

Wanganui District Council (Prohibition of Gang Insignia) Bill

Local Bill

As reported from the Law and Order
Committee

Commentary

Recommendation

The Law and Order Committee has examined the Wanganui District Council (Prohibition of Gang Insignia) Bill and recommends that it be passed with the amendments shown.

Introduction

The Wanganui District Council (Prohibition of Gang Insignia) Bill is a local bill and the Wanganui District Council is the promoter. The council considers that the wearing or displaying of gang insignia, particularly in public places, has contributed to an increasing gang problem in the Wanganui district. It sought views from members of the public on this bill by means of a referendum. We understand that the council does not believe that the enactment of this bill would solve the gang problems in Wanganui, but considers that it could form the beginning of a solution.

This commentary focuses on our recommendations for significant changes to the bill, and does not cover minor changes of a technical nature.

New Zealand Bill of Rights Act 1990

We recognise that a prima facie examination shows that parts of this bill, as introduced, could be found to be inconsistent with the New Zealand Bill of Rights Act. We took this issue seriously and have worked to address these concerns and create the right balance. We have recommended several changes, which are addressed in more detail in the remainder of this report, to make the bill more compliant with the New Zealand Bill of Rights Act. We accept that allowing the Wanganui District Council to make these bylaws could be perceived to breach the New Zealand Bill of Rights Act, but we think for the safety and security of the residents of Wanganui these powers are desirable.

Wearing

We recommend amending clauses 3, 6, and 7 by removing the words “wearing” and “worn” to make the bill more compliant with the New Zealand Bill of Rights Act 1990. We were advised that the bill would comply more readily with the New Zealand Bill of Rights Act if these words were removed. This amendment would mean that the wearing of an item that cannot be seen would not be inadvertently captured.

Definitions

Gang

We considered amending the definition of gang in clause 4 of the bill by taking out the gangs listed. However, we consider it important that the listed gangs stay in the bill in order to speed up the implementation of this legislation.

Gang insignia

We recommend amending the definition of “gang insignia” in clause 4 to include the phrase “commonly displayed”. It is important that the definition of gang insignia be kept broad to allow for possible re-branding of gangs. However, we consider that this amendment would

provide a useful limitation on the insignia that could be captured by the prohibition.

We considered recommending amending the bill so that tattoos would not be captured by this legislation. However, a majority of us (New Zealand Labour and New Zealand First) are concerned that this might cause an increase in the use of tattoos by gang members to intimidate the public. We do not consider that every tattoo should be covered by this legislation; it should capture only those that denote membership of, affiliation with, or support for a gang.

Vehicles

We recommend amending clause 4 by inserting new subclause 4(2) so that people in vehicles in specified places who were displaying gang insignia would be subject to this legislation. We understand that it was not intended that vehicles in public places be exempt from the legislation.

Bylaws designating specified places or new gangs

Specifying public places

We recommend amending the bill by adding new clause 5(5) to make it clear that the Wanganui District Council could not make all the public places in the district specified places using bylaws. Some submitters were concerned that the council could designate the whole district as such. We understand it is a well-established principle that a power to regulate an activity does not amount to total prohibition, but this amendment would provide certainty.

Signposting

We recommend amending the bill by inserting new clause 5A, so that signposts would be required, where it was reasonably practicable, indicating the specified public places where displaying gang insignia was prohibited. However, an arrest or seizure could not be challenged if there were no signs in the area. We consider this amendment would be sufficient to give notice that displaying gang insignia was illegal in these areas, and would expect the council to be diligent about the maintenance of signs.

Local Government Act 2002

We recommend inserting new clauses 5(2A) and 5B. New clause 5(2A) would make the bylaw-making process in this bill consistent with the Local Government Act.

Inserting new clause 5B would ensure that the bylaw-making powers in the bill were subject to section 157 of the Local Government Act, which specifies that the public must be notified of the making of by-laws. When a specified place or new gang was added by bylaw the public would be notified.

We also recommend inserting new clauses 5C, 5D, 5E, and 5F, which would provide mechanisms for the review of bylaws made under this legislation. A review would provide an opportunity to establish whether the bylaws were effective.

Prohibition of gang insignia

We recommend amending the title of clause 6 by including the words “display of”. We consider that this change would more accurately reflect the intent of the bill.

Penalties

We recommend amending subclause 6(2) of the bill to include a reasonable excuse provision to make the bill more compliant with the New Zealand Bill of Rights Act.

We also recommend amending clause 6 of the bill by decreasing the maximum fine for this offence from \$5,000 to \$2,000. We consider a maximum fine of \$2,000 would be consistent with fines for similar offences such as disorderly behaviour and intimidation.

