New Zealand Law Society
Te Kāhui Ture o Aotearoa

Gangs Legislation Amendment Bill

Submission of the New Zealand Law Society Te Kāhui Ture o Aotearoa

5 April 2024

1 Introduction

1.0 The New Zealand Law Society Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to comment on the Gangs Legislation Amendment Bill (**Bill**).

1.1 This submission has been prepared with input from the Law Society's Criminal Law Committee and Human Rights and Privacy Committee.[1] It reflects serious misgivings about the Bill's degree of inconsistency with the New Zealand Bill of Rights Act 1990 (**Bill of Rights**), inadequate justifications and other process concerns. It also comments on matters of workability and clarity in drafting. Where possible, amendments have been proposed to address these issues.

1.2 This submission is structured as follows:

(a) A general overview of the proposed legislation;

(b) The impacts of the draft legislation on rights protected by the New Zealand Bill of Rights Act 1990;

(c) Effectiveness of the Australian legislation;

(d) Analysis of Parts 1 – 4;

(e) Analysis of Part 5 which amends the Sentencing Act 2002.

1.3 The Law Society **wishes to be heard** in relation to this submission.

2 Overview of the proposed legislation

2.0 The Bill is an omnibus bill with a singular policy objective of improving public confidence in law and order through new offences and police powers targeting gangs.[2] The Bill proposes to create new offences and give Police a range of new powers to address gang-related crime.

2.1 In summary, the Bill:

(a) Gives Police new powers to issue a dispersal notice with the effect of requiring specific people to leave an area and not associate in public for seven days;

(b) Gives the Court the power to issue non-consorting orders to gang offenders to stop them from consorting and communicating with each other for three years;

(c) Creates new offences including a prohibition on the display of gang insignia in public places and offences related to non-compliance with dispersal notices and non-consorting orders; and

(d) Amends the Sentencing Act 2002 to add gang membership as an aggravating factor at sentencing.

2.2 However, as noted in the Regulatory Impact Statement (**RIS**)[3], there is insufficient evidence that the proposed Bill will have the desired effect. The actual safety of New

---

1 More information about the Committees can be found on the Law Society's website: https://www.lawsociety.org.nz/branches-sections-and-groups/law-reform-committees/.

2 Departmental Disclosure Statement at 3.

3 Regulatory Impact Statement, paras 40 - 42.

Zealand communities may not be assisted by the implementation of the new offences, orders, and Police powers in the long-term.

2.3 Aspects of the Bill are based on Australian laws, some of which have been assessed as ineffective, and some of which have been successfully challenged as unlawful in the High Court of Australia.[4]

2.4 The Law Society agrees with the RIS that this is not a desirable outcome, and the status quo is preferable. Criminal laws must not unjustifiably infringe on rights protected by the Bill of Rights. Legislation passed should create law that is both capable of implementation and effective. Legislators should avoid risking ineffective law, the unenforced breach of which may serve only to undermine public confidence in the law over time.

3 Impacts of the proposed legislation upon civil and human rights obligations

3.0 The Law Society acknowledges the Attorney-General's report under section 7 of the Bill of Rights, which identifies several unjustifiable breaches of protected rights. We agree the Bill breaches the rights to freedom of peaceful assembly (s 16 Bill of Rights), freedom of association (s 17 Bill of Rights), and freedom of expression (s 14 Bill of Rights).

3.1 However, the Law Society is of the view that aspects of the section 7 report understate the level of rights infringement and/or overstate the justification for those infringements. In particular:

(a) At paragraph 19, the report states the proposed gang insignia ban is tied to the Bill's objective of disincentivising gang membership, and that the provisions *'will clearly have that impact*.' At paragraph 22, the report concludes this policy objective is sufficiently important, and that the proposed limitation on the section 14, 16 and 17 rights is '*rationally connected with this objective*'. The Law Society disagrees. The RIS is clear this measure will primarily reduce only visibility of gangs to the public, and it is unrealistic to expect many gang members to exit gangs as a result of these measures.[5] In fact, it may entrench gang membership and offending, and there may be difficulties associated with enforcement (discussed below). In terms of recruitment into gangs, there are a multitude of reasons that individuals join gangs, but exposure to gang insignia in public, without any other knowledge or interaction with gang members, seems highly unlikely to be one. In the Law Society's view, the absence of any evidence (or other reasonable basis) to suggest the insignia ban will disincentivise gang membership means the limitation on protected rights cannot be rationally connected to the Bill's objective.

(b) At paragraph 38, the report concludes that the right not to be arbitrarily detained (section 22 of the Bill of Rights) is not unjustifiably infringed by clause 11, as the Bill does not authorise arbitrary detention. The report suggests this is because

[4] *Wainohu v NSW* (2011) 243 CLR 181 (relating to anti-association laws); *South Australia v Totani* (2010) 242 CLR 1 (relating to control orders). The High Court of Australia is the final court of appeal in Australia, the equivalent of our Supreme Court.

[5] Regulatory Impact Statement, paragraph 72.

detention will largely be determined by the individual's co-operation in providing their identifying details and being served with the dispersal notice. However, a dispersal notice may be issued by a constable simply where they have reasonable grounds to suspect a person is a gang member. The power to detain does not require any suspicion that the person is committing, has committed, or intends to commit an offence. The person being issued with a dispersal notice may not even be a gang member. Irrespective of the level of co-operation provided by an individual, their detention where there is no offending (or suggested risk of offending) or gang membership, is necessarily arbitrary. For the same reasons as outlined in the section 7 report in respect of sections 14, 16, and 17, the infringement of this right is not justified.

Disproportionate impact on some communities

3.2 The Law Society acknowledges the section 7 report's conclusion that there is no breach of the section 19 right to freedom from discrimination, in respect of Māori. Notwithstanding whether the proposed measures would meet the legal test for infringement of section 19, it is still important to consider whether the Bill may have a disproportionate impact on certain communities. That is, while the provisions as drafted may not differentially target groups, they may be *applied* in a way that treats groups differently, with disproportionate effects.

3.3 The RIS[6] identifies, for example, that Māori comprise a disproportionate share of gang membership. So too do other groups, such as members of deprived communities, and individuals who were formerly state wards. These groups will intersect.

