

Crimes Amendment Bill

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

16 February 2026

1 Introduction

- 1.1 The New Zealand Law Society Te Kāhui o Aotearoa (**the Law Society**) welcomes the opportunity to comment on the Crimes Amendment Bill (**the Bill**), which proposes to amend the Crimes Act 1961 (**the Act**) to strengthen responses to serious crime and meet commitments in the National/New Zealand First coalition agreement. The relevant commitments are:
- (a) Ensuring real consequences for lower-level crimes such as shoplifting;
 - (b) Introducing a specific offence for assaults on first responders, including mandatory minimum prison sentences; and
 - (c) Introducing a coward punch offence.¹
- 1.2 The Bill:
- (a) Amends the law regarding citizen's arrests and defence of property;
 - (b) Increases the maximum penalties for the offences of dealing in slaves and dealing people under 18, to align with the penalties for people smuggling and people trafficking;
 - (c) Amends the offence of human trafficking to better align with Article 3 of the Palermo Protocol and provide additional protections for children;
 - (d) Amends the people smuggling offence to enable prosecutions in cases involving genuine but unlawfully obtained immigration documents;
 - (e) Provides protection for Police engaged in covert operations while investigating the exploitation of children;
 - (f) Creates two new 'coward punch' offences for strikes delivered to the head and neck;
 - (g) Creates new offences for assaults on first responders and corrections officers;
 - (h) Creates a new theft offence, for theft that is carried out in an offensive, threatening, insulting, or disorderly manner; and
 - (i) Amends the monetary thresholds and penalties for theft.
- 1.3 We note that the Bill also has an amendment paper (**AP 436**) setting out a proposed new infringement regime for shoplifting and theft offences to be inserted into the Summary Offences Act 1981 (**the SOA**).
- 1.4 The Law Society supports the Bill's intention to improve public safety. However, as drafted, the Bill risks being ineffective and unworkable, to the detriment of public safety.
- 1.5 The Law Society recommends that, with the exception of the dealing in slaves and human trafficking amendments, the Bill not proceed. If the Bill is to proceed, the Law Society's

¹ Ministry of Justice *Regulatory Impact Statement: Crimes Act Amendment Bill (28 May 2025) (RIS)*, at [8].

submission sets out significant drafting and workability concerns that should be addressed before it progresses.

- 1.6 This submission has been prepared with the assistance of the Law Society's Criminal Law and Human Rights and Privacy Law Committees.² The submission is set out as follows:
- (a) Process concerns;
 - (b) Impact on courts;
 - (c) Citizen's arrest powers/defence of property;
 - (d) Human trafficking/dealing in slaves;
 - (e) Coward punch;
 - (f) Retail crime;
 - (g) Other matters.
- 1.7 The Law Society **wishes to be heard** on this submission.

2 Process concerns

Policy process

- 2.1 Many of the issues raised in this submission may well have been addressed throughout the course of a full and proper policy process that was not restricted by pre-determined policy outcomes. Commitments made in a coalition agreement and proposals tendered by a Ministerial Advisory Group (**the Retail MAG**) are not a substitute for a full policy development process, including a thorough investigation, testing, and definition of the policy problem and the range of options that may resolve it.³ It is clear from the RIS that officials were not given adequate time or scope to undertake such work.
- 2.2 In our view, substantial changes to the law require wider consultation and deeper analysis to ensure any legislative response is proportional, reasonable, rational and consistent with constitutional principles. This view is also held by the Legislation Design and Advisory Committee, which states that the core goals of effective legislative design are that the legislation should be fit for purpose, constitutionally sound, and accessible.⁴
- 2.3 Analysis of the respective costs and benefits of a reform proposal, and its likely impact, are also critical to understanding how it may affect the wider system and those who interact with it, as well as the relationship with existing legislation. The justice system is highly complex and affects the rights and liberties of individuals (both complainants and defendants), and the absence of fully developed policy work can create significant practical and substantive issues.

² More information about these committees can be found on the Law Society's website: <https://www.lawsociety.org.nz/professional-practice/law-reform-and-advocacy/law-reform-committees/>

³ Clearly indicated by the RIS at p 5.

⁴ Legislation Design and Advisory Committee *Legislation Guidelines: 2021 edition* at Chapters 1 – 3.

- 2.4 The absence of meaningful consultation with affected stakeholders, population groups or the public prior to the introduction of the Bill is concerning. Noting that some of the proposals arise from coalition agreements, they have been known for some time now and consultation could have been undertaken. The omission to do so is serious considering the Bill's implications for groups who are likely to be disproportionately affected by the amendments, including Māori, for whom early, genuine, and culturally appropriate engagement is critical to ensure Crown obligations under te Tiriti are upheld. The decision to consult only with government agencies reflects a closed and inadequate process that falls short of accepted standards for policy development and legislative stewardship.
- 2.5 The above deficiencies appear to have had a detrimental impact on key components of the Bill, most notably the theft and citizen's arrest provisions, and the 'coward punch' amendments. Both would have benefited significantly from robust external scrutiny and expert input. The contrast with the human trafficking reforms is instructive. This is one element of the Bill that underwent wide and meaningful consultation, consequently resulting in the production of sound, broadly supported amendments requiring only minor drafting refinements rather than substantive correction.
- 2.6 The Law Society recommends that the Bill be withdrawn for a full policy development process to address the significant concerns set out in this submission.

3 Impact on courts

- 3.1 It is unclear whether the Bill's impact on court delays and resources has been satisfactorily assessed, nor how these increased costs will be met. Analysis in the Regulatory Impact Statement (**RIS**), is limited to a brief comment on the likelihood of an impact on court resourcing and legal (in addition to Corrections and Police).⁵
- 3.2 The Law Society considers it likely that the potential consequences of the proposed infringement regime and the increase in penalty maximums will result in an increase in the number of cases where jury trial is elected. Combined with the impact of a possible strike conviction, the Bill may therefore lengthen and increase the number of criminal proceedings. This is because defendants are more likely to defend a charge or infringement when the impact of that conviction is high, or when there are alternative methods of disposing of their offending (i.e., via an infringement notice).
- 3.3 Overall, the likely impact on court resources and timeliness is unknown, while the effectiveness of the proposals is unclear (see below). The Law Society recommends the Select Committee seek advice from officials on the impact of the Bill, and how (or whether) those increased demands can be met.

