

Gangs Legislation Amendment Bill

Government Bill

As reported from the Justice Committee

Commentary

Recommendation

The Justice Committee has examined the Gangs Legislation Amendment Bill and recommends by majority that it be passed. We recommend all amendments unanimously.

About the bill as introduced

The bill aims to reduce the harm caused by gangs and make communities safer. Its focus is to reduce the harmful behaviour that gangs engage in, and disincentivise gang membership. The bill contains a range of new powers to disrupt and directly target gang activity. It would:

- prohibit the display of gang insignia in a public place
- empower police to issue dispersal notices that require specified gang members to leave a public place and not associate in public for 7 days
- create a new non-consorting order that prohibits association and communication between specified gang members for 3 years
- amend the Sentencing Act 2002 to make gang membership an aggravating factor at sentencing.

Legislative scrutiny

As part of our consideration of the bill, we have examined its consistency with principles of legislative quality. We have no issues regarding the legislation's design to bring to the attention of the House.

Report of the Attorney-General under the New Zealand Bill of Rights Act

On 26 February 2024, the Attorney-General presented a report on the bill to the House of Representatives under section 7 of the New Zealand Bill of Rights Act 1990 (NZBORA) and Standing Order 269(1). Section 7 requires the Attorney-General to bring to the House's attention any provision that appears to be inconsistent with any of the rights and freedoms contained in NZBORA. Under Standing Order 269(1), the Attorney-General must indicate the provision to the House and how it appears to be inconsistent with NZBORA.

Clause 7 of the bill would prohibit a person from displaying gang insignia at any time in a public place. The Attorney-General assessed this provision against section 5 of NZBORA. That section provides that the rights and freedoms contained in the Act may be subject to reasonable limits that are prescribed by law and demonstrably justified in a free and democratic society. The Attorney-General concluded that the proposed prohibition is inconsistent with the following rights under NZBORA:

- freedom of expression (section 14)
- freedom of peaceful assembly (section 16)
- freedom of association (section 17).

In reaching this conclusion, the Attorney-General considered whether the bill limits the freedoms no more than is necessary to achieve its objectives. She noted that more limited prohibitions could target places with a higher likelihood of public intimidation or a more likely public presence. The Attorney-General suggested that a limited ban could be supplemented by giving constables a discretionary power to direct the removal of gang insignia in other places if fear and intimidation were likely to occur. The Attorney-General stated that, before a complete ban could be justified, a more convincing reason would be needed for why less intrusive measures would not achieve the social purpose. She recognised that policing a more restricted ban could be compromised and defeat the objective, but noted that it had not been considered.

Clause 9 of the bill would create new dispersal notices against gang members disruptively gathering in public. It would require the specified gang members to leave the public place and not associate in public for 7 days. The Attorney-General acknowledged that a notice could not be issued to a gang member who was participating in a public demonstration.¹ However, once a notice was issued, the gang member could not publicly demonstrate at any time with any of the people named in the notice while it was in force. She emphasised the importance in a democracy of the right to assemble for the purpose of a public protest. Further, limitations on that right should not be entertained in the absence of an imminent risk to safety or public order.

¹ Clause 9(3) specifies that a dispersal notice could not be issued to a group of people who were 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.

Clause 16 provides that a person issued with a dispersal notice would need to seek to vary it to attend a public demonstration with other gang members specified in the notice. The Attorney-General considered that, even if the variation could be effectively exercised, permission should not need to be sought to exercise this fundamental constitutional right. The Attorney-General therefore concluded that the proposed dispersal notice regime would impair the freedom of peaceful assembly more than is necessary and is inconsistent with section 16 of NZBORA. She suggested that this inconsistency could be resolved by adding political protests to the category of exempted activities in clause 15.

Proposed amendments

This commentary covers the main amendments we recommend to the bill as introduced. We do not discuss minor, technical, or consequential amendments.

Commencement date

Clause 2 provides that the bill would come into force 6 months after Royal assent. We were advised that this date could overlap with the busy Christmas period for the New Zealand Police. A fixed commencement date would help them to plan for the necessary elements of implementation. We therefore recommend amending the commencement date to 21 November 2024.

Definitions

Gang insignia

Clause 4 defines the main terms in the bill. The definition of “gang insignia” includes “a sign, symbol, or representation commonly displayed to denote membership of, an affiliation with, or support for a gang, not being a tattoo”. We consider that the definition, as introduced, is too broad because it could capture insignia commonly displayed by non-gang members, like sporting logos. Although the logos could be used to indicate support for a gang, they may merely indicate support for a team, which is not perceived as intimidating. We understand that the prohibition on gang insignia is only intended to apply to symbols that have a primary purpose of identifying a gang listed on Schedule 2 of the legislation. Therefore, we recommend amending the definition of “gang insignia” by removing the words “support for”. This would limit the definition to items that denote membership of, or affiliation with, a gang.

Public place

Clause 4 defines a “public place” based on the definition of the term set out in section 2 of the Summary Offences Act 1981. Paragraph (a) states that it includes “a place that, at any material time, is open to or is being used by the public, whether or not on a payment of a charge, and whether or not any owner or occupier of the place is lawfully entitled to exclude or reject any person”.

