
From: s9(2)(a) @police.govt.nz>
Sent: Friday, 26 July 2024 3:47 pm
To: s9(2)(a) ; s9(2)(a)
Cc: s9(2)(a) ; s9(2)(a)
Subject: RE: IMPORTANT FW: [EXTERNAL] RE: Retail crime and anti-social behaviour work programme

Kia ora S9(2)(a)

Some useful links, that you are probably already across.

<https://communitylaw.org.nz/community-law-manual/chapter-27-neighbourhood-life/begging-busking-and-sleeping-rough/>

<https://wellington.govt.nz/community-support-and-resources/community-support/homelessness-and-begging/our-approach>

<https://www.thepeoplesproject.org.nz/homelessness/>

The last link provides a good reminder that not all people who are suffering from homelessness, are the same.

Ngā mihi
s9(2)(a)

From: s9(2)(a) @justice.govt.nz>
Sent: Friday, July 26, 2024 3:32 PM
To: s9(2)(a) @police.govt.nz>
Cc: s9(2)(a) @justice.govt.nz>; s9(2)(a) @police.govt.nz>;
s9(2)(a) @police.govt.nz>; s9(2)(a) @police.govt.nz>;
s9(2)(a) @police.govt.nz>; s9(2)(a) @police.govt.nz>; s9(2)(a) @police.govt.nz>
Subject: RE: IMPORTANT FW: [EXTERNAL] RE: Retail crime and anti-social behaviour work programme

Thank you, s9(2)(a) that's really useful and answers another question I had around the gaps in Police's current powers when responding to anti-social behaviour.

I've also been thinking about the extent to which the paper should outline Police's current operational approach to homelessness and what the implications might be if move-on orders also extended to homelessness, to assist in distinguishing between policing anti-social behaviour vs. homelessness. If you happen to have any information or thoughts on those points they would be gratefully received, but I recognise this might also sit elsewhere in Police.

Thanks again. Have a great weekend!

Ngā mihi nui,
S9(2)(a)



S9(2)(a)
Senior Policy Advisor | Criminal Law Policy
Ministry of Justice | Tāhū o te Ture
P +64 4 466 4307

From: s9(2)(a) hite@police.govt.nz>
Sent: Friday, 26 July 2024 12:30 pm
To: S9(2)(a) @justice.govt.nz>
Cc: S9(2)(a) @justice.govt.nz>; s9(2)(a) @police.govt.nz>;
s9(2)(a) @police.govt.nz>; s9(2)(a) @police.govt.nz>; s9(2)(a) @police.govt.nz>;
@police.govt.nz>; s9(2)(a) @police.govt.nz>; s9(2)(a) @police.govt.nz>

Subject: FW: IMPORTANT FW: [EXTERNAL] RE: Retail crime and anti-social behaviour work programme
Importance: High

Hi S9(2)(a)

I am responding to your email below but just in the context of 'move on' orders.

I have attached a document that may be presented to the Cabinet Strategy Committee shortly when they look looking at Law and Order issues. It was to be part of a Justice Sector Ministers Meeting recently but that was canned. S9(2)(a) has been involved in the alcohol work - Evidence on the links between alcohol-related violence and crime and possible interventions.

You will see in the Table appended to the briefing that we consider there may be potential for **creating public nuisance legislation, noting that** this is made in the context of alcohol harm and street disorder, not homelessness. We note that offenders are usually intoxicated, but youth offenders and aggressive beggars could also fit into this profile. The intent is for Police to be able to issue a notice to offenders to move and stay away from an area.

Police have no power to effectively deal with people in CBDs that behave in an offensive or disorderly manner, but not to the extent of the threshold outlined in section 3 or 4 of the Summary Offences Act 1981. The potential order proposed is intended to be used for instances when people are being a nuisance to the public, and if left to their own devices, may soon become an offender or a victim of violence. Once Police identify an offender, they could be issued with a notice to leave the "area" for a defined period. Complying means no offence is committed. Police considers this would be an infringement only penalty with a power of arrest. Offenders can be released from custody with an infringement or written warning so there is no impact on an already stretched Justice and courts system. Immediate ability to impact on CBD violence by removing offenders from the area thereby protecting members of the public. However, this would require further consideration to manage the potential of displacement.

Happy to discuss.

Ngā mihi

s9(2)(a)

s9(2)(a)

Manager Policy

Policy & Partnerships

Police National Headquarters

E s9(2)(a) @police.govt.nz

From: S9(2)(a) <[@justice.govt.nz](mailto:S9(2)(a)@justice.govt.nz)>
Sent: Wednesday, 24 July 2024 10:22 AM
To: s9(2)(a) <[@police.govt.nz](mailto:s9(2)(a)@police.govt.nz)>; s9(2)(a) <[@police.govt.nz](mailto:s9(2)(a)@police.govt.nz)>; s9(2)(a) <[@police.govt.nz](mailto:s9(2)(a)@police.govt.nz)>
Cc: S9(2)(a) <[@justice.govt.nz](mailto:S9(2)(a)@justice.govt.nz)>
Subject: [EXTERNAL] RE: Retail crime and anti-social behaviour work programme

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Kia ora koutou,

As flagged in the below email, I am currently working on a briefing with options to address homelessness in city centres. Would you be free for a meeting early next week to chat about current tools available to Police to manage homelessness or anti-social behaviour, any gaps in these tools, and feedback on the options we're outlining in the briefing?

For context, the briefing has been commissioned in response to concerns raised by retailers that homeless people are bringing antisocial behaviour to CBDs and generally making people feel unsafe. The options currently in the paper are:

- Move on orders: a tool enabling a Police officer to ask someone to immediately leave an area and not return for a specified period of time. Similar powers are available in Australia. I understand you have been looking into similar powers for public intoxication.
- Offences in the Safe Streets Bill: advice on "nuisance begging" and "nuisance obstruction of a public place" directions and prevention notices
- Option 3: TBC based on any findings from reviews of other jurisdictions (or any suggestions that you might have)

The briefing is due to the Minister on 14 August.

Ngā mihi nui,
S9(2)(a)



S9(2)(a)
Senior Policy Advisor | Criminal Law Policy
Ministry of Justice | Tāhū o te Ture
P +64 4 466 4307
Level 6, Justice Centre, Aitken Street | DX Box SX10088 | Wellington
S9(2)(a) <[@justice.govt.nz](mailto:S9(2)(a)@justice.govt.nz)> | justice.govt.nz

From: S9(2)(a) <[@justice.govt.nz](mailto:S9(2)(a)@justice.govt.nz)>
Sent: Friday, 19 July 2024 2:57 pm
To: s9(2)(a) <[@police.govt.nz](mailto:s9(2)(a)@police.govt.nz)>; s9(2)(a) <[@police.govt.nz](mailto:s9(2)(a)@police.govt.nz)>; s9(2)(a) <[@police.govt.nz](mailto:s9(2)(a)@police.govt.nz)>
Cc: S9(2)(a) <[@justice.govt.nz](mailto:S9(2)(a)@justice.govt.nz)>; S9(2)(a) <[@justice.govt.nz](mailto:S9(2)(a)@justice.govt.nz)>; S9(2)(a) <[@justice.govt.nz](mailto:S9(2)(a)@justice.govt.nz)>; S9(2)(a) <[@justice.govt.nz](mailto:S9(2)(a)@justice.govt.nz)>
Subject: Retail crime and anti-social behaviour work programme

Kia ora koutou

Document 1

I wanted to reach out as our Minister has recently asked us to start work on some retail crime initiatives. This is in relation to the recent announcement of a new [Ministerial Advisory Group](#) for the victims of retail crime.

In preparation for the Advisory Group's establishment, our Minister has asked us to provide preliminary advice in the following focus areas:

- tackling anti-social behaviour through the criminal law;
- empowering retailers to use technology for crime prevention, particularly with respect to the use of facial recognition technology; and
- enabling security guards to be more effective.

We wanted to let you know about this work programme and would be keen to draw on your work and insights relating to retail crime where relevant. Timewise, we have been asked to provide advice in the next few months.

If you would have time over the next week or so, we'd appreciate meeting with you, or members of the team involved in this policy area, to discuss any intersections with your work that may be relevant to this initiative. Particularly to start with, in the areas of facial recognition technology for crime prevention, move-on orders, and the powers of security guards to respond to crime.

We look forward to connecting soon.

Ngā mihi,
S9(2)(a)



S9(2)(a)

Acting Manager | Civil Law

P +64 4 495 1203 | Ext 41203

Justice Centre – Level 6, 19 Aitken Street, Wellington 6011

DX Box SX10088 | Wellington

S9(2)(a) [@justice.govt.nz](mailto:S9(2)(a)@justice.govt.nz)

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From: s9(2)(a) @police.govt.nz>
Sent: Friday, 26 July 2024 4:42 pm
To: S9(2)(a)
Subject: RE: IMPORTANT FW: [EXTERNAL] RE: Retail crime and anti-social behaviour work programme

Hi S9(2)(a)

I start to get less helpful at this point.

You might need to provide more specificity around what a homelessness offence might be. It's difficult to envisage an offence of being homeless. As you know homelessness in itself is not an offence. Any offending behaviour is generally already covered (eg. S21 and s22 of the Summary Offences Act 1981 - Intimidation, obstructing public way; s5A disorderly assembly Trespass Act 1980) and equally applies to homed people.

New Zealand's official definition of homelessness is broad and covers people who are without shelter, in emergency and temporary accommodation and living as a temporary resident in a severely overcrowded private dwelling. (Source: HUD).

"The 2013 Census estimated there were approximately 41,000 New Zealanders in severe housing deprivation.

Of those identified as homeless:

- around 10 percent were without shelter - living in cars, sleeping rough or in uninhabitable housing
- 20 percent in temporary or emergency accommodation – living at campgrounds or night shelters (including MSD and HUD funded accommodation)
- 70 percent were sharing accommodation with another household- living in overcrowded situations or couch surfing."

While the numbers will have changed since then definition covers a lot of people who do not demonstrate any anti-social behaviour.

Council bylaws (<https://communitylaw.org.nz/community-law-manual/chapter-27-neighbourhood-life/begging-busking-and-sleeping-rough/>)

"Councils can make bylaws for its area, and they are broadly made to cover one or more of the following purposes:

1. to protect the public from nuisance
2. to protect, promote, and maintain public health and safety
3. to minimise the potential for offensive behaviour in public places.

Each Council takes its own approach. Information from the community law website has some information about **begging** rules in some of the main centres:

Document 2

- **Auckland Council** has a **Public Safety and Nuisance Bylaw** (2013) that bans any begging that's done in a way "that may intimidate or cause a nuisance to any person" (clause 6(1)(f)).
- **Hamilton City Council** has a **Safety in Public Places Bylaw** (2020) that bans "nuisance behaviour," which includes begging "that is likely to cause harassment, alarm or distress to any reasonable person, or causes an unreasonable interference with the peace, comfort or convenience of any person" (clauses 3, 5).
- **Napier City Council** has a **Public Places Bylaw** (2021) that says you need permission from the council before you can ask for money or busk on public footpaths. In 2017 the police charged three beggars with breaching this bylaw, but later dropped the charges, with the city council saying the rule was intended for buskers and street appeals, not beggars.
- **Wellington City Council** has **said clearly** that it will not introduce an anti-begging bylaw.
- **Christchurch City Council** **gave up** on plans to introduce an anti-begging bylaw in 2015 after deciding it would be too hard to enforce it.
- **Tauranga City Council** did have a bylaw that banned begging within five metres of the doorway of a "retail premises" (like a shop, café, restaurant or bar). However, this was revoked on 27 February 2020 and is no longer in effect.

Bylaws can be enforced by council staff or external agencies such as the New Zealand Police."

From the above you can see the differences in approach from Councils and this most likely applies to dealing with homelessness.

See also: [Homelessness - The People's Project \(thepeoplesproject.org.nz\)](http://thepeoplesproject.org.nz)

I suggest you also talk with the Ministry of Health and HUD. They will likely attack the problem from the angle of prevention.

[Homelessness, Victimization and Crime: Knowledge and Actionable Recommendations \(publicsafety.gc.ca\)](http://publicsafety.gc.ca)

This Canadian report shows that without adequate shelter are more likely than the housed to be victims of violence and, for women, victims of sexual assault. They are also more likely to be Aboriginal.

I'm not clear on what immediate impact a 'move on' order would have. There is a risk that the problem is simply displaced or they move away temporarily and then come back. It is not clear whether moving "homeless" people on would increase their likelihood of offending and thereby require increased Police and Court intervention.

Ngā mihi

s9(2)(a)

Manager Policy

Policy & Partnerships

Police National Headquarters

E s9(2)(a) @police.govt.nz

From: S9(2)(a)
Sent: Friday, 26 July 2024 2:43 pm
To: 'Ewan Sargent | Communications Advisor'
Subject: RE: Request for meeting: Homelessness and criminal justice responses

Kia ora Ewan,

Thank you for your quick response. As you noted in your email about some aggressive beggars not being homeless, we're keen to understand the extent to which anti-social/criminal behaviour and homelessness overlap in Christchurch. We're also keen to understand the relationship between Police and homeless people in Christchurch and how homeless people are affected by contact with Police (justice and welfare-related) and by contact with the criminal justice system.

I hope this is useful. Thank you again and look forward to hearing from you.

Ngā mihi,
S9(2)(a)



S9(2)(a)

Senior Policy Advisor | Criminal Law Policy

Ministry of Justice | Tāhū o te Ture

P +64 4 466 4307

Level 6, Justice Centre, Aitken Street | DX Box SX10088 | Wellington

S9(2)(a) @justice.govt.nz | justice.govt.nz

From: Ewan Sargent | Communications Advisor <ewan@citymission.org.nz>
Sent: Friday, 26 July 2024 1:13 pm
To: S9(2)(a) <@justice.govt.nz>
Subject: RE: Request for meeting: Homelessness and criminal justice responses

Hi S9(2)(a)

Thanks for your query. Would you please be able to give us a little more idea about what you would like to ask about – what the questions would cover?

That would help us work out if it is something we can help you with and who might be the best person for you to talk to.

Here in Christchurch we work with rough sleepers – genuine homeless on the streets. Our first priority is their safety and comfort, but we encourage them to use our other services and to ultimately leave the streets, but we do that through building a relationship and overcoming their distrust.

We have a problem of aggressive begging here and associated anti-social behaviour, but we believe that is mostly coming from beggars who are not actually homeless. So we make that point clear.

Cheers
Ewan

From: S9(2)(a) <@justice.govt.nz>
Sent: Wednesday, July 24, 2024 2:51 PM

Document 3

To: Reception | Christchurch City Mission <info@citymission.org.nz>
Cc: S9(2)(a) [@justice.govt.nz](mailto:S9(2)(a)@justice.govt.nz)>
Subject: FW: Request for meeting: Homelessness and criminal justice responses

Kia ora,

My name is S9(2)(a) and I am a senior policy advisor at the Ministry of Justice. I am seeking your views to inform a paper about criminal justice responses to homelessness in city centres. This follows concerns from retailers that homeless people and associated anti-social behaviour is driving people away from city centres and making people feel unsafe, as mentioned in articles like this: [Demand for more powers to move on Auckland's 'nuisance' rough sleepers, drug users | RNZ News](#)

In particular, I'd be really keen to understand the scale of homelessness in Christchurch and the impact that criminal justice responses have on homeless people.

Would someone in your organisation be free to meet with me early next week to discuss? I can send out a Microsoft Teams link for a day and time that suits you.

Please let me know if you have any questions.

Ngā mihi,
S9(2)(a)



S9(2)(a)

Senior Policy Advisor | Criminal Law Policy

Ministry of Justice | Tāhū o te Ture

P +64 4 466 4307

Level 6, Justice Centre, Aitken Street | DX Box SX10088 | Wellington

S9(2)(a) [@justice.govt.nz](mailto:S9(2)(a)@justice.govt.nz) | justice.govt.nz

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From: s9(2)(a) @corrections.govt.nz>
Sent: Thursday, 8 August 2024 9:24 am
To: S9(2)(a)
Subject: consultation request re draft briefing on antisocial behaviours in CBDs
20240716 DRAFT (for consultation) briefing - tools to address antisocial behaviour
in CBDs Corrections feedback.docx
Attachments:

Kia ora S9(2)(a)

Thanks for sending the paper through for comment.

Implications for Corrections:

- Infringements engage Corrections where court action replaces unpaid debt with community work, and other community sentences, and where further offending occurs at the time of arrest.
- We can't properly comment on impacts without estimated volumes (not currently included in the paper), but:
 - Given the 3 month tariff, this new offence is likely to only have a nominal impact on imprisonment. Most people would not receive prison sentences, and, where people are imprisoned, it may not be their lead offence. This reflects what happens with existing offences with this maximum tariff.
 - However, we refer to our general feedback on other policy proposals that we look at the cumulative impact of policy changes not that of individual proposals (included below).

While this new offence is likely to only have a nominal impact on imprisonment and is unlikely to have a material financial impact in isolation, we note that any policy change impacting imprisonment needs to be considered in the context of overall prison population pressures. Impacts cannot be considered in isolation as network capacity and resourcing is assessed across the entire prison network, even where the impact of a single change may be nominal/not discernible. Should the prison population increase as a result of changes viewed collectively, additional resourcing may be needed to ensure that there is capacity in Corrections' infrastructure, and frontline staff are supported to manage additional people safely and effectively.

General feedback:

- We've tracked other minor comments and questions into the attached paper.

Ngā mihi,
s9(2)(a)

Principal Policy Adviser, Strategic Policy

Ara Poutama Aotearoa, Department of Corrections

a: Mayfair House, 44-52 The Terrace, Wellington, 6011

p: S9(2)(a)

e: s9(2)(a)

[@corrections.govt.nz](mailto:s9(2)(a)@corrections.govt.nz)



ARA POUTAMA AOTEAROA
DEPARTMENT OF CORRECTIONS



From: S9(2)(a) @justice.govt.nz>
Sent: Monday, August 5, 2024 4:29 PM
Cc: S9(2)(a) @justice.govt.nz>; S9(2)(a) @justice.govt.nz>; S9(2)(a) @justice.govt.nz>
Subject: consultation request re draft briefing on antisocial behaviours in CBDs

You don't often get email from joseph.o'hara@justice.govt.nz. [Learn why this is important](#)

Kia ora,

Please find attached for your comment a draft briefing about tools to address homelessness in city centres. The paper is in response to concerns raised by retailers, particularly in city centres, that homeless people are bringing anti-social behaviour to CBDs and generally making people feel unsafe.

The options in the draft briefing are:

- Move on orders: a tool enabling a Police officer to ask someone to immediately leave an area and not return for a specified period of time. Similar powers are available in Australia.
- Offences in the Safe Streets Bill: advice on "nuisance begging" and "nuisance obstruction of a public place" directions and prevention notices

In addition to the draft briefing, you will find attached a copy of the draft Safe Streets Bill (please do not share this) and a draft appendix to the briefing that covers Australian move-on type powers (which you likely do not need to read).

Any comments you can provide on the paper would be much appreciated by 3 pm Thursday 8 August. And please let me know if this timeframe is not feasible for you or your agency.

The briefing is due to the Minister on 14 August.

Please let me know if you have any questions or would like to discuss any part of the briefing further.

Ngā mihi,

Joseph

S9(2)(a)

Senior Advisor | Criminal Law Policy

S9(2)(a)

www.justice.govt.nz

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Hon Paul Goldsmith, Minister of Justice

Briefing: Options for new tools to address anti-social behaviour in city centres

Date	14 August 2024	File reference	
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Action sought	Timeframe

Contacts for telephone discussion (if required)

Name	Position	Telephone (work)	(a/h)	First contact
S9(2)(a)	Acting General Manager, Criminal Justice Policy	04 494 9776	S9(2)(a)	<input type="checkbox"/>
S9(2)(a)	Manager, Criminal Law Policy	044 660 0710	S9(2)(a)	<input checked="" type="checkbox"/>
S9(2)(a)	Senior Policy Advisor, Criminal Law Policy	04 466 4307	N/A	<input type="checkbox"/>

Minister's office to complete

<input type="checkbox"/> Noted <input type="checkbox"/> Approved <input type="checkbox"/> Overtaken by events <input type="checkbox"/> Referred to: _____ <input type="checkbox"/> Seen <input type="checkbox"/> Withdrawn <input type="checkbox"/> Not seen by Minister Minister's office's comments

Released under the Official Information Act 1982

[SECURITY CLASSIFICATION – E.G. CONFIDENTIAL]

Purpose

1. Retailers in Auckland's CBD have expressed concern that homeless people bring anti-social behaviour to the city centre, and generally make people feel unsafe. They contend that this anti-social behaviour is driving people away from the city centre and affecting their businesses.
2. In response to the concerns raised by retailers, and in line with your manifesto commitment to improve law and order, you have asked us to consider the merits of move-on orders and draft proposals to address nuisance begging and nuisance obstruction of a public place.
3. This briefing outlines the current tools available to law enforcement to address homelessness and associated anti-social behaviours, and seeks your decision on options to expand these tools.
4. Specifically, this briefing is split into the following parts:
 - 4.1. Part 1 discusses anti-social behaviour and the current approaches to dealing with it, and the need for cross-sector responses to anti-social behaviour;
 - 4.2. Part 2 discusses move-on orders and analyses the effectiveness of using them to address anti-social behaviour (like aggressive begging and unreasonable obstruction of a public place);
 - 4.3. Part 3 provides advice about the proposed provisions in the draft Safe Streets Bill (attached as Appendix _), relating to what it labels "nuisance begging" and "nuisance obstruction of a public place"; and
 - 4.4. Part 4 outlines the practical considerations that should be considered when addressing anti-social behaviours.

Commented [MM(1): Are other trends intersecting with this? - and available data etc.

Commented [MM(2): The paper doesn't include the maximum tariff for this, the only recommended offence, but does for the other offences.

Executive summary

5. We understand you share retailers' concerns that anti-social behaviour and behaviours associated with homelessness are making city centres unattractive spaces for the public to be in and undermining perceptions of safety.
6. Homelessness is a significant challenge faced by many cities in New Zealand. There is an opportunity to add to the tools available to Police and Councils to address behaviours associated with homelessness and anti-social behaviour.
7. You have asked us to provide advice on options to address the possible inadequacy of existing powers, through move-on orders and the proposals in the draft Safe Streets Bill (in relation to nuisance begging and nuisance obstruction of a public place).
8. Move-on orders, with appropriate penalties for non-compliance, may provide Police with an effective tool to manage anti-social behaviour in city centres.
9. In the Safe Streets Bill:

Commented [MM(3): Is there data pointing to the scale - we presume not because of the lack of comparable charges and infringements?

Commented [MM(4): The problem could be stated more clearly - it's pitched here as a general problem with homelessness - is that the case or is it something more specific about when this is coupled with particular behaviours.

Commented [MM(5): The discussion in the paper doesn't quite match this part of the exec summary.

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- 9.1. the proposals to address nuisance begging are feasible, though we have some concerns over the workability of the proposals as currently drafted;
- 9.2. there are major workability issues with the proposals for nuisance obstruction of a public place directions and prevention notices.
- 10. Improving public confidence in law and order is a legitimate objective of the justice system. However, homelessness is a complex issue that requires a multi-faceted, cross-sector response. Criminal justice responses to homelessness are often ineffective and there are significant rights challenges associated with using the criminal justice system to respond to survival behaviours by homeless people.

Commented [MM(6)]: It may help to note connections to other work including the emergency housing target.

Commented [MM(7R6)]: And also to note in the exec summary that many of those exhibiting the nuisance behaviours are not necessarily homeless (if you're using the rough sleeping definition).

Part 1: Anti-social behaviours affect towns and cities across New Zealand

The nature of anti-social behaviour in city centres

- 11. Some behaviour undertaken by homeless people (e.g., sleeping in public places) can make people nervous or uncomfortable, but is not criminal in nature. Similarly, some homeless people have complex mental health issues that can manifest in ways that make people feel unsafe (e.g., psychosis causing someone to yell in public), but this is not criminal behaviour.
- 12. However, we have heard from City Councils and service providers that not all harmful anti-social behaviour in city centres can be attributed to homeless people. For example, councils and service providers have told us that certain anti-social behaviours often associated with homelessness, like aggressive begging, are predominately undertaken by people who are not homeless.
- 13. We have also heard from Police and service providers that alcohol is contributing to anti-social behaviour in CBDs and is a key driver affecting inner-city safety. Police has expressed concern about officers' limited ability to act when they encounter intoxicated individuals who are at risk of offending but whose behaviour does not reach the level of offending.

Current powers available to Police and Councils may be inadequate

- 14. Law enforcement have a range of options to respond to crime in city centres, including criminal offences, general Police powers, and city bylaws.
 - 14.1. For example, there are several offences in the Summary Offences Act 1981 that address low-level crime and maintain public order and safety, including scam begging, obstructing a public way, offensive behaviour or language, intimidation, and other indecent behaviours.
 - 14.2. Police also have some powers to address anti-social behaviour, including the ability to detain people who are intoxicated in a public place or trespassing on private property if they are at risk of causing harm or being harmed, and to search for and

[SECURITY CLASSIFICATION – E.G. CONFIDENTIAL]

seize alcohol present in areas under the alcohol ban (with a power to arrest for non-compliance).^{1 2}

- 14.3. In addition, City Councils have the ability to independently create bylaws, which can be used to address anti-social behaviour. For example, several councils have bylaws concerning begging and rough sleeping.³
15. Despite these options, the tools currently available may be inadequate at addressing some anti-social behaviours. For example, frontline Police patrolling CBD areas have raised concerns about their limited ability to act when they come across people that have been drinking or acting in a manner that causes Police concern that offending may occur. Unless their behaviour escalates to the level of offending, currently Police cannot compel them to leave.

Criminal justice responses, in isolation, are not effective

16. Improving public confidence in law and order is a legitimate objective of the justice system. Many in the community may feel it is unfair for homelessness and other anti-social behaviours to deter more legitimate use of public spaces.
17. However, there are significant challenges associated with using the criminal justice system to respond to survival behaviours by homeless people. These challenges include:
 - 17.1. criminalising survival behaviours, such as rough sleeping, where a person has no reasonable alternatives but to engage in the conduct. A 2024 United Nations Human Rights Council report outlined that laws criminalising life-sustaining activities in public spaces may violate a range of human rights.⁴
 - 17.2. imposing penalties that would be an effective deterrent against the conduct (i.e. prison sentences are costly and disproportionate given the harm caused by the conduct and the culpability of the offender, while fines are not likely to be paid).
18. These challenges may create workability challenges to the options presented in this paper. In particular:
 - 18.1. survival behaviours are likely to be regarded by courts as constituting a "reasonable excuse" for the conduct.

