

Child Support Amendment Bill (No 4)

Government Bill

Explanatory note

General policy statement

This Bill amends the Child Support Act 1991. The Bill's purpose is to—

- improve the level of compliance with financial support obligations so that more children receive the financial support to which they are entitled, and the Government maximises revenue receipts to offset the cost of State provision of financial support:
- provide flexibility in the legislative provisions for dealing with incremental penalties associated with outstanding financial support liabilities:
- have regard to the interests of liable persons, payees, and children in determining in what circumstances liable persons should be exempt from liability for financial support:
- extend existing provisions for ensuring that parents' child support liability accurately reflects their ability to provide financial assistance for their children:
- achieve equality of rights for the applicant and the respondent in an administrative determination to seek a review of that determination in the Family Court:
- amend certain aspects of the child support law to improve the effectiveness and efficiency of the child support scheme.

Summary of key measures

Measures to improve the level of compliance with financial support obligations

Late payments of financial support incur an initial penalty of 10% of the unpaid amount; and for every month that the amount remains unpaid, it incurs an incremental penalty of 2% of the original amount plus accrued penalties.

The proportion of financial support debt (including child support debt) that is represented by penalties exceeds outstanding core liabilities and continues to grow. The size and speed of growth of the debt as penalties accumulate is a significant impediment to achieving improved levels of compliance and reductions in outstanding debt. More than half of all liable persons are in arrears. An unpaid amount increases by 36.8% in the first year that it is unpaid and 26.8% in the following years.

While the law provides some flexibility for dealing with the initial penalty, there is no flexibility relating to incremental penalties once they have been imposed.

Liable persons who enter into an arrangement to pay off their financial support arrears and maintain payments of their ongoing liability will have incremental penalties accrued before the arrangement written off at six-monthly intervals if they maintain payments under the arrangement. The write-offs will be based on a pro-rata percentage of the arrears that have been paid. There will also be greater flexibility for dealing with persons who have no ongoing liability and have paid all their core financial support arrears but still owe penalties.

The new provisions will be available to liable persons with existing repayment arrangements if they continue to comply with those arrangements.

Exemptions from liability for financial support

The Child Support Act 1991 allows exemptions from liability for financial support to liable persons who are in hospital or in prison for 13 weeks or more and do not have sufficient income to meet even the minimum liability.

There are to be two new exemptions from liability as follows:

- a permanent exemption for victims of sex offences when the offender has been convicted. This will ensure that these victims are not further victimised by being required to pay child support for a child resulting from the crime, particularly if the payments would have to be made to the offender:
- an exemption for young people under age 16 years who, like hospital patients and prisoners, do not have sufficient income to meet even the minimum liability. This will allow young parents to focus on educational achievements during their years of compulsory attendance at school, rather than on earning an income in order to meet child support obligations.

Despite meeting the criteria for an exemption, some liable persons may have other resources from which they could meet their financial support liability. It will therefore be possible for a payee, who believes such resources are available, to apply for an exemption to be set aside. These applications will follow similar procedures to those currently available for administrative determinations to depart from a formula assessment of child support when there are special circumstances.

Because it is not possible for the Inland Revenue Department (**the Department**) to obtain information about admissions of liable persons to hospital, the requirement for an application for an exemption to be made during the period of hospitalisation is to be relaxed, so that applications will be accepted up to 3 months after discharge. This concession will also be available to young liable parents for 3 months after they reach the age of 16 years. Although those young liable parents can be identified by the Department, the provision gives an additional opportunity for them to exercise their rights.

Exemptions from liability are, by their nature, generally granted partially in respect of a period that has passed. If, during that period of past entitlement to an exemption, payments of financial support have been made, they will not be refunded to the liable person. Instead, they will be applied to arrears owed for any earlier period, or held and applied to future liability when that liability arises. If the credit amount is required for neither arrears nor future liability there will be a presumption of ability to pay for the period in which it was paid and the amount of liability for that period will be set at the amount that was paid.

The provisions for exemption from liability are restructured in a *new Part 5A* of the Child Support Act 1991 that will provide separately

for each type of exemption and for determinations to set exemptions aside.

Determinations initiated by the Inland Revenue Department

The Department will be able to initiate an administrative review, using a similar administrative review process to that contained in Part 6A, if an investigation into a liable parent's financial affairs establishes that their liability does not accurately reflect their ability to provide financial support to their children.

Custodians will be able to ask the Department to discontinue the review if they are (or were) not in receipt of a social security benefit during the period under review.

The Department will supply a statement of what it considers a liable parent's financial position to be, but will not appear before the Review Officer. The Department will not be able to lodge an appeal against any decision made.

Appeal rights following an administrative determination

A new appeal right provides greater fairness between applicants and respondents following an administrative review. Under current law, unsuccessful applicants can have their case reconsidered by a Family Court, but dissatisfied respondents have recourse only through judicial review in the High Court. The new appeal right will allow respondents to have their case reconsidered by a Family Court.

Other amendments

The Bill includes a number of other amendments to the Child Support Act 1991 that will—

- allow all overseas countries to be recognised for the purpose of accepting proof of parentage documentation to establish child support liability, unless there is doubt as to the authenticity of the documentation:
- extend to the Commissioner of Inland Revenue the power to make administrative determinations that will continue in force after a temporary break in liability, if the circumstances that gave rise to the determination are unchanged and the term of the determination has not expired. That power is currently available only to the Court:
- provide that when care of a child or children is split or shared between parents, the offsetting of one parent's liability

against the liability of the other parent can continue when one parent goes on to a social security benefit, unless the party still entitled to the offset requests that it cease:

- from 1 April 2006, give priority to payments of child support owed to custodians for periods when they were not in receipt of a social security benefit over payments owed to the Crown:
- allow liable persons to transfer credits of financial support to meet their own tax liability, or to request that an available credit be transferred to meet another person's tax or financial support liability:
- implement a recommendation of the Regulations Review Committee to amend the Child Support Act 1991 so that it authorises regulations for the purpose of implementing international treaties to override only the Child Support Act 1991, rather than all primary domestic legislation as it does now:
- correct a mismatch between the date that amendments made to the Child Support Act 1991 and the Social Security Act 1964 in the Taxation (Working for Families) Act 2004 come into effect:
- correct a minor drafting error relating to the indexation of the liable parent's living allowance:
- correct a drafting inconsistency that requires copies of deductions notices issued to employers to be given to payers of child support but not to payers of spousal (domestic) maintenance.

Except as specified in relation to the priority of payments to custodians and certain changes relating to the Taxation (Working for Families) Act 2004, all changes are to come into effect on the day following Royal assent.

Clause by clause analysis

Clause 1 gives the Bill its Title.

Clause 2 relates to the commencement of the Bill. Most of the Bill comes into force on the day after the date on which it receives the Royal assent. However,—

- *clause 9(3)* (which corrects an amendment to section 30 of the principal Act) is deemed to have come into force immediately after the commencement of section 22(2) of the Taxation (Working for Families) Act 2004:

- *clause 9(1)* (which clarifies the intention of section 30(4B) of the principal Act), *clause 9(5)* (which also corrects an amendment to section 30 of the principal Act), and *clauses 33 and 34* (which relate to the allocation of payments of child support to custodians) come into force on 1 April 2006.

Part 1

Amendments to Child Support Act 1991

Clause 3 provides that in Part 1, the Child Support Act 1991 is called “the principal Act”.

Clause 4 amends section 2(1) of the principal Act (which relates to interpretation) by—

- amending the definitions of **income amount order** and **proceeding** as a consequence of *new Parts 5A and 6B* (see *clauses 17 and 24*). These new Parts allow the Commissioner of Inland Revenue (the **Commissioner**) to make determinations that certain provisions of the principal Act should be departed from; and
- inserting a definition of **overseas jurisdiction**.

Clause 5 amends section 7 of the principal Act (which relates to the meaning of **parent**) to replace references to specified overseas jurisdictions with references to overseas jurisdictions (as defined in section 2 of the principal Act as amended by *clause 4*). The effect of this amendment is to allow consideration of proof of parentage documentation (for example, birth certificates) from overseas jurisdictions that have not been specified in an Order in Council.

Clause 6 inserts *new section 7A* into the principal Act. *New section 7A* allows the Commissioner to disregard documentation from an overseas jurisdiction if the Commissioner is not satisfied that the documentation is valid and authentic.

Clause 7 amends section 19 of the principal Act as a consequence of the amendment to section 7 of the principal Act.

Clause 8 amends section 28(2) of the principal Act (which relates to rates of child support) as a consequence of the insertion of *new Parts 5A and 6B* into the principal Act.

Clause 9 amends section 30 of the principal Act (which relates to the meaning of the term **living allowance**) to—

- clarify that the living allowance for the child support years commencing on and after 1 April 2006 is the living allowance

- for the immediately preceding child support year, adjusted by the inflation rate; and
- correct an amendment that was made to the principal Act by the Taxation (Working for Families) Act 2004. That amendment changed a cross reference to a paragraph in Schedule 9 of the Social Security Act 1964 to reflect a renumbering of the paragraph by the Social Security (Working for Families) Amendment Act 2004. The amendment to Schedule 9 of the Social Security Act 1964 came into force on 1 April 2005. The amendment to section 30 of the principal Act applied for the 2005–06 and subsequent child support years, but should have applied for the 2006–07 and subsequent child support years. *Clause 9(3)* (which is deemed to have come into force immediately after the amendment in the Taxation (Working for Families) Act 2004) reverses the incorrect amendment. *Clause 9(5)* (which comes into force on 1 April 2006) inserts the new cross reference with the correct application.

Clause 10 amends section 34 of the principal Act (which relates to the offsetting of child support where the custody of 2 or more children is split between 2 liable parents). This section allows the amount of child support that is payable by one parent to be offset against the child support payable by the other parent. The amendment addresses the problem caused by the cessation of offsetting when neither parent has been receiving a social security benefit (**benefit**) and then one parent starts receiving a benefit. The effect of the amendment is that the parent who is not on a benefit will continue to have his or her child support offset against the child support payable by the other parent unless he or she elects otherwise.

Clause 11 amends section 35 of the principal Act (which relates, in part, to the offsetting of child support where a liable parent shares the custody of a child substantially equally with another liable parent). This amendment also addresses the problem caused by the cessation of offsetting when neither parent has been receiving a benefit and then one parent starts receiving a benefit. The amendment has the same effect as the amendment to section 34 of the principal Act. The parent who is not on a benefit will continue to have his or her child support offset against the child support payable by the other parent unless he or she elects otherwise.

Clauses 12 to 14 amend sections 38(7), 41(6), and 43(4)(aa) of the principal Act as a consequence of the insertion of *new Parts 5A and 6B* into the principal Act.

Clause 15 repeals sections 73 to 76 (which relate to exemptions from the payment of financial support). These provisions are replaced by *new Part 5A*.

Clause 16 amends section 87(3) of the principal Act (which relates to the amendment of assessments) as a consequence of the insertion of *new Parts 5A and 6B* into the principal Act.

