

Student Loan Scheme Amendment Bill (No. 3)

*Officials' Report to the Finance and Expenditure
Committee on Submissions on the Bill*

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CONTENTS

Overview	1
Matters raised in submissions	3
Arrest at border	5
Issue: Arrest of liable person	5
Issue: Paying amount in default	6
Issue: Notification of default	6
Issue: Timing of discharge of order	7
Issue: Returning surrendered documents	8
Issue: Arrest at border criteria	8
Repayment obligations of overseas-based borrowers	9
Issue: Gender impact of changes	9
Issue: Move to income-based repayment regime	9
Sharing a borrower's contact details	10
Issue: Protecting privacy of individuals	10
Issue: Contact person assistance	10
Late payment interest and amnesty	12
Issue: Reduced late payment interest when under an instalment arrangement	12
Issue: Discretion to write off interest	12
General student loan scheme matters	13
Issue: Student support	13
Issue: Valuation of the student loan scheme	13
Issue: Parental responsibility for repayment	14
Issue: Remedial amendments	14
Matters raised by officials	15
Definition of "relevant loan balance"	17
Issue: Calculation of relevant loan balances	17
Definition of "income"	18
Issue: Further amendments to "adjusted net income"	18
Issue: "Adjusted net income" to include income from employment benefits	19
Matters raised by FEC	21
Any other order the court thinks fit	23
Arrest at border criteria	24

OVERVIEW

The Student Loan Scheme Amendment Bill (No. 3) introduces changes announced in Budget 2013. The bill introduces two major changes:

- Proposals to enable Inland Revenue to request an arrest warrant for borrowers who persistently default on their student loan obligations and attempt to leave the country. This power will send a strong signal to borrowers that non-compliance is unacceptable and create a strong sanction for persistent defaulters.
- Amendments to speed up repayments from compliant overseas-based borrowers. It achieves this through fixed repayment obligations for overseas-based borrowers and by adding two new thresholds to the overseas-based borrower repayment rules.

Matters raised in submissions

Five submissions were made on the bill.

Four of the submitters objected to the arrest at border provision. As reasons for opposing the provision, submitters generally cited the severity of the power, saying that it would reduce the incentives for borrowers to return to New Zealand and how resources could be better used.

The New Zealand Law Society submission proposed technical amendments to the arrest at border provision but made no comment on the provision generally.

The National Council of Women said there should be a gender impact analysis of the proposed amendments. It also raised privacy concerns with clause 11 of the bill relating to sharing contact information, saying that sharing information about borrowers not in default is undeserved.

The New Zealand Union of Students' Associations (NZUSA) submitted that the overseas-based borrower repayment rules should be income-based. It also submitted that there should be broader powers for Inland Revenue to write off interest and that provisions relating to a borrower's contact person should be tightened to avoid harassment.

Three submissions referred to matters not covered by the bill, mainly about the valuation of the student loan scheme, parental responsibility for tertiary education and the student support package as a whole.

Matters raised by officials

The bill contains clauses that align the definition of “income” for student loans with that used for Working for Families. Recent tax bills have proposed changes to the definition of “income” for Working for Families. To provide consistency in the definition for social policy purposes, officials recommend amending the bill to align the definition of “income” in student loans with changes proposed for Working for Families.

Since introduction of the bill, officials have identified a small error in the drafting of the definition of “relevant loan balance” in clause 6 of the bill that would result in the provision not working as intended. Officials propose that an amendment be made to correct this error.

Matters raised by the Finance and Expenditure Committee

Clause 162B(2D) of the bill sets out that the courts may make “any other order the court thinks fit” in relation to an arrested student loan borrower. The Committee submitted that the provision had wide scope and that there was a lack of clarity around what orders could potentially be made. As a result, officials propose this order be replaced with two provisions allowing the court to make orders that the borrower provide information or enter a payment arrangement with Inland Revenue.

The Committee also asked officials for the specific criteria that would be used by Inland Revenue to request an arrest warrant for a borrower in default.

Matters raised in submissions

ARREST AT BORDER

Issue: Arrest of liable person

Submissions

(National Council of Women, Kevin Broughan, Tim Lamusse, NZUSA)

Submitters opposed the arrest at border provision and submitted that it be removed from the bill. Concerns raised by these submitters were that the arrest at border provision was overly punitive, would criminalise poor students and reduce the incentive for overseas-based borrowers to return to New Zealand. They also believed that resources should be directed towards positive measures to ensure compliance and reduce financial hardship for students rather than punishing those who do not comply.

