

Proactive release – Criminal Activity Intervention Legislation Bill

Date of issue: 23 March 2023

The following documents have been proactively released in accordance with Cabinet Office Circular CO (18) 4.

Some information has been withheld on the basis that it would not, if requested under the Official Information Act 1982 (OIA), be released. Where that is the case, the relevant section of the OIA has been noted and no public interest has been identified that would outweigh the reasons for withholding it.

No.	Document	Comments
1	Oral update on gangs legislative package <i>Aide memoire</i> Office of the Minister of Justice Meeting date: 7 June 2022	Some information has been withheld in accordance with sections: <ul style="list-style-type: none">• 9(2)(f)(iv) to protect the confidentiality of advice• 9(2)(g)(i) to protect free and frank advice.
2	Oral Item: Legislative Proposals to Tackle Gangs <i>Cabinet Minute</i> Cabinet Office Meeting date: 8 June 2022	Some information has been withheld in accordance with section 9(2)(f)(iv) to protect the confidentiality of advice.
3	Gang harm intervention – legislative options <i>Briefing</i> Office of the Minister of Police; Office of the Minister of Justice Meeting date: 17 June 2022	Some information has been withheld in accordance with sections: <ul style="list-style-type: none">• 9(2)(a) to protect privacy of individuals;• 9(2)(f)(iv) to protect the confidentiality of advice;• 9(2)(g)(i) to protect free and frank advice; and• 9(2)(h) to maintain legal professional privilege.
4	Gang Harm Intervention, Section (9)(2) [REDACTED] <i>Aide memoire</i> Office of the Minister of Justice Meeting date: 29 June 2022	Some information has been withheld in accordance with sections: <ul style="list-style-type: none">• 9(2)(f)(iv) to protect the confidentiality of advice;• 9(2)(h) to maintain legal professional privilege.
5	Gang Harm Intervention, Section (9)(2) [REDACTED] <i>Cabinet paper</i> Office of the Minister of Police; Office of the Minister of Justice Meeting date: 29 June 2022	Some information has been withheld in accordance with sections: <ul style="list-style-type: none">• 9(2)(f)(iv) to protect the confidentiality of advice;• 9(2)(g)(i) to protect free and frank advice; and• 9(2)(h) to maintain legal professional privilege.

No.	Document	Comments
6	Gang Harm Intervention, Section (9)(2) [REDACTED] <i>Cabinet Minute</i> Cabinet Office Meeting date: 29 June 2022	Some information has been withheld in accordance with section 9(2)(f)(iv) to protect the confidentiality of advice.
7	Gang Harm Intervention <i>Cabinet paper</i> Office of the Minister of Police; Office of the Minister of Justice Meeting date: 1 July 2022	Some information has been withheld in accordance with sections: <ul style="list-style-type: none"> • 9(2)(f)(iv) to protect the confidentiality of advice; • 9(2)(h) to maintain legal professional privilege; and • 9(2)(g)(i) to protect free and frank advice
8	Gang Harm Intervention <i>Cabinet Minute</i> Cabinet Office Meeting date: 4 July 2022	Some information has been withheld in accordance with section 9(2)(f)(iv) to protect the confidentiality of advice.
9	Criminal Activity Intervention Legislation Bill and Criminal Proceeds (Recovery) Amendment Bill: Approval for Introduction <i>Cabinet paper</i> Office of the Minister of Police; Office of the Minister of Justice 5 September 2022	Some information has been withheld in accordance with sections: <ul style="list-style-type: none"> • 9(2)(f)(iv) to protect the confidentiality of advice; • 9(2)(g)(i) to protect free and frank advice; and • 9(2)(h) to maintain legal professional privilege. <p>Please note there is a separate proactive release for material regarding the Criminal Proceeds (Recovery) Amendment Bill.</p>
10	Criminal Activity Intervention Legislation Bill and Criminal Proceeds (Recovery) Amendment Bill: Approval for Introduction <i>Cabinet Minute</i> Cabinet Office Meeting date: 5 September 2022	Some information has been withheld in accordance with sections: <ul style="list-style-type: none"> • 9(2)(f)(iv) to protect confidentiality of advice; and • 9(2)(h) to maintain legal professional privilege. <p>Please note there is a separate proactive release for material regarding the Criminal Proceeds (Recovery) Amendment Bill.</p>

Aide memoire – Oral update on gangs legislative package

Hon Kris Faafoi, Minister of Justice; Hon Poto Williams,
Minister of Police

7 June 2022

Purpose

1. You are presenting an oral item on the gangs legislative programme to the Cabinet Priorities Committee (CPC) on 8 June. This aide memoire provides background information and talking points to support this oral item.

Overview

2. Work is currently underway across justice sector and social agencies to develop a plan to prevent and respond to harm from gangs. As part of this plan, you have directed officials to explore legislative options in three key areas:
 - preventing gangs from moving and converting large quantities of cash proceeds of crime
 - **Section (9)(2)(f)(iv)**
 - a review of the offences and penalties related to shootings in public places
3. **Section (9)(2)(f)(iv)**
4. Related reforms to the Criminal Proceeds (Recovery) Act 2009 to better target illicit assets will be introduced as part of a separate amendment bill later this year.
5. Legislation to establish Firearms Prohibition Orders (led by Police) is also going through the Justice Select Committee and is relevant to the firearm related violence taking place within the organised crime and gang environment
6. Talking points for CPC are attached as **appendix 1**.

Section 9 (2)(g)(i)

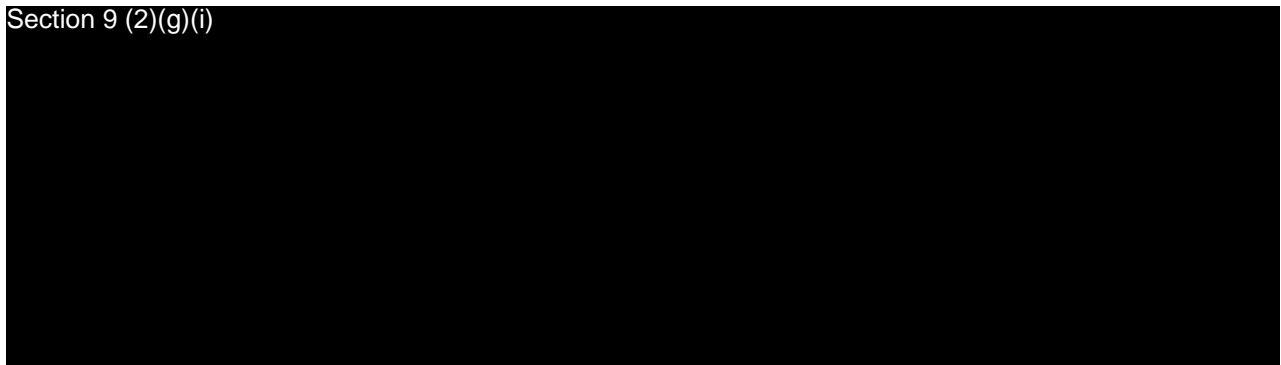
Timeline to legislation

8. Officials across the Ministry of Justice, New Zealand Police and the Ministry of Transport have developed a timeline for this work that would enable legislation to be passed this term. This involves the following key milestones:
 - week of 18 July – briefing to Minister of Justice seeking decisions on options to be included in Cabinet paper

- 31 August – policy paper to Social Wellbeing Committee
- 5 September – policy paper to Cabinet
- February 2023 – Leg paper to Cabinet, introduction of Bill.
- August 2023 – Third Reading, Royal assent.

9. A detailed timeline is attached as **appendix 2**.

Section 9 (2)(g)(i)



12. A high-level overview of the three new policy workstreams follows below. Officials are continuing to develop the policy in these areas, so initial options may be refined further.

Preventing gangs from moving and converting large quantities of cash

13. Gangs often move and convert large values of cash (and alternative modes of stored value) to facilitate criminal offending, hide its criminal origin and ultimately to use it. Police have identified circumstances where enforcement officers may find this cash, but not be able to identify that it is proceeds or evidence of offending until the opportunity to seize it has passed. Concurrently, some illicit gang cash continues to leak into the financial system through vulnerabilities in the anti-money laundering controls.
14. We are considering three options, which could potentially be used in combination.

Powers to seize suspicious cash

15. Officials are considering given to new powers to seize cash found in suspicious circumstances to allow Police to undertake further enquiries as to the cash's lawful origins. Any new powers would be to fill gaps within the existing statutory framework. This will give Police time to make further enquiries, before either returning the cash or initiating court proceedings to remove the cash permanently from the person in possession (in accordance with judicial order or existing statutory authority to retain the cash).

Prohibiting carrying large values of cash without justifiable reason

16. Another option under consideration is an offence of possessing or carrying cash over a certain threshold, without proof of lawful reasons for having the cash. Rather than directly seeking to remove the cash from the criminal economy this would add another layer of criminal conduct (possession per se) over and above the criminality which generated the cash and/or laundering the cash.
17. This option would require careful crafting to balance the obligation on a defendant to establish good reasons for having an otherwise inherently legal item. There are cultural implications and a wide range of circumstances in which people may lawfully possess

sizeable amounts of cash (including rural and migrant populations who have cash-based economies and older people who are more reliant on cash). Police and Justice have not identified any comparable jurisdiction in the world that has enacted any such offence.

Preventing criminal cash from being converted to high value goods or introduced to the financial system

18. The statutory review of the AML/CFT Act has identified a number of options that would make it harder for gangs to enjoy cash proceeds or get them into the financial system. The Ministry of Justice will make recommendations to the Minister of Justice on 30 June relating to:

- Regulatory amendments including prevention focused obligations requiring enhanced due diligence for third party deposits of cash and considering lowering the threshold for cash reporting to Police; and
- Legislative amendments to increase the AML/CFT obligations for high value dealers and specify that any business selling goods for cash over the threshold will attract AML/CFT obligations. This would be a significant change from the status quo where only dealers in certain high value goods attract limited AML/CFT obligations.

19. These options have already been extensively consulted on with industry and the public by the joint Ministry of Justice, NZ Police and Department of Internal Affairs project team. Progressing these proposals on the same timeframe as the other options under consideration would expedite their implementation.

Prohibiting cash purchases over a set threshold

20. Officials have identified a further option to make it harder for gangs to convert cash proceeds of crime by prohibiting cash purchases for high value goods over a set threshold. This option would make it harder for gangs to purchase items such a motorcycles or jewellery with cash, but would not affect all the methods that gangs use to dispose of cash proceeds of crime.

21. As with the AML/CFT measures, this option would be a significant change for affected businesses. This option has not been consulted with industry. Further, it would raise some of the same issues as an offence of carrying or possessing cash over a certain threshold (as set out above).

Section (9)(2)(f)(iv)



Review of the offences and penalties related to shootings in public places

29. Rising tensions between rival gangs have resulted in a number of drive-by shootings, which has raised public concern. Public shootings, including drive-by shootings, are one of the most harmful ways that gang violence can impact the public.
30. There are ongoing operational efforts to prevent and disrupt access to firearms, and Police continues to work with communities to lower these tensions.
31. The Firearms Prohibition Order Bill (currently before the Justice Select Committee) will establish a new set of protections to improve public safety by preventing people who have demonstrated high risk behaviours (evidenced by convictions for qualifying offences) from being able to access firearms or restricted weapons, with significant criminal penalties for breaches. While this legislation does not specifically target gangs, the nature of the qualifying offences is likely to capture some gang activity.
32. However, it is important that Police have sufficient legislative tools to respond to these events. NZ Police and Ministry of Justice are reviewing the Arms Act 1983, the Crimes Act 1961, and the Sentencing Act 2002 to ensure the offences and penalties related to shootings in public places are fit for purpose.
33. This includes identifying if there are any gaps that may require creation of new or amended offences, consideration of sufficiency of existing penalties, and review of the current aggravating factors that may be taken into consideration at sentencing.
34. There are already a number of serious offences under the Crimes Act 1961 that may be engaged by this type of offending (for example where there is injury, intent to injure, or property damage). Officials will consider options to address any issues that are identified, including ensuring that when firearms are discharged in a reckless or threatening manner this behaviour is sufficiently held to account.

Appendix 1 – Talking Points

Introduction (Minister of Justice)

- In response to ongoing concern about the harm posed by gang activity, I and other justice sector ministers have directed officials to explore legislative options to respond to these harmful behaviours. These options supplement existing work in this area, and relate to three key areas of concern.

Preventing gangs from moving and converting large quantities of cash (Minister of Justice)

- The first of these relates to cases where Police see or become aware of large amounts of cash in suspicious circumstances where there are no powers (existing or proposed) that would allow Police to seize that cash to attempt to verify its lawful origin or intended use.
- A cash seizure power designed to fill any gaps within the existing the statutory framework could directly address those issues.
- Regarding an offence of carrying or possessing cash, such an offence may impact on certain populations that have cash-based economies or who use cash regularly, including rural and migrant populations and older members of the community. While specifying a high quantity threshold would limit some of these concerns, it appears would also be the first offence of its kind in any comparable jurisdiction in the world.
- Once cash is seized under a cash seizure power and removed from circulation, investigations can take place to determine the lawful origins or intended purpose of the cash. Depending on the outcome of these investigations:
 - appropriate criminal charges can be filed (in relation to the underlying criminal conduct);
 - or proceeds of crime proceedings initiated to restrain or forfeit the cash.
- This can be done without introducing a further layer of criminality in relation to an activity – simply carrying or having cash – that is not inherently harmful and which risks innocent people being pulled into the criminal justice system.
- The Ministry of Justice will report back to me on 30 June on the Statutory Review of the Anti-Money Laundering and Countering Financing of Terrorism Act. This report will include a number of recommendations that would make it harder for gangs to get illicit cash into the system or use it to purchase high value goods.

Section (9)(2)(f)(iv)



Review of the legislative framework related to penalties for shootings in public places (Minister of Police)

- Finally, there are concerns about public shootings, including drive-by shootings, which are one of the most harmful ways that gang violence can impact the public.
- Police and Justice are reviewing the Arms Act 1983, the Crimes Act 1961, and the Sentencing Act 2002 to ensure the offences and penalties related to shootings in public places are fit for purpose.
- This includes identifying if there are any gaps that may require creation of new or amended offences, consideration of sufficiency of existing penalties, and review of the current aggravating factors that may be taken into consideration at sentencing. There are already a number of serious offences under the Crimes Act 1961 that may be engaged by this type of offending (for example where there is injury, intent to injure, or property damage). Officials will develop options to address and issues that are identified, including ensuring that when firearms are discharged in a reckless or threatening manner this is sufficiently held to account.

Appendix 2 – Detailed Timeline

Timeline for policy development

						Parliament recess						Recess				
	30-May	6-Jun	13-Jun	20-Jun	27-Jun	4-Jul	11-Jul	18-Jul	25-Jul	1-Aug	8-Aug	15-Aug	22-Aug	29-Aug	5-Sep	
Policy development	Problem definition/options development															
						Briefing										
RIA						RIA development										
									Justice to collate							
										QA panel						
Cabinet paper												Drafting			agency consultation	
								QA panel								
															SWC	
																Cabinet

Timeline for Bill

					Parliament Recess										Parliament Recess		
	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug					
Bill drafting	Bill instructions		Bill drafting														
				BORA vet													
Bill in house				LEG paper													
						Cabinet											
						1st Reading	Select committee										
											2nd Reading						
												Committee of the Whole					
																3rd Reading Royal Assent	



Cabinet Priorities Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Oral Item: Legislative Proposals to Tackle Gangs

Portfolios **Police / Justice**

On 8 June 2022, the Cabinet Priorities Committee:

- 1 **noted** that there continue to be ongoing issues with gangs and that a more targeted approach is needed to address it;
- 2 **directed** the New Zealand Police, in consultation with the Ministry of Justice and other agencies as appropriate, to report back to the Cabinet Social Wellbeing Committee on 29 June 2022 with further advice on options to:
 - 2.1 prevent gangs from moving and converting large quantities of cash, including giving Police the power to seize cash found in suspicious circumstances during lawful searches, and the parameters and specific areas that could be targeted in relation to prohibiting cash purchases over a set threshold;
 - 2.2 Section (9)(2)(f)(iv) [REDACTED]
 - 2.3 introduce stronger penalties for fleeing drivers;
 - 2.4 review the offences and penalties related to shootings in public places to introduce more targeted penalties for discharging a firearm in a public place;
 - 2.5 allow for targeted warrants to be issued as appropriate to address gang conflicts involving firearms;
- 3 Section (9)(2)(f)(iv) [REDACTED]

Jenny Vickers
Committee Secretary

Attendance: (see over)

Present:

Rt Hon Jacinda Ardern (Chair)
Hon Grant Robertson
Hon Kelvin Davis
Hon Andrew Little
Hon David Parker
Hon Nanaia Mahuta
Hon Poto Williams
Hon Stuart Nash
Hon Kris Faafoi
Hon Michael Wood

Officials present from:

Office of the Prime Minister
Officials Committee for CPC
New Zealand Police
Ministry of Justice

Hon Kiri Allan, Minister of Justice

Gang harm intervention – legislative options

Date	17 June 2020	File reference	Criminal Law Team\Organised Crime	
Action sought			Timeframe	
<p>Agree to a range of gang-related proposals for inclusion in a Cabinet paper for the Minister of Justice and Minister of Police to present at the Social Wellbeing Committee on 29 June</p>			June 2022	
Contacts for telephone discussion (if required)				
Name	Position	Telephone		First contact
		(work)	(a/h)	
Brendan Gage	General Manager, Criminal Justice, Ministry of Justice		Section (9) (2) (a)	<input checked="" type="checkbox"/>
Gillian Ferguson	Director, Policy, NZ Police		Section (9) (2) (a)	<input type="checkbox"/>

Minister's office to complete

<input type="checkbox"/> Noted	<input type="checkbox"/> Approved	<input type="checkbox"/> Overtaken by events
<input type="checkbox"/> Referred to:	<hr/>	
<input type="checkbox"/> Seen	<input type="checkbox"/> Withdrawn	<input type="checkbox"/> Not seen by Minister

Minister's office's comments

IN CONFIDENCE

Purpose

1. This briefing seeks decisions from you on policy proposals for the gang harm intervention legislative package. These decisions will inform a joint Cabinet paper on the package for you to present at the Social Wellbeing Committee on 29 June.

Executive summary


2. The Cabinet Priorities Committee has directed the Ministry of Justice and New Zealand Police to provide advice on specific proposals to target gang harm.
3. Concern about gang harm is currently focused on gang conflict and the risk it poses to the public when firearms are used. However, gang harm also includes a range of other criminal behaviours such as drug trafficking. This briefing includes a range of options intended to respond to gang conflict and public safety, as well as some of the wider harm caused by gang activity.
4. Section 9 (2)(g)(i) [REDACTED] . Proposals that provide new enforcement tools, such as new search or seizure powers will likely assist operational efforts to respond to crime but may undermine longer term work to build relationships with communities.
5. These proposals all carry implications for the Government's obligations under the New Zealand Bill of Rights Act 1990 (BORA) and te Tiriti o Waitangi/the Treaty of Waitangi and its principles. Three quarters of gang members are Māori, and as such the proposals are likely to have a disproportionate impact on Māori and further increase their representation within the criminal justice system.
6. This paper provides advice on the following proposals:
 - 6.1. a new offence in the Crimes Act 1961 to address all situations where a firearm is discharged with the intent to intimidate any person or group of people;
 - 6.2. an amendment to the Search and Surveillance Act 2012 to provide Police with additional search powers targeting gang members in circumstances of gang conflict;
 - 6.3. Section (9)(2)(f)(iv) [REDACTED]
 - 6.4. Section (9)(2)(f)(iv) [REDACTED]
 - 6.5. a new cash seizure power to allow Police to hold cash for a short period of time (up to 7 days);

- 6.6. an amendment to the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 to prohibit high-value dealers from accepting cash payments for specified goods.
7. If you are happy with the proposals as they are set out in this paper, officials will draft a Cabinet paper for you to present at the Social Wellbeing Committee on 29 June.

Background

8. In recent weeks, tensions between rival gangs have resulted in a number of violent incidents, including drive-by shootings in residential areas. This has had a significant impact on perceptions of public safety. Many members of the public are understandably concerned about the escalating violence and the threat of harm to themselves or their whānau members. Section (9)(2)(f)(iv)
9. At Cabinet Priorities Committee on 8 June 2022, Ministers discussed legislative options for counteracting the harm caused by ongoing gang activity [CPC-22-MIN-0013]. The Committee directed officials from the Ministry of Justice and New Zealand Police to provide further advice on a number of specific proposals:
- 9.1. reviewing the offences and penalties related to shootings in public places to introduce more targeted penalties for discharging a firearm in a public place;
- 9.2. new warranted search powers to prevent and respond to gang conflict
- 9.3. Section (9)(2)(f)(iv)
- 9.4. preventing gangs from moving and converting large quantities of cash, including giving Police the power to seize cash found in suspicious circumstances during lawful searches, and the parameters and specific areas that could be targeted in relation to prohibiting cash purchases over a set threshold.
10. This briefing provides you with options for these proposals, and seeks decisions to inform a joint Cabinet paper for you to present at the Social Wellbeing Committee on 29 June 2022.
11. Police will be providing the Minister of Police with separate advice on broader legislative mechanisms, which go beyond targeting gang-related offending, to better support Police to identify and respond to fleeing drivers.
12. Section (9)(2)(f)(iv)

Gang activity causes a range of harms

13. While organised crime and gangs are not synonymous, gangs and gang violence are often the visible face of organised crime in New Zealand. They frequently engage in a number of criminal behaviours, such as drug trafficking and other black-market activity, and may engage in violence as part of inter-gang rivalries or in order to resolve internal disputes. However, gangs and gang membership is not unlawful and not all gang behaviour is criminal. Gangs also provide connections and a 'home' for people marginalised, disenfranchised, or disaffected from mainstream society.
14. Dealing in illicit drugs, in particular methamphetamine, is extremely profitable for gangs and other organised criminal groups. In 2021, the New Zealand methamphetamine market was worth an estimated \$297.2 million. This money is coming out of some of our most vulnerable communities and is used to promote gang and criminal lifestyles and reinvest in further criminal activity. Gangs are highly motivated to protect and increase their share of the illicit drug market. Methamphetamine and other drugs not only provide gangs with revenue, they also increase gangs' power and influence within communities due to drug debt.
15. Current concern is focused on gang violence and its ability to spill over into wider communities through the use of firearms in public spaces or residential areas. The current spike in public violence is occurring within the context of deeper changes to the gang environment including the establishment of Australian gangs in New Zealand, resulting in increased inter-gang pressures, and greater willingness to escalate to violence using firearms.
16. As a result, Police is seeing more severe and overt violence, in particular firearms offending, which poses a significant risk to the community and has led to concerns about public safety. This is a fast moving, and highly fluid environment. This briefing proposes a new offence related to the use of firearms to intimidate, and a new search power for Police to use during times of gang conflict. These proposals specifically seek to address gang conflict and the harm it poses to the wider public.
17. Section (9)(2)(f)(iv)

18. Finally, drug transactions and other criminal activities predominately deal in cash and other forms of stored value. The proceeds of these activities are subsequently

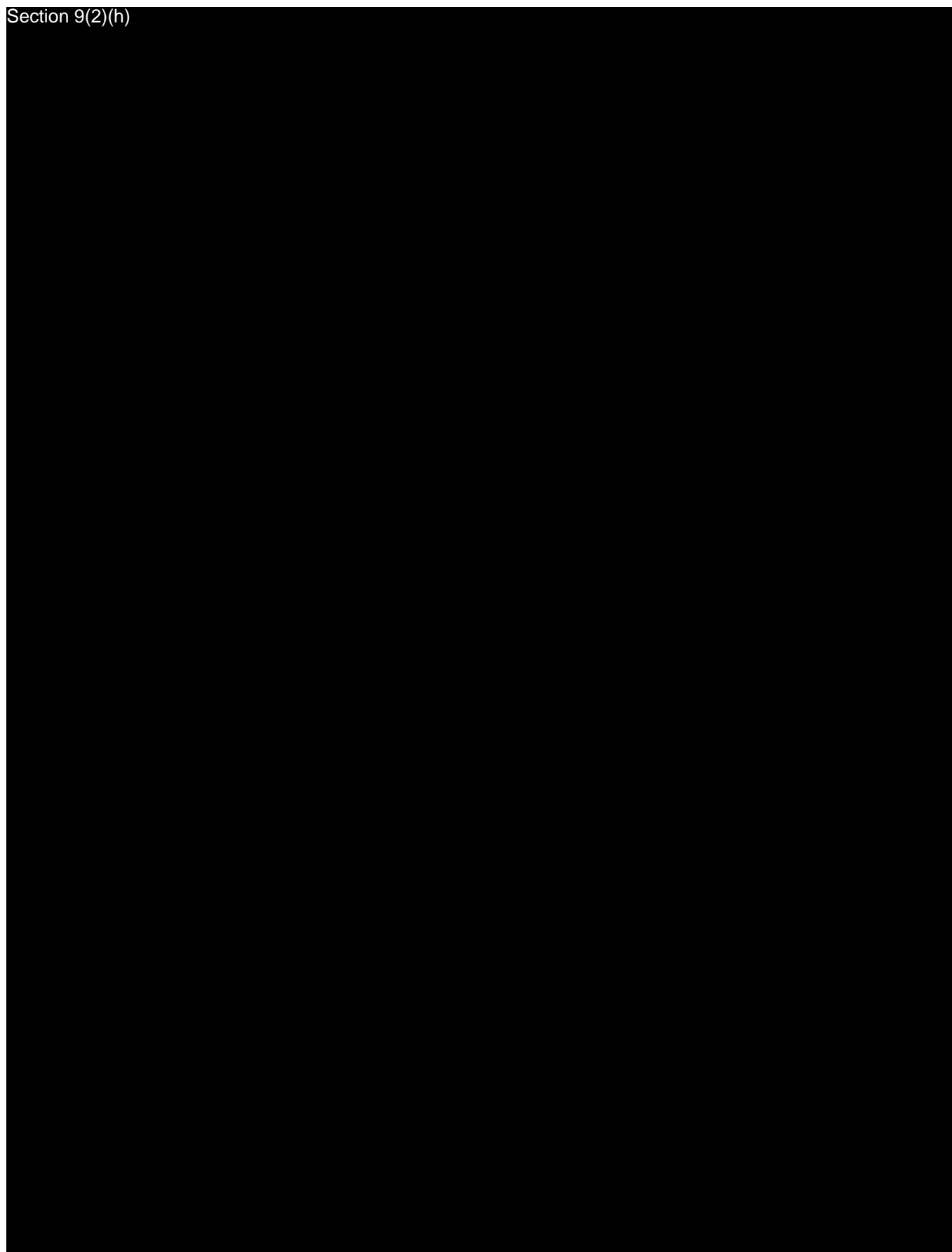
laundered by gangs and used to fund criminal activities and transport the proceeds of crime. The last set of proposals in this briefing seek to disrupt wider gang activity through limiting the ability to conceal cash profits or to convert it to other high value goods.

There are limits to a legislative response

19. Previous experience has shown that in times of escalating gang violence and tension, a concerted enforcement effort and the targeted policing of gangs is necessary to prevent, suppress and disrupt gang violence. These actions are underway.
20. Section 9 (2)(g)(i)
[REDACTED]
21. However, these amendments are carefully targeted to maximise impact. For example, we know that vehicles (particularly motorbikes) are an important part of gang member's perceived status and an essential part of many gangs' identities. Police's view is that the application of the proposed forfeiture legislation will become widely known among gangs very quickly and will impact on gangs' behaviour. Its success may be measured by its preventive impact on behaviour rather than on the number of times it is applied. We also recognise that legislation can have an important signalling effect, denouncing harmful behaviour.
22. These proposals will sit within and interact with the government's existing overarching approach to organised crime, which is set out in more detail as appendix 2. This includes a variety of work, including community-based responses to build resilience to organised crime and enforcement responses to criminal behaviour.
23. Section 9 (2)(g)(i)
[REDACTED]
[REDACTED]
[REDACTED] The new powers would need to be exercised carefully to encourage the long-term and short-term outcomes sought by both the new powers and existing programmes to reduce gang harm. Police will ensure that there are robust internal processes governing the use of any new warrants and powers and considers that such unintended outcomes are manageable.
24. For the most part, officials have proposed options which target criminal behaviour associated with gang harm, rather than gangs themselves. These options will apply to non-gang members as well. However, two of the options (a new search power to address gang conflict **Section (9)(2)(f)(iv)**) specifically target gangs. The only existing legal definition of gang is within the Prohibition of Gang Insignia in Government Premises Act 2013, which lists specific gangs. Options which target gangs may be practically difficult to draft. These issues will need to be worked through with the Parliamentary Counsel Office (PCO).

25. In addition, all of the proposals in this paper interact with the government's obligations under the New Zealand Bill of Rights Act 1990 and te Tiriti o Waitangi/the Treaty of Waitangi and its principles. These implications are set out in more detail below.

Section 9(2)(h)



Te Tiriti/Treaty analysis

34. Over three quarters of the known adult gang members in Aotearoa are Māori men. This means that measures specifically targeting gangs are disproportionately likely to impact Māori and are likely to conflict with the equity principle of te Tiriti o Waitangi/the Treaty of Waitangi. Furthermore, where options undermine BORA rights, these are likely to conflict with the Crown's specific article three duties to provide Māori with all the rights and protections of citizenship.
35. Targeting policies towards specific criminal behaviours rather than gang membership will mitigate but not completely resolve these concerns. Māori are charged with crimes between two and three times more than the general population and are overrepresented at every stage of the criminal justice system. While work is underway across the sector to better understand the disproportionate impacts on Māori, existing institutional biases and systemic racism mean that new offences or Police powers may be more likely to be used against Māori regardless of how they are targeted. Police is currently working with researchers and an independent panel, on a major research programme looking at how Police can ensure it delivers policing that is fair and equitable for all communities.
36. The prevalence of gang membership within Māori communities also means that Māori are more likely to be the victims of gang-related harm. Taking steps to combat this harm is therefore part of the Crown's responsibility to actively protect Māori. However, generally speaking the principle of partnership means the Crown should consult with Māori on the steps it takes when fulfilling its active protection obligations – Māori communities have a right to be involved in decisions that impact them. Due to time constraints, officials have not consulted with Māori on any of the proposals contained in this briefing.
37. Section (9)(2)(f)(iv)

Reviewing the offences and penalties related to shootings in public places

Objective

38. Public shootings, including drive-by shootings, are one of the most harmful ways that gang violence can impact the public. While this behaviour is used as a tool to harm and intimidate rival gang members, discharging a firearm in these settings also affects the nearby public, risking real physical harm and undermining their sense of safety. The extensive coverage of these kinds of events also tends to amplify the level of concern and intimidation such incidents generate.
39. There are ongoing operational efforts to investigate any shootings and identify offenders, which can be challenging given the circumstances of the offending. Often unlawfully held firearms will be located during investigations, which assists with

preventing and disrupting unlawful access to firearms. Police also continues to work with gang leadership and communities to lower the current gang tensions.

40. It is important to ensure that the offences and penalties related to such shootings appropriately hold offenders to account and publicly denounce this harmful behaviour. When directing officials to conduct a review of offences and penalties related to shootings in public places, Ministers expressed concern that the discharge of a firearm in a public place (such as on the street or in a carpark) may carry the same or lesser penalty as when it occurs in someone's home (say, when someone shoots at cans in their own backyard). This proposal seeks to respond to this concern.

Status quo: existing offences related to discharging a firearm

41. A licensed firearm owner, or someone under their immediate supervision, may safely discharge a firearm in public or near dwellings (if they have a lawful, proper, and sufficient purpose for doing so), such as while at a range or when hunting. However, there are a number of offences that may be engaged when a firearm is discharged, depending on the particular circumstances and facts.
42. These exist on a spectrum of offending, from lower-level offences, where minimal harm is caused or intended, through to more serious offences resulting in injury or death. This spectrum is set out at appendix 3.
43. The following scenarios are covered within that spectrum:
 - 43.1. Someone shoots at an object (eg shoots a can in their own backyard) and scares their neighbours (covered by s. 48 of the Arms Act 1983, maximum penalty of 6 months imprisonment or a \$10,000 fine);
 - 43.2. Someone shoots a firearm, in a manner likely to injure or endanger others or with reckless disregard for the safety of others (s 53(3) of the Arms Act, maximum penalty of 3 years imprisonment, a \$4,000 fine, or both);
 - 43.3. Someone shoots a firearm (not at a person), in order to intimidate someone in their home (covered by s. 308 of the Crimes Act, maximum penalty of 3 years imprisonment);
 - 43.4. Someone is in public in possession of a firearm without a lawful purpose, and enables a shooting to occur (s. 45 of the Arms Act, maximum penalty of 4 years imprisonment or a \$5,000 or both);
 - 43.5. Someone shoots a firearm and either intentionally or recklessly destroys any property knowing that danger to life was likely to result (s. 269(1) of the Crimes Act, maximum penalty 10 years);
 - 43.6. Someone shoots a firearm directly at a specific person or group of people, with intent to injure or cause grievous bodily harm or with reckless disregard for the safety of others, or with actual injury occurring (ss.188, 189 and 198 of the Crimes Act, maximum penalties ranging from 5-14 years).

44. What is not covered by existing offences is a scenario where someone shoots a firearm with the intent to intimidate, and the person or people being intimidated is/are somewhere in public (e.g. on the street), rather than inside a house. This type of shooting does not necessarily need to be at a person, nor have the intention of injuring or being reckless as to safety, nor does it need to cause any injury or property damage (as these scenarios are covered by existing offences).

Proposal: a new offence to address the identified gap

45. Officials consider that use of a firearm to intimidate causes harm regardless of where it takes place. As such, we propose introducing a new offence in the Crimes Act to address all situations where a firearm is discharged with the intent to intimidate any person or group of people. This new offence would either replace or amend the relevant subsection in section 308 of the Crimes Act, so that it captures conduct that takes place in the home *as well as* outside the home. We also consider that the penalty for this new offence would need to be increased in order to reflect the harm involved in these situations.
46. The new offence would not be limited to gang member offenders or gang-related shootings. This is because any person who commits the act with the requisite intent is equally culpable no matter who commits it. However, the nature and extent of any connection between a person's offending and their gang involvement may still be taken into account as an aggravating factor at sentencing (under s. 9(1)(hb)(i) of the Sentencing Act 2002).

