

Departmental Disclosure Statement

Sentencing (Reinstating Three Strikes) Amendment Bill

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Justice.

The Ministry of Justice certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

19 June 2024.

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Part One: General Policy Statement

The Sentencing (Reinstating Three Strikes) Amendment Bill (the Bill) reinstates the legislative regime for sentencing repeat serious offenders (the three-strikes regime) known as the three-strikes law. The Bill achieves this through amendments to the Sentencing Act 2002, the Criminal Procedure Act 2011, the Criminal Procedure (Mentally Impaired Persons) Act 2003, the Evidence Act 2006, and the Parole Act 2002.

The Bill is an omnibus Bill introduced under Standing Order 267(1)(a). That Standing Order provides that an omnibus Bill to amend more than 1 Act may be introduced if the amendments deal with an interrelated topic that can be regarded as implementing a single broad policy. The single broad policy implemented by the Bill is to reverse the repeal of the previous three-strikes regime by the Three Strikes Legislation Repeal Act 2022, while making improvements to ensure that the regime is clear and workable.

The Government is reinstating the three-strikes regime to strongly denounce repeat serious offending and, in so doing, to increase public confidence that such conduct has very serious consequences. The Bill will increase certainty for offenders about the consequences of reoffending and may reduce offending through incapacitation and deterrence.

The Bill responds to increases in reported violent crime to Police between 2019 and 2024 (New Zealand Police, Recorded Crime Victims Statistics). It will hold repeat serious violent and sexual offenders to account for the harm they cause and will contribute to the Government's commitment to ensure that there are 20,000 fewer victims of violent crime by 2029.

The Bill provides for a 3-stage regime of escalating penalties for repeat serious violent and sexual offenders. The Bill has the following main features:

- the regime will cover 42 qualifying offences, which are most of the serious violent and sexual offences in the Crimes Act 1961:
- the consequences in the regime will apply only if the court finds that a sentence of imprisonment of more than 24 months would apply (or an indeterminate sentence in some cases):
- warnings will be given at each stage. Second or subsequent strikes carry a requirement that a sentence be served without parole. Third or subsequent strikes carry the maximum penalty for that offence, which is to be served without parole:
- offenders who commit murder will receive life imprisonment with a specified mandatory period of imprisonment of 17 years (at second strike) and 20 years (at third strike):
- a manifest injustice exception, guided by principles in the Bill, will apply to all mandatory elements of the regime:
- a limited exception will allow the court to reduce the term of imprisonment when the offender pleads guilty:
- the regime will apply only to individuals aged 18 years or older at the time of offending:
- the regime will not apply retrospectively; it will apply only to offences committed on or after the commencement date of the amendments made by the Bill to the

Sentencing Act 2002. Strikes from the previous three-strikes regime will not be carried across to the new regime:

- clarification of the availability of mental health orders under the Criminal Procedure (Mentally Impaired Persons) Act 2003 for three-strikes offenders.

The Bill also amends the Parole Act 2002 to reinstate provisions that were erroneously removed by the Three Strikes Legislation Repeal Act 2022. The relevant provisions confirm that offenders sentenced under section 103(2A) of the Sentencing Act 2002 to a life sentence without parole will not have a parole eligibility date and will not be released on parole. These changes will have retrospective effect.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	YES
<p><i>Three Strikes Law Evidence Brief</i> (Ministry of Justice, December 2018): Three-Strikes-Law-Evidence-Brief.pdf (justice.govt.nz)</p> <p><i>Three Strikes Legislation Repeal Bill: Impact of the three strikes regime on rates of serious crime</i> (Ministry of Justice, 15 March 2022): Impact of the three strikes regime on rates of serious crime – New Zealand Parliament</p> <p><i>Three Strikes Legislation Repeal Bill: Manifest injustice at sentencing and appeal</i> (Ministry of Justice, 15 March 2022): Three Strikes Legislation Repeal Bill, Manifest injustice at sentencing and appeal – New Zealand Parliament</p> <p><i>Departmental Report Three Strikes Legislation Repeal Bill</i> (Ministry of Justice, 14 April 2022): Departmental Report, Three Strikes Legislation Repeal Bill – New Zealand Parliament</p> <p>The Regulatory Impact Statement (see 2.3 below) drew upon domestic and international research. This research can be located through the citations in that document. There is extensive academic literature from comparable regimes, particularly in the United States of America, as well as research about the effectiveness of deterrence, incapacitation, parole, rehabilitation, and other factors which are relevant to reducing rates of reoffending.</p>	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
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Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<p>The Ministry of Justice produced a regulatory impact statement on 11 April 2024: <i>“Reinstating three strikes sentencing law”</i>. A copy of the regulatory impact statement can be found on:</p> <ul style="list-style-type: none"> the Ministry of Justice’s website: https://www.justice.govt.nz/justice-sector-policy/regulatory-stewardship/regulatory-impact-assessments/ and The Treasury’s website: http://www.treasury.govt.nz/publications/informationreleases/ris. 	
2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	NO
<p>The RIS identified above did not meet the threshold for receiving an independent opinion on the quality of the RIS from the RIA Team based in the Treasury. The Ministry of Justice provided an internal quality assurance panel.</p>	

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	YES
<p>The penalties for manslaughter were not assessed in the impact statement prepared by the Ministry of Justice. The Ministry of Justice views these penalties as being consistent with the broader regime, and therefore supplementary analysis is not required.</p> <p>The need for the remedial amendments to the Parole Act 2002 contained in the Bill were not identified prior to the finalisation of the impact statement. These amendments are technical in nature. They are necessary to restore provisions repealed in error by the Three Strikes Legislation Repeal Act 2022 and ensure consistency between the Parole Act and the Sentencing Act 2002.</p>	

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO
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2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
Analysis of the expected benefits and costs for the policy is available in the RIS.	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	NO
(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO
<p>The courts will be required to interpret and apply the legislation in line with Parliament's intent, and judicial education will be required to embed these changes. Training will be provided for court staff, as well as Corrections, Police, prosecutors, and other agencies. This, as well as communications to external stakeholders such as the legal profession, will ensure the regime is applied consistently.</p>	

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?
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New Zealand's international commitments have been considered in the development of the proposals. This includes international human rights obligations under the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the UN Declaration on the Rights of Indigenous Peoples. These include obligations not to arbitrarily deprive individuals of their liberty and not to employ cruel, inhuman, or degrading treatment or punishment. The overall package of proposals has been designed to facilitate consistency with international obligations.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

Modelling by the Ministry of Justice indicates that most offenders sentenced under the law will be Māori. Claims in the Waitangi Tribunal on behalf of adversely affected Māori are possible. Issues related to sentencing have been raised with the Waitangi Tribunal in Te Rau o te Tika – the Justice System Kaupapa Inquiry (Wai 3060).

No Māori groups or partners have been consulted or engaged on the policy underlying this Bill due to time constraints. Despite strong Māori interests, consultation has not been conducted as the introduction of the Bill has occurred at pace, because the Bill is a priority in the Coalition's quarterly action plan.

The lack of consultation has not allowed for the development of alternatives which may better mitigate impacts of the three strikes regime on Māori. Aspects of the policy design, such as the qualifying threshold and manifestly unjust exceptions for all mandatory elements, may help mitigate impacts on Māori.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?	YES
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Advice provided to the Attorney-General, or a section 7 report of the Attorney-General, is expected to be available on the Ministry of Justice's website upon introduction of a Bill at:

- [Advice on consistency of Bills with the Bill of Rights Act](#); or
- [Section 7 reports](#).

In developing these proposals, officials took into account the importance of facilitating consistency with NZBORA and international obligations.

Key in this regard are the qualifying sentence to more closely link the regime to serious offending, and extending the use of exceptions. These provide an element of judicial discretion in respect of each of the mandatory sentence and parole requirements in the regime in order to avoid grossly disproportionate sentences.