The Clerk of the House of Representatives expressed concern about how the bill would apply to the parliamentary precincts. The definition in paragraph (a) would capture some areas of the parliamentary precincts, including the parliament grounds, select committee rooms, public gallery, and connecting areas in the precincts. He pointed out that section 26(1) of the Parliamentary Services Act 2000 specifies that the control and administration of the parliamentary precincts is vested in the Speaker on behalf of the House of Representatives. The Clerk proposed that the bill be amended to exclude the parliamentary precincts from the operation of clauses 7 and 9.² Decisions about insignia and disruptive members of the public would remain the responsibility of the Speaker. The Clerk acknowledged that other offences apply to conduct in public places that rely on a similar definition of “public place” to the one used in the bill. These offences may also apply to the precincts. He was not suggesting that the precincts should be a haven from the law. However, in this case, he considered that the conduct being regulated was such that decisions about it should remain with the Speaker.

We considered the possible implications of excluding the parliamentary precincts from the definition of a “public place”. We acknowledge that exclusion could cause some confusion about the rules that would apply in the vicinity of the parliamentary precincts. It could also create tension with the principle that the parliamentary precincts are not a sanctuary from the law and that the ordinary provisions of the law apply within them. However, we agree with the Clerk’s submission that decisions about the conduct regulated by the bill should remain with the Speaker. We therefore recommend amending the definition of “public place” to exclude the parliamentary precincts. The Speaker will retain the authority to issue rules consistent with the conduct prohibited by the offences in the bill.

Serious offence

The bill would enable the District Court to make non-consorting orders that apply to specified gang offenders in certain circumstances. Clause 4 defines “serious offence” for the purposes of determining a person’s eligibility for an order, as well as whether the order could be made or discharged. A serious offence means a category 3 or category 4 offence (as defined in section 6(1) of the Criminal Procedure Act 2011). These offences all have a penalty of imprisonment of at least 2 years.

We consider that the threshold for a serious offence is too low. We note that many of the eligible offences are not typically associated with organised crime or as particularly gang-related. Instead, we think that the offences listed in section 45(1) of the Search and Surveillance Act 2012³ are more consistent with the offending most associated with gangs. The offences include drug dealing, money laundering, serious

² Those clauses relate to the prohibition of gang insignia in a public place and the power to issue dispersal notices.

³ That section relates to enforcement officers’ powers to undertake trespass surveillance to obtain evidence.

violent offending, and firearms offences. Accordingly, we recommend amending the definition of “serious offence” to an offence that is any of the following:

- punishable by a term of imprisonment of 7 years or more
- against sections 25, 26, or 70 of the Psychoactive Substances Act 2013
- against section 308A of the Crimes Act 1961 (Discharging firearm to intimidate)
- against sections 16(4), 16A, 42A, 42B, 43, 43AA, 44, 44AA, 44A, 45, 50, 50A, 50AA, 50B, 50C, 50CA, 50D, 51, 53A(2), 54, 55, or 55A of the Arms Act 1983.

We were advised that our proposed definition would exclude offences such as assault with a weapon, which has a maximum term of imprisonment of 5 years. We understand that more serious assault charges are often negotiated down to assault with a weapon if a defendant pleads guilty. We therefore recommend adding the following offences under the Crimes Act to the definition of a “serious offence”, to ensure they are covered:

- section 189(2) (Injuring with intent)
- section 202C (Assault with weapon)
- section 232(2) (Aggravated burglary)
- section 267(3) (Arson).

Prohibiting the display of gang insignia in a public place

Clause 7 provides that a person commits an offence if the person, without reasonable excuse, displays gang insignia at any time in a public place. The penalty on conviction is a term of imprisonment of up to 6 months or a fine not exceeding \$5,000.

Several submitters expressed concern that the offence is a strict liability offence, which requires the prosecution to prove the physical, but not mental, element of an offence. One submitter pointed out that strict liability is generally not appropriate for offences liable to imprisonment. Further, the Legislation Design and Advisory Committee guidelines state that criminal offences should include a mental element unless compelling reasons exist not to do so.

We acknowledge the concerns raised in submissions. We agree that the offence should contain a mental element of “knowingly” displaying gang insignia. We recommend amending clause 7(1) accordingly. We also discussed whether the mental element should apply to the public place part of the offence—that is, a person should only be liable if they knew they were in a public place. We were advised, however, that this would be inconsistent with other offences that criminalise certain conduct only in public places. Requiring proof that a person knew they were in a public place also creates a burden that could be harder to supply evidence for. This could risk unsuccessful prosecutions in appropriate cases.

Dispersal notices

Power to issue dispersal notices

Clause 9 would empower a constable to issue a dispersal notice to a person. Clause 9(1)(a) states that the constable must have reasonable grounds to suspect that the person is one of 3 or more gang members who are gathering in a public place. The constable would also need to believe that issuing the notice was necessary to avoid disrupting the activities of other members of the community.

