Child Support Amendment Bill

Commentary on the Bill

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Minister of Revenue

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Child Support Amendment Bill – commentary on the Bill

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Overview of the Bill

OVERVIEW

The child support scheme helps to provide important financial support for over 185,000 New Zealand children.

Since its introduction in 1992, the scheme has been progressively adjusted to increase simplicity and to encourage greater compliance.

Child support will move to Inland Revenue's new systems and processes in April 2021. This move will allow a greater degree of efficiency and simplicity, and also creates opportunities for legislative changes to further improve the administration of the child support scheme.

The 2017 discussion document *Making Tax Simpler: Better administration of social policy*[1] contained proposals aimed at improving the way social policy entitlements and obligations, including child support, are administered by Inland Revenue.

The focus of the discussion document was not on changing the fundamental policy settings, but rather improving the administration by taking advantage of the opportunity offered by the modernisation of Inland Revenue's systems.

The discussion document set out a number of problems with the child support scheme that require legislative change. The problems ranged from unfairness in the system, to the need to address situations where the person's circumstances are unusual or complex. These problems can lead to dissatisfaction with the scheme and reduced compliance. Adding to this, the rules for penalties are overly punitive and complex, and act more as a disincentive, rather than an incentive, to pay.

Following public feedback, the Government made decisions on the proposals and these have been incorporated into this Bill.

Combined, these changes aim to improve the administration, reduce complexity, improve fairness and increase compliance with the scheme. The proposed changes cover four important aspects of the child support scheme:

- simplifying the penalty rules;
- introducing compulsory employer deductions;
- limiting retrospective reassessments by introducing a time bar; and
- amending the definition of "income".

The Bill also contains a number of technical amendments to assist the administration of the scheme, including to work better with customers with unusual circumstances.

The proposals in the Bill apply to financial support – that is, both child support and domestic maintenance.[2] Throughout this commentary the term child support is used for readability purposes.

All section references are to the Child Support Act 1991 unless otherwise stated.

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[1] Available at https://taxpolicy.ird.govt.nz/publications/2017-dd-mts-9-social-policy/overview

[2] Domestic maintenance refers to payments made by a person to a former partner. Inland Revenue administers domestic maintenance under Court orders registered in the New Zealand Family Courts and voluntary agreements.

Policy proposals

CHANGE TO TIMING OF SECOND STAGE OF LATE PAYMENT PENALTY

(Clause 42 (2 and 3))

Summary of proposed amendment

Late payment penalties are imposed on a liable parent if they do not pay on time. Initial penalties are applied in two stages – immediately after the default and then a follow-up penalty eight days after the due date, if the amount is not paid. The proposal is to shift that second stage of the initial late payment penalty to 28 days after the due date, rather than the current eight days after the due date.

Application date

The proposed amendment would apply from 1 April 2021.

Key features

The second stage of the initial late payment penalty would be charged 28 days after the due date.

The change to the timing of the second stage of the initial penalty would apply to amounts that become due on or after 1 April 2021. If the first stage of the initial penalty was charged before 1 April 2021, the second stage of the initial penalty would continue to be charged eight days after the due date.

Background

Currently, if a person does not pay their child support on time, penalties apply. An initial penalty of 2% is imposed the day after the due date and, if payment is not made, a further 8% initial penalty is applied eight days after the due date.

Moving the imposition of the second stage of the initial penalty to 28 days after the due date would give Inland Revenue time to contact the customer and explain payment options (for example, a payment arrangement) and the consequences of not paying (for example, the imposition of the 8% penalty, bank deductions), with the aim of working with the person to get them back on track.

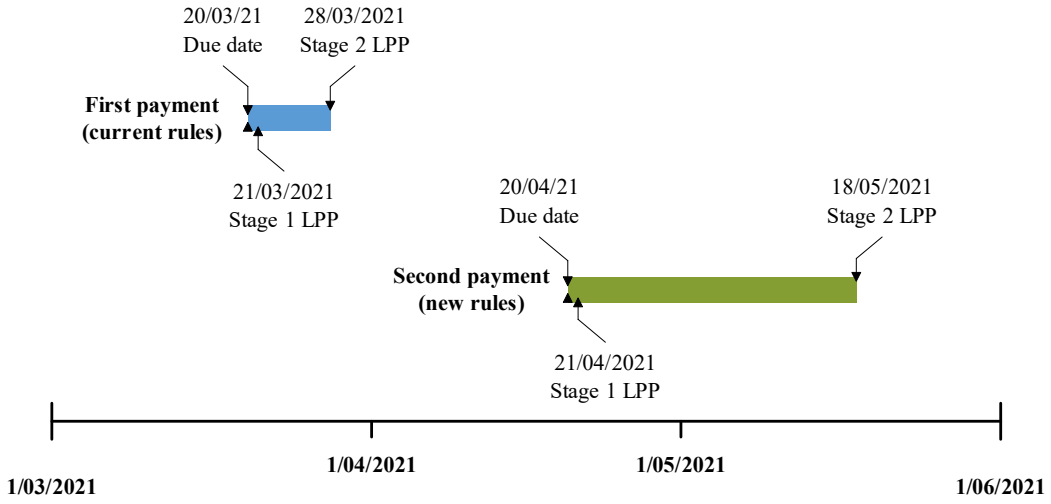
Example 1: Imposition of initial late payment penalties

Simo is separated from his partner, Lara. They have one child, Ali, who lives with Lara.

Simo's child support payment is due 20 March 2021. He does not make the payment on time. Simo's next payment is due 20 April 2021 (after the proposed amendment would take effect). Simo does not make this payment.

The timeline in figure 1 shows how the second stage of the late payment would be applied for both payments.

Figure 1



MINIMUM $5 PENALTY RULE REPEAL

(Clause 42(1))

Summary of proposed amendment

The proposal is to repeal the $5 minimum penalty rule. This would ensure that the 2% initial penalty imposed is in proportion to the unpaid obligation.

Application date

The proposed amendment would apply from 1 April 2021.

Key features

Repeal the $5 minimum penalty rule. The penalty charged at the expiry of the due date would be 2% of the unpaid obligation.

Background

The initial penalty charged the day after the due date is currently the greater of:

- 2% of the amount outstanding; or
- $5.

Penalties play an important role in encouraging parents to meet their child support obligations. However, excessive penalties can discourage the payment of child support to the detriment of the children concerned.

The current $5 minimum penalty means that some people are disproportionately penalised. This is demonstrated in the example 2.

