

**TAX, DEBT, FINE AND PENALTY COLLECTION IN NEW ZEALAND: EQUITABLE TREATMENT OR INEQUITABLE OUTCOMES?**

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**ABSTRACT**

This article examines the different approaches to collecting debts owed to the New Zealand Government. The study compares Inland Revenue's approach to debt collection 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 with information collected under the *Official Information Act 1982*. Alber's framework for comparative social service provision is used for analytical purposes.

The first, and primary, objective of this study is to measure and report on different approaches to debt management across government agencies, with the aim of highlighting how different approaches contribute to inequitable outcomes for different debtors. 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, a secondary 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 are more likely to be remitted than other forms of debt. The article makes a case for adopting a standardised, and potentially centralised, approach to debt collection in New Zealand, in order to improve transparency and equity across government debt collection.

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## I INTRODUCTION

This article examines debt collection across a number of government agencies in New Zealand, with a particular focus on tax debt. Typically, 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.

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

Receivable type	Amount (NZ\$)
Tax receivables	\$10 313 million <sup>2</sup>
ACC levy receivables	\$2225 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>3</sup>**

Receivable type	Amount (NZ\$)
Kiwibank loans and advances	\$17 795 million
Student loans	\$9197 million
Other advances	\$1591 million
<b>Total other receivables</b>	<b>\$28 583 million</b>

The primary receivables of the New Zealand Government total NZ\$24.4 billion. This amount 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 NZ\$75.6 billion.<sup>4</sup>

<sup>1</sup> New Zealand Government, Financial Statements of the Government of New Zealand for the Year Ended 30 June 2017 (2017).

<sup>2</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>3</sup> New Zealand Government, above n 1, Note 12 Receivables.

<sup>4</sup> Treasury, New Zealand Government, *Revenue* (5 October 2017) <<http://www.treasury.govt.nz/government/revenue>>.

Data is collected for this study from annual reports of government departments and supplemented with information gathered under the *Official Information Act 1982* (OIA). The study has two objectives. The first, and primary, objective is to highlight the different approaches adopted to debt collection across government agencies in New Zealand and the inequities that result from different approaches. The second objective is to examine whether different 'types' of debt are treated differently, that is, whether 'white-collar' debt is less likely to be collected.

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. Moreover, different approaches between government departments to debt collection result in inequitable outcomes for holders of government debt.

The study suggests that there may be benefit from adopting a standardised approach to debt collection across New Zealand government departments to reduce extant inequities. Further benefit may be gained from establishing a centralised debt management office to specialise in debt collection.

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

## II 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>5</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.

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<sup>5</sup> Inland Revenue, New Zealand Government, *Inquiry into the Powers and Operations of the Inland Revenue Department* (Presented to the New Zealand House of Representatives, October 1999).

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>6</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.

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>7</sup> The Inquiry reported that in the period 1 July 1998 to 30 June 1999, the department referred 1000 individuals for bankruptcy and 995 companies for liquidation. In 44 per cent 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 four of this article. However, for the purposes of comparison, the numbers of individuals and companies entering into liquidations and bankruptcies in 2015/16 were approximately double those reported for 1998/99.<sup>8</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>9</sup> In 2011, Ross and Pritikin wrote an article suggesting that corporate and white-collar fines and penalties lacked strong enforcement.<sup>10</sup> The authors report a 'massive gap between penalties imposed "on the books" and penalties collected in reality'.<sup>11</sup> However, this is not a new revelation. Over 30 years ago, Kagan suggested

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<sup>6</sup> Inland Revenue, above n 5, Terms of Reference C.

<sup>7</sup> Ibid.

<sup>8</sup> Information received under the *Official Information Act 1982* (OIA), 29 November 2017, Inland Revenue, New Zealand Government.

<sup>9</sup> OECD, 'Forum on Tax Administration. Scoping Document: Working Smarter in Tax Debt Management' (OECD Publishing, 2013).

<sup>10</sup> Ezra Ross and Martin Pritikin, 'The Collection Gap: Underenforcement of Corporate and White-Collar Fines and Penalties' (2011) 29 *Yale Law & Policy Review* 453.

<sup>11</sup> Ibid 454.

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>12</sup>

In the United States of America an 'Excessive Fines Clause' exists in the Eighth Amendment.<sup>13</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>14</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>15</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 2000 vehicles and collected €5 million during these operations.<sup>16</sup> Other examples include publishing the names of taxpayers with debts (Finland) or using specialist debt collection agencies (the United Kingdom).<sup>17</sup> The United Kingdom approach was reported as collecting an additional 77 per cent more cash than if the debt collection agencies had not been used.<sup>18</sup>

In 2011, the OECD published a document comparing debt collection mechanisms across OECD countries, among other topics.<sup>19</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 per cent.<sup>20</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>21</sup> New Zealand's

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<sup>12</sup> Robert A Kagan, 'The Routinization of Debt Collection: An Essay on Social Change and Conflict in the Courts' (1984) 18 *Law and Society Review* 323.

<sup>13</sup> Nicholas M McLean, 'Livelihood, Ability to Pay, and the Original Meaning of the Excessive Fines Clause' (2013) 40 *Hastings Constitutional Law Quarterly* 833.

<sup>14</sup> *Ibid* 835.

<sup>15</sup> For example, *Tax Administration Act 1994 (NZ)* (TAA) s 177A.

<sup>16</sup> OECD, 'Forum on Tax Administration. Information Note: Working Smarter in Structuring the Administration, in Compliance, and through Legislation' (OECD Publishing, 2012) 39.

<sup>17</sup> *Ibid*.

<sup>18</sup> OECD, 'Scoping Document', above n 9, 40.

<sup>19</sup> OECD, 'Tax Administration in OECD and Selected Non-OECD Countries: Comparative Information Series' (OECD Publishing, 2011).

