

Annexure 2: Examples of other legislation enacted despite serious human rights concerns

Enactment (link to Law Society submission)	Comment
Three Strikes Legislation Repeal Act 2022	<p>The Law Society supported the repeal of the Three Strikes regime, and reversion to a sentencing regime in which the full individual circumstances of an offender are considered, alongside other factors, to ensure a fair and proportionate sentencing outcome.</p> <p>However, the Act failed to include transitional arrangements so that persons currently in prison and sentenced under the Three Strikes regime have their sentence modified or reconsidered to ensure it is not disproportionate. The Law Society’s primary concern was that prisoners serving sentences impacted by the ‘three strikes regime’ may be serving sentences inconsistent with their rights under section 9 of the Bill of Rights.</p>
Terrorism Suppression Control Orders Act 2019	<p>The select committee process for this Act provided only one week for public consultation.</p> <p>From the Law Society’s submission:</p> <p>“The Law Society is fundamentally concerned that the Bill severely restricts a person’s rights and freedoms on the basis that they have engaged in criminal activities, without providing for the protections of the criminal justice system in relation to establishing that supposition.”</p> <p>The human rights concerns were so extensive as to not be capable of replication here. The Law Society summarised the concerns as:</p> <ul style="list-style-type: none"> • The expansive scope of the people to whom control orders could apply under the Bill raise significant human rights concerns. • The control orders should be brought within New Zealand’s criminal law, so that the protections of the criminal justice system continue to apply where the state seeks to significantly restrict an individual’s liberty. • The potential for control orders to include conditions of electronic monitoring falls within the meaning of ‘detention’ in section 22 of the Bill of Rights, which affirms the right to be free from arbitrary detention.

	<ul style="list-style-type: none"> • In practical terms, if the control orders remain civil, there is a real risk that the orders will be applied to unrepresented litigants. • Applications for control orders should be brought by the Solicitor-General, who is (broadly speaking) in charge of all prosecutions, rather than the Commissioner of Police, who is in charge of investigating criminal offending. • Applications without notice should only be made where there is extreme urgency. • The conditions of the control orders should be set out exhaustively in the Act, and not left to the discretion of the courts. • The Bill does not provide sufficient protections to deal with the risk of proceeding against an individual on the basis of non-disclosable information.
<p>Counter-Terrorism Legislation Act 2021</p>	<p>The Law Society considered aspects of the Bill did not comply with the right against double jeopardy protected under section 26(2) of the Bill of Rights. We recommended these did not proceed without further consideration of whether the Bill’s underlying policy objective can be equally well met through the criminal justice system and the Sentencing Act 2002.</p> <p>In addition, the Act established three new offences, each of which were unclearly drafted and potentially overbroad:</p> <ul style="list-style-type: none"> • Planning or preparing to carry out a terrorist act. • Weapons training or combat training for terrorist purposes. • Travelling intending to commit a specified offence.
<p>Firearms Prohibitions Orders Legislation Act 2022</p>	<p>This Act allows a Judge to impose a firearm prohibition order (FPO) when sentencing a defendant in relation to specified offences. An FPO places a number of conditions on the defendant, including restricting their ability to reside in any premises where firearms are stored, attend activities which involve the use of firearms, or be in the presence of any person who has an unsecured firearm with them.</p> <p>The Law Society raised concerns as to the extent the Act would limit the rights of defendants who are made subject to an FPO without sufficient justification. The imposition of an FPO has the potential to infringe on a person’s freedom of movement and association and is likely to disproportionately impact Māori. The Act contains no rational connection between the convictions to which the scheme applies and the objective of reducing the criminal</p>

	use of firearms, and in that regard, its rights infringements cannot be justified.
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