

Hon Stuart Nash, Minister of Revenue

Information Release

Amendments to the Child Support Act 1991

July 2020

Availability

This information release is available on Inland Revenue's Tax Policy website at <https://taxpolicy.ird.govt.nz/publications/2020-ir-cab-child-support/overview>

Documents in this information release

#	Reference	Title	Date
1	IR2019/125	Tax policy report: Business Transformation: Child support, better payment options and remedial items	20 March 2019
2	IR2019/241	Tax policy report: Business Transformation: Child support – working with customers with unusual circumstances	12 June 2019
3	IR2019/243	Tax policy report: Business Transformation: Amending child support definitions	12 June 2019
4	IR2019/242	Tax policy report: Business Transformation: Child support – certainty of assessments	17 June 2019
5	IR2019/240	Tax policy report: Business Transformation: Child support – debt and payments	18 June 2019
6	IR2019/334	Tax policy report: Cabinet paper - Business Transformation child support	18 July 2019
7	SWC-19-SUB-0110	Regulatory impact assessment: Child support Business Transformation	8 August 2019
8	SWC-19-SUB-0110	Cabinet paper: Business transformation: Amendments to the Child Support Act 1991	28 August 2019
9	SWC-19-MIN-0110	Minute: Business transformation: Amendments to the Child Support Act 1991	28 August 2019
10	IR2020/041	Tax policy report: Cabinet paper – Child Support Amendment Bill: Approval for introduction	29 January 2020
11	LEG-20-SUB-0029	Cabinet paper: Child Support Amendment Bill: Approval for introduction	3 March 2020
12	LEG-20-MIN-0029	Minute: Child Support Amendment Bill: Approval for introduction	3 March 2020

Additional information

Cabinet paper SWC-19-SUB-0110 was considered by the Social Wellbeing Committee on 28 August 2019 and confirmed by Cabinet on 2 September 2019.

Cabinet paper LEG-20-SUB-0029 was considered by the Cabinet Legislation Committee on 3 March 2020 and confirmed by Cabinet on 9 March 2020.

Two attachments to the Cabinet papers are not included in this information release as they are publicly available:

- Child Support Amendment Bill
- Departmental Disclosure Statement for the Child Support Amendment Bill

Information withheld

Some parts of this information release would not be appropriate to release and, if requested, would be withheld under the Official Information Act 1982 (the Act). Where this is the case, the relevant sections of the Act that would apply are identified. Where information is withheld, no public interest was identified that would outweigh the reasons for withholding it.

Sections of the Act under which information was withheld:

- 9(2)(a) to protect the privacy of natural persons, including deceased people
- 9(2)(f)(iv) to maintain the current constitutional conventions protecting the confidentiality of advice tendered by ministers and officials

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POLICY AND STRATEGY

Tax policy report: Business Transformation: Child support, better payment options and remedial items

Date:	20 March 2019	Priority:	Medium
Security level:	In Confidence	Report number:	IR2019/125

Action sought

	Action sought	Deadline
Minister of Revenue	Agree to recommendations for compulsory deductions of child support from salary and wages and other minor or technical changes	3 April 2019

Contact for telephone discussion (if required)

Name	Position	Telephone
Melody Guy	Policy Manager	s 9(2)(a)
s 9(2)(a)	Senior Policy Analyst	
	Senior Policy Analyst	

20 March 2019

Minister of Revenue

Business Transformation: Child support, better payment options and remedial items

Purpose

1. This report proposes that compulsory deductions of child support be made from salary and wages. It also proposes a number of technical amendments to the Child Support Act 1991 (the Act). This is the first in a series of reports proposing amendments to the Act as part of the Business Transformation work programme.

Background

2. Inland Revenue's multi-year transformation programme will modernise New Zealand's revenue system. Once complete, customers will spend far less time and effort ensuring they meet their obligations and receive their correct social policy entitlements.
3. Business transformation is enabled by a combination of changes to policy, process, technology and the organisation design of Inland Revenue. It is far more than an upgrade of technology and has provided the opportunity to fundamentally review how the revenue system is administered and consider what changes may be needed.
4. It is currently planned that the child support scheme will move to the new system and processes, in April 2021. This creates opportunities to improve the administration of the scheme at the same time.
5. In July 2017, the previous Government released the discussion document *Making Tax Simpler: Better administration of social policy* (the discussion document). One of the issues contained in the document was that child support deductions from employees' wages would be compulsory for all domestic liable parents in the same way as PAYE and student loan deductions are made.
6. This report proposes advancing the compulsory deductions policy change and two other minor or technical measures:
 - improvements to the income estimation provisions; and
 - improvements to debt offsetting.
7. In report IR2019/050 we noted we would report on a proposal to limit the back-dating of some changes of circumstances. However, reporting on this issue has been deferred to a post-budget report so it can be considered along with other items intended to improve surety of assessment. We had also intended to include in this report a proposal to repeal a redundant court order provision, however further consultation is required with the Ministry of Justice.

Comment***Compulsory deductions***

8. The discussion document proposed that child support deductions from employees' wages would be compulsory for all domestic liable parents. Compulsory employer deductions of child support were descope from the 2013 child support reforms largely because the monthly PAYE system meant they could not be effectively administered. This is because Inland Revenue must first calculate and notify a person's employer of the amount to be deducted. The monthly employer reporting for PAYE meant Inland Revenue may not know about a person's employer soon enough to notify them before the initial payments are required. This is in contrast, for example, to student loans when the borrower provides their employer with a tax code advising a loan payment is required and a percentage is deducted from each pay from the start.
9. As part of Inland Revenue's Business Transformation, from 1 April 2019 pay-day reporting will be mandatory. This means PAYE details will be provided to Inland Revenue following each pay day. This change should mean Inland Revenue can effectively implement compulsory employer deductions of child support when child support moves to Inland Revenue's new systems. Deductions are already compulsory for liable parents in receipt of a benefit (including a war pension or NZ Super). 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.
10. Eleven written submissions were received on this proposal. Eight supported it, two were concerned about compliance costs for employers and one was concerned about privacy. We acknowledge the compliance cost concerns, but note employers are already required to make deductions for PAYE, student loan repayments, ACC and KiwiSaver. Some employers are already making child support deductions (when a liable parent is in debt or asks for deductions). The proposal to make child support deductions compulsory from the start, aligns child support with these other compulsory payments. We consider making child support deductions compulsory will only marginally increase compliance costs for employers and only if it increases the number of employees they must make child support deductions for. Officials consider that the compulsory deduction proposal should be progressed.
11. However, in some cases it may not be appropriate for child support to be deducted from a person's salary or wages – for example, if they have multiple employers or for privacy reasons. Officials recommend that in such cases the Commissioner should have the discretion to determine the compulsory deduction rules not apply (and alternative arrangements are made to collect child support).
12. The change would apply to all new child support applications. As part of the transition to the new compulsory deduction rules, if at the time of transition a person is not having child support deducted from their salary and wage income and is compliant with their child support obligations, officials recommend that compulsory deductions are not made immediately. If the person stops complying or decides to opt in, compulsory deductions would then apply. This would smooth the impact of the change on employers, liable parents and the department.

Improvements to income estimations

13. Child support assessments are based on a past year's income. An exception is when a person's income in the current year will decrease when compared to the income in the past year. The decrease must be 15% or more. In such cases the person can "estimate," and elect to use their current income as the basis of their child support assessment. At the end of the year, any estimate is reconciled with the actual income earned in the period of estimation to assess the final child support payment. If a person estimates more than once during the year, each estimation is reconciled separately at the end of the year. We have identified two issues with the estimation rules.
14. First, if a person estimates more than once during the year, when their estimate is reconciled they can be assessed on income that is greater than what they earned in some periods. The issue arises because each period is reconciled using the actual income earned from the date of the estimate to the end of the child support year, rather than the income earned over the period the estimate applies for.

Example 1

Samuel has been assessed to pay child support on his past income of \$75,000. In April, he is in a lower paying job and estimates he will earn \$52,000 over the child support year (1 April – 31 March). In July, Samuel receives a pay increase, so he makes a new estimate to reflect this.

Samuel has already earned \$13,350 from 1 April to 30 June (his year-to-date income). He estimates he will earn a further \$43,500 from 1 July to 31 March (this is annualised to \$57,947). Based on this second estimate, Samuel believes his total income for the year will be \$56,850 (the amount already earned of \$13,350 plus the estimate of \$43,500). At the end of the year he actually earned \$57,700.

The outcome – current state

When the first estimate is reconciled for 1 April – 30 June, the income earned for the full year of \$57,700 is used. However, Samuel only earned \$13,350 in the period, at an annual rate is \$53,547. By using his end of year income, Samuel's liability is increased for the period 1 April – 30 June. He will now have additional child support to pay, due in the next 30 days.

15. To prevent child support income being overstated, for a person who estimates more than once, year-to-date income could be used to determine the income for the reconciliation of the previous period. To reconcile the final period, the actual income earned in the year less any year-to-date income in the final estimate would be used.

Example 2

Using the same facts, when Samuel's estimate is reconciled for 1 April – 30 June the income he earned \$13,350, an annual equivalent of \$53,547 is used. This reflects what Samuel earned in those months.

The period 1 July – 31 March is reconciled using the income earned of \$44,350 (being his total income for the year of \$57,700 less the year-to-date amount for the earlier estimation period of \$13,350), an annual equivalent of \$59,079.

16. The second issue relates to the policy that an estimation is only accepted from the beginning of the month in which the estimate is received. This can mean that a person new to the child support scheme may lose the opportunity to estimate for periods (generally the previous month), because they receive their notice of assessment or entitlement in a later month. Officials recommend that when a person joins the child support scheme an estimation can be backdated to the start of the assessment if Inland Revenue receives the estimation on or before the first due date for payment. This would mean that a person has at least 30 days to estimate their income when child support is first assessed.

Debt offsetting

17. Another issue that was descoped during the child support reforms was debt offsetting. It was intended that amounts owed between parents could be automatically offset. The amendment was repealed due to the low numbers who would qualify and the expense of building the systems changes in FIRST.
18. Instead the offset was replaced with an administrative review ground. Administrative review is a process where a person's formula assessment can be changed to better fit a person's situation. The offset applies if a parent wants the child support they owe the other parent offset (or reduced) by the child support that parent owes them.
19. The number of times the ground has been used is very low, and the provision is difficult to administer. Officials recommend that a provision permitting the Commissioner to initiate an offset of the amount owed would be preferable. The offset would net out child support debts two parents owe each other. The person owing the higher amount would be required to pay the difference. Such a provision would be simpler, cheaper, easier for customers to understand and would be more effective at reducing debt.

Administration, compliance and fiscal costs

20. Generally, the proposals would not have any fiscal implications and would reduce administration and compliance costs as the rules would be easier to understand. The exception is compulsory employer deductions which could see a marginal increase in compliance costs for employers from having to make deductions and record and pay the money to Inland Revenue. The increase in the number of deductions would, however, be small relative to the volumes already being processed at the same time to account for PAYE, student loan repayments, ACC and KiwiSaver contributions and for child support payments that are already being deducted by employers.

Consultation

21. The Treasury were involved in the development of the proposals contained in the discussion document, including compulsory deductions from salary and wages. They have been informed of the contents of this report.

Next steps

22. This report is the first in a series setting out possible changes as part of Business Transformation. When you have provided feedback on the recommendations in the

reports, we will prepare a Cabinet paper with the aim of seeking Cabinet approvals in July 2019 and for amendments to be included in a bill introduced in late 2019.

Recommended action

We recommend that you:

23. **agree** to the proposed compulsory deduction of child support from salary and wages for all domestic liable parents;

Agreed/Not agreed

24. **agree** that the Commissioner have discretion not to apply the compulsory deduction provision in limited circumstances – for example, due to privacy concerns or when there are multiple employers;

Agreed/Not agreed

25. **agree** that when compulsory deductions become effective, if an already liable parent is compliant, that compulsory deductions are not applied automatically;

Agreed/Not agreed

26. **agree** that when a person joins the scheme an estimation can be backdated to the start of the assessment if received on or before the first due date for payment;

Agreed/Not agreed

27. **agree** that the end-of-year reconciliation rules for estimates are updated to reflect the income earned over the period an estimate applies for;

Agreed/Not agreed

28. **agree** that the offsetting administrative review ground be replaced with a provision permitting the Commissioner to offset the amount owed between two parents;

Agreed/Not agreed

29. **note** that when you have provided feedback on the series of child support reports, officials will prepare a Cabinet paper for you with the aim of seeking Cabinet approvals for any amendments in July 2019 and including the amendments in a bill introduced in late 2019;

Noted

30. **agree** to refer the report to the Minister of Finance.

Agreed/Not agreed

Melody Guy
Policy Manager
Policy and Strategy

Hon Stuart Nash
Minister of Revenue
/ /2019



POLICY AND STRATEGY

Tax policy report: **Business Transformation: Child support – working with customers with unusual circumstances**

Date:	12 June 2019	Priority:	Medium
Security level:	In Confidence	Report number:	IR2019/241

Action sought

	Action sought	Deadline
Minister of Revenue	<p>Agree to recommendations to better support child support customers with unusual circumstances</p> <p>Refer a copy of this report to the Minister of Finance</p>	26 June 2019

Contact for telephone discussion (if required)

Name	Position	Telephone
Mike Nutsford	Policy Manager	s 9(2)(a)
s 9(2)(a)	Senior Policy Analyst	
	Senior Policy Analyst	

12 June 2019

Minister of Revenue

Business Transformation: Child support – working with customers with unusual circumstances

Purpose

1. This report seeks your agreement for changes to child support to better support customers with unusual circumstances when the appropriate policy outcome is not being achieved. These changes relate to:
 - 1.1 the application of the temporary exemptions from paying child support;
 - 1.2 the removal of unintended outcomes from the use of the mixed age expenditure table in calculating the costs of children and to provide some discretion for Inland Revenue to deal with complex cases where the formula gives unintended outcomes; and
 - 1.3 clarifying the law that a child support assessment ends when a child leaves Oranga Tamariki's care.

Background

2. Inland Revenue's multi-year transformation programme will modernise New Zealand's revenue system. Once complete, customers will spend far less time and effort ensuring they meet their obligations and receive their correct social policy entitlements.
3. Business transformation (BT) is enabled by a combination of changes to policy, process, technology and the organisation design of Inland Revenue. It is far more than an upgrade of technology and has provided the opportunity to fundamentally review how the revenue system is administered and consider what changes may be needed.
4. It is currently planned that the child support scheme will move to the new system and processes, in April 2021 – BT release 5. This creates opportunities to improve the administration of the scheme at the same time.
5. In July 2017, the previous Government released the discussion document *Making Tax Simpler: Better administration of social policy* (the discussion document). One of the proposals was to introduce general principle-based discretion to work with social policy customers with unusual circumstances. It was considered discretion would allow Inland Revenue to better apply the law in a way that achieves overall objectives. It was also noted that if a relatively straightforward legislative fix could address an unusual situation this is preferable.

Comment

6. Officials previously reported to you on the use of discretions to support customers with unusual or special circumstances [Report IR2018/237 refers]. We presented options for introducing either a principle-based general discretion or a more specific

discretion to deal with child support issues arising as the result of a sex offence. You confirmed a strong preference for more specific discretions.

7. Child support has an administrative review process under which certain circumstances can be considered, for example a parent can ask for a review to have extra costs associated with a child's special needs taken into account. However, officials have identified other areas where customers with unusual circumstances could be better supported by specific discretion or remedial legislative amendment.

Temporary exemptions from paying child support

8. A person, subject to meeting certain income criteria, can be granted a temporary exemption from paying financial support (child support and domestic maintenance¹) if they are under 16 or they are a long-term (13 weeks or more) prisoner or hospital patient. These exemptions are justified on the basis that the person has no capacity to earn an income for a limited time, or for those under 16 the law requires they are attending school (which limits their ability to earn). The exemptions do not apply if the liable person has a source of income – for example, interest income over a set threshold. There is allowance for a hospital patient to receive a reduced benefit², or for a prisoner to receive the small incentive payments the Department of Corrections pays for participating in prisoner employment activities.
9. The current rules mean neither the prisoner or hospital patient exemptions are available to a person overseas. This is because a prisoner must be held in custody in a New Zealand corrections prison or police jail and a hospital patient must be in a New Zealand hospital or residential care facility. Additionally, a person in a similar position to someone in hospital cannot likewise apply for an exemption if they are being cared for in some other facility or in their home. For example, a person may have a terminal illness and be cared for at home while accessing hospice services.
10. Officials recommend that the exemption rules are updated to remove some of the inequities that result from the current rules by:
 - 10.1 extending the ability to grant a prisoner exemption to a liable person in the overseas equivalent of a New Zealand corrections prison or police jail; and
 - 10.2 introducing discretion to allow Inland Revenue to grant a hospital exemption to a person not receiving an income due to suffering from long-term illness or injury even when they are not in a New Zealand hospital or residential care facility.
11. If the person started to receive an income or Inland Revenue was no longer satisfied the person was suffering from illness or injury, the exemption would end.
12. Officials also recommend the income tests are amended to ensure an exemption is granted to a person living overseas if that person's only income is analogous to that allowed for a New Zealand based liable person.

¹ Domestic maintenance is a payment for ex-spouses or ex-partners, either ordered by the Court or agreed to by the ex-spouses.

² Long-term hospital patients can receive a benefit at the rate specified in Part 12 of Schedule 4 of the Social Security Act 2018 and qualify for an exemption. This payment is currently \$45.28 a week and is provided to cover small personal costs.

13. These changes would align with the original policy intent that long-term prisoners and hospital patients should be given temporary relief from their financial support obligations given they have no capacity to earn an income.
14. The Act allows a receiving person to ask Inland Revenue to overturn a temporary exemption. This provides a safeguard for situations when a receiving person is aware of financial resources that make it just and equitable for the liable person to continue paying even when they would otherwise qualify for an exemption.
15. The proposals to amend exemptions would result in more exemptions being granted although we do not know how many more. More receivers would be entitled to nil child support for a temporary period. In practice, this is what occurs now as a liable person who would qualify for an amended exemption is unlikely to be making payments. The extent to which a receiver will be disadvantaged is likely to be minimal and may be minimised if they are eligible for government support.

Child expenditure calculations

16. The child support formula uses expenditure tables to calculate the costs of children. They have been developed based on research that concluded teenagers cost more than younger children and economies of scale apply – that is, each subsequent child costs less.
17. There are three tables – one for children aged 12 and under, one for children aged 13 and older and a 'mixed age' table which is the average of the other two, designed to simplify calculations when children in the child support calculation fall into both age brackets. Also, although the expenditure table is developed using economies of scale the child support formula then provides that total expenditure is divided equally by number of children, rather than identifying the 'marginal' costs of each subsequent child.
18. Although the intended result is reached for most, officials are aware of some unintended outcomes. Using the mixed age table means younger children are allocated a portion of the costs intended for older children. When all children are living in the same household the total amount of child support is still appropriate. When older and younger children from the same family have different care arrangements this leads to the person with the older child in their care receiving less support than they should for that child and paying more than they should for the younger child in the other parent's care.

Example

Sam and Gina have child support for their children Tom (12) and Sara (9). Tom lives with Sam and Sara lives with Gina. Sam earns \$70,000 and Gina \$35,000.

Using Sam and Gina's combined income and the expenditure table for children aged 12 and younger Tom and Sara will 'cost' their parents \$7,600 each for the year. Sam is asked to pay \$5,836 for the care of Sara, and Gina is asked to pay \$1,763 for the care of Tom. (In practice, Sam is asked to pay Gina the difference of \$4,073).

Tom turns 13 and as costs for teenagers are higher, child support is reassessed. The mixed age expenditure table is used. The cost of each child is \$8,416. Sam is asked to pay \$6,463 and Gina is asked to pay \$1,952. (Sam will pay Gina \$4,511).

Some of Tom's increased cost is allocated to Sara and Sam's payment goes up.

19. Officials recommend the repeal of the mixed age table and making consequential updates to the child support formula to reflect this. Costs for a child would be calculated on the child's age (still accounting for the total number of children) and better reflect that costs are higher for older children. Using the example above, this would mean that when Tom turns 13, the cost for Sara (\$7,600) would not change and Sam's payment would remain \$5,863. However, the cost for Tom would increase to \$9,232 and Gina's share of those costs goes up to \$2,142. This would not introduce undue complexity as calculations are already done this way for the allowance³ for parents who have children in more than one child support calculation.
20. Other more complex situations may not be resolved by the repeal of the mixed age table. Rather than attempting to introduce complex legislative fixes each time a new situation is identified, officials recommend the introduction of discretion to allow Inland Revenue to adjust calculations when children from the same family live in different care arrangements and the formula is not achieving the intended outcome. This would allow, for example, some complex cases to be resolved by identifying the actual marginal costs of subsequent children.
21. There is precedent for this type of provision in the Act. The Act is written on the assumption that a child has two parents and those parents are living apart. When these assumptions are not correct Inland Revenue must (for the purposes of raising a formula assessment) modify the provisions of the Act to reflect the true position. This provision has been used administratively to alter formula calculations in situations when a child has only one parent, or the child is living in the care of a non-parent carer, say a grandparent, and their parents have not separated.

Children leaving the care of Oranga Tamariki

22. The 2013 child support reforms introduced a formula that assesses both parents to determine child support. Unlike the old formula the new formula does not require a new child support application when a child moves into the care of the liable parent. This means there is a seamless transition when care of children changes rather than a stopping and starting of child support payments and missed periods of support.
23. However, the practice of ending child support is still applied in situations when a child is in state care. Oranga Tamariki can apply for child support from the parents of children in their care⁴. If a child leaves the care of Oranga Tamariki and is placed in the care of one of their parents, child support is stopped, and a new application is required before it can be re-established. This practice is followed due to potential safety concerns for the child and their carer as notification of the change in carer would be given to the other parent. It allows parents in these cases to make a conscious choice to access child support from the other parent. Officials recommend this practice is clarified in the legislation by specifying that a child leaving Oranga Tamariki's care explicitly ends a child support assessment.

³ The child support formula provides for a 'multi-group' allowance for a parent who has more than one child support calculation. This allowance ensures all of a parent's children are accounted for in each child support calculation.

⁴ Oranga Tamariki can apply for child support when they are making payments to a carer under s363 of the Oranga Tamariki Act 1989. Payments to Oranga Tamariki will end when these payments cease.

Administration, compliance and fiscal costs

24. The proposals would not have fiscal implications and would reduce compliance and administration costs as they would improve the fairness of the scheme and allow Inland Revenue to better work with customers to achieve appropriate policy objectives. These changes if agreed would be implemented as part of release 5 of Inland Revenue's BT programme. Implementation costs such as those incurred for communicating policy changes are included in BT. No additional funding is required.

Consultation

25. The Treasury was involved in the development of the proposals contained in the discussion document, including the proposal to introduce discretion to deal with unusual circumstances. The Treasury, Ministry of Social Development and Oranga Tamariki have been consulted on the proposals and are comfortable with the recommendations in this report.
26. Five written submissions were received on the proposal to introduce discretions to better work with customers with unusual circumstances. All broadly supported the introduction of more flexibility to work with customers with unusual circumstances. One submitter noted that they strongly supported it and saw it as a "...positive step towards supporting people living in highly vulnerable situations."

Next steps

27. This report is one in a series setting out possible child support amendments as part of Business Transformation. When you have provided feedback on the recommendations in the reports, we will prepare a Cabinet paper with the aim of seeking Cabinet approvals in July 2019 and for amendments to be included in a bill introduced in late 2019. Officials recommend all agreed changes should be effective from 1 April 2021 to align with child support's move to the new technology platform.
28. Officials recommend that a copy of this report be referred to the Minister of Finance.

Recommended action

We recommend that you:

29. **note** that the recommendations in this report relate to the proposal to introduce discretion so Inland Revenue can better work with customers with unusual circumstances as contained in the July 2017 discussion document *Making Tax Simpler: Better administration of social policy*;

Noted

30. **note** that when you have provided feedback on the series of child support reports, officials will prepare a Cabinet paper for you with the aim of seeking Cabinet approvals for any amendments in July 2019 and including the amendments in a bill introduced in late 2019;

Noted

31. **agree** to amend the prisoner exemption to allow it to be granted to a liable person in the overseas equivalent of a New Zealand corrections prison or police jail;

Agreed/Not agreed

32. **agree** to amend the hospital exemption to give Inland Revenue discretion to grant the exemption to a liable person suffering from long-term illness or injury even if they are not in a New Zealand hospital or residential care facility;
- Agreed/Not agreed
33. **agree** that a hospital exemption should end if Inland Revenue is no longer satisfied a person is suffering from long-term illness or injury;
- Agreed/Not agreed
34. **agree** to amend the exemption provisions to that an exemption should only be granted to a liable person living overseas if their only income is analogous to that allowed for a liable person in New Zealand seeking an exemption;
- Agreed/Not agreed
35. **note** that a hospital or prisoner exemption ends if the person starts receiving income;
- Noted
36. **agree** that the mixed age expenditure table should be repealed, and expenditure calculations should be completed using a child's appropriate age bracket to address unintended formula outcomes;
- Agreed/Not agreed
37. **agree** that Inland Revenue should have the discretion to adjust child expenditure calculations in situations when complex care arrangements for children in the same calculation are not adequately account for by the usual method;
- Agreed/Not agreed
38. **agree** that the legislation should be clarified to explicitly state that a child support assessment should end when a child leaves the care of Oranga Tamariki;
- Agreed/Not agreed
39. **agree** that the effective date for all the recommendations in this report should be 1 April 2021.
- Agreed/Not agree
40. **refer** a copy of this report to the Minister of Finance for his information.
- Referred/Not referred

Mike Nutsford
Policy Manager
Policy and Strategy

Hon Stuart Nash
Minister of Revenue
/ /2019



POLICY AND STRATEGY

Tax policy report: Business Transformation: Amending child support definitions

Date:	12 June 2019	Priority:	Medium
Security level:	In Confidence	Report number:	IR2019/243

Action sought

	Action sought	Deadline
Minister of Revenue	<p>Agree to recommendations for amending certain definitions that apply for child support purposes.</p> <p>Refer a copy of this report to the Minister of Finance</p>	25 June 2019

Contact for telephone discussion (if required)

Name	Position	Telephone
Mike Nutsford	Policy Manager	s 9(2)(a)
s 9(2)(a)	Senior Policy Analyst	

12 June 2019

Minister of Revenue

Business Transformation: Amending child support definitions

Purpose

1. This report proposes and seeks your agreement to amendments to certain definitions that apply when calculating child support obligations. It is part of a series of reports proposing amendments to the Child Support Act 1991 as part of the Business Transformation work programme.

