New Zealand Law Society
Te Kāhui Ture o Aotearoa

Policing Amendment Bill

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

22 April 2026

1 Introduction

1.1 The New Zealand Law Society Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to comment on the Policing Amendment Bill (**Bill**). The Bill proposes two main changes to the Policing Act 2008:

(a) Part 1 of the Bill would authorise New Zealand Police (**Police**) to record images and sounds in public places, and collect personal information for lawful purposes, including intelligence. The proposed amendments are, in part, a response to the recent Supreme Court judgment in *Tamiefuna v R*,[1] and the findings of the 2022 "Joint Inquiry by the Independent Police Conduct Authority and the Privacy Commissioner into Police conduct when photographing members of the public" (**Joint Inquiry**).[2] However, they go further than the pre-*Tamiefuna* position.

(b) Part 2 of the Bill expands the temporary road closure powers currently in the Policing Act to include a broader range of areas that may be subject to closure, broader grounds for closure relating to antisocial vehicle use, and new powers for the Police to enforce non-compliance with temporary area closures.

1.2 This submission has been prepared with input from the Law Society's Human Rights and Privacy and Criminal Law Committees.[3] The Law Society **wishes to be heard** on this submission.

Summary of the Law Society's position

1.3 We consider that the proposals are concerning and recommend the Bill not proceed in its current form. As detailed further in the following parts of this submission, the proposed legislative amendments would extend law enforcement powers in circumstances where the Law Society considers that there are either questionable and/or poorly articulated justifications. The reasons are also unclear for the need to progress the proposals with such rapidity, without any public consultation. Intelligence-gathering proposals in the Bill, in particular, risk reaching into the daily lives of ordinary New Zealanders to an extent that has not been widely publicly communicated or consulted on, and which has the risk of disproportionately affecting Māori and Pasifika communities.

1.4 There are concerns in both parts of the Bill relating to:

(a) **Process.** The proposed reforms' speed, which has affected the ability to carry out appropriate consultation and to address, for example, concerns about the proposals' consistency with te Tiriti o Waitangi | Treaty of Waitangi (**Treaty**).

(b) **Risks new intelligence-gathering powers could be inappropriately used, and of adverse outcomes.** Omissions in consultation about the proposals are significant and concerns are heightened, given the well-known over-

1 [2025] NZSC 40.

2 Privacy Commissioner and Independent Police Conduct Authority "Joint inquiry by the Independent Police Conduct Authority and the Privacy Commissioner into Police conduct when photographing members of the public" (September 2022).

3 More information about the Law Society's law reform sections and committees is available on the Law Society's website: https://www.lawsociety.org.nz/professional-practice/law-reform-and-advocacy/law-reform-committees/.

representation of Māori and other groups in the criminal justice system. There is a risk that in the event that Police are authorised to engage in substantially greater information-gathering practices, these will be affected by the same bias and profiling practices that previous inquiries into policing and the criminal justice system have identified. The Law Society acknowledges the intentions on the part of Police and justice sector agencies to address and eliminate systemic concerns of this kind, but the risk remains.

(c) **Consistency with modern privacy expectations**. The law should keep pace and be consistent with modern privacy expectations, as articulated by the Supreme Court in *Tamiefuna*. In the circumstances, and given the risks noted above of the proposed approach, insufficient justification is provided for not only legalising the conduct impugned by the Supreme Court in *Tamiefuna*, but further expanding state power. We note that key government agencies and the Privacy Commissioner have likewise raised their concerns about the necessity for and wisdom of the proposals.

(d) **Doubts about the appropriateness and workability of the proposed new enforcement regime.** As a minimum, there should be regular reporting on the operation of new enforcement powers in respect of road and other public area closures, to enable ongoing monitoring and review of the proper exercise of the proposed new powers.

(e) **Imprecise drafting**. Elements of the new provisions are vague, leaving concerns about lack of clarity and ambiguous interpretation. In the interests of clarity, and confining the scope of the new powers, we recommend tighter drafting of some aspects, including setting out appropriate statutory criteria for the exercise of new powers where applicable.

