



03 April 2024

S24.06

Submission to the Justice Select Committee on the Gangs Legislation Amendment Bill

Introduction

1. The National Council of Women of New Zealand, Te Kaunihera Wahine o Aotearoa (NCWNZ) is an umbrella group representing around 60 affiliated organisations and 300 individual members. Collectively our reach is over 200,000 with many of our membership organisations representing all genders. NCWNZ has 13 branches across the country.
2. NCWNZ's vision is a gender equal New Zealand and research shows we will be better off socially and economically if we are gender equal. Through research, discussion and action, NCWNZ in partnership with others, seeks to realise its vision of gender equality because it is a basic human right.
3. This submission has been prepared by the NCWNZ Parliamentary Watch Committee drawing on existing NCWNZ policy and previous related submissions of NCWNZ.

Executive summary

4. NCWNZ supports the Bill's twofold aim to reduce harm by criminal gangs and to make communities safer.
5. NCWNZ notes the Bill gives effect to the Coalition government's 100-day plan to restore law and order and ensure New Zealanders are safer in their communities.
6. NCWNZ understands the intended outcomes of the Bill will be achieved by:
 - creating a new criminal offence that would prohibit the display of gang insignia in public places.

- creating a new dispersal power to stop gang members gathering in public, which would require specified people to leave an area and not associate in public for 7 days.
 - creating a new non-consorting order to stop specified gang offenders from consorting, which would require specified people not to associate or communicate with each other for 3 years.
 - making gang membership an aggravating factor at sentencing.
7. NCWNZ is disquieted by the lack of consultation with key stakeholders, including Māori, and by the absence of thorough analysis in the preparation of the Bill.
 8. NCWNZ considers the proposed Bill to be in breach of the principles of Te Tiriti o Waitangi.
 9. NCWNZ is further concerned with the infringement of Human Rights that will arise with the enactment of this Bill, and that content of the Bill will not align with international treaties and conventions to which New Zealand is a signatory.
 10. NCWNZ notes the Ministry of Justice’s recommendation in its Regulatory Impact Statement on the proposed Bill, to not proceed with the suppression approach but to continue with the status quo.
 11. We urge a withdrawal of this Bill, and request the committee carries out an exploration of alternative measures to achieve the intended aims of the Bill.
 12. We further urge a legitimate attempt by Government authorities to address the underlying issues of poverty and alienation of population groups that lead to the formation of gangs.

Background

13. NCWNZ has demonstrated an ongoing interest in the area of Human Rights through its advocacy over the 125+ years of the organisation’s existence, with recent submission input provided to the following:
 - S24.02 Briefing for Aotearoa New Zealand’s Fourth Universal Periodic Review of Human Rights¹
 - S23.04 Human Rights (incitement on Grounds of Religious Belief) Amendment Bill²

¹https://assets.nationbuilder.com/ncwnz/pages/1026/attachments/original/1708131255/S24.02_UPR_recommendations.pdf?1708131255

²https://assets.nationbuilder.com/ncwnz/pages/1026/attachments/original/1676240117/S23.04_Human_Rights_Amendment_bill_.pdf?1676240117

14. NCWNZ acknowledges that Māori make up a large proportion of New Zealand’s gang population and are disquieted to learn that there has been no consultation with Māori during the preparation of this Bill.
15. NCWNZ understands from a 2019 study and report by Sir Kim Workman “It is estimated that 40 per cent of all prisoners have associations with gangs, and that around 85 per cent of all gang members are Māori.”³
16. We further acknowledge the many inequities Māori experience in terms of health, education, employment, economic stability, justice, and cultural security, all of which may encourage anti-authority views and lead to participation in gangs.

New Zealand Laws

17. New Zealand’s Bill of Rights Act 1990 makes clear that everyone has the right to freedom of expression, including the freedom to seek, receive, and impart information and opinions of any kind in any form, and that everyone has the right to freedom of peaceful assembly and the right to freedom of association.⁴
18. The Human Rights Act 1993 makes clear that no person may be discriminated against on the grounds of ethical belief or political opinion.⁵
19. The clauses of the Bill that relate to monitoring of compliance of non-consorting orders have raised concerns with the Privacy Commissioner, who notes the Police’s implementation of the proposals will be subject to the Privacy Act 2020.
20. The clauses of the proposed Bill that prohibit display of gang insignia and introduce dispersal powers to stop gang members gathering in public, would appear to be in breach of the Bill of Rights Act 1990 and the Human Rights Act 1993.

³ <https://maramatanga.co.nz/news-events/news/te-arotahi-wh-nau-ora-imprisonment>

⁴ <https://www.legislation.govt.nz/act/public/1990/0109/latest/whole.html#DLM225513>

⁵ <https://www.legislation.govt.nz/act/public/1993/0082/latest/whole.html#DLM304212>

Section 7 Report by Attorney General

21. NCWNZ notes the following information regarding consistency of the proposed Bill with the Bill of Rights Act 1990. “The Attorney-General's report noted that the proposed prohibition on the display of gang insignia in public places appears to be inconsistent with the rights to freedom of expression, association, and peaceful assembly under the New Zealand Bill of Rights Act 1990. The Attorney-General also noted that the proposed power to issue dispersal notices also appears to be inconsistent with the right to peaceful assembly under the NZBORA.”⁶

International Human Rights Obligations

22. NCWNZ is a party to the following international treaties:

- International Covenant on Civil and Political Rights (ICCPR)
- International Covenant on Economic, Social and Cultural Rights (ICESCR)
- International Convention on the Elimination of All Forms of Racial Discrimination (CERD)
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
- Convention on the Rights of the Child (CRC)
- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)
- Convention on the Rights of Persons with Disabilities (CRPD).

