

Student Loan Scheme Bill

Government Bill

Explanatory note

General policy statement

The Student Loan Scheme Bill introduces legislation to reform the way student loans are repaid, the way borrowers can manage their loans, and the way loans are to be administered. It also rewrites the current student loan legislation. The Bill replaces the Student Loan Scheme Act 1992. It is not intended as a wider review of student loan scheme policy.

Administration of the student loan scheme is complex with multiple organisations administering parts of the scheme. This means that borrowers must interact with a number of administrators, sometimes making it difficult for borrowers to have a clear view of their overall position. The system to collect student loan repayments is based on a system originally designed to collect income tax and GST. It is largely paper-based, requires annual assessments, is complex, and is inflexible. The policy of annual assessment results in a complicated annual interaction that generates compliance and administration costs. These problems are exacerbated for borrowers who are overseas.

The importance of the student loan scheme is twofold. While supporting the Government's commitment to open access to education by providing financial support, the scheme also represents a significant Crown asset, with over 560 000 borrowers and a nominal value

of \$10.3 billion. The portfolio is currently projected to grow to \$14.5 billion by 2014–15, driven by growth in the number of new borrowers.

Transforming the administration of the student loan scheme is characterised by 3 elements. The first is the implementation of a new electronic loan management solution, which will allow borrowers to manage their loans in an electronic environment, giving them a seamless view of their loan from the time that they borrow the money to the time it is paid off. It will also improve the technological capabilities of Inland Revenue, increasing the services it can provide to borrowers. The second replaces the annual assessment for the vast majority of borrowers, whose income is largely from salary or wages only, with a pay-period assessment. Repayment deductions made from salary or wages will be considered full and final for the pay period. The third element replaces the current interest and penalties rules with those that apply for other taxes.

Context

The changes proposed in the Bill form the first part of wider reforms to build a world-class tax system that delivers certainty for taxpayers, allows customers to interact with Inland Revenue speedily, provides good value for money, and builds trust and integrity in the system, leading to high compliance.

To achieve this, greater emphasis will be placed on improving technology to move taxpayers into an electronic environment, certainty and reducing compliance costs, and a new business model for Inland Revenue.

Major reforms

Electronic administration of student loan scheme

Most student loan scheme processes are paper-based. Electronic tax services currently offered simply convert paper processes into an electronic environment. The student loan scheme repayment system is overlaid on an electronic system designed for tax collection. It is therefore difficult and expensive to administer and requires significant resources to address continual system-generated errors. The risks to the fragility of the current system are heightened by the growing number of borrowers.

The implementation of a new electronic loan management solution will offer borrowers the advantages of an electronic environment and allow Inland Revenue to deliver improved services to borrowers. An electronic environment will give borrowers services tailored to suit particular needs and the ability to access relevant personal information, and make it easier to manage their loans with greater certainty. The main benefits of an electronic environment for borrowers are—

- increased certainty and reduced compliance costs; and
- a reduction in the number of contacts that have to be made, and an increase in the ease with which borrowers can communicate with Inland Revenue; and
- improved quality of information for both borrowers and Inland Revenue; and
- faster processing times by Inland Revenue; and
- more prompt and accurate responses to borrowers.

Key features

Borrowers will be able to manage their loan accounts and interact with Inland Revenue through an electronic system. As well as up-to-date loan information, borrowers will be able to communicate with Inland Revenue electronically to manage their loans and repayments. The migration of current borrowers to the electronic environment is key to the new loan repayment management system and the new services that can be offered to borrowers. While Inland Revenue will take reasonable steps to inform all borrowers of the changes, obtaining consent from all borrowers for electronic disclosure is not feasible. The Bill will provide a comprehensive set of rules that governs how student loans are repaid and the process for making disclosures to borrowers. Accordingly, compliance with the Credit Contracts and Consumer Finance Act 2003 and the Credit Contracts Act 1981 is not required. The Bill therefore provides a general exemption to those Acts. An exemption from those Acts for the period prior to this Bill coming into force will be dealt with by regulations (which are yet to be made).

Transfer of information and loan advances

Two agencies are responsible for the delivery of the student loan scheme; one agency advances student loans, another agency is re-

sponsible for administering repayments. As student loans are currently transferred to Inland Revenue on an annual basis, it is difficult for borrowers (especially those who are still studying) to find out what their total borrowings are at any given time. This Bill introduces legislation for a near real-time transfer of information about loan advances, which will enable Inland Revenue to provide borrowers with access to an Internet site to view their consolidated loan balance. It also enables the transfer of contact details as they change, which will help keep borrowers informed about their student loan details.

Repayment obligations for New Zealand-based borrowers

Currently, borrowers cannot be certain that they have met their repayment obligations without interacting with Inland Revenue. This creates compliance and administration costs.

To address these problems, the Bill introduces 2 new concepts. The first is to treat some types of income differently for different borrowers. This means different rules for salary or wage earners compared with other taxpayers, to ensure the rules are tailored for each group. Secondly, the Bill emphasises a pragmatic approach to the previous end-of-year square-up. For borrowers, this means small debts will not be raised and small refunds will be applied towards the loan balance.

Salary or wage borrowers

For the vast majority of borrowers, whose income is largely from salary or wages only, deductions from their salary or wages will be treated as satisfying their repayment obligations.

This means that the current annual concept of repayment obligations will be replaced with a pay-period repayment obligation. In other words, the amount deducted for a pay period will represent the borrower's final repayment obligation for that pay period and provide certainty every payday that the borrower's repayment obligation has been made. This means there will be no annual end-of-year square-up. Therefore there is no need for an annual calculation, assessment, terminal repayments, refunds, or late repayment penalties, and overdue debt will be reduced.

In some circumstances the PAYE system can create inaccurate deductions, either under-deductions or over-deductions. Under the pro-

posed changes in the Bill, unless these under-deductions or over-deductions are significant, they will not be corrected. More significant employer errors will be rectified by refunds or additional deductions from future salary or wages of the borrower. Inland Revenue will have the ability to assess a borrower if fraud or major errors are identified.

To keep things simple, no repayment obligations will be imposed on certain forms of other income, such as interest and dividend income, below a significant combined threshold.

For borrowers who have a job that earns less than the pay-period repayment threshold, and take a second job, there will be an option to apply the “unused” threshold from their first job (the difference between their income from the first job and the repayment threshold) to their second job. If the borrower does not make use of this option, loan deductions will be made from the first dollar of income from that second job.

Borrowers in full-time study for a full year who expect to earn less than the annual repayment threshold will have an option not to have repayments deducted from their salary or wages.

A pay-period-based system will invariably produce instances where borrowers may be better off or worse off than in an annual system. Overall, however, borrowers will benefit from a system that provides greater certainty and improved services.

Borrowers with pre-taxed income

Borrowers who have significant income that may have income tax withheld on it but no deductions made for student loan repayments will have an end-of-year square-up of their repayment obligations on that income. The income that this applies to is interest, dividends, Māori Authority distributions, personal service rehabilitation payments, and salary or wages from employment as a casual agricultural employee or an election day worker. The square-up will not include deductions from their salary or wages made by the PAYE system, as with salary or wage borrowers, these deductions will be treated as meeting the pay-period obligation in relation to the salary or wages.

Borrowers with other income

Borrowers who receive other income, such as business income, will continue to have an end-of-year square-up of their repayment obligations. This will include a square-up of repayment deductions made through the PAYE system.

Borrowers in this category with income sources that may create a loss will be able to apply for a reduced deduction rate for repayments from their salary or wages.

Interim payments and remaining repayments

Both borrowers with pre-taxed income and borrowers with other income will continue (in most cases) to make 3 interim payments during the year if their repayment obligation for the previous year was \$1,000 or more. For most of these borrowers the interim payments will be payable with their provisional tax payments. Remaining repayments (the difference between interim payments and their annual repayment obligations) will be due—

- in 1 payment if the borrower's repayment obligation is less than \$1,000; or
- spread over future interim payment dates if the borrower has not estimated his or her interim repayment obligation and the borrower's repayment obligation is between \$1,000 and \$16,000; or
- at the time interim payments were due for the relevant tax year.

Interest on unpaid repayment obligations and penalties

The Bill moves towards a more consistent system of sanctions for non-payment of loan repayments or not meeting filing obligations. For simplicity, the new late payment interest replaces the previous penalties for not paying on time (including interim payments) of 19.56%. The formula for the late payment interest rate is the base interest rate (currently 6.6%) plus a penalty margin of 4%. This penalty margin is lowered to 2% for borrowers who enter into instalment arrangements. Late payment interest is calculated daily and charged monthly. As well as promoting consistency in treatment, this change is intended to create an incentive to accurately estimate interim payments and pay on time while also reducing the rate at which student loan debt grows.

Penalties and offences for not providing information or providing incorrect information will be aligned with those that apply for income tax. These include the introduction of a late filing penalty and criminal offences such as knowledge offences, evasion offences, and aiding and abetting. Civil shortfall penalties and criminal sanctions will also be introduced for not paying or short-paying repayment obligations.

Student Loan Scheme Act 1992

The Bill will replace the Student Loan Scheme Act 1992 from 1 April 2012. Since the introduction of that Act there have been numerous amendments and the legislation has become complex and cumbersome. Incorporating the policy changes included in this Bill into the Student Loan Scheme Act 1992 would have exacerbated those problems. To increase the accessibility of the legislation, the Bill rewrites the Act with some minor policy and technical changes to improve the function of the scheme.

Regulatory impact statement

The Inland Revenue Department produced regulatory impact statements on 1 September 2009 (which was updated on 4 June 2010) and 4 June 2010, and the Ministry of Education produced regulatory impact statements on 26 March 2010 and 27 May 2010, to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of these regulatory impact statements can be found at—

- <http://www.taxpolicy.ird.govt.nz/publications/2010-ris-sls-bill/overview>
- <http://www.minedu.govt.nz/StudentLoanAdminFeeChange>
- <http://www.treasury.govt.nz/publications/informationreleases/ris>

Clause by clause analysis

Clause 1 sets out the Title of the Bill.

Clause 2 is the commencement clause. This Bill comes into force in 4 separate tranches.

The regulation-making powers, provisions concerning an annual administration fee, and provisions that exclude student loan contracts from the ambit of the Credit Contracts Act 1981 and the Credit Contracts and Consumer Finance Act 2003 come into force on the day after the date on which this Bill receives the Royal assent.

A provision that allows borrowers to apply for certain matters, and for the Commissioner to do certain things, comes into force on 1 October 2011. This provision allows for these matters to occur in preparation for when the majority of the Bill comes into force on 1 April 2012.

Provisions concerning loan advances that are made by the loan manager to borrowers, the provision of information in relation to that process, the transfer of loan advance debts from the loan manager to the Commissioner of Inland Revenue, and a borrower's rights of objection and challenge come into force on 1 January 2012.

The rest of this Bill comes into force on 1 April 2012.

Part 1

Preliminary matters, loan advances, and New Zealand-based and overseas-based borrowers

Subpart 1—Preliminary provisions

Clause 3 sets out the purposes of this Bill. They are to—

- provide for the effective administration of student loans; and
- provide for the collection of student loan repayments; and
- provide transparency about student loans so that borrowers understand their obligations for those loans; and
- encourage borrowers to repay their student loans at the earliest possible time.

Clause 4 is an interpretation clause.

Clause 5 is an application clause. It specifies which persons, student loans, liabilities to repay student loans, income derived by a borrower, and actions or omissions this Bill applies to.

Clause 6 is also an application clause. It provides that an amount repayable under a bonded scholarship may be recovered under this Bill as if it were a student loan. A bonded scholarship is an allowance

or agreement that is declared under section 307AC of the Education Act 1989 to be a bonded scholarship.

Clause 7 provides that the Bill binds the Crown.

**Subpart 2—Student loan establishment fee
and transfer of information and loan advance
debts from loan manager to Commissioner**

Student loan establishment fee

Clause 8 provides that a student loan establishment fee of \$60 must be charged by the loan manager to a borrower each time the borrower enters into a loan contract after 31 March 2012.

Clause 9 specifies that the purposes of *clauses 10 to 12* are to authorise the transfer of information between the loan manager and the Commissioner so as to—

- enable the Commissioner to confirm the identity of a person who applies for a student loan; and
- enable the Commissioner to inform borrowers about their consolidated loan balance; and
- facilitate the transfer of loan advance debts from the loan manager to the Commissioner; and
- enable the collection of consolidated loan balances.

Clause 10 requires the loan manager to notify the Commissioner of all persons who apply for a student loan and specifies the information that must be provided.

Clause 11 requires the loan manager to notify the Commissioner of every person who becomes a borrower and specifies the information that must be provided. The loan manager must also notify the Commissioner if the loan manager becomes aware that any of the information provided by the loan manager is incorrect or has changed.

Clause 12 requires the loan manager to notify the Commissioner of all loan advances that are made or charged to each borrower.

Clause 13 requires the Commissioner to inform borrowers about their consolidated loan balance and specifies when this must be done and the information that must be provided. *Clause 203* sets out the manner in which the Commissioner must inform borrowers.

Clause 14 requires the loan manager to transfer all loan advance debts that relate to a borrower to the Commissioner. However, these loan

advance debts cannot be transferred before a statement of loan advances that relates to the loan advance debts has been given to the borrower in accordance with *clause 15* and until after all of the borrower's rights to object to the details of a loan advance have been exhausted or have expired.

Clause 15 requires the loan manager to give a borrower a statement of loan advances if the loan manager proposes to transfer a loan advance debt to the Commissioner. It also specifies the information that must be provided in the statement, including the fact that a borrower may object to the details of a loan advance set out in the statement.

Subpart 3—Determining whether borrowers are New Zealand-based or overseas-based

Clause 16 provides an overview of this subpart and the consequences of a borrower being New Zealand-based or overseas-based. Whether a borrower is New Zealand-based or overseas-based is important because different repayment obligations apply to these different classes of borrowers under *Part 2*. Further, under *subpart 1 of Part 4*, overseas-based borrowers are liable to pay overseas-based interest on their loan balance.

Clause 17 defines when a borrower is treated as being New Zealand-based. Generally, a borrower must be physically in New Zealand for a period of 183 consecutive days in order to be treated as being New Zealand-based. However, it is possible for a borrower to be overseas for up to 31 days during a 183-day period. Whether a borrower who first receives a student loan is New Zealand-based is determined by reference to the 183 days before the day on which that borrower first received the student loan.

Once a borrower is treated as being New Zealand-based, the borrower is treated as being New Zealand-based for the first day of the 183-day period and for each day that follows. This only ceases if the borrower becomes overseas-based.

Clause 18 provides that a borrower is treated as being overseas-based if that borrower is not treated as being New Zealand-based, or if the borrower is physically absent from New Zealand for a period of 184 consecutive days. However, it is possible for a borrower to be in New Zealand for up to 31 days during a 184-day period. Whether a borrower who first receives a student loan is overseas-based is de-

terminated by reference to the 184 days before the day on which that borrower first received the student loan.

Once a borrower is treated as being overseas-based, the borrower is treated as being overseas-based for the first day of the 184-day period and for each day that follows. This only ceases if the borrower becomes New Zealand-based.

Clause 19 specifies that if a borrower is physically in New Zealand for part of a day, then, for the purposes of *clauses 17 and 18*, the borrower must be treated as being physically in New Zealand for the whole of that day.

*Certain borrowers may be treated as being
physically in New Zealand*

Clause 20 allows the Commissioner to treat a borrower who is outside New Zealand as if that borrower were physically in New Zealand for the purposes of *clauses 17 to 19*. This clause is important because in order for a borrower to be treated as being New Zealand-based under *clause 17*, a borrower must generally be physically in New Zealand for 183 consecutive days. In effect, this clause provides an exception to that general rule, potentially allowing a borrower to qualify to be treated as being New Zealand-based under *clause 17*, even though that borrower is overseas for some or all of the required 183-day period.

Clause 20 operates on the application of a borrower and only if the Commissioner considers that it is fair and reasonable to treat a borrower as if he or she were physically in New Zealand.

Under *clause 20*, there are 10 different grounds on which the Commissioner may treat a borrower as being physically in New Zealand. For 9 of those grounds, there are conditions that must be met before a borrower is eligible to be treated as being physically in New Zealand. Those conditions are set out in *Schedule 1*.

Clause 21 relates to a borrower who applies under *clause 20* to be treated as being physically in New Zealand. It specifies how that application must be made and the evidence or information that must be provided to the Commissioner to support that application.

Clause 22 provides that if the Commissioner treats a borrower as being physically in New Zealand under *clause 20*, then the Commissioner must notify the borrower of that fact and specify the start and

end dates for the period for which the borrower will be treated as being physically in New Zealand, or any conditions that must apply or be met in order for the borrower to be treated as being physically in New Zealand.

*Borrowers must notify Commissioner of absence
from and return to New Zealand*

Clause 23 requires a borrower to provide the Commissioner with certain specified information if the borrower intends to be, or will be, physically absent from New Zealand for a period of 184 or more consecutive days, or becomes overseas-based, or becomes aware that he or she will be overseas-based.

Clause 24 requires an overseas-based borrower to provide the Commissioner with certain specified information if the borrower becomes New Zealand-based or becomes aware that he or she will be New Zealand-based.

Part 2

Repayment obligations of borrowers

Clause 25 provides that each borrower must repay his or her student loan in accordance with this Bill and the loan contract.

Clause 26 guides borrowers by clarifying whether the repayment obligations in *subparts 1 to 3 of Part 2* or *subpart 4 of Part 2* will apply to them, depending upon whether the borrower is New Zealand-based or overseas-based. It also provides that *subpart 5 of Part 2* applies to a borrower if the borrower is either New Zealand-based but non-resident, or both New Zealand-based and overseas-based during a tax year.

Clause 27 applies to New Zealand-based borrowers and sets out which subparts of *Part 2* apply to a borrower, depending upon the type of income derived by that borrower. This clause is a guide only.

Subpart 1—New Zealand-based borrowers’ repayment obligations for salary or wages

Clause 28 is an application clause. It provides that *subpart 1 of Part 2* applies to New Zealand-based borrowers who derive salary or wages.

Repayment codes

Clause 29 provides that all New Zealand-based borrowers who derive salary or wages have the repayment code “SL” or “STC”. However, the repayment code “STC” applies only to a borrower who has been issued with a special deduction rate certificate and whose employer has been notified in writing of that fact. There are 3 circumstances in which a special deduction rate certificate may be issued in relation to a borrower (*see clauses 39, 94, and 140*). The repayment code of a borrower is important, because deductions will be made from a borrower’s salary or wages under *clause 32* at a different rate depending upon the repayment code that applies to that borrower.

Clause 30 requires a borrower with the repayment code “SL” to notify his or her employer of that fact. The obligation to notify arises in a number of ways.

Salary or wage deductions and extra deductions

Clause 31 applies to the employer of a borrower, or a person who is acting as that employer’s PAYE intermediary, who has been notified that the repayment code “SL” or “STC” applies to the borrower. If the employer or PAYE intermediary has been notified of those matters, then each time that person pays salary or wages to the borrower, the employer or the PAYE intermediary must make a deduction from that salary or those wages in accordance with *clause 32*.

Clause 32 sets out the deduction rates that apply to a borrower depending upon whether the repayment code “SL” or “STC” applies to the borrower. Deductions are made from a borrower’s salary or wages each time salary or wages are paid to a borrower.

For a borrower with the repayment code “SL”, deductions are made at the rate of 10 cents in the dollar (or at any other rate prescribed in regulations) from so much of the borrower’s primary employment earnings as exceeds the pay period repayment threshold, and from each dollar of the borrower’s secondary employment earnings. *Clause 32* sets out a definition of pay period repayment threshold, which divides the annual repayment threshold by the length of a borrower’s pay period.

If a borrower’s repayment code is “STC”, deductions must be made at the rate specified in the special deduction rate certificate from both the borrower’s primary and secondary employment earnings.

Clause 33 applies if a borrower's employer or a PAYE intermediary has received an additional deduction rate notice that applies to the borrower (*see clauses 43 to 45*), or a request from the borrower to make additional deductions (which are defined as extra deductions). If *clause 33* applies, then each time the employer or PAYE intermediary pays salary or wages to the borrower, the employer or the PAYE intermediary must make a deduction from that salary or those wages in accordance with the additional deduction rate notice or the borrower's request. These deductions are made in addition to the deductions that are made in accordance with *clauses 31 and 32*.

Clause 34 deals with a situation where a borrower receives an income-tested benefit for a pay period and the equivalent gross amount of that benefit is more than the pay period repayment threshold calculated in accordance with *clause 32(4)*. In this situation, the chief executive of the Ministry of Social Development must not make a deduction from the income-tested benefit in accordance with *clause 32*. Instead, the chief executive must make a deduction from the income-tested benefit of an amount determined by the Commissioner in consultation with the chief executive. A different process is required for deductions from income-tested benefits because all benefits are net amounts, while all deductions under *clause 32* are calculated and made on a gross basis.

*Unused repayment threshold may be allocated
to secondary employment earnings*

Under *clause 32*, deductions are made at the rate of 10 cents in the dollar from so much of a borrower's primary employment earnings as exceeds the pay period repayment threshold. If the borrower's primary employment earnings do not exceed the pay period repayment threshold, then there is an unused repayment threshold. *Clauses 35 to 42* provide a procedure by which an unused repayment threshold from a borrower's primary employment earnings can be allocated to the borrower's secondary employment earnings. A borrower is likely to have an unused repayment threshold if the annual repayment threshold is greater than the borrower's annual primary employment earnings, although this is determined on a quarterly basis so it may vary from quarter to quarter.

Borrowers who meet the criteria set out in *clause 36(1)* may apply to the Commissioner for the borrower's unused repayment threshold for

a pay period to be allocated to the borrower's secondary employment earnings. As part of this process, the borrower must determine his or her salary or wages for a quarter in accordance with *clause 37*. The borrower's unused repayment threshold for a pay period (if any) is calculated in accordance with *clause 38*.

As a result of an application under *clause 36*, the Commissioner may issue a special deduction rate certificate under *clause 39* that requires a borrower's employer to make salary or wage deductions at a rate specified in the certificate that reflects the borrower's unused repayment threshold for a pay period. *Clauses 40 and 42* specify the manner in which a special deduction rate certificate is to be issued, its effect, and the period for which it is to apply. *Clause 41* imposes an obligation on the borrower to regularly review the borrower's estimate of his or her salary or wages and notify the Commissioner if that estimate changes or if the borrower's circumstances change.

*Commissioner may issue additional deduction
rate notice to recover amounts that remain
unpaid*

Clauses 43 to 45 provide a means for the Commissioner to obtain salary or wage deductions from a borrower in addition to any salary or wage deductions already being made in relation to the borrower under *clauses 31 and 32*. The Commissioner may only take this action if there is a significant under-deduction in relation to a borrower that the Commissioner reasonably believes has occurred because of an error by the borrower's employer, or an error or an omission by the borrower, or if a borrower has an unpaid amount or un-compounded late payment interest. If any of these circumstances apply, then the Commissioner may issue an additional deduction rate notice in relation to a borrower in order to recoup the amount that is unpaid.

Clause 43(2) specifies that an additional deduction rate notice must specify the additional deduction rate that is to apply to a borrower and the total amount that is to be paid at that rate, and must require the borrower's employer, or a person acting as a PAYE intermediary for the employer, to make deductions as set out in the notice. The Commissioner cannot set an additional deduction rate that is greater than 5%.

Clause 44 specifies the manner in which the Commissioner must issue an additional deduction rate certificate. In particular, the Com-

missioner must send a copy of the notice to the borrower's employer, or a person acting as a PAYE intermediary for the employer, and must notify the borrower. *Clause 45* specifies the period for which an additional deduction rate notice is to apply.

Clause 33(1)(a) is of particular relevance to *clauses 43 to 45* because it provides that if a borrower's employer, or a person who is acting as that employer's PAYE intermediary, receives an additional deduction rate notice that applies to a borrower, then each time the employer or PAYE intermediary pays salary or wages to the borrower, the employer or the PAYE intermediary must make a deduction from that salary or those wages in accordance with the additional deduction rate notice.

Further means of recovering amounts that remain unpaid

Clause 46 authorises the Commissioner, in certain specified circumstances, to assess the salary or wage deductions that ought to have been made for any period. The circumstances in which this provision applies include when there is a significant under-deduction in relation to a borrower that the Commissioner reasonably believes has occurred because of a deliberate action or omission by the borrower or because the borrower has prevented a salary or wage deduction from being made, or if the Commissioner has been unable to obtain deductions from a borrower in accordance with an additional deduction rate notice issued under *clause 43(2)* for the purposes of *clause 43(1)(a)*.

Clause 47 provides that if the Commissioner makes an assessment under *clause 46*, the Commissioner must notify the borrower who was assessed of certain specified matters, in particular, the amount (if any) that must be paid by the borrower and the date by which it must be paid.

Exemption from salary or wage deductions for borrowers who are full-time, full-year students

Clauses 48 to 54 provide a process under which certain borrowers who are full-time, full-year students may obtain an exemption from salary or wage deductions. *Clause 48(1)* specifies the criteria that a borrower must meet in order to be eligible for this exemption. In

order to obtain an exemption, a borrower must make a declaration in accordance with *clause 49*. A declaration must relate to a specified tax year, and an exemption will apply only to future salary or wages derived during that tax year.

Clause 50 requires the Commissioner, upon receiving a declaration from a borrower, to issue a notice to that borrower that states that an exemption from salary or wage deductions has been granted to the borrower and the period of the exemption. *Clause 51* sets out the effects of an exemption and *clause 54* specifies when an exemption ceases to apply to a borrower. In essence, if a borrower's employer is notified that an exemption applies to the borrower, then salary or wage deductions under *clauses 31 and 32 or 34* cease to be made in relation to that borrower until the time stated in *clause 51*.

Clause 52 specifies the manner in which a borrower may withdraw a declaration under *clause 49* and *clause 53* places an obligation on a borrower to notify the Commissioner and the borrower's employer if any of the criteria for an exemption set out in *clause 48(1)* cease to apply to the borrower, or will cease to apply.

Information and determinations

Clause 55 authorises the Commissioner to request any information from an employer or a PAYE intermediary in order to determine the amount of a salary or wage deduction or an extra deduction made by that employer or PAYE intermediary.

Under *clause 56*, an employer or a PAYE intermediary may request the Commissioner to determine any question about the amount of salary or wage deductions that ought to be made.

Significant under-deductions and over-deductions

Clauses 57 to 62 concern significant over-deductions and significant under-deductions from a borrower's salary or wages. The general rule, as set out in *clause 58*, is that the Commissioner must not take corrective action in relation to an under-deduction or an over-deduction from a borrower's salary or wages unless it is a significant under-deduction or a significant over-deduction. Under *clause 57*, the Commissioner may determine thresholds for what is to be treated as a significant under-deduction or a significant over-deduction and

must inform borrowers of any threshold that is set for significant over-deductions for the next tax year.

Under *clause 59*, a borrower who reasonably believes that a significant over-deduction was made in relation to him or her may request the Commissioner to determine whether a significant over-deduction was made. This clause sets out the process for such a request.

Clause 60 provides that upon receiving a request from a borrower under *clause 59*, the Commissioner must determine whether a significant over-deduction was made and must notify the borrower if the Commissioner determines that a significant over-deduction was not made.

Clause 61 sets out the process that is to be followed if the Commissioner identifies that a significant over-deduction has been made, or if the Commissioner determines (in accordance with *clause 60*) that a significant over-deduction has been made. If either of those scenarios applies, the Commissioner must notify the borrower of a number of things, in particular, that the borrower may choose to receive a refund of the over-deduction.

Clause 62 is a sign post clause. It points out that the procedures in *clause 43 or 46* may be applied to a borrower if there is a significant under-deduction in relation to him or her.

Matters of general application to salary or wage deductions and extra deductions

Under *clause 63*, the Commissioner may prohibit a borrower from using certain procedures under this Bill if the Commissioner is satisfied that the borrower is using, or has used, those procedures in a manner that damages the integrity of the student loan scheme. The procedures concern making an application for an unused repayment threshold to be allocated to secondary employment earnings under *clause 36*, and making a declaration for an exemption from salary or wage deductions for full-time, full-year students under *clause 49*.

Clause 64 provides that the PAYE rules of the Income Tax Act 2007 apply to salary or wage deductions and extra deductions that are made under this Bill and that employers, PAYE intermediaries, and borrowers must comply with the PAYE rules to the extent to which they apply under this clause. *Schedule 2* (as applied by this clause) specifies certain modifications to the manner in which the PAYE rules

are to be applied. This clause is required because this Bill utilises the existing income tax collection system as the means by which salary or wage deductions and extra deductions are collected.

Clause 65 makes it clear that salary or wage deductions and extra deductions that are made under this Bill are in addition to any tax deductions that are required to be made under the PAYE rules of the Income Tax Act 2007.

Subpart 2—New Zealand-based borrowers’ repayment obligations for pre-taxed income

Clause 66 is an application clause. *Subpart 2 of Part 2* applies to New Zealand-based borrowers who derive pre-taxed income. However, it only applies if the borrower does not derive any other income for that tax year and if the net pre-taxed income derived by the borrower exceeds 2 thresholds.

Clause 67 sets out definitions of allowable expenses and net pre-taxed income. The definition of net pre-taxed income is used in a number of places in *subpart 2 of Part 2*.

Declaration of pre-taxed income and assessment of pre-taxed repayment obligation

Clause 68 requires a borrower to make a declaration of pre-taxed income if *subpart 2 of Part 2* applies to the borrower. It also specifies the manner in which that declaration must be made and the date by which it must be made.

Clause 69 allows a borrower to apply to the Commissioner for an extension of time for the making of the declaration of pre-taxed income required under *clause 68*.

Clause 70 requires the Commissioner to assess the amount of a borrower’s pre-taxed repayment obligation for a tax year as soon as practicable after the borrower makes his or her declaration of pre-taxed income. It sets out how the Commissioner must make the assessment and notify the borrower of the borrower’s pre-taxed repayment obligation and the means of paying that repayment obligation.

Calculation of pre-taxed repayment obligation

Clauses 71 and 72 each set out a different method for calculating a borrower's pre-taxed repayment obligation for a tax year. A borrower's pre-taxed repayment obligation for a tax year is calculated under *clause 71* if the gross income that the borrower derived from salary or wages is less than the annual repayment threshold. However, a borrower's pre-taxed repayment obligation must be calculated under *clause 72* if that gross income is equal to or more than the annual repayment threshold.

Payment of pre-taxed repayment obligation

Clause 73 specifies what a borrower must do if he or she has a pre-taxed repayment obligation for a tax year. If the pre-taxed repayment obligation is greater than zero, the borrower must pay remaining repayments. If it is \$1,000 or more, the borrower must also pay interim payments for the next tax year.

Clause 74 sets out the way in which the amount of each remaining repayment that must be paid for a tax year must be calculated. The calculation differs depending upon the amount of a borrower's pre-taxed repayment obligation, whether the borrower estimated his or her pre-taxed repayment obligation for that tax year, and (in some circumstances) how many due dates the borrower has for the payment of his or her remaining repayments (determined in accordance with *clause 75*).

Clause 75 specifies the number of due dates a borrower has for the payment of his or her remaining repayments and when those due dates are. These due dates differ depending upon the amount of a borrower's pre-taxed repayment obligation and whether the borrower estimated his or her pre-taxed repayment obligation for that tax year. If the borrower's pre-taxed repayment obligation is \$1,000 or more, then the remaining repayment due dates will be aligned with the borrower's due dates for the payment of his or her interim payments.

Clause 76 sets out the way in which the amount of each interim payment that must be paid for the next tax year must be calculated. The calculation differs depending upon whether the borrower estimated his or her pre-taxed repayment obligation for a tax year and how many due dates the borrower has for the payment of his or her interim payments (determined in accordance with *clause 77*).

Clause 77 specifies the number of due dates a borrower has for the payment of his or her interim payments and when those due dates are. These due dates differ depending upon whether or not the borrower is in a transitional year. If the borrower is in a transitional year, then the interim payment due dates will be aligned with the borrower's due dates for the payment of his or her provisional tax for the tax year.

Clause 78 allows the Commissioner to determine the dates on which a borrower must pay his or her remaining repayments or interim payments if a borrower requests the Commissioner to do so, or if the Commissioner considers it necessary or appropriate in the circumstances. Any dates specified by the Commissioner under this clause override the dates that would otherwise apply under *clauses 75 and 77*, and the calculation of a borrower's remaining repayments or interim payments under *clauses 74 and 76* will also need to be adjusted accordingly.

Clause 79 provides that interim payments for a borrower's pre-taxed repayment obligation for a tax year are payable in the same manner as provisional tax and that borrowers must comply with the requirements of the provisional tax rules of the Income Tax Act 2007. *Schedule 3* (as applied by this clause) modifies the application of the provisional tax rules to those circumstances and identifies certain rules that do not apply.

Clause 80 alerts people to the potential consequences if a borrower does not meet his or her repayment obligations under this subpart. If that were to happen, a borrower may be liable to pay late payment interest.

Subpart 3—New Zealand-based borrowers' repayment obligations for other income

Clause 81 is an application clause. It provides that this subpart applies to New Zealand-based borrowers who derive other income.

Assessment of other income repayment obligation

Clause 82 requires the Commissioner to assess the amount of a borrower's other income repayment obligation for a tax year as soon as practicable after the borrower provides his or her return of income for the tax year (as required under the Tax Administration Act 1994) or

details of his or her annual gross income under *clause 106* (which applies to a New Zealand-based borrower who is a non-resident). It sets out how the Commissioner must make the assessment and notify the borrower of the borrower's other income repayment obligation and the means of paying that repayment obligation.

Calculation of other income repayment obligations

Clause 83 provides that if a borrower's net income for a tax year is equal to or less than the annual repayment threshold, then the borrower has no other income repayment obligation for the tax year.

Clause 84 sets out the method for calculating a borrower's other income repayment obligation for a tax year for borrowers whose net income is more than the annual repayment threshold.

Payment of other income repayment obligations

Clause 85 specifies what a borrower must do if he or she has an other income repayment obligation for a tax year. If the other income repayment obligation is greater than zero, the borrower must pay remaining repayments. If it is \$1,000 or more, the borrower must also pay interim payments for the next tax year.

