



Trespass (Specified Retail Premises and Other Matters) Amendment Bill

**Submissions on behalf of
The Law Association of New Zealand
by the Criminal Law Committee**

14 May 2026

INTRODUCTION

The Law Association of New Zealand (The Law Association) is an independent membership organisation for the New Zealand legal profession with more than 10,000 members. The Law Association maintains expert law committees that support legal review and policy advocacy on important issues. We appreciate the opportunity to submit our comments on the Trespass (Specified Retail Premises and Other Matters) Amendment Bill.

This submission is made on behalf of the Criminal Law Committee (the Committee / We), which is comprised of practitioners with extensive expertise across the criminal justice system. Members of the Committee work daily at the coalface of criminal law – in the courts, with defendants, victims, police, and other justice stakeholders, and are therefore uniquely positioned to comment on the practical and constitutional implications of criminal legislation.

The Committee recognises the seriousness of retail crime and the need for effective tools to protect workers, customers, retailers, food service providers, and licensed premises. However, the Bill raises significant criminal law, procedural fairness, and New Zealand Bill of Rights Act 1990 concerns.

The Bill expands liability, lowers practical knowledge thresholds, increases penalties, and gives private actors greater enforcement power without adequate safeguards. The cumulative effect is a material risk of over-criminalisation and disproportionate outcomes.

EXECUTIVE SUMMARY

The Committee is concerned that the Bill shifts the trespass regime away from a reactive criminal law model, based on actual warning and intentional breach, toward a preventive exclusion model. That shift may be understandable as a policy response to retail crime, but it requires careful safeguards because breach of a trespass notice can result in criminal liability.

- The Bill allows multi-location trespass warnings without a sufficient requirement that the excluded person intended to attend, or posed a future risk at, those other locations.
- The deeming provisions risk weakening the prosecution burden by permitting liability to turn on constructive knowledge, including whether a person “ought to have known” a warning was being given.
- The Bill increases the risk of technical breaches becoming criminal offences where culpability is low.
- The Bill delegates significant practical enforcement power to private occupiers and groups of occupiers, with limited statutory safeguards.
- The Bill increases penalties without a corresponding strengthening of procedural protections.
- The Bill engages several rights and values protected by the New Zealand Bill of Rights Act 1990, including the presumption of innocence, protection against arbitrary enforcement, freedom of association and movement interests, and freedom from discrimination.

SUBMISSIONS

1. Expansion of liability without traditional safeguards

- 1.1. The Bill allows a person to be trespassed from multiple locations. This may include places the person has never attended and may never have intended to attend. The Committee is concerned that this departs from orthodox criminal law principles. Liability is ordinarily tied to conduct and a sufficient mental element. Here, the Bill may create criminal consequences for entry into premises that are disconnected from the conduct that led to the original warning.
- 1.2. The Committee accepts that multi-location warnings may be rationally connected to the policy objective of addressing retail crime, particularly where a business operates across multiple sites. However, the Bill should not permit broad exclusion without a clear link between the original conduct, the premises covered, and the risk sought to be addressed.
- 1.3. Without that link, the regime risks becoming a form of preventive punishment rather than a proportionate response to actual offending or actual trespass conduct.

2. Deeming provisions (lowering mens rea threshold)

- 2.1. The Committee is particularly concerned about the proposed deeming provisions. New section 4C appears to provide that a person may be deemed to have received a warning if they refuse to accept it or if they “ought to have known” it was being given.
- 2.2. That formulation introduces a constructive knowledge test. It risks lowering the effective mens rea threshold for an offence and weakens the traditional requirement that the prosecution prove actual knowledge of the warning. In practical terms, the provision moves the regime toward negligence-based liability in an area that can result in criminal prosecution.
- 2.3. The knowledge requirement is not a technicality. It is the mechanism that ensures a person has the information needed to avoid committing an offence. This is particularly important in a retail environment, where members of the public ordinarily expect to be able to enter shops, food service premises, and other public-facing commercial spaces unless clearly told otherwise.
- 2.4. The Committee is also concerned that the deeming provisions may generate factual disputes about whether a person refused service, understood what was being said, or ought to have known that a warning was being given. These disputes are likely to increase litigation over the validity and effect of notices.

