

# Who Doesn't Pay the Piper? Tax, Debt, Fine and Penalty Collection in New Zealand

LISA MARRIOTT<sup>1</sup>

**ABSTRACT:** This article examines the different approaches to collecting debts owed to the New Zealand Government. The aim of the study is to compare debt collection by Inland Revenue with debt collection approaches in other government departments, including the Ministries of Justice, Environment, Primary Industries, Social Development, and Business, Innovation and Employment. Data is collected from government department annual reports and supplemented by information collected under the *Official Information Act 1982*.

The first objective of this study is to measure and report on different approaches to debt management across government agencies. The study finds that approaches to collecting funds owed to the Crown are inconsistent across government agencies, both in their intent and in their application. The current approaches result in large sums of funds remaining uncollected. This is particularly evident in relation to tax debt and student loan debt.

There is some suggestion from overseas literature that white-collar fines and penalties lack strong enforcement. Thus, the second aim of the study is to examine whether there is any relationship between the types of monies owed and debt collection approaches in New Zealand. Data collected shows that tax debt and student loan debt is more likely to be remitted than other forms of debt. The article makes a case for adopting a standardised, and centralised, approach to debt collection in New Zealand, in order to improve transparency and equity across government debt collection.

## 1.0 Introduction

This article examines debt collection across a number of government agencies in New Zealand, with a particular focus on tax debt. In the legend of the Pied Piper of Hamelin, referred to in the title of this article, the piper abducted the children in a village when he was not paid for removing rats from the village as agreed. The intended reference, and relevance to this study, is that negative consequences follow when debts are not settled. However, this is not the case in relation to some debts in New Zealand, where there are a range of situations where debts will not be recovered. The issue that this study sets out to explore is the different approaches to debt management that are adopted across different government departments.

Receivables reported in the Crown financial statements for the year ended 30 June 2017 are outlined in Table 1.

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<sup>1</sup> Professor of Taxation, School of Accounting and Commercial Law, Victoria University of Wellington, New Zealand. Email: Lisa.Marriott@vuw.ac.nz.

**Table 1: New Zealand Government Receivables (30 June 2017)<sup>2</sup>**

<b>Receivable Type</b>	<b>Amount</b>
Tax receivables	\$10,313 million <sup>3</sup>
ACC levy receivables	\$2,225 million
Social benefit receivables	\$736 million
Other levies, fines and penalties receivable	\$350 million
<b>Total Sovereign Receivables</b>	<b>\$13,624 million</b>

Other receivables that are categorised as advances are outlined in Table 2.

**Table 2: Additional Receivables (30 June 2017)<sup>4</sup>**

<b>Receivable Type</b>	<b>Amount</b>
Kiwibank loans and advances	\$17,795 million
Student loans	\$9,197 million
Other advances	\$1,591 million
<b>Total Other Receivables</b>	<b>\$28,583 million</b>

The primary receivables of the New Zealand Government total \$24.4 billion. This figure includes all receivables with the exception of Kiwibank advances as, unlike other debts to the Crown, these are likely to be entered into on commercial terms. For the purposes of context, total tax revenue for the 2016/17 financial year was \$75.6 billion.<sup>5</sup>

Data is collected for this study from annual reports of government departments and supplemented with information gathered under the *Official Information Act 1982*. In the majority of cases, information requested was provided by the government agencies approached. However, the Inland Revenue declined to provide some requested information.

The research concludes that approaches to Crown debt are inconsistent, both in their intent and in their application, and result in large sums of funds remaining uncollected. The majority of Crown debt that is not collected is tax debt and student loan debt, both of which are administered by the Inland Revenue. The article suggests that Inland Revenue's attempts to be more customer-centred have resulted in a lenient approach to tax collection that impacts negatively on revenue collection.

One of the recommendations from this research is that there may be benefit from adopting a standardised approach to debt collection across New Zealand government departments. Further benefit may be gained from establishing a centralised debt management office to specialise in debt collection.

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<sup>2</sup> New Zealand Government. 2017. Financial Statements of the Government of New Zealand for the Year Ended 30 June 2017, Audited Financial Statements, Notes to the Financial Statements, Note 12 Receivables. Wellington: New Zealand Government.

<sup>3</sup> The tax receivables figure reported in the New Zealand Government financial statements differs from the receivables reported in the Inland Revenue financial statements. This is due to a number of factors, including expected timing of collection of debt.

<sup>4</sup> New Zealand Government, above n 2, Note 12 Receivables.

<sup>5</sup> New Zealand Treasury. 2017. Revenue. Available at: <http://www.treasury.govt.nz/government/revenue>, 5 October 2017.

The study commences in section two with a discussion on tax debt administration. Section three follows with a review of debt collection across a range of government agencies in New Zealand. Section four provides an analysis of the range of debt collection approaches, with concluding comments drawn in section five.

## 2.0 Background

This section provides the context to the topic of debt collection, with a primary focus on tax debt and tax penalties. Fines, penalties and other sanctions exist in order to encourage compliance with rules and laws. They also have a deterrent objective – to deter specific individuals from repeating events of non-compliance and to deter individuals in general from engaging in non-compliant behaviour. They may also include an element of reparation: to make amends for wrongdoing. However, in order to achieve these aims, the financial fines and penalties imposed need to be collected.

In 1999 the Finance and Expenditure Committee completed an *Inquiry into the Powers and Operations of the Inland Revenue Department* (the Inquiry).<sup>6</sup> The terms of reference of the Inquiry included reviewing the powers of the Commissioner of Inland Revenue to assess and collect income tax and to assess whether the powers were justified; to review Inland Revenue’s application of the compliance and penalties regime; and to review debt management practices and the adequacy of Inland Revenue’s powers to remit or defer payment of tax liabilities.

Terms of Reference C to the Inquiry are relevant to this study. This outlines the debt management practices and adequacy of the powers of Inland Revenue to remit or defer payment of tax liabilities. The Terms of Reference note that Inland Revenue has a “*difficult job to perform when dealing with taxpayers who are in debt to the department*”.<sup>7</sup> Three reasons are provided in support of this statement. First, unlike other creditors, Inland Revenue has no control over the individuals and entities that generate tax debts. Second, Inland Revenue (at the time) had no general discretion on payment of tax liabilities. Third, some forms of debt (such as child support) were given priority in distributions when a taxpayer was insolvent.

The Inquiry also observed the potential for debts to escalate quickly as use-of-money interest and penalties accrue. This is a situation that is receiving further attention at the present time, some 20 years later.

The Inquiry also commented on the Commissioner’s discretion to remit income tax if the taxpayer was experiencing serious hardship, noting that the serious hardship provision was used where taxpayers did not have the ability to pay tax in arrears but did have the ability to account for future taxation payments. The Inquiry notes the equity issues associated with remission of debt and that it “*erodes the ethos that all taxpayers have an obligation to pay their tax*”. This equity has not been addressed and creates a situation where employees, whose tax obligations are deducted at source, do not have the same ability to claim serious hardship.

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<sup>6</sup> Inland Revenue. 1999. *Inquiry into the Powers and Operations of the Inland Revenue Department*. Presented to the New Zealand House of Representatives, October 1999. Available at: <http://taxpolicy.ird.govt.nz/publications/1999-other-inquiry-ird-fec/overview>, 3 November 2017.

<sup>7</sup> Above, n 6, Terms of Reference C.