Example 2: $5 minimum penalty

Karl was supposed to pay $200 child support on 20 June. However, he did not make the payment and so the initial penalty was charged on 21 June.

The initial penalty charged is $5. 2% of $200 is $4, but the penalty imposed is $5, the current minimum penalty. This means that Karl pays more than 2% of the amount outstanding.

Under the proposed amendment Karl's penalty amount would be $4.

GRACE PERIOD

(Clause 43)

Summary of proposed amendment

For people new or returning to the child support scheme, a grace period is proposed during which late payment penalties would not be charged. The proposed grace period would allow a liable person time to adjust to making child support payments. It would also allow Inland Revenue the opportunity to provide support to newly liable or returning persons.

Application date

The proposed amendment would apply from 1 April 2021.

Key features

A grace period would be introduced under which late payment penalties would not be applied, for people new or returning to the child support scheme. This would apply to periods starting on or after 1 April 2021.

The proposed grace period would start on the first due date and would apply for the following 60 days.

The proposed grace period would apply:

- when a person is first made liable for child support under the child support scheme;
- at any time during a child support assessment when a person first becomes a liable parent after a period of being a receiving carer; or
- if after a period of not having an ongoing child support assessment, a person re-joins the scheme and is made liable for payments.

Example 3: Application of the grace period

Brian and Anna separate in April. They have a daughter, Brianna, who lives with Anna. Anna applies for child support.

Brian receives his assessment and is required to pay $150 per month, with the first payment due on 20 June.

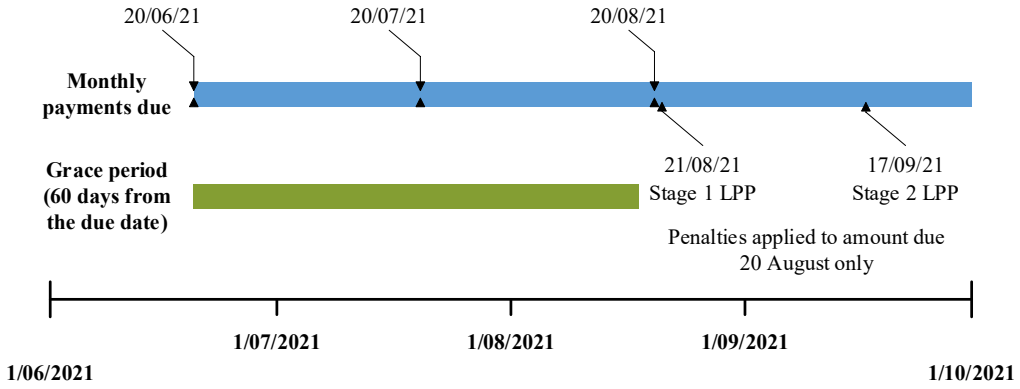
His penalty grace period is set at 20 June – 18 August (a 60-day period from the first due date).

Brian did not pay his monthly obligations due on 20 June, 20 July or 20 August.

The proposed grace period would apply to the amounts due for June and July, and no penalties (neither initial nor incremental) would be charged on these amounts.

The proposed grace period expires on 18 August. Penalties would be charged on the amount due on 20 August, and on any amounts that become overdue after that.

Figure 2



The proposed grace period would begin from the date of assessment if the person is assessed as the liable parent but has no child support payable. A person may be assessed as the liable parent but no child support payable if they have shared care of their child and the formula determines neither parent needs to pay the other.

The proposed grace period will not apply if:

- a person is currently a receiving carer but is, for example, reassessed to pay an increased amount for a past period when they were a liable parent: or
- a parent is already liable to pay child support and is made liable to pay child support for another child, either within, or outside of, the existing assessment.

Late payment penalties would start being charged on a person's child support obligations that become due after the expiry of the proposed grace period. If an amount is outstanding and was due to be paid during the proposed grace period, penalties would not be charged on this amount.

The proposed grace period would provide an opportunity to work with the customer to help get them on track with their payments, but does not prevent Inland Revenue from taking enforcement action (such as deductions from bank accounts) if appropriate.

Background

Compliance with payment obligations in the first few months when a person enters the child support scheme is generally low. Currently, twenty six percent of payments in the first three months are paid on time.

Research conducted by Inland Revenue highlighted that when parents separate and the child support process is started, customers' situations are often in flux and many felt unprepared to make payments immediately. Introducing a grace period would allow Inland Revenue to work with customers to help them get things right from the start and should result in better ongoing compliance.

COMPULSORY DEDUCTIONS FOR NEWLY LIABLE PARENTS

(Clauses 40 and 41)

Summary of proposed amendment

A newly liable person would pay their child support by automatic deduction from source deduction payments made by their employer. There would be discretion to allow payments by another method, if source deduction is not appropriate for a person.

Application date

The proposed amendment would apply from 1 April 2021.

Key features

It is proposed that employers would make child support deductions from the pay of a liable person.

A person would be required to pay their child support by source deductions if:

- they are first made liable for child support under the child support scheme on or after 1 April 2021;
- at any time during the course of a child support assessment they become a liable parent after a period of being a receiving carer (as long as this is on or after 1 April 2021); or
- if after a period of not having an ongoing child support assessment they re-join the scheme (after 1 April 2021) and are made liable for payments.

People who were liable to pay child support before 1 April 2021 and who are compliant with their obligations may continue to choose to pay by another method.

In some cases it may not be appropriate for the deduction to be made – for example, if the person has multiple employers or for privacy reasons. Therefore, Inland Revenue would have the discretion to determine that the compulsory deduction rules do not apply (and alternative arrangements would be made to collect child support). If the person subsequently defaults, compulsory deductions would then be applied.

Background

Currently, employers must make deductions of child support from salary or wages when a liable person is in debt or a customer chooses this payment option. Deductions are also compulsory for liable parents on a benefit.[3]

Compulsory employer deductions of child support from source deduction payments (salary, wages and schedular payments) were proposed and then removed from the 2013 child support reforms – largely because at that time the monthly PAYE system meant they could not be effectively administered.

[3] A benefit includes a Veteran's Pension or New Zealand Super.

However, the recently implemented pay day reporting would allow compulsory deductions for a person newly liable for child support to be administered effectively.

Compulsory deductions would assist liable parents first entering the scheme by helping them get their payments right from the start and avoid them going into debt. Currently, compliance for new liable parents in the first few months is very low – less than a third pay on time.

The discretion to allow payment by another method would provide flexibility to consider other options for payment, when source deduction is not appropriate for a person.