Proposed penalty

47. The maximum penalty attached to an offence represents the worst possible case of offending for that conduct. A judge then has discretion to apply a specific sentence for an individual in a range *up to* the maximum penalty attached to the offence.
48. The Sentencing Act 2002 also has a number of relevant aggravating factors that may be taken into account at sentencing and may result in an uplift of the sentence: threatening or using violence, threatening use of or using a weapon, membership of an organised criminal group, and any other aggravating factors the court thinks fit.
49. Officials agree that the current penalty of three years under section 308 of the Crimes Act is insufficient for the harm caused by the proposed offence. In determining an appropriate penalty, officials recommend you consider which of the existing offences this proposed offence is most commensurate with. Officials consider a penalty in the range of 5-7 years to be appropriate, sitting between the Arms Act offences where someone has been reckless about the safety of others, and the Crimes Act offences where someone intends or actually causes serious harm. However, officials have differing views on the specific penalty level.

50. Section 9 (2)(g)(i)
- 

Implications

54. Māori face disproportionate outcomes at all stages of the criminal justice system. As such, creating any new criminal offence may perpetuate already existing inequalities for Māori. This will need to be considered as part of any decision to introduce a new criminal offence.
55. However, we are aware that some of the communities that have higher levels of gang violence or violence relating to firearms are disproportionately populated by Māori. It is possible that a proposal responding to firearms could contribute to safer communities for Māori who may be inadvertently harmed by violence in their region.

Recommendation

57. Officials recommend that you:

57.1. introduce a new offence in the Crimes Act to address all situations where a firearm is discharged with the intent to intimidate any person or group of people; and

57.2. decide on which penalty you consider most appropriate for this conduct.

New warrant and search powers to prevent and respond to gang conflict

Objective

58. While the new offence above may help to hold offenders to account, it is unlikely to directly prevent gang conflict. Our second proposal seeks to provide Police with new warrant and search powers to enable them to respond to emerging conflict and remove weapons (including firearms) from participants, reducing the risk of public harm.

Status quo

59. Existing powers are adequate to search property and vehicles where Police suspect or believe that individuals have committed, are currently committing or will commit an offence involving weapons. However, the existing provisions carry a 'suspicion' requirement and must be targeted towards the property of specific individual or individuals. This does not allow Police to search the property and vehicles of all members of the gang despite the increased risk that future violence may be committed by any member of the gang

Proposal

60. The proposed warrant would grant Police additional search powers to search properties and vehicles that are occupied, used or owned by members of the specified gangs, for weapons likely to cause harm to the public – such as firearms.

61. Determining who falls within the ambit of the search power will be worked through in drafting with the PCO. However, we intend for this power to capture both validated patched/full members and prospective members. Further consideration needs to be given to whether gang associates should be included given it would capture a broader range of people. We also intend for gang conflict to include both serious inter-gang conflict and intra-gang conflict.

62. For this warrant, Police will not need to suspect the gang members of a specific offence to search their property for weapons, as there will be no thresholds to meet over and above those required to obtain the warrant.

63. When a warrant is issued, additional existing powers under the Search and Surveillance Act 2012 are engaged. This includes the ability to detain any person present at the specified location (or who was in or on any vehicle stopped) and carry out a rub down search of those persons.

64. Nothing in the proposed new warrant power will limit existing warrantless powers being exercised, including to enter places or vehicles to prevent the risk to the life or safety of any person, or to arrest and search a person suspected of having a weapon in a public place.

Police must meet criteria for the warrant to be issued

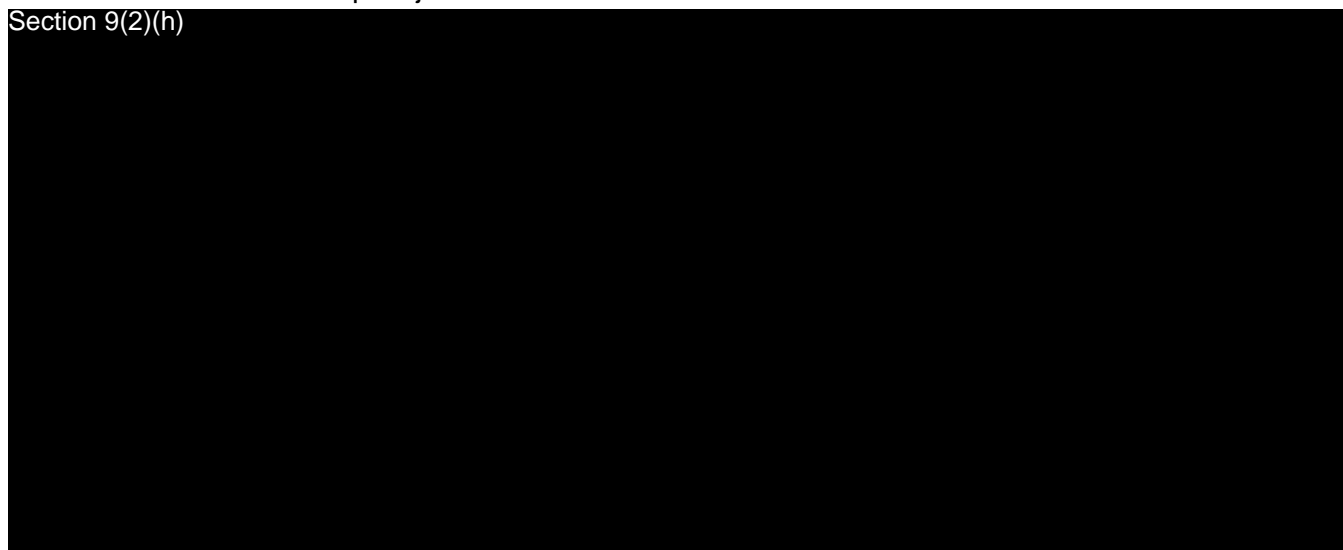
65. Before the warrant could be issued, Police would have to demonstrate to a judge that a gang conflict is underway and involves, or may soon involve, the use of weapons that are likely to cause harm, with an emphasis on harm to the public. The history of conflict and recent conflict between the gangs, as well as indicators of escalating or future conflict, should be considered.
66. The warrant itself would specify:
- a. the gang/s it relates to;
 - b. the required time limit (with a maximum of 14 days – a new warrant could be sought if additional time is needed); and
 - c. the known property (including residences, dwellings and vehicles) occupied, possessed or owned by known gang members within a specified region or regions.
67. There will need to be reasonable grounds to suspect that the property/vehicle to be searched is occupied, possessed or owned by a patched or prospective member of a specified gang.
68. Together, these safeguards increase the likelihood that Judges will issue these warrants and decrease the likelihood that the power may be found to be unreasonable following use.

Implications

69. This proposal is likely to be controversial due to the broad powers and limiting effect on people's rights.
70. Police expects that given the resourcing required to collate the information to request the warrant and then to execute the warrant, that they will only be sought where compelling circumstances exist justifying the use of such a warrant. Further, the powers may not be exercised without a judicial authority. Police expects to have robust internal processes governing the use of these warrants and powers.
71. There are existing safeguards on Police's use of powers, including the Independent Police Conduct Authority and the courts. However, this oversight does not come into play until after powers are exercised.
72. As with other proposals, this will have a disproportionate effect on Māori and will likely exacerbate Māori representation in the criminal justice system. It will likely impact the whānau of gang members as well as gang members themselves, as it allows entry into homes. During searches conducted under this new power, evidence may be found of other offending, including by other whānau members. The use of discretionary powers

and decision-making once people are within the justice system also a key way in which racial bias can impact justice outcomes.

Section 9(2)(h)



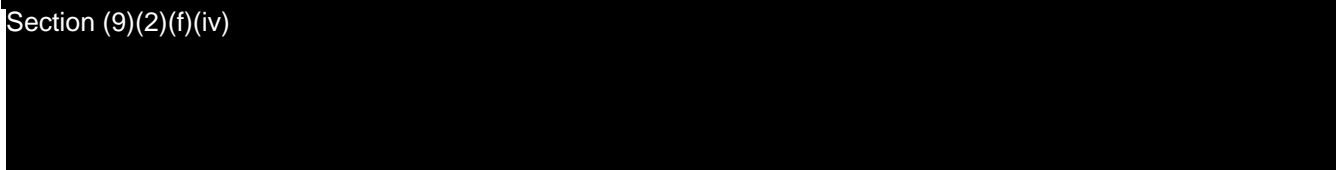
Recommendation

74. Officials recommend amending the Search and Surveillance Act 2012 to create a new warrant and search powers to provide Police with additional search powers targeting gang members in circumstances of gang conflict.

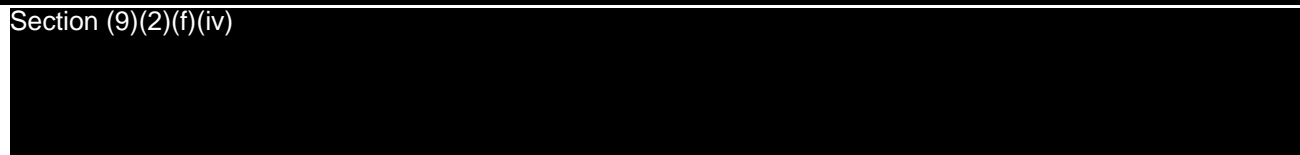
Section (9)(2)(f)(iv)



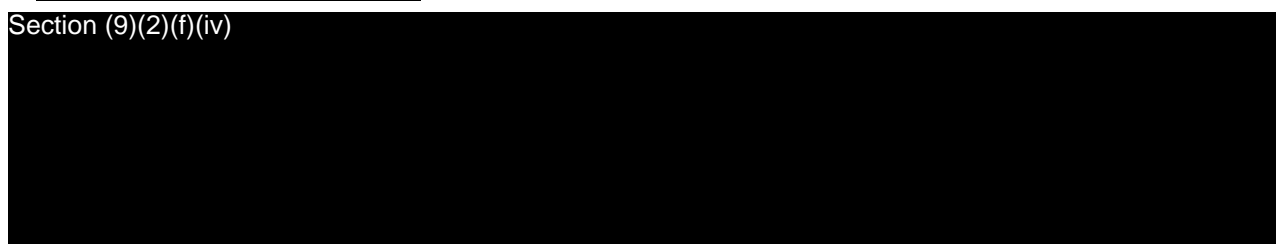
Section (9)(2)(f)(iv)



Section (9)(2)(f)(iv)



Section (9)(2)(f)(iv)



Section (9)(2)(f)(iv)

83. Section 9 (2) (g) (i)

84. Section (9)(2)(f)(iv)

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Section (9)(2)(f)(iv)

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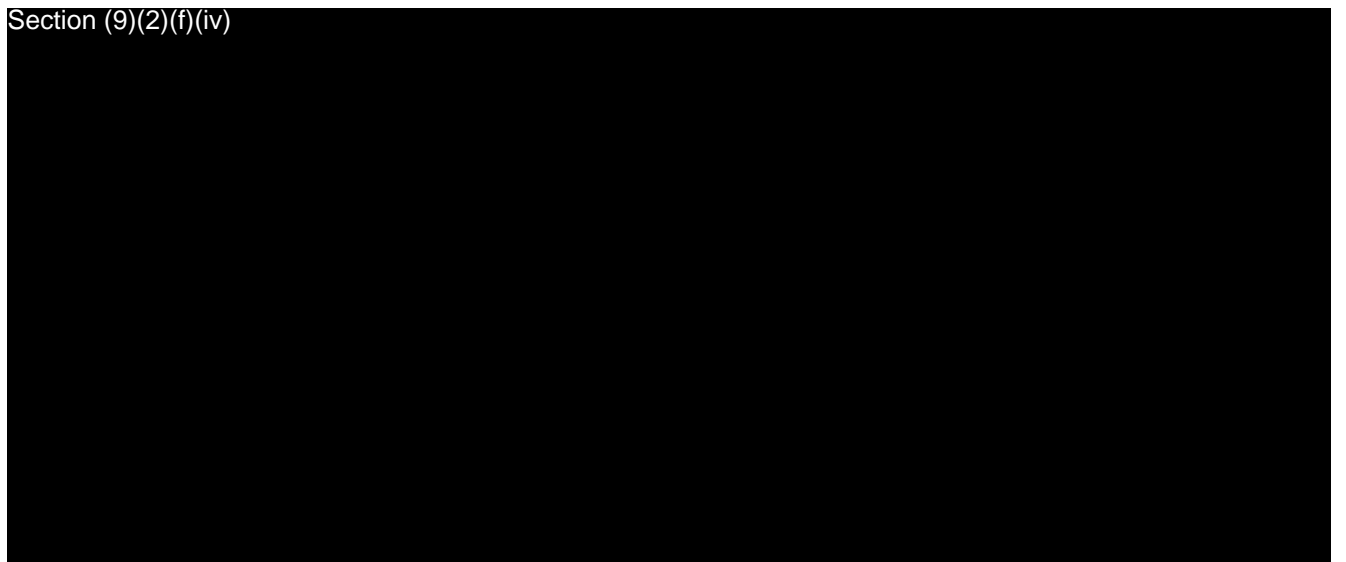
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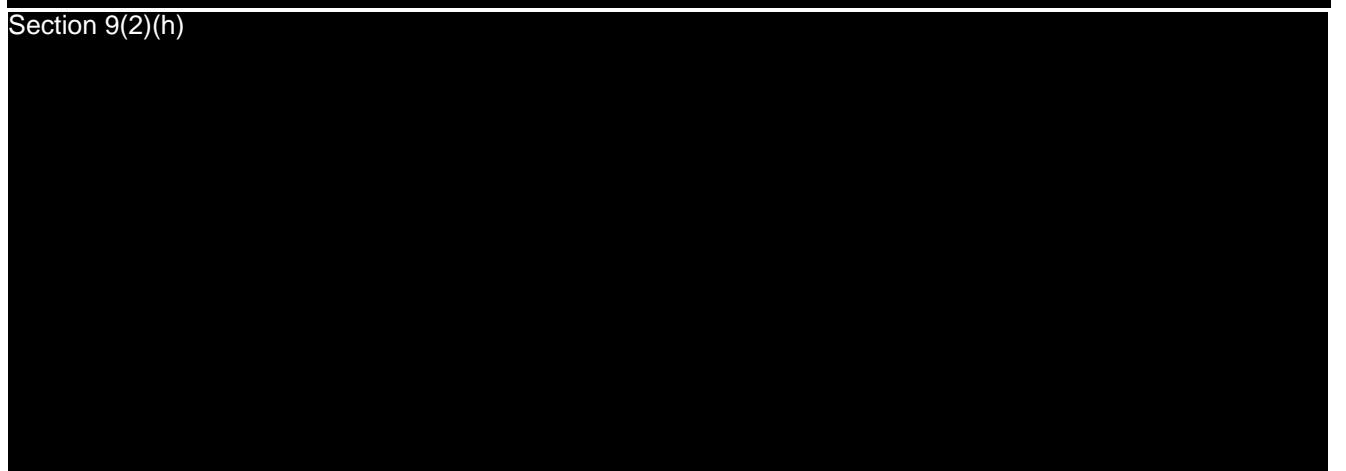
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Section (9)(2)(f)(iv)



Section 9(2)(h)



Recommendations

107. Section (9)(2)(f)(iv)

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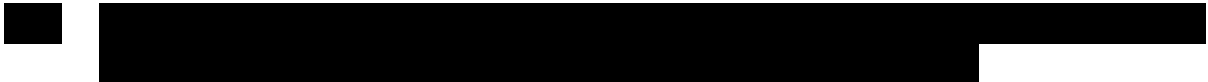
Section 9(2)(h)



108. Section (9)(2)(f)(iv)



109. Section 9 (2)(g)(i)



Preventing gangs from moving and converting large values of cash

112. Gangs often move and convert large values of cash (and alternative modes of stored value) to facilitate criminal offending, hide its criminal origin and ultimately to use it. Police have identified circumstances where enforcement officers may find this cash, but not be able to identify that it is proceeds or evidence of offending until the opportunity to seize it has passed. Concurrently, some illicit gang cash continues to leak into the financial system through vulnerabilities in the anti-money laundering controls.

Overall objective

113. The objective of the proposals is to reduce the use of cash as a means for transacting in proceeds of crime or to be used for unlawful activity.

Short-term cash seizure power

Status quo

114. The Search and Surveillance Act 2012 allows for “plain view” seizures of items, including cash, found while an officer is exercising a search power or while lawfully in a place or in a vehicle. However, for that seizure power to be exercised, the officer must have reasonable grounds to believe that the item could have been seized under a search warrant or another search power.
115. While the plain view seizure power covers a wide range of circumstances in which cash may be lawfully seized under the current law, there are scenarios in which it does not apply.
116. These include, for example, large amounts of cash found by an Aviation Security Officer at an airport notified to Police or where thousands of dollars are observed in a vehicle which has been stopped. Unless there is evidence of some criminality in relation to an

imprisonable offence (meaning that a warrant could be obtained) or another search power exercisable by the officer in the circumstances, there is no ability to seize the cash.

117. There is an argument that, given the lawful nature of cash and that it is not an inherently dangerous item (such as a firearm), the ability to seize cash should properly be limited to the extent already provided by the law. The compelling counterargument is that where cash is found in suspicious circumstances and those in possession are unable to give a plausible explanation of the origin of the cash (or its intended purpose) there should be the ability for Police to seize the cash for a short period of time. This would enable the cash's origins to be ascertained.

Proposal

118. Accordingly, officials propose new powers to seize cash found in suspicious circumstances to allow Police to undertake further enquiries as to the cash's lawful origins. Any new powers would fill gaps within the existing statutory framework. Police would be able to hold this cash for up to seven days. This will give Police time to make further enquiries, before either returning the cash or initiating proceedings to remove the cash permanently from the person in possession (in accordance with judicial order or existing statutory authority to retain the cash).
119. Mechanisms under consideration for dealing with the cash once seized are those that already exist under the Search and Surveillance Act 2012 or the Criminal Proceeds (Recovery) Act 2009.
120. In the present context, "cash" will need to be given an expansive definition to cover items such as stored value cards (for example, gift cards for petrol or goods) to ensure that any means by which proceeds of crime may be converted into an easily moveable form which may be used to disperse the cash into the economy are captured by the new power.

Implications

121. This proposal will extend beyond gang-activities to any person who possesses cash in suspicious circumstances. For example, a business person engaged in money-laundering activities involving cash. On that basis the proposal is not discriminatory and will allow Police to remove illicit cash from the economy. The impact of this proposal on those who carry cash for routine or day to day purchases is assessed to be low. It will be the high value of cash and surrounding circumstances that will give rise to suspicion of illegal activity that will form the basis for this seizure power to be used by Police.

Section 9(2)(h)



Section 9(2)(h)

Recommendation

123. Officials recommend a new cash seizure power be developed to allow Police to hold cash for a short period of time (up to 7 days) to ascertain its origins before returning the cash or initiating proceedings to remove the cash permanently from the person from whom it was seized or any person who has obtained it by illegal means.

A prohibition on selling of a list of goods by way of cash transactions over a threshold should apply to high value dealers captured by the AML/CTF Act

Status quo

124. The Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (the AML/CFT Act) is designed to help detect and deter money laundering and terrorism financing by requiring specified businesses to undertake activities (such as reporting and conducting due diligence on customers) on certain transactions.
125. The AML/CFT Act prescribes obligations on high-value dealers (HVDs); defined in the AML/CFT Act as people whose business involves the buying or selling of a list of goods by way of cash transactions above a threshold value (currently set, in regulations, at NZD10,000). Goods are on this prescribed list because of their association with money laundering, which in the high value goods space are highly aligned to the type of money laundering that gangs are involved with.
126. HVDs are not prohibited from selling these goods by way of cash transactions, but are required to:
- conduct standard customer due diligence (CDD),
 - submit prescribed transaction reports to the NZ Police Financial Intelligence Unit (FIU) for domestic physical cash transactions at or above NZD10,000,
 - keep records of identity and verification documents, suspicious activity reports (if they are submitted to the FIU), and any audits, and
 - audit their AML/CFT obligations when requested by the Department of Internal Affairs.

Proposal to prohibit selling by way of cash transaction for certain goods associated with money laundering by gangs

127. Ministers have asked about the possibility of prohibiting cash purchases over a certain threshold for a limited number of goods associated with money laundering by gangs.
128. We recommend that the most effective way to do this would be to prohibit HVDs from selling by way of cash transaction over a threshold value for these types of goods. It

would then be an offence for any HVD to sell prescribed goods for cash over the threshold.

Statutory Review of the AML/CTF Act will soon be received by the Minister of Justice

129. As part of the review of the AML/CFT Act we have consulted on a range of options for HVDs as part of the statutory review on how the AML/CFT Act has performed since 2017. The consultation on the review sought feedback on a number of options for high value dealers including whether to extend existing AML/CFT obligations. Although the review did not include an option prohibiting cash payments the majority of submitters thought that high value dealers should have increased or full obligations to improve intelligence collection and better address the risks in the sector.
130. The Ministry of Justice will conclude the review on 30 June 2022 with a report to the Minister of Justice outlining how the AML/CFT Act has performed and whether any amendments are recommended.

Prohibition on selling by way of cash transactions over a threshold should apply to high value dealers captured by the AML/CTF Act

131. We recommend that an amendment is made to the AML/CFT Act to prohibit high-value dealers from selling by way of cash transactions over a certain threshold value for some of the goods listed in the definition of 'high value dealer' in section 5 of the AML/CFT. Specifically, we recommend that these goods are:
- jewellery and watches;
 - precious metals and stones; and
 - motor vehicles and ships
132. As noted above, there is already a regulatory regime aligned to sale of this set of goods, and certain specified art objects, for cash over NZD10,000. The statutory review of the AML/CFT Act will include options to widen the scope of goods captured by the current obligation. The prohibition would complement this work by preventing cash sales of the goods identified as being most at risk of being used for laundering in New Zealand, specifically laundering cash proceeds of the illicit drug market associated with gangs. At the same time the AML/CFT review obligations would help to ensure that gang members do not purchase other goods instead of the prohibited items.
133. Police are aware that some HVDs already have policies to not accept cash. This is to minimise both reputational risk and compliance activity (ie, large cash transaction reporting requirements).

We recommend that the threshold is set through regulation to allow for a risk assessment to be undertaken, and so that the value can evolve over time

134. The Ministry of Justice's initial view is that, while setting the threshold value at NZD10,000 would align with the current definition of a HVD, this would effectively make HVDs disengage in all activity that attracts AML/CFT obligations for the listed goods. This would create a new problem, as with HVD dealers out of the regulatory system

AML supervisors would lose their ability to detect breaches of the newly created prohibition (and supervisory enforcement).

135. We would prefer for a risk assessment to be undertaken to find the right value above \$10,000 which properly responds to the risk of money laundering by gangs, whilst allowing legitimate cash business to occur. This would require HVDs to conduct CDD and report any cash sale of designated goods over NZD10,000 but below the threshold. This threshold value should be set through regulations so that it can more easily be updated over time and keep pace with money laundering as it evolves and amendments to the AML/CFT Act are made. This option also has the advantage of retaining the detection and enforcement regime in the AML/CFT Act.
136. Police's initial view is that a value of \$10,000 is justifiable on the basis of alignment to the AML regime. A higher threshold would provide for more significant leakage of cash from illegal activities entering in the financial system. Some high value dealers have already introduced a no-cash purchase system (a zero threshold) that has not impacted on their business success.
137. Police consider that there may be a case to set the threshold value below \$10,000 in response to specific money laundering activity by gangs that Police has recently become aware of, such as using second-hand cars.
138. We will look to undertake a risk assessment in the next week and include a range of options for the threshold value in the Cabinet paper.

A high value dealer register is needed to support the prohibition on selling by way of cash transactions over \$10,000

139. There are issues with the existing HVD provisions, which these changes would exacerbate. Specifically, it is challenging for supervisors to identify who are HVDs as there is no registration framework for HVDs. This would make it difficult for supervisors to identify who should be complying with the prohibition on cash payments over \$10,000.
140. However, the statutory review report for the Minister of Justice is expected to recommend a registration framework be established for all businesses with AML/CFT obligations (that do not already have a registration framework) including HVDs. Creation of a HVDs registry would provide agencies with a mechanism to monitor compliance with a prohibition that scopes HVDs out the AML/CFT regime.

Implications

141. This prohibition would make it harder for gangs to convert cash proceeds of crime by prohibiting cash purchases for high value goods over a set threshold. This option would make it harder for gangs to purchase items such a motorcycles or jewellery with cash, but would not affect all the methods that gangs use to dispose of cash proceeds of crime.
142. This proposal will extend beyond gang-activities to any person who wants to use cash to make a large purchase of the designated goods. As such, this option would be a

significant change for affected businesses and has not been consulted with industry. We are also conscious that there are a wide range of circumstances in which people may legitimately use sizeable amounts of lawful cash to purchase goods, including rural and migrant populations who have cash-based economies and older people who are more reliant on cash.

143. This proposal has limited implications for the Tiriti obligations. The proposal targets all cash transactions in relation to a limited number of high value items. High value dealers in paintings, sculpture and carvings that are likely to have cultural significance are excluded from this proposal as Police's experience is that gangs are attracted to purchases of the specified items of jewellery, watches, gold and motor vehicles.
144. This amendment would not capture private/one-off sales. While this may lead to a small amount of cash from gangs leaking into the financial system, we consider this is relatively low-risk as the high cost to gangs continually having to find private sales to launder money through means they are unlikely to do so. Furthermore, there would be significant implications to private sellers and the supporting economic infrastructure if they were bought within the prohibition (for example, the high number of private sales that are conducted through TradeMe's platform).
145. When the AML/CFT Act was extended to high value good sales in 2017, it was found to be impractical to include private sales in the AML/CFT regime. As such the regulatory and supervisory system would not be able to monitor private sales to ensure that they do not breach the prohibition. It would therefore be near impossible to enforce the prohibition for private/one-off sales.

Section 9(2)(h)



Next steps

147. If this option is progressed, we will need to develop amendments for penalties and enforcement of prohibition of HVDs selling these listed goods by way of cash transactions of \$10,000 or above (including a HVD register). This would require the selling of such to be an offence under the AML/CFT Act. We would look to include this new prohibition in the existing prohibition and enforcement schemes of the AML/CTF Act.

Recommendations

148. Officials recommend amending the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 to prohibit high-value dealers from selling by way of cash transactions for a specified subset of the goods listed in the definition of 'high-value dealer' in section 5 of the Act, over a threshold value.

149. Officials recommend that the subset of goods are:
- 149.1. Jewellery and watches;
 - 149.2. precious metals and stones
 - 149.3. motor vehicles and ships.
150. Officials recommend that this threshold value is set through regulations.

Consultation

151. The Ministry of Transport and the Crown Law Office contributed to this briefing. DPMC was consulted on the new warrant and search powers only. No other government agencies or external bodies have been consulted on this briefing due to time constraints.

Next steps

152. Officials will draft a joint Cabinet paper for you to present at Social Wellbeing Committee on 29 June 2022.
153. Due to the speed at which this policy has been developed, some of these elements may need to be refined during the remaining policy development and drafting period.
154. We will seek further decisions from Ministers as needed during the policy development and drafting period.

Recommendations

- | | |
|--|------------|
| 1. Agree to include in the Cabinet paper a proposal for a new offence in the Crimes Act 1961 to address all situations where a firearm is discharged with the intent to intimidate any person or group of people; | YES/NO |
| 2. Agree to include a penalty of, EITHER | CIRCLE ONE |
| a. 5 years imprisonment; OR | |
| b. 7 years imprisonment | |

New warranted search powers to prevent and respond to gang conflict

- | | |
|--|--------|
| 3. Agree to include in the Cabinet paper a proposal to amend the Search and Surveillance Act 2012 to create a new warrant and search powers to provide Police with additional search powers targeting gang members in circumstances of gang conflict; | YES/NO |
|--|--------|

4. **Note** that the new warrant and search powers will allow Police to search property (including vehicles) of gang members who are not suspected of any specific offence in circumstances of gang conflict;

Section (9)(2)(f)(iv)

Section 9(2)(h)

YES/NO

Section (9)(2)(f)(iv)

CIRCLE ONE

Section (9)(2)(f)(iv)

YES/NO

CIRCLE ONE

9. **Note** that Police will provide a separate briefing in relation to how penalties for fleeing drivers could be amended;

Preventing gangs from moving and converting large quantities of cash

10. **Agree** that to include in the Cabinet paper a proposal for a new cash seizure power to allow Police to hold cash for a short period of time (up to 7 days) to ascertain its origins before returning the cash or initiating proceedings to remove the cash permanently from the person from whom it was seized or any person who has obtained it by illegal means;

YES/NO

11. **Note** that cash will be given an expansive definition to cover items such as stored value cards (gift cards) into which cash may be readily converted to conceal its origins;

12. **Agree** to include in the Cabinet paper a proposal to amend the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 to prohibit high-value dealers from accepting cash payments for a specified subset of the goods listed in the definition of 'high-value dealer' in section 5 of the Act, over a threshold value.

YES/NO

13. Agree that the subset of goods are:

YES/NO

- a. Jewellery and watches;

- b. precious metals and stones;
- c. motor vehicles and ships.

14. **Agree** for this threshold value to be set through regulations

YES/NO



Brendan Gage
General Manager, Criminal Law, Ministry of Justice



Gillian Ferguson
Director, Policy, New Zealand Police

APPROVED SEEN NOT AGREED APPROVED SEEN NOT AGREED

Hon Kiri Allan
Minister of Justice

Date / /

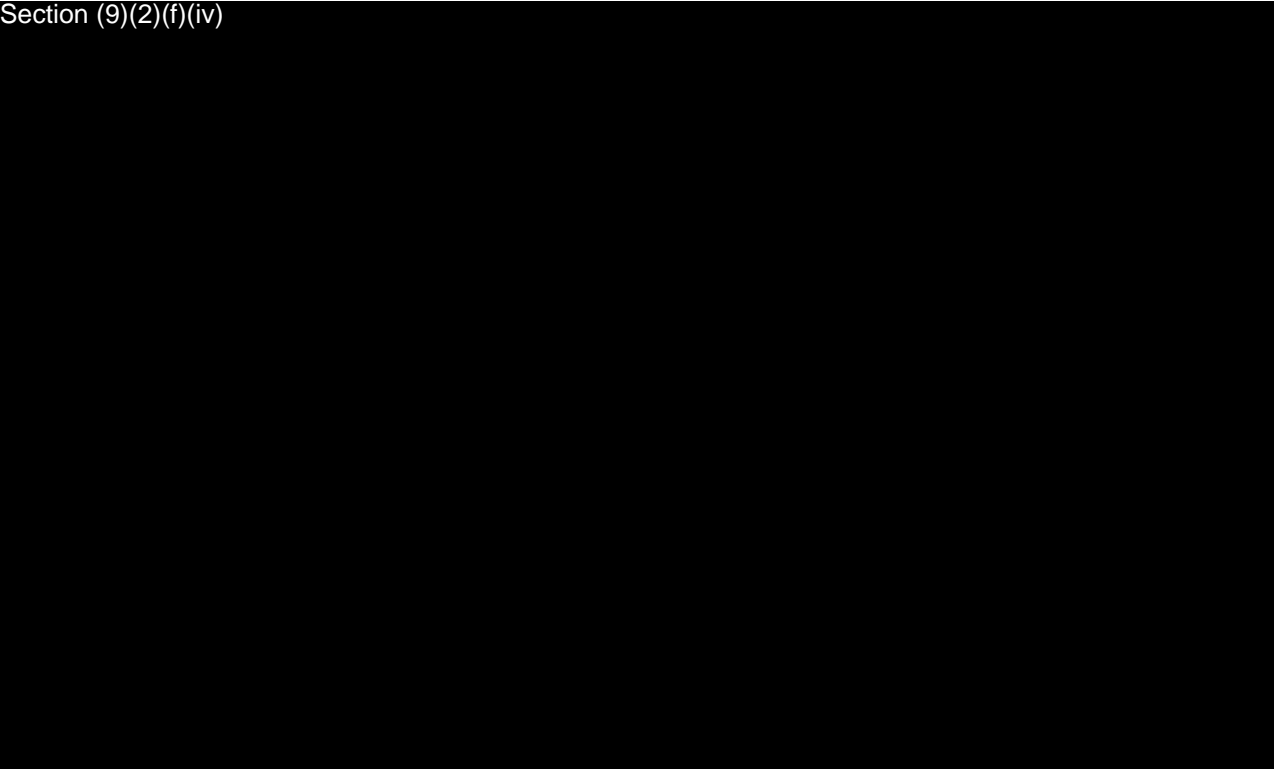
Hon Chris Hipkins
Minister of Police

Date / /

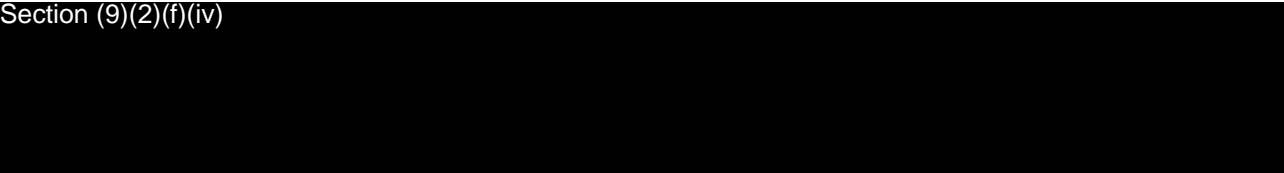
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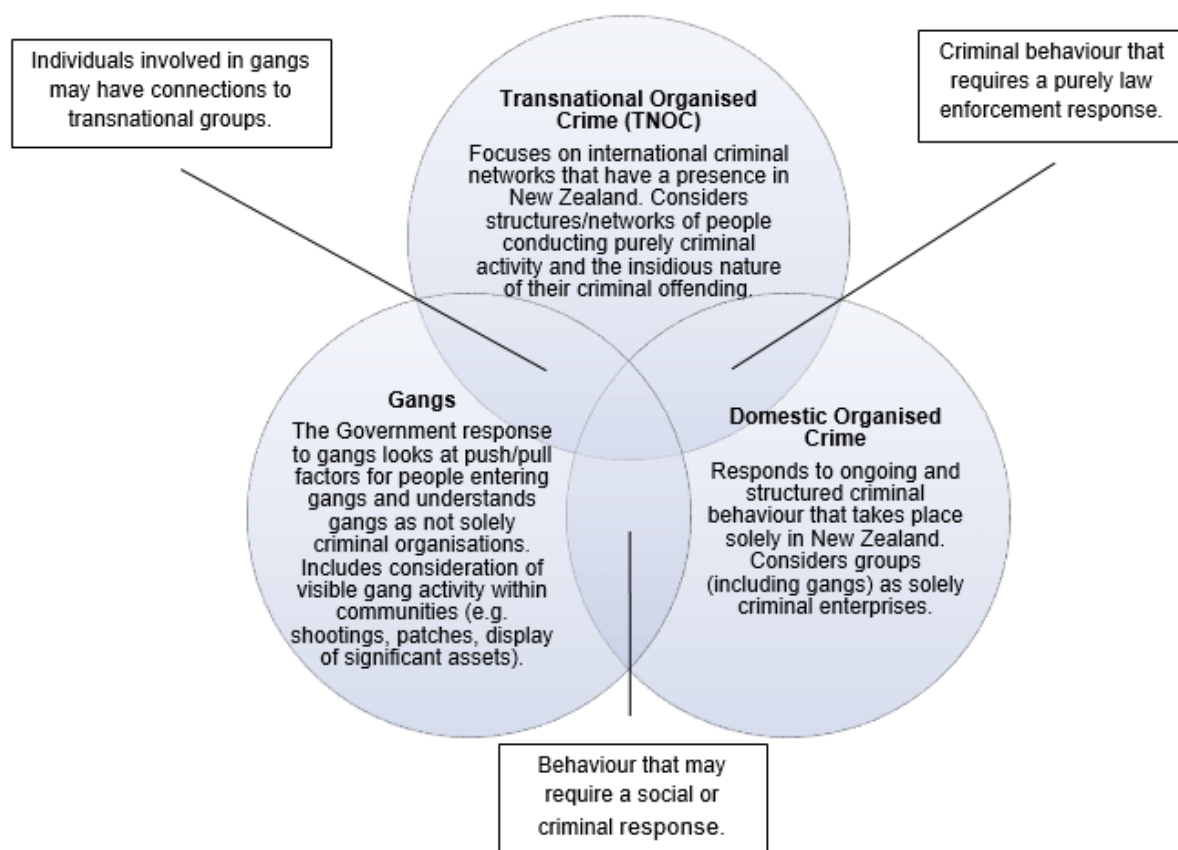


Section (9)(2)(f)(iv)



Appendix 2: The Government's overarching approach to organised crime

155. It is important to first place any discussion of gangs within the wider context of organised crime and transnational organised crime while also acknowledging that not all gang behaviour is criminal. Each of these areas has distinct problems and considerations, and the appropriate response or intervention may differ for each.