Power of seizure

We recommend amending clause 7(1)(b) to make it clear that police could seize insignia that had been displayed in a specified place. There would be no requirement for the insignia to still be displayed in that specified place when it was seized.

Disposal of seized gang insignia

We recommend amending clause 7(2) so that where the accused was given diversion or pleaded guilty, the insignia would be forfeited to

the Crown. The amendment would make it clear that anyone who was convicted of or subject to the diversion process for the offence would have to forfeit their insignia to the Crown.

We recommend inserting new clause 7(3) to specify a process for the police to follow when applying to the court for destruction orders for seized gang insignia. We are concerned that if the bill were enacted as introduced there might be claims for the return of property. Court orders are the usual way of deciding what happens to seized property.

Stopping vehicles

We recommend an amendment to insert new clause 8, which would allow the police to stop a vehicle, without a warrant, if they had reasonable grounds to believe that an offence had been committed under this legislation. Police would not then have to use other legislation to stop a car with an occupant displaying gang insignia, and we consider this amendment necessary for the efficient enforcement of the provisions of this bill.

Enforcement

We recommend inserting new clause 9 to ensure that the Police were the only enforcement agency for this legislation. We do not consider it appropriate for council staff to enforce this legislation, and suggest that care should be taken to ensure that only the police could do so.

South Australian gang legislation

While supporting the reporting back of the bill, New Zealand Labour members believe that the opportunity should be taken to consider the related legislation in South Australia and that the bill should not proceed further in the parliamentary process until such time as a full evaluation has taken place of the South Australian experience.

Appendix

Committee process

The Wanganui District Council (Prohibition of Gang Insignia) Bill was referred to the committee on 16 April 2008. The closing date for submissions was 6 June 2008. We received and considered nine submissions from interested groups and individuals. We heard six submissions.

We received advice from the Department of Internal Affairs, the Ministry of Justice, and New Zealand Police.

Committee membership

Ron Mark (Chairperson)

Hon David Benson-Pope (Deputy Chairperson)

Chester Borrows

Martin Gallagher

Hon Darren Hughes

Simon Power

Kate Wilkinson

**Wanganui District Council (Prohibition
of Gang Insignia) Bill**

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

text deleted unanimously

Chester Borrows

Wanganui District Council (Prohibition of Gang Insignia) Bill

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Wanganui District Council (Prohibition of Gang Insignia) Act 2007.
- 2 Commencement** 5
This Act comes into force on the day after the date on which it receives the Royal assent.
- 3 Purpose**
The purpose of this Act is to prohibit the ~~wearing or~~ display of gang insignia in specified places in the district. 10
- 4 Interpretation**
In this Act, unless context otherwise requires—
Council means the ~~Wanganui District Council~~
District means the district of the Wanganui District Council
gang means— 15
(a) ~~Black Power, Hells Angels, Magogs, Mothers, Mongrel Mob, Nomads, or Tribesmen; and~~
(b) any other specified organisation, association, or group of persons identified in a bylaw made under section 5 on this Act 20
gang insignia means any sign, symbol, or representation showing membership of, an affiliation with, or support for a gang and includes any items of clothing to which signs, symbols, or representations are attached
public place has the meaning given to it in section 147(1) of the Local Government Act 2002 25
specified place means a public place identified in a bylaw made under section 5 of this Act.
- 4 Interpretation**
(1) In this Act, unless the context otherwise requires,— 30
Council means the Wanganui District Council
district means the district of the Wanganui District Council

gang means—

- (a) Black Power, Hells Angels, Magogs, Mothers, Mongrel Mob, Nomads, or Tribesmen; and
- (b) any other specified organisation, association, or group of persons identified in a bylaw made under **section 5** 5

gang insignia—

- (a) means a sign, symbol, or representation commonly displayed to denote membership of, an affiliation with, or support for a gang; and
- (b) includes any item of clothing to which a sign, symbol, or representation referred to in **paragraph (a)** is attached 10

public place—

- (a) means a place—
 - (i) that is under the control of the Council; and
 - (ii) that is open to, or being used by, the public, whether or not there is a charge for admission; and 15
- (b) includes—
 - (i) a road, whether or not the road is under the control of the Council; and 20
 - (ii) any part of a public place

specified place means a public place designated as a specified place for the purpose of this Act in a bylaw made under **section 5**.