Clause 17 inserts *new Part 5A* into the principal Act (which relates to exemptions from the payment of financial support). *New Part 5A*—

- continues to provide exemptions from the payment of financial support for long-term hospital patients and long-term prisoners if certain income criteria are met (see *subpart 2 of new Part 5A*); and
- provides a new exemption for liable parents under the age of 16 years if certain income criteria are met (see *subpart 2 of new Part 5A*); and
- allows the Commissioner to make certain determinations in relation to exemptions for hospital patients, prisoners, and persons under the age of 16 years (see *subpart 3 of new Part 5A*); and
- provides a new exemption for victims of sex offences that applies regardless of income (see *subpart 4 of new Part 5A*).

Generally, the provisions relating to exemptions for long-term hospital patients and long-term prisoners are similar to the exemptions that are currently in sections 73 to 76 of the principal Act. The changes of substance are as follows:

- an exemption can be granted for the whole period or part or parts of the whole period of the person's long-term hospitalisation or imprisonment provided that the income criteria are satisfied during each of those periods (see *new sections 89C and 89D*). Currently, the income criteria must be satisfied in relation to the whole of the period of the person's long-term hospitalisation or imprisonment;
- *new section 89F* contains an important restriction on the applicability of an exemption. *New section 89F* prevents the exemption from applying at any time during the whole of a particular child support year if, at any time during a relevant period, certain income criteria are not satisfied. The relevant period is basically the period of hospitalisation or imprisonment that is in that child support year. *New section 89F* clarifies, however, that if a person is receiving, at the start of

that person's hospitalisation, a social security benefit that is paid at a rate higher than that of a benefit for long-term hospital patients, that higher rate benefit does not stop an exemption from applying after the person stops receiving that benefit:

- an application for an exemption for a hospital patient can be made within 3 months after the end of the person's long-term hospitalisation. An application for an exemption for a prisoner can be made at any time before the end of the person's long-term imprisonment. Currently, the application has to be made before or during the relevant child support year (see *new section 89H*):
- *new section 89ZE(1)* allows an agent to make an application on a person's behalf. If a person is incapable of authorising an agent, *new section 89ZE(2)* allows the application to be made on that person's behalf by the manager of that person's estate under the Protection of Personal and Property Rights Act 1988 or the next friend of the person.

The new exemption for persons under the age of 16 years is similar to the exemptions for long-term hospital patients and long-term prisoners (see *new section 89E*). In summary—

- a person may obtain an exemption for the whole period or part or parts of the whole period before the person turns 16 if, during the periods in which the exemption applies, the person earns no income or only income from investments, and any income from investments does not exceed the relevant minimum child support liability:
- the person must apply for the exemption no later than 3 months after turning 16.

The new exemption provisions apply to applications for exemptions that are received after the new provisions come into force. However, *new section 89G* provides that if an application for an exemption is made after the period of hospitalisation or after the person turns 16 years (as the case may be), the exemption does not apply at any time before the new provisions come into force.

New section 89J provides that a person who has been granted an exemption under *subpart 2 of new Part 5A*—

- is not entitled to a refund of any financial support as a result of the granting of the exemption; and

- is not entitled to recover the financial support from the payee under section 207 of the principal Act as a result of the granting of the exemption.

Subpart 3 of new Part 5A allows the Commissioner, on an application from a payee, to make certain determinations in relation to an exemption granted under *subpart 2 of new Part 5A* or an exemption granted under section 74 of the principal Act.

New section 89M provides that the Commissioner may make a determination that an exemption does not apply, or ceases to apply, in relation to the whole or a part of the period for which it was granted. This determination may be made if the Commissioner is satisfied that the application in relation to the payee, the child, or both of the provisions of the principal Act relating to that exemption would result in an unjust and inequitable determination of the level of financial support to be provided by the liable person because of the income, earning capacity, property, and financial resources of the liable person.

New section 89N provides that the Commissioner may make a determination that all or some of the provisions of the principal Act relating to formula assessment of child support will be departed from in relation to a child. This determination may be made if—

- the Commissioner has made a determination that an exemption does not apply or will cease to apply; and
- the Commissioner is satisfied that—
 - the application in relation to the qualifying custodian, the child, or both of the provisions of the principal Act relating to formula assessment of child support would result in an unjust and inequitable determination of the level of financial support to be provided by the liable person because of the income, earning capacity, property, and financial resources of the liable person; and
 - a determination would be just and equitable and otherwise proper.

In the case of child support payable under a voluntary agreement or an order of the Court, the Commissioner can only make a determination to set aside the exemption or to confirm it.

Subpart 4 of new Part 5A contains provisions relating to the new exemption for victims of sex offences. This exemption may be granted in relation to a particular child if—

- the liable parent is a victim of a sex offence; and

- another person has been convicted of that sex offence or has been proved to have committed that sex offence before a Youth Court; and
- in the opinion of the Commissioner, it is likely that the child was conceived as a result of the sex offence.

This exemption applies regardless of income. However, the exemption is void if the conviction for the sex offence is quashed or if the finding of a Youth Court that a sex offence has been committed is reversed or set aside. If subsequently a person is convicted of the sex offence following a re-trial, the victim of the sex offence can reapply for the exemption.

Clause 18 amends section 90(1)(i) of the principal Act (which relates to objections to appealable decisions) as a consequence of the new exemption provisions in *new Part 5A*.

Clause 19 amends the heading to Part 6A of the principal Act as a consequence of the insertion of *new Part 6B* into the principal Act to reflect that Part 6A applications are initiated by the liable parent or the qualifying custodian. The amendment distinguishes this Part from the departure process initiated by the Commissioner in *new Part 6B*.

Clause 20 amends section 96D(1) of the principal Act (which relates to determinations that may be made by the Commissioner under Part 6A). The amendment applies section 119(1)(a) of the principal Act (which relates to the cessation of orders) to those determinations.

Clauses 21 and 22 amend sections 96H and 96I of the principal Act as a consequence of the *new section 96L* substituted by *clause 23*.

Clause 23 substitutes *new section 96L* into the principal Act. The current section sets out the circumstances under which a subsequent application for a determination may be made under Part 6A if there has been a previous determination made under that Part or an application under section 104 of the principal Act. It requires any subsequent application to be based on a new matter or a different ground. The amendment extends the effect of this provision to address the situation in which a subsequent application for a determination is made under Part 6A after a determination has been made under *new Part 6B* or an appeal has been heard under *new section 103B* or *new section 103C*.

Clause 24 inserts *new Part 6B* into the principal Act. This Part allows the Commissioner to initiate a process leading to a determination that the provisions of the principal Act relating to the formula

assessment of child support should be departed from in relation to a child.

Before making a determination, the Commissioner must be satisfied that there are special circumstances that would make it unjust and inequitable not to depart from the Act's provisions, due to the income, earning capacity, property, and financial resources of either parent or the child.

The new process is aimed particularly at liable parents who adopt structures that have the effect of reducing their taxable income and thereby defeating the intent of the principal Act. The Commissioner may use information from an investigation into the liable parent's financial position that is carried out under the Tax Administration Act 1994. The main differences between the process under Part 6A and the new process under *new Part 6B* are—

- the process is initiated by the Commissioner on the basis of information in the Commissioner's possession:
- the Commissioner is required to notify the liable parent before making a formal decision to proceed, and to give the liable parent an opportunity to respond in writing:
- only the liable parent automatically becomes a party to the proceedings. A qualifying custodian must elect to become a party:
- a qualifying custodian may also elect that the Commissioner discontinue the proceedings in relation to any period when he or she is not or was not in receipt of a benefit:
- a qualifying custodian who elects to become a party is entitled to a copy of written representations (and accompanying documentation) provided by the liable parent to the Commissioner after the liable parent is sent notification of the Commissioner's decision to start proceedings. The qualifying custodian is not entitled to information about the liable parent unless it came into the Commissioner's possession after the Commissioner started proceedings.

Clause 25 inserts *new sections 103A to 103E* into the principal Act. *New section 103A* provides an appeal right to a Family Court in relation to a determination of the Commissioner under *new subpart 3 of Part 5A* or a refusal to make a determination under that subpart. *New sections 103B and 103C* provide appeal rights to a Family Court in relation to determinations of the Commissioner under Part 6A and *new Part 6B*. *New Part 5A*, Part 6A, and *new Part 6B* allow the Commissioner to make determinations that certain provisions of

the Act should be departed from. The new appeal process allows the Court to confirm, modify, or reverse a determination or decision on appeal. The appeal right in relation to determinations made under Part 6A is confined to those who were respondents when the original application for a determination was made. It allows respondents to challenge a determination that has been made. Persons who applied for a determination will continue to be able to seek a Family Court review under section 104 of the principal Act. The section 104 procedure enables the Court to review the terms of a determination made by the Commissioner under Part 6A of the principal Act or a refusal by the Commissioner to make a determination under that Part.

Clause 26 amends section 104(2)(b) of the principal Act—

- by confining the use of the procedure under section 104(2)(b)(i) to those persons who were applicants for a determination under Part 6A. A new appeal right under *new section 103B* relating to a determination under Part 6A may be used by persons who were respondents in relation to the original application for the determination:
- by conferring an appeal right where the Commissioner has started proceedings under *new Part 6B* but has subsequently refused to make a determination.

Clause 27 amends section 108 of the principal Act (which relates to applications for orders for the provision of child support in the form of lump sums) as a consequence of *new Parts 5A and 6B* and the new appeal rights provided in relation to determinations. The amendment provides that a Family Court may not hear an application under that section until various applications, proceedings, or appeals that are still pending have been heard and determined.

Clauses 28 to 31 amend sections 109, 112, 115, and 119 of the principal Act as a consequence of the new appeal rights provided in relation to determinations under *new Part 5A*, Part 6A, and *new Part 6B*.

Clause 32 repeals sections 135 to 135B of the principal Act (which relate to the granting of relief in relation to penalties imposed under section 134 of the principal Act), and substitutes *new sections 135 to 135O*. The main changes to the relief provisions are contained in *new sections 135G, 135J, 135K, and 135L*. The remaining new sections carry over the effect of the repealed provisions. However, those provisions have been reorganised to include *new sections 135G, 135J, 135K, and 135L*, and to distinguish more clearly

between the different types of relief. The new provisions contain the following substantive changes:

- the Commissioner may grant relief from incremental penalties under *new section 135G* if all of the debt to which those penalties relate has been paid. The Commissioner must be satisfied that recovery of the penalties would involve an inefficient use of the Commissioner's resources or place the liable person in serious hardship:
- under *new section 135J*, if a liable person complies with a payment agreement, then the Commissioner is required, at regular intervals, to write off incremental penalties that were unpaid before the person entered into the agreement. The write-off is in proportion to the amount of the original financial support debt and initial late payment penalties owing at the time that the liable person entered into the agreement that the liable person has paid in accordance with the agreement:
- under *new section 135K*, if a liable person complies with a payment agreement entered into before the commencement of this provision or a person complies with a deduction notice given before that commencement, then the Commissioner is required, at regular intervals, to write off incremental penalties that were unpaid at that commencement. The write-off is in proportion to the amount of the original financial support debt and initial late payment penalties owing at that commencement that the liable person has paid in accordance with the agreement or the person has deducted and paid in accordance with the deduction notice:
- if a liable person fails to comply with a payment agreement or deduction notice for the purposes of *new section 135J* or *new section 135K*, but the failure involves circumstances that would entitle the Commissioner to grant relief to the person from penalties, then *new section 135L* provides that the Commissioner may grant relief under *new section 135J* or *new section 135K*.

