

Departmental Disclosure Statement

Student Loan Scheme Amendment Bill (No 3)

2013 No 147

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by Inland Revenue.

The Inland Revenue Department certify that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

30 July 2013.

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Part One: General Policy Statement

The Bill gives effect to reforms announced in Budget 2013 that focus on improving repayments from overseas-based borrowers and increasing personal responsibility for debt repayment.

The bill proposes to enable Inland Revenue to request an arrest warrant for borrowers who persistently default on their student loan obligations. This power will send a strong signal to borrowers that non-compliance is unacceptable and create a strong sanction for persistent defaulters.

The bill contains an amendment making it a criminal offence to for borrowers who are in default of their overseas-based repayment obligation and who, having been notified by the Commissioner that they are in default, knowingly fail, or refuse, to make reasonable efforts to pay or to make arrangements with Inland Revenue to pay. This is a necessary provision as an arrest warrant is usually only requested in connection with a suspected criminal offence.

If the District Court is satisfied that a person has committed this offence it may issue an arrest warrant. The person must be brought as soon as possible before a District Court which may make a range of orders if it is satisfied that the person is about to leave or attempt to leave New Zealand without making reasonable efforts to pay or making an arrangement to do so. These orders prevent the person from leaving without making payment.

The bill also contains amendments to speed up repayments from compliant overseas-borrowers. At present, overseas-based borrowers' payment obligations decrease as their loan balance decreases even though it is likely that their income is increasing. The bill contains an amendment to ensure that an overseas-based borrower's repayment obligation does not decrease as their loan balance decreases.

For approximately 14% of borrowers (those who have a student loan balance over \$50,847), the amount due per year will not exceed the interest charged on their loan. These 14,581 borrowers will continue to see their student loan balance increasing even if they are compliant. The bill contains an amendment that will increase the repayment obligation of borrowers with loan balances greater than \$45,000. This amendment will reduce the number of borrowers whose obligation does not cover their interest from 14% to 3.5%

Correct contact details for borrowers are crucial in ensuring the continued compliance of overseas-based borrowers. An information sharing agreement was announced as part of Budget 2013 to allow the Department of Internal Affairs to provide Inland Revenue with borrowers' contact details that it receives as part of the passport renewal process. This sharing is to be limited to contact details of borrowers that are in default of their loan and not those who are compliant. This is because the Student Loan Scheme Act 2011 does not explicitly allow for sharing of contact details of borrower that are not in default. The bill contains an amendment to rectify this.

The bill also contains a number of remedial amendments that align the student loan scheme with the treatment of other tax types and ensure the Act works as intended.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	YES
<p>Cabinet Paper: Student Support Package for Budget 2013 Regulatory Impact Statement: Student Support 2013 Both available on http://www.treasury.govt.nz/publications/informationreleases/budget/2013/other-s-w/index.htm#socdev</p> <p>Student Loan Scheme Annual and Quarterly Reports available at http://www.ird.govt.nz/aboutir/reports/sl-scheme/</p> <p>Budget advice related to Budget 2013 material available at http://www.minedu.govt.nz/theMinistry/Budget/Budget13/TertiaryBudget2013InformationRelease.aspx</p>	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<p>Regulatory Impact Statement: Student Support Package for Budget 2013, 22 March 2013 Can be accessed at http://www.treasury.govt.nz/downloads/pdfs/b13-info/b13-2616690.pdf Certain information in the RIS is being withheld under the Official Information Act. This is explained in more detail in the link document.</p>	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	NO
<p>RIS did not meet the threshold for RIA Team assessment</p>	

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	NO

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO

2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
Available in reports outlined in 2.1	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	YES
(b) the nature and level of regulator effort put into encouraging or securing compliance?	YES
Available in reports outlined in 2.1	

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?

Inland Revenue has international obligations under Tax Information Exchange Agreements, Double Tax Agreements and the Reciprocal Agreement for Child Support with Australia.

This bill has no implications for these agreements and New Zealand's international obligations.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

This bill impacts student loan borrowers, with an emphasis on overseas-based student loan borrowers. The Bill therefore has no implications to the principles of the Treaty of Waitangi.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?

YES

The Student Loan Scheme Amendment Bill (No 3) is considered consistent with the Bill of Rights Act, clause 8 of the Bill, which inserts s 162B, may engage s 18 of BoRA (freedom of movement) but is clearly justified under s5 of BORA (justified limitations).

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:

(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?

YES

(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?

NO

Clause 8 creates an offence for default of overseas-based repayment obligation.

3.4.1. Was the Ministry of Justice consulted about these provisions?

YES

Consultation was done with the Ministry of Justice on preparation of the Budget student support package 2013 and in the preparation of this Bill. Considerable consultation was done in relation to the arrest provision because this Bill creates a new criminal offence.

The Ministry of Justice is comfortable with the final drafting of the Bill.

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	YES
Clause 11 allows the Commissioner to receive borrower's address details from any other person where the information is shared in accordance with any other provision of this Act or any other enactment. This clause will allow an approved information sharing agreement with the Department of Internal Affairs to be passed that would enable the sharing of address details of all overseas-based borrowers.	

3.5.1. Was the Privacy Commissioner consulted about these provisions?	YES
The Office of the Privacy Commissioner was consulted in all stages of drafting these provisions and the bill reflects this consultation. The Office of the Privacy Commissioner is comfortable with Clause 11.	

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	NO
The policy for this bill was announced as part of Budget 2013 and therefore was Budget secret.	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	YES
Inland Revenue have assessed the administrative applications of this policy to ensure that the policy is workable. Inland Revenue will communicate with borrowers about the major changes contained in the bill with particular focus on informing overseas-based borrowers of the changes to their repayment obligations as a result of the amendments in clause 6.	

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO

Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	YES
Clause 6 adjusts the repayment obligations of overseas-based borrowers. These obligations are there to ensure that overseas-based borrowers repay their loans. These are calculated under the Student Loan Scheme Act and are non-discretionary. The Student Loan Scheme Act contains hardship provisions to provide for relief for borrowers that cannot pay.	

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	YES
Clauses 4, 5, and 7 come into force with retrospective effect.	
Retrospective legislation is justified in these instances because clauses 4 and 5 clarify the original intention of the law and clause 7 is borrower-friendly and avoids the need to reverse historically granted penalty relief.	

Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO

Significant decision-making powers affecting individuals

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO

Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO

4.8. Does this Bill create or amend any other powers to make delegated legislation?	NO

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO