

## **CHILD SUPPORT AMENDMENT (NO. 5)**

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AS REPORTED FROM THE SOCIAL SERVICES COMMITTEE

### **COMMENTARY**

#### **Recommendation**

The Social Services Committee has examined the Child Support Amendment Bill (No. 5) and recommends that it be passed with the amendments shown in the bill.

#### **Conduct of the examination**

The Child Support Amendment Bill (No. 5) was referred to the Social Services Committee on 8 December 1998. The closing date for submissions was 26 February 1999. We received and considered 14 submissions from interested groups and individuals. We heard six submissions orally. The hearing of evidence took approximately two and a half hours and consideration took approximately one and a half hours.

We received advice from the Inland Revenue Department (the department).

This commentary sets out the details of our consideration of the bill and the major issues we addressed.

#### **Background**

The bill proposes to amend the Child Support Act 1991 to improve the overall efficiency of the child support regime. The bill is of a technical nature, to make the administration of the scheme more workable. Most of the amendments in the bill are the result of a recent review of the administration of the child support scheme. They take up, and in some cases build upon, a number of the recommendations made in the review by the Child Support Working Party 1994. The main provisions of the bill are discussed below.

#### **Write-off of penalties**

The department imposes an initial penalty of 10 percent (or a minimum of \$5) of the unpaid amount when the 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 unreasonable to impose a penalty.

Clause 27 of the bill proposes that penalties will be written off when:

- Liable parents keep to debt repayment arrangements entered into within three months of when the department first assessed their liability.
- An initial penalty is more than the arrears to which it relates and the liable parent concerned has no history of late payments.

Additional provisions will give the Commissioner of Inland Revenue the discretion to write off penalties when, under the circumstances, it would be unjust or unreasonable to charge penalties.

A number of submissions supported this proposed change, although the National Council of Women submitted that penalties should not be written off where the liable parent has access to substantial income and has deliberately adjusted his or her circumstances to reduce taxable income to reduce liability. It also suggested that the write-off of penalties should be subject to an asset test.

The proposed write-off provisions are intended to encourage voluntary compliance with child support liabilities. We consider it would be inappropriate that the write-off of penalties be subject to an income or asset test. Such a test would increase compliance and administrative costs, at a time when the department is simplifying the way tax is collected. The department proposes to issue a standard practice statement that will set out guidelines for staff to use to ensure consistent application of the proposed write-off provisions.

### **Child support year and income year of assessment**

The proposals in clauses 2, 3, 5, 6, 7, 23, 26, 36, 37 and 38 of the bill are designed to achieve a closer match between the income on which an assessment is based and the current ability of a liable parent to provide financial support. At present, there is a significant time lag of two years between the income year (on which the child support assessment is based) and the child support year. The bill proposes to shorten this time lag significantly, to take advantage of the tax simplification measures brought in with the Taxation (Simplification and Other Remedial Matters) Act 1998. To achieve this, the bill changes the child support year (current year) to 1 July - 30 June. This would leave a 3 month gap between end of the income year and the beginning of the child support year.

We propose to amend this further and retain the present April - March child support year for all liable parents. Basing assessments for most liable parents<sup>1</sup> on an estimate of their taxable income in the income year immediately prior to the child support year (current year minus one - CY-1) will close the gap completely between the year in which taxable income is earned and the year of assessment on which it is based (the current year). The proposals in respect of liable parents whose income is not subject to source deductions (the remaining 25 percent of liable parents) are unchanged.

Under this approach there will be no need for a transitional period as provided for in the bill. However, it is necessary to change a number of commencement dates from 1 July 2001 to 1 April 2001. These are in clauses 1, 3, 5, 7, 10, 16, 26, 36 and 37. Clause 6 as introduced is not now required as living allowance rates will continue to be based on benefit rates at 1 January immediately preceding the beginning of the child support year.

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<sup>1</sup> The income of approximately 75 percent of liable parents has tax deducted at source. Up to date income information for these liable parents will be available as a result of the tax simplification initiatives.

### **Sudden decline in income**

The New Zealand Association of Citizens Advice Bureaux submitted that the proposed amendments do not provide for liable parents whose income has suddenly declined dramatically, such as following redundancy. At present, liable parents whose current year income is expected to be at least 15 percent less than the income on which their assessment is based may elect to have their assessment based on their estimated income for the year. We consider that the estimation provisions adequately provide for situations where there has been a sudden and dramatic decline in income. The ability to base assessments on the previous year's income rather than on income of two years previously is also expected to reduce the need for liable parents to estimate their income.

