

Departmental Disclosure Statement

Three Strikes Legislation Repeal 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.

24 September 2021.

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Part One: General Policy Statement

General policy statement

The Three Strikes Legislation Repeal Bill (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 policy implemented by the Bill is the repeal of the elements of the Sentencing and Parole Reform Act 2010 that collectively create what is commonly known as the three strikes law.

The three strikes law was intended to deter those who commit specified strike offences with the threat of progressively longer mandatory prison terms, and to incapacitate those who continue to re-offend despite the additional penalties.

However, the mandatory sentencing regime created by the three strikes law has resulted in unjust outcomes that impact Māori disproportionately and have raised concerns regarding inconsistencies with the New Zealand Bill of Rights Act 1990.

The government's objectives in repealing the law are to remove the mandatory sentencing requirements that result in excessive and disproportionate sentence outcomes by preventing judges from taking the individual circumstances of the offender and the offending into account.

The Courts already have the power to impose sentences equivalent to those imposed under three strikes on a targeted basis to protect public safety without being required to apply mandatory sentences to all offenders convicted of these offences. Individual cases have varying factors that will be considered by the respective judge to determine a proportionate outcome with regard to the background and circumstances of the offender, the nature of the offence and the maintenance of public and community safety.

Repealing the three strikes law will revert the sentencing process for strike offences to standard sentencing practices by allowing the judge to reach an appropriate outcome on a case by case basis. This Bill expressly excludes any entitlement to compensation relating to the impacts of the three strikes law, and no transitional arrangements for those currently serving sentences of imprisonment for a strike offence are included.

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?	NO
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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
A Regulatory Impact Statement was prepared for this Bill (Three Strikes Legislation Repeal Bill) by the Ministry of Justice on 4 March 2021. A joint QA panel from the Ministry of Justice, Treasury and Ara Poutama Aotearoa – the Department of Corrections has reviewed the Regulatory Impact Statement, and considers that the information and analysis summarised within partially meets the Quality Assurance criteria.	

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
An official from Treasury was a panel member on the Ministry of Justice's Regulatory Impact Assessment quality assurance panel.	

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?	NO

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

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
a) Potential future cost savings are approximately \$636,000 by 2025 and \$1,620,000 by 2032 as repealing three strikes will potentially avoid the need for approximately 40-65 prison places by 2025 and for 110-160 prison places by 2032.	
b) The Bill will not have any substantial financial impact on any group of persons.	

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

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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?

The Ministry's scan of international obligations has not identified any obligations that conflict with the policies contained in the Bill.

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?

The Treaty of Waitangi envisaged that Māori be treated equitably. The current law exacerbates inequities for Māori in the criminal justice system because they are disproportionately impacted in receiving strikes. Repeal of the three strikes law will go some way to create a more equitable justice system for 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

The Bill was vetted for consistency with the New Zealand Bill of Rights Act by Crown Law.

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)?

NO

(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?

NO

3.4.1. Was the Ministry of Justice consulted about these provisions?

N/A

The Ministry of Justice is the lead agency for this Bill.

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?

NO

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
<p>Consultation to date has only involved government departments that will be affected by the proposed legislation. Agencies involved include Ara Poutama Aotearoa, New Zealand Police, the New Zealand Parole Board and the Crown Law Office. The Department of the Prime Minister and Cabinet, Parliamentary Counsel Office and the Treasury were informed of the proposal. Officials have also consulted members of the Judiciary.</p> <p>Time constraints have limited public consultation. However, the Ministry of Justice has drawn insights from public engagement undertaken through the <i>Hāpaitia te Oranga Tangata: of the Safe and Effective Justice</i> programme between 2018 and 2019. Interested individuals and groups will have the opportunity to make submissions to the select committee considering this Bill.</p>	

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?	NO

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?	NO
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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
The Bill repeals sections from the Sentencing Act 2002 and the Parole Act 2002 that limit judicial discretion when determining sentences in particular cases.	

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
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4.8. Does this Bill create or amend any other powers to make delegated legislation?	NO
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Any other unusual provisions or features

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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