4 Citizen's arrest immunities and defence of property

- 4.1 Clauses 4 to 6 amend sections 35 to 37 of the Act to allow a citizen's arrest to take place at any time of day and in relation to any offence under the Act. This sits alongside clauses

⁵ Ministry of Justice *Regulatory Impact Statement: Crimes Act Amendment Bill* (28 May 2025). See summary at p 4.

7 and 8, which amend sections 38 and 39 to enable a person to strike or cause bodily harm to an alleged offender, and to use mechanical restraints to detain the person arrested. Lastly, clauses 10 to 12 amend sections 52, 53, and 56, permitting the use of force in defending property from being stolen.

- 4.2 Together, these proposals seek to expand the ability of private citizens to intervene and detain individuals who are actively committing an offence. They also aim to improve public understanding of when and how people may lawfully intervene, with the intention that more bystanders and retailers will feel confident taking action and more offenders will ultimately be held accountable.
- 4.3 The Law Society questions the likely effectiveness and safety of the proposals. We set out below our concerns regarding:
- (a) Lack of evidence that the proposals will be effective;
 - (b) Inconsistency with other sections of the Act;
 - (c) The potential for unintended consequences as a result of unclear drafting and legal inconsistency.

Lack of evidence

- 4.4 The policy problem to which these amendments are targeted is poorly defined and restricted to the retail MAG's view of what the issue is: public confusion about when the public can intervene to stop offending as it is happening. This is despite mixed evidence as to whether this is actually the problem.⁶ While there may have been an increase in retail offending,⁷ and a decrease in Police prosecution of low level theft from retail premises, the feedback from the retail MAG's consultation indicates that the lack of clarity in the citizen's arrest or defence of property provisions is not the reason people are not intervening when retail theft occurs.⁸ The arrest RIS states that the main drivers of inaction are:
- (a) The lack of professionalisation in the security industry (limited training opportunities);
 - (b) Health and safety concerns; and
 - (c) Retailers' concerns about Police resourcing and responsiveness.
- 4.5 The RIS is clear that the amendments proposed are not expected to be effective in achieving the goal of improving public confidence in their rights and obligations when undertaking a citizen's arrest, or in holding more offenders accountable. It states, "lack of understanding is not what creates the hesitancy to intervene, so there is no anticipated effect on offending levels."⁹

⁶ Ministry of Justice *Regulatory Impact Statement: Arrest and defence of property amendments* (11 December 2024) (**Arrest RIS**), at [18] and [20] – [21] – noting particularly that feedback the security industry provided demonstrated the current law is well understood.

⁷ Noting that the arrest RIS highlights that part of this reported increase in offending can be attributed to the implementation of Auror – the retail theft reporting platform at [6].

⁸ Arrest RIS at [18].

⁹ Arrest RIS at [19].

- 4.6 We also note that Police feedback identified significant safety concerns arising from the proposed amendments, including:¹⁰
- (a) The inconsistent use of arrest powers and the relative lack of training that retailers are likely to have in relation to such arrests;
 - (b) The risk that more than reasonable force is used – and that prosecutions follow, undermining policy objectives;
 - (c) The vulnerability of children and young people and how they may be detained;
 - (d) Offenders targeting places with less security (e.g. lone retail operators) or an escalation of violence (that would otherwise not occur) aimed at deterring arrests by retailers;
 - (e) That citizens will perform arrests where Police would not, due to evidentiary or public interest thresholds for arrest and charging a suspect not being met – undermining confidence in the criminal justice system; and
 - (f) That situations of low-level theft escalate into more serious violent situations.
- 4.7 These concerns are not adequately addressed in the proposed amendments. In the Law Society’s view, they warrant a response that provides effective safeguards to protect the public, alleged offenders, and the retailers affected. Some of these concerns indicate a risk of unintended consequences which may have a significant and detrimental effect on public safety and confidence in the criminal justice system.
- 4.8 The Law Society notes that with a full policy development process and analysis of options, there would likely be more effective, workable options for reform that could more effectively address the issue of retail theft while better achieving the broader public safety aim of the Bill.¹¹
- 4.9 The Law Society recommends that the Select Committee seek further, more detailed advice on the issues involved, especially on the issue of how the proposed amendments will affect public safety.
- 4.10 For completeness, the Law Society notes that several of the proposed options discussed in the RIS, when taken together, could have formed the basis for at least a minimal level of safeguarding and would have partially addressed some of these concerns – yet these have been omitted from the final amendments:¹²
- (a) Permitting the use of physical or mechanical restraints to situations where it is reasonable in the circumstances, and providing the restraint causes no more than trivial harm.
 - (b) Explicitly requiring that where use of force occurs, no more than trivial, and not actual, harm is done.

¹⁰ Arrest RIS at [42].

¹¹ Arrest RIS at [18] and RIS at [129].

¹² Arrest RIS at [30] – [38].

Unintended consequences

4.11 As noted above, the Bill's citizen's arrest and defence of property provisions raise the prospect of unintended consequences, including risk to public safety and confidence in the criminal justice system.

Potential for unlawful detention or use of excessive force

4.12 The Law Society observes that section 3(b) of the New Zealand Bill of Rights Act 1990 (**Bill of Rights**) does not generally apply to private citizens effecting an arrest per the immunity provisions of the Act.¹³ Section 3(b) states:

The Bill of Rights applies only to acts done –

(b) by any person or body in the performance of any public function, power, or duty conferred or imposed on that person or body by or pursuant to law.

4.13 However, a private citizen being called to assist a constable in the arrest of a person, per section 34 of the Act, is generally understood to be exercising a public function or power so as to be captured under section 3(b).¹⁴ As such, we consider the statutory requirement to contact Police as soon as possible raises the prospect that the continued detention of an alleged offender and the following of direction (as clause 4(2) specifies must be followed) may also be treated as an exercise of public power. The period between notifying Police and handing over the individual (if that is the direction given), could be lengthy, and all manner of incidents could occur during that time, outside of the control of the responding officer. It is unclear how that intervening period, and any incidents not within the practical control of Police, will be treated.

4.14 The precise boundaries of this seem likely, under the present drafting of the Bill, to result in litigation, with legal implications for both the private citizen undertaking the arrest and for the state in respect of the directions made (or not made) by a Police Officer.