A theme that emerged from the Inquiry was that “*the department takes a heavy handed approach to debt collection, and pursues debt rigorously and without tact*”.<sup>8</sup> The Inquiry reported that in the period 1 July 1998 to 30 June 1999, the department referred 1,000 individuals for bankruptcy and 995 companies for liquidation. In 44% of these cases, the proceedings were withdrawn as the debt was either paid or arrangements to pay the debt were made. Liquidations and bankruptcies are discussed further in section three of this article. However, for the purposes of comparison, the numbers of individual and companies entering into liquidations and bankruptcies in 2015/16 were approximately double those reported for 1998/1999.<sup>9</sup>

Tax revenue authorities throughout the OECD have invested considerable resource in improving tax compliance and collection. As noted by the OECD, there is little to be gained from sophisticated strategies for enhancing or enforcing compliance, if the tax owed is not actually collected.<sup>10</sup> In 2011, Ross and Pritikin wrote an article suggesting that corporate and white-collar fines and penalties lacked strong enforcement.<sup>11</sup> The authors report a “*massive gap between penalties imposed ‘on the books’ and penalties collected in reality*”.<sup>12</sup> However, this is not a new revelation. Over 30 years ago Kagan suggested that costly mechanisms to collect debt were being foregone for alternative approaches that included negotiation of payment terms, bankruptcy or writing off unpaid debt.<sup>13</sup>

In the United States of America an “Excessive Fines Clause” exists in the Eighth Amendment.<sup>14</sup> The result of this clause is that penalties may be barred where they are disproportionate in relation to their associated offending. However, the ability of the defendant to pay the fine has not been a relevant consideration in the context of the Eighth Amendment and it is only in the event that the fine or forfeiture would be sufficiently severe as to “*destroy a defendant’s livelihood*” that the clause would be imposed.<sup>15</sup> No similar clauses exist in New Zealand, although some government departments may take advantage of legislated debt write-offs where serious hardship will result to the debtor if repayment of the debt is pursued.<sup>16</sup>

Governments are becoming more innovative in the methods used to assist with debt collection. For example, the Netherlands Tax and Customs Administration uses Automatic Number Plate Recognition to assist with collecting tax debt. Motorists with outstanding debts are stopped during “stop-and-pay” operations with police and other authorities. If motorists are identified as tax debtors during these operations, they are required to settle the tax debt or their car will be seized. In 2010, the tax administration seized 2,000 vehicles and collected €5 million during

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<sup>8</sup> Above, n 6, Terms of Reference C.

<sup>9</sup> Information received under the Official Information Act, 29 November 2017, Inland Revenue.

<sup>10</sup> OECD. 2013. Forum on Tax Administration. Scoping document: Working smarter in tax debt management. [https://www.oecd.org/tax/forum-on-tax-administration/publications-and-products/FTA\\_TOR\\_TaxDebtManagement.pdf](https://www.oecd.org/tax/forum-on-tax-administration/publications-and-products/FTA_TOR_TaxDebtManagement.pdf), 1 November 2017.

<sup>11</sup> Ezra Ross and Martin Pritikin. 2011. “The Collection Gap: Underenforcement of Corporate and White-Collar Fines and Penalties”, *Yale Law & Policy Review*, 29,453-526.

<sup>12</sup> Above, n 11, 454.

<sup>13</sup> Robert A Kagan. 1984. “The Routinization of Debt Collection: An essay on social change and conflict in the courts”, *Law and Society Review*, 18(3):323-372.

<sup>14</sup> McLean, Nicholas, M. 2013. “Livelihood, Ability to Pay, and the Original Meaning of the Excessive Fines Clause”, *Hastings Constitutional Law Quarterly*, 40(4):833-902.

<sup>15</sup> Above, n 14, 835.

<sup>16</sup> For example, s 177A Tax Administration Act 1994.

these operations.<sup>17</sup> Other examples include publishing the names of taxpayers with debts (Finland) or using specialist debt collection agencies (the United Kingdom).<sup>18</sup> The United Kingdom approach was reported as collecting an additional 77% more cash than if the debt collection agencies had not been used.<sup>19</sup>

In 2011, the OECD published a document comparing debt collection mechanisms across OECD countries, among other topics.<sup>20</sup> While this information dates back to 2009, it provides an historical perspective on resources invested in the debt collection mechanism in a range of countries. Across the 34 OECD member states reported, New Zealand has one of the lowest proportions of staff usage on debt collection and related functions at 9.4%.<sup>21</sup>

New Zealand has a low cost of collection ratio for tax debt, which the OECD observe is used as a measure of efficiency and effectiveness of the administration.<sup>22</sup> New Zealand's cost of collection ratio ((administration cost/net revenue collection)/1) is 0.85.<sup>23</sup> While this would appear to be a positive sign, other countries that have low cost of collection ratios typically have a low tax burden. In the case of New Zealand the low cost of collection may reflect a high level of efficiency or it may also reflect non-collection of debt that will incur higher costs to collect. It is acknowledged that a range of factors can impact on these measures resulting in difficulties in engaging in cross-country comparisons. These factors include when the tax authority has other roles such as collecting social insurance contributions or excise taxes, the legislated tax burden or economic conditions.<sup>24</sup>

A range of factors have been identified as contributing to positive debt collection outcomes, including: the existence of extensive debt collection powers; the ability to collect taxes from third parties, close businesses and cancel licences; the ability to obtain liens over assets; requiring tax clearance prior to being awarded government contracts; withholding government payments where tax debt is outstanding; and imposing tax debts on company directors.<sup>25</sup> Additional factors include investment in information technology and effectively resourced tax authorities. The OECD note the importance of having a well-staffed debt collection function, which is organised within a dedicated unit.<sup>26</sup>

### **3.0 Debt Collection Approaches in New Zealand**

The primary debt of interest in this study is tax debt. Thus, this section commences with a discussion of current tax debt and debt collection approaches used by Inland Revenue. This is

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<sup>17</sup> OECD. 2012. Forum on Tax Administration. Information Note. Working smarter in structuring the administration, in compliance, and through legislation. <http://www.oecd.org/site/ctpfta/49428209.pdf>, 1 November 2017, 39.

<sup>18</sup> Above, n 17.

<sup>19</sup> Above, n 10, at 40.

<sup>20</sup> OECD. 2011. Tax Administration in OECD and Selected Non-OECD Countries: Comparative Information Series (2010). 3 March 2011. <https://www.oecd.org/tax/administration/CIS-2010.pdf>, 1 November 2017.

<sup>21</sup> Above, n 20, Table 23. Countries reporting lower proportions are: the Czech Republic (6.3%); Norway (5.1%); the Slovak Republic (5.5%); Switzerland (6.1%); and Turkey (7.8%).

<sup>22</sup> OECD. 2015. Tax Administration 2015. Comparative Information on OECD and Other Advanced and Emerging Economies. Paris: OECD.

<sup>23</sup> Above, n 22, Table 5.4, p.181. Data reported as at 2013.

<sup>24</sup> Above, n 22.

<sup>25</sup> Above, n 10, at 56.

<sup>26</sup> Above, n 10.

followed with discussion of another government department that also holds a significant level of debt: the government department responsible for the welfare system, the Ministry of Social Development (MSD). Subsequently, student loan debt is discussed. The student loan scheme is administered by MSD in connection with the Ministry of Education and Inland Revenue. The Ministry of Social Development is responsible for the payment of the student loans, while Inland Revenue is responsible for the collection. A number of brief sub-sections follow, outlining debts held by a range of other government departments, together with amounts collected and remitted over the most recently reported period.

### **3.1 Inland Revenue**

Under the Tax Administration Act 1994 (TAA) the Commissioner of Inland Revenue must maximise the recovery of outstanding tax from a taxpayer.<sup>27</sup> However, the Commissioner may not recover outstanding tax where it would either be an inefficient use of Inland Revenue resources or would place the taxpayer, who is a natural person, in a position of serious hardship.<sup>28</sup> The duty to maximise revenue collection is subject to an overriding obligation to protect the integrity of the tax system as per s 6A(3) of the TAA, where the Commissioner of Inland Revenue is charged with collecting: “*over time the highest net revenue that is practicable within the law having regard to*

*(a) the resources available to the Commissioner; and*

*(b) the importance of promoting compliance, especially voluntary compliance, by all taxpayers with the Inland Revenue Acts; and*

*(c) the compliance costs incurred by taxpayers”.*

In 2015-16, 87% of tax payments made by taxpayers were on time.<sup>29</sup> The corollary is 13% of tax payments were not made on time, generating tax debts. As at 30 June 2016, tax debt reported by the Inland Revenue was \$4.7 billion. This debt includes unpaid goods and services tax (GST); income tax; KiwiSaver contributions; pay-as-you-earn; working for families tax credits; and other taxes, but does not include student loans. Student loans are discussed later in the article in section 3.3.

There are 234,462 Inland Revenue debtors with overdue debts in 2015-16.<sup>30</sup> A large component of tax debt is made up of penalties and interest: 48.8% in 2015-16, including student loan debt.<sup>31</sup> Table 3 outlines tax debt reported by Inland Revenue over the period 2012-2016, together with student loan debt. The amount described as non-collectable is debt where Inland Revenue is unable to proceed with collection activity at the present time.<sup>32</sup> Amounts shown as non-collectable also include amounts classified as tax evasion<sup>33</sup> and therefore cannot be

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<sup>27</sup> TAA s 176(1).

<sup>28</sup> TAA s 176(2).

<sup>29</sup> Inland Revenue. 2016. *Annual Report – 2016*. Wellington: Inland Revenue, 48.

