

**Reprint
as at 1 April 2012**



Student Loan Scheme Act 1992

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Student Loan Scheme Act 1992: repealed, on 1 April 2012, by section 225 of the Student Loan Scheme Act 2011 (2011 No 62).

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Note

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this reprint.

A general outline of these changes is set out in the notes at the end of this reprint, together with other explanatory material about this reprint.

This Act is administered by the Inland Revenue Department.

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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

1 Short Title and application

- (1) This Act may be cited as the Student Loan Scheme Act 1992.
- (2) This Act is hereby declared to be one of the Inland Revenue Acts within the meaning of the Tax Administration Act 1994.
- (3) Subject to Part 7, this Act shall apply to liabilities to repay student loans in respect of the tax year commencing on 1 April 1992 and every subsequent year.

Section 1(2): substituted, on 1 April 1995 (applying with respect to the tax on income derived in 1995–96 and subsequent income years), by section YB 1 of the Income Tax Act 1994 (1994 No 164).

Section 1(3): amended, on 1 April 2005 (effective for 2005–06 tax year and later tax years, except when the context requires otherwise), by section YA 2 of the Income Tax Act 2004 (2004 No 35).

2 Interpretation

- (1) In this Act, unless the context otherwise requires,—
 - borrower** means any person who has received a student loan and who has not fully repaid that loan
 - challenge**, for the purposes of Part 5, has the meaning given to it in section 3(1) of the Tax Administration Act 1994
 - chief executive** means the chief executive of the department that is, with the authority of the Prime Minister, for the time being responsible for the administration of the Social Security Act 1964
 - collection** includes administration of a zero loan balance by the Commissioner for the purposes of determining whether the borrower is entitled to an interest write-off or interest reduction or refund under this Act
 - Commissioner** means the Commissioner of Inland Revenue as defined in the Tax Administration Act 1994
 - department** means the Inland Revenue Department
 - employee** means an employee as defined in paragraph (a) of the definition of employee in section YA 1 of the Income Tax Act 2007

employer means an employer as defined in paragraphs (a) and (b) of the definition of employer in section YA 1 of the Income Tax Act 2007

extra emolument, in relation to any person, has the meaning given to extra pay in section YA 1 of the Income Tax Act 2007

gross income has the meaning given to income in section YA 1 of the Income Tax Act 2007

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

interim repayment means any repayment required to be made in accordance with sections 26 to 28

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

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

(b) transferred to the Commissioner for collection—
and includes any increase under section 103

lender means Her Majesty the Queen in right of New Zealand and acting through and by the Minister who is, with the authority of the Prime Minister, for the time being responsible for the administration of the Social Security Act 1964

loan balance means the total amount outstanding under all loans obtained by the borrower under the student loan scheme, and includes any increase under section 103

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 Commissioner for collection)

loan year means a period of 12 months commencing on 1 January and ending with 31 December

net income means net income as defined in section YA 1 of the Income Tax Act 2007

New Zealand based has the meaning set out in subsection (2)

non-resident means a person who is not resident in New Zealand in terms of section YD 1 of the Income Tax Act 2007

overseas based has the meaning set out in subsection (3)

overseas based repayment obligation means a repayment obligation imposed under Part 3

PAYE intermediary means a PAYE intermediary as defined in section YA 1 of the Income Tax Act 2007

penal charge means a charge imposed under section 86

penal repayment obligation means an obligation imposed under section 85

penalty means—

- (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 Tax Administration Act 1994 (as applied by this Act)

periodic payer means a borrower who is obliged to make interim repayments in accordance with sections 26 to 28

primary employment earnings, in relation to an employee and to any pay period, means primary employment earnings as defined in section 3(1) of the Tax Administration Act 1994

repayment code means the repayment code specified in section 17B

repayment deduction means any amount required to be deducted from salary or wages in accordance with Part 2

repayment obligation, in respect of any tax year, means,—

- (a) in the case of a borrower who is New Zealand based for the whole of the tax year, any repayment obligation assessed by the Commissioner under Part 2:
- (b) in the case of a borrower who is overseas based for the whole or part of the tax year, any repayment obligation assessed by the Commissioner under Part 3

repayment percentage means 10% or such other rate as may be determined by regulations made under section 87

repayment threshold means,—

- (a) in respect of the tax year ending with 31 March 1993, \$12,670:

- (b) in respect of the tax year ending with 31 March 1994 and each subsequent tax year, \$13,104 or such other amount as may be determined by regulations made under section 87

resident means a person who is resident in New Zealand in terms of section YD 1 of the Income Tax Act 2007

residual repayment obligation has the meaning given to that term by section 26(2)

salary or wages, in relation to any person, means salary or wages as defined in section YA 1 of the Income Tax Act 2007, 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 3(1) of the Tax Administration Act 1994

student loan—

- (a) means any money advanced under the student loan scheme to a borrower; and
- (b) includes—
- (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

student loan scheme means the scheme established by the lender on 1 January 1992 to provide loan assistance to tertiary students; and includes the scheme so established as amended from time to time

tax year, in respect of the income of a person, means a tax year as defined in section YA 1 of the Income Tax Act 2007

terminal repayment obligation has the same meaning as in section 29(2)

total interest rate means the total interest rate that applies in respect of any tax year, calculated in accordance with the formula—

$$a\% + 0.74\% = y\%$$

where—

a% is the average, rounded to the nearest 2 decimal places, of the monthly average 10-year government bond yield rates published by the Reserve Bank of New Zealand for the 5 years ending in December in the year that precedes the relevant tax year

y% rounded to the nearest 1 decimal place, is the total interest rate for the relevant tax year.

- (2) For the purposes of this Act, a borrower is **New Zealand based** for each day on which that borrower is entitled to a full interest write-off under section 38AA.
- (3) For the purposes of this Act, a borrower is **overseas based** for each day on which that borrower is not entitled to a full interest write-off under section 38AA.

Section 2(1) **assessable income**: repealed, on 1 April 2005 (effective for 2005–06 tax year and later tax years, except when the context requires otherwise), by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 2(1) **base interest rate**: repealed, on 1 April 2008, by section 4(1) of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

Section 2(1) **challenge**: inserted, on 1 October 1996, by section 2(1) of the Student Loan Scheme Amendment Act 1996 (1996 No 63).

Section 2(1) **chief executive**: inserted, on 19 September 2000, by section 3(1) of the Student Loan Scheme Amendment Act 2000 (2000 No 33).

Section 2(1) **collection**: inserted, on 15 December 2000 (applying in respect of the income year commencing on 1 April 2000, and subsequent income years), by section 4(1) of the Student Loan Scheme Amendment Act (No 2) 2000 (2000 No 96).

Section 2(1) **Commissioner**: amended, on 1 April 1995 (applying with respect to the tax on income derived in 1995–96 and subsequent income years), by section YB 1 of the Income Tax Act 1994 (1994 No 164).

Section 2(1) **employee**: amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 2(1) **employee**: amended, on 1 April 1995 (applying with respect to the tax on income derived in 1995–96 and subsequent income years), by section YB 1 of the Income Tax Act 1994 (1994 No 164).

Section 2(1) **employer**: amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 2(1) **employer**: amended, on 1 April 2005 (effective for 2005–06 tax year and later tax years, except when the context requires otherwise), by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 2(1) **extra emolument**: substituted, on 1 April 2005 (effective for 2005–06 tax year and later tax years, except when the context requires otherwise), by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 2(1) **extra emolument**: amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 2(1) **gross income**: substituted, on 1 April 2005 (effective for 2005–06 tax year and later tax years, except when the context requires otherwise), by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 2(1) **gross income**: amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 2(1) **income-tested benefit**: amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 2(1) **income year**: repealed, on 1 April 2005 (effective for 2005–06 tax year and later tax years, except when the context requires otherwise), by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 2(1) **interest adjustment rate**: repealed, on 1 April 2008, by section 4(1) of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

Section 2(1) **IRD loan balance**: substituted, on 1 April 2007, by section 4(2) of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

Section 2(1) **lender**: amended, on 19 September 2000, by section 3(2) of the Student Loan Scheme Amendment Act 2000 (2000 No 33).

Section 2(1) **loan balance**: amended, on 1 April 2007, by section 4(3) of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

Section 2(1) **net income**: inserted, on 26 July 1996 (applying to the 1997–98 and subsequent income years), by section 484 of the Taxation (Core Provisions) Act 1996 (1996 No 67).

Section 2(1) **net income**: amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 2(1) **New Zealand based**: inserted, on 1 April 2007, by section 4(4) of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

Section 2(1) **non-resident**: amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 2(1) **non-resident repayment obligation**: repealed, on 1 April 2007, by section 4(5) of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

Section 2(1) **overseas based**: inserted, on 1 April 2007, by section 4(4) of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

Section 2(1) **overseas based repayment obligation**: inserted, on 1 April 2007, by section 4(5) of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

Section 2(1) **PAYE intermediary**: inserted, on 26 March 2003 (applying to obligations under the principal Act that arise on and after 1 April 2004), by section 4(1) of the Student Loan Scheme Amendment Act 2003 (2003 No 7).

Section 2(1) **PAYE intermediary**: amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 2(1) **penal charge**: amended, on 1 April 1993, by section 2 of the Student Loan Scheme Amendment Act 1993 (1993 No 12).

Section 2(1) **penalty** paragraph (b): amended, on 1 April 1995 (applying with respect to the tax on income derived in 1995–96 and subsequent income years), by section YB 1 of the Income Tax Act 1994 (1994 No 164).

Section 2(1) **primary employment earnings**: amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 2(1) **repayment code**: inserted, on 25 November 2003 (applying for pay periods ending on and after 25 November 2003), by section 4(1) of the Student Loan Scheme Amendment Act (No 2) 2003 (2003 No 124).

Section 2(1) **repayment obligation**: amended, on 1 April 2005 (effective for 2005–06 tax year and later tax years, except when the context requires otherwise), by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 2(1) **repayment obligation** paragraph (a): amended, on 1 April 2007, by section 4(6)(a) of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

Section 2(1) **repayment obligation** paragraph (a): amended, on 1 April 2005 (effective for 2005–06 tax year and later tax years, except when the context requires otherwise), by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 2(1) **repayment obligation** paragraph (b): amended, on 1 April 2007, by section 4(6)(b) of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

Section 2(1) **repayment obligation** paragraph (b): amended, on 1 April 2005 (effective for 2005–06 tax year and later tax years, except when the context requires otherwise), by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 2(1) **repayment threshold** paragraph (a): amended, on 1 April 2005 (effective for 2005–06 tax year and later tax years, except when the context requires otherwise), by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 2(1) **repayment threshold** paragraph (b): amended, on 1 April 2005 (effective for 2005–06 tax year and later tax years, except when the context requires otherwise), by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 2(1) **resident**: amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 2(1) **salary or wages**: amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 2(1) **secondary employment earnings**: amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 2(1) **tax year**: inserted (with effect on 1 April 2005), on 21 June 2005, by section 161 of the Taxation (Base Maintenance and Miscellaneous Provisions) Act 2005 (2005 No 79).

Section 2(1) **tax year**: amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 2(1) **total interest rate**: substituted, on 1 April 2010, by section 4 of the Student Loan Scheme (Exemptions and Miscellaneous Provisions) Amendment Act 2010 (2010 No 3).

Section 2(2): added, on 1 April 2007, by section 4(8) of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

Section 2(3): added, on 1 April 2007, by section 4(8) of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

2A Application of Act to bonded scholarships

- (1) In this section, **bonded scholarship** means an allowance or agreement that is declared under section 307AC of the Education Act 1989 to be a bonded scholarship.
- (2) Any amount repayable under a bonded scholarship (the **default amount**), along with any interest payable in accordance with the scholarship agreement, may be recovered under this Act as if—
 - (a) the default amount were a student loan; and
 - (b) the recipient of the scholarship were a borrower; and
 - (c) the scholarship agreement were a loan contract.
- (3) Despite any enactment or rule of law, if a provision in an agreement for a bonded scholarship conflicts with this provision, this provision prevails.

Section 2A: inserted, on 17 May 2006, by section 59(1) of the Education Amendment Act 2006 (2006 No 19).

3 Act to bind the Crown

This Act shall bind the Crown.

Part 1
**Transfer of loan balances to
Commissioner for collection**

Transfer of loan balances

4 Transfer of loan balances to Commissioner for collection

- (1) Subject to section 12, the loan manager shall, in the administration of the student loan scheme, transfer each borrower's loan balance to the Commissioner for collection.
- (2) Every such transfer shall be effected in accordance with this Act and, unless the Commissioner otherwise requests, after the end of each loan year.

5 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—
 - (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
 - (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 6 and 8.
- (2) Where the loan balance is calculated as at 31 December in any year,—
 - (a) the notice required by subsection (1) shall be given to the borrower not later than 25 January in the following year; and
 - (b) the date on which it is proposed that the transfer take effect shall not be earlier than 28 February in the following year.
- (3) Where the loan balance is calculated as at a date other than 31 December in any year, the notice required by subsection (1) shall be given to the borrower at least 1 month before the date on which it is proposed that the transfer take effect.

*Objections before transfer of loan balance to
Commissioner*

6 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 5, the borrower may object to the statement of the loan balance by delivering or posting to the loan manager a written notice of objection stating the grounds of that person's objection.
- (2) If the loan balance is calculated as at 31 December in any year, notice of objection under subsection (1) shall, subject to section 10, be delivered or posted to the loan manager not later than 25 February in the following year.
- (3) If the loan balance is calculated as at a date other than 31 December in any year, notice of objection under subsection (1) shall, subject to section 10, be delivered or posted to the loan manager not later than the date specified for that purpose in the notice (which date shall be not later than 1 month after the date on which the notice under section 5 is given to the borrower).

7 Loan manager to consider objections

- (1) The loan manager shall consider every objection made under section 6(1), and may alter the statement of the loan balance accordingly.
- (2) The loan manager shall, as soon as practicable, give notice in writing to the objector of the loan manager's decision in respect of the objection, and of the reasons for that decision.

8 Power to require objection to be determined by chief executive

- (1) If an objection under section 6(1) is not wholly allowed by the loan manager, the objector may, by delivering or posting a written notice to the chief executive, require that the objection be determined by the chief executive.
- (2) Subject to section 10, the notice under subsection (1) shall be delivered or posted to the chief executive 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.

Section 8 heading: amended, on 19 September 2000, by section 4(2) of the Student Loan Scheme Amendment Act 2000 (2000 No 33).

Section 8(1): amended, on 19 September 2000, by section 4(1) of the Student Loan Scheme Amendment Act 2000 (2000 No 33).

Section 8(2): amended, on 19 September 2000, by section 4(1) of the Student Loan Scheme Amendment Act 2000 (2000 No 33).

9 Chief executive to consider objections

- (1) The chief executive shall consider every objection made under section 6(1) that he or she is required to determine under section 8, and may alter the statement of the loan balance accordingly.
- (2) The chief executive shall, as soon as practicable, give notice in writing to the objector of the chief executive's decision in respect of the objection, and of the reasons for that decision.

Section 9 heading: amended, on 19 September 2000, by section 5(3) of the Student Loan Scheme Amendment Act 2000 (2000 No 33).

Section 9(1): amended, on 19 September 2000, by section 5(1) of the Student Loan Scheme Amendment Act 2000 (2000 No 33).

Section 9(2): amended, on 19 September 2000, by section 5(1) of the Student Loan Scheme Amendment Act 2000 (2000 No 33).

Section 9(2): amended, on 19 September 2000, by section 5(2) of the Student Loan Scheme Amendment Act 2000 (2000 No 33).

10 Extension of time for objection

The chief executive may extend—

- (a) the time allowed under section 6(2) or section 6(3) for delivering or posting a notice of objection under section 6(1); or
- (b) the time allowed under section 8(2) for delivering or posting a notice of objection under section 8(1); or
- (c) both.

Section 10: amended, on 19 September 2000, by section 6 of the Student Loan Scheme Amendment Act 2000 (2000 No 33).

11 Right to apply to Disputes Tribunal or District Court

- (1) If an objection under section 6(1) that the chief executive is required to determine under section 8 is not wholly allowed

by the chief executive, 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 chief executive, 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 extend the time allowed under subsection (1) for applying to a Disputes Tribunal or District Court.
 - (3) Notwithstanding anything in the Disputes Tribunals Act 1988 or the District Courts Act 1947, but subject to subsection (1), no objection to which section 6(1) or section 8(1) applies shall be heard and determined by a Disputes Tribunal or a District Court.

Section 11(1): amended, on 19 September 2000, by section 7 of the Student Loan Scheme Amendment Act 2000 (2000 No 33).

12 Prohibition on transfers

Notwithstanding section 4 or any provision of the loan contract, no loan balance shall be transferred to the Commissioner for collection until any outstanding objection under section 6(1) or section 8(1) and any outstanding application under section 11(1) in relation to that loan balance has been finally determined.

13 Notice of total amount outstanding

- (1) As soon as practicable after a loan balance is transferred to the Commissioner for collection, 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).
- (2) The borrower shall be liable to repay that total amount in accordance with this Act and the loan contract.

Part 2

Collection of repayments from New Zealand based borrowers

Part 2 heading: amended, on 1 April 2007, by section 5 of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

- 14 Repayment obligation for New Zealand based borrowers**
- (1) The repayment obligation of each New Zealand based borrower in respect of a tax year shall be the amount by which the borrower's net income for the tax year exceeds the repayment threshold multiplied by the repayment percentage.
- (2) However, if the borrower was overseas based for part of the relevant tax year, then (in calculating that borrower's repayment obligation under subsection (1)) only the net income that the borrower derived during the period that the borrower was New Zealand based during that tax year must be taken into account.
- (3) Despite subsections (1) and (2), the repayment obligation for any tax year must not exceed the amount of the IRD loan balance on the last day of that tax year.

Section 14 heading: amended, on 1 April 2007, by section 6(1) of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

Section 14(1): amended, on 1 April 2007, by section 6(2) of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

Section 14(1): amended, on 1 April 2005 (effective for 2005–06 tax year and later tax years, except when the context requires otherwise), by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 14(1): amended, on 26 July 1996 (applying to the 1997–98 and subsequent income years), by section 484 of the Taxation (Core Provisions) Act 1996 (1996 No 67).

Section 14(2): substituted, on 7 March 2010, by section 5 of the Student Loan Scheme (Exemptions and Miscellaneous Provisions) Amendment Act 2010 (2010 No 3).

Section 14(3): added, on 7 March 2010, by section 5 of the Student Loan Scheme (Exemptions and Miscellaneous Provisions) Amendment Act 2010 (2010 No 3).

Returns and assessments

- 14A Declaration of worldwide income by certain borrowers**
- (1) This section applies to borrowers who, for the purposes of this Act, are New Zealand based but are not resident.

- (2) For each tax year and each part tax year in respect of which this section applies to a borrower, that borrower must furnish to the Commissioner details of all amounts of that borrower's gross income that are not treated as having a source in New Zealand under section YD 4 of the Income Tax Act 2007.
- (3) The borrower must furnish the information to the Commissioner at the time when the borrower would have furnished his or her return of income for a tax year under the Tax Administration Act 1994 if he or she was resident.
- (4) The Commissioner may require the borrower to provide evidence of that borrower's gross income.

Section 14A: inserted, on 1 April 2007, by section 7 of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

Section 14A(2): amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

15 Commissioner to assess borrower's repayment obligation

- (1) The Commissioner must make an assessment of the amount, if any, of a borrower's repayment obligation for a tax year as soon as practicable after the end of the tax year.
- (2) The assessment shall be made in accordance with the loan contract and this Act.
- (3) In making an assessment under this section, the Commissioner may have regard to—
 - (a) a return of income furnished under the Tax Administration Act 1994; or
 - (b) the sum of all amounts of gross income included in that income statement in the case of a borrower who has received an income statement; or
 - (c) the sum of all amounts of gross income known to the Commissioner for a borrower not required to furnish a return of income or receive an income statement under the Tax Administration Act 1994; or
 - (d) the details of all amounts of a borrower's gross income provided to the Commissioner under section 14A.
- (4) The Commissioner shall, as soon as practicable after making any such assessment, give notice to the borrower of the amount assessed.

- (5) In this section, **income statement** has the same meaning as in section YA 1 of the Income Tax Act 2007.

Section 15(1): substituted, on 8 December 2009 (applying for the 2009–10 and later income years), by section 168(1) of the Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63).

Section 15(3): substituted, on 7 October 1998 (applying to Student Loan repayment obligations for the 1999–2000 and subsequent income years), by section 2(2) of the Student Loan Scheme Amendment Act (No 2) 1998 (1998 No 105).

Section 15(3)(c): amended, on 1 April 2007, by section 8(2) of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

Section 15(3)(d): added, on 1 April 2007, by section 8(2) of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

Section 15(5): added, on 1 April 2005 (effective for 2005–06 tax year and later tax years, except when the context requires otherwise), by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 15(5): amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

16 Sections of Tax Administration Act 1994 and Income Tax Act 2007 relating to returns and assessments to apply

Sections 21, 33, 34, 36 to 39, 41 to 44, 63, 79, 80, 92, 92A, 106 to 111, 113, and 114 of the Tax Administration Act 1994 and section LC 10 and paragraph (b) of the definition of basic tax rate in section YA 1 of the Income Tax Act 2007 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
- (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.

Section 16 heading: substituted, on 24 October 2001 (applying to the 2002–03 and subsequent income years), by section 255(1) of the Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85).

Section 16 heading: amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 16: amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 16: amended, on 24 October 2001 (applying to the 2002–03 and subsequent income years), by section 255(2)(a) of the Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85).

Section 16: amended, on 1 April 1995 (applying with respect to the tax on income derived in 1995–96 and subsequent income years), by section YB 1 of the Income Tax Act 1994 (1994 No 164).