Clause 9(2)(a) states that the dispersal notice must be in writing. Clause 9(2)(b)(ii) would enable a dispersal notice to be issued after the gathering had ended. This allows for situations where it would not be safe or practical for an officer to issue the notice in real time. However, this is not reflected in clause 9 as introduced, which states “who are gathering”. We recommend amending clause 9(1)(a)(ii) to cover people who are gathering or were gathered in a public place.

We also consider that the threshold for disruption is too low and could capture activities like playing music in a park. We therefore recommend amending clause 9(1)(b) to limit the scope of what qualifies as a disruption for the purposes of issuing a dispersal notice. Our proposed amendment would instead require a constable to believe that the notice was necessary to avoid unreasonably disrupting the activities of other members of the public.

Service of a dispersal notice

As introduced, clause 10 provides that 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.⁴ If a dispersal notice is issued to a person after the related gathering has ended, the notice may be served by personal service or by sending it to a physical or electronic address that the person supplies. Clause 13 provides that a notice takes effect once it is served.

Clause 17 relates to a breach of a dispersal notice. A person would commit an offence if they had been served with a dispersal notice and knowingly, and without reasonable excuse, associated with a named person in a public place during the period in which the notice was in effect. The penalty on conviction would be imprisonment for a term not exceeding 6 months or a fine not exceeding \$5,000.

We spent some time discussing whether a dispersal notice should only be issued by personal service given that it imposes a significant criminal liability. We were particularly concerned about the ability to send a notice to a physical or electronic address supplied by the person (clause 10(2)(b)). We note that individuals may have literacy, mental health, or addiction issues, or might not see the dispersal notice

⁴ Clause 4 defines “personal service” as “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”.

within the 7-day period. They would therefore be unaware of their obligations under the notice. We also discussed when the notice would take effect.

We considered the following options:

- Requiring a dispersal notice to be served by personal service in all cases. This could occur while the gathering was taking place or after it had ended.
- Providing for the service methods in clause 10 as introduced, with the difference that a notice could only be sent to a physical or electronic address if the police had explained the terms and consequences of the notice.
- Allowing a dispersal notice to be issued verbally and to take effect without service. An individual would need to be fully informed of its contents and could also receive an email copy, accompany a police officer to a station to receive a copy, or contact 105 to obtain information.

We consider that a constable who issues a dispersal notice must, to the extent reasonably practicable, explain to the person receiving the dispersal notice its effect and duration, and the consequences of breaching it. We recommend inserting this requirement as clause 11A. The dispersal notice could be issued during or after gatherings and would need to be in writing. In addition to an explanation of the notice under proposed new section 11A, the notice would need to be sent to an electronic address supplied by the recipient. We therefore recommend inserting clause 10(2) to this effect. We also recommend inserting clause 10(3), which would apply to situations where a person does not supply an electronic address. Our proposed amendment would empower a constable to require the person to accompany the constable to a police station to effect personal service of the notice. This reflects the operational reality that police will typically not have a physical copy on hand without returning to the police station.

Failure to comply with power to detain a person

Under clause 11, a constable could detain a person while a gathering was taking place and at the place where the gathering was occurring, to issue a dispersal notice. The person could be detained for the period that was reasonably necessary to take the person's biographical details, or issue or serve the notice. We recommend a consequential amendment to clause 11(1) to allow police to detain the person for the purposes of issuing and serving a notice (whether before or after a gathering). This would enable our proposed amendment to clause 10(3).

Clause 11(2) provides that a person who was detained could be arrested without a warrant if they failed or refused to remain where they were being detained. They could also be arrested without a warrant if they failed or refused to give their biographical details or gave details that the constable reasonably believed were false.

We note that clause 11(2), as introduced, does not have an associated offence. To help enforce this provision, we recommend inserting as clause 11(2A) an offence for failing to comply, without reasonable excuse. The punishment for the offence would be a fine not exceeding \$1,000.

Terms of a dispersal notice

Clause 14 lists the information that a dispersal notice must include. Clause 14(b) states that the dispersal notice must specify the name of each named person with whom the person must not associate in a public place while the notice is in effect. Clause 4 defines a “named person” as “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”.

We think that clause 14(b), as introduced, is too broad. Any person could be named as someone with whom the person receiving the dispersal notice could not associate with for its duration. We consider that only people who took part in the gathering to which the dispersal notice relates should be allowed to be named on another person’s notice. This would better support the purpose of preventing future gatherings of a similar nature. We recommend amending the definition of “named person” in clause 4 to this effect.

Clause 14(c)(iv) specifies that the dispersal notice must include a statement that the person may apply for a review of the notice. We recommend inserting clause 14(c)(iia) to require the notice to also state that a person could apply for a variation of the dispersal notice.

Varying or reviewing a dispersal notice

Clause 16(1) would enable a person issued with a dispersal notice to apply to a qualified constable to vary its terms. The variation would allow the person to associate with a named person in a public place to attend a specified tangi or funeral or participate in any other specified lawful activity. Clause 16(3) provides that the Police would need to decide the application and communicate the decision to the applicant within 72 hours after the application was made.

