



7 October 2013

Mr Craig Ryan
fyi-request-1110-dc8ad5c6@requests.fyi.org.nz

Dear Mr Ryan

The Minister of Revenue transferred your Official Information Act request of 5 September 2013 to Inland Revenue, and we received it on 9 September 2013. You requested the following, in relation to the proposed "arrest at border" process for student loan defaulters:

- *I would like to know the process of who orders the arrest warrant, what the charge or offence is?*
- *Also how will the process proceed?*
- *In the event that the alleged criminal is unable to pay, will they be incarcerated in a New Zealand prison until they can pay?*
- *What will the penalty or sentence be?*
- *After the sentence is served, will the convicted criminal still be liable for the outstanding debt?*
- *What are the human rights implications of this new legislation regarding the arrest at border of defaulters of Student loans.*

The "arrest at border" provisions are in the Student Loan Scheme Amendment Bill (No. 3), which is not yet law. This bill is available on the www.legislation.govt.nz website, and the associated commentary can be found at www.taxpolicy.ird.govt.nz/publications/2013-commentary-sls-3/overview.

Each of your questions is answered below.

I would like to know the process of who orders the arrest warrant, what the charge or offence is?

Before an arrest warrant is requested, borrowers will be given multiple opportunities to discuss their situation. If a borrower genuinely cannot afford to make repayments, there are a number of options that can be discussed with the borrower, such as hardship relief and instalment arrangements. It is in a borrower's best interests to get in touch with Inland Revenue early to discuss their situation.

It will be an offence for a borrower who is in default of their overseas-based repayment obligation and who, having been notified by the Commissioner that they are in default, to knowingly fail, or refuse, to make reasonable efforts to pay or to make arrangements to pay.

A District Court judge issues the arrest warrant upon written application by the Commissioner of Inland Revenue. When issuing the warrant, the judge has to be satisfied that the borrower has committed the above offence and is about to leave or will attempt to leave New Zealand.

Also how will the process proceed?

The New Zealand Police may stop the borrower at the border and execute the arrest warrant as the borrower attempts to leave the country.

The arrested person must be brought as soon as possible before a District Court, which may make the following orders:

- an order that the person must give security for the payment of the debt
- an order that the person must not leave New Zealand without the written permission of the court
- an order that the liable person must surrender to the court any travel documents or tickets in the person's possession
- any other order the court sees fit to make.

If a person attempts to leave New Zealand without the written permission of the court or breaches the order, that person must surrender any travel document. They have committed an offence and are liable on conviction to imprisonment for a term not exceeding three months or to a fine not exceeding \$2000.

In the event that the alleged criminal is unable to pay, will they be incarcerated in a New Zealand prison until they can pay?

No. As noted earlier, a borrower who cannot afford to meet their repayment obligation may apply for an instalment arrangement or hardship under our existing provisions, meaning that the repayment obligation may be reduced.

What will the penalty or sentence be?

See answers above.

After the sentence is served, will the convicted criminal still be liable for the outstanding debt?

Yes. Whether or not a person is convicted and a fine or imprisonment is imposed, the borrower remains liable for the outstanding debt.

What are the human rights implications of this new legislation regarding the arrest at border of defaulters of Student loans?

Every bill is scrutinised before it is introduced for consistency with the Bill of Rights Act 1990 (BORA), a process called BORA vetting. Advice is provided to the Attorney General by the Ministry of Justice.

In this case, the Ministry of Justice's conclusion was that the bill appears to be consistent with the rights and freedoms affirmed in the Bill of Rights Act. The full transcript of the legal advice provided can be found here:

www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights/student-loan-scheme-amendment-bill-no-3

This response fully covers the information you requested. I trust it is of assistance to you.

Yours sincerely

A handwritten signature in blue ink, consisting of a stylized, cursive initial followed by a long horizontal line extending to the right.

Maurice Lawlor
Business Owner