

Student Loan Scheme Amendment Bill

Government Bill

As reported from the Finance and
Expenditure Committee

Commentary

Recommendation

The Finance and Expenditure Committee has examined the Student Loan Scheme Amendment and recommends that it be passed with the amendments shown.

Introduction

The bill seeks to amend the Student Loan Scheme Act 2011 in three main ways:

- It would exclude investment and business losses from the calculation of net income in assessing student loan repayments. As a consequence of this change, the salary or wages of all borrowers would be assessed on a pay-period basis. An annual square-up assessment would be required only in respect of any income a borrower derived from sources other than salary or wages.
- It would allow alternative contact details provided to the loan manager (StudyLink) as a condition of accessing a student

loan to be obtained by the Inland Revenue Department for potential use in locating borrowers in default. A contact person would bear no liability for loan repayments, and would be asked only to supply the borrower's current contact details or to ask the borrower to contact the department.

- It would make several changes to the rules for the repayment "holiday" to which borrowers living overseas are entitled. The repayment holiday would be reduced from three years to one; borrowers would need to apply for the holiday; and the application would need to specify a contact person in New Zealand.

Our commentary covers the main amendments we recommend to the bill. Minor and technical amendments are not discussed.

Repayment codes

We recommend inserting clauses 7B to 7E to reflect current administrative practices regarding the repayment codes used for income tax and student loan repayments. The treatment specified in the Student Loan Scheme Act 2011 was designed in anticipation of changes to the Inland Revenue Department's computer system which will now not be made.

Offsetting a significant over-deduction

We recommend an amendment to clause 12 so that a significant over-deduction could be offset against an unpaid amount before being refunded. The bill as introduced would allow a significant over-deduction in one period to be offset against a significant under-deduction in another period, but does not cover a situation in which a borrower has an unpaid amount. We do not consider that a borrower should receive a refund leaving a debt due. We recommend that the amendment apply from 1 April 2012.

New Zealand-based non-resident borrowers

We recommend inserting new clauses 15A and 19A to allow borrowers who are deemed to be New Zealand-based but who are currently non-resident (such as a borrower studying overseas or working for an overseas aid agency) to apply for an extension of time for filing information. The new clause would better reflect the Act's policy intent,

which is that the repayment obligations of such borrowers should be payable on the same dates that borrowers resident in New Zealand with other income pay their remaining repayments. We also recommend consequential amendments to the late filing provisions by inserting clauses 27 and 27A.

Determining excess repayments

We recommend an amendment to clause 22 to correct an error in the way repayment obligations are defined for the purposes of calculating whether a borrower has made excess repayments and is therefore entitled to the repayment bonus. As the Act stands, a borrower could miss out on the bonus entitlement through no fault of their own if there was an under-deduction, however insignificant, from their salary or wages. The amendment we propose would treat the borrower as having satisfied their repayment obligation in such a situation; other means are available to collect the amount owing. We believe this would align more accurately with the policy intent of the legislation.

Communication with a contact person

We recommend an amendment to clause 29, inserting new section 193A, to allow the Commissioner of Inland Revenue to notify an individual that they have been nominated as a contact person for a borrower. Under the bill as introduced, the commissioner could communicate with a contact person only if the borrower were in default. We believe preliminary communication would be useful to help contact people to understand the role expected of them, and particularly to reassure them that they would only be asked to provide contact information about the borrower or to ask the borrower to contact Inland Revenue. The department would not use the contact details to follow up on the contact person's own tax obligations.

Keeping contact person's details up-to-date

We recommend an amendment to clause 29, inserting new section 193B, to require a borrower to notify the Commissioner of Inland Revenue whenever there is a change in the details of the contact person named in their loan application, and to provide new contact details if the contact person dies or becomes incapacitated or is unwill-

ing to act as the borrower's contact person. In the bill as introduced, such an obligation applies only to details provided in an application for a repayment holiday.

Calculation of interest

We recommend an amendment to clause 29A to provide that loan repayments are treated as being received on the day after payment is made, for the purposes of calculating interest. That is, interest would be imposed on outstanding loan balances up to and including the date of payment. This change would align the legislation with what is already the administrative practice.

Declaration of worldwide income

We recommend inserting clause 30B, which would amend Schedule 1, to address circumstances in which a borrower is treated as living in New Zealand, and therefore qualifies as a New Zealand-based borrower, even though they are currently non-resident (for example, a borrower might be studying overseas or working for an overseas aid agency). Our proposed amendment would require a borrower in such circumstances to file a declaration of their worldwide income to qualify for such treatment. Such a requirement was imposed under the Student Loan Scheme Act 1992, but was omitted from the Student Loan Scheme Act 2011 through a legislative oversight. Consequential amendments are recommended to section 25(2) and Schedule 1 of the Act, through the addition of a further clause in that schedule (new clause 11).

Change from StudyLink to Inland Revenue

The Student Loan Scheme Act 2011 provides for the Inland Revenue Department to take over the role currently performed by StudyLink in charging interest on loans while a borrower is studying. Whereas the Act specifies a changeover date of 1 January 2012, we are informed that 1 April 2012 would be more administratively efficient, and that borrowers would not be disadvantaged by the change of date.

To regularise the current position, we recommend the retrospective repeal of clause 2 in Schedule 5 of the Act by the insertion of clause 30D.

