New Zealand Law Society
Te Kāhui Ture o Aotearoa

Summary Offences (Move-on Orders) Amendment Bill

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

2 July 2026

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 (Move-on Orders) Amendment Bill (**Bill**). The Bill provides new powers for police to issue move-on orders requiring people who are engaging in certain behaviour in public places to leave the area and not return for a period up to 24 hours. The powers are subject to some exceptions.

1.2 This submission has been prepared with input from the Law Society's Human Rights and Privacy and Criminal Law Committees.[1]

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

2 General comment

Summary

2.1 The Bill's stated aims are to maintain public order and improve community safety. However, it adopts a broad, discretionary, and coercive framework that raises significant concerns. The insertion of proposed new sections 8A–8H into the Summary Offences Act 1981 introduces wide powers that enable the police to issue and enforce move-on orders, and would criminalise breaches of the orders or other failures to co-operate. The Law Society considers that, at a minimum, the proposed new provisions warrant fundamental revision before enactment. However, the challenge in revising them appropriately is such that it would be more advisable for them not to proceed.

Process concerns, including overlap with Trespass Bill

2.2 A number of the issues raised in this submission might have been addressed by a full and proper policy process that was not restricted by pre-determined policy outcomes. As the Law Society has noted in recent submissions on the Crimes Amendment Bill[2] and the Trespass (Specified Retail Premises and Other Matters) Amendment Bill (**Trespass Bill**),[3] proposals tendered by a Ministerial Advisory Group (in this case, **the Retail MAG**) are not a substitute for a full policy development process, including a thorough investigation, testing, and definition of the policy problem. It is clear from the Regulatory Impact Statement (**RIS**) that officials were not given adequate time or scope to undertake such work.[4]

2.3 Specifically, we note that:

(a) There appears a lack of evidence to support the approach taken in the Bill. The Bill purports to be directed at addressing disorderly and disruptive behaviour in public places that is affecting businesses and communities. However, the report

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1 More information about the Law Society's law reform sections and committees is available on the Law Society's website: NZLS | Law reform committees.

2 2026 No 223—1; "Crimes Amendment Bill: Submission of the New Zealand Law Society Te Kāhui Ture o Aotearoa" (16 February 2026).

3 2026 No 273—1; Trespass (Specified Retail Premises and Other Matters) Amendment Bill: Submission of the New Zealand Law Society Te Kāhui Ture o Aotearoa" (5 May 2026).

4 Ministry of Justice "Regulatory Impact Statement: Strengthening responses to public disorder" (27 November 2025).

from the Retail MAG provides exclusively anecdotal material. As officials recognise in the RIS, police data does not show an increase in disorderly behaviour.

(b) The policy justification for imposing criminal sanctions is unclear. Some of the groups identified as being most likely to be affected by move-on orders are the homeless and those with mental health disorders. As the RIS reports, social services agencies (which we note were not consulted) do not view this as a criminal issue in relation to these groups, noting that "survival behaviours such as sleeping rough do not necessarily contribute to public disorder".

(c) The RIS identifies four options for reform, Option 1 being retention of the status quo. The Bill pursues Option 4, preferred by the Minister of Justice. In support of Option 1, the Ministry of Justice advises that there is "limited evidence that options 2–4 would meet the policy objectives" and that "formal law enforcement responses are neither appropriate nor effective responses for public disorder that falls below the criminal threshold".[5] As the RIS points out, there is no empirical evidence that move-on orders in Australia and the United Kingdom have resulted in reductions in crime rates.

2.4 Another significant concern with the Bill, and likewise a process issue, is its overlap with the Trespass Bill. The two proposed pieces of legislation both address sub-criminal anti-social behaviour and appear intended to work together. For that reason, it would be prudent to debate them together. Put simply, taken together, the two Bills allow people who have not necessarily engaged in criminal behaviour to be banned from potentially large areas. This concern arises from:

(a) The ability, under section 4B of the Trespass Bill, for an unlimited number of retailers in an area to form an agreement to trespass a person from all of their retail premises for a period of 3 years if the person is trespassed from one of the retail stores. Potentially, a provision of this nature could be used to trespass a person from all stores in a CBD.

(b) The ability, under the current Bill, to issue move-on orders for the areas not covered by the Trespass Bill (in other words, the streets, or other public areas). While this is only for a period of 24 hours, it can be re-issued.

2.5 In both Bills, we note the:

(a) potential for serious criminal consequences for acts that are not in themselves criminal;

(b) lack of criminal process, particularly the lack of opportunity for the person to argue that it was not them who engaged in the conduct;

(c) over-reliance on the conclusions of the Retail MAG and the limited or non-existent consultation with other interested or expert parties.

