

# Trespass (Specified Retail Premises and Other Matters) Amendment Bill

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

5 May 2026

## 1 Introduction

- 1.1 The New Zealand Law Society Te Kāhui Ture o Aotearoa (**the Law Society**) welcomes the opportunity to comment on the Trespass (Specified Retail Premises and Other Matters) Amendment Bill (**the Bill**), which proposes to amend the Trespass Act 1980 (**the Act**) to “modernise the Act to improve its utility to retailers, food service providers, and licenced premises”.<sup>1</sup>
- 1.2 The Bill:
- (a) Increases the period a person can be trespassed by the occupier to stay off their premises, to up to three years’ maximum;
  - (b) Creates a new bespoke power for occupiers to trespass a person from multiple locations at once;
  - (c) Widens the circumstances in which a person can be considered to ‘know’ that they have been trespassed from a location;
  - (d) Creates a backstop for situations where an occupier does not, or cannot, inform the person of the time period or location to which a warning applies;
  - (e) Increases the maximum monetary penalty for refusal to leave or breaching a trespass warning to \$2,000; and
  - (f) Increases the maximum monetary penalty for refusal to give their name and address to the occupier when requested to do so.
- 1.2 The Law Society supports the Bill’s intention to modernise the Act; however, as drafted the Bill risks intruding on individual rights and being ineffective and unworkable in practice. The Law Society recommends the Bill not proceed. If the Bill is to proceed, the Law Society’s submission makes several recommendations to address our drafting and workability concerns.
- 1.3 This submission has been prepared with the assistance of the Law Society’s Criminal Law Committee.<sup>2</sup> The submission is set out as follows:
- (a) Process concerns;
  - (b) Clause 4 – Interpretation;
  - (c) Clause 6 – Trespass after warning to stay off (groups of occupiers, multi-locations, and defences and deemed warnings); and
  - (d) Clause 7 – Delivery of warnings.
- 1.4 The Law Society **wishes to be heard**.

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<sup>1</sup> Ministry of Justice “Regulatory Impact Statement: Amending trespass law as a critical vehicle for addressing retail crime” (18 June 2025) (**RIS**) at 1.

<sup>2</sup> More information about the Criminal Law Committee can be found on the Law Society’s website: <https://www.lawsociety.org.nz/professional-practice/law-reform-and-advocacy/law-reform-committees/criminal-law-committee/>

## 2 Process concerns

### Policy process

- 2.1 Most of the issues raised in this submission may well have been addressed by a full and proper policy process that was not restricted by pre-determined policy outcomes. As discussed in our submission on the Crimes Amendment Bill,<sup>3</sup> 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.<sup>4</sup>
- 2.2 For example, we note that:
- (a) While the Bill appears to be directed at improving the issuing and enforcement of trespass orders in retail settings, in response to the Act's outdated rural orientation, the policy justification is unclear. The report from the Retail MAG<sup>5</sup> shifts between references to retail crime and broader anti-social behaviour, without clearly identifying which problem the Bill is intended to address. This lack of clarity undermines meaningful analysis of whether the proposed policy settings are appropriate or effective. Retail crime and anti-social behaviour raise different concerns and require different policy responses; conflating them risks producing measures that are ill-suited to either.
  - (b) The RIS records that "the Retail MAG broadened its remit beyond retail to encompass hospitality and food service providers when seeking amendments to the Act. The Ministry has not seen detailed written submissions to support this, nor received written details from MAG outlining the policy problems identified by non-retail businesses or industry bodies".<sup>6</sup> This is concerning, given that the Retail MAG presents itself as representing the relevant industry and as providing the evidentiary basis for identifying the policy problem and making appropriate recommendations. In the absence of documented input or substantiation from non-retail sectors, it is unclear on what basis their interests have been included or how their concerns have been assessed.
  - (c) Substantive concerns raised by government agencies have not been meaningfully addressed. Police cautioned that variable trespass periods would add operational complexity and undermine the practical enforceability of trespass orders.<sup>7</sup> Te Puni Kōkiri advised that consultation with Māori was inadequate and undermined the principles of participation and equity.<sup>8</sup> The Ministry of Justice and the Ministry of Social Development both warned the proposals would disproportionately affect children and lower income families and individuals, and

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<sup>3</sup> See [Crimes Amendment Bill](#), 16 February 2026.

<sup>4</sup> RIS at 7.

