

Hon Paul Goldsmith
Minister of Justice

Proactive release – Gangs Legislation Amendment Bill

Date of issue: 4 April 2024

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	100-Day Plan: Gangs Policy <i>Cabinet paper</i> Office of the Minister of Justice 13 December 2023	Some information has been withheld in accordance with section 6(c) to avoid prejudicing the maintenance of the law and section 9(2)(f)(iv) to protect the confidentiality of advice tendered by Ministers of the Crown and officials.
2	Gangs Policy <i>Cabinet 100-Day Plan Committee Minute</i> Cabinet Office Meeting date: 13 December 2023	Some information has been withheld in accordance with section 9(2)(f)(iv) to protect the confidentiality of advice tendered by Ministers of the Crown and officials. This decision was confirmed by Cabinet on 18 December 2023 [CAB-23-MIN-0491 refers].
3	Gangs Legislation Amendment Bill: Approval for Introduction <i>Cabinet paper</i> Office of the Minister of Justice 21 February 2024	Some information has been withheld in accordance with section 9(2)(f)(iv) to protect the confidentiality of advice tendered by Ministers of the Crown and officials. Note that the copy of the draft Bill provided to Ministers alongside this paper has been withheld in accordance with section 131 of the Legislation Act 2019 and section 9(2)(h) of the Official Information Act 1982, to maintain legal professional privilege. The version of the Bill introduced to Parliament is available on legislation.govt.nz and via bills.parliament.nz .
4	Gangs Legislation Amendment Bill: Approval for Introduction <i>Cabinet Economic Policy Committee Minute</i> Cabinet Office Meeting date: 21 February 2024	Released in full.

In Confidence

Office of the Minister of Justice
Cabinet 100-Day Plan Committee

100-Day Plan: Gangs Policy**Proposal**

- 1 This paper seeks Cabinet's agreement to a package of policy proposals that will strengthen the Government's response to the fear and intimidation caused by gangs.

Relation to government priorities

- 2 This paper delivers on the gangs proposals set out in the Government's 100-Day Plan relating to restoring law and order.

Executive Summary

- 3 Gang membership and associated offending causes significant harm to our communities. Our Government has committed to restoring law and order in New Zealand. Giving the police and justice system greater powers to deal effectively with gangs is an important part of our plan to restore public confidence in the justice system.
- 4 The Government's 100-Day Plan outlined proposals to address gangs and gang offending. I am seeking Cabinet agreement to progress four of these proposals via legislative change.
- 5 This paper proposes:
 - 5.1 prohibiting the display of gang insignia in public;
 - 5.2 stopping gangs from gathering in public by enabling Police to issue dispersal notices;
 - 5.3 stopping gang members from associating via consorting prohibition orders; and
 - 5.4 making gang membership an aggravating factor at sentencing, enabling courts to impose more severe punishments for those who choose to be part of a gang.

Background

- 6 Gang membership is currently estimated to be approximately 9,000 people, up from approximately 5,500 in 2017. The increase in gang membership has corresponded with a rise in gang tension, violence, and offending. To date, the justice system's inability to respond to this rise in offending has

contributed to the public feeling unsafe in their communities. It has undermined the public's faith in law and order.

I seek agreement to progress four proposals addressing gangs

- 7 In order to restore confidence in law and order, I seek Cabinet's approval to implement the following proposals to crack down on gangs and gang offending:
 - 7.1 prohibiting gang insignia in public;
 - 7.2 stopping gangs gathering in public;
 - 7.3 stopping gang members from associating; and
 - 7.4 making gang membership an aggravating factor at sentencing.
- 8 This paper delivers on all of the commitments we made in our 100-Day Plan for gangs, except those relating to firearms prohibition orders. That work is being led by the Minister of Police, who will bring a separate paper on this proposal.

Prohibiting gang insignia in public

- 9 Gang insignia includes signs, symbols, or representation commonly displayed to denote membership of, affiliation with, or support for a gang. Gang insignia are tools of intimidation when displayed publicly, and are used by gangs to recruit prospects.
- 10 Gang insignia (including gang patches) are already banned in government premises under the Prohibition of Gang Insignia in Government Premises Act 2013 (the Insignia Act).
- 11 To reduce the ability of gangs to intimidate the public through visible gang insignia, I propose amending the Insignia Act so that the prohibition extends to all public places. I propose the following elements of the ban:
 - 11.1 breaching the ban will attract a criminal conviction with a maximum penalty of a fine not exceeding \$5,000 or 6 months imprisonment;
 - 11.2 exceptions to the ban will include insignia posted online or in private spaces even if publicly viewable. Other appropriate exclusions will be developed where the twin rationales of intimidation and recruitment are not evident, such as for example, media reporting, insignia displayed for legitimate government purposes, or where the display is satirical in nature; and
 - 11.3 gang insignia tattoos will also be excluded.

Operational considerations

- 12 Police is working through the operational implications of this proposal, including:
 - 12.1 enforcement of the ban. Police have competing demands and finite resources, so will need to determine what operational response is appropriate in a particular case;
 - 12.2 ensuring officer safety in enforcing the ban. Section 6(c) [REDACTED]
[REDACTED]
[REDACTED]
 - 12.3 how the ban will interact with the dispersal and non-consorting notices also proposed in this package of work.

Section 9(2)(f)(iv) [REDACTED]

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

Risks

- 18 This proposal may be found to be inconsistent with the Bill of Rights, in particular section 14, the right to freedom of expression. Similar patch bans, such as the current Insignia Act and the Wanganui District Council (Prohibition of Gang Insignia) Act 2009 (the Wanganui Act) have been found to engage the right to freedom of expression.