Transitional provisions for late payment interest

The Student Loan Scheme Act 2011 changed the way late payment interest will be imposed from 1 April 2013. To ensure that borrowers are not disadvantaged in the transition to the new rules, we recommend amending clause 32 to clarify the date from which late payment interest would be charged during the transition to the new late payment interest regime. We believe the change would make it easier for borrowers to understand and comply with their obligations.

Repayment holiday

At present, borrowers who go overseas are entitled to take a “holiday” from making repayments for up to three years, during which interest accumulates on their loans. The bill would shorten the repayment holiday to one year.

Although we do not recommend any significant amendment to the provisions regarding the repayment holiday (clause 17), we consider it worth noting the rationale behind them. We understand that the changes proposed in the bill are designed to convey the idea that the break from compulsory repayments is a privilege rather than a right, and to treat borrowers who remain in New Zealand (and do not have any repayment holiday) more equitably. The changes proposed are designed to signal a matter of policy rather than in the expectation of affecting repayment rates.

Some of us were disappointed to learn that at the time of the Budget 2011 decisions there was not enough empirical evidence to evaluate the effect of the three-year repayment holiday introduced in 2007, and that limited modelling has been done on the likely effect of curtailing the holiday, as borrowers’ response to the change is uncertain.

Impact of repayment holiday

We considered whether it would be desirable for a person who had repaid their loan in full to be entitled to take another repayment holiday if they took out another loan to finance a second degree. However, we consider that a further entitlement to a repayment holiday would not necessarily advantage borrowers, as a repayment holiday tends to increase, rather than decrease, a borrower’s lifetime loan obligations since interest accumulates during the holiday. Some of us were concerned about the effect on women and second-chance learners of

not allowing a second repayment holiday once a first loan had been fully repaid.

Some of us are concerned by the possibility that a typical borrower based overseas may face interest obligations after a repayment holiday that may amount to two to three times the original principal amount. We consider that this could militate against the likelihood of borrowers repaying their loans.

Impact of the bill

We note that one purpose of the bill is to improve compliance by encouraging personal responsibility for loan repayments. The measures in the bill are estimated to increase revenue collected from student loans by an additional \$14 million per annum, comprising an additional \$5 million per annum from the extension of pay-period assessments, and \$9 million per annum as a result of the exclusion of losses from the calculation of repayment obligations. We note that the estimated additional revenue represents about 0.12 percent of the total nominal loan balance of approximately \$12 billion, of which approximately \$2.5 billion is owed by student loan borrowers currently overseas.

Appendix

Committee process

The Student Loan Scheme Amendment was referred to the Finance and Expenditure Committee of the 49th Parliament on 15 September 2011. The committee called for submissions on the bill. The bill was reinstated in the 50th Parliament on 21 December 2011. We received and considered five submissions from interested groups and individuals. We heard two submissions.

We received advice from the Inland Revenue Department, the Ministry of Education, and the Ministry of Social Development.

Committee membership

Simon Bridges (Chairperson)

Maggie Barry

David Bennett

Dr David Clark

Hon Clayton Cosgrove

Paul Goldsmith

John Hayes

Todd McClay

Dr Russel Norman

Hon David Parker

Rt Hon Winston Peters

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Key to symbols used in reprinted bill

As reported from a select committee

text inserted by a majority

~~text deleted by a majority~~

Hon Peter Dunne

Student Loan Scheme Amendment Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Student Loan Scheme Amendment Act **2011**.

2 Commencement

(1) **Sections 7** and **34(2)** come into force on 1 January 2013.

(1A) **Section 30D** is deemed to have come into force on 1 January 2012.

(2) ~~**Section 32** comes into force on the commencement of clause 6 of Schedule 7~~ **Section 32** comes into force on 1 April 2013 except that if a clause in Schedule 7 is, under section 2(5) of the principal Act, brought into force on a later date, any provision in **section 32** that relates to that clause comes into force on that later date.

~~(3) **Sections 30** and **35** come into force on the day after the date on which this Act receives the Royal assent.~~

(4) The rest of the Act comes into force on 1 April 2012.

Part 1

15

Amendments to principal Act

3 Principal Act amended

This Act amends the Student Loan Scheme Act 2011.

4 Purposes of Act

The purposes of this Act are—

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(a) to assess the repayment obligations of borrowers by—

- (i) disregarding any business or investment losses; and
- (ii) treating salaries and wages separately from investment and business income:
- (b) to provide for repayment holidays to be granted by the Commissioner and to limit their term to 365 days: 5
- (c) to require borrowers who apply for repayment holidays to have contact persons who may be requested to assist the Commissioner in locating borrowers:
- (d) to make miscellaneous amendments to the principal Act. 10

5 Interpretation

(1AA) The definition of **consolidated loan balance** in section 4(1) is amended by adding “; and” and also by adding the following paragraph: 15

“(c) any interest calculated and accrued under section 135(1)”.

- (1) The definition of **net income** in section 4(1) is repealed.
- (2) The definition of **other income** in section 4(1) is amended by omitting “net income for that tax year other than from salary or wages or” in both places where it appears and substituting in each case “adjusted net income for that tax year other than from”. 20
- (3) The definition of **other income repayment obligation** in section 4(1) is amended by omitting “other income the borrower derives for a tax year, calculated in accordance with section 91” and substituting “adjusted net income the borrower derives for a tax year, calculated in accordance with **section 90** or **91**”. 25
- (4) The definition of **significant over-deduction** in section 4(1) is amended by omitting “, from a borrower who does not derive other income in the tax year in which the deduction is made, ”. 30
- (5) Paragraph (b) of the definition of **special deduction rate** in section 4(1) is repealed.
- (6) Section 4(1) is amended by inserting the following definitions in their appropriate alphabetical order: 35

“**adjusted net income** has the meaning given to it in **section 88A**

“**net pre-taxed income** has the meaning given to it in **section 73**”.

6 Certain information must be disclosed in loan contract 5
Section 13 is amended by repealing paragraphs (g) and (h) and substituting the following paragraphs:

“(g) the borrower’s right to object to the details of loan advances set out in a notification given to the borrower in accordance with section 18: 10

“(h) the timeframe within which an objection by a borrower under section 167 must be received by the loan manager (*see* section 18(2)(e)).”

7 New section 16A inserted 15
The following section is inserted after section 16:

“**16A Loan manager must notify Commissioner of any details held about borrower’s contact person**

“(1) In any case where a borrower has advised the loan manager of the details of the borrower’s contact person, the loan manager must notify the Commissioner of the following details, to the extent that they are available: 20

“(a) the name of the individual:

“(b) a postal address for the individual:

“(c) a telephone number for the individual:

“(d) an electronic address for the individual: 25

“(e) any further information specified in regulations.

“(2) The Commissioner and the loan manager may, for the purpose of this section, determine by written agreement between them—

“(a) the frequency with which that notification must be supplied; and 30

“(b) the form in which that notification must be supplied; and

“(c) the method by which that notification must be supplied.

“(3) **Subsection (2)(b) and (c)** apply despite section 211.”

- 7A** **Commissioner may treat certain borrowers as being physically in New Zealand**
Section 25(2) is amended by omitting “10” and substituting “11”.
- 7B** **Repayment codes for New Zealand-based borrowers who derive salary or wages** 5
Section 34 is amended by repealing subsections (2) and (3) and substituting the following subsections:
- “(2)** The repayment code ‘STC’ applies to a borrower if—
- “(a)** the employer is issued with a special tax code certificate under section 24F of the Tax Administration Act 1994; 10
or
- “(b)** the Commissioner requires or permits its use in any other case.
- “(3)** If another Act requires an employer to withhold an amount of tax for a PAYE income payment to a borrower and pay the amount to the Commissioner,— 15
- “(a)** the repayment code ‘SL’ may be combined with another code under that Act; and
- “(b)** the repayment code ‘STC’ may be combined into another code under that Act.” 20
- 7C** **Borrowers with “SL” repayment code must notify employers**
Section 35(2) is amended by repealing paragraphs (b) and (c) and substituting the following paragraph: 25
- “(b)** if an ‘STC’ repayment code ceases to apply to the borrower.”
- 7D** **Employer or PAYE intermediary must make standard deductions from salary or wages**
Section 36(1)(c) is amended by omitting “a special deduction rate” and substituting “an ‘STC’ repayment code”. 30

- 7E** **Deduction rates that apply to standard deductions from salary or wages**
- (1) Section 37(1) is amended by omitting “If a borrower’s repayment code is ‘SL’ ” and substituting “If the employer of a borrower has not been notified that a special deduction rate applies to the borrower”. 5
- (2) Section 37(2) is amended by omitting “If a borrower’s repayment code is ‘STC’ ” and substituting “If the employer has been notified that a special deduction rate applies to the borrower”. 10
- 7F** **Employer or PAYE intermediary must make Commissioner deductions from salary or wages**
Section 38(3)(b) is amended by omitting “tax” and substituting “repayment”.
- 7G** **Employer or PAYE intermediary must make borrower deductions from salary or wages** 15
Section 39(3)(b) is amended by omitting “tax” and substituting “repayment”.
- 7H** **Deductions from income-tested benefits** 20
Section 40 is amended by inserting the following subsection after subsection (2):
“(2A) If the amount of the deduction determined under subsection (2)(b) is zero, then sections 34 and 35 do not apply.”
- 8** **Application for unused repayment threshold to be allocated to secondary employment earnings** 25
 Section 42(1) is amended by omitting “; and” from paragraph (b) and also by repealing paragraph (c).
- 8A** **Special deduction rate certificate for unused repayment threshold** 30
Section 45(a) is amended by inserting “and the repayment code to be used” after “special deduction rate”.

- 9 Issue and application of special deduction rate certificate**
Section 46(2)(a) is amended by omitting “or 102”.
- 9A Commissioner must issue additional deduction rate notice to obtain Commissioner deductions**
Section 49(1)(a) is amended by repealing subparagraph (i) and substituting the following subparagraph: 5
“(i) an error or omission by the borrower’s employer or PAYE intermediary; or”.
- 9B Procedures for issue of additional deduction rate notice**
Section 50 is amended by repealing subsection (2) and substituting the following subsection: 10
“(2) An additional deduction rate notice issued to an employer or a PAYE intermediary in relation to a borrower revokes an additional deduction rate notice previously issued to that employer or PAYE intermediary in relation to the borrower.” 15
- 10 Assessment of standard deductions that ought to have been made**
- (1) Section 51(1)(a)(i) is amended by inserting “or by the borrower’s employer or PAYE intermediary” after “borrower”.
- (2) Section 51(2) is repealed. 20
- 11 Borrowers who are eligible for exemption from standard deductions**
Section 54(1) is amended by repealing paragraphs (b) and (c) and substituting the following paragraph:
- “(b) reasonably expects that the annual repayment threshold 25
for year A will not be exceeded by his or her—
- “(i) gross income from salary or wages; and
- “(ii) in the case of a borrower to whom subpart 2 applies, net pre-taxed income; and
- “(iii) in the case of a borrower to whom subpart 3 applies, adjusted net income.” 30

11A Significant over-deduction identified by borrower

Section 65(2) is amended by omitting “the borrower believes the significant over-deduction was made” and inserting “the significant over-deduction is believed to have occurred”.