3.4 The Bill's focus is on the identity of an individual, rather than offending. In some respects (for example dispersal notices), it invites assumptions as to what a gang member 'looks like.' The Law Society is concerned there is a real risk of these wide discretions resulting in discriminatory enforcement.[7] This risk has eventuated in other jurisdictions.[8]

3.5 These communities have not been consulted about the development of the Bill,[9] despite the RIS identifying a range of ongoing pro-social initiatives that may be limited by the Bill[10] and any consequent entrenchment of gang membership. Consultation may have assisted in the development of more effective measures. It would also have been consistent with the Legislation Guidelines, which note that Māori interests may arise where Māori are likely to be disproportionately affected by legislation, and that early engagement should take place.[11]

---

6 Page 6.

7 We acknowledge this may be due to unconscious, rather than conscious bias, however the result is the same.

8 NSW Ombudsman *The consorting law: Report on the operation of Part 3A, Division 7 of the Crimes Act 1900* (NSW Ombudsman, April 2016) at 4 and Chapter 8.

9 Above n 2, at [3.2].

10 Page 20-21.

11 Legislation Design and Advisory Committee, Legislation Guidelines (2 November 2021), at 5.1

4 Effectiveness of Australian laws

4.0 Much has been made of the similarities between the proposed Bill and the Australian anti-gang laws (see **Appendix 1**), particularly Western Australia's (WA) reforms in late 2021. As noted in the RIS, there is limited data and analysis on the effectiveness and use of the WA reforms, however it is noteworthy that despite 130 cases of recorded charges using the reformed laws (and an approximately 80% conviction rate),[12] there has been no associated drop in overall crime statistics in WA in the time since the new laws were imposed. The statistics in fact show an increase in crime, including for violent and serious offending, and drugs offences, which the explanatory note to the Bill states are associated with gang activity (see **Appendix 2**).

4.1 Further, states that have had similar laws for longer (like Queensland) have not reported a decrease in the actual rate of crime since the law's inception.[13] The continued increase in crime statistics raises the question of the effectiveness of these laws and of the assumption that gangs (and gang membership) are a significant contributor to crime rates and/or that gang membership can be reduced by sanctions like those proposed.

Analysis of effectiveness

4.2 Control orders in NSW include prohibitions on association between members, other controlled members, recruitment of members, and carrying out certain activities in a comparable way that the non-consorting orders are proposed to be applied in the Bill. The NSW Ombudsman's report on the police use of control orders went as far as to recommend repealing the laws saying, "*We have concluded that the Act does not provide police with a viable mechanism to tackle criminal organisations, and is unlikely to ever be able to be used effectively*".[14]

4.3 A separate NSW Ombudsman review of the anti-consorting legislation in NSW found an unintended consequence of the legislation was that youth and indigenous populations were frequently targeted with dispersal notices in breach of their intended purpose.[15] The NSW Ombudsman concluded that the consorting law should be amended to "*remove children and young people aged 17* years *or less from the application of the consorting law*."[16] The WA legislation is preferable to the Bill in this respect, as it explicitly removes the ability to use dispersal notices against youth.[17]

4.4 The follow-up Law Enforcement Conduct Commission report published in 2023 found that while youth were no longer targeted, the discriminatory effect on the aboriginal population persisted, despite amendments in line with the Ombudsman's earlier report.

---

12 Regulatory Impact Statement, at para 20.

13 See Appendix 2.

14 NSW Ombudsman, *Review of police use of powers under the Crimes (Criminal Organisations Control) Act 2012: Section 39 of the Crimes (Criminal Organisations Control) Act 2012* (NSW Ombudsman, November 2016) at 32.

15 NSW Ombudsman *The consorting law: Report on the operation of Part 3A, Division 7 of the Crimes Act 1900* (NSW Ombudsman, April 2016) at 4 and Chapter 8.

16 Above n 12 at 8.3.6.

17 Sections 9 and 36 Criminal Law (Unlawful Consorting and Prohibited Insignia) Act 2021 (WA).

Further, the notices were being used to disrupt minor offending or nuisance behaviours rather than prevent serious crime as intended.[18]

4.5 A Taskforce in QLD found that of 202 people charged under the (now repealed) Vicious Lawless Association Disestablishment (VLAD) Act 2013 (QLD) only 10% were gang members, 7% were associated with gangs and 82% had no known links to gangs. Notably, although 42 people were charged with anti-association offences, none were successfully prosecuted.[19]

4.6 There has been some suggestion the Australian laws may have been effective in reducing the number of gang members, [20] though as noted above this has not reduced the incidence of crime. As gang membership numbers likely fluctuated in Australia due to displacement between jurisdictions,[21] rather than a significant decline in actual membership, it is uncertain whether the same effect would be seen in New Zealand, where a single jurisdiction covers the entire territory.

4.7 The evidence regarding the effectiveness of anti-gang laws in Australia is lacking in both quality and quantity. It is evident, however, that crime statistics have not decreased, and reports of misuse of the laws are high. This indicates that the intended improvement in public safety through the targeting of gangs has not been achieved.

Review of the Act's operation

4.8 In light of the above, and in the interests of post-legislative scrutiny and legislative stewardship, if the Bill is to proceed the Law Society recommends the addition of a review clause, requiring a post-implementation review of the Act, how it has been applied (and to whom), and whether it has been effective in meeting its objectives. We note in the RIS that the Ministry intends to undertake a review in the course of its ordinary regulatory stewardship,[22] though is not currently *required* by the Bill.

5 Parts 1- 4 of the Bill

Part 1 – Preliminary Provisions

5.0 The definition of "immediate family" as described in the Bill risks being applied in a Western-centric way that may be to the detriment of Māori and Pacific communities. While the definition can accommodate a person's whānau or culturally recognised group,

[18] Law Enforcement Conduct Commission, NSW *Review of the operation of the amendments to consorting laws under Part 3A Division 7, of the Crimes Act 1900* (Law Enforcement Conduct Commission, February 2023) at 5.1.

[19] Queensland Government *Taskforce on Organised Crime Legislation Report* (2016) at 216.

[20] Lorana Bartels, Max Henshaw, Helen Taylor "Cross-jurisdictional review of Australian legislation governing outlaw motorcycle gangs" (2021) 24 Trends in Organized Crime 343 at 351.

[21] Paragraph 67, Regulatory Impact Statement. See also: Associate Professor Mark Lauchs (University of Queensland) speaking to Newsable, reported by Imogen Wells, 'Australian expert warns against elements of government's proposed gang laws' (27 February 2024), accessed via https://www.stuff.co.nz/politics/350192403/newsable-australian-expert-warns-against-elements-governments-proposed-gang-laws

[22] Page 49.

the addition of a 'close relationship' requirement is highly subjective and may undermine what appears to be intended by this definition.

