New Zealand Law Society
Te Kāhui Ture o Aotearoa

Summary Offences (Demonstrations Near Residential Premises) Amendment Bill

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

6 October 2025

1 Introduction

1.1 The New Zealand Law Society Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to comment on the Summary Offences (Demonstrations Near Residential Premises) Amendment Bill (**Bill**). The Bill proposes to introduce a new offence to the Summary Offences Act for engaging in a targeted and disruptive demonstration near residential premises.

1.2 This submission has been prepared by the Law Society's Human Rights and Privacy and Criminal Law Committees.[1] The proposal in this Bill engages complex rights issues that warrant care and scrutiny. The Law Society doubts the need for the proposed new offence and is concerned that it has received insufficient consultation and analysis. Consequently, it may fall short of what is both principled and effective in achieving its intended outcome.

1.3 The Law Society **wishes to be heard** on this submission.

2 General comment

2.1 Privacy is an internationally recognised right. As Elias CJ observed in the Supreme Court case of *Brooker v Police*, which related to protest action outside a police officer's residence, "privacy in the home is an important value".[2] A right to privacy is recognised by article 17 of the International Covenant on Civil and Political Rights (**ICCPR**), to which New Zealand is a State Party, and in other international rights instruments, including the Universal Declaration on Human Rights (**UDHR**)[3] and the United Nations Convention on the Rights of the Child (**UNCRC**).[4] Other jurisdictions, such as Australia, have recognised and incorporated rights to privacy and rights relating to the security of families and children into their domestic legislation.

2.2 The explanatory note on the Bill frames the problem as a gap in the law: "[t]he law does not currently provide a clear statement on the relevance of privacy, and particularly on the importance of use and enjoyment of residential homes, in the context of protests and other demonstrations."[5] Supporting materials accompanying the Bill note that there has been an escalation in protest incidents around MPs' homes (though reported numbers remain low and data is only available back to 2022) and, anecdotally, the homes of other public figures.[6]

2.3 While the Bill is intended to respond to this, there are underlying tensions. The right to privacy[7] must be weighed against other rights and freedoms which the New Zealand Bill of Rights Act 1990 (**Bill of Rights Act**) protects. In the context of protests and

1 More information about the Law Society's law reform committees is available on the Law Society's website: NZLS | Law Reform & Advocacy

2 *Brooker v Police* [2007] NZSC 30 at [11]. *Brooker* is presently the leading case on the issue now addressed by the Bill.

3 Universal Declaration on Human Rights, art 12.

4 United Nations Convention on the Rights of the Child, art 16.

5 Explanatory note to the Bill at 1.

6 Ministry of Justice "Regulatory Impact Statement: Addressing protests outside private residences" (14 May 2025) at 1 (**RIS**).

7 Or the value of privacy: for discussion of the potential distinction between, and relevance of, identifying privacy as a 'right' or a 'value' see *Brooker* at [209]–[210] per Thomas J.

demonstrations, these are the freedoms of expression, peaceful assembly and movement.[8] The core issue in this Bill is the balance that should be struck. The right to freedom of expression has been described as one of the essential foundations of a democratic society.[9] Protest, which includes making "someone listen to something they do not want to hear", serves essential democratic functions.[10] A demonstration may legitimately inconvenience others, and the courts have held that even serious annoyance is insufficient to warrant the application of the criminal law.[11]

2.4 It would be consistent with this complexity to seek to ensure, before moving to establish a new criminal offence, that the relevant matters have been weighed in considering what will be justified and effective. As we discuss below, there are process concerns about the timeframes in which the Bill has progressed, and consultation on it. When the quality of legislative and policy-making processes is undermined, so is the integrity of the law. Creating a new criminal offence without proper consultation with the public and legal and rights experts is risky. Here, the policy may have benefited from stepping back to consider the legal need to do so and social licence to do so in its wider context.

