

# **Criminal Activity Intervention Legislation Bill**

Government Bill

As reported from the Justice Committee

## **Commentary**

### **Recommendation**

The Justice Committee has examined the Criminal Activity Intervention Legislation Bill and recommends that it be passed. We recommend all amendments unanimously.

### **About the bill as introduced**

The Criminal Activity Intervention Legislation Bill seeks to address the harm caused by criminal activity, including that caused by gangs, and make communities safer. It would create new powers and offences that aim to better prevent and respond to the harm caused by criminal offending. This includes the harm commonly associated with gang activities, such as money laundering and dangerous behaviour on New Zealand roads.

The bill would amend the following four Acts:

- the Crimes Act 1961, to include a new offence of discharging a firearm with intent to intimidate
- the Land Transport Act 1998, to expand the powers of enforcement officers to seize and impound vehicles in response to dangerous, reckless, and aggravated careless driving
- the Search and Surveillance Act 2012, to provide two new powers:
  - a warrant power to search for and seize weapons during a gang conflict
  - a power to seize cash found in suspicious circumstances and believed to be over \$10,000
- the Anti-Money Laundering and Countering Financing of Terrorism Act 2009, to prohibit cash transactions over a specified value for certain high-value goods.

## **Legislative scrutiny**

As part of our consideration of the bill, we have examined its consistency with principles of legislative quality. We have no issues regarding the legislation's design to bring to the attention of the House.

## **Proposed amendments to the Search and Surveillance Act**

This commentary covers the main amendments we recommend to the bill as introduced. All of our proposed amendments are to the Search and Surveillance Act. We do not discuss minor or technical amendments.

## **Warrants to search and seize weapons during a gang conflict**

Clause 20 would insert sections 18A to 18F as new subpart 6A of Part 2 of the Search and Surveillance Act, providing for warrants to search for and seize weapons during a gang conflict.

### **Matters that a judge must be satisfied of to issue a search warrant**

Proposed new section 18D(1) would enable a judge to issue a warrant on an application made under section 18B.<sup>1</sup> The judge would need to be satisfied that there were reasonable grounds to believe that:

- a gang conflict exists
- 1 or more gangs involved in the gang conflict are in a specified area
- the issuing of the warrant could reduce the risk of harm to people or property.

Proposed new section 18D sets out the matters that a judge would need to be satisfied of to issue a warrant to search 1 or more specified places (18D(2)) or specified vehicles (18D(4)). Both provisions require there to be reasonable grounds to suspect that the specified places or specified vehicles are owned, occupied, or used:

- by 1 or more gang members of a specified gang (section 18D(2)(a) and 18D(4)(a))
- by 1 or more specified persons, and there are reasonable grounds to believe that they are encouraging or assisting in the gang conflict (section 18D(2)(b) and 18D(4)(b)).

We recommend amending section 18D(2) and (4) to clarify that paragraphs (a) and (b) in these provisions could be applied separately or together.

---

<sup>1</sup> Under new section 18B, if a gang conflict exists, a constable could apply to a judge for a warrant to search places and vehicles in an area. The warrant would be for the purpose of locating and seizing weapons.

## **Providing redacted copies of search warrants**

Clause 22, which would amend section 131 of the Act, relates to the identification and notice requirements for a person exercising a search power.

Proposed new section 131(1)(b)(ii) sets out what the person exercising the search power must do before or on initial entry when exercising a warrant issued under new section 18D(2) or (3). The person would need to provide the occupier with a redacted copy of the warrant, showing only the details of the place or vehicle being searched. If that was not reasonably practicable, the person would need to inform the occupier how a copy of the redacted warrant could be made available within 7 days.

We note that this new provision would require less information to be disclosed to the occupier than for existing warrants under the Act. We investigated why a warrant issued under new section 18D would be treated differently. We concluded that there is no clear rationale for why the occupant should not receive a redacted version of the warrant before it is executed. Therefore, we recommend amending section 131 to reflect this.

We also recommend that the notice requirements in relation to the search of vehicles be dealt with separately, and that new subsections (iii) and (iv) be inserted. These new provisions would require that when the search power is exercised under a warrant issued under new section 18D(4) or (5) in relation to a vehicle, the person in charge of the vehicle must, if reasonably practicable, be provided with a copy of the warrant redacted to show only the authorisation to undertake the search in respect of the vehicle. However, if this is not reasonably practicable in the circumstances, certain information must be provided to the person, including advice about how a copy of the redacted warrant can be made available within 7 days after the date of the search.

## **Power to seize certain amounts of cash found in suspicious circumstances**

Clause 33 would insert new sections 123A to 123E dealing with the seizure of \$10,000 or more in cash.

Proposed new section 123B specifies the process for seizing cash found in suspicious circumstances that is equivalent to, or more than, the cash seizure threshold amount. The bill defines “cash seizure threshold amount” as NZ\$10,000, or an equivalent amount. New section 123B(4) would enable a constable or a person assisting them to seize the cash if all of the following conditions were met:

- The constable reasonably believed the cash was an amount equal to or over the cash seizure threshold amount.
- The constable was not satisfied with the explanations given by the person possessing the cash in response to questions asked under section 123B(3). The questions are about the origin of, and intended use for, the cash.
- The constable had reasonable grounds to suspect that the cash was not lawfully or legally sourced, or was to be used for an unlawful or dishonest purpose.

We recommend amending section 123B to require the person possessing the cash to be advised of the constable's power to seize the cash. We consider that this is necessary given the consequences of a person providing unsatisfactory answers to questions about the cash.

### **Power to amend the “cash seizure threshold amount”**

Clause 35, amending section 342, would insert a regulation-making power to amend the definition of “cash seizure threshold amount” by increasing or decreasing the specified amount. The Regulations Review Committee wrote to us querying the need for this provision. It recommended that we satisfy ourselves that the power in clause 35 to change the threshold amount by regulation is necessary and appropriate.

