HAVE YOUR SAY

**Here ora?**

**Preventive measures for community safety, rehabilitation and reintegration**

Submission Template

**How to use this template**

This submission template document presents each of the proposals in our [Preferred Approach Paper](https://www.lawcom.govt.nz/our-work/public-safety-and-serious-offenders-a-review-of-preventive-detention-and-post-sentence-orders/preferred-approach-paper) for the reform of the law governing preventive detention, extended supervision orders and public protection orders. There is space to provide your feedback underneath each proposal. You can provide feedback on all or any aspects of these proposals. We also welcome feedback on matters that are not addressed by our proposals.

We recommend that you read about the proposals in our Preferred Approach Paper. Links are provided to the relevant chapters below.

The feedback we receive will help inform the recommendations to the Government that we make in our final report.

To make a submission using this form, type your feedback into the spaces provided and save the document. You can either email this form to [pdr@lawcom.govt.nz](mailto:pdr@lawcom.govt.nz) or post to

Review of Preventive Detention and Post-Sentence Orders

Law Commission

PO Box 2590

Wellington 6140

Submissions on our Preferred Approach Paper must be received by **5pm** on **20 September 2024**.

**What happens to your submission?**

Information given to the Te Aka Matua o te Ture | Law Commission is subject to the Privacy Act 2020 and the Official Information Act 1982. These Acts govern how we collect, hold, use and disclose your personal information, which includes your name, contact details and your submission.

You have the right to access and correct your personal information held by the Commission.

If you send us a submission, we will:

* consider the submission in our review; and
* keep the submission as part of our official records.

We may also:

* publish the submission on our website;
* refer to the submission in our publications; and
* use the submission to inform our work in other projects.

### **Publication of submissions on our website and in our publications**

We treat all submissions as public and will usually publish them on our website. We will not publish your contact details if you are submitting as an individual rather than on behalf of an organisation.

Whether you are an individual or submitting on behalf of an organisation, you can request in your submission that we do not publish your name or other information from your submission that you consider to be confidential. In that case, we will not publish that information on our website or in our publications.

We may withhold information or publish your submission with your name withheld if the submission contains information that:

* is sensitive and personal about you;
* is about an identifiable person other than you the submitter; or
* may expose the Commission to legal liability, such as information that is subject to a court suppression order or that may be defamatory.

### **Responding to requests for official information**

If we receive a request for official information and your submission falls within the scope of that request, we must consider releasing it.

If you have asked us not to publish your name and identifying details or some other information in your submission, we will treat that as a starting point when considering whether we are obliged to release the information under the Official Information Act. However, ultimately, we will need to decide whether release is required under the Official Information Act (including whether there is a strong enough public interest to override any confidentiality and privacy concerns). We will try to consult you before making that decision.

If you have questions about the way we manage your submission, you are welcome to contact us at pdr@lawcom.govt.nz.

**Tell us about yourself**

Name: Click or tap here to enter your name

Email: Click or tap here to enter your email

In what capacity are you making a submission?

Personal  On behalf of an organisation [please specify below]

|  |
| --- |
| Click or tap here to enter your organisation |

Please tick to indicate you have read and understood how the Law Commission will use your information (see page 2)

Preventive measures, community safety and human rights ([see Chapter 3](https://www.lawcom.govt.nz/assets/Publications/IssuesPapers/NZLC-IP54.pdf#page=75))

|  |  |
| --- | --- |
| P1 | The law should continue to provide for preventive measures to protect the community from serious sexual or violent reoffending by those who would otherwise be released into the community after completing a determinate sentence of imprisonment.  Click or tap here to make a comment |

|  |  |
| --- | --- |
| P2 | The preventive measures the law should provide for are:   1. community preventive supervision; 2. residential preventive supervision; and 3. secure preventive detention.   Click or tap here to make a comment |

A single, post-sentence regime ([see Chapter 4](https://www.lawcom.govt.nz/assets/Publications/IssuesPapers/NZLC-IP54.pdf#page=87))

|  |  |
| --- | --- |
| P3 | A new statute should be enacted to govern all preventive measures (the new Act).  Click or tap here to make a comment |

|  |  |
| --- | --- |
| P4 | Sections 87–90 of the Sentencing Act 2002 providing for preventive detention should be repealed. Part 1A of the Parole Act 2002, providing for ESOs, should be repealed. The Public Safety (Public Protection Orders) Act 2014, providing for PPOs, should be repealed.  Click or tap here to make a comment |

|  |  |
| --- | --- |
| P5 | All preventive measures should be imposed as post-sentence orders. The new Act should require applications for a preventive measure against an eligible person under a sentence for a qualifying offence to be made prior to the person’s sentence expiry date or the date when the individual ceases to be subject to any release conditions, whichever is later.  Click or tap here to make a comment |

|  |  |
| --- | --- |
| P6 | If it appears to a court sentencing an eligible person following conviction of a qualifying offence that it is possible an application for a preventive measure will be made against that person, the court should, at sentencing, have power to:   1. notify the eligible person of the possibility a preventive measure may be sought against them; and 2. record that the person has been notified.   For the avoidance of doubt, when a sentencing court has not given notice, a person’s eligibility to have a preventive measure imposed on them should not be affected.  Click or tap here to make a comment |

