

Supplementary Analysis Report: Criminal Activity Intervention Legislation Bill

Coversheet

Purpose of Document	
Decision sought:	This analysis was produced for the purpose of informing final Cabinet decisions on an omnibus Bill to enhance enforcement tools to disrupt and prosecute gang conflict and harm.
Advising agencies:	Ministry of Justice, New Zealand Police ('Police') and the Ministry of Transport (on the transport specific options)
Proposing Ministers:	Minister of Police and the Minister of Justice
Date finalised:	August 2022
Problem Definition	
Addressing gang conflict and harm	
<p>New Zealand is seeing more overt gang violence, in particular, firearms offending which poses a significant risk to the community and has led to concerns about public safety.</p> <p>Police have a range of operational responses available, but in some situations these are insufficient to adequately disrupt the criminal activities of gangs.</p>	
Executive Summary	
<p>This Supplementary Analysis Report (SAR) outlines options that have been considered for targeted changes to the Crimes Act 1961, Arms Act 1983, Sentencing Act 2002, Search and Surveillance Act 2012, Land Transport Act 1998 and the Anti-Money Laundering and Countering Financing of Terrorism Act 2009, to be in place early in 2023.</p> <p>The Ministers of Police and Justice directed officials to review the current legislative settings, particularly in relation to the ability of Police to disrupt and prosecute drive-by shootings, dangerous driving during gang convoys, and the laundering of illicit drug and other criminal proceeds by criminal groups.</p> <p>Officials have identified a package of reforms to be in place early in 2023 to address the following issues:</p> <ul style="list-style-type: none">• A gap in the legislation related to the discharge of firearms with intent to intimidate.• Gang conflict that poses a risk to the public when firearms and other weapons are used.• High-risk and illegal behaviour during gang convoys, such as dangerous or reckless driving. When large groups of gang members travel together on the road, they can cause intimidation and present a significant safety risk for the public.	

- Gangs laundering the proceeds of drug transactions and other criminal activities by moving and converting large sums of cash (and other alternative modes of stored value) to facilitate criminal offending, to hide its criminal origin and, ultimately, to use it.

The proposals in this SAR are cumulative rather than alternative, with separate options considered within each proposal. The proposals are not interdependent, although the preferred options for each proposal do form a 'package'. As a package, these changes will strengthen Police's response to the current gang conflict issues as well as some of the wider harm caused by gang activity.

The five proposals covered by this SAR are set out in four separate sections within **Section 3: Delivering an option** (the two cash proposals are covered in Proposal D *Use of cash by gangs*). Each proposal covers the problem definition and options analysis specific to that proposal.

Table of proposals

Proposal	Policy problem	Preferred option
Proposal A: Shootings in public places	<p>Public shootings where the intent is to intimidate causes harm to public safety and perceptions of safety.</p> <p>There are a number of existing offences related to discharging a firearm, however discharging a firearm <i>with the intention of intimidating</i> a person(s) who is in a public place (rather than in a house), presents a gap in firearm offences.</p>	<p>A combination of Options 2, 2A, and 2B.</p> <p>Option 2: New offence of discharging a firearm with intent to intimidate.</p> <p>Option 2A: Additional consequences on conviction for new offence to qualify for a Firearms Prohibition Order and be subject to licence disqualification.</p> <p>Option 2B: Enabling trespass surveillance and use of interception device to investigate new offence.</p>
Proposal B: New warranted search powers to address and respond to gang conflict	When gang conflicts are occurring, violence may be committed by any member of the gang and weapons are frequently moved between locations.	Option 2: A new gang conflict warrant and associated search powers. The warrant will be authorised by a judge for a maximum of 14 days. It will cover the homes and vehicles of members of the gang(s) and non-gang members who are encouraging or assisting in the conflict.
Proposal C: Addressing offending that can occur in vehicle convoys	The driving behaviours that occur during 'gang convoys' can be dangerous and intimidating for other road users. Existing tools are available to respond to this type of offending when the driver can be identified. However, if the driver	Ministry of Justice's and Police's preferred option is Option 4: Widening the range of offences that can result in the impoundment of vehicles.

	cannot be identified, charges cannot be laid, and an impounded vehicle must be returned.	Te Manatū Waka's preferred option is to use Option 4, 4a, and 4b as an integrated package. Option 4a is to increase in towage and storage fees. Option 4b is setting a fixed penalty level for failure to identify driver.
Proposal D: Use of cash by gangs	(1) Ability to seize cash: There have been instances where airport security has identified large amounts of cash in luggage or strapped to a passenger's body. Where there is reason to suspect that the cash is likely to be proceeds of crime, but further investigation is needed to identify the nature of offending, the cash cannot be seized.	Option 4: Providing a power to seize cash in suspicious circumstances above a particular threshold amount.
	(2) Restricting the use of cash: Criminals who generate cash through offending often seek to launder the money by purchasing valuable assets (e.g. motorbikes, precious metals, and stones) using cash. As a result, businesses which accept large cash payments, including cash deposits, are particularly vulnerable to money laundering.	Option 3(c): Prohibiting cash transactions above a threshold (to be determined) for persons in trade.

The urgency given to the development of legislative proposals to address gang harm meant that a Regulatory Impact Analysis was not able to be provided when policy decisions were agreed by Cabinet. Accordingly, a SAR has been prepared for consideration by Ministers alongside the advice for the Cabinet seeking approval of the *Criminal Activity Interventions Legislation Bill 2022*.

Potential impact of the proposals

The proposals are designed to enhance Police's powers to prevent and disrupt harmful gang activity and, to take enforcement action. This is expected to have a positive impact on community safety and perceptions of safety.

New powers for Police have the potential to negatively impact progress in other workstreams including Resilience to Organised Crime in Communities, which focuses on working more directly with gangs to lessen gang harm, including providing alternative

pathways to gangs and pathways out of gangs. Searches of gang whānau homes, for example, are likely to damage these relationships and erode trust. The proposed new powers would need to be exercised carefully to encourage the long-term and short-term outcomes sought by both the new powers and existing programmes to reduce gang harm.

The proposals have been specifically developed with these risks in mind and consideration has been given to ensure that all powers strike an appropriate balance between disrupting the harmful activity and upholding the rights and privacy of affected individuals such as gang whānau. This is an existing challenge that Police continues to navigate.

Except for the proposal to create a new warrant and search power to locate and seize weapons in response to gang conflict, the proposed options target criminal behaviour and are not limited to offending by gangs, or the harm caused by gang. These proposals will apply to non-gang members as well.

Limitations and Constraints on Analysis

Ministers directed officials to develop options on a number of specific proposals:

- Reviewing the offences and penalties related to shootings in public places to introduce more targeted penalties for discharging a firearm in a public place.
- New warranted search powers to prevent and respond to gang conflict.
- Enabling the forfeiture of vehicles, including vehicles used in offending as part of a gang convoy or by fleeing drivers, and expanding the range of offences that can result in vehicle impoundment.
- Introducing stronger penalties for fleeing drivers.
- 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 the parameters and specific areas that could be targeted in relation to prohibiting cash purchases over a set threshold.

It was subsequently agreed by Cabinet that decisions on the fleeing drivers and forfeiture of vehicles proposals would progress separately.

Officials were further constrained by extremely tight timeframes, driven by the desire of Cabinet to ensure legislation was introduced and passed expediently. The timeframe recognises the importance of the new powers being available as soon as possible to address the criminal activities of gangs and improve public safety. Although advice on legislative and operational options was provided in 2021, the direction from Ministers and timeframes meant that a first-principles examination of legislative and non-legislative responses to gang harm has not been undertaken.

The range of options identified in this SAR is limited to the status quo and legislative amendments.

Police has an ongoing operational response to criminal and dangerous activity by gangs, for example, Operation Cobalt, which sits alongside the proposed legislative amendments.

Consultation

Due to the timeframes for officials to provide proposals to Cabinet and the direction to identify legislative changes, consultation was not able to be undertaken with Māori, stakeholders and the public.

Data

The evidence base for this analysis has been drawn primarily from reviews of the existing legislative offences, operational insights, and Police powers to address the increase in gang offending involving firearms, intimidation and use and converting of large sums of cash from criminal offending.

The data used for each of the proposals is specified in the relevant section. For example, the proposals relating to cash are informed by the *National Risk Assessment of Money Laundering and Terrorism Financing*¹, and the Reserve Bank of New Zealand's 2022 *Te Moni Anamata: Summary of responses to our 2021 issues papers*.²

What additional analysis of impacts on certain groups would you have liked to include given sufficient time?

Consultation with key Māori organisations, sector stakeholders, and communities would have enabled the analysis to be fully informed in terms of impact, operational challenges, and any unintended consequences.

What is the overall impact of these limitations and constraints on how confident Ministers can be when using this analysis to inform decisions?

The proposals are based on legislative reviews, operational feedback, and where available, research and sector data. They address gaps in existing regulatory regimes and investigatory powers rather than establishing entirely new powers.

There may be alternative options or sub-options that have not been considered due to timeframes, the direction given to officials and the lack of consultation, which would more effectively achieve the desired outcomes.

While we consider there is sufficient intervention logic to support the proposals, we have not been able to quantify the scale of the impact.

Although consultation was not able to be undertaken, the operation, use and impact of the existing regimes and powers the proposals sit within, provide insight into their likely impact on both gangs and the wider community. However, the lack of consultation does have te Tiriti o Waitangi implications around the Crown's partnership with Māori.

¹ New Zealand Police Financial Intelligence Unit (2019). *National Risk Assessment of Money Laundering and Terrorism Financing*. Available online: <https://www.police.govt.nz/sites/default/files/publications/fiu-nra-2019.pdf>

² Reserve Bank of New Zealand (2022) *Te Moni Anamata: Summary of responses to our 2021 issues papers*. Available online: <https://www.rbnz.govt.nz/-/media/project/sites/rbnz/files/consultations/future-of-money/future-of-money-summary-of-responses.pdf>

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25 August 2022

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Quality Assurance

Reviewing Agency: Ministries of Justice and Transport and New Zealand Police

Panel Assessment & Comment:

The joint Justice, Police and Transport Regulatory Impact Analysis Quality Assurance Panel has reviewed the Supplementary Analysis Report (SAR) prepared by Police, Justice and Transport and associated supporting material, and considers the information and analysis in the SAR **partially meets** the Quality Assurance criteria.

The SAR has information gaps in the supporting evidence for the size and scale of the problems identified, and in the analysis of impacts, including benefits, costs (particularly monetised costs) and implementation. The gaps and reasons for these (no consultation, time limitations and ministerial direction on specific options) are identified in the limitations/constraints section and in individual sections of the document.

This lack of evidence varies across the proposals, but in places means that the preferred options are not strongly persuasive. The SAR is relatively long, although reflects that the scope of this work requires analysis of proposals in different regulatory settings. The Panel assesses that, overall, the SAR provides a reasonable basis for Ministers' decision-making while highlighting the significant limitations under which the document was developed.

Section 1: The overarching policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

Gangs engage in a range of criminal activities

1. The criminal activities of gangs cause significant harm to New Zealand communities. Gangs frequently participate in drug-trafficking and other black-market activity and may engage in violence as part of inter-gang rivalries or to resolve internal disputes.
2. Three aspects of gang activity have been identified as being of particular concern:
 - Gang conflict, particularly when it involves use of firearms, endangers the public and undermines perceptions of safety.
 - Dangerous, reckless and intimidatory driving that can occur during gang convoys, where gang members travel in groups.
 - Money laundering and other means by which gangs seek to reintroduce the proceeds of crime into the legitimate financial system.

Gang conflict

3. In recent months, conflict between rival gangs has resulted in a number of violent incidents, including drive-by shootings in residential areas. For example, on 19 May, Police received information that members of the Tribesmen Motorcycle Club were preparing to go to war with the Killer Beez.³
4. In Tāmaki Makaurau, between 21 May and 7 June 2022, 31 drive-by shootings and arsons linked to the two gangs occurred. The incidents occurred at a mix of occupied and unoccupied addresses, most of which had links to high ranking or prominent Tribesmen and Killer Beez members. The majority of the incidents occurred between 5pm and 11pm when, for occupied addresses, occupants including children were at home. The timing of shootings and arsons put both gang members and their whānau, and members of the public, at significant risk.
5. During periods of gang conflict, illegally-held weapons often move between gang members and locations, and it can be difficult to predict where and when the next incident will occur. Members of the public affected by gang harm are understandably concerned about the escalating violence and the threat of harm to themselves or their whānau. During the recent Tribesmen and Killer Beez conflict, one member of the public with no known links to either gang was injured because of the inter-gang violence.
6. The specific criminal activities targeted and the proposed responses to this aspect of gang activity are outlined within Proposal A: Shootings in public places and Proposal B: New warranted search powers to prevent and respond to gang conflict.

Gang convoys and road offending

7. Gang convoys can involve high-risk and illegal behaviour on our roads, such as dangerous or reckless driving, that can cause widespread intimidation and present a

³ *Gang Tensions: Tāmaki Makaurau*, Police Intelligence Summary, 7 June 2022.

significant safety risk for the public. It is often unsafe for Police to apprehend offenders at the time of offending and it can subsequently be very challenging to identify the offender (due to helmets and face coverings).

8. Between 2018 and 2021, around 25,000 people were charged with driving offences that can result in either 28-day impoundment or post-conviction confiscation of their vehicle. Gang members accounted for around 11 percent of those charged.⁴ Most of these 25,000 people were charged with imprisonable driving offences (74 percent charged with an offence with a maximum penalty of three months imprisonment). This includes offences that are known to occur in a convoy setting, for example, dangerous and reckless driving, street racing or sustained loss of traction.
9. Proposal C: Addressing the offending that can occur in vehicle convoys responds to offending on our roads that can occur when groups of gang members travel together.

Use of cash by gangs

10. Profit is one of the key drivers of organised crime. Gangs are highly motivated to protect and increase their share of the illicit drug market. In 2021, the New Zealand methamphetamine market was worth an estimated NZ\$297.2 million. This money is coming from some of our most vulnerable communities. Criminal transactions such as drug deals are largely conducted in cash due to the anonymity of cash and the difficulty of tracing cash transactions. Criminals generate cash proceedings from offending then seek to launder the money or purchase valuable assets (e.g. motorbikes, precious metals and stones) using cash.
11. Currently there are no seizure powers specifically relating to cash or gold bars. There have been recent incidents where an individual has been identified by airport aviation security with large quantities of cash in their luggage or on their person.

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13. Businesses that accept cash are particularly vulnerable as they can be targeted by criminals for the purpose of laundering cash. Currently high-value dealers (who sell motor vehicles and ships, jewellery, precious metals and precious stones) are required to report cash sales or purchases of specific high-value goods for \$10,000 or more. However, they are not required to assess their customer and business risks, develop a compliance programme, or report suspicious activities. Proposal D(2): Restricting the use of cash responds to the money laundering risks in the high-value dealers sector.

⁴ This data may be impacted by a range of factors, including the difficulties in identifying offenders, whether the offence occurs in the context of a gang convoy.

⁵ The current definition of cash in the AML/CFT Act includes both physical currency and bearer negotiable instruments (e.g. cheques and bearer bonds); this definition would be used as a starting point with the intent of expanding it to include gold bars and ingots.

Current regulatory system

14. For the most part, these harmful behaviours are already prohibited under legislation including the Crimes Act 1961, the Arms Act 1983 and the Land Transport Act 1998. Police and other enforcement officers have a range of powers to respond to this behaviour under the Search and Surveillance Act 2012 (S&S Act). In addition, a number of regulations aimed at preventing money laundering (such as obligations for businesses) are set out in the Anti-Money Laundering and Countering the Financing of Terrorism Act. However, there are opportunities to strengthen the legislation to increase Police's ability to deter and address the specific offending outlined above.
15. Police is currently responding to the increase in gang harm through Operation Cobalt, which is an extension of the work that occurred across Police districts through Operation Tauwhiro.
16. Operation Tauwhiro focused on disrupting the illegal possession and use of firearms by organised crime groups. Operation Cobalt is a significantly broader operation focusing on the suppression, disruption and enforcement of unlawful gang behaviour. While operational responses are critical in disrupting gangs, they do not provide the full solution to address the problem. Police do not always have appropriate legislative powers to intervene when it would be most useful to do so.

How is the status quo expected to develop?

17. The current spike in public gang violence is occurring within the context of deeper changes to the gang environment including the establishment of Australian gangs not previously seen in New Zealand (e.g. the Comancheros and Mongols). This has fuelled territorial conflict and led to an oversaturation of the gang environment that has likely contributed to increased competition for influence and control in drug markets. This has resulted in more violent and public confrontations.
18. Police will continue to prioritise operational activities such as Operation Cobalt to address spikes in gang harm and violence. However, it is likely that without legislative change, tensions between gangs and the negative impact on the public will continue.

