

Student Loan Scheme Amendment Bill (No 3)

Government Bill

Explanatory note

General policy statement

The Bill gives effect to reforms announced in the Budget 2013 that focus on improving repayments from overseas-based borrowers and increasing personal responsibility for debt repayment.

The Bill amends the Student Loan Scheme Act 2011 (the **Act**) to—

- create a strong sanction against defaulters by allowing Inland Revenue to request an arrest warrant for persistent defaulters; and
- speed up repayments from compliant overseas-based borrowers; and
- allow Inland Revenue to obtain from third parties the contact details of any borrower, not just a borrower who is in default; and
- technical and remedial amendments that clarify the original intent of the legislation and align the treatment of student loans with the treatment of other tax types.

Offence and power of arrest

The Bill proposes to enable Inland Revenue to request an arrest warrant for borrowers who persistently default on their student loan obli-

gations. This power will send a strong signal to borrowers that non-compliance is unacceptable and create a strong sanction against persistent defaulters.

The Bill contains an amendment making it a criminal offence for borrowers who are in default of their overseas-based repayment obligations and who, having been notified by the Commissioner of Inland Revenue that they are in default, knowingly fail, or refuse, to make reasonable efforts to pay or to make arrangements with Inland Revenue to pay. This is a necessary provision because an arrest warrant is usually only requested in connection with a suspected criminal offence.

If the District Court is satisfied that a person has committed this offence, it may issue an arrest warrant. The arrested person must be brought as soon as possible before a District Court, which may make a range of orders if it is satisfied that the person is about to leave or attempt to leave New Zealand without making reasonable efforts to pay or making arrangements to pay. These orders could prevent the person from leaving until he or she makes payment or arrangements to pay.

Repayment thresholds

The Bill also contains amendments to speed up repayments from compliant overseas-based borrowers. At present, overseas-based borrowers' payment obligations decrease as their loan balance decreases even though it is likely that their income is increasing. The Bill contains an amendment to ensure that an overseas-based borrower's repayment obligation does not decrease as his or her loan balance decreases.

For approximately 14% of borrowers (those who have a student loan balance over \$50,847), the amount due per year will not exceed the interest charged on their loan. These 14 581 borrowers will continue to see their student loan balance increasing even if they are compliant. The Bill contains an amendment that will increase the repayment obligation of borrowers with loan balances greater than \$45,000. This amendment will reduce the percentage of borrowers whose obligation does not cover their interest from 14% to 3.5%.

Contact details for borrowers

Correct contact details for borrowers are crucial in ensuring the continued compliance of overseas-based borrowers. An information-sharing agreement was announced as part of the Budget 2013 to allow the Department of Internal Affairs to provide Inland Revenue with borrowers' contact details that it receives as part of the passport renewal process. This sharing is to be limited to contact details of borrowers who are in default of their loan and not those who are compliant. The Bill contains an amendment to allow this.

Other amendments

The Bill also contains remedial amendments that align the student loan scheme with the treatment of other tax types and ensure that the Act works as intended.

Departmental disclosure statement

The Inland Revenue Department is required to prepare a disclosure statement to assist with the scrutiny of this Bill. It provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2013&no=147&>

Regulatory impact statement

The Ministry of Education produced a regulatory impact statement on 22 March 2013 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact statement can be found at—

- <http://www.minedu.govt.nz/StudentSupportPackageForBudget2013.aspx>
- <http://www.treasury.govt.nz/publications/informationreleases/ris>

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause. *Clause 2* provides for—

- *clause 4*, which relates to borrowers' deductions, to come into force with retrospective effect on 1 April 2012:
- *clause 6*, which relates to overseas-based repayment thresholds, to come into force on 1 April 2014:
- *clause 7*, which relates to late payment penalty fees, to come into force with retrospective effect on 1 April 2013:
- the rest of the Bill to come into force on the day after the date on which it receives the Royal assent.

Clause 3 provides that *Part 1* of the Bill amends the Student Loan Scheme Act 2011 (the **principal Act**).

Part 1

Amendments to Student Loan Scheme Act 2011

Clause 4 amends section 4(1) to revise the definition of borrower deduction to include the amount of any standard deduction that exceeds the borrower's loan balance.