- 19 While the current Insignia Act has not been found inconsistent with that right, the Wanganui Act has, as its broader scope was not considered proportional to the objective. Given that this proposal expands the scope of the Insignia Act to be closer to that of the Wanganui Act, there is a risk that it will similarly be found to be an unjustifiable limit on freedom of expression.
- 20 There may be Bill of Rights implications under section 25(c) for strict liability offences, that is, where imprisonment is available without intent needing to be proven. Requiring proof of intent is generally an important safeguard associated with imprisonable offences.
- 21 **Section 6(c)** [REDACTED] gang insignia can indicate a person's membership of and seniority within a gang, as well as their movements.
- 22 The public's confidence in law and order maybe undermined if the ban is not enforced, or if they see gang members disregard the ban. **Section 9(2)(f)(iv)** [REDACTED]
[REDACTED]
- 23 Gang members are likely to find alternative ways to signify gang membership in order to avoid the ban, including wearing gang colours which could itself cause public fear. This may also risk members of the public being mistaken for gang members, either by gangs, the public, or Police, when inadvertently wearing gang colours.
- 24 If unable to wear their insignia, gang members may become more likely to get tattoos, which may reduce their ability to leave the gang at a later point, as well as have social consequences such as limiting their employment options. This risks compromising the long term goal of encouraging cessation of gang membership.

Stopping gangs gathering in public

- 25 Public gatherings of gangs undermine confidence in law and order, spread fear and intimidation, and create a public nuisance when they block roads. The public should not have to face intimidation and disruption to their lives when gangs are gathering publicly. While Police can currently intervene if criminality is involved, Police also need a tool to quickly stop gangs from gathering in public places even where there is no criminal activity occurring.
- 26 I propose giving Police the power to issue a dispersal notice to any group of gang members, including gang prospects, gathering in a public place. I propose that:
- 26.1 a group of gang members will be three or more people;
- 26.2 Police must reasonably suspect the group to be members or prospects of a gang designated in the Insignia Act;

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- 26.3 this notice could be issued even if no criminal offending is taking place, but can only be used where Police reasonably believe the notice is necessary to avoid the gang disrupting activities of other members of the community;
- 26.4 the Police will have the power to issue dispersal notices on site or after the fact, as is operationally appropriate;
- 26.5 if issued at the time of the gathering, the Police will have a power to detain the gang members in a public place in order to obtain identifying details and issue dispersal notices;
- 26.6 once a dispersal notice is issued, the specified gang member(s) will be required to immediately leave the public area and not associate with one another in person for seven days;
- 26.7 dispersal notices will not apply to immediate family members and those engaging in legal activities like work, education, or healthcare;
- 26.8 a mechanism will be included to provide for specific exceptions for other lawful activities such as to enable attendance at a funeral or tangi;
- 26.9 a general exemption to the requirements of the notice apply when a subject of the notice is managed by Corrections in custody or in the community;
- 26.10 knowingly breaching the dispersal notice without reasonable excuse carries a maximum fine of \$5,000 or 6 months imprisonment; and
- 26.11 a review mechanism be included to allow for a person subject to a seven-day dispersal notice to request a review by the Commissioner of Police if they believe it has not been issued in accordance with the legislation and that revocations must be determined by the Commissioner within 72 hours.

Operational considerations

- 27 Police have advised that their preference is for the threshold for issuing dispersal notices to decrease from “reasonable belief” to “good cause to suspect”.
- 28 Police is working through the implementation challenges posed by this proposal, including how gang members gathered but not wearing insignia will be identified and how compliance with the seven-day notice will be monitored, and the resourcing impact that monitoring will have.

Risks

- 29 This proposal may have Bill of Rights concerns, in particular the right to freedom of association. Dispersal notices are designed to prevent gang

members from gathering, even if no offending is taking place. Being unable to meet with someone in person for seven days when no offending has taken place may be an unreasonable limitation on the right to freedom of association, although other communications, such as through social media or by phone, are not restricted, which mitigates this limitation. Measures have been taken in the design of this proposal to limit its application in a way that may be justifiable.

30 **Section 6(c)**
[Redacted]

31 If Police is aware of large gatherings in advance, they may be able to bring in more resources to issue dispersal notices, **Section 6(c)**
[Redacted]

Stopping gang members from associating

32 Gangs associated with organised crime need to plan and communicate. To hinder the ability of gangs to plan crimes, and to more broadly disrupt their ability to function as groups, I propose enabling the court to make “consorting prohibition orders” to “known gang offenders”.

33 The proposal contains the following elements:

- 33.1 a known gang offender includes any gang member who is subject to a firearms prohibition order, or has been convicted of a category 3 or 4 serious offence, or any offence under the law of another jurisdiction that, if committed in New Zealand, would constitute one of these offences;
- 33.2 the court must make a consorting prohibition order if this would assist to disrupt or restrict the capacity of a known gang offender to engage in conduct that amounts to a serious offence, unless satisfied on evidence that the legitimate interests of affected persons to associate outweigh the social benefit of the order;
- 33.3 the subject of the order is not able to associate or communicate with other known gang offenders listed in the order;
- 33.4 the order will prohibit specified known gang offenders from associating or communicating with one another for three years;
- 33.5 to avoid double jeopardy and retrospective punishment, offending that qualifies a person as a known gang offender must occur after the legislation establishing the order comes into force;

- 33.6 exceptions will apply for immediate family members, those engaging in legal activities like work, education, or healthcare;
- 33.7 a mechanism will be included to provide for specific exceptions for other lawful activities such as to enable attendance at a funeral or tangi;
- 33.8 a general exemption be included to the requirements of the order when the person subject to the notice is managed by Corrections;
- 33.9 knowingly breaching the consorting prohibition order without reasonable excuse on two or more occasions carries a penalty of a fine up to \$15,000 and/or a maximum 5 years imprisonment; and
- 33.10 an appropriate review and appeal mechanism will be included in the proposal.

Operational considerations

- 34 Police is working through the implementation challenges posed by this proposal, [Section 6\(c\)](#)
[REDACTED]
- 35 Operationally, this proposal requires a new court order and subsequent system updates to reflect the new order, as well as communications to the judiciary, court staff, and the legal profession. This will require a timeframe of six months after enactment to operationally prepare, subject to any policy design parameters not yet finalised.
- 36 While uncertain, it is possible that a relatively low number of orders will be sought within the first few years following the enactment of this policy. This is because this proposal is wholly prospective in nature. This means that the orders are only available where the relevant triggering criteria (e.g. the specified offending) occurs following the enactment of this proposal. Prospective application is necessary to maintain the integrity of the justice system by avoiding double jeopardy and retrospective punishment, and to provide justification for the limitation on freedom of association.