Background

2. Inland Revenue's multi-year transformation programme will modernise New Zealand's revenue system. Once complete, customers will spend far less time and effort ensuring they meet their obligations and receive their correct social policy entitlements.
3. Business transformation is enabled by a combination of changes to policy, process, technology and the organisation design of Inland Revenue. It is far more than an upgrade of technology and has provided the opportunity to fundamentally review how the revenue system is administered and consider what changes may be needed.
4. It is currently planned that the child support scheme will move to the new system and processes in April 2021 – BT release 5. This creates opportunities to improve the administration of the scheme at the same time.

Proposals

Income definition

5. There are differences between the definition of income that currently applies for child support purposes and that which applies to other social policy products.
6. Officials consider that some of these differences are justified as the purpose of defining income for child support differs to that for other social policy products.
7. For child support, parents' income is one of the components used to calculate the financial support that should be provided for a child by its parents. It is not a basis to determine eligibility. In contrast, income is used for Working for Families to determine how much a family receives from the Government. The more a family earns, the less they will be entitled to receive.
8. In this sense, it is less important to capture all possible sources of income for child support (so long as the main ones are captured) and more important to take a balanced approach that considers likely compliance costs and provides some certainty as to payments and entitlements.

9. If a parent considers that there is other relevant income that should be taken into account, child support has a provision that allows for them to pursue this via an administrative review.
10. However, officials consider it desirable and practicable that the income definition is amended to ensure that a wider range of income is taken into account than is currently the case. This would make the rules fairer and easier to understand.
11. For parents whose sole income is from income that has had tax withheld at source, only their employment income is included in their assessment. This means that interest and dividends subject to resident withholding tax is not captured, as it was not observable until the end of the tax year. By excluding interest and dividends, Inland Revenue can use the previous calendar years' employment income in the child support assessment. New rules require that interest and dividend income is now reported to Inland Revenue on a monthly basis, so officials recommend the income definition for this group should be widened to include interest and dividends from the preceding calendar year. This would be easy to administer and would not cause undue compliance burden on parents, given this income is already provided to Inland Revenue for tax purposes.
12. Officials also recommend moving from a taxable income to a net income base for child support. This would mean that tax losses would no longer be carried forward to reduce the income used to calculate child support obligations. Similar amendments would need to be made to the estimation provisions to move them from a taxable to a net income base. One of the objectives of child support is that the level of financial support parents provide for their children in that year is determined according to their relative capacity to pay. It is at odds with that objective to reduce one parent's relative capacity to support a child in that year due to tax losses that occurred in an earlier year. Inland Revenue's administrative review process can currently be used to mitigate the impact of tax losses on the assessment, if appropriate. However, this takes time and additional cost for applicants and Inland Revenue.
13. These amendments would further ensure that relevant income is taken into account and would create greater alignment with other social policy products. Officials estimate that around 500 to 1000 liable parents would have increased income used in their assessments as a result of this move to using net income. This would also impact the income used to calculate receiving carers' obligations. However, it is expected that fewer receiving carers would be affected, as they are more likely to have earnings solely from benefits or salary and wages.
14. While considering the alignment of the child support income definition with that used for student loans and Working for Families, officials have also identified potential problems with the general "catch-all" provision in relation to "other income" in section MB 13 of the Income Tax Act 2007 that applies to Working for Families. The provision is overly complex and leads to parents incorrectly providing income and receiving reduced entitlements. Officials will undertake further analysis and report to you before the end of this year.

Maximum age of child

15. The United Nations Convention on the Rights of the Child defines a child as someone under 18 years old. Legislation for Working for Families and child support generally aligns with this maximum age, but allows for it to be extended when the child is still in school.
16. Working for Families applies until the end of the calendar year in which the child in school or tertiary education turns 18. Child support ends when a child turns 18 unless they are still in school and then it can continue until the child in school turns 19.
17. Officials propose that, like Working for Families, for children over the age of 18, child support should also apply until the end of the calendar year in which the child turns 18 (but we should retain the requirement to be in school rather than a tertiary institution). As a transitional arrangement, if a child in school turns 18 prior to 1 April 2021, the old rules will apply and child support will continue to apply until they turn 19.
18. This change should simplify carers' interactions with Inland Revenue. While it would reduce entitlements for some receiving carers as their entitlements would end sooner, this is only likely to be the case for a few and only for a few months.

Minimum age of financially independent child

19. There is currently no minimum age at which a child may be considered financially independent for child support purposes so, in theory, a child could be considered financially independent at any age. For example, they might be considered financially independent if they worked 30 hours or more on average per week over a period of employment.
20. For Working for Families, a child must be at least 16 before they can be considered financially independent. This is because the test for financial independence is based on being in full-time work or in receipt of a main benefit or student allowance. Children under 16 are required to be in full-time schooling and cannot apply for a main benefit, therefore, they cannot meet this test.
21. Apart from the minimum age requirement, child support has the same test for financial independence. It is rare for a child under 16 to meet the tests to be considered financially independent for child support purposes. Officials consider it inappropriate for a child to be expected to contribute to his or her own cost of living in such cases. Rather, policy settings should encourage any such income to be kept for future use.
22. Officials recommend aligning the minimum age of financial independence for child support purposes with that which applies for Working for Families. In the rare case when a child under 16 earns a significant amount of income, a parent could still request an administrative review of child support obligations.

Residency

23. At this stage, officials do not propose aligning the residency rules across social policy products as outlined in the July 2017 discussion document that was released by the previous Government *Making Tax Simpler: Better administration of social policy*. However, officials have identified an issue with the child support definition.
24. Child support is payable by a person who is a New Zealand citizen or is ordinarily resident in New Zealand or in a country with which New Zealand has entered into a reciprocal agreement.
25. A person is "ordinarily resident in New Zealand" if they have a permanent place of abode in New Zealand or they meet a "day count" test – that is, they are in New Zealand for at least 183 days in a year and are not overseas for 325 days a year.
26. The residency assessment for tax purposes is generally made once the day count test has been met. However, this is difficult to apply to child support, as it would mean decisions to say, accept a child support assessment may need to be delayed for up to 325 days to see if the residency criteria are met. Therefore, in practice, Inland Revenue usually makes residency decisions based on a person's intended, rather than actual, movements.
27. Officials consider that the legislation should be amended to better reflect current operational practice, that is, that the person's intended movements should be taken into account. Officials consider that this best meets the policy intent of ensuring that decisions to assess and end child support are made as promptly as possible.

Administration, compliance and fiscal costs

28. These proposals would have minimal fiscal implications. Officials estimate that up to 1,000 liable parents would have increased income used which could increase their assessments. Where the receiving carer is a sole parent beneficiary, the child support is retained by the Crown to offset their benefit. However, the increase in the amount retained is unquantifiable. The proposals would reduce administration and compliance costs as the rules would be easier to understand and are better aligned with other social policy products where appropriate. If agreed to, these proposals will be implemented as part of BT release 5 (April 2021). Implementation costs such as communicating policy changes are included in BT. No additional funding is being requested.

Consultation

29. In July 2017, the previous Government released the discussion document *Making Tax Simpler: Better administration of social policy*. The discussion document included proposals to amend the definitions referred to in this report, to create greater alignment across social policy products. Submitters were supportive of the proposals, but made suggestions aimed at avoiding increased compliance cost.
30. The proposals in the discussion document that related to both child support and Working for Families (namely, the dollar amount that applies when defining financial independence and alignment of the residency definition) will be considered at a later date as part of officials' response to the recommendations of the Welfare Expert Advisory Group. This report relates to the proposals that apply solely to child support.

31. Officials have reflected further on the child support-related amendments that were proposed in the discussion document in light of the feedback provided in the consultation process and this report recommends the following departures from the previous proposals:¹
- 31.1 Broadening the income definition to a lesser extent than was originally proposed, to keep compliance costs to a minimum.
 - 31.2 Retaining the requirement that a child must be in school, in relation to the maximum age of a child definition.
 - 31.3 Not progressing any further work to align residency definitions at this stage.
32. The Treasury was involved in the development of the proposals contained in the discussion document, including the proposed amendments to definitions. The Treasury, Ministry of Social Development and Oranga Tamariki have been consulted on the proposals and are comfortable with the recommendations in this report.

Next steps

33. This report is part of a series setting out possible changes as part of Business Transformation. When you have provided feedback on the recommendations in the reports, we will prepare a Cabinet paper with the aim of seeking Cabinet approvals in July 2019 and for amendments to be included in a bill introduced in late 2019.
34. Officials recommend that a copy of this report be referred to the Minister of Finance.

Recommended action

We recommend that you:

35. **note** that the recommendations contained in this report (except the proposed amendment to the residency definition) were canvassed in the July 2017 discussion document *Making Tax Simpler: Better administration of social policy*;
- Noted
36. **agree** to widen the definition of income for child support purposes to include investment income such as dividends and interest and to move from a taxable income to a net income base;
- Agreed/Not agreed
37. **agree** that the provision to move from a taxable income to a net income base also applies to estimations;
- Agreed/Not agreed
38. **agree** that child support should apply until the 31st of December of the year in which a child in school turns 18;
- Agreed/Not agreed

¹ The proposed amendment to the minimum age of a financially independent child definition aligns fully with the recommendation in the discussion document.

39. **agree** that the amendment to the maximum age of a child for child support purposes should only apply to children who turn 18 on or after 1 April 2021;
Agreed/Not agreed
40. **agree** that a child should not be considered financially independent for child support purposes unless they are aged at least 16;
Agreed/Not agreed
41. **agree** to amend the definition of residency for child support purposes to enable a person's intended movements to be taken into account;
Agreed/Not agreed
42. **agree** that the amendments proposed in this report should apply from the child support year commencing 1 April 2021;
Agreed/Not agreed
43. **agree** that officials should do more work on whether any changes are needed to the income "catch-all" provision in section MB 13 of the Income Tax Act 2007;
Agreed/Not agreed
44. **note** that, if you agree with the recommendation in relation to section MB 13 of the Income Tax Act 2007, officials will report to you before the end of this year;
Noted
45. **note** that when you have provided feedback on the series of child support reports, officials will prepare a Cabinet paper for you with the aim of seeking Cabinet approvals for any amendments in July 2019 and including the amendments in a bill introduced in late 2019;
Noted
46. **refer** a copy of this report to the Minister of Finance.
Referred

Mike Nutsford
Policy Manager
Policy and Strategy

Hon Stuart Nash
Minister of Revenue
/ /2019



POLICY AND STRATEGY

Tax policy report: **Business Transformation: Child support – certainty of assessments**

Date:	17 June 2019	Priority:	Medium
Security level:	In Confidence	Report number:	IR2019/242

Action sought

	Action sought	Deadline
Minister of Revenue	Agree to recommendations. Refer a copy of this report to the Minister of Finance.	26 June 2019

Contact for telephone discussion (if required)

Name	Position	Telephone
Mike Nutsford	Policy Manager	s 9(2)(a)
s 9(2)(a)	Senior Policy Analyst	
	Senior Policy Analyst	

17 June 2019

Minister of Revenue

Business Transformation: Child Support – certainty of assessments

Purpose

1. This report recommends that a child support time bar be introduced which would mean a child support assessment could not be reassessed outside of this time bar period unless an exception applied. This will reduce retrospective assessments that can arise creating uncertainty for child support customers and problems such as new debt for liable parents or overpayments to receiving carers. This report also proposes other minor amendments aimed at improving the certainty of assessments. This report is one of a series of reports covering child support proposals as part of the Business Transformation work programme.

Background

2. Inland Revenue's multi-year transformation programme will modernise New Zealand's revenue system. Once complete, customers will spend far less time and effort ensuring they meet their obligations and receive their correct social policy entitlements.
3. Business transformation is enabled by a combination of changes to policy, process, technology and the organisation design of Inland Revenue. It is far more than an upgrade of technology and has provided the opportunity to fundamentally review how the revenue system is administered and consider what changes may be needed.
4. It is currently planned that the child support scheme will move to the new system and processes, in April 2021 (BT release 5). This creates opportunities to improve the administration of the scheme at the same time.
5. In May 2019, we reported to you seeking agreement to undertake targeted consultation with a small number of relevant groups on a proposal to improve the certainty of assessments for child support parents and carers by introducing a time bar for reassessing past periods [report IR2019/234 refers].

Proposals

6. Child support is based on several variables. In some cases, after child support has been assessed, changes to those variables can cause retrospective child support assessments. This creates uncertainty for carers (including new debt for liable parents or overpayments to receiving carers which need to be repaid).
7. To improve the certainty of child support assessments, officials recommend:
 - 7.1 the introduction of a four-year child support time bar subject to a number of exceptions;

- 7.2 extending the 28-day notification rules that apply to changes of circumstances during a child support assessment to notification of circumstances that existed at the time child support was applied for;
- 7.3 introducing time constraints for the provision of paternity orders and the backdating of child support assessments; and
- 7.4 repealing the urgent maintenance order provision.

Child support time bar

8. As noted in report IR2019/234, unlike tax child support does not have a statutory time bar stopping reassessments for past periods. This means that reassessments can be made as far back as July 1992 if Inland Revenue is given information that is relevant to a past child support year. Reassessments can occur for a number of reasons – for example, changes in income, changes in care arrangements and parents reconciling.
9. The report proposed a child support time bar which would operate in a similar way to the tax time bar in that reassessments to child support for past years could only be made within a certain timeframe (subject to a number of exceptions).
10. The current lack of a time bar provides a degree of uncertainty to both liable parents and receiving carers. A reassessment could result in either party owing money depending on the specific circumstance. The amount of change to the assessments would usually be modest. For all reassessments for past years completed in 2018, 37 percent had no change and for a further 38 percent the change was less than \$1,000 (either up or down). The introduction of a four-year time bar would provide certainty to parents, and provide a clean slate going forward, albeit at the cost of some being worse off. However, there would be specific exceptions which would allow reassessments in earlier periods – for example, in cases of fraud, which would help to mitigate those who situations when a person might be worse off.
11. Officials have undertaken targeted consultation with:
 - 11.1 Chartered Accountants New Zealand and Australia;
 - 11.2 Citizen’s Advice Bureau;
 - 11.3 FinCap; and
 - 11.4 National Beneficiaries Advocates Consultative Group.
12. The National Beneficiaries Advocates Consultative Group were comfortable with the proposal and thought that the proposed exceptions addressed any possible inequities.
13. Citizen’s Advice Bureau advised that it bases its advice to government on evidence from client’s enquiries. They do not have the capacity to analyse each child support enquiry. FinCap did not respond in the time frame given.

14. The Chartered Accountants supported a time bar when there has been a default assessment¹ and a reassessment would result in a reduction of child support paid by the liable parent and a debt for the receiving carer. However, they do not support the introduction of a time bar when there has been a default assessment and a reassessment would result in an increase in child support being payable by the liable parent and money due to the receiving carer. Their concerns include:
 - 14.1 that the proposal undermines the integrity of the child support scheme and may be perceived by the public and those who pay the correct amount of child support as unfair;
 - 14.2 it fails to meet the objective of the child support scheme which is to ensure parents fulfil their responsibilities to financially support their children; and
 - 14.3 that it fails to ensure that Inland Revenue meets its responsibilities to administer the scheme for those parents who voluntarily choose to receive their child support through Inland Revenue.
15. Officials consider that since the child support formula uses both parents' incomes, the proposal, including its exceptions, does not undermine the scheme. The option of only reassessing if it was to increase the liable parent's payment would introduce inequities in that it would effectively only provide for a reassessment if it is in the receiving carer's favour – even if it is the receiving carer's income that was the default assessment. We consider it is a trade-off of a small number of people being worse off (some of which would be mitigated by the exceptions), compared to the current situation of thousands² of customer's being affected every year by reassessments and the inherent uncertainty this creates.
16. Officials, therefore, recommend the introduction of a child support time bar. Under the time bar reassessments could only be made within a four-year time frame. Unlike the tax time bar which starts the four-year period from the end of the income year in which the return is filed, the child support time bar would start from the end of the relevant child support year. Four years is consistent with the tax rules and covers the period over which most reassessments occur. The time bar would also apply to administrative reviews – that is, there would be a four-year period in which to seek an administrative review.
17. The time bar would not apply:
 - 17.1 if information provided by a person in the child support assessment is fraudulent or wilfully misleading or omits income of a particular nature in a return;³
 - 17.2 when a person who is part of the child support assessment dies;
 - 17.3 when a person should never have been made liable – for example, when a person is subsequently found not to be the father of a child;

¹ A default assessment is when a parent has not filed a relevant return and the Commissioner has determined the income on which to base the child support assessment.

² In the 2018 child support year, 41,000 reassessments were made, of which approximately 3,800 were done for the years 1993 to 2013 (that is, the period that would be outside a four-year time bar).

³ Including if the assessment is a default assessment which does not include income of a particular nature.

- 17.4 when an amendment is required for the purposes of avoiding a dual liability (for the same child) with an overseas jurisdiction;
 - 17.5 if Inland Revenue does not meet the notification requirements; or
 - 17.6 if a Court Order is granted that applies to a time barred period.
18. If an exception applies and a retrospective reassessment is made, objection rights would still be available to affected parties and a person would have up to four months to ask for an administrative review for that year.

Changes of circumstances

19. 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, rules in the Child Support Act determine 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. If the change is notified outside the 28-day timeframe, it is treated as having occurred on either the date Inland Revenue received the notification or the date the event occurred whichever would result in better outcome for the other parent or carer affected by the change.
20. These rules are designed to encourage customers to notify Inland Revenue of changes in a timely manner and to limit the impact on associated parties if the notification is not timely.
21. However, the rules do not apply when the circumstance existed at the time the child support was assessed. In these cases, the assessment is considered incorrect and must be corrected effective from the start of the child support assessment. If the start of the assessment is in a previous child support year, discretion can be applied to limit the change to the start of the child support year in which notification was received.⁴
22. Backdating child support assessments in this manner causes several issues, including:
- 22.1 Overpayments for receiving carers, when they have received and relied on the payment of child support.
 - 22.2 Increases in child support payments for past periods that liable parents must pay within 30 days. If not paid within this timeframe, late payment penalties apply.
23. To increase the certainty of assessments, officials recommend that similar notification rules that apply to changes of circumstances during a child support assessment should also apply to the notification of circumstances that existed at the time child support was assessed. The parent should have 28 days from the date of their notice of assessment to advise of their existing circumstances.

⁴ Standard Practice Statement SPS 16/02 *Child support and domestic maintenance – amendments to assessments*

Paternity orders

24. When a person applies for child support they must provide proof of parentage – usually this is the child’s birth certificate. If a person does not have proof of parentage, they may seek a paternity order. If a person already has a paternity order at the time of applying for child support but it is provided later, the child support will be established from the date the order is provided.
25. However, if a paternity order has not been granted when the child support application is made but is then granted and received by Inland Revenue, child support is backdated to the date the original child support application was received. In some cases, it can be many years later that the paternity order is submitted to Inland Revenue and private payments may have been made during this time that Inland Revenue is unable to account for. This delay can create large debts and difficulties in raising a correct assessment.
26. Inland Revenue officials have worked with officials from the Ministry of Justice looking at the time period between applying for a paternity order and the date the order is granted and the period is less than a year.⁵
27. Officials recommend that if paternity has not been established when a child support application is made, a child support liability can be backdated on the receipt of the paternity order, provided:
- 27.1 the paternity order was applied for before or within two months of the child support application being given to Inland Revenue; and
 - 27.2 having been granted, the paternity order is given to Inland Revenue within two months.
28. If these rules are not met, child support would be established from the date the paternity order is given to Inland Revenue.
29. A two-month period is consistent with the timeframe a parent or carer has to appeal matters under the Child Support Act to the Family Court. It would also allow sufficient time for a person to seek advice on the matter before applying for the paternity order and gives sufficient time to try and negotiate other arrangements for child support with the father before deciding to give the paternity order to Inland Revenue to establish child support.
30. Officials also recommend that there is discretion for Inland Revenue to accept paternity orders outside the two-month periods if the delay was due to circumstances outside the control of the person – for example, because the person was seriously ill.
31. While still providing for child support to be backdated, the recommendation limits retrospectivity and puts the onus on the carer to make timely decisions.

⁵ Based on a sample of 50 cases, 30 percent of paternity orders are received more than a year after the child support application was received, with nearly 5 percent provided approximately ten years after the application, resulting in retrospective assessments for those periods which are due in 30 days.

Redundant provision – urgent maintenance orders

32. Under section 116 of the Child Support Act, if after an application for child support is made, the Family Court considers the child needs urgent financial assistance, the Court may make an order of payment towards the maintenance of the child. If the child support application is subsequently declined the urgent maintenance order becomes invalid. Once a child support assessment is made, the order ends on receipt of the first payment under the assessment. Officials consider that the provision was included in the Act to cover the possibility of a delay by Inland Revenue in processing child support applications. The provision has never been used. Between 2013 and 2018 there was one application for an urgent maintenance order, which was not granted. Child support applications are generally made within ten days, which makes it extremely unlikely that an order could be made by the Court before Inland Revenue making an administrative assessment. To prevent the provision being built in the new system, officials recommend that the provision be repealed.

Administration, compliance and fiscal costs

33. If agreed to, these proposals will be implemented as part of BT release 5 (April 2021). Implementation costs such as communicating policy changes are included in BT. No additional funding is being requested.
34. The proposals are expected to have minor fiscal impacts which are not quantifiable. They would result in more or less being transferred between parents or parents and carers (depending on the specific situation) for past years. The proposals would reduce compliance and administration costs by limiting the retrospectivity of assessments and reducing the creation of historic debt (for both liable parents and receiving carers).

Consultation

35. The Treasury, Ministry of Social Development and Oranga Tamariki have been consulted on the proposals and are comfortable with the recommendations in this report.
36. The Ministry of Justice has been consulted on the paternity order proposal and the proposal to repeal the urgent maintenance order provision. It is comfortable with the proposal.
37. Officials conducted targeted consultation on the proposal to introduce a time bar. One group was comfortable with the proposal and another had integrity concerns. Officials consider it is trade off of a small number of people being worse off, compared to the current situation of Inland Revenue reassessing thousands of customer's assessments every year and the inherent uncertainty and disruption this causes to customers.

Next steps

38. This report is one in a series setting out possible child support amendments as part of Business Transformation. When you have provided feedback on the recommendations in the reports, we will prepare a Cabinet paper with the aim of

seeking Cabinet approvals in July 2019 and for amendments to be included in a bill introduced in late 2019.

39. Officials recommend that a copy of this report be referred to the Minister of Finance.

Recommended action

We recommend that you:

40. **agree** to the introduction of a four-year child support time bar;
Agreed/Not agreed
41. **note** the four-year period would start from the end of the relevant child support year;
Noted
42. **agree** that the child support time bar set out in paragraph 40 not apply:
- 42.1 if information provided by a person in the child support assessment is fraudulent or wilfully misleading or a return omits income of a particular nature;
Agreed/Not agreed
- 42.2 when a person who is part of the child support assessment dies;
Agreed/Not agreed
- 42.3 when a person should never have been made liable – for example, when a person is subsequently found not to be the father of a child;
Agreed/Not agreed
- 42.4 when an amendment is required for the purposes of avoiding a dual liability (for the same child) with an overseas jurisdiction;
Agreed/Not agreed
- 42.5 if Inland Revenue does not meet the notification requirements;
Agreed/Not agreed
- 42.6 if a Court Order is granted that applies to an earlier period;
Agreed/Not agreed
43. **agree** that when there are circumstances which exist when a child support application is made and are not disclosed to Inland Revenue at that time, that the parent has 28 days from the date of their notice of assessment to advise of circumstances that existed when child support is first assessed;
Agreed/Not agreed
44. **agree** to introducing time constraints for the provision of paternity orders and the backdating of child support assessments (and if the paternity order is not provided

in the period given child support would be established from the date the order is provided to Inland Revenue;

Agreed/Not agreed

45. **agree** Inland Revenue is given discretion to accept paternity orders outside the two-month periods if the delay was due to circumstances outside the control of the person;

Agreed/Not agreed

46. **agree** the urgent maintenance order provisions be repealed;

Agreed/Not agreed

47. **agree** that the amendments proposed in this report apply from the child support year commencing 1 April 2021;

Agreed/Not agreed

48. **note** that when you have provided feedback on the series of child support reports, officials will prepare a Cabinet paper for you with the aim of seeking Cabinet approvals for any amendments in July 2019 and including the amendments in a bill introduced in late 2019,

Noted

49. **refer** a copy of this report to the Minister of Finance for his information.