Other ongoing Government work programmes with interdependencies and linkages to this area that might be relevant context from a systems view

19. These proposals build on the Government's work to keep New Zealanders safe, including delivering an additional 1,800 Police officers and removing unlawful firearms. It fits alongside other relevant initiatives, such as the Criminal Proceeds (Recovery) Act 2009 reforms, the Transnational Organised Crime Strategy, and the statutory review of the Anti-Money Laundering and Countering the Financing of Terrorism regime.
20. The proposals in this SAR are at one end of the continuum of initiatives to address gang harm. There is recognition of the need to invest in other initiatives that focus on the impact of gang harm on individuals, whānau, and their communities, under the Resilience to Organised Crime in Communities (ROCC) work programme.
21. ROCC is a multi-faceted, cross-agency work programme that combines enforcement action with tailored social intervention to simultaneously address the harms and drivers of organised crime and gangs. For example, in Tauranga and Rotorua, Paearahi (navigator) roles are held by people with lived experience, who can engage and

interact with hard-to-reach whānau. By using a whānau-centred approach, Paearahi engage whānau with required services who can provide them with wraparound support.

22. Evidence shows that focusing on early interventions, rehabilitation and re-integration is the most effective route to sustained improvements in public safety in the long term.

What is the overarching policy problem or opportunity?

23. Illegal gang activities, including drug supply and use of violence, give gangs power and influence over our most vulnerable communities. Police is seeing more overt gang violence, in particular firearms offending, which poses a significant risk to the community and has led to concerns about public safety.
24. In some cases, the existing legislative system is insufficient to adequately disrupt the criminal activities of gangs and ensure public safety. Operational responses go some way to addressing the problem but are insufficient in themselves, and Police do not always have appropriate powers to intervene when it would be most effective to do so.
25. There are four distinct aspects to the problem, each of which has its own section in this SAR.
 - a) The harm caused by discharging a firearm to intimidate a person in a public place is not adequately addressed in either the Arms Act or the Crimes Act.
 - b) The challenge for Police to locate gang weapons during periods of gang conflict as weapons are frequently moved between gang locations.
 - c) The high-risk and illegal behaviour that can occur during gang convoys when it is not safe for Police to apprehend drivers and subsequent identification of offenders is challenging (due to face covering and helmets).
 - d) The inability of Police to seize large amounts of cash found in highly suspicious circumstances, if there are not reasonable grounds to suspect a specific criminal offence. Issues with the existing requirements for high-value dealers in the AML/CFT Act⁶, which undermines the Act's effectiveness in preventing money laundering in that sector.

Stakeholder views

26. The timeframes for officials to provide legislative proposals to Cabinet meant it was not possible to undertake targeted Māori, stakeholder or public consultation.

What objectives are sought in relation to the policy problem?

27. The aim is to address gaps in Police enforcement and investigatory powers and to make it more difficult for the proceeds of criminal behaviour such as drug trafficking, to be used. Specifically, the objectives are to:
 - Disrupt harmful gang activity.
 - Protect public safety.

⁶ To be covered by the AML/CFT Act definition of high-value dealer a person must undertake cash transactions "in the ordinary course of business". For many businesses, large cash transactions are unusual, this provides a loophole that some businesses use to avoid the application of the AML/CFT Act requirements.

- Prevent offending and hold offenders to account.

Te Tiriti o Waitangi implications

28. The prevalence of gang membership within Māori communities means that Māori are more likely to be the victims of gang-related harm. Taking steps to combat this harm is therefore part of the Crown's responsibility to actively protect Māori.
29. Over three quarters of the known adult gang members in Aotearoa are Māori men. Te Puni Kōkiri has estimated that Māori whānau of gangs may make up around 5 percent of the Māori population.
30. Given that 77 percent of individuals on the National Gang List are identified as Māori, these proposals will have a disproportionate effect and will likely exacerbate Māori representation in the criminal justice system. These proposals will likely impact the whānau of gang members as well as gang members themselves, particularly regarding the search warrant proposal that will allow entry into homes. During searches conducted under this new power, evidence may be found of other offending, including by other whānau members.
31. To the extent the proposals deter harmful gang activity, they may benefit those harmed by such offending. Those harmed the most are the whānau of gang members, which are themselves more likely to be Māori.
32. Te Tiriti implications of each proposal are outlined within the proposals in Section 3 of the SAR.
33. Due to the timeframes for this work, the Crown has not partnered with Māori in the development of these proposals.

Privacy impacts

34. There are no privacy impacts from Proposal C: Addressing offending that can occur in vehicle convoys. There are no privacy implications from Proposal D(2): Restricting the use of cash.
35. Proposal A: Shootings in public places – Option 2B would have an impact on privacy as it enables Police to apply for a warrant to undertake surveillance that involves trespass to land or use of an interception device to obtain evidential material in relation to the new offence. This treats the investigative powers related to the new offence (being a serious arms offence) the same as other serious arms offending - recognising the particular threat that firearms pose. These powers will only be exercised following application to a judicial officer.
36. Proposal B: New warranted search powers to address and respond to gang conflict would have a privacy impact on gang members and their whānau including tamariki, as it allows entry into homes. The warrant would cover multiple homes and vehicles based on gang membership. This incursion into privacy to search for firearms and weapons is deemed necessary to more effectively disrupt and prevent violence during a period of gang conflict. The requirement for judicial oversight is intended to ensure that the use of the new warrant power is justified and reasonable.
37. Proposal D(1): Ability to seize cash would mean that individuals seeking to have seized cash released would need to provide evidence such as IRD and bank statements to verify the cash has been legitimately obtained. This incursion into privacy is deemed

justified to more effectively disrupt and prevent harmful criminal activity by enabling Police to investigate suspicious cash.

38. Police have existing procedures in place to protect any private information they collect. The existing privacy requirements and limitations of search warrants, assets seized under CPRA, vehicle impoundment under the Land Transport Act, etc, will apply. The collection, use and retention of all material would be in line with Police's current protocols and processes for existing warrants. However, Police will need to ensure that there are robust internal processes to govern the use of any new warrant powers.

RELEASED BY THE MINISTER OF JUSTICE

Section 2: Deciding upon an option to address the policy problem

What criteria will be used to compare options to the status quo?

39. The following criteria have been used to analyse options for each proposal.

Criteria	What this means
Effectiveness	<p>The degree to which a policy intervention is successful in achieving the desired outcomes.</p> <p>The overall effectiveness seeks to assess how the options can have a direct impact at:</p> <ul style="list-style-type: none"> • Disrupting harmful criminal activity. • Maintaining public safety. • Preventing offending and holding offenders to account.
Feasibility of implementation	<p>The ease of implementation, taking into consideration the impact on funding and resources.</p>
BORA implications	<p>The degree to which the policy intervention places limitations on a person's rights under the Bill of Rights Act 1990 (BORA) and the extent to which these are justified.</p> <p>Policy options will need to consider how best to mitigate any non-compliance.</p>

40. For some proposed options there will be trade-offs between the criteria. For example, a proposal that specifically targets gangs may be more effective in disrupting gang activity and preventing offending but may not be a justified limitation on individuals' rights under BORA.

What scope will options be considered within?

41. Where relevant, scope limitations specific to the different proposals are outlined within each proposal.

Section 3: Delivering an option

Proposal A: Shootings in public places

Subsection 1A: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

Public shootings are harmful

42. Public shootings, including drive-by shootings, are one of the most harmful ways that gang violence can impact the public. While this behaviour is used as a tool to harm and intimidate rival gang members, discharging a firearm in these settings also affects the nearby public, risking real physical harm and undermining their sense of safety. The extensive media coverage of these kinds of events also tends to amplify the level of concern such incidents generate.
43. There are ongoing operational efforts to investigate any shootings and identify offenders, which can be challenging given the circumstances of some of the offending (such as where there are no witnesses). Often unlawfully held firearms will be located during investigations, which assists with preventing and disrupting unlawful access to firearms.

The Arms Regulatory System is primarily concerned with public safety

44. The Arms Act provides a regulatory framework that seeks to protect the public from the harm that may be caused by the misuse of firearms. It confirms that owning a firearm is a privilege, not a right, and allows fit and proper people to possess firearms for legal purposes (such as for business, food gathering, and recreational or sporting purposes).
45. Police will issue a firearms licence if they are satisfied the applicant is a fit and proper person to be in possession of a firearm. There are a number of circumstances included in the Arms Act that may indicate that someone is not a fit and proper person to be in possession of firearms. These include convictions for imprisonable offences, non-compliance with the Arms Act, and being a member of, or having close affiliations with, a gang⁷ or organised criminal group.
46. The Act also provides some circumstances where a person is disqualified from holding a firearms licence for 10 years. This includes convictions for specified serious offences under the Arms Act, the Crimes Act, and the Misuse of Drugs Act (with maximum penalties for these offences ranging from 5 years to 14 years or life).
47. The Firearms Prohibition Order Legislation Act 2022 was recently passed. This Act amended the Arms Act to enable the courts to impose a 10-year Firearms Prohibition Order (FPO) prohibiting high risk offenders from accessing, being around or using firearms or ammunition. The court may impose an FPO at sentencing for an eligible offence if satisfied, on the balance of probabilities, that the FPO is necessary,

⁷ Gang has the meaning given in [section 4](#) of the Prohibition of Gang Insignia in Government Premises Act 2013.

reasonable, and appropriate to assist in managing the risk that the offender poses to public safety.

48. The qualifying offences are specified serious offences under the Arms Act, the Crimes Act, and the Terrorism Suppression Act 2002 (with maximum penalties for these offences ranging from 5 years to 14 years or life). There is substantial overlap between the licence disqualification offences and the FPO-qualifying offences.

Firearms-related offences are in the Arms Act and the Crimes Act

49. A licensed firearm owner, or someone under their immediate supervision, may safely discharge a firearm in public or near dwellings (if they have a lawful, proper, and sufficient purpose for doing so) such as while at a range or when hunting. However, there are a number of offences in both the Arms Act and the Crimes Act that may be engaged when a firearm is discharged, depending on the particular circumstances and facts.
50. These offences exist on a spectrum of offending, from lower-level offences, where minimal harm is caused or intended, through to more serious offences resulting in injury or death:
- The lower-level offence in the Arms Act of discharging a firearm without reasonable excuse in or near a dwelling or public place so as to endanger property or endanger, annoy, or frighten any person (section 48, maximum penalty of 6 months or \$10,000; no *mens rea* intent to endanger is needed).
 - The offence where a person, with intent to intimidate or annoy any person, by the discharge of firearms, alarms or attempts to alarm any person in any dwelling house (section 308(b) of the Crimes Act, maximum penalty 3 years).
 - The serious offence of discharging a firearm at any person with the intent to do grievous bodily harm (section 198(1) of the Crimes Act, maximum penalty 14 years).

Police has search, seizure, and surveillance powers under the Search and Surveillance Act

51. The Search and Surveillance Act 2012 (the S&S Act) sets out Police's search, seizure, and surveillance powers. Its purpose is to facilitate the monitoring of compliance with the law and the investigation and prosecution of offences in a manner that is consistent with human rights values. There are a number of warranted and warrantless powers in the S&S Act.
52. Police may apply for a surveillance device warrant to obtain evidence about a suspected offence if there are reasonable grounds to suspect that an offence has been committed, or is being committed, or will be committed, and to believe that using a surveillance device will obtain evidential material in respect of the offence. That warrant application must set out a number of matters, including:
- The type of surveillance device to be used.
 - The name, address, or other description of the person, place, vehicle, or other thing that is the object of the proposed surveillance.
 - A description of the evidential material believed to be able to be obtained by use of the surveillance device.

- The period for which the warrant is sought.
53. Section 45 of the S&S Act enables Police to apply for a warrant to undertake surveillance that involves trespass to land or use of an interception device in order to obtain evidential material in relation to eligible offences. The eligible offences are offences punishable by 7 years imprisonment or more, and some specified serious offences against the Arms Act or the Psychoactive Substances Act 2013.
 54. The specified Arms Act offences relate to the unlawful supply, possession or use of firearms in various situations. Their maximum penalties range from a \$20,000 fine or two years' imprisonment at the lower end, to five years' imprisonment at the higher end. These offences were included to recognise the particular threat that firearms pose.
 55. When Police is undertaking surveillance that involves trespass to land or use of an interception device in relation to an eligible offence, they may find evidential material relating to a second offence. If the trespass surveillance or interception device could have been authorised in relation to the second offence, any evidential material in relation to that offence will not be inadmissible on the grounds that the surveillance device warrant was in respect of a different offence. However, if evidential material is found in relation to an offence that is not eligible, it will likely be inadmissible.

Development of the status quo

56. The status quo in relation to existing offences and penalties will not change independently of legislative change.

What is the policy problem or opportunity?

57. While there are a range of existing offences, what is not sufficiently covered is the situation where someone shoots a firearm *with the intent to intimidate* and the person(s) intended to be intimidated are somewhere in public (such as on the street) rather than inside a house (which is covered by section 308(b) of the Crimes Act, discussed above).
58. The discharge of a firearm with the intent to intimidate causes harm regardless of where the victim is. There is an apparent gap in the existing offences.

What objectives are sought in relation to the policy problem?

59. The objectives in relation to this problem are to ensure the offences and penalties related to shootings hold offenders to account, publicly denounce harmful behaviour, and are fit for purpose.

Subsection 2A: Deciding upon an option to address the policy problem

What criteria will be used to compare options to the status quo?

60. As for each of the policy problems in this document, the following criteria will be used to compare the options to the status quo:
 - Effectiveness at:
 - Disrupting harmful gang activity.
 - Improving public safety.

- Preventing offending and holding offenders to account.
- Feasibility of implementation.
- New Zealand BORA compliance.

What scope will options be considered within

61. Ministers provided clear commissioning on the options they wanted officials to pursue.

What options are being considered?

Option 1 – Status Quo

62. The status quo, as described above, continues.

Option 2 – New offence – discharging a firearm with intent to intimidate

63. This option will make it an offence under the Crimes Act to discharge a firearm with the intent to intimidate one or more people. This new offence will apply when the people intended to be intimidated are in public or at home.

64. This new offence will have a maximum penalty of 5 years imprisonment. This recognises the seriousness of the behaviour being addressed. It also recognises the potential for serious injury/death (noting those outcomes may also be addressed by existing offences, with higher maximum penalties).

65. To the extent to which this action is covered by existing section 308(b) of the Crimes Act (where the victims were in a dwelling house) the maximum penalty will increase from 3 years to 5 years imprisonment.

66. The new offence would not be limited to gang member offenders or gang-related shootings. This is because any person who commits the act with the requisite intent is equally culpable and causes public harm.

Option 2A – Additional consequences on conviction for new offence

67. Option 2A is an additional option that may be chosen to supplement Option 2.

68. Under this option, the new offence would be added to the eligible offences which enable a Firearms Prohibition Order (FPO) to be made by the court on conviction.

69. The new offence would also be added to the list of offences where a conviction disqualifies a person from holding a firearms licence for 10 years under the Arms Act.

Option 2B: Enabling trespass surveillance and use of interception device to investigate new offence

70. Option 2B is also supplementary to Option 2.

71. This option will add the new offence to section 45 of the S&S Act as an eligible offence. This means Police will be enabled to apply for a warrant to undertake surveillance that involves trespass to land or use of an interception device in order to obtain evidential material in relation to the new offence, despite the maximum penalty for the offence being 5 years.

72. This will treat the new offence (being a serious arms offence) similar to other serious arms offending that has been added to section 45 of the S&S Act despite having

maximum penalties that are less than 7 years (as discussed above). This recognises the particular threat that firearms pose.

73. It will also mean that evidence obtained about the new offence when carrying out trespass surveillance or using an interception device in relation to a different offence will not be inadmissible on the grounds that the surveillance device warrant was in respect of a different offence. Without this addition, any evidence found would likely be inadmissible.

Te Tiriti o Waitangi implications

74. The options under consideration target criminal activity, rather than gang membership – anyone, gang member or not – may commit the offence and be subject to the additional consequences. As such, we do not consider there to be significant te Tiriti implications. However, Māori are over-represented in gang membership and the wider criminal justice system, and these issues continue.

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How do the options compare to the status quo?