TIME BAR FOR REASSESSING CHILD SUPPORT

(Clauses 19, 20 and 34)

Summary of proposed amendment

It is proposed that reassessments of a child support year by Inland Revenue be restricted to four years from the end of a relevant child support year. This would be subject to legislative exceptions.

Application date

The proposed amendment would apply from 1 April 2021.

Key features

Reassessments of child support would be restricted to a four-year period. The four-year period would start from the end of the relevant child support year. Beyond the four-year period, reassessments would not occur – that is, the year would be time barred, subject to specified exceptions. A time bar for reassessing child support would provide more certainty for parents and reduce administration costs, while balancing equity concerns through specified exceptions.

Reassessments for a year could still occur after the end of the four-year period if one of the following exceptions apply:

- information provided by a person in the child support assessment is fraudulent or wilfully misleading;
- if types of income, for example, rental income, have not been included in a person's child support assessment;
- a person who is part of the child support assessment has died;
- a person should never have been made liable – for example, a person is subsequently found not to be the parent of a child;
- an amendment is required for the purpose of avoiding a double liability (for the same child at the same time) with an overseas jurisdiction;
- Inland Revenue has not met the notification requirements;
- a Court order is received that applies to an earlier time-barred period;
- a new child support assessment should result in the reassessment of an existing assessment that is time barred; or
- the exemption from paying child support for victims of sex offences should otherwise apply.

The existing rights to object to a decision or an assessment that Inland Revenue has made and to appeal to the Family Court would also still apply.

The time bar would also restrict administrative and Commissioner initiated administrative reviews[4] – that is, there would be a four-year period in which to seek an administrative review.

Once the time bar is in effect, a person would be largely unable to apply for an administrative review for the time-barred period. However, there would also be a four-month limit to apply for an administrative review of an assessment that relates to a period that is time barred. The application must be made within four months of the date of the latest notice of assessment.

The four-month limit would not apply to administrative reviews applied for within the non-time-barred four years. But, when the time bar would otherwise be in effect, parents would be permitted a small window to apply for an administrative review where appropriate.

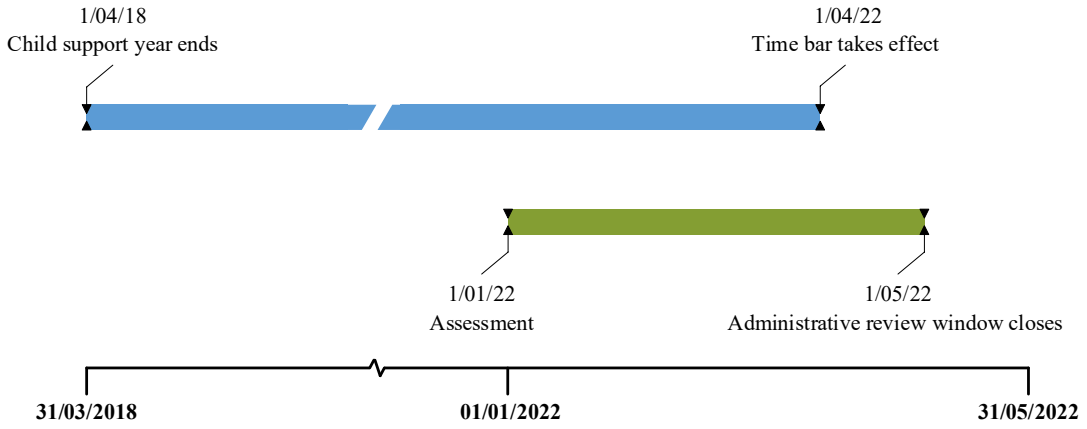
This would ensure that policy intent of the time bar can be achieved, that is, to provide a limited time period for reassessments, which would result in more certainly for parents.

Example 4

On 1 January 2022 Inland Revenue notifies Jane of an assessment for the child support year 1 April 2017 to 31 March 2018. The assessment is dated three months before the period will become time barred (1 April 2022).

Jane would have four months from 1 January (the date she was notified by Inland Revenue) to apply for an administrative review. That is, she could apply for an administrative review up until 30 April 2022 (one month after the period has become subject to the time bar).

Figure 3



Example 5

On 1 December 2021, Inland Revenue notifies Hector of a reassessment for the child support year 1 April 2012 to 31 March 2013. The reassessment arises following an audit where it was identified that none of Hector's rental income had been included in his income tax assessment. Therefore, one of the exceptions to the time bar applies. The assessment relates to a time-barred period. Hector would have four months, stating from 1 December 2021 (the date of notification) to apply for an administrative review for the time barred child support year.

[4] "Administrative review" is the term used to describe the process when a person makes an application for a departure from the formula under the Child Support Act 1991.

The proposed time bar will be broadly consistent with the time bar for income tax which restricts reassessments to four years after a taxpayer has provided their income tax return.

Background

Under the current rules, if relevant information is provided Inland Revenue can amend an assessment as far back as 1992 (when the Child Support Act came into force). Reassessments can occur for a variety of reasons – for example, changes in income, changes in care arrangements and parents reconciling. This unrestricted ability to amend assessments creates uncertainty for parents. It also results in additional administrative costs. In some cases, there is no change in the amount to be paid as a result of the reassessment because, for example, the liable person is assessed to pay the minimum child support amount.

DEFINITION OF INCOME

(Clauses 4(1) and (3), 9, 10 and 13)

Summary of proposed amendment

It is proposed that the definition of "income" used for child support purposes be amended to better reflect a parent's financial capacity by incorporating investment income and no longer offsetting losses from earlier years.

Application date

The proposed amendment would apply from 1 April 2021.

Key features

The definition of income used for child support purposes would be amended to better reflect a parent's financial capacity.

If a person's income in the tax year before the child support year is only from income that has had tax deducted at source, the income used to determine their child support obligation or entitlement would be their employment income plus any interest and dividend income (subject to resident withholding tax) from the calendar year immediately preceding the child support year.

For parents whose income is from other sources (for example, they are self-employed), any losses carried forward from an earlier year would be ignored for the purposes of determining the income to be used to calculate child support obligations.

Background

Currently, for parents whose only income is from income that has had tax deducted at source, only their employment income is included in their child support assessment. That is, interest and dividends subject to resident withholding tax are excluded. This is because, in the past, interest and dividend income was not generally known until the end of the tax year. However, from 1 April 2020 interest and dividend income information will be reported to Inland Revenue on a monthly basis. This means there will now be the opportunity to take interest and dividends into account.

One of the objectives of child support is that the level of financial support that parents provide for their children is determined according to their relative financial capacity. Reducing a person's income by deducting tax losses that have been occurred in earlier periods is at odds with that objective.