- (2) Without limiting the definition of the term public place or specified place in **subsection (1)**, for the purposes of this Act, a person is in a specified place if he or she is in or on a vehicle that is in a specified place. 25

5 Power to make bylaws designating specified places or new gangs 30

- (1) The Council may, from time to time, make bylaws—
 - (a) designating any public place as a specified place for the purposes of this Act:
 - (b) identifying an organisation, association, or group of persons as a gang for the purposes of this Act. 35

- (2) In making a bylaw under **subsection (1)**, the Council must use the special consultative procedure set out in section 83 of the Local Government Act 2002.
- (2A) Section 86(2)(a) and (b) of the Local Government Act 2002 applies to the making of a bylaw under **subsection (1)** as if it were an activity described in section 86(1) of that Act. 5
- (3) The Council must not make a bylaw identifying a gang under **subsection (1)(b)** unless it is satisfied that the organisation, association, or group proposed to be ~~regulated~~, identified has the following characteristics: 10
- (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 a pattern of criminal activity. 15
- (4) The Council may make a bylaw under this section only if it is satisfied that the bylaw is reasonably necessary in order to prevent or reduce the likelihood of intimidation or harassment of members of the public in a specified place or to avoid or reduce the potential for confrontation by or between gangs. 20
- (5) A bylaw must not be made under **subsection (1)(a)** if the effect of the bylaw, either by itself or in conjunction with other bylaws made under **subsection (1)(a)**, would be that all the public places in the district are specified places.
- 5A Signposting of specified places** 25
- (1) The Council must, where reasonably practicable, indicate the location of a specified place designated by a bylaw made under **section 5** by 1 or more clearly legible notices affixed in 1 or more conspicuous places on, or adjacent to, the place to which the notice relates. 30
- (2) No prosecution under **section 6**, and no arrest or seizure under **section 7**, may be challenged on the ground that a notice was not affixed in accordance with **subsection (1)**.

- 5B** **Public notice of bylaws and availability of copies**
Section 157 of the Local Government Act 2002 applies to a bylaw made under **section 5** as if the bylaw had been made under that Act.
- 5C** **Review of bylaws** 5
The Council must review a bylaw made by it under **section 5** no later than 5 years after the date on which the bylaw was made.
- 5D** **Further reviews of bylaws every 10 years** 10
The Council must review a bylaw made by it under **section 5** no later than 10 years after it was last reviewed as required by **section 5C** or this section.
- 5E** **Procedure for and nature of review**
- (1) The Council must review a bylaw to which **section 5C** or **5D** applies by making the determinations required by **section 5(3) and (4)**. 15
- (2) For the purposes of **subsection (1), section 5(3) and (4)** applies with all necessary modifications.
- (3) If, after the review, the Council considers that the bylaw—
- (a) should be amended, revoked, or revoked and replaced, it must act in accordance with **section 5(2) and (2A)**; 20
- (b) should continue without amendment, it must use the special consultative procedure in section 83 of the Local Government Act 2002, and **section 5(2A)** does not apply. 25
- (4) For the purposes of **subsection (3)(b)**, the statement of proposal referred to in section 83(1)(a) of the Local Government Act 2002 must include—
- (a) a copy of the bylaw to be continued; and
- (b) the reasons for the proposal. 30
- 5F** **Bylaw not reviewed within specified time frame revoked**
A bylaw that is not reviewed as required under **section 5C** or **5D**, if not earlier revoked by the Council, is revoked on the

date that is 2 years after the last date on which the bylaw should have been reviewed under that section.

6 Prohibition of display of gang insignia

- (1) No person may ~~wear or~~ display gang insignia at any time in a specified place in the district. 5
- (2) Every person who, without reasonable excuse, contravenes **subsection (1)** commits an offence and is liable on summary conviction to a fine not exceeding ~~\$5,000~~ \$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. 10

7 Powers of arrest and seizure in relation to persons wearing or displaying gang insignia

- (1) A ~~member of the police constable~~ may, without warrant, — 15
- (a) arrest a person whom the ~~member of the police 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 worn or displayed in a specified place. 20
- (2) Gang insignia seized under **subsection (1)(b)** is forfeited to the Crown if the person from whom the gang insignia is taken pleads guilty to, or is convicted of, an offence under against **section 6(2)**. 25
- (3) If gang insignia is 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(2)** or on a subsequent application, directs.** 30

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.
- (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 5
- (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,— 10
- (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 **section 7(1)**; and 15
- (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: 20
- (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)**; 25
- (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— 30
- (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 summary conviction to a fine not exceeding \$1,000 who, without reasonable excuse,— 35

- (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 made by a constable under **subsection (4)(c) or (d)**. 5
- (6) A constable may arrest without warrant any person who the constable has good cause to suspect has committed an offence against **subsection (5)**.
- 9 Laying of information for offence under this Act** 10
- An information for an offence under this Act may be laid only by a constable.

Legislative history

22 November 2007
16 April 2008

Introduction (Bill 171-1)
First reading and referral to Law and Order
Committee