¹ Police Manual: Host responsibility and dealing with intoxicated persons. [alcohol-host-responsibility-and-dealing-with-intoxicated-persons-180424.pdf \(police.govt.nz\)](#)

² Local Government Act 2002, Section 169: Powers of arrest search, and seizure in relation to alcohol bans

³ <https://www.aucklandcouncil.govt.nz/plans-projects-policies-reports-bylaws/bylaws/Pages/public-safety-nuisance-bylaw.aspx>; [Bylaws | Hamilton City Council: What we're doing about homelessness - Community support - Wellington City Council](#); [City-Amenity-Bylaw-Number-226-FINAL-Signed-and-sealed-30-August-2017-updated-14Oct21.pdf \(nelson.govt.nz\)](#); [Bylaws | Hamilton City Council: What we're doing about homelessness - Community support - Wellington City Council](#)

⁴ United Nations Special Rapporteur on extreme poverty and human rights and the Special Rapporteur on adequate housing: A/HRC/56/61/Add.3: Breaking the cycle: Ending the criminalization of homelessness and poverty

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- 18.2. behaviours that are symptoms of mental health disorders ~~may~~^{will} struggle to meet mens rea requirements, such as that the behaviour was undertaken knowingly or intentionally; and
- 18.3. policing and prosecuting these offences will displace police resourcing from more serious offending types and will further contribute to court back-log. Even with all of this, it's not clear that this will achieve the desired change in offender behaviours, given fines ~~will~~^{may} or "are likely to" remain unpaid.
19. Additionally, criminalising these behaviours is likely to undercut different council approaches to working with service providers and the homeless populations, and it may incentivise worse social outcomes. For example, evidence suggests that people prohibited from begging divert to locations with a lesser police presence or resort to more serious criminal activity.⁵
20. Further, requiring significant resourcing from Police for low-level anti-social behaviour is not aligned with the Government's current expectations around the role of Police. Minister Mitchell has stated that Police visibility in public is important but that the role of Police should not be furthered in areas, like mental health, that is more appropriately delivered by other agencies.⁶
21. We have outlined in the paper how these workability challenges can be mitigated.

Move-on orders may be effective and proportionate at dealing with anti-social behaviour

22. Having more powers to address anti-social behaviour in city centres would enable Police to tailor their response to the circumstances of individual cases. Any new tool should:
 - 22.1. be usable and enforceable;
 - 22.2. to the extent it applies, be appropriate for the circumstances of homeless people;
 - 22.3. make city centres safer; and
 - 22.4. retain the ability for city councils and service providers to self-determine how to respond to homelessness and anti-social behaviour in their city.
23. You have options that may address the potential gaps⁷ in the range of responses available to law enforcement, each taking a different approach to addressing anti-social behaviour in city centres:

Commented [MM(8): "May" instead of "will" - there are high numbers of people in the corrections system who have/have had mental health and substance abuse needs and the existence of a mental health need doesn't mean they lack the mens rea (probably more likely with people who have acute untreated psychosis but this is a small proportion) and again the presence of people with psychosis in the corrections system suggests even there they may not lack the mens rea. It's probably more likely that they are a factor in charging decisions and sentencing as there's a high standard to hold someone unfit to stand trial.

⁵ All the right moves? Police 'move-on' powers in Victoria (2009) <https://www5.austlii.edu.au/au/journals/AltLaw/Jl/2009/5.pdf>

⁶ See the Ministerial Expectations for the Commissioner of Police, 6 December 2023.

⁷ We use the term potential gaps because it is unclear if current anti-social behaviours are a symptom of Police under-resourcing; recent anecdotal evidence from Auckland CBD in relation to the impact of beat patrols supports the contention that more Police effectively deters anti-social behaviours.

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- 23.1. the introduction of move-on orders: a police power to ask someone to leave an area for a specified amount of time when they are engaging in anti-social conduct or are at clear risk of anti-social conduct.
 - 23.2. criminalising some anti-social behaviours: the introduction of directions for nuisance begging and nuisance obstruction of a public place with the ability to issue more restrictive prevention notices for non-compliance.
24. You could do one or multiple of these options. The options are outlined further below.

Part 2: Move-on orders provide flexibility and proportionality, without overreach

- 25. Police are currently unable to address some anti-social behaviours where the behaviour does not yet reach the level of offending, even when they have identified someone as being likely to offend in the immediate future. This puts them in a position where they must wait until the threshold under the Summary Offences Act has been met before they can act, even if the individual is at risk of offending.
- 26. Police considers that there is potential benefit available to them through the power to issue notices to people who are being a nuisance to the public, and if left to their own devices, may soon become an offender.
- 27. Move-on orders, which enable Police to ask a person to leave a specified area and not return for a period of time, are a tool that could address this gap. Failure to comply with a move-on order would result in a penalty, like a fine.
- 28. Police considers failure to comply with a move-on order should be an infringement-only penalty with a power of arrest. Offenders can be released from custody with an infringement or written warning which reduces the impact on an already stretched justice and courts system and is a more proportionate penalty given no criminal behaviour has occurred.
- 29. Move-on orders, when complied with, can provide an alternative to arrest or issuing an infringement notice in situations that can be diffused without need for further police action.

Equivalent powers are available in Australia and the United Kingdom

- 30. Move-on orders, or an equivalent, are available in all Australian states. While aspects of the orders vary in each jurisdiction, they are generally tied to offending behaviour (e.g. engaged or likely to commit an offence or engage in violence), breaching the peace, or posing a risk to the safety of others. Details of move-on powers in Australia can be found in the attached **Appendix _**

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31. Evidence of the effectiveness of move-on orders in Australia is mixed. Studies have found that there is no empirical evidence to show that 'move-on' legislation results in reductions in crime rates, but, rather, serves as another gateway into the criminal justice system.^{8 9}
32. The United Kingdom has dispersal powers that enable police officers to direct a person to leave an area and not return for up to 48 hours, where the officer has reasonable grounds to suspect the behaviour of the person has contributed to members of the public being harassed, alarmed or distressed and the officer considers that giving a direction is necessary to remove or reduce the likelihood of further behaviour.¹⁰ Police report that they find dispersal powers generally useful, note that under-staffing undermines the effectiveness of dispersal powers, and do not consider it a long-term solution to anti-social behaviour.¹¹
33. [TBC – effectiveness of dispersal powers in the UK]

Commented [MM(9): If this is connected to the ASBOs then there are a few decades of experience so there would probably be more than a report with staff reflections? Although we see more info is to come

We recommend that move-on orders are introduced to respond to specific behaviour

34. How and when move-on orders can be used is dependent on your priorities.
35. We have identified three options for move-on orders:
- 35.1. do not progress move-on orders at all;
 - 35.2. enable move-on orders, but with their application limited to behaviour that causes safety issues, e.g., public intoxication and aggressive begging (recommended); or
 - 35.3. enable move-on orders with a wide application, including to rough sleepers and all beggars.
36. We recommend that move-on orders are introduced as an additional power for Police to manage anti-social behaviour in city centres. However, we recommend you authorise us to work with Police to develop a regime that will apply only to behaviour that warrants a criminal justice response. This may include alcohol-related behaviour, like public intoxication, and aggressive begging.
37. As move-on orders are highly discretionary in nature, limiting their scope to apply to behaviour that causes safety issues will reduce the risk of the orders being issued in a discriminatory manner and ensure that Police can use the orders effectively. The purpose

⁸ All the right moves? Police 'move-on' powers in Victoria (2009)

<https://www5.austlii.edu.au/au/journals/AltLawJl/2009/5.pdf>

⁹ Move-on powers: New paradigms of public order policing in Queensland (2011)

https://www.researchgate.net/publication/263083932_Move-on_powers_New_paradigms_of_public_order_policing_in_Queensland

¹⁰ Anti-social Behaviour, Crime and Policing Act 2014 (UK)

¹¹ Police perceptions of powers within the Anti-Social Behaviour, Crime and Policing Act 2014, United Kingdom Home Office, 14 November 2023.

[gov.uk/government/publications/police-perceptions-of-powers-within-the-anti-social-behaviour-crime-and-policing-act-2014/police-perceptions-of-powers-within-the-anti-social-behaviour-crime-and-policing-act-2014](https://www.gov.uk/government/publications/police-perceptions-of-powers-within-the-anti-social-behaviour-crime-and-policing-act-2014/police-perceptions-of-powers-within-the-anti-social-behaviour-crime-and-policing-act-2014)

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would be to prevent the escalation of anti-social behaviour to the point of an offence occurring.

38. Move-on orders applying to anti-social behaviour, rather than someone's mere presence, will enable a more focused and rights-consistent approach. This allows for behaviour to be distinguished, for example, between aggressive begging and merely begging, or sleeping outside a retailer's door in the daytime versus sleeping in a public park at night.

Wider application of move-on orders will involve trade-offs

39. If your preference is for move-on orders to apply to a wider range of behaviour, there will be trade-offs:
- 39.1. Police resourcing and enforceability – namely, frontline services will be stretched, making addressing other offending more difficult, and enforceability of wider move-on orders could be prohibitively unmanageable to effectively enforce.
 - 39.2. the application of move-on orders to homeless people or others who have not committed a crime will stretch the traditional boundaries of the criminal justice system. Where otherwise no crime is being committed, there is a risk of significant net-widening (expansion of the ways in which people are pulled into the criminal justice system).
 - 39.3. homeless people given move-on orders may end up congregating in inner-city suburbs, which shifts the problem to another part of the city, or keep returning to the city once the order expires, which does not provide a long-term solution to the problem.

Part 3: Options to address nuisance begging in the Safe Streets Bill are feasible but there are serious issues with respect to the proposals concerning nuisance obstruction

40. You also asked for advice on the draft Safe Streets Bill, which sets out two new Police powers: nuisance obstruction of public place directions, and nuisance begging directions. Where the behaviour is ongoing despite the direction, the Bill introduces prevention orders, which carry more extensive requirements.
41. s9(2)(h)

42.

s9(2)(h)

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43. We have outlined these issues in more detail below.

Workability issues with the Bill

The Bill is unlikely to lead to a better quality of life for New Zealanders

44. The general policy statement for the Bill says that “the goal is to improve the quality of life of all New Zealanders and improve the state of New Zealand cities... while avoiding criminalising the genuinely vulnerable”. However, the Bill proposes a penalty-oriented framework for dealing with what Police consider to be issues that require health and socio-economic responses. The Bill gives Police a disproportionate role in addressing the harm, one that would potentially obstruct better responses, and, in practice, is more likely to shift inner city social problems to other areas while also making it more difficult to provide support for those people.

45. The lack of connection between the objective and provisions of the Bill causes a number of issues, including the justification of the limitation of various human rights.

The scope of the behaviour that is captured is broad and vague

46. The definition of nuisance begging and the behaviours captured by nuisance obstruction of a public place are both drafted very broadly. This may have unintended consequences, including placing restrictions on people that are superfluous to addressing the identified problem and achieving your objective.

46.1. for nuisance begging, the catchment area is drafted so broadly that there is unlikely to be any area in CBDs that does not apply. This is likely to drive begging out of the CBD and into nearby suburbs.

46.2. for nuisance obstruction of a public place, for example, “placing or leaving any material, object, thing or structure in a public place without lawful excuse” is unclear and could capture a number of behaviours. Others are already captured by existing offences, e.g. intimidating a person in a public place.

The Bill as drafted captures people participating in everyday activities

47. The definition of “nuisance obstruction of a public place” in the Bill also is broad enough that it captures people going about their day-to-day routines, meaning Police would be able to issue directions to people lawfully engaging in everyday conduct in city centres.

48. For example, there is nothing in the Bill that protects or prevents legitimate protest from being deemed a nuisance obstruction of a public place. Further, even people waiting to meet friends or congregating outside a café before it opens could be caught by the expansive framing.

The Bill is likely to raise human rights concerns

49. The Bill is likely to raise several human rights concerns, including in relation to the right to freedom of movement (section 18 of the New Zealand Bill of Rights Act), the right to

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freedom of peaceful assembly (section 16), and the right to freedom of expression (section 14).

The Bill is likely to receive a section 7 report from Crown Law

50. Due to the broad nature of the Bill, the engagement with numerous human rights, and the disconnect between the objective and outcome of the Bill, the Bill is likely to receive a section 7 report.

Generally, these proposals are inconsistent with global approaches to addressing homelessness

51. While these proposals are written to apply to anyone, in effect they are likely to be used almost exclusively against homeless people and others who spend time on the streets. These proposals and the associated penalties return to a model where homelessness is effectively criminalised, which is inconsistent with the general direction most comparable countries are taking to addressing homelessness and associated anti-social behaviour.

The penalties in the Bill are disproportionate and inappropriate for the harm caused

52. The penalties associated with breaching a direction (maximum 3 months imprisonment or \$2,000 fine) or a prevention notice (maximum 6 months imprisonment or \$4,000 fine) are disproportionate to the behaviour being captured. As noted earlier in the paper, these are likely to be disproportionate penalties and an ineffective deterrent against the conduct, especially for homeless people.

The reasons someone can return to the area following a direction would need to be widened

53. The nuisance obstruction of a public place direction currently has protections to enable people to come back to the area for work or education, but this does not sufficiently cover the legitimate reasons why someone might need to return to the city centre. Particularly for homeless people in city centres, City Missions and other support services are often based in the city centre.

The proposals to address nuisance begging may be feasible with further development

54. Police consider such additional legislative powers are not needed to address safety in CBDs. However, if you wish to move forward with new offences, the nuisance begging direction and prevention orders in the Safe Streets Bill may be workable after addressing the issues discussed above, such as refining the scope of behaviour that constitutes nuisance begging and ensuring the penalties are proportionate to the offence.
55. Implementation of move-on orders and nuisance begging directions can provide flexibility to law enforcement's options when dealing with aggressive beggars. Police will be able to determine which option is more appropriate in the circumstance and whether the behaviour merits the issuance of an infringement-only move-on order or constitutes a criminal offence.

The proposals to address nuisance obstruction of a public place are so vague and overbroad as to be unworkable

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56. We do not believe the nuisance obstruction of a public place proposals are feasible. As discussed above, the definition of the offence covers a wide range of behaviours, including everyday activities, and includes vague terms that are open to interpretation and would likely lead to unintended consequences.

We recommend this Bill is not progressed

57. We have identified four options for the Safe Streets Bill:

- 57.1. do not progress the Safe Streets Bill (recommended);
- 57.2. progress the Safe Streets Bill with amendments;
- 57.3. progress only the nuisance begging part of the Safe Streets Bill (with amendments);
or
- 57.4. progress the Safe Streets Bill as-is.

58. We recommend not progressing the Safe Streets Bill.

59. If you wish to progress the Safe Streets Bill, we recommend that you authorise us to continue to work with Crown Law and Police on what changes could be made to the Bill to best ensure it is workable.

Part 4: There are practical considerations for each option

Any option should not override the ability for local councils to tailor their responses

60. As noted earlier in this paper, each Council takes a different approach to addressing homelessness and anti-social behaviour in their city. Any approach that applies nationally should not remove this flexibility.
61. One of the risks with the Safe Streets Bill is that the prescriptive nature of the Bill as it relates to retail premises will mean begging and anti-social behaviour is more likely to occur just beyond CBDs, namely the inner suburbs surrounding CBDs.

Commented [MM(11): Noting in case it's helpful that the benefits and tradeoffs of each option are currently dispersed throughout the briefing - they all appear to be in there though.

We recommend that any new powers focus on behaviour, not presence

62. We recommend that any new powers only apply to people engaging in anti-social behaviour, rather than for their mere presence in public places.
63. Any power that can be used without a crime having taken place can lead to selective enforcement and harassment. Homeless people are also unlikely to fully understand the law and its limitations, which increases their vulnerability to misuse of the power by Police.
64. As mentioned earlier, requiring policing of presence over behaviour will stretch Police resources and push Police towards responsibilities better suited for other agencies.

Commented [MM(12): Noting that this in itself is quite a broad definition and would need to be better defined

Access to support services should not be blocked by these powers

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65. Additionally, we recommend any power includes exceptions to ensure that people subject to move-on orders, nuisance begging notices/prevention directions, or nuisance obstruction notices/prevention directions are able to remain in the city centre to access support services. Many support services including City Missions are based in city centres, and it is counterproductive to order people to leave the area where the key services to support them are based.

The penalties associated with these powers need to be proportionate and appropriate

66. As noted earlier in this briefing, the penalties in the Safe Streets Bill are disproportionate to the harm caused by the behaviour being captured and are generally not appropriate for homeless people.
67. Penalties for failing to comply with move-on orders are likely to be appropriate if they are infringement fees, which do not result in a criminal conviction. Infringement fees are more proportionate to the harm caused by behaviours move-on orders could be used for, and they largely avoid the criminal justice system¹² which is already facing delays. The recommended maximum infringement fee is \$1,000.

Agency consultation and population impacts

68. [TBC agency views- Crown Law, Police, Corrections, Social Investment Agency]
69. Police agree that move-on orders would be beneficial in targeting intoxication and disorderly behaviours that cause concern but do not yet escalate to the level of offending. However, Police currently considers additional legislative powers are not needed to address safety in city centres. Police expressed concerns that the direction and prevention orders proposed in the Safe Streets Bill would displace individuals to more isolated areas and put them at increased risk of harm. Police have anecdotal reports that the recently introduced “beat patrol teams” have reduced anti-social behaviours in CBDs and will continue to monitor the impact of this new initiative.
70. [TBC population impacts (from engagement with service providers) – homeless people, Māori, youth?]
71. Any tools addressing homelessness are likely to have a disproportionate impact on Māori, who make up a large proportion of homeless people. Downtown Community Ministry Wellington estimates that 54% of rough sleepers in Wellington City are Māori.

Commented [MM(13): It's not clear from this paragraph whether Police support the option or not. No doubt they'll comment on that though.

Next steps

72. If you agree to proceed with any of the options in this briefing, we will work with relevant agencies to develop detailed policy proposals.

¹² If someone decides to challenge their infringement fee, they can do so through the District Court. If someone appeals unsuccessfully, judges can issue a fine usually set at a maximum of three times the fee amount. This is designed to avoid people bringing appeals when they do not have a legitimate case, therefore limiting additional backlogs in the courts.

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73. Given the impacts of these proposals across the Justice sector, we recommend you share this briefing and consult with the Minister of Police, the Minister of Corrections, and the Attorney-General before making policy decisions.

Recommendations

74. It's recommended that you:

1. **Note** that there are a number of existing tools to address anti-social behaviour in public spaces, including criminal offences, police powers, and city bylaws;
2. **Approve** officials progressing analysis of move-on orders, including consultation with Police, Crown Law, and councils (recommended) YES / NO
3. **Agree** not to proceed with the Safer Streets Bill (recommended) YES / NO
4. **Agree** to proceed with only the nuisance begging part of the Safer Streets Bill (and for officials to consult with agencies and councils) YES / NO
5. **Agree** to proceed with the Safer Streets Bill in its entirety (and for officials to consult with agencies and councils) YES / NO
6. **Forward** a copy of this briefing to the Minister of Police, Minister of Corrections, and the Attorney-General. YES / NO
7. **Approve**... YES / NO

S9(2)(a)
Manager, Criminal Law Policy

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APPROVED SEEN NOT AGREED

Hon Paul Goldsmith
Minister of Justice

Date / /

Attachments: [Describe any attachments – use bullet points if more than one.]

DRAFT
Released under the Official Information Act 1982

From: s9(2)(a) @police.govt.nz>
Sent: Thursday, 8 August 2024 1:52 pm
To: S9(2)(a)
Cc: S9(2)(a) ; S9(2)(a) ; S9(2)(a) ; s9(2)(a)
Subject: RE: consultation request re draft briefing on antisocial behaviours in CBDs
20240806 Police feedback DRAFT MoJ briefing - tools to address antisocial
Attachments: behaviour in CBDs.docx

Kia ora S9(2)(a)

Thanks for the opportunity to respond. Police has a strong interest in the proposed options to address aggressive anti-social behaviour.

A move-on order that targets aggressive anti-social behaviour (not the mere presence of a person) where there is a clear risk of escalation to offending is supported by Police. This could be a significant crime prevention tool.

The proposal for a move-on power should not result in criminalisation of low level anti-social behaviour (net-widening) or of behaviour that is a result of mental health and social need (rough sleeping, non-aggressive begging, yelling or other behaviour that is not directed at the public).

It should be an additional prevention tool for Police to address low level offending and aggressive anti-social behaviour before it progresses to offending that results in harm to the public and the individual, and potentially criminal charges.

I have tracked suggested changes and added comments into the document attached.

It is worth noting that some shopping malls are privately owned and are not a public place by definition. Issues around public/private spaces have been previously raised in relation to alcohol bans and infringement notices. Worth thinking about if this work progresses.

Ngā mihi

s9(2)(a)

From: S9(2)(a) @justice.govt.nz>
Sent: Monday, August 5, 2024 4:29 PM
Cc: S9(2)(a) @justice.govt.nz>; S9(2)(a) @justice.govt.nz>; S9(2)(a) @justice.govt.nz>
Subject: consultation request re draft briefing on antisocial behaviours in CBDs

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Kia ora,

Please find attached for your comment a draft briefing about tools to address homelessness in city centres. The paper is in response to concerns raised by retailers, particularly in city centres, that homeless people are bringing anti-social behaviour to CBDs and generally making people feel unsafe.

The options in the draft briefing are:



Hon Paul Goldsmith, Minister of Justice

Briefing: Options for new tools to address anti-social behaviour in city centres

Date	14 August 2024	File reference	
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Action sought	Timeframe

Contacts for telephone discussion (if required)

Name	Position	Telephone (work)	(a/h)	First contact
S9(2)(a)	Acting General Manager, Criminal Justice Policy	04 494 9776	S9(2)(a)	<input type="checkbox"/>
S9(2)(a)	Manager, Criminal Law Policy	044 660 0710	S9(2)(a)	<input checked="" type="checkbox"/>
S9(2)(a)	Senior Policy Advisor, Criminal Law Policy	04 466 4307	N/A	<input type="checkbox"/>

Minister's office to complete

<input type="checkbox"/> Noted <input type="checkbox"/> Approved <input type="checkbox"/> Overtaken by events <input type="checkbox"/> Referred to: _____ <input type="checkbox"/> Seen <input type="checkbox"/> Withdrawn <input type="checkbox"/> Not seen by Minister Minister's office's comments

Released under the Official Information Act 1982

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Purpose

1. Retailers in Auckland's CBD have expressed concern that homeless people bring anti-social behaviour to the city centre, and generally make people feel unsafe. They contend that this anti-social behaviour is driving people away from the city centre and affecting their businesses.
2. In response to the concerns raised by retailers, and in line with your manifesto commitment to improve law and order, you have asked us to consider the merits of move-on orders and draft proposals to address nuisance begging and nuisance obstruction of a public place.
3. This briefing outlines the current tools available to law enforcement to address homelessness and associated anti-social behaviours, and seeks your decision on options to expand these tools.
4. Specifically, this briefing is split into the following parts:
 - 4.1. Part 1 discusses anti-social behaviour and the current approaches to dealing with it, and the need for cross-sector responses to anti-social behaviour;
 - 4.2. Part 2 discusses move-on orders and analyses the effectiveness of using them to address anti-social behaviour (like aggressive begging and unreasonable obstruction of a public place);
 - 4.3. Part 3 provides advice about the proposed provisions in the draft Safe Streets Bill (attached as [Appendix](#)), relating to what it labels "nuisance begging" and "nuisance obstruction of a public place"; and
 - 4.4. Part 4 outlines the practical considerations that should be considered when addressing [aggressive](#) anti-social behaviours.

Executive summary

5. We understand you share retailers' concerns that anti-social behaviour and behaviours associated with homelessness are making city centres unattractive spaces for the public to be in and undermining perceptions of safety.
6. Homelessness is a significant challenge faced by many cities in New Zealand. There is an opportunity to add to the tools available to Police and Councils to address [some of the behaviours](#) associated with homelessness and anti-social behaviour.
7. You have asked us to provide advice on options to address the possible inadequacy of existing powers, through move-on orders and the proposals in the draft Safe Streets Bill (in relation to nuisance begging and nuisance obstruction of a public place).
8. Move-on orders, with appropriate penalties for non-compliance, may provide Police with an effective tool to manage [aggressive](#) anti-social behaviour in city centres.
9. In the Safe Streets Bill:

Commented [WS1]: To make it clear that it is not a crime to be homeless (as set out in para 10). Police is not the right agency to address most of the issues around homelessness, that requires a cross-sector approach.

Commented [WS2]: Adding aggressive to anti-social because Police is interested in a power that would enable officers to require an individual to leave an area and not return where there is a real risk of offending occurring, eg aggressive begging, intoxicated aggression.

s9(2)(f)(iv)

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- 9.1. the proposals to address nuisance begging are feasible, though we have some concerns over the workability of the proposals as currently drafted;
 - 9.2. there are major workability issues with the proposals for nuisance obstruction of a public place directions and prevention notices.
10. Improving public confidence in law and order is a legitimate objective of the justice system. However, homelessness is a complex issue that requires a multi-faceted, cross-sector response. Criminal justice responses to homelessness are often ineffective and there are significant rights challenges associated with using the criminal justice system to respond to survival behaviours by homeless people.

Part 1: Anti-social behaviours affect towns and cities across New Zealand

The nature of anti-social behaviour in city centres

11. Some behaviour undertaken by homeless people (e.g., sleeping in public places) can make people nervous or uncomfortable, but is not criminal in nature. Similarly, some homeless people have complex mental health issues that can manifest in ways that make people feel unsafe (e.g., psychosis causing someone to yell in public), but this is not criminal behaviour.
12. However, we have heard from City Councils and service providers that not all ~~harmful~~ aggressive anti-social behaviour in city centres can be attributed to homeless people. For example, councils and service providers have told us that certain anti-social behaviours often associated with homelessness, like aggressive begging, are predominately undertaken by people who are not homeless.
13. We have also heard from Police and service providers that alcohol is contributing to anti-social behaviour in CBDs and is a key driver affecting inner-city safety. ~~Police has expressed concern about officers' limited ability to act when they encounter intoxicated individuals who are at risk of offending but whose behaviour does not reach the level of offending.~~
14. A significant amount of police resource is dedicated to policing public order, and in particular, night-time CBD economies that are characterised by music, entertainment, alcohol and drug consumption.

~~13.~~

Current powers available to Police and Councils may be inadequate

~~14-15.~~ Law enforcement have a range of options to respond to crime in city centres, including criminal offences, general Police powers, and city bylaws.

~~14.4.15.1.~~ For example, there are several offences in the Summary Offences Act 1981 and the Crimes Act that address low-level crime and maintain public order and safety, including scam begging, obstructing a public way, offensive behaviour or language, intimidation, and other indecent behaviours.

Commented [WS3]: Such as s42 preventing breach of the peace.

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44.2.15.2. Police also have some powers to address anti-social behaviour, including the ability to detain people who are intoxicated in a public place or trespassing on private property if they are at risk of causing harm or being harmed, and to search for and seize alcohol present in areas under the alcohol ban (with a power to arrest for non-compliance).¹ ² However, detaining intoxicated individuals in police custody to prevent further offending places significant health and safety obligations on police and is used sparingly for individuals arrested for public order offences.

44.3.15.3. In addition, City Councils have the ability to independently create bylaws, which can be used to address anti-social behaviour. For example, several councils have bylaws concerning begging and rough sleeping.³

16. Despite these options, the tools currently available may be inadequate at addressing some aggressive anti-social behaviours. For example, frontline Police patrolling CBD areas have raised concerns about their limited ability to act when they come across people that have been drinking or acting in a manner that causes Police concern that offending may occur. Unless their behaviour escalates to the level of offending, currently Police cannot compel them to leave.

