

## CHILD SUPPORT AMENDMENT BILL

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### EXPLANATORY NOTE

THIS BILL amends the Child Support Act 1991. The principal features of the Bill are—

- (a) The introduction of administrative review procedures to allow parents to apply to the Commissioner of Inland Revenue for a variation of their formula assessment child support without having to go to the Family Court;
- (b) Fairer provisions applying to a custodian of a child in respect of whom an unsupported child's benefit is paid;
- (c) Provision to allow certain social security beneficiaries to offset child support liabilities in split and shared custody cases, in the same way as non-beneficiaries;
- (d) Provision to allow the interest rate in respect of underestimated child support to be set by the Governor-General by Order in Council;
- (e) Amendment of the provisions relating to payments into, and out of, the Child Support Trust Account. Initially payments are made into the Crown Bank Account.

#### *Administrative Review (Clauses 5 and 6)*

The new administrative review procedures are based on the Australian procedures, which were introduced in 1992.

A summary of the proposed new procedures is as follows:

- (a) Either the liable or custodial parent can apply to the Commissioner for a determination that the formula assessment child support be departed from in the particular case;
- (b) The application must be made in writing, setting out the grounds on which the application is made;
- (c) The grounds are the same departure order grounds as those applied by the Court;
- (d) The other party is notified that an application has been made and that he or she may request a copy of the application from the Commissioner;
- (e) The other party may make a reply, to confirm or contest details given by the applicant;
- (f) The Commissioner may, but is not compelled to, conduct any inquiry into the matter:

- (g) Neither party can be compelled to appear in the presence of the other party:
- (h) No legal representation is allowed at the hearing:
- (i) The parties to a hearing are the liable parent and the custodian entitled to child support:
- (j) The Commissioner is not bound by any rules of evidence:
- (k) If no ground is met, or if the Commissioner considers the issue to be too complex to deal with, a determination may be refused:
- (l) Subsequent applications can be made, if the conditions are met:
- (m) There is a subsequent right to apply to the Court for a departure order, if either party is unhappy with the determination made by the Commissioner.

The role of the Family Court will be—

- (a) To hear applications for departure orders—
  - (i) Where the Commissioner has already made a determination; or
  - (ii) Where the Commissioner has refused to make a determination;
  - or
  - (iii) Where the Court is dealing with the parties on another matter such as custody or property; or
  - (iv) Where the application relates to child support payable in the child support year ending on 31 March 1994 or any earlier child support year; and
- (b) To consider any other applications and appeals as set out in Part VII of the Act (such as appeals against the Commissioner's decisions on objections, applications for lump sum orders, and urgent maintenance orders).

The new administrative review procedures are to come into force on **1 July 1994**. Departure order applications filed with the Court before that date that are still pending may be withdrawn so that an application can instead be made to the Commissioner if the applicant so wishes.

#### *Unsupported Child's Benefit*

*(Clauses 2, 8 (2), 9 (2))*

Section 9 of the principal Act provides that any eligible custodian who is in receipt of a social security benefit (including an unsupported child's benefit) must apply for child support.

The proposed amendment provides that a custodian who is in receipt of an unsupported child's benefit but no other social security benefit is required to apply for child support only in respect of the child for whom the unsupported child benefit is paid and not in respect of other children for whom no benefit is paid.

Sections 142 and 143 of the principal Act provide for payment of child support to social security beneficiaries. Child support payments are passed on to the custodian less an amount equal to the social security benefit. The proposed amendments ensure that where a custodian cares for both a child in respect of whom an unsupported child's benefit is paid (child A) and another child (child B), the pass-on to the custodian will be assessed separately for the 2 children. Child support paid in respect of child B will be passed on to the custodian less an amount equal to any benefit payable in respect of the custodian and that child (but without deduction of an amount equal to the unsupported child's benefit). Child support paid in respect of child A will be passed on to the custodian less an amount equal to the unsupported child's benefit (but without deduction of an amount equal to other benefits payable in respect of the custodian and child B).