	Option 1: SQ	Option 2: New offence in the Crimes Act 1961	Option 2A: Additional consequences on conviction for new offence	Option 2B: Enabling trespass surveillance/use of interception device to investigate new offence
Effectiveness at: - disrupting harmful gang activity - improving public safety - preventing offending and holding offenders to account	0	+ Ensures offences and penalties are fit for purpose. Will appropriately hold offenders to account for harmful behaviour. Covers a gap and may also be a more appropriate charge for some existing offending. Legislation can have an important signalling effect to denounce harmful behaviour. The new offence is not specifically aimed at disrupting gang activity.	+ Holds offenders to account and may disrupt harmful gang activity as conviction enables an FPO to be granted by the court (restricting high risk people from being able to legally access or use firearms). Denounces behaviour by disqualifying offender from holding a firearms licence for 10 years (though unlikely to have been issued or kept a licence in any event). New offence is comparable to current relevant serious offences for FPOs and licence disqualification.	+ Holds offenders to account for harmful behaviour. Evidence in relation to this offence may be obtained under warrant. Evidence obtained about new offence when carrying out trespass surveillance or using an interception device in relation to other offences will not be inadmissible. Treats this serious arms offence similar to other serious arms offending (that do not meet the otherwise 7-year maximum penalty minimum) recognising the particular threat that firearms pose.
Feasibility of implementation	0	0 No issues with implementation are expected. Will become part of a suite of offences addressing firearms harm.	0 No issues with implementation are expected. FPO can be considered at sentencing, and licence disqualification prevents licence application.	0 No issues with implementation are expected. Will become part of a suite of investigative tools. Application for a surveillance device warrant as per normal process and requirements (which requires judicial officer authorisation).
BORA implications	0	0 May engage section 9 of BORA (that a punishment should not be disproportionately severe). However, the maximum penalty for the new offence of 5 years imprisonment does not appear to be inconsistent with this requirement.	0 The licence disqualification does not engage BORA - possession and use of arms is a privilege, not a right. The eligibility for an FPO may engage BORA so far as the FPO regime itself engages BORA – including the rights to freedom of association, movement, and to be presumed innocent. The Attorney-General concluded the limits to those rights and freedoms in the FPO Bill were reasonably justified.	0 May engage section 21 of BORA (the right to be free from unreasonable search and seizure). While there may be an impact on privacy in line with current application of these warranted powers, enabling trespass surveillance or the use of interception devices does not appear to be inconsistent with this right under s21, as these powers will only be exercised following application to a judicial officer.

Overall assessment	0	+	+	+
		Better than the status quo.	Better than the status quo.	Better than the status quo.
Key:	-	worse than the status quo	--	much worse than the status quo
	+	better than the status quo	++	much better than the status quo
			0	about the same the status quo

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What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

- 75. Option 2 addresses the identified gap in relation to the situation where someone shoots a firearm *with the intent to intimidate* people in public. Option 2A enables these high-risk individuals to be restricted from being able to legally access or use firearms. Option 2B provides Police with appropriate investigative tools to hold offenders to account.
- 76. As a cohesive package, this ensures the offences and penalties related to shootings hold offenders to account, publicly denounce harmful behaviour, and are fit for purpose.
- 77. Therefore, the combination of Options 2, 2A, and 2B as a package best addresses the problem, meets the policy objectives, and delivers the highest net benefits.

What are the marginal costs and benefits of the option?

Affected groups <i>(identify)</i>	Comment <i>nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.</i>	Impact <i>\$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.</i>	Evidence Certainty <i>High, medium, or low, and explain reasoning in comment column.</i>
Additional costs of the preferred option compared to taking no action			
Police	Ongoing - Cost of prosecution (likely to be few additional prosecutions given the range of other offences already available where a firearm is discharged)	Low – Due to few additional prosecutions	Medium
Corrections	Ongoing - Higher maximum penalty (for the current element of the offence) may increase sentence length (though impact likely low due to totality of offending)	Low – Due to totality of offending	Medium
Justice	Ongoing - Potential ongoing legal aid costs for offenders	Low - Due to expectation of few additional prosecutions	Medium
Crown Law	Ongoing - Cost of prosecution (likely to be few additional prosecutions)	Low - Due to expectation of few additional prosecutions	Medium

Judiciary	Ongoing - Costs arising from court time required to try cases and consider surveillance warrant applications, but likely to be minimal increase to status quo.	Low - Likely to be minimal increase to status quo	Medium
Total monetised costs	A range of ongoing unquantified monetised costs	Low	Medium
Non-monetised costs	Nil	NA	Medium
Additional benefits of the preferred option compared to taking no action			
New Zealand Police	Ongoing - More effective policing	Low	Medium
Public of New Zealand	Ongoing - Increased safety	Low	Medium
Total monetised benefits	Nil	NA	Medium
Non-monetised benefits	Unquantified – But potential to increase public safety	Low	Medium

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Proposal B: New warranted search powers to prevent and respond to gang conflict

Subsection 1B: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

78. Gang conflict operates within a fast moving and highly fluid environment. Illegal weapons, including firearms, are a common feature in these. Gangs employ a range of methods to circumvent firearm regulations and the detection of their weapons by Police. These can include storage of the weapon by a lower-level member or associate not personally involved in the violence, exchanging weapons between gang members, and the frequent movement of weapons between locations.
79. Access to weapons (particularly firearms) within the context of escalating gang conflicts poses a significant risk of harm to our communities.

Existing powers under the Search and Surveillance Act 2012

80. The Search and Surveillance Act 2012 (S&S Act) brings together the majority of Police and law enforcement search, seizure, surveillance and related powers. The Act sets out detailed rights, powers and obligations in relation to exercising those powers. The powers in the Act are designed to make it easier to detect prevent and apprehend people committing serious criminal offences. The Act also recognises the importance of rights and entitlements affirmed in other enactments, including the BORA and the Privacy Act 2020.
81. Search and surveillance tools are a necessary mechanism to enable Police to legitimately gather intelligence, investigate, and obtain evidence for disrupting and responding to crime and harm. This is part of the Government's responsibility to uphold the rule of law. Exercising these tools requires necessary and reasonable safeguards to prevent their misuse and ensures Police actions are undertaken with proportionate limitations to fundamental human rights and expectations of privacy.
82. The existing warrantless search powers under section 18 of the S&S Act enable Police to carry out warrantless searches in relation to arms offences if there are reasonable grounds to suspect that:
 - a) someone is carrying, in possession of, or in control of arms, and is in breach of the Arms Act, or
 - b) there are arms in a place or vehicle, and that a serious offence has been committed, is being committed or is about to be committed.
83. This is an often-used search power where Police may, for example, conduct a routine vehicle stop and sight an item that activates a search, such as ammunition or a firearm. Particularly where the offence might connect to a violent crime, other sections

of the S&S Act may be used (such as section 8 which enables entry without warrant to avoid loss of offender or evidential material).

84. Police can use this power to enter specific places or vehicles in relation to individuals suspected of committing an imprisonable offence. However, it does not enable Police to search the property and vehicles of all members of the gang. This is despite the accessibility of weapons across the gang and/or the increased risk that future violence may be committed by any member.
85. The Police use of warrantless and warranted search powers has been governed by legislation and internal processes since 2012. All searches are recorded and reported to the Ministry of Justice and are often reviewed internally post event.

Development of the status quo

86. Gang conflict naturally varies in intensity as particular disputes emerge or fade. However, the current spike in public violence associated with gang conflict is occurring within the context of deeper changes to the gang environment. This includes the establishment of Australian gangs in New Zealand, which is resulting in increased inter-gang pressures, and greater willingness to escalate to violence using firearms. As a result, Police is seeing a general trend towards more severe and overt violence, in particular, firearms offending. This is likely to continue to increase.
87. Previous Police experience is that in times of escalating gang violence and tension, a concerted enforcement effort and the targeted policing of gangs is necessary to prevent, suppress and disrupt gang violence. Police will continue to adjust their operational response to these changing pressures. However, the scope of their powers under the S&S Act cannot change without legislative amendments.

What is the policy problem or opportunity?

88. When gang conflicts are occurring, future violence may be committed by any member of the gang and weapons are frequently moved between locations. Locating and seizing weapons is key to disrupting and preventing gang conflicts before further violence occurs.
89. Currently, to search a person's property and vehicles, Police needs at least reasonable grounds to suspect that the person is involved in criminal activity. This means that multiple warrants are needed to search the property and vehicles of gang members involved in gang conflict and some gang member's property and vehicles may not be able to be searched. This is despite the heightened risk of violence across the gang membership and the movement of illegal weapons between gang locations.
90. In April 2022, Operation Bloodhound responded to a conflict between two gangs in Eastern District that involved numerous shooting events and targeted violence. The operation involved 25 search warrants and resulted in more than 30 people associated with gangs facing charges and more than 30 firearms removed from gangs. Although this operation was a success, an ability to locate and seize weapons held by any member of the gang without the need for multiple search warrants could have enabled

Police to more effectively disrupt this conflict by rapidly responding to intelligence on the location of illegal weapons.

Stakeholders

91. Key stakeholders that this policy problem involves or would likely impact upon include communities experiencing gang violence, people who are members of a gang, and whānau of gang members. As many gang members in New Zealand also whakapapa Māori, it is acknowledged that proposals aimed at gangs are likely to disproportionately impact on Māori. Consultation with these groups did not occur due to time constraints.

What objectives are sought in relation to the policy problem?

92. The objectives sought are to:
- Prevent future incidences, or escalation of, gang conflict.
 - More effectively disrupt and respond to gang conflict .
 - Increase public safety and feelings/perceptions of safety.
 - More efficiently locate and seize illegal weapons from gang members.

Subsection 2B: Deciding upon an option to address the policy problem

What criteria will be used to compare options to the status quo?

93. We have identified the below criteria to apply to all proposals to compare options and the likely impacts of the options:
- Effectiveness at:
 - Disrupting harmful gang activity.
 - Improving public safety.
 - Preventing offending .
 - Feasibility of implementation.
 - New Zealand Bill of Rights Act compatibility.

How are the criteria applied to the proposal?

94. With regards to this specific proposal, the effectiveness criteria are interpreted as the following:
- *Disrupting harmful gang activity*: how each option contributes to preventing future violence and gang conflict and if the proposal will make it harder to participate in gang conflict and associated behaviours.
 - *Public safety*: how each option minimises the likelihood of gang conflict happening in a public place and contributes to increased perceptions of public safety.

- *Preventing offending*: how each option contributes to effectively locating and seizing weapons from gang members.

What scope will options be considered within?

95. Ministers provided clear commissioning on the options they wanted officials to pursue. If more time was available, agencies may have proposed different or additional options and may have provided more detailed advice on the BORA and privacy implications.
96. While officials did not consider other options to address the policy problem, officials worked through sub-options relating to different aspects of the warrant and considered the appropriate mitigations and safeguards. Within the proposed option, officials analysed different approaches to the following elements:
 - Criteria for the warrant to be authorised.
 - Who would be covered by the scope of the powers.
 - Inclusion of allowing vehicles not specified in the warrant to be stopped and searched.
 - The appropriate threshold for searches to be conducted.
 - Setting of a specified area or geographical boundary the searches must remain within.
 - Whether searches should relate to firearms only or be broader to include other weapons.
 - Who could issue the warrant.
97. A summary of the analysis of the above elements can be found below.

Evidence

98. The lack of comparative search powers in other policing jurisdictions has precluded direct comparisons or the ability to draw on the available evidence. As this warrant is an extension of existing search powers, there is no evidence available about how it may work in New Zealand
99. However, there is a partial comparison in the United Kingdom (UK). In May 2022, restrictions were lifted on UK Police's stop and search powers where serious violence is anticipated, enabling greater Police access to existing stop and search powers to prevent serious violence. This was achieved by reducing the threshold that must be met before authorisation, from reasonably believing serious violence "will" occur to "may" occur. Given the recency of their introduction, it will be some time before conclusions can be drawn about the effectiveness of these changes.
100. The policy intention of these changes was to respond to the problem of a general escalation of violence in the UK has symmetries with this proposal's problem definition and the identified criteria (i.e., responding to escalating violence through measures that increase public safety and prevent future violent offending). However, the serious violence we are seeking to prevent and address is that which is specifically carried out

by gang members during circumstances of emerging rivalry and conflict between, or within, gangs.

What options are being considered?

Option One – Status Quo

101. This would involve no changes being made to Police’s existing powers under the S&S Act. Existing provisions carry at least a ‘suspicion’ requirement and must be targeted towards the property of a specific individual/s. Police would continue to be limited in their ability to search all gang members and to remove weapons to prevent further violence that may significantly impact on public safety.
102. Gang conflict in particular is most likely to be resolved via operational methods. The status quo allows for operational tools to be utilised to suppress and disrupt gang violence.

Option Two – New warrant and search powers

103. Provide for a new warrant and associated search powers in the S&S Act 2012 that can be used to locate and seize weapons when there is gang conflict.
104. The powers need to be exercised carefully to encourage the long-term and short-term outcomes sought by both the new powers and existing programmes to reduce gang harm.
105. This proposal is likely to be controversial due to the broad powers and how they limit gang members’ and specified gang associate’s rights.

Analysis of elements:

106. In creating a new gang conflict warrant and associated search powers, Officials analysed the different elements required to ensure a proportionate approach which provides adequate/sufficient safeguards. This analysis is detailed below.

Element	Considerations
Limitations on authoriser of warrant	<ul style="list-style-type: none"> • Some search warrants can be authorised by judges or authorising officers. Officials determined that limiting the ability to issue a warrant to a judge provided the appropriate judicial oversight and aligns with current provisions in the S&S Act.
Only available in instances of gang conflict	<ul style="list-style-type: none"> • The powers are not always available. • Gang conflict can be between two or more gangs, or in-fighting within a single gang. • Gang conflict must involve the use of weapons and present or be likely to present a risk of harm to people or property. • What constitutes “gang conflict” will be determined through Police’s existing investigative processes and using Police’s existing intelligence and information.

<p>Criteria that must be met before the warrant could be issued</p>	<ul style="list-style-type: none"> • A gang conflict is underway, and involves, or may soon involve the use of weapons that are likely to cause wider harm. • The judge would consider the history of conflict and recent conflict between gangs, as well as indicators of escalating or future conflict. <p>The warrant itself would specify:</p> <ul style="list-style-type: none"> • The gang/s it relates to, • The required time limit (with a maximum of 14 days – a new warrant could be sought if additional time is needed), and • The known property (including residences, dwellings and vehicles) occupied, possessed or owned by known members of the specified gang/s within a specified region or regions.
<p>Setting a geographical boundary</p>	<ul style="list-style-type: none"> • Given the broad scope of who may be captured by the powers it was proposed that the powers are limited to a geographical area. • We considered specifying the types of areas that could be used (eg. council or electorate boundaries) but these were arbitrary distinctions that would often either be too large or too small. Arbitrary boundaries are also more likely to make the powers operationally unworkable. • The area will be described and justified in the warrant based on what is required for the operational situation to ensure the area is proportionate and fit-for-purpose for the circumstances. • Within the area, known property and vehicles to be searched will be listed in the warrant. This will provide the judge with oversight of the locations that will be searched.
<p>Who would be covered by the scope of the power</p>	<ul style="list-style-type: none"> • This problem definition clearly includes validated patched/full members and prospects/nominees of gangs. • The definition of gang in the Prohibition of Gang Insignia in Government Premises Act 2013 will be used. This definition is also used in the Arms Act. • Gang membership will usually be established using Police's existing intelligence and information. Police officers are familiar with the nature of intelligence and will seek to corroborate any information, using existing investigative processes as required, before acting on it. • Consideration was given to whether associates of gangs should also be captured. A blanket capture of people associated or affiliated with gangs could significantly broaden the reach of this power. However, intelligence from Police showed that previous operations have located and seized illegal firearms from people who are gang

	<p>associates that are involved in gang conflict, including through the storing or providing of firearms to gang members.</p> <ul style="list-style-type: none"> • Officials needed to ensure that the scope does not include a victim or innocent person caught up in the conflict, or for example, lawyers representing the gang. • Officials propose that specifically identified people are included in the warrant application to the judge. This means there is judicial oversight of the appropriateness of including non-gang members on a case-by-case basis, where there are reasonable grounds to believe that the person is involved in the conflict.
Ability to search vehicles not specified in the warrant	<ul style="list-style-type: none"> • The powers will permit searches of non-specified vehicles if these fall within the specified region/s and a constable is satisfied they are occupied, used or owned by members of a specified gang. • This power is required given how often vehicles are shared and moved by gangs. For example, gang members may own multiple cars at a time, or they may be shared with other gang members.
Thresholds for searches	<ul style="list-style-type: none"> • Once the warrant is issued, there will need to be reasonable grounds to suspect that the property/vehicle to be searched is occupied, possessed or owned by a patched or prospective member of a specified gang. This mirrors existing thresholds relating to firearms and provides Police with additional powers to respond to gang conflict. • For existing powers, searches can only be conducted if there is a suspicion that offending has occurred or is about to occur. In contrast, this proposal will enable Police to search the property and vehicles of all members of the gang as a preventative measure, as there is an increased risk that future violence may be committed by any member of the gang.
Definition of weapon	<ul style="list-style-type: none"> • The original commissioning focused on harm to the public. For this reason, the definition of weapons has focused on weapons that pose the greatest risk to the public – e.g. firearms and other items made or modified to cause injury. • To the extent possible, items that people would have legitimately in their homes, for example kitchen knives, would be excluded.
Time limited	<ul style="list-style-type: none"> • The warrant will be time limited, which is one of the constraints on this power. It will be valid for a maximum of 14 days. However, the warrant could be valid for a shorter time if that was more appropriate. This will be determined in the application and then approved by the Judge.