This proposed amendment would also more closely align the definition of "income" used for child support purposes with that used in other social policies such as Working for Families tax credits.

Technical amendments

RECONCILING AN ESTIMATION AT THE END OF THE YEAR

(Clauses 14, 16 and 17)

Summary of proposed amendment

It is proposed that a "reconciliation period" is introduced to ensure that if a parent has estimated their income for child support, the income used for the end of year reconciliation would reflect what was earned over the period the estimate applies to.

Application date

The proposed amendment would apply from 1 April 2021.

Key features

When a parent has estimated their income for child support, the proposed reconciliation would be completed on the basis of a "reconciliation period" rather than an "election period". This would ensure that the period being squared up reflects the number of days for which the estimation is in effect.

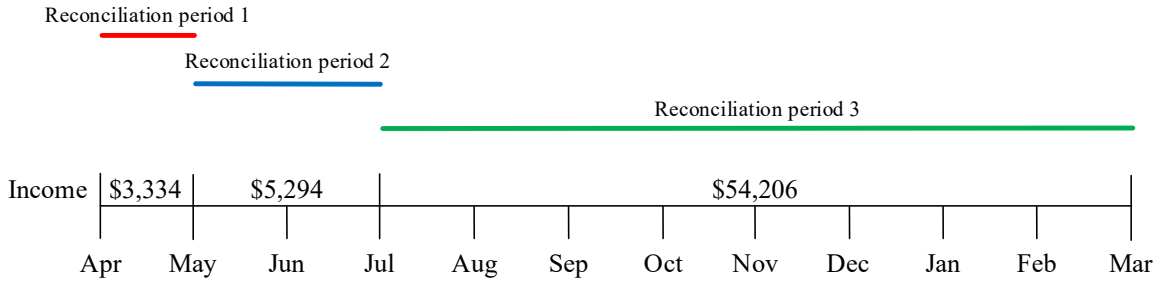
The proposed reconciliation period would be from the start of the month in which the estimate was received until the day before the next estimate. If there is only one estimate, or it is the last estimate in a year, the proposed reconciliation period would be from the start of the month in which the estimate was received until the end of the child support year.

The formula for reconciliation would be changed so that the income used reflects the amount received over the reconciliation period (rather than considering income received after the reconciliation period has ended, as can currently occur). The amended formula would have income received over the reconciliation period divided by the number of days within the reconciliation period and then multiplied by 365 to achieve an annualised income.

If the actual income a parent earned at the end of the year is more than what they were originally assessed on (before they chose to estimate), the reconciliation income would still be that from the original assessment.

This outcome is illustrated in figure 4.

Figure 4: Outcome of the proposed reconciliation period



	Reconciliation period 1	Reconciliation period 2	Reconciliation period 3
Length of period	30 days	61 days	274 days
Income derived in period	$3,334	$5,294	$54,206
YTD income	$0	$3,334	$5,294
Formula used	((a − z) ÷ b) × 365	((a − z) ÷ b) × 365	(a − b) × 365
	((3,334 − 0) ÷ 30) × 365	((5,294 − 3,334) ÷ 61) × 365	(54,206 ÷ 274) × 365
Annualised income	$40,563.67	$11,727.87	$72,208

Background

The child support formula assessment uses both parents' income, based on the previous year's income. However, if a parent expects their income to reduce by fifteen percent or more for the year, they may estimate the amount they expect to earn for the remainder of the year. A parent may estimate more than once during the year. At the end of the year there is a reconciliation of the estimate and the actual income earned in that period.

Detailed analysis

If a person elects to estimate their income, the estimate is reconciled at the end of the year to determine if child support has been under or overpaid. The reconciliation is currently completed on the basis of an "election period".

An election period for an estimate means either:

- the child support year – if the estimate is submitted before the start of the child year or in the first month of the child support year; or
- the period starting on the first day of the month in which an estimation is submitted to the last day of the child support year.

The income to be used in the reconciliation is the income received over the election period.

Once the income for the election period is identified, the amount is divided by the number of days within the election period and then multiplied by 365 to achieve an annualised income.

The current election period is appropriate when a person estimates once in a child support year. However, if there are multiple estimations in the year, all but the final election period

extend for a longer period than the estimation relates to. Therefore, this does not reflect what was earned in the period the estimate relates to.

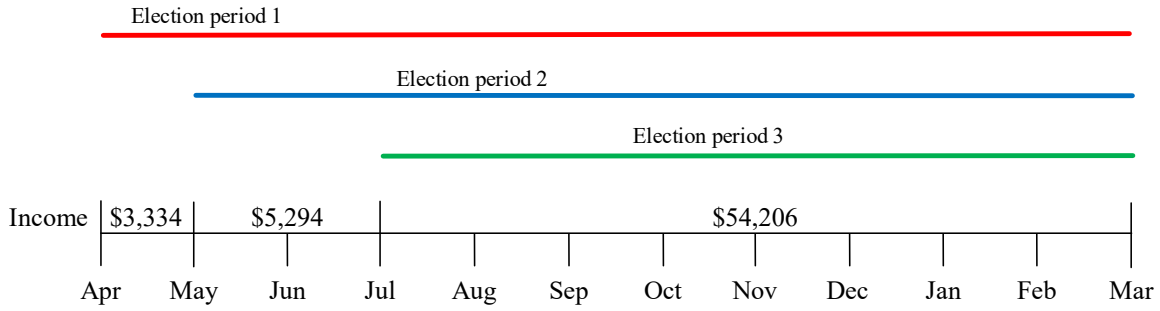
This means that a person's income used in the reconciliation could reflect more income or less income than was actually earned in the period the estimate relates to.

Example 6 demonstrates this.

Example 6: Current reconciliation rules with multiple election periods

Jorge has estimated three times in a given year: Estimate 1 begins on 1 April, Estimate 2 beings on 1 May and Estimate 3 begins on 1 July. At the end of the year Jorge has earned $62,834; the amount earnt in each election period is shown in figure 5.

Figure 5



In practice, Estimate 1 is only in force until Estimate 2 begins. However, the election period used when reconciling Estimate 1 is the full child support year. As such, Estimate 1 is reconciled on the whole year's actual income, not the $3,334 earned in April which annualised would be $40,563.

The method for determining the income used to reconcile each estimate means it may not reflect actual earnings for the relevant period.

Reconciling estimates on the income a parent earned in the relevant period the estimate applies to would improve the fairness of the child support scheme.

