

**Legislative Statement
for the
Criminal Activity Intervention Legislation Bill**

First Reading

**Presented to the House of Representatives
In accordance with Standing Order 272**

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Introduction

- 1 The Criminal Activity Legislation Bill (**the Bill**) creates new offences and enforcement powers to better prevent and respond to harms commonly associated with gangs and organised criminal groups.
- 2 The Bill amends the Crimes Act 1961, the Search and Surveillance Act 2012, the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (**AML/CFT Act**), the Arms Act 1983, the Sentencing Act 2002, and the Land Transport Act 1998.
- 3 The amendments support the Labour manifesto commitments to maintain pressure on tackling organised crime and gangs by ensuring law enforcement has the tools and powers needed to disrupt and prosecute relevant offending.

Background

- 4 In July 2022, the Ministers of Justice and Police directed officials to review the current legislative settings and provide advice on specific proposals for:
 - 4.1 offences and penalties related to shootings in public places to introduce more targeted penalties for discharging a firearm in a public place;
 - 4.2 new warranted search powers for weapons to prevent and respond to gang conflict;
 - 4.3 expanding the range of offences that can result in vehicle impoundment, including vehicles that may be used as part of a gang convoy; and
 - 4.4 preventing gangs from moving and converting large quantities of cash, including giving Police the power to seize cash found in suspicious circumstances during lawful searches, and by prohibiting high-value dealers from accepting cash payments over a set threshold.
- 5 Criminal activities of gangs, especially when violent, can cause serious harm to communities and give rise to public concern. In recent months, conflict between rival gangs have resulted in more overt violent incidents, which poses risks to the community and has led to concerns about public safety. The Bill provides legislative tools for Police that would enable them to respond to current issues around gang conflict and the wider harm caused by gang and related criminal activity.
- 6 These legislative tools will be supported by the wider package of work across Government that tackles the causes of gang participation and reduces offending over the long term.
- 7 The Bill will be enacted through an omnibus amendment Bill.

Key legislative amendments

A new discharging a firearm with intent to intimidate offence

- 8 The Bill amends the Crimes Act 1961 and introduces a new offence of discharging a firearm with intent to intimidate in a public place.

- 9 Currently, there is an apparent gap in the law where law enforcement can intervene when a firearm is discharged with intent to intimidate, but only when it is to intimidate those in a dwelling house. The Bill enables the Crimes Act to address all situations where a firearm is discharged with the intent to intimidate any person or group of people.
- 10 The Bill sets a maximum penalty of 5 years' imprisonment for this offence.
- 11 The Bill adds the new offence to the list of offences in the Criminal Investigations (Bodily Samples) Act 1995, Sentencing Act 2002 and Arms Act 1983, that results in:
- 11.1 a person detained for or suspected of committing this new offence being required to give a bodily (DNA) sample; and
- 11.2 a Firearms Prohibition Order issued by the courts against a person convicted of this offence; and
- 11.3 a 10-year firearms licence disqualification for the person convicted.

A new warrant allowing Police to search and seize weapons

- 12 The Bill amends the Search and Surveillance Act 2012 and provides a new warrant that grants Police to search properties and vehicles within defined areas where gang conflict is occurring. The warrant has a maximum a time limit of 14 days.
- 13 Police currently can search property and vehicles where they suspect or believe that individuals have committed, are currently committing, or will commit an offence involving weapons. However, the existing provisions can only be used in relation to the property of specific individual or individuals. This prevents Police from searching the property and vehicles of all members of the gang despite the increased risk that future violence may be committed by any member of the gang.
- 14 Once the warrant is issued, Police will not need to suspect the members of the specified gang/s of a specific offence to search their property for weapons.
- 15 To obtain a warrant, Police must apply to a District or High Court Judge and demonstrate that a gang conflict exists and involves, or may soon involve, the use of weapons that are likely to cause wider harm.
- 16 The warrant would specify:
- 16.1 the gang/s it relates to;
- 16.2 the required time limit; and
- 16.3 the known property occupied, possessed or owned by known members of the specified gang/s within a specified region or regions.
- 17 The warrant may apply to the vehicles and property of non-gang members if they are listed in the warrant and the authorising Judge is satisfied there are reasonable grounds to believe they are assisting or encouraging the conflict.
- 18 Police may also search vehicles not listed in the warrant if they have reasonable grounds to suspect the vehicle is owned or used by a member of the specified gang/s

or is owned or used by people specified in the warrant assisting or encouraging the conflict.

Expansion of Police power to seize and impound vehicles

- 19 The Bill amends the Land Transport Act 1998 to expand the mandatory 28-day impoundment power to include the new offences of:
- 19.1 dangerous and reckless driving where no injury or death; and
- 19.2 aggravated careless use of a vehicle causing injury or death.
- 20 Conflict is not the only way gangs can cause harm. Gang convoys, where large groups of gang members travel together on the road, often involve high-risk and illegal behaviour that present a significant road safety risk for the public. The Bill strengthens Police's ability to address and respond to this behaviour.

A new cash transaction prohibition

- 21 The Bill amends the AML/CFT Act and prohibits a person in trade from engaging in buying and selling of specified goods by way of cash transactions above the applicable threshold value. The prohibition carries both criminal and civil liabilities:
- 21.1 Contravening the prohibition order results in a criminal offence. The penalty for an individual is maximum 2 years imprisonment or a fine up to \$300,000. In the case of a body corporate or partnership, the penalty is a fine of up to \$5 million. A person, including a reporting entity who contravenes the prohibition, commits an offence.
- 21.2 In addition, reporting entities who fail to comply with the prohibition may also be subject to a civil pecuniary penalty of a maximum of \$200,000 in the case of an individual, or a maximum \$2 million in the case of a body corporate.
- 22 The Bill specifies the goods the prohibition applies to and the threshold will be set through regulation to allow for a risk assessment to be undertaken. The threshold value will be set at a level that ensures low-risk, ordinary and legitimate cash transactions are not part of the prohibition.
- 23 This prohibition would enable enforcement agencies to intervene when assets are being converted into goods and help prevent proceeds of crime from leaking into the financial system.

A new cash seizure power for Police to seize and hold cash found in suspicious circumstances

- 24 The Bill introduces a new Police power to seize cash of or over \$10,000 found in suspicious circumstances. This new power will fill gaps in the existing law relating to items found in "plain view" while exercising a lawful search, which require reasonable grounds to believe that the item could have been seized under a search warrant or another search power.
- 25 The Bill provides a definition for "cash" for the purpose of this new seizure power and provides an exhaustive list comprising of physical currency, bearer-negotiable instruments, and gold bars or gold ingots.

- 26 The time limit for the seizure power is 7 days before either returning the cash or initiating proceedings to hold the cash in order to remove the cash permanently from the person in whose possession the cash was found. Police may apply to the District Court to hold cash for a further 28 days after the initial 7-day period and seek a renewal for a further 28 days.
- 27 The Bill sets out circumstances where Police must return or release the cash seized and allows for persons to apply for their cash to be returned or released. Circumstances include:
- 27.1 the authorised holding period has ended, and Police did not commence proceedings for a restraining or forfeiture order;
 - 27.2 proceedings for a restraining or forfeiture order have been withdrawn or dismissed; or
 - 27.3 the person whom the cash was seized, or the owner of the cash, has requested a return and provided the Police with information about its origin and purpose, and Police are satisfied that the cash has lawful and legitimate origins.