<sup>30</sup> Calculated from the 339,192 debtors reported in the Inland Revenue annual report, less 104,730 student loan debtors (information received under the Official Information Act, 12 September 2017, Inland Revenue).

<sup>31</sup> It is not possible to get this figure broken down into different borrowing types.

<sup>32</sup> Above, n 29, 134.

<sup>33</sup> Section 177C(3) restricts the Commissioner of Inland Revenue from writing off outstanding tax where it relates to taking an abusive tax position or tax evasion.

written-off.<sup>34</sup> The debt under instalment figure of \$996.6 in 2015/16 includes \$239.4 million of student loan default.<sup>35</sup>

**Table 3: Tax Debt and Debt Portfolio as at 30 June: 2012-2016 (NZ\$ million)**<sup>36</sup>

	2012	2013	2014	2015	2016	% Change 2015-2016
Total tax debt	5,404.1	5,342.3	5,470.7	5,153.1	4,680.0	-9.2%
Student loan debt	512.3	635.9	769.4	933.0	1,074.8	15.2%
<b>Total</b>	<b>5,916.4</b>	<b>5,978.2</b>	<b>6,240.1</b>	<b>6,086.1</b>	<b>5,754.8</b>	
Debt under instalment	1,176.3	1,230.2	1,228.2	1,085.4	996.6	-8.2%
Other collectable debt	2,582.7	2,561.5	2,621.6	2,367.0	2,198.0	-7.1%
Non-collectable debt	2,157.4	2,186.4	2,390.3	2,633.8	2,560.2	-2.8%
<b>Total Debt</b>	<b>5,916.4</b>	<b>5,978.2</b>	<b>6,240.1</b>	<b>6,086.1</b>	<b>5,754.8</b>	<b>-5.4%</b>

Across the OECD, tax administrations report that around 45% of tax debt is considered collectable.<sup>37</sup> Based on the figures shown in Table 3, New Zealand's potential collectable debt is higher than this at 55%. However, of the \$5,754.8 million debt reported in 2016, the majority is older than two years.<sup>38</sup> Of the total, \$1,219.9 (21%) is older than one year; \$822.8 (14%) is between 1-2 years; \$1,752.5 (30%) is between 2-5 years; \$987.9 (17%) is between 5-10 years; and \$971.7 (17%) is older than 10 years.<sup>39</sup> Thus, 65% of the debt reported is older than two years. As aged debt is more likely to be non-collectable, it may be that a higher proportion than suggested in Table 3 is not collected in practice.

The Inland Revenue has a range of tools to assist with debt recovery and enforcement. These tools include allowing taxpayers to enter into instalment arrangements, whereby tax debts can be paid off over time. As shown in Table 3, debt under instalment in 2016 was \$997 million. In the 2015-2016 tax year, 110,920 taxpayers entered into an instalment arrangement, of which 10,897 were still current at the end of the year.<sup>40</sup>

An Official Information Act request was made to Inland Revenue requesting:

1. The value of penalties applied on tax debt
2. The value of penalties collected
3. The value of penalties written off
4. The value of interest applied on tax debt
5. The value of interest collected
6. The value of interest written off

<sup>34</sup> Information received under the Official Information Act, 12 September 2017, Inland Revenue.

<sup>35</sup> Information received under the Official Information Act, 12 September 2017, Inland Revenue.

<sup>36</sup> Above, n 29, 30/134.

<sup>37</sup> OECD. 2017. Tax Administration 2017. Comparative Information on OECD and other Advanced and Emerging Economies. Paris, OECD, 18.

<sup>38</sup> Above, n 29, 134.

<sup>39</sup> Above, n 29.

<sup>40</sup> Information received under the Official Information Act, 24 February 2017, Inland Revenue.

7. The value of tax debt written off (excluding penalties and interest)

Inland Revenue applied s 81(c)(i) of the TAA to decline providing information on points 1, 2, 4 and 5 above, writing: “most of the information you have requested is covered by the secrecy provisions contained in section 81. It can, therefore, only be released if one of the exceptions to secrecy (as set out in section 81) applies and the Commissioner has decided to exercise her discretion under that exception”. After outlining the provisions of s 81(1B) of the TAA, which include the Commissioner’s obligation to protect the integrity of the tax system and the importance of promoting compliance by taxpayers, correspondence from Inland Revenue advised “releasing the information you have requested would not support a duty of the Commissioner”.<sup>41</sup> Inland Revenue also used s 81(1B)iv of the TAA to support the decision not to provide the information requested, as it would not be a reasonable use of the resources available to the Commissioner. A further request has been made to the Ombudsman on the basis that the information assists with creating greater openness and transparency about the activities of Government (one of the purposes of the Official Information Act 1982).

Inland Revenue also declined to provide information on items 3 and 6 on the basis that Inland Revenue’s tax administration system does not appropriate the write off amount between penalties and interest: “accordingly, your request for this information has been declined under section 19(E) of the OIA as the information cannot be found”. It is worth observing that a previous request to Inland Revenue for similar information was able to be provided in 2013. A subsequent request to Inland Revenue asking for the proportion of write-off requests for core tax debt (i.e. not student loan or child support debt) that were successful was also declined with reference to s 18(g) of the TAA as Inland Revenue did not hold the information requested.<sup>42</sup>

Inland Revenue advised in their response to the Official Information Act request that the information requested under point 7 was not available as an amount excluding penalties and interest, and advised that the figures reported in the department’s annual report outline total tax debt written off and impaired during the year. In 2015-16, Inland Revenue report “impairment of debt and debt write-offs” at \$680,343,000 and \$1.1 billion written off as uncollectable.<sup>43</sup> However, this figure includes debt and debt written off relating to general tax, Working for Families Tax Credits and KiwiSaver debt. A further Official Information Act request was made requesting a breakdown of the three categories. In response to this request, Inland Revenue provided the information outlined in Table 4.

**Table 4: Debt Category Breakdown (2015/16)**<sup>44</sup>

<b>Debt Type</b>	<b>\$’000</b>
General Tax	\$936,414
Working for families tax credits	\$187,168
KiwiSaver	\$3,026
<b>Total debt write-offs</b>	<b>\$1,126,608</b>
Less Impairment Reversal	(\$446,265)
<b>Total impairment of debt and debt write-offs 2016</b>	<b>\$680,343</b>

<sup>41</sup> Information received under the Official Information Act, 24 February 2017, Inland Revenue.

<sup>42</sup> Information received under the Official Information Act, 12 September 2017, Inland Revenue.

<sup>43</sup> Above, n 29, 110. This debt figure includes general tax, Working for Families tax credits and KiwiSaver debt.

<sup>44</sup> Information received under the Official Information Act, 29 November 2017, Inland Revenue.



The figures above show the \$1.1 billion that was written-off as uncollectable, while the \$680 million figure is the adjusted figure taking into account the previous impairment of the debt. For the purposes of the discussion in this article, it is the \$1.1 billion amount that is of primary interest. Case law has shown that the requirement to maximise recovery of outstanding debt is not an absolute obligation. Inland Revenue report that *“the Commissioner’s duty is to be approached on ‘a pragmatic basis with proper regard to the likely benefits and the costs of achieving them’”*.<sup>45</sup>

Of relevance, is that penalties and interest accrue on unpaid tax obligations. At the time of writing, the initial late payment penalty is one per cent of unpaid tax on the day after the tax is due. This increases by a further four per cent at the end of the sixth day the tax is unpaid and a further one per cent is added for each additional month the debt remains outstanding. In addition, interest is applied. As at November 2017 the interest rate is 8.22%.<sup>46</sup> A taxpayer who enters into an instalment arrangement will benefit as the monthly additional penalties are not charged when a debt is under an instalment arrangement,<sup>47</sup> but interest charges remain.

Under s 177 of the TAA a taxpayer can request for all or some of the tax debt to be written off. The Commissioner of Inland Revenue cannot enter into an instalment arrangement, where the recovery of the debt would place the taxpayer in a position of serious hardship.<sup>48</sup> Serious hardship is defined in s 177A of the TTA as meaning that the taxpayer would have significant financial difficulties as: their dependant has a serious illness; the taxpayer would be unable to meet minimum living expenses estimated according to normal community standards of cost and quality, medical treatment for the taxpayer or their dependant, or the cost of education for their dependant; or other factors that the Commissioner thinks relevant. “Normal community standards of cost and quality” must take into account the individual circumstances of the taxpayer, such as which part of the country the taxpayer resides.<sup>49</sup> As noted above, inequity arises as individuals who earn wages or salaries, or earn other income where tax is deducted at source, do not have the same opportunity to negotiate with the Inland Revenue if they are in a similar position of serious hardship.

