

Criminal Activity Intervention Legislation Bill

Government Bill

Explanatory note

General policy statement

The Criminal Activity Intervention Legislation Bill provides measures to address the harm caused by criminal activity, including that caused by gangs, and make communities safer. The Bill creates new powers and offences to better prevent and respond to harm caused by criminal offending, including that commonly associated with gang activities such as money laundering and dangerous behaviour on our roads. The targeted measures in the Bill are ultimately designed to make Aotearoa a safer place to live.

It is important that New Zealand's legislative framework supports the management of risks and prevention of the escalation of criminal activity, including that caused by gangs, and provides the New Zealand Police (the **Police**) with appropriate tools to respond to firearms offending and other criminal activities. It is also important that any new powers are focussed and proportionate to the behaviours that the Bill responds to.

The public has a right to feel safe and the provisions in this Bill should give New Zealanders confidence that the Police have appropriate powers to respond to gang and other criminal activity in a manner that is reasonable and having regard to the harm presented by such activities.

This Bill is introduced under Standing Order 267(1)(c), which permits a bill to be introduced as an omnibus bill if, as is the case, the Business Committee has agreed to the bill's introduction as an omnibus bill.

The amendments give effect to the Labour Party's 2020 Election Manifesto to, amongst other things, keep the pressure on tackling organised crime and gangs by ensuring Police and other enforcement agencies have the resources and powers to disrupt and prosecute relevant offending and seize the proceeds of crime.

All the proposed new powers are designed to deal with activities carried out by gangs, although some of the proposals are of wider application to other organised criminal groups or individuals engaging in unlawful activity.

The Bill amends—

- the Search and Surveillance Act 2012 to provide—
 - a new warrant power to search for and seize weapons during a gang conflict:
 - a new seizure power for cash found in suspicious circumstances and believed to be over \$10,000:
- the Crimes Act 1961 to include a new offence of discharging a firearm with intent to intimidate:
- the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 by prohibiting cash payments over a specified value for certain high value goods:
- the Land Transport Act 1998 to extend the circumstances in which vehicles can be impounded to respond to conduct that occurs during gang convoys, but also to apply more generally to other drivers reasonably believed to have committed a relevant offence.

The Police need effective, but proportionate, powers to disrupt criminal activity, including that perpetuated by gangs. This Bill responds to that need and will enhance community safety by providing clear legal authority for Police to intervene in and disrupt relevant criminal activity.

The Bill responds in a practical and meaningful way to criminal activities that are considered unacceptable by New Zealanders and does so in a way that is targeted and appropriately framed to counter the unlawful conduct that the Bill is designed to address.

Departmental disclosure statement

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

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2022&no=166>

Regulatory impact statement

A supplementary analysis report (**SAR**) has been prepared for this Bill instead of a regulatory impact statement. The Ministry of Justice produced an SAR on 25 August 2022 to help inform the main policy decisions taken by the Government relating to the contents of this Bill. A copy of the SAR can be found at <https://www.just->

ice.govt.nz/justice-sector-policy/regulatory-stewardship/regulatory-impact-assessments/.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause. It provides that the Bill comes into force on the day after the date on which it receives the Royal assent.

Part 1

Discharging firearm with intent to intimidate

Subpart 1—Amendments to Crimes Act 1961

Clause 3 provides that *subpart 1* amends the Crimes Act 1961 (the **principal Act**).

Clause 4 amends section 308 of the principal Act to remove from this offence provision (threatening acts) reference to intimidating or annoying by discharging a firearm in a dwellinghouse. This is because discharging a firearm anywhere with intent to intimidate is now dealt with in *new section 308A*, inserted into the principal Act by *clause 5*.

Clause 5 inserts *new section 308A* into the principal Act to provide that it is an offence for a person to discharge a firearm with intent to intimidate 1 or more other persons. A person convicted of this offence is liable to a term of imprisonment not exceeding 5 years.

Subpart 2—Amendments to Arms Act 1983

Clause 6 provides that *subpart 2* amends the Arms Act 1983 (the **principal Act**).

Clause 7 amends section 22H of the principal Act so that a person is disqualified from holding a firearms licence if within the previous 10 years they have been convicted, or been released from custody after being convicted, of an offence against *new section 308A* of the Crimes Act 1961.

Clause 8 amends section 39A of the principal Act so that when sentencing an offender aged 18 years or over who has been convicted of an offence against *new section 308A* of the Crimes Act 1961 a court may, under that section, make a firearms prohibition order against the offender.

Subpart 3—Amendment to Sentencing Act 2002

Clause 9 provides that *subpart 3* amends the Sentencing Act 2002 (the **principal Act**).

Clause 10 amends section 111A of the principal Act to provide that a court sentencing an offender aged 18 years or over for an offence against *new section 308A* of the Crimes Act 1961 may make a firearms prohibition order against the offender under Part 7A of the Arms Act 1983.

Subpart 4—Amendments to Search and Surveillance Act 2012

Clause 11 provides that *subpart 4* amends the Search and Surveillance Act 2012 (the **principal Act**).

Clause 12 amends section 45 of the principal Act to enable an enforcement officer to undertake trespass surveillance, and to use an interception device, in order to obtain evidential material in relation to an offence against *new section 308A* of the Crimes Act 1961.

Subpart 5—Amendment to Criminal Investigations (Bodily Samples) Act 1995

Clause 13 provides that *subpart 5* amends the Criminal Investigations (Bodily Samples) Act 1995 (the **principal Act**).

