

Version
as at 31 March 2022



Child Support Amendment Act 2021

Public Act 2021 No 6
Date of assent 24 March 2021
Commencement see section 2

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Note

The Parliamentary Counsel Office has made editorial and format changes to this version using the powers under subpart 2 of Part 3 of the Legislation Act 2019.

Note 4 at the end of this version provides a list of the amendments included in it.

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Child Support Amendment Act 2021.

2 Commencement

- (1) Sections 7, 11, 23(1), 33, 38, 39, 42, 44 to 54, 56, and 57 come into force on 1 April 2021.
- (2) Section 4(2) is treated as having come into force on 26 November 2018.

- (3) The rest of this Act comes into force on a date appointed by the Governor-General by Order in Council or, if not earlier brought into force, on 1 April 2022.
- (4) In subsection (3), 1 or more orders may be made appointing different dates for different provisions and for different purposes.
- (5) In this section, **provision** includes any item, or any part of an item, in any of the schedules of this Act.
- (6) An Order in Council made under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 2(3): sections 5, 6, 18 to 22, 23(2) to (4), 24 to 32, 34 to 37, 40, 41, and 55 brought into force, on 26 October 2021, by clause 2(1) of the Child Support Amendment Act 2021 Commencement Order 2021 (LI 2021/301).

Section 2(3): section 43 brought into force, on 1 November 2021, by clause 2(2) of the Child Support Amendment Act 2021 Commencement Order 2021 (LI 2021/301).

3 Principal Act

This Act amends the Child Support Act 1991 (the **principal Act**).

Part 1

Amendments to sections of principal Act

4 Section 2 amended (Interpretation)

- (1) In section 2(1), insert in its appropriate alphabetical order:
income has the same meaning as **net income** has in section YA 1 of the Income Tax Act 2007
- (2) In section 2(1), insert in its appropriate alphabetical order:
social security beneficiary means a person who is in receipt of a social security benefit
- (3) In section 2(1), repeal the definition of **taxable income**.

Amendments to Part 1 (liability to pay child support under formula assessment)

5 Section 5 amended (Children who qualify for child support)

- (1) In section 5(1)(c), before “is not”, insert “in the case of a person aged 16 or older”.

- (2) Replace section 5(4) with:
- (4) However, the latest that a child qualifies for child support is 31 December in the year in which they turn 18, regardless of whether they are still enrolled at and attending a school after that date.

6 Section 19 amended (When liability to pay child support starts)

Replace section 19(3) with:

- (3) Subsection (4) applies 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, if all of the following conditions are met:
- (a) a New Zealand court, or a court or public authority of any overseas jurisdiction, later finds person P to be a parent of the child:
 - (b) the Commissioner determines under this Part that person P is a liable parent of the child:
 - (c) the application is otherwise properly completed.
- (4) Liability by person P to pay child support under a formula assessment in respect of the child starts—
- (a) on the day on which the application is received by the Commissioner if—
 - (i) the application for the finding referred to in subsection (3)(a) (the **order**) is made no later than 60 days after the Commissioner receives the application for a formula assessment; and
 - (ii) the Commissioner receives the order no later than 60 days after the order is made; or
 - (b) on the day on which the application is received by the Commissioner, if the Commissioner is satisfied that the time limits in paragraph (a) were not met because there was a reasonable cause; or
 - (c) on the day on which the Commissioner receives the order, in any other case.
- (5) Subsection (6) applies 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, if all of the following conditions are met:
- (a) person P later, in any proceeding before any court in New Zealand, or before any court or public authority in an overseas jurisdiction, acknowledges that they are a parent of the child and a court has not made a finding of paternity of the child that is to the contrary of that acknowledgment:

- (b) the Commissioner determines under this Part that person P is a liable parent of the child;
 - (c) the application is otherwise properly completed.
- (6) Liability by person P to pay child support under a formula assessment in respect of the child starts—
- (a) on the day on which the application is received by the Commissioner if—
 - (i) the acknowledgment is made no later than 60 days after the Commissioner receives the application for a formula assessment; and
 - (ii) the Commissioner receives the acknowledgment no later than 60 days after it is made; or
 - (b) on the day on which the application is received by the Commissioner, if the Commissioner is satisfied that the time limits in paragraph (a) were not met because there was a reasonable cause; or
 - (c) on the day on which the Commissioner receives the acknowledgment, in any other case.
- (7) For the purposes of this section, **reasonable cause** means an event or circumstance in relation to an applicant that—
- (a) is beyond the control of the applicant, including a serious illness, an accident, or a disaster; and
 - (b) caused, in the opinion of the Commissioner, the time limits not to be met.

