



Summary Offences (Move-on-Orders) Amendment Bill

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

2 July 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 11,000 members. The Law Association maintains expert law committees that support legal review and policy advocacy on important issues.

The Criminal Law Committee of The Law Association (the “Committee”) consists of criminal law practitioners from across New Zealand who regularly appear in the District Court, High Court, Court of Appeal, Youth Court and specialist criminal jurisdictions. Committee members represent defendants across the full spectrum of criminal offending and have extensive experience advising people who may be affected by police powers. We appreciate the opportunity to submit our comments on the Summary Offences (Move-on-Orders) Amendment Bill (“the Bill”).

EXECUTIVE SUMMARY

The Committee does not support the Bill in its present form. Police powers permitting interference with people who have not committed an offence should always be approached cautiously.

Parliament has traditionally required clear justification before conferring preventive coercive powers of this nature because they engage fundamental constitutional rights. Those rights include freedom of expression, freedom of movement, and protection from arbitrary detention under the New Zealand Bill of Rights Act 1990 (NZBORA).

The Bill would confer broad coercive powers on Police in relation to conduct that may fall below the existing criminal threshold for disorderly behaviour. It represents a significant expansion of police powers. The Bill moves away from the traditional criminal law model, where police powers generally respond to completed offending, towards a preventive regime allowing coercive intervention based on anticipated or suspected conduct that may not amount to criminal behaviour.

The Committee is not persuaded that the proposed limits on protected rights are demonstrably justified in a free and democratic society. Several of the proposed powers extend beyond what is reasonably necessary to achieve the legitimate objective of maintaining public order. If the Bill proceeds, the grounds for issuing a move-on order should be narrowed and any distance requirement should be expressly required to be reasonable and proportionate. The threshold should be raised from “reasonable grounds to suspect” to “reasonable grounds to believe”. Begging and rough sleeping should not be standalone grounds for issuing a move-on order. Criminal liability for breach should require further conduct beyond mere presence in a public place.

SUBMISSIONS

Analysis of grounds to issue move-on orders

1. The grounds to issue move-on orders, set out in s 8A(1), do not themselves create criminal liability. However, the ability to detain someone on those grounds,¹ alongside the effect of the move-on orders,² undermine quasi-constitutional rights that are promulgated by the New Zealand Bill of Rights Act 1990 (NZBORA); particularly s 14, which protects the right to freedom of expression, and s 18(1), which protects the right to freedom of movement. The extent someone might be detained for exercising those rights in a public place also increases the risk of arbitrary detention – protected by s 22.
2. Any decision to increase Police powers to control the liberties of individual expression and movement in public needs to be “demonstrably justified in a free and democratic society”.³ For reasons discussed below, the grounds to issue move-on orders fetter individual rights beyond what is required to maintain public order. The proposed limitations are not proportionate because the Bill permits intervention in circumstances where there may be no offending, no harm, and no serious disruption to public order.
3. ***Section 8A(1)(a) – the power to issue move-on orders, where Police have reasonable grounds to suspect a person is, or recently has engaged in, behaviour in a manner that is disorderly, intimidating, or threatening.***

3.1. Behaviour in public, in a manner that is “disorderly” is already prohibited under s 4(1)(a) of the Summary Offences Act 1981. In the judgments of *Brooker v Police*, disorderly behaviour was described by Elias CJ as “disorderly behaviour under s 4(1)(a) means behaviour seriously disruptive of public order”. Justice Blanchard said:⁴

“Disorderly behaviour ... is behaviour which disturbs or violates public order. To fall within s 4(1)(a) it must be behaviour in or within view of a public place which substantially disturbs the normal functioning of life in the environs of that place. It must cause a disturbance of good order which in the particular circumstances of time and place any affected members of the public could not reasonably be expected to endure because of its intensity or its duration or a combination of both those factors.”

¹ Section 8C.

² Section 8A(2).

³ New Zealand Bill of Rights Act 1990, s 5.

⁴ *Brooker v Police* [2007] NZSC 30.

3.2. So, to the extent that Police suspect an offence pursuant to s 4(1)(a) of the Summary Offences Act, issuing a move-on order might be a more pragmatic power for Police to bring about public order – as opposed to immediately charging someone.