*Cross Payments**(Clause 3)*

Sections 34 and 35 of the principal Act provide for offsetting of liabilities in split and shared custody cases, where neither parent is a social security beneficiary (as that term is defined in the Act).

It is proposed that the offsetting be extended to cases where one parent is a beneficiary, if the parent who is not a beneficiary so elects. The effect will be that the amount to be deducted from the benefit will reduce the amount payable by the non-beneficiary. Amounts paid by the non-beneficiary will be passed on to the beneficiary only in the limited circumstances which already apply.

*Interest on Underestimations**(Clauses 4 and 12)*

Where a liable parent has made an election that his or her child support income be based on estimated taxable income for the current year (instead of actual income in the last relevant income year), and has underestimated that income, interest is payable by the liable parent on the amount of underpaid child support. At present, the rate of interest is linked to the rate payable in respect of underpayments of provisional tax. The proposed amendments provide for the separation of the 2 rates of interest. The Governor-General is empowered to set the interest rate in respect of underestimated child support by Order in Council, independently of the rate for underpayments of provisional tax. By way of a transitional provision, the first Order in Council may apply from the beginning of the 1994/1995 child support year.

*Child Support Trust Bank Account**(Clauses 7, 10, and 11)*

Difficulties have arisen with the intended operation of the Child Support Trust Bank Account. It is not practicable for child support payments which are to be passed to the custodian to be paid directly into the Trust Bank Account because it is not possible, at the point of receipt, to distinguish between those payments and payments due to the Crown. All child support payments therefore initially need to be banked in the Crown Bank Account.

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## A BILL INTITULED

**An Act to amend the Child Support Act 1991**

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

**1. Short Title and commencement**—(1) This Act may be cited as the Child Support Amendment Act 1994, and shall be read together with and deemed part of the Child Support Act 1991\* (hereinafter referred to as the principal Act).

(2) Except as otherwise provided in sections 5 (2), 6 (2), 8 (3), and 9 (4), this Act shall come into force on the date on which it receives the Royal assent.

**2. Custodian in receipt of social security benefit must apply for formula assessment**—Section 9 of the principal Act (as amended by section 2 of the Child Support Amendment Act 1993) is hereby amended by inserting, after subsection (1), the following subsection:

“(1A) Where a person is in receipt of an unsupported child’s benefit in respect of a child, but is not in receipt of any other social security benefit, subsection (1) of this section shall require the person to apply for a formula assessment of child support only in relation to the child or children in respect of whom the unsupported child’s benefit is paid.”

**3. Offsetting in split and shared custody situations**—The principal Act is hereby amended by repealing sections 34 and 35, and substituting the following sections:

**“34. Position where custody of 2 or more children is split between 2 liable parents**—(1) This section applies where—

“(a) A parent has 2 or more qualifying children; and

“(b) The parent has the ongoing daily care of any one or more of the children; and

“(c) Another parent has the ongoing daily care of the other child or children; and

“(d) The parent is liable to pay child support to the other parent under a formula assessment.

(2) Where neither of those parents is in receipt of a social security benefit, the annual rate of child support payable to the other shall be reduced (but not below 0) by the annual rate of child support that would (apart from this section) be payable by the other.

\*1991, No. 142

Amendments: 1992, No. 7; 1993, No.15

5 “(3) Where not more than one of those parents is in receipt of a social security benefit, the parent who is not in receipt of a social security benefit may, by written notice given to the Commissioner, elect that **subsection (2)** of this section shall apply, and the Commissioner shall reduce the annual rate of child support accordingly.

“**35. Position where liable parent shares custody of child**—(1) This section applies where—

- 10 “(a) A parent has one or more qualifying children; and  
 “(b) The parent shares the ongoing daily care of one or more of those children substantially equally with another person; and  
 “(c) The parent is liable to pay child support to the other person under a formula assessment.