<sup>5</sup> Ministerial Advisory Group for Victims of Retail Crime "Reform of the Trespass Act" (7 May 2025).

<sup>6</sup> RIS at 7.

<sup>7</sup> RIS at 3.

<sup>8</sup> DDS at 3.2; WAI 2540: Tū mai te rangi! Report on the Crown and disproportionate reoffending rates at 4.3.

lack sufficient protective safeguards.<sup>9</sup> The Privacy Commissioner raised serious concerns about the significant privacy and discrimination risks created by the proposed power to trespass individuals from multiple locations, or as a group of occupiers, particularly in the absence of a requirement for reasonable grounds to suspect.<sup>10</sup> Oranga Tamariki advised that children and young people should be excluded from the amendments.<sup>11</sup>

- 2.3 In our view, any substantial changes to the law that involve a complex balance of rights requires wider consultation and deeper analysis to ensure the legislative response is proportional, reasonable, and consistent with the New Zealand Bill of Rights Act 1990 (**the Bill of Rights**). This view is also held by the Legislation Design and Advisory Committee, which states the core goals of effective legislative design include ensuring the legislation be fit for purpose, constitutionally sound, and accessible.<sup>12</sup>
- 2.4 Further, the absence of meaningful consultation with affected stakeholders, population groups or the public prior to the introduction of the Bill is concerning. This is particularly acute for those who may be disproportionately affected, including Māori. Early, genuine, and culturally appropriate engagement is critical to ensure Crown obligations under te Tiriti are upheld.<sup>13</sup> 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.
- 2.5 Given these process concerns (and the further concerns addressed below), the Law Society recommends the Bill not proceed. Further policy analysis and consultation with affected groups is necessary. If the Bill does proceed, we make further recommendations below to address our most serious concerns.

### 3 Clause 4 – Interpretation

- 3.1 Clause 4 of the Bill inserts the proposed definition of ‘specified retail premises,’ which states it:
- (a) means any of the following:
    - (i) Premises from which the occupier carries on business selling, or offering for sale, by retail any finished goods:
    - (ii) Premises from which any prepared or cooked food or beverage that is ready to be consumed on the premises or taken away from the premises for immediate consumption is sold (for example, a takeaway shop, restaurant, food hall, or food court):
    - (iii) Premises from which alcoholic beverages for consumption on or off the premises are sold (for example, an on-licence or an off-licence):

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<sup>9</sup> DDS at 3.1; RIS at 3 – 4.

<sup>10</sup> DDS at 3.5.1; RIS at 4.

<sup>11</sup> RIS at 4.

<sup>12</sup> Legislation Design and Advisory Committee *Legislation Guidelines: 2021 edition* at Chapters 1 – 3.

<sup>13</sup> DDS at 3.2.

- (iv) Premises at which hospitality services are provided to members of the public (for example, a gambling venue, sporting facility, or other entertainment facility); but
- (b) Does not include premises within the meaning of paragraph (a) that are occupied by a local authority.

### 'Premises'

- 3.2 The term 'premises' requires a separate definition to ensure legal certainty as to the scope and effect of a trespass order. In the absence of a clear statutory definition, the provision is vulnerable to inconsistent and overly broad application. It is also contrary to general principles of legality and strict construction. If 'premises' is not clearly defined, there is a risk that ancillary or shared areas such as parking facilities, food courts, or internal thoroughfares may fall within the definition, without regard to their functional purpose or the proportionality of exclusion. This ambiguity is particularly problematic in complex or multi-use environments, including shopping malls, libraries and museums, and sporting or entertainment venues, where access to essential services or lawfully purchased event seating may require transit through areas associated with a trespass order.
- 3.3 Further, the lack of clarity undermines the Bill's purpose to improve the trespass regime's utility for retailers, where an unclear term may result in unenforceable trespass orders. It also risks negatively impacting on individual rights, including freedom of movement and access to essential services or lawfully obtained entitlements, as individuals may be unable to ascertain the lawful limits of a trespass order (and regulate their conduct accordingly). Where a statutory term is undefined and capable of limiting or adversely affecting individual rights, courts are required to adopt the interpretation that least infringes those rights and best accords with rights-consistent interpretive principles.<sup>14</sup> Definitional clarity is essential for the effective operationalisation of the regime.<sup>15</sup>
- 3.4 The Law Society recommends the term 'premises' is defined in the Bill. Multiple other Acts<sup>16</sup> define the term and they may provide a useful starting point for the Select Committee.

