

Student Loan Scheme Amendment Bill (No 3)

Government Bill

As reported from the Finance and
Expenditure Committee

Commentary

Recommendation

The Finance and Expenditure Committee has examined the Student Loan Scheme Amendment Bill (No 3) and recommends by majority that it be passed with the amendments shown.

Introduction

The bill seeks to build on previous changes to the student loan scheme with the aim of encouraging personal responsibility for loan repayments and promoting compliance, particularly by overseas-based borrowers. It would amend the Student Loan Scheme Act 2011 and the Student Loan Scheme Amendment Act 2013 in the following ways:

- making it a criminal offence for borrowers living overseas who are in default on their repayment obligations to knowingly fail, or refuse, to make reasonable efforts to pay
- allowing Inland Revenue to request an arrest warrant for persistent defaulters who attempt to leave the country

- adjusting the method of calculating repayment obligations to speed up repayments from compliant borrowers living overseas
- allowing Inland Revenue to obtain a borrower's contact details from third parties if sharing of this information is authorised by legislation
- making various technical and remedial amendments to reflect the original intent of the legislation and to align the treatment of student loans with that of other types of tax.

Proposed amendments

This commentary discusses the more important amendments we recommend to the bill. It does not discuss minor or technical amendments. For example, the changes we recommend to clause 6, section 110(4), and clause 8, section 162A(1), would simply clarify the wording of these provisions to ensure they work as intended.

Offence and power of arrest

Much of our consideration, and of the submissions we received, focused on the provisions for Inland Revenue to seek arrest warrants for borrowers who persistently default on their student loan obligations.

These provisions are in clause 8, which would insert new sections 162A and 162B in the Student Loan Scheme Act 2011. Section 162A would make it a criminal offence for a borrower living overseas who was in default of their repayment obligation, and who had been notified of this by Inland Revenue, to refuse to pay or make reasonable efforts to pay. Section 162B would allow the District Court to issue an arrest warrant if it was satisfied that a person who had committed this offence was about to leave New Zealand.

We are aware of concern that the measure would punish borrowers living overseas excessively, and act as a disincentive for them to return to New Zealand. The majority of us, however, consider it an appropriate means of targeting borrowers who have the ability to repay their loans but consistently refuse to do so. We believe the measure sends a clear message to all borrowers that it is unacceptable to renege on loan obligations. We note that the Child Support Act 1991 gives Inland Revenue a similar power to apply for the arrest of liable

parents who fail to meet their child support obligations. The measure has been used sparingly—in only about a dozen cases over the past four years—but has proved effective in getting payment arrangements set up.

We considered carefully how the legislation would operate in practice, and its likely impact on borrowers. Inland Revenue uses several criteria to identify hard-core defaulters, a relatively small number. As well as the amount of their overdue payments, it looks at their repayment histories and the circumstances of their non-payment to decide whether they are deliberately choosing not to pay. It would consider such factors as well as the criteria in the legislation before applying for an arrest warrant. Inland Revenue's procedures would have allowed borrowers multiple opportunities to discuss their situation and make some arrangement for repayments before this point. Hardship relief is available for borrowers who genuinely cannot afford to pay. The majority of us therefore support retaining the offence and arrest provisions in the bill as introduced.

We recommend the following amendments to ensure the provisions are clear and framed no more broadly than necessary.

In clause 8 as introduced, section 162B(2) sets out the types of order the District Court could make, including “any other order the court thinks fit” (subsection (d)). We consider this catch-all provision overly broad, and recommend amending clause 8 by replacing section 162B(2)(d), and inserting new subsections (aa) and (ab), to specify more clearly the principal types of order that we would foresee a court making under this provision. Under these sections as amended, a court could order the borrower to pay the amount in default, to enter an arrangement to do so, or to provide information to the court. We would envisage the court requesting such information as the borrower's contact details, or information about their assets, income, or employment status.

For clarity, we recommend amending clause 8, section 162B(5), to remove some ambiguity. We also recommend inserting new section 162B(7) to make it clear that a court would be required to direct the return of any travel documents or tickets once it discharged an order not to leave New Zealand.

Alignment with other legislation

Part 2 of the bill would amend the Student Loan Scheme Amendment Act 2013 to align the definition of “income” for student loan repayment purposes with that used for Working for Families tax credits.

In our report to the House on the Taxation (Annual Rates, Foreign Superannuation, and Remedial Matters) Bill, we are recommending further changes to the definition of income, to simplify the way company income is calculated under the Working for Families rules. We recommend corresponding changes to the definition of income for student loan repayment purposes in this legislation.