Referred/Not referred

Mike Nutsford

Policy Manager
Policy and Strategy

Hon Stuart Nash

Minister of Revenue
/ /2019



POLICY AND STRATEGY

Tax policy report: Business Transformation: Child support – debt and payments

Date:	18 June 2019	Priority:	Medium
Security level:	In Confidence	Report number:	IR2019/240

Action sought

	Action sought	Deadline
Minister of Revenue	Agree to recommendations. Refer a copy of this report to the Minister of Finance.	26 June 2019

Contact for telephone discussion (if required)

Name	Position	Telephone
Mike Nutsford	Policy Manager	s 9(2)(a)
s 9(2)(a)	Senior Policy Analyst	
	Senior Policy Analyst	

18 June 2019

Minister of Revenue

Business Transformation: Child support – debt and payments

Purpose

1. This report seeks your agreement for amendments to the following child support penalty rules:
 - 1.1 s 9(2)(f)(iv) [REDACTED]
 - 1.2 Providing more time between the impositions of the two stages of the initial penalty.
 - 1.3 Removing the minimum \$5 penalty rule.
 - 1.4 s 9(2)(f)(iv) [REDACTED]
 - 1.5 Introducing a grace period for people joining or re-joining the scheme.
2. s 9(2)(f)(iv) [REDACTED]

Background

3. Inland Revenue's multi-year transformation programme will modernise New Zealand's revenue system. Once complete, customers will spend far less time and effort ensuring they meet their obligations and receive their correct social policy entitlements.
4. Business transformation is enabled by a combination of changes to policy, process, technology and the organisation design of Inland Revenue. It is far more than an upgrade of technology and has provided the opportunity to fundamentally review how the revenue system is administered and consider what changes may be needed.
5. It is currently planned that the child support scheme will move to the new system and processes, in April 2021 – BT release 5. This creates opportunities to improve the administration of the scheme at the same time.
6. In July 2017, the previous Government released the discussion document *Making Tax Simpler: Better administration of social policy* (the discussion document). The discussion document proposed that penalties not apply while missed payments are being actively managed and that Inland Revenue would be able to set a due date and impose penalties when the debt is not being managed, there is fraud or the customer has a history of non-compliance.

Comment

7. The penalty rules were reviewed as part of the 2013 child support reforms. The reforms resulted in a move to impose the initial penalty for paying late in two stages, to reduce the incremental penalties when a debt has been owing for a year or more, and to introduce more provisions to allow for the write off of penalty debt. These provisions serve to reduce the amount of child support debt, but they were not aimed encouraging ongoing compliance.
8. Currently, if a person does not pay their child support or domestic maintenance¹ 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% penalty is applied seven days later. Incremental penalties are then charged each month the payment is outstanding, at the rate of 2% each month for the first 12 months and then 1% each month until the debt is cleared. The penalties are payable to the Government. When a payment is made, it is first allocated to the child support debt and then to any penalties. There is a complex set of write-off rules, which have been added to over the years, which mean that in many cases the penalties charged can be written off. Use-of-money interest is not charged on child support debt.
9. 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. As at February 2019 the child support debt was \$2.2 billion, \$558 million of which was core child support debt and \$1.6 billion was penalties. Currently, most penalties can be written off – for example, if the person complies with a payment arrangement for 26 weeks. The recovery of debt is challenging and currently 97% of child support penalty debt is written down at initial recognition as we do not expect to collect the debt.
10. The current penalty rules are seen as overly harsh. The imposition of penalties means that some people stop interacting with Inland Revenue and do nothing, resulting in spiralling debt and further disengagement.
11. s 9(2)(f)(iv)
12. The research showed that customers felt that penalties are necessary to encourage compliance. There were concerns that if no penalties were applied when child support is not paid on time, people would stop complying – that is, that penalties are needed as an incentive to keep child support “top of mind”. However, customers felt that Inland Revenue was too quick to penalise customers and the penalties imposed are too high. Many customers did not understand the rules and therefore did not understand how to “fix things”. Customers felt that the rules need to provide “clarity, flexibility and the perception that Inland Revenue is working with customers”.

¹ Domestic maintenance is a payment made to an ex-spouse or ex-partner, either ordered by the Court or agreed to by the ex-spouses.

² s 9(2)(f)(iv)

13. Most customers do, or are willing to, comply with their child support obligations, but at times may have trouble meeting their payments. For example, 70 percent of payments are made on time; 81.5 percent of child support payments assessed in a year are paid within that year (which increases to 85 percent if only considering child support payable by parents living in New Zealand). Although some payments are late, it illustrates customers are generally trying to comply.
14. Customers who are trying to comply, face the same penalty rules as customers who are habitually non-compliant. To introduce more clarity, flexibility, fairness and show that Inland Revenue is working with customers to get payments right, officials propose that the penalty rules be amended to do the following:
 - 14.1 Change the way the initial penalties are charged by moving the imposition of the second phase of the penalty, the 8%, to be imposed 28 days after the due date (that is, on or before the due date for the payment due for the following month). This delay would give Inland Revenue the opportunity to contact and engage with customers (via Online services, text message, phone, letter etc) and explain the consequences of not paying or not entering an instalment arrangement (that is, the imposition of the 8% penalty and in some cases the use of other collection tools).
 - 14.2 Remove the \$5 minimum penalty rule. Currently, the 2% initial late payment penalty rule provides that the minimum penalty imposed is \$5 – even if 2% of the amount owed is less than \$5. This rule means that the penalty is not proportionate to the default and over-penalises debts of less than \$226.
 - 14.3 s 9(2)(f)(iv)
 - 14.4 Introduce a grace period for customers who are new to paying child support including those returning to the scheme. Customers would not be charged penalties during the grace period, although enforcement action (such as, deductions from bank accounts) could take place. Compliance in the first few months when a person enters the scheme is generally low (26 percent of payments in the first three months are paid on time). From the research, a common theme was that when partners separate, and the child support process is started, customers' situations are 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 result in better ongoing compliance. The grace period would apply to their first due date and then for any due dates that occur within the next 60 days (which would usually cover the next two payments).

14.5 s 9(2)(f)(iv)

s 9(2)(f)(iv)

3

15. s 9(2)(f)(iv)
Currently, if a liable parent falls into debt, early intervention is a priority. The proposals would provide more opportunity for Inland Revenue to engage with customers and encourage them to comply with their child support obligations.
16. These proposals are consistent with the proposal to apply compulsory deductions of child support from salary and wages for domestic liable parents [as agreed in report IR2019/125]. Together these proposals are aimed at encouraging the prompt payment of child support and ensuring customers comply with their child support obligations. The proposals would also apply to domestic maintenance obligations.
17. s 9(2)(f)(iv)
18. In some cases, customers may still not comply. In these cases, the current collection tools available to Inland Revenue could be used – for example, deductions from bank accounts, charging orders over property or warrants for the arrest of a person who is about to leave New Zealand and intending to avoid paying their child support.
19. Behavioural interventions aimed at improving a liable parent’s compliance with their child support obligations could also be implemented. Such interventions could be done administratively – that is, they would not require any legislative change. These types of interventions were trialled in the United States and mainly involved changes to communications to liable parents, such as incorporating references to social norms, simplifying letters, using coloured envelopes and paper, removing references to the other parent and personalising communications. They were low cost and led to an increase in responses from liable parents and a small increase in payment rates.
20. All of these proposals, both legislative and administrative, would form part of a package aimed at improving ongoing compliance to ensure payments can be passed on to receiving carers.
21. These proposals are also consistent with recent changes to late payment penalties charged on tax debt.

Administration, compliance and fiscal costs

22. s 9(2)(f)(iv)

³ An uplift is when a receiving carer elects to take over the collection of the liable parent’s debt from Inland Revenue.

s 9(2)(f)(iv)

23.

24.

25. Introducing a grace period would result in a small amount of initial penalties not be imposed and minimal fiscal implications of \$30,000. These penalties can be, and some are, written off under current provisions but some of them are collected.

26. It is anticipated that the proposals would reduce compliance and administration costs as they would improve the clarity and fairness of the scheme and allow Inland Revenue to better work with customers to achieve policy objectives. Any impact on compliance and administration costs is appropriately dependent on customer behaviour.

27. s 9(2)(f)(iv)

Consultation

28. The Treasury was involved in the development of the proposals contained in the discussion document, including the proposals relating to debt. The Treasury, the Department of Prime Minister and Cabinet, the Ministry of Social Development and Oranga Tamariki have been consulted of the contents of this report.

Next steps

29. s 9(2)(f)(iv)

30. This report is one in a series setting out possible child support amendments as part of Business Transformation. When you have provided feedback on the

recommendations in the reports, we will prepare a Cabinet paper with the aim of seeking Cabinet approvals in July 2019 and for amendments to be included in a bill introduced in late 2019.

31. Officials recommend that a copy of this report be referred to the Minister of Finance.

Recommended action

We recommend that you:

32. **note** the proposals in this report build on the proposals for managing missed payments in the discussion document *Making Tax Simpler: Better administration of social policy*,

Noted

33. **agree** to moving the imposition of the second phase of the initial penalty to 28 days after the initial due date,

Agreed/Not agreed

34. **agree** that the \$5 minimum penalty rule be repealed,

Agreed/Not agreed

35. s 9(2)(f)(iv)

- 36.

37. **agree** to introducing a grace period which would apply to a new or returning liable person's first due date and then for any due dates that occur within the next 60 days under which no penalties would be charged if payments are late,

Agreed/Not agreed

38. **note** during the grace period Inland Revenue will work with the liable person to ensure they understand their rights and obligations,

Noted

39. s 9(2)(f)(iv)

40. **agree** that the amendments proposed in this report apply from 1 April 2021,

Agreed/Not agreed

41. **note** that the proposals would apply to child support and domestic maintenance obligations,

Noted

42.

s 9(2)(f)(iv)

43.

44. **note** that when you have provided feedback on the series of child support reports, officials will prepare a Cabinet paper for you with the aim of seeking Cabinet approvals for any amendments in July 2019 and including the amendments in a bill introduced in late 2019,

Noted

45. **refer** a copy of this report to the Minister of Finance for his information.

Referred/Not referred

Mike Nutsford
Policy Manager
Policy and Strategy

Hon Stuart Nash
Minister of Revenue
/ /2019



POLICY AND STRATEGY

Tax policy report: Cabinet paper - Business Transformation child support

Date:	18 July 2019	Priority:	High
Security level:	In Confidence	Report number:	IR2019/334

Action sought

	Action sought	Deadline
Minister of Revenue	Agree to recommendations. Authorise the lodgement of the attached Cabinet paper.	10am, Thursday 15 August 2019

Contact for telephone discussion (if required)

Name	Position	Telephone
Mike Nutsford	Policy Manager	s 9(2)(a)
Samantha Aldridge	Senior Policy Advisor	
s 9(2)(a)	Senior Policy Analyst	
	Senior Policy Analyst	

18 July 2019

Minister of Revenue

Cabinet paper – Business Transformation – child support

Purpose

1. This report asks you to refer the attached Cabinet paper to the Cabinet Office by 10am Thursday 15 August 2019 (following any changes that you wish to make to it) so that it may be considered by the Cabinet Social Wellbeing Committee at its meeting on Wednesday 21 August 2019.
2. This report also seeks approval for other minor policy changes that have come to light in the drafting of the Cabinet paper that are not covered in the recommendations of the earlier series of child support reports. s 9(2)(f)(iv)

Background

3. Earlier this year officials sent you a series of reports proposing amendments to the Child Support Act 1991 as part of the Business Transformation (BT) programme, which will go live in April 2021. The reports were:
 - 3.1 Business Transformation: Child support, better payment options and remedial items [IR2019/125 refers];
 - 3.2 Business Transformation: Child support – debt and payments [IR2019/240 refers];
 - 3.3 Business Transformation: Child support – working with customers with unusual circumstances [IR2019/241 refers];
 - 3.4 Business Transformation: Child support – certainty of assessments [IR2019/242 refers]; and
 - 3.5 Business Transformation: Amending child support definitions [IR2019/243 refers].
4. The attached Cabinet paper seeks Cabinet approvals for the recommendations set out in those reports and for the amendments to be included in a bill introduced in late 2019 and enacted before the end of 2020.

Financial considerations

5. Officials have identified the following costs of these proposals over the forecast period, which are set out in the Cabinet paper:
 - 5.1 s 9(2)(f)(iv)
 - 5.2 \$30,000 per annum to introduce a grace period; and
 - 5.3 \$23,000 per annum to repeal the minimum \$5 penalty charge.
6. The Cabinet paper sets out the fiscal implications of the proposals and options. The costs of introducing the grace period and repealing the minimum \$5 penalty charge

are immaterial and will not impact on revenue forecasts. s 9(2)(f)(iv)

7. s 9(2)(f)(iv)

8.

9.

10.

11.

12.

Further policy changes


13. During the drafting of the Cabinet paper several issues came to light that require clarification.

Child support, better payment options and remedial items

14. The better payment options and remedial items report recommended that deductions of child support from salary and wages be compulsory for all domestic liable parents who are new to the child support scheme as well as for existing liable parents when they default. Officials recommend that this proposal be extended to deductions of financial support from source deduction payments made by New

Zealand employers. Financial support includes domestic maintenance¹ as well as child support. Referring to source deduction payments means that deductions could also be made from schedular payments.² This is consistent with the compulsory deduction proposal which was descope'd in 2013 and would help liable parents comply.

s 9(2)(f)(iv)



Amending child support definitions

18. The amending child support definitions report recommended that child support should apply to 31 December of the year in which a child in school turns 18. This would better align the child support rule with a similar Working for Families rule. You indicated that you did not agree with this proposal and asked that the issue be discussed with officials. When we discussed the issue with you, you agreed with the proposal as set out in the report. This agreement has not been reflected in the reports returned to officials. For completeness, this recommendation is included in this report.

Next steps

19. Officials recommend that you refer the attached Cabinet paper entitled "Business Transformation – Amendments to the Child Support Act 1991" (with any changes that you wish to make to it) to the Cabinet Office by 10am Thursday 15 August 2019 so that it may be considered by the Cabinet Social Wellbeing Committee at its meeting on Wednesday 21 August 2019.
20. A regulatory impact assessment is being separately provided to your office for you to attach to the Cabinet paper.



¹ Domestic maintenance is a payment made to an ex-spouse or ex-partner, either ordered by the Court or agreed to by the ex-spouses.

² Schedular payments are certain types of payments that are made to contractors.

21. Speaking notes will be supplied to you for the Social Wellbeing Committee's meeting on Wednesday 21 August 2019.
22. Officials recommend that the attached Cabinet paper should be proactively released in full but that its release should be delayed until the introduction of the proposed child support amendment bill containing legislative changes to give effect to the proposals. This reflects that an announcement would be made on the contents of the bill when it is introduced, which is expected to be late 2019.

Recommended action

We recommend that you:

23.  s 9(2)(f)(iv)
24. 
25. **agree** that the compulsory deduction proposal be extended:
 - 25.1 to deductions of financial support,
Agreed/Not agreed
 - 25.2 from source deduction payments made by New Zealand employers,
Agreed/Not agreed

26.  s 9(2)(f)(iv)

s 9(2)(f)(iv)

27.

28. **agree** that child support should apply until 31 December of the year in which a child in school turns 18,

Agreed/Not agreed

29. **authorise** the lodgement of the attached Cabinet paper (subject to your changes) with the Cabinet Office by 10am Thursday 15 August 2019 for the Cabinet Social Wellbeing Committee to consider at its meeting on Wednesday 21 August 2019,

Authorised/Not authorised

30. **note** that a regulatory impact assessment is being separately provided to you,

Noted

31. **agree** to delay the release of the attached Cabinet paper in full and associated minutes until the introduction of the proposed child support amendment bill containing legislative amendments to give effect to the recommendations in this report.

Agreed/Not agreed

32. **indicate** if you wish to discuss the contents of this report or the Cabinet paper with officials.

Mike Nutsford
Policy Manager
Policy and Strategy

Hon Stuart Nash
Minister of Revenue
/ /2019

Coversheet: Child support Business Transformation

Advising agencies	<i>Inland Revenue</i>
Decision sought	<i>Approve proposed amendments to the Child Support Act 1991 intended to improve the administration of the scheme and incentivise compliance and payments</i>
Proposing Ministers	<i>Minister of Revenue</i>

Summary: Problem and Proposed Approach

Problem Definition

What problem or opportunity does this proposal seek to address? Why is Government intervention required?

As part of Inland Revenue's Business Transformation (BT) programme to modernise the tax system, the child support scheme will move to new systems and processes in April 2021.

Some aspects of the current child support scheme are overly prescriptive and do not support engagement and compliance with the scheme as well as they could do.

The BT change provides an opportunity to make legislative changes to improve administration, make the rules fairer, less complex and more flexible, thereby improving compliance (particularly for liable parents) with the scheme which in turn supports improvements to the welfare of children.

If policy changes to simplify the legislation are not made now, the existing complexity of the current legislation will need to be built into the new system.

Proposed Approach

How will Government intervention work to bring about the desired change? How is this the best option?

The proposals are to:

- change the penalty rules – including introducing a penalty grace period for people newly liable, or returning to the scheme;
- introduce compulsory employer deductions from salary and wages for newly liable parents;
- put a time limit of four years on retrospective reassessments;
- change the definition of "income"; and
- make a number of minor and technical amendments, including working with customers in unusual circumstances.

Taken together, the proposals will make the rules fairer and less complex. This should improve engagement and compliance with the scheme which would in turn support improvements to the welfare of children. They will allow Inland Revenue to work better with parents to help prevent debt occurring in the first place.

Section B: Summary Impacts: Benefits and costs

Who are the main expected beneficiaries and what is the nature of the expected benefit?

The beneficiaries of the proposals are parents, carers and children in the child support scheme.

As at 31 May 2019 the child support customer base was made up of:

- 164,000 liable parents (including 29,700 with debt only);
- 135,500 receiving carers; and
- 182,800 children.

The proposals are expected to simplify parts of the scheme and make it fairer which should better incentivise and improve compliance of liable parents. This improves payment certainty and timeliness for receiving carers which contributes to the welfare of their children.

Where do the costs fall?

The costs of administering the child support scheme fall on Inland Revenue.

There is the potential for increased costs on employers as a result of the compulsory deduction proposal for newly liable parents. However, employers are already required to deduct in cases when the liable parent has chosen employer deduction as a payment method or has defaulted on a payment. Accordingly, this proposal should only result in a marginal increase in costs for employers who do not currently deduct child support, or for those employers for whom the proposal increases the number of employees that they must make deductions for. Over time we estimate an additional 3,800 employers will be asked to make child support deductions.

What are the likely risks and unintended impacts, how significant are they and how will they be minimised or mitigated?

Some people may not respond as expected to the penalty measures and levels of compliance could reduce. This can be mitigated by use of customer education and existing enforcement provisions, the proposed introduction of compulsory deductions for newly liable parents and improved information made available through Inland Revenue's BT programme.

Identify any significant incompatibility with the Government's 'Expectations for the design of regulatory systems'.

The proposals are compatible with the Government's "*Expectations for the design of regulatory systems*".

Section C: Evidence certainty and quality assurance

Agency rating of evidence certainty?

Inland Revenue has a medium–high level of confidence in the evidence base.

The key uncertainty is the impact of the penalty proposals on customer behaviour which cannot be modelled. However, literature suggests that measures designed to be fairer are more likely to lead to better compliance outcomes. Research Inland Revenue conducted with child support liable and receiving carers¹ indicated that penalties had a role to play in encouraging compliance but that the overly punitive nature of the current penalties and the complexity of the penalty rules acted as a barrier to compliance.

Inland Revenue collects data relating to numbers of liable parents, compliance levels, debt and penalties imposed. This data has been used to estimate the potential direct impacts of the penalty proposals, compulsory deductions for employers, the effect of the time bar proposal and the change that the income definition could have.

Some of the administrative data is manually input and therefore subject to errors however their impact should be relatively minor and would not change the “dollar” value of the impacts.

The data relating to interest and dividends (which is relevant to the proposal to change the definition of income) is being sourced from Inland Revenue’s new system START and it is the first period that this income has been provided. While every effort has been made to ensure it is complete, there is no benchmark to compare to and it is likely some data is missing given the newness of these rules. Currently, all dividend information is sourced from records provided by parents. It will become compulsory for third parties to provide this information from 1 April 2020 which should improve the data from that point onwards.

We are unable to identify the impacts of some of the more minor and technical amendments - such as allowing overseas liable parents to apply for prisoner exemptions. However, we consider that these changes will affect few customers and will help to make the child support rules fairer.

Quality Assurance Reviewing Agency:

Inland Revenue

Quality Assurance Assessment:

The Quality Assurance reviewer at Inland Revenue has reviewed the *Child support Business Transformation* Regulatory Impact Assessment prepared by Inland Revenue, and considers that the information and analysis summarised in the Regulatory Impact Assessment meets the quality assurance criteria.

Withheld under section 9(2)(f)(iv) of the Official Information Act 1982

¹ The research consisted of 27 one-on-one interviews around the country. The interviewees were a mix of liable parents and receiving carers, and a mix of levels of income including beneficiaries.

Withheld under section 9(2)(f)(iv) of the Official Information Act 1982

Reviewer Comments and Recommendations:

The reviewer's comments on earlier versions of the Regulatory Impact Assessment have been incorporated into the final version.

Impact Statement: Child support Business Transformation

Section 1: General information

Purpose
<p>Inland Revenue is solely responsible for the analysis and advice set out in this Regulatory Impact Assessment, except as otherwise explicitly indicated. This analysis and advice have been produced for the purpose of informing final decisions to proceed with a policy change to be taken by Cabinet.</p>

Key Limitations or Constraints on Analysis

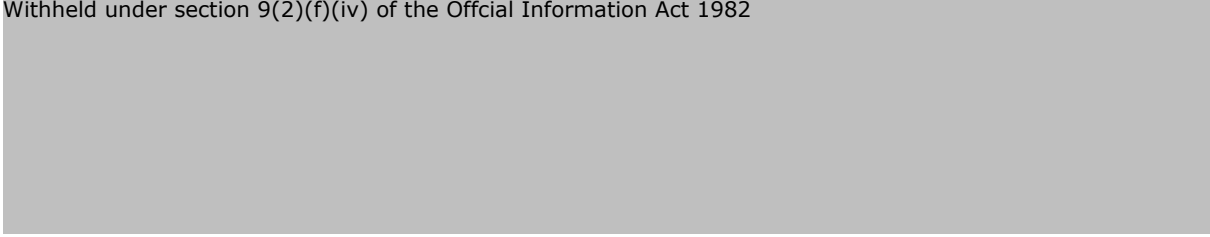
The proposals were developed as part of the Business Transformation (BT) programme that Inland Revenue is undertaking. The scope of the programme was predominately focussed on changes to improve the overall administration of the New Zealand tax and social policy systems by reducing compliance and administrative costs rather than any fundamental policy shifts.

A time constraint exists to implement the recommended options because the opportunity to progress any changes is provided by Inland Revenue's BT programme which sees child support move from the current system (FIRST) to the new system (START) in April 2021. If policy changes to the child support administrative rules are not made in time for the roll-out of START, the complexity of the existing administrative rules would need to be incorporated into the design of START.

Extensive public consultation took place on the main proposals in this Regulatory Impact Assessment with the exception of the proposal to introduce a time bar for reassessing past years, and the specific penalties proposals relating to the penalty changes.

Research was conducted with a small number of liable parents and receiving carers to gauge their attitudes towards the penalty rules and how they see penalties affecting compliance.

Withheld under section 9(2)(f)(iv) of the Official Information Act 1982



The problems around the current policy that reassessments can happen at any time for any year was identified more recently. Due to time constraints, consultation on the proposal to introduce a child support time bar was limited to interest groups rather than parents and carers.

Some of the minor or technical changes were not consulted on due to their minor nature. However, the use of discretion for those in unusual circumstances was included in the 2017 discussion document *Making Tax Simpler: Better administration of social policy*.

The data used to analyse reassessments in relation to the time bar proposal are liable parent-centric and identify impacts specifically on liable parents (although this means the opposite impact occurs for the receiving carer).

Also, some of the administrative data is manually input and therefore subject to errors. However, this impact should be relatively minor and would not change the "dollar" value of the impacts.

The income data relating to interest and dividends has been sourced from Inland Revenue's new system START and it is the first period that this income has been provided. While every

effort has been made to ensure it is complete, there is no benchmark to compare to and it is likely some data is missing given the newness of these rules.

We are unable to identify the impacts of some of the more minor and technical amendments such as allowing overseas liable parents to apply for prisoner exemptions. However, we are confident that these changes will affect few customers and will result in intended policy outcomes.

Responsible Manager (signature and date):

Mike Nutsford
Policy Manager
Policy and Strategy
Inland Revenue
8 August 2019

Section 2: Problem definition and objectives

2.1 What is the context within which action is proposed?

Inland Revenue's multi-year transformation programme is modernising New Zealand's revenue system. Once complete, customers will spend far less time and effort ensuring they meet their obligations and receive their correct social policy entitlements. Child support is part of release 5² of BT which provides an opportunity to review how the revenue system is administered and consider what changes may be needed.

The Government is concerned with improving the welfare of children and minimising the impact of government agency debt on New Zealanders.

The child support scheme works to ensure that children are appropriately supported by both their parents even when they are not living together as a family. Inland Revenue assesses, collects and disburses payments. As part of the assessment process Inland Revenue will identify the liable parent (the parent responsible for making the child support payment) and the receiving carer (the parent (or other carer) entitled to receive the child support payment).

When a liable parent does not pay or pay on time they are charged initial late payment penalties and continue to be penalised each month until they pay or come to an arrangement to pay the outstanding amount. The financial burden when a liable parent does not pay falls on the receiving carers and their children.