7 Section 25 amended (When liability to pay child support ceases)

- (1) After section 25(1)(c), insert:
- (d) in any case to which section 8(2) applied, ceases to be a child in respect of whom payments are required to be made under section 363 of the Oranga Tamariki Act 1989.
- (2) Repeal section 25(3)(d).

Amendments to Part 2 (amount of child support payable under formula assessment made by Commissioner)

8 Section 30 amended (Formula for assessing annual amount of child support)

After section 30(2), insert:

- (3) However, if no child expenditure table applies because at least 1 child is aged 0 to 12 and 1 or 2 children are aged 13 or over, e is the amount, determined in accordance with the child expenditure table that would apply to the parent in respect of the child if all of the children in the child support group were the same age as the qualifying 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.
- (4) However, the Commissioner may make modifications to the child expenditure amount for the child that the Commissioner considers necessary or desirable if the Commissioner believes on reasonable grounds that—
- (a) there are exceptional circumstances (for example, exceptional complexity of care arrangements for children within a particular child support group); and
 - (b) applying the provisions of this section without modification would result in an unjust or inequitable outcome (for example, an apportionment of costs that is disproportionate to the amount of expenditure attributable to the child).

9 Section 34 amended (Child support income amount)

- (1) In section 34(1) and (3), replace “taxable income” with “income” in each place.
- (2) In each provision listed in Schedule 1, replace “taxable income” with “income” in each place.

10 Section 35 replaced (Adjusted taxable income)

Replace section 35 with:

35 Adjusted income

- (1) A person's **adjusted income** for a child support year is,—
 - (a) if, in the most recent tax year, the person's income was derived solely from withholding income, the person's withholding income for the calendar year immediately preceding the start of the child support year; or
 - (b) if paragraph (a) does not apply, the person's income derived in the tax year immediately preceding the most recent tax year, inflated by the inflation percentage for the child support year.
- (2) If a person's income for a tax year has not been assessed, the Commissioner must determine the person's income on the basis of the income and any other particulars known to the Commissioner.
- (3) This section is subject to—
 - (a) sections 38 to 39A (which relate to ascertaining income, etc); and
 - (b) sections 40AA to 44A (which permit elections for adjusted income to be assessed using estimated income).

11 Section 35A amended (Living allowance)

- (1) In section 35A(1)(a), after “determined”, insert “as at 1 January in the immediately preceding child support year.”.

- (2) In section 35A(2)(b), after “for a person granted a supported living payment under subpart 4 of Part 2 of the Social Security Act 2018”, insert “who is, for the purposes of that benefit, a single beneficiary with 1 or more dependent children”.

12 Section 35B amended (Dependent child allowance)

After section 35B(2), insert:

- (2A) However, if no child expenditure table applies because at least 1 child is aged 0 to 12 and 1 or 2 children are aged 13 or over, e is the amount, determined in accordance with the child expenditure table that would apply to the parent in respect of the dependent child if all of the parent’s dependent children were the same age as 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 income of the parent, minus the parent’s living allowance; and
 - (b) the total number of the parent’s dependent children.
- (2B) However, the Commissioner may make modifications to the child expenditure amount for the child that the Commissioner considers necessary or desirable if the Commissioner believes on reasonable grounds that—
- (a) there are exceptional circumstances (for example, exceptional complexity of care arrangements for the parent’s dependent children); and
 - (b) applying the provisions of this section without modification would result in an unjust or inequitable outcome (for example, an apportionment of costs that is disproportionate to the amount of expenditure attributable to the dependent child).

13 Section 38 amended (Application of assessments under Income Tax Act 1976 or Tax Administration Act 1994)

- (1) In section 38(1), replace “the Income Tax Act 1976 (other than an assessment made under section 21 of that Act” with “an income tax Act (other than an assessment made where there has been default in furnishing returns)”.
- (2) In section 38(2), (3)(a), (4), (5), and (6)(a), replace “the Income Tax Act 1976” with “an income tax Act” in each place.
- (3) After section 38(7), insert:
- (8) In this section, unless the context otherwise requires,—
- assessment made where there has been default in furnishing returns** means an assessment made if any person makes default furnishing a return, including by—
- (a) providing information in a return or an account that is not likely to be correct; or

- (b) providing a return that the Commissioner is not otherwise satisfied with, or
- (c) not making a return where the Commissioner has reason to suppose that the person is a taxpayer

income tax Act means all or any of the Income Tax Act 1976, the Income Tax Act 1994, the Income Tax Act 2004, and the Income Tax Act 2007.