Repayment deductions from salary and wages

17 Borrowers to whom repayment deduction provisions of this Part apply

- (1) Sections 17B to 25 apply to any borrower—
- (a) who reasonably expects that his or her gross income from salary or wages that are primary employment earnings for any tax year will exceed the repayment threshold for that tax year; or
 - (b) who is issued with a special repayment deduction rate certificate under section 21.
- (2) Earnings from employment—
- (a) *[Repealed]*
 - (b) *[Repealed]*
 - (c) as a casual agricultural worker; or
 - (d) as an election day worker,—
- (as those terms are defined in section YA 1 of the Income Tax Act 2007) shall not be taken into account under subsection (1)(a).

Section 17 heading: amended, on 1 April 1999, pursuant to section 3 of the Student Loan Scheme Amendment (No 2) Act 1998 (1998 No 105).

Section 17(1): amended, on 25 November 2003 (applying for pay periods ending on and after 25 November 2003), by section 5(1) of the Student Loan Scheme Amendment Act (No 2) 2003 (2003 No 124).

Section 17(1)(a): amended, on 1 April 2005 (effective for 2005–06 tax year and later tax years, except when the context requires otherwise), by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 17(1)(a): amended, on 26 July 1996 (applying to the 1997–98 and subsequent income years), by section 484 of the Taxation (Core Provisions) Act 1996 (1996 No 67).

Section 17(2): amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 17(2)(a): repealed, on 1 April 1999, by section 3(1) of the Student Loan Scheme Amendment Act (No 2) 1998 (1998 No 105).

Section 17(2)(b): repealed, on 1 April 1999, by section 3(1) of the Student Loan Scheme Amendment Act (No 2) 1998 (1998 No 105).

Section 17(2)(c): added, on 1 April 1995, by section 2 of the Student Loan Scheme Amendment Act 1995 (1995 No 26).

Section 17(2)(d): added, on 1 April 1995, by section 2 of the Student Loan Scheme Amendment Act 1995 (1995 No 26).

17B Repayment codes for application of PAYE rules

For the purpose of the application of the PAYE rules of the Income Tax Act 2007 under section 25 of this Act, the repayment code of any borrower in relation to any salary or wages is “SL”.

Section 17B: inserted, on 25 November 2003 (applying for pay periods ending on and after 25 November 2003), by section 6(1) of the Student Loan Scheme Amendment Act (No 2) 2003 (2003 No 124).

Section 17B: amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

18 Borrower’s notice to employer of requirement for repayment deductions

- (1) A person who is a borrower and is in the employment of an employer (including an employer from whom secondary employment earnings are received) must give written notice under this section to the employer as soon as practicable after the later of—
 - (a) the time at which the person becomes an employee of the employer; and
 - (b) the time at which the person becomes a borrower.
- (2) A notice under this section must inform the employer that—
 - (a) the borrower is required to have repayment deductions made under this Part from any amount paid to the borrower by way of salary or wages; and
 - (b) the tax code prescribed by section 24B(3) of the Tax Administration Act 1994 for the borrower should be followed by the repayment code “SL” for the purpose of making a repayment deduction from salary or wages paid to the borrower.

Section 18: substituted, on 25 November 2003 (applying for pay periods ending on and after 25 November 2003), by section 7(1) of the Student Loan Scheme Amendment Act (No 2) 2003 (2003 No 124).

Section 18(2)(b): amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

19 Employer or PAYE intermediary to make repayment deductions

- (1) If a borrower has given a notice under section 18, or the Commissioner has given a notice under section 20A, to an employer, each time the employer, or a person acting as a PAYE intermediary for the employer, pays an amount to the borrower by way of salary or wages for an tax year, the employer or the person must make a deduction from that amount.
- (2) The deduction shall be made at the standard deduction rate or, if the employer is aware that a special deduction rate or an increased repayment deduction rate applies, at that rate.
- (3) The repayment deductions made under this section shall be in addition to any tax deductions required to be made under the PAYE rules of the Income Tax Act 2007.

Compare: 1992 No 13 s 115(1)

Section 19 heading: amended, on 26 March 2003 (applying to obligations under the principal Act that arise on and after 1 April 2004), by section 5(1) of the Student Loan Scheme Amendment Act 2003 (2003 No 7).

Section 19(1): substituted, on 26 March 2003 (applying to obligations under the principal Act that arise on and after 1 April 2004), by section 5(2) of the Student Loan Scheme Amendment Act 2003 (2003 No 7).

Section 19(1): amended, on 7 March 2010, by section 6(1) of the Student Loan Scheme (Exemptions and Miscellaneous Provisions) Amendment Act 2010 (2010 No 3).

Section 19(1): amended, on 1 April 2005 (effective for 2005–06 tax year and later tax years, except when the context requires otherwise), by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 19(2): amended, on 7 March 2010, by section 6(2) of the Student Loan Scheme (Exemptions and Miscellaneous Provisions) Amendment Act 2010 (2010 No 3).

Section 19(2): amended, on 28 March 2007, by section 9 of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

Section 19(3): amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 19(3): amended, on 1 April 1995 (applying with respect to the tax on income derived in 1995–96 and subsequent income years), by section YB 1 of the Income Tax Act 1994 (1994 No 164).

20 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
 - (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,—
 - (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); and
 - (c) where the salary or wages is paid three-weekly, 3 times the amount specified in paragraph (a); and
 - (d) where the salary or wages is paid four-weekly, 4 times the amount specified in paragraph (a); and
 - (e) where the salary or wages is paid monthly, the amount specified in paragraph (a) multiplied by 13 and divided by 3.
- (3) If the repayment percentage is changed by regulations made under section 87, the standard deduction rate shall change accordingly.

20A Standard deduction rate may be increased in certain circumstances

- (1) This section applies if—
 - (a) the amount of a borrower's repayment deductions in the current tax year or in any tax year prior to the current tax year is, or was, less than the amount required under this Act; or
 - (b) a borrower has failed to pay any amount that has become due and payable in accordance with this Act.
- (2) If this section applies, the Commissioner may, in relation to the borrower, issue an increased repayment deduction rate notice that—

- (a) varies the standard deduction rate by increasing it up to a maximum rate of 15 cents in each complete dollar; and
 - (b) specifies the total amount payable by the borrower (which may include any penalties, interest, or other amount that has become due and payable); and
 - (c) requires the borrower's employers to make repayment deductions at the increased rate until those repayment deductions equal the amount specified under paragraph (b).
- (3) If the Commissioner issues an increased repayment deduction rate notice, the Commissioner must send that notice, together with a notice that complies with section 18(2), directly to the borrower's employers.
- (4) The increased repayment deduction rate applies until the earlier of the date on which—
 - (a) the repayment deductions made in accordance with the increased repayment deduction rate notice equal the amount specified in subsection (2)(b); or
 - (b) the Commissioner notifies the employer otherwise.
- (5) An increased repayment deduction rate notice issued in relation to a borrower under this section revokes—
 - (a) any special repayment deduction rate certificate previously issued to that borrower; and
 - (b) any notice previously given to an employer by that borrower in accordance with section 18.
- (6) The Commissioner must give a borrower a copy of any notice that is given to that borrower's employers under this section as soon as practicable after it is issued.
- (7) Nothing in this section limits the application of sections 53 to 55D.

Section 20A: inserted, on 7 March 2010, by section 7 of the Student Loan Scheme (Exemptions and Miscellaneous Provisions) Amendment Act 2010 (2010 No 3).

21 Special deduction rates

- (1) If a borrower wishes to vary the standard deduction rate, the borrower may apply by notice in writing to the Commissioner

for the issue of a special repayment deduction rate certificate that takes into account the greater of—

- (a) the borrower's estimated repayment obligation for the tax year; or
 - (b) some other amount required by the borrower.
- (2) Any borrower who has been issued with a special tax code certificate under section 24F of the Tax Administration Act 1994 and whose net income for the tax year will exceed the repayment threshold shall be deemed to have made such an application.
- (3) Section 24F of the Tax Administration Act 1994 shall apply, with all necessary modifications, to any special deduction rate certificate issued under this section.

Section 21(1): substituted, on 2 September 1996, by section 46 of the Taxation (Remedial Provisions) Act 1996 (1996 No 159).

Section 21(1)(a): amended, on 1 April 2005 (effective for 2005–06 tax year and later tax years, except when the context requires otherwise), by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 21(2): amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 21(2): amended, on 1 April 2005 (effective for 2005–06 tax year and later tax years, except when the context requires otherwise), by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 21(2): amended, on 26 July 1996 (applying to the 1997–98 and subsequent income years), by section 484 of the Taxation (Core Provisions) Act 1996 (1996 No 67).

Section 21(3): amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

22 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 regulations made for the purposes of this Part, 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.

Compare: 1976 No 65 s 337(3)

23 Deductions from income-tested benefits

Notwithstanding section 20, where a repayment deduction is required to be made under this Part from an income-tested benefit, the repayment deduction shall be of such amount as the Commissioner determines in consultation with the chief executive.

Section 23: amended, on 19 September 2000, by section 8 of the Student Loan Scheme Amendment Act 2000 (2000 No 33).

Section 23: amended, on 1 October 1998, by section 11 of the Employment Services and Income Support (Integrated Administration) Act 1998 (1998 No 96).

24 Information to show repayment deductions made

- (1) Every employer or PAYE intermediary who makes a repayment deduction under this Part 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.
- (2) The information required pursuant to subsection (1) shall be given in such manner as the Commissioner may reasonably require.

Section 24(1): amended, on 26 March 2003 (applying to obligations under the principal Act that arise on and after 1 April 2004), by section 6(1) of the Student Loan Scheme Amendment Act 2003 (2003 No 7).

25 PAYE rules of Income Tax Act 2007 to apply to repayment deductions

- (1) Subject to this section, the PAYE rules as defined in section YA 1 of the Income Tax Act 2007 shall, as far as applicable and with the necessary modifications, apply as if—
- (a) every reference to income tax were a reference to a borrower's repayment obligation; and
 - (b) every reference to withholding or deducting an amount of tax were a reference to repayment deductions; and

- (c) every reference to a tax code were a reference to a repayment code,—
and every employer, PAYE intermediary, and employee shall comply with the requirements of the PAYE rules of the Income Tax Act 2007 to the extent to which those rules apply by virtue of this section.
- (2) Notwithstanding subsection (1), sections BC 1, LD 1(2) and (3), RC 2(1), RC 6, RC 7, RC 16, and RC 17 of the Income Tax Act 2007 shall not apply to any amount required to be deducted under this Part.
- (3) Any repayment deduction made under this Part shall not be treated as part of or included in any tax deduction made under the PAYE rules of the Income Tax Act 2007 on account of income tax.

Section 25: substituted, on 1 April 1995 (applying with respect to the tax on income derived in 1995–96 and subsequent income years), by section YB 1 of the Income Tax Act 1994 (1994 No 164).

Section 25 heading: amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 25(1): amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 25(1): amended (with effect on 1 April 1997), on 25 November 2003, by section 8(1) of the Student Loan Scheme Amendment Act (No 2) 2003 (2003 No 124).

Section 25(1): amended, on 26 March 2003 (applying to obligations under the principal Act that arise on and after 1 April 2004), by section 7(1) of the Student Loan Scheme Amendment Act 2003 (2003 No 7).

Section 25(1)(b): amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 25(1)(b): amended, on 25 November 2003 (applying for pay periods ending on and after 25 November 2003), by section 8(2) of the Student Loan Scheme Amendment Act (No 2) 2003 (2003 No 124).

Section 25(1)(c): inserted, on 25 November 2003 (for pay periods ending on and after 25 November 2003), by section 8(2) of the Student Loan Scheme Amendment Act (No 2) 2003 (2003 No 124).

Section 25(2): amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 25(2): amended (with effect on 1 April 1997), on 25 November 2003, by section 8(4) of the Student Loan Scheme Amendment Act (No 2) 2003 (2003 No 124).

Section 25(3): amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Interim repayments

26 Borrowers to whom interim repayment provisions of this Part apply

- (1) Sections 27 and 28 apply to any borrower whose residual repayment obligation in relation to any tax year is \$1,000 or more for that tax year.
- (2) The term **residual repayment obligation** means the amount by which the borrower's repayment obligation for any tax year exceeds any repayment deductions made for that tax year.
- (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 tax year in accordance with sections 27 and 28.
- (4) Notwithstanding subsections (1) to (3), a periodic payer shall have no liability to make interim repayments in respect of the net income for any tax year where that payer was not liable to pay a residual repayment obligation exceeding the sum of \$1,000 for the immediately preceding tax year.

Section 26(1): amended, on 1 April 2005 (effective for 2005–06 tax year and later tax years, except when the context requires otherwise), by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 26(2): amended, on 1 April 2005 (effective for 2005–06 tax year and later tax years, except when the context requires otherwise), by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 26(3): amended, on 1 April 2005 (effective for 2005–06 tax year and later tax years, except when the context requires otherwise), by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 26(4): amended, on 1 April 2005 (effective for 2005–06 tax year and later tax years, except when the context requires otherwise), by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 26(4): amended, on 26 July 1996 (applying to the 1997–98 and subsequent income years), by section 484 of the Taxation (Core Provisions) Act 1996 (1996 No 67).

27 Amount of interim repayments

- (1) The amount payable by a periodic payer by way of interim payments in respect of the net income for any tax year shall

be, subject to subsection (2), an amount equal to 105% of the amount of the payer's residual repayment obligation for the immediately preceding tax year.

- (2) The amount payable under subsection (1), may be varied in accordance with this Act and the provisions of the Income Tax Act 2007 (as applied by section 28).

Section 27(1): amended, on 1 April 2005 (effective for 2005–06 tax year and later tax years, except when the context requires otherwise), by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 27(1): amended, on 26 July 1996 (applying to the 1997–98 and subsequent income years), by section 484 of the Taxation (Core Provisions) Act 1996 (1996 No 67).

Section 27(2): amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

28 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) The provisional tax rules of the Income Tax Act 2007 and of the Tax Administration Act 1994 shall, as far as applicable and with all necessary modifications, apply as if—
- (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 or a person liable to pay provisional tax 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
 - (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.
- (3) Notwithstanding subsection (1),—
- (a) sections RC 3 and RC 5(2) of the Income Tax Act 2007 and section LB 2 of that Act (which provides that provisional tax is to be credited against a taxpayer's income

- tax liability) shall not apply to any amount of interim repayments; and
- (b) section RC 5(3) of the Income Tax Act 2007 (which relates to amounts of instalments where return not furnished)—
 - (i) shall apply only where the periodic payer's residual repayment obligation for the second preceding tax year exceeds \$1,000; and
 - (ii) shall apply as if, where the return for the immediately preceding tax 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 tax year equal to the amount of any interim repayments paid by the periodic payer on or before that date; and
 - (c) section RC 8 of the Income Tax Act 2007 (under which a provisional taxpayer may use the GST ratio method to determine an amount of provisional tax payable) shall not apply to any amount of interim payments; and
 - (d) section RC 9(4)(a)(i) and (ii) and (b)(i) of the Income Tax Act 2007 (which provide for exceptions to the requirements of section RC 9(3) of that Act) shall not apply to any amount of interim payments; and
 - (e) section RC 9(5) of the Income Tax Act 2007 (which provides for payments of provisional tax by a provisional taxpayer who pays GST on a 6-monthly basis) shall not apply to any amount of interim payments; and
 - (f) sections RC 11, RC 16 to RC 19, RC 24, and RC 31 of the Income Tax Act 2007 (which provide for the use by a provisional taxpayer of the GST ratio method) shall not apply to any amount of interim payments.

Section 28(2): amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 28(2): amended, on 23 September 1997 (applying to the 1998–99 and subsequent income years), by section 2(1)(a) of the Student Loan Scheme Amendment Act 1997 (1997 No 79).

Section 28(2): amended, on 1 April 1995 (applying with respect to the tax on income derived in 1995–96 and subsequent income years), by section YB 1 of the Income Tax Act 1994 (1994 No 164).

Section 28(2)(b): amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 28(3)(a): substituted, on 1 April 1995 (applying with respect to the tax on income derived in 1995–96 and subsequent income years), by section YB 1 of the Income Tax Act 1994 (1994 No 164).

Section 28(3)(a): amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 28(3)(a): amended, on 24 October 2001 (applying to the 2002–03 and subsequent income years), by section 256(1) of the Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85).

Section 28(3)(b): amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 28(3)(b)(i): amended, on 1 April 2005 (effective for 2005–06 tax year and later tax years, except when the context requires otherwise), by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 28(3)(b)(ii): amended, on 1 October 2007 (applying for student loan repayment obligations relating to the 2008–09 and subsequent tax years), by section 300(1)(b)(ii) of the Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3).

Section 28(3)(b)(ii): amended, on 1 April 2005 (effective for 2005–06 tax year and later tax years, except when the context requires otherwise), by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 28(3)(c): added, on 1 October 2007 (applying for student loan repayment obligations relating to the 2008–09 and subsequent tax years), by section 300(1)(c) of the Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3).

Section 28(3)(c): amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 28(3)(d): added, on 1 October 2007 (applying for student loan repayment obligations relating to the 2008–09 and subsequent tax years), by section 300(1)(c) of the Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3).

Section 28(3)(d): amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 28(3)(e): added, on 1 October 2007 (applying for student loan repayment obligations relating to the 2008–09 and subsequent tax years), by section 300(1)(c) of the Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3).

Section 28(3)(e): amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 28(3)(f): added, on 1 October 2007 (applying for student loan repayment obligations relating to the 2008–09 and subsequent tax years), by section 300(1)(c) of the Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3).

Section 28(3)(f): amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Terminal repayments

29 Borrowers to whom terminal repayment provisions of this Part apply

- (1) Section 30 applies to any borrower whose repayment obligation in respect of any tax year exceeds the sum of—
 - (a) any repayment deductions credited against the repayment obligation for the tax year; and
 - (b) any interim repayments credited against the repayment obligation for the tax year; and
 - (c) any voluntary payments made to the Commissioner and credited against the repayment obligation for the tax year.
- (2) The amount by which the borrower's repayment obligation exceeds the sum of those amounts for any tax year is referred to as the borrower's **terminal repayment obligation**.

Section 29(1): amended, on 1 April 2005 (effective for 2005–06 tax year and later tax years, except when the context requires otherwise), by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 29(1)(a): amended, on 1 April 2005 (effective for 2005–06 tax year and later tax years, except when the context requires otherwise), by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 29(1)(b): amended, on 1 April 2005 (effective for 2005–06 tax year and later tax years, except when the context requires otherwise), by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 29(1)(c): amended, on 1 April 2005 (effective for 2005–06 tax year and later tax years, except when the context requires otherwise), by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 29(2): amended, on 1 April 2005 (effective for 2005–06 tax year and later tax years, except when the context requires otherwise), by section YA 2 of the Income Tax Act 2004 (2004 No 35).

30 Payment of terminal repayment obligation

- (1) A terminal repayment obligation for a tax year that is not previously due and payable is due and payable on the borrower's terminal tax date, as defined in section YA 1 of the Income Tax Act 2007, for the tax year.
- (2) Notwithstanding subsection (1), 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.

Compare: 1976 No 65 s 388(2); 1985 No 141 s 27(4)

Section 30(1): substituted, on 26 March 2003 (applying for the 2002–03 and subsequent income years), by section 8(1) of the Student Loan Scheme Amendment Act 2003 (2003 No 7).

Section 30(1): amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 30(1): amended, on 1 April 2005 (effective for 2005–06 tax year and later tax years, except when the context requires otherwise), by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Part 3

Collection of repayments from overseas based borrowers

Part 3: substituted, on 1 April 2007, by section 10 of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

31 Definitions used in this Part

In this Part, unless the context otherwise requires,—

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

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

Section 31: substituted, on 1 April 2007, by section 10 of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

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

- (1) A borrower who becomes overseas based after 1 April 2007 is entitled to a repayment holiday for a maximum period of 3 years.
- (2) A borrower is only entitled to a repayment holiday for periods when the borrower is overseas based.
- (3) A repayment holiday may consist of 1 or more periods of time when a borrower is overseas based, but in total those periods must be for 3 years or less.
- (4) If a borrower is, at any time, overseas based after that borrower's 3-year repayment holiday has ended, that borrower's repayment obligation must be calculated in accordance with section 34.
- (5) Any 1 borrower is only entitled to receive 1 3-year repayment holiday.

Section 32: substituted, on 1 April 2007, by section 10 of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

32A Repayment obligations of non-resident borrowers

[Repealed]

Section 32A: repealed, on 1 April 2007, by section 10 of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

32B Interest chargeable

[Repealed]

Section 32B: repealed, on 1 April 2007, by section 10 of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

33 Borrowers may choose not to have repayment holiday

- (1) A borrower may, by giving notice to the Commissioner, choose not to have a repayment holiday for any period during which that borrower is overseas based.
- (2) A borrower may have 1 or more opt-out periods.
- (3) An opt-out period may begin from a date prior to the date on which a borrower gives notice to the Commissioner under subsection (1).

- (4) An opt-out period ends if a borrower becomes New Zealand based.
- (5) A repayment holiday—
 - (a) ends if an opt-out period begins; and
 - (b) begins when an opt-out period ends (provided that the borrower has, at that time, had a repayment holiday for a total of less than 3 years).
- (6) If a borrower is overseas based and chooses to have an opt-out period, that borrower's repayment obligation must be calculated in accordance with section 34.
- (7) Notice under subsection (1) may be given—
 - (a) by telephone; or
 - (b) in writing; or
 - (c) in any other manner acceptable to the Commissioner.
- (8) However, the Commissioner may require notice to be given in writing.