156. The Government currently tailors its response to the relevant area of organised crime within the overall landscape. Within the New Zealand landscape, we currently experience:
- 156.1. Visible antisocial behaviour that is often attached to gang membership (e.g. shootings, visible wearing of patches, display of significant illicit assets).
 - 156.2. Social harm to members of gangs and also communities that have a gang presence, that needs a social sector response to remove the pull towards gang membership and reduce the impact of gang activity on communities.
 - 156.3. Law enforcement interventions that respond to the significantly harmful and criminal behaviours of TNOC and domestic organised crime actors (e.g. asset recovery and criminal offences).
157. Together, these aspects form a highly complex and interwoven organised crime landscape within New Zealand. This means any intervention will not exist in isolation. Agencies are

currently progressing several pieces of work that respond to various parts of the organised crime landscape.

Legislative projects

Project	How this responds to organised crime
Reforms to the Criminal Proceeds (Recovery) Act	<p>These amendments will allow courts to order forfeiture of property:</p> <ul style="list-style-type: none"> involved in transnational offending; associated with organised crime, where the respondent's known legitimate income and capital are likely to have been insufficient to acquire the property. <p>These amendments would further improve CPRA's effectiveness in disrupting TNOC.</p>

Section (9)(2)(f)(iv)

Review of the Search and Surveillance Act	The review will ensure law enforcement powers relating to search and seizure are appropriate and fit for purpose. This will help to ensure that all types of crime, including organised crime, can be appropriately investigated and responded to.
Statutory Review of the AML/CFT Act	Ensuring our AML/CFT settings are appropriate and working well is an important part of responding to organised crime as laundering the proceeds of crime is a central part of being able to profit from organised crime activities.

Strategic responses

Project	How this responds to organised crime
Resilience to Organised Crime Strategy	The Resilience to Organised Crime in Communities work programme employs an innovative approach to combatting organised crime by combining social and economic intervention with targeted enforcement action.
Whanau resilience to gangs (Led by Te Pūni Kōkiri with Justice involved in discussions)	The focus of this work will be about balancing social cohesion and community building and enforcement. The work aims at preventing recruitment to gangs, preventing re-recruitment post jail and employment/housing – which are all essential to resilience against organised crime.
Transnational Organised Crime Strategy	<p>The Government's transnational organised crime strategy brings together government agencies to tackle organised crime by setting out a framework for greater coordination and prioritisation of government responses to transnational organised crime across a wide range of crime types.</p> <p>It focuses on the sophisticated global network of organised criminal groups which target New Zealand, driving the supply of drugs and other illicit commodities.</p>

Appendix 3: Offences and penalties related to firearm use

Act/provision	Description	Max penalty
s48 Arms Act	(discharge in or near a dwelling or public place) the lower-level offence when a firearm is discharged without reasonable excuse near a dwelling or in public so as to endanger property or endanger, annoy, or frighten any person	6 months or \$10,000
s53(3) Arms Act	(discharge with reckless disregard for safety) an offence when, without reasonable cause, a firearm is discharged in a manner likely to injure or endanger the safety of any person or with reckless disregard for the safety of others	3 years or \$4,000 or both
s308(b) Crimes Act	(discharge intent to intimidate or alarm) an offender who, with intent to intimidate or annoy any person, by the discharge of firearms or otherwise, alarms or attempts to alarm any person in any dwellinghouse	3 years
s45 Arms Act	(unlawfully carrying or possessing firearm) an offence to carry or possess a firearm with no lawful, proper, and sufficient purpose	4 years or \$5,000 or both
s189(2) Crimes Act	(injures with intent to injure) intent to injure anyone or with reckless disregard for the safety of others, injures any person	5 years
s306 Crimes Act	(threatens to kill or do GBH) offence to threaten to kill or do grievous bodily harm (GBH)	7 years
s269(2)(a) Crimes Act	(intentional property damage) offence of intentionally or recklessly destroying or damaging any property (with no interest in it)	7 years
s188(2) Crimes Act	(wounding with intent to injure) With intent to injure anyone, or with reckless disregard for the safety of others, wounds etc any person	7 years
S198(2) Crimes Act	(discharging with intent to injure or with reckless disregard) with intent to injure, or with reckless disregard for the safety of others, discharges a firearm at any person	7 years
s269(1) Crimes Act	(intentional property damage with danger to life) offence of intentionally or recklessly destroying or damaging any property if they know or ought to know that danger to life is likely to result	10 years
s189(1) Crimes Act	(injures with intent to cause GBH) with intent to cause GBH to anyone, injures any person	10 years
s188(1) Crimes Act	(wounding etc with intent to cause GBH) with intent to cause GBH to anyone, wounds etc any person	14 years
s198(1)(a) Crimes Act	(discharging with intent to cause GBH) the serious offence of discharging a firearm at any person with the intent to do grievous bodily harm	14 years

Hon Kiri Allan
Minister of Justice

Hon Chris Hipkins
Minister of Police

Purpose

1. The proposals for legislative amendments to address gang harm, **Section (9)(2)(f)(iv)** are being discussed at Social Wellbeing Committee on 29 June. This note outlines the key proposals.

Background

2. This paper proposes a package of legislation that delivers on two fronts, providing new tools to Police to combat ongoing gang conflict and harm, **Section (9)(2)(f)(iv)**.
3. The proposals agreed by Cabinet will be given effect via an omnibus amendment Bill, to be introduced in August. Subject to Cabinet decision, you will make second-tier policy decisions for inclusion in the Bill, to be approved by the Cabinet Legislation Committee.
4. Officials note there are limitations to what changes to legislation can achieve. Gang conflict in particular is most likely to be resolved via operational methods, rather than new offences or increased penalties. A concerted enforcement effort and the targeted policing of gangs is necessary to prevent, suppress, and disrupt gang violence. These actions are underway.

Part A: Gang harm intervention

A new offence for discharging a firearm in public places with intent to intimidate [Minister of Police]

5. There is an apparent gap in the law where a firearm discharged with intent to intimidate, but without the intent or effect of causing actual injury or damage. Under section 308 of the Crimes Act 1961, it is an offence to intimidate someone (through the discharge of a firearm or otherwise) but only if they are inside a dwelling (as opposed to on the street or in a carpark). However, the intention to intimidate causes harm regardless of where it takes place.
6. We propose a new offence to replace or amend section 308, to address all situations where a firearm is discharged with the intent to intimidate any person or group of people. We consider a maximum penalty of 5 to 7 years would be appropriate; aligned with section 189(2), intent to injure or injury with reckless regard for the safety of others (5 years), or section 306, threaten to kill or do grievous bodily harm (7 years), respectively. **Section 9 (2)(g)(i)**

A new warrant and search power to prevent and respond to gang conflict [Minister of Police]

7. A search warrant must currently apply to individual premises or vehicles to obtain evidence in relation to specified offending. The proposed judicial warrant will allow searches of multiple properties and vehicles connected with specified gangs within a specified area, on multiple occasions, without any suspicion of any criminal offending or that any evidence will be found. The purpose of the proposed warrant is to locate and seize weapons that may be in the place or vehicle.
8. Police operations in recent gang conflicts have resulted in firearms being taken out of the hands of gangs. However, Police would benefit from having a broader power to reduce and disrupt these conflicts quicker and more effectively. Despite Police efforts to remove firearms from these individuals, gangs are re-arming and continuing conflict that is impacting on public safety and

perceptions of safety. The new warrant and search powers will specifically target this behaviour by gangs, and those supporting gangs. It will significantly strengthen Police's ability to disrupt this behaviour.

Section (9)(2)(f)(iv)

Section (9)(2)(f)(iv)

Short-term cash seizure power [Minister of Justice]


10. Police currently have no power to seize cash except where the circumstances indicate criminality allowing another search power to be exercised. Occasionally cash will be found in suspicious circumstances (such as by an Aviation Security Officer at an airport) where there is no other evidence to suggest the cash's criminal origins. The proposed power will allow Police to hold cash found in suspicious circumstances for up to 7 days to allow the cash's origins (and intended use) to be ascertained.

Prohibiting the sale of certain goods via cash transactions over a threshold [Minister of Justice]

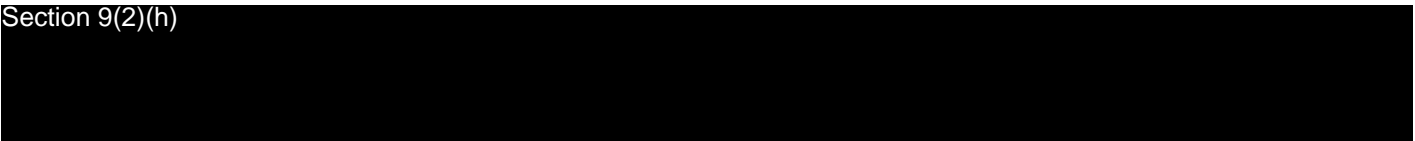
11. Gangs often move and convert large values of cash (and alternative modes of stored value) to facilitate criminal offending, to hide its criminal origin and, ultimately, to use it. In order to prevent cash proceeds of crime from leaking into the financial system, we propose amending the AML/CFT Act 2009 to prohibit High Value Dealers from selling goods for cash over a certain threshold value for jewellery and watches, precious metals and stones; and motor vehicles and ships. The prohibition will also encourage funds to be deposited into the financial system so that they can be recorded and detected under the AML/CFT Act.

Section (9)(2)(f)(iv)


Section (9)(2)(f)(iv)



Section 9(2)(h)



This is one of several legislative projects currently underway on organised crime and gangs

18. The Criminal Proceeds (Recovery) Act 2009 reforms to better target illicit assets are being drafted for Cabinet Legislation Committee to consider. Justice is also progressing the statutory review of the Anti-Money Laundering and Countering the Financing of Terrorism Act 2009, and the review of the Search and Surveillance Act 2012. 

19. These projects contribute to the Transnational Organised Crime Strategy (TNOC), and Resilience to Organised Crime in Communities Strategy (ROCC), and fall within the Government's overarching approach to address the full spectrum of organised crime.

In Confidence

Office of the Minister of Police

Office of the Minister of Justice

Social Wellbeing Committee

Gang Harm Intervention, Section (9)(2)(f)(iv)

Proposal

- 1 This paper seeks decisions on a package of policy proposals to address gang harm. Section (9)(2)(f)(iv)

Relation to government priorities

- 2 The proposals in this paper support the Government's manifesto commitments to keep up the pressure on tackling organised crime, gangs, and harmful drug use by ensuring Police and other enforcement agencies have the resources and powers to disrupt and prosecute this offending. Section (9)(2)(f)(iv)

Executive summary

- 3 This paper proposes a package of legislation that delivers on two fronts. In the context of ongoing and longstanding work on combatting organised crime, it provides additional measures to respond to a recent spike in visible gang offending in our communities. Officials have been considering legislative settings relating to organised crime for some time, particularly as part of work under the government's TNOC Strategy.
- 4 These additional measures sits alongside the Government's record investment in Police, including delivering an additional 1,800 Police officers and removing unlawful firearms. Section (9)(2)(f)(iv)
- 5 In recent months, conflict between rival gangs has resulted in a number of violent incidents, including drive-by shootings in residential areas. These events are just a spike in the significant and ongoing harm posed by criminal gang activity. This paper proposes a number of new tools to better enable Police to respond to this harm. These include:
 - 5.1 a new offence in the Crimes Act 1961 to address all situations where a firearm is discharged with the intent to intimidate any person or group of people;

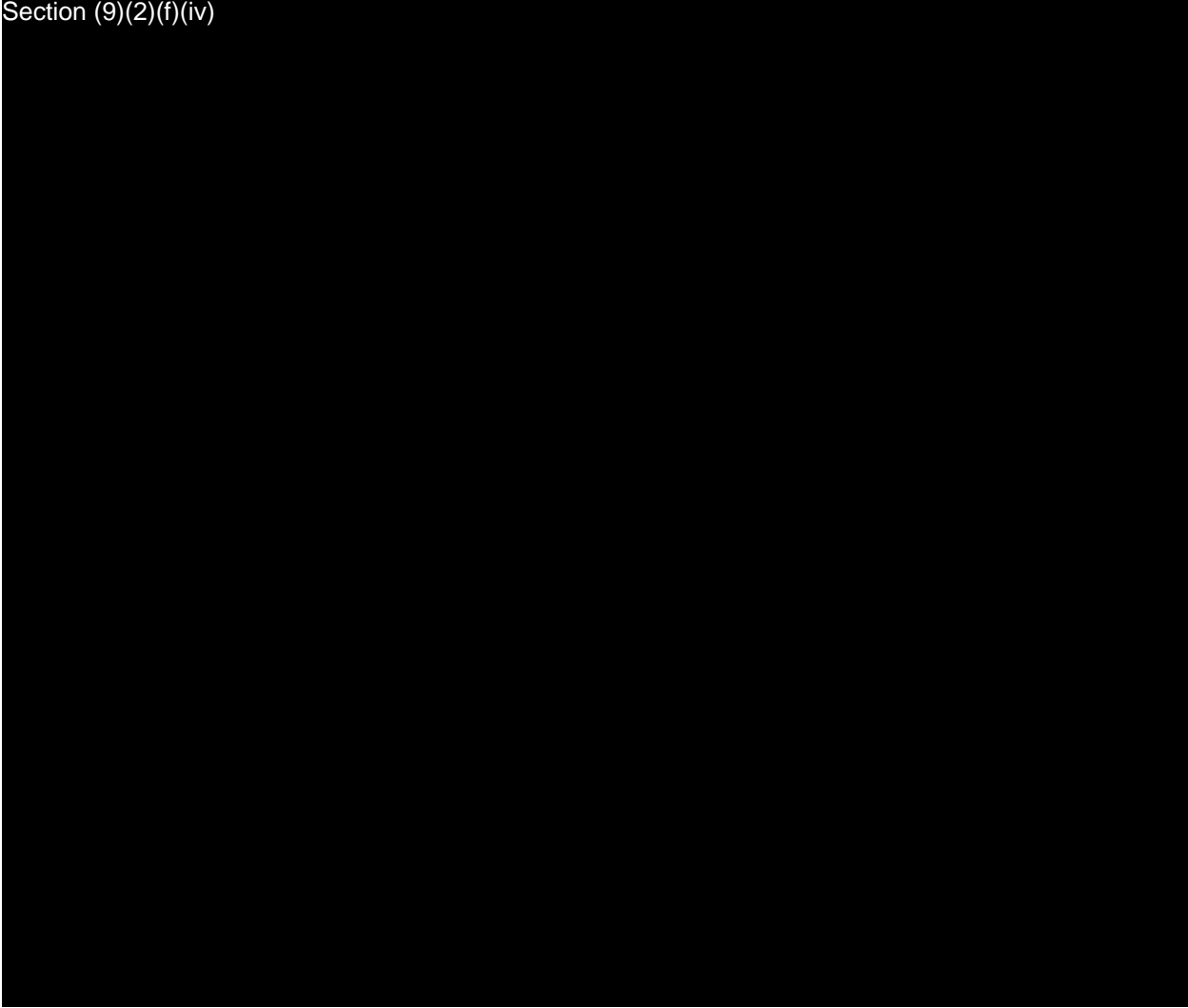
- 5.2 an amendment to the Search and Surveillance Act 2012 to provide Police with additional search powers targeting gang members in circumstances of gang conflict;

Section (9)(2)(f)(iv)



- 5.5 a new cash seizure power to allow Police to hold cash for a short period of time (up to seven days); an amendment to the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 to prohibit high-value dealers from accepting cash payments for specified goods

Section (9)(2)(f)(iv)




- 9 These proposals will be given effect via an omnibus amendment Bill, which we propose to introduce in August, following final confirmation by the Cabinet Legislation Committee.

¹ How we fail children who off end and what to do about it: 'A breakdown across the whole system' (2022).

Background

- 10 The additional gang harm intervention proposals in this paper build on the Government's work to keep New Zealanders safe, including delivering an additional 1,800 Police officers and removing unlawful firearms, and will further prevent and deter gang offending and the threat it poses to our communities. This fits alongside our other relevant initiatives, such as the Criminal Proceeds (Recovery) Act 2009 reforms, the Transnational Organised Crime Strategy, the statutory review of the Anti-Money Laundering and Countering the Financing of Terrorism regime, and the \$562 million law and order package in Budget 2022.

- 11 Section (9)(2)(f)(iv)
- 

Part A – Gang harm intervention


- 12 Officials have been considering legislative settings relating to organised crime for some time, particularly as part of work under the government's Transnational Organised Crime Strategy to prevent and respond to organised crime.

- 13 At Cabinet Priorities Committee on 8 June 2022, Ministers discussed legislative options for counteracting the harm caused by ongoing gang activity [CPC-22-MIN-0013]. The Committee directed officials from the Ministry of Justice and New Zealand Police to provide further advice on a number of specific proposals:

13.1 reviewing the offences and penalties related to shootings in public places to introduce more targeted penalties for discharging a firearm in a public place;

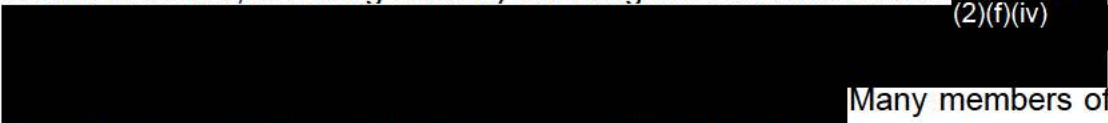
13.2 new warranted search powers to prevent and respond to gang conflict

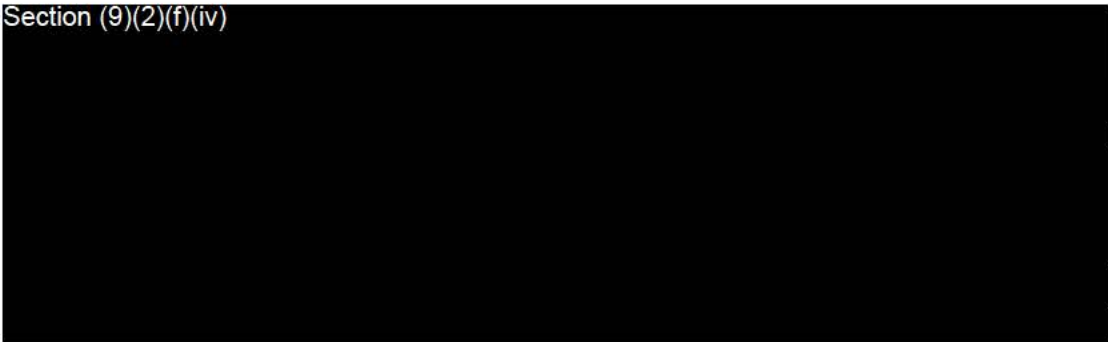
13.3 Section (9)(2)(f)(iv)



13.4 preventing gangs from moving and converting large quantities of cash, including giving Police the power to seize cash found in suspicious circumstances during lawful searches, and the parameters and specific areas that could be targeted in relation to prohibiting cash purchases over a set threshold.

Gang activity causes a range of harms

- 14 While organised crime and gangs are not synonymous, gangs and gang violence are often the visible face of organised crime in New Zealand. They frequently engage in a number of criminal behaviours, such as drug trafficking and other black-market activity, and may engage in violence as part of inter-gang rivalries or in order to resolve internal disputes. However, gangs and gang membership is not unlawful and not all gang behaviour is criminal. Gangs also provide connections and a 'home' for people marginalised, disenfranchised, or disaffected from mainstream society.
- 15 Dealing in illicit drugs, in particular methamphetamine, is extremely profitable for gangs and other organised criminal groups. In 2021, the New Zealand methamphetamine market was worth an estimated \$297.2 million. This money is coming out of some of our most vulnerable communities and is used to promote gang and criminal lifestyles and reinvest in further criminal activity. Gangs are highly motivated to protect and increase their share of the illicit drug market. Methamphetamine and other drugs not only provide gangs with revenue, they also increase gangs' power and influence within communities due to drug debt.
- 16 In recent weeks, conflict between rival gangs has resulted in a number of violent incidents, including drive-by shootings in residential areas. Section (9)
(2)(f)(iv)
 Many members of the public are understandably concerned about the escalating violence and the threat of harm to themselves or their whānau members.
- 17 The current spike in public violence is occurring within the context of deeper changes to the gang environment including the establishment of Australian gangs in New Zealand, resulting in increased inter-gang pressures, and greater willingness to escalate to violence using firearms.
- 18 As a result, Police is seeing more severe and overt violence, in particular firearms offending, which poses a significant risk to the community and has led to concerns about public safety. This is a fast moving, and highly fluid environment. This paper proposes a new offence related to the use of firearms to intimidate, and a new search power for Police to use during times of gang conflict. These proposals specifically seek to address gang conflict and the harm it poses to the wider public.

- 19 Section (9)(2)(f)(iv)


Section (9)(2)(f)(iv)




- 20 Finally, drug transactions and other criminal activities predominately deal in cash and other forms of stored value. The proceeds of these activities are subsequently laundered by gangs and used to fund criminal activities and transport the proceeds of crime. The last set of proposals in this paper seek to disrupt wider gang activity through limiting the ability to conceal cash profits or to convert it to other high value goods.

Implications of the proposed interventions

- 21 Previous experience has shown that in times of escalating gang violence and conflict, a concerted enforcement effort and the targeted policing of gangs is necessary to prevent, suppress and disrupt gang violence. These actions are underway.

22 Section 9 (2)(g)(i)




. However, we also recognise that legislation can have an important signalling effect, denouncing harmful behaviour.

- 23 Furthermore, these amendments are carefully targeted to maximise impact. For example, we know that vehicles (particularly motorbikes) are an important part of gang member's perceived status and an essential part of many gangs' identities. It is possible that the application of the proposed forfeiture legislation will become widely known among gangs very quickly and will impact on gangs' behaviour. Its success may be measured by its preventive impact on behaviour rather than on the number of times it is applied.

- 24 These proposals will sit within and interact with the government's existing overarching approach to organised crime. This includes a variety of work, including community-based responses to build resilience to organised crime and enforcement responses to criminal behaviour.

25 Section 9 (2)(g)(i)



The new powers would need to be exercised carefully to encourage the long-term and short-term outcomes sought by both the new powers and existing programmes to reduce gang harm. Police will ensure that

there are robust internal processes governing the use of any new warrants and powers and considers that such unintended outcomes are manageable.

- 26 For the most part, officials have proposed options which target criminal behaviour associated with gang harm, rather than gangs themselves. Section (9)(2)(f)(iv)

The only existing legal definition of gang is within the Prohibition of Gang Insignia in Government Premises Act 2013, which lists specific gangs. Options which target gangs may be practically difficult to draft. These issues will need to be worked through with the Parliamentary Counsel Office (PCO).

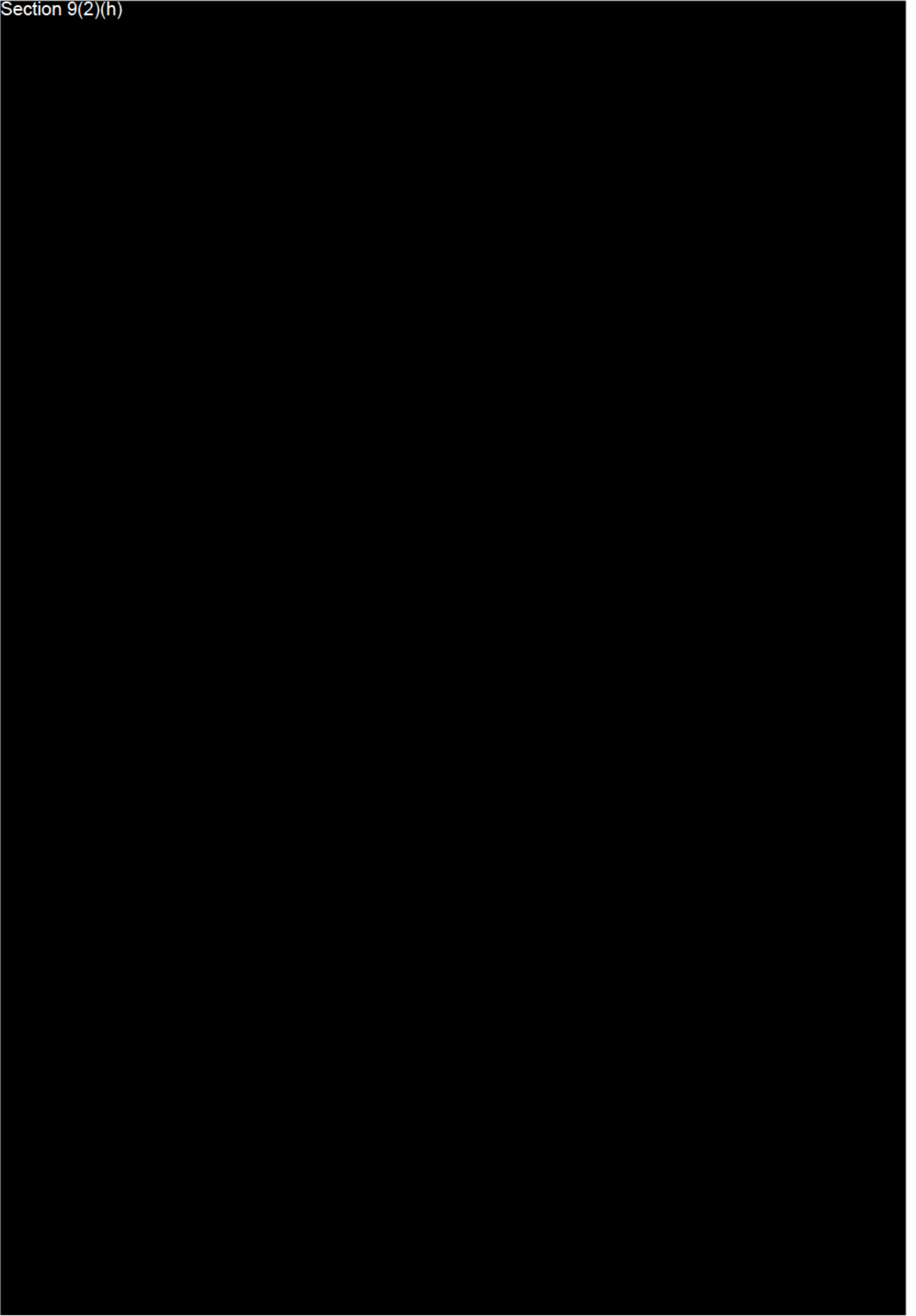
- 27 In addition, all of the proposals in this paper interact with the government's obligations under BORA and te Tiriti o Waitangi/the Treaty of Waitangi and its principles. These implications are set out in more detail below.

Te Tiriti/Treaty analysis

- 28 Over three quarters of the known adult gang members in Aotearoa are Māori men. This means that measures that specifically target gangs are disproportionately likely to impact Māori and are likely to conflict with the equity principle of te Tiriti o Waitangi/the Treaty of Waitangi. Furthermore, where options undermine BORA rights, these are likely to conflict with the Crown's specific article three duties to provide Māori with all the rights and protections of citizenship.
- 29 Targeting policies towards specific criminal behaviours rather than gang membership will mitigate but not completely resolve these concerns. Māori are charged with crimes between two and three times more than the general population and are overrepresented at every stage of the criminal justice system. While work is underway across the sector to better understand the disproportionate impacts on Māori, existing institutional biases and systemic racism mean that new offences or Police powers may be more likely to be used against Māori regardless of how they are targeted. Police is currently working with researchers and an independent panel, on a major research programme looking at how Police can ensure it delivers policing that is fair and equitable for all communities.
- 30 The prevalence of gang membership within Māori communities also means that Māori are more likely to be the victims of gang-related harm. Taking steps to combat this harm is therefore part of the Crown's responsibility to actively protect Māori. However, generally speaking the principle of partnership means the Crown should consult with Māori on the steps it takes when fulfilling its active protection obligations – Māori communities have a right to be involved in decisions that impact them. Due to time constraints, officials have not consulted with Māori on any of the proposals contained in this paper.

- 31 Section (9)(2)(f)(iv)

Section 9(2)(h)



Section 9(2)(h)

Reviewing the offences and penalties related to shootings in public places

- 40 While it is not inherently illegal for a licensed firearm owner (or someone under their immediate supervision) to discharge a firearm in public, there are a number of offences that may be engaged when a firearm is discharged, depending on the particular circumstances and facts.
- 41 A range of relevant offences are set out at Appendix 1. These exist on a spectrum of offending, from lower-level offences, where minimal harm is caused or intended, through to more serious offences resulting in injury or death.
- 42 There is an apparent gap in the law for situations where a firearm discharged with intent to intimidate, but without the intent or effect of causing actual injury or damage. Under section 308 of the Crimes Act 1961, it is an offence to intimidate someone (through the discharge of a firearm or otherwise) but only if they are inside a dwelling. Currently section 308 would not apply, for example, if someone discharged their firearm on the street or in a carpark to intimidate people in public.
- 43 We consider that discharging a firearm with the intention to intimidate causes harm regardless of where it takes place. As such, we propose introducing a new offence in the Crimes Act to address all situations where a firearm is discharged with the intent to intimidate any person or group of people.
- 44 The new offence would either replace or amend the relevant subsection in section 308 of the Crimes Act.
- 45 In setting the penalty, we have considered a number of similar Crimes and Arms Act offences, and consider a maximum penalty in the range of five to seven years to be appropriate. This would place it alongside similar Crimes Act offences such as:
- 45.1 Section 189(2): *intent to injure anyone or with reckless disregard for the safety of others, injures any person (five years)*
- 45.2 Section 306: *threaten to kill or do grievous bodily harm (seven years).*
- 46 Section 9 (2)(g)(i)

Section 9(2)(h)

New warrant and search powers to prevent and respond to gang conflict

- 48 We propose new warrant and search powers to enable Police to respond to emerging gang conflict and remove weapons (including firearms) from participants. The proposed warrant grants Police additional search powers to search properties and vehicles that are occupied, used or owned by members of specified gangs.
- 49 Existing powers are adequate to search property and vehicles where Police suspect or believe that individuals have committed, are currently committing or will commit an offence involving weapons. However, the existing provisions carry a 'suspicion' requirement and must be targeted towards the property of specific individual or individuals. This does not allow Police to search the property and vehicles of all members of the gang despite the increased risk that future violence may be committed by any member of the gang.

Police must meet criteria for the warrant to be issued

- 50 Before the new warrant could be issued, Police would have to demonstrate to a judge that a gang conflict is underway and involves, or may soon involve, the use of weapons that are likely to cause wider harm. The judge would consider the history of conflict and recent conflict between gangs, as well as indicators of escalating or future conflict.
- 51 The warrant itself would specify:
- 51.1 the gang/s it relates to;
 - 51.2 the required time limit (with a maximum of 14 days – a new warrant could be sought if additional time is needed); and
 - 51.3 the known property (including residences, dwellings and vehicles) occupied, possessed or owned by known members of the specified gang/s within a specified region or regions.
- 52 Once the warrant is obtained, Police will not need to suspect the members of the specified gangs for a specific offence to search their property for weapons.

