

Three Strikes Legislation Repeal Bill

Government Bill

As reported from the Justice Committee

Commentary

Recommendation

The Justice Committee has examined the Three Strikes Legislation Repeal Bill and recommends by majority that it be passed with the amendments shown. We recommend all amendments unanimously.

About the bill as introduced

The Three Strikes Legislation Repeal Bill is an omnibus bill that would amend the Sentencing Act 2002 and several other statutes and regulations. Its purpose is to repeal 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 repeat offenders with the threat of progressively longer mandatory prison terms, and to incapacitate those who continue to re-offend despite the additional penalties. This mandatory sentencing regime does not allow a judge any discretion in sentencing. It prevents judges from taking the individual circumstances of the offender and the offending into account.

The Government believes that the three strikes law has resulted in unjust outcomes, disproportionately affecting Māori. Also, concerns have been raised about the law's inconsistency with the New Zealand Bill of Rights Act 1990.

Enacting this bill would repeal the three strikes law, reverting the sentencing process to standard sentencing practices, where Judges decide an appropriate outcome on a case-by-case basis. Judges would still be able to impose sentences up to and including the maximum penalty, where appropriate. The bill expressly excludes any entitlement to compensation relating to the effects of the three strikes law.

Consideration of retrospective action

There are no provisions included in the bill that would adjust the sentences of any offender who was sentenced under the three strikes regime, or make any offender sentenced under the three strikes law eligible to have their sentence reconsidered. The Minister of Justice wrote to us, inviting us to consider whether the bill should apply retrospectively to offenders who are serving sentences of imprisonment for a strike offence.

We have considered this option and we do not wish to recommend any changes to the bill of this nature. Retrospectively changing sentences would require complex approaches that would differ depending on which of the affected groups were included.

In addition, any option for retrospectively reducing sentences or allowing parole would significantly affect the victims of those offenders, who could not have expected any re-sentencing or parole hearings to occur.

Proposed amendment

This commentary covers the main amendment we recommend to the bill as introduced. We do not discuss minor or technical amendments.

Recognising the need for clarity in the compensation clause

Clause 15(1) of the bill's Schedule states that no three strike offenders are entitled to compensation as a result of the effect of the three strikes law on their sentence or sentencing process. Clause 15(2) says that nothing in clause 15(1) prevents a person from being entitled to compensation in respect of anything that occurred while the person was serving a sentence or complying with an order or a direction.

The intent of clause 15 was to preclude the establishment of any form of Crown-established compensation scheme for three strike offenders who may have received harsher punishments because of the three strike law. However, this compensation provision is not intended to preclude individuals bringing claims for compensation for a breach of their rights under the Bill of Rights Act.

From the submissions we received, we acknowledge that clause 15 is insufficiently clear, and risks causing confusion. Therefore, we recommend amending clause 15 to clearly state that it does not preclude an individual from seeking to bring a claim for a breach of their rights under the New Zealand Bill of Rights Act.

New Zealand National Party differing view

The National Party opposes the recommendation that the Three Strikes Legislation Repeal Bill be passed as recommended by the majority report.

The Ministry of Justice evidence brief says "there is no substantial international or New Zealand evidence on the effect of three strikes laws on crime ... the existing evidence is mixed and more robust research is needed to understand the true effects of these laws".

This is not a strong basis for repeal.

In an environment where gang membership has increased by 40 percent, and violent crime by 21 percent (since 2017), we should not be removing tools available to deter serious offending and keep communities safer. The message that the Government is sending with this bill—that we have been too tough on our most serious repeat offenders—is ill-timed and inappropriate.

The relatively few applications of the three strikes law (25 people between 2012–2021) indicates that it does deter reoffending. Meantime, by taking the worst repeat offenders out of circulation for longer, it is keeping New Zealanders safer.

Under the current law, judges have the ability not to apply the three strikes provision if it would be “manifestly unjust”. We believe this provides an adequate safeguard against perverse outcomes or gross injustices.

The select committee process highlighted some of the practical difficulties that have arisen from the law, such as a lack of rehabilitation programmes available for prisoners not eligible for parole. Improvements to the Act would make more sense than its repeal.