Risks

- 37 This proposal may have Bill of Rights implications, in particular for freedom of association. Prohibiting contact between people for three years may be considered an unjustified limit. Measures have been taken with this proposal to limit its application in a way that may be justifiable.

Give greater weight to gang membership as an aggravating factor at sentencing

- 38 Currently, for the aggravating factor for gang membership to apply, (1) it must be applicable to the case (which is common to all aggravating factors), and (2)

the sentencing judge must take into account the nature and extent of the link between gang membership and the offending.

- 39 I propose to remove the second of these requirements from section 9(1)(hb) of the Sentencing Act 2002, as I am concerned that it is unduly limiting the use of gang membership as an aggravating factor. I intend to retain the definition of gang membership in this section as it is already sufficiently broad.¹
- 40 This amendment, in conjunction with other changes described in this paper, would signal to judges and prosecutors that gang membership should be taken into account at sentencing. This approach is consistent with other aggravating factors in the Sentencing Act, which are all connected to the offence or the offending.
- 41 I have considered whether the legislative change should go further, for example by removing the first of the two considerations detailed above. However, I consider that a change of this kind – which would fundamentally alter how aggravating factors relate to offending – is best worked through as part of the wider reforms of the Sentencing Act that officials are progressing. These reforms will include wider changes to aggravating and mitigating factors in order to deliver the Government’s commitment to cap sentencing discounts and introduce new aggravating factors within this Parliamentary term.

Risks

- 42 It is likely that this proposal will lead to an increase in the prison population as judges will be more likely to increase sentences when it is established that gang membership is applicable to the case. However, this impact is difficult to quantify as judges would still be able to exercise discretion about whether to uplift or discount sentences. This will remain a matter of judicial discretion.

Implementation

- 43 Police has briefed their Minister on currently known relevant implementation issues. However, a number of matters, including the ability to update information systems in a timely manner to accommodate this proposal, are unknown at this stage.
- 44 I seek Cabinet’s approval to make second-tier policy decisions that may be necessary to address issues arising during drafting. This will be in consultation with the Attorney-General and Minister of Police.

¹ The Sentencing Act currently refers to “participation in an organised group” within the meaning of section 98A of the Crimes Act, rather than using terminology of “gang” or “gang membership”. Therefore, for the existing factor to apply, the offending must have arisen from the offender’s participation in a group of three or more people who had as their objective one or more of the matters listed in s 98(2)(A), or through the offender’s involvement in any other form of “organised criminal association”.

- 45 In order to meet the 100-Day Plan timeframes, I will bring a paper and the bill to Cabinet Legislation Committee in early 2024, before the end of the 100-day period, to seek agreement to the changes.
- 46 I propose that Cabinet agree that the legislation resulting from these proposals be reviewed after 2 years.

Cost-of-living Implications

- 47 This proposal is not expected to impact cost of living at a whole of population level.

Financial Implications

- 48 Police is likely to face financial and resourcing implications as a result of these proposals. The extent of these costs cannot be determined until implementation analysis has been finalised.
- 49 The financial implications for Corrections could be significant if these policies result in a higher prison population and more people being managed by Corrections in the community. Any increase to the prison population, including remand, will also create additional operational and infrastructure pressures for Corrections.
- 50 Overseas evidence suggests that policies of this kind could have a limited impact on the prison population overall. However, given the tight fiscal environment that Corrections is operating in, and cost pressures relating to existing population growth, it would be difficult for Corrections to manage any costs associated with these proposals within baseline funding.
- 51 These proposals are likely to increase activity in the courts, and therefore will have cost implications. There will be some financial impacts on court processes, systems, and scheduling. There will also be implications for fines collections. The extent of these impacts cannot be determined until further details of the proposals are finalised.
- 52 I will work with the Minister of Finance regarding the financial implications of these proposals as they are developed further and will report back to Cabinet before introduction of any resulting bill.

Legislative Implications

- 53 Amendments to existing legislation are required to implement some of these proposals, and new legislation will be required for dispersal notices and consorting prohibition orders. This new notice and order could be included in the same legislation as the prohibition of gang insignia. However, officials will work with the Parliamentary Counsel Office and the Office of the Clerk to determine the best approach to give effect to these proposals.
- 54 My preference is for an omnibus bill which is likely to include amendments to the:

54.1 Prohibition of Gang Insignia in Government Premises Act 2013;

54.2 Sentencing Act 2002; and

54.3 **Section 9(2)(f)(iv)** .

55 Additional proposals relating to Firearms Prohibition Orders in the Arms Act 1983 may be added to this bill, subject to their approval by Cabinet.

56 The Parliamentary Counsel Office has been consulted on this proposal and is available to draft a bill in early 2024.

57 The proposed omnibus act will bind the Crown.

Impact Analysis

Regulatory Impact Statement

58 Cabinet's impact analysis requirements apply to the proposals in this Cabinet paper. For 100-Day Plan proposals that seek approval for new policy, Cabinet has determined that Regulatory Impact Statements (RIS) are required but that the RIS does not need to be quality assured. The Ministry of Justice has notified the Treasury's Regulatory Impact Analysis team that they were not able to prepare an accompanying RIS due to time constraints.

59 The Treasury and the Ministry of Justice have agreed that supplementary analysis will be provided when these policy proposals are considered by the Cabinet Legislation Committee in 2024.

Population Implications

60 Over three quarters of adult gang members in Aotearoa are Māori men and about 50,000 people overall are whānau to gang members. Around 1 in 20 Māori are related to a gang member.

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

62 Māori are disproportionately:

62.1 victimised by crime (along with Pacific peoples), so the vast majority of Māori who are not associated with gangs will benefit from these proposals where they are victims of gang crime; and

62.2 members of gangs, so may disproportionately be brought into the criminal justice system by policies that are directly focussed on suppressing or criminalising gang membership.