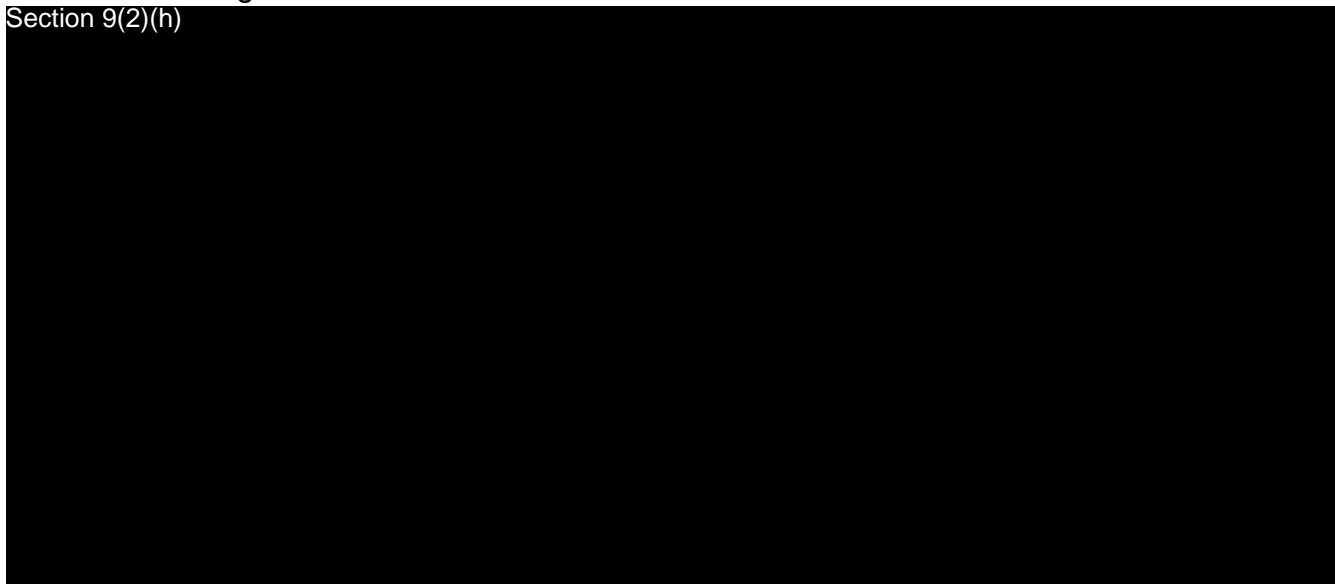
Intended scope of search powers

- 53 The powers will permit searches of non-specified vehicles if these fall within the specified region/s and a constable is satisfied they are occupied, used or owned by members of a specified gang. This power is required given how easily vehicles can be shared and moved.
- 54 Determining who is captured by the search power will be worked through in drafting. However, we intend for this power to capture both validated patched/full members and prospects/nominees. Further consideration will be given as to whether other identified people (eg associates) involved with the gang could be included if Police can provide information that supports an

individual's involvement with a specified gang. We also intend for gang conflict to include both inter-gang conflict and intra-gang conflict and for multiple entries/searches within the specified timeframe and region/s to be enabled by the warrant.

- 55 The powers in this proposal may not be exercised without judicial authority. This provides a constraint on the use of what is a broad new power and decreases the likelihood that the power may be found to be unreasonable following its use.

Section 9(2)(h)




Section (9)(2)(f)(iv)



Section (9)(2)(f)(iv)



Section (9)(2)(f)(iv)



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Section 9 (2)(g)(i)



Section (9)(2)(f)(iv)



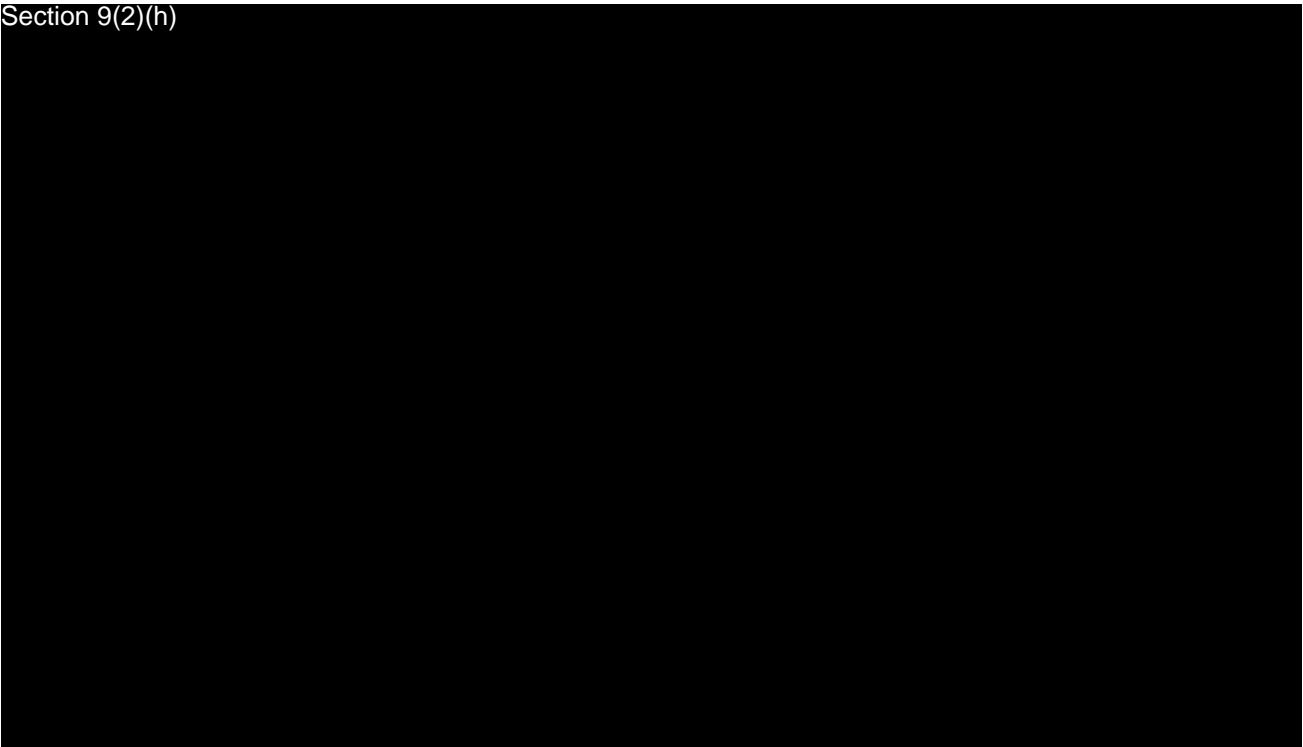
Section (9)(2)(f)(iv)



Section (9)(2)(f)(iv)



Section 9(2)(h)



Section 9(2)(h)

Short-term cash seizure power

- 79 Gangs often move and convert large values of cash (and alternative modes of stored value) to facilitate criminal offending, to hide its criminal origin and, ultimately, to use it. Police has identified circumstances where enforcement officers may find this cash, but not be able to identify that it is proceeds or evidence of offending until the opportunity to seize it has passed.
- 80 We propose a new Police power to seize cash found in suspicious circumstances. This new power will fill gaps in the existing law relating to items found in “plain view” (while exercising a lawful search power) which require reasonable grounds to believe that the item could have been seized under a search warrant or another search power.
- 81 The new power will cover situations such as where large amounts of cash found by an Aviation Security Officer at an airport are notified to Police or where thousands of dollars are observed in a vehicle which has been stopped. Unless there is evidence of some criminality in relation to an imprisonable offence (meaning that a warrant could be obtained), or another search power exercisable by the officer in the circumstances, there is currently no ability to seize the cash.
- 82 Where cash is found in suspicious circumstances and those in possession are unable to give a plausible explanation of the origin of the cash (or its intended purpose), there should be the ability for Police to seize the cash for a short period of time while they make further enquiries.
- 83 Police would be able to hold the cash for up to 7 days, before either returning the cash or initiating proceedings to remove the cash permanently from the person in possession, in accordance with judicial order or existing statutory authority to retain the cash. Mechanisms for dealing with the cash once seized are those that already exist under the Search and Surveillance Act 2012 or the Criminal Proceeds (Recovery) Act 2009.
- 84 In the present context, “cash” will need to be given an expansive definition to cover items such as stored value cards (for example, gift cards for petrol or goods) to ensure that any means by which proceeds of crime may be converted into an easily moveable form which may be used to disperse the cash into the economy are captured by the new power.

Section 9(2)(h)

Section 9(2)(h)



A prohibition on selling of a list of goods by way of cash transactions over a threshold to apply to high value dealers captured by the AML/CTF Act

- 86 In order to prevent cash proceeds of crime from leaking into the financial system, we propose amendments to the Anti-Money laundering and Countering Financing of Terrorism Act 2009 (The AML/CFT Act).
- 87 The AML/CFT Act prescribes obligations on high-value dealers (HVDs); defined as people whose business involves the buying or selling of a list of goods by way of cash transactions above a threshold value (currently set in regulations at NZD10,000). Goods are on this prescribed list because of their association with money laundering.
- 88 We propose amending the AML/CFT Act to prohibit HVDs from selling goods for cash over a certain threshold value for some of the goods listed in the definition of HVD in section 5 of the AML/CFT Act. Specifically, we recommend that these goods are:
- jewellery and watches;
 - precious metals and stones; and
 - motor vehicles and ships
- 89 As noted above, there is already a regulatory regime aligned to the sale of this set of goods, and certain specified art objects, for cash over \$10,000. The proposed prohibition would complement this work by preventing cash sales of the goods identified as being most at risk of being laundered by gangs. At the same time the AML/CFT review obligations would help to ensure that gang members do not purchase other goods instead of the prohibited items.
- 90 We propose that the threshold is set through regulation to allow for a risk assessment to be undertaken, and so that the value can evolve over time
- 91 We will also need to develop amendments for penalties and enforcement of prohibition of HVDs selling these listed goods by way of cash transactions of \$10,000 or above (including a HVD register). We would look to include this new prohibition in the existing prohibition and enforcement schemes of the AML/CTF Act.

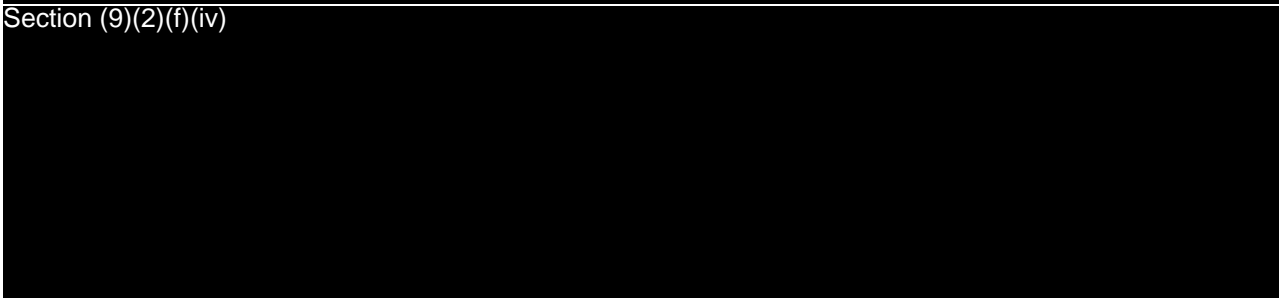
A high value dealer register is needed to support the prohibition on selling by way of cash transactions over \$10,000

- 92 There are issues with the existing HVD provisions, specifically, it is challenging for supervisors to identify who HVDs are as there is no registration framework for HVDs. This would make it difficult for supervisors to identify who should be complying with the prohibition on cash payments over \$10,000.
- 93 However, the statutory review report is expected to recommend a registration framework be established for all businesses with AML/CFT obligations (that do not already have a registration framework) including HVDs. Creation of a HVDs registry would provide agencies with a mechanism to monitor compliance with a prohibition that scopes HVDs out of the AML/CFT regime.
- 94 This prohibition would make it harder for gangs to convert cash proceeds of crime by prohibiting cash purchases for high value goods, such as motorcycles, over a set threshold. A prohibition would therefore encourage funds to be deposited into the financial system so that they can be recorded and detected under the AML/CFT Act. Banks are required to report large cash transactions (over \$10,000) or suspicious activity (regardless of the amount), which are not captured under obligations for HVDs. This option would not affect all the methods that gangs use to dispose of cash proceeds of crime.
- 95 This proposal will extend beyond gang-activities to any person who wants to use cash to make a large purchase of the designated goods. As such, this option would be a significant change for affected businesses and has not been consulted with industry. There are circumstances in which people may legitimately use sizeable amounts of lawful cash to purchase goods, including rural and migrant populations who have cash-based economies and older people who are more reliant on cash. While these groups may prefer using cash, there is unlikely to be an impediment to their use of a bank account to enable purchases.

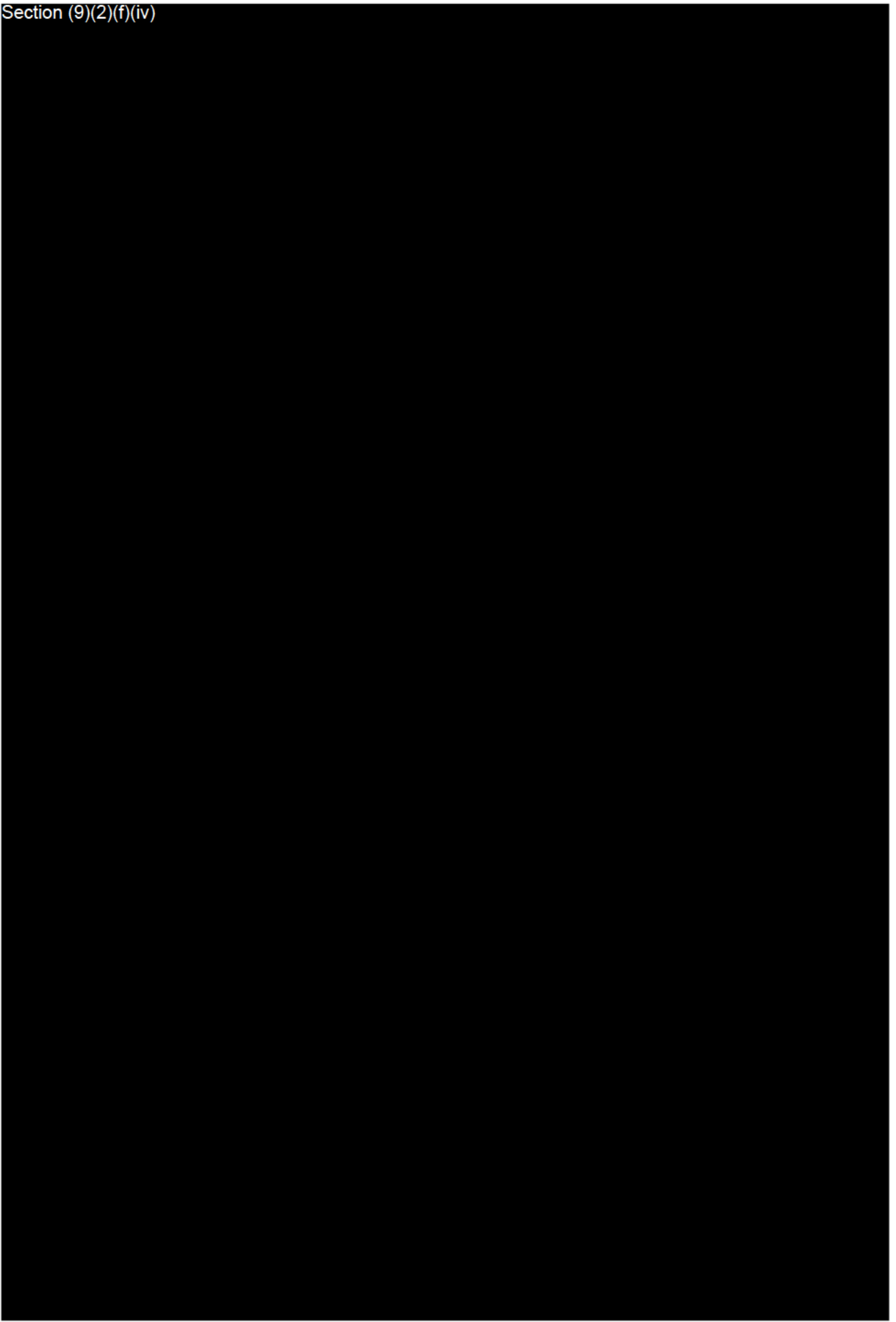
Section 9(2)(h)



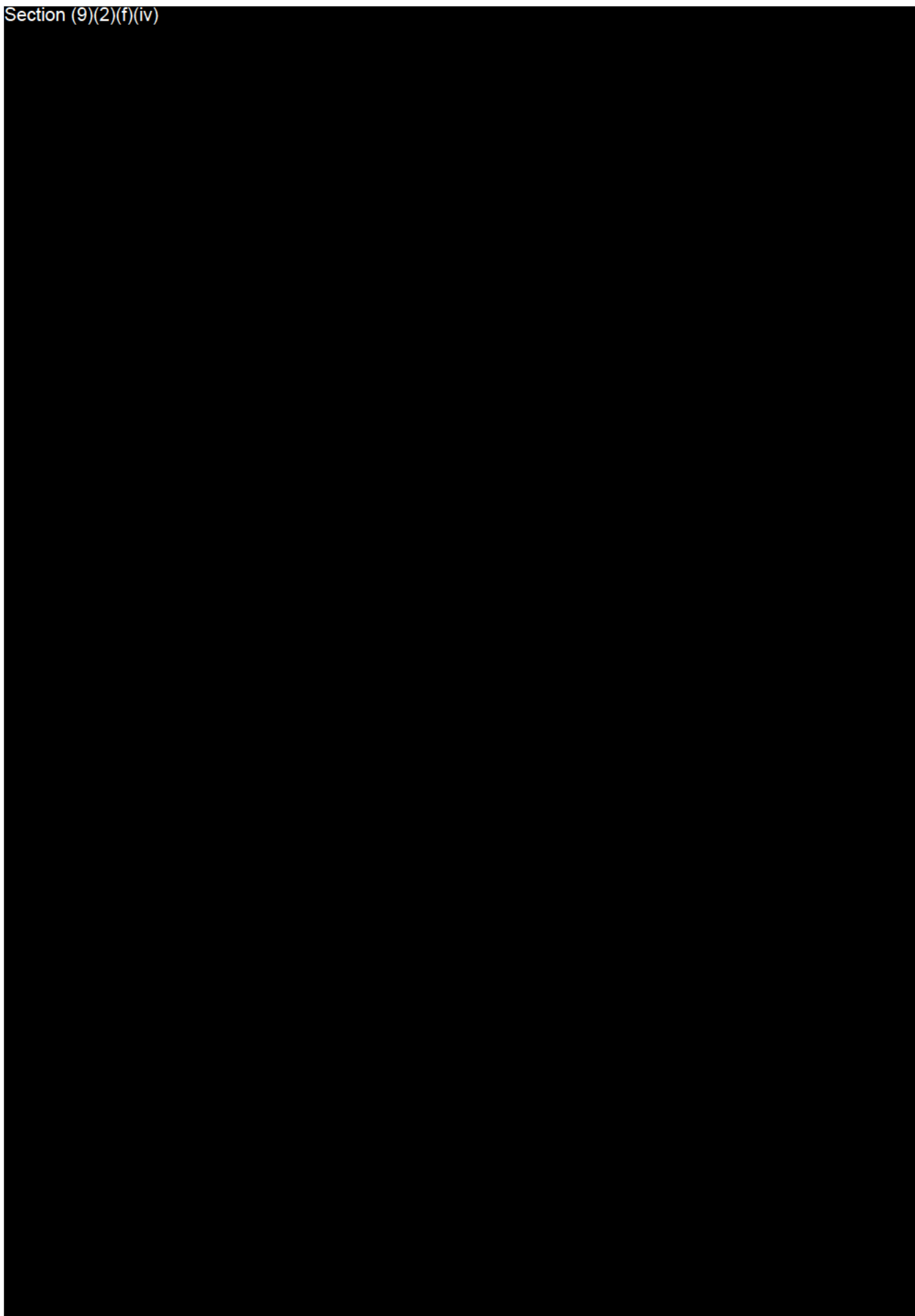
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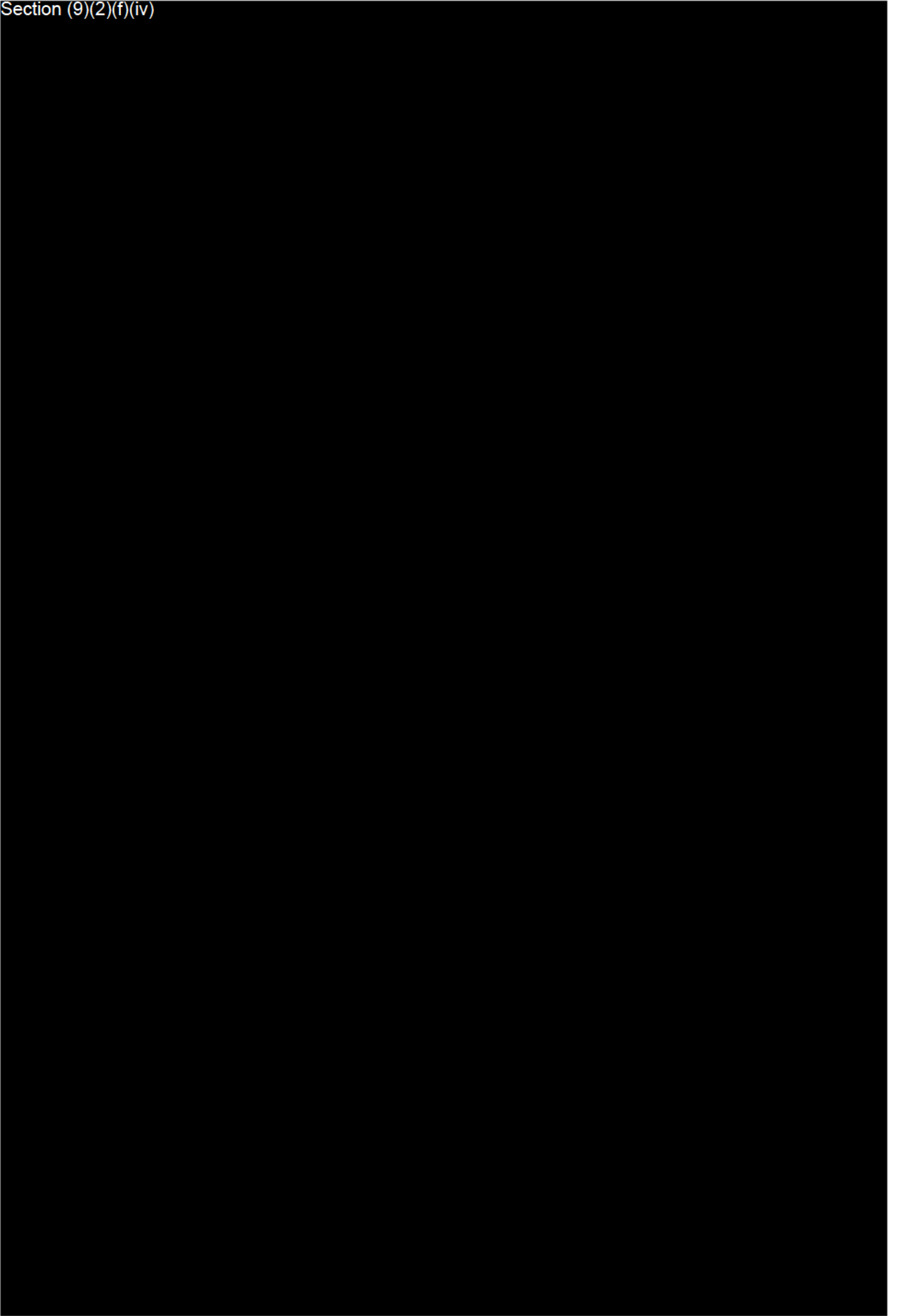
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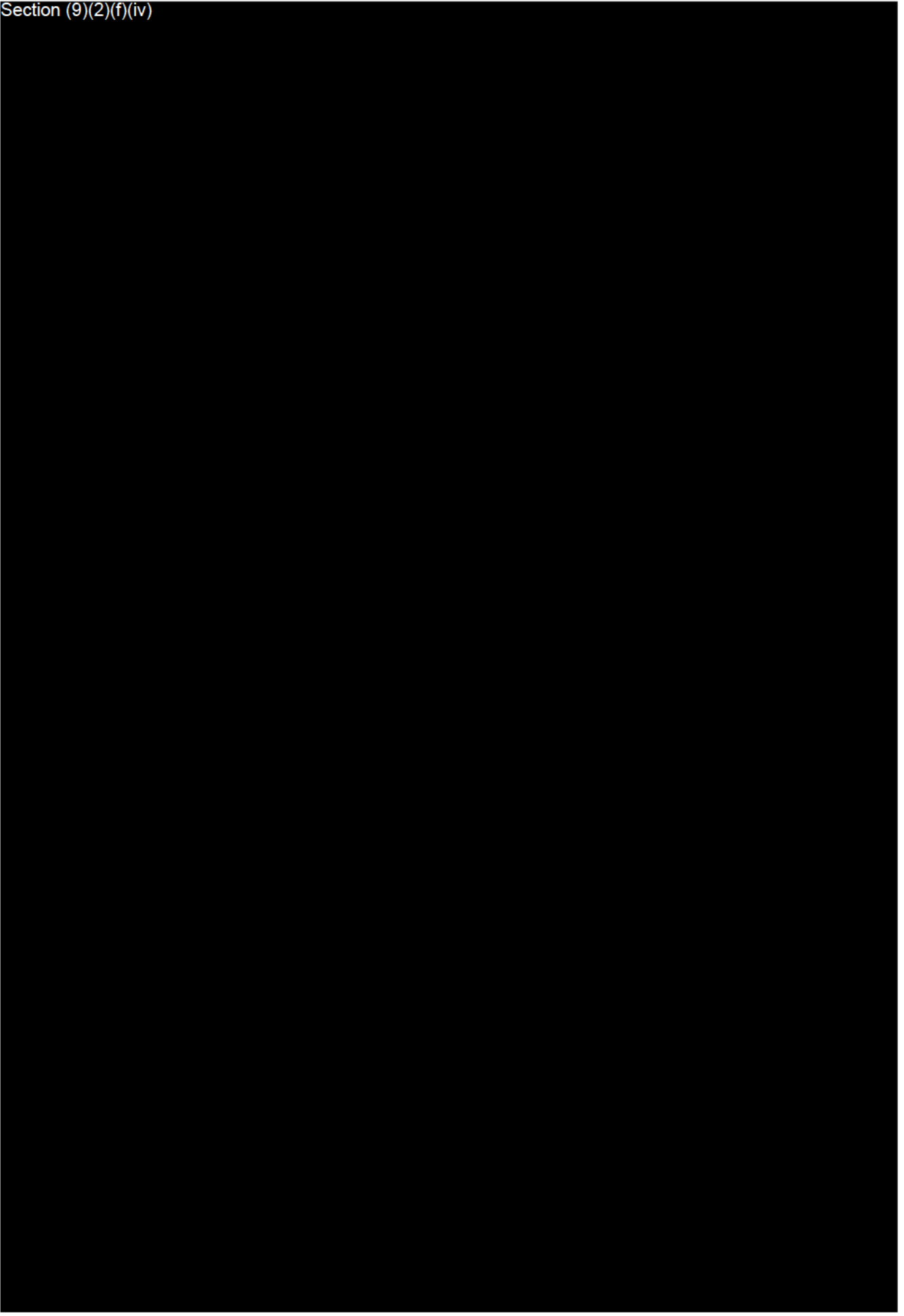
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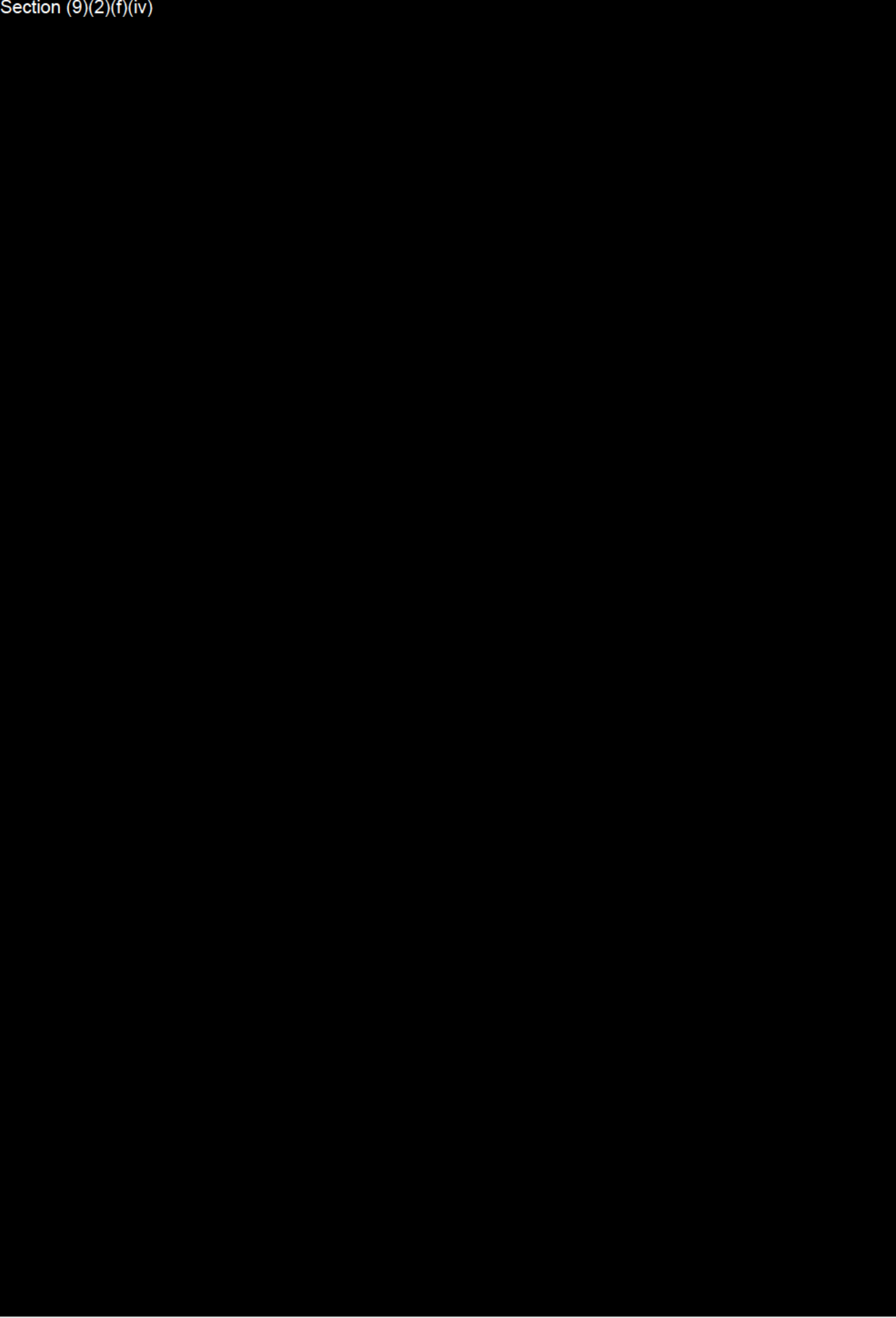
Section (9)(2)(f)(iv)



Section (9)(2)(f)(iv)



Section (9)(2)(f)(iv)




Section (9)(2)(f)(iv)



Delegated Authority

- 134 The proposals in Part A, relating to gang harm intervention, have been developed at pace and as such there are a number of details which will need to be worked through further. We propose that Cabinet delegate authority to us both to take any second-tier policy decisions necessary to support the intent of the legislative recommendations agreed by Cabinet in this paper.

Section (9)(2)(f)(iv)



Section (9)(2)(f)(iv)



Financial Implications

137 We expect any additional costs to the Crown (from criminal cases due to the gang harm intervention amendments) will be absorbed within baselines. This will in part rely on prosecutorial discretion, and on the increased baselines as announced for Budget 2022.

Section (9)(2)(f)(iv)




Section (9)(2)(f)(iv)



Section (9)(2)(f)(iv)



Section (9)(2)(f)(iv)



Legislative Implications


- 142 Legislation is required to implement these initiatives. We propose to introduce an omnibus criminal justice amendment bill by the end of 2022. Parliamentary Counsel Office is aware of the proposed bill. The amendments are to existing Acts that bind the Crown.

Impact Analysis

Regulatory Impact Statement

- 143 Cabinet's impact analysis requirements apply to the proposal regarding gang harm interventions, but there is no accompanying Regulatory Impact Statement and the Treasury has not exempted the proposal from the impact analysis requirements. Therefore, it does not meet Cabinet's requirements for regulatory proposals.
- 144 On behalf of respective Ministers, the Regulatory Impact Analysis team at the Treasury and the Ministry of Justice have agreed that supplementary analysis will be provided before the Legislative Cabinet Committee.

Section (9)(2)(f)(iv)



Climate Implications of Policy Assessment (CIPA)

- 147 The Ministry for the Environment was consulted, and confirmed that the CIPA requirements do not apply to this proposal as the threshold for significance is not met.

Population Implications

Part A - Gang harm interventions

- 148 Māori make up a disproportionate share of gang membership (see table below for Police data on ethnicities of those on the National Gang list). In addition, Te Puni Kōkiri has estimated that Māori whānau of gangs may make up around 5 percent of the Māori population.

National Gang List – Ethnicity as at April 2022 ¹⁴	
Maori	77%
European	12%
Pacific Islander	9%
Aboriginal/Latin American-Hispanic/South African/African/Indian/Middle Eastern	1%
Not Recorded	1%

- 149 The use of discretionary powers and decision-making once people are within the justice system is a key way in which racial bias can impact justice outcomes. Given that 77 percent of individuals on the National Gang List are identified as Māori, these proposals will have a disproportionate effect and will likely exacerbate Māori representation in the criminal justice system. These proposals will likely impact the whānau of gang members as well as gang members themselves, particularly regarding the search warrant proposal that will allow entry into homes. During searches conducted under this new power, evidence may be found of other offending, including by other whānau members.
- 150 The proposed measures which specifically target gangs will have the most significant impact on Māori. In terms of driving offences, Police estimate Māori comprise 82 percent of gang members charged with a relevant driving offence and 74 percent of prospects charged. In contrast, Māori only comprised 37 percent of those charged for a relevant offence who had no gang affiliation.
- 151 To the extent the proposals deter harmful gang activity, they may benefit those harmed by such offending. Those harmed the most are the whānau of gang members, which are themselves more likely to be Māori.