4.15 It is also important to recognise that a person undertaking a citizen's arrest is significantly more likely to infringe the rights of a detainee. Unlike trained police officers, private citizens have no formal instruction in the lawful use of force, arrest procedures, or evidential requirements. Given that the lawfulness and fairness of the manner in which evidence is obtained are determinative factors under section 30 of the Evidence Act 2006, evidence arising from a citizen's arrest is correspondingly more vulnerable to exclusion on the grounds of being unlawfully or improperly obtained. This heightened risk undermines both the reliability and admissibility of such evidence, and, more broadly, the integrity of the criminal justice system.

Risk of violence against children or young persons

4.16 We observe that a large percentage of shoplifting and retail theft offending is committed by children and young people for whom separate and distinct arrest provisions and rights protections are otherwise afforded, given their age and vulnerability.¹⁵ The

¹³ As noted in Crown Law *Bill of Rights Vet Advice: Crimes Amendment Bill* at footnote 37, referring to *R v Song Van Nguyen* CA269/98, 2 December 1998.

¹⁴ *R v Song Van Nguyen* CA269/98, 2 December 1998 at 5 - 6.

¹⁵ Oranga Tamariki Act 1989, sections 5, 208 and 214.

proposed amendments do not contain any safeguards against the potential arrest and detention of children and young people.

- 4.17 This discrepancy already exists for offences committed at night or offending punishable by more than three years imprisonment, but the actual occurrence of citizen's arrest against children and young people is low, given the pre-conditions. Where the amendments propose to expand the immunity to cover low-level shoplifting offending at any time of day, the arrest of children and young people may increase significantly without adequate safeguards in place.
- 4.18 The RIS identifies these issues, but notes that consideration of an alternative approach for children and young people – including around the use of mechanical restraints, which cannot be used on children and young people in Oranga Tamariki custody – was not possible due to time constraints.¹⁶ In the Law Society's view, this is unacceptable.
- 4.19 If the citizen's arrest provisions proceed, we recommend that the Bill is amended to safeguard children and young people against the likelihood of citizen's arrest, restraint, and use of force by untrained private citizens. At a minimum, the amendments should make clear that the protective rights afforded to children and young people under the Oranga Tamariki Act 1989 apply.

Employment health and safety concerns

- 4.20 The arrest RIS briefly notes that action against theft is often not undertaken due to health and safety concerns.¹⁷ The proposed amendments do not address these concerns, which we expect would have been considered in the course of a full policy process.
- 4.21 We draw to the Committee's attention that there is a risk that by authorising (or even requiring) the use of force by retail employees, liability for injury or death of an employee in these circumstances would raise significant concerns for retail employers. It may also raise a number of uncertainties within the context of an employment relationship, for both employer and employee. For example:
- (a) Will an employer reasonably be able to require (or alternatively, prohibit) the carrying out of a citizen's arrest by an employee, or set expectations around the circumstances in which an arrest could be carried out and the extent of force that is permitted? Relatedly, should there be provisions clarifying that an employer cannot require an employee to carry out citizen's arrests?
 - (b) What will be the extent of the employer's obligation in terms of training and preparedness for staff who may encounter such a situation? The obligations of a person conducting a business or undertaking need to be addressed.
- 4.22 The extent of the analysis required is not possible in a submission such as this, and in the absence of further information. However, the Law Society recommends the Select Committee seek advice from officials on the issue of how retailers' employment health and safety obligations may intersect with the proposed amendments.

¹⁶ As provided by the arrest RIS at [27].

¹⁷ At [18].

Inconsistency

4.23 The Law Society notes that aspects of the citizen’s arrest provisions overlook the effect of other provisions in the Act and may result in increased confusion about which provisions apply or what the person arresting is required to do in different situations. If the Bill is to progress, we set out further drafting and clarity issues below.

Duty of persons arresting

4.24 The Regulatory Impact Statement (**the Arrest RIS**) on the arrest and defence of property amendments states that “the Crimes Act is silent on what to do after an arrest has occurred.”¹⁸ It is clear that drafting of the proposed amendments to sections 35 to 38 has proceeded on this basis. Those amendments require that the citizen carrying out the arrest must contact Police as soon as practicable and follow all directions given by Police.

4.25 Section 316 of the Act explicitly sets out what is expected of a person arresting someone for an alleged crime,¹⁹ and provides that “every person who is arrested on a charge of any offence shall be brought before a court, as soon as possible, to be dealt with according to law.”²⁰

4.26 The amendments to new sections 35(2), 36(2), 37(2) and 38(3) imply that contact with Police and following Police instructions are sufficient to fulfil the duty to ensure the person arrested is brought before a court as soon as possible. However, we consider this should be strengthened by an amendment requiring that Police, upon being notified that a citizen’s arrest has been carried out, must ensure that the requirements of section 316 are met as soon as possible (or, at a minimum, including a cross-reference to the obligations under section 316, for clarity that they continue to apply).

4.27 Section 316(1) of the Act also requires that the person be informed of the act or omission for which the person is being arrested, unless it is impracticable to do so, or unless the reason for the arrest is obvious in the circumstances. If this is not done, the arrest results in unlawful detention, and the person arrested is justified in using reasonable force to regain their freedom. There appears to be a real risk that persons seeking to make an arrest under the proposed amendments to sections 35 to 38 will not correctly identify the offence for which the arrest is purportedly made, with a consequent risk of the arrested person using justified force to regain their freedom and potentially bringing a tort claim against the arresting person for false imprisonment. The Law Society recommends that the Committee take advice on this issue.

Restriction of offences to the Crimes Act

4.28 The Law Society observes that the ability to arrest is only in respect of ‘offences against this Act.’²¹ This is consistent with the current legislation. However, we query whether consideration has been given to the prospect of including other serious offences that sit outside of the Act. There are a number of circumstances in which a person would not be able to arrest a person who is in the process of committing the offences of:

¹⁸ Arrest RIS, at [14].

¹⁹ At section 316(1).

²⁰ At section 316(5).

²¹ Clause 4(1).

- (a) Possession of objectionable material (Films, Videos and Publications Classification Act 1993);
- (b) Breach of protection order (Family Violence Act 2018);
- (c) Dangerous driving causing death (Land Transport Act 1998);
- (d) Unlawful possession of a firearm (Arms Act 1989); or
- (e) Attempting to carry out a terrorist act (Terrorism Suppression Act 2002).