Clause 18 provides that a person issued with a dispersal notice could apply to the Commissioner of Police for a review of the notice. The person would need to believe that the notice was not issued in accordance with the legislation. The Commissioner would need to decide the application and communicate the decision to the applicant within 72 hours after the application was made.

We think that the time frame for deciding whether to vary or review a dispersal notice is too long. We were advised that reducing the period to 48 hours would give Police sufficient time to consider the notice and communicate the outcome to the applicant and police districts. It would also allow time for police systems to be updated to reflect any changes resulting from the review. Further, the Police expect that this would be the maximum time required for the review and communication, and less time would be needed in many cases. Therefore, we recommend amending clauses 16(3) and 18(3) by reducing the period to 48 hours.

We note that clause 16 as introduced does not state the grounds for granting an application to vary a dispersal notice. We recommend inserting clause 16(2A) to provide that a qualified constable could vary a notice if they were satisfied that the variation related to an activity specified in clause 16(1). The constable would also

need to be satisfied that granting the variation would not unreasonably disrupt the activities of other members of the public.

Clause 9(1) provides that a constable could issue a dispersal notice if they had reasonable grounds to suspect that a person was one of 3 or more gang members who were gathering in a public place. However, the fact that a person was not a gang member would not be a reason for revoking the notice under clause 18. Given that the bill is only intended to capture the behaviour of gang members, we recommend inserting clause 18(2A)(b) to require the Commissioner to revoke the notice in these circumstances.

Clause 18(4) would enable the Commissioner to revoke the notice if, after reviewing the notice, they decided that it was not validly issued. However, as introduced, the Commissioner could not vary the notice. They would instead need to decline the review application and direct the person to apply for a variation, restarting the time frame to decide the application. We consider that the Commissioner should also be allowed to vary the terms of a dispersal notice. Therefore, we recommend deleting clause 18(4) and inserting clause 18(2A)(a), which would specify that the Commissioner could uphold, vary, or revoke the dispersal notice.

Non-consorting orders

Clause 19 would enable the District Court to make a non-consorting order for a person after hearing an application by the Commissioner. The Court would need to be satisfied that the person was a specified gang offender. The order would need to help disrupt or restrict the capacity of the person to engage in conduct amounting to a serious offence. It would also need to identify the specified gang offender(s) with whom the person could not consort.

Clause 19(1)(a) would require the Commissioner to give notice to a person that an application for a non-consorting order had been made against them. Given the significance of a non-consorting order, we think it would be more appropriate to require the notification to be served personally. We recommend inserting clause 19(1B) to this effect.

Subpart 2 of Part 20 of the District Court Rules 2014 requires applications to the District Court under certain legislation to be filed as an originating application under this subpart. We recommend inserting clause 19(1A) to make it clear that an application for a non-consorting order would need to be filed as an originating application under the Rules.

We note that the District Court Fees Regulations 2009 state that originating applications have an associated fee of \$200, unless exempted under section 3(2)(a). We understand that, for consistency with other current exemptions, applications for non-consorting orders are intended to be exempt from the fee. We recommend inserting clause 33A to specify this.

Amending the list of identified gangs

Schedule 2 of the bill contains a list of identified gangs for the purposes of the legislation. The list is based on the gangs previously identified in the Prohibition of Gang Insignia in Government Premises Act 2013 and associated 2018 regulations. We received advice that updates are needed to the list, based on current intelligence from the Police. Four gangs now meet the criteria for a gang, eleven have been identified as defunct, and two are now identified as separate gangs. We recommend amending Schedule 2 accordingly.

Clause 30 would enable the Governor-General, by Order in Council, to add or remove gangs from the list set out in Schedule 2. This would be made on the recommendation of the Minister of Police. Clause 30(2) provides that the Minister would need to be satisfied on reasonable grounds that the organisation, association, or group had both of the following characteristics:

- a common name or common identifying signs, symbols, or representations
- its members, associates, or supporters individually or collectively promote, encourage, or engage in criminal activity.

Many submitters expressed concern that the test to be identified as a gang under the legislation is not particularly stringent. We agree and propose several amendments to the criteria in clause 30, which we set out below.

We think that the focus should be on the behaviour of the members or associates of the group being designated, and not on their supporters. We also recommend that the test should require actual criminal offending instead of promoting or encouraging offending. Given the consequences of being added to the list, we considered whether the threshold should be serious offending rather than any criminal activity. However, we understand that this would exclude some gangs that are intended to be covered by the legislation. We consider that a category 3 or 4 offence, as defined in section 6(1) of the Criminal Procedure Act, would instead be more appropriate. As previously noted, these offences all have a penalty of imprisonment of at least 2 years. We recommend amending the bill accordingly.

We acknowledge the importance of ensuring that the designation is relevant. We therefore recommend that the offending should be within the past 5 years and the group should be currently active in New Zealand. We also recommend including offending outside New Zealand that would qualify if committed in New Zealand. We understand that this would enable the Police to consider gangs that operate in both Australia and New Zealand.

We recommend inserting clause 30(2A) to make it clear that section 30(2)(c) would not apply to conduct that consisted primarily of civil disobedience for the purpose of political activism. Our proposed amendment is intended to protect political activist groups from being eligible for inclusion on the list of gangs.