Comment

The arrest at border power is a targeted measure aimed at borrowers who consistently refuse to meet their responsibility to repay their loans despite having the ability to do so. The overwhelming majority of borrowers do the right thing and take their repayments seriously. However, there remains a small group of borrowers who consistently renege on their loan repayments. This lack of personal responsibility is unfair to borrowers who do honour their repayment obligations.

The arrest at border provision will send a clear message to all borrowers that non-compliance with their responsibilities is unacceptable and send a strong sanction for persistent defaulters. If a borrower in default is concerned that they may face arrest, they should contact Inland Revenue to discuss their situation.

The power is targeted towards borrowers who have the ability to pay their loans but refuse to do so. Before an arrest warrant is requested borrowers will be given multiple opportunities to discuss their situation. If a borrower genuinely cannot afford to repay, hardship relief is available for that borrower.

Before a borrower would receive a criminal record they would need to be charged and convicted of the offence. If convicted the offence is a comparatively minor one.

Recommendation

That the submissions be declined.

Issue: Paying amount in default

Submission

(New Zealand Law Society)

Section 162A(1) provides that :

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, 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.

On a literal reading of this section a borrower could commit an offence if they have not paid the amount in default by the due date, even if they have entered an arrangement to pay the amount in default. This is because the phrase “make arrangements with Inland Revenue to pay the amount in default by the due date” could be read as requiring payment of the full amount in default by the due date. The New Zealand Law Society recommends this section be amended to remove the ambiguity.

Comment

The situation outlined by the New Zealand Law Society where a borrower who had entered an instalment arrangement but had still committed an offence would be unintentional. If a borrower does not pay the full amount in default by the due date but has entered an arrangement to pay, the section should not apply.

Recommendation

That the submission be accepted.

Issue: Notification of default

Submission

(New Zealand Law Society)

A component of the definition of the offence is that the person in default has been “notified” by the Commissioner of Inland Revenue. “Notified” has the meaning ascribed to it by section 211 of the Student Loan Scheme Act. This section does not require communication to have been actually received by the borrower.

The New Zealand Law Society submits that, notification should be required to be provided to an address provided by the borrower, at the time of borrowing or later, as the address at which communications about the loan may be addressed.

Comment

The offence definition in section 162A of the bill requires that a borrower “knowingly fails, or refuses, 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”. To prove that a borrower has knowingly defaulted, Inland Revenue will be required to demonstrate that the borrower has received notification that they are in default. As a result, we consider the proposed amendment would be unnecessary.

The New Zealand Law Society also submitted that it should be required that notification be to the borrower’s address. Inland Revenue communicates with borrowers by more means than just through direct mail and sometimes due to not having their address but having other contact details. Officials are of the view that to require notification by mail would unnecessarily limit the different ways Inland Revenue could contact borrowers (for example, by e-mail or telephone).

Recommendation

That the submission be declined.

Issue: Timing of discharge of order

Submission

(New Zealand Law Society)

Section 162B(5) of the bill makes it an offence for a person to breach the court orders provided in section 162B(2)(b) or (c).

As it currently stands, section 162B(5) will apply to a person subject to an order under subsection 162B(2)(b) or (c) who has paid the entire sum due, but has not yet obtained discharge of the order. For example, a person who pays the entire sum due on a Friday intending to have their lawyer seek a discharge on the Monday would commit an offence by leaving New Zealand over the weekend. Imprisonment would not be justified in this situation.

An amendment is recommended, to make it clear that the offence is not committed if the person has not had an order discharged but has paid the entire amount in default before leaving New Zealand.

Comment

Borrowers who leave the country having paid the amount in default but not having discharged the court order are in breach of a court order. However, given that they have repaid the loan, their behaviour is not culpable enough to justify having the offence outlined in subsection (5) apply to them.

Recommendation

That the submission be accepted.

Issue: Returning surrendered documents

Submission

(New Zealand Law Society)

Section 162B(6) should also provide that when an order under section 162B(2)(C) is discharged, any travel documents which have been surrendered to the court should be returned.

Comment

When a court discharges an order that required a surrender of documents, the court will ordinarily return the documents that have been surrendered. The proposed amendment would clarify this position.

Recommendation

That the submission be accepted.

Issue: Arrest at border criteria

Submission

(New Zealand Union of Students' Associations)

NZUSA was concerned that Inland Revenue has not made public the criteria for requesting an arrest warrant.

Comment

This submission was also made by the Finance and Expenditure Committee and is addressed later in this report.

Recommendation

That the submission be declined.

REPAYMENT OBLIGATIONS OF OVERSEAS-BASED BORROWERS

Issue: Gender impact of changes

Submission

(National Council of Women of New Zealand)

A gender impact analysis would be useful as gender pay equity gap affects women's ability to repay loans. It would be useful to consider the gender impact of the proposed amendments to the repayment obligations for overseas-based borrowers.