### **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 department must make complex adjustments when a liable parent revokes an estimation. The amendments in this bill propose to make the provisions governing estimation of income fairer and easier to use.

The proposed amendments in clauses 9 to 17, 25 and 30 include:

- Allowing reconciliation assessments to be issued when liable parents who have estimated their income fail to furnish tax returns.
- Stopping those liable parents from estimating their income again until they furnish their outstanding returns.
- Capping child support at what would have been payable had income not been estimated.
- Ensuring that those who estimate their income part-way through the year will not have to continue paying the minimum amount of \$10 a week when the amount they have already paid covers their liability for the year.
- Providing that when liable parents revoke an estimation or no longer meet the criteria for estimating income, their liability will revert to what it would have been had they not estimated, with the resulting shortfall being spread over the rest of the year.
- Making it no longer necessary that an application to estimate income be in the "approved form".

The National Council of Women and the Family Law Section of the New Zealand Law Society support the changes proposed, especially as it is hoped the provisions will encourage voluntary compliance. We support these provisions.

### **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. Currently the exemption only applies where the period of imprisonment or hospitalisation is at least a full child support year in duration.

Clauses 19 to 22 of the bill propose that exemptions from paying child support will cover the full period of a liable parent's imprisonment or hospitalisation if more than 13 weeks and be extended to long-term hospital patients who are on a

reduced social welfare benefit, and patients in private hospitals and residential care institutions.

The National Council of Women agreed with the proposed changes, but suggested that the exemption should be subject to an asset test as well. We consider that the addition of an asset test to the processing of applications for exemptions would increase both the administrative and compliance costs incurred by liable parents. Custodians who believe that liable parents have assets that could be better used to meet their child support liability may have grounds for an application for departure from the formula.

The Family Law Section of the New Zealand Law Society submitted that the exemption should also be extended to those who have very limited income and whose stay in hospital or prison is less than 13 weeks. We consider that extending the exception would create an inconsistency with the term “long-term” under the Social Security Act 1964, which provides for a reduction in benefit payable when a beneficiary is a patient in a hospital for more than 13 weeks.

### **Overseas taxable income**

Clause 8 of the bill proposes to add a new section after section 39 of the principal Act to allow the Commissioner to take taxable income earned by a liable parent who is resident overseas into account when assessing child support liability. Once the proposed reciprocal agreement between New Zealand and Australia for the collection of child support is in place, for liable parents resident in Australia, the Australian authorities will advise the department of liable parents’ income details to be used as the basis for New Zealand assessments. Following assessment of liability in New Zealand, the Australian authorities will, where necessary, use their legislative powers to collect the payments and remit them to New Zealand.

A number of submissions supported this amendment but commented that instead of a discretionary power to include overseas taxable income, inclusion should be mandatory, with a discretionary power to exclude overseas income in certain circumstances. We consider that the provisions should be discretionary. This will allow the Commissioner to include any overseas income, that is, not just Australian income, only where the information about the income can be validated in some way, and there is an expectation that payment can be enforced. We welcome this arrangement as it is expected that the amendment will have a deterrent effect on liable parents who leave New Zealand to avoid their child support liability.

### **Reciprocal agreement with Australia**

Clause 39 of the bill proposes to amend the Family Proceedings Act 1980 in anticipation of a reciprocal agreement being entered into between New Zealand and Australia for the enforcement and collection of child support and spousal maintenance. 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 National Council of Women supported the proposed reciprocal agreement, although it is sceptical about the effectiveness of this change, because of the length of time this agreement is taking to become a reality. Whilst we acknowledge this concern, we are aware that the reciprocal agreement is one of the matters being considered by the Prime Ministerial Taskforce on Closer Economic Relations with Australia. It is expected that the taskforce will not be reporting to the respective Prime Ministers until the end of June. The implementation date will not precede that report and will also be dependent on

Australia enacting the legislative changes necessary to its child support legislation to give effect to the agreement.

### **Minor remedial amendments**

We are recommending a number of amendments to the bill to introduce more flexibility within the Child Support Act 1991. These arise from the technical and drafting issues raised by officials.

### **Other issues raised in submissions**

The bill is narrow in its scope and only looks at technical matters. A number of submissions questioned why many of the recommendations made in the Trapsky report were not included in this bill. We note that some issues in the Trapsky report are still to be addressed, and we acknowledge how important these matters are to a number of the submitters.