2.5 For instance, by contrast with the freedoms relating to dissent and demonstrations, expressly affirmed and protected by the Bill of Rights Act, privacy is not presently addressed in that Act.[12] Some have argued this is no more than an accident of drafting history.[13] However, the question whether privacy (consistent with the international recognition of it as a right) should stand alongside other protected rights and freedoms in the Bill of Rights Act would be the proper subject of a separate review and reform exercise — perhaps before turning to the criminal law. The conclusion that the current criminal legal framework is deficient is arguable, but far from self-evident;[14] and while we note a new offence of 'residential picketing' was a recommendation of the Independent Police Conduct Authority (**IPCA**) in a thematic review on the policing of public protests in New Zealand,[15] we also note this recommendation was not intended to proceed in isolation, but as part of a wider package.

---

8 New Zealand Bill of Rights Act 1990, ss 14, 16 and 18.

9 *Handyside v UK* (1976) 1 EHRR 737 at 754.

10 *Brooker* at [62] per Blanchard J.

11 See for example *Brooker* at [33] and [42] per Elias CJ, [63] and [68] per Blanchard J, [84] per Tipping J, [121] per McGrath J, and [203]–[205] per Thomas J.

12 Except obliquely, in the Act's long title, by reference to intentions "to affirm New Zealand's commitment to the International Covenant on Civil and Political Rights". See the RIS at [8].

13 Discussed in *Brooker* at [227] per Thomas J.

14 RIS, above n 6 at 2 and [23]–[24]: "In the absence of the law being changed to state the relevance of privacy and quiet enjoyment of one's home, Police and other responders are not clearly empowered to intervene". In *Brooker*, the then Chief Justice concluded that rights recognised in the Bill of Rights Act should only be balanced against other values (like privacy) if the law in question made it clear that the value was relevant: citing *Brooker* at [40] per Elias CJ. "In practice, this means Police are likely to be conservative when responding to protest activity outside people's homes, given the high threshold for prosecution in protest situations". There are, however, a number of criminal offences and other legislation (such as trespass and harassment) which, depending on the nature of the protest action, may be applicable: see further the RIS at [10]–[11] and [22].

15 RIS, above n 6 at [15]–[18]; Ministry of Justice "Departmental Disclosure Statement: Summary Offences (Demonstrations Near Residential Premises) Amendment Bill" (9 July 2025) at [2.1]

2.6 We have noted, too, the reserved tone of comments provided by the Privacy Commissioner in departmental consultation with his Office on the proposal:[16]

> The Privacy Commissioner has a mandate to examine any proposal that affects privacy, including broader notions of privacy, such as quiet enjoyment of the home. The Privacy Commissioner recognises that this proposal aims to better protect people's right to privacy. However, it is important decision makers carefully consider and balance the right to privacy against other core human rights. He notes that public consideration will be important to ensure that the rights and freedoms engaged in this proposal, including privacy, are appropriately balanced.

2.7 Our submission expands as follows on these concerns. We have some key reservations about the policy process for this Bill, and whether the new offence will achieve the intended outcome in a way that is both principled and effective:

(a) The proposal for a new criminal offence appears reactive. Consideration of how the law is to weigh and provide for privacy relative to other freedoms and values, and whether a new criminal offence is necessary and appropriate, would have benefited from being oriented within a wider discussion of social values and the constitutional and legal frame. Consultation on the proposal has been inadequate, given the competing rights involved. We share officials' concerns about the abbreviated policy process that has prevented consultation.

(b) There is a risk that the proposed offence will not remove or greatly assist in clarifying the underlying tension between competing fundamental rights, which will be left to the senior courts to determine. The courts will still be required by the proposed new offence to assess whether disruption that is occurring due to a demonstration is 'unreasonable', by reference to a range of circumstances. While the judicial discretion provided for can serve as some safeguard, it also undermines the principle that a criminal offence should be clear.

2.8 The final part of the submission makes drafting recommendations to tighten and clarify some aspects of the offence if it proceeds.