An Official Information Act request was made to Inland Revenue asking for the following information:

- The value of tax written off due to bankruptcy of the debtor in 2015/16 (excluding student loans);
- The number of individuals, companies or other entities that received tax write-offs due to bankruptcy, liquidation or no asset procedures in 2015-16 (excluding student loan write-offs); and

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<sup>45</sup> Inland Revenue. 2011. SPS 11/01 Instalment arrangements for payment of tax. <http://www.ird.govt.nz/technical-tax/standard-practice/returns-debt/sps-11-01-instalment-arrangements-for-payment-of-tax.html>, 3 November 2017, at 19.

<sup>46</sup> Inland Revenue, Current and Past Interest Rates, <http://www.ird.govt.nz/how-to/debt/penalties/interest/interest-overview/interest-rates.html>, 6 August 2017.

<sup>47</sup> Above, n 45, at 22

<sup>48</sup> TAA s 177B.

<sup>49</sup> Inland Revenue. 2013. SPS 15/03 Writing Off Outstanding Tax, at 56.

- How many bankruptcy, liquidation or no asset procedures were initiated by Inland Revenue in 2015/16 (excluding student loans).

Inland Revenue provided the information outlined in Table 5.

**Table 5: Inland Revenue Liquidations and Bankruptcies (2015/16)**<sup>50</sup>

Entity Type	Client Status	Number of Entities	Amount of Tax Written Off (Millions)
Company	Liquidation	1,956	\$210.8M
Individual	Bankruptcy	2,070	\$191.2M
Partnership	Liquidation	1	\$0
Society / Club	Liquidation	2	\$0.3M
Trust	Liquidation	46	\$6.7M
<b>Total</b>		<b>4,075</b>	<b>\$408.9M</b>

The Inland Revenue advised that no tax write-offs were received as a result of no asset procedures for the 2015-16 tax year. Inland Revenue were not able to provide information on how many bankruptcy or liquidation procedures were initiated by Inland Revenue, advising that this information is considered part of court records and is therefore not included within the Official Information Act.

Inland Revenue provide a Standard Practice Statement to outline how the Commissioner will exercise statutory discretion in relation to writing off outstanding tax debt.<sup>51</sup> Certain debts must be written off, such as tax debt that cannot be recovered due to bankruptcy, liquidation or when a taxpayer's estate has been distributed.<sup>52</sup> There are also some tax debts that cannot be written off, such as debt generated from shortfall penalties for taking an abusive tax position<sup>53</sup> or tax evasion.<sup>54</sup> In addition, there are provisions for small tax debts to be written off.<sup>55</sup> Some situations will require a trade-off between maximising revenue and protecting integrity of the tax system. For example, when a negotiated agreement for payment of part of outstanding debt will generate a greater return than bankruptcy.<sup>56</sup>

As well as remission of debt, taxpayers may request remission of penalties applied to debt. Remission will be granted where the debt was created by an event outside the control of the taxpayer<sup>57</sup> or where there is an emergency event.<sup>58</sup> Remission will also be granted where it is consistent with the duty of the Commissioner to collect the highest revenue over time.<sup>59</sup> Interest will also be remitted where it is consistent with the Commissioner's duty to collect the highest amount of revenue over time.<sup>60</sup> Where tax debt is remitted, then any interest on that debt is also

<sup>50</sup> Information received under the Official Information Act, 29 November 2017, Inland Revenue.

<sup>51</sup> Above, n 49.

<sup>52</sup> TAA s 177C(2).

<sup>53</sup> TAA s 141D(2).

<sup>54</sup> TAA s 141E(1). Some of the debt classified as non-collectable in Table 3 includes this type of debt.

<sup>55</sup> TAA s 174AA allows for balances less than \$20 to be written off.

<sup>56</sup> Above, n 49, at 37.

<sup>57</sup> TAA s 183A.

<sup>58</sup> TAA s 183ABA

<sup>59</sup> TAA s 183D.

<sup>60</sup> TAA s 183D(2).

remitted.<sup>61</sup> As with tax debt and penalties, applications for remission of interest will be considered on the merits of each case.

Inland Revenue can issue statutory notices (more commonly referred to as deduction notices) to banks or other third parties, which require them to make deductions from their customers' accounts.<sup>62</sup> This is, in effect, a debt collection tool for the Inland Revenue. Deduction notices can be for lump sum amounts or instalments.<sup>63</sup> Guidance is provided in the TAA on limits to the amounts that can be claimed through a deduction notice.<sup>64</sup> In 2015/16, Inland Revenue issued 73,013 deduction notices.<sup>65</sup>

In 2017, Inland Revenue was given the power to share "reportable unpaid tax" with approved credit reporting agencies.<sup>66</sup> The stated purpose of this power is to protect other creditors, by allowing visibility of tax debt. At the present time, only companies and not individuals will have their debt information shared with the credit reporting agencies. Inland Revenue advise that information will only be shared when the debt has been overdue for at least a year, it is 30% or more of the company's assessable income, the debt is not disputed, and it is not under a formal instalment arrangement. To date, only one case exists where Inland Revenue have reported a firm under this power.<sup>67</sup> The name of the company is not made publically available and is only available through the credit reporting agency when a credit check is requested for a specific company.

### ***3.2 Ministry of Social Development***

Welfare debts are generated in a number of ways. The primary methods by which debt is generated are fraud, overpayments, advances on benefits and recoverable special needs grants (also known as recoverable assistance loans). Interest is not usually charged on these debts. Similar debt recovery approaches apply to all debts, although current welfare beneficiaries are likely to be repaying debts in instalment from current benefit received.

The nominal value of MSD receivables as at 30 June 2016 was \$1,377 million. However, when the provision for impairment was taken into account, this reduces to \$703 million.<sup>68</sup> The impairment does not reflect non-collection of debt. Instead, it reflects the fair value of the debt, which is calculated by discounting the expected future cash flows by the interest rate at the year-end (2.12%-4.31%).<sup>69</sup> As welfare debt is unlike traditional debt, there are no contractual repayment terms and therefore future cash flows are adjusted for possible future events such as death of the debtor before repayment.

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<sup>61</sup> TAA s 183E.

<sup>62</sup> Inland Revenue. 2011. SPS 11/04 Compulsory Deductions From Bank Accounts, at 1.

<sup>63</sup> TAA s 157.

<sup>64</sup> TAA s 157(3).

<sup>65</sup> Information provided under an Official Information Act request.

<sup>66</sup> TAA s 85N.

<sup>67</sup> Pullar-Strecker, Tom. 24 October 2017. Inland Revenue dubs in Auckland firm to credit ratings agencies over unpaid tax bill. <https://www.stuff.co.nz/business/industries/98168461/inland-revenue-dubs-in-auckland-firm-to-credit-ratings-agencies-over-unpaid-tax-bill>, 1 November 2017.

<sup>68</sup> Ministry of Social Development. 2016. *Annual Report 2015/16*. Wellington: Ministry of Social Development, 131.

<sup>69</sup> Above, n 68, 130.

It is noticeable that, unlike other debt like student loan debt, default on payment is not a factor taken into account in the discounting process. This is because default on the debt will not result in the debt being written off, as the MSD approach to debt recovery is that “*all monies owed to the Crown are actively pursued and debts remain with each individual until all avenues to recover have been exhausted*”.<sup>70</sup>

The Ministry of Social Development reports benefit recoveries of \$319 million for the year ended 30 June 2016.<sup>71</sup> Benefit recoveries are amounts collected from a current or former welfare recipient by way of a regular deduction from a current benefit or other source.<sup>72</sup>

The Ministry of Social Development have a high proportion of clients repaying by instalment at 70%.<sup>73</sup> As well as current instalment options, MSD also has the potential to eventually recover debts when people turn 65 and become eligible for New Zealand Superannuation, at which point the debt can be recovered through deductions from pension payments.<sup>74</sup>

Other tools that may be used for debt collection include deduction notices made directly from beneficiaries’ bank accounts or wages, where voluntary instalments or repayments are not made.<sup>75</sup> In 2015/16, MSD served deduction notices on 36,269 beneficiaries.<sup>76</sup> In addition, civil action may be taken, including placing caveats over property. The Ministry report that \$1.6 million in debt was recovered through asset seizures and reparation orders in 2015/16.<sup>77</sup>

The Ministry of Social Development approach to writing off debt is “*where all reasonable and practicable avenues of recovery have been exhausted the Ministry may consider writing off the debt*”.<sup>78</sup> Examples provided by MSD include where a debtor has died and the estate is insolvent or distributed prior to the Crown notifying its claim; where the debtor is insolvent and has been adjudicated bankrupt; or the Official Assignee has recognised under the No Asset Procedure that the debtor is insolvent with no realisable assets.<sup>79</sup>

Different approaches to serious hardship exist for tax debtors and welfare debtors. Where Inland Revenue may remit or write-off penalties and interest in cases of serious hardship, MSD will generally take hardship into account by “*negotiating realistic repayment rates with debtors so that significant hardship is not caused*”.<sup>80</sup>

An Official Information Act request was made to MSD requesting the amount of welfare debt that was written off in the 2015-16 year and, where possible, for a breakdown of the debt into

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<sup>70</sup> Office of the Associate Minister for Social Development (2012) “Welfare Debt Recovery,” <http://msd.govt.nz> (accessed May 2013).

