

STUDENT LOAN SCHEME BILL

EXPLANATORY NOTE

THIS Bill provides for the repayment of loans made by the Crown to tertiary students.

The Bill deals only with assessment and collection of repayments by the Inland Revenue Department. It does not cover matters such as eligibility for loans under the Crown's student loan scheme, credit limits, draw down limits, or the general imposition of interest on loan balances. These matters are dealt with in the loan contracts signed by the borrowers.

The Bill applies both to existing borrowers who have already entered into a loan contract with the Crown and to future borrowers.

In the case of existing borrowers, the loan contract specifies the general principles according to which loans will be repaid. These are—

- (a) That the annual amount repayable is based on a percentage of the borrower's assessable income for the income year after deducting a repayment threshold;
- (b) That collection is to be made by the Inland Revenue Department;
- (c) That the annual loan repayment amount shall be paid at the same times and in the same manner as if the loan repayment were income tax of the borrower;
- (d) That if the loan repayment amount is not so paid, the amount payable shall be subject to a late payment penalty of 2 percent per month.

The provisions of this Bill are consistent with those general principles in the loan contract.

It is a term of the loan contract entered into by existing borrowers that—

“The Borrower acknowledges that the Borrower is aware and accepts that the Lender intends to seek the passing of legislation after the commencement of this Loan Agreement conferring upon the Commissioner of Inland Revenue appropriate powers required to enable recovery of the Loan Repayment Amount or other moneys payable under this Loan Agreement and creating appropriate offences . . . and otherwise in relation to the Borrower's obligations under this Loan Agreement.”

The Bill therefore supplements the loan contract for existing borrowers.

The Bill will apply in a corresponding way to future borrowers under the Crown's student loan scheme.

The Bill makes no change in respect of the basic amount of annual repayments that existing borrowers have already agreed to make. That amount will be, in the case of resident borrowers, an amount equivalent to the amount by which the borrower's assessable income for the tax year exceeds the repayment threshold (currently set at \$12,670), multiplied by the repayment percentage (currently set at 10 percent). The existing loan contracts envisage that that figure and that percentage may be changed. This Bill provides for any such change to occur by Order in Council.

The Bill specifies a repayment rate for non-New Zealand resident borrowers. The loan contract currently makes no special provision for assessing repayments for non-residents. The basic rate set by the Bill, in cases where the loan balance on the day after the borrower left New Zealand is less than \$15,000, is \$1,000 per annum plus interest on the loan balance. In cases where that loan balance is more than \$15,000 on that day, the annual rate set by the Bill is one-fifteenth of the loan balance on that day plus interest on the loan balance.

Clause by Clause Explanation

Clause 1 provides that the Bill (other than its transitional provisions) shall apply to liabilities to repay student loans in respect of the income year commencing on 1 April 1992 and every subsequent year. The transitional provisions in *Part VI* provide, however,—

- (a) That no repayment deductions are required to be made from salary or wages before 1 April 1993:
- (b) That no interim repayments are required to be made for the income year commencing on 1 April 1992:
- (c) That the non-resident repayment obligation in respect of the income year commencing on 1 April 1992 is required to be paid on 30 June 1993.

Clause 2 deals with interpretation.

Clause 3 provides that the Act shall bind the Crown.

PART I

COLLECTION OF REPAYMENTS FROM BORROWERS RESIDENT IN NEW ZEALAND

Part I applies to borrowers who are resident for the whole of the income year. In summary, this Part—

- (a) Establishes the basic repayment rate:
- (b) Requires the Commissioner to issue assessments of the annual repayment obligation:
- (c) Requires borrowers who reasonably expect to have primary employment earnings in excess of the repayment threshold (currently \$12,670) to notify their employers that automatic deductions are required to be made from salary or wages towards the annual repayment obligation, and requires employers to make those deductions:
- (d) Requires borrowers with an end of year liability of \$1,000 or more (i.e., after allowing for salary deductions) to make interim repayments towards the annual repayment obligation in the same way as payments of provisional tax are made:
- (e) Establishes an end of year square-up similar to payment of terminal tax, which is, in most cases, payable by the following 7 February.

Clause 4 imposes a liability on borrowers to make payments towards repayment of their student loans once their income exceeds the repayment threshold. For the 1992-93 income year the repayment threshold is \$12,670 and the amount payable is 10 cents in the dollar of the assessable income in excess of the repayment threshold.

The repayment obligation in any income year cannot exceed the loan balance on the last day of that income year.

Returns and Assessments

Clauses 5 and 6 provide for the furnishing of returns and the issuing of assessments. The requirements set are the same as the requirements of the Income Tax Act 1976 in this respect, i.e.,—

- (a) Borrowers can be required to furnish returns by the dates set in the Income Tax Act 1976, i.e., usually by 7 June for ordinary taxpayers:
- (b) The Commissioner is, until the loan is repaid, required to make assessments from the returns furnished and from any other information in his or her possession:
- (c) The Commissioner is empowered to make a determination of the amount that ought to be a repayment obligation in cases where, for example, the borrower has not filed an annual return for the preceding income year:
- (d) The Commissioner is obliged to give the borrower a notice of assessment:
- (e) The Commissioner is empowered to amend assessments at any time to ensure their correctness, except that alterations may only be made after 4 years where, in the opinion of the Commissioner, the return is fraudulent or wilfully misleading or omits all mention of income of a particular nature or derived from a particular source:
- (f) The Commissioner may reassess the repayment obligation where the return date is between 31 March and 1 October:
- (g) The validity of an assessment is not affected by a failure to comply with the Bill:
- (h) Assessments are deemed correct except in proceedings on objection:
- (i) The production of original returns and assessments is not necessary in Court proceedings.

Repayment Deductions from Salary and Wages

Clauses 7 to 15 deal with automatic repayment deductions from salary and wages. The deduction provisions will apply—

- (a) In all cases where a borrower reasonably expects that his or her assessable income from salary or wages that are primary employment earnings for the income year will exceed the repayment threshold (currently \$12,670); and
- (b) At the borrower's request, in the case of borrowers whose combined assessable income from primary and secondary employment earnings will exceed that repayment threshold:
- (c) In all cases where a borrower has been issued with a special tax code certificate under section 351 of the Income Tax Act 1976 and whose assessable income will exceed that repayment threshold.

The exceptions are that earnings as a shearer, shearing shed hand, or private domestic worker will not be counted in determining whether repayment deductions have to be made in cases referred to in paragraph (a). Such workers are already subject to different rules for PAYE tax deductions.

Borrowers who are required to have repayment deductions made must notify their employers of that fact. It is an offence to fail to give such notification.

Where the offence is wilful, the maximum fine is \$15,000 for the first such offence and \$25,000 for each subsequent offence.

Where the offence results from negligence, the maximum fine is \$2,000 for the first such offence, \$4,000 for the second such offence, and \$6,000 for each subsequent offence.

Once an employer has been so notified of the obligation to make repayment deductions, the employer is obliged to make deductions at the standard (currently 10 percent) deduction rate. The exception is where the borrower has been issued with a special deduction rate, in which case the employer is obliged to make deductions at that rate. Special repayment deduction rates can be issued to take account of a borrower's estimated repayment obligation. For example, special rates can be issued to ensure that only secondary income in excess of the repayment threshold is subject to deductions.

Provision is expressly made—

- (a) For the Commissioner to determine the correct amounts of repayment deductions, where the matter is in doubt:
- (b) For repayment deductions to be made from income-tested benefits at such amounts as the Commissioner determines in consultation with the Director-General of Social Welfare. This provision enables special account to be taken of the particular way in which income-tested benefits are paid, i.e., on a net basis:
- (c) For employers to supply the Commissioner with such information as the Commissioner may reasonably require in order to establish the amount of any repayment deduction. This requirement is different to the position in respect of PAYE tax deductions. In that case, employers are not required to supply the Commissioner with a reconciliation of the basic total amounts deducted until the end of the year.

The repayment deductions are required to be made in addition to, and at the same time as, PAYE tax deductions.

Part XI of the Income Tax Act 1976, which relates to PAYE tax deductions, is applied with certain specified exceptions. In summary, the principal results of this are—

- (a) Repayment deductions are to be made in the same manner as PAYE tax deductions:
- (b) Employers are required to keep proper records in respect of repayment deductions in the same way as for PAYE tax deductions:
- (c) Employers are required to pay repayment deductions to the Commissioner at the same time as PAYE tax deductions, normally by the 20th day of the month following the period in which the deduction was made:
- (d) Employers are required to hold repayment deductions in trust for the Crown. Such amounts—
 - (i) Form no part of the employer's estate in bankruptcy, liquidation, or assignment:
 - (ii) Rank, in the application of the assets of the employer, equally with PAYE tax deductions which the employer has failed to pay to the Commissioner:
- (e) Unpaid repayment deductions will constitute a charge on the employer's property in the same manner as unpaid PAYE tax deductions:
- (f) Employers are liable to a 10 percent late payment penalty for failure to make a repayment deduction or to pay any amount due to the Commissioner.

Clause 83 provides that employers are chargeable with a penal charge of up to treble the amount in respect of which default has been made for failing to account for repayment deductions.

Interim Repayments

Clauses 16 to 18 require borrowers with an end of year liability in excess of \$1,000 to pay 3 instalments towards their liability during the year. For example, the clauses will be triggered, based on current figures, when a borrower—

- (a) Has employment earnings in excess of \$12,670 and also has more than \$10,000 of other assessable income such as bank interest or income from a business:
- (b) Has more than \$22,670 in assessable income such as bank interest or income from a business.

The sections will therefore have only a limited application.

The sections use the term "residual repayment obligation". This refers to the end of year repayment liability, i.e., the repayment liability that remains after crediting any salary and wage repayment deductions.

Instalments are based on the previous year's residual repayment obligation increased by 5 percent. A borrower may estimate his or her liability at any time up to the date on which the third instalment is due.

Interim repayments are payable in the same manner as provisional tax. Part XII of the Income Tax Act 1976, which relates to provisional tax, is applied with certain specified exceptions. In summary, the principal results of this are—

- (a) That interim repayments are payable in 3 equal instalments. For borrowers with 31 March balance dates, the due dates will be 7 July, 7 November, and 7 March:
- (b) Borrowers who choose to use the standard option will pay interim repayments based on the previous year's residual repayment obligation increased by 5 percent. The advantage of this option is that there will be no penalties for underestimation:
- (c) Borrowers may instead choose to estimate their residual repayment obligation. The advantage of this option is that if the borrower's income is going to be less than the previous year's, it keeps the borrower from making larger payments than necessary. The disadvantage of this option is that borrowers can be charged an underestimation additional charge if the estimate is inaccurate. Borrowers who choose the estimation option cannot go back to the standard option, but can re-estimate as often as they like up to the third instalment date:
- (d) An underestimation additional charge is made if a borrower's estimate is less than 80 percent of their residual repayment obligation at the end of the year. The additional charge is 10 percent of the smaller of—
 - (i) The borrower's residual repayment obligation less all interim repayments paid by the third instalment date; or
 - (ii) The residual repayment obligation from the tax return for the immediately preceding year increased by 5 percent, minus all interim repayments paid by the third instalment date:
- (e) The use-of-money interest (currently set at 6 percent per annum) provisions (in section 398A of the Income Tax Act 1976) that apply where provisional taxpayers underestimate their income are not applied to borrowers who underestimate their residual repayment liability:
- (f) Estimates must be "fair and reasonable" at the time they are made. The Inland Revenue Department can adjust any estimate that is not fair and reasonable:
- (g) The last day a borrower can make an estimate is the third instalment due date:
- (h) Where the previous year's return has not been furnished by the first or second instalment dates, the liability is based on the second preceding year's liability, increased by 10 percent. If the previous year's return is not furnished by the third instalment date, the borrower is deemed to have estimated his or her liability at an amount equal to the amount of any interim repayments paid by that date.

Terminal Repayments

Clauses 19 and 20 provide for an end of year square-up when the borrower is required to pay the balance of any repayment obligation after taking into account salary deductions, interim repayments, and voluntary repayments. That terminal payment is required to be paid by the same date as the date for payment of terminal tax, which for most borrowers is 7 February in the following year.