3 Criminal law in constitutional and social context, and fast-tracking the policy process

3.1 The new offence proposed in the Bill is intended to reduce uncertainty about whether, or when, the law may provide protection against disruption targeted at a person's residence. It addresses an issue identified in *Brooker* that contributed to the majority view in that case that an offence of disorderly conduct did not apply, and seems to align more closely with the dissenting view in *Brooker* of Thomas J. Thomas J, considering that protection of one's privacy *should* be regarded as a right, held that "[t]he fabric of our democratic and civil society would lose nothing if the right to freedom of expression were required to give way to a reasonable recognition of privacy and the interest of

(**DDS**), citing Independent Police Conduct Authority *Thematic Review: The Policing of Public Protests in New Zealand* (18 February 2025).

16 DDS, above n 15 at [3.5.1].

being let alone in the seclusion of the home."[17] His Honour "suspected that the last word had not been said" on the point in New Zealand:[18]

> My plea that this Court should reflect long and hard before sanctioning, or appearing to sanction, protest action of the kind in issue in residential neighbourhoods has not been sufficiently persuasive to carry a majority. Such is the importance of the right or interest to be let alone, and the appreciation of that right or interest in the community, however, that I suspect that the last word has not been said. The appropriate balance between the right to freedom of expression and a resident's interest in being let alone in the seclusion of his or her home, has not yet been set in stone.

3.2 As such, the Bill intends to adjust the balance in the law. We agree it will likely produce some shift in approach, such as strengthening the confidence of and grounds for police to intervene to disrupt residential picketing, although what will then happen in practice as a prosecutorial matter remains unclear. However, it should be noted that, from a rights perspective, the formal position of New Zealand's law at present stops short of the analysis provided by Thomas J. As his dissenting judgment makes clear, to analyse privacy as a 'right' is to also adopt a policy position with material legal consequences.[19] At international law, rights to privacy are addressed, relevantly to New Zealand, by the article 17 of the ICCPR, article 12 of the UDHR, and article 16 of the UNCRC (among a number of other international rights instruments).[20] The wording of each is similar, adequately illustrated by the ICCPR, which provides:

> 1 No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
>
> 2 Everyone has the right to the protection of the law against such interference or attacks.

3.3 New Zealand's international human rights obligations as State Party to the ICCPR are identified as relevant to this Bill. Consistency with international human rights obligations was a part of the Ministry of Justice's analysis of the policy options informing the Bill's development.[21] In New Zealand, the Bill of Rights Act affirms New Zealand's commitment to the ICCPR.[22] To date, however — by contrast with the freedoms of expression, peaceful assembly and movement protected in that Act that are relevant in the context of demonstrations, and thus the proposed new offence — New Zealand has not taken the step to legislatively affirm privacy as a protected right. In this, New Zealand contrasts with several Australian state legislatures which have moved to protect privacy and reputation in their rights legislation.[23]

3.4 The point is not that reform of the Bill of Rights Act is a necessary precursor: it is not. The courts will continue to engage with privacy as they have done to date, as a right

17 *Brooker* at [276] per Thomas J.
18 At [255].
19 At [209]–[210].
20 See also article 8 of the European Convention on Human Rights, for example.
21 Explanatory note to the Bill; DDS, above n 15 at 6.
22 New Zealand Bill of Rights Act 1990, long title.
23 Human Rights Act 2004 (ACT), s 12; Human Rights Act 2019 (Qld), s 25; Charter of Human Rights and Responsibilities Act 2006 (Vic), s 13.

and/or relevant value; and it may well be that (if or when the Bill of Rights Act is reviewed at some future time) the affirmation of privacy in it would be seen as an uncontroversial change, one that fellow jurisdictions have adopted, and consistent with a trend New Zealand has also followed towards setting legal frameworks in place to safeguard privacy.[24] However, as canvassed in the judgments in *Brooker*, privacy together with the other freedoms engaged by demonstration activity make up strands of the weave of our social fabric, that are woven in turn into the law. Given the importance of the values engaged, it would be desirable if consideration of the need to establish a new criminal offence were well-grounded in consideration of the relevant social values and wider legal context, to ensure a law that:

(a) coherently reflects the weighting society wishes to attribute to various values; and

(b) evaluates and weighs the legal need for the change against any social costs involved and whether those costs are justified.

