

CHILD SUPPORT AMENDMENT BILL (NO. 5)

EXPLANATORY NOTE

General Policy Statement

The provisions in the Bill will improve the administration and effectiveness of child support.

Unless the contrary is indicated, the amendments come into force upon enactment.

AMENDMENTS TO THE CHILD SUPPORT ACT 1991

Write-Off of Penalties

The Inland Revenue Department (IRD) imposes an initial penalty of 10% (or a minimum of \$5) of the unpaid amount when payments of child support are not made on or before the due date. The circumstances leading to a late payment are not always entirely within the control of a liable parent, and in those situations it is often not reasonable or just to impose a penalty. Under the present law, the IRD can write off late payment penalties only in the following circumstances:

- (a) When the late payment arises through the failure of an employer or other third party to make a deduction; or
- (b) When a liable person adheres to an agreed arrangement to repay a debt on which incremental penalties have been incurred. In this situation only the incremental penalties may be written off.

The Bill proposes write-off of penalties when liable parents adhere to instalment arrangements entered into within 3 months of when an assessment for their first liability is issued, or when an initial penalty is more than the arrears to which it relates and they have no history of short payments. Write-off of penalties will be possible when the circumstances indicate it is unjust or unreasonable to charge penalties. These measures are expected to encourage voluntary compliance.

Child Support Year and Income Year of Assessment

The IRD bases its assessment of a parent's liability on income 2 years before the child support year, since that is the most recent information available to the department.

Under the tax simplification initiatives contained in the Taxation (Simplification and Other Remedial Matters) Act 1998, the IRD will accumulate wage and salary income information throughout the year. When all of an individual's income is subject to source deductions, an income tax return will not be necessary. This will

mean that the IRD can also issue annual assessments of child support liability for 75% of liable parents based on that accumulated information, rather than wait until after an income tax return has been filed. The closest match, between the income on which a child support assessment is based and the current ability of a liable parent to provide financial support, can be achieved by concurrently changing the child support year to run from 1 July to 30 June instead of 1 April to 31 March. This would mean that the IRD could base assessments for that July-June year on income for the tax year that ended on the previous 31 March.

The remaining liable parents will continue to have their assessments based on their income of 2 years previous, but with an inflation factor based on the average of actual headline Consumer Price Index (CPI) over the later year.

Estimation of Income

The current income estimation provisions contain a number of inequities and are unnecessarily complex: reconciliations cannot be completed until after income tax returns are filed for the year of estimation; some liable parents are required to continue to pay the minimum amount following an estimation even though they have already paid their full year's liability; and the IRD must make complex adjustments when a liable parent revokes an estimation.

The amendments will set a maximum liability following an election to estimate income so that liable parents will never have to pay more than if they had not estimated.

When liable parents who estimate their income do not file their income tax returns, custodians may receive less than they should. If this happens, the IRD will be able to reconcile the assessment based on the income that would have been used had there been no estimation. Those liable parents will also be prevented from estimating their income in future until they have filed their tax return.

When, at the time they estimate their income, liable parents have already paid their reduced full year's liability, they will no longer have to continue paying the minimum amount. This may mean that some custodians may go on a welfare benefit when child support payments cease. The State will waive its entitlement to retain any child support for that period so custodians do not incur a debt.

If liable parents revoke their estimation or re-estimate their income so that it is more than the estimation threshold, their liability will revert immediately to what it would have been had they not estimated, and the shortfall will be spread over the remaining months of the child support year.

It will no longer be necessary for liable parents to complete an "approved form" to elect to estimate.

Use of money interest is a charge imposed when child support is underpaid. It recognises the benefit gained by the liable parent through having the use of money not paid for child support. The use of money interest provisions were included in the Child Support Act 1991 primarily to provide liable parents with an incentive to file an income tax return so their actual child support liability could be determined, but return filing is now partially enforced through the late filing fee. In addition, the change that will allow the IRD to reconcile the assessment when liable parents do not file returns will limit the period over which interest would be calculated. The Bill also proposes that use of money interest provisions be removed.

Exemptions for Long-Term Prisoners and Hospital Patients

The minimum child support liability is \$10 per week, but there are exemptions for some long-term prison inmates and hospital patients in recognition of their limited opportunity to earn income. The current provisions mean prisoners and hospital patients generally receive an exemption only if they are in prison or hospital for the full child support year; they do not receive it for part years. The

exemption is not available to patients in private hospitals or people in residential care. Nor is it available to long-term patients in public hospitals who are beneficiaries, even though the combination of the reduced benefit and automatic child support deduction leaves them with only \$16.98 per week from which to meet all their personal needs.

The Bill proposes making exemptions from child support liability available for the full period of imprisonment or hospitalisation if more than 13 weeks, and to long-term hospital patients who are on a reduced benefit. It also removes the inequities that exist between patients depending on where they are hospitalised.

Minor Remedial Amendments

The Bill also proposes a number of minor remedial amendments to the Child Support Act 1991.

It introduces more flexibility to ensure that the content of notices of assessment is appropriate to the circumstances, including liable parents' right to apply for an administrative determination when they believe they have grounds for departure from the formula assessment. Although the IRD will have the ability to refrain from issuing a reassessment notice, all liable parents will continue to receive at least 1 notice of assessment for each child support year in which they have a liability.

When financial support has been overpaid, liable parents will be able to make their requests for refunds either verbally or in writing. If there are no arrears and there is no known future liability, the IRD will be able to refund excess financial support without a prior application. If the available final credit is less than \$5 and no request for a refund has been received after 12 months from when that credit arose, it will be transferred to the liable person's tax account.

The Bill will allow liable persons to choose to have more than 40% deducted from a given wage/salary source when they have more than 1 employer or a combination of benefit and earnings. It will also ensure that employers are able to calculate the amount of earnings to be deducted on the basis of their individual pay periods, and is thus a compliance cost saving measure for them.

The Bill removes an anomaly that prevents beneficiary custodians who are entitled to spousal maintenance from uplifting spousal maintenance debt. It will also allow those custodians to uplift future entitlement, and allow non-beneficiary custodians who withdraw from the child support scheme to take over collection of future amounts of child support to which they may be entitled.

The Bill also preserves the administrative efficiency of requiring payments to be direct-credited to a bank account. It makes the provisions more flexible, however, to prevent unnecessary delays in the processing of child support applications, and to allow custodians to choose where their payments are made.

Taxable Income

The proposed amendment will give the IRD the discretion to include overseas taxable income in the child support assessment base when a liable parent is not resident in New Zealand for income tax purposes. (Any overseas income should already be included in the parent's tax return if he or she is resident in New Zealand for income tax purposes.)

The proposed amendment will apply from the 1999-2000 child support year.

Proposed Agreement Between the Government of Australia and the Government of New Zealand on Child and Spousal Maintenance

In anticipation of a reciprocal agreement being entered into between New Zealand and Australia for the enforcement of collection of child support and spousal maintenance, the proposed amendments to the Child Support Act 1991 are—

- (a) Provision is to be made to allow annual debits arising from exchange fluctuations of up to \$20 to be written off; and
- (b) The Family Proceedings Act 1980 is to be amended so that, once the Agreement comes into effect, people residing in New Zealand or Australia will not be able to seek maintenance using the United Nations Convention for the Recovery of Maintenance Abroad.