Reorienting preventive measures ([see Chapter 5](https://www.lawcom.govt.nz/assets/Publications/IssuesPapers/NZLC-IP54.pdf#page=106))

|  |  |
| --- | --- |
| P7 | The purposes of the new Act should be to:   1. protect the community by preventing serious sexual and violent reoffending; 2. support a person considered at high risk of serious sexual and/or violent reoffending to be restored to safe and unrestricted life in the community; and 3. ensure that limits on a person’s freedoms to address the high risk they will sexually and/or violently reoffend are proportionate to the risks and are the least restrictive necessary.   Click or tap here to make a comment |

|  |  |
| --- | --- |
| P8 | In proceedings under the new Act, if it appears to the court that a person against whom a preventive measure is sought, or a person already subject to a preventive measure, may be “mentally disordered” or “intellectually disabled”, the court should have power to direct the chief executive of Ara Poutama Aotearoa | Department of Corrections to:   1. consider an application in respect of the person under section 45 of the Mental Health (Compulsory Assessment and Treatment) Act 1992 or under section 29 of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003; and 2. if the chief executive decides not to make an application, to inform the court of their decision and provide reasons for why the preventive measure is appropriate.   Click or tap here to make a comment |

|  |  |
| --- | --- |
| P9 | If at any time it appears to the chief executive of Ara Poutama | Department of Corrections that a person subject to a preventive measure is mentally disordered or intellectually disabled, the chief executive should have power to make an application in respect of the person under section 45 of the Mental Health (Compulsory Assessment and Treatment) Act 1992 or under section 29 of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003.  Click or tap here to make a comment |

|  |  |
| --- | --- |
| P10 | For the purposes of any application under section 45 of the Mental Health (Compulsory Assessment and Treatment) Act 1992 or under section 29 of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 made in relation to a person against whom a preventive measure is sought, or who is already subject to a preventive measure, the person should be taken to be detained in a prison under an order of committal.  Click or tap here to make a comment |

|  |  |
| --- | --- |
| P11 | If a compulsory treatment order under the Mental Health (Compulsory Assessment and Treatment) Act 1992 or a compulsory care order under the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 is imposed on a person subject to a preventive measure, the preventive measure should be suspended. While suspended, a probation officer should be able to reactivate any conditions of the preventive measure to ensure that the person does not pose a high risk to the community or any class of people.  Click or tap here to make a comment |

Te ao Māori and the preventive regimes ([see Chapter 6](https://www.lawcom.govt.nz/assets/Publications/IssuesPapers/NZLC-IP54.pdf#page=123))

|  |  |
| --- | --- |
| P12 | When imposing a preventive measure, the new Act should require the court to consider whether the preventive measure should be administered by placing the person within the care of a Māori group or a member of a Māori group, such as:   1. an iwi, hapū, or whānau; 2. a marae; or 3. a group with rangatiratanga responsibilities in relation to the person.   Click or tap here to make a comment |

Age of eligibility ([see Chapter 7](https://www.lawcom.govt.nz/assets/Publications/IssuesPapers/NZLC-IP54.pdf#page=144))

|  |  |
| --- | --- |
| P13 | The new Act should require that a person is aged 18 years or older to be eligible for a preventive measure.  Click or tap here to make a comment |

Qualifying offences ([see Chapter 8](https://www.lawcom.govt.nz/assets/Publications/IssuesPapers/NZLC-IP54.pdf#page=153))

|  |  |
| --- | --- |
| P14 | The new Act should continue to require that a person has been convicted of a qualifying offence in order to be eligible for a preventive measure.  Click or tap here to make a comment |

|  |  |
| --- | --- |
| P15 | Qualifying offences should be the same for all preventive measures under the new Act.  Click or tap here to make a comment |

|  |  |
| --- | --- |
| P16 | To be eligible for a preventive measure under the new Act, a person must have been convicted of an offence set out in Table 1 in Appendix 1, with the following amendments:   1. The offence of strangulation and suffocation (section 189A of the Crimes Act 1961) should be added as a qualifying offence. 2. The following offences should be removed as qualifying offences:    1. Incest (section 130 of the Crimes Act 1961).    2. Bestiality (section 143 of the Crimes Act 1961).    3. Accessory after the fact to murder (section 176 of the Crimes Act 1961).   Click or tap here to make a comment |

|  |  |
| --- | --- |
| P17 | All qualifying offences listed above should also be “further qualifying offences” for the purpose of the application of the legislative tests under the new Act, with the exception of:   1. imprisonable Films, Videos, and Publications Classification Act 1993 offences; 2. attempts and conspiracies to commit qualifying offences; and 3. Prostitution Reform Act 2013 offences.   Click or tap here to make a comment |

Overseas offending ([see Chapter 9](https://www.lawcom.govt.nz/assets/Publications/IssuesPapers/NZLC-IP54.pdf#page=188))

|  |  |
| --- | --- |
| P18 | The new Act should provide that a person convicted of an offence overseas is eligible for a preventive measure if the offence would come within the meaning of a qualifying offence as defined under the new Act had it been committed in Aotearoa New Zealand and the person:   1. has arrived in Aotearoa New Zealand within six months of ceasing to be subject to any sentence, supervision conditions, or order imposed on the person for that offence by an overseas court; and    1. since that arrival, has been in Aotearoa New Zealand for less than six months; and    2. resides or intends to reside in Aotearoa New Zealand; or 2. has been determined to be a returning prisoner and is subject to release conditions under the Returning Offenders (Management and Information) Act 2015; or 3. is a returning offender to whom subpart 3 of Part 2 of the Returning Offenders (Management and Information) Act 2015 applies and who is subject to release conditions under that Act.   Click or tap here to make a comment |

