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Report of the

# ATTORNEY-GENERAL

under the New Zealand Bill of Rights Act 1990 on  
the Summary Offences (Move-on Orders)  
Amendment Bill

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*Presented to the House of Representatives pursuant to  
Section 7 of the New Zealand Bill of Rights Act 1990 and  
Standing Order 269 of the Standing Orders of the House of  
Representatives*

1. I have considered this Bill (PCO28721/v9.0) for consistency with the New Zealand Bill of Rights Act 1990 (Bill of Rights Act). I conclude that:
  - 1.1 The proposed treatment of “begging” as a stand-alone ground for issuing a move-one order appears inconsistent with the right to freedom of expression in the Bill of Rights Act.<sup>1</sup>; and
  - 1.2 The proposed effect of a move-on order, which would preclude a person (who has been issued with an order because he or she is/has been begging or rough sleeping<sup>2</sup>) from staying or entering a specified area,<sup>3</sup> for *all* purposes, appears inconsistent with the right to freedom of movement.<sup>4</sup>
2. I bring these apparent inconsistencies to the attention of the House under section 7 of the Bill of Rights Act and Standing Order 269.
3. I have also considered whether the Bill engages, and unjustifiably limits, the rights to freedom of discrimination and freedom from arbitrary detention. I am satisfied that it does not engage either right.

### The Bill

4. The Bill seeks to provide New Zealand Police (**Police**) with powers to “manage public order and support safe and thriving urban economies”.<sup>5</sup> These powers are designed to enable the Police to proactively defuse a situation involving disorderly behaviour before it escalates to offending, or that affects the enjoyment of a public space beyond that which the public should be expected to tolerate.
5. To this end, the Bill will amend the Summary Offences Act 1981 to introduce a power for Police to issue a “move-on order”. A constable can issue a move-on order to a person aged 14 years or older who is in a public place if the constable has reasonable grounds to suspect that the person is engaging in or has recently engaged in any of the following behaviour:
  - 5.1 behaving in a way that is disorderly, intimidating, or threatening (s 8A(1)(a));
  - 5.2 behaving in a manner that is disruptive (s 8A(1)(b));
  - 5.3 unreasonably obstructing, hindering, or preventing someone entering from or leaving a place where a lawful trade, business, or occupation is being conducted (s 8A(1)(c));
  - 5.4 breaching the peace (s 8A(1)(d));
  - 5.5 begging (s 8A(1)(e));

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<sup>1</sup> New Zealand Bill of Rights Act 1990 (**Bill of Rights Act**), 14.

<sup>2</sup> Or, setting up person possessions, encampments, makeshift dwellings, or other structures indicating an intent to inhabit a public place.

<sup>3</sup> For no longer than 24 hours.

<sup>4</sup> Bill of Rights Act, s 18.

<sup>5</sup> Office of the Minister of Justice “Strengthening responses to public disorder” (Cabinet Paper, 12 December 2025)(**Cabinet Paper**) at [5].

- 5.6 rough sleeping or setting up personal possessions, makeshift shelters, or other structures indicating an intent to inhabit the public place (s 8A(1)(f)).
6. For the purposes of the Bill of Rights Act, these behaviours can be grouped into three categories: (a) disorderly or aggressive behaviour<sup>5,6</sup>; (b) begging;<sup>7</sup> and (c) rough sleeping.<sup>8</sup>
7. The Bill expressly states that move-on orders do not apply to protest activities, or freedom camping.
8. Move-on orders may require a person to:
- 8.1 leave the public place specified in the order or move a specified distance away from that place; and
- 8.2 remain away from the public place, or remain at or beyond a specified distance from that place, for no longer than 24 hours.
9. A constable may temporarily detain a person for the time that is reasonably necessary for the purpose of taking the persons biographical details, and preparing, serving and issuing a move-on order.
10. A person commits an offence if he or she knowingly or recklessly, and without reasonable excuse, fails or refuses to comply with a move-on order immediately or within a reasonable time. The penalty is imprisonment for a term not exceeding 3 months or a fine not exceeding \$2,000.

#### **Freedom of expression – section 14**

11. Section 14 of the Bill of Rights Act affirms the right to freedom of expression, which includes the freedom to seek, receive, and impart information and opinions of any kind and in any form.<sup>9</sup> Any limitation of that freedom must be justified, or it will be inconsistent with the Bill of Rights Act.
12. I do not consider the application of move-on orders to disorderly or aggressive behaviour unjustifiably limits the right to freedom of expression. This is because such behaviour, if it has any expressive content, is of very low value in a democracy. Rough sleeping in itself is also unlikely to involve expression of views or opinion of any kind. Occupation of public places can be a form of protest,<sup>10</sup> which would engage s 14, but protesting is expressly exempted from the scope of the orders.