### **Value of fringe benefits to be included in taxable income**

One submitter suggested that the Child Support Act 1991 be amended to include the value of fringe benefits when assessing the taxable income of a liable parent. He submitted that the Act discriminates in favour of those parents who receive income by way of fringe benefits as well as by wages, because the definition of “taxable income” excludes the financial benefit received by a liable parent from fringe benefits.

Although we can see merit in this submission, taxable income is used as the basis for formula assessments of child support because it is administratively simple, is subject to audit and does not add compliance costs for liable parents. It is an accurate basis for the majority of liable parents. In certain circumstances liable parents and custodians can seek an assessment of liability by applying for an administrative review. These reviews have the ability to grant a departure from the standard formula assessment by looking at non-monetary benefits if and when appropriate.

### **Explicit liability for same-sex partners of custodians**

The Commissioner for Children would like to see specific wording in the Act to include the liability for same-sex parents to pay child support.

In a recent High Court appeal from a Family Court declaration, it was noted in the judgment that the wording of the Child Support Act 1991 should be taken to be gender-neutral unless otherwise stated, and that an inclusive interpretation would promote the protection of children’s rights. Whilst we acknowledge the importance of this issue, we do not believe that this particular bill is the appropriate forum for it to be debated.

### **Perceived inequalities in the child support system**

One witness suggested some radical changes to the system as it stands. She suggested that the legislation needs revamping because at present both parents are not equally liable for raising their children. She submitted that the child support system perpetuates inequality. The focal point of the system should be the need to support children financially; it should not focus on the non-custodial parent’s net taxable income. We note that child support is based on taxable income because this information is readily available from the department’s computer system. She also questioned why child support liability automatically reduces when a non-custodial parent has a live-in partner, regardless of whether or not that person is dependent on the liable parent. We consider these issues

would be too complex to address administratively and would require a radical change to the Act, which is not the intention of this bill.

### **Delays in receiving child support following cessation of benefit**

The National Council of Women submitted that some custodians experience unnecessary delays when transferring from a benefit. We understand that the delay between cessation of benefit payments and commencement of child support payments is an inevitable consequence of the payment cycle. Although custodians experience a delay when they move off a benefit, those who move onto a benefit continue to receive their child support for the first month.

### **Maximum for assessable income**

The National Council of Women submitted that the maximum assessable income level should be removed or at least increased. The limit on assessable income is adjusted each year and is set at \$65,891 for the 1999/2000 child support year. Having a maximum allows high earning liable parents some discretion as to how they spend any additional amounts. Also, irrespective of the amount of money paid, a child will not necessarily get any more benefit out of a higher income level. We note that the opportunity does exist for discretionary spending over and above the costs of maintaining the children, or, alternatively they can enter into a voluntary agreement on the amount to be paid. The opportunity also exists for either party to seek an administrative determination of a more appropriate amount to be paid.

### **Relationship between assessed income and actual earning in rural situations**

The Women's Division of Federated Farmers submitted that a number of rural women report that assessed income often has little relevance to the actual earnings of the liable parent. Whilst we take note of this submission, the Child Support Act 1991 recognises that the use of taxable income may not produce an appropriate result in some situations. The Act allows for an application for departure from the formula in those situations.

### **Liable parents who were granted "nil orders" under the former scheme**

One witness submitted that the committee reconsider the situation of liable parents who were granted "nil orders" by the Department of Social Welfare under the liable parent scheme, which preceded the Child Support Act 1991.

This submission refers to those liable parents who were affected by the retrospective application of the Child Support Amendment Act 1993. It was concluded that the retrospective nature of the legislation was not universally appropriate, but that further interference into the lives of those affected could not be justified. Therefore, we consider that since many people affected by the Act have adjusted to new arrangements it would be even more inequitable to create exceptions for those affected now.

### **Liability in respect of children "abducted" from New Zealand**

One witness submitted that a liable parent should be exempt from liability when children are "abducted" from the country illegally. The submitter believes that the Government is implicitly supporting an illegal activity by enforcing payment of child support when the qualifying children have been "abducted" from this country.

We note the submission, but would like to stress that the Child Support Act 1991 provides for the financial support of children when either or both parents do not

live with those children. It is not concerned with issues relating to custody and access.

