

Reprint  
as at 25 February 2016



## Child Support Amendment Act 2013

Public Act 2013 No 12  
Date of assent 16 April 2013  
Commencement see section 2

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#### Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.  
Note 4 at the end of this reprint provides a list of the amendments incorporated.

**This Act is administered by the Inland Revenue Department.**

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**The Parliament of New Zealand enacts as follows:**

**1 Title**

This Act is the Child Support Amendment Act 2013.

**2 Commencement**

- (1) Sections 6, 31, and 32 come into force on the day after the date of Royal assent.
- (2) Sections 18, 19, and 19A come into force on 1 April 2014.
- (3) Sections in Part 1 not referred to in subsection (1) or (2) come into force on 1 April 2015.
- (4) Sections 40(1), 41, 42, 44, and 45 come into force on the day after the date on which the Taxation (Annual Rates for 2015–16, Research and Development, and Remedial Matters) Act 2016 receives the Royal assent.
- (5) The rest of Part 2 comes into force on 1 April 2016.

Section 2(2): replaced, on 27 February 2014, by section 151 of the Taxation (Annual Rates, Foreign Superannuation, and Remedial Matters) Act 2014 (2014 No 4).

Section 2(3): replaced, on 27 February 2014, by section 151 of the Taxation (Annual Rates, Foreign Superannuation, and Remedial Matters) Act 2014 (2014 No 4).

Section 2(4): replaced, on 24 February 2016, by section 57 of the Taxation (Annual Rates for 2015–16, Research and Development, and Remedial Matters) Act 2016 (2016 No 1).

Section 2(5): inserted, on 24 February 2016, by section 57 of the Taxation (Annual Rates for 2015–16, Research and Development, and Remedial Matters) Act 2016 (2016 No 1).

**3 Principal Act amended**

This Act amends the Child Support Act 1991.

**Part 1**

**Formula assessment of child support**

**4 Long Title repealed**

The Long Title is repealed.

**5 Interpretation**

- (1) Section 2(1) is amended by repealing the following definitions: **child support percentage, eligible applicant, eligible custodian, income amount order, last relevant tax year, liable parent, principal provider of ongoing daily care, qualifying custodian, relevant average weekly earnings amount,**

**shared custody child, substantially equal sharing of ongoing daily care, and taxable income.**

- (2) Section 2(1) is amended by inserting the following definitions in their appropriate alphabetical order:

**adjusted taxable income** has the meaning in section 35

**annual amount of child support** means the amount payable in a child support year by a liable parent in respect of a qualifying child

**annual rate of child support** means the total amount payable in a child support year by a liable parent in respect of all of his or her qualifying children

**care cost percentage** means the percentage of costs associated with providing a proportion of ongoing daily care to a child; and, in relation to a particular parent or carer of a child, is the percentage set out in column 2 of the table in Schedule 2 that reflects the proportion of ongoing daily care that the Commissioner establishes (under section 14) that the person provides to the child

**care order or agreement** means any of the following that are in force:

- (a) a parenting order made under section 48(1) of the Care of Children Act 2004;
- (b) an overseas parenting order as defined in section 8 of the Care of Children Act 2004;
- (c) any agreement (not being an order referred to in paragraph (a) or (b))—
  - (i) that the parents and carers of a child agree to treat as binding on them; and
  - (ii) that identifies the proportion of care that each parent and carer of the child will provide to the child

**carer** means, in relation to a child, a person (whether or not a parent) who provides ongoing daily care to the child, other than on a commercial basis

**child expenditure amount** has the meaning set out in section 30(2)

**child expenditure table** means, in relation to a child support year, the child expenditure table approved by the Commissioner under section 36D applying to that year

**child support group**, in relation to a parent who, at a particular time, has more than 1 qualifying child, means the qualifying children of that parent who all share the same other parent and in relation to whom child support for that time has been assessed or is being assessed

**income amount order** means a determination under Part 5A, 6A, or 6B, or an order under Part 7, that, in relation to a person who is subject to a formula assessment, substitutes a new—

- (a) child support income amount; or
- (b) amount of taxable income or adjusted taxable income; or



(c) annual amount of child support

**income percentage** means, in relation to a parent of a qualifying child, that parent's percentage of the combined child support income amounts of all the child's parents, as determined under section 33

**last relevant tax year** means,—

- (a) in a case where a parent's taxable income for the most recent tax year was derived solely from withholding income, and has no adjustments of the sort referred to in section 35(1), the calendar year ending in that tax year:
- (b) in any other case, the tax year immediately preceding the most recent tax year

**liable parent** means,—

- (a) in relation to a parent subject to a formula assessment, a parent of a qualifying child who the Commissioner determines under section 17 is a liable parent of the child; and
- (b) in relation to any other parent, a parent who is liable to pay child support under section 58(1) or 68(1)

**receiving carer** means a carer of a qualifying child who the Commissioner determines under section 17 is a receiving carer of the child

**tax year** has the meaning in section YA 1 of the Income Tax Act 2007

**taxable income** has the meaning in section YA 1 of the Income Tax Act 2007

Section 5(1): amended, on 17 July 2013, by section 166(1) of the Taxation (Livestock Valuation, Assets Expenditure, and Remedial Matters) Act 2013 (2013 No 52).

Section 5(1): amended, on 17 July 2013, by section 166(2) of the Taxation (Livestock Valuation, Assets Expenditure, and Remedial Matters) Act 2013 (2013 No 52).

Section 5(2) **income amount order**: inserted, on 17 July 2013, by section 166(3) of the Taxation (Livestock Valuation, Assets Expenditure, and Remedial Matters) Act 2013 (2013 No 52).

Section 5(2) **last relevant tax year**: inserted, on 17 July 2013, by section 166(3) of the Taxation (Livestock Valuation, Assets Expenditure, and Remedial Matters) Act 2013 (2013 No 52).

## 6 New section 3A inserted

The following section is inserted after section 3:

### 3A Transitional and savings provisions relating to amendments to this Act

Schedule 1 contains transitional and savings provisions (relating to amendments made to this Act on or after 1 April 2014) that affect other provisions of this Act (*see* section 276).

## 7 Objects

- (1) Section 4 is amended by repealing paragraph (c).

- (2) Section 4(d) is amended by omitting “according to their capacity to provide financial support” and substituting “according to their relative capacity to provide financial support and their relative levels of provision of care”.
- (3) Section 4 is amended by inserting the following paragraph after paragraph (f):
  - (fa) to affirm the right of carers who provide significant care to children to receive financial support in respect of those children from a parent or parents of the children:
- (4) Section 4(g) is amended by omitting “caregivers” and substituting “carers”.
- (5) Section 4(h) is amended by omitting “between custodial and non-custodial parents” and substituting “between parents and, where applicable, carers”.
- (6) Section 4(j) is amended by—
  - (a) omitting “custodians” and substituting “carers”; and
  - (b) omitting “non-custodial” and substituting “liable”.

## 8 New section 4A inserted

The following section is inserted after section 4:

### 4A Overview of child support payable under formula assessment

- (1) A parent or non-parent carer of a qualifying child may apply to the Commissioner for a formula assessment of child support payable for that child by a liable parent.
- (2) The Commissioner will then determine the proportion of care that each carer of the child provides, and the income of each parent of the child, and, using that information, will identify the parent or parents who are liable to pay child support, and the carer or carers who are entitled to receive child support, in respect of the child.
- (3) A person will be a liable parent in respect of a child if his or her income percentage (which is a percentage of the combined child support income amounts of both the child’s parents) is greater than the person’s care cost percentage (which is a cost percentage directly related to the proportion of care that the parent provides to the child).
- (4) If annual child support is payable by a liable parent for a qualifying child, the amount is determined under Part 2. It is worked out by deducting the liable parent’s care cost percentage from their income percentage, and then multiplying the result by the appropriate amount set out in the relevant child expenditure table (which identifies, amongst other things, the average annual expenditure on children in New Zealand, by reference to average weekly earnings).
- (5) This section is by way of explanation only. If it is inconsistent with any other provision of this Act, the other provision prevails.

Section 8: amended, on 17 July 2013, by section 167 of the Taxation (Livestock Valuation, Assets Expenditure, and Remedial Matters) Act 2013 (2013 No 52).

*Amendments to Part 1 (liability to pay)*

**9 Children who qualify for child support**

(1) Section 5 is amended by repealing paragraph (a) and substituting the following paragraph:

(a) is under the age of 18, or is aged 18 and enrolled at and attending a school; and

(2) Section 5 is amended by adding the following subsections as subsections (2), (3), and (4):

(2) In subsection (1)(a), **school** means—

(a) a registered school (as defined in section 2(1) of the Education Act 1989); or

(b) an overseas school.

(3) A child who is enrolled at a registered school and attends it until the end of the school's academic year is deemed to be enrolled at and attending the school until 31 December in that year.

(4) In relation to the child support year commencing on 1 April 2015, subsection (1) must be read as if the whole of paragraph (a) were replaced by a reference to a child under 19 years of age.

Section 9(2): amended, on 27 February 2014, by section 152 of the Taxation (Annual Rates, Foreign Superannuation, and Remedial Matters) Act 2014 (2014 No 4).

**10 New headings and sections 7B to 19 substituted**

Sections 8 to 24 and the headings above sections 8, 11, 14, 18, and 21 are repealed and the following sections and headings substituted:

**7B Assumptions about parents of child**

(1) The Commissioner is entitled to assume, for the purposes of a formula assessment, that a qualifying child has 2 parents, and that those parents are living apart.

(2) However, if the Commissioner believes on reasonable grounds that either of those assumptions is incorrect, the Commissioner must apply the provisions of this Act, with any necessary modifications, to reflect the true position as determined by the Commissioner.

*Application for formula assessment*

**8 Who may apply for formula assessment**

(1) Any parent or carer of a qualifying child may apply to the Commissioner for a formula assessment of child support payable by a liable parent in respect of the child, if the applicant is not living with that parent in a marriage, civil union, or de facto relationship.

- (2) However, if a qualifying child is a child in respect of whom payments are being made under section 363 of the Children, Young Persons, and Their Families Act 1989, then, despite subsection (1), the only person who may apply for a formula assessment in relation to the child is either of the following:
- (a) the chief executive of the department for the time being responsible for the administration of the Children, Young Persons, and Their Families Act 1989; or
  - (b) a body or organisation approved under section 396 of that Act.

### **9 Social security beneficiaries must apply for formula assessment**

- (1) This section applies to a person who is a carer of a qualifying child (other than a child to whom section 8(2) applies) and—
- (a) is a social security beneficiary; and
  - (b) provides, or considers that he or she provides, at least 35% of ongoing daily care to the child; and
  - (c) is not a receiving carer in respect of the child (but *see* subsection (4)).
- (2) A person to whom this section applies must apply for a formula assessment of child support in relation to every parent of the child.
- (3) An application for a formula assessment must be made at the same time as an application for social security benefit is made, and at any other time when the Commissioner notifies the beneficiary that an application for a formula assessment is required in relation to a qualifying child.
- (4) If a person who is or becomes a social security beneficiary receives child support pursuant to an order under Part 4 that relates to an overseas order (as referred to in section 67(b)),—
- (a) the person is deemed not to be a receiving carer for the purpose of this section; and
  - (b) the person is deemed to have made, on the date on which he or she becomes a social security beneficiary, an election under section 70 that the order be one to which Part 4 does not apply; and
  - (c) if the person ceases to be a social security beneficiary, or ceases to provide at least 35% of ongoing daily care to the child,—
    - (i) any formula assessment applying at that time ceases to apply; and
    - (ii) the election under section 70 is deemed to be revoked (despite section 70(4)) on the following day.
- (5) If the person is in receipt of an unsupported child's benefit in respect of 1 or more children, but is not in receipt of any other social security benefit, subsection (2) applies only in relation to the child or children in respect of whom the unsupported child's benefit is paid.

- (6) Any social security beneficiary who fails to comply with their obligations under this section is liable under section 70A of the Social Security Act 1964 to have their rate of benefit reduced.
- (7) In order to ensure the enforcement of section 70A of the Social Security Act 1964, the Commissioner may notify the chief executive of the department responsible for the administration of that Act if any social security beneficiary fails to comply with his or her obligations under this section, or if his or her application for a formula assessment is not properly completed.

#### **10 Form of application**

- (1) An application for formula assessment must be in an approved form and be accompanied by the documents (if any) specified in the form.
- (2) Every application must—
  - (a) identify at least 1 qualifying child to whom the application relates; and
  - (b) identify, in relation to each qualifying child, at least 1 person who provides at least 35% of ongoing daily care to the child; and
  - (c) identify at least 1 person as a liable, or potentially liable, parent of each qualifying child identified; and
  - (d) include the tax file number (as defined in section YA 1 of the Income Tax Act 2007) of each qualifying child (except to the extent that the application form permits otherwise).
- (3) The application, and every document accompanying it, must be verified as specified in the application form.
- (4) An application for a formula assessment is properly completed if—
  - (a) it contains all the information required by the application form to be supplied; and
  - (b) it is accompanied by all the documents required by the application form to accompany the application; and
  - (c) the application and documents are verified as required by the application form.

#### **11 Multiple applications in single form**

- (1) If an application for a formula assessment is made on a single form in respect of 2 or more children, the form may be treated as if it contained separate applications for formula assessment of child support for each child.
- (2) Subsection (3) applies if—
  - (a) an application is made on a single form for child support in respect of 1 child or 2 or more children; and
  - (b) payment of child support is sought from both parents of the child or any of the children.

- (3) When this subsection applies, the form may be treated as if it contained separate applications for a formula assessment of child support in respect of the child or each of the children from a parent from whom payment of child support is sought.

## **12 Deemed application by beneficiary**

- (1) This section applies if a social security beneficiary is entitled to child support payments under a voluntary agreement but child support payments then cease to be payable under the agreement because—
- (a) the agreement expires; or
  - (b) the amount payable by the liable parent is less than the amount that would be payable by the liable parent under a formula assessment; or
  - (c) an election under section 64 (to terminate liability under the voluntary agreement) takes effect.
- (2) If this section applies, on the day after the date on which the child support payments cease to be payable under the agreement, the Commissioner is deemed to have received from the beneficiary a properly completed application for a formula assessment for child support, as required by section 9, in relation to the same child or children, the same liable parent, and the same carer, as the voluntary agreement related to.

## **13 Notification by Commissioner of application**

- (1) On receiving a properly completed application for a formula assessment in respect of 1 or more qualifying children, the Commissioner must notify the applicant, and every parent and carer identified in the application, that the Commissioner has received an application for a formula assessment and will therefore ascertain—
- (a) who the liable parent or parents, and who the receiving carer or carers, of the qualifying child are; and
  - (b) the annual amount of child support payable by any liable parent in respect of each qualifying child identified in the application; and
  - (c) the annual rate of child support payable by any liable parent in respect of all the liable parent's qualifying children; and
  - (d) the amount payable in respect of each receiving carer; and
  - (e) the date on which the liability of a liable parent to pay child support began or begins.
- (2) If, in order to ascertain the matters listed in subsection (1), the Commissioner needs further information from the applicant (such as the name of the other parent), the Commissioner may require the applicant to provide that information and need not take further action with respect to the application until the information is provided.