12 Procedure if significant over-deduction made

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(1) Section 67(2)(d) is amended by inserting “, subject to **subsections (2A)** and (3),” after “borrower may”.

(2) Section 67 is amended by inserting the following subsection after subsection (2):

~~“(2A) In any case where there is also, in relation to the borrower and any tax year, a significant under-deduction that the Commissioner has at any time identified, the significant under-deduction may be offset against the significant over-deduction before any refund is made.”~~ 10

“(2A) In any case where there is also, in relation to the borrower and any tax year, a significant under-deduction or an unpaid amount that the Commissioner has at any time identified, the significant under-deduction or unpaid amount may be offset against the significant over-deduction before any refund is made.” 15
20

13 New section 73 substituted

Section 73 is repealed and the following section substituted:

“73 Meaning of net pre-taxed income

“(1) In this Act, net pre-taxed income, in relation to a borrower for a tax year, means the amount calculated in accordance with the formula— 25

$$a = b - c$$

where—

a is the borrower’s net pre-taxed income for the tax year

b is the borrower’s pre-taxed income (as defined in section 4(1)) for the tax year 30

c is the borrower’s allowable expenses for the tax year.

“(2) However, the pre-taxed income and allowable expenses for any investment activity for a tax year are ignored when calculating a borrower’s net pre-taxed income for that tax year if, treating the borrower as having only the pre-taxed income and 35

allowable expenses of that activity, the borrower would have a net loss for that year.

- “(3) For the purposes of applying **subsection (2)**, 2 or more investment activities may be treated as a single activity if the Commissioner considers that those investment activities are of a kind that are normally carried on in association with each other. 5
- “(4) For the purposes of applying **subsection (2)**, as modified by **subsection (3)**, allowable expenses that relate to an asset used in carrying on 2 or more investment activities must be appropriately apportioned between those activities on the basis of the use of that asset in those activities. 10
- “(5) In this section,—
- “**allowable expenses** means—
- “(a) expenditure or interest for which a person is allowed a deduction under section DB 3, DB 5, or DB 6 of the Income Tax Act 2007: 15
- “(b) a premium under a policy of income protection insurance for which a person is allowed a deduction under section DA 1 of the Income Tax Act 2007 20
- “**investment activity** has the same meaning as in section MB 3(5) of the Income Tax Act 2007.”
- Compare: 2007 No 97 s MB 3

14 New section 88A inserted

The following section is inserted after section 88: 25

“88A Meaning of adjusted net income

- “(1) In this Act, **adjusted net income** means a borrower’s income calculated in accordance with the formula—
- $$a = b - c$$
- where— 30
- a is the borrower’s adjusted net income
- b is the borrower’s annual gross income other than from salary or wages
- c is the borrower’s annual total deductions.
- “(2) However, the income and deductions for any investment activity, or for any business, for a tax year are ignored when cal- 35

culating a borrower's adjusted net income for that tax year if, treating the borrower as having only the income and deductions of that investment activity or of that business, the borrower would have a net loss for that year.

- “(3) For the purposes of applying **subsection (2)**, 2 or more business or investment activities may be treated as a single activity if the Commissioner considers that those business or investment activities are of a kind that are normally carried on in association with each other. 5
- “(4) For the purposes of applying **subsection (2)**, as modified by **subsection (3)**, deductions that relate to an asset used in carrying on 2 or more business or investment activities must be appropriately apportioned between those activities on the basis of the use of that asset in those activities. 10
- “(5) In this section,— 15
 “**business** has the same meaning as in section YA 1 of the Income Tax Act 2007
 “**investment activity** has the same meaning as in section MB 3(5) of the Income Tax Act 2007.”
 Compare: 2007 No 97 s MB 3(2) 20

15 **New sections 90 and 91 substituted**

Sections 90 and 91 are repealed and the following sections substituted:

- “**90 Calculation of borrower's other income repayment obligation where salary or wages below threshold** 25
- “(1) **Subsection (2)** applies if, in relation to a tax year,—
 “(a) this subpart applies to a borrower; and
 “(b) the gross income that the borrower derived from salary or wages is less than the annual repayment threshold.
- “(2) The borrower's other income repayment obligation for the tax year must be calculated in accordance with the formula— 30

$$a = b \times (c - d)$$

 where—
 a is the borrower's other income repayment obligation for the tax year 35
 b is the repayment percentage

- c is the income that the borrower derives from adjusted net income and from salary or wages for the tax year
- d is the annual repayment threshold.
- “(3) If the borrower’s other income repayment obligation for the tax year is zero or less, the borrower has no other income repayment obligation for the tax year. 5
- “**91 Calculation of borrower’s other income repayment obligation where salary or wages equal to or above threshold**
- “(1) **Subsection (2)** applies if, in relation to a tax year,— 10
- “(a) this subpart applies to a borrower; and
- “(b) the gross income that the borrower derived from salary or wages is equal to or more than the annual repayment threshold.
- “(2) The borrower’s other income repayment obligation for the tax year must be calculated in accordance with the formula— 15
- $$a = b \times c$$
- where—
- a is the borrower’s other income repayment obligation for the tax year 20
- b is the repayment percentage
- c is the income that the borrower derives from adjusted net income for the tax year.
- 15A Due dates for payment of remaining repayments**
- (1) Section 94(2)(b) is amended by inserting “, or his or her notification of gross income and deductions under section 114 or **114A,**” after “return of income”. 25
- (2) Section 94(4)(b) is amended by inserting “, or his or her notification of gross income and deductions under section 114 or **114A,**” after “return of income”. 30
- 16 Heading and sections 101 to 104 repealed**
- The heading above section 101 and sections 101 to 104 are repealed.

