

# **Student Loan Scheme Amendment Bill (No 2)**

Government Bill

As reported from the Education and Science Committee

## **Commentary**

### **Recommendation**

The Education and Science Committee has examined the Student Loan Scheme Amendment Bill (No 2) and recommends that it be passed with the amendments shown.

### **Introduction**

This bill amends the Student Loan Scheme Act 1992. The purpose of the bill is to remove barriers that deter student loan borrowers from returning to New Zealand. The key features of the bill are as follows:

- the introduction of an affordable repayment regime for overseas based borrowers
- the provision of an opportunity for a new start for overseas borrowers who have not been meeting their repayment obligations, by extending the current amnesty to 31 March 2008
- provision for data matching between the New Zealand Customs Service and the Inland Revenue Department to allow the department to determine correctly the entitlement of borrowers to interest-free loans
- provision for the Commissioner of the Inland Revenue Department to allow borrowers who hold loans before leaving New Zealand to be exempted from paying interest while they are studying at undergraduate level overseas; to reduce the

late-payment penalty rate; and to allow flexibility in assessing hardship.

We received 15 submissions on the bill, and the majority of submitters supported its intent.

### **Three-year repayment holiday**

New Zealanders have a tradition of travelling overseas soon after completing their tertiary studies. The current student loan rules, and particularly the complexity of repayment obligations for overseas based borrowers, may discourage them from meeting their repayment obligations. As the penalties for non-payment can be punitive, borrowers may be deterred from returning to New Zealand.

This bill introduces a three-year “holiday” from repayments to ensure that the loan balances of those going overseas short-term will not increase at a punitive rate.

This bill provides clarity, which should help borrowers to meet their obligations, and the provision for delayed repayment will reduce barriers to New Zealanders returning to this country.

### **Repayment obligations for borrowers not on a repayment holiday**

Some submitters questioned the difference in approach to repayment obligations for overseas based and New Zealand based borrowers. They suggested that repayment obligations should be based on the borrowers’ income rather than on their loan balance.

Borrowers who are non-resident for tax purposes are not required to declare their overseas sourced income. Furthermore, the Inland Revenue Department has no way of verifying the declared income. Double-taxation agreements, which provide for the exchange of such information, do not apply for student loan purposes. Therefore, we do not support the proposal that the repayment obligations of overseas based borrowers be assessed on income.

We note that New Zealand based borrowers are entitled to an interest-free loan, an entitlement not generally available to loan holders living overseas.

## **Interest-free loans for borrowers studying full-time overseas at under-graduate level**

Many submitters supported the introduction of Clause 14, which will allow loans held by borrowers who are studying full-time overseas at under-graduate level to be interest-free. The purpose of the clause is to extend this exemption to students at undergraduate level. It does not mean that borrowers will be able to take out a loan for study undertaken overseas.

Students enrolled at an overseas tertiary education institution are not entitled to student loans to pay for their study. However, students enrolled with a New Zealand tertiary education provider are eligible to apply for a student loan while studying at an overseas tertiary education provider where the course is a component of a formal exchange programme between a New Zealand and an overseas tertiary education provider.

## **Data matching**

Clauses 28 and 36–39 allow information sharing between the New Zealand Customs Service and the Inland Revenue Department. The intent behind these changes was supported by the majority of submitters who commented on them.

We are satisfied that information will be collected only for the purpose of determining whether borrowers are entitled to an interest-free loan, and whether or not borrowers are in New Zealand or overseas for the purposes of the principal Act. Access to this information is limited to those officials who require it.

We believe that, as a principle, the information collected on an individual student loan borrower should be permanently deleted from the department's database when it no longer serves the purpose for which it was collected.

## **Interest-free loans for borrowers working overseas for a charitable organisation**

We recognise that many student loan borrowers travel overseas to work as volunteers, or for token payment, for charitable organisations.

Clause 12 inserts new section 38AEA, which establishes the criteria to be satisfied by an applicant seeking interest-free status on an existing loan while performing charitable work overseas.

Regulations made under the Act list the charitable organisations for which a borrower may work and still retain his or her interest-free status.

The criteria are the same as those adopted for charitable donee status by Cabinet in 1978.

### **Application of care and management**

The Inland Revenue Department has used care-and-management provisions to ensure that loan balances miscalculated as a result of an administrative error do not disadvantage borrowers. The department reviewed this practice and has concluded that its application for the purposes of student loan interest is uncertain.

Clause 16A amends section 43 of the Act to allow the Commissioner to amend the amount of interest charged in order to correct an administrative error.

Clause 39(1A) amends the Tax Administration Act 1994 to ensure that the care-and-management provisions apply to student loan interest.

We believe that student loan borrowers should not be penalised as a result of administrative error.

### **Repayment obligations**

Clauses 20 and 20A provide that the amount of a repayment obligation which the Commissioner may refrain from collecting be increased from \$250 to \$333.

The bill first set the amount at \$250, as this was the amount below which penalties are too small to be charged. As a result of the proposal to reduce the penalty rate from 2.0 percent to 1.5 percent, this amount would rise to \$333.

We believe that pursuing small amounts owing is uneconomical.

### **Small balance threshold**

The Inland Revenue Department currently refunds income tax which is overpaid by more than \$5 and writes off underpaid amounts of \$20 or less. It would be inconsistent to have a higher threshold for refunding student loan overpayment.

We recommend that clause 20 be amended to increase the small balance threshold for borrowers' end-of-year repayment obligations

and employer repayment deductions from \$5 to \$20, for debit amounts only.

### **Technical amendments**

A number of amendments have been proposed to clarify the intention of the bill, to address omissions or drafting errors, or to make other improvements. We have considered these suggestions and made amendments as appropriate.

## **Appendix**

### **Committee process**

The Student Loan Scheme Amendment Bill (No 2) was referred to the committee on 16 November 2006.

We received advice from the Inland Revenue Department.

### **Committee membership**

Hon Brian Donnelly (Chairperson)

Moana Mackey (Deputy chairperson)

Paula Bennett

Dr Ashraf Choudhary

Te Ururoa Flavell

Hon Marian Hobbs

Colin King

Allan Peachey

Katherine Rich

Dianne Yates

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Student Loan Scheme Amendment  
Bill (No 2)

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**Key to symbols used in reprinted bill**

**As reported from a select committee**

**Struck out (unanimous)**

Subject to this Act,	Text struck out unanimously
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**New (unanimous)**

Subject to this Act,	Text inserted unanimously
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*(Subject to this Act.)*                      Words struck out unanimously

Subject to this Act.                      Words inserted unanimously

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*Hon Peter Dunne*

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**The Parliament of New Zealand enacts as follows:**

**1 Title**

This Act is the Student Loan Scheme Amendment Act (No 2) **2006**.

**2 Commencement**

- (1) **Sections (4(2)) 4(1A) to (5) and (7), 5 to 8, 9 to 12, 14, 16, 17, 19, 23, 24, 26A, 27, 30, 32(2) and (3), 34, 35, 37, 38(4) and (5), and 39(3)** come into force on 1 April 2007. 5
- (2) **Sections 20 and 26** come into force on 1 October 2007.
- (3) **Sections 4(1) and (6), (32) 32(1), and 40** come into force on 1 April 2008. 10
- (4) The rest of this Act comes into force on the day after the date on which it receives the Royal assent.

## Part 1 Amendments to principal Act

### 3 Principal Act amended

**This Part** amends the Student Loan Scheme Act 1992.

### 4 Interpretation

- (1) Section 2 is amended by repealing the definitions of **base interest rate** and **interest adjustment rate**.

5

#### New (unanimous)

- (1A) Section 2 is amended by repealing the definition of **IRD loan balance** and substituting the following definition:

“**IRD loan balance** means the total amount outstanding under all loans—

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“(a) obtained by the borrower under the student loan scheme; and

“(b) transferred to the Commissioner for collection;— and includes any increase under **section 103**”.

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- (2) The definition of **loan balance** in section 2 is amended by adding “, and includes any increase under **section 103**”.

