



# Regulatory Impact Statement: Amending trespass law as a critical vehicle for addressing retail crime

<b>Decision sought</b>	<i>Analysis produced for the purpose of final Cabinet decisions</i>
<b>Agency responsible</b>	<i>Ministry of Justice</i>
<b>Proposing Ministers</b>	<i>Minister of Justice</i>
<b>Date finalised</b>	<i>18 June 2025</i>

The Government has committed to restoring law and order and addressing retail crime. It has established the Ministerial Advisory Group for Victims of Retail Crime (the MAG) to recommend legislation to reduce retail crime.

The proposed changes are based on the MAG recommendations to modernise the Trespass Act 1980 (the Act) to improve its utility to retailers, food service providers, and licenced premises by:

- Increasing the period a person can be trespassed by the occupier to stay off their premises, from the current 24 months to up to five years, decided at the discretion of the occupier.
- Providing retailers, food service providers and occupiers of licenced premises with the ability to trespass a person (by notice in writing where possible) across multiple locations, by removing the requirement for the retailer, food service provider or licensee to have reasonable cause to suspect the person is likely to trespass on each of the named locations.
- Increasing the penalties for the main related trespass offences (refusal to leave when trespassed and breaching a trespass notice) from \$1,000 up to a maximum penalty of \$2,000.
- Increasing the penalty for the offence of refusing to provide a name and place of abode to an occupier or the police from \$500 up to a maximum of \$1,000.

There are non-regulatory proposals to support law change through provision of guidance for retailers on serving trespass notices validly.

## Summary: Problem definition and options

### What is the policy problem?

The key purpose of the Act remains relevant today in recognising the right of a legal occupier of a privately owned place to control who can come into and remain on the property. This

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principle also applies in the retail environment where the public can expect to enter a privately owned retail place, but must leave when directed to do so by the owner or occupier. Following a targeted consultation, primarily with retailers, the MAG provided a report to the Minister of Justice outlining retailers' experience of the Act's application. The MAG confirmed the Act continued to have a critical role in upholding property rights, but that its age and focus on rural environments made its application and enforcement impracticable and ineffective in a modern retail setting. The MAG also reported that the Act and how to apply it effectively is not well understood by retailers. To address these issues, the Minister seeks amendments to the Act that address a lack of utility for retailers in the length and location of trespass notices, and address the perception that trespass does not carry clear consequences for offenders.

The Ministry agrees the Act is not well suited to the current retail environment. However, it considers that it is the difficulty faced by retailers in serving an enforceable notice, rather than a lack of pecuniary consequence and/or length of notice, that impacts on the deterrence value of the Act.

Specifically;

- The Act does not readily allow for the serving of a notice by retailers in a way that meets evidentiary standards for Police prosecution to take place; and
- There are no clear and up-to-date non-regulatory tools to assist retailers to understand why a valid notice is important for enforcement, and the steps to take to serve an enforceable notice.

### **What are the policy objectives?**

The intended outcome of the MAG's recommended changes is to provide a 'self-help' tool for retailers to easily trespass people from returning to places where they are likely to commit retail crime, through the delivery of immediate, and proportionate consequences.

The options assessed in this RIS aim to:

- deliver an effective regulatory and non-regulatory framework for trespass law for retailers.
- measurably support retailers to serve trespass notices in a way that promotes deterrence through a higher likelihood of enforcement action.
- deliver proportionate trespass penalties commensurate with other interference with private property offences,
- maintain safeguards to ensure access to essential services such as food, petrol, and medical services are maintained where relevant.

### **What policy options have been considered, including any alternatives to regulation?**

**The status quo:** The status quo was considered and rejected because retailers report the Act is not fit-for-purpose in the retail environment.

**The Minister's preferred options:** The Minister considered the MAG report and the Ministry's advice on this report. The Minister's preferred options are to increase the trespass period from the current 24 months to any period up to five years at the occupier's discretion, provide a bespoke power for some occupiers to issue one trespass notice applying to multiple locations, and increase the penalties for three key trespass offences.

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The Minister agreed to the Ministry's proposal for the provision of non-regulatory solutions to better assist retailers in serving valid trespass notices via guidance. Guidance could be updated easily to reflect regulatory developments, particularly in relation to live facial recognition technology. It could cover practical aspects of trespassing someone, for example, through using a recording device to assist with identification and prosecution evidentiary requirements.

**The Ministry's preferred options:** The Ministry's preferred options differ from the Minister's preferred option in some areas. These options address the barriers faced by retailers in serving a valid notice. They also recognise that occupiers can trespass a person for any reason provided it is not discriminatory as outlined in the Human Rights Act. People receiving a trespass notice from a private occupier have no legal recourse, other than through a civil court at their expense, to challenge the decision. The options are to ensure protections are in place for access to justice, and to essential services for lengthy single and multi-location trespass notices where viable options for food and other services are not available. Specifically, the Ministry's options are:

- retain the current trespass period of 24 months.
- provide the courts with the discretion, upon a trespass conviction, to issue further trespass orders of up to 24 months from the expiry date of the original notice, and up to 36 months upon conviction of a breach of a court trespass order.
- provide the courts with non-exhaustive factors to consider when issuing further trespass orders including the occupier's view, and access to essential services where trespass periods are longer than 24 months.
- no change to the current penalty for the offence of refusing to provide a name and place of abode to an occupier or Police.

### **What consultation has been undertaken?**

#### MAG consultation

The MAG sought submissions from retailers and industry bodies to identify their concerns about the Act. These submissions were made available to the Ministry. The submissions provided useful insight into the perceptions of how the law currently operates and what contributes to the limitations of the Act. However, in the time provided, there was no ability to test the policy problems directly with submitters, or to seek wider consultation with a greater range of retailers via a discussion document to more accurately understand the details and breadth of any concerns.

#### Agency consultation

Time was also limited for departmental consultation. The Ministry consulted with Police on all options presented by the Minister and the Ministry, and with the Ministry of Social Development in relation to multi-location notices:

#### **Police comment**

Police supports taking a victim-first approach to responding to retail crime. Police has worked closely with the Ministry to seek operationally feasible approaches for frontline Police and prosecutors. Police notes the proposals will add complexity to the policing of trespass breaches and may make it more difficult to respond to and prosecute trespassers. Police continues to highlight the importance of proposals that provide Police with adequate evidence to accurately enforce trespass notices. For example, providing discretion for the period in which a person can be trespassed will be challenging to operationalise. In this instance, Police consider that the Ministry's proposal for a court-supervised trespass period would reduce this complexity and increase the likelihood of successful prosecution.

**Ministry of Social Development (MSD) comment**

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

**Oranga Tamariki**

Children and young people should be excluded from the proposed amendments to the Trespass Act and instead be dealt with under the Oranga Tamariki Act 1989 (The Act). The Act provides a framework specifically designed to respond to child and youth offending, while also addressing developmental needs, prioritising wellbeing and supporting rehabilitation.

**Office of the Privacy Commissioner**

The Privacy Commissioner considers that the proposal to provide a bespoke power to trespass people from multiple locations could have privacy risks, because operationalising the policy will require information to be shared about those affected individuals. As the proposal does not require there to be a reasonable cause to suspect that the person is likely to trespass on all premises included in the notice, without safeguards the Commissioner does not consider this proposal to be necessary, proportionate, or justified.

**Is the preferred option in the Cabinet paper the same as preferred option in the RIS?**

While the Minister's preferred option in the Cabinet paper is different from the Ministry's preferred option in the RIS there are elements that are consistent in both. The key difference is the Minister's preferred option in the Cabinet paper increases the maximum time someone can be trespassed to up to five years, with no legislative safeguards to address the potential significant impact of the decision, especially when considering the implications in combination with a multi-location trespass. The Ministry's preferred option is that longer periods of trespass could be ordered by a court upon conviction of a trespass offence.