Legislative tests for imposing preventive measures ([see Chapter 10](https://www.lawcom.govt.nz/assets/Publications/IssuesPapers/NZLC-IP54.pdf#page=197))

|  |  |
| --- | --- |
| P19 | Under the new Act, the chief executive of Ara Poutama Aotearoa | Department of Corrections should be responsible for applying to the court for an order imposing a preventive measure on an eligible person.  Click or tap here to make a comment |

|  |  |
| --- | --- |
| P20 | Te Kōti Matua | High Court should have first instance jurisdiction to determine applications for secure preventive detention and residential preventive supervision under the new Act. Te Kōti-ā-Rohe | District Court should have first instance jurisdiction to determine applications for community preventive supervision. Where the chief executive of Ara Poutama Aotearoa | Department of Corrections applies for preventive measures in the alternative, they should apply to the court having first instance jurisdiction to determine the most restrictive preventive measure sought.  Click or tap here to make a comment |

|  |  |
| --- | --- |
| P21 | The new Act should provide that the court may impose a preventive measure on an eligible person if it is satisfied that:   1. the person is at high risk of committing a further qualifying offence in the next three years if the preventive measure is not imposed on them; 2. having regard to the nature and extent of that risk, the preventive measure is the least restrictive measure adequate to address that risk; and 3. the nature and extent of any limits the preventive measure would place on the person’s rights and freedoms affirmed under the New Zealand Bill of Rights Act 1990 are justified by the nature and extent of the risk the person poses to the community.   Click or tap here to make a comment |

|  |  |
| --- | --- |
| P22 | When the court hears and determines an application for residential preventive supervision or community preventive supervision:   1. any reference to a preventive measure in the tests in P21 should include any special conditions to form part of that preventive measure sought against the eligible person; and 2. the court should impose the preventive measure together with any special conditions that satisfy the tests.   Click or tap here to make a comment |

|  |  |
| --- | --- |
| P23 | In deciding whether the tests in P21 are met, the new Act should provide that the court:   1. must take into account:    1. the health assessor reports provided in support of the application;    2. offences disclosed in the person’s criminal record;    3. any efforts made by the person to address the cause or causes of all or any of those offences;    4. whether and, if so, how a preventive measure imposed can be administered by Ara Poutama Aotearoa | Department of Corrections (or on its behalf of Ara Poutama); and    5. any other possible preventive measure that the court could impose that would comply with those tests; and 2. may take into account any other information relevant to whether the tests in P21 are met.   Click or tap here to make a comment |

|  |  |
| --- | --- |
| P24 | If the court is not satisfied the tests in P21 are met, the new Act should confer on the court the power in the same proceeding to impose a less restrictive measure if satisfied the tests are met in respect of that less restrictive measure.  Click or tap here to make a comment |

|  |  |
| --- | --- |
| P25 | Before an application for a preventive measure is finally determined under the new Act, the court should have power to impose any preventive measure on an interim basis if one or more of the following events occur:   1. An eligible person is released from detention; 2. An eligible person who is a returning offender arrives in Aotearoa New Zealand; 3. The court directs the chief executive of Ara Poutama Aotearoa | Department of Corrections to consider an application in respect of the person under section 45 of the Mental Health (Compulsory Assessment and Treatment) Act 1992 or under section 29 of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003; or 4. The chief executive of Ara Poutama Aotearoa | Department of Corrections makes an application to escalate the person to a more restrictive preventive measure.   Click or tap here to make a comment |

|  |  |
| --- | --- |
| P26 | To impose an interim preventive measure under the new Act, the court should be satisfied the primary legislative tests are made out on the available evidence in support of the application for the interim measure.  Click or tap here to make a comment |

|  |  |
| --- | --- |
| P27 | If the court imposes residential preventive supervision or community preventive supervision as an interim preventive measure, the standard conditions of that measure should apply. The court should also have power to impose any special conditions that may be imposed under that measure.  Click or tap here to make a comment |

Evidence of reoffending risk ([see Chapter 11](https://www.lawcom.govt.nz/assets/Publications/IssuesPapers/NZLC-IP54.pdf#page=225))

|  |  |
| --- | --- |
| P28 | The new Act should require the chief executive of Ara Poutama Aotearoa | Department of Corrections to file with the court:   1. one health assessor report to accompany an application to impose community preventive supervision on an eligible person; or 2. two health assessor reports to accompany an application to impose secure preventive detention or residential preventive supervision on an eligible person.   Click or tap here to make a comment |

|  |  |
| --- | --- |
| P29 | The new Act should specify that a health assessor’s report must provide the assessor’s opinion on whether:   1. the person is at high risk of committing a further qualifying offence in the next three years if the preventive measure is not imposed on them; and 2. having regard to the nature and extent of the high risk the person will commit a further qualifying offence, the preventive measure is the least restrictive measure adequate to address the high risk that the person will commit a further qualifying offence.   Click or tap here to make a comment |

|  |  |
| --- | --- |
| P30 | The new Act should define a health assessor as a health practitioner who:   1. is, or is deemed to be, registered with Te Kaunihera Rata o Aotearoa | Medical Council of New Zealand specified by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of medicine, and who is a practising psychiatrist; or 2. is, or is deemed to be, registered with Te Poari Kaimātai Hinengaro o Aotearoa | New Zealand Psychologists Board specified by section 114(1)(a) of the Health Practitioners Act 2003 as a practitioner of the profession of psychology.   Click or tap here to make a comment |

|  |  |
| --- | --- |
| P31 | The new Act should provide that the court may, on its own initiative, direct that an additional health assessor report be provided.  Click or tap here to make a comment |

|  |  |
| --- | --- |
| P32 | The new Act should provide that the person against whom an application for a preventive measure is made may submit an additional health assessor report prepared by a health assessor they have engaged.  Click or tap here to make a comment |

|  |  |
| --- | --- |
| P33 | The new Act should provide that the court may receive and consider any evidence or information it thinks fit for the purpose of determining an application or appeal whether or not it would otherwise be admissible. The rules applying to privilege and confidentiality under subpart 8 of Part 2 of the Evidence Act 2006, and rules applying to legal professional privilege, should continue to apply.  Click or tap here to make a comment |