Section (9)(2)(f)(iv)

¹⁴ The National Recording Standard (NRS) is the overarching recording policy for Police. The NRS describes ethnicity as an attribute of a person, instructing staff to select ethnicity by recording the option which an individual identifies with most strongly. The NRS states that ethnicity is used for statistical reporting and intelligence trends for victims and offenders. However, there are some limitations to ethnicity recording such as only one ethnicity can be recorded, and if someone identifies as something other than Asian, European, Indian, Latin American/Hispanic, Māori, Middle Eastern, Native African, or Pacific Island, the ethnicity is recorded as 'other'.

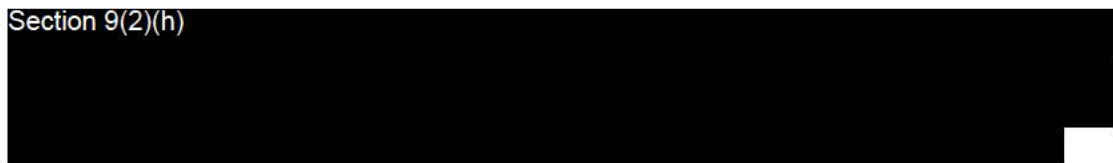
Section (9)(2)(f)(iv)



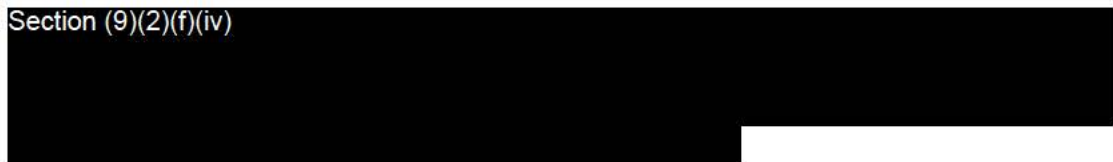
Human Rights

153 Crown Law will vet the draft Bill for consistency with BORA.

154 Section 9(2)(h)




155 Section (9)(2)(f)(iv)




Consultation

156 The Ministry of Transport and the Crown Law Office contributed to the discussion of the proposals in Part A. The Department of the Prime Minister and Cabinet (DPMC) was consulted on the new warrant and search powers only. There has been minimal consultation with other agencies on this part due to time constraints.

157 Section 9 (2) (g) (i)



158 Section (9)(2)(f)(iv)



Communications

159 We intend to release a press statement following Cabinet decisions.

Proactive Release

160 We intend to proactively release the paper, subject to redactions as appropriate consistent with the Official Information Act 1982.

Recommendations

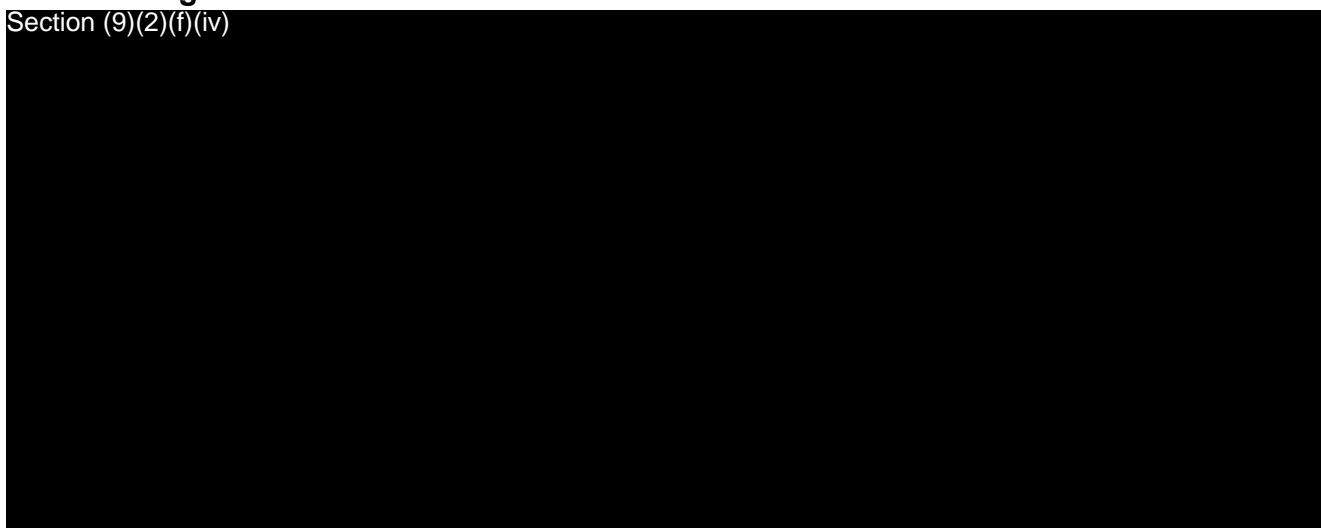
The Minister of Justice and the Minister of Police recommend that the Committee:

Gang harm intervention

- 1 **Agree** to amend the Crimes Act 1961 to include a new offence to address the discharge of a firearm with the intent to intimidate in a public place;
- 2 **Agree** to include a penalty of seven years imprisonment:
- 3 **Agree** to amend the Search and Surveillance Act 2012 to create a new warrant and search power to locate and seize weapons in circumstances of gang conflict;
- 4 **Note** that the new warrant and search power will allow Police to search property (including vehicles) of members of specified gangs who are not suspected of any specific offence in circumstances of gang conflict;

- 5 **Agree** to:

Section (9)(2)(f)(iv)



- 6 **Agree** to:

EITHER

Section (9)(2)(f)(iv)




OR

Section (9)(2)(f)(iv)



7

Section 9(2)(h)




- 8 **Agree** to provide a new cash seizure power to allow Police to hold cash for up to 7 days to ascertain its origins;
- 9 **Agree** to amend the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 to prohibit high-value dealers from accepting cash payments for a specified subset of the goods listed in the definition of 'high-value dealer' in section 5 of the Act, over a threshold value;
- 10 **Agree** that the subset of goods are:
- 10.1 jewellery and watches;
 - 10.2 precious metals and stones;
 - 10.3 motor vehicles and ships;
- 11 **Note** that a financial implications analysis or regulatory impact statement for the above proposals has not yet been prepared, though any costs will be met through baselines in the first instance, and officials will provide a supplementary analysis report before the Legislative Cabinet Committee;

Section (9)(2)(f)(iv)



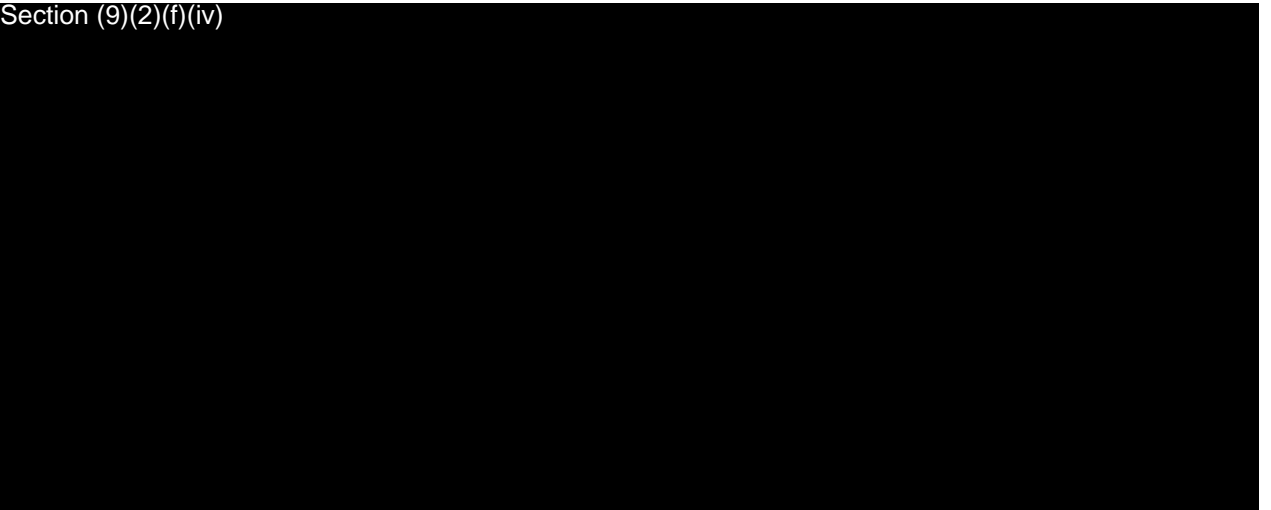
Section (9)(2)(f)(iv)



Delegated authority

- 22 **Agree** to delegate authority to the Minister of Justice and the Minister of Police to take any second-tier policy decisions necessary to give effect to the legislative recommendations agreed by Cabinet in respect of the part A of this paper on gang harm;

Section (9)(2)(f)(iv)



Section (9)(2)(f)(iv)



Authorised for lodgement

Hon Chris Hipkins

Minister of Police

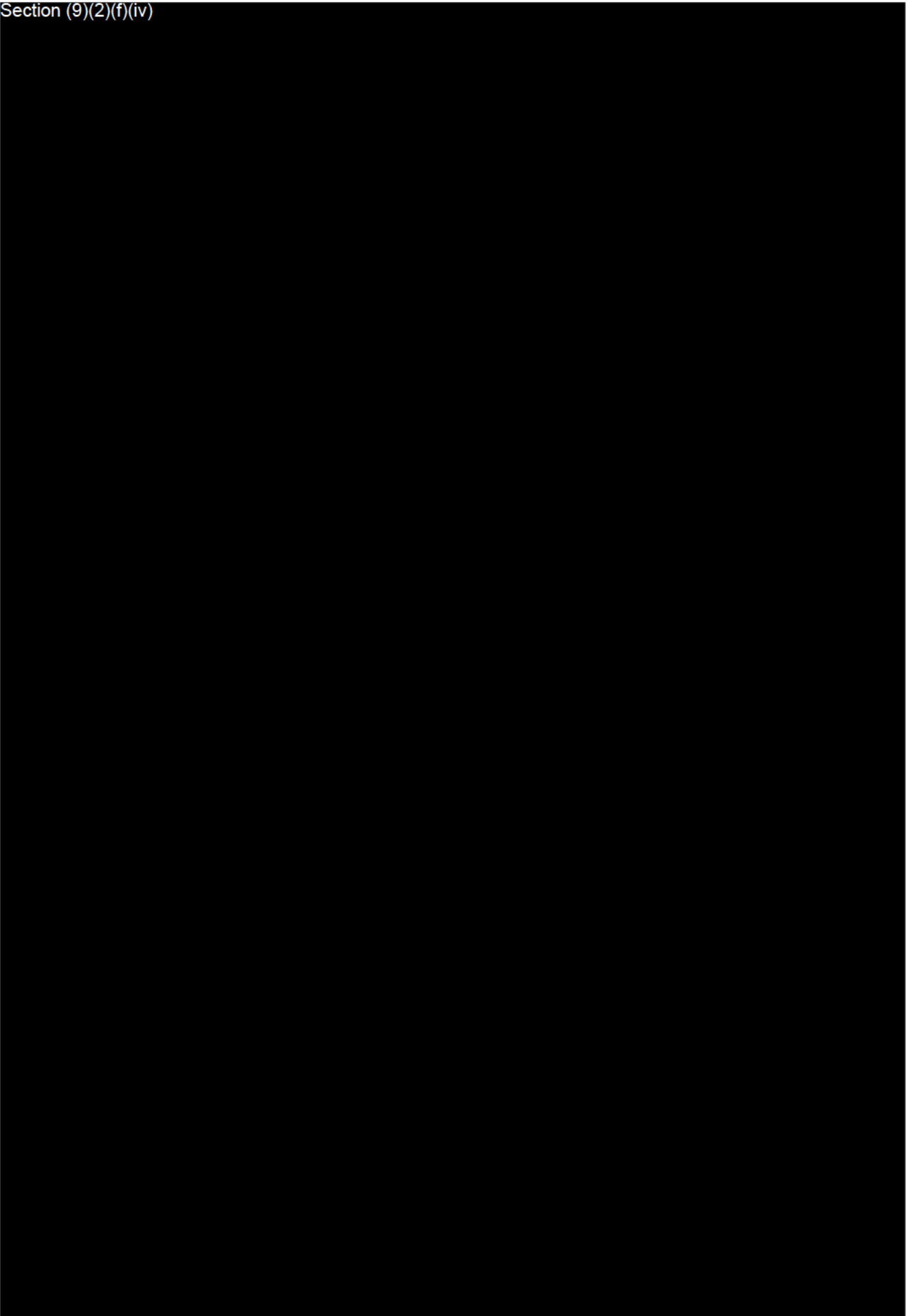
Hon Kiri Allan

Minister of Justice


APPENDIX 1: OFFENCES AND PENALTIES RELATED TO FIREARM USE

Act/ provision	Description	Max penalty
s21 Summary Offences Act	(intimidation) an offence to intend to frighten or intimidate a person knowing that this conduct is likely to cause that person to be frightened or intimidated	3 months or \$2,000
s48 Arms Act	(discharge in or near a dwelling or public place) the lower-level offence when a firearm is discharged without reasonable excuse near a dwelling or in public so as to endanger property or endanger, annoy, or frighten any person	6 months or \$10,000
s53(3) Arms Act	(discharge with reckless disregard for safety) an offence when, without reasonable cause, a firearm is discharged in a manner likely to injure or endanger the safety of any person or with reckless disregard for the safety of others	3 years or \$4,000 or both
s308(b) Crimes Act	(discharge intent to intimidate or alarm) an offender who, with intent to intimidate or annoy any person, by the discharge of firearms or otherwise, alarms or attempts to alarm any person in any dwellinghouse	3 years
s45 Arms Act	(unlawfully carrying or possessing firearm) an offence to carry or possess a firearm with no lawful, proper, and sufficient purpose	4 years or \$5,000 or both
s189(2) Crimes Act	(injures with intent to injure) intent to injure anyone or with reckless disregard for the safety of others, injures any person	5 years
s306 Crimes Act	(threatens to kill or do GBH) offence to threaten to kill or do grievous bodily harm (GBH)	7 years
s269(2)(a) Crimes Act	(intentional property damage) offence of intentionally or recklessly destroying or damaging any property (with no interest in it)	7 years
s188(2) Crimes Act	(wounding with intent to injure) with intent to injure anyone, or with reckless disregard for the safety of others, wounds etc any person	7 years
s198(2) Crimes Act	(discharging with intent to injure or with reckless disregard) with intent to injure, or with reckless disregard for the safety of others, discharges a firearm at any person	7 years
s269(1) Crimes Act	(intentional property damage with danger to life) offence of intentionally or recklessly destroying or damaging any property if they know or ought to know that danger to life is likely to result	10 years
s189(1) Crimes Act	(injures with intent to cause GBH) with intent to cause GBH to anyone, injures any person	10 years
s188(1) Crimes Act	(wounding etc with intent to cause GBH) with intent to cause GBH to anyone, wounds etc any person	14 years
s198(1)(a) Crimes Act	(discharging with intent to cause GBH) the serious offence of discharging a firearm at any person with the intent to do grievous bodily harm	14 years

Section (9)(2)(f)(iv)

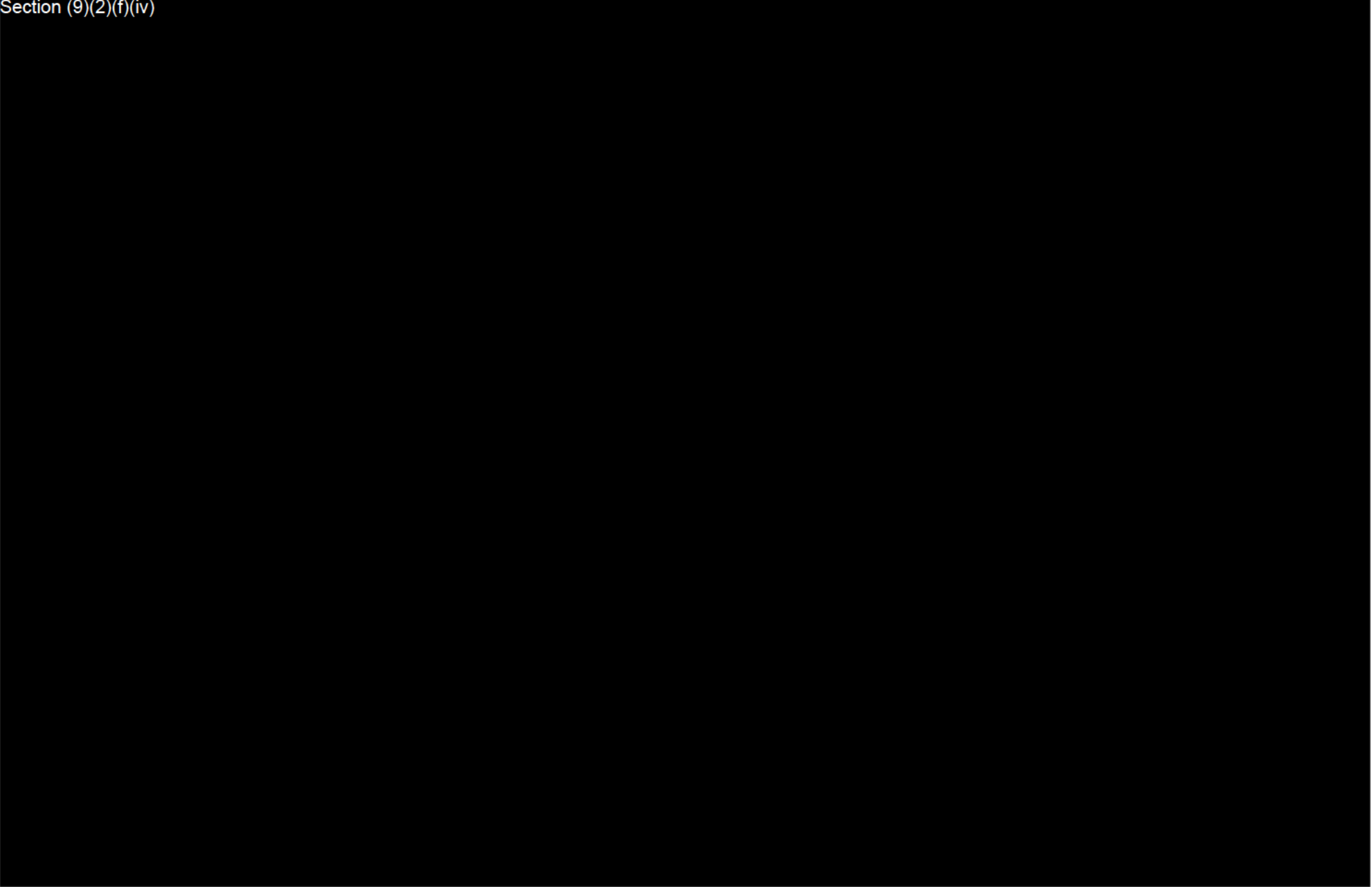


Section (9)(2)(f)(iv)



IN CONFIDENCE


Section (9)(2)(f)(iv)



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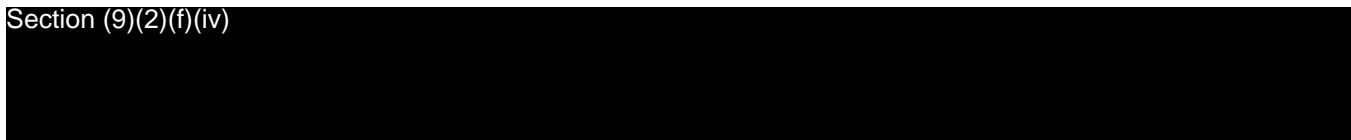
Section (9)(2)(f)(iv)




Section 9(2)(b)(ii)




Section (9)(2)(f)(iv)



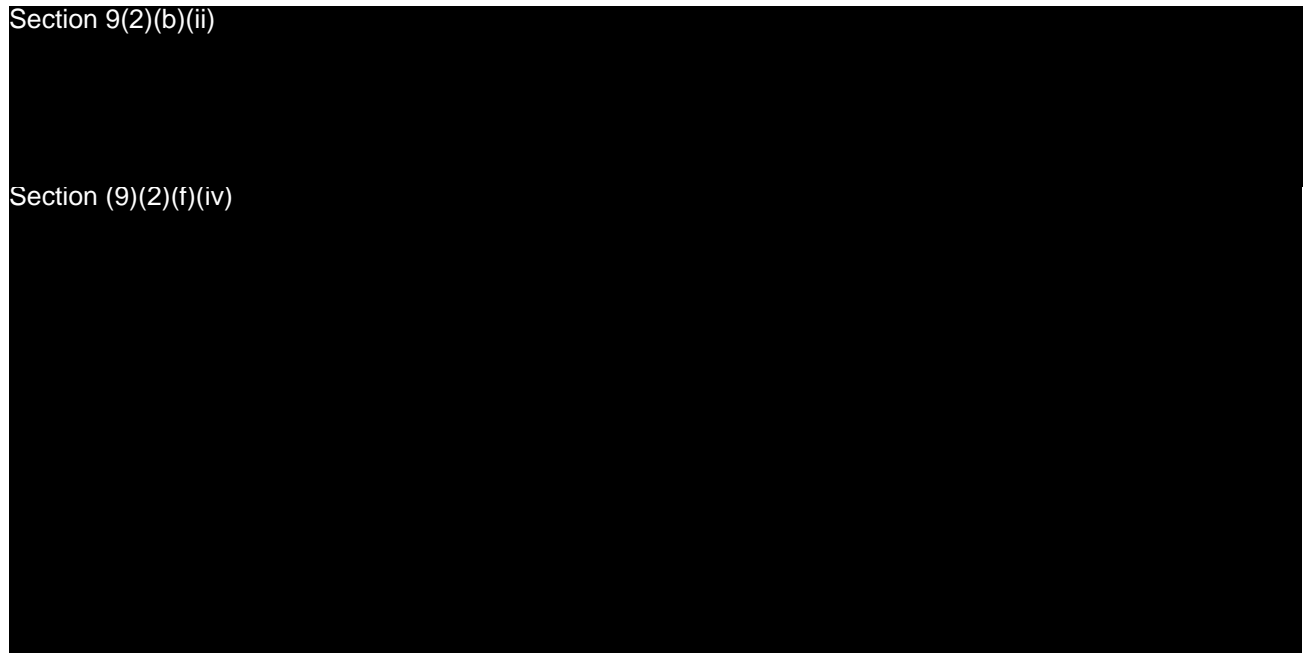
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Section 9(2)(b)(ii)

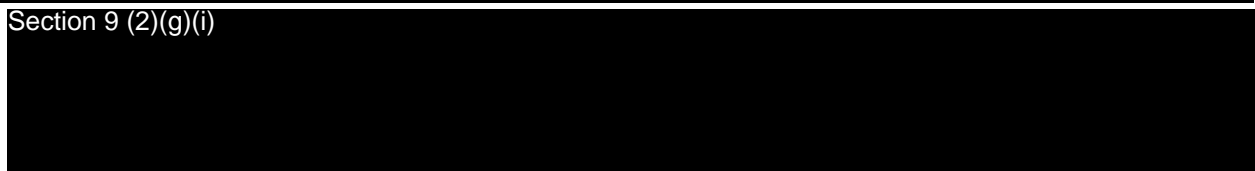


Section 9(2)(b)(ii)



Section (9)(2)(f)(iv)

Section 9 (2)(g)(i)





Cabinet Social Wellbeing Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Gang Harm Intervention, Section (9)(2)(f)(iv)

Portfolios

Police / Justice

On 29 June 2022, the Cabinet Social Wellbeing Committee **referred** the submission under SWC-22-SUB-0122 to Cabinet on 4 July 2022, revised as appropriate in light of discussion at the meeting.

Rachel Clarke
Committee Secretary

Present:

Hon Grant Robertson
Hon Kelvin Davis
Hon Chris Hipkins
Hon Carmel Sepuloni (Chair)
Hon Andrew Little
Hon Poto Williams
Hon Peeni Henare
Hon Kiri Allan
Hon Dr Ayesha Verrall
Hon Priyanca Radhakrishnan
Hon Aupito William Sio
Hon Meka Whaitiri

Officials present from:

Office of the Prime Minister
Office of the Chair
Officials Committee for SWC

In Confidence

Office of the Minister of Police

Office of the Minister of Justice

Cabinet

Gang Harm Intervention

Proposal

- 1 This paper seeks decisions on a package of policy proposals to address gang harm.

Relation to government priorities

- 2 The proposals in this paper support the Government's manifesto commitments to keep up the pressure on tackling organised crime, gangs, and harmful drug use by ensuring Police and other enforcement agencies have the resources and powers to disrupt and prosecute this offending.

Executive summary

- 3 The criminal activities of gangs, particularly when violent, can cause serious harm to communities and give rise to significant public concern. It is important that Police continue to have the tools they need to respond to and address the changing nature of criminal behaviour. This builds on our current multi-faceted response to gang harm, which combines enforcement action that targets drug supply and other unlawful behaviour with prevention work that builds resilience in communities with whānau and rangatahi.
- 4 This paper proposes a set of legislative proposals that contains tools for Police that would enable them to respond to current issues around gang conflict as well as some of the wider harm caused by gang activity.
- 5 However, evidence shows that focusing on early interventions, rehabilitation and re-integration is the most effective route to sustained improvements in public safety over the long term. The specific proposals in this paper must be supported by additional work across the sector to tackle the causes of gang participation and support a long-term reduction in offending. Section (9)(2)(f)
(iv)

The Ministers of Police and Social Development and Employment are also leading work on addressing the drivers of youth offending, and alongside this the Associate Minister for Education is leading work to improve educational engagement for at risk youth.
- 6 The legislative package proposed in this paper includes:

- 6.1 a new offence in the Crimes Act 1961 to address all situations where a firearm is discharged with the intent to intimidate any person or group of people;
- 6.2 an amendment to the Search and Surveillance Act 2012 to provide Police with additional search powers targeting gang members in circumstances of gang conflict;

Section (9)(2)(f)(iv)

- 6.4 a new cash seizure power to allow Police to hold cash for a short period of time (up to 7 days); and
 - 6.5 an amendment to the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 to prohibit high-value dealers from accepting cash payments for specified goods.
- 7 The paper also includes discussion of options for provision Section (9)(2)(f)(iv)
- 8 These proposals all carry implications for the Government's obligations under the New Zealand Bill of Rights Act 1990 (BORA) and te Tiriti o Waitangi/the Treaty of Waitangi and its principles. Three quarters of gang members are Māori, and as such the proposals are likely to have a disproportionate impact on Māori and further increase their representation within the criminal justice system.
- 9 These proposals will be given effect via an omnibus amendment Bill, which we propose to introduce in August, following final confirmation by the Cabinet Legislation Committee.

Background

- 10 Officials have been considering legislative settings relating to organised crime for some time, particularly as part of work under the government's Transnational Organised Crime Strategy to prevent and respond to organised crime.
- 11 Ministers directed officials from the Ministry of Justice and New Zealand Police to provide further advice on a number of specific proposals:
 - 11.1 reviewing the offences and penalties related to shootings in public places to introduce more targeted penalties for discharging a firearm in a public place;
 - 11.2 new warranted search powers to prevent and respond to gang conflict;
 - 11.3 Section (9)(2)(f)(iv)

- 11.4 introduce stronger penalties for fleeing drivers; and
- 11.5 preventing gangs from moving and converting large quantities of cash, including giving Police the power to seize cash found in suspicious circumstances during lawful searches, and the parameters and specific areas that could be targeted in relation to prohibiting cash purchases over a set threshold.

Gang activity causes a range of harms

- 12 While organised crime and gangs are not synonymous, gangs and gang violence are often the visible face of organised crime in New Zealand. They frequently engage in a number of criminal behaviours, such as drug trafficking and other black-market activity, and may engage in violence as part of inter-gang rivalries or in order to resolve internal disputes. However, gangs and gang membership is not unlawful and not all gang behaviour is criminal.
- 13 Dealing in illicit drugs, in particular methamphetamine, is extremely profitable for gangs and other organised criminal groups. In 2021, the New Zealand methamphetamine market was worth an estimated \$297.2 million. This money is coming out of some of our most vulnerable communities and is used to promote gang and criminal lifestyles and reinvest in further criminal activity. Gangs are highly motivated to protect and increase their share of the illicit drug market. Methamphetamine and other drugs not only provide gangs with revenue, they also increase gangs' power and influence within communities due to drug debt.
- 14 In recent months, conflict between rival gangs has resulted in a number of violent incidents, including drive-by shootings in residential areas. Section (9)
(2)(f)(iv)
 Many members of the public are understandably concerned about the escalating violence and the threat of harm to themselves or their whānau members.
- 15 The current spike in public violence is occurring within the context of deeper changes to the gang environment including the establishment of Australian gangs in New Zealand, resulting in increased inter-gang pressures, and greater willingness to escalate to violence using firearms.
- 16 As a result, Police is seeing more severe and overt violence, in particular firearms offending, which poses a significant risk to the community and has led to concerns about public safety. This is a fast moving, and highly fluid environment. This paper proposes a new offence related to the use of firearms to intimidate, and a new search power for Police to use during times of gang conflict. These proposals specifically seek to address gang conflict and the harm it poses to the wider public.
- 17 Section (9)(2)(f)(iv)

Section (9)(2)(f)(iv)



- 19 Finally, drug transactions and other criminal activities predominately deal in cash and other forms of stored value. The proceeds of these activities are subsequently laundered by gangs and used to fund criminal activities and transport the proceeds of crime. The last set of proposals in this paper seek to disrupt wider gang activity through limiting the ability to conceal cash profits or to convert it to other high value goods.

There is a wider package of work aimed at reducing offending over the long term

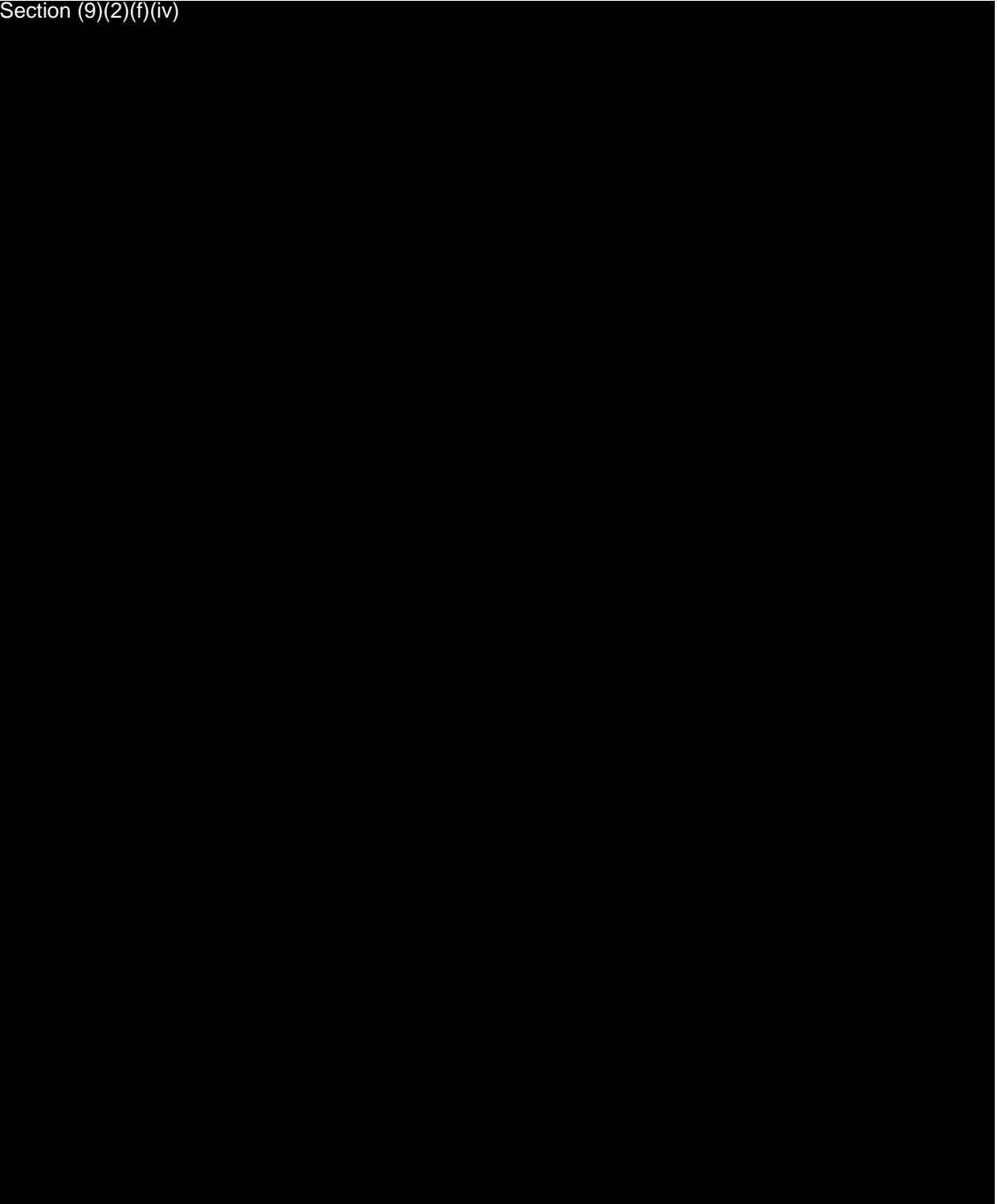
- 20 Previous experience has shown that in times of escalating gang violence and conflict, a concerted enforcement effort and the targeted policing of gangs is necessary to prevent, suppress and disrupt gang violence. These actions are underway, and will be supported by the proposals in this paper.
- 21 These proposals build on the Government's work to keep New Zealanders safe, including delivering an additional 1,800 Police officers and removing unlawful firearms. This fits alongside our other relevant initiatives, such as the Criminal Proceeds (Recovery) Act 2009 reforms, the Transnational Organised Crime Strategy, the statutory review of the Anti-Money Laundering and Countering the Financing of Terrorism regime, and the \$562 million law and order package in Budget 2022.
- 22 However, evidence shows that focusing on early interventions, rehabilitation and re-integration is the most effective route to sustained improvements in public safety over the long term. The specific proposals in this paper must be supported by additional work across the sector to tackle the causes of gang participation and support a long-term reduction in offending.
- 23 We know that programmes which prevent children and young people from entering the justice system leads to reductions in the number of young adults that end up imprisoned. Between 2010/11 and 2020/21 offending rates for children and young people declined by 65 percent and 63 percent respectively. This contributed to the 89 percent reduction in the number of 17- to 19-year-olds starting a sentence of imprisonment between 2009 and

2020. By comparison, there was a 68 percent reduction for 20- to 24-year-olds, and only a 3 percent reduction for 30- to 39-year-olds over the same period.

