

Hapori whānui me te tangata mōrea nui: he arotake o te mauhere ārai hē me ngā ōta nō muri whakawhiu | Public safety and serious offenders: a review of preventive detention and post-sentence orders

TERMS OF REFERENCE

Project Overview

In this review, Te Aka Matua o te Ture | Law Commission will examine the laws protecting the public from offenders who pose significant risks by providing for preventive detention, ESOs and PPOs.

The current law

Aotearoa New Zealand has laws aimed at protecting the public from risks posed by some offenders convicted of serious crimes. These laws enable the detention or supervision of those offenders beyond a fixed-term prison sentence (determinate sentence). For the court to order detention or supervision, the offender must have been convicted of a qualifying sexual or violent offence and present a risk of further sexual or violent offending.

The types of orders a court can make include the following:

- Preventive detention. Preventive detention is a prison sentence a court can impose under the Sentencing Act 2002 at the time a person is sentenced. A person sentenced to preventive detention cannot be considered for parole until the end of a minimum period of imprisonment stipulated by the sentencing court, which must be no less than five years. After that, they will only be released from prison if the New Zealand Parole Board is satisfied the person will not pose an undue risk to the safety of the community.
- Extended supervision orders (ESOs). ESOs are post-sentence orders a court can impose under the Parole Act 2002 on a person completing a determinate sentence. An ESO requires the ongoing monitoring and supervision of the person in the community after the end of their sentence. The New Zealand Parole Board can also impose special conditions such as restricting where the person can go, requiring participation in a rehabilitative programme, and monitoring the person 24 hours a day.



- Public protection orders (PPOs). PPOs are post-sentence orders a court can impose under the Public Safety (Public Protection Orders) Act 2014 on a person completing a determinate sentence. Under a PPO, a person must be detained after the end of their sentence in a secure facility within prison precincts.

The Commission's review

The review will consider whether the laws adequately provide for public protection while respecting the human rights of persons subject to detention or supervision. It will consider te ao Māori and te Tiriti o Waitangi | Treaty of Waitangi, especially in light of tikanga Māori approaches towards criminal justice and the over-representation of Māori among those subject to preventive detention and post-sentence orders. It will also focus on ways to improve the coherence and accessibility of the law.

Scope of the review

The review will consider:

- preventive detention under the Sentencing Act 2002;
- extended supervision orders (ESOs) under the Parole Act 2002; and
- public protection orders (PPOs) under the Public Safety (Public Protection Orders) Act 2014.

The review will include (but not be limited to) consideration of:

- whether the laws reflect current understandings of reoffending risks and provide an appropriate level of public protection;
- te Tiriti o Waitangi | the Treaty of Waitangi, 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.

Review process and timing

Public consultation will be part of the review.

Te Aka Matua o te Ture | Law Commission intends to report to the Minister responsible for the Law Commission by the end of 2024.

