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Retail NZ submission: Crimes Amendment Bill

Overview

1. Retail NZ is a membership organisation that represents the views and interests of New Zealand's retail sector. We are the peak body representing retailers across Aotearoa, with our membership accounting for nearly 70% of all domestic retail turnover. New Zealand's retail sector comprises approximately 27,000 businesses and employs around 220,000 Kiwis.
2. We have consulted with our members in preparation for this submission. Our members support stronger deterrents of retail crime but have deep concerns about the practical and legal implications proposed in this Bill. Our members tell us they already know what works to deter retail crime, for example training in de-escalation tactics, store layout, and focusing on customer service is already showing positive results.
3. Citizen's Arrest (Clauses 4-12): While the Bill intends to empower retailers, it creates an irreconcilable conflict between the Crimes Act and the Health and Safety at Work Act (HSWA). Retailers are being granted a power that they cannot safely exercise without exposing their staff to significant physical danger or facing substantial fines for breaching Health and Safety legislation. We strongly believe depriving a person of their liberty is not the role of individuals or private organisations, but a matter for the state.
4. We do not support the use of mechanical restraints in carrying out citizen's arrest as these have no place in a retail setting. We believe to use restraints would place staff and customers at unacceptable risk of harm.
5. The proposed changes would move New Zealand further from our international partners who have moved to restrict citizen's arrest powers to restrict vigilantism and protect human rights.
6. We support the new offence of Disorderly Theft and the simplification of the \$2,000 theft threshold.

7. We support the proposed changes to infringement notices in the Summary Offences Act but have concerns about how this would be enforced in practice.

Citizen's Arrest (Arrest without a warrant)

8. Our members view citizen's arrest as unsafe, operationally impractical in a retail environment, and a source of legal and reputational risk. We strongly oppose the framing of citizen's arrest as a tool for reducing retail crime.
 - a. Citizen's arrest, including physically restraining and/or detaining a person is not workable in practice and will put staff and customers at unacceptable risk of harm.
 - i. The act of physically restraining an alleged offender places the person attempting citizen's arrest, the alleged offender, and bystanders at unacceptable risk of physical harm through the escalation of a high-stress situation into a potential violent situation in circumstances where a person resists being detained as part of a citizen's arrest.
 - ii. Retail stores are not designed to hold people, supervise them for extended periods, or protect staff from the risks arising from prolonged detention. Very few stores possess:
 1. a secure room that is safe and void of potential hazards that an alleged offender could use to harm themselves or others
 2. CCTV coverage specifically designed for continuous monitoring of a high-risk detention space
 3. appropriate furnishings that are designed to minimise accidental or deliberate incidents of harm
 4. amenities such as water and toilets
 5. trained staff available to observe detainees for extended periods
 - iii. Without specifically designed holding rooms, detention creates unacceptable risks to staff, customers, and alleged offenders. Due to these requirements, the number of stores able to accommodate such measures would realistically be very small, limiting the overall impact of detention powers on retail crime. Our members have been clear in their feedback that they are customer service professionals and not police officers, and as such are not interested in, or equipped to, detain offenders due to the potential risk of harm to staff and customers.
 - iv. Prolonged detention increases the legal liability for the retailer regarding the health and safety of the detainee (e.g. medical emergencies or mental health crises occurring while in mechanical restraints, risks to staff overseeing someone being detained, etc.).
 - v. The use of mechanical restraints necessitates physical contact between retail staff and an alleged offender. This places both parties at

unacceptable risk of harm and risks escalating already high-pressure situations.

- vi. We are concerned that in the event police instruct the person who carried out the citizen's arrest to release the alleged offender, it creates an unacceptably high level of risk of a disorderly or violent confrontation upon that release, and the potential for the alleged offender to return with weapons or additional people.
- vii. Where clause 10-12 proposes to remove language from section 53 and 56 of the Crimes Act 1961 pertaining to striking or doing bodily harm to a person in defence of property, land or buildings, we don't believe this has any place in a retail setting and has potential to encourage the use of violence in response to retail crime.