2.6 In the Law Society's view, any substantial changes to the law that involve a complex balance of rights require wider consultation and deeper analysis to ensure the legislative

5 RIS, above n 4 at [55].

response is proportional, reasonable, and consistent with the New Zealand Bill of Rights Act 1990 (**Bill of Rights Act**). Both the report of the Attorney General and the RIS highlight inconsistencies of this Bill with the Bill of Rights Act that cannot be justified. The absence of meaningful consultation with affected stakeholders, population groups or the public prior to the introduction of the Bill is concerning. The decision to consult only with government agencies and retailers as one side of the affected population group reflects a closed and inadequate process that falls short of accepted standards for policy development and legislative stewardship.

The Bill should not proceed

2.7 In considering our recommendations which follow, relating to remediation of the Bill (to the limited extent possible), there is a larger and more fundamental point. The Bill inappropriate conflates moving on people "camping" in the street — the underlying issue the Bill seeks to resolve — with the different concept of disorderly and threatening behaviour. Disorderly and threatening behaviour are already offences. There are already grounds to arrest people behaving in this way and remove them from the area if they do not desist.

2.8 In the remainder of the submission, we make further recommendations to address our most serious concerns if the Bill does proceed.

3 Overbroad and imprecisely prescribed powers

3.1 The Bill empowers police to issue a move-on order under new section 8A(1) if there are reasonable grounds to suspect that the person is engaging or has recently engaged in behaviour in a public place including: disorderly, intimidating, disruptive, or obstructive behaviour, a breach of the peace, begging, or rough sleeping.

3.2 The imprecision of the triggering criteria for issuing a move-on order is concerning.

(a) Imprecise words in statutes create interpretive ambiguity. People may reasonably disagree about what conduct is covered.

(b) It is inconsistent with the rule of law, which requires that penal powers be exercised according to clear and foreseeable standards. If the meaning of the law is unclear, those interpreting it while they carry out their functions effectively make the law.

(c) Powers that are poorly defined or constrained allow room for the exercise of wide discretion. There are risks that exercise of the powers will be inconsistent or excessive.

(d) Challenges to the legitimacy of police decisions will be unlikely, given the prohibitive cost and the reality that those upon whom it will be used will be vulnerable and likely face barriers to accessing justice.

3.3 Three aspects of the proposed new provisions exemplify these concerns:

(a) Key terms in proposed section 8A(1) are undefined.

(b) The evidentiary requirement for an order to be issued is low.

(c) There are no constraints on the move-on distance that an officer may specify, or requirement to allow a person issued with an order reasonable time to comply.

Section 8A(1): undefined terms

3.4 Proposed section 8A(1) provides that a move-on order may be issued in respect of ongoing or recent specified conduct. It relies significantly on terms including "disruptive" and "disorderly",[6] which are undefined in either the Bill or the principal Act. We acknowledge there would be legal risk and drafting challenges in endeavouring to codify, for example, the term "disorderly", that is widely used elsewhere in the Summary Offences Act. We accept it is proper not to attempt to do so. However, in this context there is a real risk of inconsistent and arbitrary enforcement, that, as we discuss further below, is unable to be effectively challenged.

3.5 Section 8A(1) also lists rough sleeping and begging as separate conduct, without any requirement of disorder. The proposed separate inclusion of begging and rough sleeping in the draft provisions reflects the legal reality that, in themselves (notwithstanding statements implying the contrary in the explanation of the Bill's purpose), begging and rough sleeping may not reach the level of conduct that threatens public order, which is what the Bill seeks to address. There is legal doubt whether rough sleepers or beggars would otherwise fit those common law definitions of "disorderly" and "disruptive".

3.6 Although clause 4 of the Bill, amending section 2 of the principal Act, provides a definition of "begging", other matters remain unclear. To provide a simple example: using "rough sleeping" as one trigger for the orders invites argument as to whether people must be literally asleep at the time of the order. Will "rough sleeping" encompass what may be effectively involuntary conduct — as where a person falls asleep in a public place (for example on a park bench or in a bus shelter) as a result of exhaustion or ingestion of alcohol or drugs? Will it encompass sleeping on private land where the sleeper has been either permitted, or not prohibited, by the landowner and may be visible from a public place — for example, sleeping on the grounds of an urban church if the church has not prohibited it?

3.7 It is unusual to use such a term without definition. In the event that "begging" and "rough sleeping" are not removed from the Bill (see below), a definition should be provided both for clarity, and to remove the need to otherwise clarify details of this sort through litigation.

The evidentiary requirement for a move-on order

3.8 The evidentiary requirement for an order to be issued is low, enabling early intervention by Police. Police can issue a move-on order if they have "reasonable grounds to suspect": a significantly lower threshold than a requirement of belief or knowledge that behaviour has occurred, or that it has caused harm. The term "recently" is also open to interpretation.

