

Chair, Cabinet Social Wellbeing Committee

## Repeal of the three strikes law

### Proposal

- 1 This paper seeks Cabinet's agreement to repeal the three strikes law. It also provides three options for transitional arrangements for people serving a prison sentence for a strike offence when the repeal legislation comes into effect.

### Relation to government priorities

- 2 This proposal will deliver on a Labour party manifesto commitment.

### Executive Summary

- 3 I am proposing to repeal the elements of the Sentencing and Parole Reform Act 2010 that created what is commonly known as the three strikes law. The law limits and then outright removes a judge's ability to consider the individual circumstances and context of the offending when determining sentences for offenders who commit certain specified offences.<sup>1</sup>
- 4 The three strikes law needs to be repealed because it has resulted in punishments for offending that are excessive and disproportionate to the crimes that have been committed. It is my view that discretion should be returned to the judiciary, who are best placed to respond appropriately to serious and repeat offending. The Courts already have equivalent sentencing options at their disposal.
- 5 In sentencing notes for third strike cases, judges have drawn attention to the disproportionate sentences the three strikes law requires them to impose. At the time the Act was passed, its proponents argued it would improve public safety. There is little evidence that the regime has reduced serious offending, or the number of victims impacted by it.
- 6 This Government's focus is on building a justice system that ensures less crime, less offending and fewer victims of crime who are better supported. The excesses of the three strikes regime do not support this objective and the removal of

---

<sup>1</sup> There are 40 qualifying three strike offences, comprising all major violent and sexual offences with a maximum penalty of seven years or greater imprisonment, including murder, attempted murder, manslaughter, wounding with intent to cause grievous bodily harm, sexual violation, abduction, kidnapping, and aggravated robbery.

judicial discretion that is created by the law instead frustrates the ability of our justice system to rehabilitate offenders.

- 7 In addition to repealing the three strikes law for future offences, I have considered the impact the law has had on those sentenced under it.<sup>2</sup> The decision of whether to provide transitional arrangements is finely balanced between addressing poor sentencing outcomes and minimising the potential impacts on victims. Three options follow from these considerations:
  - 7.1 not including transitional arrangements as part of the repeal legislation in order to remove the possibility of stress for victims of offenders currently serving sentences under the three strikes regime;
  - 7.2 restoring parole eligibility to offenders who have been denied it by the three strikes regime (benefits approximately 200 offenders);<sup>3</sup> or
  - 7.3 allowing second or third strike offenders to apply for a re-sentencing, excluding those who have committed offences with a maximum penalty of more than 10 years (benefits approximately 58 offenders).
- 8 The second option is intended to limit the impact of transitional arrangements on victims by avoiding any re-sentencing of offenders and ensuring that earlier release from prison only takes place if supported by the Parole Board. This option would not benefit third strike offenders, who have been most adversely impacted by three strikes regime, as in almost all cases this group is already entitled to parole, with the injustice experienced by this group relating instead to the length of the sentence imposed.
- 9 The third option is also focused on mitigating stress for victims but does so by limiting re-sentencing to offenders convicted of offences at the lower end of the offending spectrum. This approach would do more to address the distorting effects of the three strikes regime, as it would allow offenders on their third strike to receive a more proportionate sentence. However, limiting this redress based on conviction type is likely to be challenged on the grounds of arbitrary detention.
- 10 I propose to exclude any entitlement to compensation relating to the impacts of the three strikes law. Compensation would go beyond the purpose of the repeal of the three strikes regime, which is to minimise further negative effects of the disproportionate sentences it requires judges to impose.
- 11 Subject to Cabinet agreement, I propose to introduce the Bill to the House in mid-2021, with a view to enactment by the end of 2021. The Ministry of Justice will engage with victims to ensure that they receive the information and support they need throughout the process.

---

<sup>2</sup> A profile of people currently in prison for second and third strike offences is set out at Appendix 1.

<sup>3</sup> All data provided throughout the paper are estimates and snapshots in time. The number of affected people could be significantly different when the legislation is passed as some people will complete their sentences and other people will be sentenced under the regime.

