

Wisdom in three strikes policy?

KIM Workman QSO, director of the “Rethinking Crime and Punishment” project, spoke at the NZ Council for Civil Liberties AGM late last year.

He focused particularly on the penal policy described as “three strikes”, a sentencing measure which has the effect of de facto life imprisonment for three serious of-

fences. This approach was part of the ACT Party’s law and order policy in the 2008 general election. Under its coalition agreement with National, “three strikes” has support to the Select Committee stage.

Features of ACT’s “three strikes” proposal are that it would target serious offenders only, and that on conviction for a second “strike” offence, the offender would receive the maximum penalty for that particular offence, a minimum parole period of 80 percent of their sentence, and a warning of the consequences of conviction for a third such offence. Upon conviction for a third “strike”, an offender would go to jail for a term of 25 years to life. There would be no judicial discretion in imposing the tariff.

Kim noted that three strikes laws are premised on the rationale that, everything else being equal, a person will be less likely to commit a crime when the cost of doing so increases. The initial expectation is reduced crime.

Three strikes regimes in the United States, including California, which is the most punitive “Three strikes” advocate, pointed initially to dramatic declines in crime rates since its passage in the USA. However, the timing of the decline in the crime rate raised questions as to whether, and how “three strikes” could have contributed to the drop. Some researchers have pointed out that the great American crime drop was trending some five years before the introduction of “three strikes”. It should be noted that within California, counties that aggressively en-

forced the law had no greater declines in crime than did counties that used it far more sparingly.

It is inevitable that with an increase in the prison population there will be a reduction in the crime rate in the community; some of that crime reduction will be due to the increased incarceration. In California the prison population increased by a factor of five in the period between 1980 and 1991. The general view now is that there is no compelling evidence to show that the three strikes legislation impacted on criminal offending one way or the other. Kim noted that the regime appears to have had some unintended adverse consequences in the USA.

Under-reporting of repeat domestic violence is one likely consequence of “three strikes”, and Kim raised concerns that this could be counter-productive to a major attitudinal shift regarding violent offending which appears to be happening in New Zealand.

There is growing evidence that the “It’s Not OK” campaign is producing a growing intolerance of family violence and child abuse, that the message is positively received by Maori families, and is encouraging early reporting of domestic violence. However, faced with the likelihood of a family member receiving the maximum penalty on the second qualifying offence, and 25 years on the third offence, victims and families may opt not to report. The result could be that those wanting support for stopping the violence would be discouraged from seeking it from law enforcement agencies.

Kim advised there would be an opportunity to make a submission to the Justice and Electoral Select Committee on the proposed legislation.

From a civil liberties perspective there is concern that the penalty tariff involved in three strike laws is disproportionately severe. A further concern is that the tariff amounts to double jeopardy for an earlier offence, contrary to section 26(2) of the New Zealand Bill of Rights Act.



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