



RESEARCH AND CONSULTING LTD.

Gang Legislation Amendment Bill

Submission to Select Committee

1.0 General Position

1.1 We oppose the Gang Legislation Amendment Bill (the Amendment Bill) because:

- it does not properly address the causes of gang formation and gang members' behaviour;
- there is no empirical evidence that the proposed Amendment Bill will achieve the policy objectives outlined in Part 1; and
- it contravenes sections 14 and 17 of the Bill of Rights Act (BORA) 1990 and subsequently infringes on human rights.

1.2 Despite our strong overall objection to the Amendment Bill for the reasons noted above, if the Bill does proceed our submission also includes suggested amendments to Part 2 of the Bill to temper some of the potential unintended consequences of this proposed legislation.

1.3 These amendments include:

- revising the prohibition on the display of gang insignia in public places to only be used if Police have reasonable cause to believe three or more gang members wearing their regalia are likely to cause violence; and
- removing the exemption of news media.

2.0 Our background and interest in this Amendment Bill

2.1 H2R Research and Consulting Ltd (H2R Ltd) has supported the design, development and delivery of initiatives to improve whānau health and wellbeing in hard-to-reach communities around the country since 2014/15. Our approach is underpinned by a framework based on penetration, engagement, and mobilisation to support hard-to-reach Māori communities to design, develop and deliver their own initiatives to lead transformative change within their own whānau and communities. Key principles of the approach include the need to penetrate and engage with marginalised communities, that communities know best what will work for them, and empowering and supporting them to lead change for themselves. We have two co-directors – Harry Tam and Angie

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Wilkinson. Our experience includes, working at senior levels in government policy development, and backgrounds in public health and community development.

2.2 Further information about our work and areas of expertise can be found here: www.hard2reach.co.nz

3.0 Consultation undertaken in preparation of this submission

To prepare this submission we have consulted with academic and subject matter experts, including those directly affected by this proposed Amendment Bill. This includes:

- Dr Juan Tauri, Adjunct Associate Professor, Macquarie University
- Associate Professor Mark Lauchs, Queensland University of Technology's Centre for Justice
- Professor Mark Henaghan, University of Auckland
- Consultation with hard to reach communities across New Zealand, including at the National Presidents Meeting on 25 November 2023.

4.0 Detailed comments

4.1 The purpose of this Amendment Bill stated in Part 1(3) is to reduce the ability of gangs to operate and cause fear, intimidation, and disruption to the public.

4.2 Based on our involvement with gang communities for over forty years it is our opinion that the Amendment Bill will not achieve its stated aims as it fails to address the causes of gang formation and dysfunctional behaviours amongst some gang members. Importantly, it fails to recognise the role of the news media in generating a 'moral panic' which was a key driver of the formation of these communities and perpetuates their alienation, and the failure of successive policies of suppression in addressing intergenerational dysfunction and harm.

Moral panic, hysteria, and institutionalisation

4.3 The fear of gangs in New Zealand can be traced back to the 1950s where the news media generated public outcry and hysteria about young people and gangs. The Mazengarb Report¹ in 1954 typifies this hysteria, which arguably contributed to the formation of the gangs as we know of them today. In her book, *The road to Hell*, Criminologist Dr Elizabeth Stanley points out:

"The alarmist and moralist Mazengarb report distributed to nearly 300,000 New Zealand homes in 1954, blamed parents who gave their children excessive freedoms and pocket money, limited discipline and undermined strong religious. And then, fault lay with disparate societal changes, such as the demise of community spirit as well as

growth of comic books, indecent literature, cinema and advertising [...] all had a part to play in raising a generation out of control”¹

- 4.4 In addition to the hysteria that Mazengarb generated, Child Welfare Officers increasingly made remarks in the media about the rising number of children involved in gangs, and in 1957 the NZ Police created the Juvenile Crime Prevention Branch to focus specifically on young people.² This eventually led to a flow of young people being placed into youth institutions where their carers physically, mentally and sexually abused them. By the 1960s, a significant proportion of the young people abused in these institutions were Māori.³ The Waitangi Tribunal confirmed that many of the gang members of today have their whakapapa from these institutions, which makes them a “*unique and important part of Aotearoa’s survivor community*” according to Coral Shaw, Chair of the Royal Commission of Inquiry into Abuse in Care.⁴