15 “(2) In every case where this section applies, the annual rate of child support payable by the liable parent shall be calculated under section 29 of this Act as if in determining the child support percentage for the parent, every child to whom **paragraph (b)** of **subsection (1)** of this section applies were treated as  
 20 0.5 children, and the percentage differed with the number of children in respect of whom the person is a liable parent as follows:

25	“(a) 0.5 child	..	..	..	12 percent:
	“(b) 1 child	..	..	..	18 percent:
	“(c) 1.5 children	..	..	..	21 percent:
	“(d) 2 children	..	..	..	24 percent:
	“(e) 2.5 children	..	..	..	25.5 percent:
	“(f) 3 children	..	..	..	27 percent:
30	“(g) 3.5 children	..	..	..	28.5 percent:
	“(h) 4 or more children	..	..	..	30 percent.

35 “(3) In a case where the other person is also a liable parent of the child or children and neither liable parent is in receipt of a social security benefit, the annual rate of child support shall be reduced (but not below 0) by the annual rate of child support that would (apart from this subsection) be payable by the other.

40 “(4) Where not more than one of those parents is in receipt of a social security benefit, the parent who is not in receipt of a social security benefit may, by written notice given to the Commissioner, elect that **subsection (3)** of this section shall apply, and the Commissioner shall reduce the annual rate of child support accordingly.

45 “(5) The annual rate of child support payable by a person to whom both this section and **section 34** of this Act applies shall be calculated in accordance with this section.”

**4. Interest to be charged on underestimations**—Section 46 (1) of the principal Act is hereby amended by repealing the definition of the term “specified rate of interest”, and substituting the following definition:

“‘Specified rate of interest’, in relation to any day, means such rate percent per annum as may be specified by the Governor-General by Order in Council.” 5

**5. New Part VIa inserted**—(1) The principal Act is hereby amended by inserting, after Part VI, the following new Part:

“PART VIa 10

“DEPARTURE FROM FORMULA ASSESSMENT OF CHILD SUPPORT

“**96A. Commissioner may make determination**—The Commissioner may, in accordance with this Part of this Act, make a determination having the effect that all or some of the provisions of this Act relating to formula assessment of child support will be departed from in relation to a child. 15

Cf. Child Support (Assessment) Act 1989 (Aust.), s. 98A; Child Support Legislation Amendment Act 1992 (Aust.), s. 5

“**96B. Application for determination**—(1) A qualifying custodian or a liable parent may, by written application, ask the Commissioner to make a determination under this Part of this Act. 20

“(2) An application may be made—

“(a) Only if a formula assessment is in force in relation to the child, the qualifying custodian, and the liable parent concerned; and 25

“(b) Only in relation to child support payable in the child support year commencing on the **1st day of April 1994** or any later child support year; and 30

“(c) Subject to **section 96L** of this Act.

“(3) The parties to the application are the liable parent and the qualifying custodian.

Cf. Child Support (Assessment) Act 1989 (Aust.), s. 98B; Child Support Legislation Amendment Act 1992 (Aust.), s. 5 35

“**96C. Matters as to which Commissioner must be satisfied before making determination**—(1) Subject to this Part of this Act, if—

“(a) An application is made to the Commissioner under **section 96B** of this Act; and 40

“(b) The Commissioner is satisfied that—

“(i) One or more of the grounds for departure referred to in subsection (2) of this section exists or exist; and

“(ii) It would be—

5 “(A) Just and equitable as regards the child, the qualifying custodian, and the liable parent; and

“(B) Otherwise proper,—

10 to make a particular determination under this Part of this Act,—

the Commissioner may make the determination.

“(2) For the purposes of subsection (1) (b) (i) of this section,—

15 “(a) The grounds for departure are the same as the grounds for departure set out in section 105 (2) of this Act; and

“(b) Section 105 (2) (b) (i) of this Act has effect subject to section 105 (3) of this Act.

20 “(3) Subsections (4) to (6) of section 105 of this Act apply to the Commissioner in the exercise of his or her powers under this section as if—

“(a) Any reference in those subsections to the Court were a reference to the Commissioner; and

“(b) Any reference to an order were a reference to a determination.