**Summary: Minister's preferred option in the Cabinet paper**

**Costs (Core information)**

The Minister's preferred options may incur monetised costs:

**Agencies**

**Police**

- Development of new enforcement procedural guidelines and guidance will be required, and subsequently training for frontline officers, including understanding the interaction between multi-location trespass notices from licenced premises and the regulatory framework for the sale and supply of alcohol.
- Increased complexity associated with the proposals, particularly in relation to discretionary trespass periods, will result in increased proceedings and prosecution costs.

- Police may also have to respond to increased reports of trespass breaches if more retailers use trespass notices. This could potentially create delays in responding to other type of incidents.

#### **Ministry of Social Development**

- Ministry for Social Development will need to put in place new processes, and associated training, for any non-financial sanctions that involve directing a client's benefit to a payment card linked to a specific store or brand of stores.
- A multi-site trespass will put an increased strain on service centres in rural areas where there are few options for registered suppliers.
- Where a client is trespassed from all MSD supplier options available, this could increase the risk of frontline staff having to deal with agitated clients.

#### **Ministry of Justice and the Courts**

- Increased prosecutions are likely to result in increased court time and associated costs.
- Increased maximum penalties for offences may have an impact on court resourcing and timeliness. This also has cost implications for legal aid.

#### **Corrections**

- There may be additional costs and impacts on Corrections resourcing if more people are given custodial sentences.

#### **All government agencies and local authorities**

- All agencies, particularly those with customer-facing premises, will need to put in place new policies to account for longer trespass periods, and policies guiding staff on proportionality of a trespass notice period.

#### **Retailers**

- Retailers may face additional administrative costs associated with multi-location notices, recording the length of each individual trespass period issued, and compliance with the Privacy Act and any relevant codes if sharing trespass information between locations listed on a multi-location notice.

The Minister's preferred options may incur the following non-monetised costs:

#### **Victims of crime (including retail crime)**

- Increased complexity in application of trespass law, in the retail environment particularly, will likely result in a decrease of enforcement and/or successful prosecution.
- Increase in reports of trespass breaches will require balancing with other policing demands, which could potentially create delays in responding to other types of incidents.
- Similarly, an increase in time required to prosecute trespasses, may require trade-offs in prosecutorial decisions, which may impact on prosecuting other offences.

#### **Population costs**

- There will be costs to those trespassed, including those mistakenly trespassed, arising from lengthy trespass periods, and potentially across a number of premises.

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There are costs associated with a person being misidentified and trespassed with no recourse other than possibly taking civil action at their own expense.

- Difficulties in accessing essential services such as food and petrol, particularly in rural areas.
- The proposals are likely to disproportionately affect Māori, who currently make up 53% of adults proceeded against for trespass, and 60 per cent of young people.
- Trespassing a person for up to five years across multiple locations could compound the social and financial issues experienced by different population groups including those who experience hardship or poverty or have mental health and/or addiction needs.
- For children and young people, five-year trespass periods, particularly across multiple locations, will have costs in relation to social participation and access to essential public and private services for a significant period of childhood.
- Caregivers and families may also experience secondary impacts, as trespass notices can create logistical and financial pressures when children are unable to access commercial services independently or as part of family routines. This may contribute to heightened family stress and disrupt caregiving arrangements.
- Pressure on social service pressure will increase where people are unable to access essential services with community providers requiring more resource to cope with this demand.

### **Benefits (Core information)**

#### **Non-monetised benefits**

##### **Retailers:**

The Minister's proposals may;

- increase retailer confidence in the efficacy of the Trespass Act, particularly in the short-term where a trespass notice alone is enough to deter a person from re-entering a store.
- Have a possible deterrent effect, arising from multi-location notices if those trespassed comply with the notice.

##### **Victims of crime (including retail crime)**

The Minister's proposals may reduce victim harm (retailers, workers, and public) if trespass notices are effectively enforced. If enforced, individuals who commit retail crime will be better able to be held to account using appropriate offences. This may result in victims having a better sense that justice has been achieved. Retail theft may decrease if offenders feel they are more likely to be held to account.

### **Balance of benefits and costs (Core information)**

#### **Does the RIS indicate that the benefits of the Minister's preferred option are likely to outweigh the costs?**

The benefits of the Minister's options may outweigh the costs in the short-term due to;

- Retailer confidence arising from a greater number of trespass tools as a means of deterring retail crime.
- Initial deterrence of potential trespass offenders due to increased penalties and the ability to trespass someone from a number of premises.

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In the medium/long term these benefits may be eroded because;

- The options do not address why trespass notices are not currently being enforced.
- The addition of discretionary trespass periods, and a bespoke power specific to some sectors will add a layer of operational and prosecutorial complexity for Police.
- Subsequently, any deterrence effect of increased penalties, length of trespass, or trespass applying to more than one location will wane if there is no increase in prosecutions resulting from these changes.
- People may therefore be more likely to return to premises they have been trespassed from, and continue their unwanted behaviour.

### Implementation

**How will the proposal be implemented, who will implement it, and what are the risks?**

The proposals are expected to come into force six months after enactment [TBC]. The Ministry of Justice, NZ Police, Crown Law Office and the Department of Corrections will be responsible for operationalising the Minister's preferred options. Implementation will be funded out of baseline.

By introducing discretion for up to five years, Police may need to add additional steps to ascertain whether the duration of the notice was reasonable, and the process may take longer.

### Limitations and Constraints on Analysis

The analysis in this regulatory impact statement has been constrained by:

**Time constraints** – The MAG provided its final report with recommendations for amendments to the Act on 7 May 2025. The analysis underpinning the advice to the Minister of Justice and this RIS was developed at pace to enable the Cabinet paper to be considered by Cabinet in late June, in order to introduce a Bill to the House by the end of October.

**Limited scope and options** – Proposals by the MAG presented pre-defined problems and solutions that the Ministry was unable to interrogate further in the time available. This meant accepting the policy problem, as identified by the MAG, and narrowed the scope of feasible options when considering the most effective policy intervention.

**Lack of broader consultation:**

In the time available, the Ministry did not consult outside of government. In particular, officials were unable to engage with the judiciary, defence lawyers, or population groups including Māori, rural communities, and youth and children on the options. Consultation with those groups would have assisted in identifying and addressing any unintended consequences, and understanding any other implementation limitations. Those groups and the public will only have the opportunity to submit on the proposals during the Select Committee process.

Late in the process (late May) the MAG broadened its remit beyond retail to encompass hospitality and food service providers when seeking amendments to the Act. The Ministry has not seen detailed written submissions to support this, nor received written details from MAG outlining the policy problems identified by non-retail businesses or industry bodies.

## Summary: Ministry of Justice's preferred option

### Costs (Core information)

The costs of the Ministry's options are the same as the Minister's options in the Cabinet paper except for the following areas.

*Maintaining a default trespass period of 24 months, with longer periods provided via court order upon conviction*

#### Monetised costs:

##### Ministry of Justice and the Courts:

- The cost of these proposals has not been modelled in detail, however, initial modelling suggests the number of additional court cases is estimated at between 380 and 900 per year.

##### Police

- There are likely to be implementation costs for Police and increased demand on Police operational and prosecution resources associated with prosecution of court trespass orders, due to more enforceable notices being issued by retailers who follow agency guidance on serving effective trespass notices. This could potentially create delays in responding to other type of incidents.

##### Department of Corrections

- There may be additional costs and impacts on Corrections resourcing if more people are given custodial sentences.

*Bespoke power for retailers and food service providers to trespass from multiple locations*

#### Monetised costs:

- Development of new enforcement procedural guidelines and guidance will be required, and subsequently training for frontline officers, in the enforcement of multi-location notices issued by a smaller group of retailers and food service providers.
- A smaller group of retailers may face additional administrative costs associated with multi-location notices, recording the length of each individual trespass period issued, and compliance with the Privacy Act and any relevant codes if sharing trespass information between locations listed on a multi-location notice.

### Benefits (Core information)

**Outline the key monetised and non-monetised benefits, where those benefits fall (e.g. what people or organisations, or environments), and the nature of those impacts (e.g. direct or indirect)**

The benefits of the Ministry's options are the same as the Minister's options in the Cabinet paper except for the following areas.