ACCEPTING AN ESTIMATION

(Clause 15)

Summary of proposed amendment

When a person joins the child support scheme, it is proposed that an estimation could be backdated to the start of the new assessment if Inland Revenue receives the estimation within 28 days of the notification of the assessment. This means that a person (whether a liable parent or receiving parent) would have at least 28 days to estimate their income when child support is first assessed.

Application date

The proposed amendment would apply from 1 April 2021.

Key features

When a person joins (or re-joins) the child support scheme an estimation could be backdated to the start of the new assessment if Inland Revenue receives the estimation within 28 days of the notification of the assessment. This means that a person (whether a liable parent or receiving parent) would have at least 28 days to estimate their income when child support is first assessed.

Once 28 days has passed the current rule would apply and the estimate could only be back dated to the beginning of the month in which the estimate is given.

Background

Currently, if an estimate is given before the start of the child support year, it applies from the beginning of that year. Otherwise, it applies from the beginning of the month in which the estimate is given.

In some circumstances, a person new to the child support scheme may lose the opportunity to estimate for periods (generally the previous month), because they receive their first notice of assessment or entitlement after their first month of liability or entitlement has already ended.

The proposed amendment would mean that a person (whether a liable parent or receiving parent) has at least 28 days to estimate their income when child support is first assessed.

COMMISSIONER INITIATED DEBT OFFSETTING BETWEEN PEOPLE

(Clauses 35–37 and 46)

Summary of proposed amendment

Inland Revenue would be able to offset child support amounts owed between parents, without the person having to apply for an administrative review.

Application date

The proposed amendment would apply from 1 April 2021.

Key features

It is proposed that the current administrative review ground which allows for child support amounts to be offset, be replaced by a provision permitting Inland Revenue to complete an offset when two people owe each other child support (whether or not the amounts have become due and payable). The offset would net out child support amounts two people owe each other rather than require an adjustment to any formula assessment (as is required with an administrative review). The person owing the greater amount would be required to pay the difference.

As with the current legislative settings, an offset would not be able to be exercised for any payments that are to be retained by the Government to cover the costs of benefits paid to carers.

Background

Currently, a parent may apply for an administrative review to request a child support amount they owe another parent is offset by the amount that parent owes to them. Administrative review is a process when a person's formula assessment can be changed, on application by the parent to better fit a person's specific situation, through determination by Inland Revenue.

The ground was introduced in 2016 but has been largely unused.

A provision permitting Inland Revenue to initiate an offset of the debts would be simpler to administer, easier for customers to understand, and be more effective at reducing debt.

REPEAL OF REDUNDANT PROVISION FOR URGENT MAINTENANCE ORDERS

(Clauses 38 and 39)

Summary of proposed amendment

It is proposed to repeal the provision which allows a person to apply to the Family Court for an urgent maintenance order if they have made an application for child support to Inland Revenue, but child support has not yet been assessed.

Application date

The proposed amendment would apply from 1 April 2021.

Key features

The current provision for a carer to be granted an urgent maintenance order for a child if the Family Court rules that a child is in urgent need of assistance would be repealed, as it is redundant.

Background

In 1992, the urgent maintenance provision was included in the Child Support Act to cover the period of transition when child support moved to Inland Revenue in case there were any unforeseen circumstances that meant Inland Revenue was unable to assess child support. An order under this provision has never been granted.

Repealing the provision would simplify the legislation.

CHANGES TO TEMPORARY EXEMPTIONS

(Clauses 22–32)

Summary of proposed amendment

Amendments are proposed to the hospital patient and prisoner exemptions so that the exemptions would be available to liable persons who are overseas.

It is proposed that a new exemption be introduced for people who have a long-term illness or injury who are unable to work, with similar income criteria to the existing exemptions.

Application date

The proposed amendment would apply from 1 April 2021.

Key features

The hospital patient and prisoner exemptions would be extended to qualifying liable persons who are overseas. The exemption would only be available if the liable person earns the equivalent of (or less than) the income currently allowed for New Zealand-based hospital patients or prisoners.

It is proposed that a new exemption be introduced for liable persons who have a long-term illness or injury who cannot work (for 13 weeks or more) and who meet specific income thresholds. To be eligible for the exemption they must either have:

- nil income; or
- income only from investments (not exceeding the weekly average of the minimum weekly child support liability – currently $18).

As with the existing exemptions, the exemptions would not be available to liable persons who have any other income such as a main benefit (including a Jobseekers Allowance, Sole Parent Benefit, or Supported Living Payment).

Example 7

George receives a main benefit (supported living payment) of $308.91 per week. Because this amount is more than the maximum child support obligation per week, George does not qualify for the exemption for persons suffering from a long-term illness or injury.

Currently, a receiving carer can make an application requesting an exemption be overturned on the basis of the financial capacity of the exempted person. Inland Revenue can make a determination that an exemption should not apply, if the exemption would be inequitable because of the earning capacity, or financial resources of the liable person. This would also apply to the proposed changes.

Background

Temporary exemptions from payment of child support for hospital patients and long-term prisoners exist to provide relief from payment on the grounds that a person has limited income (and capacity to earn an income) for a period of time.

Currently, the exemptions for hospital patients and prisoners are only available to a liable person living in New Zealand and either in a prison or hospital for more than 13 weeks or more.

Under current rules, to qualify for an exemption, a liable person who is a long-term hospital patient must have:

- nil income;
- income only from investments (not exceeding the weekly average of the minimum weekly child support liability (currently $18); or
- only income from the benefit payable to long-term hospital patients (currently $45.28 per week).

Under current rules, a liable person who is a prisoner must have:

- nil income;
- income only from investments (not exceeding the weekly average of the minimum weekly child support liability (currently $18);
- only income payable under section 66 of the Corrections Act 2004.

Making temporary exemptions available to patients in overseas hospitals and prisoners in overseas prisons would bring consistency to the rules for domestic and overseas liable parents.

The proposed new exemption for people who have an injury or illness but being cared for in a home environment would mean that they are being treated consistently with a person who is in hospital.

REMOVAL OF THE MIXED AGE EXPENDITURE TABLE

(Clauses 8, 12 and 49)

Summary of proposed amendment

It is proposed to remove the mixed age expenditure table to ensure that costs of children are allocated appropriately between younger and older children.

Application date

The proposed amendment would apply from 1 April 2021.

Key features

The mixed age expenditure table would be removed.

Costs would be calculated for each child based on their age, using the applicable expenditure table for their age.