### 'Finished goods'

- 3.5 The term 'finished goods' is not a widely known or understood term among those not involved in consumer manufacturing or retail business. The Law Society understands 'finished goods' to mean goods that have completed the manufacturing process and are in a 'deliverable state' (i.e. ready to be sold, but have not yet been sold).<sup>17</sup> However, it is not clear if this is what is intended by the term in the proposed definition of 'specified retail premises.'

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<sup>14</sup> New Zealand Bill of Rights Act 1990, section 6.

<sup>15</sup> RIS at p 25 – 26.

<sup>16</sup> For example: Residential Tenancies Act 1986, section 2; Health (Registration of Premises) Regulations 1966, regulation 2.

<sup>17</sup> Sale of Goods Act 1908, section 2(4).

- 3.6 It is also questionable whether a good can be described as ‘finished’ if it is a part of a larger whole product and requires interaction with another good in order to be functional. For example, we note that vape shops are frequently targeted in retail crime, but the proposed definition leaves it unclear whether the vape cartridges or pods would be considered ‘finished goods’ such that an occupier of a vape shop would be enabled to make use of the proposed trespass regime for ‘specified retail premises’.
- 3.7 ‘Finished goods’ requires clarification to ensure the legislation remains accessible. A lack of clarity, may also affect the utility of the trespass order itself. We recommend this term is defined in the Bill to avoid any possible confusion and to ensure it is clear what premises are included as ‘specified retail premises’ for the purposes of the trespass regime.

## 4 Clause 6 – Trespass after warning to stay off

- 4.1 Clause 6 sets out new sections 4, 4A, 4B, and 4C. Respectively, these relate to:
- (a) trespass after warning to stay off a place that is not a specified retail premises;
  - (b) trespass after warning to stay off a specified retail premises by a single occupier;
  - (c) trespass after warning to stay off specified retail premises given by a group of occupiers; and
  - (d) the deemed warning provisions.
- 4.2 Proposed new section 4 reiterates the standard ‘trespass after being warned to stay off’ provision with updated language and an extended warning period. We note the duration of a warning is now at the discretion of the occupier, with a default maximum period of three years’ where no other duration is specified.<sup>18</sup> The extension of the warning period, and the introduction of discretion over its length, are also reflected in new sections 4A(2) and (5) and 4B(2) and (6).
- 4.3 The RIS discussed extending the duration of the warning period, as well as the option to include an occupier discretion, in some detail. Some serious issues with the practical workability and likely effectiveness of the discretionary approach were identified, which we consider should be addressed. For example;
- (a) Operational feasibility: Police advised that introducing a discretion over the duration of trespass notices would be difficult to operationalise in practice. Police expressed a preference for the Ministry of Justice’s proposal to introduce a court-supervised trespass period, noting that this approach would reduce complexity and increase the likelihood of successful prosecution. This is important where enforceability of notices is cited as a reason the proposed changes are needed.<sup>19</sup>
  - (b) Deterrent effect and lack of certainty: The deterrent effect of the proposed change is likely to be limited for several reasons. In particular, the change does

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<sup>18</sup> Trespass (Specified Retail Premises and Other Matters) Amendment Bill (**Bill**), Clause 6, new section 4(4).

<sup>19</sup> RIS at 3, 7, 9.

not address the underlying factors contributing to the current lack of enforcement of trespass notices. Moreover, discretionary time periods are likely to further complicate prosecution by introducing uncertainty, given the variability in duration and the evidentiary burden of proving beyond a reasonable doubt that the trespassed person was aware of the applicable time limit. This uncertainty would be further exacerbated in the context of multi-location trespass notices, where there may also be ambiguity as to the precise locations from which a person is trespassed.

- (c) **Safeguards:** Although the RIS does not explicitly address safeguards in the context of discretionary time periods, there is a broader and significant absence of safeguards generally associated with the proposed changes in new section 4. In contrast, the Ministry of Justice's preferred option—providing for a default trespass period of two years', with the ability to impose longer periods through a court following conviction—introduces an important layer of oversight. That approach mitigates the risks inherent in a regime that would otherwise rely heavily on an occupier's discretion and informal confirmation of identity and is therefore preferable to a discretionary trespass period of up to three years.