3.9 Belief requires there to be an objective and credible basis to hold the view that the grounds actually exist, whereas suspicion means thinking that it is likely that a situation

6 New section 8A(1)(a) and (b).

exists. In terms of degrees of likelihood, a belief requires something akin to a high or substantial likelihood, while suspicion may require no more than medium or moderate likelihood. Reasonable suspicion has variously been defined as "a reasonable ground of suspicion on which a reasonable person may act"; something that is "possible or likely" or "inherently likely"; and thinking it is likely that a situation exists. A threshold of "suspicion" could be met, for instance, if a shop owner complains about a person. It does not require that the constable even speak to the person concerned to see if the complaint is accurate.

3.10 Move on orders are coercive, and the imposition of them may impose hardship on those subject to them. There is a real risk that "move on" orders relating to past behaviour may come to be used as, in effect, punishment for conduct that is suspected but not proven — let alone proven beyond reasonable doubt. The extent to which orders may have a punitive effect will depend on the circumstances in which the order is issued and of the persons subject to it. (For example, an order to move a few hundred metres on a warm summer's afternoon may not impose great hardship on a fit adult, but an order for a person with disabilities to move a kilometre in wet winter conditions would probably do so.) It is at odds with constitutional principles for agents of the executive to be able to impose what may be arbitrary punishments, and to do so inconsistently. It is even more objectionable where, as here, the alleged basis for such treatment may not be criminal, and need not be proved to have actually occurred.

3.11 "Reasonable grounds to believe" would, in the view of the Law Society, be a more appropriate test, lessening the likelihood of the use of orders (and resulting impact on the rights of those subject to the orders) on speculative or premature grounds.

Section 8A(2): directions about distance and reasonable time to comply

3.12 The Bill does not provide clear directions about distance and time. A move-on order may require the person to whom it is issued to "leave the public place specified" or to move a certain distance away. How the relevant area may be specified is left up to the police to decide. There is no guidance or limitation as to how far a person (moved on, for example, from in front of certain retail premises) can be required to relocate. (Must they move only from in front of that store? From that street? From the entire CBD?)

3.13 There is also no guidance as to how promptly an individual who is served an order must move. There have been reports in Western Australia of instances of orders of this kind being issued with unreasonable time limits to leave, resulting in premature arrests.[7] A lack of clarity about how long a person will have to leave an area before they are considered to be breaching an order means undue discretion is left to police officers. It also means there may not be uniformity in the subsequent punishment for breaches of move-on orders.

3.14 In overseas jurisdictions, courts have had to address the need for clarity about how distance is measured. The Western Australia Supreme Court found that landmarks and general areas can be included for a distance (for example, that the person issued with an

7 Dennis Eggington and Kate Allingham "Move on Laws: A New Mechanism for Police Control" (2006) 6(23) Indigenous Law Bulletin 18.

order must not return to Queen Street).[8] By comparison, the applicable measure of distance for orders under section 8A(2) of the Bill is unclear. This creates further issues surrounding compliance. If unclear distance directions are given, such as requiring a person who may not know exactly how far 100 metres is to move 100 metres away, they may travel too far for fear of non-compliance (which further impairs their right to movement) or they may, unwittingly, not travel far enough and be in breach.

3.15 It is also unclear whether the applicable area refers to a radius around the particular location.

3.16 The Law Society recommends amending the drafting of these aspects, as a precaution against oppressive use or abuse of new powers. We have included in our recommendations that, should the new powers proceed, the provision be amended to specify (or restrict) distance and enable appropriate time to comply (or clarifying how long will be given to comply).

4 Consistency with the Bill of Rights Act

4.1 The Bill raises concerns relating to Bill of Rights Act consistency. These include:

(a) freedom of expression (section 14);

(b) right to protest (section 16);

(c) freedom of movement (section 18);

(d) right not to be arbitrarily detained (section 22); and

(e) right to procedural fairness (section 27).

4.2 Under section 8(d) of the Policing Act 2008, police are directed to provide policing services "in a manner that respects human rights". The prospect that police will be required to operate a regime which promises to ignore or override relevant human rights protections is a significant concern.

Freedom of expression: section 14

4.3 Begging is a form of protected expression under section 14 of the Bill of Rights Act, which guarantees the freedom to seek, receive, and impart information and opinion of any kind in any form. The Bill's definition of begging captures both active and passive forms, and does not distinguish between conduct that is harmful or threatening and conduct that is not.[9] As a result, simply holding a sign could subject someone to a move-on order. The Law Society concurs with the Attorney-General's advice on this aspect of the Bill, which concludes:[10]

> There are less rights-infringing measures that would achieve the purpose, for example by narrowing the scope of this ground to begging that is aggressive or that interferes in the freedoms of others.

8 *Morrow v UJC* [2012] WASC 114 at [37].

9 Clause 4.

10 "Report of the Attorney-General under the New Zealand Bill of Rights Act 1990 on the Summary Offences (Move-on Orders) Amendment Bill" (14 May 2026) at [22]–[23].