2 Legal context

2.1 The central question in *Tamiefuna v R* was whether a photo taken by a police officer on a public road during a routine traffic stop could be used to convict a person of an unrelated crime. The Supreme Court found that taking the photo was unlawful and unreasonable in terms of section 21 of the New Zealand Bill of Rights Act 1990 (**Bill of Rights**), because the Police officer was not investigating any specific crime when he did so. Uploading the photo to the Police database and keeping it there was also unlawful and unreasonable. If the officer had been investigating a specific crime, there is a legal framework that would have allowed the taking of photos and other information by Police.

2.2 The impropriety in taking and retaining the photo was such in Mr Tamiefuna's case that the Court said it should have been excluded from the trial under section 30 of the Evidence Act 2006. That exclusion vindicated the breach of Mr Tamiefuna's rights and upheld the integrity of the justice system. The Court's decision set a baseline approach for the exclusion of similarly obtained evidence in other like trials.

2.3 According to the Bill's Explanatory Note, the findings of the Court in *Tamiefuna* and the 2022 Joint Inquiry have together "narrowed the law".[4] The Departmental Disclosure

[4] General Policy Statement at 1.

Statement (**DDS**) further says that these developments have "created uncertainty about the Police's lawful authority to record images and sounds in public places and private places where the Police is lawfully allowed, and to use this information for a wide range of policing purposes, including for intelligence".[5]

2.4 The Law Society doubts the correctness of the view that the findings of the Supreme Court in *Tamiefuna* "narrowed the law". The Supreme Court clarified the law by finding that certain Information Privacy Principles (**IPP**) represent modern societal expectations of privacy that protect New Zealanders from arbitrary state data collection and permanent storage, even when in public. Such a finding was plainly available to the Court, although it differed from the "understanding" on which Police had been operating.[6] Simply because state conduct has not previously been impugned does not mean that it was lawful to begin with. Elsewhere, one of the Regulatory Impact Statements (**RIS**) accompanying the Bill clarifies more precisely that the *Tameifuna* position and findings of the Joint Inquiry represented a significant narrowing of Police's previous understanding of the circumstances in which taking photographs in public would be permissible. It considers that the Supreme Court did change the common law position with regard to what would be considered a search (or seizure) for the purposes of section 21 of the Bill of Rights (ie, recording images of a person in public), and by finding that a "zone of privacy" may exist in public places.[7]

2.5 The proposed legislative amendments now seek further clarification to the law by legalising the type of intelligence-gathering/evidence collection approach which the Court had found to be unlawful. Part 1 of the Bill, while purporting to respond to *Tamiefuna*, goes both further than the law was before the judgment and, as outlined further below, further than presently permitted by the Privacy Act 2020. In the Law Society's view, such a proposal needs to be weighed in the light of the Supreme Court's analysis of modern societal expectations of privacy, and risks of arbitrary state data collection. Doing so has been hindered by a rushed process.

3 Rushed legislative and policy process: limited consultation and consideration of key issues

3.1 The DDS notes that regulatory impact assessment of the proposals has been "constrained by limited consultation and supporting evidence", and that the policy development timeframes prevented public consultation on the proposals in the Bill.[8] The lack of public consultation on proposed legislative amendments regarding collection of personal information for policing and intelligence purposes is concerning. Select Committee was identified as the proper forum for public input,[9] however we do not agree that this is sufficient in extent or in timing.

5 Departmental Disclosure Statement: Policing Amendment Bill (5 March 2026); General Policy Statement at 1.

6 New Zealand Police "Regulatory Impact Statement: Amendments to the Policing Act 2008" (11 September 2025) at [13]–[22].

7 At [25]–[26].

8 DDS, above n 5 at 2.3.1; RIS, above n 6 at 5–6.

9 RIS, above n 6 at [50].

3.2 The rationale for accelerated legislative reform remains unclear. Insufficient reasons are provided for why an orthodox policy and legislative process, enabling adequate consultation time, was not followed. Indications of why the Police's current operating state is risky or deficient are also limited, but appear premised on the view that the post-*Tamiefuna* revised practice, whereby "Police now has guidelines that taking photographs of members of the public can be a lawful collection of information during the execution of Police duties for intelligence purposes, but only *where there is a reasonable link to a particular or likely criminal investigation"* is not sufficient or workable going forward.[10] As outlined in the RIS, Police has been operating for the past few years (post-*Tamiefuna*) under more constrained settings for recording images in public, requiring any photographs taken for intelligence purposes to be "related to an actual or likely investigation".[11] This is said to be causing uncertainty, leaving Police concerned about risks of future legal challenge, and the "opportunity costs", which Police acknowledge are unable to be quantified.[12] On the potential for ongoing uncertainty arising from *Tamiefuna*, the RIS analysis acknowledges that the perceived risks have not been realised, though suggests this is due to the comparative recency of that judgment.[13]

