New Zealand Law Society
Te Kāhui Ture o Aotearoa

Sentencing (Reform) Amendment Bill

Submission of the New Zealand Law Society Te Kāhui Ture o Aotearoa

29 October 2024

1 Introduction

1.1 The New Zealand Law Society Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to comment on the Sentencing (Reform) Amendment Bill (**Bill**).

1.2 This Bill proposes to respond to the reduced use of imprisonment in recent years and strengthen the consequences of offending. The three main objectives of the Bill are:

(a) Strengthening the consequences of offending;

(b) Increasing public safety for both people and communities; and

(c) Ensuring the functioning of a fair and effective justice system.

1.3 While the Law Society acknowledges the aims of improving public safety and ensuring a fair and effective justice system are commendable, the Bill proposes significant restrictions on the judicial discretion necessary to implement individualised justice. Individualised justice is a cornerstone of a fair and effective justice system and supports the aim of increasing public safety through the ability to apply a sentence that best supports the rehabilitation of the offender, thereby decreasing the likelihood of recidivism.

1.4 The Law Society recommends that the Bill does not proceed. If the Bill is to proceed, the Law Society's submission sets out drafting and workability concerns that should be addressed before it progresses.

1.5 This submission has been prepared with assistance from the Law Society's Criminal Law Committee.[1] The submission is set out as follows:

(a) General Comment;

(b) Prioritisation of victims;

(c) New aggravating factors;

(d) Sentencing discounts for youth and remorse;

(e) Guilty plea discounts;

(f) Capping sentencing discounts;

(g) Concurrent sentencing;

(h) Other matters.

1.6 The Law Society **wishes to be heard**.

[1] More information on the Law Society's law reform committees can be found here: https://www.lawsociety.org.nz/branches-sections-and-groups/law-reform-committees/criminal-law-committee/.

2 General Comment

The Criminal Justice System in New Zealand

2.1 The criminal justice system in New Zealand addresses societal harms through state intervention aimed at *reducing* criminal offending.[2] It does not operate as a retributive system in which a victim is litigating against a defendant. The public interest test is a deciding factor in whether a prosecution for a crime is pursued, reflective of the system operating, as a whole, in the public interest.

2.2 The Victims' Rights Act 2002 was implemented to provide victims with an expressive, not substantive, input in criminal proceedings. This is because a predominant or determinative focus on the views of a victim would limit the ability of the justice system to deliver just and equitable outcomes, accommodate rehabilitative aims, and in general operate for the benefit of society as a whole.

2.3 The Law Society is concerned that provisions in the Bill which aim to give greater prominence to the views of victims at sentencing may fundamentally shift the basis of criminal law, in such a way that results in inconsistent and unjust outcomes, and unintentionally alters the purpose of the criminal justice system.

The current sentencing process

2.4 Sentencing is not a fixed process. Judicial discretion is necessary because the facts of each case and each offender are individual, and the resulting sentence must therefore be individualised. The process of individualised justice requires discretion over the application and weight given to the differing sentence goals.[3]

2.5 In *Berkland v R*, the Supreme Court described the sentencing judge as undertaking an evaluative exercise of the sentencing principles and factors in "an intensely individualised factual evaluation."[4] Further, in *Hessell v R,* the Supreme Court accepted what the Court of Appeal earlier stated regarding the judicial assessment of offending gravity:[5]

> In the end, almost everything turns on the facts of the particular case. It is part of the judicial responsibility to weigh these.

2.6 Some sentencing goals, such as accountability, deterrence, and rehabilitation are nearly always present in sentencing evaluations. Others, like reparation, are not always relevant or appropriate. In all cases, the public interest and the interests of the victim are considered. When exercising their discretion, judges are sensitive to the wishes and interests of victims.

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2 Julia Tolmie, Kris Gledhill, Fleur Te Aho, Khylee Quince *Criminal Law in Aotearoa New Zealand* (1st ed, LexisNexis, Wellington, 2022) at 1; Andrew Ashworth "Responsibilities, Rights and Restorative Justice" (2002) 42 British Journal of Criminology 578 at 579.

3 *Zhang v R* [2019] NZCA 507 at [120].

4 *Berkland v R* [2022] NZSC 143 at [21] – [22].

5 *Hessell v R* [2010] NZSC 135 at [26].