**How the three strikes regime works**

- 12 Under the three strikes regime, a person convicted of:
  - 12.1 a first specified offence is warned of the consequences if the person is convicted of another specified offence committed after that warning,
  - 12.2 a second specified offence is required to serve any prison sentence in full (i.e. without eligibility for automatic release for short-term sentences or the possibility of parole for long-term sentences) and receive a final warning, and
  - 12.3 a third specified offence is sentenced to the maximum penalty for that offence, and the term of imprisonment must be served without parole unless the Court determines that this would be manifestly unjust.
- 13 The table below compares sentence and parole eligibility settings under the standard process and the three strikes law.

Table 1: Comparison between standard sentencing process and three strikes law

Standard sentencing process	Three strikes regime
<b>Short-term sentence of imprisonment (two years or less)</b>	
	<i>Second strike</i>
Released (may be subject to conditions) after serving one half of sentence	Released after serving full sentence
<b>Long-term sentence of imprisonment (longer than two years)</b>	
	<i>Second strike</i>
Eligible for parole after serving one third of sentence (unless Court imposes longer minimum period of up to two thirds of sentence)	Not eligible for parole
Released at direction of Parole Board; released after serving full sentence if not granted parole	Released after serving full sentence
	<i>Third strike</i>
Sentenced under provisions of Sentencing Act 2002; maximum penalty reserved for most serious cases of offence	Sentenced to maximum penalty available for offence (e.g. 14 years for aggravated robbery)
Eligible for parole after serving one third of sentence (unless Court imposes longer minimum period of up to two thirds of sentence)	Not eligible for parole unless Court rules this would be manifestly unjust
Released at direction of Parole Board; released after serving full sentence if not granted parole	Released after serving full sentence unless eligible for parole when they may be released at direction of Parole Board
<b>Life imprisonment for murder</b>	
	<i>Second/Third strike</i>
Eligible for parole after serving minimum period imposed at sentencing (may not be less than ten years)	Not eligible for parole unless Court rules this would be manifestly unjust; where the Court imposes a minimum period, it must not be less than 20 years (for third strike murder offences) unless this would be manifestly unjust
Released at direction of Parole Board, subject to release conditions imposed by Parole Board	If not eligible for parole, remains in prison for rest of life; if eligible for parole, released at direction of Parole Board
<b>Preventive detention</b>	
	<i>Third strike</i>
The minimum period of imprisonment must not be less than five years	The minimum period of imprisonment must not be less than the maximum penalty for the offence unless this would be manifestly unjust

## Case for repeal of the three strikes regime

### *Little evidence the regime is meeting its objectives*

- 14 One of the key objectives of the three strikes law was to reduce serious crime through deterrence and incapacitation, increasing public safety and reducing harm to victims. In December 2018, the Ministry of Justice published an evidence brief that considered the impact of the regime on crime rates in New Zealand.<sup>4</sup> It found that:
- 14.1 changes in the rate of sexual assault, robbery, and serious assault (which make up more than 90% of strike offences) cannot be easily attributable to the new law,
  - 14.2 convictions for three strike offences have proven to be stable, and
  - 14.3 there is no clear indication that the three strikes legislation deters individuals from committing qualifying offences.<sup>5</sup>
- 15 The regime is unique in New Zealand law due to the lack of discretion it allows for judges in sentencing. In a number of cases, judges have expressed concern about being required to impose disproportionately severe sentences when there have been mitigating circumstances for the offending, such as mental health issues.<sup>6</sup>
- 16 Judicial discretion is important to allow for consideration of the individual circumstances of the case. The Courts already have a range of measures available to protect the public from people who commit serious violent offences. These include:
- 16.1 preventive detention – an indeterminate prison sentence that allows for parole to be granted only when a person ceases to be an undue risk to the community. People in this category can be recalled to prison at any time for the remainder of their lives;
  - 16.2 public protection and extended supervision orders – Court-imposed orders that allow serious violent and sexual offenders to be intensively managed indefinitely at the end of their sentence to prevent further offending, including (under public protection orders) at a secure residential facility if necessary;

---

<sup>4</sup> Ministry of Justice “Three Strikes Law: Evidence Brief” (December 2018).

<sup>5</sup> Daniel Nagin “Deterrence in the 21st Century” (2013) 42 Crime and Justice Journal 199. These findings are based on observational analysis of crime trends, and a more thorough statistical analysis would be needed to confirm them. Wider evidence does show that more severe penalties do not impact on deterrence as people generally commit offences without considering the consequences, or in the belief they will not be caught.