- (3) If the Commissioner has already ascertained some or all of the matters listed in subsection (1), the notice under this section may include that information.

*Determining care cost percentages*

**14 Commissioner to establish proportions of care**

- (1) The Commissioner must establish, for each qualifying child to whom a properly completed application relates, the proportion of ongoing daily care that each parent and non-parent carer identified in the application, or in other information provided following a request under section 13(2), provides to the child.
- (2) If 2 or more people who live together each provide ongoing daily care to a child,—
- (a) only 1 of those people may be treated as a carer, and the care provided by the other persons must be treated as part of the care provided by the first person; and
  - (b) if 1 of the people is a parent of the child, that person must be treated as the carer.
- (3) The parents of a qualifying child in respect of whom payments are being made under section 363 of the Children, Young Persons, and Their Families Act 1989 are deemed to provide no ongoing daily care to the child.

**15 How Commissioner establishes proportions of care**

- (1) For the purpose of section 14, the Commissioner must (subject to subsection (3)) rely on the content of any care order or agreement relating to a qualifying child when establishing the proportion of ongoing daily care that a carer provides to the child.
- (2) If a care order or agreement specifies the proportion of nights that a child is to spend with a carer, that proportion of nights is taken to be the proportion of ongoing daily care provided to the child by that carer.
- (3) A parent or carer of a qualifying child may challenge the application of subsection (1) or (2) by providing evidence of—
- (a) why a care order or agreement should not be relied on; or
  - (b) why the proportion of nights that a child spends with a carer should not be taken to be the proportion of ongoing daily care provided to that child by that carer.
- (4) If there is no care order or agreement relating to the child, or if the Commissioner is satisfied, on the basis of evidence provided, that a care order or agreement does not accurately reflect the proportion of ongoing daily care provided by a carer to a child, the Commissioner must establish the proportion of care provided by a carer primarily on the basis of the number of nights that the child spends with the carer.

- (5) If the Commissioner is satisfied, on the basis of evidence provided, that the number of nights spent with a carer is not a true reflection of the proportion of care actually provided by a carer to the child, the Commissioner must establish the proportion of care provided on the basis of the amount of time that the carer is the person responsible for the daily care of the child.
- (6) When establishing proportions of care, the Commissioner—
  - (a) must use only whole percentage figures and, for that purpose, must round figures over 50% upwards to the next whole percentage figure, and figures under 50% downwards to the next whole percentage figure; and
  - (b) must assume that every year has 365 days.

#### **16 Determining care cost percentages**

- (1) The Commissioner must determine the care cost percentage of each parent and carer of a qualifying child on the basis of the proportion of care that the Commissioner has established, under section 14, that each carer provides to the child.
- (2) The care cost percentage that applies is the relevant percentage set out in, or determined in accordance with, column 2 of the table in Schedule 2.

#### *Liable parents and receiving carers*

#### **17 Determining who are liable parents and receiving carers**

- (1) The Commissioner must determine the liable parents and receiving carers of each qualifying child, in accordance with this section.
- (2) A parent of a qualifying child is a liable parent of that child if the parent's income percentage (as determined under section 33) is greater than or equal to their care cost percentage for that child (as determined under section 16).
- (3) A parent of a qualifying child is a receiving carer of the child if the parent's income percentage is less than their care cost percentage for the child.
- (3A) Despite subsections (2) and (3), a parent whose income percentage is 100% and whose care cost percentage is also 100% is a receiving carer.
- (4) A non-parent carer of a qualifying child is a receiving carer of the child if the carer provides at least 35% of ongoing daily care to the child.

#### **18 Effect of being liable parent or receiving carer**

- (1) A person who the Commissioner determines is a liable parent of a child is liable to make payments of child support in respect of that child, unless the parent's liability is assessed as nil in accordance with section 31(1).
- (2) A person who the Commissioner determines is a receiving carer of a child is a person in relation to whom child support payments in respect of the child are



payable, unless no child support is payable in accordance with section 36A(3) or 36C(4).

*Beginning of liability to pay child support under formula assessment*

**19 When liability to pay child support starts**

- (1) The liability of a liable parent to pay child support under a formula assessment starts—
  - (a) from the day on which the properly completed application for that formula assessment is received by the Commissioner; or
  - (b) if a reassessment results in a person being identified as a liable parent, from the date specified in the reassessment as the effective date.
- (2) If a parent becomes liable to pay child support to a person in relation to a child under a formula assessment, any existing liability of that parent to pay child support to the person in relation to that child under any voluntary agreement is suspended between the commencement of liability to pay under the formula assessment and the end of that liability.
- (3) If the Commissioner receives an application for a formula assessment that names a person as a parent of a qualifying child (**person P**), but person P is not at that time a parent of the child within the meaning of section 7, then, if the application is otherwise properly completed, liability by person P to pay child support in respect of the child starts from the day on which the application was received if—
  - (a) a court later declares person P to be the parent of the child, or person P is later declared to be a parent of the child by an order made by a court or a public authority in an overseas jurisdiction; and
  - (b) the Commissioner determines under this Part that person P is a liable parent of the child.

Section 10: amended, on 17 July 2013, by section 168 of the Taxation (Livestock Valuation, Assets Expenditure, and Remedial Matters) Act 2013 (2013 No 52).

**11 New section 25 substituted**

Section 25 is repealed and the following section substituted:

**25 When liability to pay child support ceases**

- (1) A liable parent ceases to be liable to pay child support in respect of a qualifying child under a formula assessment on the day before the date on which the child—
  - (a) ceases to be a qualifying child; or
  - (b) is adopted; or
  - (c) dies.

- (2) A liable parent ceases to be liable to pay child support under a formula assessment on the day the parent ceases to be a liable parent under section 17, or on the day before the date on which the parent—
- (a) becomes a person who is none of the following:
    - (i) a New Zealand citizen;
    - (ii) a person who is ordinarily resident in New Zealand;
    - (iii) a person who is ordinarily resident in a country with which New Zealand has entered into a reciprocal agreement for the enforcement of child support; or
  - (b) becomes a person from whom child support may not be sought in respect of the child by reason of section 6(2); or
  - (c) dies.
- (3) A liable parent ceases to be liable to pay child support in respect of a particular receiving carer of a qualifying child under a formula assessment on the earliest of the following:
- (a) if the receiving carer dies, on the earlier of the following:
    - (i) the 28th day after the date of death;
    - (ii) the day before the date on which a properly completed application for formula assessment is received by the Commissioner from a carer in place of the carer who has died;
  - (b) the day before the date on which the receiving carer ceases to provide at least 35% of ongoing daily care to the child;
  - (c) the day before the date on which the receiving carer starts to live, or resumes living, with the liable parent of the child in a marriage, civil union, or de facto relationship;
  - (d) in any case to which section 8(2) applies, the day before the date on which the carer ceases to be under a duty to make payments under section 363 of the Children, Young Persons, and Their Families Act 1989 in respect of the child;
  - (e) the day specified in a notice of election, given under section 27, to end the liability of the liable parent to the carer (except that this paragraph does not apply in respect of any carer who is in receipt of a social security benefit);
  - (f) in a case where a voluntary agreement made in relation to the child between the liable parent and the carer is accepted by the Commissioner, the day before the date on which that voluntary agreement first applies, in accordance with section 59.

*Amendments to Part 2 (assessment of amounts)*

**12 New headings and sections 29 to 36D substituted**

Sections 29 to 36 and the heading above section 32 are repealed and the following sections and headings substituted:

**29 Commissioner to assess child support payable under formula assessment**

- (1) As soon as practicable after identifying a liable parent under Part 1, the Commissioner must—
- (a) assess the annual amount of child support payable by the liable parent in that child support year in respect of each of his or her qualifying children; and
  - (b) assess the annual rate of child support payable by the liable parent in that child support year in respect of all of his or her qualifying children; and
  - (c) where the application for a formula assessment was made in the previous child support year, make such assessments in relation to the previous child support year.
- (2) Before, or as soon as practicable after, the start of each later child support year in which child support continues, or appears likely to continue, to be payable in respect of any qualifying child of the parent, the Commissioner must make the assessments referred to in subsection (1)(a) and (b) in relation to that later child support year.
- (3) Every assessment must be done in accordance with this Part and Part 5.

**30 Formula for assessing annual amount of child support**

- (1) The formula for assessing the annual amount of child support payable under a formula assessment by a liable parent in a child support year in respect of a qualifying child is the parent's income percentage minus the parent's care cost percentage, multiplied by the child expenditure amount for the child. This formula can be expressed as—

$$(i\% - c\%) \times p$$

where—

- i% is the liable parent's income percentage determined under section 33
- c% is the liable parent's care cost percentage determined under section 16
- p is the child expenditure amount for a qualifying child.

- (2) The **child expenditure amount** for a qualifying child in a child support year is—

$$e \div n$$

where—

- e is the amount, determined in accordance with the child expenditure table applying to that child support year, that applies to the parent in respect of the child on the basis of—
- (a) the combined child support income amounts of both parents of the child; and
  - (b) the number of children in the child's child support group; and
  - (c) the age group of those children
- n is the number of children in the same child support group as the child.

### **31 Annual amount of child support payable by liable parent**

- (1) The annual amount of child support payable under a formula assessment by a liable parent in respect of a qualifying child is nil, and section 32 does not apply, if—
- (a) the liable parent provides more than 65% of ongoing daily care to the child; or
  - (b) the liable parent provides at least 28% of ongoing daily care to the child and the liable parent's income percentage is equal to their care cost percentage; or
  - (c) no receiving carer provides at least 35% of ongoing daily care to the child.
- (2) Where subsection (1) does not apply, the annual amount of child support payable under a formula assessment by a liable parent in a child support year in respect of a qualifying child is as follows:
- (a) the amount determined in accordance with the formula set out in section 30(1), unless paragraph (b) or (c) applies:
  - (b) for a liable parent to whom section 36 applies but section 36A does not,—
    - (i) the amount determined in accordance with the formula set out in section 30(1); or
    - (ii) the amount determined under the multi-group cap (referred to in subsection (3)) applying to the child, but only if it is less than the amount referred to in subparagraph (i):
  - (c) for a parent to whom section 36A applies (whether or not section 36 also applies),—
    - (i) the amount determined in accordance with the formula set out in section 30(1); or
    - (ii) if the multi-group cap applies, the amount determined under the multi-group cap applying to the child, but only if it is less than the amount referred to in subparagraph (i); or

- (iii) the amount payable in respect of a receiving carer under section 36A, but only if it is less than each of the amounts referred to in subparagraph (i) or (ii).

- (3) The **multi-group cap** for a child is the amount determined as follows:

$$(100\% - c\%) \times m$$

where—

c% is the parent's care cost percentage in relation to the child

m is the multi-group cost of the child, as determined under section 36(4).

- (4) The purpose of the multi-group cap is to avoid liable parents paying more in child support than they would pay if all the children for whom they are liable to pay child support were living together.

### 32 Minimum annual rate of child support

If, after assessing the annual amount of child support payable by a liable parent in respect of each of his or her qualifying children, the Commissioner determines that the total amount payable by the parent is less than the minimum annual rate referred to in section 72(1)(a), the Commissioner must, despite sections 30 and 31(2),—

- (a) assess the parent's annual rate of child support as the minimum annual rate referred to in section 72(1)(a); and
- (b) determine the proportion of that minimum annual rate of child support that is payable in respect of each receiving carer, on the basis of the number of qualifying children of the liable parent that each carer provides care for.

#### *Determining income percentages*

### 33 Income percentage

A parent's **income percentage**, in relation to a qualifying child, is the percentage figure derived by dividing the person's child support income amount (as determined under section 34) by the sum of the child support income amounts, in relation to that child, of all the parents of the child.

### 34 Child support income amount

- (1) A parent's **child support income amount** for a child support year in relation to a child is the person's adjusted taxable income (determined under section 35) for the relevant tax year minus each of the following:
  - (a) the person's living allowance (as determined under section 35A) for the child support year;
  - (b) the sum of any dependent child allowances to which the person is entitled under section 35B for the child support year;

- (c) any multi-group allowance that relates to the child and to which the person is entitled under section 36 for the child support year.
- (2) If the result of the calculation in subsection (1) is zero or less, the parent's child support income amount must be treated as being nil.
- (3) If the adjusted taxable income of a parent of a qualifying child cannot reasonably be ascertained, or cannot be applied by the Commissioner, the parent's child support income amount is to be treated as being,—
  - (a) if there is 1 parent whose adjusted taxable income is known, the same as that parent's child support income amount; and
  - (b) if there is more than 1 parent whose adjusted taxable income is known, the average of those parents' child support income amounts.

### 35 Adjusted taxable income

- (1) A person's **adjusted taxable income** for a child support year is the person's taxable income for the relevant tax year adjusted by the adjustments (if any) that would be made to the person's taxable income to determine the person's family scheme income under subpart MB of the Income Tax Act 2007, except that the following are not to be treated as being part of the person's family scheme income for this purpose:
  - (a) income that is exempt income under section CW 32 of the Income Tax Act 2007 (child support and spousal maintenance);
  - (b) income referred to in section MB 11 of the Income Tax Act 2007 (income derived by dependent children);
  - (c) income referred to in section MB 12 of the Income Tax Act 2007 (non-residents' foreign-sourced income of the person's spouse or partner).
- (2) However, for the purposes of an assessment of child support for the child support year commencing 1 April 2015 only, the adjustments referred to in subsection (1) must not be applied to a person's taxable income.
- (3) A person's taxable income must be taken to be their income from employment for the calendar year immediately preceding the start of the child support year if, in the most recent tax year,—
  - (a) the person's taxable income was derived solely from withholding income; and
  - (b) no adjustments of the sort referred to in subsection (1) are made.
- (4) If subsection (3) does not apply, a person's taxable income for a child support year must be taken to be their taxable income in the tax year immediately preceding the most recent tax year, inflated by the inflation percentage for the child support year.
- (5) The adjustments under subsection (1) that must be applied are those that applied in the tax year immediately preceding the most recent tax year.

- (6) If a person's taxable income for a tax year has not been assessed, the Commissioner must determine the person's taxable income,—
- (a) if an income statement has been issued, on that basis; and
  - (b) in any other case, on the basis of the income and any other particulars known to the Commissioner.
- (7) Subsections (3) to (6) are subject to sections 38 to 39A.