63 Gangs include women and girls. Women and girls have unique vulnerabilities within the gang context, including being controlled through a combination of violence and general coercive control. This means that:

- 63.1 measures which reduce gang membership can therefore be of benefit to women and girls;
 - 63.2 measures that impose criminal justice consequences on gang members risks capturing women and girls whose membership is influenced by the context of coercion and abuse they live within; and
 - 63.3 women and girls may be more likely face reprisals or retaliation following police interventions in the home.
- 64 Children with gang-affiliated parents/caregivers will be affected by these proposals. If parents are more likely to be imprisoned or deemed unfit to care for children, some children may need to go into State care. This means that:
- 64.1 they may experience less direct harm from caregivers; but
 - 64.2 there is an increased risk of perpetuating the harms that many adult gang members also faced. The Waitangi Tribunal has acknowledged the connection between State care and gangs, and many gang members have been victims of family harm and abuse in care. Normalisation of violence in gangs is a result of this trauma.

Te Tiriti o Waitangi/Treaty of Waitangi considerations

- 65 Due to time constraints, no consultation with Māori has been undertaken.
- 66 Measures that specifically target gangs will reinforce the disproportionate impact of the criminal justice system on Māori which some may argue conflicts with te Tiriti o Waitangi/the Treaty of Waitangi.
- 67 Claims in the Waitangi Tribunal on behalf of adversely affected Māori are possible. Issues related to gangs are raised with the Waitangi Tribunal in Te Rau o te Tika – the Justice System Kaupapa Inquiry (Wai 3060).
- 68 Māori victims of crime may benefit from any reductions in gang offending that result from this proposal.

Human Rights and Litigation

- 69 These proposed policies engage a number of rights under the Bill of Rights.
 - 69.1 *Prohibition of gang insignia in public*
Section 14 freedom of expression;
Section 9(2)(f)(iv)
Section 25(c) the right to be presumed innocent until proved guilty according to law.
 - 69.2 *Stop gang members from gathering in public*
Section 16 freedom of peaceful assembly; and
Section 18 freedom of movement.

69.3 *Stop gang members from associating*
Section 17 freedom of association.

70

Section 9(2)(f)(iv)

71

The Bill of Rights is expressed to “affirm, protect and promote human rights and fundamental freedoms in New Zealand”, and to “affirm New Zealand’s commitment to the International Covenant on Civil and Political Rights” and any legislation should generally be consistent with these rights and freedoms.

72

The Crown Law Office will vet any resulting draft bill for consistency with the Bill of Rights. Where a bill appears to be inconsistent with the Bill of Rights, the Attorney-General will provide a report pursuant to section 7 of the Bill of Rights to Parliament on the inconsistency. Any report of Bill of Rights inconsistency may result in increased scrutiny or adverse comment as the bill proceeds through the House.

73

There are also risks associated with Bill of Rights inconsistent legislation, including that the courts may read down the relevant legislation in order to be more rights-consistent, challenges to Police exercises of discretionary powers, claims for monetary damages for breaches of Bill of Rights-protected rights, and applications for a declaration of inconsistency.

Consultation

74

The following agencies have been consulted in developing this Cabinet paper: New Zealand Police, the Department of Corrections, Te Puni Kōkiri, Ministry for Pacific Peoples, Ministry for Women, the Treasury, Oranga Tamariki, and Crown Law. The Department of the Prime Minister and Cabinet has been informed.

75

Agency feedback has been incorporated into the paper.

76

There has been no public consultation on this proposal, including with Māori, despite the significant impacts it will have on Māori individuals, whānau, and communities.

Limitations

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Due to this proposal being part of the 100-Day Plan, time has been restricted and there are some limitations on information available. Details on costing and resources for enforcement and fine collection, impacts on Police and Courts, and community responses to the proposal are all unknown.

Communications

78

I intend to prepare a media package and release a press statement following Cabinet decisions.

Proactive Release

- 79 I intend to proactively release this Cabinet paper and related minutes within 30 business days of decisions being confirmed by Cabinet, subject to any redactions as appropriate and consistent with the Official Information Act 1982.

Recommendations

The Minister of Justice recommends that the Committee:

- 1 **Note** that the Government's 100-Day Plan outlines proposals to address fear and intimidation caused by gangs and gang offending;

Proposal to prohibit gang insignia in public

- 2 **Agree** it will be illegal to wear gang patches or display specified gang insignia in all public places;
- 3 **Agree** tattoos will be exempt;
- 4 **Agree** the ban will not extend to private premises;
- 5 **Agree** the ban will have appropriate exclusions or defences will be developed, including for example media reporting, legitimate government purposes, or satirical commentary;
- 6 **Agree** the penalty for breach will be a maximum fine of \$5,000 or 6 months imprisonment;

- 7 **Section 9(2)(f)(iv)**

Proposal to stop gangs gathering in public

- 8 **Agree** Police will have the power to issue a "dispersal notice" to any group of three or more gang members gathering in a public place;
- 9 **Agree** the dispersal notice will require the specified gang members to immediately leave the public area, and not associate with one another for seven days;
- 10 **Agree** dispersal notices will not apply to immediate family members, and those engaging in legal activities like work, education, or healthcare;
- 11 **Agree** that Police be given the power to issue dispersal notices on site or after the fact, as is operationally appropriate;

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- 12 **Agree** that if the dispersal notice is to be issued at the time of the gathering, the Police will have a power to detain the gang members in a public place in order to obtain identifying details and issue dispersal notices;
- 13 **Agree** that a dispersal notice can only be issued where Police reasonably believe the notice is necessary to avoid the gang disrupting activities of other members of the community;
- 14 **Agree** a group of gang members will be three or more people;
- 15 **Agree** Police must reasonably suspect the group to be members or prospects of a gang designated in the Prohibition of Gang Insignia in Government Premises Act 2013;
- 16 **Agree** that a general exemption to the requirements of the notice will apply when the person who is subject to the notice is managed by Corrections in custody or in the community;
- 17 **Agree** to the inclusion of a mechanism to provide for specific exceptions for other lawful activities such as attendance at a funeral or tangi;
- 18 **Agree** that knowingly breaching the dispersal notice without reasonable excuse will carry a maximum fine of \$5,000 or 6 months imprisonment;
- 19 **Agree** that a review mechanism be included to allow for a person subject to a seven-day dispersal notice to request a review by the Commissioner of Police if they believe it has not been issued in accordance with the legislation and that revocations must be determined by the Commissioner within 72 hours;