Clause 33 amends section 142 of the principal Act (which relates to the payment of child support to custodians who are recipients of a social security benefit). Section 142 of the principal Act includes a requirement for the Commissioner to deduct the net of tax amount of the social security benefit before making a payment to the custodian. As a result of the amendment, the custodian will, before the Commissioner makes a deduction, receive a payment priority in relation

to payments made by a particular liable parent for periods when the custodian did not receive a social security benefit.

Clause 34 amends section 143 of the principal Act (which relates to the payment of child support to custodians, who are recipients of a social security benefit, under 1 or more voluntary agreements). In a manner consistent with section 142 of the principal Act (as amended by *clause 33*), the amendments have the effect of conferring a payment priority on the custodian in respect of periods when the custodian was not in receipt of a social security benefit.

Clause 35 inserts *new section 152A* into the principal Act. *New section 152A* provides that the Commissioner must write off the whole of a debt if the debt—

- is an amount that is repayable by the payee to the Commissioner under section 151 of the principal Act; and
- arises solely as a result of the liable person being granted an exemption under *subpart 2 of new Part 5A*.

Clause 36 amends section 156 of the principal Act to clarify that copies of deduction notices are given to liable persons rather than just liable parents.

Clause 37 amends section 207 of the principal Act (which relates to recovering amounts from payees) as a consequence of *new section 89J* (which prevents exempted persons from recovering certain amounts from payees).

Clause 38 amends section 208(a) of the principal Act (which relates to offences) as a consequence of the new exemption provisions. The amendment creates an offence of failing to notify the Commissioner, as required by *new section 89ZC*, of certain matters relating to a person's eligibility for an exemption under *new Part 5A*.

Clause 39 amends section 215(1)(a) of the principal Act which currently empowers the Governor-General, by Order in Council, to declare that the provisions contained in a reciprocal agreement with another country may, despite anything in the principal Act or in any other Act, have force and effect so far as they relate to New Zealand. The amendment removes the reference to Acts other than the principal Act. This means that Orders in Council can only declare that reciprocal agreements have force and effect despite the principal Act and may not override other Acts. However, a savings provision has been included in relation to the Child Support (Reciprocal Agreement with Australia) Order 2000.

Clause 40 amends section 216 of the principal Act (which relates to refunds) as a consequence of *new section 89J* (which prevents exempted persons from receiving a refund in certain circumstances).

Clause 41 amends section 216A of the principal Act (which relates to the application of refunds of excess financial support paid) as a consequence of the amendments made by *clause 42*.

Clause 42 inserts *new sections 216B to 216D* into the principal Act. These new provisions allow a person to request that the Commissioner transfer all or part of a refund of excess financial support towards the satisfaction of a tax liability of the person or of another person, or towards the satisfaction of a financial support liability of another person.

Clause 43 amends section 230(2) of the principal Act (which relates to proof of certain matters) to ensure that the section includes a reference to documents purporting to be orders.

Clause 44 amends section 235 of the principal Act (which relates to regulations) as a consequence of the amendment to section 7 of the principal Act.

Clause 45 amends section 240(2) of the principal Act (which relates to secrecy). This amendment is incidental to the amendments in *clauses 52 and 53* to the Tax Administration Act 1994 in that it ensures that communications with the Ministry of Justice and with the police are deemed to be communications of matters made for the purpose of carrying into effect the provisions of the principal Act.

Clauses 46 to 49 contain transitional provisions. These provisions provide—

- that pending applications for exemptions before the commencement of the new exemption provisions will be dealt with under the law in force before the amendments come into force (the **old law**); and
- that exemptions in force before the commencement of the new exemption provisions continue in force until they would expire under the old law (unless the period of exemption is ended at an earlier date as a result of a determination under *subpart 3 of new Part 5A*); and
- that pending objections under Part 6 of the principal Act are determined under the old law; and
- that persons who have pending applications under section 104 of the principal Act but who are unable to use the process under section 104 (as amended) may elect to use the new

appeal process in *new section 103B*. If an election is not made, the application must be dealt with under the old law.

Clause 50 amends the Corrections Act 2004 as a consequence of the new exemption provisions in *new Part 5A*.

Part 2

Amendments to Tax Administration Act 1994

Clauses 52 and 53 amend the Tax Administration Act 1994 as a consequence of the new exemption provisions in *new Part 5A*.

Clause 52 amends section 81(4) of the Tax Administration Act 1994 (which relates to officers of the Inland Revenue Department maintaining secrecy). The amendment ensures that section 81 does not prevent the communication of information to any member of the police or to the Ministry of Justice for the purposes of the victim of sex offences exemption under *subpart 4 of new Part 5A*.

Clause 53 inserts *new sections 85H and 85I* into the Tax Administration Act 1994. These new provisions are designed to facilitate the exchange of information between the Inland Revenue Department and the police and between the Inland Revenue Department and the Ministry of Justice for the purpose of determining whether a person is eligible for a victim of a sex offence exemption under *subpart 4 of new Part 5A*.

Hon David Cunliffe

Child Support Amendment Bill (No 4)

Government Bill

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89ZB	Commissioner must give effect to exemption and may take changes into account	96ZA	Procedure for making determination
89ZC	Exempted person must advise Commissioner of certain matters	96ZB	Determinations that may be made
89ZD	Liable person liable for payment of financial support for parts of child support year to which exemption does not apply	96ZC	Commissioner may refuse to make determination because issues too complex
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18	Objections to appealable decisions	96ZE	Commencement of determinations
		96ZF	Restriction of publication of reports
		96ZG	Application of certain provisions in Part 6A to proceedings under this Part

Child Support Amendment (No 4)

25	New sections 103A to 103E inserted		
	<i>Appeals in relation to determinations</i>		<i>Mandatory relief in respect of initial late payment penalty</i>
	103A Appeal in relation to determination or decision under subpart 3 of Part 5A		135H Relief from initial late payment penalty if payment arrangement
	103B Appeal by respondent from determination under Part 6A		135I Relief from initial late payment penalty if minimum amount
	103C Appeal from determination under Part 6B		<i>Mandatory relief in respect of incremental penalties</i>
	103D Powers of Family Court on appeal		135J Relief from incremental penalties unpaid before agreement entered into
	103E Implementation of orders		135K Relief from incremental penalties in relation to arrangements entered into or made before commencement
26	Application for departure from formula assessment in special circumstances		135L Writing-off of incremental penalties if non-compliance with arrangement
27	Application for order for provision of child support in form of lump sum		135M Relief from ongoing incremental penalties if payment agreement in force
28	Orders for provision of child support in form of lump sum		135N Relief from ongoing incremental penalties if deduction notice in force
29	Discharge, suspension, revival, and variation of orders		<i>Miscellaneous</i>
30	Pending appeal or application not to affect assessment		135O Refunds paid out of Crown Bank Account without further appropriation
31	Cessation of orders under Act		33 Payment of formula assessment child support to custodians who are social security beneficiaries
32	New sections 135 to 135O substituted		34 Payment of voluntary agreement child support to custodians who are social security beneficiaries
	<i>Interpretation provision relating to relief from penalties</i>		35 New section 152A inserted
	135 Interpretation for purposes of sections 135A to 135O		152A Relief in case of exemption granted to liable person
	<i>Discretionary relief in respect of penalties</i>		36 Copy of deduction notice to be given to liable parent
	135A Application of sections 135B to 135G		37 Amounts paid where no liability to pay exists, etc.
	135B Discretionary relief if reasonable cause		38 Offences
	135C Discretionary relief if failure of another person to make deduction		39 Adoption of reciprocal agreement with other countries
	135D Discretionary relief if honest oversight by liable person with no history of default		40 Refund of excess financial support
	135E Discretionary relief if error made by Department		41 Method of application for refund of excess financial support paid
	135F Discretionary relief if debt uplifted		42 New sections 216B to 216D inserted
	135G Discretionary relief for residual incremental penalty debt		

<p>216B Transfer of refund</p> <p>216C Form of request for transfer of refund</p> <p>216D Commissioner must transfer refund</p> <p>43 Proof of certain matters</p> <p>44 Regulations</p> <p>45 Secrecy</p> <p style="text-align: center;"><i>Transitional provisions</i></p> <p>46 Pending applications for exemptions</p> <p>47 Continuation of exemptions</p> <p>48 Pending objections</p> <p>49 Transitional provision relating to certain pending applications made under principal Act</p> <p>50 Corrections Act 2004 consequentially amended</p>	<p style="text-align: center;">Part 2</p> <p style="text-align: center;">Amendments to Tax Administration Act 1994</p> <p>51 Tax Administration Act 1994 called principal Act in this Part</p> <p>52 Officers to maintain secrecy</p> <p>53 New sections 85H and 85I inserted</p> <p>85H New Zealand Police and Ministry of Justice to provide information concerning sex offences for purposes of child support exemptions</p> <p>85I Use of information supplied under section 85H</p>
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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Child Support Amendment Act **(No 4) 2005**.

2 Commencement

- (1) **Section 9(3) and (4)** are deemed to have come into force immediately after the commencement of section 22(2) of the Taxation (Working for Families) Act 2004.
- (2) **Sections 9(1), (2), (5), and (6), 33, and 34** come into force on 1 April 2006.
- (3) The rest of this Act comes into force on the day after the date on which it receives the Royal assent.

Part 1

Amendments to Child Support Act 1991

3 Child Support Act 1991 called principal Act in this Part

In this Part, the Child Support Act 1991¹ is called “the principal Act”.

¹ 1991 No 142

4 Interpretation

- (1) Section 2(1) of the principal Act is amended by—
 - (a) omitting from the definition of **income amount order**, the words “an order under Part 6A or Part 7 of this Act,

- being an order”, and substituting the words “a determination under **Part 5A** or Part 6A or **Part 6B** or an order under Part 7, being a determination or an order”; and
- (b) omitting from the definition of **proceeding** the words “Part 6A of this Act”, and substituting the words “**Part 5A**, Part 6A, or **Part 6B**”.
- (2) Section 2(1) of the principal Act is amended by inserting, in its appropriate alphabetical order, the following definition:
- “overseas jurisdiction—**
- “(a) means a country outside New Zealand and a State, territory, province, or other part of a country outside New Zealand; and
- “(b) includes the Cook Islands, Niue, and Tokelau”.