Section 33: substituted, on 1 April 2007, by section 10 of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

34 Repayment obligations of overseas based borrowers

- (1) This section applies to an overseas based borrower—
 - (a) whose 3-year repayment holiday has ended; or
 - (b) who has chosen to have an opt-out period.
- (2) A borrower to whom this section applies has the repayment obligations set out in subsections (3) to (5).
- (3) If the borrower's loan balance is less than \$1,000, the borrower's repayment obligation for the first tax year during which this section applies to the borrower is the amount of the borrower's loan balance.
- (4) If the borrower's loan balance is—
 - (a) \$15,000 or less, the borrower's repayment obligation is \$1,000 for each full tax year during which the borrower is overseas based;
 - (b) more than \$15,000 and less than or equal to \$30,000, the borrower's repayment obligation is \$2,000 for each full tax year during which the borrower is overseas based;

- (c) more than \$30,000, the borrower's repayment obligation is \$3,000 for each full tax year during which the borrower is overseas based.
- (5) The borrower's repayment obligation for the portion of any tax year (being less than a full tax year) during which the borrower is overseas based is calculated as follows:

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

where—

- x = the number of days in the tax year during which the borrower was overseas based
- y = one of the following:
- (a) \$1,000, if the borrower's loan balance is \$15,000 or less; or
 - (b) \$2,000, if the borrower's loan balance is more than \$15,000 and less than or equal to \$30,000; or
 - (c) \$3,000, if the borrower's loan balance is more than \$30,000.
- (6) If subsection (3) applies to a borrower's loan balance, subsections (4) and (5) do not apply.
- (7) For the purposes of this section, the amount of a borrower's loan balance is the amount of the loan balance as at the date on which this section first applies to that borrower and then (subject to section 36A) as at 31 March in each year after that date, and includes any interest compounded as at that day.

Section 34: substituted, on 1 April 2007, by section 10 of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

35 Repayment obligations of overseas based borrowers subject to penalties

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

borrower's repayment obligation is the amount of the penalty free loan balance.

- (3) Nothing in this section affects overdue repayment obligations that were assessed in previous tax years.
- (4) This section overrides section 34.

Section 35: substituted, on 1 April 2007, by section 10 of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

36 Repayment to be made by instalments

- (1) A borrower's overseas based repayment obligation for a tax year must be paid by the borrower in 2 equal instalments.
- (2) The instalments are due and payable in the tax year on—
 - (a) 30 September;
 - (b) 31 March.

Section 36: substituted, on 1 April 2007, by section 10 of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

36A Repayment obligation for borrowers who are overseas based for part of tax year

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

- (a) section 34(5) or section 35 (as the case may be) applies to any portion of the tax year during which the borrower is overseas based and—
 - (i) is not entitled to a repayment holiday; or
 - (ii) has chosen to have an opt-out period; and
- (b) the borrower's overseas based repayment obligation is payable in such instalments as the Commissioner determines; and
- (c) Part 2 applies to the borrower in respect of the period in the tax year during which he or she is New Zealand based (the **New Zealand based period**), except that the amount of the repayment threshold for the tax year must be proportionately decreased to the same proportion as the number of days in the New Zealand based period bears to the number of days in a year.

Section 36A: inserted, on 1 April 2007, by section 10 of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

36B Assessments in year borrower is overseas based

- (1) As soon as practicable after being notified that, or becoming aware that, a borrower is or will be overseas based, the Commissioner must make an assessment of the amount of that borrower's overseas based repayment obligation for that year.
- (2) The Commissioner must continue to make an assessment of the amount of a borrower's overseas based repayment obligation for each year, or part of a year, that the borrower remains overseas based.
- (3) The assessment must be made in accordance with the loan contract and this Act.
- (4) The Commissioner must give notice to the borrower of the amount assessed as soon as practicable after the making of the assessment.
- (5) Subsection (4) does not apply if the amount assessed is zero.

Section 36B: inserted, on 1 April 2007, by section 10 of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

Part 4

**Miscellaneous provisions applying to
student loan scheme**

Notification requirements

37 Borrower to advise Commissioner of absence from New Zealand

- (1) Any borrower who will be absent from New Zealand for a period of more than 6 months shall, before leaving New Zealand, provide the Commissioner with—
 - (a) either—
 - (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 requires in order to determine the borrower's overseas based repayment obligation (if any); and
 - (c) any information that the Commissioner reasonably requires in order to determine whether the borrower is

entitled to the full interest write-off set out in section 38AK.

- (2) When a borrower who is absent from New Zealand becomes aware that he or she will be absent from New Zealand for a period of more than 6 months, he or she must, as soon as practicable after becoming so aware, provide the Commissioner with the information required by subsection (1).
- (3) *[Repealed]*

Section 37(1): amended, on 1 April 2007, by section 11(1) of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

Section 37(1)(b): amended, on 1 April 2007, by section 11(2) of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

Section 37(1)(b): amended, on 22 December 2005, by section 4(1) of the Student Loan Scheme Amendment Act 2005 (2005 No 122).

Section 37(1)(c): added, on 22 December 2005, by section 4(1) of the Student Loan Scheme Amendment Act 2005 (2005 No 122).

Section 37(2): substituted, on 22 December 2005, by section 4(2) of the Student Loan Scheme Amendment Act 2005 (2005 No 122).

Section 37(2): amended, on 1 April 2007, by section 11(3) of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

Section 37(3): repealed, on 22 December 2005, by section 4(2) of the Student Loan Scheme Amendment Act 2005 (2005 No 122).

38 Borrower to advise Commissioner of return to New Zealand

Where any borrower to whom section 37 applies returns to New Zealand, that borrower shall advise the Commissioner that the borrower has returned to New Zealand.

Section 38 heading: amended, on 22 December 2005, by section 5 of the Student Loan Scheme Amendment Act 2005 (2005 No 122).

Full interest write-off for borrowers present in New Zealand or granted an exemption

Heading: substituted, on 22 December 2005, by section 6 of the Student Loan Scheme Amendment Act 2005 (2005 No 122).

38AA Full interest write-off for certain borrowers

- (1) A borrower is entitled to the full interest write-off set out in section 38AK if—
- (a) the borrower satisfies the 183-day requirement in section 38AB; or

- (b) the Commissioner grants an exemption to the borrower under section 38AE, 38AJ, or 38AJA.
- (2) The conditions in section 38AK(2) apply to subsection (1).

Section 38AA: inserted, on 22 December 2005, by section 7 of the Student Loan Scheme Amendment Act 2005 (2005 No 122).

Section 38AA(1)(b): amended, on 7 March 2010, by section 8 of the Student Loan Scheme (Exemptions and Miscellaneous Provisions) Amendment Act 2010 (2010 No 3).

38AB 183-day requirement

- (1) A borrower satisfies the 183-day requirement if that borrower is personally present in New Zealand for a period of 183 or more consecutive days after 31 March 2006 (a **183-day period**).
- (2) For the purposes of subsection (1), a borrower is treated as being **personally present in New Zealand** if—
 - (a) he or she is personally absent from New Zealand for a period, or periods in the aggregate, of no more than 31 days during a period of what would otherwise have been a 183-day period; and
 - (b) he or she is personally present in New Zealand for the first day of that 183-day period.
- (3) A borrower who satisfies the 183-day requirement is entitled to the full interest write-off set out in section 38AK for the first day within the 183-day period and, subject to section 38AC, for each subsequent day.

Section 38AB: inserted, on 22 December 2005, by section 7 of the Student Loan Scheme Amendment Act 2005 (2005 No 122).

38AC Full interest write-off ceases if borrower is personally absent from New Zealand for 184 days

- (1) A borrower who has satisfied the 183-day requirement in section 38AB ceases to satisfy that requirement if he or she is personally absent from New Zealand for a period of 184 or more consecutive days (a **184-day absence**).
- (2) For the purposes of subsection (1), a borrower is treated as being **personally absent from New Zealand** if—
 - (a) he or she is personally present in New Zealand for a period, or periods in the aggregate, of no more than 31

- days during a period of what would otherwise have been a 184-day absence; and
- (b) he or she is personally absent from New Zealand for the first day of that 184-day absence.
- (3) However, a borrower must not be treated as being personally absent from New Zealand for any day on which that borrower may be treated as being personally present in New Zealand under section 38AB(2).
- (4) A borrower who has had a 184-day absence ceases to be entitled to the full interest write-off set out in section 38AK for the first day within the 184-day absence and, subject to section 38AB, for each subsequent day.
- (5) Subsection (4) is subject to the Commissioner granting an exemption to a borrower under section 38AE, 38AJ, or 38AJA.

Section 38AC: inserted, on 22 December 2005, by section 7 of the Student Loan Scheme Amendment Act 2005 (2005 No 122).

Section 38AC(5): amended, on 7 March 2010, by section 9 of the Student Loan Scheme (Exemptions and Miscellaneous Provisions) Amendment Act 2010 (2010 No 3).

38AD Treatment of partial days

For the purposes of sections 38AB to 38AK, if a borrower is personally present in New Zealand for part of a day, that borrower is treated as being personally present in New Zealand for the whole of that day and not being personally absent from New Zealand for any part of that day.

Section 38AD: inserted, on 22 December 2005, by section 7 of the Student Loan Scheme Amendment Act 2005 (2005 No 122).

38AE Power of Commissioner to grant exemptions to borrowers who do not satisfy 183-day requirement

- (1) On the application of a borrower who does not satisfy the 183-day requirement in section 38AB, the Commissioner may, if the Commissioner considers that it is fair and reasonable to do so, grant an exemption to the 183-day requirement to that borrower if the principal reason that the borrower does not satisfy the 183-day requirement is because—

- (a) the borrower was personally absent from New Zealand in the service in any capacity of the Government of New Zealand; or
 - (b) the borrower was personally absent from New Zealand because he or she was working as a volunteer or for token payment for a charitable organisation that, at the time the borrower did that work, was named in regulations made under this Act (**charity**); or
 - (c) of an unexpected delay; or
 - (d) of an unplanned personal absence; or
 - (e) the borrower is required to be personally absent from New Zealand because of the borrower's employment or occupation; or
 - (f) the borrower was personally absent from New Zealand because the borrower accompanied his or her wife or husband, civil union partner, or de facto partner (**partner**) overseas; or
 - (g) the borrower was personally absent from New Zealand because he or she was in 1 or more of Niue, the Cook Islands, Tokelau, or the Ross Dependency.
- (2) If the Commissioner grants an exemption under subsection (1), the Commissioner must specify either—
- (a) the start and end dates for the period for which the relevant borrower is treated as being personally present in New Zealand for the purposes of section 38AB; or
 - (b) the conditions that must apply or be met in order for the relevant borrower to be treated as being personally present in New Zealand for the purposes of section 38AB.
- (3) The Commissioner may grant an exemption—
- (a) under subsection (1)(b) in respect of any one borrower for a maximum aggregate period of up to 24 months; and
 - (b) under subsection (1)(f) in respect of any one borrower whose partner was personally absent from New Zealand because the partner was working as a volunteer or for token payment for a charity, for a maximum aggregate period of up to 24 months.
- (3A) The conditions in section 38AEA apply to subsection (1)(b).
- (4) The conditions in section 38AF apply to subsection (1)(c).

- (5) The conditions in section 38AG apply to subsection (1)(d).
- (6) The conditions in section 38AH apply to subsection (1)(e).
- (7) The conditions in section 38AI apply to subsection (1)(f).
- (7A) The conditions in section 38AIA apply to subsection (1)(g).
- (8) A borrower who applies to the Commissioner under this section must supply the Commissioner with all information, and in the manner, that the Commissioner may reasonably require in order to establish whether one of the grounds for the grant of an exemption in subsection (1)(a) to (g) applies.
- (9) Subsections (1)(g) and (7A) apply with effect from 31 March 2009.

Section 38AE: inserted, on 22 December 2005, by section 7 of the Student Loan Scheme Amendment Act 2005 (2005 No 122).

Section 38AE(1)(b): amended, on 7 March 2010, by section 10(1) of the Student Loan Scheme (Exemptions and Miscellaneous Provisions) Amendment Act 2010 (2010 No 3).

Section 38AE(1)(f): amended, on 7 March 2010, by section 10(2) of the Student Loan Scheme (Exemptions and Miscellaneous Provisions) Amendment Act 2010 (2010 No 3).

Section 38AE(1)(g): added, on 7 March 2010, by section 10(2) of the Student Loan Scheme (Exemptions and Miscellaneous Provisions) Amendment Act 2010 (2010 No 3).

Section 38AE(3A): inserted, on 1 April 2007, by section 12 of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

Section 38AE(7A): inserted, on 7 March 2010, by section 10(3) of the Student Loan Scheme (Exemptions and Miscellaneous Provisions) Amendment Act 2010 (2010 No 3).

Section 38AE(8): amended, on 7 March 2010, by section 10(4) of the Student Loan Scheme (Exemptions and Miscellaneous Provisions) Amendment Act 2010 (2010 No 3).

Section 38AE(9): added, on 7 March 2010, by section 10(5) of the Student Loan Scheme (Exemptions and Miscellaneous Provisions) Amendment Act 2010 (2010 No 3).

38AEA Conditions to charitable organisation exemption

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

- (a) provide proof that the work he or she did as a volunteer or for token payment for a charitable organisation was 1 or more of the following:
 - (i) work to relieve poverty, hunger, sickness, or the ravages of war or natural disaster; or

- (ii) work to improve the economy of a country that is listed on the Organisation for Economic Cooperation and Development's list of countries receiving development assistance; or
 - (iii) work to raise the educational standards of a country that is listed on the Organisation for Economic Cooperation and Development's list of countries receiving development assistance; and
- (b) provide the Commissioner with the information described in section 14A(2), and section 14A(3) and (4) applies accordingly.

Section 38AEA: inserted, on 1 April 2007, by section 13 of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

Section 38AEA(a)(ii): amended, on 7 March 2010, by section 11 of the Student Loan Scheme (Exemptions and Miscellaneous Provisions) Amendment Act 2010 (2010 No 3).

Section 38AEA(a)(iii): amended, on 7 March 2010, by section 11 of the Student Loan Scheme (Exemptions and Miscellaneous Provisions) Amendment Act 2010 (2010 No 3).

38AF Conditions to unexpected delay exemption

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

- (a) have been a resident during the time in question; and
- (b) provide proof—
 - (i) of the applicant's intended return to New Zealand; and
 - (ii) that if the applicant had returned to New Zealand as intended, the applicant would have satisfied the 183-day requirement in section 38AB; and
- (c) provide proof of the unexpected delay that resulted in the applicant not being able to return to New Zealand as intended; and
- (d) provide proof that the unexpected delay was due to an event or to circumstances beyond the reasonable control of the applicant, like (for example)—
 - (i) an airline strike, personal illness, or death of a family member;
 - (ii) a fire, flood, storm, earthquake, landslide, volcanic eruption, or other act of God:

- (iii) an explosion or nuclear, biological, or chemical contamination:
- (iv) sabotage, terrorism, or an act of war (whether declared or not).

Section 38AF: inserted, on 22 December 2005, by section 7 of the Student Loan Scheme Amendment Act 2005 (2005 No 122).

38AG Conditions to unplanned personal absence exemption

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

- (a) have been a resident during the time in question; and
- (b) provide proof of the duration of the applicant's unplanned personal absence from New Zealand; and
- (c) provide proof that the applicant's unplanned personal absence was due to an event or to circumstances beyond the reasonable planning and control of the applicant, like (for example)—
 - (i) the illness or death of a family member who is overseas;
 - (ii) the applicant's employer requiring the applicant to attend a conference overseas.

Section 38AG: inserted, on 22 December 2005, by section 7 of the Student Loan Scheme Amendment Act 2005 (2005 No 122).

38AH Conditions to employment or occupation absence exemption

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

- (a) have been a resident during the time in question; and
- (b) have a permanent place of abode only in New Zealand; and
- (c) provide proof that the applicant receives either—
 - (i) a PAYE income payment as defined in section RD 3(1) of the Income Tax Act 2007, derived from New Zealand; or
 - (ii) income from a business that has a permanent place of business in New Zealand; and
- (d) provide proof that the majority of the applicant's personal absences from New Zealand are because of the applicant's employment or occupation.

Section 38AH: inserted, on 22 December 2005, by section 7 of the Student Loan Scheme Amendment Act 2005 (2005 No 122).

Section 38AH(c)(i): substituted, on 28 March 2007, by section 14(1) of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

Section 38AH(c)(i): amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

38AI Conditions to marriage, civil union, or de facto exemption

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

- (a) have been a resident during the time in question; and
- (b) provide proof of the applicant's relationship with his or her wife or husband, civil union partner, or de facto partner (**partner**); and
- (c) provide proof that the applicant's personal absence from New Zealand was because the applicant was accompanying his or her partner overseas; and
- (d) provide proof that one of the following applies:
 - (i) the applicant's partner was personally absent from New Zealand—
 - (A) in the service in any capacity of the Government of New Zealand; or
 - (B) because he or she was working as a volunteer or for token payment for a charitable organisation named in regulations made under this Act; or
 - (ii) the applicant's partner satisfies the conditions in section 38AH; or
 - (iii) the applicant's partner satisfies the conditions in section 38AJ(2); or
 - (iv) the applicant's partner satisfies the conditions in section 38AJA(4).

Section 38AI: inserted, on 22 December 2005, by section 7 of the Student Loan Scheme Amendment Act 2005 (2005 No 122).

Section 38AI(d)(iii): amended, on 7 March 2010, by section 12 of the Student Loan Scheme (Exemptions and Miscellaneous Provisions) Amendment Act 2010 (2010 No 3).

Section 38AI(d)(iv): added, on 7 March 2010, by section 12 of the Student Loan Scheme (Exemptions and Miscellaneous Provisions) Amendment Act 2010 (2010 No 3).

**38AIA Conditions to Niue, Cook Islands, Tokelau, and Ross
Dependency exemption**

- (1) An applicant under section 38AE(1)(g) must—
- (a) provide proof that he or she—
 - (i) was personally present in 1 or more of New Zealand, Niue, the Cook Islands, Tokelau, or the Ross Dependency for a period of 183 or more consecutive days after 31 March 2009 (a **183-day period**); and
 - (ii) was personally present in New Zealand, Niue, the Cook Islands, Tokelau, or the Ross Dependency for the first day of the 183-day period; and
 - (iii) was not personally absent from New Zealand, Niue, the Cook Islands, Tokelau, and the Ross Dependency for a period, or periods in the aggregate, of more than 31 days during a period of what would otherwise have been a 183-day period; and
 - (b) pay his or her repayment obligation in full when, or before, it falls due each tax year; and
 - (c) provide the Commissioner with the information described in section 14A(2), and section 14A(3) and (4) apply accordingly.
- (2) In specifying under section 38AE(2) when, or the basis on which, an applicant under section 38AE(1)(g) is treated as being personally present in New Zealand for the purposes of section 38AB, the Commissioner must apply sections 38AC(1) to (4) and 38AD as if references in those sections to “New Zealand” are references to “New Zealand (which includes Niue, the Cook Islands, Tokelau, and the Ross Dependency)”, and section 38AK(2)(b) must be interpreted accordingly.

Section 38AIA: inserted, on 7 March 2010, by section 13 of the Student Loan Scheme (Exemptions and Miscellaneous Provisions) Amendment Act 2010 (2010 No 3).

38AJ Power of Commissioner to grant exemption to borrowers undertaking study at post-graduate or under-graduate level overseas

- (1) On the application of a borrower who does not satisfy the 183-day requirement in section 38AB, the Commissioner may, if the Commissioner considers that it is fair and reasonable to do so, grant an exemption to the 183-day requirement to that borrower if the principal reason that the borrower does not satisfy the 183-day requirement is that the borrower is undertaking full-time study at post-graduate or under-graduate level overseas.
- (2) An applicant under subsection (1)—
 - (a) must provide the Commissioner with a document from the NZQA verifying that the applicant's course is at post-graduate or under-graduate level for the purposes of this section; and
 - (b) must provide the Commissioner with evidence from the applicant's overseas education provider verifying that the applicant is enrolled full-time in the course verified by the NZQA; and
 - (c) must supply the Commissioner with all other information, and in the manner, that the Commissioner may reasonably require in order to establish whether the ground for the grant of an exemption under subsection (1) applies; and
 - (d) must provide the Commissioner with the information specified in section 14A(2), and section 14A(3) and (4) applies accordingly.
- (3) If the Commissioner grants an exemption under subsection (1), the Commissioner must specify either—
 - (a) the start and end dates for the period for which the relevant borrower is treated as being personally present in New Zealand for the purposes of section 38AB; or
 - (b) the conditions that must apply or be met in order for the relevant borrower to be treated as being personally present in New Zealand for the purposes of section 38AB.
- (4) In this section,—

NZQA means the New Zealand Qualifications Authority established under Part 20 of the Education Act 1989

study at post-graduate or under-graduate level means study that is assessed by the NZQA as being equivalent to level 7, 8, 9, or 10 on the New Zealand Register of Quality Assured Qualifications developed by the Authority under section 253(1)(c) of the Education Act 1989.

Section 38AJ: inserted, on 22 December 2005, by section 7 of the Student Loan Scheme Amendment Act 2005 (2005 No 122).