Together with agency-issued non-regulatory guidelines for retailers on how to issue more effective trespass notices, the following Ministry options will provide the following benefits:

*Maintaining a default trespass period of 24 months, with longer periods provided via court upon conviction*

**Monetised benefits**

**Police**

- Uniformity of a default 24-month notice periods will provide a clearer regime for Police, lessening the cost associated with complex proceedings ahead of any prosecution decisions. The status quo on a fixed 24 month notice period provides more certainty for Police enforcement.

**Government agencies**

- No need to find new resource for training, guidelines and policies for a new trespass regime.

**Victims of crime (including retail crime)**

- Reduced social and property harm from retail crime due to increased convictions from court trespass orders, and from more enforceable notices being issued by retailers who follow future agency guidance on how to serve more effective trespass notices.
- Greater deterrence (and therefore avoidance of harm) arising from potential offenders seeing increased prosecutions, resulting in decreased incident of harm in the retail environment to retailers, staff and customers.

**Non-monetised benefits**

**Population**

- Court oversight of notices longer than two years will provide safeguards to;
  - Those living in rural areas with limited access to alternative services.
  - Those with mental health, poverty or additions challenges.
  - Those using MSD payment cards to access essential services from specific providers.

*Bespoke power for retailers and food service providers to trespass from multiple locations*

This option still provides a broad definition, which making it easier for Police to establish the occupier’s right to use the multi-location provision. By excluding licensed premises, the option does not bring another exclusion regime into the existing regime provided by the Sale and Supply of Alcohol Act.

**Balance of benefits and costs (Core information)**

**Does the RIS indicate that the benefits of the Ministry’s preferred option are likely to outweigh the costs?**

The benefits of this option outweighs the costs in the medium longer-term as this approach provides longer term deterrence through;

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- Greater enforcement action arising from breaches of court orders.
- Clearer understanding from those trespassed both the length of time and the premises from they are trespassed, providing a greater likelihood of compliance.
- Greater operational clarity.
- Safeguards access to essential services for those living rurally, as well as vulnerable adults.
- Greater consequences for recidivist trespass offenders.

**Implementation**

**How will the proposal be implemented, who will implement it, and what are the risks?**

The proposals are expected to come into force six months after enactment [TBC]. The Ministry of Justice, NZ Police, Crown Law Office and the Department of Corrections will be responsible for operationalising the Minister’s preferred options. Implementation will be funded out of baseline.

**Limitations and Constraints on Analysis**

Limitations and constraints on analysis are the same as under the Minister’s preferred option above.

**I have read the Regulatory Impact Statement and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the preferred option.**

**Responsible Manager(s) signature:**



**Kathy Brightwell**

**General Manager, Civil and Constitutional**

**18 June 2025**

### Quality Assurance Statement

**Reviewing Agency:** Ministry of Justice

**QA rating:** Partially meets.

Panel Comment: The Ministry of Justice’s Regulatory Impact Assessment Quality Assurance Panel (QA Panel) has reviewed the *Regulatory Impact Statement: Trespass Amendment Bill* prepared by the Ministry of Justice. The QA Panel considers that the RIS partially meets the Quality Assurance criteria.

Time constraints and specific commissioning have limited the Ministry’s ability to interrogate the policy problem as identified by the MAG, and fully develop and assess a wider range of options for addressing it. The time constraints have also prevented the Ministry from fully testing the options outside of government with a wide range of stakeholders and those who would be affected by the proposals. As the RIS notes, this would have assisted in identifying and addressing any unintended consequences, and understanding any other implementation limitations.

Nevertheless, within the scope and timing in which officials were directed to develop the policy proposals, the Panel considers the analysis contained in the RIS is robust, and sufficient to enable Cabinet to make informed decisions on the proposals. The RIS outlines the benefits, costs and risks of the various options appropriately.

## Section 1: Diagnosing the policy problem

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### What is the context behind the policy problem and how is the status quo expected to develop?

1. In July 2024, the Government announced the establishment of a Ministerial Advisory Group for the victims of retail crime (the MAG), as part of its plan to restore law and order. The MAG was tasked with engaging directly with victims, workers, business owners, retail experts and advocacy groups to provide the Government specific proposals to address urgent challenges in retail crime.
2. The MAG identified modernisation of the Trespass Act as a key initiative to addressing retail crime, alongside the other legislative amendments including citizen's arrest powers and greater consequences for shoplifting in the upcoming Crimes Amendment Bill [CAB-25-MIN-0041 refers].

### The status quo with respect to criminal trespass

3. The fundamental principle at the heart of the Act is the primacy of an exclusive right to the use of land. The Act provides an occupier with the ability to exclude anyone they wish from entering into, or remaining on, their land. They do not have to have a reason to do so.
4. The universality of the Act in terms of most types of land means that its provision includes retail spaces which are privately owned, but into which the public has an expectation to enter (implied licence), for example, a shop. The only relevant limitation for retailers is a prohibition on discriminating against a person in providing goods or services under the Human Rights Act 1993.
5. The Act provides an occupier with the right to direct a person to leave their premises, and the right to warn a person not to return to those premises on any non-discriminatory ground for 24 months by way of a trespass notice. A trespass notice can be given in either verbal or written form. Being served a notice in itself is *not* an offence. The serving of a trespass notice, regardless of its length, is only the first step. A notice is only breached when a person knowingly comes back to the place they are trespassed from. At this point the person is allegedly committing a criminal offence under the Act.
6. The Act provides two key offences and penalties if a person refuses to leave, or comes back, after having been trespassed. After being asked to leave, it is a criminal offence to remain. On conviction, this is punishable by a maximum fine of \$1,000 or imprisonment of up to three months. It is a criminal offence to return to the premises within two years of getting a trespass notice. This offence is also punishable on conviction by a maximum fine of \$1,000 or imprisonment of up to three months.
7. There is no age limit on who can be served a trespass notice. Children and young people can be served a notice by an occupier.

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8. Because breaching a trespass notice is a criminal offence, a trespassed person can only be convicted when Police take enforcement action and take the case to court. Police can only do so if they are satisfied that the evidence will prove beyond reasonable doubt that the person has knowingly breached their trespass notice.
9. The critical point is often whether the notice was properly served in the first place. This is because a person cannot be found guilty of trespass unless the court is satisfied that:
  - a. The person knew they were trespassed and that the notice was communicated to them such that it was reasonable to expect the person understood it.
  - b. The person knew from which premises they were trespassed and for how long.
  - c. The identity of the person accused of trespass is the same as the person on the trespass notice.
  - d. The retailer has the legal authority (as the owner or occupier of the premises) to issue the notice.
10. The serving of a notice in a way that covers the above is the critical component for enforcement, and subsequently for conviction and therefore deterrence for future or repeat trespass offences.

### **How the status quo may develop if no action is taken**

11. The Trespass Act 1980 is over 40 years old and primarily concerned with farm trespassers. The legislation specifically addresses disturbance of animals, gates, traps, and firearms. The case law is concerned with either known individuals making a nuisance of themselves to acquaintances on private land, or protestors in public spaces such as in courthouses and squares, where there must be reasonable grounds for officials to order them to leave.
12. Following a targeted consultation period primarily with retailers, the MAG confirmed the Act continued to have a critical role in upholding property rights, but that its age and focus on rural environments made its application and enforcement impracticable and ineffective in a modern retail setting.

### *The Act does not support the serving of enforceable notices in a retail environment*

13. A major block in the serving of valid notices identified by the MAG in its 7 May 2025 report to the Minister stems from a lack of workable application of the Act in the retail environment. The MAG argues that the following are key blocks to the Act providing an effective tool in excluding individuals, particularly those who commit retail offences, such as theft:
  - a. The current two-year notice period is overly restrictive in that there is no ability to trespass a person for longer or shorter periods of time to match the seriousness of the behaviour of the person while trespassing (e.g. shoplifting versus assault of staff).