25 Cf. Child Support (Assessment) Act 1989 (Aust.), s. 98c; Child Support Legislation Amendment Act 1992 (Aust.), s. 5

30 “96D. **Determinations that may be made**—(1) The Commissioner may make as a determination under this Part of this Act any decision that the Court could make as an order under section 106 (1) of this Act, and the following provisions shall apply, with necessary modifications, as if a determination were an order:

35 “(a) Section 98 (which sets the minimum liability in respect of child support):

“(b) Section 106 (2) to (4) (which relate to the orders that may be made):

“(c) Section 107 (which relates to implementation of orders).

40 “(2) The Commissioner shall give both parties, in writing, the reasons for making the determination (including the reasons for which the Commissioner is satisfied as required by section 105 (1) of this Act).



“(3) A contravention of **subsection (2)** of this section in relation to a determination does not affect the validity of the determination.

Cf. Child Support (Assessment) Act 1989 (Aust.), s. 98D;  
Child Support Legislation Amendment Act 1992 (Aust.),  
s. 5 5

“**96E. Requirements for application**—An application under **section 96B** of this Act must—

“(a) Be in writing; and

“(b) Set out the grounds on which the application is made. 10

Cf. Child Support (Assessment) Act 1989 (Aust.), s. 98E;  
Child Support Legislation Amendment Act 1992 (Aust.),  
s. 5

“**96F. Commissioner may refuse to make determination because issues too complex**—(1) If the Commissioner is satisfied, at any time after considering the application, that the issues raised by the application are too complex to be dealt with under this Part of this Act, the Commissioner may refuse to make the determination without taking any further action under this Part of this Act, and recommend that application be made to the Court for an order under Part VII of this Act. 15 20

“(2) The Commissioner shall give the applicant, in writing, the reasons for refusing to make the determination.

Cf. Child Support (Assessment) Act 1989 (Aust.), s. 98EA; 25  
Child Support Legislation Amendment Act (No. 2) 1992,  
(Aust.), s. 23

“**96G. Application disclosing no grounds etc. for making determination—how dealt with**—(1) If the Commissioner is satisfied, after considering the application, that— 30

“(a) There are no grounds for departing from the provisions of this Act relating to formula assessment of child support in relation to the child concerned; or

“(b) That the application seeks to reduce an assessment that has been set at the minimum liability,— 35

the Commissioner may refuse to make the determination without taking any further action under this Part of this Act.

“(2) The Commissioner shall give the applicant, in writing, the reasons for refusing to make the determination. 40

Cf. Child Support (Assessment) Act 1989 (Aust.), s. 98F;  
Child Support Legislation Amendment Act 1992 (Aust.),  
s. 5

“96H. **Other party to be notified**—(1) The Commissioner shall notify the other party to the application—

“(a) That an application has been made; and

5 “(b) That he or she may request a copy of the application and any accompanying documentation from the Commissioner; and

“(c) That he or she may make any representation (in this Part of this Act called a ‘reply’) regarding the application that he or she considers relevant.

10 “(2) Any reply to an application must—

“(a) Be in writing; and

“(b) Be filed with the Commissioner—

15 “(i) Within 14 days after the date on which the copy of the application and accompanying documentation is sent to the other party; or

“(ii) If no request is made for a copy of the application, within 14 days after the date on which the notification is sent.

20 “(3) The Commissioner shall send a copy of the reply and any accompanying documentation to the applicant.

“(4) Nothing in this section applies where the Commissioner refuses to make a determination under **section 96F** or **section 96G** or **section 96L (2)** of this Act.

25 Cf. Child Support (Assessment) Act 1989 (Aust.), s. 98G; Child Support Legislation Amendment Act 1992 (Aust.), s. 5; Child Support Legislation Amendment Act (No. 2) 1992, s. 24

30 “96I. **Procedure for dealing with application**—(1) In making a decision under this Part of this Act in relation to an application, the Commissioner—

“(a) May act on the basis of the application and the reply (if any) and any other information in the Commissioner’s possession; and

35 “(b) May, but (subject to **subsection (2)** of this section) is not required to, conduct any enquiries or investigations into the matter.