<sup>71</sup> Above, n 68, 123. Current debt is \$224 million and non-current debt is \$95 million.

<sup>72</sup> Above, n 68, 123.

<sup>73</sup> Above, n 68, 60.

<sup>74</sup> Controller and Auditor-General, 2011. Controller and Auditor-General (2011) *Ministry of Social Development: Managing the recovery of debt*. Wellington: Office of the Auditor-General. New Zealand Superannuation is a universal pension payment paid to all New Zealand residents aged over 65 years of age who meet a residency test.

<sup>75</sup> Social Security Act 1964, s 86(A)(D).

<sup>76</sup> Information received under an Official Information Act request to the Ministry of Social Development.

<sup>77</sup> Above, n 68, 33.

<sup>78</sup> Ministry of Social Development correspondence received under the *Official Information Act 1982*, 9 May 2013.

<sup>79</sup> Information received under an Official Information Act request, 30 November 2017, Ministry of Social Development.

<sup>80</sup> Above, n 70.

the categories of debt from loans, debt from overpayments and debt from fraud. Information provided is outlined in Table 6.

**Table 6: Ministry of Social Development Debt Written-Off (2015/16)**

<b>Debt Type</b>	<b>Amount</b>
Recoverable assistance (loans)	\$3,512,935
Fraud	\$1,057,137
Overpayment	\$8,698,572
<b>Total</b>	<b>\$13,268,644</b>

As the value written-off from fraudulent activity has been provided separately by the Ministry, the overpayment amounts are those that will result from error, which may be error by the Ministry or error by the recipient of the welfare benefit. It is not possible to know from the information, as it is currently provided, how much of this is the result of Ministry error, which may not be accurately classified as debt in the first instance.

### **3.3 Student Loans**

In New Zealand, student loans are available to New Zealand citizens or residents who are studying an approved course operated by an approved education provider. Depending on the circumstances of the student, a loan may be available for course-related fees and living costs. As noted above, Inland Revenue is responsible for collecting student loan repayments.<sup>81</sup>

Under the *Student Loan Scheme Act 2011*, a student loan borrower has an obligation to repay the loan balance in accordance with the contract and the Act.<sup>82</sup> Loan repayments must start when the loan holder has annual earnings in excess of \$19,136 before tax. The amount of the repayment will depend on earnings of the individual debt holder. Interest is not applied to student loans, as long as the debtor is not overseas for more than 183 days.<sup>83</sup> However, a late payment interest charge is made when student loan repayments are not made on time.<sup>84</sup> This late payment interest charge is currently 8.4% per annum.<sup>85</sup> The rate reduces by 2% if an instalment arrangement is entered into.<sup>86</sup>

When debt holders travel overseas, the debt repayment arrangements do not change unless the debt holder is overseas for more than six months. When debt holders are outside New Zealand for more than six months, repayments are no longer assessed on earned income, instead, the repayments are calculated on the loan balance.<sup>87</sup> In addition, interest becomes payable for loan holders who are overseas for longer than 183 days. The interest rate for the period from 1 April

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<sup>81</sup> A second form of government student support is the Student Allowances Scheme. This provides eligible students with a weekly payment to assist with living expenses. The allowance is income-tested on the student and the student's family. This assistance does not have to be repaid.

<sup>82</sup> Student Loan Scheme Act 2011 (SLSA) s 30.

<sup>83</sup> Interest is applied to the loan in the first instance, but this is written off as the loan is repaid on time.

<sup>84</sup> SLSA s 113.

<sup>85</sup> Calculated as the interest rate of 4.4% plus a 4% penalty.

<sup>86</sup> SLSA s 141.

<sup>87</sup> By way of example, an overseas-based student loan holder with a student loan between \$1,000 and \$15,000 is expected to make bi-annual payments of \$500. If the same loan holder had a loan between \$15,000 and \$30,000, bi-annual loan payments are \$1,000. Inland Revenue, *Paying Off Your Student Loan When You're Overseas*, <http://www.ird.govt.nz/studentloans/overseas/managing/student-loan-paying-off-overseas.html>, 6 August 2017.

2017 to 31 March 2018 is 4.4%.<sup>88</sup> Inland Revenue advise that loan interest on overseas-based borrowing is \$135.4 million and late payment interest on both New Zealand and overseas borrower default is \$63.8 million.<sup>89</sup> Overseas based debtors may apply for a repayment holiday.<sup>90</sup>

Most New Zealand-based student loan debtors will have their loan repayments made automatically by their employer, as when an employer knows of the student loan, they have an obligation to make standard deductions for the student loan.<sup>91</sup> Inland Revenue have an Approved Information Sharing Agreement with the Department of Internal Affairs.<sup>92</sup> This agreement with the Department of Internal Affairs allows for passport information to be shared on student loan defaulters.

**Table 7: Student Loan Debt as at 30 June 2012 – 2016 (NZ\$)<sup>93</sup>**

	2011/12	2012/13	2013/14	2014/15	2015/16	% Change 2014/15-2015/16
<b>Overdue Debt</b>	\$512.3M	\$635.9M	\$769.4M	\$933.0M	\$1,074.8M	+15.2%
<b>Nominal balance</b>	\$12,969M	\$13,562M	\$14,235M	\$14,837M	\$15,340M	+3.4%
<b>Average balance / student</b>	\$18,507	\$19,092	\$19,756	\$20,386	\$20,983	+2.9%
<b>Median balance / student</b>	\$12,849	\$13,307	\$13,882	\$14,421	\$14,904	+3.3%

Table 7 shows student loan debt. The first row shows overdue debt of \$1.1 billion in 2015/16, while the second row shows the nominal balance of all debt \$15 billion in 2015/16. The reason for the significant differences is that debt does not become repayable until individuals earn above the specified threshold.

As shown in Table 7, the overdue student loan debt of \$1.1 billion as at 30 June 2016 increased 15.2% over the previous year. The majority of this overdue debt is held by overseas borrowers at 91.5%.<sup>94</sup> Only 20.4% of overseas taxpayers with New Zealand student loans are making repayments.<sup>95</sup> Moreover, only 26.7% of overseas-based borrowers in debt are in contact with Inland Revenue (this figure includes those making repayments).<sup>96</sup> Total annual repayments from taxpayers with student loans who are overseas was \$216 million in 2015-16. Overseas

<sup>88</sup> Inland Revenue, Student Loan Interest Rates, <http://www.ird.govt.nz/studentloans/manage/interest/student-loan-interest-rates.html>, 6 August 2017.

<sup>89</sup> Information received under the Official Information Act, 12 September 2017, Inland Revenue.

<sup>90</sup> SLSA s 107.

<sup>91</sup> SLSA s 36. Around 70% of student loan debt is collected through the PAYE system. Student Loan Scheme Annual Report, Data Tables, available at: <https://www.educationcounts.govt.nz/publications/80898/student-loan-scheme-annual-report-2016>, Table 11.

<sup>92</sup> Above, n 29, 19.

<sup>93</sup> Above, n 29, 29.

<sup>94</sup> Above, n 29, 30.

<sup>95</sup> Above, n 29, 30.

<sup>96</sup> Above, n 29, 30.

debtors hold higher debt balances than New Zealand debtors, with an average amount outstanding of \$12,188, as compared to New Zealand debtors at \$3,782 in 2016.<sup>97</sup> Figures showing borrowing numbers by activity are outlined in Table 8, which shows that the majority of borrowers are in New Zealand and repaying their debt. Only a small proportion overall (14% in 2015/16) are overseas, but of these debtors, over half are inactive.