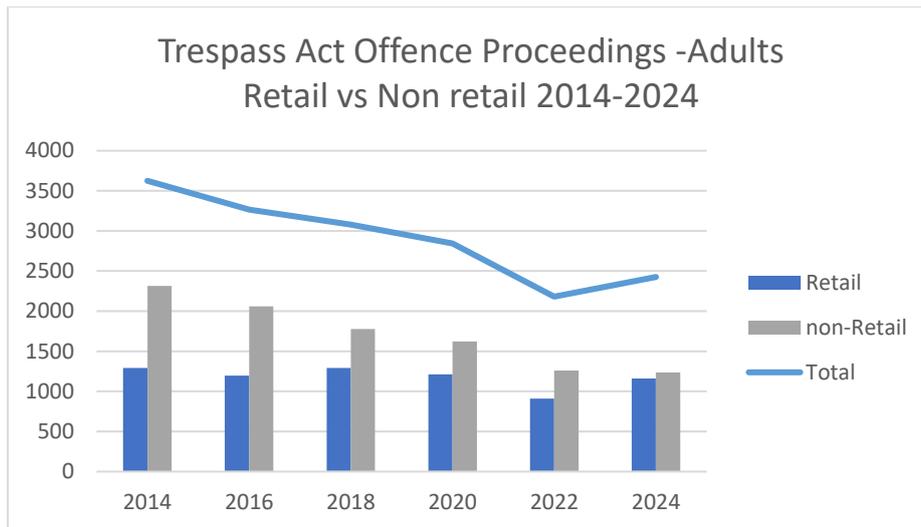
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- b. While the Act supports a verbal serving of a trespass, challenges arise when Police cannot enforce the notice due to a lack of identifying information, along with clear evidence that the person trespassed has been effectively warned about the scope of the trespass (e.g. locations and duration).
- c. The Act does not account for a situation which is common in the retail space where individuals avoid being served by leaving before the written warning can be prepared, by refusing to provide a name, providing false or incomplete information, or by threatening the occupier so that they cannot safely serve the notice.
- d. The Act is prescriptive about the specific place to which a trespass notice can apply, noting that a person can only be trespassed pre-emptively from more than one place if the retailer has reasonable cause to suspect the individual is likely to go to each of those places. Retailers say this results in people just moving on to another premises if trespassed from one.
- e. The penalties in the Act remain the same as they were at the time of enactment, with retailers suggesting that they are now too low to act as real deterrents.
- f. The MAG suggests that as a result, people feel they are able to enter stores and engage in criminal behaviour such as theft, with the knowledge that they can subvert any attempt to be served a trespass notice, or that a trespass notice will not be enforced. This results in their ability to return to a retail place with impunity to continue criminal behaviour. A holder of a notice can undermine the effectiveness of the notice by simply going to another retail place and repeating unwanted behaviour there.

*Data shows that while overall Police proceedings for trespass have declined since 2014, the decline was only 10 per cent for trespass in retail locations*

14. Ministry data shows that overall, there has been a decrease in Police proceedings of trespass offences. The number of adults proceeded against by Police for trespass, whether as the lead or secondary offence, decreased by 37 per cent from 2014 to 2024 (from 2,940 to 1,843). There were similar reductions in the total number of Police proceedings for trespass from 2014 to 2024.
15. More recently, proceedings for trespass in the retail environment increased slightly between 2022-2024 (see Figure 1 below).

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16. Despite this increase, Police confirm that the Act is not understood well by the general public. Without better guidance for retailers, the issues typically resulting in a lack of enforcement action, such as no identifying information and the accurate recording of when, against whom, and under whose delegated authority trespass notices have been served will continue to make it difficult to prosecute trespass offences. Police also add that an additional issue is that retailers themselves can be reluctant to make a statement or attend court even if prosecution is attempted.

### **What is the policy problem or opportunity?**

17. New Zealand has seen an exponential growth in retail crime over the past five years, with an 86 per cent increase in retail crime of all types. Around 230,000 New Zealanders work in the retail sector, with increasing numbers experiencing the personal and economic impacts of violent and theft-related crimes. In its submission to the MAG, Woolworths reported the financial impact of retail crime in the 2024 financial year, with the total theft-related loss amounting to nearly \$50 million. It added that if one totalled the value of this community harm - physical and mental health costs, lost productivity, economic stock losses, an increasing security spend - it would amount to hundreds of millions of dollars per year.
18. In considering how to address this increase in retail crime, the MAG identified the Trespass Act as a critical tool through its key purpose – providing the right of a legal occupier of a privately owned place to control who can come into and remain on the property. This principle also applies in the retail environment where the public can expect to enter a privately owned retail place, but must leave when directed to do so by the owner or occupier. Following a targeted consultation period, primarily with retailers, the MAG confirmed the Act continued to have value in recognising property rights, but that its age and focus on rural environments made its application and enforcement impracticable and ineffective in a modern retail setting.
19. To address this, based on recommendations of the MAG, the Minister has identified an opportunity to amend the Act to provide better utility for retailers. This includes through granting more autonomy in deciding how long someone can be trespassed and from which locations, and to address the perception that trespass does not carry clear

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consequences for offenders by increasing penalties.

20. The Ministry agrees the Act is not well suited to the current retail environment. However, it considers the key policy problem is the difficulty faced by retailers in serving an enforceable notice, rather than a lack of pecuniary consequence and/or length of the trespass, that impacts on the deterrence value of the Act.

### **What objectives are sought in relation to the policy problem?**

21. The Minister's and Ministry's objectives are to provide better utility for retailers in exercising their property rights through the Act by deterring potential trespass offenders through;
- a. The provision of more effective trespass processes that quantifiably reduce crime and harm in the retail environment;
  - b. Increased trespass offence penalties;
  - c. Non-regulatory support for retailers to promote effective serving of trespass notices;
  - d.
22. The following competing Ministry objectives will require trade-offs;
- a. Maintenance of property rights and avoidance of disproportionate impact on trespassed individuals;
  - b. Retailer autonomy in serving trespass notices and the requirement for evidentiary sufficiency for prosecution and conviction of trespass offences.

### **What consultation has been undertaken?**

23. The MAG consulted with a range of retail stakeholders when developing its policy proposals. The Ministry has received a summary of this feedback, as well as the written submissions to the MAG. This provided useful insight into the perceptions of how the law currently operates and what contributes to the limitations of the Act in empowering retailers to exclude people from their property, and deter trespass offending.
24. As far as possible given the timeframes, Police feedback has informed the advice in this RIA, together with MSD on the multi-location option. The Ministry used the MAG's proposals as the basis for developing a refined set of proposals, aimed at achieving the intended clarity for retailers, but with minimal legislative complexity and a lower risk of unintended consequences. With more time, the Ministry would have directly engaged with stakeholders from the retail, food services, and hospitality sectors, verifying and interrogating further the problem as identified by the MAG, and would have sought more comprehensive feedback from agencies in the formulation of options.
25. Departmental consultation: The following agencies [are being] consulted: Crown Law Office, Department of Corrections, Ministry of Social Development, Ministry of Disabled People, Ministry for Business, Innovation and Employment, New Zealand Police, Office of the Privacy Commissioner, Ministry for Women, Te Puni Kōkiri, Ministry for Pacific Peoples, Treasury, Ministry of Health, Ministry for Regulation, Te Puna Aonui, Department of Internal Affairs, Ministry for Ethnic Communities, and Oranga Tamariki.

## Section 2: Assessing options to address the policy problem

### What criteria will be used to compare options to the status quo?

26. The following criteria will be used to compare the options to the status quo:

Criteria	Description
<b>Certainty of the law</b>	<ul style="list-style-type: none"> <li>To what extent is the law clearer for the public and potential offenders?</li> <li>To what extent is the law enforceable by Police?</li> <li>How certain are the consequences of the offending?</li> </ul>
<b>Effectiveness</b>	<ul style="list-style-type: none"> <li>Does the option respond to the policy problem?</li> <li>How well does the option protect public safety?</li> </ul>
<b>Consistency</b>	<ul style="list-style-type: none"> <li>Is the option consistent with criminal justice principles? Namely, presumption of innocence, the independence of the judiciary, an effective and efficient justice system, and proportionate and accountable law enforcement.</li> <li>Is the option consistent with relevant legislative frameworks?</li> <li>How consistent is the option with our domestic law and the Crimes Act 1961 (Crimes Act) and Summary Offences Act 1981 (Summary Offences Act)?</li> <li>Are there any inconsistencies with the New Zealand Bill of Rights Act 1990 and if there are limitations on any rights and freedoms, are they justified- particularly the right to freedom of movement?</li> </ul>
<b>Feasibility</b>	<ul style="list-style-type: none"> <li>Is the option cost effective and achievable within current baseline?</li> <li>Are there any operational challenges to implementation?</li> </ul>

### What scope will options be considered within?

27. The Ministry has had very limited timeframes to develop policy options. The scope within which policy options could be developed has restricted the range of feasible

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options which can be considered. Options that were ruled out at an early stage are outlined in each relevant Part description below.