The proposed amendment to the Family Proceedings Act 1980 will be given effect by the Order in Council that gives effect to the reciprocal agreement.

Clause by Clause Analysis

Clause 1 relates to the Short Title and commencement of the Bill. Other than *clauses 3, 10, and 20, and Part 2*, the Bill comes into force on the day after the date on which it receives the Royal assent.

The commencement of *clauses 3, 10, and 20* is delayed because in each of those instances, the Bill contains more than 1 amendment to the section of the Child Support Act 1991 being amended. Where a section of the Act is amended by the Bill more than once, and the amendments apply as from a different child support year, the commencement of the later amendment is delayed.

Part 2 comes into force on a date to be appointed by the Governor-General by Order in Council. The commencement of the Part is delayed because it effects an amendment to the Family Proceedings Act 1980 that is consequential on the adoption of the proposed reciprocal agreement between the Governments of Australia and New Zealand on child support and spousal maintenance, which has not yet been entered into.

PART 1

AMENDMENTS TO PRINCIPAL ACT

Clause 2 changes the timing of the child support year. At present, the child support year runs from 1 April to 31 March. As from 1 July 2001 the child support year changes to run from 1 July to 30 June. There is a 3-month transitional period immediately before the year changes, from 1 April 2001 to 30 June 2001. *Clause 38* of the Bill contains the special provisions that apply during that period.

Clause 3 contains a number of amendments to the interpretation section of the Act that apply after the child support year has changed to run from 1 July to 30 June. The amendments are—

- A changed definition of “last relevant income year”. At present that term means, in relation to a child support year, the income year 2 years previous. The new definition distinguishes between—
 - (a) A liable parent whose income for the most recent income year was derived solely from source deduction payments, where the most recent income year is the last relevant income year; and
 - (b) Any other liable parent, where the last relevant income year remains the income year 2 years previous.

The effect of this amendment, with the amendments in *clause 5* to section 29 of the Act, is that for the majority of liable parents the income year that is used to determine child support liability is 1 year ago, rather than 2.

- A new definition of “most recent income year” is included, which means, in relation to a child support year, the income year that ended on 31 March nearest to the start of that child support year.
- A provision that clarifies which income year corresponds with a child support year.

Clause 4 removes the requirement, in section 14 of the Act, for an application for a formula assessment to provide details of a bank account held by the custodian.

Clause 5 contains amendments to section 29 of the Act (the formula assessment) that apply from the child support year commencing on 1 July 2001. The most important change is to the definition of “child support income amount”. The new definition provides that the relevant taxable income figure is,—

- (a) For a liable parent whose taxable income for the most recent income year was derived only from source deduction payments, the amount of that income; or
- (b) For any other liable parent, the amount of taxable income derived in the year preceding the most recent income year, inflated by the inflation percentage.

The child support income amount which is used in a formula assessment is the lesser of the amount of that taxable income, or the amount that is twice the yearly equivalent of the relevant average weekly earnings amount for the most recent income year.

Clause 5 also includes an amended definition of “inflation percentage”, which is based on average movement of the CPI over a 12-month period, and an amended definition of “relevant average weekly earnings amount”.

Clause 6 changes the relevant date for the purposes of the benefit rates used in section 30 of the Act to calculate a living allowance. At present the relevant date is 1 January in the immediately preceding child support year. With effect from the child support year commencing on 1 July 2001, the relevant date changes to 1 April in the immediately preceding child support year.

Clause 7 makes a consequential amendment to section 39 of the Act as from the child support year commencing on 1 July 2001. The amendment is required as a result of the change in *clause 5* to the definition of “relevant average weekly earnings amount”.

Clause 8 is a new provision that allows the Commissioner to take taxable income earned by a liable parent who is resident overseas into account. This provision applies as from the child support year commencing on 1 April 1999.

Clause 9 contains amendments to section 40 of the Act that apply from commencement. The requirement that liable parents give notice of an election to estimate using an “approved form” is removed. In addition to the events listed in section 40 (3) of the Act that prohibit an election being made, a person may not make an election if he or she made an election to estimate in respect of a previous child support year, was required to furnish a return of income in respect of the corresponding income year, and is currently in default of that obligation.

Clause 10 contains further amendments to section 40 of the Act that apply from the child support year commencing on 1 July 2001. The requirement that a person not be able to make an election to estimate unless the amount of the estimate is not more than 85% of the person’s taxable income for the last relevant income year (as multiplied by the inflation percentage) is amended. The inflation percentage will not apply if the last relevant income year in relation to that person is the most recent income year.

Clause 11 amends, as from the child support year commencing on 1 April 1999, the formula in section 41 of the Act that is used to calculate child support payable by a person after an election is made during a child support year. The effect of

the amendment is that the minimum amount payable (\$520) does not apply if a liable parent makes an election to estimate and has already, during the child support year, paid the amount payable as a result of the election. The liable parent is not required to make any further payments in that child support year.

Clause 12 provides that an election to estimate is deemed to be revoked if the person makes a later estimation in the same child support year, and the amount of the estimate is more than 85% of the amount of the person's taxable income for the last relevant income year (as multiplied by the inflation percentage if the last relevant income year is not the most recent income year). This provision, which is new, applies from the child support year commencing on 1 April 1999.

Clause 13 provides that where an election to estimate is revoked, the person's child support liability for the whole child support year is calculated on the basis of the amount that would have been the person's child support income amount if the election had not been made. The election to estimate is disregarded for the purposes of calculating the person's liability for the child support year. Section 43 currently provides that where an election is revoked, the person's child support income amount is only affected in relation to the days following the revocation. This amendment applies from the child support year commencing on 1 April 1999.

Clause 14 amends the child support income amount that is used to reconcile estimated and actual taxable income in respect of a child support year. The child support income amount that is used in a formula assessment cannot be greater than the amount that would have been used for the purposes of the formula if no election to estimate had been made.

The effect of the amendment is that a liable parent can never be worse off than if no estimation had been made. Under the existing section 44, a liable parent could be worse off by estimating if—

- The amount of the person's actual taxable income for the child support year is more than the amount of taxable income for the last relevant income year; and
- The amount that is twice the yearly equivalent of the average weekly earnings for the last relevant income year (or the most recent income year as from 1 July 2001) is more than the amount of taxable income for the last relevant income year.

This amendment applies from the child support year commencing on 1 April 2000.

Clause 15 inserts a new provision in the Act that allows the Commissioner to reconcile estimated income where the liable parent is required to furnish a return of income for an income year that corresponds to a child support year in which an estimation was made, but fails to do so. In this case, the child support income amount that is used for a formula assessment is the child support income amount that would have been used had no election been made.

Clause 16 adjusts the period during which changes to income tax law allow a penalty for underestimating income to be written-off. The amendment is consequential on the changing of the child support year.

Clause 17 repeals section 46 of the Act, which imposes use of money interest on underestimations. This amendment is deemed to apply as from the child support year that commenced on 1 April 1998.