Proceedings under the new Act ([see Chapter 12](https://www.lawcom.govt.nz/assets/Publications/IssuesPapers/NZLC-IP54.pdf#page=239))

|  |  |
| --- | --- |
| P34 | Te Kōti Matua | High Court and Te Kōti-a-Rohe | District Court should hear and determine applications for preventive measures under the new Act under their criminal jurisdiction.  Click or tap here to make a comment |

|  |  |
| --- | --- |
| P35 | The new Act should provide for a right of appeal to Te Kōti Pīra | Court of Appeal against decisions by Te Kōti Matua | High Court or Te Kōti-a-Rohe | District Court determining an application to:   1. impose a preventive measure; 2. impose a preventive measure on an interim basis; 3. review a preventive measure; 4. terminate a preventive measure; and 5. escalate a person to a more restrictive measure (including to a prison detention order).   Click or tap here to make a comment |

|  |  |
| --- | --- |
| P36 | When a court hears and determines applications for the imposition or review of a preventive measure in respect of a person, the new Act should require the court to consider any views expressed by the person’s family, whānau, hapū, marae or iwi or anyone holding a shared sense of whānau identity with the person.  Click or tap here to make a comment |

|  |  |
| --- | --- |
| P37 | The Government should continue to develop and support ways to facilitate the court to hear views from whānau, hapū, marae, iwi and other people holding a shared sense of whānau identity.  Click or tap here to make a comment |

|  |  |
| --- | --- |
| P38 | The new Act should provide that the chief executive of Ara Poutama Aotearoa | Department of Corrections must notify, as soon as practicable, each victim of a person considered for or subject to a preventive measure:   1. that an application for a preventive measure has been made; 2. of the outcome of an application when the application is determined or suspended; 3. of any special conditions that are imposed on a person subject to community preventive supervision or residential preventive supervision and when these are varied or terminated; 4. that an application to the court for review of a preventive measure has been made; 5. of the outcome of any review conducted by the court; 6. that the person subject to a preventive measure has died; 7. that the person subject to a preventive measure has escaped from a secure preventive detention facility; 8. that the person subject to residential preventive supervision or community preventive supervision has been convicted of a breach of their conditions.   Click or tap here to make a comment |

|  |  |
| --- | --- |
| P39 | The new Act should provide that notification to victims regarding special conditions may be withheld if disclosure would unduly interfere with the privacy of any other person.  Click or tap here to make a comment |

|  |  |
| --- | --- |
| P40 | The new Act should:   1. entitle victims to make written submissions and, with leave of the court, oral submissions, when the court is determining an application to impose or review a preventive measure; and 2. provide that victims may be represented by counsel and/or a support person or people if making an oral submission to the court.   Click or tap here to make a comment |

|  |  |
| --- | --- |
| P41 | For the purposes of the new Act, a victim should be defined as a person who:   1. is a victim of a qualifying offence committed by a person:    1. against whom an application for a preventive measure has been made; or    2. who is subject to a preventive measure imposed under the Act; and 2. who has asked for notice or advice of matters or decisions or directions, and copies of orders and conditions, and has given their current address under section 32B of the Victims’ Rights Act 2002.   Click or tap here to make a comment |

|  |  |
| --- | --- |
| P42 | The new Act should protect information related to victims by:   1. requiring that a person subject to a preventive measure or against whom an application for a preventive measure has been made:    1. does not receive any information that discloses the address or contact details of any victim; and    2. does not retain any written submissions made by a victim; 2. providing that the court may, on its own initiative or in response to an application, withhold any part of a victim’s submission if, in its opinion, it is necessary to protect the physical safety or security of the victim concerned or others; and 3. making it an offence for any person to publish information that identifies, or enables the identification of, a victim of a person subject to an application or a preventive measure.   Click or tap here to make a comment |

|  |  |
| --- | --- |
| P43 | Proceedings under the new Act concerning preventive measures should generally be open to the public.  Click or tap here to make a comment |

|  |  |
| --- | --- |
| P44 | The new Act should allow for the relevant court to make an order forbidding publication of:   1. the name or any other identifying details of a person who is the subject of an application for, or subject to, a preventive measure; and/or 2. the whole or any part of the evidence given or submissions made in the proceedings; and/or 3. any details of the measure imposed.   Click or tap here to make a comment |

|  |  |
| --- | --- |
| P45 | The court may make an order forbidding publication only if satisfied that publication would be likely to:   1. cause undue hardship to the person who is the subject of an application for, or subject to, a preventive measure; 2. unduly impede the person’s ability to engage in rehabilitation and reintegration; 3. cause undue hardship to any victim of the person’s previous offending; 4. endanger the safety of any person; 5. lead to the identification of another person whose name is suppressed by order of by law; or 6. prejudice the maintenance of the law, including the prevention, investigation, and detection of offences.   Click or tap here to make a comment |

Overarching operational matters ([see Chapter 13](https://www.lawcom.govt.nz/assets/Publications/IssuesPapers/NZLC-IP54.pdf#page=262))

|  |  |
| --- | --- |
| P46 | Ara Poutama Aotearoa | Department of Corrections should be responsible for the operation of preventive measures under the new Act.  Click or tap here to make a comment |

|  |  |
| --- | --- |
| P47 | The new Act should provide for the appointment of facility managers by the chief executive of Ara Poutama Aotearoa | Department of Corrections or, in case of facilities operated pursuant to a facility management contract, by the contractor.  Click or tap here to make a comment |

|  |  |
| --- | --- |
| P48 | The new Act should require all facility managers to comply with guidelines and/or instructions from the chief executive of Ara Poutama Aotearoa | Department of Corrections.  Click or tap here to make a comment |

