

Justice Committee

Sentencing (Reinstating Three Strikes) Amendment Bill

July 2024

# Improve the mental health of our communities

# Royal Australian and New Zealand College of Psychiatrists submission

## Sentencing (Reinstating Three Strikes) Amendment Bill

### **About the Royal Australian and New Zealand College of Psychiatrists**

The Royal Australian and New Zealand College of Psychiatrists (RANZCP) is a membership organisation that prepares doctors to be medical specialists in the field of psychiatry, supports and enhances clinical practice, advocates for people affected by mental illness and advises governments on mental health care. The RANZCP is the peak body representing psychiatrists in Aotearoa New Zealand and Australia and, as a bi-national college, has strong ties with associations in the Asia-Pacific region.

The RANZCP represents more than 8400 members, including more than 5900 qualified psychiatrists and is guided on policy matters by a range of expert committees including the Tu Te Akaaka Roa, the New Zealand National Committee, and several sub-committees, including the Faculty of Forensic Psychiatry. Psychiatrists are clinical leaders in the provision of mental health care in the community and use a range of evidence-based treatments to support a person in their journey of recovery.

### **Introduction**

The RANZCP welcomes the opportunity to provide a submission to the Select Committee's public consultation on the Sentencing (Reinstating Three Strikes) Amendment Bill (the Bill). The recommendations contained within this submission are based on consultation with the RANZCP expert committees which is made up of psychiatrists with direct experience working in Adult Mental Health and Forensic Psychiatry. Due to the breadth of academic, clinical, and service delivery expertise of our members, the RANZCP is well positioned to provide advice on this issue.

The RANZCP is disappointed at the decision to re-introduce the three strikes regime despite the overwhelming evidence that this type of legislation is ineffective against significant recidivism, exacerbates inequities and may cause long-term harm to vulnerable members of our society.

### ***The legislation is ineffective in preventing crime***

Aotearoa New Zealand's has one of the highest rates of imprisonment in the OECD and comparatively high re-offending rates with around 57% of people being reconvicted within two years following release from prison. [1] The re-introduction of the three strikes regime is projected to further increase the prison population while failing to address the root causes of a person's offending. [2] As our prison population grows, so does the number of prisoners with significant mental health and substance abuse issues. Approximately 91% of incarcerated New Zealanders have a lifetime incidence of a mental health condition and incarcerated New Zealanders are significantly more likely have experienced trauma, adverse childhood events, intergenerational trauma, and psychosocial disadvantages, compared to the general population. [3-6] While not every individual with mental health challenges engages in criminal behaviour, the high prevalence of mental health and substance abuse issues across the prison population is both a precursor and consequence of the offending cycle and adequate support is needed to break the cycle of offending. Under the Corrections Act 2004, incarcerated New Zealanders have a right to receive healthcare that is reasonably equivalent to that of the general population. However, due to the increasing prison population, nationwide workforce shortages, and 'tough on crime' policies such as the proposed Bill, this right is violated at increasing rates; the Bill will put further pressure on forensic services, which are already stretched beyond capacity and unable to provide timely treatment to those who need it.

The RANZCP maintains the importance of addressing the social determinants of criminal behaviour and the provision of holistic, culturally appropriate psychiatric intervention. Expert advisors from agencies across the justice system, including The Ministry of Justice | Te Tāhū o Te Ture, Department of Corrections | Ara Poutama Aotearoa, and the Chief Victim Advisor have recognised the impact of long-term system failure, and advocated for a people-centred transformation of Aotearoa New Zealand's justice system.

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### ***The legislation leads to unjustified sentencing***

The previous three-strikes regime has failed to show a clear reduction in the rate of violent crime in Aotearoa New Zealand; instead, it enabled disproportionate sentencing to the level of crime committed. The RANZCP acknowledges the adaption of “manifestly unjust” exceptions and limited discounts offered for guilty pleas. Nevertheless, the three strikes regime hinges on the assumption that unusually long sentences deter individuals from committing a strike offence, despite evidence suggesting that punitive measures are not only ineffective, but counterproductive. Longer sentences have been shown to be an ineffective deterrent for crime, particularly for those living with mental health and addiction issues. [7, 8] While the new regime provides slightly more flexibility, the Bill continues to undermine a judge’s ability to use their experience and discretion and take external factors into account. Additionally, plea bargains have been shown to increase the rate of wrongful convictions, particularly for those with mental health and substance abuse issues and other vulnerable populations [9, 10], increasing the risk of a disproportionate, and unjustified consequences for New Zealanders in need of support.

### ***The Bill exacerbates inequities***

The Bill disproportionately impacts Māori, young people, and individuals living with mental health and addiction issues, intellectual disabilities and/or neurodevelopmental disorders. Māori are more likely to experience psychosocial disadvantages and poor mental health outcomes and remain overrepresented in the criminal justice system, making up around 52% of Aotearoa New Zealand’s prison population. Additionally, Māori are subject to a higher rate of adverse treatment, seclusion, and restraint in the criminal justice system. The Waitangi Tribunal has previously highlighted the Crown’s failure to live up to its obligations under Te Tiriti o Waitangi, and Aotearoa New Zealand has been internationally criticised on several occasions for the high number of Māori in the criminal justice system. [11, 12] The Bill is likely to disproportionately impact Māori and exacerbate existing inequities. Under the previous three-strikes legislation, 81% of people who received a third strike were Māori. Between 2018 and 2020, Māori were almost nine times more likely than tauwiwi to receive a first strike and over 18 times more likely to receive a second strike. As noted in the Ministry of Justice’s policy impact statement, the inequitable effect on Māori and the lack of engagement with Māori violates Te Tiriti o Waitangi.

Individuals with an intellectual disabilities or neurodevelopmental condition have unique neurocognitive challenges that make them more likely to come in contact with the criminal justice system and they may struggle to comprehend the long-term consequences of their behaviour due to their disabilities. Similarly, the RANZCP believes the Bill will disproportionately impact young people. While we appreciate that strike offences only apply to those 18 and over, development of the prefrontal cortex, which is responsible for impulse control, continues into early adulthood. Early engagement with the justice system has been shown to cause further harm, and the RANZCP emphasises the need to rehabilitate young and vulnerable people and, wherever possible, divert them away from imprisonment to improve the outcomes long-term. [13, 14]

Incarceration comes at a significant economic cost, and may cause serious mental, emotional, physical, and spiritual harm to individuals and our communities. Over the past 15 years, government resources have increasingly been directed towards punitive measures of the criminal justice system, while funding for social support systems, including the health and education sectors, have seen comparatively less support. The RANZCP advocates for new solutions to reduce people’s association with the criminal justice system and stop the cycle of repetitive re-offending and intergenerational offending. We strongly urge the government to reject the Bill and invest into welfare services that target risk factors and eliminate disparities. Instead of harsh and unjustified punishments, we must find evidence-informed alternatives to criminalisation that focus on prevention and psychosocial supports. If you have any further questions regarding this letter, please contact the New Zealand National Office - Tu Te Akaaka Roa.

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