Population analysis

107. This proposal is likely to disproportionately impact Māori as it specifically targets gangs and is likely to conflict with the equity principle of the Treaty of Waitangi.
108. The new warrant will impact on whānau of gang members including those whose only links to gangs may be through familial association (not criminal) such as tamariki, as it allows entry into homes. During searches conducted under this new power, evidence may be found of other offending, including by other whānau members residing or present in search locations. This could increase gang whānau representation in crime statistics and involvement in the criminal justice system, as well as other significant flow on effects that this brings.
109. The prevalence of gang membership within Māori communities also means that Māori are more likely to be the victims of gang-related harm. Taking steps to combat this harm is likely to also have a positive impact for Māori.

BORA

110. New search powers will likely engage rights under section 21 of the BORA, which protects against unreasonable search or seizure. They are also a significant imposition into personal privacy because of the ability to search private places/vehicles.
111. Existing search powers require Police to have a reasonable degree of suspicion or belief that a criminal act is occurring or will occur. This search power only requires Police to believe or suspect the person is a member of a gang that is involved in conflict. This has the potential to place a higher limitation on the right to not be subjected to unreasonable search or seizure than existing powers, and is more likely to result in searches of people not involved in the conflict.
112. However, lower thresholds may be justified where there is a significantly increased risk that future violence may be committed or aided by any member of the gang. Current search powers are not broad enough to prevent this anticipated activity that would cause harm to the public.

Privacy considerations

113. Where search powers are exercised in family homes or in relation to shared property, the rights of non-gang members will be affected. This is likely to include children and other vulnerable groups.
114. Police acknowledges that the proposal will be an expansion of Police powers and will require careful management consistent with the approach taken for other search warrants. This includes ensuring that there are policies and processes in place to confirm all searches under the warrant are conducted reasonably. The collection, use and retention of all material in preparation and execution of this warrant would be in line with Police's protocols and processes for existing types of warrants.
115. Police also has existing processes to minimise intrusion and distress for those that are not the target of the warrant and will apply these as appropriate for the powers under this new warrant. For example, Police can undertake assessments of the potential impact on communities and whānau where appropriate, implement plans to minimise harm and ensure tamariki are safe and cared for. This includes searching the house during school hours when tamariki are less likely to be home or allocating someone to

specifically locate the children and ensure they are in a safe place during execution of the warrant.

116. Because these warrants are likely to be highly planned, there will be time to ensure any wider impacts or harms are minimised and managed. For example, Police may use community impact assessments in some circumstances, and there will be a significant intelligence and investigation component to support the execution of the warrant.
117. The fact that this is a judicially issued warrant may balance some of these concerns, as Police will not be able to exercise these powers unless a judge considers the search to be reasonable in the circumstances. Other safeguards include the time limit of the warrant, specifying an area in which the warrant can be executed, and limiting the use to instances of gang conflict, as well as other aspects discussed in the analysis of elements above.
118. Police expects that given the resourcing required to collate the information to request the warrant and then to execute the warrant, that they will only be sought where compelling circumstances exist justifying the use of such a warrant.
119. In accordance with the S&S Act, Police annually reports on the use of search and surveillance powers. The use of the new warrant and search powers will be included in the reporting, to provide public accountability.

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How do the options compare to the status quo/counterfactual?

	Option One – Status Quo	Option Two – New warrant and search powers
Disrupting harmful gang activity	0	++ The new warrant and powers are aimed at disrupting gang activity. Conducting searches and seizing weapons is expected to disrupt gang conflict and other harmful gang activity
Improving public safety	0	+ This proposal will increase public safety by enabling Police to locate and seize weapons from gang members more proactively than current provisions allow for.
Preventing offending	0	+ The proposal will prevent offending by seizing weapons.
Feasibility of implementation	0	- This proposal can be implemented but there is work required to ensure appropriate processes are in place.
New Zealand Bill of Rights Act compatibility	0	- The proposal impacts on privacy and on section 21 of BORA. However, requiring judicial authority for the warrant balances some of the risk of an unreasonable search.
Overall assessment	0	+ Option two would be better than the status quo at preventing and disrupting gang conflict.

Key: - worse than the status quo -- much worse than the status quo 0 about the same the status quo
 + better than the status quo ++ much better than the status quo

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

120. The new warrant and search powers will address the problem, meet the policy objectives and deliver the highest net benefits, when compared to the status quo.

What are the marginal costs and benefits of the option?

Affected groups <i>(identify)</i>	Comment <i>nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.</i>	Impact <i>\$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.</i>	Evidence Certainty <i>High, medium, or low, and explain reasoning in comment column.</i>
Additional costs of the preferred option compared to taking no action			
People who are subject to search power	One-off – Costs associated with being searched and responding to the exercise of the search power.	Medium – The costs would likely involve legal fees and engagement in court proceedings.	High – This cost would be incurred as soon as the power is used.
New Zealand Police	Ongoing – The initial cost of implementing (including training), applying for and executing the warrant as well as increased Police efforts in exercising the search power, managing the seized goods and conducting necessary investigations. This will largely be in terms of opportunity cost, with staff unable to complete other tasks. It is expected that any costs will be covered from baseline.	Low – These warrants are likely to be time-consuming and resource intensive to put together and execute, with costs commensurate with the scaling of search activities. However, the number of gang conflicts each year may not be significant. Furthermore, the costs associated with executing this new search warrant may be counterbalanced by a reduction in other search warrants and Police activities.	Low – It is unknown how many of these warrants will be used, whether it will replace the need for other warrants and Police activities, or what other effect it may have on Police's costs and resources.
Department of Corrections	Ongoing – The searches may lead to prosecution of offences that are liable for terms of imprisonment.	Low – As the number of warrants is likely to be low relative to existing warrant numbers, and so numbers of prosecution and convictions are likely to be low.	Low – It is unknown at this stage how many convictions would result but it is anticipated that there would be some

Ministry of Justice	Ongoing - Costs of legal aid.	Low – The number of warrants is likely to be low relative to existing warrants and so numbers of prosecutions and convictions are likely to be low.	Low – It is unknown at this stage how many prosecutions would result but it is anticipated that there would be some.
Crown Law	Ongoing - Cost of prosecution.	Low - The number of warrants issued under the new power is likely to be low relative to total number of all warrants issued.	Low – It is unknown at this stage how many prosecutions would result but it is anticipated that there would be some.
Judiciary	Ongoing - Costs of issuing warrants.	Low - The number of warrants issued under the new power is likely to be low relative to total number of all warrants issued.	Low – It is unknown at this stage how many warrants would be applied for but it is anticipated that there would be some.
General public	N/A	N/A	N/A
Total monetised costs	It is expected that any costs will be covered from baseline.	Any costs will largely be opportunity costs rather than financial costs.	It is unknown how many of these warrants will be used and what costs will be incurred.
Non-monetised costs			
Additional benefits of the preferred option compared to taking no action			
People who are subject to seizure power	N/A	N/A	N/A
New Zealand Police	Ongoing – The option will allow Police to seize weapons more effectively and efficiently by improving search	Medium – It is unknown how many of these warrants will be issued, but it is likely to be some. It is likely that weapons will be identified	Low – It is unknown how many weapons will be seized under these powers.

	powers. This, in turn, will help disrupt gang conflict.	during these searches, which will disrupt gang conflict and reduce the need for other policing services.	Further, it is likely that organised criminal groups will adjust their behaviour to avoid the application of the new search power.
Department of Corrections	N/A	N/A	N/A
Ministry of Justice	N/A	N/A	N/A
Crown Law	N/A	N/A	N/A
Judiciary	N/A	N/A	N/A
General public	Ongoing – Direct benefit of safer communities through removing weapons from gangs and disrupting gang conflict.	Medium - It is unknown how many of these warrants will be issued, but it is likely to be some. It is likely that weapons will be identified during these searches, which will disrupt gang conflict and reduce the need for other policing and other emergency services (eg. health services).	Low – It is unknown how many weapons will be seized under these powers. Further, it is likely that organised criminal groups will adjust their behaviour to avoid the application of the power.
Total monetised benefits	N/A	N/A	N/A
Non-monetised benefits	The option has the potential to increase community safety and reduce the harm of organised crime to some extent.	Medium	Low

Proposal C: Addressing offending that can occur in vehicle convoys

Subsection 1C: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

121. Gang-related activity and offending have spilled onto New Zealand roads, with members of the public being harmed by 'gang convoys' (for example, the incident on Waikato Expressway in March 2022)⁸. The driving behaviours during these 'gang convoys', can be dangerous and intimidating to other road users. While this behaviour may constitute an offence under the Land Transport Act 1998 (LTA), Police struggle to prosecute individuals who have committed an offence due to difficulties with identification of the driver of the vehicle. It is often unsafe to apprehend offenders at the time, and any collected evidence of offending (for example, video footage) may not identify the offender (due to helmets and face coverings).
122. At present, the vehicle can be seized to support Police inquiries, and, depending on the offence committed, a sentencing outcome could include the permanent confiscation of the vehicle. The current regulatory system is able to sanction offenders effectively where a driver can be identified. However, if the offender cannot be identified, charges cannot be laid, and the vehicle must be returned.
123. Without Government intervention, this behaviour will continue to have detrimental road safety impacts and affect the ability for members of the public to safely use the transport system. Any potential intervention will need to consider how to deter unsafe behaviours on the road and how these can best apply if the offender is not immediately identifiable or cannot be identified after the fact.

The use of penalties in the land transport system

124. Within the land transport system, penalties are effective at creating positive behavioural change.⁹ Their primary role is to create a safe transport system which reduces risk to road users. Further information is attached in **Appendix 1**.

External factors will influence policy options

Consideration will need to be given to te Tiriti o Waitangi implications

125. Over three quarters of the known adult gang members in Aotearoa are Māori men (around 77 percent). This means that targeting offending that occurs during gang

⁸ 'It was scary': Witnesses fear for their safety as bike gang drives on wrong side of the road. *New Zealand Herald*, Retrieved from: <https://www.nzherald.co.nz/nz/it-was-scary-witnesses-fear-for-their-safety-as-bike-gang-drives-on-wrong-side-of-the-road/JRVACTZWYZ2RA5DOLLM7HW4LNA/>

⁹ Road safety penalties encourage road users to comply with traffic regulations through both general and specific deterrence. General deterrence refers to the public having a perception that those who break the law will be caught and incur a penalty. Specific deterrence refers to those who have been caught, and the penalty is enough to prevent them from reoffending. Penalties are most effective when combined with visible and consistent enforcement (for example, through road policing or a safety camera network): Sakashita, C. Fleiter, J.J. Cliff, D., Flieger, M., Harman, B. & Lilley, M (2021). *A Guide to the Use of Penalties to Improve Road Safety*. Global Road Safety Partnership, Geneva, Switzerland

convoys, which may often be part of a tangi, will have a disproportionate impact on Māori and is likely to conflict with the equity principle of te Tiriti o Waitangi/the Treaty of Waitangi.

126. Increased use of impoundment, forfeiture or confiscation of vehicles for offending committed as part of a gang convoys may also result in Māori having either an increased inability to vehicle finance or being provided finance at higher interest rates. This is because, anybody with a security interest in the vehicle loses their right of claim against the property for any debts due, once forfeited or confiscated.

Australia has tried to address intimidatory behaviour on their roads

127. Several Australian states have similar issues with gang membership and 'hooning'/street racing and have legislated in response. We have summarised their approach to these issues in **Appendix 2**.

What is the policy problem or opportunity?

128. Illegal and intimidatory behaviour is taking place on New Zealand roads and members of the public have been injured as a consequence for example, in the Waikato Expressway incident. Drivers have the right to feel safe on the road, and to expect that there is an equity in enforcement and expected standards for drivers across the land transport system.
129. In terms of risks to the integrity of the road system, the current lead risk stems from illegal behaviours that happen as part of gang convoys where the driver who is committing an offence cannot be identified and penalised. This is the major policy problem that will be dealt with in this proposal.
130. There are lesser risks that could be associated with motorists being intimidated by gang convoys and changing their driving behaviours to account for this. For instance, some road users may look to avoid locations where gang convoys are taking place, and this could affect their access to the land transport system when going about their daily business.
131. Finally, there is a component around the enforceability and operationalisation of the current regulatory provisions that can be used to penalise illegal driving behaviours at gang convoys. This will be dealt with in part by Option 3b below: suggesting that there should be an increase in the fees for towage and storage operators. Police report that they struggle at times to effectively enforce existing offences that occur during gang convoys and that they do not have sufficient tools to intervene. Additionally, while not specifically gang related, events such as the 2022 Parliament protest have shown issues around the availability of towage and storage operators, and the reliability of the current impoundment model.

What objectives are sought in relation to the policy problem?

132. The main objective of addressing the policy problem will be to reduce harm on roads, through curtailing and deterring intimidatory and high-risk behaviour that can occur within vehicle convoys.
133. Options should seek to drive a change in behaviour and improve overall road safety. These objectives will need to be balanced against the human rights provided for in BORA.

Section 2: Deciding upon an option to address the policy problem

What criteria will be used to compare options to the status quo?

134. We have identified three criteria to assess options against. These support the overall objectives of the Bill but are a more specific framework to measure individual options against to ensure that the options strike the right balance and optimally achieve the objective individually.

Criteria	What this means
Effectiveness	<p>The degree to which a policy intervention is successful in achieving the desired outcomes.</p> <p>In assessing overall effectiveness of the options, the following factors will be considered:</p> <ul style="list-style-type: none">• Disrupting harmful criminal activity.• Maintaining public safety.• Appropriately holding offending to account.
Feasibility of implementation	<p>The ease of implementation, taking into consideration the impact on funding and resources.</p>
BORA implications	<p>The degree to which a policy intervention takes into consideration the impact on the BORA rights of those being targeted by options.</p> <p>Policy options will need to consider how best to mitigate any negative impacts.</p>

What scope will options be considered within?

135. Ministers provided clear commissioning on the options they wanted officials to pursue.
136. The scope of the options considered in this proposal have been curtailed by Ministers' desire to address the one specific evidence aspect of this policy problem: identifying who has committed an offence, and the desire of Ministers to remove vehicles from offenders. There is wider scope to consider the harm created by gang vehicles on the road, and policy options to redress the potential issues they cause. These may be considered further by Ministers as part of the on-going work programme to address

gang harm. However, this document is focused on options to address the issue of providing evidence that an offence has occurred, with a particular focus that targets the vehicles used in an offence.

137. This SAR only considers the policy proposals that were put before Ministers.

What options are being considered?

Option One – Status Quo

Description

138. This is a baseline option that would see Police continue to respond to gang convoys without any further interventions, of either an operational or legislative nature. The safety and enforcement concerns that prevent Police from being able to take immediate enforcement action would continue.

Analysis

139. The status quo poses risks to the safety of the New Zealand public on the roads. Vehicle convoys, where groups of gang members or others (e.g. “boy racers”) travel together on the road, often involve high-risk and illegal behaviour, such as dangerous or reckless driving, that can intimidate the public and present significant public and road safety risks.
140. The current state presents significant enforcement challenges for Police. It is often not safe for Police to intervene immediately when there are a significant number of vehicles. Post-event, Police often experience challenges identifying drivers and in progressing investigations and enforcement actions.
141. Various seizure, impoundment, and confiscation tools are currently available to Police and the courts to respond to the range of driving offences that are known to occur during gang convoys. Different powers are available at different stages. These include: 28-day impoundment, extended impoundment for evidential purposes, and vehicle confiscation post-conviction.
142. The status quo would not enable Police to intervene where it is not possible to identify the offender. This reduces Police’s ability to prevent the types of behaviour that are prevalent during gang convoys and constitute a safety risk to the road travelling public.
143. These could include:
- Careless use of a vehicle, with no regard to other road users, with an aggravating factor of the offending occurring at speed (with no death or injury).
 - Dangerous or reckless driving, where a driver has purposely intended to drive in such a manner (with no death or injury).

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s9(2)(f)(iv)

s9(2)(f)(iv)

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Option 4 - widening the range of offences that can result in impoundment of vehicles

176. This is a package of moderate amendments to the existing system. Option 4 could be used separately, or in combination with 4a or 4b. For best possible outcomes, if option 4 were to proceed, this should be used in conjunction with option 4a to ensure adequate supply of towage and storage operators that are willing and able to undertake this work, given the potential increase in impoundments.