Clause 86 sets out the way in which the amount of each remaining repayment that must be paid for a tax year must be calculated. The calculation differs depending upon the amount of a borrower's other income repayment obligation, whether the borrower estimated his or her other income repayment obligation for that tax year, and (in some circumstances) how many due dates the borrower has for the payment of his or her remaining repayments (determined in accordance with *clause 87*).

Clause 87 specifies the number of due dates a borrower has for the payment of his or her remaining repayments and when those due dates are. These due dates differ depending upon the amount of a borrower's other income repayment obligation and whether the borrower estimated his or her other income repayment obligation for that tax year. If the borrower's other income repayment obligation is \$1,000 or more, the remaining repayment due dates will be aligned with the borrower's due dates for the payment of his or her interim payments.

Clause 88 sets out the way in which the amount of each interim payment that must be paid for the next tax year must be calculated. The calculation differs depending upon whether the borrower estimated his or her other income repayment obligation for a tax year and how many due dates the borrower has for the payment of his or her interim payments (determined in accordance with *clause 89*).

Clause 89 specifies the number of due dates a borrower has for the payment of his or her interim payments and when those due dates are. The general rule is that a borrower must pay an interim payment for a tax year on or before each of the dates on which the borrower must pay his or her provisional tax for that tax year in accordance with the provisional tax rules of the Income Tax Act 2007. However, there are 3 exceptions to this rule set out in this clause.

Clause 90 allows the Commissioner to determine the dates on which a borrower must pay his or her remaining repayments or interim payments if a borrower requests the Commissioner to do so, or if the Commissioner considers it necessary or appropriate in the circumstances. Any dates specified by the Commissioner under this clause override the dates that would otherwise apply under *clauses 87 and 89*, and the calculation of a borrower's remaining repayments or interim payments under *clauses 86 and 88* will also need to be adjusted accordingly.

Clause 91 provides that interim payments for a borrower's other income repayment obligation for a tax year are payable in the same manner as provisional tax and that borrowers must comply with the requirements of the provisional tax rules of the Income Tax Act 2007. *Schedule 4* (as applied by this clause) modifies the application of the provisional tax rules to those circumstances and identifies certain rules that do not apply.

Clause 92 alerts people to the potential consequences if a borrower does not meet his or her repayment obligations under this subpart. If that were to happen, a borrower may be liable to pay late payment interest.

*Reduction of salary or wage deduction rate for
borrower with lower repayment obligation*

Clause 93 provides that *clause 94* applies if a borrower either derives other income or incurs a loss from other income in a tax year, derives

salary or wages in the tax year, considers on reasonable grounds that the difference between his or her salary or wage deductions and other income repayment obligation for the tax year will be less than his or her salary or wage deductions for that tax year, and applies to the Commissioner for a reduction in the salary or wage deduction rate that applies to the borrower under *clause 32(1) or (2)* in order to reflect that difference. It also specifies the way in which an application to the Commissioner must be made.

As a result of an application under *clause 93*, the Commissioner may issue a special deduction rate certificate under *clause 94* that requires a borrower's employer to make salary or wage deductions at a special deduction rate specified in the certificate. In determining the special deduction rate that is to apply to the borrower, the Commissioner must have regard to the amount of any refund that may have to be made to the borrower if the special deduction rate certificate is not issued to the borrower.

Clauses 95 and 96 specify the manner in which a special deduction rate certificate is to be issued under *clause 94*, its effect, and the period for which it is to apply.

Subpart 4—Overseas-based borrowers' repayment obligations

Clause 97 is an application clause. It provides that this subpart applies to overseas-based borrowers.

Clause 98 defines 2 terms that are used in this subpart.

Repayment holiday from overseas-based repayment obligations

Clause 99 provides that a borrower who becomes overseas-based is entitled to a repayment holiday for a maximum period of 3 years. A repayment holiday is a period during which the borrower will have no overseas-based repayment obligations. A repayment holiday can be taken only for periods when a borrower is overseas-based and it may consist of 1 or more periods of time, but in total those periods cannot exceed 3 years.

Clause 100 provides that a borrower may choose to have 1 or more opt-out periods for any period during which the borrower is overseas-based. An opt-out period is a period for which a borrower chooses

not to have a repayment holiday. This clause sets out when an opt-out period begins and ends and its effect.

Assessment of overseas-based repayment obligation

Clause 101 requires the Commissioner to assess the amount of a borrower's overseas-based repayment obligation for each tax year, or part of a tax year, that the borrower is overseas-based, and notify the borrower of the amount assessed and the means by which it must be paid.

Calculation and payment of overseas-based repayment obligation

Clause 102 specifies the manner in which an overseas-based borrower's repayment obligation for a tax year is calculated.

Clause 103 sets out some exceptions to the general rules in *clause 102* on how an overseas-based borrower's repayment obligation for a tax year is calculated. These exceptions apply if an overseas-based borrower has an unpaid amount but no loan balance, or if the borrower's repayment obligation under *clause 102* is equal to or more than the borrower's loan balance.

Clause 104 specifies the manner in which an overseas-based borrower's repayment obligation for a tax year must be paid. It must be paid in 2 instalments on or before 30 September and 31 March in the tax year.

Clause 105 alerts people to the potential consequences if a borrower does not meet his or her repayment obligations under this subpart. If that were to happen, a borrower may be liable to pay late payment interest.

Subpart 5—New Zealand-based non-resident
borrowers and borrowers with New
Zealand-based and overseas-based
repayment obligations

Clause 106 applies to New Zealand-based borrowers who are non-resident. If this clause applies to a borrower, he or she must notify the Commissioner of the borrower's annual gross income. The noti-

fictionation must be provided at the time when the borrower would have provided either a declaration of pre-taxed income or a return of income if the borrower were a New Zealand resident.

Clause 107 sets out what happens to a borrower's repayment obligations if a borrower is overseas-based for part of a tax year and New Zealand-based for the rest of that year. In essence, *subparts 1 to 3* apply to the borrower for the period in the year during which he or she is New Zealand-based, and *clauses 102(4) or 103* (as applicable) apply to any portion of the tax year during which the borrower is overseas-based. However, these parts of the Bill are adjusted in their application to reflect the relative portion of the year to which they apply to the borrower.

Clause 108 provides that *subpart 1 of Part 2* applies to an overseas-based borrower who derives New Zealand salary or wages as if that borrower were New Zealand-based.

Clause 109 provides that if a deduction is made from a borrower's salary or wages in accordance with *clause 108*, that money is used to satisfy that borrower's future overseas-based repayment obligations as each of them arises, in turn.

Part 3

Excess repayments

Clause 110 is an interpretation clause. It sets out definitions for 2 terms that are used in this Part, and cross-refers to the definition of excess repayment in *clause 111*.

Clause 111 sets out a definition of excess repayment. In essence, an excess repayment is a salary or wage deduction, an extra deduction, or a payment made to the Commissioner for a tax year for a borrower who has no unpaid amount, and that exceeds that borrower's repayment obligations for the tax year.

Clause 111(3) specifies when excess repayments may be made. Generally, all excess repayments need to be made within the tax year for which they are paid. However, if a borrower must pay interim payments for the tax year in question, excess repayments may be made for that tax year up to and including the day on which that borrower must pay his or her final interim payment for that tax year.

Clause 112 provides that if an excess repayment is made for a borrower, or if the Commissioner discovers that an excess repayment

was made, the Commissioner must apply that amount in reduction of the borrower's consolidated loan balance and notify the borrower of several things, the most important being the options that are available to the borrower in relation to the excess repayment.

Clause 113 sets out the options that are available to a borrower in relation to an excess repayment. A borrower may be eligible to receive a 10% bonus (as set out in *subpart 1*), or may choose to receive a refund or to use the excess repayment to satisfy a future repayment obligation of the borrower (as set out in *subpart 2*). However, if any part of an excess repayment exceeds a borrower's consolidated loan balance, that part is not eligible for a 10% bonus and it must be refunded by the Commissioner.

Clause 114 sets out an exception to the general rules in *clauses 112 and 113*. If, in relation to 2 or more prior tax years, the Commissioner discovers that a borrower has made an excess repayment in 1 year but has an unsatisfied repayment obligation for another year, the Commissioner may offset the excess repayment against the unsatisfied repayment obligation. In this case, *clauses 112 and 113* apply only to any portion of the excess repayment that is not offset against the unsatisfied repayment obligation.

Subpart 1—Excess repayment bonus

Subpart 1 concerns the payment of a 10% bonus to a borrower who makes excess repayments to the Commissioner for a tax year.

Clause 115 is the main operative provision. *Subclause (1)* sets out the circumstances in which a borrower is entitled to a 10% bonus. For a borrower to be entitled to a 10% bonus, the borrower's total excess repayments for a tax year must be \$500 or more and, at the beginning of that tax year, the borrower's loan balance must be \$550 or more. If a borrower is entitled to a 10% bonus under this clause, the Commissioner must reduce the borrower's loan balance by an amount equal to 10% of the borrower's total excess repayments for the relevant tax year.

Clause 116 applies if a borrower's final excess repayment for a tax year is \$500 and, on the date on which that repayment is made, the borrower's loan balance was more than \$500 but less than \$550. If this clause applies, the Commissioner must reduce the borrower's loan balance to zero.

Clause 117 deals with a situation where (along with other criteria) a borrower's total excess repayments for a tax year are less than \$500 and the shortfall is because of an under-deduction through the PAYE system and that under-deduction meets 1 or more of 3 criteria. A borrower is only entitled to a 10% bonus under this clause if the Commissioner considers that the borrower's total excess repayments for the relevant tax year would have been \$500 or more if the under-deduction had not occurred. If a borrower is entitled to a 10% bonus under this clause, the Commissioner must reduce the borrower's loan balance by an amount equal to 10% of the borrower's total excess repayments for the relevant tax year that the Commissioner considers would have been made if the under-deduction had not occurred.

Clause 118 sets out the time at which a 10% bonus must be credited to a borrower's loan balance.

Clause 119 provides that the total amount of a 10% bonus that may be provided to a borrower must not exceed an amount equal to one-eleventh of that borrower's loan balance. This is to ensure that a borrower cannot end up with a positive loan balance as a result of a 10% bonus.

Clause 120 sets out what must occur if a borrower who has received a 10% bonus subsequently seeks a refund of an excess repayment, or an excess repayment is used to satisfy a future repayment obligation of the borrower. If this occurs, the 10% bonus that was provided to the borrower must be reduced to an amount equal to 10% of the remaining excess repayment (if any) for the tax year that is equal to or more than \$500.

Clause 121 requires the Commissioner to include a statement, in all material that provides information about 10% bonuses and that is made available to all borrowers, to the effect that borrowers are advised to seek appropriate financial advice before making excess repayments in order to obtain a 10% bonus.

Subpart 2—Refund of excess repayments and satisfaction of future repayment obligation

Clause 122 provides that if an excess repayment is \$5 or less, the Commissioner may refrain from refunding the excess repayment to a

borrower or using the excess repayment to satisfy a future repayment obligation. This clause overrides *clause 123*.

Clause 123 provides that a borrower may choose that the whole or part of an excess repayment be refunded or be used to satisfy a future repayment obligation of the borrower. It also sets out the time frames within which a borrower must make that choice.

Part 4

Interest, relief, penalties and offences, rights of objection, and rights to challenge

Subpart 1—Interest

Clause 124 provides that no interest is payable on a consolidated loan balance except as provided in this Part.

Overseas-based interest charged for borrowers who are overseas-based

Clause 125 provides that a borrower is liable to pay overseas-based interest on his or her loan balance for each day that that borrower is overseas-based. It also sets out the way in which overseas-based interest must be calculated.

Clause 126 provides that overseas-based interest is calculated each day that a borrower is overseas-based, is charged on the last day of each month, and (to the extent that it has not been paid in the meantime) is compounded on 31 March each year. However, no interest is charged for a month if the loan balance and all un-compounded overseas-based interest are paid in full on or before the last day of that month.

Clause 127 requires the Commissioner to notify a borrower as soon as practicable after a borrower's loan balance is increased by the amount of the compounded overseas-based interest in accordance with *clause 126*. The Commissioner may also notify a borrower of the borrower's loan balance and overseas-based interest at any other time the Commissioner chooses.

Clause 128 applies to a person who was an overseas-based borrower and who would have been treated as being New Zealand-based, except that he or she ceased to be a borrower because his or her consolidated loan balance was fully repaid. In these circumstances, over-

seas-based interest that is charged on the person's loan balance is reduced to zero from the first day of the period on which the borrower would have been treated as being New Zealand-based until the date on which the loan was repaid. This clause rewards the quick repayment of student loans in limited circumstances.

Late payment interest

Clause 129 provides that a borrower is liable to pay late payment interest on his or her unpaid amount if it is \$500 or more (or any other amount determined by regulations). It also sets out the way in which the late payment interest must be calculated.

Under *clause 146*, a borrower may apply to enter into an instalment arrangement in relation to an unpaid amount in order to enable the borrower to repay that unpaid amount. *Clause 130* provides that if an instalment arrangement applies to an unpaid amount, the late payment interest that is calculated in relation to that unpaid amount in accordance with *clause 129* must be calculated at a reduced interest rate. However, this reduced interest rate applies only while a borrower is in compliance with the instalment arrangement.

Clause 131 provides that late payment interest is calculated each day after the due date of an unpaid amount until the unpaid amount and all late payment interest that has not been compounded have been paid. It goes on to provide that late payment interest is charged on the last day of each month, and (to the extent that it has not been paid in the meantime) compounded on 31 March each year. However, no interest is charged for a month if the unpaid amount and all late payment interest that has been charged in relation to that amount are paid in full on or before the last day of that month.

Clause 132 requires the Commissioner to notify a borrower as soon as practicable after the borrower becomes liable to pay late payment interest.

Clause 133 requires the Commissioner to notify a borrower as soon as practicable after a borrower has been charged with late payment interest, and also after a borrower's loan balance is increased by the amount of the compounded late payment interest in accordance with *clause 131(4)*. The Commissioner may also notify a borrower of various matters relating to the borrower's liability for late payment interest at any other time the Commissioner chooses.

Matters of general application to interest

Clause 134 provides that no interest is payable on a consolidated loan balance that is in credit, an excess repayment, or a payment that is made under this Bill before its due date.

Clause 135 provides that all amounts of interest charged are treated as being correct unless a borrower establishes by proceedings under Part 8A of the Tax Administration Act 1994 that he or she should not have been charged with the amount of interest that was charged. However, the Commissioner can correct an error that is made in relation to the amount of interest charged, and must notify the relevant borrower if the Commissioner does so.

Subpart 2—Relief*Different types of relief*

Clause 136 authorises the Commissioner to refrain from issuing notices of assessment, collecting repayment obligations, or collecting any amount payable by an employee or a PAYE intermediary if the amount concerned is \$20 or less. Further, the Commissioner may refrain from collecting payment of an unpaid amount if it is less than \$500. This is because it is uneconomic for the Commissioner to take those actions in those circumstances. Any amount that the Commissioner refrains from collecting from a borrower is not written off and remains part of the borrower's loan balance.

Clause 137 sets out the various types of relief that a borrower, or someone on a borrower's behalf, may apply for and the manner in which that application must be made. The various types of relief available are set out in *clauses 138 to 147*.

Relief from late payment interest

Under *clause 138*, the Commissioner may grant relief to a borrower by cancelling as much late payment interest as the Commissioner considers equitable in the circumstances, and refunding any part of the cancelled late payment interest that has already been paid by the borrower.

Hardship relief

Under *clause 139*, the Commissioner may grant hardship relief by decreasing a borrower's repayment obligation for any period the Commissioner considers equitable. The Commissioner can only grant this relief if the Commissioner is satisfied that payment of that repayment obligation is causing, or would cause, serious hardship to the borrower, or considers that there are other special reasons that make it fair and reasonable to do so.

If the Commissioner grants hardship relief under *clause 139*, the Commissioner may issue a special deduction rate certificate under *clause 140* that requires a borrower's employer to make salary or wage deductions at a special deduction rate specified in the certificate that reflects the Commissioner's decision under *clause 139*.

Clauses 141 and 142 specify the manner in which a special deduction rate certificate is to be issued and the period for which it is to apply.

Clause 143 makes it clear that any amount that is refunded to, or not collected from, a borrower granted hardship relief under *clause 139* is not written off, but remains part of the borrower's loan balance. Equally however, that amount is not treated as an unpaid amount.

Clause 144 imposes an obligation on the borrower to notify the Commissioner if any of the circumstances that formed the basis for the grant of hardship relief change.

Clause 145 provides that the Commissioner may review any decision he or she made to grant hardship relief to a borrower. Further, the Commissioner may require a borrower to take certain actions, or the Commissioner may take certain actions, if the Commissioner considers that the circumstances for the grant of hardship relief to that borrower have changed.

Instalment arrangements

Clause 146 sets out a procedure for a person to apply for entry into an instalment arrangement in relation to an unpaid amount and any un-compounded late payment interest. Such an application must be made in accordance with specified sections of the Tax Administration Act 1994. Under *clause 130*, the late payment interest that is calculated in relation to an unpaid amount to which an instalment arrangement applies must be calculated at a reduced interest rate. However,

this reduced interest rate applies only while a borrower is in compliance with the instalment arrangement.

Clause 147 provides that an instalment arrangement is cancelled if any 2 instalments that were due under the instalment arrangement are not paid in full and on time.

Subpart 3—Penalties and offences

Late filing penalties

Clause 148 provides that if a borrower does not provide a declaration of pre-taxed income or a notification of a borrower's annual gross income under *clause 106* on time, the Commissioner may notify the borrower and give the borrower 30 days to complete and file that declaration or notification. A borrower is liable to pay a late filing penalty if the borrower does not comply with the Commissioner's notification by the specified date. This clause also sets out the means for determining the amount of a late filing penalty that is imposed on a borrower.

Clause 149 sets out the due dates that apply for the payment of a late filing penalty imposed under *clause 148*.

Student loan shortfall penalties

Clause 150 sets out 3 definitions that are used in this clause and *clauses 151 to 154*.

Clause 151 sets out when a student loan shortfall penalty may be imposed under *clause 152*. In essence, *clause 152* applies if a borrower is liable to pay a shortfall penalty under the Tax Administration Act 1994 and the circumstances that gave rise to that shortfall penalty also resulted in the borrower having a repayment obligation shortfall under this Bill.

Clause 152 authorises the Commissioner to impose a student loan shortfall penalty on a borrower and sets out the formula in accordance with which the amount of the penalty is calculated.

Clause 153 provides that the Commissioner must notify a borrower if the Commissioner imposes a student loan shortfall penalty on the borrower, and sets out the matters that must be specified in that notification. *Subclause (3)* requires a borrower to pay a student loan shortfall penalty on or before the date specified in the notification.

Clause 154 requires the Commissioner to reduce or remove a borrower's student loan shortfall penalty to reflect a successful challenge that is made to the shortfall penalty imposed under the Tax Administration Act 1994 that formed the basis for the imposition of the student loan shortfall penalty under *clause 152*.

Offences

Clause 155 notes 4 sections of the Tax Administration Act 1994 that apply to borrowers and their consolidated loan balances. Each of those sections creates offences. This clause also applies sections 149 to 150A of the Tax Administration Act 1994 for the purposes of the 4 offence sections.

Clause 156 creates offences that apply to any employer who acts in a prejudicial way to a person because that person is a borrower.

Clauses 157 to 159 set out the procedures for taking a proceeding for an offence against *clause 156*.

Subpart 4—Borrower's right to object to loan manager about details of loan advances

Clause 160 provides that a borrower may object to the details of a loan advance made or charged to the borrower if the borrower reasonably believes that those details are incorrect. These details may be stated in the information provided or made available to the borrower in accordance with *clause 13*, or in the statement of loan advances given to the borrower under *clause 15*. An objection under this clause must be made to the loan manager (currently StudyLink) and in accordance with the other requirements set out in *subclause (3)*.

Clause 161 provides that the loan manager must consider all objections made in accordance with *clause 160* and must notify the objector and the Commissioner of the loan manager's decision.

Clause 162 provides an appeal right if an objection under *clause 160* is not wholly allowed. In these circumstances, the objector may require the objection to be determined by the chief executive of the Ministry of Social Development. The time frame for making an appeal is also set out in this clause.

Clause 163 provides that the chief executive of the Ministry of Social Development must consider all objections that he or she is required to

determine under *clause 162* and must notify the objector and the loan manager of the chief executive's decision. In turn, the loan manager must notify the Commissioner of the chief executive's decision.

Clause 164 allows the chief executive to extend the time allowed under *clause 15* for a borrower to make an objection under *clause 160*, and for an objector to appeal under *clause 162*.

Clause 165 provides an appeal right if an appeal under *clause 162* is not wholly allowed. In these circumstances, the objector may apply to a Disputes Tribunal or a District Court for the determination of the dispute. The time frame for making an appeal is also set out in this clause, and a Referee of a Disputes Tribunal or a District Court Judge may extend that time.

Clause 166 requires the loan manager to notify the Commissioner of the Disputes Tribunal's or District Court's decision under *clause 165*.

Subpart 5—Dispute procedures and rights to challenge

Dispute procedures

Clause 167 provides that the procedures in Part 4A of the Tax Administration Act 1994 are to apply if there is dispute between a person and the Commissioner under this Bill, other than in relation to an objection to the details of a loan advance made or charged to a borrower (in which case *subpart 4* applies).

Rights to challenge

Clause 168 stipulates that a person may challenge a matter under this subpart only after the dispute process set out in *clause 167* has been concluded in relation to that matter.

The word challenge is defined in *clause 4(1)* as having the same meaning as in section 3(1) of the Tax Administration Act 1994. The definition of challenge in that Act means a proceeding under Part 8A of that Act. Therefore, each of the rights of challenge in this subpart provides a mechanism that leads to the commencement of proceedings under Part 8A of the Tax Administration Act 1994.

Clause 169 allows a borrower to challenge any information (other than the details of a loan advance made or charged to the borrower)

provided to the borrower under *clause 13* if the borrower reasonably believes that that information is incorrect.

Clause 170 concerns a borrower's right to challenge a decision by the Commissioner in relation to various matters concerning whether or not, and for what periods, a borrower is treated as being physically in New Zealand.

Clause 171 allows a borrower who has been issued with an additional deduction rate notice under *clause 43* to challenge the notice on the ground that the notice is erroneous or excessive or has been issued in error.

Clause 172 allows an employer or PAYE intermediary who is required to make a salary or wage deduction under *clause 31 or 33* to challenge a determination made under *clause 56(2)* on the ground that the determination is erroneous.

Clause 173 concerns a borrower's right to challenge matters concerning significant over-deductions.

Clause 174 permits a borrower whose repayment obligation has been assessed under *clause 46, 70, 82, or 101* to challenge the assessment on the ground the assessment is erroneous or excessive or has been issued in error.

Clause 175 concern's a borrower's right to challenge certain matters relating to interest that is charged. It also makes it clear that, except as set out in this clause, there are no other rights under this Bill, Parts 4A and 8A of the Tax Administration Act 1994, or a loan contract to challenge interest that is charged.

Clause 176 concerns a borrower's right to challenge certain decisions by the Commissioner relating to relief from late payment interest under *clause 138*, hardship relief under *clause 139*, or entry into an instalment arrangement under *clause 146*.

Clause 177 permits a borrower who is charged with a late filing penalty to challenge that penalty.

Clause 178 permits a borrower who has a student loan shortfall penalty imposed on him or her to challenge that penalty.

Clause 179 specifies who may make a challenge under this subpart.

Clause 180 provides that the Commissioner may allow a challenge in full, allow it in part, or disallow it, and must notify the person who made the challenge of the Commissioner's decision.

Part 5

Matters of general application and miscellaneous matters

Subpart 1—Matters of general application

Clause 181 specifies that an annual administration fee of \$40 must be charged each tax year by the Commissioner to each borrower who has a consolidated loan balance of \$20 or more on the last day of that tax year. However, no fee can be charged under this clause if the borrower is charged with a student loan establishment fee under *clause 8* in that tax year.

Clause 182 specifies what is to happen if a borrower has pre-taxed income or other income and that income is for a period other than 12 months because of a change in the borrower's balance date. In essence, for the purposes of calculating a borrower's repayment obligation under *subparts 2 and 3 of Part 2*, the annual repayment threshold is adjusted to reflect the length of the relevant period.

Clause 183 sets limits on the amount of a borrower's repayment obligations to ensure that those repayment obligations do not exceed the borrower's loan balance.

Clause 184 provides that if a payment date is not specified for an amount that is payable in accordance with this Bill, that amount is due and payable 30 days after the date on which the borrower is notified that the amount is due and payable.

Clause 185 provides that an unpaid amount and un-compounded late payment interest are recoverable as a debt due to the Crown, and that, for this purpose, sections 156 to 165 of the Tax Administration Act 1994 apply.

Clause 186 specifies when salary or wage deductions, extra deductions, and payments are treated as having been made and are credited.

Clause 187 sets out the order in which matters that are required to be paid under this Bill are satisfied when certain salary or wage deductions and extra deductions are made, or a payment is received by the Commissioner. In essence, each obligation is satisfied in chronological order based upon its due date.

Clauses 188 and 189 are priority of payment provisions. *Clause 189* sets out the order in which the various elements of a borrower's overall debt are to be paid off whenever the Commissioner receives a pay-

ment that the Commissioner identifies as being intended to be used to pay off the borrower's un-compounded late payment interest or unpaid amount (an **identified payment**). *Clause 188* sets out the order in which the various elements of a borrower's overall debt are to be paid off whenever a deduction is made or the Commissioner receives a payment other than an identified payment.

Clause 190 requires the Commissioner to cancel any interest that is charged in relation to a borrower if the Commissioner has notified that borrower of his or her consolidated loan balance and the borrower pays that loan balance within 30 days after the notification. This is to ensure that the accumulation of interest does not prevent a borrower from paying off his or her loan balance completely.

Clause 191 provides that a borrower's consolidated loan balance must be reduced to zero if the borrower dies, or the Commissioner has reasonable grounds for believing that the borrower has died, or the borrower's consolidated loan balance is less than \$20 on the last day of a tax year.

Clause 192 concerns a situation in which a borrower's obligations under this Bill are changed for any reason. If this occurs, anything that was done or has happened in relation to the changed portion of the obligation must be reversed. For example, any amount that was paid in order to satisfy that portion of the obligation must be refunded, or any interest that was imposed must be reversed.

Clause 193 specifies that a refund that is made under this Bill must be made in the manner required under section 184A of the Tax Administration Act 1994.

Clause 194 provides that a refund that is made under this Bill may be made without further appropriation than this clause.

Clause 195 requires the Commissioner to alter the information provided to a borrower under *clause 13* in certain circumstances. The Commissioner must alter the details about a loan advance in order to reflect the outcome of an objection under *subpart 4 of Part 4*, or alter any other information in order to reflect a decision of the Commissioner under *subpart 5 of Part 4*.

Clause 196 sets out certain provisions of the Tax Administration Act 1994 and the Income Tax Act 2007 that apply for the purposes of this Bill. Most of these provisions concern returns and assessments.

Subpart 2—Miscellaneous matters

Interaction with loan contracts and other enactments

Clause 197 provides that this Bill applies despite anything to the contrary in a loan contract, and that loan contracts must be interpreted in a manner that is consistent with this Bill.

Clause 198 provides that a loan contract is enforceable against a borrower who is under 18 years of age.

Clause 199 provides that a student loan contract is not a credit contract for the purposes of the Credit Contracts Act 1981, or a credit contract or a consumer credit contract for the purposes of the Credit Contracts and Consumer Finance Act 2003. Further, no cause of action exists under either of those Acts in relation to a student loan contract. This clause applies to all loan contracts regardless of when they were entered into.

Student loan contracts are removed from the ambit of the Credit Contracts Act 1981 and the Credit Contracts and Consumer Finance Act 2003 because those contracts are governed by the legislative scheme set out in this Bill. Many of the requirements of those Acts double up on, or do not align with, the requirements of this Bill.

Disclosure of information

Clause 200 provides for the disclosure of specified information between certain authorised persons for specified purposes, mainly relating to the need to identify a person who applies for a loan, to correctly identify a borrower, and to investigate circumstances where a student loan may have been improperly obtained or an attempt has been made to obtain a student loan by improper means.

Clause 201 authorises the disclosure of specified information between the Inland Revenue Department and the New Zealand Customs Service for the purpose of establishing an information-matching programme to assist the Commissioner to verify whether borrowers are New Zealand-based or overseas-based and whether borrowers are New Zealand residents for the purposes of this Bill.

Clause 202 authorises the Commissioner to access information-recording systems used by the New Zealand Customs Service to store arrival or departure information for the purpose set out in section 280I of the Customs and Excise Act 1996. After amendment by

this Bill (*see clause 215 and Schedule 8*), that purpose is to assist the Commissioner to verify whether borrowers are New Zealand-based or overseas-based, whether borrowers are New Zealand residents for the purposes of this Bill, and whether borrowers are in New Zealand.

Informing and notifying under this Act

Clause 203 defines what is required or allowed when there is a requirement in this Bill for a person to inform another person of something.

Clause 204 defines what is required or allowed when there is a requirement in this Bill for a person to notify another person of something.

Clause 205 defines what is required or allowed when there is a requirement in this Bill for a person to notify another person in writing.

Clause 206 defines what is required or allowed when there is a requirement in this Bill for a person to formally notify another person.

Clause 207 provides that the informing and notifying provisions set out in *clauses 203 to 206* override sections 14 and 14B of the Tax Administration Act 1994 (which concern the giving of notices by and to the Commissioner).

Clauses 203 to 207 come into force on 1 January 2012 for the reasons set out in relation to *clause 211 and Schedule 5*.

Regulations

Clause 208 is a regulation-making clause, while *clause 209* permits regulations to be made for transitional matters. Both of these clauses come into force on the day after the date on which the Bill receives the Royal assent.

Clause 210 specifies that regulations made under *clause 208 or 209* are regulations for the purposes of the Regulations (Disallowance) Act 1989 and the Acts and Regulations Publication Act 1989.

Savings and transitional provisions

Clause 211 and Schedule 5 set out some transitional provisions that apply to loan advances that are made by the loan manager to borrowers, the provision of information in relation to that process, the transfer of loan advance debts from the loan manager to the Com-

missioner, and a borrower's rights of objection and challenge. From 1 January 2012, the provisions of this Bill that deal with those matters will apply in place of the provisions of the Student Loan Scheme Act 1992 that deal with those matters. This clause and *Schedule 5* come into force on 1 January 2012.

Clause 212 comes into force on 1 October 2011. It allows borrowers to apply for certain matters, and for the Commissioner to do certain things, in preparation for when the majority of the Bill comes into force on 1 April 2012.

Clause 213 and *Schedule 6* set out the savings and transitional provisions that apply in order to regulate the manner in which the repeal of the Student Loan Scheme Act 1992 is aligned with the coming into force of this Bill.

Consequential amendments and repeals

Clause 214 and *Schedule 7* consequentially amend the Student Loan Scheme Act 1992 and the Credit Contracts and Consumer Finance Act 2003. Those amendments concern the establishment of an annual administration fee, and the insertion of provisions that exclude student loan contracts from the ambit of the Credit Contracts Act 1981 and the Credit Contracts and Consumer Finance Act 2003. This clause and *Schedule 7* come into force on the day after the date on which this Bill receives the Royal assent.

Clause 215 and *Schedule 8* consequentially amend the Acts specified in that schedule.

Clause 216 and *Schedule 9* consequentially amend the enactments specified in that schedule.

Clause 217 repeals the Student Loan Scheme Act 1992.

Clause 218 revokes the Student Loan Scheme (Charitable Organisations) Regulations 2006.