ACT Party differing view

The three strikes legislation was first introduced to the Sentencing and Parole Reform Act in 2010. Its passing just over 10 years ago sent several signals to our communities. The first is that victims of crime matter; the second is that serious violent repetitive crime will not be tolerated in New Zealand society.

Three strikes law applies to only 40 serious offences, and the repetitive nature of committing these serious offences. The initial two strikes meant that the offender was aware of what continued offending would mean to their ability to participate in society, and that full jail sentences would be mandated if their serious offending continued. This legislation was about ensuring that the worst of the worst, the 1 percent of those convicted under the three strikes law, stayed locked up and off our streets doing no more harm to innocent victims and their families.

The message sent to victims of crime was that New Zealand supported them and put them at the heart of our justice system. The message sent to criminals was that if you continued your path of destruction you would be incarcerated to the fullest extent of the law. A necessary action to keep our communities safe.

The Government’s arguments to support the repeal fall flat in our opinion. Statistics received from officials explain that a 2018 analysis followed up with a recent data set, has shown that over the short period of time three strikes has been operating it looks to have had some benefit as a deterrent. Especially between the first and second strike offending.

The figures tell their own story and it reads that only 1 percent of all offending results in a strike offence: just under 13,500 people are on a first strike, a massive reduction of 640 receiving a second strike, and a mere 21 of New Zealand’s worst offenders have received a third strike. A low amount, as potential three strike offenders are still

serving second strike sentences. More time is needed to be able to accurately ascertain the deterrent effect, as initial reports are certainly promising.

What is really happening here is a soft-on-crime approach by the Labour Government who, in our view, appear to believe that New Zealand's worst offenders deserve to live in local communities, amongst society, alongside their victims, after repeatedly showing they have no care for law, for communities or for the targets of their crimes. An approach to reduce our prison population at the expense of community safety.

ACT continues to advocate for our victims. To ensure that those that break the law by committing serious offences are made to pay for the pain they inflict on others. That if criminals do not learn after the first offence, or by the second offence, then their third strike will give them plenty of time for reflection on their behaviour, while removing these offenders from our streets.

ACT also has a bill in the ballot box that will ensure that rehabilitation is available, and must be attended by all prisoners, to assist them to be released as better contributors to our communities and their own families. A simple exercise that should continue the reduction between strike offences. However, for that small amount of third strikers serving full time for their offence, there is a reason for longer-term incarceration. The first is that their repeated offending is not tolerable, and the second that we put the victims of crime at the centre of the justice system.

We believe that victims are feeling hurt and ignored by this Government. That their often ongoing pain and suffering at the hands of criminals has no justice afforded it. A message that ACT deplors.

The ACT Party will not support the repeal of this legislation.

Appendix

Committee process

The Three Strikes Legislation Repeal Bill was referred to the committee on 17 November 2021. We received advice on the bill from the Ministry of Justice. The Parliamentary Counsel Office assisted with legal drafting.

The closing date for submissions on the bill was 7 January 2022. We received and considered 485 submissions from interested groups and individuals. We heard oral evidence from 24 submitters.

Committee membership

Ginny Andersen (Chairperson)

Dr Emily Henderson

Hon Paul Goldsmith

Nicole McKee

Hon Mark Mitchell

Simon O'Connor

Willow-Jean Prime

Vanushi Walters

Arena Williams

Three Strikes Legislation Repeal Bill

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Kris Faafoi

Three Strikes Legislation Repeal Bill

Government Bill

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The Parliament of New Zealand enacts as follows:**1 Title**

This Act is the Three Strikes Legislation Repeal Act **2021**.

2 Commencement

This Act comes into force on **1 July 2022**.

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Part 1**Amendments to Sentencing Act 2002****3 Principal Act**

This Part amends the Sentencing Act 2002.

4 Section 4 amended (Interpretation)

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In section 4(1), definition of **minimum period of imprisonment**, replace “section 86, 86D(4), 86E(4)(a), 89, or 103” with “section 86, 89, or 103”.

5 Sections 86A to 86I and cross-heading repealed

Repeal sections 86A to 86I and the cross-heading above section 86A.

6 Section 89 amended (Imposition of minimum period of imprisonment)

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Repeal section 89(2A).

7 Section 102 amended (Presumption in favour of life imprisonment for murder)

Repeal section 102(3).