Option 4 - Widening the range of offences that can result in the impoundment of vehicles

Description

177. Section 96 of the LTA sets out the circumstances under which vehicles may, or must, be impounded for 28 days. However, the power to seize and impound a vehicle is not currently available in relation to some high-risk driving offences that are likely to occur during gang convoys. Instead, the only mechanism to remove the vehicle is where the court issues a confiscation order post-conviction.

178. This option would amend section 96 to include offences that have a high road safety risk, which include:

- Dangerous and reckless driving, where no injury or death (section 35 LTA – maximum penalty 3 months imprisonment + fine + disqualification – see above).
- Aggravated careless use of a vehicle causing injury or death (section 39 LTA – maximum penalty 3 years imprisonment + fine + disqualification – see above).

179. This option would not be specific to gang convoys but would apply in any context.

Analysis

180. This is an evidence-based sanction, with the potential impact of losing a vehicle for up to 28 days being shown to influence driver behaviour. The power to impound vehicles for 28 days was introduced in 1999 and has been an effective deterrent for those driving while disqualified or unlicensed and had positive road safety outcomes. Since this date, there has been a 29 percent reduction in the proportion of crashes involving

disqualified or unlicensed drivers, and a 34 percent reduction in the number of detected driving while disqualified offences.

181. The proposed qualifying offences have been observed in the gang convoy context, but are also common offences on the New Zealand, with an average of 3,760 offences committed a year. It is expected that the rate of offences could increase given the impoundment would be mandatory, if Police had reasonable belief that an offence had been committed. This could mean that Police could impound more vehicles, while they undertake further investigations to determine if further charges should be laid.
182. There are potential disproportionate outcomes due to the potential loss of the main form of transport in situations where a family or work vehicle is impounded. However, under the LTA, an owner whose motor vehicle has been seized and impounded may appeal against such action to the:
- Police, under s102, and
 - the District Court, under s110 (if a person has unsuccessfully appealed under s102).
183. Offences in relation to careless driving causing injury or death (s38 LTA) or failing to comply with the requirement to identify a driver (s52 and s118 LTA) were not considered appropriate for further consideration. In relation to careless driving causing injury or death, a vehicle may otherwise be seized for evidentiary purposes. Failing to comply with the requirement to identify a driver and consideration of how this could be addressed will be dealt with through a separate process.

There are uncertain operational outcomes that come from this intervention...

184. While seizure and impoundment may have the intended deterrent effect, expanding the list of circumstances in which this is permitted could increase in the number of impounded vehicles and could place additional pressure on the towage and storage system. As outlined below in option 4a, the system has limited capacity to grow and this option could exacerbate this further if there are no changes to the regulated fees.

This option also has BORA implications...

185. In applying the offences, the application to gang convoys could engage s17: freedom of association and s19: freedom from discrimination, of the BORA, depending on how these were defined. Specifically targeting gang convoys will likely have disproportionate outcomes for Māori who are overrepresented in gang membership (around 77 percent). Māori also accounted for 82 percent of patched gang members and 74 percent of gang prospects charged with relevant driving offences between 2018 and 2021.
186. In comparison, if this is applied in a general sense, any potential engagement of s 21: unreasonable search and seizure and s27: right to justice, due to potential imposition of penalty without due process, could be mitigated by utilising the existing review and appeal process.

Option 4a - Increase in towage and storage fees

Description

187. Towage and storage fees for Police ordered impoundments are set in the Land Transport (Storage and Towage Fees for Impounded Vehicles) Regulations 1999 and

have not been updated since the 1990s. These fees are paid by offenders directly to the towage operators. The Ministry is currently scoping a review of the regulated towage and storage system, but any recommended changes are likely to take place over a longer timeline than this regulatory change.

188. s9(2)(b)(i)

189. The fees charged vary depending on the vehicle type, distance towed and whether the vehicle is towed during business hours. For example, a light (3,500kg and under) vehicle that is stored for 28 days would cost at least \$388.50 to be released.

190. s9(2)(f)(iv)

Analysis

191. Financial penalties are one of the many tools that regulators can use to enforce the requirements of the system. In the transport system they are designed to discourage negative behaviour, address associated risks, and respond to any harm that may be caused by a behaviour. While the towage and storage fee is not specifically a penalty, it does impose penalty-like impacts on the offender.

An increase in fees alone may help...

192. s9(2)(f)(iv)

Abandoned vehicles already pose a challenge and their rate could increase...

193. A risk of this option is an increase in vehicles are abandoned by their owner. The current abandonment rate varies between 10-15% of impounded vehicles, which is an average of 2,500 vehicles per annum. It is reasonable to expect that if the towage and storage fees increase, that the abandonment rate will increase.

194. If a vehicle fails to be recovered by the owner, a rebate of \$253 is available to a towage operator from Waka Kotahi NZ Transport Agency. The rebate does not consider if an operator is rural or urban, so those operators that operate in remote rural locations, who have to travel a significant distance, are more likely to be at a financial disadvantage.

195. This rebate was increased in 2020 from \$102.40 to address immediate concerns from operators that there was an inability to adequately recoup costs. s9(2)(b)(i)

¹⁰ MTA Feedback on Expanding Impound Criteria, July 2022.

196. This option would have limited BORA implications, however there would be limited deterrence in the behaviour that is being targeted. This would have a wider impact on the general public who have had vehicles impounded for other offences.

Option 4b - Setting a fixed penalty level for failure to identify driver

Description

197. Section 52(7) of the LTA currently allows for a maximum fine of \$20,000. This could be amended to set a fixed penalty level that is applicable upon conviction.
198. Data from the Ministry of Justice shows that between 2017-2021, of the 596 cases that have appeared before the Court, the average fine passed down is \$659. The maximum fine that has been recorded was a fine of \$5,000.

Analysis

199. This option would aid Police in circumstances where there is an inability to identify a driver at the time of an offence occurring and investigations are occurring after the fact. This could be used for both offences that occur during a gang convoy.
200. Setting a fixed penalty level would provide a stronger deterrent than what the LTA currently allows, as this would mean that there would be little discretion that the courts could apply and there would cease to be such a wide range of penalties passed down.
201. Police have advised that there are instances where a person will deliberately impede an investigation and refuse to identify the driver of a vehicle, because they are either:
- Under pressure e.g., a gang prospect, or
 - They are aware that the fine is likely to be minimal and this is likely to be a less significant penalty than the offence they may have otherwise been charged with if they identified the driver.
202. The transport penalty system is one of the main inputs into the Justice system, so this could have unintended consequences if an offender is unable to pay the fine. If this is the case, it is likely that they could default, or that this is paid over a longer time period, which means that the overall deterrent effect may be mitigated. If there is a chance that offenders may still receive a lesser penalty through refusing to identify a driver, then it is reasonable to expect that this option may not provide the level of deterrence that is being sought but this could be an improvement on the status quo.
203. Given the broad application of such a penalty, there would be no BORA implications in the application of this option.

How do the options compare to the status quo/counterfactual?

	Option One – Status Quo	s9(2)(f)(iv)	s9(2)(f)(iv)	s9(2)(f)(iv)	Option 4 - Widening the range of offences that can result in the impoundment of vehicles	Option 4a - Increase in towage and storage fees	Option 4b - Setting a fixed penalty level for failure to identify driver
Problem addressed	None				Inability to identify offender	Ability for system to implement	Inability to identify offender
Effectiveness	0				<p>++</p> <p>This is an evidence-based deterrent that has previously reduced the rate of disqualified drivers. Would provide more immediate sanction for specific offences (compared with post-conviction penalties).</p>	<p>0</p> <p>Will have significant impact on general public as well, this would lead to an increase in abandoned vehicles. This would have a low deterrence rate.</p>	<p>+</p> <p>The effectiveness of this would be impacted if offenders still choose not to identify a driver to avoid a higher penalty. This could also be impacted by the integrity of the data in the Motor Vehicle Register.</p>

Feasibility of implementation	0	s9(2)(f)(iv)	s9(2)(f)(iv)	s9(2)(f)(iv)	0 There is a known shortage of towage and storage operators and this could exacerbate the rate of abandoned vehicles increases and operators are unable to adequately recoup costs.	⁺ s9(2)(f)(iv)	⁺ This would be easy to implement through the Courts.
BORA implications	0				0 Could have some BORA implications, in particular s 21: unreasonable search and seizure and s27: right to justice. These could be mitigated through the current appeal process.	0 Limited BORA implications given the general application.	0 Limited BORA implications given the general application.
Overall assessment	0				⁺⁺	⁺	⁺⁺

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What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

204. The preferred option of Te Manatū Waka would be an integrated package of Option 4, 4a and 4b. Option 4 is the preferred option of both the Ministry of Justice and Police. Te Manatū Waka considers that using 4, 4a and 4b together would deliver an improvement over the status quo and perform more strongly against the criteria than Options 2a, 2b and 3. As stewards of the transport system, these options will ensure that regulators have sufficient regulatory tools to mitigate any unintended consequences. Given the broad application of this option, which utilise an existing appeal regime, any BORA implications can be mitigated and there will be a general increase in public road safety using evidence-based policy.

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What are the marginal costs and benefits of the option?

205. The table below considers the marginal costs and benefits of Options 4, 4a and 4b.

Option 4 - *Widening the range of offences that can result in the impoundment of vehicles*

Affected groups <i>(identify)</i>	Comment <i>nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.</i>	Impact <i>\$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.</i>	Evidence Certainty <i>High, medium, or low, and explain reasoning in comment column.</i>
Additional costs of the preferred option compared to taking no action			
Regulated groups – Towage and Storage operators	Ongoing – This may increase the number of abandoned vehicles that operators need to attempt to resell in order to recoup costs.	Medium	High – This is a known risk.
Regulators – Waka Kotahi and Police	Ongoing – Waka Kotahi will continue to pay a rebate of \$253 for abandoned vehicles. Operational policies for Police will need to be reviewed to provide frontline staff with guidance.	s9(2)(f)(iv)	High – This issue prompted a 2019 increase in the rebate to alleviate concerns in the short-term.
Road Users	One-off – Offenders will be liable for the towage and storage fees.	Medium	High
Total monetised costs		Medium	High
Non-monetised costs			
Additional benefits of the preferred option compared to taking no action			
Regulated groups – Towage and Storage operators	N/A	N/A	N/A
Regulators – Waka Kotahi and Police	Police would have new tools to address behaviour.	N/A	N/A
Road Users	Ongoing – This is a known deterrent for	Medium	Medium – This has been

	behaviour so will increase public road safety.		demonstrated through the introduction of the 28 day impoundment for disqualified drivers.
Total monetised benefits	N/A	N/A	N/A
Non-monetised benefits	N/A	Medium	Medium

Option 4a - Increase in towage and storage fees

Affected groups	Comment <i>nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.</i>	Impact <i>\$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.</i>	Evidence Certainty <i>High, medium, or low, and explain reasoning in comment column.</i>
Additional costs of the preferred option compared to taking no action			
Regulated groups – Towage and Storage operators	Ongoing – This may increase the number of abandoned vehicles that operators need to attempt to resell in order to recoup costs.	Medium	High – This is a known risk
Regulators – Waka Kotahi	Ongoing – Waka Kotahi will continue to pay a rebate of \$253 for abandoned vehicles. Operational policies will need to be reviewed in preparation for any increase.	s9(2)(f)(iv)	High – This issue prompted a 2019 increase in the rebate to alleviate concerns in the short-term.
Road Users	One-off – Members of the public will need to pay more for their vehicles to be released.	Medium	High
Total monetised costs	Not known	N/A	N/A
Non-monetised costs	Waka Kotahi will need to carry out a review of operational policies	Medium	High

	to ensure preparation for an increase in potential rebates. This will impact on both the providers and road users.		
Additional benefits of the preferred option compared to taking no action			
Regulated groups – Towage and Storage operators	Ongoing – This will address some of the concern as to the financial feasibility of these businesses.	High	High
Regulators – Waka Kotahi and Police	Police will have greater availability and consistency of towage services, making the ability to use the impoundment powers effective.	N/A	N/A
Road Users	N/A	N/A	N/A
Total monetised benefits	This will assist operators in adequately covering the costs of offering this service to Police.	High	N/A
Non-monetised benefits	N/A	N/A	N/A

Option 4b - Setting a fixed penalty level for failure to identify driver

Affected groups <i>(identify)</i>	Comment <i>nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.</i>	Impact <i>\$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.</i>	Evidence Certainty <i>High, medium, or low, and explain reasoning in comment column.</i>
Additional costs of the preferred option compared to taking no action			
Regulators – Courts	Ongoing – This may lead to an increase in debt collection services required.	Medium	Medium – The transport system is a known Justice sector pipeline in terms of fines not being paid and being deferred for collection.

Road Users	One-off – This would only apply if an offender refuses to cooperate and is convicted.	Medium	High – This would be a penalty that is passed down upon conviction.
Total monetised costs	Not known	Medium	N/A
Non-monetised costs	N/A	Low	N/A
Additional benefits of the preferred option compared to taking no action			
Regulators –courts	Ongoing – This could deter behaviour and reduce the number of convictions, reducing the time the court allocates to these cases.	Low	Low
Road Users	N/A	N/A	N/A
Total monetised benefits	Could reduce the number of cases that are referred to Court due to non-compliance with requests for information to identify a driver.	N/A	N/A
Non-monetised benefits	N/A	N/A	N/A

206. All options have a level of cost involved when compared to the status quo. The options will all incur some level of one-off cost for updating operational policies for the regulators (Waka Kotahi and Police). For Waka Kotahi, these could be implemented through a variety of operational approaches, particularly in the increased volume of rebates to towage and storage operators. This is a key limitation on the analysis.

Proposal D: Use of cash by gangs

Section 1D: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

207. Cash is the lifeblood of organised crime and remains the dominant means of transacting for domestic drug crimes.¹¹ Criminal transactions undertaken by gangs are largely conducted in cash due to the anonymity and difficulty tracing transactions across the economy. However, organised crime groups also need to effectively launder the illicit cash to disguise its criminal origins and ensure it can be used without the risk of law enforcement activity (prosecution or seizure). This means that businesses that conduct cash transactions are at risk for money laundering by organised criminal groups.
208. However, cash is legal tender, and many New Zealanders use cash every day without being involved in any kind of criminal activity. The great majority of respondents to the Reserve Bank of New Zealand's issues papers on the Future of Money were supportive of having a well-functioning cash system, with some saying that they viewed access to cash as a basic human right. Many respondents also valued the privacy, tangibility, and physicality of cash, as well as the social and cultural uses of cash, and were concerned about overregulation of cash preventing legitimate and low risk transactions from occurring.¹²

Existing powers to seize cash

209. There are no existing seizure powers specifically relating to cash. Instead, general Police property seizure powers following a search are set out in the Search and Surveillance Act (S&S Act). The S&S Act underpins the regulatory system governing the exercise of police search and seizure powers. Its purpose is to ensure that the rights of New Zealanders are protected while providing investigative tools that are effective and adequate for law enforcement needs.
210. Seizure powers under the Act are closely tied to search powers:
- Police carrying out a lawful search under the Act (i.e., either through a search warrant or through a warrantless search power) can seize anything that is the subject of the search. Search warrants must specify the offence in respect of which evidential material is sought as part of the search.

¹¹ New Zealand Police Financial Intelligence Unit (2019). *National Risk Assessment of Money Laundering and Terrorism Financing*. Available online: <https://www.police.govt.nz/sites/default/files/publications/fiu-nra-2019.pdf>

¹² Reserve Bank of New Zealand (2022). *Te Moni Anamata: Summary of responses to our 2021 issues papers*. Available online: <https://www.rbnz.govt.nz/-/media/project/sites/rbnz/files/consultations/future-of-money/future-of-money-summary-of-responses.pdf>

- Police can seize any additional item they come across as part of a lawful search or any item they otherwise identify by observation (i.e., items in 'plain view'), if they have reasonable grounds to believe that a search warrant could have been obtained permitting seizure of that item or that the item could otherwise have been seized under another search power.

211. Generally, both warranted and warrantless search powers (and therefore seizure powers) require Police to have reasonable grounds to suspect a specific criminal offence has occurred, is occurring, or will occur.

212. In addition to seizing cash as part of a lawful search, the Police can use powers under the Criminal Proceeds (Recovery) Act 2009 (CPRA) to confiscate or forfeit cash if they can prove, on the balance of probabilities, that the cash is "tainted property". This requires the Police to prove to the civil standard that the cash was derived from significant criminality.

Existing regulatory system relating to the use of cash and money laundering

213. Criminals who generate cash proceeds of offending will seek to exploit New Zealand businesses in order to launder the money by purchasing valuable assets (e.g. motorbikes, precious metals and stones) using cash. As a result, businesses which accept cash, including cash deposits, are particularly vulnerable to money laundering.¹³

214. Businesses that are at-risk for money laundering generally have obligations under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (AML/CFT Act). These businesses are known as "reporting entities", and the AML/CFT Act generally requires them to assess their money laundering and terrorism financing risks, identify and know their customers, report suspicious activities and certain transactions, and maintain various records.