4.29 This should not be taken as to suggest that citizens should be encouraged to attempt, for example, arrest of an individual with a firearm (the unlawful possession of which it would likely be challenging to identify) or attempting to carry out a terrorist attack. Rather, the point is that it appears that insufficient consideration has been given as to whether all relevant offences are covered by the amended citizen's arrest power, and also whether it is necessary and/or appropriate for all offences under the Act to be captured (consider, for example, bigamy). Further, it demonstrates that little additional clarity is afforded by expanding the immunity as proposed. In addition to the complicated considerations of force and restraint, there are criminal offences outside of the Act for which a citizen's arrest is not provided.

4.30 The Law Society recommends that the Select Committee seek advice from officials as to the rationale for each offence included, or not included, within the scope of the expanded immunity.

Expanded use of the defence of property provisions

4.31 Whilst it is clear that the proposed amendments to the defence of property provisions are targeted at retail offenders, we note that the amendments as drafted are not restricted in this way. The potential breadth of the amendments has significant implications for matters such as family violence. This is because a common family violence situation involves arguments over phones, car keys and similar physical property. A family violence offender would be permitted, under the proposed amendments, to strike their partner because they wanted to get their phone back or because they were worried their partner would break their phone. They would also, arguably, be permitted to restrain their partner as a form of citizen's arrest until they can call the Police.

4.32 Whilst such an occurrence will ultimately be a matter for a fact finder to determine, it is likely that some offenders may attempt to claim defence of property as a matter through which their conduct is excusable. This would clearly be an undesirable and unintended consequence of such a change to the law.

4.33 The Law Society recommends that the defence of property and citizen's arrest amendments be amended to narrow their application to situations involving retailers or their employees or contractors (such as security personnel) responding to attempted or completed retail theft.

5 Human trafficking

- 5.1 Clauses 13 to 17 of the Bill set out the proposed amendments to the slave dealing and human trafficking offences. This includes amending definitions of the terms used in those offences so that they remove coercion as an element to be proved when the person trafficked is a child, among other changes discussed below.
- 5.2 The Law Society supports the Bill's amendments to the human trafficking provisions. Specifically, the reconstruction of section 98D (trafficking in persons) is a significant improvement. The amendments mean that New Zealand law will align with the Trafficking Protocol.²² We consider it positive that:
- (a) The Bill removes the requirement to prove deception or coercion for child victims (under 18).²³ This recognises that children cannot meaningfully consent to exploitation and aligns with Article 3(c) of the Palermo Protocol, which provides that the recruitment, transportation, transfer, harbouring or receipt of a child for exploitation constitutes trafficking regardless of the means used.
 - (b) New section 98D(6)(a) explicitly states that consent is not a defence. This is consistent with international human rights norms recognising that apparent "consent" obtained through coercion, abuse of power, or vulnerability is not genuine consent.
 - (c) The new definition in section 98B captures a broader range of exploitative conduct including forced criminality, forced marriage, and serious violations of minimum employment rights. This better protects victims whose exploitation may not fit traditional trafficking narratives.
 - (d) Raising maximum penalties for slavery and child exploitation offences from 14 to 20 years (or \$500,000 fine, or both) signals the gravity of these offences and aligns with the penalties for trafficking and smuggling.
 - (e) The inclusion of "forced criminality or forced unlawful behaviour"²⁴ – to be included in s98B is positive and reflects international standards.²⁵
- 5.3 It is also positive that the Bill includes a definition of forced or exploitative labour or services. However, in our view, this does not go far enough. This is because the trafficking provisions criminalise precursor activities to exploitation, but do not include a

²² Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, Art 3.

²³ Clause 16.

²⁴ Subject to our drafting concern about the inclusion of the term 'forced unlawful behaviour' discussed at 5.9.

²⁵ See Directive 2011/36/EU, art 2(3) (explicitly including "the exploitation of criminal activities" within the definition of exploitation); *VCL and AN v United Kingdom* (App Nos 77587/12 and 74603/12) [2021] ECHR 130, at [158]-[159] (ECtHR recognising that trafficking victims may be compelled to commit criminal acts as part of their exploitation, and that States have positive obligations to identify such victims before prosecution).

standalone criminal offence for the exploitation itself when it takes the form of forced labour.²⁶

- 5.4 We note that section 351 of the Immigration Act 2009 provides for the penal offence of exploiting migrant workers under temporary visas or those who are working in New Zealand illegally. However, this does not protect New Zealand citizens, permanent residents and those with open work or residence visas from exploitation. As such, this provides only a limited scope of protection against exploitation and, in our view, should be brought into the Crimes Act amendments under this Bill.
- 5.5 The Law Society also has some drafting recommendations, set out below.

Definitions

- 5.6 Clause 15 amends the relevant definitions used in the offences of smuggling migrants and trafficking in persons.

'exploitation'

- 5.7 While proposed subsections 98B(1)(a) – (c) largely reflect the current law, proposed subsections 98B(1)(d) and (e), as drafted, may bring within sections 98C to 98F conduct that would not necessarily be regarded as exploitation.
- 5.8 For example, the inclusion of proposed subsection (e) regarding forced or coerced marriage or civil union will pose significant overlap with the current offence provisions on forced or coerced marriage or civil union at section 207A. An offence against section 207A has the much lower maximum penalty of five years' imprisonment, compared with the proposed twenty years' imprisonment for an offence against proposed section 98D. It is not clear where the distinction between the offences may lie, and we recommend that the Select Committee seek advice on this point and consider inserting an amendment that provides clarity on the distinction between the offences, given the significant difference in penalty.
- 5.9 Turning to subsection (d), which signals the inclusion of 'forced criminality or forced unlawful behaviour', we consider that the term 'forced unlawful behaviour' may be problematic. This term is not used in the Palermo Protocol or the legislation of comparable jurisdictions such as Australia, Canada or the United Kingdom. We understand the term could be intended to capture conduct which is prohibited but does not amount to an offence (for example, discrimination on the grounds of race, gender etc), but it is not clear that this is what is meant by the term, or that there is a proper basis for making it an element of a very serious offence.

²⁶ International Labour Organization Convention No. 29, article 2(1): For the purposes of this Convention the term "forced or compulsory labour" shall mean all work or service which is extracted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily; and article 25: The illegal exaction of forced or compulsory labour shall be punishable as a penal offence, and it shall be an obligation on any Member ratifying this Convention to ensure that the penalties imposed by law are really adequate and are strictly enforced.

- 5.10 The Law Society recommends the Committee either remove the phrase or, at a minimum, take advice as to the reasons for its inclusion and consider clarifying what is meant by the term by inserting a definition.