45.17. In response to concerns about public safety in CBDs on 1 July 2024 Police rolled out Community Beat Teams across Tāmaki Makaurau, Wellington and Christchurch. The Beat Teams will provide 24/7 service with a more visible and reassuring police presence in the CBD where people have been feeling unsafe. It also gives Police the opportunity to engage with local businesses and retailers and give them reassurance and safety advice.

Criminal justice responses, in isolation, are not effective

46.18. Improving public confidence in law and order is a legitimate objective of the justice system. Many in the community may feel it is unfair for homelessness and other anti-social behaviours to deter more legitimate use of public spaces.

47.19. However, there are significant challenges associated with using the criminal justice system to respond to survival behaviours by homeless people. These challenges include:

47.4.19.1. criminalising survival behaviours, such as rough sleeping, where a person has no reasonable alternatives but to engage in the conduct. A 2024 United Nations Human Rights Council report outlined that laws criminalising life-sustaining activities in public spaces may violate a range of human rights;⁴

¹ Police Manual: Host responsibility and dealing with intoxicated persons. [alcohol-host-responsibility-and-dealing-with-intoxicated-persons-180424.pdf \(police.govt.nz\)](#)

² Local Government Act 2002, Section 169: Powers of arrest search, and seizure in relation to alcohol bans

³ <https://www.aucklandcouncil.govt.nz/plans-projects-policies-reports-bylaws/bylaws/Pages/public-safety-nuisance-bylaw.aspx>; [Bylaws | Hamilton City Council: What we're doing about homelessness - Community support - Wellington City Council](#); [City-Amenity-Bylaw-Number-226-FINAL-Signed-and-sealed-30-August-2017-updated-14Oct21.pdf \(nelson.govt.nz\)](#); [Bylaws | Hamilton City Council: What we're doing about homelessness - Community support - Wellington City Council](#)

⁴ United Nations Special Rapporteur on extreme poverty and human rights and the Special Rapporteur on adequate housing: A/HRC/56/61/Add.3: Breaking the cycle: Ending the criminalization of homelessness and poverty

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47-2-19.2. imposing penalties that would be an effective deterrent against the conduct (i.e. prison sentences are costly and disproportionate given the harm caused by the conduct and the culpability of the offender, while fines are not likely to be paid).

48-20. These challenges may create workability challenges to the options presented in this paper. In particular:

48-1-20.1. survival behaviours are likely to be regarded by courts as constituting a "reasonable excuse" for the conduct;

48-2-20.2. behaviours that are symptoms of mental health disorders will struggle to meet mens rea requirements, such as that the behaviour was undertaken knowingly or intentionally; and

48-3-20.3. policing and prosecuting these offences will displace police resourcing from more serious offending types and will further contribute to court back-log. Even with all of this, it's not clear that this will achieve the desired change in offender behaviours, given fines will remain unpaid.

Commented [WS4]: This section seems to be focused on a broader use of powers for rough sleeping etc where currently there is no offence.

49-21. Additionally, criminalising these behaviours is likely to undercut different council approaches to working with service providers and the homeless populations, and it may incentivise worse social outcomes. For example, evidence suggests that people prohibited from begging divert to locations with a lesser police presence or resort to more serious criminal activity.⁵

20-22. Further, requiring significant resourcing from Police for low-level anti-social behaviour is not aligned with the Government's current expectations around the role of Police. A lot of the issues in Auckland CBD and other CBDs around the country, such as homelessness and complex mental health issues, are not issues Police can solve. Minister Mitchell has stated that Police visibility in public is important but that the role of Police should not be furthered in areas, like mental health, that is more appropriately delivered by other agencies.⁶

24-23. We have outlined in the paper how these workability challenges can be mitigated.

Move-on orders may be effective and proportionate at dealing with anti-social behaviour

22-24. Having more powers to address aggressive anti-social behaviour in city centres would enable Police to tailor their response to the circumstances of individual cases. Any new tool should:

22-1-24.1. be usable and enforceable;

22-2-24.2. to the extent it applies, be appropriate for the circumstances of homeless people;

⁵ All the right moves? Police 'move-on' powers in Victoria (2009)

<https://www5.austlii.edu.au/au/journals/AitLawJl/2009/5.pdf>

⁶ See the Ministerial Expectations for the Commissioner of Police, 6 December 2023.

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22.3-24.3. make city centres safer; and

22.4-24.4. retain the ability for city councils and service providers to self-determine how to respond to homelessness and anti-social behaviour in their city.

23-25. You have options that may address the potential gaps⁷ in the range of responses available to law enforcement, each taking a different approach to addressing anti-social behaviour in city centres:

23.4-25.1. the introduction of move-on orders: a police power to ~~ask~~ require someone to leave an area for a specified amount of time when they are engaging in aggressive anti-social conduct or are at clear risk ~~of anti-social conduct of their behaviour escalating to offending~~.

Commented [WS5]: Police can ask a person to leave the CBD now, but if there is no offence and the person refuses, Police have no legal power to require the person to leave.

23.2-25.2. criminalising some anti-social behaviours: the introduction of directions for nuisance begging and nuisance obstruction of a public place with the ability to issue more restrictive prevention notices for non-compliance.

24-26. You could do one or multiple of these options. The options are outlined further below.

Part 2: Move-on orders can provide flexibility and proportionality, without overreach

25-27. Police are currently unable to address some anti-social behaviours where the behaviour does not yet reach the level of offending, even when they have identified someone as being likely to offend in the immediate future. This puts them in a position where they must wait until the threshold under the Summary Offences Act has been met before they can act, even if the individual is at risk of offending.

26-28. Police considers that there is potential benefit ~~available to them through the~~ from a power to issue notices to people who are being ~~a nuisance to the~~ aggressive in public, and who, if left to their own devices, may ~~soon become an offender~~ offend. An ability to have aggressive individuals leave the CBD and not return could prevent offending, reducing demand on Police and other emergency services (such as ambulance and EDs).

27-29. Move-on orders, which enable Police to ask a person to leave a specified area and not return for a period of time, are a tool that could address this gap. Failure to comply with a move-on order would result in a penalty, like a fine.

28-30. Police considers failure to comply with a move-on order should be an infringement-only penalty with a power of arrest. Offenders can be released from custody with an infringement or written warning which reduces the impact on an already stretched justice and courts system and is a more proportionate penalty given no criminal behaviour has occurred.

29-31. Move-on orders, when complied with, can provide an alternative to arrest or issuing an infringement notice in situations that can be diffused without need for further police action.

⁷ We use the term potential gaps because it is unclear if current anti-social behaviours are a symptom of Police under-resourcing; recent anecdotal evidence from Auckland CBD in relation to the impact of beat patrols supports the contention that more Police effectively deters anti-social behaviours.

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However, move-on orders have the potential to increase criminalisation of low level anti-social behaviour and it is important that these powers are designed in a proportionate way.

Equivalent powers are available in Australia and the United Kingdom

30-32. Move-on orders, or an equivalent, are available in all Australian states. While aspects of the orders vary in each jurisdiction, they are generally tied to offending behaviour (e.g. engaged or likely to commit an offence or engage in violence), breaching the peace, or posing a risk to the safety of others. Details of move-on powers in Australia can be found in the attached **Appendix**.

34-33. Evidence of the effectiveness of move-on orders in Australia is mixed. Studies have found that there is no empirical evidence to show that 'move-on' legislation results in reductions in crime rates, but, rather, serves as another gateway into the criminal justice system.^{8 9}

32-34. The United Kingdom has dispersal powers that enable police officers to direct a person to leave an area and not return for up to 48 hours, where the officer has reasonable grounds to suspect the behaviour of the person has contributed to members of the public being harassed, alarmed or distressed and the officer considers that giving a direction is necessary to remove or reduce the likelihood of further behaviour.¹⁰ Police report that they find dispersal powers generally useful, note that under-staffing undermines the effectiveness of dispersal powers, and do not consider it a long-term solution to anti-social behaviour.¹¹

33-35. [TBC – effectiveness of dispersal powers in the UK]

We recommend that move-on orders are introduced to respond to specific behaviour

34-36. How and when move-on orders can be used is dependent on your priorities.

35-37. We have identified three options for move-on orders:

35-4-37.1. do not progress move-on orders at all;

35-2-37.2. enable move-on orders, but with their application limited to behaviour that causes safety issues, e.g., aggressive public intoxication and aggressive begging (recommended); or

⁸ All the right moves? Police 'move-on' powers in Victoria (2009)

<https://www5.austlii.edu.au/au/journals/AltLawJl/2009/5.pdf>

⁹ Move-on powers: New paradigms of public order policing in Queensland (2011)

https://www.researchgate.net/publication/263083932_Move-on_powers_New_paradigms_of_public_order_policing_in_Queensland

¹⁰ Anti-social Behaviour, Crime and Policing Act 2014 (UK)

¹¹ Police perceptions of powers within the Anti-Social Behaviour, Crime and Policing Act 2014, United Kingdom Home Office, 14 November 2023.

gov.uk/government/publications/police-perceptions-of-powers-within-the-anti-social-behaviour-crime-and-policing-act-2014/police-perceptions-of-powers-within-the-anti-social-behaviour-crime-and-policing-act-2014

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35.3-37.3. enable move-on orders with a wide application, including to rough sleepers and all beggars.

36-38. We recommend that move-on orders are introduced as an additional power for Police to manage anti-social behaviour in city centres. However, we recommend you authorise us to work with Police to develop a regime that will apply only to behaviour that warrants a criminal justice response. This may include alcohol-related behaviour, like public intoxication, and aggressive begging.

Commented [WS6]: Police sees value in a move-on order where a person is intoxicated and displaying anti-social behaviour. Not just where a person is intoxicated (if the person is with friends and non-aggressive, etc, there is no need for Police to get involved).

37-39. As move-on orders are highly discretionary in nature, limiting their scope to apply to behaviour that causes safety issues will reduce the risk of the orders being issued in a discriminatory manner and ensure that Police can use the orders effectively. The purpose would be to prevent the escalation of aggressive anti-social behaviour to the point of an offence occurring.

Commented [WS7]: Can be more or less discretionary depending on the criteria for their use.

38-40. Move-on orders applying to anti-social behaviour, rather than someone's mere presence, will enable a more focused and rights-consistent approach. This allows for behaviour to be distinguished, for example, between aggressive begging and merely begging, or sleeping outside a retailer's door in the daytime versus sleeping in a public park at night.

Commented [WS8]: Suggest removing this example. The paper recommends move-on orders for alcohol + anti-social behaviour and aggressive begging, not for homelessness.

Wider application of move-on orders will involve trade-offs

39-41. If your preference is for move-on orders to apply to a wider range of behaviour, there will be trade-offs:

39.1-41.1. Police resourcing and enforceability – namely, frontline services will be stretched, making addressing other offending more difficult, and enforceability of wider move-on orders could be prohibitively unmanageable to effectively enforce.

Commented [WS9]: Given the introduction of Beat Teams in TM, Wgtn and ChCh, Police resources could probably deal with this. The bigger issue is the impact on BoRs. If homeless people and non-aggressive beggars breach move-on orders, they will effectively be subject to arrest for their mere presence in the CBD.

39.2-41.2. the application of move-on orders to homeless people or others who have not committed a crime will stretch the traditional boundaries of the criminal justice system. Where otherwise no crime is being committed, there is a risk of significant net-widening (expansion of the ways in which people are pulled into the criminal justice system).

39.3-41.3. homeless people given move-on orders may end up congregating in inner-city suburbs, which shifts the problem to another part of the city, or keep returning to the city once the order expires, which does not provide a long-term solution to the problem.

Part 3: Options to address nuisance begging in the Safe Streets Bill are feasible but there are serious issues with respect to the proposals concerning nuisance obstruction

40-42. You also asked for advice on the draft Safe Streets Bill, which sets out two new Police powers: nuisance obstruction of public place directions, and nuisance begging directions. Where the behaviour is ongoing despite the direction, the Bill introduces prevention orders, which carry more extensive requirements.

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43-45. We have outlined these issues in more detail below.

Workability issues with the Bill

The Bill is unlikely to lead to a better quality of life for New Zealanders

44-46. The general policy statement for the Bill says that “the goal is to improve the quality of life of all New Zealanders and improve the state of New Zealand cities... while avoiding criminalising the genuinely vulnerable”. However, the Bill proposes a penalty-oriented framework for dealing with what Police consider to be issues that require health and socio-economic responses. The Bill gives Police a disproportionate role in addressing the harm, one that would potentially obstruct better responses, and, in practice, is more likely to shift inner city social problems to other areas while also making it more difficult to provide support for those people. In addition, some emergency and transition housing are located in CBDs. Temporary housing that is designed for short stays i.e. hotels or boarding houses without properly designed social spaces results in people hanging out on the streets.

45-47. The lack of connection between the objective and provisions of the Bill causes a number of issues, including the justification of the limitation of various human rights.

The scope of the behaviour that is captured is broad and vague

46-48. The definition of nuisance begging and the behaviours captured by nuisance obstruction of a public place are both drafted very broadly. This may have unintended consequences, including placing restrictions on people that are superfluous to addressing the identified problem and achieving your objective.

46.1-48.1. for nuisance begging, the catchment area is drafted so broadly that there is unlikely to be any area in CBDs that does not apply. This is likely to drive begging out of the CBD and into nearby suburbs.

46.2-48.2. for nuisance obstruction of a public place, for example, “placing or leaving any material, object, thing or structure in a public place without lawful excuse” is unclear and could capture a number of behaviours. Others are already captured by existing offences, e.g. intimidating a person in a public place.

The Bill as drafted captures people participating in everyday activities

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47-49. The definition of “nuisance obstruction of a public place” in the Bill also is broad enough that it captures people going about their day-to-day routines, meaning Police would be able to issue directions to people lawfully engaging in everyday conduct in city centres.

48-50. For example, there is nothing in the Bill that protects or prevents legitimate protest from being deemed a nuisance obstruction of a public place. Further, even people waiting to meet friends or congregating outside a café before it opens could be caught by the expansive framing.

The Bill is likely to raise human rights concerns

49-51. The Bill is likely to raise several human rights concerns, including in relation to the right to freedom of movement (section 18 of the New Zealand Bill of Rights Act), the right to freedom of peaceful assembly (section 16), and the right to freedom of expression (section 14).

The Bill is likely to receive a section 7 report from Crown Law

50-52. Due to the broad nature of the Bill, the engagement with numerous human rights, and the disconnect between the objective and outcome of the Bill, the Bill is likely to receive a section 7 report.

Generally, these proposals are inconsistent with global approaches to addressing homelessness

54-53. While these proposals are written to apply to anyone, in effect they are likely to be used almost exclusively against homeless people and others who spend time on the streets. These proposals and the associated penalties return to a model where homelessness is effectively criminalised, which is inconsistent with the general direction most comparable countries are taking to addressing homelessness and associated anti-social behaviour.

The penalties in the Bill are disproportionate and inappropriate for the harm caused

52-54. The penalties associated with breaching a direction (maximum 3 months imprisonment or \$2,000 fine) or a prevention notice (maximum 6 months imprisonment or \$4,000 fine) are disproportionate to the behaviour being captured. As noted earlier in the paper, these are likely to be disproportionate penalties and an ineffective deterrent against the conduct, especially for homeless people.

The reasons someone can return to the area following a direction would need to be widened

53-55. The nuisance obstruction of a public place direction currently has protections to enable people to come back to the area for work or education, but this does not sufficiently cover the legitimate reasons why someone might need to return to the city centre. Particularly for homeless people in city centres, City Missions and other support services are often based in the city centre.

The proposals to address nuisance begging may be feasible with further development

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54-56. Police ~~consider such additional legislative powers are not needed to address safety in CBDs~~ does not support criminalising rough sleeping and non-aggressive begging. Although this can be a nuisance for retailers, these behaviours are at the low end of the spectrum of anti-social behaviours. Police resource should be focussed on anti-social behaviour that has a real risk of escalating into offending such as, aggressive begging, intoxicated aggression and fighting. However, if you wish to move forward with new offences, the nuisance begging direction and prevention orders in the Safe Streets Bill may be workable after addressing the issues discussed above, such as refining the scope of behaviour that constitutes nuisance begging and ensuring the penalties are proportionate to the offence.

55-57. Implementation of move-on orders and nuisance begging directions can provide flexibility to law enforcement's options when dealing with aggressive beggars. Police will be able to determine which option is more appropriate in the circumstance and whether the behaviour merits the issuance of an infringement-only move-on order or constitutes a criminal offence.

The proposals to address nuisance obstruction of a public place are so vague and overbroad as to be unworkable

56-58. We do not believe the nuisance obstruction of a public place proposals are feasible. As discussed above, the definition of the offence covers a wide range of behaviours, including everyday activities, and includes vague terms that are open to interpretation and would likely lead to unintended consequences.

We recommend this Bill is not progressed

57-59. We have identified four options for the Safe Streets Bill:

57-1-59.1. do not progress the Safe Streets Bill (recommended);

57-2-59.2. progress the Safe Streets Bill with amendments;

57-3-59.3. progress only the nuisance begging part of the Safe Streets Bill (with amendments); or

57-4-59.4. progress the Safe Streets Bill as-is.

58-60. We recommend not progressing the Safe Streets Bill.

59-61. If you wish to progress the Safe Streets Bill, we recommend that you authorise us to continue to work with Crown Law and Police on what changes could be made to the Bill to best ensure it is workable.

Part 4: There are practical considerations for each option

Any option should not override the ability for local councils to tailor their responses

60-62. As noted earlier in this paper, each Council takes a different approach to addressing homelessness and anti-social behaviour in their city. Any approach that applies nationally should not remove this flexibility.

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64-63. One of the risks with the Safe Streets Bill is that the prescriptive nature of the Bill as it relates to retail premises will mean begging and anti-social behaviour is more likely to occur just beyond CBDs, namely the inner suburbs surrounding CBDs.

We recommend that any new powers focus on behaviour, not presence

62-64. ~~We Justice and Police~~ recommend that any new powers only apply to people engaging in aggressive anti-social behaviour, rather than for their mere presence in public places.

63-65. ~~Any power that can be used without a crime having taken place can lead to selective enforcement and harassment.~~ Homeless people are also unlikely to fully understand the law and its limitations, which increases their vulnerability, risks pulling them into the criminal justice system and means mens rea will be challenging to evidence. ~~to misuse of the power by Police.~~

Commented [WS10]: Any power can be selectively enforced or used for harassment, this isn't a new risk created by these proposals. However, Police operational guidance mitigates the risk of inappropriate and/or inconsistent use of powers. In addition, we can build in a requirement for Police and indpt review of use of powers to address this concern.

64-66. As mentioned earlier, requiring policing of presence over behaviour will stretch Police resources and push Police towards responsibilities better suited for other agencies.

Access to support services should not be blocked by these powers

65. Additionally, we recommend any power includes exceptions to ensure that people subject to move-on orders, nuisance begging notices/prevention directions, or nuisance obstruction notices/prevention directions are able to remain in the city centre to access support services. Many support services including City Missions and government agencies are based in city centres, and it is counterproductive to order people to leave the area where the key services to support them are based.

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The penalties associated with these powers need to be proportionate and appropriate

66-67. As noted earlier in this briefing, the penalties in the Safe Streets Bill are disproportionate to the harm caused by the behaviour being captured and are generally not appropriate for homeless people.

67-68. Penalties for failing to comply with move-on orders are likely to be appropriate if they are infringement fees, which do not result in a criminal conviction. Infringement fees are more proportionate to the harm caused by behaviours move-on orders could be used for, and they largely avoid the criminal justice system¹² which is already facing delays. The recommended maximum infringement fee is \$1,000.

Agency consultation and population impacts

68-69. [TBC agency views – Crown Law, Police, Corrections, Social Investment Agency]

70. Police agree that move-on orders would be beneficial in targeting intoxication and disorderly behaviours such as aggressive begging that cause concern but either do not yet

¹² If someone decides to challenge their infringement fee, they can do so through the District Court. If someone appeals unsuccessfully, judges can issue a fine usually set at a maximum of three times the fee amount. This is designed to avoid people bringing appeals when they do not have a legitimate case, therefore limiting additional backlogs in the courts.

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escalate to the meet the threshold for disorderly behaviour, intimidation etc or are at a low level of offending. The objective of a move-on order power would be to prevent harm and offending before it occurs. This However, would help to keep people out of the criminal justice and court system but would not address underlying factors such as addiction and mental health issues, housing and financial insecurity that are contributing to the anti-social behaviour.

~~60. Police currently considers additional legislative powers are not needed to address safety in city centres. Police expressed concerns that the direction and prevention orders proposed in the Safer Streets Bill would displace individuals to more isolated areas and put them at increased risk of harm. Police have anecdotal reports that the recently introduced “beat patrol teams” have reduced anti-social behaviours in CBDs and will continue to monitor the impact of this new initiative.~~

Commented [WS11]: Based on further internal discussions, the internal view is that there isn't a safety risk re displacing beggars out of the CBD. But there are issues re access to social and govt services, and potentially access to accommodation (night shelters, emergency housing).

70-71. [TBC population impacts (from engagement with service providers) – homeless people, Māori, youth?]

74-72. Any tools addressing homelessness are likely to have a disproportionate impact on Māori, who make up a large proportion of homeless people. Downtown Community Ministry Wellington estimates that 54% of rough sleepers in Wellington City are Māori.

Next steps

72-73. If you agree to proceed with any of the options in this briefing, we will work with relevant agencies to develop detailed policy proposals.

73-74. Given the impacts of these proposals across the Justice sector, we recommend you share this briefing and consult with the Minister of Police, the Minister of Corrections, and the Attorney-General before making policy decisions.

Recommendations

74-75. It's recommended that you:

1. **Note** that there are a number of existing tools to address anti-social behaviour in public spaces, including criminal offences, police powers, and city bylaws;
2. **Approve** officials progressing analysis of move-on orders for aggressive anti social behaviour, including consultation with Police, Crown Law, and councils (recommended) YES / NO
3. **Agree** not to proceed with the Safer Streets Bill (recommended) YES / NO
4. **Agree** to proceed with only the nuisance begging part of the Safer Streets Bill (and for officials to consult with agencies and councils) YES / NO
5. **Agree** to proceed with the Safer Streets Bill in its entirety (and for officials to consult with agencies and councils) YES / NO

Commented [WS12]: It would be helpful to get explicit agreement about the behaviour that move on orders would be used for.

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- 6. **Forward** a copy of this briefing to the Minister of Police, Minister of Corrections, and the Attorney-General. YES / NO
- 7. **Approve...** YES / NO

S9(2)(a)
Manager, Criminal Law Policy

APPROVED SEEN NOT AGREED

Hon Paul Goldsmith
Minister of Justice

Date / /

Attachments: [Describe any attachments – use bullet points if more than one.]

From: s9(2)(a) @hud.govt.nz>
Sent: Monday, 12 August 2024 8:09 am
To: S9(2)(a)
Subject: RE: ~~IN CONFIDENCE~~ - consultation request re draft briefing on antisocial behaviours in CBDs

Mōrena S9(2)(a)

Thanks for the extra time. We have just been through our finalisation of changes to our policy group and last week was very busy as new teams were set up and work was shifted around.

We would commonly use the term people experiencing homelessness rather than homeless people. The definition of homelessness used in New Zealand (and other jurisdictions) includes people who are without shelter (e.g., 'sleeping rough' or in cars, outbuildings), or people in temporary accommodation (e.g., motels, caravans, shelters and refuges, or emergency and transition housing), people living in overcrowded properties, or in uninhabitable buildings (those that lack amenities). It is quite broad. It might be useful to note this in the paper, and include a reference to the Stats NZ definition of [homelessness](#). If the comments from retailers in Auckland CBD is in relation to any particular segment(s) of the homeless population, for example, it would be good if the paper was a bit clearer on this (eg people who are rough sleeping).

The paper links homelessness and anti-social behaviour in ways that suggest homelessness itself is an anti-social behaviour, or that anti-social behaviours are particularly associated with or arise because of homelessness. We don't think this is intended. In some places the briefing does acknowledge that behaviours such as aggressive begging may be undertaken by people who are not homeless, but in others (for example, see comment on para 16 below), it suggests homelessness is an anti-social behaviour or that homelessness has associated anti-social behaviours. We think the paper would benefit from being very clear on the particular behaviours it is suggesting that new tools are needed to deal with, and then it can discuss links to the homeless population specifically, and/or the effects such tools might have (including unintended consequences, ineffectiveness, inability to pay, nowhere to move along to, restrictions on access to services, risk of predation, criminalising survival behaviours etc).

For example, you could focus para 3 on the current tools available to law enforcement to address anti-social behaviours in public places without reference to addressing homelessness, which is best addressed through collaborative place-based approaches between councils, service providers (health, social, housing), and relevant govt agencies (including HUD, Health, MSD, and Police). Law enforcement is often an inappropriate and ineffective response to homelessness (as you point out in para 10) but can be an effective tool in the wider responses to anti-social behaviours.

People who are well housed also have poor mental health which can present in ways which are unsettling for others, and result in other people feeling unsafe. Perhaps the paras 11 to 13 could also just concentrate on anti-social behaviours without referring to people experiencing homelessness or focus on the behaviours the tools are intended for.

The paper makes it clear that rough sleeping is not a criminal behaviour and rough sleeping by itself is also not generally considered an anti-social behaviour. In para 12, the reporting of comments from Councils and providers seems to suggest a vast majority of harmful anti-social behaviour in city centres can be attributed to homelessness. This is because of the use of the words "not all" which suggests most can be. We also wonder about the use of 'harmful' in this paragraph as suggesting that anti-social behaviour is either harmful or not harmful.

It would be useful for the paper to explain the circumstances when council by-laws apply, for example if all begging is banned or if only begging that intimidates, harasses, or causes alarm. It might be also worth noting that some councils that have decided not to introduce begging by-laws, or have dropped the ones they did have, including because they would be too hard to enforce. Similarly for rough sleeping [para 14.3].

The observation in para 16 that ‘many in the community may feel it is unfair for homelessness and other anti-social behaviours to deter more legitimate use of public spaces’ does cause us some concern, particularly the phrasing of “homelessness and other anti-social behaviours” (see point earlier about homelessness not being an anti-social behaviour of itself). The sentence also implies that there it is less legitimate for people experiencing homelessness to use public spaces than people who have stable housing. We suggest removing the reference to homelessness.

The paragraphs 16 to 21 may flow better if the heading was focused on challenges with criminal justice responses in isolation for some anti-social behaviours, and then discussing this generally, then in relation to when anti-social behaviours are attributed to people with poor mental health and people experiencing homelessness.

We totally agree with your recommendation not to progress the Safer Streets Bill. We also agree that caution is needed with move on orders, particularly for people experiencing homelessness, as in addition to your point about accessing the outreach, health, shelter, and other social services they need, these people may have nowhere else safe to go (people who are rough sleeping are at risk particularly women and young people. People who are rough sleeping, are often not in receipt of any financial assistance from MSD (as they require addresses for this) and may not be able to pay even the most minor infringement fee, putting them at risk of further action. Similarly, they would lack the resources to challenge an infringement fee through the District Court. Could consultation include community providers as well as agencies and councils, to ensure that Ministers are best informed before making policy decisions.