215. The AML/CFT Act was amended in 2017 to impose obligations on high-value dealers when they buy or sell specific high-value goods for \$10,000 or more of cash. The specific goods are outlined in section 5 of the AML/CFT Act, and include precious metals, precious stones, jewellery, art, motor vehicles, and ships. Like other reporting entities, high-value dealers are required to conduct customer due diligence and provide a report to the Police's Financial Intelligence Unit when a high-value transactions occurs. However, high-value dealers are not required to assess their customer and business risks, develop a compliance programme, or report suspicious activities.

Development of the status quo

216. Without intervention, we consider that gangs will continue to be able to transport cash, avoid application of CPRA, and exploit New Zealand businesses for money laundering and to fund a lavish lifestyle. This will allow gangs to continue to engage in and fund illicit criminal activity and use their lavish lifestyle to recruit new gang members. While we anticipate that some changes will be made to the broader policy settings for CPRA

¹³ New Zealand Police Financial Intelligence Unit (2019). *National Risk Assessment of Money Laundering and Terrorism Financing*.

and AML/CFT Act, we do not consider that these will respond to the current issue identified.

217. We do not anticipate that the status quo will develop regarding powers to seize cash independently of this policy process. Legislative amendments are required to make changes to powers to seize cash as part of a lawful search as the powers are governed by the S&S Act.
218. The Ministry of Justice is progressing amendments to CPRA to make it easier to secure the seizure and forfeiture of illicit assets involved in transnational offending and to target the assets of those associated with organised criminal groups. However, these changes will not remove the requirement for Police to have reasonable grounds to believe a specific criminal offence has occurred and occur after the money has already been laundered.
219. We anticipate that there will be some changes to the status quo regarding the AML/CFT Act, which will occur independently of this policy process. The Ministry of Justice recently concluded a comprehensive review of the AML/CFT Act on 30 June 2022, which makes over 200 recommendations for how the regime can be improved.

What is the policy problem or opportunity?

Ability to seize cash

220. Police are unable to seize cash even when found in highly suspicious circumstances, if there are not reasonable grounds to suspect a specific criminal offence. However, the anonymous nature of cash makes it difficult for Police to connect it to a specific criminal offence without further investigation. This means opportunities to gather evidence of and disrupt criminal transactions are missed. The flow-on effect of this enforcement gap is that the cash can then be used to further criminal activity and ultimately harm communities.
221. For example, there have been incidents where Aviation Security Officers have alerted Police to passengers travelling domestically with significantly large amounts of cash either in their luggage or on their person. In these cases, Police had reason to suspect that the cash was likely to be the proceeds of crime but were unable to identify the specific nature of the crime without further investigation.
222. To take proceedings under CPRA, the Commissioner is required to prove (albeit to the civil standard) that the cash was acquired through significant criminal activity. This requires investigation post-discovery to obtain the necessary evidence to enable commencement of proceedings under the CPRA. However, conducting an investigation in those circumstances is typically futile for cash, as the owner of the suspicious cash is likely to learn of police interest, resulting in the disappearance of the cash for the avoidance of its restraint and intended forfeiture.

Restricting the use of cash

223. The problem is the exploitation of businesses by gangs and organised criminal groups to launder money. The AML/CFT Act applies to high-value dealers but there are several issues with the existing requirements, which undermines the Act's effectiveness in that sector. A key issue is that it is challenging to identify (and effectively supervise) high-value dealers as there is no requirement for these businesses to be registered. As a result, the supervisor (DIA) is required to expend substantial effort to determine whether a potential business should be supervised,

which means that non-compliant high-value dealers can escape attention and that supervising the sector is more resource intensive than it otherwise could be.

224. In addition, the more limited obligations for high-value dealers (in particular, no requirement to assess their risks or report suspicious activities) means that the intelligence generated by the sector is limited, which undermines broader efforts to investigate and prosecute offending and restrain assets. Finally, to be a high-value dealer a person must undertake cash transactions “in the ordinary course of business”. For many businesses, large cash transactions are unusual at best, this provides a loophole that some dealers have sought to rely on to avoid application of the AML/CFT Act.
225. Several countries, including countries in Europe, have cash transaction limits between €1,000 and €15,000, with Europol¹⁴ recommending that EU member states consider the introduction of cash payment thresholds to tackle the prevalence of money being laundered through the purchase of high-value items.¹⁵ Other countries which have introduced a limit on cash transactions include Jamaica, Mexico, Uruguay, and India.¹⁶ With respect to Europe, a 2017 report found that a ban or declaration obligation would have a positive impact on combatting money laundering, either through making it harder to purchase high-value goods or by providing law enforcement intelligence, with effectiveness being inversely related to the threshold amount. However, the report also found that a prohibition can negatively impact economic freedom and privacy as well vulnerable groups with high income potential (elderly, people with disabilities, and consumers living in remote areas).¹⁷

What objectives are sought in relation to the policy problem?

226. For this problem we are particularly focused on disrupting and preventing harmful criminal activity by enabling Police to investigate suspicious cash. In addition, we are focused on reducing the ability of organised criminals to launder money through the purchase of high-value goods.
227. We also seek to minimise the impact of any proposals on the legitimate use of cash by New Zealanders not engaged in criminal activities. This includes ensuring that any change or restriction on the use of cash or conducting cash transactions does not negatively impact the economic freedom and privacy of New Zealanders as well as

¹⁴ The European Union Agency for Law Enforcement Cooperation.

¹⁵ Europol (2015). *Why is Cash Still King? A Strategic Report on the Use of Cash by Criminal Groups as a Facilitator for Money Laundering*. Available online: <https://www.europol.europa.eu/sites/default/files/documents/europolcik%20%281%29.pdf>

¹⁶ Peter Sands, Hayley Campbell, Tom Keatinge, and Ben Weisman (2017). *Limiting the Use of Cash for Big Purchases – Assessing the Case for Uniform Cash Thresholds*. Available online: https://static.rusi.org/201709_rusi_limiting_the_use_of_cash_for_big_purchases_sands.campbell.keatinge.weisman_web.pdf

¹⁷ ECORYS and Centre for European Policy Studies (CEPS) (2017). *Study on an EU initiative for a restriction on payments in cash*. Available online: https://ec.europa.eu/info/sites/default/files/economy-finance/final_report_study_on_an_eu_initiative_ecorys_180206.pdf

vulnerable groups with high income potential. In addition, we want to minimise compliance costs.

Section 2D: Deciding upon an option to address the policy problem

228. For clarity, the two policy problems (seizing cash and restricting the use of cash) are analysed separately in this section. Notwithstanding this, we consider that an expansive definition of “cash” would be used for all options under consideration. The current definition of cash in the AML/CFT Act includes both physical currency and bearer negotiable instruments (e.g. cheques and bearer bonds); this definition would be used as a starting point but also be expanded to include precious metals and other liquid forms of value.
229. No options have been considered in relation to CPRA. The Ministry of Justice is already separately progressing amendments to CPRA. These were considered in a separate regulatory impact analysis, ‘Reforms to CPRA to better target illicit assets’.

What criteria will be used to compare options to the status quo?

230. The criteria used are the same as for the other policy problems identified in this Regulatory Impact Analysis, specifically:
- a. Effectiveness at achieving the following objectives:
 - i. Disrupting harmful gang activity.
 - ii. Improving public safety.
 - iii. Preventing offending.
 - b. Feasibility of implementation.
 - c. BORA compatibility.

What scope will options be considered within?

231. Ministers provided clear commissioning on the options they wanted officials to pursue. If more time was available, agencies may have proposed different or additional options.
232. While officials did not consider other options to address the policy problem, officials worked through sub-options for restricting the use of cash proposal relating to: the nature of the restriction on cash transactions; who the restriction applies to; and the range of goods the restriction applies to.

Sub-problem (1): ability to seize cash

What options are being considered?

233. With respect to the **ability to seize cash**, the following options are being considered:

Option	Description
1. Status quo	Option one would involve making no changes to either Police powers relating to cash seizure or the regulatory system relating to the use of cash. Police would continue to be limited in their ability to seize cash.
2. Create a new cash seizure power	This option would involve amending the S&S Act to provide Police with a new seizure power in relation to cash where the person holding the cash cannot provide a reasonable explanation. This seizure power would have a lower requirement for use than existing powers, meaning Police would not have to suspect the person carrying the cash of a specific crime.
3. Create a new cash seizure power for amounts of cash over a specified threshold (e.g. \$10,000)	This option is the same as Option Two, but would include a threshold, meaning Police could only exercise the seizure power when they detect cash suspected to be above the relevant threshold.

234. Officials also considered making it an offence to carry cash above a certain threshold, but considered that this would have a disproportionate impact on the general public, particularly those demographics (the elderly, certain ethnic communities) which use cash more frequently.

Te Tiriti

235. The overrepresentation of Māori in gang activity means that they may be more likely to be subject to any new cash seizure powers. However, the options under consideration target criminal activity, rather than gang membership. Anyone, gang member or not, who is found to be carrying significant amounts of cash in suspicious circumstances may be subject to seizure. As such, we do not consider there to be significant Treaty implications.

BORA

236. A new seizure power will engage the right under s21 of BORA: not to be subject to unreasonable search or seizure. However, this may be a justifiable limitation to the extent that it is effective at disrupting harmful criminal activity.

How do the options compare to the status quo/counterfactual?

Improving the ability for Police to seize cash

	Option 1 – Status Quo	Option 2 – Power to seize	Option 3 – Power to seize above a threshold
Effectiveness	0	<p style="text-align: center;">+</p> <p>Disrupts gang activity by allowing Police to seize suspicious cash.</p>	<p style="text-align: center;">+</p> <p>As with Option 2, the effectiveness of this option is unlikely to be undermined by a threshold as the threshold can be set at a level which is likely to capture most illegitimate activity and avoid capturing legitimate cash carriage.</p>
Feasibility of implementation	0	<p style="text-align: center;">+</p> <p>This option would be relatively easy to implement as the relevant powers are likely to be straightforward in their construction.</p>	<p style="text-align: center;">0</p> <p>As with Option 2, however there may be additional complexity arising from the use of a threshold, as Police would need to believe the amount exceeds the threshold.</p>
BORA compatibility	0	<p style="text-align: center;">-</p> <p>This option may limit the rights protected by section 21 and may not be found to be justifiable. A bare power to seize cash of any amount risks the public being subject to seizure powers, the exercise of which are not justified by the risk of offending or potential for disrupting harmful gang activity.</p>	<p style="text-align: center;">0</p> <p>This option may limit rights protected by section 21; however it is likely the limitation would be found to be justifiable. The use of a threshold helps to mitigate against the risk that people will be subjected to unreasonable searches as it would allow search powers to be targeted towards areas of greatest risk.</p>
Overall assessment	0	<p style="text-align: center;">+</p>	<p style="text-align: center;">+</p>

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

237. With respect to the power to seize cash, we consider that the best option is Option 3 – providing a power to seize cash above a particular threshold. While there may be some additional complexity arising from the use of a threshold that may make implementation more challenging, the use of a threshold allows for a more appropriate balance between effectiveness and compatibility with BORA. This is because the threshold can be set at an appropriate level where there is a higher likelihood that the cash being seized is used or derived from illicit purposes and avoids the application of the power for legitimate cash carriage.

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What are the marginal costs and benefits of the option?

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
People who are subject to seizure power	One-off – Costs associated with responding to the exercise of the seizure power and subsequent CPRA activity.	Medium – The costs would likely involve legal fees and engagement in court proceedings.	High – This cost would be incurred as soon as the power is used.
Businesses vulnerable to cash placement	One-off – The threat of cash placement may increase across the economy as criminals may perceive carrying cash as less secure. This could result in businesses vulnerable to cash placement updating their AML/CFT risk assessments and adjusting their compliance programmes accordingly.	High – Adjusting risk assessments and compliance programmes is known to be expensive, particularly for larger businesses with complex products.	Low – The extent of displacement or changes in threat profile is unknown at this stage.
Police	Ongoing – There would be increased Police efforts in exercising the seizure power, managing the seized goods, conducting necessary investigations, and dealing with subsequent CPRA actions to confiscate or forfeit the cash.	Medium – Due to the time-sensitive nature of the subsequent investigations, the cost of those investigations may be greater than average. However, those investigations may also remove the need for other CPRA activities which occur under the status quo.	Medium – It is unknown whether the use of this power would remove the need for some CPRA activities that are currently occurring (e.g. if this allows for cash to be seized at an earlier stage and replaces subsequent seizure activity).
Judiciary	Ongoing – Increase in the number of CPRA applications advanced by Police, as well as orders to retain the cash. As the power helps ensure the cash does not disappear after detection, this will provide the ability for Police to take CPRA action that they previously	Low – While the number of orders applied for is unknown, they are likely to be relatively straightforward matters to consider and dispose of.	Medium – It is unknown at this stage how many subsequent CPRA orders would be applied for but anticipated that there would be at least some.

	may not have been able to.		
AML/CFT regulators	Ongoing – If the threat profile for cash changes because of the cash seizure power, this could require further support and guidance from AML/CFT regulators to ensure businesses are appropriately assessing their risks and adjusting their compliance programmes.	Low – Producing additional guidance and risk assessments is BAU for AML/CFT regulators and occurs periodically. Any required support would likely be factored into baseline costs and operations.	Low – The extent of displacement or changes in threat profile is unknown at this stage.
General public	N/A	N/A	N/A
Total monetised costs	A broad range of monetised (but unquantified) costs will result from the option that will be shared by the public, businesses, and Government agencies to a greater and lesser extent.	Low-medium	Low-medium
Non-monetised costs	Nil	Nil	Nil
Additional benefits of the preferred option compared to taking no action			
People who are subject to seizure power	N/A	N/A	N/A
Businesses vulnerable to cash placement	N/A	N/A	N/A
Police	Ongoing – The option will allow Police to recover the proceeds of criminal activity more effectively and efficiently by limiting opportunities for criminals to use or otherwise disperse of cash proceeds. This, in turn, will help disrupt organised	Medium	Low – The volume of additional money for which the option will allow recovery is unknown, as is the extent to which recovering those funds will disrupt organised crime. Further, it is likely that organised

	criminal activity in circumstances where suspicious cash is detected		criminal groups will adjust their behaviour to avoid the application of the power.
Judiciary	N/A	N/A	N/A
AML/CFT regulators	N/A	N/A	N/A
General public	Ongoing – Direct benefit of safer communities through disrupting organised criminal activity and reducing the appeal of participating in organised crime. The option also provides an indirect benefit of funding the Proceeds of Crime Fund, which can then be used to support crime prevention initiatives.	Medium	Low - The volume of additional money for which the option will allow recovery is unknown, as is the extent to which recovering those funds will disrupt organised crime. Further, it is likely that organised criminal groups will adjust their behaviour to avoid the application of the power.
Total monetised benefits	The option has the potential to result in an increase in funds recovered to some extent, but the amount of increase is unknown.	Medium	Low
Non-monetised benefits	The option has the potential to increase community safety and reduce the harm of organised crime to some extent.	Medium	Low

238. Compared to the status quo, the creation of a cash seizure power will incur (unquantified) costs to the public, Government agencies (particularly the Police), and some businesses. These costs are likely to be ongoing and occur for as long as the power is being exercised. We anticipate that there will be benefits enjoyed by the public and Police; however, the extent of the benefits are unknown and unquantified. As such, this analysis is limited and unable to determine whether the costs are outweighed by the benefits.

Sub-problem (2): restricting the use of cash

239. With respect to the ability to **restrict the use of cash, including for purchasing high-value goods**, options have been considered based on the nature of the restriction as well as the subset of the population to which the restriction applies.

Nature of the restriction:

Option	Description
1. Require some or all cash transactions to be reported to Police below \$10,000	This option would involve lowering the value at which cash transactions require reporting to Police (e.g. to \$5,000 or \$1,000). This would provide the Police with more intelligence about cash transactions and provide some deterrent effect.
2. Require enhanced customer due diligence (CDD) for cash transactions over a specified threshold	This option would require reporting entities to conduct enhanced, rather than standard, CDD for cash transactions at or over a specified threshold. This would require those businesses to obtain and verify the source of the funds in the transaction. If the source of funds cannot be verified (using a reliable and independent source), the reporting entity would be prohibited from carrying out the transaction.
3. Prohibit cash transactions above a specified threshold	This option is similar to Option 2, except that all transactions would be prohibited irrespective of whether there is a legitimate source of the funds.