Development of dysfunctional behaviours and identification with the patch

- 4.5 Within these institutions, the last remnant of Tikanga Māori was literally beaten out of these young people and they developed their own subcultures of violence, including sexual violence. The “no narking rule” may well have evolved within these institutions as a means of protecting the perpetrators of violence and debauchery that these young people were subjected to on almost a daily basis. When these traumatised and angry young people eventually left these institutions they had become institutionalised and could not relate to others who did not share their experiences. As such, their bond with each other was the beginnings of the likes of the ‘Mongrels’. This was a label that a Hastings Magistrate bestowed on a group of these young men after they wrecked a flat.⁵ Eventually they called themselves the Mongrel Mob and thus the patch was born.
- 4.6 The patch became their symbol of identity; to remove the patch is to remove their identity without addressing the harm inflicted upon them by the state. A case in point here comes directly from the late national President of the Notorious chapter of the Mongrel Mob, Roy Dunn. Roy told Harry off when he asked if youth gang members in South Auckland could avoid wearing their colours at a national hui that NZ Police Deputy Commissioner Wally Haumaha was attending. Roy’s response was: “*That’s*

¹ Stanley, E. (2017). The road to hell: State violence against children in postwar New Zealand. *Aotearoa New Zealand Social Work*, 29(1), 115–116. <https://doi.org/10.11157/anzswj-vol29iss1id367>

² Watt, E. (2003). *A History of Youth Justice in New Zealand* 1.

³ Tāwharautia: Pūrongo o te wā, Interim Report, Abuse in Care, Royal Commission of Inquiry, December 2020

⁴ ‘Gangs’ first-ever joint hui to discuss State’s role in their formation, Royal Commission invited.’ 20 Feb 2023. <https://www.abuseincare.org.nz/our-progress/news/gangs-first-ever-joint-hui-to-discuss-states-role-in-their-formation-royal-commission-invited/> (Accessed 5 April 2024)

⁵ Gilbert, J. (2013). *Patched: The history of gangs in New Zealand*. Auckland University Press

*all that young fulla's got and you're asking me to take that off him? Go and get f**ked."*

Roy's comment came from his own lived experience: he was put into a Residential Boys' Home when he was eight years old and didn't see his mother again for another eight years.

Intergenerational trauma and harm in gang communities

- 4.7 Most gang members today are second or third generational gang members; they are the sons, nephews, and siblings of older gang members whose fathers and uncles were survivors of state care living with unresolved trauma. Their sons and daughters are the victims of intergenerational transfer of dysfunction. Because these people have unresolved trauma, they have a propensity to display extreme violence towards others and to each other.⁶ They also have a propensity to self-medicate through alcohol and drug abuse, and often start dealing substances to manage their own addiction.⁷ Some will also go on to become involved in the largescale distribution of drugs. This can be seen in the Supreme Court case of Jason Philip v R, whereby his very difficult background, drug and gambling addictions, and mental health issues were found to have a direct link to his offending.⁸

Suppression vs intervention to address the proliferation of gangs

- 4.8 As an organisation that works closely with gang communities, we are also deeply concerned about the proliferation of gangs in recent years. However, the increase in gang numbers is not surprising because the only policy to manage gang behaviours has been the policy of suppression since 1989. In the main, the gangs have been left to fester on their own with no or miniscule assistance from government agencies to address gang behaviours. It should be noted that at the time of the 1981 Report of the Committee on Gangs, the Police numbers for gang members was 2,300 and by 1987, at the time of the Ministerial Inquiry into Violence, there were 2,200.^{9,10} It should also be noted that under the National Government of 1975 – 1984 Prime Minister Sir Robert Muldoon took a personal interest in the gangs, and he proactively implemented policies to ensure gang members were engaged in work and other prosocial activities like rugby league, etc.¹¹

⁶ Gerrard, J., Lambie, I., McIntosh, T., (2023). Toward an understanding of gangs in Aotearoa New Zealand - Full report. The Office of the Prime Minister's Chief Science Advisor. Report. <https://doi.org/10.17608/k6.OPMCSA.23157782.v1>

⁷ He Ara Oranga : report of the Government Inquiry into Mental Health and Addiction (2018) <https://mentalhealth.inquiry.govt.nz/inquiry-report/> (Accessed 5 April 2024)

⁸ <https://www.courtsofnz.govt.nz/cases/jason-brendon-philip-v-r-1>

⁹ New Zealand Committee on Gangs & Comber K. (1981). Report of the committee on gangs. ISBN 0477011284

¹⁰ Roper, C., et al, Report of Ministerial Committee of Inquiry into Violence. <https://www.ojp.gov/pdffiles1/Digitization/108665NCJRS.pdf> (accessed 5 April 2024)