Clause 18 removes the requirement for an application for acceptance of a voluntary agreement to specify a bank account held by the payee.

Clause 19 amends the definition of “hospital patient” for the purposes of the exemption contained in section 73 of the Act. The current definition of that term excludes patients in private hospitals or residential care. The proposed new definition of “hospital patient” includes those patients.

The clause also amends references in section 73 of the Act to “net income”, to become “gross income”.

Clause 20, in conjunction with *clauses 21 and 22*, substantially amends the exemption granted to prison inmates and hospital patients, with effect from the child support year commencing on 1 April 1999. Currently section 73 (in conjunction with section 75) provides that the exemption is available only where a person is in prison or hospital for a full child support year. The exemption is only available if the person estimates that his or her net income will be nil for the child support year, or will consist only of income from investments (not exceeding \$520 gross in the child support year). The exemption is currently not available where a person receives a benefit at the hospital rate.

The effect of the amendments is that—

- An exemption is available where a person is a “long-term” prison inmate or hospital patient. “Long-term” is defined to mean a period of 13 weeks or more.
- The exemption is available for the period of imprisonment or hospitalisation (provided that the income requirements are met), whatever length that period might be.
- The income requirements are changed so that a person may receive a hospital rate social security benefit and not be disqualified from the exemption.
- The exemption is available where a person’s income from investments (if any) averages less than \$10 per week during the period of hospitalisation or imprisonment, and, if the period is at least a full child support year in duration, is less than \$520 in a year.

Clause 21 amends the date on which an exemption commences. Currently an exemption commences on the later of the day the application is received, the beginning of the child support year, or the day on which the person becomes a prison inmate or hospital patient. The proposed amendment is that the exemption will commence on the day on which the person becomes a prison inmate or hospital patient.

The effect of the amendment is that where an application for an exemption is made after the person becomes a prison inmate or hospital patient, the exemption commences on the first day of imprisonment or hospitalisation rather than the date that the application is made.

Clause 22 amends the provisions for the end of an exemption. An exemption will no longer terminate at the end of a child support year. Where an exemption applies to part of a child support year, child support is payable in relation to the parts of the year to which an exemption did not apply.

Clause 23 inserts a new provision in the Act that provides for the situation where the Commissioner issues an assessment after the start of a child support year (other than the first year in which a person becomes liable to pay child support). Until the assessment is issued child support is payable at the previous year’s rate. After the assessment is issued, child support payable for the rest of the child support year is the amount determined under the new assessment, less the amount paid previously during the year.

The amendment applies from the child support year commencing on 1 July 2001.

Clause 24 amends the requirements relating to notices of assessment. Rather than being required to give a notice of assessment to the liable person each time an assessment is made (as is currently required), the Commissioner will be required to give written notice of an assessment to a liable person—

- After making the first assessment of financial support payable in a child support year; and
- After making an assessment that changes the amount payable.

The requirements relating to the contents of a notice of assessment are amended.

Clause 25 provides that a decision to reconcile estimated income where no return of income is furnished (as provided for in *clause 15*) is an appealable decision for the purpose of Part VI of the Act.

Clause 26 makes an amendment to section 106 that is consequential on the amendments made to the formula assessment provisions that apply from the child support year commencing on 1 July 2001.

Clause 27 inserts 2 new provisions into the Act. New *section 135A* requires that the Commissioner write-off the initial late payment penalty (provided for in section 134 (1)(a)) in defined circumstances. New *section 135B* provides the Commissioner with a discretion to write-off penalties in defined circumstances.

Clause 28 contains the methods used to calculate monthly and daily rates of child support or spousal maintenance payable. The method of calculating a monthly rate is currently specified in section 88 of the Act, but is removed from that section by the amendment contained in *clause 24*.

Clause 29 provides that the Commissioner can make a payment to an account “nominated” by the payee. The account need not be “held” by the payee as is currently required by section 148 of the Act.

Clause 30 inserts a new provision in the Act that allows the Commissioner to write-off a debt if—

- It relates to an amount paid to the payee prior to an election being made by the liable parent that resulted in no further child support being payable during that child support year (which is possible as a result of the amendment contained in *clause 11*); and
- The payee was a social security beneficiary at any time during the child support year after the liable parent made the election; and
- The debt is repayable under section 151 (1)(c).

This amendment applies from the child support year commencing on 1 April 1999.

Clause 31 allows employers to make their protected net earnings calculations on a “pay period” basis rather than on a weekly basis (as is currently required). An employer may disregard the protected net earnings rate if instructed to do so by the Commissioner under section 166.

Clause 32 allows the protected net earnings rate of 60% to be disregarded where a liable person has more than 1 employer, provided that the total deductions made by all employers of the person do not exceed 40% of the person’s total earnings. The Commissioner may, on request from the liable person, instruct an employer of the person to disregard the protected net earnings rate.

Clause 33 extends the current provision allowing the uplift of debt by payees. Section 180 of the Act currently allows a payee, other than a social security

beneficiary, to uplift a financial support debt that is unpaid and in arrears. The proposed new *section 180* extends this provision to allow—

- The uplift of existing debts by non-beneficiary payees, and by beneficiaries who receive spousal maintenance; and
- The uplift of future debts, other than by—
 - (a) A payee who receives child support and is a beneficiary; or
 - (b) A payee who receives child support but is not a beneficiary, unless at the time of electing to uplift the debt the person also elects to end the liable parent's liability to pay child support under any of sections 27, 64, or 70 of the Act.

There is no restriction on the ability of payees to uplift lump sum payments or spousal maintenance.

Clause 34 clarifies the provisions relating to the refund of excess financial support. The proposed new *section 216* provides that a person may request a refund of excess financial support. On receiving a request, the Commissioner must refund all of the excess financial support if the person has no liability to make further payments of financial support. In any other case, the Commissioner must refund so much of the excess financial support as has not been paid to the payee.

The Commissioner may refund so much of the excess financial support as has not been paid to the payee, without receiving a request, if the person has no liability to make further payments. Credits of less than \$5 are to be transferred to the person's tax credit account if a refund is not requested within 12 months.

Clause 35 is a new provision that gives the Commissioner the power to refrain from collecting debits of \$20 or less, where a liable parent resides overseas and pays financial support in a foreign currency. The debit must arise as a result of exchange rate fluctuations.

Clause 36 repeals section 235 (1) (c) as from the child support year commencing on 1 July 2001. Section 235 (1) (c) gives the Governor-General the power to make regulations setting the inflation percentage figure. This amendment is consequential on the amendment in *clause 5 (2)* which links the definition of "inflation percentage" to the CPI.

Clause 37 changes the date (which is specified in section 236 of the Act) after which changes in published statistics must be disregarded. The amendment is consequential on changing the child support year to run from 1 July to 30 June. The other change effected by the clause is that the new *section 236* applies to publication of the all groups index number of the CPI as well as the ordinary time average weekly earnings for males and females combined.