Clause 14 amends Part 3 of Schedule 1 of the principal Act to insert a reference to *new section 308A* of the Crimes Act 1961 (inserted by *clause 5*). The effect of this is that any person (including a young person) who is being detained for committing, or who is suspected of having committed, an offence against *new section 308A* of the Crimes Act 1961, may be requested, or required, to give a bodily sample for the purpose of confirming or disproving their involvement in the commission of the offence. Any DNA profile derived from the bodily sample may be stored in a DNA profile databank. Part 3 of Schedule 1 of the principal Act is also amended to update the item relating to section 308 of the Crimes Act 1961 to reflect the new heading to that section (replaced by *clause 4(1)*).

Part 2

Expanding power of enforcement officers to seize and impound vehicles

Clause 15 provides that *Part 2* amends the Land Transport Act 1998 (the **principal Act**).

Clause 16 amends section 96 of the principal Act to expand the powers of enforcement officers to seize and impound motor vehicles in response to offending. *New subsection (IAAB)* provides that an enforcement officer may seize and impound, or seize and authorise the impoundment of, a motor vehicle for 28 days if the officer believes on reasonable grounds that the driver has committed any of the following offences:

- driving recklessly (section 35(1)(a));
- driving dangerously (section 35(1)(b));
- driving carelessly and causing injury or death while speeding, overtaking, or improperly using the road (section 39(1)).

Clause 17 amends section 102 of the principal Act to provide that the owner of a motor vehicle seized and impounded under *new section 96(IAAB)* may appeal to the New Zealand Police (the **Police**) against the seizure and impoundment if the owner—

- did not know, and could not reasonably be expected to know, that the operator of the vehicle would contravene section 35(1)(a) or (b) or 39(1); or
- took all reasonable steps to prevent the operator of the vehicle from contravening section 35(1)(a) or (b) or 39(1).

Part 3

Warrants to search and seize weapons when there is gang conflict

Clause 18 provides that *Part 3* amends the Search and Surveillance Act 2012 (the **principal Act**).

Clause 19 amends section 6 of the principal Act so that the criteria for the issue of a search warrant set out in that section do not apply in respect of a warrant issued under *new section 18D* (inserted by *clause 20*).

Clause 20 inserts *new subpart 6A* into Part 2 of the principal Act (warrants to search and seize weapons when there is gang conflict). *New subpart 6A* comprises *new sections 18A to 18F*.

New section 18A is the interpretation section for *new subpart 6A* and sets out definitions of gang, gang conflict, gang insignia, gang member, and weapon.

New section 18B provides that, if a gang conflict exists, a constable may apply to a Judge for a warrant to search places and vehicles in an area for the purpose of locating and seizing any weapons found at, in, or on those places or in or on those vehicles.

New section 18C sets out the particulars that an application must contain, which include the names of the gangs involved in the gang conflict, a description of the area in which the search of places and vehicles is proposed to be conducted, the names of the gangs in that area involved in the gang conflict, the addresses of the places proposed to be searched, and the descriptions of the vehicles proposed to be searched.

New section 18D provides that, if a Judge is satisfied that a gang conflict exists, that there are gangs in the specified area in which the search of places and vehicles is proposed to be conducted that are involved in that conflict, and that the issue of a warrant may reduce the risk of harm to people or property, the Judge may issue a warrant authorising—

- the search of specified places and specified vehicles in the specified area for the purpose of locating weapons; and
- the seizing of any weapons found at, in, or on those places or in or on those vehicles.

The specified area may be the same area as that in which the gang conflict exists, part of the area in which the gang conflict exists, an area within the area in which the gang conflict exists, or an entirely different area.

The specified places and vehicles that may be searched are—

- places and vehicles that the Judge has reasonable grounds to suspect are owned, occupied, or used by 1 or more gang members of a gang specified in the warrant;
- places and vehicles that the Judge has reasonable grounds to suspect are owned, occupied, or used by 1 or other persons specified in the warrant who the Judge has reasonable grounds to believe are encouraging or assisting in the gang conflict.

The warrant may also authorise the search of vehicles that are not specified in the warrant but that are in the specified area and that a constable has reasonable grounds to suspect are owned or used by—

- 1 or more gang members of a gang specified in the warrant; or
- 1 or more persons specified in the warrant who are encouraging or assisting in the gang conflict.

The places that may be searched include specified non-private premises if the Judge issuing the warrant is satisfied there are reasonable grounds to suspect that those places are being used by gang members to conduct gang-related activities involving weapons.

New section 18E provides that a warrant may be executed on more than 1 occasion against the same or different places or vehicles.

New section 18F provides for the form and content of a warrant. The particulars that must be contained in a warrant issued under *new section 18D* are substantially the same as the particulars that section 103 of the principal Act requires other types of warrants to contain.

Clause 21 amends section 98 of the principal Act to provide that that section, which sets out the particulars to be contained in an application for a search warrant, does not apply to an application made under *new section 18B*. This is because *new section 18C* sets out the particulars to be contained in an application made under *new section 18B*.

Clause 22 amends section 131 of the principal Act to provide that, when a constable is exercising a search power authorised by a warrant issued under *new section 18D(2) or (3)* in respect of places and vehicles specified in the warrant, the constable must provide the occupier of the place or the person in charge of the vehicle with a copy of the warrant redacted to show only that particular place or vehicle proposed to be searched or, if that is not reasonably practicable in the circumstances, advice about how a copy of the redacted warrant can be made available within 7 days. If the occupier of the place or person in charge of the vehicle is not present at the time of the search, notice must be left or provided about how to obtain a copy of the warrant. When a constable is exercising a search power authorised by a warrant issued under *new section 18D(4)* in respect of a vehicle not specified in the warrant, the constable must, if it is practicable to do so, provide the person in charge of the vehicle with the name of the enactment under which the search is taking place and the reason for the search.