'forced or exploitative labour or services'

- 5.11 It is not clear whether the key word 'harm' in subsections 98B(1)(a) and (b) is intended to be restricted to physical harm to the person or another, or extends to psychological or economic harm. The Law Society recommends clarifying the scope of what kinds of harm are included in this term.
- 5.12 Additionally, we query whether 'harm' could or should be extended to include damage to or loss of property owned by the exploited person or by another. Alternatively, whether insertion of the words 'or loss' after harm is preferable.²⁷ We note that threats to damage or destroy property such as clothing, food, documents, shops, or housing may also be used to keep a person in forced or exploitative labour or services.
- 5.13 The Law Society recommends that the Committee seek advice about whether express provision should be made for either or both psychological and economic harm, and whether damage or destruction of property should be included.

Proposed section 98D(4)

- 5.14 Proposed section 98D(4) sets out the defence to a charge under section 98D(3) relating to trafficking a child. The defence provides that if the person charged can prove that at the time they carried out the conduct concerned, they believed on reasonable grounds that the trafficked child was aged 18 years or over.
- 5.15 We note that this defence requires less of the person charged than that of a person charged with sexual conduct with a young person under 16.²⁸ We query whether this is intentional and recommend that the Committee consider mirroring the language of the defence to a charge under section 134 of the Act.²⁹ This requires a person to have taken 'reasonable steps' to find out the young person's age, *and* 'reasonable belief' that the young person was of or over the age of 16 years old. Proposed section 98D(4) simply requires 'reasonable belief.'

6 Coward punch offence

- 6.1 Clauses 19 and 20 insert new sections 171A and 188A, respectively. New section 171A creates an offence of culpable manslaughter arising from a strike to the head or neck, and new section 188A creates an offence of wounding with intent where the injury results from a strike to the head or neck. The policy development concerns set out at section 2 of this submission apply equally to these clauses. The Law Society sets out below specific concerns associated with the proposed offences, and how they might be addressed. .
- 6.2 First, we acknowledge the profound harm caused by coward-punch attacks, especially where death and serious injury occur, and recognise the devastating impact on victims, whānau, and the wider community. Their experiences rightfully demand a robust and

²⁷ Compare the wording of section 237(1) of the Crimes Act 1961.

²⁸ Section 134, Crimes Act 1961.

²⁹ Defence to a charge under section 134 is set out in section 134A, Crimes Act 1961.

thoughtful response. However, in our view, the approach proposed in the Bill will not deliver an appropriate or effective mechanism to address these harms.

- 6.3 The Act already contains manslaughter and wounding with intent offences. These offences contain established actus reus (the action element) and mens rea (the mental element). We note that in relation to manslaughter, it is not possible to increase the maximum penalty for this by virtue of the actus reus constituting a single strike to the head or neck. The penalty under the existing manslaughter offence and the proposed offence is life imprisonment.³⁰ This is the highest penalty under New Zealand law. A wounding with intent offence currently has the maximum penalty of fourteen years imprisonment where the wounding was done intentionally to cause grievous bodily harm, and seven years imprisonment where wounding with intent to injure.³¹ The proposed amendment lifts this maximum penalty for wounding with intent where it involves a strike to the head or neck, to fifteen and eight years respectively.³²
- 6.4 In light of the fact that substantially equivalent offences already exist in New Zealand law, and that sentencing judges are empowered to (and do) treat the targeting of the head and the victim's limited ability to defend themselves as aggravating factors, we do not consider that the creation of new offences is necessary or justified.³³ The proposed offences do not materially expand the scope of existing criminal liability, nor do they meaningfully alter the applicable sentencing framework. Moreover, several elements of the proposed offences, as drafted, appear difficult to prove, and the absence of a clearly articulated mens rea requirement further undermines their legal coherence and practical utility.
- 6.5 The proposed section also risks creating difficulties where a defendant is charged with an offence against new section 171A alongside an alternative charge of standard manslaughter. If, at trial, the evidence establishes strikes to the head or neck and a degree of victim vulnerability, but the jury nevertheless acquits on the section 171A charge and convicts only on the alternative, the sentencing judge may be left without a clear factual basis on which to proceed with the sentencing calculation. Because juries do not provide reasons for their verdicts, the judge cannot determine whether the acquittal reflects a lack of satisfaction regarding foresight of vulnerability (if such foresight is required, as discussed below), or instead reflects doubt that the strikes were directed to the head or neck.
- 6.6 Both an inability of the victim to defend themselves and the targeting of the head or neck could constitute aggravating factors at sentencing. However, the judge must sentence only on the facts that are consistent with the jury's verdict. Where the verdict does not reveal which factual elements the jury accepted or rejected, the judge cannot safely rely

³⁰ Section 177, Crimes Act 1961; clause 19.

³¹ Section 188, Crimes Act 1961.

³² Clause 20.

³³ *R v Taueki* CA384/04, 30 June 2005 at [31]: *Taueki* has become the guideline sentencing judgment for wounding with intent offences, and explicitly sets out 14 factors which set the standard for assessing the appropriate sentencing band under which to consider each set of offending. We note that this method has also been applied in previous one-punch manslaughter cases using existing offences: *Kepu v R* [2011] NZCA 104. This demonstrates that Judges are already taking these elements into account at the sentencing stage.

on either aggravating factor without risking inconsistency with that verdict. This creates a real possibility of inconsistent or arbitrary sentencing outcomes, undermining the clarity and coherence of the proposed section.

- 6.7 For these reasons, we are not persuaded that the introduction of these additional offences would enhance the effectiveness, clarity, or fairness of the current criminal law.
- 6.8 Overall, the Law Society considers the proposed offences inserted by clauses 19 and 20 are duplicative, unnecessary and appear to be intended more to signal policy intent than to create substantive legal impact. We recommend that both clauses 19 and 20 be deleted. If they are not deleted, we set out recommended amendments below.