8 Section 103 amended (Imposition of minimum period of imprisonment or imprisonment without parole if life imprisonment imposed for murder)

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Replace section 103(1) with:

(1) If a court sentences an offender convicted of murder to imprisonment for life, it must—

(a) order that the offender serve a minimum period of imprisonment under that sentence; or

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(a) if subsection (2A) applies, make an order under that subsection.

9 Section 104 amended (Imposition of minimum period of imprisonment of 17 years or more)

In section 104(2), replace “section 86E(2)(b) or (4)(a) or 103(2A)” with “section 103(2A)”.

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10 Schedule 1AA amended

In Schedule 1AA,—

- (a) insert the Part set out in the **Schedule** of this Act as the last Part; and
- (b) make all necessary consequential amendments.

Part 2

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Amendments to other legislation

Subpart 1—Amendments to Acts

*Amendment to Arms Act 1983***11 Principal Act**

Section 12 amends the Arms Act 1983.

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12 Section 22H amended (Persons disqualified from holding firearms licence)

Replace section 22H(a)(ii) with:

- (ii) a specified violent offence as defined in section 4 of the Victims' Orders Against Violent Offenders Act 2014:

Amendment to Criminal Procedure Act 2011

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13 Principal Act

Section 14 amends the Criminal Procedure Act 2011.

14 Section 180 amended (Court may correct erroneous sentence)

Repeal section 180(4)(b).

Amendment to Evidence Act 2006

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15 Principal Act

Section 16 amends the Evidence Act 2006.

16 Section 139 amended (Evidence of convictions, acquittals, and other judicial proceedings)

Repeal section 139(1)(ba).

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*Amendments to Parole Act 2002***17 Principal Act**

Sections 18 to 20 amend the Parole Act 2002.

- 18 Section 20 amended (Parole eligibility date)**
Repeal section 20(5) to (8).
- 19 Section 84 amended (Non-parole periods)**
- (1) In section 84(2), replace “section 86, section 86D(4), section 86E(4), section 89, or section 103” with “section 86, 89, or 103”. 5
- (2) Replace section 84(3) with:
- (3) The non-parole period of a sentence of imprisonment for life (other than one in respect of which the court has imposed a minimum term of imprisonment) is 10 years. 10
- (3) Repeal sections 84(3A) and 84(5)(ab). 10
- 20 Section 86 amended (Release date of sentence)**
Repeal section 86(1A).
- Amendments to Victims’ Orders Against Violent Offenders Act 2014*
- 21 Principal Act**
Sections 22 to 25 amend the Victims’ Orders Against Violent Offenders Act 2014. 15
- 22 Section 4 amended (Interpretation)**
- (1) In section 4, definition of **immediate family**, paragraph (a), replace “violent offence” with “specified violent offence”.
- (2) In section 4, definition of **victim**, replace “violent offence” with “specified violent offence” in each place. 20
- (3) In section 4, repeal the definition of **violent offence**.
- (4) In section 4, insert in its appropriate alphabetical order:
specified violent offence means an offence against any of the following provisions of the Crimes Act 1961: 25
- (1) section 128B (sexual violation):
- (2) section 129 (attempted sexual violation and assault with intent to commit sexual violation):
- (3) section 129A(1) (sexual connection with consent induced by threat):
- (4) section 131(1) (sexual connection with dependent family member under 18 years): 30
- (5) section 131(2) (attempted sexual connection with dependent family member under 18 years):
- (6) section 132(1) (sexual connection with child):
- (7) section 132(2) (attempted sexual connection with child): 35