Clause 23 inserts *new section 160A* into the principal Act. *New section 160A* provides for the disposal of weapons seized as a result of the execution of a warrant issued under *new section 18D*.

Clause 24 amends section 170 of the principal Act to require the Commissioner of Police to include in an annual report that is required under the Public Finance Act 1989 information relating to warrants issued under *new subpart 6A* of Part 2 of the principal Act.

Clause 25 inserts *new section 171A* into the principal Act. *New section 171A* sets out the particular information required to be included in an annual report. This information includes the number of applications made under *new section 18B*, the number of warrants issued under *new section 18D*, and the number of weapons seized under each warrant issued and executed.

Part 4

Prohibition on persons conducting cash transactions for certain items above applicable threshold value

Clause 26 provides that *Part 4* amends the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (the **principal Act**).

Clause 27 inserts *new subpart 5A* into Part 2 of the principal Act (cash transactions above applicable threshold value), comprising *new section 67A*.

New section 67A prohibits persons in trade from buying or selling in cash any of the following articles if the value of the article is equal to or above the applicable threshold value:

- jewellery:
- watches:
- gold, silver, or other precious metals:
- diamonds, sapphires, or other precious stones:
- motor vehicles:
- ships.

The applicable threshold value is an amount prescribed by regulations.

Clause 28 inserts *new section 78(h)* into the principal Act to expressly provide that failure to comply with *new section 67A* is a civil liability act. The effect of this is that persons who are reporting entities under the principal Act and who fail to comply with *new section 67A* may be ordered by the High Court to pay a pecuniary penalty. They are also criminally liable, under section 91 of the principal Act, if they knowingly or recklessly engaged in the conduct that constituted the failure (and are subject to the penalties in section 100 of the principal Act). However, under section 74 of the principal Act, a court may not impose both civil and criminal penalties on a person in relation to the same or substantially similar conduct.

Clause 29 amends section 90 of the principal Act to provide that the maximum amount of a pecuniary penalty that a reporting entity may be ordered to pay for failing to comply with *new section 67A* is,—

- in the case of an individual, \$200,000; or
- in the case of a body corporate or partnership, \$2 million.

Clause 30 amends section 104 of the principal Act to include a reference to *new section 105A* so that the limitation period in respect of an offence under that section ends 3 years after the date on which the offence was committed.

Clause 31 inserts a new cross-heading (offence relating to cash transactions) and a *new section 105A* into the principal Act. *New section 105A* provides that it is an offence to contravene *new section 67A*. The penalty, on conviction, is,—

- in the case of an individual, a term of imprisonment not exceeding 2 years or a fine of up to \$300,000, or both; or
- in the case of a body corporate or partnership, a fine of up to \$5 million.

Part 5

Seizure of cash amount of or over \$10,000 found in suspicious circumstances

Clause 32 provides that *Part 5* amends the Search and Surveillance Act 2012 (the **principal Act**).

Clause 33 inserts *new sections 123A to 123E* into the principal Act.

New section 123A is an interpretation provision and defines key terms used in *new sections 123A to 123E*, including cash (which means physical currency and bearer-negotiable instruments, and also includes gold bars and gold ingots), cash seizure threshold amount (which means NZ\$10,000, or an equivalent amount), and enforcement officer (which includes an aviation security officer).

New section 123B applies if a constable is—

- exercising a search power, is lawfully in any place or is in or on a vehicle, or is conducting a lawful search of a person, and sees or finds an amount of cash that the constable reasonably believes to be of or over the cash seizure threshold amount; or
- informed by an enforcement officer that, while lawfully searching any person or thing, they have seen or found cash in the possession of a person in suspicious circumstances.

The constable may seize the cash if the constable—

- reasonably believes the amount of cash to be of or over the cash seizure threshold amount; and
- is not satisfied with the explanations given by the person from whom the cash was seized as to the origin and intended use of the cash; and

- has reasonable grounds to suspect that the cash does not have lawful or legitimate origin or is to be used for any illegal or dishonest purpose.

Not later than 7 days after seizing the cash, the constable must return the cash to the person from whom it was seized, or release the cash to the owner, unless an application is made to a District Court Judge under *new section 123C* to hold it for a longer period.

New section 123C provides that a District Court Judge may grant an application made by a constable under *new section 123B* and allow the Police to hold the cash for up to a further 28 days. The Judge must be satisfied that the Police—

- continue to have reasonable grounds to suspect that the cash is not from lawful origin or is intended to be used for an unlawful or dishonest purpose; and
- are either continuing their investigations or are taking steps to commence proceedings under the Criminal Proceeds (Recovery) Act 2009.

If the District Court Judge declines the application, the Judge must make directions for the return or release of the cash to the person from whom it was seized or the owner of the cash.

The period for which the Police may hold the cash may be extended once more by a District Court Judge on a second application made under this section, but in no case may the Police be authorised to hold the cash for a period of more than 63 days from the date on which it was seized.