5 Meaning of parent

- (1) Section 7(1)(a), (d), and (i) of the principal Act is amended by omitting the word “specified” in each place where it appears.
- (2) Section 7(1)(e) of the principal Act is amended by omitting the words “specified Court or public authority in a specified”, and substituting the words “Court or public authority in an”.
- (3) Section 7 of the principal Act is amended by repealing subsection (5).

6 New section 7A inserted

- (1) The principal Act is amended by inserting, after section 7, the following section:
- “7A Commissioner may disregard document from overseas jurisdiction if not satisfied that document is valid and authentic**
- “(1) If a document purporting to be the original or a copy of a certificate, entry, or record of a birth, death, or marriage alleged to have taken place in an overseas jurisdiction is provided to the Commissioner, the Commissioner may, in his or her discretion, disregard the document for the purposes of this Act if the Commissioner is not satisfied that the document is valid and authentic.
- “(2) If a document purporting to be the original or a copy of an order or decree made by a Court or public authority of an overseas jurisdiction is provided to the Commissioner, the Commissioner may, in his or her discretion, disregard the

document for the purposes of this Act if the Commissioner is not satisfied that the document is valid and authentic.

- “(3) This section does not limit section 7(2).”
- (2) This section applies to documents provided to the Commissioner on or after the commencement of this section.

7 Commencement of liability of person declared to be parent after application made

Section 19(b) of the principal Act is amended by omitting the words “a specified overseas jurisdiction to which section 7(5) of this Act applies”, and substituting the words “an overseas jurisdiction”.

8 This Part sets out rates of child support

Section 28(2) of the principal Act is amended by omitting the words “Part 6A of this Act”, and substituting the words “**Part 5A** or Part 6A or **Part 6B**”.

9 Meaning of term living allowance

- (1) Section 30 of the principal Act is amended by repealing subsection (4B), and substituting the following subsection:
- “(4B) For the child support years commencing on and after 1 April 2006, the living allowance allowed under subsection (4) in respect of each dependent child is the living allowance allowed in respect of each dependent child for the immediately preceding child support year, inflated by the inflation percentage (as defined in section 29(1)) for the child support year in relation to which the living allowance is being calculated.”
- (2) **Subsection (1)** applies for the 2006–07 and subsequent child support years.
- (3) Section 30(5) of the principal Act is amended by omitting from the definition of **gross married rate of unemployment benefit** the expression “(1)(e)”, and substituting the expression “(1)(h)”.
- (4) **Subsection (3)** applies for the 2005–06 child support year.
- (5) Section 30(5) of the principal Act (as amended by **subsection (3)**) is amended by omitting from the definition of **gross married rate of unemployment benefit** the expression “(1)(h)”, and substituting the expression “(1)(e)”.

- (6) **Subsection (5)** applies for the 2006–07 and subsequent child support years.

10 Position where custody of 2 or more children is split between 2 liable parents

- (1) Section 34 of the principal Act is amended by adding the following subsections:

“(4) **Subsection (5)** applies if—

“(a) not more than 1 of those parents is in receipt of a social security benefit; and

“(b) subsection (2) applied to each parent immediately before the parent in receipt of a social security benefit started to receive that benefit; and

“(c) the parent who is not in receipt of a social security benefit has not elected, by written notice given to the Commissioner, that subsection (2) should stop applying to him or her.

“(5) Subsection (2) applies to the parent who is not in receipt of a social security benefit, and the Commissioner must reduce the annual rate of child support payable by that parent accordingly.

“(6) Subsection (3) does not limit **subsection (5)**.

“(7) If a parent makes an election under subsection (3) or **subsection (4)(c)**, the Commissioner must give effect to the election as soon as is practicable on or after the day that is the later of—

“(a) the first day of the month in which the Commissioner receives written notice of the election; or

“(b) the day on which the person became entitled to make the election.”

- (2) **Section 34(4) and (5)** of the principal Act (as inserted by **subsection (1)**) does not apply if section 34(2) of the principal Act had ceased to apply to the parent who is not in receipt of a social security benefit before this section comes into force.

11 Position where liable parent shares custody of child

- (1) Section 35 of the principal Act is amended by inserting, after subsection (4), the following subsections:

“(4A) **Subsection (4B)** applies if—

“(a) the other person is also a liable parent of the child or children; and

- “(b) not more than 1 of those parents is in receipt of a social security benefit; and
 - “(c) subsection (3) applied to each parent immediately before the parent in receipt of a social security benefit started to receive that benefit; and
 - “(d) the parent who is not in receipt of a social security benefit has not elected, by written notice given to the Commissioner, that subsection (3) should stop applying to him or her.
- “(4B) Subsection (3) applies to the parent who is not in receipt of a social security benefit, and the Commissioner must reduce the annual rate of child support payable by that parent accordingly.
- “(4C) Subsection (4) does not limit **subsection (4B)**.
- “(4D) If a parent makes an election under subsection (4) or **subsection (4A)(d)**, the Commissioner must give effect to the election as soon as is practicable on or after the day that is the later of—
- “(a) the first day of the month in which the Commissioner receives written notice of the election; or
 - “(b) the day on which the person became entitled to make the election.”
- (2) **Section 35(4A) and (4B)** of the principal Act (as inserted by **subsection (1)**) does not apply if section 35(3) of the principal Act had ceased to apply to the parent who is not in receipt of a social security benefit before this section comes into force.

12 Application of assessments under Income Tax Act 1976 or Tax Administration Act 1994

Section 38(7) of the principal Act is amended by omitting the words “Part 6A of this Act”, and substituting the words “**Part 5A** or Part 6A or **Part 6B**”.

13 Effect of election

Section 41(6) of the principal Act is amended by omitting the words “Part 6A of this Act”, and substituting the words “**Part 5A** or Part 6A or **Part 6B**”.

14 Effect of revocation

Section 43(4)(aa) of the principal Act is amended by omitting the words “Part 6A of this Act”, and substituting the words “**Part 5A** or Part 6A or **Part 6B**”.

15 Heading and sections 73 to 76 repealed

The principal Act is amended by repealing—

- (a) the heading above section 73; and
- (b) sections 73 to 76.

16 Amendment of assessments

- (1) Section 87(3) of the principal Act is amended by inserting, after paragraph (d), the following paragraph:
“(da) giving effect to **Part 5A**; or”.
- (2) Section 87(3)(ea) of the principal Act is amended by inserting, after the expression “Part 6A”, the words “or **Part 6B**”.

17 New Part 5A inserted

- (1) The principal Act is amended by inserting, after Part 5, the following Part:

**“Part 5A
“Exemptions**

“Subpart 1—Outline and definitions

“89A Outline

- “(1) This Part provides for exemptions from the payment of financial support in the following cases:
 - “(a) for hospital patients, in respect of periods of long-term hospitalisation, if certain income criteria are met:
 - “(b) for prisoners, in respect of periods of long-term imprisonment, if certain income criteria are met:
 - “(c) for liable parents under the age of 16 years, if certain income criteria are met:
 - “(d) for victims of sex offences, regardless of income.
- “(2) This Part also allows the Commissioner to make determinations in relation to exemptions granted under this Act (except exemptions for victims of sex offences).
- “(3) This section is intended only as a guide to the general scheme and effect of this Part.

“89B Definitions for this Part

In this Part, unless the context otherwise requires,—

“exempted person means a person who has, under this Part, been exempted from the payment of financial support

“hospital patient means a person who is, for the time being,—

“(a) a patient in a hospital care institution within the meaning of section 58(4) of the Health and Disability Services (Safety) Act 2001; or

“(b) a resident of an institution certified under the Alcoholism and Drug Addiction Act 1966

“income—

“(a) has the same meaning as in section OB 1 of the Income Tax Act 2004; and

“(b) includes gross income (within the meaning of section OB 1 of the Income Tax Act 1994) and assessable income (within the meaning of the Income Tax Act 1976)

“long-term means a period of 13 weeks or more

“period of hospitalisation—

“(a) means the continuous period during which a person is a hospital patient; and

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

“period of imprisonment—

“(a) means the continuous period during which a person is a prisoner; and

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

“prisoner means a person who is, for the time being,—

“(a) in the legal custody of the Superintendent of any penal institution as defined in the Penal Institutions Act 1954; or

“(b) in legal custody under the Corrections Act 2004

“relevant minimum annual rate of financial support means, in relation to a child support year,—

- “(a) for an exemption from child support payable under a formula assessment or under an order under section 109, the minimum annual rate for that year under section 72(1)(a):
 - “(b) for an exemption from any other child support payable under this Act or from domestic maintenance, \$520
- “**social security benefit** means any benefit within the meaning of the Social Security Act 1964.

“Subpart 2—Exemptions for hospital patients, prisoners, and persons under 16 years

“*Exemption for hospital patients*

“89C **Exemption for long-term hospital patients**

- “(1) A liable person is eligible for an exemption from the payment of financial support for the whole, or part, of a long-term period of hospitalisation of that person if—
- “(a) the person’s income for that whole period, or that part, will be or was nil, or will be or was calculated only from income consisting solely of—
 - “(i) income from investments; or
 - “(ii) a social security benefit payable to the person at the rate specified in Schedule 22 of the Social Security Act 1964; and
 - “(b) the person’s income from investments (if any) during that whole period, or that part, did not or will not—
 - “(i) exceed an average amount per week in that whole period, or that part, that is equal to the relevant minimum annual rate of financial support, divided by 52; and
 - “(ii) if that whole period, or that part, is 1 or more full child support years in duration, exceed, in a child support year in that whole period or that part, the relevant minimum annual rate of financial support; and
 - “(c) the person applies for the exemption in accordance with **section 89H**.
- “(2) This section is subject to **sections 89F and 89G**.

*“Exemption for prisoners***“89D Exemption for long-term prisoners**

- “(1) A liable person is eligible for an exemption from the payment of financial support for the whole, or part, of a long-term period of imprisonment of that person if—
- “(a) the person’s income for that whole period, or that part, will be or was nil, or will be or was calculated only from income consisting solely of income from investments; and
 - “(b) the person’s income from investments (if any) during that whole period, or that part, did not or will not—
 - “(i) exceed an average amount per week in that whole period, or that part, that is equal to the relevant minimum annual rate of financial support, divided by 52; and
 - “(ii) if that whole period, or that part, is 1 or more full child support years in duration, exceed, in a child support year in that whole period or that part, the relevant minimum annual rate of financial support; and
 - “(c) the person applies for the exemption in accordance with **section 89H**.
- “(2) This section is subject to **sections 89F and 89G**.

*“Exemption for persons under 16 years***“89E Exemption for persons under 16 years**

- “(1) A liable parent is eligible for an exemption from the payment of child support for the whole, or part, of the period before that person turned or turns 16 if—
- “(a) the person’s income for that whole period, or that part, will be or was nil, or will be or was calculated only from income consisting solely of income from investments; and
 - “(b) the person’s income from investments (if any) during that whole period, or that part, did not or will not—
 - “(i) exceed an average amount per week in that whole period, or that part, that is equal to the relevant minimum annual rate of financial support, divided by 52; and
 - “(ii) if that whole period, or that part, is 1 or more full child support years in duration, exceed, in a child

support year in that whole period or that part, the relevant minimum annual rate of financial support; and

“(c) the person applies for the exemption in accordance with **section 89H**.