### **35A Living allowance**

- (1) A parent's **living allowance** in a child support year is the appropriate amount referred to in subsection (2)—
- (a) increased by the total amount of income tax deductions that would be required to make the rate a gross, rather than a net, rate (as determined in accordance with section RD 11(3) of the Income Tax Act 2007); and
  - (b) annualised.
- (2) The amount of living allowance is as follows:
- (a) for every person other than a person identified in paragraph (b) or (c), the amount specified in Schedule 16 of the Social Security Act 1964 as the amount of domestic purposes benefit payable to a beneficiary with 1 or more dependent children:
  - (b) for a person who has been granted a domestic purposes benefit at the rate payable to a single beneficiary with 1 or more dependent children, under section 27G of the Social Security Act 1964 (domestic purposes benefit for care at home of the sick or infirm), the amount specified in Schedule 17 of that Act for that benefit type:
  - (c) for a person who has been granted an invalid's benefit at the rate payable to a single beneficiary with 1 or more dependent children, under section 40 of the Social Security Act 1964, the amount specified in Schedule 6 of that Act for that benefit type.
- (3) The version of the appropriate schedule of the Social Security Act 1964 that applies in a child support year is the version in force on 1 January in the immediately preceding child support year.
- (4) The Commissioner must ensure that notice of the applicable living allowances under this section that apply to the current and (if applicable) the previous child support year is available at all reasonable times on an Internet site maintained by or on behalf of the Inland Revenue Department.

### **35B Dependent child allowance**

- (1) For the purpose of calculating a parent's child support income amount under section 34 in a child support year, a parent is entitled to a dependent child allowance in respect of each of his or her dependent children.

- (2) The amount of a parent's dependent child allowance, in relation to each dependent child, is—

$$c\% \times (e \div n)$$

where—

*c%* is the care cost percentage of the parent in relation to the dependent child (being the percentage that would be determined under section 16 if the child were a qualifying child)

*e* is the amount, determined in accordance with the child expenditure table applying to that child support year, that applies to the parent in respect of the dependent child on the basis of—

- (a) the child support income amount of the parent alone, with that amount being treated as the adjusted taxable income of the parent, minus the parent's living allowance; and
- (b) the total number of the parent's dependent children; and
- (c) the age group of those children

*n* is the total number of the parent's dependent children.

- (3) In this section, a person's **dependent child** means a child of whom the person is a parent (within the meaning in section 7) and who—
- (a) is maintained as a member of the parent's family and for whom the parent provides at least 28% of the ongoing daily care; and
  - (b) is not a child in relation to whom any person is a liable parent or receiving carer, or for whom, under the law of another country, any person is required to make payments that are of the same nature as child support; and
  - (c) meets the requirements of section 5(1)(a) to (c) (which describe which children qualify for child support).

### 36 Multi-group allowance

- (1) This section applies to a parent who has more than 1 child support group.
- (2) For the purpose of calculating a parent's child support income amount in relation to a particular child (**child C**) in a child support year, a parent to whom this section applies is entitled to a multi-group allowance in relation to child C.
- (3) The multi-group allowance in relation to child C is the sum of the multi-group costs of each child (**child D**) of the parent who is not in the same child support group as child C.
- (4) The multi-group cost of child D is—

$$e \div n$$

where—



- e is the amount, determined in accordance with the child expenditure table applying to the relevant child support year, that applies to the parent in respect of child D—
- (a) on the basis of the child support income amount of that parent alone, with that amount being treated as the adjusted taxable income of the parent, minus the parent's living allowance and the sum of any dependent child allowances to which the parent is entitled; and
  - (b) as if—
    - (i) child D were one of  $n$  children; and
    - (ii) all those children were the same age as child D
- $n$  is the total number of children of the parent in all the parent's child support groups.

*Amounts payable in respect of receiving carers*

**36A Where parent is sole receiving carer**

- (1) This section applies where, in respect of a qualifying child, there is only 1 receiving carer, and that carer (**person P**) is a parent of the child.
- (2) When this section applies, the amount of child support payable in respect of person P is—
  - (a) the amount of annual child support that person P would pay if the difference between person P's income percentage and care cost percentage (which, under the formula in section 30, is a negative percentage) were a positive percentage; or
  - (b) if the multi-group cap applies, the amount payable under the multi-group cap, but only if it is less than the amount payable under paragraph (a).
- (3) However, no child support is payable under subsection (2) in respect of a receiving carer of a qualifying child if the receiving carer provides less than 35% of ongoing daily care to the child.

**36B Where no receiving carers are parents**

- (1) This section applies if, in respect of a qualifying child, there are 1 or 2 receiving carers, and neither of them is a parent of the child.
- (2) If the liable parent is liable to pay child support in respect of just 1 non-parent receiving carer, the amount of child support payable in respect of that carer is the annual amount of child support payable by the liable parent for the child.
- (3) If the liable parent is liable to pay child support in respect of 2 non-parent receiving carers, the amount of child support payable in respect of each carer is—

$$f \times c\% \div g\%$$

where—

- f is the annual amount of child support payable by the liable parent for the child
- c% is the care cost percentage of the receiving carer in relation to the child
- g% is the combined care cost percentages of both the receiving carers of the child, in relation to the child.

### **36C Where 1 receiving carer is parent and other is non-parent**

- (1) This section applies if, in respect of a qualifying child, there are 2 receiving carers, where 1 of them is a parent of the child and the other is a non-parent carer of the child.
- (2) The amount of child support payable in respect of the receiving parent (**person P**) is—
  - (a) the amount of annual child support that person P would pay if the difference between person P's income percentage and care cost percentage (which, under the formula in section 30, is a negative percentage) were a positive percentage; or
  - (b) if the multi-group cap applies, the amount determined by multiplying—
    - (i) the amount payable in respect of the qualifying child, as determined by the liable parent's multi-group cap; by
    - (ii) the difference between person P's income percentage and care cost percentage, as if it were a positive percentage.
- (3) The amount of child support payable in respect of the non-parent receiving carer is the annual amount of child support payable by the liable parent for the child, minus the amount payable under subsection (2) to person P.
- (4) However, no child support is payable under subsection (2) in respect of a receiving carer who is a parent of a qualifying child if the parent provides less than 35% of ongoing daily care to the child.

### *Expenditure on children*

### **36D Child expenditure tables**

- (1) Before the start of a child support year, the Commissioner must approve a child expenditure table for that child support year, based on the expenditure on children table in Schedule 3, that identifies, for the relevant child support year,—
  - (a) the amount of the average weekly earnings that applies; and
  - (b) the amount of child support income that is taken to be expended on children, with that amount corresponding to the percentages set out in the expenditure on children table within each income band in the table.
- (2) The Commissioner must ensure that the child expenditure table for the current and (if applicable) the previous child support year is available—

- (a) on request to the Inland Revenue Department, in hard copy; and
  - (b) at all reasonable times, on an Internet site maintained by or on behalf of the Inland Revenue Department.
- (3) Whenever an income amount is used in relation to the child expenditure table, the income amount must be truncated to whole dollars.

Section 12: amended, on 27 February 2014, by section 153 of the Taxation (Annual Rates, Foreign Superannuation, and Remedial Matters) Act 2014 (2014 No 4).

Section 12: amended, on 17 July 2013, by section 169 of the Taxation (Livestock Valuation, Assets Expenditure, and Remedial Matters) Act 2013 (2013 No 52).

### 13 New heading and sections 40AA to 45 substituted

Sections 40 to 45 and the heading above section 40 are repealed and the following heading and sections are substituted:

#### *Estimate of taxable income*

#### **40AA Interpretation for purposes of sections 40 to 45**

In sections 40 to 45, unless the context otherwise requires,—

**annualised estimated taxable income** means the amount that a person estimates will be their taxable income in an election period, annualised (if the estimate does not cover a full child support year) in accordance with the following formula:

$$(a \div b) \times 365$$

where—

- a is the person's estimated taxable income for the election period
- b is the number of days in the election period

**election** means an election, made by a person under section 40, to have the person's estimated taxable income, instead of their original taxable income, applied for the purpose of calculating the person's adjusted taxable income for an election period

**election period**, in relation to a child support year to which an election relates, means,—

- (a) if notice of the election is given under section 40 before the start of the child support year, the child support year; and
- (b) if notice of the election is given during the child support year, the period in the child support year that starts on the first day of the month in which the notice is given under section 40 and ends on the last day of the child support year

**estimated taxable income** means the amount specified in a notice of election given by a person under section 40 as the amount of taxable income that the person estimates that he or she will earn in the election period

**original adjusted taxable income** means the adjusted taxable income that would have been used to assess a person's child support liability during an election period if the person had not made an election

**original taxable income**, in relation to a person and a child support year, means the person's taxable income, plus any relevant inflation percentage, that would have applied to the person if the person had not made an election

**year-to-date income** means a person's taxable income specified in a notice of election given under section 40 for the period beginning with the start of a child support year and ending with the end of the month immediately preceding the month in which the notice of an election is given.

#### **40 Estimated taxable income**

- (1) Any person may, by notice to the Commissioner, elect that the taxable income to be used to assess their adjusted taxable income for an election period must be the estimated taxable income specified in the notice of election.
- (2) The Commissioner, subject to subsections (4) and (6), must accept an election if the sum of the person's year-to-date income (if any) and the person's estimated taxable income is 85% or less than the person's original taxable income.
- (3) A notice of election must,—
  - (a) if notice of the election is given before the start of the child support year to which it relates, state the person's estimated taxable income for the full child support year; or
  - (b) if notice of the election is given during the child support year to which it relates, state—
    - (i) the person's year-to-date income; and
    - (ii) the person's estimated taxable income for the election period.
- (4) The Commissioner may not accept an election if—
  - (a) an income amount order is in force in relation to the person, and to any months in the child support year in respect of which the election is to apply; or
  - (b) the person is subject to an order of the court under section 187; or
  - (c) the person has made an election within the previous 3 months, and the proposed new election would change the person's annualised estimated taxable income by \$500 or less; or
  - (d) the person made an election in relation to an earlier child support year and was required to provide a return of income under the Income Tax Act 2007 or the Tax Administration Act 1994 in relation to that year, but, at the time the notice is given under this section, the person is in breach of the requirement to furnish a return of income in respect of that year; or

- (e) the person's annualised estimated taxable income is more than their original taxable income.
- (5) A notice under this section may be given in any form acceptable to the Commissioner, and is to be treated by the Commissioner as having been given in the month in which it was sent or provided by the person making the election, even if it is received by the Commissioner in the following month.
- (6) The Commissioner may decline to accept an election if the person making the election does not, on request by the Commissioner, provide the information and evidence that the Commissioner requires in order to support the making of the estimate.

#### **41 Effect of election**

- (1) If the Commissioner accepts an election made by a person, the Commissioner must determine the person's adjusted taxable income by—
  - (a) calculating the person's annualised estimated taxable income; and
  - (b) adjusting the annualised estimated taxable income by the adjustments referred to in section 35, based on the adjustments applying to the tax year immediately preceding the most recent tax year, and applying those adjustments at a uniform daily rate throughout the election period.
- (2) The Commissioner must then adjust any formula assessment applying to the person during the election period and take whatever steps are necessary to ensure that the amount of child support payable per day during the election period reflects the adjusted assessment.
- (3) The making of an election does not prevent the Commissioner making a determination under Part 5A, 6A, or 6B, or the court making an order under Part 7.

#### **42 Revocation of election and subsequent elections**

- (1) A person who has made an election in relation to a child support year may revoke the election, before or during the child support year, by giving notice to the Commissioner; and the revocation takes effect from the start of the election period to which any election applied.
- (2) If an election is in effect but the person then makes a later election,—
  - (a) if the Commissioner accepts the later election,—
    - (i) the later election takes effect from the start of the month in which the notice of election is given, and section 41 applies accordingly; and
    - (ii) the earlier election ceases to have effect on the last day of the previous month:
  - (b) if the Commissioner does not accept the later election because the amount of year-to-date taxable income plus the new estimated taxable

income is more than 85% of the person's original taxable income, then the earlier estimate is deemed to be revoked:

- (c) if the Commissioner does not accept the election for any other reason, the earlier estimate remains in effect.
- (3) A revocation is of no effect to the extent that it is inconsistent with an income amount order.

#### 43 Effect of revocation of election

- (1) When an election is revoked, or deemed to be revoked, the Commissioner must—
- (a) adjust any formula assessment applying to the person on the basis of the person's original adjusted taxable income; and
  - (b) take whatever steps are necessary to ensure that the amount of child support payable per day, during the election period to which the revoked election relates, reflects that adjusted assessment.
- (2) The revocation of an election does not prevent the Commissioner making a determination under Part 5A, 6A, or 6B, or the court making an order under Part 7, or a person making a further election.

#### 44 End-of-year reconciliation

- (1) For the purpose of determining whether a person has, or has been, underpaid or overpaid child support in an election period, after the end of the child support year to which an election relates, the Commissioner must complete an assessment for the person based on the income amount determined under subsection (2).
- (2) The income amount to be used for the assessment is the least of the following:
- (a) the person's actual taxable income earned in the election period (which is the actual taxable income earned in the full year less the year-to-date income specified in a notice of election), annualised in accordance with the formula in subsection (3) (which gives the **annualised actual taxable income in the election period**), and adjusted in accordance with section 41(1)(b);
  - (b) the person's original adjusted taxable income;
  - (c) the value of any adjustments made under section 41(1)(b), but only in the case where the actual taxable income earned by the person during the year is equal to or less than the year-to-date income specified in the notice of election.
- (3) The formula for annualising a person's actual taxable income in an election period is—

$$(a \div b) \times 365$$

where—

- a is the actual taxable income earned during the election period
  - b is the number of days in the election period.
- (4) After comparing the result of the assessment done under subsection (1) with the results obtained under section 41, the Commissioner must take whatever steps are necessary to ensure that the correct amount of child support is assessed for the child support year.
- (5) A reconciliation under this section is subject to any income amount order that applies during all or any part of an election period.

#### **44A Determining income amount if no tax return filed**

- (1) This section applies if the Commissioner cannot determine the person's actual taxable income during a child support year because the person, having been required to provide a return of income in respect of the tax year that corresponds to the child support year, has failed to provide it within 28 days of the requirement to provide it.
- (2) Where this section applies, the Commissioner must determine that the amount to be used for the purpose of the assessment under section 44(2) is the same as the person's original adjusted taxable income, unless the Commissioner is satisfied that there is reasonable cause for the failure to provide the return of income.
- (3) A determination under subsection (2) is final unless, within 28 days after the person receives notification from the Commissioner of the determination, the person—
- (a) makes an objection under section 90; or
  - (b) provides a return of income in respect of the relevant tax year to the Commissioner.
- (4) In subsection (2), **reasonable cause** means a circumstance that, on application being made by the person under section 37(3) of the Tax Administration Act 1994, results in the Commissioner extending the time for providing the return.