Hon Peter Dunne

Student Loan Scheme Bill

Government Bill

Contents

		Page
1	Title	12
2	Commencement	12
Part 1		
Preliminary matters, loan advances, and New Zealand-based and overseas-based borrowers		
Subpart 1—Preliminary provisions		
3	Purposes	13
4	Interpretation	13
5	Application of Act	21
6	Application of Act to bonded scholarships	21
7	Act binds Crown	22
Subpart 2—Student loan establishment fee and transfer of information and loan advance debts from loan manager to Commissioner		
<i>Student loan establishment fee</i>		
8	Student loan establishment fee	22
<i>Transfer of information and loan advance debts from loan manager to Commissioner</i>		
9	Purposes of sections 10 to 12	22
10	Loan manager must notify Commissioner of persons who apply for student loan	23
11	Loan manager must notify Commissioner of borrower's details	23

Student Loan Scheme Bill

12	Loan manager must notify Commissioner of loan advances made or charged to borrowers	24
13	Commissioner must inform borrowers about consolidated loan balance	24
14	Loan manager must transfer loan advance debts to Commissioner	25
15	Loan manager must notify borrowers of loan advance debts to be transferred to Commissioner	25
	Subpart 3—Determining whether borrowers are New Zealand-based or overseas-based	
16	Overview of being New Zealand-based or overseas-based	26
17	Meaning of New Zealand-based	26
18	Meaning of overseas-based	27
19	Treatment of partial days	28
	<i>Certain borrowers may be treated as being physically in New Zealand</i>	
20	Commissioner may treat certain borrowers as being physically in New Zealand	28
21	Method of making application and provision of evidence and information	29
22	Commissioner must notify borrower and specify period or conditions when granting application	30
	<i>Borrowers must notify Commissioner of absence from and return to New Zealand</i>	
23	Borrower to notify Commissioner of absence from New Zealand of 184 or more days	30
24	Borrower to notify Commissioner of return to New Zealand of more than 183 days	31
	Part 2	
	Repayment obligations of borrowers	
25	Borrower's liability to repay consolidated loan balance	31
26	Repayment obligations that apply to New Zealand-based borrowers and overseas-based borrowers	31
27	Interrelationship between subparts 1 to 3	32
	Subpart 1—New Zealand-based borrowers' repayment obligations for salary or wages	
28	Application of this subpart	32

Student Loan Scheme Bill

	<i>Repayment codes</i>	
29	Repayment codes for New Zealand-based borrowers who derive salary or wages	33
30	Borrowers with “SL” repayment code must notify employers	33
	<i>Salary or wage deductions and extra deductions</i>	
31	Employer or PAYE intermediary must make salary or wage deductions from salary or wages	34
32	Deduction rates that apply to borrower	34
33	Employer or PAYE intermediary must make further deductions from salary or wages	35
34	Salary or wage deductions from income-tested benefits	36
	<i>Unused repayment threshold may be allocated to secondary employment earnings</i>	
35	Definitions relating to repayment thresholds	36
36	Application for unused repayment threshold to be allocated to secondary employment earnings	37
37	Determining estimated salary or wages	37
38	Calculating borrower’s unused repayment threshold for pay period	37
39	Special deduction rate certificate for unused repayment threshold	38
40	Issue and application of special deduction rate certificate	38
41	Ongoing obligations of borrower to review and notify	39
42	Time when special deduction rate ceases to apply	39
	<i>Commissioner may issue additional deduction rate notice to recover amounts that remain unpaid</i>	
43	Commissioner may issue additional deduction rate notice	39
44	Procedures for issue of additional deduction rate notice	40
45	Time when additional deduction rate ceases to apply	41
	<i>Further means of recovering amounts that remain unpaid</i>	
46	Assessment of salary or wage deductions that ought to have been made	41
47	Recovery of assessed amounts	42
	<i>Exemption from salary or wage deductions for borrowers who are full-time, full-year students</i>	
48	Borrowers who are eligible for exemption from salary or wage deductions	42

Student Loan Scheme Bill

49	Declaration by eligible borrowers for exemption from salary or wage deductions	43
50	Notice from Commissioner	43
51	Consequences of exemption from salary or wage deductions	44
52	Withdrawal of declaration	44
53	Notice of change of circumstances	44
54	When exemption from salary or wage deductions ceases to apply	45
	<i>Information and determinations</i>	
55	Information to show salary or wage deductions or extra deductions made	45
56	Commissioner must determine question about amount of salary or wage deductions	46
	<i>Significant under-deductions and over-deductions</i>	
57	Commissioner determines what is significant under-deduction or significant over-deduction	46
58	Salary or wage deductions are full and final unless significant error	47
59	Significant over-deduction identified by borrower	47
60	Commissioner must determine whether significant over-deduction made	48
61	Procedure if significant over-deduction made	48
62	Applicable procedures if significant under-deduction	49
	<i>Matters of general application to salary or wage deductions and extra deductions</i>	
63	Prohibition on applications or declarations to maintain integrity of student loan scheme	49
64	PAYE rules apply to salary or wage deductions and extra deductions	49
65	Salary or wage deductions and extra deductions in addition to income tax withheld	50
	Subpart 2—New Zealand-based borrowers’ repayment obligations for pre-taxed income	
66	Application of this subpart	50
67	Definitions relating to net pre-taxed income	50
	<i>Declaration of pre-taxed income and assessment of pre-taxed repayment obligation</i>	
68	Declaration of pre-taxed income	51

Student Loan Scheme Bill

69	Extension of time for making declaration of pre-taxed income	51
70	Commissioner to assess borrower's pre-taxed repayment obligation	52
	<i>Calculation of pre-taxed repayment obligation</i>	
71	Calculation of borrower's pre-taxed repayment obligation if salary or wages are less than annual repayment threshold	52
72	Calculation of borrower's pre-taxed repayment obligation if salary or wages are equal to or more than annual repayment threshold	53
	<i>Payment of pre-taxed repayment obligation</i>	
73	Payment of pre-taxed repayment obligation	53
74	Calculation of remaining repayments for tax year	54
75	Due dates for payment of remaining repayments	55
76	Calculation of interim payments for next tax year	56
77	Due dates for payment of interim payments	58
78	Commissioner's powers in relation to due dates	58
79	Interim payments to be paid in same manner as provisional tax	59
80	Consequence of failure to meet repayment obligations	59
	Subpart 3—New Zealand-based borrowers' repayment obligations for other income	
81	Application of this subpart	59
	<i>Assessment of other income repayment obligation</i>	
82	Commissioner to assess borrower's other income repayment obligation	59
	<i>Calculation of other income repayment obligations</i>	
83	Certain borrowers have no other income repayment obligations	60
84	Calculating borrower's other income repayment obligation	60
	<i>Payment of other income repayment obligations</i>	
85	Payment of other income repayment obligations	61
86	Calculation of remaining repayments for tax year	61
87	Due dates for payment of remaining repayments	63
88	Calculation of interim payments for next tax year	64
89	Due dates for payment of interim payments	65
90	Commissioner's powers in relation to due dates	66

Student Loan Scheme Bill

91	Interim payments to be paid in same manner as provisional tax	67
92	Consequence of failure to meet repayment obligations	67
	<i>Reduction of salary or wage deduction rate for borrower with lower repayment obligation</i>	
93	Borrower may apply for reduction of salary or wage deduction rate to reflect lower repayment obligation	67
94	Special deduction rate certificate for lower repayment obligation	68
95	Issue and application of special deduction rate certificate	68
96	Time when special deduction rate ceases to apply	69
	Subpart 4—Overseas-based borrowers’ repayment obligations	
97	Application of this subpart	69
98	Definitions used in this subpart	69
	<i>Repayment holiday from overseas-based repayment obligations</i>	
99	Overseas-based borrowers are entitled to 3-year repayment holiday	69
100	Borrowers may choose to opt out of repayment holiday	70
	<i>Assessment of overseas-based repayment obligation</i>	
101	Assessments for years in which borrower is overseas-based	70
	<i>Calculation and payment of overseas-based repayment obligation</i>	
102	Repayment obligations of overseas-based borrowers	71
103	Exceptions to repayment obligations of overseas-based borrowers	73
104	Repayment to be made by instalments	73
105	Consequence of failure to meet repayment obligations	73
	Subpart 5—New Zealand-based non-resident borrowers and borrowers with New Zealand-based and overseas-based repayment obligations	
106	Notification of worldwide income by New Zealand-based non-resident borrowers	74
107	Repayment obligations of borrowers who are overseas-based for part of tax year	74
108	Overseas-based borrowers who derive salary or wages from New Zealand	75

Student Loan Scheme Bill

109	Overseas-based borrower's salary or wage deductions satisfy overseas-based repayment obligation	75
-----	---	----

**Part 3
Excess repayments**

110	Interpretation	76
111	Meaning of excess repayment	76
112	Commissioner must notify borrower of excess repayment	77
113	Options that apply to excess repayments	78
114	Exception to general rule if repayment obligations for prior tax years reassessed	79

Subpart 1—Excess repayment bonus

115	Borrower's entitlement to 10% bonus for total excess repayments of \$500 or more	79
116	Borrower's entitlement to bonus if loan balance is less than \$550	80
117	Borrower may be entitled to 10% bonus if under-deduction is due to PAYE system	80
118	Time at which 10% bonus is credited	81
119	Restriction on amount of 10% bonus	81
120	Consequences of refund or credit to next tax year	82
121	Commissioner must advise borrowers to seek financial advice	82

Subpart 2—Refund of excess repayments and satisfaction of future repayment obligation

122	Limit on use of excess repayments	82
123	Borrower may receive refund or apply excess repayment to future repayment obligations	83

**Part 4
Interest, relief, penalties and offences, rights of objection, and rights to challenge**

Subpart 1—Interest

124	No interest applied to student loans except as specified in this Part	83
	<i>Overseas-based interest charged for borrowers who are overseas-based</i>	
125	Overseas-based interest charged for borrowers who are overseas-based	84
126	Overseas-based interest calculated daily, charged monthly, and compounded annually	84

Student Loan Scheme Bill

127	Notification that overseas-based interest has compounded	84
128	Overseas-based interest written-off for quick repayment of consolidated loan balance	85
<i>Late payment interest</i>		
129	Late payment interest charged on unpaid amount	85
130	Late payment interest reduced if instalment arrangement complied with	86
131	Late payment interest calculated daily, charged monthly, and compounded annually	87
132	Initial notification that late payment interest is payable	87
133	Ongoing notification requirements regarding late payment interest	88
<i>Matters of general application to interest</i>		
134	No interest on consolidated loan balance in credit	88
135	Commissioner's power to correct interest when charged in error	89
Subpart 2—Relief		
<i>Different types of relief</i>		
136	Power of Commissioner in relation to small amounts	89
137	Application for different types of relief for borrower	90
<i>Relief from late payment interest</i>		
138	Commissioner may grant relief from late payment interest	90
<i>Hardship relief</i>		
139	Hardship relief for any tax year	91
140	Special deduction rate certificate for hardship relief	91
141	Issue and application of special deduction rate certificate	92
142	Time when special deduction rate ceases to apply	92
143	Effect of Commissioner's decision under section 139	92
144	Borrowers must notify Commissioner of change of circumstances	93
145	Commissioner may review grant of hardship relief	93
<i>Instalment arrangements</i>		
146	Application for instalment arrangement	93
147	Instalment arrangement cancelled if non-compliance	94
Subpart 3—Penalties and offences		
<i>Late filing penalties</i>		
148	Late filing penalty for certain declarations	94
149	Due dates for payment of late filing penalty	95

Student Loan Scheme Bill

Student loan shortfall penalties

150	Definitions relating to student loan shortfall penalties	95
151	Student loan shortfall penalties may be imposed on certain borrowers	96
152	Commissioner may impose student loan shortfall penalties	96
153	Notification of student loan shortfall penalty	97
154	Student loan shortfall penalty reduced or removed to reflect change to shortfall penalty	97

Offences

155	Certain offence provisions in Tax Administration Act 1994 apply to borrowers	97
156	Offence to prejudice employees because of student loan repayment liability	98
157	Proceedings to be taken summarily	98
158	Information may charge several offences	99
159	Information may be laid within 10 years	99

Subpart 4—Borrower’s right to object to loan manager about details of loan advances

160	Borrowers may object to details of loan advances	99
161	Loan manager must consider objections	100
162	Power to require objection to be determined by chief executive	100
163	Chief executive must consider objections required to be determined by chief executive	100
164	Extension of time for objection	101
165	Right to apply to Disputes Tribunal or District Court	101
166	Notification of Disputes Tribunal’s or District Court’s decision about objection	102

Subpart 5—Dispute procedures and rights to challenge

Dispute procedures

167	Part 4A of Tax Administration Act 1994 applies to disputes under this Act	102
-----	---	-----

Rights to challenge

168	Dispute process must be completed before challenge is made	102
169	Challenge to details of consolidated loan balance	102
170	Challenge to decision concerning treating borrowers as being physically in New Zealand	103
171	Challenge to additional deduction rate notice	103

Student Loan Scheme Bill

172	Challenge to determination of salary or wage deduction	103
173	Challenge to decision regarding significant over-deduction	104
174	Challenge to assessments	104
175	Challenge to interest charged	104
176	Challenge to decision concerning relief	104
177	Challenge to late filing penalty	105
178	Challenge to student loan shortfall penalty	105
179	Person who may make challenge	105
180	Commissioner's decision on challenges	105

Part 5

Matters of general application and miscellaneous matters

Subpart 1—Matters of general application

181	Annual administration fee	106
182	Tax year other than 12 months due to change in balance date	106
183	Limit on repayment obligation for pay period or tax year	106
184	Payment date not otherwise specified	107
185	Recovery of un-compounded late payment interest and unpaid amount	107
186	Date on which deductions and payments treated as being made and credited	108
187	Satisfaction of requirements to pay obligations and penalties	108
188	Order in which deductions and payments offset against borrower's consolidated loan balance	110
189	Order in which identified payments are offset against borrower's consolidated loan balance	111
190	Cancellation of interest if consolidated loan balance repaid early	111
191	Write-off of consolidated loan balance	112
192	Associated matters unwound if position changed	112
193	Manner of making refunds	113
194	Appropriation of refunds	113
195	Loan advances and other information may be altered	113
196	Return and assessment provisions of Tax Administration Act 1994 and Income Tax Act 2007 to apply to this Act	113

Subpart 2—Miscellaneous matters

Interaction with loan contracts and other enactments

197	This Act overrides loan contracts	114
198	Loan contract enforceable against minor	114

Student Loan Scheme Bill

199	Student loan contracts are not credit contracts	114
	<i>Disclosure of information</i>	
200	Disclosure of information between authorised persons	115
201	Disclosure of information between Inland Revenue Department and New Zealand Customs Service for information-matching purposes	117
202	Power of Commissioner to access arrival or departure information	117
	<i>Informing and notifying under this Act</i>	
203	Meaning of inform	118
204	Meaning of notify	118
205	Meaning of notify a person in writing	119
206	Meaning of formally notify	119
207	Notice requirements of Tax Administration Act 1994 do not apply	120
	<i>Regulations</i>	
208	Regulations	120
209	Transitional regulations	121
210	Application of Regulations (Disallowance) Act 1989 and Acts and Regulations Publication Act 1989	121
	<i>Savings and transitional provisions</i>	
211	Transitional provisions concerning loan manager and loan advances	121
212	Early applications and issue of certificates for transition to this Act	121
213	Savings and transitional provisions	122
	<i>Consequential amendments and repeals</i>	
214	Amendments to Student Loan Scheme Act 1992 and Credit Contracts and Consumer Finance Act 2003	122
215	Amendments to other Acts	122
216	Amendments to other enactments	123
217	Student Loan Scheme Act 1992 repealed	123
218	Student Loan Scheme (Charitable Organisations) Regulations 2006 revoked	123
	Schedule 1	124
	Conditions to borrower being treated as being physically in New Zealand	

Schedule 2	130
Application of PAYE rules for purposes of section 64	
Schedule 3	131
Application of provisional tax rules for purposes of section 79	
Schedule 4	133
Application of provisional tax rules for purposes of section 91	
Schedule 5	135
Transitional provisions concerning loan manager and loan advances	
Schedule 6	136
Savings and transitional provisions	
Schedule 7	142
Amendments to Student Loan Scheme Act 1992 and Credit Contracts and Consumer Finance Act 2003	
Schedule 8	144
Amendments to other Acts	
Schedule 9	151
Amendments to other enactments	

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Student Loan Scheme Act **2010**.

2 Commencement

- (1) **Sections 208 to 210 and 214 and Schedule 7** come into force on the day after the date on which this Act receives the Royal assent. 5
- (2) **Section 212** comes into force on 1 October 2011.
- (3) **Sections 9 to 15, Subpart 4 of Part 4, sections 167 to 169, 179, 180, 195, 203 to 207, and 211, and Schedule 5** come into force on 1 January 2012. 10
- (4) The rest of this Act comes into force on 1 April 2012.

Part 1
Preliminary matters, loan advances, and
New Zealand-based and overseas-based
borrowers

	Subpart 1—Preliminary provisions	5
3	Purposes	
	The purposes of this Act are to—	
	(a) provide for the effective administration of student loans; and	
	(b) provide for the collection of student loan repayments; and	10
	(c) provide transparency about student loans so that bor- rowers understand their obligations for those loans; and	
	(d) encourage borrowers to repay their student loans at the earliest possible time.	15
4	Interpretation	
(1)	In this Act, unless the context otherwise requires,—	
	annual gross income has the same meaning as in section BC 2 of the Income Tax Act 2007, except that it includes non- residents' foreign-sourced income	20
	annual repayment threshold means,—	
	(a) for the tax year commencing on 1 April 2009, \$19,084;	
	(b) for each subsequent tax year, the amount prescribed by regulations	
	base interest rate means the interest rate that applies for a tax year, calculated in accordance with the formula—	25
	$a\% = b\% + 0.74\%$	
	where—	
	a% rounded to the nearest 1 decimal place is the interest rate for the relevant tax year	30
	b% is the average, rounded to the nearest 2 decimal places, of the monthly average 10-year government bond yield rates published by the Reserve Bank of New Zealand for the 5 years ending in December in the year that precedes the relevant tax year	35

borrower means a person who has received or been charged with a loan advance and who has not fully repaid his or her consolidated loan balance

challenge, for the purposes of **subpart 5 of Part 4**, has the same meaning as in section 3(1) of the Tax Administration Act 1994 5

charity means a charitable organisation that is specified in regulations

chief executive means the chief executive of the department that is, with the authority of the Prime Minister, for the time being responsible for the administration of the Social Security Act 1964 10

Commissioner means the Commissioner of Inland Revenue as defined in section 3(1) of the Tax Administration Act 1994

consolidated loan balance means the total amount incurred by a borrower and outstanding under the student loan scheme and this Act, consisting of— 15

- (a) the loan balance; and
- (b) any uncompounded overseas-based interest; and
- (c) any unpaid amount; and 20
- (d) any uncompounded late payment interest

declaration of pre-taxed income means a declaration made in accordance with **section 68**

employer has the same meaning as in paragraphs (a) and (b) of the definition of **employer** in section YA 1 of the Income Tax Act 2007 25

employer or PAYE intermediary means an employer or a person acting as a PAYE intermediary for the employer

extra deduction means a deduction from a borrower's salary or wages made in accordance with a request from a borrower as set out in **section 33(1)(b)** 30

extra pay has the same meaning as in section RD 7 of the Income Tax Act 2007

formally notify has the meaning given to it in **section 206**

income tax has the same meaning as in section YA 1 of the Income Tax Act 2007 35

inform has the meaning given to it in **section 203**

interim payment means the amount that a borrower is obliged to pay towards, as applicable,—

- (a) the next tax year’s pre-taxed repayment obligation in accordance with **sections 76 and 77**; or
- (b) the next tax year’s other income repayment obligation in accordance with **sections 88 and 89** 5

late filing penalty means a penalty imposed under **section 148**

late payment interest means interest that a borrower is liable to pay under **section 129(1)** 10

lender means the Crown acting by and through the Minister who is, with the authority of the Prime Minister, for the time being responsible for the administration of the Social Security Act 1964

loan advance means all— 15

- (a) money that is advanced by the loan manager to a borrower under the student loan scheme; and
- (b) student loan establishment fees charged by the loan manager to the borrower under **section 8**; and
- (c) student loan establishment fees and any other type of fee charged by the loan manager to the borrower in accordance with a loan contract 20

loan advance debt means the debt created by the loan manager making or charging a loan advance to a borrower

loan balance— 25

- (a) means the following to the extent that they have not been repaid or paid:
 - (i) loan advances; and
 - (ii) overseas-based interest that has been compounded under **section 126(4)**; and 30
 - (iii) late filing penalties; and
 - (iv) student loan shortfall penalties; and
 - (v) annual administration fees charged under **section 63D** of the Student Loan Scheme Act 1992 or **section 181** of this Act; but 35
- (b) does not include—
 - (i) uncompounded overseas-based interest; or
 - (ii) an unpaid amount; or

(iii) uncompounded late payment interest

loan contract means any loan agreement or contract entered into by the lender and the borrower under the student loan scheme

loan manager means any person who is appointed by the lender to make, charge, and administer loan advances under the student loan scheme 5

net income has the same meaning as in section YA 1 of the Income Tax Act 2007

New Zealand-based has the meaning given to it in **section 17** 10

New Zealand resident has the same meaning as in section YA 1 of the Income Tax Act 2007

non-resident means a person who is not a New Zealand resident 15

notify has the meaning given to it in **section 204**

notify a person in writing has the meaning given to it in **section 205**

other income, in relation to a tax year, means,—

(a) if a borrower files a return of income for that tax year, the borrower's net income for that tax year other than from salary or wages or pre-taxed income: 20

(b) if a borrower provides details of his or her annual gross income under **section 106** for that tax year, the borrower's annual gross income for that tax year other than from salary or wages or pre-taxed income 25

other income repayment obligation means the repayment obligation of a New Zealand-based borrower for the other income the borrower derives for a tax year, calculated in accordance with **section 84** 30

outstanding obligation means so much of each of the following as has not been paid on or before the due date and has not been decreased, reduced, or written off by the Commissioner:

(a) a remaining repayment: 35

(b) an interim payment:

(c) an overseas-based repayment obligation:

(d) a consolidated loan balance that is payable as a result of a demand made under a loan contract:

- (e) an amount that must be paid by a borrower in accordance with a written notification under **section 47**:
- (f) a late filing penalty:
- (g) a student loan shortfall penalty
- overseas-based** has the meaning given to it in **section 18** 5
- overseas-based interest** means interest that a borrower is liable to pay under **section 125(1)**
- overseas-based repayment obligation** means the repayment obligation of an overseas-based borrower under **subpart 4 of Part 2** 10
- pay period**, for a borrower who receives a payment of salary or wages, means the period for which that payment is payable
- PAYE intermediary** has the same meaning as in section YA 1 of the Income Tax Act 2007
- PAYE rules** has the same meaning as in section YA 1 of the 15
Income Tax Act 2007
- pre-taxed income** means annual gross income derived from 1
or more of the following:
- (a) interest, as defined in section YA 1 of the Income Tax Act 2007: 20
- (b) a dividend, as defined in sections CD 3 to CD 20 of the Income Tax Act 2007:
- (c) a taxable Māori authority distribution, as defined in section HF 7 of the Income Tax Act 2007:
- (d) a personal service rehabilitation payment, as defined in 25
section YA 1 of the Income Tax Act 2007:
- (e) salary or wages from employment as a casual agricultural employee, as defined in section YA 1 of the Income Tax Act 2007:
- (f) salary or wages from employment as an election day 30
worker, as defined in section YA 1 of the Income Tax Act 2007
- pre-taxed repayment obligation** means the repayment obligation of a New Zealand-based borrower for the pre-taxed income the borrower derives for a tax year, calculated in accordance with **section 71 or 72** 35

primary employment earnings has the same meaning as in section 3(1) of the Tax Administration Act 1994, except that it—

- (a) includes an extra pay paid to the borrower in the pay period; but 5
- (b) does not include—
 - (i) salary or wages from employment as a casual agricultural employee, as defined in section YA 1 of the Income Tax Act 2007:
 - (ii) salary or wages from employment as an election day worker, as defined in section YA 1 of the Income Tax Act 2007 10

provisional tax has the same meaning as in section YA 1 of the Income Tax Act 2007

provisional tax rules has the same meaning as in section YA 1 of the Income Tax Act 2007 15

regulations means regulations made under this Act

remaining repayment means the amount that a borrower is obliged to pay towards, as applicable,—

- (a) a pre-taxed repayment obligation in accordance with **sections 74 and 75:** 20
- (b) an other income repayment obligation in accordance with **sections 86 and 87**

repayment obligation means the requirements of so much of the following as applies to a borrower for a particular tax year: 25

- (a) salary or wage deductions:
- (b) pre-taxed repayment obligation:
- (c) other income repayment obligation:
- (d) overseas-based repayment obligation

repayment percentage means 10% or any other rate prescribed by regulations 30

return of income means a return of income required under section 33 of the Tax Administration Act 1994

salary or wage deduction means a deduction from a New Zealand-based borrower's salary or wages in accordance with **subpart 1 of Part 2**, but does not include an extra deduction 35

salary or wages has the same meaning as in section RD 5 of the Income Tax Act 2007, except that it—

- (a) includes an extra pay; but
- (b) does not include salary or wages from employment as—
 - (i) a casual agricultural employee, as defined in section YA 1 of the Income Tax Act 2007; or
 - (ii) an election day worker, as defined in section YA 1 of the Income Tax Act 2007

secondary employment earnings has the same meaning as in section 3(1) of the Tax Administration Act 1994, except that it—

- (a) includes an extra pay; but
- (b) does not include—
 - (i) salary or wages from employment as a casual agricultural employee, as defined in section YA 1 of the Income Tax Act 2007;
 - (ii) salary or wages from employment as an election day worker, as defined in section YA 1 of the Income Tax Act 2007

significant over-deduction means a salary or wage deduction, from a borrower who does not derive other income in the tax year in which the deduction is made, that—

- (a) is more than the amount that is required to be deducted in accordance with **subpart 1 of Part 2**; and
- (b) exceeds the threshold determined by the Commissioner in accordance with **section 57(1)**

significant under-deduction means a salary or wage deduction that—

- (a) either—
 - (i) is required to be made in accordance with **subpart 1 of Part 2** but is not made; or
 - (ii) is less than the amount that is required to be deducted in accordance with **subpart 1 of Part 2**; and
- (b) exceeds the threshold determined by the Commissioner in accordance with **section 57(1)**

special deduction rate means a special deduction rate specified in a special deduction rate certificate that is issued in relation to a borrower under—

- (a) **section 39** (special deduction rate certificate for unused repayment threshold); or 5
- (b) **section 94** (special deduction rate certificate for lower repayment obligation); or
- (c) **section 140** (special deduction rate certificate for hardship relief)

student loan means any loan assistance provided to a borrower by means of a loan contract 10

student loan scheme means the scheme established by the Crown on 1 January 1992 to provide loan assistance to tertiary students, as amended from time to time

student loan shortfall penalty means a student loan shortfall penalty imposed on a borrower by the Commissioner under **section 152** 15

tax file number has the same meaning as in section YA 1 of the Income Tax Act 2007

tax year has the same meaning as in section YA 1 of the Income Tax Act 2007 20

uncompounded late payment interest means any late payment interest that—

- (a) has been charged in relation to an unpaid amount under **section 131(2)**; but 25
- (b) has not been compounded under **section 131(4)**

uncompounded overseas-based interest means any overseas-based interest that—

- (a) has been charged in relation to an overseas-based borrower under **section 126(2)**; but 30
- (b) has not been compounded under **section 126(4)**

unpaid amount means the aggregate amount of a borrower's outstanding obligations and, if applicable, any late payment interest that has been compounded under **section 131(4)**.

(2) A reference to a borrower— 35

- (a) **estimating his or her pre-taxed repayment obligation** is a reference to a borrower making a fair and reasonable estimate of his or her pre-taxed repayment obli-

gation for a tax year in accordance with section RC 7 of the Income Tax Act 2007, as applied by **section 79 and Schedule 3** of this Act; and

- (b) **estimating his or her other income repayment obligation** is a reference to a borrower making a fair and reasonable estimate of his or her other income repayment obligation for a tax year in accordance with section RC 7 of the Income Tax Act 2007, as applied by **section 91 and Schedule 4** of this Act.

Compare: 1992 No 141 ss 2, 38AE(1)(b)

5 Application of Act

- (1) This Act applies—

- (a) to all persons who—
- (i) are borrowers under the Student Loan Scheme Act 1992 on the close of 31 March 2012; or
 - (ii) apply for a student loan on or after 1 April 2012; or
 - (iii) are borrowers under this Act; and
- (b) to all student loans (regardless of when they were entered into) on 1 April 2012 in relation to the tax year starting on 1 April 2012 and every subsequent year; and
- (c) to liabilities to repay student loans for the tax year starting on 1 April 2012 and every subsequent year; and
- (d) to income derived by a borrower on or after 1 April 2012; and
- (e) to actions or omissions that occur on or after 1 April 2012 in relation to a matter under this Act.

- (2) However, regulations made under **section 209, sections 211 to 213, and Schedules 5 and 6** override **subsection (1)**.

Compare: 1992 No 141 s 1(3)

6 Application of Act to bonded scholarships

- (1) An amount repayable under a bonded scholarship (the **default amount**), along with interest payable in accordance with the scholarship agreement, may be recovered under this Act as if—
- (a) the default amount were a loan advance; and

- (b) the recipient of the scholarship were a borrower; and
(c) the scholarship agreement were a loan contract.
- (2) Despite any enactment or rule of law, if a provision in an agreement for a bonded scholarship conflicts with this section, this section prevails. 5
- (3) In this section, **bonded scholarship** means an allowance or agreement that is declared under section 307AC of the Education Act 1989 to be a bonded scholarship.
Compare: 1992 No 141 s 2A
- 7 Act binds Crown** 10
This Act binds the Crown.
Compare: 1992 No 141 s 3
- Subpart 2—Student loan establishment fee
and transfer of information and loan advance
debts from loan manager to Commissioner 15
Student loan establishment fee
- 8 Student loan establishment fee**
A student loan establishment fee of \$60 (or any other amount prescribed by regulations) must be charged by the loan manager to a borrower each time the borrower enters into a loan contract after 31 March 2012. 20
- Transfer of information and loan advance debts
from loan manager to Commissioner*
- 9 Purposes of sections 10 to 12** 25
The purposes of **sections 10 to 12** are to authorise the transfer of information between the loan manager and the Commissioner so as to—
- (a) enable the Commissioner to confirm the identity of a person who applies for a student loan; and
(b) enable the Commissioner to inform borrowers about their consolidated loan balance; and 30
(c) facilitate the transfer of loan advance debts from the loan manager to the Commissioner; and

- (d) enable the collection of borrowers' consolidated loan balances.

10 Loan manager must notify Commissioner of persons who apply for student loan

- (1) The loan manager must notify the Commissioner of all persons who apply for a student loan. 5
- (2) That notification must include the following information:
- (a) the applicant's full name; and
 - (b) the applicant's tax file number; and
 - (c) the applicant's date of birth; and 10
 - (d) any further information specified in regulations.
- (3) 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 15
 - (b) the form in which that notification must be supplied; and
 - (c) the method by which that notification must be supplied.
- (4) **Subsection (3)(b) and (c) apply despite section 204.** 20
Compare: 1992 No 141 s 62A(2), (3)

11 Loan manager must notify Commissioner of borrower's details

- (1) The loan manager must notify the Commissioner—
- (a) of every person who becomes a borrower; and
 - (b) if the loan manager becomes aware that any of the information provided by the loan manager is incorrect or has changed. 25
- (2) That notification must—
- (a) include the following information: 30
 - (i) the borrower's full name; and
 - (ii) the borrower's tax file number; and
 - (iii) the borrower's date of birth; and
 - (iv) a current postal address for the borrower; and
 - (v) a current electronic address for the borrower (if the borrower has one); and 35

- (vi) any further information specified in regulations;
and
- (b) if applicable, indicate which information has been corrected or changed.
- (3) The Commissioner and the loan manager may, for the purpose of this section, determine by written agreement between them— 5
- (a) the frequency with which that notification must be supplied; and
- (b) the form in which that notification must be supplied; and 10
- (c) the method by which that notification must be supplied.
- (4) **Subsection (3)(b) and (c)** apply despite **section 204**.
Compare: 1992 No 141 s 62A(2), (3)
- 12 Loan manager must notify Commissioner of loan advances made or charged to borrowers** 15
- (1) The loan manager must notify the Commissioner of each loan advance that is made or charged to each borrower.
- (2) The Commissioner and the loan manager may, for the purpose of this section, determine by written agreement between them— 20
- (a) the frequency with which that notification must be supplied; and
- (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 204**. 25
Compare: 1992 No 141 ss 5, 62A(3)
- 13 Commissioner must inform borrowers about consolidated loan balance**
- (1) The Commissioner—
- (a) must inform borrowers about their consolidated loan balances as soon as practicable after the loan manager has notified the Commissioner in accordance with **section 12(1)**; and 30
- (b) must keep that information up to date.
- (2) For the purposes of **subsection (1)**, the Commissioner must provide the following information for each borrower: 35

- (a) details of all loan advances that have been made or charged to the borrower (and that the Commissioner has been notified of in accordance with **section 12(1)**); and
 - (b) details of all repayments that have been made; and
 - (c) any other information that the Commissioner considers appropriate. 5
- (3) The Commissioner must correct that information if the Commissioner becomes aware that any of the information is incorrect or has changed. 10
- Compare: 1992 No 141 ss 5, 13(1), 43(1)

14 Loan manager must transfer loan advance debts to Commissioner

- (1) The loan manager must, as soon as practicable, transfer all loan advance debts that relate to a borrower to the Commissioner.
 - (2) However, no loan advance debt may be transferred to the Commissioner before— 15
 - (a) a statement of loan advances for that loan advance debt has been given to the borrower in accordance with **section 15**; and
 - (b) the date of transfer specified in the statement of loan advances for that loan advance debt in accordance with **section 15(2)(e)** has passed; and 20
 - (c) if an objection to the details of the loan advance is made in accordance with **section 160**, the objection procedures under **sections 161 to 166** have come to an end. 25
- Compare: 1992 No 141 ss 4, 5, 12

15 Loan manager must notify borrowers of loan advance debts to be transferred to Commissioner

- (1) This section applies if the loan manager— 30
 - (a) has made or charged 1 or more loan advances to a borrower; and
 - (b) proposes to transfer the loan advance debt of the borrower to the Commissioner.
- (2) The loan manager must give the borrower a statement of loan advances that— 35
 - (a) states that the loan manager is proposing to transfer the borrower's loan advance debt to the Commissioner; and

- (b) sets out the details of the loan advances that will be included in the transfer; and
 - (c) sets out the borrower's right, under **sections 160 to 165**, to object to the details of a loan advance made or charged to the borrower; and 5
 - (d) states the date on or before which an objection by a borrower must be received by the loan manager, which must be at least 31 days after the date on which the statement of loan advances is given to the borrower; and
 - (e) states the date on which it is proposed that the transfer will occur, which must be at least 3 days after the date specified in accordance with **paragraph (d)**. 10
- (3) The loan manager must give the statement of loan advances by notifying the borrower in writing. 15
- Compare: 1992 No 141 ss 5, 6

Subpart 3—Determining whether borrowers are New Zealand-based or overseas-based

- 16 Overview of being New Zealand-based or overseas-based**
- (1) This subpart specifies when a borrower is treated as being New Zealand-based and when a borrower is treated as being overseas-based. 20
 - (2) Under **Part 2**, different repayment obligations apply to a borrower depending upon whether that borrower is New Zealand-based or overseas-based.
 - (3) Under **subpart 1 of Part 4**, a borrower is liable to pay overseas-based interest for each day that that borrower is overseas-based. 25
 - (4) This section is intended as a guide only.
- 17 Meaning of New Zealand-based**
- (1) The following persons are treated as being New Zealand-based: 30
 - (a) a borrower who is physically in New Zealand for a period of 183 consecutive days:
 - (b) a borrower who—
 - (i) is physically absent from New Zealand for a period, or aggregated periods, of no more than 35

- 31 days during a period of 183 consecutive days;
but
- (ii) is physically in New Zealand for the balance of that 183-day period, including the first day of that period. 5
- (2) A period of 183 consecutive days may include any days before the day on which a person becomes a borrower.
- (3) For the purposes of **subsection (1)**, a borrower is treated as being New Zealand-based—
- (a) from the later of— 10
- (i) the day on which he or she became a borrower; and
- (ii) the first day of the 183-day period; and
- (b) for each subsequent day.
- (4) A borrower ceases to be New Zealand-based if that borrower becomes overseas-based. 15
- Compare: 1992 No 141 s 38AB(1), (2)