PART II

COLLECTION OF REPAYMENTS FROM BORROWERS WHO ARE NON-RESIDENT FOR ALL OR PART OF INCOME YEAR

Part II provides for the repayment of student loans by borrowers who are not resident in New Zealand for income tax purposes.

The annual repayment obligation is \$1,000 for loans not exceeding \$14,999 (or one-fifteenth of the loan if the loan balance exceeds \$14,999) plus the interest that the Commissioner estimates will be payable on the loan balance for that income year. If the loan balance is less than \$1,000, the amount payable is the loan balance, plus the estimated interest for that income year. Provision is made for those amounts to be amended by Order in Council.

The non-resident repayment obligation is payable by the borrower in 4 equal instalments, which are due on the last day of the third, sixth, ninth, and twelfth months of the income year.

In any year that the borrower is not resident in New Zealand for the full year, the repayment obligation is apportioned for the period that the borrower is a non-resident.

The provisions relating to interest reduction do not apply where the borrower is a non-resident.

Notification requirements are imposed on certain borrowers departing from New Zealand for more than 3 months and on returning borrowers.

PART III

MISCELLANEOUS PROVISIONS APPLYING TO ADMINISTRATION OF STUDENT LOAN SCHEME

Transfer of Loan Balances to Commissioner for Collection

Clauses 29 and 30 provide for the transfer of loan balances to the Commissioner of Inland Revenue for collection.

Interest

The Bill does not set out the general liability to pay interest on outstanding loan balances. The existing student loan contract, in clauses 6 and 7, provides for interest to be payable. Those clauses read as follows:

“6.0 Interest for Initial Loan Period

“6.1 For the initial Loan Period interest shall accrue at the Interest Rate on a daily basis on the Loan Balance and shall be capitalised to the Loan Account on the last day of the Initial Loan Period.

“7.7 Interest in Following Tax Year

“7.1 In each Tax Year following the Initial Loan Period interest shall accrue at the Interest Rate (unless clause [8.0] applies) on a daily basis on the Loan Balance.

“7.2 Interest for each Tax Year shall be capitalised to the Loan Account on the last day of each such Tax Year.”

The current interest rate in the loan contract is as follows:

Real interest rate:	6.0 percent p.a.
Interest adjustment rate:	2.2 percent p.a.
Total interest rate:	8.2 percent p.a.

The existing student loan contract envisages that those rates may be changed. This Bill provides for any such change to occur by Order in Council.

Interest Reduction

The existing student loan contract provides for interest reduction in certain circumstances. Clauses 8.2 and 8.3 of that contract read as follows:

“8.2 Income below Income Threshold: If in any Tax Year where clause [8.1] applies the Borrower’s Assessable Income is less than or equal to the Income Threshold the Real Interest Rate for that Tax Year shall be reduced to zero.

“8.3 Income above Income Threshold: If in any Tax Year where clause [8.1] applies the Borrower’s Assessable Income is greater than the Income Threshold but the Loan Repayment Amount is less than interest calculated at the Real Interest Rate then the amount payable in respect of the Real Interest Rate shall be reduced to the Loan Repayment Amount.”

The substance of those provisions is duplicated in *clauses 31 and 32*.

Changes are, however, made to the application of those provisions.

First, the years in which the provisions will apply are amended. Clause 8.1 of the contract provides as follows:

“Clauses [8.2 and 8.3] shall only apply in any Tax Year where the Borrower has not in that Tax Year or in the period between the immediately preceding 1st January and the commencement of that Tax Year drawn on a loan under the Student Loan Scheme.”

Clause 33 overrides this to provide that the interest reduction provisions will apply only—

- (a) During any period for which the borrower is or was a resident;
- (b) In any income year in which the borrower did not receive any money under a student loan in the loan year that terminated in that income year;
- (c) In any income year in respect of which the borrower has furnished a return of income.

Secondly, the way in which the provisions will apply where a borrower either—

- (a) Is a non-resident for part of the income year; or
 - (b) Changes his or her balance date for income tax purposes,—
- is clarified by *clauses 25 and 52* respectively.

Other Provisions Relating to Interest

Clause 34 provides for a reduction in the interest charged to the date the loan is transferred to the Commissioner where the Commissioner has received a payment that results in a credit balance. The amount of the reduction is limited to the amount of interest charged to the date of transfer.

Clause 35 requires the Commissioner, as soon as practicable after the end of any income year, to give borrowers who were charged with interest in the income year written notice of the amount of interest charged in that income year. That notice will thus be sent out before the annual repayment obligation is assessed by the Commissioner which will take place only after income tax returns are sent in.

Penalties for Late Payment

The existing student loan contract provides a 2 percent per month penalty for late payments. Clauses 12.2 to 12.4 of that contract read as follows:

“12.2 The Loan Repayment Amount shall be paid in addition to any income tax payable at the same time or times and in the same manner as if the Loan Repayment Amount were income tax of the Borrower or otherwise as shall be required pursuant to any statute or regulation.

“12.3 If the Loan Repayment Amount (or any part of the Loan Repayment Amount) is not paid in accordance with clause [12.2] the amount payable shall be subject to a penalty of 2 percent payable on the amount as shall be outstanding on the expiry of the first day following the date on which such payment was due and a further penalty of 2 percent for each successive month.

“12.4 Any penalty due under clause [12.3] shall be payable Upon Demand and until payment shall be added to and included in the Loan Repayment Amount. For the purpose of calculation of further penalties under clause [12.3] such penalty amount shall be added to the Loan Repayment Amount as at the dates referred to in clause [12.3].”

Clause 36 clarifies the application of clauses 12.2 to 12.4 of the loan contract by specifying that the 2 percent per month penalty for late payment will apply—

- (a) To failure to pay a terminal repayment obligation by the due date;
- (b) To failure to pay any interim repayment by the date on which payment of the third instalment of that interim repayment is due;
- (c) To failure to pay a non-resident repayment obligation by the last day of the twelfth month of the income year.

Other late payment penalties imposed by the Bill are—

- (a) A 10 percent penalty for making late repayment deductions;
- (b) A 10 percent penalty for underestimating interim repayments;
- (c) A 10 percent penalty for default in paying a penal repayment obligation or penal charge.

All of the penalties are compounding ones.

Clause 37 requires the Commissioner to give written notice of penalties charged.

Enforcement

Clause 38 provides that outstanding amounts of repayment obligations are recoverable as a debt due to the Crown.

Sections 399 to 408 of the Income Tax Act 1976 are applied for the purpose of enabling recovery of unpaid repayment obligations. Those sections, in summary, provide as follows:

- (a) Section 399 specifies the mode of recovery, i.e., by the Commissioner on behalf of the Crown by suit in his or her official name;
- (b) Section 400 enables the Commissioner to require persons such as banks to make deductions from amounts payable to defaulters;
- (c) Sections 401 and 402 specify Court procedure where the borrower is absent from New Zealand;
- (d) Sections 403 to 405 contain miscellaneous provisions in relation to Court proceedings;
- (e) Section 406 provides that no statute of limitations shall bar actions for recovery;
- (f) Section 407 provides that the Crown Proceedings Act 1950 is not affected;
- (g) Section 408 enables the recovery of tax paid by one person on behalf of another.

Date on Which Payments Due

Clause 39 provides that if not otherwise specified, amounts are due and payable one month after the date of issue of the notice or assessment. This

clause will apply mainly in the case of amounts payable under amended assessments.

Dates on which Payments Deemed to be Received and Credited

Clause 40 provides that payments are deemed to be received on the date received by the Commissioner.

Clause 41 states that, for the purposes of calculating interest,—

- (a) Any repayment deduction made is deemed to have been made on the 15th of the month in which the deduction was made from the borrower's salary or wages:
- (b) Any other payment is deemed to have reduced the loan balance by that amount on the day it was received.

For any purpose other than calculating interest, payments will be credited against the borrower's annual liability when the Commissioner makes an assessment.

Clause 42 specifies the order in which payments will be applied.

The remaining provisions of this Part deal with such matters as relief, refunds, write-offs, and disclosure of information.

PART IV
OBJECTIONS

Objections Before Transfer of Loan Balance to Department

Clauses 55 to 57 prescribe the procedure to be followed where a borrower wishes to object to the statement (which shows the loan balance and which *clause 30* requires the loan manager to send out to the borrower). If no objection is made to this statement, the loan balance will be transferred to the Department for collection.

Clause 58 provides that if the objection is not allowed under *clause 56 (1)*, the objector may apply to a Disputes Tribunal or a District Court for determination of the dispute.

Clause 59 prohibits the transfer to the Department of loan balances in respect of which there are outstanding objections or applications.

Clause 60 provides that, as soon as practicable after a loan is transferred to the Department for collection, the Commissioner is to give written notice to the borrower of the total amount outstanding.

Objections to Commissioner After Transfer of Loan Balance to Department

The remaining provisions of the Part specify the rights of objection to the Commissioner. These include the right to object to assessments of repayment obligation, notices of interest charged, penalties charged, assessments of repayment deductions, and assessments of penal repayment obligations and penal charges.

Disallowed objections may be referred to the Taxation Review Authority or the High Court in the same manner as tax objections.

Relevant sections of the Income Tax Act 1976 relating to objections are applied to objections under the Bill, with certain modifications. In summary, the principal results are—

- (a) The objection procedures are the same as for objections against tax assessments:
- (b) Where a borrower makes a competent objection,—
 - (i) He or she may defer payment of half of the amount in dispute until the day the objection is resolved:
 - (ii) If the objection is successful, Inland Revenue will pay interest on the amount in credit only in the case of objections made against

penalties charged, assessments of repayment deductions, and assessments of penal repayment obligations and penal charges:

(iii) If the objection is not successful, Inland Revenue will charge an additional charge on the deferred amount in dispute only in the case of objections made against penalties charged, assessments of repayment deductions, and assessments of penal repayment obligations and penal charges:

- (c) Where the objection is non-qualifying (i.e., because the borrower is objecting because the details supplied in his or her tax return are wrong or details are missing),—
- (i) The borrower is required to pay all the amount on the normal due date:
- (ii) The borrower cannot defer payment of half of the amount in dispute and Inland Revenue will not pay interest if the objection succeeds.

PART V

OFFENCES AND PENALTIES

This Part specifies offences and penalties.

