

# **Prohibition of Gang Insignia in Government Premises Bill**

Member's Bill

As reported from the Law and Order  
Committee

## **Commentary**

### **Recommendation**

The Law and Order Committee has examined the Prohibition of Gang Insignia in Government Premises Bill and recommends by majority that it be passed with the amendments shown.

### **Introduction**

This bill seeks to restrict the display of gang insignia in the premises of departments of the public service, statutory entities, and local authorities in New Zealand. It would make the display of gang insignia on government premises an offence, and empower the police to arrest any person who contravenes this prohibition and seize the offending insignia.

### **Purpose**

We recommend amending clause 3 to add police and school premises to the areas in which displaying gang insignia would be prohibited. The interpretation of the “public service” in the State Sector Act 1988

does not include the New Zealand Police or any schools, so they are not generally considered to be public service premises. We believe that the intent of the bill is to include such places.

### **Interpretation**

In clause 4, the interpretation of “gang” is limited to the gangs listed or any included by regulation. Some gangs could thus avoid coverage by the legislation by changing their names slightly. We recommend amending clause 4 to specify that a gang is subject to the prohibition if its name is substantially similar to one listed. We also consider that 17 other gangs warrant inclusion, and recommend adding them to the list.

We recommend adding the suffix “MC”, denoting motorcycle club, to the majority of gang names listed in clause 4 to distinguish them from other similarly named groups.

We recommend amending the interpretation of “government premises” to include police and school premises, reflecting the intention of the bill. We also recommend adding an interpretation of “Police” and amending the interpretation of “school” to cover all schools and early childhood education centres that receive State funding.

### **Regulations**

We recommend amending subclause 5(2) to clarify the requirement that the Minister of Police establish with certainty that an organisation meets the statutory criteria defining a gang before recommending a regulation identifying the organisation as such. The amended subclause would forbid the Minister to make such a recommendation unless satisfied on reasonable grounds that the group in question exhibited the specified characteristics.

### **Minority views**

#### **New Zealand Labour Party**

Labour has no truck with gangs with a culture that promotes, encourages, facilitates, or tolerates criminal activity collectively or individually among its members.

We are absolutely intolerant of intimidation of the public by gang members, patched or otherwise.

However, we believe that this bill fails to address the substance of gang problems in this country and will make little or no difference to gang activity.

The power already exists for government departments to prohibit people wearing gang patches on their premises. If that is not being used now we need to ask why not.

Government agencies could be enforcing that rule right now where the wearing of patches is considered to be a problem to staff or members of the public.

The bill adds nothing to a power that already exists.

The bill by contrast does nothing to prevent patch-wearing gang members loitering outside government premises, which would not be illegal under the bill and which government agencies including schools currently have no power to do anything about.

However, other legislation does deal with preventing unacceptable gang behaviour. The Summary Offences Act 1981 (section 3) makes threatening behaviour an imprisonable offence and (section 4) makes offensive behaviour a criminal offence. Section 21 makes it an imprisonable offence to intimidate anyone.

If intimidation is occurring, the focus should be on enforcing this law.

The manner in which this bill is drafted also creates major anomalies. It prohibits the wearing of a gang patch on government premises but not other offensive symbols such as a swastika.

Unlike the Wanganui Act, it covers only some public places. A covered footpath may be included but not an uncovered pavement. Swimming pools are covered but not playing fields. Clubrooms may be covered if owned by government or local authorities but not if they are not. Bus and train stations may be covered in some instances if there is a shelter but not if there is not.

This legislation fails the basic test of the need to be clear and consistent.

A gang member can go into government premises with insignia like “Mongrel Mob” tattooed across their face but not with the same words printed on their jackets.

This bill will not make any significant difference to the real problems gangs create in our community. It exists for political purposes rather

than reflecting any determination to genuinely tackle the gang problem.

It is Labour's view that the Government would be far better to fully enforce laws against intimidatory conduct, use alternative legislation like the Labour-initiated Criminal Proceeds Act, and tackle issues like rising youth unemployment that fuel gang recruitment.

### **Green Party**

This member's bill is well-intentioned, and identifies a problem that is very real in some situations and some communities. We recognise that the display of gang insignia at government premises has the capacity to intimidate and to cause concern and distress to staff members, and to other people having cause to enter such premises.

Our objections to the bill are primarily that it would be ineffective; creates major definitional issues; would be difficult to enforce; and could provide perverse incentives for gang members to behave in ways that create further public concern and unease.

One submitter provided a useful summary of legislation that has been enacted over time targeting gangs and associated criminality. While some of this legislation has been effective, much of it has not, and given the difficulties noted above we are inclined to agree with the submitter's view that this bill if enacted would add to the list of legislative failures.