5.1 The definition of "immediate family" is relevant to both dispersal notices and non-consorting orders (see clauses 15(a) and 22(a)) and could be of great consequence. In the case of dispersal orders, it will be practically challenging for police to make such highly nuanced assessments when exercising such a discretion. Police views may be at odds with suspected gang members' genuine beliefs about who are their family members. This may engender grievance that is corrosive to the objective of reducing gang membership, and increase societal marginalisation which in turn cements members' affiliations to gangs as a means of belonging.

Part 2 – Prohibition on display of gang insignia in public places

5.2 The Bill provides in clause 7(1) that "a person commits an offence if the person, without reasonable excuse, displays gang insignia at any time in a public place."

5.3 The definition of 'gang insignia' is:

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

(b) *Includes any item or thing to which a sign, symbol, or representation referred to in paragraph (A) is attached or affixed (for example, clothing or a vehicle).*

Strict Liability Offence

5.4 The Law Society notes the offence is one of strict liability, with a defence of reasonable excuse. This contrasts with breaching a dispersal notice, which states that "*a person commits an offence if the person...(b)* ***knowingly****, and without reasonable excuse, associates with a named person in a public place during the period in which the notice is in effect.*"

5.5 The Minister agreed to amend the dispersal notice provision, so that a dispersal notice must be *knowingly* breached.[23] However, no change was made to the gang insignia provisions.

5.6 In the Law Society's view, the gang insignia offence should also be amended, so that the defendant must <u>both</u> knowingly display insignia, and know it to be gang insignia. Strict liability offences are typically not appropriate for criminal offences, and the Legislation Guidelines are clear that criminal offenc should include a *mens rea* (mental) element unless there are compelling policy reasons otherwise.[24] A strict liability offence will typically limit the right to a presumption of innocence (section 25(c) of the Bill of Rights). The Law Society considers the potential term of imprisonment, combined with the vagaries of the provision and the limited efficacy of such provisions (see above), means such limitation is not justified in this instance.

5.7 It is possible to see circumstances where this provision could be applied to those who unknowingly breach its provisions. For example:

---

23 Regulatory Impact Statement at para 208.

24 Legislation Design and Advisory Committee, Legislation Guidelines (2 November 2021), at 24.3.

(a) A person wears supporter clothing, without being aware it is supporter clothing. For example, an Eastside top, as depicted in **Appendix 3**. These items of "support" carry hidden meanings known only to gangs (and Police) in many cases. The wider public would be unaware of these meanings and may purchase and wear these items without knowledge of their hidden meaning.

(b) A gang member attends an event wearing a patch, thinking it is in a private location, when unbeknownst to them the event is actually in a location open to the public at the relevant period and so is a 'public place.'

5.8 It is unclear from the drafting of the legislation whether the above examples might involve 'reasonable excuses'. Given that a term of imprisonment can be the outcome of conviction of this offence, it is appropriate that such circumstances would be considered as elements of the offence to be proven by the prosecution (i.e. that the defendant wore gang insignia knowingly), rather than as a reasonable excuse to be established by the defendant.

5.9 Even if Parliament intended the provision to be a *prima facie* strict liability offence, a *Hansen*-consistent Bill of Rights interpretation could read in intent as an element in the absence of clear statutory wording that it is intended to be strict liability.[25] It is not unusual for the courts to read in a mental element to an offence.

5.10 The Law Society recommends the Bill (if passed) should read: "a person commits an offence if the person, without reasonable excuse, **knowingly** displays gang insignia at any time in a public place." For the avoidance of doubt, the provision could also specify that an offence is not committed where the individual is unaware that the insignia displayed is gang insignia.

Supporter clothing

5.11 The Bill's definition of gang insignia is wider than simple patches. It also covers signs and symbols that denote 'support for a gang.' Presumably, this is to deal with so-called 'supporter clothing.'

5.12 Supporter clothing is clothing worn by members of the public who are not members or prospects but are nonetheless supporters of the gang. This can include partners. Such clothing is sold by gangs. Some examples are provided in **Appendix 3** below.

5.13 In some cases, it is normal practice for persons to adopt public symbols of another legitimate organisation as part of showing their association with a gang. An example of this is members of the Kings Cobras wearing Kansas City Chiefs apparel (image 4 in **Appendix 3**), including to court.

5.14 The issue here is what 'commonly displays' means. Amongst gang members, it may be 'common' to display these symbols. However, amongst the general public, it is not common or commonly known, and indeed we doubt that many know what they mean.

5.15 The Law Society considers the legislation could be simpler and clearer (and easier to enforce) if the 'support' component of the definition is removed and the definition applies to patches rather than general supporter clothing. The purpose of the legislation

25 *R v Hansen* [2007] NZSC 7.

is to prevent advertising of gang membership to the public at large. As such, 'coded' clothing does not need to be captured: it is only if you already know the hidden messaging behind the clothing that support is understood.

Substitution of patches with tattoos

5.16 The prohibition of gang insignia does not cover tattoos. For the avoidance of doubt, the Law Society agrees the prohibition **should not** cover tattoos.

5.17 However, an unintended consequence of not criminalising tattoos may be that gangs are increasingly likely to turn to facial tattoos as a sign of membership. A further unintended consequence may be that, where gangs do turn to tattoos as a sign of membership, it would make it more difficult for a gang member to leave a gang. This would be counter-productive to the objective of the legislation.

5.18 It is currently possible for a gang member to 'turn in their patch.' Sometimes this involves being 'taxed' or 'beaten out,' but it is possible. However, should the legislation cause gangs to turn to facial tattooing as a way around the prohibitions, a laser removal technician has pointed out the increased difficulty, saying that gang attitudes towards facial tattoos are best expressed as "give me your face and I'll have them for life."[26]

5.19 A facial tattoo is not easily removed. It is in effect, a patch that a person wears 24/7. It pushes them away from conventional employment, and into the criminal underworld due to the inability to live a normal life. These reforms may therefore have the unintended consequence of reinforcing gang membership rather than discouraging it.

5.20 The Law Society suggests that if the legislation passes, funding for tattoo removal should be considered. It needs to be considered in a wider context than just those in prison or under a Corrections sentence. It would be preferable to fund a gang member to remove their facial tattoo if they wish to leave a gang before they commit a serious criminal offence, than to wait for them to commit an offence and obtain funding through a Corrections scheme.

Part 3 – Dispersal notices and non-consorting orders

Subpart 1 – Dispersal Notices

5.21 The dispersal notice provisions confer a large degree of discretion and power on Police officers, which infringes an individual's right to freedom of association and peaceful association, and subjects that individual to a potential term of imprisonment.