3.3 On the other hand, the RIS also refers to "no quantifiable evidence that the expected benefits from the preferred options will be realised, and there could be risk of unintended consequences".[14] Key agencies including the Ministry of Justice, Te Puni Kōkiri and the Privacy Commission have raised their own concerns:[15]

(a) The Ministry of Justice is noted as concerned that the proposals do not provide sufficient assurances there will be clear and transparent protections to ensure that the collection, retention, and use of personal information remains proportionate to the policing value of that information.

(b) The Privacy Commissioner has publicly expressed his concerns about the impact of over-broad or insufficiently clear intelligence-gathering powers on the privacy rights of all New Zealanders. The Commissioner is concerned the proposals go further than returning Police to its previous operating state (pre-*Tamiefuna*), and that the new powers and wide Police discretion they entail could have a chilling effect on people's civil and political rights:[16]

> I have real concerns about Police's wide discretion and the lack of clear boundaries on intelligence gathering activities that this Bill proposes, and I strongly believe limits are needed on these powers. …
>
> Collecting information about people is a vital part of Police's role in keeping the public safe and preventing crime but it also needs to happen within an agreed set of reasonable boundaries. From a privacy perspective Police should only be

10 RIS above n 6, at [36]
11 RIS above n 6, at 5.
12 RIS above n 6, at 5.
13 RIS above n 6, at 5–6 and [36].
14 RIS above n 6, at 5–6.
15 RIS above n 6, at 3.
16 RIS above n 6, at 3 and [52]–[53]; and Statement of the Privacy Commissioner, *Police Amendment Bill could have chilling effect on people's rights* (20 April 2026).

> collecting and retaining the information about people needed to carry out its functions. …
>
> My concern is the impacts on people's civil rights. It's possible this Bill could allow Police to take video of young people hanging out in a park, not because they're connected to a possible crime, investigation, or public safety reason, but to keep tabs on a group of people because that video 'might' be useful one day.

3.4 The DDS and RIS also note time pressures have limited consideration of the likely impact of proposals on Māori victims, offenders and communities,[17] and that the timeframes have not enabled consultation with any population groups, including Māori. Further, they note "it could therefore be argued that the Crown has failed to recognise its obligations to protect the rights and privileges of Māori, therefore potentially being inconsistent with the Crown's obligations under the Treaty, as well as negatively impacting Police's ability to uphold the commitment to Māori and the Treaty of Waitangi":[18]

> Limited consultation has constrained Police's ability to identify any specific effects of the Bill on Māori victims, offenders, and communities. However, it is widely recognised that Māori are overrepresented in the criminal justice system, and are therefore likely to be impacted by the Bill. Police consulted Te Puni Kōkiri during the policy approvals phase, who alongside noting the likely impacts for Māori, raised concerns that the lack of public consultation, including with iwi, hapū and Māori, has not enabled testing of the social licence Police may have to undertake the activities in the Bill, or for improving trust and confidence in Police – of which, Māori have lower levels of compared to other ethnicities.

3.5 Real risks arise from the shortcomings of this policy process and consultation. The response in the RIS is that such concerns will be operationally managed.[19] However, in weighing this, the proposals must be understood against the context of the Joint Inquiry's previous findings that Police had been routinely and illegally photographing and filming young people and adults. The Joint Inquiry found Police practices and procedures had breached New Zealand and international law covering the treatment of children and young people, and, crucially, that officers did not understand privacy laws. As signalled in the DDS, the statistics regarding the over-representation of Māori and Pasifika in the criminal justice system are well known, and the matters and concerns in question closely affect Māori and other communities.