28. The Ministry advises that a review of the entire Act would be more effective so that all options could be considered against the Act's universal applicability to private and public property. However, this would require widespread consultation and could not feasibly be developed and considered in the available timeframes.
29. Comparable jurisdictions have been investigated, namely the United Kingdom, Australia, and Canada.

### **What options are being considered?**

#### ***Issue 1: Period someone can be trespassed***

##### Option One – Status quo

30. Option One is the status quo. Currently the default length of a trespass notice is two years. When issuing a trespass notice, the notice is automatically for a period of 24 months. An occupier can, however, revoke a notice at any time within the default period.
31. The period of two years is an international outlier, as most comparable jurisdictions have a maximum trespass period of one year. The status quo does not preclude multiple location notices. The Act is clear however, that occupiers must be satisfied that the trespassed person intends to visit each place listed in the notice.<sup>1</sup>

##### Option Two – Increase the period someone can be trespassed to five years (Minister's preferred option)

32. Option Two is the Minister's option. Option Two would increase the maximum period someone could be trespassed from the current two years to 'up to five years' at the retailers' discretion in recognition of a property owners' right to exclude individuals indefinitely for non-discriminatory reasons. This option brings in occupier discretion as to the length of the notice at serving.
33. Providing a greater range of timeframes for trespass notices allows a retailer discretion in matching consequences to behaviour. The MAG suggests that retailers would use discretion in applying a time period, with less threatening individuals receiving notices for shorter time periods.

##### Option Three – Maintain the maximum length of trespass at 24 months and provide court oversight for any period longer than 24 months (Ministry's preferred option)

34. Option Three is the Ministry's preferred option. Option Three would maintain the current 24-month maximum trespass period but also provide courts with;

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<sup>1</sup> Section 4(2).

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- a. a discretion, upon conviction, to issue a further trespass order of up to 24-months from the expiry date of the original notice;
  - b. a discretionary option, upon conviction for breach of a court trespass order, to issue a further court order of up to 36-months; and
  - c. non-exhaustive factors for the courts to consider when issuing further trespass orders including the occupier's view, and access to essential services where trespass periods are longer than 24 months.
35. We note that the Act currently allows occupiers to revoke a notice at any time however, this is not well-understood or applied by occupiers. This option maintains the 24-month default period and occupier ability to revoke any time within this. Clarity on this point would be provided through agency-issued (non-regulatory) guidance.

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**How do the options compare to the status quo/counterfactual?**

	<b>Option One – [Status Quo / Counterfactual]</b>	<b>Option Two – Five-year maximum trespass period</b>	<b>Option Three - 24-month maximum trespass period with court oversight for longer periods</b>
<b>Certainty of law</b>	0	- <p>There are likely to be significant variations across businesses, private residences, and locations based on the occupier’s discretion.</p> <p>Wide variations in potential periods mean that the law could be less clear for the public and potential offenders.</p> <p>Police do not support the introduction of trespass notices with varied lengths, particularly where these are discretionary. It would create operational and enforcement complexity for enforcement action by Police due to a lack of consistency of approach across occupiers, and having to ascertain whether the period of the notice was made clear to the individual served.</p> <p>Police would be required to assess the reasonableness of the trespass period when determining whether to prosecute, making prosecutions more difficult.</p> <p>Variability would add to Police’s existing processes when deciding whether to enforce a trespass notice.</p>	+ <p>The status quo will provide a unitary 24 month period (unless actively revoked by the occupier), which provides clarity for Police and is more likely to support enforcement action.</p> <p>Court issued trespass orders would provide significant certainty for all the impacted groups.</p> <p>An order would be more likely to result in enforcement action due to a) greater level of criminality associated with breaching a court order, b) clear evidential sufficiency as premises, time, date and identity would be confirmed by the Court.</p>
<b>Effectiveness</b>	0	- <p>The discretionary option would be less effective compared to the status quo because longer trespass periods do not address the core policy</p>	+ <p>A court order approach for longer trespass periods would more likely result in enforcement action due to evidentiary sufficiency being met. This would in</p>

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		<p>problem as identified by the Ministry – the lack of enforceability of an incorrectly served trespass notice.</p>	<p>turn more likely provide a deterrent effect for potential or recidivist trespass offenders.</p> <p>The cumulative effect of a court trespass order when added to a previous notice or, particularly when an earlier court trespass order is breached, could result in a maximum five-year trespass period, as sought by the MAG.</p> <p>The Ministry understands that the current ability of courts to trespass a person is not utilised, therefore the effectiveness of this option would depend on the court’s willingness to use it.</p>
<p><b>Consistency</b></p>		<p align="center">--</p> <p>As the Act does not provide an appeal process against notices issued by private occupiers, extending the period to five years would have an even greater impact on an individual’s access to justice if wrongly identified than the status quo.</p> <p>Similarly, the impact, particularly in rural areas or small towns on an individual’s access to essential services could be significant, noting the lack of alternative services for supermarkets and pharmacies in particular.</p> <p>Police note that frequent trespassers are often trespassed from multiple locations and it is not uncommon that they have cognitive conditions that impair their abilities to remember and fulfil their obligations.</p>	<p align="center">+</p> <p>This approach would provide courts with discretionary oversight, upon conviction, to ensure;</p> <ul style="list-style-type: none"> <li>• the views of the occupier in relation to a suitable order period would be considered.</li> <li>• visibility of access to essential services concerns (if raised by the convicted person at sentencing).</li> </ul> <p>This option would not remove the ability for an occupier to roll over a 24 month trespass notice (even if the court declined to issue a court ordered trespass).</p>

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<p><b>Feasibility</b></p>	<p>0</p>	<p align="center"><b>0</b></p> <p>Retailers will need to record accurately the time period for someone to be trespassed, and under what circumstances.</p> <p>May result in more cost in Police attendance to trespass call outs for potential breaches for multi-location notices.</p>	<p align="center">+</p> <p>This option would represent increased cost in terms of court hearings, but this is unavoidable if greater enforcement action, leading to a greater number of convictions, is a method of ensuring deterrence of future and recidivist trespass offenders. Compared to the status quo of trespass cases heard by District Courts in 2024, the number of additional court cases is estimated at between 380 with a 25% increase in numbers charged, and 900 with a 100% increase in numbers charged.</p>
<p><b>Overall assessment</b></p>	<p>0</p>	<p align="center">-</p>	<p align="center">+</p>

***Issue 2: Trespassing someone from multiple locations***

Option One: Status quo

36. Option One is the status quo. The Act currently allows for multiple location trespass under section 4(2) of the Act. However, the courts have considered this generally lawful only if the person issuing the notice has delegated authority of all the premises identified **and** had reasonable cause to suspect that the person is likely to trespass on each and every place listed.