18 Meaning of overseas-based

- (1) The following persons are treated as being overseas-based:
- (a) a borrower who is not treated as being New Zealand-based under **section 17**: 20
- (b) a New Zealand-based borrower who is physically absent from New Zealand for a period of 184 consecutive days:
- (c) a New Zealand-based borrower who— 25
- (i) is physically in New Zealand for a period, or aggregated periods, of 31 days or less during a period of 184 consecutive days; and
- (ii) is physically absent from New Zealand for the balance of that 184-day period, including the first day of that period. 30
- (2) A period of 184 consecutive days may include any days before the day on which a person becomes a borrower.
- (3) For the purposes of **subsection (1)**, a borrower is treated as being overseas-based— 35
- (a) from the later of—

- (i) the day on which he or she became a borrower; and
 - (ii) the first day of the 184-day period; and
 - (b) for each subsequent day.
- (4) A borrower ceases to be overseas-based if that borrower becomes New Zealand-based. 5
- Compare: 1992 No 141 s 38AC(1)–(3)

19 Treatment of partial days

For the purposes of **sections 17 and 18**, if a borrower is physically in New Zealand for part of a day, that borrower is treated as— 10

- (a) being physically in New Zealand for the whole of that day; and
- (b) not being physically absent from New Zealand for any part of that day. 15

Compare: 1992 No 141 s 38AD

Certain borrowers may be treated as being physically in New Zealand

20 Commissioner may treat certain borrowers as being physically in New Zealand 20

- (1) On the application of a borrower, the Commissioner may, for the purposes of **sections 17 to 19** and if the Commissioner considers that it is fair and reasonable to do so, treat a borrower as being physically in New Zealand if the principal reason that the borrower is not, was not, or will not be physically in New Zealand is because— 25
- (a) the borrower is in the service in any capacity of the Government of New Zealand; or
 - (b) the borrower is working as a volunteer or for token payment for a charity; or 30
 - (c) of an unexpected delay; or
 - (d) of an unplanned personal absence; or
 - (e) the borrower is required to be overseas because of the borrower's employment or occupation; or
 - (f) the borrower is accompanying his or her spouse, civil union partner, or de facto partner overseas; or 35

- (g) the borrower is undertaking study that meets the requirements of **clause 7 of Schedule 1**; or
- (h) the borrower is undertaking study that meets the requirements of **clause 8 of Schedule 1**; or
- (i) the borrower is undertaking study that meets the requirements of **clause 9 of Schedule 1**; or 5
- (j) the borrower is in 1 or more of Niue, the Cook Islands, Tokelau, or the Ross Dependency.
- (2) **Subsection (1)(b) to (j)** are subject to the conditions set out in, as applicable, **clauses 2 to 10 of Schedule 1**. 10
- (3) **Subsection (1)(a) to (f)** apply only to days on or after 1 April 2006.
- (4) **Subsection (1) (g), (h), and (i)** apply only to days on or after 1 April 2007.
- (5) **Subsection (1)(j)** applies only to days on or after 1 April 15 2009.
- Compare: 1992 No 141 ss 38AE(1), (3A)–(7A), (9), 38AJ(1), 38AJA(1)–(3), (7)

21 Method of making application and provision of evidence and information 20

A borrower who applies to the Commissioner to be treated as being physically in New Zealand under **section 20(1)** must—

- (a) make that application by notifying the Commissioner; and
- (b) provide the evidence or information that is required by **clauses 2 to 10 of Schedule 1**, as applicable, by notifying the Commissioner in a manner acceptable to the Commissioner; and 25
- (c) provide any other evidence or information that the Commissioner may reasonably require in order to establish whether one of the grounds for the grant of that application applies by notifying the Commissioner in a manner acceptable to the Commissioner. 30

Compare: 1992 No 141 ss 38AE(8), 38AJ(2)(c), 38AJA(4)(b)

22 Commissioner must notify borrower and specify period or conditions when granting application

If the Commissioner treats a borrower as being physically in New Zealand under **section 20(1)**, the Commissioner must—

- (a) notify the borrower in writing; and 5
- (b) specify either—
 - (i) the start and end dates for the period for which the borrower is treated as being physically in New Zealand; or
 - (ii) any conditions that must apply or be met in order for the borrower to be treated as being physically in New Zealand. 10

Compare: 1992 No 141 ss 38AE(2), 38AIA(2), 38AJ(3), 38AJA(5)

Borrowers must notify Commissioner of absence from and return to New Zealand 15

23 Borrower to notify Commissioner of absence from New Zealand of 184 or more days

- (1) A borrower who intends to be, or will be, physically absent from New Zealand for a period of 184 or more consecutive days must, before leaving New Zealand, notify the Commissioner of the following matters: 20
 - (a) 1 of the following ways for the Commissioner to notify the borrower:
 - (i) a permanent overseas postal address; or
 - (ii) a New Zealand postal address; or 25
 - (iii) the name and New Zealand postal address of a person empowered to act for the borrower; and
 - (b) an electronic means of communication prescribed by the Commissioner by which the Commissioner may notify the borrower; and 30
 - (c) any information that the Commissioner reasonably requires in order to determine—
 - (i) the borrower's repayment obligation (if any); and
 - (ii) whether the borrower is liable to pay overseas-based interest. 35
- (2) A borrower who is physically absent from New Zealand must notify the Commissioner of the matters required by **subsection (1)**, as well as the date on which the borrower left New

Zealand, as soon as practicable after the earlier of the following:

- (a) the borrower becomes overseas-based:
- (b) the borrower becomes aware that he or she will be overseas-based. 5

Compare: 1992 No 141 s 37

24 Borrower to notify Commissioner of return to New Zealand of more than 183 days

- (1) An overseas-based borrower who is physically in New Zealand must comply with **subsection (2)** as soon as practicable after the earlier of the following: 10

- (a) the borrower becomes New Zealand-based:
- (b) the borrower becomes aware that he or she will be New Zealand-based.

- (2) The borrower must notify the Commissioner of— 15

- (a) the date on which the borrower returned to New Zealand; and
- (b) any other information that the Commissioner may reasonably require in order to establish whether the borrower is New Zealand-based. 20

Compare: 1992 No 141 s 38

Part 2

Repayment obligations of borrowers

25 Borrower's liability to repay consolidated loan balance

- (1) Each borrower must repay his or her consolidated loan balance in accordance with this Act and the loan contract. 25

- (2) **Section 197** applies if there is an inconsistency between this Act and the loan contract.

Compare: 1992 No 141 ss 13(2), 63

26 Repayment obligations that apply to New Zealand-based borrowers and overseas-based borrowers 30

- (1) If a borrower—
 - (a) is New Zealand-based, the repayment obligations in **subparts 1 to 3** apply to that borrower:

- (b) is overseas-based, the repayment obligations in **subpart 4** apply to that borrower.
- (2) **Subpart 5** applies to a borrower who—
- (a) is New Zealand-based but is a non-resident; or
- (b) is both New Zealand-based and overseas-based during a tax year. 5
- 27 Interrelationship between subparts 1 to 3**
- (1) This section applies to New Zealand-based borrowers.
- (2) If a borrower derives only salary or wages, **subpart 1** applies to that borrower. 10
- (3) If a borrower derives only pre-taxed income, **subpart 2** applies to that borrower.
- (4) If a borrower derives only other income, **subpart 3** applies to that borrower.
- (5) If a borrower derives salary or wages, and pre-taxed income, **subparts 1 and 2** both apply to the borrower. 15
- (6) If a borrower derives salary or wages, and other income, **subparts 1 and 3** both apply to the borrower.
- (7) If a borrower derives pre-taxed income and other income, **subpart 3** applies to the borrower (and **subpart 2** does not apply). 20
- (8) If a borrower derives salary or wages, pre-taxed income, and other income, **subparts 1 and 3** both apply to the borrower (and **subpart 2** does not apply).
- (9) This section is intended as a guide only.
- Subpart 1—New Zealand-based borrowers’ repayment obligations for salary or wages 25
- 28 Application of this subpart**
- This subpart applies to New Zealand-based borrowers who derive salary or wages.

*Repayment codes***29 Repayment codes for New Zealand-based borrowers who derive salary or wages**

- (1) For the purpose of the application of the PAYE rules under **section 64**, the repayment code of all New Zealand-based borrowers who derive salary or wages is either— 5
- (a) “SL”; or
 - (b) “STC”.
- (2) The repayment code “STC” applies to a borrower only if— 10
- (a) a special deduction rate applies to the borrower; and
 - (b) the borrower’s employer is notified in writing that the special deduction rate applies to the borrower.
- (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, the repayment code “STC” may be combined with another code applying under that Act. 15
- Compare: 1992 No 141 s 17B; 1994 No 166 s 24B(4)

30 Borrowers with “SL” repayment code must notify employers

- (1) A borrower whose repayment code is “SL” must notify his or her employer in a manner acceptable to the Commissioner. 20
- (2) The borrower must notify his or her employer as soon as practicable—
- (a) after the later of—
 - (i) the time at which the borrower becomes an employee of the employer; and 25
 - (ii) the time at which the borrower becomes a borrower; and
 - (b) if a special deduction rate ceases to apply to the borrower; and 30
 - (c) if the borrower wants a special deduction rate to cease to apply to him or her.

Compare: 1992 No 141 s 18

*Salary or wage deductions and extra deductions***31 Employer or PAYE intermediary must make salary or wage deductions from salary or wages**

- (1) This section applies if—
- (a) a borrower has notified his or her employer under **section 30**; or 5
 - (b) the Commissioner has notified a borrower’s employer or PAYE intermediary that the repayment code that should be applied to the borrower’s salary or wages is “SL”; or 10
 - (c) a borrower’s employer has been notified in writing that a special deduction rate applies to the borrower.
- (2) Each time the employer or PAYE intermediary pays an amount to the borrower that is salary or wages for a pay period, the employer or PAYE intermediary must make a deduction from that amount in accordance with **section 32(1) or (2)**. 15
- Compare: 1992 No 141 s 19(1)

32 Deduction rates that apply to borrower

- (1) If a borrower’s repayment code is “SL”, deductions must be made at the rate of 10 cents in each complete dollar from— 20
- (a) so much of the primary employment earnings paid to the borrower as exceeds the pay period repayment threshold; and
 - (b) any secondary employment earnings paid to the borrower. 25
- (2) If a borrower’s repayment code is “STC”, deductions must be made at the special deduction rate specified in the applicable special deduction rate certificate from—
- (a) the primary employment earnings paid to the borrower; and 30
 - (b) any secondary employment earnings paid to the borrower.
- (3) If the repayment percentage is changed by regulations, the deduction rate in **subsection (1)** is changed accordingly.
- (4) In this section, **pay period repayment threshold** means,— 35

- (a) if the salary or wages are paid weekly, an amount equal to one fifty-second of the annual repayment threshold; and
 - (b) if the salary or wages are paid fortnightly, twice the amount specified in **paragraph (a)**; and 5
 - (c) if the salary or wages are paid three-weekly, 3 times the amount specified in **paragraph (a)**; and
 - (d) if the salary or wages are paid four-weekly, 4 times the amount specified in **paragraph (a)**; and
 - (e) if the salary or wages are paid monthly, an amount equal to one-twelfth of the annual repayment threshold; and 10
 - (f) if the salary or wages are paid other than as set out in **paragraphs (a) to (e)**, an amount determined by the Commissioner to reflect the pay period.
- Compare: 1992 No 141 ss 19(2), 20 15

33 Employer or PAYE intermediary must make further deductions from salary or wages

- (1) This section applies if a borrower’s employer or PAYE intermediary—
 - (a) has received an additional deduction rate notice that has been issued in relation to the borrower under **section 43(2)**; or 20
 - (b) has been requested by the borrower to make extra deductions at an additional deduction rate or of a specified amount. 25
- (2) Each time the employer or PAYE intermediary pays an amount to the borrower that is salary or wages for a pay period, the employer or PAYE intermediary must, in addition to the deductions under **section 32**, make a deduction from that amount—
 - (a) at the additional deduction rate specified in the notice; 30
 - or
 - (b) at the additional deduction rate, or of the amount, requested by the borrower.
- (3) Deductions made in accordance with **subsection (2)** must have the tax code “SLADR” applied to them. 35
- (4) Deductions made in accordance with **subsection (2)(b)** must continue to be made until the borrower notifies his or her employer or PAYE intermediary otherwise.

- (5) Nothing in this section limits **section 31 or 32**.

Compare: 1992 No 141 s 19(1), (2)

34 Salary or wage deductions from income-tested benefits

- (1) This section applies if—

- (a) a borrower receives an income-tested benefit for a pay period; and 5
 (b) the equivalent gross amount of that income-tested benefit exceeds the pay period repayment threshold (calculated in accordance with **section 32(4)**) for that pay period. 10

- (2) The chief executive—

- (a) must not make a deduction from the income-tested benefit in accordance with **section 32**; and
 (b) must make a deduction from the income-tested benefit of an amount determined by the Commissioner in consultation with the chief executive. 15

- (3) This section overrides **section 31(2)**.

- (4) In this section,—

equivalent gross amount means the sum of—

- (a) the amount of an income-tested benefit; and 20
 (b) any amount that was paid to the Commissioner in accordance with section 83A of the Social Security Act 1964 for income tax payable on that income-tested benefit

income-tested benefit means an income-tested benefit as defined in section YA 1 of the Income Tax Act 2007. 25

Compare: 1992 No 141 s 23

*Unused repayment threshold may be allocated
to secondary employment earnings*

35 Definitions relating to repayment thresholds 30

In **sections 36 to 42**,—

estimated salary or wages, in relation to a quarter, means the amount determined in accordance with **section 37**

quarter means a period of 3 consecutive calendar months that ends with the last day of March, June, September, or December 35

unused repayment threshold for a pay period means the amount determined in accordance with **section 38**.

36 Application for unused repayment threshold to be allocated to secondary employment earnings

- (1) **Subsection (2)** applies to a New Zealand-based borrower 5
who, for a quarter,—
- (a) has 1 or more sources of secondary employment earnings; and
 - (b) has an unused repayment threshold for a pay period that is greater than zero; and 10
 - (c) does not derive other income.
- (2) The borrower may apply to the Commissioner for the borrower's unused repayment threshold for a pay period to be allocated to the borrower's secondary employment earnings.
- (3) The borrower must apply by notifying the Commissioner, in a 15
manner acceptable to the Commissioner, of—
- (a) the borrower's estimated salary or wages; and
 - (b) any other information requested by the Commissioner.

37 Determining estimated salary or wages

- (1) A borrower must determine his or her estimated salary or 20
wages by making a fair and reasonable estimate of the total income the borrower will derive for the relevant quarter from each of the following:
- (a) the borrower's primary employment earnings;
 - (b) the borrower's secondary employment earnings. 25
- (2) The borrower must—
- (a) take reasonable care in making the estimate; and
 - (b) revise the estimate if, at some time in the quarter, the amount estimated is no longer fair and reasonable.

Compare: 2007 No 97 s RC 7(2), (4)

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38 Calculating borrower's unused repayment threshold for pay period

A borrower's **unused repayment threshold for a pay period** is calculated in accordance with the formula—

$$a = \frac{b - c}{d}$$

where—

- a is the unused repayment threshold for a pay period
- b is the annual repayment threshold for the relevant tax year divided by 4 5
- c is the borrower's estimated primary employment earnings in the relevant quarter, as notified to the Commissioner in accordance with **section 36(3) or 41(2)(a)**
- d is the number of the borrower's pay periods in the quarter for his or her primary employment earnings. 10

39 Special deduction rate certificate for unused repayment threshold

Upon receiving an application in accordance with **section 36**, the Commissioner may issue a special deduction rate certificate that, in relation to the borrower's secondary employment earnings,— 15

- (a) specifies a special deduction rate that reflects the borrower's unused repayment threshold for a pay period; and 20
- (b) specifies the period for which the special deduction rate is to apply to the borrower; and
- (c) requires the borrower's employer to make salary or wage deductions at the special deduction rate. 25

Compare: 1992 No 141 s 20A(2)

40 Issue and application of special deduction rate certificate

- (1) If the Commissioner issues a special deduction rate certificate under **section 39**, the Commissioner must give a copy of the certificate to the borrower. 30
- (2) The special deduction rate certificate—
 - (a) revokes all other special deduction rate certificates previously issued in relation to the borrower under **section 39 or 94**; and

- (b) does not limit the application of **sections 139 to 145** (concerning hardship relief).

Compare: 1992 No 141 s 20A(5)–(7)

41 Ongoing obligations of borrower to review and notify

- (1) The borrower— 5
- (a) must review an estimate he or she made under **section 37** before the end of each quarter; and
- (b) may revise an estimate he or she made under **section 37** at any time.
- (2) The borrower must notify the Commissioner in a manner acceptable to the Commissioner, and provide details, if— 10
- (a) the borrower revises an estimate he or she made under **section 37**; or
- (b) any of the circumstances set out in **section 36(1)** change; or 15
- (c) the borrower ends any employment or starts any new employment.

Compare: 2007 No 97 s RC 7(3)

42 Time when special deduction rate ceases to apply

- The special deduction rate applies until the earlier of— 20
- (a) the end of the period specified in the special deduction rate certificate; or
- (b) the date on which the Commissioner notifies the employer otherwise; or
- (c) the date on which the borrower notifies the employer otherwise. 25

Compare: 1992 No 141 s 20A(4)

Commissioner may issue additional deduction rate notice to recover amounts that remain unpaid 30

43 Commissioner may issue additional deduction rate notice

- (1) This section applies if—
- (a) there is a significant under-deduction in relation to a borrower in the current tax year or in any prior tax year that the Commissioner reasonably believes has occurred because of— 35

- (i) an error by the borrower's employer; or
 - (ii) an error or omission by the borrower; or
 - (b) a borrower has—
 - (i) an unpaid amount; or
 - (ii) uncompounded late payment interest. 5
 - (2) The Commissioner may issue an additional deduction rate notice that—
 - (a) specifies the additional deduction rate that is to apply to the borrower (in addition to the rate that applies under **section 32(1) or (2)**); and 10
 - (b) specifies the total amount payable by the borrower at the additional deduction rate; and
 - (c) requires some or all of the borrower's employers or PAYE intermediaries to make deductions from the borrower's salary or wages (in addition to the deductions under **section 32**) at the additional deduction rate until those deductions equal the amount specified in accordance with **paragraph (b)**. 15
 - (3) The additional deduction rate specified under **subsection (2)(a)** must be 5% or less. 20
 Compare: 1992 No 141 s 20A(1), (2)
- 44 Procedures for issue of additional deduction rate notice**
- (1) If the Commissioner issues an additional deduction rate notice under **section 43(2)**, the Commissioner must—
 - (a) give that notice to the employers or PAYE intermediaries of the borrower to whom the notice applies; and 25
 - (b) notify the borrower in writing—
 - (i) that an additional deduction rate notice has been issued in relation to the borrower under **section 43(2)**; and 30
 - (ii) of all of the information in that notice.
 - (2) An additional deduction rate notice issued in relation to a borrower revokes an additional deduction rate notice previously issued in relation to the borrower.
 - (3) Nothing in **section 43** or this section limits the application of **sections 139 to 145** (concerning hardship relief). 35
 Compare: 1992 No 141 s 20A(3), (5)–(7)

45 Time when additional deduction rate ceases to apply

The additional deduction rate applies until the earlier of the date on which—

- (a) the Commissioner notifies the borrower's employers or the PAYE intermediaries in writing otherwise; or 5
- (b) the deductions made from the borrower's salary or wages in accordance with the additional deduction rate notice equal the amount specified in the notice in accordance with **section 43(2)(b)**.

Compare: 1992 No 141 s 20A(4) 10

Further means of recovering amounts that remain unpaid

46 Assessment of salary or wage deductions that ought to have been made

- (1) This section applies if— 15
 - (a) there is a significant under-deduction in relation to a borrower in the current tax year or in any prior tax year that the Commissioner reasonably believes has occurred because—
 - (i) of a deliberate action or omission by the borrower; or 20
 - (ii) the borrower has prevented a salary or wage deduction from being made; or
 - (b) the Commissioner has been unable to obtain deductions from a borrower's salary or wages in accordance with an additional deduction rate notice issued under **section 43(2)** for the purposes of **section 43(1)(a)**; or 25
 - (c) the Commissioner is satisfied that he or she will be unable to obtain deductions within a reasonable period of time from a borrower's future salary or wages in accordance with an additional deduction rate notice issued under **section 43(2)** for the purposes of **section 43(1)(a)**. 30
- (2) However, this section does not apply if the borrower derives other income within the tax year in question. 35
- (3) The Commissioner may make an assessment in relation to the borrower to determine the salary or wage deductions that ought to have been made for any period.

- (4) In making an assessment under this section, the Commissioner may have regard to any information that the Commissioner considers to be relevant.
- (5) The assessment must be made in accordance with this subpart and the loan contract. 5
- (6) **Section 197** applies if there is an inconsistency between this subpart and the loan contract.
Compare: 1992 No 141 ss 15, 20A(1)

47 Recovery of assessed amounts

- (1) The Commissioner must, as soon as practicable after making an assessment under **section 46**, notify the borrower in writing—
- (a) that an assessment of the borrower has been carried out; and
 - (b) of the amount, if any, that must be paid by the borrower; and 15
 - (c) of the date by which that payment must be made, which must be at least 30 days after the date of the assessment; and
 - (d) that if that amount is not paid by the specified date, then it may be subject to late payment interest (*see section 129(1)*). 20
- (2) The amount specified in accordance with **subsection (1)(b)** must be no greater than the amount the Commissioner considers the borrower should or would have paid under this subpart for the period in question. 25
Compare: 1992 No 141 s 15(4); 1994 No 166 s 44

Exemption from salary or wage deductions for borrowers who are full-time, full-year students

- 48 Borrowers who are eligible for exemption from salary or wage deductions** 30
- (1) **Subsection (2)** applies to a New Zealand-based borrower who, for a tax year (**year A**),—
- (a) is a full-time, full-year student; and
 - (b) reasonably expects that his or her gross income from salary or wages and pre-taxed income for year A will 35

- not exceed the annual repayment threshold for year A;
and
- (c) does not derive other income.
- (2) The borrower may make a declaration in accordance with **section 49** in order to obtain an exemption from future salary or wage deductions in year A. 5
- (3) In this section, **full-time, full-year student** means a borrower who is undertaking a course of study that is, or courses of study that are,—
- (a) of at least 32 weeks in duration in any 52-week period that ends during year A; and 10
- (b) at least 80% of equivalent full-time study, as determined in accordance with the formula used for the purposes of the Education Act 1989.
- 49 Declaration by eligible borrowers for exemption from salary or wage deductions** 15
- A declaration must—
- (a) specify the tax year to which it relates; and
- (b) contain all of the information prescribed by the Commissioner; and 20
- (c) be made by notifying the Commissioner in a manner acceptable to the Commissioner.
- 50 Notice from Commissioner**
- Upon receiving a declaration that complies with **section 49** from a borrower, the Commissioner must— 25
- (a) grant an exemption from salary or wage deductions to the borrower; and
- (b) issue a notice to the borrower that—
- (i) states that an exemption from salary or wage deductions has been granted to the borrower; and 30
- (ii) specifies the period to which the exemption applies; and
- (iii) summarises the effect of **section 51**.

51 Consequences of exemption from salary or wage deductions

- (1) If a borrower's employer is notified in writing that an exemption from salary or wage deductions has been granted to the borrower, then— 5
- (a) the repayment codes “SL” or “STC”, as applicable, cease to apply to the borrower; and
 - (b) nothing in **sections 29 to 32 or 34** applies in relation to the borrower.
- (2) **Subsection (1)(a) and (b)** apply from the later of— 10
- (a) the start date of the period to which the exemption applies, as specified in the notice issued by the Commissioner in accordance with **section 50(b)**; and
 - (b) the date on which the borrower's employer is notified in writing that the exemption has been granted to the borrower. 15
- (3) The grant of an exemption from salary or wage deductions to a borrower does not affect the ability of the Commissioner to issue an additional deduction rate notice in relation to that borrower under **section 43(2)**. 20

52 Withdrawal of declaration

A borrower may withdraw a declaration under **section 49** by—

- (a) notifying the Commissioner; and
- (b) notifying the borrower's employer. 25

53 Notice of change of circumstances

- (1) A borrower must notify the Commissioner and the borrower's employer, and provide details, as soon as practicable, if— 30
- (a) any of the matters in **section 48(1)** cease to apply to that borrower; or
 - (b) the borrower becomes aware that any of those matters will cease to apply to him or her.
- (2) If the Commissioner becomes aware that any of the matters in **section 48(1)** have ceased, or will cease, to apply to a borrower, the Commissioner may— 35
- (a) notify the borrower in writing; and
 - (b) notify the borrower's employer in writing.

- (3) A notification under **subsection (1) or (2)** must specify the date on which the matters ceased, or will cease, to apply to the borrower.

54 When exemption from salary or wage deductions ceases to apply 5

- (1) **Section 51** ceases to apply in relation to a borrower from the earliest of the following:
- (a) the end of the period specified in the notice:
 - (b) the date on which the borrower withdraws his or her declaration in accordance with **section 52**: 10
 - (c) the date of a change of circumstances as notified to the Commissioner by the borrower under **section 53(1) and (3)**:
 - (d) the date of a change of circumstances as notified to the borrower by the Commissioner under **section 53(2) and (3)**. 15
- (2) From the date on which **section 51** ceases to apply in relation to a borrower,—
- (a) the repayment code “SL” or “STC”, as applicable, applies to the borrower; and 20
 - (b) **sections 29 to 32 and 34** apply in relation to the borrower.

Information and determinations

55 Information to show salary or wage deductions or extra deductions made 25

- (1) The Commissioner may—
- (a) require an employer or PAYE intermediary who is required to make a salary or wage deduction or an extra deduction to provide the Commissioner with any information the Commissioner may reasonably require in order to establish the amount of that deduction; and 30
 - (b) specify the date on or before which that information must be provided.
- (2) The Commissioner must notify the employer or PAYE intermediary in writing of a requirement under **subsection (1)**. 35

- (3) An employer or PAYE intermediary must provide the Commissioner with any information required under **subsection (1)** by notifying the Commissioner, in a manner acceptable to the Commissioner, on or before the date specified by the Commissioner. 5

Compare: 1992 No 141 s 24

56 Commissioner must determine question about amount of salary or wage deductions

- (1) An employer or PAYE intermediary may request the Commissioner to determine any question as to the amount, if any, of salary or wage deductions that ought to be made. 10
- (2) The Commissioner must, as soon as practicable after receiving a request under **subsection (1)**,—
- (a) determine the amount, if any, of salary or wage deductions that ought to be made; and 15
- (b) notify the employer or PAYE intermediary in writing of the Commissioner's determination.
- (3) A request under **subsection (1)** must be made by notifying the Commissioner (*see section 204*). 20

Compare: 1992 No 141 s 22

Significant under-deductions and over-deductions

57 Commissioner determines what is significant under-deduction or significant over-deduction

- (1) The Commissioner must determine the thresholds (which may differ) for what is to be treated as a significant under-deduction or a significant over-deduction. 25
- (2) The Commissioner must exercise his or her discretion under **subsection (1)**—
- (a) in order to maintain the integrity of the student loan scheme; and 30
- (b) having regard to the resources available to the Commissioner.
- (3) A determination under **subsection (1)** may take into account the cumulative effect of 2 or more under-deductions or over-deductions from a borrower's salary or wages. 35

- (4) The Commissioner must, on or before 31 March each year, inform borrowers of the threshold determined by the Commissioner for significant over-deductions for the next tax year.

58 Salary or wage deductions are full and final unless significant error

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- (1) **Subsection (2)** applies if—
- (a) there is an incorrect deduction; and
 - (b) the incorrect deduction is not a significant under-deduction or a significant over-deduction.
- (2) If this subsection applies,—
- (a) the Commissioner must not take corrective action in relation to the incorrect deduction; and
 - (b) the incorrect deduction must be treated as if it was the amount that was required to be deducted from a borrower's salary or wages in accordance with this subpart; and
 - (c) this Act must be interpreted and applied with all necessary modifications in order to give effect to **paragraph (b)**.
- (3) **Subsection (2)** applies despite anything to the contrary.
- (4) In this section, **incorrect deduction** means a salary or wage deduction that—
- (a) is required to be made in accordance with this subpart but is not made; or
 - (b) is less than or more than the amount that is required to be deducted in accordance with this subpart.

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59 Significant over-deduction identified by borrower

- (1) If a borrower reasonably believes that a significant over-deduction was made in relation to him or her, the borrower—
- (a) may request the Commissioner to determine whether a significant over-deduction was made; and
 - (b) must provide any evidence or information that the Commissioner may reasonably require in order to establish whether a significant over-deduction was made.

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- (2) The borrower must make a request under **subsection (1)(a)** within 6 months after the date on which the borrower believes the significant over-deduction was made.
- (3) A request under **subsection (1)(a)** must be made by notifying the Commissioner (*see* **section 204**). 5

60 Commissioner must determine whether significant over-deduction made

If the Commissioner receives a request in accordance with **section 59**, the Commissioner must, as soon as practicable,—

- (a) determine whether a significant over-deduction was made; and 10
- (b) notify the borrower in writing if the Commissioner determines that a significant over-deduction was not made.

61 Procedure if significant over-deduction made 15

- (1) This section applies if the Commissioner—
- (a) identifies that a significant over-deduction has been made in relation to a borrower; or
- (b) determines (in accordance with **section 60**) that a significant over-deduction has been made in relation to a borrower. 20
- (2) The Commissioner must—
- (a) offset the significant over-deduction against the borrower's consolidated loan balance in accordance with **section 188**; and 25
- (b) as soon as practicable, notify the borrower in writing—
- (i) that a significant over-deduction has been made in relation to the borrower; and
- (ii) that the over-deduction has been offset against the borrower's consolidated loan balance in accordance with **section 188**; and 30
- (iii) of the amount of the over-deduction; and
- (iv) that the borrower may choose to receive a refund of the over-deduction (*see* **sections 193 and 194**) by notifying the Commissioner in a manner acceptable to the Commissioner; and 35

- (v) of the time frames within which the borrower must notify the Commissioner if the borrower chooses to receive a refund of the over-deduction.
- (3) If the borrower is New Zealand-based, the borrower must make a choice under **subsection (2)(b)(iv)** within 6 months after the date on which the borrower was notified by the Commissioner of the significant over-deduction. 5
- (4) If the borrower is overseas-based, the borrower must make a choice under **subsection (2)(b)(iv)** within 2 months after the date on which the borrower was notified by the Commissioner of the significant over-deduction. 10
- (5) A choice made by a borrower under **subsection (2)(b)(iv)** is irrevocable.
- 62 Applicable procedures if significant under-deduction** 15
The procedures in **section 43 or 46** may be applied to a borrower if there is a significant under-deduction in relation to him or her.
- Matters of general application to salary or wage deductions and extra deductions* 20
- 63 Prohibition on applications or declarations to maintain integrity of student loan scheme**
The Commissioner may prohibit a borrower from making an application under **section 36** (application for unused repayment threshold to be allocated to secondary employment earnings) or a declaration under **section 49** (declaration by eligible borrowers for exemption from salary or wage deductions) if the Commissioner is satisfied that that borrower is using, or has used, either of those procedures in a manner that damages the integrity of the student loan scheme. 25 30
- 64 PAYE rules apply to salary or wage deductions and extra deductions**
Subject to **Schedule 2**,—
(a) the PAYE rules apply to salary or wage deductions and extra deductions; and 35

- (b) every employer, PAYE intermediary, and borrower must comply with the PAYE rules to the extent to which those rules apply under this section.

Compare: 1992 No 141 s 25

65 Salary or wage deductions and extra deductions in addition to income tax withheld 5

Salary or wage deductions and extra deductions are in addition to amounts of tax for PAYE income payments that are required to be withheld and paid to the Commissioner under the PAYE rules.

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Compare: 1992 No 141 s 19(3)

Subpart 2—New Zealand-based borrowers' repayment obligations for pre-taxed income

66 Application of this subpart

This subpart applies to New Zealand-based borrowers— 15

- (a) who derive \$1,500 or more of net pre-taxed income (as defined in **section 67**) for a tax year; and
 (b) whose income from net pre-taxed income and salary or wages (if any) for that tax year is \$1,500 or more above the annual repayment threshold; and
 (c) who do not derive other income for that tax year. 20

67 Definitions relating to net pre-taxed income

In this subpart,—

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: 25
 (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 30

net pre-taxed income, in relation to a borrower for a tax year, means the amount calculated in accordance with the formula—

$$a = b - c$$

where—

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- 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
- c is the borrower's allowable expenses for the tax year.

*Declaration of pre-taxed income and assessment
of pre-taxed repayment obligation* 5

68 Declaration of pre-taxed income

- (1) If this subpart applies to a borrower, the borrower must make a declaration of pre-taxed income.
- (2) The declaration of pre-taxed income must be made— 10
 - (a) by notifying the Commissioner in a manner acceptable to the Commissioner; and
 - (b) on or before—
 - (i) 7 July in the tax year following the tax year in which the pre-taxed income was derived; or 15
 - (ii) if the borrower has received an extension of time to make the declaration in accordance with **section 69**, the date on which the borrower is required to make the declaration.

69 Extension of time for making declaration of pre-taxed income 20

A borrower may apply to the Commissioner for an extension of time for the making of a declaration of pre-taxed income 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— 25

- (a) the reference to “the due date required under this section” were a reference to “the due date required under **section 68(2)(b)(i)** of the Student Loan Scheme Act **2010**”; and 30
- (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 declaration of pre-taxed income.

70 Commissioner to assess borrower's pre-taxed repayment obligation

- (1) The Commissioner must assess the amount (if any) of a borrower's pre-taxed repayment obligation for a tax year as soon as practicable after the borrower makes his or her declaration of pre-taxed income. 5
- (2) In making the assessment, the Commissioner may have regard to—
- (a) the borrower's declaration of pre-taxed income; and
 - (b) any other information that the Commissioner considers to be relevant. 10
- (3) The assessment must be made in accordance with this subpart and the loan contract.
- (4) **Section 197** applies if there is an inconsistency between this subpart and the loan contract. 15
- (5) The Commissioner must, as soon as practicable after making the assessment, notify the borrower in writing of—
- (a) the borrower's pre-taxed repayment obligation for the tax year; and
 - (b) the due dates (if any) on or before which the pre-taxed repayment obligation must be paid (*see sections 75 and 77*); and 20
 - (c) the amounts (if any) that must be paid on or before those due dates.

Compare: 1992 No 141 s 15

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Calculation of pre-taxed repayment obligation

71 Calculation of borrower's pre-taxed repayment obligation if salary or wages are less than annual repayment threshold

- (1) **Subsection (2)** applies if, in relation to a tax year,— 30
- (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 pre-taxed repayment obligation for the tax year must be calculated in accordance with the formula— 35

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

where—

- a is the borrower's pre-taxed repayment obligation for the tax year
 - b is the repayment percentage
 - c is the income that the borrower derives from net pre-taxed income and from salary or wages for the tax year 5
 - d is the annual repayment threshold.
- (3) If the borrower's pre-taxed repayment obligation for the tax year is zero or less, the borrower has no pre-taxed repayment obligation for the tax year.

72 Calculation of borrower's pre-taxed repayment obligation if salary or wages are equal to or more than annual repayment threshold 10

- (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 equal to or more than the annual repayment threshold. 15

- (2) The borrower's pre-taxed repayment obligation for the tax year must be calculated in accordance with the formula—

$$a = b \times c \quad 20$$

where—

- a is the borrower's pre-taxed repayment obligation for the tax year
- b is the repayment percentage
- c is the income that the borrower derives from net pre-taxed income for the tax year. 25

Payment of pre-taxed repayment obligation

73 Payment of pre-taxed repayment obligation

- (1) A borrower whose pre-taxed repayment obligation for a tax year is greater than zero must pay remaining repayments— 30
- (a) calculated in accordance with **section 74**;
 - (b) on or before the due dates determined in accordance with **section 75**.

- (2) A borrower whose pre-taxed repayment obligation for a tax year is \$1,000 or more must also pay interim payments for the next tax year—
- (a) calculated in accordance with **section 76**:
 - (b) on or before the due dates determined in accordance with **section 77**. 5

Compare: 1992 No 141 s 26

74 Calculation of remaining repayments for tax year

- (1) **Subsections (2) and (3)** apply—
- (a) if a borrower has a pre-taxed repayment obligation for a tax year of less than \$1,000; or 10
 - (b) if—
 - (i) a borrower has a pre-taxed repayment obligation for a tax year that is \$1,000 or more, but less than \$16,000; and 15
 - (ii) that borrower has not estimated his or her pre-taxed repayment obligation for that tax year.
- (2) The amount of each of a borrower's remaining repayments (for the borrower's pre-taxed repayment obligation for the tax year) is the same and must be calculated in accordance with the formula— 20

$$a = \frac{(b - c) - (d - c)}{e}$$

where—

- a is the amount of each of the borrower's remaining repayments
- b is the borrower's pre-taxed repayment obligation for the tax year 25
- c is the amount of the borrower's interim payments for the tax year calculated in accordance with **section 76**
- d is the sum of any amounts that satisfy (so far as they extend) the borrower's pre-taxed repayment obligation for the tax year 30
- e is,—

- (a) for a borrower who has a pre-taxed repayment obligation for the tax year of less than \$1,000, 1; or
- (b) for all other borrowers, the number of due dates the borrower has for the next tax year determined in accordance with **section 75(3)**. 5
- (3) However,—
- (a) if the sum of (b – c) is less than zero, then it must be treated as if it were zero; and
- (b) if the sum of (d – c) is less than zero, then it must be treated as if it were zero. 10
- (4) If **subsections (2) and (3)** do not apply, then the amount of each of a borrower’s remaining repayments (for the borrower’s pre-taxed repayment obligation for the tax year) may vary and must be calculated separately in accordance with the formula— 15

$$a = \frac{b}{c} - d$$

where—

- a is the amount of the borrower’s remaining repayment
- b is the borrower’s pre-taxed repayment obligation for the tax year 20
- c is the number of due dates the borrower has for the tax year determined in accordance with **section 75(4)**
- d is the amount that, as at the due date of the remaining repayment, has been used to satisfy (so far as it extends) the interim payment due on the same date. 25

Compare: 1992 No 141 s 29

75 Due dates for payment of remaining repayments

- (1) A borrower whose pre-taxed repayment obligation for a tax year is less than \$1,000 must pay 1 remaining repayment on or before the date in column B, D, or F of the table in Part A of Schedule 3 of the Income Tax Act 2007 that— 30
- (a) corresponds to the month of the borrower’s balance date; and

- (b) immediately follows the date on which the borrower is required to file his or her declaration of pre-taxed income for the tax year.
- (2) **Subsection (3)** applies if—
- (a) a borrower has a pre-taxed repayment obligation for a tax year that is \$1,000 or more, but less than \$16,000; and 5
- (b) that borrower has not estimated his or her pre-taxed repayment obligation for that tax year.
- (3) The borrower— 10
- (a) must make the same number of remaining repayments for a tax year (**tax year A**) as the number of interim payment dates the borrower has for tax year A; but
- (b) must pay a remaining repayment on or before each of the interim payment dates that immediately follow the date on which the borrower is required to file his or her declaration of pre-taxed income for tax year A, even though this may require those payments to be made in tax year A and in the tax year following tax year A. 15
- (4) If **subsections (1) and (3)** do not apply, a borrower must pay a remaining repayment for a tax year on or before each of the interim payment dates for the same tax year. 20
- (5) In this section, **interim payment dates** means the dates determined in accordance with **section 77** on which a borrower must pay his or her interim payments. 25
- Compare: 1992 No 141 s 30(1)

76 Calculation of interim payments for next tax year

- (1) If a borrower has not estimated his or her pre-taxed repayment obligation for a tax year, the amount of the borrower's interim payments for the tax year is calculated in accordance with the formula— 30

$$a = \frac{b}{c}$$

where—

- a is the amount of each of the borrower's interim payments

- b is—
- (a) the amount of the borrower's pre-taxed repayment obligation for the immediately preceding tax year multiplied by 105%; or
 - (b) if the borrower has not filed a declaration of pre-taxed income for the immediately preceding tax year, the amount of the borrower's pre-taxed repayment obligation for the year before the immediately preceding tax year multiplied by 110%
- c is the number of due dates the borrower has for the tax year.
- (2) If a borrower has estimated his or her pre-taxed repayment obligation for a tax year, the amount of the borrower's interim payments for the tax year is calculated in accordance with the formula—

$$a = b \times \frac{c}{d} - e$$

where—

- a is the amount of each of the borrower's interim payments
- b is the amount of the borrower's estimated pre-taxed repayment obligation for the tax year
- c is the number derived by adding 1 to the number of due dates the borrower has for the tax year that have passed as at the date on which the borrower estimated his or her pre-taxed repayment obligation for the tax year, except that this number must not be greater than the number of due dates the borrower has for the tax year
- d is the number of due dates the borrower has for the tax year
- e is the aggregate amount of all of the borrower's interim payments that were due before the date on which the borrower estimated his or her pre-taxed repayment obligation for the tax year.

- (3) For the purposes of this section, the number of due dates a borrower has is determined by reference to the number of interim payments the borrower must make, as set out in **section 77**.

Compare: 1992 No 141 s 27

77 Due dates for payment of interim payments 5

- (1) If a borrower is in a transitional year, the borrower must pay an interim payment on or before each of the dates on which the borrower's provisional tax for that tax year is due in accordance with the provisional tax rules.

- (2) If a borrower is not in a transitional year, the due dates for the payment of the borrower's interim payments are the dates in columns B, D, and F of the table in Part A of Schedule 3 of the Income Tax Act 2007 that correspond to the month of the borrower's balance date. 10

- (3) In this section, **transitional year** has the same meaning as in section YA 1 of the Income Tax Act 2007. 15

78 Commissioner's powers in relation to due dates

- (1) The Commissioner may determine the dates on or before which a borrower must pay his or her remaining repayments or interim payments for a tax year if— 20

- (a) the borrower requests the Commissioner to determine the borrower's due dates; or
 (b) the Commissioner considers it necessary or appropriate in the circumstances.

- (2) The dates determined by the Commissioner under **subsection (1)** may differ from the dates specified in **sections 75 and 77**. 25

- (3) If the Commissioner determines the dates on or before which a borrower must pay his or her remaining repayments or interim payments for a tax year,—

- (a) the Commissioner must, as soon as practicable, notify the borrower in writing— 30
 (i) of that fact; and
 (ii) of the dates determined by the Commissioner; and

- (b) the amount of those remaining repayments or interim payments must be calculated by reference to those dates.
- (4) This section overrides **sections 70(5) and 73 to 77**.
Compare: 1992 No 141 s 30(2) 5
- 79 Interim payments to be paid in same manner as provisional tax**
Subject to **Schedule 3**,—
- (a) interim payments for a borrower’s pre-taxed repayment obligation for a tax year are payable in the same manner as provisional tax; and 10
- (b) a borrower must comply with the requirements of the provisional tax rules.
- Compare: 1992 No 141 s 28
- 80 Consequence of failure to meet repayment obligations** 15
A borrower may be liable to pay late payment interest if the borrower does not meet his or her repayment obligations under this subpart (*see section 129(1)*).
- Subpart 3—New Zealand-based borrowers’
repayment obligations for other income 20
- 81 Application of this subpart**
This subpart applies to New Zealand-based borrowers who derive other income.
- Assessment of other income repayment obligation* 25
- 82 Commissioner to assess borrower’s other income repayment obligation**
- (1) The Commissioner must assess the amount (if any) of a borrower’s other income repayment obligation for a tax year as soon as practicable after the borrower provides— 30
- (a) his or her return of income for that tax year; or
- (b) details of his or her annual gross income under **section 106**.

- (2) In making the assessment, the Commissioner may have regard to—
- (a) a return of income; and
 - (b) the details of a borrower's annual gross income provided to the Commissioner under **section 106**; and 5
 - (c) any other information that the Commissioner considers to be relevant.
- (3) The assessment must be made in accordance with this subpart and the loan contract.
- (4) **Section 197** applies if there is an inconsistency between this subpart and the loan contract. 10
- (5) The Commissioner must, as soon as practicable after making the assessment, notify the borrower in writing of—
- (a) the borrower's other income repayment obligation for the tax year; and 15
 - (b) the due dates (if any) on or before which the other income repayment obligation must be paid (*see sections 87 and 89*); and
 - (c) the amounts (if any) that must be paid on or before those due dates. 20

Compare: 1992 No 141 s 15

Calculation of other income repayment obligations

- 83 Certain borrowers have no other income repayment obligations** 25
- If a borrower's net income for the tax year is equal to or less than the annual repayment threshold, then the borrower has no other income repayment obligation for the tax year.
- 84 Calculating borrower's other income repayment obligation** 30
- (1) **Subsection (2)** applies if, in relation to a tax year,—
- (a) this subpart applies to a borrower; and
 - (b) the borrower's net income is more than the annual repayment threshold.
- (2) The borrower's other income repayment obligation for a tax year must be calculated in accordance with the formula— 35

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

where—

- a is the amount of the borrower's other income repayment obligation for the tax year
 - b is the repayment percentage 5
 - c is the amount of the borrower's net income for the tax year
 - d is the annual repayment threshold
 - e is the total amount of salary or wage deductions made in accordance with **subpart 1** for the tax year. 10
- (3) If the amount of 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.

Compare: 1992 No 141 ss 14(1), 26

Payment of other income repayment obligations 15

85 Payment of other income repayment obligations

- (1) A borrower whose other income repayment obligation for a tax year is greater than zero must pay remaining repayments—
 - (a) calculated in accordance with **section 86**:
 - (b) on or before the due dates determined in accordance with **section 87**. 20
- (2) A borrower whose other income repayment obligation for a tax year is \$1,000 or more must also pay interim payments for the next tax year—
 - (a) calculated in accordance with **section 88**: 25
 - (b) on or before the due dates determined in accordance with **section 89**.

Compare: 1992 No 141 s 26

86 Calculation of remaining repayments for tax year

- (1) **Subsections (2) and (3)** apply— 30
 - (a) if a borrower has an other income repayment obligation for a tax year of less than \$1,000; or
 - (b) if—

- (i) a borrower has an other income repayment obligation for a tax year that is \$1,000 or more, but less than \$16,000; and
- (ii) that borrower has not estimated his or her other income repayment obligation for that tax year. 5
- (2) The amount of each of a borrower's remaining repayments (for the borrower's other income repayment obligation for the tax year) is the same and must be calculated in accordance with the formula—
- $$a = \frac{(b - c) - (d - c)}{e}$$
- where— 10
- a is the amount of each of the borrower's remaining repayments
- b is the borrower's other income repayment obligation for the tax year
- c is the total amount of the borrower's interim payments for the tax year calculated in accordance with **section 88** 15
- d is the sum of any amounts that satisfy (so far as they extend) the borrower's other income repayment obligation for the tax year 20
- e is,—
- (a) for a borrower who has an other income repayment obligation for the tax year of less than \$1,000, 1; or
- (b) for all other borrowers, the number of due dates the borrower has for the next tax year determined in accordance with **section 87(3)**. 25
- (3) However,—
- (a) if the sum of (b - c) is less than zero, then it must be treated as if it were zero; and 30
- (b) if the sum of (d - c) is less than zero, then it must be treated as if it were zero.
- (4) If **subsections (2) and (3)** do not apply, then the amount of each of a borrower's remaining repayments (for the borrower's other income repayment obligation for the tax year) may vary 35

and must be calculated separately in accordance with the formula—

$$a = \frac{b}{c} - d$$

where—

- a is the amount of the borrower's remaining repayment
- b is the borrower's other income repayment obligation for 5
the tax year
- c is the number of due dates the borrower has for the tax
year determined in accordance with **section 87(4)**
- d is the amount that, as at the due date of the remaining
repayment, has been used to satisfy (so far as it extends) 10
the interim payment due on the same date.

Compare: 1992 No 141 s 29

87 Due dates for payment of remaining repayments

- (1) A borrower whose other income repayment obligation for a
tax year is less than \$1,000 must pay 1 remaining repayment 15
on or before the date in column B, D, or F of the table in Part
A of Schedule 3 of the Income Tax Act 2007 that—
 - (a) corresponds to the month of the borrower's balance
date; and
 - (b) immediately follows the date on which the borrower is 20
required to file his or her return of income for the tax
year.
- (2) **Subsection (3)** applies if—
 - (a) a borrower has an other income repayment obligation
for a tax year that is \$1,000 or more, but less than 25
\$16,000; and
 - (b) that borrower has not estimated his or her other income
repayment obligation for that tax year.
- (3) The borrower—
 - (a) must make the same number of remaining repayments 30
for a tax year (**tax year A**) as the number of interim
payment dates the borrower has for tax year A; but
 - (b) must pay a remaining repayment on or before each of
the interim payment dates that immediately follow the

date on which the borrower is required to file his or her return of income for tax year A, even though this may require those payments to be made in tax year A and in the tax year following tax year A.

- (4) If **subsections (1) and (3)** do not apply, a borrower must pay a remaining repayment for a tax year on or before each of the interim payment dates for the same tax year. 5
- (5) In this section, **interim payment dates** means the dates determined in accordance with **section 89** on which a borrower must pay his or her interim payments. 10
- Compare: 1992 No 141 s 30(1)

88 Calculation of interim payments for next tax year

- (1) If a borrower has not estimated his or her other income repayment obligation for a tax year, the amount of the borrower's interim payments for the tax year is calculated in accordance with the formula— 15

$$a = \frac{b}{c}$$

where—

- a is the amount of each of the borrower's interim payments
- b is— 20
- (a) the amount of the borrower's other income repayment obligation for the immediately preceding tax year multiplied by 105%; or
- (b) if the borrower has not filed a return of income for the immediately preceding tax year, the amount of the borrower's other income repayment obligation for the year before the immediately preceding tax year multiplied by 110% 25
- c is the number of due dates the borrower has for the tax year. 30
- (2) If a borrower has estimated his or her other income repayment obligation for a tax year, the amount of the borrower's interim payments for the tax year is calculated in accordance with the formula—

$$a = b \times \frac{c}{d} - e$$

where—

- a is the amount of each of the borrower's interim payments
 - b is the amount of the borrower's estimated other income repayment obligation for the tax year 5
 - c is the number derived by adding 1 to the number of due dates the borrower has for the tax year that have passed as at the date on which the borrower estimated his or her other income repayment obligation for the tax year, except that this number must not be greater than the number of due dates the borrower has for the tax year 10
 - d is the number of due dates the borrower has for the tax year
 - e is the aggregate amount of all of the borrower's interim payments that were due before the date on which the borrower estimated his or her other income repayment obligation for the tax year. 15
- (3) For the purposes of this section, the number of due dates a borrower has is determined by reference to the number of interim payments the borrower must make, as set out in **section 89**. 20
Compare: 1992 No 141 s 27

89 Due dates for payment of interim payments

- (1) A borrower must pay an interim payment for a tax year on or before each of the dates on which the borrower must pay his or her provisional tax for that tax year in accordance with the provisional tax rules. 25
- (2) However,—
 - (a) if a borrower uses a GST ratio to determine his or her provisional tax for a tax year and that year is not a transitional year for the borrower, the due dates for the payment of the borrower's interim payments are the dates in columns B, D, and F of the table in Part A of Schedule 3 of the Income Tax Act 2007 that correspond to the month of the borrower's balance date: 30

- (b) if a borrower uses a GST ratio to determine his or her provisional tax for a tax year and that year is a transitional year for the borrower, the due dates for the payment of the borrower's interim payments are every second date in the table headed "GST ratio provisional taxpayers" in Part B of Schedule 3 of the Income Tax Act 2007 that correspond to the month of the borrower's balance date except that— 5
- (i) if the borrower only has 1 payment date, the borrower only has 1 due date; and 10
- (ii) if the borrower has an odd number of payment dates, then the last payment date does not apply to the borrower:
- (c) if a borrower does not pay provisional tax for a tax year, the due dates for the payment of the borrower's interim payments are the dates in columns B, D, and F of the table in Part A of Schedule 3 of the Income Tax Act 2007 that correspond to the month of the borrower's balance date. 15
- (3) In this section, **GST ratio** and **transitional year** have the same meaning as in section YA 1 of the Income Tax Act 2007. 20

90 Commissioner's powers in relation to due dates

- (1) The Commissioner may determine the dates on or before which a borrower must pay his or her remaining repayments or interim payments for a tax year if— 25
- (a) the borrower requests the Commissioner to determine the borrower's due dates; or
- (b) the Commissioner considers it necessary or appropriate in the circumstances.
- (2) The dates determined by the Commissioner under **subsection (1)** may differ from the dates specified in **sections 87 and 89**. 30
- (3) If the Commissioner determines the dates on or before which a borrower must pay his or her remaining repayments or interim payments for a tax year,—
- (a) the Commissioner must, as soon as practicable, notify the borrower in writing— 35
- (i) of that fact; and

- (ii) of the dates determined by the Commissioner;
and
- (b) the amount of those remaining repayments or interim payments must be calculated by reference to those dates. 5
- (4) This section overrides **sections 82(5) and 85 to 89**.
Compare: 1992 No 141 s 30(2)
- 91 Interim payments to be paid in same manner as provisional tax**
Subject to **Schedule 4**,— 10
- (a) interim payments for a borrower's other income repayment obligation for a tax year are payable in the same manner as provisional tax; and
- (b) a borrower must comply with the requirements of the provisional tax rules. 15
- Compare: 1992 No 141 s 28
- 92 Consequence of failure to meet repayment obligations**
A borrower may be liable to pay late payment interest if the borrower does not meet his or her repayment obligations under this subpart (*see section 129(1)*). 20
- Reduction of salary or wage deduction rate for borrower with lower repayment obligation*
- 93 Borrower may apply for reduction of salary or wage deduction rate to reflect lower repayment obligation**
- (1) **Section 94** applies if a borrower— 25
- (a) either—
- (i) derives other income in a tax year; or
- (ii) incurs a loss from other income for the tax year;
and
- (b) derives salary or wages in the tax year; and 30
- (c) considers on reasonable grounds that his or her balance of repayment obligations for the tax year is, or will be, less than his or her salary or wage deductions for the tax year; and

- (d) applies to the Commissioner for a reduction in the salary or wage deduction rate that applies to the borrower under **section 32(1) or (2)** in order to reflect the difference in **paragraph (c)**.
- (2) An application under **subsection (1)(d)** must be made by notifying the Commissioner in a manner acceptable to the Commissioner. 5
- (3) The borrower must, as soon as practicable, notify the Commissioner if the circumstances in **subsection (1)(c)** change.
- (4) In this section, **balance of repayment obligations** means the sum that is derived when the amount calculated in accordance with the formula in **section 84(2)** for the borrower for the tax year is offset against the total amount of the borrower's salary or wage deductions for the tax year. 10
- 94 Special deduction rate certificate for lower repayment obligation** 15
- (1) If this section applies, the Commissioner may, in relation to the borrower, issue a special deduction rate certificate that—
- (a) specifies a special deduction rate; and
- (b) specifies the period for which the special deduction rate is to apply to the borrower; and 20
- (c) requires the borrower's employers to make salary or wage deductions at the special deduction rate.
- (2) In determining the specified deduction rate that is to apply to the borrower, the Commissioner must have regard to the amount of any excess repayment the borrower may have for the tax year if the special deduction rate certificate is not issued to the borrower. 25
- Compare: 1992 No 141 s 20A(2)
- 95 Issue and application of special deduction rate certificate** 30
- (1) If the Commissioner issues a special deduction rate certificate under **section 94**, the Commissioner must give a copy of the certificate to the borrower.
- (2) The special deduction rate certificate—

- (a) revokes all other special deduction rate certificates previously issued in relation to the borrower under **section 94 or 39**; and
 - (b) does not limit the application of **sections 139 to 145** (concerning hardship relief). 5
- Compare: 1992 No 141 s 20A(5)–(7)

96 Time when special deduction rate ceases to apply

The special deduction rate applies until the earlier of—

- (a) the end of the period specified in the special deduction rate certificate; or 10
- (b) the date on which the Commissioner notifies the employer in writing otherwise; or
- (c) the date on which the borrower notifies the employer otherwise.

Compare: 1992 No 141 s 20A(4) 15

Subpart 4—Overseas-based borrowers’
repayment obligations

97 Application of this subpart

This subpart applies to overseas-based borrowers.

98 Definitions used in this subpart 20

In this subpart,—

opt-out period means a period for which an overseas-based borrower chooses, under **section 100(1)**, not to have a repayment holiday

repayment holiday means a period during which a borrower’s overseas-based repayment obligation is reduced to zero for the purposes of **section 99**. 25

Compare: 1992 No 141 s 31

*Repayment holiday from overseas-based
repayment obligations* 30

99 Overseas-based borrowers are entitled to 3-year repayment holiday

- (1) A borrower who becomes overseas-based is entitled to a repayment holiday for a maximum period of 3 years.

- (2) A borrower is entitled to a repayment holiday only for periods when the borrower is overseas-based.
- (3) A repayment holiday may consist of 1 or more periods of time when a borrower is overseas-based, but in total those periods must be 3 years or less. 5
- (4) If a borrower is, at any time, overseas-based after that borrower's 3-year repayment holiday has ended, that borrower's repayment obligation must be calculated in accordance with **sections 102 and 103**.
- (5) Any 1 borrower is entitled to receive only one 3-year repayment holiday. 10
Compare: 1992 No 141 s 32

100 Borrowers may choose to opt out of repayment holiday

- (1) A borrower may, by notifying the Commissioner, choose to have 1 or more opt-out periods for any period during which that borrower is overseas-based. 15
- (2) An opt-out period may begin from a date before the date on which a borrower notifies the Commissioner under **subsection (1)**.
- (3) An opt-out period ends if a borrower becomes New Zealand-based. 20
- (4) A repayment holiday—
 (a) ends if an opt-out period begins; and
 (b) begins when an opt-out period ends (but only if the borrower, at that time, is overseas-based and has had a repayment holiday for a total of less than 3 years). 25
- (5) If a borrower chooses to have an opt-out period, the borrower's repayment obligation must be calculated in accordance with **sections 102 and 103**. 30
Compare: 1992 No 141 s 33

Assessment of overseas-based repayment obligation

101 Assessments for years in which borrower is overseas-based

- (1) The Commissioner must assess the amount (if any) of a borrower's overseas-based repayment obligation for a tax year 35

as soon as practicable after being notified that, or becoming aware that, the borrower is or will be overseas-based.

- (2) The Commissioner must continue to assess the amount of a borrower's overseas-based repayment obligation for each tax year, or part of a tax year, during which the borrower remains overseas-based. 5
- (3) In making an assessment under this section, the Commissioner may have regard to any information that the Commissioner considers to be relevant.
- (4) The assessment must be made in accordance with this subpart and the loan contract. 10
- (5) **Section 197** applies if there is an inconsistency between this subpart and the loan contract.
- (6) The Commissioner must, as soon as practicable after making an assessment, notify the borrower in writing of— 15
- (a) the borrower's overseas-based repayment obligation for the tax year; and
 - (b) the due dates on or before which the overseas-based repayment obligation must be paid (*see section 104*); and 20
 - (c) the amounts that must be paid on or before those due dates.
- (7) **Subsection (6)** does not apply if the amount assessed is zero. Compare: 1992 No 141 s 36B

Calculation and payment of overseas-based repayment obligation 25

102 Repayment obligations of overseas-based borrowers

- (1) This section applies to an overseas-based borrower—
- (a) whose 3-year repayment holiday has ended; or
 - (b) who has chosen to have an opt-out period. 30
- (2) If the borrower's consolidated loan balance is less than \$1,000, the borrower's repayment obligation for a tax year (or, if applicable, part of a tax year) during which this section applies to the borrower is the amount of the borrower's consolidated loan balance. 35
- (3) If the borrower's consolidated loan balance is—

- (a) \$1,000 or more, but less than or equal to \$15,000, the borrower's repayment obligation is \$1,000 for each full tax year during which the borrower is overseas-based:
- (b) more than \$15,000, but less than or equal to \$30,000, the borrower's repayment obligation is \$2,000 for each full tax year during which the borrower is overseas-based: 5
- (c) more than \$30,000, the borrower's repayment obligation is \$3,000 for each full tax year during which the borrower is overseas-based.
- (4) The borrower's repayment obligation for the portion of a tax year (being less than a full tax year) during which the borrower is overseas-based is calculated in accordance with the formula— 10

$$\frac{a}{365} \times b$$

where—

- a is the number of days in the tax year during which the borrower was overseas-based 15
- b is one of the following:
- (a) \$1,000, if the borrower's consolidated loan balance is \$1,000 or more, but less than or equal to \$15,000; or 20
- (b) \$2,000, if the borrower's consolidated loan balance is more than \$15,000, but less than or equal to \$30,000; or
- (c) \$3,000, if the borrower's consolidated loan balance is more than \$30,000. 25
- (5) For the purposes of this section, the amount of a borrower's consolidated loan balance is the amount of the consolidated loan balance as at the date on which this section applies to the borrower and then (subject to **section 107**) as at 31 March in each year after that date. 30

Compare: 1992 No 141 s 34

103 Exceptions to repayment obligations of overseas-based borrowers

- (1) For each tax year in which an overseas-based borrower has an unpaid amount but has no loan balance, the borrower's repayment obligation is zero. 5
- (2) For each tax year in which an overseas-based borrower's repayment obligation under **section 102** is equal to or more than the borrower's loan balance, the borrower's repayment obligation (the **adjusted repayment obligation**) is equal to the total of— 10
- (a) the borrower's loan balance; and
 - (b) any uncompounded overseas-based interest that the borrower is liable to pay at the time when the adjusted repayment obligation is paid in full.
- (3) Nothing in this section affects— 15
- (a) a borrower's liability for an unpaid amount or late payment interest; or
 - (b) **section 185**.
- (4) This section overrides **section 102**. 20
Compare: 1992 No 141 ss 14(3), 35

104 Repayment to be made by instalments

A borrower's overseas-based repayment obligation for a tax year must be paid by the borrower as follows:

- (a) half of the total amount must be paid in the tax year on or before 30 September: 25
- (b) the other half of the total amount must be paid in the tax year on or before 31 March.

Compare: 1992 No 141 s 36

105 Consequence of failure to meet repayment obligations

A borrower may be liable to pay late payment interest if the borrower does not meet his or her repayment obligations under this subpart (*see* **section 129(1)**). 30

Subpart 5—New Zealand-based non-resident
borrowers and borrowers with New
Zealand-based and overseas-based
repayment obligations

- 106 Notification of worldwide income by New Zealand-based non-resident borrowers** 5
- (1) This section applies to a New Zealand-based borrower who is a non-resident.
- (2) For each tax year and each part of a tax year to which this section applies to a borrower, the borrower must notify the Commissioner, in a manner acceptable to the Commissioner, of the borrower's annual gross income. 10
- (3) The borrower must notify the Commissioner at the time when, if the borrower were a New Zealand resident, he or she would have had to provide— 15
- (a) a declaration of pre-taxed income; or
- (b) a return of income for a tax year.
- (4) The Commissioner may require the borrower to provide evidence of the borrower's annual gross income. 20
- Compare: 1992 No 141 s 14A
- 107 Repayment obligations of borrowers who are overseas-based for part of tax year**
- If a borrower is both New Zealand-based and overseas-based during a tax year,—
- (a) **subparts 1 to 3** apply to the borrower for the period in the tax year during which he or she is New Zealand-based (the **New Zealand-based period**), except that, for the purposes of **subparts 2 and 3**, the amount of the annual repayment threshold for the tax year must be proportionately decreased to the same proportion as the number of days in the New Zealand-based period bears to the number of days in a year; and 25
- (b) only the income that the borrower derived during the period that the borrower was New Zealand-based during the year must be taken into account when calculating the borrower's repayment obligation under **subparts 1 to 3**; and 30
- 35

- (c) **section 102(4) or 103** (as applicable) applies to any portion of the tax year during which the borrower is overseas-based and—
- (i) is not entitled to a repayment holiday (as defined in **section 98**); or 5
 - (ii) has chosen to have an opt-out period (as defined in **section 98**); and
- (d) the borrower's overseas-based repayment obligation is payable in instalments as determined by the Commissioner. 10

Compare: 1992 No 141 ss 14(2), 36A

108 Overseas-based borrowers who derive salary or wages from New Zealand

- (1) **Subpart 1** applies to an overseas-based borrower who derives salary or wages from New Zealand as if the borrower were New Zealand-based. 15
- (2) **Subsection (1)** applies despite anything to the contrary in this Act.

109 Overseas-based borrower's salary or wage deductions satisfy overseas-based repayment obligation 20

- (1) A specified deduction that is made for an overseas-based borrower in a tax year satisfies (so far as it extends) each future obligation of the borrower that has a due date in that tax year in the order in which those obligations become due.
- (2) However,— 25
- (a) **subsection (1)** does not apply to a future obligation whose due date has passed at the time when the deduction is made; and
 - (b) the Commissioner may, if the Commissioner considers that it is fair and reasonable to do so, treat a specified deduction as satisfying a future obligation that has a due date in the tax year following the tax year in which the specified deduction was made. 30
- (3) In this section,—

future obligation means an instalment of an overseas-based borrower's repayment obligation for a tax year that must be paid in accordance with **section 104**

specified deduction means a deduction made (in accordance with **section 108**)—

(a) from the salary or wages an overseas-based borrower derives from New Zealand; and

(b) under—

(i) **sections 31 and 32**; or

(ii) **section 33(1)(a)** in relation to an additional deduction rate notice issued for the purposes of **section 43(1)(a)**.

(4) This section overrides **section 187**.

Part 3

Excess repayments

110 Interpretation

In this Part, unless the context otherwise requires,—

10% bonus means the bonus specified in, as appropriate, **section 115(2), 116(2), or 117(2)**

excess repayment has the meaning given to it in **section 111**

final excess repayment means an excess repayment that, when combined with the resulting 10% bonus, results in the borrower's consolidated loan balance being fully repaid.

Compare: 1992 No 141 s 45A

111 Meaning of excess repayment

(1) In this Part, **excess repayment** means so much of a borrower's salary or wage deductions and extra deductions in a tax year, and payments made to the Commissioner for the borrower for a tax year, as exceeds—

(a) the borrower's total obligations for the tax year; and

(b) all amounts that, during the tax year, are due and payable for a prior tax year.

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

(a) disregard a deduction from a borrower's salary or wages that is more than the amount that is required to be de-

- ducted in accordance with **subpart 1 of Part 2** unless it is a significant over-deduction or an extra deduction; and
- (b) disregard a salary or wage deduction or extra deduction made, or payment made to the Commissioner, that is subsequently refunded; and 5
 - (c) treat a borrower’s repayment obligation as if any relief granted under **section 139** had not been granted; and
 - (d) disregard any fee refunded by an education provider to the loan manager or the Commissioner. 10
- (3) Excess repayments may be made for a tax year—
- (a) at any time during that tax year; and
 - (b) if a borrower must make interim payments for that tax year, at any time up to and including the due date of that borrower’s final interim payment for that tax year. 15
- (4) In **subsection (1), total obligations** means the total amount of—
- (a) a borrower’s repayment obligations for a tax year, excluding any amount that—
 - (i) is required to be deducted from a borrower’s salary or wages in accordance with an additional deduction rate notice issued under **section 43(2)**; and 20
 - (ii) must be paid by the borrower during the tax year in accordance with a written notification under **section 47**; and 25
 - (b) any uncompounded late payment interest that the borrower has; and
 - (c) any unpaid amount that the borrower has; and
 - (d) any late filing penalties that must be paid by the borrower during the tax year; and 30
 - (e) any student loan shortfall penalties that must be paid by the borrower during the tax year.