Aspects of the current penalty rules unreasonably penalise parents. Child support debt is significant at \$2.2 billion dollars³ with penalties making up a large portion – 75%. Changes introduced to penalties and write-offs in 2015 have slowed the growth of child support debt but primarily through write-offs and reducing penalty charges rather than addressing debt prevention.

Liable parents' compliance in their first three months of liability is very low – less than 30% pay on time as they adjust to being required to make payments.

Liable parents are proportionately over-penalised by a \$5 penalty rule that requires the 2% initial penalty for defaulting on payment to be a minimum of \$5. This rule affects any liable parent with a monthly obligation of less than \$226, which means it particularly affects liable parents on lower incomes. The minimum monthly child support assessment is \$78.

Penalty debt is 97% impaired (when imposed) meaning it is largely not expected to be collected. Write-offs have been successful as an incentive to get some parents to re-engage with the scheme but are not effective at preventing debt.

Some liable parents are concerned that the rules do not encourage them to comply with their child support payments and at times could promote non-compliance. This is because the rules are complex, can penalise parents unreasonably, and in some cases create uncertainty for all parties (including Inland Revenue). Receiving carers are most concerned about the

² BT is being progressively rolled out over each tax and social policy type. Release 5 is scheduled for April 2021.

³ Includes liable parent, receiving carer, and employer debt. Liable parent debt arises from payments by the liable parent to the receiving carer being made late, or not being paid. Receiving carer debt arises from overpayments to the receiving carer. Employer debt arises when the employer has deducted a child support payment from a liable parent's wages or salary but has not passed the payment on to Inland Revenue.

non-payment of child support as it impacts on their ability to support their children.

There are some unintended or inequitable outcomes as a result of some of the rules in the scheme. For example, because the rules do not cater for some complex family arrangements a liable parent may be assessed to pay more than they should be. These outcomes can contribute to a liable parent's willingness to engage with the scheme and therefore lead to non-compliance.

If the current rules were left in place reliance would solely be placed on operational improvements that may be provided through BT. However, the policy problems outlined above would largely remain and improvements to child support compliance and engagement may not be achieved.

2.2 What regulatory system, or systems, are already in place?

Child Support Act 1991

The New Zealand administrative child support scheme has been in place since July 1992.

The key feature of the regulatory system is to assess, collect and disburse child support in accordance with the Child Support Act 1991. The key objective of child support is to ensure that children are appropriately supported by both their parents even when they are not living together as a family.

Any parent or carer can make an application for a child support assessment.⁴ Using a formula that is legislated for under the Act, Inland Revenue assesses which parent is liable for a child support payment (the liable parent) and which parent will receive child support payments (the receiving carer), and the amount to be paid by the liable parent. This formula includes components such as the income of each parent, the age of the child, and how much care of the child each parent does.

Changes were made in the child support reforms (effective 1 April 2015) to modernise the scheme and improve fairness, primarily through changes to the formula assessment and by assessing the income and other circumstances of both parents (rather than just the liable parent).

Once Inland Revenue has determined who the liable parent is, the liable parent must make the child support payment to Inland Revenue. Child support payments are due to Inland Revenue monthly. Inland Revenue then passes the payment on to the receiving parent.

When payments are not made, or not made on time, the financial burden generally falls on carers and their children.⁵ Penalties and other tools (such as contact by Inland Revenue and compulsory deductions for defaulting liable parents) are used by Inland Revenue to encourage compliance.

⁴ For parents receiving a sole parent rate of benefit from the Ministry of Social Development the scheme is mandatory, and they must apply for a child support assessment against the child's other parent. Child support payments are used to offset the cost of benefits paid.

⁵ Or if the receiving parent is on a sole parent benefit, there is an impact on Government revenue because in those cases the payment is not passed on to the carer.

Initial late payment penalties apply if a payment is not paid on time. In addition to the initial late payment penalties, for each subsequent month that the child support remains outstanding (with no repayment arrangement in place), compounding incremental penalties are also applied (initially at 2%, but reduced to 1% after 12 months).

International agreements

There is a reciprocal agreement with Australia which allows for the enforcement of payments when a liable parent moves to Australia or a parent liable under the Australian child support scheme moves to New Zealand.

The Family Proceeding Act 1980 details the rules for recognition of overseas maintenance orders made in Commonwealth countries as well as countries that are parties to the United Nations Convention on the Recovery Abroad of Maintenance (UNCRAM). The Family Court registers overseas court orders and refers them to Inland Revenue for enforcement. The Family Court can also make child support orders to be sent for enforcement in other countries if an administrative assessment cannot be raised under the Child Support Act.

Why is Government regulation preferable?

Regulation is preferable because parents may not be able to come to agreement between themselves regarding the support of their children.

2.3 What is the policy problem or opportunity?

The opportunity provided by BT allows Inland Revenue to introduce changes to work better with customers when they are new to the scheme and assist them to get things right from the start – particularly those who are willing to comply but might have trouble at times meeting their payments.

Penalty rules

Impact of current penalty charges

On balance, the New Zealand child support scheme has been very successful in collecting assessed child support debt. Since the scheme's introduction in 1992, Inland Revenue has collected 89% of all the child support payments assessed by Inland Revenue. This rate compares very favourably internationally. However, parents who are new to the scheme have a low initial level of compliance. Research indicates this is because parents are adjusting to the changes in the family situation (i.e. recent separation), there is lack of understanding of the child support rules and their obligations, or previous negative interactions with Inland Revenue.

The table below illustrates the value of overall child support debt and the proportion made up of penalties.

	Mar 16	Sept 16	Mar 17	Sept 17	Mar 18	Sept 18	Mar 19
Assessment debt	\$651m	\$633m	\$621m	\$596m	\$579m	\$562m	\$558m
Penalty debt	\$2.67b	\$2.59b	\$2.48b	\$2.03b	\$1.80b	\$1.65b	\$1.66b
Penalties as % of debt	80%	80%	80%	77%	76%	75%	75%
Total debt	\$3.3b	\$3.2b	\$3.1b	\$2.6b	\$2.4b	\$2.2b	\$2.2b

In April 2016, the initial late payment penalty was split into a two-stage penalty charge. An initial charge of 2% on the day after the due date and a further 8% seven days later. Before this, the penalty was combined and a single 10% penalty was charged the day after the due date. The introduction of the two-stage penalty was intended to reduce penalty charges on those who were only a few days late and give Inland Revenue an opportunity to try and contact parents and remind them of their payment. The change has had little impact on overall compliance or reduced penalty charges. This is because the time between charging the 2% and 8% penalty is not long enough for Inland Revenue to undertake any interventions such as a reminder notice. Research indicated it also wasn't long enough for parents to adjust their budgets to make the payment.

Low-income liable parents are over-penalised proportionately to their assessment by a \$5 penalty rule that requires the first stage 2% initial penalty to be a minimum of \$5. This means anyone with an assessment of less than \$226 per month is over penalised. The table below shows on average how many are proportionately over-penalised each month.

Number of liable parents incurring the initial penalty	Number of parents who are charged as a result of the \$5 minimum rule	Total amount charged as a result of the \$5 minimum rule	Amount of penalty that would be charged if there is no \$5 rule	Amount over-penalised per month as a result of the \$5 minimum rule
38,171	19,435	\$97,175	\$34,547	\$62,628

Compulsory deductions

There is an opportunity to improve the timeliness of child support payments and reduce defaults as a result of the pay-day reporting rules⁶ introduced into the tax rules from 1 April 2019.

Making deductions compulsory has been considered before, but the monthly PAYE system meant this could not be effectively administered. This is because the information was not timely enough to ensure Inland Revenue knew who a liable parent's employer was and to inform those employers of amounts required to be deducted before the payments became

⁶ A number of changes have been introduced including requiring employment information to be provided to Inland Revenue each time an employee is paid.

overdue. Deductions of child support by employers are already compulsory once a liable parent defaults on their payment or when a liable parent is receiving a benefit. Additionally, a person can choose employer deductions as their payment method.

Time bar

A child support assessment takes into account a number of factors - for example, income and shared care arrangements for the child. If Inland Revenue becomes aware of a change to one of these factors, a reassessment is required. These reassessments can be made retrospectively and as far back as 1992 (when the child support scheme began). This retrospective approach becomes more unsustainable and costlier administratively as the scheme gets older. Further, this creates uncertainty for liable parents and receiving carers and possibly debt as a result of increased assessments (for liable parents) or over payments (to receiving carers) which then needs to be repaid. Often the reassessment results in no change to the child support payment obligation but creates a notification to all parties that a reassessment has occurred which can cause confusion and stress. In some cases, the liable parent and receiving carer have exited the child support scheme and the reassessment brings them back in.

In practice, most reassessments to a past year occur within four years of that child support year ending. Less than 2% of reassessments occur more than four years after the end of the child support year. A four-year time bar, applying from the end of the relevant child support year would allow for 98% of current reassessments to occur.

From 1 April 2017 to 30 June 2019 about 156,000 liable parents (and their associated receiving carers) were reassessed a total of 611,000 times (this includes reassessments during a current year). About 2,830 of these liable parents were reassessed on average 2.3 times (6,690 occasions in total) for years that would be time barred under the proposals. Many reassessments affect more than one year. At an aggregate level, the net impact of reassessments for child support years that ended more than four years ago has been a reduction in liabilities for liable parents and therefore a reduction in entitlements to receiving carers.

The table below shows the number of liable parents who saw no change to their payment obligations, or an increase or a decrease to their payments. Some parents were reassessed for multiple years so will appear in more than one “change” row – hence the number of liable parents in each change group shown in the table is more than the total number of liable parents reassessed (2,830).

Change	Liable parents	Annual change	Per liable parent
No change	1,000	\$0	N/A
Decrease	1,590	(\$15,492,300)	(\$9,743)
Increase	960	\$6,386,200	\$6,652
Net change	3,550	(\$9,106,100)	(\$3,091)

Reassessments occur for a variety of reasons. The table below shows the main reason for the reassessment and the net impact to liabilities that can be attributed to the change. Some parents will have more than one reason for change, hence the number is greater than total liable parents reassessed (2,830).

Reason for change	Number of liable parents	Net change
Income	1,997	(\$5,490,787)
Cessation	419	(\$3,839,438)
Child change	287	\$470,070
All other reasons	322	(\$245,948)
Total	3,025	(\$9,106,103)

An “income” change most commonly occurs because a person has confirmed their taxable income for a past year and that income is replacing a default income amount used in the child support assessment.

“Cessation” means the child support obligation for the liable parent has ended – this could be because the liable parent and receiving carer have reconciled, or the last child that a parent is liable for no longer qualifies for child support.

“Child change” covers a variety of changes specific to a child – for example, parents start to share the care of the child or a child turns 13 (which changes the costs associated with a child).

There are many other reasons a reassessment of child support can occur - for example, a child or parent dies. These have been combined in the above table in “all other reasons.”

The aggregate net impact on reassessed liable parents is to reduce liable parents’ obligations – that is, the majority of the reassessments resulted in the liable parent’s child support obligations being reduced.

If the liable parent has not already paid the amount assessed (before the reassessment) the receiving carer has a reduced amount owed to them.

Alternatively, if the liable parent has met their obligation, the receiving carer has been overpaid their child support.

When the payment has been paid to the receiving carer, Inland Revenue will undertake collection action to recover the overpaid amount from the receiving carer. Amounts overpaid to receiving carers can be written-off if it is shown that collection of the overpayment would create serious hardship for them.⁷

If the receiving carer is in receipt of a sole parent rate of benefit, the child support payment is not paid to the receiving carer but is kept by the Government to cover the cost of their benefit. In these cases, it is the Crown that is “overpaid,” and a refund is issued to the liable parent.

⁷ The liable parent will still receive a refund of overpaid child support – the cost of the written-off overpayment of child support to the receiving carer is met by Crown revenue.

Although the aggregate net impact is a reduction in child support obligations, 960 liable parents do have an increase in their obligations. In the main, this becomes a debt because the liable parent does not pay the increased amount by the due date (30 days from the date of reassessment). Only 33 (of the 960) liable parents paid the new amounts on time, 875 were already in debt and the new amounts owed increased the size of their debt. The remaining 52 liable parents were fully compliant with their child support obligations (and possibly no longer in the scheme) and the reassessment caused them to fall into debt as did not pay by the due date.

Changes to the definition of “income” for child support

Adding investment income (such as interest and dividends)

Currently, if during a year a parent earns solely withholding income (any income where tax is deducted before it is paid to the parent), they are assessed using only their income from employment (salary and wages). This means investment income such as interest or dividends they earn is not included in their child support assessment – this is because it was not readily available (other than annually). Changes to the income tax rules require that interest and dividends are now reported more frequently by third parties (for example, banks) which means the income can now be included in a parent’s child support assessment. The table below indicates how much additional interest income is not currently being included in a parent’s annual child support assessment.

Annual interest income			
Parent type	Number of parents	Total interest	Median
Receiving	37,680	\$4,979,100	\$0.57
Both	15,150	\$2,424,800	\$0.52
Liable	26,800	\$3,934,100	\$0.47
Total	79,630	\$11,338,000	N/A

The table shows all parents in the scheme over the course of a child support year. Where parent type is “both” the parent has either been both a liable parent and receiving carer during the year or they are registered as both a liable parent and receiving carer (usually because shared care is in place). They are in the “both” category to avoid double counting.

The median interest is less than \$1 which indicates the large majority have an immaterial amount of interest but that a few have significant amounts of interest income that is currently not being accounted for when calculating a parent’s capacity to support their children. The following table shows the distribution of interest income:

Distribution of annual income				
Parent type	<\$1	\$1<\$1,000	\$1,000<\$5,000	>\$5,000
Receiving	21,301	15,491	614	125
Both	8,616	6,157	292	60
Liable	15,767	10,384	488	291
Total	45,684	32,032	1,394	476

Reporting of dividend income to Inland Revenue by third parties only becomes compulsory from 1 April 2020. Based on information provided by parents for the tax year ending 31 March 2019 less than 70 parents (liable and receiving) have some dividend income. The combined dividend income declared by these parents is about \$900,000.

It is possible in some of these cases the income is being taken into account through an application for a departure⁸ (known as an administrative review). Having the income taken into account automatically would remove the requirement to go through the administrative review process which generally takes up to three months.

Ignoring losses from prior years in determining income for current year

A parent's income to support a child in a year may be reduced by tax losses that occurred in an earlier year – that is, the losses are “brought forward” to the current year. This is the approach used in calculating income tax obligations.

A concern with this approach is that it is at odds with the objective to assess a parents' relative financial capacity to support their children in a given year.

Further, the current approach does not align with the way that these losses are accounted for when working out Working for Families entitlements and student loan obligations.

From administrative data fewer than 500 child support parents (liable and receiving) have their child support income reduced by tax losses brought forward. There is an even split between receiving carers and liable parents. For about half of these, parent's income is being reduced by less than \$5,000. About 25 have their income reduced by more than \$50,000.

Minor and technical amendments to improve fairness, equity, compliance or administration of the scheme

Other minor and technical amendments have been identified to address specific issues with the scheme. Combined, they are intended to make the administration of the scheme fairer, simpler and less confusing – for example, by aligning the rules across different social policies. Not all of these proposals are required to be included in this impact assessment; they have been included for transparency and completeness.

Most of these minor and technical amendments will impact positively on customers. The exception is a proposal to amend the maximum age of child support which would mean that for a small group of carers (a maximum of about 150 children) child support for the child would end some months sooner than is currently the case. However, this proposal largely aligns child support with Working for Families tax credits which Inland Revenue also administers.

An explanation of each proposed amendment is included in the appendix.

⁸ A person can apply for a “departure” from their child support assessment on certain grounds - for example, the financial capacity of the other parent. If a departure is granted, it means a relevant component used in the formula is adjusted - for example, the income.

Why does the Counterfactual constitute “a problem”?

Relying solely on operational improvements that may be provided through BT is unlikely to lead to significant improvements to child support compliance or engagement with the scheme and we would not expect to see any substantial improvement in parents' behaviour.

If no policy changes are made, the complexities of the existing system would be introduced to the new system. Further, the opportunity to improve child welfare as part of Inland Revenue's BT programme would be lost.

The policy changes could be considered at a later date. However, if the changes are implemented at a later date they would come with significant additional implementation costs, whereas if they are implemented as part of BT the changes will not have additional costs because they can be included in the new systems and processes that are being developed as part of BT.

2.4 Are there any constraints on the scope for decision making?

The focus of BT has been on administrative improvements to the tax and social policy systems. Given this, fundamental changes to the child support scheme such as changes to the child support formula, are out of scope.

The Welfare Expert Advisory Group has proposed changes which, if adopted, would impact the child support scheme (such as passing on child support payments from liable parents to parents who are on the sole parent benefit).

2.5 What do stakeholders think?

The main stakeholders are parents and carers who are in the child support scheme, and employers who deduct child support payments from wages.

The discussion document *Making Tax Simpler: Better administration of social policy* was released in July 2017 which included proposals outlined in this document to:

- introduce compulsory employer deductions of child support from salary and wages;
- not penalise people who are trying to comply, and better support early intervention to prevent debt;
- align the child support definition of income with the definition of income used for other social policy products; and
- work with customers in unusual circumstances.

An extensive engagement strategy was developed to support the release of the discussion document, including online public consultation which provided a vehicle for the public to comment on the proposals. It included an online forum with views sought on specific questions, short summaries of the key proposals, a simplified online survey and animated videos of the proposals. The summaries, surveys and videos were available in nine languages other than English and the video was also available in New Zealand sign language. Officials also met with key interest groups around New Zealand – for example, the National Beneficiary Advocacy Group.

Submitters broadly agreed with the proposals. Submitters' comments were mixed about making compulsory child support wage deductions for all liable parents with employment income. Some submitters expressed concerns about the compliance costs for employers and there were concerns whether compulsory deductions should apply to fully compliant parents.

Submitters supported expanding the income definition used for child support purposes to better align with that used for Working for Families tax credits and student loans.

Submitters supported Inland Revenue working proactively with customers to manage debt.

Submitters strongly supported the proposal to provide Inland Revenue with additional authority to work with customers who have these unusual circumstances in order to achieve the intended outcome for the specific social policies.

In relation to the proposal to introduce a time bar, targeted consultation was undertaken with interest groups. These groups were:

- National Beneficiaries Advocacy Consultative Group;
- The Federation of Budget Advisors;
- Citizens Advice Bureau; and
- Chartered Accountants Australia and New Zealand.

One group were comfortable with the proposal and thought that the proposed exceptions addressed any possible inequities. Another group supported a time bar when there has been a default assessment⁹ and a reassessment would result in a reduction of child support paid by the liable parent and a debt for the receiving carer. However, they do not support the introduction of a time bar when there has been a default assessment and a reassessment would result in an increase in child support being payable by the liable parent and money due to the receiving carer. Their concerns include:

- that the proposal undermines the integrity of the child support scheme and may be perceived by the public and those who pay the correct amount of child support as unfair;
- it fails to meet the objective of the child support scheme which is to ensure parents fulfil their responsibilities to financially support their children; and
- that it fails to ensure that Inland Revenue meets its responsibilities to administer the scheme for those parents who voluntarily choose to receive their child support through Inland Revenue.

Inland Revenue considered these concerns and consider that, on balance, the proposal is fairer as it provides parents and carers with more certainty. Any equity concerns can be addressed by the specified exceptions to the time bar.

Inland Revenue consulted with the Treasury, the Ministry of Social Development and Oranga Tamariki (as Inland Revenue collects child support for beneficiaries and Oranga Tamariki as the custodian of wards of the State) on the proposals set out in this regulatory impact assessment. The Ministry of Justice and the Department of Prime Minister and Cabinet (child poverty unit) were consulted on relevant proposals. These agencies generally supported the proposals. Officials have consulted with the Office of the Privacy Commissioner on the compulsory deductions proposal. The Privacy Commissioner is pleased to support the compulsory deductions proposal as a measure that is consistent with applying good privacy values.

The discussion document *Making Tax Simpler: Better administration of social policy* included information in Te Reo. The proposals will apply to Maori the same as for any customer in the child support scheme. The proposal to include Maori authority income (which is a type of investment income) will affect those with income from Maori authorities in the same way as it affects people with other types of investment income.

⁹ A default assessment is when a parent has not filed a relevant return and the Commissioner has determined the income on which to base the child support assessment.

Section 3: Options identification

3.1 What options are available to address the problem?

This regulatory impact assessment contains a number of proposals. The recommended options work together in combination to deliver on the key objectives to simplify the rules, make the rules fairer, and encourage engagement and compliance with the scheme.

Penalties rules

Option 1: Maintain the status quo with some operational improvements including, better education, improved statements and better online content.

The option would be unlikely to deliver significant improvements on current state.

Option 2: Make some small changes to the existing rules including, increasing the time period between the imposition of the 2% and 8% initial penalties and only charge a 1% incremental penalty each month (rather than a 2% incremental penalty reducing to 1% after a year).

This option would slow the escalation of the debt book but is unlikely to have much impact on preventing debt in the first instance and improving compliance behaviours.

Option 3: Charge no penalties.

This option would slow the escalation of the debt book due to the accumulation of penalty growth but could increase the value of assessment debt. It could mean some liable parents stop paying altogether.

Research conducted showed penalties do play a part in incentivising compliance by keeping child support “front of mind”. Charging no penalties may reduce compliance with the scheme.

Option 4: Introduce a grace period for new payers (for a three-month period), increase the period between the imposition of the 2% and 8% initial late payment penalties (up to 28 days – that is, closer to the next due date), and remove the \$5 minimum penalty rule.

The changes would simplify aspects of the scheme, reduce administration and compliance costs and enable Inland Revenue to better work with customers to encourage their ongoing compliance. Penalties would still be charged when a person is non-compliant, however they would be in proportion to the amount outstanding. Parents agree penalties have a place in the scheme but when they are too punitive they cause them to disengage with the scheme and reduce compliance.

Increasing the time between charging the 2% and 8% penalty to 28 days would mean on average an additional 540 parents would not be charged the second stage (8%) of the penalty each month. With the additional interventions that could be employed in the 28 days before the 8% penalty is charged, it is expected even more parents would benefit from not incurring a penalty (although we cannot say how many more).

Compulsory deductions

Option 1: Status quo with operational improvements

This option could see some improvements in debt collection and compliance due to the better information received by Inland Revenue due to pay day reporting, but it would not prevent people falling into debt.

Option 2: Extension of compulsory source deduction payments to liable parents who become liable after the proposals come into effect (rather than just those who have defaulted). The Commissioner would have discretion not to impose deductions in certain cases – for example, for privacy reasons. Liable parents already in the scheme who are compliant would not be subject to compulsory deductions unless they defaulted.

This provides more certainty to carers and helps to prevent customers falling into debt in the first place. It aligns the policy with beneficiaries who are liable parents as they have deductions made from their benefit.

Time bar

Option 1: Status quo.

This option does not provide any certainty for carers and parents as adjustments can be made back to 1992, which can result in debt for either parent and can result in reopening cases which have already been closed. Administratively, continuing to make adjustments to child support assessments back as far as 1992 becomes unsustainable, particularly given the move to the new system.

Option 2: A time bar with no exceptions.

This option improves certainty and reduces administration costs and debt. However, it is open to manipulation and could result in inappropriate outcomes. It would reduce the overall fairness and equity of the scheme.

Options 3: A time bar with specific exceptions:

- If information provided by a person in the child support assessment is fraudulent or wilfully misleading or omits income of a particular nature;
- when a parent or child included in the assessment has died;
- when a person should never have been made liable – for example, when a person is subsequently found not to be the father of a child;
- when a reassessment is required to avoid a dual liability (for the same child) with an overseas jurisdiction;
- if Inland Revenue does not meet the notification requirements; or
- if a court order is granted that applied to a time barred period.

Definition of “income”

Option 1: Status quo.

This option would not make use of the information that Inland Revenue now receives on a regular basis. The current approach of reducing a person’s income for child support purposes due to tax losses from earlier years means the income used in the assessment does not fully reflect the person’s ability to financially support their children and does not contribute to improving the fairness of the scheme. It does not align with how these losses are accounted for when working out Working for Families entitlements and student loan obligations.

Option 2: Full alignment with the income definitions used for Working for Families and student loans purposes – for example to include income not reported for tax purposes such as money given by a family member to help with living costs (over a certain threshold)

This option would significantly increase complexity, compliance and administration costs. Due to the increased complexity of the rules, more adjustments would be made to people’s assessments as income that should be, or not be, included in the assessment is identified. This would reduce the certainty of payments. Child support already has provisions which allow for other types of financial resources to be taken into account in assessments – for example, administrative reviews.

Option 3: Moving to a net income base and including other reported income (aligning more closely with the definition of income for Working for Families and student loans).

Moving to a net income basis ensures that income is no longer reduced due to tax losses from an earlier year and more accurately reflects each parent’s ability to financially support their children. Given that the majority of the parents who have losses that reduce their income are liable parents, the net effect of the proposal overall is to increase liable parents’ obligations toward the support of their children.

3.2 What criteria, in addition to monetary costs and benefits, have been used to assess the likely impacts of the options under consideration?

Compliance with the scheme – The proposal should improve compliance with the scheme, particularly for liable parents. This should reduce the number of people in debt.

Certainty and complexity – The proposal should result in the right amount being paid and will reduce over or underpayments. It should reduce complexity of the rules.

Compliance costs – The proposal should reduce compliance costs for parents and carers.

Administration cost – The proposal should reduce administration costs.

Equity and fairness – The proposal should be fair and equitable, and not encourage or reward undesirable behaviours.

3.3 What other options have been ruled out of scope, or not considered, and why?

Withheld under section 9(2)(f)(iv) of the Official Information Act 1982

An option to not have any employer deductions from salary or wages (or source deduction payments) was ruled out as it would reduce compliance with the scheme and further misalign the rules for non-beneficiary liable parents with those that apply to beneficiary liable parents. A beneficiary liable parent must have their child support deducted from their benefit whether in debt or not.