3.6 The Law Society is concerned that in the event the Police's approach to gathering intelligence/evidence rejected in *Tamiefuna* – now to be not only reinstated but extended – does lead to police bias and profiling, it in turn risks undermining, longer-term, the effectiveness and credibility of the wider justice system. In the Law Society's view, the response in various papers accompanying the Bill — that concerns identified will be addressed operationally — is not persuasive, nor adequate as a substitute for

17 DDS above n 5, at 3.2.

18 DDS above n 5, at 3.2; RIS above n 6, at [127]–[131] and [138].

19 At [130]: "Police will continue to consider and give effect to its obligations to Māori and the Treaty, including ways in which any disproportionate impacts to Māori can be appropriately mitigated, as well as data sovereignty issues. Police will manage these considerations in the operationalisation of the Bill, including through the development of internal operational practices, policies and guidance."

respecting proper legislative and policy process, and designing a statutory framework buttressed by adequate safeguards and consistent with privacy norms.

4 Breadth of proposed Part 1 provisions and privacy concerns

4.1 The combined effect of the new provisions will be to substantially broaden Police collection powers, broader than is currently permitted by the Privacy Act.

4.2 IPP 1 of the Privacy Act stipulates that when personal information is collected it must be:

(a) for a lawful purpose; and

(b) necessary for that purpose.

4.3 The Bill widens the scope of collection to remove any requirement for it to be "necessary" for a lawful purpose, and to permit the collection for any other lawful purpose "connected with a function or activity". The "functions" of Police provided for in section 9 of the Policing Act are broadly drafted: the list of powers is non-exhaustive, including keeping the peace, maintaining public safety, law enforcement, crime prevention, community support and reassurance, national security, participation in policing activities outside New Zealand, and emergency management.[20] "Activity" (as further discussed below) is not defined.

4.4 To give an example of the new powers that are proposed: if a person were stopped at a traffic stop and breath tested, currently Police would be entitled to collect their breath test result (necessary for the lawful purpose they are carrying out), but not their name or photograph (not necessary for that lawful purpose) unless the breath test showed that they were over the limit.

4.5 Under the new law, it is at least arguable that Police could take a person's photo regardless of whether their test is over the limit, as there is no longer a "necessity" requirement and, arguably, collection of a person's photo while they are being breath-tested could be "connected with" Police functions, such as keeping the peace and community support.

4.6 New section 45D in clause 4 of the Bill ostensibly limits Police collection of personal information for intelligence purposes. However, it also says that: "a Police employee— (a) must not collect information for an intelligence purpose *unless they consider that the information will or may support* the Police in performing a function, or carrying out an activity, of the Police" (emphasis added). The words "or may" indicate an intention that the Police could collect information prospectively, without certainty about how (or even whether) it could be used in the future. The Explanatory Note to the Bill confirms this, stating that Police "may collect or record information that *may* be used *now or in the future* for any lawful purpose, including for intelligence purposes, to the extent that it supports a policing function".[21]

20 Policing Act 2008, s 9.

21 Explanatory Note at 2.

4.7 Some of the risk may be mitigated by IPP9 of the Privacy Act,[22] which would continue to apply. IPP9 provides that an agency must not hold personal information for longer than the agency lawfully requires it. However, the information gathering provisions in the Bill may themselves give Police a lawful reason to retain information. It is also expected that Police would retain information in accordance with disposal authorities under the Public Records Act 2005, meaning that once information is in the police national intelligence system, it would only be stripped out whenever the disposal authorities stipulate that it must be. In the absence of clear statutory provision to the contrary, once the information is in the Police system, there is a likelihood it will stay there even if it proves to be speculative or is never actually needed for policing functions.

5 Intelligence-gathering powers: specific drafting issues

5.1 According to the Bill's Explanatory Note, part of the justification for these proposed amendments is the uncertainty that *Tamiefuna* and the Joint Inquiry have caused. However, in the Law Society's view the draft provisions themselves create uncertainty. A number of the proposed elements in the new clause 4 provisions are imprecise, as detailed below.

Clause 4, new section 45A (purposes for which Police may collect information)

5.2 Under new section 45A, Police "may collect information for 1 or more of the following purposes", which includes "an intelligence purpose connected with a function, or an activity, of the Police": new section 45A(c).