The Hague Convention on the Civil Aspects of International Child Abduction is given effect in New Zealand through the Guardianship Amendment Act 1991. However, regardless of the outcome of an application under that Act in respect of children removed from New Zealand, the Child Support Act 1991 places an absolute obligation on absent parents to support their children. That obligation is not removed or abated on grounds of “fault” of either parent.

#### **Extension of the child support enforcement provisions**

One witness submitted that the current provisions involving any form of enforcement are not being used by the department, or are being used somewhat reluctantly. The power to arrest should be extended to include those liable parents who have outstanding child support payments, not just those who are leaving the country to avoid paying child support. We do not consider that the existence of child support arrears is, of itself, sufficient reason to stop a liable parent from leaving the country.

#### **Conclusion**

Whilst we were sympathetic to many of the issues raised in submissions, we recognise that most of these issues were not addressed by this bill, which only amends technical aspects of the principal Act. We would welcome the Government acting on the outstanding issues raised in the Trapsky report and a number of other issues brought to our attention through the submission process. We also look forward to progress being made on the reciprocal agreement with Australia.

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## KEY TO SYMBOLS USED IN REPRINTED BILL

AS REPORTED FROM A SELECT COMMITTEE

*Struck Out (Unanimous)*

Subject to this Act,

Text struck out unanimously

*New (Unanimous)*

Subject to this Act,

Text inserted unanimously

*(Subject to this Act,)*

Words struck out unanimously

Subject to this Act,

Words inserted unanimously

*Hon Bill English*

**CHILD SUPPORT AMENDMENT (NO. 5)**

ANALYSIS

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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 (No. 5) 1998, and is part of the Child Support Act 1991\* (“the principal Act”).

(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. 5

*Struck Out (Unanimous)*

(3) **Section 3** (amendments to interpretation that apply from 1 July 2001) comes into force on 1 July 2001.

*New (Unanimous)* 10

(3) **Section 6** (meaning of term “living allowance”) comes into force on 1 October 1999.

(4) **Section 10** (amendments to election where taxable income for child support purposes is estimated to have fallen at least 15% that apply from 1 ~~(July)~~ April 2001) comes into force on 1 ~~(July)~~ April 2001. 15

*Struck Out (Unanimous)*

(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. 20

(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.

## PART 1

### AMENDMENTS TO PRINCIPAL ACT 25

*Struck Out (Unanimous)*

**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: 30

\*1991, No. 142

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

*Struck Out (Unanimous)*

“ ‘Child support year’ means—

“ (a) The period of 9 months commencing on 1 July 1992 and ending with 31 March 1993; or

5 “ (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 10 31 March 2001; or

“ (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

15 “ (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:

20 “ ‘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:

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

30 (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) immediately preceding the start of that 35 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,—

40 “ (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. 5

“(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. 10

*Struck Out (Unanimous)*

“(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.” 15

*New (Unanimous)*

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

(4) This section applies with respect to child support payable in relation to the child support year commencing on 1 ~~July~~ April 2001, and subsequent years. 20

**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: 25

“‘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 30

“(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 35

income year, inflated by the inflation percentage for the child support year,—

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

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(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:

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“‘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) 31 December before the start of that child support year.”

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

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(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:

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“‘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) mid-February in the income year immediately preceding the most recent income year, as published by the Department of Statistics.”

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

*Struck Out (Unanimous)*

**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”.

(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.

## New (Unanimous)

**6. Meaning of term “living allowance”**—Section 30 (4) of the principal Act is amended by omitting the expression “section KD 2 (2)” in both places where it occurs, and substituting in each case the expression “section KD 2 (3)”. 5

**6A. Position where taxable income from source deduction payments not available**—(1) The principal Act is amended by inserting, after section 38, the following section:

“38A. (1) This section applies where the Commissioner assesses the annual rate of child support payable under a formula assessment by a liable parent whose taxable income for the first 10 months of the most recent income year was derived solely from source deduction payments. 10

“(2) If, at the time of making the assessment, the Commissioner is unable to determine the amount of the liable parent’s taxable income for the most recent income year, then the Commissioner may make a formula assessment on the basis that the liable parent’s child support income amount is the lesser of— 15

“(a) The sum of— 20

    “(i) The taxable income derived by the liable parent in the first 10 months of the most recent income year; and

    “(ii) An amount that is equal to one-fifth of that taxable income; or 25

“(b) An amount equal to twice the yearly equivalent of the relevant average weekly earnings amount for the most recent income year.