23. NCWNZ is concerned that the proposed Bill would be in breach of a number of the treaties and conventions listed above. For example, Article 2 of the ICCPR states: “Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”⁷

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<https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/the-bill-of-rights-act/compliance-reports/section-7-reports/>

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<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

UN Sustainable Development Goals

24. The Bill is at odds with the following targets detailed in the UN Sustainable Development Goals:

- 10 Reduced Inequalities
 - 10.2 By 2030, empower and promote the social, economic and political inclusion of all, irrespective of age, sex, disability, race, ethnicity, origin, religion or economic or other status.
 - 10.3 Ensure equal opportunity and reduce inequalities of outcome, including by eliminating discriminatory laws, policies and practices and promoting appropriate legislation, policies and action in this regard.
- 16 Peace, Justice and Strong Institutions
 - 16.4 By 2030, significantly reduce illicit financial and arms flows, strengthen the recovery and return of stolen assets and combat all forms of organized crime.
 - 16.6 Develop effective, accountable and transparent institutions at all levels.
 - 16.10 Ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements.
 - 16.b Promote and enforce non-discriminatory laws and policies for sustainable development.

Effectiveness of Suppression Approach

25. NCWNZ is aware of the Regulatory Impact Statement statement, *Responding to Gang Harms*, produced by the Ministry of Justice for the proposed Bill and is concerned by the following: “There is no evidence to suggest a suppression approach will work to reduce long-term offending behaviours by gangs, or eliminate gangs altogether. The shift in the overall approach also risks further entrenching mistrust of state authorities held by gang members and many in their wider whānau. This risks:

- making it more difficult for people to exit gangs (for those able to disengage), or to desist from crime (for those who remain a member or associate);
- undermining relationships between gangs and law enforcement or other agencies, thereby reducing prevention opportunities such as the de-escalation of gang tensions or social service delivery to address needs;
- undercutting efforts to cultivate pro-social activity with gang communities, for those groups that have moved towards adopting such behaviours; and
- making it harder for whānau experiencing violence, particularly domestic violence to seek help.”

26. NCWNZ is particularly worried by the final point listed above regarding the potential for victims of domestic violence to be obstructed from accessing assistance and support from the Police or government agencies.

27. NCWNZ is further concerned by the limitations and constraints of analysis noted by the Ministry of Justice in the Regulatory Impact Statement. These include time constraints due to the implementation of the Coalition government’s 100-day plan, and lack of broader public consultation. “A longer timeframe could have allowed officials to consult with stakeholders and public, including groups most affected by these policies, such as Māori and communities with high concentrations of gang activity. This could have provided more fully informed advice on the impact of these proposals, operational challenges, and unintended consequences, as well as insights on the nature of gang conduct within communities and existing efforts to address them.”⁸

Te Tiriti o Waitangi

28. NCWNZ finds it disturbing that the Bill does not align with the commonly accepted principles of equity, partnership, and protection embedded in Te Tiriti o Waitangi.

29. NCWNZ is aware of the following advice given in the preparation of the Bill: Officials said that "measures that specifically target gangs are likely to impact Māori and are likely to conflict with the equity principle of the Treaty of Waitangi. Claims to the Waitangi Tribunal could be expected.”⁹

⁸ <https://www.justice.govt.nz/justice-sector-policy/regulatory-stewardship/regulatory-impact-assessments/>

⁹

<https://www.rnz.co.nz/news/in-depth/511053/gang-patch-ban-pushing-ahead-against-advice-of-officials-and-experts-warn-it-could-backfire>

30. NCWNZ is concerned by the lack of consultation particularly with Māori, in the preparation of the Bill. Consultation is considered a key element of the Treaty principle of partnership by The Waitangi Tribunal.¹⁰

Conclusions

31. NCWNZ supports the Bill's twofold aim to reduce harm by criminal gangs and to make communities safer.
32. However, we believe the proposed suppression approach will not be effective and is likely to have negative consequences. Instead we recommend an alternative approach be taken to tackling the issue of criminal offending by gangs.
33. We are unable to support the Bill in its current form due to its repudiation of existing human rights laws and international human rights conventions.
34. We wish to see the Bill in its current form withdrawn, a thorough regulatory analysis carried out, and an in-depth consultation with the public, particularly Māori, undertaken to ensure a robust and effective piece of legislation fit to achieve its intended outcomes.
35. NCWNZ urges Government authorities to address the underlying issues of poverty and alienation of population groups that lead to the formation of gangs.



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¹⁰ <https://www.waitangitribunal.govt.nz/treaty-of-waitangi/principles-of-the-treaty/>