New section 123D provides that the Police must return the cash seized to the person from whom it was seized, or release the cash seized to the owner of the cash, if—

- the period for which the Police are authorised to hold the cash has expired and before the expiry of that period no proceedings have been commenced under the Criminal Proceeds (Recovery) Act 2009 for a restraining order or forfeiture order in respect of the cash seized; or
- proceedings commenced under the Criminal Proceeds (Recovery) Act 2009 for a restraining order or forfeiture order in respect of the cash seized have been withdrawn or dismissed; or
- the person from whom the cash was seized, or the owner of the cash, has requested the return of the cash and provided the Police with sufficient information as to its origin and intended purpose to satisfy the Police that the origin and intended purpose are lawful.

New section 123E provides that if the person from whom the cash was seized, or the owner of the cash, has requested the Police to return the cash and that request has been refused, the person or owner may apply to the District Court for the return or release of the cash. A District Court Judge may grant an application if the Judge, having regard to the following matters, is satisfied that it would be contrary to the interests of justice for the Police to continue to hold the cash:

- the value of the cash seized; and

- the loss or damage caused to the applicant if the cash is not returned or released; and
- the need for the Police to continue to hold the cash seized for the purpose of court proceedings.

Clause 34 amends section 149 of the principal Act to provide that subpart 6 of Part 4 of the principal Act (procedures applying to seized or produced materials) does not apply to cash seized under *new section 123B*. This is because *new sections 123D and 123E* provide for the return or release of any cash seized under *new section 123B*.

Clause 35 amends section 342 of the principal Act to insert a new empowering provision to enable regulations to be made to increase or decrease the cash seizure threshold amount.

Hon Kiritapu Allan

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Part 5
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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Criminal Activity Intervention Legislation Act **2022**.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent. 5

Part 1 Discharging firearm with intent to intimidate

Subpart 1—Amendments to Crimes Act 1961

3	Principal Act		
	This subpart amends the Crimes Act 1961.		5
4	Section 308 amended (Threatening acts)		
(1)	Replace the heading to section 308 with “ Threatening acts in relation to dwellinghouses and persons in dwellinghouses ”.		
(2)	Replace section 308(b) with:		
	(b) by threatening behaviour, alarms or attempts to alarm any person in a dwellinghouse.		10
5	New section 308A inserted (Discharging firearm to intimidate)		
	After section 308, insert:		
	308A Discharging firearm to intimidate		
(1)	A person commits an offence who discharges a firearm intending to intimidate 1 or more other persons.		15
(2)	A person who is convicted of an offence under subsection (1) is liable to a term of imprisonment not exceeding 5 years.		
Subpart 2—Amendments to Arms Act 1983			
6	Principal Act		
	This subpart amends the Arms Act 1983.		20
7	Section 22H amended (Persons disqualified from holding firearms licence)		
	In section 22H(a)(iii), replace “or 306” with “306, or 308A ”.		
8	Section 39A amended (When FPO may be made)		
	Replace section 39A(1)(a)(iii) with:		25
	(iii) an offence under section 98A, 189A, or 308A of the Crimes Act 1961; or		
Subpart 3—Amendment to Sentencing Act 2002			
9	Principal Act		
	This subpart amends the Sentencing Act 2002.		30

- 10 Section 111A amended (Firearms prohibition order)**
 Replace section 111A(2)(c) with:
 (c) an offence under section 98A, 189A, or **308A** of the Crimes Act 1961:
 Subpart 4—Amendments to Search and Surveillance Act 2012
- 11 Principal Act** 5
 This subpart amends the Search and Surveillance Act 2012.
- 12 Section 45 amended (Restrictions on some trespass surveillance and use of interception device)**
 (1) After section 45(1)(c), insert:
 (d) against section **308A** of the Crimes Act 1961. 10
 (2) After section 45(2)(c), insert:
 (d) against section **308A** of the Crimes Act 1961.
- Subpart 5—Amendment to Criminal Investigations (Bodily Samples) Act 1995
- 13 Principal Act** 15
 This subpart amends the Criminal Investigations (Bodily Samples) Act 1995.
- 14 Schedule 1 amended**
 In Schedule 1, Part 3, replace the item relating to section 308 of the Crimes Act 1961 with:
- | | |
|--|---------------------|
| Threatening acts in relation to dwellinghouses and persons in dwellinghouses | section 308 |
| Discharging firearm to intimidate | section 308A |
- Part 2** 20
Expanding power of enforcement officers to seize and impound vehicles
- 15 Principal Act**
 This Part amends the Land Transport Act 1998.
- 16 Section 96 amended (Vehicle seized and impounded for 28 days in certain circumstances)** 25
 After section 96(1AA), insert:
 (1AAB) An enforcement officer must, if practicable, seize and impound, or seize and authorise the impoundment of, a motor vehicle for 28 days if the officer

believes on reasonable grounds that the driver has committed an offence against section 35(1)(a) or (b) or 39(1).

17 Section 102 amended (Appeal to Police against impoundment of vehicle)

Replace section 102(1)(f) and (g) with:

- (f) if section 96(1A), (1AA), **(1AAB)**, or (1AB) applies, the owner did not know and could not reasonably be expected to know that the operator of the vehicle would contravene section 22A(1) or (3), 22AF, 35(1)(a) or (b), 39(1), or 114 (whichever applies); or 5
- (g) if section 96(1A), (1AA), **(1AAB)**, or (1AB) applies, the owner took all reasonable steps to prevent the operator of the vehicle from contravening section 22A(1) or (3), 22AF, 35(1)(a) or (b), 39(1), or 114 (whichever applies); or 10

Part 3

Warrants to search and seize weapons when there is gang conflict

18 Principal Act 15

This Part amends the Search and Surveillance Act 2012.