Clause 5 amends section 84(2)(d), which prescribes due dates for borrowers who pay provisional tax on a 6-monthly basis, so that the provision also applies to tax years after the 2012–2013 tax year.

Clause 6 replaces section 110—

- to prescribe repayment obligations for overseas-based borrowers, who will be required to pay—
 - \$1,000 per year, if their relevant loan balance is less than or equal to \$15,000:
 - \$2,000 per year, if their relevant loan balance is more than \$15,000 but less than or equal to \$30,000:
 - \$3,000 per year, if their relevant loan balance is more than \$30,000 but less than or equal to \$45,000:
 - \$4,000 per year, if their relevant loan balance is more than \$45,000 but less than or equal to \$60,000:
 - \$5,000 per year, if their relevant loan balance is more than \$60,000:
- to define the relevant loan balance in relation to the borrower's consolidated loan balance.

Clause 7 inserts a *new section 141A* to reduce the late payment penalty fee for a borrower who is in default where the Commissioner of Inland Revenue has exercised his or her powers under section 157 of the Tax Administration Act 1994 to require another person to deduct any amount from moneys payable by that other person to the borrower.

Clause 8 inserts *new sections 162A and 162B*. *New section 162A* creates a new offence for borrowers who are in default of their overseas-based repayment obligations. *New section 162B* allows a District Court Judge to issue an arrest warrant for a borrower who is in default of his or her overseas-based repayment obligation and is temporarily in New Zealand. The provision allows the court to make orders—

- requiring the borrower to provide security (before leaving New Zealand):
- preventing the borrower from leaving New Zealand without the court's permission:
- requiring the borrower to surrender his or her travel documents or tickets.

Clause 9 makes consequential amendments to sections 164, 165, and 166, which are general provisions relating to offences, to reflect the insertion by *clause 8* of a new offence in *new clause 162A*.

Clause 10 amends section 193A to make a minor amendment to the definition of address details so that the definition also applies in the *new section 193C(2)* being inserted by *clause 11*.

Clause 11 inserts *new subsection (2)* in section 193C to signpost the Commissioner of Inland Revenue's ability to receive the borrower's address details in accordance with other information-sharing provisions.

Clause 12 amends section 207 to allow information sharing for the purposes of verifying any declaration made by an applicant for a student loan as to any unpaid amounts owed by the applicant where the declaration is a condition of obtaining the loan.

Part 2
Amendments to Student Loan Scheme
Amendment Act 2013

Clause 13 provides that *Part 2* of the Bill amends the Student Loan Scheme Amendment Act 2013, which inserts a new Schedule 3 of the principal Act that will come into force on 1 April 2014.

Clause 14 amends the new Schedule 3, which will provide for various adjustments to a borrower's net income. The amendments in this Bill—

- replace clause 8 of new Schedule 3 to make provision for dividends attributable to the borrower to be deducted from the borrower's adjusted net income; and
 - amend clause 11 of new Schedule 3 to clarify that only living settlors should be counted when determining the number of settlors for a borrower's trust.
-

Hon Todd McClay

Student Loan Scheme Amendment Bill (No 3)

Government Bill

Contents

		Page
1	Title	2
2	Commencement	2
3	Principal Act	2
Part 1		
Amendments to Student Loan Scheme Act 2011		
4	Section 4 amended (Interpretation)	2
5	Section 84 amended (Due dates for payment of interim payments)	3
6	Section 110 replaced (Repayment obligations of overseas-based borrowers)	3
	110 Repayment obligations of overseas-based borrowers	3
7	New section 141A inserted (Late payment interest reduced if deduction or extraction notice applies)	4
	141A Late payment interest reduced if deduction or extraction notice applies	4
8	New sections 162A and 162B inserted	5
	162A Offence for default of overseas-based repayment obligation	5
	162B Arrest of liable person	5
9	Sections 164 to 166 amended	6
10	Section 193A amended (Contact person may be requested to assist)	6

cl 1 **Student Loan Scheme Amendment
Bill (No 3)**

11	Section 193C amended (Changes relating to contact details of borrower)	6
12	Section 207 amended (Disclosure of information between authorised persons)	7