3 Key Concerns

Te Tiriti/Crown-Māori relationship

3.1 The Regulatory Impact Statement (**RIS**) states that there was insufficient time for consultation with Māori, despite acknowledgement that the Bill will disproportionately impact Māori, due to their overrepresentation in the justice system both as victims and offenders.[6] Further, Crown Law's advice to the Attorney-General (**Crown Law advice**) does not address this likely disproportionate impact, nor consider whether section 19 of the New Zealand Bill of Rights Act 1990 (**Bill of Rights**) is implicated.

3.2 The Law Society considers that, like the Sentencing (Reinstating Three Strikes) Amendment Bill and the Gangs Legislation Amendment Bill, the proposed measures will likely be applied variably to different groups, in such a way that there is a real risk of disproportionate treatment. All factors being equal, institutional, structural and interpersonal bias means that Māori are more likely to be apprehended, prosecuted, convicted, and sentenced to a period of imprisonment. The Bill risks exacerbating these disproportionate outcomes.

3.3 The Law Society considers that the absence of consultation with Māori regarding the design and development of the Bill is concerning, and is inconsistent with the Crown's obligations as a Treaty partner. It is not clear there is any particular reason that timeframes for the development of the legislative policy required such haste that proper process, including consultation, could not be followed.

Cumulative effects of law and order reforms

3.4 The Bill, in conjunction with other proposed law and order reforms such as the Sentencing (Reinstating Three Strikes) Amendment Bill, Corrections Amendment Bill, Young Serious Offender categorisations, Military Style Academies, and Gangs Legislation Bill represent a significant, cumulative change to the justice system.

3.5 It seems likely this will generate increased work for the courts, lawyers, Police, and Department of Corrections. It is not clear whether the indication given by the Ministry of Justice as to the expected increase in prison population has taken into account all of the proposed reforms or simply each reform individually. The Law Society is concerned that the proposed reforms represent changes that will have a much larger than anticipated impact on court delays as well as the number of people imprisoned. It is also unclear whether the assessment of these proposed reforms has considered the impact of increased criminalisation and custodial sentences on recidivism. As a result, there is a risk that the reforms will reduce the rate of rehabilitation and reintegration, and thereby have an effect opposite to that intended by increasing the risk of harm to the safety of people and communities.

6 RIS at 34 and 37.

4 Prioritisation of Victims

4.1 Clause 5 proposes to amend section 8(f) of the Sentencing Act 2002 to "give greater prominence to victims in sentencing decisions."[7] For the reasons set out above at 2.1 – 2.3, the Law Society has concerns about these proposed amendments. Victims rightly have a place in the sentencing process, but prioritising the views of victims over other factors could fundamentally change the criminal justice system. This could lead to unintended and unjust outcomes, with disproportionately severe and varied results: two victims of similar crimes could hold very different views about the purpose of sentencing, and the appropriate sentence. Additionally, creating an expectation that victims' perspectives will determine the sentencing decision may ultimately disappoint victims when this is not possible due to other factors such as sentencing principles, purposes, and aggravating or mitigating circumstances. This could undermine confidence in the justice system.

4.2 In addition, we note that the meaning and use of the words 'victims' needs' and 'victims' interests' in proposed section 8(f)(i) and (ii) are unclear. A victim's interests or needs are not simple concepts and placing them in statute risks misinterpretation. For example, it is possible to read the amendment as conveying something wider or different to informing the court of the impact of the offending (despite that appearing in the example), as it would otherwise simply be replicating the existing provision. There is no singularity about a victim's needs or interests. We also note that a victim's subjective views of their needs or interests may differ from a more objective view and/or the view appropriately taken by a sentencing judge in a particular case.

4.3 By way of further example, it could be interpreted to require that the court take into account a victim's desire for retribution. As noted above, this would represent a significant change to the criminal justice system. It would also risk constraining justice in such a way that leads to varied outcomes dependent on whether the victim has retributivist views or restorative views.[8]

5 New Aggravating Factors

5.1 Aggravating factors are used to increase the sentence starting point. Judges are skilled in balancing and applying competing aggravating factors. A judge considers more than the mere presence of an aggravating factor, they also look to the degree to which it is present.

5.2 For example, when considering the aggravating factor 'use of a weapon' in an assault case, the degree of danger the weapon of choice presents increases or decreases the gravity of the aggravating factor. A broomstick picked up from nearby during an assault

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7 Sentencing (Reform) Amendment Bill, explanatory note.