<sup>20</sup> *Ibid* Table 23. Countries reporting lower proportions are: the Czech Republic (6.3 per cent); Norway (5.1 per cent); the Slovak Republic (5.5 per cent); Switzerland (6.1 per cent); and Turkey (7.8 per cent).

<sup>21</sup> OECD, 'Tax Administration 2015: Comparative Information on OECD and Other Advanced and Emerging Economies' (OECD Publishing, 2015).

cost of collection ratio ((administration cost/net revenue collection)/1) is 0.85.<sup>22</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>23</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>24</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>25</sup>

### III METHOD AND THEORETICAL FRAMEWORK

This study adopts a comparative method. It is often argued that comparative study is potentially the most important of all.<sup>26</sup> This claim results from the potential for one country, institution or department to improve its own processes by observing how other countries, institutions or departments have responded to similar problems. The research uses a case study approach, notwithstanding the acknowledged limitations of comparative case studies: the use of a small number of cases, with many variables, results in limited ability to generalise from the findings.<sup>27</sup>

The comparative method is used to explore debt collection approaches across a range of government departments in New Zealand. As such, the study is largely positive in nature, focusing on extant practice and the potential for inequities to arise from current approaches to debt collection.

For analytical purposes, the study uses the framework proposed by Alber for comparative study of social services.<sup>28</sup> The framework uses a 'checklist' of variables to facilitate analysis of state service provision. For the purposes of this study, the service

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<sup>22</sup> Ibid 181, Table 5.4. Data reported as at 2013.

<sup>23</sup> Ibid.

<sup>24</sup> OECD, 'Scoping Document', above n 9, 56.

<sup>25</sup> Ibid.

<sup>26</sup> Christopher Nobes and Robert Parker, *Comparative International Accounting* (Financial Times/Prentice Hall, 7<sup>th</sup> ed, 2002) 8.

<sup>27</sup> Arend Lijphart, 'Comparative Politics and the Comparative Method' (1971) 65 *The American Political Science Review* 682.

<sup>28</sup> Jens Alber, 'A Framework for the Comparative Study of Social Services' (1995) 5 *Journal of European Social Policy* 131.



considered is the debt collection mechanism. The analytical framework proposes four variables, which are outlined below in Figure 1.

**Figure 1: Analytical framework applied to debt collection in New Zealand<sup>29</sup>**

<p><b>Regulatory structure</b></p> <p>Determined by legislation and applied by individual government departments</p>	<p><b>Financing structure</b></p> <p>Funded by central government through appropriations to individual government departments</p>
<p><b>Delivery structure</b></p> <p>Delivery approaches determined by individual government departments</p>	<p><b>Customer power</b></p> <p>Different power held by different debtor types</p>

Figure 1 further shows the application of the four variables to the case study herein: debt collection. The regulatory structure refers to who regulates and at what level of government. In the case study examined in this research, the government departments operate under different legislation. For example, Inland Revenue debt collection is largely determined by the *Tax Administration Act 1994* (TAA) while debt collection for the Ministry of Social Development (MSD) is in the *Social Security Act 1964*.

Financing for the debt collection functions, as well as write-off provisions, come through the appropriation process to individual government departments. For example, MSD have an output expense for 'investigation of overpayments and fraudulent payments and collection of overpayments'<sup>30</sup> and Inland Revenue have an output expense for 'management of debt and outstanding returns'.<sup>31</sup>

The third variable, the delivery structure, determines how debt collection approaches are applied in practice. These will, in part, be influenced by the regulatory and financing structure, but will also be influenced by historical practice.

Customer (debtor) power will differ between different debtor types and will also be influenced by the regulatory structure. By way of example, the Inland Revenue have a statutory revenue collection function to maximise tax revenue collection. However, this must be achieved in an efficient manner, ie, it must not be an inefficient use of resources. This generates a situation where taxpayer debtors have the power to negotiate an agreed outcome, as it is preferable for Inland Revenue to collect some revenue, as opposed to no revenue. However, other debtors, such as those holding fines payable to the Ministry of Justice, do not have similar powers. These different approaches are discussed in more detail in the next section. These variables will be returned to in the Discussion, in order to frame the analysis.

<sup>29</sup> Ibid 142.

<sup>30</sup> Ministry of Social Development, New Zealand Government, *Annual Report 2016/17* (2017) 66.

<sup>31</sup> Treasury, New Zealand Government, *Supplementary Estimates of Appropriations 2016/17 B.7* (2017) 588.

#### IV 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 followed with discussion of another government department that also holds a significant level of debt: the government department responsible for the welfare system, 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. MSD 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 additional government departments, together with amounts collected and remitted over the most recently reported period.

##### *A Inland Revenue*

Under the TAA the Commissioner of Inland Revenue must maximise the recovery of outstanding tax from a taxpayer.<sup>32</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>33</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 per cent of tax payments made by taxpayers were on time.<sup>34</sup> The corollary is 13 per cent of tax payments were not made on time, generating tax debts. As at 30 June 2016, tax debt reported by the Inland Revenue was NZ\$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 in sub-section C.

There are 234 462 Inland Revenue debtors with overdue debts in 2015/16.<sup>35</sup> A large component of tax debt is made up of penalties and interest: 48.8 per cent in 2015/16, including student loan debt.<sup>36</sup> Table 3 outlines tax debt reported by Inland Revenue over the period 2012–16, together with student loan debt. The amount described as non-

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<sup>32</sup> TAA s 176(1).

<sup>33</sup> *Ibid* s 176(2).

<sup>34</sup> Inland Revenue, New Zealand Government, *Annual Report – 2016* (2016) 48.

