

# **Regulatory Impact Statement**

## **Information sharing Arrangement with Australia for the recovery of student loan debt**

### **Agency Disclosure Statement**

This Regulatory Impact Statement (RIS) has been prepared by Inland Revenue.

It provides an analysis of options to implement an information-sharing mechanism between Australia and New Zealand for the recovery of student loan debt. This analysis follows approval by Cabinet in August of last year to negotiate and progress towards an agreement with Australia for the purpose of exchanging information to assist in the recovery of New Zealand student loan debt held by borrowers currently residing in Australia.

Negotiations with Australian officials included a test data exchange to examine the ability of the Australians to perform the relevant information exchange and the likely benefits to New Zealand for having such an exchange.

In assessing the likely revenue benefits and determining the cost of the exchange, assumptions were made regarding the frequency of exchange and number of borrowers whose details will be matched under the proposed facility. Estimation of the revenue benefits and analysis of the problem also makes assumptions about the extent of the overseas-based borrower population residing in Australia. Because of the lack of quality contact details held for borrowers overseas, particularly for borrowers in default, it is difficult to ascertain what proportion of these borrowers are in Australia.

The information-sharing mechanism requires amendment to both Australian and New Zealand legislation. Further work needs to be undertaken to develop the required legislative changes.

No public consultation was carried out in respect of the proposed Arrangement. Extensive consultation occurred between Inland Revenue officials and the Office of the Privacy Commissioner to ensure that the potential privacy impacts have been identified and properly considered. Additionally, the Ministry of Foreign Affairs and Trade was consulted with regards to the appropriate international instrument to support the proposed exchange of information.

There is no legislation accompanying this Arrangement. However, legislation will be required before exchange of information under this Arrangement can become operational. The required legislation could be included in a student loan scheme bill scheduled for introduction in the second half of this year.

None of the proposed options are expected to impair private property rights, reduce market competition, or override common law principles.

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## **STATUS QUO AND PROBLEM DEFINITION**

### **Overseas-based-borrower debt**

1. There is currently over \$683 million owing in overseas student loan default. In 2015 this is likely to increase to \$880 million, which will represent well over 90 percent of all student loan default. Approximately 65 percent of overseas-based borrower default is estimated to be held by borrowers residing in Australia.
2. Overall, repayment rates for overseas-based borrowers are very poor. Nearly 80 percent who had a repayment obligation on 31 March 2014 failed to make their payments.
3. The key to collecting overdue repayments is holding up-to-date contact details for defaulters. Inland Revenue holds some form of contact details for only approximately 30 percent of overseas-based borrowers. This lack of contact details makes engaging with overseas-based borrowers difficult, including those borrowers based in Australia.

### **Previous initiatives**

4. In order to address the high levels of non-compliance by overseas-based borrowers, several initiatives have been introduced over the last four years to increase the quality of contact details held by Inland Revenue for overseas-based borrowers.
5. From 2012, borrowers applying for a repayment holiday were required to also provide details for an alternative contact person based in New Zealand. In 2013, legislation was amended to ensure all borrowers have an obligation to notify the Commissioner of Inland Revenue of any change in their contact details.
6. Additionally, Inland Revenue has an information match with the New Zealand Customs Service, which allows Inland Revenue to receive the contact information from the arrival cards of serious defaulters. There is also an information-sharing agreement with the Department of Internal Affairs, which allows Inland Revenue to receive contact details from passport applications and renewals for overseas-based borrowers who are either in default of their repayment obligations or whose contact details appear not to be up-to-date.
7. Inland Revenue also entered into contracts with private debt collection agencies in Australia in 2013, which allowed these agencies to locate borrowers' contact details and pursue debt collection activities on behalf of Inland Revenue when required.
8. The exchange of information underlying the proposed Arrangement follows these initiatives in scaling up the overseas-based borrower compliance initiative which began in 2010 (and initially focused on borrowers based in Australia). The initiative is run by Inland Revenue, which reports on its progress quarterly to the Minister for Tertiary Education, Skills and Employment and the Minister of Revenue.

### **Status quo**

9. There is currently no written understanding in place to facilitate and support an information-sharing mechanism between New Zealand and Australia to assist in the recovery of student loan debt.
10. At the Australia–New Zealand Leaders' meeting held in February 2013, it was agreed that officials from Australia and New Zealand would work together to investigate the possible implementation of a reciprocal student debt recovery scheme on a without-prejudice basis.

11. Following the Australia-New Zealand Leaders' meeting held in February 2014, the Prime Ministers welcomed progress on work to set up a mechanism to share data to assist New Zealand to recoup unpaid student loans in Australia, with the option of New Zealand providing reciprocal assistance should Australia adopt an overseas-based borrower regime in the future.