<sup>6</sup> For example, in the 2017 case of *R v Ratima*, the judge calculated that the offender, who had mental health difficulties, would ordinarily have received a prison sentence of three years and eleven months (with eligibility for parole after one year and three months), rather than the ten year sentence (with no parole eligibility) the Court was obliged to impose.

- 16.3 minimum periods of imprisonment – the Courts can override standard parole eligibility when necessary to uphold the safety of the community and hold the offender to account for their actions; and
- 16.4 imposing maximum penalties – the Courts can impose terms of imprisonment up to the maximum penalty for the offence where the offending is extremely serious.
- 17 It is not clear that the three strikes law has increased public or victim safety, and there is no evidence that continuing to limit judicial discretion and availability of rehabilitative opportunities in these cases will aid in reforming offenders or reducing serious crime.

*Adverse impacts of the regime*

- 18 The three strikes law has had several adverse impacts. It has attracted severe criticism for excessive and disproportionate punishment in many cases. The Court of Appeal has found sentences imposed under the regime contravene the New Zealand Bill of Rights Act 1990 (Bill of Rights Act).<sup>7</sup>
- 19 The main effects of the regime to date are:
- 19.1 removal of the possibility of parole, a useful tool for prioritising access to rehabilitation programmes and reintegrating offenders into the community, for second strike offenders, and
- 19.2 severe distortion of conventional sentencing practices for third strike offenders where the maximum sentence must be imposed.
- 20 Academics have highlighted the disproportionate impact of the three strikes law on Māori.<sup>8</sup> Māori are significantly over-represented in the group of offenders who have received a strike.
- 21 Three strikes regimes may also have a negative effect on victims. International evidence shows that three strikes regimes decrease the rate of guilty pleas.<sup>9</sup> This means that victims who would otherwise be spared the trauma of giving evidence, may be re-victimised by having to testify.
- 22 The regime incurs costs to government. International evidence also shows that similar regimes increase prison populations.<sup>10</sup> Repealing the regime could reduce future demand for prison places by around 40-65 by 2025 and 110-160 by 2032.

---

<sup>7</sup> In the 2020 case of *Fitzgerald v R*, the Court of Appeal held that the punishment of seven years for an indecent assault in that case amounted to “grossly disproportionate” punishment in contravention of the Bill of Rights Act. That was so even given the very high standard for such a finding set by the Supreme Court in *Taunoa v Attorney-General* [2007] NZSC 70, [2008] 1 NZLR 429.

<sup>8</sup> Sophie Klinger “Three Strikes for New Zealand? Repeat Offenders and the Sentencing and Parole Reform Bill 2009” (2009) 15 Auck U L Rev 248 at 256.

<sup>9</sup> Jennifer Walsh *Three strikes Laws* (Greenwood Press, USA, 2007).

<sup>10</sup> Yan Zhang, Christopher Maxwell & Michael Vaughn “The impact of state sentencing policies on the US prison population” (2009) 37(2) Journal of Criminal Justice 190.

## Consideration of transitional arrangements

### *Approach to transitional arrangements*

- 23 I have considered what should happen to offenders who have been sentenced for one or more strike offences in the time the law has been in place.
- 24 Legislation should apply from the date of its enactment and should not affect events that took place before that date.<sup>11</sup> The general principle in New Zealand's system of criminal law is that a person is convicted and sentenced on the basis of the law at the time they committed the alleged offence.
- 25 Changes to the law significantly reducing the sentence for an offence or the period of a sentence that must be served are rare. In scale, the repeal of the three strikes law is extraordinary. Had the repeal been concerned only with moderate changes to sentence length and parole eligibility, the option of including transitional arrangements of any kind probably would not be entertained.<sup>12</sup>
- 26 In approaching the decision of whether to introduce transitional arrangements my primary concern has been preventing further impacts on the victims of these offenders and upholding public confidence in the justice system. Having carefully weighed these competing interests, I consider there are three workable options.
- 27 The first option is to not include transitional arrangements as part of the repeal legislation. This approach would result in all offenders serving sentences of imprisonment at the time the repeal legislation takes effect (currently 238 people)<sup>13</sup> serving out their sentences as originally imposed.
- 28 If Cabinet would prefer to include transitional arrangements in the repeal legislation, two approaches are presented.