3. Risk of over-criminalisation

- 3.1. The Bill permits exclusion for up to three years. During that period, a person may commit an offence simply by entering premises covered by the notice. When this is combined with multi-location warnings and deeming provisions, there is a heightened risk that technical or inadvertent breaches will become criminal offences even where culpability is low.
- 3.2. This is especially concerning where the person did not properly receive the notice, did not understand the scope of the notice, or did not appreciate that a different location was

covered by a multi-location warning. The longer the period and the wider the geographical or corporate reach of the warning, the greater the risk of disproportionate criminal liability.

4. Delegation of enforcement power to private actors

- 4.1. The Bill permits occupiers, including groups of occupiers, to issue trespass notices and to delegate that power to others. The Committee is concerned that private individuals and businesses may effectively exercise quasi-public enforcement powers, with breach of those privately issued warnings giving rise to criminal liability.
- 4.2. The Trespass Act already allows private occupiers to control access to premises. However, the Bill materially expands the practical effect of that power by enabling multi-location exclusion, longer exclusion periods, deeming provisions, and higher penalties. That expansion requires stronger safeguards than are presently apparent.
- 4.3. Where private decisions can trigger criminal liability, the statutory framework should be clear, constrained, and procedurally fair. The Bill should ensure that decision-makers are identifiable, that the basis and scope of the warning are clear, and that the affected person has practical information about how to avoid breach.

5. Evidential and fairness concerns

- 5.1. The Committee considers that the Bill is likely to create evidential and fairness issues. In particular, disputes may arise about:
 - which locations are covered by a multi-location warning;
 - whether the warning was validly given;
 - whether the warning was clear enough for the person to understand its scope;
 - whether the person refused to accept the warning;
 - whether the person “ought to have known” that a warning was being given; and
 - whether any default provisions apply, including the automatic three-year period.
- 5.2. These issues are not peripheral. They go directly to whether a person has had fair notice of conduct that may later expose them to criminal liability. The risks are particularly acute where warnings are given orally, in fast-moving situations, during conflict, or to persons who may have language, age, cognitive, mental health, disability, or other vulnerabilities.
- 5.3. If the period is not clearly communicated, an automatic three-year ban may apply. A default of that length is significant and should not arise simply because the person was not properly informed of the period or scope of the notice.

6. Disproportionate reach of multi-location bans

- 6.1. A single incident at one store may result in exclusion from multiple unrelated locations. Breach at any covered location may then constitute an offence. The Committee is concerned that this risks disconnecting the legal consequence from the original conduct.

6.2. The concern is not limited to large corporate retailers. Multi-location powers may affect access to essential or everyday services, particularly where a chain or group of premises has a significant presence in a local area. Broad exclusion from public-facing commercial premises may have practical effects that go beyond ordinary property rights and begin to affect participation in public life.

6.3. The Bill should include limits that ensure any multi-location warning is necessary and proportionate. It should also require clear identification of each location covered, or a sufficiently precise description that a reasonable person can understand and comply with.

7. Increased penalties without procedural strengthening

7.1. The Bill increases penalties, including maximum fines of up to \$2,000 and \$1,000 for relevant conduct. It is concerning that those increases are not matched by a corresponding strengthening of procedural protections.

7.2. Higher penalties are problematic when combined with a lower-threshold liability regime. The result may be that more serious consequences are imposed in circumstances where proof of actual knowledge is less clear, the scope of the warning may be uncertain, and the warning may have been issued by a private actor without independent oversight.

New Zealand Bill of Rights Act 1990 issues

8. Section 25(c): presumption of innocence

8.1. The deeming provision risks undermining the presumption of innocence. A person may be treated as having received or understood a warning because they refused to accept it or because they “ought to have known” it was being given. While the legal burden may remain on the prosecution, the practical effect may be to make it easier to establish an element of the offence and to place pressure on the defendant to explain why they did not know or understand the warning.