14 Section 40AA amended (Interpretation for purposes of sections 40 to 45)

- (1) In section 40AA, definition of **election period**, after paragraph (b), insert:
 - (c) if notice of the election is given after the end of the child support year under section 40(8), the period that starts on the first day of the month in which the formula assessment begins and ends on the last day of that child support year
- (2) In section 40AA, insert in its appropriate alphabetical order:
 - reconciliation period** has the meaning given in section 44(3D)
- (3) In section 40AA, definition of **year-to-date income**, replace “notice of an election is given” with “election period starts”.

15 Section 40 amended (Estimated taxable income)

- (1) In section 40(1), delete “relating to that child support year”.
- (2) After section 40(3)(b), insert:
 - (c) if notice of the election is given after the child support year to which it relates, state—
 - (i) the person’s year-to-date income; and
 - (ii) the person’s estimated income for the election period.
- (3) After section 40(6), insert:
 - (7) Subsection (8) applies to any person who receives an assessment unless they already have an existing assessment of child support.
 - (8) The person may make an election after the end of a child support year to which the election relates, provided the election is received by the Commissioner on or before the 28th day after notification of the assessment.
 - (9) If an election is made after the end of a child support year under subsection (8), this section applies as if separate elections were made for each child support year to which the assessment relates.

Section 15(2): amended, on 31 March 2022, by section 269(2) of the Taxation (Annual Rates for 2021–22, GST, and Remedial Matters) Act 2022 (2022 No 10).

16 Section 44 amended (End-of-year reconciliation)

Replace section 44(1) to (3) with:

- (1) For the purpose of determining whether a person has, or has been, underpaid or overpaid child support in a reconciliation period (**period A**), after the end of the child support year to which an election relates, the Commissioner must complete an assessment for the person who made the election (**person A**), treating the amount determined under subsection (2) or (3B) as person A's adjusted income.
- (1A) Subsections (2) and (3) apply if period A is the only election period, or the last election period, in the child support year.
- (2) The amount to be treated as person A's adjusted income for the purposes of the assessment is,—
- (a) if the actual income earned by person A during the year is equal to or less than the year-to-date income specified in the notice of election, nil; or
 - (b) if the actual income earned by person A during the year is more than the year-to-date income specified in the notice of election, the lesser of the following:
 - (i) person A's actual income earned in period A (which is the actual income earned in the full year less the year-to-date income specified in the notice of election), annualised in accordance with the formula in subsection (3) (which gives the **annualised actual income in the reconciliation period**):
 - (ii) person A's original adjusted income.
- (3) The formula for annualising person A's actual income in a reconciliation period is—
- $$(a \div b) \times 365$$
- where—
- a is the actual income earned during the reconciliation period
 - b is the number of days in the reconciliation period.
- (3A) Subsections (3B) and (3C) apply if period A is a period that is not referred to in subsection (1A).
- (3B) The amount to be treated as person A's adjusted income for the purposes of the assessment is,—
- (a) if the actual income earned by person A during the year is equal to or less than the year-to-date income specified in the notice of election, nil; or
 - (b) if the actual income earned by person A during the year is more than the year-to-date income specified in the notice of election, the lesser of the following:

- (i) person A's actual income earned in period A, annualised in accordance with the formula in subsection (3C) (which gives the **annualised actual income in the reconciliation period**):
- (ii) person A's original adjusted income.
- (3C) The formula for annualising person A's actual income in a reconciliation period is—
- $$((a - z) \div b) \times 365$$
- where—
- a is the year-to-date income specified in the estimate for the period that immediately succeeds period A
- z is the year-to-date income specified in the estimate for period A
- b is the number of days in the reconciliation period.
- (3D) In this section, unless the context otherwise requires,—
- reconciliation period**, in relation to an election, means a period that—
- (a) starts on,—
- (i) if the notice of the election is given before the start of the child support year, the start of the child support year; or
- (ii) otherwise, the first day of the month in which the notice is given; and
- (b) ends with the close of—
- (i) the last day of the month before any other immediately subsequent election period starts in relation to another election; or
- (ii) otherwise, the last day of the child support year.

17 Section 44A amended (Determining income amount if no tax return filed)

Replace section 44A(2) with:

- (2) Where this section applies, the Commissioner must determine that the amount to be treated as the person's adjusted income for the purpose of the assessment under section 44(2) or (3B) is the same as the person's original adjusted income, unless the Commissioner is satisfied that there is reasonable cause for the failure to provide the return of income.