17 New sections 106 to 108A and heading substituted

Sections 106 to 108 and the heading above section 107 are repealed and the following sections and heading substituted:

“106 Meaning of repayment holiday

In this subpart, **repayment holiday** means a period during 5
which a borrower’s overseas-based repayment obligation is reduced to zero.

*“Repayment holiday from overseas-based
repayment obligations*

**“107 Borrowers who intend to be overseas-based may apply for 10
repayment holidays**

“(1) A borrower may, by notifying the Commissioner, apply to the Commissioner for a repayment holiday if he or she intends to be overseas-based.

“(2) The application may be made from New Zealand or from overseas, but no application may be made by an overseas-based borrower. 15

“107A Contact person to be nominated

“(1) At the time of making an application under **section 107 and 20
~~whenever subsection (2) applies~~**, the borrower must nominate, as the borrower’s contact person, an individual who resides in New Zealand.

~~“(2) This subsection applies whenever an individual nominated under subsection (1) dies or becomes incapacitated or is for any other reason ineligible, unable, or unwilling to act as the borrower’s contact person. 25~~

“(3) The borrower nominates a contact person by notifying the Commissioner of an individual who is willing to act as the borrower’s contact person and by specifying the following details in that notification: 30

“(a) the name of the individual:

“(b) a New Zealand postal address for the individual:

“(c) an electronic address for the individual (if the individual has one):

“(d) a New Zealand telephone number for the individual (if 35
the individual has one):

“(e) any further information specified in regulations.

~~“(4) Whenever the details specified in **subsection (3)** change, the borrower must notify the Commissioner of the changed details.~~

“107B Grant of repayment holiday 5

“(1) The Commissioner may grant a repayment holiday to a borrower who applies under **section 107** if satisfied that the borrower—

“(a) has not reached the borrower’s limit; and

“(b) has complied with **section 107A**. 10

“(2) A borrower who is granted a repayment holiday becomes entitled to that repayment holiday on the day on which the borrower becomes overseas-based.

“(3) For the purposes of this subpart, a borrower reaches the borrower’s limit if— 15

“(a) the borrower has had 1 or more repayment holidays, granted under this Act, for a period of 365 days or for periods that total 365 days; or

“(b) the borrower has had 1 or more repayment holidays under Part 3 of the Student Loan Scheme Act 1992 for a period of 3 years or for periods that total 3 years; or 20

“(c) the borrower has had—

“(i) 1 or more repayment holidays under Part 3 of the Student Loan Scheme Act 1992 for a period of less than 3 years or for periods that total less than 3 years; and 25

“(ii) 1 or more repayment holidays, granted under this Act, for a period that equals, or for periods that in total equal, the lesser of—

“(A) 365 days; and 30

“(B) the remainder of the period of the repayment holiday to which the borrower would have been entitled under Part 3 of the Student Loan Scheme Act 1992 if that Act had not been repealed; or 35

“(d) the borrower has had his or her repayment holiday under Part 3 of the Student Loan Scheme Act 1992 continued

under **section 108A(2)** for the maximum period prescribed for that continuation.

“108 Duration of repayment holiday

- “(1) Despite **section 107B(2)**, for the purpose of determining the duration of a repayment holiday, the repayment holiday of a borrower who has become entitled to it under that subsection is deemed to have commenced on the first day of the period of the borrower’s physical absence from New Zealand, being the period that resulted in the borrower becoming overseas-based. 5
- “(2) The repayment holiday of a borrower who has become entitled to it under **section 107B(2)** ends on the earlier of— 10
- “(a) the day that the borrower reaches the borrower’s limit; and
 - “(b) the day on which the borrower ceases to be overseas-based. 15
- “(3) A borrower’s repayment obligation must be calculated in accordance with sections 110 and 111 if the borrower is, at any time, overseas-based after his or her repayment holiday has ended.

“108A Borrowers who have had, or are having, repayment holidays under Student Loan Scheme Act 1992 20

- “(1) A New Zealand-based borrower who has had 1 or more repayment holidays under Part 3 of the Student Loan Scheme Act 1992, but who has not reached the borrower’s limit (within the meaning of **section 107B(3)**), must apply under **section 107** if he or she wishes to have a repayment holiday under this Act. 25
- “(2) An overseas-based borrower who, as at 31 March 2012, has a repayment holiday under Part 3 of the Student Loan Scheme Act 1992 that, but for the repeal of that Act, would have continued under that Act continues to have a repayment holiday under this Act, but for no longer than the lesser of— 30
- “(a) 365 days; and
 - “(b) the remainder of the period of the repayment holiday to which the borrower would have been entitled under Part 3 of the Student Loan Scheme Act 1992 if that Act had not been repealed. 35

“(3) The repayment obligation of a borrower to whom **subsection (2)** applies must be calculated in accordance with sections 110 and 111 if the borrower is, at any time, overseas-based after his or her repayment holiday has ended in accordance with that subsection.” 5

18 Repayment obligations of overseas-based borrowers

(1) Section 110 is amended by repealing subsection (1) and substituting the following subsection:

“(1) This section applies to an overseas-based borrower who is not, or is no longer, entitled to a repayment holiday under **section 107B** or **108A(2)**.” 10

(2) Section 110(6)(b)(iii) is amended by omitting “excluding” and substituting “subtracting”.