PART VI

REGULATIONS, AMENDMENTS TO OTHER ACTS, AND TRANSITIONAL PROVISIONS

Provisions worthy of note in this Part include—

- (a) *Clause 84*, which is the regulation-making power. Regulations can be made varying the repayment threshold, the repayment percentage, the interest rates, and the non-resident repayment rates, in which case the Commissioner is required to notify borrowers of the effect of the regulations by notice in writing or by advertisement in the public notices section of the major metropolitan newspapers:
- (b) *Clause 90*, which substitutes a new definition of “primary employment earnings” in the Income Tax Act 1976. The existing definition refers to cases where an employee derives source deduction payments from 2 or more employers. The new definition makes it clear that where an employee derives source deduction payments from only one employer, those payments will be regarded as primary employment earnings:
- (c) *Clause 91*, the effect of which is that all borrowers will be required to furnish a tax return under the Income Tax Act 1976:
- (d) *Clauses 95 to 98* which contain the transitional provisions.
-

STUDENT LOAN SCHEME

ANALYSIS

<p>Title</p> <p>1. Short Title and application</p> <p>2. Interpretation</p> <p>3. Act to bind the Crown</p> <p>PART I</p> <p>COLLECTION OF REPAYMENTS FROM BORROWERS RESIDENT IN NEW ZEALAND</p> <p>4. Repayment obligation for resident borrowers</p> <p style="padding-left: 40px;"><i>Returns and Assessments</i></p> <p>5. Commissioner to assess borrower's repayment obligation</p> <p>6. Part II of Income Tax Act 1976 (which relates to returns and assessments) to apply</p> <p style="padding-left: 40px;"><i>Repayment Deductions from Salary and Wages</i></p> <p>7. Borrowers to whom repayment deduction provisions of this Part apply</p> <p>8. Borrower to notify employer of student loan repayment obligation</p> <p>9. Employer to make repayment deductions</p> <p>10. Standard deduction rate</p> <p>11. Special deduction rates</p> <p>12. Commissioner may assess amount of repayment deductions</p> <p>13. Deductions from income-tested benefits</p> <p>14. Information to show repayment deductions made</p> <p>15. Part XI of Income Tax Act 1976 to apply to repayment deductions</p> <p style="padding-left: 40px;"><i>Interim Repayments</i></p> <p>16. Borrowers to whom interim repayment provisions of this Part apply</p> <p>17. Amount of interim repayments</p> <p>18. Interim repayments to be paid in same manner as provisional tax</p> <p style="padding-left: 40px;"><i>Terminal Repayments</i></p> <p>19. Borrowers to whom terminal repayment provisions of this Part apply</p>	<p>20. Payment of terminal repayment obligation</p> <p>PART II</p> <p>COLLECTION OF REPAYMENTS FROM BORROWERS WHO ARE NON-RESIDENT FOR ALL OR PART OF INCOME YEAR</p> <p><i>Borrowers Who Are Non-Resident for Whole of Income Year</i></p> <p>21. Application of sections 22 to 24</p> <p>22. Repayment obligation for wholly non-resident borrowers</p> <p>23. Commissioner to assess borrower's non-resident repayment obligation</p> <p>24. Repayment to be made by instalments</p> <p style="padding-left: 40px;"><i>Borrowers Who Are Non-Resident for Part of Income Year</i></p> <p>25. Repayment obligation for borrowers who are non-resident for part of income year</p> <p>26. Assessments in year borrower deemed to be non-resident</p> <p style="padding-left: 40px;"><i>Notification Requirements</i></p> <p>27. Borrower to advise Commissioner of absence from New Zealand</p> <p>28. Non-resident borrower to advise Commissioner of return to New Zealand</p> <p>PART III</p> <p>MISCELLANEOUS PROVISIONS APPLYING TO ADMINISTRATION OF STUDENT LOAN SCHEME</p> <p><i>Transfer of Loan Balances to Commissioner for Collection</i></p> <p>29. Power to transfer loan balances to Commissioner for collection</p> <p>30. Notice to borrower</p> <p style="padding-left: 40px;"><i>Interest Reduction</i></p> <p>31. Interest write-off where income below repayment threshold</p> <p>32. Interest reduction where income above repayment threshold</p> <p>33. Periods in which interest write-off and interest reduction apply</p>
---	---

Other Provisions Relating to Interest

34. Interest adjustment in respect of credit balances
35. Interest statement

Penalties for Late Payment

36. Application of penalty clause in loan contract
37. Notification of penalties

Enforcement

38. Recovery of repayment obligation

Date on Which Payments Due

39. Payment date not otherwise specified

Dates on Which Payments Deemed to be Received and Credited

40. Date on which payments deemed to have been made
41. Date on which payments deemed to have been credited
42. Priority of payments

Relief

43. Power of Commissioner in respect of small amounts
44. No liability in respect of small amounts of penalty
45. Relief from penalty
46. Commissioner may refrain from collecting repayment obligation

Refunds

47. Excess repayments made by residents
48. Election by non-resident to receive refund or to apply overpayment to loan balance
49. Repayment obligation paid in excess may be set off against increased repayment obligation when assessments reopened
50. Appropriation of refunds

Miscellaneous Provisions

51. Write-off of loan balance
52. Changes in balance dates producing income year other than 12 months
53. Disclosure of information
54. Act to supplement loan contract

PART IV

OBJECTIONS

Objections Before Transfer of Loan Balance to Department

55. Right to object to amount of loan balance being transferred
56. Power to require objection to be determined by Secretary of Education
57. Extension of time for objection
58. Right to apply to Disputes Tribunal or District Court
59. Prohibition on transfers
60. Notice of total amount outstanding

Objections to Commissioner After Transfer of Loan Balance to Department

61. Objection to assessment of repayment obligation
62. Objection to amount of interest charged
63. Objection to penalty
64. Objection to assessment of repayment deduction
65. Objection to penal repayment obligation or penal charge
66. Objector
67. Manner in which objection to be made
68. Time for objection
69. Objection to amended assessment or notice
70. Extension of time for objection
71. Commissioner to consider objections
72. Objector may refer disallowed objections to Taxation Review Authority
73. Objections to which this Part does not apply

PART V

OFFENCES AND PENALTIES

74. Offences in respect of repayment deductions
75. Penalties for offences in respect of repayment deductions
76. Other offences
77. Officers and employees of corporate bodies
78. Offence to prejudice employees because of student loan repayment liability
79. Proceedings to be taken summarily
80. Information may charge several offences
81. Information may be laid within 10 years
82. Penal repayment obligation in case of evasion
83. Penal charge for default in paying repayment deduction

PART VI

REGULATIONS, AMENDMENTS TO OTHER ACTS, AND TRANSITIONAL PROVISIONS

84. Regulations

Amendment to District Courts Act 1947

85. Effect of attachment orders

Amendment to Social Security Act 1964

86. Benefits to be inalienable

Amendment to Insolvency Act 1967

87. Priorities

Amendments to Inland Revenue Department Act 1974

88. Interpretation
89. Secrecy

Amendments to Income Tax Act 1976

90. Interpretation
91. Pay-period taxpayers
92. National superannuitant borrowers to apply for special tax code certificates

<p><i>Amendment to Accident Compensation Act 1982</i> 93. Compensation not assignable</p>	<p>96. Interim repayments for income years commencing 1 April 1992 and 1 April 1993</p>
<p><i>Amendment to Accident Rehabilitation and Compensation Insurance Act 1992</i> 94. Compensation, grant, or allowance inalienable</p>	<p>97. Non-resident assessments in income year commencing 1 April 1992</p>
<p><i>Transitional Provisions</i> 95. No repayment deductions to be made from payments made before 1 April 1993</p>	<p>98. Obligations of non-resident borrowers for income year commencing 1 April 1992</p>

A BILL INTITULED

An Act to provide for the assessment and collection of loan repayments under the Crown's student loan scheme and to otherwise facilitate the administration of that scheme

5

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title and application—(1) This Act may be cited as the Student Loan Scheme Act 1992.

10 (2) This Act is hereby declared to be one of the Inland Revenue Acts within the meaning of the Inland Revenue Department Act 1974, and the First Schedule to that Act is hereby accordingly amended by adding a reference to this Act.

15 (3) Subject to Part VI of this Act, this Act shall apply to liabilities to repay student loans in respect of the income year commencing on the 1st day of April 1992 and every subsequent year.

2. Interpretation—In this Act, unless the context otherwise requires,—

20 “Assessable income” means assessable income as defined in section 2 of the Income Tax Act 1976:

“Borrower” means any person who has been advanced money under a student loan and who has not fully repaid that loan:

25 “Commissioner” means the Commissioner of Inland Revenue as defined in the Inland Revenue Department Act 1974:

“Department” means the Inland Revenue Department:

“Employee” means an employee as defined in section 2 of the Income Tax Act 1976:

30 “Employer” means an employer as defined in section 2 of the Income Tax Act 1976:

- “Extra emolument”, in relation to any person, means an extra emolument as defined in section 2 of the Income Tax Act 1976:
- “Income-tested benefit” means an income-tested benefit as defined in section 2 of the Income Tax Act 1976: 5
- “Income year”, in respect of the income of any person, means an income year as defined in section 2 of the Income Tax Act 1976:
- “Interest adjustment rate” means 2.2 percent or such other rate as may be determined by regulations made under **section 84** of this Act: 10
- “Interim repayment” means any repayment required to be made in accordance with **sections 16 to 18** of this Act:
- “IRD loan balance” means the total amount outstanding under all loans— 15
- (a) Obtained by the borrower under the student loan scheme; and
- (b) Transferred to the Department for administration: 20
- “Lender” means Her Majesty the Queen in right of New Zealand and acting through and by the Minister of Education:
- “Loan balance” means the total amount outstanding under all loans obtained by the borrower under the student loan scheme: 25
- “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 from time to time to establish and administer loan balances under the student loan scheme (other than any such loan balances that have been transferred to the Department for collection): 30
- “Loan year” means a period of 12 months commencing on the 1st day of January and ending with the 31st day of December: 35
- “Non-resident” means a person who is not resident in New Zealand in terms of section 241 of the Income Tax Act 1976: 40
- “Non-resident repayment obligation” means a repayment obligation imposed under **Part II** of this Act:
- “Penal charge” means a charge imposed under **section 83** of this Act:

“Penal repayment obligation” means an obligation imposed under **section 82** of this Act:

“Penalty” means—

5 (a) Any penalty chargeable under the loan contract for failure to pay any repayment obligation:

(b) Any penalty or additional charge or other late payment charge chargeable under this Act or under the Income Tax Act 1976 (as applied by this Act):

10 “Periodic payer” means a borrower who is obliged to make interim repayments in accordance with **sections 16 to 18** of this Act:

15 “Primary employment earnings”, in relation to an employee and to any pay period, means primary employment earnings as defined in section 2 of the Income Tax Act 1976:

“Real interest rate” means 6 percent or such other rate as may be determined by regulations made under **section 84** of this Act:

20 “Repayment deduction” means any amount required to be deducted from salary or wages in accordance with **Part I** of this Act:

“Repayment obligation”, in respect of any income year, means,—

25 (a) In the case of a borrower who is a resident for the whole of the income year, any repayment obligation assessed by the Commissioner under **Part I** of this Act:

30 (b) In the case of a borrower who is a non-resident for the whole or part of the income year, any repayment obligation assessed by the Commissioner under **Part II** of this Act:

“Repayment percentage” means 10 percent or such other rate as may be determined by regulations made under **section 84** of this Act:

35 “Repayment threshold” means \$12,670 or such other amount as may be determined by regulations made under **section 84** of this Act:

40 “Resident” means a person who is resident in New Zealand in terms of section 241 of the Income Tax Act 1976:

“Residual repayment obligation” has the same meaning as in **section 16 (2)** of this Act:

“Salary or wages”, in relation to any person, means salary or wages as defined in section 2 of the Income Tax

Act 1976, except that, in this Act, it includes extra emoluments:

“Secondary employment earnings”, in relation to an employee and to any pay period, means secondary employment earnings as defined in section 2 of the Income Tax Act 1976: 5

“Student loan”—

(a) Means any money advanced under the student loan scheme to a borrower; and

(b) Includes— 10

(i) Any interest charged in respect of money advanced to a borrower under the student loan scheme; and

(ii) Any administration fee payable, in accordance with a loan contract, by the borrower under that loan contract to the lender under that loan contract: 15

“Student loan scheme” means the scheme established by the lender on the 1st day of January 1992 to provide loan assistance to tertiary students; and includes the scheme so established as amended from time to time: 20

“Terminal repayment obligation” has the same meaning as in section 19 (2) of this Act:

“Total interest rate” means the sum of the real interest rate and the interest adjustment rate. 25

3. Act to bind the Crown—This Act shall bind the Crown.

PART I

COLLECTION OF REPAYMENTS FROM BORROWERS RESIDENT IN NEW ZEALAND

4. Repayment obligation for resident borrowers— 30

(1) The repayment obligation of each resident borrower in respect of an income year shall be the amount by which the borrower’s assessable income for the income year exceeds the repayment threshold multiplied by the repayment percentage. 35

(2) Notwithstanding subsection (1) of this section, the repayment obligation for any income year shall not exceed the amount of the IRD loan balance on the last day of that income year.

Returns and Assessments

5. Commissioner to assess borrower’s repayment obligation—(1) As soon as practicable after a borrower furnishes under the Income Tax Act 1976 his or her return of 40

income for an income year, the Commissioner shall make an assessment of the amount (if any) of the borrower's repayment obligation for that income year.

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

(3) The Commissioner may, in making any such assessment, have regard to any return furnished under the Income Tax Act 1976, notwithstanding that the return was made for the purpose of the assessment and levy of income tax.