### *Alternative approach 1: Re-instating parole eligibility*

- 29 Firstly, standard parole settings could be restored for second and third strike offenders. Under this approach, offenders serving a sentence of imprisonment for a strike offence at the time the repeal legislation takes effect would be eligible for Parole Board consideration at completion of one third of their sentence. Those who have reached or passed this threshold when the repeal legislation comes into effect would be eligible immediately.
- 30 This approach would be more consistent with the Bill of Rights Act but creates complexities for some subcategories of strike offender. For example, offenders sentenced to short term periods of imprisonment (less than two years) are not, under standard settings, eligible for parole consideration, instead being released automatically at 50% of their sentence. On this basis, they would be excluded

---

<sup>11</sup> Legislation Design and Advisory Committee *Legislation Guidelines: 2018 Edition* at Chapter 12.

<sup>12</sup> For example, the Parole Act 2002 abolished the "serious violent offence" category, whereby prisoners convicted of specified offences were not eligible for parole and were released automatically at two thirds of sentence. Offenders sentenced under this regime served out their sentences in accordance with these requirements; they did not become eligible for parole after one third in the same way as those convicted of a serious violent offence after the Act came into force.

<sup>13</sup> This group comprises 220 second strike offenders and 18 third strike offenders.



from transitional arrangements, which is likely to raise issues of compliance with the Bill of Rights Act.

- 31 Further, this approach would not have any impact on third strike offenders, who, in almost all cases, have already been granted parole eligibility.<sup>14</sup> These offenders have been the most adversely impacted by the law because they are required to serve the maximum prison term for their offence irrespective of its seriousness.<sup>15</sup> In one illustrative case, a person was sentenced to 10 years imprisonment for a low-level robbery, for which the sentencing judge indicated that they would ordinarily have imposed 18 months in prison. Re-sentencing is the only way of addressing this kind of disparity.

*Alternative approach 2: Re-sentencing based on seriousness of offending*

- 32 The second approach would see transitional arrangements made available to some offenders based on the maximum sentence length of the strike offence committed. Using this criterion for re-sentencing is justified because it is a proxy for the seriousness of offending.

- 33 Under this approach, offenders serving a sentence of imprisonment for a strike offence with a maximum period of imprisonment of 10 years or less<sup>16</sup> at the time the repeal legislation takes effect would be dealt with in the following way:

33.1 offenders who have committed eligible offences (currently 58 people)<sup>17</sup> would be able to apply to the High Court for re-sentencing, and

33.2 those offenders who apply would be re-sentenced in the High Court at the earliest practicable opportunity under standard sentencing and parole settings.

- 34 Re-sentencing does not require the judge to impose a lesser sentence. Rather, it would allow the judge to determine what the appropriate sentence should be in each case, without being constrained by the mandatory sentencing requirements.

- 35 The High Court has indicated it would be able to accommodate the re-sentencing of these offenders, but officials are not able to estimate how long it will take for re-sentencing to be completed.

---

<sup>14</sup> In two or three cases, judges have opted not to invoke the manifestly unjust provisions in the three strikes law which allow for parole to be re-instated. If this option is preferred consideration will need to be given to whether these offenders should have parole eligibility re-instated by statute.

<sup>15</sup> Second strike offenders, on average, will serve an additional three months than they would have absent the three strikes regime, while third strike offenders, on average, will serve several more years.

<sup>16</sup> This approach would see half of the 40 three strike offences eligible for transitional arrangements, with a list of offences that would be eligible and ineligible set out at Appendix 2.

<sup>17</sup> This group comprises 49 second strike offenders and 9 third strike offenders.



s9(2)(h)

s9(2)(h)

S

*Impact on victims*

37 The government has a responsibility to victims of crime, and upholding victims' rights should be one of the primary goals of the criminal justice system. While approaching the repeal of the three strikes law, I have considered the likely impact of the change to sentencing arrangements on the victims of these offenders. This is the unfortunate result of remedying poor sentence outcomes.

38 I appreciate that the repeal of the three strikes law may upset victims of these offences. Victims will be the paramount consideration in all communications with the public regarding the repeal of the three strikes law, and the Ministry of Justice will consult the Chief Victims Advisor and work closely with its Court Victim Advisors in developing any communications directly to victims.

39 Prioritising the repeal of the three strikes regime will help to minimise the impact on victims, as the Courts are already adjourning sentencings in anticipation of the planned legislation. Adjournments will increase the backlog of people on remand and negatively impact victims through the delays in Court.

