

**Sentencing (Offender Levy)  
Amendment Bill**

Government Bill

As reported from the committee of the whole  
House



**Sentencing (Offender Levy) Amendment Bill**

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**Key to symbols used in reprinted bill**

**As reported from the committee of the whole  
House**

text deleted

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*Hon Simon Power*

## **Sentencing (Offender Levy) Amendment Bill**

Government Bill

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**The Parliament of New Zealand enacts as follows:**

**1 Title**

This Act is the Sentencing (Offender Levy) Amendment Act **2009**.

**2 Commencement**

This Act comes into force on a date to be appointed by the Governor-General by Order in Council. 5

**3 Principal Act amended**

This Act amends the Sentencing Act 2002.

**Part 1**

**Amendments to Sentencing Act 2002**

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**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

**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

**6 Determining amount of fine**

Section 40 is amended by adding the following subsection:

- “(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**.” 5

**7 New heading and sections 105A to 105J inserted**

The following heading and sections are inserted after section 105:

“Subpart 4A—Offender levy and victims’ services bank account 10

**“105A Interpretation**

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

“**account** means the Crown bank account known as the victims’ services bank account established under **section 105G** 15

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

“**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. 20

**“105B Offender to pay levy**

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

- “(2) On being sentenced or otherwise dealt with by a court in relation to 1 or more offences, the offender must pay a levy. 25

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

**“105C Priority of payments received from offender**

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: 30

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

“(b) in payment of the offender levy:

“(c) in payment of any fine. 35

**“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.

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**“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.

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**“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**.

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**“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:
- “(b) providing for the manner in which, and the conditions subject to which, the Secretary may or must otherwise operate the account.

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**“105J Approval of agency**

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

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- “(2) Before approving an organisation as an approved agency, the Secretary must be satisfied that—
- “(a) the organisation has as one of its roles providing services to victims of crime; and
  - “(b) any amount paid to the organisation under **section 105F** will be applied to provide services to victims of crime; and
  - “(c) the organisation has members with the knowledge, experience, and skills to provide services 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.
- “(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.”

#### **7A Sale of confiscated motor vehicles**

- (1) Section 137(3)(c) is amended by inserting “or in payment of any levy payable by the offender under **section 105B**,” after “imposed on the offender.”
- (2) Section 137 is amended by adding the following subsection:
- “(4) Where a levy is payable under **section 105B**, proceeds of sale applied under subsection (3)(c) must be applied in the order of priority set out in **section 105C**.”

#### **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:
- “(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,—

- “(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: 5
- “(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 10
- “(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): 15

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

## Part 2

### Consequential amendments to other enactments 20

## 10 Consequential amendments to other enactments

The enactments listed in the Schedule are amended in the manner indicated in that schedule.

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## Schedule

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### Consequential amendments

#### Customs and Excise Act 1996 (1996 No 27)

Definition of **fine** in section 280C: add:

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

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#### Immigration Act 1987 (1987 No 74)

Definition of **fine** in section 141AD: add:

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

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#### Social Security Act 1964 (1964 No 136)

Definition of **fine** in section 126A(1): add:

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

#### Summary Proceedings Act 1957 (1957 No 87)

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Section 81: insert after subsection (1):

“(1A) Where a levy is payable under **section 105B** of the Sentencing Act 2002, an order made under subsection (1)—

“(a) must require payment of the levy; and

“(b) must not result in amounts owed by an offender being paid in a different order of priority to that set out in **section 105C** of the Sentencing Act 2002.”

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Section 83: insert after subsection (1):

“(1A) Where a levy is payable under **section 105B** of the Sentencing Act 2002, an order made under subsection (1) must require payment of the levy at the same time as any other amount payable under the order.”

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#### Tax Administration Act 1994 (1994 No 166)

Definition of **finer defaulter** in section 85A(6): add:

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

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**Legislative history**

10 February 2009	Introduction (Bill 12-1)
12 February 2009	First reading and referral to Justice and Electoral Committee
3 August 2009	Reported from Justice and Electoral Committee (Bill 12-2)
14 October 2009	Second reading
15 October 2009	Committee of the whole House (Bill 12-3)

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