Background

Child support obligations are based on various factors including the estimated costs of raising children. These estimated costs are reflected in schedule 3 of the Child Support Act. The schedule provides for expenditure for children aged 12 and younger or 13 and older. It also provides expenditure for when a child support calculation includes children from both age brackets in a "mixed age expenditure table" which is an average of the expenditure for the children in the other age brackets.

If a child support calculation includes at least two children in the same child support calculation and they fall into different age brackets, the use of the mixed age table can lead to an inequitable outcome. For example, if the children do not live in the same household (for example, one child lives with the mother and the other with the father), the use of the mixed age table does not allocate costs appropriately to each child (although the total expenditure for all children is correct), with the result that the parent with the older child is not receiving the appropriate amount of child support.

The proposed amendment would ensure that the costs are calculated appropriately for each child, based on their age, and would better reflect that costs are higher for older children. In cases when children live in different households, it would ensure that the household with the younger child does not benefit from being allocated some of the expenditure intended for the older child.

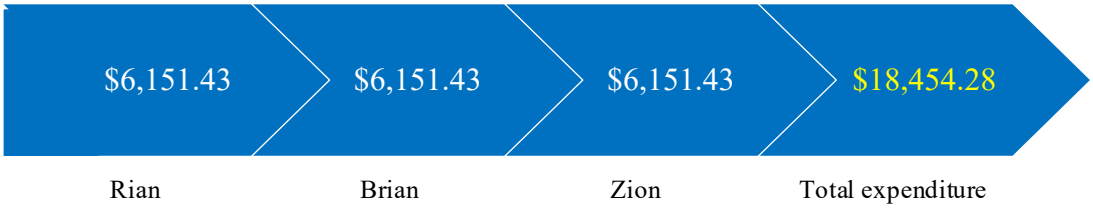
Example 8

Ioane and Krystal have three children together: Rian (aged 15), Brian (aged 14) and Zion (aged 10). Rian and Brian live with Ioane 100% of the time, and Zion lives with Krystal 100% of the time. Since all three children share the same parents, they form a child support group. Child expenditure would be calculated as a total figure for the group. When determining child expenditure for the group, the mixed age expenditure table applies. Ioane and Krystal have a combined child support income of $63,634.

For the child support year 1 April 2020 – 31 March 2021, child expenditure for the group is **$18,454.28**.

This figure would be divided by three to find individual expenditure figures for each child, as shown in figure 6.

Figure 6



As Zion lives with his mother Krystal, the individual figure $6,151.76 will be used in the formula to determine the amount of child support payable for him. This amount is greater than would be reached using the table for children aged 12 or younger, which would be **$5,620.75**.

The reason this figure is lower than the amount reached under the mixed age expenditure table is because expenditure figures in the mixed age table are higher than the table for children aged 12 or younger to account for the costs of children aged over 13. This means that when the total figure is divided between the number of children in the child support group, children 12 or younger are allocated greater expenditure than their age would normally entitle them to.

Conversely, Rian and Brian are allocated expenditure of $12,303.52, which is less than would be allocated if the table for children aged 13 or older were used. That figure would be **$13,362.87** (this figure includes expenditure for both Rian and Brian).

This means that Krystal's higher expenditure figure for Zion will result in a higher entitlement, and Ioane's lower expenditure figure for Rian and Brian will mean a lower entitlement.

This outcome is not a problem when a parent cares for all children in a child support group, as that parent incurs the costs associated with all children. However, when children live with different parents, a parent who cares for children 12 or younger will benefit from higher expenditure because of the costs associated with children they do not care for, and the parent who cares for children 13 or older will be disadvantaged.

DISCRETION TO ADJUST CHILD EXPENDITURE CALCULATIONS

(Clauses 8 and 12)

Summary of proposed amendment

It is proposed that Inland Revenue would have the discretion to adjust child expenditure calculations when children live in different care arrangements which result in the formula not achieving the intended outcome.

Application date

The proposed amendment would apply from 1 April 2021.

Key features

The proposed amendment would allow discretion for Inland Revenue to adjust child expenditure calculations in situations when complex care arrangements for children in the same calculation are not adequately accounted for.

This discretion would only be applied when there are exceptional circumstances and the outcome would be unjust or inequitable if the calculations were not modified.

Background

The expenditure table in schedule 3 of the Child Support Act was developed based on economies of scale, that is, each subsequent child increases child expenditure by a progressively smaller amount.

Example 9

In the 2020 child support year, a parent earning $61,351.00 per annum caring for dependent children aged under 12 would be permitted a dependent child allowance of:

- $9,816.12 for 1 child;
- $14,417.20 for 2 children; and
- $16,257.25 for 3 or more children.

The expenditure table does not provide individual child expenditure figures. However, these can be calculated from the difference between total figures:

Figure 7

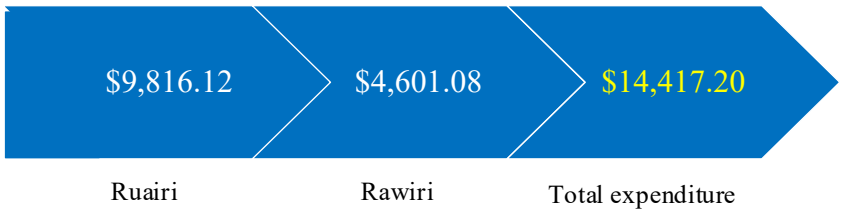
Although expenditure calculations serve the majority of cases, in some complex situations these calculations can produce unintended outcomes. For example, if a parent has two dependent children in their care full time and a third dependent child enters their care for fifty percent of the time, while that parent's dependent child allowance might reasonably be expected to increase or stay the same, it can in fact decrease.

This occurs because of how the formula for calculating the dependent child allowance apportions total expenditure amongst the children concerned. The formula divides expenditure equally between each child. Expenditure is granted to the parent as a dependent child allowance in proportion to the amount of time they care for each relevant child. However, because subsequent children increase child expenditure by a progressively smaller amount, the formula deducts the proportion of time from a greater share of total expenditure than the child has contributed.

Example 10

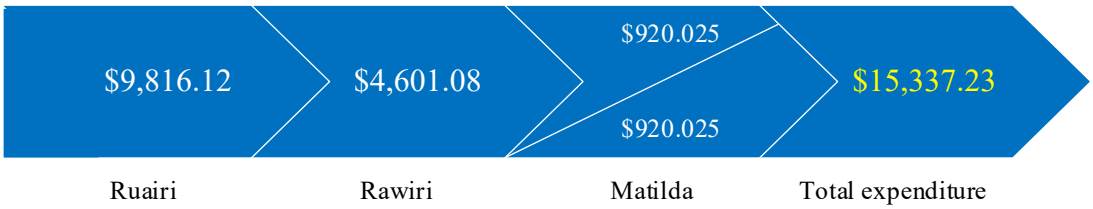
Caoimhe earns $61,351 and has two dependent children in her care, Ruairi and Rawiri. Caoimhe has a dependent child allowance of $14,417.20.