8 We note that research indicates that restorative justice, as used in our current justice system leads to greater victim satisfaction and reduces recidivism more than any other accountability measure. Donald J Schmid "Restorative Justice: A New Paradigm for Criminal Justice Policy" (2002) 34 VUWLR 91 at 92; Department of Justice Canada *The effectiveness of Restorative Justice Practices: A Meta-Analysis* (26 August 2022); Ministry of Justice *Restorative Justice Survey: Victim Satisfaction Survey 2023* (June 2023).

would be considered less grave as a choice of weapon compared to a gun taken to the event.

5.3 The Bill proposes four new aggravating factors (clause 6):

(a) Adult offender convicted as party to offence committed by child or young person (new section 9(1)(cb));

(b) Offender live-streamed or posted their offending online (new section 9(1)(cc));

(c) Public transport passenger service workers (new section 9(1)(fc));

(d) Sole charge workers and people whose home and business are connected (new section 9(1)(fd)).

Glorification of offending by posting online/live-streaming

5.4 The aggravating factor proposed by new section 9(i)(cc) applies to the sentencing of a person convicted of the relevant streamed/posted offence. This factor pertains to instances where the individual live-streamed or posted online a recording of the offending in a way that glorifies the offending. The Law Society considers that there is a sensible purpose for the proposed aggravating factor and considers that any limitation on freedom of expression may be reasonably justified. The question of whether the recording 'glorified' the offending is a value judgment that judges and juries are well equipped to determine.

Victims are sole charge workers, public transport passenger service workers, home and business connected

5.5 The proposed aggravating factors covered by section 9(1)(fc) and (fd) represent specific examples of a general issue of people who are vulnerable because of their employment circumstances. There is a risk that specifying only certain sub-sets of this vulnerable group may be seen as implying that offending against other sub-sets of the vulnerable group is less serious. Further, case law currently indicates that offending against people who are inherently vulnerable by the nature of their work, such as taxi drivers and sex workers, is already taken into account in the sentencing process.

5.6 The Law Society considers it would be better, and produce more consistent sentencing outcomes, if the proposed sections were amalgamated and re-drafted as a general aggravating factor which makes offending against any group of persons who are more vulnerable due to their employment circumstances an aggravating factor. This would work in parallel to the existing section 9(g) aggravating factor of physical vulnerability.

5.7 New section 9(1)(fc) restricts the aggravating factor to offending against the worker while they are acting 'in the course of his or her duty'. In most cases, an employee will have their duties defined by the employer or by the general law. It is not clear how the phrase would be applied to sole traders, or if conduct occurring outside of those duties whilst still at work would nullify the aggravating factor (for example, if the offending occurred whilst the employee was on a break, leaving or entering work, or where the employee allowed a duty to be breached). Rendering the aggravating factor irrelevant in such circumstances could result in unjust or absurd outcomes. The Law Society suggests

that, if our recommendation of amalgamating these subsections into a general aggravating factor is not taken, further consideration should be given to the drafting of this subsection.

5.8 Additionally, the Law Society considers it would be beneficial to clarify for both subsections (fc) and (fd) whether knowledge or recklessness as to the victim's employment circumstance is relevant to the application and gravity of the aggravating factor. That is, whether the offender knew, or was reckless to the victim being at work and/or on their own. For example, where A assaults B, who is standing by a taxi with a cell phone in her hand. B is, in fact, the driver of that taxi, but A does not know that and is motivated only by a desire to seize the phone (which B is using to report to her employer as required by her contract of employment). The application of the aggravating factor would be inappropriate, but it is clear that the situation would be caught by the current drafting.

5.9 Lastly, the extent of 'next to' in new section 9(1)(fd) is unclear. Geographically, this is easy to understand in an urban environment. However, when considering the phrase in relation to a rural setting such as a farm, 'next to', it is less so. We recommend further clarification.

6 Sentencing discounts for youth and remorse

6.1 Clause 7 sets out new sections 9B to 9G, which propose to limit the making of a sentence reduction to a single sentence (presumed to be the first sentencing occasion) and reduce the maximum sentence discount available to an offender. Clause 7 proposes:

(a) A general sentencing discount cap of 40%, and

(b) A limit to a single use of a discount for youth and remorse.