Amendments to Part 5 (assessment of child support and domestic maintenance)

18 New section 81A inserted (Amendments of assessments arising from living circumstances existing at time initial assessment made)

After section 81, insert:

81A Amendments of assessments arising from living circumstances existing at time initial assessment made

- (1) This section applies if—
 - (a) the Commissioner made an assessment on the basis that certain living circumstances existed at the time of assessment; and
 - (b) the recipient of the assessment advises the Commissioner that the circumstances did not exist at the time of assessment; and
 - (c) section 82 does not apply.
- (2) The Commissioner may backdate any amendment made under section 87 to the time when the assessment begins if the recipient of the assessment advises the Commissioner within the period of 28 days beginning with the date of the notice of assessment.
- (3) The Commissioner may also backdate any amendment made under section 87 to the time when the assessment begins if the recipient of the assessment—
 - (a) is a liable parent, and the backdating has the effect of increasing the amount of the parent’s child support liability;
 - (b) is a receiving carer, and the backdating has the effect of decreasing the amount of child support payable in respect of that carer.
- (4) Otherwise, an amendment of the assessment under section 87 is effective only from the date on which the recipient advises the Commissioner.

19 Section 87 amended (Amendment of assessments)

After section 87(6), insert:

- (7) This section is subject to section 87A.

20 New section 87A inserted (Four-year time bar for amendment of certain assessments)

After section 87, insert:

87A Four-year time bar for amendment of certain assessments

- (1) Despite section 87, the Commissioner may amend an assessment only—
 - (a) before the expiry of the fourth child support year after the end of the child support year in which the assessment was given; or
 - (b) as a result of information or an application that was received by the Commissioner before the expiry of that fourth child support year; or
 - (c) if an exception in subsection (2) or (3) applies.
- (2) An exception applies if—
 - (a) the Commissioner is of the opinion that information provided by a person is fraudulent or wilfully misleading; or

- (b) the Commissioner is of the opinion that information provided by a person does not mention income that is of a particular nature, or that was derived from a particular source, and in respect of which information is required to be provided; or
 - (c) an assessment is made under subpart 4 of Part 5A (which relates to victims of sex offences).
- (3) An exception also applies if—
- (a) a liable person, child, or payee to whom the assessment relates has died; or
 - (b) a person is not a parent of the child; or
 - (c) reassessment is necessary to avoid double liability of a liable person who has paid financial support in an overseas jurisdiction in respect of the same child or payee and period; or
 - (d) a court order is received that applies to an earlier period; or
 - (e) a new assessment is made in relation to a qualifying child (for example, because a paternity order is provided) and it results in a reassessment of an existing child support assessment in relation to another qualifying child or children; or
 - (f) the Commissioner did not meet the requirements of section 88 (which relates to notice of assessment) or section 89 (which relates to notification).
- (4) This section does not otherwise restrict rights in respect of review, objection, or appeal under other Parts of this Act.

Compare: 1994 No 166 s 108

21 Section 88 amended (Notice of assessment of formula assessment of child support)

After section 88(3), insert:

- (3A) Any notice of assessment to which section 81A(2) could apply must specifically draw the attention of the recipient to the 28-day time limit for advising the Commissioner of any living circumstances that existed at the time when the assessment was made but that appear not to have been taken into account by the Commissioner.

Amendments to Part 5A (exemptions)

22 Section 89A amended (Outline)

After section 89A(1)(a), insert:

- (aa) for persons suffering from long-term periods of illness, if certain income criteria are met:

23 Section 89B amended (Definitions for this Part)

- (1) In section 89B, definition of **hospital patient**, replace paragraph (b) with:
 - (b) a resident in a treatment centre within the meaning of the Substance Addiction (Compulsory Assessment and Treatment) Act 2017; or
- (2) In section 89B, definition of **hospital patient**, after paragraph (b), insert:
 - (c) a person in an overseas jurisdiction who is equivalent to a patient referred to in paragraph (a) or to a resident referred to in paragraph (b)
- (3) In section 89B, insert in its appropriate alphabetical order:

period of illness means the continuous period during which a person is suffering from an illness or injury
- (4) In section 89B, definition of **prisoner**, after paragraph (b), insert:
 - (c) in legal custody in an overseas jurisdiction that is equivalent to legal custody referred to in paragraph (a) or (b)

24 Subpart 2 heading in Part 5A amended

In Part 5A, in the subpart 2 heading, after “hospital patients,”, insert “persons suffering from long-term periods of illness,”.

25 Cross-heading above section 89C amended

In the cross-heading above section 89C, after “*hospital patients*”, insert “*and persons suffering from long-term periods of illness*”.

26 Section 89C amended (Exemption for long-term hospital patients)

In section 89C(1)(a)(ii), after “hospital patients”, insert “or an equivalent benefit in an overseas jurisdiction”.

