

Sentencing (Offender Levy) Amendment Bill

Government Bill

Explanatory note

General policy statement

Background: the need for reform

This Bill is an initial response to the Government's concerns about how our society should respond to the financial and emotional costs that fall on victims of crime, particularly victims of serious crimes such as murder, sexual violation, and grievous assault. Underpinning the Government's concern is that failing to recognise and acknowledge the interests of victims in the justice process, or failing to address the negative impact of crime on victims, risks eroding victims' confidence in the justice sector's ability to deal effectively with crime.

An important element of our democratic society is that people have confidence in the rule of law being maintained and in the ability of the justice sector to respond appropriately to breaches of the law. Such confidence is necessary not only if an individual is accused of a crime but also if an individual is the victim of crime. Failing to recognise or to minimise the harm to victims may cause victims to become disillusioned or fearful, or to withdraw their co-operation with the formal justice system.

The purpose of this Bill is to ensure that offenders contribute to addressing the harm they cause to victims. This Bill proposes imposing

a levy of \$50 on offenders at the point of sentencing. The imposition of the levy is a first and early step assisting the Government to improve the criminal justice sector response to victims of crime. Priority will be accorded to victims of serious offences.

Main changes to existing law

The Bill amends the Sentencing Act 2002.

The Bill provides that all offenders who have been convicted of an offence must pay an offender levy of \$50. The amount of the levy may be changed by regulation.

The levy is in addition to any other penalty that the criminal courts may impose, such as imprisonment, community service, a fine, or reparation to be paid to any victim. The courts are not to consider whether or not the levy will cause hardship, which is a consideration associated with a sentence involving reparation, or to consider the levy when taking into account the financial capacity of the offender in determining the amount of a fine.

If the court imposes on an offender a sentence of reparation or a fine, or both, the payments received from the offender will be used first to pay the reparation owed, then the offender levy and then the fine.

The offender will pay the levy to the Secretary for Justice who will pay the money into a specific Crown bank account known as the victims' services bank account. The amount of the levy may be amended by way of regulation. The operation requirements of the victims' services bank account will be prescribed by regulation.

Finally, the Bill requires the Secretary for Justice to approve an organisation as an approved agency for providing victims with services that are paid for from the victims' services bank account. Criteria for approval are outlined in the Bill.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause. The Bill will come into force on a date to be appointed by the Governor-General by Order in Council.

Clause 3 states that the principal Act being amended in this Part is the Sentencing Act 2002.

Part 1

Amendments to Sentencing Act 2002

Clause 4 amends section 12, which requires the court to impose a sentence of reparation unless the court is satisfied that a sentence of reparation would result in undue hardship or there are other special circumstances that would make such a sentence inappropriate. The amendment provides that when considering undue hardship or other special circumstances the court must not take into account the fact that the offender must pay a levy.

Clauses 5 and 6 amend sections 35 and 40 to provide that the court must not take into account that an offender is required to pay a levy when considering the financial capacity of an offender and the amount of any fine.

Clause 7 inserts a *new subpart 4A* and *new sections 105A to 105J*. These provisions relate to the offender levy and the establishment of a victims' services Crown bank account.

New section 105A defines terms used in the new subpart.

New section 105B provides that an offender convicted of an offence must pay the levy when sentenced. The levy is not a sentence and is in addition to any other sentence that may be imposed.

New section 105C sets out the priority of payments of sentences or orders of reparation and sentences of fines and the levy. Payments received from the offender will be used first to pay reparation, then the levy, and finally any fine.

New section 105D provides that the initial levy amount is set at \$50. The amount of the levy may be changed by regulation.

New section 105E provides that the levy must be paid to the Secretary for Justice who must pay the levy into the victims' services bank account.

New section 105F provides that the Secretary may pay money held in the account to an approved agency.

New section 105G establishes a Crown account to be known as the victims' services bank account.

New section 105H provides that the Secretary for Justice must ensure that money paid out of the account and the operation of the account is in accordance with, or as required by, *new subpart 4A* or regulations made under *new section 105I*.

New section 105I is a regulation-making power relating to the operation of the victims' services bank account.