Manifest injustice

6.2 Each of the requisite provisions on sentence reduction has a manifest injustice exception. Those clauses provide that if following the general rule for sentence reduction would lead to a manifestly unjust sentence, the court must reduce the sentence only to the extent necessary to avoid *manifest* injustice. A sentence that does not exceed the manifest qualifier does not meet this requirement. This suggests that the proposed sentencing regime intends to impose 'unjust' outcomes and accepts this so long as they are not *manifestly* unjust.

6.3 As with other sections of the proposed reform, the Law Society is concerned about the acceptance of inconsistent and unjust outcomes in the justice system. The Law Society is of the view that injustice should not be an accepted outcome of sentencing.

Single occasion

6.4 It appears the Bill is intended to operate as a deterrent, by limiting the application of a sentence discount to a single occasion. As we noted in our submission on the Sentencing (Reinstating Three Strikes) Amendment Bill, this seems unlikely. It presumes that offending occurs after the offender has undertaken a rational consideration of the likely

consequences. Evidence concurs that such rational consideration does not typically occur.[9]

Informing the defendant

6.5 New sections 9B(2)(b) and 9E(2)(b) impose a duty on the court to inform the offender that the youth or remorse discount (respectively) will not apply to any later offending unless it is required to avoid a manifestly unjust sentence.

6.6 This information may be given 'using any words that the court thinks fit'. The Law Society is of the view that this is vague, does not take into account the cognitive and other requirements prevalent amongst youth offenders, and could cause issues on appeal. We suggest that the section instead refer to 'using language appropriate to that defendant'.

6.7 Further, we note that the Bill does not indicate what the consequences of not giving the warning will be. That is, whether not giving the warning as specified results in a change to the sentence or is cured by providing the information at a later date.

Historic Offences

6.8 Historic prosecutions are reasonably common where very serious offending was committed when a person was young. Most often this occurs with serious sexual offending, but can include offences such as aggravated robberies, where a DNA match years later identifies that a defendant was involved. This should not prevent a defendant from receiving a discount due to youth at the time of the offending. The Law Society considers that this point should be clarified in the drafting of the section, so that it should only apply if *at the time of the offending* the defendant had already received a previous reduction for youth and/or remorse.

The Youth Factor

6.9 New section 9B introduces the 'youth factor,' which states that a sentence reduction based on an offender's youth may only be applied once, unless not applying it in a second sentencing would lead to a manifestly unjust sentence.

6.10 The current youth discount reflects the fact that a young person's brain has not fully developed and, in particular, that the judgment of risk is processed differently than in adult brains. This reflects a long-standing judicial approach, a summary of which was outlined in *Churchwood v R:*[10]

> Youth has been held to be relevant to sentencing in the following ways:
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> (a) There are age-related neurological differences between young people and adults, including that young people may be more vulnerable or susceptible to negative influences and outside pressures (including peer pressure) and may be more impulsive than adults.

9 New Zealand Law Society "Sentencing (Reinstating Three Strikes) Amendment Bill submission" (23 July 2024) at 3.7 – 3.9.

10 *Churchwood v R* [2011] NZCA 531 at [77].

(b) The effect of imprisonment on young people, including the fact that long sentences may be crushing on young people.

(c) Young people have greater capacity for rehabilitation, particularly given that the character of a juvenile is not as well formed as that of an adult.

6.11 The creation of the Youth Court and the implementation of the Oranga Tamariki Act 1989 demonstrate a recognition by Parliament of the need to deal with the large majority of youth and adolescent offenders in a way that reflects their developmental stage. The progression of that development is not influenced by prosecution for an offence – whether or not there is a conviction or the imposition of a sentence, with or without a youth discount. Further, it is a factor over which the offender has no control.

6.12 Limiting the youth discount to a first (or singular) sentencing is not evidence-based, and is in fact contrary to the scientific evidence. It is likely to produce unjust outcomes.

6.13 There are also likely to be unjust outcomes arising from practical implementation of the provisions. For example, where a young defendant has been charged with multiple offences which do not all proceed to the same timetable (due to differing resolutions, such as some by guilty plea and others by trial). If sentencing on the less serious offences that the defendant pleaded guilty to happens first and a youth discount is applied to that sentencing process, it is not then available for the more serious offences. Yet, the brain development, assessment of risk and effect of imprisonment remains the same between each set of sentencing.

Remorse

6.14 New section 9E sets out the proposed sentencing discounts for remorse. This discount is also limited to a singular use of the discount, unless not applying it would result in a manifestly unjust sentence.