- (3) Section 2 is amended by inserting the following definitions in their appropriate alphabetical order:

“**New Zealand based** has the meaning set out in **subsection (2)** “**overseas based** has the meaning set out in **subsection (3)**”.

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- (4) The definition of **non-resident repayment obligation** in section 2 is amended by omitting “**non-resident**” and substituting “**overseas based**”.

- (5) The definition of **repayment obligation** in section 2 is amended by—

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(a) omitting “a resident” and substituting “New Zealand based”; and

(b) omitting “a non-resident” and substituting “overseas based”.

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- (6) Section 2 is amended by repealing the definition of **total interest rate** and substituting the following definition:

- “**total interest rate** means the rate prescribed in respect of a tax year by regulations made under section 87 in the last 6 months of the immediately preceding tax year.”
- (7) Section 2 is amended by adding the following subsections as subsections (2) and (3): 5
- “(2) For the purposes of this Act, a borrower is **New Zealand based** for each day on which that borrower is entitled to a full interest write-off under section 38AA.
- “(3) For the purposes of this Act, a borrower is **overseas based** for each day on which that borrower is not entitled to a full interest write-off under section 38AA.” 10
- 5 Heading to Part 2 amended**  
The heading to Part 2 is amended by omitting “**borrowers resident in New Zealand**” and substituting “**New Zealand based borrowers**”. 15
- 6 Repayment obligation for resident borrowers**
- (1) The heading to section 14 is amended by omitting “**resident borrowers**” and substituting “**New Zealand based borrowers**”.
- (2) Section 14(1) is amended by omitting “resident” and substituting “New Zealand based”. 20
- 7 New section 14A inserted**  
The following section is inserted after the heading above section 15:
- “14A Declaration of world-wide income by certain borrowers** 25
- “(1) This section applies to borrowers who, for the purposes of this Act, are New Zealand based but are not resident.
- “(2) For each tax year and each part tax year in respect of which this section applies to a borrower, that borrower must furnish to the Commissioner details of all amounts of that borrower’s gross income that are not treated as having a source in New Zealand under section OE 4 of the Income Tax Act 2004. 30
- “(3) The borrower must furnish the information to the Commissioner at the time when the borrower would have furnished his or her return of income for a tax year under the Tax Administration Act 1994 if he or she was resident. 35

“(4) The Commissioner may require the borrower to provide evidence of that borrower’s gross income.”

**8 Commissioner to assess borrower’s repayment obligation**

(1) Section 15 is amended by repealing subsection (1) and substituting the following subsection: 5

“(1) Unless section 33A(1) of the Tax Administration Act 1994 applies, the Commissioner must make an assessment of the amount (if any) of a borrower’s repayment obligation for a tax year as soon as practicable after the borrower furnishes— 10

“(a) his or her return of income for that tax year under the Tax Administration Act 1994; or

“(b) details of all amounts of his or her gross income under **section 14A(2).**”

(2) Section 15(3) is amended by adding “; or” and also by adding the following paragraph: 15

“(d) the details of all amounts of a borrower’s gross income provided to the Commissioner under **section 14A.**”

**New (unanimous)**

**8A Employer or PAYE intermediary to make repayment deductions** 20

Section 19(2) is amended by inserting “the employer is aware that” after “if”.

**9 Part 3 substituted**

Part 3 is repealed and the following Part substituted:

**“Part 3** 25

**“Collection of repayments from overseas based borrowers**

**“31 Definitions used in this Part**

In this Part, unless the context otherwise requires,—

“**opt-out period** means a period for which a borrower chooses, under **section 33(1)**, not to have a repayment holiday 30

“**repayment holiday** means a period during which a borrower’s overseas based repayment obligation is reduced to zero.

- “**32 Overseas based borrowers are entitled to 3-year repayment holiday** 5
- “(1) A borrower who becomes overseas based after 1 April 2007 is entitled to a repayment holiday for a maximum period of 3 years.
- “(2) A borrower is only entitled to a repayment holiday for periods when the borrower is overseas based. 10
- “(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 for 3 years or less.
- “(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 **section 34**. 15
- “(5) Any 1 borrower is only entitled to receive 1 3-year repayment holiday.
- “**33 Borrowers may choose not to have repayment holiday** 20
- “(1) A borrower may, by giving notice to the Commissioner, choose not to have a repayment holiday for any period during which that borrower is overseas based.
- “(2) A borrower may have 1 or more opt-out periods.
- “(3) An opt-out period may begin from a date prior to the date on which a borrower gives notice to the Commissioner under **subsection (1)**. 25
- “(4) An opt-out period ends if a borrower becomes New Zealand based.
- “(5) A repayment holiday— 30
- “(a) ends if an opt-out period begins; and
- “(b) begins when an opt-out period ends (provided that the borrower has, at that time, had a repayment holiday for a total of less than 3 years).
- “(6) If a borrower is overseas based and chooses to have an opt-out period, that borrower’s repayment obligation must be calculated in accordance with **section 34**. 35



- “(7) Notice under **subsection (1)** may be given—  
 “(a) by telephone; or  
 “(b) in writing; or  
 “(c) in any other manner acceptable to the Commissioner.
- “(8) However, the Commissioner may require notice to be given in writing. 5

**“34 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. 10
- “(2) A borrower to whom this section applies has the repayment obligations set out in **subsections (3) to (5)**.
- “(3) If the borrower’s loan balance is less than \$1,000, the borrower’s repayment obligation for the first tax year during which this section applies to the borrower is the amount of the borrower’s loan balance. 15
- “(4) If the borrower’s loan balance is—  
 “(a) \$15,000 or less, the borrower’s repayment obligation is \$1,000 for each full tax year during which the borrower is overseas based: 20  
 “(b) more than \$15,000 and 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:  
 “(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. 25
- “(5) The borrower’s repayment obligation for the portion of any tax year (being less than a full tax year) during which the borrower is overseas based is calculated as follows: 30

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

where—

- x = the number of days in the tax year during which the borrower was overseas based 35
- y = 1 of the following:  
 (a) \$1,000, if the borrower’s loan balance is \$15,000 or less; or

- (b) \$2,000, if the borrower's loan balance is more than \$15,000 and less than or equal to \$30,000; or
- (c) \$3,000, if the borrower's loan balance is more than \$30,000. 5

where—

x = the number of days in the tax year during which the borrower was overseas based

y = 1 of the following:

- (a) \$1,000, if the borrower's loan balance is \$15,000 or less; or 10
- (b) \$2,000, if the borrower's loan balance is more than \$15,000 and less than or equal to \$30,000; or
- (c) \$3,000, if the borrower's loan balance is more than \$30,000. 15

“(6) If **subsection (3)** applies to a borrower's loan balance, **subsections (4) and (5)** do not apply.

“(7) For the purposes of this section, the amount of a borrower's loan balance is the amount of the loan balance as at the date on which this section first applies to that borrower and then (subject to **section 36**) as at 31 March in each year after that date, and includes any interest compounded as at that day. 20

**New (unanimous)**

“**34A Repayment obligations of overseas based borrowers subject to penalties** 25

“(1) For each tax year in which an overseas based borrower is liable to pay a penalty on the entirety of the borrower's loan balance, that borrower's repayment obligation is zero.

“(2) For each tax year in which an overseas based borrower's repayment obligation under **section 34** is greater than the portion of that borrower's loan balance on which the borrower is not liable to pay a penalty (the **penalty free loan balance**), that borrower's repayment obligation is the amount of the penalty free loan balance. 30

## New (unanimous)

“(3) Nothing in this section affects overdue repayment obligations that were assessed in previous tax years.

“(4) This section overrides **section 34**.

**“35 Repayment to be made by instalments**

“(1) A borrower’s overseas based repayment obligation for a tax year must be paid by the borrower in 2 equal instalments. 5

“(2) The instalments are due and payable in the tax year on—

“(a) 30 September:

“(b) 31 March.