|  |  |
| --- | --- |
| P49 | The new Act should provide that the chief executive of Ara Poutama Aotearoa | Department of Corrections may enter into a contract with an appropriate external entity for the management of a residential facility (under residential preventive supervision) or a secure facility (for secure preventive detention).  Click or tap here to make a comment |

|  |  |
| --- | --- |
| P50 | The new Act should require that every facility management contract must:   1. provide for objectives and performance standards no lower than those of Ara Poutama Aotearoa | Department of Corrections; 2. provide for the appointment of a suitable person as facility manager, whose appointment must be subject to approval by the chief executive of Ara Poutama, as well as suitable staff members; and 3. impose on the contracted entity a duty to comply with the new Act (including instructions and guidelines issued by the chief executive of Ara Poutama), the New Zealand Bill of Rights Act 1990, the Public Records Act 2005, sections 73 and 74(2) of the Public Service Act 2020 and all relevant international obligations and standards as if the residence were run by Ara Poutama.   Click or tap here to make a comment |

|  |  |
| --- | --- |
| P51 | The new Act should provide for the ability of the chief executive of Ara Poutama Aotearoa | Department of Corrections to take control of externally administered facilities in emergencies.  Click or tap here to make a comment |

|  |  |
| --- | --- |
| P52 | The new Act should provide that probation officers, as well as facility managers and their staff, must have regard to the following guiding principles when exercising their powers under the new Act:   1. People subject to community preventive supervision should not be subjected to any more restrictions of their rights and freedoms than are necessary to ensure the safety of the community. 2. People subject to residential preventive supervision or secure preventive detention should have as much autonomy and quality of life as is consistent with the safety of the community and the orderly functioning and safety of the facility. 3. People subject to any preventive measure should, to the extent compatible with the safety of the community, be given appropriate opportunities to demonstrate rehabilitative progress and be prepared for moving to a less restrictive preventive measure or unrestricted life in the community.   Click or tap here to make a comment |

|  |  |
| --- | --- |
| P53 | The new Act should provide that:   1. people subject to a preventive measure are entitled to receive rehabilitative treatment and reintegration support; and 2. Ara Poutama Aotearoa | Department of Corrections must ensure sufficient rehabilitative treatment and reintegration support is available to people subject to a preventive measure in order to keep the duration of the preventive measure as short as possible while protecting the community from serious reoffending.   Click or tap here to make a comment |

|  |  |
| --- | --- |
| P54 | The new Act should provide that people subject to residential preventive supervision or secure preventive detention are entitled to participate in therapeutic, recreational, cultural and religious activities to the extent compatible with the safety of the community and the orderly functioning and safety of the facility.  Click or tap here to make a comment |

|  |  |
| --- | --- |
| P55 | The new Act should provide that people subject to residential preventive supervision or secure preventive detention are entitled to medical treatment and other healthcare appropriate to their conditions. The standard of healthcare available to them should be reasonably equivalent to the standard of healthcare available to the public.  Click or tap here to make a comment |

|  |  |
| --- | --- |
| P56 | The new Act should require that each person subject to a preventive measure must have their needs assessed as soon as practicable after the measure is imposed. The assessment should identify any:   1. medical requirements; 2. mental health needs; 3. needs related to any disability; 4. educational needs; 5. needs related to therapeutic, recreational, cultural and religious activities; 6. needs related to building relationships with the person’s family, whānau, hapū, or iwi or other people with whom the person has a shared sense of whānau identity; 7. steps to be taken to facilitate the person’s rehabilitation and reintegration into the community; and 8. other matters relating to the person’s wellbeing and humane treatment.   Click or tap here to make a comment |

|  |  |
| --- | --- |
| P57 | The new Act should provide that each person subject to a preventive measure should have a treatment and supervision plan developed with them. The treatment and supervision plan should set out:   1. the reasonable needs of the person based on the completed needs assessment; 2. the steps to be taken to work towards the person’s restoration to safe and unrestricted life in the community; 3. if applicable, the steps to be taken to work towards the person’s transfer to a less restrictive measure; 4. the rehabilitative treatment and reintegration support a person is to receive; 5. for people subject to residential preventive supervision or secure preventive detention, opportunities to engage with life in the community; 6. any matters relating to the nature and extent of the person’s supervision required to ensure the safety of the person, other residents of a facility, staff of the facility, and the community; and 7. any other relevant matters.   Click or tap here to make a comment |

|  |  |
| --- | --- |
| P58 | Under the new Act, the person responsible for assessing the person’s needs and developing and administering the treatment and supervision plan should be:   1. in the case of community preventive supervision, the probation officer responsible for supervising the person; or 2. in the case of residential preventive supervision and secure preventive detention, the facility manager into whose care the person is placed.   Click or tap here to make a comment |

Community preventive supervision ([see Chapter 14](https://www.lawcom.govt.nz/assets/Publications/IssuesPapers/NZLC-IP54.pdf#page=283))

|  |  |
| --- | --- |
| P59 | Community preventive supervision should comprise of standard conditions, and any additional special conditions imposed by the court. The new Act should provide that, when te Kōti-a-Rohe | District Court imposes community preventive supervision, the following standard conditions should automatically apply. The person subject to community preventive supervision must:   1. report in person to a probation officer in the probation area in which the person resides as soon as practicable, and not later than 72 hours, after commencement of the extended supervision order; 2. report to a probation officer as and when required to do so by a probation officer, and notify the probation officer of their residential address and the nature and place of their employment when asked to do so; 3. obtain the prior written consent of a probation officer before moving to a new residential address; 4. report in person to a probation officer in the new probation area in which the person is to reside as soon as practicable, and not later than 72 hours, after the person’s arrival in the new area if consent is given under paragraph (c) and the person is moving to a new probation area; 5. not reside at any address at which a probation officer has directed the person not to reside; 6. not leave or attempt to leave Aotearoa New Zealand without the prior written consent of a probation officer; 7. if a probation officer directs, allow the collection of biometric information; 8. obtain the prior written consent of a probation officer before changing their employment; 9. not engage, or continue to engage, in any employment or occupation in which the probation officer has directed the person not to engage or continue to engage; 10. take part in a rehabilitative and reintegrative needs assessment if and when directed to do so by a probation officer; 11. not associate with, or contact, a victim of their offending without the prior written approval of a probation officer; and 12. not associate with, or contact, any specified person, or with people of any specified class, with whom the probation officer has, in writing, directed the person not to associate, unless the probation officer has defined conditions under which association or contact is permissible.   Click or tap here to make a comment |

