

**Legislative Statement
for the
Sentencing (Reinstating Three Strikes)
Amendment Bill

First Reading**

**Presented to the House of Representatives
In accordance with Standing Order 272**

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Introduction

- 1 The Sentencing (Reinstating Three Strikes) Amendment Bill (**the Bill**) restores the three strikes regime, repealed in 2022, in a revised form. The three strikes regime sets out a three-stage process with increasingly stricter consequences for repeat serious violent and sexual offending. Some of the key differences between the previous and new three strikes regimes are outlined in more detail below.
- 2 The Bill is an omnibus bill which amends the Sentencing Act 2002, the Criminal Procedure Act 2011, the Criminal Procedure (Mentally Impaired Persons) Act 2003 (**the CPMIP Act**), the Evidence Act 2006, and the Parole Act 2002.
- 3 The Bill fulfils the commitment in the National Party and Act Party coalition agreement to “restore three strikes legislation, with amendments to tighten the definition of strike offences and ensure some benefit for pleading guilty”. The National Party and Act Party’s 2023 general election manifestos also included a commitment to restore three strikes legislation.
- 4 Some of the amendments to the Parole Act 2002 restore provisions that were repealed in error by the Three Strikes Legislation Repeal Act 2022 (**the Repeal Act**).

Key legislative amendments

A new sentencing principle requires judges to regard repeat serious offending as worthy of a stern sentencing response where the manifestly unjust exception applies

- 5 Clause 5 of the Bill amends section 8 of the Sentencing Act 2002 to insert a new sentencing principle. It states that when it would be manifestly unjust to impose the mandatory sentence for a second- or third-stage offence covered by the three strikes regime, judges must regard the offence as worthy of a stern sentencing response.
- 6 This principle makes clear that even if three strikes sentencing is not applied in order to prevent a manifestly unjust outcome, the sentence that is instead imposed should still strongly denounce serious repeat offending. It is consistent with the case law principle expressed by Winkelmann CJ in *Fitzgerald v R* [2021] NZSC 131 at [138].

Courts will be required to disregard the consequences of the three strikes regime in determining sentence length

- 7 Clause 6 inserts new section 82A into the Sentencing Act 2002, which provides that courts must not take into account the additional consequences of the three strikes regime when determining the sentence. This is intended, for example, to:
 - 7.1 prevent the courts from compensating offenders for the loss of parole eligibility at stage-2 by shortening the overall sentence, a practice that arose under the previous regime (such as in *Barnes v R* [2018] NZCA 42);
 - 7.2 guard against the courts imposing sentences of less than 24 months (the qualifying sentence threshold), due to the consequences of the three strikes regime, in cases where the sentence is on the cusp of the threshold.

Offenders must receive a qualifying sentence for a qualifying offence to be subject to the three strikes regime

- 8 Clause 7 inserts new section 86J into the Sentencing Act 2002. This section defines a “qualifying offence” as an offence listed in new Schedule 1AB. The Schedule contains most serious violent and sexual offences in the Crimes Act 1961 with a maximum penalty of 7 years’ imprisonment or greater. This set of offences is the same as under the previous regime, with the addition of the strangulation or suffocation offence in s189A of the Crimes Act.
- 9 New section 86J also defines a qualifying sentence as either:
 - 9.1 a determinate sentence of imprisonment longer than 24 months; or
 - 9.2 an indeterminate sentence of imprisonment (that is, a sentence of life imprisonment or preventive detention).
- 10 Generally, the warnings and additional consequences in the regime only apply if offenders receive a qualifying sentence (or *would have* received a qualifying sentence, at stage-3, where the sentence is prescribed). If the court does not impose a qualifying sentence, the offender will not receive a warning and will be sentenced under ordinary sentencing principles. However, for stage-2 offences other than murder, the additional consequences of loss of parole eligibility apply only to determinate sentences of more than 24 months (new section 86O).
- 11 Offenders must be at least 18 years old at the time of the offending to be covered by the regime (see the definition of “stage-1 offence”, “stage-2 offence” and “stage-3 offence” in new section 86J), as was the case under the previous regime.