27 New section 89CA inserted (Exemption for persons suffering from long-term periods of illness)

After section 89C, insert:

89CA Exemption for persons suffering from long-term periods of illness

- (1) A liable person is eligible for an exemption from the payment of financial support for the whole, or a part, of a long-term period of illness of that person if—
 - (a) the person’s income for that whole period, or that part, will be, or was, nil or will be, or was, calculated only from income consisting solely of income from investments; and
 - (b) the person’s income from investments (if any) during that whole period, or that part, did not, or will not,—
 - (i) exceed an average amount per week in that whole period, or that part, that is equal to the relevant minimum annual rate of financial support, divided by 52; and

- (ii) if that whole period, or that part, is 1 or more full child support years in duration, exceed, in a child support year in that whole period, or that part, the relevant minimum annual rate of financial support; and
 - (c) the long-term period of illness results in the person being unable to engage in paid work; and
 - (d) the person applies for the exemption in accordance with section 89H.
- (2) For the purposes of subsection (1)(a), a liable person's income during a long-term period of illness does not include any amounts received by the person during that period for, or in respect of, any time up to and including the day on which the long-term period of illness began.
- (3) This section is subject to sections 89F and 89G.

28 Section 89D amended (Exemption for long-term prisoners)

In section 89D(1)(a)(ii), after “Corrections Act 2004”, insert “or equivalent employment in an overseas jurisdiction”.

29 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 “Social Security Act 2018”, insert “or an equivalent benefit in an overseas jurisdiction”.
- (2) After section 89F(1)(a)(i), insert:
- (ia) in the case of an exemption under section 89CA, the person receives any income (subject to section 89CA(2)) other than from investments; or
- (3) Replace section 89F(1)(a)(ii) with:
- (ii) in the case of an exemption under section 89D or 89E, the person receives any income (subject to section 89D(1A)) other than from investments or from employment under section 66 of the Corrections Act 2004 or equivalent employment in an overseas jurisdiction; or
- (4) After section 89F(2), insert:
- (2A) Also, in the case of an exemption under section 89CA, if a liable person is receiving a benefit at the start of that person's period of illness, that benefit does not prevent the exemption from applying after the person stops receiving that benefit for the whole, or a part of, the rest of the child support year in which that exemption applies.
- (5) In section 89F(3), definition of **relevant period**, after paragraph (a), insert:
- (aa) in the case of an exemption under section 89CA, means the period of illness that is in the child support year and during which the person would,

but for an exemption under this subpart, be liable to pay financial support; and

30 Section 89G amended (Other restrictions on application of exemptions)

- (1) After section 89G(1)(a), insert:
 - (aa) the day on which the relevant period of illness ends (in the case of an exemption under section 89CA):
- (2) After section 89G(3)(a), insert:
 - (aa) section 89CA is made under section 89H after the day on which the relevant period of illness ends, the exemption does not apply at any time before the commencement of this paragraph:

31 Section 89H amended (Applications for exemptions under this subpart)

- (1) After section 89H(1)(b)(i), insert:
 - (ia) the expiry of 3 months after the day on which the relevant period of illness ends (in the case of an application for an exemption under section 89CA); or
- (2) After section 89H(1)(c), insert:
 - (ca) in the case of an application for an exemption under section 89CA, include evidence, as reasonably required by the Commissioner, to satisfy the Commissioner that the applicant has a long-term period of illness during the period to which the application relates; and
- (3) After section 89H(2)(a), insert:
 - (aa) section 89CA may be made in relation to the whole of the long-term period of illness or 1 or more parts of that whole period:

32 Subpart 3 heading in Part 5A amended

In Part 5A, in the subpart 3 heading, after “hospital patients,” insert “persons suffering from long-term periods of illness.”

33 Section 89Z amended (Grant of exemption to victim of sex offence)

In section 89Z(4), replace “section 85K” with “section 18H”.

Amendments to Part 6A (departure from formula assessment of child support initiated by liable parent or receiving carer)

34 New section 96BA inserted (Four-month time limit for certain applications that are time-barred under section 87A)

After section 96B, insert:

96BA Four-month time limit for certain applications that are time-barred under section 87A

- (1) An application under section 96B that asks for a determination in relation to a time-barred period must be received by the Commissioner within 4 months after the date on which the latest notice of assessment in respect of that period is given by the Commissioner to the applicant.
- (2) In this section, a **time-barred period** means the period in section 87A after which the Commissioner may not amend an assessment unless an exception under that section applies.

35 Section 96D amended (Determinations that may be made)

Repeal section 96D(1)(bb).

Amendments to Part 7 (jurisdiction of courts in relation to child support and domestic maintenance)

36 Section 105 amended (Matters as to which court must be satisfied before making order)

Repeal section 105(2)(e) and the heading above section 105(2)(e).

37 Section 106B repealed (Further provision on orders for offsetting of liabilities situations)

Repeal section 106B.

38 Cross-heading above section 116 amended

In the cross-heading above section 116, replace “*Urgent maintenance orders and suspension*” with “*Suspension*”.