> A further measure would be to set out in the legislation the factors the constable must consider before issuing a move on order to a beggar including the person's freedom to express themselves and whether it is having a disproportionate impact on other people in the vicinity.

4.4 The Law Society supports the Attorney-General's analysis and recommendations. We have noted above our preferred position, regarding not conflating rough sleeping and begging with conduct that already amounts to disorder (and, given that, query the need for the Bill to proceed).

4.5 However, if that position is not accepted, section 8A requires amendment to address its Bill of Rights inconsistency. We recommend either:

(a) amending section 8A(1) to remove begging and rough sleeping as specific grounds for the exercise of move-on powers (which would have the effect of requiring that they be disruptive, disorderly, a breach of the peace, etc, as proposed in section 8A(1)(a)–(d) to qualify); or

(b) as advised by the Attorney-General, narrowing the scope of this ground to begging that is aggressive, harassing, or that interferes in the freedoms of others; and/or

(c) setting out in the legislation the factors that a constable must consider before issuing a move on order to a person begging, including the person's freedom to express themselves and whether it is having a disproportionate impact on other people in the vicinity.

4.6 In the event of preferring the latter option, other factors additional to those suggested by the Attorney-General could be added, such as consideration of whether the activity poses serious risks to the safety of the public, or the person's own safety, or is obstructing traffic.[11] While we think that already, in such circumstances, the person could be moved on for any such danger that they pose, the amendment proposed may assist in addressing the concerns at [4.3] above by setting express parameters to ensure that the person's freedoms are minimally impaired, and only where there is strong justification.

Right to protest: section 16

4.7 The Bill excludes from its scope persons who are in a public place for the primary purpose of demonstrating or publicising a point of view.[12] This is a partial recognition of the rights to freedom of expression under section 14 of the Bill of Rights Act and peaceful assembly under section 16. However, the "primary purpose" qualifier is narrow and difficult to assess in practice. A person who is engaged in protest activity but who is also begging or rough sleeping may not satisfy the threshold for being exempt by reason of protest. Police are given discretion to treat the same individual as either a protester or a beggar depending on their assessment of subjective purpose. This subjective determination creates scope for inconsistency and content-based interference with expressive activity contrary to sections 14 and 16 of the Bill of Rights Act.

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11 Compare Law Enforcement (Powers and Responsibilities) Act 2002 (NSW), s 200(3) and (4).

12 Clause 5, new section 8A(5)(a).

4.8 The Law Society acknowledges the challenges of endeavouring to address this concern by including a clear definition of protest. On this question, we support the broad approach proposed in section 8A(5) of the Bill.[13] While overseas examples of equivalent move-on powers have taken a different approach, they have not adequately addressed the issue:

(a) In Queensland, the equivalent powers state that move-on powers do not apply to public assemblies authorised under the Peaceful Assembly Act 1992.[14] This provides for a specific definition of what would be considered a protest,[15] and therefore what is exempt from move-on orders.

(b) The equivalent move-on powers in New South Wales exclude "an apparently genuine demonstration or protest" from move-on orders, even if it is not a procession or organised public assembly.[16] There are some statutory exceptions: for example, orders are not precluded if a police officer believes on reasonable grounds that the direction is necessary to deal with a "serious risk to the safety" of either the directed person or others, or a protest that is obstructing traffic.[17] In consequence, the net effect of the NSW powers is more restrictive on rights of protest than those proposed in the Bill. In allowing for an assessment of what is "apparently genuine", it does not appear to resolve subjectivity concerns.

4.9 To achieve greater clarity (thus reducing risks of arbitrariness), and assure minimal impairment of the right to protest, the resolution in our view is to remove the ability to "move on" an individual for begging or rough sleeping alone, as discussed at [4.5]–[4.6] above.

Freedom of movement: section 18

4.10 Under new section 8A(2), move-on orders may require individuals to leave and remain away from a specified public place, or to remain a specified distance from it, for a period of up to 24 hours. The right to freedom of movement, guaranteed by section 18 of the Bill of Rights Act, includes the right to move freely within New Zealand and the right to enter public spaces without arbitrary restriction. Under the Bill, restrictions are placed based on mere presence, rather than harmful behaviour. A person may be excluded from a location simply because they were rough sleeping or begging, regardless of any impact on others.

4.11 A consequence is that individuals may be prevented from accessing essential services such as food banks, health care facilities, or emergency shelters if these facilities are in the area from which they have been moved on. The Bill does not contain any requirement for a police officer to consider whether a person has viable alternatives, or can access necessary services elsewhere before issuing a move-on order.

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13 New section 8A(5) may be compared with approaches in Queensland and New South Wales, as outlined.