3.5 The concerns about adequately contextualising the offence, by considering whether it is the right mechanism and its wider legal context, relate not only to the Bill of Rights Act. The proposed new offence, adopting a recommendation from the IPCA, has been lifted out of the context of broader consideration of the IPCA's report on the policing of public protests. As the RIS notes, this has meant that broader options to improve policing of public protest (which could also improve the policing of residential protests) have not been considered.[25]

3.6 These considerations make the gap in public consultation on the proposals more concerning. In the Law Society's view, the absence of proper public consultation is problematic when creating a new criminal offence — particularly the present offence, given the important rights involved, the finely balanced nature of the issues, and the shift in the balance intended to be struck in protecting rights by the criminal law.[26] The RIS provided with the Bill notes repeatedly the absence of adequate time available to officials to consult on this proposal:[27]

> A longer timeframe would have allowed officials to consult with legal experts, civil society, interest groups and the public, as well as Māori as Treaty partners. This could have provided more fully informed advice on the nature and scale of the problem, the impacts of these proposals, and any operational challenges that may arise.

3.7 The reason for proceeding (as Ministerially directed) at a pace not allowing for public consultation is not clear.

3.8 The fact that Crown Law has not found the proposal to be *un*justified in the present case is significantly due to the degree of flexibility, through judicial discretion, that will

---

24 See *Brooker* at [122] per McGrath J, noting the increasing concern in New Zealand law with safeguarding privacy interests: represented for example in developments in information privacy legislation.

25 RIS, above n 6 at [48].

26 DDS, above n 15 at 7.

27 RIS, above n 6 at 4–5 and see at 2, at 6 (from the Quality Assurance panel, which considered that consultation should have occurred given the significant rights issues engaged by the proposal), and [33]–[39].

continue to be available in prosecuting the proposed offence. This raises its own concerns, discussed next, regarding whether the new offence is likely to be effective in improving the clarity of the law and/or changing the law; and principled from the perspective of the certainty that the criminal law requires.

4 Does the proposal achieve the intended outcome in a way that is effective and principled?

Concerns with effectiveness

4.1 The new offence is intended to clarify that "the right to protest in residential settings must be balanced against people's right to privacy and quiet enjoyment of their homes".[28] However, the offence proposed in clause 4, new section 5B of the Bill does not precisely define where that balance will lie. In likelihood, courts will continue to give rights to protest significant weight.[29]

4.2 Doing so would be consistent with the position, as summarised by Crown Law in their consideration of the Bill, that: [30]

> These freedoms may be limited under s 5 of the Bill of Rights Act. However, given the importance of the right to protest the basis for any limitation must be strong. This is particularly the case where the protest is political.

4.3 The case law is consistent: the issues are finely balanced in such cases. Protection of the freedom of expression is critical, and the exercise of power by authorities ought to be done within strict limits of reasonableness. Temperance in the exercise of public power in areas which may impinge on rights has been a long-accepted principle. In *Minto v McKay*, predating the Bill of Rights Act, Cooke P noted:[31]

> The citizen's protection lies in the insistence of the law that the steps should be reasonable. One is confident that careful attention will be given to that criterion by any judicial officer in New Zealand before whom this kind of question comes. ... [T]he Courts should be — and I am sure are — conscious of the importance of ensuring that the rights and liberties of citizens are not unduly or unreasonably interfered with by the police or others in authority.

4.4 In *Wakim v Police*, discussing *Brooker*, Heath J noted:[32]

> It will be apparent that all members of the *Brooker* Court were alive to and emphasised the need for a more nuanced approach when the behaviour in question arose out of the exercise of one or more of the freedoms guaranteed by the Bill of Rights.