¹¹ Smith A., (25 August 2023) National Party vows to scrap contracts with gangs for community support. <https://www.rnz.co.nz/news/political/496546/national-party-vows-to-scrap-contracts-with-gangs-for-community-support> (Accessed 5 April)

4.9 While gang membership grew after 1987 it was at a much slower rate, which I attribute to many of the larger gangs adopting a passive recruitment policy. The saying at the time was that gangs wanted quality members over quantity, as was the case in the late 1970s and early 1980s. This may explain why, in around 2014, there was a surge in the formation and membership of youth gangs who have since been recruited into the established gangs.¹² I attribute this to the Rebels Motorcycle club establishing themselves in NZ, which saw the growth of the Head Hunters who had been around since the late 1960s but never expanded south of the Bombay Hills. With the arrival of the 501 gang members from Australia, however, the Head Hunters proliferated throughout NZ, triggering a reaction by the existing gangs to actively recruit. Gang membership increased to over 8,000 gang members as a result.¹³ Another factor in the recent growth in gang numbers may also be attributed to the social and economic policies of consecutive governments who have continued with the suppression approach, which also denies access to government-funded prosocial activities.¹⁴

The role of the news media and politicians in generating a moral panic and perpetuating the alienation of gang communities

4.10 According to NZ Police statistics in 2021, there were just over 8,000 gang members in the same year that the Department of Statistics estimated the NZ population to be 5.123 million.^{15,16} This works out to be around 1.5 gang members to 1,000 New Zealanders. These statistics suggest that unless members of the public are residing in gang infested communities such as Maraenui, Flaxmere, Porirua etc., most New Zealanders are unlikely to see patched gang members on a regular basis—if at all. These figures also suggest that members of the public are more likely to see gang members wearing patches through the mass media or on social media. We note that this Amendment Bill aims to prohibit the display of gang insignia on social media however, it excludes the news media.

4.11 The lead up to the 2023 election included a concerted programme of misinformation generated by the National Party and the media where ‘tough on crime’ was the mantra. A moral panic was created in the minds of New Zealanders, which fed off the idea that the country has a gang and law and order problem. The reality on the streets was different from what was feared, however: it should be noted that at the same time this

¹² New Zealand gang membership: A snapshot of recent trends (2022). <https://www.parliament.nz/en/pb/library-research-papers/research-papers/new-zealand-gang-membership-a-snapshot-of-recent-trends/> (Accessed 5 April 2024)

¹³ Ibid.

¹⁴ Gerrard, J., Lambie, I., McIntosh, T., (2023). Toward an understanding of gangs in Aotearoa New Zealand - Full report. The Office of the Prime Minister's Chief Science Advisor. Report. <https://doi.org/10.17608/k6.OPMCSA.23157782.v1>

¹⁵ New Zealand gang membership: A snapshot of recent trends (2022). <https://www.parliament.nz/en/pb/library-research-papers/research-papers/new-zealand-gang-membership-a-snapshot-of-recent-trends/> (Accessed 5 April 2024)

¹⁶ Statistics New Zealand. Population (Topics) <https://www.stats.govt.nz/topics/population/>

scaremongering was happening, experts in youth justice were advising the government that youth crime had been dropping.

4.12 There is a plethora of evidence that media and politicians generate moral panics which fail to provide effective solutions.¹⁷ More often than not, they are more likely to create perverse outcomes and unintended consequences, as outlined above regarding the outcome of the Mazengarb report. It should be noted that consecutive government reports since 1979 have always advised the need for greater controls of the media to prevent the sensationalised reporting of gang incidents.

4.13 The 1981 Report of the Committee on Gangs suggested:

“Continued efforts should be made by the news media to strike a balance between the public’s right to know about gang activities and avoiding coverage that unnecessarily “glamorise these activities.”¹⁸

4.14 And the 1987 Ministerial Inquiry into violence said:

“There is probably no subject in the field of law and order that can provoke more selective and distorted coverage from the media, or more emotive, and often ill-informed, rhetoric from those in authority, than gangs.”¹⁹

4.15 If the government is serious about preventing gang intimidation of the public then it needs to identify ways to prevent the news media from sensationalising gang incidents. One way of achieving this is to remove the exemption of news media from the proposed Part 2 of the Bill.

Lack of evidence that this Bill will achieve its policy objectives

4.16 In addition to our concerns that the Amendment Bill does not appropriately consider the factors driving the formation, perpetuation and proliferation of gangs in New Zealand, we are concerned that there is no empirical evidence that what this bill proposes will achieve the policy objectives outlined in Part 1 of the Bill.