39 Section 116 repealed (Urgent maintenance orders)

Repeal section 116.

Amendments to Part 8 (collection of financial support)

40 Section 129 amended (Right to choose voluntary automatic deductions or other payment method)

In section 129(1), replace “sections 130 and 131” with “sections 129A to 131”.

41 New section 129A inserted (Newly liable persons to pay financial support by automatic deduction)

After section 129, insert:

129A Newly liable persons to pay financial support by automatic deduction

- (1) This section applies to a liable person who receives an assessment unless—

- (a) the person is already paying financial support under this Act (for example, in respect of another child) by another payment method acceptable to the Commissioner; and
 - (b) the person is not in default of their obligations under this Act.
- (2) Section 129 does not apply and payments of financial support must be paid—
- (a) by way of automatic deduction under Part 10 from source deduction payments paid by an employer of the person; or
 - (b) if the Commissioner considers automatic deduction inappropriate in the person’s case, by another payment method acceptable to the Commissioner.

42 Section 134 amended (Penalties for late payment of financial support debts)

- (1) In the heading above section 134(1), delete “*(initial and incremental)*”.
- (2) In section 134(1), replace “(2), (3), (4), (5), or (6)” with “(2) or (3)”.
- (3) Replace section 134(2) and the heading above section 134(2) with:

Late payment penalty: due date

- (2) At the expiry of the due date, the penalty is an amount equal to 2% of the amount of financial support remaining unpaid at the expiry of the due date.
- (4) In the heading above section 134(3), replace “*Initial late payment penalty: seventh*” with “*Late payment penalty: 27th*”.
- (5) In section 134(3), replace “seventh” with “27th”.
- (6) Repeal section 134(4), (5), and (6) and the headings above those subsections.

43 New section 134AAA inserted (Sixty-day grace period before penalties apply)

After section 134, insert:

134AAA Sixty-day grace period before penalties apply

- (1) This section applies to a liable person who receives an assessment unless—
 - (a) the person is already a liable person under an existing assessment; or
 - (b) the assessment is for a period in respect of which the person was a liable person.
- (2) The person is not liable to pay to the Commissioner a penalty under section 134 in respect of a debt that becomes due and payable during a 60-day grace period.
- (3) The grace period starts,—
 - (a) if the person is liable to pay financial support, on the first date on which a debt becomes due and payable under the assessment by the liable per-

son in respect of a period starting on or after the commencement of this section:

- (b) if the person is subject to a nil assessment, on the date of the assessment.
- (4) The grace period ends with the expiry of 60 days after the grace period starts.

44 Section 134B amended (Act’s provisions on liable person’s financial support debt also apply to payees’ debts arising from overpayments)

In section 134B, replace “135N” with “135G”.

45 Section 135 replaced (Interpretation for purposes of sections 135AA to 135O)

Replace section 135 with:

135 Interpretation for purposes of sections 135A to 135G

For the purposes of sections 135A to 135G, unless the context otherwise requires,—

penalty means a penalty that is imposed under section 134, excluding a pre-2021 penalty

pre-2021 penalty means a penalty that is imposed under section 134 before 1 April 2021.

46 Section 135A and cross-heading replaced

Replace section 135A and the cross-heading above section 135A with:

Discretionary relief in respect of penalties and pre-2021 penalties

135A Application of sections 135AB to 135G

- (1) Sections 135AB to 135G apply in relation to a penalty or pre-2021 penalty that is payable by a liable person in relation to a financial support debt.
- (2) The Commissioner may grant relief to a liable person on any of the grounds specified in sections 135AB to 135G by—
 - (a) writing off the whole or part of a penalty or pre-2021 penalty; or
 - (b) if a penalty or pre-2021 penalty has been paid, in whole or in part, refunding to the liable person the whole or any part of that penalty or pre-2021 penalty that has been paid, with or without the writing off of any part of that penalty or pre-2021 penalty that has not been paid.

47 New section 135AB inserted (Discretionary relief for pre-2021 penalties)

After section 135A, insert:

135AB Discretionary relief for pre-2021 penalties

The Commissioner may grant relief to a liable person from the payment of pre-2021 penalties in the manner prescribed by section 135A if the Commissioner is satisfied that it would be fair and reasonable to do so.

48 New section 135DA inserted (Discretionary relief if recovery is inefficient use of Commissioner's resources)

After section 135D, insert:

135DA Discretionary relief if recovery is inefficient use of Commissioner's resources

- (1) This section applies in relation to penalties that have been imposed in respect of any part of the benefit component of an amount of child support that has been written off by the Commissioner under section 180A(1)(b)(ii) on the ground that recovery would involve an inefficient use of the Commissioner's resources.
- (2) The Commissioner may grant relief to a liable person in the manner prescribed by section 135A if the Commissioner is satisfied that recovery of the penalties would involve an inefficient use of the Commissioner's resources.