To ensure that the list is regularly reviewed, we also recommend inserting clause 30(3A) and (3B). These would require the Minister to review the Schedule before

making a recommendation to amend it, and every 5 years if no amendments were made.

New Zealand Labour Party differing view

The Labour Party considers criminal gangs to be a significant problem in New Zealand. Keeping communities safe from gangs and disrupting their criminal behaviour should be a priority. This bill, however, is entirely unworkable and diverts precious police resources from attacking the root of the problem.

We agree that intimidation by gangs is unacceptable, however the provisions banning gang patches create expectations that the police will be stopping groups of gang members in the street and demanding that clothing be removed. In many cases this would place police at risk and will not occur. While it might be said that this is “just another tool in the toolbox” the fact is that if an activity is criminalised then there is a reasonable expectation on the part of the public that such visible wrongdoing will be addressed by the police. We consider that to be an unreasonable and unworkable demand on police.

The provisions of this bill are largely triggered by a person being a member of a gang. Our select committee process made it clear that the current list of gangs and gang members is not reliable. The gang list included defunct gangs and was far from comprehensive. Given that this is a critical component of the workability of the framework we consider that the entire regulatory edifice is built on a shaky foundation.

The provisions giving police the power to disperse gang members are equally unworkable and do not meaningfully add to the powers that police already have to intervene where there is disorderly conduct in a public place. The test requires that the police suspect that there are three or more people who are gang members who are “unreasonably disrupting the activities of other members of the public”. This is vague and provides little or no guidance to police or the courts as to when a dispersal notice may actually be issued.

The issuing of the notice itself is also problematic. The bill would allow a dispersal notice to be served by email in some cases. While we accept the operational challenges of the police, we do not think it workable to serve a notice (the breach of which can lead to an imprisonable offence) by a verbal explanation and a follow up email. The service of the notice (or the explanation of it) may well occur in a tense or heated environment when the likelihood of its significance being understood is low. We are not confident that people who are served dispersal notices by email will be assiduous in checking their emails to understand the nature and extend to the constraints imposed by the notice.

We consider that any notification of a limit on freedom like a dispersal notice—the breach of which can lead to prison—should be served in person by means of a physical document. We note that this is the case with a police safety order.

Non-consorting orders are intended to be a tool to disrupt gang activity. In fact they do no more than the existing provisions in section 112 of the Sentencing Act 2002 (other than being longer in duration).

Creating gang membership as an aggravating factor in sentencing whether or not the criminal conduct is related to gang membership is also problematic. We agree that if there is an offence which is a gang offence this is a serious matter and there should be a corresponding uplift in the sentence. However, where there is no rational connection between the offence and status of the offender as gang member the increase of the sentence imposed is arbitrary.

We also consider that the procedural provisions in the bill fall short of what is appropriate in a democratic society. We consider that where conduct leads to a constraint on liberty the evidential threshold should be the criminal standard of beyond reasonable doubt, not the civil standard of the balance of probabilities.

Green Party of Aotearoa New Zealand differing view

The Green Party opposes the Gangs Legislation Amendment Bill. As a country, we have made enormous gains in understanding what drives people to join, and stay, in gangs. It is a complex web of shared historic trauma (including abuse in state care), poverty, and cycles of incarceration that fuels gang membership.

Our primary concern is that this bill will unravel progress made over a number of years to address intimidating behaviour and organised crime by gangs. There has been collaboration between gang leaders, police leadership, and government leaders to understand the drivers of gang membership so that meaningful solutions can be sought. However, this adversarial and punitive approach undermines this collaboration and makes our communities less safe.

Enforcing the ban on gang patches creates hostile, dangerous environments within our communities. We have serious concerns about the slippery slope of telling people what they can and cannot wear. We are concerned about the dangerous position this puts police officers in, and the risks to public safety where this enforcement results in showdowns between police and gangs. Removing the visual presence of gangs within our communities does not eliminate the existence of gangs by any measure. In addition, evidence heard by the committee shows that this legislation will be unenforceable in some circumstances, in particular in some communities where there are many more gang members than police officers. Passing legislation that is unenforceable is bad policy-making.

We are concerned about enhanced police powers to issue dispersal notices, non-consorting orders and increased discretionary powers. There is well-documented evidence that racial bias continues to influence a wide range of policing decisions in Aotearoa, including in relation to charging discretion. We are deeply concerned with introducing new powers that risk these biases becoming further entrenched in Police attitudes and practices. The introduction of consorting laws in other jurisdictions has resulted in disproportionate use against indigenous people.⁵ This legislation will directly lead to higher incarceration of Māori.

Petition of Yulian Varbanov: Ban the gangs Head Hunters, Hell’s Angels, Nomads, and Filthy Few

We also considered the petition of Yulian Varbanov, which was presented to the Petitions Committee of the 53rd Parliament on 27 July 2022. The petition requests:

That the House of Representatives pass legislation to ban members of the Head Hunters, Hell’s Angels, Nomads, and Filthy Few from wearing their patches in public, and encourage the Police and Ministry of Justice to keep up their great work.