We also recommend altering the definition of “adjusted net income” for student loan repayment purposes to reflect provisions in the Taxation (Livestock Valuation, Assets Expenditure, and Remedial Matters) Act 2013 requiring employees who receive certain non-cash benefits from their employer, such as a motor vehicle, to include them in their income calculations.

To effect these changes, we recommend amending clause 14 and inserting new clauses 15 to 18. They would amend Schedule 3, new Schedule 3, in the Student Loan Scheme Amendment Act 2013.

Minority views

New Zealand Labour Party

Labour supports the general principle that loan borrowers should meet repayment obligations for money they have borrowed from the Crown. This bill does little to achieve that end.

Labour considers the bill to be unnecessarily punitive in nature. We do not believe that the criteria for the arrest warrant discretion to be given to the Commissioner of Inland Revenue is appropriately specified in the legislation. As it stands, the bill turns what is currently a civil matter into a criminal matter, giving the Commissioner powers for which there is neither adequate legal description nor precedent.

In the final analysis, the arrest at border provision amounts to little more than a distasteful gimmick; police have indicated that they do not have the resources necessary to implement it as intended.

No compelling case for expecting increased compliance as a result of the proposed measures has been presented to the committee. A more likely outcome is that a few unfortunate indebted young New

Zealanders will be arrested at the borders when returning for close family funerals. This bill appears to be little more than authoritarian posturing, and as such Labour members are unable to support it in its current form.

Meaningful change to improve student loan repayments from overseas-based borrowers requires looking at options such as repayments based on earnings and negotiated payment agreements, including with third party involvement (parents in particular). Unfortunately the Government has not considered these as part of this legislation.

The original aim of the student loan scheme was to improve equity of access to tertiary education, not to turn struggling young New Zealanders into exiled enemies of the state as this bill does.

The Green Party of Aotearoa/New Zealand

The Green Party strongly opposes this bill. The Green Party member asserts that this bill is a punitive approach which will be unlikely to have a significant impact on student loan repayments, whereas a flexible, incentive-based approach is likely to be effective. A perverse outcome of this bill is the risk that it will act as a deterrent for expat New Zealanders to return to New Zealand. The Green Party member supports the majority of submitters who have opposed this bill.

Provisions allowing arrest at the border for borrowers not meeting their student loan responsibilities criminalises a group of borrowers unable to meet repayment obligations due to a variety of reasons. Treasury notes “this proposal may have the appearance of the Police acting as debt collection agents for Inland Revenue” which could reduce public confidence in the Police’s role. It has additionally been noted by officials that they do not expect the threat of an arrest warrant to be a particularly effective incentive. Inland Revenue’s new allowance to identify those for whom they believe an arrest warrant needs to be applied has been defined as punitive and unprincipled by the Legislation Advisory Committee. Further, this reform reduces incentives for overseas-based borrowers to return to New Zealand, for fear of arrest, and already is contributing towards confusion for expat New Zealanders considering returning to New Zealand. Lastly, the definition of the offence that the person in default be “notified” is concerning, as this translates to mean the person can be arrested without actually receiving the notification.

Repayment requirements for foreign-based student loan borrowers are enacted with an absence of income information; obligations will instead be based on historic loan balances from when the borrower left New Zealand leading to repayment inequities. This creates the situation where two loan borrowers with different incomes would not correspondingly have equal repayment responsibilities. The Regulatory Impact Statement notes “This creates an inequity whereby two loan borrowers with the same loan balances may have different repayment obligations if one of the borrower’s loan balances was historically higher.” Repayment rates will be unequal, based only on whether one balance was higher historically, which could lead to real hardship for low-earning borrowers. Finally, repayment obligations for overseas borrowers will no longer decrease as they reduce their loan balance, which acts as another disincentive to meet repayment obligations.

The Green Party member supports repayment requirements being income-based and progressive in nature, and having regard for individual circumstances. This bill as drafted could lead to overseas borrowers who are realistically unable to meet repayment obligations, due to current income or other circumstances, facing arrest at the New Zealand border.

The Green Party member questions if the policy objectives will actually be achieved through this bill, and given the concerns and uncertainties raised by officials cannot support it proceeding. The Green Party member notes that the Regulatory Impact Statement says “The impact of this policy on the compliance of overseas-based borrowers is uncertain” and “Officials have also stated that they do not expect the faster recovery of loans from compliant borrowers under this proposal to generate any savings in the short term.” The Green Party member notes with concern that punitive arrest provisions and repayment inequities may risk those borrowers stopping repayments altogether or making fewer repayments. He notes that it could act as an incentive to reduce repayments or a perverse incentive not to return to New Zealand at all.