- 24 Ministers have commissioned the Social Wellbeing Board (SWB) to develop a multi-faceted plan to strengthen our responses to harms associated with gang-centred living. The Gang Harm Intervention Plan that was recently agreed to in principle to at SWC [insert cabinet minute] brings together action underway to prevent and reduce the harm from gangs at multiple levels: national, regional, local; and across a spectrum of enforcement to social sector response.
- 25 As part of this, officials have considered opportunities to strengthen government's response across five requested areas:
 - 25.1 support for young people to prevent involvement in gangs
 - 25.2 improved response to, and support for deportees ('501s')
 - 25.3 refresh of the Proceeds of Crime Fund
 - 25.4 targeted enforcement effort
 - 25.5 enhancing enforcement tools through legislative amendments.
- 26 An important part of this work is the Resilience to Organised Crime in Communities (ROCC) work programme which is a multi-faceted, cross-agency work programme regionally led in four parts of New Zealand and nationally enabled. It seeks to prevent and reduce harm from organised crime and gangs and received Budget 22 funding to sustain and expand existing activity.
- 27 Alongside this we also saw further investments in prevention and community development approaches which lead to sustainable and long-term outcomes for whānau and communities through E tu whanau and Pasefika proud. These programmes are community led initiatives supported by MSD to prevent violence in communities.
- 28 Budget 22 investment also strengthened cross-agency coordination and will improve access to essential support for returning deportees (501s) as part of ROCC. This package will help deportees find some stability in New Zealand including help with transitional housing and integration support. It will also improve our ability to assess deportees' impact on the criminal environment.
- 29 Based on insights from the Social Wellbeing Agency we also know that preventing youth crime is important to preventing gang membership for young people. The Social Wellbeing Agency analysed about 2000 young people in their early 20s who are currently on Corrections' gang member list and found that 100% of the cohort had contact with the Police and were reported as offenders one or more times across their lives.

- 30 This analysis also showed that the early risk factors for young people becoming involved in a gang are very similar to those that are correlated with serious and persistent youth offending. For example, young people who are identified as gang members in their early 20s were far more likely than the population average to have had contact with Oranga Tamariki as children or teenagers and to leave school early and with low attainment. While the picture this paints is negative, it also shows that these young people had multiple points of contact with the State, creating opportunities to intervene earlier, provide better support, and reduce the likelihood and seriousness of offending as a young adult.

Section (9)(2)(f)(iv)

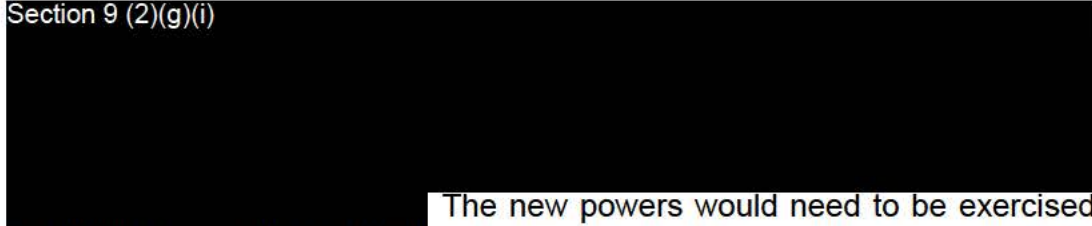


Section (9)(2)(f)(iv)



Implications of the proposed interventions

36 Section 9 (2)(g)(i)



The new powers would need to be exercised carefully to encourage the long-term and short-term outcomes sought by both the new powers and existing programmes to reduce gang harm.

- 37 The proposals in this paper have been specifically developed with these in mind and consideration has been given to ensure that all powers strike an appropriate balance ensuring that there are robust internal processes governing the use of any new warrants and powers and considers that such unintended outcomes are manageable. This is an existing challenge that Police already manage successfully
- 38 For the most part, officials have proposed options which target criminal behaviour and are not limited to offending by gangs, or the harm caused by gang. These options will apply to non-gang members as well.
- 39 A new search power to address gang conflict specifically targets criminal offences committed by gangs. The only existing legal definition of gang is within the Prohibition of Gang Insignia in Government Premises Act 2013, which lists specific gangs. Options which target gangs may be practically difficult to draft. These issues will need to be worked through with the Parliamentary Counsel Office (PCO).
- 40 In addition, all of the proposals in this paper interact with the government's obligations under BORA and te Tiriti o Waitangi/the Treaty of Waitangi and its principles. These implications are set out in more detail below.

Te Tiriti/Treaty analysis

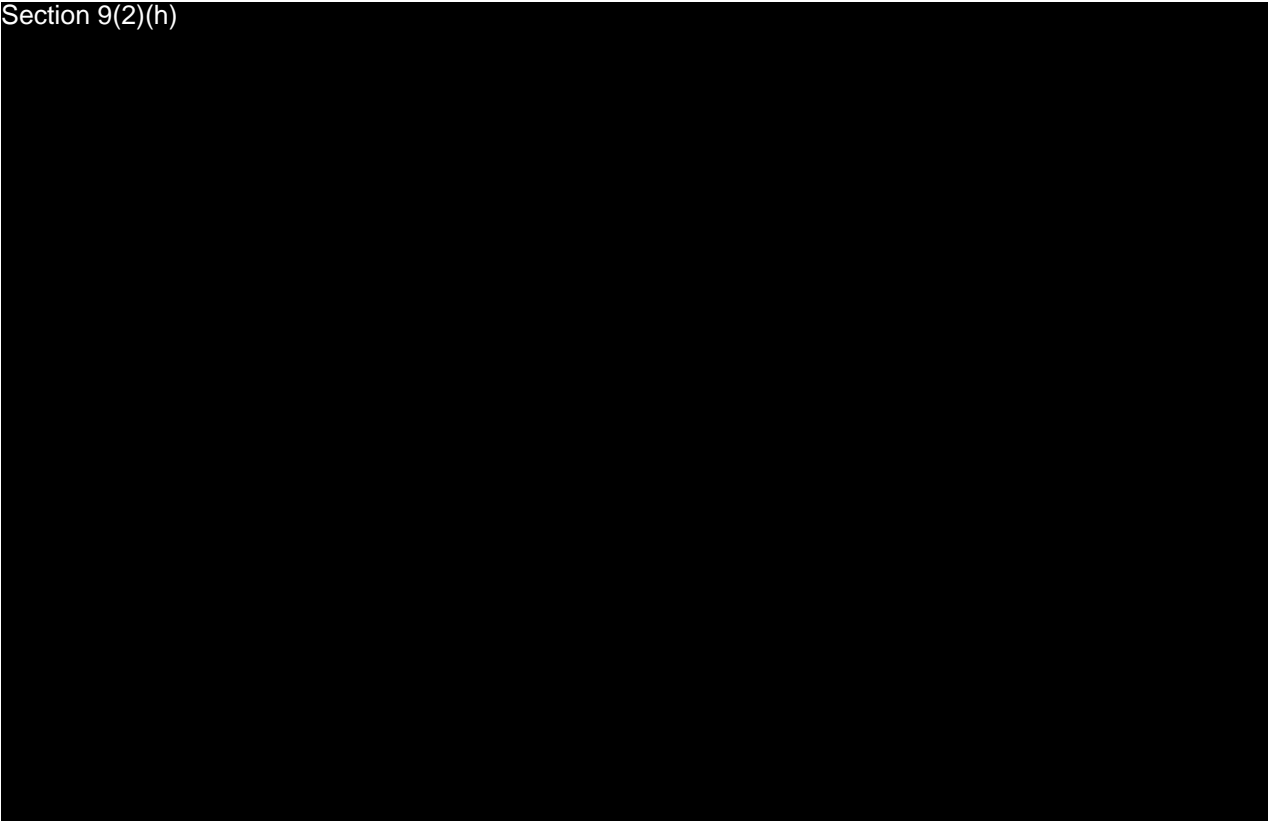
- 41 Over three quarters of the known adult gang members in Aotearoa are Māori men. This means that measures that specifically target gangs are disproportionately likely to impact Māori and are likely to conflict with the equity principle of te Tiriti o Waitangi/the Treaty of Waitangi. Furthermore, where options undermine BORA rights, these are likely to conflict with the Crown's specific article three duties to provide Māori with all the rights and protections of citizenship.

- 42 Targeting policies towards specific criminal behaviours rather than gang membership will mitigate but not completely resolve these concerns. Māori are charged with crimes between two and three times more than the general population and are overrepresented at every stage of the criminal justice system. While work is underway across the sector to better understand the disproportionate impacts on Māori, existing institutional biases and systemic racism mean that new offences or Police powers may be more likely to be used against Māori regardless of how they are targeted. Police is currently working with researchers and an independent panel, on a major research programme looking at how Police can ensure it delivers policing that is fair and equitable for all communities.
- 43 The prevalence of gang membership within Māori communities also means that Māori are more likely to be the victims of gang-related harm. Taking steps to combat this harm is therefore part of the Crown's responsibility to actively protect Māori.
- 44 Section (9)(2)(f)(iv) [REDACTED]
- 45 We have directed officials to undertake specific consultation with key Maōri organisations and communities throughout the progression of legislation, particularly throughout the select committee process.

Section 9(2)(h)

[REDACTED]

Section 9(2)(h)



Reviewing the offences and penalties related to shootings in public places

- 53 The deterrent effect on gang members from any new offence or increased penalty will be low, as evidence shows that this is rarely a factor considered (or known) by offenders. However, we also recognise that legislation can have an important signalling effect, denouncing harmful behaviour.
- 54 While it is not inherently illegal for a licensed firearm owner (or someone under their immediate supervision) to discharge a firearm in public, there are a number of offences that may be engaged when a firearm is discharged, depending on the particular circumstances and facts.
- 55 A range of relevant offences are set out at Appendix 1. These exist on a spectrum of offending, from lower-level offences, where minimal harm is caused or intended, through to more serious offences resulting in injury or death.
- 56 There is an apparent gap in the law for situations where a firearm discharged with intent to intimidate, but without the intent or effect of causing actual injury or damage. Under section 308 of the Crimes Act 1961, it is an offence to intimidate someone (through the discharge of a firearm or otherwise) but only if they are inside a dwelling. Currently section 308 would not apply, for example, if someone discharged their firearm on the street or in a carpark to intimidate people in public.
- 57 We consider that discharging a firearm with the intention to intimidate causes harm regardless of where it takes place. As such, we propose introducing a new offence in the Crimes Act to address all situations where a

firearm is discharged with the intent to intimidate any person or group of people.

58 The new offence would either replace or amend the relevant subsection in section 308 of the Crimes Act.

59 In setting the penalty, we have considered a number of similar Crimes and Arms Act offences, and consider a maximum penalty in the range of five to seven years to be appropriate. This would place it alongside similar Crimes Act offences such as:

59.1 Section 189(2): *with intent to injure anyone or with reckless disregard for the safety of others, injures any person (five years)*

59.2 Section 306: *threatens to kill or do grievous bodily harm (seven years)*.

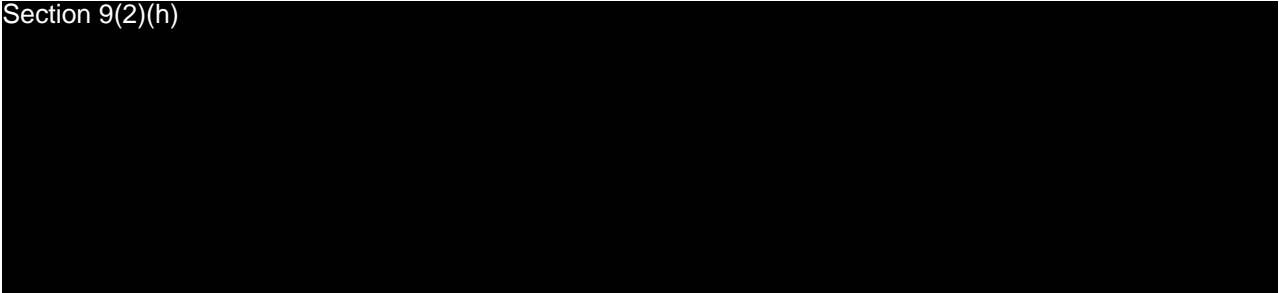
60 On balance, we consider that the appropriate maximum penalty for this offence should be five years. This takes into account the harmful nature of the offence, and the use of a firearm, but acknowledges that intent to intimidate is a step below the more serious seven-year offences.

61 We propose the new offence should be added to the eligible offences enabling a Firearms Prohibition Order to be made by the court. This will require an amendment to future section 39A of the Arms Act 1983 (which is currently being inserted by the Firearms Prohibition Orders Legislation Bill, scheduled for report back to Parliament by 9 August 2022).

62 We also propose that this offence should be included in section 45 of the Search and Surveillance Act 2012, which sets out the offences for which Police can obtain surveillance device warrants. This means Police will be able to apply for a warrant to undertake surveillance that involves trespass to land or use of an interception device in order to obtain evidential material in relation to the new offence (noting these powers are usually reserved for offences punishable by 7 years imprisonment or more, and other serious offences against the Arms Act 1983 or the Psychoactive Substances Act 2013).

63 Adding this new offence to section 45 of the Search and Surveillance Act will also ensure that when existing surveillance powers are being used to monitor gang activities, evidence of the new offence obtained through those surveillance powers may be admitted in evidence in court proceedings. Given the operational challenges involved in holding offenders to account, particularly in the gang context, additional investigative tools are important.

Section 9(2)(h)



Section 9(2)(h)

New warrant and search powers to prevent and respond to gang conflict

- 65 We propose new warrant and search powers to enable Police to respond to emerging gang conflict and remove weapons (including firearms) from participants. The proposed warrant grants Police additional search powers to search properties and vehicles that are occupied, used or owned by members of specified gangs.
- 66 Existing powers are adequate to search property and vehicles where Police suspect or believe that individuals have committed, are currently committing or will commit an offence involving weapons. However, the existing provisions carry a 'suspicion' requirement and can only be used in relation to towards the property of specific individual or individuals (for example where an individual is believed to be in illegal possession of a firearm). This does not allow Police to search the property and vehicles of all members of the gang despite the increased risk that future violence may be committed by any member of the gang.

Police must meet criteria for the warrant to be issued

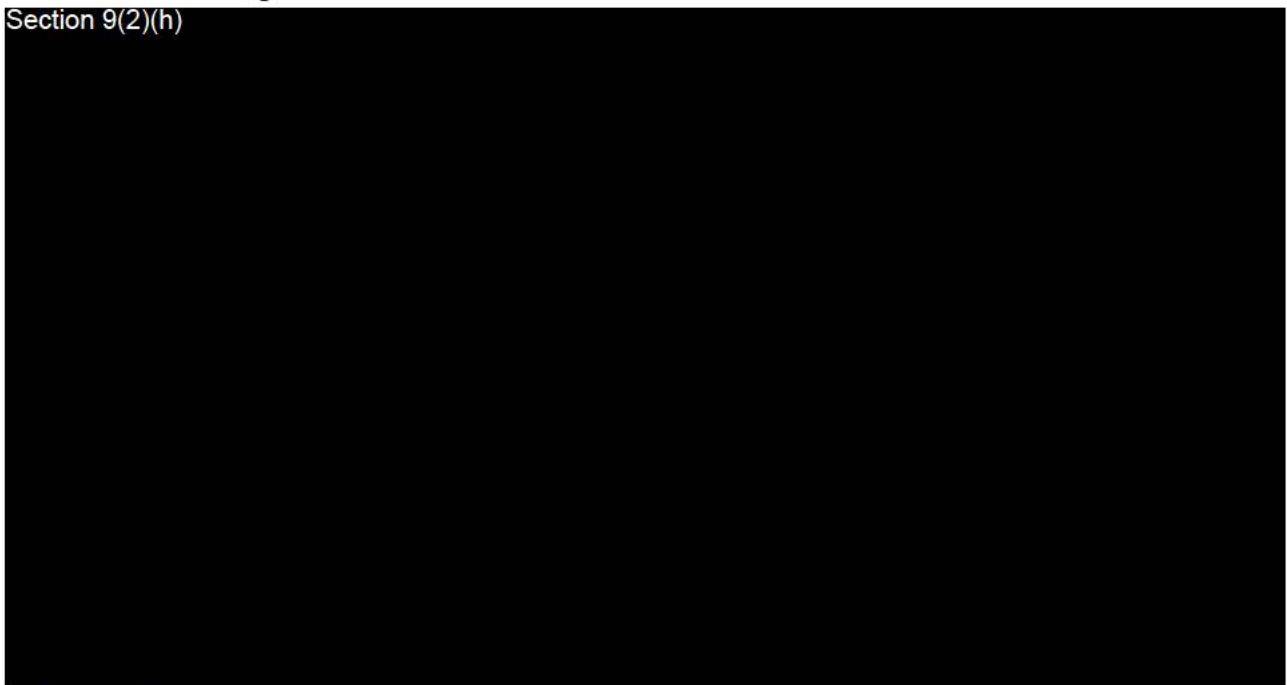
- 67 Before the new warrant could be issued, Police would have to demonstrate to a judge that a gang conflict is underway and involves, or may soon involve, the use of weapons that are likely to cause wider harm. The judge would consider the history of conflict and recent conflict between gangs, as well as indicators of escalating or future conflict.
- 68 The warrant itself would specify:
- 68.1 the gang/s it relates to;
 - 68.2 the required time limit (with a maximum of 14 days – a new warrant could be sought if additional time is needed); and
 - 68.3 the known property (including residences, dwellings and vehicles) occupied, possessed or owned by known members of the specified gang/s within a specified region or regions.
- 69 Once the warrant is obtained, Police will not need to suspect the members of the specified gangs for a specific offence to search their property for weapons.

Intended scope of search powers

- 70 The powers will permit searches of non-specified vehicles if these fall within the specified region/s and a constable is satisfied they are occupied, used or owned by members of a specified gang. This power is required given how easily vehicles can be shared and moved.

- 71 Determining who is captured by the search power will be worked through in drafting. However, we intend for this power to capture both validated patched/full members and prospects/nominees. Further consideration will be given as to whether other identified people (eg associates) involved with the gang could be included if Police can provide information that supports an individual's involvement with a specified gang.
- 72 In the proposed reforms to the Criminal Proceeds (Recovery) Act 2009 (CPRA) consideration is being given to how to capture those associated with an organised criminal group. This will determine who is subject to the scope of the proposed new powers for restraint and forfeiture of illicit assets under that Act. The work in the CPRA context may be able to be drawn upon to help in drafting the warrant power. However, given the different contexts (gangs and organised criminal groups overlap but are not the same) it may be difficult to align the approaches.
- 73 We also intend for gang conflict to include both inter-gang conflict and intra-gang conflict and for multiple entries/searches within the specified timeframe and region/s to be enabled by the warrant. During the course of drafting consideration will be given to managing the potential for impact on gang whanau, for example by requiring specific associates to be identified.
- 74 The powers in this proposal may not be exercised without judicial authority. This provides a constraint on the use of what is a broad new power and decreases the likelihood that the power may be found to be unreasonable following its use.

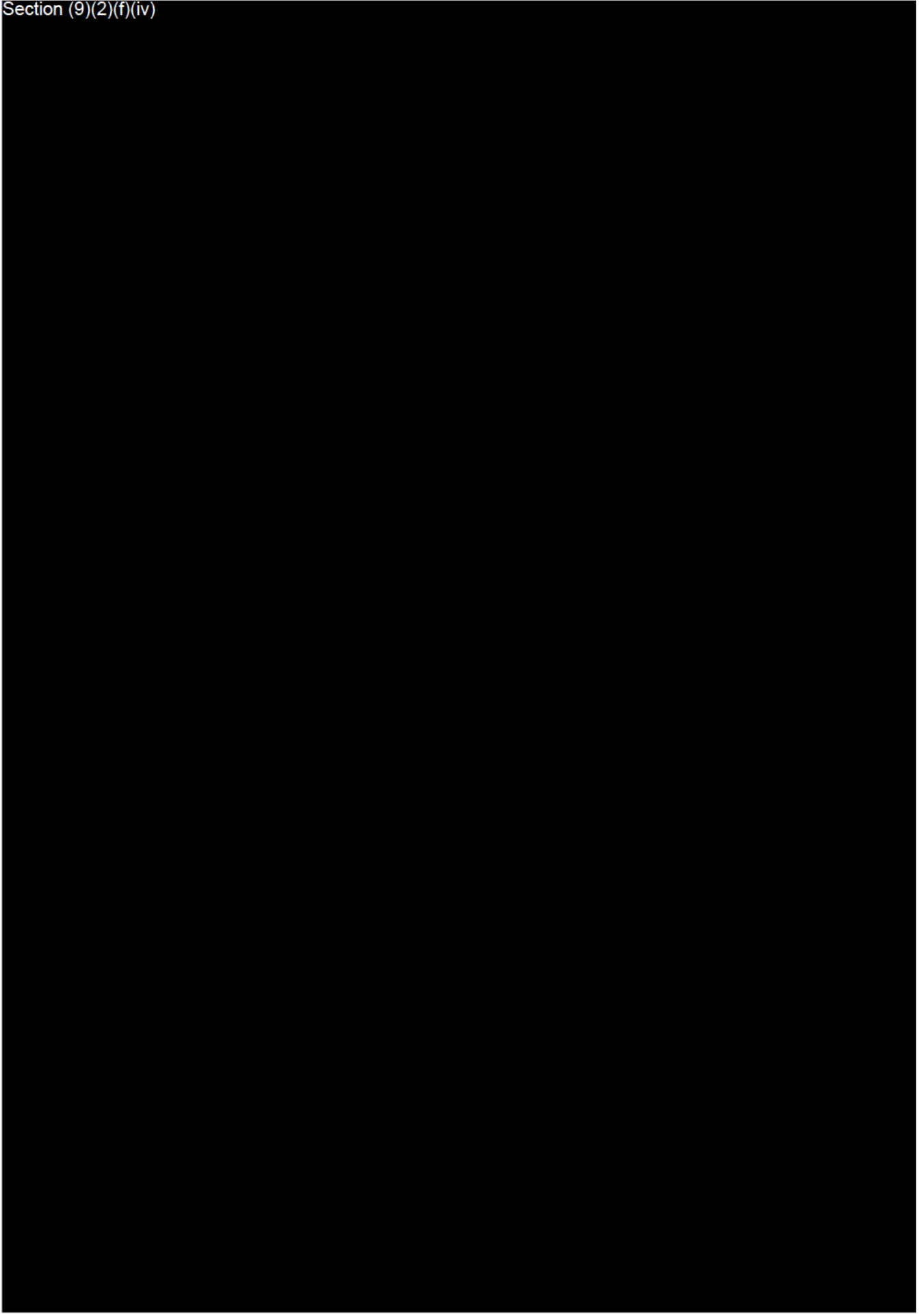
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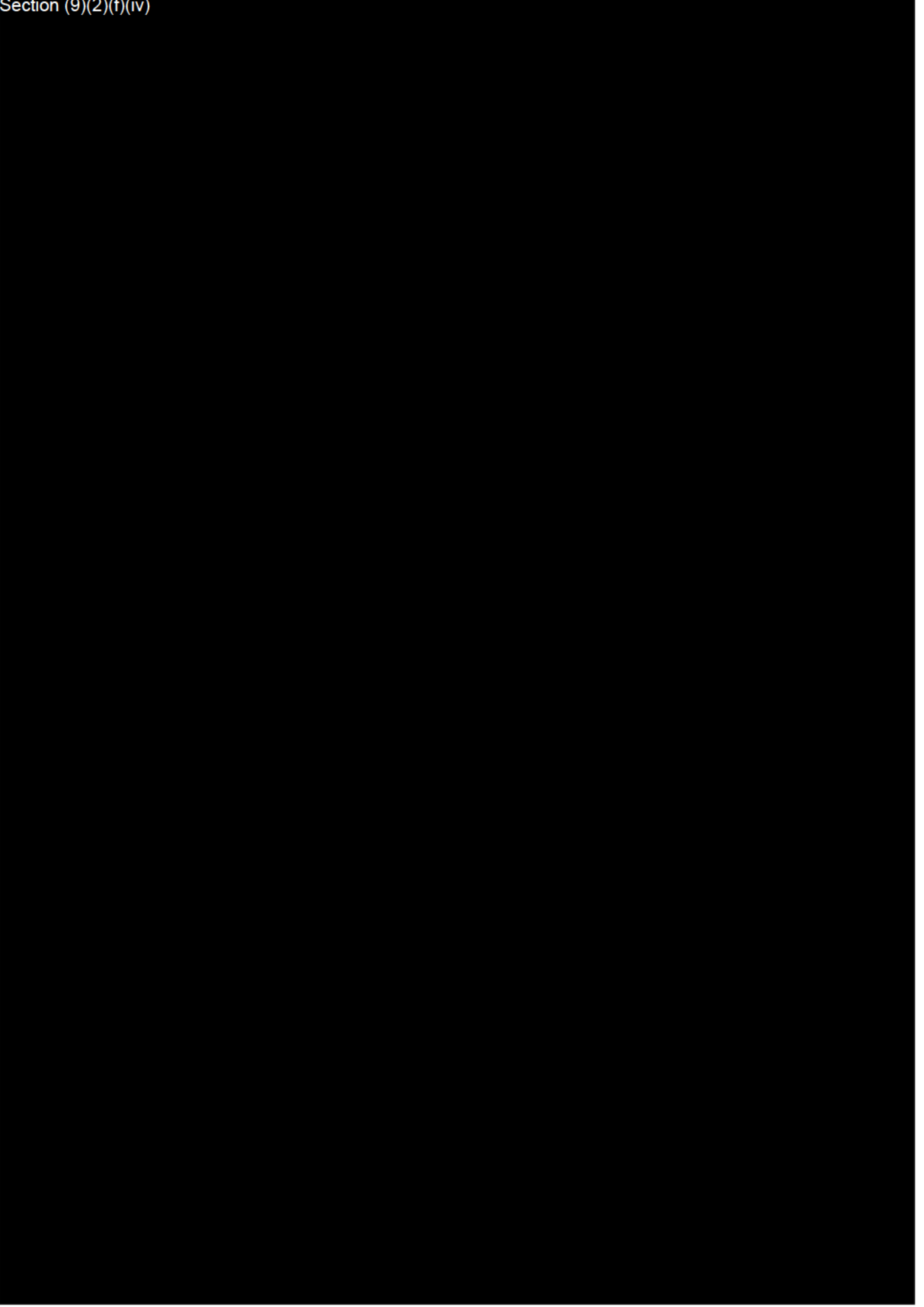
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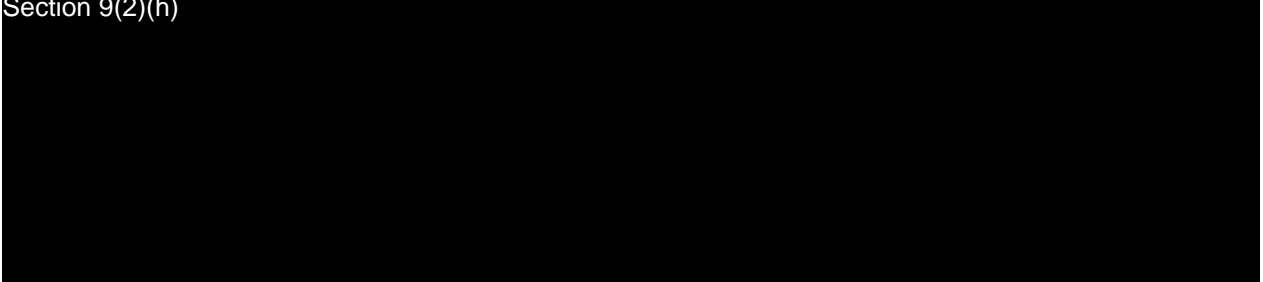
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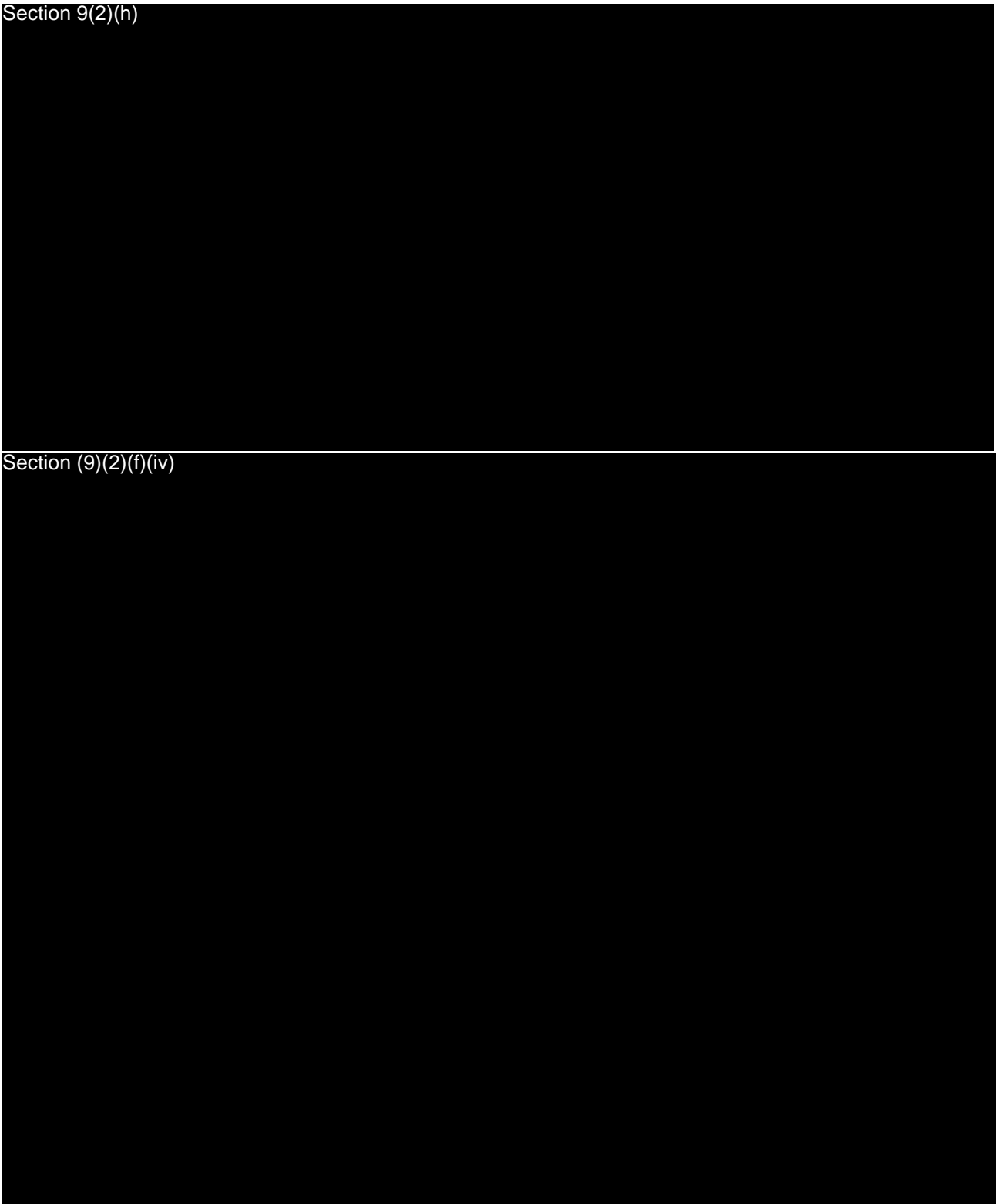
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Section 9(2)(h)



Section 9(2)(h)



Section (9)(2)(f)(iv)

Fleeing drivers

Fleeing driver events present significant enforcement challenges for Police

- 3 A fleeing driver event occurs when a driver fails to stop or remain stopped when required by Police or flees as a result of Police presence whether signalled to stop or not.

⁵ <https://www.justice.govt.nz/assets/Documents/Publications/BORA-2001-Land-Transport-street-and-illegal-drag-racing-amendment-bill.pdf>

- 4 Police is encountering barriers to identifying and holding fleeing drivers to account. Since December 2020, the proportion of unidentified drivers has increased by 64 percent and unresolved fleeing driver events have increased from around 35 to 60 percent. Where drivers are identified and charged for failing to stop for Police, or a registered owner refuses to identify the driver, current penalties do not reflect the seriousness of their offending.
- 5 The challenges in effectively hold fleeing drivers to account presents reputational risks for Police and undermines public trust and confidence. It also creates perverse incentives for offenders, with the view that there is little consequence for fleeing from Police.⁶

There is an opportunity to strengthen penalties and improve legislative responses to fleeing drivers

- 6 Having stronger penalties may signal to drivers that there will be a severe outcome if they choose to flee, which could influence behaviour. It would also acknowledge the danger this behaviour creates for other road users and Police.
- 7 The ability for Police to effectively identify and hold fleeing drivers to account is determined by operational practice and current legislative settings. There is an opportunity to consider additional legislative mechanisms, which go beyond targeting gang-related offending, to strengthen current penalties and support Police to better respond to fleeing driver events.
- 8 Police has identified the following possible legislative responses to better reflect the high-risk nature of fleeing driver events and improve the enforceability of fleeing driver offences:

8.1 *Strengthening penalties for failing to stop offences*, including:

- 8.1.1 amending licence disqualification penalties for failing to stop offences to align with penalties for comparable high-risk driving offences
- 8.1.2 introducing new aggravated failing to stop offences with higher penalties to respond to fleeing drivers who cause injury or death or commit anti-social or high-risk behaviour (e.g. using a stolen vehicle, dangerous or reckless driving, speeding, or impaired driving)
- 8.1.3 enabling forfeiture of a vehicle when an enforcement officer has reasonable grounds to believe that the vehicle has been used in the commission of the offence of failing to stop for Police.

⁶ Evidence-Based Policing Centre *Understanding the motivations of fleeing drivers – Te Ikarere, a youth perspective of Police pursuits* (June 2021).

- 8.2 *Strengthening obligations and penalties for owners of vehicles involved in fleeing driver events*, including:
- 8.2.1 creating owner liability for failing to stop offences
 - 8.2.2 enabling Police to seize and impound a vehicle for 28 days where the registered owner fails to provide information to identify a fleeing driver
 - 8.2.3 enabling forfeiture of vehicle in some circumstances when the registered owner provides false or misleading information to identify a fleeing driver.
- 9 However, increasing fleeing driver penalties may have unintended or disproportionate outcomes.⁷ We know that Māori and Pacific people are over-represented in fleeing driver events and related offending. Imposing stronger penalties could adversely impact these groups while failing to have the intended deterrent effect. These risks will need to be considered alongside potential benefits.
- 10 This is not an exhaustive or a final set of policy proposals and further work is required to develop the full package. Police officials will engage with Ministry of Justice and Te Manatū Waka Ministry of Transport officials to develop final proposals.
- 11 The Minister of Police, following consultation with the Minister of Justice and Minister of Transport, will report back to Cabinet by September 2022 on final proposals to strengthen fleeing driver penalties and improve legislative responses to fleeing drivers.

Short-term cash seizure power

- 12 Gangs often move and convert large values of cash (and alternative modes of stored value) to facilitate criminal offending, to hide its criminal origin and, ultimately, to use it. Police has identified circumstances where enforcement officers may find this cash, but not be able to identify that it is proceeds or evidence of offending until the opportunity to seize it has passed.
- 13 We propose a new Police power to seize cash reasonably believed to be over \$10,000 when found in suspicious circumstances. This new power will fill gaps in the existing law relating to items found in “plain view” (while exercising a lawful search power) which require reasonable grounds to believe that the item could have been seized under a search warrant or another search power.
- 14 The new power will cover situations such as where large amounts of cash found by an Aviation Security Officer at an airport are notified to Police or where significant amounts of cash are observed in a vehicle which has been

⁷ Evidence-Based Policing Centre *Understanding the motivations of fleeing drivers – Interventions to reduce fleeing driver events* (December 2020). This research indicates that increasing penalties for failing to stop may have a limited effect on offending.

stopped. Unless there is evidence of some criminality in relation to an imprisonable offence (meaning that a warrant could be obtained), or another search power exercisable by the officer in the circumstances, there is currently no ability to seize the cash.

- 15 Where cash is found in suspicious circumstances and those in possession are unable to give a plausible explanation of the origin of the cash (or its intended purpose), there should be the ability for Police to seize the cash for a short period of time while they make further enquiries.
- 16 Police would be able to hold the cash for up to 7 days, before either returning the cash or initiating proceedings to remove the cash permanently from the person in possession, in accordance with judicial order or existing statutory authority to retain the cash. Mechanisms for dealing with the cash once seized are those that already exist under the Search and Surveillance Act 2012 or the Criminal Proceeds (Recovery) Act 2009.
- 17 In the present context, “cash” will need to be given an expansive definition to cover items such as stored value cards (for example, gift cards for petrol or goods) to ensure that any means by which proceeds of crime may be converted into an easily moveable form which may be used to disperse the cash into the economy are captured by the new power.
- 18 However, given the proposed threshold there will be significant limitations as to the use of the new power where the value of the cash, in whatever form, cannot be ascertained without first seizing and counting it or undertaking further analysis (for stored value cards). The proposed power will only allow seizure where there is a reasonable belief as to the value of the cash in question *prior to seizure*.

Section 9(2)(h)



A prohibition on selling of a list of goods by way of cash transactions over a threshold to apply to high value dealers captured by the AML/CTF Act

- 20 In order to prevent cash proceeds of crime from leaking into the financial system, we propose amendments to the Anti-Money laundering and Countering Financing of Terrorism Act 2009 (The AML/CFT Act).

- 21 The AML/CFT Act prescribes obligations on high-value dealers (HVDs); defined as people whose business involves the buying or selling of a list of goods by way of cash transactions above a threshold value (currently set in regulations at \$10,000). Goods are on this prescribed list because of their association with money laundering.
- 22 We propose amending the AML/CFT Act to prohibit HVDs from selling goods for cash over a certain threshold value for some of the goods listed in the definition of HVD in section 5 of the AML/CFT Act. Specifically, we recommend that these goods are:
- jewellery and watches;
 - precious metals and stones; and
 - motor vehicles and ships
- 23 As noted above, there is already a regulatory regime aligned to the sale of this set of goods, and certain specified art objects, for cash over \$10,000. The proposed prohibition would complement this work by preventing cash sales of the goods identified as being most at risk of being laundered by gangs. At the same time the AML/CFT review obligations would help to ensure that gang members do not purchase other goods instead of the prohibited items.
- 24 We propose that the threshold is set through regulation to allow for a risk assessment to be undertaken, and so that the value can evolve over time. In setting the threshold value for the prohibition, Officials will take into account that many New Zealanders use cash in their ordinary life for legitimate business. For example, we are aware that older people and those living in rural communities frequently use cash in the ordinary course of their day. The threshold value will be set a level that ensures these low-risk, ordinary and legitimate cash transactions are not part of the prohibition.
- 25 We will also need to develop amendments for penalties and enforcement of prohibition of HVDs selling these listed goods by way of cash transactions of \$10,000 or above (including a HVD register). We would look to include this new prohibition in the existing prohibition and enforcement schemes of the AML/CTF Act.

A high value dealer register is needed to support the prohibition on selling by way of cash transactions over \$10,000

- 26 There are issues with the existing HVD provisions, specifically, it is challenging for supervisors to identify who HVDs are as there is no registration framework for HVDs. This would make it difficult for supervisors to identify who should be complying with the prohibition on cash payments over \$10,000.
- 27 However, the statutory review report is expected to recommend a registration framework be established for all businesses with AML/CFT

obligations (that do not already have a registration framework) including HVDs. Creation of a HVDs registry would provide agencies with a mechanism to monitor compliance with a prohibition that scopes HVDs out of the AML/CFT regime.


- 28 This prohibition would make it harder for gangs to convert cash proceeds of crime by prohibiting cash purchases for high value goods, such as motorcycles, over a set threshold. A prohibition would therefore encourage funds to be deposited into the financial system so that they can be recorded and detected under the AML/CFT Act. Banks are required to report large cash transactions (over \$10,000) or suspicious activity (regardless of the amount), which are not captured under obligations for HVDs. This option would not affect all the methods that gangs use to dispose of cash proceeds of crime.
- 29 This proposal will extend beyond gang-activities to any person who wants to use cash to make a large purchase of the designated goods. As such, this option would be a significant change for affected businesses and has not been consulted with industry. There are circumstances in which people may legitimately use sizeable amounts of lawful cash to purchase goods, including rural and migrant populations who have cash-based economies and older people who are more reliant on cash. While these groups may prefer using cash, there is unlikely to be an impediment to their use of a bank account to enable purchases.

Section 9(2)(h)




Delegated Authority

- 31 There are a several technical details which will need to be worked through further. We propose that Cabinet delegate authority to the Prime Minister, Deputy Prime Minister, and us both to take any second-tier policy decisions necessary to support the intent of the legislative recommendations agreed by Cabinet in this paper.

- 32 Section (9)(2)(f)(iv)
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Financial Implications

- 33 We expect any additional costs to the Crown (from criminal cases due to the gang harm intervention amendments) will be absorbed within baselines. This will in part rely on prosecutorial discretion, and on the increased baselines as announced for Budget 2022. We note any increase in forfeiture is likely to have a minor increase to the Proceeds of Crime Fund, the exact impact of which officials have not yet had time to model.

- 34 Section (9)(2)(f)(iv)
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Legislative Implications

- 35 Legislation is required to implement these initiatives. We propose to introduce an omnibus criminal justice amendment bill by the end of 2022. Parliamentary Counsel Office is aware of the proposed bill. The amendments are to existing Acts that bind the Crown.

Impact Analysis

Regulatory Impact Statement

- 36 Cabinet's impact analysis requirements apply to the proposal regarding gang harm interventions, but there is no accompanying Regulatory Impact Statement and the Treasury has not exempted the proposal from the impact analysis requirements. Therefore, it does not meet Cabinet's requirements for regulatory proposals.
- 37 On behalf of respective Ministers, the Regulatory Impact Analysis team at the Treasury and the Ministry of Justice have agreed that supplementary analysis will be provided before the Legislative Cabinet Committee.

Climate Implications of Policy Assessment (CIPA)

- 38 The Ministry for the Environment was consulted, and confirmed that the CIPA requirements do not apply to this proposal as the threshold for significance is not met.

Population Implications

- 39 Māori make up a disproportionate share of gang membership (see table below for Police data on ethnicities of those on the National Gang list). In

addition, Te Puni Kōkiri has estimated that Māori whānau of gangs may make up around 5 percent of the Māori population.

National Gang List – Ethnicity as at April 2022 ⁸	
Maori	77%
European	12%
Pacific Islander	9%
Aboriginal/Latin American-Hispanic/South African/African/Indian/Middle Eastern	1%
Not Recorded	1%

- 40 The use of discretionary powers and decision-making once people are within the justice system is a key way in which racial bias can impact justice outcomes. Given that 77 percent of individuals on the National Gang List are identified as Māori, these proposals will have a disproportionate effect and will likely exacerbate Māori representation in the criminal justice system. These proposals will likely impact the whānau of gang members as well as gang members themselves, particularly regarding the search warrant proposal that will allow entry into homes. During searches conducted under this new power, evidence may be found of other offending, including by other whānau members.
- 41 The proposed measures which specifically target gangs will have the most significant impact on Māori. In terms of driving offences, Police estimate Māori comprise 82 percent of gang members charged with a relevant driving offence and 74 percent of prospects charged. In contrast, Māori only comprised 37 percent of those charged for a relevant offence who had no gang affiliation.
- 42 To the extent the proposals deter harmful gang activity, they may benefit those harmed by such offending. Those harmed the most are the whānau of gang members, which are themselves more likely to be Māori.

Human Rights

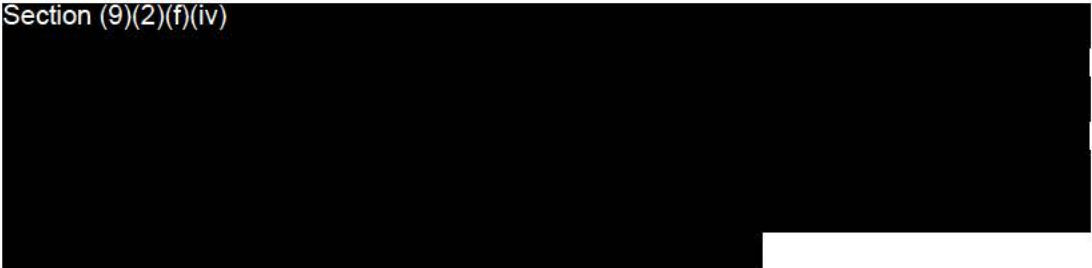
- 43 Crown Law will vet the draft Bill for consistency with BORA.

- 44 Section 9(2)(h)

⁸ The National Recording Standard (NRS) is the overarching recording policy for Police. The NRS describes ethnicity as an attribute of a person, instructing staff to select ethnicity by recording the option which an individual identifies with most strongly. The NRS states that ethnicity is used for statistical reporting and intelligence trends for victims and offenders. However, there are some limitations to ethnicity recording such as only one ethnicity can be recorded, and if someone identifies as something other than Asian, European, Indian, Latin American/Hispanic, Māori, Middle Eastern, Native African, or Pacific Island, the ethnicity is recorded as 'other'.

Consultation

- 45 The Ministry of Transport and the Crown Law Office contributed to the discussion of the proposals in this paper. The Department of the Prime Minister and Cabinet (DPMC) was consulted on the new warrant and search powers only. There has been minimal consultation with other agencies on this part due to time constraints.

- 46 Section (9)(2)(f)(iv)
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Communications

- 47 We intend to release a press statement following Cabinet decisions.

Proactive Release

- 48 We intend to proactively release the paper, subject to redactions as appropriate consistent with the Official Information Act 1982.

Recommendations

The Minister of Justice and the Minister of Police recommend that the Committee:

Shootings in public places

- 1 **Agree** to amend the Crimes Act 1961 to include a new offence to address the discharge of a firearm with the intent to intimidate in a public place;
- 2 **Agree** to include a maximum penalty of five years imprisonment for the above offence;
- 3 **Agree** to include this new offence as a qualifying offence within the Firearms Prohibition Order regime;
- 4 **Agree** to amend the Search and Surveillance Act 2012 to include this new offence in the list of offences for which trespass surveillance may be undertaken or an interception device may be used;

New warrant and search powers to prevent and respond to gang conflict

- 5 **Agree** to amend the Search and Surveillance Act 2012 to create a new warrant and search power to locate and seize weapons in circumstances of gang conflict;

- 6 **Note** that the new warrant and search power will allow Police to search property (including vehicles) of members of specified gangs who are not suspected of any specific offence in circumstances of gang conflict;

Section (9)(2)(f)(iv)

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Fleeing drivers

- 9 **Note** that there is an opportunity to consider additional legislative mechanisms, which go beyond targeting gang-related offending, to strengthen current penalties and support Police to better respond to fleeing driver events;
- 10 **Invite** the Minister of Police, in consultation with the Minister of Justice and Minister of Transport, to report back to Cabinet by September 2022 on final proposals to strengthen fleeing driver penalties and improve legislative responses to fleeing drivers;

Cash seizure

- 11 **Agree** to provide a new cash seizure power for amounts of cash over \$10,000 to allow Police to hold cash for up to 7 days to ascertain its origins;

Cash payments for high-value goods

- 12 **Agree** to amend the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 to prohibit high-value dealers from accepting cash payments for a specified subset of the goods listed in the definition of 'high-value dealer' in section 5 of the Act, over a threshold value;
- 13 **Agree** that the subset of goods are:
- 13.1 jewellery and watches;
 - 13.2 precious metals and stones;
 - 13.3 motor vehicles and ships;

Financial implications and regulatory impact

- 14 **Note** that a financial implications analysis or regulatory impact statement for the above proposals has not yet been prepared, though any costs will be met through baselines in the first instance, and officials will provide a supplementary analysis report before the Legislative Cabinet Committee;

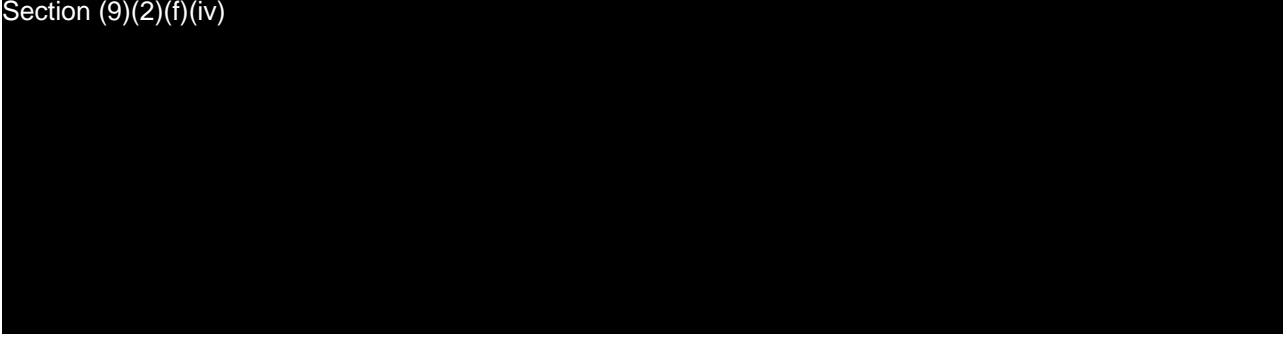
Delegated authority

- 15 **Agree** to delegate authority to the Prime Minister, the Deputy Prime Minister, the Minister of Justice and the Minister of Police to take any second-tier policy decisions necessary to give effect to the legislative recommendations agreed by Cabinet;

Cross-agency work

- 16 **Note** that cross-agency work led by the Social Wellbeing Board has provided a multi-faceted Gang Harm Intervention plan to strengthen our responses to harms associated with gang-centred living;
- 17 **Note** that preventing youth crime is important to preventing gang membership for young people;
- 18 **Note** that the Minister of Police and the Minister of Social Development are leading work on addressing the drivers of youth offending;
- 19 **Note** that further advice will be provided to Ministers on immediate measures to respond to youth crime;
- 20 **Note** the Associate Minister for Education is leading work on reforming the provision of Alternative Education pathways for at-risk youth which is a critical part of preventing young people from becoming involved in crime and gangs;

Section (9)(2)(f)(iv)



Authorised for lodgement

Hon Chris Hipkins

Minister of Police

Hon Kiri Allan

Minister of Justice


APPENDIX 1: OFFENCES AND PENALTIES RELATED TO FIREARM USE

Act/ provision	Description	Max penalty
s21 Summary Offences Act	(intimidation) an offence to intend to frighten or intimidate a person knowing that this conduct is likely to cause that person to be frightened or intimidated	3 months or \$2,000
s48 Arms Act	(discharge in or near a dwelling or public place) the lower-level offence when a firearm is discharged without reasonable excuse near a dwelling or in public so as to endanger property or endanger, annoy, or frighten any person	6 months or \$10,000
s53(3) Arms Act	(discharge with reckless disregard for safety) an offence when, without reasonable cause, a firearm is discharged in a manner likely to injure or endanger the safety of any person or with reckless disregard for the safety of others	3 years or \$4,000 or both
s308(b) Crimes Act	(discharge intent to intimidate or alarm) an offender who, with intent to intimidate or annoy any person, by the discharge of firearms or otherwise, alarms or attempts to alarm any person in any dwellinghouse	3 years
s45 Arms Act	(unlawfully carrying or possessing firearm) an offence to carry or possess a firearm with no lawful, proper, and sufficient purpose	4 years or \$5,000 or both
s189(2) Crimes Act	(injures with intent to injure) intent to injure anyone or with reckless disregard for the safety of others, injures any person	5 years
s306 Crimes Act	(threatens to kill or do GBH) offence to threaten to kill or do grievous bodily harm (GBH)	7 years
s269(2)(a) Crimes Act	(intentional property damage) offence of intentionally or recklessly destroying or damaging any property (with no interest in it)	7 years
s188(2) Crimes Act	(wounding with intent to injure) with intent to injure anyone, or with reckless disregard for the safety of others, wounds etc any person	7 years
s198(2) Crimes Act	(discharging with intent to injure or with reckless disregard) with intent to injure, or with reckless disregard for the safety of others, discharges a firearm at any person	7 years
s269(1) Crimes Act	(intentional property damage with danger to life) offence of intentionally or recklessly destroying or damaging any property if they know or ought to know that danger to life is likely to result	10 years
s189(1) Crimes Act	(injures with intent to cause GBH) with intent to cause GBH to anyone, injures any person	10 years
s188(1) Crimes Act	(wounding etc with intent to cause GBH) with intent to cause GBH to anyone, wounds etc any person	14 years
s198(1)(a) Crimes Act	(discharging with intent to cause GBH) the serious offence of discharging a firearm at any person with the intent to do grievous bodily harm	14 years

Section (9)(2)(f)(iv)

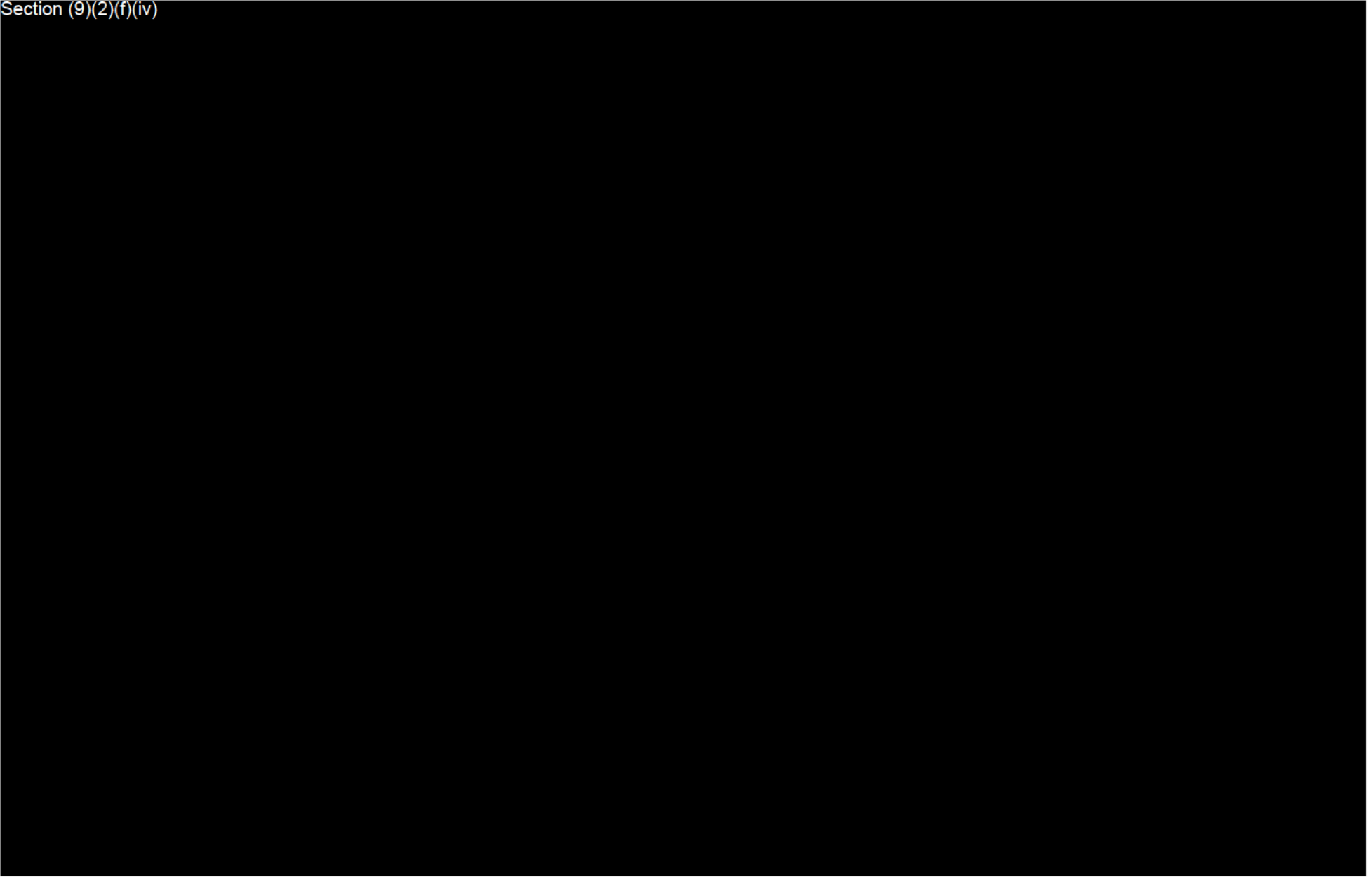


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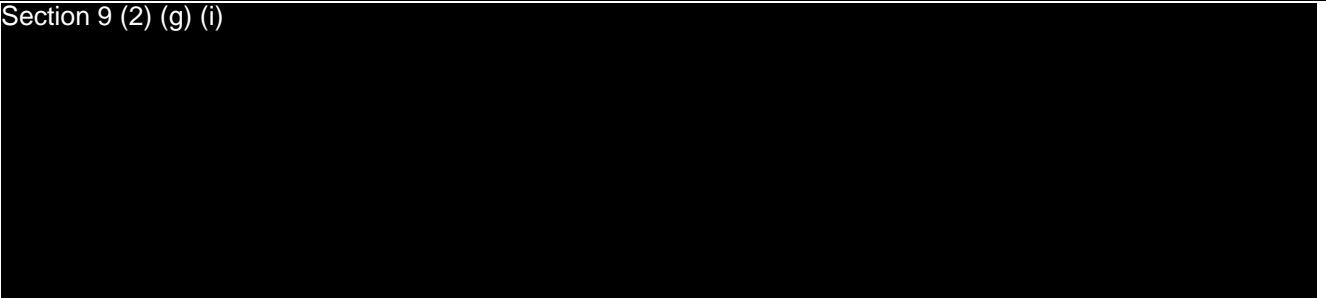


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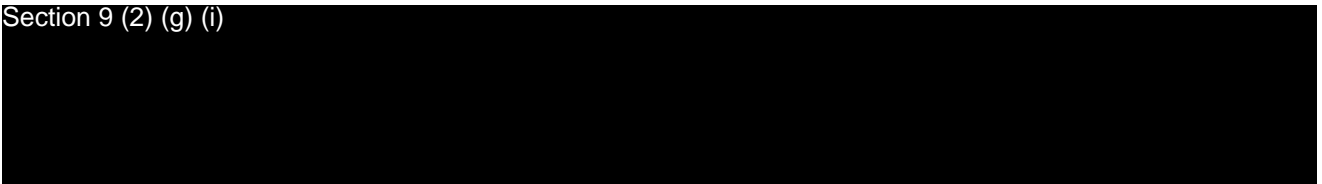
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Section 9 (2) (g) (i)





Cabinet

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Gang Harm Intervention

Portfolios **Police / Justice**

On 4 July 2022, Cabinet:

Shootings in public places

- 1 **agreed** to amend the Crimes Act 1961 to include a new offence to address the discharge of a firearm with the intent to intimidate in a public place;
- 2 **agreed** to include a maximum penalty of five years' imprisonment for the above offence;
- 3 **agreed** to include this new offence as a qualifying offence within the Firearms Prohibition Order regime;
- 4 **agreed** to amend the Search and Surveillance Act 2012 to include this new offence in the list of offences for which trespass surveillance may be undertaken or an interception device may be used;

New warrant and search powers to prevent and respond to gang conflict

- 5 **agreed** to amend the Search and Surveillance Act 2012 to create a new warrant and search power to locate and seize weapons in circumstances of gang conflict;
- 6 **noted** that the new warrant and search power will allow Police to search property (including vehicles) of members of specified gangs who are not suspected of any specific offence in circumstances of gang conflict;

Section (9)(2)(f)(iv)

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Fleeing drivers

- 9 **noted** that there is an opportunity to consider additional legislative mechanisms, which go beyond targeting gang-related offending, to strengthen current penalties and support Police to better respond to fleeing driver events;

- 10 **invited** the Minister of Police, in consultation with the Minister of Justice and the Minister of Transport, to report back to Cabinet by September 2022 with final proposals to strengthen fleeing driver penalties and improve legislative responses to fleeing drivers;

Cash seizure

- 11 **agreed** to provide a new cash seizure power for amounts of cash over \$10,000 to allow Police to hold cash for up to 7 days to ascertain its origins;

Cash payments for high-value goods

- 12 **agreed** to amend the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 to prohibit high-value dealers from accepting cash payments for a specified subset of the goods listed in the definition of ‘high-value dealer’ in section 5 of the Act, over a threshold value;
- 13 **agreed** that the subset of goods be as follows:
- 13.1 jewellery and watches;
 - 13.2 precious metals and stones;
 - 13.3 motor vehicles and ships;

Financial implications and regulatory impact

- 14 **noted** that:
- 14.1 a financial implications analysis or regulatory impact statement for the above proposals has not yet been prepared;
 - 14.2 any costs will be met through baselines in the first instance;
 - 14.3 officials will provide a supplementary analysis report before the Bill is submitted to the Cabinet Legislation Committee;

Delegated authority

- 15 **authorised** the Prime Minister, the Deputy Prime Minister, the Minister of Justice and the Minister of Police to take any second-tier policy decisions necessary to give effect to the above paragraphs;

Cross-agency work

- 16 **noted** that cross-agency work led by the Social Wellbeing Board has provided a multi-faceted Gang Harm Intervention plan to strengthen the responses to harms associated with gang-centred living;
- 17 **noted** that preventing youth crime is important to preventing gang membership for young people;
- 18 **noted** that the Minister of Police and the Minister for Social Development and Employment are leading work on addressing the drivers of youth offending;
- 19 **noted** that further advice will be provided to Ministers on immediate measures to respond to youth crime;

- 20 **noted** that the Associate Minister of Education (School Operations) is leading work on reforming the provision of Alternative Education pathways for at-risk youth which is a critical part of preventing young people from becoming involved in crime and gangs;

Section (9)(2)(f)(iv)

- [REDACTED]
- [REDACTED]

Rachel Hayward
Acting Secretary of the Cabinet

In Confidence

Office of the Minister of Police

Office of the Minister of Justice

Cabinet Legislation Committee

Criminal Activity Intervention Legislation Bill and Criminal Proceeds (Recovery) Amendment Bill: Approval for Introduction

Proposal

- 1 This paper seeks approval to introduce the Criminal Activity Intervention Legislation Bill and the Criminal Proceeds (Recovery) Amendment Bill into the House as soon as possible.

Executive Summary

- 2 The Criminal Activity Intervention Legislation Bill creates new offences, orders and enforcement powers targeted at the specific behaviours associated with gangs and organised criminal groups. It amends the Crimes Act 1961, the Search and Surveillance Act 2012, the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (AML/CFT Act), the Arms Act 1983, the Sentencing Act 2002, the Criminal Investigations (Bodily Samples) Act 1995, and the Land Transport Act 1998, to:
 - 2.1 create a new offence of discharging a firearm with intent to intimidate; and
 - 2.2 make amendments to provide for:
 - 2.2.1 a new warrant that allows Police to search and seize weapons within defined areas where gang conflict is occurring;
 - 2.2.2 Section (9)(2)(f)(iv)
 - 2.2.3 a new cash seizure power that allows Police to seize and hold cash found in suspicious circumstances and reasonably believed to be over the value of \$10,000 for a period of time;
 - 2.2.4 a new prohibition on conducting cash transactions for specified goods above a prescribed cash value amount.
- 3 The Criminal Proceeds (Recovery) Amendment Bill's purpose is to improve the law's effectiveness at restraining and forfeiting property derived from significant criminal activity. It amends the Criminal Proceeds (Recovery) Act 2009 and the KiwiSaver Act 2006 to provide:

IN CONFIDENCE

- 3.1 new restraint and forfeiture orders where a person associated with an organised criminal group has legitimate property deemed insufficient to have acquired the specific property subject to the order;
 - 3.2 a new disclosure of source order requiring overseas respondents to provide information on the source of restrained property within 2 months, or else the court may presume the property tainted;
 - 3.3 authorisation for the Official Assignee to hold seized property beyond 28 days if awaiting determination of an application for a restraining order;
 - 3.4 an exception in accordance with the KiwiSaver Act 2006 to allow funds in KiwiSaver schemes to be subject to civil forfeiture orders.
- 4 There is an outstanding policy decision pertaining to the new restraint and forfeiture orders in the Criminal Proceeds (Recovery) Amendment Bill. To resolve this, we seek agreement on the minimum threshold to include for the value of property not explained by the respondent's known legitimate property. We also seek agreement on the meaning of associate for the purposes of the Criminal Proceeds (Recovery) Amendment Bill.

The Criminal Activity Intervention Legislation Bill: policy

- 5 The Criminal Activity Intervention Legislation Bill's purpose is to strengthen New Zealand's criminal legislation to better prevent and respond to the harm caused by criminal activity, including that perpetuated by gangs. The Bill targets specific behaviours associated with the activities of gangs and organised criminal groups.
- 6 The Criminal Activity Intervention Legislation Bill provides Police with a range of new tools to help address gang conflict and mitigate the harm it brings to communities. It supports the Government's manifesto commitments to maintain the pressure on tackling organised crime, gangs, and harmful drug use, by ensuring law enforcement has the tools and powers needed to disrupt and prosecute this offending.
- 7 Legislative amendments are necessary as the provisions create new offences, orders, and enforcement powers that are required to be in primary legislation.
- 8 The Criminal Activity Intervention Legislation Bill amends the Crimes Act 1961, the Search and Surveillance Act 2012, the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (AML/CFT Act), the Arms Act 1983, the Sentencing Act 2002, the Criminal Investigations (Bodily Samples) Act 1995, and the Land Transport Act 1998, to:
- 8.1 create a new offence of discharging a firearm with intent to intimidate; and
 - 8.2 make amendments to provide for:
 - 8.2.1 a new warrant that allows Police to search and seize weapons within defined areas where gang conflict is occurring; and

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Section (9)(2)(f)(iv)

- 8.2.3 a new cash seizure power that allows Police to seize and hold for a period of time cash found in suspicious circumstances reasonably believed to be over the value of \$10,000; and
- 8.2.4 a new prohibition on conducting cash transactions for specified goods above a prescribed cash value amount.

- 9 Cabinet considered the amendments in the Criminal Activity Intervention Legislation Bill in the policy paper *Gang Harm Intervention*, considered on 4 July 2022 [CAB-22-MIN-0264].

Section (9)(2)(f)(iv)

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

Second-tier policy decisions agreed

- 14 Cabinet delegated authority to us, the Prime Minister, and the Deputy Prime Minister to make second-tier policy decisions as necessary to give effect to the policy contained in the Criminal Activity Intervention Legislation Bill. For this purpose, second-tier decisions were required for the new cash transaction prohibition, cash seizure power, gang-conflict search warrant, and offence of discharging a firearm with intent to intimidate.
- 15 On the new cash transactions prohibition, Ministers with Power to Act made decisions relating to the penalties for not complying with the prohibition. The Bill amends the AML/CFT Act to include the prohibition in section 78 and new section 105A of that Act. This makes it both a civil liability act and criminal

IN CONFIDENCE

IN C O N F I D E N C E

offence, enabling remedies to be sought through both the civil and criminal pathways (with civil requiring a lower burden of proof).

- 16 The penalty for a civil liability act is capped at \$200,000 for an individual and \$2 million for a body corporate or partnership. The penalty for the new criminal offence is a term of imprisonment of not more than 2 years and a fine of up to \$300,000 for an individual or a fine of up to \$300,000 for a body corporate or partnership.
- 17 Ministers further decided that the new prohibition applies to all persons engaging in cash transactions of the prescribed type “in trade”, rather than to high-value dealers only, to ensure all persons engaging in relevant cash transactions are captured. Officials identified an issue with the definition of high-value dealer that means all relevant transactions may not otherwise be captured if they only occurred occasionally.
- 18 On the cash seizure power, Ministers decided:
 - 18.1 that the definition of “cash” for should be an exhaustive list of items comprising physical currency, bearer-negotiable instruments, and gold bars or gold ingots as they have similar properties to currency and have been used to launder money.
 - 18.2 that the power allows Police to apply to the District Court to hold the cash for a further 28 days after the initial 7-day period, and seek a renewal for a further 28 days, to allow more time when necessary to gather the high degree of evidence needed to initiate restraint proceedings (a maximum of 63 days);
 - 18.3 that cash of any value seized using the new power will be subject to the new regime, so long as it was reasonably suspected to be above the \$10,000 threshold at the time of seizure (i.e. it will not be immediately returned if the actual value is below the \$10,000 threshold).
- 19 On the new gang-conflict search warrant power, we previously indicated that further consideration would be given as to whether ‘associates’ of a gang could be included in the scope of the warrant. However, Ministers with Power to Act have instead agreed that warrant may apply to the vehicles and property of specific non-gang members only if the Judge issuing the warrant is satisfied there are reasonable grounds to believe they are assisting or encouraging the conflict. These individuals must be listed in the warrant. Officials consider that this approach better targets the warrant power towards the conflict and reduces the impact on friends or whānau members who are not involved.
- 20 Ministers have also decided that the new warrant power will enable Police to search vehicles not listed in the warrant if they have reasonable grounds to suspect the vehicle is owned or used by a member of the specified gang/s or the non-gang members listed in the warrant, as this will make it easier for Police to locate and seize weapons

IN C O N F I D E N C E

- 21 On the new offence of discharging a firearm with intent to intimidate, Ministers have decided that it should be added to the list of offences that result in a 10-year firearms licence disqualification for the person convicted (amending section 22H of the Arms Act 1983). This is because the new offence is a serious firearms offence and is consistent with those currently listed in section 22H.

The Criminal Activity Intervention Legislation Bill: outstanding policy decisions

- 22 Officials have identified the need to make a further consequential amendment because of the new offence of discharging a firearm with intent to intimidate. The Criminal Investigations (Bodily Samples) Act 1995, Schedule 1, Part 3 needs to be amended to refer to the new offence (new section 308A of the Crimes Act). Currently, section 308 of the Crimes Act is listed in that Schedule. It would be anomalous not to include the new section 308A offence as it has a greater penalty of 5 years and deals with a similar type of offending.
- 23 The effect of this necessary amendment is that any person (including a young person) who is being detained for committing, or who is suspected to have committed, the new section 308A offence, may be requested or required to give a bodily sample for the purpose of confirming or disproving their involvement in the commission of the offence. Any DNA profile derived from the bodily sample may be stored on a DNA profile databank.

The Criminal Proceeds (Recovery) Amendment Bill: policy

- 24 The Criminal Proceeds (Recovery) Amendment Bill amends the Criminal Proceeds (Recovery) Act 2009 (CPRA) and the KiwiSaver Act 2006 to improve the law's effectiveness at restraining and forfeiting property derived from significant criminal activity. This will help to deter profit-driven criminal conduct by reducing opportunities for people to benefit financially from criminal activity.
- 25 Legislative amendments are necessary as the provisions create new orders and enforcement powers that are required to be in primary legislation.
- 26 The Criminal Proceeds (Recovery) Amendment Bill amends CPRA and the KiwiSaver Act 2006 to provide:
- 26.1 new restraint and forfeiture orders where a person is associated with a member of an organised criminal group and their legitimate property is deemed insufficient to have acquired the specific property subject to the order;
 - 26.2 a new disclosure of source order requiring respondents who are overseas to provide information on the source of restrained property within 2 months, or else the court may presume the property was tainted;
 - 26.3 authorisation for the Official Assignee to hold seized property beyond 28 days if awaiting determination of an application for a restraining order;
 - 26.4 an exception in accordance with the KiwiSaver Act 2006 to allow funds in KiwiSaver schemes to be subject to CPRA orders.

- 27 Previous policy papers considered by Cabinet for the amendments in the Criminal Proceeds (Recovery) Amendment Bill were:

27.1 *Criminal Proceeds (Recovery) Act 2009: Proposed Reforms to Better Target Illicit Assets*. Considered by Cabinet Business Committee on 19 April 2021 and Cabinet on 3 May 2021 [CBC-21-MIN-0040; CAB-21-MIN-0138];

27.2 *Criminal Proceeds (Recovery) Act 2009 Reforms to Better Target Illicit Assets*. Considered by Cabinet on 19 April 2022 [CAB-22-MIN-0146].

The Criminal Proceeds (Recovery) Amendment Bill: outstanding policy decisions

- 28 Crown Law's advice is that the Bill as a whole is consistent with the New Zealand Bill of Rights (BORA), subject to Cabinet's decision on the threshold below. In particular, the rights to freedom of association, freedom from unreasonable seizure, and natural justice are engaged (ss 17, 21, and 27 BORA). However, these limitations are reasonable and justified, as the rights are limited no more than is necessary to achieve the important public objective of preventing and deterring organised crime.

Options on the threshold for the new restraint and forfeiture orders


- 29 Cabinet agreed to policy refinements for the new restraint and forfeiture orders in April 2022. Cabinet noted that a decision on whether to include a minimum threshold (for the value of the property not explained by the respondent's known legitimate property) will be made following drafting and vetting for New Zealand Bill of Rights (BORA) compliance of the Bill [CAB-22-MIN-0146 refers].
- 30 PCO drafted 4 different options in the Bill to be vetted for BORA compliance:
- 30.1 a threshold of \$50,000; or
 - 30.2 a threshold of \$30,000; or
 - 30.3 a threshold of \$10,000; or
 - 30.4 no threshold.

Crown Law advice

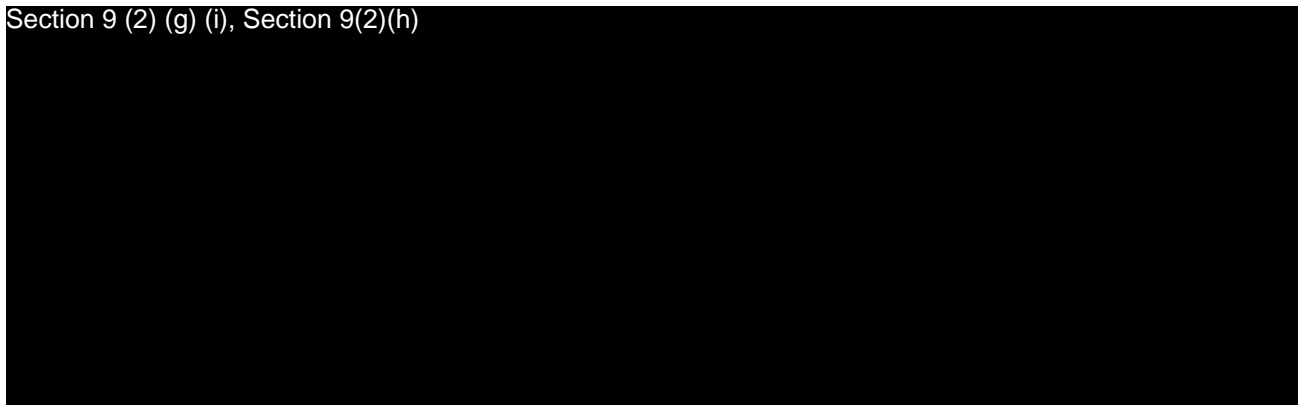
- 31 Crown Law's advice is that:
- 31.1 a threshold is necessary to ensure that the new restraint and forfeiture orders operate in a proportionate manner; and
 - 31.2 a threshold of \$30,000 or \$50,000 threshold would be consistent with BORA as a consequence of the threshold of "significant criminal activity" being set at \$30,000.

- 32 Crown Law advised that a \$10,000 threshold, or no threshold, would *not* be a justifiable limitation on rights as it would not meet the threshold for “significant criminal activity” and therefore would not be consistent with BORA. Accordingly, both of these options would risk a section 7 report.


Section 9 (2) (g) (i)




Section 9 (2) (g) (i), Section 9(2)(h)



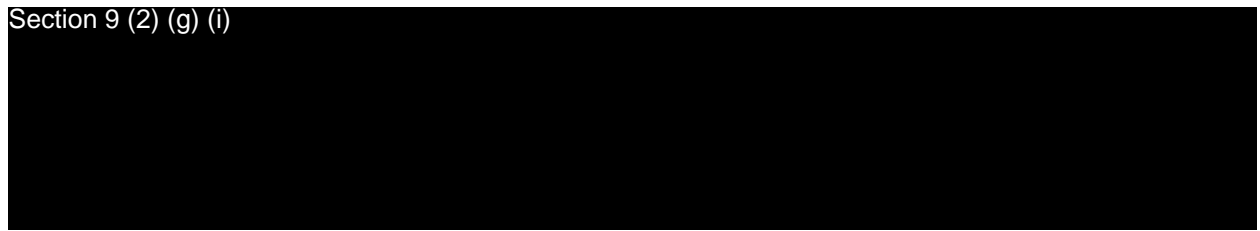
Section 9 (2) (g) (i), Section 9(2)(h)



Section 9 (2) (g) (i)



Section 9 (2) (g) (i)




If a threshold is included, Cabinet has the option to allow it be adjusted by regulation

- 46 The draft Bill includes the ability to prescribe a threshold higher than the amount selected above via regulation. This will allow for adjustments (such as for inflation) without requiring amendments to the primary legislation. This would prevent more people from falling within the scope of this new power over time due to the values of property increasing. This option was suggested by Parliamentary Counsel during drafting. Justice officials recommend including this mechanism.
- 47 The alternative would be to set a fixed value in the legislation as the threshold. Police officials prefer this option, which they consider to be more consistent with other forfeiture orders (which cannot be adjusted by regulation).

The meaning of associate

- 48 Cabinet has previously agreed to clarify that an associate must be more than a mere acquaintance [CAB-22-MIN-0146 refers]. This definition is currently included in the Bill. Association is only one of the tests which must be met before an order can be issued; the person must also have assets beyond what their legitimate property could acquire and the threshold (if one is agreed) is met.
- 49 Previous advice from officials on this issue indicated that an overly prescriptive definition of associate could encourage leaders and facilitators of organised crime to deliberately structure their affairs to avoid meeting the definition. This could counterproductively incentivise transferring assets to people intended to be excluded, such as whānau members. The clarification that association did not include 'a mere acquaintance' was intended to avoid shopkeepers, tradespeople, etc from accidentally being caught up as associates. Otherwise, officials advised that it was preferable to allow the courts to draw on a common meaning of association.

Section 9 (2) (g) (i)



Section 9 (2) (g) (i)



Technical matters to note, arising during drafting of the CPRA amendments


53 Cabinet agreed to amend CPRA to expressly provide that funds in KiwiSaver may be subject to forfeiture orders. This is intended to:

53.1 deter criminals from depositing any proceeds of crime into KiwiSaver accounts to avoid forfeiture; and


53.2 create consistency with other retirement savings vehicles, such as bank accounts and managed funds, which can be subject to CPRA.

54 The KiwiSaver amendments will resolve the issue highlighted by the Court of Appeal:¹ the general prohibition on KiwiSaver funds being passed to another person (including CPRA's Official Assignee) will no longer prevent forfeiture.² This achieves Cabinet's direction regarding CPRA.

55 Section 9(2)(h)



56 Section (9)(2)(f)(iv)



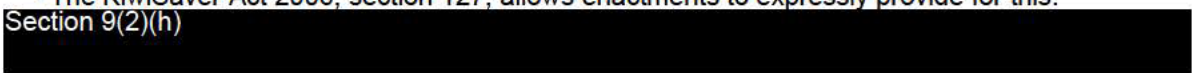
Impact analysis

57 For the Criminal Activity Intervention Legislation Bill, a supplementary analysis report (the SAR) has been prepared and is attached to this Cabinet Paper. A cross-agency quality assurance panel comprising New Zealand Police, the

¹ *Commissioner of Police v Harrison* [2021] NZCA 540, 18 October 2021

² The KiwiSaver Act 2006, section 127, allows enactments to expressly provide for this.

Section 9(2)(h)



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Ministry of Justice and the Ministry of Transport has reviewed this and considers the information and analysis in the SAR **partially meets** the Quality Assurance criteria.

- 58 The SAR has information gaps in the supporting evidence for the size and scale of the problems identified, and in the analysis of impacts, including benefits, costs (particularly monetised costs) and implementation. The gaps and reasons for these (no consultation, time limitations and ministerial direction on specific options) are identified in the limitations/constraints section and in individual sections of the document.
- 59 This lack of evidence varies across the proposals, but in places means that the preferred options are not strongly persuasive. The SAR is relatively long, although reflects that the scope of this work requires analysis of proposals in different regulatory settings. The Panel assesses that, overall, the SAR provides a reasonable basis for Ministers' decision-making while highlighting the significant limitations under which the document was developed.
- 60 For the Criminal Proceeds (Recovery) Amendment Bill, a regulatory impact summary was submitted when Cabinet approved the policies regarding amendments to CPRA [CAB-21-MIN-0138]. The second Cabinet Paper relating to CPRA was exempt from providing another summary because the relevant issues had been adequately addressed by the previous regulatory impact analysis, and the revised approach was analysed in the paper itself [CAB-22-MIN-0146].

Compliance

- 61 The Criminal Activity Intervention Legislation Bill complies with each of the following:
 - 61.1 the rights and freedoms contained in the BORA and the Human Rights Act 1993;
 - 61.2 the disclosure statement requirements. A disclosure statement has been prepared and is attached to this paper;
 - 61.3 relevant international standards and obligations;
 - 61.4 the Legislation Guidelines (2021 edition).
- 62 The Criminal Proceeds (Recovery) Amendment Bill complies with each of the following:
 - 62.1 the principles of the Treaty of Waitangi;
 - 62.2 the rights and freedoms contained in the BORA and the Human Rights Act 1993, subject to Cabinet's decision on the threshold.
 - 62.3 the disclosure statement requirements. A disclosure statement has been prepared and is attached to this paper;

IN CONFIDENCE

IN C O N F I D E N C E

- 62.4 the principles and guidelines set out in the Privacy Act 2020;
- 62.5 relevant international standards and obligations;
- 62.6 the Legislation Guidelines (2018 edition).

Criminal Activity Intervention Legislation Bill: New Zealand Bill of Rights Act 1990

- 63 The measures introduced by the Criminal Activity Intervention Legislation Bill may limit the following rights recognised in the BORA:
 - 63.1 the right to freedom of association (section 17),
 - 63.2 the right to be free from discrimination (section 19),
 - 63.3 the right to be free from unreasonable search and seizure (section 21).
- 64 However, we consider the potential for limitations on these rights to be justified in the circumstances considering the significant harms caused by ongoing violent gang and organised criminal activity.
- 65 The potential for unjustifiable limitation is reduced by the fact the amendments are directed at disrupting harmful gang activity and not mere gang membership. We also consider the new powers to have adequate safeguards built into them to prevent their unreasonable exercise e.g. the new gang conflict search warrant requires judicial authorisation.

Criminal Activity Intervention Legislation Bill: potential conflicts with the principles of te Tiriti o Waitangi/the Treaty of Waitangi

- 66 The Criminal Activity Intervention Legislation Bill introduces measures that target criminal offending commonly associated with gang activities. Because over three quarters of the known adult gang members in Aotearoa New Zealand are Māori men, this response is likely to disproportionately impact Māori and conflict with the equity principle of te Tiriti/the Treaty.
- 67 However, the prevalence of gang membership within Māori communities also means that Māori are more likely to be the victims of gang-related harm. Taking steps to combat this harm is therefore part of the Crown's responsibility to actively protect Māori.
- 68 Māori have not yet been consulted on the package. However, we expect key Māori organisations and communities to be consulted throughout the legislative process, particularly throughout the select committee process.

Criminal Activity Intervention Legislation Bill: potential conflicts with the principles of the Privacy Act 2020

- 69 The Privacy Commissioner has been consulted on the Criminal Activity Intervention Legislation Bill and has raised the following concerns:

IN C O N F I D E N C E

IN CONFIDENCE

- 69.1 The Privacy Commissioner recognises that gang harm is a significant problem and supports the aim of reducing the harm caused by gangs. However, the Commissioner does not consider that sufficient evidence has been provided to demonstrate that the benefits of the new interventions outweigh the intrusion into privacy.
- 69.2 The exercise of search powers is intrinsically privacy-invasive and represents the exercise of State power against individual citizens. As such, any proposals involving search powers need to be evaluated carefully to assess whether the use of this invasive action is justified in the circumstances.
- 69.3 The proposed gang-conflict provisions appear to be a significant departure from the established approach to warrant and search powers, which generally require more specific thresholds and suspicions of offending. This would be the first time that warrant and search powers attach to such a large group, primarily on the basis of membership and association to that group. This carries a high level of privacy risk and the potential to significantly impact third parties – for example tamariki who happen to be living in a property associated with a gang member. The Commissioner is also conscious of the precedent-setting effect that these proposals may have, in enabling the broad warrant and search powers in relation to a group of people, and how this could potentially be expanded in the future.
- 69.4 Given that these are significant, wide-ranging and privacy intrusive powers, if these proposals were to proceed, confining applicability wherever possible would be appropriate. Protections could be added to the legislation including: a presumption that existing powers should be exhausted before using additional powers; requiring Judges to apply thresholds to target the exercise of powers to risk to the public; reducing the time that warrants are applicable; and adding a sunset or review clause for the legislative framework. The Office of the Privacy Commissioner is happy to work with officials on developing mitigations.
- 70 Officials note that the provisions in the Bill extend existing legislative mechanisms. The existing privacy requirements and limitations of search warrants, assets seized under CPRA, and vehicle impoundment under the Land Transport Act, will apply as they currently do. Police have procedures to protect the private information and material they collect using existing warrant powers. Police will need to ensure there are robust internal processes to govern the use of any new warrant powers.

Consultation

- 71 Due to time constraints, consultation on the amendments to date has been limited to government officials. The public (including Māori) will have opportunities for consultation during the progression of the legislative process.
- 72 The Ministry of Transport and Crown Law have been involved in developing the policy and have been consulted on the draft Criminal Activity Intervention

IN CONFIDENCE

Legislation Bill. Te Puni Kōkiri, Waka Kotahi, the Department of Internal Affairs, the Department of Corrections, the Treasury, the Department of the Prime Minister and Cabinet, and the Privacy Commissioner have also been consulted on the draft Criminal Activity Intervention Legislation Bill.

- 73 During consultation, Te Puni Kōkiri indicated that it does not support punitive responses and instead encourages and supports more strengths-based and whānau-centred approaches to healing and restoration (like Paiheretia te Muka Tangata and Whānau Ora).
- 74 The following departments have been consulted during the development of the draft Criminal Proceeds (Recovery) Amendment Bill: Crown Law, Te Puni Kōkiri, Ministry for Women, the Ministry of Business, Innovation and Employment, Treasury, the Inland Revenue Department, New Zealand Customs Service, and the Ministry of Foreign Affairs and Trade. The Department of the Prime Minister and Cabinet has been informed.

Binding on the Crown

- 75 The Acts amended by the Criminal Activity Intervention Legislation Bill and the Criminal Proceeds (Recovery) Amendment Bill are already binding on the Crown [SWC-22-MIN-0122; CAB-22-MIN-0264; CBC-21-MIN-0040; CAB-21-MIN-0138].

Allocation of decision-making powers

Criminal Activity Intervention Legislation Bill

- 76 The Criminal Activity Intervention Legislation Bill allocates two decision making powers to the judiciary. The new gang conflict warrant requires a District or High Court Judge's authorisation before Police may exercise search and seizure powers, and the new cash seizure power requires Court orders to hold seized cash for periods longer than 7 days.
- 77 These new decision-making powers are consistent with:
- 77.1 the warrant preference approach applied by the courts to the powers under the Search and Surveillance Act 2012;
 - 77.2 the general approach that the holding of property seized using search powers should be subjected to appropriate independent scrutiny by a court for continued retention and consideration of claims by those asserting their right to the property.
- 78 The Criminal Activity Intervention Legislation Bill also delegates authority to the executive to issue regulations. This complies with the criteria and procedures set out in the Legislation Design and Advisory Committee Legislation Guidelines 2021 Edition.

Criminal Proceeds (Recovery) Amendment Bill

- 79 The Criminal Proceeds (Recovery) Amendment Bill allocates decision-making powers to the judiciary for issuing the new restraint and forfeiture orders, and the disclosure of source orders.

Associated regulations

Criminal Activity Intervention Legislation Bill

- 80 The new cash transaction prohibition requires regulations to be issued to prescribe the relevant threshold above which cash transactions are prohibited.
- 81 Regulations will be drafted as soon as practicable, to come into force on the date appointed by the Governor-General by Order in Council.

Criminal Proceeds (Recovery) Amendment Bill

- 82 The Criminal Proceeds (Recovery) Amendment Bill requires secondary legislation to give effect to certain CPRA amendments. Regulations are required to prescribe the order and application forms for the new restraint and forfeiture orders and the disclosure of source orders.
- 83 Regulations will be drafted as soon as practicable, to come into force on the date appointed by the Governor-General by Order in Council.

Other instruments

- 84 If Cabinet agrees to allow the threshold for the new restraint and forfeiture orders to be increased later via regulations, the Criminal Proceeds (Recovery) Amendment Bill will need to amend the existing CPRA regulation-making powers under section 173. This would allow the Governor-General to prescribe an amount for the purpose of the threshold by Order in Council.

Commencement of legislation

- 85 The Criminal Activity Intervention Legislation Bill will come into force on the day after the date of Royal assent.
- 86 The Criminal Proceeds (Recovery) Amendment Bill will come into force on the day after the date of Royal assent with the exception of amendments requiring secondary legislation. These amendments will come into force on the date appointed by the Governor-General by Order in Council or 12 months after Royal assent.

Parliamentary stages

- 87 The Criminal Activity Intervention Legislation Bill and the Criminal Proceeds (Recovery) Amendment Bill should be introduced as soon as possible following Cabinet approval.

88 We propose that the Bills be referred to the Justice Select Committee for a consideration period of four months.

89 We propose that the Bills should be **Section (9)(2)(f)(iv)**

Finalising Bills for introduction

90 Standing Order 267(1)(a) requires that, for amendments to more than one Act to be included in an Omnibus Bill, the amendments must deal with an interrelated topic that can be regarded as implementing a single broad policy. Advice from the Office of the Clerk is that, due to the disparate nature of the amendments in the Criminal Activity Intervention Legislation Bill, it does not meet the requirement under SO 267(1)(a). However, under SO 267(1)(c) the Business Committee may agree to a Bill's introduction as an Omnibus Bill, even if it does not meet the SO 267(1)(a) requirement.

91 If Business Committee does not agree to all the amendments in the Criminal Activity Intervention Legislation Bill being included in one Omnibus Bill, the amendments will need to be split into several stand-alone Amendment Bills.

Proactive Release

92 We propose to release this paper proactively after the Bills are introduced.

Recommendations

93 The Minister of Police and the Minister of Justice recommend that the Committee:

Criminal Activity Intervention Legislation Bill

1 **agree** that the Criminal Activity Intervention Legislation Bill be given a category 3 priority on the 2022 Legislation Programme;

2 **agree** to amend the Criminal Investigations (Bodily Samples) Act 1995 to refer to the new offence of discharging a firearm with intent to intimidate in section 308A of the Crimes Act 1961;

3 **Section (9)(2)(f)(iv)**

[REDACTED]

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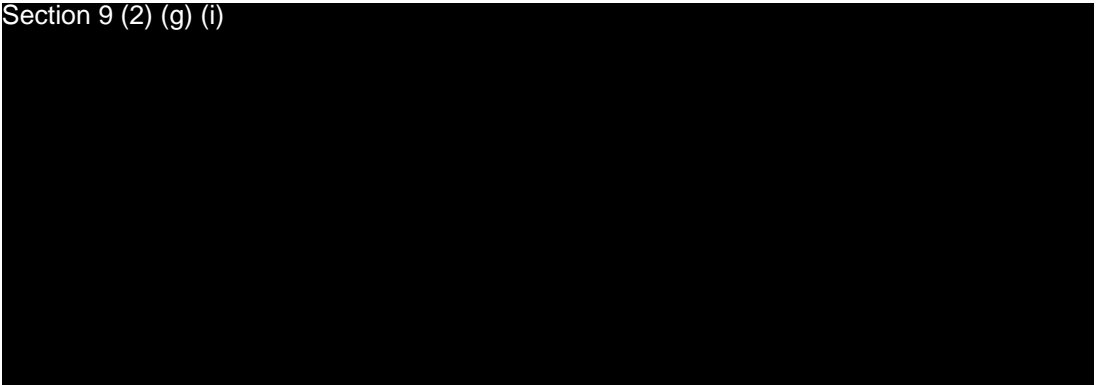
- 5 **note** that Ministers with delegated authority have agreed to the following second-tier policy decisions:
- 5.1.1 that the new cash transactions prohibition be included in the AML/CFT Act as both a civil liability act and criminal offence for reporting entities, and a criminal offence for all other persons “in trade”;
 - 5.1.2 that the prohibition be added to the list of civil liability acts in section 78 of the AML/CFT Act;
 - 5.1.3 that new section 105A be inserted into the AML/CFT Act to make it a criminal offence for any person to contravene the prohibition on conducting certain cash transactions;
 - 5.1.4 that the definition of “cash” for the purpose of the new cash seizure power should be an exhaustive list of items comprising physical currency, bearer-negotiable instruments, and gold bars or gold ingots;
 - 5.1.5 that the new cash seizure power allows Police to apply to the District Court to hold the cash for a further 28 days after the initial 7-day period, and seek a renewal for a further 28 days;
 - 5.1.6 that cash of any value seized using the new power will be subject to the new regime after seizure;
 - 5.1.7 that the new gang-conflict search warrant may apply to the vehicles and property of non-gang members if listed in the warrant and the Judge issuing the warrant is satisfied there are reasonable grounds to believe they are assisting or encouraging the conflict;
 - 5.1.8 that the new gang-conflict search warrant enables Police to search vehicles not listed in the warrant if they have reasonable grounds to suspect the vehicle is owned or used by a member of the specified gang/s or the non-gang members listed in the warrant;
 - 5.1.9 that the new offence of discharging a firearm with intent to intimidate be added to the list of offences under section 22H of the Arms Act 1983 that result in a 10-year firearms licence disqualification for the person convicted;
 - 5.1.10 that the new prohibition on conducting cash transactions for specified goods applies to all persons engaging in cash transactions “in trade”;

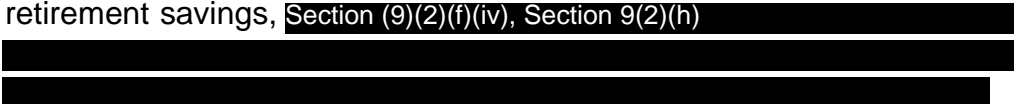
IN C O N F I D E N C E

Criminal Proceeds (Recovery) Amendment Bill

- 6 **note** that the Criminal Proceeds (Recovery) Amendment Bill is on the Government's 2022 Legislation Programme with a category 3 priority;
- 7 **note** that Crown Law's advice is that a threshold of \$30,000 or \$50,000 threshold would be consistent with the New Zealand Bill of Rights, to ensure that the new restraint and forfeiture orders operate in a proportionate manner, and that a \$10,000 or no threshold would not be a justifiable limitation on rights;
- 8 **agree**, for the new restraint and forfeiture orders, to either:
- 8.1 a threshold of \$50,000; or
 - 8.2 a threshold of \$30,000; or
 - 8.3 a threshold of \$10,000; or
 - 8.4 no threshold;

9 Section 9 (2) (g) (i)



- 10 **agree** that, if a threshold is included, a higher amount may be prescribed by regulation, to allow for making adjustments (such as for inflation);
- 11 **agree** either;
- 11.1 the definition of associate specifies that an associate cannot be a mere acquaintance, or
 - 11.2 Section 9 (2) (g) (i)
- 12 **note** that the amendments resolve the prohibition on KiwiSaver funds being forfeited, putting KiwiSaver in an equivalent position to other retirement savings, Section (9)(2)(f)(iv), Section 9(2)(h)
- 

Both Bills

- 13 **note** that the Bills will amend Acts that bind the Crown;

IN C O N F I D E N C E

- 14 **note** that the Parliamentary Counsel Office has indicated that:
- 14.1 it is likely to substitute the Bills between the Cabinet Legislation Committee meeting and the Cabinet meeting in order to make any necessary drafting changes; and
- 14.2 it will continue to make technical changes to the Bills before they are introduced;
- 15 **agree** to instruct Parliamentary Counsel Office to restructure the Criminal Activity Intervention Legislation Bill into a number of Amendment Bills, if Business Committee does not agree to the amendments in Criminal Activity Intervention Legislation Bill being included in one Bill;
- 16 **approve** the Criminal Activity Intervention Legislation Bill, or any Bills it is restructured into, for introduction, subject to the final approval of the government caucus and sufficient support in the House of Representatives;
- 17 **approve** the Criminal Proceeds (Recovery) Amendment Bill for introduction, subject to the final approval of the government caucus and sufficient support in the House of Representatives;
- 18 **agree** that the Bills be introduced as soon as possible after Cabinet approval;
- 19 **agree** that the government propose that the Bills be:
- 19.1 referred to the Justice Committee for consideration for four months, with a Select Committee report back date of 9 February;
- 19.2 **Section (9)(2)(f)(iv)**

Authorised for lodgement

Hon Chris Hipkins
Minister of Police

Hon Kiri Allan
Minister of Justice

IN C O N F I D E N C E



Cabinet

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Criminal Activity Intervention Legislation Bill and Criminal Proceeds (Recovery) Amendment Bill: Approval for Introduction

Portfolios **Police / Justice**

On 5 September 2022, following reference from the Cabinet Legislation Committee, Cabinet:

Criminal Activity Intervention Legislation Bill

- 1 **agreed** that the Criminal Activity Intervention Legislation Bill be given a Category 3 priority on the 2022 Legislation Programme (to be passed if possible in 2022);
- 2 **agreed** to amend the Criminal Investigations (Bodily Samples) Act 1995 to refer to the new offence of discharging a firearm with intent to intimidate in section 308A of the Crimes Act 1961;
- 3 **noted** that in July 2022, Cabinet authorised the Prime Minister, the Deputy Prime Minister, the Minister of Justice and the Minister of Police (Ministers with delegated authority) to take any second-tier policy decisions necessary to give effect to the decisions agreed by Cabinet [CAB-22-MIN-0264];
- 4 Section (9)(2)(f)(iv) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- 6 **noted** that Ministers with delegated authority have agreed to the following second-tier policy decisions:
 - 6.1 that the new cash transactions prohibition be included in the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (AML/CFT Act) as both a civil liability act and criminal offence for reporting entities, and a criminal offence for all other persons “in trade”;
 - 6.2 that the prohibition be added to the list of civil liability acts in section 78 of the AML/CFT Act;

- 6.3 that new section 105A be inserted into the AML/CFT Act to make it a criminal offence for any person to contravene the prohibition on conducting certain cash transactions;
- 6.4 that the definition of “cash” for the purpose of the new cash seizure power should be an exhaustive list of items comprising physical currency, bearer-negotiable instruments, and gold bars or gold ingots;
- 6.5 that the new cash seizure power allows Police to apply to the District Court to hold the cash for a further 28 days after the initial 7-day period, and seek a renewal for a further 28 days;
- 6.6 that cash of any value seized using the new power will be subject to the new regime after seizure;
- 6.7 that the new gang-conflict search warrant may apply to the vehicles and property of non-gang members if listed in the warrant and the Judge issuing the warrant is satisfied there are reasonable grounds to believe they are assisting or encouraging the conflict;
- 6.8 that the new gang-conflict search warrant enables Police to search vehicles not listed in the warrant if they have reasonable grounds to suspect the vehicle is owned or used by a member of the specified gang/s or the non-gang members listed in the warrant;
- 6.9 that the new offence of discharging a firearm with intent to intimidate be added to the list of offences under section 22H of the Arms Act 1983 that result in a 10-year firearms licence disqualification for the person convicted;
- 6.10 that the new prohibition on conducting cash transactions for specified goods applies to all persons engaging in cash transactions “in trade”;

Criminal Proceeds (Recovery) Amendment Bill

- 7 **noted** that the Criminal Proceeds (Recovery) Amendment Bill is on the Government’s 2022 Legislation Programme with a category three priority;
- 8 **noted** that Crown Law’s advice is that a threshold of \$30,000 or \$50,000 threshold would be consistent with the New Zealand Bill of Rights, to ensure that the new restraint and forfeiture orders operate in a proportionate manner, and that a \$10,000 or no threshold would not be a justifiable limitation on rights;
- 9 **agreed**, for the new restraint and forfeiture orders, to a threshold of \$30,000;
- 10 **agreed** that a higher amount may be prescribed by regulation, to allow for making adjustments (such as for inflation);
- 11 **agreed** to the definition of associate that specifies that an associate cannot be a mere acquaintance;
- 12 **noted** that the amendments resolve the prohibition on KiwiSaver funds being forfeited, putting KiwiSaver in an equivalent position to other retirement savings, Section (9)(2)(f) (iv), Section

Both Bills

- 13 **noted** that Māori are more likely to be the victims of gang related harm;
- 14 **noted** that the Criminal Activity Intervention Legislation Bill and the Criminal Proceeds Acts Amendment Bill (the Bills) will amend Acts that bind the Crown;
- 15 **noted** that the Parliamentary Counsel Office has indicated that it will continue to make technical changes to the Bills before they are introduced;
- 16 **invited** the Minister of Justice to instruct Parliamentary Counsel Office to restructure the Criminal Activity Intervention Legislation Bill into a number of Amendment Bills, if the Business Committee does not agree to the amendments in the Criminal Activity Intervention Legislation Bill being included in one Bill;
- 17 **approved** the Criminal Activity Intervention Legislation Bill [PCO 24852/15.0], or any Bills that it is restructured into, for introduction, subject to the final approval of the government caucus and sufficient support in the House of Representatives;
- 18 **approved** the Criminal Proceeds (Recovery) Amendment Bill [PCO 22596] for introduction, subject to the final approval of the government caucus and sufficient support in the House of Representatives;
- 19 **agreed** that the Bills be introduced as soon as possible after Cabinet approval;
- 20 **agreed** that the government propose that the Bills be:
 - 20.1 referred to the Justice Committee for consideration, with a report back date of 9 February 2023;
 - 20.2 **Section (9)(2)(f)(iv)** [REDACTED]

Rachel Hayward
Acting Secretary of the Cabinet