It is interesting to note that despite gangs having been present in New Zealand for over four decades, there has never been a legal definition of "gangs", which this bill seeks to achieve in order to establish criteria for adding to the list of banned patches over time.

It will be very difficult for "lay people" (especially people employed in government premises) to accurately identify which patches or insignia are banned, and which are not—or indeed, to distinguish between gang insignia and commercial labels or branding on such items as t-shirts, caps, and jackets.

The committee quickly discovered that defining the places where insignia may or may not be worn under this proposed legislation leads quickly to farce. It is generally agreed, for example, that insignia may be worn by someone standing at a bus stop, but not if they sit on a bench or within a shelter provided at that stop, assuming it is under the control of a local authority.

A blanket ban on insignia overlooks the fact that some patched gang members have given up on criminal behaviour, and in fact in some instances are actively working on positive (and government sanctioned) programmes in their communities (White Ribbon, anti-violence, drug and alcohol issues, for example). As noted in the Rethinking Crime and Punishment submission, these people have turned away from offending but are in no way prepared to step away from their gang association or identity, which in some cases is cross-generational.

The passing of this legislation is likely to lead to a situation where for some gang members it will be a matter of pride to have their insignia added to the banned list, and so will actually encourage the sort of behaviour the bill seeks to limit.

While not denying the “power” of a gang patch, or its ability to intimidate and concern members of the public and people working in government premises, the reality is that people are intimidated as much by the attitude and stance of individuals or groups as by a piece of coloured cloth, or a badge.

This bill would do little to address the underlying social, cultural and economic drivers of gangs and criminal behaviour, and so cannot be seen as part of any long-term solution.

## **Appendix**

### **Committee process**

The Prohibition of Gang Insignia in Government Premises Bill was referred to the committee on 29 August 2012. The closing date for submissions was 31 October 2012. We received and considered 26 submissions from interested groups and individuals, and heard 12. We received advice from the Ministry of Justice, the New Zealand Police, the Department of Internal Affairs, and the Parliamentary Counsel Office. The Regulations Review Committee reported to the committee on the powers contained in clause 5.

### **Committee membership**

Jacqui Dean (Chairperson)

David Clendon

Kris Faafoi

Hon Phil Goff

Ian McKelvie

Mark Mitchell

Richard Prosser

Jami-Lee Ross

Lindsay Tisch

---

**Prohibition of Gang Insignia in  
Government Premises Bill**

---

**Key to symbols used in reprinted bill**

**As reported from a select committee**

text inserted by a majority

~~text deleted by a majority~~

---





*Todd McClay*

## **Prohibition of Gang Insignia in Government Premises Bill**

Member's Bill

### **Contents**

		Page
1	Title	1
2	Commencement	2
<b>Part 1</b>		
<b>General provisions</b>		
3	Purpose	2
4	Interpretation	2
5	Regulations	5
<b>Part 2</b>		
<b>Offences and enforcement</b>		
6	Prohibition of display of gang insignia	6
7	Powers of arrest and seizure in relation to persons displaying gang insignia	6
8	Power to stop vehicle to exercise powers of arrest or seizure	7
9	Filing charging document for offence	8

---

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

**1 Title**

This Act is the Prohibition of Gang Insignia in Government Premises Act **2012**.

**2 Commencement**

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

**Part 1**  
**General provisions**

5

**3 Purpose**

The purpose of this Act is to prohibit the display of gang insignia on premises of ~~D~~departments of the Public Service, ~~the~~ Police, and Crown Entities, and Local Authorities in New Zealand, and schools.

10

**4 Interpretation**

In this Act, unless the context otherwise requires,—

~~crime~~ has the same meaning as in the ~~Crimes Act 1961~~

Crown entity has the same meaning as in section 7 of the Crown Entities Act 2004

15

department means any department specified in Schedule 1 of the State Sector Act 1988

district health board means a district health board established by or under section 19 of the New Zealand Public Health and Disability Act 2000

20

~~gang~~ means—

(a) ~~Aotearoa Natives, Black Power, Devils Henchmen, Filthy Few, Head Hunters, Hells Angels, Highway 61, Killerbeez, Magogs, Mongrel Mob, Mangu Kaha, Mothers, Nomads, Rebels, Road Knights, Satans Slaves, Tribesmen, or~~

25

(b) ~~any other specified organisation, association, or group of persons identified in a regulation made under **section 5**~~

gang means any organisation, association, or group of persons—

30

(a) that is known by a name that is the same as, or substantially similar to, any of the following:

(i) Aotearoa Natives:

(ii) Bandidos MC:

35

(iii) Black Power:

<u>(iv)</u>	<u>Devils Henchmen MC:</u>	
<u>(v)</u>	<u>Epitaph Riders:</u>	
<u>(vi)</u>	<u>Filthy Few MC:</u>	
<u>(vii)</u>	<u>Forty-Five MC:</u>	
<u>(viii)</u>	<u>Greasy Dogs MC:</u>	5
<u>(ix)</u>	<u>Head Hunters MC:</u>	
<u>(x)</u>	<u>Hells Angels MC:</u>	
<u>(xi)</u>	<u>Highway 61 MC:</u>	
<u>(xii)</u>	<u>Hu-Hu MC:</u>	
<u>(xiii)</u>	<u>Killerbeez:</u>	10
<u>(xiv)</u>	<u>King Cobras:</u>	
<u>(xv)</u>	<u>Lone Legion MC:</u>	
<u>(xvi)</u>	<u>Lost Breed MC:</u>	
<u>(xvii)</u>	<u>Magogs MC:</u>	
<u>(xviii)</u>	<u>Mongrel Mob:</u>	15
<u>(xix)</u>	<u>Mangu Kaha:</u>	
<u>(xx)</u>	<u>Mothers MC:</u>	
<u>(xxi)</u>	<u>Nomads:</u>	
<u>(xxii)</u>	<u>Outcasts MC:</u>	
<u>(xxiii)</u>	<u>Outlaws MC:</u>	20
<u>(xxiv)</u>	<u>Rebels MC:</u>	
<u>(xxv)</u>	<u>Red Devils MC:</u>	
<u>(xxvi)</u>	<u>Road Nights MC:</u>	
<u>(xxvii)</u>	<u>Satans Slaves MC:</u>	
<u>(xxviii)</u>	<u>Sinn Fein MC (not being a branch, or an associated organisation, of the political party known by a similar name):</u>	25
<u>(xxix)</u>	<u>Southern Vikings MC:</u>	
<u>(xxx)</u>	<u>Storm Troopers:</u>	
<u>(xxxi)</u>	<u>Taupiri MC:</u>	30
<u>(xxxii)</u>	<u>Tribal Huk:</u>	
<u>(xxxiii)</u>	<u>Tribesmen MC:</u>	
<u>(xxxiv)</u>	<u>Tyrants MC; or</u>	
<u>(b)</u>	<u>identified in regulations made under <b>section 5</b></u>	
	<b>gang insignia—</b>	35
<u>(a)</u>	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 of clothing to which a sign, symbol, or representation referred to in **paragraph (a)** is attached

**Government premise—**

- (a) ~~means a temporary or permanent movable or immovable structure (including structures intended for occupation by people, animals, machinery, or chattels); and~~ 5
- (b) ~~is owned or under the authority of Departments of the Public Service as defined in Schedule 1 of the State Sector Act 1988; or~~
- (c) ~~is owned or under the authority of Crown Entities as defined in Schedule 1 of the Crown Entities Act 2004; or~~ 10
- (d) ~~is owned or under the authority of Local Authorities as defined in Schedule 2 of the Local Government Act 2012; and~~ 15
- (e) ~~includes the grounds of State schools and early childhood education facilities as referred to in **paragraph (b)**; and~~
- (f) ~~the grounds of public hospitals and health facilities under the authority of District Health Boards as referred to in **paragraph (b)**; and~~ 20
- (g) ~~the grounds of public swimming pools and aquatic centres under the authority of Local Authorities as referred to in **paragraph (d)**; and~~
- (h) ~~excludes residential dwellings under the authority of the Housing New Zealand Corporation as referred to in **paragraph (c)**;~~ 25

**Government premises—**

- (a) means the whole or part of any structure that is owned by, or is under the control of,— 30
- (i) the Crown, acting through a department, the Police, or a Crown entity; or
- (ii) a local authority; and
- (b) includes the buildings and grounds of any school; and
- (c) includes the grounds of— 35
- (i) any public hospital or health facility that is owned by, or is under the control of, a District Health Board; and

- (ii) any public swimming pool or aquatic centre that is owned by, or is under the control of, a local authority; but
- (d) excludes any residential dwelling that is owned by, or is under the control of, Housing New Zealand Corporation or a local authority 5
- integrated school** has the same meaning as in section 145(1) of the Education Act 1989
- local authority** has the same meaning as in section 5(1) of the Local Government Act 2002 10
- Police** has the same meaning as in section 4 of the Policing Act 2008
- school** means any of the following:
- (a) a State school:
- (b) an integrated school: 15
- (c) any other school in respect of which the Crown pays, or authorises the payment of, either or both—
- (i) grants:
- (ii) teachers' salaries:
- (d) a licensed early childhood education and care centre within the meaning of section 309 of the Education Act 1989: 20
- (e) a playgroup within the meaning of section 309 of the Education Act 1989 for which a certificate issued under regulations under that Act is held and in respect of which the Crown pays, or authorises the payment of, grants 25
- State school** has the same meaning as in section 145(1) of the Education Act 1989
- structure** includes a temporary structure, a movable structure, a structure for the storage of machinery or chattels, and a structure for the containment of animals. 30