Clause 38 provides for the 3-month transitional period. The clause provides that—

- If an assessment of financial support payable by a liable person was made by the Commissioner in relation to the preceding child support year, the amount payable for the transitional period is 25% of that annual amount.
- If no assessment was made for the preceding year, the amount payable during the transitional period is 25% of the amount that would otherwise be payable in relation to a 12-month period.
- The minimum amount payable for the transitional period is 25% of \$520.
- If a liable parent made an estimation during the preceding child support year, liability for the transitional period must be calculated on the basis of the person's reconciled income for the preceding year, not the estimated income.

- A liable parent can make an election to estimate income (under section 40 of the Act) in respect of the transitional period. If so, the estimate is reconciled against the person's actual taxable income for the transitional period as determined by the Commissioner.

PART 2

AMENDMENT TO FAMILY PROCEEDINGS ACT 1980

Clause 39, which comes into force on a date to be appointed by the Governor-General by Order in Council, amends the Family Proceedings Act 1980 by removing Australia from the definition of "Convention country". It is intended that this clause will be brought into force when the Governments of New Zealand and Australia enter into a reciprocal agreement in relation to the collection of child support and spousal maintenance. When that has occurred, it will no longer be possible for people residing in New Zealand or Australia to seek maintenance using the United Nations Convention for the Recovery of Maintenance Abroad. In practice, neither New Zealand nor Australia use the Convention for the purposes of seeking or enforcing reciprocal maintenance arrangements between those 2 countries.

CHILD SUPPORT AMENDMENT (NO. 5)

ANALYSIS

Title	21. Effect of election	
1. Short Title and commencement	22. End of exemption	
PART 1		
AMENDMENTS TO PRINCIPAL ACT		
2. Amendments to interpretation that apply from commencement	23. Position where assessment issued after start of child support year	
3. Amendments to interpretation that apply from 1 July 2001	24. Notice of assessment to be given to liable person	
4. Application requirements	25. Objections to appealable decisions	
5. Basic amount of child support payable	26. Orders that may be made	
6. Meaning of term "living allowance"	27. New sections inserted	
7. Position where taxable income not readily ascertainable	135A. Commissioner required to write-off initial late payment penalty for late payment of financial support	
8. Commissioner may take overseas taxable income into account	135B. Commissioner's discretion to write-off penalty for late payment of financial support	
9. Amendments to election where taxable income for child support purposes is estimated to have fallen at least 15% that apply from commencement	28. Amounts payable per month and per day	
10. Amendments to election where taxable income for child support purposes is estimated to have fallen at least 15% that apply from 1 July 2001	29. Method in which payments to be made	
11. Effect of election	30. Relief where child support overpaid before estimation	
12. Revocation of election	31. Protected net earnings rate	
13. Effect of revocation	32. Position where liable person has 2 or more employers	
14. Reconciliation of estimated and actual taxable income after end of child support year	33. Payee may uplift financial support debt	
15. Reconciliation of estimated income where no tax return filed	34. Refund of excess financial support	
16. Penalty where income underestimated	35. Power of Commissioner where small debit results from exchange rate fluctuations	
17. Interest to be charged on underestimations	36. Regulations	
18. Application requirements	37. Changes in published statistics to be disregarded	
19. Amendments to application for exemption by prisoner or hospital patient that apply from commencement	38. Transitional provision relating to assessments for child support year commencing on 1 April 2001	
20. Amendments to application for exemption by prisoner or hospital patient that apply from 1 April 1999	PART 2	
	AMENDMENT TO FAMILY PROCEEDINGS ACT 1980	
	39. Amendment to Family Proceedings Act 1980	

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 (No. 5) 1998, and is part of the Child Support Act 1991* (“the principal Act”). 5
- (2) Except as provided in subsections (3) to (6), this Act comes into force on the day after the date on which it receives the Royal assent.
- (3) **Section 3** (amendments to interpretation that apply from 1 July 2001) comes into force on 1 July 2001. 10
- (4) **Section 10** (amendments to election where taxable income for child support purposes is estimated to have fallen at least 15% that apply from 1 July 2001) comes into force on 1 July 2001. 15
- (5) **Section 20** (amendments to application for exemption by prisoner or hospital patient that apply from 1 April 1999) comes into force on 1 April 1999.
- (6) **Part 2** (amendment to Family Proceedings Act 1980) comes into force on a date to be appointed by the Governor-General by Order in Council. 20

PART 1

AMENDMENTS TO PRINCIPAL ACT

- 2. Amendments to interpretation that apply from commencement**—Section 2(1) of the principal Act is amended by repealing the definition of the term “child support year”, and substituting the following definition: 25
- “‘Child support year’ means—
- “(a) The period of 9 months commencing on 1 July 1992 and ending with 31 March 1993; or 30
- “(b) The year commencing on 1 April 1993 and ending with 31 March 1994; or
- “(c) The subsequent years commencing on 1 April and ending with 31 March, up to and including the year commencing on 1 April 2000 and ending with 31 March 2001; or 35
- “(d) The period of 3 months commencing on 1 April 2001 and ending with 30 June 2001; or
- “(e) The year commencing on 1 July 2001 and ending with 30 June 2002; or 40

*1991, No. 142

Amendments: 1992, No. 7; 1993, No. 15; 1994, No. 74; 1996, No. 65; 1997, Nos. 24, 67, 76

“(f) Any subsequent year commencing on 1 July and ending with 30 June:”.

3. Amendments to interpretation that apply from 1 July 2001—(1) Section 2 (1) of the principal Act is amended by repealing the definition of the term “last relevant income year”, and substituting the following definition:

“‘Last relevant income year’ means,—

“(a) In a case where a liable parent’s taxable income for the most recent income year was derived solely from source deduction payments, the most recent income year:

“(b) In the case of any other liable parent, the income year immediately preceding the most recent income year:”.

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

“‘Most recent income year’, in relation to a child support year, means the income year that ended on 31 March nearest to the start of that child support year:”.

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

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

“(a) In relation to a person whose income is assessed under the Tax Administration Act 1994, the income year ends on 31 March nearest to the last day of the child support year:

“(b) In relation to a person who is resident in a country outside New Zealand, the income year of that country ends on a date nearest to the last day of the child support year.

“(4) For the purposes of **subsection (3) (a)**, if a person’s income is assessed in relation to the year ending with the annual balance date of the person’s accounts, the corresponding income year is determined in accordance with section 38 of the Tax Administration Act 1994.

“(5) For the purposes of **subsection (3) (b)**, 31 December in any year is deemed to be nearer to the last preceding 30 June than to the next succeeding 30 June.”

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

4. Application requirements—Section 14 (1)(f) of the principal Act is repealed.

5. Basic amount of child support payable—(1) Section 29 (1)(b) of the principal Act is amended by repealing the definition of the term “child support income amount”, and substituting the following definition: 5

“ ‘Child support income amount’ means,—

“(a) In a case where the liable parent’s taxable income for the most recent income year was derived solely from source deduction payments, the taxable income derived by the liable parent in the most recent income year; or 10

“(b) In the case of any other liable parent, the taxable income derived by the liable parent in the income year immediately preceding the most recent income year, inflated by the inflation percentage for the child support year,— 15

or, if less, an amount equal to twice the yearly equivalent of the relevant average weekly earnings amount for the most recent income year:” 20

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

“ ‘Inflation percentage’, in relation to a child support year, means the average movement in the all groups index number of the New Zealand Consumer Price Index during the 12-month period that ends with 31 March before the start of that child support year:” 25

(3) Section 29 (1)(b) of the principal Act is amended by repealing the definition of the term “last relevant income year” 30

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

“ ‘Relevant average weekly earnings amount’, in relation to the most recent income year, means the ordinary time average weekly earnings (for males and females combined), as at mid-November in that most recent income year, as published by the Department of Statistics:” 35 40

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

6. Meaning of term “living allowance”—(1) Section 30 of the principal Act is amended by omitting the expression “the 1st day of January” wherever it occurs, and substituting in each case the expression “1 April”.