40 If Cabinet decides to progress with transitional arrangements, there will be additional stress for some victims associated with Parole Board consideration or re-sentencing. This risk would be mitigated by the fact that the Parole Board or judge will be able to refer back to any previous victim impact statements, so victims will not need to submit again if they choose not to. Victims may choose to participate during any parole hearings or re-sentencings in accordance with their statutory rights.

- 41 Should transitional arrangements be included, affected victims who are on the Victims Notification Register will be proactively contacted to ensure they are aware that there may be a parole or re-sentencing hearing. The Court Victim Advisor responsible for the victims' case will notify the victim of any outcomes for the offender and inform victims of services available to them.
- 42 These will include all services available to victims at the time the offence was committed, regardless of whether these services were used at that time.

*Compensation excluded*

- 43 I propose excluding any entitlement to compensation for people impacted by the three strikes law. Compensation would go beyond the purpose of repealing the law, which is to prevent further negative effects from the disproportionate sentencing and parole outcomes imposed.
- 44 There is no general principle that a person who is sentenced under a repealed law is entitled to compensation on repeal. Where a person has been wrongfully sentenced, there are existing avenues to appeal and seek compensation. In this instance, there is no suggestion that the sentences were wrongfully imposed as they were in accordance with the law at the time.
- 45 I propose inserting a provision which clearly states that repeal of the three strikes regime and re-sentencing does not give rise to any claims for compensation or damages, for the avoidance of doubt. This is the approach that was taken in the Criminal Records (Expungement of Historical Homosexual Offences) Act 2018.

**Timeframes**

- 46 I recommend that we progress the proposed repeal legislation as a priority in 2021. A protracted repeal process will increase the number of Court decisions made under current legislation which have a distorting effect. This includes a Supreme Court hearing about three strikes offending that is currently underway.
- 47 Anticipation of the legislation is likely to cause an increase in requests for adjournments of three strike cases, particularly for those who are to be sentenced for second strike offences. This will increase the backlog of people on remand and negatively impact victims through delays in Court.
- 48 If transitional arrangements are to be included in the repeal legislation, public messaging will be important in advance of legislation coming into effect as it will allow Courts and defence counsel to prepare for these changes.

**Next steps**

- 49 If Cabinet agrees to these proposals, a Bill will be introduced to the House.
- 50 I intend to introduce the Bill in mid-2021. I propose that the Bill be referred to the Justice Select Committee to report back by October 2021.

### Financial implications

- 51 The associated reduction in demand for prison places may allow some future Ara Poutama Aotearoa – the Department of Corrections operating costs to be avoided.
- 52 Should transitional arrangements be included there will be some costs to Crown Law, the Ministry of Justice and Ara Poutama Aotearoa – the Department of Corrections for re-sentencings in Court. However, these will be absorbed within baselines.
- 53 Legal challenges may arise depending on decisions regarding transitional arrangements. If brought, these will have financial impacts relating to costs of litigation and potential damages.

### Legislative implications

- 54 The proposals would require amendments to the Sentencing Act 2002 and the Parole Act 2002. There will also be consequential amendments to a number of other statutes which refer to the definition of a serious violent offence.
- 55 Subject to decisions from Cabinet, my officials will work with Parliamentary Counsel Office to draft the relevant provisions in preparation for introduction in mid-2021.
- 56 The Bill will bind the Crown.

### Regulatory Impact Statement

- 57 A Regulatory Impact Statement has been prepared. A joint QA panel from the Ministry of Justice, Treasury and Ara Poutama Aotearoa – the Department of Corrections has reviewed the Regulatory Impact Statement prepared by the Ministry of Justice on the proposal to Repeal Three Strikes, and considers that the information and analysis summarised in the Regulatory Impact Statement **partially meets** the Quality Assurance criteria.
- 58 The panel considers that the analysis is otherwise robust and can be relied on by Ministers to support their decision-making.
- 59 The analysis supporting this paper is informed by the public engagement on the criminal justice system that took place through the *Hāpaitia te Oranga Tangata: Safe and Effective Justice* programme between 2018 and 2019 and engagement with affected government agencies.
- 60 *Hāpaitia te Oranga Tangata* reports have highlighted the impact imprisonment has on Māori and their whānau.<sup>18</sup> Repealing the three strikes law will allow for background and cultural considerations of the offender to be considered at sentencing. This has been specifically highlighted in these reports, which call for such considerations to be mainstreamed throughout the criminal justice system.

