

Child Support Amendment Act 1999

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An Act to amend the Child Support Act 1991

BE IT ENACTED by the Parliament of New Zealand as follows:

1 Short Title and commencement

- (1) This Act may be cited as the Child Support Amendment Act 1999, and is part of the Child Support Act 1991 (“the principal Act”).

- (2) Except as provided in subsections (3) to (5), this Act comes into force on the day after the date on which it receives the Royal assent.
- (3) Section 5 (meaning of term **living allowance**) comes into force on 1 October 1999.
- (4) Section 10 (amendments to election where taxable income for child support purposes is estimated to have fallen at least 15% that apply from 1 April 2001) comes into force on 1 April 2001.
- (5) Part 2 (amendment to Family Proceedings Act 1980) comes into force on a date to be appointed by the Governor-General by Order in Council.

Part 1

Amendments to principal Act

2 Interpretation

- (1) Section 2(1) of the principal Act is amended by repealing the definition of the term **last relevant income year**, and substituting the following definition:

“**Last relevant income year** means,—

- “(a) In a case where a liable parent’s taxable income for the most recent income year was derived solely from source deduction payments, the most recent income year:
- “(b) In the case of any other liable parent, the income year immediately preceding the most recent income year.”

- (2) Section 2(1) of the principal Act is amended by inserting, after the definition of the term **married person**, the following definition:

“**Most recent income year**, in relation to a child support year, means the income year that ended on 31 March immediately preceding the start of that child support year”.

- (3) Section 2 of the principal Act is amended by adding the following subsections:

“(3) For the purposes of this Act, an income year corresponds with a child support year if,—

- “(a) In relation to a person whose income is assessed under the Tax Administration Act 1994, the income year ends on the last day of the child support year:

- “(b) In relation to a person who is resident in a country outside New Zealand, the income year of that country ends on a date nearest to the last day of the child support year.
- “(4) For the purposes of subsection (3)(a), if a person’s income is assessed in relation to the year ending with the annual balance date of the person’s accounts, the corresponding income year is determined in accordance with section 38 of the Tax Administration Act 1994.
- “(5) For the purposes of subsection (3)(b), 30 September in any year is deemed to be nearer to the last preceding 31 March than to the next succeeding 31 March.”
- (4) This section applies with respect to child support payable in relation to the child support year commencing on 1 April 2001, and subsequent years.

3 Application requirements

Section 14(1)(f) of the principal Act is repealed.

4 Basic amount of child support payable

- (1) Section 29(1)(b) of the principal Act is amended by repealing the definition of the term **child support income amount**, and substituting the following definition:

“**Child support income amount** means,—

- “(a) In a case where the liable parent’s taxable income for the most recent income year was derived solely from source deduction payments, the taxable income derived by the liable parent in the most recent income year; or
- “(b) In the case of any other liable parent, the taxable income derived by the liable parent in the income year immediately preceding the most recent income year, inflated by the inflation percentage for the child support year,—

or, if less, an amount equal to twice the yearly equivalent of the relevant average weekly earnings amount for the most recent income year”.

- (2) Section 29(1)(b) of the principal Act is amended by repealing the definition of the term **inflation percentage**, and substituting the following definition:

“**Inflation percentage**, in relation to a child support year, means the average movement in the all groups index number of the New Zealand Consumer Price Index during the 12-month period that ends with 31 December before the start of that child support year”.

(3) Section 29(1)(b) of the principal Act is amended by repealing the definition of the term **last relevant income year**.

(4) Section 29(1)(b) of the principal Act is amended by repealing the definition of the term **relevant average weekly earnings amount**, and substituting the following definition:

“**Relevant average weekly earnings amount**, in relation to the most recent income year, means the ordinary time average weekly earnings (for males and females combined), as at mid-February in the income year immediately preceding the most recent income year, as published by the Department of Statistics”.

(5) This section applies with respect to child support payable in relation to the child support year commencing on 1 April 2001, and subsequent years.