**“36 Repayment obligation for borrowers who are overseas based for part of tax year 10**

If a borrower is overseas based for part, but not the whole, of a tax year as a result of that borrower becoming New Zealand based during that tax year,—

“(a) **section 34(5)** or **section 34A** (as the case may be) applies to any portion of the tax year during which the borrower is overseas based and— 15

“(i) is not entitled to a repayment holiday; or

“(ii) has chosen to have an opt-out period; and

“(b) the borrower’s overseas based repayment obligation is payable in such instalments as the Commissioner determines; and 20

“(c) Part 2 applies to the borrower in respect of the period in the tax year during which he or she is New Zealand based (the **New Zealand based period**), except that the amount of the 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. 25

**“36A Assessments in year borrower is overseas based 30**

“(1) As soon as practicable after being notified that, or becoming aware that, a borrower is or will be overseas based, the Commissioner must make an assessment of the amount of that borrower’s overseas based repayment obligation for that year.

**New (unanimous)**

“(1A) The Commissioner must continue to make an assessment of the amount of a borrower’s overseas based repayment obligation for each year, or part of a year, that the borrower remains overseas based.

“(2) The assessment must be made in accordance with the loan contract and this Act. 5

“(3) The Commissioner must give notice to the borrower of the amount assessed as soon as practicable after the making of the assessment.

**New (unanimous)**

“(4) **Subsection (3)** does not apply if the amount assessed is zero.” 10

**10 Borrower to advise Commissioner of absence from New Zealand**

- (1) Section 37(1) is amended by omitting “3” and substituting “6”.
- (2) Section 37(1)(b) is amended by omitting “non-resident” and substituting “overseas based”. 15
- (3) Section 37(2) is amended by omitting “3” and substituting “6”.

**11 Power of Commissioner to grant exemptions to borrowers who do not satisfy 183-day requirement** 20

Section 38AE is amended by inserting the following subsection after subsection (3):

“(3A) The conditions in **section 38AEA** apply to subsection (1)(b).”

**12 New section 38AEA inserted**

The following section is inserted after section 38AE:

**Struck out (unanimous)**

**“38AEA Condition to charitable organisation exemption**

An applicant under section 38AE(1)(b) must provide the Commissioner with the information specified in **section 14A(2)**, and **section 14A(3) and (4)** applies accordingly.

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**New (unanimous)**

**“38AEA Conditions to charitable organisation exemption**

An applicant under section 38AE(1)(b) must—

“(a) provide proof that the work he or she did as a volunteer or for token payment for a charitable organisation was 1 or more of the following:

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“(i) work to relieve poverty, hunger, sickness, or the ravages of war or natural disaster; or

“(ii) work to improve the economy of a country that is recognised by the United Nations as a developing country; or

15

“(iii) work to raise the educational standards of a country that is recognised by the United Nations as a developing country; and

“(b) provide the Commissioner with the information described in **section 14A(2)**, and **section 14A(3) and (4)** applies accordingly.”

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**13 Conditions to employment or occupation absence exemption**

(1) Section 38AH(c) is amended by repealing subparagraph (i) and substituting the following subparagraph:

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“(i) a source deduction payment, as defined in section OB 2(1) of the Income Tax Act 2004, derived from New Zealand; or”.

(2) The requirement of section 38AH(c)(i) (as substituted by **sub-section (1)**) applies to a borrower who—

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- (a) made an application under section 38AE(1)(e) of the principal Act before this section came into force, from 1 April 2008; and
- (b) makes an application under section 38AE(1)(e) of the principal Act on or after the date on which this section comes into force, from the date of his or her application.

**14 Power of Commissioner to grant exemption to borrowers undertaking post-graduate study overseas**

- (1) The heading to section 38AJ is amended by omitting “**post-graduate study overseas**” and substituting “**study at post-graduate or under-graduate level overseas**”. 10
- (2) Section 38AJ(1) is amended by inserting “or under-graduate” after “post-graduate”.
- (3) Section 38AJ(2)(a) is amended by—
  - (a) omitting “post-graduate” in the first place where it appears; and 15
  - (b) inserting “or under-graduate” after “post-graduate” in the second place where it appears.
- (4) Section 38AJ(2)(b) is amended by omitting “post-graduate”.
- (5) Section 38AJ(2) is amended by adding “; and” and also by adding the following paragraph: 20
  - “(d) must provide the Commissioner with the information specified in **section 14A(2)**, and **section 14A(3) and (4)** applies accordingly.”
- (6) Section 38AJ(4) is amended by—
  - (a) inserting “**or under-graduate**” after “**post-graduate**”; and 25
  - (b) omitting “levels” and substituting “level 7,”.

**15 New section 38AL inserted**

The following section is inserted after section 38AK: 30

**“38AL Commissioner’s discretion for initial 183-day period for new borrowers**

- “(1) The Commissioner may at his or her discretion, if the Commissioner considers that it is fair and reasonable to do so, reduce the amount of interest calculated on an eligible borrower’s loan balance to zero for interest chargeable during some or all of the period starting on the day on which the 35

- borrower first received a student loan and ending 182 days after that day.
- “(2) If the Commissioner reduces the amount of interest calculated on an eligible borrower’s loan balance to zero under **subsection (1)**, the Commissioner must specify the start and end dates for the period for which the amount of interest is reduced to zero. 5
- “(3) The Commissioner may specify a start date of 1 April 2006, or any date after that date.
- “(4) In this section,—
- “**eligible borrower** means a borrower who— 10
- “(a) first received a student loan after 1 April 2006; and
- “(b) was personally absent from New Zealand for a period of 183 days or less during the period starting on the day on which the borrower first received a student loan and ending 182 days after that date 15
- “**first received**, in relation to a particular borrower, means each time that borrower’s loan balance increases from zero or less to greater than zero.”

**16 Headings and sections 38A to 41 repealed**

- (1) The headings above sections 38A, 39, and 40 are repealed. 20
- (2) Sections 38A to 41 are repealed.

**New (unanimous)**

**16A Interest statement**

Section 43 is amended by adding the following subsections:

- “(3) Subsection (2) does not prevent the Commissioner from amending the amount of interest charged if this is necessary to correct an error. 25
- “(4) If the amount of interest charged is corrected, the Commissioner must give written notice to the relevant borrower as soon as practicable after the amendment.”

**17 Late payment penalties** 30

- (1) Section 44(1)(c) is amended by omitting “a non-resident” and substituting “an overseas based”.

- (2) Section 44(2)(a) and (b) are amended by omitting “2%” and substituting in each case “1.5%”.
- (3) Paragraph (d) of the definition of **amount of the default** in section 44(3) is amended by—
- (a) omitting “a non-resident” and substituting “an overseas based”; and
  - (b) omitting “non-resident” in the second place it appears and substituting “overseas based”.
- (4) Paragraph (d) of the definition of **due date** in section 44(3) is amended by omitting “a non-resident” and substituting “an overseas based”.

**18 New section 44B inserted**

The following section is inserted after section 44A:

**“44B No interest on portion of loan balance subject to penalty**

- “(1) No interest may be charged on any portion of a loan balance on which a borrower is liable to pay a penalty.
- “(2) **Subsection (1)** applies—
- “(a) despite any provision in a loan contract; and
  - “(b) with effect from 1 April 1992.”

**19 Heading and sections 45A to 45D repealed**

The heading above section 45A and sections 45A to 45D are repealed.

**New (unanimous)**

**19A Recovery of repayment obligation**

Section 46(2) is amended by omitting “and section 211”.

**19B New section 50 substituted**

Section 50 is repealed and the following section substituted:

**“50 Priority of payments**

Any payment in respect of a repayment obligation must be off-set—

- “(a) first, against any interest charged; and
- “(b) secondly, against any principal outstanding.”



**Struck out (unanimous)**

- 20 Power of Commissioner in respect of small amounts**  
Section 51 is amended by omitting “\$5” in each place where it appears and substituting in each case “\$20”.