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

7. Position where taxable income not readily ascertainable—(1) Section 39(2) of the principal Act is amended by omitting the words “that last relevant income year”, and substituting the words “the most recent income year”.

10 (2) This section applies with respect to child support payable in relation to the child support year commencing on 1 July
15 2001, and subsequent years.

8. Commissioner may take overseas taxable income into account—(1) The principal Act is amended by inserting, after section 39, the following section:

20 “39A. (1) The Commissioner may, in making a formula assessment, take into account any income derived by a liable parent resident in a country outside New Zealand, being income that is taxable in that country, if the Commissioner is of the opinion that the income can be ascertained on the basis of information in the Commissioner’s possession.

25 “(2) For that purpose, the Commissioner may apply the provisions of this Act with such modifications as may be necessary.

“ (3) Without limiting the generality of **subsection (2)**, those modifications include modifications so that—

30 “(a) References to ‘taxable income’ include references to taxable income derived outside New Zealand:

“ (b) References to ‘income year’ and ‘relevant income year’ are references to income periods of the relevant country that most appropriately correspond to the equivalent New Zealand periods:

35 “ (c) Section 37 applies to taxable income of zero determined according to the law of the relevant country, as if determined by the Commissioner:

40 “ (d) Section 38 applies in respect of assessments and amended assessments of taxable income that are made by the Government of the relevant country as

if made by the Commissioner, if the Commissioner has information as to the assessment or amended assessment:

“(e) Section 40 allows for elections to estimate taxable income by a liable parent outside New Zealand: 5

“(f) Section 44 allows for reconciliations of estimated and actual taxable income derived by a liable parent outside New Zealand:

“(g) Section 81 enables the Commissioner to require the liable parent to supply a return or estimate of the parent’s overseas taxable income.” 10

(2) This section applies with respect to child support payable in relation to the child support year commencing on 1 April 1999, and subsequent years.

9. Amendments to election where taxable income for child support purposes is estimated to have fallen at least 15% that apply from commencement— (1) Section 40 of the principal Act is amended by repealing subsection (2), and substituting the following subsection: 15

“(2) The notice must— 20

“(a) Be given to the Commissioner before or during the child support year; and

“(b) Specify the person’s estimate of his or her taxable income for the income year corresponding with the child support year; and 25

“(c) Be accompanied by information and evidence that, in the opinion of the Commissioner, is sufficient to support the making of the estimate.”

(2) Section 40 (3) of the principal Act is amended by inserting, after paragraph (b), the following paragraph: 30

“(ba) The person—

“(i) Made an election under section 40 in respect of an earlier child support year; and

“(ii) Was required to furnish a return of income under the Income Tax Act 1994 or the Tax Administration Act 1994 in respect of the income year that corresponds with that earlier child support year; and 35

“(iii) At the time the notice is given under **subsection (2)**, is in breach of the requirement to furnish a return of income in respect of that income year; or”. 40

10. Amendments to election where taxable income for child support purposes is estimated to have fallen at least 15% that apply from 1 July 2001—(1) Section 40 of the principal Act is amended by repealing subsection (1), and substituting the following subsection:

5

“(1) Subject to subsection (3), a person may, by written notice given to the Commissioner, elect that the annual rate of child support payable under a formula assessment for the remaining months in a child support year is to be calculated subject to the modifications contained in sections 41 to 44A if—

10

“(a) Before or during the child support year the person estimates that his or her taxable income for the income year corresponding with that child support year will be a particular amount; and

15

“(b) The amount of the estimate is not more than 85% of the person’s taxable income for the last relevant income year (as inflated by the inflation percentage for the child support year if the last relevant income year in relation to that person is not the most recent income year).”

20

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

11. Effect of election—(1) Section 41 (1) of the principal Act is amended by—

25

(a) Omitting the words “the greater of \$520 or”; and

(b) Inserting in item a of the formula, after the words “is the”, the words “greater of \$520 or the”.

30

(2) This section applies to child support payable in relation to the child support year commencing on 1 April 1999, and subsequent years.

12. Revocation of election—(1) Section 42 of the principal Act is amended by inserting, after subsection (2), the following subsection:

35

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

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

40

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

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

“(3) An election is irrevocable, despite subsections (1) and (2A), if an income amount order made after the election comes into force in relation to the person and to the child support year.” 5

(3) This section applies with respect to child support payable in relation to the child support year commencing on 1 April 1999, and subsequent years.

13. Effect of revocation—(1) Section 43 of the principal Act is amended by repealing subsection (1), and substituting the following subsection: 10

“(1) If an election made by a person under section 40 in relation to a child support year is revoked under section 42, the person’s child support income amount in relation to the child support year (including any days in the child support year preceding the revocation of the election) is to be taken to be, and always to have been, the amount that would have been the person’s child support income amount for the year if that election had not been made.” 15

(2) Section 43 (3) of the principal Act is amended by omitting the words “receipt of a notice of revocation that complies with section 42 of this Act”, and substituting the words “revocation of a notice under section 42”. 20

(3) This section applies with respect to child support payable in relation to the child support year commencing on 1 April 1999, and subsequent years. 25

14. Reconciliation of estimated and actual taxable income after end of child support year—(1) Section 44 of the principal Act is amended by repealing subsection (1), and substituting the following subsections: 30

“(1) This section applies where the Commissioner makes, under any provision of the Income Tax Act 1976 (other than section 21) or the Income Tax Act 1994 or the Tax Administration Act 1994 (other than section 106), an assessment of taxable income of a person for an income year (being an income year that corresponds with a child support year in which at least 1 election made by that person under section 40 has applied). 35

“(1A) The person’s child support income amount that is to be used in a formula assessment for that child support year is to be taken to be, and always to have been, the lesser of— 40

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

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

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

(3) This section applies with respect to child support payable in relation to the child support year commencing on 1 April
10 2000, and subsequent years.

15. Reconciliation of estimated income where no tax return filed—(1) The principal Act is amended by inserting, after section 44, the following section:

“44A. (1) This section applies if a person—

15 “(a) Makes an election under section 40 in respect of a child support year; and

“(b) Is or was required to furnish a return of income under the Income Tax Act 1976 or the Income Tax Act 1994 or the Tax Administration Act 1994 in respect
20 of the income year that corresponds with that child support year; and

“(c) Does not furnish a return of income within 28 days of the date the return was required to be furnished under those Acts.