8.2. The Committee considers that any provision affecting the knowledge element of a criminal offence should be drafted narrowly. It should preserve the requirement that the prosecution prove beyond reasonable doubt that the person had sufficient knowledge of the warning and of the premises covered by it.

9. Section 25(e): right to be present and defend

9.1. If a person does not properly receive a notice, or does not understand its scope, they may later breach it unknowingly. That creates difficulty for the person’s ability to meaningfully defend a charge. The issue is not only whether the person can appear in court. It is whether the statutory framework gives the person sufficient information at the time of the warning to know what conduct is prohibited.

10. Section 26: double jeopardy / multiple punishment concerns

10.1. The Bill does not raise a classic double jeopardy issue. However, multi-location warnings may extend the consequences of one incident across many locations for up to three years. That creates a cumulative punitive effect that may be disproportionate to

the original conduct, particularly where the additional locations have no direct connection to that conduct.

11. Section 22: arbitrary detention (indirect)

11.1. The Bill also indirectly engages concerns about arbitrary or unnecessary enforcement action. Failure to provide a name or address can lead to arrest. With increased penalties and expanded scope, there is a greater risk that enforcement action will be taken in circumstances where the person's culpability is low or the validity of the underlying warning is uncertain.

12. Section 21: unreasonable search and seizure

12.1. The Bill indirectly engages section 21 concerns through requests for a person's name and address, backed by increased penalties. The concern is heightened because the coercive dynamic may arise in the context of private occupiers or their delegates, not only police. The statutory limits on such requests should be clear and capable of consistent application.

13. Section 17: freedom of association and movement interests

13.1. Broad multi-location bans may restrict access to public-facing commercial spaces. This is particularly concerning where large retail chains or groups of occupiers control access to essential or common services in a particular area. The practical effect may be a de facto exclusion from parts of public life, especially for people with limited transport, limited financial means, or few alternative service providers nearby.

14. Section 19: freedom from discrimination

14.1. The Bill leaves significant discretion with occupiers and their delegates. That discretion creates a risk of selective or discriminatory use, particularly affecting vulnerable groups, including homeless people, young people, Māori, and people experiencing mental health issues. The Bill does not appear to contain express safeguards against misuse or discriminatory application.

15. Section 5: justified limitations

15.1. The Committee accepts that the Bill has a legitimate objective and that some of the proposed measures may be rationally connected to that objective. However, the proportionality analysis is highly contestable.

15.2. A three-year multi-location ban may not be minimally impairing, particularly where there is no requirement for an individualised assessment of necessity, no judicial oversight at the point of issuing the notice, and limited safeguards around scope, communication, review, or revocation.

16. Recommended amendments

16.1. If the Bill proceeds, the Committee recommends that it be amended to include safeguards limiting multi-location warnings, preserving the knowledge requirement, and strengthening procedural protections.

- 16.2. The safeguards should ensure warnings are clear, necessary, proportionate, properly recorded, and capable of review, variation, or revocation.
- 16.3. They should also guard against selective, arbitrary, discriminatory, or disproportionate use, particularly where vulnerable persons may be affected.

CONCLUSION

The Committee recognises the need to respond to retail crime and to protect workers, customers, and businesses. However, the Bill as drafted creates significant criminal law and rights-based concerns. If the Bill proceeds, it should be amended to ensure that any expansion of trespass powers is narrow, clearly defined, proportionate, and subject to enforceable safeguards.

The Committee again thanks you for the opportunity to make submissions on the Trespass (Specified Retail Premises and Other Matters) Amendment Bill.

The Committee wishes to be heard in support of this submission. Should clarification be required with regards to any matters raised, please contact Gandhya Senanayake, The Law Association Committee Executive at Gandhya.Senanayake@tlanz.nz.

ACKNOWLEDGMENTS

The Committee acknowledges the contributions to the submissions by the following members: Samira Taghavi.

Ngā mihi



Julie-Anne Kincade KC
Convenor
The Law Association Criminal Law Committee

The views represented in this submission are not necessarily representative of the views of all The Law Association members but are those of individual The Law Association members or The Law Association committees who have responded to the consultation.