The Regulations Review Committee also noted that the power is very broad, since no range is specified for the threshold amount. It recommended that we amend the definition of “cash seizure threshold amount” in new section 123A(1) to add a reference to the amount set by regulations. We agree with the committee's suggestion and recommend that the definition of “cash seizure threshold amount” in new section 123A(1) be amended to make it explicit that the amount may be prescribed by regulations under new section 342(2A).

### **Search warrant reports**

We note that section 104 of the Act enables an issuing officer to require a search warrant report. The report must contain information about the use of the search warrant, including whether it was executed and, if so, the type of material that was seized. It must also contain information on any other powers exercised along with the execution of the warrant, and any criminal proceedings relating to any evidence seized.

We consider that a judge issuing a warrant under proposed new section 18D should also be able to request a search warrant report. We recommend inserting new section 18G to provide for this, which would be similar to the search warrant report that may be required by an issuing officer in respect of other types of warrants under section 104.

Section 104(2)(b) of the Act requires the report to indicate whether the execution of the warrant resulted in the seizure of evidential material under section 123 of the Act (Seizure of items in plain view). We note that cash seized under new section 123B could also constitute evidential material. Therefore, we recommend amending section 104(2)(b) to require a search warrant report to also contain information on whether any cash was seized as evidential material under new section 123B.

## Appendix

### Committee process

The Criminal Activity Intervention Legislation Bill was referred to the committee on 27 September 2022. We called for submissions on the bill with a closing date of 26 October 2022. We received and considered submissions from 14 interested groups and individuals. We heard oral evidence from six submitters at hearings in Wellington and by videoconference.

We received advice on the bill from the Ministry of Justice, the Ministry of Transport, and the New Zealand Police. The Office of the Clerk provided advice on the bill's legislative quality. The Parliamentary Counsel Office assisted with legal drafting. The Regulations Review Committee reported to us on the powers contained in clause 35.

### Committee membership

Ginny Andersen (Chairperson)

Hon Paul Goldsmith

Dr Emily Henderson

Nicole McKee

Hon Mark Mitchell

Simon O'Connor

Willow-Jean Prime

Vanushi Walters

Arena Williams



**Key to symbols used in reprinted bill**

**As reported from a select committee**

text inserted unanimously

~~text deleted unanimously~~



*Hon Kiritapu Allan*

## **Criminal Activity Intervention Legislation Bill**

Government Bill

### **Contents**

|                                                          |                                                                                                | Page |
|----------------------------------------------------------|------------------------------------------------------------------------------------------------|------|
| 1                                                        | Title                                                                                          | 3    |
| 2                                                        | Commencement                                                                                   | 3    |
| <b>Part 1</b>                                            |                                                                                                |      |
| <b>Discharging firearm with intent to intimidate</b>     |                                                                                                |      |
| Subpart 1—Amendments to Crimes Act 1961                  |                                                                                                |      |
| 3                                                        | Principal Act                                                                                  | 4    |
| 4                                                        | Section 308 amended (Threatening acts)                                                         | 4    |
| 5                                                        | New section 308A inserted (Discharging firearm to intimidate)                                  | 4    |
|                                                          | 308A Discharging firearm to intimidate                                                         | 4    |
| Subpart 2—Amendments to Arms Act 1983                    |                                                                                                |      |
| 6                                                        | Principal Act                                                                                  | 4    |
| 7                                                        | Section 22H amended (Persons disqualified from holding firearms licence)                       | 4    |
| 8                                                        | Section 39A amended (When FPO may be made)                                                     | 4    |
| Subpart 3—Amendment to Sentencing Act 2002               |                                                                                                |      |
| 9                                                        | Principal Act                                                                                  | 4    |
| 10                                                       | Section 111A amended (Firearms prohibition order)                                              | 5    |
| Subpart 4—Amendments to Search and Surveillance Act 2012 |                                                                                                |      |
| 11                                                       | Principal Act                                                                                  | 5    |
| 12                                                       | Section 45 amended (Restrictions on some trespass surveillance and use of interception device) | 5    |

**Criminal Activity Intervention Legislation Bill**

---

Subpart 5—Amendment to Criminal Investigations (Bodily  
Samples) Act 1995

|    |                    |   |
|----|--------------------|---|
| 13 | Principal Act      | 5 |
| 14 | Schedule 1 amended | 5 |

**Part 2**

**Expanding power of enforcement officers to seize and impound  
vehicles**

|    |                                                                                           |   |
|----|-------------------------------------------------------------------------------------------|---|
| 15 | Principal Act                                                                             | 5 |
| 16 | Section 96 amended (Vehicle seized and impounded for 28 days in<br>certain circumstances) | 5 |
| 17 | Section 102 amended (Appeal to Police against impoundment of<br>vehicle)                  | 6 |

**Part 3**

**Warrants to search and seize weapons when there is gang  
conflict**

|    |                                                              |   |
|----|--------------------------------------------------------------|---|
| 18 | Principal Act                                                | 6 |
| 19 | Section 6 amended (Issuing officer may issue search warrant) | 6 |
| 20 | New subpart 6A of Part 2 inserted                            | 6 |