“(2) This section is subject to **sections 89F and 89G**.

“Restrictions on application of exemptions

“89F **Exemption does not apply at any time during child support year if income criteria not met at any time during relevant period**

“(1) An exemption under this subpart does not apply at any time during the whole of a child support year if,—

“(a) at any time during the relevant period,—

“(i) in the case of an exemption under **section 89C**, the person receives any income other than from investments or a social security benefit payable at the rate specified in Schedule 22 of the Social Security Act 1964; or

“(ii) in the case of an exemption under **section 89D or section 89E**, the person receives any income other than from investments; or

“(b) the person receives income from investments during the relevant period that—

“(i) exceeds, if the relevant period is less than a full child support year in duration, an average amount per week in the relevant period that is equal to the relevant minimum annual rate of financial support, divided by 52; or

“(ii) exceeds, if the relevant period is a full child support year in duration, the relevant minimum annual rate of financial support.

“(2) However, in the case of an exemption under **section 89C**, if a liable person is receiving a higher rate benefit at the start of that person’s hospitalisation, that benefit does not prevent the exemption from applying after the person stops receiving that benefit for the whole or a part of the rest of the child support year in which that person became a hospital patient.

“(3) For the purposes of this section,—

“**higher rate benefit** means a social security benefit payable at a rate higher than the rate specified in Schedule 22 of the Social Security Act 1964

“**relevant period**, in relation to a child support year,—

“(a) in the case of an exemption under **section 89C**, means the period of hospitalisation that is in the child support year and during which the person would, but for an exemption under this subpart, be liable to pay financial support; and

“(b) in the case of an exemption under **section 89D**, means the period of imprisonment that is in the child support year and during which the person would, but for an exemption under this subpart, be liable to pay financial support; and

“(c) in the case of an exemption under **section 89E**, means the period before the person turns 16 that is in the child support year and during which the person would, but for an exemption under this subpart, be liable to pay child support.

“89G **Other restrictions on application of exemptions**

“(1) An exemption under this subpart does not apply at any time after—

“(a) the day on which the relevant period of hospitalisation ends (in the case of an exemption under **section 89C**):

“(b) the day on which the relevant period of imprisonment ends (in the case of an exemption under **section 89D**):

“(c) the day on which the person turns 16 (in the case of an exemption under **section 89E**).

“(2) An exemption under this subpart does not apply to a period if the liable person is not eligible, or ceases to be eligible, for that exemption in relation to that period.

“(3) If an application for an exemption under—

“(a) **section 89C** is made under **section 89H** after the day on which the relevant period of hospitalisation ends, the exemption does not apply at any time before the commencement of this section:

“(b) **section 89E** is made under **section 89H** after the day on which the person turns 16, the exemption does not

apply at any time before the commencement of this section.

“Application and grant of exemptions under this subpart

“89H Applications for exemptions under this subpart

- “(1) An application for an exemption under this subpart must—
- “(a) be in the appropriate approved form; and
 - “(b) be given to the Commissioner before—
 - “(i) the expiry of 3 months after the day on which the relevant period of hospitalisation ends (in the case of an application for an exemption under **section 89C**); or
 - “(ii) the relevant period of imprisonment ends (in the case of an application for an exemption under **section 89D**); or
 - “(iii) the expiry of 3 months after the day on which the person turns 16 (in the case of an application for an exemption under **section 89E**); and
 - “(c) specify the person’s estimate of his or her weekly and total income for the periods specified on the form; and
 - “(d) include the information that the approved form requires to be included.
- “(2) An application for an exemption under—
- “(a) **section 89C** may be made in relation to the whole of the long-term period of hospitalisation or 1 or more parts of that whole period:
 - “(b) **section 89D** may be made in relation to the whole of the long-term period of imprisonment or 1 or more parts of that whole period:
 - “(c) **section 89E** may be made in relation to the whole of the period before the person turns 16 or 1 or more parts of that whole period.

“89I Grant of exemption under this subpart

- “(1) The Commissioner must, as soon as practicable after receiving an application for an exemption under this subpart in respect of a liable person, exempt the person from the payment of financial support under this Act for a period or periods if the Commissioner is satisfied that—
- “(a) the application is made in accordance with **section 89H**; and

- “(b) the estimates of income provided with the application are fair and reasonable; and
 - “(c) the person is eligible for an exemption under this subpart in relation to that period or those periods; and
 - “(d) the exemption is not prevented from applying to that period or those periods in accordance with **section 89F or section 89G**.
- “(2) In deciding under **subsection (1)** whether to grant an exemption to a person in relation to a future period, the Commissioner may act on the basis—
- “(a) that the person’s income in that future period will be in accordance with the estimates provided in or with the application if the Commissioner is satisfied that the estimates are fair and reasonable; and
 - “(b) of any other assumptions as to future events that, in the opinion of the Commissioner, are reasonable in the circumstances of the case.
- “89J **Exempted person not entitled to refund**
- “(1) In this section, **exemption excess** means any amount of financial support paid to the Commissioner in relation to a person’s liability for a period or periods for which the person has been granted an exemption under this subpart.
- “(2) A person who has been granted an exemption under this subpart—
- “(a) is not entitled to a refund of the exemption excess; and
 - “(b) is not entitled to recover the exemption excess from the payee under section 207.
- “(3) Nothing in sections 216 to **216D** applies in relation to the exemption excess.
- “(4) The Commissioner must, as soon as practicable after granting an exemption under this subpart, take the action that is necessary to—
- “(a) give effect to **subsection (2)(a)**; and
 - “(b) ensure that a refund of the exemption excess is not paid, and does not become payable, to the person concerned.
- “(5) The Commissioner’s power to take action under **subsection (4)** includes, without limitation, the power to do any of the following:
- “(a) apply the exemption excess (in whole or in part) to any unpaid financial support, unpaid penalty, or other

charge imposed under this Act in relation to the person concerned:

- “(b) hold the exemption excess (in whole or in part) and apply the amount held at some future time to a liability of the person concerned to make further payments of financial support:
- “(c) amend any assessment.

“Subpart 3—Determinations in relation to exemptions for hospital patients, prisoners, and persons under 16 years

“89K **Commissioner may make determinations in relation to exemptions**

- “(1) The Commissioner may, in accordance with this subpart, make a determination having the effect that a specified exemption does not apply, or ceases to apply, in relation to the whole or a part of a period for which it was granted.
- “(2) The Commissioner may, in accordance with this subpart, make a determination having the effect that all or some of the provisions of this Act relating to formula assessment of child support will be departed from in relation to a child if the Commissioner has made, or intends to make, a determination under **subsection (1)**.
- “(3) For the purposes of this subpart, **specified exemption** means—
 - “(a) an exemption granted under **subpart 2**:
 - “(b) an exemption granted under section 74 (as in force immediately before the commencement of this section).

“89L **Application for determination**

- “(1) A payee may, by written application, ask the Commissioner to make a determination under this subpart.
- “(2) An application under this section must set out the grounds on which the application is made.
- “(3) The parties to the application are the liable person and the payee.

“89M Determination that exemption does not apply or ceases to apply or determination confirming exemption

- “(1) Subject to this subpart, the Commissioner may make a determination that a specified exemption does not apply, or ceases to apply, in relation to the whole or a part of a period for which it was granted if—
- “(a) an application is made to the Commissioner under **section 89L**; and
 - “(b) the Commissioner is satisfied that the application in relation to the payee, the child, or both of the provisions of this Act relating to that exemption would result in an unjust and inequitable determination of the level of financial support to be provided by the liable person because of the income, earning capacity, property, and financial resources of the liable person.
- “(2) If the Commissioner makes a determination under **subsection (1)** that a specified exemption does not apply, or ceases to apply, in relation to the whole or a part of a period for which it was granted, the liable person is liable to pay in relation to that whole or part of a period—
- “(a) the amount of financial support that would otherwise have been payable but for the granting of the specified exemption; or
 - “(b) the amount of financial support determined in accordance with **section 89N**.
- “(3) The following provisions apply, with necessary modifications, as if a determination under **subsection (1)** were an order:
- “(a) section 106(4) (which relates to the period of time in which orders apply or when orders terminate):
 - “(b) section 107 (which relates to implementation of orders):
 - “(c) section 119(1)(a) (which relates to the cessation of orders).
- “(4) The Commissioner may make a determination confirming that the specified exemption continues to apply to the whole or a part of a period for which it was granted if the Commissioner does not make a determination under **subsection (1)** in relation to that whole or part of a period.

- “89N Determination that provisions of Act relating to formula assessment of child support will be departed from**
- “(1) Subject to this subpart, the Commissioner may make a determination that all or some of the provisions of this Act relating to formula assessment of child support will be departed from in relation to a child if—
- “(a) the Commissioner has made, or intends to make, a determination under **section 89M**; and
 - “(b) the Commissioner is satisfied that—
 - “(i) the application in relation to the qualifying custodian, the child, or both of the provisions of this Act relating to formula assessment of child support would result in an unjust and inequitable determination of the level of financial support to be provided by the liable parent for the child because of the income, earning capacity, property, and financial resources of the liable parent; and
 - “(ii) a determination under this section would be—
 - “(A) just and equitable as regards the child, the qualifying custodian, and the liable parent; and
 - “(B) otherwise proper.
- “(2) Section 105(4) to (6) applies to the Commissioner in the exercise of his or her powers under this section as if—
- “(a) any reference in those subsections to the Court were a reference to the Commissioner; and
 - “(b) any reference in those subsections to an order were a reference to a determination under this section.
- “(3) The Commissioner may make as a determination under this section any decision that the Court could make as an order under section 106(1), and the following provisions apply, with necessary modifications, as if a determination under this section were an order:
- “(a) section 98 (which sets the minimum liability in respect of child support):
 - “(b) section 106(2) to (4) (which relates to the orders that may be made):
 - “(c) section 107 (which relates to implementation of orders):

“(d) section 119(1)(a) (which relates to the cessation of orders).

“89O Reasons for determination

“(1) The Commissioner must give both parties, in writing, the reasons for making a determination under this subpart.

“(2) A contravention of **subsection (1)** in relation to a determination does not affect the validity of the determination.

“89P Commissioner may refuse to make determination because issues too complex

“(1) If the Commissioner is satisfied, at any time after considering an application under this subpart, that the issues raised by the application are too complex to be dealt with under this subpart, the Commissioner may refuse to make the determination without taking any further action under this subpart.

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

“89Q Application disclosing no grounds for making determination: how dealt with

“(1) If the Commissioner is satisfied, after considering an application under this subpart, that there are no grounds for making a determination under this subpart, the Commissioner may refuse to make the determination without taking any further action under this subpart.