We also suggest you also recommend your Minister sharing the briefing and consult with Housing, Health, and Social Development Ministers before making policy decisions.

Thank you again for the opportunity to comment, and apologies for taking a little longer to get back to you than hoped for. Let me know if you want to discuss any of the above.

Ngā mihi
s9(2)(a)

s9(2)(a)

Principal Policy Advisor | Responding to Severe Housing Needs
Policy Group
www.hud.govt.nz | Level 8, 7 Waterloo Quay, Pipitea, Wellington



Te Tūāpapa Kura Kāinga
Ministry of Housing and Urban Development



He kāinga ora, he hāpori ora - our purpose is thriving communities where everyone has a place to call home.

out of scope

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out of scope

Released under the Official Information Act 1982

From: S9(2)(a)
Sent: Tuesday, August 6, 2024 3:17 PM
To: s9(2)(a) @hud.govt.nz' s9(2)(a) @hud.govt.nz>
Subject: ~~IN CONFIDENCE~~ - consultation request re draft briefing on antisocial behaviours in CBDs

Kia ora S9(2)(a)

I have been pointed your way by S9(2)(a) at MoJ. We are providing advice in relation to anti-social behaviour in CBDs and we may be a little light on the context. The advice has been put together rather quickly, and we're working to a short timeframe, but I'm wondering if you have any capacity to comment or talk online about the issues in the briefing. We're trying to be sensitive around how we frame the 'problem' so please excuse any instances where we may have erred there as this is very much still a working draft. And apologies for the short timeframe, I fully appreciate this may not be workable for you or your team.

Attached for your comment, if you have the time and capacity, is a draft briefing about tools to address homelessness in city centres. The paper is in response to concerns raised by retailers, particularly in city centres, that homeless people are bringing anti-social behaviour to CBDs and generally making people feel unsafe.

The options in the draft briefing are:

- Move on orders: a tool enabling a Police officer to ask someone to immediately leave an area and not return for a specified period of time. Similar powers are available in Australia.
- Offences in the Safe Streets Bill: advice on "nuisance begging" and "nuisance obstruction of a public place" directions and prevention notices

In addition to the draft briefing, you will find attached a copy of the draft Safe Streets Bill (please do not share this) and a draft appendix to the briefing that covers Australian move-on type powers (which you likely do not need to read).

Any comments you can provide on the paper would be much appreciated by **3 pm Thursday 8 August**. And please let me know if this timeframe is not feasible.

The briefing is due to the Minister on 14 August.

Please let me know if you have any questions or would like to discuss anything further.

Ngā mihi,

S9(2)(a)

S9(2)(a)

Senior Advisor | Criminal Law Policy

Mobile S9(2)(a)

www.justice.govt.nz



Hon Paul Goldsmith, Minister of Justice

Options for new tools to address anti-social behaviour in city centres

Date	20 August 2024	File reference	
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Action sought	Timeframe
Agree on a proposed course of action to address anti-social behaviour in city centres	At your convenience

Contacts for telephone discussion (if required)

Name	Position	Telephone		First contact
		(work)	(a/h)	
Alida Mercuri	General Manager, Criminal Justice Policy	04 466 2091	S9(2)(a)	<input type="checkbox"/>
S9(2)(a)	Manager, Criminal Law Policy	04 466 2600	S9(2)(a)	<input checked="" type="checkbox"/>
S9(2)(a)	Senior Policy Advisor, Criminal Law Policy	04 466 4307	N/A	<input type="checkbox"/>

Minister's office to complete

<input type="checkbox"/> Noted	<input type="checkbox"/> Approved	<input type="checkbox"/> Overtaken by events
<input type="checkbox"/> Referred to:	_____	
<input type="checkbox"/> Seen	<input type="checkbox"/> Withdrawn	<input type="checkbox"/> Not seen by Minister
Minister's office's comments		

IN-CONFIDENCE**Purpose**

1. This briefing outlines the current tools available to law enforcement to address anti-social behaviour in central business districts (CBDs) across New Zealand, and seeks your decision on options to expand these tools.
2. This briefing is split into the following parts:
 - a. Part 1 discusses anti-social behaviour, the current approaches to dealing with it, and context on how this type of behaviour can be addressed;
 - b. Part 2 discusses move-on orders and analyses the effectiveness of using them to address anti-social behaviour (like aggressive begging and unreasonable obstruction of a public place); and
 - c. Part 3 provides advice about the proposed provisions in the draft Safe Streets Bill (attached as Appendix A), relating to what it labels “nuisance begging” and “nuisance obstruction of a public place.”

Executive summary

3. Retailers in Auckland’s CBD are concerned that anti-social behaviour is driving people away from CBDs and affecting their businesses. In response to these concerns, and in line with your commitments to improve public confidence in law and order, you have asked us to consider move-on orders and proposals in the draft Safe Streets Bill to address nuisance begging and nuisance obstruction of a public place.
4. We consider that move-on orders, with appropriate penalties for non-compliance, would be a more effective tool in supporting Police to manage certain aggressive anti-social behaviours in city centres compared to the new offences in the Safe Streets Bill.
5. Move-on orders could help Police to address certain anti-social behaviours like aggressive begging and threatening, or dangerous public intoxication. However, Police and councils agree that move-on orders should not be used to address survival behaviours associated with homelessness, like rough sleeping, general begging, or people experiencing mental health distress. We share this concern, noting both efficacy issues (move-on orders merely move the concerning behaviours down the street) and the human rights impacts associated with criminalising survival behaviour.
6. In the draft Safe Streets Bill (“**the Bill**”), we consider:
 - a. the proposals to address nuisance begging are feasible, though we have some concerns over the workability of the proposals as currently drafted; and
 - b. there are major workability issues with the proposals for nuisance obstruction of a public place directions and prevention notices.
7. Improving public confidence in law and order is a legitimate objective of the justice system. However, targeting low-level anti-social behaviour that is driven by homelessness (and underlying issues like poverty and mental health) requires multi-faceted, cross-sector

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responses. Criminal justice responses to such behaviours are often ineffective in isolation, and there are significant rights challenges associated with using the criminal justice system to respond to survival behaviours by homeless people.

Part 1: Anti-social behaviours affect towns and cities across New Zealand

The nature of anti-social behaviour in city centres

8. We have heard from Police, city councils and service providers¹ that alcohol (and other substance abuse) is contributing to anti-social behaviour in CBDs and is a key driver affecting inner-city safety. A significant amount of Police resourcing is dedicated to policing public order, and in particular, night-time CBD economies that are characterised by music, entertainment, and alcohol and drug consumption.
9. In addition to substance-driven anti-social behaviour, we have heard that aggressive begging and people being generally disruptive (in a way that constitutes harassment or intimidation of the public) are the most significant anti-social behaviours affecting city centres.
10. Conversely, survival behaviours undertaken by homeless people (e.g., sleeping in public places) or the manifestation of mental health illnesses (e.g., psychosis causing someone to yell in public) can make people nervous or uncomfortable, and impact the enjoyment of public spaces, but Police and councils have advised that law enforcement responses to these behaviours are generally ineffective and merely shift the issue to neighbouring areas.

Current powers available to Police and councils

11. Law enforcement have a range of options to respond to low-level crime and certain anti-social behaviours in city centres, including criminal offences, general Police powers, and city bylaws.
 - a. For example, there are several offences in the Summary Offences Act 1981 that address low-level crime and maintain public order and safety, including seeking donations by false pretence, obstructing a public way, disorderly behaviour, offensive behaviour or language, intimidation, and other indecent behaviours.
 - b. Police also have some powers to address anti-social behaviour, including the ability to detain people who are intoxicated in a public place or trespassing on private property if they are at risk of causing harm or being harmed,² and to search for and seize alcohol present in areas under the alcohol ban (with a power to arrest for non-compliance).³ Police also routinely assist retailers in issuing trespass notices to groups or individuals who disrupt their businesses with aggressive begging or other anti-social behaviours.

¹ Specifically, Auckland Council, Christchurch City Council, Christchurch City Mission, and Downtown Community Ministry Wellington.

² Police Manual: Host responsibility and dealing with intoxicated persons <alcohol-host-responsibility-and-dealing-with-intoxicated-persons-180424.pdf (police.govt.nz)>

³ Local Government Act 2002, Section 169: Powers of arrest search, and seizure in relation to alcohol bans

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- c. In addition, city councils have the ability to independently create bylaws, which can be used to address anti-social behaviour. For example, several councils have bylaws concerning begging and rough sleeping.⁴
12. Despite these options, Police and councils agree that the tools currently available are inadequate for addressing certain anti-social behaviours. Of the anti-social behaviours identified, we have heard:
- a. Police, councils, and service providers believe adequate tools exist already for dealing with rough sleepers, the most vulnerable homeless population, and punitive responses would merely shift the problem;
 - b. Police and councils confirm that aggressive begging is a concern for city centres and while existing Police powers and council bylaws can be used to deter this behaviour, additional powers would be welcomed as they would mean Police can more readily intervene; and
 - c. Police state current powers to deter intoxicated (and other unruly and aggressive) persons from engaging in disruptive and threatening behaviour are inadequate and do not allow Police to take preventative action. Unless their behaviour escalates to the level of offending, currently Police cannot compel them to leave.

Criminal justice responses, in isolation, are not effective

13. Improving public confidence in law and order is a legitimate objective of the justice system. Many in the community may feel it is unfair for anti-social behaviours to impede other people's use of public spaces.
14. There are some significant challenges associated with using the criminal justice system to respond to low-level anti-social behaviour, namely:
- a. there is a risk of criminalising survival behaviours, such as rough sleeping, where a person has no reasonable alternatives but to engage in the conduct. A 2024 United Nations Human Rights Council report outlined that laws criminalising life-sustaining activities in public spaces may violate a range of human rights;⁵
 - b. the difficulty of imposing penalties that would be effective deterrents against the conduct (i.e., prison sentences are costly and disproportionate given the harm

⁴ Auckland Council's Public Safety and Nuisance Bylaw 2013 <<https://www.aucklandcouncil.govt.nz/plans-projects-policies-reports-bylaws/bylaws/Pages/public-safety-nuisance-bylaw.aspx>>; Hamilton City Council Public Places Bylaw 2016 <<https://storage.googleapis.com/hccproduction-web-assets/public/Uploads/Documents/Bylaws/Public-Places-Bylaw-2016.pdf>>; Wellington City Council, "What we're doing about homelessness and begging/what the council is doing" <<https://wellington.govt.nz/community-support-and-resources/community-support/homelessness-and-begging/what-the-council-is-doing>>; Nelson City Council City Amenity Bylaw 2017 <https://www.nelson.govt.nz/assets/Our-council/Downloads/bylaws/bylaw-226/City-Amenity-Bylaw-Number-226-FINAL-Signed-and-sealed-30-August-2017-updated-14Oct21.pdf>

⁵ United Nations Special Rapporteur on extreme poverty and human rights and the Special Rapporteur on adequate housing: A/HRC/56/61/Add.3: Breaking the cycle: Ending the criminalization of homelessness and poverty

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caused by the conduct and the culpability of the offender, while fines are not likely to be paid).

15. These challenges may affect the workability or efficacy of the options presented in this paper. In particular:
 - a. to the extent the options capture survival behaviours, these are likely to be regarded by courts as constituting a "reasonable excuse" for the conduct;
 - b. similarly, penalising survival behaviours creates a costly revolving door wherein individuals experiencing homelessness will repeatedly encounter the criminal justice system because they have no choice but to carry out life-sustaining activities in public spaces;
 - c. behaviours that are symptoms of mental health disorders may struggle to meet mens rea requirements, such as where the behaviour must be undertaken knowingly or intentionally; and
 - d. policing and prosecuting these offences will displace police resourcing from more serious offending types and will further contribute to court back-log.
16. Additionally, criminalising these behaviours may undercut different council approaches to working with service providers and homeless populations, and it may incentivise worse social outcomes. For example, evidence suggests that people prohibited from begging can divert to locations with a lesser police presence or resort to more serious criminal activity.⁶ This concern was confirmed through our engagement with councils and service providers.
17. Further, Police does not support criminalising rough sleeping and non-aggressive begging. Police has confirmed that prioritising law enforcement responses to these low-level anti-social behaviours is not aligned with the Government's current expectations around the role of Police. Minister Mitchell has stated that Police visibility in public is important but that the role of Police should not be furthered in areas, like mental health, that is more appropriately delivered by other agencies.⁷
18. We have outlined in the paper how these workability challenges can be mitigated.

There are some options to expand Police response to anti-social behaviours

19. Having more powers to address anti-social behaviour in city centres would enable Police to better tailor their response to the circumstances of individual cases.
20. You have options that may address the potential gaps⁸ in the range of responses available to law enforcement, each taking a different approach to addressing anti-social behaviour in city centres:

⁶ All the right moves? Police 'move-on' powers in Victoria (2009)
<<https://www5.austlii.edu.au/au/journals/AltLawJI/2009/5.pdf>>

⁷ See the Ministerial Expectations for the Commissioner of Police, 6 December 2023.

⁸ We use the term 'potential gaps' because it is unclear whether current anti-social behaviours are a symptom of Police under-resourcing; recent anecdotal evidence from Auckland CBD in relation to the impact

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- a. the introduction of move-on orders: a police power to require someone to leave an area for a specified amount of time when they are engaging in aggressive anti-social conduct or are at clear risk of their behaviour escalating to offending;
 - b. criminalising some anti-social behaviours per the Bill: the introduction of directions for nuisance begging and nuisance obstruction of a public place with the ability to issue more restrictive prevention notices for non-compliance.
21. You could do one, both, or none of these options. The options are outlined further below.
22. Regardless of what you decide to proceed with, the following should be taken into consideration:
- a. the ability for local councils to tailor their responses to homelessness and anti-social behaviour should not be impeded;
 - b. new powers should only apply to people engaging in anti-social behaviour, rather than for their mere presence in public places;
 - c. access to support services (often located in inner cities) should not be blocked; and
 - d. penalties should be proportionate and appropriate (helping ensure the justice system is not unduly strained).

Part 2: Move-on orders can provide flexibility and proportionality, without overreach

23. Police are currently unable to address some anti-social behaviours where the behaviour does not yet reach the level of offending, even when they have identified someone as being likely to offend in the immediate future. This puts them in a position where they must wait until the threshold under the Summary Offences Act has been met before they can act.
24. Police considers that there is potential benefit available in the power to issue notices to people who are being aggressive in public, and who, if left to their own devices, may offend. This tool could prevent offending and reduce demand on Police and other emergency services (such as ambulances and EDs).
25. Move-on orders, which enable Police to ask a person to leave a specified area and not return for a period of time, are a tool that could address this gap. Failure to comply with a move-on order would result in an infringement fine.
26. Police considers failure to comply with a move-on order should be an infringement-only penalty with a power of arrest. Offenders can be released from custody with an infringement or written warning which reduces the impact on an already stretched justice and courts system and is a more proportionate penalty, given no criminal behaviour has occurred.

of beat patrols supports the contention that increased Police presence and visibility effectively deters anti-social behaviours.

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27. Move-on orders, when complied with, can provide Police with an option for lower-level intervention of anti-social behaviours, and an alternative to arrest or issuing infringement notices in situations that can be diffused without need for further police action.

Equivalent powers are available in Australia and the United Kingdom

28. Move-on orders, or an equivalent, are available in all Australian states. While aspects of the orders vary in each jurisdiction, they are generally tied to offending behaviour (e.g., engaged in or likely to commit an offence or engage in violence), breaching the peace, or posing a risk to the safety of others. Details of move-on powers in Australia can be found in the attached Appendix B.
29. There is limited evidence of the effectiveness of move-on orders in Australia. Studies have found that there is no empirical evidence to show that move-on powers result in reductions in crime rates, but, rather, serve as another gateway into the criminal justice system.^{9 10}
30. The United Kingdom has dispersal powers that enable police officers to direct a person to leave an area and not return for up to 48 hours, where the officer has reasonable grounds to suspect the behaviour of the person has contributed to members of the public being harassed, alarmed or distressed and the officer considers that giving a direction is necessary to remove or reduce the likelihood of further behaviour.¹¹ Police report that they find dispersal powers generally useful, but note that under-staffing undermines the effectiveness of dispersal powers, and do not consider it a long-term solution to anti-social behaviour.¹²

We recommend that move-on orders are introduced to respond to specific behaviour

31. How and when move-on orders can be used is dependent on your priorities.
32. We have identified three options for move-on orders:
- do not progress move-on orders at all;
 - enable move-on orders, but with their application limited to behaviour that causes safety issues, e.g., aggressive public intoxication and aggressive begging; or
 - enable move-on orders with a wide application, including to rough sleepers and all beggars (not recommended).

⁹ All the right moves? Police 'move-on' powers in Victoria (2009)

<<https://www5.austlii.edu.au/au/journals/AltLawJl/2009/5.pdf>>

¹⁰ Move-on powers: New paradigms of public orders policing in Queensland (2011)

<https://www.researchgate.net/publication/263083932_Move-on_powers_New_paradigms_of_public_order_policing_in_Queensland>

¹¹ Anti-social Behaviour, Crime and Policing Act 2014 (UK)

¹² Police perceptions of powers within the Anti-Social Behaviour, Crime and Policing Act 2014, United Kingdom Home Office, 14 November 2023

<gov.uk/government/publications/police-perceptions-of-powers-within-the-anti-social-behaviour-crime-and-policing-act-2014/police-perceptions-of-powers-within-the-anti-social-behaviour-crime-and-policing-act-2014>

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33. If you are inclined to introduce move-on orders, we recommend that you authorise us to do further design work with Police to develop a regime that will apply only to behaviour that warrants a criminal justice response. This may include behaviours like aggressive begging or public intoxication where the individual is displaying anti-social behaviour.
34. As move-on orders are discretionary in nature, limiting their scope to apply to behaviour that causes demonstrable public safety issues will reduce the risk of the orders being issued in a discriminatory manner and ensure that Police can use the orders effectively. The purpose would be to prevent the escalation of aggressive anti-social behaviour to the point of an offence occurring.
35. Move-on orders applying to behaviour, rather than someone's mere presence, will enable a more focused and rights-consistent approach. This allows for behaviour to be distinguished, for example, between aggressive begging and merely begging.
36. Any future advice we provide in relation to move-on orders would be informed by discussions with councils, Police and other agencies around what distinguishes aggressive begging from simple begging (e.g., following people, congregating in a group, begging directly next to an ATM). Similarly, we would look to provide advice on the best way to describe belligerent behaviour that poses a minimal risk of such powers being used against people who are not engaging in anti-social behaviour.

Wider application of move-on orders will involve trade-offs

37. If your preference is for move-on orders to apply to a wider range of behaviour, there will be trade-offs, namely:
 - a. the application of move-on orders to homeless people or others who have not committed a crime will stretch the traditional boundaries of the criminal justice system and impact individual rights. Where otherwise no crime is being committed, there is a risk of significant net-widening (expansion of the ways in which people are pulled into the criminal justice system).
 - b. homeless people given move-on orders may end up congregating in inner-city suburbs, which shifts the problem to another part of the city, or they may keep returning to the city once the order expires, which does not provide a long-term solution to the problem.

Part 3: Options to address nuisance begging in the draft Safe Streets Bill are feasible but there are serious issues with respect to the proposals concerning nuisance obstruction

38. You also asked for advice on the draft Safe Streets Bill, which sets out two new Police powers: nuisance obstruction of public place directions, and nuisance begging directions. Where the behaviour is ongoing despite the direction, the Bill introduces prevention orders, which carry more extensive requirements.
39. S9(2)(h)

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S9(2)(h)

- a.
- b.
- c.
- d.

40. Consequently, the Bill is at risk of receiving a section 7 report from the Attorney-General.
41. We have outlined these issues in more detail below, followed by options detailing how the workability of the Bill can be improved.

Workability issues with the Bill

The Bill is unlikely to achieve its stated goal of leading to a better quality of life for New Zealanders

42. The general policy statement for the Bill states, “the goal is to improve the quality of life of all New Zealanders and improve the state of New Zealand cities ... while avoiding criminalising the genuinely vulnerable”. However, the Bill proposes a penalty-oriented framework for dealing with what the Ministry, Police, and other agencies consider to be issues that require health and socio-economic responses. The Bill gives Police a disproportionate role in addressing the harm, one that would potentially obstruct better responses, and, in practice, is more likely to shift inner city social problems to other areas while also making it more difficult to provide support for those people.
43. The lack of connection between the objective and provisions of the Bill causes a number of issues, including the justification of the limitation of various human rights. For example, nuisance begging is defined as begging in virtually all public spaces, without necessarily being causally linked to “damage, disruption, harassment or distress to the public”.
44. The provisions in the Bill appear neutral in only targeting certain behaviours, but in practice will likely result in criminalising people for their mere presence in CBDs or having no alternative place to sleep, eat, and perform other life-sustaining activities.

The scope of the behaviour that is captured is broad and vague

45. The definitions of nuisance begging and nuisance obstruction of a public place are both drafted very broadly. This may have unintended consequences, including placing restrictions on people that are superfluous to addressing the identified problem and achieving the Bill’s objective.
46. For nuisance begging, the catchment area is drafted so broadly that there is unlikely to be any area in CBDs that does not apply. This is likely to drive begging out of CBDs and into nearby suburbs.
47. The definition of “nuisance obstruction of a public place” is broad enough that it captures people going about their day-to-day routines, meaning Police would be able to issue directions to people lawfully engaging in everyday conduct in city centres. For example:

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- a. “placing or leaving any material, object, thing or structure in a public place without lawful excuse” is unclear and could capture a number of behaviours. Other behaviours included in the definition are already captured by existing offences, e.g., intimidating a person in a public place; and
- b. there is nothing in the Bill that protects or prevents legitimate protest from being deemed a nuisance obstruction of a public place. Further, even people waiting to meet friends or congregating outside a café before it opens could be caught by the expansive framing.

48. Criminalising such a wide range of behaviours also risks creating a ‘revolving door’ where individuals come into repeated subsequent contact with the justice system.

The penalties in the Bill are disproportionate and inappropriate for the harm caused

49. The penalties associated with breaching a direction (maximum 3 months imprisonment or \$2,000 fine) or a prevention notice (maximum 6 months imprisonment or \$4,000 fine) are disproportionate to the behaviour being captured and are likely to be ineffective deterrents against the conduct, especially for homeless people. Specifically, homeless people are unlikely to be able to pay the fines, which further entrenches them in the justice system, and they are likely to repeat the offending behaviour (particularly where survival behaviours are captured) following release.
50. The penalties are also inconsistent with those imposed on similar offences in the Summary Offences Act 1981 (such as scam begging and obstructing a public way), which have lesser penalties for comparable behaviour.¹³ To the extent the offences criminalise survival behaviours, it is not clear that the proposed penalties will achieve the desired change in offender behaviours. Convictions can also impact future employment opportunities, compounding financial hardship.

The reasons someone can return to the area following a direction would need to be widened

51. The nuisance obstruction of a public place direction currently has protections to enable people to come back to the area for work or education, but this does not sufficiently cover the legitimate reasons why someone might need to return to the city centre. Particularly for homeless people in city centres, City Missions, temporary housing, healthcare services, government agencies, and other support services are often based (and continue to be established) in city centres.

Without mitigations, the Bill in its current form risks receiving a section 7 report from the Attorney-General

52. The Bill is likely to raise several human rights concerns, including interference with the rights to freedom of expression (section 14 of the New Zealand Bill of Rights Act), manifestation of religion and belief (section 15) (e.g., if a direction is given to someone

¹³ Scam begging (s 15) imposes a maximum penalty of 3 months imprisonment or a fine not exceeding \$1,000; obstructing a public way (s 22) imposes a maximum fine of \$1,000, with power to arrest.

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preaching in a public area), freedom of peaceful assembly (section 16), freedom of association (section 17), and freedom of movement (section 18).

53. While procedural and legislative safeguards can aim to mitigate against potential encroachments of these rights, the behaviours targeted through the Bill are so broad that this is not practically feasible to any significant extent. The Bill provides a high degree of discretion to Police to disallow people from occupying public spaces and the highly subjective nature relating to assessments of when to impose the offences creates a real risk of misuse or abuse.
54. Due to the broad nature of the Bill, the engagement with numerous human rights, and the disconnect between the objective and outcome of the Bill, the Bill is likely to receive a section 7 report.

Generally, these proposals are inconsistent with global approaches to addressing homelessness

55. While these proposals are written to apply to anyone, in effect they are likely to be used almost exclusively against homeless people and others who spend time on the streets. These proposals and the associated penalties return to a model where homelessness is effectively criminalised, which is inconsistent with the general direction most comparable countries are taking to addressing homelessness and associated anti-social behaviour.

The proposals to address nuisance begging may be feasible with further development

56. As noted above, Police does not support criminalising rough sleeping and non-aggressive begging. Although these behaviours can be a nuisance for retailers, they are at the low end of the spectrum of anti-social behaviours. Police resourcing should be focused on anti-social behaviour that has a real risk of escalating into offending (e.g., aggressive begging, intoxicated aggression and fighting).
57. However, if you wish to move forward with new offences, the nuisance begging direction and prevention orders in the Bill may be workable after addressing the issues discussed above, such as refining the scope of behaviour that constitutes nuisance begging (or targeting more specific locations, like near ATMs and public transport) and ensuring the penalties are proportionate to the offence.
58. Implementation of move-on orders and nuisance begging directions can provide flexibility to law enforcement's options when dealing with aggressive beggars. Police will be able to determine which option is more appropriate in the circumstance and whether the behaviour merits the issuance of an infringement-only move-on order or constitutes a criminal offence.

The proposals to address nuisance obstruction of a public place are so vague and overbroad as to be unworkable

59. We do not believe the nuisance obstruction of a public place proposals are feasible. As discussed above, the definition of the offence covers a wide range of behaviours, including everyday activities, and includes vague terms that are open to interpretation and would likely lead to unintended consequences.

We recommend this Bill is not progressed

60. We have identified four options for the Safe Streets Bill:
- a. do not progress the Safe Streets Bill (recommended);
 - b. progress the Safe Streets Bill with amendments;
 - c. progress only the nuisance begging part of the Safe Streets Bill (with amendments);
or
 - d. progress the Safe Streets Bill as-is.
61. If you wish to progress the Safe Streets Bill, we recommend that you authorise us to continue to work with Crown Law and Police on what changes could be made to the Bill to best ensure it is workable. Regulatory impact analysis will be required, including further analysis of the rights implications.

Agency consultation and population impacts

Agencies agree that move-on orders would be more effective and proportionate

62. S9(2)(h)
63. Police agrees that move-on orders would be beneficial in targeting intoxication and disorderly behaviours that cause concern but do not meet the threshold level of offending. Police has anecdotal reports that the recently introduced Community Beat Teams have reduced anti-social behaviours in CBDs and will continue to monitor the impact of this new initiative.
64. Corrections provided feedback that harsher penalties would be more likely to place strain on the prison network.
65. The Office of the Privacy Commissioner requested that it be engaged if any of these proposals are progressed.
66. The Ministry of Housing and Urban Development (HUD) recommends that any policy introducing move-on powers takes into account the particular vulnerability of the homeless population and does not block access to outreach organisations, healthcare, shelter, and other social services.