New section 105J provides for the approval by the Secretary for Justice of organisations as approved agencies. However, before approving an organisation, the Secretary must be satisfied of certain criteria. Approval may be revoked by the Secretary for Justice at any time by notice in writing if he or she is no longer satisfied that the organisation meets the criteria or of any other matter that the Secretary of Justice considers relevant.

Clause 8 amends section 145 to provide that the fines enforcement procedures under the Summary Proceedings Act 1957 and the Crimes Act 1961 apply to the levy. However, if only the levy is payable then a simplified enforcement procedure applies in both the District Court and the High Court. In these cases, the provisions in Part 3 of the Summary Proceedings Act 1957 apply except those provisions relating to seizure and warrants of commitment and arrest. For these purposes, section 88B(1)(a) is also amended so that the amount referred to in that section is to be read as the levy amount and section 88B(1)(b) is amended so that the Registrar may remit a levy within 1 year.

Clause 9 amends section 147, which is the regulation-making power, to include the power to prescribe the amount of the levy.

Part 2

Consequential amendment to Social Security Act 1964

Clause 10 makes a consequential amendment to the definition of **fine** in section 126A(1) of the Social Security Act 1964. The definition is amended to include a reference to the levy.

Regulatory impact statement

Executive summary

Victims of crime often face significant costs associated with the crimes committed against them that are not covered by ACC, other state help, or by court ordered reparation. Imposing a \$50 levy on all convicted offenders at the point of sentencing will ensure offenders contribute to addressing the harm their offending has caused,

and will generate a revenue stream that will fund the provision of additional services for victims of crime.

Adequacy statement

The Ministry of Justice confirms that the analysis contained in this regulatory impact statement meets the adequacy requirements. The policy cannot be implemented effectively without the proposed regulatory reform.

The impacts of serious crime on individual victims can include physical, emotional, and mental injuries and property loss. There are also consequential costs associated with addressing these impacts for victims and society. In addition, victims can be further victimised by the criminal justice system process if they are not adequately supported through it. The impacts for society of not providing adequate services and support for victims can include a loss of confidence in the criminal justice system and a potential loss of productivity where victims' recovery is delayed.

While convicted offenders are held accountable for their offending through the sentencing process and may be required to pay reparation in individual cases, imposing a \$50 levy on all convicted offenders will also ensure they contribute to meeting the general costs associated with their offending for victims and society.

Objectives

Supporting victims can reduce the direct and consequential impacts of crime for individual victims and society and enhance trust in the justice system.

The proposed reforms seek to ensure that offenders contribute to addressing the harm that their criminal behaviour has caused victims, and will also generate revenue that will fund ongoing services to victims of crime. The policy objectives of the reforms are to—

- enable the courts to impose a levy on all convicted offenders:
- enable the Ministry of Justice to collect and enforce the payment of the levy:
- establish a victims' services Crown bank account to receive and hold the levy revenue that will be use to fund victims' services.

Alternative options

Non-regulatory options

There are no non-regulatory options that will enable a levy to be imposed. Imposing a levy on convicted offenders that is automatically applied at each sentencing event requires legislative change for it to be mandated and enforced by the courts. The fundamental constitutional principle which applies to the imposition of government charges is that only Parliament can levy money for the Crown. Legislative authority for the imposition of fees is usually provided by including empowering provisions in an Act to authorise the making of regulations to fix fees or charges.¹

Alternative regulatory options

Although the levy is not a sentence, establishing the levy under the Sentencing Act 2002 is consistent with Government policy to impose the levy on convicted offenders at the point of sentencing. The alternative option would be to include empowering provisions in the Victims' Rights Act 2002 (VRA). However, the current focus of the VRA is on victims' rights and principles for the treatment of victims by state agencies and is not on offenders' obligations towards victims.

Status quo

Retaining the status quo would mean that offenders would not be obliged to contribute to the consequential costs of the impact of their offending on victims.

