

## **MEDIA RELEASE**

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# **LAW COMMISSION SEEKS FEEDBACK ON HIGH-RISK OFFENDER RESTRICTIONS**

Te Aka Matua o te Ture | Law Commission is considering whether reform is needed to the laws that keep the community safe from people at high risk of serious sexual and violent offending. The Commission has today published an Issues Paper for public consultation. It is seeking feedback on problems with the current law and proposals for reform.

The Law Commission is reviewing preventive detention, extended supervision orders and public protection orders. The purpose of these laws is to keep the community safe from people convicted of serious offences who are considered to pose risks of committing further serious offences. Preventive detention and public protection orders require a person to be detained indefinitely. They remain in prison or a secure facility until they are considered safe enough to be released into the community. They are likely to be detained for longer periods than people serving determinate sentences with a fixed release date. Extended supervision orders require a person to be managed in the community when they are released from prison. They are subject to restrictions, such as electronic monitoring and limits on where they may live and where they can go.

The Law Commission's review was prompted by findings by the United Nations Human Rights Committee in 2017 that the laws governing preventive detention were in breach of the International Convention on Civil and Political Rights. In addition, the Court of Appeal has recently held that ESOs and PPOs breach the prohibition under human rights law against punishing a person twice for the same crime. The decision is currently under appeal to the Supreme Court.

John-Luke Day, Principal Adviser at the Law Commission, said:

"The law should strike the right balance. It needs to keep the community safe by preventing high-risk people from further serious offending. At the same time, it needs to protect the human rights of people who are detained or under supervision.

"Serious violent and sexual offending causes severe harm. There is a strong argument that there need to be laws in place to protect the community from reoffending.

"On the other hand, indefinite imprisonment and restrictive supervision are normally associated with the punishment of criminal offenders. Because this legislation is aimed protecting the community from what a person may or may not do in the future, it is inappropriate to subject them to restrictions in the nature of punishment, especially for long periods of time."

The Issues Paper considers whether the law should be reformed and contains high-level proposals that could address some of the issues. One important area the Commission is seeking feedback on is whether the law should have a stronger focus on providing therapeutic and rehabilitative treatment to people who need to be detained or supervised.

The Issues Paper also considers how the laws can better give effect to tikanga Māori and te Tiriti o Waitangi | Treaty of Waitangi. Tikanga Māori emphasises the need to restore relationships between the person who poses a risk, their whānau, any victims and the victims' whānau. While some measures are required to keep the community safe, keeping people indefinitely imprisoned or apart from their whānau and kin groups is inconsistent with tikanga. The Law Commission has also heard during its research and engagement a strong desire among Māori to take greater responsibility for managing their own people who may pose a risk of reoffending.

Other aspects of the current law the Issues Paper explores include:

- the fragmentation of these laws into different statutes with differing requirements;
- what type of offending should make someone eligible for preventive detention, an ESO or a PPO;
- whether the tests and processes to establish a person's risk of reoffending are appropriate;
- specific issues with managing people in the community subject to an extended supervision order.

The Law Commission is now calling for submissions. The closing date to submit is 28 July 2023. The Commission intends to hold a second consultation period in 2024 to gather feedback on options for changes to the law before submitting its final recommendations to the Government.

ENDS

#### **Background:**

Te Aka Matua o te Ture | Law Commission is an Independent Crown Entity operating under its own statute, the Law Commission Act 1985. It reports to the Minister responsible for the Law Commission. The Commission's statutory purpose is to "promote the systematic review, reform and development of the law of New Zealand". The Law Commission receives its work programme for reform and development work as references from the responsible Minister under section 7 of the Law Commission Act and from Parliament. Visit [lawcom.govt.nz](https://www.lawcom.govt.nz) for more information.

#### **For further information and comment, contact:**

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All documents relating to this project are available on our website at:

<https://www.lawcom.govt.nz/our-projects/a-review-of-preventive-detention-and-post-sentence-orders>