Compare: 1992 No 141 s 45B

- 112 Commissioner must notify borrower of excess repayment 35**
- (1) **Subsection (2)** applies if—
- (a) an excess repayment is made for a borrower; or

- (b) upon investigation by the Commissioner of a borrower's repayment obligation for a prior tax year, the Commissioner is satisfied that—
 - (i) the repayment obligation assessed by the Commissioner is incorrect; and 5
 - (ii) as a result, an excess repayment has been made.
- (2) The Commissioner must—
 - (a) offset the excess repayment against the borrower's consolidated loan balance in accordance with **section 188 or 189**, as applicable; and 10
 - (b) as soon as practicable, notify the borrower in writing—
 - (i) that an excess repayment has been offset against the borrower's consolidated loan balance in accordance with **section 188 or 189**, as applicable; and 15
 - (ii) of the borrower's options in relation to excess repayments (*see section 113*); and
 - (iii) of the time frames within which the borrower must notify the Commissioner if the borrower wishes to exercise 1 or more of those options. 20
- (3) **Subsection (2)(b)** does not apply if an excess repayment is \$5 or less.

Compare: 1992 No 141 s 58A

113 Options that apply to excess repayments

- (1) If an excess repayment is made for a borrower, the borrower may— 25
 - (a) be eligible to receive a 10% bonus in accordance with **subpart 1**; or
 - (b) choose to receive a refund of the excess repayment in accordance with **subpart 2**; or 30
 - (c) choose to use the excess repayment to satisfy a future repayment obligation of the borrower in accordance with **subpart 2**.
- (2) However, any part of an excess repayment that exceeds a borrower's consolidated loan balance— 35
 - (a) is not eligible for a 10% bonus; and
 - (b) must be refunded by the Commissioner (*see sections 193 and 194*).

- (3) **Subsection (2)** overrides **section 122(1)(a)**.

114 Exception to general rule if repayment obligations for prior tax years reassessed

- (1) **Subsection (2)** applies if, upon investigation by the Commissioner of a borrower's repayment obligations for 2 or more prior tax years (the **investigated years**),—
- (a) the Commissioner assesses the borrower as having a repayment obligation for an investigated year for which no assessment has been made previously, or alters an assessment for an investigated year so as to increase the repayment obligation; and
- (b) the Commissioner also identifies that an excess repayment has been made for an investigated year.
- (2) If this subsection applies,—
- (a) the Commissioner may, to the extent that he or she considers equitable, offset the excess repayment against any repayment obligation due for any of the investigated years; and
- (b) **sections 112 and 113** apply only to so much of the excess repayment (if any) as is not offset against a repayment obligation in accordance with **paragraph (a)**.
- (3) **Subsection (2)** applies despite anything to the contrary in this Act.

Compare: 1992 No 141 s 58

Subpart 1—Excess repayment bonus 25

115 Borrower's entitlement to 10% bonus for total excess repayments of \$500 or more

- (1) **Subsection (2)** applies to a borrower if—
- (a) the borrower's total excess repayments for a tax year are \$500 or more; and
- (b) at the beginning of the tax year for which the excess repayments were made, the borrower's loan balance was \$550 or more.

- (2) The Commissioner must reduce the borrower's loan balance by an amount equal to 10% of the borrower's total excess repayments for the relevant tax year.

Compare: 1992 No 141 s 45C

116 Borrower's entitlement to bonus if loan balance is less than \$550 5

- (1) **Subsection (2)** applies to a borrower if—

(a) the borrower's final excess repayment for a tax year is \$500; and

(b) at the date on which the final excess repayment was made, the borrower's loan balance was more than \$500 but less than \$550. 10

- (2) The Commissioner must reduce the borrower's loan balance to zero.

Compare: 1992 No 141 s 45D

15

117 Borrower may be entitled to 10% bonus if under-deduction is due to PAYE system

- (1) **Subsection (2)** applies to a borrower if—

(a) the borrower derives other income; and

(b) the borrower's total excess repayments for a tax year are less than \$500; and 20

(c) the difference between the borrower's total excess repayments for the tax year and \$500 (the **shortfall**) is because of an under-deduction through the PAYE system; and 25

(d) the shortfall meets 1 or more of the following criteria:

(i) it is less than \$20:

(ii) it is due to the borrower starting or ending employment:

(iii) it is due to an action or an omission of the borrower's employer; and 30

(e) the Commissioner considers that the borrower's total excess repayments for the tax year would have been \$500 or more if the under-deduction referred to in **paragraph (c)** had not occurred; and 35

(f) at the beginning of the tax year, the borrower's loan balance was \$550 or more.

- (2) The Commissioner must reduce the borrower's loan balance by an amount equal to 10% of the borrower's total excess repayments for the tax year that the Commissioner considers would have been made if the under-deduction referred to in **subsection (1)(c)** had not occurred. 5
Compare: 1992 No 141 s 45E
- 118 Time at which 10% bonus is credited**
- (1) If a borrower's loan balance will be fully repaid as a result of being reduced by a 10% bonus, that bonus must be credited to the borrower's loan balance with effect from the date on which the final excess repayment was made. 10
- (2) If a borrower's loan balance will not be fully repaid as a result of being reduced by a 10% bonus, that bonus must be credited to the borrower's loan balance with effect from 1 April in the tax year that follows the tax year for which the excess repayments were made. 15
- (3) However, the Commissioner must not credit a 10% bonus to a borrower's loan balance in accordance with **subsection (1) or (2)** until after the Commissioner has determined the borrower's total excess repayments for a tax year. 20
Compare: 1992 No 141 s 45F(1)–(3)
- 119 Restriction on amount of 10% bonus**
- (1) The total amount of a 10% bonus that may be credited to a borrower must not exceed an amount equal to one-eleventh of the borrower's loan balance on either— 25
- (a) the date on which the 10% bonus is credited; or
- (b) an earlier date determined by the Commissioner, at his or her discretion, that is within the relevant tax year.
- (2) The Commissioner may determine a date under **subsection (1)(b)** for a borrower only if— 30
- (a) 1 or more excess repayments are made for a tax year; and
- (b) a final excess repayment was made for the same tax year. 35
Compare: 1992 No 141 s 45F(4), (5)

120 Consequences of refund or credit to next tax year

- (1) If the whole or part of a borrower's excess repayment for a tax year is refunded or used to satisfy a future repayment obligation of the borrower in accordance with **subpart 2**, any 10% bonus that was credited to that borrower must be reduced to an amount equal to 10% of the remaining excess repayment (if any) for the tax year that is \$500 or more. 5
- (2) If the 10% bonus was credited under **section 117(2)**, then the remaining excess repayment (if any) for the tax year that is \$500 or more must be determined by reference to the borrower's total excess repayments for the tax year that the Commissioner considered (under **section 117**) would have been made if the under-deduction referred to in **section 117(1)(c)** had not occurred. 10
- Compare: 1992 No 141 s 45G 15

121 Commissioner must advise borrowers to seek financial advice

The Commissioner must, in all material that provides information about 10% bonuses and that is made available to all borrowers, include a statement to the effect that borrowers are advised to seek appropriate financial advice before making excess repayments in order to obtain a 10% bonus. 20

Compare: 1992 No 141 s 45H

**Subpart 2—Refund of excess repayments
and satisfaction of future repayment
obligation** 25

122 Limit on use of excess repayments

- (1) If an excess repayment is \$5 or less, the Commissioner may refrain from— 30
- (a) refunding the excess repayment to a borrower; or
 - (b) using the excess repayment to satisfy a future repayment obligation of the borrower.
- (2) This section overrides **section 123**.
Compare: 1992 No 141 s 51(1)

123 Borrower may receive refund or apply excess repayment to future repayment obligations

- (1) A borrower may choose, by notifying the Commissioner in a manner acceptable to the Commissioner, that the whole or part of an excess repayment— 5
- (a) be refunded (*see* **sections 193 and 194**); or
 - (b) be used to satisfy a future repayment obligation of the borrower.
- (2) If the borrower is New Zealand-based, the borrower must make a choice under **subsection (1)(a)** within 6 months after the date on which the borrower received notification of the excess repayment from the Commissioner in accordance with **section 112**. 10
- (3) If the borrower is overseas-based, the borrower must make a choice under **subsection (1)(a)** within 2 months after the date on which the borrower received notification of the excess repayment from the Commissioner in accordance with **section 112**. 15
- (4) A choice made by a borrower under **subsection (1)(a)** is irrevocable. 20
- Compare: 1992 No 141 ss 56, 57

Part 4**Interest, relief, penalties and offences, rights of objection, and rights to challenge**

Subpart 1—Interest 25

124 No interest applied to student loans except as specified in this Part

Except as provided in this Part, no interest is payable on a consolidated loan balance.

*Overseas-based interest charged for borrowers
who are overseas-based*

125 Overseas-based interest charged for borrowers who are overseas-based

- (1) A borrower is liable to pay overseas-based interest on his or her loan balance for each day that the borrower is overseas-based. 5
- (2) Overseas-based interest must be calculated in accordance with the formula—

$$a = \frac{(b \times c)}{365}$$

where—

- a is the overseas-based interest
- b is the borrower's loan balance on the relevant day
- c is the base interest rate.

Compare: 1992 No 141 ss 38AA, 38AB(3), 38AC(4), (5)

126 Overseas-based interest calculated daily, charged monthly, and compounded annually

- (1) Overseas-based interest is calculated each day that a borrower is overseas-based. 15
- (2) Overseas-based interest is charged on the last day of each month. 20
- (3) However, no interest is charged under **subsection (2)** for a month if the loan balance and all uncompounded overseas-based interest are paid in full on or before the last day of that month.
- (4) On 31 March each year, a borrower's loan balance is increased by the amount of the outstanding overseas-based interest. 25
- (5) In this section, **outstanding overseas-based interest** means all overseas-based interest charged in relation to a loan balance on or after 1 April that remains unpaid on 31 March the following year. 30

127 Notification that overseas-based interest has compounded

- (1) The Commissioner must, as soon as practicable after a borrower's loan balance is increased by the amount of the out-

standing overseas-based interest in accordance with **section 126(4)**, notify the borrower in writing—

- (a) that the borrower's loan balance has been increased by the amount of the outstanding overseas-based interest; and 5
 - (b) of the new total of the borrower's loan balance; and
 - (c) that the new total of the borrower's loan balance is itself subject to overseas-based interest.
- (2) The Commissioner may notify a borrower in writing of the borrower's loan balance and overseas-based interest at any other time the Commissioner chooses. 10

Compare: 1992 No 141 s 43(1)

128 Overseas-based interest written-off for quick repayment of consolidated loan balance

- (1) This section applies to a person who— 15
- (a) was an overseas-based borrower; and
 - (b) would subsequently have been treated as being New Zealand-based except that he or she ceased to be a borrower because of **paragraph (c)**; and
 - (c) fully repaid his or her consolidated loan balance before 20 the end of the period of 183 consecutive days under which the borrower would have been treated as being New Zealand-based.
- (2) Overseas-based interest that is charged on the person's loan balance is reduced to zero for the period— 25
- (a) starting on the first day of the 183-day period; and
 - (b) ending on the day on which the person's consolidated loan balance was fully repaid.

Compare: 1992 No 141 s 38AM

Late payment interest 30

129 Late payment interest charged on unpaid amount

- (1) A borrower is liable to pay late payment interest on his or her unpaid amount if that unpaid amount is \$500 or more (or any other level prescribed by regulations).
- (2) Late payment interest must be calculated in accordance with the formula— 35

$$a = \frac{(b \times c)}{365}$$

where—

- a is the late payment interest
- b is the unpaid amount
- c is the base interest rate plus 4%.

Compare: 1992 No 141 s 44

5

130 Late payment interest reduced if instalment arrangement complied with

- (1) If an instalment arrangement applies to an unpaid amount, then any late payment interest that is payable on that unpaid amount must be calculated under **section 129** as if item c in the formula in **section 129(2)** is the base interest rate plus 2%. 10
- (2) **Subsection (1)** applies—
 - (a) on the day after the date on which the instalment arrangement starts:
 - (b) until the earlier of— 15
 - (i) the date on which the instalment arrangement ends; and
 - (ii) the date on which the instalment arrangement is cancelled in accordance with **section 147**; and
 - (iii) the date on which the Commissioner cancels the instalment arrangement under section 177B(6) of the Tax Administration Act 1994. 20
- (3) However, if an instalment that has become due under the instalment arrangement has not been paid in full and on time (the **unpaid instalment**), **subsection (1)** ceases to apply— 25
 - (a) on the day after the date on which the instalment before the unpaid instalment was paid:
 - (b) until the date on which the unpaid instalment and the instalment immediately following the unpaid instalment have been paid in full. 30
- (4) **Subsection (2)(b)** overrides **subsection (3)(b)**.

131 Late payment interest calculated daily, charged monthly, and compounded annually

- (1) Late payment interest is calculated each day after the due date of the unpaid amount until the unpaid amount and all late payment interest that is charged in relation to that amount are paid. 5
- (2) Late payment interest is charged on the last day of each month.
- (3) However, no interest is charged under **subsection (2)** for a month if the unpaid amount and all late payment interest that has been charged in relation to that amount are paid in full on or before the last day of that month. 10
- (4) On 31 March each year, a borrower's unpaid amount is increased by the amount of the outstanding late payment interest.
- (5) In this section, **outstanding late payment interest** means all late payment interest charged in relation to an unpaid amount on or after 1 April that remains unpaid on 31 March the following year. 15

132 Initial notification that late payment interest is payable

- (1) The Commissioner must, as soon as practicable after a borrower becomes liable to pay late payment interest, notify that borrower in writing. 20
- (2) The notification must specify—
- (a) the unpaid amount; and
 - (b) that the borrower is liable to pay late payment interest on the unpaid amount in accordance with this subpart; and 25
 - (c) the amount of late payment interest (if any) that has been charged on the unpaid amount under **section 131(2)** as at the date of the notification; and
 - (d) the date on which the borrower will next be charged with late payment interest under **section 131(2)**. 30

Compare: 1992 No 141 ss 43(1), 45

133 Ongoing notification requirements regarding late payment interest

- (1) The Commissioner must, as soon as practicable after a borrower has been charged with late payment interest under **section 131(2)**, notify the borrower in writing— 5
- (a) of the unpaid amount on which the late payment interest has been charged; and
 - (b) that the borrower has been charged with late payment interest on that unpaid amount; and
 - (c) of the amount of that interest; and 10
 - (d) of the date on which the borrower will next be charged with late payment interest under **section 131(2)**.
- (2) The Commissioner must, as soon as practicable after a borrower's unpaid amount is increased by the amount of the outstanding late payment interest in accordance with **section 131(4)**, notify the borrower in writing— 15
- (a) that the borrower's unpaid amount has been increased by the amount of the outstanding late payment interest; and
 - (b) of the new total of the borrower's unpaid amount; and 20
 - (c) that the new total of the borrower's unpaid amount is itself subject to late payment interest.
- (3) The Commissioner may notify a borrower in writing of the borrower's outstanding obligations, unpaid amount, and late payment interest at any other time the Commissioner chooses. 25
- Compare: 1992 No 141 ss 43(1), 45

Matters of general application to interest

134 No interest on consolidated loan balance in credit

- No interest is payable on—
- (a) a consolidated loan balance that is in credit: 30
 - (b) an excess repayment:
 - (c) a payment that is made under this Act before its due date.

Compare: 1992 No 141 s 42

135 Commissioner's power to correct interest when charged in error

- (1) All amounts of interest charged must be taken to be correct unless a borrower establishes by proceedings under Part 8A of the Tax Administration Act 1994 that he or she should not have been charged with the amount of interest that was charged. 5
- (2) However, the Commissioner may amend an amount of interest charged if this is necessary to correct an error.
- (3) If an amount of interest charged is corrected, the Commissioner must notify the relevant borrower in writing as soon as practicable after the amendment. 10

Compare: 1992 No 141 s 43(2)–(4)

Subpart 2—Relief*Different types of relief***136 Power of Commissioner in relation to small amounts** 15

- (1) The Commissioner may refrain from—
- (a) issuing a notice of assessment in relation to a repayment obligation that is payable by a borrower for a tax year if the amount payable is \$20 or less; or
- (b) issuing a notice of assessment if the total amount of a borrower's remaining repayments for a tax year is \$20 or less; or 20
- (c) collecting a repayment obligation that is payable by a borrower for a tax year if the amount payable is \$20 or less; or 25
- (d) collecting, and may write off, any amount that is payable by an employer or PAYE intermediary for any period under this Act if the amount payable is \$20 or less.
- (2) The Commissioner may refrain from collecting payment of an unpaid amount if that unpaid amount is less than \$500. 30
- (3) Any amount that the Commissioner refrains from collecting under **subsection (1)(c) or (2)** is not written off, and remains part of the borrower's loan balance.
- (4) This section applies despite anything to the contrary in this Act. 35

Compare: 1992 No 141 ss 51(2)–(5), 51A

137 Application for different types of relief for borrower

- (1) A borrower, or a person on a borrower's behalf, may apply for 1 or more of the following:
- (a) relief from late payment interest (*see section 138*):
 - (b) hardship relief for the current tax year, any prior tax year, or the next tax year (*see section 139*): 5
 - (c) financial relief by entry into an instalment arrangement (*see section 146*).
- (2) An application under **subsection (1)(a)** must be made by notifying the Commissioner in a manner acceptable to the Commissioner. 10
- (3) An application under **subsection (1)(b)**—
- (a) must be made by notifying the Commissioner in a manner acceptable to the Commissioner:
 - (b) that relates to hardship relief for the next tax year must be made on or before 31 March in the tax year that immediately precedes the tax year for which relief is sought. 15
- (4) An application under **subsection (1)(c)** must be made in accordance with **section 146(1)**. 20

Compare: 1992 No 141 s 54

*Relief from late payment interest***138 Commissioner may grant relief from late payment interest**

- (1) **Subsection (2)** applies—
- (a) if a borrower has been charged with late payment interest; and 25
 - (b) regardless of whether that late payment interest has been paid, either in whole or in part; and
 - (c) if an application is made under **section 137(1)(a)** for relief from late payment interest. 30
- (2) The Commissioner may, having regard to the circumstances of the case and if the Commissioner considers it equitable to do so, grant relief to the borrower by cancelling as much of the late payment interest as the Commissioner considers equitable.
- (3) If all or part of the late payment interest is cancelled,— 35
- (a) the borrower's consolidated loan balance and, if the late payment interest has been compounded under **section**

- 131(4)**, unpaid amount are decreased by the amount of the cancelled late payment interest; and
- (b) the Commissioner must refund any payment made in excess of the remaining amount of late payment interest payable (if any) by the borrower in accordance with **sections 193 and 194.** 5

Compare: 1992 No 141 s 53

Hardship relief

139 Hardship relief for any tax year

- (1) If an application is made under **section 137(1)(b)** for hardship relief, the Commissioner may, for any period the Commissioner considers equitable, decrease a borrower's repayment obligation if the Commissioner— 10
- (a) is satisfied that payment of that repayment obligation is causing, or would cause, serious hardship to the borrower; or 15
- (b) considers that there are other special reasons that make it fair and reasonable to do so.
- (2) However, despite **section 192**, the Commissioner must not refund any amount that was deducted or paid to meet a repayment obligation for a tax year prior to the current tax year other than the tax year that immediately precedes the current tax year. 20

Compare: 1992 No 141 ss 55, 55A, 55B

140 Special deduction rate certificate for hardship relief 25

- (1) **Subsection (2)** applies if—
- (a) the Commissioner decreases the repayment obligation of a borrower under **section 139**; and
- (b) the borrower derives salary or wages.
- (2) The Commissioner may issue a special deduction rate certificate that— 30
- (a) specifies a special deduction rate that reflects the Commissioner's decision under **section 139**; and
- (b) specifies the period for which the special deduction rate is to apply to the borrower; and 35

- (c) requires the borrower's employer to make salary or wage deductions at the special deduction rate.
- (3) The issue of a special deduction rate certificate may form part of or all of the means by which a borrower's repayment obligation is decreased under **section 139**. 5
Compare: 1992 No 141 ss 20A(2), 55B
- 141 Issue and application of special deduction rate certificate**
- (1) If the Commissioner issues a special deduction rate certificate under **section 140**, the Commissioner must give a copy of the certificate to the borrower. 10
- (2) The special deduction rate certificate revokes all other special deduction rate certificates previously issued in relation to the borrower under **section 39, 94, or 140**.
Compare: 1992 No 141 s 20A(5), (6)
- 142 Time when special deduction rate ceases to apply** 15
The special deduction rate applies until the earlier of—
- (a) the end of the period specified in the special deduction rate certificate; or
- (b) the date on which the Commissioner notifies the employer in writing otherwise; or 20
- (c) the date on which the borrower notifies the employer otherwise.
- Compare: 1992 No 141 s 20A(4)
- 143 Effect of Commissioner's decision under section 139** 25
An amount that, as a result of a decision under **section 139**, the Commissioner refunds to, or does not collect from, a borrower—
- (a) is not written off; and
- (b) remains part of the borrower's loan balance; and
- (c) is not an unpaid amount. 30
Compare: 1992 No 141 s 55C

144 Borrowers must notify Commissioner of change of circumstances

A borrower who applies for hardship relief under **section 137(1)(b)** must notify the Commissioner, and provide details, as soon as practicable if there is a change in the borrower's circumstances that—

- (a) means that any information supplied to the Commissioner under **section 137** is incorrect or inaccurate; or
- (b) may affect whether or not a borrower would have been, or will continue to be, granted hardship relief under **section 139**.

Compare: 1992 No 141 s 55D(1)

145 Commissioner may review grant of hardship relief

- (1) The Commissioner may review any decision he or she made to grant hardship relief to a borrower. 15
- (2) If for any reason the Commissioner considers that the circumstances for the grant of that hardship relief have changed, the Commissioner may do either or both of the following:
 - (a) require the borrower to take any action that is required to reverse the effects of the hardship relief that was granted to the borrower: 20
 - (b) reinstate all or part of the repayment obligation that would have applied to the borrower if hardship relief had not been granted to the borrower, and require payment of any amount that would have been due during the relevant tax year. 25

Compare: 1992 No 141 s 55D(2), (3)

*Instalment arrangements***146 Application for instalment arrangement**

- (1) An application for entry into an instalment arrangement— 30
 - (a) may be made at any time in relation to an unpaid amount and any un compounded late payment interest; and
 - (b) must be made in accordance with section 177(1)(b) of the Tax Administration Act 1994.
- (2) Sections 177(1)(b) and (3) to (5), 177A, 177B, and 177CA of the Tax Administration Act 1994 apply to an application under 35

subsection (1) and to an instalment arrangement granted as a result of that application, as far as applicable and with all necessary modifications, as if—

- (a) every reference to a taxpayer included a borrower; and
- (b) every reference to tax included an unpaid amount and un-compounded late payment interest. 5

147 Instalment arrangement cancelled if non-compliance

- (1) An instalment arrangement is cancelled if 2 instalments that were due under the instalment arrangement are not paid in full and on time. 10
- (2) Cancellation under **subsection (1)** takes effect—
 - (a) on the day after the due date of the second unpaid instalment; and
 - (b) whether or not the first unpaid instalment was subsequently paid on or before the due date of the second unpaid instalment. 15

Subpart 3—Penalties and offences

Late filing penalties

148 Late filing penalty for certain declarations

- (1) If a borrower does not complete and provide a declaration on time, the Commissioner may— 20
 - (a) notify the borrower in writing that a late filing penalty will be imposed if the declaration is not completed and filed within 30 days of the date of the notification; or
 - (b) give public notice that a late filing penalty will be imposed on borrowers who do not complete and file the declaration within 30 days of the date of the notice. 25
- (2) A borrower is liable to pay a late filing penalty if—
 - (a) the Commissioner notified the borrower or gave public notice in accordance with **subsection (1)**; and 30
 - (b) the declaration is not completed and filed within 30 days of the date of the notification or notice.
- (3) The late filing penalty for a borrower with net income—
 - (a) below \$100,000 is \$50;
 - (b) between \$100,000 and \$1,000,000 (both figures inclusive) is \$250: 35

- (c) above \$1,000,000 is \$500.
- (4) A borrower is not liable to pay a late filing penalty under both this section and under section 139A of the Tax Administration Act 1994 for the same declaration.
- (5) In this section, **declaration** means— 5
- (a) a declaration of pre-taxed income:
- (b) a notification of a borrower’s annual gross income under **section 106**.
- Compare: 1994 No 166 s 139A
- 149 Due dates for payment of late filing penalty** 10
- A borrower who is liable to pay a late filing penalty must pay that penalty on or before the later of the following dates:
- (a) the date that is 60 days after the date of the notification or notice given to the borrower under **section 148(1)**:
- (b) if the borrower does not have an extension of time to file a return of income under section 37 of the Tax Administration Act 1994, the date in column B of the table in Part A of Schedule 3 of the Income Tax Act 2007 that corresponds to the month of the borrower’s balance date: 15
- (c) if the borrower does have an extension of time to file a return of income under section 37 of the Tax Administration Act 1994, the date in column F of the table in Part A of Schedule 3 of the Income Tax Act 2007 that corresponds to the month of the borrower’s balance date. 20
- Compare: 1994 No 166 s 142 25

Student loan shortfall penalties

- 150 Definitions relating to student loan shortfall penalties**
- In this section and **sections 151 to 154**,—
- incorrect tax position** has the meaning given to it in **section 151(b)** 30
- repayment obligation shortfall**, for a tax year, means the difference between the effect of—
- (a) a borrower’s income tax position on his or her other income repayment obligation for the tax year; and 35

- (b) the correct tax position on that repayment obligation for the tax year

shortfall penalty means a penalty imposed under any of sections 141A to 141E of the Tax Administration Act 1994 for taking an incorrect tax position or for doing or failing to do anything specified or described in those sections. 5

151 Student loan shortfall penalties may be imposed on certain borrowers

Section 152 applies to a borrower if—

- (a) the borrower is liable to pay a shortfall penalty; and 10
 (b) the incorrect tax position, action, or omission that resulted in the shortfall penalty (the **incorrect tax position**)—
 (i) created a shortfall in the income tax paid or payable by the borrower; and 15
 (ii) resulted in the borrower having a repayment obligation shortfall.

152 Commissioner may impose student loan shortfall penalties

- (1) If this section applies to a borrower, the Commissioner may, at his or her discretion, impose a student loan shortfall penalty on the borrower. 20
 (2) The amount of a student loan shortfall penalty is calculated in accordance with the formula—

$$a = b \times c$$

where— 25

- a is the amount of the student loan shortfall penalty
 b is the amount of the repayment obligation shortfall
 c is the final percentage imposed under the Tax Administration Act 1994 for the shortfall penalty after adjustment, if any, under section 141FB, 141G, 141H, 141I, 141J, or 141K of the Tax Administration Act 1994, as applicable. 30

Compare: 1992 No 141 s 85

153 Notification of student loan shortfall penalty

- (1) If the Commissioner imposes a student loan shortfall penalty on a borrower, the Commissioner must notify the borrower in writing.
- (2) The notification must specify— 5
 - (a) the amount of the student loan shortfall penalty and the reasons for its imposition; and
 - (b) the date on or before which the student loan shortfall penalty must be paid (which must be 30 days or more after the date of the notification); and 10
 - (c) the amount of the repayment obligation shortfall that remains due and payable and that that amount is subject to late payment interest.
- (3) The borrower must pay the student loan shortfall penalty on or before the date specified in the notification. 15

154 Student loan shortfall penalty reduced or removed to reflect change to shortfall penalty

- (1) **Subsection (2)** applies if—
 - (a) a borrower challenges a shortfall penalty; and
 - (b) as a result, the shortfall penalty is reduced or removed; and 20
 - (c) the shortfall penalty was the basis for the Commissioner imposing a student loan shortfall penalty on the borrower under **section 152**.
- (2) The Commissioner must, as appropriate, reduce or remove the borrower’s student loan shortfall penalty to reflect the decision that was made in relation to the shortfall penalty. 25

Offences

155 Certain offence provisions in Tax Administration Act 1994 apply to borrowers

- (1) The sections of the Tax Administration Act 1994 that apply to borrowers and their consolidated loan balances include— 30
 - (a) section 143 (absolute liability offences):
 - (b) section 143A (knowledge offences):
 - (c) section 143B (evasion or similar offence): 35
 - (d) section 148 (aiding or abetting).

- (2) Sections 149 to 150A of the Tax Administration Act 1994 apply, as far as applicable and with all necessary modifications, for the purposes of the sections listed in **subsection (1)**, as if—
- (a) every reference to a taxpayer were a reference to a borrower; and
 - (b) every reference to income tax were a reference to a repayment obligation.

156 Offence to prejudice employees because of student loan repayment liability

- (1) An employer commits an offence against this Act if the employer—
- (a) refuses to employ, or to pay salary or wages to, another person because that person is a borrower; or
 - (b) dismisses, or threatens to dismiss, another person from his or her employment because that person is a borrower; or
 - (c) terminates, or threatens to terminate, the payment of salary or wages to another person because that person is a borrower; or
 - (d) prejudices, or threatens to prejudice, another person in his or her employment or otherwise in the receipt of salary or wages because that person is a borrower; or
 - (e) intimidates or coerces, imposes any pecuniary or other penalty on, or takes any other disciplinary action in relation to another person because that person is a borrower.
- (2) A person who commits an offence against **subsection (1)** is liable to a fine not exceeding \$2,000.
- (3) If an employer is convicted of an offence against **subsection (1)**, the Court may order the payment of compensation to the borrower for loss or damage suffered as a result of the offence.
- Compare: 1992 No 141 s 81

157 Proceedings to be taken summarily

A proceeding for an offence against **section 156** must be taken by way of summary prosecution before a District Court Judge upon the information of the Commissioner.

Compare: 1992 No 141 s 82

158 Information may charge several offences

- (1) An information may charge the defendant with any number of offences against **section 156** if those offences are founded on the same set of facts, or form or are part of a series of offences of the same or similar character. 5
- (2) If an information charges more than 1 offence,—
- (a) particulars of each offence charged must be set out separately in the information; and
- (b) all of those charges must be heard together, unless the court, either before or at any time during the hearing, considers it just that any charge should be heard separately and makes an order to that effect. 10

Compare: 1992 No 141 s 83

159 Information may be laid within 10 years

- (1) An information for an offence against **section 156** may be laid at any time within 10 years after the end of the tax year in which the offence was committed. 15
- (2) **Subsection (1)** applies despite anything in the Summary Proceedings Act 1957 or in any other Act. 20

Compare: 1992 No 141 s 84

Subpart 4—Borrower’s right to object to
loan manager about details of loan advances

160 Borrowers may object to details of loan advances

- (1) A borrower may object to the details of a loan advance made or charged to the borrower stated in— 25
- (a) the information provided or made available to the borrower under **section 13**; or
- (b) the statement of loan advances given to the borrower under **section 15**.
- (2) However, a borrower may object only if the borrower reasonably believes that those details are incorrect. 30
- (3) An objection under **subsection (1)** must—
- (a) state the reasons for the objection; and
- (b) be made by notifying the loan manager in writing (*see section 205*); and 35

- (c) for an objection that concerns the details of a loan advance stated in a statement of loan advances, be received by the loan manager on or before the date stated in that statement in accordance with **section 15(2)(d)**.

Compare: 1992 No 141 s 6

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161 Loan manager must consider objections

- (1) The loan manager must consider all objections made in accordance with **section 160**.

- (2) The loan manager must, as soon as practicable,—

- (a) notify the objector in writing of the loan manager’s decision in respect of the objection, and of the reasons for that decision; and

- (b) notify the Commissioner (in the manner determined by the Commissioner and the loan manager) of the loan manager’s decision in respect of the objection.

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Compare: 1992 No 141 s 7

162 Power to require objection to be determined by chief executive

- (1) If an objection under **section 160** is not wholly allowed by the loan manager, the objector may, by formally notifying the chief executive, require that the objection be determined by the chief executive.

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- (2) A notification under **subsection (1)** must be given within 21 days after the date on which the loan manager notifies the objector of the decision under **section 161(2)(a)**.

25

- (3) **Subsection (2)** is subject to **section 164**.

Compare: 1992 No 141 s 8

163 Chief executive must consider objections required to be determined by chief executive

- (1) The chief executive must consider all objections that the chief executive is required to determine under **section 162**.

30

- (2) The chief executive must, as soon as practicable,—

- (a) notify the objector in writing of the chief executive’s decision in respect of the objection, and of the reasons for that decision; and

35

- (b) notify the loan manager in writing of the chief executive's decision in respect of the objection, and of the reasons for that decision.
- (3) The loan manager must, as soon as practicable, notify the Commissioner (in the manner determined by the Commissioner and the loan manager) of the chief executive's decision in respect of the objection. 5
- Compare: 1992 No 141 s 9
- 164 Extension of time for objection** 10
- The chief executive may extend—
- (a) the time allowed under **section 15(2)(d)** for notifying an objection under **section 160**; or
- (b) the time allowed under **section 162(2)** for notifying that an objection is required to be considered by the chief executive under **section 162(1)**; or 15
- (c) both.
- Compare: 1992 No 141 s 10
- 165 Right to apply to Disputes Tribunal or District Court**
- (1) **Subsection (2)** applies if an objection under **section 160** that the chief executive is required to determine under **section 162** is not wholly allowed by the chief executive. 20
- (2) The objector may, within 30 days after the date on which the chief executive notifies the objector of the decision under **section 163(2)(a)**, either—
- (a) apply to a Disputes Tribunal for determination of the dispute if the amount in dispute is within the financial jurisdiction of the Disputes Tribunal; or 25
- (b) apply to a District Court for determination of the dispute.
- (3) A Referee of a Disputes Tribunal or a District Court Judge, as applicable, may extend the time allowed under **subsection (2)** for applying to a Disputes Tribunal or District Court. 30
- (4) No objection to which **section 160 or 162** applies may be heard and determined by a Disputes Tribunal or a District Court. 35
- (5) **Subsection (4)** applies—

- (a) despite anything in the Disputes Tribunals Act 1988 or the District Courts Act 1947; but
- (b) subject to **subsections (1) and (2)**.