(8)	section 132(3) (indecent act on child):	
(9)	section 134(1) (sexual connection with young person):	
(10)	section 134(2) (attempted sexual connection with young person):	
(11)	section 134(3) (indecent act on young person):	
(12)	section 135 (indecent assault):	5
(13)	section 138(1) (exploitative sexual connection with person with significant impairment):	
(14)	section 138(2) (attempted exploitative sexual connection with person with significant impairment):	
(15)	section 142A (compelling indecent act with animal):	10
(16)	section 144A (sexual conduct with children and young people outside New Zealand):	
(17)	section 172 (murder):	
(18)	section 173 (attempted murder):	
(19)	section 174 (counselling or attempting to procure murder):	15
(20)	section 175 (conspiracy to murder):	
(21)	section 177 (manslaughter):	
(22)	section 188(1) (wounding with intent to cause grievous bodily harm):	
(23)	section 188(2) (wounding with intent to injure):	
(24)	section 189(1) (injuring with intent to cause grievous bodily harm):	20
(25)	section 191(1) (aggravated wounding):	
(26)	section 191(2) (aggravated injury):	
(27)	section 198(1) (discharging firearm or doing dangerous act with intent to do grievous bodily harm):	
(28)	section 198(2) (discharging firearm or doing dangerous act with intent to injure):	25
(29)	section 198A(1) (using firearm against law enforcement officer, etc):	
(30)	section 198A(2) (using firearm with intent to resist arrest or detention):	
(31)	section 198B (commission of crime with firearm):	
(32)	section 200(1) (poisoning with intent to cause grievous bodily harm):	30
(33)	section 201 (infecting with disease):	
(34)	section 208 (abduction for purposes of marriage or civil union or sexual connection):	
(35)	section 209 (kidnapping):	
(36)	section 232(1) (aggravated burglary):	35
(37)	section 234 (robbery):	

- (38) section 235 (aggravated robbery):
- (39) section 236(1) (causing grievous bodily harm with intent to rob, or assault with intent to rob in specified circumstances):
- (40) section 236(2) (assault with intent to rob)
- 23 Section 5 amended (Meaning of violent offender or offender)** 5
In section 5(1), replace “violent offence” with “specified violent offence”.
- 24 Section 7 amended (Application for non-contact order)**
In section 7(1), replace “violent offence” with “specified violent offence”.
- 25 Section 18 amended (Discharge of non-contact order by operation of law)** 10
In section 18(1)(a) and (b), replace “violent offence” with “specified violent offence”.

Subpart 2—Amendments to secondary legislation

Amendments to Criminal Procedure (Transfer of Information) Regulations 2013

- 26 Principal regulations** 15
Sections 27 and 28 amend the Criminal Procedure (Transfer of Information) Regulations 2013.
- 27 Regulation 3 amended (Interpretation)**
In regulation 3(1), replace the definition of **violent offence** with:
specified violent offence has the same meaning as in section 4 of the Victims’ Orders Against Violent Offenders Act 2014 20
- 28 Regulation 8A amended (Information about criminal proceedings in VOAVOA proceedings)**
In regulation 8A(3)(a) and (c), replace “violent offence” with “specified violent offence”. 25

Amendment to Legal Services (Quality Assurance) Regulations 2011

- 29 Principal regulations**
Section 30 amends the Legal Services (Quality Assurance) Regulations 2011.
- 30 Schedule amended** 30
In the Schedule, clause 1(1), definition of **approval level 4 criminal proceedings**, revoke paragraph (c).

*Amendments to Sentencing Regulations 2002***31 Principal regulations**

Section 32 amends **Sections 31A and 32** amend the Sentencing Regulations 2002.

31A Regulation 5 amended (Prescribed forms)

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In regulation 5(2), delete “12B to”.

32 Schedule amended

(1) In the Schedule, form 7,—

(a) heading, replace “*Sections 86, 86D(4), 86E(4)(a), and 103*” with “*Sections 86 and 103*”; and 10

(b) paragraph 2, delete “*or* I am satisfied that section 86D(4)/86E(4)(a)* of the Sentencing Act 2002 applies to the offender. *Select one.”; and

(c) paragraph 3, replace “section 86/86D(4)/86E(4)(a)/103*” with “section 86/103*”.

(2) In the Schedule, form 8, paragraph 2, delete “*or* I am satisfied that section 86D(7) of the Sentencing Act 2002 applies to the offender, and consider that a minimum period of imprisonment of [*specify period*] is appropriate”. 15

(3) In the Schedule, revoke forms 12B to 12E.