5.22 It is unclear what is meant by 'disrupting other activities' in clause 9, and no definition or examples are provided in the Bill. The Law Society recommends the term be defined in some way to avoid doubt, and abuse of power.

5.23 The Bill establishes the trigger point for issuing a dispersal notice. It is not necessary for the person to be a gang member; rather, it is sufficient for a constable to have reasonable grounds to suspect that the individual is a gang member.

---

[26] Jeremy Wilkinson "Corrections budgets $100k for prisoner tattoo removal" *The New Zealand Herald* (online ed, Palmerston North, 24 September 2023)

5.24 Further, there is a risk these provisions will be enforced in a discriminatory manner. Previous evidence indicates there is an unconscious bias among police officers in New Zealand towards certain populations, and in particular Māori.[27] The evidence from Australian authorities also identifies that dispersal notices and non-consorting laws continue to be applied in a discriminatory fashion by police officers.[28]

Effect of dispersal notice

5.25 A dispersal notice must specify the 'public place' the subject person(s) must leave.

5.26 This raises practical issues, one being the risk of inconsistent practice amongst constables in the specificity of the 'public place' detailed in the notice. Individuals must be capable of identifying the precise area to which the notice pertains. Unless large numbers of review applications are received, it may be difficult for Police to identify areas of poor practice, exposing individuals to unnecessary risk of infringement.

5.27 Further, clause 12(2)(b) provides that a person issued a dispersal notice must then go 'beyond a reasonable distance' from the specified public place. This seems open to misunderstanding or subjective understanding, as it is not clear what a reasonable person would consider 'beyond a reasonable distance' to mean. This places individuals at risk of unintentionally breaching their dispersal notice, and subject to a potential sentence of imprisonment. Conversely, those issued with a dispersal notice can presumably just reconvene elsewhere in public.

5.28 Overall, it is unclear what harm is being addressed by a dispersal notice, that cannot already be more effectively addressed, if the individuals concerned are in fact causing harm. There are existing offences for breaching the peace, damage of property, threatening behaviours, obstruction of public access, and the like.

Review and variation of dispersal notices

5.29 Clause 18 proposes a review process for persons issued with a dispersal notice. Where the subject of a dispersal notice believes the notice was not validly issued in accordance with the requirements set out in the Bill, they may apply to the Commissioner of Police for review. Similarly, the subject of a dispersal order may, under clause 16, apply to a qualified constable for variation of the notice to allow attendance at a tangi, funeral, or other specified lawful activity.

5.30 Both clauses provide the decisions must be made and communicated within 72 hours of the application being made. In the case of an application under clause 16, the dispersal notice will cease to have effect if this timeframe is not met. In the case of an application for variation under clause 16, there is no such consequence.

---

[27] *New Zealand Police Tactical Options 2019 Annual Report* (2019) at 44; *New Zealand Police Environment and Response Operational Capability Annual Report* (2022) at 102-110; *Office of the Privacy Commissioner and the Independent Police Conduct Authority Joint Inquiry by the Independent Police Conduct Authority and the Privacy Commissioner into Police Conduct when photographing members of the public* (Wellington, September 2022) at 27.

[28] Above, n 17.

5.31 The Law Society supports the provision of a review process, and the ability to seek variation of the notice. However, we note several substantive concerns with the processes proposed in the Bill:

(a) Review by the Police Commissioner under clause 18 is not a particularly independent process, and it seems likely (and practical) that responsibility for that decision will be delegated by the Commissioner. Were this process applying to a decision with a longer lifespan than a dispersal notice, review by the Commissioner would be a sensible *first* step. As it stands, the ability to apply for review, and then make a complaint about the outcome of that review, is likely to be challenging within the 7-day period for which the notice applies. Given the wide discretionary power given to Police under clause 9, and the availability of only a limited review (validity) by the same institution under clause 18, decisions about who will undertake the review, including where are they located in structure and physically, will require consideration. The Law Society encourages the Commissioner of Police to ensure there is operational independence for those reviewing. Some independent oversight (see below) is still needed.

(b) The ground of review under clause 18 is validity of issuance. We recommend this is extended to enable the Commissioner of Police to revoke a notice where satisfied that the individual subject to the notice is not in fact a gang member. Currently, a notice could be validly issued by a constable if they have reasonable grounds to suspect the person is a gang member. The validity of the notice does not depend on the person actually being a gang member. If the Australian experience is reflected in Aotearoa, we will see large numbers of dispersal notices issued to non-gang members. Such individuals may justifiably feel aggrieved or inappropriately labelled, and it is fair that they should be able to seek revocation of the order in such circumstances.[29] We note here that review of validity should encompass all requirements under clauses 9, 10, 14 and 15.

(c) There is currently no provision for review where a decision is made by a constable not to vary a dispersal notice following application under clause 16. The level of decision making under this provision means it may be more susceptible to bias, particularly where constables are required to make decisions about individuals who they have had multiple, potentially challenging, interactions with. This, coupled with the seriousness of an individual missing a significant funeral or tangi, suggests a level of oversight is required.

(d) It is unclear whether, in the circumstances of both clause 16 and clause 18, it is anticipated that decisions by a constable or the Commissioner of Police would fall within the jurisdiction of the Independent Police Conduct Authority (**IPCA**). The functions of IPCA are premised on receiving complaints alleging misconduct or neglect of duty, or complaints concerning practice, policy, or procedure.[30] As it will be a decision that is challenged, rather than a pattern of practice, a policy, or

---

[29] We note it may be challenging for an individual subject to a dispersal notice to prove a negative – that they are not a gang member. Police will need to consider these applications fairly and reasonably.

[30] Independent Police Conduct Authority Act 1988, section 12(1)(a).

a procedure, it is not clear this would fall within the latter. Disagreement with such decisions may also not be seen to reach the threshold of misconduct or neglect of duty. The decisions would also be outside of the jurisdiction of the Ombudsman, leaving no accessible form of independent oversight. The Select Committee may wish to consider clarifying this point.

5.32 There are also several practical considerations we recommend addressing:

(a) The process of applying for review or variation of a dispersal notice must be capable of meeting the needs of individuals with limited access to technology, varying levels of literacy, and disability. A written requirement may impede access to this process. While we hope Police will adopt a simple and accessible process for applications, with multiple available methods of entry to that process, we also recommend amending clauses 16 and 18 to allow for an application to be made verbally, where required for reasonable accommodation or other practical purposes.