We consider that the matters raised by the petitioner were covered in our consideration of the bill. We have no further matters to bring to the attention of the House.

⁵ Law Enforcement Conduct Commission, 2019, Review of the operation of the amendments to the consorting law under Part 3A Division 7 of the Crimes Act 1900, pp. 49-50. Review of the operation of the amendments to the consorting law under Part 3A Division 7 of the Crimes Act 1900 | Law Enforcement Conduct Commission (nsw.gov.au).

Appendix

Committee process

The Gangs Legislation Amendment Bill was referred to the committee on 7 March 2024. We called for submissions on the bill with a closing date of 5 April 2024. We received and considered submissions from 164 interested groups and individuals. We heard oral evidence from 32 submitters at hearings in Wellington and by videoconference.

Advice on the bill was provided by the Ministry of Justice and the New Zealand Police. The Office of the Clerk provided advice on the bill's legislative quality. The Parliamentary Counsel Office assisted with legal drafting.

We considered the bill alongside the Report of the Attorney-General on the Gangs Legislation Amendment Bill and the Petition of Yulian Varbanov: Ban the gangs Head Hunters, Hell's Angels, Nomads, and Filthy Few. The petition was referred to the Petitions Committee of the 53rd Parliament on 27 July 2022. It was reinstated with the Petitions Committee of the 54th Parliament on 6 December 2023. The petition was transferred to us on 28 March 2024.

Committee membership

James Meager (Chairperson)

Hon Ginny Andersen

Jamie Arbuckle

Cameron Brewer

Tākuta Ferris

Paulo Garcia

Dr Tracey McLellan

Rima Nakhle

Tamatha Paul

Todd Stephenson

Hon Dr Duncan Webb

Related resources

The documents received as advice and evidence are available on the Parliament website.

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Paul Goldsmith

Gangs Legislation Amendment Bill

Government Bill

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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~~ **21 November 2024**. 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) 5

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 other specified gang offenders

constable has the same meaning as in section 4 of the Policing Act 2008 10

criminal activity means an activity that constitutes the commission of an offence

dispersal notice means a notice issued under **section 9**

electronic address includes an email address

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** 15

gang insignia—

(a) means a sign, symbol, or representation commonly displayed to denote membership of, or an affiliation with, ~~or support for~~ a gang, not being a tattoo; and 20

(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)

gang member includes the following: 25

(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 30

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): 35

(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
- (b) to avoid doubt, includes— 5
 - (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: 10
 - (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~~ 15

named person, in relation to a dispersal notice, means a person who—

- (a) took part in the gathering to which the dispersal notice relates; and
- (b) is named in the 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 20

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 25

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 30
- (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 35
- (c) ~~does not include any publicly accessible online place (for example, an Internet site or an online application or similar) —~~

- (i) any publicly accessible online place (for example, an internet site or an online application or similar):
- (ii) for the purposes of **Part 2 or subpart 1 of Part 3**, the parliamentary precincts (within the meaning of section 3 of the Parliamentary Service Act 2000) 5
- 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)~~
- serious offence** means— 10
- (a) an offence that is punishable by a term of imprisonment of 7 years or more; or
- (b) an offence against—
- (i) section 16(4), 16A, 42A, 42B, 43, 43AA, 44, 44AA, 44A, 45, 50, 50AA, 50A, 50B, 50C, 50CA, 50D, 51, 53A(2), 54, 55, or 55A of the Arms Act 1983; or 15
- (ii) section 25, 26, or 70 of the Psychoactive Substances Act 2013; or
- (iii) sections 189(2), 202C, 232(2), 267(3), and 308A of the Crimes Act 1961
- specified gang offender** means a person— 20
- (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
- (ii) is convicted of— 25
- (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** 30
- The transitional, savings, and related provisions (if any) set out in **Schedule 1** have effect according to their terms.
- 6 Act binds the Crown**
- This Act binds the Crown.

Part 2

Prohibition on display of gang insignia in public places

- 7 Prohibition on display of gang insignia in public place**
- (1) A person commits an offence if the person knowingly, and without reasonable excuse, displays gang insignia at any time in a public place. 5
- (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.
- (3) If a person pleads guilty to, or is convicted of, an offence against **subsection (1)**, the gang insignia concerned— 10
- (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.
- Compare: 2009 No 1 (L) ss 12, 13; 2013 No 56 ss 6, 7(2), (3)
- 8 Exceptions to prohibition** 15
- Section 7** does not apply if the display of gang insignia in a public place—
- (a) was for or relates to—
- (i) a genuine artistic or educational purpose:
- (ii) media reporting of news, observations on news, or current affairs:
- (iii) the broadcast of a documentary: 20
- (iv) law enforcement:
- (v) providing training or information to persons carrying out work for a government agency or local authority; and
- (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—~~ 30
- (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.~~

Grounds for issuing

- (1) A constable may issue a dispersal notice to a person if the constable has reasonable grounds—
- (a) to suspect that the person—
- (i) is a gang member; and 5
- (ii) is one of 3 or more gang members who are gathering or were gathered in a public place; and
- (b) to believe that issuing the notice is necessary to avoid unreasonably disrupting the activities of other members of the public.