IN-CONFIDENCE*The extent of homelessness in New Zealand*

67. 2018 data¹⁴ indicates that approximately 42,000 people in New Zealand are categorised as homeless – excluding the 60,000 estimated people living in uninhabitable housing.¹⁵ Of these 42,000 people, approximately 3,500 were people without shelter (e.g., rough sleepers and those in improvised dwellings) and approximately 7,600 were living in temporary accommodation (e.g., night shelters or motels). Of the total, approximately, 102,000 people experiencing homelessness (including those in uninhabitable housing), 29% are Māori, 23% are Pacific Peoples, and 25% are Asian; while 44% are based in Auckland and 52.5% are women.¹⁶

The impact on Māori could be better understood through consultation

68. There is a risk that creating powers that target behaviours associated with homelessness will have a disproportionate impact on Māori. Downtown Community Ministry Wellington estimates that 54% of rough sleepers in Wellington City are Māori. If you decide to progress with move-on orders that affect low-level anti-social behaviour (e.g., rough sleeping) or the Safe Streets Bill, then we recommend further consultation to better understand the potential impact on Māori as these proposals are likely to have a significant impact on people experiencing homelessness.¹⁷
69. We note that the Waitangi Tribunal has commented that the partnership relationship between Māori and the Crown is especially relevant when developing and implementing policy where Māori are expressly seeking an effective role in the process.¹⁸ An approach that does not adequately account for Māori interests in addressing homelessness, including through lack of consultation with Māori in relation to these proposals, may undermine this relationship.¹⁹ Māori have displayed an active role in this respect, with 79 claimants involved in stage one of the Wai 2750 Housing Policy and Services Kaupapa Inquiry on Māori Homelessness,²⁰ and through Māori social service groups that seek to support homeless people, both Māori and non-Māori.²¹

¹⁴ There are inherent limitations in the information relating to the size and make-up of the homeless population given it uses Census data. This means these figures may underestimate and misrepresent the extent and make-up of New Zealand's homeless population.

¹⁵ The state of housing in Aotearoa New Zealand, Statistics New Zealand, 15 December 2020

<stats.govt.nz/infographics/the-state-of-housing-in-aotearoa-new-zealand/>

¹⁶ Homelessness Outlook, Ministry of Housing and Urban Development

<hud.govt.nz/stats-and-insights/homelessness-outlook/homelessness-indicators/>;

Country note: Data on homelessness in New Zealand, OECD, 2024

<web.archive.org/temp/2024-03-24/675277-Homelessness-NZL.pdf>

¹⁷ Proceeding with a better understanding of the impact on Māori, including what Māori are doing to support vulnerable peoples engaging in anti-social behaviour (in particular, people experiencing homelessness), would demonstrate good faith in relation to the Crown-Māori relationship and is appropriate given the existing efforts Māori have initiated with respect to supporting vulnerable persons (specifically rough sleepers) - see Te Tiriti o Waitangi / Treaty of Waitangi Guidance at paragraph 39, Cabinet Office, 22 October 2019.

¹⁸ Hauora: Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry, pages 28-29.

¹⁹ Cabinet Manual 2023, at 5.22.

²⁰ Kāinga Kore: The Stage One Report of the Housing Policy and Services Kaupapa Inquiry on Māori Homelessness, Waitangi Tribunal, 2024, at page 1.

²¹ For example, Kāhui Tū Kaha which offers support services to long-term homeless people in Auckland and Northland; <kahuitukaha.co.nz>

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70. Additionally, consultation would minimise the risk that Māori would be disproportionately affected by these proposals and so help mitigate against the pursuance of potential claims in the Waitangi Tribunal (again, especially relevant given the Tribunal recently examined the issue of Māori homelessness in Wai 2750 and found the Crown breached its Treaty obligations relating to Māori homelessness).

Next steps

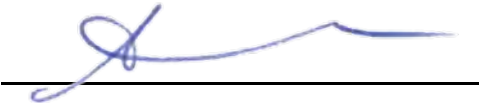
71. If you agree to proceed with any of the options in this briefing, we will work with relevant agencies to develop detailed policy proposals.
72. We do not have a legislative vehicle to carry forward these proposals, which would require amendments be made to the Summary Offences Act 1981. We do not consider these amendments would meet the single broad policy requirement in the Standing Orders to be progressed as an omnibus Bill alongside forthcoming amendments to the Crimes Act 1961 (to enact proposals set out in the National-New Zealand First Coalition Agreement).
73. Progressing these proposals will involve further trade-offs across the Justice policy work programme.
74. Given the widespread impacts of these proposals, we recommend you share this briefing and consult with housing and health sector Ministers before making policy decisions.

Recommendations

75. It's recommended that you:
1. **Note** that there are a number of existing tools to address anti-social behaviour in public spaces, including criminal offences, police powers, and city bylaws;
 2. **Indicate** your preferred approach to officials progressing analysis of move-on orders, including consultation with Police, Crown Law, and councils:
 - 2.1. Do not progress move-on orders at all; YES / NO
 - 2.2. Progress move-on orders, with their application limited to behaviour that causes safety issues; or YES / NO
 - 2.3. Progress move-on orders with wide-ranging application, including to rough sleepers and all beggars (not recommended); YES / NO
 3. **Indicate** your preferred approach for the Safe Streets Bill:
 - 3.1. **Agree** not to proceed with the Safe Streets Bill (recommended); YES / NO

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- 3.2. **Agree** to proceed with only the nuisance begging part of the Safe Streets Bill (and for officials to consult with agencies and councils); or YES / NO
- 3.3. **Agree** to proceed with the Safe Streets Bill in its entirety (and for officials to consult with agencies and councils); YES / NO
- 4. **Agree** for officials to engage with Te Puni Kōkiri, the Ministry of Housing and Urban Development and relevant Māori interest groups that provide assistance and support to homeless populations; and YES / NO
- 5. **Forward** a copy of this briefing to the Minister of Police, the Associate Minister of Justice and the Attorney-General. YES / NO



Alida Mercuri

General Manager, Criminal Justice Policy

APPROVED SEEN NOT AGREED

Hon Paul Goldsmith
Minister of Justice

Date / /

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Appendix A: Safe Streets Bill (draft)

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Appendix B: Move-on powers in Australia

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Safe Streets Bill

Government / Member's Bill

Explanatory Note

General policy statement

The Summary Offences Act 1981 creates offences relating to obstruction, intimidation, disorderly and offensive behaviour in public places. But many offences which could be used to deal with the problems on the streets of central Auckland and elsewhere in New Zealand currently contain bars that are too high for them to be used effectively. For example:

- Section 21 (intimidation) requires an offender to have had the intention to cause a victim to feel frightened or intimidated;
- Section 22 (obstructing a public way) requires the offender to have been warned by a Police officer, but to have ignored the warning;
- Section 28 (loitering) requires the offender to have been intending to commit an imprisonable offence.

This Bill proposes a separate statutory scheme to empower and require the Police to give directions to people causing a nuisance by obstructing a public place or begging to leave the area for a period of up to 96 hours. Where that person continues to be a nuisance to the public, the Police are then able to issue a prevention order, with more extensive requirements.

The Bill also introduces offences to prevent the arranging or facilitation by third parties of obstruction of public place or begging for gain.

The goal of the Bill is to improve the quality of life of all New Zealanders and improve the state of New Zealand cities by tackling nuisance obstruction of public places and begging where it causes damage, disruption, harassment or distress to the public, while avoiding criminalising the genuinely vulnerable.

Departmental disclosure statement

[TBC]

Regulatory impact statement

[TBC]

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 gives the date on which the Bill comes into force.

Part 1

Preliminary provisions

Clause 3 sets out the purpose of the legislation.

Clause 4 provides the definitions of nuisance obstruction of a public place and nuisance begging.

Part 2

Public nuisance

Subpart 1—Nuisance obstruction of public place

Clause 5 sets out the requirements for the issuing of a nuisance obstruction of public place direction.

Clause 6 sets out the requirements for the issuing of a nuisance obstruction of public place prevention notice.

Clause 7 makes it an offence to arrange or facilitate either of the behaviours described in clauses 5 and 6 for gain.

Subpart 2—Nuisance begging

Clause 8 sets out the requirements for the issuing of a nuisance begging direction.

Clause 9 sets out the requirements for the issuing of a nuisance begging prevention notice.

Clause 10 makes it an offence to arrange or facilitate either of the behaviours described in clauses 8 and 9 for gain.

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[Name of Minister / Member]

Safe Streets Bill

Government / Member's Bill

Contents

- Explanatory note
- 1 Title
- 2 Commencement

Part 1 Preliminary provisions

- 3 Purposes
- 4 Interpretation

Part 2 Public nuisance

Subpart 1—Nuisance obstruction of public place

- 5 Nuisance obstruction of public place directions
- 6 Nuisance obstruction of public place prevention notices
- 7 Arranging or facilitating obstruction of public place for gain

Subpart 2—Nuisance begging

- 8 Nuisance begging directions
- 9 Nuisance begging prevention notices
- 10 Arranging or facilitating begging for gain

The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Safe Streets Act 2024.
- 2 Commencement**
This Act comes into force on the day after Royal assent.

Part 1 Preliminary provisions

- 3 Purposes**
The purpose of this Act is to—
 - (a) provide for the issuing of directions to target nuisance obstruction of public places and begging;

- (b) make it an offence to arrange or facilitate nuisance obstruction of public places and begging for gain.

4 Interpretation

In this Act, unless the context otherwise requires,—

nuisance begging means begging—

- (a) on public transport
- (b) in a public transport station, including at an entrance or exit
- (c) at a bus stop or any other place where members of the public access any form of public transport
- (d) at a taxi rank
- (e) on a road or cycle track
- (f) in any area within 10 metres of business premises
- (g) within 10 metres of an automated teller machine, ticket machine, vending machine or other device through which members of the public obtain goods or services by making payments
- (h) in, or within 10 metres of, the entrance to, or exit from, retail premises or any building housing retail premises
- (i) in the common parts of, or outside, any building containing two or more dwellings
- (j) that causes or is likely to cause harassment, alarm or distress to a person
- (k) that causes or is likely to cause a person reasonably to believe that they may be harmed or property may be damaged
- (l) that causes or is likely to cause disorder
- (m) that causes or is likely to cause a risk to the health or safety of any person

nuisance obstruction of a public place means—

- (a) occupying a public place, including a right of way, footpath, road, in a way that obstructs or otherwise creates a disturbance to any person
- (b) placing or leaving any material, object, thing or structure in a public place without lawful excuse
- (c) lodging in the open-air in a public place
- (d) obstructing, disturbing or interfering with any other person in their use or enjoyment of a public place
- (e) intimidating a person in a public place
- (f) engaging in behaviour in a public place that causes or is likely to cause harassment, alarm or distress to a person
- (g) engaging in behaviour in a public place that causes or is likely to cause a person reasonably to believe that they may be harmed or property may be damaged
- (h) engaging in behaviour in a public place that causes or is likely to cause disorder
- (i) engaging in behaviour in a public place that is likely to cause a risk to the health or safety of any person

Part 2

Public nuisance

Subpart 1—Nuisance obstruction of public place

5 Nuisance obstruction of public place directions

- (1) A constable may give a nuisance obstruction of public place direction to a person if satisfied on reasonable grounds that the person is engaging, has engaged, or is likely to engage in nuisance obstruction of a public place.
- (2) A **nuisance obstruction of public place direction** is a direction requiring the person—
 - (a) to leave a specified location as soon as reasonably practicable; and
 - (b) not to return to the specified location at any time in a specified period, not exceeding 96 hours, beginning with the giving of the direction.
- (3) A nuisance obstruction of public place direction may require the person, when leaving the specified location, to remove (and take with them) their belongings and any specific litter or other things for which they are responsible.
- (4) A nuisance obstruction of public place direction must, so far as practicable, avoid—
 - (a) any interference with attending any place where the person normally works or attends an educational establishment;
 - (b) any conflict with the requirements of any court order to which the person is subject.
- (5) A nuisance obstruction of public place direction must be in writing and state it is an offence to fail to comply with the direction.
- (6) A person to whom a nuisance obstruction of public place direction has been given commits an offence if the person fails to comply with the direction.
- (7) A person who commits an offence under this section is liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding \$2,000.

6 Nuisance obstruction of public place prevention notices

- (1) A constable may give a nuisance obstruction of public place prevention notice to a person if:
 - (a) satisfied on reasonable grounds that the person is engaging, has engaged, or is likely to engage in nuisance obstruction of a public place; and
 - (b) the person has received a nuisance obstruction of public place direction in the previous three months.
- (2) A **nuisance obstruction of public place prevention notice** is a notice imposing, on the person to whom it is given, either or both of the following—
 - (a) requirements not to do specified things, at any time in a specified period not exceeding 3 years beginning at the end of the day on which the notice is given;
 - (b) requirements to do specified things within specified periods or by specified times.
- (3) A requirement in section 6(2) may only be imposed if it is reasonable to impose it for the purpose of preventing the person to whom the notice is given from engaging in nuisance obstruction of a public place.

- (4) A nuisance obstruction of public place prevention notice must, so far as practicable, avoid—
 - (a) any interference with attending any place where the person normally works or attends an educational establishment;
 - (b) any conflict with the requirements of any court order to which the person is subject.
- (5) A nuisance obstruction of public place prevention notice must:
 - (a) state the name of the person to whom it is given;
 - (b) describe the behaviour giving rise to the giving of the notice;
 - (c) describe the consequences of failing to comply with the notice; and
 - (d) contain information about appealing against the notice.
- (6) A nuisance obstruction of public place prevention notice must be given to a person—
 - (a) by hand;
 - (b) by leaving it at, or posting it to, the person's last known address, or
 - (c) by any electronic means by which the person has agreed to receive it.
- (7) A person to whom a nuisance obstruction of public place prevention notice has been given may appeal to the District Court on any of the following grounds—
 - (a) that the person did not engage in nuisance obstruction of a public place as described in the notice;
 - (b) that the person had not received a nuisance obstruction of public place direction in the previous three months.
- (8) A person to whom a nuisance obstruction of public place prevention notice has been given commits an offence if the person fails to comply with the notice.
- (9) A person who commits an offence under this section is liable on summary conviction to imprisonment for a term not exceeding 6 months or a fine not exceeding \$4,000.

7 Arranging or facilitating obstruction of public place for gain

- (1) A person commits an offence if, for gain, the person arranges or facilitates another person's nuisance obstruction of a public place.
- (2) A person who commits an offence under this section is liable on summary conviction to imprisonment for a term not exceeding 6 months or a fine not exceeding \$4,000.

Subpart 2—Nuisance begging

8 Nuisance begging directions

- (1) A constable may give a nuisance begging direction to a person if satisfied on reasonable grounds that the person is engaging, has engaged, or is likely to engage in nuisance begging.
- (2) A **nuisance begging direction** is a direction requiring the person—
 - (a) to leave a specified location as soon as reasonably practicable, and

- (b) not to return to the specified location at any time in a specified period, not exceeding 96 hours, beginning with the giving of the direction.
- (3) A nuisance begging direction may require the person, when leaving the specified location, to remove (and take with them) their belongings and any specific litter or other things for which they are responsible.
- (4) A nuisance begging direction must, so far as practicable, avoid—
 - (a) any interference with attending any place where the person normally works or attends an educational establishment;
 - (b) any conflict with the requirements of any court order to which the person is subject.
- (5) A nuisance begging direction must be in writing and state it is an offence to fail to comply with the direction.
- (6) A person to whom a nuisance begging direction has been given commits an offence if the person fails to comply with the direction.
- (7) A person who commits an offence under this section is liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding \$2,000.

9 Nuisance begging prevention notices

- (1) A constable may give a nuisance begging prevention notice to a person if:
 - (a) satisfied on reasonable grounds that the person is engaging, has engaged, or is likely to engage in nuisance begging; and
 - (b) the person has received a nuisance begging direction in the previous three months.
- (2) A **nuisance begging prevention notice** is a notice imposing, on the person to whom it is given, either or both of the following—
 - (a) requirements not to do specified things, at any time in a specified period not exceeding 3 years beginning at the end of the day on which the notice is given;
 - (b) requirements to do specified things within specified periods or by specified times.
- (3) A requirement in section 9(2) may only be imposed if it is reasonable to impose it for the purpose of preventing the person to whom the notice is given from engaging in nuisance obstruction of a public place.
- (4) A nuisance begging prevention notice must, so far as practicable, avoid—
 - (a) any interference with attending any place where the person normally works or attends an educational establishment;
 - (b) any conflict with the requirements of any court order to which the person is subject.
- (5) A nuisance begging prevention notice must:
 - (a) state the name of the person to whom it is given;
 - (b) describe the behaviour giving rise to the giving of the notice;
 - (c) describe the consequences of failing to comply with the notice; and
 - (d) contain information about appealing against the notice.

- (6) A nuisance begging prevention notice must be given to a person—
 - (a) by hand;
 - (b) by leaving it at, or posting it to, the person's last known address, or
 - (c) by any electronic means by which the person has agreed to receive it.
- (7) A person to whom a nuisance begging prevention notice has been given may appeal to the District Court on any of the following grounds—
 - (a) that the person did not engage in nuisance begging as described in the notice;
 - (b) that the person had not received a nuisance begging direction in the previous three months.
- (8) A person to whom a nuisance begging prevention notice has been given commits an offence if the person fails to comply with the notice.
- (9) A person who commits an offence under this section is liable on summary conviction to imprisonment for a term not exceeding 6 months or a fine not exceeding \$4,000.

10 Arranging or facilitating begging for gain

- (1) A person commits an offence if, for gain, the person arranges or facilitates another person's nuisance begging.
- (2) A person who commits an offence under this section is liable on summary conviction to imprisonment for a term not exceeding 6 months or a fine not exceeding \$4,000.

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	Queensland	Australian Capital Territory	New South Wales	Northern Territory
Legislation	Police Powers and Responsibilities Act 2000, Sections 44-48	Crimes Act 1900, Sections 175-179	Law Enforcement (Powers and Responsibilities) Act 2002, Sections 197-200A	Summary Offences Act 1923, Section 47B
Trigger	<p>A police officer reasonably suspects the person's behaviour is or has been—</p> <p>(a) causing anxiety to a person entering, at or leaving the place, reasonably arising in all the circumstances; or</p> <p>(b) interfering with trade or business at the place by unnecessarily obstructing, hindering or impeding someone entering, at or leaving the place; or</p> <p>(c) disorderly, indecent, offensive, or threatening to someone entering, at or leaving the place; or</p> <p>(d) disrupting the peaceable and orderly conduct of any event, entertainment or gathering at the place.</p> <p>A police officer reasonably suspects the person's presence is or has been—</p> <p>(a) causing anxiety to a person entering, at, or leaving the place, reasonably arising in all the circumstances; or</p> <p>(b) interfering with trade or business at the place by unnecessarily obstructing, hindering or impeding someone entering, at or leaving the place; or</p> <p>(c) disrupting the peaceable and orderly conduct of any event,</p>	<p>A police officer reasonably believes that a person has recently engaged in, is engaged in, or is likely in the immediate future to engage in, conduct—</p> <p>(a) involving violence towards, or intimidation of, a person; or damage to property; or</p> <p>(b) that would cause a reasonable person to fear for their safety.</p>	<p>A police officer believes on reasonable grounds that the person's behaviour or presence in the place (referred to in this Part as relevant conduct)—</p> <p>(a) is obstructing another person or persons or traffic, or</p> <p>(b) constitutes harassment or intimidation of another person or persons, or</p> <p>(c) is causing or likely to cause fear to another person or persons, so long as the relevant conduct would be such as to cause fear to a person of reasonable firmness, or</p> <p>(d) is for the purpose of unlawfully supplying, or intending to unlawfully supply, or soliciting another person or persons to unlawfully supply, any prohibited drug, or</p> <p>(e) is for the purpose of obtaining, procuring or purchasing any prohibited drug that it would be unlawful for the person to possess.</p> <p>A direction given by a police officer under this section must be reasonable in the circumstances for the purpose of—</p> <p>(a) reducing or eliminating the obstruction, harassment, intimidation or fear, or</p> <p>(b) stopping the supply, or soliciting to supply, of the prohibited drug, or</p>	<p>Where a person is loitering in a public place and a police officer reasonably suspects –</p> <p>(a) the person has committed, or is about to commit, an offence at the place or in the area; or</p> <p>(b) the person is part of a group of people at the place and one or more people in the group have committed or are about to commit an offence at the place or in the area.</p>

	entertainment or gathering at the place.		<p>(c) stopping the obtaining, procuring or purchasing of the prohibited drug.</p> <p>A police officer may give a direction to an intoxicated person who is in a public place to leave the place and not return for a specified period if the police officer believes on reasonable grounds that the person's behaviour in the place as a result of the intoxication (referred to in this Part as relevant conduct)—</p> <p>(a) is likely to cause injury to any other person or persons, damage to property or otherwise give rise to a risk to public safety, or</p> <p>(b) is disorderly.</p> <p>A direction given by a police officer under this section must be reasonable in the circumstances for the purpose of—</p> <p>(a) preventing injury or damage or reducing or eliminating a risk to public safety, or</p> <p>(b) preventing the continuance of disorderly behaviour in a public place.</p>	
Time period	24 hours maximum	6 hours maximum	Section 197 - None specified; Section 198 - 6 hours maximum	72 hours maximum
Exclusions	A police officer must not give a direction that interferes with a person's right of peaceful assembly unless it is reasonably necessary in the interests of— (a) public safety; or (b) public order; or (c) the protection of the rights and freedoms of other persons.	Does not apply in relation to a person who is— (a) picketing a place of employment; or (b) demonstrating or protesting about a particular issue; or (c) speaking, bearing, or otherwise identifying with a banner, placard or sign or otherwise behaving in a way	<p>Does not authorise a police officer to give a direction in relation to an industrial dispute.</p> <p>Does not authorise a police officer to give a direction in relation to—</p> <p>(a) an apparently genuine demonstration or protest, or</p> <p>(b) a procession, or</p>	There is a defence if the defendant proves that the defendant has a reasonable excuse.

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		<p>that is apparently intended to publicise the person's view about a particular issue.</p>	<p>(c) an organised assembly, except as provided by subsection (3) or (4).</p> <p>A police officer is not precluded from giving a direction in relation to any such demonstration, protest, procession or assembly if the police officer believes on reasonable grounds that the direction is necessary to deal with a serious risk to the safety of the person to whom the direction is given or to any other person.</p> <p>A police officer is not precluded from giving a direction in relation to any such demonstration, protest, procession or assembly that is obstructing traffic if—</p> <p>(a) the demonstration, protest, procession or assembly is not an authorised public assembly for the purposes of Part 4 of the Summary Offences Act 1988 or the demonstration, protest, procession or assembly is not being held substantially in accordance with any such authorisation, and</p> <p>(b) the police officer in charge at the scene has authorised the giving of directions under this Part in relation to the demonstration, protest, procession or assembly, and</p> <p>(c) the direction is limited to the persons who are obstructing traffic.</p>	
<p>Geography</p>	<p>A direction may require a person to do one of the following—</p> <p>(a) leave the regulated place and not return or be within the regulated</p>	<p>The police officer may give the person a direction to do any of the following:</p>	<p>None specified.</p>	<p>A police officer may give written notice requiring the person to stay away from the place or an area including the place (specifying the</p>

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	<p>place within a stated reasonable time of not more than 24 hours; (b) leave a stated part of the regulated place and not return or be within the stated part of the regulated place within a stated reasonable time of not more than 24 hours; (c) move from a particular location at or near the regulated place for a stated reasonable distance, in a stated direction, and not return or be within the stated distance from the place within a stated reasonable time of not more than 24 hours.</p>	<p>(a) immediately leave an area specified by the officer; (b) remain outside the exclusion zone for a period, decided by the officer; (c) leave the exclusion zone by a particular route, or in a particular direction, decided by the officer.</p>		<p>place or area, and the period, as is reasonable in the circumstances)</p>
<p>Procedure</p>	<p>The police officer must tell the person or group of persons the reasons for giving the direction.</p>	<p>The police officer must tell, or make reasonable efforts to tell, the person the following: (a) that the person has been given an exclusion direction; (b) the reason for the direction; (c) the exclusion zone to which the direction applies; (d) that the person must not remain in the zone; (e) the exclusion period, if any; (f) the route or direction, if any, that the person must take to leave the zone; (g) that it is an offence to fail to comply with the direction; (h) the time and date the direction ends. (2) If an exclusion direction is given to 2 or more people at the same time, the police officer giving the direction—</p>	<p>A police officer must give to a person to whom the officer gives a direction under this section (being a direction on the grounds that the person is intoxicated and disorderly in a public place) a warning that it is an offence to be intoxicated and disorderly in that or any other public place at any time within 6 hours after the direction is given. The warning is in addition to any other warning required under Part 15.</p> <p>A police officer who exercises this power must provide the following to the person subject to the exercise of the power— (a) evidence that the police officer is a police officer (unless the police officer is in uniform), (b) the name of the police officer and his or her place of duty,</p>	<p>The officer must ensure all reasonable steps are taken to explain to the person (in language the person can readily understand) the matters relating to the notice, its conditions (time, place/area, consequences of contravention); although the notice is not invalidated by failure to do this.</p>

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Appendix B – Move-on Powers in Australia

		(a) may tell, or make reasonable efforts to tell, the group generally the information mentioned in subsection (1); and (b) in that case, need not give the information to each person individually.	(c) the reason for the exercise of the power. A police officer must do the above: (a) as soon as it is reasonably practicable to do so, or (b) in the case of a direction, requirement or request to a single person—before giving or making the direction, requirement or request.	
Penalties	Maximum 60 penalty units (1 penalty unit = \$161.30 as of July 2024)	Maximum 2 penalty units (1 penalty unit = \$160)	Maximum 2 penalty units (1 penalty unit = \$110)	Maximum 100 penalty units or 6 months imprisonment (1 penalty unit = \$185)

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Appendix B – Move-on Powers in Australia

	South Australia	Tasmania	Victoria	Western Australia
Legislation	Summary Offences Act 1953, Section 18	Police Offences Act 1935, Section 15B	Summary Offences Act 1966, Section 6	Criminal Investigation Act 2006, Section 27
Trigger	<p>Where a person is loitering in a public place or a group of persons is assembled in a public place and a police officer believes or apprehends on reasonable grounds—</p> <p>(a) that an offence has been, or is about to be, committed by that person or by one or more of the persons in the group or by another in the vicinity; or</p> <p>(b) that a breach of the peace has occurred, is occurring, or is about to occur, in the vicinity of that person or group; or</p> <p>(c) that the movement of pedestrians or vehicular traffic is obstructed, or is about to be obstructed, by the presence of that person or group or of others in the vicinity; or</p> <p>(d) that the safety of a person in the vicinity is in danger, the officer may request that person to cease loitering, or request the persons in that group to disperse, as the case may require.</p>	<p>A police officer believes on reasonable grounds that the person —</p> <p>(a) has committed or is likely to commit an offence; or</p> <p>(b) is obstructing or is likely to obstruct the movement of pedestrians or vehicles; or</p> <p>(c) is endangering or likely to endanger the safety of any other person; or</p> <p>(d) has committed or is likely to commit a breach of the peace.</p>	<p>A police officer or protective services officer suspects on reasonable grounds that—</p> <p>(a) the person is or persons are breaching, or likely to breach, the peace; or</p> <p>(b) the person is or persons are endangering, or likely to endanger, the safety of any other person; or</p> <p>(c) the behaviour of the person or persons is likely to cause injury to a person or damage to property or is otherwise a risk to public safety.</p>	<p>A police officer reasonably suspects that the person —</p> <p>(a) is doing an act —</p> <p>(i) that involves the use of violence against a person; or</p> <p>(ii) that will cause a person to use violence against another person; or</p> <p>(iii) that will cause a person to fear violence will be used by a person against another person; or</p> <p>(b) is just about to do an act that is likely to —</p> <p>(i) involve the use of violence against a person; or</p> <p>(ii) cause a person to use violence against another person; or</p> <p>(iii) cause a person to fear violence will be used by a person against another person; or</p> <p>(c) is committing any other breach of the peace; or</p> <p>(d) is hindering, obstructing or preventing any lawful activity that is being, or is about to be, carried out by another person; or</p> <p>(e) intends to commit an offence; or</p> <p>(f) has just committed or is committing an offence.</p>
Time period	None specified.	Minimum 4 hours	Maximum 24 hours	Maximum 24 hours

<p>Exclusions</p>	<p>None.</p>	<p>None.</p>	<p>Does not apply in relation to a person who, whether in the company of other persons or not, is— (a) picketing a place of employment; or (b) demonstrating or protesting about a particular issue; or (c) speaking, bearing or otherwise identifying with a banner, placard or sign or otherwise behaving in a way that is apparently intended to publicise the person's view about a particular issue.</p>	<p>A person is not in breach of the move on order if the person is taking reasonable steps to comply with the order and move out of the area.</p>
<p>Geography</p>	<p>A person of whom a request is made must leave the place and the area in the vicinity of the place in which he or she was loitering or assembled in the group.</p>	<p>A police officer may direct a person in a public place to leave that place and not return for a specified period.</p>	<p>A direction under this section may direct the person or persons not to return to the public place or part of a public place or not be in that public place or part for a specified period.</p>	<p>A police officer may order a person who is in a public place, or in a vehicle used for public transport, to leave it, or a part of it specified by the officer.</p> <p>In addition, a police officer may do either or both of the following: (a) order the person to go beyond a reasonable distance from the place, or the part of the place, set by the officer; (b) order the person to obey the order or orders for a reasonable period set by the officer; but the period must not be longer than 24 hours.</p>

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Appendix B – Move-on Powers in Australia

<p>Procedure</p>	<p>None specified.</p>	<p>None specified.</p>	<p>A direction under this section may be given orally.</p>	<p>Any order given must be in writing on a prescribed form.</p> <p>When giving a person an order under subsection (1), a police officer must take into account the likely effect of the order on the person, including but not limited to the effect on the person's access to the places where he or she usually resides, shops and works, and to transport, health, education or other essential services.</p>
<p>Penalties</p>	<p>Maximum \$1250 or 3 months imprisonment</p>	<p>Maximum 2 penalty units (1 penalty unit = \$202)</p>	<p>Maximum 5 penalty units (1 penalty unit = \$197.59)</p>	<p>Maximum fine of \$12 000 and 12 months imprisonment</p>

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From: S9(2)(a)
Sent: Wednesday, 25 June 2025 10:21 am
To: S9(2)(a) @retailmag.govt.nz'
Cc: S9(2)(a) ; S9(2)(a)
Subject: Initial MoJ comments on anti-social behaviour issues paper

Kia ora S9(2)(a)

Thank you for the opportunity to provide comment on the MAG's initial issues paper on anti-social behaviour in New Zealand retail environments.