49 Section 135FA repealed (Discretionary relief from incremental penalties unpaid before agreement entered into on or after 1 April 2016)

Repeal section 135FA.

50 Section 135G amended (Discretionary relief from payment of incremental penalties)

- (1) In the heading to section 135G, replace “**from payment of incremental penalties**” with “**if serious hardship**”.
- (2) Replace section 135G(1) with:
 - (1) The Commissioner may grant relief to a liable person from the payment of penalties in the manner prescribed by section 135A if the Commissioner is satisfied that recovery of the penalties would place the liable person in serious hardship.
- (3) In section 135G(2), delete “(b)(i)”.
- (4) In section 135G(3), replace “sections 135GA and” with “section”.

51 Sections 135GA to 135N and cross-headings repealed

Repeal sections 135GA to 135N, and the cross-headings above sections 135GB and 135J.

52 Section 135O amended (Refunds paid out of Crown Bank Account without further appropriation)

In section 135O, replace “135N” with “135G”.

53 Section 137 amended (Order in which payments to be applied by Commissioner)

Repeal section 137(a).

54 Section 151AA amended (Overpayments to payees on or after 1 April 2016)

In section 151AA(6), replace “135N” with “135G”.

*Amendments to Part 9 (payment of financial support)***55 Section 152B amended (Offsetting child support payments)**

(1) Replace section 152B(1) with:

(1) This section applies if 2 persons are each liable to pay in respect of the other an amount of child support under a formula assessment (whether or not those amounts have become due and payable).

(1A) The Commissioner may at any time offset one amount against the other if the Commissioner is satisfied that it would be just and equitable to do so.

(2) In section 152B(2), replace “liability of a parent” with “amount”.

(3) After section 152B(2), insert:

(3) Subsection (4) applies if—

(a) the power to offset should not have been exercised because of subsection (2); and

(b) the reversal of the offsetting results in a requirement to pay an additional amount of child support.

(4) The parent must pay the additional amount within 30 days after the date on which the notice of reversal is given to the parent.

*Amendment to Part 14 (general provisions)***56 Section 218 amended (Meaning of ordinarily resident in New Zealand)**

After section 218(5), insert:

(6) The Commissioner may treat a child as ordinarily resident in New Zealand if the Commissioner is satisfied that the child is personally present in New Zealand and is likely to be ordinarily resident in New Zealand within the meaning of this section.

(7) The Commissioner may treat a child as not ordinarily resident in New Zealand if the Commissioner is satisfied that the child is not personally present in New Zealand and is not likely to be ordinarily resident in New Zealand within the meaning of this section.

(8) The Commissioner may treat a person other than a child as ordinarily resident in New Zealand if the Commissioner is satisfied that the person is personally

- present in New Zealand and intends to be ordinarily resident in New Zealand within the meaning of this section.
- (9) The Commissioner may treat a person other than a child as not ordinarily resident in New Zealand if the Commissioner is satisfied that the person is not personally present in New Zealand and does not intend to be ordinarily resident in New Zealand within the meaning of this section.
- (10) Subsections (6) to (9) apply despite subsections (2) to (4).

Part 2

Amendments to Schedules of principal Act

57 Schedule 1 amended

In Schedule 1,—

- (a) insert the Part 4 set out in Schedule 2 of this Act as the last part; and
- (b) make all necessary consequential amendments.

58 Schedule 3 amended

In Schedule 3, table, repeal the eighth and ninth columns and the headings above those columns.

Schedule 1

References to “taxable income” replaced with “income”

s 9(2)

Section 2(1), definitions of **adjusted taxable income, income amount order, and last relevant tax year**

Section 35B(2)

Section 36(4)

Cross-heading after section 36D

Section 38(1) to (4), (5)(b), and (6)(a)

Heading to section 39

Section 39(1) and (3)

Cross-heading above section 40AA

Section 40AA, definitions of **annualised estimated taxable income, election, estimated taxable income, original adjusted taxable income, and year-to-date income**

Heading to section 40

Section 40(1) to (4)

Section 41(1)

Section 42(2)

Section 43(1)

Section 44A(1)

Section 88A(1) and (2)

Section 105(2) and (3)

Section 106(1)

Section 106A

Schedule 2

New Part 4 inserted into Schedule 1

s 57

Part 4

Provisions relating to Child Support Amendment Act 2021

13 Interpretation in this Part

In this Part,—

2021 Amendment Act means the Child Support Amendment Act 2021
commencement, in relation to any provision of the 2021 Amendment Act, means the commencement of that provision

old, in relation to a provision, means the provision as if the amendments made to the provision by the 2021 Amendment Act had not been made

old Act means the Child Support Act 1991 as if the amendments made by the 2021 Amendment Act had not been made.