18A Exceptions to repayment obligations of overseas-based borrowers 15

Section 111(5)(b)(iii) is amended by omitting “excluding” and substituting “subtracting”.

19 Repayment to be made by instalments

Section 112 is amended by repealing subsection (3) and substituting the following subsection: 20

“(3) However, a borrower’s overseas-based repayment obligation for a tax year must be paid by the borrower in instalments as determined by the Commissioner if any repayment holiday granted to the borrower under **section 107B** or continued under **section 108A(2)** ends part-way through the tax year.” 25

19A New section 114A inserted

The following section is inserted after section 114:

“114A Extension of time for making notification of worldwide income

“(1) This section applies if section 114(2) applies.” 30

“(2) A borrower may apply to the Commissioner for an extension of time for the making of a notification of the borrower’s annual gross income and annual total deductions in accordance with section 37(3) to (5) of the Tax Administration Act 1994,

and those subsections apply, as far as applicable and with all necessary modifications, as if—

“(a) the reference to ‘the due date required under this section’ were a reference to ‘the due date required under section 114(3) of the Student Loan Scheme Act 2011’; 5

and

“(b) every reference to a taxpayer were a reference to a borrower; and

“(c) every reference to a return or a return of income were a reference to a notification of the borrower’s annual gross income and annual total deductions.” 10

20 Repayment obligations of borrowers who are overseas-based for part of tax year

Section 115(1) is amended by repealing paragraph (c) and substituting the following paragraph: 15

“(c) section 110(4) or 111 (as applicable) applies to any portion of the tax year during which the borrower is overseas-based and is not entitled to a repayment holiday (as defined in **section 106**); and”.

20A Overseas-based borrower’s standard and Commissioner deductions satisfy overseas-based repayment obligation 20

Section 117(3) is repealed.

21 Interpretation

The definition of **10% bonus** in section 118 is amended by omitting “124(2), or 125(2)” and substituting “or 124(2)”. 25

22 Meaning of excess repayment

(1) Section 119(2)~~(a)(ii)~~ is repealed, and the following subsection substituted:

“(2) In determining whether an excess repayment has been made, the Commissioner must— 30

“(a) disregard a salary or wage deduction or a payment made to the Commissioner that is subsequently refunded; and

“(b) treat a borrower’s repayment obligation as if any relief granted under section 147 had not been granted; and

- “(c) disregard any fee refunded by an education provider to the loan manager or the Commissioner.”
- (2) Section 119(3) is amended by repealing the definition of **total obligations** and substituting the following definition:
- “**total obligations** means— 5
- “(a) all unpaid amounts; and
- “(b) any standard deductions that were deducted in the tax year except—
- “(i) a significant over-deduction; or
- “(ii) a standard deduction or Commissioner deduction for the purposes set out in section 49(1)(a) made (in accordance with section 116) from the salary or wages an overseas-based borrower derives from New Zealand; and 10
- “(c) any Commissioner deductions for the purposes set out in section 49(1)(a) that were deducted in the tax year; and 15
- “(d) any other income repayment obligations for the tax year; and
- “(e) any pre-taxed repayment obligation for the tax year; and 20
- “(f) any overseas-based repayment obligation for the tax year; and
- “(g) any amount that must be paid by a borrower in accordance with a written notification under section 52 for the tax year; and 25
- “(h) penalties imposed under subpart 3 of Part 4”.
- (3) The definition of **total payments** in section 119(3) is amended by repealing paragraph (a) and substituting the following paragraph:
- “(a) all salary or wage deductions that were deducted in the tax year (including salary and wage deductions made in accordance with section 116 from the salary or wages an overseas-based borrower derives from New Zealand); and”. 30
- 23 Section 125 repealed** 35
Section 125 is repealed.

- 24 Consequences of refund or credit to next tax year**
Section 129(2) is repealed.
- 24A Loan interest calculated daily and charged and compounded annually**
- (1) Section 135(1) is amended by inserting “and accrues” after “is calculated”. 5
- (2) Section 135(2) is amended by adding “or an earlier date determined by the Commissioner, at his or her discretion, that is within the relevant tax year.”
- 25 Commissioner may grant relief from late payment interest** 10
Section 146 is amended by repealing subsection (3) and substituting the following subsections:
- “(3) So much of any cancelled late payment interest that has already been paid must be offset as follows: 15
- “(a) first, against any unpaid amount the borrower has; and
- “(b) secondly, any remainder must be offset against the borrower’s current year obligations; and
- “(c) thirdly, any remainder must be offset against the borrower’s loan balance.
- “(4) Where any amount is, under **subsection (3)(c)**, applied to the loan balance, the borrower may choose to have that amount 20
refunded in whole or in part, and section 132(2) and (3) apply to that choice with all necessary modifications.”
- 25A Special deduction rate certificate for hardship relief**
- Section 148(2)(a) is amended by inserting “and the repayment code to be used” after “specifies a special deduction rate”. 25
- 26 Issue and application of special deduction rate certificate**
Section 149(2) is amended by omitting “, 102,”.
- 27 Late filing penalty for certain declarations**
- (1) Section 155(3) is amended by omitting “net income” and substituting “adjusted net income or net pre-taxed income”. 30
- (2) Section 155(5) is amended by inserting “and section 156” after “In this section”.