**New (unanimous)**

- 20 New section 51 substituted**  
Section 51 is repealed and the following section substituted: 5
- “51 Power of Commissioner in respect of small amounts**
- “(1) The Commissioner may refrain from refunding any repayment obligation (or part of a repayment obligation) payable to a borrower, or any repayment deduction (or part of a repayment deduction) payable to an employer or a PAYE intermediary, if— 10
- “(a) the amount payable to a borrower in any tax year is \$5 or less; or
- “(b) the amount payable to an employer or a PAYE intermediary in any period is \$5 or less. 15
- “(2) The Commissioner may refrain from issuing a notice of assessment or refrain from collecting and write off any repayment obligation (or part of a repayment obligation) payable by a borrower, or any repayment deduction (or part of a repayment deduction) payable by an employer or a PAYE intermediary, if— 20
- “(a) the amount payable by a borrower in any tax year is \$20 or less; or
- “(b) the amount payable by an employer or a PAYE intermediary in any period is \$20 or less. 25
- “(3) The Commissioner may refrain from collecting payment of a repayment obligation (or part of a repayment obligation) if that repayment obligation (or part of a repayment obligation)— 30
- “(a) is more than \$20 but less than \$333; and
- “(b) has not been paid by the due date (as that term is defined in **section 44**).
- “(4) Any amount that, under **subsection (3)**, the Commissioner does not collect from a borrower is subject to interest at the total

**New (unanimous)**

interest rate on the daily amount outstanding (except to the extent that this Act otherwise requires).

“(5) This section applies despite anything in this Act.”

**20A New section 51A inserted**

The following section is inserted after section 51:

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**“51A Commissioner may refrain from collecting amounts between \$5 and \$333**

“(1) The Commissioner may refrain from collecting payment of a repayment obligation (or part of a repayment obligation) if that repayment obligation (or part of a repayment obligation)—

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“(a) is more than \$5 but less than \$333; and

“(b) has not been paid by the due date (as that term is defined in **section 44**).

“(2) Any amount that, under **subsection (1)**, the Commissioner does not collect from a borrower is subject to interest at the total interest rate on the daily amount outstanding (except to the extent that this Act otherwise requires).

15

“(3) This section applies despite anything in this Act.

“(4) This section expires on the close of 30 September 2007.”

20

**21 Relief from penalty**

(1) Section 53(1) is amended by omitting “in writing”.

(2) Section 53 is amended by inserting the following subsections after subsection (1):

“(1A) An application for relief may be made—

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“(a) by telephone; or

“(b) in writing; or

“(c) in any other manner acceptable to the Commissioner.

“(1B) However, the Commissioner may require an application for relief to be made in writing.”

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**Struck out (unanimous)**

**22 New section 54 substituted**

Section 54 is repealed and the following section substituted:

**“54 Commissioner may refrain from collecting repayment obligation**

The Commissioner may refrain from collecting payment of a repayment obligation if the repayment obligation is less than \$250.”

5

**23 New sections 55 to 55D substituted**

Section 55 is repealed and the following sections are substituted:

10

**“55 Borrowers may apply for hardship relief**

“(1) A borrower may apply to the Commissioner for either or both of the following:

“(a) hardship relief during a tax year:

“(b) hardship relief for the next tax year.

15

“(2) An application under **subsection (1)(b)** must be made before 31 March in the tax year that immediately precedes the tax year for which relief is sought.

“(3) An application may be made—

“(a) by telephone; or

“(b) in writing; or

“(c) in any other manner acceptable to the Commissioner.

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“(4) However, the Commissioner may require an application to be made in writing.

**“55A Commissioner may refrain from collecting, or reduce repayment obligation**

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If an application has been made under **section 55**, the Commissioner may, for any period the Commissioner considers equitable, do either or both of the following::

“(a) refrain from collecting payment of all or part of a repayment obligation if the Commissioner—

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“(i) is satisfied that payment of the repayment obligation has caused or would cause serious hardship to the borrower; or

**Struck out (unanimous)**

- “(ii) considers that there are other special reasons that make it fair and reasonable to do so:
- “(b) reduce a repayment obligation if the Commissioner—
  - “(i) is satisfied that payment of a repayment obligation calculated at the standard deduction rate set out in section 20(1) has caused or would cause serious hardship to the borrower; or
  - “(ii) is satisfied that the amount payable by a periodic payer by way of interim payments as set out in section 27(1) has caused or would cause serious hardship to the borrower; or
  - “(iii) considers that there are other special reasons that make it fair and reasonable to do so.
  
- “55B Effect of Commissioner’s decision under section 55A(b)**
- “(1) If the Commissioner reduces a borrower’s repayment obligation under **section 55A(b)**, the Commissioner must either—
  - “(a) issue to that borrower a special repayment deduction rate certificate that varies the standard deduction rate in accordance with the Commissioner’s decision under **section 55A(b)**; or
  - “(b) reduce the percentage payable by that borrower under section 27(1) in accordance with the Commissioner’s decision under **section 55A(b)**; or
- “(2) If the Commissioner reduces a borrower’s repayment obligation to zero, section 18 does not apply to that borrower for the period for which that reduction applies.
- “(3) Section NC 14 of the Income Tax Act 2004 applies, with all necessary modifications, to any special deduction rate certificate issued under this section.
  
- “55C Effect of Commissioner’s decision under section 55A**
- “(1) Any amount that, as a result of a decision under **section 55A**, the Commissioner has not collected from a borrower, is subject to interest at the total interest rate on the daily amount outstanding.

**Struck out (unanimous)**

“(2) Section 56 or **section 57**, as appropriate, applies to a borrower who, as a result of the Commissioner refraining from collecting any amount from that borrower, or reducing that borrower’s repayment obligation, has had deductions made, or has made payments, in excess of that borrower’s repayment obligations as set out in section 56(1)(a) to (e) or **section 57(1)**.

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**“55D Borrowers must inform Commissioner of change of circumstances**

“(1) A borrower who applies for hardship relief under **section 55** must inform the Commissioner as soon as practicable if there is a change in the borrower’s circumstances that—

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“(a) means that any information supplied to the Commissioner under **section 55** is incorrect or inaccurate; or

“(b) may affect whether or not a borrower is granted hardship relief under **section 55A**.”

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**New (unanimous)**

**23 New sections 54 to 55D substituted**

Sections 54 and 55 are repealed and the following sections substituted:

**“54 Borrowers may apply for hardship relief**

“(1) A borrower may apply to the Commissioner for 1 or more of the following:

20

“(a) hardship relief for the tax year immediately prior to the current tax year:

“(b) hardship relief for the current tax year:

“(c) hardship relief for the next tax year.

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“(2) An application under **subsection (1)(c)** must be made on or before 31 March in the tax year that immediately precedes the tax year for which relief is sought.

“(3) An application may be made—

“(a) by telephone; or

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“(b) in writing; or

“(c) in any other manner acceptable to the Commissioner.

**New (unanimous)**

“(4) However, the Commissioner may require an application to be made in writing.

**“55 Commissioner may refund or reduce amounts deducted or paid for repayment obligation**

If an application has been made under **section 54**, the Commissioner may, for any period the Commissioner considers equitable, do either or both of the following: 5

“(a) refund any amount that was deducted or paid to meet a repayment obligation in the tax year immediately prior to the current tax year if the Commissioner— 10

“(i) is satisfied that payment of that repayment obligation is causing serious hardship to the borrower; or

“(ii) considers that there are other special reasons that make it fair and reasonable to do so: 15

“(b) reduce any amount that must be deducted or paid in order to meet the repayment obligation assessed or to be assessed for the current tax year or the next tax year if the Commissioner—

“(i) is satisfied that the amount being deducted or paid, or to be deducted or paid, has caused or will cause serious hardship to the borrower; or 20

“(ii) considers that there are other special reasons that make it fair and reasonable to do so.