4.5 In *Ross v Police*, Hammond J was faced with an issue of protest arising in the context of private property (there, a bank). His Honour held that when police exercise trespass

---

28 RIS, above n 6 at 19.
29 For concerns regarding workability, see RIS, above n 6 at 20.
30 Crown Law "BORA vet" (22 July 2025) at [7].
31 *Minto v McKay* [1987] 1 NZLR 374, (1987) 2 CRNZ 330 (CA) at 378 and 333 per Cooke P. The comment has more recently been approved by the High Court in the context of a matter involving freedom of movement and freedom from unreasonable detention: *Ghent v Police* [2014] NZHC 3282 at [17].
32 *Wakim v Police* (2011) 9 HRNZ 318 at [24].

powers "in the execution of a public duty", those "powers under the Trespass Act had to be exercised in a manner which was reasonable in all the circumstances" having regard to the Bill of Rights Act. His Honour recognised "the general importance of street protests as an agent for voice, and social change".[33]

4.6 The Law Society does not consider that establishing the proposed new offence will or should change this general stance taken by the courts. New section 5B proposes that, in determining whether a disruption is unreasonable, the court must have regard to all relevant circumstances, including: the time of day at which the disruption started and ended, the duration of the disruption, the actions of the demonstrators during the disruption, the level of noise generated by the demonstrators during the disruption, and the distance between the demonstrators and the residential premises during the disruption.[34] In other words, it remains for the courts to weigh the key relevant matters. As Crown Law's Bill of Rights Act advice accepted, this is on one hand a rights safeguard: "The broad nature of the reasonableness inquiry give the courts the ability to consider whether application of the new offence in a given situation constitutes a justified limitation on rights of expression, assembly and movement."[35] The offence has been crafted in a way that leaves room for the importance of protest to continue to be upheld. Equally, however, it follows that it may do little in fact to assuage uncertainty and clarify the law.

Concerns in principle

4.7 The discretion left to the courts may serve in practice to moderate the impact of over-zealous prosecutions. However, this type of safeguard will be too late to correct infringements on the right to demonstrate, if these occur. The express intention of the Bill is to strengthen the willingness and confidence of Police to intervene in a situation, by assuring them of their immediate authority to disrupt a protest meeting the statutory criteria. Even if no conviction eventuates (and even if the RIS assessment is correct that the consequences for court time and resources are anticipated to be negligible), in terms of the impact on demonstrations there remains a real risk of a chilling effect, and/or a risk of arrest powers being used in practice to disrupt legitimate protests.

4.8 In the event that Police were to use the legislation to arrest protesters who are being disruptive, but not unreasonably so, these protesters could then either:

(a) be prosecuted, but successfully defend the charge; or

(b) more likely be released without charge; or

(c) have charges laid against them withdrawn.

33 *Ross v Police* (2002) 6 HRNZ 734 at [45] and [57].
34 Crown Law, above n 30 at [4].
35 Crown Law, above n 30 at [9]–[10].

4.9 In any of these scenarios, the fact that protestors have been removed from the protest site greatly reduces the strength of a protest and infringes on the right to protest. The infringement on the right will have occurred and cannot retrospectively be rectified.

4.10 The majority of the Supreme Court in *Brooker* raised other concerns of legal principle that are relevant in the context of the proposed offence and will be exacerbated by it. The uncertainty inherent in the new offence offends the principle that criminal law should be certain. Because of its open-ended nature, allowing judicial oversight but also wide judicial discretion, the offence risks falling into the trap identified in *Brooker* by Elias CJ of the scope of an offence being "arrived at by balancing competing interests identified as deserving of protection by a judge after the event".[36] Such an approach "is unnecessarily restrictive of freedom of expression and offends the principle that criminal law should be certain".[37] Until there is case law clarifying the interpretation of the new offence, it becomes difficult to know which side of the line certain conduct may fall. Elias CJ noted further that "reasonable limitations prescribed by law" (as provided for in the Bill of Rights Act) envisage that those subject to the law will be able to "foresee with reasonable certitude the consequence which a given action may entail",[38] and that:[39]

> Imprecision in the criminal law which leaves it to judges to identify what is deserving of penalty is inconsistent with the rule of law for reasons also identified by the Permanent Court of International Justice in the *Danzig Legislative Decrees* case:
>
> > '[A] man may find himself placed on trial and punished for an act which the law did not enable him to know was an offence, because its criminality depends entirely upon the appreciation of the situation by the Public Prosecutor and by the judge.'