5.3 If the Bill proceeds, the Law Society recommends clarifying three aspects of this proposed phrase, as follows:

(a) There is no definitional guidance regarding the meaning of "intelligence purpose".

(b) What comprises a Police "activity" for the purpose of the Bill is likewise undefined. The closest may be the definition of a "policing operation" under section 31(3) of the Act, but if this is what is intended, it would be desirable to clarify the point.

(c) The requirement that the intelligence purpose is "connected with …" (which also appears in new section 45A(d)) is similarly open-ended and will, if not further refined, require case law development to clarify its scope. What does it mean to be "connected with" a function or an activity? How "connected" does information have to be to "support" a policing function?

Clause 4, new section 45C (recording by Police employee: private property)

5.4 Clause 4, new section 45C is also concerning. The proposed provision essentially gives Police powers to record information on private property without a search warrant

[22] See further the DDS, above n 5 at 2.3.2: in the drafting of the Bill, it was determined that no exclusions from the Privacy Act Information Privacy Principles will be required.

provided they are lawfully there, and that the recording of the information does not require use of a surveillance device.

5.5 Our legal system (including through development of the common law) has long accorded significant respect to private property rights, and this should inform consideration of new search powers (or similar). The Legislation Guidelines published by the Legislation Design and Advisory Committee set this out clearly and are an appropriate starting point. The Guidelines note:[23]

> Search powers balance important sets of values. On one hand is respect for liberty, dignity, bodily integrity, privacy, and the right to peaceful enjoyment by people of their property. These values are affirmed by the right in section 21 of NZBORA to be secure against unreasonable search and seizure…
>
> On the other hand, and balanced against that right are regulatory and law enforcement objectives underlying particular powers…
>
> A well-designed set of search powers will strike a balance between respecting individual rights and providing an agency with the vital tools it needs to give effect to a policy or Act. Generally, the more intrusive the search power is, or the more significant the consequences for the individual of the use of the power, the greater the need is for both a strong policy justification and safeguards on the exercise of the power. ....

5.6 The Legislation Guidelines further outline a framework for determining whether new search powers should be granted and, if so, how they should be framed:[24]

(a) New search powers should be granted only if the policy objective cannot be achieved by other means.

(b) All searches for law enforcement purposes should be carried out pursuant to a warrant, unless there are good reasons why a warrant should not be required.

(c) New search powers for law enforcement purposes should be exercisable only if there are "reasonable grounds to suspect" the relevant factual situation has occurred, and "reasonable grounds to believe" that evidence will be found or that a particular thing may be achieved during the course of that search.

(d) The rules and procedures under Part four of the Act should apply.

(e) The proposed powers should be held by individuals with the appropriate level of expertise and accountability.

5.7 This does not appear to have been the approach taken to development of new section 45C. The Law Society suggests that extension of such a power (which involves a different mix of policy considerations compared to recording in a public place) would be more appropriately considered in the wider context of a future Search and Surveillance Act review, rather than inserted in this ad hoc manner. While we recognise the proposal may seem a natural extension of what Police can do incidentally in the course of conducting other lawful activity (whether in a public place or on private property) the scope and range of relevant considerations when in a private context goes significantly further than the *Tameifuna* issue, which only addressed police powers in public places. A proposal of

23 Legislation Design and Advisory Committee *Legislation Guidelines* (2021), Chapter 21 at 110.
24 *Ibid*.

this kind warrants specific public consultation. We recommend this clause is removed from the Bill, pending further policy development and consultation.

6 Part 2: expanding temporary closure powers

6.1 Part 2 of the Bill relates to expanding the powers of Police to temporarily close certain areas, as they presently can with roads.[25] Connected with this is provision for a new enforcement regime, including powers to issue infringements, require biographical information, and powers of arrest and detention.

6.2 Another Bill currently before the House, the Anti-social Road Use Legislation Amendment Bill (**ASRU Bill**), likewise proposes new powers to close an otherwise accessible public area. [26] It does so, however, on more limited grounds. The drafting of the present Bill is based in part on the ASRU Bill's proposed changes, which were reported back to the House by the Justice Committee on 15 December 2025.[27] A wider enforcement package has also been developed, to address issues that Standing Orders did not permit to be included in the ASRU Bill.[28]

6.3 We also note, however, that this Bill has a broader scope than providing the supplementary enforcement part of the new powers. While not spelt out clearly, it does expand what is proposed in respect of closure of public areas, compared to the precursor ASRU Bill. The overlap in drafting between the two Bills leaves the intended interaction between them unclear.