As your work is still in early stages, we have limited our feedback to suggestions for areas of focus and potential further work, rather than any firm recommendations or Justice positions at this stage.

We look forward to further opportunities to engage as your work and thinking progresses.

Problem definition

As the work progresses, it will be important that a clear problem definition and objective is identified, including what aspects of anti-social behaviour each proposal is intending to target.

We also suggest more information would be useful about the 'sense of impunity' around antisocial conduct – for instance what are the signs of 'impunity' and whether and how other jurisdictions are addressing this.

Evidence and data

If you are undertaking further engagement with retailers, it may be helpful to have more information about the following:

- the frequency and nature of antisocial behaviour
- whether the concern was about antisocial behaviour directed at the retailer or that it occurred outside their place of work which could deter customers
- whether the retailer had called the Police or local council to report the behaviour
- a clearer profile of those committing the antisocial conduct, as well as those most affected by the conduct, including offending history and demographics.

It would also be useful to provide evidence that Police are not adequately responding to assaults on retailers, or that offenders are not being charged under the existing assault framework.

International comparisons

It may be useful to explore the broader suite of mechanisms available in the United Kingdom for managing antisocial behaviour, including Public Spaces Protection Orders and Community Protection Notices. If consideration is to be given to measures like those used overseas, it would be helpful to include any relevant evidence about their use or effectiveness.

It may also be useful to reflect any evidence regarding the efficacy of the Australian move-on orders in responding to and decreasing anti-social behaviours. In the NSW example of move-on powers, some of the examples have significant overlap with existing New Zealand criminal laws, such as obstruction of a public way and intimidation.

Proposals

Document 9

It would be helpful to have a list of which anti-social behaviours each proposal is designed to address. For instance, would move-on orders only apply to anti-social behaviour that poses a public safety issue, or is the proposal broader?

The development and implementation of on-the-spot penalties for antisocial behaviours is likely to be complex. In developing these proposals we suggest you consider:

- Flexibility: to account for a wide range of antisocial behaviours with context-specific tools.
- Proportionality: the scope of behaviours included under the umbrella of antisocial conduct means that while a response may be proportionate to the level of harm associated with one behaviour, the same response may not be appropriate for similar behaviours
- Resources and training required: to equip enforcement officers (including council officers) with the tools to respond to such a broad range of behaviours – especially where health and safety issues arise.
- Natural justice and the ability to challenge incorrectly imposed penalties.

Move on orders

It would be useful to consider how move on orders could work in practice, especially if the person is unwilling to leave, and how the Police may operationalise and monitor the orders.

We note that move-on powers were considered recently by the Independent Police Conduct Authority (IPCA) as part of its review of *Policing of Public Protests in New Zealand*. The IPCA noted significant reservations about a general 'move on' power.

out of scope

Human rights considerations

It will be important to consider how the proposal will interact with the New Zealand Bill of Rights Act 1990 (NZBORA) regarding freedom of movement and association. Move-on orders that require a warning to be given first, and which can only be given if there is a significant or imminent public safety risk, would place a smaller limitation on NZBORA rights and freedoms.

We suggest you consider the extent to which the NZBORA presumption of innocence is displaced, given the police could be exercising powers to issue these orders against people who may have committed no offence. You should also consider other NZBORA rights and freedoms, including freedom from discrimination (which may be particularly relevant to restrictions on begging), presumption of innocence, and the right not to be arbitrarily arrested or detained.

Engagement with other agencies

An important part of this work will involve engaging with Police on how criminal and non-criminal antisocial conduct is currently managed through Police operational guidelines and practice.

Document 9

The paper notes that regional councils are having difficulties enforcing infringements, in part due to complexities with requiring court approval. S9(2)(f)(iv)

We suggest you engage with Oranga Tamariki to understand how these proposals might apply to children and young people.

We note that other government agencies are likely to be interested in the anti-social behaviour proposals. This may include TPK, Ministry for Pacific Peoples, Whaikaha, Ministry of Social Development, and Kainga Ora.

Additionally, there are several organisations who help those in our communities who may be most impacted by the anti-social behaviour proposals. You may wish to engage with non-profit groups such as the Salvation Army, the Wellington and Auckland City Missions, and Kahui Tu Kaha.

I hope this feedback is useful to the MAG. Officials are available to discuss any aspect of this feedback in more detail.

Ngā mihi,

S9(2)(a)



S9(2)(a)

Chief Advisor | Criminal Justice

Ministry of Justice | Tāhū o te Ture

S9(2)(a)

S9(2)(a) [@justice.govt.nz](https://twitter.com/justice.govt.nz) | www.justice.govt.nz

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From: S9(2)(a) <[S9\(2\)\(a\)@retailmag.govt.nz](mailto:S9(2)(a)@retailmag.govt.nz)>
Sent: Tuesday, August 12, 2025 9:47 AM
To: S9(2)(a) <[S9\(2\)\(a\)@police.govt.nz](mailto:S9(2)(a)@police.govt.nz)>; S9(2)(a) <[S9\(2\)\(a\)@ot.govt.nz](mailto:S9(2)(a)@ot.govt.nz)>; ROTH, Tanya <Tanya.ROTH@police.govt.nz>; S9(2)(a) <[S9\(2\)\(a\)@justice.govt.nz](mailto:S9(2)(a)@justice.govt.nz)>; WOOD, Jeremy <jeremy.wood@police.govt.nz>; S9(2)(a) <[S9\(2\)\(a\)@justice.govt.nz](mailto:S9(2)(a)@justice.govt.nz)>; S9(2)(a) <[S9\(2\)\(a\)@justice.govt.nz](mailto:S9(2)(a)@justice.govt.nz)>; S9(2)(a) <[S9\(2\)\(a\)@ethniccommunities.govt.nz](mailto:S9(2)(a)@ethniccommunities.govt.nz)>; S9(2)(a) <[S9\(2\)\(a\)@tpk.govt.nz](mailto:S9(2)(a)@tpk.govt.nz)>; S9(2)(a) <[S9\(2\)\(a\)@whaikaha.govt.nz](mailto:S9(2)(a)@whaikaha.govt.nz)>; S9(2)(a) <[S9\(2\)\(a\)@mmp.govt.nz](mailto:S9(2)(a)@mmp.govt.nz)>; S9(2)(a) <[S9\(2\)\(a\)@justice.govt.nz](mailto:S9(2)(a)@justice.govt.nz)>; S9(2)(a) <[S9\(2\)\(a\)@retailmag.govt.nz](mailto:S9(2)(a)@retailmag.govt.nz)>
Cc: S9(2)(a) <[S9\(2\)\(a\)@retailmag.govt.nz](mailto:S9(2)(a)@retailmag.govt.nz)>; S9(2)(a) <[S9\(2\)\(a\)@retailmag.govt.nz](mailto:S9(2)(a)@retailmag.govt.nz)>; S9(2)(a) <[S9\(2\)\(a\)@retailmag.govt.nz](mailto:S9(2)(a)@retailmag.govt.nz)>
Subject: MAG paper for comment by 21 August - anti-social behaviour

Hello all,

See attached our options paper on responding to anti-social behaviour. We'd appreciate comments back by Thursday 21 August. Please send feedback to me and S9(2)(a) <[S9\(2\)\(a\)@mag.govt.nz](mailto:S9(2)(a)@mag.govt.nz)>.

The paper considers:

- **Option 1: move-on orders** – a new tool for Police and/or Councils to move a person on to a different location if that person is behaving anti-socially
- **Option 2: new criminal offences** for criminal offending that victimises retail workers
- **Option 3: additional powers for councils** to enforce by-laws
- **Option 4: geographic bans** on certain behaviour, like begging, in certain areas (for example, around a cash machine)
- **Option 5: government action plan** or policy statement to address anti-social behaviour, which could 'wrap up' the other actions into a cohesive strategy
- **Option 6: court-issued civil orders** – an order requiring a person to stay away from certain locations and undertake rehabilitation to address underlying issues

The team and I are happy to meet and discuss any questions or feedback you wish to provide.

S9(2)(a) - might be good to have a meeting directly. If the Government does wish to proceed with move-on orders (which is a likely outcome I think), I'm interested in whether that's something that would best be placed in the Policing Act or Summary Offences Act.

MOJ colleagues - I'd appreciate contacts for DIA (local govt), and any contacts you have at HUD / Kainga Ora.

I would appreciate it if you could acknowledge receipt of this email.

Kind regards,

S9(2)(a) | Policy Manager

Ministerial Advisory Group for the Victims of Retail Crime

Email S9(2)(a) <[S9\(2\)\(a\)@RetailMAG.govt.nz](mailto:S9(2)(a)@RetailMAG.govt.nz)>

Phone S9(2)(a)

Anti-social behaviour around retail settings: Options Paper

MINISTERIAL ADVISORY GROUP FOR
VICTIMS OF RETAIL CRIME

August 2025

Executive summary

1. We want your feedback on options to address anti-social behaviour in and around retail settings.
2. 'Anti-social behaviour' includes any behaviour that is likely to intimidate, harass, alarm, or distress any person. It includes the actions of any person behaving in an anti-social manner, including public disorder, obstruction and escalating abusive behaviour. Retailers are dealing with the fear and safety risks of this behaviour themselves, with little substantial support.
3. Retailers have told us that:
 - Anti-social behaviour is increasing, and results in significant harm to retail workers and customers. It affects all businesses, from small, sole operator retailers all the way up to larger multi-store operators and retail chains
 - There is a lack of tools to address anti-social behaviour, and those that exist are difficult to enforce, for example the Auckland Public Safety and Nuisance by-law
4. This paper assesses six options to address anti-social behaviour affecting retailers:
 - **Option 1: move-on orders** – a new tool for Police and/or Councils to move a person on to a different location if that person is behaving anti-socially
 - **Option 2: new criminal offences** targeting criminal offending that victimises retail workers
 - **Option 3: additional powers for councils** to enforce by-laws
 - **Option 4: geographic bans** on certain behaviour (e.g. begging) within certain 'zones' (for example, around a cash machine)
 - **Option 5: government action plan** or policy statement to address anti-social behaviour, which could 'wrap up' the other actions into a cohesive strategy
 - **Option 6: court-issued civil orders** – an order requiring a person to stay away from certain locations and undertake rehabilitation to address underlying issues
5. Our view is that options 1 and 2 are the most promising. These options are likely to be effective in providing immediate relief to retailers and greater accountability for offenders.
6. Move-on orders look to be an effective response to deal with anti-social behaviour that is not criminal in nature, but which cause significant harm to retailers. Move on orders can also prevent situations from escalating into truly criminal acts – for example, by moving on an aggressive person who is intoxicated. Early, non-punitive intervention, by simply requiring a person to leave the area, and with a referral to appropriate support services, is a more effective and humane approach to public order management and protecting the retail environment. It strikes a balance between the public's right to freely access public spaces and conduct business, and the realities of people experiencing significant personal life challenges. A 'three strikes' policy could also be implemented where there is an automatic trespass issued to

repeat offenders.

7. A new bespoke criminal offence, on the other hand, is focused on restoring the balance of accountability for offending. This option aims to combat the sense of entitlement that too many offenders have in believing that it is okay to offend against retail workers. While offending against any particular group of persons is harmful, retail workers are unique because:

- Retail workers are often young and in their first job. There is a perception that they will just put up with it because they don't have any choice
- The mistaken and entitled belief that 'the customer is always right', and that there are no consequences for treating retail workers poorly because it might be seen as a low-status job
- The regular exposure to anti-social behaviour reflects a systemic vulnerability that existing criminal laws do not adequately address

We have also seen significant international moves towards bespoke offences for offending against retail workers.

8. We also think that options 3, 4, and 5 could have some benefit, and could complement the changes under options 1 and 2 by giving Councils the tools to enforce by-laws, creating protected 'zones', and a plan to package up all the changes. Currently by-laws are difficult to enforce, meaning their utility is low. Enforcement powers will restore this. Protected zones would make people feel safer with knowledge they won't be accosted when they walk out onto the street. An action plan from government would give purpose and direction to the set of changes adopted from this paper.

9. We are unlikely to recommend option 6 due to its longer-term nature and lack of immediate impact. Our focus is on interventions that can either stop behaviour quickly or strongly deter such behaviour in the future. These interventions are applicable to everyone, whereas a civil order only addresses the behaviour of one person. A large number of civil orders would need to be given out before there is a wider effect, and there is little evidence of their efficacy.

10. In assessing these options, we have considered whether the proposals are:

- Proportionate
- Reflect accepted social norms in New Zealand
- Do not unduly criminalise homelessness, youth, or reduce anyone's access to essential services.

11. We are seeking your feedback on these initial assessments of options.

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Introduction

1. We want your feedback on the six options we've identified that could help address anti-social behaviour in and around retail settings. We are also keen to know what else you think we should be doing.

Sector and stakeholder engagement

2. Twenty-two organisations or businesses responded to our previous paper that sought feedback on the prevalence and impact of anti-social behaviour. We heard from business membership organisations, individual retailers, unions, local Councils, and other stakeholders.
3. We are grateful to all who contributed their views, particularly the retailers who shared personal stories of the impacts of anti-social behaviour on their businesses and staff.

The problem

4. We are concerned with addressing 'anti-social behaviour', which we define as a person behaving in a manner that causes or is likely to cause intimidation, harassment, alarm or distress to one or more other persons in or around a retail environment.
5. Anti-social behaviour harms retail workers, customers, and the general trading environment. Sometimes anti-social behaviour, while awful, falls short of being a criminal offence (e.g. verbal abuse directed at retail workers). However, sometimes it includes conduct that is already criminal, but which is at the less serious end of offending, for which existing systems find it difficult to prioritise and enforce effectively.

Submitters said:

Retailers are experiencing people defecating outside and in doorways to their shops. Having sex in the street. Unauthorised messy encampments on streets which scare customers off. People dealing with mental health crises. On the street or in the car park, open drug taking, people drunk, aggressive loitering and verbal threats, harassment from groups, especially youths, racial abuse, spitting, and intimidation of customers. Smashing windows. Abusive customers coming in and harassing workers. Damaging fixings and furniture i.e. toilet seats, soap dispensers, sinks, toilet bowls etc. Tagging in bathrooms; Breaking baby change tables.

6. Retailers are largely left to deal with this behaviour themselves. All the above examples came from submissions.
7. Another example is a small retailer who is struggling with a regular group of people exhibiting

anti-social behaviour outside his shop and intimidating customers on a daily basis. The offenders sit on the ground by the entrance all day, aggressively begging, smoking, and taking drugs. They defecate around the back of the shop. They are abusive if the owner seeks to move them on, and they are abusive to customers. He fears for his safety while at work, and when getting to and from work. He is very concerned that his loyal customer base is eroding because of this constant threat just outside the shop.

8. As a result, the anti-social behaviour is not addressed in a systemic way, there is under-reporting of this behaviour, and there is not good data on the overall prevalence of the problem.

What we heard about the problem

9. Submitters largely agreed with the problem statement. Key themes are discussed below.

Anti-social behaviour is taking place in retail settings in New Zealand

10. Virtually all submitters agreed that anti-social behaviour is taking place in retail settings. Many submitters made specific comments about the types of behaviour they are seeing in and around their retail stores, in CBDs and high streets and other retail areas, as noted in paragraph 5 above. The consistent and dramatic increase in the volume and severity of anti-social behaviour across New Zealand suggests that these are no longer isolated or exceptional occurrences. Instead, they signify a fundamental shift in the nature of retail work, where frontline staff are routinely exposed to aggression and threats.
11. Almost 20 per cent of all retail crime events in New Zealand last year involved verbal or physical abuse, intimidation, threats, or violence, and even the use of weapons. 10 per cent of offenders are causing more than 60 per cent of the harm. Those repeat offenders are four times more likely to be aggressive¹.
12. A strong view from submitters was that, not only is this behaviour present, but it is *increasing*. For example (this is a small subset of similar comments and anecdotes received):
 - One national retail organisation said that there has been a noticeable increase in anti-social behaviour in its members' shops, particularly groups loitering outside and intimidating customers who may want to enter the shop
 - Another submitter said that there has been a marked increase of anti-social behaviour, homelessness and mental health issues since the Covid-19 pandemic, and due to increases in the cost of living and housing

¹ *Opinion: Time to Treat Retail Crime Like Real Crime*, Thompson (Auror), January 2025 (accessed July 2025: <https://www.auror.co/media-center/opinion-time-to-treat-retail-crime-like-real-crime>)

13. The increase in homelessness is reflected in recent reports from the Salvation Army² and the Ministry of Housing and Urban Development³. 1 in every 1,000 people in New Zealand is currently without shelter. This is a major concern, and we note that homelessness is not anti-social behaviour but is rather a deep-rooted and complex problem that will require a co-ordinated effort across government and society to address. In making the proposals in this paper we are very mindful of the impact they may have on homeless people and their ability to restore their lives. Having said that, the increase in homelessness does affect public perceptions of safety.

Anti-social behaviour has a serious impact

14. We heard there are strong negative impacts on staff wellbeing, customer confidence, personal safety, and there are financial losses for businesses involved. This is impacting businesses as some are closing shops earlier and hiring additional security to ensure staff safety when arriving at or leaving work. Recently we saw that a retailer is locking customers in-store while they shop and then walking them back to their cars⁴.
15. These unexpected expenses strain already tight profit margins, threatening business sustainability and particularly the viability of smaller businesses.
16. Anti-social behaviour lessens the attractiveness of precincts, and it is difficult to reverse these perceptions once they are in place. It has a negative impact on community perceptions of safety and people's quality of life, which directly impacts on foot traffic for retailers, and threatens the establishment and maintenance of a safe and secure community and local economic structure, which is an important prerequisite for community wellbeing and cohesion as well as economic growth through continuing business activity and investment.
17. Youth who engage in anti-social behaviour risk becoming excluded from important support mechanisms such as school, their families and service providers. They also risk coming into contact with the criminal justice system early in their lives. Involvement in anti-social behaviour can persist throughout adolescence into adulthood, becoming a more significant social issue with long term negative consequences for the individual, their family and the wider community.

There is a sense of impunity

18. Amongst those who exhibit anti-social behaviour, there appears to be a sense of impunity. This results from the belief that the anti-social behaviour is either going to be tolerated, or if

² <https://www.salvationarmy.org.nz/news/new-data-highlights-urgent-need-for-a-coordinated-response-to-homelessness-across-the-nation/>. Also see [Housing First Auckland](#). Accessed July 2025.

³ [Homelessness insights report June 2025 - Te Tūāpapa Kura Kāinga – Ministry of Housing and Urban Development](#) (Accessed July 2025)

⁴ [Onekawa shops: Faeces, threats and window smashings as addicts smoke drugs outside - 'I was told my family could find my body wrapped up in a blanket' - NZ Herald](#) (paywalled; accessed July 2025).

not, there is little else that will happen. Outside on the street, where trespass is rare, there is virtually nothing retailers can do apart from seek voluntary agreement from perpetrators to move on or call Police or the Council, who are already constrained in their resourcing.

19. We received strong feedback that most people demonstrating anti-social behaviour in retail environments in New Zealand do have such a sense of impunity. Submitters said:

- There is a palpable sense of impunity among individuals engaging in anti-social behaviour. This stems from a perceived lack of immediate consequences and a belief that authorities will not or cannot intervene effectively for lower-level incidents. A submitter said “The [offenders] themselves tell us that ‘nothing will happen to them’”
- One Council said that feedback from Police and community members suggests some individuals feel emboldened due to limited enforcement or visible consequences
- “Offenders know their rights under the law and understand there are limitations on issuing trespasses [in public places such as street frontages] - so they do as they wish, and understand that ... arrest, charges and enforcement along with any form of accountability are unlikely”

20. One submitter said that “...when we see it and we call it in, the process takes so long for anyone to come that the offender has moved on to somewhere else and can’t be found - so what they are doing as anti-social behaviour isn’t addressed at the time. There should be a person walking the beat all the time, not sitting in an office waiting for calls, but someone mobile who can deal with it immediately”. This reinforces the need for greater emphasis on proactive enforcement by Council and Police with a positive, visible presence on the streets. We recognise this would require further funding and investment and this is not a criticism of Councils or Police.

21. We acknowledge that anti-social behaviour can have a complex set of causes and is context- and individual-specific, and that some forms of anti-social behaviour are not criminal (though have the likelihood of escalating into criminal behaviour either immediately or in time) and so a proportionate, holistic response is required⁵. It will not be enough to simply pass new laws

⁵ For example, for youth there is a range of potential interventions which can bring their lives back on track. <https://practice.orangatamariki.govt.nz/our-work/interventions/family-court-orders/tamariki-with-offending-behaviours> and *Effectiveness of 12 Types of Interventions in Reducing Juvenile Offending and Antisocial Behaviour*, Farrington, Gaffney and White, Canadian Criminal Justice Association, 2022 (accessed July 2025: [https://www.orangatamariki.govt.nz/assets/Uploads/About-us/Research/Research-seminars/December-2022/Effectiveness-of-12-Types-of-Interventions...-Farrington-et-al-2022.pdf#:~:text=Based%20on%20the%20most%20important%20systematic%20review,is%20commonly%20believed%20\(based%20on%20other%20measures\)](https://www.orangatamariki.govt.nz/assets/Uploads/About-us/Research/Research-seminars/December-2022/Effectiveness-of-12-Types-of-Interventions...-Farrington-et-al-2022.pdf#:~:text=Based%20on%20the%20most%20important%20systematic%20review,is%20commonly%20believed%20(based%20on%20other%20measures))). There is some link with homelessness however not a causal one: *A population-based study of homelessness, antisocial behaviour and violence victimisation among young adults in Victoria*, Australia, Heerde, Bailey, Patton, Toumbourou, Aust J Soc Issues, December 2022 (accessed July 2025: <https://pubmed.ncbi.nlm.nih.gov/36530738/>).

to deal with the wider societal problems like homelessness and poverty⁶. There should be a focus on social initiatives to deal with the societal and economic issues which draw young people into a life of anti-social and potentially criminal behaviour⁷, as well as rehabilitation programmes for recidivist offenders and actions taken to address homelessness. If effective measures are undertaken in these areas, this would support a reduction in anti-social behaviour in retail contexts.

22. Structural factors are important, and we need systems that deal with this. However, retailers' doorsteps can't be the ambulance at the bottom of the cliff, as is currently the case.

Options

23. The Ministerial Advisory Group for the Victims of Retail Crime's overarching aim is to create a zero-tolerance response to retail crime. A zero-tolerance response is our best chance to combat the growing culture of impunity, to reduce crime, and ensure the law appropriately backs victims, not offenders.
24. Our focus is on the retailer, its staff, customers and the retail context. Our primary interest is the need of retailers for immediate relief. We believe it is necessary that solutions are developed to tackle the harm caused by anti-social behaviour in and around retail settings. This behaviour is interfering with people and businesses' legitimate rights.

Criteria for assessing options

25. Potential legislative reforms for addressing anti-social behaviour should be directed at the goal of reducing harm from anti-social behaviour in and around retail settings, based on the following criteria:
- *Effective*: Provides immediate consequences which influence anti-social behaviour and reduces the harm from anti-social behaviour

⁶ *Understanding and Addressing Anti-Social Behaviour - A Rapid Evidence Review*, Vaughan, Dennehy, Kelly, Gabhainn, Health Promotion Research Centre NUI Galway, September 2022 (accessed July 2025: https://www.drugsandalcohol.ie/37060/1/DOE_Understanding_and_addressing_anti-social_behaviour_a_rapid_evidence_review.pdf).