25 “(2) Despite section 41, the person’s child support income amount that is to be used in a formula assessment for that child support year is to be taken to be, and always to have been, the child support income amount that would have been used for the purposes of a formula assessment for that child support
30 year if that person had not made any election under section 40.

“(3) **Subsection (2)** has effect subject to any applicable income amount order.

“(4) The Commissioner must take such action as is necessary to give effect to **subsection (2)** in relation to the person (whether
35 by amending any formula assessment that has been made in relation to the child support year or otherwise) unless the Commissioner is satisfied that there is a reasonable cause for the failure to furnish the return of income.

“(5) Any action taken by the Commissioner to give effect to
40 **subsection (2)** is final unless, within 28 days of the person receiving notification from the Commissioner of the action taken, the person—

“(a) Makes an objection under section 90; or

“(b) Furnishes the return of income for the relevant income year to the Commissioner.

“(6) For the purposes of this section, ‘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 furnishing the return. 5

“(7) This section applies to a person regardless of whether a return of income was required to be furnished before or after this section comes into force.” 10

(2) Section 40 (1) of the principal Act is consequentially amended by omitting the words “sections 41 to 44 of this Act”, and substituting the words “sections 41 to 44A”.

(3) Section 41 (1) of the principal Act is consequentially amended by omitting the words “section 44 of this Act”, and substituting the words “sections 44 and 44A”. 15

(4) Section 45 of the principal Act is consequentially amended by inserting, after the words “section 44” wherever they occur, the words “or section 44A”.

16. Penalty where income underestimated—(1) Section 45 (3) of the principal Act is amended by repealing paragraphs (a) and (b), and substituting the following paragraphs: 20

“(a) The enactment of any Act amending the Income Tax Act 1994 or the making of any regulation or Order in Council relating to income tax, during the period commencing on the 1st day of the last month in that child support year and ending with the due date for payments in respect of that month; or 25

“(b) The Commissioner making public, during the period commencing on the 1st day of the last month in that child support year and ending with the due date for payments in respect of that month, any ruling in relation to any provision of the Income Tax Act 1994 and that ruling is different to a ruling previously made public by the Commissioner in relation to that provision; or” 30 35

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

17. Interest to be charged on underestimations— (1) Section 46 of the principal Act is repealed. 40

(2) Sections 45 (4), 90 (1) (e), 235 (1) (ca), and 237 (3) (c) of the principal Act are consequentially repealed.

(3) Section 45 (5) of the principal Act is consequentially amended by omitting the words “subsection (4) of this section and”.

5 (4) This section is deemed to apply with respect to child support payable in relation to the child support year that commenced on 1 April 1998, and subsequent years.

18. Application requirements—Section 55 (1)(e) of the principal Act is repealed.

10 **19. Amendments to application for exemption by prisoner or hospital patient that apply from commencement**—(1) Section 73 (1)(b) of the principal Act is amended by omitting the word “net”, and substituting the word “gross”.

15 (2) Section 73 (2)(c) of the principal Act is amended by omitting the word “net”, and substituting the word “gross”.

(3) Section 73 (3) of the principal Act is amended by repealing the definition of the term “hospital patient”, and substituting the following definition:

“ ‘Hospital patient’ means a person who is—

20 “(a) A patient in a hospital that is licensed under the Hospitals Act 1957; or

“(b) A patient in a hospital within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992; or

25 “(c) A resident of an institution certified under the Alcoholism and Drug Addiction Act 1966.”

20. Amendments to application for exemption by prisoner or hospital patient that apply from 1 April 1999—(1) Section 73 of the principal Act is amended by
30 repealing subsection (1), and substituting the following subsection:

“(1) A liable person may, by written notice given to the Commissioner, apply for exemption from the payment of financial support during a period of long-term imprisonment or
35 long-term hospitalisation where—

“(a) The person estimates that his or her gross income (within the meaning of that expression in section OB 1 of the Income Tax Act 1994) for that period will be nil, or will be calculated only from gross income consisting solely of—

40 “(i) Income from investments; or

“(ii) A social security benefit payable to the person at the rate specified in the Twenty-second Schedule of the Social Security Act 1964; and

“(b) The person estimates that the gross income from investments (if any) during the period will not exceed— 5

“(i) An average of \$10 per week in that period; and

“(ii) Where the period is at least a full child support year in duration, \$520 in a child support year.” 10

(2) Section 73 (2) of the principal Act is amended by repealing paragraph (c), and substituting the following paragraph:

“(c) Specify the person’s estimate of his or her weekly and total gross income for the period of imprisonment or hospitalisation; and”. 15

(3) Section 73 of the principal Act is amended by adding the following subsection:

“(4) For the purposes of this section and **section 75**,— 20

“ ‘Long-term’ means a period of 13 weeks or more:

“ ‘Period of hospitalisation’ and ‘period of imprisonment’, as the case may be,—

“(a) Mean the continuous period during which a person is a hospital patient or is a prison inmate; and 25

“(b) Include any lawful absence of the person from the hospital or prison for not more than 7 days, or any other period that is, in the opinion of the Commissioner, reasonable in the circumstances of the case: 30

“ ‘Social security benefit’ means any benefit within the meaning of the Social Security Act 1964.”

(4) This section applies with respect to financial support payable in relation to the child support year commencing on 1 April 1999, and subsequent years. 35

21. Effect of election—(1) Section 74 of the principal Act is amended by repealing subsection (2), and substituting the following subsection:

“(2) The period of exemption commences on the day on which the person becomes a prison inmate or hospital patient.” 40

(2) This section applies with respect to financial support payable in relation to the child support year commencing on 1 April 1999, and subsequent years.

22. End of exemption—(1) The principal Act is amended by repealing section 75, and substituting the following section:

5 “75. (1) A person who the Commissioner has, in accordance with section 74, exempted from the payment of financial support under this Act ceases to be eligible for the exemption on the day that ends with the earlier of—

“(a) The day on which the person ceases to be a prison inmate or hospital patient; or

10 “(b) The day on which the person receives any gross income other than from investments or social security benefits payable at the rate specified in the Twenty-second Schedule of the Social Security Act 1964; or

“(c) The day on which the person receives gross income from investments of more than an average of \$10 per week in a child support year.

15 “(2) A person to whom an exemption has been granted in respect of a part or parts of a child support year is liable for payment of financial support for the parts of the child support year to which the exemption does not apply, and the Commissioner must issue an assessment accordingly.”

20 (2) This section applies with respect to financial support payable in relation to the child support year commencing on 1 April 1999, and subsequent years.

23. Position where assessment issued after start of child support year—(1) The principal Act is amended by inserting, after section 80, the following section:

25 “80A. (1) This section applies where the Commissioner does not issue an assessment until after the start of a child support year.

30 “(2) The annual rate of child support payable in relation to any day in the period beginning on the day that the child support year commences and ending with the day that the assessment is issued is the annual rate at which child support was payable by the liable parent on the last day of the preceding child support year.

35 “(3) The annual rate of child support payable in relation to any day in the period beginning on the 1st day of the month following the day on which the assessment is issued and ending with the last day of the child support year is the annual rate at which child support is payable by the liable parent under that assessment less the amount payable in respect of the days in the period referred to in subsection (2).

