

# **Gangs and Organised Crime Bill**

Government Bill

As reported from the Law and Order  
Committee

## **Commentary**

### **Recommendation**

The Law and Order Committee has examined the Gangs and Organised Crime Bill and recommends that it be passed with the amendments shown.

### **Introduction**

This bill increases the penalty for participating in an organised criminal group, clarifies the evidential requirements to prove that offence, expands police surveillance powers in respect of gang communications, and provides greater powers to remove gang fortifications. This bill amends section 98A of the Crimes Act 1961 (participation in an organised criminal group) and other sections that relate to or are linked to section 98A. Additional changes are proposed to the Local Government Act 2002 and the Sentencing Act 2002.

This commentary covers the key amendments that we recommend to this bill. It does not cover minor or technical amendments.

### **Extraterritorial jurisdiction**

We recommend inserting new clause 3A to amend section 7A(1)(d) of the Crimes Act 1961. This amendment would make it clear that if a person acted outside New Zealand in a manner that contributed to the occurrence of criminal activity within New Zealand, with the required knowledge (including knowledge as to the objectives of the organised criminal group), that person could be liable under section 98A.

### **Serious violent offences**

We recommend inserting new clause 4(2) to amend section 98A(2) of the Crimes Act to lower the penalty for serious violent offences from 10 years' or more imprisonment to seven years' or more imprisonment. This amendment would bring section 98A(2) into alignment with the penalties in section 312A (interception powers) of the Act. It would also pick up a range of offences that are currently not covered in section 98A(2) such as perverting the course of justice with a violence component, certain firearms offences, and certain wounding and injury offences.

### **Interpretation**

We recommend inserting new clause 5(2) which would amend the definition of "specified offence" in section 312A(1) of the Act. The effect of clause 5 as introduced is that a number of specified offences carrying seven years' or more imprisonment are covered more than once in the definition. New clause 5(2) would remove this unnecessary duplication and ensure that only those specified offences carrying less than seven years' imprisonment were included.

### **Interception warrants**

We recommend amending clauses 6(3) and 8 by replacing the words "has committed, or is" with "is believed to have committed, or be". These amendments would reflect more accurately the actual circumstances set out in section 312B and 312D of the Crimes Act that may lead to the Police applying for a warrant to intercept private communications. The threshold for applying for a warrant under the relevant

provisions is reasonable grounds to believe that a person has committed, or is committing, an offence under section 98A(1).

### **Aggravating factors at sentencing**

We recommend amending clause 12 by replacing the words “that the offender committed the offence partly or wholly because of his or her” with “the nature and extent of any connection between the offending and the offender’s”. This amendment would remove the potentially onerous requirement on the prosecution to prove the motivations of an offender. It would also replace the reference in paragraph (hb)(i) to section 98A(2) with section 98A, to ensure that “participation” under section 98A(1) as well as the reference to “organised criminal group” were both relevant to the consideration as to whether the aggravating factor existed at sentencing.

## **Appendix**

### **Committee process**

The Gangs and Organised Crime Bill was referred to the committee on 10 February 2009. The closing date for submissions was 27 March 2009. We received and considered 11 submissions from interested groups and individuals. We heard seven submissions.

We received advice from the Ministry of Justice and the New Zealand Police.

### **Committee membership**

Sandra Goudie (Chairperson)

Shane Ardern

Hon Rick Barker

Simon Bridges (until 24 June 2009)

Dr Cam Calder (from 24 June 2009)

Hon Clayton Cosgrove

David Garrett

Melissa Lee

Carmel Sepuloni

Metiria Turei

Jonathan Young

---

**Gangs and Organised Crime Bill**

---

**Key to symbols used in reprinted bill**

**As reported from a select committee**

text inserted unanimously

~~text deleted unanimously~~

---



*Hon Simon Power*

# **Gangs and Organised Crime Bill**

Government Bill

## **Contents**

		Page
1	Title	2
2	Commencement	2
<b>Part 1</b>		
<b>Amendments to Crimes Act 1961</b>		
3	Crimes Act 1961 amended	2
3A	Extraterritorial jurisdiction in respect of certain offences with transnational aspects	2
4	Participation in organised criminal group	2
5	Interpretation	3
6	Application by Police for warrant to intercept private communications	3
7	Matters on which Judge must be satisfied in respect of applications	4
8	Contents and term of warrant	5
<b>Part 2</b>		
<b>Amendment to Local Government Act 2002</b>		
9	Local Government Act 2002 amended	5
10	Circumstances when Court may make removal order	5
<b>Part 3</b>		
<b>Amendment to Sentencing Act 2002</b>		
11	Sentencing Act 2002 amended	5
12	Aggravating and mitigating factors	5

**The Parliament of New Zealand enacts as follows:**

**1 Title**

This Act is the Gangs and Organised Crime Act **2009**.

**2 Commencement**

This Act comes into force on 1 December 2009.

5

**Part 1**

**Amendments to Crimes Act 1961**

**3 Crimes Act 1961 amended**

**This Part** amends the Crimes Act 1961.

**3A Extraterritorial jurisdiction in respect of certain offences with transnational aspects**

10

Section 7A(1)(d) is amended by inserting “with or” after “people”.