## 5 Regulations

- (1) The Governor-General may, on the recommendation of the Minister of Police, by Order in Council, make regulations for the purpose of identifying an organisation, association, or group of persons as a gang for the purposes of this Act. 35

- (2) ~~A regulation must not be made identifying a gang~~ The Minister of Police may not make a recommendation under **subsection (1)** unless he or she is satisfied on reasonable grounds that the organisation, association, or group proposed to be identified has the following characteristics: 5
- (a) a common name or common identifying signs, symbols, or representations; and
- (b) its members, associates, or supporters individually or collectively promote, encourage, or engage in criminal activity. 10

## Part 2

### Offences and enforcement

#### **6 Prohibition of display of gang insignia**

- (1) No person may display gang insignia at any time in ~~a Govern-~~ ment premise Government premises. 15
- (2) Every person who, without reasonable excuse, contravenes **subsection (1)** commits an offence and is liable ~~on summary conviction~~ to a fine not exceeding \$2,000.
- (3) Without limitation, and to avoid doubt, a Judge may apply section 128 of the Evidence Act 2006 in deciding whether a sign, symbol, or representation is gang insignia for the purposes of this Act. 20

Compare: 2009 No 1 (L) s 12

#### **7 Powers of arrest and seizure in relation to persons displaying gang insignia**

 25

- (1) A constable may, without warrant,—
- (a) arrest a person whom the constable has good cause to suspect has committed an offence against **section 6(2)**;
- (b) seize and remove gang insignia (by the use of force if necessary) that has been or is being displayed in ~~a Gov-~~ ernment premise Government premises. 30
- (2) Gang insignia seized under **subsection (1)(b)** are forfeited to the Crown if the person from whom the gang insignia is taken pleads guilty to, or is convicted of, an offence against **section 6(2)**. 35

- (3) If gang insignia are forfeited to the Crown under **subsection (2)**, the gang insignia may be destroyed or otherwise disposed of as the court, either at the time of the conviction for the offence under **section 6(1)(2)** or on a subsequent application, directs. 5

Compare: 2009 No 1 (L) s 13

**8 Power to stop vehicle to exercise powers of arrest or seizure**

- (1) A constable may stop a vehicle without a warrant to exercise either or both of the powers in **section 7(1)** in relation to a person if the constable has reasonable grounds to believe that the person is in or on the vehicle. 10
- (2) A constable who stops a vehicle under **subsection (1)** must—
- (a) be wearing a uniform or distinctive cap, hat, or helmet with a badge of authority affixed to that cap, hat, or helmet; or 15
  - (b) be following immediately behind the vehicle in a motor vehicle displaying flashing blue lights, or flashing blue and red lights, and sounding a siren.
- (3) A constable exercising the stopping power conferred by **subsection (1)** must, immediately after the vehicle has stopped,— 20
- (a) identify himself or herself to the driver of the vehicle; and
  - (b) tell the driver that the stopping power is being exercised under this section for the purpose of exercising powers under **subsection (1)**; and 25
  - (c) if not in uniform and if so required, produce evidence that he or she is a constable.
- (4) Without limiting **section 7(1)**, a constable exercising the stopping power conferred by **subsection (1)** may do any 1 or more of the following: 30
- (a) search the vehicle to locate a person referred to in **subsection (1)**;
  - (b) search the vehicle to locate gang insignia that the constable may seize under **section 7(1)(b)**: 35

- (c) require any person in or on the vehicle to state his or her name, address, and date of birth, or any of those particulars that the constable may specify:
- (d) require the vehicle to remain stopped for as long as is reasonably necessary to exercise the powers— 5
- (i) in **paragraphs (a), (b), and (c)**; and
- (ii) in **section 7(1)**, in relation to a person referred to in **subsection (1)** of this section.
- (5) Every person commits an offence and is liable on conviction to a fine not exceeding \$1,000 who, without reasonable excuse,— 10
- (a) fails to stop as soon as practicable when required to do so by a constable exercising the power conferred by this section; or
- (b) fails to comply with a requirement of a constable under **subsection (4)(c) or (d)**. 15

Compare: 2009 No 1 (L) s 14

**9 ~~Laying of information for offence under this Act~~**  
~~An information for an offence under this Act may be laid only by a constable.~~ 20

**9 Filing charging document for offence**  
Only a constable may file a charging document for an offence against this Act.

Compare: 2009 No 1 (L) s 15

---

### Legislative history

28 June 2012	Introduction (Bill 33–1)
29 August 2012	First reading and referral to Law and Order Committee

---