40 “(4) For the purposes of subsection (3), the annual rate is the amount determined in accordance with the following formula:

$$(a - b) \times \frac{c}{d}$$

where—

a is the greater of \$520 or the amount of child support that, but for this subsection, would be payable by the liable parent in relation to the days in the new child support year in respect of which child support is payable by the liable parent under 1 or more assessments: 5

b is the amount of child support payable by the liable parent under subsection (2):

c is the number of days in the child support year:

d is the number of days remaining in the child support year. 10

“(5) This section does not apply to the 1st year in which a person becomes liable to pay child support.”

(2) This section applies with respect to child support payable in relation to the child support year commencing on 1 July 2001, and subsequent years. 15

24. Notice of assessment to be given to liable person—

The principal Act is amended by repealing section 88, and substituting the following section:

“88. (1) The Commissioner must give written notice of an assessment to a person who is required to make payments under the assessment as soon as practicable— 20

“(a) After making the 1st assessment of financial support payable by the person in respect of a child support year; and

“(b) After making an assessment that changes the amount of financial support payable by the person. 25

“(2) A notice of assessment must contain sufficient information regarding the assessment to enable the liable person to exercise his or her right to object to the assessment under section 91. 30

“(3) The notice must also include, or be accompanied by, statements of the following kinds:

“(a) A statement that specifically draws the attention of the person required to make payments under the assessment to the right to object to the assessment under section 91 if he or she is aggrieved by any of the particulars of the assessment; and 35

“(b) In relation to a notice of assessment of child support assessed under a formula assessment, a statement that specifically draws the attention of the liable parent to the right to apply— 40

- “(i) To the Commissioner under Part VIA; and
- “(ii) To a Family Court under Part VII.”

5 **25. Objections to appealable decisions**—Section 90 (1) of the principal Act is amended by inserting, after paragraph (c), the following paragraph:

 “(ca) A decision under **section 44A** to reconcile estimated income where no return of income is furnished under the Income Tax Act 1994 and the Tax Administration Act 1994:”.

10 **26. Orders that may be made**—(1) Section 106 (1) (b) of the principal Act is amended by inserting, after the words “child support year” in the second place where they occur, the words “and to that liable parent”.

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

27. New sections inserted—The principal Act is amended by inserting, after section 135, the following sections:

20 “**135A. Commissioner required to write-off initial late payment penalty for late payment of financial support**—

(1) For the purposes of this section,—

 “‘First payment’ means the first amount of financial support that is required to be paid by a liable person:

25 “‘Initial late payment penalty’ means the penalty which is imposed in accordance with section 134 (1) (a).

 “(2) The Commissioner must write-off a liable person’s liability to pay an initial late payment penalty in relation to a financial support debt if the Commissioner is satisfied that—

30 “(a) The initial late payment penalty relates to the first payment of financial support payable by the liable person; and

 “(b) Within the 3-month period beginning on the date that the Commissioner issues the assessment under which the first payment is payable, the liable person enters into an arrangement with the Commissioner to pay, in 2 or more instalments,—

35 “(i) The first payment; and

 “(ii) Other payments of financial support that are or will become payable by the liable person; and

40 “(c) Every instalment is paid in full pursuant to the terms of that arrangement.

“(3) The Commissioner must write-off a liable person’s liability to pay an initial late payment penalty in relation to a financial support debt if the Commissioner is satisfied that—

“(a) The amount of the penalty is no more than the minimum amount specified in section 134 (1) (a) (ii); and 5

“(b) The amount of the financial support debt that the penalty relates to is less than the amount of the penalty; and

“(c) The liable person does not have a history of default in previous payments of financial support. 10

“(4) Where an initial late payment penalty is written-off under **subsection (2)** or **subsection (3)**, and that penalty has been paid in whole or in part, the Commissioner must refund to the liable person the whole or part of the initial late payment penalty that has been paid. 15

“(5) Any refund made under this section must be paid out of the Crown Bank Account without further appropriation than this section.

“135B. **Commissioner’s discretion to write-off penalty for late payment of financial support**—(1) Where a penalty is payable by a liable person under section 134 in relation to a financial support debt, the Commissioner may grant relief to the liable person in the manner prescribed by **subsection (3)** if the Commissioner is satisfied that— 20 25

“(a) There was a reasonable cause for the delay in payment of the debt, and the liable person remedied the default as soon as practicable; or

“(b) The delay in payment of the debt was due to an error made by an officer of the Department, and— 30

“(i) The liable person has acted in good faith and has altered his or her position in reliance on the error; and

“(ii) Having regard to the circumstances of the case, it would be fair and reasonable to write-off all or part of the penalty; or 35

“(c) The delay in payment of the debt was due to an honest oversight by a liable person who—

“(i) Has no history of default in previous payments of financial support; and 40

“(ii) Pays the debt as soon as he or she is aware of the oversight; or

“(d) The payee has uplifted the debt under section 180, and it would be fair and reasonable to write-off all or part of the penalty.

5 “(2) For the purposes of this section, ‘reasonable cause’ means an event or circumstance in relation to a liable person that—

“(a) Is beyond the control of the liable person, including a serious illness, accident, or disaster; and

10 “(b) In the opinion of the Commissioner, caused a reasonable delay in the payment of a financial support debt by the liable person.

“(3) In granting relief to the liable person, the Commissioner may either—

“(a) Write-off the whole or part of the penalty; or

15 “(b) If the penalty has been paid in whole or in part, refund to the liable person the whole or any part of the penalty that has been paid, with or without writing-off any part of the penalty that has not been paid.

20 “(4) Any refund made under this section must be paid out of the Crown Bank Account without further appropriation than this section.”

28. Amounts payable per month and per day—The principal Act is amended by repealing section 136, and substituting the following section:

25 “136. (1) Where child support or spousal maintenance is payable in relation to any month in a child support year, the monthly rate payable is calculated by dividing the annual rate by 12 and rounding the converted rate to the nearest 5 cents.

30 “(2) The amount of child support or spousal maintenance payable in relation to each day in the child support year is the amount of the monthly rate divided by the number of days in that calendar month and rounded to the nearest 5 cents.”

29. Method in which payments to be made—Section 148 of the principal Act is amended by omitting the word “held”, and substituting the word “nominated”.

30. Relief where child support overpaid before estimation—(1) The principal Act is amended by inserting, after section 151, the following section:

40 “151A. (1) The Commissioner may write-off the whole or part of a debt, and may make alterations in the assessment that are necessary for that purpose, if the debt—

“(a) Is repayable by a payee who was a social security beneficiary at any time during a child support year after an election was made by the liable parent that resulted in no child support being payable by the liable parent for the remainder of the child support year under section 40; and 5

“(b) Relates to an amount paid to the payee before the election was made by the liable parent; and

“(c) Is repayable to the Commissioner under section 151 (1) (c) in relation to a child support debt. 10

“(2) The Commissioner may, if the debt has been paid in whole or in part, refund to the payee the whole or any part of the debt that has been paid, with or without writing-off any part of the debt that has not been paid.