14 2021 Amendment Act does not have retrospective effect

Except as provided in this Part and in section 2(2) of the 2021 Amendment Act, the old Act continues to apply in relation to financial support in respect of a child support year ending before 1 April 2021.

15 Amendments to section 5 (Children who qualify for child support)

- (1) The amendment to section 5(1) (financial independence qualification) made by section 5(1) of the 2021 Amendment Act applies only to a child who turns 16 on or after commencement of section 5(1) of the 2021 Amendment Act.
- (2) The amendment to section 5 (age qualification) made by section 5(2) of the 2021 Amendment Act applies only to a child who turns 18 on or after commencement of section 5(2) of the 2021 Amendment Act.
- (3) The old section 5 continues to apply if the child turned 18 before commencement of section 5(2) of the 2021 Amendment Act as if section 5(2) of the 2021 Amendment Act had not been enacted.
- (4) The old section 5(4) continues to apply in relation to the child support year starting on 1 April 2015.

16 Amendment to section 19 (When liability to pay child support starts)

- (1) The amendment to section 19 made by section 6 of the 2021 Amendment Act applies only to applications for formula assessment of child support that are received by the Commissioner on or after commencement of section 6 of the 2021 Amendment Act.

- (2) The old section 19 continues to apply if the application was made before commencement of section 6 of the 2021 Amendment Act.
- 17 Insertion of section 81A (Amendments of assessments arising from living circumstances existing at time initial assessment made)**
- Section 81A (as inserted by section 18 of the 2021 Amendment Act) applies on or after commencement, including if the assessment was made before commencement of section 18 of the 2021 Amendment Act.
- 18 Insertion of section 87A (Four-year time bar for amendment of certain assessments)**
- Section 87A (as inserted by section 20 of the 2021 Amendment Act) applies in respect of all child support years, whether ending before commencement or on or after commencement of section 20 of the 2021 Amendment Act.
- 19 Savings provision about orders for offsetting of liabilities situations**
- The repeal of sections 105(2)(e) and 106B by sections 36 and 37 of the 2021 Amendment Act does not affect—
- (a) any order made under section 106B before commencement of sections 36 and 37 of the 2021 Amendment Act, which continues in full force and effect; or
 - (b) the power of the court in any proceedings that were commenced under section 103B or 104 before commencement of sections 36 and 37 of the 2021 Amendment Act but that were not completed, and the court may make an order under section 106 on the ground in section 105(2)(e) as if sections 105(2)(e) and 106B had not been repealed.
- 20 Amendments to section 134 (Penalties for late payment of financial support debts)**
- The amendments to section 134 made by section 42 of the 2021 Amendment Act apply to a financial support debt if the expiry of the seventh day after the due date falls on or after commencement of section 42 of the 2021 Amendment Act, but do not apply to a financial support debt if the expiry of the seventh day after the due date falls before commencement of that provision.
- 21 Savings provision about relief from penalty if full or substantial compliance with payment arrangement entered into or made within 3-month period**
- Section 135GB continues to apply during the period beginning on 1 April 2021 and ending with the commencement of section 43 of the 2021 Amendment Act (sixty-day grace period before penalties apply) as if section 135GB had not been repealed by the 2021 Amendment Act and as if section 135GB applies both to initial late payment penalties that are imposed under old section 134 and to penalties that are imposed under new section 134.

22 Amendment to section 152B (Offsetting child support payments)

The amendment to section 152B made by section 55 of the 2021 Amendment Act applies to all child support years, regardless of the period in which the liability to pay financial support arose or when an amount of financial support became due and payable.

Notes

1 *General*

This is a consolidation of the Child Support Amendment Act 2021 that incorporates the amendments made to the legislation so that it shows the law as at its stated date.

2 *Legal status*

A consolidation is taken to correctly state, as at its stated date, the law enacted or made by the legislation consolidated and by the amendments. This presumption applies unless the contrary is shown.

Section 78 of the Legislation Act 2019 provides that this consolidation, published as an electronic version, is an official version. A printed version of legislation that is produced directly from this official electronic version is also an official version.

3 *Editorial and format changes*

The Parliamentary Counsel Office makes editorial and format changes to consolidations using the powers under subpart 2 of Part 3 of the Legislation Act 2019. See also PCO editorial conventions for consolidations.

4 *Amendments incorporated in this consolidation*

Taxation (Annual Rates for 2021–22, GST, and Remedial Matters) Act 2022 (2022 No 10): section 269

Child Support Amendment Act 2021 Commencement Order 2021 (LI 2021/301)