Replacing penalties with interest which would be passed on to the receiving carer is considered to be outside the scope of the BT work. Further it does not fit with the purpose of the scheme which is the transfer of payments between parents as interest is generally applied when the Government is the direct recipient of the money collected.

More closely aligning the time bar with the time bar for tax by only considering the time bar once a person has had their relevant income assessment for a child support year finalised. As most parents do not file income tax returns this option would mean that child support reassessments would still be available for many years.

Section 4: Impact Analysis

Penalty rules					
	Compliance with the child support rules	Certainty	Compliance costs	Administration costs	Equity and fairness
Status quo and operational improvements	0	0	0	0	0
Increasing period between the imposition of the two phases of the initial penalty and reducing the incremental to 1%	+	0	+	+	0
	allows for interventions before the 8% penalty is charged		more time before 8% penalty charged, debt growth is slowed	debt growth is slowed	
No penalties	--	--	0	--	--
	potential to encourage non-compliance	reduces incentive to pay	liable parents will not have penalties imposed but there will be compliance costs for receiving parents whose payments by be delayed or not made	becomes more difficult to collect payments	less incentive to pay non-compliant parents treated the same as compliant
Introducing a grace period, increasing period between the imposition of the two phases of the initial penalty	+	+	+	+	+
	allow IR to work with parents to provide up-front education and opportunity for more interventions	working with and educating liable parents should improve regularity and timeliness of payments	working with and educating liable parents should improve parents understanding of their rights and obligations reducing ongoing compliance costs	some additional up-front administration costs to educate and provide interventions if initial penalty is charged However administration savings should be made through increased regularity of payment, reduced debt, reduced need for write-offs	all new parents provided time to adjust to paying under the scheme all parents penalised for any months of non-compliance all parents penalised in proportion to their debt

Compulsory deductions					
	Efficiency	Certainty	Compliance costs	Administration costs	Equity and fairness
Status quo and operational improvements	0	0	0	0	0
Extending compulsory deduction to all source deduction payments	<p>+</p> <p>help parents avoid falling into debt</p>	<p>++</p> <p>should improve regularity and timeliness of payment</p>	<p>+</p> <p>some new employers required to make child support deductions</p>	<p>+</p> <p>fewer parents in debt should reduce administration cost</p> <p>deductions are shifted to beginning of process rather than once debt occurs</p>	<p>+</p> <p>aligns with compulsory deductions for beneficiaries</p> <p>treats child support same as other compulsory payments – for example, student loans and PAYE</p>

Introduction of time bar after four years					
	Compliance with the child support rules	Certainty	Compliance costs	Administration costs	Equity and fairness
Status quo	0	0	0	0	0
Time bar no exceptions	<p>+</p> <p>encourages timely provision of information</p>	<p>+</p> <p>less change to past periods</p>	<p>+</p> <p>less change to past period</p> <p>less likely to re-enter scheme due to retrospective reassessments</p>	<p>++</p> <p>less administration of periods back to 1992</p> <p>able to exit cases with more certainty, could encourage parents to be timelier providing information about their circumstances</p>	<p>--</p> <p>could encourage perverse behaviours as parents could deliberately withhold information until time bar starts</p>
Time bar with specified exceptions	<p>+</p> <p>encourages timely provision of information</p>	<p>+</p> <p>less change to past periods</p>	<p>+</p> <p>less change to past periods</p> <p>less likely to re-enter scheme due to retrospective reassessments</p>	<p>++</p> <p>less administration of periods back to 1992</p> <p>able to exit cases with more certainty, could encourage parents to be timelier providing information about their circumstances</p>	<p>++</p> <p>specified exceptions maintain equity, situations of fraud, wilful omission would be addressed.</p>

Definition of "income"					
	Compliance with the child support rules	Certainty	Compliance costs	Administration costs	Equity and fairness
Status quo	0	0	0	0	0
Full alignment with Working for Families and student loans	- rules are widely misunderstood due to complexity so easy to be non-compliant	- rules are widely misunderstood due to complexity, likely to increase reassessments	-- much of the income is self-declared by parents separate from income for tax purposes	-- additional income to process, likely to be more reassessments	+ would provide for full financial capacity to be reported (although errors due to complexity would work against this)
Move to net income balance and include reported income	0	0	+ income included is already provided by third parties for tax purposes the investment income proposal may reduce compliance costs because there may be fewer administrative reviews	+ income included is already provided by third parties for tax purposes the investment income proposal may reduce administration costs because there may be fewer administrative reviews	++ better represents parent's financial capacity by re-using information already provided for tax purposes, less open to error or manipulation by parents

The minor and technical proposals outlined in this document were not measured against the criteria and therefore are not reflected here.

Key:

- ++ much better than doing nothing/the status quo
- + better than doing nothing/the status quo
- 0 about the same as doing nothing/the status quo
- worse than doing nothing/the status quo
- much worse than doing nothing/the status quo

Section 5: Conclusions

5.1 What option, or combination of options, is likely best to address the problem, meet the policy objectives and deliver the highest net benefits?

Inland Revenue's preference is to move forward with the following combination of options (as outlined in section 3 *Options identification*)

Penalty rules – option 4 to make changes by introducing a three month grace period for new payers, increase the period between the imposition of the 2% and 8% initial late payment penalties (up to 28 days – that is, closer to the next due date), and remove the \$5 minimum penalty rule.

This option is recommended as it best meets the assessment criteria that the options were rated against. The changes would simplify aspects of the scheme, reduce administration and compliance costs and enable Inland Revenue to better work with customers to encourage their ongoing compliance. Penalties would still be charged when a person is non-compliant however they would be in proportion to the amount outstanding. Parents agree penalties have a place in the scheme but when are too punitive they cause them to disengage with the scheme and reduce compliance.

Compulsory deductions – option 2 which extends compulsory deductions to all new liable parents. This will improve the timeliness of child support and help to prevent newly liable parents getting into debt.

Time bar – option 3 which introduces a time bar but with specific exceptions. This will increase certainty for parents and reduce compliance and administration costs.

Definition of "income" – option 3 which moves to a net income basis and includes investment income (interest and dividends). These proposals will make the rules fairer and the investment income proposal will reduce compliance and administration costs.

Minor and technical proposals – all the minor and technical proposals included in the appendix (including those applying to customers with unusual circumstances).

We consider that the combination of these options would best achieve the desired outcomes of improved ongoing compliance with the scheme and debt prevention.

The combination of interventions would improve administration and reduce compliance costs but also make the rules fairer, more equitable, and less complex, thereby improving and incentivising customers, and particularly liable parent compliance. Overall, they should result in a reduction in debt.

Non-compliance would still be addressed by penalties but in a more proportional manner.

5.2 Summary table of costs and benefits of the preferred approach

Affected parties	Comment:	Impact	Evidence certainty
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Additional costs of proposed approach, compared to taking no action

Regulated parties (Liable parents, receiving carers and employers)	<p><i>Liabe and receiving parents</i> About 80,000 parents would have their child support income increased by the income definition changes. This could increase or decrease the child support liability depending on whether they were the liable parent or receiving carer respectively.</p>	Additional interest income added to assessments of \$11 million	Medium–low
	<p><i>Liabe parents</i> The time bar would mean about 1,600 liable parents who would have been reassessed would not receive a reduction to their obligations.</p>	Total reduction to obligations is about \$16million per year	Medium
	<p><i>Receiving carers</i> The time bar would mean about 1,000 liable parents would not be reassessed so would not see their obligations increased. This means receiving carers would not see their entitlements increased.</p>	Total reduction in receiving carer entitlements is about \$6million per year	Medium
	<p><i>Employers</i> Additional compliance costs for compulsory deductions for employers if they are not already required to make child support deductions.</p>	Unable to quantify but would be low as child support deductions are already made on behalf of many liable parents and compulsory for child support defaulters	High

Regulators (Inland Revenue)	The changes to the way penalties are imposed would reduce the penalties charged, which in turn would reduce the amount of penalties collected. We note that accounting standards require child support debt to be recognised at fair value and only 3% of child support penalty debt is due to the high initial write-down. <i>Inland Revenue's administrative costs:</i> No additional costs because costs are already budgeted for as part of BT.	None - the impact is insignificant. No additional administrative costs	Medium
Wider government	None	None	N/A
Other parties	None	None	N/A
Total monetised cost	Penalty proposals	None	Medium
Non-monetised costs	Potential to increase compliance costs for employers	Low	High

Expected benefits of proposed approach, compared to taking no action			
Regulated parties (Liable parents, receiving carers and employers)	<i>Liable parents</i> The time bar would mean about 1,000 liable parents who are reassessed would no longer have an increase to their obligations The scheme will support liable parents more by encouraging them to get things right from the start and comply with their obligations The changes mean that parents are less likely to fall into debt	Total reduction in increased payments is \$6 million Medium	Medium Medium (able to measure the cost of not charging penalties but it is not possible to model the behavioural impacts that we expect from these proposals)

	<p>and stay in debt.</p> <p><i>Receiving carers</i> The time bar would mean about 1600 liable parents would not be reassessed so would not see their obligations reduced. This means receiving carers would not see their entitlements reduced – which causes receiving carer overpayment and debt.</p> <p>The scheme will benefit receiving carers by encouraging liable parents to comply with their obligations and therefore making it more likely that carers receive payments. The time bar helps to improve overall certainty that payments are not going to be reassessed many years later.</p> <p><i>Employers</i> There are no benefits to employers to any of the proposals.</p>	<p>Receiving carers would no longer be overpaid by up to \$16 million per year</p>	<p>Medium</p>
		<p>Medium</p>	<p>Medium</p>
		<p>None</p>	<p>N/A</p>
<p>Regulators (Inland Revenue)</p>	<p>Overall the legislative proposals would be expected to reduce Inland Revenue's administration costs in conjunction with Inland Revenue's new system and processes. Reduction in administration costs</p>	<p>Medium</p>	<p>Medium</p>

	will form part of the savings from Inland Revenue's BT programme.		
Wider government	None	None	N/A
Other parties	None	None	N/A
Total monetised benefit	Given the impacts to liable parents and receiving carers are generally opposite the monetised benefits can't be meaningfully combined.	N/A	N/A
Non-monetised benefits		Medium	Medium

5.3 What other impacts is this approach likely to have?

None identified.

5.4 Is the preferred option compatible with the Government's 'Expectations for the design of regulatory systems'?

The proposals are compatible with the Government's "*Expectations for the design of regulatory systems*".

Section 6: Implementation and operation

6.1 How will the new arrangements work in practice?

The proposals would require amendment to the Child Support Act 1991. It is intended that the preferred option be included in a child support amendment bill which is expected to be introduced into Parliament at the end of 2019.

Inland Revenue will be responsible for the operation of these options and they will form part of its business as usual function. Although not the key driver, the preferred options will reduce the implementation risks associated with transferring the child support scheme from the current computer platform to the new systems and processes.

The proposed changes will apply to child support from April 2021. This will enable sufficient preparation time for Inland Revenue to implement the changes. Changes for employers to make compulsory deductions are effectively business as usual as they are already required to make deductions for some parents under the current rules.

Withheld under section 9(2)(f)(iv) of the Official Information Act 1982

The proposed approach will be included in the commentary on the child support amendment bill. Consideration by Select Committee is expected to provide an opportunity for interested parties to further express their views on these proposed changes.

Transitional proposals have been included where identified. Further transitional issues may come to light during the design and build of the new system. They will be considered when they arise.

6.2 What are the implementation risks?

There were no issues concerning implementation raised in consultation.

There is a risk that employers choose not to be compliant with the new compulsory deduction rules. However, this is unlikely as they already required to make deductions when they are instructed to do so by Inland Revenue.

There is a risk that customers may not respond as expected to the penalty measures and that, as a result, compliance reduces. This can be mitigated by use of customer education and existing enforcement provisions, the introduction of compulsory deductions and improved information made available through Inland Revenue's BT programme.

As part of moving to the new systems, Inland Revenue will begin designing and building the new agreed proposals before the legislation is enacted. If there are any delays in making the amendments, there is a risk that the system and the legislation are not aligned. This risk will be mitigated through consultation with the Minister's office and the

development of a contingency plan.

Section 7: Monitoring, evaluation and review

7.1 How will the impact of the new arrangements be monitored?

Inland Revenue already monitors timeliness of child support payments, obligations paid on time (including for newly liable parents), amounts collected and dispersed (including amounts collected through employers).

Inland Revenue is currently building a monitoring and evaluation framework for child support. These tools will be used to monitor and evaluate the proposals when they are implemented.

Inland Revenue will monitor the effectiveness of the proposed legislation when implemented. If we identify any evidence that suggests the legislation is not operating as intended, we will consider options for addressing the issues raised.

7.2 When and how will the new arrangements be reviewed?

The final step in the Generic Tax Policy Process is the implementation and review stage, which involves post implementation review of legislation, and the identification of remedial issues. Post implementation review is expected to occur around 12 months after implementation.

Any necessary changes identified from the review would be recommended for addition to the Government's tax policy work programme.

Inland Revenue is currently building a monitoring and evaluation framework for child support. These tools will be used to monitor and evaluate the proposals when they are implemented.

Appendix

Minor and technical amendments to improve fairness, equity, compliance or administration of the scheme

The following proposals are aimed at specific issues that have been identified with the scheme. Combined, they are intended to make the administration of the scheme fairer, simpler and less confusing – for example, by aligning the rules across different social policies. Not all of these proposals are required to be included in this impact assessment; they have been included for transparency and completeness.

Most will impact positively on customers. The exception is the proposal to amend the maximum age of child support which would mean that for a small group of carers (a maximum of about 150) child support for the child would end some months sooner than is currently the case. However, this proposal largely aligns child support with Working for Families tax credits which Inland Revenue also administers.

Improvements to the income estimation provisions

Estimation square ups

Child support is based on a past year's income. An exception is when a person's income in the current year will decrease by 15% or more when compared to the income in the past year. In such cases the person can "estimate," and elect to use their current income as the basis of their child support assessment. At the end of the year, any estimate is reconciled with the actual income earned in the period of estimation to assess the final child support payment. If a person estimates more than once during the year, each estimation is reconciled separately at the end of the year.

If a person estimates more than once during the year, the current rules mean that when their estimate is reconciled they can be assessed on income that is greater than what they earned in some periods. The proposal is to amend the end of year square up provisions to ensure that a person who estimates more than once during a year is squared up on the income they earned in the period.

Estimation timing

An estimation is only accepted from the beginning of the month in which the estimate is received. This can mean that a person new to the child support scheme may lose the opportunity to estimate for periods (generally the previous month) because they receive their notice of assessment or entitlement in a later month. The proposal is that when a person joins the child support scheme an estimation can be backdated to the start of the assessment if Inland Revenue receives the estimation on or before the first due date for payment.

This would mean that a person has at least 30 days to estimate their income when child support is first assessed and does not miss the opportunity to estimate due to Inland Revenue processing times.

Debt offsetting

Currently, a person can apply for an administrative review if they want debt owed between themselves and another parent offset. Administrative review is a process where a person's formula assessment can be changed to better fit a person's specific situation.

The number of times the ground has been used is very low and the provision is difficult to administer as it requires an adjustment to the assessment calculation to achieve the desired result. The proposal is to introduce a provision permitting Inland Revenue to initiate an offset of the amount owed. The offset would net out child support debts two parents owe each other. The person owing the higher amount would be required to pay the difference. Such a provision would be simpler, cheaper, easier for customers to understand and would be more effective at reducing debt, and in some cases would clear the parent's full debt. Removing this

debt burden can reduce financial stress on the parent and may have other flow on effects such improving their credit rating.

Repealing a redundant provision for urgent maintenance

The Child Support Act contains a provision for a person to apply to the Courts for an urgent maintenance order if they have made an application for child support to Inland Revenue, but the child support application has not been processed. It is believed the provision was included in the Child Support Act to cover the period of transition when child support moved to Inland Revenue in 1992 in case there were any unforeseen circumstances that could mean Inland Revenue is unable to raise an assessment. An order under this provision has never been granted so it is recommended the provision is removed. The Ministry of Justice has been consulted and is comfortable with the provision being repealed.

Working with customers with unusual circumstances

Changes to temporary exemptions

Subject to a person meeting specified income criteria, temporary exemptions from payment of financial support (child support and domestic maintenance) are available to a liable person if they are a long-term (13 weeks or more) prisoner or hospital patient. They are justified on the basis that the person has no capacity to earn an income for the period. The proposal is to extend the ability to grant a prisoner exemption to a person in an overseas prison, and to give Inland Revenue discretion to grant a hospital exemption to a person who is not in hospital but who is suffering from long-term illness or injury (and, for example, is being cared for at home). In both instances, granting the exemption would be subject to the current income criteria being met.

The number of people who might qualify for the amended exemptions is not quantifiable. However, it is expected it would be low. The proposals align with the overall policy intent that prisoners and the long-term ill should be given temporary relief from their obligations if they do not have the financial capacity to pay at least the minimum child support amount.

Removal of the mixed age expenditure table

The child support formula uses expenditure tables to calculate the costs of children. They have been developed based on research that concluded teenagers cost more than younger children and economies of scale apply – i.e. each subsequent child costs less.

There are three expenditure tables used for calculating the costs of children for child support. One for children aged 12 and younger, one for children aged 13 and older and a 'mixed age' table which is an average of the two other tables. The mixed age table is used when there are at least two children in the same child support calculation and they fall into different age brackets. However, if the children do not live in the same household (for example one child lives with mum and the other with dad), the use of the mixed age table does not allocate costs appropriately to each child (although the total expenditure for all children is correct).

Removal of the mixed age table will mean costs are calculated for each child based on their age and would better reflect that costs are higher for older children. It will not change the total expenditure calculations but when children live in different households it would ensure the household with the younger child does not benefit from being allocated some of the expenditure intended for the older child.

Discretion to modify expenditure calculations when perverse outcomes are reached

Although the child expenditure tables are developed on the basis of economies of scale the child support formula then provides that total expenditure is divided equally by number of children rather than attempting to

identify the “marginal costs” of each subsequent child. This can cause perverse outcomes in situations when there are multiple children in a child support calculation that have different care arrangements. For example, a person’s dependent child allowance reducing when additional children come into their care – it is expected that the allowance remain the same or increase. Allowing Inland Revenue, the discretion to modify expenditure calculations would give it the ability to modify the calculation to resolve these complex cases by, for example, identifying the actual marginal costs of children. It is expected the number of cases to consider would be low. Based on 2016 data and the known criteria that could lead to perverse outcomes, less than 40 cases each year could arise that need adjustment.

Clarifying that child support should end when a child leaves State care

When a child moves from the receiving carer to the liable parent child support can continue and a new application for child support is not required. The exception to this is when the receiving carer is Oranga Tamariki because the child has been placed in their care. In these situations, if the child leaves Oranga Tamariki’s care and is placed with one of the parents the child support is stopped. This practice is followed due to potential safety concerns for the child and their carer as the other parent would be notified of the change in carer. If the parent with the child in their care would like to receive child support, they are able to apply. Parents who choose not to apply for child support due to safety concerns may be eligible for other financial assistance from the state - such as Working for Families tax credits. The proposed amendment explicitly ends child support when a child leaves the care of Oranga Tamariki. It clarifies and reinforces the current practice.

Introducing timeframes for parents and carers to provide orders of parentage

If a person makes an application for child support and they do not have any proof of who the other parent is, the child support application is declined. If the applicant subsequently provides a court order stating that the person named on the child support application is the parent of the child, the child support application is accepted from the date the original application was received.

The proposal is to introduce some time limits to improve fairness. The rules would mean child support would only be back-dated on receipt of a court order declaring 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. There would be discretion for Inland Revenue to accept orders outside the two-month period if the delay was due to circumstances beyond the carers control – for example, they were seriously ill.

These court orders are used as proof of parentage in a small number of cases. Between 1 January 2016 and 28 February 2019, an order was used as proof of parentage in 325 cases. For most (260), the order was received either with the child support application or within two months of the application being received, so the proposal would have had no impact in these cases. For the remaining carers, if the time limits were met, there would have been no impact on the amount of child support they receive. However, the proposal would remove the ability for the carer to ‘hold off’ giving Inland Revenue the order knowing the support can still be backdated. For liable parents it restores some equity as it means an onus is put on carers to be timelier in their decisions to seek child support through Inland Revenue (as opposed to the current state where some cases have taken more than 13 years for the carer to provide the order).

Timeframes to advise of circumstances when first assessed

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 does not apply when the circumstance existed at the time the child support was assessed for the first time. In these situations, the assessment is considered incorrect and should be corrected effective from the start of the child support assessment. This can cause overpayments to carers (for example, if a liable parent notifies Inland Revenue of a dependent child that reduces their payments) or increases in payments by liable parents (if a receiving carer likewise notifies of a dependent child). Any increase in payments for past periods are due within 30 days.

The proposal is that similar notification rules that apply to changes of circumstances during a child support assessment should also apply to the notification of circumstances that existed at the time child support was first assessed. The parent should have 28 days from the date of their notice of assessment to advise of their existing circumstances, otherwise the change would apply from the date of notification.

Minimum age at which a child can be considered financially independent

When a child is financially independent they no longer qualify for child support. To be financially independent the child must be working full time (considered 30 hours or more per week, or what might be considered full time for the type of work), or in receipt of a benefit or student allowance.

Fewer than 60 children under the age of 16 have had child support ceased by virtue of being considered financially independent since the scheme began. If a parent believes the child has significant financial resources that should be taken into account in determining the child support assessment, they can ask for this to be considered by apply for a departure from their assessment (commonly referred to as an administrative review).

The proposal is to introduce a minimum age of 16 before a child can be considered financially independent. This would fully align the financially independent definition for child support with that used for Working for Families tax credits.

Maximum qualifying age of a child

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;
- the 31st of December 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.

The proposal is to amend the qualifying criteria, so the latest child support could be paid is the 31st of December of the year in which the child turns 18. The schooling criteria would be retained.

This change aligns the child support 'maximum qualifying age' of a child with similar tests for Working for Families and main benefit recipients. Administrative data shows that this change would mean child support would end sooner for about 150 children.

Residency for child support purposes

A parent can apply for child support for a child if the child is a New Zealand citizen or ordinarily resident in New Zealand. Child support is payable by a parent who is a New Zealand citizen or ordinarily resident in New Zealand or in a country with which New Zealand has a reciprocal agreement with. A person is "ordinarily resident in New Zealand" if they have a permanent place of abode in New Zealand or they are physically

present in New Zealand for at least 183 days in a year and are not overseas for more than 325 days in aggregate in any 12 month period.

For child support, residency decisions are often based on a person's intended, rather than actual, movements. This means that child support applications are accepted (or ended) in a timely manner rather than up to 12 months later during which time children may be living without the financial support of both their parents.

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

Sensitive - Budget

Office of the Minister of Revenue

Chair, Cabinet Social Wellbeing Committee

BUSINESS TRANSFORMATION – AMENDMENTS TO THE CHILD SUPPORT ACT 1991

Proposal

1. This paper seeks the Cabinet Social Wellbeing Committee's agreement to amendments to the Child Support Act 1991, which are focused on improving the administration of the child support scheme by taking advantage of the opportunity offered by the modernisation of Inland Revenue's systems. These improvements are aimed at improving engagement and compliance with the scheme which would in turn support improvements to the welfare of children.

Executive summary

2. Inland Revenue's multi-year Business Transformation (BT) programme will modernise New Zealand's revenue system. It is currently planned that the child support scheme will move to the new system and processes in April 2021 (BT release 5). This creates opportunities to improve the administration of the scheme and reduce complexity in the new system at the same time.
3. The proposed amendments fall into five categories:
 - 3.1 changes to the child support penalty ^{s 9(2)(f)(iv)} rules to simplify the rules and make them fairer and more effective;
 - 3.2 compulsory employer deductions for newly liable parents;
 - 3.3 limiting retrospective reassessments by introducing a time-bar;
 - 3.4 aligning key child support definitions with definitions used in other social policy products; and
 - 3.5 technical amendments to assist the administration of the scheme, including to better work with customers with unusual circumstances.
4. I propose that the majority of these changes be included in a child support amendment bill to be introduced in early 2020, to be effective from April 2021.

^{s 9(2)(f)(iv)}

Background

5. Inland Revenue's multi-year transformation programme will modernise New Zealand's revenue system. Once complete, customers will spend far less time and effort ensuring they meet their obligations and receive their correct social policy entitlements.
6. Business transformation is enabled by a combination of changes to policy, process, technology and the organisational design of Inland Revenue. It is far more than an upgrade of technology and has provided the opportunity to review how the revenue system is administered and consider what changes may be needed.
7. It is currently planned that the child support scheme will move to the new system and processes in April 2021 (BT release 5). This creates opportunities to improve the administration of the scheme and reduce complexity in the new system at the same time.
8. In July 2017 the previous Government released a discussion document *Making Tax Simpler: Better administration of social policy* (the discussion document). The discussion document explored proposals for improving the way social policy entitlements and obligations are administered by Inland Revenue, including child support. Child support is money paid by parents who do not live with their children or who share the care with someone else. The money is to help with the costs of raising the children.
9. 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.
10. The proposals in this Cabinet paper have been developed following feedback on the discussion document.

Simplification of the penalty ^{s 9(2)(f)(iv)} rules

11. Currently, if a person does not pay their financial support (child support or domestic maintenance¹) 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% penalty is applied seven days later. Incremental penalties are then charged each month the payment is outstanding – 2% each month for the first year which reduces to 1% per month after a year until the amount outstanding is paid.
12. 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. As at February 2019, the child support debt book is \$2.2 billion; of which \$550 million is child support and \$1.7 billion is penalties. Research by Inland Revenue indicates that the current penalty rules are seen as overly harsh. Most penalties can be, and are, written off – for example, because the person has complied with a payment arrangement. The recovery of debt is challenging. Currently, 97 percent of child support penalty debt is written down at initial recognition as it is not expected to be collected.