(4) In the Schedule, form 12F,—

(aaa) heading, replace “*Sections 86C(4), 86D(3), 86E(2), and 103(2A)*” with “*Sections 86 and 103*”; and 20

(a) paragraph 2, delete “*For this paragraph select the statement that applies.* I am satisfied that section 86C(4) of the Sentencing Act 2002 applies to the offender. *or* I am satisfied that section 86D(3) of the Sentencing Act 2002 applies to the offender. *or* I am satisfied that section 86E(2) of the Sentencing Act 2002 applies to the offender. *or*”; and 25

(b) paragraph 3, replace “section 86C(4)/86D(3)/86E(2)/103(2A)*” with “section 86C(4)/103(2A)*”.

(b) paragraph 3,—

(i) replace “section 86C(4)/86D(3)/86E(2)/103(2A)*” with “section 103(2A)”; and 30

(ii) delete “*Select one.”.

Schedule
Schedule 1AA amended

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Part 4

Provisions relating to Three Strikes Legislation Repeal Act 2021 5

13 Treatment of persons convicted and sentenced before enactment of Three Strikes Legislation Repeal Act 2021

(1) This clause applies to a person who, before 1 July 2022, was convicted of and sentenced for a stage-2 or stage-3 offence.

(2) If this clause applies,— 10

(a) the person is not eligible for release or re-sentencing as a consequence of any provision brought into force under the Three Strikes Legislation Repeal Act 2021; and

(b) in the case of calculating the non-parole period of a long-term notional single sentence, a sentence for which an order was made under section 86C(4) or 86D(3) of the Sentencing Act 2002 (as it read immediately before 1 July 2022) must be treated as if the full term of that sentence were the non-parole period of that sentence; and 15

(c) in the case of a short-term sentence for which an order was made under section 86C(4)(b) of the Sentencing Act 2002 (as it read immediately before 1 July 2022), the release date of that sentence is the expiry date of that sentence (whether or not that sentence was part of a short-term notional single sentence). 20

14 Treatment of persons convicted or sentenced after enactment of Three Strikes Legislation Repeal Act 2021 25

(1) This clause applies to a person who, on or after 1 July 2022, is convicted of or sentenced for an offence that would have been a stage-2 or stage-3 offence if the Three Strikes Legislation Repeal Act 2021 had not been brought into force.

(2) If this clause applies, in the case of a conflict between ~~section 19 of the Interpretation Act 1999~~ section 34 of the Legislation Act 2019 and— 30

(a) section 6 of the Sentencing Act 2002, section 6 prevails; or

(b) section 25(g) of the New Zealand Bill of Rights Act 1990, section 25(g) prevails.

15 No entitlement to compensation

(1) A person is not entitled to compensation of any kind, on account of any alteration of sentencing rules as a consequence of any provision brought into force 35

- under the Sentencing and Parole Reform Act 2010, in respect of the fact that the person—
- (a) was charged with, or prosecuted for, the offence; or
 - (b) admitted committing or pleaded guilty to, or was found to have committed, was convicted of, was sentenced for, or had an order or a direction made against the person for, the offence; or
 - (c) served a sentence for, or complied with an order or a direction made against the person because of committing, the offence; or
 - (d) was required to pay a fine or other money (including costs or any amount by way of restitution or compensation) on account of committing, or being convicted of, or sentenced for, the offence; or
 - (e) incurred any loss, or suffered any consequence (including being sentenced, or otherwise dealt with, as an offender, or as a repeat offender, of any kind), as a result of any circumstance referred to in **paragraph (a), (b), (c), or (d)**.
- (2) Nothing in **subclause (1)** prevents a person from being entitled to compensation in respect of anything that occurred while the person was serving a sentence or complying with an order or a direction.
- (2) Nothing in **subclause (1)** prevents a person from—
- (a) being entitled to compensation in respect of anything that occurred while the person was serving a sentence or complying with an order or a direction;
 - (b) bringing a claim for a breach of their rights under the New Zealand Bill of Rights Act 1990 in respect of being convicted of or sentenced for an offence specified in **clause 13(1)**.
- (3) Nothing in **subclause (2)(b)** is, or implies, an acknowledgement or a denial that relief (monetary or otherwise) may be available for a breach of the New Zealand Bill of Rights Act 1990 in respect of being convicted of or sentenced for an offence specified in **clause 13(1)**.
- Compare: 2010 No 24 s 90(1)(b); 2018 No 7 s 23

Legislative history

11 November 2021
17 November 2021

Introduction (Bill 79–1)
First reading and referral to Justice Committee