6.4 The lack of public consultation and adherence to a usual legislative processes has also made it difficult to clearly understand what is intended and to make informed comment on it. We have assumed that – regardless of whether the relevant Policing Amendment part of ASRU Bill does eventually proceed – the Policing Amendment is intended to either replace provisions that will then be deleted from the other Bill, or supersede it.

6.5 We presume that in due course the two Bills' respective content will be reconciled, so that they align more cleanly than presently appears to be the case, if/when they respectively proceed.

Scope of the powers

6.6 Part 2 of the Bill proposes broad new powers, additional to those presently provided in section 35 of the Policing Act (temporary closing of roads).[29] According to the DDS, the

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25 Policing Act 2008, s 35.

26 For the Law Society's earlier submission, see New Zealand Law Society "Antisocial Road Use Legislation Amendment Bill" Antisocial-Road-Use-Legislation-Amendment-Bill.pdf (29 September 2025). However, the relevant matters from that submission (ie, relating to temporary road / other public area proposals) have been reincorporated here.

27 There are some differences – for example, this Bill omits reference to a proposed new "frightening and intimidating" convoy offence in the definition of an antisocial road use offence in new section 35(4). This offence does not currently exist in the Land Transport Act 1998 (though will presumably be introduced by way of the ASRU Bill if/when that Bill proceeds).

28 RIS, above n 6 at [168].

29 Section 35 provides for temporary closing of roads on the following grounds:

35 Temporary closing of roads

principal objective of Part 2 of the Bill is to enable the effective removal of people (including bystanders) from a temporarily closed area within specified circumstances.[30] This is through an escalated pathway of enforcement and penalties for non-compliance. The alternative would be that Police may be unable to remove anti-social road users within a closed area, even after an infringement notice is issued, where Police is unable to issue infringement notices, or where due to the scale of activity, it is impractical for infringement notices to be issued.[31]

6.7 The ASRU Bill proposed giving Police a new power to close roads *and other public areas* temporarily, *where certain anti-social driving behaviour is currently/or is reasonably expected to occur* (emphasis added). It confined the exercise of the powers to where a constable believes on reasonable grounds that any of the listed antisocial road use offence activities are being committed or may reasonably be expected to be committed. Clause 6, new section 35 of the present Bill extends the proposal, incorporating significant elements of both current powers in section 35 and the ASRU Bill's proposals. Two concerns arise from this.

6.8 First, proposed safeguards on the exercise of the powers are weak, providing only that the Commissioner of Police is responsible for providing appropriate internal guidance for the deployment of these powers. This includes ensuring that police officers have training and experience in the maintenance of public order through their ordinary duties. Police officers are also expected to be sensitive to the rights and freedoms they are limiting when using some powers, and to do so only where it is necessary in a manner that is consistent with reasonable limitation of the freedoms.

6.9 Second, the Law Society considers that more explicit public information about the scope changes, and their rationale, would have been desirable. The somewhat broader scope of Part 2 of the Bill appears insufficiently acknowledged in the DDS, which explains only that proposed powers from the ASRU Bill (which would have amended the Policing Act) are "carried over".[32] Differences between them are, however, acknowledged in the RIS, and apparent in the respective pieces of Bill of Rights advice (**BORA advice**).[33] The RIS

> (1) A constable may temporarily close to traffic any road, or part of a road, leading to or from or in the vicinity of a place, if the constable has reasonable cause to believe that—
> (a) public disorder exists or is imminent at or near that place; or
> (b) danger to a member of the public exists or may reasonably be expected at or near that place; or
> (c) an offence punishable by 10 or more years' imprisonment has been committed or discovered at or near that place.