Section 38AJ heading: amended, on 1 April 2007, by section 15(1) of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

Section 38AJ(1): amended, on 1 April 2007, by section 15(2) of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

Section 38AJ(2)(a): amended, on 1 April 2007, by section 15(3)(a) of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

Section 38AJ(2)(a): amended, on 1 April 2007, by section 15(3)(b) of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

Section 38AJ(2)(b): amended, on 1 April 2007, by section 15(4) of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

Section 38AJ(2)(c): amended, on 1 April 2007, by section 15(5) of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

Section 38AJ(2)(d): added, on 1 April 2007, by section 15(5) of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

Section 38AJ(4) **study at post-graduate or under-graduate level**: amended, on 1 April 2007, by section 15(6)(a) of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

Section 38AJ(4) **study at post-graduate or under-graduate level**: amended, on 1 April 2007, by section 15(6)(b) of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

38AJA Power of Commissioner to grant exemption to borrowers undertaking full-time overseas study

- (1) On the application of a borrower who does not satisfy the 183-day requirement in section 38AB, the Commissioner may, if the Commissioner considers that it is fair and reasonable to do so, grant an exemption to the 183-day requirement to that borrower if either subsection (2) or (3) applies.
- (2) This subsection applies if the principal reason that the borrower does not satisfy the 183-day requirement is that the borrower is undertaking study that—
 - (a) the borrower is enrolled in with a New Zealand tertiary education provider; and

- (b) if it is completed successfully, will count towards a qualification offered by a New Zealand tertiary education provider; and
 - (c) is assessed by the NZQA as being equivalent to level 7 or above on the New Zealand Register of Quality Assured Qualifications developed by the NZQA under section 253(1)(c) of the Education Act 1989; and
 - (d) is full-time and undertaken overseas as part of either—
 - (i) a formal exchange programme approved by the New Zealand Government; or
 - (ii) a formal agreement between a New Zealand tertiary education provider and an overseas tertiary provider.
- (3) This subsection applies if the principal reason that the borrower does not satisfy the 183-day requirement is that the borrower is undertaking study that—
- (a) the borrower is enrolled in with a New Zealand tertiary education provider; and
 - (b) if it is completed successfully, will count towards a qualification offered by a New Zealand tertiary education provider; and
 - (c) is assessed by the NZQA as being equivalent to level 8 or above on the New Zealand Register of Quality Assured Qualifications developed by the NZQA under section 253(1)(c) of the Education Act 1989; and
 - (d) is full-time and undertaken overseas; and
 - (e) cannot be completed in New Zealand.
- (4) An applicant under subsection (1)—
- (a) must provide the Commissioner with evidence from the applicant's New Zealand tertiary education provider verifying that the applicant's study meets the requirements of either—
 - (i) subsection (2)(b), (c), and (d)(i) or (ii); or
 - (ii) subsection (3)(b) to (e); and
 - (b) must supply the Commissioner with all other information, and in the manner, that the Commissioner may reasonably require in order to establish whether the ground for the grant of an exemption under subsection (1) applies; and

- (c) must provide the Commissioner with the information specified in section 14A(2), and section 14A(3) and (4) apply accordingly.
- (5) If the Commissioner grants an exemption under subsection (1), the Commissioner must specify either—
 - (a) the start and end dates for the period for which the relevant borrower is treated as being personally present in New Zealand for the purposes of section 38AB; or
 - (b) the conditions that must apply or be met in order for the relevant borrower to be treated as being personally present in New Zealand for the purposes of section 38AB.
- (6) In this section,—

NZQA means the New Zealand Qualifications Authority established under Part 20 of the Education Act 1989

overseas tertiary provider means an institution or organisation that—

 - (a) provides tertiary education or training; and
 - (b) is based in a country other than New Zealand; and
 - (c) is registered by an appropriate education authority in that country.
- (7) This section applies with effect from 31 March 2007.

Section 38AJA: inserted, on 7 March 2010, by section 14 of the Student Loan Scheme (Exemptions and Miscellaneous Provisions) Amendment Act 2010 (2010 No 3).

38AK Terms of full interest write-off

- (1) When a borrower is entitled to a full interest write-off under section 38AA, the amount of interest calculated on the borrower's loan balance for the days to which this subsection applies must be reduced to zero.
- (2) Subsection (1)—
 - (a) applies only to days on or after 1 April 2006 on which a borrower—
 - (i) is personally present in New Zealand in accordance with the requirements of sections 38AB to 38AD; or
 - (ii) is treated as being personally present in New Zealand under section 38AB(2), 38AE(2), 38AJ(3), or 38AJA(5); and

- (b) does not apply to the days on which a borrower is personally present in New Zealand but is treated as being personally absent from New Zealand under section 38AC(2).

Section 38AK: inserted, on 22 December 2005, by section 7 of the Student Loan Scheme Amendment Act 2005 (2005 No 122).

Section 38AK(2)(a)(ii): amended, on 7 March 2010, by section 15 of the Student Loan Scheme (Exemptions and Miscellaneous Provisions) Amendment Act 2010 (2010 No 3).

38AL Commissioner's discretion for initial 183-day period for new borrowers

- (1) The Commissioner may at his or her discretion, if the Commissioner considers that it is fair and reasonable to do so, reduce the amount of interest calculated on an eligible borrower's loan balance to zero for interest chargeable during some or all of the period starting on the day on which the borrower first received a student loan and ending 182 days after that day.
- (2) If the Commissioner reduces the amount of interest calculated on an eligible borrower's loan balance to zero under subsection (1), the Commissioner must specify the start and end dates for the period for which the amount of interest is reduced to zero.
- (3) The Commissioner may specify a start date of 1 April 2006, or any date after that date.
- (4) In this section,—
eligible borrower means a borrower who—
(a) first received a student loan after 1 April 2006; and
(b) was personally absent from New Zealand for a period of 183 days or less during the period starting on the day on which the borrower first received a student loan and ending 182 days after that date

first received, in relation to a particular borrower, means each time that borrower's loan balance increases from zero or less to greater than zero.

Section 38AL: inserted, on 28 March 2007, by section 16 of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

38AM Full interest write-off for quick repayment of loan balance

- (1) This section applies to a borrower who—
 - (a) satisfies the 183-day requirement in section 38AB(1) and (2); and
 - (b) fully repays his or her loan balance before the end of the 183-day period.
- (2) The amount of interest calculated on the loan balance of a borrower to whom this section applies must be reduced to zero for the period—
 - (a) beginning on the first day of the 183-day period; and
 - (b) ending on the day on which the borrower fully repays his or her loan balance.
- (3) This section applies with effect from 31 March 2006.

Section 38AM: inserted, on 7 March 2010, by section 16 of the Student Loan Scheme (Exemptions and Miscellaneous Provisions) Amendment Act 2010 (2010 No 3).

Full interest write-off for certain students
[Repealed]

Heading: repealed, on 1 April 2007, by section 17(1) of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

38A Full interest write-off for full-time, full-year students

[Repealed]

Section 38A: repealed, on 1 April 2007, by section 17(2) of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

38B Full interest write-off for part-time or part-year students

[Repealed]

Section 38B: repealed, on 1 April 2007, by section 17(2) of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

38C Amount of full interest write-off

[Repealed]

Section 38C: repealed, on 1 April 2007, by section 17(2) of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

38D Conditions for full-interest write-off

[Repealed]

Section 38D: repealed, on 1 April 2007, by section 17(2) of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

Base interest write-off
[Repealed]

Heading: repealed, on 1 April 2007, by section 17(1) of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

39 Base interest write-off where income below repayment threshold

[Repealed]

Section 39: repealed, on 1 April 2007, by section 17(2) of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

Interest reduction
[Repealed]

Heading: repealed, on 1 April 2007, by section 17(1) of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

40 Interest reduction where base interest exceeds 50% of repayment obligation

[Repealed]

Section 40: repealed, on 1 April 2007, by section 17(2) of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

41 Conditions for base interest write-off

[Repealed]

Section 41: repealed, on 1 April 2007, by section 17(2) of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

Other provisions relating to interest

42 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 tax year, paid an amount to the Commissioner before the transfer of the loan to the Com-

missioner 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), 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 limits the application of section 120 of the Tax Administration Act 1994 (as in force before the enactment of the Tax Administration Amendment Act (No 2) 1996),—
 - (a) where it applies by virtue of section 36(2) of the Tax Administration Amendment Act (No 2) 1996; and
 - (b) which is to be construed as if—
 - (i) references in that section to a competent objection were references to a challenge a borrower is entitled to make under Part 8A of the Tax Administration Act 1994 as it applies by virtue of Part 5; and
 - (ii) the proviso to section 120(1) of the Tax Administration Act 1994 read “provided that where the amount of the disputed repayment obligation that has been paid is less than \$100 no interest shall be payable under this section.”; and
 - (iii) all other changes necessary to give effect to this section were made.

Section 42(2): amended, on 1 April 2005 (effective for 2005–06 tax year and later tax years, except when the context requires otherwise), by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 42(4): substituted, on 1 October 1996, by section 4(1) of the Student Loan Scheme Amendment Act 1996 (1996 No 63).

43 Interest statement

- (1) The Commissioner shall, as soon as practicable after the end of any tax year, give any borrower who was charged with interest in that tax year written notice of the amount of interest charged in that tax year.

- (2) Except where the person establishes by proceedings under Part 8A of the Tax Administration Act 1994 that the person should not have been charged with that amount of interest, the amount of interest charged shall be taken to be correct.
- (3) Subsection (2) does not prevent the Commissioner from amending the amount of interest charged if this is necessary to correct an error.
- (4) If the amount of interest charged is corrected, the Commissioner must give written notice to the relevant borrower as soon as practicable after the amendment.

Section 43(1): amended, on 1 April 2005 (effective for 2005–06 tax year and later tax years, except when the context requires otherwise), by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 43(2): amended, on 1 October 1996, by section 5(1) of the Student Loan Scheme Amendment Act 1996 (1996 No 63).

Section 43(3): added, on 28 March 2007, by section 18 of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

Section 43(4): added, on 28 March 2007, by section 18 of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

Penalties for late payment

44 Late payment penalties

- (1) A borrower is liable to pay a late payment penalty if the borrower does not pay by the due date—
 - (a) any part of a terminal repayment obligation; or
 - (b) any part of an instalment of an interim repayment; or
 - (c) any part of an overseas based repayment obligation; or
 - (d) any amount, being a loan balance or interest, that is payable as a result of a demand made under a loan contract; or
 - (e) any underestimation penalty imposed under section 44A.
- (2) The late payment penalty the borrower is liable to pay under subsection (1) is—
 - (a) 1.5% of the amount of the default; and
 - (b) 1.5% of the amount of the default as at each day that falls 1 month after the day on which a penalty is imposed under paragraph (a) or under this paragraph.
- (3) For the purposes of this section—

amount of the default means:

- (a) in respect of a terminal repayment obligation, the amount of the terminal repayment obligation not paid by the due date:
- (b) in respect of an interim repayment, the amount that is the smallest of—
 - (i) the difference between 105% of the residual repayment obligation for the immediately preceding tax year and the amount of interim repayments made; and
 - (ii) the difference between the residual repayment obligation for the tax year and the amount of interim repayments made; and
 - (iii) the difference between the amount of the interim repayment last notified by the Commissioner as due by the third instalment date and the amount of the interim repayments made:
- (c) the amount of any instalment of an interim repayment due after the third instalment date not paid by the due date:
- (d) in respect of an overseas based repayment obligation, the amount of any overseas based repayment obligation not paid by the last day of the tax year;—

and includes the amount of any late payment penalty payable under this section

due date means—

- (a) for a terminal repayment obligation, the date specified in Schedule 3 of the Income Tax Act 2007 or any later date specified in the notice of assessment:
- (b) for any instalment of an interim repayment due on or before the third instalment date, the date specified in Schedule 3 of the Income Tax Act 2007 as the date for payment of the third instalment:
- (c) for any instalment of an interim repayment due after the third instalment date, the date specified in the notice of assessment as the due date:
- (d) for an overseas based repayment obligation, the last day of the tax year.

Section 44: substituted, on 26 July 1996 (applying to any amount due on or after 7 February 1996), by section 6(1) of the Student Loan Scheme Amendment Act 1996 (1996 No 63).

Section 44(1)(c): amended, on 1 April 2007, by section 19(1) of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

Section 44(1)(d): amended, on 7 March 2010, by section 17 of the Student Loan Scheme (Exemptions and Miscellaneous Provisions) Amendment Act 2010 (2010 No 3).

Section 44(1)(e): added, on 23 September 1997 (applying to the 1998–99 and subsequent income years), by section 4 of the Student Loan Scheme Amendment Act 1997 (1997 No 79).

Section 44(2)(a): amended, on 1 April 2007, by section 19(2) of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

Section 44(2)(b): amended, on 1 April 2007, by section 19(2) of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

Section 44(3) **amount of the default** paragraph (d): amended, on 1 April 2007, by section 19(3)(a) of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

Section 44(3) **amount of the default** paragraph (d): amended, on 1 April 2007, by section 19(3)(b) of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

Section 44(3) **amount of the default** paragraph (d): amended, on 1 April 2005 (effective for 2005–06 tax year and later tax years, except when the context requires otherwise), by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 44(3) **due date** paragraph (a): amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 44(3) **due date** paragraph (b): amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 44(3) **due date** paragraph (d): amended, on 1 April 2007, by section 19(4) of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

Section 44(3) **due date** paragraph (d): amended, on 1 April 2005 (effective for 2005–06 tax year and later tax years, except when the context requires otherwise), by section YA 2 of the Income Tax Act 2004 (2004 No 35).

44A Underestimation penalty where interim repayments underestimated as at final instalment date

- (1) If, at the due date for payment of the third instalment, a periodic payer has estimated the interim repayment obligation and—
 - (a) the estimate applying at the third instalment date is less than 80% of the periodic payer’s residual repayment obligation and is less than the periodic payer’s interim

- repayment obligation would have been had the periodic payer not estimated; and
- (b) the amount of interim repayments made on or before the third instalment date is less than 80% of the periodic payer's residual repayment obligation for the tax year—the person (subject to subsection (3)) is liable to pay to the Commissioner, by way of penalty, an amount calculated in accordance with subsection (2).
- (2) In relation to any tax year, the amount of underestimation penalty payable under this section is an amount calculated in accordance with the following formula:
- $$(a - b) \times 10\%$$
- where—
- a is the periodic payer's residual repayment obligation for the tax year
- b is the greater of—
- (i) the amount of the periodic payer's estimate, being that estimate applying at the due date for payment of the third instalment; and
- (ii) the amount of the interim repayments paid on or before the due date for payment of the third instalment.
- (3) If the Commissioner is satisfied that a periodic payer has become liable for underestimation penalty for a tax year under this section by reason of—
- (a) the enactment of any Act amending the Income Tax Act 2007 or the making of any regulation or Order in Council relating to income tax, on or after 1 March in that tax year and on or before 20 April in the immediately succeeding tax year; or
- (b) the Commissioner making public, on or after 1 March in that tax year and on or before 20 April in the immediately succeeding tax year, any ruling in relation to any provision of the Income Tax Act 2007 and that ruling is different from that previously made public by the Commissioner in relation to that provision; or
- (c) the adoption by the person of an incorrect tax position which is corrected for the tax year,—

the Commissioner shall, to the extent that the penalty is higher than it would otherwise have been, write off the penalty or a part thereof.

- (4) A penalty imposed under this section is deemed to be due and payable on—
- (a) the seventh day of the month specified in Schedule 13, Part A of the Income Tax Act 2004 as the month for payment of the borrower's terminal tax, unless the month is January; and
 - (b) 15 January, when January is the month specified in Schedule 3, Part A of the Income Tax Act 2007.

Section 44A: inserted, on 23 September 1997 (applying to the 1998–99 and subsequent income years), by section 5 of the Student Loan Scheme Amendment Act 1997 (1997 No 79).

Section 44A(1): amended, on 25 November 2003 (applying to estimated interim repayment obligations arising in respect of the 1998–99 and subsequent income years), by section 9(1)(a) of the Student Loan Scheme Amendment Act (No 2) 2003 (2003 No 124).

Section 44A(1)(a): amended, on 25 November 2003 (applying to estimated interim repayment obligations arising in respect of the 1998–99 and subsequent income years), by section 9(1)(b) of the Student Loan Scheme Amendment Act (No 2) 2003 (2003 No 124).

Section 44A(1)(a): amended, on 25 November 2003 (applying to estimated interim repayment obligations arising in respect of the 1998–99 and subsequent income years), by section 9(1)(c) of the Student Loan Scheme Amendment Act (No 2) 2003 (2003 No 124).

Section 44A(1)(b): amended, on 1 April 2005 (effective for 2005–06 tax year and later tax years, except when the context requires otherwise), by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 44A(1)(b): amended, on 25 November 2003 (applying to estimated interim repayment obligations arising in respect of the 1998–99 and subsequent income years), by section 9(1)(d) of the Student Loan Scheme Amendment Act (No 2) 2003 (2003 No 124).

Section 44A(2): amended, on 1 April 2005 (effective for 2005–06 tax year and later tax years, except when the context requires otherwise), by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 44A(2) formula item a: amended, 1 April 2005 (effective for 2005–06 tax year and later tax years, except when the context requires otherwise), by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 44A(2) formula item a: amended, on 25 November 2003 (applying to estimated interim repayment obligations arising in respect of the 1998–99 and subsequent income years), by section 9(2) of the Student Loan Scheme Amendment Act (No 2) 2003 (2003 No 124).

Section 44A(3): amended, on 1 April 2005 (effective for 2005–06 tax year and later tax years, except when the context requires otherwise), by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 44A(3)(a): amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 44A(3)(a): amended, on 1 April 2005 (effective for 2005–06 tax year and later tax years, except when the context requires otherwise), by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 44A(3)(b): amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 44A(3)(b): amended, on 1 April 2005 (effective for 2005–06 tax year and later tax years, except when the context requires otherwise), by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 44A(3)(c): amended, on 1 April 2005 (effective for 2005–06 tax year and later tax years, except when the context requires otherwise), by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 44A(4)(a): amended, on 1 April 2005 (effective for 2005–06 tax year and later tax years, except when the context requires otherwise), by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 44A(4)(b): amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

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

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

Section 44B: inserted, on 28 March 2007, by section 20 of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

45 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.

Ten percent bonus for excess repayments

Heading: substituted, on 1 April 2010, by section 4 of the Student Loan Scheme (Repayment Bonus) Amendment Act 2009 (2009 No 33).

45A Interpretation

In this section and sections 45B to 45H, unless the context otherwise requires,—

10% bonus means the bonus specified in, as appropriate, section 45C(2), 45D(2), or 45E(2)

excess repayment has the meaning set out in section 45B

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

Section 45A: substituted, on 1 April 2010, by section 4 of the Student Loan Scheme (Repayment Bonus) Amendment Act 2009 (2009 No 33).

45B Meaning of excess repayment

- (1) For the purposes of this Act, an **excess repayment**, in respect of a borrower, is any amount paid to the Commissioner in respect of a tax year in excess of that borrower's repayment obligation for that tax year.
- (2) However, the following are not excess repayments:
 - (a) any amount paid in respect of a tax year when a repayment obligation, repayment deduction, interim repayment, terminal repayment obligation, or penalty is, or will be, due and payable in respect of that tax year or any prior tax year (the **due amount**), except to the extent that the amount paid is in excess of all due amounts:
 - (b) any amount that was paid before 1 April 2009:
 - (c) any amount that is paid in respect of a tax year that ended on or before 31 March 2009.
- (3) Excess repayments may be made—
 - (a) by any means, including repayment deductions, interim repayments, and voluntary payments; and
 - (b) in 1 or more payments in respect of a tax year; and
 - (c) in respect of a tax year, at any time during that tax year and, if the borrower is a periodic payer, at any time up to and including the due date for payment of the final instalment of that borrower's interim repayments for that tax year.

Section 45B: substituted, on 1 April 2010, by section 4 of the Student Loan Scheme (Repayment Bonus) Amendment Act 2009 (2009 No 33).

45C Borrower's entitlement to 10% bonus for total excess repayments of \$500 or more

- (1) Subsection (2) applies to a borrower if—
 - (a) the borrower's total excess repayments in respect of a tax year are \$500 or more; and
 - (b) at the beginning of the tax year in respect of which the excess repayments were made, the borrower's IRD loan balance was \$550 or more.
- (2) If this subsection applies to a borrower, the Commissioner must reduce the borrower's IRD loan balance by an amount equal to 10% of the borrower's total excess repayments in respect of the relevant tax year.

Section 45C: substituted, on 1 April 2010, by section 4 of the Student Loan Scheme (Repayment Bonus) Amendment Act 2009 (2009 No 33).

45D Borrower's entitlement to bonus if IRD loan balance is less than \$550

- (1) Subsection (2) applies to a borrower if—
 - (a) the borrower's final excess repayment in respect of a tax year is \$500; and
 - (b) at the date on which the final excess repayment was made, the borrower's IRD loan balance was more than \$500 but less than \$550.
- (2) If this subsection applies to a borrower, the Commissioner must reduce the borrower's IRD loan balance to zero.

Section 45D: substituted, on 1 April 2010, by section 4 of the Student Loan Scheme (Repayment Bonus) Amendment Act 2009 (2009 No 33).

45E Borrower may be entitled to 10% bonus if under-deduction is due to PAYE system

- (1) Subsection (2) applies to a borrower if—
 - (a) the borrower's total excess repayments in respect of a tax year are less than \$500; and
 - (b) the difference between the borrower's total excess repayments in respect of that tax year and \$500 (the **short-fall**) is because of an under-deduction through the PAYE system; and
 - (c) the shortfall meets 1 or more of the following criteria:
 - (i) it is less than \$20:

- (ii) it is due to the borrower commencing or ceasing employment;
 - (iii) it is due to an action or an omission of the borrower's employer; and
 - (d) the Commissioner considers that the borrower's total excess repayments in respect of that tax year would have been \$500 or more if the under-deduction referred to in paragraph (b) had not occurred; and
 - (e) at the beginning of the tax year in respect of which the excess repayments were made, the borrower's IRD loan balance was \$550 or more.
- (2) If this subsection applies to a borrower, the Commissioner must reduce the borrower's IRD loan balance by an amount equal to 10% of the borrower's total excess repayments in respect of the relevant tax year that the Commissioner considers would have been made if the under-deduction referred to in subsection (1)(b) had not occurred.

Section 45E: inserted, on 1 April 2010, by section 4 of the Student Loan Scheme (Repayment Bonus) Amendment Act 2009 (2009 No 33).

45F Manner in which 10% bonus is to be provided and restriction on amount of 10% bonus

- (1) If a borrower's IRD loan balance will be fully repaid as a result of it being reduced by a 10% bonus, that bonus must be credited to that borrower's IRD loan balance as at the date on which the final excess repayment was made.
- (2) If a borrower's loan balance will not be fully repaid as a result of being reduced by a 10% bonus, that bonus must be credited to the borrower's loan balance with effect from—
 - (a) 1 April in the tax year that follows the tax year for which the excess repayments were made; or
 - (b) any other date that the Commissioner considers appropriate if the borrower dies or is declared bankrupt.
- (3) Nothing in subsection (1) or (2) requires the Commissioner to credit a 10% bonus to a borrower's IRD loan balance before the Commissioner has determined that borrower's total excess repayments in respect of a tax year.