b. Conflict with Health and Safety legislation

- i. Our members understand that encouraging retail staff to opt for citizen's arrest in response to retail crime will be exposing them to unacceptable risk of harm and directly contradicts obligations under HSWA 2015 (s36).
- ii. The Health and Safety at Work Act (HSWA) 2015 (s 36) relating to Primary Duty of Care says that an employer, so far as is reasonably practicable, must ensure that the health and safety of other persons is not put at risk from work carried out as part of the conduct of the business or undertaking. The proposals in this bill are in direct conflict with HSWA.
- iii. Our members understand their obligations under HSWA 2015 and have advised us that ensuring the safety of their staff whilst they are at work is their top priority.
- iv. Persons found in breach of HSWA 2015 face severe penalties including fines of up to \$3million HSWA 2015 (s47).
- v. Failure to comply with HSWA 2015 may have implications for insurance claims arising as a result of a citizen's arrest occurring on business grounds.
- vi. Attracting employees to work in the current retail environment is challenging. The expectation that retail employees may be involved in arresting potentially violent offenders as a part of their duties could result in fewer applicants and greater workforce stresses. It is unreasonable to expect a retail worker to also be responsible for the apprehension of potentially violent offenders.
- vii. We are concerned that there has been no consultation with WorkSafe or ACC in relation to this Bill.

c. Risk of civil action

- i. If a citizen's arrest is carried out for improper reasons, or unreasonable or excessive force is used, or if the Police are not informed as soon as is practicable, the arresting person may be exposed to legal action.
- ii. Ongoing legal actions as a result of citizen's arrest carry financial and reputational risks, as well as burdening staff members with stress and anxiety.
- iii. Additional risk of civil action may see an increase in insurance costs, claims and liability which may increase the cost of goods.

d. Impact on Police and judiciary

- i. Clause 4, 5, 6, 7 require a person who has made a citizen's arrest to make contact with the Police as soon as practicable and to follow all directions given by the Police. This would necessarily impact the public's expectations of local Police. Once notified, Police officers will be under pressure to respond in a reasonable time to ensure the safety of both the retailer and the alleged offender. The ability of Police to respond to a citizen's arrest will be evaluated against competing priorities—such as incidents of domestic and family violence—or other high-risk situations.
- ii. We are aware that Police are unable to respond to all current retail crime events. Changing legislation to allow citizen's arrest doesn't provide additional resources for Police to enable them to respond to these situations. We are not convinced that this Bill will make any difference on the ground.
- iii. Core training for retail staff is centred around de-escalation, removing yourself from harm and solving issues or ensuring the "customer" leaves the store as quickly and quietly as possible. This legislation undermines this core training which emphasises staff and customer safety. We strongly support a de-escalation approach focused on maintaining safety in the workplace.
- iv. In addition, we can imagine scenarios where a detained person causes harm to themselves or others before Police officers are able to respond, which would create significant legal and reputational risks for the New Zealand Police and the Ministry of Justice.
- v. Police data released in January 2026 (YTD June 2025) show there were 296 allegations of unlawful use of force by Police officers, 171 of these allegations were completed and 5 were upheld. Police officers receive extensive training in the safe and proper use of force when performing

an arrest. In contrast to the Police, civilians are untrained, and therefore we think there is a higher chance that a physical confrontation whilst attempting citizen's arrest would result in allegations of unlawful use of force. This would increase the burden on Police and Judiciary, and result in additional costs to stores for internally investigating complaints and employing legal defence.

e. Risk of escalation and claims of self-defence

- i. We are concerned that the expansion of arrest powers will lead to more physical altercations where offenders claim self-defence under Section 48 of the Crimes Act.
- ii. If a person during an attempted citizen's arrest uses force that is later deemed unreasonable or excessive, the alleged offender may be legally justified in using force to resist. Such use of force would lead to the loss of criminal immunity for the person undertaking the citizen's arrest.
- iii. Many retail environments contain items that can instantly become weapons of opportunity. For example, a tin of soup, a fire extinguisher, or a hammer can be easily taken from a shelf and used to cause serious harm during a confrontation. The use of such items by an offender or a person attempting an arrest dramatically increases the likelihood of serious injury. Furthermore, the introduction of a weapon into a struggle significantly increases the probability that any force used will be deemed unreasonable or excessive by the courts, stripping the individual of their legal protections under the Crimes Act.

f. Disproportionate risk to young people

- i. A large number of retail staff are young people under the age of 25, many of whom are in their first job and in frontline roles.
- ii. It is vital to protect the mental and physical health of rangatahi by not exposing them to elevated levels of risk inherent in the act of citizen's arrest.
- iii. Placing an expectation of citizen's arrest on young people would risk exposing employers to a breach of HSWA 2015 section 36.
- iv. On the other side of the equation, young people who offend are at a disproportionate risk of physical injury during a citizen's arrest. Due to their smaller stature and ongoing physical and physiological development, they are more susceptible to harm from physical restraint, including the risk of positional asphyxia or injury from excessive force used by untrained individuals.

