Purpose

The main aim of the Bill is to amend the Student Loan Scheme Act 2011 (the Act or the 2011 Act) “to improve the value of the student loan scheme and ensure that repayment obligations are determined on a fair and equitable basis for all borrowers regardless of the types of income they earn”.

Main changes

Repayment obligations for first-time borrowers

The bar-2 Bill provides that new borrowers commencing a loan after 31 December are not subject to the end-of-year assessment for that tax year. This change applies from 1 April 2012 for the 2013 and future tax years. The Bill continues to provide the relief currently provided through the Student Loan Scheme Act 2011 (Transitional Provisions) Regulations 2012 (which would otherwise expire in 2015) by enabling regulations to be made in relation to the transition (Part 1, Clause 6(1), inserting new subsection 7 amending Section 4(1) of the Act by inserting a new definition, “new borrower”; amending Clause 13, amending Part 2 of the Act by inserting New Subpart 2, substituting Section 72 of the Act;
amending Clause 39 (amending Schedule 6 of the Act – “Application, savings, and transitional provisions”) by inserting new subclause (3) (inserting new part 2 in Schedule 6 and changing the heading of that schedule to “Transitional provision relating to Student Loan Scheme Amendment Act (No 2) 2012”) and new subclause (4) (“Regulations for transitional purposes”); inserting New Clause 49A into the Bill).

Comment
This amendment is made to “correct an unintended consequence of the 2011 Act. From 1 January 2012, the Act enabled the Inland Revenue Department to receive information from StudyLink about loan advances almost instantly, rather than only once a year, in February. This allowed borrowers to view their consolidated loan balance, rather than having to add the amounts managed by two different agencies. However, an unintended drawback of the earlier transfer has been that new borrowers’ repayment obligations are calculated on their income for the entire tax year, even when they have had the loan for only a short time”².

Regulations for the transition
The bar-2 Bill provides for regulations to be made “to smooth the transition to the new regime”. This amendment “is similar to that in Section 216 of the 2011 Act, which provided a power to make regulations on the recommendation of the Minister to enable an orderly transition to the new legislation”³. Regulations made must include a date on which the regulations are revoked, and that date must be no later than 3 years after the date on which they are made. The regulation-making provision expires at the close of 1 April 2017. However if such regulations include a revocation date which is later than that date (but no later than 3 years after they are made), the regulations continue in force until the revocation date included in the regulations is reached (unless they are earlier revoked) despite the repeal of the regulation-making provision. In respect of regulations for the transition, the Minister must not recommend their making unless he or she is satisfied that the regulations:

- are reasonably necessary for the purpose of facilitating or ensuring an orderly transition; and
- are consistent with the purposes of the Act (Part 1, Clause 39 amending Schedule 6 of the Act by inserting new clause 17).

Comment
“The changes the bill would make to the 2011 Act are complex. They involve amendments to previous amendments that have not yet come into force, the repeal of provisions that were to come into force in the future, and inter-relationships between provisions that would be amended or repealed at different points in time. There is also the challenge of ensuring that Inland Revenue’s computer system implements the amendments accurately. There is a relatively high risk that unforeseen issues or unintended consequences may emerge in the transition to this legislation, creating a need for regulations”⁴.

Certain matters in the Act not to proceed
The Bill as introduced “recognises that some of the changes to the administration of the student loan scheme originally provided for in the Student Loan Scheme Act 2011 would be too complicated to implement within the Inland Revenue Department’s current computer system, and should therefore not proceed”⁵. The bar-2 Bill removes other matters from the 2011 Act including:

- the discretion to write off small obligation amounts under $20 (Part 1, Clause 22, inserting subclause (2), amending Section 144(3) of the Act);

² Student Loan Scheme Amendment Bill (No 2), 2013 No 56-2, As reported from the Finance and Expenditure Committee, Commentary, pp. 2 and 3.
³ Ibid., p. 5.
⁴ Ibid., p. 5.
⁵ Ibid., p. 3.
the restoration of the current system for calculating loan interest is retained (the 2011 Act, with effect from 1 April 2013, would have calculated loan interest only for overseas-based borrowers, and it would have been calculated daily and charged and compounded monthly) (Part 2, deleting Clause 54 from the Bill (and therefore retaining the existing loan interest regime in Sections 134 to 137 of the Act));

retaining the 30-day grace period currently allowed for cancelling loan interest if a borrower’s consolidated loan balance is paid in full within 30 days of receiving a notification of their loan balance (Part 2, inserting Clause 59A, amending Section 196 (which would otherwise expire on 1 May 2013)).