Comment

Analysis of the impact of repayment rates is limited by the data collected by agencies. Inland Revenue does not hold information about the income of overseas-based borrowers and therefore does not collect income data broken down by gender, age or ethnicity for overseas-based borrowers. As a result, Inland Revenue is limited in its ability to do a gender impact analysis.

Hardship relief is available for those borrowers who cannot afford to pay.

Recommendation

That the submission be declined.

Issue: Move to income-based repayment regime

Submission

(New Zealand Union of Students' Associations)

The repayment obligations for overseas-based borrowers should be income-contingent. For many overseas-based borrowers the repayment obligation is out of proportion with their current earning capacity. Repayment obligations are the same for all overseas-based borrowers without regard to individual income and circumstances.

Comment

An income-contingent repayment regime is only possible if Inland Revenue knows the income of overseas-based borrowers. Inland Revenue does not have a reliable means of obtaining the income information of overseas-based borrowers. As a result, the repayment obligations of overseas-based borrowers are based on the borrower's loan balance rather than income, with hardship available for borrowers who cannot afford to pay.

Recommendation

That the submission be declined.

SHARING A BORROWER'S CONTACT DETAILS

Issue: Protecting privacy of individuals

Submission

(National Council of Women of New Zealand)

The stated goal of the bill is to target the small group of overseas-based borrowers who continue to ignore their responsibilities. We see no reason that information on all borrowers should be shared and this is an undeserved breach of the privacy of compliant borrowers.

Comment

Obtaining accurate contact details is crucial for increasing the compliance of overseas-based borrowers. For borrowers who are not in default, obtaining accurate contact details will help Inland Revenue to prevent these borrowers from falling into default. With accurate contact details, Inland Revenue can educate borrowers about their obligations and put early interventions in place.

Borrowers have an obligation under section 193C of the Student Loan Scheme Act 2011 to keep up-to-date contact details. Borrowers are also made aware of this obligation in the student loan contract.

The Office of the Privacy Commissioner was consulted for the information-sharing agreement with the Department of Internal Affairs and for the proposed amendment in the bill.

Recommendation

That the submission be declined.

Issue: Contact person assistance

Submission

(New Zealand Union of Students' Associations)

The requirements of the overseas-based borrower's "contact person" could lead to harassment of the contact person.

Section 193A of the Act (Contact person may be requested to assist) should be amended to require that the contact person be advised that they are not required to assist and that they may say they are unwilling to act as the borrower's contact person.

Comment

A borrower may nominate a person for Inland Revenue to contact in order to obtain the borrower's address details.

Section 193A(4) requires that the Commissioner of Inland Revenue not request assistance from the contact person unless the contact person first confirms that they are willing to act as the borrower's contact person. This section addresses NZUSA's concerns.

Recommendation

That the submission be declined.

LATE PAYMENT INTEREST AND AMNESTY

Issue: Reduced late payment interest when under an instalment arrangement

Submission

(New Zealand Union of Students' Associations)

Late payment interest should be reduced when a borrower enters into a voluntary arrangement with Inland Revenue for clearing their outstanding obligations.

Comment

Section 141 of the Student Loan Scheme Act provides reduced late payment interest for borrowers who comply with an instalment arrangement.

Recommendation

That the submission be declined.

Issue: Discretion to write off interest

Submission

(New Zealand Union of Students' Associations)

Inland Revenue should have the capacity to write off all interest that occurred before the introduction of the interest-free scheme as well as all penalties and fines accumulated for borrowers who comply with an instalment arrangement.

A one-off amnesty using this discretion would have great impact.

Comment

The submission refers to matters that are not part of the bill and are therefore outside the scope for consideration.

Recommendation

That the submission be declined.

GENERAL STUDENT LOAN SCHEME MATTERS

Issue: Student support

Submissions

(Kevin Broughan, Tim Lamusse, New Zealand Union of Students' Associations)

Submissions stated concerns with the student support system, including the partial funding of tertiary education by students, inter-generational fairness, the funding of universities and the effect of previous budget changes.

The Student Loan Scheme should instead be referred to as a system of grants and targeted taxation. *(New Zealand Union of Students' Associations)*

Comment

The submissions refer to matters that are not part of the bill and are therefore outside the scope for consideration.

Recommendation

That the submissions be declined.