Process for issuing

- (2) The dispersal notice— 10
- (a) must be issued in writing; and
- (b) may be issued to ~~any of the gang members attending the gathering the~~ person—
- (i) while the gathering is taking place; or 15
- (ii) after the gathering has ended.

Limitation on issuing

- (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. 20

Compare: 1981 No 113 s 5A(3)

10 Service of dispersal notice

- (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.~~ 30

10 Service of dispersal notice

- (1) A dispersal notice may be served by—
- (a) personal service; or
- (b) sending it to an electronic address supplied by the person to whom it is issued. 35

- (2) However, a dispersal notice may only be served electronically under **subsection (1)(b)** if an explanation of the notice has been given under **section 11A** before sending the notice.
- (3) If the person does not supply an electronic address for the purposes of **subsection (1)(b)**, a constable may require the person to accompany the constable to a Police station to effect personal service of the notice. 5

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 may detain the person for the period that is reasonably necessary to do 1 or more of the following: 10
- (a) take the person's biographical details:
 - (b) issue the notice:
 - (c) serve the notice.
- (2) A person who is detained under **subsection (1)** may, after being cautioned, be arrested without warrant if the person— 15
- (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.
- (2A) A person who, after being cautioned, fails or refuses, without reasonable excuse, to comply with a direction of a constable exercising the constable's powers under **section 10(3)** or this section— 20
- (a) commits an offence; and
 - (b) is liable on conviction to a fine not exceeding \$1,000.
- (3) In this section, **biographical details**, in relation to a person, means the person's— 25
- (a) name; and
 - (b) date of birth; and
 - (c) physical address; and
 - (d) electronic address (if available). 30

Compare: 1981 No 113 s 39(2); 1998 No 110 s 114(3), (6); 2008 No 72 s 33(4); 2018 No 46 s 32(1), (2)(b)

11A Duty of constable to explain dispersal notice

- (1) A constable who issues a dispersal notice must, to the extent that it is reasonably practicable to do so in the circumstances, explain to the person to whom the notice is issued— 35
- (a) the effect and duration of the notice; and
 - (b) the consequences that may follow if the person breaches the notice.

- (2) The explanation may be given when—
- (a) the dispersal notice is issued under **section 9**; or
 - (b) -serving the dispersal notice under **section 10**; or
 - (c) detaining the person under **section 11** for the purposes of issuing or serving the notice. 5
- (3) A failure to comply with this section does not affect the validity of the dispersal notice.
- Compare: 2018 No 46 s 33(1)

12 Requirement to disperse

- (1) This section applies if a dispersal notice is issued ~~and served on to~~ a person while the gathering to which it relates is taking place. 10
- (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 15
 - (b) to go beyond a reasonable distance from the public place (or part of the public place) specified by the constable.

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. 20
- (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)18(2A)**.

14 Terms of dispersal notice

A dispersal notice must—

- (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: 30
 - (iii) the date on which the gathering to which the notice relates took place;
 - (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 35

- (c) include the following information:
- (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: 5
 - (iiia) a statement that the person may apply for a variation of the notice under **section 16**:
 - (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**: 10
 - (iv) a statement that the person may apply for a review of the notice under **section 18**:
 - (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: 15
 - (vi) any other information required by regulations.

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— 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.

16 Variation of dispersal notice for specified reasons

- (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— 30
 - (a) attend a specified tangi or funeral; or
 - (b) participate in any other specified lawful activity.
- (2) The application must be made—
 - (a) in writing; and 35
 - (b) during the period in which the dispersal notice is in effect.
- (2A) A qualified constable may vary the notice if satisfied that—

- (a) the proposed variation relates to an activity referred to in **subsection (1)(a) or (b)**; and
- (b) granting the variation would not unreasonably disrupt the activities of other members of the public.
- (3) The application must be decided and the decision must be communicated to the applicant within ~~72~~48 hours after the application is made. 5

Offence

17 Breach of dispersal notice

- (1) A person commits an offence if the person—
 - (a) has been served with a dispersal notice; and 10
 - (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. 15

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. 20
- (2) The application must be made—
 - (a) in writing; and
 - (b) during the period in which the dispersal notice is in effect.
- (2A) After reviewing the application, the Commissioner of Police—
 - (a) may uphold, vary, or revoke the dispersal notice; but 25
 - (b) must revoke the dispersal notice (by giving written notice to the applicant) if satisfied that any of the following apply:
 - (i) the person to whom the notice was issued is not a gang member;
 - (ii) the gathering to which the notice relates—
 - (A) did not occur in a public place; or 30
 - (B) did not consist of 3 or more gang members;
 - (iii) issuing the notice was not necessary to avoid unreasonably disrupting the activities of other members of the public.
- (3) The application must be decided and the decision must be communicated to the applicant within ~~72~~48 hours after the application is made. 35

- (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. 5
- (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

- (1) The District Court must, on hearing an application made by the Commissioner of Police, make a non-consorting order in respect of a person if ~~it~~ satisfied that— 10
- (a) the Commissioner of Police has given notice of the application and the hearing to the person; and
- (b) is satisfied that— 15
- (i) the person is a specified gang offender; and
- (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. 20
- (b) the person is a specified gang offender; and
- (c) the order would specify another specified gang offender or other specified gang offenders with whom the person may not consort; and
- (d) the order would assist in disrupting or restricting the capacity of the person to engage in conduct that amounts to a serious offence. 25
- (1A) The application must be made in accordance with the rules of the District Court for originating applications.
- (1B) Notice of the application must be given in accordance with the rules of the District Court for personal service.
- (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. 30

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. 35

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
- (c) the duration of the order.