10 (4) The Commissioner shall, as soon as practicable after making any such assessment, give notice to the borrower of the amount assessed.

6. Part II of Income Tax Act 1976 (which relates to returns and assessments) to apply—Part II of the Income Tax Act 1976 shall, as far as applicable and with all necessary modifications, apply for the purposes of this Act as if—

- (a) Every reference to a taxpayer were a reference to a borrower; and
- 20 (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
- (c) Every reference to income tax were a reference to a repayment obligation.

Repayment Deductions from Salary and Wages

25 **7. Borrowers to whom repayment deduction provisions of this Part apply**—(1) Sections 8 to 15 of this Act apply to any borrower—

- (a) Who reasonably expects that his or her assessable income from salary or wages that are primary employment earnings for any income year will exceed the repayment threshold for that income year; or
- 30 (b) Who is issued with a special repayment deduction rate certificate under section 11 of this Act.

(2) Earnings from employment—

- 35 (a) As a shearer or shearing shed hand; or
- (b) As a private domestic worker,—

(as those terms are defined in section 2 of the Income Tax Act 1976) shall not be taken into account under subsection (1) (a) of this section.

40 **8. Borrower to notify employer of student loan repayment obligation**—Where a borrower to whom this section applies is in the employment of any employer (including

any employer from whom secondary employment earnings are received), that borrower shall, as soon as practicable after becoming such a borrower or becoming an employee of that employer, whichever is the later, notify that employer—

- (a) That the borrower is required to have repayment deductions made under this Part of this Act from any amount paid to the borrower by way of salary or wages; and 5
- (b) That any repayment deductions made under this Part of this Act from any amount paid to the borrower by way of salary or wages are to be instalments on account of the borrower's repayment obligation for the income year. 10

9. Employer to make repayment deductions—(1) Every employer (being an employer who has in any income year received from a borrower a notice under **section 8** of this Act) shall, on each occasion on which that employer pays any amount to that borrower by way of salary or wages in respect of that income year, make a deduction from that amount. 15

(2) The deduction shall be made at the standard deduction rate or, if a special deduction rate applies, at that rate. 20

(3) The repayment deductions made under this section shall be in addition to any tax deductions required to be made under Part XI of the Income Tax Act 1976.

Cf. 1992, No. 13, s. 115 (1) 25

10. Standard deduction rate—(1) The standard deduction rate shall be the rate of 10 cents in each complete dollar from—

- (a) So much of the primary employment earnings paid to the borrower as exceeds the proportional repayment threshold; and 30
 - (b) Any secondary employment earnings paid to the borrower; and
 - (c) Any extra emolument paid to the borrower.
- (2) For the purposes of this section, the proportional repayment threshold means,— 35
- (a) Where the salary or wages is paid weekly, an amount equal to one fifty-second of the repayment threshold; and
 - (b) Where the salary or wages is paid fortnightly, twice the amount specified in **paragraph (a)** of this subsection; and 40

- (c) Where the salary or wages is paid three-weekly, three times the amount specified in **paragraph (a)** of this subsection; and
- 5 (d) Where the salary or wages is paid four-weekly, four times the amount specified in **paragraph (a)** of this subsection; and
- (e) Where the salary or wages is paid monthly, the amount specified in **paragraph (a)** of this subsection multiplied by 13 and divided by 3.
- 10 (3) If the repayment percentage is changed by regulations made under **section 84** of this Act, the standard deduction rate shall change accordingly.

11. Special deduction rates—(1) Any borrower—

- 15 (a) Who wishes, but is not obliged, to have repayment deductions made from his or her salary or wages; or
- (b) Who wishes to have the standard deduction rate varied to take into account his or her estimated repayment obligation for the income year,—

20 may make a written application to the Commissioner for the issue of a special repayment deduction rate certificate that, in the opinion of the Commissioner, is appropriate to the estimated repayment obligation.

25 (2) Any borrower who has been issued with a special tax code certificate under section 351 of the Income Tax Act 1976 and whose assessable income for the income year will exceed the repayment threshold shall be deemed to have made such an application.

30 (3) Section 351 of the Income Tax Act 1976 shall apply, with all necessary modifications, to any special deduction rate certificate issued under this section.

12. Commissioner may assess amount of repayment deductions—(1) If any question is raised as to the amount, if any, of any repayment deduction that ought to be made from any salary or wages, or any part thereof, it shall, subject to any

35 regulations made for the purposes of this Part of this Act, be determined by the Commissioner.

(2) As soon as practicable after making any such determination, the Commissioner shall make an assessment of any repayment deductions so determined.

40 Cf. 1976, No. 65, s. 337 (3)

13. Deductions from income-tested benefits—Notwithstanding **section 10** of this Act, where a repayment deduction is

required to be made under this Part of this Act from an income-tested benefit, the repayment deduction shall be of such amount as the Commissioner determines in consultation with the Director-General of Social Welfare.

14. Information to show repayment deductions made—(1) Every employer who makes a repayment deduction under this Part of this Act from the salary or wages of an employee for any period shall supply the Commissioner with such information, and in such manner, as the Commissioner may reasonably require in order to establish the amount of that repayment deduction. 5 10

(2) The information required pursuant to **subsection (1)** of this section shall be given in such manner as the Commissioner may reasonably require.

15. Part XI of Income Tax Act 1976 to apply to repayment deductions—(1) Subject to this section, Part XI of the Income Tax Act 1976 shall, as far as applicable and with the necessary modifications, apply as if— 15

- (a) Every reference to income tax were a reference to a borrower's repayment obligation; and 20
- (b) Every reference to tax deductions were a reference to repayment deductions,—

and every employer and employee shall comply with the requirements of Part XI of the Income Tax Act 1976 to the extent to which the Part applies by virtue of this section. 25

(2) Notwithstanding **subsection (1)** of this section, sections 338 (1), 343, 343A, 355 to 361, 362 (2), 362 (3), 368, and 369 of the Income Tax Act 1976 shall not apply to any amount required to be deducted under this Part of this Act.

(3) Any repayment deduction made under this Part of this Act shall not be treated as part of or included in any tax deduction made under Part XI of the Income Tax Act 1976 on account of income tax. 30

Cf. 1992, No. 13, s. 115 (2), (3), (21)

Interim Repayments 35

16. Borrowers to whom interim repayment provisions of this Part apply—(1) Sections 17 and 18 of this Act apply to any borrower whose residual repayment obligation in relation to any income year is \$1,000 or more for that income year.

(2) The term "residual repayment obligation" means the amount by which the borrower's repayment obligation for any 40

income year exceeds any repayment deductions made for that income year.

5 (3) Every borrower to whom this section applies shall be a periodic payer who is obliged to make interim repayments towards the repayment obligation for the income year in accordance with **sections 17 and 18** of this Act.

10 (4) Notwithstanding **subsections (1) to (3)** of this section, a periodic payer shall have no liability to make interim repayments in respect of the income derived in any income year where that payer was not liable to pay a residual repayment obligation exceeding the sum of \$1,000 for the immediately preceding income year.

15 **17. Amount of interim repayments**—(1) The amount payable by a periodic payer by way of interim payments in respect of the income derived in any income year shall be an amount equal to 105 percent of the amount of the payer's residual repayment obligation for the immediately preceding income year.

20 (2) Notwithstanding **subsection (1)** of this section, that amount may be varied in accordance with this Act and the provisions of the Income Tax Act 1976 (as applied by **section 18** of this Act).

25 **18. Interim repayments to be paid in same manner as provisional tax**—(1) Subject to this section, interim repayments shall be payable in the same manner as provisional tax.

(2) Part XII of the Income Tax Act 1976 shall, as far as applicable and with all necessary modifications, apply as if—

30 (a) Every reference to provisional tax were a reference to the amount of interim repayments payable by a periodic payer; and

(b) Every reference to a provisional taxpayer were a reference to a periodic payer; and

(c) Every reference to residual income tax were a reference to the amount of residual repayment obligation; and

35 (d) Every reference to income tax were a reference to the repayment obligation,—

and every periodic payer shall comply with the requirements of that Part to the extent to which the Part applies by virtue of this section.

40 (3) Notwithstanding **subsection (1)** of this section,—

(a) Subsections (1) and (2) of section 377 of the Income Tax Act 1976 (which determine the amount of provisional tax payable) and section 389 of the Income Tax Act

1976 (which provides that provisional tax is to be credited against tax assessment) shall not apply to any amount of interim repayments; and

(b) Section 381 of the Income Tax Act (which relates to amounts of instalments where return not furnished)— 5

(i) Shall apply only where the periodic payer's residual repayment obligation for the second preceding income year exceeds \$1,000; and

(ii) Shall apply as if, where the return for the immediately preceding income year, or an estimate of the residual repayment obligation, is not furnished by the due date for payment of the third instalment, the periodic payer is deemed to have furnished a statement showing an estimate of the residual repayment obligation for that income year equal to the amount of any interim repayments paid by the periodic payer on or before that date. 10 15

Terminal Repayments

19. Borrowers to whom terminal repayment provisions of this Part apply—(1) Section 20 of this Act applies to any borrower whose repayment obligation in respect of any income year exceeds the sum of— 20

(a) Any repayment deductions credited against the repayment obligation for the income year; and 25

(b) Any interim repayments credited against the repayment obligation for the income year; and

(c) Any voluntary payments made to the Commissioner and credited against the repayment obligation for the income year. 30

(2) The amount by which the borrower's repayment obligation exceeds the sum of those amounts for any income year is referred to as the borrower's terminal repayment obligation.

20. Payment of terminal repayment obligation—(1) Any terminal repayment obligation not previously due and payable shall be due and payable on the 7th day of the month specified in the Eighth Schedule to the Income Tax Act 1976 as the month for payment of the borrower's terminal income tax. 35 40

(2) Notwithstanding subsection (1) of this section, where an assessment is not made until after the due date of the terminal repayment obligation, or is increased after the due date of the terminal repayment obligation, the Commissioner may, having

regard to the circumstances of the case and if the Commissioner thinks it equitable to do so, fix a new date for the payment of the terminal repayment obligation, or part thereof, or of the increase, as the case may be, and the date so fixed shall be deemed to be the due date for the purposes of this Part of this Act.

Cf. 1976, No. 65, s. 388 (2); 1985, No. 141, s. 27 (4)

PART II

COLLECTION OF REPAYMENTS FROM BORROWERS WHO ARE NON-RESIDENT FOR ALL OR PART OF INCOME YEAR

Borrowers Who Are Non-Resident for Whole of Income Year

21. Application of sections 22 to 24—(1) Sections 22 to 24 of this Act shall apply to any borrower who is a non-resident for the whole of any income year.

(2) Where sections 22 to 24 of this Act apply to a borrower, nothing in Part I of this Act (other than section 6) shall apply to that borrower.

22. Repayment obligation for wholly non-resident borrowers—(1) The repayment obligation of each borrower in respect of an income year to which this section applies shall,—

(a) Where the loan balance on the day following the date on which the borrower left New Zealand is less than \$15,000, be the smaller of \$1,000 or the amount of the current loan balance; or

(b) Where the loan balance on the day following the date on which the borrower left New Zealand is \$15,000 or more, be the smaller of one-fifteenth of the loan balance on that day or the amount of the current loan balance,—

plus any interest that the Commissioner estimates will be chargeable on the loan balance for that income year.

(2) Where the interest chargeable for an income year exceeds the amount of the interest estimated by the Commissioner, the amount of that excess shall be added to the loan balance on the last day of that income year.

(3) Where the interest chargeable for an income year is less than the amount of the interest estimated by the Commissioner, the amount by which the interest estimated by the Commissioner exceeds the amount chargeable shall be deducted from the loan balance on the last day of that income year.

23. Commissioner to assess borrower's non-resident repayment obligation—(1) As soon as practicable after the commencement of any income year, the Commissioner shall make an assessment of the amount of each borrower's non-resident repayment obligation for that year. 5

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

(3) The Commissioner shall give notice to the borrower of the amount assessed as soon as practicable after the making of the assessment. 10

24. Repayment to be made by instalments—(1) A borrower's non-resident repayment obligation for an income year shall be payable by the borrower in 4 equal instalments.

