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27 September 2019

Lance O'Riley
fyi-request-10955-804535e8@requests.fyi.org.nz

Our ref: OIA 77187

Dear Mr O'Riley

Official Information Act request: documents related to the effects of the Three Strikes policy

Thank you for your email of 12 August 2019 requesting, under the Official Information Act 1982, "all reports, cabinet papers, and other official documentation of the effects of the 'Three Strikes Law'". I want to apologise for the late provision of my response.

As you were notified on 9 September 2019, the timeframe in which to respond to your request was extended by 10 working days due to the need for consultation.

I have now appended to this letter a list of documents that fall within scope of your request. Some information has been withheld under section 9(2)(g)(i) to maintain the effective conduct of public affairs through the free and frank expression of opinions by or between or to Ministers of the Crown or members of an organisation or officers and employees of any department or organisation in the course of their duty, or as the information is out of scope. In addition, one document is refused under section 18(d), as it is publicly available. The appended table includes the website where you can find this document. I am satisfied that there are no other public interest considerations that render it desirable to make the information withheld under section 9 available.

If you require any further information, please contact Julia Goode, Team Leader Media and External Relations on 021 636 416, or email media@justice.govt.nz. If you are not satisfied with my response to your request, you have the right to complain to the Ombudsman under section 28(3) of the Act. The Ombudsman may be contacted by email at info@ombudsman.parliament.nz.

Yours sincerely

Brendan Gage
General Manager, Criminal Justice

Appendix: Documents regarding the effects of the Three Strikes policy

No	Document title	Date	Document type	Comments
1.	Humane and Effective Justice: [s9(2)(g)(i)]	February 2018	Aide memoire	Some information withheld under s9(2)(g)(i) and some information out of scope
2.	Paper A: Towards a more effective criminal justice system and a safer New Zealand	29/3/18	Cabinet paper	Some information withheld as out of scope
3.	First steps towards a more effective criminal justice system and a safer New Zealand	4/5/18	Cabinet paper	Some information withheld as out of scope
4.	Coversheet: First steps towards a more effective criminal justice system and a safer New Zealand	17/5/18	Regulatory Impact Statement	Some information withheld as out of scope
5.	First steps towards a more effective criminal justice system: Key messages for Cabinet Business Committee on Monday 28 May	25/5/18	Aide memoire	Withheld in full under s9(2)(g)(i)
6.	Appendix – Summary of initial policy proposals to support a safe and effective justice system	31/5/18	Summary paper	Some information withheld as out of scope
7.	Three Strikes Law	December 2018	Evidence Brief	Refused under s18(d) as publicly available at www.justice.govt.nz/assets/Documents/Publications/Three-Strikes-Law-Evidence-Brief.pdf
8.	Four Evidence Briefs to be released	22/2/19	Weekly Report item	Some information withheld as out of scope

Excerpt from *Humane and Effective Justice: [s9(2)(g)(i)]*

Aide memoire

Dated February 2018

[Out of scope – pages 1-3]

Repealing the three strikes regime

21. There is no evidence to suggest that the three strikes regime has had any effect on crime rates. The majority of the regime's effect to date has been to remove the possibility of parole for 2nd strike offenders. We consider that parole is a useful tool for reintegrating offenders into the community while they can be subject to recall. The effect of the regime has also been mitigated by the Judiciary utilising the 'manifestly unjust' provisions every time it has been possible.

[Out of scope – remaining pages]

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Excerpt from Paper A: Towards a more effective criminal justice system and a safer New Zealand

Cabinet paper

Dated 29/03/2018

[Out of scope – pages 1-12]

65.6 *Repealing the 'three strikes' regime.* There is no evidence to suggest that the 'three strikes' regime has had any effect on violent crime rates, which have increased since its introduction in 2010. **[out of scope]**

[Out of scope – remaining pages]

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Excerpt from *First steps towards a more effective criminal justice system and a safer New Zealand*

Cabinet paper

Dated 04/05/2018

[Out of scope – pages 1-4]

Repealing the 'three strikes' regime

33. The Sentencing and Parole Reform Act 2010 created a three-stage system of increasing consequences for repeat serious violent offenders. The 'three strikes' regime has attracted severe criticism for excessive and disproportionate punishment in many cases, as the sentencing judge has very limited ability to take the individual circumstances into account. [out of scope]

[Out of scope – remaining pages]

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Excerpt from Coversheet: *First steps towards a more effective criminal justice system and a safer New Zealand*

Regulatory Impact Statement

Dated 17/05/2018

[Out of scope – pages 1-13]

[out of scope] However, most people subject to the regime have been convicted of less serious instances of the relevant offences resulting in disproportionately long sentences or unnecessary restriction of parole. There is no evidence to suggest that the three strikes regime has any impact on crime rates.

[Out of scope – remaining pages]

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Excerpt from *Coversheet: First steps towards a more effective criminal justice system and a safer New Zealand*

Regulatory Impact Statement

Dated 17/05/2018

[Out of scope – pages 1-13]

Repealing the ‘three strikes’ regime

6. The Sentencing and Parole Reform Act 2010 created a three-stage system of increasing consequences for repeat serious violent offenders to reduce crime through deterrence and incapacitation. However, there is no international or domestic evidence that such regimes have any effect on crime rates. The key arguments for repealing the ‘three strikes’ regime (the regime) are that:

- 6.1. **Longer prison sentences do not decrease overall crime rates.** Keeping someone in prison longer prevents them from re-offending during that period, but does not necessarily reduce their risk of re-offending on release. The risk is therefore deferred, but is replaced by the previous person who received a longer sentence meaning that there is no change to overall risk levels in the community.
- 6.2. **More severe penalties do not increase deterrence.** Recent literature states that most criminals commit offences without considering the consequences, or in the belief they will not be caught. Even if someone did consider the consequences of their potential offending, most people are unlikely to understand what constitutes a ‘strikeable’ offence and therefore whether the regime would apply to them.¹
- 6.3. **The regime removes the possibility of parole as a reintegration tool.** Parole is a useful tool for incentivising rehabilitation, re-integrating prisoners and is linked to lower rates of re-offending. Eliminating the possibility of parole for repeat violent offenders could undermine the Government’s long-term goals for a more effective justice system.
- 6.4. **There are alternative mechanisms for dealing with serious offenders.** Some offenders pose significantly more risk than others and prolonged incapacitation is justified. The Judiciary has the discretion to apply a tailored range of sentences and orders to offenders as appropriate, for a broader range of offences than the regime permits, and before a person has offended three times.²

[Out of scope – remaining pages]

¹ For example, ‘injuring with intent to cause grievous bodily harm’ is a strikeable offence, but ‘injuring with intent to injure’ is not.

² These include, preventive detention, minimum periods of imprisonment, extended supervision orders, and public protection orders

Excerpt from Appendix – Summary of initial policy proposals to support a safe and effective justice system

Summary paper

Dated 31/05/2018

[Out of scope – page 1]

12. [out of scope] There is also no evidence to suggest that the regime has had any effect on violent crime rates, which have increased since its introduction in 2010. The main effect of the regime to date has been to remove the possibility of parole, a useful tool for reintegrating offenders into the community, for 'second strike' offenders.

[Out of scope – remaining pages]

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982

Excerpt from *Four Evidence Briefs to be released*

Weekly Report item

Dated 22/02/2019

[Out of scope – pages 1]

5. **[out of scope]** The Evidence ratings for the first three interventions are assessed as “fair”, while the evidence rating for the “Three Strikes Law” is “inconclusive”.

[Out of scope – remaining pages]

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