



16 April 2024

File Ref: OIA 48315



Tēnā koe [redacted]

Official Information Act request

Thank you for your information request dated 11 March 2024. You asked for the following information:

“Copies of all advice, briefings, memos, feedback or any other documents provided by Te Puni Kōkiri on the implementation of the Gang Amendment Bill as referred to on page 22 of the Regulatory Impact Statement, including which ministers, if any it was provided to.”

Your request has been considered in accordance with the Official Information Act 1982 (the Act).

Three documents have been identified in scope of your request. The documents and my decisions regarding the release of the information are set out in the table attached as Appendix A.

Some information has been withheld in accordance with the Act on the following grounds:

- section 9(2)(a) – in order to protect the privacy of natural persons.

In making the decision to withhold information, I have considered the public interest considerations in section 9(1) of the Act.

I trust my response satisfies your request.

You have the right to seek an investigation and review by the Ombudsman of this response. Information about how to make a complaint is available at www.ombudsman.parliament.nz or freephone 0800 802 602.

Please note that Te Puni Kōkiri publishes some of its OIA responses on its website, after the response is sent to the requester. The responses published are those that are considered to have a high level of public interest. We will not publish your name, address or contact details.

If you wish to discuss any aspect of your request with us, including this decision, please feel free to contact us at oiia@tpk.govt.nz.

Ngā mihi

A handwritten signature in blue ink, appearing to read 'Paula Rawiri'. The signature is fluid and cursive, with the first letter 'P' being particularly large and stylized.

Paula Rawiri
Hautū, Te Puni Kaupapa Here | Deputy Secretary, Policy Partnerships

Appendix A – documents OIA request from [REDACTED] dated 11 March 2024

Item	Date	Document description	Decision
1.	1 December 2023	<p>Email: <i>FW: For feedback: gangs 100 day plan Cabinet paper</i></p> <ul style="list-style-type: none"> The Ministry of Justice is seeking agency review from Te Puni Kōkiri on a draft Cabinet paper outlining four proposals in the new government's 100-day plan about addressing gang harm. 	Released with some information withheld under S9(2)(a) of the Act.
2.	07 February 2024	<p>Email: <i>FW: Consultation – Gangs Policy RIA</i></p> <ul style="list-style-type: none"> Correspondence between Te Puni Kōkiri and Ministry of Justice 	Released with some information withheld under S9(2)(a) of the Act.
3.	14 February 2024	<p>48167 Ministerial Consultation on the <i>Gangs Legislation Amendment Bill: Approval for Introduction</i> (provided to Hon Tama Potaka, Minister for Māori Development)</p> <p>Note error in <i>Min Consult</i>, to clarify this paper was written and provided by Te Puni Kōkiri NOT Hon Paul Goldsmith, Minister of Justice.</p> <p>Note the paper was incorrectly dated as 14 February 2023.</p>	Released in full.

Out of Scope

To:
Subject:

Out of Scope

From: Charles Smith 9(2)(a)@tpk.govt.nz>

Sent: Friday, December 1, 2023 5:26 PM

To: 9(2)(a)

Cc: 9(2)(a); Erin Keenan (Hidden) 9(2)(a)@tpk.govt.nz>;

Patty Green 9(2)(a)@tpk.govt.nz>; Adrian Shields 9(2)(a)@tpk.govt.nz>

Subject: FW: For feedback: gangs 100 day plan Cabinet paper

Kia ora Maddie,

Thank you for the opportunity to provide comment on the paper and its proposals.

I have made annotated comments in the attached version which reflect Te Puni Kōkiri feedback and position. The comments pertain to different implications, concerns and risks that need to be considered when finalising the paper.

Some high-level comments we wish to provide:

- We are concerned of the lack of evidence that is provided in this paper. The need for a 'crack down' on gang membership and associated offending because of growing concern is not supported by strong data and evidence. We would recommend that evidence needs to be provided that the community is intimidated by the display of gang insignia, the reason for making membership of gangs a criminal matter.
 - o The international literature tends to describe gang involvement as a transient life stage for young people. While that may be the case for some of our gang population, New Zealand research has found that it is very common to find gang membership that has persisted well into adult years in NZ. In some instances, older gang members will have been gang associated from a young age and likely have children and grandchildren raised within the gang context. However, intergenerational gang relationships do not necessarily equate to participation within organised criminal networks or any criminal activity whatsoever. It is important to recognise that longevity of gang membership and being born into a gang whānau are separate, if related, issues. For many - gang membership is simply whānau.
- We believe that the paper should address the entry to gang life as an important intervention point. This would include addressing the social and economic factors that we know are contributing factors to young people joining gangs and bringing a greater emphasis on prevention and early intervention.
- A major issue for many Māori is the lack of trust in government. Over the past years there has been a focus on improving the trust in government. We are concerned that this confrontative and punitive approach to gang membership will build distrust in communities and will create alienation, with the risk of fuelling gang membership.
- We strongly recommend reconsideration of the approach detailed in this paper and would encourage greater reliance on evidence to address concerns about increasing gang membership.
- We remain seriously concerned about the implications of these proposals for Maori who are whanau of gang members and the introduction of an offence that is based in gang membership. Additionally, any proposals to be progressed need to ensure that they don't further perpetuate or fuel already existing discrimination on Māori and whānau Māori.

We also offer some feedback that pertains to potential legal implications of the proposals.

- The definition of a 'known gang member', as provided in para. 36, is unworkable as the footnote does not prove any relationship to gang affiliation. Where gang members who do not meet the criteria in the

footnote may be able to consort, other individuals regardless of affiliations but who meet the test as outlined in the footnote, cannot.

- We also have concerns about the proposal to lowering the threshold for gang membership to be an aggravating factor. In para. 42, the proposal is to remove: “the need to establish the nature and extent of any connection between the offending and the offender’s participation in an organised criminal group.”
 - o The paper does not then clarify what will need to be shown to establish a connection that creates an “aggravating” factor.
 - o This lack of a nexus creates a risk that any relationship with either a gang member (however defined) will be considered an aggravating factor.
 - o The application of these two proposals will, if implemented without further clarification, create breaches to the BORA.

We are happy to be kept in the loop as the paper and proposals progress – and to meet on Monday to discuss any of these points further should you wish.

Ngā mihi,
Charles

Charles Smith
Senior Analyst | Kaimātai
Te Tari Matua



Te Puni Kōkiri
MINISTRY OF MĀORI DEVELOPMENT

Tauwaea DDI 9(2)(a) Waea Pūkoro M 9(2)(a)
Waea Whakaahua F : 0800 875 329

Te Puni Kōkiri, Te Puni Kōkiri House, 143 Lambton Quay, Wellington 6011, New Zealand
PO Box 3943, Wellington 6140, New Zealand



Te Puni Kōkiri Website



Kōkiri Magazine



Facebook

Released under the Official Information Act 1982

Out of Scope

To:
Subject:

Out of Scope

From: Charles Smith 9(2)(a)@tpk.govt.nz>

Sent: Wednesday, February 7, 2024 4:56 PM

To: 9(2)(a)

Cc: Huria Heperi 9(2)(a)@tpk.govt.nz>; Adrian Shields 9(2)(a)@tpk.govt.nz>; Stephanie Alexander

9(2)(a)@tpk.govt.nz>; Patty Green 9(2)(a)@tpk.govt.nz>

Subject: FW: Consultation - Gangs Policy RIA

Importance: High

Kia ora Stephen,

Thank you for the opportunity to provide feedback on the gang policy RIA. Below are some comments we have prepared for your consideration in finalising the RIA. The comments largely pertain to the impact the proposals could have on Māori, and advice on how different rationales featured in the RIA can be better informed.

- The RIA could note the efficacy of approaches to gang crime that are long-term, early intervention, and preventative. We find that the proposals described in the RIA are ineffective because they lack a wider-focused approach to crime, and instead are punitive without actually addressing the root causes of different criminal activity. There is a range of research and literature that support this.
- To clarify, we don't recommend that the document recommends long-term and preventative approaches (since this is a RIA), but instead note them as a known piece of information – especially as they should have been considered when developing this set of policy.
- Social investment (approaches that are targeted, evidence based, and interventional) is expected to be a major focus of this government. Therefore, we would recommend that policies, and their rationale, as promoted by the Government's manifesto commitments should be consistent – especially as they interface with communities. This applies with the gang policy package which should make mention to social investment in the RIA, and whether they were considered in developing the proposals.
- The RIA makes mentions of the overrepresentation of Māori within gangs, but it makes no attempt at explaining why some Māori are involved in gangs to begin with. Making reference to the causes will confirm that Māori are not inherently drawn to gangs/criminal activity, but rather it's a consequence of generational deprivation and discrimination. There are a range of causes to the disproportionate membership of Māori in gangs, this includes; forms of racism (institutionalised, interpersonal), mistrust in authority, and overrepresentation in social/economic domains of wellbeing (social deprivation, socio/economic inequality). Stating these causes can further illuminate the problem definition which highlights what approaches are actually needed to address them (e.g., as I note above). Again, there is research that supports this.
- Another comment we would like to provide is the potential impact these proposals may have on whānau of gangs, especially those who are not gang members themselves. The RIA could be clearer in showing how the different analyses of the proposals took into account the whānau of gang members – especially if they are present in the identified 'crime' of a gang member (e.g., gangs gathering in public).