4.4 The Law Society recommends the Select Committee reconsider the Ministry of Justice's preferred approach to ensure the list of concerns identified in the RIS, are adequately addressed. In our view, the approach identified by the Ministry of Justice would also assist in ensuring the Bill effectively addresses the underlying policy problem and ensures any changes are enforceable, proportionate and justified.

#### New section 4A

- 4.5 New section 4A covers a situation where a person is trespassing or has trespassed on a specified retail premises by a single occupier. Notably, the extension of the trespass regime to specified retail premises:
- (a) enables the occupier to prospectively warn the person to stay off any other specified retail premises occupied by that occupier;
  - (b) removes the requirement for the occupier to have reasonable cause to suspect that the person is likely to trespass on the premises before issuing a warning; and
  - (c) where a person commits an offence against the section, reverses the onus of proof for the defence that the occupier who gave the warning is no longer an occupier of the place concerned or that it was necessary.

#### *Reverse onus of proof/defence provisions*

4.6 We note a reverse onus of proof already exists in the Act, but that this is not a reason to maintain the status quo or to avoid reviewing the sensibility of its continuation. The Law Society considers the imposition of a warning applying to potentially multiple locations, coupled with the absence of any requirement to reasonably suspect offending, a lowered threshold for establishing 'knowledge', and the inclusion of a deemed knowledge provision, will significantly elevate the risks inherent in the proposed framework. In our view, this represents a substantial and disproportionate departure from fundamental criminal law principles.

- 4.7 The new sections proposed in clause 6 shift the responsibility for disproving criminal liability to individuals in circumstances where culpability may be minimal, or even absent. Whilst we agree with the reverse onus position for the necessity defence, (given the defendant will have the relevant knowledge and evidence to prove so), we do not agree with a continued reverse onus to establish the defence that the occupier who gave the warning is no longer the occupier of the place concerned. This information would more easily be known by the prosecution rather than the defence. In our view, it should be for the prosecution to prove who the occupier is – that is, that the current occupier remains the same occupier who gave the warning, and was consulted when assessing whether prosecution should be pursued.
- 4.8 We consider it is also a significant omission to exclude a wrongful identity defence. A wrongful identity defence should be included so that a person who was issued a trespass warning in error, based on a mistaken identification, is not able to be convicted of an offence when returning to the premises at a later date. This concern is heightened by the known use of systems such as facial recognition technology and Auror in specified retail premises, which have relatively high error rates in correctly identifying individuals, depending on how system safeguards are configured.<sup>20</sup> A highly publicised case of wrongful identity was published in the media in 2024 and clearly demonstrates the need for care to be taken and a defence of wrongful identity included.<sup>21</sup> We suggest including privacy guidelines, along the lines of the Privacy Commission’s report on the inquiry into Foodstuffs North Island’s Facial Recognition Technology trial alongside guidance for valid and enforceable trespass notices.<sup>22</sup>

#### *Multi-location trespass notices*

- 4.9 New section 4A(2)(b) enables an occupier of a specified retail premises to trespass a person from any other specified retail premises occupied by that occupier, regardless of whether they have trespassed on any of the other premises. This provision also removes the requirement that the occupier needs to have reasonable cause to suspect the person would trespass on the other premises. We note the RIS identifies this particular issue as relating to a concern from retailers that if trespassed from one premises, a person will simply move on to another and cause similar troubles there.<sup>23</sup>
- 4.10 However, the ability to trespass a person from specified retail premises without any requirement to hold a reasonable suspicion they are likely to trespass again, raises serious concerns:
- (a) First, the absence of a reasonable cause threshold significantly weakens safeguards against discriminatory or targeted use of trespass powers (granted to

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<sup>20</sup> Privacy Commissioner “Inquiry into Foodstuffs North Island trial use of facial recognition technology” (May 2025); Jessica Murray “Guilty until proven innocent: shoppers falsely identified by facial recognition system struggle to clear their names” (3 May 2026) The Guardian at < [Guilty until proven innocent: shoppers falsely identified by facial recognition system struggle to clear their names | Facial recognition | The Guardian](#) >.

<sup>21</sup> Pokere Paewai “Māori woman mistaken as thief by supermarket AI not surprising, experts say” (17 April 2024) RNZ at < <https://www.rnz.co.nz/news/national/514523/maori-woman-mistaken-as-thief-by-supermarket-ai-not-surprising-experts-say> >

<sup>22</sup> We note the RIS explains that this guidance is being developed alongside the Bill.