Offenders receive a warning for each strike offence where a qualifying sentence is imposed

- 12 Clause 7 inserts new sections 86K to 86N into the Sentencing Act 2002. These sections set out the requirements and processes for courts to issue warnings to offenders at each stage of the three strikes regime.
- 13 Offenders will receive a warning if the court imposes a qualifying sentence for an offence under the regime (under new section 86K at stage-1 and new section 86L at stage-2 or stage-3). This is the same as under the previous regime, except that warnings will apply upon the qualifying sentence being imposed, rather than on conviction. The new regime also makes it clear that offenders should still continue to receive a warning for a stage-3 offence. Warnings are categorised as a “first warning” at stage-1 and “subsequent warning” at stage-2 and stage-3 (which was called “final warning” under the previous regime).
- 14 The warnings are to be given at sentencing (new section 86M). The court must warn the offender and make an entry in the permanent court record (new sections 86K(2) and 86L(2)). This entry will constitute the record of first warning or subsequent warning.
- 15 This entry in the permanent court record will be conclusive evidence that the warning was given (in accordance with the definition inserted by clause 4(2) into section 4(1) of the Sentencing Act, which incorporates the definition in section 5 of the Criminal Procedure Act 2011).

16 These provisions also cover other matters to do with warnings, including what happens if a court omits to give a required warning (new section 86M(2)) and what happens if a qualifying sentence is imposed on appeal (new section 86M(3)).

17 New section 86N also sets out details about the written notice the offender will receive.

The Bill imposes certain consequences for stage-2 and stage-3 offences other than murder (unless doing so would be manifestly unjust)

18 The Bill prescribes certain consequences for stage-2 and stage-3 offences; these consequences are the same as under the previous regime. For qualifying offences other than murder, the Bill requires that:

18.1 for a stage-2 offence, any determinate sentence of over 24 months imposed on an offender must be served without parole, unless manifestly unjust (new section 86O(2) of the Sentencing Act 2002);

18.2 for a stage-3 offence, the maximum term of imprisonment be imposed (or at least 80% of the maximum term if the offender pleads guilty), unless manifestly unjust (new sections 86R(2)(a)-(b)); this sentence must also be served without parole unless manifestly unjust.

19 The Bill makes specific provision for manslaughter as a stage-3 offence, as it is the only qualifying offence (aside from murder) that carries a maximum penalty of life imprisonment. The Bill requires that a term of imprisonment of at least 10 years be imposed for a stage-3 offence of manslaughter, or at least 8 years if the offender pleads guilty, unless manifestly unjust (new sections 86R(2)(c)-(d)). This constitutes a change from the previous regime. This penalty has been revised to a level that the courts will apply in practice, to ensure workability, and to align with the changes for murder offences.

20 As under the previous regime, a sentence of preventive detention under section 87 remains available, instead of the specified term, and if preventive detention is imposed, the court must impose a minimum period that is not less than the term the court would have imposed under the stage-3 requirements, unless manifestly unjust (new sections 86R(6)-(7)).

Consequences for murder offences at stage-2 and stage-3

21 All offenders who commit murder are subject to the usual presumptive sentence of life imprisonment under section 102 of the Sentencing Act 2002 (unless this would be manifestly unjust). They will have a minimum period of imprisonment imposed (in the same way as the ordinary sentencing process for offenders who commit murder).

22 The Bill requires the following minimum periods of imprisonment (unless a life sentence without parole is imposed under section 103(2A)), unless manifestly unjust:

22.1 for a stage-2 murder offence, a minimum period of 17 years, or 15 years if the offender pleads guilty (new section 86P(2)); but

22.2 for a stage-2 murder offence, if one or more circumstances under section 104 are present, a minimum period of 17 years (regardless of plea); this is to avoid offenders getting a lower sentence under the three strikes regime due to their guilty plea, than they would otherwise have received, where section 104 applies;

22.3 for a stage-3 offence, a minimum period of 20 years, or 18 years if the offender pleads guilty (new section 86S(2)).

- 23 These consequences for murder offending under three strikes differ from those under the previous regime. This is because, under the previous regime, it became clear that life imprisonment without parole would virtually never be imposed for murder offences, as such a high sentence would almost always be manifestly unjust.

Proceedings and sentencing for stage-3 offences must be transferred to senior courts

- 24 The Bill inserts new section 86Q into the Sentencing Act 2002. New section 86Q(1) requires proceedings against defendants charged with stage-3 offences to be transferred to the High Court for continuation, and new section 86Q(2) only permits the High Court and other senior courts to sentence an offender convicted of a stage-3 offence. This is the same as under the previous regime.

Ordinary sentencing principles apply regarding the imposition of concurrent or cumulative sentences for offenders convicted of a non-murder stage-3 offence and any other offence

- 25 The Bill inserts new section 86R into the Sentencing Act 2002, which imposes minimum sentences and removes parole eligibility for non-murder stage-3 offences.
- 26 New section 86R does not contain any specific provision about whether a sentence for such an offence should run concurrently or cumulatively in relation to any other sentence imposed on the offender at the same time as the stage-3 sentence. This is because the intention is for ordinary principles and legislative provisions governing concurrent and cumulative sentences to apply in such situations, including the guidance in section 84 of the Sentencing Act.
- 27 This approach differs from the previous three strikes regime, which required sentences imposed at the same time as the strike sentence to be imposed concurrently.