4.11 In the Law Society's view, Her Honour's concern that "[t]he more elastic the meaning, the wider the discretion left to enforcement officers and the greater the difficulty of any check for legality after the event" accurately describes the risk that exists with new section 5B.[40] Requiring, as an element of the offence, Police to give a warning (as recommended by Justice officials) would assist in providing greater certainty and in some part resolving this concern. We recommend this below, proposing amendments to the offence that may improve it, if it proceeds. We note, though, that the anticipated risk of a chilling effect on protest activity is not resolved by this recommendation. It is only a small percentage of protestors that are willing to be arrested to vindicate their right to protest. If the Police warn protestors that they intend to arrest them (even if the protest is not in fact unreasonable), and the protest stops as a result, the concerns set out at paras [4.7]–[4.9] above will be engaged.

36 *Brooker* at [11].
37 At [11].
38 At [39].
39 At [38]–[39].
40 *Brooker* at [39] per Elias CJ.

5 Concerns about offence definition and scope

5.1 The Law Society acknowledges the proposed offence contains some appropriate, necessary safeguards to limit its ambit. It requires:[41]

(a) the demonstration (which is occurring "near" residential premises) to be "targeted", meaning "directed at any regular occupant" of the premises; and

(b) that the protestor knows or ought to know that the demonstration is causing an unreasonable disruption.

5.2 Definitions are further provided of "residential premises" (used mainly as a place of residence) and "regular occupant" (any person who regularly occupies those premises as a place of residence). While these leave room for some interpretation, they do seem potentially sufficient to exclude certain premises — the Speaker's flat at Parliament, for example — that may be incidental or common targets of legitimate political protest.[42]

5.3 For the avoidance of doubt, we support these elements of the offence if it is to proceed. There remain concerns about scope and definition that we recommend should be addressed. Steps can be taken to tighten the scope and improve the drafting of the offence.

"Near" residential premises lacks clarity

5.4 A demonstration "near" residential premises lacks clarity.[43] For example: does "near" mean directly outside the premises? Within view? On the same street? Within (for instance) some distance such as 100m — or perhaps further, if (for example) the protest is sufficiently loud and agitated?

5.5 If the intent as stated is that "the proposal would provide greater certainty around the parameters of lawful protest for those organising and participating in protests, as well as targets of protests",[44] these questions should be clarified. Acknowledging that specifying a bright line could be problematic due to being too easily circumvented, we recommend exploring options to give courts and prosecutors guidance on the intended meaning. One option may be to provide a non-exhaustive list of considerations.[45]

5.6 We note further that while the offence requires disruption targeted at any regular occupant of premises that are "near" to the demonstration, the unreasonable disruption that is occurring need not be in relation to those premises. It may be to "any other residential premises" (provided P, the protestor, knows or ought to know it is unreasonably disruptive). The inclusion within scope of an unspecified number of other residences in proximity broadens the potential scope of the offence, and it is unclear that the scope of the phrase "any other residential premises" in subsection (1)(b)(ii) is confined by the nearness requirement (once defined). This should be clarified.

---

41 Clause 4, new section 5B(1).
42 Clause 4, new section 5B(4).
43 Clause 4, new section 5B(1)(a).
44 RIS, above n 6 at 3.
45 We have considered the comparable UK provision in case it assisted, but note that it is not clearer, referring to demonstrations "outside or in the vicinity of" any premises that are used by an individual as their dwelling: Police and Criminal Justice Act 2001 (UK), s 42A.

Requirement to issue a warning

5.7 Officials recommended a different policy option than the one proceeding in the Bill. The recommended option would have resulted in criminal liability only if protestors refused to cease participating in a disruptive protest following a Police warning. Justice officials considered that this would provide a more proportionate limit on Bill of Rights Act rights and freedoms and was the option which optimised all the relevant considerations.[46]

5.8 Officials' advice on the Bill also notes that "[i]n practice, we understand that Police are likely to issue a warning in the first instance where practicable".[47] In the Law Society's view, while offering some reassurance, this is not sufficient. Statutorily requiring a warning, if giving one is practicable (as Police indicate they intend to do) would assist in providing greater certainty in response to the concerns we have raised. As quoted above, "finding oneself placed on trial and punished for an act which the law did not enable him to know was an offence, because its criminality depends entirely upon the appreciation of the situation by the Public Prosecutor and by the judge" is at odds with the principle that the criminal law should be clear. Requiring a warning to be given would also be consistent with the law of trespass, frequently also relevant in protest cases.