<sup>23</sup> RIS at [13](d).

private citizens who are not trained in fair and reasonable application). This increases the risk that individuals may be excluded based on personal characteristics, perceived association, mistaken identity, or other irrelevant factors, rather than conduct alone.

- (b) Second, the lack of any evidentiary or behavioural justification required for future exclusion undermines the adequate protection of fundamental rights, including freedom of movement and the presumption of innocence. These rights are impacted because a retail premises is not a truly 'private property'; it is a store that opens for public access at certain hours of the day, extending an invitation to the public to enter for business purposes. Occupiers can revoke the invitation for any person to be on the premises (the warning), and if they refuse to leave, they would be committing a trespass offence. However, this power is required to be applied in a rights-consistent way. Empowering prospective exclusion shifts that balance in such a way that undermines rights-protective principles and risks normalising punitive restrictions on lawful behaviour without sufficient justification or recourse.

4.11 These concerns are particularly acute in relation to access to essential services, especially in rural areas and small towns where there may be limited or no meaningful alternatives to a single supermarket, pharmacy, petrol station, or other core retail or service provider. In such communities, a trespass notice may have the practical effect of excluding a person from necessities required for daily living, including food, medicine, and basic transport needs.<sup>24</sup> Where exclusion can be imposed prospectively and without any requirement for reasonable suspicion, the risk of disproportionate and unjustified impacts is significantly heightened, particularly for vulnerable individuals.<sup>25</sup> In these contexts, trespass powers operate not merely as a property-protection mechanism, but as a de facto restriction on access to essential services. This concern highlights the need for robust safeguards, clear justification, and rights-consistent limitations.

4.12 Practically, there must also be consideration of how trespass notices will apply across multiple locations. In our view, this raises a fairness issue where people who are trespassed may not understand that they are trespassed from not only the KFC they refused to leave (for example), but also the other fast-food restaurants associated with the parent company or other KFCs either regionally or nationally. We note that parent companies can often own multiple different named stores, often via franchise agreements which have complicated contractual terms enabling the use of the franchise. For example:

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<sup>24</sup> As discussed in the RIS at 2, 6, 21, 26 and [41].

<sup>25</sup> As the Ministry of Social Development provides in the RIS at p 4: "MSD considers these changes would disproportionately impact MSD clients, including those who use payment cards, are under non-financial sanctions, or are non-beneficiaries who access hardship support for essentials like food and clothing. MSD holds an overall concern that issuing long trespass notices may lead to clients disengaging from support services, which could in turn increase anti-social behaviour in the community. MSD may see increased demand for hardship assistance, and emergency accommodation due to possible financial implications on whānau and families where fines have been imposed or there are consequences which may have impacted individuals' employment status."

- (a) Foodstuffs owns multiple supermarket chains across the country.
- (b) Restaurant Brands owns KFC, Pizza Hutt, Taco Bell and Carl's Jr.
- 4.13 There are real questions about how the Bill would apply in the case of franchises where it is unclear whether the large corporations owning the brand, but not the premises, are occupiers of the premises or whether this title falls to the owner of that individual franchise. In our view, this should be made clear to avoid any confusion and enable an appropriate and accurate trespass notice to be provided to the trespassed person. Not doing so will reduce a person's ability to comply with the notice and potentially result in unjust convictions or render a notice unenforceable.
- 4.14 On the Bill's current drafting, it also appears as though these occupiers could effectively trespass a person from entering their premises across the country without any geographical limitation. We note the DDS explains the unusual features of this provision and states:
- ...The new bespoke power in the Bill removes the 'reasonable cause to suspect' safeguard for occupiers of specified retail premises. Under this new power, these occupiers would have the ability to significantly restrict a person's freedom of movement over a wide area, without recourse to any review or appeal process. In recognition of the potential impact of this amendment, the Minister of Justice intends to request that the Justice Committee consider whether there should be geographic limits to multi-location trespass notices.
- 4.15 Whether the potential geographical ambit of this provision imposes a demonstrably justifiable limit on freedom of movement is not addressed in the Attorney-General's Bill of Rights advice.<sup>26</sup> We consider this to be a concerning oversight given the potential gravity of restrictions a person could face with such a broad power and recommend that the Select Committee seek advice from officials about the potential implications the power will have on an individual's right to freedom of movement.
- 4.16 The Law Society is concerned with the potential impact of this new section and recommends that, at a minimum, geographic limitations be set for the implementation of any trespass power. Other factors such as the size and rurality of a specified retail premise may also be relevant when considering how to practically apply trespass notices across multiple locations. This would also assist in ensuring access to essential services are not unduly restricted.
- 4.17 Finally, we note the Privacy Commissioner's feedback does not appear to have been adequately addressed. The DDS states the Privacy Commissioner:<sup>27</sup>
- was consulted in the policy development process, and on draft cabinet papers. The Commissioner considers that the proposal to provide a bespoke power to trespass people from multiple locations could have privacy risks, because operationalising the policy will require information to be shared about those affected individuals. As the proposal does not require there to be a reasonable cause to suspect that the person is likely to trespass on all premises included in