Proposal to stop gang members from associating

- 20 **Agree** that consorting prohibition orders can be made by the court to “known gang offenders”;
- 21 **Agree** that a “known gang offender” includes any gang member who is subject to a firearms prohibition order, or has been convicted of a category 3 or 4 serious offence, or has been convicted of any offence under the law of another jurisdiction that, if committed in New Zealand, would constitute one of these offences;
- 22 **Agree** that consorting prohibition orders not apply to immediate family members and those engaging in legal activities like work, education, or healthcare;
- 23 **Agree** that the court must make a consorting prohibition order if this would assist to disrupt or restrict the capacity of a known gang offender to engage in conduct that amounts to a serious offence, unless satisfied on evidence that the legitimate interests of affected persons to associate outweigh the social benefit of the order;

I N C O N F I D E N C E

- 24 **Agree** that the offending that qualifies a person as a known gang offender must occur after the legislation establishing the proposal comes into force;
- 25 **Agree** that the subject of an order is not able to associate or communicate with other known gang offenders listed in the order for 3 years;
- 26 **Agree** that a general exemption to the requirements of the order will apply when the person who is subject to the order is managed by Corrections in custody or in the community;
- 27 **Agree** that a mechanism be included to provide for specific exceptions for other lawful activities such as attendance at a funeral or tangi;
- 28 **Agree** that knowingly breaching the consorting prohibition order without reasonable excuse on two or more occasions will carry a penalty of a maximum \$15,000 fine or maximum 5 years imprisonment;
- 29 **Agree** there will be an appropriate review and appeal mechanism;

Proposal to make gang membership an aggravating factor at sentencing

- 30 **Agree** to the removal of the requirement for the court to establish the nature and extent of any connection between the offending and the offender's participation in an organised criminal group in the existing aggravating factor in the Sentencing Act 2002;

Implementation

- 31 **Authorise** the Minister of Justice, in consultation with the Minister of Police and the Attorney-General, to make any second-tier policy decisions necessary for the purposes of drafting a bill;
- 32 **Agree** to add resulting draft legislation to the legislative programme for 2023/4; and

Impacts on improving justice outcomes for Māori

- 33 **Note** that Māori make up a disproportionate number of gangs membership, therefore policies directly focussed on suppressing or criminalising gang membership will reinforce the disproportionate impact of the criminal justice system on Māori and their whānau.

Hon Paul Goldsmith

Minister of Justice



Cabinet 100-Day Plan 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.

Gangs Policy

Portfolio Justice

On 13 December 2023, the Cabinet 100-Day Plan Committee:

Background

1 **noted** that the Government's 100-Day Plan outlines proposals to address fear and intimidation caused by gangs and gang offending;

Proposal to prohibit gang insignia in public

2 **agreed** that it will be illegal to wear gang patches or display specified gang insignia in all public places;

3 **agreed** that tattoos will be exempt from the ban;

4 **agreed** that the ban will not extend to private premises or publicly accessible social media websites;

5 **agreed** that the ban will have appropriate exclusions or defences which will be developed, including, for example, media reporting, legitimate government purposes, or satirical commentary;

6 **agreed** that the penalty for a breach will be a maximum fine of \$5,000 or six months imprisonment;

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

Proposal to stop gangs gathering in public

8 **agreed** that Police will have the power to issue a "dispersal notice" to any group of three or more gang members gathering in a public place;

9 **agreed** that the dispersal notice will require the specified gang members to immediately leave the public area, and not associate with one another for seven days;

10 **agreed** that dispersal notices will not apply to immediate family members, and those engaging in legal activities like work, education, or healthcare;

- 11 **agreed** that Police be given the power to issue dispersal notices on site or after the fact, as is operationally appropriate;
- 12 **agreed** that if the dispersal notice is to be issued at the time of the gathering, the Police will have a power to detain the gang members in a public place in order to obtain identifying details and issue dispersal notices;
- 13 **agreed** that a dispersal notice can only be issued where Police reasonably believe the notice is necessary to avoid the gang disrupting activities of other members of the community;
- 14 **agreed** that a group of gang members will be three or more people;
- 15 **agreed** that Police must reasonably suspect the group to be members or prospects of a gang designated in the Prohibition of Gang Insignia in Government Premises Act 2013;
- 16 **agreed** that a general exemption to the requirements of the dispersal notice will apply when the person who is subject to the notice is managed by Corrections in custody or in the community;
- 17 **agreed** to the inclusion of a mechanism to provide for specific exceptions for other lawful activities such as attendance at a funeral or tangi;
- 18 **agreed** that knowingly breaching the dispersal notice without reasonable excuse will carry a maximum fine of \$5,000 or six months imprisonment;
- 19 **agreed** that a review mechanism be included to allow for a person subject to a seven-day dispersal notice to request a review by the Commissioner of Police if they believe it has not been issued in accordance with the legislation and that revocations must be determined by the Commissioner within 72 hours;

Proposal to stop gang members from associating

- 20 **agreed** that consorting prohibition orders can be made by the court to “known gang offenders”;
- 21 **agreed** that a “known gang offender” includes any gang member who is subject to a firearms prohibition order, or has been convicted of a category three or four serious offence, or has been convicted of any offence under the law of another jurisdiction that, if committed in New Zealand, would constitute one of these offences;
- 22 **agreed** that consorting prohibition orders not apply to immediate family members and those engaging in legal activities like work, education, or healthcare;
- 23 **agreed** that the court must make a consorting prohibition order if this would assist to disrupt or restrict the capacity of a known gang offender to engage in conduct that amounts to a serious offence, unless satisfied on evidence that the legitimate interests of affected persons to associate outweigh the social benefit of the order;
- 24 **agreed** that the offending that qualifies a person as a known gang offender must occur after the legislation establishing the proposal comes into force;
- 25 **agreed** that the subject of an order is not able to associate or communicate with other known gang offenders listed in the order for three years;
- 26 **agreed** that a general exemption to the requirements of the order will apply when the person who is subject to the order is managed by Corrections in custody or in the community;