⁷ The causes of youth anti-social behaviour are examined in *Antisocial behaviour: An examination of individual, family, and neighbourhood factors*, McGee, Wickes, Corcoran, Bor and Najman, Australian Institute of Criminology, February 2011 (accessed July 2025: <https://www.aic.gov.au/sites/default/files/2020-05/tandi410.pdf>), and *Patterns and Precursors of Adolescent Antisocial Behaviour*, Australian Institute of Family Studies and Crime Prevention Victoria, December 2022 (accessed July 2025: https://aifs.gov.au/sites/default/files/publication-documents/report1_0.pdf).

- *Transformative*: Shifts attitudes away from a sense of impunity towards anti-social behaviour
- *Workable*: Respects the Bill of Rights Act 1990 and the rule of law, legitimate principles of natural justice and respect for international obligations

26. Proposed reforms should be designed to ensure they respect and reflect accepted social norms in New Zealand. As noted above, they also should not criminalise homelessness or reduce anyone's access to essential services, nor their right to protest legitimately. Reforms should also make it clear to all involved what the thresholds are for behaviour, and the type of behaviour, that will not be tolerated.

27. In this section, the status quo is assessed against these criteria, followed by the analysis and assessment of six options for legislative reform, namely:

- **Option 1**: Move-on orders
- **Option 2**: New criminal offence to address specific anti-social behaviours towards retail workers
- **Option 3**: Additional powers for councils
- **Option 4**: Geographic bans on certain anti-social behaviour
- **Option 5**: A government action plan or policy statement addressing anti-social behaviour in retail
- **Option 6**: Court-issued civil orders

Status quo

28. The status quo is governed by the current laws and by-laws relating to anti-social behaviour. There are several laws and by-laws in place which can address aspects of anti-social behaviour in retail settings, including some Crimes Act 1961 offences and some Summary Offences Act 1981 offences.
29. There are also some existing Local Territorial Authority (Council) by-laws that address aspects of anti-social behaviour. By-laws can be made by local authorities under the Local Government Act 2002 and other legislation⁸. However, under current law these by-laws are difficult to enforce.
30. Trespass law also applies but is challenging to enforce in public spaces such as city streets.
31. The New Zealand Bill of Rights Act 1990 (**NZBORA**) is applicable in all cases. Most relevant is freedom of movement, expression, and the right to be free from arbitrary arrest or detention. All people in New Zealand, including homeless people, have the right to travel through and exist in public spaces, and should not be detained unless it is for a legitimately socially harmful action. However, these rights are subject to reasonable limitations – recognising that a society that respects individual rights also has obligations to uphold collective responsibility towards each other.
32. Unfortunately, this combination of criminal law and by-laws does not deal comprehensively with new patterns of anti-social behaviour being experienced by retailers as we have described, and is not providing sufficient protection for retailers, staff or customers, leading to the problems outlined earlier. The balance is too far away from upholding the legitimate social expectations that we all have to freely and safely access public spaces. This suggests that clarification of existing laws where necessary as well as potential new initiatives should be explored further.
33. The "new normal" of retail work, involving consistent anti-social behaviour, necessitates a re-evaluation of the existing legal framework. General legal protections, designed for a different operational context, are insufficient to address this pervasive and growing threat.

What we heard from submitters

34. Most submitters believed that the current law is inadequate to address the recurring anti-

⁸ Auckland and Hamilton Councils are the only Councils with by-laws that address aspects of anti-social behaviour, such as 'nuisance' begging, bad behaviours in public places, and behaviour that may distress, intimidate or harm any other person in their use or enjoyment" of a public place. These are however not regularly enforced, as enforcement is difficult under current regulatory settings. We understand that no

social behaviour which is being experienced in and around retail settings. The result of this is that retailers feel they are bearing the burden of this behaviour largely themselves without any substantial support.

35. We heard in submissions there is:

- A lack of laws that directly address anti-social behaviour or provide immediate consequences for such behaviour
- Uncertainty as to how existing law applies, resulting in hesitance to contact Police or Council, and under-reporting
- A consequent sense of impunity and lack of consequence for offenders, which continues the problem

36. We heard some positive stories about the success of business- or Council-led approaches to 'on the street'/ambassador engagement with those who may exhibit anti-social behaviour. These usually rely on business or Council funding or volunteer workers such as Māori Wardens⁹ in some cases. A key feature of these approaches is they are proactive and can identify situations developing. They are local; hence the officers/ambassadors gain an understanding of the people and the particular type of problems being experienced in local areas and can intervene ahead of problems developing. These approaches are very positive and should be scaled up where possible.

Assessment

37. Our assessment of the status quo against the criteria follows:

Criteria	Assessment	Comment
<i>Effective - Provides immediate consequences which influence anti-social behaviour and reduces the harm from anti-social behaviour</i>	0 <i>(Calculated based on: Positive 2, Slightly positive 1, Nil 0, Slightly negative -1, Negative -2)</i>	The retail sector in New Zealand is grappling with an escalating crisis of abuse and other anti-social behaviour directed at its frontline workers. Current law does not adequately address modern trends in anti-social behaviour in retail, nor provides sufficient protection. Where it is relevant, it is difficult to apply and enforce in a way that deals with current anti-social behaviours. Many offences in the Crimes Act and Summary Offences Act

regulations have been issued under section 259 of the Local Government Act to deal with enforcement of these by-laws.

⁹ <https://maoriwardens.nz/>

Criteria	Assessment	Comment
		<p>are relevant, but not comprehensive enough, to deal with patterns of current behaviour like repetitive offenders of awful behaviour in retail settings which is not quite criminal. In particular, most do not enable a <i>proactive</i> approach to be taken to enforcement. There is little ability to stop developing situations immediately, meaning they are left to escalate and repeat. This results in a greater likelihood of criminalisation whereas earlier intervention could enable a more rehabilitative approach, while also reducing harm to retailers, staff and customers.</p> <p>By-laws relating to nuisance behaviour are not being comprehensively enforced (or don't exist).</p> <p>Current trespass law provides challenges for enforcement in public spaces, so public trespass (e.g. from a street outside shop) is rare.</p> <p>Most submitters said that they had experienced or were aware of an increase in anti-social behaviour in recent years. Most anti-social behaviour and low-level crime is not reported nor followed up on, so there are few consequences, if any.</p> <p>We heard in submissions that there were many recidivist offenders, causing harm over wide geographic areas. They operate on a methodical basis. Apart from the contribution of systems like Auror, it is very difficult to track this offending.</p> <p>Police have constrained resources to respond to incidents quickly. Potentially enabling Council by-law officers to issue move-on notices could assist with more rapid, proactive responses.</p> <p>There is not enough consistent proactive engagement being carried out on the streets in order to minimise anti-social behaviour incidents¹⁰. Effectively, there is nothing retailers can do to deal with these problems in and around their shops.</p>

¹⁰ We acknowledge there are city ambassadors and some inner-city security in certain cities funded by local business associations and/or councils, and also the move by the Police to focus increasingly on retail crime.

Criteria	Assessment	Comment
		Accordingly, anti-social behaviour is not being managed well under the status quo. This is not a criticism of those who are currently working to resolve these issues. We however conclude there is likely to be continuing increased harm from anti-social behaviour in retail under the status quo.
<i>Transformative - Shifts attitudes away from a sense of impunity towards anti-social behaviour</i>	0	<p>Anti-social behaviour often does not meet criminal thresholds, and even where it does, it is not being addressed sufficiently. Other approaches are taken including Police warnings and occasionally arrests. However, as a result, there is a sense of impunity and the cycle continues.</p> <p>In addition, as noted above the law does not effectively protect against all relevant forms of anti-social behaviour, like swearing, loitering and general intimidation of staff and customers. In the case of mental health crises, a person may appear anti-social but is not technically breaching the law. Under the status quo it goes unaddressed, and the person is left to cause significant disturbance to retailers and members of the public as well as not resolving their own issues. Opportunities for intervention are limited. If action could be taken earlier, then such a person could be referred or taken to relevant mental health services.</p> <p>Submitters overall were of the view that current law does not provide retailers with confidence that this growing problem will be addressed.</p> <p>Overall, a clear picture emerged that settings are failing to hold to account the real-world range of anti-social behaviours being experienced by retailers.</p> <p>In the absence of specific actions, it is unlikely this situation will change.</p>
<i>Workable - Respects NZBORA and the rule of law, legitimate principles of natural justice and respect for international obligations</i>	0	<p>There are problems with existing laws and their effectiveness at dealing with the current problems, as described herein.</p> <p>We recognise the New Zealand Bill of Rights Act 1990 (NZBORA) analysis is important for ensuring that new laws respect fundamental human rights.</p> <p>Some of the proposals in this paper affect NZBORA rights</p>

Criteria	Assessment	Comment
		and so need to be assessed under section 5 of the NZBORA as to whether they are reasonable limits as can be demonstrably justified in a free and democratic society.
Total	0	

38. Based on this assessment we do not believe that continuing the status quo would be likely to achieve our objectives.

Question 1

Do you have any comments on the initial analysis for the status quo?

Option 1: Move-on orders

What would this option look like?

39. This option would involve creating a legal framework for 'move-on' orders. A move-on order requires a person to leave the area and stay away for a short, fixed period of time (up to 24 hours), thereby immediately stopping the conduct, providing immediate respite for victims, and potentially creating a deterrent effect to behaviour escalating to such an anti-social level in the future.
40. The purpose of this power is to address or avert anti-social behaviour in circumstances where a concrete criminal offence has not yet been committed, or where criminal offending has likely been committed (e.g. public defecation), but in the particular circumstances, is not in the public interest for Police or the courts to deal with through a traditional criminal justice process.
41. This preventative capacity distinguishes move-on orders from traditional arrest powers, making them a proactive measure for maintaining public peace. For instance, a move-on power might be invoked when a group gathers in a public space, engaging in offensive language or behaviour that appears to be escalating towards violence or causing distress to others. In such scenarios, the power serves to de-escalate and ensure the safety and comfort expected in and around modern retail environments. It is not a criminal offence unless breached.
42. Australia provides a good example of how move-on powers are legislated at the state level, with some variations in conditions, durations, and exemptions. These powers enable police to act based on a "reasonable suspicion" of potential disorder or harm which has, is or is yet to occur. The philosophy underpinning move-on orders is based in prevention and protection,

rather than being solely punitive. These orders are specifically designed to address problematic situations *before* they escalate into more serious criminal offences, thereby safeguarding individuals and public spaces and providing better outcomes for the offender as well. This proactive, pre-emptive function is a distinguishing characteristic of these powers.

43. We envisage move-on orders as a lower-level tool than trespass, and one which can be used rapidly and with certainty to stop offending anti-social behaviour before it escalates further. The shorter duration of move-on orders also means it is a more proportionate tool for responding to escalating anti-social behaviour than trespassing a person from public places (i.e. reducing the impact on individual's rights to freedom of movement).
44. A move-on order could be given where a Police officer (or potentially a trained Council by-law compliance officer)¹¹ has reasonable grounds to suspect that a person's behaviour is, has been or is likely to:
- Cause anxiety to a person entering, at or leaving a place, reasonably arising in all the circumstances; or
 - Interfere with trade or business at or proximate to a place by unnecessarily obstructing, hindering or impeding someone entering, at or leaving the place; or
 - Be disorderly, indecent, intimidating, offensive, or threatening to someone entering, at or leaving a place; or
 - Disrupt the peaceable and orderly conduct of any event, entertainment or gathering at a place
45. We would propose the following safeguards and limitations would apply to move-on orders:
- If the person has no fixed abode, then the officer issuing the order must consider whether issuing the order will facilitate or encourage the person to appropriately engage with health services to address their underlying needs. There would be an obligation on the officer to refer the person to relevant support services
 - If the person is a youth, then in addition to the move-on order, as above they should be referred to relevant youth social services, as well as contact made with their family
 - While their use has an inherent level of discretion and subjectivity, the legal test to apply a move-on order would be based around 'reasonable grounds', bringing objectivity to the

¹¹ If Council by-law compliance officers were empowered to *make* a move on order, we still expect most instance of *enforcement* would require a Police response, where there is a concern for safety risks.

consideration

- The test would need to focus on the offender's **behaviour**. They should not be used as a mechanism to effectively criminalise homelessness or simply move people on who appear undesirable
- They should not be used in a way that reduce anyone's access to essential services, especially homeless people. The "area" of focus for the move-on order should not be reasonably larger than is necessary to address the anti-social behaviour (e.g. no order can be made to leave a city entirely)
- The order should be given for the minimum amount of time necessary to deal with the anti-social behaviour, and for no longer than 24 hours
- Move-on orders should not apply to protests or trade union actions
- There should be strong operational oversight, monitoring and reporting on the use of the power

46. The issue of structuring discretion in imposing move-on orders could also be addressed through Police and Council authorities formulating comprehensive policies and guidelines in relation to move-on powers, as has been done in many Australian states. This would not mean eliminating discretion but providing some objective standards for testing issuance decisions, which may be particularly useful for officers who are confronted with complex public disorder situations¹².

47. We consider there would be significant benefit in Police and/or Councils forming partnerships with social organisations such as (for example) the Salvation Army, Barnados, Maori Wardens, Foodbanks, Community Trusts and City Missions for the purpose of referring the person being moved on to places where they can get the help they may need. This would avoid move-on powers being purely punitive and enable a rehabilitative approach to be taken, particularly in cases where the person being moved on is homeless or in mental distress¹³.

48. We are considering whether move-on orders could be **issued** not only by sworn Police

¹² *Move-on Powers: New Paradigms of Public Order Policing in Queensland*, Griffith University, Punter 2011. Accessed in July 2025: https://www.researchgate.net/publication/263083932_Move-on_powers_New_paradigms_of_public_order_policing_in_Queensland.

¹³ There is benefit to homeless in particular who are subject to move-on orders where there are close working relationships between Police and Council officers and outreach workers (*Living Within a Public Spaces Protection Order: the impacts of policing anti-social behaviour on people experiencing street homelessness*, Sheffield Hallam University Helena Kennedy Centre for International Justice, Heap, Black and Devany, September 2022 (accessed July 2025: <https://www.shu.ac.uk/helena-kennedy-centre-international-justice/research-and-projects/all-projects/impact-of-anti-social-behaviour-tools-and-powers-on-street-sleeping-homeless-people>).

officers, but also by trained Council by-law enforcement officers¹⁴:

- A key reason for this is timeliness: the ability to rapidly issue a move-on order could be particularly useful in lieu of the capacity of Police to respond to anti-social behaviour incidents in a rapid and timely fashion, which we have heard is a concern from submitters. Council by-law enforcement officers could potentially respond more quickly, proactively dealing with situations
- Dedicated Council officers can be out on the streets day-to-day, getting to know the types of retailers, people and issues in certain areas and taking a localised, tailored approach to enforcement. They can identify local recidivist offenders. This links well with some approaches already being taken, for example in Auckland with the Auckland Council Compliance Wardens (formerly CityWatch) who are an on-street team that undertakes proactive patrols, and can help issues of public nuisance such as obstruction in public places or anti-social behaviour¹⁵
- **Enforcement** (i.e. if the offender refuses to leave or returns to the location) would have to be by Police as it would be a criminal offence to breach a move-on order
- Allowing by-law enforcement officers to issue move-on orders is legally appropriate because they are agents of the landowner, which is usually the Council for public spaces in towns and cities
- We do not envisage that a specific by-law would need to be enacted by every Council in order for their officers to issue move-on orders. Rather, primary legislative change would occur creating a new legislative power usable by Police officers and by-law enforcement officers (where certain training and/or registration requirements are met in the case of Council officers). Such officers would then have a legal power to issue move-on orders irrespective of (variable) Council by-laws addressing anti-social behaviour¹⁶

49. Another feature we are considering is a 'three strike' system, where a person would be automatically issued a trespass notice for the relevant area if the person has received more than three move-on orders in relation to substantially the same area in the course of a defined

¹⁴ Some Councils expressed reservation that move-on order enforcement by their officers could result in increased violence against officers, however there are many instances where this may not be the case, for example a homeless encampment on the street outside an empty shop. Where drugs, alcohol or mental health issues are concerned then the Council officer may call Police for back-up.

¹⁵ There is also a number of business association-funded local wardens, for example ShopCare in Manurewa and Papakura, which has been successful at engaging with locals and bridging the gap with retailers (<https://shopcare.org.nz/>).

¹⁶ We note that, as confirmed by submissions to the Issues Paper, only Auckland and Hamilton currently have active 'anti-social behaviour and public nuisance' by-laws that address things like encampments, public defecation and nuisance begging. We also note this is not mandatory – it will be up to individual Councils to decide whether to utilise these powers.

time period, for example 6 months¹⁷. This would address the problem of repeat offenders who continue to behave anti-socially and receive move-on orders but do not change their course (or location) of behaviour.

50. We note that the Independent Police Conduct Authority (IPCA) recently noted¹⁸ significant reservations about a move-on power, but this was in the context of a report on the Police’s response to public protests, and the IPCA made clear that its comments are limited to a protest context¹⁹. We propose to expressly exclude protesting and picketing from the power.

What we heard from submitters

51. There was strong support for move-on orders from submitters:

- Some said that the biggest problems facing their retail and ground floor premises are people who continue to target places for anti-social or criminal behaviour on a recurring basis. Move-on orders could be useful for recidivist behaviour (we heard that approximately 65% of retail crime is caused by approximately 10% of offenders)
- Several business associations, retailers and Councils said move-on orders would be a very useful tool because the current challenges of applying trespass law in public spaces (footpaths, street verges) mean that individuals can persist with disruptive behaviour right outside retail premises. Submitters said that move-on orders would help bridge the current gap between informal warnings and formal trespass notices

52. Some submitters however noted that consideration should be given to the unintended consequences of displacing the issue elsewhere without resolution, and the practical implementation of move-on orders can still effectively criminalise the mere presence or existence of certain vulnerable populations in public spaces.

Assessment

53. Our assessment of the proposal for move-on orders follows:

Criteria	Assessment	Comment
Effective - Provides	Positive	Move-on orders would reduce the incidence of anti-social behaviour in retail, particularly in public areas outside store fronts and on the streets

¹⁷ This may involve a person being trespassed from a public place, which as we have noted previously is challenging to achieve. We are interested in views on whether this would be workable.

¹⁸ *Thematic Review – The Policing of Public Protests in New Zealand*, Independent Police Conduct Authority, February 2025. Accessed July 2025:

<https://www.ipca.govt.nz/download/168202/18%20February%202025%20-%20IPCA%20Public%20Report%20-%20Thematic%20Review%20on%20the%20policing%20of%20public%20protests%20in%20New%20Zealand.pdf>.

¹⁹ *Ibid*, paragraph 263.

Criteria	Assessment	Comment
<p><i>immediate consequences which influence anti-social behaviour and reduces the harm from anti-social behaviour</i></p>	<p>(+2) <i>(Calculated based on: Positive 2, Slightly positive 1, Nil 0, Slightly negative -1, Negative -2)</i></p>	<p>and carparks in and around CBDs and retail precincts. They would provide a quick path to proactive resolution of anti-social behaviour with certainty, compared with the status quo where the law is unclear and there is little to no enforcement action unless serious offending occurs.</p> <p>Move-on orders would lead to more immediate consequences for offenders, i.e. having to physically leave the area. Immediate consequences are necessary to address anti-social behaviour, as it often occurs rapidly and can also escalate rapidly. At present there are few consequences, if any.</p> <p>Move-on orders would address the challenges of applying public trespass, as it would be clear they can be issued in any place, public or private.</p> <p>Research from Ireland suggests dispersal powers (like move-on orders) are generally effective at their aim of improving behaviour in an area and providing respite to those who have suffered anti-social behaviour²⁰. We have also spoken with some Australian police who have also commented that move-on orders have been generally effective at achieving their aims.</p> <p>There is some debate about whether the powers just move the problem 'down the street'. However, move-on orders will have limited duration and are a short-term intervention into an often-complex anti-social behaviour situation. They are a 'release valve' that enables the heat to be taken out of an escalating situation before it turns into more serious criminal offending, which is worse for everyone involved. We are considering whether move-on orders should be accompanied with a formal referral to relevant social services that the person being moved on can access.</p> <p>They can also be used to move on recidivist offenders who may target particular retail stores (for example the situation where a group of people are consistently gathering near a retail store and regularly behaving anti-socially, but never quite breaking the law except for alcohol and drug use).</p> <p>The issue of where people should go if moved on, but with no fixed</p>

²⁰ *Evaluation of The Use of Dispersal Powers in the East End of Glasgow: Full Report*, McMillan and Robertson, Glasgow Caledonian University, 2012 (accessed July 2025: https://researchonline.gcu.ac.uk/ws/portalfiles/portal/5005080/McMillan_and_Robertson_Dispersal_Powers_Report_PDF.pdf).

Criteria	Assessment	Comment
		<p>abode, is a concern and we think this should be addressed in the design of the orders. For example, the move-on order should not extend to areas where the person sleeps or accesses essential services. We are interested in views on how this could be addressed workably.</p>
<p><i>Transformative - Shifts attitudes away from a sense of impunity towards anti-social behaviour</i></p>	<p>Positive (+2)</p>	<p>The sense of impunity comes from a belief there will be no significant consequences for anti-social behaviour. Move-on orders can provide those consequences.</p> <p>They are a tool to rapidly deal with an anti-social behaviour situation. Importantly, it would not be a criminal offence to receive a move-on order. If complied with, there is no criminal record for the offender. This is a proportionate response to the behaviour, instead of the Police having to resort to enforcing criminal offences as under the status quo. People are more likely to comply voluntarily if they can avoid a more serious criminal charge. If a person returns and breaches the order, then they have committed an offence punishable by fine or arrest. This will have a deterrent effect.</p> <p>If Council officers can issue orders, then there will be greater and more proactive, visible enforcement.</p> <p>Move-on orders ensure that public spaces remain accessible and enjoyable for all citizens without fear of disruption or intimidation. Their application helps to uphold the collective right to public amenity.</p> <p>Proactive intervention will be beneficial for example when dealing with youth anti-social behaviour where there is a greater chance of rehabilitation before their lives continue off-track.</p> <p>Repeat offenders would potentially receive a trespass notice for the relevant area.</p> <p>By reducing anti-social behaviour and fostering safer retail spaces, move-on orders would contribute significantly to the overall quality of the retail experience for customers and support the economic health of local businesses, thereby creating more vibrant and attractive communities.</p>
<p><i>Workable - Respects NZBORA and the rule of law, legitimate</i></p>	<p>Slightly negative (-1)</p>	<p>Move-on orders can be workable, conform with natural justice, the rule of law and NZBORA when designed well and when appropriate safeguards are in place.</p> <p>We heard from Australian police that the power is generally effective at dealing with instances of anti-social behaviour. The legal test we are</p>

Criteria	Assessment	Comment
<p><i>principles of natural justice and respect for international obligations</i></p>		<p>proposing is based on Australian statute and is more limited than in some states.</p> <p>The main issue is timeliness. The core of the issue is addressing the anti-social behaviour as quickly as it happens. As noted, this can potentially be resolved by allowing a limited group, Council by-law enforcement officers, to also issue move-on orders in addition to Police. Enforcement would only be available to Police as a criminal matter. We acknowledge this may require additional resourcing.</p> <p>There is research looking at the Australian experience of move-on orders, some of which suggests that the inherent discretion can result in discrimination against minorities, indigenous people, homeless people, and youth, and questionable efficacy for reducing crime²¹. However, we believe a well-designed power with appropriate guidelines can address the pitfalls arguably identified in the Australian approaches.</p> <p>NZBORA will apply to move-on orders. We would only propose move-on orders that are consistent with section 5 – that move-on orders are a justified limitation to the offender’s right to freedom of movement given their anti-social behaviour has caused the situation. Clear criteria will be in place for the issuance of orders. Move-on orders will not apply to protest action, nor limit freedom of expression.</p> <p>In addition, move-on orders would protect the rights of retailers, staff and customers to carry out their business free from harassment or intimidation, including exercising their own freedom of movement.</p>
Total	+3	

²¹ For example, *No-where to go: The Impact of Police Move-on Powers on Homeless People in Queensland*, University of Queensland, November 2006 (accessed July 2025: <https://espace.library.uq.edu.au/view/UQ:398653>), *Move-on Powers: New Paradigms of Public Order Policing in Queensland*, Griffith University, Punter 2011 (accessed July 2025: https://www.researchgate.net/publication/263083932_Move-on_powers_New_paradigms_of_public_order_policing_in_Queensland), *Police Move-on Powers: A CMC Review of Their Use*, Crime and Misconduct Commission, December 2010 (accessed July 2025: <https://www.ccc.qld.gov.au/sites/default/files/Docs/Legislative-Review/Police-move-on/Police-move-on-powers-A-CMC-review-of-their-use-Report-2010.pdf>), *Police ‘Move-On’ Powers*, Queensland Parliamentary Library Research Brief, 2006 (accessed July 2025: <https://documents.parliament.qld.gov.au/explore/researchpublications/researchbriefs/2006/rbr200616.pdf>), *All the Right Moves? Police Move-on Powers in Victoria*, Farrell, 2009 (accessed July 2025: <https://www5.austlii.edu.au/au/journals/AltLawJl/2009/5.pdf>)

Criteria	Assessment	Comment
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54. The analysis supports the introduction of a move-on power, which we are likely to recommend, using the test and conditions set out earlier in this paper. Early, non-punitive intervention is increasingly viewed as a more effective and humane approach to retail anti-social behaviour. This proactive stance aims to mitigate risks and maintain social cohesion more efficiently.
55. We have not reached a view on whether Council by-law officers should have the power to issue such orders, and we are seeking feedback on this. A key consideration is timeliness and the ability of city ambassadors to identify relevant local offenders in a proactive manner. Also of course this proposal depends on Council support and willingness to issue move-on orders, which we are keen to hear about.
56. We are also interested in the workability of the proposal for 'three strikes' leading to a trespass notice, noting that it is challenging to achieve trespass in a public place.

Question 2

Do you have any comments on the proposal to introduce move-on orders? Do you agree with our initial assessment of this option? Should Council by-law officers (with special training) have the ability to issue move-on orders? Would Councils utilise such powers? Do you agree with the 'three strikes' proposal for trespass for repeat offenders?

Option 2: New criminal offence to address anti-social behaviour towards retail workers

What would this option look like?

57. This option would involve creating a new criminal offence for **assaulting, threatening, or abusing a retail worker** and which also potentially allows for aggravation of that offence where the retail worker is enforcing a statutory restriction (e.g. age for alcohol, pharmacist-only medicines).
58. This type of specific, bespoke offence exists in some Australian states²² and is being

²² In Australia, states like South Australia, New South Wales, and Western Australia have already introduced stricter laws. The Australian Capital Territory has Workplace Protection Orders, and Queensland has 'Jack's Law,' all aimed at providing greater protection to retail workers. Refer (accessed July 2025) <https://www.nationalretail.org.au/retailers-call-for-urgent-national-response-to-retail-crime/>

introduced in England and Wales currently²³. Scotland already has such an offence²⁴.