19 Section 6 amended (Issuing officer may issue search warrant)

In section 6, insert as subsection (2):

- (2) This section does not apply to an application for a search warrant issued under **section 18D**. 20

20 New subpart 6A of Part 2 inserted

After section 18, insert:

Subpart 6A—Warrants to search and seize weapons when there is gang conflict

18A Interpretation 25

In this subpart, unless the context otherwise requires,—

gang has the same meaning as in section 4 of the Prohibition of Gang Insignia in Government Premises Act 2013

gang conflict means ongoing dissension between 2 or more gangs, or factions within a gang, that— 30

- (a) has involved, or is likely to involve, the use of weapons; and
- (b) has presented, or is likely to present, a risk of harm to persons or damage to property

gang insignia has the same meaning as in section 4 of the Prohibition of Gang Insignia in Government Premises Act 2013

gang member—

- (a) means an individual who is a member of a gang (including an individual who is a prospective member or nominee); and 5
- (b) includes—
 - (i) an individual who demonstrates affiliation to a gang by displaying the gang’s insignia;
 - (ii) an individual who is involved in the affairs of a gang for the likely purpose of participating in a criminal activity 10

weapon means—

- (a) any arms; and
- (b) any other item made, or modified, for use to cause bodily injury.

18B Application for warrant to search places and vehicles and seize weapons

If a gang conflict exists, a constable may apply to a Judge for a warrant to— 15

- (a) search places and vehicles in an area for the purpose of locating weapons at, in, or on those places or in or on those vehicles; and
- (b) seize any weapons found at, in, or on those places or in or on those vehicles.

18C Content of application

(1) An application made under **section 18B** must set out the following particulars: 20

- (a) the name of the applicant; and
- (b) the provision that authorises the making of the application; and
- (c) the grounds on which the application is made (including the reasons why the applicant believes the legal requirements for issuing the warrant are satisfied); and 25
- (d) a description of the area in which the gang conflict exists; and
- (e) the name or names of the gang or gangs involved in the gang conflict; and 30
- (f) a description of the area in which the search of places and vehicles is proposed to be conducted; and
- (g) the name or names of the gang or gangs in that area involved in the gang conflict; and
- (h) the names of any persons other than persons who are gang members of a gang referred to in **paragraph (e)** whose places and vehicles are proposed to be entered and searched; and 35

- (i) the addresses of the places proposed to be entered and searched; and
- (j) a description of the vehicles proposed to be entered and searched; and
- (k) the period for which the warrant is sought.
- (2) When considering an application made under **section 18B**, the Judge—
- (a) may require the applicant to provide further information concerning the grounds on which the warrant is sought; but 5
- (b) must not, in any circumstances, require the applicant to disclose the name, address, or any other identifying detail of an informant unless, and only to the extent that, that information is necessary for the Judge to assess either or both of the following: 10
- (i) the credibility of the informant:
- (ii) whether there is a proper basis for issuing the warrant.
- (3) The applicant must disclose in the application—
- (a) details of any other application for a search warrant that the applicant knows to have been made within the previous 3 months in respect of any place or vehicle proposed to be searched; and 15
- (b) the result of that application or those applications.
- (4) The applicant must, before applying for a search warrant under **section 18B**, make reasonable inquiries within the Police, for the purpose of complying with **subsection (3)**. 20
- 18D Issue of warrant to search places and vehicles in specified area and seize weapons**
- (1) A Judge may issue a warrant on an application made under **section 18B** if the Judge is satisfied that there are reasonable grounds to believe that—
- (a) a gang conflict exists; and 25
- (b) 1 or more gangs involved in the gang conflict are in a specified area; and
- (c) the issue of the warrant may reduce the risk of harm to people or property.
- (2) A Judge, if satisfied of the following matters, may issue a warrant authorising a search in the specified area of 1 or more specified places for the purpose of locating weapons and seizing any weapons found at, in, or on any of those places: 30
- (a) there are reasonable grounds to suspect that the specified places are owned, occupied, or used by 1 or more gang members of a specified gang: 35
- (b) there are reasonable grounds—
- (i) to suspect that the specified places are owned, occupied, or used by 1 or more specified persons; and

- (ii) to believe that the specified persons are encouraging or assisting in the gang conflict.
- (3) A warrant authorising the search of places specified under **subsection (2)** may only authorise the search of non-private premises if the Judge issuing the warrant is satisfied that there are reasonable grounds to suspect that the premises are being used by gang members to conduct gang-related activities involving weapons. 5
- (4) A Judge, if satisfied of the following matters, may issue a warrant authorising a search in the specified area of 1 or more specified vehicles for the purpose of locating weapons and seizing any weapons found in or on any of those vehicles: 10
- (a) there are reasonable grounds to suspect the specified vehicles are owned or used by 1 or more gang members of a specified gang:
- (b) there are reasonable grounds—
- (i) to suspect that the specified vehicles are owned or used by 1 or more specified persons; and 15
- (ii) to believe that the specified persons are encouraging or assisting in the gang conflict.
- (5) A warrant may also authorise a search within the specified area of any vehicles other than specified vehicles for the purpose of locating and seizing weapons found in or on the vehicles if a constable is satisfied that there are reasonable grounds to suspect that the vehicles are— 20
- (a) owned or used by 1 or more gang members of a specified gang; or
- (b) owned or used by 1 or more specified persons who are encouraging or assisting in the gang conflict. 25
- (6) In this section,—
- specified area** means the area specified in the warrant by any description (for example, by geographical region) that enables the boundaries of the area to be ascertained, and may be any of the following: 30
- (a) the same area as the area in which the gang conflict exists; or
- (b) a different area to the area in which the gang conflict exists; or
- (c) an area that includes part of the area in which the gang conflict exists; or
- (d) an area within the area in which the gang conflict exists
- specified gang** means a gang specified in a warrant issued under this section
- specified person** means a person specified in a warrant issued under this section who is not a gang member of a specified gang 35
- specified place** means a place specified in a warrant issued under this section
- specified vehicle** means a vehicle specified in a warrant issued under this section.