4.17 We have had personal communication with Australian academic Associate Professor Mark Lauchs of Queensland University of Technology’s Centre for Justice (Teams meeting, 9 February 2024). Mark previously worked in the Queensland state government in policy and project roles associated with accountability and the justice system and now specialises in research about outlaw motorcycle gangs. Mark

¹⁷ Gilbert, J. (2022) Making Gang Laws in a Panic: Lessons from the 1990s and beyond. The Law Foundation

¹⁸ New Zealand Committee on Gangs & Comber K. (1981). Report of the committee on gangs. ISBN 0477011284

¹⁹ Roper, C., et al, Report of Ministerial Committee of Inquiry into Violence.

<https://www.ojp.gov/pdffiles1/Digitization/108665NCJRS.pdf> (accessed 5 April 2024)

informed us that there has been no evaluation conducted on whether the anti-bikie laws work or not and it depends on who you talk to. He suggested that the politicians and the Police might say the laws work but this is only anecdotal. This appears to be consistent with the advice the Minister of Justice received from his official on 27 November 2023, which said:

There is also limited anecdotal evidence that membership of Outlaw Motorcycle Clubs in some Australian jurisdictions reduced over the period 2015-2019, which coincides in time with the introduction of a greater number of suppression laws.

Infringement on human rights

- 4.18 The Attorney General has advised the Amendment Bill is inconsistent with the Bill of Rights Act, including rights to freedom of expression, association and peaceful assembly.²⁰ We are concerned with all of these infringements on the human rights of gang members, however a key point we want to draw the Committee's attention to is the background that led to gang members' strong identification with the patch, as is detailed in paras 4.5 and 4.6 above. This demonstrates why the patch is so important to gang members and the need to protect their right to freedom of expression when every other form of identity has been stripped away from them.

Potential for unintended consequences

- 4.19 As we have outlined in our submission, the Marzengarb report exacerbated the problem it sought to address and can be directly traced to the formation of gangs (see paras 4.3 and 4.4). Similarly, the approach taken with this Amendment Bill follows a similar vein of moral panic and hysteria generated by news media and politicians (paras 4.10-4.14 refer).
- 4.20 For these reasons we consider there is a significant potential for unintended consequences with this proposed approach. Examples of these unintended consequences may include gangs coming up with different forms of identification that will make it more difficult for law enforcement to pick up, the potential for an increased propensity for facial tattoos which arguably are more intimidating than patches, the potential to drive gangs underground, and the perpetuation of alienation into future generations.

²⁰ <https://www.justice.govt.nz/assets/Documents/Publications/Gangs-Legislation-Amendment-Bill.pdf>

5.0 Conclusion and recommendations

5.1 In conclusion, we strongly oppose this Amendment Bill. We consider it will not address its stated purpose to reduce the ability of gangs to operate and cause fear, intimidation, and disruption to the public. Key reasons for this are it fails to address the drivers of the formation and perpetuation of gangs, the proposed approach lacks an evidence-base of effectiveness, and it infringes on the human rights of gang members.

5.2 Instead, we would recommend a programme of work that takes an intervention approach to addressing the proliferation of gangs, similar to the effective approach undertaken under the National Government of 1975 – 1984 by Prime Minister Sir Robert Muldoon. Based on our extensive experience working with gang communities, an effective approach would enable the pro-social leadership potential that exists within communities and support the active participation of ‘hard to reach’ communities in designing, developing and delivering services and initiatives for themselves to address their needs, build hope, and raise aspirations for the next generations.

5.3 However, if the Minister goes ahead with this Amendment Bill, then we suggest the following changes to Part 2 to address some of our key concerns:

Part 2, section 7(1) – revising the prohibition on the display of gang insignia in public places to only be used if Police have reasonable cause to believe three or more gang members wearing their regalia are likely to cause violence

5.4 Banning of gang regalia should only be used if the Police have reasonable cause to believe three or more gang members wearing their regalia are likely to cause violence. We believe this would make this law consistent with the likes of the unlawful assemblies charge so gang members can only be charged if they are in a group of three or more. This provides more reasonable grounds to believe the group is likely to cause violence rather than a blanket ban, and provides more discretion to the Police to base their decisions on their extensive intel and experience.

Part 2, section 8, (a)(ii) – remove exception for media reporting of news, observations on news, or current affairs

5.5 The news media is a major contributor to displaying gang regalia, probably more so than the gang members themselves and there is sufficient evidence of this through consecutive government reports that have expressed concerns over the sensationalised reporting of gang activities. We consider that the reporting itself is a driver of public intimidation and fear, and for these reasons we recommend that this exception is removed.