<sup>35</sup> Calculated from the 339 192 debtors reported in the Inland Revenue annual report, less 104 730 student loan debtors (information received under the OIA, 12 September 2017, Inland Revenue, New Zealand Government).

<sup>36</sup> It is not possible to get this figure broken down into different borrowing types.



collectable is debt where Inland Revenue is unable to proceed with collection activity at the present time.<sup>37</sup> Amounts shown as non-collectable also include amounts classified as tax evasion<sup>38</sup> and therefore cannot be written off.<sup>39</sup> The debt-under-instalment figure of NZ\$996.6 million in 2015/16 includes NZ\$239.4 million of student loan default.<sup>40</sup>

**Table 3: Tax debt and debt portfolio as at 30 June 2012 to 30 June 2016 (NZ\$ million)<sup>41</sup>**

	2012	2013	2014	2015	2016	% change 2015-16
Total tax debt	5404.1	5342.3	5470.7	5153.1	4680.0	-9.2%
Student loan debt	512.3	635.9	769.4	933.0	1074.8	15.2%
<b>Total</b>	<b>5916.4</b>	<b>5978.2</b>	<b>6240.1</b>	<b>6086.1</b>	<b>5754.8</b>	
Debt-under- instalment	1176.3	1230.2	1228.2	1085.4	996.6	-8.2%
Other collectable debt	2582.7	2561.5	2621.6	2367.0	2198.0	-7.1%
Non-collectable debt	2157.4	2186.4	2390.3	2633.8	2560.2	-2.8%
<b>Total debt</b>	<b>5916.4</b>	<b>5978.2</b>	<b>6240.1</b>	<b>6086.1</b>	<b>5754.8</b>	-5.4%

Across the OECD, tax administrations report that around 45 per cent of tax debt is considered collectable.<sup>42</sup> Based on the figures shown in Table 3, New Zealand's potential collectable debt is higher than this at 55 per cent. However, of the NZ\$5754.8 million debt reported in 2016, the majority is older than two years.<sup>43</sup> Of the total, NZ\$1219.9 million (21 per cent) is older than one year; NZ\$822.8 million (14 per cent) is between one and two years; NZ\$1752.5 million (30 per cent) is between two and five years; NZ\$987.9 million (17 per cent) is between five and ten years; and NZ\$971.7 million (17 per cent) is older than ten years.<sup>44</sup> Thus, 65 per cent 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

<sup>37</sup> Inland Revenue, New Zealand Government, *Annual Report*, above n 34, 134.

<sup>38</sup> TAA s 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.

<sup>39</sup> Information received under the OIA, 12 September 2017, Inland Revenue, New Zealand Government.

<sup>40</sup> *Ibid.*

<sup>41</sup> Inland Revenue, New Zealand Government, *Annual Report*, above n 34, 30/134.

<sup>42</sup> OECD, 'Tax Administration 2017: Comparative Information on OECD and Other Advanced and Emerging Economies' (OECD Publishing, 2017) 18.

<sup>43</sup> Inland Revenue, New Zealand Government, *Annual Report*, above n 34, 134.

<sup>44</sup> *Ibid.*

was NZ\$997 million. In the 2015/16 tax year, 110 920 taxpayers entered into an instalment arrangement, of which 10 897 were still current at the end of the year.<sup>45</sup>

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

Inland Revenue advised in their response to the OIA 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 NZ\$680.343 million and NZ\$1.1 billion written off as uncollectable.<sup>46</sup> However, this amount includes debt and debt written off relating to general tax, Working for Families tax credits and KiwiSaver debt. A further OIA 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>47</sup>

Debt type	NZ\$ million
General tax	\$936.414
Working for Families tax credits	\$187.168
KiwiSaver	\$3.026
<b>Total debt write-offs</b>	<b>\$1126.608</b>
Less impairment reversal	(\$446.265)
<b>Total impairment of debt and debt write-offs 2016</b>	<b>\$680.343</b>

Table 4 shows the NZ\$1.1 billion that was written off as uncollectable, while the NZ\$680 million amount 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

<sup>45</sup> Information received under the OIA, 24 February 2017, Inland Revenue, New Zealand Government.

<sup>46</sup> Inland Revenue, New Zealand Government, above n 34, 110. This debt figure includes general tax, Working for Families tax credits and KiwiSaver debt.

<sup>47</sup> Information received under the OIA, 29 November 2017, Inland Revenue, New Zealand Government.

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>48</sup>

Of relevance, is that penalties and interest accrue on unpaid tax obligations. At the time of writing, the initial late payment penalty is 1 per cent of unpaid tax on the day after the tax is due. This increases by a further 4 per cent at the end of the sixth day the tax is unpaid and a further 1 per cent is added for each additional month the debt remains outstanding. In addition, interest is applied. As at May 2018 the interest rate is 8.22 per cent.<sup>49</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, but interest charges remain.<sup>50</sup>

Information provided by Inland Revenue in relation to points 1–6 above is outlined in Table 5. As shown in Table 5, a high proportion of penalties and interest are written off each year. In the three most recent years shown, over 60 per cent of penalties were written off. It is acknowledged that this figure will not accurately reflect the actual collection of penalties applied in that year, as some penalties will be collected, or written off, in a different year to when they are applied.

Collection of penalties ranged from a low of 18 per cent (in 2012/13) to a high of 36 per cent (in 2015/16). Thus, relatively low proportions of penalties applied are collected. A similar picture is visible with interest, but with higher proportions of collection rates. Collection rates of interest ranged from 42 per cent (in 2012/13) to 63 per cent (in 2015/16). Interest values written off were close to 50 per cent in the past three years.