**“55A Effect of Commissioner’s decision under section 55(a)** 25

“(1) If the Commissioner refunds any amount to a borrower under **section 55(a)**, the Commissioner must—

“(a) retrospectively decrease that borrower’s repayment obligation for the relevant tax year; and

“(b) refund the whole or part of the portion of the repayment obligation that is the difference in assessment amounts. 30

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

**New (unanimous)**

**“55B Effect of Commissioner’s decision under section 55(b)**

- “(1) If the Commissioner reduces the amount to be deducted or paid by a borrower under **section 55(b)**, the Commissioner must, as appropriate, do 1 of the following:
  - “(a) issue to that borrower a special repayment deduction rate certificate that varies the standard deduction rate in accordance with the Commissioner’s decision under **section 55(b)** and, when assessed, reduce that borrower’s repayment obligation accordingly; or 5
  - “(b) reduce the percentage payable by that borrower under section 27(1) in accordance with the Commissioner’s decision under **section 55(b)** and, when assessed, reduce that borrower’s repayment obligation accordingly; or 10
  - “(c) reduce that borrower’s repayment obligation under **section 34** in accordance with the Commissioner’s decision under **section 55(b)**. 15
- “(2) If the Commissioner reduces the amount to be deducted from, or paid by, a borrower to zero, section 18 does not apply to that borrower for the period for which that reduction applies.
- “(3) If a borrower has given his or her employer notice in accordance with section 18 and the Commissioner subsequently reduces the amount to be deducted from, or paid by, a borrower to zero, the borrower must give a copy of the special repayment deduction rate certificate to his or her employer as soon as practicable after it is issued. 25
- “(4) Section NC 14 of the Income Tax Act 2004 applies, with all necessary modifications, to any special deduction rate certificate issued under this section.

**“55C Effect of Commissioner’s decision under section 55**

- “(1) Any amount that, as a result of a decision under **section 55**, the Commissioner has refunded to, or not collected from, a borrower is subject to interest at the total interest rate on the daily amount outstanding (except to the extent that this Act otherwise requires). 30
- “(2) **Section 56 or 57**, as appropriate, applies to a borrower who, as a result of the Commissioner refraining from deducting or 35

**New (unanimous)**

collecting any amount from that borrower, or reducing that borrower's repayment obligation, has had deductions made, or has made payments, in excess of that borrower's repayment obligations as set out in section 56(1)(a) to (e) or **section 57(1)**.

- “55D Borrowers must inform Commissioner of change of circumstances and Commissioner may review** 5
- “(1) A borrower who applies for hardship relief under **section 54** must inform the Commissioner 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 54** is incorrect or inaccurate; or 10
- “(b) may affect whether or not a borrower would have been, or will continue to be, granted hardship relief under **section 55**.
- “(2) The Commissioner may, at the end of a tax year, review any decision he or she made during that year to grant hardship relief to a borrower. 15
- “(3) 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: 20
- “(a) require the borrower to take any action that is required in order to reverse the effects of the hardship relief that was granted to the borrower:
- “(b) reinstate all or part of the repayment deduction or 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
- 24 Election by non-resident to receive refund or to apply overpayment to loan balance** 30
- (1) The heading to section 57 is amended by omitting “**non-resident**” and substituting “**overseas based borrower**”.
- (2) Section 57(1) is amended by omitting “non-resident” in each place where it appears and substituting in each case “overseas based”. 35



**25 Repayment obligation paid in excess may be refunded when assessments reopened**

Section 58A(1) is amended by omitting “the tax year ending on 31 March 2006 or any prior tax year” and substituting “any tax year”.

5

**26 Write-off of loan balance**

Section 60(c) is amended by omitting “\$10” and substituting “\$20”.

**New (unanimous)****26A New section 61 substituted**

Section 61 is repealed and the following section substituted:

10

**“61 Tax year other than 12 months due to change in balance date**

If a borrower’s net income is for a period other than 12 months as a result of the borrower changing his or her balance date for income tax purposes, for the purpose of calculating the amount of that borrower’s repayment obligation, the repayment threshold is calculated as follows:

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

20

where—

a is the amount of the repayment threshold referred to in **section 2**:

b is the number of days in the period.”

**27 Disclosure of information**

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**New (unanimous)**

(1AA) Section 62(1A) is amended by omitting “subsection (2)(ab) and”.

(1) Section 62(2)(ab) is repealed.

(2) Section 62(2AA) is repealed.

**28 New sections 62A and 62B inserted**

The following sections are inserted after section 62:

**“62A Disclosure of information for information matching purposes**

- “(1) The purpose of this section is to facilitate the exchange of information between the Department and the New Zealand Customs Service for the purpose of establishing an information matching programme to assist the Commissioner to verify—
- “(a) borrowers’ entitlements to a full interest write-off under section 38AA: 5
  - “(b) whether borrowers are New Zealand based or overseas based for the purposes of this Act: 10
  - “(c) whether borrowers are resident or non-resident for the purposes of this Act. 15
- “(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 Department:
- “(a) a borrower’s name or any other name by which a borrower is known: 20
  - “(b) a borrower’s date of birth:
  - “(c) a borrower’s tax file number.
- “(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. 30
- “(4) **Subsection (2)** applies despite any obligation as to secrecy or other restriction imposed by any enactment or otherwise on the disclosure of information.

**“62B 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

Zealand Customs Service to store arrival or departure information.”

**29 Objection to decision concerning grant of exemption**  
Section 65A is amended by adding the following *(paragraph)* paragraphs:

“(e) not to reduce the amount of interest calculated on an eligible borrower’s loan balance under **section 38AL**, on the ground that that decision was not fair and reasonable:

**New (unanimous)**

“(f) specifying the start and end dates for the period for which the amount of interest calculated on an eligible borrower’s loan balance is reduced to zero under **section 38AL(2)**, on the ground that those dates are—

“(i) not fair and reasonable; or

“(ii) erroneous.”

**30 Section 66A repealed**  
Section 66A is repealed.

**31 Heading to Part 7 amended**  
The heading to Part 7 is amended by omitting “, **amendments to other Acts, and transitional provisions**” and substituting “**and miscellaneous matters**”.

**32 Regulations**  
(1) Section 87(1) is amended by repealing paragraphs (ab) and (ac) and substituting the following paragraphs:

“(ab) specifying a formula or methodology, and other requirements, in accordance with which the total interest rate must be set or reset for the purposes of this Act:

“(ac) determining, in accordance with the formula or methodology and requirements specified under **paragraph (ab)**, the total interest rate that is to apply in respect of any tax year:”.

**New (unanimous)**

- |   |
|---|
| (2) Section 87(1)(ba) is repealed.                                |
| (3) Section 87(4) is amended by omitting “or subsection (1)(ba)”. |

**33 New section 88 inserted**

The following section is inserted after **section 87**:

**“88 Full interest write-offs, base interest write-offs, and interest reductions validated”** 5

“(1) This section applies to a borrower whose loan balance was treated by the Commissioner as being zero or less on 13 November 2006 and who, in relation to that loan balance, received 1 or more of the following in any tax year that ended prior to 1 April 2006: 10

“(a) a full interest write-off as described in section 38C before its repeal by **section 16** of the **Student Loan Scheme Amendment Act (No 2) 2006**: 15

“(b) a base interest write-off as described in section 39(2) before its repeal by **section 16** of the **Student Loan Scheme Amendment Act (No 2) 2006**: 20

“(c) an interest reduction as described in section 40(2) before its repeal by **section 16** of the **Student Loan Scheme Amendment Act (No 2) 2006**. 25

“(2) In relation to a borrower to whom this section applies,—

“(a) the full interest write-off described in **subsection (1)(a)** is validated and must not be reversed: 25

“(b) the base interest write-off described in **subsection (1)(b)** is validated and must not be reversed: 30

“(c) the interest reduction described in **subsection (1)(c)** is validated and must not be reversed. 35

“(3) This section does not affect any loan obtained by the borrower under the student loan scheme after 13 November 2006.

“(4) This section applies despite anything in any other enactment or in a loan contract.”

**34 Headings and sections 89 to 102 repealed**

(1) The heading above section 89 and all of the headings after section 89 are repealed.