Option Two: Retailers, food service providers and licensed premises can trespass someone from multiple locations by way of a written trespass notices, where reasonable (Minister's preferred option)

37. Option Two would provide retailers, food service providers and licenced premises with a bespoke power to trespass someone from multiple locations for up to five years by not requiring the 'reasonable cause to suspect' test in section 4(2). This provision would apply to the following occupiers:
- a. Retailers, businesses whose purpose is to sell finished goods to the public.
  - b. Cafes, restaurants and takeaway food services engaged in providing food and beverage serving services for consumption on the premises.
  - c. Takeaways and fast-food restaurants engaged in providing food services ready to be taken away for immediate consumption. This definition would also include businesses mainly engaged in supplying food services in food halls and food courts.
  - d. Hotels, bars or similar businesses engaged in serving alcoholic beverages for consumption on the premises, or selling alcoholic beverages both for consumption on and off the premises. These businesses may also provide food services, gambling services and/or present live entertainment.
  - e. Associations engaged in providing hospitality services to members. These hospitality services include gambling, sporting or other social or entertainment facilities.
38. The notification of the trespass would need to be in writing, where reasonable. The circumstances where it was unreasonable to issue a written notice are not further defined and, if enforcement was being considered, would require all the circumstances of the case to be taken into account. Without a definition of reasonable, it is likely that eligible occupiers will resort to verbal multi-location notices, which are less likely to be enforceable unless Police were satisfied that the trespassed person knew they had been served with a notice, and was clear which premises were involved.
39. Under this option, for those without the bespoke power, multi-location notices can still be served but must meet the section 4(2) test.

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### Option Three: Retailers and food service providers only can trespass someone from multiple locations by way of a written trespass notice only (Ministry's preferred option)

40. Option Three would provide retailers and food service providers ONLY with a bespoke power to trespass someone from multiple locations for up to five years by excluding them from having to apply section 4(2). This option responds to a lack of evidence of a policy problem in trespass law used in licenced premises, and the lack of time available to better analyse the interaction between other legislation regulating licenced premises and any amendments to the Trespass Act.
41. The option would require trespass to be notified only through a written notice. This is to provide the necessary certainty that the sufficient authority from all the occupiers of the named premises has been obtained, and the person knows the length of the trespass period and the locations from which they are trespassed. This supports the enforceability of the trespass notice.

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**How do the options compare to the status quo/counterfactual?**

	<b>Option One – [Status Quo / Counterfactual]</b>	<b>Option Two – A bespoke power for retailers, food service providers and licensed premises to trespass from multiple locations, by notice in writing where reasonable (Minister’s option)</b>	<b>Option Three - A bespoke power for retailers and food service providers ONLY to trespass from multiple locations, by notice in writing (Ministry’s option)</b>
<b>Certainty of law</b>	0 .	+  This option may result in enforceable action but only where Police are able to assess whether an occupier had authority to serve a multi-location notice, and whether the notice was served in a way that the person served understood which stores they were trespassed from and for how long (in the case of an ‘up to five-year’ period applying).  This option presents an added layer of complication for licenced premises as it is unclear and untested how this new bespoke power would work alongside duty manager’s responsibilities in relation to powers afforded to them by the Sale and Supply of Alcohol Act 2012.	+  This option still provides a broad definition which may make it easier for Police to establish the occupier’s right to use the multi-location provision, but does not bring another exclusion regime into an existing regime already provided by the Sale and Supply of Alcohol Act.  This option also reflects that the Ministry has not received any detailed reporting from the MAG on licenced premises’ experiences of the Trespass Act.
<b>Effectiveness</b>	0	+	+

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		<p>This option requires a degree of governance and agreement between occupiers as it would require occupiers to have delegated authority arrangements in place that are clearly recorded. Smaller, single premises businesses may be less likely to band together with other single premise businesses to issue multi-location notices because of the time required and possible complexity in putting in place the delegated authority arrangements needed to serve enforceable multi-location notices.</p> <p>Operationally Police would have to assess whether the issuer of a multi-location notice met the definition of a retail, food service, or licence premises to ascertain the enforceability of the notice. The definition will therefore need to unambiguous for this option to be fully effective.</p> <p>Police would also have to assess whether the circumstances meant it was unreasonable to serve a written trespass notice</p>	<p>Same as Option Two, except that only a notification in writing would be the only lawful way to trespass a person from multiple locations, helping to ensure it was enforceable</p>
<p><b>Consistency</b></p>	<p align="center">0</p>	<p align="center">--</p> <p>As the Act does not provide an appeal process against trespass notices, provision of a five-year multi-location notice, either regionally or nationally, with no complaint process, would have an even greater impact on an individual's access to justice if wrongly identified than under the status quo. This is particularly the case in rural</p>	<p align="center">-</p> <p>Same as Option Two but with less impact on access to essential services and natural justice due to the smaller category of premises that could be included in a multi-location notice.</p>

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		areas or small towns where an individual's access to essential services could be significant.	
<b>Feasibility</b>	0	<p align="center">-</p> <p>Greater compliance cost for licenced premises who already have compliance costs associated with existing powers for exclusion of patrons.</p> <p>Possibly greater compliance cost for an owner/occupier's single premise business or smaller multi-premise businesses who may have to ensure governance/contractual arrangements are in place to give delegated authority between business/premises.</p>	-
<b>Overall assessment</b>	0	-	+

***Issue 3: Increase penalties for the existing offences***

Option One – Status quo

42. Option One is the status quo. Sections 3 (failure to leave when directed to do so) and 4 (breaching a trespass notice) offences both have penalties of a maximum fine of \$1,000 and a maximum term of imprisonment of 3 months on conviction. A section 9 offence (refusal to give a correct name or address to an occupier or constable) has a penalty not exceeding \$500 on conviction.

Option Two – Increase in penalties (Minister's preferred option)

43. Option Two provides for an increase in sections 3 and 4 penalties to \$2,000 and retains the current 3-month maximum term of imprisonment on conviction. This option also provides for an increase in section 9 penalty to a maximum fine of \$1,000 on conviction.

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	<b>Option One – [Status Quo / Counterfactual]</b>	<b>Option Two – Increase in Section 3, 4 and 9 penalties (Minister’s option)</b>
<b>Certainty of law</b>	0	<p align="center">+</p> <p>Raising section 3 and 4 offence penalties aligns well with other property related offences of a similar magnitude in the Summary Offences Act.</p> <p>However, raising the section 9 penalty to \$1000 for failure to provide name or address to a private person makes what is already an anomalous penalty, even more so. Most members of the public would not expect that not giving private information to another private person is a criminal offence.</p>
<b>Effectiveness</b>	0	<p align="center">+</p> <p>This option addresses the need to update the Act’s penalties regime in relation to section 3 and 4 offences, noting this regime has not been amended since 1980.</p>
<b>Consistency</b>	0	<p align="center">+</p> <p>The option for raising section 3 and 4 penalties aligns with property interference penalties in the Summary Act.</p>

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		- Increasing the penalty for a section 9 offence will reinforce what is already an anomalous power for a private person that is usually only provided to Police. Police already have the power to gather information from offenders or suspected offenders by virtue of the Policing Act. Increasing the maximum fine to \$1,000 could further confuse the distinction between law enforcement and private individuals.
<b>Feasibility</b>	0	0
<b>Overall assessment</b>	0	+

**What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?**

***Issue 1: Length of trespass period***

*Increasing the length of the trespass period to up to five years will not improve its enforceability*

44. The Ministry of Justice's analysis shows that Option Three, retaining a 24-month occupier-issued trespass period with court oversight for longer periods, is the preferred option.
45. Being served a notice is not in itself an offence. The serving of a trespass notice is only the first step, and the person receiving a notice is not an offender at that point, regardless of the length of the notice. An offence only occurs when a person who has received a trespass notice knowingly comes back to the place they are trespassed from. While a retailer can trespass someone for any length of time as outlined in the Minister's option, practically they cannot enforce this without the involvement of Police, unless the retailer decides to pursue a civil case. Police will only take a prosecution if they are satisfied that the evidence will prove beyond reasonable doubt that a person has knowingly breached their trespass notice. This will not change regardless of the length of the notice
46. Therefore, the critical point for Police and the courts is not solely whether the person has returned within the trespass period, but whether the notice was properly served in the first place. This is because Police and courts must ascertain whether the offence of trespass actually took place, just like any other criminal offence. To do this, Police and courts must be satisfied that:
  - a. The person knew they were trespassed and that the notice was communicated to them such that it was reasonable to expect the person understood it.
  - b. The person knew from which premises they were trespassed – particularly the case for multi-location notices.
  - c. The identity of the person accused of trespass is the same as the person on the trespass notice.
  - d. That the retailer has the legal authority (as the owner or occupier of the premises) to issue the notice.