Courts may only avoid imposing sentences or consequences under the three strikes regime if they consider doing so would be manifestly unjust after considering relevant guidance

- 28 The Bill provides, in new sections 86O(2), 86P(2), 86R(2)-(3) and (6), and 86S(2) inserted into the Sentencing Act 2002, that sentences or orders under the three strikes regime must be imposed unless the courts consider doing so would be manifestly unjust.
- 29 New section 86T sets out guidance for the court in determining whether it would be manifestly unjust to impose a sentence or make an order. This will support the application of the manifestly unjust test in line with Parliament's intent. The court must:
- 29.1 give due consideration to denunciation, individual and general deterrence, and protecting the community from the offender; and
- 29.2 not find manifest injustice merely because:
- 29.2.1 one or more mitigating factors under section 9(2) of the Sentencing Act may apply; or
- 29.2.2 the sentence or order would be disproportionate (unless grossly disproportionate).

When courts impose the sentence or consequence for second- and third-stage offenders, they must set out the approach they would otherwise have taken

- 30 The Bill inserts new sections 86O(3), 86P(3), 86R(5), and 86S(3) into the Sentencing Act 2002. These require courts to state the sentence and minimum period of imprisonment they would have imposed on second- and third-stage offenders, had they not imposed the sentence or consequence required under the three strikes regime. This is to assist in the “manifestly unjust” assessment and will also be useful in any appeal against sentence.

The Bill clarifies the availability of treatment orders for mentally impaired offenders under the CPMIP Act if specific criteria are met

- 31 The Bill inserts new sections 34(6) and 34(7) into the CPMIP Act. These expressly prohibit courts from issuing a treatment order instead of passing sentence for an offender with a mental impairment or an intellectual disability under section 34(1)(b) of the CPMIP Act if the offender:

- 31.1 is convicted of a qualifying offence under the three strikes regime; and
- 31.2 would have received a qualifying sentence from the court in the absence of section 34(1)(b).

- 32 The Bill does not limit the ability of courts to issue:

- 32.1 detention orders under section 34(1)(a) of the CPMIP Act for mentally impaired offenders who have received a qualifying sentence upon conviction for a qualifying offence; or
- 32.2 treatment orders under section 34(1)(b) of the CPMIP Act for mentally impaired offenders who would not have received a qualifying sentence in the absence of section 34(1)(b).

- 33 This change is intended to clarify that orders under section 34(1)(a) (which are imposed *alongside* a term of imprisonment) remain available even where the court imposes a sentence under the three strikes regime. Orders under section 34(1)(b) (which apply *instead* of passing sentence) will only be available for offenders who would not have received a qualifying sentence. This reflects existing approaches under section 34(1)(b), whereby these orders are reserved for less serious offending only.

The Bill reinstates provisions repealed in error in the Parole Act 2002

- 34 The Bill makes remedial amendments to the Parole Act 2002 to restore references to section 103(2A) of the Sentencing Act 2002 that were removed in error by the Repeal Act. This will ensure consistency between the Parole Act and the Sentencing Act.
- 35 Section 103(2A) of the Sentencing Act allows the court to impose a sentence of life imprisonment without parole for murder. The remedial amendments amend sections 20 and 84 of the Parole Act (which relate to parole eligibility dates and non-parole periods respectively) to confirm that offenders serving this sentence are not eligible for parole.

Commencement

- 36 The amendments to sections 20 and 84 of the Parole Act 2002, referring to section 103(2A) of the Sentencing Act 2002, will come into force on the day after the date of Royal Assent.
- 37 The remainder of the Bill, covering the three strikes regime, comes into force on the day that is 6 months after Royal assent. This is to enable sufficient lead-in time to make system and process changes required to implement the three strikes regime.

Transitional provisions

- 38 The amendments to sections 20 and 84 of the Parole Act 2002 will have retrospective effect from the date the Repeal Act came into force (as specified by new parts 3 and 4 inserted into Schedule 1 of the Parole Act) to clarify that any offender sentenced to life without parole is not eligible for parole.
- 39 New part 5 inserted into Schedule 1AA of the Sentencing Act 2002 states that the three strikes regime will not apply retrospectively, so the regime will not apply to offences committed (whether in whole or in part) before the commencement date. This means that any strikes accrued under the previous three strikes regime will not be recognised.
- 40 Sentences imposed under the previous three strikes regime continue to be served as ordered under that previous regime. There is also no entitlement to compensation based on any difference between the new and previous three strikes regimes.