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

“89R Other party to be notified

“(1) The Commissioner must notify the other party to the application under this subpart—

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

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

“(c) that he or she may make any representation (in this subpart called a **reply**) regarding the application that he or she considers relevant.

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- “(2) Any reply to an application must—
- “(a) be in writing; and
 - “(b) be filed with the Commissioner—
 - “(i) within 14 days after the date on which the copy of the application and accompanying documentation is sent to the other party; or
 - “(ii) if no request is made for a copy of the application, within 14 days after the date on which the notification is sent.
- “(3) The Commissioner must send a copy of the reply and any accompanying documentation to the applicant.
- “(4) Nothing in this section applies if the Commissioner refuses to make a determination under **section 89P or section 89Q or section 89U**.

“89S Procedure for dealing with application

- “(1) In making a decision under this subpart in relation to an application, the Commissioner—
- “(a) may act on the basis of the application and the reply (if any) and any other information in the Commissioner’s possession; and
 - “(b) may, but (subject to **subsection (2)**) is not required to, conduct any enquiries or investigations into the matter.
- “(2) The Commissioner must give an opportunity to the applicant and the other party to the application to be heard by the Commissioner if they so wish.
- “(3) Nothing in **subsection (2)**—
- “(a) empowers the Commissioner to compel a party to an application to appear before the Commissioner in the presence of the other party; or
 - “(b) applies if the Commissioner refuses to make a determination under **section 89P or section 89Q or section 89U**.
- “(4) Despite **subsection (2)**, if the other party to the application fails to file a reply or does not file a reply within the prescribed time, the Commissioner may refuse to hear that party.
- “(5) Any hearing before the Commissioner, and any enquiry or investigation carried out by the Commissioner, is to be carried out as the Commissioner thinks fit and the Commissioner is not bound by any rules of evidence.

“(6) Nothing in section 125 (which relates to intervention in proceedings) applies to proceedings under this subpart.

“89T **Circumstances in which representation or assistance at hearing may be approved**

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

“(a) the liable person:

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

“(c) a minor, or other person under disability:

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

“(2) No other party is entitled to be represented at a hearing by a representative unless it appears to the Commissioner to be proper in all the circumstances to so allow, and the Commissioner approves the representative.

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

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

“(5) No person approved by the Commissioner under **subsection (4)** is entitled to be heard at the hearing, and the Commissioner may exclude the person from the hearing at any time.

“(6) The Commissioner must not approve as a representative under **subsection (1) or subsection (2)**, or approve under **subsection (4)**, any person who is, or has been, enrolled as a barrister and solicitor, or who, in the opinion of the Commissioner is, or has been, regularly engaged in advocacy work before other tribunals.

“(7) If the Commissioner approves any person under **subsection (1) or subsection (2) or subsection (4)**, the Commissioner may impose in respect of the appointment or approval any conditions that the Commissioner considers necessary to ensure that any

other party to the proceedings is not substantially disadvantaged by that appointment or approval.

“89U Subsequent applications

- “(1) If a determination has been made under this subpart in respect of an exemption, another application may be made under this subpart in respect of that exemption only if the Commissioner, in his or her discretion, is satisfied, after considering the matters referred to in **subsection (2)**, that a new matter has been submitted in support of the application that was not submitted in support of the previous application.
- “(2) The matters to be considered are—
- “(a) the current application and any accompanying documentation; and
 - “(b) the previous application and any accompanying documentation and any matter taken into account by the Commissioner in considering the previous application.
- “(3) If the Commissioner is not satisfied of the matter referred to in **subsection (1)**, the Commissioner may refuse to make a determination, without taking any further action under this subpart.
- “(4) The Commissioner must give the applicant, in writing, the reasons for refusing to make the determination.

“89V Effect of pending applications

The fact that an application is made by any person under this subpart does not suspend, interfere with, or affect the application of the specified exemption concerned.

“89W Commencement of determinations

The Commissioner may, under this subpart, make a determination expressed to be retrospective to any day that the Commissioner considers appropriate, not being a day that precedes the start of the period of exemption.

“89X Restriction of publication of reports

- “(1) Section 124 (which restricts the publication of reports) applies to reports of any proceeding in respect of any application made under this subpart as if the reference to the leave of the Court that heard the proceedings was a reference to the leave of a Family Court.

- “(2) Nothing in section 81 of the Tax Administration Act 1994 prevents the publication of a report of a proceeding under this subpart—
- “(a) with the leave of a Family Court; or
 - “(b) in accordance with section 124(4) (as applied by **subsection (1)**).

“Subpart 4—Exemption for victims of sex offences

“89Y **Application for exemption on grounds relating to sex offence**

- “(1) A liable parent may, by notice in writing to the Commissioner, apply for an exemption from the payment of child support in relation to a particular child if—
- “(a) either—
 - “(i) another person has been convicted of a sex offence; or
 - “(ii) another person has been proved to have committed a sex offence before a Youth Court; and
 - “(b) the liable parent is the victim of that sex offence; and
 - “(c) the liable parent believes that the child was conceived as a result of that sex offence.
- “(2) For the purposes of this subpart,—
- “**sex offence** means an offence under sections 127 to 144C of the Crimes Act 1961
 - “**victim** means, in relation to a sex offence, the person against whom the offence is committed by another person.

“89Z **Grant of exemption to victim of sex offence**

- “(1) The Commissioner must, as soon as practicable after receiving an application under **section 89Y** in respect of a liable parent and a particular child, exempt the person from the payment of child support in relation to that child if—
- “(a) the application is made in accordance with that section; and
 - “(b) the Commissioner is satisfied that the liable parent is a victim of a sex offence; and
 - “(c) the Commissioner is satisfied that either—
 - “(i) another person has been convicted of that sex offence; or
 - “(ii) another person has been proved to have committed that sex offence before a Youth Court; and

- “(d) in the opinion of the Commissioner, it is likely that the child was conceived as a result of that sex offence.
- “(2) If the Commissioner grants an exemption under **subsection (1)**, the period of exemption commences on the day on which the Commissioner received the application for the exemption.
- “(3) However, the period of exemption commences on the day on which the Commissioner accepts an application for formula assessment of child support under section 17(1) in relation to the child if—
- “(a) that application for formula assessment was made on or after the day on which the person referred to in **subsection (1)(c)** was convicted of the sex offence or was proved to have committed the sex offence before a Youth Court; and
- “(b) the liable parent made the application for the exemption under this subpart within 28 days after the date on which notice of the decision under section 17(1) was given by the Commissioner to the liable parent.
- “(4) The Commissioner may, for the purpose of determining whether a person is eligible for an exemption under this section, obtain information from the Ministry of Justice, the New Zealand Police, or both in accordance with **section 85H** of the Tax Administration Act 1994.

“89ZA **Exemption is void if conviction quashed or finding is reversed or set aside**

- “(1) An exemption granted under **section 89Z(1)** is void from the beginning if,—
- “(a) in the case of an application that is based on a conviction for a sex offence, that conviction is quashed on appeal; or
- “(b) in the case of an application that is based on a finding of a Youth Court that a sex offence has been proved to have been committed, that finding is reversed or set aside.
- “(2) **Subsection (1)** does not prevent a liable parent from making a new application under **section 89Y** if, in the case of a conviction that is quashed,—
- “(a) a court has directed a retrial in relation to the matter; and

- “(b) a person has subsequently been convicted of the sex offence.
- “(3) If, following that new application, an exemption is granted under **section 89Z(1)**,—
- “(a) the exemption commences on the date of conviction in relation to the retrial if the new application is received within 28 days after the date of conviction in relation to the retrial; or
- “(b) in any other case, the exemption commences on the date the Commissioner received the new application for the exemption.

“Subpart 5—Miscellaneous provisions
concerning exemptions

“89ZB **Commissioner must give effect to exemption and may take changes into account**

- “(1) The Commissioner must, as soon as practicable after granting an exemption under this Part, take the action that is necessary to give effect to the exemption (whether by revoking any assessment or otherwise).
- “(2) The Commissioner must, as soon as practicable after being notified or otherwise becoming aware that an exemption under this Part does not apply for the whole or a part of a period for which the exemption was granted, take the action that is necessary to take that matter into account (whether by issuing or amending any assessment, amending any exemption, or otherwise).
- “(3) **Subsection (4)** applies if 1 or more of the following applies:
- “(a) the Commissioner has acted under **section 89I(2)** and the Commissioner is no longer satisfied that the estimates referred to in **section 89I(2)(a)** are fair and reasonable:
- “(b) the Commissioner has acted under **section 89I(2)** and the Commissioner is no longer satisfied that the assumptions referred to in **section 89I(2)(b)** are reasonable in the circumstances of the case:
- “(c) an exempted person’s income is not in accordance with the estimates provided in or with the application for the exemption.
- “(4) The Commissioner may take the action that is necessary to take the matters referred to in **subsection (3)** into account

(whether by issuing or amending any assessment, amending any exemption, or otherwise).

- “(5) The Commissioner’s power to take action under **subsections (2) and (4)** includes, without limitation, the power to amend the period or periods for which an exemption was granted (whether that period or those periods are before or after the time that the Commissioner takes the action) in order to ensure that—
- “(a) the exemption is granted for a period or periods in relation to which the exempted person is eligible for the exemption; and
 - “(b) the exemption is not granted for any period in relation to which the exemption must not apply in accordance with this Part.
- “(6) Nothing in this section limits the powers of the Commissioner under sections 86 and 87.

“89ZC **Exempted person must advise Commissioner of certain matters**

- “(1) This section applies if an exempted person—
- “(a) receives any income that affects the application of the exemption in relation to the whole or a part of a period for which the exemption has been granted; or
 - “(b) receives more income than was disclosed in the estimates provided in or with the application for the exemption; or
 - “(c) otherwise becomes aware that an exemption does not apply for the whole or a part of a period for which the exemption has been granted.
- “(2) The person must, as soon as practicable, notify the Commissioner of the matters referred to in **subsection (1)**.

“89ZD **Liable person liable for payment of financial support for parts of child support year to which exemption does not apply**

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

“89ZE Applications by agents

- “(1) A person who may apply for an exemption under this Part may do so by an agent authorised in writing by that person.
- “(2) If a person is incapable of authorising an agent under **subsection (1)** to make an application on that person’s behalf,—
- “(a) the manager of that person’s estate under the Protection of Personal and Property Rights Act 1988 may make the application; or
- “(b) if there is no manager under **paragraph (a)**, the next friend of the person may make the application.”
- (2) **Subparts 1, 2, 4, and 5 of Part 5A** of the principal Act (as inserted by this section) apply to applications for exemptions from the payment of financial support under the principal Act received by the Commissioner on or after the commencement of this section (regardless of whether or not a period of exemption under **subpart 2 of Part 5A** of the principal Act occurs before or after that date).
- (3) **Subsection (2)** does not limit **section 89H or section 89I or section 89Z** of the principal Act.