#### ***Applying move-on orders to begging limits freedom of expression***

13. I consider begging engages freedom of expression. The Bill provides a definition of

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<sup>6</sup> Section 8A(1)(a)-(d).

<sup>7</sup> Section 8A(1)(e).

<sup>8</sup> Section 8A(1)(f).

<sup>9</sup> *Moonen v Film and Literature Board of Review* [2000] 2 NZLR 9, (1999) 5 HRNZ 224 (CA) at [15]; *Attorney-General v Smith* [2018] NZCA 24 at [38] noting that: “Low value” expression — whether mundane and innocuous (such as private discourse or commercial radio) or hateful and dangerous (such as hate speech, an incitement to violence or even violent action itself) — is expression regardless”.

<sup>10</sup> *Wadsworth v Auckland Council* [2013] NZHC 413; [2013] NZAR 430 at [37]

“begging” as follows:

- (a) means requesting or demanding a donation of money, food, or other goods through –
    - (i) speech; or
    - (ii) or other conduct, for example holding a sign; but
  - (b) does not include charitable or not-for-profit fund-raising lawfully carried out by or on behalf of an organisation.
14. This definition captures both active and passive begging. Both forms of begging involve expressive content. The definition refers to “speech” and, by way of example, “holding a sign”, both of which are expressive activity. The overseas cases also clearly support this view. In *R v Banks*, the Ontario Court Appeal considered that “the act of begging is communication and is evidently expression”; it conveys the message “I am in need and I am requesting your help”.<sup>11</sup> In *Federated Anti-Poverty Groups of British Columbia v Vancouver*, the Court said “it is obvious that the act of asking another for money is a passive expression (with the exception of aggressive panhandling), by which the panhandler expresses his or her plight to another while seeking assistance, usually in the form of money”.<sup>12</sup> In the United States, various Courts have held that begging comes within the free speech protection under the First Amendment.<sup>13</sup>
15. The Bill limits the right to freedom of expression because move-on orders may prevent someone from begging – expressing their plight to others while seeking assistance – in a public place.<sup>14</sup>

***Is this justified under section 5 of the Bill of Rights Act?***

16. Section 5 of the Bill of Rights Act provides that rights and freedoms may be subject to reasonable limits that are prescribed by law and demonstrably justified in a free and democratic society. I have assessed this by looking at (1) whether the limit serves a purpose sufficiently important to justify curtailment of the right; (2) whether the limit is rationally connected to that objective; (3) whether it impairs the right no more than is reasonably necessary for sufficient achievement of its purpose; and (4) whether the limit is in due proportion to the importance of the objective.<sup>15</sup>

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<sup>11</sup> *R v Banks* (2007) 275 DLR (4<sup>th</sup>) 640 at [112].

<sup>12</sup> *Federated Anti-Poverty Groups of British Columbia v Vancouver* 2002 BCSC 105, [2002] BCJ No 493 at [150].

<sup>13</sup> See, for instance, *Speet v Schuette* 726 F3d 867 (6<sup>th</sup> Cir 2013) at 873-878.

<sup>14</sup> In theory, move-on orders may be issued to the same person again and again, from one area to another, so as to operate effectively as a total ban on begging. However, this is not a reasonable hypothetical and it can be assumed that constables will exercise their statutory orders in a way that is compliant with the Bill of Rights Act, and not in an oppressive manner.

<sup>15</sup> *Hansen v R* [2007] NZSC 7, [2007] 3 NZLR 1; *R v Oakes* [1986] 1 SCR 103.

*Step 1 – Does the limiting measure serve a purpose sufficiently important to justify curtailment of the right?*

17. The purpose of applying move-on orders to begging is to support “thriving urban economies”.<sup>16</sup> I consider this purpose is sufficiently important to justify some limitation on the freedom of those who wish to beg.
18. While there may be some debates in overseas case law,<sup>17</sup> I consider the purpose is a sufficiently important one. It is important to note that the Bill does not ban begging, and it is legitimate for the Government to take the view that a beggar’s freedom to express themselves wherever, and for as long as they choose, needs to be constrained in the public interest due to the socio-economic impact of allowing them to do so. There is plainly a qualifying important objective.

*Step 2 – Is the limiting measure rationally connected with its purpose.*

19. It is conceivable that begging in close proximity to businesses – even if it falls short of being an unreasonable obstruction, hinderance or prevention – may still deter some from entering and diminish the vibrancy of urban economies. Moving them away can serve the purpose of the Bill.
20. At this stage of the analysis, all that is needed is to show “on the basis of reason or logic [as opposed to empirical evidence] that there is a causal connection between the infringement and the benefit sought”.<sup>18</sup> It is not a particularly onerous step.<sup>19</sup> I consider a rational connection exists.