---

<sup>18</sup> Hui Māori *Ināia Tonu Nei* (2019); Te Uepū Hapai I Te Ora *Turuki! Turuki! Move Together* (2019); Te Uepū Hapai I Te Ora *He Waka Roimata* (2019).

- 61 The proposal to repeal the three strikes law implements a manifesto commitment. The Government wishes to proceed swiftly, and the Regulatory Impact Statement also states that the change needs to be progressed quickly as some Courts are already adjourning sentencing in anticipation. There has therefore been no engagement with the public on the issue of whether the three strikes law should be repealed and, if so, what the transitional arrangements should be.

### **Treaty of Waitangi implications**

- 62 Māori are disproportionately over-represented in the prison population. This disparity is even more pronounced in the cohort of offenders who have received a strike. Over 2018/19 and 2019/20 combined, Māori were almost nine times more likely to receive a first strike than those of European/other ethnicity and over 18 times more likely to receive a second strike.
- 63 As at 30 June 2020, 50% percent of those who have received a first strike and 63% of those who have received a second strike are Māori. Sixty-two per cent of Māori who received a second strike were aged under 30. The proposal to not pay compensation will therefore also disproportionately affect Māori.
- 64 The Treaty of Waitangi envisaged that Māori be treated equitably. The current regime exacerbates inequities for Māori in the criminal justice system and repeal of the three strikes law will go some way to create a more equitable justice system for Māori.

### **Gender implications**

- 65 The proposals in this paper have no direct gender implications. However:
- 65.1 men are disproportionately represented in the criminal justice system, and make up around 93% of the prisoner population, and
- 65.2 approximately 98% of the people currently serving second or third strike prison sentences are men.
- 66 The proposals in this paper will therefore directly benefit more men than women.

### **Disability perspective**

- 67 The proposals in this paper have no direct or specific implications from a disability perspective. People with neurodisabilities are over-represented in the prisoner population, and the changes proposed are likely to improve outcomes for these people.

### **Human rights implications**

- 68 These changes will promote and safeguard the rights of those coming into contact with the criminal justice system, as affirmed by the Bill of Rights Act and the Human Rights Act 1993. The draft Bill will be vetted by Crown Law for consistency with the Bill of Rights Act. Ruling out or limiting transitional arrangements for offenders sentenced under the regime could raise a potential inconsistency with the Bill of Rights Act.

- 69 While these cases, if brought, would not necessarily be successful, they would have financial and reputational implications. A declaration of inconsistency with the Bill of Rights Act would not nullify or overturn any part of the repeal legislation.

**Consultation**

- 70 New Zealand Police, Ara Poutama Aotearoa - Department of Corrections, the Judiciary, the New Zealand Parole Board, and the Crown Law Office were given the opportunity to comment on the proposal. The Department of the Prime Minister and Cabinet, Parliamentary Counsel Office and the Treasury were informed of the proposal.

s9(2)(h)

**Communications**

- 72 The communications approach around this paper and associated issues will be managed by my office, in consultation with other Ministers' offices as appropriate.

**Proactive release**

- 73 I intend to proactively release this paper in accordance with Cabinet circular CO(18)4.

## Recommendations

The Minister of Justice recommends that the Committee:

- 1 **agree** to repeal the three strikes law;
- 2 **note** that officials are putting in place a support plan to minimise stress for victims impacted by the repeal of the three strikes law;
- 3 **agree** that:  
**EITHER**
  - 3.1 no transitional arrangements will be introduced;**OR**
  - 3.2 transitional arrangements will be introduced that restore standard parole eligibility settings for offenders serving a sentence of imprisonment of more than two years for a strike offence when the repeal legislation is enacted;**OR**
  - 3.3 transitional arrangements will be introduced for offenders serving a sentence of imprisonment for a strike offence with a maximum period of imprisonment of 10 years or less when the repeal legislation is enacted;
- 4 **agree** that people who have already completed sentences of imprisonment for second or third strike offences will not be eligible to have their sentences modified;
- 5 **agree** that the legislation should specify that being convicted and/or sentenced under the three strikes regime does not give rise to a claim for compensation or damages;

### *Legislation*

- 6 **note** that I intend to seek a priority 3 slot for the Bill on the 2021 Legislation Programme;
- 7 **invite** the Minister of Justice to issue drafting instructions to Parliamentary Counsel Office to give effect to the above proposals, including the decision referred to in recommendation 3;
- 8 **authorise** the Minister of Justice, in consultation with the Minister of Corrections, to make additional minor policy decisions in relation to the drafting of legislation which are consistent with the contents of this paper, without further reference to Cabinet.