- (4) The total amount of a 10% bonus that may be provided to a borrower must not exceed an amount equal to one-eleventh of that borrower's IRD loan balance on either—
- (a) the date on which the 10% bonus is provided; or
 - (b) an earlier date determined by the Commissioner, at his or her discretion, that is within the relevant tax year.
- (5) The Commissioner may only determine a date under subsection (4)(b) if, in respect of a borrower,—
- (a) 1 or more excess repayments are made in respect of a tax year; and
 - (b) a final excess repayment was made in respect of the same tax year.

Section 45F: inserted, on 1 April 2010, by section 4 of the Student Loan Scheme (Repayment Bonus) Amendment Act 2009 (2009 No 33).

Section 45F(2): substituted, on 30 August 2011, by section 222 of the Student Loan Scheme Act 2011 (2011 No 62).

45G Consequences of refund

- (1) If a borrower elects that the whole or part of an excess repayment in respect of a tax year be refunded, any 10% bonus that was provided to that borrower must be reduced to an amount equal to 10% of the remaining excess repayment (if any) in respect of the tax year that is \$500 or more.
- (2) If the 10% bonus was provided under section 45E(2), then the remaining excess repayment (if any) in respect of the tax year that is \$500 or more must be determined by reference to the borrower's total excess repayments in respect of the relevant tax year that the Commissioner considered (under section 45E) would have been made if the under-deduction referred to in section 45E(1)(b) had not occurred.

Section 45G: inserted, on 1 April 2010, by section 4 of the Student Loan Scheme (Repayment Bonus) Amendment Act 2009 (2009 No 33).

45H Commissioner must advise borrowers to seek financial advice

The Commissioner must, in all material that provides information about repayment bonuses and that is made available to all borrowers, include a statement to the effect that borrowers

are advised to seek appropriate financial advice before making excess repayments in order to obtain a 10% bonus.

Section 45H: inserted, on 1 April 2010, by section 4 of the Student Loan Scheme (Repayment Bonus) Amendment Act 2009 (2009 No 33).

45I Application of sections 45A to 45H

Sections 45A to 45H apply with effect from 31 March 2009.

Section 45I: inserted, on 1 April 2010, by section 4 of the Student Loan Scheme (Repayment Bonus) Amendment Act 2009 (2009 No 33).

Enforcement

46 Recovery of repayment obligation

- (1) Any amount payable under this Act by a borrower shall be recoverable as a debt due to the Crown.
- (2) Sections 156 to 165 of the Tax Administration Act 1994, 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
 - (b) the reference to an assessment in section 162 were a reference to an assessment made under Part 2 or Part 3; and
 - (c) every reference to “this Act” in sections 164 and 165 were a reference to this Act.

Compare: 1985 No 141 s 44

Section 46(2): amended, on 28 March 2007, by section 22 of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

Section 46(2): amended, on 1 April 1995 (applying with respect to the tax on income derived in 1995–96 and subsequent income years), by section YB 1 of the Income Tax Act 1994 (1994 No 164).

Section 46(2)(b): amended, on 1 April 1995 (applying with respect to the tax on income derived in 1995–96 and subsequent income years), by section YB 1 of the Income Tax Act 1994 (1994 No 164).

Section 46(2)(c): amended, on 1 April 1995 (applying with respect to the tax on income derived in 1995–96 and subsequent income years), by section YB 1 of the Income Tax Act 1994 (1994 No 164).

*Date on which payments due***47 Payment date not otherwise specified**

Any amount not otherwise due and payable in accordance with this Act shall be due and payable 1 month after the date of issue of the assessment or notice.

*Dates on which payments deemed to be received
and credited***48 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.

49 Date on which payments deemed to have been credited

- (1) For the purpose of calculating interest payable,—
- (a) any payment other than a repayment deduction shall be deemed to have reduced the IRD 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 IRD 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.
- (2) Other than for the purpose of calculating interest, any payment made under this Act or under the loan contract in a tax year shall be credited to the repayment obligation for that tax year at the time when the Commissioner makes an assessment of that obligation.

Section 49(2): amended, on 1 April 2005 (effective for 2005–06 tax year and later tax years, except when the context requires otherwise), by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 49(2): amended, on 1 April 2005 (effective for 2005–06 tax year and later tax years, except when the context requires otherwise), pursuant to section YA 2 of the Income Tax Act 2004 (2004 No 35).

50 Priority of payments

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

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

Section 50: substituted, on 28 March 2007, by section 23 of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

Relief

51 Power of Commissioner in respect of small amounts

- (1) The Commissioner may refrain from refunding any repayment obligation (or part of a repayment obligation) payable to a borrower, or any repayment deduction (or part of a repayment deduction) payable to an employer or a PAYE intermediary, if—
 - (a) the amount payable to a borrower in any tax year is \$5 or less; or
 - (b) the amount payable to an employer or a PAYE intermediary in any period is \$5 or less.
- (2) The Commissioner may refrain from issuing a notice of assessment or refrain from collecting and write off any repayment obligation (or part of a repayment obligation) payable by a borrower, or any repayment deduction (or part of a repayment deduction) payable by an employer or a PAYE intermediary, if—
 - (a) the amount payable by a borrower in any tax year is \$20 or less; or
 - (b) the amount payable by an employer or a PAYE intermediary in any period is \$20 or less.
- (3) The Commissioner may refrain from collecting payment of a repayment obligation (or part of a repayment obligation) if that repayment obligation (or part of a repayment obligation)—
 - (a) is more than \$20 but less than \$334; and
 - (b) has not been paid by the due date (as that term is defined in section 44).
- (4) Any amount that, under subsection (3), the Commissioner does not collect from a borrower is subject to interest at the total interest rate on the daily amount outstanding (except to the extent that this Act otherwise requires).
- (5) This section applies despite anything in this Act.

Section 51: substituted, on 1 October 2007, by section 24 of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

Section 51(3)(a): amended, on 7 March 2010, by section 18 of the Student Loan Scheme (Exemptions and Miscellaneous Provisions) Amendment Act 2010 (2010 No 3).

51A Commissioner may refrain from collecting amounts between \$5 and \$333*[Expired]*

Section 51A: expired, on 1 October 2007, by section 51A(4).

52 No liability in respect of small amounts of penalty

- (1) The Commissioner shall not charge, and there 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 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)),—
 - (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 during which the default continues.
- (3) This section applies only to borrowers' obligations under this Act.

Compare: 1976 No 65 s 411A

Section 52(3): added, on 1 April 1997, by section 7(1) of the Student Loan Scheme Amendment Act 1996 (1996 No 63).

53 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 by or on behalf 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.
- (1A) An application for relief may be made—
 - (a) by telephone; or
 - (b) in writing; or

- (c) in any other manner acceptable to the Commissioner.
- (1B) However, the Commissioner may require an application for relief to be made in writing.
- (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).
- (3) If the amount of any penalty is reduced, the Commissioner shall apply any amount overpaid in accordance with section 56 or section 57.
- (4) This section applies only to borrowers' obligations under this Act.

Compare: 1976 No 65 s 413

Section 53(1): amended, on 28 March 2007, by section 26(1) of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

Section 53(1A): inserted, on 28 March 2007, by section 26(2) of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

Section 53(1B): inserted, on 28 March 2007, by section 26(2) of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

Section 53(4): added, on 1 April 1997, by section 8 of the Student Loan Scheme Amendment Act 1996 (1996 No 63).

54 Borrowers may apply for hardship relief

- (1) A borrower may apply to the Commissioner for 1 or more of the following:
 - (a) hardship relief for any tax year prior to the current tax year;
 - (b) hardship relief for the current tax year;
 - (c) hardship relief for the next tax year.
- (2) An application under subsection (1)(c) must be made on or before 31 March in the tax year that immediately precedes the tax year for which relief is sought.
- (3) An application may be made—
 - (a) by telephone; or
 - (b) in writing; or
 - (c) in any other manner acceptable to the Commissioner.
- (4) However, the Commissioner may require an application to be made in writing.

Section 54: substituted, on 1 April 2007, by section 27 of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

Section 54(1)(a): substituted, on 7 March 2010, by section 19 of the Student Loan Scheme (Exemptions and Miscellaneous Provisions) Amendment Act 2010 (2010 No 3).

55 Hardship relief for any tax year prior to current tax year

- (1) If an application is made under section 54(1)(a), the Commissioner may, for any period the Commissioner considers equitable, retrospectively decrease that borrower's repayment obligation for any tax year prior to the current tax year if the Commissioner—
- (a) is satisfied that payment of that repayment obligation is causing, or would cause, serious hardship to the borrower; or
 - (b) considers that there are other special reasons that make it fair and reasonable to do so.
- (2) Except as set out in section 55A, the Commissioner must not refund any amount that was deducted or paid (if any) to meet a repayment obligation for any tax year prior to the current tax year.

Section 55: substituted, on 7 March 2010, by section 20 of the Student Loan Scheme (Exemptions and Miscellaneous Provisions) Amendment Act 2010 (2010 No 3).

55A Hardship relief for tax year immediately prior to current tax year may include refund

- (1) If an application is made under section 54(1)(a), the Commissioner may, for any period the Commissioner considers equitable, refund any amount that was deducted or paid to meet a repayment obligation in the tax year immediately prior to the current tax year if the Commissioner—
- (a) is satisfied that payment of that repayment obligation is causing, or would cause, serious hardship to the borrower; or
 - (b) considers that there are other special reasons that make it fair and reasonable to do so.
- (2) If the Commissioner refunds any amount to a borrower under subsection (1), the Commissioner must—
- (a) retrospectively decrease that borrower's repayment obligation for the relevant tax year; and

- (b) refund the whole or part of the portion of the repayment obligation that is the difference in assessment amounts.
- (3) A refund that is made under this section must be made in the manner required under section 184A of the Tax Administration Act 1994.

Section 55A: substituted, on 7 March 2010, by section 20 of the Student Loan Scheme (Exemptions and Miscellaneous Provisions) Amendment Act 2010 (2010 No 3).

55B Hardship relief for current tax year or next tax year

- (1) If an application is made under section 54(1)(b) or (c), the Commissioner may, for any period the Commissioner considers equitable, reduce any amount that must be deducted or paid in order to meet the repayment obligation assessed or to be assessed for the current tax year or the next tax year if the Commissioner—
 - (a) is satisfied that the amount being deducted or paid, or to be deducted or paid, has caused or will cause serious hardship to the borrower; or
 - (b) considers that there are other special reasons that make it fair and reasonable to do so.
- (2) If the Commissioner reduces the amount to be deducted or paid by a borrower under subsection (1), the Commissioner must, as appropriate, do one of the following:
 - (a) issue to that borrower a special repayment deduction rate certificate that varies the standard deduction rate in accordance with the Commissioner's decision under subsection (1) and, when assessed, reduce that borrower's repayment obligation accordingly; or
 - (b) reduce the percentage payable by that borrower under section 27(1) in accordance with the Commissioner's decision under subsection (1) and, when assessed, reduce that borrower's repayment obligation accordingly; or
 - (c) reduce that borrower's repayment obligation under section 34 in accordance with the Commissioner's decision under subsection (1).

- (3) If the Commissioner reduces the amount to be deducted from, or paid by, a borrower to zero, section 18 does not apply to that borrower for the period for which that reduction applies.
- (4) If a borrower has given his or her employer notice in accordance with section 18 and the Commissioner subsequently reduces the amount to be deducted from, or paid by, a borrower to zero, the borrower must give a copy of the special repayment deduction rate certificate to his or her employer as soon as practicable after it is issued.
- (5) Section 24F of the Tax Administration Act 1994 applies, with all necessary modifications, to any special repayment deduction rate certificate issued under this section.

Section 55B: substituted, on 7 March 2010, by section 20 of the Student Loan Scheme (Exemptions and Miscellaneous Provisions) Amendment Act 2010 (2010 No 3).

55C Effect of Commissioner's decision under section 55, 55A, or 55B

- (1) Any amount that, as a result of a decision under section 55, 55A, or 55B, the Commissioner has refunded to, or not collected from, a borrower is subject to interest at the total interest rate on the daily amount outstanding (except to the extent that this Act otherwise requires).
- (2) Section 56 or 57, as appropriate, applies to a borrower who, as a result of the Commissioner refraining from deducting or collecting any amount from that borrower, or reducing that borrower's repayment obligation, has had deductions made, or has made payments, in excess of that borrower's repayment obligations as set out in section 56(1)(a) to (e) or section 57(1).

Section 55C: inserted, on 1 April 2007, by section 27 of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

Section 55C heading: amended, on 7 March 2010, by section 21(1) of the Student Loan Scheme (Exemptions and Miscellaneous Provisions) Amendment Act 2010 (2010 No 3).

Section 55C(1): amended, on 7 March 2010, by section 21(2) of the Student Loan Scheme (Exemptions and Miscellaneous Provisions) Amendment Act 2010 (2010 No 3).

55D Borrowers must inform Commissioner of change of circumstances and Commissioner may review

- (1) A borrower who applies for hardship relief under section 54 must inform the Commissioner as soon as practicable if there is a change in the borrower's circumstances that—
 - (a) means that any information supplied to the Commissioner under section 54 is incorrect or inaccurate; or
 - (b) may affect whether or not a borrower would have been, or will continue to be, granted hardship relief under section 55, 55A, or 55B.
- (2) The Commissioner may, at the end of a tax year, review any decision he or she made during that year to grant hardship relief to a borrower.
- (3) If for any reason the Commissioner considers that the circumstances for the grant of that hardship relief have changed, the Commissioner may do either or both of the following:
 - (a) require the borrower to take any action that is required in order to reverse the effects of the hardship relief that was granted to the borrower;
 - (b) reinstate all or part of the repayment deduction or repayment obligation that would have applied to the borrower if hardship relief had not been granted to the borrower, and require payment of any amount that would have been due during the relevant tax year.

Section 55D: inserted, on 1 April 2007, by section 27 of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

Section 55D(1)(b): amended, on 7 March 2010, by section 22 of the Student Loan Scheme (Exemptions and Miscellaneous Provisions) Amendment Act 2010 (2010 No 3).

Refunds

56 Excess repayments made by borrowers

- (1) Where for any tax year a borrower has—
 - (a) had repayment deductions made in excess of the repayment obligation for that tax year; or
 - (b) paid interim repayments in excess of the repayment obligation for that tax year; or
 - (c) paid an amount in excess of the amount of any instalment of an interim repayment; or

- (d) made a voluntary payment in excess of the repayment obligation for that tax year; or
 - (e) paid an amount in excess of the amount of any penalty charged,—
- the Commissioner shall—
- (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 tax 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 apply any amount not so credited in accordance with either subsection (1A) or (1B).
 - (g) *[Repealed]*
- (1A) A borrower may elect that the whole or part of the amount not credited—
- (a) be refunded; or
 - (b) be applied to the loan balance.
- (1B) Where a borrower does not make an election, the Commissioner must apply the amount not credited to the loan balance.
- (2) Any election under subsection (1A)(b) shall be irrevocable.
- (2A) Where a borrower has not made an election, the borrower may request the Commissioner, within 6 months of the date on which the Commissioner issued the notice of assessment that showed the amount applied to the loan balance, to refund, in whole or in part, the amount so credited.
- (2B) A refund that is made under this section must comply with section 184A of the Tax Administration Act 1994.
- (3) Notwithstanding subsection (1), 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.

Compare: 1976 No 65 s 409(1)

Section 56 heading: amended, on 7 March 2010, by section 23 of the Student Loan Scheme (Exemptions and Miscellaneous Provisions) Amendment Act 2010 (2010 No 3).

Section 56(1): amended, on 1 April 2005 (effective for 2005–06 tax year and later tax years, except when the context requires otherwise), by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 56(1)(a): amended, on 1 April 2005 (effective for 2005–06 tax year and later tax years, except when the context requires otherwise), by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 56(1)(b): amended, on 1 April 2005 (effective for 2005–06 tax year and later tax years, except when the context requires otherwise), by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 56(1)(d): amended, on 1 April 2005 (effective for 2005–06 tax year and later tax years, except when the context requires otherwise), by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 56(1)(f): amended, on 1 April 2005 (effective for 2005–06 tax year and later tax years, except when the context requires otherwise), by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 56(1)(f): amended, on 27 March 1998 (applying to an overpayment arising on or after 1 April 1998), by section 2(1) of the Student Loan Scheme Amendment Act 1998 (1998 No 8).

Section 56(1)(g): repealed, on 27 March 1998 (applying to an overpayment arising on or after 1 April 1998), by section 2(2) of the Student Loan Scheme Amendment Act 1998 (1998 No 8).

Section 56(1A): inserted, on 27 March 1998 (applying to an overpayment arising on or after 1 April 1998), by section 2(3) of the Student Loan Scheme Amendment Act 1998 (1998 No 8).

Section 56(1B): inserted, on 27 March 1998 (applying to an overpayment arising on or after 1 April 1998), by section 2(3) of the Student Loan Scheme Amendment Act 1998 (1998 No 8).

Section 56(2): amended, on 27 March 1998 (applying to an overpayment arising on or after 1 April 1998), by section 2(4) of the Student Loan Scheme Amendment Act 1998 (1998 No 8).

Section 56(2A): inserted, on 27 March 1998 (applying to an overpayment arising on or after 1 April 1998), by section 2(5) of the Student Loan Scheme Amendment Act 1998 (1998 No 8).

Section 56(2B): inserted, on 20 May 1999 (applying to amounts paid in excess of borrowers' repayment obligations that arise on and after 1 April 2000), by section 4(1) of the Student Loan Scheme Amendment Act 1999 (1999 No 60).

57 Election by overseas based borrower to receive refund or to apply overpayment to loan balance

- (1) Where any overseas based borrower has paid an amount in excess of the overseas based repayment obligation for any year, the Commissioner shall—

- (a) credit the amount so paid in excess, so far as it extends, to any repayment obligation for any other tax 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
 - (b) notify the borrower of any amount so paid in excess that is not credited under paragraph (a).
- (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).
- (2A) Unless subsection (4) applies, a refund of an amount paid in excess of a borrower's repayment obligation must be made in the manner required under section 184A of the Tax Administration Act 1994.
- (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) shall be applied in reduction of the loan balance.

Section 57 heading: amended, on 1 April 2007, by section 28(1) of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

Section 57(1): amended, on 1 April 2007, by section 28(2) of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

Section 57(1)(a): amended, on 1 April 2005 (effective for 2005–06 tax year and later tax years, except when the context requires otherwise), by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 57(2A): inserted, on 7 October 1998 (applying to amounts paid in excess of borrowers' repayment obligations arising on and after 1 April 2000), by section 6(1) of the Student Loan Scheme Amendment Act (No 2) 1998 (1998 No 105).

57A Application of sections 57B to 57D

Sections 57B to 57D—

- (a) apply despite anything to the contrary in this Act; and
- (b) only apply to a refund that was elected or requested by a borrower under section 56, or requested by a borrower under section 57, on or after 30 November 2005.

Section 57A: inserted, on 22 December 2005, by section 11 of the Student Loan Scheme Amendment Act 2005 (2005 No 122).

57B No refunds for deductions or payments made prior to 31 March 2006

No refund may be made under section 56 or section 57 of any amount that was deducted or paid in excess (as set out in section 56(1)(a) to (e) or section 57(1)) prior to 31 March 2006.

Section 57B: inserted, on 22 December 2005, by section 11 of the Student Loan Scheme Amendment Act 2005 (2005 No 122).

Section 57B heading: amended, on 30 August 2011, by section 222 of the Student Loan Scheme Act 2011 (2011 No 62).

Section 57B: amended, on 30 August 2011, by section 222 of the Student Loan Scheme Act 2011 (2011 No 62).

57C Certain refunds not entitled to full interest write-off under section 38AK

- (1) This section applies to refunds made under section 56 or section 57 of any amount that was deducted or paid in excess (as set out in section 56(1)(a) to (e) or section 57(1)) during the period from 31 March 2004 to 31 March 2006 (referred to in this section and section 57D as a **relevant refund**).
- (2) The amount of any relevant refund must be excluded from the amount of a borrower's loan balance for the purposes of section 38AK(1).
- (3) Until such time as the relevant refund and all interest charged on it are repaid in full to the Commissioner,—
 - (a) all payments in respect of the borrower's repayment obligation must be off-set only against the portion of that borrower's loan balance that consists of the relevant refund that remains outstanding and the interest charged on it (the **priority portion**); and
 - (b) any amount deducted or paid in excess of the borrower's repayment obligation must be off-set only against the priority portion; and
 - (c) section 50 must be applied in order to give effect to paragraphs (a) and (b).
- (4) In their application to a borrower who is entitled to a full interest write-off under section 38AA and who has also received a relevant refund, all references in sections 38C, 39, and 40 to "IRD loan balance" and "loan balance" must be treated as being a reference only to that borrower's priority portion.

Section 57C: inserted, on 22 December 2005, by section 11 of the Student Loan Scheme Amendment Act 2005 (2005 No 122).

57D Commissioner's discretion in cases of significant financial hardship

- (1) On the application of a borrower, the Commissioner may exempt part or all of a relevant refund made to that borrower from section 57C.
- (2) The Commissioner may only exempt a relevant refund if the Commissioner is satisfied that that refund was necessary to alleviate the borrower's significant financial hardship.
- (3) If the Commissioner grants an exemption under subsection (1), the Commissioner must specify the amount of the relevant refund that is exempt from section 57C.
- (4) In this section, **significant financial hardship** includes significant financial difficulties that arise because of—
 - (a) a borrower's inability to meet minimum living expenses; or
 - (b) a borrower's inability to carry out his or her usual occupation because of his or her temporary or permanent illness, injury, or disability; or
 - (c) a borrower's inability to meet mortgage repayments on his or her principal family residence resulting in the mortgagee seeking to enforce the mortgage on the residence; or
 - (d) the cost of modifying a residence to meet special needs arising from a disability of a borrower or a borrower's dependant; or
 - (e) the cost of medical treatment for an illness or injury of a borrower or a borrower's dependant; or
 - (f) the cost of palliative care for a borrower or a borrower's dependant; or
 - (g) the cost of a funeral for a borrower's deceased dependant.

Section 57D: inserted, on 22 December 2005, by section 11 of the Student Loan Scheme Amendment Act 2005 (2005 No 122).