#### **45 Penalty if estimated income less than 80% of actual income**

- (1) A person is liable to a penalty under this section if their year-to-date income (if any) specified in the notice of election plus the estimated taxable income for the election period is less than 80% of—
- (a) their actual taxable income for the child support year; or
  - (b) the amount determined under section 44A(2).
- (2) The penalty is 10% of the difference between—
- (a) the annual amount of child support that was assessed under section 41 as payable in the election period; and
  - (b) the reconciled annual amount of child support payable in the election period, as determined under section 44.

- (3) However, no penalty is payable by a receiving parent if the amount that the liable parent pays has been determined under the multi-group cap referred to in section 31(3).
- (4) The Commissioner must write off a penalty to which a person is liable under this section, or any part of the penalty, if the Commissioner is satisfied that the person, in relation to an election period in a child support year, has become liable to pay a penalty under this section as the result of the taxable income derived by the person in the child support year being higher than it would otherwise have been by reason of—
- (a) the enactment of any Act amending the Income Tax Act 2007, or the making of any regulation or Order in Council relating to income tax, during the period commencing on the first 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 that period, any ruling in relation to any provision of the Income Tax Act 2007, and that ruling is different from a ruling previously made public by the Commissioner in relation to that provision; or
  - (c) the adoption by the person of an incorrect interpretation of any provision of this Act or of the Income Tax Act 2007, being an interpretation which, although incorrect, is reasonable having regard to the circumstances of the case.
- (5) Subject to the other provisions of this Part, the other Parts of this Act apply with respect to any penalty payable under this section as if it were a penalty payable under section 134, except that late payment penalties do not apply to penalties imposed under this section.

*Amendments to Part 5 (procedures)*

**14 Minimum rate of child support or domestic maintenance**

- (1) Section 72(1) is amended by repealing paragraph (a) and substituting the following paragraph:
- (a) child support payable under a formula assessment by a liable parent in respect of all of his or her children is,—
    - (i) for the child support year commencing on 1 April 2013, \$871:
    - (ii) for each later child support year, the minimum annual rate of child support under this paragraph for the immediately preceding child support year, adjusted by the applicable inflation percentage:
- (2) Section 72(1)(b) is amended by omitting “qualifying custodian” and substituting “receiving carer”.



**15 New section 82 substituted**

Section 82 is repealed and the following section substituted:

**82 Parents and receiving carers to advise Commissioner of changes**

- (1) For the purpose of enabling the Commissioner to make or amend a calculation of child support payable in respect of a child in any child support year under a formula assessment, every parent and every receiving carer of the child must advise the Commissioner of any change in the parent's or carer's living circumstances occurring during the child support year that affects, or may affect, any of the following:
  - (a) in relation to parents and non-parent carers, the determination of the person's care cost percentage:
  - (b) in relation only to parents, the following:
    - (i) the person's appropriate living allowance:
    - (ii) the application or calculation of any dependent child allowance (if any):
    - (iii) the application or calculation of any person's multi-group allowance (if any):
    - (iv) the application or calculation of any person's multi-group cap (if applicable).
- (2) If the Commissioner is satisfied that a relevant change of living circumstances has occurred, the change is to be treated as having occurred—
  - (a) on the date on which the change occurred, in any of the following cases:
    - (i) in relation to a liable parent, where the change has the effect of increasing the amount of the parent's child support liability:
    - (ii) in relation to a receiving carer, where the change has the effect of decreasing the amount of child support payable in respect of that carer:
    - (iii) where notice of the change is received by the Commissioner within 28 days after the date on which the change occurred; or
  - (b) on the date on which the Commissioner receives notice of the change, in either of the following cases (unless paragraph (a)(iii) applies):
    - (i) in relation to a liable parent, where the change has the effect of decreasing the amount of the parent's child support liability:
    - (ii) in relation to a receiving carer, where the change has the effect of increasing the amount of child support payable in respect of that carer.
- (3) Every notification of a change must be accompanied by such documentation as the Commissioner requires.

- (4) The Commissioner may disregard subsection (2), and may determine the date on which a particular change in living circumstances is to be treated as having occurred, in any case where 2 or more people give notice under this section relating to the same change, and the application of subsection (2) would result in the same change having to be treated as having occurred on different days in relation to different people.

#### **16 Commissioner to give effect to changed circumstances**

Section 86(1) is amended by repealing paragraphs (a) and (b) and substituting the following paragraphs:

- (a) that the liability of a liable parent to pay child support to a carer in respect of the child has ceased in accordance with section 25 or 62; or
- (b) that an event or change of circumstances has occurred that alters the respective liability or entitlement of any parent or carer of the qualifying child,—

#### **17 New sections 88 to 89 substituted**

Sections 88 and 89 are repealed and the following sections substituted:

#### **88 Notice of assessment of formula assessment of child support**

- (1) The Commissioner must give written notice (a **notice of assessment**) to each parent and receiving carer of a qualifying child—
- (a) as soon as practicable after making an assessment under section 29; and
- (b) after making any assessment that changes—
- (i) the amount of child support payable by a liable parent in respect of the child; or
- (ii) the respective amounts payable in respect of different receiving carers; and
- (c) at the beginning of each later child support year.
- (2) The notice of assessment must set out, as a minimum, the relevant matters identified in section 88A, but in no case may a notice of assessment reveal any more detail about another person who is a parent or carer than the person's name (subject to subsection (5)) and, in relation to a qualifying child, the person's proportion of care and care cost percentage.
- (3) Without limiting subsection (2), the notice of assessment must contain sufficient information to enable the recipient to exercise his or her rights to object under section 90 or 91.
- (4) The notice must also include, or be accompanied by, statements that specifically draw to the attention of the recipient the recipient's right to—
- (a) object under section 90 or 91 if he or she is aggrieved by any of the particulars of the assessment; and

- (b) apply to the Commissioner under Part 6A; and
  - (c) apply to a Family Court under Part 7.
- (5) Despite anything in this section, the Commissioner may omit from a notice of assessment or any related communication the name of any parent or carer if—
- (a) he or she is satisfied that revealing the name to the recipient of the notice would be prejudicial to the safety of any parent, carer, or child; or
  - (b) the parent is deceased, or is a parent in respect of whom an assessment has not been made.

**88A Details in notices of assessments**

- (1) A notice of assessment given to a liable parent must set out all of the following that are applicable in relation to each qualifying child to whom the notice relates:
- (a) the child's first names and date of birth;
  - (b) the names of the child's other parent (subject to section 88(5));
  - (c) the names of any non-parent receiving carers of the child (subject to section 88(5));
  - (d) the proportion of ongoing daily care that the Commissioner has established (under section 14) that the liable parent provides to the child;
  - (e) the care cost percentage of the liable parent in relation to the child, as determined under section 16;
  - (f) the liable parent's adjusted taxable income;
  - (g) the first names and date of birth of every dependent child (as defined in section 35B(3)) of the liable parent and the amount of the dependent child allowance for each dependent child;
  - (h) the amount of any multi-group allowance to which the liable parent is entitled;
  - (i) the liable parent's child support income amount in relation to the child;
  - (j) the combined child support income amounts of the liable parent and the child's other parent, in relation to the child;
  - (k) the liable parent's income percentage in relation to the child.
- (2) A notice of assessment given to a parent of a child who is a receiving carer must set out all of the following that are applicable in relation to each qualifying child to whom the notice relates:
- (a) the child's first names and date of birth;
  - (b) the names of the child's liable parent or parents, and of any other parents (subject to section 88(5));
  - (c) the names of any non-parent receiving carers of the child (subject to section 88(5));

- (d) the proportion of ongoing daily care that the Commissioner has established (under section 14) that the parent provides to the child:
  - (e) the care cost percentage of the parent in relation to the child, as determined under section 16:
  - (f) the parent's adjusted taxable income:
  - (g) the first names and date of birth of every dependent child (as defined in section 35B(3)) of the parent and the amount of the dependent child allowance for each dependent child:
  - (h) the amount of any multi-group allowance to which the parent is entitled:
  - (i) the parent's child support income amount in relation to the child:
  - (j) the combined child support income amounts of the parent and all the child's other parents in relation to the child:
  - (k) the parent's income percentage in relation to the child.
- (3) A notice of assessment given under this section to a non-parent receiving carer of a child must set out all of the following that are applicable in relation to each qualifying child to whom the notice relates:
- (a) the child's first names and date of birth:
  - (b) the names of the child's liable parent or parents, and any other parent (subject to section 88(5)):
  - (c) the names of any other non-parent receiving carers of the child (subject to section 88(5)):
  - (d) the proportion of ongoing daily care that the Commissioner has established (under section 14) that the carer provides to the child:
  - (e) the care cost percentage of the carer in relation to the child, as determined under section 16:
  - (f) the expenditure on each child for whom the carer provides care, as determined by the relevant child expenditure table:
  - (g) the amount of child support payable by the child's liable parents in respect of the carer.

### **89 Notification by Commissioner to other payers and payees**

- (1) The Commissioner must give written notice under this section to every person who is required under this Act to make payments, and every person entitled under this Act to receive payments, of—
- (a) domestic maintenance; or
  - (b) child support under a voluntary agreement; or
  - (c) child support under a court order.
- (2) The notice must set out—
- (a) the amount of domestic maintenance or child support payable; and

- (b) the name of the payer and the payee; and
  - (c) in the case only of a notice relating to child support, the name of each child in respect of whom payment is to be made.
- (3) The notice must be given—
- (a) as soon as practicable after determining the amount payable in respect of a child support year; and
  - (b) after making any assessment that changes the amount payable.
- (4) The notice must contain sufficient information to enable the recipient to exercise his or her rights to object under section 90 or 91.
- (5) The notice must also include, or be accompanied by, statements that specifically draw to the attention of the recipient his or her right to—
- (a) object under section 90 or 91 if he or she is aggrieved by any of the particulars of the assessment; and
  - (b) apply to a Family Court under Part 7.

*Amendment to Part 5A (exemptions)*

**18 Exemption for long-term hospital patients**

Section 89C is amended by inserting the following subsection after subsection (1):

- (1A) For the purposes of subsection (1)(a), a liable person's income during a period of long-term hospitalisation does not include any amounts received by the person during that hospitalisation for, or in respect of, any time up to and including the day on which the period of hospitalisation began.

**19 Exemption for long-term prisoners**

Section 89D is amended by inserting the following subsection after subsection (1):

- (1A) For the purposes of subsection (1)(a), a liable person's income during a period of long-term imprisonment does not include any amounts received by the person during that imprisonment for, or in respect of, any time up to and including the day on which the period of imprisonment began.

**19A Section 89F amended (Exemption does not apply at any time during child support year if income criteria not met at any time during relevant period)**

- (1) In section 89F(1)(a)(i), after "income", insert "(subject to section 89C(1A))".
- (2) In section 89F(1)(a)(ii), after "income", insert "(subject to sections 89C(1A) and 89D(1A))".

Section 19A: inserted, on 27 February 2014, by section 154 of the Taxation (Annual Rates, Foreign Superannuation, and Remedial Matters) Act 2014 (2014 No 4).

*Amendments to Part 6 (objections)***20 Objections to appealable decisions**

- (1) Section 90(1) is amended by repealing paragraphs (a) and (b) and substituting the following paragraphs:
  - (a) a decision to make, or refuse to make, a formula assessment of child support:
  - (b) a decision under section 14 establishing the proportion of ongoing daily care that a carer provides to a qualifying child:
  - (ba) a decision as to whether a particular child is or is not a dependent child of a person:
- (2) Section 90(1) is amended by repealing paragraph (d) and substituting the following paragraph:
  - (d) a decision that a penalty has been imposed by operation of section 45 or 134:
- (3) Section 90(1) is amended by inserting the following paragraph after paragraph (h):
  - (ha) a decision made under section 82(4) determining the date on which a change in living circumstances occurred:

**21 Objections to assessments**

- (1) Section 91(1) is amended by repealing paragraph (a).
- (2) Section 91 is amended by repealing subsection (2) and substituting the following subsection:
  - (2) An objection under this section may be made by any person who is affected by the assessment.

**22 Requirements in relation to objections**

Section 92 is amended by inserting the following subsection after subsection (3):

- (3A) An objection against a decision referred to in section 90(1)(b) (about the proportion of care that a carer provides to a child) must be based only on the information that was before the Commissioner at the time the decision establishing the proportion of care was made.

*Amendments to Part 6A*

Heading: inserted, on 17 July 2013, by section 170 of the Taxation (Livestock Valuation, Assets Expenditure, and Remedial Matters) Act 2013 (2013 No 52).

**22A Application for determination**

- (1) Section 96B(1) is amended by omitting “A qualifying custodian or a liable parent” and substituting “Any liable parent or receiving carer of a qualifying child”.
- (2) Section 96B(2)(a) is amended by omitting “, the qualifying custodian, and the liable parent concerned”.
- (3) Section 96B is amended by repealing subsection (3) and substituting the following subsection:
  - (3) The parties to the application are—
    - (a) the applicant; and
    - (b) every other liable parent or receiving carer of the qualifying child.

Section 22A: inserted, on 17 July 2013, by section 170 of the Taxation (Livestock Valuation, Assets Expenditure, and Remedial Matters) Act 2013 (2013 No 52).

*Amendment to Part 6B (Commissioner-initiated administrative reviews)*

**23 Commissioner may make determination under this Part**

Section 96Q is amended by repealing subsection (2) and substituting the following subsection:

- (2) The parties to proceedings under this Part are—
  - (a) the parent (who may, but need not, be a liable parent) who is the subject of a review under this Part (the **subject parent**); and
  - (b) any receiving carer, whether a parent or non-parent, of the child who elects, under section 96Y, to become a party; and
  - (c) a liable parent who is not the subject parent, but who elects, under section 96Y, to become a party.

*Amendments to Part 7 (appeals and departure orders)*

**24 Sections 100 and 101 repealed**

Sections 100 and 101 are repealed.

**25 Matters as to which court must be satisfied before making order**

- (1) Section 105(2)(b) is amended by repealing subparagraph (i) and substituting the following subparagraph:
  - (i) of high costs incurred by a parent or a receiving carer in enabling a parent or receiving carer to have contact with the child; or

- (2) Section 105 is amended by repealing subsection (3) and substituting the following subsection:
- (3) For the purposes of subsection (2)(b)(i), costs incurred in enabling a parent or receiving carer to have contact with the child are not to be taken to be high unless the total of those costs during a child support year is more than 5% of the adjusted taxable income for the year of the person incurring the costs.