(b) Where a person subject to a dispersal notice seeks variation of the notice in order to attend, for example, a funeral, the 72-hour period may be too long, and a person may be left in a position of being unable to attend due to delay. The Law Society recommends that as this provision is aimed at attendance of time-sensitive events, it is appropriate to shorten the timeframe specified in clause 16.

(c) Operationally, a person who is subject to a dispersal notice may not necessarily be able to identify a 'qualified constable' in order to apply for variation of the notice under clause 16. It is not clear if what is intended by this provision is that individuals would approach constables with written requests, or be required to direct emails to them. The Law Society notes this may be challenging in already stressful circumstances, and a process that is too prescriptive may render this provision futile for some individuals.

Subpart 2 – Non-consorting Orders

5.33 Clause 19 sets out that the District Court *must* on hearing an application make a non-consorting order in respect of a person if it -

(a) Has given notice of the application and the hearing to the person; and

(b) Is satisfied that the person is a specified gang offender, the order would specify another specified gang offender or offenders with whom the person may not consort and the order would assist in disrupting or restricting the capacity of the person to engage in conduct that amounts to a serious offence.

5.34 The Law Society is concerned the process only requires that 'notice' of the application and hearing has been given to the person, rather than personal service. We recommend that personal service is required, given the significance of the order that may be made.

5.35 Further, the Law Society considers that the phrase in clause 19(1)(b) "*assist in disrupting or restricting the capacity of the person to engage in conduct that amounts to a serious offence*" needs further definition. The use of the word 'assist' is particularly vague, and likely redundant. There is a wide range of assistance in terms of disrupting or restricting

someone's capacity to engage in criminal conduct. We recommend removing the word 'assist' from the phrase.

5.36 Similarly, the Law Society recommends further consideration of the term 'capacity.' Logically, every person has the capacity to engage in serious offending of some description. Presumably what is intended here is the disruption of an individual's capacity to engage in serious offending with the other person(s) specified in the order. To provide some measure of clarity, we recommend the addition of terms to this effect.

Clauses 26 and 27 – standard of proof

5.37 Clause 26 provides that proceedings in respect of non-consorting orders, other than the offence provisions, are civil proceedings. Clause 27 then provides that decisions pertaining to a question of fact in proceedings under the Bill will be decided on the balance of probabilities instead of the usual criminal standard (beyond a reasonable doubt). An exception is made for the offence sections, where the criminal standard applies.

5.38 The impact of this is that, if facts must be proven by the Commissioner of Police to establish that an order is necessary to disrupt a specified gang offender from engaging in serious offending with another, those facts need only be established on the balance of probabilities (so, the order must be 'more likely than not' to disrupt offending). This seems likely to be a fertile area for dispute, given the consequences of an order (including its restriction on communications entirely unrelated to offending), the duration for which it applies, and the potential penalties for breach.

5.39 The Law Society recommends the Select Committee consider amending the standard of proof to beyond a reasonable doubt, or otherwise consider greater specificity around what is required to justify the making of an order under clause 19(1)(b)(iii).

6 Part 5 of the Bill

Part 5 – Sentencing Act Amendments

6.0 The proposed purpose of the amendments to the Sentencing Act 2002 is to replace the aggravating factor set out in section 9(1)(hb) with a new provision that removes the requirement for the court to establish the nature and extent of any connection between the offender and the offender's participation in an organised criminal group (within the meaning of section 98A of the Crimes Act 1961), to ensure that consideration of a person's gang membership as an aggravating factor in sentencing is not unduly limited.

Amendment of section 9(1)(hb)(i)

6.1 The Law Society considers that section 9(1)(hb)(i) as proposed in the Bill is without merit, given the incorporation of the definition of an organised criminal group from section 98A of the Crimes Act 1961. That is:

A group of 3 or more people who have as their objective or one of their objectives:

(a) *obtaining material benefits from the commission of offences that are punishable by imprisonment for a term of 4 years or more; or*

(b) *obtaining material benefits from conduct outside New Zealand that, if it occurred in New Zealand, would constitute the commission of offences that are punishable by imprisonment for a term of 4 years or more; or*

(c) *the commission of serious violent offences; or*

(d) *conduct outside New Zealand that, if it occurred in New Zealand, would constitute the commission of serious violent offences.*

6.2 The purpose of the amendment is said to be to eliminate the need for proof of contributory conduct as outlined in section 98A.[31] However, the Law Society suggests that we should examine how the provision in section 98A has been utilised in New Zealand to understand its practical impact.

6.3 Prosecutions under section 98A have so far focussed on individual criminal organisations (e.g. drug dealing syndicates) rather than gangs. Recent academic research in New Zealand has identified that section 98A, enacted in 1998, has been used more often against individuals with gang affiliations than those without. On average, 59.8% of those charged under this measure are affiliated with a gang. However, the fact that almost 40% of people charged with this offense were not affiliated with a gang at all indicates significant non-gang participation in organized criminal activities.[32] The disparate nature of New Zealand gangs means that proving an 'overall objective' of the group is difficult. Gangs have criminals within them, but do not function themselves as criminal groups.[33]

6.4 A relevant example of this is the 'Ghost Unit' group of the Head Hunters, responsible for the kidnapping of Jindarat Prutsiriporn, and which was operating as a semi-mercenary style criminal group. This was a sub-group of Head Hunters, rather than the chapter of the Head Hunters themselves.[34] It may be that this particular group would qualify as an organised criminal group, but not the chapter or gang.

6.5 To date, organised criminal group membership has been proved by reference to the crime itself (by being an offence charged together with other related criminal offending). The court considers whether membership has been proven by reference to the criminal conduct in question. The object of the proposed amendment is to make this wider, by making membership by itself an aggravating factor.

6.6 Accordingly, in applying the amendment, the new aggravating factor would not deal with the members of this 'Ghost Unit' (an accepted organised criminal group who are charged with unrelated offences) as the purpose of the amendment suggests.

6.7 This is because if the existence and membership of the group has not been (and does not have to be) proven by reference to previous proceedings, the problem the courts will face is that section 24 of the Sentencing Act 2002 (proof of disputed facts) requires that if an aggravating factor of the offender, such as organised criminal group membership is

---

31 Gangs Legislation Bill, Explanatory Note, p 1.

32 Jarrod Gilbert *Making Gang Laws in a Panic: Lessons from the 1990s and Beyond* (New Zealand Law Foundation, May 2022) at 34-35.