12. In August 2014, Cabinet agreed that New Zealand officials would enter into formal negotiations with their Australian counterparts in relation to an agreement to exchange information to assist in the recovery of student loan debt [CAB Min (14) 26/22 refers].

13. There is a concern that the status quo is not sufficient, as there is no official political commitment between Australia and New Zealand to assist in the recovery of student loan debt. As mentioned above, Australia has previously signalled an intention to cooperate with New Zealand in the recovery of student loan debt; however, this intention is not currently formalised in any manner. Assistance in recovery of student loan debt in Australia would be beneficial to New Zealand, as there is a high level of student loan default held by borrowers currently residing in Australia.

### **Problem definition**

14. The problem addressed in this RIS is limited to implementation of an agreement following negotiations with Australian officials, as Cabinet approved these negotiations in August 2014. This RIS therefore identifies the implementation options available for an agreement for the assistance in the recovery of student loan debt between Australia and New Zealand.

15. After formal negotiations with Australian officials, which took place in September to December of 2014, it has been decided that the type of agreement that is acceptable to both jurisdictions is an Arrangement. An Arrangement is of less than treaty status and instead embodies a moral and political commitment.

16. In this context, this RIS is concerned with how to progress the exchange of information between Australia and New Zealand to assist with the recovery of New Zealand student loan debt held by borrowers residing in Australia.

17. This RIS does not consider a legally binding agreement (treaty) as an option. Formal negotiations with Australian officials have indicated that their preferred option for an international instrument is an Arrangement.

### **OBJECTIVES**

18. The objectives are to:

- (a) Support an information exchange between the Australian Taxation Office (ATO) and Inland Revenue in relation to New Zealand student loan borrowers residing in Australia.
- (b) Commit Australia to enter into a mechanism for the exchange of information for information on student loan borrowers. This will require consensus with Australian officials.
- (c) Gain access to contact information for New Zealand student loan borrowers in a cost-effective way.

- (d) Achieve (c) in a timely manner, recognising that the quicker Inland Revenue can make contact with these borrowers, the more successful the initiative is likely to be.
- (e) Maintain flexibility to negotiate debt recovery terms, including information requests from Australia to New Zealand on Australian borrowers living in New Zealand (reciprocity).

19. The primary objective is to advance an information exchange between the ATO and Inland Revenue in relation to New Zealand student loan borrowers residing in Australia (objective (a)). The objectives (b), (c), (d) and (e) concern the specific criteria to be considered when trying to achieve (a).

20. The ability to maintain flexibility, particularly for the purpose of potentially providing reciprocal facilities in the future for sharing information on Australian borrowers residing in New Zealand (objective (e)) is likely to involve more lengthy negotiations. Accordingly there is a trade-off between objectives (d) and (e).

21. For an information exchange to become operational, both Australia and New Zealand will require passing amendments to current legislation to allow for the sharing of information. This means that the earliest any information exchange will be operational is the middle of 2016.

22. Following consultation with the Office of the Privacy Commissioner, and as stated in the proposed Arrangement, any information sharing will be carried out in accordance with applicable privacy laws in both jurisdictions.

## **REGULATORY IMPACT ANALYSIS**

23. This RIS considers the status quo (option one) and one alternative (option two) as options to address the stated problem and achieve the desired objectives.

### **Status quo (option one)**

24. There is currently no written understanding between Australia and New Zealand that allows for assistance in the collection of student loan debt. Accordingly, there is currently no ability or mechanism to share information with Australia for the purpose of obtaining contact details on student loan borrowers.

25. If the status quo is retained, the ability to implement an information exchange with the ATO is substantially reduced.

26. Negotiations between Australian and New Zealand officials have indicated that it is preferable for there to be a high-level written understanding or arrangement in place to facilitate an information-sharing mechanism between tax departments in each jurisdiction.

27. Therefore, if the proposed Arrangement is not made, there is no support for an information exchange mechanism to assist in the recovery of New Zealand student loan debt held in Australia.

28. If the information exchange is still pursued, re-negotiations with Australia officials will be required to ascertain whether it is possible to implement an information-sharing mechanism either without a high-level agreement or with another kind of high-level

agreement (for example, a treaty). This is likely to substantially delay the implementation of an information exchange and the likely benefits.

**Enter into an Arrangement (option two)**

29. Option two is for the Commissioner of Inland Revenue to enter into an Arrangement with the Commissioner of Taxation (Australia) for the exchange of information on New Zealand student loan borrowers residing in Australia. The information exchange proposed under this Arrangement will require changes to both Australian and New Zealand legislation. In particular, it will require amendment to the tax secrecy provisions in the Tax Administration Act 1994 and further changes to either the Tax Administration Act or the Student Loan Scheme Act 2011.