¹ Domestic maintenance is a payment made to an ex-spouse or ex-partner, either ordered by the Court or agreed to by the ex-spouses.

13. Research (undertaken by Inland Revenue) suggests that Inland Revenue is too quick to penalise people.² People consider that penalties are needed as an incentive to keep child support “top of mind”, but do not understand the rules and therefore do not know how to “fix things” when they go wrong. People feel that the rules need to provide “clarity, flexibility and the perception that Inland Revenue is working with customers”.

14. Child support is due every month. s 9(2)(f)(iv)

[Redacted]

15. I recommend the following in relation to child support and domestic maintenance debt:

15.1 The imposition of the second phase of the initial penalty is moved to 28 days after the due date, which would give Inland Revenue time to contact the customer and explain the consequences of not paying (for example, the imposition of the 8%, the use of charging orders) with the aim of working with the person to get them back on track.

15.2 The rule which provides that the minimum penalty imposed is \$5 is repealed, which would ensure that the 2% penalty imposed is in proportion to the amount outstanding.

15.3 s 9(2)(f)(iv)

[Redacted]

15.4 A grace period is introduced for customers who are new, newly liable, or returning to the child support scheme during which penalties would not be charged but enforcement action (such as deductions from bank accounts) could be taken, which would allow Inland Revenue to work with customers to help them get things right from the start. The grace period would apply to the customer’s first due date and for any due dates that occur within the next 60 days (which would usually cover the next two payments).

16. s 9(2)(f)(iv)

[Redacted]

² The research consisted of 27 one-on-one interviews around the country. The interviewees were a mix of liable parents and receiving carers, and a mix of levels of income.

³ s 9(2)(f)(iv)

[Redacted]

17.

18.

19.

20.

21.

Compulsory deductions for newly liable parents

22. Currently, employers must make deductions when a liable parent is in debt or chooses this payment option. Deductions are also compulsory for liable parents in receipt of a benefit (including a veteran’s pension or NZ Super). Compulsory employer deductions of financial support (child support and domestic maintenance) from source deduction payments (salary, wages and schedular payments⁴) for newly liable parents were proposed and then descoped from the 2013 child support reforms largely because the monthly PAYE system meant they could not be effectively administered. As part of Inland Revenue’s Business Transformation, payday reporting is mandatory from 1 April 2019. This means PAYE details are provided to Inland Revenue closely following each pay day and that Inland Revenue can now effectively implement compulsory employer deductions for newly liable parents when child support moves to the new system.

23. 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.

⁴ Schedular payments are certain types of payments that are made to contractors.

Currently, compliance for new liable parents in the first few months is very low – less than a third pay on time.

24. I recommend that compulsory deductions of financial support be made from source deduction payments made by New Zealand employers. However, 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, I recommend that in such cases Inland Revenue should have the discretion to determine the compulsory deduction rules do not apply (and alternative arrangements are made to collect child support). If the person subsequently defaults, compulsory deductions would then be applied.
25. The change would apply to all new child support liable parents. As part of the transition to the new compulsory deduction rules, I recommend that compulsory deductions are not made immediately if at the time of transition a person is not having child support deducted and is compliant with their child support obligations. If the person stops complying or decides to opt in, compulsory deductions would then apply. This would smooth the impact of the change on employers, liable parents and Inland Revenue.
26. This would work in conjunction with the grace period which will mean that the grace period will affect self-employed people more.

Time bar

27. Unlike tax child support does not have a statutory time bar preventing reassessments for past periods. This means that reassessments must be made as far back as July 1992 if Inland Revenue is given information that is relevant to a past child support year. Reassessments can occur for a number of reasons – for example, changes in income, changes in care arrangements and parents reconciling. This creates uncertainty for parents. It also results in additional administrative costs. In a number of cases there is no actual change in the amount to be paid as a result of the reassessment.
28. I recommend the introduction of a child support time bar which would operate in a similar way to the tax time bar. Reassessments of child support for past years could only be made within four years from the end of the relevant child support year (subject to a number of exceptions). Four years is consistent with the tax rules and covers the period over which most child support reassessments occur. The time bar would also apply to administrative and Commissioner initiated reviews⁵ – that is, there would be a four-year period in which to seek an administrative review.
29. In order to deal with any equity issues that may arise, I recommend that the time bar would not apply:
 - 29.1 if information provided by a person in the child support assessment is fraudulent or wilfully misleading or omits income of a particular nature in a return;⁶

⁵ “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.

⁶ Including if the assessment is a default assessment which does not include income of a particular nature.

- 29.2 when a person who is part of the child support assessment dies;
 - 29.3 when a person should never have been made liable – for example, when a person is subsequently found not to be the father of a child;
 - 29.4 when an amendment is required for the purposes of avoiding a dual liability (for the same child) with an overseas jurisdiction;
 - 29.5 if Inland Revenue does not meet the notification requirements; or
 - 29.6 if a Court Order is granted that applies to a time barred period.
30. If an exception applies and a retrospective reassessment is made, objection rights would still be available to affected parties and a person would have up to four months to ask for an administrative review for that year.

Definition of “income”

31. Income is one of the components used in child support to calculate the financial support that should be provided for a child based on the combined incomes of both parents. Currently, for parents whose sole income is from withholding income, only their employment income is included in their child support assessment. That is, interest and dividends subject to resident withholding tax is excluded. This is because, in the past, interest and dividend income was not generally known until the end of the tax year. However, new rules require that from 1 April 2020 interest and dividend income be reported to Inland Revenue on a monthly basis. I recommend that the income definition for this group of parents should be widened to include interest and dividends from the preceding calendar year. This would be easy to administer and would not cause undue compliance burden on parents, given this income is already provided to Inland Revenue for tax purposes.
32. 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 capacity to do this. It is at odds with that objective to reduce one parent’s relative capacity to support a child in that year due to tax losses that occurred in an earlier year.⁷ I recommend moving from a taxable income to a net income base for child support. This would mean that tax losses would no longer be carried forward to reduce the income used to calculate child support obligations. Similar amendments would need to be made to the estimation provisions to move them from a taxable to a net income base.
33. Inland Revenue’s administrative review process can currently be used to mitigate the impact of tax losses on the assessment and the exclusion of interest and dividends, if appropriate. However, it takes time and additional cost to go through the process.

⁷ These losses would have been taken into account in an earlier child support year.

Technical amendments to assist the administration of the scheme, including working with people with unusual circumstances

Improvements to the income estimation provisions

Estimation square ups

34. Child support assessments are based on a past year's income. An exception is when a person's income in the current year will decrease when compared to the income in the past year. The decrease must be 15% or more. In such cases, the person can "estimate," and elect to use their current income as the basis of their child support assessment. At the end of the year, any estimate is reconciled with the actual income earned in the period of estimation to assess the final child support payment. If a person estimates more than once during the year, each estimation is reconciled separately at the end of the year.
35. When a person estimates more than once during the year, the current rules mean that when their estimate is reconciled they can be assessed on income that is greater than what they earned in some periods. I recommend an amendment to the end-of-year square up provisions to ensure that a person who estimates more than once during a year is squared up on the income they earned in the period.

Estimation timing

36. An estimation is only accepted from the beginning of the month in which the estimate is received. This can mean that a person new to the child support scheme may lose the opportunity to estimate for periods (generally the previous month), because they receive their notice of assessment or entitlement in a later month. I recommend that when a person joins the child support scheme an estimation can be backdated to the start of the assessment if Inland Revenue receives the estimation on or before the first due date for payment.
37. This would mean that a person has at least 30 days to estimate their income when child support is first assessed and are not missing the opportunity to estimate due to Inland Revenue processing times.

Debt offsetting

38. Currently, a person can apply for an administrative review if they want to offset debt owed between two parents. Administrative review is a process where a person's formula assessment can be changed to better fit a person's specific situation.
39. The number of times the ground has been used is very low and the provision is difficult to administer as it requires an adjustment to the assessment calculation to achieve the desired result. I recommend that a provision permitting Inland Revenue to initiate an offset of the amount owed be introduced. The offset would net out child support debts two parents owe each other. The person owing the higher amount would be required to pay the difference. Such a provision would be simpler, cheaper, easier for customers to understand and would be more effective at reducing debt.

Repealing a redundant provision for urgent maintenance

40. The Child Support Act contains a provision for a person to apply to the Courts for an urgent maintenance order if they have made an application for child support to Inland Revenue, but child support has not been assessed. I believe the provision was included in the Child Support Act to cover the period of transition when child support moved to Inland Revenue in 1992 in case there were any unforeseen circumstances that meant Inland Revenue was unable to raise an assessment. An order under this provision has never been granted. I recommend the provision is repealed.

Working with customers with unusual circumstances

Changes to temporary exemptions

41. Subject to a person meeting specified income criteria, temporary exemptions from payment of financial support (child support and domestic maintenance) are available to a liable person if they are a long-term (13 weeks or more) prisoner or hospital patient. They are justified on the basis that the person has no capacity to earn an income for the period. I recommend extending the ability to grant a prisoner exemption to a person in an overseas prison, and to give Inland Revenue discretion to grant a hospital exemption to a person who is not in hospital but who is suffering from long-term illness or injury (and, for example, is in an overseas hospital or is being cared for at home). In both instances, granting the exemption would be subject to the current income criteria and a person overseas would be allowed to receive income analogous to that allowed for a New Zealand based person.

Removal of the mixed age expenditure table

42. The child support formula uses expenditure tables to calculate the costs of children. They have been developed based on research that concluded teenagers cost more than younger children and economies of scale apply – that is, each subsequent child costs less.
43. There are three expenditure tables used for calculating the costs of children for child support. One for children aged 12 and younger, one for children aged 13 and older and a 'mixed age' table which is an average of the two other tables. The mixed age table is used when there are at least two children in the same child support calculation and they fall into different age brackets. However, if the children do not live in the same household (for example, one child lives with mum and the other with dad), the use of the mixed age table does not allocate costs appropriately to each child (although the total expenditure for all children is correct).
44. I recommend removing the mixed age table. This will mean costs are calculated for each child based on their age and would better reflect that costs are higher for older children. It will not change the total expenditure calculations but when children live in different households it would ensure the household with the younger child does not benefit from being allocated some of the expenditure intended for the older child.

Discretion to modify expenditure calculations when perverse outcomes are reached

45. More complex situations may not be resolved by the repeal of the mixed age table. For example, when there are multiple children in a child support calculation that have different care arrangements (such as, two children in full care of a parent, and two other children in shared care). Rather than attempting to introduce complex legislative fixes each time a new situation is identified, I recommend the introduction of discretion to allow Inland Revenue to adjust calculations when children from the same family live in different care arrangements and the formula is not achieving the intended outcome. This would allow, for example, some complex cases to be resolved by identifying the actual marginal costs of subsequent children.
46. There is precedent for this type of provision in the Act. The Act is written on the assumption that a child has two parents and those parents are living apart. When these assumptions are not correct Inland Revenue must (for the purposes of raising a formula assessment) modify the provisions of the Act to reflect the true position. This provision has been used administratively to alter formula calculations in situations when a child has only one parent, or the child is living in the care of a non-parent carer, say a grandparent, and their parents have not separated.
47. I recommend giving Inland Revenue discretion to modify expenditure calculations to resolve these complex cases by, for example, identifying the actual marginal costs of children.

Clarifying that child support should end when a child leaves State care

48. When a child moves from the receiving carer to the liable parent child support can continue and a new application for child support is not required. The exception to this is when the child has been placed in State care.⁸ In these situations, if the child leaves State care and is placed with one of the parents the child support is stopped.⁹ This practice is followed due to potential safety concerns for the child and their carer as the other parent would be notified of the change in carer. If the parent with the child in their care would like to receive child support, they are able to apply.
49. I recommend a clarification to explicitly end child support when a child leaves State care. It would reinforce the current practice.

Introducing timeframes for parents and carers to provide orders of parentage

50. If a person applies for child support and they do not have any proof of who the other parent is, the child support application is declined. If the applicant subsequently provides an order of parentage made by the Court stating that person named on the child support application is the parent of the child, the child support application is accepted from the date the original application was received. These orders are usually a paternity order granted under the Family Proceeding Act 1980 but in rare cases may also be a step parent declaration under section 99 of the Child Support

⁸ "State care" means the child is in the care of the Chief Executive of Oranga Tamariki or an iwi or social service, a cultural social service or a child and family support service approved under section 396 of the Oranga Tamariki Act 1989.

⁹ Any payments made in relation to the child (under section 363 of the Oranga Tamariki Act 1989) stop when a child has left State care. Any child support entitlement to Oranga Tamariki or an organisation approved under section 396 of the Oranga Tamariki Act 1989 also ends when these payments cease.

Act or a court declaration that a person is a guardian by virtue of being the father. It may also be an order made in an overseas court or public authority.

51. I recommend introducing some time limits to improve fairness. The rules would mean child support would only be back-dated on receipt of an order 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. I recommend that Inland Revenue be given discretion to accept the orders outside the two-month periods if the delay was due to circumstances beyond the carer's control – for example, they were seriously ill.
52. This would remove the ability for the carer to hold off giving Inland Revenue the order knowing the support can still be backdated. For liable parents, it restores some equity as it means an onus is put on carers to be timelier in their decisions to seek child support through Inland Revenue.

Introducing timeframes to advise of circumstances when child support first assessed

53. 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 does not apply when the circumstance existed at the time the child support was assessed for the first time. In these situations, the assessment is considered incorrect and should be corrected effective 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 new dependent child that reduces their payments) or increases in payments by liable parents (if a receiving parent likewise notifies that they are the carer of a new dependent child). Any increase in payments for past periods are due within 30 days.
54. I recommend that similar notification rules that apply to changes of circumstances during a child support assessment should also apply to the notification of circumstances that existed at the time child support was first assessed. The parent should have 28 days from the date of their notice of assessment to advise of their existing circumstances, otherwise the change would apply from the date of notification.

Minimum age at which a child can be considered financially independent

55. When a child is financially independent they no longer qualify for child support. To be financially independent, the child must be working full time (considered 30 hours or more per week, or what might be considered full time for the type of work), or in receipt of a benefit or student allowance.
56. I recommend that a child be 16 before they can be considered financially independent. This would fully align the financially independent definition for child support with the rules that apply for Working for Families. If a parent believes the child has significant financial resources that should be taken into account in

determining the child support assessment, they can ask for this to be considered by an administrative review.

Maximum qualifying age of a child

57. 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 upon the earlier of:
- 57.1 when they leave school if they do not finish the school year;
 - 57.2 the end of the calendar year if they finish the school year and they are not attending school the following year; or
 - 57.3 the day before the child turns 19 if the child is still in school until their 19th birthday.
58. I recommend that the latest child support could be paid is to the end of the calendar year in which the child turns 18. The schooling criteria would be retained. This change aligns 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 will apply, and child support will continue to apply until they turn 19.

Residency for child support purposes to enable a person's intended movements to be taken into account

59. A child qualifies for child support if they are a New Zealand citizen or ordinarily resident in New Zealand. Child support may be sought from a person who is a New Zealand citizen, or who is ordinarily resident in New Zealand or in a country with which New Zealand has a reciprocal agreement with.¹⁰ A person is "ordinarily resident in New Zealand" if they have a permanent place of abode in New Zealand or they are in New Zealand for at least 183 days in a year and are not overseas for more than 325 days.
60. In practice, 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 for example, have to wait up to 325 days before Inland Revenue could accept their application for support. This is different to the approach taken for tax purposes. Because income is assessed looking back over a period, the tax residency test looks at a person's actual movements.
61. I recommend that the legislation be amended so that it allows for a person's intended movements to be taken into account. This would mean a non-New Zealand citizen who moved to New Zealand less than 183 days ago and intends to live here could be made liable for child support for their New Zealand child. This would better reflect the current operational practice.

¹⁰ Currently, Australia is the only country that New Zealand has a reciprocal agreement with.

Consultation

62. Most of the proposals in this paper were included in the discussion document *Making Tax Simpler: Better administration of social policy*, which canvassed proposals relating to Working for Families and student loans as well as child support. The consultation generated 37 email submissions, 183 comments on the online forums, 374 responses to the surveys and one response to the foreign language surveys. Inland Revenue officials held 17 face-to-face meetings with stakeholders.
63. The discussion document contained proposed approaches to social policy debt management that included no longer charging penalties and interest in certain situations and supported an early intervention approach aimed at debt prevention. However, it did not canvass the specific penalty ^{s 9(2)(f)(iv)} proposals put forward here.
64. Submitters generally supported the proposals in the discussion document. Submitters comments were mixed about making compulsory child support wage deductions for all liable parents with employment income. Some submitters expressed concerns about the compliance costs for employers and there were concerns whether compulsory deductions should apply to fully compliant parents. Officials have subsequently consulted with the Office of the Privacy Commissioner. The Privacy Commissioner is pleased to support the compulsory deductions proposal as a measure that is consistent with applying good privacy values.
65. Submitters supported expanding the income definition used for child support purposes to better align with that used for Working for Families tax credits and student loans.
66. Submitters strongly supported the proposal to provide Inland Revenue with additional authority to work with customers who have unusual circumstances in order to achieve the intended outcome for the specific social policies.
67. Officials also undertook targeted consultation with interest groups on the proposal to introduce a time bar. One group was comfortable with the proposal and thought that the proposed exceptions addressed any possible inequities. Another group supported a time bar when there has been a default assessment¹¹ and a reassessment would result in a reduction of child support paid by the liable parent and a debt for the receiving carer. However, they did not support the introduction of a time bar when there has been a default assessment and a reassessment would result in an increase in child support being payable by the liable parent and money due to the receiving carer. Their concerns include:
 - 67.1 that the proposal undermines the integrity of the child support scheme and may be perceived by the public and those who pay the correct amount of child support as unfair;
 - 67.2 it fails to meet the objective of the child support scheme which is to ensure parents fulfil their responsibilities to financially support their children; and

11 A default assessment is when a parent has not filed a relevant return and the Commissioner has determined the income on which to base the child support assessment.

- 67.3 that it fails to ensure that Inland Revenue meets its responsibilities to administer the scheme for those parents who voluntarily choose to receive their child support through Inland Revenue.
68. I consider on balance that the proposal is fairer as it provides parents with more certainty while still addressing equity concerns through the specified exceptions to the time-bar.
69. Officials have consulted with the Treasury, Ministry of Social Development and Oranga Tamariki (as Inland Revenue collects child support for beneficiaries and wards of the State), and the Ministry of Justice in respect of the proposals to repeal the provision allowing for urgent maintenance and the time limits for the provision of orders of parentage. The Department of Prime Minister and Cabinet (Child Poverty Unit) was consulted on the penalty ^{s 9(2)(f)(iv)} proposals. These agencies generally agreed with the proposals. Ministry of Justice were informed of the proposed penalty changes.

Financial implications

70. The fiscal costs for these proposals relate to ^{s 9(2)(f)(iv)} repealing the minimum \$5 penalty charge and introducing a grace period for people who are newly liable, or returning, to the scheme. The objective of penalties is to encourage customers to comply with their obligations, not to raise revenue.
71. Accounting standards require child support debt to be recognised at fair-value. The fair value of child support penalty debt is only 3% of the original penalty due to high initial write-down. The annual cost of each proposal is:
- 71.1 ^{s 9(2)(f)(iv)}
- 71.2 \$30,000 per annum to introduce a grace period; and
- 71.3 \$23,000 per annum to repeal the minimum \$5 penalty charge.
72. The costs of introducing the grace period and repealing the \$5 minimum penalty charge are immaterial and will not impact on annual revenue forecasts. ^{s 9(2)(f)(iv)}

s 9(2)(f)(iv)

73.

74.

75.

Legislative implications

76. Implementing these proposals requires changes to the Child Support Act 1991.

77. If approved, I propose including most of the legislative changes resulting from these recommendations in a child support amendment bill, scheduled for introduction in early 2020. s 9(2)(f)(iv)

All of the proposals would apply from 1 April 2021. This aligns with the transition of child support to the new systems and processes as part of Inland Revenue's business transformation.

Impact analysis

78. The Quality Assurance reviewer at Inland Revenue has reviewed the *Child support Business Transformation* RIA prepared by Inland Revenue, and considers that the information and analysis summarised in the RIA **meets** the quality assurance criteria.

Human rights

79. No inconsistencies with the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993 have been identified.

Gender implications

80. Child support is intended to financially support children. However, the amount of child support paid and the way the payments are administered affects both receiving and liable parents.
81. Data is not collected on the gender breakdown of receiving and liable parents. However, data from Statistics NZ indicates that most one-parent families are headed by women.¹² Accordingly, it seems reasonable to assume that women are more likely to receive child support and men more likely to be liable for child support.
82. Overall, the proposals should improve fairness and reduce compliance costs for both receiving and liable parents. To the extent that the proposals should increase the engagement by liable parents with the scheme (by encouraging liable parents to make payments more consistently), this will indirectly have a positive impact of women who are carers of dependent children, by reducing their financial stress.

Disability perspective

83. No specific impacts on people with disabilities have been identified.

Publicity

84. I will make an announcement on the contents of the bill, including the proposals, when the child support amendment bill is introduced. A commentary on the bill will also be released at this time. Inland Revenue will include details of the new legislation in a *Tax Information Bulletin* after the bill is enacted.

Proactive release

85. I propose to delay the proactive release of this Cabinet paper, associated minutes, and key advice papers until the proposed child support amendment bill containing the legislative amendments to give effect to the recommendations in this paper is introduced.

Recommendations

86. The Minister of Revenue recommends that the Cabinet Social Wellbeing Committee:
- 86.1 **note** Cabinet approved the release of the discussion document: *Making Tax Simpler: Better administration of social policy* [CAB-17-MIN-0372 refers];
Simplification of penalty s 9(2)(f)(iv) rules
 - 86.2 **agree** that the penalty s 9(2)(f)(iv) rules apply to child support and domestic maintenance obligations;
 - 86.3 **agree** that the imposition of the second phase of the initial penalty be moved to 28 days after the initial due date;
 - 86.4 **agree** that the \$5 minimum penalty rule be repealed;
 - 86.5 **agree** that a grace period be introduced which would apply to a new, newly liable or returning liable person's first due date and then for any due dates that

¹² In 2013, 84.2 percent of the parents in single-parent families with dependent children were women.

occur within the next 60 days under which no penalties would be charged if payments are late;

86.6 s 9(2)(f)(iv)

86.7

s 9(2)(f)(iv)

86.8 s 9(2)(f)(iv)

86.9

86.10

86.11 s 9(2)(f)(iv)

Compulsory deductions

- 86.12 **agree** that the compulsory deduction recommendations apply to child support and domestic maintenance obligations;
- 86.13 **agree** that financial support be compulsorily deducted from source deduction payments made by an employer for all domestic liable persons;
- 86.14 **agree** that Inland Revenue have discretion not to apply the compulsory deduction provision in limited circumstances – for example, due to privacy concerns or when there are multiple employers;
- 86.15 **agree** that when compulsory deductions become effective, if an already liable person is compliant, that compulsory deductions are not applied automatically;

Time bar

- 86.16 **agree** to the introduction of a four-year child support time bar;
- 86.17 **agree** the four-year period would start from the end of the relevant child support year;
- 86.18 **agree** the time bar should not apply if information provided by a person in the child support assessment is fraudulent or wilfully misleading or a return omits income of a particular nature;
- 86.19 **agree** the time bar should not apply when a person who is part of the child support assessment dies;
- 86.20 **agree** the time bar should not apply when a person should never have been made liable – for example, when a person is subsequently found not to be the father of a child;
- 86.21 **agree** the time bar should not apply when an amendment is required for the purposes of avoiding a dual liability (for the same child) with an overseas jurisdiction;
- 86.22 **agree** the time bar should not apply if Inland Revenue does not meet the notification requirements;
- 86.23 **agree** the time bar should not apply if a Court Order is received that applies to an earlier period;

Definition of “income”

- 86.24 **agree** to widen the definition of “income” used for child support purposes to include investment income such as dividends and interest;

86.25 **agree** the definition of “income” used for child support purposes move from a taxable income to a net income base;

86.26 **agree** that the provision to move from a taxable income to a net income base also applies to estimations;

Technical amendments to assist the administration of the scheme, including to work with customers with unusual circumstances

86.27 **agree** that when a person joins the child support scheme an estimation can be backdated to the start of the assessment if received on or before the first due date for payment;

86.28 **agree** that the end-of-year reconciliation rules for estimates are updated to reflect the income earned over the period an estimate applies for;

86.29 **agree** that the offsetting departure ground be replaced with a provision permitting Inland Revenue to offset the amount owed between two parents;

86.30 **agree** the urgent maintenance order provisions be repealed;

86.31 **agree** to amend the prisoner exemption to allow it to be granted to a liable person in the overseas equivalent of a New Zealand corrections prison or police jail;

86.32 **agree** to amend the hospital exemption to give Inland Revenue discretion to grant the exemption to a liable person suffering from long-term illness or injury even if they are not in a New Zealand hospital or residential care facility;

86.33 **agree** that a hospital exemption should end if Inland Revenue is no longer satisfied a person is suffering from long-term illness or injury;

86.34 **agree** to amend the exemption provisions so that an exemption should only be granted to a liable person living overseas if their only income is analogous to that allowed for a liable person in New Zealand seeking an exemption;

86.35 **agree** that the mixed age expenditure table should be repealed, and expenditure calculations should be completed using a child’s appropriate age bracket to address inappropriate expenditure allocations between older and younger children;

86.36 **agree** that Inland Revenue should have the discretion to adjust child expenditure calculations in situations when complex care arrangements for children in the same calculation are not adequately accounted for by the usual method;

86.37 **agree** that the legislation should be clarified to state explicitly that a child support assessment should end when a child leaves State care;

86.38 **agree** to introducing time constraints of two months for the provision of court orders of parentage and the backdating of child support assessments (and if

the order is not provided in the period given child support would be established from the date the order is provided to Inland Revenue);

86.39 **agree** Inland Revenue is given discretion to accept court orders of parentage outside the two-month periods if the delay was due to circumstances outside the control of the person;

86.40 **agree** that when there are circumstances which exist when a child support application is made and are not disclosed to Inland Revenue at that time, that the parent has 28 days from the date of their notice of assessment to advise of circumstances that existed when child support is first assessed otherwise the circumstance is effective from the date of notification;

86.41 **agree** that a child should not be considered financially independent for child support purposes unless they are aged at least 16;

86.42 **agree** that child support should apply until the end of the calendar year in which a child in school turns 18;

86.43 **agree** that the amendment to the maximum age of a child for child support purposes should only apply to children who turn 18 on or after 1 April 2021;

86.44 **agree** to amend the definition of residency for child support purposes to enable a person's intended movements to be taken into account;

87. **agree** that the amendments proposed in this report apply from the child support year commencing 1 April 2021;

Legislative vehicle

88. **agree** the legislation to give effect to the changes recommended in this paper be included in a child support amendment bill introduced in early 2020;

89. s 9(2)(f)(iv)

90. **invite** the Minister of Revenue to instruct the Parliamentary Counsel Office to draft the necessary amendments to give effect to the changes recommended in this paper.