|  |  |
| --- | --- |
| P60 | The new Act should provide for a non-exhaustive list of example special conditions. This list should include conditions:   1. to reside at a particular place; 2. to be at the place of residence for up to 12 hours per day; 3. to take part in a rehabilitative and reintegrative programme if and when directed to do so by a probation officer; 4. not to use a controlled drug or a psychoactive substance and/or consume alcohol; 5. not to associate with any person, persons, or class of persons; 6. to take prescription medication, provided they have given their informed consent; 7. not to enter, or remain in, specified places or areas at specified times or at all times; 8. not to associate with, or contact, a person under the age of 16 years except with the prior written approval of a probation officer and in the presence and under the supervision of an adult who has been informed about the relevant offending and has been approved in writing by a probation officer as suitable to undertake the role of supervision; 9. to submit to the electronic monitoring of compliance with any conditions that relate to the whereabouts of the person; and 10. not to use any electronic device capable of accessing the internet without supervision.   Click or tap here to make a comment |

|  |  |
| --- | --- |
| P61 | The new Act should provide that the following conditions cannot be imposed as part of a community preventive supervision order:   1. Any kind of detention, except conditions to be at a residence for up to 12 hours per day. 2. An intensive monitoring condition (in-person, line-of-sight monitoring).   Click or tap here to make a comment |

|  |  |
| --- | --- |
| P62 | The new Act should provide that special conditions should, by default, be imposed for the same period as preventive measure itself. Te Kōti-a-Rohe | District Court, may, however, specify a shorter period for individual special conditions where the full period would not be the least restrictive measure.  Click or tap here to make a comment |

|  |  |
| --- | --- |
| P63 | The new Act should provide that probation officers should be responsible for monitoring people’s compliance with community preventive supervision conditions.  Click or tap here to make a comment |

Residential preventive supervision ([see Chapter 15](https://www.lawcom.govt.nz/assets/Publications/IssuesPapers/NZLC-IP54.pdf#page=300))

|  |  |
| --- | --- |
| P64 | Residential preventive supervision should comprise of standard conditions and any additional special conditions imposed by the court. The new Act should provide for the following standard conditions of residential preventive supervision. The person subject to residential preventive supervision must:   1. reside at the residential facility specified by the court; 2. stay at that facility at all times unless leave is permitted by the facility manager; 3. be subject to electronic monitoring for ensuring compliance with other standard or special conditions unless the facility manager directs otherwise; 4. be subject to in-person, line-of-sight monitoring during outings unless the facility manager directs otherwise; 5. not have in their possession any prohibited items; 6. submit to rub-down searches and to searches of their room if the facility manager has reasonable grounds to believe that the resident has in their possession a prohibited item; 7. hand over any prohibited items discovered in their possession; 8. not associate with, or contact, a victim of the resident’s offending without the prior written approval of the facility manager; and 9. not associate with, or contact, any specified person or people of any specified class, with whom the facility manager has, in writing, directed the resident not to associate, unless the facility manager has defined conditions under which association or contact is permissible.   Click or tap here to make a comment |

|  |  |
| --- | --- |
| P65 | Under the new Act, the chief executive of Ara Poutama Aotearoa | Department of Corrections should have legal custody of the residents, while the facility manager should be entrusted with the residents’ care and responsible for the day-to-day operation of the facility.  Click or tap here to make a comment |

|  |  |
| --- | --- |
| P66 | The new Act should set out a procedure for the responsible Minister to designate a residential facility by *New Zealand Gazette* notice.  Click or tap here to make a comment |

|  |  |
| --- | --- |
| P67 | The new Act should provide for residential facilities to be subject to examination by a National Preventive Mechanism under the Crimes of Torture Act 1989 and to periodic inspections every six months by specialised inspectors.  Click or tap here to make a comment |

Secure preventive detention ([see Chapter 16](https://www.lawcom.govt.nz/assets/Publications/IssuesPapers/NZLC-IP54.pdf#page=319))

|  |  |
| --- | --- |
| P68 | The new Act should provide for the following core features of secure preventive detention:   1. People subject to secure preventive detention are detained in secure facilities. 2. Detainees must not leave the facility without permission of the facility manager. 3. Detainees are in the custody of the chief executive of Ara Poutama Aotearoa | Department of Corrections.   Click or tap here to make a comment |

|  |  |
| --- | --- |
| P69 | The new Act should provide that secure preventive detention is administered in secure facilities separate from prisons.  Click or tap here to make a comment |

|  |  |
| --- | --- |
| P70 | The new Act should set out a procedure for the responsible Minister to designate a secure facility by *New Zealand Gazette* notice.  Click or tap here to make a comment |

|  |  |
| --- | --- |
| P71 | The new Act should provide that people subject to secure preventive detention should have rooms or separate, self-contained units to themselves. The rooms or units should be materially different from prison cells and provide the detainee with privacy and a reasonable level of comfort.  Click or tap here to make a comment |

|  |  |
| --- | --- |
| P72 | The new Act should state that the detainee’s rights are only restricted to the extent they are limited by the new Act.  Click or tap here to make a comment |