“(2) The Commissioner shall give an opportunity to the applicant and the other party to the application to appear before the Commissioner, and be heard by him or her, if they so wish.

“(3) Nothing in **subsection (2)** of this section—

40 “(a) Empowers the Commissioner to compel a party to an application to appear before the Commissioner in the presence of the other party; or

“(b) Applies where the Commissioner refuses to make a determination under **section 96F** or **section 96G** or **section 96L (2)** of this Act.

“(4) Notwithstanding **subsection (2)** of this section, where the other party to the application fails to file a reply or does not file a reply within the prescribed time, the Commissioner may refuse to hear that party. 5

“(5) Any hearing before the Commissioner, and any enquiry or investigation carried out by the Commissioner, is to be carried out as the Commissioner thinks fit and the Commissioner is not bound by any rules of evidence. 10

“(6) Nothing in section 125 of this Act (which relates to intervention in proceedings) shall apply to proceedings under this Part of this Act.

Cf. Child Support (Assessment) Act 1989 (Aust.), s. 98H; 15  
Child Support Legislation Amendment Act 1992 (Aust.),  
s. 5

“**96J. Circumstances in which representation or assistance at hearing may be approved**—(1) Subject to **subsection (2)** of this section, no party shall be entitled to be represented at a hearing by a representative unless it appears to the Commissioner to be proper in all the circumstances to so allow, and the Commissioner approves such representative. 20

“(2) The following parties may be represented by a representative who is approved by the Commissioner: 25

“(a) The Crown, if the representative is an officer or employee of the Crown:

“(b) A minor, or other person under disability:

“(c) Any other person, if the Commissioner is satisfied that for sufficient cause that person is unable to appear in person or is unable to present his or her case adequately. 30

“(3) No person proposed as a party’s representative shall be approved unless the Commissioner is satisfied that the person proposed has sufficient knowledge of the case and sufficient authority to bind the party. 35

“(4) The Commissioner may permit any person nominated by a party to be present at the hearing and to assist the party in the presentation of his or her case if it appears to the Commissioner to be proper in all the circumstances to so permit, and the Commissioner approves such person. 40

“(5) No person approved by the Commissioner under **subsection (4)** of this section shall be entitled to be heard at the

hearing, and the Commissioner may exclude any such person from the hearing at any time.

“(6) The Commissioner shall not—

5       “(a) Approve as a representative under **subsection (1)** or **subsection (2)** of this section; or

      “(b) Approve under **subsection (4)** of this section—  
any person who is, or has been, enrolled as a barrister and solicitor, or who, in the opinion of the Commissioner is, or has been, regularly engaged in advocacy work before other  
10 tribunals.

      “(7) Where the Commissioner approves any person under **subsection (1)** or **subsection (2)** or **subsection (4)** of this section, the Commissioner may impose in respect of any such appointment or approval such conditions as the Commissioner considers  
15 necessary to ensure that any other party to the proceedings is not substantially disadvantaged by that appointment or approval.

Cf. 1988, No. 110, s. 38 (2)–(8)

20       **“96K. Child support agreements entered into before determination made—**The Commissioner may not make a determination under this Part of this Act in relation to an application if, while the application is pending, the parties enter into an agreement in relation to the child support payable for the child in relation to whom the determination was sought and  
25 either—

      “(a) The agreement is a qualifying voluntary agreement that is accepted by the Commissioner under Part III of this Act; or

30       “(b) An election is made in accordance with section 27 of this Act to end the liability of the liable parent to pay child support in respect of the child under a formula assessment.

**“96L. Subsequent applications—**(1) Where a determination has been made under this Part of this Act, or an application has been heard by the Court under section 104 of this Act, in respect of a formula assessment of child support, an application may be made under this Part of this Act in respect of that assessment only if the Commissioner, in his or her discretion, is satisfied, after considering—  
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40       “(a) The current application and any accompanying documentation; and

      “(b) The previous application and any accompanying documentation and any matter taken into account

by the Commissioner or the Court in considering the previous application,—  
that either—

“(c) A new matter has been submitted in support of the application that was not submitted in support of the previous application; or 5

“(d) The application is made on a ground for departing from the formula assessment that is different from the ground or grounds on which the previous application was made. 10

“(2) If the Commissioner is not so satisfied, the Commissioner may refuse to make a determination, without taking any further action under this Part of this Act.