Who the restriction applies to:

Option	Description
(a) Status quo	This option would retain the status quo for restricting the use of cash and no further restrictions would apply to businesses or persons in New Zealand. Businesses would continue to be able to accept cash but would attract obligations under the AML/CFT Act, including the requirement to conduct standard customer due diligence for transactions at or above \$10,000, and reporting those transactions to the Police.
(b) High-value dealers only	This option would only apply any additional restrictions to high-value dealers, i.e., those businesses which, in the ordinary course of business, buy or sell specific high-value goods for cash at or above \$10,000
(c) All persons who are in trade	This option would apply any additional restrictions to persons who buy and sell items as part of a business ("in trade"), irrespective of whether the transactions are ordinary. This would cover all high-value dealers, but also include non-reporting entities. As such, this option is only compatible with Option (3) above as Options (2) and (3) can only apply to reporting entities.
(d) Businesses identified as being vulnerable to cash placement risks	This option would apply restrictions to all businesses identified as having a high risk of placement of cash, specifically banks, building societies, casinos, remitters, and high-value dealers.
(e) All reporting entities	This option would apply restrictions to all reporting entities, irrespective of whether they are vulnerable to cash placement.

(f) All persons in New Zealand	This option would apply restrictions to every person in New Zealand. This option is only compatible with Option (3) above as Options (2) and (3) can only apply to reporting entities.
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240. This results in the following combination of options to restrict the use of cash:

Nature of the restriction	Who the restriction applies to				
	Status quo	High value dealers	All persons in trade	Businesses vulnerable to cash placement	All reporting entities
Reporting obligation	1(a)	1(b)	XX	1(d)	1(e)
Enhanced CDD	2(a)	2(b)	XX	2(d)	2(e)
Prohibition	3(a)	3(b)	3(c)	3(d)	3(e)

241. If prohibiting the sale and purchase of high-value goods by cash transaction over a specified threshold is the preferred option, there are also options regarding the nature or range of goods to which the prohibition would apply:

Option	Description
1. All goods listed in the definition of a high-value dealer	This would mean that high-value dealers are prohibited from selling or buying any good listed in the definition in section 5 of the AML/CFT Act by cash over a specified threshold. This would apply to specified precious metals, precious stones, jewellery and watches, various forms of art, protected cultural objects or artefacts, motor vehicles, and ships
2. Specific types of goods identified as being used by gangs	This would limit the prohibition on cash over a specified threshold only to those items which are known to be purchased by gangs. This includes most of the types of items in Option 1, except for the various forms of art (e.g. paintings, sculptures) or protected cultural objects or artefacts.
3. All goods, including those listed in the definition of a high-value dealer	This option would prohibit the sale or purchase of all goods for cash over a specified threshold, including all goods listed in the definition of a high-value dealer. This option would only be compatible with option 3(e) as it would need to apply to businesses which are not reporting entities.

242. A registration framework would need to be developed for any option that applies to the high-value dealer sector. This would be required to resolve the known difficulties with supervising the sector (in particular, identifying which businesses should have obligations) and effectively implementing the change in requirements. ^{s9(2)(f)(iv)}

s9(2)(f)(iv)

Te Tiriti

243. We have not identified any particular Māori interests in these options. However, there has been a lack of consultation on this issue which may have helped to identify interests.

BORA

244. A number of the options under consideration will engage the right to freedom of expression, as they compel the disclosure of information. All the options will have privacy implications as they undermine transaction privacy. However, we consider that these limitations are likely to be justified to the extent that they will effectively disrupt criminal activity and money-laundering.

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How do the options compare to the status quo/counterfactual?

Requiring cash transactions above a specific threshold to be reported

	Option 1(a) – Status Quo	Option 1(b) – high value dealers	Option 1(d) – businesses vulnerable to cash placement	Option 1(e) – all reporting entities
Effectiveness	0	0 Because this option would only apply to a small subset of reporting entities, the deterrent effect of the additional reporting is likely to be minimal, particularly if existing challenges regarding identification of high value dealers are unresolved. In addition, this option carries a risk of displacing activity into other businesses which are vulnerable to cash placement. Further, effectiveness of this option is inversely related to the threshold value, with lower thresholds likely to be more effective than higher thresholds. However, requiring the reporting of transactions is unlikely to provide much of a deterrent to the people or businesses that are engaging in the transactions, including those that are complicit in the criminal activity.	+	+

Feasibility of implementation	0	<p style="text-align: center;">--</p> <p>This option would require the creation of a registration requirement for high-value dealers to be effectively implemented, which is not being progressed as part of these proposals. It would also require the occasional CDD threshold for cash transactions to be lowered to same amount, as this would be how the high-value dealer obtains information about the customer. There would be some compliance costs associated with the obligation, but the costs can entirely be avoided by the high-value dealer refusing to take cash.</p>	<p style="text-align: center;">--</p> <p>As with 1(b), however costs of complying for some businesses, particularly banks, would likely be significant. Banks and other large reporting entities would need to update their compliance programme and adjust their policies, procedures, and controls to account for a lower occasional transaction threshold and increased reporting obligations. Some businesses would also need to develop automatic reporting systems to account for the volume of reporting. Further, these businesses cannot avoid obligations by refusing to take cash. However, most businesses vulnerable to cash placement have existing registration or licensing requirement (except high-value dealers).</p>	<p style="text-align: center;">--</p> <p>As with 1(d).</p>
BORA compatibility	0	<p style="text-align: center;">0</p> <p>This option would limit the right to freedom of expression by compelling people to provide information in certain circumstances. However, it is likely that the limitation would be justified given the limitation is directly connected to the policy objective and no more than is reasonably necessary.</p>	<p style="text-align: center;">0</p> <p>As with 1(b).</p>	<p style="text-align: center;">0</p> <p>As with 1(c).</p>
Overall assessment	0	<p style="text-align: center;">--</p>	<p style="text-align: center;">--</p>	<p style="text-align: center;">--</p>

Requiring businesses to conduct enhanced customer due diligence for cash transactions above a threshold

	Option 2(a) – Status Quo	Option 2(b) – high value dealers	Option 2(d) – businesses vulnerable to cash placement	Option 2(e) – all reporting entities
Effectiveness	0	<p style="text-align: center;">+</p> <p>By requiring high-value dealers to obtain and verify the source of funds for a transaction, this option will effectively disrupt harmful gang activity by requiring gang members to provide verifiable information as to where the cash has come from. As gang members are unlikely to be able to do this, the high-value dealer would be prohibited from carrying out the transaction. However, because this option only applies to one sector, the potential for displacing the risk into another sector is significant. Further, the effectiveness of this option is inversely related to the threshold amount, but unlikely to provide much of a deterrent to businesses that are willingly complicit in criminal activity.</p>	<p style="text-align: center;">++</p> <p>As with 2(b), but this option largely avoids the potential for displacement by ensuring that all businesses that are vulnerable to cash placement have consistent obligations.</p>	<p style="text-align: center;">++</p> <p>As with 2(d), however this option also ensures that any future cash placement risks are mitigated.</p>

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Feasibility of implementation	0	<p style="text-align: center;">--</p> <p>As with 1(b), a registration framework would be required to ensure high-value dealers are complying with their obligations. As this is not being progressed as part of these reforms, this option would be difficult to implement efficiently. As high-value dealers are not currently required to conduct enhanced CDD, the supervisor (DIA) would need to provide additional support to these businesses to ensure they can understand their obligations. Conducting enhanced CDD would increase compliance costs, but those costs can be entirely avoided by high-value dealers by refusing to engage in cash transactions.</p>	<p style="text-align: center;">-</p> <p>As with 1(b), however all other businesses are already required to conduct enhanced CDD in all high-risk and suspicious scenarios, which can include large cash transactions. As such, the costs would not be as significant for businesses other than high-value dealers as they already have some understanding of what is required by enhanced CDD. Further, businesses can avoid some of the transactions (e.g., cash deposits in to third party accounts) and thereby avoid some of the compliance costs. Finally, most businesses vulnerable to cash placement have existing registration or licensing requirement (except high-value dealers).</p>	<p style="text-align: center;">--</p> <p>As with 2(d), however this would apply to all reporting entities and result in all having to update their compliance programmes to reflect the change in regulatory requirements.</p>
BORA compatibility	0	<p style="text-align: center;">0</p> <p>This option does not engage any rights protected and affirmed by BORA. While satisfying enhanced CDD requirements would require customers to provide information, those customers are not compelled by the state to do so.</p>	<p style="text-align: center;">0</p> <p>As with 2(b).</p>	<p style="text-align: center;">0</p> <p>As with 2(c).</p>
Overall assessment	0	<p style="text-align: center;">0</p>	<p style="text-align: center;">+</p>	<p style="text-align: center;">0</p>

Prohibiting businesses to conduct cash transactions above a specified threshold

	Option 3(a) – Status Quo	Option 3(b) – high value dealers	Option 3(c) – all persons in trade	Option 3(d) – businesses vulnerable to cash placement	Option 3(e) – all reporting entities	Option 3(f) – all persons
Effectiveness	0	<p style="text-align: center;">+</p> <p>This option would have limited effectiveness in disrupting the ability for gangs to use cash to purchase high-value assets as it requires the transactions to be “in the ordinary course of business”. Many businesses only engage in transactions infrequently and the prohibition would not apply.</p>	<p style="text-align: center;">+</p> <p>This option would effectively disrupt the ability for gangs to use cash to purchase high-value assets by prohibiting transactions above a certain threshold and would also provide a deterrent effect to businesses and people who are willingly complicit in the criminal activity. The extent of effectiveness is inversely proportional to the threshold set. However, there is a risk of displacing the activity into other businesses vulnerable to cash placement, which, depending on the extent those businesses comply with their AML/CFT obligations, could mean</p>	<p style="text-align: center;">++</p> <p>As with 3(b), however the risk of displacement is largely avoided by prohibiting the transaction for all businesses vulnerable to cash placement. There is a remaining risk that other businesses may become vulnerable in the future.</p>	<p style="text-align: center;">++</p> <p>As with 3(d), except that all future risks of cash placement are protected against.</p>	<p style="text-align: center;">++</p> <p>As with 3(e), except that this option would also ensure that gangs cannot purchase high-value items from any business.</p>

			that gangs can circumvent this option.			
Feasibility of implementation	0	-- If the threshold is set at the same level as the definition of high-value dealer (\$10,000), this option would effectively result in high-value dealers having very minimal AML/CFT obligations. However, a higher threshold (e.g. \$15,000) would mean that high-value dealers would still have obligations in respect of some transactions. However, as there is no registration framework being progressed for the sector currently, it would be difficult for the prohibition to be effectively enforced as there is no easy way to identify whether a business is a high-value dealer.	- As with 3(b), however it would potentially be easier to enforce as the supervisor would not need to determine that the transactions are occurring “in the ordinary course of business”. This option extends the prohibition to people who are not reporting entities, which would create additional complexity in terms of enforcing the prohibition.	+ As with 3(b), however there would be less of a reduction in compliance costs for other businesses (e.g., banks) as they would continue to have AML/CFT obligations for other activities. These businesses would also need to update their compliance programmes and policies, procedures, and controls. However, most businesses vulnerable to cash placement have existing registration or licensing requirement (except high-value dealers).	0 As with 3(c).	- This option would be challenging to implement effectively and enforce. It is unclear which law enforcement agency/ies would be responsible for ensuring people are not conducting cash transactions above the prescribed threshold or ensuring that businesses are not accepting those transactions. These challenges would further be exacerbated if the prohibition extended to consumer-to-consumer transactions as well as business to consumer transactions.

BORA compatibility	0	0 This option does not engage any rights protected or affirmed by BORA. However, depending on how the prohibition is constructed (e.g. strict liability or contains a <i>mens rea</i> standard) and the relevant penalty, the prohibition may engage section 25(c). A strict liability prohibition with a high penalty may be found to unreasonably limit the right to be presumed innocent.	0 This option does not engage any rights protected or affirmed by BORA. However, depending on how the prohibition is constructed (e.g. strict liability or contains a <i>mens rea</i> standard) and the relevant penalty, the prohibition may engage section 25(c). A strict liability prohibition with a high penalty may be found to unreasonably limit the right to be presumed innocent.	0 As with 3(b). However, the potential for the prohibition being found to unreasonably limit section 25(c) increases as the prohibition would apply in a greater number of circumstances.	0 As with 3(c).	0 As with 3(c), but the chance of the prohibition being found to unreasonably limit section 25(c) is the greatest with this option as it applies to all persons.
Overall assessment	0	-	0	++	+	+

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Types of goods in respect of which the prohibition on cash transactions applies

	Option 1 – Status Quo	Option 2 – all goods listed in the definition of a high-value dealer	Option 3 – goods identified as used by gangs	Option 4 – all goods
Effectiveness	0	<p style="text-align: center;">+</p> <p>Prohibiting all goods listed in the definition of a high-value goods ensures that the cash placement risk associated with those goods is appropriately managed and avoids potential displacement. The list of goods in the AML/CFT Act was developed with reference to the types of goods commonly restrained by Police as well as international best practice.</p>	<p style="text-align: center;">-</p> <p>While this option is targeted towards goods that gangs are known to use, this option also carries a significant risk of displacement resulting from gangs changing their behaviour to avoid the application of the prohibition. This approach is also targeted towards those gangs that have already been caught and does not address goods used by gangs that have not been caught. Further, the exclusion of art is counter to international experience – the US has identified some evidence of money laundering occurring through art (US Treasury, 2022).</p>	<p style="text-align: center;">++</p> <p>As with Option 2, however it avoids any future displacement of risk into goods not covered by the prohibition (e.g., electronics).</p>
Feasibility of implementation	0	<p style="text-align: center;">0</p> <p>Because this option would be consistent with pre-existing obligations and requirements for high-value dealers, it would be relatively straightforward for those businesses to comply with the prohibition. The same businesses that are caught by existing obligations are those that would need to comply with the prohibition.</p>	<p style="text-align: center;">-</p> <p>This option would increase the overall complexity of obligations for high value dealers as it would result in some (e.g. gold dealers) having to comply with the prohibition while others (e.g. art dealers) would not. This would also complicate requirements for dealers in multiple types of goods (e.g. gold and art dealers) who are prohibited from conducting some transactions but not others.</p>	<p style="text-align: center;">-</p> <p>This option would result in significantly more businesses being caught by the prohibition and having some compliance obligations, albeit with likely low associated costs. Those businesses would need to develop policies and procedures to ensure they do not breach the prohibition, including through a series of related cash transactions. The AML/CFT supervisors would also need to provide support to those businesses.</p>

BORA compatibility	0	0 This option does not engage any rights or freedoms protected by BORA.	0 This option does not engage any rights or freedoms protected by BORA.	0 This option does not engage any rights or freedoms protected by BORA.
Overall assessment	0	+	-	+

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

245. We consider that the best option is Option 3(d) – prohibiting cash transactions above a specified threshold for businesses vulnerable to cash placement. This option is the most effective and avoids displacement risks associated with Option 3(c) (persons in trade). However, we do not consider that this option is viable without proper engagement with the businesses impacted by the change, as there would be potentially unavoidable compliance costs that would result from that option. Option 3(b) has the potential to be broadly effective, but its effectiveness is undermined by likely challenges in implementing the option resulting from the lack of a registration requirement for high-value dealers.
246. With respect to the type of goods to which the prohibition would apply, we consider that the best approach would be to prohibit the sale and purchase of all goods currently listed in the definition of a high value dealer (Option 2). This option is consistent with existing regulatory requirements and addresses known money laundering risks, as well as risks associated with gangs. We consider that Option 3 carries a significant risk of displacement resulting from gangs buying and selling goods that are not covered by the prohibition, specifically art. Option 4 could be viable, but would require consultation with industry given it would potentially result in significantly more businesses being captured by the AML/CFT regime.

RELEASED BY THE MINISTER OF JUSTICE

What are the marginal costs and benefits of the option?