91. **agree** the Minister of Revenue be given delegated authority to approve minor technical changes related to these proposals for inclusion in the child support bill.

Authorised for lodgement

Hon Stuart Nash
Minister of Revenue



Cabinet Social Wellbeing Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Business Transformation: Amendments to the Child Support Act 1991

Portfolio Revenue

On 28 August 2019, the Cabinet Social Wellbeing Committee:

- 1 **noted** that in July 2017, the previous government approved the release of the discussion document: *Making Tax Simpler: Better administration of social policy* [CAB-17-MIN-0372 refers];

Simplification of penalty s 9(2)(f)(iv) rules

- 2 **agreed** that the penalty s 9(2)(f)(iv) rules outlined in paragraph 15 of the paper under SWC-19-SUB-0110 apply to child support and domestic maintenance obligations;
- 3 **agreed** that the imposition of the second phase of the initial penalty be moved to 28 days after the initial due date;
- 4 **agreed** that the rule which provides that the minimum penalty imposed is \$5 be repealed;

s 9(2)(f)(iv)

s 9(2)(f)(iv)

Compulsory deductions

- 12 **agreed** that the compulsory deduction decisions apply to child support and domestic maintenance obligations;
- 13 **agreed** that financial support be compulsorily deducted from source deduction payments made by an employer for all domestic liable persons;
- 14 **agreed** that Inland Revenue have discretion not to apply the compulsory deduction provision in limited circumstances – for example, due to privacy concerns or when there are multiple employers;
- 15 **agreed** that when compulsory deductions become effective, if an already liable person is compliant, that compulsory deductions are not applied automatically;

Time bar

- 16 **agreed** to the introduction of a four-year child support time bar, preventing reassessments for past periods;
- 17 **agreed** that the four-year period would start from the end of the relevant child support year;
- 18 **agreed** that the time bar should not apply if information provided by a person in the child support assessment is fraudulent or wilfully misleading or a return omits income of a particular nature;
- 19 **agreed** that the time bar should not apply when a person who is part of the child support assessment dies;
- 20 **agreed** that the time bar should not apply when a person should never have been made liable – for example, when a person is subsequently found not to be the father of a child;
- 21 **agreed** that the time bar should not apply when an amendment is required for the purposes of avoiding a dual liability (for the same child) with an overseas jurisdiction;

- 22 **agreed** that the time bar should not apply if Inland Revenue does not meet the notification requirements;
- 23 **agreed** that the time bar should not apply if a Court Order is received that applies to an earlier period;

Definition of “income”

- 24 **agreed** to widen the definition of “income” used for child support purposes to include investment income such as dividends and interest;
- 25 **agreed** that the definition of “income” used for child support purposes move from a taxable income to a net income base;
- 26 **agreed** that the provision to move from a taxable income to a net income base also applies to estimations;

Technical amendments to assist the administration of the scheme, including to work with customers with unusual circumstances

- 27 **agreed** that when a person joins the child support scheme, an estimation can be backdated to the start of the assessment if received on or before the first due date for payment;
- 28 **agreed** that the end-of-year reconciliation rules for estimates are updated to reflect the income earned over the period an estimate applies for;
- 29 **agreed** that the offsetting departure ground be replaced with a provision permitting Inland Revenue to offset the amount owed between two parents;
- 30 **agreed** that the urgent maintenance order provisions be repealed;
- 31 **agreed** to amend the prisoner exemption to allow it to be granted to a liable person in the overseas equivalent of a New Zealand corrections prison or police jail;
- 32 **agreed** to amend the hospital exemption to give Inland Revenue discretion to grant the exemption to a liable person suffering from long-term illness or injury even if they are not in a New Zealand hospital or residential care facility;
- 33 **agreed** that a hospital exemption should end if Inland Revenue is no longer satisfied a person is suffering from long-term illness or injury;
- 34 **directed** officials to determine who would be captured in the extension of the hospital exemption in consultation with the Disabled People’s Organisations Coalition, and report to the Minister of Revenue on the issue;
- 35 **agreed** to amend the exemption provisions so that an exemption should only be granted to a liable person living overseas if their only income is analogous to that allowed for a liable person in New Zealand seeking an exemption;
- 36 **agreed** that the mixed age expenditure table should be repealed, and expenditure calculations should be completed using a child’s appropriate age bracket to address inappropriate expenditure allocations between older and younger children;
- 37 **agreed** that Inland Revenue should have the discretion to adjust child expenditure calculations in situations when complex care arrangements for children in the same calculation are not adequately accounted for by the usual method;

- 38 **agreed** that the legislation should be clarified to explicitly state that a child support assessment should end when a child leaves State care;
- 39 **agreed** to introduce time constraints of two months for the provision of court orders of parentage and the backdating of child support assessments (and if the order is not provided in the period given child support would be established from the date the order is provided to Inland Revenue);
- 40 **agreed** that Inland Revenue is given discretion to accept court orders of parentage outside the two-month periods if the delay was due to circumstances outside the control of the person;
- 41 **agreed** that when there are circumstances which exist when a child support application is made and are not disclosed to Inland Revenue at that time, that the parent has 28 days from the date of their notice of assessment to advise of circumstances that existed when child support is first assessed, otherwise the circumstance is effective from the date of notification;
- 42 **agreed** that a child should not be considered financially independent for child support purposes unless they are aged at least 16;
- 43 **agreed** that child support should apply until the end of the calendar year in which a child in school turns 18;
- 44 **agreed** that the amendment to the maximum age of a child for child support purposes should only apply to children who turn 18 on or after 1 April 2021;
- 45 **agreed** to amend the definition of residency for child support purposes to enable a person's intended movements to be taken into account;
- 46 **agreed** that the amendments proposed in this report apply from the child support year commencing 1 April 2021;

Legislative vehicle

- 47 **agreed** that the legislation to give effect to the decisions set out above be included in the Child Support Amendment Bill to be introduced in early 2020;
- 48 **noted** that the Child Support Amendment Bill holds a category four priority on the 2019 Legislation Programme (to be referred to a select committee in 2019);
- 49 **noted** that if the Budget 2020 bid is successful, the amendments relating to incremental penalties and the write off rules could be included in a supplementary order paper to the child support amendment bill;
- 50 **invited** the Minister of Revenue to instruct the Parliamentary Counsel Office to draft the necessary amendments to give effect to the changes above decisions;
- 51 **authorised** the Minister of Revenue to approve minor technical changes related to these decisions for inclusion in the child support bill.

Gerrard Carter
Committee Secretary

Hard-copy distribution: (see over)

Present:

Rt Hon Jacinda Ardern
Hon Grant Robertson
Hon Dr Megan Woods
Hon Andrew Little
Hon Carmel Sepuloni (Chair)
Hon David Parker
Hon Jenny Salesa
Hon Damien O'Connor
Hon Willie Jackson
Hon Aupito William Sio
Hon Poto Williams
Jan Logie, MP

Officials present from:

Office of the Prime Minister
Office of the Chair
Officials Committee for SWC

Hard-copy distribution:

Minister of Revenue



POLICY AND STRATEGY

Tax policy report: Cabinet paper – Child Support Amendment Bill: Approval for introduction

Date:	29 January 2020	Priority:	High
Security level:	Sensitive - Budget	Report number:	IR2020/041

Action sought

	Action sought	Deadline
Minister of Revenue	Agree to recommendations Authorise the lodgement of the attached Cabinet paper	12 February 2020 10 am, Thursday 27 February 2020

Contact for telephone discussion (if required)

Name	Position	Telephone
Samantha Aldridge	Principal Policy Advisor	s 9(2)(a)
s 9(2)(a)	Senior Policy Advisor	
	Policy Advisor	

29 January 2020

Minister of Revenue

Cabinet paper – Child Support Amendment Bill: Approval for introduction

Executive Summary

1. This report asks you to approve and lodge the attached Cabinet paper and accompanying disclosure statement with the Cabinet Office by 10am, Thursday 27 February 2020 for consideration at the Cabinet Legislation Committee meeting on Tuesday 3 March 2020.
2. The Cabinet paper seeks approval to introduce the Child Support Amendment Bill (the Bill) on 10 March 2020 and recommends that at its first reading, the Bill is referred to the Social Services and Community Select Committee.
3. This report also briefs you on officials' consultation with the Legislation Design and Advisory Committee on the proposed discretion to modify expenditure calculations when perverse outcomes are reached and on the proposed time bar.
4. Officials consulted with the Disabled Peoples' Organisations Coalition to determine who would be captured in the extension of the hospital exemption. Following this consultation, and discussion with the Ministry of Social Development, officials recommend that the bill make the eligibility criteria for the proposed exemption clearer and more consistent with the original policy intent.
5. Cabinet has also authorised you to approve minor technical changes related to the proposals (SWC-19-MIN-0110). In the course of preparing drafting instructions, officials have identified several items which we consider fall under this category and recommend that you agree to these items. These are discussed in detail below.
6. A disclosure statement is attached to accompany the Cabinet Paper in accordance with Cabinet guidelines.

7. s 9(2)(f)(iv)

8.

Background

9. The policy changes in the Bill will improve the administration of the child support scheme, by taking advantage of the opportunity offered by the modernisation of Inland Revenue's systems as part of its Business Transformation (BT) programme.
10. It is planned that the child support scheme will move to the new system and processes in April 2021 (BT release 5). This bill would therefore need to be passed by the end of 2021 (or very early in 2021) so that the legislative changes align with the operational changes for the new system. The Bill contains the items listed below. The main items were approved by Cabinet in September 2019 (CAB-19-MIN-0447).

11. The key changes in the Bill are:
 - 11.1 Simplification of penalty rules.
 - 11.2 Introduction of compulsory deductions of financial support from source deduction payments made by an employer for newly liable persons.
 - 11.3 Introduction of a four year time bar.
 - 11.4 Amending the definition of "income", which will:
 - 11.4.1 widen the definition of "income" used for child support purposes to include investment income such as dividends and interest; and
 - 11.4.2 move the definition of "income" used for child support purposes from a "taxable income" to a "net income" base.
 - 11.5 Technical amendments to assist the administration of the scheme, including amendments to allow Inland Revenue to work better with customers with unusual circumstances.

Legislation Design and Advisory Committee consultation

12. Officials requested consultation from LDAC on the proposed time bar and proposed discretion to modify expenditure calculations when perverse outcomes are reached. These proposals, LDAC's comment and officials' responses are outlined below.

Discretion to modify calculations when unintended outcomes are reached

13. Cabinet has agreed to a proposal which would grant the Commissioner of Inland Revenue discretion to modify child expenditure calculations in instances when application of the child support formula resulted in perverse outcomes (SWC-19-MIN-0110 paragraph 36 and CAB-19-MIN-0447).

Background

14. In several places, the child support formula uses a child expenditure figure to account for the cost of raising children. Child expenditure is derived from the child expenditure table. The expenditure table is based on economies of scale; each subsequent child increases child expenditure by a progressively smaller amount.

Example 1:

In the current child support year, a parent earning \$61,351.00 per annum caring for dependent child(ren) 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.

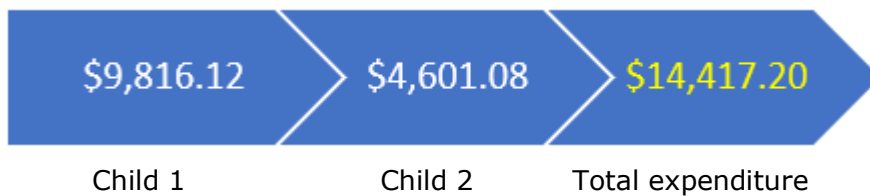
The expenditure table does not provide individual child expenditure figures. However, these can be calculated from the difference between total figures:



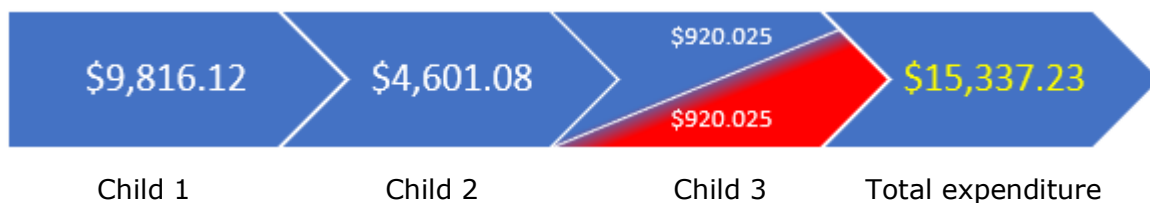
15. Although expenditure calculations serve the majority of cases, in some complex situations these calculations can produce unintended outcomes. For example, if a parent has two dependent children in their care full time and a third dependent child enters their care for only 50% of the time, while that parent's dependent child allowance might reasonably be expected to increase or stay the same, it can in fact decrease.
16. This can occur 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 2:

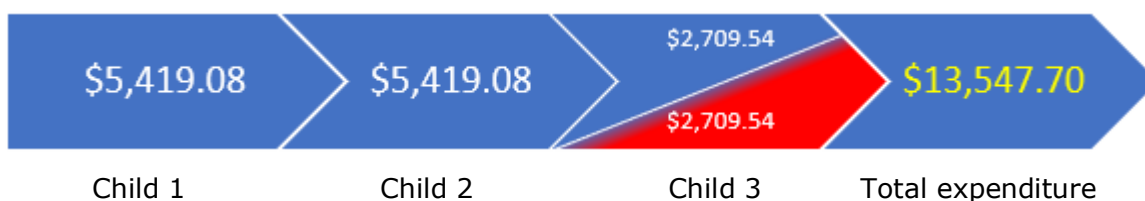
1. The parent in the example above, providing 100% care for two dependent children, would have a dependent child allowance of \$14,417.20.



1. If a third child (Child 3) were to enter their care for 50% of the time, it could be reasonably expected that their dependent child allowance would increase by 50% of the expenditure permitted for that child (in this instance, around \$920).



2. However, this is not the outcome reached under current rules. Since the formula for the dependent child allowance divides expenditure equally amongst the children, Child 3 is allocated an equal third of total expenditure, of which the parent is permitted only 50% (in this instance, \$2,709.54). As such, the parent's dependent child allowance decreases from \$14,417.20 to \$13,547.70, even though there is an additional child in their care.



17. Officials presented to LDAC two possible solutions:
 - 17.1 A more clearly delineated (and less flexible) power to identify within the total expenditure the actual marginal cost of dependent children for the purposes

of calculating the dependent child allowance in situations when dependent children do not share the same care arrangement.

- 17.2 A broader discretion permitting the Commissioner to modify expenditure calculations when complex care arrangements for children in the same calculation are not adequately accounted for by the usual method.

LDAC's comment

18. LDAC did not object to the proposed broad discretionary power for the Commissioner. LDAC did, however, recommend that the Bill include a test for the exercise of the discretion to modify calculations.
19. LDAC noted that there would be the safeguard of a statutory right to object to the expenditure calculations. However, they further commented that this safeguard would be less effective if there were no criteria for the Commissioner's proposed discretion to modify expenditure calculations, since objections need to state clearly the grounds of the person's objection. Therefore, if the process were unclear, a parent might find it difficult to formulate an objection.
20. LDAC noted that a statutory test would further make it easier for the person assessing an objection to determine whether the objection should succeed.

Officials' response

21. Officials generally agree with LDAC's comments regarding a statutory test, and favour the broader discretion. The draft legislation reflects that the discretion should apply only in exceptional circumstances, and that in applying the test the Commissioner must have regard to whether the formula would result in an unfair or unintended outcome.

Time bar

22. Cabinet has agreed to a proposed time bar of four years on the reassessment of child support assessments (SWC-19-MIN-0110 paragraphs 16-23 and CAB-19-MIN-0447).

Background

23. Currently, child support does not have a statutory time bar preventing reassessments for past periods. Consequently, reassessments must be made as far back as July 1992 (being the start of the child support scheme) if Inland Revenue is given information that is relevant to a past child support year. This can lead to uncertainty for parents, who might at any time have their entitlement or liability reassessed.
24. The proposed time bar would limit reassessments of child support to within four years of a child support year ending. Four years is consistent with the tax rules time bar, and currently less than 2% of reassessments occur outside this period. To address equity concerns, the time bar would not apply if:
- 24.1 information provided by a person in the child support assessment is fraudulent or wilfully misleading or omits income of a particular nature;
 - 24.2 it is found that a person who is part of the child support assessment has died;
 - 24.3 the person should never have been made liable (for example, a person is subsequently found not to be the parent of a child);
 - 24.4 an amendment is required for the purpose of avoiding a dual liability for the same child with an overseas jurisdiction;

24.5 Inland Revenue has not met the notification requirements; or

24.6 a Court Order is granted that applies to a time barred period.

LDAC's comment

25. LDAC noted that the current rules raise natural justice issues as it may be difficult for a parent to exercise their right to a fair hearing when objecting to a reassessment after a significant period has passed. As such, LDAC concluded that the proposal seemed an improvement.
26. LDAC expressed concern that the "relatively short length" of the proposal period could prevent fair outcomes for children, receiving carers and liable parents. LDAC noted that Inland Revenue have addressed some particular fairness concerns. LDAC advised that Inland Revenue might still wish to consider a general exception to cover any other situations where the time bar might be unfair to parties.

Officials' response

27. Officials consider that a general exception on the grounds of unfairness would detract from the proposal's effectiveness. Since a reassessment invariably results in the carer receiving less, or the liable parent paying more, there is broad potential for one party to perceive the reassessment as unfair. If the general exception could be widely applied, it would weaken the certainty of assessment which the proposal aims to achieve.
28. Officials believe that the specific exceptions listed above adequately balance the need that assessments be raised on correct grounds with the concern that parents have certainty that their entitlements and liabilities will not change after a long period of time.

Consultation with Disabled Peoples' Organisations Coalition

29. At Cabinet's direction, officials consulted with the Disabled Peoples' Organisations Coalition to determine who would be captured in the extension of the hospital exemption (SWC-19-MIN-0110 and CAB-19-MIN-0447). Under this proposed extension, the exemption for long-term hospital patients from paying child support would be extended to persons unable to work because of a long-term injury or illness, but not cared for in a hospital.
30. We will provide a separate report to you on this consultation (report IR2020/042 refers). You may wish to refer it to the Minister for Disabled Persons for her information. Following this consultation, we recommend that the bill make the eligibility criteria for the proposed exemption clearer and more consistent with the original policy intent, in particular by:
 - 30.1 not allowing the person to earn benefit income analogous to the benefit payable to hospital patients (because there is no such benefit); and
 - 30.2 requiring that the person must be unable to work because of the injury or illness.
31. These recommendations are discussed in more details below, under "*Exemption for persons suffering from a long-term period of illness*".

Items for approval by Minister of Revenue

32. Cabinet has agreed to grant you delegated authority to approve minor technical changes related to proposals included within the Bill. Officials recommend that you agree to the following minor technical changes.

Additional exception to proposed time bar for when a new assessment results in reassessment of a time barred assessment

- 32.1 If a new child support assessment were raised in relation to a qualifying child(ren) for a time barred period (because, for example, an order of parentage was provided), and there was an existing assessment for another qualifying child(ren), the existing assessment would need to be reassessed. This is because the child support formula includes calculations to account for any liability a parent might have under a different assessment.

Recommendation

Agree that an exception be added to the proposed time bar so that when a new child support assessment should result in the reassessment of a time barred assessment, the time-barred assessment can be reassessed.

Agreed/Not agreed

Additional exception to proposed time bar for the permanent exemption from paying child support for victims of sex offences

- 32.4 Liable parents who are victims of sex offences can apply for an exemption from paying child support for children conceived as a result of those offences.
- 32.5 Currently, this exemption can be applied as far back as 26 September 2006, which is when the exemption provisions were first introduced. Officials consider that the time bar should not limit the application of this exemption.

Recommendation

Agree that an exception to the proposed time bar be added so that this exemption can be applied back to 26 September 2006.

Agreed/Not agreed

Limit of four months to apply for an administrative review in relation to a time barred assessment

- 32.6 Paragraph 30 of the Cabinet Paper *Business Transformation – Amendments to the Child Support Act 1991* notes that a person would have up to four months to request an administrative review¹ for an assessment or reassessment made in relation to a time barred period. However, this was not reflected in the Cabinet paper’s recommendations.
- 32.7 Officials recommend that a four-month limit in which to apply for an administrative review be imposed on assessments or reassessments made in relation to time barred periods. There is currently no time limit for administrative reviews. However, officials consider that such a limit is needed to ensure the policy intent of the time bar can be achieved.

Recommendation

Agree to the implementation of a four month limit to apply for an administrative review in relation to a time barred assessment.

Agreed/Not agreed

¹ “Administrative review” is the term used to describe the process when a person makes an application for a departure from the child support formula under the Child Support Act 1991.

Offsetting liabilities whether they have become due and payable or not under proposed offsetting provision

- 32.8 Under current rules, a person can apply to have their liability to another person offset against a liability which that person owes to them (whether these amounts have become due and payable or not). This is provided for under an administrative review ground. In addition, the Child Support Act permits Inland Revenue to offset the liability which two parents owe each other, but only if the amounts have not become due and payable.
- 32.9 The number of times that the administrative review ground has been used is very low. Furthermore, it is difficult to administer as to achieve the desired result requires an adjustment to the child support formula calculation.
- 32.10 Cabinet has agreed to replace the offsetting ground with a provision permitting Inland Revenue to offset the amount owed between two parents (SWC-19-MIN-0110 paragraph 29 and CAB-19-MIN-0447). The proposal refers explicitly to offsetting amounts owed (CAB-19-MIN-0447). Alongside the existing provisions, this would allow Inland Revenue to initiate the offsetting of ongoing liability against ongoing liability, and overdue amounts against overdue amounts, but not ongoing liability against overdue amounts. Since the current administrative review ground permits ongoing liability to be offset against owed amounts, officials recommend that the proposal be modified to maintain this capability.

Recommendation

Agree that the proposal be modified to reflect that the administrative review ground be replaced by a provision which would allow Inland Revenue to offset amounts owed between two parents whether they have become due and payable or not.

Agreed/Not agreed

Backdating estimations

- 32.11 Child support assessments are based on a past year's income. If a person expects that their income in the current year will decrease from the past year's income by 15% or more, they can elect to estimate what they think they will earn in the current year. The estimate is used as the basis of their child support assessment. At the end of the child support year, the estimate is reconciled with the person's actual earnings.
- 32.12 An estimation can only be accepted from the beginning of the month in which the estimate is received. Cabinet has agreed that when a person joins the child support scheme an estimation can be backdated to the start of the assessment if Inland Revenue receives the estimation on or before the first due date for payment (CAB-19-MIN-0447).
- 32.13 Both receiving carers and liable parents can elect to estimate their income. However, officials have determined that since only liable parents receive due dates for payment, the change would not apply to receiving carers as intended.

Recommendation

Agree to modify the proposal so that an estimation can be backdated to the start of the assessment if received within 28 days of notification of the assessment. This limit is consistent with current rules for backdating changes in living circumstances.

Agreed/Not agreed

Exemption for persons suffering from a long-term period of illness

- 32.14 Under current rules, a liable parent who is a long-term² hospital patient can apply for a temporary exemption from paying child support. The rationale for the exemption is that during this period the person is unable to earn an income. Consequently, they must have an income of nil; consisting solely of income from investments, and not exceeding the weekly average of the minimum annual child support liability (currently, \$18); or consisting solely of the benefit payable to long-term hospital patients (currently, \$45.28 per week).
- 32.15 Cabinet has agreed to a proposal permitting Inland Revenue discretion to grant a hospital exemption to a person who is not hospitalised but is unable to work due to a long-term illness or injury (CAB-19-MIN-0447). The same income criteria as the exemption for hospital patients would apply, including income analogous to the benefit payable to long-term hospital patients.
- 32.16 However, after consultation with the Ministry of Social Development, officials have determined that there is no such analogous benefit which a person who suffers from a long-term illness or injury, and is not a hospital patient, could earn while meeting the income criteria. That is, the exemption will only apply to a person who suffers from a long-term illness or injury and is not a hospital patient if the person's income is nil or consists solely of income from investments, and not exceeding the weekly average of the minimum annual child support liability (currently, \$18).
- 32.17 In addition, the proposal does not specify that the person must be unable to work due to the illness or injury.