Authorised for lodgement

**Hon Kris Faafoi**

Minister of Justice



**Appendix 1: Profile of people currently in prison for second and third strike offences**

<b>Second strike offenders (short-term sentences) – approximately 17 people</b>	
Sentenced to 1-2 years imprisonment	8 people
Sentence expiry dates prior to 30 June 2021	9 people
Depending on when repeal legislation comes into force, we estimate there will be between 10-25 people serving short-term sentences of imprisonment.	

<b>Second strike offenders (long-term sentences) – approximately 203 people</b>	
Terms of imprisonment	
Sentenced to 2-3 years imprisonment	37 people
Sentenced to 3-5 years imprisonment	65 people
Sentenced to 5-10 years imprisonment	59 people
Sentenced to over 10 years imprisonment	17 people
Offence types	
Robbery/Aggravated robbery	67 people
Wounding/Injuring	64 people
Sexual offences	41 people
Aggravated burglary	15 people
Kidnapping/Threatening to kill	5 people
Murder	14 people
Other homicide	7 people
Other offences	7 people
Sentence expiry dates prior to 30 June 2021	23 people
Approximately 25% of these offenders are serving mixed sentences (for non-strike offences) and have a parole eligibility date.	

<b>Third strike offenders - approximately 18 people</b>	
Offence types	
Wounding/Injuring	8 people
Robbery/Aggravated robbery	4 people
Sexual offences	3 people
Murder/Attempted murder	3 people
Criminal history	
Fewer than 15 previous convictions	63%
Fewer than 10 previous custodial sentences	56%
Demographics	
Male	100%
Māori	81%
Aged under 30 when they received their third strike	56%

**Appendix 2: Strike offences that would be eligible and ineligible for re-sentencing (Alternative approach 2)**

<b>Maximum penalty</b>	<b>Strike offences</b>
<b>7 years imprisonment (eligible)</b>	Sexual connection with dependant family member under 18 years (s 131(1))
	Attempted sexual connection with dependant family member under 18 years (s 131(2))
	Indecent act on a young person (s 134(3))
	Indecent assault (s 135)
	Wounding with intent to injure (s 188(2))
	Aggravated injury (s 191(2))
	Discharging firearm or doing dangerous act with intent to injure (s 198(2))
<b>10 years imprisonment (eligible)</b>	Attempted sexual violation and assault with intent to commit sexual violation (s 129)
	Attempted sexual connection with a child under 12 (s 132(2))
	Indecent act on a child under 12 (s 132(3))
	Sexual connection with young person (s 134(1))
	Attempted sexual connection with young person (s 134(2))
	Exploitative sexual connection with person with significant impairment (s 138(1))
	Attempted exploitative sexual connection with person with significant impairment (s 138(2))
	Counselling or attempting to procure murder (s 174))
	Conspiracy to murder (s 175))
	Injuring with intent to cause grievous bodily harm (s 189(1))
	Using firearm with intent to resist arrest or detention (s 198A(2))
	Commission of crime with firearm (s 198B)
	Robbery (s 234)
<b>14 years imprisonment (ineligible)</b>	Sexual conduct with consent induced by certain threats (s 129A(1))
	Sexual connection with a child under 12 (s 132(1))
	Compelling indecent act with animal (s 142A)
	Attempted murder (s 173)
	Wounding with intent to cause grievous bodily harm (s 188(1))
	Aggravated wounding (s 191(1))
	Discharging firearm or doing dangerous act with intent to do grievous bodily harm (s 198(1))
	Using firearm against law enforcement officer, etc (s 198A(1))

	Poisoning with intent to cause grievous bodily harm (s 200(1))
	Infecting with disease (s 201)
	Abduction for purposes of marriage or sexual connection (s 208)
	Kidnapping (s 209)
	Aggravated burglary (s 232(1))
	Aggravated robbery (s 235)
	Causing grievous bodily harm with intent to rob or assault with intent to rob in specified circumstances (s 236(1))
	Assault with intent to rob (s 236(2))
20+ years imprisonment <b>(ineligible)</b>	Sexual violation (s 128B; 20 years)
	Murder (s 172; Life imprisonment)
	Manslaughter (s 177; Life imprisonment)