- 27 **agreed** that a mechanism be included to provide for specific exceptions for other lawful activities such as attendance at a funeral or tangi;
- 28 **agreed** that knowingly breaching the consorting prohibition order without reasonable excuse on two or more occasions will carry a penalty of a maximum \$15,000 fine or maximum five years imprisonment;
- 29 **agreed** there will be an appropriate review and appeal mechanism;

Proposal to make gang membership an aggravating factor at sentencing

- 30 **agreed** to the removal of the requirement for the court to establish the nature and extent of any connection between the offending and the offender's participation in an organised criminal group in the existing aggravating factor in the Sentencing Act 2002;

Implementation

- 31 **authorised** the Minister of Justice to issue drafting instructions to the Parliamentary Counsel Office to give effect to the decisions in the paper under 100-23-SUB-0004, including any necessary consequential amendments, savings, and transitional provisions;
- 32 **authorised** the Minister of Justice, in consultation with the Minister of Police and the Attorney-General, to make any second-tier policy decisions necessary for the purposes of drafting a bill;
- 33 **noted** that the Bill will be subject to a bid for the 2024 Legislation Programme;

Impacts on improving justice outcomes for Māori

- 34 **noted** that Māori make up a disproportionate number of gangs membership, therefore policies directly focussed on suppressing or criminalising gang membership will reinforce the disproportionate impact of the criminal justice system on Māori and their whānau.

Jenny Vickers
Committee Secretary

Present:

Rt Hon Christopher Luxon (Chair)
Rt Hon Winston Peters
Hon David Seymour
Hon Chris Bishop
Hon Dr Shane Reti
Hon Shane Jones
Hon Simeon Brown
Hon Erica Stanford
Hon Paul Goldsmith
Hon Judith Collins
Hon Mark Mitchell
Hon Nicole McKee

Officials present from:

Office of the Prime Minister
Department of the Prime Minister and Cabinet

In Confidence

Office of the Minister of Justice

Cabinet Economic Policy Committee

Gangs Legislation Amendment Bill: Approval for Introduction

Proposal

- 1 This paper seeks approval for the introduction of the Gangs Legislation Amendment Bill (**the Bill**).

Policy

- 2 On 18 December 2023, Cabinet agreed to progress the policies in the Government's 100-Day plan that address fear and intimidation caused by gangs and gang offending [100-23-MIN-0004; CAB-23-MIN-0491 refer]. These are to:
 - 2.1 prohibit the display of gang insignia in public;
 - 2.2 stop gangs from gathering in public;
 - 2.3 stop gang offenders from associating, through court-issued non-consorting order; and
 - 2.4 make gang membership an aggravating factor at sentencing.
- 3 These policies contribute to the Government's coalition agreements to restore law and order and public confidence in the justice system.
- 4 Cabinet authorised the Minister of Justice, in consultation with the Minister of Police and the Attorney-General, to make any second-tier policy decisions necessary for the purposes of drafting a bill.
- 5 I seek Cabinet's agreement to make a minor change relating to our non-consorting order policy. Cabinet previously agreed, consistent with the National Party manifesto commitment, that it would be an offence breach the order on "two or more occasions" [100-23-MIN-0004, at 28 refers]. To address workability concerns, I seek Cabinet's agreement that the first breach of the order be an offence.
- 6 A Bill is required to give effect to these new gang powers, including making necessary amendments to the Sentencing Act 2002, and other consequential amendments.

Prohibiting gang insignia in public

- 7 Prohibiting the public display of gang insignia is intended to reduce public fear and intimidation, and gangs' ability to recruit prospects.
- 8 Cabinet agreed that it will be an offence to wear gang patches or display specified gang insignia in public places, with exceptions for reasonable and lawful purposes (such as where the display is part of a news report). It will be an offence to breach the ban, liable to a maximum fine of \$5,000 or a maximum 6-months imprisonment.
- 9 The Bill repeals the current Prohibition of Gang Insignia in Government Premises Act 2013, as its provisions overtake the current insignia ban.¹ The Bill carries over the relevant definitions and list of gangs identified in that Act, and the ability to amend that list by Order-in-Council.

Stopping gangs gathering in public

- 10 Dispersal notices will enable Police to intervene where a gang gathering is likely to be disrupting the lives of the public.
- 11 Cabinet agreed for Police to have the power to issue dispersal notices to any group of three or more gang members gathering in a public place. Police must have reasonable grounds to believe it is necessary to avoid disrupting activities of other members of the community. The Commissioner of Police may vary a notice to allow for association for specified lawful activities.
- 12 The Bill provides that the notices require those specified to immediately leave the public area, and not associate with one another for seven days. It will be an offence to knowingly breach the notice without reasonable excuse, liable to a maximum fine of \$5,000 or a maximum 6-months imprisonment.
- 13 Consistent with Cabinet's agreement to include specific exemptions to the dispersal order for lawful activities [100 23 MIN 0004, at 17 refers], I note that the dispersal notice cannot be issued in respect of groups gathering for the purpose of genuine political protest.
- 14 This provision ensures the new dispersal notice powers align with the existing offence of disorderly assembly. This provision is also consistent with the general requirements of the New Zealand Bill of Rights Act 1990, which requires discretionary powers that restrict freedoms of assembly and expression be exercised proportionately.

Stopping gang members from associating

- 15 Non-consorting orders will hinder the ability of gangs to plan or commit criminal offences and disrupt their ability to function as groups.

¹ For this reason, it also repeals the Wanganui District Council (Prohibition of Gang Insignia) Act 2009.

- 16 Cabinet agreed that a court may make orders requiring a specified gang offender to not consort with other known gang offenders listed in the order for three years.² A court must be satisfied that the order would assist to disrupt or restrict the capacity of the person to engage in serious offending, unless satisfied the detrimental effects on the person outweigh its societal benefits.
- 17 The Bill provides for non-consorting orders, including exemptions for immediate family or for specified lawful purposes. It will be an offence to knowingly breach a non-consorting order without reasonable excuse, liable to a maximum fine of \$15,000 or a maximum 5 years imprisonment.