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	YES
<p>The Bill specifies consequences for certain repeated serious violent or sexual offending in clause 7.</p> <p>For non-murder offences, the Bill requires that:</p> <ul style="list-style-type: none"> for a stage-2 offence, the court must impose a sentence without parole unless this would be manifestly unjust (clause 7, new section 86O of the Sentencing Act 2002); for a stage-3 offence, the court will be required to impose the maximum sentence, unless this would be manifestly unjust (clause 7, new section 86R), except in the case of manslaughter where the offender must receive a sentence of at least 8 years (if they plead guilty) or 10 years (in any other case); the stage-3 sentence must also be served without parole, unless manifestly unjust. <p>For murder offences, the Bill requires that:</p> <ul style="list-style-type: none"> for a stage-2 offence, the court impose a minimum period of imprisonment of at least 15 years (if the offender pleads guilty) or 17 years (in any other case) unless this would be manifestly unjust (clause 7, new section 86P of the Sentencing Act 2002); for a stage-3 offence, the court impose a minimum period of imprisonment of at least 18 years (if the offender pleads guilty) or 20 years (in any other case) unless this would be manifestly unjust (clause 7, new section 86S of the Sentencing Act 2002). 	
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	YES
<p>The Bill requires that third strike cases be heard in the High Court, and that only the High Court, Court of Appeal, or Supreme Court may sentence an offender for a third strike offence (consistent with the previous regime). See clause 7, new section 86Q of the Sentencing Act 2002.</p>	

3.4.1. Was the Ministry of Justice consulted about these provisions?	NO
The Ministry of Justice was the lead agency for developing these provisions.	

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	YES
<p>Clause 14 of the Bill replaces section 180(4) of the Criminal Procedure Act 2011 to also allow the correction of erroneous sentences relating to third strike cases in court records. This is consistent with the purpose of section 180 of that Act.</p>	
3.5.1. Was the Privacy Commissioner consulted about these provisions?	NO
<p>The Ministry of Justice have not identified any privacy issues relating to the provisions referred to in 3.5.</p>	

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	NO
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Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	YES
Officials have worked closely with relevant agencies to ensure the provisions in the Bill are workable and can be applied by the courts and otherwise operationalised.	

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
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Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
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Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	YES
<p>The Bill makes technical amendments to the Parole Act 2002 to reinstate provisions repealed in error (see clause 20 inserting new section 20(5), and clause 22 replacing section 84(3) with new sections 84(3) and 84(3A). These amendments will have retrospective effect through Schedule 3 of the Bill, which inserts new Parts 3 and 4 into Schedule 1 of the Parole Act 2002. These amendments will apply from the date that they were erroneously repealed by the Three Strikes Legislation Repeal Act 2022 (the Repeal Act). This is necessary to restore the position prior to the Repeal Act and avoid unintended changes to parole calculations.</p> <p>None of the provisions relating to the new three strikes regime are intended to have retrospective effect.</p>	

Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO
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Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	YES
<p>The Bill restricts judicial discretion to determine the sentence in certain cases (e.g. clause 7 of the Bill inserting new sections 86O, 86P, 86R, and 86S of the Sentencing Act 2002). However, the Bill provides a limited ability to depart from the mandatory sentence where the "manifestly unjust" exception applies. Clause 7 inserts new section 86T of the Sentencing Act 2002, which will provide legislative guidance on what constitutes "manifestly unjust".</p> <p>The Bill also introduces an additional element of judicial discretion in the new requirement for a qualifying sentence of more than 24 months imprisonment. This qualifying sentence must be met for the consequences and warnings in the regime to apply. See the definition in new section 86J of the Sentencing Act 2002 as inserted by clause 7 of the Bill.</p> <p>Clause 16 of the Bill inserts new sections 34(6) and 34(7) into the Criminal Procedure (Mentally Impaired Persons) Act 2003 (the CPMIP Act). These new sections preclude the making of an order under section 34(1)(b) of the CPMIP Act in respect of an offender who has been convicted and would otherwise receive a qualifying sentence of more than 24 months under the regime. However, orders under section 34(1)(a) of the CPMIP Act will remain available as well as orders under section 34(1)(b) where the qualifying sentence threshold is not met.</p> <p>Clause 7 of the Bill inserting new sections 86P, 86R, and 86S of the Sentencing Act 2002 provides for the court to reduce sentences to a limited extent if the offender enters a guilty plea.</p>	

Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO
4.8. Does this Bill create or amend any other powers to make delegated legislation?	NO

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO
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