The Green Party supports incentives as opposed to a punitive approach to the Student Loan Scheme debt challenge. For example, the Green Party member asked officials if any work had been undertaken to negotiate with countries where student loan borrowers are mainly domiciled to arrange income-based loan repayments through

tax payments, and found that despite the desirability it had not proceeded. Another option is greater use of Inland Revenue Department discretion in negotiating fair and reasonable repayment rates.

New Zealand First Party

New Zealand First agrees that student debts must be repaid but is of the view that debt recovery measures should be sensible, practical, and in proportion to the issue.

The bill proposes to enable Inland Revenue to request an arrest warrant for borrowers who persistently default on their student loan obligations.

New Zealand First is of the view that such measures are draconian and are entirely disproportionate to the nature of the offence. The measures in this bill must be viewed in context. Finance company directors virtually stole billions of dollars in recent years and ruined the lives of many, yet in many cases avoided prosecution or serious penalty. The student loan scheme has already had many unintended adverse consequences; this bill will create more.

We urge the Government to reconsider the excessive measures proposed in this bill. New Zealand First believes that other measures must be explored to create real incentives for repayment. The real solution to the student debt issues is ensuring that there are decent paying jobs for students to go to after they graduate so that they can repay their loans without having to go to Australia or elsewhere.

In New Zealand First's view making a group of young New Zealanders outcasts from their own country is not the solution to the problem of outstanding student debt.

Appendix

Committee process

The Student Loan Scheme Amendment Bill (No 3) was referred to the committee on 27 August 2013. The closing date for submissions was 11 October 2013. We received and considered six submissions from interested groups and individuals. We heard oral evidence from three submitters.

We received advice from the Department of Inland Revenue, the Ministry of Education, and the Ministry of Social Development.

Committee membership

Paul Goldsmith (Chairperson)

Maggie Barry

David Bennett

Dr David Clark

John Hayes

Hon Shane Jones

Dr Russel Norman

Hon David Parker

Rt Hon Winston Peters

Jami-Lee Ross

Hon Kate Wilkinson

Gareth Hughes replaced Dr Russel Norman for this item of business.

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

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Todd McClay

Student Loan Scheme Amendment Bill (No 3)

Government Bill

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Student Loan Scheme Amendment Act (No 3) **2013**.
- 2 Commencement** 5
 - (1) **Section 4** is deemed to have come into force on 1 April 2012.
 - (2) **Section 6** comes into force on 1 April 2014.
 - (3) **Section 7** is deemed to have come into force on 1 April 2013.
 - (4) This rest of this Act comes into force on the day after the date on which it receives the Royal assent. 10
- 3 Principal Act**
This Act amends the Student Loan Scheme Act 2011 (the **principal Act**).

Part 1
Amendments to Student Loan Scheme
Act 2011

- 4 Section 4 amended (Interpretation)**
In section 4(1), replace the definition of **borrower deduction** 5
with:
“**borrower deduction** means—
“(a) a deduction from a borrower’s salary or wages in ac-
cordance with section 39:
“(b) the amount of a standard deduction that exceeds the bor- 10
rower’s loan balance”.
- 5 Section 84 amended (Due dates for payment of interim payments)**
In section 84(2)(d), after “2012–2013 tax year”, insert “or any
subsequent tax year”. 15
- 6 Section 110 replaced (Repayment obligations of overseas-based borrowers)**
Replace section 110 with:
“**110 Repayment obligations of overseas-based borrowers**
“(1) This section applies to an overseas-based borrower who— 20
“(a) is not or is no longer entitled to a repayment holiday
under section 107B or 108A(2); and
“(b) has not had his or her overseas-based repayment obli-
gation reassessed under section 115A.
“(2) The borrower’s repayment obligation for every full tax year 25
during which this section applies to the borrower is—
“(a) \$1,000, if the relevant loan balance is less than or equal
to \$15,000:
“(b) \$2,000, if the relevant loan balance is more than
\$15,000 but less than or equal to \$30,000: 30
“(c) \$3,000, if the relevant loan balance is more than
\$30,000 but less than or equal to \$45,000:
“(d) \$4,000, if the relevant loan balance is more than
\$45,000 but less than or equal to \$60,000:
“(e) \$5,000, if the relevant loan balance is more than 35
\$60,000.