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Public	Ongoing – Cost resulting from reduction in economic freedom, i.e. not being able to conduct cash transactions and purchase high value goods. The public would have to either deposit their money in the formal financial system (e.g. bank account) or decide not to conduct the transaction.	Low-medium – The amount of impact is inversely related to the applicable threshold, with lower values having higher impacts. However, cash is unlikely to be used regularly by the public for buying and selling high-value goods.	Medium – While there is a high degree of certainty that the cost would be incurred, it is unknown how many transactions would be impacted by the prohibition as we do not have baseline figures.
Persons in trade	Ongoing – High-value dealers and other persons in trade will experience direct costs resulting from complying with the prohibition (e.g., creating transaction monitoring systems, changing business model) and potential lost revenue if there is a reduction in transactions. In addition, there is the regular one-off cost of complying with registration requirements.	High – Many high value dealers and persons in trade are small to medium enterprises and likely to be significantly impacted by the cost of complying with the prohibition.	High – The extent of the costs is unknown, but they are almost certain to occur.
Other businesses vulnerable to cash placement	Ongoing – Other businesses vulnerable to cash placement will likely experience increased threats due to displacement of activity from the high-value dealer sector. These businesses would be required to keep adjusting their risk understanding and updating their compliance programmes accordingly.	High – Adjusting risk assessments and compliance programmes is known to be expensive, particularly for larger businesses with complex products.	Medium – The extent of displacement is unknown but almost certain to occur as organised criminals adjust their behaviour in response to the prohibition.
AML/CFT regulators	Ongoing – Direct costs resulting from investigating	Medium – Enforcing a prohibition can be	High – The AML/CFT regulators (i.e. DIA)

	and enforcing prohibition (including costs of prosecution). In addition, there are additional costs resulting from providing additional guidance and support to high value dealers as well as other businesses vulnerable to cash placement and maintaining an ongoing understanding of cash placement risks.	resource intensive. However, producing additional guidance and risk assessments is BAU for AML/CFT regulators and occurs periodically. Any required support would likely be factored into baseline costs and operations.	would be responsible for enforcing the prohibition and incurring those costs.
Registration authority	Ongoing and one-off – There is a one-off cost associated with establishing a registration framework and authority for high-value dealers, as well as ongoing costs associated with maintaining the register and its integrity.	Medium – If an existing registrar (e.g., MBIE, FMA) is responsible for the register and its enforcement as the existing framework and resources can be leveraged; high if a wholly new registrar is created.	High – A registration framework is required for the option to be effective and there is certainty that the costs will be incurred. However, the value of those costs is unquantified.
Judiciary	Ongoing – Direct costs resulting from taking enforcement action against high-value dealers that breach the prohibition.	Low – Unlikely to be a significant number of businesses which breach the prohibition due to a small number of high-value dealers in general.	Medium – The likely number of prosecutions or other enforcement actions is unknown, as is the costs associated with each prosecution or enforcement action.
Total monetised costs	There are ongoing and one-off unquantified monetised costs for persons in trade, businesses and the Government resulting from the change in regulatory settings for high value dealers. The change directly impacts high-value dealers but will likely result in flow-on costs for other regulated sectors.	Medium	Medium
Non-monetised costs	There are unquantified non-monetised costs for the public resulting from a loss in economic freedom and the opportunity costs	Low	Medium

	associated with identifying alternative ways to purchase high-value goods.		
Additional benefits of the preferred option compared to taking no action			
Public	Ongoing – Direct benefit of safer communities through disrupting organised criminal activity and reducing the appeal of participating in organised crime by making it harder for organised criminals to use cash and launder proceeds of their offending.	Low – The extent of this benefit is likely reduced by displacing the risk into other sectors and the ability to circumvent the controls by placing the money through another vulnerable business that is not covered by the prohibition (e.g. banks).	Low - The extent to which the prohibition will disrupt organised crime is unknown. Further, it is likely that organised criminal groups will adjust their behaviour to avoid the application of the power.
High value dealers	Ongoing – There may be some reduction in AML/CFT compliance obligations depending on the value at which the prohibition is set. A low threshold (e.g. \$10,000) could obviate the need for high-value dealers to have AML/CFT obligations. There may also be some benefit for the sector overall through a reduction in cash placement risk.	Low – medium , Depending on the extent of any reduction in compliance obligations.	Medium – A reduction in some compliance costs is unlikely, but the quantity of those benefits is unknown as it depends on the value at which the prohibition is set.
Other businesses vulnerable to cash placement	N/A	N/A	N/A
AML/CFT regulators	Ongoing – Indirect non-monetised benefit of moving money laundering risks from an immature sector (i.e. high value dealers) to more mature sectors (e.g. banking) with theoretically more robust systems in place. This could support a more efficient allocation of supervisory resources.	Low	Low – The size of the displacement effect is unknown.

Registration authority	N/A	N/A	N/A
Judiciary	N/A	N/A	N/A
Total monetised benefits	There are unquantified monetised benefits for high-value dealers resulting from a potential reduction in AML/CFT compliance obligation. The extent of any reduction depends on the value at which the prohibition is set.	Low – medium	Low
Non-monetised benefits	There are unquantified non-monetised benefits for the public and AML/CFT regulators resulting from disrupting organised crime and displacing risk from more vulnerable sectors.	Low	Low

247. Compared to the status quo, the prohibiting cash transactions for persons in trade will incur (unquantified) costs to the public, high-value dealers and other reporting entities, and Government agencies (particularly AML/CFT regulators). These costs are likely to be ongoing and occur for as long as persons in trade are prohibited from conducting cash transactions. We anticipate that there will be benefits enjoyed by high-value dealers, but the quantum and likelihood both depend on the level at which the prohibition is set, as a lower threshold could remove the need for high-value dealers to have AML/CFT obligations. There may be some benefit to the broader public resulting from disrupting organised crime, but the extent of the benefit is likely undermined by the ability to circumvent the prohibition through depositing the cash through businesses not covered by the prohibition (e.g. banks).

Section 3: Delivering an option

How will the new arrangements be implemented?

Police

248. Police will adopt a project response to implementing the changes in legislation. A Senior Responsible Owner and project manager will be appointed to make sure all necessary changes to operational policy and guidelines, IT, and financial requirements are managed. The guidance for frontline Police on the application of a new shooting offence, warrant power, and impoundment provisions will ensure consistent implementation across the regions, where possible.
249. Police will ensure that there are robust internal processes (in addition to the above) to govern the use of any new warrants and powers. Existing internal processes governing powers that Police will consider are:
- Approval required from a particular rank, or multiple ranks, in NZ Police.
 - Consultation with Police legal counsel.
 - Completion of assessments and community impact assessments.

Waka Kotahi

250. Waka Kotahi will be responsible for administering rebates to towage and storage operators for new impoundment provisions. This may require additional funding, as the full impact of these changes are realised.

Department of Internal Affairs

251. Depending on the level at which the threshold is set for prohibiting cash transactions for persons in trade, this change would reduce compliance requirements for these businesses. The AML/CFT supervisors, particularly DIA, would be responsible for providing guidance to affected businesses to ensure the sector is aware of the new requirements, as well as enforcing obligations against those businesses that fail to comply.

Ministry of Justice

252. The Ministry of Justice will develop guidance for the judiciary on the new search warrant power.
253. ^{s9(2)(f)(iv)}

How will the new arrangements be monitored, evaluated, and reviewed?

Police

254. Monitoring of Police's use of search and seizure powers, occurs through the Independent Police Conduct Authority (after powers are exercised) and the courts (for authorisation of the new warrant power and after powers are exercised).
255. Police will consider internal reporting requirements on the exercise of such powers (for example to the Commissioner of Police or a Police employee designated to receive reports of that kind) as soon as practicable after the exercise of the power.
256. In addition, in accordance with the S&S Act, Police annually reports on the use of search and surveillance powers.
257. Police will provide offence data on the new shooting and impoundment provisions.

Ministry of Justice

258. The Crimes Act is administered by the Ministry of Justice. The new shootings in public places offence will be subject to their ongoing regulatory stewardship activities. The Ministry of Justice will provide conviction data on the new shooting and impoundment provisions.
259. The Ministry of Justice concluded a comprehensive review of the AML/CFT Act on 30 June 2022. If Cabinet agrees to implement the findings of the Review, including progressing further regulatory and legislative change, there will be the opportunity to review the settings s9(2)(f)(iv)
260. Finally, New Zealand is subject to periodic reviews by the Financial Action Task Force (FATF), known as Mutual Evaluations. These reviews examine the effectiveness of the country's AML/CFT system and would provide further opportunity for monitoring and evaluating the effectiveness of the cash policy changes. s6(b)

The Ministry of Justice is the lead agency for responding to FATF recommendations.

Te Manatū Waka

261. Te Manatū Waka will monitor the implementation of new impoundment of vehicle provisions from a regulatory stewardship perspective and consider any impact that this may have on the regulated activities and fees of the towage and storage industry.

Department of Internal, Financial Markets Authority and Reserve Bank of New Zealand

262. The Police and AML/CFT supervisors periodically produce assessments of national and sectoral money laundering and terrorism financing risks, and future iterations of these risk assessments would be able to determine whether there has been a change in criminal behaviour and risks within the sector.

APPENDIX 1: THE USE OF PENALTIES IN THE LAND TRANSPORT SYSTEM

1. Outside of prosecutions before the Court, the two most commonly imposed penalties road users can face are:
 - Demerit points – if a person receives 100 demerit points within two years, their licence will be suspended. Demerit point systems are effective at removing dangerous drivers from the road, and their deterrent effect increases the closer the person gets to suspension.
 - Infringement fees – infringement fees are set in regulation (the fee cannot be changed by the Police or Waka Kotahi) and apply to a range of traffic offences. Research from 2016 found that increases in financial penalties can reduce fatal crashes between 1-12 percent.¹⁸ Higher penalties can increase positive behaviour change. For example, a Dutch study¹⁹ found that for every 1 percent of financial penalty increase, there is a 0.14 percent decrease in offending, and demerit points²⁰ can lead to the removal of dangerous drivers from the road. However, there are limitations to financial penalties especially when a person has limited means to pay them, or if it is difficult to identify who was driving a vehicle when an offence has taken place.

There are also a suite of more serious land transport offences...

2. Section 6 of the Criminal Procedure Act 2011 sets out how offences can be categorised, and what range of penalties may apply.
3. Driving offences with a penalty of a custodial sentence of 2 years or less include:
 - Reckless driving.
 - Failing to stop after being in an accident, if no other person is injured or killed.
 - A first or second drink-driving conviction.
 - Careless driving causing injury or death.
 - Street-racing or wheel-spinning where no injury or death is caused.
4. More serious transport offences carrying sentencing options of two years or more include:
 - Dangerous driving causing injury (a maximum prison term of five years or a maximum fine of \$20,000, and compulsory disqualification for at least one year).
 - Street-racing or wheel-spinning causing injury (maximum prison term of five years or a maximum fine of \$20,000, and compulsory disqualification for at least one year).
 - Aggravated careless driving causing injury or death (maximum prison term of three years or a maximum fine of \$10,000).
 - A third or further drink-driving conviction (a maximum prison term of two years or a maximum fine of \$6,000, and compulsory disqualification for more than one year).
5. All the above offences may also include the imposition by the court of a driving disqualification, an alcohol interlock licence or even the permanent forfeiture of a

¹⁸ Elvik, R. (2016). Association between increase in fixed penalties and road safety outcomes: A meta-analysis. *Accident Analysis & Prevention*, 92, 202–210.

¹⁹ Moolenaar, D (2014), "Motorist's response to an increase in traffic fines", *Journal of Criminology*, Volume 2014.

²⁰ Castillo-Manzano, J. I., & Castro-Nuño, M. (2012). Driving licenses based on points systems: Efficient road safety strategy or latest fashion in global transport policy? A worldwide meta-analysis. *Transport Policy*, 21, 191-201.

vehicle. The current confiscation power is an additional power that a court can exercise on conviction of a driver for certain offences, set out in s128 of the *Sentencing Act 2002*. In order to take forward these legal proceedings the Police need to be able to prove beyond a reasonable doubt that a driver that has committed these offences.

6. All penalty types, when accompanied by widespread and sustained enforcement can reduce high risk behaviours. Although if the penalties are unenforceable, then there is a risk of regulatory failure. Penalties are often unenforceable in gang convoys due to the difficulty Police have in identifying drivers committing an offence. This reduces the effectiveness of the current road rules for those travelling in a gang convoy.

Penalties can lead to unfair outcomes...

7. Where penalties can be enforced, road safety penalties system can contribute to unfair outcomes through:
 - **Income stress** – infringement fees and licence sanctions can push people with limited financial means into further income stress, which harms their wellbeing and may make it difficult for the person to comply in future.
 - **Entry pathway into the justice system** – infringement fees that are not paid on time can be escalated to the court. The court enforcement process results in additional costs and potential hardship, especially for those with limited financial means. Additionally, 58 percent of people coming before the court for the first time had a traffic offence as their most serious charge.
8. Te Manatū Waka Ministry of Transport seeks to balance these equity concerns when creating new penalties with the implications of a new or increased penalty level on overall road safety.

A 28 day impoundment is another regulatory tool that can act as a deterrent...

9. Under the LTA there is also provision to impound vehicles for 28 days. This is not a penalty, but an action that a Police officer can take when they have a reasonable belief that the driver is not permitted to operate the vehicle. The impoundment currently applies to drivers who have:
 - Been disqualified from holding or obtaining a driver licence, or had their licence revoked or suspended.
 - Are driving a vehicle contrary to conditions of an alcohol interlock licence.
 - Exceeded breath or blood alcohol concentration levels or failed or refused to undergo a blood test.
 - Received two or more alcohol or drug offences, or person in charge of vehicle causing death offences in the last four years.
10. A driver will have the right to reclaim their vehicle (upon payment of fines and towage and storage fees) once the 28 day impoundment has elapsed.
11. The effectiveness of a 28 day impoundment regime is, in part, reliant on an effective towage and storage industry. In New Zealand, this is outsourced to the private sector with fees and rebates for towage operators set in statute. The current low levels of

these fees, and the impact of this are discussed in further detail later in this RIS. For instance, one towage company is owed over \$178,000²¹ in towage and storage fees.

RELEASED BY THE MINISTER OF JUSTICE

²¹ *Motor Trade Association feedback on expanding impound offences*, July 2022.

APPENDIX 2: COMPARISON TO AUSTRALIAN JURISDICTIONS

1. Several Australian states have similar issues with gang membership and 'hooning'/street racing, and have legislated in response.
2. However, it must be noted when comparing New Zealand with Australian jurisdictions that:
 - Gang membership in Australia is not concentrated amongst Aboriginal Australians in the way that gang membership is in New Zealand, and
 - Many states/territories do not have anything similar to a statutory BORA that prohibits the limitation of rights and freedoms where they are disproportionate or otherwise not justifiable in a free and democratic society.
3. Anti-consorting laws aim to prevent crime by disrupting and dismantling organised criminal activity that establishes, uses, or builds up criminal and gang networks.
4. In New South Wales, it is a criminal offence for a person aged 14 years or older to continue to associate or communicate with at least two people who have previously been convicted of an offence, after receiving an official police warning.
5. This communication and/or association only has to happen on two occasions, and the communication can be via electronic means (email, social media, phone calls) or in person, both privately and publicly. The person does not have to be convicted of a previous offence themselves, as the offence is about habitually associating with convicted offenders. The maximum penalty is up to three years' imprisonment.
6. Similar anti-consorting legislation is also in force in Queensland and in Western Australia. In Queensland, a person found guilty faces up to three years' imprisonment, and in Western Australia, up to five years' imprisonment.
7. However, these anti-consorting laws have had some unintended consequences. A number of Australian gangs have been driven underground and no longer wear patches to signify their membership, which has made them harder to police. An Ombudsman Report in New South Wales also found that Police in the state repeatedly misused the powers against children, homeless people, and Aborigines.²²
8. In general, anti-consorting laws can have significant human rights implications, in particular regarding the freedoms of movement and association, and the right to privacy. The anti-consorting laws in Australia have been criticised by experts and academics as being punitive and an 'extreme form of criminalisation'.²³
9. While we are not currently proposing to enact anti-consorting legislation, the design of the proposed vehicle forfeiture provision in Option 2 has some similarities to Australian anti-consorting legislation, as we would be criminalising two or more gang members

²² The consorting law report on the operation of Part 3A, Division 7 of the Crimes Act 1900 - April 2016, https://www.ombo.nsw.gov.au/_data/assets/pdf_file/0018/130527/The-consorting-law-report-on-the-operation-of-Part-3A-Division-7-of-the-Crimes-Act-1900-April-2016.pdf.

²³ McNamara L, Quilter J. *The 'Bikie Effect' and Other Forms of Demonisation: The Origins and Effects of Hyper-Criminalisation*. 2018. 34(2). Available from: <https://journals.latrobe.edu.au/index.php/law-in-context/article/view/38>.

traveling in a convoy on the road. This would impact gang members freedom to move and to associate.

10. New South Wales, Victoria and South Australia only provide for vehicle impoundment as being the immediate response to offending. Confiscation and/or forfeiture is reserved to circumstances where a successful criminal prosecution can be brought in relation to the offending.
11. Enabling the confiscation/forfeiture of vehicles used in offending as part of a 'gang convoy' would also be unique compared to Australian jurisdictions because it would specifically target offending that occurs during a gang convoy. In the Australian jurisdictions reviewed, impoundment and forfeiture regimes apply generally to all qualifying offending for misuse of a motor vehicle, irrespective of whether it was carried out by a gang member.
12. The key difference with our status-quo arrangement relating to vehicle impoundment and confiscation as compared to New South Wales is the length of impoundment that applies. In New Zealand this is limited to 28 days, whereas in New South Wales vehicles can be impounded for 6 months.

RELEASED BY THE MINISTER OF JUSTICE