Recommendation

Agree that the proposal be modified to remove reference to analogous benefit income and to clarify that the person must be unable to work due to the illness or injury.

Agreed/Not agreed

33. Your approval is also sought to correct the following drafting errors in the legislation:

Tax Administration Act 1994

- 33.1 As a result of the repeal of certain sections of the Tax Administration Act 1994 and the insertion of new provisions to deal with collection, use and disclosure of revenue information, some cross references need to be updated in the Child Support Act:

33.1.1 The Child Support Act grants the Commissioner of Inland Revenue authority to obtain information from the Ministry of Justice and New Zealand Police when determining if a person is eligible for an exemption from paying child support to the victim of a sex offence. However, it cites now repealed section of the Tax Administration Act in order to do so.

33.1.2 The definition of "relevant payments" in the Child Support Act refers to a now repealed section of the Tax Administration Act for the definition of "earnings related compensation".

² 13 weeks or more.

Recommendation

Agree that the above cross references be corrected to cite the right sections of the Tax Administration Act.

Agreed/Not agreed

Definition of "social security beneficiary"

33.2 The definition of "social security beneficiary" has been repealed from the Child Support Act (subsequent to updates made as a result of the Social Security Act 2018 rewrite). However, it is still referred to as being specifically defined in the Child Support Act in various sections of the Child Support Act.

Recommendation

Agree that references in the Child Support Act to the definition of "social security beneficiary" be removed.

Agreed/Not agreed

Living allowance*Date at which rate of living allowance is in force*

33.3 The living allowance is an amount of a parent's child support income which is set aside for personal costs, and so is not considered as income available for determining the amount of the child support payable under a formula assessment. There is a standard rate of living allowance for all persons, except for those receiving a supported living payment who are entitled to a higher rate.

33.4 The Child Support Act sets out that the rate of living allowance for a given year be determined according to the rate set out in the Social Security Act 2018 of either the sole parent support benefit, or the supported living payment (for those entitled to the higher rate of living allowance). The living allowance is calculated by increasing the appropriate benefit rate by the total amount of income tax deductions required to make the rate a gross rate.

33.5 Prior to 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 in force on 1 January of the preceding year. However, this was inadvertently removed in the amendment of the Act.

Recommendation

Agree that the Child Support Act be amended to clarify that the rate at which to gross up the appropriate benefit rate for the coming child support year should be the rate in force on 1 January of the preceding year.

Agreed/Not agreed

Rate of living allowance for beneficiaries receiving a supported living payment

33.6 As mentioned above, beneficiaries receiving a supported living payment are permitted a higher rate of living allowance. The relevant section of the Child Support Act was updated consequentially to the 2018 Social Security Act rewrite. However, the update inadvertently widened who qualifies for the rate of living allowance based on the supported living payment. Before the

amendment, this living allowance was limited to a single beneficiary with at least one dependent child and receiving a supported living payment. It has now been widened so that it is payable to any beneficiary granted a supported living payment.

Recommendation

Agree that the Child Support Act be amended so that the higher rate of living allowance is limited to a single beneficiary with at least one dependent child as intended.

Agreed/Not agreed

Definition of hospital patient

33.7 The Alcoholism and Drug Addiction Act 1966 was repealed and replaced by the Substance Addiction (Compulsory Assessment and Treatment) Act 2017. Prior to this, the Child Support Act had defined "hospital patient" as "a resident of an institution certified under the Alcoholism and Drug Addiction Act 1966".

33.8 As a consequence of the repeal and replacement of the Alcoholism and Drug Act, the definition of "hospital patient" in the Child Support Act was amended to "a patient within the meaning of the Substance Addiction (Compulsory Assessment and Treatment) Act 2017". That meaning is: a person in respect of whom an approved specialist has signed a compulsory treatment certificate.

33.9 This new definition does not refer specifically to a "patient" as being resident in a certified institution. An individual who is subject to a compulsory treatment certificate would be defined as a "hospital patient" under the Child Support Act, even while not resident in a medical institution. Therefore, the definition has been inadvertently widened beyond the policy intent.

Recommendation

Agree that the definition of "hospital patient" 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. This would be the equivalent of the previous definition in the Child Support Act.

Agreed/Not agreed

Next steps

Draft disclosure statement

34. A draft disclosure statement is attached to accompany the Cabinet Paper in accordance with Cabinet guidelines. The draft disclosure statement is referred to Cabinet along with the Cabinet paper. The draft statement is finalised by Inland Revenue with the Parliamentary Counsel Office three days before the introduction of the Bill and is made public when the Bill is introduced.

s 9(2)(f)(iv)

s 9(2)(f)(iv)

Support party and caucus consultation

37. Officials recommend that the Bill is introduced on the same day that Cabinet approves it for introduction. To achieve this, support party and caucus consultation will need to occur in advance of Cabinet's final decision.

Recommended action

38. Officials recommend that you:
- 38.1 **note** the contents of this report and attached Cabinet paper and disclosure statement;
Noted
 - 38.2 **note** that within this report your approval is sought for minor technical changes and remedial items;
Noted
 - 38.3 **sign** and **refer** the Cabinet paper, to the Cabinet Office by 10 am, Thursday 27 February 2020.
Signed and referred/Not signed and referred

Samantha Aldridge
Principal Policy Advisor
Policy and Strategy

Hon Stuart Nash
Minister of Revenue
/ /2020

Sensitive - Budget

Office of the Minister of Revenue

Chair, Cabinet Legislation Committee

CHILD SUPPORT AMENDMENT BILL: APPROVAL FOR INTRODUCTION

Proposal

1. I seek the Cabinet Legislation Committee's agreement to introduce the Child Support Amendment Bill (the Bill). The Bill introduces amendments to the Child Support Act 1991.
2. I have requested that this Bill have a category 2 priority on the 2020 Legislative Programme (must be passed in the year).

Policy

3. The policy changes in the Bill will improve the administration of the child support scheme, by taking advantage of the opportunity offered by the modernisation of Inland Revenue's systems as part of its Business Transformation (BT) programme.
4. As part of its five-year Business Transformation (BT) programme, Inland Revenue is modernising its systems and processes to be more flexible and customer-focussed. This includes modernising Inland Revenue's functions in collecting and disbursing child support. Almost all areas that are administered by Inland Revenue (including income tax, GST and Working for Families) have already migrated.
5. The administration of child support is the final major area of Inland Revenue that will migrate to the new computer system and processes for the start of the child support year in April 2021 (as BT Release 5).
6. A Bill is necessary because amendments to existing legislation are required to implement the proposed policy changes. The policy changes are listed below.

Policy items with Cabinet approval (SWC-19-MIN-0110, CAB-19-MIN-0447)

7. Simplification of penalty rules, including to:
 - 7.1 move the imposition of the second phase of the initial penalty to 28 days after the initial due date;
 - 7.2 repeal the rule which provides that the minimum penalty imposed is \$5; and
 - 7.3 introduce a grace period of 60 days from the first due date in which a newly liable person, or person returning to the scheme, will not be charged late payment penalties.

8. Compulsory deductions of financial support from source deduction payments made by an employer to newly liable persons.
9. A time bar of four years, which will:
 - 9.1 prevent reassessments for periods outside the four year period;
 - 9.2 start four years after the end of the relevant child support year; and
 - 9.3 be subject to specific exceptions to address concerns about fairness (such as if the information provided by a person is fraudulent or wilfully misleading).
10. Amend the definition of “income”, which will:
 - 10.1 widen the definition of “income” used for child support purposes to include investment income such as dividends and interest; and
 - 10.2 move the definition of “income” used for child support purposes from a “taxable income” to a “net income” base.
11. Technical amendments to assist the administration of the scheme, including to work with customers with unusual circumstances, including:
 - 11.1 providing that when a person joins the child support scheme, an estimation can be backdated to the start of the assessment if received on or before the first due date of payment;
 - 11.2 updating the end-of-year reconciliation rules for estimates to reflect the income over the period an estimate applies for;
 - 11.3 replacing the offsetting departure ground with a provision permitting Inland Revenue to offset the amount owed between two parents;
 - 11.4 repealing the urgent maintenance order provisions;
 - 11.5 amending the prisoner exemption to allow it to be granted to a liable person in the overseas equivalent of a New Zealand prison;
 - 11.6 amending the hospital exemption to give Inland Revenue discretion to grant the exemption to a liable person suffering from long-term illness or injury even if they are not in a New Zealand hospital or residential care facility;
 - 11.7 repealing the mixed age expenditure table;
 - 11.8 providing Inland Revenue with a discretion to adjust child expenditure calculations in situations when complex care arrangements for children in the same calculation are not adequately accounted for by the usual method;
 - 11.9 clarifying the legislation to state explicitly that a child support assessment should end when a child leaves State care;

- 11.10 introducing time constraints of two months for the provision of court orders of parentage for the backdating of child support assessments;
- 11.11 providing that a person has 28 days from the date they are first notified of an assessment to advise Inland Revenue of existing living circumstances, otherwise the circumstances are effective from the date of application;
- 11.12 providing that a child should not be considered financially independent for child support purposes unless they are aged at least 16;
- 11.13 providing that child support should cease at the end of the calendar year in which a child turns 18, if that child attends school up until the end of the school year;
- 11.14 amending the definition of “residency” for child support purposes to enable a person’s intended movements to be taken into account.

Items not requiring Cabinet approval

- 12. Cabinet has authorised me to approve minor technical changes for inclusion in the Bill (SWC-19-MIN-0110, CAB-19-MIN-0447) I ask Cabinet to note that I have approved:
 - 12.1 the addition of an exception to the proposed time bar so that when a new child support assessment should result in the reassessment of an existing assessment that is time-barred, that time-barred assessment can be reassessed;
 - 12.2 the addition of an exception to the proposed time bar so that application of the exemption from paying child support for victims of sex offences is not limited by the time bar;
 - 12.3 the addition to the proposed time bar of a four month limit to apply for an administrative review¹ in relation to a time barred assessment (the four month limit was discussed in the Cabinet paper *Business Transformation – Amendments to the Child Support Act 1991* (SWC-19-SUB-0110), but was not reflected in the paper’s recommendations);
 - 12.4 a change to the proposal to replace the current administrative review ground permitting Inland Revenue to offset the amount owed between two parents with a provision, which would clarify that Inland Revenue could offset amounts whether they have become due and payable or not (which is permitted by the current administrative review ground, but not explicitly stated by the proposal);
 - 12.5 a change to the proposal allowing new members of the child support scheme to backdate an estimation² to the start of their liability if submitted within 28

¹ “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.

² Child support assessments are based on a past year’s income; if a person expects that their income in the current year will decrease from the past year’s income by 15% or more, they can elect to estimate what they think they will earn in the current year as the basis of their child support assessment.

days of notification of the assessment, which clarifies that the proposal applies to both liable parents and receiving carers;

12.6 clarifying the eligibility for the proposed exemption from paying child support for persons suffering from a long-term period of illness or injury, so that:

12.6.1 the exemption would not be available if the person receives any income from a benefit (the existing exemption for hospital patients allows liable parents to receive the exemption if the only income that they receive is a very small amount of investment income and a specific benefit that is only payable to long term hospital patients – this benefit is not available to people who are not hospital patients); and

12.6.2 the exemption would be available only if the person is unable to work because of the injury or illness.

13. I have also approved remedial changes to the Child Support Act to:

13.1 update cross references in the Child Support Act which refer to now repealed sections of the Tax Administration Act;

13.2 remove references in the Child Support Act to the definition of “social security beneficiary”, which was removed from the Child Support Act subsequent to updates made as a result of the 2018 Social Security Act rewrite;

13.3 clarify that the net benefit rates used to calculate the rate of living allowance each year (used in the child support formula to account for parents’ personal living costs) should be grossed up to account for tax using the applicable tax rate in force on 1 January of the immediately preceding child support year;

13.4 limit the higher rate of living allowance available to a recipient of the supported living payment to a beneficiary with at least one dependent child in their care, as it was before being inadvertently widened in an update following the 2018 Social Security Act rewrite; and

13.5 amend the definition of “hospital patient” in the Child Support Act, which was unintentionally widened in an update following the repeal of the Alcoholism and Drug Addiction Act 1966, which was replaced by the Substance Addiction (Compulsory Assessment and Treatment) Act 2017.

Contentious items

14. As noted in the Cabinet paper *Business Transformation – Amendments to the Child Support Act 1991* (SWC-19-SUB-0110), in consultation about the proposed changes, concerns were raised about the time bar. Officials undertook consultation with interest groups on this proposal. One group was comfortable with the proposal and thought that the proposed exceptions addressed any possible inequities. Another group supported a time bar when there has been a default assessment³ and a reassessment would result in a reduction of the child support paid by the liable

³ A default assessment is when a parent has not filed a relevant return and the Commissioner has determined the income on which to base a child support assessment.

parent and a debt for the receiving carer. However, they did not support the introduction of a time bar when there has been a default assessment and a reassessment would result in an increase in child support being payable by the liable parent and money due to the receiving carer. Their concerns include:

- 14.1 that the proposal undermines the integrity of the child support scheme and may be perceived by the public and those who pay the correct amount of child support as unfair;
 - 14.2 it fails to meet the objective of the child support scheme which is to ensure parents fulfil their responsibilities to financially support their children; and
 - 14.3 that it fails to ensure that Inland Revenue meets its responsibilities to administer the scheme for those parents who voluntarily choose to receive their child support through Inland Revenue.
15. To address concerns about fairness, the time bar would not apply if:
- 15.1 information provided by a person in the child support assessment is fraudulent or wilfully misleading or omits income of a particular nature in a return;
 - 15.2 it is found that a person who is part of the child support assessment died;
 - 15.3 the person should never have been made liable (for example, a person is subsequently found not to be the parent of a child);
 - 15.4 an amendment is required for the purpose of avoiding a dual liability (for the same child) with an overseas jurisdiction;
 - 15.5 Inland Revenue has not met the notification requirements;
 - 15.6 a Court Order is granted that applies to a time barred period,
 - 15.7 it relates to an application for the exemption from paying child support for victims of sex offences, or
 - 15.8 a new child support assessment is raised which should result in the reassessment of an existing assessment that is time-barred;
16. I consider that, on balance, the proposal is fairer as it provides parents with more certainty while still addressing the equity concerns through the specified exceptions to the time bar.
17. Officials consulted with the Legislation Design and Advisory Committee (LDAC) in respect of the proposed time bar and other drafting issues. LDAC suggested consideration of a general exception to the time bar to cover any other situations where the time bar would be unfair to any of the parties. However, I consider that a general exemption would undermine the certainty of the time bar. I note that currently 98% of reassessments are done within the proposed four year period.
18. In relation to making compulsory child support wage deductions for all newly liable parents with employment income, some submitters to the 2017 discussion document *Making Tax Simpler: Better administration of social policy* expressed concerns about

the additional costs for employers and there were concerns whether compulsory deductions should apply to fully compliant parents.

19. I note that making deductions compulsory for new employees will help parents comply with their obligations right from the start. Additional costs for employers would be relatively minimal, as employers are required to deduct child support payments upon request by Inland Revenue.

Impact Analysis

20. A regulatory impact assessment was prepared, where required, for the policy items in the Bill and submitted at the time that Cabinet Committee approval for the relevant policy items in the Bill was sought.
21. The regulatory impact analysis requirements do not apply to the remaining items in the Bill, as the proposed changes result in little or no change to the status quo legislative position. A number of the items (particularly those of a remedial nature) involve technical “revisions” or consolidations that substantially re-enact the current law to improve legislative clarity and understanding (including the fixing of errors, the clarification of the existing legislative intent, and the reconciliation of inconsistencies). Other items repeal or remove redundant legislative provisions, or have no or only minor impacts on businesses, individuals or not-for-profit entities.

Compliance

22. The Bill complies with:
 - 22.1 the principles of the Treaty of Waitangi;
 - 22.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993;
 - 22.3 the disclosure statement requirements;
 - 22.4 the principles and guidelines set out in the Privacy Act 1993;
 - 22.5 relevant international standards and obligations; and
 - 22.6 the *Legislation Guidelines* (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

Consultation

23. The substantive policy initiatives to which this Bill is intended to give effect were subject to public and other consultation in accordance with the Generic Tax Policy Process.

Relevant government departments or other public bodies

24. Officials have consulted with the Treasury, Ministry of Social Development and Oranga Tamariki — Ministry for Children (as Inland Revenue collects child support for beneficiaries and wards of the State) on all proposals; and the Ministry of Justice (in respect of the proposals to repeal the provision allowing for urgent maintenance, the time limits for the provision of orders of parentage and the proposed penalty changes). The Department of Prime Minister and Cabinet (Child Poverty Unit) was consulted on the penalty proposals. These agencies generally agreed with the proposals.
25. Officials have consulted with the Office of the Privacy Commissioner on the policy proposal to make compulsory child support wage deductions for newly liable parents. The Privacy Commissioner supports the compulsory deductions proposal as a measure that is consistent with applying good privacy values.
26. Officials consulted with the Legislation Design and Advisory Committee (LDAC) in respect of the proposed time bar and proposed discretion to modify expenditure calculations when perverse outcomes are reached. LDAC's comments in relation to proposed discretion to modify expenditure calculations when perverse outcomes are reached have been taken into account in drafting the bill. LDAC's comments in relation to the time bar are discussed above.
27. At Cabinet's direction, Inland Revenue officials consulted with the Disabled Peoples' Organisations Coalition to determine who would be captured in the proposed extension of the hospital exemption (SWC-19-MIN-0110). The current exemption is available only if the person is hospitalised for 13 or more weeks and receives only a very minimal amount of investment or benefit income (which would not include a main benefit). The proposal in the bill would allow a similar exemption for long term injury or illness.
28. Following officials' consultation, I propose that the bill makes the eligibility criteria for the proposed exemption clearer and more consistent with the original policy intent, in particular by:
- 28.1 ensuring that the exemption would not be available if the person receives any income from a benefit; and
 - 28.2 ensuring that the exemption would be available only if the person is unable to work because of the injury or illness.
29. Oranga Tamariki have commented that there should be guidance on how the proposed exemption for long term injury and illness would work. Inland Revenue officials advise that appropriate evidence would be required, such as a medical certificate.

30. I note that under existing rules, the receiving carer can apply to the Commissioner to make a determination that an exemption should not apply if the exemption would be inequitable because of the earning capacity, property or financial resources of the liable person. This rule would also apply to the exemption for long term injury or illness.

Relevant private sector organisations and public consultation processes

31. Most of the proposals in this paper were included in the discussion document *Making Tax Simpler: Better administration of social policy 2017*, which canvassed proposals relating to Working for Families and student loans as well as child support. The consultation generated 37 email submissions, 183 comments on online forums, 374 responses to the surveys and one response to the foreign language surveys. Inland Revenue officials held 17 face-to-face meetings with stakeholders.
32. The discussion document contained proposed approaches to social policy debt management that supported an early intervention approach aimed at debt prevention. However, it did not canvass the specific penalty proposals put forward here.
33. Submitters generally supported the proposals in the discussion document. Submitters were mixed about making compulsory child support wage deductions for all liable parents with employment income. As noted above, some submitters expressed concerns about the compliance cost for employers and there were concerns whether compulsory deductions should apply to fully compliant parents.
34. Submitters supported expanding the “income” definition used for child support purposes to better align with that used for Working for Families tax credits and student loans.
35. Submitters strongly supported the proposal to provide Inland Revenue with additional authority to work with customers who have unusual circumstances in order to achieve the intended outcome for the specific social policies.

Binding on the Crown

36. The Child Support Act 1991 is binding on the Crown. The amendments will follow the position of the principal Act.

Creating New Agencies or Amending Law Relating to Existing Agencies

37. The legislation will not create a new agency.
38. The legislation will not amend the existing coverage of the Ombudsman Act 1975, the Official Information Act 1982, or the Local Government Official Information and Meetings Act 1987.

Allocation of Decision Making Powers

39. The draft legislation does not involve the allocation of decision-making powers between the executive, the courts, and tribunals.

Other Instruments

- 40. The Bill does not include any provision empowering the making of other instruments that are deemed to be legislative or disallowable instruments.

Definition of Minister/Department

- 41. The Bill does not contain a definition of Minister, department, or chief executive.

Commencement of Legislation

- 42. Each provision of the Bill comes into force on 1 April 2021. There will be appropriate transition provisions.

Parliamentary Stages

- 43. The Bill should be introduced in March 2020, referred to the Social Services and Community Select Committee and reported back to the House by July 2020. This would be a shortened select committee process.
- 44. The reason for a shortened select committee process is because these legislative amendments need to be enacted by the end of 2020 in order to apply from the child support year starting April 2021.
- 45. This is because the child support “annual assessment run” (which calculates the income and other variables that will be used for determining child support amounts payable/receivable for the year beginning 1 April) is done each February. The bill, therefore, needs to be enacted before that process begins in February 2021.

46.

s 9(2)(f)(iv)

47.

48.



Publicity

49. I will make an announcement about the proposals in the Bill when it is introduced. A commentary on the Bill will also be released at this time. Inland Revenue will include details of the new legislation in a *Tax Information Bulletin* after the Bill is enacted.

Proactive Release

50. I propose that proactive release of this Cabinet paper, associated minutes, and key advice papers occur alongside the introduction of the Bill. The expected introduction date for this Bill is 10 March 2020.

Recommendations

I recommend that the Cabinet Legislation Committee:

1. **note** that I have requested that the Child Support Amendment Bill hold a category 2 priority on the 2020 Legislative Programme (must be passed in the year);
2. **note** that the Bill makes substantive, remedial, and technical amendments to the Child Support Act 1991;
3. **note** that the I have approved the following minor or technical changes under delegated Cabinet authority:
 - 3.1 the addition of an exception to the proposed time bar so that when a new child support assessment should result in the reassessment of an existing time barred assessment, the time-barred assessment can be reassessed;
 - 3.2 the addition of an exception to the proposed time bar so that application of the exemption from paying child support for victims of sex offences is not limited by the time bar;
 - 3.3 the addition to the proposed time bar of a four month limit to apply for an administrative review in relation to a time barred assessment;
 - 3.4 clarifying the eligibility for the proposed exemption from paying child support for persons suffering from a long-term period of illness or injury, so that:
 - 3.4.1 the exemption would not be available if the person receives any income from a benefit (the existing exemption for hospital patients allows liable parents to receive the exemption if the only income that they receive is a very small amount of investment income and a specific benefit that is only payable to long term hospital patients – this benefit is not available to people who are not hospital patients)); and
 - 3.4.2 the exemption would be available only if the person is unable to work because of the injury or illness.
4. **approve** the Child Support Amendment Bill for introduction, subject to the final approval of the Government caucus and sufficient support in the House of Representatives;

5. **agree** that the Child Support Amendment Bill be introduced in March 2020;
6. **agree** that the Government propose that the Bill be:
 - 6.1 referred to the Social Services and Community Select Committee for consideration;
 - 6.2 reported back to the House by July 2020;
 - 6.3 enacted by December 2020.

Authorised for lodgement

Hon Stuart Nash
Minister of Revenue



Cabinet Legislation Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Child Support Amendment Bill: Approval for Introduction

Portfolio **Revenue**

On 3 March 2020, the Cabinet Legislation Committee:

- 1 **noted** that in August 2019, the Cabinet Social Wellbeing Committee:
 - 1.1 agreed to amend the Child Support Act 1991 to improve the administration of the child support scheme;
 - 1.2 authorised the Minister of Revenue to approve minor technical changes related to these decisions for inclusion in the amending legislation;

[SWC-19-MIN-0110];
- 2 **noted** that the Child Support Amendment Bill (the Bill) makes substantive, remedial, and technical amendments to the Child Support Act;
- 3 **noted** that the Minister of Revenue has approved the following minor or technical changes:
 - 3.1 the addition of an exception to the proposed time bar so that when a new child support assessment should result in the reassessment of an existing time barred assessment, the time-barred assessment can be reassessed;
 - 3.2 the addition of an exception to the proposed time bar so that application of the exemption from paying child support for victims of sex offences is not limited by the time bar;
 - 3.3 the addition to the proposed time bar of a four month limit to apply for an administrative review in relation to a time barred assessment;
 - 3.4 clarifying the eligibility for the proposed exemption from paying child support for persons suffering from a long-term period of illness or injury, so that:
 - 3.4.1 the exemption would not be available if the person receives any income from a benefit (the existing exemption for hospital patients allows liable parents to receive the exemption if the only income that they receive is a very small amount of investment income and a specific benefit that is only payable to long term hospital patients – this benefit is not available to people who are not hospital patients)); and

3.4.2 the exemption would be available only if the person is unable to work because of the injury or illness;

4 **approved** for introduction the Child Support Amendment Bill [PCO 22406/5.0], subject to the final approval of the government caucuses and sufficient support in the House of Representatives;

5 **agreed** that the Child Support Amendment Bill be introduced in March 2020;

6 **agreed** that the government propose that the Bill be:

6.1 referred to the Social Services and Community Committee for consideration;

6.2 reported to the House by July 2020;

6.3 enacted by December 2020.

Gerrard Carter
Committee Secretary

Present:

Rt Hon Winston Peters
Hon Chris Hipkins (Chair)
Hon Andrew Little
Hon Stuart Nash
Hon Tracey Martin
Hon Julie Anne Genter
Hon Eugenie Sage
Michael Wood MP (Senior Government Whip)

Officials present from:

Office of the Prime Minister
Officials Committee for LEG

Hard-copy distribution:

Minister of Revenue