**Table 5: Penalties applied, collected and written off (2012/13–2015/16)<sup>51</sup>**

	2012/13	2013/14	2014/15	2015/16
Penalties applied (\$ m)	850	563	552	484
Penalties collected (\$ m)	151	179	175	172
Penalties written off (\$ m)	281	342	341	319
<i>Penalties collected (%)</i>	<i>18%</i>	<i>32%</i>	<i>32%</i>	<i>36%</i>
<i>Penalties written off (%)</i>	<i>33%</i>	<i>61%</i>	<i>62%</i>	<i>66%</i>
Interest applied (\$ m)	420	366	354	336
Interest collected (\$ m)	176	190	185	213
Interest written off (\$ m)	143	153	194	179

<sup>48</sup> Inland Revenue, New Zealand Government, *Standard Practice Statement 11/01: Instalment Arrangements for Payment of Tax* (2011) 19.

<sup>49</sup> Inland Revenue, New Zealand Government, *Current and Past Interest Rates* (2 May 2018) <<http://www.ird.govt.nz/how-to/debt/penalties/interest/interest-overview/interest-rates.html>>.

<sup>50</sup> Inland Revenue, New Zealand Government, *Standard Practice Statement 11/01*, above n 48, 22.

<sup>51</sup> Information received under the OIA, 23 May 2018, Inland Revenue, New Zealand Government. Inland Revenue advise that these amounts exclude social policy amounts, such as student loans; the time period is from July to June, rather than the tax year (April to March); the amounts are based on the year in which a resolution to an outstanding debt case is achieved (paid, written off, or a combination of both); and the amounts reflect the amount accrued over the life of the debt.

<i>Interest collected (%)</i>	42%	52%	52%	63%
<i>Interest written off (%)</i>	34%	42%	55%	53%

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>52</sup> Serious hardship is defined in s 177A of the TAA 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>53</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 OIA 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
- 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 6.

**Table 6: Inland Revenue liquidations and bankruptcies (2015/16)**<sup>54</sup>

<b>Entity type</b>	<b>Client status</b>	<b>Number of entities</b>	<b>Amount of tax written off (NZ\$ million)</b>
Company	Liquidation	1956	\$210.8
Individual	Bankruptcy	2070	\$191.2
Partnership	Liquidation	1	\$0
Society/Club	Liquidation	2	\$0.3
Trust	Liquidation	46	\$6.7
<b>Total</b>		<b>4075</b>	<b>\$408.9</b>

<sup>52</sup> TAA s 177B.

<sup>53</sup> Inland Revenue, New Zealand Government, *Standard Practice Statement SPS 15/03: Writing Off Outstanding Tax* (2013) 56.

<sup>54</sup> Information received under the OIA, 29 November 2017, Inland Revenue, New Zealand Government.

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 OIA.

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>55</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>56</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>57</sup> or tax evasion.<sup>58</sup> In addition, there are provisions for small tax debts to be written off.<sup>59</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>60</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>61</sup> or where there is an emergency event.<sup>62</sup> Remission will also be granted where it is consistent with the duty of the Commissioner to collect the highest revenue over time.<sup>63</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>64</sup> Where tax debt is remitted, any interest on that debt is also remitted.<sup>65</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>66</sup> This is, in effect, a debt collection tool for the Inland Revenue. Deduction notices can be for lump sum amounts or instalments.<sup>67</sup> Guidance is provided in the TAA on limits to the amounts that can be claimed through a deduction notice.<sup>68</sup> In 2015/16, Inland Revenue issued 73 013 deduction notices.<sup>69</sup>

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<sup>55</sup> Inland Revenue, New Zealand Government, *Standard Practice Statement SPS 15/03*, above n 53.

<sup>56</sup> TAA s 177C(2).

<sup>57</sup> *Ibid* s 141D(2).

<sup>58</sup> *Ibid* s 141E(1). Some of the debt classified as non-collectable in Table 3 includes this type of debt.

<sup>59</sup> *Ibid* s 174AA allows for balances less than NZ\$20 to be written off.

<sup>60</sup> Inland Revenue, New Zealand Government, *Standard Practice Statement SPS 15/03*, above n 53, 37.

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

<sup>62</sup> *Ibid* s 183ABA.

<sup>63</sup> *Ibid* s 183D.

<sup>64</sup> *Ibid* s 183D(2).

<sup>65</sup> *Ibid* s 183E.

<sup>66</sup> Inland Revenue, New Zealand Government, *Standard Practice Statement SPS 11/04: Compulsory Deductions from Bank Accounts* (2011) 1.

<sup>67</sup> TAA s 157.

<sup>68</sup> *Ibid* s 157(3).

<sup>69</sup> Information received under the OIA, 29 November 2017, Inland Revenue, New Zealand Government.

In 2017, Inland Revenue was given the power to share 'reportable unpaid tax' with approved credit reporting agencies.<sup>70</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 per cent 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>71</sup> The name of the company is not made publicly available and is only available through the credit reporting agency when a credit check is requested for a specific company.

### ***B 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 benefits received.

The nominal value of MSD receivables as at 30 June 2016 was NZ\$1377 million. However, when the provision for impairment was taken into account, this reduces to NZ\$703 million.<sup>72</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 per cent).<sup>73</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.

It is noticeable that, unlike other debt such as 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>74</sup>

MSD report benefit recoveries of NZ\$319 million for the year ended 30 June 2016.<sup>75</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>76</sup>

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<sup>70</sup> TAA s 85N.

<sup>71</sup> Tom Pullar-Strecker, 'Inland Revenue Dobs in Auckland Firm to Credit Ratings Agencies over Unpaid Tax Bill', *The Dominion Post* (online), 24 October 2017, <<https://www.stuff.co.nz/business/industries/98168461/inland-revenue-dobs-in-auckland-firm-to-credit-ratings-agencies-over-unpaid-tax-bill>>.

<sup>72</sup> Ministry of Social Development, New Zealand Government, *Annual Report 2015/16* (2016) 131.