6.15 The Law Society notes that new section 9E is inconsistent with current section 10. Under section 10, the consideration of remorse includes attempts to fully or partially remedy the harm caused by the offending. If there is no benefit in terms of sentencing outcome, many offenders may decide to redirect their limited resources elsewhere, thereby negatively impacting the victim and removing from them the prospect of an effective remedy to the harm they have experienced.

6.16 New section 9A may also discourage offenders from taking part in restorative justice processes, which as noted above, have positive outcomes for both victims and offenders by reducing recidivism and improving victim satisfaction with the sentencing (and overall justice) process.

6.17 Parliament has consistently encouraged the use of restorative justice processes, which work to encourage offenders to have empathy for their victims and express remorse for the effect their offending has had. Limiting the use of the remorse discount is counterproductive to the principles of restorative justice.

6.18 In practice, judges will only apply a discount for remorse where the expressed remorse is, in their view, genuine. Some judges will not give a discount for remorse where they

see a claim of remorse as self-serving. In the experience of some lawyers, tangible evidence of remorse is required before a discount will be applied.

6.19 A further issue with limiting remorse discounts arises where an offender has been convicted of an offence with a *mens rea* element of negligence. This means they would be liable for the offence because they failed to perform a duty that they could not prevent despite doing their best (for example, careless driving causing injury/manslaughter/death). Such offenders may well have been remorseful about earlier offending as well as the present offending, but that remorse would not affect their capacity to avoid liability for negligence. Despite experiencing significant, and genuine remorse for this, they would be deprived of access to a second discount for remorse when one should apply to ensure a just outcome.

6.20 Implementing the proposed amendments under clause 7 would be unlikely to affect other mitigating factors, but there appears to have been no consideration of how this would work equitably in practice, in multi-charge and/or multi-defendant trials.

6.21 Overall, the Law Society expects these proposals will have a negative effect on the justice system, resulting in further resource strain, larger delays, less just outcomes, and increased stress for victims.

7 Guilty plea discounts

7.1 New section 9C sets out the proposed scaling of guilty plea discounts. The Law Society notes that the proposed scheme bears a strong resemblance to that proposed by the Court of Appeal in *Hessell v R,*[11] which was subsequently overturned by the Supreme Court.[12]

7.2 The maximum discount available is capped at 25%, which applies if the plea is made or signalled 'at the first reasonable opportunity,' to a maximum of 5% if the plea or signal occurs less than 20 working days before the scheduled start date of the trial, or during the trial. The maxima in the list can be exceeded provided the discount does not exceed 25% in total, and the judge records the basis on which the increased discount was granted.

7.3 New section 9D subsequently sets out a fairly comprehensive list of matters that a judge must take into account when assessing the appropriate guilty plea discount. The Law Society supports the inclusion of this list. However, we suggest that subsection (g) should, as a matter of fairness, require a judge should take into account if a defendant was successful in any disputed facts hearing.

7.4 The Law Society also suggests that the type and nature of the offence that the defendant was charged with should be added to the list of factors that must be taken into account when assessing the guilty plea discount. For offences like serious sexual offending or serious family violence, pleading guilty (even at a later stage) would save a victim from further trauma and is also an important acknowledgement of the harm caused. This

11 *Hessell v R* [2009] NZCA 450.
12 Above n 5.

would more appropriately reflect that a greater discount should be encouraged in such circumstances. Conversely, where a defendant is charged with a very serious offence like murder, the consequences of a guilty plea and the complexity of such a case are such that an early guilty plea should not be expected. Where a guilty plea does occur in such cases, the timing of the plea should not be determinative of whether the full 25% discount is given.

8 Capping sentencing discounts

8.1 New section 9F prescribes a cap on sentencing discounts related to the mitigating factors personal to an offender, unless it is manifestly unjust. The Law Society is concerned about the imposition of an arbitrary cap on sentencing discounts. If a mitigating factor applies, then a discount should be given that appropriately reflects the degree of mitigation of that factor.

