

REAL CONSEQUENCES FOR CRIME



Real consequences for crime

National will strengthen consequences for crime, increase support for victims, and ensure remand prisoners receive proper rehabilitation.

National believes that every New Zealander deserves to feel safe in their home, community and workplace. But under Labour's leadership, our country has become less safe.

In just five years, violent crime has increased by 33 per cent, gangs are growing faster than police, and retail crime has doubled. One contributor to this spike in criminal activity is the weak consequences faced by offenders.

Labour's approach of aiming to reduce the prison population by 30 per cent while failing to reduce crime is fundamentally flawed. The lack of restrictions on the ability of judges to reduce sentences, removal of the Three Strikes law, refusal to hold gang members to account and taxpayer funding for cultural reports to influence judges is all leading to convicted criminals escaping with minimal consequences or significantly reduced sentences.

In stark contrast, National is committed to ensuring that convicted criminals face meaningful consequences for their actions. Unlike Labour, who want to empty our prisons without reducing crime, National's priority is public safety and victims.

National will scrap the Government's misguided target of reducing the prison population by 30 per cent. Instead, we will focus on genuinely reducing crime, recognising this is the only safe way to decrease the prison population over time.

National's plan to restore real consequences for crime

- 1. Stronger sentences for convicted criminals**
- 2. More support for victims**
- 3. Proper rehabilitation for remand prisoners**

First, National will introduce stronger sentences for convicted criminals, by limiting the ability of judges to reduce sentences, making gang membership an aggravating factor, restoring Three Strikes and ending taxpayer funding for cultural reports.

Second, National will provide more support for victims through increased funding for grants to support access to counselling, mental health services, or help with transport costs when attending court hearings.

Third, National will extend eligibility for offence-based rehabilitation programmes to remand prisoners who are currently unable to access them.

National stands for a safer New Zealand, where criminals face appropriate consequences for their actions. By prioritising public safety and taking proactive measures to reduce crime, we aim to create an environment where New Zealanders can once again feel safe in their daily lives.

Real consequences for crime

National will ensure there are real consequences for crime, more support for victims, and faster, more effective rehabilitation services for prisoners. Our plan will help restore law and order by ensuring convicted criminals receive sentences that reflect the seriousness of the crimes they have committed.

1. Stronger sentences for convicted criminals

National will introduce stronger sentences for convicted criminals, by limiting the ability of judges to reduce sentences, making gang membership an aggravating factor, restoring Three Strikes and ending taxpayer funding for cultural reports.

Limiting the ability of judges to reduce sentences

An effective criminal justice system should impose sentences on convicted offenders that clearly denounce the seriousness of the crime, acknowledge the harm caused to victims, and discourage others from engaging in criminal activities. Parliament, composed of elected MPs representing voters, passes laws to indicate the severity of particular crimes alongside case law that has developed to establish a sentence range for particular crimes.

The Sentencing Act 2002 grants judges the authority to consider multiple factors when determining the most appropriate sentence. Although the process for determining a sentence is not standardised, judges typically start by evaluating the aggravating and mitigating factors related to the crime and the extent of harm caused to determine a "starting point" for the sentence.

Subsequently, additional factors such as the offender's plea, prior criminal record, display of remorse, and age are taken into account through a process of "discount" and "uplift." This process focuses on factors relevant to the offender's overall personal circumstances. By applying discounts, judges can reduce the length or severity of a sentence from its starting point.

Granting judges some discretion to apply sentence reductions in this way accounts for the unique circumstances of each case and prevents unjust outcomes that may result from overly rigid requirements. However, when offenders receive multiple sentence discounts, one after another, sentences can deviate significantly from the intended punishment.

In New Zealand, there are no limits on the total number of sentence discounts that can be given and, unlike in other jurisdictions, mandatory minimum sentences are rare. This lack of clear guidance for the judiciary can lead to substantially reduced sentences that fail to adequately denounce the severity of the crime, recognise the harm caused to the victim, and deter others from committing similar offenses.

There are also no limits on the number of separate occasions offenders can receive sentence reductions as a result of youth or showing remorse. National believes that if an offender receives a discount for being young or showing remorse but subsequently commits further offences, their actions speak louder than their words. As a result, they should not be eligible to receive a sentence reduction for the same factor a second or subsequent time.