<sup>73</sup> *Ibid* 130.

<sup>74</sup> Office of the Associate Minister for Social Development, New Zealand Government, *Welfare Debt Recovery* (15 May 2013).

<sup>75</sup> Ministry of Social Development, above n 72, 123. Current debt is NZ\$224 million and non-current debt is \$95 million.

<sup>76</sup> *Ibid* 123.



MSD have a high proportion of clients repaying by instalment at 70 per cent.<sup>77</sup> As well as current instalment options, MSD also have 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>78</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>79</sup> In 2015/16, MSD served deduction notices on 36 269 beneficiaries.<sup>80</sup> In addition, civil action may be taken, including placing caveats over property. MSD report that NZ\$1.6 million in debt was recovered through asset seizures and reparation orders in 2015/16.<sup>81</sup>

The MSD 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>82</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>83</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>84</sup>

An OIA 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 the categories of debt from loans, debt from overpayments and debt from fraud. Information provided is outlined in Table 7.

**Table 7: Ministry of Social Development debt written off (2015/16)**

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

<sup>77</sup> Ibid 60.

<sup>78</sup> Controller and Auditor-General, Ministry of Social Development, New Zealand Government, *Managing the Recovery of Debt* (Office of the Auditor-General, 2011). New Zealand Superannuation is a universal pension payment paid to all New Zealand residents aged over 65 who meet a residency test.

<sup>79</sup> *Social Security Act 1964* (NZ) s 86(A)(D).

<sup>80</sup> Information received under the OIA, 30 November 2017, Ministry of Social Development, New Zealand Government.

<sup>81</sup> Ministry of Social Development, above n 72, 33.

<sup>82</sup> Information received under the OIA, 9 May 2013, Ministry of Social Development, New Zealand Government.

<sup>83</sup> Information received under the OIA, 30 November 2017, Ministry of Social Development, New Zealand Government.

<sup>84</sup> Office of the Associate Minister for Social Development, above n 74.

As the value written off from fraudulent activity has been provided separately by MSD, the overpayment amounts are those that will result from error, which may be error by MSD 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 MSD error. Therefore, the value for overpayment debt in Table 7 may be overstated.

### **C 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>85</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>86</sup> Loan repayments must start when the loan holder has annual earnings in excess of NZ\$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>87</sup> However, a late payment interest charge is made when student loan repayments are not made on time.<sup>88</sup> This late payment interest charge is currently 8.3 per cent per annum.<sup>89</sup> The rate reduces by 2 per cent if an instalment arrangement is entered into.<sup>90</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>91</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 2018 to 31 March 2019 is 4.3 per cent.<sup>92</sup> Inland Revenue advise that loan interest on overseas-based borrowing is NZ\$135.4 million and late payment interest on both New Zealand and overseas borrower default is NZ\$63.8 million.<sup>93</sup> Overseas-based debtors may apply for a repayment holiday.<sup>94</sup>

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<sup>85</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>86</sup> *Student Loan Scheme Act 2011* (NZ) (SLSA) s 30.

<sup>87</sup> Interest is applied to the loan in the first instance, but this is written off as the loan is repaid on time.

<sup>88</sup> SLSA s 113.

<sup>89</sup> Calculated as the interest rate of 4.3 per cent plus a 4 per cent penalty.

<sup>90</sup> SLSA s 141.

<sup>91</sup> By way of example, an overseas-based student loan holder with a student loan between NZ\$1000 and NZ\$15 000 is expected to make biannual payments of NZ\$500. If the same loan holder had a loan between NZ\$15 000 and NZ\$30 000, biannual loan payments are NZ\$1000. Inland Revenue, New Zealand Government, *Paying Off Your Student Loan When You're Overseas* (23 March 2017) <<http://www.ird.govt.nz/studentloans/overseas/managing/student-loan-paying-off-overseas.html>>.

<sup>92</sup> Inland Revenue, New Zealand Government, *Student Loan Interest Rates* (2 April 2018) <<http://www.ird.govt.nz/studentloans/manage/interest/student-loan-interest-rates.html>>.

<sup>93</sup> Information received under the OIA, 12 September 2017, Inland Revenue, New Zealand Government.

<sup>94</sup> SLSA s 107.

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>95</sup> Inland Revenue have an Approved Information Sharing Agreement with the Department of Internal Affairs.<sup>96</sup> This agreement with the Department of Internal Affairs allows for passport information to be shared on student loan defaulters.

**Table 8: Student loan debt as at 30 June: 2012–16 (NZ\$)**<sup>97</sup>

	2011/12	2012/13	2013/14	2014/15	2015/16	% change 2014/15– 2015/16
<b>Overdue debt</b>	\$512.3 million	\$635.9 million	\$769.4 million	\$933.0 million	\$1074.8 million	+15.2%
<b>Nominal balance</b>	\$12 969 million	\$13 562 million	\$14 235 million	\$14 837 million	\$15 340 million	+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 8 shows student loan debt. The first row shows overdue debt of NZ\$1.1 billion in 2015/16, while the second row shows the nominal balance of all debt NZ\$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 8, the overdue student loan debt of NZ\$1.1 billion as at 30 June 2016 increased 15.2 per cent over the previous year. The majority of this overdue debt is held by overseas borrowers at 91.5 per cent.<sup>98</sup> Only 20.4 per cent of overseas taxpayers with New Zealand student loans are making repayments.<sup>99</sup> Moreover, only 26.7 per cent of overseas-based borrowers in debt are in contact with Inland Revenue (this figure includes those making repayments).<sup>100</sup> Total annual repayments from taxpayers with student loans who are overseas was NZ\$216 million in 2015/16. Overseas debtors hold higher debt balances than New Zealand debtors, with an average amount outstanding of NZ\$12 188, as compared to New Zealand debtors at NZ\$3782 in 2016.<sup>101</sup> Borrowing numbers by activity are outlined in Table 9, which shows that the majority of borrowers are in New Zealand and repaying their debt. Only a small proportion overall (14 per cent in 2015/16) are overseas. Overseas debtors are forecast to take twice as long to repay

<sup>95</sup> Ibid s 36. Around 70 per cent of student loan debt is collected through the PAYE system. Ministry of Education, New Zealand Government, *Student Loan Scheme Annual Report 2015/16* (2016).