33 Jarrod Gilbert *Patched: The History of Gangs in New Zealand* (Auckland University Press, 2013).

34 *R v Liev* [2017] NZHC 2253.

disputed, that factor has to be proven beyond reasonable doubt by the prosecutor. Subsequently, membership would have to be proven at a disputed facts hearing.

6.8 At the disputed facts hearing both membership and that the group is an organised criminal group will have to be proved. Proving this is likely to take much time, and many resources. This is because admissible evidence will have to be proven of the criminal activities of the group (making it a 'trial within a trial').

6.9 In short, proof that a defendant is a member of a gang is unlikely to be sufficient for this aggravating factor. It is not as simple as showing that a defendant has a patch.

6.10 Organised criminal groups are constantly changing. For example, would the above 'Ghost Unit' remain operational after everyone is sentenced to imprisonment given the inability to carry out criminal objectives? If it does remain operational, has the defendant remained a member in this group?

6.11 A further evidential obstruction is likely to be that most Police intelligence about organised criminal groups and gangs is gathered for intelligence purposes, and are in a form that is unusable in court proceedings, for example, hearsay, confidential informants, and overall rumour and gossip. Given the requirements of section 24 of the Sentencing Act 2002, it would have to be proven to the criminal standard, and it is questionable whether in many cases this will be able to be done.

6.12 The RIS[35] suggests potential cost savings as a result of these changes:

(a) "Sentencing hearings where the aggravating factor may take less time as Judges no longer need to consider the nature and extent of the link between gang membership and the offending;" and

(b) "Decrease in prosecution costs resulting from lower threshold and no longer needing to tie offending directly to the offender's participation in an organised criminal group."

6.13 The Law Society considers these are not likely outcomes. Rather, proof of the aggravating factor is likely to delay proceedings, requiring evidence of the underlying criminal activity to show that an organised criminal group is an organised criminal group.

6.14 The Law Society proposes that it is more likely that:

(a) In cases where prosecutors can prove involvement, a section 98A charge would likely be laid, making the aggravating factor superfluous; or

(b) In cases where they cannot prove involvement and push comes to shove, many prosecutors would likely agree for the purposes of section 24 Sentencing Act 2002 that membership of an organised criminal group cannot be made out beyond reasonable doubt.

Amendment of section 9(1)(hb)(ii)

6.15 Finally turning to section 9(1)(hb)(ii), this proposed aggravating factor appears to deal with groups that are not organised criminal groups, but are 'organised criminal

[35] Regulatory Impact Statement at p 88.

associations'. The Bill does not define this term and it is unclear what the purpose of this additional sub-section is. A definition would be useful.

6.16 If the purpose is to capture defendants that cannot be definitively shown to be members of an organised criminal group, it would fail on this count. It is difficult to see what this sub-section adds to sub-section (i), and the same problems encountered and discussed in relation to (i) would arise.

6.17 If the purpose is that sub-section (ii) is meant to be applied to gangs themselves (as opposed to subgroups within gangs) some further issues arise. Arguably, if the wording is to be interpreted as 'gangs' then it does infringe on the right to freedom of association in the Bill of Rights. A Bill of Rights consistent analysis would suggest that the interpretation of the meaning in the legislation is more strict than mere gang membership, and if Parliament had intended it to be applied in this way, then more strict wording would have been given.

6.18 The Law Society recommends the removal of the Sentencing Act amendments proposed as they will not have the practical effect intended and may serve to significantly increase delays in the sentencing process.

7 Recommendations

7.0 The Law Society recommends the Select Committee consider the following amendments to the Bill:

(A) Addition of a review clause, requiring mandatory post-implementation review of the Act, how it has been applied (and to whom), and whether it has been effective in meeting its objectives.

(B) Amendment of clause 7(1) to read "a person commits an offence if the person, without reasonable excuse, **knowingly** displays gang insignia at any time in a public place."

(C) Removal of the 'support for a gang' component of the *gang insignia* definition.

(D) Amendment of clause 9 to better define or provide context to the term 'disrupting other activities.'

(E) Addition of a clause specifying that those under the age of 18 cannot be served with a dispersal notice.

(F) Expansion of the review grounds in clause 18 to include revocation where the Commissioner of Police is satisfied that the individual subject to the notice is not in fact a gang member.

(G) Clarifying the independent oversight arrangements for the issuance and review of the validity of dispersal notices.

(H) Amendment of clauses 16 and 18 to allow for a review or variation of dispersal notice application to be made verbally where required for reasonable accommodation or other practical purposes.

(I) Amendment of clause 16 to shorten the timeframe specified, to allow for decisions to be made in time for attendance at time-sensitive events such as tangis and funerals.

(J) Addition of a requirement in clause 19 specifying that people under the age of 18 cannot be subjected to non-consorting orders.

(K) Amendment of clause 19 to require personal service of the application for a non-consorting order.

(L) Amendment of clause 19(1)(b) to remove the word 'assist'.

(M) Further consideration of the term 'capacity' in clause 19(1)(b) with addition of terms to reflect that the 'capacity' referred to is in respect of the person's ability to offend with the other 'specified gang offender' named in the order.

(N) Consideration of an amendment to the standard of proof for non-consorting orders to that of the ordinary criminal standard, or otherwise consider greater specificity around what is required to justify the making of an order under clause 19(1)(b)(iii).

(O) Removal the clauses amending the Sentencing Act 2002.

(P) If the Bill proceeds, define the term *organised criminal association* in respect of the proposed amendment to section 9(1)(hb)(ii) of the Sentencing Act 2002.

Frazer Barton
President

Appendix 1: Current legislation in Australia

1. Current legislation in Australia is discussed below, in reference to the proposed reforms indicated by the Bill. Due to time constraints, not all states' legislation has been reviewed. Where possible, preference to comparison with the WA regime is given as this has been noted to be the basis for the Bill.

Gang Insignia Bans in Australia

2. In Victoria, through the use of 'control orders' made by the Court, an individual or a 'declared organisation' can be prohibited from wearing or displaying the patches or insignia of the organisation.[36] Contravention of a control order has a maximum penalty of 600 'penalty units'[37] and/or a 5-year imprisonment term.[38] This is a more limited prohibition on the ban of gang insignia than the Bill proposes to implement.