**Table 8: Borrowing Activity**<sup>98</sup>

		2013/14	%	2014/15	%	2015/16	%
<b>New Zealand Based Borrowers</b>	Borrowing and repaying	86,975	11%	89,372	12%	88,766	11%
	Borrowing	117,643	15%	110,542	14%	104,848	13%
	Repaying	280,865	36%	291,764	38%	301,189	39%
	Inactive	185,145	24%	170,315	22%	171,847	22%
<b>Overseas Based Borrowers</b>	Repaying	39,997	5%	43,486	6%	48,242	6%
	Inactive	69,966	9%	67,822	9%	63,660	8%
<b>Total</b>		<b>780,591</b>		<b>773,301</b>		<b>778,552</b>	

The non-current asset value of student loans reported in the Inland Revenue annual report was \$7.8 billion, with current asset value of an additional \$1.2 billion.<sup>99</sup> This reflects the initial write-down of the value of the loan, together with the timing delay in collecting much of the student debt. Table 9 shows the initial write-down on new borrowing and the average cost of lending in cents per dollar. As is visible in Table 9, significant write-downs on new borrowing are reflected in the carrying amounts of student loan debt.

**Table 9: Lending and Initial Write-Down on Borrowing**<sup>100</sup>

	2011/12	2012/13	2013/14	2014/15	2015/16
<b>New lending (\$ million)</b>	\$1,489	\$1,481	\$1,522	\$1,529	\$1,522
<b>Initial write-down on new borrowing (\$ million)</b>	\$702	\$536	\$629	\$602	\$659
<b>Average cost of lending (cents/\$)</b>	47.15	36.19	41.33	39.37	43.3

As shown in Table 9, the key measure of the cost of the student loan scheme is the initial write-down on the new borrowing. By way of illustration, in 2015/16, the write-down was \$659 million on the lending of \$1,522 million (43.3 cents in the dollar).<sup>101</sup> This write-down provides an estimation of the long-term economic cost of the lending and ensures that the asset of the loan is recognised in the Crown financial statements at fair value. This takes into account the time value of money, lending policies, and economic factors such as interest rates, income and changes in employment, e.g. if incomes and/or employment are increasing, then repayments will also increase.<sup>102</sup>

<sup>97</sup> Ministry of Education 2016. Student Loan Scheme Annual Report 2015/16. Wellington: Ministry of Education, Table 14, 30.

<sup>98</sup> Above, n 91.

<sup>99</sup> Above, n 29, 123.

<sup>100</sup> Above, n 91.

<sup>101</sup> Above, n 97, 41.

<sup>102</sup> Above, n 97.

There is relatively high risk associated with student loan lending and therefore the value of new loans are discounted to reflect that loans may not be repaid. For example, borrowers may die before the loan is repaid; borrowers may default on repayment and as no security is provided against the loan, this will result in non-payment of the debt; and borrowers may never earn above the minimum earnings that will trigger repayment obligations. These factors are all reflected in the differences between the amount loaned and the carrying value of the loan. By way of illustration, in 2015-16, Inland Revenue report that \$32 million of student loan debt was written off due to death and bankruptcies.<sup>103</sup> Of this figure, \$18 million was written off due to bankruptcy with 483 individuals declaring bankruptcy (averaging \$37,000 / individual).<sup>104</sup> After the initial fair value write-down, student loans are measured at amortised cost, which includes any annual impairment.<sup>105</sup>

Inland Revenue engage in data-matching with the Department of Internal Affairs in order to determine whether a taxpayer is entitled to an interest-free loan and to provide insight into the border movements of some student loan customers.<sup>106</sup> In 2015-16, Inland Revenue report that 559,921 student loan customers had their records updated as a result of data-matching.<sup>107</sup> Other initiatives to assist with collecting student loans include an Overseas Based Borrower Compliance Initiative, introduced in 2015/16; working with private sector collection agencies in Australia and the United Kingdom to track and collect debt; and progressing an information exchange initiative with the Australian Taxation Office.

Inland Revenue provide a Standard Practice Statement that outlines when relief may be available from student loan repayment obligations.<sup>108</sup> There are limited situations in which relief is available for student loan debtors. These include:

- Quick repayment of loan balance, made by an overseas debtor. In these cases, where repayment is made before the end of the 183 day consecutive period, then interest will be written off; and<sup>109</sup>
- Small amounts (less than \$20).<sup>110</sup>

Relief may be granted from late payment interest or penalties on application from the debtor.<sup>111</sup> Under the *Student Loan Scheme Act 2011*, the Commissioner may grant this relief, taking into account the circumstances of each case, if it is “*equitable to do so*”.<sup>112</sup> Hardship relief may decrease a student loan debtor’s repayment obligation where it is likely to cause serious hardship to the borrower, or where the Commissioner considers there are other reasons that

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<sup>103</sup> Above, n 29, 123.

<sup>104</sup> Above, n 97.

<sup>105</sup> Above, n 97, Note 15.

<sup>106</sup> Inland Revenue, above n 29, 31.

<sup>107</sup> Above, n 29.

<sup>108</sup> Inland Revenue. 2011. Standard Practice Statement, SPS 11/03 Student Loans – Relief from repayment obligations.

<sup>109</sup> SLSA s 138.

<sup>110</sup> SLSA s 144.

<sup>111</sup> SLSA s 146.

<sup>112</sup> SLSA s 146(2) and s 146A.



make it fair and reasonable to provide relief.<sup>113</sup> Relief in the case of student loans, does not result in the loan being written-off: the debt remains as part of the borrower's loan balance.<sup>114</sup>

Recently, Inland Revenue has been given the power to obtain an arrest warrant to prevent an overseas based borrower who has a debt that is in default from leaving the country (if they are visiting New Zealand). Inland Revenue advise that this is used only for the most serious defaulters. Furthermore, in 2016 information sharing provisions were implemented between Inland Revenue and the Australian Tax Office that allow for exchange of information on contact details of student loan borrowers who are in default.<sup>115</sup>

As at 30 June 2016, 731,754 people had a student loan.<sup>116</sup> Inland Revenue advise that the total number of student loan debtors as at 30 June 2016 was 104,730, comprised of 80,622 overseas-based borrowers and 24,108 New Zealand-based borrowers.<sup>117</sup> The differences in these numbers represent the different status of those holding student loans. Those held by Inland Revenue are those classified as overdue, whereas the higher figure of 731,754 includes all those holding student loans, a large component of which are not classified as overdue.

In 2015/16, there were 182,537 new loan arrangements. Of students who are eligible for a student loan, 71% did take up a student loan in this period.<sup>118</sup> The average amount borrowed was \$8,888 in the year. As noted in Table 7, the average loan balance per person is \$20,983, and the median is \$14,904 in 2016.<sup>119</sup> Median repayment times for all borrowers (who finished study in 2014) is forecast to be 8.4 years, although significant differences are visible for those who reside in or outside New Zealand. Median repayment times for those in New Zealand is forecast to be 6.5 years and for those outside New Zealand is forecast to be 17 years.<sup>120</sup>

Nearly two-thirds of the student loan debt that is overdue is older than two years. Less than 20% of student loan debt is 12 months or less overdue, 15.5% is overdue by 1-2 years; 30.8% is overdue by 2-5 years; and 35.1% is overdue by greater than 5 years.<sup>121</sup>

Student loans are not only provided for education fees, they can also be applied to living costs and course-related costs. While some students may also be entitled to a student allowance, which is not repayable, living cost payments that are provided under the student loan scheme are repayable. In the 2015/16 year, students could borrow up to \$176.86 per week for living costs from the student loan scheme. Average amounts borrowed for course fees, course-related fees and living costs for the past five years are outlined in Table 10.

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<sup>113</sup> SLSA s 147.

<sup>114</sup> SLSA s 151.

<sup>115</sup> Above, n 97.

<sup>116</sup> Above, n 97. The differences in student loan numbers reported by the Inland Revenue (778,552, as shown in Table 8) and the Ministry of Education (731,754) are noted. The respective Ministries have been asked to provide an explanation for the discrepancy.

<sup>117</sup> Official Information Act request, received 12 September 2017, Inland Revenue.

<sup>118</sup> Above, n 97, 24.

<sup>119</sup> Above, n 97, 3.

<sup>120</sup> Above, n 97, 3.

<sup>121</sup> Above, n 97, Table 15, 30.