<sup>96</sup> Inland Revenue, New Zealand Government, *Annual Report*, above n 34, 19.

<sup>97</sup> Ibid 29.

<sup>98</sup> Ibid 30.

<sup>99</sup> Ibid.

<sup>100</sup> Ibid.

<sup>101</sup> Ministry of Education, *Annual Report 2015/16*, above n 95, 30.

their debt as New Zealand debtors.<sup>102</sup> Some of the overseas debtors may never return to New Zealand and there is the risk that some of the debt held by overseas borrowers will not be repaid.

**Table 9: Borrowing activity**<sup>103</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 NZ\$7.8 billion, with current asset value of an additional NZ\$1.2 billion.<sup>104</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 10 shows the initial write-down on new borrowing and the average cost of lending in cents per dollar. As is visible in Table 10, significant write-downs on new borrowing are reflected in the carrying amounts of student loan debt.

**Table 10: Lending and initial write-down on borrowing**<sup>105</sup>

	2011/12	2012/13	2013/14	2014/15	2015/16
<b>New lending (NZ\$ million)</b>	\$1489	\$1481	\$1522	\$1529	\$1522
<b>Initial write-down on new borrowing (NZ\$ million)</b>	\$702	\$536	\$629	\$602	\$659
<b>Average cost of lending (NZ\$)</b>	\$47.15	\$36.19	\$41.33	\$39.37	\$43.3

As shown in Table 10, 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 NZ\$659 million on the lending of NZ\$1522 million (43.3 cents in the dollar).<sup>106</sup> This write-down provides an estimation of the long-term economic cost of the lending and

<sup>102</sup> Ministry of Education, New Zealand Government, *Student Loan Scheme Annual Report 2016/17* (2017) 41.

<sup>103</sup> Ministry of Education, *Annual Report 2015/16*, above n 95.

<sup>104</sup> Inland Revenue, New Zealand Government, *Annual Report*, above n 34, 123.

<sup>105</sup> Ministry of Education, *Annual Report 2015/16*, above n 95.

<sup>106</sup> *Ibid* 41.

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, eg, if incomes and/or employment are increasing, then repayments will also increase.<sup>107</sup>

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>108</sup> Of this figure, \$18 million was written off due to bankruptcy with 483 individuals declaring bankruptcy (averaging NZ\$37 000/individual).<sup>109</sup> After the initial fair value write-down, student loans are measured at amortised cost, which includes any annual impairment.<sup>110</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>111</sup> In 2015/16, Inland Revenue report that 559 921 student loan customers had their records updated as a result of data-matching.<sup>112</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>113</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>114</sup>
- Small amounts (less than NZ\$20).<sup>115</sup>

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<sup>107</sup> Ibid.

<sup>108</sup> Inland Revenue, New Zealand Government, *Annual Report*, above n 34, 123.

<sup>109</sup> Ministry of Education, *Annual Report 2015/16*, above n 95.

<sup>110</sup> Ibid Note 15.

<sup>111</sup> Inland Revenue, New Zealand Government, *Annual Report*, above n 34, 31.

<sup>112</sup> Ibid.

<sup>113</sup> Inland Revenue, New Zealand Government, *Standard Practice Statement SPS 11/03: Student Loans – Relief from Repayment Obligations* (2011).

<sup>114</sup> SLSA s 138.

<sup>115</sup> Ibid s 144.

Relief may be granted from late payment interest or penalties on application from the debtor.<sup>116</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>117</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 make it fair and reasonable to provide relief.<sup>118</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>119</sup>

Recently, Inland Revenue have 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 Taxation Office that allow for exchange of information on contact details of student loan borrowers who are in default.<sup>120</sup>

As at 30 June 2016, 731 754 people had a student loan.<sup>121</sup> Inland Revenue advise that the total number of student loan debtors as at 30 June 2016 was 104 730, comprising 80 622 overseas-based borrowers and 24 108 New Zealand-based borrowers.<sup>122</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 per cent did take up a student loan in this period.<sup>123</sup> The average amount borrowed was NZ\$8888 in the year. As noted in Table 8, the average loan balance per person is NZ\$20 983, and the median is NZ\$14 904 in 2016.<sup>124</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>125</sup>

Nearly two-thirds of the student loan debt that is overdue is older than two years. Less than 20 per cent of student loan debt is 12 months or less overdue, 15.5 per cent is

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<sup>116</sup> Ibid s 146.

<sup>117</sup> Ibid ss 146(2) and 146A.

<sup>118</sup> Ibid s 147.

<sup>119</sup> Ibid s 151.

<sup>120</sup> Ministry of Education, *Annual Report 2015/16*, above n 95.

<sup>121</sup> Ibid. The differences in student loan numbers reported by Inland Revenue (778 552, as shown in Table 9) and the Ministry of Education (731 754) are noted.

<sup>122</sup> Information received under the OIA, 12 September 2017, Inland Revenue, New Zealand Government.

<sup>123</sup> Ministry of Education, *Annual Report 2015/16*, above n 95, 24.

<sup>124</sup> Ibid 3.

<sup>125</sup> Ibid 3.



overdue by 1–2 years; 30.8 per cent is overdue by 2–5 years; and 35.1 per cent is overdue by more than 5 years.<sup>126</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 NZ\$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 11.