3. In WA, the gang insignia ban prohibits the display of gang insignia in public places. The definition of public place in the legislation is largely similar to that of the definition in the Bill. The significant difference in definition is that the WA law does not specifically reference online forums not being a 'public place' where the Bill does, and the WA law prescribes that places only gang members can enter are not public places, but the Bill does not.[39]

4. The insignia definition provided by each jurisdiction differs in that WA does not include a reference to signs and symbols of 'support' in the definition.[40]

5. The offence of displaying or wearing insignia in a public place differs slightly between the two jurisdictions. WA includes tattoos as a display of insignia that constitutes an offence and includes a place that is merely 'visible' to the public (s 24). The Bill does not purport to include a place 'visible' to the public and has specifically excluded tattoos from the definition of 'gang insignia.'

6. The penalty for the offence of displaying gang insignia in a public place in WA is more than twice the proposed penalty in the Bill. However, it is of note that both jurisdictions include a potential term of imprisonment as punishment. The penalty in WA does not apply to a person under 18, and a body corporate can be convicted and fined.[41] These situations do not appear in the Bill.

---

36 Section 45(2)(d) Criminal Organisations Control Act 2012 (Vic).

37 Penalty units are a distinct unit of measurement, generally denoting the amount of a fine set by the Victorian Government each year. For the 2023/2024 year, one penalty unit is equivalent to $192.31: https://www.justice.vic.gov.au/justice-system/fines-and-penalties/penalties-and-values

38 Section 68 Criminal Organisations Control Act 2012 (Vic).

39 Criminal Law (Unlawful Consorting and Prohibited Insignia) Act 2021 (WA); Gangs Legislation Amendment Bill

40 Section 22, Criminal Law (Unlawful Consorting and Prohibited Insignia) Act 2021 (WA).

41 Section 25, Criminal Law (Unlawful Consorting and Prohibited Insignia) Act 2021 (WA).

7. Exceptions and defences to the prohibition contained in WA law include the defence of ignorance (not knowing the insignia was that of an identified organisation) which is notably lacking from the Bill.[42]

8. Lastly, WA law does not require forfeiture of the insignia like the Bill, rather it only requires that the insignia must be removed or modified.[43] There is also no provision stipulating that the Crown may destroy the insignia.

Non-Consorting Orders in Australia

1. Part 5A of the Criminal Organisations Control Act 2012 sets out the Victorian anti-association laws.[44] An initial unlawful association notice can be served by a senior police officer who has *reasonable belief* that the served person has associated with a convicted offender and the commission of an offence is likely to be prevented by serving the notice. The specific name of the person whom the served person must not associate with must be included. An unlawful association notice requires that the served person not associate with the specified person on more than 3 occasions in 3 months, or 6 occasions in 12 months. The maximum penalty is 360 penalty units and/or imprisonment for 3 years. Exceptions apply, including one for genuine political purposes, protest, or industrial action.

2. In SA, significant non-consorting laws are in place. There are 3 types of these laws. The first (and most restrictive) are control orders; the second are summary offences; and the third is specific to serious and organised crime.

3. The prohibitions and extent of a control order in SA are more significant than the Bill's non-consorting orders. [45]

4. The Summary Offences Act 1953 (SA) provides non-consorting laws that make it an offence to consort with particular people. The provisions require that an offender consorts with a convicted offender on at least 2 occasions and has been officially warned by Police about each of those offenders. The maximum penalty is 2 years imprisonment.[46]

5. There are also 4 anti-association offences in the Serious and Organised Crime (Control) Act 2008 (SA). These range from permitting premises to be habitually used by members of a 'declared organisation' to associating with a person you know to have been convicted of an indictable offence 6 or more times in a year if you also have been convicted of an indictable offence. The maximum penalty ranges from 2 years imprisonment for the lesser offences to 5 years imprisonment for the more serious offences.[47]

---

[42] Section 26, Criminal Law (Unlawful Consorting and Prohibited Insignia) Act 2021 (WA).
[43] Section 34, Criminal Law (Unlawful Consorting and Prohibited Insignia) Act 2021 (WA).
[44] Criminal Organisations Control Act 2012 (Vic) found here: /https://content.legislation.vic.gov.au/sites/default/files/2023-11/12-80aa016-authorised.pdf
[45] Sections 22 and 22I Serious and Organised Crime (Control) Act 2008 (SA).
[46] Section 13 Summary Offences Act 1953 (SA).
[47] Sections 34A and 35 Serious and Organised Crime (Control) Act 2008 (SA).

6. Dispersal notices in WA require a police officer to 'reasonably suspect' a person is a gang member, of or over the age of 18, and has been or is consorting with another gang member of or over the age of 18 where a dispersal notice has not already been issued.[48]
7. The primary differences between dispersal and non-consorting notices in WA are the class of people upon whom they can be served ('restricted persons' for the former, and 'relevant offenders' for the latter), as well as the officer's consideration of whether or not the consorting may lead to criminal conduct (for non-consorting notices only).[49]
8. In both, the person must be of or over 18 years of age. The WA legislation is preferable to the Bill in this respect, as it explicitly removes the ability to use the notices against youth. Youth, along with indigenous populations, have frequently been targets of the use of dispersal and non-consorting notices in NSW.[50] The NSW Ombudsman recommended that the consorting law be amended to "remove children and young people aged 17 years or less from the application of the consorting law."[51]
9. The penalties for breaching dispersal notices in WA are more than those of the proposed penalties in the Bill. That is 12 months imprisonment and a fine of $12,000 for breaching a dispersal notice. The penalty for non-consorting notices is the same.[52]
10. A further distinction to make between the two jurisdictions is that a non-consorting order per the Bill must be made by the Court on application by the Commissioner of Police, not by a police officer who 'considers it appropriate' as in WA.[53]

Sentencing in Australia

11. Aggravating factors are not explicitly listed in Australian sentencing legislation in some states, leaving their determination instead to the common law. This is the case in WA. The law reforms in 2021 in WA did not change sentencing provisions. That said, there are some provisions for increased penalties and a mandatory minimum sentence due to association with or commission of a crime for the benefit of gangs.
12. In SA, there are general criminal laws that apply to criminal activity done to benefit a criminal organisation. This means that the offending will be aggravated, and aggravated offences attract higher penalties.[54] An example of that is where the Controlled Substances Act 1984, a person who is convicted of drug offences which benefit a criminal organisation is also subject to a higher penalty as the offending is considered an 'aggravated offence'.[55]

---

[48] Section 36 Criminal Law (Unlawful Consorting and Prohibited Insignia) Act 2021 (WA).

[49] Sections 9 and 36 Criminal Law (Unlawful Consorting and Prohibited Insignia) Act 2021 (WA).