59. While existing criminal law can be applied to prosecute violence against retail workers, it often fails to specifically recognise the unique context and aggravating factors associated with crimes committed within a retail environment, potentially leading to lower prioritisation by law enforcement or less severe penalties than are warranted by the specific occupational context and the cumulative impact of such incidents.
60. Such an offence would make this problem much more visible in society and could be expected to have a strong deterrent effect. While we acknowledge the debate about whether there should be an offence specifically for retail workers, from our perspective we believe that there are unique characteristics of being in retail which justify this approach:
- Retail workers are often young and in their first job. There is a perception that they will just put up with it because they don't have any choice
 - Retail workers usually come into contact with significant numbers of people over the course of a working day, and a retail worker who experiences anti-social behaviour and its harms has usually no choice but to go to work again the next day in the same location, which may significantly heighten their anxiety over time
 - The mistaken and entitled belief that 'the customer is always right', and that there are no consequences for treating retail workers poorly because it might be seen as a low-status job
 - The regular exposure to anti-social behaviour reflects a systemic vulnerability that existing criminal laws do not adequately address
61. The rising tide of retail anti-social behaviour can directly lead to difficulties in staff attraction and retention within the sector. As experienced retail workers, facing persistent threats and a perceived lack of protection, opt for safer employment in other industries, the retail workforce may become less experienced, potentially more vulnerable, and less equipped to handle challenging situations. A specific offence could be a critical tool for retaining valuable retail talent.
62. We think the Scotland approach is in line with our objectives. It creates an offence for a

²³ <https://www.gov.uk/government/news/new-powers-to-clamp-down-on-anti-social-behaviour>. Some prefectures in Japan have also introduced ordinances to protect retail workers from customer abuse and harassment. For example, the Tokyo Ordinance on Protection of Workers from Customer Abuse (effective April 2025) focuses on preventing "kasu-hara" (customer harassment), prohibiting harassment and discouraging a wide range of customer conduct that may cause "significant annoyance" to workers.

²⁴ *Protection of Workers (Retail and Age-restricted Goods and Services) (Scotland) Act 2021* (accessed July 2025: <https://www.legislation.gov.uk/asp/2021/6/notes/division/4>).

person to assault, threaten or abuse another person who is a retail worker, and who is engaged, at the time, in retail work. This is the threat we are targeting – a person causing offence and disorder in a retail setting. A person who commits an offence under the provision is liable on summary conviction to imprisonment or a fine. The full Scotland provisions are in the **Annex**.

63. A potential alternative is to make anti-social behaviour towards *all* retail workers an aggravating factor under section 9 of the Sentencing Act 2002 (the **Sentencing Act**).
- From 29 June 2025, the Sentencing Act has been amended to introduce a new aggravating factor for offences where the victim is a ‘vulnerable worker’, being a person who was working alone or in a business physically joined to their dwelling place. This is in addition to existing aggravating factors where the victim is a Police officer, prison officer or emergency worker. The relevant new aggravating factors are whether the victim was working alone or working in a business that was physically joined to, or that was located next to, the dwelling place of a victim
 - There is also an aggravating factor in s9(1)(h) which applies where the victim has been targeted on the basis of discrimination (race, colour, nationality, religion, gender identity, sexual orientation, age or disability). Section 9(4)(a) enables the Court to take into account any other aggravating factor that the Court thinks fit
64. The new provision in section 9 could be amended to apply to *all* retail workers rather than only vulnerable workers. This would recognise that all retail workers face the same risks, however would be limited to consideration during sentencing (as opposed to being a new offence).

What we heard from submitters

65. Submissions were somewhat divided, but on balance supported the idea of creating a specific offence for retail workers. Several stakeholders thought it would be a powerful signal that anti-social, verbal and physical abuse towards retail workers is not OK and that front line, essential workers’ safety is important. A specific offence would recognise the risk faced by retail workers, reinforce the seriousness of the conduct, offer greater protection to retail workers, and serve as a deterrent.
66. On the other hand, some said there isn’t a good justification for treating retail workers differently to anyone else in society, and that a specific offence would create an arbitrary distinction. Another noted that the addition of increasingly specific offences or aggravating factors unintentionally risks diminishing, by omission, other circumstances in which the victimisation may warrant equal recognition.
67. Others argued that the existing criminal offences in the Summary Offences Act and the Crimes Act already sufficiently deal with abusive behaviour towards retail workers.

Assessment

68. Our assessment of the proposal for a new specific offence follows:

Criteria	Assessment	Comment
<p><i>Effective - Provides immediate consequences which influence anti-social behaviour and reduces the harm from anti-social behaviour</i></p>	<p>Slightly positive (+1) <i>(Calculated based on: Positive 2, Slightly positive 1, Nil 0, Slightly negative -1, Negative -2)</i></p>	<p>A new offence for assaulting, threatening or abusing a retail worker would be operationalised and enforced by Police. A strong enforcement approach, subject to resourcing, would increase prosecutions for this anti-social behaviour against retail workers.</p> <p>Through these prosecutions taking place, over time there is likely to be to increased awareness of the physical and verbal abuse faced by retail workers. Through enforcement, a reduction should occur in the number of occasions on which retail workers would have to face this type of behaviour. This would help with the lack of consequences and bring rates of anti-social behaviour in retail down.</p> <p>On the other hand, it could be argued that it is difficult to know whether a specific offence would likely have the effect of reducing anti-social behaviour, particularly because there are already some offences that apply where the victim is a retail worker. As we have already assessed however, existing offences do not provide for the full spectrum of the problem. Evidence on efficacy in other jurisdictions is lacking.</p>
<p><i>Transformative - Shifts attitudes away from a sense of impunity towards anti-social behaviour</i></p>	<p>Slightly positive (+1)</p>	<p>It directly counters the growing sense of entitlement amongst some members of the public, that it is okay to offend against retail workers because they are perceived as being young, vulnerable, and a low-status profession. This entitlement and impunity contributes to a growing culture of mistreatment of retail workers.</p> <p>Such an offence signals to retail workers that they are worth respect and dignity. It would send a wider signal to society that retail workers are doing public good, are often providing essential services, and deserve respect and protection.</p> <p>It would enable Police to take action with more confidence of achieving a prosecution. This would signal to offenders that this behaviour will not be tolerated and restore law and order in retail environments. This would transform attitudes over time.</p>

Criteria	Assessment	Comment
<i>Workable - Respects NZBORA and the rule of law, legitimate principles of natural justice and respect for international obligations</i>	Neutral (0)	A new offence could be designed to be workable as it has been implemented in several other countries. One submitter argued that enforcement would be difficult and add to an already-clogged Court system. In reality, new offences merely give Police an additional pathway to consider when charging an offence. New offences are not expected to lead to greater levels of offending being taken through courts, as they often relate to behaviour that is already an offence. It merely changes how the system recognises and punishes the offending.
Total	+2	

69. While we acknowledge the debate about whether there should be an offence specifically for retail workers, from our perspective we believe that there are unique characteristics of being in retail which justify this approach.

70. Therefore, on balance, we think the differential treatment of retail workers is justified and this option is promising and worth developing further. The Scottish law provisions are in the **Annex**.

Question 3

Do you have any comments on the proposal to introduce a new specific offence for certain anti-social behaviour? Do you agree with our initial assessment of this option?

Option 3: Additional powers for Councils

What would this option look like?

71. This option would involve regulations being issued²⁵ to enable Councils to enforce their by-laws addressing anti-social behaviour. Councils would, of course, retain their own discretion as to the nature of by-laws in their area, but where such by-laws are in place then they could be more effectively enforced.

72. At present, only certain by-laws can be enforced by Councils in an effective manner. The Auckland and Hamilton public nuisance by-laws are challenging to enforce due to the nature of the process and the remedies currently available, which as we understand do not include on-the-spot infringement notices, for example. New regulations could provide for an

²⁵ Under section 259(1)(a) of the Local Government Act 2002.

infringement offence for breaches of the relevant by-laws.

73. This option would address anti-social behaviour which is prohibited by the by-laws. It would mean by-laws could be enforced in a reasonable and proportionate manner.
74. We note that some Councils have safety and community patrol wardens/ambassadors whose job is to make the streets a safer and more welcoming place. We support these initiatives, and believe they have a strong role to play in forging a better link between local authorities and retailers²⁶.

What we heard from submitters

75. Views from submitters were mixed on the ability for Council by-laws to address anti-social behaviour. Issues raised include whether this is the role of Councils, whether by-laws would actually have a deterrent effect, difficulty in by-law enforcement and variability of by-laws nationally.
76. Some submitters said that they strongly advocate for greater powers for local councils, particularly the ability to issue on-the-spot infringement notices for breaches of relevant by-laws, especially when dealing with recidivist offenders.
77. However, some noted that fines aren't likely to have a deterrent effect. They may help deter low-level offenders; however, most recidivist offenders will refuse to stop or engage to allow for the issuing of an infringement notice. Further, there is a risk of escalation and aggressive behaviour being directed towards those attempting to serve an infringement notice. Some said this is not the Council's job.

Assessment

78. Our assessment of the proposal for additional powers for Councils follows:

Criteria	Assessment	Status quo
<i>Effective - Provides immediate consequences which influence anti-social behaviour and reduces the harm from anti-</i>	Slightly positive (+1) (Calculated based on: Positive 2,	Will lead to increased ability to enforce by-laws including those that target anti-social behaviour. Where by-laws regarding anti-social behaviour are in place (or are put in place), they will be more effective at achieving their aims. However, they are not in place in most districts ²⁷ . The extent of benefit from this option would depend to a large

²⁶ This web page has a number of case studies of local Councils in the United Kingdom taking steps to address anti-social behaviour (accessed July 2025): <https://www.local.gov.uk/tackling-anti-social-behaviour-case-studies>. ShopCare has a guide to 'ambassador programmes' (accessed July 2025): <https://shopcare.org.nz/wp-content/uploads/2025/07/ShopCare-Ambassador-programme-2025.pdf>).

²⁷ Auckland and Hamilton are the only districts with public nuisance by-laws.

Criteria	Assessment	Status quo
<i>social behaviour</i>	<i>Slightly positive 1, Nil 0, Slightly negative -1, Negative -2)</i>	extent on whether Councils are willing to introduce by-laws dealing with anti-social behaviour. Thus, the positive impact is limited.
<i>Transformative - Shifts attitudes away from a sense of impunity towards anti-social behaviour</i>	Slightly positive (+1)	Enforcement of by-laws is unlikely to have a strong effect on shifting attitudes towards short-term anti-social behaviour, however it would certainly contribute towards this goal. We agree that fines or infringements are unlikely to influence the behaviour of those who are truly on the margins of society and destitute. However, this is not the only cohort engaging in anti-social behaviour. The ability to enforce council by-laws adds to the toolbox.
<i>Workable - Respects NZBORA and the rule of law, legitimate principles of natural justice and respect for international obligations</i>	Neutral (0)	Whilst the law can be changed to address the perceived defects with by-law enforcement, it is unclear whether Councils would (a) put further anti-social behaviour by-laws in place or (b) seek to actively enforce them. It is however a low-cost way to achieve a means of enforcement for existing anti-social behaviour by-laws. By-laws are subject to NZBORA. Introducing a power to enforce by-laws arguably indirectly limits freedoms of individuals to the extent the by-law imposes restrictions. This is not expected to be extensive as, for example, the Auckland City Nuisance by-law only prohibits wilfully obstructing, disturbing or harming any other person in a public place.
Total	+2	

79. This option is worth considering as another tool with some benefit in addressing the problem.

While it is not likely to resolve all situations of anti-social behaviour, it could help with low level offenders. It would be relatively low-cost to implement, with few downsides however with limited benefit unless accompanied by concrete actions. We are interested in hearing views from Councils on whether they would have an appetite for implementing anti-social behaviour by-laws.

Question 4

Do you have any comments on the proposal to introduce powers to enforce by-laws, particularly those in relation to anti-social behaviour? Do you agree with our initial assessment of this option? Would Councils want to use such powers?

Option 4: Geographic bans on certain anti-social behaviour

What would this option look like?

80. This option would involve creating defined geographic 'zones' within which certain behaviours (e.g. begging) are banned. There would be two components:

- Designated zones sought by retailers, Police or Council
- Pre-defined zones

81. For designated zones with high foot traffic, the power to designate could be implemented by Police on the request of a local business association, retailers or Council, and be subject to reasonable limitations and conditions. Such an approach could work in tandem with additional Council enforcement powers and/or move-on orders for enforcement.

- There are some streets and precincts where there is a higher congregation of people who are there to shop, socialise and enjoy themselves, and where there is typically a focus on enhancing the street experience to provide a welcoming environment for shoppers and tourists
- For example, Federal Street in Auckland hosts a number of hospitality venues and sees regular day and night foot traffic, New Regent Street in Christchurch has a significant number of heritage buildings with retailers and hospitality alike, and aims to boost foot traffic and improve the experience of inner-city shopping
- These places, with high existing foot traffic, have regular 'captive audiences' for people who are looking to behave anti-socially (e.g. aggressive begging) or commit crime. These zones would therefore be created to stop anti-social behaviour towards 'captive audiences' in areas where people are accessing retail stores and services, congregating, shopping, socialising and dining.

82. Pre-defined zones would include environments such as retail 'high streets', around ATM machines where people feel vulnerable whilst acquiring cash from a machine, at the entrances and exits to banks, public transport hubs, bus stops, train stations and entrances to convenience stores and fast-food outlets.

83. Anti-social behaviour impacts on both the legitimate rights of people to socialise, shop and

enjoy themselves as well as retailers' legitimate ability to operate economically viable businesses. The rights of people to access these essential services without fear or intimidation should be upheld more than they are at present. For example, a lone individual may well reasonably fear for their safety or property where a beggar is sitting right next to an ATM machine, and the individual is withdrawing cash.

84. On the other hand, we need to bear in mind that limiting people from accessing these same essential services must not be limited nor unreasonably limit their right to freedom of movement.
85. This option is a greater intrusion on rights than the other options we are considering because it would likely apply to more people (those within or excluded from the zone), however it would be limited to defined geographic zones where there is arguably justification for such protective measures. There would need to be strong communication about the zones and what they mean. This approach is taken in some jurisdictions including Western Australia²⁸.

What we heard from submitters

86. Views on this proposal were also mixed; some submitters strongly supported it as a zero-tolerance approach in protected areas. On the other hand, some submitters said that it would depend on how it would be implemented, the consequences and the ability to enforce. Without a significant increase in resourcing, any such bans could be ineffective, or worse, selectively enforced – leading to conflict and erosion of trust and confidence in Police.
87. One of the supporting submissions said that bans on geographic locations could be a useful signal, and that imposing a ban on all forms of anti-social behaviour is the answer and would be workable. Another noted that the idea is good, but in reality it would require a dedicated task force to run it.
88. Some submitters said instead the law should focus on specific, high-impact anti-social behaviours (e.g., aggressive begging, public defecation, open drug use), rather than a blanket ban on all anti-social behaviour in certain areas.

Assessment

89. Our assessment of the proposal for geographic bans on anti-social behaviour follows:

Criteria	Assessment	Status quo
Effective - Provides immediate consequences which influence anti-social	Slightly positive (+1)	Taking a strict approach to anti-social behaviour within certain defined geographic zones would very effectively reduce the harm from anti-social behaviour within the zone, assuming the

²⁸ <https://www.dlgsc.wa.gov.au/racing-gaming-and-liquor/liquor/protected-entertainment-precincts>

Criteria	Assessment	Status quo
<i>behaviour and reduces the harm from anti-social behaviour</i>	<i>(Calculated based on: Positive 2, Slightly positive 1, Nil 0, Slightly negative -1, Negative -2)</i>	<p>rules can be monitored and enforced (which is questionable).</p> <p>Within these zones, there could be strict rules on what behaviour is and isn't acceptable.</p> <p>There is a "public reassurance effect" that would stem from such zones, with retailers and customers likely to perceive a reduction in anti-social behaviour and visible congregations of people acting anti-socially. The area would be less intimidating for customers to experience the retail environment.</p> <p>Could also have a 'halo effect' thereby diffusing such behaviour in neighbouring areas²⁹.</p> <p>However, there is a corresponding risk of concentrating offending in areas immediately outside of the selected geographic zone, which would be unfair to many retailers.</p>
<i>Transformative - Shifts attitudes away from a sense of impunity towards anti-social behaviour</i>	Slightly positive (+1)	There is little doubt that this option would reduce the sense of impunity when the offender is located inside a designated geographic zone. It would be clearly communicated that certain behaviours would result in automatic removal from the zone or criminal sanctions.
<i>Workable - Respects NZBORA and the rule of law, legitimate principles of natural justice and respect for international obligations</i>	Neutral (-1)	<p>There would be some impact on freedom of movement for those who breach the rules. However, the rules and area within which the rules apply would need to be made very clear. Care would need to be taken with homeless people in particular, and their ability to continue to access essential services.</p> <p>The precise impact on the human rights of individuals would depend on the specific proposal and how targeted it is. For example, large zones which cover entire CBDs is not the intent and this would have a significant effect on rights and liberties. The scale of the protected zone should be minimised to the extent reasonably possible in order to mitigate such impacts.</p>
Total	+1	

90. We are still considering whether this option should be developed further, and we note it could

²⁹ *Disorder policing to reduce crime: A systematic review*, Braga, Welsh and Schnell, PMID: 37131517; PMID: PMC8356497, September 2019 (accessed July 2025: <https://pmc.ncbi.nlm.nih.gov/articles/PMC8356497/>)

have some benefit in addressing the problem. Its main challenge is in the detailed workability of defining particular zones and the types of behaviour deemed to be acceptable or not acceptable, and this being sufficiently well communicated to all present, and enforced, within the zone. We do not think these challenges are unsurmountable, given the potential benefit.

Question 5

Do you have any comments on the proposal to introduce outright bans of certain anti-social behaviour in designated areas? Are there any particular areas that you think should be designated due to their special character, or due to repeated instances of anti-social behaviour? Do you agree with our initial assessment of this option?

Option 5: A government action plan addressing anti-social behaviour in retail

What would this option look like?

91. This option would involve a government-issued action plan to address anti-social behaviour in retail, encompassing the proposals in this paper, plus guidance on the implementation of the proposals. It could also include wider steps like:

- Providing additional resourcing for social and non-legal initiatives to deal with the root causes of anti-social behaviour
- Steps to provide for at-risk youth who are exhibiting early signs of anti-social behaviour, including training and vocational programmes, and social supports

What we heard from submitters

92. Most submitters supported this idea as a useful signal on the Government's stance on anti-social behaviour, though generally said that it needed to be in conjunction with a wider set of actions. On its own an action plan is unlikely to have much impact.

93. On the other hand, some said a clear government action plan would be very helpful. It would serve to:

- Clarify expectations, and clearly articulate what is considered acceptable behaviour in public retail spaces and what consequences will follow unacceptable conduct
- Show leadership, by demonstrating a national commitment to addressing this issue, which would be reassuring to retailers and the wider community
- Promote consistency by encouraging a more consistent approach to managing anti-social behaviour across different regions and agencies

94. Developing such a statement would require finding the right balance between a government mandate and societal expectations.

Assessment

95. Our assessment of the proposal for a government policy statement or action plan follows:

Criteria	Assessment	Status quo
<i>Effective - Provides immediate consequences which influence anti-social behaviour and reduces the harm from anti-social behaviour</i>	Slightly positive (+1) <i>(Calculated based on: Positive 2, Slightly positive 1, Nil 0, Slightly negative -1, Negative -2)</i>	On its own a plan is unlikely to achieve significant change, however if 'wrapped around' the proposals in this paper and other relevant policy elements then it could be an effective addition to provide overall coherence to the proposals. If it involved greater funding or resourcing for undertaking the actions this would improve its effectiveness. It would provide a clear statement of the government's intention when introducing other proposals in this paper, which could guide monitoring and enforcement. It would also increase political accountability as people assess whether the plan's objectives are being achieved over time.
<i>Transformative - Shifts attitudes away from a sense of impunity towards anti-social behaviour</i>	Nil (0)	Such a plan should contribute to the changing of attitudes towards anti-social behaviour, particularly if it is well publicised and accessible including in other languages. Without concrete actions, it is unlikely to have any significant impact.
<i>Workable - Respects NZBORA and the rule of law, legitimate principles of natural justice and respect for international obligations</i>	Slightly positive (+1)	A workable action plan can be developed at reasonably low cost, though in and of itself it is unlikely to provide immediate consequences. Combined with tangible actions as described in this paper, it would be effective.
Total	+2	

96. We are still considering whether this option should be developed further, and we note it could have some benefit in addressing the problem. In itself, it is a low cost way of packaging the proposals together into a holistic approach to dealing with anti-social behaviour in retail settings.

Question 6

Do you have any comments on the proposal to introduce a government action plan or policy statement? Do you agree with our initial assessment of this option?

Option 6: Court-issued civil orders

What would this option look like?

97. This option would involve creating a legislative framework for Court-issued civil orders like Respect Orders³⁰ which are being introduced in the United Kingdom – a civil order that requires the recipient to stay away from certain areas, and which can also include positive obligations to take steps to address any underlying issues, like alcoholism or drug addiction.
98. Respect Orders aim to provide relief to the community by stopping an individual's anti-social behaviour, and over the longer-term work to address the underlying causes of the behaviour.

What we heard from submitters

45. Submitters were divided on whether civil orders are a good idea for New Zealand. The general theme was that, while such orders offer the potential for addressing underlying causes and long-term rehabilitation for individuals, their utility for immediate anti-social behaviour in retail settings would be limited due to the potentially lengthy court process for their issuance and the longer-term nature of their effect.
99. Some submitters said that civil orders require more evidence to determine their effectiveness, noting these could become a 'badge of honour' for some young offenders (arguably similar to the Anti-Social Behaviour Orders in the United Kingdom³¹). One submitter expressed reservations around the ability and resources to enforce such orders.
100. Supporters said that these orders would be valuable, particularly if they include obligations for positive interventions such as addiction treatment or anger management. They offer a more holistic approach that targets the underlying causes of behaviour.
101. There was a general theme that these orders would assist with recidivist offenders. This tool could be paired with access to support services to promote behaviour change and reduce reoffending.

³⁰ Accessed July 2025: <https://www.gov.uk/government/publications/crime-and-policing-bill-2025-factsheets/crime-and-policing-bill-antisocial-behaviour-asb-factsheet>

³¹ <https://www.gov.uk/civil-injunctions-criminal-behaviour-orders>

Assessment

102. Our assessment of the proposal for civil orders follows:

Criteria	Assessment	Comment
<i>Effective - Provides immediate consequences which influence anti-social behaviour and reduces the harm from anti-social behaviour</i>	Slightly positive (+1) <i>(Calculated based on: Positive 2, Slightly positive 1, Nil 0, Slightly negative -1, Negative -2)</i>	Civil orders like Respect Orders are tailored to the needs of particular individuals and aim to restore their life from any conditions that are creating a drive for anti-social behaviour. However, there is little evidence of their effectiveness. They do not provide an immediate solution for new offenders and thus the deterrent effect in retail may be low. Once in place they reduce harm, but this does not provide relief from short-term, in the moment, anti-social behaviours. They only apply to an individual and not all people in a retail environment.
<i>Transformative - Shifts attitudes away from a sense of impunity towards anti-social behaviour</i>	Slightly positive (+1)	Will result in recidivist offenders being less likely to commit anti-social behaviour. The aim of respect orders is expressly to reduce such behaviour. Whether this would have an overall transformative effect is questionable and would depend on the volume and visibility of enforcement.
<i>Workable - Respects NZBORA and the rule of law, legitimate principles of natural justice and respect for international obligations</i>	Slightly negative (-1)	Will have effect on an individual's behaviour over time, by restricting anti-social behaviour and addressing underlying drivers. Unlikely to provide immediate consequences, until the order is issued. Efficacy is yet to be established in the United Kingdom. A similar, previous mechanism called Anti-Social Behaviour Orders (ASBOs) which have been in place since 1998, however there is limited evidence that ASBOs positively affected behaviours ³² . A body of research has drawn attention to potential criminogenic consequences of lower-

³² For example, *Essays for civil liberties and democracy in Europe - The state of ASBO Britain - the rise of intolerance*, European Civil Liberties Network, Rowlands (accessed July 2025: <https://www.ecln.org/essays/essay-9.pdf>) and *Lowering the Standard: a review of Behavioural Control Orders in England and Wales*, JUSTICE United Kingdom, Lubega, 2023 (accessed July 2025: <https://files.justice.org.uk/wp-content/uploads/2023/11/06143241/Lowering-the-Standard-a-review-of-Behavioural-Control-Orders-in-England-and-Wales-September-2023.pdf>)

		level prohibitions and penalties ³³ . Would place restrictions on freedom of movement on an individual for potentially a long time period and require the individual to take steps or go to places they may otherwise not want to.
Total	+1	

103. Based on this analysis we do not believe we should pursue civil orders at this time. The efficacy of civil orders has not been established and it would be better to wait and follow the United Kingdom experience with Respect Orders. If a person is behaving anti-socially generally in their life, then this is a wider societal issue than just that arising in the retail context, with which we are concerned.

Question 7

Do you have any comments on the proposal to introduce civil orders? Do you agree with our initial assessment of this option?

Other insights from submissions

104. One business association provided a useful summary of practical steps to address anti-social behaviour and retail crime:
- Improve street lighting in high-risk areas
 - Install CCTV near sensitive sites
 - Increase foot patrols
 - Deploy uniformed safety officers focused on de-escalation, presence, and prevention
 - Engage local shopkeepers to form security groups
 - Fast-track Police access for retailers

³³ 'A little bit of a toothless tiger - Police banning powers in Western Australia: key informant perspectives and implications for the administration of justice. Farmer, C., Miller, P., & Kennedy, S. (2024). *Police Practice and Research*, 25(5), 594–611. Accessed July 2025: <https://doi.org/10.1080/15614263.2024.2329283>

- Allocate funding and training through local Councils
- Implement youth intervention programmes

Urgency of addressing anti-social behaviour in retail

105. A number of submissions reiterated the urgency of addressing anti-social behaviour in retail and that it is having a significant impact. Submitters said:

“People don't want to come to town and go shopping or buy some food if they don't feel safe. We seriously need to solve this problem and the organizations in charge need to stop fobbing off this issue...”

“We wish to reiterate the urgency of addressing anti-social behaviour in retail. Our town centres are vital community hubs and economic drivers, and their health is directly tied to the perception of safety and order”

“Our members were agreed that something needs to change regarding anti-social behaviour as it is difficult for retailers to feel that they provide a safe environment for their staff and customers”

“Ultimately there needs to be immediate consequences. There is a strong sense of impunity and lack of consequence. In some places, a lot of anti-social behaviour is driven by school-age youths. Big issue is when the behaviour recurs repeatedly. A strong sentiment is that there needs to be quicker and stronger enforcement by Police. Retailers view this as being the Police's job, not theirs”

Conclusion

106. This paper seeks your feedback on options for addressing anti-social behaviour in and around retail settings in New Zealand, following our earlier Issues Paper. Submissions confirmed both aspects of our problem definition in the Issues Paper.

107. We have carried out an initial assessment of six options, as described in this paper. The net results of these initial assessments³⁴ are:

³⁴ Calculated based on: Positive 2, Slightly positive 1, Nil 0, Slightly negative -1, Negative -2