

# Public Finance (Prohibition on Providing Public Funds to Gangs) Amendment Bill

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Submission of the New Zealand Law Society Te Kāhui  
Ture o Aotearoa

30 June 2026

## 1 Introduction

1.1 The New Zealand Law Society Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to comment on the Public Finance (Prohibition on Providing Public Funds to Gangs) Amendment Bill (**Bill**).

1.2 The Bill seeks to amend the Public Finance Act 1989 to ensure ‘public funds do not end up in the hands of gangs’.<sup>1</sup> This submission, prepared with input from the Law Society’s Criminal Law and Public Law Committees, does not express views on the underlying policy objective of the Bill, but makes recommendations to improve its clarity and workability.<sup>2</sup>

1.3 The Law Society does not wish to be heard.

## 2 The payment of ‘money’

2.1 Clauses 4 and 5 of the Bill provide that the Crown must not pay ‘money’ to gangs, and that it is an offence to do so without reasonable excuse. While these new provisions refer to the payment of ‘money’, we note the Act currently refers to ‘public money’ (rather than ‘money’ more generally). The term ‘public money’ is defined in section 2 of the Act as follows:

**public money** means all money received by or on behalf of the Crown, including the proceeds of all loans raised on behalf of the Crown, and any other money that the Minister or the Secretary directs to be paid into a Crown Bank Account or Departmental Bank Account and any money held by an Office of Parliament or a parliamentary agency; but does not include money held in trust as trust money

2.2 To ensure the provisions in the Bill are consistent with existing provisions of the Act, the Law Society recommends replacing the references to ‘money’ in the Bill with ‘public money’. Such a change is also likely to be consistent with the objectives of the Bill to ensure *public funds* do not end up in the hands of gangs.

## 3 Who can be prosecuted?

3.1 The principal means of enforcement of the new prohibition on providing public funds to gangs is the criminal offence provision in amended section 76(2). However, we note there are a number of mechanisms that Parliament may adopt as a means of responding to and enforcing legislative prohibitions,<sup>3</sup> and as noted below, there are several drafting issues with the use of a criminal offence provision in this situation. The Select Committee may therefore wish to take advice on whether an alternative approach to enforcement would be more appropriate.

3.2 The Act also makes it clear that the relevant appropriation Minister is the person responsible for the *expenditure* of public money,<sup>4</sup> and that departments and public

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<sup>1</sup> Explanatory Note of the Bill.

<sup>2</sup> See the Law Society’s website for more information about these committees: [www.lawsociety.org.nz/professional-practice/law-reform-and-advocacy/law-reform-committees/](http://www.lawsociety.org.nz/professional-practice/law-reform-and-advocacy/law-reform-committees/).

<sup>3</sup> Legislation Design and Advisory Committee *Legislation Guidelines* (2021 ed, September 2021), ch 24.

<sup>4</sup> Section 7C(2)(a).

servant employees are responsible for *administering* the appropriation on behalf of the appropriation Minister.<sup>5</sup> This means that although the offence in the Bill refers to ‘any person’, liability for the offence potentially sits with the appropriation Minister as the person responsible for ‘paying or making available’ public money to gangs.

- 3.3 If the policy intention is that individuals such as public servant employees, public service contractors or consultants, and/or private sector contractors or consultants can be prosecuted for the new offence, this should be clarified in the Bill. This clarity could be achieved through an additional clause which states that, to avoid doubt, the offence in proposed section 76(2)(ba) also applies to other specified individuals.
- 3.4 If the policy intention is that individuals beyond the appropriation Minister can be prosecuted, the legislation could also helpfully indicate whether the policy intention is that multiple individuals would be charged for the same offence, or whether liability for prosecution ought to sit at certain levels (or whether it is discretionary for the person laying the prosecution charge). For example, as presently drafted, the following individuals could all be liable for prosecution for a single payment of public money to a gang:
- (a) the appropriation Minister,
  - (b) the chief executive of the appropriation department,
  - (c) the chief financial officer (or equivalent, including other finance staff who process or are otherwise involved in the payment),
  - (d) the director,
  - (e) the manager, and
  - (f) the front-line public service employee.
- 3.5 If the policy intention is to target the final decision-maker, and not the individuals who provide advice and/or administer decisions, it may be helpful for the Bill to specify any defences (or exclusions or protections) available to the latter.<sup>6</sup> For example, the Associate Minister of Justice, Minister of Justice and Minister of Finance currently decide which initiatives will receive Proceeds of Crime money on the advice of the Secretary of Justice.<sup>7</sup> Is the policy intention that the Secretary of Justice is criminally liable for implementing the decisions of Ministers? Or is the intention that the Secretary of Justice will have a legislated defence available, or be able to decline to implement the decisions of Ministers if they are of the view it would contravene the Bill (or both)?
- 3.6 We recommend the Select Committee seek advice on these matters from officials and the Member in charge of the Bill, and consider making necessary amendments to the Bill to ensure the resulting legislation is clear and workable.

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<sup>5</sup> Section 7C(2)(b).

<sup>6</sup> Proposed section 76(2)(ba) already provides that it is not an offence where the act was done without reasonable excuse.

<sup>7</sup> Justice Sector Directorate *Terms of Reference – Proceeds of Crime Fund* (October 2025) at [12].

#### 4 Entities and organisations prohibited from paying money to gangs

- 4.1 The Act's definition of 'Crown' excludes parliamentary agencies and Offices, and organisations and entities including Crown entities.<sup>8</sup> If the policy intention is to also prohibit these entities, offices and organisations from paying or making available public money to gangs, this should be made clear in the Bill (for example, by providing that, for the purposes of proposed section 73A, the term 'Crown' also includes other specified entities and organisations).

#### 5 Monetary threshold

- 5.1 The proposed requirement in the Bill that the Crown take all reasonable precautions and exercise due diligence to avoid paying public money to a gang will require tracking and reporting of how public money is spent all the way through to the end recipient.
- 5.2 This could present practical difficulties, given the range of public spending that would come within the scope of the Bill: as currently drafted, the provisions in the Bill could apply to spending ranging from multi-billion dollar public-private procurement projects which rely on subcontracts with large-scale private companies,<sup>9</sup> to smaller payments (for example, payment of invoices for catering or transport).
- 5.3 The Select Committee could therefore consider specifying a monetary threshold which would trigger the application of proposed sections 73A and 76(2)(ba) (for example, a threshold of \$10,000 or higher).



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<sup>8</sup> See section 2(c).

<sup>9</sup> For example, the \$5.5 billion City Rail Link, which mixes public and private funding.