

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

FREQUENTLY ASKED QUESTIONS

WHAT IS THIS REVIEW ABOUT?

Te Aka Matua o te Ture | Law Commission is undertaking a review of the laws in Aotearoa New Zealand providing for preventive detention and post-sentence supervision or detention. These laws apply to individuals who are convicted of sexual or violent crimes. A court can order detention or supervision of an individual if satisfied the individual would continue to present risks to public safety after completing a determinate prison sentence.

The review is considering:

- 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.

Preventive detention is a criminal sentence under which a person remains in prison until they are considered safe enough to be released on parole.

Extended supervision orders, or ESOs, require people to be managed in the community under heavy restrictions, such as electronic monitoring and restrictions on where they may live and where they can go.

Public protection orders, or PPOs, were introduced by legislation in 2014. They are a type of detention in which people subject to orders are managed in a secure facility in the precincts of Christchurch Men's prison.

As at 30 June 2022, there were 310 people subject to preventive detention and 205 people subject to extended supervision orders. There are currently two people subject to a PPO.

The [terms of reference](#) for the review require Commission to consider:

- 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.

WHAT IS THE LAW COMMISSION?

Te Aka Matua o te Ture | Law Commission is an independent crown entity. Its function is to keep New Zealand's law under review and to make recommendations to reform and develop the law.

WHY IS THE LAW COMMISSION REVIEWING THESE LAWS?

In 2022, the Government referred preventive detention and post-sentence orders to the Law Commission to review.

The 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.

HOW HAS THE LAW COMMISSION IDENTIFIED THE ISSUES WITH THE CURRENT LAW?

The Law Commission has spent the initial phase of this review researching the law and issues. This has included an analysis of relevant cases and commentary, international human rights authorities and some analysis of comparable jurisdictions. The Commission has begun preliminary engagement with experts and stakeholders, including relevant government departments such as the Department of Corrections | Ara Poutama, lawyers, academics, and non-governmental and community organisations.

The Commission has also taken steps to explore the tikanga Māori related to community safety and managing reoffending risks, including reviewing relevant literature and holding wānanga with pūkenga tikanga. The Commission has met with several Māori groups and individuals who have experience and expertise in criminal justice.

WHAT ARE THE NEXT STEPS IN THIS REVIEW?

The Commission will use the feedback it receives on the Issues Paper as it develops options for reform in the next phase of the review. It will present those options in a Preferred Approach Paper which it will publish in mid-2024 for further consultation. After consultation on the Preferred Approach Paper, the Commission will develop final recommendations for reform. The Commission expects to produce a final report with recommendations to the Government in late 2024.

WHAT ARE THE ISSUES WITH THE CURRENT LAW?

In its Issues Paper, the Law Commission has identified what it considers to be the main issues with the current law. The Commission seeks feedback on these issues as it determines whether and what reform might be needed.

The issues described in the Issues Paper include:

- The current law may fail to enable Māori to live in accordance with tikanga and give effect to the obligations arising from te Tiriti o Waitangi | Treaty of Waitangi.
 - The United Nations Human Rights Committee has found preventive detention to be in breach of the human rights protections against arbitrary detention. The Court of Appeal has declared ESOs and PPOs to be inconsistent with the human rights prohibition against punishing someone twice for the same crime.
 - The law can be difficult to apply in practice and can cause procedural inefficiencies because it separates preventive detention and post-sentence orders into different statutory regimes.
 - Young adults are eligible for indeterminate imprisonment even though their cognitive and emotional development is likely to change considerably as they mature.
 - The law bases eligibility for preventive detention, ESOs and PPOs on convictions for past offending that may be insufficiently serious.
 - The tests in the statutes for when a court may impose preventive detention, ESOs and PPOs may not focus on the risks a person will reoffend at the right level of likelihood and severity. The tests may also focus inappropriately on whether a person has certain traits and behavioural characteristics.
 - The law applying to the conditions on which people are managed in the community on ESOs and parole from preventive detention is not clear in several places and may sometimes unnecessarily require someone to be detained rather than be in the community. The conditions could be made better by giving greater priority to enabling Māori-designed and Māori-led initiatives and tikanga.
 - There are some minor problems relating to the variation or termination of preventive detention, ESOs and PPOs.
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