5 Meaning of term living allowance

This section amended s 30(4) of the principal Act.

6 Position where taxable income from source deduction payments not available

(1) The principal Act is amended by inserting, after section 38, the following section:

“38A

(1) This section applies where the Commissioner assesses the annual rate of child support payable under a formula assessment by a liable parent whose taxable income for the first 10 months of the most recent income year was derived solely from source deduction payments.

“(2) If, at the time of making the assessment, the Commissioner is unable to determine the amount of the liable parent’s taxable income for the most recent income year, then the Commissioner may make a formula assessment on the basis that the liable parent’s child support income amount is the lesser of—

“(a) The sum of—

- “(i) The taxable income derived by the liable parent in the first 10 months of the most recent income year; and
 - “(ii) An amount that is equal to one-fifth of that taxable income; or
 - “(b) An amount equal to twice the yearly equivalent of the relevant average weekly earnings amount for the most recent income year.
- “(3) The Commissioner must, as soon as practicable, amend a formula assessment if—
 - “(a) The Commissioner applies subsection (2) in making the formula assessment; and
 - “(b) The Commissioner subsequently ascertains the liable parent’s taxable income for the most recent income year (whether or not an assessment has been made under the Income Tax Act 1976 or the Tax Administration Act 1994 in respect of that year); and
 - “(c) The subsequently ascertained income is more than \$500 in excess of, or less than, the figure calculated for the purposes of subsection (2)(a).
- “(4) An assessment amended under subsection (3) must be amended on the basis that the liable parent’s taxable income for the most recent income year is, and always has been, the subsequently ascertained income.”
- (2) This section applies with respect to child support payable in relation to the child support year commencing on 1 April 2001, and subsequent years.

7 Position where taxable income not readily ascertainable

- (1) Section 39(2) of the principal Act is amended by omitting the words “that last relevant income year”, and substituting the words “the most recent income year”.
- (2) This section applies with respect to child support payable in relation to the child support year commencing on 1 April 2001, and subsequent years.

8 Commissioner may take overseas taxable income into account

This section inserted section 39A of the principal Act.

9 Amendments to election where taxable income for child support purposes is estimated to have fallen at least 15% that apply from commencement

- (1) This subsection substituted s 40(2) of the principal Act.
- (2) This subsection inserted s 40(3)(ba) of the principal Act.

10 Amendments to election where taxable income for child support purposes is estimated to have fallen at least 15% that apply from 1 July 2001

- (1) Section 40 of the principal Act is amended by repealing subsection (1), and substituting the following subsection:
“(1) Subject to subsection (3), a person may, by written notice given to the Commissioner, elect that the annual rate of child support payable under a formula assessment for the remaining months in a child support year is to be calculated subject to the modifications contained in sections 41 to 44A if—
“(a) Before or during the child support year the person estimates that his or her taxable income for the income year corresponding with that child support year will be a particular amount; and
“(b) The amount of the estimate is not more than 85% of the person’s taxable income for the last relevant income year (as inflated by the inflation percentage for the child support year if the last relevant income year in relation to that person is not the most recent income year).”
- (2) This section applies with respect to child support payable in relation to the child support year commencing on 1 April 2001, and subsequent years.

11 Effect of election

- (1) Section 41(1) of the principal Act is amended by—
 - (a) Omitting the words “the greater of \$520 or”; and
 - (b) Inserting in item “a” of the formula, after the words “is the”, the words “greater of \$520 or the”.

- (2) This section applies to child support payable in relation to the child support year commencing on 1 April 2000, and subsequent years.

12 Revocation of election

- (1) Section 42 of the principal Act is amended by inserting, after subsection (2), the following subsection:

“(2A) An election made by a person under section 40 in relation to a child support year is deemed to be revoked if—

“(a) The person makes a later election under that section in relation to the child support year; and

“(b) The amount of the estimate is more than 85% of the person’s taxable income for the last relevant income year (as inflated by the inflation percentage for the child support year, if required by section 40(1)(b)).”