- 27A Due dates for payment of late filing penalty**
Section 156(b) and (c) are amended by omitting “file a re-
 turn of income under section 37 of the Tax Administration Act
 1994” and substituting in each case “make a declaration under
 section 75 or **114A**”. 5
- 28 Annual administration fee**
 Section 189(1) is amended by omitting “has a loan balance”
 and substituting “has a consolidated loan balance”.
- 29 ~~New section 193A inserted~~ sections 193A and 193B
 inserted** 10
 The following ~~section is~~ sections are inserted after section 193:
“193A Contact person may be requested to assist
“(1) ~~This section applies if—~~
~~“(a) the borrower has an unpaid amount; and~~
**~~“(b) the Commissioner does not have current address details
 for the borrower or is uncertain whether the address de-
 tails for the borrower are still current.~~** 15
- “(1) The Commissioner may at any time advise a person that the
 person has been nominated as the contact person of a borrower.**
- “(2) If, in any case where a borrower has an unpaid amount, the
 Commissioner does not have the current address details for
 the borrower or is uncertain as to the accuracy of the address
 details for the borrower, the ~~The~~ Commissioner may request
 the borrower’s contact person—** 20
- “(a) to notify the Commissioner of the borrower’s current
 address details; or** 25
- “(b) to ask the borrower to notify the Commissioner of the
 borrower’s current address details.**
- “(2A) In **subsection (2)**, address details, in relation to a borrower,
 means—** 30
- “(a) all postal addresses for the borrower; and**
- “(b) all electronic addresses for the borrower (if the borrower
 has any); and**
- “(c) all telephone numbers for the borrower (if the borrower
 has any).** 35

- “(3) The Commissioner may not make a request under **subsection (2)** unless the contact person confirms that he or she is willing to act as the borrower’s contact person.
- “(4) The Commissioner—
- “(a) may not disclose any matters about the borrower other than those required to be disclosed for the purposes of this section; and
- “(b) may use any information obtained from a request under this section only for the purposes of this Act.
- ~~“(5) In this section,—~~ 10
- ~~“address details, in relation to a borrower, means—~~
- ~~“(a) all postal addresses for the borrower; and~~
- ~~“(b) all electronic addresses for the borrower (if the borrower has any); and~~
- ~~“(c) all telephone numbers for the borrower (if the borrower has any)~~ 15
- ~~“contact person, in relation to a borrower, means—~~
- ~~“(a) an individual whose name has been notified under **section 16A** in relation to the borrower; or~~
- ~~“(b) an individual nominated by the borrower under **section 107A** -~~ 20
- “(5) In this section and **section 193B**, **contact person**, in relation to a borrower, means—
- “(a) an individual whose name has been notified under **section 16A** in relation to the borrower; or 25
- “(b) an individual nominated by the borrower under **section 107A or 193B**.
- “**193B Changes relating to identity and details of contact person**
- “(1) Whenever the contact person of a borrower dies or becomes incapacitated or is for any other reason ineligible, unable, or unwilling to act as the borrower’s contact person, the borrower must nominate another contact person who resides in New Zealand in the manner provided by **section 107A(3)**. 30
- “(2) If there is a change in any of the details of a borrower’s contact person, the borrower must promptly notify the Commissioner of the changed details.” 35

29A Date on which salary or wage deductions and payments treated as being made and credited

- (1) Section 195(3) is amended by omitting “loan interest and”.
 (2) Section 195 is amended by inserting the following subsection after subsection (3): 5

“(3A) For the purpose of calculating loan interest,—
“(a) a salary or wage deduction is credited on the 16th day of the month in which the deduction is made; and
“(b) all other payments are credited on the day after the date on which they are received by the Commissioner.” 10

29B Cancellation of loan interest if consolidated loan balance repaid early

Section 196 is amended by repealing subsection (2) and substituting the following subsection:

- “(2) The Commissioner must cancel any loan interest that is calculated and accrued between the date of the notification and the date on which the payment is received.” 15

30 Early applications and issue of certificates for transition to this Act

- (1) Section 219(1)(a) is amended by omitting “, 101,”. 20
 (1A) Section 219(1)(b) is amended by omitting “(in accordance with section 34(2)(b))”.
 (2) Section 219(2)(a) is amended by omitting “, 102,”.

30A Amendments to this Act

Section 221 is amended by inserting “, and is subject to the transitional provisions,” after “manner”. 25

30B Schedule 1 amended

Schedule 1 is amended by adding the following clause:

“11 Certain exempt borrowers must notify Commissioner of their worldwide income 30

- “(1) This clause applies to a borrower who is treated as being physically in New Zealand under any of paragraphs (b), (g), (h), (i), and (j) of section 25(1).

“(2) The borrower must notify the Commissioner of the borrower’s annual gross income and annual total deductions in accordance with section 114(2), and sections 114(3) and (4) and **114A** apply accordingly.”