|  |  |
| --- | --- |
| P73 | The new Act should carry over the rights of detainees affirmed in sections 27–39 of the Public Safety (Public Protection Orders) Act 2014.  Click or tap here to make a comment |

|  |  |
| --- | --- |
| P74 | The new Act should clarify that, subject to reasonably necessary restrictions, detainees are entitled to:   1. cook their own food; 2. wear their own clothes; 3. use their own linen; 4. have regular supervised outings; and 5. access the internet.   Click or tap here to make a comment |

|  |  |
| --- | --- |
| P75 | Under the new Act, to ensure the orderly functioning of the facility, the manager of a secure facility should have powers to:   1. check and withhold certain written communications; 2. inspect delivered items; 3. monitor and restrict phone calls and internet use; 4. restrict contact with certain people outside a facility; 5. conduct searches; 6. inspect and take prohibited items; 7. carry out drug or alcohol tests; 8. seclude detainees; 9. restrain detainees; and 10. call on corrections officers to use physical force in a security emergency.   Click or tap here to make a comment |

|  |  |
| --- | --- |
| P76 | The new Act should provide for a facility manager to have the power to make appropriate rules for the management of the facility and for the conduct and safe custody of the detainees.  Click or tap here to make a comment |

|  |  |
| --- | --- |
| P77 | Under the new Act, the manager of a secure facility may delegate any of their powers to suitably qualified staff, except the powers to make rules and to delegate.  Click or tap here to make a comment |

|  |  |
| --- | --- |
| P78 | The new Act should provide for secure facilities to be subject to examination by a National Preventive Mechanism under the Crimes of Torture Act 1989 and to periodic inspections at least every six months by specialised inspectors.  Click or tap here to make a comment |

Non-compliance and escalation ([see Chapter 17](https://www.lawcom.govt.nz/assets/Publications/IssuesPapers/NZLC-IP54.pdf#page=332))

|  |  |
| --- | --- |
| P79 | The new Act should provide that a person subject to a preventive measure who breaches any conditions of that measure without reasonable excuse commits an offence and is liable on conviction to imprisonment for a term not exceeding two years.  Click or tap here to make a comment |

|  |  |
| --- | --- |
| P80 | Te Kōti Matua | High Court should have power to order that a preventive measure to which a person is subject be terminated and a more restrictive preventive measure be imposed if:   1. the person would, if they were to remain subject to the preventive measure, pose such an unacceptably high risk to the community, themselves or others that they cannot be safely managed under that preventive measure; and 2. all less restrictive options for managing the behaviour of the person have been considered and any appropriate options have been tried.   Click or tap here to make a comment |

|  |  |
| --- | --- |
| P81 | Te Kōti Matua | High Court should have power to order that a person subject to secure preventive detention be detained in prison if:   1. the person would, if they were to remain subject to secure preventive detention, pose such an unacceptably high risk to the community, themselves or others that they cannot be safely managed on secure preventive detention; and 2. all less restrictive options for managing the behaviour of the person have been considered and any appropriate options have been tried.   Click or tap here to make a comment |

|  |  |
| --- | --- |
| P82 | A person who Te Kōti Matua | High Court has ordered to be detained in prison should:   1. be treated in the same way as a prisoner who is committed to prison solely because they are awaiting trial; 2. have the rights and obligations of such a prisoner; and 3. have all the rights conferred on that person under the new Act to the extent that those rights are compatible with the provisions of the Corrections Act 2004 that apply to prisoners who are committed to prison solely because they are awaiting trial.   Click or tap here to make a comment |

Review, variation and termination ([see Chapter 18](https://www.lawcom.govt.nz/assets/Publications/IssuesPapers/NZLC-IP54.pdf#page=346))

|  |  |
| --- | --- |
| P83 | The new Act should provide that a preventive measure is indeterminate and remains in force until it is terminated by a court.  Click or tap here to make a comment |

|  |  |
| --- | --- |
| P84 | Under the new Act, a preventive measure to which a person is subject should be suspended while that person is detained in a prison (except under a prison detention order or a sentence of life imprisonment). Community preventive supervision and residential preventive supervision should remain suspended during any period the person is released from prison (if applicable) until the sentence expiry date. Secure preventive detention should reactivate once the person is no longer detained in a prison.  Click or tap here to make a comment |

|  |  |
| --- | --- |
| P85 | A preventive measure a person is subject to should continue in force while that person is serving a community-based sentence or a sentence of home detention.  Click or tap here to make a comment |

|  |  |
| --- | --- |
| P86 | A preventive measure to which a person is subject should be suspended while an interim preventive measure is in force in relation to that person. If the court declines the application for the substantive preventive measure to which the interim measure relates, the suspended preventive measure should reactivate. If the court grants the application for the new substantive preventive measure, the suspended preventive measure should terminate.  Click or tap here to make a comment |

|  |  |
| --- | --- |
| P87 | A preventive measure to which a person is subject should terminate if a sentence of life imprisonment is imposed on that person.  Click or tap here to make a comment |

|  |  |
| --- | --- |
| P88 | Under the new Act, the chief executive of Ara Poutama Aotearoa | Department of Corrections should apply to the court for a review of a preventive measure no later than three years after the court has finally determined the application to impose the measures. For subsequent reviews, the chief executive should apply for a review of the preventive measure no later than three years after the court has finally determined the previous application for review.  Click or tap here to make a comment |

|  |  |
| --- | --- |
| P89 | Applications for a review of community preventive supervision should be made to te Kōti-a-Rohe | District Court. Applications for the review of residential preventive supervision or secure preventive detention should be made to te Kōti Matua | High Court.  Click or tap here to make a comment |

