



**LEGISLATION ADVISORY COMMITTEE**

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25 October 2013

Hon Todd Melay  
Chair, Finance and Expenditure Committee  
Parliament Buildings  
P O Box 18 041  
**WELLINGTON 6160**

Dear Committee Members

**STUDENT LOAN SCHEME AMENDMENT BILL (NO 3)**

**Introduction**

1. This submission is made by the Legislation Advisory Committee (LAC).
2. The Legislation Advisory Committee was established to provide advice to the Government on good legislative practice, legislative proposals, and public law issues. It has produced, and updates, Guidelines on the Process and Content of Legislation as appropriate benchmarks for legislation, which have been adopted by Cabinet.
3. The terms of reference of the LAC include:
  - to scrutinise and make submissions to the appropriate body on aspects of Bills introduced into Parliament that affect public law or raise public law issues;
  - to help improve the quality of law-making by attempting to ensure that legislation gives clear effect to government policy, ensuring that legislative proposals conform with the LAC Guidelines, and discouraging the promotion of unnecessary legislation.
4. The LAC considered the Student Loan Scheme Amendment Bill (No 3) at its meeting on 23 October 2013. We are grateful to the Committee for agreeing to accept this submission after the closing date and we hope that it will nevertheless be useful.

### **Offence for default of overseas-based repayment obligations**

5. Clause 8 inserts into the Student Loan Scheme Act section 162A, which creates a new offence for borrowers in default of overseas-based repayment obligations. It provides:

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 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.

6. New section 162B provides that arrest warrants and court orders may be made against persons liable under section 162A.
7. The LAC has two concerns with these new sections.

### **Appropriateness of offence**

8. First, it appears that the primary rationale for creating this new offence is to allow the Inland Revenue to apply for an arrest warrant for the liable person if they have committed the offence in section 162A and are about to leave or attempt to leave New Zealand. The LAC considers that this is an unprincipled basis on which to create an offence.
9. If it is desired to prevent borrowers from leaving New Zealand, the Bill should provide directly for this power.

### **Notice requirement**

10. If the offence provision is retained in the Bill, the LAC considers that there is an issue with the notification element that needs to be addressed.
11. The offence, as currently drafted, requires that a person has been notified by the Commissioner that he is in default, and then knowingly fails to make reasonable efforts to pay. The LAC has particular concerns about these elements. The definition of “notify” in the section 211 of the Student Loan Scheme Act does not require the person actually to have received the notification from the Commissioner. It appears this element could be satisfied without actual notice. In contrast, the latter element of the offence requires the person to have acted knowingly.
12. The LAC considers that the construction of this offence leaves it unclear whether a person could be liable under the section if they did not actually receive notice but have failed to make reasonable efforts to pay. The LAC recommends that section 162A be redrafted so that a person is required to have actually received notice of the default in order for them to be liable. The LAC submits that it is inappropriate for a person to be liable for this offence and arrested under warrant, without that person being aware that he or she is in default.

**Conclusion**

13. Thank you for taking the time to consider the LAC's submission. The LAC does not wish to be heard on this submission.

Yours sincerely

A handwritten signature in black ink, appearing to read "Grant Hammond". The signature is written in a cursive style with a long, sweeping underline that extends to the left.

Hon Sir Grant Hammond  
Chair