(2) Sections 89 to 102 are repealed. 35

**35 New Parts added**

The following Parts are added:

**“Part 8**

**“2007/08 transitional provisions for fresh start for  
certain borrowers**

5

**“89 Interpretation**

In this Part, unless the context otherwise requires,—

“**amnesty application date**, in respect of a borrower, means the date on which the Commissioner receives an amnesty application from the borrower under **section 93(1)(a)(i)**

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“**amnesty condition** means the conditions set out in **sections 94 to 97 and 100**, as applicable

“**late payment penalties**—

“(a) means any penalty that was charged under **section 44** (despite being cancelled under **section 91**); and

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“(b) includes any penalty that would have been charged under **section 44** if **section 90** had not been enacted

“**non-resident repayment obligation** means a repayment obligation assessed under Part 3 before that Part was repealed and substituted with a **new Part 3** by **section 9** of the **Student Loan Scheme Amendment Act (No 2) 2006**

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“**off-set** means to apply towards, and not necessarily to eliminate (for example, if a person has already made repayment deductions of \$400, and this Part provides that an amnesty payment obligation of \$500 may be off-set against those repayment deductions, \$100 is left to pay)

25

“**old amnesty** means the amnesty provided under sections 45A to 45D before their repeal by **section 19** of the **Student Loan Scheme Amendment Act (No 2) 2006**

“**old repayment obligation** means every repayment obligation that was assessed by the Commissioner in respect of a period before 1 April 2007, or that should have been assessed by the Commissioner in respect of any such period if **section 90** had not been enacted (whether a non-resident repayment obligation or a resident repayment obligation)

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35

“**resident repayment obligation** means a repayment obligation assessed under Part 2 before that Part was amended by the **Student Loan Scheme Amendment Act (No 2) 2006**.

“(Clean) Fresh start for certain non-resident borrowers

“**90 No need to issue non-resident repayment obligations for period before 1 April 2007**

The Commissioner is not obliged to issue any new non-resident repayment obligation (*in respect of*) in relation to a borrower for any period before 1 April 2007 if the Commissioner has not previously issued a non-resident repayment obligation in relation to that borrower for that period.

5

“**91 Penalties cancelled, and interest imposed, for certain non-resident borrowers**

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“(1) This section applies to a borrower who was—

“(a) non-resident on 31 March 2006; and

“(b) in arrears in respect of all or part of an old repayment obligation as at 1 April 2007.

“(2) All old repayment obligations and all associated penalties of a borrower to whom this section applies are reduced to zero, to the extent that the old repayment obligations or the associated penalties are unpaid as at 1 April 2007.

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“(3) The amount that was to be paid in respect of the old repayment obligations is subject to interest from the date that the old repayment obligations were (or would have been) originally due at the total interest rate that applied over the period of non-payment of those obligations on the daily amount outstanding.

20

“(4) For the avoidance of doubt, the amount that was to be paid in respect of the old repayment obligations remains part of the borrower’s loan balance, and that loan balance remains outstanding and due for repayment in accordance with subsequent repayment obligations assessed by the Commissioner.

25

**Examples**

**Example 1: Lenore**

Lenore has a loan balance on 1 April 2005 of \$15,000. Lenore was issued with non-resident assessments of \$1,997 for the 2005–06 tax year and \$1,919 for the 2006–07 tax year, which she has failed to pay. The 2005–06 assessment ceased to be subject to standard interest (7% for the 2005–06 tax year) and instead became subject to compounding late payment penalties of 2% per month from 1 April 2006. The 2006–07 assessment ceased to become subject to standard interest (6.9% for the 2006–07 tax year) 1 year later on 1 April 2007. Her total late payment penalties on 31 March 2007 are \$536 and her loan balance is \$17,555.

On 1 April 2007 her overdue debt is zero and her loan balance is reduced by \$398 (penalties of \$536 less interest of \$138 charged in place of penalties) to \$17,157.

**Example 2: Keith**

Keith left New Zealand on 31 March 2005 with a loan balance of \$20,000. The Commissioner was not aware that Keith was a non-resident and therefore did not issue non-resident assessments while Keith was overseas. On 1 April 2007 the Commissioner becomes aware that Keith is a non-resident and has been since 1 April 2005. The Commissioner is not required to make non-resident repayment obligation assessments for tax years prior to 1 April 2007. Keith has not made any repayments while overseas and his loan balance is \$22,877 on 1 April 2007, including compounding interest.

*“New amnesty*

**“92 Application of sections 93 to 105**

- “(1) Sections 93 to 105** apply only to a borrower who was—
- “(a) non-resident on 31 March 2006; and
  - “(b) in arrears in respect of all or part of an old repayment obligation as at *(that date)* 1 April 2007.
- “(2)** However, **sections 93 to 105** do not apply to a borrower whose loan balance was treated by the Commissioner as being zero or less on 13 November 2006.

**“93 Borrowers whose loan balance is not increased under section 103**

- “(1) Section 103** (increase to loan balance) does not apply to a borrower if—
- “(a) either—
    - “(i) the Commissioner receives an amnesty application (in any form or manner acceptable to the

- Commissioner) by or on behalf of that borrower on or after 1 April 2007 and before the close of 31 March 2008; or
- “(ii) the old amnesty applies to the borrower and the borrower is not in breach of the condition of the old amnesty as at 1 April 2007; and 5
- “(b) the borrower meets the relevant amnesty condition.
- “(2) To avoid doubt, a borrower to whom the old amnesty applies and who is in breach of a condition of that amnesty as at 1 April 2007 may make an amnesty application under **subsection (1)(a)(i)**. 10
- “94 Amnesty condition for borrowers who apply for amnesty after 31 March 2007**
- The amnesty condition for a borrower referred to in **section 93(1)(a)(i)** is that the borrower must— 15
- “(a) give an undertaking to the Commissioner that he or she will pay to the Commissioner the amount referred to in **paragraph (b)**; and
- “(b) in accordance with that undertaking, pay the following amount to the Commissioner: 20
- “(i) \$2,000, if the borrower’s loan balance as at the amnesty application date is \$15,000 or less:
- “(ii) \$4,000, if the borrower’s loan balance as at the amnesty application date is more than \$15,000 and less than or equal to \$30,000: 25
- “(iii) \$6,000, if the borrower’s loan balance as at the amnesty application date is more than \$30,000.
- “95 Payment arrangements if amnesty application date is between 1 April 2007 and 31 August 2007**
- “(1) This section applies to a borrower whose amnesty application date is between 1 April 2007 and the close of 31 August 2007. 30
- “(2) The amount in **section 94** must be paid by the borrower in 4 equal instalments which are due and payable on 30 September 2007, 31 March 2008, 30 September 2008, and 31 March 2009. 35
- “(3) The amount in **section 94** applies instead of—
- “(a) any overseas based repayment obligation to which the borrower may otherwise be liable, to the extent that the



- amount is received by the Commissioner in the tax year ending 31 March 2008 or 31 March 2009; and
- “(b) any repayment holiday the borrower may have had under **section 107** during the tax year ending 31 March 2008 or 31 March 2009. 5
- “96 Payment arrangements if amnesty application date is between 1 September 2007 and 29 February 2008**
- “(1) This section applies to a borrower whose amnesty application date is between 1 September 2007 and the close of 29 February 2008. 10
- “(2) The amount in **section 94** must be paid by the borrower in 4 equal instalments which are due and payable on 31 March 2008, 30 September 2008, 31 March 2009, and 30 September 2009.
- “(3) The amount in **section 94**— 15
- “(a) applies instead of any overseas based repayment obligation to which the borrower may otherwise be liable, to the extent that the amount is received by the Commissioner in the tax years ending 31 March 2008 and 31 March 2009; and 20
- “(b) is off-set against any overseas based repayment obligation to which the borrower may otherwise be liable, to the extent that the amount is received by the Commissioner in the tax year ending 31 March 2010; and
- “(c) applies instead of any repayment holiday the borrower may have had under **section 107** during the tax year ending 31 March 2008 or 31 March 2009. 25
- “97 Payment arrangements if amnesty application date is in March 2008**
- “(1) This section applies to a borrower whose amnesty application date is in March 2008. 30
- “(2) The amount in **section 94** must be paid by the borrower in 4 equal instalments which are due and payable on 30 September 2008, 31 March 2009, 30 September 2009, and 31 March 2010. 35
- “(3) The amount in **section 94** applies instead of—
- “(a) any overseas based repayment obligation to which the borrower may otherwise be liable, to the extent that the