Subpart 6A—Warrants to search and seize weapons when  
there is gang conflict

|      |                                                                                                                                      |           |
|------|--------------------------------------------------------------------------------------------------------------------------------------|-----------|
| 18A  | Interpretation                                                                                                                       | 6         |
| 18B  | Application for warrant to search places and vehicles and<br>seize weapons                                                           | 7         |
| 18C  | Content of application                                                                                                               | 7         |
| 18D  | Issue of warrant to search places and vehicles in specified<br>area and seize weapons                                                | 8         |
| 18E  | Places and vehicles may be searched on more than 1<br>occasion                                                                       | 10        |
| 18F  | Form and content of warrant                                                                                                          | 10        |
| 18G  | <u>Judge may require warrant report</u>                                                                                              | <u>11</u> |
| 21   | Section 98 amended (Application for search warrant)                                                                                  | 12        |
| 22   | Section 131 amended (Identification and notice requirements for<br>person exercising search power (other than remote access search)) | 12        |
| 23   | New section 160A inserted (Disposal of weapons)                                                                                      | 13        |
| 160A | Disposal of weapons                                                                                                                  | 14        |
| 24   | Section 170 amended (Annual reporting of search and surveillance<br>powers by Commissioner)                                          | 14        |
| 25   | New section 171A inserted (Information to be included in report<br>on warrants under <b>subpart 6A</b> of Part 2)                    | 14        |
| 171A | Information to be included in report on warrants under<br><b>subpart 6A</b> of Part 2                                                | 14        |

**Part 4**  
**Prohibition on persons conducting cash transactions for  
certain items above applicable threshold value**

|    |                                                                                                                      |    |
|----|----------------------------------------------------------------------------------------------------------------------|----|
| 26 | Principal Act                                                                                                        | 15 |
| 27 | New subpart 5A of Part 2 inserted                                                                                    | 15 |
|    | Subpart 5A—Cash transactions above applicable<br>threshold value                                                     |    |
|    | 67A Prohibition on certain cash transactions                                                                         | 15 |
| 28 | Section 78 amended (Meaning of civil liability act)                                                                  | 16 |
| 29 | Section 90 amended (Pecuniary penalties for civil liability act)                                                     | 16 |
| 30 | Section 104 amended (Time limit for prosecution of offences<br>relating to non-compliance with AML/CFT requirements) | 16 |
| 31 | New section 105A and cross-heading inserted                                                                          | 16 |
|    | <i>Offence relating to cash transactions</i>                                                                         |    |
|    | 105A Contravention of <b>section 67A</b>                                                                             | 16 |

**Part 5**  
**Seizure of cash amount of or over \$10,000 found in suspicious  
circumstances**

|     |                                                                                    |    |
|-----|------------------------------------------------------------------------------------|----|
| 32  | Principal Act                                                                      | 16 |
| 33  | New sections 123A to 123E and cross-heading inserted                               | 16 |
|     | <i>Seizure of cash found in suspicious circumstances</i>                           |    |
|     | 123A Interpretation                                                                | 17 |
|     | 123B Seizure of cash of or over cash seizure threshold amount                      | 17 |
|     | 123C Application to retain cash seized for further period                          | 18 |
|     | 123D Return or release of cash seized                                              | 19 |
|     | 123E Application to District Court for return or release of cash<br>seized         | 20 |
| 33A | <u>Section 104 amended (Issuing officer may require search warrant<br/>report)</u> | 20 |
| 34  | Section 149 amended (Disposal of things seized or produced)                        | 20 |
| 35  | Section 342 amended (Regulations)                                                  | 21 |

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

**1 Title**

This Act is the Criminal Activity Intervention Legislation Act **2022**.

**2 Commencement**

This Act comes into force on the day after the date on which it receives the 5  
Royal assent.

## Part 1

### Discharging firearm with intent to intimidate

#### Subpart 1—Amendments to Crimes Act 1961

##### 3 Principal Act

This subpart amends the Crimes Act 1961. 5

##### 4 Section 308 amended (Threatening acts)

- (1) Replace the heading to section 308 with “**Threatening acts in relation to dwellinghouses and persons in dwellinghouses**”.

- (2) Replace section 308(b) with:

(b) by threatening behaviour, alarms or attempts to alarm any person in a dwellinghouse. 10

##### 5 New section 308A inserted (Discharging firearm to intimidate)

After section 308, insert:

##### 308A Discharging firearm to intimidate

- (1) A person commits an offence who discharges a firearm intending to intimidate 1 or more other persons. 15
- (2) A person who is convicted of an offence under **subsection (1)** is liable to a term of imprisonment not exceeding 5 years.

#### Subpart 2—Amendments to Arms Act 1983

##### 6 Principal Act

This subpart amends the Arms Act 1983. 20

##### 7 Section 22H amended (Persons disqualified from holding firearms licence)

In section 22H(a)(iii), replace “or 306” with “306, or **308A**”.

##### 8 Section 39A amended (When FPO may be made)

Replace section 39A(1)(a)(iii) with: 25

(iii) an offence under section 98A, 189A, or **308A** of the Crimes Act 1961; or

#### Subpart 3—Amendment to Sentencing Act 2002

##### 9 Principal Act

This subpart amends the Sentencing Act 2002. 30

**10 Section 111A amended (Firearms prohibition order)**

Replace section 111A(2)(c) with:

(c) an offence under section 98A, 189A, or **308A** of the Crimes Act 1961:

Subpart 4—Amendments to Search and Surveillance Act 2012

**11 Principal Act**

5

This subpart amends the Search and Surveillance Act 2012.

**12 Section 45 amended (Restrictions on some trespass surveillance and use of interception device)**

(1) After section 45(1)(c), insert:

(d) against section **308A** of the Crimes Act 1961.

10

(2) After section 45(2)(c), insert:

(d) against section **308A** of the Crimes Act 1961.

Subpart 5—Amendment to Criminal Investigations (Bodily Samples)  
Act 1995

**13 Principal Act**

15

This subpart amends the Criminal Investigations (Bodily Samples) Act 1995.

**14 Schedule 1 amended**

In Schedule 1, Part 3, replace the item relating to section 308 of the Crimes Act 1961 with:

|                                                                              |             |
|------------------------------------------------------------------------------|-------------|
| Threatening acts in relation to dwellinghouses and persons in dwellinghouses | section 308 |
|------------------------------------------------------------------------------|-------------|

|                                   |                     |
|-----------------------------------|---------------------|
| Discharging firearm to intimidate | <b>section 308A</b> |
|-----------------------------------|---------------------|

**Part 2**

20

**Expanding power of enforcement officers to seize and impound vehicles****15 Principal Act**

This Part amends the Land Transport Act 1998.