To ensure offenders face appropriate consequences, National will rewrite the Sentencing Act to include two new limitations on sentence reductions:

- A maximum sentence discount of 40 per cent, ensuring that regardless of the number of discounts granted by the judge, the final sentence cannot be reduced by more than 40 per cent from the sentence starting point.
- A "use-it-and-lose-it" rule that prevents repeat offenders from receiving sentence discounts for youth or remorse more than once.

National will rewrite the Sentencing Act in a way that ensures there are safeguards against clearly unjust outcomes.

Sentence reduction case studies

45 per cent reduction¹

A 45 per cent sentence reduction was given on appeal to a 25-year-old male who entered into a sexual relationship with a 15-year-old female. Initially, the male was sentenced to 27 months imprisonment however this was downgraded to home detention when additional discounts were given on appeal due to the offender's age.

60 per cent reduction²

A 60 per cent sentence reduction was given to a 19-year-old male on appeal that reduced a prison sentence to three years and five months, from a starting point of eight years and six months imprisonment. The offender, carrying a knife, and accompanied by two other males (one wearing Mongrel Mob regalia), kicked down the front door of a pregnant woman alone at home and assaulted her. He then went on to attack another victim, holding a knife to their throat, and kidnapped them. He was guilty of aggravated burglary, indecent assault, demanding with intent to steal, aggravated robbery, kidnapping, injuring with intent to injure and possession of an offensive weapon.

85 per cent reduction³

An 85 per cent sentence reduction was given to a male in his twenties who had raped and sexually violated a woman several years younger than him on multiple occasions during youth and into his adulthood, including pinning the victim down and choking her on one occasion. This resulted in a final sentence of 12 months home detention and 200 hours of community work. The crown prosecutor advocated for a sentence of four years or more imprisonment.

Stronger sentences for gang members

Gangs have been an unwelcome part of New Zealand's criminal landscape for decades, but in recent years, their numbers and the level of violence they perpetrate have seen a significant and alarming rise.

Since Labour assumed power in 2017, the country has witnessed a staggering 66 per cent increase in gang membership, amounting to over 3,500 new members.

New Zealand now has 8,900 gang members, compared to 10,700 police officers. Alarming, gangs are now recruiting around twice as fast as the police, and in five police districts there are now more gang members than police officers.

¹Woman 'paralysed with anxiety' after youth group groomer's prison sentence overturned - [link](#)

²Sentenced reduced for night-time violence, kidnapping, sex assault - [link](#)

³Christchurch man given 85 per cent discount on sentence despite raping, sexually assaulting young girl - [link](#)

These gangs pose a grave threat to New Zealand society. They thrive by preying on the most vulnerable individuals, peddling addiction, intimidation, and widespread misery wherever they set up shop.

In government, National will pull every lever available to halt the growth of criminal gangs and dismantle their capacity to terrorise law-abiding Kiwis.

As part of our plan to make membership of a criminal gang as unappealing as possible, National will make gang membership an aggravating factor when it comes to sentencing.

Aggravating factors are crucial considerations that judges must weigh when determining an appropriate sentence. They encompass elements such as the severity of violence, premeditation, and the power imbalance between the offender and the victim.

Aggravating factors acknowledge that in some cases, the circumstances surrounding a crime may inflict greater harm upon their victims, and so warrant stronger sentences. National believes the visible presence of gangs in communities can lead to prolonged fear and intimidation for victims who have suffered at the hands of offending by gang members.

Under the current Sentencing Act, the court must consider extent of the connection between a criminal organisation and the crime itself. Even since the inception of this section, courts have held that the mere fact an offender is a gang member is not an aggravating factor itself.⁴

In practice the court considers factors such as the position of the offender within the gang, whether the gang members pre-planned the offence and the extent to which the gang instigated the offence.^{5,6}

Consideration of these factors can result in gang membership not being an aggravating factor at all or reducing the weight it is given when deciding upon the final sentence. Under National, none of these factors will matter. Mere membership of a gang must automatically be considered an aggravating factor.

By making gang membership an aggravating factor, judges will be required to consider this when determining a sentence. In practice, it means offenders who are known members of criminal gangs will likely face tougher sentences for crime.⁷

National's message is clear: If you choose to align yourself with a criminal gang and engage in criminal activities, you will face more severe consequences.