I recommend an amendment to the offence of breaching a non-consorting order

- 18 Cabinet previously agreed that the offence would apply where a person breaches a non-consorting order “on two or more occasions.” Officials have identified during drafting that this would create operational difficulties. It would require Police to maintain a database of those who have only breached the order once. It may also be difficult to gather evidence of breaches, as search warrants require offending and so would not be available on the first breach.
- 19 I propose that Cabinet agree to modify the offence to apply wherever a person knowingly breaches the order without reasonable excuse, even if it is the first breach. I consider that the making of the non-consorting order provides sufficient warning to any individual to whom the court is satisfied an order should apply. Police will retain operational discretion to warn a person who has or is about to breach the order, if they consider it is not the public interest to charge for that breach in the circumstances.

Giving greater weight to gang membership as an aggravating factor at sentencing

- 20 Strengthening the weight given to gang membership at sentencing is intended to ensure gang members who offend face more severe consequences.
- 21 Cabinet agreed to amend the existing aggravating factor in the Sentencing Act 2002 by removing the requirement that the sentencing judge consider the nature and extent of any connection between the offending and the offender’s participation in an organised criminal group.
- 22 The Bill amends the Sentencing Act 2002 accordingly, so that courts are not unduly limited in using gang membership as an aggravating factor.

Impact analysis

- 23 Cabinet’s regulatory impact analysis (RIA) requirements apply to the proposals related to the Bill. Due to time constraints associated with delivering for the 100-Day Plan, a Regulatory Impact Statement (RIS) was not provided to Cabinet when the policy approvals related to the Bill were made. The

² Defined as any gang member who is made subject to a firearms prohibition order, or is convicted of a category three or four serious offence, or is convicted of any offence under the law of another jurisdiction that, if committed in New Zealand, would constitute one of these offences.

Treasury and the Ministry of Justice agreed that the RIS would be provided with this paper, and is attached to this Cabinet Paper.

- 24 The Ministry of Justice's Regulatory Impact Assessment quality panel has reviewed the RIS: Responding to Gang Harms prepared by the Ministry of Justice and considers that the information and analysis summarised in the Regulatory Impact Statement partially meets the Quality Assurance criteria.
- 25 The package of proposals implements an election manifesto commitment. The Government wishes to proceed swiftly, and the time constraints have limited the opportunities for consultation with affected communities. That has constrained the evidence base for analysis. However, the RIS makes good use of available evidence, and the objectives and criteria support good analysis.
- 26 The RIS identifies relevant parties and implementation pathways, but these pathways have not been fully developed due to time constraints. The panel considers there is some implementation risk: the regulatory and operational landscape is complicated, with many moving parts, including new regulatory settings that are still bedding in. Additional change to that landscape is likely to carry some implementation risk that has not yet been explored.
- 27 Overall, the panel considers that the analysis is robust and can be relied on by Ministers to support their decision-making.

Compliance

- 28 The Bill complies with:
 - 28.1 advice from the Treaty Provisions Officials Group (not applicable);
 - 28.2 the requirements of the Legislation Guidelines (2021 edition);
 - 28.3 the Human Rights Act 1993; and
 - 28.4 the disclosure statement requirements. A disclosure statement has been prepared and is attached to this paper;

Treaty of Waitangi considerations

- 29 The Bill targets gangs. Māori, like all New Zealanders, have a strong interest in policies aimed at addressing gang offending and victimisation, but have not been consulted or engaged on the policy underlying this Bill due to time constraints. Over three-quarters of known adult gang members are Māori.
- 30 Claims in the Waitangi Tribunal on behalf of adversely affected Māori are possible. Issues related to gangs are raised with the Waitangi Tribunal in Te Rau o te Tika – the Justice System Kaupapa Inquiry (Wai 3060).

Consistency with certain rights, freedoms, and international obligations

- 31 The Bill is likely to engage rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and New Zealand's international commitments under the International Covenant on Civil and Political Rights. For example:
- 31.1 *Prohibition of gang insignia in public*
Section 14 freedom of expression;
Section 9(2)(f)(iv)
Section 25(c) the right to be presumed innocent until proved guilty according to law.
- 31.2 *Dispersal notices to stop gang members from gathering in public*
Section 16 freedom of peaceful assembly; and
Section 18 freedom of movement.
- 31.3 *Non-consorting orders to stop gang members from associating*
Section 17 freedom of association.
- 32 While the policies have been designed to limit rights no more than is reasonably necessary to respond to gang harm and improving public confidence in law and order, there will be debate as to whether the prohibition on gang insignia in public places is demonstrably justifiable in a free and democratic society.
- 33 Ultimately, the Attorney-General will express her views in due course on whether the Bill is consistent with the New Zealand Bill of Rights Act 1990.

Consultation

- 34 The following agencies were consulted during the drafting of the Bill: New Zealand Police, Crown Law, the Department of Corrections, Oranga Tamariki, and the Office of the Privacy Commissioner. Additionally, the Treasury, Te Puni Kōkiri, Ministry for Pacific Peoples, and Ministry for Women were also consulted on the development of the policy. The Department of the Prime Minister and Cabinet has been informed. Agency feedback has been incorporated throughout the paper, including comments below.
- 35 There has been no public consultation on this proposal, including with Māori despite the significant impacts it will have on Māori individuals, whānau, and communities.
- 36 Consultation has been undertaken with the government caucus and other parties represented in Parliament.

Office of Privacy Commissioner

- 37 The Commissioner has noted concerns about privacy impacts of this Bill. The Commissioner was not consulted on the preceding Cabinet paper seeking policy decisions (as required by the Cabinet Manual). Justice officials have informed me this was an oversight due to working at pace, and that procedures have been put in place to ensure it does not happen again.

- 38 The Commissioner considers the non-consorting order provisions risk infringing on privacy of communications not covered by the non-consorting order, including communications with whānau and family members. The Commissioner notes it is important that officials are careful when designing and implementing these processes to ensure that the objectives are appropriately balanced with privacy risks. Particularly, Police will need to ensure that any monitoring of communication is only carried out to the extent that is necessary to ensure that individuals are not in breach of their non-consorting order. The Commissioner has indicated that his Office is available to support officials in the implementation process, which will need to include work to ensure privacy rights are appropriately safeguarded.