30. This proposed Arrangement is a high-level document that embodies a moral and political commitment. It allows for the exchange of information between the ATO and Inland Revenue. This information exchange would allow Inland to receive up-to-date contact details for New Zealand student loan borrowers residing in Australia through matching borrower details against the ATO database of Australian taxpayers. Inland Revenue would then be able contact those individuals to keep them engaged with their loan obligations and, where appropriate, recover outstanding student loan amounts.

31. To indicate the potential benefits of the proposed Arrangement, a test information-match occurred in November 2014 between the ATO and Inland Revenue, using a sample of New Zealand student loan borrower data.

32. The high-level data match process involved the following:

- Inland Revenue selected 1,000 active student loan cases.
- The cases were sent securely in two batches to the ATO.
- The ATO performed an information-match.
- A high-level report was provided to Inland Revenue.

33. The results of the test match were as follows:

Confidence	Group 1 (up-to-date contact details)		Group 2 (contact details not up-to-date)		Total	
	Count	Percentage	Count	Percentage	Count	Percentage
High confidence of match	483	96.6%	384	76.8%	867	86.7%
Low confidence of match	3	0.6%	22	4.4%	25	2.5%
No match	9	1.8%	58	11.6%	67	6.7%
Inconclusive match	5	1.0%	36	7.2%	41	4.1%
<b>TOTALS</b>	<b>500</b>	<b>100.0%</b>	<b>500</b>	<b>100.0%</b>	<b>1,000</b>	<b>100.0%</b>

34. This table outlines the degree of confidence of the information-match performed by ATO using the data Inland Revenue sent on New Zealand borrowers. This data was separated into two groups of borrowers. Group 1 consisted of borrowers for whom Inland Revenue believed it had up-to-date contact details. Group 2 consisted of borrowers who were not considered to have up-to-date contact details currently registered with Inland Revenue.

35. This test match indicates that an information exchange between the ATO and Inland Revenue is likely to be a good source of contact details for New Zealand borrowers residing in Australia.

36. The results of this test match were used to estimate the likely revenue benefits from an information-exchange mechanism. Additional assumptions were made regarding the frequency of exchange and volume of borrowers' details sent to the ATO for matching. These benefits were estimated to be around \$NZ10 million in repayments (additional to the repayments already being received under the overseas-based borrower compliance initiative) for the first year. Subsequent years are estimated to have a similar increase in borrower repayments from new contacts made as well as from those contacted in previous years who have continued to make their repayments.

37. This table summarises our impact assessment of the options.

Options	Does it meet the objectives (a, b, c, d or e)?	Impacts					
		Fiscal	Administration	Compliance	Environmental , social and cultural	Risks	Net impacts
<i>Option one - Retain the status quo</i> (No Arrangement with the ATO for exchange of information)	None	Revenue negative. Debt is likely to continue to grow. Relies on previous initiatives to obtain contact details.	Unable to utilise ATO database to obtain contact details for borrowers.	No compliance costs for borrowers.  No expected compliance change for borrowers.	Announcements have been made regarding the intention of Australian and New Zealand to work together for student loan debt recovery. Failure to proceed might be perceived negatively.	No formalised political commitment from Australia to assist in student loan debt recovery.  Potential loss of goodwill between Australia and New Zealand.	Overall, negative. Does not progress the information-exchange mechanism between Australia and New Zealand.
<i>Option two - Enter into an Arrangement with the ATO for the exchange of information</i>  (Preferred option)	Yes (a, b, c, d, and e*).	Revenue positive. Estimated revenue benefits around \$10 million in additional repayments in the initial year (2016/17).  Subsequent years are expected to have a similar increase from new contacts in addition to ongoing compliance from those already contacted.	The indicative administrative cost to implement this initiative is \$1,143,600 (AUD) over five years.  This service is provided on a cost-recovery basis.  Service-level arrangement and implementing legislation need to be developed for information exchange to be operational.  An impact assessment has been completed within Inland Revenue. This indicates that the administrative impacts of this proposal are likely to be minimal.	Direct positive impact on compliance – experience shows once contacted a large proportion of borrowers start to comply.  Indirect positive impact on compliance – illustrates that Inland Revenue is able to obtain details on borrowers living in Australia.	Change in cultural perception – signals to borrowers in Australia that Inland Revenue is able to obtain contact information from ATO.	An Arrangement between Australia and New Zealand would set a precedent in international cooperation for New Zealand student loan debt recovery – may prompt other countries to pursue similar agreements with New Zealand.	Overall, positive. Will support access to a reliable source of information on student loan borrowers in Australia.