## 26 Orders that may be made

Section 106 is amended by repealing subsection (1) and substituting the following subsection:

- (1) In determining an application made under section 104, a court may make any of the following orders:
- (a) an order departing from some or all of the provisions of this Act by substituting a different amount for any of the following amounts as they relate to a formula assessment, or prescribing an amount or a percentage by which any of those amounts must be varied:
- (i) a person's adjusted taxable income:
  - (ii) a person's living allowance:
  - (iii) a person's dependent child allowance:
  - (iv) a person's child support income amount:
  - (v) the child expenditure amount applying in respect of a qualifying child:
- (b) an order departing from some or all of the provisions of this Act relating to the formula assessment of child support in relation to the child and, as a result,—
- (i) substituting a different annual amount of child support payable by a liable parent in place of the amount determined under a formula assessment; or
  - (ii) prescribing an amount or a percentage by which the annual amount of child support payable by a liable parent must vary from the amount determined under a formula assessment:
- (c) an order that the provisions of this Act relating to a formula assessment of child support must not be departed from in relation to a particular child.

### *Amendments to Part 8 (collection of financial support)*

## 27 Discretionary relief if debt uplifted

- (1) The heading to section 135F is amended by inserting “**waived or**” before “**uplifted**”.



- (2) Section 135F is amended by repealing paragraph (a) and substituting the following paragraph:

- (a) the payee has—
- (i) waived under section 179A the right to the payment to which the penalty relates; or
  - (ii) uplifted under section 180 the debt to which the penalty relates; and

*Amendment to Part 9 (payment)*

**28 New section 152B inserted**

The following section is inserted after section 152A:

**152B Offsetting child support payments**

- (1) If 2 parents are each to be liable to pay the other an amount of child support, the Commissioner may at any time before both of the amounts of child support concerned become due and payable offset one liability against the other.
- (2) However, the Commissioner cannot exercise this power in respect of any liability of a parent in respect of a period if during that period the parent is expected to be a social security beneficiary (as defined in section 2(1)).

*Amendment to Part 11 (enforcement provisions)*

**29 New section 179A inserted**

The following section is inserted after section 179:

**179A Waiver of right to payment**

- (1) A payee who is a non-parent receiving carer of a qualifying child (other than a payee who is in receipt of an unsupported child's benefit for that child) may, by notice to the Commissioner, waive their right to receive the child support payments yet to be paid by a liable parent.
- (2) The notice takes effect as a waiver on the date specified in the notice; but if no date is specified, it takes effect on the date on which the notice is received by the Commissioner.
- (3) On and from the date on which a waiver takes effect, no unpaid child support payments constitute a debt payable by the liable parent to the Crown, whether the payments were due before, on, or after the date on which the waiver takes effect.
- (4) A waiver under this section is revocable at any time, by notice to the Commissioner, and the revocation takes effect on the later of the following:
  - (a) the date specified in the notice;
  - (b) the date on which the notice is received by the Commissioner.

- (5) A waiver under this section is deemed to be revoked if, and on the date that, the payee begins to receive an unsupported child's benefit for the child to whom the waiver relates.
- (6) If a waiver is revoked, the liable parent must pay the child support due in relation to the child from the date the revocation takes effect, and must pay it within 30 days after the date on which the notice of revocation is given to the liable parent.

*Amendments to Part 14 (general provisions)*

**30 Section 237 substituted**

Section 237 is repealed and the following section substituted:

**237 Rounding of amounts**

- (1) The following amounts must be rounded to whole dollars:
  - (a) late payment penalties:
  - (b) the amounts identified in the child expenditure table approved under section 36D:
  - (c) the living allowances as identified in section 35A(2):
  - (d) the minimum annual rate of child support referred to in section 72(1)(a).
- (2) Except as provided elsewhere in this Act, the Commissioner may round any other amount referred to in, or arrived at in accordance with, this Act to a whole dollar or to any amount less than a whole dollar.
- (3) If an amount that is rounded to a whole dollar consists of a number of whole dollars and 50 cents, the amount must be rounded down to the nearest whole dollar.

*Amendment to Part 16 (transitional and savings provisions)*

**31 New section 276 added**

The following section is added after section 275:

**276 Transitional and savings provisions relating to amendments to Act**

The transitional and savings provisions set out in Schedule 1, which relate to amendments to this Act that come into force on and after 1 April 2014, have effect for the purposes of this Act.

*New schedules inserted*

**32 New Schedule 1 inserted**

The principal Act is amended by inserting after section 276 the Schedule 1 set out in Schedule 1 of this Act.

**33 New Schedules 2 and 3 inserted**

The principal Act is amended by inserting after Schedule 1 the Schedules 2 and 3 set out in Schedule 2 of this Act.

*Consequential amendments*

**34 Consequential amendments to principal Act**

The principal Act is consequentially amended in the manner set out in Schedule 3.

**35 Consequential amendment to Adoption Act 1955**

Section 16(6) of the Adoption Act 1955 is amended by omitting “section 25(1)(b)(iii)” and substituting “section 25(2)(b)”.

**36 Consequential amendment to Births, Deaths, Marriages, and Relationships Registration Act 1995**

- (1) This section amends the Births, Deaths, Marriages, and Relationships Registration Act 1995.
- (2) In Schedule 1A, item relating to the Inland Revenue Department, in the row relating to birth information, marriage information, civil union information, and name change information, the column relating to purpose, after paragraph (b), insert:

(c) for child support purposes, details of the parentage, birth, and death of qualifying children or dependent children

**Part 2**

**Departures from formula assessment, collection, penalties, and relief**

*Amendments to Part 7 (grounds for departure from formula assessment)*

*[Repealed]*

Heading: repealed, on 25 February 2016, by section 58 of the Taxation (Annual Rates for 2015–16, Research and Development, and Remedial Matters) Act 2016 (2016 No 1).

**37 Matters as to which court must be satisfied before making order**

*[Repealed]*

Section 37: repealed, on 25 February 2016, by section 58 of the Taxation (Annual Rates for 2015–16, Research and Development, and Remedial Matters) Act 2016 (2016 No 1).

*Amendments to Part 8 (automatic deduction)**[Repealed]*

Heading: repealed, on 25 February 2016, by section 59 of the Taxation (Annual Rates for 2015–16, Research and Development, and Remedial Matters) Act 2016 (2016 No 1).

**38 New heading and sections 129 to 131B substituted***[Repealed]*

Section 38: repealed, on 25 February 2016, by section 59 of the Taxation (Annual Rates for 2015–16, Research and Development, and Remedial Matters) Act 2016 (2016 No 1).

*Amendments to Part 8 (penalties)***39 New sections 134 to 134B substituted**

Section 134 is repealed and the following sections are substituted:

**134 Penalties for late payment of financial support debts***Late payment penalties (initial and incremental)*

- (1) A person liable to pay a financial support debt (whether that debt is incurred before, on, or after 1 April 2016) is liable to pay to the Commissioner a penalty of the amount stated in subsection (2), (3), (4), (5), or (6) if—
- (a) the time stated in that subsection (which is a time after the time at which all of the debt became due and payable) occurs on or after 1 April 2016; and
  - (b) at the time stated in that subsection, some or all of the debt remains unpaid.

*Initial late payment penalty: due date*

- (2) At the expiry of the due date, the penalty is the greater of the following amounts:
- (a) the amount of \$5; and
  - (b) an amount equal to 2% of the amount of financial support remaining unpaid at the expiry of the due date.

*Initial late payment penalty: seventh day after due date*

- (3) At the expiry of the seventh day after the due date, the penalty is an amount equal to 8% of so much (if any) of the amount of financial support (excluding the penalty imposed under subsection (2)) remaining unpaid at that expiry.

*Incremental late payment penalty: first month after due date*

- (4) At the expiry of the period of 1 month that starts on the day after the due date, the penalty is an amount equal to 2% of so much (if any) of the sum of the following as remains unpaid at that expiry:
- (a) the amount of financial support remaining unpaid at the expiry of the due date:

(b) all penalties, if any, imposed under either of subsections (2) and (3).

*Incremental late payment penalty: first 11 later months*

(5) At the expiry of each of the first 11 periods of 1 month (if any) that, consecutively, follow the 1-month period referred to in subsection (4), the penalty is an amount equal to 2% of so much (if any) of the sum of the following as remains unpaid at that expiry:

(a) the amount of financial support remaining unpaid at the expiry of the due date:

(b) all penalties, if any, imposed under any of subsections (2) to (4):

(c) all penalties, if any, earlier imposed under this subsection.

*Incremental late payment penalty: months after 1 year*

(6) At the expiry of each of the periods of 1 month (if any) that, consecutively, follow the last of the 11 periods of 1 month referred to in subsection (5), the penalty is an amount equal to 1% of so much (if any) of the sum of the following as remains unpaid at that expiry:

(a) the amount of financial support remaining unpaid at the expiry of the due date:

(b) all penalties, if any, imposed under any of subsections (2) to (5):

(c) all penalties, if any, earlier imposed under this subsection.

Compare: 1976 No 65 s 398; 1985 No 141 s 41

#### **134A Status of penalties under section 134**

A penalty payable under section 134—

(a) is a debt due to the Crown; and

(b) must for all purposes (except the purposes of Part 9) be treated as, and is accordingly recoverable as if it were, of the same nature as the amount in respect of which it was imposed.

Compare: 1976 No 65 s 398; 1985 No 141 s 41

#### **134B Act's provisions on liable person's financial support debt also apply to payees' debts arising from overpayments**

This Act's provisions on a liable person's financial support debt (including, without limitation, sections 134 and 135 to 135N) also apply, in accordance with sections 151(2) and 151AA(5) and (6), to payees' debts arising from overpayments.

Section 39: amended, on 27 February 2014, by section 156 of the Taxation (Annual Rates, Foreign Superannuation, and Remedial Matters) Act 2014 (2014 No 4).

*Amendments to Part 8 (relief from penalties)***40 Interpretation for purposes of sections 135A to 135O**

- (1) The heading to section 135 is amended by omitting “**135A**” and substituting “**135AA**”.
- (2) Section 135 is amended by repealing the definitions of **incremental penalty** and **initial late payment penalty** and substituting the following definitions:

**incremental penalty** means a penalty that is imposed—

- (a) before 1 April 2016 under section 134(1)(b) or (c) (as repealed by the Child Support Amendment Act 2013); or
- (b) on or after 1 April 2016 under section 134(4), (5), or (6) (as substituted by the Child Support Amendment Act 2013)

**initial late payment penalty** means a penalty that is imposed—

- (a) before 1 April 2016 under section 134(1)(a) (as repealed by the Child Support Amendment Act 2013); or
- (b) on or after 1 April 2016 under section 134(2) or (3) (as substituted by the Child Support Amendment Act 2013)

Section 40(2): amended, on 27 February 2014, by section 157 of the Taxation (Annual Rates, Foreign Superannuation, and Remedial Matters) Act 2014 (2014 No 4).

*Amendment to Part 8 (payment agreements)***41 New heading and section 135AA inserted**

The following heading and section are inserted after section 135:

*Sufficient reason for declining to enter into or make payment agreement*

**135AA Non-compliance without reasonable cause with previous payment agreements**

- (1) The Commissioner may decline to enter into a payment agreement with a liable person solely for the reason that the Commissioner is satisfied on the basis of information available to the Commissioner of both of the following matters:
  - (a) that the liable person has not complied with 1 or more earlier payment agreements; and
  - (b) that no reasonable cause existed for the liable person’s non-compliance with all or any of those agreements.
- (2) This section does not prevent the Commissioner from—
  - (a) declining to enter into the agreement for any other reason; or
  - (b) ceasing, because of further information available to the Commissioner, to be satisfied of either or both of those matters.

- (3) For the purposes of section 96 (which identifies matters with respect to which Part 6 does not confer any right of objection), the Commissioner's decision whether to enter into or make a payment agreement is a matter left by this section to the discretion of the Commissioner.

*Amendments to Part 8 (discretionary relief from penalties)*

**42 Application of sections 135B to 135G**

- (1) The heading to section 135A is amended by omitting “135G” and substituting “135GA”.
- (2) Section 135A(1) and (2) are amended by omitting “135G” and substituting in each case “135GA”.

**43 New section 135FA inserted**

The following section is inserted after section 135F:

**135FA Discretionary relief from incremental penalties unpaid before agreement entered into on or after 1 April 2016**

- (1) For the purposes of this section,—
- initial debt**, in relation to a payment agreement, means the amount the liable person owes at the time that the agreement is entered into in respect of financial support and initial late payment penalties
- payment agreement** means an agreement entered into on or after 1 April 2016 between a liable person and the Commissioner that requires the liable person to pay, in 1 sum or 2 or more instalments of specified amounts,—
- (a) the amount of the initial debt; and
- (b) the amount of financial support (if any) that the person will become liable to pay during the term of the payment agreement.
- (2) The Commissioner may grant relief to the liable person in the manner prescribed by section 135A in respect of the incremental penalties of the liable person that were unpaid at the time a payment agreement was entered into if the Commissioner is satisfied—
- (a) that recovery of those incremental penalties would place the liable person in serious hardship (as defined in section 135G(3)); or
- (b) that it would be fair and reasonable to grant relief.
- (3) Before making a decision under subsection (2)(a), the Commissioner must have regard to the matters referred to in sections 6 and 6A of the Tax Administration Act 1994.

Section 43: amended, on 25 February 2016, by section 60(1) of the Taxation (Annual Rates for 2015–16, Research and Development, and Remedial Matters) Act 2016 (2016 No 1).

Section 43: amended, on 25 February 2016, by section 60(2) of the Taxation (Annual Rates for 2015–16, Research and Development, and Remedial Matters) Act 2016 (2016 No 1).

Section 43: amended, on 27 February 2014, by section 158(1) of the Taxation (Annual Rates, Foreign Superannuation, and Remedial Matters) Act 2014 (2014 No 4).

Section 43: amended, on 27 February 2014, by section 158(2) of the Taxation (Annual Rates, Foreign Superannuation, and Remedial Matters) Act 2014 (2014 No 4).

#### 44 Discretionary relief for residual incremental penalty debt

- (1) The heading to section 135G is amended by omitting “**for residual incremental penalty debt**” and substituting “**from payment of incremental penalties**”.
- (2) Section 135G(1)(a) is amended by inserting “some or” before “all of the financial support debt and initial late payment penalties to which the incremental penalties relate”.
- (3) Section 135G(3) is amended by inserting “and sections 135GA and 180A(1)(b)(i)” after “In this section”.

Section 44(3): amended, on 24 February 2016, by section 61 of the Taxation (Annual Rates for 2015–16, Research and Development, and Remedial Matters) Act 2016 (2016 No 1).