**Table 10: Course Fees, Living Costs and Course-Related Costs Borrowed Under the Student Loan Scheme (2011-2015)<sup>122</sup>**

	2011/12	2012/13	2013/14	2014/15	2015/16
<b>Average Course Fees</b>	\$5,441	\$5,571	\$5,850	\$6,074	\$6,323
<b>Average Living Costs</b>	\$3,710	\$3,774	\$3,944	\$4,036	\$4,179
<b>Average Course-Related Costs</b>	\$990	\$988	\$988	\$987	\$988

### 3.4 Ministry of Justice

The Ministry of Justice is responsible for the justice sector. The key responsibilities of the agency are administration of the court system, the legal aid system and the Public Defence Service. The agency is also responsible for the collection and enforcement of fines and civil debts, including reparation.<sup>123</sup>

In their Annual Report, the Ministry of Justice note that effective collection of fines and reparations is important in ensuring the credibility of fines as a sentencing option.<sup>124</sup> The Ministry of Justice also claim to follow up on non-payment of court-imposed fines and reparations, and will enforce civil debts on behalf of credits where payments have been ordered by the courts.<sup>125</sup>

Ministry of Justice debt information is outlined in Table 11. Debt as at 30 June 2016 was \$593 million, of which 42.5% was under a repayment arrangement. The Ministry of Justice report that 77-80% of court imposed fines and infringement fines are collected or have a repayment arrangement entered into within four months of the fine being imposed. However, the Ministry of Justice also report that 56% of people have not paid or made an arrangement to pay their fine, infringement or reparation.

**Table 11: Ministry of Justice Collection of Fines and Reparations<sup>126</sup>**

	2014/15	2015/16	% change 2014/15-2015/16
<b>Total debt owing (as at 30 June)</b>	\$576 million	\$593 million	+3%
<b>Total fines and reparations collected</b>	\$212 million	\$191 million	-11%
<b>Debt under arrangement</b>	46.6%	42.5%	-10%
<b>% of court imposed fines collected or placed under arrangement within 4 months</b>	84.2%	80%	-5%
<b>% of infringement fines collected or placed under arrangement within 4 months</b>	86.8%	77%	-13%
<b>% of people who have not paid or made an arrangement to pay their fine, infringement or reparation</b>	56%	56%	Unchanged

<sup>122</sup> Above, n 97, Table 5, 25.

<sup>123</sup> Ministry of Justice, About the Ministry, <https://www.justice.govt.nz/about>, 27 October 2017.

<sup>124</sup> Ministry of Justice 2015. Annual Report 2015/16. Wellington: Ministry of Justice, 29.

<sup>125</sup> Above, n 124, 29.

<sup>126</sup> Above, n 124, 29 / 70.

An Official Information Act 1982 request was made to the Ministry of Justice asking for information on fines and reparation that was written off. The Ministry of Justice advised that:

*Registrars will, in the first instance, seek payment in full or negotiate sustainable payment arrangements where possible. If these are unsuccessful, the registrar may take measures to enforce overdue amounts which can include clamping vehicles, seizing and selling property, making compulsory deductions from a person's income or bank account, suspending drivers' licences and preventing a person's international travel.*<sup>127</sup>

A further Official Information Act request was made asking for detail on how many deduction notices were served; how many seizures of property there were; how many drivers' licences were suspended; and how frequently people had been prevented from travelling internationally. The Ministry advised that 24,280 deduction notices were issued to financial institutions; 31,989 attachment orders were issued to employers and 30,672 attachment orders were issued to MSD.<sup>128</sup>

During the 2015-16 financial year, 109 driver's licences were suspended as a result of non-payment of fines. There were 199 intercepts on either departure or arrival from airports in this period. However, the Ministry can only advise that the debtor was stopped and this does not necessarily result in the debtor being restricted from travelling. Either paying the debt in full or negotiating repayment arrangements would allow the debtor to continue with their travel.<sup>129</sup>

The Official Information Act response also advised that in some circumstances, remittal of a fine is considered the most appropriate action, such as when a person dies, a company is put into liquidation, or when a registrar remits small outstanding balances. In other circumstances, where enforcement action has been unsuccessful or further action is not considered appropriate, fines may be remitted by a judge and an alternative sentence imposed, such as imprisonment, home detention, community detention or community work. Registrars have the discretion to remit court costs and enforcement fees in order to encourage payment of the original fine.<sup>130</sup> A total of \$28,976,746 was remitted in the 2015/16 financial year, made up of \$27,554,692 in remitted fines and \$1,422,054 in remitted reparation.<sup>131</sup>

Some of the debts outlined herein relate to Legal Aid debt. Legal Aid debt as at 30 June 2016 is \$126 million, with an impairment provision of \$71 million, and a carrying value of \$55 million.<sup>132</sup> Under the *Legal Services Act 2011*, the Commissioner of Legal Services may write off repayments or other debt payable to the Commissioner of Legal Services in circumstances that are similar to tax write-off provisions. These include:

- (a) Where the enforcement of the debt would cause serious hardship to the aided person;
- (b) Where the cost of enforcing the debt is likely to exceed the amount of the debt likely to be repaid; or
- (c) If the Commissioner considers that it would be just and equitable to write off the debt.<sup>133</sup>

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<sup>127</sup> Information received under the Official Information Act, 18 July 2017, Ministry of Justice.

<sup>128</sup> Information received under the Official Information Act, 31 August 2017, Ministry of Justice.

<sup>129</sup> Information received under the Official Information Act, 31 August 2017, Ministry of Justice.

<sup>130</sup> Information received under the Official Information Act, 18 July 2017, Ministry of Justice.

<sup>131</sup> Information received under the Official Information Act, 18 July 2017, Ministry of Justice.

<sup>132</sup> Above, n 124.

<sup>133</sup> Legal Services Act 2011, s 42(1).

Serious hardship is defined in a similar way to tax collection, which is: “*significant financial difficulties that arise because of:*

- (a) *the aided person’s inability to meet minimum living expenses according to normal community standards; or*
- (b) *the cost of medical treatment of an illness or injury of the aided person or the aided person’s dependant; or*
- (c) *a serious illness suffered by the aided person or the aided person’s dependant”*.<sup>134</sup>

### **3.5 Ministry for the Environment**

Total receivables reported in the 2015/16 Ministry for the Environment (MfE) annual report were \$13 million, of which the majority was amounts receivable from the Crown.<sup>135</sup> The Ministry for the Environment report fines and penalties receivable of \$120,000 in the 2015-16 year with a further \$34,000 due from Emissions Trading Scheme penalty revenue.<sup>136</sup>

A request was made to MfE on 15 August 2017 for the value of fines and penalties receivable that were written off during the 2015-16 period. The Ministry advised under the Official Information Act that the amount written off was \$55,042.84, which is made up of several smaller amounts from different participants, all of which relates to the New Zealand Emissions Trading Scheme.<sup>137</sup> The penalties were imposed by the Environmental Protection Agency due to non-compliance by Emissions Trading Scheme participants.

### **3.6 Ministry for Primary Industries**

The Ministry for Primary Industries (MPI) is responsible for supporting primary sector growth in New Zealand. MPI can issue infringement notices (more commonly referred to as instant fines) for situations where people fail to declare biosecurity risk goods when arriving in New Zealand; when people commit an offence under the Fisheries Act; or for breaking animal welfare laws.<sup>138</sup> Biosecurity fines are due within 14 days. Recreational fishing fines and animal welfare finds are due within 28 days. For all of these offences, a waiver may be requested, but not for reasons such as not knowing the law or forgetting.

The 2015-16 annual report of MPI reports revenue of \$31,360,000 from fines, penalties and levies.<sup>139</sup> The majority of this sum is from cost recovery levies from the fishing industry (\$25,381,000 – 81%).<sup>140</sup> The Annual Report also reports debtor receivables from fines, penalties and levies of \$20,988,000.

An Official Information Act 1982 request was made to MPI in relation to fines, penalties and levies that were written off in the 2015-16 period. MPI advised that no fines, penalties or levies were written off during this time.<sup>141</sup>

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<sup>134</sup> Legal Services Act 2011, s 42(4).

<sup>135</sup> Ministry for the Environment. 2016. Annual Report 2015-16. Wellington: Ministry for the Environment

<sup>136</sup> Ibid.

<sup>137</sup> Information received under the Official Information Act, 12 September 2017, Ministry for the Environment.

<sup>138</sup> Ministry for Primary Industries (MPI). Paying Your Fine. <https://www.mpi.govt.nz/law-and-policy/paying-your-fine/>, 6 August 2017.

<sup>139</sup> Ministry for Primary Industries. 2016. 2015/16 Annual Report. Wellington: Ministry for Primary Industries.

<sup>140</sup> Above, n 139, 118.

<sup>141</sup> Information received under the Official Information Act, 4 August 2017, Ministry for Primary Industries.