“(3) The Commissioner shall give the applicant, in writing, the reasons for refusing to make the determination. 15

Cf. Child Support (Assessment) Act 1989 (Aust.), s. 98L;  
Child Support Legislation Amendment Act 1992 (Aust.), s. 5

“96M. **Effect of pending applications**—Subject to section 96N of this Act, the fact that an application is made by any person under this Part of this Act does not suspend, interfere with, or affect— 20

“(a) Any formula assessment made in relation to the person; or

“(b) The obligation to pay child support; or 25

“(c) The right of the Commissioner to receive and recover child support.

Cf. Child Support (Assessment) Act 1989 (Aust.), s. 98M;  
Child Support Legislation Amendment Act (No. 2) 1992 (Aust.), s. 25 30

“96N. **Suspension of liabilities**—When an application has been made under this Part of this Act, a party to the application may apply to the Commissioner for a suspension order, and section 117 of this Act shall apply with necessary modifications as if references to the Court were references to the Commissioner. 35

“96O. **Commencement of determinations**—The Commissioner may, under this Part of this Act, make a determination expressed to be retrospective to such day as the Commissioner considers appropriate, not being a day that precedes the later of— 40

“(a) The 1st day of April 1994; or

“(b) The day on which the application for formula assessment to which the determination applies was made.

5       “96P. **Restriction of publication of reports**—(1) Section 124 of this Act (which restricts the publication of reports) applies to reports of any proceeding in respect of any application made under this Part of this Act as if the references to the leave of the Court that heard the proceedings were a reference to the leave of the Family Court.

10       “(2) Nothing in section 13 of the Inland Revenue Department Act 1974 shall prevent the publication of any such report—

      “(a) With the leave of the Family Court; or

      “(b) In accordance with section 124 (4) of this Act (as applied by subsection (1) of this section).”

15       (2) This section shall come into force on the **1st day of July 1994**.

**6. Amendments consequential on insertion of new Part VIA**—(1) The principal Act is hereby consequentially amended in the manner indicated in the Schedule to this Act.

(2) This section shall come into force on the **1st day of July 1994**.

20       **7. Payments into, and out of, Child Support Trust Bank Account**—The principal Act is hereby amended by repealing section 140, and substituting the following section:

      “140. (1) All amounts received by the Commissioner pursuant to this Act shall be paid into the Crown Bank Account.

25       “(2) There shall be paid into the Child Support Trust Bank Account out of the Crown Bank Account without further appropriation than this section such amount as is necessary to meet the payments required to be made under sections 141 to 145 of this Act.

30       “(3) The money standing to the credit of the Child Support Trust Bank Account shall be applied in making payments under sections 141 to 145 of this Act.”

**8. Payment of formula assessment child support to custodians who are social security beneficiaries**—

35       (1) Section 142 (f) of the principal Act is hereby amended by omitting the words “Pay into the Crown Bank Account”, and substituting the word “Deduct”.

(2) Section 142 of the principal Act is hereby amended by adding, as subsection (2), the following subsection:

40       “(2) Where a qualifying custodian of more than one child receives an unsupported child’s benefit in respect of one or

more children, then subsection (1) of this section shall not apply and the Commissioner shall—

“(a) In respect of each child for whom an unsupported child’s benefit is payable,—

“(i) Aggregate all payments of child support payable to the custodian in respect of each such child; and 5

“(ii) Deduct an amount equal to whichever is the lesser of the following amounts:

“(A) The net of tax amount of the unsupported child’s benefit; or 10

“(B) The aggregate of all payments of child support received by the Commissioner that are payable to the custodian in respect of that child; and 15

“(iii) Pay any remaining child support in respect of that child to the qualifying custodian; and

“(b) In respect of any other child or children,—

“(i) Aggregate all payments of child support payable to the custodian in respect of that child or children; and 20

“(ii) Deduct an amount equal to whichever is the lesser of the following amounts:

“(A) The net of tax amount of social security benefit (other than unsupported child’s benefit) receivable by the qualifying custodian; or 25

“(B) The aggregate of all payments of child support received by the Commissioner in respect of that child or children that are payable to the custodian; and 30

“(iii) Pay any remaining child support in respect of that child or children to the qualifying custodian.”