Preferred option: Legislative reform

The preferred option involves amending the Sentencing Act 2002 to—

- allow the courts to impose a flat levy of \$50 in all criminal jurisdictions dealing with adult offenders, that would apply automatically when a convicted offender is sentenced (or an order is made) by the court for 1 or more convictions, but will not be imposed for each individual conviction:

¹ LAC Guidelines 3.4.1.

- make the levy payable within 28 days like fines and reparation and that where an offender does not have the capacity to pay immediately, or where fines and reparation are also owed, then payment by instalments could be made:
- allow the existing enforcement processes under the Summary Proceedings Act 1957 to be used in the District Court when offenders owing fines, reparations, and a levy do not pay within 28 days or default on a payment arrangement. Where only the levy payment is outstanding, the proposed amendments will allow for a tailored and proportionate enforcement process:
- ensure that when only a levy is owed by an offender convicted in the High Court that the existing enforcement provisions in the High Court under the Crimes Act 1961 will not apply. Further amendments provide for the same enforcement provisions available in the District Court to be applied in the High Court when only the levy is owed, such as seeking payment by way of either a wage order or a deduction notice on the offenders bank account:
- allow for the establishment of a victims' services Crown bank account that will receive the levy revenue and that will fund services for victims of crime.

Benefits

Through this policy convicted offenders will be made to contribute to addressing the harm that their criminal behaviour has caused victims. The proposed reforms will also generate a revenue stream that will fund the provision of services to victims of crime and will also improve justice sector outcomes for victims. Victims of crime often face significant costs to assist their participation in the justice process or to help them recover from injuries not covered by ACC or other state help. Reparation when awarded may also not sufficiently cover the costs victims face as a result of the crime.

Victims, already traumatised by the crime itself, can also be further impacted by the criminal justice system process contributing to further distress and harm unless they receive sufficient support throughout the process. This is particularly important for those people who have been victims of serious crime. This policy will provide revenue that can be used to target gaps in services for victims of crime and

better meet their support needs. Supporting victims can enhance their trust in the justice system, and contribute to reduced revictimisation.

Costs

The implementation costs of the proposals will fall on Vote: Courts. The costs will arise for both the courts and the Ministry's Collections Unit and include the initial establishment costs involved in modifying the two IT systems to record and transfer information about the levy, and the costs relating to the collection of the levy in the first year of operation. It is anticipated that over time the revenue generated from the levy will cover ongoing collections costs and will rise to sufficient levels to fund services for victims of crime.

Implementation and review

The proposals will be implemented through the Sentencing (Offender Levy) Amendment Bill.

Consultation

The following agencies have been consulted on this paper: the Department of Corrections, the Ministry of Social Development, the New Zealand Police, the Treasury, the Ministry of Pacific Island Affairs, and Te Puni Kōkiri. The Department of the Prime Minister and Cabinet has been informed.

Hon Simon Power

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Part 2

Consequential amendment to Social Security Act 1964

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The Parliament of New Zealand enacts as follows:

1	Title This Act is the Sentencing (Offender Levy) Amendment Act 2009 .	
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2	Commencement This Act comes into force on a date to be appointed by the Governor-General by Order in Council.	5
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3	Principal Act amended This Act amends the Sentencing Act 2002.	
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Part 1

Amendments to Sentencing Act 2002

4	Reparation Section 12 is amended by inserting the following subsection after subsection (1): “(1A) When considering undue hardship or other special circumstances under subsection (1), a court must not take into account that the offender is required to pay a levy under section 105B .”	15
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5	Taking into account financial capacity of offender Section 35 is amended by adding the following subsection: “(3) Subsection (2) is subject to section 105C .”	20
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6	Determining amount of fine Section 40 is amended by adding the following subsection:	
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“(5) When considering the financial capacity of the offender under subsection (1), the court must not take into account that the offender is required to pay a levy under **section 105B**.”

7 New heading and sections 105A to 105J inserted

The following heading and sections are inserted after section 105: 5

“Subpart 4A—Offender levy and victims’ services bank account

“105A Interpretation

For the purposes of this subpart, unless the context otherwise requires,— 10

“**account** means the Crown bank account known as the victims’ services bank account established under **section 105G**

“**approved agency** means an organisation for the time being approved by the Secretary under **section 105J** 15

“**Secretary** means the Secretary for Justice; and includes a person or body authorised by the Secretary to exercise or perform his or her functions, powers, and duties under this Act.