“(3) The borrower’s repayment obligation for any portion of a tax year (being less than a full tax year) during which this section applies to the borrower must be calculated in accordance with the following formula:

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

where— 5

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

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

“(4) In this section— 10

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

“**relevant loan balance** means the borrower’s consolidated loan balance on the start date or any subsequent 31 March after the start date, whichever balance is the greatest 15

“**relevant loan balance** means the borrower’s consolidated loan balance on the start date or, if the borrower’s consolidated loan balance increases, the greatest balance on any 31 March after the start date but before the last day of the tax year 20

“**start date** means,—

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

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

“Compare: 1992 No 141 s 34”. 25

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

After section 141, insert:

“**141A Late payment interest reduced if deduction or extraction notice applies** 30

“(1) This section applies if—

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

- “(b) the Commissioner has exercised powers available under section 157 of the Tax Administration Act 1994 to require any person to deduct or extract any amount from any moneys payable by that person to the borrower.
- “(2) For a month during which any unpaid amount remains unpaid and the Commissioner has received tax withheld or deducted in accordance with the requirements of a notice issued under section 157 of the Tax Administration Act 1994 (a **deduction or extraction notice**), any late payment interest that the borrower is liable to pay on the unpaid amount must be calculated as if, in the definition of late payment interest rate in section 139(3), the reference to base interest rate plus 4% were a reference to base interest rate plus 2%.
- “(3) However, **subsection (2)** applies only to the days in a month during which a deduction or extraction notice is in effect.”

8 New sections 162A and 162B inserted

After section 162, insert:

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

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

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

“Compare: 1994 No 166 ss 143A, 143B.

“162B Arrest of liable person

- “(1) A District Court Judge or, if a District Court Judge is not available and the case appears to be urgent, a Registrar may, on an application in writing by the Commissioner, issue a warrant for the arrest of a person (the **liable person**) if the Judge or Registrar (as the case may be) is satisfied that the person has

committed the offence in **section 162A** and is about to leave or attempt to leave New Zealand.

- “(2) The liable person must be brought as soon as possible before a District Court, which, if it is satisfied that the person is about to leave or attempt to leave New Zealand without making reasonable efforts to pay the amount in default or without making arrangements with the Inland Revenue Department to pay the amount in default, may ~~make any of the following orders:~~ order that the liable person— 5
- “(aa) pay the amount in default: 10
- “(ab) make arrangements with the Inland Revenue Department to pay the amount in default:
- “(a) ~~an order that the liable person~~ give such security (including the provision of sureties) for the payment of that liability as the court specifies: 15
- “(b) ~~an order that the liable person~~ not leave New Zealand without the written permission of the court:
- “(c) ~~an order that the liable person~~ surrender to the court, for such period as the court specifies, any travel documents or tickets in the person’s possession: 20
- ~~“(d) any other order the court thinks fit.~~
- “(d) provide the court, within such period as the court specifies, with any information the court thinks appropriate.
- “(3) To avoid doubt, the court may make an order under **subsection (2)** even if the Commissioner is able to recover the debt by other means. 25
- “(4) On making an order under **subsection (2)(b) or (c)**, the court may direct the Registrar to give notice of the order to such departments of State, offices, or persons as the court or the Registrar thinks appropriate. 30
- “(5) Every person commits an offence and is liable on conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$2,000 who, ~~being a person against whom an order under **subsection (2)(b) or (c)** is in force, leaves New Zealand, or attempts or does any act with intent to leave New Zealand.—~~ 35
- “(a) is a person against whom an order is in force under **subsection (2)(b) or (c)**; and

- “(b) is in default of his or her overseas-based repayment obligation; and
- “(c) either—
- “(i) leaves New Zealand; or
- “(ii) attempts, or does any act with the intent, to leave New Zealand. 5
- “(6) A person against whom an order under **subsection (2)** is in force may apply to the court for the discharge of the order, and the court may, if it considers it just or appropriate, discharge the order accordingly. 10
- “(7) If the Court discharges an order made under **subsection (2)(c)**, it must direct the return of any travel documents or tickets surrendered pursuant to the order (unless the court grants a new order under **subsection (2)(c)** in relation to the same documents). 15
- “Compare: 1991 No 142 s 199”.
- 9 Sections 164 to 166 amended**
In sections 164, 165, and 166, replace “section 163” with “section **162A** or 163”.
- 10 Section 193A amended (Contact person may be requested to assist)** 20
In section 193A(3), replace “In subsection (2),” with “In this section and section 193C,”.
- 11 Section 193C amended (Changes relating to contact details of borrower)** 25
In section 193C, insert as subsection (2):
- “(2) For the purpose of verifying the borrower’s address details, the Commissioner may receive the borrower’s address details from any other person if the information is shared in accordance with any other provision of this Act or any other enactment.” 30
- 12 Section 207 amended (Disclosure of information between authorised persons)**
After section 207(1)(b), insert:

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

5

Part 2

Amendments to Student Loan Scheme Amendment Act 2013

13 Amendments to Student Loan Scheme Amendment Act 2013 10
This **Part** amends the Student Loan Scheme Amendment Act 2013.