- (2) Section 42 of the principal Act is amended by repealing subsection (3), and substituting the following subsection:

“(3) An election is irrevocable, despite subsections (1) and (2A), if an income amount order made after the election comes into force in relation to the person and to the child support year.”

- (3) This section applies with respect to child support payable in relation to the child support year commencing on 1 April 2000, and subsequent years.

13 Effect of revocation

- (1) Section 43 of the principal Act is amended by repealing subsection (1), and substituting the following subsection:

“(1) If an election made by a person under section 40 in relation to a child support year is revoked under section 42, the person’s child support income amount in relation to the child support year (including any days in the child support year preceding the revocation of the election) is to be taken to be, and always to have been, the amount that would have been the person’s child support income amount for the year if that election had not been made.”

- (2) Section 43(3) of the principal Act is amended by omitting the words “receipt of a notice of revocation that complies with section 42 of this Act”, and substituting the words “revocation of a notice under section 42”.

- (3) This section applies with respect to child support payable in relation to the child support year commencing on 1 April 2000, and subsequent years.

14 Reconciliation of estimated and actual taxable income after end of child support year

- (1) Section 44 of the principal Act is amended by repealing subsection (1), and substituting the following subsections:

“(1) This section applies where the Commissioner makes, under any provision of the Income Tax Act 1976 (other than section 21) or the Income Tax Act 1994 or the Tax Administration Act 1994 (other than section 106), an assessment of taxable income of a person for an income year (being an income year that corresponds with a child support year in which at least 1 election made by that person under section 40 has applied).

“(1A) The person’s child support income amount that is to be used in a formula assessment for that child support year is to be taken to be, and always to have been, the lesser of—

“(a) The amount of the taxable income derived by that person in that child support year; or

“(b) The child support income amount that would have been used for the purposes of a formula assessment for that child support year if the person had not made any election under section 40.”

- (2) Section 44(2) of the principal Act is amended by omitting the words “Subsection (1) of this section has”, and substituting the words “Subsections (1) and (1A) have”.

- (3) This section applies with respect to child support payable in relation to the child support year commencing on 1 April 2000, and subsequent years.

15 Reconciliation of estimated income where no tax return filed

- (1) This subsection inserted section 44A of the principal Act.
(2) This subsection amended s 40(1) of the principal Act.
(3) This subsection amended s 41(1) of the principal Act.
(4) This subsection amended s 45 of the principal Act.

16 Penalty where income underestimated

- (1) Section 45(3) of the principal Act is amended by repealing paragraphs (a) and (b), and substituting the following paragraphs:
 - “(a) The enactment of any Act amending the Income Tax Act 1994 or the making of any regulation or Order in Council relating to income tax, during the period commencing on the 1st day of the last month in that child support year and ending with the due date for payments in respect of that month; or
 - “(b) The Commissioner making public, during the period commencing on the 1st day of the last month in that child support year and ending with the due date for payments in respect of that month, any ruling in relation to any provision of the Income Tax Act 1994 and that ruling is different from a ruling previously made public by the Commissioner in relation to that provision; or”.
- (2) This section applies with respect to child support payable in relation to the child support year commencing on 1 April 2001, and subsequent years.

17 Interest to be charged on underestimations

- (1) This subsection repealed s 46 of the principal Act.
- (2) This subsection repealed ss 45(4), 90(1)(e), 235(1)(ca), and 237(3)(c) of the principal Act.
- (3) This subsection amended s 45(5) of the principal Act.
- (4) This section is deemed to apply with respect to child support payable in relation to the child support year that commenced on 1 April 1999, and subsequent years.

18 Application requirements

Section 55(1)(e) of the principal Act is repealed.

19 Application for exemption by prisoner or hospital patient

This section substituted section 73 of the principal Act.

20 Effect of election

This section substituted s 74(2) of the principal Act.

21 End of exemption

This section substituted s 75 of the principal Act.