(3) Subsection (2) of this section shall come into force on the 1st day of July 1994. 35

**9. Payment of voluntary agreement child support to custodians who are social security beneficiaries—**

(1) Section 143 (1) (f) of the principal Act is hereby amended by omitting the words “Pay into the Crown Bank Account”, and substituting the word “Deduct”. 40

(2) Section 143 of the principal Act is hereby amended by inserting, after subsection (1), the following subsection:

“(1A) Where a qualifying custodian of more than one child receives an unsupported child’s benefit in respect of one or

more children, then subsection (1) of this section shall not apply and the Commissioner shall—

5 “(a) In respect of each child for whom money is paid under a voluntary agreement, pay to the qualifying custodian the amount by which that money exceeds the payment that would have been made under a formula assessment of child support; and

“(b) In respect of each child for whom an unsupported child’s benefit is payable,—

10 “(i) Aggregate all remaining payments of child support payable to the custodian in respect of each such child; and

“(ii) Deduct an amount equal to whichever is the lesser of the following amounts:

15 “(A) The net of tax amount of the unsupported child’s benefit; or

“ (B) The aggregate of all payments of child support received by the Commissioner that are payable to the custodian in respect of that child (after any deductions have been made in accordance with **paragraph (a)** of this subsection); and

20 “(iii) Pay any remaining child support in respect of that child to the qualifying custodian; and

25 “(c) In respect of any other child or children,—

“ (i) Aggregate all remaining payments of child support payable to the custodian in respect of that child or children; and

30 “(ii) Deduct an amount equal to whichever is the lesser of the following amounts:

“ (A) The net of tax amount of social security benefit (other than unsupported child’s benefit) receivable by the qualifying custodian; or

35 “ (B) The aggregate of all payments of child support received by the Commissioner in respect of that child or children that are payable to the custodian (after any deductions have been made in accordance with **paragraph (a)** of this subsection); and

40 “(iii) Pay any remaining child support in respect of that child or children to the qualifying custodian.”

45 (3) Section 143 (2) of the principal Act is hereby amended by inserting, after the expression “subsection (1) (d)”, the expression “or **subsection (1A) (a)**”.



(4) **Subsections (2) and (3)** of this section shall come into force on the **1st day of July 1994**.

**10. Unremitted deductions made by employers—** Section 147 of the principal Act is hereby amended by repealing the words “an amount equal to the amount of the deduction unpaid on or before that day shall be payable into the Child Support Trust Bank Account out of the Crown Bank Account without further appropriation than this section”, and substituting the words “the amount of that deduction shall, for the purposes of this Part of this Act, be deemed to have been received by the Commissioner on or before the 20th day of the following month”.

**11. Unexplained remittances—**Section 149 (2) of the principal Act is hereby amended by omitting the words “in the Child Support Trust Bank Account”.

**12. Regulations—**(1) Section 235 of the principal Act is hereby amended by inserting, after paragraph (c), the following paragraph:

“(ca) Specifying the rate percent per annum of interest that is to apply for the purposes of section 46 of this Act:”.

(2) The first Order in Council made under **section 235 (ca)** of the principal Act (as inserted by **subsection (1)** of this section) may have effect from the commencement of the child support year.

**13. Transitional provision relating to departure order applications pending as at 1 July 1994—**(1) Where an application has been made to the Family Court under section 104 of the principal Act before the **1st day of July 1994** but has not been heard by the Court, the applicant may elect, subject to this section, to withdraw the application and to make an application to the Commissioner under **Part VIA** of the principal Act.