New section 171A

Mens rea

- 6.9 The Law Society considers the offence as currently drafted is inadequately defined, and does not clearly identify the elements that must be proven to secure a conviction.
- 6.10 A criminal charge typically requires that a prosecutor prove beyond a reasonable doubt that: the actus reus (the action element) was done by the alleged offender, in this case, a strike to the head or neck; and that the alleged offender had the requisite mens rea (the mental element), of which there are several types.
- 6.11 Mens rea usually involves either:
- (a) 'Intending': the conduct or outcome was desired or wanted by the defendant. A 'firm intent or a firm purpose to effect a result (thus murder under section 167(a) of the Act is distinguished from manslaughter because death was intended).'
 - (b) 'Knowing': this requires actual knowledge or a deliberate shutting of one's mind to a possibility.
 - (c) 'Recklessness': the defendant was aware of the risk and chose nonetheless to act. In this case, it would require a conscious realisation that one's conduct will or is likely to cause a particular result (murder under section 167(b) requires the offender to cause injury that could well result in death), and continuing to act anyway, where an ordinary person would consider the risk too great to be justified (i.e. it was unreasonable to take the risk).
 - (d) Negligence, or the 'ought to have known' test: doing acts that will or could cause the prohibited result where the defendant may not know or realise that result could well happen but an ordinary person would realise that risk and not run it (in manslaughter cases, causes a death without realising the risk of that occurring where a reasonable person would foresee that result).
- 6.12 As to the mens rea of new section 171A, as drafted, there are two issues that we consider require clarification. These are:
- (a) Whether there needs to be intention, knowing, recklessness, or negligence as to whether the strike to the head or neck would cause death; and

- (b) Whether there should be a requirement for the alleged offender to have intended, known, been reckless to, or been negligent about whether the victim would have little or no opportunity to defend themselves.
- 6.13 On (a), we consider it is critical that there is clarity about whether the requirement is that the attacker deliberately struck the victim's head or neck, or if it is simply the fact that a strike to the head or neck has occurred regardless of whether the attacker had targeted that area.³⁴ Given that a deliberate blow to the neck or head causing death would likely amount to reckless murder under section 167(b) of the Act, it seems likely that the intended meaning of new section 171A is that the attacker was reckless about whether the victim was struck in the head or neck, causing death.
- 6.14 On (b), new section 171A requires that the strike that causes death must have been struck in circumstances where the victim had little or no opportunity to defend themselves against that strike. It is unclear whether this element requires the attacker to have had a particular mental element in regard to the victim's vulnerability. As mentioned above, every element of an offence in a serious crime requires a mental element so if one is not clarified in the legislation, the courts will likely read one in.
- 6.15 Additionally, it is possible on the wording of new section 171A that the offence may be charged in circumstances where there has been a more prolonged incident. For example, consider a situation where person A and person B have been exchanging blows and person A is struggling to stand upright and no longer has the ability to deflect or resist further strikes from person B. Person B nevertheless deliberately targets the head or neck of person A, striking them a blow which can be shown to be 'the' cause of death.
- 6.16 The Law Society recommends that new section 171A be amended to make it clear:
- (a) What mens rea is required for the offence to be proved on (a) and suggests that recklessness should be the standard to avoid legal confusion with section 167(b).
 - (b) What mens rea is required for the offence to be proved on (b).
 - (c) Whether it is intended for the offence to capture scenarios where prolonged incidents occur, as provided by the example.

Cause of death

- 6.17 We understand that the new provision is intended to address cases in which a single strike results in death. In such cases, establishing causation would not ordinarily present difficulty. However, as noted above, the wording of proposed section 171A does not confine the offence to single-strike scenarios. If the policy intention is for the offence to apply in cases involving more than one strike – and no amendment is made to clarify this, as recommended at 6.16(c) – then an additional concern arises regarding the causation element. In multi-strike situations, attributing the fatal outcome to a specific

³⁴ This is critical because if it is not clarified, then the offence would be contrary to the established legal principle that serious criminal offences require the prosecution to prove some form of mens rea (or guilty mind) for every element of the actus reus: *actus non facit reum nisi mens sit rea*; Legislation and Design Advisory Committee *Legislation Guidelines: 2021 edition* at Chapter 24.

act becomes significantly more complex, creating uncertainty and potential inconsistency in application.

- 6.18 First, whilst likely unintentional, the wording of the section requires the prosecution to prove that a strike to the head or neck was the cause of death. This would be contrary to the general role of causation in homicide cases, where case law on section 158 of the Act (homicide defined) simply requires that the conduct of the alleged offender has contributed in a 'more than minimal' way to the death.³⁵
- 6.19 We recommend that the Select Committee seek advice on this issue and consider whether an amendment to the drafting of the provision is required.

7 Retail crime

- 7.1 AP 436 introduces a new infringement regime for low-level shoplifting and retail theft. It proposes to add this regime to the SOA. Clause 25 proposes to insert a new section 219A into the Act, relating to theft carried out in an offensive, threatening, insulting, or disorderly manner.
- 7.2 These amendments are the result of the retail MAG recommendations and purport to address the problem of increased low-level retail crime. These proposals were recommended as an option to specifically address the issue of low-level retail crime (theft of goods with a value of less than \$500 and \$2,000, respectively), especially where the level of prosecution following such theft is low.³⁶
- 7.3 The Law Society reiterates its concerns about the policy development process (discussed in more detail above), as well as the limited consideration of more rights-consistent alternatives, the lack of overall consistency with the standing criminal regime for retail theft (which is substantially unchanged³⁷ and remains an operative alternative to the infringement regime or the new section 219A), and the potential for discriminatory outcomes arising from multiple options for addressing equivalent offending. It also raises access to justice issues where it imposes a strict liability for conduct that ordinarily requires proof of a mental element (*mens rea*) – which we note remains required under the alternative criminal offence pathway.³⁸
- 7.4 It should also be emphasised that the introduction of the AP and clause 25 contradicts the advice given and preferences of the agencies consulted, including the Ministry of Justice and Police, who will be responsible for operationalising the regime.³⁹ Police further indicated that the regime changes will not make a material difference to Police prosecution decisions, or prioritisation of on-the-ground responses,⁴⁰ which

³⁵ *R v Tawa* [2019] NZHC 2451 at [23] – [24].

³⁶ According to the RIS only 16% of all reported victimisations for theft under \$500 resulted in court action and 59% were not pursued based on Police discretion, which includes issues such as prioritisation of incidents based on public safety concerns, sufficiency of evidence, or public interest in a prosecution, and application of alternative resolutions: at [122] – [125].

³⁷ Noting the exception of the repeal of section 223(d) of the Act – punishment of theft under the value of \$500.

³⁸ With the exception of the new offence inserted by clause 25, as discussed.

³⁹ RIS at [127] – [133], and [145].

⁴⁰ RIS at [127].

demonstrates that the regime is unlikely to be effective in achieving its intended purpose.