Restoring Three Strikes for serious repeat criminals

The justice system should ensure criminals face the consequences of their actions and that victims receive the justice they deserve for the harm they have endured. This is especially crucial when dealing with the most severe repeat offenders, those who commit numerous serious acts of violence or sexual offences.

In 2010, National introduced the Three Strikes law to ensure the worst repeat violent criminals faced appropriate sentences, recognising their continued engagement in horrific crimes despite prior consequences.

⁴Queen v Hulbert [2017] NZDC 9915

⁵Queen v Philip [2021] NZHC 2393

⁶King v Wiley [2022] NZDC 23673

⁷National will explicitly add gang membership as an aggravating factor in the Sentencing Act 2002, so when a gang member commits a crime they are likely to receive a stronger sentence than they otherwise would have. While participation in an "organised criminal group" may currently be considered an aggravating factor if there is a connection between the group and the particular offence, National believes gang membership should always be an aggravating factor when a gang member commits a crime.

Under the Three Strikes regime, offenders face a standard sentence and warning for their first serious offence. Upon the second offence, in most cases, they receive a jail term without parole and an additional warning. Finally, upon conviction for their third serious offence, offenders are subject to the maximum penalty for that offence in prison, without the possibility of parole.

It is noteworthy that criminals convicted of a third strike under the law had an average of 74 prior offences, yet fewer than 30 offenders ever reached the third strike stage. This indicates that many serious offenders were motivated to avoid a Third Strike. The primary purpose of this law was to keep our most dangerous repeat offenders off the streets for longer, thus preventing them from inflicting further harm on potential victims of crime.

Labour's decision to repeal the Three Strikes regime in 2022 sent a troubling message, especially considering the rise in violent crime since they took office. It signifies to serious repeat offenders that the consequences for their offences will be weakened, reflecting Labour's soft-on-crime approach.

National is committed to reinstating the Three Strikes regime, incorporating clearer guidance on when judges will be required to apply it and where exceptions may be allowed.

By doing so, we aim to restore a robust framework that effectively addresses the issue of repeat offending and protects our communities from further harm.

No taxpayer-funded cultural reports

Section 27 of the Sentencing Act 2002 allows offenders to request someone speak to the court to explain how their personal, family or cultural background may have contributed to their offending.

Labour, in an attempt to meet its goal of reducing the prison population by 30 per cent, has weaponised this section of the Sentencing Act and used substantial sums of taxpayer money to pay for offenders to submit written "cultural reports" to the court.

It is reported that section 27 cultural reports now commonly result in sentence discounts of 10 to 30 per cent.⁸ In one case, a 30 per cent discount was granted on the basis of the information provided in the cultural report, despite offending that involved multiple stabbings to the chest of the victim.⁹

In another case, a gang member in his thirties was sentenced on over ten charges, including offending that was pre-meditated and involved the use of a hammer, pistol, knife and small axe, was found to have diminished moral culpability due to submissions in the cultural report including the fact that he had been a gang member from a young age.¹⁰

The taxpayer funding of written reports has led to a thriving cottage industry, with written cultural reports produced by third parties who usually have no personal connections to the offender, designed to influence judges to deliver lighter sentences.

This is despite Ministry of Justice advice that section 27 of the Sentencing Act "envisages that information comes from persons known to or otherwise selected by the offender, and that this could take the form of oral representation in a court."¹¹

Labour has spent almost \$20 million funding cultural reports for offenders, with the number of taxpayer-subsidised cultural reports increasing from just eight in 2017 to nearly 2,400 in 2022.

⁸Ben Goh, Equal Justice Project, 29 September 2021

⁹Solicitor-General v Heta [2019] NZHC 2453

¹⁰Carr v R [2020] NZCA 357

¹¹Ministry of Justice briefing to Hon Andrew Little, 14 September 2018

In March 2021 the Government was advised that the substantial number of written cultural reports being presented to the courts "...was not explicitly envisaged by the Act."¹² The proliferation of written cultural reports has resulted in an increasing number of sentence discounts given to offenders, which goes well beyond what Parliament intended when it passed section 27 of the Sentencing Act in 2002.