“105B Offender to pay levy

“(1) This section applies to an offender who has been convicted of an offence. 20

“(2) On being sentenced or otherwise dealt with by a court in relation to 1 or more offences, the offender must pay a levy.

“(3) The levy is not a sentence and is in addition to any sentence.

“105C Priority of payments received from offender 25

If the court imposes or has previously imposed on an offender a sentence or an order of reparation or a sentence of a fine, or both, any payments received from the offender must be applied in the following order of priority:

“(a) in payment of the amount due under any sentence or order of reparation: 30

“(b) in payment of the offender levy:

“(c) in payment of any fine.

“105D Amount of levy

The amount of the levy payable under **section 105B** is \$50 unless regulations made under section 147 prescribe otherwise.

“105E Payment of levy

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An offender must pay the levy to the Secretary who must pay the levy into the account.

“105F Distribution of money in account

The Secretary may, from time to time, pay to an approved agency any amount of money from money that is held in the account. 10

“105G Victims’ services bank account

The Secretary must, for the purposes of this subpart, establish through the Treasury, a separate Crown bank account to be known as the victims’ services bank account. 15

“105H Payments from, and other operation of, account

The Secretary must ensure that money is paid out of the account, and that the account is otherwise operated, only as permitted or required by this subpart or by regulations made under **section 105I**. 20

“105I Regulations on operation of account

The Governor-General may, by Order in Council, make regulations for all or any of the following purposes:

- “(a) providing for the circumstances and manner in which money may or must be paid out of the account: 25
- “(b) providing for the manner in which, and the conditions subject to which, the Secretary may or must otherwise operate the account.

“105J Approval of agency

- “(1) The Secretary may approve an organisation as an approved agency for the purposes of this subpart. 30

- “(2) Before approving an organisation as an approved agency, the Secretary must be satisfied that—
- “(a) the organisation has as one of its roles the support of victims of crime; and
 - “(b) any amount paid to the organisation under **section 105F** will be applied to support victims of crime; and 5
 - “(c) the organisation has members with the knowledge, experience, and skills to provide support to victims of crime; and
 - “(d) the organisation has in place administrative arrangements that will enable money received by the organisation to be accounted for. 10
- “(3) The Secretary may at any time, by notice in writing to an organisation approved under **subsection (1)**, revoke that approval if the Secretary is no longer satisfied of the matters set out in **subsection (2)** or of any other matters that the Secretary considers relevant.” 15

8 Enforcement of payment of amounts under sentence of reparation, reparation orders, etc

- (1) Section 145(1) is amended by adding “; or” and also by adding the following paragraph: 20
- “(c) the amount of any levy payable under **section 105B**.”
- (2) Section 145 is amended by inserting the following subsection after subsection (2):
- “(2A) However, if the only amount payable is the levy,— 25
- “(a) Part 3 of the Summary Proceedings Act 1957 applies (even if sections 19 and 19B to 19F of the Crimes Act 1961 would be applicable); but
 - “(b) sections 83(2)(a) and (b), 87(1)(a), and 88 of the Summary Proceedings Act 1957 do not apply and the following references must be read as follows: 30
 - “(i) the reference in section 88B(1)(a) to the amount of \$25 must be read as a reference to the amount of the levy (being \$50 or any other amount that may be prescribed by regulation); and 35
 - “(ii) the reference in section 88B(1)(b) to 3 years must be read as a reference to 1 year.”

9 Regulations

Section 147 is amended by inserting the following paragraph after paragraph (c):

“(ca) prescribing the amount of the levy payable under **section 105B**.”

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Part 2**Consequential amendment to Social Security Act 1964****10 Amendment to Social Security Act 1964**

(1) This section amends the Social Security Act 1964.

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(2) The definition of **fine** in section 126A(1) is amended by adding the following paragraph:

“(c) a levy payable under **section 105B** of the Sentencing Act 2002.”