**Table 11: Course fees, living costs and course-related costs borrowed under the student loan scheme (2011–15, NZ\$)**<sup>127</sup>

	2011/12	2012/13	2013/14	2014/15	2015/16
<b>Average course fees</b>	\$5441	\$5571	\$5850	\$6074	\$6323
<b>Average living costs</b>	\$3710	\$3774	\$3944	\$4036	\$4179
<b>Average course-related costs</b>	\$990	\$988	\$988	\$987	\$988

#### ***D Ministry of Justice***

The Ministry of Justice (MoJ) 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>128</sup>

In their *Annual Report*, MoJ note that effective collection of fines and reparations is important in ensuring the credibility of fines as a sentencing option.<sup>129</sup> MoJ 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>130</sup>

MoJ debt information is outlined in Table 12. Debt as at 30 June 2016 was NZ\$593 million, of which 42.5 per cent was under a repayment arrangement. MoJ report that 77–80 per cent 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, MoJ also report that 56 per cent of people have not paid or made an arrangement to pay their fine, infringement or reparation.

<sup>126</sup> Ibid 30, Table 15.

<sup>127</sup> Ibid 25, Table 5.

<sup>128</sup> Ministry of Justice, New Zealand Government, *About the Ministry* (27 October 2017) <<https://www.justice.govt.nz/about>>.

<sup>129</sup> Ministry of Justice, New Zealand Government, *Annual Report 2015/16* (2016) 29.

<sup>130</sup> Ibid.

**Table 12: Ministry of Justice collection of fines and reparations**<sup>131</sup>

	2014/15	2015/16	% change 2014/15- 2015/16
<b>Total debt owing (as at 30 June)</b>	NZ\$576 million	NZ\$593 million	+3%
<b>Total fines and reparations collected</b>	NZ\$212 million	NZ\$191 million	-11%
<b>Debt-under-arrangement</b>	46.6%	42.5%	-10%
<b>% of court imposed fines collected or placed under arrangement within four months</b>	84.2%	80%	-5%
<b>% of infringement fines collected or placed under arrangement within four 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

An OIA request was made to MoJ asking for information on fines and reparation that was written off. MoJ 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>132</sup>

A further OIA 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. MoJ 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>133</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, MoJ 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>134</sup>

<sup>131</sup> Ibid 29, 70.

<sup>132</sup> Information received under the OIA, 18 July 2017, Ministry of Justice, New Zealand Government.

<sup>133</sup> Information received under the OIA, 31 August 2017, Ministry of Justice, New Zealand Government.

<sup>134</sup> Information received under the OIA, 31 August 2017, Ministry of Justice, New Zealand Government.

The OIA 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>135</sup> A total of NZ\$28 976 746 was remitted in the 2015/16 financial year, made up of NZ\$27 554 692 in remitted fines and NZ\$1 422 054 in remitted reparation.<sup>136</sup>

Some of the debts outlined herein relate to Legal Aid debt. Legal Aid debt as at 30 June 2016 is NZ\$126 million, with an impairment provision of NZ\$71 million, and a carrying value of NZ\$55 million.<sup>137</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:

1. Where the enforcement of the debt would cause serious hardship to the aided person;
2. Where the cost of enforcing the debt is likely to exceed the amount of the debt likely to be repaid; or
3. If the Commissioner considers that it would be just and equitable to write off the debt.<sup>138</sup>

Serious hardship is defined in a similar way to tax collection, which is:

significant financial difficulties that arise because of:

- the aided person's inability to meet minimum living expenses according to normal community standards; or
- the cost of medical treatment of an illness or injury of the aided person or the aided person's dependant; or
- a serious illness suffered by the aided person or the aided person's dependant.<sup>139</sup>

### ***E 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

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<sup>135</sup> Information received under the OIA, 18 July 2017, Ministry of Justice, New Zealand Government.

<sup>136</sup> Ibid.

<sup>137</sup> Ministry of Justice, *Annual Report 2015/16*, above n 129.

<sup>138</sup> *Legal Services Act 2011* (NZ) s 42(1).

<sup>139</sup> Ibid s 42(4).

Crown.<sup>140</sup> MfE report fines and penalties receivable of NZ\$120 000 in the 2015/16 year with a further NZ\$34 000 due from Emissions Trading Scheme penalty revenue.<sup>141</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. MfE advised under the OIA that the amount written off was NZ\$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>142</sup> The penalties were imposed by the Environmental Protection Agency due to non-compliance by Emissions Trading Scheme participants.

### **F 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 1996* (NZ); or for breaking animal welfare laws.<sup>143</sup> Biosecurity fines are due within 14 days. Recreational fishing fines and animal welfare fines 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.

MPI's 2015/16 *Annual Report* reports revenue of NZ\$31 360 000 from fines, penalties and levies.<sup>144</sup> The majority of this sum is from cost recovery levies from the fishing industry (NZ\$25 381 000 – 81 per cent).<sup>145</sup> The *Annual Report* also reports debtor receivables from fines, penalties and levies of NZ\$20 988 000.

An OIA 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>146</sup>

### **G Ministry for Business, Innovation and Employment**

The Ministry for Business, Innovation and Employment (MBIE) report collection of fines and penalties totalling NZ\$108 000 in 2015/16, and other penalties of NZ\$6 434 000.<sup>147</sup> The receivables amount is calculated at NZ\$58 791 000, but this includes levies as well as fines and penalties. An OIA 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.

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<sup>140</sup> Ministry for the Environment, New Zealand Government, *Annual Report 2015–16* (2016).

<sup>141</sup> Ibid.

<sup>142</sup> Information received under the OIA, 12 September 2017, Ministry for the Environment, New Zealand Government.