Figure 8



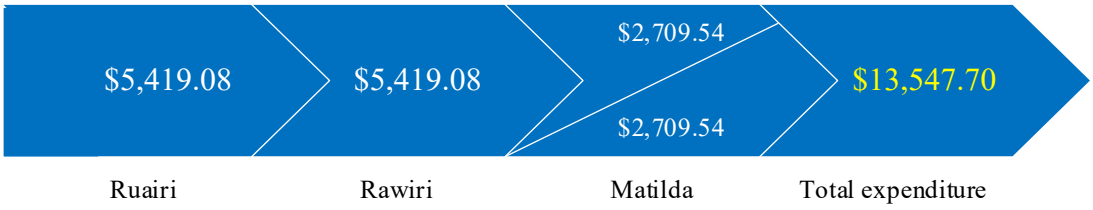
Caoimhe's daughter Matilda comes to live with her fifty percent of the time. It could be reasonably expected that Caoimhe's dependent child allowance would increase by fifty percent of the expenditure permitted for Matilda (in this instance, around $920).

Figure 9



However, this is not the outcome reached under current rules. Since the formula for the dependent child allowance divides expenditure equally amongst the children, Matilda is allocated an equal third of total expenditure, of which Caoimhe is permitted only fifty percent (in this instance, $2,709.54). As such, Caoimhe's dependent child allowance decreases from $14,417.20 to $13,547.70, even though there is an additional child in her care.

Figure 10



By allowing Inland Revenue the discretion to modify expenditure calculations it would be able to resolve cases, which, due to their complexity, result in a perverse outcome. This would increase fairness for families.

CLARIFYING THAT CHILD SUPPORT ENDS WHEN A CHILD LEAVES STATE CARE

(Clause 7)

Summary of proposed amendment

The proposed amendment would clarify that child support would stop for a qualifying child when the child leaves State care.

Application date

The proposed amendment would apply from 1 April 2021.

Key features

The proposed clarification would confirm that child support stops for a qualifying child when they leave State care.

If the child is subsequently going to be cared for by one of the parents, that parent could apply for child support if they wish to receive payments.

Background

The Child Support Act provides that in situations when a child's care arrangement is changed the new care arrangement should be updated and the child support should continue – taking into account the change in care. Notifications of the child support assessment based on the child's new care arrangement would be issued to the parents.

However, when a child leaves State care and is placed with one of the parents, Inland Revenue practice is to stop the child support that parents are paying to the State (the receiving carer in these cases). This practice is followed due to potential safety concerns for the child and their carer that may arise out of the need to notify the change in the child's care arrangements.

If the parent with the child in their care would like to receive child support, they are able to apply.

However, Inland Revenue's approach is not consistent with the current legislative provisions.

Clarifying that child support should end when a child leaves State care would reinforce the current practice and protect the safety of the child.

TIMEFRAMES FOR PROVIDING ORDERS OF PARENTAGE

(Clause 6)

Summary of proposed amendment

It is proposed that Court declarations of parentage would be required to be provided to Inland Revenue in a timely manner.

Application date

The proposed amendment would apply from 1 April 2021.

Key features

The proposed amendment would mean child support would only be back dated on receipt of a declaration of parentage if:

- the carer applied for the order either before or within two months of submitting their child support application; and
- having been granted, the order is given to Inland Revenue within two months.

Inland Revenue would have discretion to accept the orders outside the two-month period if the delay was due to circumstances beyond the carer's control – for example, they were seriously ill.

These rules would also apply to an order or declaration made by an overseas court or a public authority in an overseas jurisdiction.

If the two-month period was not met, child support would start from the date the Court order is given to Inland Revenue.

Background

A person cannot be made liable to pay child support unless Inland Revenue has received proof that the person is a parent as defined in section 7 of the Child Support Act. In some cases, a person is named on the child support application but not initially considered liable, then through a subsequent Court order is declared the parent. That person's child support liability can be back dated to the date the child support application was received. This is regardless of how long it takes for the Court declaration to be given to Inland Revenue. This can lead to delays of many years and can create large debts for the liable parent.

The proposed amendment would remove the ability for the carer to delay giving Inland Revenue a parentage order in a timely manner knowing that child support can be backdated.

Introducing timeframes for parents and carers to provide orders of parentage would address this and improve equity for parents.

INTRODUCING TIMEFRAMES TO ADVISE OF CIRCUMSTANCES WHEN CHILD SUPPORT FIRST ASSESSED

(Clauses 18 and 21)

Summary of proposed amendment

It is proposed that there should be a time limit for advising Inland Revenue of a person's circumstances that exist when they apply for child support.

Application date

The proposed amendment would apply from 1 April 2021.

Key features

A liable parent or receiving carer would have 28 days from the date of their notice of assessment to advise Inland Revenue of any existing circumstances that could affect their assessment for it to be back dated to the start of their assessment.

If notification is received after 28 days, it would only take effect from the date the notification is received by Inland Revenue.

Background

When Inland Revenue is satisfied that a relevant change of circumstance has occurred (for example, the birth of a new dependent child or a change in care arrangements) the Child Support Act determines when the change is to be treated as having occurred. If a change is notified within 28 days of it occurring, it is recognised from the date it occurred.

However, this is not the case when the circumstance existed at the time child support was assessed for a person for the first time. In these situations, the assessment is considered incorrect and therefore could be corrected from the start of the child support assessment. This can cause overpayments to carers (for example, if a liable parent notifies Inland Revenue that they are the carer of a dependent child that reduces their payments) or retrospectively increases obligations owed by liable parents (if a receiving parent likewise notifies that they have always been the carer of a dependent child).

The proposed amendment would ensure consistency with the rules governing changes of circumstances that occur after the initial child support assessment. It would also encourage parents to notify circumstances in a timely manner and improve certainty for parents and carers.

MINIMUM AGE AT WHICH A CHILD CAN BE CONSIDERED FINANCIALLY INDEPENDENT

(Clause 5(1))

Summary of proposed amendment

It is proposed to align the minimum age at which a child could be considered financially independent with similar rules in the Working for Families legislation.