3.3. However, s 8A(1)(a) also empowers Police to issue move-on orders where they suspect a person is behaving in an intimidating or threatening manner. The Bill provides little explanation for separately identifying intimidating and threatening behaviour or why conduct falling short of disorderly behaviour should nevertheless justify coercive police intervention. That is beyond the purpose of the Bill, as stipulated in the general policy statement.⁵

4. Section 8A(1)(b) – the power to issue move-on orders, where Police have reasonable grounds to suspect a person is, or recently has engaged in, behaviour in a manner that is disruptive

4.1. Section 8A(1)(b) empowers Police to issue move-on orders for suspecting behaviour that is simply categorised as “disruptive”. In *Brooker*, Elias CJ described behaviour that is disruptive of public order as disorderly behaviour. Accordingly, the express statutory reference to “disruptive” behaviour, separate to disorderly behaviour, suggests that Police can issue move-on orders where they suspect behaviour is disruptive but does not meet the threshold of disrupting public order. Again, that is beyond the intended scope of the Bill.

5. Section 8A(1)(e) - the power to issue move-on orders, where Police have reasonable grounds to suspect a person is, or recently has engaged in begging.

5.1. Section 8A(1)(e) permits the Police to detain a person solely because they are begging in a public place.

5.2. New Zealand ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) on 28 December 1978. Article 11 requires that New Zealand take steps to realise the right that everyone has an adequate standard of living, including adequate food. Introducing legislation that enables the detention of persons solely for begging in a public place sits uneasily with that covenant. The grounds envisaged under s 8A(1)(f) regarding rough sleeping also give rise to a similar issue.⁶

⁵ “The Summary Offences (Move-on Orders) Amendment Bill (the Bill) contributes to the Government’s commitment to restoring law and order to keep New Zealanders safe by ensuring that the New Zealand Police (Police) has the necessary powers to maintain public order.”

⁶ Covenant on Economic, Social and Cultural Rights (ICESCR), art 11: “right to housing, and to the continuous improvement of living conditions”.

5.3. Criminalising behaviour directly linked to poverty risks penalising social need rather than harmful conduct. Begging may be confronting or uncomfortable for members of the public. However, the act of begging itself does not undermine public order. The power to detain persons for begging and thereafter issue move-on orders requiring them to leave public places is unjustified.

5.4. The practical effect of the regime is likely to fall disproportionately on people experiencing homelessness. The Ministry of Housing and Urban Development's *Homelessness insights: To 31 March 2026* report records that the most robust estimates of homelessness remain the severe housing deprivation estimates from the five-yearly Census. Those estimates suggest that, on 7 March 2023, at least 112,500 people were severely housing deprived, including 4,965 people estimated to be living without shelter. The report also defines homelessness by reference to people having no other options to acquire safe and secure housing, and notes that people living without shelter may be sleeping on the street or in improvised dwellings such as a garage, shack, or car.⁷

6. Section 8A(1)(f), the power to issue move-on orders where Police have reasonable grounds to suspect a person is, or recently has engaged in, rough sleeping.

6.1. Rough sleeping should not be a standalone ground for issuing a move-on order. Rough sleeping is not inherently disorderly behaviour. It is generally a manifestation of homelessness rather than criminality.

6.2. Criminal law is not an appropriate mechanism for responding to homelessness. A person sleeping in a public place may have no safe or available private place to go. Requiring that person to leave and remain away from a public place does not address the underlying cause of the conduct. It merely displaces the person elsewhere.

6.3. The proposed ground risks punishing status and circumstance rather than harmful conduct. It also risks inconsistent and arbitrary enforcement against people experiencing homelessness, particularly where no separate disorderly, threatening, intimidating, or harmful conduct is present.

6.4. The ground in s 8A(1)(f) should be removed. If a person rough sleeping also engages in conduct that seriously disrupts public order, existing public order laws and a narrowed move-on order regime would be sufficient to address that conduct.

7. Section 8A(2) – Requirement to leave and remain away from a specified distance from a public place for 24 hours

⁷ Ministry of Housing and Urban Development, *Homelessness insights: To 31 March 2026*, at 2.

7.1. Section 8A(2) will allow Police to order a person on the grounds set out in s 8A(1) to move a specified distance away from a public place and remain at or beyond that specified distance from that place.

7.2. That power is problematic. The Bill does not limit the maximum distance a recipient might be required to move and remain away from a public place. For example, it leaves open the possibility that a recipient may be required to move 10 kilometres away from a public place. That may be particularly difficult for people experiencing homelessness or poverty, given their limited means.