(2) The instalments shall be due and payable in the income year on— 15

- (a) The 30th day of June;
- (b) The 30th day of September;
- (c) The 31st day of December;
- (d) The 31st day of March.

Borrowers Who Are Non-Resident for Part of Income Year 20

25. Repayment obligation for borrowers who are non-resident for part of income year—Where any borrower is a non-resident for part, but not the whole, of any income year—

(a) **Sections 21 to 24** of this Act shall apply to the borrower in respect of the period in the income year during which he or she is or was a non-resident, except that— 25

(i) The amount of the non-resident repayment obligation shall be proportionately decreased to the same proportion as the number of days in the period bears to the number of days in a year; and 30

(ii) The non-resident repayment obligation shall be payable in such instalments as the Commissioner determines; and

(b) **Part I** of this Act shall apply to the borrower in respect of the period in the income year during which he or she is or was a resident, except that— 35

(i) The amount of the repayment threshold for the income year shall be proportionately decreased to the same proportion as the number of days in the period bears to the number of days in a year; and 40

(ii) The amount of the real interest to which **sections 31 and 32** of this Act shall apply shall be limited to the

real interest chargeable for the period that the borrower was or is a resident.

- 26. Assessments in year borrower deemed to be non-resident**—(1) As soon as practicable after being notified that a
5 borrower is, or will be deemed to be, a non-resident, the Commissioner shall make an assessment of the amount of each borrower's non-resident repayment obligation for that year.
(2) The assessment shall be made in accordance with the loan contract and this Act.
10 (3) The Commissioner shall give notice to the borrower of the amount assessed as soon as practicable after the making of the assessment.

Notification Requirements

- 27. Borrower to advise Commissioner of absence from New Zealand**—(1) Any borrower who will be absent from New
15 Zealand for a period of more than 3 months shall, before leaving New Zealand, provide the Commissioner with—
(a) Either—
20 (i) A permanent overseas address; or
(ii) A New Zealand address to which any notice to the borrower may be delivered; or
(iii) The name and address of a person in New Zealand empowered to act for the borrower; and
(b) Any information that the Commissioner reasonably
25 requires in order to determine the borrower's non-resident repayment obligation (if any).
(2) **Subsection (1) (a)** of this section shall not apply to any borrower if, during his or her absence from New Zealand, he or she will continue to pay his or her repayment obligation in
30 accordance with **Part I** of this Act.
(3) Subject to **subsection (2)** of this section, where a borrower who is absent from New Zealand becomes aware that he or she
35 will be absent from New Zealand for a period of more than 3 months, he or she shall as soon as practicable after becoming so aware provide the Commissioner with the information required by **paragraphs (a) and (b)** of **subsection (1)** of this section.

- 28. Non-resident borrower to advise Commissioner of return to New Zealand**—Where any borrower to whom
40 **section 27** of this Act applies returns to New Zealand, that borrower shall advise the Commissioner that the borrower has returned to New Zealand.

PART III

MISCELLANEOUS PROVISIONS APPLYING TO ADMINISTRATION OF
STUDENT LOAN SCHEME*Transfer of Loan Balances to Commissioner for Collection*

29. Power to transfer loan balances to Commissioner for collection—The loan manager may, in accordance with this Act, transfer any borrower's loan balance to the Commissioner for collection. 5

30. Notice to borrower—(1) The loan manager shall, before transferring a borrower's loan balance to the Commissioner for collection, give to the borrower a notice— 10

- (a) Stating that the loan manager is proposing to transfer the borrower's loan balance to the Commissioner for collection; and
- (b) Giving the date at which it is proposed that the transfer take effect; and 15
- (c) Specifying the amount of the borrower's loan balance and the date as at which it is calculated; and
- (d) Notifying the borrower of the rights of objection conferred on the borrower by sections 55 and 56 of this Act. 20

(2) Where the loan balance is calculated as at the 31st day of December in any year,—

- (a) The notice required by subsection (1) of this section shall be given to the borrower not later than the 25th day of January in the following year; and 25
- (b) The date on which it is proposed that the transfer take effect shall not be earlier than the 26th day of February in the following year.

(3) Where the loan balance is calculated as at a date other than the 31st day of December in any year, the notice required by subsection (1) of this section shall be given to the borrower at least one month before the date on which it is proposed that the transfer take effect. 30

Interest Reduction 35

31. Interest write-off where income below repayment threshold—Subject to section 33 of this Act, where in any income year the assessable income of a borrower is less than or equal to the repayment threshold, the amount of interest calculated at the real interest rate shall be reduced to zero. 40

32. Interest reduction where income above repayment threshold—Subject to **section 33** of this Act, where in any year the interest chargeable at the real interest rate for any borrower exceeds the repayment obligation for that income year, the real interest to be charged shall be reduced to the amount of that repayment obligation.

33. Periods in which interest write-off and interest reduction apply—Sections **31** and **32** of this Act shall apply only—

- (a) During any period for which the borrower is or was a resident:
- (b) In any income year in which the borrower did not receive any money under a student loan in the loan year that terminated in that income year:
- (c) In any income year in respect of which the borrower has furnished to the Commissioner a return of his or her assessable income.

Other Provisions Relating to Interest

34. Interest adjustment in respect of credit balances—
(1) Except as provided in this section, no interest shall be payable on any credit balance.

(2) Where a repayment deduction has been made in respect of any borrower or a borrower has, in any income year, paid an amount to the Commissioner before the transfer of the loan to the Department and, as a result of that repayment deduction or payment, as the case may be, the balance held by the Commissioner is in credit, any interest chargeable on the money so advanced to the date of the transfer shall be reduced by an amount equal to the interest calculated on the daily credit balance held by the Commissioner at the total interest rate.

(3) Notwithstanding **subsection (2)** of this section, the amount of the reduction made in accordance with the said **subsection (2)** shall not exceed the interest transferred to the Commissioner for collection.

(4) Nothing in this section shall limit **section 34A** of the Income Tax Act 1976 (which relates to interest on certain excess tax) (as applied by **section 72 (3)** of this Act).

35. Interest statement—(1) The Commissioner shall, as soon as practicable after the end of any income year, give any borrower who was charged with interest in that income year

written notice of the amount of interest charged in that income year.

(2) Except where the person establishes on objection that the person should not have been charged with that amount of interest, the amount of interest charged shall be taken to be correct. 5

Penalties for Late Payment

36. Application of penalty clause in loan contract—

(1) Any clause of any loan contract (whether entered into before or after the commencement of this section) which provides for a 2 percent per month penalty for late payment, shall apply— 10

(a) To any failure to pay a terminal repayment obligation by the due date:

(b) To any failure to pay any interim repayment by the date on which payment of the third instalment of that interim repayment is due, which penalty shall be payable on the lesser of— 15

(i) The difference between 105 percent of the residual repayment obligation for the immediately preceding income year and the amount of interim repayments made; or 20

(ii) The difference between the residual repayment obligation for the income year and the amount of interim repayments made: 25

(c) To any failure to pay a non-resident repayment obligation by the last day of the twelfth month of the income year.

(2) Any such clause shall not apply—

(a) To any failure of an employer to make a repayment deduction (to which section 370 of the Income Tax Act 1976 (as applied by section 15 of this Act) applies): 30

(b) To any underestimation of interim repayments (to which section 384 of the Income Tax Act 1976 (as applied by section 18 of this Act) applies): 35

(c) To any failure to pay any penal repayment obligation or penal charge (to which section 421 of the Income Tax Act 1976 (as applied by sections 82 and 83 of this Act) applies).

37. Notification of penalties—The Commissioner shall, as soon as practicable after charging a penalty, give the person charged with that penalty written notice of the amount of that penalty. 40

Enforcement

38. Recovery of repayment obligation—(1) Any amount payable under this Act shall be recoverable as a debt due to the Crown.

5 (2) Sections 399 to 408 of the Income Tax Act 1976, as far as they are applicable and with the necessary modifications, shall apply for the purposes of this Act, as if—

(a) Every reference in those provisions to income tax were a reference to a repayment obligation; and

10 (b) The reference to an assessment in section 405 were a reference to an assessment made under **Part I or Part II** of this Act; and

(c) Every reference to “this Act” in sections 407 and 408 were a reference to this Act.

15 Cf. 1985, No. 141, s. 44

Date on Which Payments Due

39. Payment date not otherwise specified—Any amount not otherwise due and payable in accordance with this Act shall be due and payable one month after the date of issue of the assessment or notice.

Dates on Which Payments Deemed to Be Received and Credited

40. Date on which payments deemed to have been made—Any payment made under this Act shall be deemed to have been made on the date on which it was received by the Commissioner.

41. Date on which payments deemed to have been credited—(1) For the purpose of calculating interest payable,—

30 (a) Any payment other than a repayment deduction shall be deemed to have reduced the loan balance by the amount of that payment on the day it was made; and

(b) Any repayment deduction shall be deemed to have reduced the loan balance by the amount of that deduction on the 15th day of the month in which the deduction was made from the borrower’s salary or wages.

35 (2) Other than for the purpose of calculating interest, any payment made under this Act or under the loan contract in an income year shall be credited to the repayment obligation for that income year at the time when the Commissioner makes an assessment of that obligation.

40

42. Priority of payments—Any payment in respect of a repayment obligation shall be offset—

- (a) First, against any real interest charged; and
- (b) Secondly, against any interest adjustment interest charged; and 5
- (c) Thirdly, against any principal outstanding.

Relief

43. Power of Commissioner in respect of small amounts—Notwithstanding anything in this Act, the Commissioner may, in the Commissioner's discretion, refrain 10 from either issuing a notice of assessment or collecting or refunding any repayment obligation payable by or to a borrower, or any repayment deduction payable by or to an employer, in any case where—

- (a) The amount payable by or to a borrower in any income 15 year does not exceed \$5; or
- (b) The amount payable by or to an employer in any period does not exceed \$5.

44. No liability in respect of small amounts of penalty—(1) The Commissioner shall not charge, and there 20 shall be no liability to pay, any penalty imposed in respect of any default in paying any repayment obligation or other amount by its due date where the amount of the penalty calculated in respect of that default does not exceed \$5 (or such 25 other amount as the Governor-General may, from time to time, by Order in Council declare for the purposes of this section).

(2) Where the amount of any penalty initially calculated in respect of any default does not exceed \$5 (or such other amount as may be declared under **subsection (1)** of this section),— 30

- (a) The amount so calculated shall be deemed not to be a penalty, and shall not be added to the amount in default; and
- (b) No further amount of penalty shall be added under the relevant provision in respect of any further period 35 during which the default continues.

Cf. 1976, No. 65, s. 411A

45. Relief from penalty—(1) Where any penalty is payable by a person under this Act in relation to any default by that person, on application for relief made in writing by or on behalf 40 of that person, the Commissioner may, having regard to the circumstances of the case and if the Commissioner thinks it

equitable to do so, grant relief to the person by remitting such part of the penalty as the Commissioner considers equitable.

5 (2) The payment of the penalty, in whole or in part, shall not preclude the Commissioner from granting relief from that penalty in accordance with **subsection (1)** of this section.

(3) If the amount of any penalty is reduced, the Commissioner shall apply any amount overpaid in accordance with **section 47 or section 48** of this Act.

Cf. 1976, No. 65, s. 413

10 **46. Commissioner may refrain from collecting repayment obligation**—(1) The Commissioner may, where the Commissioner is satisfied that payment of any repayment obligation has caused or would cause serious hardship to any
15 borrower or considers that there are other special reasons that make it fair and reasonable to do so, on written application by or on behalf of that borrower, refrain from collecting payment of that repayment obligation, or part of that repayment obligation, as the case may be, for such period as the
20 Commissioner considers equitable.

(2) Where the Commissioner refrains from collecting payment of any repayment obligation or part of any repayment obligation in accordance with this section, the amount that the Commissioner has refrained from collecting shall be subject to interest at the total interest rate on the daily
25 amount outstanding.