14 Police Powers and Responsibilities Act 2000 (Qld), s 45.

15 Peaceful Assembly Act 1992, s 7.

16 Law Enforcement (Powers and Responsibilities) Act 2002 (NSW), s 200(2)(a).

17 Section 200(3) and (4).

4.12 Other jurisdictions include such requirements. For example, section 27(3) of Western Australia's Criminal Investigation Act 2006 requires a police officer to take into account:

> … the likely effect of the order on the person, including but not limited to … (a) the effect on the person's access to the places where the person ordinarily resides, shops and works; (b) the effect on the person's access to transport, health, education or other essential services; (c) the effect on the person's safety and wellbeing.

4.13 For rough sleepers, removal from a public space may result in no safe or practical equivalent, making the restriction both overbroad and disproportionate under section 5 of the Bill of Rights Act. Homeless women are already at an increased risk of sexual violence and sexual harm.[18] It is not difficult to understand that the risk to them, or to the personal safety of any homeless person, would be increased in more secluded areas. Instituting move-on orders without a safe location for them to go risks ultimately forcing individuals into more vulnerable situations for all forms of abuse and assault.

4.14 To address these concerns, the Law Society recommends:

(a) Amending proposed new section 8A, to require police officers to consider the effect of issuing a move-on order on the person's personal safety, and ability to access places where they reside, shop and work, access transportation, health care, education, and other essential services. This insertion follows the legislation in section 27(3) of Western Australia's Criminal Investigation Act 2006.

(b) The Committee may also wish to consider simply prohibiting orders from being made that would prevent access to emergency services or crisis accommodation.

Arbitrary detention: section 22

4.15 Police may detain an individual under new section 8C for the time reasonably necessary to take biographical details, and issue or serve an order under new section 8C(1). The right not to be arbitrarily detained is guaranteed by section 22 of the Bill of Rights Act. The Bill provides no maximum duration for this detention and no requirement that the police officer have grounds beyond those sufficient to issue an order in the first place. Refusing to provide biographical details is itself an offence under new section 8C(3), which carries a fine of up to $500. This offence can apply before an order has been issued and before a person has been informed of the full basis for the proposed order.

4.16 Similar powers under other legislation, such as section 114(5) of the Land Transport Act 1998 (**LTA**), have a time limit on what is considered a reasonable detention to obtain the necessary biographical data. In the case of the LTA, a driver can be detained "not for longer than 15 minutes". Similar clarity would be beneficial in the Bill.

4.17 It is accepted that if the detention is only so far *as reasonably necessary*, the limitation would be considered justified under section 5 of the Bill of Rights Act. The purpose of enforcing provisions passed by Parliament are likely to be important enough, and the need to hold someone to obtain information and issue an order is rationally connected. However, *reasonably necessary* is a term subject to some ambiguity. It cannot be

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18 Tanita Bidois and others *Ngā Ara ki te Kāinga: Understanding Barriers and Solutions to Women's Homelessness in Aotearoa* (Coalition to End Women's Homelessness, Ihi Research, 2024) at 23–24.

guaranteed that police officers will understand the extent to which detention is reasonable. We have considered the Attorney-General's analysis, which considers that:[19]

> Confirmation of the identity of the person and the ability to issue and serve the order is necessary for the purpose of the order and the section requires that the detention be limited to the time reasonably necessary for this. The length of time will largely be determined by the amount of co-operation received but I am satisfied that the Bill is not authorising any arbitrary detention.

4.18 In the view of the Law Society this conclusion leaves the position unsatisfactorily vague. We recommend amending section 8C(1), to provide for an amount of time that is reasonable to detain someone. Preferably, this will be 15 minutes, consistent with section 114 of the LTA. In addition, we note that the offence of failing to provide biographical details on demand under section 8C(3) is triggered once a caution has been given, but before a move-on order has been issued. A person approached by police may commit an offence by declining to provide their name and address even though no order eventuates.

4.19 Generally, New Zealand law does not require a person to answer police questions, and when it does, there are generally robust policy reasons to support the requirement. A police officer does not need a person's biographical information to determine whether they will be subject to a move-on order. As a precaution against the oppressive use of new powers, we recommend refining the drafting of this point, by deleting the words "proposing to" from section 8C(1). The power should be amended to only require a person to answer when an order is being issued, as opposed to merely proposed.

4.20 Section 8C(3)(b) is also problematic. Read literally it makes it an offence to give true biographical details to a constable who reasonably believes the details to be false. The details need not in fact be false, provided that the constable does not believe them to be true and has some basis for that belief. The Law Society recommends deleting subclause (3)(b).

Procedural fairness: section 27

4.21 Section 27 of the Bill of Rights Act provides the right to observance of the principles of natural justice in proceedings affecting rights and obligations. Consistency with this right would be supported by:

(a) Provision for a challenge mechanism.