#### 45 New section 135GA inserted

The following section is inserted after section 135G:

##### **135GA Discretionary relief for residual penalty-only debt**

- (1) The Commissioner may grant relief to a liable person from the payment of initial late payment penalties or incremental penalties or both in the manner prescribed by section 135A if—
  - (a) the liable person has paid, or had written off in accordance with this Act, all of the liable person’s financial support debt; and
  - (b) the Commissioner is satisfied that recovery of those penalties would do either or both of the following:
    - (i) place the liable person in serious hardship (as defined in section 135G(3));
    - (ii) involve an inefficient use of the Commissioner’s resources.
- (2) The Commissioner may grant relief to a liable person from the payment of initial late payment penalties or incremental penalties or both in the manner prescribed by section 135A if—
  - (a) the Commissioner has under section 180A written off some or all of the benefit component of an amount of child support (as defined in section 180A(2)) that is payable by the liable person to the Crown under this Act; and
  - (b) the Commissioner is satisfied that those penalties relate to, or arise from, some or all of that written-off benefit component, and that recovery of those penalties would do either or both of the following:
    - (i) place the liable person in serious hardship (as defined in section 135G(3));



- (ii) involve an inefficient use of the Commissioner's resources.
- (3) Before making a decision under subsection (1)(b) or (2)(b), the Commissioner must have regard to the matters referred to in sections 6 and 6A of the Tax Administration Act 1994.

Section 45: amended, on 24 February 2016, by section 62(1) of the Taxation (Annual Rates for 2015–16, Research and Development, and Remedial Matters) Act 2016 (2016 No 1).

Section 45: amended, on 24 February 2016, by section 62(2) of the Taxation (Annual Rates for 2015–16, Research and Development, and Remedial Matters) Act 2016 (2016 No 1).

Section 45: amended, on 24 February 2016, by section 62(3) of the Taxation (Annual Rates for 2015–16, Research and Development, and Remedial Matters) Act 2016 (2016 No 1).

*Amendment to Part 8 (mandatory relief from initial late payment penalties)*

**46 New sections 135GB and 135H inserted**

Section 135H is repealed and the following sections are inserted:

**135GB Relief from initial late payment penalty if full or substantial compliance with payment arrangement entered into or made on or after 1 April 2016 and within 3-month period**

- (1) The Commissioner must write off an initial late payment penalty if satisfied that—
- (a) that penalty was imposed in respect of a debt that is or includes the first payment of financial support payable by the liable person under a formula assessment, voluntary agreement, or order of the court issued or made before, on, or after 1 April 2016; and
  - (b) a payment arrangement was entered into or made on or after 1 April 2016 and within the 3 months that began on the date of issue or making of the assessment, agreement, or order under which that first payment is payable, and has been fully or substantially complied with in accordance with subsection (5).
- (2) The payment arrangement referred to in subsection (1)(b) must be a payment agreement specified in subsection (3) or a deduction notice specified in subsection (4).
- (3) The payment agreement is one that the liable person entered into with the Commissioner to pay, in 1 sum or 2 or more instalments of specified amounts,—
- (a) the first payment mentioned in subsection (1)(a); and
  - (b) other payments of financial support that were or would become payable (under the assessment, agreement, or order mentioned in subsection (1)(a), or any other assessment, voluntary agreement, or order of the court) by the liable person.

- (4) The deduction notice is one that the Commissioner gave a person under section 154 in relation to the liable person in order to collect, in 1 sum or 2 or more deductions and payments,—
- (a) the first payment mentioned in subsection (1)(a); and
  - (b) other payments of financial support that were or would become payable (under the assessment, agreement, or order mentioned in subsection (1)(a) or any other assessment, voluntary agreement, or order of the court) by the liable person.
- (5) The payment arrangement referred to in subsection (1)(b) has been fully or substantially complied with in accordance with this subsection if the arrangement has operated for a period that the Commissioner considers reasonable and—
- (a) it is a payment agreement, and to date there has been either no default in the payment in accordance with that agreement of the 1 sum, or every one of the 2 or more instalments, specified in subsection (3), or only default of that kind to an extent, or arising from a cause, that the Commissioner considers reasonable; or
  - (b) it is a deduction notice, and to date there has been either no default in the making in accordance with that notice of every one of the 2 or more deductions and payments specified in subsection (4), or only default of that kind to an extent, or arising from a cause, that the Commissioner considers reasonable.
- (6) If an initial late payment penalty written off under subsection (1) has been paid in whole or in part, the Commissioner must refund to the liable person the whole or part of the penalty paid.

**135H Relief from initial late payment penalty if full compliance with payment arrangement entered into or made before 1 April 2016 and within 3-month period**

- (1) The Commissioner must write off an initial late payment penalty if satisfied that—
- (a) that penalty was imposed in respect of a debt that is or includes the first payment of financial support payable by the liable person under a formula assessment, voluntary agreement, or order of the court issued or made before, on, or after 1 April 2016; and
  - (b) a payment arrangement was entered into or made on or after 26 September 2006 and before 1 April 2016 and within the 3 months that began on the date of issue or making of the assessment, agreement, or order under which that first payment is payable, and has been fully complied with in accordance with subsection (5).

- (2) The payment arrangement referred to in subsection (1)(b) must be a payment agreement specified in subsection (3) or a deduction notice specified in subsection (4).
- (3) The payment agreement is one that the liable person entered into with the Commissioner to pay, in 1 sum or 2 or more instalments of specified amounts,—
  - (a) the first payment mentioned in subsection (1)(a); and
  - (b) other payments of financial support that were or would become payable (under the assessment, agreement, or order mentioned in subsection (1)(a), or any other assessment, voluntary agreement, or order of the court) by the liable person.
- (4) The deduction notice is one that the Commissioner gave a person under section 154 in relation to the liable person in order to collect, in 1 sum or 2 or more deductions and payments,—
  - (a) the first payment mentioned in subsection (1)(a); and
  - (b) other payments of financial support that were or would become payable (under the assessment, agreement, or order mentioned in subsection (1)(a) or any other assessment, voluntary agreement, or order of the court) by the liable person.
- (5) The payment arrangement referred to in subsection (1)(b) has been fully complied with in accordance with this subsection if—
  - (a) it is a payment agreement, and the 1 sum, or every one of the 2 or more instalments, specified in subsection (3) is paid in full in accordance with that agreement; or
  - (b) it is a deduction notice, and every one of the 2 or more deductions and payments specified in subsection (4) is made in accordance with that notice.
- (6) If an initial late payment penalty written off under subsection (1) has been paid in whole or in part, the Commissioner must refund to the liable person the whole or part of the penalty paid.

Section 46: amended, on 27 February 2014, by section 159(1) of the Taxation (Annual Rates, Foreign Superannuation, and Remedial Matters) Act 2014 (2014 No 4).

Section 46: amended, on 27 February 2014, by section 159(2) of the Taxation (Annual Rates, Foreign Superannuation, and Remedial Matters) Act 2014 (2014 No 4).

Section 46: amended, on 27 February 2014, by section 159(3) of the Taxation (Annual Rates, Foreign Superannuation, and Remedial Matters) Act 2014 (2014 No 4).

Section 46: amended, on 27 February 2014, by section 159(4) of the Taxation (Annual Rates, Foreign Superannuation, and Remedial Matters) Act 2014 (2014 No 4).

*Amendments to Part 8 (mandatory relief from incremental penalties)***47 Relief from incremental penalties unpaid before agreement entered into**

- (1) The heading to section 135J is amended by adding “**on or after 26 September 2006**”.
- (2) The definition of **payment agreement** in section 135J(1) is amended by omitting “after the commencement of this section” and substituting “on or after 26 September 2006”.

**48 Relief from incremental penalties in relation to arrangements entered into or made before commencement**

- (1) The heading to section 135K is amended by omitting “**before commencement**” and substituting “**before 26 September 2006**”.
- (2) The definition of **payment agreement** in section 135K(1) is amended by omitting “before the commencement of this section” and substituting “before 26 September 2006”.
- (3) The definition of **specified deduction notice** in section 135K(1) is amended—
  - (a) by omitting “before the commencement of this section” and substituting “before 26 September 2006”; and
  - (b) by omitting “before this section comes into force” and substituting “before 26 September 2006”.

**49 Relief from ongoing incremental penalties if payment agreement in force**

Section 135M is amended by repealing subsection (1) and substituting the following subsection:

- (1) This section applies if—
  - (a) an incremental penalty is by operation of law imposed on a person at the expiry of a 1-month period; and
  - (b) during that 1-month period, the person is liable to pay financial support, initial late payment penalties, or incremental penalties that are payable in 1 sum, or in 2 or more instalments, under a payment agreement entered into between the person and the Commissioner; and
  - (c) every sum or instalment payable under the payment agreement during that 1-month period has during that 1-month period been paid in full in accordance with the payment agreement.

**50 Relief from ongoing incremental penalties if deduction notice in force**

Section 135N is amended by repealing subsection (1) and substituting the following subsection:

- (1) This section applies if—

- (a) an incremental penalty is by operation of law imposed on a person at the expiry of a 1-month period; and
- (b) during that 1-month period, the person is liable to pay financial support, initial late payment penalties, or incremental penalties by way of deductions required to be made, and paid to the Commissioner, under a deduction notice given under section 154; and
- (c) each deduction required during that 1-month period to be made, and paid to the Commissioner, under the deduction notice has during that 1-month period been made (even if it has not also been paid to the Commissioner) in accordance with the deduction notice.

*Amendments to Part 9 (payment)*

**51 Method in which payments to be made**

The heading to section 148 is amended by omitting “in” and substituting “by”.

**52 Overpayments to payees**

- (1) The heading to section 151 is amended by adding “before 1 April 2016”.
- (2) Section 151(1) is amended by inserting “before 1 April 2016” before “paid an amount under any provision of this Part”.

Section 52(1): amended, on 27 February 2014, by section 160(1) of the Taxation (Annual Rates, Foreign Superannuation, and Remedial Matters) Act 2014 (2014 No 4).

Section 52(2): amended, on 27 February 2014, by section 160(2) of the Taxation (Annual Rates, Foreign Superannuation, and Remedial Matters) Act 2014 (2014 No 4).

**53 New section 151AA inserted**

The following section is inserted after section 151:

**151AA Overpayments to payees on or after 1 April 2016**

- (1) This subsection applies to an amount that on or after 1 April 2016 is paid to a payee under any provision of this Part if—
  - (a) the payee was not entitled to be paid the amount; or
  - (b) the amount is, because of a subsequent variation in the liability of the liable person, repayable by the Commissioner to the liable person; or
  - (c) the amount is, because of a subsequent variation in the entitlement of the payee, in excess of the amount properly payable to the payee under this Act.
- (2) An amount to which subsection (1) applies is, if that amount is assessed by the Commissioner in the exercise of the Commissioner’s discretion under subsection (3),—
  - (a) repayable by the payee to the Commissioner; and
  - (b) a debt due by the payee to the Crown.

- (3) The Commissioner may assess an amount to which subsection (1) applies.
- (4) The Commissioner must notify the payee in writing of the assessment under subsection (3).
- (5) This Act (subject to subsection (6)) applies to the amount assessed, and to the payee, as if—
  - (a) that amount was financial support; and
  - (b) the payee was a liable person.
- (6) Sections 134, 134A, and 135 to 135N (which relate to penalties and to relief from them) apply to an amount assessed under subsection (3) and to the payee unless the Commissioner, in the Commissioner’s discretion under this subsection, determines that all of those sections do not apply to the amount assessed.
- (7) The Commissioner must notify the payee in writing of a determination under subsection (6), and the determination may be combined with an assessment under subsection (3).
- (8) If the payee is entitled to receive further payments under any provision of this Part, the amount of the debt due to the Crown by the payee may be recovered by reducing such of those payments by such amount as is determined in writing by the Commissioner.

Section 53: amended, on 27 February 2014, by section 161(1) of the Taxation (Annual Rates, Foreign Superannuation, and Remedial Matters) Act 2014 (2014 No 4).

Section 53: amended, on 27 February 2014, by section 161(2) of the Taxation (Annual Rates, Foreign Superannuation, and Remedial Matters) Act 2014 (2014 No 4).

#### **54 Section 151A repealed**

Section 151A is repealed.

#### **55 Relief in cases of serious hardship**

- (1) Section 152(a) is amended—
  - (a) by inserting “or 151AA” after “section 151”; and
  - (b) by inserting “or 151AA(8)” after “section 151(3)”.
- (2) Section 152(b) is amended by inserting “or 151AA(8)” after “section 151(3)”.

#### **56 Relief in case of exemption granted to liable person**

Section 152A(1)(a) is amended by inserting “or 151AA” after “section 151”.

#### **57 New section 152B inserted**

*[Repealed]*

Section 57: repealed, on 25 February 2016, by section 63 of the Taxation (Annual Rates for 2015–16, Research and Development, and Remedial Matters) Act 2016 (2016 No 1).

*Amendment to Part 10 (automatic deductions)*

*[Repealed]*

Heading: repealed, on 25 February 2016, by section 64 of the Taxation (Annual Rates for 2015–16, Research and Development, and Remedial Matters) Act 2016 (2016 No 1).

**58 Deduction notice**

*[Repealed]*

Section 58: repealed, on 25 February 2016, by section 64 of the Taxation (Annual Rates for 2015–16, Research and Development, and Remedial Matters) Act 2016 (2016 No 1).

*Amendments to Part 11 (discretion to write off certain child support debt and recognition of qualifying payments for child's direct benefit)*

**59 Payee may uplift financial support debt**

Section 180 is amended by repealing subsection (2) and substituting the following subsection:

- (2) This section does not entitle an election to be made in relation to an amount of child support payable to a payee, other than pursuant to a lump sum order made under section 109,—
- (a) under subsection (1)(a), if the amount of child support was payable in respect of a period during which the payee was a social security beneficiary (as defined in section 2(1)); or
  - (b) under subsection (1)(b), if the payee is a social security beneficiary (as so defined) at the time of the making of the election; or
  - (c) under subsection (1)(b), if the payee is not a social security beneficiary (as so defined) at the time of the making of the election, unless, at that time,—
    - (i) the Commissioner has accepted an election under section 27 that covers the liability of the liable parent to pay child support; or
    - (ii) the payee elects that the liability of the liable parent to pay child support is to end under section 64 or 70.

Section 59: amended, on 25 February 2016, by section 65 of the Taxation (Annual Rates for 2015–16, Research and Development, and Remedial Matters) Act 2016 (2016 No 1).

**60 New sections 180A to 180D inserted**

The following sections are inserted after section 180:

**180A Commissioner may write off benefit component of child support debt if receiving carer was social security beneficiary and recovery would cause serious hardship or be inefficient use of Commissioner's resources**

- (1) The Commissioner may write off some or all of the benefit component of an amount of child support that is payable by the liable person to the Crown under this Act, and that is unpaid and in arrear, if—

- (a) the amount of child support was payable in respect of a period during which the receiving carer was a social security beneficiary (as defined in section 2(1)); and
  - (b) the Commissioner is satisfied that recovery of that part or, as the case requires, all, of the benefit component of the amount of child support would do either or both of the following:
    - (i) place the liable person in serious hardship (as defined in section 135G(3));
    - (ii) involve an inefficient use of the Commissioner's resources.
- (2) The **benefit component** of an amount of child support, in subsection (1), means the proportion of that amount that is deductible under section 142 or 143 in respect of social security benefit or unsupported child's benefit (or any lesser amount that would be deductible in lieu of that proportion under those sections).