**16 Section 96 amended (Vehicle seized and impounded for 28 days in certain circumstances)**

25

After section 96(1AA), insert:

(1AAB) An enforcement officer must, if practicable, seize and impound, or seize and authorise the impoundment of, a motor vehicle for 28 days if the officer

believes on reasonable grounds that the driver has committed an offence against section 35(1)(a) or (b) or 39(1).

**17 Section 102 amended (Appeal to Police against impoundment of vehicle)**

Replace section 102(1)(f) and (g) with:

- (f) if section 96(1A), (1AA), **(1AAB)**, or (1AB) applies, the owner did not know and could not reasonably be expected to know that the operator of the vehicle would contravene section 22A(1) or (3), 22AF, 35(1)(a) or (b), 39(1), or 114 (whichever applies); or 5
- (g) if section 96(1A), (1AA), **(1AAB)**, or (1AB) applies, the owner took all reasonable steps to prevent the operator of the vehicle from contravening section 22A(1) or (3), 22AF, 35(1)(a) or (b), 39(1), or 114 (whichever applies); or 10

### Part 3

#### Warrants to search and seize weapons when there is gang conflict

**18 Principal Act** 15

This Part amends the Search and Surveillance Act 2012.

**19 Section 6 amended (Issuing officer may issue search warrant)**

In section 6, insert as subsection (2):

- (2) This section does not apply to an application for a search warrant issued under **section 18D**. 20

**20 New subpart 6A of Part 2 inserted**

After section 18, insert:

Subpart 6A—Warrants to search and seize weapons when there is gang conflict

**18A Interpretation** 25

In this subpart, unless the context otherwise requires,—

**gang** has the same meaning as in section 4 of the Prohibition of Gang Insignia in Government Premises Act 2013

**gang conflict** means ongoing dissension between 2 or more gangs, or factions within a gang, that— 30

- (a) has involved, or is likely to involve, the use of weapons; and
- (b) has presented, or is likely to present, a risk of harm to persons or damage to property

**gang insignia** has the same meaning as in section 4 of the Prohibition of Gang Insignia in Government Premises Act 2013

**gang member**—

- (a) means an individual who is a member of a gang (including an individual who is a prospective member or nominee); and
- (b) includes—
  - (i) an individual who demonstrates affiliation to a gang by displaying the gang's insignia;
  - (ii) an individual who is involved in the affairs of a gang for the likely purpose of participating in a criminal activity

**weapon** means—

- (a) any arms; and
- (b) any other item made, or modified, for use to cause bodily injury.

#### **18B Application for warrant to search places and vehicles and seize weapons**

If a gang conflict exists, a constable may apply to a Judge for a warrant to—

- (a) search places and vehicles in an area for the purpose of locating weapons at, in, or on those places or in or on those vehicles; and
- (b) seize any weapons found at, in, or on those places or in or on those vehicles.

#### **18C Content of application**

- (1) An application made under **section 18B** must set out the following particulars:
  - (a) the name of the applicant; and
  - (b) the provision that authorises the making of the application; and
  - (c) the grounds on which the application is made (including the reasons why the applicant believes the legal requirements for issuing the warrant are satisfied); and
  - (d) a description of the area in which the gang conflict exists; and
  - (e) the name or names of the gang or gangs involved in the gang conflict; and
  - (f) a description of the area in which the search of places and vehicles is proposed to be conducted; and
  - (g) the name or names of the gang or gangs in that area involved in the gang conflict; and
  - (h) the names of any persons other than persons who are gang members of a gang referred to in **paragraph (e)** whose places and vehicles are proposed to be entered and searched; and

- (i) the addresses or descriptions of the places proposed to be entered and searched; and
  - (j) a description of the vehicles proposed to be entered and searched; and
  - (k) the period for which the warrant is sought.
- (2) When considering an application made under **section 18B**, the Judge— 5
  - (a) may require the applicant to provide further information concerning the grounds on which the warrant is sought; but
  - (b) must not, in any circumstances, require the applicant to disclose the name, address, or any other identifying detail of an informant unless, and only to the extent that, that information is necessary for the Judge to 10
    - (i) the credibility of the informant:
    - (ii) whether there is a proper basis for issuing the warrant.
- (3) The applicant must disclose in the application—
  - (a) details of any other application for a search warrant that the applicant 15
    - knows to have been made within the previous 3 months in respect of any place or vehicle proposed to be searched; and
  - (b) the result of that application or those applications.
- (4) The applicant must, before applying for a search warrant under **section 18B**, make reasonable inquiries within the Police, for the purpose of complying with 20
 **subsection (3).**
- 18D Issue of warrant to search places and vehicles in specified area and seize weapons**
- (1) A Judge may issue a warrant on an application made under **section 18B** if the Judge is satisfied that there are reasonable grounds to believe that— 25
  - (a) a gang conflict exists; and
  - (b) 1 or more gangs involved in the gang conflict are in a specified area; and
  - (c) the issue of the warrant may reduce the risk of harm to people or property.
- (2) A Judge, if satisfied of either or both of the following matters, may issue a war- 30
 rant authorising a search in the specified area of 1 or more specified places for the purpose of locating weapons and seizing any weapons found at, in, or on any of those places:
  - (a) there are reasonable grounds to suspect that the specified places are 35
    - owned, occupied, or used by 1 or more gang members of a specified gang:
  - (b) there are reasonable grounds—

