
24	Mongols Motorcycle Club	
25	Mongrel Mob	30
26	Mothers MC	
27	Nomads	
28	Outcasts MC	
29	Outlaws MC	
30	Rebels MC	35

31	Red Devils MC	
32	Road Knights MC	
33	Satans Slaves MC	
34	Sinn Fein MC (not being a branch, or an associated organisation, of the political party known by a similar name)	5
35	Southern Vikings MC	
36	Storm Troopers	
37	Taupiri MC	
38	Tribal Huk	
39	Tribesmen MC	10
40	Tyrants MC	
41	West Side Nation or by the name Uru Taha	

Compare: 2013 No 56 s 4; LI 2018/64 rr 3–9

Schedule 3 Consequential amendments

s 35

Arms Act 1983 (1983 No 44)

In section 24A(6), definition of **gang**, replace “section 4 of the Prohibition of Gang Insignia in Government Premises Act 2013” with “**section 4** of the **Gangs Legislation Amendment Act 2024**”. 5

Search and Surveillance Act 2012 (2012 No 24)

In section 18A, definition of **gang**, replace “section 4 of the Prohibition of Gang Insignia in Government Premises Act 2013” with “**section 4** of the **Gangs Legislation Amendment Act 2024**”. 10

In section 18A, definition of **gang insignia**, replace “section 4 of the Prohibition of Gang Insignia in Government Premises Act 2013” with “**section 4** of the **Gangs Legislation Amendment Act 2024**”.

In section 18A, replace the definition of **gang member** with: 15

gang member has the same meaning as in **section 4** of the **Gangs Legislation Amendment Act 2024**

Schedule 4
New Part 5 inserted into Schedule 1AA of Sentencing Act 2002

s 38

Part 5		
Provisions relating to Gangs Legislation Amendment Act 2024		5
16	Interpretation	
	In this Part,—	
	amendment Act means Part 5 of the Gangs Legislation Amendment Act 2024	
	commencement date means the date on which section 37 of the amendment Act comes into force.	10
17	Application to proceedings on or after commencement date	
	To avoid doubt, section 9(1)(hb) of this Act (as replaced by the amendment Act) applies only to proceedings commenced on or after the commencement date.	15