**180B Commissioner may write off child support debt if liable person has died and his or her estate is insufficient**

- (1) The Commissioner may write off some or all of an amount of child support debt that is payable by the estate of a liable person to the Crown under this Act, and that is unpaid and in arrear, if—
- (a) the liable person has died; and
  - (b) the Commissioner is satisfied that the liable person's estate is insufficient to pay the part, or all, of the amount.
- (2) Subsection (1) applies even if no order has been made that the liable person's estate be administered under Part 6 (insolvent deceased estates) of the Insolvency Act 2006.

**180C Commissioner may write off child support debt if receiving carer has died and debt is likely to be unable to be recovered**

The Commissioner may write off some or all of an amount of child support debt that is payable by a liable person to the Crown under this Act, and that is unpaid and in arrear, if—

- (a) the receiving carer has died; and
- (b) the Commissioner is satisfied that the part, or all, of the amount is for any reason likely to be unable to be recovered.

**180D Sections 180B and 180C to cover child support penalties**

In sections 180B and 180C, **child support debt** includes the following:

- (a) an initial late payment penalty (as defined in section 135) imposed in relation to child support:



- (b) an incremental penalty (as defined in section 135) imposed in relation to child support:
- (c) a penalty imposed under section 45 as in force before 1 April 2015 (including as applied on and after that date by clauses 1A and 2A of Schedule 1).

Section 60 heading: amended, on 25 February 2016, by section 66(1) of the Taxation (Annual Rates for 2015–16, Research and Development, and Remedial Matters) Act 2016 (2016 No 1).

Section 60: amended, on 25 February 2016, by section 66(2) of the Taxation (Annual Rates for 2015–16, Research and Development, and Remedial Matters) Act 2016 (2016 No 1).

Section 60: amended, on 25 February 2016, by section 66(3) of the Taxation (Annual Rates for 2015–16, Research and Development, and Remedial Matters) Act 2016 (2016 No 1).

## 61 Direct payment to payee

*[Repealed]*

Section 61: repealed, on 25 February 2016, by section 67 of the Taxation (Annual Rates for 2015–16, Research and Development, and Remedial Matters) Act 2016 (2016 No 1).

*Amendment to Part 16 (transitional and savings provisions)*

## 62 Section 276 amended

In section 276(2) (as inserted by section 54(3) of the Taxation (Annual Rates for 2015–16, Research and Development, and Remedial Matters) Act 2016), after the item relating to Part 1A of Schedule 1, insert:

Child Support Amendment Act 2013: Provisions relating to amendments effective on 1 April 2016 2

Section 62: replaced, on 25 February 2016, by section 68 of the Taxation (Annual Rates for 2015–16, Research and Development, and Remedial Matters) Act 2016 (2016 No 1).

*Amendments to Schedule 1*

## 63 Schedule 1 amended

(1) *[Repealed]*

(2) Schedule 1 (as inserted by section 32 of this Act and amended by section 55 of the Taxation (Annual Rates for 2015–16, Research and Development, and Remedial Matters) Act 2016) is amended by adding the following Part:

### Part 2

#### Child Support Amendment Act 2013: Provisions relating to amendments effective on 1 April 2016

## 9 Amendments to Part 7 (grounds for departure from formula assessment)

*[Repealed]*

**10 Amendments to Part 8 (penalties imposed under section 134 before 1 April 2016)**

- (1) Section 134 (as substituted on 1 April 2016 by the Child Support Amendment Act 2013) does not limit or affect a person's liability to pay any penalties imposed in respect of the same debt under section 134 (as in force before 1 April 2016).
- (2) The reference in section 134(1) (as substituted on 1 April 2016) to a financial support debt incurred before 1 April 2016 includes any initial late payment penalties or incremental penalties or both that are imposed under section 134(1) (as in force before 1 April 2016) in respect of, and that are deemed under section 134(2) (as in force before 1 April 2016) to be of the same nature as, that debt.
- (3) An initial late payment penalty (seventh day after due date) under section 134(3) (as substituted on 1 April 2016) must not be imposed on a financial support debt on which an initial late payment penalty under section 134(1)(a) (as in force before 1 April 2016) was imposed on or after 25 March 2016.
- (4) Section 134(4) (as substituted on 1 April 2016) applies to a financial support debt on which an initial late payment penalty under section 134(1)(a) (as in force before 1 April 2016) was imposed on or after 1 March 2016.
- (5) Section 134(5) or (6) (as substituted on 1 April 2016) applies (as the case requires) to a financial support debt on which an incremental penalty under (as the case requires) section 134(1)(b) or (c) (as in force before 1 April 2016) was imposed on or after 1 March 2016.
- (6) The Commissioner may, in the Commissioner's discretion, grant relief from initial late payment penalties, incremental penalties, or both, imposed on a person under section 134 (as substituted on 1 April 2016) if satisfied that the relief is necessary or desirable to prevent unfairness arising from corresponding equivalent penalties also having been imposed on the person under section 134 (as in force before 1 April 2016).

**11 Insertion of sections 180A and 180C (Writing off of child support debt)**

- (1) In relation to child support in respect of a child support year ending before 1 April 2015, section 180A(1)(a) applies as if the reference to the receiving carer were to the qualifying custodian.
- (2) In relation to child support in respect of a child support year ending before 1 April 2015 (including any penalty referred to in section 180D(a) to (c) relating to such child support), section 180C(a) applies as if the reference to the receiving carer were to the qualifying custodian.

Section 63(1): repealed, on 25 February 2016, by section 69(1) of the Taxation (Annual Rates for 2015–16, Research and Development, and Remedial Matters) Act 2016 (2016 No 1).

Section 63(2): amended, on 25 February 2016, by section 69(2) of the Taxation (Annual Rates for 2015–16, Research and Development, and Remedial Matters) Act 2016 (2016 No 1).

Section 63(2): amended, on 25 February 2016, by section 69(3) of the Taxation (Annual Rates for 2015–16, Research and Development, and Remedial Matters) Act 2016 (2016 No 1).

Section 63(2): amended, on 25 February 2016, by section 69(4) of the Taxation (Annual Rates for 2015–16, Research and Development, and Remedial Matters) Act 2016 (2016 No 1).

Section 63(2): amended, on 27 February 2014, by section 163(2) of the Taxation (Annual Rates, Foreign Superannuation, and Remedial Matters) Act 2014 (2014 No 4).

Section 63(2): amended, on 27 February 2014, by section 163(4) of the Taxation (Annual Rates, Foreign Superannuation, and Remedial Matters) Act 2014 (2014 No 4).

Section 63(2): amended, on 27 February 2014, by section 163(5) of the Taxation (Annual Rates, Foreign Superannuation, and Remedial Matters) Act 2014 (2014 No 4).

Section 63(2): amended, on 27 February 2014, by section 163(6) of the Taxation (Annual Rates, Foreign Superannuation, and Remedial Matters) Act 2014 (2014 No 4).

Section 63(2): amended, on 27 February 2014, by section 163(7)(a) of the Taxation (Annual Rates, Foreign Superannuation, and Remedial Matters) Act 2014 (2014 No 4).

Section 63(2): amended, on 27 February 2014, by section 163(7)(b) of the Taxation (Annual Rates, Foreign Superannuation, and Remedial Matters) Act 2014 (2014 No 4).

Section 63(2): amended, on 27 February 2014, by section 163(8)(a) of the Taxation (Annual Rates, Foreign Superannuation, and Remedial Matters) Act 2014 (2014 No 4).

Section 63(2): amended, on 27 February 2014, by section 163(8)(b) of the Taxation (Annual Rates, Foreign Superannuation, and Remedial Matters) Act 2014 (2014 No 4).

Section 63(2): amended, on 27 February 2014, by section 163(9)(a) of the Taxation (Annual Rates, Foreign Superannuation, and Remedial Matters) Act 2014 (2014 No 4).

Section 63(2): amended, on 27 February 2014, by section 163(9)(b) of the Taxation (Annual Rates, Foreign Superannuation, and Remedial Matters) Act 2014 (2014 No 4).

Section 63(2): amended, on 27 February 2014, by section 163(10) of the Taxation (Annual Rates, Foreign Superannuation, and Remedial Matters) Act 2014 (2014 No 4).

## Schedule 1

### New Schedule 1 inserted

s 32

### Schedule 1

#### Transitional and savings provisions relating to amendments to Act made on or after 1 April 2014

ss 3A, 276

#### 1 Definitions

In this clause and clauses 2 to 8, unless the context otherwise requires,—

**commencement date** means 1 April 2014 (which is the date on which Part 1 (except sections 6, 31, and 32) of the Child Support Amendment Act 2013 comes into force)

**new assessment** means a formula assessment made or applied for under the new provisions and applying after the commencement date to the child support year ending on 31 March 2015

**new formula** means the formula assessment as provided for by the new provisions

**new provisions** means the provisions of this Act as amended by Part 1 of the Child Support Amendment Act 2013; and references to **new section** and **new Part** have a corresponding meaning

**old assessment** means a formula assessment made or applied for under the old provisions

**old formula** means the formula assessment as provided for under the old provisions

**old provisions** means the provisions of this Act as they are immediately before Part 1 of the Child Support Amendment Act 2013 comes into force; and references to **old section** and **old Part** have a corresponding meaning.

#### 2 New provisions treated as if in force for certain purposes

- (1) This clause applies for the purpose of ensuring that, at the start of the child support year commencing 1 April 2014, the annual rate of child support payable under the new formula has been ascertained in relation to every person who is or will be subject to a formula assessment on the commencement date.
- (2) For the purpose described in subclause (1),—
  - (a) the new provisions apply as if they were in force; and
  - (b) the Commissioner may exercise any powers under the new provisions, and take any steps necessary, to enable that purpose to be achieved.

- (3) However, until the commencement date, nothing in the new provisions affects an old assessment, and no new assessment may take effect.

### **3 Determinations made under old provisions**

- (1) If a determination relating to an old assessment has been made under Part 6A or Part 6B before the commencement date, the Commissioner must apply that determination when making any new assessment, but only if the determination relates to an element in the new formula.
- (2) If the determination does not relate to an element in the new formula, the determination must be disregarded when making the new assessment.

### **4 Application for determination under old provisions**

If a review or an application for a review under Part 6A or Part 6B has been commenced but not completed by the commencement date, the Commissioner must, on and after the commencement date, act on the basis that,—

- (a) to the extent that the review or application applies to an old assessment, the old provisions apply; and
- (b) to the extent that the review or application applies to a new assessment, the new provisions apply.

### **5 Objections, appeals, and applications under old Parts 6 and 7**

- (1) An objection, appeal, or application relating to an old assessment may be lodged under and in accordance with old Part 6 or 7 before or after the commencement date, in which case the matter must be dealt with and completed on the basis of the old provisions.
- (2) An appeal or application relating to a new assessment may be lodged either before the commencement date under and in accordance with old Part 7, or after the commencement date under and in accordance with new Part 7; but, in either case, the appeal or application must not be dealt with until after the commencement date, and must then be dealt with and completed on the basis of the new provisions.

### **6 Orders made by court**

Where an order of the court made under old section 106 or 109 affects, or will affect, a new formula assessment applying to a person, the Commissioner must act on the basis of that order in relation to any period after the commencement date to which the order applies.

### **7 Application for variation of court orders**

After the commencement date, if any person applies for a variation of a court order that was made under old section 106, the application must be dealt with and completed on the basis that a new assessment applies to the parties.

**8 Transitional regulations**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for either or both of the following purposes:
  - (a) prescribing how the new provisions and the old provisions must be applied or modified in order to ensure that notices of assessment for new formula assessments are given before the commencement date to all those to whom the new assessment will apply:
  - (b) prescribing assumptions that may be made concerning any element of the new formula, in order to ensure that new formula assessments are given before the commencement date, but any such assumption must be subject to correction by any party to whom it relates or applies.
- (2) Regulations made under this clause must include a date on which the regulations are repealed, and that date must be no later than 3 years after the date on which they are made.
- (3) The Minister may recommend the making of regulations under this clause only if satisfied that the regulations are consistent with the purposes of this Act and clauses 1 to 7 of this schedule, and are necessary or desirable for the orderly implementation of Part 1 of the Child Support Amendment Act 2013.
- (4) This clause expires and is repealed on 1 April 2016.

**Schedule 2**  
**New Schedules 2 and 3 inserted**

s 33

**Schedule 2**  
**Care cost percentage**

ss 2(1), 16

<b>Item</b>	<b>Column 1: Proportion of ongoing daily care</b>	<b>Column 2: Care cost percentage</b>
1	0 to 27%	Nil
2	28% to 34%	24%
3	35% to 47%	25% plus 2% for each percentage point over 35%
4	48% to 52%	50%
5	53% to 65%	51% plus 2% for each percentage point over 53%
6	66% to 72%	76%
7	73% to 100%	100%

s 36D

### Schedule 3 Expenditure on children

This table sets out percentages of child support income amounts that are expended on children. The percentages represent marginal expenditure, which means how much of each additional dollar of child support income in an AWE\* band is treated as expenditure on children. Where child support income extends over several AWE bands, expenditure therefore accumulates down the columns.

**Fraction of AWE**

**Percentages of child support income amounts**

	Age group: all children aged 0 to 12			Age group: all, or the oldest 3, children aged 13 or over			Age group: at least 1 child aged 0 to 12, and 1 or 2 children aged 13 or over		
	Number of children			Number of children			Number of children		
	1	2	3 or more	1	2	3 or more	1	2	3 or more
Up to and including 0.5	17%	24%	27%	23%	29%	32%	26.5%	29.5%	29.5%
More than 0.5 but no more than 1	15%	23%	26%	22%	28%	31%	25.5%	28.5%	28.5%
More than 1 but no more than 1.5	12%	20%	25%	12%	25%	30%	22.5%	27.5%	27.5%
More than 1.5 but no more than 2	10%	18%	24%	10%	20%	29%	19%	26.5%	26.5%
More than 2 but no more than 2.5	7%	10%	18%	9%	13%	20%	11.5%	19%	19%
More than 2.5	†	†	†	†	†	†	†	†	†

\* Average weekly earnings, as published by Statistics New Zealand (for all industries, males and females combined) for the June quarter in the immediately preceding child support year. The weekly earnings are annualised.