Refunds

47. Excess repayments made by residents—(1) Where for any income year a borrower has—

30 (a) Had repayment deductions made in excess of the repayment obligation for that income year; or

(b) Paid interim repayments in excess of the repayment obligation for that income year; or

(c) Paid an amount in excess of the amount of any instalment of an interim repayment; or

35 (d) Made a voluntary payment in excess of the repayment obligation for that income year; or

(e) Paid an amount in excess of the amount of any penalty charged,—

the Commissioner shall—

40 (f) Credit the amount so deducted or paid in excess, so far as it extends, to any repayment obligation or instalment of an interim repayment for any other income year or any other amount that has become due and

payable that the borrower has failed to pay in the order in which that repayment obligation or instalment of an interim repayment obligation or other amount became due; and

- (g) Refund any amount not so credited, unless the borrower has elected that the Commissioner should apply the whole or part of the amount that would otherwise be refundable to the loan balance. 5

(2) Any election under **subsection (1) (g)** of this section shall be irrevocable. 10

(3) Notwithstanding **subsection (1)** of this section, no refund shall be made under this section after the expiry of the period of 8 years immediately after the end of the year in which the assessment was made or, in any case where the original assessment has been altered (whether once or more than once) after the end of the year in which the original assessment was made, unless written application for the refund is made by or on behalf of the borrower before the expiry of that period. 15

Cf. 1976, No. 65, s. 409 (1)

48. Election by non-resident to receive refund or to apply overpayment to loan balance—(1) Where any non-resident borrower has paid an amount in excess of the non-resident repayment obligation for any year, the Commissioner shall— 20

- (a) Credit the amount so paid in excess, so far as it extends, to any repayment obligation for any other income year or any other amount that has become due and payable that the borrower has failed to pay in the order in which that repayment obligation or other amount became due; and 25 30

- (b) Notify the borrower of any amount so paid in excess that is not credited under **paragraph (a)** of this subsection.

(2) The borrower may request the Commissioner, within 2 months of the date on which the Commissioner issued the notice, to refund any amount so paid in excess that is not credited under **subsection (1) (a)** of this section. 35

- (3) Any such request shall be irrevocable.

(4) If no such request is made within that time, any amount paid in excess that is not credited under **subsection (1) (a)** of this section shall be applied in reduction of the loan balance. 40

49. Repayment obligation paid in excess may be set off against increased repayment obligation when assessments reopened—In any case where, upon the

investigation by the Commissioner of the liability of a borrower for that borrower's repayment obligation over a group of 2 or more income years,—

5 (a) The Commissioner assesses the borrower with a repayment obligation for any year of assessment in respect of which no assessment has been made previously or alters an assessment for any year so as to increase the repayment obligation; and

10 (b) The Commissioner is satisfied that for any year or years of assessment within that group of years any repayment obligation has been paid in excess of the amount properly payable,—

the Commissioner may, in the Commissioner's discretion and to the extent that in the Commissioner's opinion is equitable, 15 allow any amount so paid in excess to be deducted from or set off against any repayment obligation due and unpaid for any year or years within that group of income years, notwithstanding that the time for the making of a refund of any repayment obligation so paid in excess may have expired.

20 Cf. 1976, No. 65, s. 410

50. Appropriation of refunds—Any refund of a repayment obligation under this Act may be made without further appropriation than this section.

Cf. 1976, No. 65, s. 415

25

Miscellaneous Provisions

51. Write-off of loan balance—If—

(a) A borrower should die; or

(b) The Commissioner has reasonable grounds for believing that a borrower has died; or

30 (c) A borrower has an IRD loan balance that, as at the last day of any income year, is less than \$10,—
the IRD loan balance shall be reduced to zero.

52. Changes in balance dates producing income year other than 12 months—In any case where any borrower's 35 assessable income is for a period other than 12 months as a result of the borrower changing that borrower's balance date for income tax purposes,—

(a) For the purpose of calculating the amount of the 40 repayment obligation, the repayment threshold shall be—

$$a \times \frac{b}{365} ; \text{ and}$$

- (b) For the purpose of calculating any interest write-off under **section 31** or interest reduction under **section 32** of this Act, the amount of the repayment obligation shall be— 5

$$c \times \frac{365}{b} ,—$$

where—

- a is the amount of the repayment threshold referred to in **section 2** of this Act: 10
 b is the number of days in the period:
 c is the repayment obligation calculated under **paragraph (a)** of this section.

53. Disclosure of information—(1) For the purposes of this section, “authorised person” means— 15

- (a) The Commissioner of Inland Revenue or any officer of the Inland Revenue Department who is authorised by the Commissioner to disclose and receive information under this section; or 20
 (b) Any employee of the loan manager who is authorised by the Secretary of Education to disclose and receive information under this section; or
 (c) Any employee of any tertiary institution who is authorised by the Secretary of Education to disclose and receive information under this section. 25

(2) No obligation as to secrecy or other restriction imposed by any enactment or otherwise upon the disclosure of information shall prevent any authorised person from disclosing to another authorised person any information required for the purpose of enabling the Commissioner to correctly identify any borrower whose loan is to be transferred from the loan manager to the Commissioner for collection. 30

(3) Subject to **subsection (4)** of this section, information obtained pursuant to **subsection (2)** of this section shall not be disclosed except to an authorised person and for the purposes of that subsection. 35

(4) No obligation as to secrecy or other restriction imposed by any enactment or otherwise upon the disclosure of information shall prevent the Secretary of Education, or any officer of the Ministry of Education who is authorised by the Secretary of Education to receive information under this 40

section, from receiving information disclosed from any authorised person to another authorised person in accordance with **subsection (2)** of this section for any purpose that relates to the administration of the student loan scheme.

- 5 **54. Act to supplement loan contract**—The provisions of this Act shall supplement the provisions of the loan contract and shall prevail in the event of any inconsistency.

PART IV

OBJECTIONS

10 *Objections Before Transfer of Loan Balance to Department*

- 15 **55. Right to object to amount of loan balance being transferred**—(1) Where a notice stating that the loan manager is proposing to transfer a borrower's loan balance to the Commissioner for collection is given to the borrower under **section 30** of this Act, the borrower may object to the statement of the loan balance by giving written notice of objection to the loan manager.

20 (2) If the loan balance is calculated as at the 31st day of December in any year, notice of objection under **subsection (1)** of this section shall be given to the loan manager not later than the 25th day of February in the following year.

25 (3) If the loan balance is calculated as at a date other than the 31st day of December in any year, notice of objection under **subsection (1)** of this section shall be given to the loan manager not later than the date specified for that purpose in the notice (which date shall be not later than one month after the date on which the notice under **section 30** of this Act is given to the borrower).

- 30 **56. Power to require objection to be determined by Secretary of Education**—(1) If an objection under **section 55** of this Act is not wholly allowed by the loan manager, the objector may, by notice in writing to the Secretary of Education, require that the objection be determined by the Secretary of Education.

35 (2) Subject to **section 57** of this Act, the notice under **subsection (1)** of this section shall be given to the Secretary of Education within 21 days after the date on which the notice of disallowance is given to the objector by or on behalf of the loan manager.

- 40 **57. Extension of time for objection**—The Secretary of Education may in his or her discretion extend—

- (a) The time allowed under **section 55 (2)** or **section 55 (3)** of this Act for giving notice of objection under **section 55 (1)** of this Act; or
- (b) The time allowed under **section 56 (2)** of this Act for giving notice of objection under **section 56 (1)** of this Act; or
- (c) Both.

58. Right to apply to Disputes Tribunal or District Court—(1) If an objection under **section 56 (1)** of this Act is not wholly allowed by the Secretary of Education, the objector may, within 30 days after the date on which the notice of the disallowance is given to the objector by or on behalf of the Secretary of Education, 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
 - (b) Apply to a District Court for determination of the dispute.
- (2) A Referee of a Disputes Tribunal or a District Court Judge, as the case may be, may in his or her discretion extend the time allowed under **subsection (1)** of this section for applying to a Disputes Tribunal or District Court.

(3) Notwithstanding anything in the Disputes Tribunal Act 1988 or the District Courts Act 1947, but subject to **subsection (1)** of this section, no objection to which **section 55 (1)** or **section 56 (1)** of this Act applies shall be heard and determined by a Disputes Tribunal or a District Court.

59. Prohibition on transfers—Notwithstanding **section 29** of this Act or any provision of the loan contract, no loan balance shall be transferred to the Department for collection until any outstanding objection under **section 55 (1)** or **section 56 (1)** of this Act and any outstanding application under **section 58 (1)** of this Act in relation to that loan balance has been finally determined.

60. Notice of total amount outstanding—As soon as practicable after a loan balance is transferred to the Department for collection,—

- (a) The Commissioner shall give notice in writing to the borrower of the total amount outstanding under the loan (which notice shall specify the net amount of principal and the net amount of interest transferred); and
- (b) The borrower shall be liable to repay that total amount in accordance with this Act and the loan contract.

*Objections to Commissioner After Transfer of Loan Balance to
Department*

5 **61. Objection to assessment of repayment obligation—**
Any borrower whose repayment obligation has been assessed under **Part I** or **Part II** of this Act may, on the ground that the assessment is erroneous or excessive or has been issued in error, object to the assessment.

10 **62. Objection to amount of interest charged—**Any borrower who is charged with interest in an income year may, on the ground that he or she should not have been charged with the amount of interest charged, object to the notice given to the borrower under **section 35** of this Act.

15 **63. Objection to penalty—**Any person who is charged with a penalty may,—
15 (a) On the ground that the person is not chargeable with the amount of the penalty; or
 (b) On the ground that the amount of the penalty charged is excessive,—
20 object to the notice given to the person under **section 37** of this Act.

25 **64. Objection to assessment of repayment deduction—**
Any employer who is required to make a repayment deduction determined under **section 12** of this Act may, on the ground that the determination is erroneous, object to the assessment made under **section 12 (2)** of this Act.

30 **65. Objection to penal repayment obligation or penal charge—**(1) Any person who is assessed under **section 82** of this Act with a penal repayment obligation or under **section 83** of this Act with a penal charge may,—
30 (a) On the ground that the person is not chargeable with the amount so assessed; or
 (b) On the ground that the amount so assessed is excessive having regard to—
35 (i) The nature and degree of the act or default in respect of which the assessment was made; or
 (ii) The reason for the imposition of the penal repayment obligation or penal charge; or
 (iii) Both,—
40 object to the assessment.
 (2) An objection may be made under **subsection (1)** of this section notwithstanding that the amount of the assessment is

not in excess of treble the amount of the deficient repayment obligation or deficient repayment deduction.

66. Objector—An objection under **section 61** or **section 62** or **section 63** or **section 64** or **section 65** of this Act may be made only by or on behalf of the person to whom the assessment or notice relates. 5

67. Manner in which objection to be made—Every objection under **section 61** or **section 62** or **section 63** or **section 64** or **section 65** of this Act shall be made by delivering or posting to the Commissioner a written notice of objection stating the grounds of that person's objection. 10

68. Time for objection—Every objection under **section 61** or **section 62** or **section 63** or **section 64** or **section 65** of this Act shall be made within 2 months after the date on which the assessment or notice to which the objection relates was given to the objector. 15

69. Objection to amended assessment or notice—Where the assessment or notice objected to under **section 61** or **section 62** or **section 63** or **section 64** or **section 65** of this Act is an amended assessment or notice, the person to whom the amended assessment or notice is given shall have no further right of objection than that person would have had if the amendment had not been made, except to the extent to which by reason of the amendment a fresh liability in respect of any particular is imposed on that person or an existing liability in respect of any particular is increased. 20 25

70. Extension of time for objection—(1) The Commissioner may in his or her discretion extend the time allowed under **section 68** of this Act on written application by or on behalf of any person made before the expiry of— 30

(a) The time for objection specified in the notice of assessment or liability, as the case may be; or

(b) Any extended time for objection previously allowed by the Commissioner in respect of the assessment or notice, as the case may be. 35

(2) No notice of objection given after the time specified in **section 68** of this Act, or after such extended time as the Commissioner may allow under **subsection (1)** of this section, shall be of any force or effect unless the Commissioner, in the

Commissioner's discretion, accepts the same and gives notice to the objector accordingly.