30 DDS, above n 5 at 2.6.

31 RIS, above n 6 at [198].

32 DDS, above n 5 at 2.3.2.

33 RIS, above n 6 at 5 and 6 and [171]–[172]. Refers to "[providing] the most benefit for Police, with the ability to temporarily close an area under an exhaustive set of circumstances" not confined to those in the ASRU Bill (which Crown Law had vetted as compliant). "These proposals may infringe some existing human rights, as they go beyond the proposals in the ASRU Bill, where the Attorney-General concluded that the proposed area closure power is consistent with NZBORA. However, given the public safety objectives underpinning the proposals, any limitations are likely to be justified." Ministry of Justice "Consistency with the New Zealand Bill of Rights Act 1990: Policing Amendment Bill" (5 March 2026). Compare advice provided on the ASRU Bill at [27]: "The Bill will add a further power to close a publicly accessible place *that is being used for antisocial road use offending or where people are operating vehicles with excessive noise or in such a*

identifies the opportunity "to improve consistency and operational effectiveness" by taking a broader approach: that is, "expanding existing temporary road closure powers to include all public and private areas accessible to the public by vehicle (e.g. parks, river catchments, beaches, reserves, golf courses, and car parks), for **all** existing road closure scenarios (alongside the new grounds being introduced by the ASRU Bill)."[34]

6.10 The Law Society notes that a clearer understanding of the rationale for these changes is relevant to assessing proportionality of the proposals. We acknowledge the more general underlying rationale for the new powers that are sought. There may well, at times, be public disorder which prompts road (or "place") closures and as to which Police believe it is necessary to close an area and stop people entering it, and they want powers to deal with this. The difficulties in enforcement and the desirability of "closing" a space are acknowledged, as is the prospect that disturbances may involve other areas (parks etc, other public spaces such as river beds) which are not roads. Against this, however, there are also valid concerns regarding the risks of undue expansion, in that political protests involving disorder may lead to closure of roads and accessible places, and thus prohibitions on entry and potential arrests.

6.11 The key concept is public disorder and whether the closure of an area is justified in the first place. This provides a threshold, but it is a threshold that can be uncertain and for which police discretion can only be tested after the event. In regard to roads, these are to some extent existing powers. Nevertheless, unlike for the former ASRU Bill, the Bill heightens the risk of overreach. The Bill combines antisocial road user dimensions with other, less clear concerns, and vague references to "public safety objectives".[35]

6.12 There remains a concern that - especially with road closures in the public disorder category - there are vague phrases involved in the triggering of the powers ("disorder") and the risk of creep in their use into the field of legitimate protest. Notwithstanding that "disorder" is a threshold, it is one that (just as it is in prosecutions of disorderly or offensive behaviour) would have to be evaluated after the event.

6.13 As a minimum, there ought to be greater safeguards as recommended below:

(a) Statutory preconditions; and

(b) A reporting requirement.

Statutory preconditions for exercise of the temporary closure powers

6.14 We reiterate our agreement with the BORA advice on the ASRU Bill, that "it would be preferable for the pre-conditions for the use of these powers to be set out in the Policing Act."[36] This could go some way to reducing the risk that arises from an expanded power with uncertain parameters.

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way that will cause damage to public spaces and amenities." At [28] "The exercise of such powers can plainly be justified where there is a large and unruly gathering. Those who participate in that type of antisocial road use gathering are often indifferent to the danger they create and the damage and nuisance they cause …"

34 At [171]–[172].

35 RIS, above n 6 at 5 and 6.

36 See advice on the ASRU Bill at [30]

6.15 We suggested, in the submission on the ASRU Bill, as examples of potential preconditions that could be considered:

(a) That the constable has reasonable grounds to suspect that, if the road or place is not immediately closed, either or both of the following may occur:

(i) The person(s) will leave there to avoid arrest: or

(ii) The ASRU offence that is being committed, or about to be committed, would be likely to cause injury to any person, or serious damage to, or serious loss of, any property, or there is risk to the life or safety of any person that requires an emergency response.

6.16 We reiterate that the inclusion of more specific preconditions would be desirable, though the above would need to be revised for the broader powers the Bill creates.

Recommendation for a reporting requirement

6.17 In the Law Society's view, there needs to be, at a minimum, reporting and annual returns of all invocations of the proposed new clause 6 powers (replacing section 35: substituting temporary closing of roads with temporarily closing accessible areas) such that it can be examined and evaluated after the event, if not in individual prosecutions.