- amount is received by the Commissioner in either the tax year ending 31 March 2009 or the tax year ending 31 March 2010; and
- “(b) any repayment holiday the borrower may have had under **section 107** during the tax year ending 31 March 2009. 5
- “(4) For the tax year ending 31 March 2008, the borrower’s repayment obligation is reduced to zero.
- “**98 Commissioner may reduce instalments if significant financial hardship** 10  
The Commissioner may reduce any instalment to be paid by a borrower under any of **sections 94 to 97** if the Commissioner is satisfied that reduction is necessary to alleviate the borrower’s significant financial hardship (within the meaning of section 57D(4)). 15
- “**99 Relationship with New Zealand based repayment obligations**  
An amount paid by a borrower under **section 94** at any time when that borrower is New Zealand based may be off-set by the Commissioner against any New Zealand based repayment obligation payable by that borrower. 20
- “**100 Amnesty condition for people who applied for old amnesty before 1 April 2007**  
The amnesty condition for a borrower referred to in **section 93(1)(a)(ii)** is that the borrower must make payments to the Commissioner in accordance with **sections 94 to 99**, as those sections are applied by the Commissioner,— 25  
“(a) in a way that, in the opinion of the Commissioner, gives credit for the extent to which the borrower has complied with the conditions of the old amnesty; and 30  
“(b) with such other modifications as may be necessary.
- “**101 What happens if amnesty condition breached**  
If the Commissioner is satisfied that a borrower has breached the relevant amnesty condition,—  
“(a) **section 102** (one time opportunity to correct amnesty condition breach) applies; and 35

“(b) in any other case, the amnesty ceases to apply to the borrower and the Commissioner must apply **section 103** and give written notice to the borrower accordingly.

**“102 One time opportunity to correct amnesty condition breach**

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“(1) This section applies if the Commissioner is satisfied that—

“(a) a borrower has breached the relevant amnesty condition; and

“(b) this is the first breach of that condition by that borrower.

“(2) If this section applies, the Commissioner must give the borrower written notice of—

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“(a) the breach of the amnesty condition by the borrower; and

“(b) the action that must be taken by the borrower to remedy that breach; and

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“(c) the date by which the breach must be remedied, which must be the date that is 30 days after the date of the Commissioner’s notice; and

“(d) the fact that the Commissioner is exercising a discretion that can only be used once in relation to the borrower.

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“(3) If the borrower remedies the breach in accordance with the terms of the Commissioner’s notice, the Commissioner must treat the borrower as if the borrower has met all of his or her obligations under **sections 93 to 103**.

**“103 Increase to loan balance if borrower does not come under amnesty or if amnesty condition breached**

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“(1) If a borrower does not apply for an amnesty before 1 April 2008, the borrower’s loan balance is increased by an amount equal to 5% of the borrower’s loan balance as at 31 March ~~(2007)~~ 2008, including any interest compounded as at that date.

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“(2) However, if the Commissioner considers that the amount in **subsection (1)** would have been more than the late payment penalties, the Commissioner may reduce the amount in **subsection (1)** to such an amount as the Commissioner considers to be fair and reasonable.

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“(3) If the borrower fails to comply with the relevant amnesty conditions, the borrower’s loan balance is increased, on

31 March following the breach, by an amount equivalent to the lesser of the amounts in **subsections (1) and (2)** but reduced in proportion to the degree of the breach.

- “104 Objection to decisions concerning penalty amnesty** 5  
A borrower may challenge a decision of the Commissioner—  
“(a) not to take the actions set out in **section 102(2) and (3)**, on the ground that that decision is erroneous; or  
“(b) under **section 103**, on the ground that that decision is erroneous.
- “105 Commissioner must apply rest of Act accordingly** 10  
The Commissioner must apply this Act to borrowers to whom **sections 93 to 105** apply with any necessary modifications (for example, as if, for the purposes of section 50, an amount payable under **section 94** was a payment in respect of a repayment obligation). 15
- “Part 9**  
**“Other transitional provisions**
- “Repayment holiday entitlements for borrowers who are overseas based on 1 April 2007*
- “106 (Repayment) Full repayment holiday entitlement for borrowers who are overseas based on 1 April 2007 and (are) compliant** 20
- “(1) This section applies to a borrower who, on 1 April 2007,—  
“(a) is overseas based; and  
“(b) is not in arrears in respect of all or part of an old repayment obligation (as defined in **section 89**). 25
- “(2) A borrower to whom this section applies is entitled to a repayment holiday for a maximum period of 3 years, and **sections 31 to 36A** apply accordingly, with all necessary modifications. 30
- “107 (Repayment) Restricted repayment holiday entitlements for borrowers who are overseas based on 1 April 2007 and non-compliant**
- “(1) This section applies to a borrower who—  
“(a) is overseas based on 1 April 2007; and 35

- “(b) but for **sections 90 and 91**, would have been in arrears in respect of all or part of an old repayment obligation (as defined in **section 89**) as at 1 April 2007.
- “(2) A borrower who, as at 1 April 2007, has been non-resident for a continuous period of more than 364 days but less than 2 years is entitled to a repayment holiday for a maximum period of 2 years, and **sections 31 to 36A** apply accordingly, with all necessary modifications. 5
- “(3) A borrower who, as at 1 April 2007, has been non-resident for a continuous period of 2 years or more, but less than 3 years, is entitled to a repayment holiday for a maximum period of 1 year, and **sections 31 to 36A** apply accordingly, with all necessary modifications. 10
- “(4) A borrower who, as at 1 April 2007, has been non-resident for a continuous period of 3 years or more is not entitled to a repayment holiday under **section 32**, and the repayment obligations in **sections 34 and 35** apply accordingly, with all necessary modifications. 15
- “**108 (Repayment) Restricted repayment holiday entitlements for borrowers who are overseas based on 1 April 2007 and do not comply with amnesty conditions** 20
- “(1) This section applies to a borrower who—
- “(a) was overseas based on 1 April 2007; and
- “(b) applied to come under the amnesty under **section 93** but failed to comply with all of the relevant amnesty conditions. 25
- “(2) The restricted repayment holidays in **section 107(2) to (4)** apply to a borrower to whom this section applies.
- “(3) Any amounts that a borrower has paid in accordance with **section 94** may be off-set against any overseas based repayment obligation to which that borrower may otherwise be liable— 30
- “(a) after his or her restricted repayment holiday under **sub-section (2)** has ended; or
- “(b) while opting out of a repayment holiday in accordance with **section 33**. 35

- “109 Interrelationship of sections 31 to 36A, Part 8, and sections 107 and 108**
- “(1) The restricted repayment holidays in **section 107(2) to (4)** apply only for the ongoing period from 1 April 2007 during which a borrower remains overseas based. 5
- “(2) A borrower to whom **section 107 or section 108** applies and who subsequently becomes New Zealand based is entitled to a repayment holiday in accordance with **sections 31 to 36A** if that borrower becomes overseas based again.
- “(3) However, any repayment holiday that borrower has already had under **section 107 or section 108** must be counted as part of that borrower’s total 3-year repayment holiday. 10
- “(4) The amnesty conditions in **Part 8** override a borrower’s entitlement to a repayment holiday under **section 107**.
- “110 (*Repayment*) Full repayment holiday entitlement for borrowers who meet amnesty conditions** 15
- “(1) This section applies to a borrower who—  
“(a) was overseas based on 1 April 2007; and  
“(b) has, since 1 April 2007, become a compliant borrower.
- “(2) For the purposes of **subsection (1)**, a borrower becomes a **compliant borrower** when that borrower applies to come under the amnesty under **section 93** and has complied with all of the relevant amnesty conditions. 20
- “(3) A borrower to whom this section applies may apply to the Commissioner for a full repayment holiday when he or she becomes a compliant borrower. 25
- “(4) An application may be made by the borrower, or on behalf of the borrower,—  
“(a) by telephone; or  
“(b) in writing; or 30  
“(c) in any other manner acceptable to the Commissioner.
- “(5) However, the Commissioner may require an application to be made in writing.
- “(6) If the Commissioner grants a borrower’s application for a full repayment holiday, that borrower is entitled to a repayment holiday of up to 3 years, and **sections 31 to 36A** apply accordingly, with all necessary modifications. 35