14 Schedule 3, new Schedule 3 amended, clause 8 replaced
(1) In Schedule 3, new Schedule 3, replace clause 8 with:
“8 Borrowers who are shareholders in close companies 15
If a borrower is a major shareholder in a close company on the last day of the company’s balance date for financial purposes, the borrower’s adjusted net income includes an amount calculated using the following formula if that amount is greater than zero: 20

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

where—

- a is the number of shares issued by the company and held by the borrower, excluding fixed-rate shares, on the last day of the company’s accounting year 25
- b is the number of shares issued by the company, excluding fixed-rate shares, on the last day of the company’s accounting year
- c is the net income of the company for the company’s accounting year 30
- d is the total dividends paid by the company for the company’s accounting year.

8 Borrowers who are shareholders in close companies

(1) This clause applies to a borrower who is a major shareholder in a close company on the last day of the company's income year.

(2) The borrower's adjusted net income for the income year includes an amount calculated using the following formula, if the amount is greater than zero,— 5

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

where—

a is the voting interest (in percentage) in the company held by the borrower on the last day of the company's income year 10

b is the net income of the company for the company's income year

c is the total dividends paid by the company for the company's income year. 15

(2) In Schedule 3, new Schedule 3, clause 11(3), item d of the formula, after "borrower's trust", insert "who are alive at any time in the income year".

15 Schedule 3, new Schedule 3, clause 11 amended 20

(1) In Schedule 3, new Schedule 3, clause 11(3), replace "(a + b - c) ÷ d" with "(a + b) ÷ d".

(3) In Schedule 3, new Schedule 3, clause 11(3), replace item b with:

"b is the greater of zero and the total of amounts calculated in accordance with **subclause (4)** for each company in which the trustee of the borrower's trust and associated persons hold voting interests of 50% or more on the last day of the company's income year". 25

(2) In Schedule 3, new Schedule 3, clause 11(3), delete item c. 30

(3) In Schedule 3, new Schedule 3, clause 11(3), item d, after "borrower's trust", insert "who are alive at any time in the income year".

(4) In Schedule 3, new Schedule 3, after clause 11(3), insert:

“(4) The amount referred to in **item b** of the formula in subclause (3) is to be calculated for each company using the following formula:

$$x \times (y - z)$$

where—

x is the total of the voting interests (in percentage) held by the trustee on the last day of the company’s income year

y is the net income of the company for the company’s income year

z is the total dividends paid by the company for the company’s income year.

16 Schedule 3, new Schedule 3, clause 12 amended

In Schedule 3, new Schedule 3, replace clause 12(1)(a) with:

“(a) a borrower is an employee of a company in which the borrower and associated persons hold voting interests of 50% or more on the last day of the income year; and”.

17 Schedule 3, new Schedule 3, new clause 12A inserted

In Schedule 3, new Schedule 3, after clause 12, insert:

“12A Income from employment benefits

“(1) This clause applies to a borrower to whom clause 12 does not apply if the borrower’s employer makes a motor vehicle or a short term charge facility available to the borrower in the income year.

“(2) If the borrower’s employer makes a motor vehicle available for the borrower’s private use (the **benefit**) and, under the terms of the borrower’s employment, the borrower would be entitled to a greater amount of employment income if the borrower chose not to receive the benefit, the borrower’s adjusted net income for that income year includes an amount equal to the amount by which the borrower’s employment income would be greater without the benefit.

“(3) If the borrower’s employer makes any short term charge facility available to the borrower (the **facility**), and the total value for the income year of any such facilities (excluding any fringe benefit tax) is more than the lesser of \$1,200 or 5% of the bor-

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rower’s salary or wages, then the borrower’s adjusted net income for the income year includes the total value of the facilities including any fringe benefit tax.”

- 18** **Schedule 3, new Schedule 3, clause 13 amended** 5
In Schedule 3, new Schedule 3, replace clause 13(d) with:
“(d) a company in which a trustee referred to in paragraph (c) and associated persons hold a voting interest of 50% or more on the last day of the income year.”

Legislative history

19 August 2013	Introduction (Bill 147–1)
27 August 2013	First reading and referral to Finance and Expenditure Committee