- (i) to suspect that the specified places are owned, occupied, or used by 1 or more specified persons; and
  - (ii) to believe that the specified persons are encouraging or assisting in the gang conflict.
- (3) A warrant authorising the search of places specified under **subsection (2)** may only authorise the search of non-private premises if the Judge issuing the warrant is satisfied that there are reasonable grounds to suspect that the premises are being used by gang members to conduct gang-related activities involving weapons. 5
- (4) A Judge, if satisfied of either or both of the following matters, may issue a warrant authorising a search in the specified area of 1 or more specified vehicles for the purpose of locating weapons and seizing any weapons found in or on any of those vehicles: 10
  - (a) there are reasonable grounds to suspect the specified vehicles are owned or used by 1 or more gang members of a specified gang: 15
  - (b) there are reasonable grounds—
    - (i) to suspect that the specified vehicles are owned or used by 1 or more specified persons; and
    - (ii) to believe that the specified persons are encouraging or assisting in the gang conflict. 20
- (5) A warrant may also authorise a search within the specified area of any vehicles other than specified vehicles for the purpose of locating and seizing weapons found in or on the vehicles if a constable is satisfied that there are reasonable grounds to suspect that the vehicles are—
  - (a) owned or used by 1 or more gang members of a specified gang; or 25
  - (b) owned or used by 1 or more specified persons who are encouraging or assisting in the gang conflict.
- (6) In this section,—
 

**specified area** means the area specified in the warrant by any description (for example, by geographical region) that enables the boundaries of the area to be ascertained, and may be any of the following: 30

  - (a) the same area as the area in which the gang conflict exists; or
  - (b) a different area to the area in which the gang conflict exists; or
  - (c) an area that includes part of the area in which the gang conflict exists; or
  - (d) an area within the area in which the gang conflict exists 35

**specified gang** means a gang specified in a warrant issued under this section

**specified person** means a person specified in a warrant issued under this section who is not a gang member of a specified gang

**specified place** means a place specified in a warrant issued under this section

**specified vehicle** means a vehicle specified in a warrant issued under this section.

**18E Places and vehicles may be searched on more than 1 occasion**

A warrant issued under **section 18D** may be executed on more than 1 occasion in respect of—

- (a) different places or vehicles:
- (b) the same place or vehicle, subject to any conditions specified in the warrant that the Judge considers reasonable.

**18F Form and content of warrant**

- (1) This section applies in respect of a warrant issued under **section 18D**.
- (2) Every warrant must be in the prescribed form, if any.
- (3) Every warrant must be directed to a constable.
- (4) A warrant may be—
  - (a) executed by a constable:
  - (b) subject to any conditions specified in the warrant that the issuing Judge considers reasonable, including (without limitation)—
    - (i) any restriction on the time of execution that is reasonable:
    - (ii) a condition that the occupier or person in charge of a place must provide reasonable assistance to a constable executing the warrant if, in the absence of such assistance, it would not be practicable to execute the warrant without undue delay.
- (5) Every search warrant must contain, in reasonable detail, the following particulars:
  - (a) the name of the issuing Judge and the date on which the warrant was issued:
  - (b) the provision that authorises the issue of the warrant:
  - (c) a statement that the constable executing the warrant may use any assistance that is reasonable in the circumstances:
  - (d) a statement that any constable may execute the warrant:
  - (e) a statement that the constable executing the warrant may use any force, if authorised by this Act or any other enactment, that is reasonable in the circumstances to enter or break open or access any area within the place or vehicle being searched:
  - ~~(f) the address or a description of the place or vehicle that may be entered, or entered and searched (if applicable):~~
  - (f) a description of the area in which authorised searches of places and vehicles may be conducted (the **specified area**):

- (fa) to the extent that is applicable,—
- (i) the addresses or descriptions of places in the specified area that are authorised to be searched (**specified places**):
  - (ii) the descriptions of vehicles in the specified area that are authorised to be searched (**specified vehicles**): 5
  - (iii) a statement that vehicles other than specified vehicles are authorised to be searched in the specified area in accordance with **section 18D(5)**:
  - (iv) the name or names of the gang or gangs in the specified area involved in the gang conflict (**specified gangs**): 10
  - (v) the names of persons who are not gang members of a specified gang whose places and vehicles may be searched in the specified area (**specified persons**):
- (g) a description of what may be seized:
- (h) the period during which the warrant may be executed, being a period specified by the issuing Judge not exceeding 14 days from the date on which the warrant was issued: 15
- (i) any conditions specified by the issuing Judge under **subsection (4)(b)**:
- (j) an explanation of the availability of relevant privileges and an outline of how any of those privileges may be claimed (where applicable): 20
- (k) a statement that any person found in the place or vehicle to be searched may be searched if there are reasonable grounds to believe that an item being searched for is on that person.
- (6) A person is not required, as a consequence of a condition imposed under **subsection (4)(b)**, to give any information tending to incriminate the person. 25
- (7) In this section, **issuing Judge**, in relation to a warrant issued under **section 18D**, means the Judge issuing the warrant.
- 18G Judge may require warrant report**
- (1) A Judge who issues a warrant under **section 18D** may impose a condition under **section 18F(4)(b)** requiring the Commissioner to provide the Judge with a search warrant report within a specified period after the expiry of the period during which the warrant may be executed. 30
- (2) A search warrant report must contain the following information:
- (a) whether the warrant was executed; and
  - (b) whether the execution of the warrant resulted in the seizure of any weapons; and 35
  - (c) whether the execution of the warrant resulted in the seizure of evidential material, and, if so, whether that material was—
    - (i) a weapon seized under the warrant; or

- (ii) material seized under section 123 or **123B**; and
- (d) whether any other powers exercised in conjunction with the execution of the warrant resulted in the seizure of evidential material; and
- (e) whether any criminal proceedings have been brought, or are under consideration, that relate to—
  - (i) the weapons seized; or
  - (ii) any other evidential material seized.

