

Examined and certified:

Clerk of the House of Representatives

*In the name and on behalf of Her Majesty Queen Elizabeth
the Second I hereby assent to this Act this 21st day
of December 2005*

Governor-General.

Student Loan Scheme Amendment Act 2005

Public Act 2005 No 122

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The Parliament of New Zealand enacts as follows:

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.

3 Interpretation

Section 2 of the principal Act is amended by repealing the definition of **total interest rate**, and substituting the following definition:

"**total interest rate** means,—

- "(a) in respect of any tax year ending on or before 31 March 2006, the sum of the base interest rate and the interest adjustment rate:
- "(b) in respect of each tax year ending after 31 March 2006, the rate prescribed in respect of that tax year by regulations made under section 87 in the last 6 months of the immediately preceding tax year."

4 Borrower to advise Commissioner of absence from New Zealand

- (1) Section 37(1) of the principal Act is amended by adding the word "; and", and also by adding the following paragraph:

“(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) Section 37 of the principal Act is amended by repealing subsections (2) and (3), and substituting the following subsection:

“(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 3 months, he or she must, as soon as practicable after becoming so aware, provide the Commissioner with the information required by subsection (1).”

5 Non-resident borrower to advise Commissioner of return to New Zealand

The heading to section 38 of the principal Act is amended by omitting the words “**Non-resident borrower**”, and substituting the word “**Borrower**”.

6 New heading substituted

The principal Act is amended by omitting the heading below section 38, and substituting the heading “*Full interest write-off for borrowers present in New Zealand or granted an exemption*”.

7 New sections 38AA to 38AK inserted

The principal Act is amended by inserting, before section 38A, the following sections:

“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 or section 38AJ.

“(2) The conditions in section 38AK(2) apply to subsection (1).

“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.

“**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 or section 38AJ.

“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.

“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 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.

“(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 1 borrower for a maximum aggregate period of up to 24 months; and
 - “(b) under subsection (1)(f) in respect of any 1 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.
- “(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).
- “(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 1 of the grounds for the grant of an exemption in subsection (1)(a) to (f) applies.

“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).

“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.

“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 source deduction payment as defined in section OB 2(1) of the Income Tax Act 2004; 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.

“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).

“38AJ Power of Commissioner to grant exemption to borrowers undertaking post-graduate study 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 level overseas.
- “(2) An applicant under subsection (1)—
 - “(a) must provide the Commissioner with a document from the NZQA verifying that the applicant’s post-graduate course is at post-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 post-graduate 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.

- “(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 level** means study that is assessed by the NZQA as being equivalent to levels 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.

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) or section 38AE(2) or section 38AJ(3); 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).”

8 New heading inserted

The principal Act is amended by inserting, immediately above section 38A, the heading “*Full interest write-off for certain students*”.

9 Conditions for base interest write-off

- (1) Section 41 of the principal Act is amended by adding the word “; and”, and also by adding the following paragraph:
- “(c) a maximum aggregate of 2 tax years each in respect of any 1 borrower.”
- (2) Section 41 of the principal Act is amended by adding, as subsection (2), the following subsection:
- “(2) Subsection (1)(c) applies from 31 March 2006.”

10 New heading and sections 45A to 45D inserted

The principal Act is amended by inserting, after section 45, the following heading and sections:

“Amnesty from payment of late payment penalties

“45A Amnesty in respect of late payment penalties

- “(1) The Commissioner must write off any late payment penalties to which a borrower has become liable under section 44 (**late payment penalties**) if—
- “(a) the Commissioner is satisfied that the borrower is a non-resident on 31 March 2006; and
- “(b) the borrower meets the condition in section 45B(1); and
- “(c) the Commissioner receives an application (in any form or manner acceptable to the Commissioner) by or on behalf of that borrower before the close of 31 March 2007.
- “(2) This section applies—
- “(a) from 31 March 2006; and
- “(b) only to those late payment penalties that the borrower is already liable to pay on the date on which the Commissioner receives the borrower’s application under subsection (1)(c).

“45B Conditions of amnesty

- “(1) The condition that a borrower must meet for the purposes of section 45A(1)(b) is that the borrower must give an undertaking to the Commissioner that he or she will, for the whole of the 2 years after the date on which the Commissioner receives the borrower’s application under section 45A(1)(c), meet all of his or her obligations under this Act.

“(2) In accordance with the borrower’s undertaking given under subsection (1), the borrower must meet all of his or her obligations under this Act for the whole of the 2 years after the date on which the Commissioner receives the borrower’s application under section 45A(1)(c).

“45C **Effect of amnesty on repayment obligation and interest**

“(1) If the Commissioner writes off late payment penalties under section 45A(1),—

“(a) the relevant borrower is not required to make, and the Commissioner is not required to collect, payments in respect of the repayment obligation on which those penalties were written off (the **relevant repayment obligation**); and

“(b) for the purposes of paragraph (a), the relevant repayment obligation is reduced to zero; and

“(c) the amount that was to be paid in respect of the relevant repayment obligation is subject to interest from the date that the relevant repayment obligation was originally due at the total interest rate that applied over the period of non-payment of that obligation on the daily amount outstanding.

“(2) For the avoidance of doubt, the amount that was to be paid in respect of the relevant repayment obligation remains part of the relevant borrower’s loan balance, and that loan balance remains outstanding and due for repayment in accordance with subsequent repayment obligations assessed by the Commissioner.

“45D **Repayment obligation and penalties may be reinstated if amnesty condition breached**

“(1) If the Commissioner is satisfied that a borrower has breached the condition in section 45B(2), the Commissioner may, at his or her discretion, reinstate so much of the late payment penalties written off under section 45A in respect of that borrower as the Commissioner considers fair and reasonable in the circumstances.

“(2) In order to reinstate part or all of a late payment penalty under subsection (1), the Commissioner may reverse all or any part of an action that occurred under section 45C.

- “(3) The Commissioner must, as soon as practicable after reinstating a late payment penalty, give the borrower written notice of—
- “(a) the amount of that penalty; and
 - “(b) any action taken under subsection (2).”

11 New sections 57A to 57D inserted

The principal Act is amended by inserting, after section 57, the following sections:

“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.

“57B No refunds for deductions or payments made prior to 1 April 2004

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 1 April 2004.

“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.

“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.”

12 New section 58A inserted

The principal Act is amended by inserting, after section 58, the following section:

“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 the tax year ending on 31 March 2006 or any prior 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.”

13 New section 65A inserted

The principal Act is amended by inserting, after section 65, the following section:

“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) or section 38AJ, on the ground that that decision is not fair and reasonable:
- “(b) that the conditions in section 38AF, 38AG, 38AH, 38AI, or 38AJ(2) 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) or section 38AJ(3)(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) or section 38AJ(3)(b), on the ground that those conditions are—
 - “(i) not fair and reasonable; or
 - “(ii) erroneous.”

14 New sections 66A and 66B inserted

The principal Act is amended by inserting, after section 66, the following sections:

“66A Objection to decisions concerning penalty amnesty

A borrower may challenge a decision by the Commissioner—

- “(a) not to write off that borrower’s late payment penalties under section 45A, on the ground that that decision is erroneous:
- “(b) concerning the amount of that borrower’s late payment penalties that the Commissioner writes off under section 45A, on the ground that that decision is erroneous:
- “(c) that that borrower has breached the condition in section 45B(2), on the ground that that decision is erroneous:

“(d) to reinstate some or all of that borrower’s late payment penalties in accordance with section 45D(1), on the ground that that decision is not fair and reasonable.

“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.”

15 New section 69 substituted

The principal Act is amended by repealing section 69, and substituting the following section:

“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.”

16 Regulations

- (1) Section 87(1)(a)(ii) and (iii) of the principal Act is repealed.
- (2) Section 87(1) of the principal Act is amended by inserting, after paragraph (a), the following paragraphs:
 - “(ab) specifying a formula or methodology, and other requirements, in accordance with which the following interest rates must be set or reset for the purposes of this Act:
 - “(i) the base interest rate; and
 - “(ii) the interest adjustment rate; and
 - “(iii) the total interest rate:
 - “(ac) determining, in accordance with the formula or methodology and requirements specified under paragraph (ab), the following interest rates that are to apply in respect of any tax year:
 - “(i) the base interest rate; and
 - “(ii) the interest adjustment rate; and
 - “(iii) the total interest rate:”.
- (3) Section 87(1) of the principal Act is amended by inserting, after paragraph (ba), the following paragraph:

“(bb) specifying a list of charitable organisations for the purposes of section 38AE(1)(b):”.

- (4) Section 87(2) and (3) of the principal Act is repealed.
- (5) Section 87(4) of the principal Act is amended by inserting, after the expression “subsection (1)(a)”, the words “or subsection (1)(ac)”.

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,—
 - (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.

Legislative history

13 December 2005

Divided from Taxation (Annual Rates and Urgent Measures) Bill (Bill 1–2), third reading