\*The Arrangement is able to be easily amended in the future to incorporate reciprocal information sharing. However, there is no explicit provision in the Arrangement to cover information sharing on Australian student loan borrowers in New Zealand.

## **CONSULTATION**

38. Inland Revenue officials have developed the proposed Arrangement in consultation with the Ministry of Foreign Affairs and Trade, the Office of the Privacy Commissioner, the Australian Treasury and the ATO. The New Zealand Treasury and the Ministry of Education have also been consulted on the proposed information exchange and proposed Arrangement.

39. In particular, the Office of the Privacy Commissioner has been consulted with regards to the privacy impacts and relevant information safeguards in the development of the text of the Arrangement. Inland Revenue officials will continue to consult with the Office of the Privacy Commissioner in the drafting and preparation of the legislation required to implement the information exchange.

40. The Australian and legal divisions of the Ministry of Foreign Affairs and Trade have been consulted extensively with regards to the most appropriate international instrument to bring the information exchange into effect.

## **CONCLUSIONS AND RECOMMENDATIONS**

41. Inland Revenue's recommendation is for the Commissioner of Inland Revenue to enter into an Arrangement with the Commissioner of Taxation (Australia). This option meets all of the objectives outlined above.

42. The Arrangement solidifies the intention for Australia to assist New Zealand in the recovery of its student loan debt through an information-exchange facility (objective (b)).

43. The status of the Arrangement allows the exchange of information to become operational pending the enactment of legislation to allow information to be shared between Australia and New Zealand for this purpose. The information-exchange mechanism is expected to become operational in the second half of 2016 (objective (d)).

44. The Arrangement supports a one-way information exchange between Australia and New Zealand to assist New Zealand in the recovery of its student loan debt held in Australia. However, the nature of an Arrangement means that it is able to be amended in the future for the purpose of supporting a reciprocal information exchange (objective (e)).

45. This service is to be provided on a cost-recovery basis. Australian officials have provided Inland Revenue with an indicative cost of \$1,143,600 (AUD) over five years. The results of the test match indicate that the ATO is a reliable source of information on New Zealand borrowers based in Australia (objective (c)).

46. Entering into an Arrangement is considered to be preferable to the status quo because it ultimately supports an information exchange with the ATO to assist in the recovery of New Zealand student loan debt (objective (a)), while the status quo does not support this.

## **IMPLEMENTATION**

47. The Arrangement is required to be signed by the Commissioner of Inland Revenue and the Commissioner of the Australian Taxation Office.



48. In order for the exchange of information facility to be operational, legislation will need to be passed in both Australia and New Zealand to allow for the relevant sharing of information. In New Zealand, legislative amendments would need to be made to secrecy provisions in the Tax Administration Act 1994. Further amendments would be required, which could be included in either the Tax Administration Act 1994 or the Student Loan Scheme Act 2011. Those amendments could be included in a student loan scheme bill, scheduled for introduction in the second half of 2015.

49. Following the approval of the Arrangement, a service-level arrangement will be drafted between Australian and New Zealand officials. This document will govern the operational details of how the information exchange will be carried out, and it will be able to be amended where necessary to ensure efficient operation of the information-exchange mechanism.

50. The Arrangement includes guidelines for the use of information. Specific operational details of the handling of information and appropriate safeguards will be included in the service-level arrangement.

51. Broadly, the exchange of information is intended to work as follows: at the request of the New Zealand Central Authority<sup>1</sup>, the Australian Central Authority will take all appropriate steps to provide directly to the requesting Central Authority, as promptly as possible, any information it holds on:

- the most recent residential address of a student loan borrower; and
- the contact information for a student loan borrower.

52. Inland Revenue will then use the contact details in normal student loan collection processes for overseas-based borrowers.

53. An impact assessment has been completed within Inland Revenue. This assessment indicates that the administrative impacts of this proposal are likely to be minimal.

## **MONITORING, EVALUATION AND REVIEW**

54. The Arrangement provides that Central Authorities may carry out an annual review of the Arrangement, and additionally may review the whole or part of the Arrangement at the request of either Central Authority. This is outlined in paragraph 10 of the Arrangement.

55. Once this proposal is operational, its results and evaluation will be included as part of quarterly reporting on the overseas-based borrower compliance initiative to the Minister for Tertiary Education, Skills and Employment and the Minister of Revenue.

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<sup>1</sup> The New Zealand Central Authority refers to the Commissioner of Inland Revenue or a person authorised by the Commissioner. The Australian Central Authority refers to the Commissioner of Taxation or a person authorised by the Commissioner.