5

## 21 Section 98 amended (Application for search warrant)

After section 98(5), insert:

- (6) This section does not apply to an application made under **section 18B** (see **section 18C**).

10

## 22 Section 131 amended (Identification and notice requirements for person exercising search power (other than remote access search))

- (1) Replace section 131(1)(b) with:

- (b) before or on initial entry into or onto the place or vehicle, or other thing to be searched, provide the occupier of the place or the person in charge of the vehicle or other thing with—
  - (i) a copy of the search warrant (unless the warrant is issued under **section 18D**); or
  - (ii) if the power is exercised under a warrant issued under **section 18D(2) or (3)**, either a copy of the warrant redacted to show only the particular place or vehicle in respect of which the search power is being exercised or, if that is not reasonably practicable in the circumstances, advice about how a copy of the redacted warrant can be made available within 7 days; or
  - (iii) if the power is exercised without a warrant, or is exercised under a warrant issued under **section 18D(4)**, the name of the enactment under which the search is taking place and the reason for the search under that enactment, unless it is impracticable to do so in the circumstances.
  - (iii) if the power is exercised under a warrant issued under **section 18D(4) or (5)**, or both, and it is reasonably practicable in the circumstances to do so, to the extent applicable in relation to the particular search,—
    - (A) a copy of the warrant redacted to show only the specified vehicle in respect of which the search power is being exercised;
    - (B) a copy of the warrant showing the authority to search vehicles other than specified vehicles, or redacted to show

15

20

25

30

35

- only the authority to search vehicles other than specified vehicles; or
- (iv) if the power is exercised under a warrant issued under **section 18D(4) or (5)**, or both, and it is not reasonably practicable in the circumstances to provide a copy of the warrant in accordance with **subparagraph (iii)**,— 5
- (A) the name of the enactment under which the search is taking place; and
- (B) the reason for the search under that enactment; and
- (C) advice about how a copy of the warrant referred to in **subparagraph (iii)** can be made available within 7 days after the date of the search; or 10
- (v) if the power is exercised without a warrant and it is reasonably practicable in the circumstances to do so,—
- (A) the name of the enactment under which the search is taking place; and 15
- (B) the reason for the search under that enactment.
- (1A) After section 131(4), insert:
- (4A) In subsection (4), **search warrant** includes a search warrant redacted in accordance with **subsection (1)(b)(ii) or (iii)**. 20
- (2) After section 131(5)(b), insert:
- (ba) ~~if the power is exercised under a warrant issued under **section 18D(2) or (3)** and a copy of the warrant redacted to show only the particular place or vehicle in respect of which the search power is being exercised is not available at the time of the search, information about how to request a copy of the warrant:~~ 25
- (bb) if the power is exercised under a warrant issued under **section 18D(4) or (5)**, or both, ~~the name of the enactment under which the search took place and the reason for the search under that enactment:—~~
- (i) the name of the enactment under which the search took place; and 30
- (ii) the reason for the search under that enactment; and
- (iii) advice about how a copy of the warrant referred to in **subsection (1)(b)(iii)** can be made available within 7 days after the date of the search:
- 23 New section 160A inserted (Disposal of weapons)** 35
- After section 160, insert:

**160A Disposal of weapons**

- (1) **Subsection (2)** applies if a weapon is seized as a result of the execution of a warrant issued under **section 18D** and—
- (a) there is no mechanism provided for disposing of the weapon, or it has not been disposed of, under any other legislation; and 5
  - (b) no order has been made by a court in relation to the disposal of the weapon.
- (2) The Police may destroy the seized weapon if—
- (a) notice is given to the person from whom the weapon was seized and that person— 10
    - (i) consents to its destruction; or
    - (ii) does not within 30 days consent to its destruction; or
  - (b) the person to whom the notice would otherwise be given under **paragraph (a)** cannot be located after reasonable inquiries have been made; or 15
  - (c) in a case where a person objects to the destruction of the weapon within 30 working days of receiving a notice under **paragraph (a)** and any person applies within that period to a court to determine the status of the weapon, the court is satisfied that— 20
    - (i) the possession of the weapon by the person from whom it was seized is unlawful under New Zealand law; or
    - (ii) there is no legitimate reason to own or possess the weapon and the destruction of the weapon is just.
- (3) In this section, **weapon** has the same meaning as in **section 18A**.

**24 Section 170 amended (Annual reporting of search and surveillance powers by Commissioner)** 25

After section 170(1)(b), insert:

- (ba) the matters set out in **section 171A** in relation to warrants under **subpart 6A** of Part 2 of this Act:

**25 New section 171A inserted (Information to be included in report on warrants under subpart 6A of Part 2)** 30

After section 171, insert:

**171A Information to be included in report on warrants under subpart 6A of Part 2**

The following information is required by **section 170(1)(ba)** to be included in an annual report: 35

|       |                                                                                                                                                                                                                                                               |    |
|-------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| (a)   | the number of applications made under <b>section 18B</b> in the period covered by the report:                                                                                                                                                                 |    |
| (b)   | the number of warrants issued under <b>section 18D</b> in the period covered by the report:                                                                                                                                                                   |    |
| (c)   | for each warrant issued under <b>section 18D</b> in the period covered by the report,—                                                                                                                                                                        | 5  |
| (i)   | the number of searches conducted; and                                                                                                                                                                                                                         |    |
| (ii)  | the number of places searched (on 1 or more occasions); and                                                                                                                                                                                                   |    |
| (iii) | the number of vehicles searched (on 1 or more occasions); and                                                                                                                                                                                                 |    |
| (iv)  | the number of weapons seized as a result of the places and vehicles searched:                                                                                                                                                                                 | 10 |
| (d)   | the number of persons charged in criminal proceedings where the collection of evidential material relevant to those proceedings was significantly assisted by the execution of a warrant issued under <b>section 18D</b> in the period covered by the report. | 15 |

## Part 4

### Prohibition on persons conducting cash transactions for certain items above applicable threshold value

#### 26 Principal Act

This Part amends the Anti-Money Laundering and Countering Financing of Terrorism Act 2009. 20

#### 27 New subpart 5A of Part 2 inserted

After section 67, insert:

|                                                                                                                                                                                                                                                                      |    |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| Subpart 5A—Cash transactions above applicable threshold value                                                                                                                                                                                                        |    |
| <b>67A Prohibition on certain cash transactions</b>                                                                                                                                                                                                                  | 25 |
| A person who is in trade must not buy or sell any of the following articles by way of a cash transaction or a series of related cash transactions, if the total value of that transaction or those transactions is equal to or above the applicable threshold value: |    |
| (a) jewellery:                                                                                                                                                                                                                                                       | 30 |
| (b) watches:                                                                                                                                                                                                                                                         |    |
| (c) gold, silver, or other precious metals:                                                                                                                                                                                                                          |    |
| (d) diamonds, sapphires, or other precious stones:                                                                                                                                                                                                                   |    |
| (e) motor vehicles (within the meaning of section 6(1) of the Motor Vehicle Sales Act 2003):                                                                                                                                                                         | 35 |

|           |                                                                                                                                                                                                                                 |    |
|-----------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
|           | (f) ships (within the meaning of section 2(1) of the Maritime Transport Act 1994).                                                                                                                                              |    |
| <b>28</b> | <b>Section 78 amended (Meaning of civil liability act)</b><br>After section 78(g), insert:                                                                                                                                      |    |
|           | (h) enters into cash transactions in relation to certain items in breach of <b>section 67A</b> .                                                                                                                                | 5  |
| <b>29</b> | <b>Section 90 amended (Pecuniary penalties for civil liability act)</b><br>In section 90(3), replace “or (f)” with “(f), or (h)”.                                                                                               |    |
| <b>30</b> | <b>Section 104 amended (Time limit for prosecution of offences relating to non-compliance with AML/CFT requirements)</b><br>In section 104, replace “any of sections 101 to 103” with “section 101, 102, 103, or <b>105A</b> ”. | 10 |
| <b>31</b> | <b>New section 105A and cross-heading inserted</b><br>After section 105, insert:                                                                                                                                                |    |
|           | <i>Offence relating to cash transactions</i>                                                                                                                                                                                    | 15 |
|           | <b>105A Contravention of section 67A</b>                                                                                                                                                                                        |    |
|           | (1) A person commits an offence who contravenes <b>section 67A</b> .                                                                                                                                                            |    |
|           | (2) A person who commits an offence under <b>subsection (1)</b> is liable, on conviction, to,—                                                                                                                                  |    |
|           | (a) in the case of an individual, either or both of the following:                                                                                                                                                              | 20 |
|           | (i) a term of imprisonment of not more than 2 years;                                                                                                                                                                            |    |
|           | (ii) a fine of up to \$300,000; and                                                                                                                                                                                             |    |
|           | (b) in the case of a body corporate or partnership, a fine of up to \$5 million.                                                                                                                                                |    |
|           | <b>Part 5</b>                                                                                                                                                                                                                   |    |
|           | <b>Seizure of cash amount of or over \$10,000 found in suspicious circumstances</b>                                                                                                                                             | 25 |
| <b>32</b> | <b>Principal Act</b><br>This Part amends the Search and Surveillance Act 2012.                                                                                                                                                  |    |
| <b>33</b> | <b>New sections 123A to 123E and cross-heading inserted</b><br>After section 123, insert:                                                                                                                                       | 30 |

*Seizure of cash found in suspicious circumstances***123A Interpretation**

- (1) In this section and **sections 123B to 123E**,—
- authorised holding period**, in relation to cash seized, means the period for which the Police are authorised to hold the cash by an order made under— 5
- (a) **section 123C(3)(a)**; or
  - (b) **section 123C(7)**
- cash** means any of the following:
- (a) cash as defined in section 5(1) of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009: 10
  - (b) gold bars:
  - (c) gold ingots
- cash seized** means cash seized under **section 123B**
- ~~**cash seizure threshold amount** means the amount of NZ\$10,000, or an equivalent amount~~ 15
- cash seizure threshold amount** means—
- (a) the amount of NZ\$10,000 or an equivalent cash amount; or
  - (b) such other amount as may be prescribed by regulations made under **section 342(2A)** or an equivalent cash amount to the prescribed amount
- enforcement officer** includes an aviation security officer as defined in section 2(1) of the Civil Aviation Act 1990. 20
- (2) For the purposes of **sections 123B to 123E**, cash is **in the possession of** a person if it is—
- (a) on the person; or
  - (b) in a bag or receptacle owned by or carried by or with the person; or 25
  - (c) in or under the effective control of the person; or
  - (d) in a vehicle in which the person is the driver or an occupant.

**123B Seizure of cash of or over cash seizure threshold amount**

- (1) This section applies to a constable who,—
- (a) as part of their duties,— 30
    - (i) is exercising a search power; or
    - (ii) is lawfully in any place or in or on a vehicle; or
    - (iii) is conducting a lawful search of a person; and
  - (b) sees or finds cash in the possession of any person that the constable reasonably believes to be an amount of or over the cash seizure threshold amount. 35