(b) The duty to provide an explanation to the recipient of a move-on order not merely that is "reasonably practicable", but in a form that the recipient can understand.

Ability to challenge an order

4.22 The Bill provides no means by which a person subject to an order can challenge its terms, even in circumstances of clear hardship or error. The Law Society is concerned that the absence of any right to seek variation or revocation of an order is a procedural

[19] At [46].

gap inconsistent with section 27, particularly given that the orders may prevent access to essential services in specific locations for up to 24 hours.

4.23 We acknowledge that, because an order is only in force for 24 hours, there are practical issues in respect of the meaningful ability to provide for challenge of an order that is made. This only underlines the points we have earlier made, about closely questioning the workability and propriety of the powers and — failing that — the importance of taking all possible steps to minimise risks of arbitrariness or procedural unfairness, by clearly prescribing the powers.

4.24 The Committee may still wish to seek advice on what options may be available to address this issue, particularly for those persons who may be repeatedly issued with move-on orders. For example:

(a) Express provision for a complaint to be made to the Independent Police Conduct Authority;[20]

(b) an obligation to provide information to a person issued with more than one order within a specified period about how to contact a lawyer or their local Community Law Centre for legal assistance.

4.25 An obligation to explain the right to complain to the IPCA or to refer the person to legal assistance could be included in new section 8D.

Duty to explain order

4.26 The duty to explain an order under section 8D of the Bill is met by reasonable practicability ("reasonably practicable to do so in the circumstances"). This does not require an explanation to be provided in a form that the recipient can understand, and may create an acute gap for individuals with mental illness, cognitive impairment, or limited English. In this respect, the Bill's approach may be contrasted with the approach taken in the United Kingdom, which pertained under provisions for Anti-social Behaviour Orders or ASBOs, abolished in 2014. There, courts found that anti-social behaviour orders must be capable of being understood by an offender.[21]

4.27 The Law Society recommends amending the requirement under section 8D, to require the explanation of the effect of an order to be given in a form that the recipient understands. If the practical issues of ensuring recipients experiencing cognitive impairment or mental illness are of concern, this indicates it should perhaps be assessed through the lens that social services would be better suited to attend the scene.

5 Other concerns

Rights of children and young people

5.1 The powers proposed in the Bill will apply to persons aged 14 years and older, pursuant to section 8A(3). Section 8G preserves certain protections under the Oranga Tamariki Act 1989 (**OTA**) for those aged 14–17 years during questioning and arrest. However, the

20 Independent Police Conduct Authority Act 1988, s 12.
21 *R v P* [2004] EWCA Crim 287 at [34].

Bill does not require any youth-specific considerations when a constable decides whether to issue an order. As further discussed below, it also leaves a number of matters unclear regarding the intended interaction of the new powers with procedural requirements under the OTA.

5.2 A child as young as 14 may be issued a move-on order, detained under section 8C to provide biographical details, and subsequently prosecuted for breach under section 8F. This raises concerns regarding New Zealand's obligations under article 37 of the United Nations Convention on the Rights of the Child (**UNCRC**), which requires that detention of children be used only as a measure of last resort and for the shortest appropriate period. No such approach is reflected in the Bill's framework for young people.

5.3 At a minimum, we recommend that section 8A(3) is amended to require that, before issuing an order to a person aged 14–17, a constable must:

(a) have regard to the best interests of the child, consistent with article 3 of UNCRC and the Oranga Tamariki Act 1989; and

(b) consider whether referral to youth services is more appropriate.

5.4 As discussed further below, there may be grounds for more fundamental reconsideration of the age of applicability of the new powers, and/or their workability in the wider legislative context.

The effect on young persons: interface with the Oranga Tamariki Act

5.5 Proposed section 8A(3) provides powers to issue "move on" orders to children and young persons aged 14 years or older. The Oranga Tamariki Act 1989 contains a significant number of provisions which are not easily reconciled with the provisions of the Bill. New section 8G expressly states the OTA provisions are not limited or affected by the Bill's changes.

5.6 The Law Society is concerned that section 8G does not address how inherent conflicts between the OTA and the regime under the Bill are to be resolved. There may be an intention to develop internal guidance. However, in its absence, there is a risk that police officers in various regions will adopt different strategies and procedures, leading to conflicting results, confusion and potential injustice. For example, the purposes of the OTA as stated in section 4 of that Act will be relevant. The principal purpose is stated to be "to promote the well-being of children, young persons, and their families, whānau, hapū, iwi, and family groups" through a range of approaches including:[22]

> establishing, promoting, or co-ordinating services that are designed to affirm mana tamaiti (tamariki), are centred on children's and young persons' rights, promote their best interests, advance their well-being, address their needs, and provide for their participation in decision making that affects them.