18 Objections to appealable decisions

Section 90(1)(i) of the principal Act is amended by omitting the words “section 74(1) of this Act”, and substituting the words “**section 89I or section 89Z**”.

19 Heading to Part 6A amended

The principal Act is amended by adding to the heading to Part 6A the words “**initiated by liable parent or qualifying custodian**”.

20 Determinations that may be made

Section 96D(1) of the principal Act is amended by adding the following paragraph:

“(d) section 119(1)(a) (which relates to the cessation of orders).”

21 Other party to be notified

Section 96H(4) of the principal Act is amended by omitting the expression “96L(2)”, and substituting the expression “**96L(5)**”.

22 Procedure for dealing with application

Section 96I(3)(b) of the principal Act is amended by omitting the expression “96L(2)”, and substituting the expression “**96L(5)**”.

23 New section 96L substituted

The principal Act is amended by repealing section 96L, and substituting the following section:

“96L Subsequent applications

“(1) This section applies to a formula assessment of child support if—

“(a) a determination has been made in connection with that formula assessment under this Part or **Part 6B**; or

“(b) an appeal has been heard by a Family Court under **section 103B or section 103C** in connection with that formula assessment; or

“(c) an application has been heard by a Family Court under section 104 in connection with that formula assessment.

“(2) An application may be made under this Part in connection with a formula assessment to which this section applies only if the Commissioner is satisfied, in his or her discretion, after considering the matters referred to in **subsection (3)**, that either—

“(a) a new matter has been submitted in support of that application that was not considered in relation to the previous application, determination, or appeal; or

“(b) the application is made on a ground for departing from the formula assessment that is different from the ground or grounds that were considered in relation to the previous application, determination, or appeal.

“(3) The matters to be considered are—

“(a) the current application and any accompanying documentation; and

“(b) any matter taken into account by the Commissioner or the Court in the course of considering the previous application, determination, or appeal.

“(4) The Commissioner is required to take into account the matters specified in **subsection (3)** only to the extent that the Commissioner has knowledge of those matters.

“(5) If the Commissioner is not satisfied of the matters of which the Commissioner is required to be satisfied under this

section, the Commissioner may refuse to make a determination without taking any further action under this Part.

“(6) The Commissioner must give the applicant, in writing, the reasons for refusing to make the determination.”

24 New Part 6B inserted

The principal Act is amended by inserting, after Part 6A, the following Part:

“Part 6B

“Departure from formula assessment of child support initiated by Commissioner

“96Q Commissioner may make determination under this Part

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

“(2) The parties to proceedings under this Part are—

“(a) the liable parent; and

“(b) the qualifying custodian if he or she elects to become a party under **section 96Y**.

“96R Matters that Commissioner must be satisfied of before making determination

“(1) Subject to this Part, the Commissioner may make a determination under this Part if the Commissioner is satisfied that,—

“(a) by virtue of special circumstances, application in relation to the child of the provisions of this Act relating to formula assessment of child support would result in an unjust and inequitable determination of the level of child support to be provided by the liable parent for the child because of the income, earning capacity, property, and financial resources of either parent or the child; and

“(b) a determination under this Part would be—

“(i) just and equitable as regards the child, the qualifying custodian, and the liable parent; and

“(ii) otherwise proper.

“(2) Section 105(4) to (6) applies to the Commissioner in the exercise of his or her powers under this section as if—

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

“(b) any reference in those subsections to an order were a reference to a determination under this Part.

“96S Commissioner may make preliminary enquiries

“(1) The Commissioner may conduct a preliminary enquiry or investigation with a view to considering whether a determination under this Part may be appropriate.

“(2) For the purposes of this section, the Commissioner—

“(a) may act on the basis of any information in the Commissioner’s possession; and

“(b) may make any enquiries or investigations the Commissioner considers necessary.

“96T Notice to liable parent giving chance to respond

If the Commissioner is satisfied that there are reasonable grounds to believe that a determination under this Part may be appropriate, the Commissioner must—

“(a) notify the liable parent; and

“(b) send to the liable parent a statement of reasons as to why the Commissioner is satisfied that a determination under this Part may be appropriate; and

“(c) notify the liable parent that he or she may make a written response.

“96U Written response by liable parent

“(1) A liable parent may respond in writing to a notification by the Commissioner under **section 96T**.

“(2) A written response under this section must be—

“(a) made to the Commissioner in a manner specified by the Commissioner; and

“(b) filed with the Commissioner within 28 days after the date the liable parent is sent notification under **section 96T**.

“96V Decision by Commissioner to start proceedings under this Part

As soon as practicable after the expiry of the period referred to in **section 96U(2)(b)**, the Commissioner must—

“(a) consider any written response filed by the liable parent; and

“(b) decide whether to start proceedings under this Part.

“96W Commissioner to notify liable parent

- “(1) The Commissioner must notify the liable parent, in writing, as to whether the Commissioner has decided to start proceedings under this Part.
- “(2) If the Commissioner decides to start proceedings under this Part, the Commissioner must also—
- “(a) notify the liable parent of the rights of the liable parent and of the qualifying custodian (if the qualifying custodian elects to become a party under **section 96Y**) to make written representations and receive information in accordance with **section 96Z**; and
 - “(b) provide the liable parent with a summary of the information on which the Commissioner has based his or her decision.

“96X Commissioner to notify qualifying custodian

If the Commissioner decides to start proceedings under this Part, the Commissioner must notify the qualifying custodian, in writing, of—

- “(a) the Commissioner’s decision; and
- “(b) the qualifying custodian’s rights of election under **section 96Y**; and
- “(c) the rights of the liable parent and of the qualifying custodian (if the qualifying custodian elects to become a party under **section 96Y**) to make written representations and receive information in accordance with **section 96Z**.

“96Y Election by qualifying custodian to become party or discontinue proceedings

- “(1) The qualifying custodian may elect to become a party to proceedings before the Commissioner under this Part.
- “(2) The qualifying custodian may,—
- “(a) if he or she is not in receipt of a social security benefit, elect that the Commissioner discontinue proceedings under this Part in relation to formula assessment of child support that will become payable; and
 - “(b) if he or she was not in receipt of a social security benefit when child support was payable in relation to a particular period under a formula assessment, elect that the Commissioner discontinue proceedings under this Part

in relation to formula assessment of child support payable in relation to that period.

- “(3) If a qualifying custodian makes an election under **subsection (1) or subsection (2)**, the election must be—
- “(a) in writing; and
 - “(b) filed with the Commissioner within 14 days after the date on which the Commissioner sends notification to the qualifying custodian under **section 96X**.
- “(4) The Commissioner must inform the liable parent of any election made by the qualifying custodian under this section as soon as practicable after it is filed with the Commissioner.
- “(5) A qualifying custodian may become a party to proceedings under this Part only in accordance with this section.
- “(6) If a qualifying custodian makes an election under **subsection (2)** to discontinue proceedings in relation to formula assessment of child support that was or will become payable, the Commissioner must discontinue the proceedings that relate to formula assessment of that child support in accordance with the election.

“96Z **Written representations by liable parent or qualifying custodian**

- “(1) A liable parent, and a qualifying custodian who elects to become a party under **section 96Y**, may each make written representations as to whether the grounds for a determination under this Part exist.
- “(2) Any written representations made by a liable parent or qualifying custodian in proceedings under this Part must be—
- “(a) made to the Commissioner in a manner specified by the Commissioner; and
 - “(b) filed with the Commissioner,—
 - “(i) in the case of a liable parent, within 14 days after the date on which the liable parent is sent notification under **section 96W**; and
 - “(ii) in the case of a qualifying custodian, within 14 days after the date on which the qualifying custodian is sent notification under **section 96X**.
- “(3) A liable parent is entitled to receive a copy of any written representations (and any accompanying documentation) that

the qualifying custodian provides to the Commissioner under this section.

- “(4) A qualifying custodian who elects to become a party in accordance with **section 96Y** is entitled to receive a copy of any written representations (and any accompanying documentation) that the liable parent provides to the Commissioner under this section if those representations are provided to the Commissioner after the liable parent is sent notification under **section 96W**.
- “(5) For the purposes of this Part, a qualifying custodian is not entitled to any information relating to the liable parent that is in the Commissioner’s possession other than information that came into the Commissioner’s possession in the course of proceedings under this Part after those proceedings are started under **section 96V**.

“**96ZA Procedure for making determination**

- “(1) In making a determination under this Part, the Commissioner—
- “(a) may act on the basis of any information in the Commissioner’s possession; and
 - “(b) may, but (subject to **subsection (2)**) is not required to, conduct any enquiries or investigations into the matter.
- “(2) The Commissioner must give an opportunity to the liable parent and to the qualifying custodian (if that person is a party to the proceedings) to appear before the Commissioner and be heard by him or her, if they so wish.
- “(3) Nothing in **subsection (2)**—
- “(a) empowers the Commissioner to compel a party to appear before the Commissioner in the presence of the other party; or
 - “(b) applies if the Commissioner refuses to make a determination under **section 96ZC**.
- “(4) Despite **subsection (2)**, if a qualifying custodian who elects to become a party in accordance with **section 96Y** fails to file any written representations within the prescribed time, the Commissioner may refuse to hear that person.

- “(5) Any hearing before the Commissioner, and any enquiry or investigation carried out by the Commissioner, must be carried out as the Commissioner thinks fit and the Commissioner is not bound by any rules of evidence.
- “(6) Nothing in section 125 (which relates to intervention in proceedings) applies to proceedings under this Part.

“96ZB Determinations that may be made

- “(1) The Commissioner may make as a determination under this Part any decision that the Court could make as an order under section 106(1), and the following provisions apply, with necessary modifications, as if a determination were an order:
- “(a) section 98 (which sets the minimum liability in respect of child support):
 - “(b) section 106(2) to (4) (which relates to the orders that may be made):
 - “(c) section 107 (which relates to implementation of orders):
 - “(d) section 119(1)(a) (which relates to cessation of orders).
- “(2) The Commissioner must, in writing, give reasons for making the determination (including the reasons why the Commissioner is satisfied, in accordance with **section 96R**, that a determination should be made) to—
- “(a) the liable parent; and
 - “(b) the qualifying custodian if the qualifying custodian has elected to become a party in accordance with **section 96Y**.
- “(3) A contravention of **subsection (2)** in relation to a determination does not affect the validity of the determination.

“96ZC Commissioner may refuse to make determination because issues too complex

- “(1) If the Commissioner is satisfied, at any time after starting proceedings under this Part, that the matters in issue are too complex to be dealt with under this Part, the Commissioner may refuse to make the determination without taking any further action under this Part.
- “(2) The Commissioner must give the qualifying custodian and the liable parent the reasons, in writing, for refusing to make the determination.

“(3) The Commissioner may recommend that the qualifying custodian make an application to the Court for an order under section 104.