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<sup>26</sup> Attorney-General Judith Collins "Trespass (Specified Retail Premises and Other Matters) Amendment Bill – Consistency with the New Zealand Bill of Rights Act 1990" (10 March 2026).

<sup>27</sup> DDS at 3.5.1.

the notice, without safeguards the Commissioner does not consider this proposal to be necessary, proportionate, or justified.

- 4.18 The Law Society echoes the concerns raised by the Privacy Commissioner and agrees with their conclusion that the proposal is not ‘necessary, proportionate, or justified’. We recommend the Select Committee seek further advice from the Privacy Commissioner on the privacy issues raised by the Bill, and amend new sections 4A and 4B to re-insert the protective safeguard requiring an occupier to have a ‘reasonable cause to suspect’ that a person is likely to trespass on the other premises listed in the trespass notice.

#### New section 4B

- 4.19 The effect of new section 4B is to permit a group of occupiers to warn a person to stay off their premises because they have trespassed at one of the other occupiers’ premises. The concerns outlined above in relation to proposed new section 4A, particularly the multi-location trespass power and the absence of a reasonable-suspicion threshold, equally apply to new section 4B. However, those concerns are amplified given that new section 4B extends to a broader group of occupiers and premises.
- 4.20 New section 4B(5) enables a group of occupiers to delegate the authority issue a warning under new section 4B(2) to any person. The new section does not specify any parameters for the delegation of that authority, raising potential risks of abuse of power and difficulties in proving the delegation remains effective when challenged. For example, a franchisor could require delegated authority to be given to them as a standard term in a franchise agreement, or an agreement to lease a shop in a mall could include a requirement for the authority to be delegated to the lessor as a standard term. The concerns raised at 4.11 also apply in this context.
- 4.21 In our view, there should not be a general capacity to delegate authority on an ongoing, potentially retrospective, and unrestrained basis. Aside from the risk of abuse, it does not leave room for an occupier who is part of the group to opt out in a specific incident. Guardrails should also provide safety from targeting of individuals.
- 4.22 The Law Society recommends amending new section 4B(5) to include appropriate limits on this power including:
- (a) Which occupiers can sign the delegated authority;
  - (b) When the authority must be signed, i.e. prospectively;
  - (c) A geographic and number limit to the ‘group’;
  - (d) A duration of the delegated authority; and
  - (e) A person-specific or incident-specific limit.

#### *Ability to appeal*

- 4.23 Trespass notices, whether issued for a single location or multiple locations, do not provide any mechanism for appeal or review. This compounds existing access to justice concerns with the regime.<sup>28</sup> The concerns identified above are particularly acute where a

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<sup>28</sup> RIS at p 21.

notice may be issued to the wrong person, in a rural area, or where there are other grounds on which the notice ought to be challenged.

- 4.24 In practice, the only avenue available to challenge a trespass notice is through civil proceedings, requiring the affected person to bear the financial cost, procedural burden, and broader consequences of initiating legal action.
- 4.25 We recommend the Select Committee consider inserting a new subsection to allow a challenge or review of a trespass notice to facilitate access to justice and reduce the potential impact a trespass notice may have on an individual.

#### New section 4C

- 4.26 New section 4C sets out the situations in which a person can be 'deemed' to have been given a warning to stay off specified retail premises. We acknowledge the addition of limits, setting out that this applies only to specified retail premises and only where there is intentional refusal to accept a warning given to them. These safeguards improve the practical applicability and effectiveness of the section.
- 4.27 However, the Law Society is concerned that proposed new section 4C(b) incorporates the words 'ought to have known.' In the present context, an 'ought to have known' standard (which applies a reasonable person test) is likely to create difficulty where there is also a requirement that the refusal of a warning be intentional. The inclusion of a negligence-based or constructive knowledge threshold is conceptually inconsistent with an intention requirement and risks blurring the applicable mens rea element. In these circumstances, a subjective 'actual knowledge' standard is more appropriate and consistent with established criminal law principles. We further note that importing a reasonable person test in situations where the individual may not be capable of understanding or operating to that standard (i.e. intellectually disabled or English as a second-language individuals) raises fairness concerns. We recommend deleting the words 'ought to have known' from new section 4C(b).