5.7 The compatibility with such a statutory aim of requiring a homeless young person to "move on" or threatening them with prosecution for breach of a "move on" order seems doubtful. The OTA also has specific rules about the obligations on police when deciding whether to institute criminal proceedings against a child or young person. Adherence to

22 Oranga Tamariki Act 1989, s 4(1)(a)(i).

those rules might well be difficult in the context of a police attempt to deal with a gathering of people of different ages who do not obey a "move on" order.

Interface of the Bill's provisions affecting young people and international law obligations

5.8 Under section 5 of the OTA, the courts and any person or agencies exercising powers under the OTA are required to respect and uphold the rights of young persons recognised in the UNCRC. Under article 2 of that convention, parties must respect and ensure Convention rights to each child (that is, a person under the age of 18) irrespective of a range of characteristics including "property" and "disability".

5.9 The potential for the proposed regime to infringe such rights has been discussed above. The UNCRC goes further in article 3, which requires administrative authorities or legislative bodies (amongst others) to treat the best interests of the child as a primary consideration and to take all appropriate legislative and administrative measures to provide such protection and care as is necessary to ensure the child's well-being. A more specific provision in article 20 requires the state to provide special protection and assistance to any child "temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment".

5.10 The Law Society queries how issuing "move on" orders can comply with the requirements of section 5 of the OTA and UNCRC.[23]

Addressing the use of force

5.11 Cases in Western Australia of move-on orders have found excessive force has been used by police officers when enforcing orders.[24] The Bill should provide clear direction as to enforcement.

5.12 The Law Society recommends specifically addressing whether force can be used to ensure compliance with orders, perhaps providing that it cannot be used. Section 8F should also specify the power that a police officer has following a breach, such as whether arrest can be immediate.

The penalty for breach of move-on orders

5.13 The proposed penalty for breaching a move-on order is a term of imprisonment not exceeding 3 months or a fine not exceeding $2,000: section 8F(2). As the RIS points out, other offences that carry the same penalty penalise significantly more severe conduct like supplying or dealing with class C drugs, wilful damage or indecent exposure. The proposed penalty therefore seems disproportionate.

5.14 A sentence of imprisonment should be reserved for the most serious criminal offending. As earlier noted, key elements listed in section 8A(1) are not criminal offending. We

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23 See further: "Move-on orders will 'criminalise children experiencing homelessness' - public health experts" (Te Ao Māori News, 17 June 2026).

24 *Tallott v Matier* [2013] WASC 429.

recommend seeking further advice on penalty options and reviewing the penalty that is proposed.

5.15 More generally, it is concerning that the Bill creates a pathway for non-criminal conduct to incur criminal liability. In other words, conduct which is not itself an offence creates an indirect route to custodial punishment. The fact that it does so may ultimately be a disservice to the wider justice system. The RIS provided by the Ministry of Justice estimates that "[t]his policy change is projected to increase the prison population by six prisoners per annum, at the high estimate".[25] While on its face a low number, there is a wider issue of detriment arising from the undue use of coercive powers. Studies indicate the individuals affected by orders of this nature experience increased mistrust in police.[26] The Bill also suggests, as a justification for introducing the powers, that "disorderly behaviour" can lead to criminality. Yet, based on the experience of overseas jurisdictions, move-on orders do not reduce crime.[27] Rather, United States experience has suggested that introducing curfews, which has similarities to a move-on order in that it dictates when youths cannot be in public places, may actually increase crime, because police time is spent ensuring compliance.[28]

Lack of accountability and oversight

5.16 In addition to the point earlier discussed regarding individuals' ability to challenge an order, the Law Society is concerned that the Bill provides no wider mechanism for independent review or oversight of the proposed new powers. This would be particularly important if a review power in individual cases is impracticable. As presently drafted, there is:

(a) no obligation on police officers to record the grounds for issuing an order;

(b) no public reporting requirements on the exercise of powers under sections 8A–8F; and

(c) no provision for an independent body to review patterns of move-on orders' use.

5.17 Given the breadth of police discretion that is proposed, and the population likely to be affected, the absence of structural accountability mechanisms is a serious omission. Equivalent powers in comparable jurisdictions, including move-on powers under Queensland's Police Powers and Responsibilities Act 2000, have been accompanied by statutory data collection, annual reporting, and external review requirements.[29]

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25 RIS, above n 4 at [86].

26 Thalia Anthony and others *Hyper-policing the Homeless: Lived Experience and the Perils of Benevolent and Malevolent Policing* (online ed, Critical Criminology, 2024). Other studies exploring the physical and psychological impact of encounters with the police on rough sleepers in the United States have also noted the impact on attitudes towards other organisations attempting to address societal issues: Jessie Chen, Benjamin Henwood, Randall Kuhn "Criminalizing homelessness: Longitudinal associations of police encounters and homeless sweeps with psychosocial health among the unhoused community in Los Angeles" (2026) 393 Social Science & Medicine.