- “111 (Repayment) Full repayment holiday entitlement for borrowers who meet amnesty conditions and do not apply under section (111) 110**
- “(1) This section applies to a borrower who—
- “(a) was overseas based on 1 April 2007; and 5
  - “(b) has, since 1 April 2007, become a compliant borrower (as defined in **section 110(2)**); and
  - “(c) does not make an application to the Commissioner under **section 110(3)**.
- “(2) A borrower to whom this section applies and who subsequently becomes New Zealand based is entitled to a repayment holiday of up to 3 years in accordance with **sections 31 to 36A** if that borrower becomes overseas based again. 10

*“Application of Tax Administration Act 1994*

- “112 Application of repealed provisions of Tax Administration Act 1994 15**
- Where a provision of this Act (a **relevant provision**)—
- “(a) refers to a provision of the Tax Administration Act 1994 that is repealed by the Tax Administration Amendment Act (No 2) 1996; and 20
  - “(b) incorporates the repealed provision for any purpose to give effect to the relevant provision,—
- the repealed provision must be treated as continuing in effect for the purpose of giving effect to the relevant provision.”

**Part 2 25**

**Amendments to other enactments**

Subpart 1—Amendments to other Acts

- 36 Customs and Excise Act 1996 amended**
- The Customs and Excise Act 1996 is amended by inserting the following sections after section 280F: 30
- “280G Defined terms for sections 280H and 280I**
- In **sections 280H and 280I**, unless the context otherwise requires,—
- “**borrower** has the meaning given to it by section 2 of the Student Loan Scheme Act 1992 35

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

“**Department** means the Inland Revenue Department

“**identifying information** means the information set out in **section 62A(2)** of the Student Loan Scheme Act 1992 that identifies a borrower 5

“**officer of the Department** has the meaning given to it by section 3(1) of the Tax Administration Act 1994.

“**280H Disclosure of arrival and departure information for purposes of Student Loan Scheme Act 1992** 10

“(1) The purpose of this section is to facilitate the exchange of information between the Customs and the Department for the purpose of assisting the Commissioner to verify—

“(a) borrowers’ entitlements to a full interest write-off under section 38AA of the Student Loan Scheme Act 1992: 15

“(b) whether borrowers are New Zealand based or overseas based for the purposes of that Act:

“(c) whether borrowers are resident or non-resident for the purposes of that Act.

“(2) For the purpose of this section, the Commissioner may supply any identifying information to the Chief Executive. 20

“(3) If, in relation to any borrower, identifying information is supplied in accordance with **subsection (2)**, the Chief Executive may compare that information with any arrival and departure information held by the Customs that relates to that borrower. 25

“(4) If the Customs has arrival or departure information relating to a borrower, the Chief Executive may, for the purpose of this section, supply to the Commissioner any of the following information held by the Customs:

“(a) the borrower’s name: 30

“(b) the borrower’s date of birth:

“(c) the borrower’s tax file number:

“(d) the time and date on which the borrower arrived in, or, as the case may be, departed from, New Zealand.

“(5) The Chief Executive and the Commissioner may, for the purpose of this section, determine by written agreement between them— 35



- “(a) the frequency with which information may be supplied;  
and
- “(b) the form in which information may be supplied; and
- “(c) the method by which information may be supplied.

**“280I Direct access to arrival and departure information for purposes of Student Loan Scheme Act 1992** 5

- “(1) The purpose of this section is to facilitate the Department’s access to information stored in a database for the purpose of assisting the Commissioner to verify—
  - “(a) borrowers’ entitlements to a full interest write-off under section 38AA of the Student Loan Scheme Act 1992: 10
  - “(b) whether borrowers are New Zealand based or overseas based for the purposes of that Act:
  - “(c) whether borrowers are resident or non-resident for the purposes of that Act: 15
  - “(d) for the purposes of that Act, whether borrowers are in New Zealand.
- “(2) The Chief Executive may, for the purpose of this section, allow the Commissioner to access a database in accordance with a written agreement entered into by the Chief Executive and the Commissioner. 20
- “(3) In accessing a database for the purpose of this section, the Commissioner—
  - “(a) may only search for arrival or departure information relating to pre-selected borrowers who are of interest to the Commissioner; and 25
  - “(b) must not search for—
    - “(i) any information other than arrival or departure information; or
    - “(ii) any information about a person who is not a borrower. 30
- “(4) The Commissioner must take all reasonable steps to ensure that—
  - “(a) only persons who have had appropriate powers delegated to them by the Commissioner— 35
    - “(i) have access to the database; and
    - “(ii) use the database; and
  - “(b) a record is kept of—

- “(i) every occasion on which persons access a database; and
  - “(ii) the reason for accessing the database; and
  - “(iii) the identity of the person who accessed the database; and 5
- “(c) every person who accesses a database for the purpose of this section complies with **subsection (3)**.

“(5) In this section,—

“**access a database** includes remote access to a database  
“**database** means any information recording system used by 10  
the Customs to store arrival or departure information.”

**37 Education Act 1989 amended**

Section 307C of the Education Act 1989 is repealed.

**38 Privacy Act 1993 amended**

- (1) This section amends the Privacy Act 1993. 15
- (2) Schedule 3 is amended by inserting the following item in its appropriate alphabetical order:  
Student Loan Scheme Act 1992      **Section 62A**
- (3) The item relating to the Customs and Excise Act 1996 in Schedule 3 is amended by omitting “Sections 280 to 280D” 20  
and substituting “**Sections 280 to 280D and 280H**”.
- (4) The item relating to the Education Act 1989 in Schedule 3 is amended by omitting “307C,”.
- (5) The item relating to the Tax Administration Act 1994 in Schedule 3 is amended by omitting “85D,”. 25

**39 Tax Administration Act 1994 amended**

- (1) This section amends the Tax Administration Act 1994.

**New (unanimous)**

- (1A) Paragraph (c) of the definition of **tax** in section 3(1) is amended by inserting “, any interest charged on a loan balance (as that term is defined in the Student Loan Scheme Act 1992),” after “Revenue Acts”. 30

- (2) Section 81(4) is amended by inserting the following paragraph after paragraph (g):  
“(gb) communicating to the chief executive of the New Zealand Customs Service under **section 62A** of the Student Loan Scheme Act 1992 any information specified in **subsection (2)** of that section for the purpose set out in **subsection (1)** of that section.” 5
- (3) Section 85D is repealed.
- (4) Section 87(4) is amended by inserting the following paragraph after paragraph (d): 10  
“(db) where it is given by any person referred to in **section 81(4)(gb)**, be kept by the New Zealand Customs Service as a permanent record:”.
- (5) Section 87(5)(a)(i) is amended by inserting “(gb),” after “(g),”. 15

### Subpart 2—Amendments to regulations

**40 Student Loan Scheme (Interest Rates Formulas) Regulations 2006 amended**

The Student Loan Scheme (Interest Rates Formulas) Regulations 2006 are amended by revoking regulations 5 and 6. 20

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#### Legislative history

13 November 2006	Introduction (Bill 92–1)
16 November 2006	First reading and referral to Education and Science Committee

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