

# New Zealand Law Society

## SUBMISSION ON SENTENCING (OFFENDER LEVY) AMENDMENT BILL

### INTRODUCTION

1. The Society does not oppose the bill, but questions whether imposing a \$50 levy on offenders will ultimately achieve its purpose.

### POLICY CONSIDERATION

2. The purpose of the bill is to ensure that offenders contribute to addressing the harm they cause to victims. The current sentencing process already addresses this issue. Courts may order an offender to pay reparation, which is payable directly to the offender's victim/s, rather than to "victims at large".
3. The bill provides that 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 to pay first reparation, then the offender levy, and then the fine. Reparation remains a priority under the bill, and the proposed new offender levy adds little to the system of reparation already in place.
4. The explanation given for imposing a \$50 levy on offenders is that the levy will create a fund for "victim services". There is no information about what those services may be other than providing support. Professional services to support victims of crime are already available through the court's Victim Adviser service.
5. The Society questions the practicality of imposing a levy as a way of ensuring offenders contribute to addressing the harm they have caused to victims. Many of those appearing in the summary jurisdiction of the District Court are struggling financially. They rely on the services of a free duty solicitor, or apply for and are granted legal aid. In many cases a Judge is not able to impose a sentence of reparation because the offender simply does not have sufficient means to meet any such order. An offender, upon conviction, is also liable for \$150 court costs per information. In respect of some prosecutions, particularly those by government departments, solicitors' fees may also be ordered. The recovery of fines and reparation is a significant task for the Ministry of Justice and a \$50 levy may also be difficult

to recover. At the very least it is essential for the Committee to consider whether the cost involved in recovering a \$50 levy is likely to exceed the amount of the levy.

## **CLAUSE ANALYSIS**

### **Clause 7 – New heading and sections 105A to 105J inserted**

#### **Proposed new Sections 105B - Offender to pay levy and 105D - Amount of levy**

6. Under these proposed new sections an offender who was being sentenced or otherwise dealt with by a Court in relation to one or more offences would have to pay a levy. The levy would be set at \$50.
7. Neither proposed new section makes clear whether the levy is to be imposed per offence, or per sentencing. It is also unclear what is meant by “or otherwise dealt with by the Court” in section 105B(2). For example, it is unclear whether this is intended to refer to situations where diversion is granted, or where the accused is acquitted following a hearing.

#### ***Recommendation***

8. That both proposed new sections be amended to clarify whether a \$50 levy applies to each discrete offence, and whether it applies in the event of a discharge or acquittal.

John Marshall QC  
President  
2.4.09