6.18 One option for a requirement to report annually on use of the powers for transparency / accountability would be to report annually to the Independent Police Conduct Authority (**IPCA**). As the RIS notes, the IPCA can conduct thematic reviews, which focus on both broader issues and general themes of concern.[37] Reviews of this kind provide actionable recommendations to Police for improvements in policy or practice. The OPCA/IPCA Joint Inquiry referred to earlier is an example of one such review, and may provide a suitable backdrop for proposing an ongoing function for the IPCA, as we recommend below.

Enforcement measures

6.19 Proposed new enforcement measures in clauses 7 to 12 of the Bill would provide powers including that Police may stop a vehicle, move and/or detain a person, and require provision of biographical details to enable an enforcement notice to be issued.

6.20 We make the following preliminary comments:

(a) Some agency feedback is noted to have questioned whether additional arrest powers are necessary given Cabinet's agreement to limit non-compliance to an infringement notice, and the lack of previous issues with enforcing existing powers in section 35.[38]

(b) The appropriateness in this context of infringement notices (given the subjectivity of public disorder, etc) is open to question. Further, and acknowledging Police hold operational expertise and the Law Society is concerned foremost with matters of legal principle and of workability, we query

37 RIS, above n 6 at [154].
38 RIS, above n 6 at 3.

whether the new powers are any more workable than reliance on the offence of obstruction.

6.21 The existing powers in section 35 of the Policing Act are not accompanied by enforcement powers and rely instead on the offence of obstruction to deal with those who ignore legally proclaimed road closures. In favour of the proposed expanded powers, we acknowledge that accompanying prohibitions with specific offences and enforcement powers is not itself unusual. If infringement offences are to be provided for, then reckoning with those who do not disclose identity and thus cannot be specified in any "ticket" given or posted to them, is a fairly obvious need. It is understandable that this leads to proposals for a further offence to apply to those who do not reveal their biographical details.

6.22 On the other hand, the preference for an infringement offence regime may also be seen as misplaced. Offences of this kind are suited to the more straightforward, lower level of criminality involving inadvertence such as speeding tickets, and where they are not being issued in the context of some sort of melee (in other words, in situations which differ significantly from the public disorder and antisocial road use scenarios contemplated by this Bill).

6.23 Preferably, the proposed enforcement measures would be reconsidered, following further analysis and policy development. On the basis of the provisions as drafted, we suggest the present obstruction offence is both sufficient and better suited to the circumstances contemplated, requiring as it does that there is proof of the police officer being in the execution of his or her duty. There could still be the processing of offenders who give their name for a later summons, and the arrest of those who do not do so. Reliance on the present obstruction offence may also better guard against the risk that the closure powers (and therefore infringement offences) are misused in a manner that unjustifiably infringes protected rights.

7 Recommendations

7.1 In summary, the Law Society does not consider the Bill should pass in its current form. Fundamentally, we are concerned the rushed policy process and lack of public consultation (particularly with affected communities), has created a set of proposals that risks overreach, inconsistencies with modern privacy principles, and difficulties of interpretation.

7.2 If however, the Bill does proceed, the Law Society makes the following recommendations:

(a) In relation to Part 1:

(i) In clause 4, new section 45A, clarify key elements including:

(A) The meaning of "an intelligence purpose".

(B) A Police "activity" (not currently defined in the Act).

(C) What it means to be "connected with" a function or activity and/or what defines "support" of a policing function.

(ii) Remove clause 4, new section 45C. The extension of such a power (which involves, as per *Tamiefuna*, a type of search, however a different mix of policy considerations compared to public places) requires further consultation and policy consideration, and should be considered (if at all) in the context of other search powers under the Search and Surveillance Act.

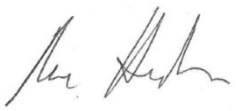
(b) In relation to Part 2:

(i) Include preconditions for the use of the temporary closure powers.

(ii) As a minimum, include a reporting requirement to the IPCA, following the exercise of temporary closure powers.

(iii) In the absence of (and/or pending) more fulsome consideration of the enforcement measures (being the infringement offences, and by extension, various associated further powers) remove clauses 7 to 12 of the Bill, relying instead on the offence of obstruction.

Nāku noa, nā



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