<sup>143</sup> Ministry for Primary Industries, New Zealand Government, *Paying Your Fine* (10 January 2018) <<https://www.mpi.govt.nz/law-and-policy/paying-your-fine>>.

<sup>144</sup> Ministry for Primary Industries, New Zealand Government, *2015/16 Annual Report* (2016).

<sup>145</sup> Ibid 118.

<sup>146</sup> Information received under the OIA, 4 August 2017, Ministry for Primary Industries, New Zealand Government.

<sup>147</sup> Ministry for Business, Innovation and Employment, New Zealand Government, *Annual Report 2015–16* (2016).

The response received from MBIE advised that the majority of the receivables amount was levies (NZ\$58 659 000) with only NZ\$132 000 comprising fines and penalties. The amount of fines and penalties written off during the year was NZ\$396 000. MBIE also advised that the majority of this write-off related to penalties issued to Immigration Advisers.<sup>148</sup>

## V DISCUSSION

Section four outlined the outcomes of the debt collection process across a number of government departments. While not all departments are included in section four, 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 13, together with the number of deduction notices served 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 13: 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, NZ\$)</b>	\$1.1 billion	\$13 million	\$18 million <sup>149</sup>	\$29 million	\$55 042	Nil	\$396 000
<b>Write-downs (NZ\$)</b>	\$680 million	N/A	\$659 million	N/A	N/A	N/A	N/A
<b>Serious hardship provision</b>	Yes	No	Yes	Yes	N/A	Waiver request	N/A
<b>Deduction notices</b>	73 013	36 269	Unknown <sup>150</sup>	86 941	N/A	N/A	N/A
<b>Write-offs as % of debt</b>	19.1% <sup>151</sup>	1.9%	See footnote 151	4.7%	36%	0%	N/A <sup>152</sup>

<sup>148</sup> Information received under the OIA, 27 November 2017, Ministry for Business, Innovation and Employment, New Zealand Government.

<sup>149</sup> Due to bankruptcy.

<sup>150</sup> The SLSA provides for the use of deduction notices, but it is not known if they have been used to help collect student loans.

<sup>151</sup> This amount combines Inland Revenue and student loan debt, as Inland Revenue cannot provide a breakdown between student loan write-offs, with the exception of that written off due to bankruptcy.

<sup>152</sup> The write-off amount for MBIE is greater than the year-end receivables held.

Table 13 shows that Inland Revenue writes off significant amounts of tax – 85 times the amount written off by MSD. All the other government departments write off 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 MfE write-off a high proportion of their debt, the actual amount written off is low at NZ\$55 042 (or around 1/20 000 of that written off by Inland Revenue). These different approaches to writing off debt result from a combination of all the variables highlighted in Alber's framework: the regulatory structure provides for different approaches; the financing structure and appropriations allow for writing off debt by some, but not all, government departments; the delivery structure facilitates different approaches; and customer power is visible when some debtors have greater power to negotiate more favourable outcomes.

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. MSD, 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*. Thus, the regulatory structure and delivery structure facilitate the different approaches adopted to serious hardship and the inequity that results from the different approaches.

Differences in debt collection are visible across the agencies discussed in the previous sub-section. Some agencies, such as the MPI, collect all fines, penalties and levies imposed. Others, such as the student loan scheme, administered by Inland Revenue, collect around 55 per cent of debt. While the tax debt appears high, this is accumulated debt and therefore it is reference to 'new debt' that is perhaps the most accurate to assess current collection procedures. However, it must also be acknowledged that 87 per cent of tax is paid on time and another proportion is paid, albeit late. Thus, the regulatory structure and delivery structure are, to some extent, effective for some government departments, but there is inconsistency in the debt collection outcomes. This, at least in part, results from the regulatory structure and the power of the particular debtors.

The different approaches adopted to debt collection are highlighted in Table 13 and throughout the prior section. These different approaches lead to inequitable outcomes: different debtor types have access to different approaches to debt collection. Welfare debtors are less likely to have their debt written off than other debtor types. Welfare debtors also do not have access to the same ability to request remission of their debt when they are suffering from serious hardship. In addition, welfare debtors are more likely to have deduction notices or asset seizures applied to assist with debt collection than, for example, tax debtors.

Extant provisions also create inequities within similar groups of people, for example, not all taxpayers have the same ability to request tax relief when they are suffering from serious hardship. Remission of debt where there is serious hardship is only available to taxpayers who are not taxed at source. All of these inequities result from the current regulatory structure.

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 'just and equitable' treatment in relation to debt repayment. This could be achieved by amendments to the regulatory structures to improve consistency between agencies, and to the delivery structure to improve consistency of application of the regulation.

Focusing on the delivery structure, there is 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 government departments. 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. Extant practice also does not ensure consistency of treatment among debtors. 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>153</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 by Inland Revenue and MSD.<sup>154</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.

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 the debtors with the least power - 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.

## VI CONCLUSION

The primary objective of this research is to report on approaches to debt management across government departments in New Zealand, with the aim of highlighting differences that contribute to inequitable outcomes. 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

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<sup>153</sup> OECD, 'Tax Administration 2017', above n 42.

<sup>154</sup> Lisa Marriott, 'Unpaid Tax and Overpaid Welfare: A Comparison of Debt Recovery Approaches in New Zealand' (2014) 20 *New Zealand Journal of Taxation Law and Policy* 46.

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 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 study highlights the inequities that arise from extant practice. Inequities arise as not all debtors can apply for special consideration when they are suffering from serious hardship. They also arise when different debtors are subject to different debt write-off criteria. Debt collection produces further inequities: some government departments make greater use of tools such as deduction notices and asset seizures. In addition, taxpayers who earn their income from wages and salaries will not have access to the same ability to apply for debt write-offs or serious hardship provisions as other taxpayers who do not have their tax deducted at source.

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.

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