† For child support income amounts that exceed 2.5 times AWE, the marginal expenditure on children does not increase. The relevant amounts to be inserted in a child expenditure table in this row are therefore the maximum amounts from the row immediately above it.



## Schedule 3

### Consequential amendments to principal Act

s 34

#### Section 1

Heading: omit “**Short**”.

Subsection (1): omit “may be cited as” and substitute “is”.

#### Section 2(1)

Definition of **child support income amount**: omit “section 29” and substitute “section 34”.

Definition of **formula assessment**: omit “Part 2” and substitute “Parts 1 and 2”.

Definition of **inflation percentage**: omit and substitute:

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

Definition of **living allowance**: omit “section 30” and substitute “section 35A”.

Definition of **payee**: omit “the person who is the qualifying custodian” and substitute “a person who is a receiving carer”.

Definition of **properly made**: omit and substitute:

**properly made**, in relation to an application for acceptance of a voluntary agreement, means made in accordance with section 55

#### Section 26

Heading: omit “**custodian**” and substitute “**carer**”.

Omit “eligible custodian” in each place where it appears and substitute in each case “receiving carer”.

Subsection (1): omit “25(1)(c)(i)” and substitute “25(3)(a)(i)”.

Subsection (2): omit “25(1)(c)(ii)” and substitute “25(3)(a)(ii)”.

#### Section 27

Heading: omit “**eligible custodian**” and substitute “**receiving carer**”.

Subsection (1): omit “An eligible custodian who is not in receipt of a social security benefit may, by written notice given to the Commissioner, elect that the liability of a liable parent to pay child support” and substitute “A receiving carer who is not in receipt of a social security benefit may, by notice to the Commissioner (in any form acceptable to the Commissioner), elect that the liability of every liable parent to pay child support to the receiving carer”.

**Section 28(4)**

Omit “custodian” and substitute “carer”.

**Section 38**

Subsection (5)(a): omit “the annual rate of child support payable by a liable parent” and substitute “the annual amount of child support payable by a person”.

Subsection (5)(b): omit “the liable parent” and substitute “any parent”.

**Section 38A**

Repeal.

**Section 39**

Subsection (2): repeal.

**Section 39A**

Heading: omit **taxable**.

Omit “liable” in each place where it appears.

Subsection (1): omit “, being income that is taxable in that country,”.

Subsection (3)(a): repeal.

**Section 47(2)(b)**

Omit “an eligible custodian” and substitute “a carer”.

**Section 48(1)(a)(i)**

Omit “the eligible custodian” and substitute “a carer”.

**Section 62(1)(a)**

Omit “qualifying custodian” and substitute “carer of the child”.

**Section 65**

Subsection (1): omit “a person who is a qualifying custodian or a liable parent” and substitute “any parent or carer”.

Subsection (2): omit “qualifying custodian” in each place where it appears and substitute in each case “carer”.

**Section 77**

Omit “In making an assessment of child support or domestic maintenance” and substitute “For the purpose of determining liability under a formula assessment, or making an assessment of child support or domestic maintenance”.

**Section 78**

Repeal.

**Section 81**

Subsection (1): omit “liable parent” and substitute “parent of a qualifying child”.

Subsection (2): omit “liable parent” in each place where it appears and substitute in each case “person”.

Subsection (3): repeal.

**Section 87(3)(d)**

Omit “to the acceptance of an application for” and substitute “to a”.

**Section 89N(1)(b)**

Omit “qualifying custodian” in each place where it appears and substitute in each case “receiving carer”.

**Section 89O(1)**

Omit “both” and substitute “all”.

**Section 89Z(3)**

Omit “accepts an application for formula assessment of child support under section 17(1)” and substitute “receives a properly completed application for formula assessment under Part 1”.

**Section 95(2)(a)**

Omit “section 100” and substitute “section 102”.

**Section 96C(1)(b)(ii)(A)**

Omit “, the qualifying custodian, and the liable parent” and substitute “and all parties to the application”.

**Section 96D(2)**

Omit “both parties” and substitute “each party”.

**Section 96H**

Heading: omit “**party**” and substitute “**parties**”.

Subsection (1): omit “the other” and substitute “each other”.

Subsection (2)(b)(i): omit “the other party” and substitute “the party”.

Subsection (3): replace with:

(3) The Commissioner must send a copy of any reply and accompanying documentation to the applicant, and may send a copy of any reply and accompanying documentation to the other parties.

**Section 96I**

Subsection (1)(a): omit “the reply (if any)” and substitute “any reply received”.

**Section 96I**—*continued*

Subsection (2): omit “the other party” and substitute “each other party”.

Subsection (3)(a): omit “the other party” and substitute “any other party”.

Subsection (4): omit “the other party” and substitute “any other party”.

**Heading to Part 6A**

Omit “**qualifying custodian**” and substitute “**receiving carer**”.

**Section 96R(1)(b)(i)**

Omit “the qualifying custodian” and substitute “the receiving carer”.

**Section 96T**

Heading: omit “**liable**” and substitute “**subject**”.

Omit “liable” in each place where it appears and substitute in each case “subject”.

**Section 96U**

Heading: omit “**liable**” and substitute “**subject**”.

Omit “liable” in each place where it appears and substitute in each case “subject”.

**Section 96V(a)**

Omit “liable” and substitute “subject”.

**Section 96W**

Heading: omit “**liable**” and substitute “**subject**”.

Subsection (1): omit “liable” and substitute “subject”.

Subsection (2)(a): omit “liable parent of the rights of the liable” and substitute “subject parent with the rights of the subject”.

Subsection (2)(a): omit “the qualifying custodian (if the qualifying custodian elects to become a party under section 96Y)” and substitute “any receiving carer or liable parent who elects to become a party under section 96Y”.

Subsection (2)(b): omit “liable” and substitute “subject”.

**Section 96X**

Heading: omit “**qualifying custodian**” and substitute “**receiving carers and liable parent who is not subject parent**”.

Omit “qualifying custodian” and substitute “receiving carers and any liable parent who is not the subject parent”.

Paragraph (b): omit “qualifying custodian’s” and substitute “receiving carer’s or liable parent’s”.

Paragraph (c): omit “liable parent and of the qualifying custodian (if the qualifying custodian elects to become a party under section 96Y)” and substitute “subject parent

**Section 96X**—*continued*

and of any receiving carer or liable parent who elects to become a party under section 96Y”.

**Section 96Y**

Heading: omit “**qualifying custodian**” and substitute “**receiving carer or by liable parent who is not subject parent**”.

Subsection (1): omit “The qualifying custodian” and substitute “Any receiving carer, or any liable parent who is not the subject parent,”.

Subsection (2): repeal and substitute:

- (2) A receiving carer, or a liable parent who is not a subject parent, may elect to discontinue proceedings in relation to a formula assessment of child support that was or will become payable, except that—
- (a) a receiving carer who was a social security beneficiary during a particular period may not elect to discontinue proceedings in respect of child support that was payable during that period; and
  - (b) a receiving carer who is a social security beneficiary may not elect to discontinue proceedings in respect of child support that will become payable.

Subsection (3): omit “qualifying custodian” in each place where it appears and substitute in each case “receiving carer or liable parent”.

Subsection (4): omit “liable parent of any election made by the qualifying custodian” and substitute “subject parent of any election made by a receiving carer or by a liable parent who is not the subject parent”.

Subsections (5) and (6): omit “qualifying custodian” and substitute in each case “receiving carer or liable parent who is not the subject parent”.

**Section 96Z**

Heading: omit “**liable parent or qualifying custodian**” and substitute “**parties**”.

Subsection (1): omit “A liable parent, and a qualifying custodian who elects to become a party under section 96Y, may each” and substitute “Any party may”.

Subsection (2): omit “a liable parent or qualifying custodian” and substitute “a party”.

Subsection (2)(b)(i): omit “liable” in each place where it appears and substitute in each case “subject”.

Subsection (2)(b)(ii): omit “qualifying custodian” in each place where it appears and substitute in each case “receiving carer or a liable parent who is not the subject parent”.

Subsections (3), (4), and (5): omit “liable” in each place where it appears and substitute in each case “subject”.

**Section 96Z**—*continued*

Subsections (3), (4), and (5): omit “qualifying custodian” and substitute in each case “receiving carer or liable parent who is not the subject parent”.

**Section 96ZA**

Subsection (2): omit “the liable parent and to the qualifying custodian (if that person is a party to the proceedings)” and substitute “each party”.

Subsection (4): omit “qualifying custodian” and substitute “receiving carer or liable parent who is not the subject parent”.

**Section 96ZB(2)**

Omit “to—” and substitute “to each party to the proceedings.”

Paragraphs (a) and (b): repeal.

**Section 96ZC**

Subsection (2): omit “the qualifying custodian and the liable parent” and substitute “each parent and receiving carer affected by the proceedings”.

Subsection (3): omit “the qualifying custodian” and substitute “the receiving carer or the liable parent”.

**Section 98**

Omit “eligible custodian” in each place where it appears and substitute in each case “receiving carer”.

Subsection (2)(b): omit “each custodian” and substitute “each receiving carer”.

Subsection (2)(b): omit “eligible custodians” and substitute “receiving carers”.

**Section 99**

Subsection (1): omit “Any person who is an eligible custodian” and substitute “A parent or receiving carer”.

Subsection (3): omit “custodian of the child in respect of whom the declaration is sought” and substitute “applicant for the declaration under this section”.

**Section 102**

Heading: omit “**other administrative**”.

Subsection (1): omit “(other than an objection to which section 100 or section 101 applies)”.

**Section 103**

Subsection (1): omit “who is a liable person in respect of that” and substitute “affected by the”.

Subsection (3): omit “liable person in relation to whom the assessment was made” and substitute “person or persons affected by the assessment”.

**Section 103**—*continued*

Subsection (6): omit “liable person” and substitute “persons”.

**Section 103B**

Subsection (1): omit “qualifying custodian” in each place where it appears and substitute in each case “receiving carer”.

Subsection (4)(b): omit “the other party” and substitute “any other party”.

**Section 103C**

Subsection (1): omit “A qualifying custodian or a liable parent” and substitute “Any party referred to in section 96Q(2)”.

Subsection (3)(b): omit “the other party (if any)” and substitute “any other party”.

**Section 103E**

Omit “qualifying custodian” in each place where it appears and substitute in each case “receiving carer”.

**Section 104**

Omit “qualifying custodian” in each place where it appears and substitute in each case “receiving carer”.

**Section 105**

Subsection (1)(b)(i): omit “qualifying custodian” and substitute “receiving carer”.

Subsection (2)(c)(ii): omit “to the child, to the qualifying custodian” and substitute “or a receiving carer to the child, to a liable parent or a receiving carer”.

Subsection (2)(c)(iii): omit “custodian” and substitute “liable parent or receiving carer”.

Subsection (2)(c)(iii): omit “liable parent” and substitute “liable parent or receiving carer”.

Subsection (4): omit “the qualifying custodian” in the first place where it appears and substitute “a receiving carer”.

Subsection (4)(f) and (g): omit “qualifying custodian” in each place where it appears and substitute in each case “receiving carer”.

**Section 107**

Omit “qualifying custodian” in each place where it appears and substitute in each case “receiving carer”.

**Section 108**

Omit “qualifying custodian” in each place where it appears and substitute in each case “receiving carer”.

**Section 109**

Omit “qualifying custodian” in each place where it appears and substitute in each case “receiving carer”.

**Section 110(1)**

Paragraph (a): omit “qualifying custodian” and substitute “receiving carer”.

Paragraphs (b) and (c): omit “custodian” and substitute in each case “receiving carer”.

**Section 111(2)(a)**

Omit “custodian” and substitute “receiving carer”.

**Section 112**

Omit “qualifying custodian” in each place where it appears and substitute in each case “receiving carer”.

**Section 113**

Omit “qualifying custodian” in each place where it appears and substitute in each case “receiving carer”.

**Section 115**

Subsection (1): omit “section 100 or section 101 or”.

Subsection (2): omit “section 100” and substitute “section 102”.

**Section 116**

Subsection (2)(b): omit “eligible custodian” and substitute “carer”.

Subsection (3): omit “an eligible custodian” in each place where it appears and substitute in each case “a carer”.

**Section 119**

Subsection (1)(c)(i)(B): omit “qualifying custodian” and substitute “receiving carer”.

Subsection (2): omit “spousal” and substitute “domestic”.

**Section 120(3)**

Omit “sections 100 to 103” and substitute “section 102 or 103”.

**Section 122(1)(a)**

Repeal and substitute:

- (a) who is a parent or carer of a qualifying child; and

**Section 125(2)**

Omit “The custodian” and substitute “Any parent or carer”.



**Section 136**

Subsection (1): omit “and rounding the converted rate to the nearest 5 cents”.

Subsection (2): omit “and rounded to the nearest 5 cents”.

**Section 141**

Heading: omit “custodians” and substitute “receiving carers”.

Omit “qualifying custodian” in each place where it appears and substitute in each case “receiving carer”.

**Section 142**

Heading: omit “custodians” and substitute “receiving carers”.

Omit “qualifying custodian” in each place where it appears and substitute in each case “receiving carer”.

**Section 143**

Heading: omit “custodians” and substitute “receiving carers”.

Omit “qualifying custodian” in each place where it appears and substitute in each case “receiving carer”.

Subsections (1) and (1A): omit “custodian” in each place where it appears and substitute in each case “receiving carer”.

**Section 144(1)**

Omit “qualifying custodian” and substitute “receiving carer”.

**Section 239**

Subsection (2): omit “a liable person” and substitute “a carer of a qualifying child, a liable person”.

**Section 240**

Subsection (2)(a)(i): omit “the custodian” and substitute “any carer”.

Subsection (2)(a)(ii): omit “spouse or partner” in each place where it appears and substitute in each case “parent”.

Subsection (9): omit “returns of income supplied by” and substitute “income of”.

Schedule 3: amended, on 27 February 2014, by section 164 of the Taxation (Annual Rates, Foreign Superannuation, and Remedial Matters) Act 2014 (2014 No 4).

Schedule 3: amended, on 17 July 2013, by section 171 of the Taxation (Livestock Valuation, Assets Expenditure, and Remedial Matters) Act 2013 (2013 No 52).

## Reprints notes

### **1** *General*

This is a reprint of the Child Support Amendment Act 2013 that incorporates all the amendments to that Act as at the date of the last amendment to it.

### **2** *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

### **3** *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

### **4** *Amendments incorporated in this reprint*

Taxation (Annual Rates for 2015–16, Research and Development, and Remedial Matters) Act 2016 (2016 No 1): sections 57–69

Taxation (Annual Rates, Foreign Superannuation, and Remedial Matters) Act 2014 (2014 No 4): sections 150–164

Taxation (Livestock Valuation, Assets Expenditure, and Remedial Matters) Act 2013 (2013 No 52): sections 166–171