- g. Broader societal impacts and the normalisation of violence
 - i. Retail NZ is concerned that the tenor of these proposals moves New Zealand further toward a culture where aggression is met with more aggression. By encouraging citizen's to "get a bigger stick" than those who wish to do harm, we risk creating a self-fulfilling spiral of escalating violence. In our view, the safety of the public and the dignity of our workforce are best served by de-escalation and professional law enforcement, rather than a legislative model that normalises physical confrontation as a standard response to property crime.
 - ii. This Bill has the potential to amplify the fear of crime in everyday life. In an era of viral social media, even a handful of recorded citizen's arrests involving physical confrontation can alarm the general public and create a perception of escalating disorder.
 - iii. Furthermore, we are concerned that if perpetrators believe they are likely to be physically detained by civilians or staff, an offender may be incentivised to "arm" themselves proactively to avoid arrest.
- h. Lack of data
 - i. We are unaware of any publicly available datasets that would indicate the number of attempted and successful citizen's arrests without which we are unable to assess the degree to which citizen's arrest may have an impact on retail crime.
 - ii. We expect the clause 4 amendments would increase the number of attempted citizen's arrests, leading to the high-risk scenarios detailed above, without any material impact on retail crime.
- i. Mismatch between the law and the public's understanding of the law
 - i. Citizen's arrest has a place in the public imagination. Whilst it is not the responsibility of legislators to disarm members of the public of perceptions of "playing the hero", some consideration should be given to scenarios where a member of the public attempting to perform citizen's arrest does not fully understand their responsibilities under law. Under the proposals, a failure to notify Police promptly, a failure to follow Police instructions, or a failure to clearly state the reason for arrest can render the arrest or detention unjustified. Most importantly, a misunderstanding of the obligation to use reasonable force may result in harm done to a person and the resulting legal ramifications that follow on from that.
 - ii. With the rise in popularity of mixed martial arts, we're concerned that people with some knowledge but limited experience of MMA techniques, such as a rear-naked choke (a popular MMA submission) which causes rapid unconsciousness by blocking the carotid arteries,

may not realise that sustained application of such a technique could cause brain damage or death.

- j. Aotearoa New Zealand will be an international outlier.
 - i. Retail NZ is concerned that the proposed expansion of citizen's arrest powers, particularly the explicit authorisation of mechanical restraints and "striking" in defence of property, moves New Zealand significantly out of step with our international partners.
 - ii. Countries such as the United Kingdom, Australia, and parts of the United States have moved to restrict or clarify civilian arrest powers to prevent vigilantism and protect human rights, these proposals represent a sharp reversal of that trend. By codifying specific tools of state-sanctioned force (such as mechanical restraints) for use by untrained members of the public, New Zealand risks becoming an international outlier.

New offence of disorderly theft (Clause 25 and 26 Amendments to Crimes Act 1961)

- 9. Retail NZ supports the introduction of a new offence of theft of items valued less than \$2,000 in an offensive, threatening, insulting, or disorderly manner. This addresses aggressive shoplifting which falls short of the threshold for robbery but causes significant harm to staff.
- 10. We support the raised penalty for disorderly theft from 1 to 2 years imprisonment to reflect the harm caused to retail operators and staff. We believe this puts in place a welcome deterrent to would-be offenders.
- 11. Clarification of the evidence requirements for "disorderly" behaviour would be welcomed by retailers. For example, would CCTV without audio, or witness statements meet the threshold of acceptable evidence.
- 12. We support the simplification of the theft thresholds in Clause 26, moving to a single \$2,000 threshold (\$2k+ = 7 years; Under \$2k = 1 year).