Compare: 1992 No 141 s 11

- 166 Notification of Disputes Tribunal’s or District Court’s decision about objection** 5
- The loan manager must, as soon as practicable, notify the Commissioner (in the manner determined by the Commissioner and the loan manager) of a Disputes Tribunal’s or District Court’s decision in respect of an objection under **section 165**. 10

Subpart 5—Dispute procedures and rights to challenge

Dispute procedures

- 167 Part 4A of Tax Administration Act 1994 applies to disputes under this Act** 15
- (1) The procedures in Part 4A of the Tax Administration Act 1994 apply, with all necessary modifications, to a dispute between a person and the Commissioner under this Act.
 - (2) However, **subsection (1)** does not apply to an objection to the details of a loan advance made or charged to a borrower (*see section 160*). 20

Compare: 1992 No 141 s 69A

Rights to challenge

- 168 Dispute process must be completed before challenge is made** 25
- A person may challenge a matter under this subpart only after the dispute process applied by **section 167** has been concluded in relation to that matter.

Compare: 1992 No 141 s 69A

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- 169 Challenge to details of consolidated loan balance**
- A borrower may challenge any information (other than the details of a loan advance made or charged to the borrower) pro-

vided to the borrower under **section 13** if the borrower reasonably believes that that information is incorrect.

170 Challenge to decision concerning treating borrowers as being physically in New Zealand

A borrower may challenge a decision by the Commissioner— 5

- (a) not to treat the borrower as being physically in New Zealand under **section 20(1)** on the ground that that decision is not fair and reasonable:
- (b) that a condition in any of **clauses 2 to 10 of Schedule 1** is not satisfied by the borrower on the ground that that decision is erroneous: 10
- (c) concerning the start and end dates for the period for which the borrower is treated as being physically in New Zealand under **section 22(b)(i)** on the ground that those dates are— 15
 - (i) not fair and reasonable; or
 - (ii) erroneous:
- (d) concerning the conditions that must apply or be met in order for the borrower to be treated as being physically in New Zealand under **section 22(b)(ii)** on the ground that those conditions are— 20
 - (i) not fair and reasonable; or
 - (ii) erroneous.

Compare: 1992 No 141 s 65A

171 Challenge to additional deduction rate notice 25

A borrower who has been issued with an additional deduction rate notice under **section 43(2)** may, on the ground that the notice is erroneous or excessive or has been issued in error, challenge the notice.

172 Challenge to determination of salary or wage deduction 30

An employer or PAYE intermediary who is required to make a salary or wage deduction under **section 31 or 33** may, on the ground that the determination is erroneous, challenge a determination made under **section 56(2)**.

Compare: 1992 No 141 s 67

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- 173 Challenge to decision regarding significant over-deduction**
- A borrower may challenge—
- (a) a determination by the Commissioner under **section 60** that a significant over-deduction was not made, on the ground that the determination is erroneous: 5
 - (b) the amount of a significant over-deduction stated in a notice in accordance with **section 61(2)(b)(iii)**, on the ground that the amount is erroneous.
- 174 Challenge to assessments**
- A borrower whose repayment obligation has been assessed under **section 46, 70, 82, or 101** may, on the ground that the assessment is erroneous or excessive or has been issued in error, challenge the assessment. 10
- Compare: 1992 No 141 s 64
- 175 Challenge to interest charged** 15
- (1) A borrower who is charged with overseas-based interest may, on the ground that he or she should not have been charged with the amount of interest charged, challenge that interest.
 - (2) A borrower who is charged with late payment interest may, on the ground that he or she should not have been charged with the amount of interest charged, challenge that interest. 20
 - (3) Except as set out in **subsections (1) and (2)**, a right to challenge interest charged under this Act is not conferred by anything in—
 - (a) this Act; or 25
 - (b) Parts 4A and 8A of the Tax Administration Act 1994; or
 - (c) a loan contract.
- Compare: 1992 No 141 ss 65, 65A(e), (f), 69B
- 176 Challenge to decision concerning relief** 30
- (1) A borrower may challenge a decision by the Commissioner, on the ground that the decision is not fair and reasonable, not to grant the borrower—
 - (a) relief from late payment interest under **section 138**: 35
 - (b) hardship relief under **section 139**:

- (c) entry into an instalment arrangement under **section 146**.
- (2) A borrower may challenge the relief provided to the borrower under **section 138, 139, or 146** on the ground that the relief is not fair and reasonable. 5
Compare: 1992 No 141 s 66B
- 177 Challenge to late filing penalty**
A borrower who is charged with a late filing penalty may challenge the penalty on the ground that it was imposed on the borrower in error. 10
Compare: 1992 No 141 s 66
- 178 Challenge to student loan shortfall penalty**
A borrower who has a student loan shortfall penalty imposed on him or her under **section 152** may challenge the student loan shortfall penalty on the ground that it was imposed on the borrower in error. 15
Compare: 1992 No 141 s 68
- 179 Person who may make challenge**
A challenge under this subpart may be made only by or on behalf of the person to whom the assessment, notice, or decision relates. 20
Compare: 1992 No 141 s 69
- 180 Commissioner's decision on challenges**
- (1) After considering a challenge under this subpart, the Commissioner may— 25
- (a) allow the challenge in full; or
 - (b) allow the challenge in part; or
 - (c) disallow the challenge.
- (2) The Commissioner must formally notify the person who made the challenge as soon as practicable after the Commissioner has made a decision about the challenge. 30
- (3) This section applies despite anything to the contrary in Part 8A of the Tax Administration Act 1994.

Part 5
**Matters of general application and
miscellaneous matters**

Subpart 1—Matters of general application

- 181 Annual administration fee** 5
- (1) An annual administration fee of \$40 (or any other amount prescribed by regulations) must be charged each tax year by the Commissioner to a borrower who has a consolidated loan balance of \$20 or more on 31 March in that year.
- (2) However, no annual administration fee may be charged to a borrower for a tax year if that borrower is charged with a student loan establishment fee under **section 8** in that tax year. 10
- 182 Tax year other than 12 months due to change in balance date**
- (1) This section applies if a borrower— 15
- (a) derives pre-taxed income, other income, or both; and
- (b) that income is for a period other than 12 months as a result of the borrower changing his or her balance date for the purposes of income tax.
- (2) For the purposes of calculating the borrower’s repayment obligations under **subparts 2 and 3 of Part 2**, the annual repayment threshold is calculated in accordance with the formula— 20
- $$a = b \times \frac{c}{365}$$
- where—
- a is the annual repayment threshold calculated in accordance with this section: 25
- b is the amount of the annual repayment threshold:
- c is the number of days in the period.
- Compare: 1992 No 141 s 61
- 183 Limit on repayment obligation for pay period or tax year**
- (1) If a borrower derives only salary or wages for a tax year, the borrower’s repayment obligation for a pay period in that tax 30

- year must not exceed the amount of the borrower's loan balance on the last day of the month in which the pay period falls.
- (2) If a borrower derives pre-taxed income or other income for a tax year, the borrower's pre-taxed repayment obligation or other income repayment obligation for that tax year must not exceed the amount of the borrower's loan balance on the last day of that tax year. 5
- (3) **Section 103(2)** applies to overseas-based borrowers.
- (4) This section applies despite anything to the contrary in this Act. 10
- Compare: 1992 No 141 s 14(3)

184 Payment date not otherwise specified

If this Act does not specify a date by which an amount payable under this Act is payable, the amount is due and payable 30 days after the date on which the borrower is notified in writing that the amount is due and payable. 15

Compare: 1992 No 141 s 47

185 Recovery of un-compounded late payment interest and unpaid amount

- (1) The following are recoverable as a debt due to the Crown: 20
- (a) an unpaid amount;
 - (b) un-compounded late payment interest.
- (2) Sections 156 to 165 of the Tax Administration Act 1994, as far as they are applicable and with all necessary modifications, apply for the purposes of this Act, as if— 25
- (a) every reference in those provisions to income tax or tax were a reference to an unpaid amount or un-compounded late payment interest; and
 - (b) every reference in those provisions to a taxpayer or a person were a reference to a borrower; and 30
 - (c) the reference to an assessment in section 162 of the Tax Administration Act 1994 were a reference to an assessment made under **Part 2** of this Act; and
 - (d) every reference to "this Act" in sections 164 and 165 of the Tax Administration Act 1994 were a reference to the Student Loan Scheme Act **2010**. 35

Compare: 1992 No 141 s 46

186 Date on which deductions and payments treated as being made and credited

- (1) A salary or wage deduction and an extra deduction is made on the date the deduction is made.
- (2) A payment is made to the Commissioner on the date it is received by the Commissioner. 5
- (3) For the purpose of calculating overseas-based interest or late payment interest,—
- (a) a salary or wage deduction and an extra deduction are credited on the 15th day of the month in which the deduction is made from the borrower's salary or wages; and 10
- (b) all other payments are credited on the date on which they are received by the Commissioner.
- (4) Other than for the purpose of calculating overseas-based interest or late payment interest,— 15
- (a) a salary or wage deduction and an extra deduction are credited on the last day of the month in which the deduction is made from the borrower's salary or wages; and 20
- (b) a payment made by a New Zealand-based borrower (excluding a salary or wage deduction or an extra deduction) for a tax year is credited at the time when the Commissioner assesses the borrower's pre-taxed repayment obligation or other income repayment obligation for that tax year; and 25
- (c) a payment made by an overseas-based borrower (excluding a salary or wage deduction or an extra deduction) is credited on the date it is received by the Commissioner. 30

Compare: 1992 No 141 ss 48, 49

187 Satisfaction of requirements to pay obligations and penalties

- (1) A specified repayment that is made for a borrower in a tax year satisfies (so far as it extends) each future obligation of the borrower that has a due date in that tax year in the order in which those obligations become due. 35
- (2) However,—

- (a) **subsection (1)** does not apply to a future obligation whose due date has passed at the time when the specified repayment is made; and
- (b) if an interim payment is due on the same date as any other type of future obligation, the interim payment is satisfied last; and 5
- (c) the Commissioner may, if the Commissioner considers that it is fair and reasonable to do so, treat a specified repayment as satisfying a future obligation that has a due date in the tax year following the tax year in which the specified repayment was made. 10
- (3) In this section,—
- future obligation** means—
- (a) an amount that must be paid by a borrower in accordance with a written notification under **section 47**: 15
- (b) a remaining repayment:
- (c) an interim payment:
- (d) an instalment of an overseas-based borrower's repayment obligation for a tax year that must be paid in accordance with **section 104**: 20
- (e) a late filing penalty that has been imposed:
- (f) a student loan shortfall penalty that has been imposed
- identified payment** means an extra deduction or a payment that is made to the Commissioner for a borrower, that is identified by the Commissioner as a deduction or a payment that is intended to be offset against— 25
- (a) any uncompounded late payment interest that the borrower has; or
- (b) any unpaid amount owed by the borrower
- specified repayment**— 30
- (a) means—
- (i) an identified payment for a borrower, but only to the extent that it exceeds—
- (A) uncompounded late payment interest that the borrower has; and 35
- (B) an unpaid amount owed by the borrower; and
- (ii) any other payment made to the Commissioner for a borrower; and

- (iii) an extra deduction that is not an identified payment; and
 - (iv) a significant over-deduction that has not been refunded; but
 - (b) except as set out in **paragraph (a)(i)**, does not include an identified payment; and 5
 - (c) except as set out in **paragraph (a)(iv)**, does not include a salary or wage deduction.
- 188 Order in which deductions and payments offset against borrower's consolidated loan balance** 10
- (1) A salary or wage deduction, an extra deduction, or a payment that is made to the Commissioner for a borrower (other than an identified payment) must be offset against the borrower's consolidated loan balance as follows:
 - (a) first, against any uncompounded overseas-based interest; and 15
 - (b) secondly, against the loan balance.
 - (2) However, the total amount offset in accordance with **subsection (1)** for a tax year must not exceed the borrower's total obligations for that tax year. 20
 - (3) If the total salary or wage deductions and extra deductions made, and payments made to the Commissioner, for a tax year (other than identified payments) exceed the borrower's total obligations for that tax year, the Commissioner must offset the remainder of those deductions and payments against the borrower's consolidated loan balance as follows: 25
 - (a) first, against any uncompounded late payment interest; and
 - (b) secondly, against any unpaid amount; and
 - (c) thirdly, against any remaining uncompounded overseas-based interest; and 30
 - (d) fourthly, against any remaining loan balance.
 - (4) In this section,—
 - identified payment** has the meaning given to it in **section 187(3)** 35
 - total obligations** means the total amount of—
 - (a) a borrower's repayment obligations for a tax year; and

- (b) any amount that must be paid by the borrower during the tax year in accordance with a written notification under **section 47**; and
- (c) late filing penalties that must be paid by the borrower during the tax year; and 5
- (d) student loan shortfall penalties that must be paid by the borrower during the tax year.

Compare: 1992 No 141 s 50

189 Order in which identified payments are offset against borrower's consolidated loan balance 10

- (1) An identified payment that is made to the Commissioner for a borrower must be offset against the borrower's consolidated loan balance as follows:
 - (a) first, against any uncompounded late payment interest; and 15
 - (b) secondly, against any unpaid amount; and
 - (c) thirdly, against any uncompounded overseas-based interest; and
 - (d) fourthly, against the loan balance.

- (2) In this section, **identified payment** has the meaning given to it in **section 187(3)**. 20

Compare: 1992 No 141 s 50

190 Cancellation of interest if consolidated loan balance repaid early

- (1) **Subsection (2)** applies if— 25
 - (a) the Commissioner informs or notifies a borrower of the borrower's consolidated loan balance (the **notification**); and
 - (b) the borrower pays the consolidated loan balance stated in the notification in full within 30 days after the date of the notification. 30
- (2) The Commissioner must cancel any interest that is charged between the date of the notification and the date on which the payment is received.

- (3) A notification provided on or after 2 March 2012 under section 60A(1) of the Student Loan Scheme Act 1992 is treated as being a notification under **subsection (1)**.

Compare: 1992 No 141 s 60A

191 Write-off of consolidated loan balance 5

A borrower's consolidated loan balance must be reduced to zero if—

- (a) the borrower dies; or
- (b) the Commissioner has reasonable grounds for believing that the borrower has died; or 10
- (c) the borrower's consolidated loan balance is less than \$20 on the last day of a tax year.

Compare: 1992 No 141 s 60

192 Associated matters unwound if position changed

- (1) If there is a changed obligation, then— 15

- (a) an amount that was deducted or paid to meet the changed obligation must be refunded; and
- (b) any overseas-based interest, late payment interest, late filing penalty, student loan shortfall penalty, or other form of interest or penalty imposed in relation to the changed obligation must be removed; and 20
- (c) any relief granted under **subpart 2 of Part 4** in relation to the changed obligation must be removed; and
- (d) any other action taken in relation to the changed obligation must be reversed. 25

- (2) In this section, **changed obligation** means—

- (a) so much of a borrower's repayment obligation as is decreased or removed under this Act or by the Commissioner:
- (b) so much of any overseas-based interest, late payment interest, late filing penalty, student loan shortfall penalty, or other form of interest or penalty imposed on a borrower as is decreased or removed under this Act or by the Commissioner: 30
- (c) repayment obligations of an overseas-based borrower that subsequently cease to apply because of **section 17(3)**: 35

- (d) repayment obligations of a New Zealand-based borrower that subsequently cease to apply because of **section 18(3)**.

193 Manner of making refunds

A refund that is made under this Act must be made in the manner required under section 184A of the Tax Administration Act 1994. 5

Compare: 1992 No 141 ss 55A(3), 56(2B), 57(2A), 58A(3)

194 Appropriation of refunds

A refund that is made under this Act may be made without further appropriation than this section. 10

Compare: 1992 No 141 s 59

195 Loan advances and other information may be altered

The Commissioner must, as soon as practicable,—

- (a) alter the details of a loan advance provided or made available to a borrower under **section 13** in accordance with the decision of— 15
- (i) the loan manager under **section 161**; or
 - (ii) the chief executive under **section 163**; or
 - (iii) a Referee of a Disputes Tribunal or a District Court Judge, as applicable, under **section 165**; 20
- or
- (b) alter any information (other than the details of a loan advance made or charged to the borrower) provided or made available to a borrower under **section 13** in accordance with a decision of the Commissioner under **subpart 5 of Part 4**. 25

Compare: 1992 No 141 s 7(1)

196 Return and assessment provisions of Tax Administration Act 1994 and Income Tax Act 2007 to apply to this Act 30

Sections 21, 24B, 24F, 24H, 33, 34, 35, 36 to 39, 42 to 44, 79, 80, 92, 92A, 106 to 108, 108B to 111, 113, and 114 of the Tax Administration Act 1994 and section LC 10 and paragraph (b) of the definition of basic tax rate in section YA 1 of the Income

Tax Act 2007 apply, as far as applicable and with all necessary modifications, for the purposes of this Act as if—

- (a) every reference to a taxpayer were a reference to a borrower; and
- (b) every reference to the assessment and levy of income tax or tax were a reference to the assessment and levy of a repayment obligation; and 5
- (c) every reference to income tax were a reference to a repayment obligation.

Compare: 1992 No 141 s 16

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Subpart 2—Miscellaneous matters

Interaction with loan contracts and other enactments

197 This Act overrides loan contracts

- (1) This Act applies despite anything to the contrary in any loan contract. 15
- (2) All loan contracts must be interpreted in a manner that is consistent with this Act.
- (3) If a loan contract cannot be interpreted in a manner that is consistent with this Act, then this Act prevails over the terms of the loan contract. 20

Compare: 1992 No 141 s 63

198 Loan contract enforceable against minor

A loan contract entered into by a borrower (whether before or after the commencement of this section) who is under 18 years of age must be treated, for the purposes of the Minors' Contracts Act 1969, as if the borrower were aged 18 years. 25

Compare: 1992 No 141 s 63A

199 Student loan contracts are not credit contracts

- (1) A loan contract is not— 30
 - (a) a credit contract for the purposes of the Credit Contracts Act 1981:
 - (b) a credit contract or a consumer credit contract for the purposes of the Credit Contracts and Consumer Finance Act 2003. 35

- (2) No cause of action exists under the Credit Contracts Act 1981 or the Credit Contracts and Consumer Finance Act 2003 in relation to a loan contract.
- (3) This section applies—
- (a) to all loan contracts regardless of when they were entered into; and
 - (b) despite anything to the contrary.

Disclosure of information

200 Disclosure of information between authorised persons

- (1) No obligation as to secrecy or other restriction imposed by an enactment or otherwise on the disclosure of information prevents—
- (a) an authorised person from disclosing to another authorised person information required for the purpose of enabling the Commissioner to confirm the identity of a person who applies for a student loan; or
 - (b) an authorised person from disclosing to another authorised person information required for the purpose of enabling the Commissioner to correctly identify a borrower who has received or been charged with a loan advance; or
 - (c) the Commissioner from disclosing to the chief executive information that is necessary to investigate circumstances in which an authorised person considers—
 - (i) a student loan may have been improperly obtained; or
 - (ii) an attempt has been made to obtain a student loan by improper means.
- (2) For the purposes of **subsection (1)(c)**, the information that the Commissioner may disclose includes the following:
- (a) particulars of loan repayments made;
 - (b) the consolidated loan balance;
 - (c) particulars the Commissioner may possess as to the location of a borrower;
 - (d) whether a person specified by the chief executive is a taxpayer:

- (e) for an address specified by the chief executive, the number of borrowers recorded as resident at that address:
- (f) any other particulars that the Commissioner considers relevant to the purposes of **subsection (1)(c)**.
- (3) Information obtained under **subsection (1)** must not be disclosed except to an authorised person and for the purposes of that subsection. 5
- (4) Despite **subsection (3)**, no obligation as to secrecy or other restriction imposed by an enactment or otherwise on the disclosure of information prevents the persons specified in **paragraphs (a), (c), and (e)** of the definition of authorised person in **subsection (5)** from receiving information disclosed by an authorised person to another authorised person in accordance with **subsection (1)** for any purpose that relates to the administration of the student loan scheme. 10 15
- (5) In this section,—
- authorised person** means—
- (a) the Commissioner or an officer of the Inland Revenue Department who is authorised by the Commissioner to disclose and receive information under this section; or 20
- (b) an employee of a tertiary institution who is authorised by the chief executive to disclose and receive information under this section; or
- (c) the chief executive, or an officer of the specified department who is authorised by the chief executive to disclose and receive information under this section; or 25
- (d) the Secretary of Education, or an officer of the Ministry of Education who is authorised by the Secretary of Education to disclose and receive information under this section; or 30
- (e) the loan manager, or an employee of the loan manager who is authorised by the chief executive to disclose and receive information under this section
- specified department** means the department that is, with the authority of the Prime Minister, for the time being responsible for the administration of the Social Security Act 1964. 35

Compare: 1992 No 141 s 62

201 Disclosure of information between Inland Revenue Department and New Zealand Customs Service for information-matching purposes

- (1) The purpose of this section is to facilitate the exchange of information between the Inland Revenue Department and the New Zealand Customs Service for the purpose of establishing an information-matching programme to assist the Commissioner to verify—
- (a) whether borrowers are New Zealand-based or overseas-based: 10
 - (b) whether borrowers are New Zealand residents for the purposes of this Act.
- (2) For the purpose of this section, the Commissioner may provide to the chief executive of the New Zealand Customs Service any of the following information that is held by the Inland Revenue Department: 15
- (a) a borrower's name or any other name by which a borrower is known:
 - (b) a borrower's date of birth:
 - (c) a borrower's tax file number. 20
- (3) The Commissioner and the chief executive of the New Zealand Customs Service may, for the purpose of this section, determine by written agreement between them—
- (a) the frequency with which information may be supplied; and 25
 - (b) the form in which information may be supplied; and
 - (c) the method by which information may be supplied.
- (4) **Subsection (2)** applies despite any obligation as to secrecy or other restriction imposed by any enactment or otherwise on the disclosure of information. 30

Compare: 1992 No 141 s 62A

202 Power of Commissioner to access arrival or departure information

In accordance with, and for the purpose set out in, section 280I of the Customs and Excise Act 1996, the Commissioner may access any information-recording system used by the New 35

Zealand Customs Service to store arrival or departure information.

Compare: 1992 No 141 s 62B

Informing and notifying under this Act

- 203 Meaning of inform** 5
- (1) A requirement in this Act for a person to **inform** another person (**person B**) is satisfied—
- (a) by—
- (i) providing the information free of charge on an Internet site that allows person B to access the information at all reasonable times; and 10
- (ii) making the information available for inspection free of charge, and for purchase at a reasonable price, at each office of the Inland Revenue Department during the period from 8 am to 4.30 pm each working day; or 15
- (b) by giving public notice.
- (2) Despite **subsection (1)(b)**, public notice must not be given for the purposes of **section 13**.
- 204 Meaning of notify** 20
- (1) A requirement in this Act for a person to **notify** another person or for a matter to be notified is satisfied by a communication—
- (a) that is printed, typewritten, or otherwise visibly represented, copied, or reproduced on paper and is given by personal delivery, post, or fax; or 25
- (b) by telephone; or
- (c) made orally in person in a manner acceptable to the Commissioner; or
- (d) by an electronic means, if the person complies with the Electronic Transactions Act 2002, including by fax, email, or the Internet; or 30
- (e) in any other manner acceptable to the Commissioner.
- (2) However, it does not include a communication on the Internet, or by other means, if the person for whom the communication is intended is not directly alerted to it in some manner. 35

- (3) A notification that is given by post is treated as having been given at the time the notification would have been delivered in the ordinary course of the post.
- (4) Despite **subsection (1)(d)** of this section and section 16 of the Electronic Transactions Act 2002, the consent of a person is not required in order for information to be communicated in an electronic form. 5

205 Meaning of notify a person in writing

- (1) A requirement in this Act for a person to **notify a person in writing** or for a matter to be notified in writing is satisfied by a communication— 10
- (a) that is printed, typewritten, or otherwise visibly represented, copied, or reproduced on paper and is given by personal delivery, post, or fax; or
 - (b) by an electronic means, if the person complies with the Electronic Transactions Act 2002, including by fax, email, or the Internet; or 15
 - (c) in any other manner acceptable to the Commissioner.
- (2) However, it does not include a communication on the Internet, or by other means, if the person for whom the communication is intended is not directly alerted to it in some manner. 20
- (3) A notification in writing that is given by post is treated as having been given at the time the notification would have been delivered in the ordinary course of the post.
- (4) Despite **subsection (1)(b)** of this section and section 16 of the Electronic Transactions Act 2002, the consent of a person is not required in order for information to be communicated in an electronic form. 25

206 Meaning of formally notify

- (1) A requirement in this Act for a person to **formally notify** another person or for a matter to be formally notified is satisfied by a communication that— 30
- (a) is printed, typewritten, or otherwise visibly represented, copied, or reproduced on paper; and
 - (b) is given by— 35
 - (i) personal delivery; or

- (ii) post; or
- (iii) fax.
- (2) However, it does not include a communication by email, the Internet, or other electronic means (except a facsimile).
- (3) A formal notification that is given by post is treated as having been given at the time the notification would have been delivered in the ordinary course of the post. 5

207 Notice requirements of Tax Administration Act 1994 do not apply

Sections 203 to 206 of this Act override sections 14 and 14B of the Tax Administration Act 1994. 10

Regulations

208 Regulations

The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes: 15

- (a) prescribing the amount of the annual repayment threshold, or a means by which it may be calculated or ascertained:
- (b) specifying charitable organisations for the purposes of the definition of charity in **section 4(1)**: 20
- (c) prescribing the repayment percentage, or a means by which it may be calculated or ascertained:
- (d) prescribing the amount of a student loan establishment fee charged under **section 8**, or a means by which it may be calculated or ascertained: 25
- (e) specifying further information requirements in accordance with **section 10(2)(d) or 11(2)(a)(vi)**:
- (f) prescribing the level of unpaid amount on which a borrower is liable to pay late payment interest under **section 129(1)**, or a means by which it may be calculated or ascertained: 30
- (g) prescribing the amount of an annual administration fee charged under **section 181**, or a means by which it may be calculated or ascertained: 35

- (h) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.

Compare: 1992 No 141 s 87

- 209 Transitional regulations** 5
- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations to—
- (a) prescribe matters in respect of the transition of the student loan scheme from the Student Loan Scheme Act 1992 to this Act that may be in addition to or in place of the provisions of **Schedules 5 and 6**: 10
- (b) make provision for a situation for which no or insufficient provision is made by or under this Act or any other Act referred to in this Act.
- (2) The Minister must not recommend the making of regulations unless he or she is satisfied that to do so is necessary for the effective and efficient transition of the student loan scheme from the Student Loan Scheme Act 1992 to this Act. 15
- (3) Any regulations made under this section that are in force on 1 April 2015 are revoked at the close of that day. 20
- 210 Application of Regulations (Disallowance) Act 1989 and Acts and Regulations Publication Act 1989**
- Regulations made under **section 208 or 209** are regulations for the purposes of the Regulations (Disallowance) Act 1989 and the Acts and Regulations Publication Act 1989. 25
- Savings and transitional provisions*
- 211 Transitional provisions concerning loan manager and loan advances**
- This Act and the Student Loan Scheme Act 1992 are subject to the transitional provisions set out in **Schedule 5**. 30
- 212 Early applications and issue of certificates for transition to this Act**
- (1) A borrower may—

- (a) make an application under **section 36, 93, or 137(1)(b)**; and
- (b) if applicable, notify his or her employer in writing (in accordance with **section 29(2)(b)**) that a special deduction rate applies to the borrower; and 5
- (c) request his or her employer or PAYE intermediary (in accordance with **section 33(1)(b)**) to make extra deductions.
- (2) The Commissioner may—
- (a) issue a special deduction rate certificate under **section 39, 94, or 140**; and 10
- (b) issue an additional deduction rate notice under **section 43(2)**; and
- (c) if applicable, follow the procedures in **section 44(1)**.
- (3) This Act applies, for the purpose of giving effect to this section, as if it were in force from 1 October 2011. 15
- (4) However, a special deduction rate or an additional deduction rate notice that applies to a borrower under this section, or a request under **subsection (1)(c)**, does not have effect until the later of— 20
- (a) 1 April 2012; and
- (b) any later date specified in the special deduction rate certificate, the additional deduction rate notice, or the request under **subsection (1)(c)**.
- 213 Savings and transitional provisions** 25
- This Act is subject to the savings and transitional provisions set out in **Schedule 6**.
- Consequential amendments and repeals*
- 214 Amendments to Student Loan Scheme Act 1992 and Credit Contracts and Consumer Finance Act 2003** 30
- The Acts specified in **Schedule 7** are amended in the manner set out in that schedule.
- 215 Amendments to other Acts**
- The Acts specified in **Schedule 8** are amended in the manner set out in that schedule. 35

216 Amendments to other enactments

The enactments specified in **Schedule 9** are amended in the manner set out in that schedule.

217 Student Loan Scheme Act 1992 repealed

The Student Loan Scheme Act 1992 (1992 No 141) is re- 5
pealed.

**218 Student Loan Scheme (Charitable Organisations)
Regulations 2006 revoked**

The Student Loan Scheme (Charitable Organisations) Regula- 10
tions 2006 (SR 2006/68) are revoked.

Schedule 1**ss 20, 21(b)****Conditions to borrower being treated as
being physically in New Zealand****1 Definition**

In this schedule, **NZQA** means the New Zealand Qualifications Authority established under Part 20 of the Education Act 1989. 5

Compare: 1992 No 141 ss 38AJ(4), 38AJA(6)

2 Conditions to charity application

(1) A borrower who makes an application under **section 20(1)(b)** 10
must provide the Commissioner with evidence that the work
the borrower is doing as a volunteer or for token payment for
a charity is 1 or more of the following:

(a) work to relieve poverty, hunger, sickness, or the ravages 15
of war or natural disaster; or

(b) work to improve the economy of a country that is on the
Organisation for Economic Co-operation and Develop-
ment's list of countries receiving development assist-
ance; or

(c) work to raise the educational standards of a country that 20
is on the Organisation for Economic Co-operation and
Development's list of countries receiving development
assistance.

(2) The charity must be specified in regulations at the time the
work described in **clause 1** is carried out. 25

(3) The Commissioner may treat a borrower as being physically
in New Zealand under **section 20(1)(b)** for a maximum ag-
gregate period of up to 24 months.

Compare: 1992 No 141 ss 38AE(3)(a), 38AEA

3 Conditions to unexpected delay application 30

A borrower who makes an application under **section 20(1)(c)**
must—

(a) have been a New Zealand resident for the period to
which the application applies; and

(b) provide evidence— 35

- (i) of the borrower's intended return to New Zealand; and
 - (ii) that, if the borrower had returned to New Zealand as intended, the borrower would have been New Zealand-based; and 5
 - (c) provide evidence of the unexpected delay that resulted in the borrower not being able to return to New Zealand as intended; and
 - (d) provide evidence that the unexpected delay was due to an event or to circumstances beyond the reasonable control of the borrower, like (for example)— 10
 - (i) an airline strike, a personal illness, or the death of a family member:
 - (ii) a fire, flood, storm, earthquake, landslide, volcanic eruption, or other act of God: 15
 - (iii) an explosion or nuclear, biological, or chemical contamination:
 - (iv) sabotage, terrorism, or an act of war (whether declared or not). 20
- Compare: 1992 No 141 s 38AF 20

4 **Conditions to unplanned personal absence application**

A borrower who makes an application under **section 20(1)(d)** must—

- (a) have been a New Zealand resident for the period to which the application applies; and 25
 - (b) provide evidence of the duration of the borrower's unplanned personal absence from New Zealand; and
 - (c) provide evidence that the borrower's unplanned personal absence was due to an event or to circumstances beyond the reasonable planning and control of the borrower, like (for example)— 30
 - (i) the illness or death of a family member who is overseas:
 - (ii) the borrower's employer requiring the borrower to attend a conference overseas. 35
- Compare: 1992 No 141 s 38AG

5 Conditions to employment or occupation absence application

A borrower who makes an application under **section 20(1)(e)** must—

- (a) be a New Zealand resident for the period to which the application applies; and 5
- (b) have a permanent place of abode only in New Zealand; and
- (c) provide evidence that the borrower derives either—
 - (i) a PAYE income payment as defined in section RD 3(1) of the Income Tax Act 2007, having a source in New Zealand; or 10
 - (ii) income from a business that has a permanent establishment in New Zealand; and
- (d) provide evidence that the majority of the borrower's personal absences from New Zealand are because of the borrower's employment or occupation. 15

Compare: 1992 No 141 s 38AH

6 Conditions to marriage, civil union, or de facto application

- (1) A borrower who makes an application under **section 20(1)(f)** must— 20
 - (a) be a New Zealand resident for the period to which the application applies; and
 - (b) provide evidence of the borrower's relationship with his or her spouse, civil union partner, or de facto partner (**partner**); and 25
 - (c) provide evidence that the borrower's personal absence from New Zealand is because the borrower is accompanying his or her partner overseas; and
 - (d) provide evidence that the borrower's partner— 30
 - (i) is physically absent from New Zealand in the service in any capacity of the Government of New Zealand; or
 - (ii) satisfies the conditions in **clause 2, 5, 7, 8, or 9.** 35
- (2) The Commissioner may treat a borrower whose partner satisfies the conditions in **clause 2** (working as a volunteer or for token payment for a charity) as being physically in New

Zealand under **section 20(1)(f)** for a maximum aggregate period of up to 24 months.