18E Places and vehicles may be searched on more than 1 occasion

A warrant issued under **section 18D** may be executed on more than 1 occasion in respect of—

- (a) different places or vehicles:
- (b) the same place or vehicle, subject to any conditions specified in the warrant that the Judge considers reasonable. 5

18F Form and content of warrant

- (1) This section applies in respect of a warrant issued under **section 18D**.
- (2) Every warrant must be in the prescribed form, if any.
- (3) Every warrant must be directed to a constable. 10
- (4) A warrant may be—
 - (a) executed by a constable:
 - (b) subject to any conditions specified in the warrant that the issuing Judge considers reasonable, including (without limitation)—
 - (i) any restriction on the time of execution that is reasonable: 15
 - (ii) a condition that the occupier or person in charge of a place must provide reasonable assistance to a constable executing the warrant if, in the absence of such assistance, it would not be practicable to execute the warrant without undue delay.
- (5) Every search warrant must contain, in reasonable detail, the following particulars: 20
 - (a) the name of the issuing Judge and the date on which the warrant was issued:
 - (b) the provision that authorises the issue of the warrant:
 - (c) a statement that the constable executing the warrant may use any assistance that is reasonable in the circumstances: 25
 - (d) a statement that any constable may execute the warrant:
 - (e) a statement that the constable executing the warrant may use any force, if authorised by this Act or any other enactment, that is reasonable in the circumstances to enter or break open or access any area within the place or vehicle being searched: 30
 - (f) the address or a description of the place or vehicle that may be entered, or entered and searched (if applicable):
 - (g) a description of what may be seized:
 - (h) the period during which the warrant may be executed, being a period specified by the issuing Judge not exceeding 14 days from the date on which the warrant was issued: 35
 - (i) any conditions specified by the issuing Judge under **subsection (4)(b)**:

- (j) an explanation of the availability of relevant privileges and an outline of how any of those privileges may be claimed (where applicable):
- (k) a statement that any person found in the place or vehicle to be searched may be searched if there are reasonable grounds to believe that an item being searched for is on that person. 5
- (6) A person is not required, as a consequence of a condition imposed under **sub-section (4)(b)**, to give any information tending to incriminate the person.
- (7) In this section, **issuing Judge**, in relation to a warrant issued under **section 18D**, means the Judge issuing the warrant.
- 21 Section 98 amended (Application for search warrant)** 10
- After section 98(5), insert:
- (6) This section does not apply to an application made under **section 18B** (*see section 18C*).
- 22 Section 131 amended (Identification and notice requirements for person exercising search power (other than remote access search))** 15
- (1) Replace section 131(1)(b) with:
- (b) before or on initial entry into or onto the place or vehicle, or other thing to be searched, provide the occupier of the place or the person in charge of the vehicle or other thing with—
- (i) a copy of the search warrant (unless the warrant is issued under **section 18D**); or 20
- (ii) if the power is exercised under a warrant issued under **section 18D(2) or (3)**, either a copy of the warrant redacted to show only the particular place or vehicle in respect of which the search power is being exercised or, if that is not reasonably practicable in the circumstances, advice about how a copy of the redacted warrant can be made available within 7 days; or 25
- (iii) if the power is exercised without a warrant, or is exercised under a warrant issued under **section 18D(4)**, the name of the enactment under which the search is taking place and the reason for the search under that enactment, unless it is impracticable to do so in the circumstances. 30
- (2) After section 131(5)(b), insert:
- (ba) if the power is exercised under a warrant issued under **section 18D(2) or (3)** and a copy of the warrant redacted to show only the particular place or vehicle in respect of which the search power is being exercised is not available at the time of the search, information about how to request a copy of the warrant: 35

- (bb) if the power is exercised under a warrant issued under **section 18D(4)**, the name of the enactment under which the search took place and the reason for the search under that enactment:

23 New section 160A inserted (Disposal of weapons)

After section 160, insert:

5

160A Disposal of weapons

- (1) **Subsection (2)** applies if a weapon is seized as a result of the execution of a warrant issued under **section 18D** and—

- (a) there is no mechanism provided for disposing of the weapon, or it has not been disposed of, under any other legislation; and
- (b) no order has been made by a court in relation to the disposal of the weapon.

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- (2) The Police may destroy the seized weapon if—

- (a) notice is given to the person from whom the weapon was seized and that person—

15

- (i) consents to its destruction; or
- (ii) does not within 30 days consent to its destruction; or

- (b) the person to whom the notice would otherwise be given under **paragraph (a)** cannot be located after reasonable inquiries have been made; or

20

- (c) in a case where a person objects to the destruction of the weapon within 30 working days of receiving a notice under **paragraph (a)** and any person applies within that period to a court to determine the status of the weapon, the court is satisfied that—

- (i) the possession of the weapon by the person from whom it was seized is unlawful under New Zealand law; or
- (ii) there is no legitimate reason to own or possess the weapon and the destruction of the weapon is just.