Application date

The proposed amendment would apply from 1 April 2021.

Key features

It is proposed that a child would only be able to be considered financially independent for child support purposes when they have reached 16 years of age. This would align with similar rules in the Working for Families legislation.

Background

There is currently no minimum age for when a child can be considered financially independent.

This change would ensure that parents support their children financially until they are at least 16 years old.

MAXIMUM AGE OF QUALIFYING CHILD

(Clause 5(2))

Summary of proposed amendment

It is proposed that the "maximum qualifying age" of a child for child support purposes be aligned with similar tests for Working for Families and main benefit recipients.

Application date

The proposed amendment would apply to any child who turns 18 on or after 1 April 2021.

Key features

If a child is aged 18 and enrolled at school, it is proposed that child support would stop on the earlier of:

- the day before the day they are no longer enrolled and attending school; or
- 31 December of the year in which the child turns 18, if they attend school until the end of the academic year.

This would better align the child support "maximum qualifying age" of a child with similar tests for Working for Families and main benefit recipients.

As a transitional arrangement, if a child in school turns 18 before 1 April 2021, the old rules would apply, and child support could continue to apply until they turn 19.

Background

Currently a child ceases to qualify for child support once they turn 18 unless they are still at school. Once a child turns 18, child support ends the earlier of:

- when they leave school if they do not finish the school year;
- 31 December of the year the child turns 18, if they finish the school year and they are not attending school the following year; or
- the day before the child turns 19, if the child is still in school until their 19th birthday.

CLARIFYING RESIDENCE RULES

(Clause 47)

Summary of proposed amendment

It is proposed that the child support residence rules are clarified so that Inland Revenue can determine whether a person is ordinarily resident in New Zealand based on whether a person intends to be ordinarily resident or not.

Application date

The proposed amendment would apply from 1 April 2021.

Key features

Determinations of whether a person is ordinarily resident in New Zealand or not for the purposes of child support could be made if Inland Revenue is satisfied that a person intends to be ordinarily resident or not.

To determine whether a child is ordinarily resident in New Zealand, Inland Revenue would consider where the child is more likely to be living.

Example 11

Kate arrived in New Zealand from England on 1 July 2021 and purchased a house in August. She has a child, Ben, from a previous relationship who lives with his father in New Zealand. Kate intends to live in New Zealand permanently.

Ben's father applied for child support on 10 July 2021. Kate's intention to stay in New Zealand can be taken into account and she is considered ordinarily resident for the purposes of child support. Kate is assessed as liable to pay child support for Ben from 10 July.

If Kate's intention to live in New Zealand could not be considered, the child support application could not be accepted, and a child support obligation raised until Kate had lived in New Zealand for at least 183 days.

Example 12

Dave, Alice and their two children emigrate to New Zealand from Germany, they are not New Zealand citizens. A few months after moving to New Zealand, Dave and Alice separate and the two children live with Dave full time. Dave applies for child support and Alice is made liable (she is considered resident based on her intention to stay in New Zealand). A year later, Alice decides to move back to Germany with no intention of returning to New Zealand to live.

Because Alice does not intend to return to New Zealand her child support obligation stops from the day she leaves the country. Dave can consider pursuing child support from Alice through the German child support system.

If Alice's intention to leave the country was not taken into account, the child support could not be stopped until at least 325 days had passed, and Dave may not be able to pursue child support through the German child support system.

Background

Inland Revenue's current practice is that child support residency decisions are usually based on a person's intended movements. This is because residency for child support purposes needs to be determined in order to accept a child support application or end a child support assessment in a timely manner.

If this approach is not taken, a carer could have to wait up to 325 days before Inland Revenue could determine their residency status and then accept their application for support.

The proposed amendment would better reflect the current operational practice that a person's intention to be ordinarily resident (or not) should be taken into account.

MINOR REMEDIAL PROPOSALS

(Clauses 4(2), 11(1), 11(2), 33 and 44)

Summary of proposed amendment

It is proposed that minor remedial amendments are made, including corrections to cross references.

Application date

The proposed amendments would apply from 1 April 2021.

Key features

- The definition of "social security beneficiary" has been repealed from section 2 of the Child Support Act. However, it is still referred to as being specifically defined in section 2(1) in sections 152B(2), 180(2)(a), 180(2)(b), 180(2)(c) and 180A(1)(a) of the Child Support Act. The Bill proposes a clarification that a social security beneficiary would be a person in receipt of a social security benefit.
- Before the Child Support Amendment Act 2013, the Child Support Act stipulated that the tax rate at which to gross the benefit rate for each year be the rate in force on 1 January of the preceding year. However, this was inadvertently removed in the amendment of the Act. A clarification is proposed that the rate at which to gross up the appropriate benefit rate for the coming child support year would be the rate in force on 1 January of the preceding year.
- Section 35A(2) of the Child Support Act was updated as a consequence of the Social Security Act rewrite. However, that amendment has inadvertently widened who qualifies for the higher rate of living allowance (which is based on the benefit payable under clause 1(c) of Part 3 of Schedule 4 of the Social Security Act 2018), so that it is now payable to any beneficiary granted a supported living payment. It is proposed that the higher rate of living allowance would be limited to a single beneficiary with at least one dependent child, as intended.
- The Alcoholism and Drug Addiction Act 1966 was repealed and replaced by the Substance Addiction (Compulsory Assessment and Treatment) Act 2017. Consequentially, part (b) of the definition of "hospital patient" in section 89B of the Child Support Act was amended to "a patient within the meaning of the Substance Addiction (Compulsory Assessment and Treatment) Act 2017" which has widened the definition.
- It is proposed that part (b) of the definition of "hospital patient" would be amended to refer to a person who is "a resident in a treatment centre" under the Substance Addiction (Compulsory Assessment and Treatment) Act 2017.
- As a result of the repeal of sections 81 to 88 of the Tax Administration Act 1994 in 2019 and insertion of new provisions to deal with collection, use and disclosure of revenue information, some cross references in the Child Support Act are no longer correct:

- Section 89Z(4) of the Child Support Act refers to the now repealed section 85K of the Tax Administration Act 1994. The cross reference should be to the new section 18H of the Tax Administration Act 1994 (which refers to schedule 7, part C of that Act).
- The definition of "relevant payments" in section 135JA(1) of the Child Support Act refers to the now repealed section 82(9) of the Tax Administration Act 1994 for the definition of "earnings related compensation". It is proposed that the reference would be to schedule 7, part C, subpart 2, clause 41(9) of schedule 7 of the Tax Administration Act 1994.