22 Notice of assessment to be given to liable person

This section substituted s 88 of the principal Act.

23 Objections to appealable decisions

This section inserted s 90(1)(ca) of the principal Act.

24 Orders that may be made

- (1) Section 106(1)(b) of the principal Act is amended by inserting, after the words “child support year” in the second place where they occur, the words “and to that liable parent”.
- (2) This section applies with respect to child support payable in relation to the child support year commencing on 1 April 2001, and subsequent years.

25 New sections inserted

This section inserted ss 135A and 135B of the principal Act.

26 Amounts payable per month and per day

This section substituted section 136 of the principal Act.

27 Method in which payments to be made

This section amended s 148 of the principal Act.

28 Relief where child support overpaid before estimation

- (1) The principal Act is amended by inserting, after section 151, the following section:

“151A

- (1) The Commissioner may write-off the whole or part of a debt, and may make alterations in the assessment that are necessary for that purpose, if the debt—
 - “(a) Is repayable by a payee who was a social security beneficiary at any time during a child support year after an election was made by the liable parent that resulted in no child support being payable

- by the liable parent for the remainder of the child support year under section 40; and
- “(b) Relates to an amount paid to the payee before the election was made by the liable parent; and
- “(c) Is repayable to the Commissioner under section 151(1)(c) in relation to a child support debt.
- “(2) The Commissioner may, if the debt has been paid in whole or in part, refund to the payee the whole or any part of the debt that has been paid, with or without writing-off any part of the debt that has not been paid.
- “(3) Any refund made under this section must be paid out of the Crown Bank Account without further appropriation than this section.”
- (2) This section applies with respect to child support payable in relation to the child support year commencing on 1 April 2000, and subsequent years.

29 Protected net earnings rate

Section 165 of the principal Act is amended by—

- (a) This paragraph amended s 165 of the principal Act.
- (b) This paragraph inserted s 165(2) of the principal Act.

30 Position where liable person has 2 or more employers

This section inserted s 166(2) of the principal Act.

31 Payee may uplift financial support debt

This section substituted s 180 of the principal Act.

32 Offences

This section amended s 208(a) of the principal Act.

33 Refund of excess financial support

This section substituted s 216 of the principal Act.

34 Power of Commissioner where small debit results from exchange rate fluctuations

This section inserted s 219A of the principal Act.

35 Regulations

- (1) Section 235 of the principal Act is amended by—
 - (a) Repealing subsection (1)(c); and
 - (b) Repealing subsection (3).
- (2) This section applies with respect to child support payable in relation to the child support year that commences on 1 April 2001, and subsequent years.

36 Changes in published statistics to be disregarded

- (1) The principal Act is amended by repealing section 236, and substituting the following section:

“236

- (1) This section applies to publication by the Department of Statistics of—
 - “(a) The ordinary time average weekly earnings (for males and females combined); or
 - “(b) The all groups index number of the Consumer Price Index.
- “(2) A correction to those statistics that is published by that department must be disregarded for the purposes of this Act if—
 - “(a) The correction is published at any time after 1 January immediately preceding the start of a child support year; and
 - “(b) The statistics corrected are—
 - “(i) As at mid-February immediately preceding the start of the most recent income year in relation to the ordinary time average weekly earnings (for males and females combined); or
 - “(ii) For the year ending on 31 December immediately preceding the start of the child support year in relation to the all groups index number of the Consumer Price Index.”
- (2) This section applies with respect to child support payable in relation to the child support year that commences on 1 April 2001, and subsequent years.

Part 2
Amendment to Family Proceedings Act
1980

37 Amendment to Family Proceedings Act 1980

Section 2 of the Family Proceedings Act 1980 is amended by repealing the definition of the term **Convention country**, and substituting the following definition:

“Convention country—

- “(a) Means a country that is a party to the United Nations Convention for the Recovery of Maintenance Abroad done at New York on 20 June 1956; but**
- “(b) Does not include Australia:”.**