25

- (3) In this section, **weapon** has the same meaning as in **section 18A**.

24 Section 170 amended (Annual reporting of search and surveillance powers by Commissioner)

30

After section 170(1)(b), insert:

- (ba) the matters set out in **section 171A** in relation to warrants under **subpart 6A** of Part 2 of this Act:

25 New section 171A inserted (Information to be included in report on warrants under subpart 6A of Part 2)

35

After section 171, insert:

171A Information to be included in report on warrants under subpart 6A of Part 2

The following information is required by **section 170(1)(ba)** to be included in an annual report:

- (a) the number of applications made under **section 18B** in the period covered by the report: 5
- (b) the number of warrants issued under **section 18D** in the period covered by the report:
- (c) for each warrant issued under **section 18D** in the period covered by the report,— 10
 - (i) the number of searches conducted; and
 - (ii) the number of places searched (on 1 or more occasions); and
 - (iii) the number of vehicles searched (on 1 or more occasions); and
 - (iv) the number of weapons seized as a result of the places and vehicles searched: 15
- (d) the number of persons charged in criminal proceedings where the collection of evidential material relevant to those proceedings was significantly assisted by the execution of a warrant issued under **section 18D** in the period covered by the report.

Part 4 20**Prohibition on persons conducting cash transactions for certain items above applicable threshold value****26 Principal Act**

This Part amends the Anti-Money Laundering and Countering Financing of Terrorism Act 2009. 25

27 New subpart 5A of Part 2 inserted

After section 67, insert:

Subpart 5A—Cash transactions above applicable threshold value**67A Prohibition on certain cash transactions**

A person who is in trade must not buy or sell any of the following articles by way of a cash transaction or a series of related cash transactions, if the total value of that transaction or those transactions is equal to or above the applicable threshold value: 30

- (a) jewellery: 35
- (b) watches:

(c)	gold, silver, or other precious metals:	
(d)	diamonds, sapphires, or other precious stones:	
(e)	motor vehicles (within the meaning of section 6(1) of the Motor Vehicle Sales Act 2003):	
(f)	ships (within the meaning of section 2(1) of the Maritime Transport Act 1994).	5
28	Section 78 amended (Meaning of civil liability act)	
	After section 78(g), insert:	
(h)	enters into cash transactions in relation to certain items in breach of section 67A .	10
29	Section 90 amended (Pecuniary penalties for civil liability act)	
	In section 90(3), replace “or (f)” with “(f), or (h)”.	
30	Section 104 amended (Time limit for prosecution of offences relating to non-compliance with AML/CFT requirements)	
	In section 104, replace “any of sections 101 to 103” with “section 101, 102, 103, or 105A ”.	15
31	New section 105A and cross-heading inserted	
	After section 105, insert:	
	<i>Offence relating to cash transactions</i>	
105A	Contravention of section 67A	20
(1)	A person commits an offence who contravenes section 67A .	
(2)	A person who commits an offence under subsection (1) is liable, on conviction, to,—	
(a)	in the case of an individual, either or both of the following:	
(i)	a term of imprisonment of not more than 2 years:	25
(ii)	a fine of up to \$300,000; and	
(b)	in the case of a body corporate or partnership, a fine of up to \$5 million.	
	Part 5	
	Seizure of cash amount of or over \$10,000 found in suspicious circumstances	30
32	Principal Act	
	This Part amends the Search and Surveillance Act 2012.	

33 New sections 123A to 123E and cross-heading inserted

After section 123, insert:

Seizure of cash found in suspicious circumstances

123A Interpretation

- (1) In this section and **sections 123B to 123E**,— 5
- authorised holding period**, in relation to cash seized, means the period for which the Police are authorised to hold the cash by an order made under—
- (a) **section 123C(3)(a)**; or
- (b) **section 123C(7)**
- cash** means any of the following: 10
- (a) cash as defined in section 5(1) of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009;
- (b) gold bars;
- (c) gold ingots
- cash seized** means cash seized under **section 123B** 15
- cash seizure threshold amount** means the amount of NZ\$10,000, or an equivalent amount
- enforcement officer** includes an aviation security officer as defined in section 2(1) of the Civil Aviation Act 1990.
- (2) For the purposes of **sections 123B to 123E**, cash is **in the possession of a** 20
person if it is—
- (a) on the person; or
- (b) in a bag or receptacle owned by or carried by or with the person; or
- (c) in or under the effective control of the person; or
- (d) in a vehicle in which the person is the driver or an occupant. 25

123B Seizure of cash of or over cash seizure threshold amount

- (1) This section applies to a constable who,—
- (a) as part of their duties,—
- (i) is exercising a search power; or
- (ii) is lawfully in any place or in or on a vehicle; or 30
- (iii) is conducting a lawful search of a person; and
- (b) sees or finds cash in the possession of any person that the constable reasonably believes to be an amount of or over the cash seizure threshold amount.