[50] Law Enforcement Conduct Commission, NSW *Review of the operation of the amendments to consorting laws under Part 3A Division 7, of the Crimes Act 1900* (Law Enforcement Conduct Commission, February 2023), 5.1; NSW Ombudsman *The consorting law: Report on the operation of Part 3A, Division 7 of the Crimes Act 1900* (NSW Ombudsman, April 2016) at 4 and Ch 8.

[51] NSW Ombudsman *The consorting law: Report on the operation of Part 3A, Division 7 of the Crimes Act 1900* (NSW Ombudsman, April 2016) at 8.3.6.

[52] Sections 17 and 42, Criminal Law (Unlawful Consorting and Prohibited Insignia) Act 2021 (WA).

[53] Section 9(1)(c) Criminal Law (Unlawful Consorting and Prohibited Insignia) Act 2021 (WA).

[54] Section 5AA Criminal Law Consolidation Act 1935 (SA).

[55] Section 43 Controlled Substances Act 1984 (SA).

13. In WA, section 9C of the Sentencing Act 1995 provides that a court dealing with offences committed at the direction of, or in association with a declared criminal organisation must sentence with the principal objectives of denouncing the activities of the criminal organisation and its members and associates and protecting the community from harm.[56] The discretion of the choice of sentencing principle to be applied has been removed, which would have the practical effect of increasing the sentence.
14. Section 9D of the Sentencing Act 1995 (WA) provides that a mandatory minimum sentence must be applied where the offence was committed whilst the offender was a member of a criminal organisation and imports a presumption that the offender committed the offence for the benefit of or at the direction of the criminal organisation unless rebuttal evidence is provided.[57] This represents a shift in the burden of proof, where a more severe penalty is imposed unless it is proven that the presumed circumstances for the harsher penalty do not exist. Sections 9C and 9D were the result of amendments made in 2012.
15. As with the dispersal and non-consorting notices section of the laws, it is explicitly stated that the increased penalties do not apply to persons aged under 18.[58] As with the dispersal and non-consorting laws, this is a preferable addition to the proposed Bill, which does not specify that youth offenders cannot be given a higher penalty nor subject to non-association and non-consorting orders.

Summary Comparison Table

16. Table comparison of the types of anti-gang laws imposed in Australia, by state, by reference to the proposed types of laws in the Bill.

	ACT	**CTH***	**NSW**	**NT**	**QLD**	**SA**	**TAS**	**VIC**	**WA**
NON-CONSORTING ORDERS	X	X	X		X	X	X	X	X
INSIGNIA RESTRICTIONS			X	X	X	X	X	X	X
INCREASED POLICE POWERS	X	X	X	X	X	X		X	X
SENTENCING	X				X	X			X

*CTH stands for Commonwealth laws (Australian Federal Law).

56 Section 9C Sentencing Act 1995 (WA).
57 Section 9D Sentencing Act 1995 (WA).
58 Section 9E Sentencing Act 1995 (WA).

Appendix 2: Comparison of crime statistics

1. Tables depicting the crime statistics in Australian states the year before the anti-gang laws were implemented where possible and since. Some states do not have raw statistical data available for review, so this is limited to the states that do post raw data. The categories of offences depicted are those that are most typically publicly associated with gang offending, for example, violence offences and drug offences.

Western Australia

2. Stronger anti-gang laws for Western Australia, which form the basis of the proposed Bill, were introduced in 2021. Below are the crime statistics from 2021 and since.[59]

OFFENCE CATEGORY	2021-22	2022-23	2023-24	PERCENTAGE CHANGE
SELECTED OFFENCES AGAINST THE PERSON	13,905	14,372	15,156	↑ 3.3% 2021-22 ↑ 5.5% 2022-23
FAMILY-RELATED OFFENCES	13,865	16,569	18,653	↑ 16.3% 2021-22 ↑ 11.2% 2022-23
SELECTED OFFENCES AGAINST PROPERTY	61,672	66,424	67,975	↑ 7.2% 2021-22 ↑ 2.3% 2022-23
TOTAL SELECTED OFFENCES AGAINST PERSON OR PROPERTY	89,442	97,365	101,784	↑ 8.1% 2021-22 ↑ 4.3% 2022-23
DRUG OFFENCES	10,042	11,031	12,193	↑ 9.0% 2021-22 ↑ 9.5% 2022-23

59 Data taken from: Western Australia Police Force "Crime Statistics" (31 Jan 2024) Western Australia Police Force < https://www.police.wa.gov.au/Crime/CrimeStatistics#/start >

Queensland

3. Queensland's latest reform of anti-gang laws was introduced in September 2016. Below are the state's crime statistics from 2016, 2021, and 2023.[60]

OFFENCE CATEGORY	2016	2021	2023	PERCENTAGE CHANGE
OFFENCES AGAINST THE PERSON	32,264	50,322	81,941	↑ 35.9% between 2016 and 2021 ↑ 38.6% between 2021 and 2023
OFFENCES AGAINST PROPERTY	215,019	223,577	293,800	↑ 3.8% between 2016 and 2021 ↑ 23.9% between 2021 and 2023
DRUG OFFENCES	90,731	70,795	62,855	↓ 28.2% between 2016 and 2021 ↓ 12.6% between 2021 and 2023

60 Data taken from: Queensland Police "Queensland Crime Statistics" myPolice Queensland Police News < https://mypolice.qld.gov.au/queensland-crime-statistics/ >

Victoria

4. The latest legislative reforms of anti-gang laws in Victoria were introduced in 2012. Crime statistics from 2011 are not accessible on the state's statistics website, so the statistics from 2014, 2021 and 2023 are used instead and still show a similar upward trend despite the anti-gang measures introduced.[61]

OFFENCE CATEGORY	2014	2021	2023	PERCENTAGE CHANGE
OFFENCES AGAINST THE PERSON	68,262	83,397	84,181	↑ 18.1% between 2014 and 2021 ↑ 0.9% between 2021 and 2023
PROPERTY AND DECEPTION OFFENCES	272,579	244,753	290,164	↓ 11.4% between 2014 and 2021 ↑ 15.7% between 2021 and 2023
DRUG OFFENCES	25,925	30,320	30,060	↑ 14.5% between 2014 and 2021 ↓ 0.9% between 2021 and 2023

[61] Data taken from: Victoria State Government "Recorded Offences" (March 2024) Crime Statistics Agency < https://www.crimestatistics.vic.gov.au/crime-statistics/latest-victorian-crime-data/recorded-offences-2 >

Appendix 3

Below are images of the types of signs and symbols that denote "support for a gang" that will be problematic if support items remain included in the Bill.

Image 1

Image 2

Image 3

Image 4