The Ministry of Justice has also pointed out that "...the structure of the Act suggests that where cultural information is required to be provided in a formal written report to the court, it can be provided in the pre-sentence report called for and provided under section 26."¹³

While evidence from qualified experts such as pre-sentence reports should be considered in court, it is inappropriate for individuals without expertise or qualifications, paid for by the taxpayer, to provide such information, with judges then left to determine its veracity or whether it contributed to the offending.

National will end taxpayer funding of cultural reports and restore section 27 of the Sentencing Act to its original intention. Only oral submissions by people with a personal connection to the offender will be permitted.

Judges will still have access to sufficient information through experts that can be called upon to provide evidence, character references, and pre-sentencing reports.

Government expenditure and number of taxpayer-funded cultural reports¹⁴

Year	Total expenditure	Number of reports
2017	\$16,780	8
2018	\$148,866	79
2019	\$871,378	446
2020	\$3,269,808	1,521
2021	\$5,783,031	2,360
2022	\$6,518,892	2,459
2023 (to date)	\$3,025,396	1,090
Total	\$19,634,152	7,963

¹²Ministry of Justice Aide Memoire to Hon Kris Faafoi, 16 March 2021

¹³Ministry of Justice DCE Operational Group briefing, 5 October 2018

¹⁴WPQ 16557 & 16548

2. More support for victims

National will provide more support for victims through increased funding for grants to support access to counselling, mental health services, or help with transport costs when attending court hearings.

National firmly believes the interest of victims should be at the core of New Zealand's justice system. However, current victim support systems, which heavily rely on the invaluable volunteer work carried out by compassionate New Zealanders and community organisations, are facing significant strain due to the escalating number of victims affected by violent crimes.

Regrettably, far too many victims are being denied the vital support they desperately need to navigate the arduous journey of overcoming the trauma and enduring impacts of crime.

Last year, National revealed that Ministry of Justice officials had described to the Government the existence of an "untenable and unethical" strategy that deliberately excluded victims from accessing support services.¹⁵ This exclusionary tactic was being employed due to the sheer number of victims surpassing the allocated budget for victim assistance.

These officials cautioned that if it were to become widely known, the approach of deliberately under-promoting services for victims "would erode public confidence and undermine the stated ethos of access to justice".¹⁶

National believes that rather than providing taxpayer funding for third parties to create professional written cultural reports aimed at influencing judges to reduce sentences, this money should instead be redirected towards victim support services.

Budget 2023 allocated \$68 million over four years to "victim entitlements" which includes counselling and financial assistance for victims of crime.

Ending taxpayer funding for written cultural reports is expected to save around \$20 million over four years.

National will redirect all of this funding toward victim support services, which represents an increase of 29 per cent of the existing budget for victim entitlements.

Increasing funding for victim entitlements by almost a third would result in approximately 30,000 additional funding grants to victims.

These grants can be used by victims of crime to access support services such as mental health assistance, counselling, or help with travel costs to court cases or hearings.

By prioritising victims we can ensure that justice is not only accessible but also restorative, enabling victims to rebuild their lives and find solace amidst their harrowing experiences.

¹⁵RNZ: Crime victims deliberately excluded from financial support, ministry document reveals - [link](#)