*Step 3 – Does the limiting measure impair the right or freedom no more than is reasonably necessary for sufficient achievement of its purpose?*

21. The question is whether there is a less rights-intrusive alternative that would be effective at securing the measure’s objective.<sup>20</sup>
22. I consider that the scope of the “begging” ground is, without more, too wide. There are less rights-infringing measures that would achieve the purpose, for example by narrowing the scope of this ground to begging that is aggressive or that interferes in the freedoms of others.
23. A further measure would be to set out in the legislation the factors the constable

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<sup>16</sup> Cabinet Paper at [5]. Elsewhere in the Cabinet Paper, the Minister also describes the purpose of the Bill as promoting “vibrant public spaces” (at [17]).

<sup>17</sup> In *Lacatus v Switzerland* (14065/15) 19 January 2021, the European Court of Human Rights held that an outright ban on begging in public places was incompatible with Article 8 of the European Convention on Human Rights.<sup>17</sup> In the course of its analysis, the Court found it was salient to note that “in the view of the United Nations Special Rapporteur on extreme poverty and human rights...a desire to reduce the visibility of poverty in a city and attract investments is not a legitimate aim from a human rights standpoint...” (at [113]). In contrast, in *Smith v City of Fort Lauderdale Florida* 177 F3d 954 (11<sup>th</sup> Cir 1999), the US Court of Appeals Eleventh Circuit considered whether the City’s regulation, which proscribed begging on a certain five-mile strip of beach and two sidewalks, was unconstitutional on the basis it violated the free speech clause under the First Amendment. In its reasoning, the Court considered it was not for it to “second guess” the City’s judgement that “begging in this designated, limited beach area adversely impacts tourism” (at 956).<sup>17</sup> It went on to conclude the restrictions were not unconstitutional because they were “narrowly tailored to serve the City’s interest in providing a safe, pleasant environment and eliminating nuisance activity on the beach” (at 956).<sup>17</sup> The Court described these matters as falling within “the government’s legitimate interest” (at 956).

<sup>18</sup> *Fair Change v Ontario (Attorney General)* 2024 ONSC 1895, 170 OR (3d) 561 at [230].

<sup>19</sup> *Fair Change v Ontario (Attorney General)* 2024 ONSC 1895, 170 OR (3d) 561 at [232].

<sup>20</sup> *Attorney-General v Chisnall* [2024] NZSC 178, [2024] 1 NZLR 768 at [211].

must consider before issuing a move on order to a beggar including the person's freedom to express themselves and whether it is having a disproportionate impact on other people in the vicinity.

*Step 4 – Is the limit in due proportion to the importance of the objective?*

24. This final assessment draws together the preceding three steps.<sup>21</sup> Given that I have reached the view that the measure impairs the freedom more than is necessary to achieve its purpose, this does not require separate consideration.

**Freedom of movement – section 18**

25. Section 18(1) provides that “everyone lawfully in New Zealand has the right to freedom of movement and residence in New Zealand”.
26. A move-on order limits freedom of movement by preventing a person (to whom an order is issued) from staying in or returning to a specified area, albeit for no longer than 24 hours.<sup>22</sup> The question is whether this limit is justified under section 5 of the Bill of Rights Act.
27. I consider the limit is justified to the extent the Bill authorises move-on orders on the ground of disorderly or aggressive behaviour. But it does not appear justified insofar as it authorises such orders on the grounds of begging and rough sleeping.

*Disorderly and aggressive behaviour*

28. The purpose of issuing move-on orders to persons engaged in disorderly or aggressive behaviour is to maintain public order and promote safety. We consider this is a sufficiently important objective.
29. Where a person is engaging in such behaviour, Police are justified in keeping him or her away from the area where the behaviour is occurring or has occurred. It allows Police to defuse a situation involving disorderly or aggressive behaviour before it escalates to offending. By keeping the person away, it is likely to provide the public a sense of safety and calm in the relevant area. It is also likely to provide a ‘cool down’ period for the relevant individual, moving him or her away from the source of tension or aggravation, which may lessen the risk of escalation.
30. I consider the limit impairs the freedom of movement no more than reasonably necessary as the duration of the restriction is relatively short (no longer than 24 hours) and is proportional to the objective of maintaining public order and promoting safety.

*Begging and rough sleeping*

31. The purpose of issuing move-on orders to persons who beg and rough sleep is to promote thriving urban economies (or vibrant public spaces).

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<sup>21</sup> *Attorney-General v Chisnall* [2024] NZSC 178, [2024] 1 NZLR 768 at [245].