“(3) Any refund made under this section must be paid out of the Crown Bank Account without further appropriation than this section.” 15

(2) This section applies with respect to child support payable in relation to the child support year commencing on 1 April 1999, and subsequent years. 20

31. Protected net earnings rate—Section 165 of the principal Act is amended by—

(a) Omitting the word “week”, and substituting the words “pay period (within the meaning of section OB 1 of the Income Tax Act 1994)”; and 25

(b) Adding, as subsection (2), the following subsection:

“(2) This section is subject to any instruction received by an employer under section 166.”

32. Position where liable person has 2 or more employers—Section 166 of the principal Act is amended by adding, as subsection (2), the following subsection: 30

“(2) Without limiting the generality of subsection (1)(b), where a liable person has more than 1 employer, the Commissioner may, under that subsection and on the request of the liable person, disregard, and instruct an employer of the liable person to disregard, the provisions of section 165 (1) provided that the total deductions made under deduction notices by all employers of the liable person must not reduce the person’s total net earnings in respect of a pay period to an amount that is less than 60% of the residue that remains after deducting from the source deduction payments the amount of any tax deductions made under the PAYE rules of the Income Tax Act 1994.” 35 40

33. Payee may uplift financial support debt—The principal Act is amended by repealing section 180, and substituting the following section:

5 “180. (1) A person who is the payee in respect of an amount of child support or spousal maintenance may elect, by written notice to the Commissioner signed by the payee, that—

“(a) The Commissioner cease to pursue payment of the whole or any part of an amount payable by the liable person that is unpaid and in arrear; or

10 “(b) The Commissioner not pursue payment of an amount that is to become payable in the future by a liable person.

“(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,—

15 “(a) Under **subsection (1) (a)** or **subsection (1) (b)**, if the payee is or was a social security beneficiary at the time the child support is or was payable; or

20 “(b) Under **subsection (1) (b)**, if the payee is not a social security beneficiary at the time the child support is payable unless, at the time of making the election, the payee also elects that the liability of the liable parent to pay child support is to end under section 27 or section 64 or section 70.

25 “(3) Where the Commissioner receives an election under **subsection (1)** that complies with the requirements of this section, the amount of money that is or becomes unpaid and in arrear, to the extent that the payee has elected that the Commissioner not pursue payment,—

30 “(a) Ceases to be a debt payable by the liable person to the Crown under this Act; and

“(b) Becomes a debt payable by the liable person to the payee; and

35 “(c) Without prejudice to any mode of recovery and despite section 179, may be recovered by the payee in a District Court.

40 “(4) An election made under this section is irrevocable from the time that the amount of child support or spousal maintenance is unpaid and in arrear.”

34. Refund of excess financial support—The principal Act is amended by repealing section 216, and substituting the following section:

“216. (1) In this section, ‘excess financial support’ means any amount paid by a person to the Commissioner in excess of the amount of financial support properly payable, together with any penalties imposed under this Act.

“(2) The person may request a refund of the excess financial support from the Commissioner. 5

“(3) On receiving a request from the person, the Commissioner must refund—

“(a) All of the excess financial support if the person neither has, nor is known to have at some future time, liability to make further payments of financial support under this Act; or 10

“(b) In any other case, so much of the excess financial support as has not been paid to the payee.

“(4) The Commissioner may refund so much of the excess financial support as has not been paid to the payee without receiving a request from the person if the person neither has, nor is known to have at some future time, any liability to make further payments of financial support under this Act. 15

“(5) If the person is entitled to a refund not exceeding \$5 but does not request it within 12 months of first becoming entitled to it, the Commissioner must transfer the refund to the person’s tax credit account for the purposes of the Income Tax Act 1994.” 20

35. Power of Commissioner where small debit results from exchange rate fluctuations—The principal Act is amended by inserting, after section 219, the following section: 25

“219A. Despite anything else in this Act, where the balance of any financial support payable at the end of a child support year does not exceed \$20, the Commissioner may, in the Commissioner’s discretion, refrain from collecting the financial support if— 30

“(a) The financial support is payable by a liable person who, during the child support year, resided in a country outside New Zealand; and 35

“(b) Financial support was paid by the liable person during the child support year in a foreign currency; and

“(c) The balance payable is due to fluctuations in the exchange rate.”

36. Regulations—(1) Section 235 of the principal Act is amended by— 40

(a) Repealing subsection (1) (c); and

(b) Repealing subsection (3).

(2) This section applies with respect to child support payable in relation to the child support year that commences on 1 July 2001, and subsequent years.

37. Changes in published statistics to be disregarded—

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

“236. (1) This section applies to publication by the Department of Statistics of—

10 “(a) The ordinary time average weekly earnings (for males and females combined); or

“(b) The all groups index number of the Consumer Price Index.

15 “(2) A correction to those statistics that is published by that department must be disregarded for the purposes of this Act if—

“(a) The correction is published at any time after 1 May immediately preceding the start of a child support year; and

“ (b) The statistics corrected are—

20 “(i) As at mid-November in the most recent income year in relation to the ordinary time average weekly earnings (for males and females combined); or

25 “(ii) For the year ending on 31 March immediately preceding the start of the child support year in relation to the all groups index number of the Consumer Price Index.”

30 (2) This section applies with respect to child support payable in relation to the child support year that commences on 1 July 2001, and subsequent years.

38. Transitional provision relating to assessments for child support year commencing on 1 April 2001—

35 (1) Subject to subsections (2) and (3), the total amount of financial support payable by a liable person in respect of the child support year commencing on 1 April 2001 (in this section referred to as the transitional period) is,—

40 (a) Where 1 or more assessments of financial support were made by the Commissioner in relation to the liable person and to the child support year commencing on 1 April 2000, the amount that is 25% of the annual amount of financial support that was payable by the liable person in respect of that child support year; or

(b) Where no assessment was made in relation to the liable person and to the preceding child support year, the amount that is 25% of the amount that would otherwise be payable by the liable person in respect of a 12-month period under the principal Act. 5

(2) The minimum annual rate at which financial support is payable by a liable person in respect of the transitional period is 25% of \$520.

(3) For the purposes of **subsection (1)**, where a liable parent made at least 1 election under section 40 of the principal Act in relation to the child support year commencing on 1 April 2000, the annual amount of child support that was payable by the person in respect of the preceding child support year is the amount determined by the Commissioner under section 44 or **section 44A** of that Act. 10 15

(4) Despite **subsection (1)**, a liable parent may make an election under section 40 of the principal Act in respect of the transitional period.

(5) Where an election to estimate is made by a liable parent in respect of the transitional period, despite section 44 of the principal Act, the person's child support income amount that is to be used in any formula assessment for the transitional period is to be taken to be, and always to have been, the amount of taxable income derived by the person during that period as determined by the Commissioner. 20 25

PART 2

AMENDMENT TO FAMILY PROCEEDINGS ACT 1980

39. Amendment to Family Proceedings Act 1980—

Section 2 of the Family Proceedings Act 1980 is amended by repealing the definition of the term "Convention country", and substituting the following definition: 30

" 'Convention country'—

"(a) Means a country that is a party to the United Nations Convention for the Recovery of Maintenance Abroad done at New York on 20 June 1956; but 35

"(b) Does not include Australia."