58 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,—

- (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
- (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, to the extent that in the Commissioner's opinion is equitable, 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.

Compare: 1976 No 65 s 410

58A Repayment obligation paid in excess may be refunded when assessments reopened

- (1) This section applies to any case where, upon investigation by the Commissioner of a borrower's liability for a repayment obligation for any tax year, the Commissioner is satisfied that—
 - (a) the repayment obligation assessed by the Commissioner was incorrect; and
 - (b) as a result, any repayment obligation has been paid in excess of the amount properly payable by that borrower (**a difference in assessment amounts**).
- (2) In any case to which this section applies,—
 - (a) the Commissioner must notify the relevant borrower of the amount of the difference in assessment amounts; and

- (b) the borrower may request the Commissioner, within 6 months of the date on which the Commissioner issued the notice, to refund the whole or part of the portion of the repayment obligation that is the difference in assessment amounts.
- (3) A refund that is made under this section must be made in the manner required under section 184A of the Tax Administration Act 1994.
- (4) If no request for a refund is made by a borrower within the required 6 months, the difference in assessment amounts must be applied in reduction of the relevant borrower's loan balance.
- (5) This section applies despite anything to the contrary in this Act.

Section 58A: inserted, on 22 December 2005, by section 12 of the Student Loan Scheme Amendment Act 2005 (2005 No 122).

Section 58A(1): amended, on 28 March 2007, by section 29 of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

59 Appropriation of refunds

A refund of repayment obligation or interest that has been paid in excess of the amount required under this Act may be made without further appropriation than this section.

Section 59: substituted, on 15 December 2000 (applying in respect of the income year commencing on 1 April 2000, and subsequent income years), by section 9 of the Student Loan Scheme Amendment Act (No 2) 2000 (2000 No 96).

Miscellaneous provisions

60 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
- (c) a borrower has an IRD loan balance that, as at the last day of any tax year, is less than \$20,—

the IRD loan balance shall be reduced to zero.

Section 60(c): amended, on 1 October 2007, by section 30 of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

Section 60(c): amended, on 1 April 2005 (effective for 2005–06 tax year and later tax years, except when the context requires otherwise), by section YA 2 of the Income Tax Act 2004 (2004 No 35).

60A Cancellation of interest if IRD loan balance repaid early

- (1) Subsection (2) applies if—
- (a) the Commissioner notifies a borrower of the borrower's outstanding IRD loan balance; and
 - (b) the borrower pays that loan balance in full (including interest charged to the date of notification) within 30 days of the date of notification.
- (2) The Commissioner must cancel the interest that accrues between the date of a notification and the date on which the payment is received.
- (3) This section applies to notifications provided on or after 1 June 1998.

Section 60A: inserted, on 27 March 1998, by section 3 of the Student Loan Scheme Amendment Act 1998 (1998 No 8).

Section 60A(1)(b): amended, on 7 March 2010, by section 24 of the Student Loan Scheme (Exemptions and Miscellaneous Provisions) Amendment Act 2010 (2010 No 3).

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

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

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

where—

- a is the amount of the repayment threshold referred to in section 2
- b is the number of days in the period.

Section 61: substituted, on 1 April 2007, by section 31 of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

62 Disclosure of information

- (1) For the purposes of this section, **authorised person** means—
- (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
- (b) any employee of the loan manager who is authorised by the chief executive to disclose and receive information under this section; or
 - (c) any employee of any tertiary institution who is authorised by the chief executive to disclose and receive information under this section.
- (1A) For the purposes of section 81(4)(g) of the Tax Administration Act 1994, **authorised person** includes the chief executive, or any officer of the specified department who is authorised by the chief executive to disclose or receive information under this section.
- (2) No obligation as to secrecy or other restriction imposed by any enactment or otherwise on the disclosure of information may prevent—
- (a) an authorised person from disclosing to another authorised person any information required for the purpose of enabling the Commissioner to correctly identify a borrower whose loan is to be transferred from the loan manager to the Commissioner for collection; or
 - (ab) *[Repealed]*
 - (b) the Commissioner from disclosing to the chief executive such information as may be necessary to investigate circumstances in which an authorised person considers—
 - (i) a student loan may have been improperly obtained; or
 - (ii) an attempt has been made to obtain a student loan by improper means.
- (2AA) *[Repealed]*
- (2A) For the purposes of subsection (2)(b), the information that the Commissioner may disclose includes the following:
- (a) particulars of any loan repayments made:
 - (b) the current loan balance:
 - (c) such particulars as the Commissioner may possess as to the whereabouts of a borrower:
 - (d) whether a person specified by the chief executive is a taxpayer:

- (e) in respect of an address specified by the chief executive, the number of borrowers recorded as resident at that address:
 - (f) any other particulars that the Commissioner considers relevant to the purposes of subsection (2)(b).
- (3) Subject to subsection (4), information obtained pursuant to subsection (2) shall not be disclosed except to an authorised person and for the purposes of that subsection.
- (4) No obligation as to secrecy or other restriction imposed by any enactment or otherwise upon the disclosure of information shall prevent the chief executive, or any officer of the specified department who is authorised by the chief executive to receive information under this section, from receiving information disclosed from any authorised person to another authorised person in accordance with subsection (2) for any purpose that relates to the administration of the student loan scheme.
- (5) For the purposes of section 81(4)(g) of the Tax Administration Act 1994, the chief executive, or any officer of the specified department who is authorised by the chief executive to receive information under this section, shall be deemed to be an authorised person under this section.
- (6) In this section, **specified department** means the department that is, with the authority of the Prime Minister, for the time being responsible for the administration of the Social Security Act 1964.

Section 62(1)(b): amended, on 19 September 2000, by section 9(1)(a) of the Student Loan Scheme Amendment Act 2000 (2000 No 33).

Section 62(1)(c): amended, on 19 September 2000, by section 9(1)(a) of the Student Loan Scheme Amendment Act 2000 (2000 No 33).

Section 62(1A): inserted, on 15 December 2000 (applying in respect of the income year commencing on 1 April 2000, and subsequent income years), by section 11(1) of the Student Loan Scheme Amendment Act (No 2) 2000 (2000 No 96).

Section 62(1A): amended, on 1 April 2007, by section 32(1) of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

Section 62(2): substituted, on 26 November 1998, by section 2(1) of the Student Loan Scheme Amendment Act (No 3) 1998 (1998 No 108).

Section 62(2)(ab): repealed, on 1 April 2007, by section 32(2) of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

Section 62(2)(b): amended, on 19 September 2000, by section 9(1)(a) of the Student Loan Scheme Amendment Act 2000 (2000 No 33).

Section 62(2AA): repealed, on 1 April 2007, by section 32(3) of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

Section 62(2A): inserted, on 26 November 1998, by section 2(1) of the Student Loan Scheme Amendment Act (No 3) 1998 (1998 No 108).

Section 62(2A)(d): amended, on 19 September 2000, by section 9(1)(a) of the Student Loan Scheme Amendment Act 2000 (2000 No 33).

Section 62(2A)(e): amended, on 19 September 2000, by section 9(1)(a) of the Student Loan Scheme Amendment Act 2000 (2000 No 33).

Section 62(4): amended, on 19 September 2000, by section 9(1)(a) of the Student Loan Scheme Amendment Act 2000 (2000 No 33).

Section 62(4): amended, on 19 September 2000, by section 9(1)(b) of the Student Loan Scheme Amendment Act 2000 (2000 No 33).

Section 62(5): amended, on 19 September 2000, by section 9(1)(a) of the Student Loan Scheme Amendment Act 2000 (2000 No 33).

Section 62(5): amended, on 19 September 2000, by section 9(1)(b) of the Student Loan Scheme Amendment Act 2000 (2000 No 33).

Section 62(5): amended, on 26 November 1998 (applying on and after 1 April 1995), by section 2(2) of the Student Loan Scheme Amendment Act (No 3) 1998 (1998 No 108).

Section 62(5): amended, on 1 April 1995 (applying with respect to the tax on income derived in 1995–96 and subsequent income years), by section YB 1 of the Income Tax Act 1994 (1994 No 164).

Section 62(6): added, on 19 September 2000, by section 9(2) of the Student Loan Scheme Amendment Act 2000 (2000 No 33).

62A Disclosure of information for information matching purposes

- (1) The purpose of this section is to facilitate the exchange of information between the department and the New Zealand Customs Service for the purpose of establishing an information matching programme to assist the Commissioner to verify—
 - (a) borrowers' entitlements to a full interest write-off under section 38AA:
 - (b) whether borrowers are New Zealand based or overseas based for the purposes of this Act:
 - (c) whether borrowers are resident or non-resident for the purposes of this Act.
- (2) For the purpose of this section, the Commissioner may provide to the chief executive of the New Zealand Customs Service any of the following information that is held by the department:

- (a) a borrower's name or any other name by which a borrower is known:
 - (b) a borrower's date of birth:
 - (c) a borrower's tax file number.
- (3) The Commissioner and the chief executive of the New Zealand Customs Service may, for the purpose of this section, determine by written agreement between them—
- (a) the frequency with which information may be supplied; and
 - (b) the form in which information may be supplied; and
 - (c) the method by which information may be supplied.
- (4) Subsection (2) applies despite any obligation as to secrecy or other restriction imposed by any enactment or otherwise on the disclosure of information.

Section 62A: inserted, on 28 March 2007, by section 33 of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

62B Power of Commissioner to access arrival or departure information

In accordance with, and for the purpose set out in, section 280I of the Customs and Excise Act 1996, the Commissioner may access any information recording system used by the New Zealand Customs Service to store arrival or departure information.

Section 62B: inserted, on 28 March 2007, by section 33 of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

63 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.

63A Loan contract enforceable against minor

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

Section 63A: inserted, on 19 September 2000 (applying to or affects any loan contract that is subject of proceedings commenced before 5 October 1999, being

the date on which this Act was introduced as a Bill into the House of Representatives), by section 10(1) of the Student Loan Scheme Amendment Act 2000 (2000 No 33).

63B Initial disclosure

The loan manager must provide a borrower with a copy of the borrower's student loan contract before the day that is 6 working days after the day on which the contract is entered into.

Compare: SR 2010/341 r 5

Section 63B: inserted, on 30 August 2011, by section 222 of the Student Loan Scheme Act 2011 (2011 No 62).

63C Certain information must be disclosed in loan contract

- (1) Every loan contract entered into on or after the date on which this section comes into force must specify the following information that applies at the date the loan contract is entered into:
 - (a) the repayment threshold:
 - (b) the total interest rate:
 - (c) the repayment percentage:
 - (d) the amount of any student loan establishment fee:
 - (e) the amount of the annual administration fee charged under section 63L:
 - (f) any other matters specified in regulations.
- (2) The Commissioner must inform borrowers in accordance with section 63D if any of the information specified in accordance with subsection (1) changes.

Section 63C: inserted, on 30 August 2011, by section 222 of the Student Loan Scheme Act 2011 (2011 No 62).

63D Method of informing borrowers

For the purposes of section 63C(2), the Commissioner must inform a borrower—

- (a) by—
 - (i) providing the information free of charge on an Internet site that allows the borrower to access the information at all reasonable times; and
 - (ii) making the information available for inspection free of charge, and for purchase at a reasonable price, at each office of the Inland Revenue De-

partment during the period from 8 am to 4.30 pm each working day; or

- (b) by giving public notice.

Section 63D: inserted, on 30 August 2011, by section 222 of the Student Loan Scheme Act 2011 (2011 No 62).

63E Continuing disclosure of information

- (1) The loan manager or the Commissioner must disclose the information set out in section 63F to the borrower under a student loan contract.
- (2) The information must—
- (a) be disclosed at least once in each 6-month period following the day on which the contract is entered into; and
- (b) relate to the previous 6-month period.

Compare: SR 2010/341 r 6

Section 63E: inserted, on 30 August 2011, by section 222 of the Student Loan Scheme Act 2011 (2011 No 62).

63F Content of information disclosed

Each disclosure of information in accordance with section 63E must contain as much of the following information as is applicable to the borrower or the student loan contract:

- (a) the opening and closing dates of the period covered by the disclosure; and
- (b) the loan balance on the opening and closing dates; and
- (c) the date and amount, and a description, of each amount advanced to the borrower under the contract during the period covered by the disclosure; and
- (d) the date and amount of any interest charged to the borrower during the period covered by the disclosure; and
- (e) the total interest rate that applies during the period covered by the disclosure; and
- (f) the date and amount, and a description, of each fee charged to the borrower during the period covered by the disclosure; and

- (g) the date and amount, and a description, of each penalty charged to the borrower during the period covered by the disclosure.

Compare: SR 2010/341 r 7

Section 63F: inserted, on 30 August 2011, by section 222 of the Student Loan Scheme Act 2011 (2011 No 62).

63G Disclosure of changes to obligations under student loan contract

- (1) Subsection (2) applies if—
 - (a) a change is made to a borrower's obligations under a student loan contract; and
 - (b) that change increases the borrower's obligations under that contract in a more than minor way, including a change to—
 - (i) the borrower's repayment obligations; or
 - (ii) the repayment percentage; or
 - (iii) the total interest rate; and
 - (c) that change is made—
 - (i) without the borrower's prior agreement; or
 - (ii) by, or as a consequence of, an enactment.
- (2) Details of the change must be disclosed to the borrower within 7 months after the day on which the change is made.

Compare: SR 2010/341 r 8

Section 63G: inserted, on 30 August 2011, by section 222 of the Student Loan Scheme Act 2011 (2011 No 62).

63H Direct disclosure of information and changes

- (1) Disclosure under sections 63E to 63G must be made—
 - (a) by means of information that is printed, typewritten, or otherwise visibly represented, copied, or reproduced on paper and is given by personal delivery, post, or fax; or
 - (b) by an electronic means (except a fax), if the person making the disclosure complies with the Electronic Transactions Act 2002, including by email or the Internet (if the borrower for whom the disclosure is intended is directly alerted to it in some manner).
- (2) Despite subsection (1)(b) of this section and section 16 of the Electronic Transactions Act 2002, the consent of a borrower is

not required in order for disclosure to be made in an electronic form.

- (3) However, subsection (1) does not apply if the loan manager or the Commissioner, as applicable, cannot reasonably locate the borrower.

Compare: SR 2010/341 r 9

Section 63H: inserted, on 30 August 2011, by section 222 of the Student Loan Scheme Act 2011 (2011 No 62).

63I Public disclosure of changes

Disclosure under section 63G must also be made—

- (a) by providing the information free of charge on an Internet site that allows a borrower to access the information at all reasonable times; and
(b) by giving public notice that the information is available on that Internet site.

Compare: SR 2010/341 r 10

Section 63I: inserted, on 30 August 2011, by section 222 of the Student Loan Scheme Act 2011 (2011 No 62).

63J Satisfaction of requirements to disclose

If disclosure is made in accordance with sections 63E to 63H, the requirements to disclose under those sections are satisfied regardless of whether the borrower receives the information that was disclosed.

Compare: SR 2010/341 r 11

Section 63J: inserted, on 30 August 2011, by section 222 of the Student Loan Scheme Act 2011 (2011 No 62).

63K Cap on student loan establishment fees

A student loan establishment fee charged by the loan manager to a borrower under a student loan contract must not exceed \$60.

Compare: SR 2010/341 r 12

Section 63K: inserted, on 30 August 2011, by section 222 of the Student Loan Scheme Act 2011 (2011 No 62).

63L Annual administration fee

- (1) If a borrower has a loan balance of \$20 or more on the close of 31 March 2012,—

- (a) an annual administration fee of \$40 must be charged by the Commissioner to that borrower for the 1 April 2011 to 31 March 2012 tax year; and
 - (b) that borrower's loan balance is increased on 1 April 2012 by the amount of that fee.
- (2) However, no fee may be charged under subsection (1) to a borrower if that borrower is charged with a student loan establishment fee during the period starting on 1 April 2011 and ending on 31 March 2012.

Section 63L: inserted, on 30 August 2011, by section 222 of the Student Loan Scheme Act 2011 (2011 No 62).

63M Student loan contracts are not credit contracts

- (1) A loan contract is not—
- (a) a credit contract for the purposes of the Credit Contracts Act 1981;
 - (b) a credit contract or a consumer credit contract for the purposes of the Credit Contracts and Consumer Finance Act 2003.
- (2) No cause of action exists under the Credit Contracts Act 1981 or the Credit Contracts and Consumer Finance Act 2003 in relation to a loan contract.
- (3) This section applies—
- (a) to all loan contracts regardless of when they were entered into; and
 - (b) despite anything to the contrary.

Section 63M: inserted, on 30 August 2011, by section 222 of the Student Loan Scheme Act 2011 (2011 No 62).

63N Commissioner may exercise rights in loan contracts to recall loans

- (1) The Commissioner may exercise any right or power in a loan contract to recall or demand repayment of all or any part of a loan balance.
- (2) To avoid doubt, the right or power may be exercised in the name of the Commissioner without any assignment by the lender.
- (3) This section applies—

- (a) whether or not the Commissioner is the lender under the loan contract or a person on whom the loan contract confers the right or power; and
- (b) despite section 63 or anything in the loan contract or any other Act; and
- (c) whether the loan contract was signed before or after the date on which this section comes into force.

Section 63N: inserted, on 30 August 2011, by section 222 of the Student Loan Scheme Act 2011 (2011 No 62).

Part 5

Challenges after transfer of loan balance to Commissioner

Part 5 heading: substituted, on 1 October 1996, by section 9(1) of the Student Loan Scheme Amendment Act 1996 (1996 No 63).

64 Challenge to assessment of repayment obligation

Any borrower whose repayment obligation has been assessed under Part 2 or Part 3 may, on the ground that the assessment is erroneous or excessive or has been issued in error, challenge the assessment.

Section 64 heading: amended, on 1 October 1996, pursuant to section 10 of the Student Loan Scheme Amendment Act 1996 (1996 No 63).

Section 64: amended, on 1 October 1996, by section 10(1) of the Student Loan Scheme Amendment Act 1996 (1996 No 63).

65 Challenge to amount of interest charged

Any borrower who is charged with interest in a tax year may, on the ground that he or she should not have been charged with the amount of interest charged, challenge the notice given to the borrower under section 43.

Section 65 heading: amended, on 1 October 1996, pursuant to section 11 of the Student Loan Scheme Amendment Act 1996 (1996 No 63).

Section 65: amended, on 1 April 2005 (effective for 2005–06 tax year and later tax years, except when the context requires otherwise), by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 65: amended, on 1 October 1996, by section 11(1) of the Student Loan Scheme Amendment Act 1996 (1996 No 63).

65A Objection to decision concerning grant of exemption

A borrower may challenge a decision by the Commissioner—

- (a) not to grant that borrower an exemption to the 183-day requirement under section 38AE(1), 38AJ, or 38AJA, on the ground that that decision is not fair and reasonable:
- (b) that the conditions in section 38AEA, 38AF, 38AG, 38AH, 38AI, 38AIA, 38AJ(2), or 38AJA(4) are not satisfied by that borrower, on the ground that that decision is erroneous:
- (c) specifying the start and end dates for the period for which that borrower is treated as being personally present in New Zealand under section 38AE(2)(a), 38AJ(3)(a), or 38AJA(5)(a), on the ground that those dates are—
 - (i) not fair and reasonable; or
 - (ii) erroneous:
- (d) specifying the conditions that must apply or be met in order for that borrower to be treated as being personally present in New Zealand under section 38AE(2)(b), 38AJ(3)(b), or 38AJA(5)(b), on the ground that those conditions are—
 - (i) not fair and reasonable; or
 - (ii) erroneous:
- (e) not to reduce the amount of interest calculated on an eligible borrower's loan balance under section 38AL, on the ground that that decision was not fair and reasonable:
- (f) specifying the start and end dates for the period for which the amount of interest calculated on an eligible borrower's loan balance is reduced to zero under section 38AL(2), on the ground that those dates are—
 - (i) not fair and reasonable; or
 - (ii) erroneous.

Section 65A: inserted, on 22 December 2005, by section 13 of the Student Loan Scheme Amendment Act 2005 (2005 No 122).

Section 65A(a): amended, on 7 March 2010, by section 25(1) of the Student Loan Scheme (Exemptions and Miscellaneous Provisions) Amendment Act 2010 (2010 No 3).

Section 65A(b): amended, on 7 March 2010, by section 25(2) of the Student Loan Scheme (Exemptions and Miscellaneous Provisions) Amendment Act 2010 (2010 No 3).

Section 65A(c): amended, on 7 March 2010, by section 25(3) of the Student Loan Scheme (Exemptions and Miscellaneous Provisions) Amendment Act 2010 (2010 No 3).

Section 65A(d): amended, on 7 March 2010, by section 25(4) of the Student Loan Scheme (Exemptions and Miscellaneous Provisions) Amendment Act 2010 (2010 No 3).

Section 65A(e): added, on 28 March 2007, by section 34 of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

Section 65A(f): added, on 28 March 2007, by section 34 of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

66 Challenge to penalty

Any person who is charged with a penalty may,—

- (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,—

challenge the notice given to the person under section 45.

Section 66 heading: amended, on 1 October 1996, pursuant to section 12 of the Student Loan Scheme Amendment Act 1996 (1996 No 63).

Section 66: amended, on 1 October 1996, by section 12(1) of the Student Loan Scheme Amendment Act 1996 (1996 No 63).

66A Objection to decisions concerning penalty amnesty

[Repealed]

Section 66A: repealed, on 1 April 2007, by section 35 of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

66B Objection to decision concerning significant financial hardship

A borrower may challenge a decision by the Commissioner under section 57D not to exempt part or all of a refund made to that borrower from section 57C, on the ground that that decision is not fair and reasonable.

Section 66B: inserted, on 22 December 2005, by section 14 of the Student Loan Scheme Amendment Act 2005 (2005 No 122).

67 Challenge to assessment of repayment deduction

Any employer or PAYE intermediary who is required to make a repayment deduction determined under section 22 may, on the ground that the determination is erroneous, challenge the assessment made under section 22(2).