Issue: Valuation of the student loan scheme

Submissions

(Kevin Broughan, New Zealand Union of Students' Associations)

There should be a different approach to the valuation of the student loan scheme. *(Kevin Broughan, New Zealand Union of Students' Associations)*

The cost of lending, that is the initial fair value write-down, neglects the positive impact of the interest unwind (the partial reversal of the loss in value that occurs as repayments are received); that is, the Crown books the cost of the policy changes at its upfront value and does not account for the positive financial flow from the interest unwind. *(New Zealand Union of Students' Associations)*

The cost of lending should be regarded, not as something to motivate punishment but as a dollar badly placed. *(Kevin Broughan)*

Comment

The submissions refer to matters that are not part of the bill and are therefore outside the scope for consideration.

Recommendation

That the submissions be declined.

Issue: Parental responsibility for repayment

Submission

(Kevin Broughan)

Parents should have a greater explicit responsibility for their children's tertiary education. The expectation should be that parents should save for their children's tertiary education and be required to guarantee their children's student loan.

Comment

The submission refers to matters that are not part of the bill and are therefore outside the scope for consideration.

Recommendation

That the submission be declined.

Issue: Remedial amendments

Submission

(New Zealand Union of Students' Associations)

The current practice of changing the student loan scheme on a piecemeal and annual basis is bound to lead to problems. (Clauses 2, 4 and 5)

Comment

Remedial amendments are sometimes needed to ensure the student loan legislation works as intended.

Recommendation

That the submission be noted.

Matters raised by officials

DEFINITION OF “RELEVANT LOAN BALANCE”

Issue: Calculation of relevant loan balances

Submission

(Matter raised by officials)

Clause 6 of the bill sets fixed repayment obligations for overseas-based borrowers so that their repayment obligation does not decrease as their loan balance decreases.

Due to an oversight, the definition of “relevant loan balance” does not work as intended.

To correct this problem, officials recommend amending the definition of “relevant loan balance” so that it only applies to loan balances before the date that the repayment obligation is assessed.

Comment

The proposed amendment would correct the calculation of a borrower’s relevant loan balance for the purpose of assessing an overseas-based borrower’s repayment obligation.

Recommendation

That the submission be accepted.

DEFINITION OF “INCOME”

Issue: Further amendments to “adjusted net income”

Submission

(Matter raised by officials)

The bill includes an amendment to the definition of “income” for student loan repayment purposes to align it with that used for Working for Families. Further simplifications to the definition of “family scheme income” under the Working for Families tax credit rules have been proposed as part of the Committee’s consideration of the Taxation (Annual Rates, Foreign Superannuation, and Remedial Matters) Bill.

Officials recommend that, if the Committee accepts the proposed amendments to the Taxation (Annual Rates, Foreign Superannuation, and Remedial Matters) Bill, these amendments are also made to the definition of “adjusted net income” for student loan repayment purposes. The definition of “income” used for student loan repayment purposes ensures there is consistency across all social policy initiatives to improve the integrity of the social assistance system.

The amendments should apply from 1 April 2014 for the 2014–15 and later tax years.

Comment

The definition of “adjusted net income” for student loan purposes is largely based on the definition used for Working for Families tax credits. The amendment proposed in this bill aligns the definition of “income” for student loans with proposed changes for the definition of income for “Working for Families”.

A submission made on The Taxation (Annual Rates, Foreign Superannuation, and Remedial Matters) Bill suggested that Working for Families tax credit legislation could be made simpler and more coherent. If the Committee accepts the proposed amendments to the Taxation (Annual Rates, Foreign Superannuation, and Remedial Matters) Bill, officials recommend that these simplification measures also be made to the definition of “income” for student loan repayment purposes.

The proposed amendments ensure the wording and formulas used in the calculation of a borrower’s interest in a company are consistent with the wording and formulas used to calculate a borrower’s interest in a trust and trust-owned companies. In particular, the amendments provide that:

- The method to determine a person’s interest in a company is based on the voting interest being held by the major shareholder, rather than the proportion of total shares they earn (consistent with the method used to determine a borrower’s interest in a trust and trust-owned company).
- The dates that these interests are measured is calculated on the last day of the income year.

- The references to “market value interests if there is a market value circumstance” are removed, as they seldom occur.
- Ensure formulas that determine income from companies, and trusts or trust-owned companies are aligned.

Recommendation

That the submission be accepted.

Issue: “Adjusted net income” to include income from employment benefits

Submission

(Matter raised by officials)

The Taxation (Livestock Valuation, Assets Expenditure, and Remedial Matters) Act 2013 included an amendment to require employees who receive certain non-cash benefits to include them in their family scheme income calculations. The availability of an employer-provided motor vehicle is included as income for Working for Families purposes if it is part of an explicit salary trade-off. That is, if the employee would be entitled to a greater amount of employment income if they chose not to receive the non-cash benefit. An employee who receives short-term charge facilities will also be required to include these if the value of benefits received in a year is more than the specified threshold.