8.2 Such a cap will likely have a chilling effect on the necessary and appropriate sentencing purposes of rehabilitation and restorative justice, as well as a negative effect on early guilty pleas. It is counterintuitive to apply a randomly selected percentage as a cap on sentencing discounts where part of the aim of sentencing is to rehabilitate (and thereby reduce recidivism) and to encourage restorative justice. As noted above, and reiterated throughout this submission, restorative justice acts as a significant part of the sentencing process, enabling a victim's interests to be acknowledged by the offender, often leading to greater victim satisfaction.[13]

8.3 Capping sentencing discounts may have the unintended consequence of causing a defendant not to plead guilty. For example, a young defendant who has done rehabilitative work, is genuinely remorseful and demonstrates so by attending a restorative justice meeting and following through on any outcome of that meeting, and who has no previous convictions, would likely already be approaching the 40% cap by those factors alone, without any credit for a guilty plea. In such circumstances, there would likely be little to be gained by pleading guilty, particularly if they have a defence (even if a weak one).

Manifest injustice

8.4 The Law Society reiterates that the proposed reforms will have the effect of producing inconsistent and unjust outcomes. The Law Society is concerned with the fundamental shift that this represents. We note that a provision is included to avoid manifestly unjust outcomes in new section 9F(4), however, as the Crown Law advice makes clear, this is

13 *Criminal Procedure – A – Z New Zealand Law* (online looseleaf ed, Westlaw) at 21.16.1; Donald J Schmid "Restorative Justice: A new paradigm for Criminal Justice Policy" (2003) 34 VUWLR 91 at 91; Judge Sir David Carruthers "Restorative Justice: Lessons from the Past, Pointers for the Future" (2012) 20 WLR 1 at 14; Heather Strang, Lawrence Sherman, Evan Mayo-Wilson, Daniel Woods and Barak Ariel "Restorative Justice Conferencing (RJC) using face-to-face meetings of offenders and victims: Effects on offender recidivism and victim satisfaction – a systemic review" 9 Campbell Systemic Reviews 1 at 33-44. Past Ministry research indicates victim satisfaction levels of 82% with use of restorative justice processes.

only designed to go so far as to avoid breaching section 9 of the Bill of Rights – a high standard.[14]

Factors personal to the offender

8.5 It is not clear whether, by virtue of new section 9F(2), mitigating factors that are not personal to the offender (i.e. the conduct of the victim, time spent on restrictive bail conditions, or adverse effects on the offender of a delay in the disposition of the proceedings caused by a failure by the prosecutor to comply with a procedural requirement) can result in a sentencing discount above the 40% cap. The Law Society suggests this should be clarified, and a greater discount based on these factors outside of the offender's control, should be possible.

Assistance to authorities

8.6 The Law Society queries whether a sentencing discount on the basis of assistance to the authorities is included within the 40% cap, given that this discount alone may result in a discount of 30% in particular cases.[15]

8.7 If the sentencing cap does apply to this factor, there will likely be a chilling effect on offenders who might otherwise cooperate with the authorities. If the discount is not included in the cap, there is still likely to be a chilling effect. Offenders who receive the discount will be easily identifiable given they will have received a discount of over 40%. This will make it easier for other offenders and their associates to identify the actions of the sentenced offender, which will have a predictable adverse effect on them.

8.8 The Law Society suggests that the Select Committee may wish to invite officials to consider this issue further.

9 Cumulative Sentencing

9.1 Clause 12 amends section 84 to specify that offences committed while on bail, in custody, or on parole are 'generally appropriate' to be sentenced cumulatively. The Law Society acknowledges that this retains some discretion. However, a change to cumulative sentencing may, in some cases, increase the likelihood that defendants will go to trial on the chance that they may not be found guilty, with consequent implications in terms of resourcing, costs, delay, stress and hardship to complainants and witnesses.

10 Other matters

Forfeiture of weapons

10.1 New section 142R proposes that a weapon used by an offender in the commission of an offence must be forfeited or destroyed by the Crown. The Law Society considers that whilst largely unobjectionable, this provision may raise issues where the weapon has been acquired unlawfully by the offender or another and then used to commit a crime (i.e. stolen by the offender or hired from an innocent third party by a confederate).

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14 Crown Law "Sentencing Reform Amendment Bill and District Court (District Court Judges) Amendment Bill - Consistency with the New Zealand Bill of Rights Act 1990" at [25].

15 *Enoka v R* [2018] NZCA 185.

Forfeiture of property belonging to innocent third parties would infringe upon the right to be free from unreasonable search and seizure, protected by section 21 of the Bill of Rights. This was not considered in the Crown Law advice. The Law Society suggests that the Committee consider inserting suitable procedural provisions into the Bill to address this issue. These could be based on those provided for instrument forfeiture.[16]

Jesse Savage
Vice-President

16 Sentencing Act 2002, section 10B, 142L and 142M.