“(3) The Commissioner must, as soon as is practicable, amend a formula assessment if— 30

    “(a) The Commissioner applies **subsection (2)** in making the formula assessment; and

    “(b) The Commissioner subsequently ascertains the liable parent’s taxable income for the most recent income year (whether or not an assessment has been made under the Income Tax Act 1976 or the Tax Administration Act 1994 in respect of that year); and 35

    “(c) The subsequently ascertained income is more than \$500 in excess of, or less than, the figure calculated for the purposes of **subsection (2) (a)**. 40

*New (Unanimous)*

“**(4)** An assessment amended under **subsection (3)** must be amended on the basis that the liable parent’s taxable income for the most recent income year is, and always has been, the subsequently ascertained income.”

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

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

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

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

“**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.

“**(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—

“**(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:

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

“(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: 5

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

“(f) Section 44 allows for reconciliations of estimated and actual taxable income derived by a liable parent outside New Zealand: 10

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

*Struck Out (Unanimous)* 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.

**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: 20

“(2) The notice must—

“(a) Be given to the Commissioner before or during the child support year; and 25

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

“(c) Be accompanied by information and evidence that, in the opinion of the Commissioner, is sufficient to support the making of the estimate.” 30

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

“(ba) The person— 35

“(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 40

year that corresponds with that earlier child support year; and

5 “(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”.

**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:

10 “(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—

15 “(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

20 “(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).”

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

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

30 (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”.

35 (2) This section applies to child support payable in relation to the child support year commencing on 1 April *(1999)* 2000, and subsequent years.

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

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

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

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

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

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

(3) This section applies with respect to child support payable in relation to the child support year commencing on 1 April (1999) 2000, and subsequent years.

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

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

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

(3) This section applies with respect to child support payable in relation to the child support year commencing on 1 April (1999) 2000, and subsequent years.

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

“(1) This section applies where the Commissioner makes, under any provision of the Income Tax Act 1976 (other than section 21) or the Income Tax Act 1994 or the Tax Administration Act 1994 (other than section 106), an assessment of taxable income of a person for an income year (being an income year that corresponds with a child support

year in which at least 1 election made by that person under section 40 has applied).

5 “(1A) The person’s child support income amount that is to be used in a formula assessment for that child support year is to be taken to be, and always to have been, the lesser of—

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

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

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

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

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

20 “44A. (1) This section applies if a person—

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

25 “(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 of the income year that corresponds with that child support year; and

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

“(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 year if that person had not made any election under section 40.

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

40 “(4) The Commissioner must take such action as is necessary to give effect to **subsection (2)** in relation to the person (whether 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 **subsection (2)** is final unless, within 28 days of the person receiving notification from the Commissioner of the action taken, the person— 5

“(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’ 10 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.

“(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.” 15

(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**”. 20

(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**”.

(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**”. 25

**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: 30

“(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 35

“(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” 40

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

**17. Interest to be charged on underestimations—**

5 (1) Section 46 of the principal Act is repealed.

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

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

(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)~~ 1999, and subsequent years.

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

*Struck Out (Unanimous)*

**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”.

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

25 (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—

30 “(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

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

*New (Unanimous)*

**19. Application for exemption by prisoner or hospital patient**—The principal Act is amended by repealing section 73, and substituting the following section:

“73. (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 long-term hospitalisation where— 5

“(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— 10

“(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 15

“(b) The person estimates that the gross income from investments (if any) during that period will not exceed— 20

“(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. 25

“(2) The notice must—

“(a) Be in the appropriate approved form; and

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

“(c) Specify the person’s estimate of his or her weekly and total gross income for the period of imprisonment or hospitalisation; and 30

“(d) Include such information relating to the making of the estimate as the form of notice requires to be included. 35

“(3) For the purposes of this Act, unless the context otherwise requires,—

“‘Hospital patient’ means a person who is—

“(a) A patient in a hospital that is licensed under the Hospitals Act 1957; or 40

*New (Unanimous)*

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

5 “(c) A resident of an institution certified under the Alcoholism and Drug Addiction Act 1966:

“‘Prison inmate’ means a person who is in the legal custody of the Superintendent of any penal institution as defined in the Penal Institutions Act 1954.