Compare: 1992 No 141 ss 38AE(3)(b), 38AI

- 7 Condition to study at postgraduate or undergraduate level overseas application** 5
- (1) A borrower who makes an application under **section 20(1)(g)** must—
- (a) be undertaking study at postgraduate or undergraduate level; and
 - (b) provide the Commissioner with the following: 10
 - (i) evidence from the NZQA verifying that the borrower’s course is study at postgraduate or undergraduate level; and
 - (ii) evidence from the borrower’s overseas education provider verifying that the borrower is enrolled full-time in the course verified by the NZQA. 15
- (2) In this clause, **study at postgraduate or undergraduate level** means study that is assessed by the NZQA as being equivalent to level 7, 8, 9, or 10 on the New Zealand Register of Quality Assured Qualifications developed by the NZQA under section 253(1)(c) of the Education Act 1989. 20
- Compare: 1992 No 141 s 38AJ(2), (4)
- 8 Condition to full-time overseas study under formal exchange programme or formal agreement application**
- (1) A borrower who makes an application under **section 20(1)(h)** must— 25
- (a) be undertaking study that—
 - (i) the borrower is enrolled in with a New Zealand tertiary education provider; and
 - (ii) if it is completed successfully, will count towards a qualification offered by a New Zealand tertiary education provider; and 30
 - (iii) is assessed by the NZQA as being equivalent to level 7 or above on the New Zealand Register of Quality Assured Qualifications developed by the NZQA under section 253(1)(c) of the Education Act 1989; and 35

- (iv) is full-time and undertaken overseas as part of either—
 - (A) a formal exchange programme approved by the New Zealand Government; or
 - (B) a formal agreement between a New Zealand tertiary education provider and an overseas tertiary provider; and
 - (b) provide the Commissioner with evidence from the borrower's New Zealand tertiary education provider verifying that the borrower's study meets the requirements of **paragraph (a)**. 10
- (2) In this clause, **overseas tertiary provider** means an institution or organisation that—
- (a) provides tertiary education or training; and
 - (b) is based in a country other than New Zealand; and 15
 - (c) is registered by an appropriate education authority in that country.

Compare: 1992 No 141 s 38AJA(2), (4), (6)

9 Condition to full-time overseas study application

A borrower who makes an application under **section 20(1)(i)** must— 20

- (a) be undertaking study that—
 - (i) the borrower is enrolled in with a New Zealand tertiary education provider; and
 - (ii) if it is completed successfully, will count towards a qualification offered by a New Zealand tertiary education provider; and 25
 - (iii) is assessed by the NZQA as being equivalent to level 8 or above on the New Zealand Register of Quality Assured Qualifications developed by the NZQA under section 253(1)(c) of the Education Act 1989; and 30
 - (iv) is full-time and undertaken overseas; and
 - (v) cannot be completed in New Zealand; and
- (b) provide the Commissioner with evidence from the borrower's New Zealand tertiary education provider veri- 35

fyng that the borrower's study meets the requirements of **paragraph (a)**.

Compare: 1992 No 141 s 38AJA(3), (4)

10 Conditions to Niue, Cook Islands, Tokelau, and Ross Dependency application 5

A borrower who makes an application under **section 20(1)(j)** must—

- (a) provide the Commissioner with evidence that he or she is physically in 1 or more of New Zealand, Niue, the Cook Islands, Tokelau, or the Ross Dependency for the period to which the application applies; and 10
- (b) pay his or her repayment obligation in full when, or before, it falls due during the period he or she is treated as being physically in New Zealand. 15

Compare: 1992 No 141 s 38AIA

Schedule 2

s 64

Application of PAYE rules for purposes
of section 64

- 1 PAYE rules apply to salary or wage deductions and extra deductions** 5
- (1) The PAYE rules apply for the purposes of **section 64**, as far as applicable and with all necessary modifications, as if—
- (a) every reference to income tax or tax were a reference to a salary or wage deduction or an extra deduction, as applicable; and 10
 - (b) every reference to an amount of tax for a PAYE income payment that is withheld and paid to the Commissioner were a reference to a salary or wage deduction or an extra deduction, as applicable; and
 - (c) every reference to a taxpayer or a person were a reference to a borrower; and 15
 - (d) every reference to a tax code were a reference to, as applicable, the repayment code “SL” or “STC”, or the tax code “SLADR”; and
 - (e) every reference to basic tax rates were a reference to the repayment percentage. 20
- (2) However,—
- (a) the following do not apply to salary or wage deductions or extra deductions:
 - (i) sections BC 1, LA 6, RC 2(1), RC 6, RC 7, RC 16, RC 17, RD 8 to RD 10, RD 13B, RD 17(2) and (3), and RD 18 to RD 20 of the Income Tax Act 2007; 25
 - (ii) sections 24K to 24M and 24O of the Tax Administration Act 1994; and 30
 - (b) a salary or wage deduction and an extra deduction must not be treated as part of, or included in, an amount of tax for a PAYE income payment that is withheld and paid to the Commissioner under the PAYE rules. 35
- Compare: 1992 No 141 s 25
-

Schedule 3

s 79

**Application of provisional tax rules for
purposes of section 79**

- 1 Interim payments for pre-taxed income to be paid in same manner as provisional tax** 5
- (1) The provisional tax rules apply for the purposes of **section 79**, as far as applicable and with all necessary modifications, as if—
- (a) every reference to provisional tax were a reference to the amount of interim payments payable by a borrower; and 10
 - (b) every reference to a person, a person liable to pay provisional tax, or a provisional taxpayer were a reference to a borrower; and
 - (c) every reference to residual income tax were a reference to the amount of the pre-taxed repayment obligation; and 15
 - (d) every reference to income tax were a reference to a pre-taxed repayment obligation; and
 - (e) every reference to an instalment were a reference to an interim payment; and 20
 - (f) every reference to a return of income were a reference to a declaration of pre-taxed income; and
 - (g) every reference to \$2,500 or less (being the threshold below which a person is not required to make provisional tax payments during the year) were a reference to the \$1,000 threshold in **section 73(2)**; and 25
 - (h) every reference to section RC 10 or to an amount calculated under section RC 10 were a reference to **section 76** of this Act or to the amount of a borrower's interim payments calculated in accordance with **section 76** of this Act; and 30
 - (i) the reference in section RC 9(9) of the Income Tax Act 2007 to interest calculated under section 120KC of the Tax Administration Act 1994 were a reference to late payment interest calculated under **section 129** of this Act. 35
- (2) However,—

-
- (a) sections LB 2, RC 3, RC 4, RC 5(6) and (8), RC 7(6), RC 8, RC 11, RC 12, RC 15 to RC 19, RC 24, RC 28 to RC 35, RC 37 to RC 39, RZ 3, and RZ 5B of the Income Tax Act 2007, and the definition of early-payment discount in section RC 40 of that Act do not apply to an interim payment; and 5
- (b) section RC 5(2) of the Income Tax Act 2007—
- (i) applies only if the borrower's pre-taxed repayment obligation for the second preceding tax year is \$1,000 or more; and 10
- (ii) applies as if the calculation in that section were a reference to the calculation in **section 76** of this Act; and
- (c) section RC 5(3) of the Income Tax Act 2007—
- (i) applies only if the borrower's pre-taxed repayment obligation for the second preceding tax year is \$1,000 or more; and 15
- (ii) for a declaration of pre-taxed income for the immediately preceding tax year, or an estimate of the pre-taxed repayment obligation, that is not filed by the due date for payment of the final interim payment, applies as if the borrower has filed a statement showing an estimate of the pre-taxed repayment obligation for that tax year equal to the total amount of interim payments paid by the borrower on or before that date. 20 25

Compare: 1992 No 141 s 28

Schedule 4

s 91

**Application of provisional tax rules for
purposes of section 91**

- 1 Interim payments for other income to be paid in same manner as provisional tax** 5
- (1) The provisional tax rules apply for the purposes of **section 91**, as far as applicable and with all necessary modifications, as if—
- (a) every reference to provisional tax were a reference to the amount of interim payments payable by a borrower; and 10
 - (b) every reference to a person, a person liable to pay provisional tax, or a provisional taxpayer were a reference to a borrower; and
 - (c) every reference to residual income tax were a reference to the amount of the other income repayment obligation; and 15
 - (d) every reference to income tax were a reference to an other income repayment obligation; and
 - (e) every reference to an instalment were a reference to an interim payment; and 20
 - (f) every reference to section RC 10 or to an amount calculated under section RC 10 were a reference to **section 88** of this Act or to the amount of a borrower's interim payments calculated in accordance with **section 88** of this Act; and 25
 - (g) the reference in section RC 9(9) of the Income Tax Act 2007 to interest calculated under section 120KC of the Tax Administration Act 1994 were a reference to late payment interest calculated under **section 129** of this Act. 30
- (2) However,—
- (a) sections LB 2, RC 3, RC 4, RC 5(6) and (8), RC 7(6), RC 8, RC 11, RC 12, RC 15 to RC 19, RC 24, RC 28 to RC 35, RC 37 to RC 39, RZ 3, and RZ 5B of the Income Tax Act 2007, and the definition of early-payment discount in section RC 40 of that Act, do not apply to an interim payment; and 35
 - (b) section RC 5(2) of the Income Tax Act 2007—

- (i) applies only if the borrower's other income repayment obligation for the second preceding tax year is \$1,000 or more; and
- (ii) applies as if the calculation in that section were a reference to the calculation in **section 88** of this Act. 5

Compare: 1992 No 141 s 28

Schedule 5

s 211

**Transitional provisions concerning loan
manager and loan advances**

- 1 Provisions of this Act apply in place of Part 1 of Student Loan Scheme Act 1992** 5
- (1) **Sections 9 to 15, subpart 4 of Part 4, sections 167 to 169, 179, 180, 195, and 203 to 207**, and this schedule apply, and Part 1 of the Student Loan Scheme Act 1992 does not apply, if—
- (a) a person applies for a student loan between 31 December 2011 and 1 April 2012; or 10
- (b) a person becomes a borrower between 31 December 2011 and 1 April 2012; or
- (c) a loan advance is made or charged to a borrower between 31 December 2011 and 1 April 2012. 15
- (2) The Student Loan Scheme Act 1992 must be interpreted to give effect to **subclause (1)**.
- 2 No interest charged by loan manager**
- (1) The loan manager must not charge interest in relation to any loan advance made by the loan manager in accordance with this schedule. 20
- (2) **Subclause (1)** applies despite anything to the contrary in the Student Loan Scheme Act 1992.
- 3 Borrower liable to repay**
- (1) A borrower is liable to repay the total amount outstanding under a student loan in accordance with the Student Loan Scheme Act 1992 and the loan contract (*see* section 13(2) of the Student Loan Scheme Act 1992). 25
- (2) **Subclause (1)** applies despite anything to the contrary in this schedule. 30
-

Schedule 6**s 213****Savings and transitional provisions**

Savings provisions

- 1 This Schedule applies despite repeal of Student Loan Scheme Act 1992 and anything to contrary** 5
The provisions of this schedule apply despite—
- (a) **section 217:**
(b) anything to the contrary in this Act.
- 2 Student Loan Scheme Act 1992 applies to tax years prior to 1 April 2012** 10
- (1) The Student Loan Scheme Act 1992 (and all relevant regulations made under that Act) continues in full effect to the extent necessary for the proper administration and completion of all matters under that Act relating to the tax year ending on 31 March 2012 and all earlier tax years. 15
- (2) All obligations or requirements in relation to a matter under the Student Loan Scheme Act 1992 relating to the tax year ending on 31 March 2012 or an earlier tax year continue to apply, even if that obligation or requirement arises on or after 1 April 2012. 20
- (3) Any action that is taken in relation to a matter under the Student Loan Scheme Act 1992 relating to the tax year ending on 31 March 2012 or an earlier tax year must be taken under the Student Loan Scheme Act 1992, even if that action is taken on or after 1 April 2012. 25

Transitional provisions

- 3 Commissioner may request information from loan manager**
- (1) The loan manager must provide the Commissioner with any information held by the loan manager about a borrower or a loan advance— 30
- (a) that the loan manager would have to notify the Commissioner of under **sections 10 to 12** if those sections applied to the borrower or the loan advance; and
- (b) if the Commissioner requests that information. 35

- (2) A request under **subclause (1)** may relate to particular borrowers or loan advances, or to a class (however defined) of borrowers or loan advances.
- 4 Commissioner may write off certain interest**
- (1) **Subclause (2)** applies to any interest imposed in relation to a borrower under the Student Loan Scheme Act 1992 before the borrower's loan balance is transferred to the Commissioner for collection in accordance with section 4 of that Act. 5
- (2) The Commissioner may, at his or her discretion, write off the interest. 10
- 5 Transition of loan balances from Student Loan Scheme Act 1992 to this Act**
- (1) **Subclause (2)** applies to any amount (**specified amount A**) that—
- (a) must be paid or repaid in accordance with the Student Loan Scheme Act 1992 on or before 31 March 2012; and 15
- (b) has not been paid or repaid on or before the close of 31 March 2012; and
- (c) has not been decreased, reduced, or written off by the Commissioner. 20
- (2) On 1 April 2012, specified amount A must be treated as being part of a borrower's outstanding obligations for the purposes of this Act.
- (3) **Subclause (4)** applies to any amount (**specified amount B**) that,— 25
- (a) in accordance with this schedule, must be paid or repaid in accordance with the Student Loan Scheme Act 1992 on or after 1 April 2012; and
- (b) is not paid or repaid on or before its due date; and 30
- (c) is not decreased, reduced, or written off by the Commissioner.
- (4) At the time when this Act applies to it, specified amount B must be treated as being part of a borrower's outstanding obligations for the purposes of this Act. 35

- (5) At the time when this Act applies to it, any amount owed by a borrower under the Student Loan Scheme Act 1992 to which neither **subclause (2) nor (4)** applies must be treated as being part of a borrower's loan balance for the purposes of this Act.
- 6 Small amounts of unpaid and uncollected repayment obligations** 5
- (1) Any amount that the Commissioner has refrained from collecting in accordance with section 51(3) of the Student Loan Scheme Act 1992—
- (a) is an unpaid amount under this Act; but 10
- (b) is not subject to late payment interest.
- (2) This clause overrides **clause 5**.
- 7 New Zealand-based and overseas-based borrowers**
- (1) Every borrower who, on the close of 31 March 2012, is New Zealand based under the Student Loan Scheme Act 1992 is treated as being New Zealand-based under this Act on 1 April 2012. 15
- (2) Every borrower who, on the close of 31 March 2012, is overseas based under the Student Loan Scheme Act 1992 is treated as being overseas-based under this Act on 1 April 2012. 20
- (3) Every day on which a borrower is personally present in New Zealand under the Student Loan Scheme Act 1992 is treated as a day on which the borrower is physically in New Zealand for the purposes of **sections 17 and 19** of this Act.
- (4) Every day on which a borrower is personally absent from New Zealand under the Student Loan Scheme Act 1992 is treated as a day on which the borrower is physically absent from New Zealand for the purposes of **section 18** of this Act. 25
- 8 Exemptions to the 183-day rule continue**
- (1) This clause applies if— 30
- (a) the Commissioner has granted an exemption to the 183-day requirement to a borrower under section 38AE, 38AJ, or 38AJA of the Student Loan Scheme Act 1992 before 1 April 2012; and

- (b) the end date for the period of that exemption continues past 1 April 2012, or the conditions for the continuation of that exemption continue to apply or to be met on the close of 31 March 2012.
- (2) The exemption continues until, as applicable,— 5
- (a) the end date for the period of that exemption specified by the Commissioner; or
- (b) the conditions for the continuation of that exemption cease to apply or to be met.
- (3) The borrower is treated as being physically in New Zealand for the purposes of **sections 17 to 19** for the period that the exemption continues. 10
- 9 Deduction rates and deduction rate certificates**
- (1) If, at the close of 31 March 2012, a borrower has employment for which the repayment code “SL” applies to the borrower under section 18 of the Student Loan Scheme Act 1992, that repayment code continues to apply to that borrower in relation to that employment for the purposes of **section 29** of this Act. 15
- (2) A borrower who, at the close of 31 March 2012, has complied with section 18 of the Student Loan Scheme Act 1992 in relation to an employer does not have to comply with **section 30** of this Act in relation to that employer. 20
- (3) An increased repayment deduction rate notice that has been issued under section 20A of the Student Loan Scheme Act 1992 and that continues to apply at the close of 31 March 2012— 25
- (a) continues to apply until the earlier of the date on which—
- (i) the deductions made from the borrower’s salary or wages in accordance with the notice equal the amount specified in the notice in accordance with section 20A(2)(b) of the Student Loan Scheme Act 1992; or 30
- (ii) the Commissioner notifies the relevant employer otherwise; and
- (b) must be treated as if it were an additional deduction rate notice that has been issued by the Commissioner under **section 43(2)** of this Act. 35

- (4) A special repayment deduction rate certificate that has been issued under section 21 of the Student Loan Scheme Act 1992 and that continues to apply at the close of 31 March 2012—
- (a) continues to apply; and
 - (b) must be treated as if it were, as applicable in the circumstances,—
 - (i) a request by the borrower to make extra deductions in accordance with **section 33(1)(b)** of this Act; or
 - (ii) a special deduction rate certificate issued in relation to the borrower under—
 - (A) **section 39** of this Act (special deduction rate certificate for unused repayment threshold); or
 - (B) **section 94** of this Act (special deduction rate certificate for lower repayment obligation); or
 - (C) **section 140** of this Act (special deduction rate certificate for hardship relief).
- 10 Pay period that spans 1 April 2012** 20
- If an employer or PAYE intermediary pays an amount to a borrower by way of salary or wages for a pay period that starts before, and ends after, 1 April 2012,—
- (a) the employer or PAYE intermediary must make a deduction from that amount for the entire pay period in accordance with **section 31** of this Act; and
 - (b) section 19 of the Student Loan Scheme Act 1992 does not apply to the employer or PAYE intermediary in relation to the pay period. 25
- 11 Instalment arrangements** 30
- (1) This clause applies if—
- (a) a borrower has entered into an instalment arrangement with the Commissioner on or before 31 March 2012 in relation to an amount (the **instalment amount**) that must be paid under the Student Loan Scheme Act 1992; and 35

- (b) some of the payments that are required under the instalment arrangement must be paid on or after 1 April 2012.
- (2) If all of the payments that are required under the instalment arrangement are paid on or before their due date,—
- (a) all late payment penalties that apply to the instalment amount under the Student Loan Scheme Act 1992 must be written off by the Commissioner; and 5
- (b) all late payment interest that applies to the instalment amount under this Act must be written off by the Commissioner. 10
- (3) If any of the payments that are required under the instalment arrangement are not paid on or before their due date, the following applies:
- (a) unpaid instalment amounts with a due date before 1 April 2012 are subject to the late payment penalties that apply to that amount under the Student Loan Scheme Act 1992 until the close of 31 March 2012; and 15
- (b) unpaid instalment amounts with a due date before 1 April 2012 that remain unpaid on or after that date are subject to late payment interest under this Act from 31 March 2012; and 20
- (c) unpaid instalment amounts with a due date on or after 1 April 2012 are subject to late payment interest under this Act.
- 12 Updated references** 25
- Unless the context otherwise requires, all references in an enactment or document (including a loan contract) to—
- (a) the Student Loan Scheme Act 1992 must be read as a reference to this Act; and
- (b) the student loan scheme under the Student Loan Scheme Act 1992 must be read as a reference to the student loan scheme under this Act; and 30
- (c) a student loan under the Student Loan Scheme Act 1992 must be read as a reference to a student loan under this Act; and 35
- (d) a borrower under the Student Loan Scheme Act 1992 must be read as a reference to a borrower under this Act.

Schedule 7

s 214

**Amendments to Student Loan Scheme Act
1992 and Credit Contracts and Consumer
Finance Act 2003**

- Student Loan Scheme Act 1992 (1992 No 141)** 5
- New sections 63B to 63E: insert after section 63A:
- “63B Certain information must be disclosed in loan contract**
- “(1) Every loan contract entered into on or after the date on which this section comes into force must specify the following information that applies at the date the loan contract is entered into: 10
- “(a) the repayment threshold:
 - “(b) the total interest rate:
 - “(c) the repayment percentage:
 - “(d) the amount of any student loan establishment fee:
 - “(e) the amount of the annual administration fee charged 15
under **section 63D**:
 - “(f) any other matters specified in regulations.
- “(2) The Commissioner must inform borrowers in accordance with **section 63C** if any of the information specified in accordance with **subsection (1)** changes. 20
- “63C Method of informing borrowers**
- For the purposes of **section 63B(2)**, the Commissioner must inform a borrower—
- “(a) by—
 - “(i) providing the information free of charge on an 25
Internet site that allows the borrower to access the information at all reasonable times; and
 - “(ii) making the information available for inspection free of charge, and for purchase at a reasonable price, at each office of the Inland Revenue De- 30
partment during the period from 8 am to 4.30 pm each working day; or
 - “(b) by giving public notice.
- “63D Annual administration fee**
- “(1) If a borrower has a loan balance of \$20 or more on 31 March 35
2012,—

Student Loan Scheme Act 1992 (1992 No 141)—*continued*

- “(a) an annual administration fee of \$40 must be charged by the Commissioner to that borrower; and
- “(b) that borrower’s loan balance is increased on 31 March 2012 by the amount of that fee.
- “(2) However, no fee may be charged under **subsection (1)** to a borrower if that borrower is charged with a student loan establishment fee during the period starting on 1 April 2011 and ending on 31 March 2012. 5
- “63E Student loan contracts are not credit contracts**
- “(1) A loan contract is not— 10
- “(a) a credit contract for the purposes of the Credit Contracts Act 1981:
- “(b) a credit contract or a consumer credit contract for the purposes of the Credit Contracts and Consumer Finance Act 2003. 15
- “(2) No cause of action exists under the Credit Contracts Act 1981 or the Credit Contracts and Consumer Finance Act 2003 in relation to a loan contract.”
- “(3) This section applies—
- “(a) to all loan contracts regardless of when they were entered into; and 20
- “(b) despite anything to the contrary.”
- Section 87(1): insert after paragraph (bb):
- “(bc) specifying further information requirements in accordance with **section 63B(1)(f)**.”. 25

Credit Contracts and Consumer Finance Act 2003 (2003 No 52)

Section 15(1): insert after paragraph (c):

- “(ca) a loan contract (as that term is defined in section 2(1) of the Student Loan Scheme Act 1992):”.

Schedule 8

s 215

Amendments to other Acts

Accident Compensation Act 2001 (2001 No 49)

Section 123(2)(i): repeal and substitute:

- “(i) **subparts 1 to 3 and 5 of Part 2** or **section 185** of the Student Loan Scheme Act **2010**; or”.

Companies Act 1993 (1993 No 105)

Clause 1(2)(d) of Schedule 7: omit “section 25 of the Student Loan Scheme Act 1992” and substitute “**section 64** of the Student Loan Scheme Act **2010**”.

10

Corrections Act 2004 (2004 No 50)

Definition of **student loan** in section 180C(2): omit “section 2 of the Student Loan Scheme Act 1992” and substitute “**section 4(1)** of the Student Loan Scheme Act **2010**”.

Credit Contracts and Consumer Finance Act 2003 (2003 No 52) 15

Section 15(1)(ca): omit “section 2(1) of the Student Loan Scheme Act 1992” and substitute “**section 4(1)** of the Student Loan Scheme Act **2010**”.

Customs and Excise Act 1996 (1996 No 27)

Definition of **borrower** in section 280G: omit “section 2 of the Student Loan Scheme Act 1992” and substitute “**section 4(1)** of the Student Loan Scheme Act **2010**”.

20

Definition of **identifying information** in section 280G: omit “section 62A(2) of the Student Loan Scheme Act 1992” and substitute “**section 201(2)** of the Student Loan Scheme Act **2010**”.

25

Heading to section 280H: omit “**Student Loan Scheme Act 1992**” and substitute “**Student Loan Scheme Act 2010**”.

Section 280H(1)(a) to (c): repeal and substitute:

- “(a) whether borrowers are New Zealand-based or overseas-based for the purposes of the Student Loan Scheme Act **2010**;

30

Customs and Excise Act 1996 (1996 No 27)—*continued*

“(b) whether borrowers are New Zealand residents for the purposes of that Act.”

Heading to section 280I: omit “**Student Loan Scheme Act 1992**” and substitute “**Student Loan Scheme Act 2010**”.

Section 280I(1)(a) to (d): repeal and substitute: 5

“(a) whether borrowers are New Zealand-based or overseas-based for the purposes of the Student Loan Scheme Act **2010**:

“(b) whether borrowers are New Zealand residents for the purposes of that Act: 10

“(c) for the purposes of that Act, whether borrowers are in New Zealand.”

District Courts Act 1947 (1947 No 16)

Section 84I(2)(c)(iia): omit “section 46 of the Student Loan Scheme Act 1992” and substitute “**section 185** of the Student Loan Scheme Act **2010**”. 15

Education Act 1989 (1989 No 80)

Definition of **student loan** and **student loan scheme** in section 226A(1): repeal and substitute:

“**student loan** has the same meaning as in **section 4(1)** of the Student Loan Scheme Act **2010**

“**student loan scheme** has the same meaning as in **section 4(1)** of the Student Loan Scheme Act **2010**”.

Definition of **student loan** and **student loan scheme** in section 238B(1): repeal and substitute: 25

“**student loan** has the same meaning as in **section 4(1)** of the Student Loan Scheme Act **2010**

“**student loan scheme** has the same meaning as in **section 4(1)** of the Student Loan Scheme Act **2010**”.

Definition of **student loan** in section 302: repeal and substitute: 30

“**student loan** has the same meaning as in **section 4(1)** of the Student Loan Scheme Act **2010**”.

Education Act 1989 (1989 No 80)—*continued*

Definition of **student loan information** in section 302: omit “Student Loan Scheme Act 1992” and substitute “Student Loan Scheme Act **2010**”.

Section 307AC(2): omit “section 2A of the Student Loan Scheme Act 1992, the Student Loan Scheme Act 1992” and substitute “**section 6** of the Student Loan Scheme Act **2010**, the Student Loan Scheme Act **2010**”. 5

Electoral Act 1993 (1993 No 87)

Section 263B(4)(a)(iii): omit “section 2 of the Student Loan Scheme Act 1992” and substitute “**section 4(1)** of the Student Loan Scheme Act **2010**”. 10

Income Tax Act 2007 (2007 No 97)

Section MK 2(1)(d)(ii): repeal and substitute:

“(ii) work overseas as a volunteer or for token payment for a charitable organisation named in regulations made under the Student Loan Scheme Act **2010** and the work meets 1 or more of the requirements in **clause 2(1) of Schedule 1** of that Act.” 15

Section RH 3(2)(b)(i): omit “Student Loan Scheme Act 1992” and substitute “Student Loan Scheme Act **2010**”. 20

Paragraph (f) of the definition of **employer monthly schedule** in section YA 1: omit “and student loan deductions made” and substitute “deductions made, and salary or wage deductions and extra deductions made under the Student Loan Scheme Act **2010**”. 25

Paragraph (f) of the definition of **PAYE income payment form** in section YA 1: omit “student loan payments” and substitute “salary or wage deductions and extra deductions made under the Student Loan Scheme Act **2010**”.

Insolvency Act 2006 (2006 No 55)

Definition of **student loan balance** in section 3: repeal and substitute:

“**student loan balance** means a consolidated loan balance, as that term is defined in **section 4(1)** of the Student Loan Scheme Act **2010**”.

Section 274(2)(d): omit “section 25 of the Student Loan Scheme Act 1992” and substitute “**section 64** of the Student Loan Scheme Act **2010**”.

Judicature Act 1908 (1908 No 89)

10

Rule 17.35(1)(d) of Schedule 2: omit “section 46 of the Student Loan Scheme Act 1992” and substitute “**section 185** of the Student Loan Scheme Act **2010**”.

KiwiSaver Act 2006 (2006 No 40)

Section 98(3)(c): repeal and substitute:

15

“(c) the total salary or wage deductions and extra deductions made under the Student Loan Scheme Act **2010**; and”.

Prisoners’ and Victims’ Claims Act 2005 (2005 No 74)

Section 17(5): omit “Student Loan Scheme Act 1992” and substitute “Student Loan Scheme Act **2010**”.

20

Section 19(3): omit “Student Loan Scheme Act 1992” and substitute “Student Loan Scheme Act **2010**”.

Privacy Act 1993 (1993 No 28)

Item relating to the Student Loan Scheme Act 1992 in Schedule 3: omit and substitute:

25

Student Loan Scheme Act **2010**

Section 201

Social Security Act 1964 (1964 No 136)

Section 84(1): omit “Student Loan Scheme Act 1992” and substitute “Student Loan Scheme Act **2010**”.

Tax Administration Act 1994 (1994 No 166)

Paragraph (a)(iii)(D) of the definition of **tax** in section 3(1): repeal and substitute:

“(D) a salary or wage deduction (as defined in **section 4(1)** of the Student Loan Scheme Act **2010**), or an amount recovered in accordance with **section 185** of that Act:”.

Paragraph (a)(x) of the definition of **tax** in section 3(1): repeal and substitute:

“(x) a pre-taxed repayment obligation, an other income repayment obligation, or an overseas-based repayment obligation (as those terms are defined in **section 4(1)** of the Student Loan Scheme Act **2010**):”.

Paragraph (c) of the definition of **tax** in section 3(1): omit “any interest charged on a loan balance (as that term is defined in the Student Loan Scheme Act 1992)” and substitute “any overseas-based interest charged on a loan balance (as those terms are defined in **section 4(1)** of the Student Loan Scheme Act **2010**)”.

Paragraph (ca)(ii) of the definition of **tax** in section 3(1): omit “section 2 of the Student Loan Scheme Act 1992” and substitute “**section 4(1)** of the Student Loan Scheme Act **2010**”.

Paragraph (d)(iii)(D) of the definition of **tax** in section 3(1): repeal and substitute:

“(D) a salary or wage deduction (as defined in **section 4(1)** of the Student Loan Scheme Act **2010**) or an amount recovered in accordance with **section 185** of that Act:”.

Paragraph (d)(ix) of the definition of **tax** in section 3(1): repeal and substitute:

“(ix) a pre-taxed repayment obligation, an other income repayment obligation, or an overseas-based repayment obligation (as those terms are defined in **section 4(1)** of the Student Loan Scheme Act **2010**)”.

Section 4A(3)(c): repeal and substitute:

“(c) salary or wage deductions or extra deductions under the Student Loan Scheme Act **2010**,—”.

Tax Administration Act 1994 (1994 No 166)—continued

Section 33A(1)(b)(ii): repeal.

Section 33A(1)(b)(viii): repeal.

Section 46(5B): omit “or student loan deductions made” and substitute “deductions made, or salary or wage deductions or extra deductions made under the Student Loan Scheme Act **2010**”.

5

Section 81(4)(g) and (gb): repeal and substitute:

“(g) communicating to an authorised person under **section 200** of the Student Loan Scheme Act **2010** any information specified in **subsection (1) or (2)** of that section in accordance with **subsection (1)** of that section:

10

“(gb) communicating to the chief executive of the New Zealand Customs Service under **section 201** of the Student Loan Scheme Act **2010** any information specified in **subsection (2)** of that section for the purpose set out in **subsection (1)** of that section.”

15

Section 81(7): omit “Student Loan Scheme Act 1992” and substitute “Student Loan Scheme Act **2010**”.

Section 120B(c): omit “Student Loan Scheme Act 1992” and substitute “Student Loan Scheme Act **2010**”.

Section 138S(1)(a): omit “Student Loan Scheme Act 1992” in each place where it appears and substitute in each case “Student Loan Scheme Act **2010**”.

20

Section 143A(5): insert after paragraph (d):

“(e) a salary or wage deduction or extra deduction made under the Student Loan Scheme Act **2010**.”

25

Section 143B: insert after subsection (2):

“(3) In this section, **tax** includes a repayment obligation as defined in **section 4(1)** of the Student Loan Scheme Act **2010**.”

Section 149(5): repeal and substitute:

“(5) If a shortfall penalty, other than under section 141ED, has been imposed on a taxpayer for taking an incorrect tax position, the Commissioner may not subsequently prosecute the taxpayer—

30

“(a) under this Act for taking the incorrect tax position; or

“(b) under the Student Loan Scheme Act **2010** for taking the incorrect tax position; or

35

Tax Administration Act 1994 (1994 No 166)—continued

“(c) in relation to an obligation arising under the Student Loan Scheme Act **2010** for taking the incorrect tax position.”

Section 157A(1)(a)(iv): repeal and substitute:

“(iv) **section 185** of the Student Loan Scheme Act **2010**; or” 5

Section 184A(5)(f): repeal and substitute:

“(f) a repayment obligation, as defined in **section 4(1)** of the Student Loan Scheme Act **2010**, if the borrower has chosen to receive a refund under **section 123** of that Act.” 10

Item relating to the Student Loan Scheme Act 1992 in the Schedule: omit and substitute: “Student Loan Scheme Act **2010**”.

Schedule 9

s 216

Amendments to other enactments

District Courts Rules 2009 (SR 2009/257)

Note 2(b) of form 67 in Schedule 1: omit “Student Loan Scheme Act 1992” and substitute “Student Loan Scheme Act **2010**”.

5

Education (Early Childhood Services) Regulations 2008 (SR 2008/204)

Regulation 7(c): omit “student loan within the meaning of section 2(1) of the Student Loan Scheme Act 1992” and substitute “student loan, as defined in **section 4(1)** of the Student Loan Scheme Act **2010**”.

10

Regulation 8(c): omit “student loan within the meaning of section 2(1) of the Student Loan Scheme Act 1992” and substitute “student loan, as defined in **section 4(1)** of the Student Loan Scheme Act **2010**”.

15

Inland Revenue Department (Drafting) Order 1995 (SR 1995/286)

Clause 2(2)(a): omit “Student Loan Scheme Act 1992” and substitute “Student Loan Scheme Act **2010**”.

Sentencing (Orders of Reparation) Order 2006 (SR 2006/263)

20

Item relating to the Student Loan Scheme Act 1992 in the Schedule: omit “**Student Loan Scheme Act 1992 (1992 No 141)**” and substitute “**Student Loan Scheme Act 2010 (2010 No 00)**”.

Item relating to the Student Loan Scheme Act 1992 in the Schedule: omit “Section 81(4)” and substitute “**Section 156(4)**”.

25

Student Allowances Regulations 1998 (SR 1998/277)

Paragraph (c)(vii) of the definition of **personal income** in regulation 2(1): omit “within the meaning of section 2 of the Student Loan Scheme Act 1992” and substitute “as defined in **section 4(1)** of the Student Loan Scheme Act **2010**”.

30

Paragraph (c)(v) of the definition of **spousal or partner’s income** in regulation 2(1): omit “within the meaning of section 2 of the Student

Student Allowances Regulations 1998 (SR 1998/277)—*continued*

Loan Scheme Act 1992” and substitute “as defined in **section 4(1)** of the Student Loan Scheme Act **2010**”.