- (2) This section also applies to a constable who is informed by an enforcement officer that the enforcement officer, while lawfully screening or searching any person, item, or vehicle as part of their duties, has seen or found cash in the possession of any person in suspicious circumstances.
- (3) The constable may question the person in the possession of the cash about— 5
- (a) the origin of the cash; and
 - (b) the intended use for the cash.
- (4) The constable, or any person assisting the constable, may seize the cash if the constable—
- (a) reasonably believes the cash to be an amount of or over the cash seizure threshold amount; and 10
 - (b) is not satisfied with the explanations given by the person in response to the questions put to the person under **subsection (3)**; and
 - (c) has reasonable grounds to suspect that the cash is not of lawful or legitimate origin or derivation, or is to be used for, or to further, any unlawful or dishonest purpose. 15
- (5) As soon as is reasonably practicable, and in any case not later than 7 days after the cash is seized, a constable must—
- (a) return the cash to the person from whom it was seized, or have made contact with that person or that person's representative to arrange for the return of the cash; or 20
 - (b) release the cash to the owner of the cash (if the owner is not the person from whom the cash was seized); or
 - (c) make an application to the District Court under **section 123C** for Police to hold the cash for a further period. 25
- (6) Nothing in this section affects or limits the power of a constable to seize property that is given by or under any other legislative provision or by the common law.

123C Application to retain cash seized for further period

- (1) A constable may apply to a District Court Judge for an order authorising the Police to hold any cash seized for a further period to enable investigations to continue to establish the origin of the cash or its intended use. 30
- (2) The Police may continue to hold the cash seized pending the determination or withdrawal of the application.
- (3) A District Court Judge may— 35
- (a) grant the application if satisfied of the matters in **subsection (4)** and make an order authorising the Police to continue to hold the cash seized for a further period not exceeding 28 days from the date of the order; or
 - (b) decline the application and make directions for—

- (i) the return of the cash to the person from whom the cash was seized; or
- (ii) the release of the cash to the owner of the cash (if the owner is not the person from whom the cash was seized).
- (4) The matters referred to in **subsection (3)(a)** are that the Police— 5
- (a) continue to have reasonable grounds to suspect that the cash is not of lawful or legitimate origin or derivation, or is to be used for, or to further, any unlawful or dishonest purpose; and
- (b) are— 10
- (i) continuing investigations to establish the origin of the cash seized or its intended use; or
- (ii) taking steps to commence proceedings under the Criminal Proceeds (Recovery) Act 2009 for a restraining order or forfeiture order in respect of the cash seized.
- (5) Before the expiry of the period specified in an order made under **subsection (3)(a)** (the **further period**), a constable may make an application to the District Court to extend the further period for another period not exceeding 28 days commencing from the expiry of the further period to enable continuing investigations to establish the origin or intended use of the cash seized. 15
- (6) Only 1 application may be made under **subsection (5)**. 20
- (7) A District Court Judge may grant an application made under **subsection (5)** if in respect of that application the Judge is satisfied of the matters in **subsection (4)**.
- (8) However, in no case may an order be made under **subsection (3)(a)**, or be extended under **subsection (7)**, if the effect of making or extending the order would be to authorise the Police to hold the cash seized for a period exceeding 63 days from the date on which it was seized. 25
- 123D Return or release of cash seized**
- (1) If any of the circumstances specified in **subsection (2)** exist, the Police must, as soon as is reasonably practicable,— 30
- (a) return the cash seized to the person from whom it was seized, or make contact with the person or the person’s representative to arrange for the return of the cash; or
- (b) release the cash to the owner of the cash (if the owner is not the person from whom the cash was seized). 35
- (2) The circumstances referred to in **subsection (1)** are that—
- (a) the authorised holding period has ended and before the end of that period the Police did not commence proceedings under the Criminal Proceeds

	(Recovery) Act 2009 for a restraining order or forfeiture order in respect of the cash seized:	
	(b) any proceedings commenced under the Criminal Proceeds (Recovery) Act 2009 for a restraining order or forfeiture order in respect of the cash seized have been withdrawn or dismissed:	5
	(c) the person from whom the cash was seized, or the owner of the cash, has requested the return of the cash and provided the Police with information about its origin and intended purpose and the Police, having considered all available information, are satisfied that the cash has lawful and legitimate origin or derivation and is not to be used for any unlawful or dishonest purpose.	10
123E	Application to District Court for return or release of cash seized	
(1)	The person from whom the cash was seized, or the owner of the cash, may apply to the District Court for the return or release of the cash seized if—	
	(a) the person or owner has requested the Police to return the cash and that request has been refused; and	15
	(b) the Police have not commenced proceedings under the Criminal Proceeds (Recovery) Act 2009 for a restraining order or forfeiture order in respect of the cash seized.	
(2)	A District Court Judge may grant an application made under subsection (1) if, having regard to the following, the Judge is satisfied that it would be contrary to the interests of justice for the Police to continue to hold the cash:	20
	(a) the value of the cash seized; and	
	(b) any loss or damage to the applicant that is caused, or is likely to be caused, by not returning or releasing the cash seized; and	25
	(c) the need for the Police to continue to hold the cash seized for the purpose of—	
	(i) commencing proceedings under the Criminal Proceeds (Recovery) Act 2009 for a restraining order or forfeiture order; or	
	(ii) producing it as evidence in any other proceedings.	30
34	Section 149 amended (Disposal of things seized or produced)	
	After section 149(2), insert:	
(3)	This subpart does not apply to cash seized under section 123B of this Act.	
35	Section 342 amended (Regulations)	
	After section 342(2), insert:	35
(2A)	The Governor-General may, by Order in Council, amend the definition of cash seizure threshold amount in section 123A(1) by increasing or decreasing the amount specified in that definition.	

Criminal Activity Intervention Legislation Bill

Wellington, New Zealand:

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