5

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—

- (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
 - (ii) for work, education, or health care purposes.

10

15

*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
 - (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.

20

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

Variation and discharge of order

25

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
 - (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.

30

- (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— 5

- (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.

Compare: 2019 No 79 s 15(4)

10

Proceedings

26 Civil proceedings

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

Part 4

Miscellaneous provisions

15

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
(b) that is not a proceeding for an offence against this Act.

20

- (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

25

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

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. 30

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

Compare: 2013 No 56 s 6(3)

Secondary legislation

- 30 Power to amend Schedule 2 by Order in Council** 5
- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister of Police, amend **Schedule 2** to—
- (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. 10
- (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:~~
- (a) ~~a common name or common identifying signs, symbols, or representations; and~~ 15
- (b) ~~its members, associates, or supporters individually or collectively promote, encourage, or engage in criminal activity.~~
- (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— 20
- (a) has a common name or common identifying signs, symbols, or representations; and
- (b) is currently active in New Zealand; and
- (c) has members or associates who individually or collectively have, within the previous 5 years, engaged in conduct that amounts to— 25
- (i) a category 3 offence or category 4 offence (as defined in section 6(1) of the Criminal Procedure Act 2011); or
- (ii) an offence under the law of another jurisdiction that, if committed in New Zealand, would be a category 3 offence or category 4 offence (as defined in section 6(1) of the Criminal Procedure Act 2011). 30
- (2A) Nothing in **subsection (2)(c)** applies to conduct that consists primarily of civil disobedience for the purpose of political activism.
- (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)**. 35

- (3A) The Minister of Police must review the list of identified gangs in **Schedule 2**—
- (a) before making a recommendation under **subsection (1)(a) or (b)**; and
 - (b) within 5 years after the commencement of this Act if no recommendation has been made during that period. 5
- (3B) The Minister of Police must review the list of identified gangs in **Schedule 2** at least once every 5 years after it was last reviewed.
- (4) An order made under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements). 10
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:
 - (a) providing for anything that this Act says may or must be provided for by regulations; and 15
 - (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).
- Amendment to Legal Services Act 2011* 20
- 32 Principal Act**
- Section 33** amends the Legal Services Act 2011.
- 33 Section 4 amended (Interpretation)**
- 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 25
- Amendment to District Court Fees Regulations 2009*
- 33A Principal regulations** 30
- Section 33B** amends the District Court Fees Regulations 2009.
- 33B Regulation 3 amended (Application)**
- Replace regulation 3(2)(a)(vii) with:
- (vii) the Harmful Digital Communications Act 2015;
 - (viii) the **Gangs Legislation Amendment Act 2024**; or 35

*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. 5
- (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. 10

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) 15

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: 20

38 Schedule 1AA amended

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

- (a) insert the **Part 5** set out in **Schedule 4** of this Act as the last part; and
- (b) make all necessary consequential amendments. 25

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
<u>2A</u>	<u>Barbarian Stormtrooper</u>	
3	Black Power	
4	Comanchero-Motoreyele Club <u>MC</u>	
5	Crips	
<u>5A</u>	<u>Damned Pirates</u>	10
6	Devils Henchmen MC	
7	Epitaph Riders	
8	Filthy Few MC	
9	Finks Motoreyele Club	
<u>9</u>	<u>Fitus</u>	15
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)	
12	Greasy Greazy Dogs MC	20
13	Head Hunters MC	
14	Hells Angels MC	
15	Highway 61 MC	
16	Hu-Hu MC	
<u>16</u>	<u>HTOWN07</u>	25
17	Killerbeez	
18	King Cobras	
19	Kuki Squad	
20	Lone Legion MC	
21	Lost Breed MC	30
22	Magogs MC	
23	Mangu Kaha	
24	Mongols-Motoreyele Club <u>MC</u>	
25	Mongrel Mob	
26	Mothers MC	35

27	<u>New Zealand Nomads</u>	
28	Outcasts MC	
29	Outlaws MC	
30	Rebels MC	
31	Red Devils MC	5
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)	
35	Southern Vikings MC	10
36	Storm Troopers <u>Stormtrooper</u>	
37	Taupiri MC	
38	Tribal Huk	
39	Tribesmen MC	
40	Tyrants MC	15
40	<u>Uru Taha</u>	
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

Legislative history

7 March 2024

Introduction (Bill 23–1), first reading and referral to Justice Committee