**Part 2
Amendments to Student Loan Scheme Amendment
Act 2013**

13	Amendments to Student Loan Scheme Amendment Act 2013	7
14	Schedule 3, new Schedule 3 amended	7

The Parliament of New Zealand enacts as follows:

1 Title
This Act is the Student Loan Scheme Amendment Act (No 3) **2013**.

2 Commencement 5
(1) **Section 4** is deemed to have come into force on 1 April 2012.
(2) **Section 6** comes into force on 1 April 2014.
(3) **Section 7** is deemed to have come into force on 1 April 2013.
(4) This rest of this Act comes into force on the day after the date on which it receives the Royal assent. 10

3 Principal Act
This Act amends the Student Loan Scheme Act 2011 (the **principal Act**).

**Part 1
Amendments to Student Loan Scheme
Act 2011** 15

4 Section 4 amended (Interpretation)
In section 4(1), replace the definition of **borrower deduction** with:

“**borrower deduction** means—

- “(a) a deduction from a borrower’s salary or wages in accordance with section 39:
- “(b) the amount of a standard deduction that exceeds the borrower’s loan balance”.

5

5 Section 84 amended (Due dates for payment of interim payments)

In section 84(2)(d), after “2012–2013 tax year”, insert “or any subsequent tax year”.

6 Section 110 replaced (Repayment obligations of overseas-based borrowers)

10

Replace section 110 with:

“110 Repayment obligations of overseas-based borrowers

- “(1) This section applies to an overseas-based borrower who—
 - “(a) is not or is no longer entitled to a repayment holiday under section 107B or 108A(2); and
 - “(b) has not had his or her overseas-based repayment obligation reassessed under section 115A.
- “(2) The borrower’s repayment obligation for every full tax year during which this section applies to the borrower is—
 - “(a) \$1,000, if the relevant loan balance is less than or equal to \$15,000:
 - “(b) \$2,000, if the relevant loan balance is more than \$15,000 but less than or equal to \$30,000:
 - “(c) \$3,000, if the relevant loan balance is more than \$30,000 but less than or equal to \$45,000:
 - “(d) \$4,000, if the relevant loan balance is more than \$45,000 but less than or equal to \$60,000:
 - “(e) \$5,000, if the relevant loan balance is more than \$60,000.
- “(3) The borrower’s repayment obligation for any portion of a tax year (being less than a full tax year) during which this section applies to the borrower must be calculated in accordance with the following formula:

20
25
30

$$\frac{x}{365} \times y$$

where—

x is the number of days in the tax year during which this section applies to the borrower

y is the amount that would apply under **subsection (2)** if this section applied to the borrower for the full tax year. 5

“(4) In this section—

“**existing borrower** means a borrower who was overseas-based on 31 March 2014 and has been continuously overseas-based since that date

“**relevant loan balance** means the borrower’s consolidated loan balance on the start date or any subsequent 31 March after the start date, whichever balance is the greatest 10

“**start date** means,—

“(a) for an existing borrower, 31 March 2014:

“(b) for any other borrower, the day when the borrower becomes overseas-based. 15

“Compare: 1992 No 141 s 34”.

7 New section 141A inserted (Late payment interest reduced if deduction or extraction notice applies)

After section 141, insert: 20

“**141A Late payment interest reduced if deduction or extraction notice applies**

“(1) This section applies if—

“(a) a borrower is liable to pay late payment interest on an unpaid amount under section 139; and 25

“(b) the Commissioner has exercised powers available under section 157 of the Tax Administration Act 1994 to require any person to deduct or extract any amount from any moneys payable by that person to the borrower.

“(2) For a month during which any unpaid amount remains unpaid and the Commissioner has received tax withheld or deducted in accordance with the requirements of a notice issued under section 157 of the Tax Administration Act 1994 (a **deduction or extraction notice**), any late payment interest that the borrower is liable to pay on the unpaid amount must be calculated as if, in the definition of late payment interest rate in section 35

139(3), the reference to base interest rate plus 4% were a reference to base interest rate plus 2%.

“(3) However, **subsection (2)** applies only to the days in a month during which a deduction or extraction notice is in effect.”