*Discretion will reduce enforceability*

47. Police consider the introduction of discretionary trespass periods will reduce enforceability because Constables will need to ascertain whether the duration was reasonable in the first place. Currently, the status quo provides for a default 24 month notice upon issue, which can be revoked by the occupier at any time within those 24 months. The Minister's option brings in occupier discretion as to the length of the trespass when serving a notice. When determining whether to enforce a trespass notice, the reasonableness of the duration imposed by the retailer will impact the likelihood of a successful prosecution.

### *Significant impacts on access to essential services*

48. The Ministry also considers that a five-year trespass period (Option Two) has significant social implications. There are no appeal pathways for trespass notices. The impact on an individual if wrongly identified by the occupier, or on a person's ability to access essential services, is therefore significant, with no recourse for complaint or reconsideration.
49. New Zealand has a duopoly in the supermarket sector, with choices further limited in smaller towns and rurally. A five-year multi-location notice, particularly a multi-location notice applicable across a whole region, or the country, could mean a person is effectively unable to access any supermarket for that whole period with no appeal.
50. Although it could be suggested that this situation could be mitigated by online shopping or someone shopping on behalf of the trespassed person, these options are not available to everyone.
51. Finally, if there is no alternative way to buy food and other essential goods for five years, it is likely to be difficult for the served person to avoid re-offending. This would undo any deterrence effect of the proposal.
52. The Ministry's option maintains the current 24-month occupier-issued trespass period as the maximum length a notice can be issued by an occupier but:
  - a. Make clear in section 4(3) that the court can provide, at its discretion, a civil order at sentencing via a court trespass order for up to 24-months, dated from the expiry of the original trespass notice. This could effectively provide a maximum four-year court trespass order. The views of the occupier in relation to a suitable order period could be considered, as well as, where relevant, any concerns about access to services.
  - b. Make clear in section 4(4) that breaching a court trespass order would be an offence and that upon conviction, an offender could receive an additional civil trespass order of up to 36 months, starting from the expiry date of the initial court trespass order. As above, the views of the occupier in relation to a suitable order period could be considered, as well as, where relevant, any concerns about access to services.
53. The cumulative effect of a court trespass order when added to a previous notice or, particularly when an earlier court trespass order is breached, could result in a maximum seven-year trespass period, which is longer than that sought by the MAG (Option Two, five-year period).

### *International comparison*

54. New Zealand's current 24-month trespass period is already an outlier in relation to the length of a trespass when assessed against comparable jurisdictions. Most jurisdictions analysed have a maximum or default exclusion period of 12 months. Those

with longer periods are usually associated with specific places, such as agricultural or industrial sites.

## ***Issue 2: Multi-location trespass***

55. The Ministry of Justice's analysis shows that Option Three (excluding licenced premises) is the preferred option. However, both Options Two and Three present complexities from an enforcement point of view. Both options would require police officers to assess whether the occupier was eligible to trespass someone from multiple locations, and serve a multi-location notice. This would include assessing whether the occupier of the relevant business falls into any of the definitions that will be provided by the Act.
56. From a workability point of view, Options Two and Three require individual businesses to have delegated authority arrangements in place in advance, to give authority for an occupier to act on behalf of another. As a hypothetical example, a clause could be included in a franchise contract that says that in signing on to the franchise, the franchisee gives their delegated authority to the franchise owner, or other franchisees, to trespass someone from that franchisee's store. The Ministry advises that smaller, single premises businesses are unlikely to avail themselves of multi-location notices because the time required to put in place the governance and paperwork to serve enforceable notices may outweigh any benefits.
57. Options Two and Three present a risk of criticism by any occupier not covered by the definitions that may have multiple locations and experience similar issues with crime and trespass to retailers. This may include other businesses with street facing premises such as banks and medical centres. Submissions may be received at select committee on this issue.
58. The Ministry considers that Option Three is the preferred option, in the absence of detailed information from the hospitality sector. Licenced premises have their own regulatory framework already, the Sale and Supply of Alcohol Act 2012 which allows them to exclude patrons. It is unclear a) whether a multi-location notice is useful, and b) how such a provision would interact with other powers of a duty manager.
59. Under Option Three, occupiers of licenced premises would still have trespass from their own premises available to them, or could use section 4(2) (which allows multi-location trespass provided the occupier has reasonable cause to suspect the person is likely to trespass on that place). Finally, the submissions provided to the Ministry by the MAG overwhelmingly represent retailers. We have not heard in any detail from the hospitality sector so lack understanding on what issues they face in relation to the Act, including how it intersects with other legislation that covers patron access in this sector.
60. Finally, from an enforceability perspective, Option 3 requires that multiple location trespass must be communicated through a written notice. Option 2 would require a written notice only where reasonable. The Ministry considers this opens the door to too much uncertainty.

### **Issue 3: Raising key trespass offence penalties (sections 3, 4 and 9)**

61. The Ministry of Justice's analysis shows that Option Two, raising the monetary penalties associated with these offences, is the preferred option. However, we note that the current section 9 offence, as drafted in 1989, provides private citizens with an anomalous power.
62. The Ministry agreed with the MAG's argument that the penalties in the Act had not been changed since its enactment in 1980. However, in assessing any increase, the Ministry considered options against a hierarchy of offences. The offence of trespass relates to revisiting a premises that an individual has been banned from or refusing to leave a premises having been trespassed, rather than any of the additional behaviour that occurs while the offender has returned to the premise. Any other offending while trespassing, including serious offences such as assault or theft, are covered by the Crimes Act or Summary Offences Act.
63. In our review of the Act's penalties, we considered and compared breaching a trespass with other property related offences of a similar magnitude. We considered violent offences directed against the person or the conversion of expensive goods to be more serious than the breach of a trespass notice.
64. We consider trespass to be commensurate with some offences related to interference with private property rights in the Summary Offences Act. This includes disorderly behaviour by three people on private premises (section 5), willful damage to property (section 11), or being found on property without reasonable excuse (section 29). These offences all carry a maximum penalty of 3 months imprisonment or a \$2,000 fine on conviction. We also considered the offence of graffiti vandalism, introduced in 2008, to be a comparable interference with private property rights (section 11 A). This offence carries a maximum \$2,000 fine or a community-based sentence. This suggests that to ensure proportionality with other similar property offences, an increase to \$2,000 for breaching a trespass notice would be appropriate.
65. The same proportionality lens also applies to the maximum period of imprisonment that should arise from a breach of sections 3 or 4 of the Act. Consistency with the property offences outlined above suggests retaining the current maximum of three months' imprisonment is appropriate, given that this is the maximum possible prison time for comparable offences.
66. In respect of a rise in penalty for a breach of section 9 of the Act to \$1,000, the Ministry sought alignment with other legislation that required a private person to give their identifying information to another private person, and to distinguish any penalty from sanctions to those that support the police's ability to gather information in exercising their law enforcement function.
67. Sections 32 and 33 of the Policing Act pertain to police, in the course of their law enforcement function, gathering information from a person who is already in custody or is suspected of committing an offence. This differs from a private occupier under the Act who has a bespoke power to request the name and residence of another private individual.

68. Under the Policing Act, an offence will occur only after constables have cautioned individuals failing to provide identifying information, while under the Trespass Act, an occupier does not have to caution an individual failing to provide their name or address.
69. It is already anomalous that failure to provide this information to a private person can result in a criminal sanction. Increasing the maximum fine to \$1,000 could further confuse the distinction between law enforcement and private individuals. Police already have the power to gather information from offenders or suspected offenders by virtue of the Policing Act. The Ministry notes that increasing this penalty would solely reinforce this anomalous power granted to private occupiers.

**Is the Minister’s preferred option in the Cabinet paper the same as the agency’s preferred option in the RIS?**

70. The Ministry of Justice’s preferred option package differs from the Minister of Justice’s preferred option package. The key difference is the Cabinet paper increases the maximum time someone can be trespassed to up to five years.