Some specific comments we would like to provide include:

- In para 14, the RIA mentions that - *Historically, as children and young people, many gang members suffered abuse and neglect in state and faith-based care, creating mistrust and resistance to authority. The Waitangi*

Tribunal has noted that an estimated 80 to 90% of Mongrel Mob and Black Power gang whānau had been a state ward.

- We think this point could go further by explaining that Māori children were (and are) disproportionately placed in state care, as this helps to explain why Māori are overrepresented in gang membership.
- In para 194.3. it identifies the risk of 'actual or perceived instances of misuse or abuse'. This risk should be expanded to say that 'Where this perception arises for non-gang members this will contribute to mistrust and if charges are laid may lead to criminalisation and empathy for gang membership'

Please reach out if you wish to discuss further.

Ngā mihi,
Charles

Charles Smith
Senior Analyst | Kaimātai
Te Tari Matua

Tauwaea DDI 9(2)(a) Waea Pūkoro M 9(2)(a)
Waea Whakaahua F : 0800 875 329

Te Puni Kōkiri, Te Puni Kōkiri House, 143 Lambton Quay, Wellington 6011, New Zealand
PO Box 3943, Wellington 6140, New Zealand



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Ministerial Consultation on Gangs Legislation Amendment Bill: Approval for Introduction

From: Hon Paul Goldsmith, Minister of Justice

Due: 14 February 2023

Purpose

1. This paper seeks approval for the introduction of the Gangs Legislation Amendment Bill (the Bill), which progresses policies to: prohibit the display of gang insignia in public; stop gangs from gathering in public; stop gang offenders from associating, through court-issued non-consorting order; and make gang membership an aggravating factor at sentencing.

Context

2. The paper contributes to the Government's coalition agreements to restore law and order and public confidence in the justice system. Cabinet agreed to progress these policies in December 2023 as part of its 100-Day Plan and for a Bill to be drafted. This paper further defines the policies to be more stringent.

Recommended action

3. **Note** that different components of the policies have an impact on the Bill of Rights Act 1990, and the Office of the Privacy Commissioner has expressed their concerns on the proposed new search powers.
4. **Consider raising** that the lack of public consultation poses a risk to the efficacy of the proposed policies in addressing the policy problem.
5. **Consider raising** that discrimination of Māori may be further exacerbated by the proposed policies.
6. **Consider raising** that the proposed policies should be accompanied with early-intervention and preventative initiatives to ensure that the causes of joining gangs are mitigated and eliminated.

Risks and impacts on Māori

7. The proposed gang policies pose the risk of perpetuating and exacerbating existing discrimination of Māori and their whānau, regardless of if they are actually involved in a gang or criminal activity.
8. There are historical and societal causes that influence why Māori are overrepresented in gang statistics, including economic deprivation and institutional discrimination. The proposals do not take these factors into account and may produce sub-optimal, if not detrimental, outcomes for Māori and New Zealand as a whole.
9. The proposed policies are all short-term and punitive approaches to address the policy problems identified in the paper. The merits of early-intervention and preventative approaches should be emphasised – especially when addressing multi generational issues impacting whānau Māori.
10. The lack of consultation with communities, non-governmental organisations, and Māori poses the risk of the policies not being reflective of the actual issues and informed by what these parties think will work, based on their knowledge and experience.

Te Puni Kōkiri involvement

11. Te Puni Kōkiri were consulted on the development of the proposals in this paper. The feedback provided was largely unaddressed in the final paper.