7.5 Accordingly, the Law Society recommends that the retail crime provisions do not proceed.

7.6 The concerns specific to each amendment are discussed in more detail here.

Unintended consequence of increase in maximum penalty for theft offending

7.7 The proposed amendments to sections 233, 241, and 247 of the Act remove the offences of theft and dishonestly obtaining and receiving under \$500 and replace them with corresponding offences where the value of the relevant property is increased to \$2,000. The maximum sentences for the existing offences are three months imprisonment. The proposed new offences have a maximum penalty of one year imprisonment.

7.8 The proposed increase in the maximum penalty will result in two consequences that are likely unforeseen:

(a) The proposed new offences will exceed the jurisdictional limit of community magistrates (offences with a maximum penalty of three months imprisonment or less) which will necessitate that any theft charge, even for an insubstantial amount, will have to be dealt with by a judge. This will, in turn, increase judicial workload and will likely contribute to greater delays in the court as discussed above in section 3 of our submission.

(b) The increase in the maximum penalty will also have the effect of bringing low-level theft charges within automatic eligibility for legal aid funding where the relevant financial criteria are satisfied. While this may be desirable from the point of view of access to justice, the process of applying for legal aid and having counsel assigned on low-level charges will likely result in remands for legal aid applications to be processed and thus in additional court appearances.

Theft carried out in an offensive, threatening, insulting, or disorderly manner

7.9 Proposed new section 219A introduces the phrase ‘offensive, threatening, insulting, or disorderly manner.’ There is a lack of clarity about what this phrase means, and indeed, whether some of the terms are appropriate to use in the criminal context. Additionally, new section 219A does not express a mental element required for the establishment of the offence. As discussed, this is necessary for the creation of a criminal offence and will likely be read in where one is not provided.⁴¹

7.10 We consider it likely that the words ‘offensive, threatening, insulting, or disorderly’ will be interpreted by the courts in accordance with the decisions of the Supreme Court interpretations of the SOA. In light of those decisions, it is convenient to discuss the terms ‘disorderly’ and ‘offensive’ together, as they are seen to overlap. The words ‘insulting’ and ‘threatening’ are dealt with separately.

‘disorderly’ or ‘offensive’

⁴¹ Above n 35.

7.11 Disorderly behaviour must be conduct that ‘constitutes a disturbance to good order which, in the time, place, and circumstances of the case, is at a level reasonable citizens should not be expected to endure.’⁴² This means that, arguably, all retail theft would be ‘disorderly’ as reasonable retailers should not be expected to endure it. As such, we consider it likely that ‘disorderly’ in regard to new section 219A will need to be interpreted narrowly so as not to defeat the purpose of the other offence provisions and the proposed infringement regime.

7.12 ‘Offensive’ behaviour, however, requires something more than just causing offence. *Brooker v Police* refers to behaviour:⁴³

capable of wounding feelings or arousing real anger, resentment, disgust or outrage in the mind of a reasonable person of the kind actually subjected to it in the circumstances in which it occurs.

7.13 More recent precedent goes further, suggesting that the generation of emotions such as anger and resentment is not enough to amount to ‘offensive behaviour’ on their own. It must also be the cause of offence to others to such an extent that public order is disrupted.⁴⁴

7.14 The Law Society notes that it appears unlikely that such a high standard is intended by new section 219A.

‘insulting’

7.15 As a general principle, the criminal law is concerned with conduct that causes harm to individuals or results in the loss of, or damage to, property. To a more limited extent, it also addresses behaviour that threatens the maintenance of public order. The public could reasonably expect that conduct causing such harm would attract criminal sanction. It is therefore unclear why ‘insulting’ behaviour has been included within the scope of criminal offending as proposed by new section 219A. While protection from insulting conduct may be relevant in certain human rights contexts, it does not reach the threshold that would justify the coercive intervention of the criminal law. Including ‘insulting’ behaviour as a criminal offence represents an unjustified expansion of the state’s punitive reach beyond its legitimate boundaries.

‘threatening’

7.16 The inclusion of ‘threatening’ as a term in new section 219A is likely to cause practical difficulties. This is because the Act already contains robbery and aggravated robbery offences under sections 234 and 235. These carry a maximum penalty of ten years imprisonment and fourteen years imprisonment, respectively.

7.17 This means that there is a risk that new section 219A, if not removed or amended, will lead to legal incoherence with equivalent offending being charged as different offences and significantly different consequences. We also note that whilst a section 219A conviction would fall within Clean Slate legislation, a robbery conviction would not. The type of charge proceeded with is also likely to have significant effects on bail decisions.

⁴² Adams on Criminal Law at SO4.02(1), referring to *Brooker v Police* [2007] NZSC 30.

⁴³ *Brooker v Police* [2007] NZSC 30 at [55].

⁴⁴ *Morse v Police* [2011] NZSC 45.

Legislating in a manner that knowingly produces such disparities is neither principled nor responsible law-making.

The timing issue

- 7.18 New section 219A and the proposed infringement regime discussed below are likely to create protracted arguments as to the timing of the behaviour. The question will be whether a theft was accompanied by behaviour of the stated kind, or whether that behaviour only occurred after the theft element was completed.
- 7.19 This is because in *R v Tahana*⁴⁵ the Court of Appeal held that a theft of bottles of liquor from a liquor store commenced when the bottles were removed from a shelf within the store without consent and continued while the bottles were carried out of the store. However, as soon as the bottles has been removed from the premises, the theft was complete. Behaviour after that could not affect the character of the conduct within the store.⁴⁶
- 7.20 Taking this approach, conduct within the liquor store which is threatening or offensive etc will support a section 219A charge; conduct from outside the store would not. In our view, it is not likely that this was the intention of the section, but given current case law, it will be the effect.
- 7.21 If clause 25 is not removed, we recommend that the Committee refer the clause back to officials to be redrafted, specifically addressing the elements of the offence to ensure there is clarity, legal coherence and practical workability.

Retail theft infringement regime

- 7.22 Similarly, the Law Society is of the view that the proposed infringement regime for retail theft is, as presently drafted:
- (a) Legally incoherent;
 - (b) Demonstrably risks discriminatory application;
 - (c) Provides inadequate safeguarding of young people and children;
 - (d) Risks unintended consequences with a detrimental impact;
 - (e) Lacks clarity.