5.9 We agree with officials' advice given to Cabinet that the offence should include a requirement for Police to have issued a warning.

Expanding the reasonableness factors

5.10 New subsection 5B(3) lists factors to which a court must have regard in determining, for the purposes of a prosecution under this section, whether a disruption in relation to any residential premises is unreasonable. They include:

(a) the time of day at which the disruption started;

(b) the time of day at which the disruption ended;

(c) the duration of the disruption;

(d) the actions of the demonstrators during the disruption;

(e) the level of noise generated by the demonstrators during the disruption; and

(f) the distance between the demonstrators and those premises during the disruption.

5.11 The proposed factors can usefully be considered against those stated in *Routhan v Police*. *Routhan* provides existing case law indicia of reasonableness in such situations. In that case, Ms Routhan entered the Law Society building in Wellington. She "sat in the foyer singing, reciting poetry and telling [occupants] what [she] thought of them".[48] Factors affirmed by Kós J for assessing reasonableness in the context of considering whether to issue a trespass notice included:[49]

46 RIS, above n 6 at 2–3, 19–20 and [68] and [71].
47 RIS, above n 6 at [72].
48 *Routhan v Police* [2014] NZHC 3203 at [7].
49 *Police v Beggs* at 629–631, affirmed by Kós J in *Routhan*, above n 48 at [47].

(a) whether the assembly is unreasonably prolonged;

(b) the degree to which the rights and freedoms of other people are affected by the trespass notice;

(c) the degree to which the assembly or protest interfered with the rights of the occupier to use the premises for ordinary business or duties free of nuisance;

(d) the size of the assembly and its duration;

(e) the content of what is being expressed, if the message is one of hatred, racial abuse, intolerance or obscenity; and

(f) whether the notice is justified on the grounds of maintenance of public order (such as lack of prior notice to police of the time and location of the event or in terms of management of street traffic).

5.12 We note that there is substantial overlap of the *Routhan* considerations with those proposed in the Bill:

(a) An unreasonably prolonged assembly, the size of the assembly, and its duration (*Routhan*) may be compared with the proposed time at which the demonstration started and ended, and duration of the disruption.[50]

(b) The degree to which rights of the occupier are being interfered with (*Routhan*) may be compared with considering the actions of the demonstrators, their level of noise, and the distance from the premises.[51]

5.13 Informed by the *Routhan* considerations, we would recommend two further changes to the list provided of relevant circumstances in new section 5B:

(a) **Adding consideration of the content of what is being expressed.** If the message is one of hatred, racial abuse, intolerance or obscenity, this will be or should be relevant to gauging the reasonableness of the protest and justification for seeking to curtail it.

(b) **Requiring explicit consideration to be had to the importance of the right to free speech and public assembly.** This will be required by the Bill of Rights Act regardless; however, reinforcing these considerations would emphasise that the rights being limited are important, and so should require important factors before departure.

6 Recommendations

6.1 The Law Society recommends four amendments to clause 4, new section 5B:

(a) Consider options and take steps to more clearly define or give guidance on the intended meaning of "near", in the phrase "near any residential premises".

(b) Require a Police warning to be issued to a demonstrator, as a prerequisite to criminal liability under section 5B.

50 New section 5B(3)(a), (b) and (c).
51 New section 5B(3)(d), (e) and (f).

(c) Specify two further factors in determining under subsection 5B(3) whether a disruption is unreasonable:

(i) the content of what is being expressed, such as whether the message is one of hatred, racial abuse, intolerance or obscenity; and

(ii) the importance of the Bill of Rights Act freedoms of expression, public assembly and movement.

Nāku noa, nā

David Campbell
Vice President