(2) There shall be no right of election if—

(a) The qualifying custodian or the liable parent is a party to another application pending in a Family Court, and the Court is satisfied that it would be appropriate for the Court to consider the application made under section 104 of the principal Act at the same time as it hears the other application; or

(b) The application relates, wholly or in part, to child support payable in the child support year ending on the **31st day of March 1994** or any earlier child support year.

(3) No person may exercise the right contained in this section later than the **1st day of September 1994** or the date on which the Court commences hearing the application, whichever is the earlier.

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## SCHEDULE

Section 6

AMENDMENTS TO PRINCIPAL ACT CONSEQUENTIAL ON INSERTION OF NEW  
PART VIA

Provision of Principal Act	Amendment
Section 2 .. ..	By inserting in the definition of the term "income amount order", after the word "under", the words "Part VIA or".
	By adding to the definition of the term "proceeding" the words "or before the Commissioner under Part VIA of this Act".
Section 28 .. ..	By repealing subsection (2), and substituting the following subsection: “(2) This Part of this Act is subject to any determination made by the Commissioner under Part VIA of this Act and to any order made by the Court under Part VII of this Act.”
Section 38 .. ..	By repealing subsection (7), and substituting the following subsection: “(7) Nothing in this section is to be taken to prevent the Commissioner making a determination under Part VIA of this Act or the Court making an order under Part VII of this Act.”
Section 41 .. ..	By repealing subsection (6), and substituting the following subsection: “(6) Nothing in this section is to be taken to prevent the Commissioner making a determination under Part VIA of this Act or the Court making an order under Part VII of this Act.”
Section 43 .. ..	By inserting in subsection (4), before paragraph (a), the following paragraph: “(aa) The Commissioner making a determination under Part VIA of this Act; or”.
Section 87 .. ..	By inserting in subsection (3), after paragraph (e), the following paragraph: “(ea) Giving effect to a determination of the Commissioner under Part VIA of this Act; or”.
Section 104 .. ..	By repealing subsection (2), and substituting the following subsection: “(2) An application may be made only if— “(a) A formula assessment is in force in relation to the child, the qualifying custodian, and the liable parent concerned; and “(b) Either—

SCHEDULE—continued

AMENDMENTS TO PRINCIPAL ACT CONSEQUENTIAL ON INSERTION OF NEW PART VIA—continued

Provision of Principal Act	Amendment
Section 104—continued	<p>“(i) The Commissioner has made a determination under Part VIA of this Act in relation to the matter; or</p> <p>“(ii) The Commissioner has refused to make a determination under that Part in relation to the matter; or</p> <p>“(iii) The qualifying custodian or the liable parent are parties to another application pending in a Family Court and the Court is satisfied that it would be appropriate for the Court to consider an application made under this section at the same time as it hears the other application; or</p> <p>“(iv) The application relates, wholly or in part, to child support payable in the child support year ending on the 31st day of March 1994 or any earlier child support year.”</p>
Section 106 .. ..	<p>By adding to paragraph (b) of subsection (1) the following:</p> <p>“; or</p> <p>“(c) An order that the provisions of this Act relating to formula assessment of child support should not be departed from in relation to the child.”</p>
Section 108 .. ..	<p>By repealing subsection (3), and substituting the following subsection:</p> <p>“(3) The Court may not hear the application until any pending application to the Commissioner under section 96a of this Act or to the Court under section 104 of this Act has been heard and determined.”</p>
Section 109 .. ..	<p>By inserting in subsection (3), after paragraph (a), the following paragraph:</p> <p>“(aa) Any determination in force under Part VIA of this Act in relation to the child, the</p>

*Child Support Amendment*SCHEDULE—*continued*AMENDMENTS TO PRINCIPAL ACT CONSEQUENTIAL ON INSERTION OF NEW  
PART VIA—*continued*

Provision of Principal Act	Amendment
Section 109— <i>continued</i>	qualifying custodian, and the liable parent; and”.