Legal incoherence

- 7.23 It is logically inconsistent to characterise property as 'stolen' where no intent to steal has been established. The definition of the infringement offence does not require that property removed from retail premises be taken with the intent to steal.⁴⁷ However, it may equally have been removed mistakenly or inadvertently. Treating all such removals as theft reflects a misunderstanding of the relevant law.
- 7.24 The Law Society notes that if the infringement regime proceeds alongside new section 219A while the current theft offences also remain intact, it will result in equivocal

⁴⁵ *R v Tahana* [2021] NZCA 497.

⁴⁶ At [40] - [43]; endorsed by *Watson v R* [2024] NZCA 625.

⁴⁷ Clause 14AA(1).

offending having disparate outcomes where one offender may be convicted and even potentially given a sentence of imprisonment, while others would have an infringement fine to pay and no conviction on their record. This approach lacks a coherent rationale and creates conditions that are highly susceptible to discriminatory application.

Risk of discrimination

- 7.25 There is a significant risk of discriminatory, or perceived discriminatory, application under the proposed framework, as offenders who are unable to pay may be treated differently from those with the financial means to pay an infringement fee. This risks creating an inequitable two-tiered system in which the consequences of identical conduct vary according to an individual's economic circumstances. For example,
- (a) An affluent young person who is perceived as engaging in minor, good-natured misbehaviour and is consequently issued only a warning or an infringement; and
 - (b) A young person from a low-income background, who instead faces prosecution for theft, with any accompanying verbal behaviour potentially exposing them to an additional charge under proposed section 219A.
- 7.26 These concerns are amplified by well-documented evidence of systemic bias within policing practices, which increases the likelihood that marginalised groups (including Māori and Pacific communities) will be subject to more frequent, more serious, and more punitive enforcement responses.⁴⁸
- 7.27 As a result, the Law Society recommends that, if the infringement regime is not deleted and the Bill proceeds, the issue of discretion be explicitly addressed to ensure clarity and accountability. This could, for example, involve the addition of criteria indicating the circumstances in which the respective responses (i.e., infringement vs offence) should be used.

Inadequate safeguarding of children and young persons

- 7.28 We note that there is no general age threshold for liability for infringement offences, and section 25 of the Bill of Rights does not apply as an infringement regime is generally seen as sitting outside of the criminal system. This also means that it is unclear whether the protective requirements of the Oranga Tamariki Act 1989 apply.⁴⁹
- 7.29 A similar issue is discussed above in relation to the citizen's arrest amendments. We recommend here, as we do above, that amendments are made to clarify whether these provisions apply in the instance of a child or young person receiving an infringement notice under the proposed regime.
- 7.30 In our view, this would be fairer and reduce the likelihood of inconsistent Police decisions and actions, and may go some way to addressing the concerns of Mana Mokopuna as raised in the Supplementary Departmental Disclosure Statement (**Supplementary DDS**) on the AP.⁵⁰

⁴⁸ Understanding Policing Delivery Independent Panel *Understanding Policing Delivery: Independent Panel Report Two* (November 2024).

⁴⁹ Sections 209, and 215, Oranga Tamariki Act 1989.

⁵⁰ At 3.6.

7.31 More broadly, we note that children and young people are unlikely to have the means to pay such a fine, and as a result may be taken to court to enforce payment. Alternatively, the effect may be that children and young people are instead channelled through the offence provisions. Further consideration needs to be given to the unintended and inappropriate outcomes this could result in.

Unintended consequences

7.32 Another concern with the proposed infringement regime is that a person who receives an infringement notice is not 'convicted' and therefore cannot rely on the protections of the Criminal Records (Clean Slate) Act 2004. If a person is later asked – whether by a prospective employer, insurer, or other agency – about infringement offences under this regime, they will be required to disclose them regardless of how old they are. This has potentially significant consequences for employment prospects and insurance, and is a further reason to be concerned about the disproportionate impact the provision may have on young people.

7.33 It is also inconsistent that an individual convicted of theft but not sentenced to imprisonment will, in time, be able to state that they have no criminal record, while a person issued with an infringement notice for equivalent conduct would be required to disclose it indefinitely. At present, there is no widespread practice of employers, for example, seeking prospective or current employees' infringement records; however, this may change should the proposed infringement regime be implemented, because the relevant conduct is analogous to theft and thus has greater relevance to employers than would traffic infringements, for example. It appears unlikely that this consequence was anticipated. We recommend that the Committee amend the proposed regime to address this.

7.34 Secondly, a consequence of relying on an infringement offence is that criminal liability will not apply to a person who has received said property removed from a retail premises without payment. This is because, per section 246 of the Act, the receiving person has not committed an offence because the person who removed the property has not committed an imprisonable offence.⁵¹ Further, it is unlikely that the innocent agent principle⁵² whereby a person can be charged as committing theft via an innocent agent if they recruit someone to remove the goods from the retail premises, could be attached to an infringement offence. It is not clear whether this is an intended outcome.

Lack of clarity

7.35 New section 14AA provides a standard fine for the infringement offence. It does not guide whether an infringement notice should be issued for each item of property removed from the retail premises, or whether it must only be for the total value of the items. In our view, the Bill should address this, and provide for how alleged offenders may challenge the infringements, especially where multiple infringements might arise from the same event.

⁵¹ See section 246, Crimes Act 1961. The offence of 'receiving' stolen goods requires that the property received was stolen or obtained by any other imprisonable offence.

⁵² See *R v Patterson* [1976] 2 NZLR 394.

7.36 Lastly, for completeness, we draw the Committee's attention to the Supplementary DDS (at 2.5), which notes that the Police IT system used to manage infringement regimes is end-of-life and cannot be updated to amend or add new infringement categories. It is unclear when this capacity issue will be resolved. As a result, in our view, there is a meaningful opportunity (and good reason) for the underlying policy analysis to be revisited, and the proposals reconsidered to ensure that any eventual legislative framework is coherent, credible, and capable of being practically implemented.

8 Other matters

8.1 We note that clause 30 proposes to repeal section 10 of the SOA. Section 10 sets out that every person is liable to imprisonment for a term not exceeding six months or a fine not exceeding \$4,000 who assaults any constable, or any prison officer, or any traffic officer, acting in the execution of his duty. Whilst it appears that the decision to repeal this section lies in the justification that proposed new sections 189, 192 and 193 will cover this conduct, we consider that it would be beneficial to retain the section as practically it is used to cover offending against a police officer where that conduct is more minor than that considered by the other assault provisions. For example, where a push or shove has occurred, rather than more serious conduct resulting in the more serious charge that would be eligible to be decided by a jury trial.

8.2 The Law Society recommends that section 10 of the SOA be retained.



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