¹⁶Ibid

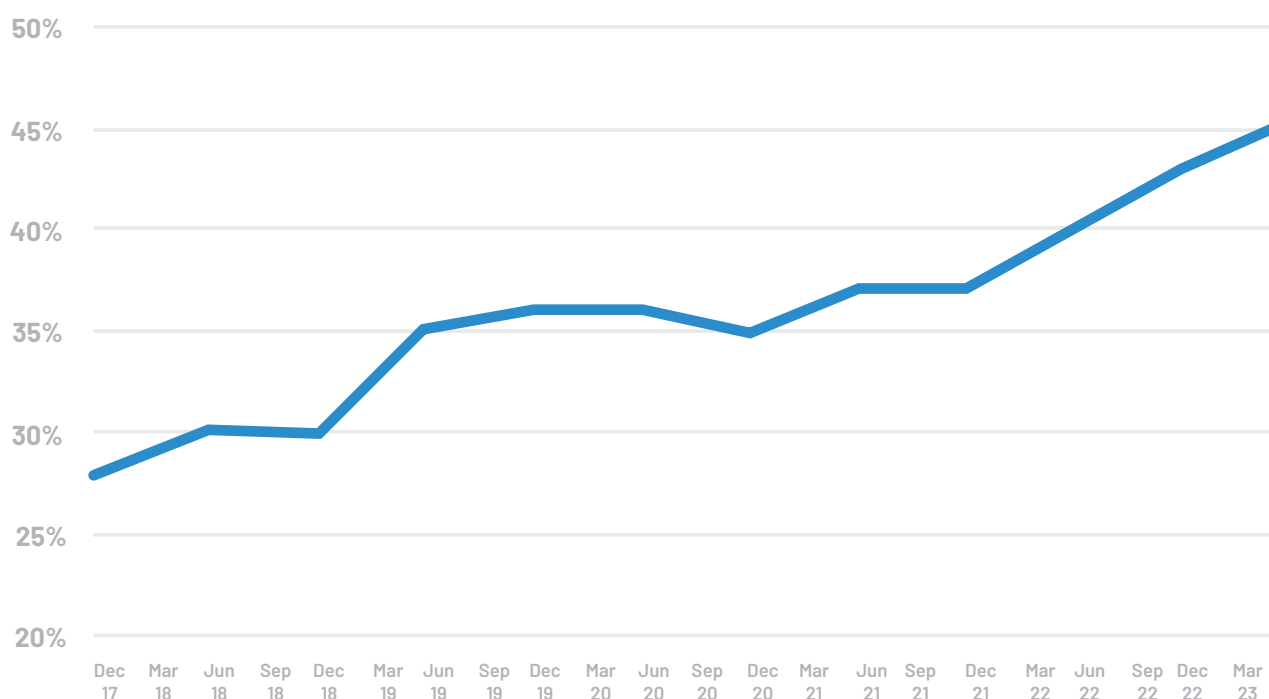
3. Proper rehabilitation for remand prisoners

National will extend eligibility for offence-based rehabilitation programmes to remand prisoners who are currently unable to access them.

Prison rehabilitation programmes, when well-designed and delivered, play a crucial role in reducing re-offending rates upon prisoners' reintegration into society. However, a significant proportion of prisoners in New Zealand cannot access the most effective rehabilitation programmes due to being on remand - held in custody awaiting trial or sentencing.

Prisoners are held on remand when they are deemed too dangerous or risky to be released into the community during the pre-trial or pre-sentencing phase. There has been a significant increase in the proportion of prisoners on remand, growing from 28 per cent in December 2017 to 45 per cent at the end of May 2023 (despite a reduction in prisoners serving custodial sentences).

Percentage of the total onsite prison population on remand.¹⁷



Although any time spent on remand is deducted from the final sentence, backlogs in the court system under Labour have led to prolonged waiting periods. As a result, prisoners are also spending more time in this status, with the percentage of people spending their entire sentence on remand growing from 13 per cent in 2017 to 23 per cent today.¹⁸

¹⁷WPQ 16893

¹⁸WPQ 16996

While remand prisoners have access to only basic courses covering life skills, parenting, and money management, they are not eligible for more effective offence-based rehabilitation programmes – which address the underlying causes of serious offences – until after conviction and sentencing.¹⁹ This means a significant proportion of offenders in prison either completely miss out on effective rehabilitation or commence it too late.

To ensure more prisoners receive rehabilitation, National will extend eligibility for all rehabilitation programmes, including offence-based rehabilitation programmes addressing serious offending, to remand prisoners.

Funding

Ending taxpayer funding for written cultural reports is expected to save around \$20 million over four years. National will redirect all of this funding toward victim support services, which represents an increase of 29 per cent of the existing budget for victim entitlements.

Funding for Corrections has increased by almost \$850 million over the past six years despite a 20 per cent reduction in the prison population. Budget 2022 allocated nearly \$500m of multi-year funding to Corrections, allowing for future remuneration and capacity pressures. This included funding to recruit an additional 518 corrections staff over four years. National will continue this recruitment drive to ensure there is sufficient capacity to manage the prison population, which will be determined by crime rates.

There is currently sufficient physical capacity in the prison network given the prison population has fallen by 20 per cent in the last five years. If capacity pressures arise in the future, these will be funded out of future Budgets.

¹⁹WPQ 5367