## 5 Clause 7 - Delivery of warnings

### Oral warnings

- 5.1 Clause 7 sets out proposed new section 5, which largely repeats current section 5 of the Act, including continuing to allow warnings to be given orally.
- 5.2 We acknowledge that retailers have identified difficulties in delivering warnings as part of the problem definition. However, the Law Society queries whether an oral warning remains sufficient in the context of New Zealand's modern and multicultural society and the Bill's objectives and proposed changes to the trespass regime. Relying on an oral warning alone may undermine both the procedural fairness and practical effectiveness of trespassing a person from a specified retail premise. Without adequate safeguards, an oral-only warning also risks being misunderstood, unheard, or inaccessible. Oral warnings may not be appropriate where there is an obvious disability, neurodiversity, and/or communication barrier or where the person being trespassed is a child or young person. In these examples, there is a real risk the warning will not be understood.

- 5.3 Given the increase to the warning period of up to three years', we are also concerned that an oral warning is simply unlikely to be remembered accurately, which impacts an individual's ability to comply. As with the continued application of the reverse onus in relation to occupiers, we consider there should be further scrutiny of whether an occupier can rely on oral warnings alone. If an occupier is required to provide a written notice in all cases, this is likely to improve the Bill's workability and ensure a trespass notice remains enforceable.
- 5.4 We recommend the Select Committee seek further advice from agency officials and experts on the issues (especially sufficiency) posed by the continuation of oral warnings with the proposed expansion of the regime, and consider amending accordingly. Any amendments made should be applied consistently throughout the Bill, including in new section 4C relating to deemed warnings.

#### 'Where reasonable'

- 5.5 The Law Society is also concerned about including the words "where reasonable" in proposed new section 5(2) relating to the requirement to provide a written warning when a trespass order applies to multiple premises or is issued by multiple occupiers under a delegated authority from a group of occupiers. Certainty in the scope and effect of a trespass order is essential. It is neither reasonable nor fair to trespass a person from multiple sites unless they are clearly and specifically informed of each location to which the order applies. Absent such clarity, individuals cannot reasonably be expected to understand or comply with the restrictions imposed, creating an undue risk of inadvertent non-compliance and unjust enforcement.
- 5.6 The policy analysis accompanying the Bill clearly recognised the risks associated with uncertainty in the scope of trespass orders applying to multiple locations,<sup>29</sup> and this concern was reflected, appropriately, in the drafting of proposed new section 4B(4)(b), which defaults the operation of a trespass notice to the single premises where the trespass occurred. The Law Society recommends the same safeguard be applied consistently throughout the Bill, to ensure clarity, fairness, and effective compliance. We recommend deleting the words "where reasonable" from proposed new section 5(2)(a) and (b), to ensure a written notice is mandatory where a trespass order applies to multiple locations or is issued by a group of occupiers.

#### Minimum requirements of a trespass notice

- 5.7 Lastly, we note the RIS states that guidance on issuing valid trespass notices will be provided for retailers.<sup>30</sup> This is a positive step, and we recommend that adequate public consultation on the design of the guidance should be required.
- 5.8 However, we also consider the legislation should clearly set out the minimum requirements for the content of a trespass notice to be valid. It is unlikely that mandatory minimums would change with any great speed; only the method of delivery of those

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<sup>29</sup> RIS at [38] and p 25.

<sup>30</sup> RIS at 1.

minimums and, therefore, placing minimum standards in legislation as a safeguard would be appropriate.<sup>31</sup> In our view, this should include:

- (a) A list of the location/s (and addresses) from which the person is trespassed;
- (b) The term of the trespass;
- (c) The reason for the trespass;
- (d) The consequences of a breach of the trespass notice.

5.9 As such, we recommend inserting a new subsection detailing the minimum requirements of a valid trespass notice.



Jesse Savage  
**Vice-President**

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<sup>31</sup> Above n 12 at Chapter 14, Part 5.