Officials recommend that this amendment to the definition of family scheme income also apply to the definition of “adjusted net income” for calculating student loan repayment obligations.

The amendment should apply from 1 April 2014 for the 2014–15 and later tax years.

Comment

The definition of “adjusted net income” for student loan purposes is largely based on and aligned with, the definition of “income” used for determining entitlement to Working for Families tax credits. This ensures that a borrower’s repayment obligation accurately reflects their ability to pay.

When a non-cash benefit is provided as a substitute for salary or wages, if it is not included in “adjusted net income” in the same way salary or wages would be, inequity arises. Including these types of benefits in the definition of “adjusted net income” ensures greater fairness.

If an employee who is a student loan borrower receives a motor vehicle from their employer, and the employee would be entitled to a greater amount of employment income if they chose not to receive the non-cash benefit, that benefit will be included in the calculation of “adjusted net income”, regardless of its value. The amount which the employee would be required to report would be the amount by which their employment income would be greater in the absence of the above benefit.

Employees who are student loan borrowers will also be required to include short-term charge facilities they have received in “adjusted net income” in certain situations. This will only be when the value of the benefit provided under short-term charge facilities provided in an income year (not including the fringe benefit tax payable on the benefits) is more than the lesser of 5 percent of the employee’s salary or wages for the tax year, or \$1,200.

Recommendation

That the submission be accepted.

Matters raised by FEC

ANY OTHER ORDER THE COURT THINKS FIT

Submission

(Matter raised by the Committee)

Clause 8 of the bill inserts section 162B(2) which allows the court to make a range of orders when a liable person is brought before the court. Section 162B(2)(d) includes that the court may make “any other order the court thinks fit”.

The Committee raised concerns about the scope of this provision and the lack of clarity around what orders could potentially be made.

Comment

Section 162B(2)(d) was intended to give the court discretion to deal with situations that the other orders in the bill may not adequately address and to deal with unforeseen circumstances.

The main two orders that we foresee being made under this provision are:

- An order that the borrower provide information to the court. This information could include the borrower’s contact details, assets, income or employment status.
- An order that the borrower pays Inland Revenue the amount in default or enters an arrangement with Inland Revenue to pay the amount in default.

To address the Committee’s concerns around the scope of the provision, officials propose to remove clause 162B(2)(d) from the bill and replace it with two additional clauses describing the situations outlined above. This would make it clear what orders the court can make.

Recommendation

That the clause be removed and replaced with two additional clauses as set out above.

ARREST AT BORDER CRITERIA

Submission

(Matter raised by the Committee)

The court must be satisfied that the borrower meets the criteria set out in section 162B of the bill before the court may grant an arrest warrant.

The criteria in section 162B are that:

- the borrower is in default of their overseas-based repayment obligation;
- after being notified that they are in default, the borrower knowingly fails, or refuses, to make reasonable efforts to pay, or enter an arrangement to pay; and
- the borrower is about to leave New Zealand.

The Committee raised concerns that Inland Revenue had too much discretion in the decision of which borrowers are identified for an arrest warrant to be applied. It wanted to know about the specific criteria Inland Revenue would use to determine which borrowers would be selected.

Comment

If a borrower has any amount of default on their student loan, they face the risk of an arrest warrant being sought if they do not contact Inland Revenue to address their overdue repayments. If borrowers in default are concerned that they may face arrest, they should contact Inland Revenue to discuss their situation.

In practice, Inland Revenue would not request a warrant for all loan defaulters. Inland Revenue would balance the costs of applying for an arrest warrant against the benefits of additional compliance. The worst offenders would be targeted when deciding who to request an arrest warrant for and Inland Revenue would consider the following criteria:

- the size of the defaulter's loan;
- the amount of their overdue payments, including penalties;
- the time since they last made a payment;
- how often they return to New Zealand; and
- their history of non-compliance.

Inland Revenue intends to maintain the confidentiality of the specifics of the criteria it will apply to decide which borrowers will be targeted for an arrest warrant. To publicise specific criteria would undermine the effectiveness of the border sanctions policy by:

- Enabling borrowers to circumvent the criteria. For example, if the criteria for the level of default were publicly known, borrowers could repay to the threshold in order to disqualify them from the target group.

- Weakening the deterrent effect of the policy. If non-compliant borrowers know they do not meet the criteria for requesting an arrest warrant, there is little incentive for them to contact Inland Revenue to address their overdue repayments.

Recommendation

That the submission be declined.