

I N C O N F I D E N C E

**GOVERNMENT RESPONSE TO
TE AKA MATUA O TE TURE |
LAW COMMISSION REPORT ON
PREVENTIVE MEASURES IN A REFORMED LAW**

Presented to the House of Representatives

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GOVERNMENT RESPONSE TO LAW COMMISSION REPORT ON PREVENTIVE MEASURES IN A REFORMED LAW

Introduction

The Government has carefully considered the Law Commission's report *Here ora: Preventive measures in a reformed law* (NZLC R149) (the report). The Government responds to the report in accordance with Cabinet Office Circular CO (09) 1.

Background to current preventive measures

There are a range of measures currently available to protect the public from serious sexual or violent offenders who would pose a high risk of reoffending if released unsupervised into the community after serving a prison sentence. These measures vary in the severity of restrictions they impose.

Extended Supervision Orders (ESOs)

An ESO is a post-sentence order where the offender is supervised and monitored in the community and is subject to conditions similar to parole conditions (for example, limits on where they can live and work). The Parole Board has discretion to impose more restrictive special conditions, including curfews and electronic monitoring, or a court may impose intensive monitoring for a period of up to 12 months.¹ ESOs are governed by the Parole Act 2002.

Public Protection Orders (PPOs)

A PPO is a more restrictive form of post-sentence order that requires an offender to be detained in a secure facility on prison grounds. PPOs are governed by the Public Safety (Public Protection Orders) Act 2014.

Preventive Detention

Preventive detention is an indeterminate prison sentence which a court can impose at sentencing if it considers the offender is likely to reoffend if released at the end of any finite sentence. An offender subject to preventive detention is detained in prison until they are granted parole and may be recalled to prison at any time. Preventive detention is the most severe preventive measure and is governed by the Sentencing Act 2002.

The Law Commission's review

In 2021, the Government requested that the Law Commission (the Commission) review the laws governing preventive detention, ESOs, and PPOs. The terms of reference required the Commission to consider:

- whether the laws reflect current understandings of reoffending risks and provide an appropriate level of public protection;

¹ An intensive monitoring condition requires that the offender submits to person-to-person monitoring and supervision for up to 24 hours a day.

- te Tiriti o Waitangi | the Treaty of Waitangi, te ao Māori perspectives and any matters of particular concern to Māori;
- consistency with domestic and international human rights law; and
- the relationship between sentences of preventive detention, ESOs, and PPOs.

The Commission's report was presented to the House of Representatives on 4 April 2025. The report contains 149 recommendations and proposes new legislation. Although the report acknowledges the importance of retaining preventive measures to protect public safety, it concludes there are substantial issues with the current legal framework. The Commission considers that existing legislation is fragmented, inconsistent, not geared to accurate risk assessment, hard to administer, and omits some types of qualifying offending.

The Commission recommends significant reform of the law governing preventive measures, in particular that the three current measures are replaced with a new single statutory regime. This new regime would involve a three-tier graduated scale of post-sentence orders that increase in restrictiveness as the level of risk posed by the offender increases. These are:

- **Community preventive supervision:** This measure would permit an offender to live in the community, subject to various conditions requiring their supervision and monitoring. These conditions would be tailored to the offender's reoffending risk and rehabilitative needs.
- **Residential preventive supervision:** This measure would require an offender to reside at a residential facility with minimal security features. Like with community preventive supervision, the conditions the offender is subject to could be tailored to their circumstances.
- **Secure preventive detention:** This measure would require an offender to be detained in a secure facility separate to and distinct from a prison, designed to stop them from leaving.

The report comprehensively sets out how the new regime should operate. It also makes recommendations regarding:

- adjustments to the list of qualifying offences;
- revisions to the legislative tests for the imposition of post-sentence measures;
- how each order should operate in practice, including rehabilitation requirements; and
- how the measures should be reviewed and by whom.

Government Response

The Government thanks the Commission for its thorough work in reviewing preventive detention, PPOs, and ESOs.

The Government acknowledges the Commission's findings. The legislation has been developed gradually over several decades to address emerging public safety risks, and is likely to benefit from the coherence a single legislative framework could provide. However,

the Government considers that further policy work is required to carefully analyse the report's recommendations, which are substantial, before making decisions on legislative reform. The Government is further considering the report's recommendations and will consider the impact of the proposals. Carefully considering the report's recommendations will help ensure that any legislative change is well-informed and effectively supports public safety.

The Ministry of Justice and Department of Corrections will consider the Commission's recommendations in detail. This work will take considerable resources and will need to be balanced alongside other competing Government priorities.