Section 67 heading: amended, on 1 October 1996, pursuant to section 13 of the Student Loan Scheme Amendment Act 1996 (1996 No 63).

Section 67: amended, on 26 March 2003 (applying to obligations under the principal Act that arise on and after 1 April 2004), by section 10(1) of the Student Loan Scheme Amendment Act 2003 (2003 No 7).

Section 67: amended, on 1 October 1996, by section 13(1) of the Student Loan Scheme Amendment Act 1996 (1996 No 63).

68 Challenge to penal repayment obligation

(1) Any borrower who is assessed under section 85 with a penal repayment obligation may,—

- (a) on the ground the borrower is not chargeable with the amounts so assessed; or
- (b) on the ground that the amount so assessed is excessive having regard to either or both of—
 - (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,—

challenge the assessment.

(2) A challenge may be made under subsection (1) notwithstanding that the amount of the assessment is not in excess of treble the amount of the deficient repayment obligation.

Section 68: substituted, on 1 October 1996, by section 14(1) of the Student Loan Scheme Amendment Act 1996 (1996 No 63).

69 Objector

A challenge under any of sections 64 to 68 may be made only by or on behalf of the person to whom the assessment, notice, or decision relates.

Section 69: substituted, on 22 December 2005, by section 15 of the Student Loan Scheme Amendment Act 2005 (2005 No 122).

69A Application of Parts 4A and 8A of Tax Administration Act 1994

- (1) Parts 4A and 8A of the Tax Administration Act 1994 apply with respect to every notice of assessment or reassessment issued by the Commissioner under this Act on or after 1 October 1996.
- (2) Subsection (1) does not apply to any notice of reassessment issued by the Commissioner under this Act on or after 1 October 1996, if, before that date, the person who has been assessed has made a competent objection to a notice of assessment that precedes the notice of reassessment.

Section 69A: inserted, on 1 October 1996, by section 16(1) of the Student Loan Scheme Amendment Act 1996 (1996 No 63).

69B No right of challenge to interest payable under loan contract

Nothing in—

- (a) Parts 4A and 8A of the Tax Administration Act 1994;
or
- (b) this Act—

confers a right to challenge the rate of interest charged under a loan contract.

Section 69B: inserted, on 1 October 1996, by section 16(1) of the Student Loan Scheme Amendment Act 1996 (1996 No 63).

70 Manner in which objection to be made

[Repealed]

Section 70: repealed, on 1 October 1996, by section 17(1) of the Student Loan Scheme Amendment Act 1996 (1996 No 63).

71 Time for objection

[Repealed]

Section 71: repealed, on 1 October 1996, by section 17(1) of the Student Loan Scheme Amendment Act 1996 (1996 No 63).

72 Objection to amended assessment or notice

[Repealed]

Section 72: repealed, on 1 October 1996, by section 17(1) of the Student Loan Scheme Amendment Act 1996 (1996 No 63).

73 Extension of time for objection*[Repealed]*

Section 73: repealed, on 1 October 1996, by section 17(1) of the Student Loan Scheme Amendment Act 1996 (1996 No 63).

74 Commissioner to consider objections*[Repealed]*

Section 74: repealed, on 1 October 1996, by section 17(1) of the Student Loan Scheme Amendment Act 1996 (1996 No 63).

75 Objector may refer disallowed objections to Taxation Review Authority*[Repealed]*

Section 75: repealed, on 1 October 1996, by section 17(1) of the Student Loan Scheme Amendment Act 1996 (1996 No 63).

76 Objections to which this Part does not apply*[Repealed]*

Section 76: repealed, on 1 October 1996, by section 17(1) of the Student Loan Scheme Amendment Act 1996 (1996 No 63).

Part 6 Offences and penalties

77 Offences in respect of repayment deductions

(1) Subject to subsection (3), every borrower commits an offence against this Act who—

(a) *[Repealed]*

(b) *[Repealed]*

(c) *[Repealed]*

(d) wilfully fails to notify an employer in accordance with section 18 or wilfully gives any false information, or wilfully misleads or attempts to mislead the Commissioner or any other officer, or any employer or a PAYE intermediary or other person, in relation to any matter or thing affecting a repayment deduction; or

(e) negligently fails to notify an employer in accordance with section 18, or negligently gives any false information, or negligently misleads or attempts to mislead the Commissioner or any other officer, or any employer or

a PAYE intermediary or other person, in relation to any matter or thing affecting a repayment deduction.

(2) *[Repealed]*

(3) *[Repealed]*

Section 77(1): amended, on 26 July 1996 (applying with respect to the 1997–98 income year and subsequent years), by section 18(1)(a) of the Student Loan Scheme Amendment Act 1996 (1996 No 63).

Section 77(1)(a): repealed, on 26 July 1996 (applying with respect to the 1997–98 income year and subsequent years), by section 18(1)(b) of the Student Loan Scheme Amendment Act 1996 (1996 No 63).

Section 77(1)(b): repealed, on 26 July 1996 (applying with respect to the 1997–98 income year and subsequent years), by section 18(1)(b) of the Student Loan Scheme Amendment Act 1996 (1996 No 63).

Section 77(1)(c): repealed, on 26 July 1996 (applying with respect to the 1997–98 income year and subsequent years), by section 18(1)(b) of the Student Loan Scheme Amendment Act 1996 (1996 No 63).

Section 77(1)(d): amended, on 26 March 2003 (applying to obligations under the principal Act that arise on and after 1 April 2004), by section 11(1) of the Student Loan Scheme Amendment Act 2003 (2003 No 7).

Section 77(1)(d): amended, on 26 July 1996 (applying with respect to the 1997–98 income year and subsequent years), by section 18(1)(c) of the Student Loan Scheme Amendment Act 1996 (1996 No 63).

Section 77(1)(e): amended, on 26 March 2003 (applying to obligations under the principal Act that arise on and after 1 April 2004), by section 11(1) of the Student Loan Scheme Amendment Act 2003 (2003 No 7).

Section 77(1)(e): amended, on 26 July 1996 (applying with respect to the 1997–98 income year and subsequent years), by section 18(1)(d) of the Student Loan Scheme Amendment Act 1996 (1996 No 63).

Section 77(2): repealed, on 26 July 1996 (applying with respect to the 1997–98 income year and subsequent years), by section 18(2) of the Student Loan Scheme Amendment Act 1996 (1996 No 63).

Section 77(3): repealed, on 26 July 1996 (applying with respect to the 1997–98 income year and subsequent years), by section 18(2) of the Student Loan Scheme Amendment Act 1996 (1996 No 63).

78 Penalties for offences in respect of repayment deductions

(1) *[Repealed]*

(2) Every borrower who commits an offence against section 77(1)(d) shall,—

(a) on the first occasion on which the person is convicted of any such offence or more than 1 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), on which the person is convicted of any such offence or more than 1 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.
- (3) Every borrower who commits an offence against section 77(1)(e) shall,—
- (a) on the first occasion on which the person is convicted of any such offence or more than 1 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 1 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:
 - (c) on every occasion, other than the occasions referred to in paragraphs (a) and (b), on which the person is convicted of any such offence or more than 1 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.

Section 78(1): repealed, on 26 July 1996 (applying with respect to the 1997–98 income year and subsequent years), by section 19(1)(a) of the Student Loan Scheme Amendment Act 1996 (1996 No 63).

Section 78(2): amended, on 26 July 1996 (applying with respect to the 1997–98 income year and subsequent years), by section 19(1)(b) of the Student Loan Scheme Amendment Act 1996 (1996 No 63).

Section 78(3): amended, on 26 July 1996 (applying with respect to the 1997–98 income year and subsequent years), by section 19(1)(c) of the Student Loan Scheme Amendment Act 1996 (1996 No 63).

79 Other offences

- (1) Every person commits an offence against this Act who—
- (a) being a borrower, 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

- (b) *[Repealed]*
 - (c) *[Repealed]*
 - (d) *[Repealed]*
 - (e) aids, abets, incites, or conspires with any borrower to commit any offence against this Act.
- (2) Every person who commits an offence against subsection (1) shall,—
- (a) on the first occasion on which the person is convicted of any such offence or more than 1 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), on which the person is convicted of any such offence or more than 1 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.
- (3) Every person commits an offence against this Act who—
- (a) being a borrower, refuses or fails to furnish any return or information as and when required by this Act or the Commissioner; or
 - (b) being a borrower, 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 repayment obligation; or
 - (c) being a borrower, 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
 - (d) *[Repealed]*
 - (e) *[Repealed]*
- (4) Every person who commits an offence against subsection (3) shall,—
- (a) on the first occasion on which the person is convicted of any such offence or more than 1 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 1 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:
- (c) on every occasion, other than the occasions referred to in paragraphs (a) and (b), on which the person is convicted of any such offence or more than 1 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.

Section 79(1)(a): amended, on 26 July 1996 (applying with respect to the 1997–98 income year and subsequent years), by section 20(1)(a) of the Student Loan Scheme Amendment Act 1996 (1996 No 63).

Section 79(1)(b): repealed, on 26 July 1996 (applying with respect to the 1997–98 income year and subsequent years), by section 20(1)(b) of the Student Loan Scheme Amendment Act 1996 (1996 No 63).

Section 79(1)(c): repealed, on 26 July 1996 (applying with respect to the 1997–98 income year and subsequent years), by section 20(1)(b) of the Student Loan Scheme Amendment Act 1996 (1996 No 63).

Section 79(1)(d): repealed, on 26 July 1996 (applying with respect to the 1997–98 income year and subsequent years), by section 20(1)(b) of the Student Loan Scheme Amendment Act 1996 (1996 No 63).

Section 79(1)(e): amended, on 26 July 1996 (applying with respect to the 1997–98 income year and subsequent years), by section 20(1)(c) of the Student Loan Scheme Amendment Act 1996 (1996 No 63).

Section 79(3)(a): amended, on 26 July 1996 (applying with respect to the 1997–98 income year and subsequent years), by section 20(2)(a) of the Student Loan Scheme Amendment Act 1996 (1996 No 63).

Section 79(3)(b): amended, on 26 July 1996 (applying with respect to the 1997–98 income year and subsequent years), by section 20(2)(b) of the Student Loan Scheme Amendment Act 1996 (1996 No 63).

Section 79(3)(b): amended, on 26 July 1996 (applying with respect to the 1997–98 income year and subsequent years), by section 20(2)(c) of the Student Loan Scheme Amendment Act 1996 (1996 No 63).

Section 79(3)(c): amended, on 26 July 1996 (applying with respect to the 1997–98 income year and subsequent years), by section 20(2)(d) of the Student Loan Scheme Amendment Act 1996 (1996 No 63).

Section 79(3)(d): repealed, on 26 July 1996 (applying with respect to the 1997–98 income year and subsequent years), by section 20(2)(e) of the Student Loan Scheme Amendment Act 1996 (1996 No 63).

Section 79(3)(e): repealed, on 26 July 1996 (applying with respect to the 1997–98 income year and subsequent years), by section 20(2)(e) of the Student Loan Scheme Amendment Act 1996 (1996 No 63).

80 Officers and employees of corporate bodies

[Repealed]

Section 80: repealed, on 26 July 1996 (applying with respect to the 1997–98 income year and subsequent years), by section 21(1) of the Student Loan Scheme Amendment Act 1996 (1996 No 63).

81 Offence to prejudice employees because of student loan repayment liability

- (1) Every employer commits an offence against this Act who—
 - (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
 - (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 relation to, another person,—
because the other person has a student loan.
- (2) In a prosecution for an offence against subsection (1), it is not necessary for the prosecutor to prove the reasons for the defendant's action, but it is a defence to the prosecution if the defendant proves, on the balance of probabilities, that the action was not motivated (either in whole or in part) by a reason specified in that subsection.
- (3) Every person who commits an offence against subsection (1) shall be liable to a fine not exceeding \$2,000.
- (4) Where an employer is convicted of an offence against subsection (1), the court may order the payment of compensation to the person for loss or damage suffered as a result of the offence.

Compare: 1991 No 142 s 171

82 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.

Compare: 1976 No 65 s 417; 1991 No 142 s 211

83 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 1 such offence, particulars of each offence charged shall be set out separately in the information.
- (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.

Compare: 1976 No 65 s 418; 1991 No 142 s 212

84 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.

Compare: 1976 No 65 s 419; 1991 No 142 s 213

85 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 186 to 191 and section 193 of the Tax Administration Act 1994 (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 188 of the Tax Administration Act 1994.

Compare: 1976 No 65 s 420

Section 85: amended, on 1 April 1995 (applying with respect to the tax on income derived in 1995–96 and subsequent income years), by section YB 1 of the Income Tax Act 1994 (1994 No 164).

86 Penal charge for default in paying repayment deduction

[Repealed]

Section 86: repealed, on 26 July 1996 (applying with respect to the 1997–98 income year and subsequent years), by section 22(1) of the Student Loan Scheme Amendment Act 1996 (1996 No 63).

Part 7

Regulations and miscellaneous matters

Part 7 heading: amended, on 28 March 2007, by section 36 of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

87 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) *[Repealed]*
 - (iii) *[Repealed]*
 - (iv) the repayment percentage,—
that shall apply in respect of any tax year or years:
 - (ab) *[Repealed]*
 - (ac) *[Repealed]*
 - (b) *[Repealed]*
 - (ba) *[Repealed]*
 - (bb) specifying a list of charitable organisations for the purposes of section 38AE(1)(b):

- (bc) specifying further information requirements in accordance with section 63C(1)(f):
 - (c) 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:
 - (d) 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) *[Repealed]*
 - (3) *[Repealed]*
 - (4) The Commissioner shall notify any borrower affected by any regulation made under subsection (1)(a) of the effect of the regulation.
 - (5) 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.

Section 87(1)(a): amended, on 1 April 2005 (effective for 2005–06 tax year and later tax years, except when the context requires otherwise), by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 87(1)(a)(ii): repealed, on 22 December 2005, by section 16(1) of the Student Loan Scheme Amendment Act 2005 (2005 No 122).

Section 87(1)(a)(iii): repealed, on 22 December 2005, by section 16(1) of the Student Loan Scheme Amendment Act 2005 (2005 No 122).

Section 87(1)(ab): repealed, on 1 April 2010, by section 26(1) of the Student Loan Scheme (Exemptions and Miscellaneous Provisions) Amendment Act 2010 (2010 No 3).

Section 87(1)(ac): repealed, on 1 April 2010, by section 26(1) of the Student Loan Scheme (Exemptions and Miscellaneous Provisions) Amendment Act 2010 (2010 No 3).

Section 87(1)(b): repealed, on 7 March 2010, by section 26(2) of the Student Loan Scheme (Exemptions and Miscellaneous Provisions) Amendment Act 2010 (2010 No 3).

Section 87(1)(ba): repealed, on 1 April 2007, by section 37(2) of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

Section 87(1)(bb): inserted, on 22 December 2005, by section 16(3) of the Student Loan Scheme Amendment Act 2005 (2005 No 122).

Section 87(1)(bc): inserted, on 30 August 2011, by section 222 of the Student Loan Scheme Act 2011 (2011 No 62).

Section 87(2): repealed, on 22 December 2005, by section 16(4) of the Student Loan Scheme Amendment Act 2005 (2005 No 122).

Section 87(3): repealed, on 22 December 2005, by section 16(4) of the Student Loan Scheme Amendment Act 2005 (2005 No 122).

Section 87(4): amended, on 7 March 2010, by section 26(3) of the Student Loan Scheme (Exemptions and Miscellaneous Provisions) Amendment Act 2010 (2010 No 3).

88 Full interest write-offs, base interest write-offs, and interest reductions validated

- (1) This section applies to a borrower whose loan balance was treated by the Commissioner as being zero or less on 13 November 2006 and who, in relation to that loan balance, received 1 or more of the following in any tax year that ended prior to 1 April 2006:
 - (a) a full interest write-off as described in section 38C before its repeal by section 17 of the Student Loan Scheme Amendment Act 2007:
 - (b) a base interest write-off as described in section 39(2) before its repeal by section 17 of the Student Loan Scheme Amendment Act 2007:
 - (c) an interest reduction as described in section 40(2) before its repeal by section 17 of the Student Loan Scheme Amendment Act 2007.
- (2) In relation to a borrower to whom this section applies,—
 - (a) the full interest write-off described in subsection (1)(a) is validated and must not be reversed:
 - (b) the base interest write-off described in subsection (1)(b) is validated and must not be reversed:
 - (c) the interest reduction described in subsection (1)(c) is validated and must not be reversed.
- (3) This section does not affect any loan obtained by the borrower under the student loan scheme after 13 November 2006.
- (4) This section applies despite anything in any other enactment or in a loan contract.

Section 88: substituted, on 28 March 2007, by section 38 of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

Part 8

2007/08 transitional provisions for fresh start for certain borrowers

Part 8 heading: added, on 1 April 2007, by section 40 of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

89 Interpretation

In this Part, unless the context otherwise requires,—

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

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

late payment penalties—

- (a) means any penalty that was charged under section 44 (despite being cancelled under section 91); and
- (b) includes any penalty that would have been charged under section 44 if section 90 had not been enacted

non-resident repayment obligation means a repayment obligation assessed under Part 3 before that Part was repealed and substituted with a new Part 3 by section 10 of the Student Loan Scheme Amendment Act 2007

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

old amnesty means the amnesty provided under sections 45A to 45D before their repeal by section 21 of the Student Loan Scheme Amendment Act 2007

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

resident repayment obligation means a repayment obligation assessed under Part 2 before that Part was amended by the Student Loan Scheme Amendment Act 2007.

Section 89: substituted, on 1 April 2007, by section 40 of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

Fresh start for certain non-resident borrowers

Heading: substituted, on 1 April 2007, by section 40 of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

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

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

Section 90: substituted, on 1 April 2007, by section 40 of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

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

- (1) This section applies to a borrower who was—
 - (a) non-resident on 31 March 2006; and
 - (b) in arrears in respect of all or part of an old repayment obligation as at 1 April 2007.
- (2) All old repayment obligations and all associated penalties of a borrower to whom this section applies are reduced to zero, to the extent that the old repayment obligations or the associated penalties are unpaid as at 1 April 2007.
- (3) The amount that was to be paid in respect of the old repayment obligations is subject to interest from the date that the old repayment obligations were (or would have been) originally due at the total interest rate that applied over the period of non-payment of those obligations on the daily amount outstanding.
- (4) For the avoidance of doubt, the amount that was to be paid in respect of the old repayment obligations remains part of the borrower's loan balance, and that loan balance remains out-

standing and due for repayment in accordance with subsequent repayment obligations assessed by the Commissioner.

Examples**Example 1: Lenore**

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

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

Example 2: Keith

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

Section 91: substituted, on 1 April 2007, by section 40 of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

New amnesty

Heading: substituted, on 1 April 2007, by section 40 of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

92 Application of sections 93 to 105

- (1) Sections 93 to 105 apply only to a borrower who was—
- (a) non-resident on 31 March 2006; and
 - (b) in arrears in respect of all or part of an old repayment obligation as at 1 April 2007.

- (2) However, sections 93 to 105 do not apply to a borrower whose loan balance was treated by the Commissioner as being zero or less on 13 November 2006.

Section 92: substituted, on 1 April 2007, by section 40 of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

93 Borrowers whose loan balance is not increased under section 103

- (1) Section 103 (increase to loan balance) does not apply to a borrower if—

(a) either—

(i) the Commissioner receives an amnesty application (in any form or manner acceptable to the Commissioner) by or on behalf of that borrower on or after 1 April 2007 and before the close of 31 March 2008; or

(ii) the old amnesty applies to the borrower and the borrower is not in breach of the condition of the old amnesty as at 1 April 2007; and

(b) the borrower meets the relevant amnesty condition.

- (2) To avoid doubt, a borrower to whom the old amnesty applies and who is in breach of a condition of that amnesty as at 1 April 2007 may make an amnesty application under subsection (1)(a)(i).

Section 93: substituted, on 1 April 2007, by section 40 of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

94 Amnesty condition for borrowers who apply for amnesty after 31 March 2007

The amnesty condition for a borrower referred to in section 93(1)(a)(i) is that the borrower must—

(a) give an undertaking to the Commissioner that he or she will pay to the Commissioner the amount referred to in paragraph (b); and

(b) in accordance with that undertaking, pay the following amount to the Commissioner:

(i) \$2,000, if the borrower's loan balance as at the amnesty application date is \$15,000 or less:

- (ii) \$4,000, if the borrower's loan balance as at the amnesty application date is more than \$15,000 and less than or equal to \$30,000:
- (iii) \$6,000, if the borrower's loan balance as at the amnesty application date is more than \$30,000.

Section 94: substituted, on 1 April 2007, by section 40 of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

95 Payment arrangements if amnesty application date is between 1 April 2007 and 31 August 2007

- (1) This section applies to a borrower whose amnesty application date is between 1 April 2007 and the close of 31 August 2007.
- (2) The amount in section 94 must be paid by the borrower in 4 equal instalments which are due and payable on 30 September 2007, 31 March 2008, 30 September 2008, and 31 March 2009.
- (3) The amount in section 94 applies instead of—
 - (a) any overseas based repayment obligation to which the borrower may otherwise be liable, to the extent that the amount is received by the Commissioner in the tax year ending 31 March 2008 or 31 March 2009; and
 - (b) any repayment holiday the borrower may have had under section 107 during the tax year ending 31 March 2008 or 31 March 2009.

Section 95: substituted, on 1 April 2007, by section 40 of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

96 Payment arrangements if amnesty application date is between 1 September 2007 and 29 February 2008

- (1) This section applies to a borrower whose amnesty application date is between 1 September 2007 and the close of 29 February 2008.
- (2) The amount in section 94 must be paid by the borrower in 4 equal instalments which are due and payable on 31 March 2008, 30 September 2008, 31 March 2009, and 30 September 2009.
- (3) The amount in section 94—
 - (a) applies instead of any overseas based repayment obligation to which the borrower may otherwise be liable,

to the extent that the amount is received by the Commissioner in the tax years ending 31 March 2008 and 31 March 2009; and

- (b) is off-set against any overseas based repayment obligation to which the borrower may otherwise be liable, to the extent that the amount is received by the Commissioner in the tax year ending 31 March 2010; and
- (c) applies instead of any repayment holiday the borrower may have had under section 107 during the tax year ending 31 March 2008 or 31 March 2009.