**4 Participation in organised criminal group**

(1) Section 98A is amended by repealing subsection (1) and substituting the following subsection:

15

“(1) Every person commits an offence and is liable to imprisonment for a term not exceeding 10 years who participates in an organised criminal group—

“(a) knowing that 3 or more people share any 1 or more of the objectives (the **particular objective or particular objectives**) described in paragraphs (a) to (d) of subsection (2) (whether or not the person himself or herself shares the particular objective or particular objectives);

20

and

25

“(b) either knowing that his or her conduct contributes, or being reckless as to whether his or her conduct may contribute, to the occurrence of any criminal activity; and

“(c) either knowing that the criminal activity contributes, or being reckless as to whether the criminal activity may contribute, to achieving the particular objective or particular objectives of the organised criminal group.”

30



- (2) **Section 98A(2)** is amended by omitting “that are punishable by imprisonment for a term of 10 years or more” in each place where it appears.

## 5 Interpretation

- (1) Paragraph (a) of the definition of **specified offence** in section 312A(1) is amended by omitting “10” and substituting “7”. 5

- (2) The definition of **specified offence** in section 312A(1) is amended by repealing paragraphs (b) to (f) and substituting the following paragraphs:

“(b) an offence against section 243(3) (which relates to certain money laundering offences): 10

“(c) an offence punishable under section 247(b) or (c) (which relate to certain offences in respect of receiving property dishonestly obtained)”.

## 6 Application by Police for warrant to intercept private communications 15

- (1) Section 312B(1) is amended by repealing subsection (1) and substituting the following subsection:

“(1) An application may be made in accordance with this section to a Judge of the High Court for a warrant for any Police employee to intercept a private communication by means of an interception device in any case where there are reasonable grounds for believing— 20

“(a) either that—

“(i) a person has committed, or is committing, an offence under **section 98A(1)**; or 25

“(ii) a member of an organised criminal enterprise is planning, participating in, or committing, or has planned, participated in, or committed, criminal offences of which at least 1 is a specified offence, as part of a continuing course of criminal conduct planned, organised, or undertaken by members of the enterprise; and 30

“(b) it is unlikely that the Police investigation of the case could be brought to a successful conclusion without the grant of the warrant.” 35

- (2) Section 312B(2) is amended by repealing paragraph (a) and substituting the following paragraph:
- “(a) the facts relied upon to show that there are reasonable grounds for believing either—
- “(i) that a person has committed, or is committing, an offence under **section 98A(1)**; or
- “(ii) that—
- “(A) there is an organised criminal enterprise; and
- “(B) a member of the organised criminal enterprise is planning, participating in, or committing, or has planned, participated in, or committed, criminal offences of which at least 1 is a specified offence, as part of a continuing course of criminal conduct planned, organised, or undertaken by members of the enterprise; and”.
- (3) Section 312B(2)(c) is amended by inserting “or by the person who ~~has committed, or is~~ is believed to have committed, or be committing, an offence under **section 98A(1)** (as the case may be)” after “organised criminal enterprise”.

## 7 Matters on which Judge must be satisfied in respect of applications

- Section 312C(1) is amended by repealing paragraph (a) and substituting the following paragraph:
- “(a) there are reasonable grounds for believing either—
- “(i) that a person has committed, or is committing, an offence under **section 98A(1)**; or
- “(ii) that—
- “(A) there is an organised criminal enterprise; and
- “(B) a member of the organised criminal enterprise is planning, participating in, or committing, or has planned, participated in, or committed, criminal offences of which at least 1 is a specified offence, as part of a continuing course of criminal con-

duct planned, organised, or undertaken by members of the enterprise; and”.

- 8 Contents and term of warrant**  
Section 312D(1)(b)(i) is amended by inserting “or by the person who ~~has committed, or is~~ is believed to have committed, or be committing, an offence under **section 98A(1)** (as the case may be)” after “organised criminal enterprise”. 5

## **Part 2**

### **Amendment to Local Government Act 2002**

10

- 9 Local Government Act 2002 amended**  
**This Part** amends the Local Government Act 2002.

- 10 Circumstances when Court may make removal order**  
Section 216(b) is amended by adding “; or” and also by adding the following subparagraph: 15  
“(iii) is such that the court is satisfied that it may reasonably be regarded as intimidating.”

## **Part 3**

### **Amendment to Sentencing Act 2002**

- 11 Sentencing Act 2002 amended** 20  
**This Part** amends the Sentencing Act 2002.

- 12 Aggravating and mitigating factors**  
Section 9(1) is amended by inserting the following paragraph after paragraph (ha): 25  
~~“(hb) that the offender committed the offence partly or wholly because of his or her—~~  
“(i) participation in an organised criminal group (within the meaning of section 98A(2) of the Crimes Act 1961); or  
“(ii) involvement in any other form of organised criminal association.” 30

**Gangs and Organised Crime Bill**

---

“(hb) the nature and extent of any connection between the offending and the offender’s—

“(i) participation in an organised criminal group (within the meaning of section 98A of the Crimes Act 1961); or

“(ii) involvement in any other form of organised criminal association:”.

5

---

**Legislative history**

10 February 2009  
10 February 2009

Introduction (Bill 10–1)  
First reading and referral to Law and Order  
Committee

---