Binding on the Crown

- 39 Cabinet agreed that the Bill, when enacted, will bind the Crown [100-23-MIN-0004; CAB-23-MIN-0491 refer].

Creating new agencies or amending law relating to existing agencies

- 40 Not applicable.

Allocation of decision-making powers

- 41 The Bill allocates decision-making powers to Police to issue dispersal notices to gang members gathering in public. This complies with chapter 18 of the Legislation Guidelines 2021, as the power is necessary to achieve the objective, with authority given to Police given the need for a quick response and short duration of the notices, as well as the ability for the Police to vary or revoke a notice.
- 42 The Bill allocates decision-making powers to the courts to make non-consorting orders, on application by the Police, to prohibit known gang offenders from consorting for three years, if satisfied the criteria have been met. This complies with chapter 18 of the Legislation Guidelines 2021, as independent authorisation of the power is appropriate for the significant time and conditions imposed.
- 43 The Bill allocates decision-making powers to the executive to make secondary legislation described at paragraph 46, below. These comply with chapter 14 of the Legislation Guidelines 2021, as the matters are appropriately narrow and for maintaining the system to remain consistent with its purpose.
- 44 While the ability to amend the list of gangs in Schedule 2 of the Bill by Order-in-Council is technically a Henry VIII power, I am satisfied it is appropriate. It will improve transparency compared to the current regulation-making power in the Prohibition of Gang Insignia in Government Premises Act 2013. This change will consolidate in one place the list of gangs to which the prohibition applies. Currently, this is set out across both the Act and associated regulations.

Associated regulations

45 Not applicable.

Other instruments

46 The Bill allows the Governor-General to make regulations by Order in Council for the purposes of:

46.1 amending Schedule 2 to keep up-to-date the list of identified gangs that can be subject to the powers in the Bill; and

46.2 prescribe any other information that must be included in a dispersal notice when issued by Police, beyond that provided in the statute.

Definition of Minister/department

47 Not applicable.

Commencement of legislation

48 The Bill will come into force on the day that is 6 months after Royal assent.

Parliamentary stages

49 The Bill should be introduced as soon as possible and passed by November 2024. The Bill will be referred to the Justice Committee.

Proactive Release

50 I propose to proactively release this paper after the Bill is introduced.

Recommendations

I recommend that the Cabinet Economic Policy Committee:

1 **agree** that the Gangs Legislation Amendment Bill holds a category 3 priority on the 2024 Legislation Programme (a priority to be passed by the end of 2024);

2 **note** that the Bill will fulfil the Government's coalition agreements to address fear and intimidation caused by gangs and gang offending by:

2.1 prohibiting the display of gang insignia in public;

2.2 creating dispersal notices to stop gangs gathering in public;

2.3 creating non-consorting orders to stop associating and communicating among specified gang offenders;

2.4 giving greater weight to gang membership as an aggravating factor at sentencing.

IN CONFIDENCE

- 3 **agree** to amend the offence for breaching a non-consorting order to apply wherever a person knowingly breaches the order without reasonable excuse, even if it is the first breach (as opposed to on two or more occasions);
- 4 **note** that to fulfil the 100-day timeframes, there has been no public consultation on the proposals, including with Māori;
- 5 **note** that the Parliamentary Counsel Office has indicated that it will continue to make any necessary drafting changes to the Bill before it is introduced;
- 6 **approve** the Gangs Legislation Amendment Bill for introduction subject to the final approval of the government caucus and sufficient support in the House of Representatives;
- 7 **agree** that the Gangs Legislation Amendment Bill be introduced as soon as possible after Cabinet approval;
- 8 **agree** that the Government propose that the Gangs Legislation Amendment Bill be:
 - 8.1 referred to the Justice Committee for consideration;
 - 8.2 enacted by November 2024.

Authorised for lodgement

Hon Paul Goldsmith

Minister of Justice

IN CONFIDENCE



Cabinet Economic Policy 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.

Gangs Legislation Amendment Bill: Approval for Introduction

Portfolio **Justice**

On 21 February 2024, the Cabinet Economic Policy Committee, having been authorised by Cabinet to have Power to Act [CAB-24-MIN-0034]:

- 1 **agreed** that the Gangs Legislation Amendment Bill (the Bill) holds a category 3 priority on the 2024 Legislation Programme (a priority to be passed by the end of 2024);
- 2 **noted** that the Bill will fulfil the Government’s coalition agreements to address fear and intimidation caused by gangs and gang offending by:
 - 2.1 prohibiting the display of gang insignia in public;
 - 2.2 creating dispersal notices to stop gangs gathering in public;
 - 2.3 creating non-consorting orders to stop associating and communicating among specified gang offenders;
 - 2.4 giving greater weight to gang membership as an aggravating factor at sentencing;
- 3 **agreed** to amend the offence for breaching a non-consorting order to apply wherever a person knowingly breaches the order without reasonable excuse, even if it is the first breach (as opposed to on two or more occasions);
- 4 **noted** that to fulfil the 100-day timeframes, there has been no public consultation on the proposals, including with Māori;
- 5 **noted** that the Parliamentary Counsel Office has indicated that it will continue to make any necessary drafting changes to the Bill before it is introduced;
- 6 **approved** the Bill [PCO 25941/8.0] for introduction, subject to the final approval of the government caucuses and sufficient support in the House of Representatives;
- 7 **agreed** that the Bill be introduced as soon as possible following Cabinet approval;

8 **agreed** that the Government propose that the Bill be:

8.1 referred to the Justice Committee;

8.2 enacted by November 2024.

Rachel Clarke
Committee Secretary

Present:

Rt Hon Winston Peters
Hon Nicola Willis (Chair)
Hon Brooke van Velden
Hon Simeon Brown
Hon Paul Goldsmith
Hon Judith Collins
Hon Tama Potaka
Hon Melissa Lee
Hon Simon Watts
Hon Penny Simmonds
Hon Chris Penk
Hon Andrew Hoggard
Hon Mark Patterson
Simon Court MP
Jenny Marcroft MP

Officials present from:

Office of the Prime Minister
Officials Committee for ECO