<sup>22</sup> We proceed on the basis that the freedom of movement does not, on current authorities, include a freedom to stay. We have therefore not considered whether the requirement to leave constitutes a limit on the right to freedom of movement. The High Court has observed, in obiter, that the right to freedom of movement is unlikely to include “a right to remain in place for the purpose of staying in a location overnight simpliciter”: *The New Zealand Motor Caravan Association Inc v Thames-Coromandel District Council* [2014] NZHC 2016, [2014] NZAR 127 at [131]. For this reason, the fact that a move-on orders may be issued on the ground of rough-sleeping does not, by itself, engage the right to freedom of movement.

32. I consider the limit to freedom of movement is not justified for begging and rough sleeping. This is because the effect of a move-on order would prevent a beggar or a rough sleeper from staying in, or returning to, a specified area for any purposes. That is, a move-on order would not only prevent a beggar or rough sleeper from continuing to beg or sleep in a specified area but will operate to prevent them from staying or entering the area regardless of what they do there. This effect is, in my view, broader than it needs to be to fulfil the Bill's purpose.
33. By way of illustration, suppose a person has been rough sleeping around the only shop in the area and is then issued with a move-on order, the effect of which is they are not allowed to return to the relevant area for the next 24 hours. This would not only prevent them from resuming their rough sleeping but also from visiting the shop to buy food. There could be other important premises in the relevant area such as a medical centre or church that would need to be excluded, but the Bill would not direct the constable's attention to this. A less rights-limiting alternative is for move-on orders to require only that a person not return to the place for the purpose of resuming the behaviour that gave rise to the orders in the first place.
34. I consider the effect of the Bill, in this respect, is overbroad – that is, it impairs rights more than reasonably necessary – by creating an unacceptable risk of a move-on order that is an unjustified limit on the right to freedom of movement.
35. I consider the limitation to the freedom of movement caused by this Bill, in the specific respects identified above, has not been justified under section 5 of the Bill of Rights Act.

#### **Freedom from discrimination – section 19**

36. I do not consider the Bill engages s 19, the right to be free from discrimination.
37. Section 19(1) states, “everyone has the right to freedom from discrimination on the grounds of discrimination in the Human Rights Act 1993”. The prohibited grounds of discrimination are listed in s 21 of the Human Rights Act, including “employment status, which means – being unemployed”.<sup>23</sup>
38. Section 19 proscribes direct discrimination, as well as indirect discrimination.
39. Direct discrimination occurs when a law uses a prohibited ground as the very basis upon which to differentiate between two groups.
40. Legislation will discriminate directly if it:<sup>24</sup>
- 40.1 treats or affects persons or groups in comparable situations differently on the basis of a prohibited ground;
  - 40.2 this differential treatment or effect causes material disadvantage; and
  - 40.3 this is not justified under section 5 of the Bill of Rights Act.
41. I have considered whether the Bill, in authorising move-on orders against those

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<sup>23</sup> Human Rights Act 1993, s 21(1)(k)(i).

<sup>24</sup> *Ministry of Health v Atkinson* [2012] NZCA 184, [2012] 3 NZLR 456 at [55] and [143].

who beg or rough sleep in a public place, treats people differently based on “employment status” – that is, between the employed and unemployed. I do not consider there is differential treatment between these groups because both the employed and unemployed are subject to move on orders if they engage in begging or rough sleeping in a public place.

42. Indirect discrimination occurs when a law is neutral on its face but has a disproportionate impact on a group because of a particular characteristic of that group or person.
43. For the purpose of assessing whether there is indirect discrimination, the correct question is not whether a high percentage of those who beg or rough sleep are unemployed, but whether most, or a significant portion, of persons who are unemployed are likely to beg or rough sleep.<sup>25</sup> To the contrary, only a very small percentage of persons who are unemployed are engaging in these behaviours.

#### **Freedom from arbitrary detention – section 22**

44. I do not consider the Bill engages the right in s 22.
45. Section 22 provides: “Everyone has the right not to be arbitrarily arrested or detained”. Arbitrariness is a broader concept than lawfulness, and can include elements of inappropriateness, injustice, lack of predictability or due process of law, as well as unreasonableness, lack of necessity and disproportionality.<sup>26</sup>
46. Confirmation of the identity of the person and the ability to issue and serve the order is necessary for the purpose of the order and the section requires that the detention be limited to the time reasonably necessary for this. The length of time will largely be determined by the amount of co-operation received but I am satisfied that the Bill is not authorising any arbitrary detention.



Hon Chris Bishop  
Attorney-General  
14 May 2026

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<sup>25</sup> Applying the reasoning in *Ngaranoa v Attorney General* [2017] 3 NZLR 643.

<sup>26</sup> *AW v Minister of Health* [2026] NZHC 302 at [46].