Section 96: substituted, on 1 April 2007, by section 40 of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

97 Payment arrangements if amnesty application date is in March 2008

- (1) This section applies to a borrower whose amnesty application date is in March 2008.
- (2) The amount in section 94 must be paid by the borrower in 4 equal instalments which are due and payable on 30 September 2008, 31 March 2009, 30 September 2009, and 31 March 2010.
- (3) The amount in section 94 applies instead of—
 - (a) any overseas based repayment obligation to which the borrower may otherwise be liable, to the extent that the amount is received by the Commissioner in either the tax year ending 31 March 2009 or the tax year ending 31 March 2010; and
 - (b) any repayment holiday the borrower may have had under section 107 during the tax year ending 31 March 2009.
- (4) For the tax year ending 31 March 2008, the borrower's repayment obligation is reduced to zero.

Section 97: substituted, on 1 April 2007, by section 40 of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

98 Commissioner may reduce instalments if significant financial hardship

The Commissioner may reduce any instalment to be paid by a borrower under any of sections 94 to 97 if the Commissioner is

satisfied that reduction is necessary to alleviate the borrower's significant financial hardship (within the meaning of section 57D(4)).

Section 98: substituted, on 1 April 2007, by section 40 of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

98A No repayment deductions to be made from income-tested benefits before 1 April 1994

[Repealed]

Section 98A: repealed, on 1 April 2007, by section 39(2) of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

99 Relationship with New Zealand based repayment obligations

An amount paid by a borrower under section 94 at any time when that borrower is New Zealand based may be off-set by the Commissioner against any New Zealand based repayment obligation payable by that borrower.

Section 99: substituted, on 1 April 2007, by section 40 of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

100 Amnesty condition for people who applied for old amnesty before 1 April 2007

The amnesty condition for a borrower referred to in section 93(1)(a)(ii) is that the borrower must make payments to the Commissioner in accordance with sections 94 to 99, as those sections are applied by the Commissioner,—

- (a) in a way that, in the opinion of the Commissioner, gives credit for the extent to which the borrower has complied with the conditions of the old amnesty; and
- (b) with such other modifications as may be necessary.

Section 100: substituted, on 1 April 2007, by section 40 of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

101 What happens if amnesty condition breached

If the Commissioner is satisfied that a borrower has breached the relevant amnesty condition,—

- (a) section 102 (one time opportunity to correct amnesty condition breach) applies; and

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

Section 101: substituted, on 1 April 2007, by section 40 of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

102 One time opportunity to correct amnesty condition breach

- (1) This section applies if the Commissioner is satisfied that—
 - (a) a borrower has breached the relevant amnesty condition; and
 - (b) this is the first breach of that condition by that borrower.
- (2) If this section applies, the Commissioner must give the borrower written notice of—
 - (a) the breach of the amnesty condition by the borrower; and
 - (b) the action that must be taken by the borrower to remedy that breach; and
 - (c) the date by which the breach must be remedied, which must be the date that is 30 days after the date of the Commissioner's notice; and
 - (d) the fact that the Commissioner is exercising a discretion that can only be used once in relation to the borrower.
- (3) If the borrower remedies the breach in accordance with the terms of the Commissioner's notice, the Commissioner must treat the borrower as if the borrower has met all of his or her obligations under sections 93 to 103.

Section 102: substituted, on 1 April 2007, by section 40 of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

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

- (1) If a borrower does not apply for an amnesty before 1 April 2008, the borrower's loan balance is increased by an amount equal to 5% of the borrower's loan balance as at 31 March 2008, including any interest compounded as at that date.
- (2) However, if the Commissioner considers that the amount in subsection (1) would have been more than the late payment penalties, the Commissioner may reduce the amount in sub-

section (1) to such an amount as the Commissioner considers to be fair and reasonable.

- (3) If the borrower fails to comply with the relevant amnesty conditions, the borrower's loan balance is increased, on 31 March following the breach, by an amount equivalent to the lesser of the amounts in subsections (1) and (2) but reduced in proportion to the degree of the breach.

Section 103: added, on 1 April 2007, by section 40 of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

104 Objection to decisions concerning penalty amnesty

A borrower may challenge a decision of the Commissioner—

- (a) not to take the actions set out in section 102(2) and (3), on the ground that that decision is erroneous; or
(b) under section 103, on the ground that that decision is erroneous.

Section 104: added, on 1 April 2007, by section 40 of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

105 Commissioner must apply rest of Act accordingly

The Commissioner must apply this Act to borrowers to whom sections 93 to 105 apply with any necessary modifications (for example, as if, for the purposes of section 50, an amount payable under section 94 was a payment in respect of a repayment obligation).

Section 105: added, on 1 April 2007, by section 40 of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

Part 9

Other transitional provisions

Part 9: added, on 1 April 2007, by section 40 of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

Repayment holiday entitlements for borrowers who are overseas based on 1 April 2007

Heading: added, on 1 April 2007, by section 40 of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

106 Full repayment holiday entitlement for borrowers who are overseas based on 1 April 2007 and compliant

- (1) This section applies to a borrower who, on 1 April 2007,—
 - (a) is overseas based; and
 - (b) is not in arrears in respect of all or part of an old repayment obligation (as defined in section 89).
- (2) A borrower to whom this section applies is entitled to a repayment holiday for a maximum period of 3 years, and sections 31 to 36B apply accordingly, with all necessary modifications.

Section 106: added, on 1 April 2007, by section 40 of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

107 Restricted repayment holiday entitlements for borrowers who are overseas based on 1 April 2007 and non-compliant

- (1) This section applies to a borrower who—
 - (a) is overseas based on 1 April 2007; and
 - (b) but for sections 90 and 91, would have been in arrears in respect of all or part of an old repayment obligation (as defined in section 89) as at 1 April 2007.
- (2) A borrower who, as at 1 April 2007, has been non-resident for a continuous period of more than 364 days but less than 2 years is entitled to a repayment holiday for a maximum period of 2 years, and sections 31 to 36B apply accordingly, with all necessary modifications.
- (3) A borrower who, as at 1 April 2007, has been non-resident for a continuous period of 2 years or more, but less than 3 years, is entitled to a repayment holiday for a maximum period of 1 year, and sections 31 to 36B apply accordingly, with all necessary modifications.
- (4) A borrower who, as at 1 April 2007, has been non-resident for a continuous period of 3 years or more is not entitled to a repayment holiday under section 32, and the repayment obligations in sections 34 to 36 apply accordingly, with all necessary modifications.

Section 107: added, on 1 April 2007, by section 40 of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

108 Restricted repayment holiday entitlements for borrowers who are overseas based on 1 April 2007 and do not comply with amnesty conditions

- (1) This section applies to a borrower who—
 - (a) was overseas based on 1 April 2007; and
 - (b) applied to come under the amnesty under section 93 but failed to comply with all of the relevant amnesty conditions.
- (2) The restricted repayment holidays in section 107(2) to (4) apply to a borrower to whom this section applies.
- (3) Any amounts that a borrower has paid in accordance with section 94 may be off-set against any overseas based repayment obligation to which that borrower may otherwise be liable—
 - (a) after his or her restricted repayment holiday under subsection (2) has ended; or
 - (b) while opting out of a repayment holiday in accordance with section 33.

Section 108: added, on 1 April 2007, by section 40 of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

109 Interrelationship of sections 31 to 36B, Part 8, and sections 107 and 108

- (1) The restricted repayment holidays in section 107(2) to (4) apply only for the ongoing period from 1 April 2007 during which a borrower remains overseas based.
- (2) A borrower to whom section 107 or section 108 applies and who subsequently becomes New Zealand based is entitled to a repayment holiday in accordance with sections 31 to 36B if that borrower becomes overseas based again.
- (3) However, any repayment holiday that borrower has already had under section 107 or section 108 must be counted as part of that borrower's total 3-year repayment holiday.
- (4) The amnesty conditions in Part 8 override a borrower's entitlement to a repayment holiday under section 107.

Section 109: added, on 1 April 2007, by section 40 of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

110 Full repayment holiday entitlement for borrowers who meet amnesty conditions

- (1) This section applies to a borrower who—
 - (a) was overseas based on 1 April 2007; and
 - (b) has, since 1 April 2007, become a compliant borrower.
- (2) For the purposes of subsection (1), a borrower becomes a **compliant borrower** when that borrower applies to come under the amnesty under section 93 and has complied with all of the relevant amnesty conditions.
- (3) A borrower to whom this section applies may apply to the Commissioner for a full repayment holiday when he or she becomes a compliant borrower.
- (4) An application may be made by the borrower, or on behalf of the borrower,—
 - (a) by telephone; or
 - (b) in writing; or
 - (c) in any other manner acceptable to the Commissioner.
- (5) However, the Commissioner may require an application to be made in writing.
- (6) If the Commissioner grants a borrower's application for a full repayment holiday, that borrower is entitled to a repayment holiday of up to 3 years, and sections 31 to 36B apply accordingly, with all necessary modifications.

Section 110: added, on 1 April 2007, by section 40 of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

111 Full repayment holiday entitlement for borrowers who meet amnesty conditions and do not apply under section 110

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

Section 111: added, on 1 April 2007, by section 40 of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

Application of Tax Administration Act 1994

Heading: added, on 1 April 2007, by section 40 of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

112 Application of repealed provisions of Tax Administration Act 1994

Where a provision of this Act (a **relevant provision**)—

- (a) refers to a provision of the Tax Administration Act 1994 that is repealed by the Tax Administration Amendment Act (No 2) 1996; and
- (b) incorporates the repealed provision for any purpose to give effect to the relevant provision,—

the repealed provision must be treated as continuing in effect for the purpose of giving effect to the relevant provision.

Section 112: added, on 1 April 2007, by section 40 of the Student Loan Scheme Amendment Act 2007 (2007 No 13).

Student Loan Scheme Amendment Act 1996

Public Act 1996 No 63
Date of assent 26 July 1996
Commencement 26 July 1996

1 Short Title

This Act may be cited as the Student Loan Scheme Amendment Act 1996, and shall be read together with and deemed part of the Student Loan Scheme Act 1992 (in this Act referred to as “the principal Act”).

17 Repeal of sections

- (1) *Amendment(s) incorporated in the Act(s).*
- (2) Notwithstanding subsection (1), sections 70 to 76 of the principal Act continue to apply as if they had not been repealed to every notice of assessment or reassessment—
 - (a) issued by the Commissioner under the principal Act before 1 October 1996; or
 - (b) referred to in section 69A(2) of the principal Act (as inserted by section 16 of this Act).
- (3) The Commissioner may, with the written agreement of a person who has been assessed for a liability or obligation under the principal Act, specify that a notice of assessment or reassessment—
 - (a) issued before 1 October 1996, is to be treated as if it had been issued after that date (in which case the provisions of Parts 4A and 8A of the Tax Administration Act 1994 are to apply to the notice);
 - (b) issued on or after 1 October 1996, is to be treated as if it had been issued before that date (in which case the provisions of sections 70 to 76 of the principal Act (as in force before the enactment of this section) are to continue to apply to the notice).
- (4) This section comes into force on 1 October 1996.

Student Loan Scheme Amendment Act 2000

Public Act 2000 No 33
Date of assent 18 September 2000
Commencement see section 2

1 Title

- (1) This Act is the Student Loan Scheme Amendment Act 2000.
- (2) In this Act, the Student Loan Scheme Act 1992 is called “the principal Act”.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

Part 2

Transitional provisions

11 Transitional provision relating to transfer of loans entered into before 31 December 1999

Sections 8 to 11 of the principal Act, as they read immediately before the commencement of this Act, continue to apply to any objection as to a loan balance relating to a student loan—

- (a) entered into on or before 31 December 1999; and
- (b) under which money is first advanced to the borrower on or before 31 December 1999.

12 Transitional provision relating to disclosure of information

Section 62 of the principal Act, as it read immediately before the commencement of this Act, applies to information relating to a student loan—

- (a) entered into on or before 31 December 1999; and
 - (b) under which money is first advanced to the borrower on or before 31 December 1999.
-

Student Loan Scheme Amendment Act 2005

Public Act 2005 No 122
Date of assent 21 December 2005
Commencement see section 2

1 Title

- (1) This Act is the Student Loan Scheme Amendment Act 2005.
- (2) In this Act, the Student Loan Scheme Act 1992 is called “the principal Act”.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

17 Transitional provision for initial 183-day period

- (1) The Commissioner may at his or her discretion, if the Commissioner considers that it is fair and reasonable to do so, reduce the amount of interest calculated on an eligible borrower’s loan balance to zero for interest chargeable during some or all of the period starting on 1 April 2006 and ending on 30 September 2006.
- (2) If the Commissioner reduces the amount of interest calculated on an eligible borrower’s loan balance to zero under subsection (1), the Commissioner must specify the start and end dates for the period for which the amount of interest is reduced to zero.
- (3) In this section, **eligible borrower** means a borrower who, during the period starting on 1 April 2006 and ending on 30 September 2006, does not satisfy and is not treated as satisfying the 183-day requirement in section 38AB of the principal Act.

18 Transitional provision concerning section 21 of principal Act

- (1) This section applies to borrowers who, on or after 30 November 2005,—

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- (a) apply to the Commissioner for the issue of a special repayment deduction rate certificate under section 21(1) of the principal Act; or
 - (b) are deemed to have made such an application under section 21(2) of the principal Act.
- (2) Despite anything to the contrary in the principal Act or in any other Act, the amount or rate of repayment deductions specified in a certificate issued by the Commissioner under section 21 of the principal Act to a borrower to whom this section applies must, for the period from 29 November 2005 to 31 March 2006, not be less than 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 (as defined in section 20(2) of the principal Act); and
 - (b) any secondary employment earnings paid to the borrower; and
 - (c) any extra emolument paid to the borrower.
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Education Amendment Act 2006

Public Act 2006 No 19
Date of assent 16 May 2006
Commencement see section 2

1 Title

This Act is the Education Amendment Act 2006.

2 Commencement

- (1) This Act (except sections 26, 53, 57, and 60) comes into force on the day after the date on which it receives the Royal assent.
- (2) Sections 26, 53, 57, and 60 come into force on a date to be appointed by the Governor-General by Order in Council.
- (3) Despite subsections (1) and (2), sections 314(1) to (4), 317, and 319 (as inserted by section 53 of this Act) come into force on the day after the date on which this Act receives the Royal assent.

Part 2

Other enactments

59 Student Loan Scheme Act 1992 amended

- (1) *Amendment(s) incorporated in the Act(s).*
- (2) For the purpose of giving effect to section 2A of the Student Loan Scheme Act 1992 with respect to TeachNZ scholarships entered into before that section comes into force, if TeachNZ scholarships are declared under section 307AC of the principal Act to be bonded scholarships, then—
 - (a) the provisions of the standard 2005 loan contract for student loans that relate to payment of interest are deemed to be included (with any necessary modifications) in the agreements for TeachNZ scholarships; and
 - (b) those provisions are deemed always to have been part of the agreement and therefore apply whether any default under the scholarship occurs before or after the commencement of this section.

Student Loan Scheme Amendment Act 2007

Public Act 2007 No 13
Date of assent 27 March 2007
Commencement see section 2

1 Title

This Act is the Student Loan Scheme Amendment Act 2007.

2 Commencement

- (1) Sections 4(2) to (6) and (8), 5 to 8, 10 to 13, 15, 17, 19, 21, 27, 28, 31, 32, 35, 37(2) and (3), 39, 40, 42, 43(4) and (5), and 44(4) come into force on 1 April 2007.
- (2) Sections 24 and 30 come into force on 1 October 2007.
- (3) Sections 4(1) and (7), 37(1), and 45 come into force on 1 April 2008.
- (4) The rest of this Act comes into force on the day after the date on which it receives the Royal assent.

Part 1

Amendments to principal Act

3 Principal Act amended

This Part amends the Student Loan Scheme Act 1992.

14 Conditions to employment or occupation absence exemption

- (1) *Amendment(s) incorporated in the Act(s).*
- (2) The requirement of section 38AH(c)(i) (as substituted by subsection (1)) applies to a borrower who—
 - (a) made an application under section 38AE(1)(e) of the principal Act before this section came into force, from 1 April 2008; and
 - (b) makes an application under section 38AE(1)(e) of the principal Act on or after the date on which this section comes into force, from the date of his or her application.

Contents

- 1 General
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Notes

1 *General*

This is a reprint of the Student Loan Scheme Act 1992. The reprint incorporates all the amendments to the Act as at 1 April 2012, as specified in the list of amendments at the end of these notes.

Relevant provisions of any amending enactments that contain transitional, savings, or application provisions that cannot be compiled in the reprint are also included, after the principal enactment, in chronological order. For more information, *see* <http://www.pco.parliament.govt.nz/reprints/>.

2 *Status of reprints*

Under section 16D of the Acts and Regulations Publication Act 1989, reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by the amendments to that enactment. This presumption applies even though editorial changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in the reprint.

This presumption may be rebutted by producing the official volumes of statutes or statutory regulations in which the principal enactment and its amendments are contained.

3 *How reprints are prepared*

A number of editorial conventions are followed in the preparation of reprints. For example, the enacting words are not included in Acts, and

provisions that are repealed or revoked are omitted. For a detailed list of the editorial conventions, see <http://www.pco.parliament.govt.nz/editorial-conventions/> or Part 8 of the *Tables of New Zealand Acts and Ordinances and Statutory Regulations and Deemed Regulations in Force*.

4 *Changes made under section 17C of the Acts and Regulations Publication Act 1989*

Section 17C of the Acts and Regulations Publication Act 1989 authorises the making of editorial changes in a reprint as set out in sections 17D and 17E of that Act so that, to the extent permitted, the format and style of the reprinted enactment is consistent with current legislative drafting practice. Changes that would alter the effect of the legislation are not permitted. A new format of legislation was introduced on 1 January 2000. Changes to legislative drafting style have also been made since 1997, and are ongoing. To the extent permitted by section 17C of the Acts and Regulations Publication Act 1989, all legislation reprinted after 1 January 2000 is in the new format for legislation and reflects current drafting practice at the time of the reprint.

In outline, the editorial changes made in reprints under the authority of section 17C of the Acts and Regulations Publication Act 1989 are set out below, and they have been applied, where relevant, in the preparation of this reprint:

- omission of unnecessary referential words (such as “of this section” and “of this Act”)
- typeface and type size (Times Roman, generally in 11.5 point)
- layout of provisions, including:
 - indentation
 - position of section headings (eg, the number and heading now appear above the section)
- format of definitions (eg, the defined term now appears in bold type, without quotation marks)
- format of dates (eg, a date formerly expressed as “the 1st day of January 1999” is now expressed as “1 January 1999”)

- position of the date of assent (it now appears on the front page of each Act)
- punctuation (eg, colons are not used after definitions)
- Parts numbered with roman numerals are replaced with arabic numerals, and all cross-references are changed accordingly
- case and appearance of letters and words, including:
 - format of headings (eg, headings where each word formerly appeared with an initial capital letter followed by small capital letters are amended so that the heading appears in bold, with only the first word (and any proper nouns) appearing with an initial capital letter)
 - small capital letters in section and subsection references are now capital letters
- schedules are renumbered (eg, Schedule 1 replaces First Schedule), and all cross-references are changed accordingly
- running heads (the information that appears at the top of each page)
- format of two-column schedules of consequential amendments, and schedules of repeals (eg, they are rearranged into alphabetical order, rather than chronological).

5 *List of amendments incorporated in this reprint
(most recent first)*

Student Loan Scheme Act 2011 (2011 No 62): sections 222, 225

Student Loan Scheme (Exemptions and Miscellaneous Provisions) Amendment Act 2010 (2010 No 3)

Taxation (Consequential Rate Alignment and Remedial Matters) Act 2009 (2009 No 63): section 168(1)

Student Loan Scheme (Repayment Bonus) Amendment Act 2009 (2009 No 33)

Income Tax Act 2007 (2007 No 97): section ZA 2(1)

Student Loan Scheme Amendment Act 2007 (2007 No 13)

Education Amendment Act 2006 (2006 No 19): section 59(1)

Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 (2006 No 3): section 300(1)(b)(ii), (c)

Student Loan Scheme Amendment Act 2005 (2005 No 122)

Taxation (Base Maintenance and Miscellaneous Provisions) Act 2005 (2005 No 79): section 161
Income Tax Act 2004 (2004 No 35): section YA 2
Student Loan Scheme Amendment Act (No 2) 2003 (2003 No 124)
Student Loan Scheme Amendment Act 2003 (2003 No 7)
Taxation (Taxpayer Assessment and Miscellaneous Provisions) Act 2001 (2001 No 85): sections 255(1), (2)(a), 256(1)
Student Loan Scheme Amendment Act (No 2) 2000 (2000 No 96)
Student Loan Scheme Amendment Act 2000 (2000 No 33)
Student Loan Scheme Amendment Act 1999 (1999 No 60)
Student Loan Scheme Amendment Act (No 3) 1998 (1998 No 108)
Student Loan Scheme Amendment Act (No 2) 1998 (1998 No 105)
Employment Services and Income Support (Integrated Administration) Act 1998 (1998 No 96): section 11
Student Loan Scheme Amendment Act 1998 (1998 No 8)
Student Loan Scheme Amendment Act 1997 (1997 No 79)
Taxation (Remedial Provisions) Act 1996 (1996 No 159): section 46
Taxation (Core Provisions) Act 1996 (1996 No 67): section 484
Student Loan Scheme Amendment Act 1996 (1996 No 63)
Student Loan Scheme Amendment Act 1995 (1995 No 26)
Income Tax 1994 (1994 No 164): section YB 1
Student Loan Scheme Amendment Act 1993 (1993 No 12)
Student Loan Scheme Act 1992 (1992 No 141): section 51A(4)