Enhanced penalties (Amendments to the Summary Offences Act 1981 set out in Amendment Paper 436)

- 13. We support the introduction of an on-the-spot infringement notice regime for low-level theft. This provides an immediate deterrent without the complexity of a full court prosecution however;
 - a. We note Section 38B(3), which states that no person arrested under the Crimes Act (s39) may be issued an infringement notice. For Police to determine which penalty to apply in a retail crime scenario may require additional training, as

the option of issuing an infringement notice is removed once a suspect is arrested under section 39. Following an arrest a Police officer is committing to the full criminal justice process, absorbing Police and judiciary resources. Charges brought under the Crimes Act require a higher standard of evidence which may make it less likely charges are upheld.

- b. Section 38C necessitates that a Police officer is able to attend a crime scene promptly in order to make use of the proposed infringement notice powers. Offenders will likely have left the scene before a Police unit can respond. Without additional resourcing of Police forces we are concerned that the proposed regime will make little material difference to levels of retail crime.
14. 2024 data from the Auror platform showed that 75% of retail crime is caused by 10% of offenders in New Zealand, suggesting that the majority of crime is committed by known offenders. We would encourage the committee to consider how existing technology can support the implementation of on-the-spot infringement notices if sufficient evidence is submitted by retailers to the Police, leveraging existing databases and technology such as facial recognition technology.

Human trafficking (Clause 13-17)

15. Retail NZ strongly supports the amendments to the human trafficking provisions. We recognise that exploitation and trafficking can occur in the retail sector and we support legislation that strengthens the powers of government and Police to prevent it.

Protection of First Responders (Clauses 21-24)

16. Retail NZ supports increased penalties for those who assault on-duty first responders. However, we seek clarification on the definition of first responder under Clause 21.
17. In many retail environments, particularly in large malls or CBD precincts, security guards are the first to arrive at violent incidents and manage the scene until Police attend.
18. We recommend that the Committee explore extending these protections to licensed security personnel who are acting in a first-response capacity to protect public safety in retail settings.

Recommendations

19. In summary, we recommend the following to the committee.
- i. Remove clauses 4 - 9 relating to citizen's arrest
 - ii. Adjust clause 10, 11, 12 to clarify the striking or doing bodily harm in a business setting is inappropriate
 - iii. Remove provisions allowing mechanical restraints
 - iv. Retain and pass clauses 25-26 (disorderly theft)

- v. Resource Police adequately to enable practical use of infringement notice regime
 - vi. Extend first responder protections to licensed security personnel
20. We will continue to encourage retailers to adopt the following practices which have proven successful at reducing retail crime through prevention and de-escalation rather than physical confrontation. Retailers should:
- i. Actively build relationships with your local NZ Police Retail Unit
 - ii. Build relationships with local retailers in your area, sharing intelligence when recidivous offenders are in the area.
 - iii. Ensure team members are trained on de-escalation techniques and understand when you need to deploy them in order to keep themselves and colleagues safe.
 - iv. Customer service is critical as a deterrent, engaging with people as they enter your store and recognising when someone is agitated. Prioritise de-escalation, observation, and prepare to be an effective witness if you need to report to Police
 - v. Have good sight lines within your store by removing decals from windows and identifying blind spots.
 - vi. Monitor your CCTV feed to ensure you have good coverage of your store
 - vii. Implement Facial Recognition Technology if appropriate for your store
 - viii. Use license plate recognition to identify recidivist offenders before they enter the store

Conclusion

Retail NZ is committed to working with the Government to create a safer New Zealand. While we support the move toward instant fines and tougher penalties for aggressive "disorderly" theft, we remain strongly opposed to the expansion of citizen's arrest and mechanical restraint powers.

We strongly believe that depriving a person of their liberty is not the role of individuals or private organisations. Law enforcement must remain the responsibility of the state. Expecting untrained, often young, retail workers to physically detain offenders is a recipe for tragedy and a direct contradiction of current Health and Safety laws. We urge the Committee to prioritise the safety of our workers by focusing on providing the New Zealand Police with the resources required to respond to retail incidents effectively. We will continue to work with retailers to implement proven strategies to reduce retail crime in their stores.

Thank you for the opportunity to make a submission. Retail NZ is happy to discuss any aspect of this submission further at a Select Committee hearing.

No part of this submission should be withheld under the OIA.

Sincerely,



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