30C Schedule 2 amended

5

Clause 1 of Schedule 2 is amended by repealing paragraph (d) and substituting the following paragraph:

“(d) every reference to a tax code were a reference to, as applicable, the repayment codes ‘SL’, ‘STC’, ‘SLCIR’, or ‘SLBOR’; and”.

10

30D Schedule 5 amended

Schedule 5 is amended by repealing clause 2.

31 Schedule 6 amended

(1) Clause 6(1)(b) of Schedule 6 is amended by omitting “2012” and substituting “2013”.

15

(2) Clause 6(1)(b) of Schedule 6 is amended by inserting “or late payment interest under section 139(1) of this Act” after “Student Loan Scheme Act 1992”.

(3) Clauses 9 and 10(4)(b)(ii)(B) of Schedule 6 are repealed.

32 Schedule 7 amended

20

(1AAA) Schedule 7 is amended by inserting the following clause before clause 1:

“1AA Interpretation

The definition of **consolidated loan balance** in section 4(1) is amended by repealing paragraphs (b) and **(c)** and substituting the following paragraph:

25

“(b) any unpaid amount”.

(1AAA) Schedule 7 is amended by repealing clause 2 and substituting the following clause:

“2 Overseas-based borrower’s standard and Commissioner deductions satisfy overseas-based repayment obligation

30

Section 117 is amended by adding the following subsection:

“(4) In relation to the tax year starting on 1 April 2013, and every subsequent year, this section overrides section 194A(1) and (2).”

(1AA) Schedule 7 is amended by inserting the following clause after clause 4:

“4A **Transitional provisions relating to late payment interest**

“(1) **Subclause (2)** applies to any interim payments payable by a borrower for the tax year starting 1 April 2012 if 1 or more of those interim payments are due before the commencement of clause 4 of this schedule and 1 or more of those interim payments are due after that commencement.

“(2) In relation to interim payments to which this subclause applies, the term **unpaid amount** in sections 139 to 141 (as substituted by clause 4 of this schedule) is (despite section 5 as substituted by clause 1 of this schedule) taken to refer to an interim payment default (within the meaning of section 5 as in force before the commencement of clause 1 of this schedule) that has not been paid on or before the due date determined by section 5 (as so in force) and that has not been decreased, reduced, or written off by the Commissioner.

“(3) **Subclause (4)** applies to any instalments of an overseas-based repayment obligation payable by a borrower for the tax year starting 1 April 2012 if 1 or more of those instalments are due before the commencement of clause 4 of this schedule and 1 or more of those instalments are due after that commencement.

“(4) In relation to instalments of an overseas-based repayment obligation to which this subclause applies, the term **unpaid amount** in sections 139 to 141 (as substituted by clause 4 of this schedule) is (despite section 5 as substituted by clause 1 of this schedule) taken to refer to an overseas-based instalment default (within the meaning of section 5(2) as in force before the commencement of clause 1 of this schedule) that has not been paid on or before the due date determined by section 5(2) (as so in force) and that has not been decreased, reduced, or written off by the Commissioner.

“(5) **Subclause (6)** applies to any remaining repayments payable by a borrower for the tax year starting 1 April 2012 if 1 or

more of those remaining repayments are due before the commencement of clause 4 of this schedule and 1 or more of those remaining repayments are due after that commencement.

“(6) In relation to remaining repayments to which this subclause applies, the term **unpaid amount** in sections 139 to 141 (as substituted by clause 4 of this schedule) is (despite section 5 as substituted by clause 1 of this schedule) taken to refer to the aggregate of those remaining repayments that have not been paid on or before the due date for the final of those remaining repayments and that have not been decreased, reduced, or written off by the Commissioner.”

(1) Section 146(1)(a), as substituted by clause 6 of Schedule 7, is repealed and the following paragraph substituted:

“(a) if late payment interest has been added to a borrower’s unpaid amount under section 141; and”

(2) Section 146(3)(b), as substituted by clause 6 of Schedule 7, is amended by omitting “if the late payment interest has been added to the borrower’s unpaid amount under section 141(2).”

33 Schedule 9 amended

The item relating to section 81(4)(g) and (gb) of the Tax Administration Act 1994 in Schedule 9 is amended by adding the following paragraph:

“(gba) communicating to a contact person (within the meaning of **section 193A** of the Student Loan Scheme Act 2011), for the purposes of a request under that section, any information required to be communicated by that section.”

Part 2

Transitional provision and related amendments to Student Loan Scheme Act 1992

34 Transitional provision

(1) Until the close of 31 December 2012, the definition of **contact person** in **section 193A(5)** of the principal Act must be read without reference to **paragraph (a)** of that definition.

Student Loan Scheme Amendment Bill

- (2) This section is repealed on 1 January 2013.

35 Student Loan Scheme Act 1992

- (1) ~~This section amends the Student Loan Scheme Act 1992.~~

- (2) ~~The heading to section 57B is amended by omitting “31 March 2006” and substituting “1 April 2006”.~~ 5

- (3) ~~Section 57B is amended by omitting “31 March 2006” and substituting “1 April 2006”.~~

- (4) ~~Section 63L(1) is amended by omitting “a loan balance” and substituting “an IRD loan balance (including any amounts payable under this Act)”.~~ 10

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7 September 2011
15 September 2011

Introduction (Bill 326–1)
First reading and referral to Finance and
Expenditure Committee