7.3. The Bill also contains no express requirement that any distance imposed be reasonable or proportionate in the circumstances. If the Bill proceeds, it should be amended to require that any distance imposed be reasonable and proportionate, having regard to the conduct relied on, the location, the person's circumstances, and the purpose of maintaining public order.

8. Section 8A(1) - “reasonable grounds to suspect” to be replaced with “reasonable grounds to believe” to counterbalance the imposition of broad grounds for issuing a move-on order

8.1. An appropriate amendment to the wording of s 8A(1) might include replacing the word “suspect” with “believe”, thereby allowing a constable to issue a move-on order only when:

*... the constable has reasonable grounds to **believe** that the person is engaging in, or has recently engaged in, any of the following conduct in a public place: ...*

8.2. Considering authorities in relation to the Search and Surveillance Act 2012, reasonable grounds to suspect is a lesser standard than reasonable grounds to believe.⁸ The higher threshold of reasonable grounds to believe is more appropriate where the proposed power may limit rights protected by NZBORA.⁹ The increased threshold would mitigate arbitrary exercises of s 8A(1); for example, a constable would not be able to issue a move-on order on the basis that someone looks impoverished and therefore likely to beg.

Analysis of liability for breaching a move-on order

⁸ See for example *Collins v R* [2010] NZSC 3 at [2].

⁹ See for example the discussion in *R v Williams* [2007] NZCA 52 at [213], regarding the threshold to be met for reasonable grounds to believe in the context of search powers. See also s 6 of the Search and Surveillance Act 2012

9. Under the proposed regime, a person will commit an offence when they are issued a move-on order and knowingly or recklessly, and without reasonable excuse, fail or refuse to comply with the notice. Liability for breaching a move-on order carries up to 3 months' imprisonment or a \$2,000 fine. That penalty is not justified.
10. The practical effect of the move-on order regime is likely to fall disproportionately on people experiencing homelessness. People experiencing homelessness are among the most vulnerable people in society, not only because of poverty, but because of the underlying reasons why they may be experiencing poverty or homelessness in the first place. Those reasons may include mental health issues, addiction, disability, trauma, family violence, or lack of access to stable accommodation.
11. People with impaired mental faculties have greater difficulty following instructions. That might be because they do not understand instructions when they are explained to them or, even when they do understand them, they are unable to mentally retain them for as long as necessary to comply with their mandate. A move-on order is an instruction not to return to a place for a certain period of time for up to 24 hours. Accordingly, people experiencing homelessness are far more susceptible to breaching a move-on order, even absent mala fide intent.
12. Criminal liability should ordinarily attach to harmful conduct rather than mere presence in a public place. The act of being in a public space is not inherently bad. It is the exercise of the right to freedom of movement.¹⁰
13. More than mere presence in a public place should be required to breach a move-on order and attract criminal liability. The threshold for a breach could be raised by making it an offence to:
- (a) be within the area that the order applies to; and
 - (b) engage in behaviour that provided grounds for the issue of that move-on order.
14. As stated previously, the grounds in s 8A(1) need to be refined. Nonetheless, the requirement that the recipient of a move-on order behave in a way described in s 8A(1) to establish criminal liability is less arbitrary than criminalising a person's presence in or near public space.
15. The \$2,000 fine should also be removed as a maximum monetary penalty. Individuals most likely to be liable for this offence are unlikely to have the means to pay a fine. Imposing monetary penalties on people experiencing homelessness or poverty risks compounding the very circumstances that make

¹⁰ New Zealand Bill of Rights Act 1990, s 18(1).

them vulnerable to the operation of the Bill. It is therefore unlikely to be an effective or proportionate penalty.

CONCLUSION

For these reasons, the Committee recommends that the Bill not proceed in its current form. If the Bill proceeds, the grounds for issuing a move-on order should be narrowed, begging and rough sleeping should be removed as standalone grounds, the threshold should be raised to reasonable grounds to believe, any distance requirement should be expressly required to be reasonable and proportionate, the duration of orders should be clearly limited, and criminal liability for breach should require further conduct beyond mere presence.

Thank you for the opportunity to make submissions in respect of the Summary Offences (Move-on-Orders) Amendment Bill.

We are available to discuss our submissions, if required. 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

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Ngā mihi



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