### 3.7 Ministry for Business, Innovation and Employment

The Ministry for Business, Innovation and Employment (MBIE) report collection of fines and penalties totalling \$108,000 in 2015-16, and other penalties of \$6,434,000.<sup>142</sup> The receivables amount is calculated at \$58,791,000, but this includes levies as well as fines and penalties. An Official Information Act request was made for a breakdown of the amount that was fines and penalties, together with the amount of fines and penalties written off during the period.

The response received from MBIE advised that the majority of the receivables amount was levies (\$58,659,000) with only \$132,000 comprising fines and penalties. The amount of fines and penalties written off during the year was \$396,000. MBIE also advised that the majority of this write-off related to penalties issued to Immigration Advisers.<sup>143</sup>

## 4.0 Discussion

Section three outlines the outcomes of the debt collection process across a number of government departments. While not all departments are included in section three, the primary departments that hold and collect debt from the general population are included. The debt held by Inland Revenue is significantly higher than other agencies. This is because Inland Revenue is responsible for both outstanding tax debt and overdue student loan debt.

The different amounts written off across each of the agencies is outlined in Table 12, together with the amount of deduction notices serviced by each agency and whether the relevant legislation has a provision to alleviate debt when the debtor is in a situation of serious hardship. The final row shows the proportion of write-offs against year-end debt held by the respective agency.

**Table 12: Comparative Information across Government Departments and Loan Types**

	<b>Inland Revenue</b>	<b>MSD</b>	<b>Student Loans</b>	<b>MoJ</b>	<b>MfE</b>	<b>MPI</b>	<b>MBIE</b>
<b>Write-offs (2015/16)</b>	\$1.1BN	\$13M	\$18M <sup>144</sup>	\$29M	\$55,042	Nil	\$396K
<b>Write-Downs</b>	\$680M	N/A	\$659M	N/A	N/A	N/A	N/A
<b>Serious Hardship Provision</b>	Yes	No	Yes	Yes	N/A	N/A	N/A
<b>Deduction Notices</b>	73,013	36,269	Unknown <sup>145</sup>	86,941	N/A	N/A	N/A

<sup>142</sup> Ministry for Business, Innovation and Employment. 2016. Annual Report 2015-16. Wellington: Ministry for Business, Innovation and Employment.

<sup>143</sup> Information received under the Official Information Act, 27 November 2017, Ministry of Business, Innovation & Employment, Ref OIA 1718-0591.

<sup>144</sup> Due to bankruptcy.

<sup>145</sup> The Student Loan Scheme Act provides for the use of deduction notices, but it is not known if they have been used to help collect student loans.

<b>Write-offs as % of debt</b>	19.1% <sup>146</sup>	1.9%	See footnote 146	4.7%	36%	0%	N/A <sup>147</sup>
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Table 12 shows that Inland Revenue writes off significant amount of tax – 85 times the amount written off by MSD. All the other government departments write of relatively low amounts when compared to Inland Revenue. While the amount of student loan debt written off is low, the amount of write-downs of the debt are high and comparable to the write-downs of Inland Revenue. As noted in the previous section, the student loan write-downs are due to the high cost to the government of providing student debt facilities. While it appears that the Ministry for the Environment write-off a high proportion of their debt, the actual amount written off is low at \$55,042 (or around 1/20,000 of that written off by Inland Revenue).

It is also worth observing that of all the large government debts, it is tax debt, student loan debt and debts held by the Ministry of Justice that have legislated serious hardship provisions to protect debtors who are in a position of financial hardship. The Ministry of Social Development where, arguably, debtors are the most likely to be in financial hardship notwithstanding the presence of debt to the government, does not have legislated serious hardship provisions in the *Social Security Act 1964*.

Differences in debt collection are visible across the agencies discussed in the previous subsection. Some agencies, such as the Ministry for Primary Industries, collect all fines, penalties and levies imposed. Others, such as the student loan scheme, administered by Inland Revenue collect around 55% of debt. While the tax debt book appears high, this is accumulated debt and therefore it is reference to “new debt” that is perhaps the most accurate to assess collection procedures. However, it must also be acknowledged that 87% of tax is paid on time and another proportion is paid, albeit late.

There is an argument to be made that in a small country such as New Zealand, there are efficiency gains and more effective outcomes to be had from a standardised approach to debt collection across all government debt. This would extend to collection of debt, penalties, interest or fines, as well as write-off provisions. Such an approach would increase transparency and equity, as all debtors would be treated equally. Currently, some debt, such as student loan debt or fines may be remitted where it is “just and equitable” to do so. However, this is not the case for all debt. There is a case to be made that all debtors are entitled to equal “just and equitable” treatment in relation to debt repayment.

Consistency across treatment of all debtors to the Crown is desirable. While New Zealand does not have an “ability to pay” clause in our legislation, some legislation permits remission of debt where the debtor is in a position of serious hardship. However, such a provision does not apply in a standardised manner to all debtors. As noted in Table 12, not all debts have provisions where the debtor is in a position of serious hardship. Where hardship provisions do exist they do not result in equal treatment of different types of debtors. Those taxpayers whose tax is deducted at source do not have the potential to take advantage of the serious hardship provision.

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<sup>146</sup> This figure combines Inland Revenue and Student Loan debt as Inland Revenue cannot provide a break-down between student loan write-offs, with the exception of that written off due to bankruptcy.

<sup>147</sup> The write-off amount for MBIE is greater than the year end receivables held.

There is also a further argument to be made that there is benefit to be gained from adopting a centralised debt collection mechanism or agency. At the present time, multiple debt collection activity occurs across all agencies. Not only does this result in duplication of resources, it minimises the extent to which best practice adopted in larger government departments can be passed through to smaller government departments. Tools and techniques used by government agencies, and the Inland Revenue in particular, to assist with collecting outstanding tax payments continue to evolve. The OECD note increased use of advanced analytics for targeting debtors with accompanying targeted intervention strategies.<sup>148</sup> Such tools could be appropriately shared across all debtors if debt management was the role of a coordinated agency.

Prior research has observed the different debt collection approaches adopted between Inland Revenue and MSD.<sup>149</sup> However, what is visible from the above discussion is the difference in collection rates between Inland Revenue and all the other government agencies investigated in this study. Student loan debt is greater than all tax debt and significant amounts are written down at the point of initial recognition to reflect, among other things, the cost to the Crown of providing the finance, together with the likelihood that some of the loans will not be repaid.

To return to the title of this article, and the fable that it refers to, there are two possible endings to the tale. One is that the citizens pay the piper (and the children are returned); the other is that the citizens do not pay the piper (and the children are not returned). To bring this analogy back to the topic herein, when debts are not settled, consequences typically follow. This is the usual manner when other debts are not fulfilled, such as bank borrowings, where property provided by way of guarantee is usually forfeited. However, in New Zealand it is largely welfare beneficiaries who are most likely to be held to account to settle debts. Meanwhile, debtors who are, arguably, in a better position to repay debts, such as student loan debtors or tax debtors, are more likely to receive debt write-offs than those who hold debt generated from the welfare system.

## 5.0 Conclusion

The primary objective of this research is to report on approaches to debt management across government departments in New Zealand. The study finds differences in approaches to collecting debt across government departments, ranging from total collection of debt to just over half of due debt collection. Overseas research suggests that white-collar debt is less likely to be enforced than other forms of debt. This exploratory research indicates that a similar situation may apply in New Zealand, with collection of tax debt and student loan debts being collected at a significantly lower rate than other forms of debt. Arguably, tax debt and student loan debtors are among the groups that are, over time, most able to settle these debts.

Where differences exist in the collection approaches of different debt types, but where the creditor is the same, the potential exists for preferential treatment of certain types of debtors. With the exploratory analysis undertaken above it is not possible to suggest with any certainty that this exists in New Zealand. However, the adoption of a centralised debt collection agency

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<sup>148</sup> Above, n 37.

<sup>149</sup> Lisa Marriott. 2014. "Unpaid Tax and Overpaid Welfare: A comparison of debt recovery approaches in New Zealand", *New Zealand Journal of Taxation Law and Policy*, 20(1):46-70.

that can apply best practice tools and techniques across all overdue debt would alleviate any suggestion of preferential treatment of certain debtors. Moreover, it is likely to improve efficiency of operations and collections across all debt types.

The results of this study suggest there is future research needed to examine in more detail the types of tax debts and student loan debts that are written off. These represent significant losses to the New Zealand taxpayer, at over \$2 billion combined per annum, and therefore warrant further investigation.