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

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

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

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

“(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:

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

*Struck Out (Unanimous)*

25 **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 repealing subsection (1), and substituting the following subsection:

30 “(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 long-term hospitalisation where—

35 “(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—

“(i) Income from investments; or

*Struck Out (Unanimous)*

- “(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—
- “(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.”
- (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”.
- (3) Section 73 of the principal Act is amended by adding the following subsection:
- “(4) For the purposes of this section and **section 75**,—
- “‘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
- “(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;
- “‘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.

**21. Effect of election**—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.”



*Struck Out (Unanimous)*

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.

“(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)**.

“(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;
- 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.

“(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.

**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—

- “(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.

5 “(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.

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

10 “(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

15 “(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—

“(i) To the Commissioner under Part VIA; and

“(ii) To a Family Court under Part VII.”

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

25 “(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.”

30 **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”.

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

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

“135A. **Commissioner required to write-off initial late payment penalty for late payment of financial support**—  
(1) For the purposes of this section,—

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

“‘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—

“(a) The initial late payment penalty relates to the first payment of financial support payable by the liable person; and 5

“(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,— 10

“(i) The first payment; and

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

“(c) Every instalment is paid in full pursuant to the terms of that arrangement. 15

“(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 20

“(b) The amount of the financial support debt that the penalty relates to is less than the amount of the penalty; and 25

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

“(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. 30

“(5) Any refund made under this section must be paid out of the Crown Bank Account without further appropriation than this section. 35

“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— 40

“(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

- 5 “(b) The delay in payment of the debt was due to an error made by an officer of the Department, and—
- “(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
- 10 “(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
  - “(ii) Pays the debt as soon as he or she is aware of the oversight; or
- 15 “(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.
- “2) For the purposes of this section, ‘reasonable cause’ means an event or circumstance in relation to a liable person that—
- 20 “(a) Is beyond the control of the liable person, including a serious illness, accident, or disaster; and
- “(b) In the opinion of the Commissioner, caused a reasonable delay in the payment of a financial support debt by the liable person.
- 25 “(3) In granting relief to the liable person, the Commissioner may either—
- “(a) Write-off the whole or part of the penalty; or
  - “(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.
- 30 “(4) Any refund made under this section must be paid out of the Crown Bank Account without further appropriation than this section.”
- 35

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

- 40 “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.
- “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”. 5

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

“151A. (1) The Commissioner may write-off the whole or part of a debt, and may make alterations in the assessment that are necessary for that purpose, if the debt— 10

“(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 15

“(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. 20

“(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. 25

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

(2) This section applies with respect to child support payable in relation to the child support year commencing on 1 April (1999) 2000, and subsequent years. 30

**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 35

(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:

5 “(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)  
10 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  
15 Tax Act 1994.”

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

20 “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

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

30 “(2) This section does not entitle an election to be made in  
relation to an amount of child support payable to a payee,  
other than pursuant to a lump sum order made under section  
109,—

“ (a) Under **subsection (1) (a)** 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

35 “(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  
40 section 64 or section 70.

“ (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,—

“(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 5

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

“(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.” 10

*New (Unanimous)*

**33A. Offences**—Section 208 (a) of the principal Act is amended by omitting the word “child”, and substituting the word “financial”. 15

**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. 20

“(2) The person may request a refund of the excess financial support from the Commissioner. 25

“(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 30

“(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. 35

“(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 40

person's tax credit account for the purposes of the Income Tax Act 1994."

**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:

5 "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—

- 10 "(a) The financial support is payable by a liable person who, during the child support year, resided in a country outside New Zealand; and
- 15 "(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—

- 20 (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)* April 2001, and subsequent years.

**37. Changes in published statistics to be disregarded**—

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

25 "236. (1) This section applies to publication by the Department of Statistics of—

- 30 "(a) The ordinary time average weekly earnings (for males and females combined); or
- "(b) The all groups index number of the Consumer Price Index.

35 "(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)* January immediately preceding the start of a child support year; and

40 "(b) The statistics corrected are—

"(i) As at *(mid-November in)* mid-February immediately preceding the start of the most recent

income year in relation to the ordinary time average weekly earnings (for males and females combined); or

“(ii) For the year ending on 31 ~~(March)~~ December immediately preceding the start of the child support year in relation to the all groups index number of the Consumer Price Index.” 5

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

*Struck Out (Unanimous)*

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

(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,— 15

(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 20

(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. 25

(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. 30

(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. 35

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

*Struck Out (Unanimous)*

5 (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.

PART 2

10 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:

15 "Convention country"—

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

"(b) Does not include Australia."