71. The Ministry’s preferred option is to maintain a 24-month maximum period, with longer periods of trespass only available by court order upon conviction of a trespass offence. This is to provide sufficient oversight of these potentially significant decisions, rather than providing power entirely to the occupier.

**What are the marginal costs and benefits of the preferred package of options in the Cabinet paper?**

<b>Affected groups</b>	<b>Comment</b> <i>nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.</i>	<b>Impact</b> <i>\$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.</i>	<b>Evidence Certainty</b> <i>High, medium, or low, and explain reasoning in comment column.</i>
<b>Additional non-monetised costs of the preferred option compared to taking no action</b>			
Retailers, food service providers, occupiers of licensed premises	<b>One-off and ongoing</b> – costs more likely to fall unevenly depending on the occupier’s need to use trespass and possibly their size. Some who want to use trespass may opt to review their policies to align with the new law. This could be particularly in relation to align with agency guidance on how to serve a valid trespass notice (thereby increasing its enforceability), and aligning length of notice with the level of unwanted behaviour presented by the trespassed person. Larger retailers/ providers may also opt	<b>Low-medium</b> – unable to quantify monetised impacts, will be extremely variable depending on individual occupier.	<b>Low</b>

	<p>to draft policies around how best to record delegated authority to issue multi-location notices, and whether to apply a regional or national approach.</p> <p>This group may incur costs in undertaking staff training in trespassing.</p> <p>Limited certainty as based on anecdotal evidence from the MAG consultation with selected stakeholders.</p>		
Public	<p><b>Ongoing</b> – a small number of individuals may face potentially harsh consequences if they are unfairly trespassed and there is no recourse, with a potential 5-year prohibition across multiple sites. Risks are highest for those in rural locations where there are few alternative retail/food other service providers.</p> <p>Limited certainty as no consultation has been undertaken to understand impacts on individuals or population groups.</p>	<p><b>Low - medium</b> - unable to quantify monetised impacts as will be extremely variable depending on individuals.</p>	<p><b>Low</b></p>
Police	<p><b>One-off and ongoing</b> – Police will have one-off-operational costs to implement the law changes, including updating staff policies and guidance for occupiers. Ongoing costs may be incurred due to the added complexity for Police</p>	<p><b>Low</b> – Police have not provided a monetised figure for one-off costs or ongoing costs arising due to the complexity of assessing alleged trespass offending. Because variable</p>	<p><b>Low</b></p>

	<p>arising from occupier discretion. Police will have to ascertain the length of notice, and whether the length was properly communicated to the served individual, in addition to other evidential investigations.</p> <p>Increased resource may be required for prosecutions arising from more enforceable notices being served by occupiers, and to enforce and prosecute breaches of court trespass orders</p> <p>Limited time to engage with Police, and for Police to ascertain impact of proposals in the time available.</p>	<p>trespass periods up to five-years are not likely to lead to additional prosecutions no additional operational costs are expected. Police will continue to apply current prioritisation of frontline resource to call-outs involving threat to public safety or damage to property.</p>	
Public agencies that use trespass (for example, government agencies with operational functions, local authorities)	<p><b>One-off and ongoing</b> – costs will fall unevenly depending on the occupier’s need to use trespass. Agencies that need to use trespass should review their policies to align with the new law. These should align with agency guidance on how to serve a valid trespass notice, and NZBORA considerations around length of trespass period.</p> <p>Limited certainty as no consultation has been taken to understand impacts on public agencies</p>	<p><b>Low</b> - unable to quantify monetised impacts, will be extremely variable depending on individual occupier.</p>	<b>Low</b>
Courts	<p><b>Ongoing</b> – possibly more prosecutions</p>	<p><b>Low</b> – courts will consider the same evidence for a</p>	<b>Low</b> –.

<i>For fiscal costs, both increased costs and loss of revenue could be relevant</i>	being brought by Police. Courts will still have to apply the usual evidentiary thresholds for a five-year notice. Time constraints have meant the changes have not been discussed with the judiciary.	five-year notice as under the status quo.	
<b>Total monetised costs</b>	N/A	N/A	N/A
<b>Non-monetised costs</b>	The package is likely to create some ongoing and one-off costs for stakeholders, but these are expected to be minimal for most. For others will vary greatly depending on individual circumstances.	Low impact compared to taking no action.	Low
<b>Additional benefits of the preferred option compared to taking no action</b>			
Retailers, food service providers, occupiers of licensed premises	Greater confidence in actions to trespass unwanted people, especially in circumstances where occupiers want to act together to trespass a person from multiple locations at once. May be diminished over time as negative impact of the discretion (and the resulting complexity) on enforceability becomes clearer.	Low	Low
Public	May be flow on benefit to the public present in occupier locations if disruptive or harmful behaviours of trespassers are reduced.	Low	Low
Police	Police consider that providing for a	Low	Low

	mandatory or court-supervised trespass period would reduce complexity and increase the likelihood of successful prosecution.		
Courts	None identified		
<b>Total monetised benefits</b>	N/A	N/A	N/A
<b>Non-monetised benefits</b>		Low	

**What are the marginal costs and benefits of the Ministry’s preferred package of options?**

<b>Affected groups</b> <i>(identify)</i>	<b>Comment</b> <i>nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.</i>	<b>Impact</b> <i>\$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.</i>	<b>Evidence Certainty</b> <i>High, medium, or low, and explain reasoning in comment column.</i>
<b>Additional non-monetised costs of the preferred option compared to taking no action</b>			
<b>Same as Minister’s options</b>			
Retailers, food service providers, occupiers of licensed premises	<b>Ongoing</b> - Occupiers would need to attend court and make statements to support court trespass orders.		
Public	<b>Ongoing</b> – a small number of individuals are subject potentially harsh consequences but only by order of the court (potential additional up to 5-year prohibition including across multiple sites). Low impact because individual circumstances can be taken into account. Natural justice principles applied. Limited certainty as no consultation has been	<b>Low</b>	<b>Low</b>

	undertaken to understand impacts on individuals or population groups.		
<b>Total monetised costs</b>	N/A	N/A	N/A
<b>Non-monetised costs</b>	This option is likely to create some ongoing and one-off costs for stakeholders, but these are expected to be minimal.	<i>Low impact</i>	<i>Low certainty</i>
<b>Additional non-monetised benefits of the preferred option compared to taking no action</b>			
Retailers, food service providers	Greater confidence in the enforceability of longer-term trespass notices due to court orders – particularly for recidivist offenders.	<i>Medium</i>	<i>Medium</i>
Public	Greater confidence in trespass notices being enforced in the longer term, leading to harm reduction, while ensuring through court oversight that access to essential services are maintained.	<i>Medium (in longer term)</i>	<i>Medium</i>
Police	Court trespass orders are much more likely to result in enforceable action due to greater certainty on reasonableness of duration, and in deployment of frontline resource.	<i>Medium</i>	<i>Medium</i>
<b>Total monetised benefits</b>	N/A	N/A	N/A
<b>Non-monetised benefits</b>		<i>Medium</i>	

## **Section 3: Delivering an option**

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### **How will the proposal be implemented?**

The Minister's proposals will require amendments to the Act, through an amendment bill. There are no new offences being created. There may be operational implications for Police if the proposals lead to a significant deviation from the status quo, in relation to frequency of arrests or if people use multi-location notices, although such a deviation is not anticipated (for the reasons given in this paper).

### **How will the proposal be monitored, evaluated, and reviewed?**

The proposals require amendments to the Act, which is periodically reviewed by the responsible policy functions. The Ministry of Justice administers the Act and is responsible for ongoing regulatory stewardship. These responsibilities will be informed by feedback from Police operations, any relevant judicial judgements, academic studies of these changes, and media reporting. Stakeholders, including Police, can raise any identified concerns directly with the Ministry of Justice.

There will be ongoing monitoring of rates of retail crime, and other, offending. However, it will not be possible to determine whether any changes in offending rates are attributed to the changes proposed here, due to the low incidents of trespass being the only offence of person being prosecuted, and the many factors that give rise to offending behaviours.