8 New sections 162A and 162B inserted 5

After section 162, insert:

“162A Offence for default of overseas-based repayment obligation

“(1) Every person commits an offence who is in default of his or her overseas-based repayment obligation and who, having been notified by the Commissioner that he or she is in default, knowingly fails, or refuses, to make reasonable efforts to pay the amount in default or to make arrangements with the Inland Revenue Department to pay the amount in default by the due date specified in the notification. 10 15

“(2) Every person who commits an offence against **subsection (1)** is liable on conviction to a fine not exceeding \$2,000.

“Compare: 1994 No 166 ss 143A, 143B.

“162B Arrest of liable person

“(1) A District Court Judge or, if a District Court Judge is not available and the case appears to be urgent, a Registrar may, on an application in writing by the Commissioner, issue a warrant for the arrest of a person (the **liable person**) if the Judge or Registrar (as the case may be) is satisfied that the person has committed the offence in **section 162A** and is about to leave or attempt to leave New Zealand. 20 25

“(2) The liable person must be brought as soon as possible before a District Court, which, if it is satisfied that the person is about to leave or attempt to leave New Zealand without making reasonable efforts to pay the amount in default or without making arrangements with the Inland Revenue Department to pay the amount in default, may make any of the following orders: 30

“(a) an order that the liable person give such security (including the provision of sureties) for the payment of that liability as the court specifies: 35

- “(b) an order that the liable person not leave New Zealand without the written permission of the court:
- “(c) an order that the liable person surrender to the court for such period as the court specifies any travel documents or tickets in the person’s possession: 5
- “(d) any other order the court thinks fit.
- “(3) To avoid doubt, the court may make an order under **subsection (2)** even if the Commissioner is able to recover the debt by other means.
- “(4) On making an order under **subsection (2)(b) or (c)**, the court may direct the Registrar to give notice of the order to such departments of State, offices, or persons as the court or the Registrar thinks appropriate. 10
- “(5) Every person commits an offence and is liable on conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$2,000 who, being a person against whom an order under **subsection (2)(b) or (c)** is in force, leaves New Zealand, or attempts or does any act with intent to leave New Zealand. 15
- “(6) A person against whom an order under **subsection (2)** is in force may apply to the court for the discharge of the order, and the court may, if it considers it just or appropriate, discharge the order accordingly. 20
- “Compare: 1991 No 142 s 199”.
- 9 Sections 164 to 166 amended** 25
- In sections 164, 165, and 166, replace “section 163” with “section **162A** or 163”.
- 10 Section 193A amended (Contact person may be requested to assist)**
- In section 193A(3), replace “In subsection (2),” with “In this section and section 193C,”. 30
- 11 Section 193C amended (Changes relating to contact details of borrower)**
- In section 193C, insert as subsection (2):

“(2) For the purpose of verifying the borrower’s address details, the Commissioner may receive the borrower’s address details from any other person if the information is shared in accordance with any other provision of this Act or any other enactment.” 5

12 Section 207 amended (Disclosure of information between authorised persons)

After section 207(1)(b), insert:

“(ba) an authorised person from disclosing to another authorised person any information for the purpose of verifying any declaration made by an applicant for a student loan as to any unpaid amounts owed by the applicant where the declaration is a condition of obtaining the loan; or” 10

Part 2
Amendments to Student Loan Scheme 15
Amendment Act 2013

13 Amendments to Student Loan Scheme Amendment Act 2013

This **Part** amends the Student Loan Scheme Amendment Act 2013. 20

14 Schedule 3, new Schedule 3 amended

(1) In Schedule 3, new Schedule 3, replace clause 8 with:

“8 Borrowers who are shareholders in close companies

If a borrower is a major shareholder in a close company on the last day of the company’s balance date for financial purposes, the borrower’s adjusted net income includes an amount calculated using the following formula if that amount is greater than zero: 25

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

where— 30

a is the number of shares issued by the company and held by the borrower, excluding fixed-rate shares, on the last day of the company’s accounting year

- b is the number of shares issued by the company, excluding fixed-rate shares, on the last day of the company's accounting year
 - c is the net income of the company for the company's accounting year 5
 - d is the total dividends paid by the company for the company's accounting year.
- (2) In Schedule 3, new Schedule 3, clause 11(3), item d of the formula, after "borrower's trust", insert "who are alive at any time in the income year". 10
-