|  |  |
| --- | --- |
| P90 | To accompany an application, the chief executive of Ara Poutama Aotearoa | Department of Corrections should submit:   1. one health assessor report for the review of community preventive supervision or two health assessor reports for the review of residential preventive supervision and secure preventive detention; and 2. the decisions of the review panel since the last court review.   Click or tap here to make a comment |

|  |  |
| --- | --- |
| R91 | The health assessor reports should address whether:   1. the eligible person is at high risk of committing a further qualifying offence in the next three years if the person does not remain subject to the preventive measure; and 2. having regard to the nature and extent of the high risk the person will commit a further qualifying offence, the preventive measure is the least restrictive measure adequate to address the high risk that the eligible person will commit a further qualifying offence.   Click or tap here to make a comment |

|  |  |
| --- | --- |
| R92 | When determining an application for review of a preventive measure, the court should review the ongoing justification for the measure by applying the same legislative tests that are used for imposing preventive measures.  Click or tap here to make a comment |

|  |  |
| --- | --- |
| P93 | The court should determine an application for the review of a preventive measure by:   1. confirming the preventive measure and, if applicable, its conditions; 2. confirming the preventive measure but varying the special conditions of the preventive measure to make them less restrictive (in the case of community preventive supervision or residential preventive supervision); 3. terminating the preventive measure and imposing a less restrictive measure; or 4. terminating the preventive measure without replacement.   Click or tap here to make a comment |

|  |  |
| --- | --- |
| P94 | If the court confirms the preventive measure, or orders the imposition of a less restrictive measure, it should review the person’s treatment and supervision plan. The court should have the power to make recommendations to the person responsible for developing and administering the plan.  Click or tap here to make a comment |

|  |  |
| --- | --- |
| P95 | The new Act should provide for the establishment of a review panel. The review panel should:   1. be chaired by a judge or former judge; 2. include other judges or former judges or experienced solicitors or barristers as members and panel convenors; 3. include psychiatrists and clinical psychologists as members; 4. include members with Parole Board experience and have at least one member who is also a current member of the Parole Board; and 5. include members with knowledge of mātauranga Māori (including tikanga Māori).   Click or tap here to make a comment |

|  |  |
| --- | --- |
| P96 | The review panel should review the preventive measure annually except in the years during which an application for a court review of a preventive measure is pending.  Click or tap here to make a comment |

|  |  |
| --- | --- |
| P97 | The review panel should be able to request information relevant to the review from those responsible for the administration of a preventive measure. It should also be able to conduct interviews with a person subject to a preventive measure if they consent.  Click or tap here to make a comment |

|  |  |
| --- | --- |
| P98 | The review panel should review the ongoing justification for the measure by applying the same legislative tests that are used for imposing preventive measures.  Click or tap here to make a comment |

|  |  |
| --- | --- |
| P99 | The review panel should conclude a review of a preventive measure by issuing a decision:   1. confirming the ongoing justification for preventive measure and, if applicable, its conditions; 2. confirming the ongoing justification for the preventive measure but varying the special conditions to make them less restrictive (in the case of community preventive supervision or residential preventive supervision); or 3. if it considers the preventive measure is no longer justified, directing the chief executive of Ara Poutama Aotearoa | Department of Corrections to apply to the relevant court to terminate the measure.   Click or tap here to make a comment |

|  |  |
| --- | --- |
| P100 | Under the new Act, the chief executive of Ara Poutama Aotearoa | Department of Corrections and, with the leave of the court, the person subject to a preventive measure should be able to apply to the court to terminate the preventive measure. An application concerning community preventive supervision should be submitted to te Kōti-a-Rohe | District Court. An application concerning residential preventive supervision or secure preventive detention should be submitted to te Kōti Matua | High Court.  Click or tap here to make a comment |

|  |  |
| --- | --- |
| P101 | The chief executive of Ara Poutama Aotearoa | Department of Corrections and the person subject to community preventive supervision or residential preventive supervision should be able to apply to the review panel to vary the special conditions of community preventive supervision or residential preventive supervision.  Click or tap here to make a comment |

|  |  |
| --- | --- |
| P102 | The new Act should allow the chief executive of Ara Poutama Aotearoa | Department of Corrections and the person subject to a preventive measure to appeal to the relevant court (te Kōti-a-Rohe | District Court for community preventive supervision or te Kōti Matua | High Court for residential preventive supervision) against a decision by the review panel to vary special conditions.  Click or tap here to make a comment |

|  |  |
| --- | --- |
| P103 | Under the new Act, prison detention orders should remain in force until terminated by te Kōti Matua | High Court.  Click or tap here to make a comment |

|  |  |
| --- | --- |
| P104 | The new Act should provide for the following review procedure for prison detention orders:   1. The same legislative test for imposing a prison detention order should be applied for reviewing it. 2. A prison detention order should be reviewed annually by te Kōti Matua | High Court upon application by the chief executive of Ara Poutama Aotearoa | Department of Corrections. 3. A prison detention order should be reviewed by the review panel every six months or, if there is an application for a court review pending, within 6 months after the court review is finalised. 4. The chief executive of Ara Poutama Aotearoa | Department of Corrections and, with leave of the court, a person subject to a prison detention order should be able to apply to the High Court for the termination of a prison detention order.   Click or tap here to make a comment |

Transitional provisions ([see Chapter 19](https://www.lawcom.govt.nz/assets/Publications/IssuesPapers/NZLC-IP54.pdf#page=371))

|  |  |
| --- | --- |
| P105 | Ara Poutama Aotearoa | Department of Corrections should consider the appropriate transitional arrangements to bring the new Act into effect.  Click or tap here to make a comment |

Any other feedback

|  |  |
| --- | --- |
|  | If you have any other feedback about our review, please comment here.  Click or tap here to make a comment |