Cf. 1985, No. 141, s. 33

71. Commissioner to consider objections—(1) The
5 Commissioner shall consider every objection made under **section 61** or **section 62** or **section 63** or **section 64** or **section 65** of this Act, and may alter the assessment or notice accordingly.

(2) The Commissioner shall, as soon as practicable, give
10 notice in writing to the objector of the Commissioner's decision in respect of the objection, and of the reasons for that decision.

72. Objector may refer disallowed objections to Taxation Review Authority—(1) If an objection is not wholly
15 allowed by the Commissioner, the objector may, within 2 months after the date on which notice of the disallowance is given to the objector by or on behalf of the Commissioner, by notice in writing to the Commissioner require that the objection be heard and determined by a Taxation Review Authority, and in that event the objection shall be heard and determined by an Authority, and the provisions of Part II of the
20 Inland Revenue Department Act 1974 shall apply in respect of the institution, hearing, and determination of the proceedings on the objection.

(2) If the Commissioner, after considering the objection, has
25 allowed the objection in part and has reduced the assessment, the reduced assessment shall be the assessment to be dealt with by the Authority.

(3) Sections 32 to 35 of the Income Tax Act 1976 shall apply
30 to any objection under **section 61** or **section 62** or **section 63** or **section 64** or **section 65** of this Act with all necessary modifications as if an objection made under **section 61** or **section 62** or **section 63** or **section 64** or **section 65** of this Act were an objection made under section 30 of the Income Tax Act 1976, except that section 34A (which relates to interest on certain excess tax paid) shall apply only in the case of objections made under **section 63**
35 or **section 64** or **section 65** of this Act.

(4) Section 398 of the Income Tax Act 1976 (so far as it
relates to use of money interest where payment of tax deferred during objections) shall apply, as far as applicable and with all necessary modifications in the case of objections made under
40 **section 63** or **section 64** or **section 65** of this Act as if any such objection were made under section 30 of the Income Tax Act 1976.

(5) Section 398 (3) of the Income Tax Act 1976 shall apply, as far as applicable and with all necessary modifications to any penalty charged under **Part I** or **Part III** or **Part V** of this Act as if any such penalty was additional tax charged under section 398 (2) of the Income Tax Act 1976.

5

Cf. 1985, No. 141, s. 34

73. Objections to which this Part does not apply—

Except so far as may be expressly provided in this Act, this Part of this Act shall not confer any right of objection with respect to—

10

(a) The rate of interest charged under the loan contract:

(b) Any decision or determination of the Commissioner made in exercise of any power or discretion conferred upon the Commissioner to enlarge or extend the time for giving any notice, making any application, furnishing any return, or doing any other act, matter, or thing:

15

(c) Any matter which is left to the discretion, judgment, opinion, approval, consent, or determination of the Commissioner:

(d) Any matter in respect of which it is expressly provided that there shall be no right of objection to the decision or determination of the Commissioner.

20

Cf. 1985, No. 141, s. 40

PART V

OFFENCES AND PENALTIES

25

74. Offences in respect of repayment deductions—

(1) Subject to **subsection (3)** of this section, every person commits an offence against this Act who—

(a) Being an employer, fails wholly or in part to make a repayment deduction in accordance with the obligations of the person under **Part I** of this Act; or

30

(b) Wilfully applies or wilfully permits to be applied the amount of any repayment deduction, or any part of any such deduction, for any purpose other than the payment of that deduction to the Commissioner; or

35

(c) Fails to duly pay to the Commissioner the amount of any repayment deduction, or any part of such deduction; or

(d) Wilfully fails to notify an employer in accordance with **section 8** of this Act, or wilfully fails to supply information to the Commissioner as required by **section 14** of this Act, or wilfully gives any false

40

information, or wilfully misleads or attempts to mislead the Commissioner or any other officer, or any employer or other person, in relation to any matter or thing affecting a repayment deduction; or

5 (e) Negligently fails to notify an employer in accordance with **section 8** of this Act, or negligently fails to supply information to the Commissioner as required by **section 14** of this Act, or negligently gives any false

10 information, or negligently misleads or attempts to mislead the Commissioner or any other officer, or any employer or other person, in relation to any matter or thing affecting a repayment deduction.

(2) For the purposes of **subsection (1) (b)** of this section, a repayment deduction shall be deemed to have been made if and when payment is made of the net amount of any amount included in the earnings of an employee.

15

(3) A person shall not be convicted of an offence under **subsection (1) (b)** of this section if the person satisfies the Court that the amount of the repayment deduction required to be made under **Part I** of this Act has been paid to the Commissioner, and that the person's failure to make payment of the repayment deduction within the prescribed time was due to illness, accident, or other cause beyond the person's control.

20

75. Penalties for offences in respect of repayment deductions—(1) Every person who commits an offence against **section 74 (1) (b)** of this Act shall,—

25

(a) On the first occasion on which the person is convicted of any such offence or more than one such offence, be liable, in respect of that offence or, as the case may be, each of those offences, to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$15,000:

30

(b) On every occasion, other than the occasion referred to in **paragraph (a)** of this subsection, on which the person is convicted of any such offence or more than one such offence, be liable, in respect of that offence or, as the case may be, each of those offences, to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$25,000.

35

(2) Every person who commits an offence against **section 74 (1) (a)** or **section 74 (1) (c)** or **section 74 (1) (d)** of this Act shall,—

40

(a) On the first occasion on which the person is convicted of any such offence or more than one such offence, be liable, in respect of that offence or, as the case may

- be, each of those offences, to a fine not exceeding \$15,000:
- (b) On every occasion, other than the occasion referred to in paragraph (a) of this subsection, on which the person is convicted of any such offence or more than one such offence, be liable, in respect of that offence or, as the case may be, each of those offences, to a fine not exceeding \$25,000. 5
- (3) Every person who commits an offence against section 74 (1) (e) of this Act shall,— 10
- (a) On the first occasion on which the person is convicted of any such offence or more than one such offence, be liable, in respect of that offence or, as the case may be, each of those offences, to a fine not exceeding \$2,000: 15
- (b) On the second occasion on which the person is convicted of any such offence or more than one such offence, be liable, in respect of that offence or, as the case may be, each of those offences, to a fine not exceeding \$4,000: 20
- (c) On every occasion, other than the occasions referred to in paragraphs (a) and (b) of this subsection, on which the person is convicted of any such offence or more than one such offence, be liable, in respect of that offence or, as the case may be, each of those offences, to a fine not exceeding \$6,000. 25

76. Other offences—(1) Every person commits an offence against this Act who—

- (a) Wilfully makes any false return, or wilfully gives any false information, or wilfully misleads or attempts to mislead the Commissioner or any other officer, in relation to any matter or thing affecting the borrower's own or any other person's repayment obligation; or 30
- (b) Knowingly fails to make any deduction or extraction required by section 400 of the Income Tax Act 1976 (as applied by section 38 of this Act); or 35
- (c) Knowingly fails, after making any such deduction or extraction to pay the sum deducted or extracted to the Commissioner within the time specified therefor; or 40
- (d) Knowingly permits the payment to or on behalf of any person, other than the Commissioner, of any amount that, under section 400 of the Income Tax Act 1976

(as applied by **section 38** of this Act), is deemed to be held in trust for the Crown; or

(e) Aids, abets, incites, or conspires with any person to commit any offence against this Act or against any regulation made under this Act.

5

(2) Every person who commits an offence against **subsection (1)** of this section shall,—

10

(a) On the first occasion on which the person is convicted of any such offence or more than one such offence, be liable, in respect of that offence or, as the case may be, each of those offences, to a fine not exceeding \$15,000:

15

(b) On every occasion, other than the occasion referred to in **paragraph (a)** of this subsection, on which the person is convicted of any such offence or more than one such offence, be liable, in respect of that offence or, as the case may be, each of those offences, to a fine not exceeding \$25,000.

20

(3) Every person commits an offence against this Act who—

(a) Refuses or fails to furnish any return or information as and when required by this Act or the Commissioner; or

25

(b) Negligently makes any false return, or negligently gives any false information, or negligently misleads or attempts to mislead the Commissioner or any other officer, in relation to any matter or thing affecting the borrower's own or any other person's repayment obligation; or

30

(c) Obstructs any officer of the Inland Revenue Department acting in the discharge of that officer's duties or in the exercise of that officer's powers under this Act; or

35

(d) Negligently fails, after making any deduction or extraction required by section 400 of the Income Tax Act 1976 (as applied by **section 38** of this Act) to pay the sum deducted or extracted to the Commissioner within the time specified therefor; or

40

(e) Negligently permits the payment to or on behalf of any person, other than the Commissioner, of any amount that, under section 400 of the Income Tax Act 1976 (as applied by **section 38** of this Act), is deemed to be held in trust for the Crown.

(4) Every person who commits an offence against **subsection (3)** of this section shall,—

45

(a) On the first occasion on which the person is convicted of any such offence or more than one such offence, be

liable, in respect of that offence or, as the case may be, each of those offences, to a fine not exceeding \$2,000:

- (b) On the second occasion on which the person is convicted of any such offence or more than one such offence, be liable, in respect of that offence or, as the case may be, each of those offences, to a fine not exceeding \$4,000: 5
- (c) On every occasion, other than the occasions referred to in paragraphs (a) and (b) of this subsection, on which the person is convicted of any such offence or more than one such offence, be liable, in respect of that offence or, as the case may be, each of those offences, to a fine not exceeding \$6,000. 10

77. Officers and employees of corporate bodies—(1) For the purpose of this section, unless the context otherwise requires, “officer”, in relation to a corporate body, includes— 15

- (a) A director or secretary or other statutory officer of the corporate body:
- (b) A receiver or a manager of any property of the corporate body, or a person having powers or responsibilities, similar to those of such a receiver or manager, in relation to the corporate body: 20
- (c) A liquidator of the corporate body.

(2) Every person commits an offence against this Act who, being an officer or an employee of a corporate body, is, by reason of that office or, as the case may be, that employment, responsible (whether under any statute or rule of law, or any instructions of the corporate body or for any other reason) for supplying to the Commissioner any information or any statement in accordance with this Act or in accordance with any notice, order, or requirement issued, made, or notified in accordance with this Act, and who fails to supply that information or that statement, as the case may be, to the Commissioner within the time specified for the supply thereof. 30 35

(3) Every person who commits an offence against subsection (2) of this section shall,—

- (a) On the first occasion on which the person is convicted of any such offence or more than one such offence, be liable, in respect of that offence or, as the case may be, each of those offences, to a fine not exceeding \$2,000: 40
- (b) On the second occasion on which the person is convicted of any such offence or more than one such offence,

be liable, in respect of that offence or, as the case may be, each of those offences, to a fine not exceeding \$4,000:

- 5 (c) On every occasion, other than the occasions referred to in paragraphs (a) and (b) of this subsection, on which the person is convicted of any such offence or more than one such offence, be liable, in respect of that offence or, as the case may be, each of those offences, to a fine not exceeding \$6,000.

10 Cf. 1976, No. 65, s. 416A (1), (2); 1991, No. 142, s. 209

78. Offence to prejudice employees because of student loan repayment liability—(1) Every employer commits an offence against this Act who—

- 15 (a) Refuses to employ, or to pay salary or wages to, another person; or
(b) Dismisses, or threatens to dismiss, another person from his or her employment; or
(c) Terminates, or threatens to terminate, the payment of salary or wages to another person; or
20 (d) Prejudices, or threatens to prejudice, another person in his or her employment or otherwise in the receipt of salary or wages; or
(e) Intimidates or coerces, imposes any pecuniary or other penalty on, or takes any other disciplinary action in
25 relation to, another person,—

because the other person has a student loan.

(2) Every person who commits an offence against subsection (1) of this section shall be liable to a fine not exceeding \$2,000.

- 30 (3) Where an employer is convicted of an offence against subsection (1) of this section, the Court may order the payment of compensation to the person for loss or damage suffered as a result of the offence.