- (2) This section also applies to a constable who is informed by an enforcement officer that the enforcement officer, while lawfully screening or searching any person, item, or vehicle as part of their duties, has seen or found cash in the possession of any person in suspicious circumstances.
- (3) The constable may question the person in the possession of the cash about— 5
- (a) the origin of the cash; and
  - (b) the intended use for the cash.
- (3A) The constable must advise the person in possession of the cash of the power of the constable, or of any person assisting the constable, to seize the cash under subsection (4). 10
- (4) The constable, or any person assisting the constable, may seize the cash if the constable—
- (a) reasonably believes the cash to be an amount of or over the cash seizure threshold amount; and
  - (b) is not satisfied with the explanations given by the person in response to the questions put to the person under **subsection (3)**; and 15
  - (c) has reasonable grounds to suspect that the cash is not of lawful or legitimate origin or derivation, or is to be used for, or to further, any unlawful or dishonest purpose.
- (5) As soon as is reasonably practicable, and in any case not later than 7 days after the cash is seized, a constable must— 20
- (a) return the cash to the person from whom it was seized, or have made contact with that person or that person's representative to arrange for the return of the cash; or
  - (b) release the cash to the owner of the cash (if the owner is not the person from whom the cash was seized); or 25
  - (c) make an application to the District Court under **section 123C** for Police to hold the cash for a further period.
- (6) Nothing in this section affects or limits the power of a constable to seize property that is given by or under any other legislative provision or by the common law. 30
- 123C Application to retain cash seized for further period**
- (1) A constable may apply to a District Court Judge for an order authorising the Police to hold any cash seized for a further period to enable investigations to continue to establish the origin of the cash or its intended use. 35
- (2) The Police may continue to hold the cash seized pending the determination or withdrawal of the application.
- (3) A District Court Judge may—

- (a) grant the application if satisfied of the matters in **subsection (4)** and make an order authorising the Police to continue to hold the cash seized for a further period not exceeding 28 days from the date of the order; or
    - (b) decline the application and make directions for—
      - (i) the return of the cash to the person from whom the cash was seized; or
      - (ii) the release of the cash to the owner of the cash (if the owner is not the person from whom the cash was seized).
  - (4) The matters referred to in **subsection (3)(a)** are that the Police—
    - (a) continue to have reasonable grounds to suspect that the cash is not of lawful or legitimate origin or derivation, or is to be used for, or to further, any unlawful or dishonest purpose; and
    - (b) are—
      - (i) continuing investigations to establish the origin of the cash seized or its intended use; or
      - (ii) taking steps to commence proceedings under the Criminal Proceeds (Recovery) Act 2009 for a restraining order or forfeiture order in respect of the cash seized.
  - (5) Before the expiry of the period specified in an order made under **subsection (3)(a)** (the **further period**), a constable may make an application to the District Court to extend the further period for another period not exceeding 28 days commencing from the expiry of the further period to enable continuing investigations to establish the origin or intended use of the cash seized.
  - (6) Only 1 application may be made under **subsection (5)**.
  - (7) A District Court Judge may grant an application made under **subsection (5)** if in respect of that application the Judge is satisfied of the matters in **subsection (4)**.
  - (8) However, in no case may an order be made under **subsection (3)(a)**, or be extended under **subsection (7)**, if the effect of making or extending the order would be to authorise the Police to hold the cash seized for a period exceeding 63 days from the date on which it was seized.
- 123D Return or release of cash seized**
- (1) If any of the circumstances specified in **subsection (2)** exist, the Police must, as soon as is reasonably practicable,—
    - (a) return the cash seized to the person from whom it was seized, or make contact with the person or the person's representative to arrange for the return of the cash; or
    - (b) release the cash to the owner of the cash (if the owner is not the person from whom the cash was seized).

- (2) The circumstances referred to in **subsection (1)** are that—
- (a) the authorised holding period has ended and before the end of that period the Police did not commence proceedings under the Criminal Proceeds (Recovery) Act 2009 for a restraining order or forfeiture order in respect of the cash seized: 5
  - (b) any proceedings commenced under the Criminal Proceeds (Recovery) Act 2009 for a restraining order or forfeiture order in respect of the cash seized have been withdrawn or dismissed:
  - (c) the person from whom the cash was seized, or the owner of the cash, has requested the return of the cash and provided the Police with information about its origin and intended purpose and the Police, having considered all available information, are satisfied that the cash has lawful and legitimate origin or derivation and is not to be used for any unlawful or dishonest purpose. 10
- 123E Application to District Court for return or release of cash seized** 15
- (1) The person from whom the cash was seized, or the owner of the cash, may apply to the District Court for the return or release of the cash seized if—
- (a) the person or owner has requested the Police to return the cash and that request has been refused; and
  - (b) the Police have not commenced proceedings under the Criminal Proceeds (Recovery) Act 2009 for a restraining order or forfeiture order in respect of the cash seized. 20
- (2) A District Court Judge may grant an application made under **subsection (1)** if, having regard to the following, the Judge is satisfied that it would be contrary to the interests of justice for the Police to continue to hold the cash: 25
- (a) the value of the cash seized; and
  - (b) any loss or damage to the applicant that is caused, or is likely to be caused, by not returning or releasing the cash seized; and
  - (c) the need for the Police to continue to hold the cash seized for the purpose of— 30
    - (i) commencing proceedings under the Criminal Proceeds (Recovery) Act 2009 for a restraining order or forfeiture order; or
    - (ii) producing it as evidence in any other proceedings.
- 33A Section 104 amended (Issuing officer may require search warrant report)**
- In section 104(2)(b)(ii) and (iii), after “section 123”, insert “or **123B**”. 35
- 34 Section 149 amended (Disposal of things seized or produced)**
- After section 149(2), insert:
- (3) This subpart does not apply to cash seized under **section 123B** of this Act.

**35 Section 342 amended (Regulations)**

After section 342(2), insert:

- (2A) The Governor-General may, by Order in Council, ~~amend the definition of cash seizure threshold amount in **section 123A(1)** by increasing or decreasing the amount specified in that definition.~~ make regulations prescribing, for the purposes of the definition of cash seizure threshold amount in **section 123A(1)**, an amount of New Zealand dollars that is more or less than \$10,000.

5

**Legislative history**

13 September 2022  
27 September 2022

Introduction (Bill 166–1)  
First reading and referral to Justice Committee