27 James Farrell "All the Right Moves? Police 'move-on' powers in Victoria" (2009) 34 AitLJ 21 at 23.

28 Mike Males and Dan Macallair *The Impact of Juvenile Curfew Laws in California* (Juvenile Justice Information Center, June 1998) at 6.

29 Police Powers and Responsibilities Act 2000 (Qld), s 49.

5.18 The Law Society recommends inclusion in the Bill of safeguards comparable to those provided for in Queensland, to enable independent oversight of the new powers if they are to proceed. We recommend mechanisms be provided for including:

(a) a statutory duty to record the grounds for each order issued under section 8A;

(b) mandatory annual reporting to the Minister of Police and the Human Rights Commission, with a requirement to publish such reports; and

(c) additional provision for an appropriate independent authority, such as the Human Rights Commission or the Ombudsman, to undertake periodic external review.

6 Recommendations

6.1 The Law Society recommends that the Bill not proceed.

6.2 If it does proceed, we:

(a) reiterate the importance of a holistic consideration by the Committee of the combined concerns arising from this Bill and the Trespass Bill (also presently being considered by the Committee); and

(b) recommend as follows:

Section 8A: power to issue move-on order

6.3 Amend section 8A(1) to remove begging and rough sleeping as specific grounds for the exercise of move-on powers (which would have the effect of requiring that they be disruptive or disorderly to qualify).

6.4 If this recommendation is not accepted:

(a) Define "rough sleeping" in clause 4 (amending section 2 of the principal Act).

(b) As advised by the Attorney-General, consider narrowing the scope of this ground to begging that is aggressive, harassing, or that interferes in the freedoms of others; and/or

(c) Set out in the legislation the factors the constable must consider before issuing a move on order to a person begging (and/or rough sleeping), including the person's freedom to express themselves and whether it is having a disproportionate impact on other people in the vicinity.

6.5 Amend the threshold test for issuing an order, to require "reasonable grounds to believe" that relevant conduct is occurring.

6.6 Consider amending section 8A(2) to set a maximum allowable specified distance. Clarify whether the distance needs to be provided in metrics, or as landmarks, and whether it refers to a radius.

6.7 Amend section 8A(2) to include the time that a person will have to comply with an order by removing themselves from the area, before they are considered in breach. Also require the time permitted to be reasonable.

6.8 Require police officers to consider the effect of issuing a move-on order on the person's personal safety, and their ability to access places where they reside, shop and work, access transportation, health care, education, and other essential services. This insertion follows the legislation in s 27(3) of Western Australia's Criminal Investigation Act 2006.

6.9 Consider simply prohibiting orders that would prevent access to emergency services or crisis accommodation.

6.10 Amend section 8A(3) to require that, before issuing an order to a person aged 14–17, a constable must have regard to the best interests of the child, consistent with article 3 of the UNCRC and the Oranga Tamariki Act 1989. Also require consideration of whether referral to youth services is more appropriate.

Section 8C: power to detain for purpose of issuing and serving a move-on order

6.11 Amend section 8C(1) to provide for an amount of time that it is reasonable to detain someone: preferably, no longer than 15 minutes, consistent with existing powers in section 114 of the LTA.

6.12 Amend s 8C(1) to only allow a person to be detained when a constable is issuing a move-on order, as opposed to proposing to. Delete the words "proposing to".

6.13 Delete section 8C(3)(b).

Section 8D: Duty of constable to explain move-on order

6.14 Amend section 8D to require the explanation of the effect of an order to be given in a form that the recipient understands.

6.15 Include, if applicable, the right to seek review or to refer the person to legal assistance: see further [4.24]–[4.25].

Section 8F: Breach of move-on order

6.16 Consider specifically addressing whether force can be used to ensure compliance with orders, or providing that it cannot be used.

6.17 Insert into section 8F the power that a police officer has following a breach of a move-on order, such as whether arrest can be immediate.

6.18 Review the penalties proposed in section 8F(2), which are disproportionately harsh.

Additional matters

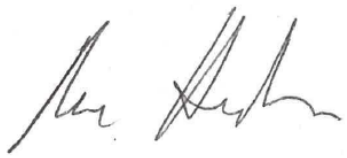
6.19 The absence of any right to seek variation or revocation of an order on grounds of hardship or error is a procedural gap inconsistent with section 27 (observance of the principles of natural justice). Consider what options may be available to address this issue, particularly in the event that person is repeatedly issued with move-on orders, for example:

(a) provision for a complaint to be made to the IPCA;

(b) obligation to provide information to a person issued with an order about how to seek legal assistance.

6.20 Introduce independent oversight mechanisms, including a statutory duty to record the grounds for each order issued under section 8A, mandatory annual reporting to the Minister of Police and the Human Rights Commission, and a complaint pathway to an external body.

Nāku noa, nā



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