Cf. 1991, No. 142, s. 171

35 **79. Proceedings to be taken summarily**—All proceedings for offences under this Act shall be taken by way of summary prosecution before a District Court Judge upon the information of the Commissioner.

Cf. 1976, No. 65, s. 417; 1991, No. 142, s. 211

40 **80. Information may charge several offences**—(1) Any information may charge the defendant with any number of offences against this Act 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.

(2) Where any information charges more than one such offence, particulars of each offence charged shall be set out separately in the information. 5

(3) All such charges shall 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.

Cf. 1976, No. 65, s. 418; 1991, No. 142, s. 212 10

81. Information may be laid within 10 years—

Notwithstanding anything in the Summary Proceedings Act 1957 or in any other Act, any information in respect of any offence against this Act or against any regulations made under this Act may be laid at any time within 10 years after the end of the year in which the offence was committed. 15

Cf. 1976, No. 65, s. 419; 1991, No. 142, s. 213

82. Penal repayment obligation in case of evasion—

If any borrower evades, or attempts to evade, or does any act with intent to evade, or makes default in the performance of any duty imposed upon the borrower by this Act or any regulations made under this Act with intent to evade, the assessment or payment of any sum which is or may become chargeable against the borrower by way of a repayment obligation (which sum shall be known as the deficient repayment obligation), the borrower shall be chargeable, by way of penalty for that offence, with an additional repayment obligation (to be known as a penal repayment obligation) not exceeding an amount equal to treble the amount of the deficient repayment obligation; and sections 420 to 424 and 426 of the Income Tax Act 1976 (which relate to the nature of penal tax and contain provisions relating to assessment, objections, and recovery) shall apply as if the penal repayment obligation were an amount of penal tax in respect of which the Commissioner of Inland Revenue had made an assessment under section 422 of the Income Tax Act 1976. 20 25 30 35

Cf. 1976, No. 65, s. 420

83. Penal charge for default in paying repayment deduction—

(1) Where any employer knowingly applies or permits to be applied any repayment deduction, in whole or in part, for any purpose other than the payment of that repayment deduction to the Commissioner, that employer shall 40

be chargeable by way of penalty, in addition to any penalty imposed by this Act, with a further amount (to be known as a penal charge) not exceeding an amount equal to treble the amount in respect of which default has been made (to be known as the deficient repayment deduction); and sections 369 and 420 to 426 of the Income Tax Act 1976 (which relate to the nature of penal tax and contain provisions relating to assessment, objections, and recovery) shall apply as if the penal charge were an amount of penal tax in respect of which the Commissioner of Inland Revenue had made an assessment under section 422 of the Income Tax Act 1976.

(2) For the purposes of subsection (1) of this section, a repayment deduction shall be deemed to have been applied for a purpose other than the payment of that repayment deduction to the Commissioner if a deduction made in accordance with Part I of this Act has not been paid to the Commissioner by the due date.

(3) Notwithstanding subsection (1) of this section, no employer shall be chargeable with a penal charge under this section if that employer satisfies the Commissioner that the amount of the repayment deduction has been accounted for, and that the employer's failure to account for it within the prescribed time was due to illness, accident, or other cause beyond the employer's control.

25 Cf. 1976, No. 65, s. 369 (1), (2)

PART VI

REGULATIONS, AMENDMENTS TO OTHER ACTS, AND TRANSITIONAL PROVISIONS

30 **84. Regulations**—(1) The Governor-General may from time to time, by Order in Council, make regulations, not inconsistent with this Act, for all or any of the following purposes:

(a) Determining—

- (i) The amount of the repayment threshold:
 - (ii) The interest adjustment rate:
 - 35 (iii) The real interest rate:
 - (iv) The repayment percentage,—
- that shall apply in respect of any income year or years:

- (b) Amending any amount specified in section 22 of this Act:
- 40 (c) Providing, where there is no provision in this Act or no sufficient provision in respect of any matter or thing necessary to give effect to this Act, in what manner and form the deficiency shall be supplied:

- (d) Prescribing offences in respect of the contravention of or non-compliance with any regulations made under this Act, and the amounts of the fines that may be imposed in respect of any such offences, which fines shall be an amount not exceeding \$500: 5
- (e) Providing for such matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for its due administration.
- (2) The Commissioner shall notify any borrower affected by any regulation made under **subsection (1) (a)** or **subsection (1) (b)** of this section of the effect of the regulation. 10
- (3) Such notification shall be, in accordance with the loan contract, either by notice in writing to the borrower or by advertisement in the public notices section of the major New Zealand metropolitan newspapers. 15

Amendment to District Courts Act 1947

85. Effect of attachment orders—Section 84₁ (2) (c) of the District Courts Act 1947 (as inserted by section 9 of the District Courts Amendment Act 1989 and amended by section 246 of the Child Support Act 1991) is hereby amended by inserting, after subparagraph (iii), the following subparagraph: 20

“(iiiia) Any deduction notice issued under section 400 of the Income Tax Act 1976 (as applied by **section 38** of the Student Loan Scheme Act **1992**),—”.

Amendment to Social Security Act 1964 25

86. Benefits to be inalienable—Section 84 of the Social Security Act 1964 is hereby amended by inserting, after the expression “the Child Support Act 1991” (as inserted by section 11 of the Social Security Amendment Act (No. 5) 1991), the expression “or the Student Loan Scheme Act **1992**”. 30

Cf. 1991, No. 143, s. 11

Amendment to Insolvency Act 1967

87. Priorities—Section 104 (1) of the Insolvency Act 1967 is hereby amended by repealing paragraph (e), and substituting the following paragraph: 35

“(e) Fifthly, in payment rateably of—

“(i) All amounts payable to the Commissioner of Inland Revenue in accordance with section 365 (2) of the Income Tax Act 1976:

“(ii) All amounts payable to the Commissioner of Inland Revenue in accordance with section 365 (2) of 40

the Income Tax Act 1976 as applied by **section 15** of the Student Loan Scheme Act **1992**.”.

Amendments to Inland Revenue Department Act 1974

88. Interpretation—(1) Section 2 of the Inland Revenue Department Act 1974 is hereby amended by repealing the definition of the term “tax or duty” (as inserted by section 250 of the Child Support Act 1991), and substituting the following definition:

“Tax or duty’ includes any financial support within the meaning of the Child Support Act 1991 or any amount payable under the Student Loan Scheme Act **1992**, and the term ‘tax and duty’ has a corresponding meaning.”.

(2) Section 250 of the Child Support Act 1991 is hereby consequentially repealed.

89. Secrecy—(1) Section 13 (4) of the Inland Revenue Department Act 1974 is hereby amended by inserting, after paragraph (bb) (as inserted by section 2 of the Inland Revenue Department Amendment Act (No. 3) 1991), the following paragraph:

“(bc) Communicating to any authorised person pursuant to **section 53** of the Student Loan Scheme Act **1992** any information required for the purpose specified in **subsection (2)** of that section.”.

(2) Section 15 (1) of the Inland Revenue Department Act 1974 (as amended by section 2 (3) of the Inland Revenue Department Amendment Act 1989 and section 4 (1) of the Inland Revenue Department Amendment Act (No. 2) 1991) is hereby amended by inserting, after the expression “paragraph (bb)”, the expression “**or paragraph (bc)**”.

(3) Section 15 (5) of the Inland Revenue Department Act 1974 (as amended by section 4 (2) of the Inland Revenue Department Amendment Act (No. 2) 1991) is hereby amended by inserting, after paragraph (aa), the following paragraph:

“(ab) Where it is given by any person referred to in **section 13 (4) (bc)** of this Act (being an employee of the loan manager under the Student Loan Scheme or an employee of any tertiary institution), be kept by the Secretary of Education as a permanent record; and”.

Amendments to Income Tax Act 1976

90. Interpretation—Section 2 of the Income Tax Act 1976 is hereby amended by repealing the definition of the term

“primary employment earnings” (as inserted by section 3 (1) of the Income Tax Amendment Act 1984), and substituting the following definition:

“‘Primary employment earnings’, in relation to an employee and to any pay period, means,— 5

“(a) In any case where the employee derives in that pay period a source deduction payment (not being a withholding payment and not being an extra emolument) from one employer, that source deduction payment; and 10

“(b) In any case where the employee derives in that pay period source deduction payments (not being withholding payments and not being extra emoluments) from 2 or more employers, such source deduction payment as, being derived from one of those employers, exceeds in amount the source deduction payment derived in that pay period from the other employer, or, as the case may be, each of those other employers; and 15

“(c) In any case where, in that pay period, any 2 or more of the source deduction payments (not being withholding payments and not being extra emoluments) are of equal amount, the primary employment earnings in relation to the employee and to the pay period shall be such one of those source deduction payments that are of equal amount as the employee elects.” 20 25

91. Pay-period taxpayers—Section 356 (3) of the Income Tax Act 1976 (as amended by section 249 of the Child Support Act 1991) is hereby amended by inserting, as paragraph (f), the following paragraph: 30

“(f) At any time during that year the taxpayer had an IRD loan balance (as defined in section 2 of the Student Loan Scheme Act 1992).”

92. National superannuitant borrowers to apply for special tax code certificates—The Income Tax Act 1976 is hereby amended by inserting, after section 336L (as inserted by section 8 (1) of the Income Tax Amendment Act (No. 6) 1991), the following section: 35

“336LA. Notwithstanding anything in this Part of this Act, any taxpayer who is a borrower as defined in the Student Loan Scheme Act 1992 and who, but for this section, would be required to make an election to use any of the national 40

superannuitant surcharge codes of 'SAJ' or 'MAJ' or 'MIN' shall request that the Commissioner issue him or her with a special tax code certificate in accordance with section 351 of this Act."

Amendment to Accident Compensation Act 1982

5 **93. Compensation not assignable**—The Accident Compensation Act 1982 (as continued in effect by Part VIII of the Accident Rehabilitation and Compensation Insurance Act 1992) shall have effect as if, for paragraph (f) of section 89 (5) (as substituted by section 241 of the Child Support Act 1991),
10 there were substituted the following paragraphs:

"(f) Part X or section 184 or section 187 of the Child Support Act 1991; or

"(g) Part I or section 38 of the Student Loan Scheme Act 1992."

Amendment to Accident Rehabilitation and Compensation Insurance Act 1992

15

94. Compensation, grant, or allowance inalienable—Section 86 (2) of the Accident Rehabilitation and Compensation Insurance Act 1992 is hereby amended by inserting, after paragraph (g), the following paragraph:

20 "(ga) Part I or section 38 of the Student Loan Scheme Act 1992; or".

Transitional Provisions

95. No repayment deductions to be made from payments made before 1 April 1993—The provisions of
25 Part I of this Act relating to repayment deductions shall not apply to any payment that relates to a pay period that commenced before the 1st day of April 1993.

96. Interim repayments for income years commencing 1 April 1992 and 1 April 1993—(1) Sections 16 to 18 of this Act
30 shall not apply—

(a) In respect of the income year commencing on the 1st day of April 1992; or

(b) In respect of the income year commencing on the 1st day
35 of April 1993 to any borrower whose assessable income (other than from salary or wages) for that year will not exceed \$10,000.

(2) Notwithstanding section 381 of the Income Tax Act 1976 (as applied by section 18 of this Act), a borrower shall not be
40 required to pay the first instalment or the second instalment of the borrower's interim repayment for the income year commencing on the 1st day of April 1993 if the borrower has not,

before the due date for payment of the instalment, furnished either a return of income for the preceding income year or an estimate of residual repayment obligation for that income year.

97. Non-resident assessments in income year commencing 1 April 1992—Notwithstanding section 26 of this Act, the Commissioner shall issue non-resident repayment obligation assessments in respect of the income year commencing on the 1st day of April 1992 as soon as practicable after the last day of that income year. 5

98. Obligations of non-resident borrowers for income year commencing 1 April 1992—(1) Notwithstanding Part II of this Act, any non-resident repayment obligation in respect of the income year commencing on the 1st day of April 1992 shall be due and payable on the 30th day of June 1993. 10

(2) Section 27 of this Act shall not apply to any borrower before the date on which this Act receives the Royal assent. 15