“96ZD **Effect of pending proceedings under this Part**

The fact that the Commissioner has started proceedings under this Part does not suspend, interfere with, or affect—

- “(a) any formula assessment made in relation to the liable parent; or
- “(b) the obligation to pay child support; or
- “(c) the right of the Commissioner to receive and recover child support.

“96ZE **Commencement of determinations**

The Commissioner may, under this Part, make a determination expressed to be retrospective to any day that the Commissioner considers appropriate, not being a day that precedes the commencement of this section.

“96ZF **Restriction of publication of reports**

“(1) Section 124 (which restricts publication of reports) applies to any reports of any proceedings under this Part as if the reference to the leave of the Court that heard the proceedings was a reference to the leave of a Family Court.

“(2) Nothing in section 81 of the Tax Administration Act 1994 prevents the publication of a report of a proceeding under this Part—

- “(a) with the leave of a Family Court; or
- “(b) in accordance with section 124(4) (as applied by **subsection (1)**).

“96ZG **Application of certain provisions in Part 6A to proceedings under this Part**

The following provisions of Part 6A apply to proceedings under this Part, with necessary modifications, as if any reference to an application in those sections were a reference to proceedings under this Part:

- “(a) section 96J (which relates to circumstances in which representation or assistance at a hearing may be approved);

“(b) section 96K (which relates to the effect of a child support agreement entered into before a determination is made).”

25 New sections 103A to 103E inserted

The principal Act is amended by inserting, after section 103, the following heading and sections:

“Appeals in relation to determinations

“103A Appeal in relation to determination or decision under subpart 3 of Part 5A

“(1) A payee or a liable person may appeal to a Family Court against—

“(a) a determination made by the Commissioner under **subpart 3 of Part 5A**; or

“(b) a decision made under that subpart to refuse to make a determination.

“(2) An appeal under this section must be lodged within—

“(a) 2 months after the date on which the determination or decision is made; or

“(b) any further time that a Family Court may allow on application made before or after the expiration of that period.

“(3) The parties to an appeal are—

“(a) the appellant; and

“(b) the other party to the proceedings before the Commissioner resulting in the determination or decision; and

“(c) the Commissioner.

“(4) An appeal under this section is by way of rehearing.

“103B Appeal by respondent from determination under Part 6A

“(1) A qualifying custodian may appeal to a Family Court against a determination made by the Commissioner under Part 6A if the qualifying custodian is not the person who made the application for the determination under section 96B.

“(2) A liable parent may appeal to a Family Court against a determination made by the Commissioner under Part 6A if the liable parent is not the person who made the application for the determination under section 96B.

- “(3) An appeal under this section must be lodged within—
- “(a) 2 months after the date on which the determination is made; or
 - “(b) any further time that a Family Court may allow on application made before or after the expiration of that period.
- “(4) The parties to an appeal are, subject to section 125,—
- “(a) the appellant; and
 - “(b) the other party to the proceedings under Part 6A.
- “(5) An appeal under this section is by way of rehearing.

“**103C Appeal from determination under Part 6B**

- “(1) A qualifying custodian or a liable parent may appeal to a Family Court against a determination made by the Commissioner under **Part 6B**.
- “(2) An appeal under this section must be lodged within—
- “(a) 2 months after the date on which the determination is made; or
 - “(b) any further time that a Family Court may allow on application made before or after the expiration of that period.
- “(3) The parties to an appeal are—
- “(a) the appellant; and
 - “(b) the other party (if any) to the proceedings before the Commissioner resulting in the determination; and
 - “(c) the Commissioner.
- “(4) An appeal under this section is by way of rehearing.

“**103D Powers of Family Court on appeal**

- “(1) In determining an appeal under any of **sections 103A to 103C**, a Family Court may—
- “(a) confirm, modify, or reverse any determination or decision appealed against (in whole or in part);
 - “(b) make any decision that the Commissioner could have made in respect of the determination or decision appealed against;
 - “(c) exercise any of the powers that could have been exercised by the Commissioner.

- “(2) Without limiting **subsection (1)**,—
- “(a) in reversing a decision or part of a decision, a Family Court may make an order that the provisions of this Act relating to the formula assessment of child support should not be departed from:
- “(b) in reversing a decision made under **subpart 3 of Part 5A** to refuse to make a determination, a Family Court may exercise any of the powers that could have been exercised by the Commissioner to make a determination under that subpart.
- “(3) An order under this section may make different provision in relation to different child support years and in relation to different parts of a child support year.
- “(4) Subject to section 98(2), an order made under this section does not operate so as to increase or reduce the amount of child support payable in relation to any child to whom the order does not apply, and the child support payable in relation to any child to whom the order does not apply must be calculated as if the order had not been made.
- “(5) Every order made under this section must specify the period of time in which the order is to apply or specify the event the occurrence of which will cause the order to terminate.

“103E **Implementation of orders**

- “(1) When a decision of a Family Court making an order in determination of an appeal under **section 103D** becomes final, the Commissioner must, as soon as practicable, take the action necessary to give effect to the decision in relation to any—
- “(a) formula assessment that has been made in relation to the child, the qualifying custodian, and the liable parent concerned (whether by amending the assessment or otherwise); or
- “(b) exemption granted under this Act in relation to the payee and the liable person concerned (whether by amending an assessment or otherwise).
- “(2) Subject to **subsection (3)**, in subsequently making an assessment in relation to the child, the payee, and the liable person concerned while the order is in force, the Commissioner must act on the basis of the provisions of this Act as modified by the order.

- “(3) Despite **subsection (2)**, if the Commissioner becomes aware of a change in circumstances which, had that change occurred before the making of that order, could reasonably be expected to have resulted in the order being different from that which was made, the Commissioner may—
- “(a) amend an existing formula assessment in relation to the child, the qualifying custodian, and the liable parent concerned to reflect that change in any manner that the Commissioner considers appropriate; or
 - “(b) in subsequently making a formula assessment in relation to the child, the qualifying custodian, and the liable parent concerned while the order is in force, act on the basis of the provisions of this Act as modified to reflect the tenor of the order and the change in circumstances that has occurred since the order was made.”

26 Application for departure from formula assessment in special circumstances

- (1) Section 104(2)(b)(i) of the principal Act is amended by adding the words “and the person who applies under this section is the person who applied for that determination”.
- (2) Section 104(2)(b)(ii) of the principal Act is amended by omitting the words “that Part”, and substituting the expression “Part 6A”.
- (3) Section 104(2)(b) of the principal Act is amended by inserting, after subparagraph (ii), the following subparagraph:
 - “(iia) the Commissioner has refused to make a determination under **Part 6B** in relation to the matter after having commenced proceedings under that Part; or”.

27 Application for order for provision of child support in form of lump sum

Section 108 of the principal Act is amended by repealing subsection (3), and substituting the following subsection:

- “(3) A Family Court may not hear the application until the following applications, proceedings, or appeals that are still pending have been heard and determined:
- “(a) an application to the Commissioner under **subpart 3 of Part 5A**;
 - “(b) an application to the Commissioner under section 96B:

- “(c) proceedings started by the Commissioner under **section 96V**:
- “(d) an application to the Court under section 104:
- “(e) an appeal under any of **sections 103A to 103C**.”

28 Orders for provision of child support in form of lump sum

Section 109(3)(aa) of the principal Act is amended by omitting the words “Part 6A of this Act”, and substituting the words “**Part 5A** or Part 6A or **Part 6B**”.

29 Discharge, suspension, revival, and variation of orders

- (1) Section 112(1) of the principal Act is amended by inserting, after the word “under”, the words “**section 103D** or”.
- (2) Section 112(2) of the principal Act is amended by inserting, after the words “If an order under”, the words “**section 103D** or”.

30 Pending appeal or application not to affect assessment

Section 115(1) of the principal Act is amended by omitting the words “section 103 of this Act,”, and substituting the words “section 103 or **section 103A** or **section 103B** or **section 103C**,”.

31 Cessation of orders under Act

Section 119(1) of the principal Act is amended by inserting, before paragraph (a), the following paragraph:

- “(aa) in the case of an order made under **section 103D**, on the expiry of the order in accordance with **section 103D(5)**.”.

32 New sections 135 to 135O substituted

- (1) The principal Act is amended by repealing sections 135 to 135B, and substituting the following headings and sections:

“Interpretation provision relating to relief from penalties

“135 Interpretation for purposes of sections 135A to 135O

For the purposes of **sections 135A to 135O**, unless the context otherwise requires,—

“**incremental penalty** means a penalty that is imposed under section 134(1)(b) or (c)

“**initial late payment penalty** means a penalty that is imposed under section 134(1)(a)

“**penalty** means a penalty that is imposed under section 134.

“Discretionary relief in respect of penalties

“135A **Application of sections 135B to 135G**

- “(1) **Sections 135B to 135G** apply in relation to a penalty that is payable by a liable person in relation to a financial support debt.
- “(2) The Commissioner may grant relief to a liable person on any of the grounds specified in **sections 135B to 135G** by—
- “(a) writing off the whole or part of a penalty; or
 - “(b) if a penalty has been paid, in whole or in part, refunding to the liable person the whole or any part of that penalty that has been paid, with or without the writing off of any part of that penalty that has not been paid.

“135B **Discretionary relief if reasonable cause**

- “(1) The Commissioner may grant relief to a liable person in the manner prescribed by **section 135A** if the Commissioner is satisfied that—
- “(a) there was a reasonable cause for the delay in payment of the debt to which a penalty relates; and
 - “(b) the liable person remedied the default as soon as practicable.
- “(2) For the purposes of this section, **reasonable cause** means an event or circumstance in relation to a liable person that—
- “(a) is beyond the control of the liable person, including a serious illness, an accident, or a disaster; and
 - “(b) caused, in the opinion of the Commissioner, a reasonable delay in the payment of a financial support debt by the liable person.

“135C **Discretionary relief if failure of another person to make deduction**

The Commissioner may grant relief to a liable person in the manner prescribed by **section 135A** if the Commissioner is satisfied that—

- “(a) the circumstances that contributed to the delay in the payment of the debt to which a penalty relates were due to, or caused directly or indirectly by, the failure of any person to make a deduction under Part 10; and

- “(b) the liable person has taken reasonable action to mitigate, or mitigate the effects of, those circumstances; and
- “(c) having regard to the nature of those circumstances, it would be fair and reasonable to grant relief.

“135D Discretionary relief if honest oversight by liable person with no history of default

The Commissioner may grant relief to a liable person in the manner prescribed by **section 135A** if the Commissioner is satisfied that—

- “(a) the delay in payment of the debt to which a penalty relates is due to an honest oversight by the liable person; and
- “(b) the liable person has no history of default in previous payments of financial support; and
- “(c) the liable person paid the debt as soon as he or she became aware of the oversight.

“135E Discretionary relief if error made by Department

The Commissioner may grant relief to a liable person in the manner prescribed by **section 135A** if the Commissioner is satisfied that—

- “(a) the delay in payment of the debt to which a penalty relates was due to an error made by an officer of the Department; and
- “(b) the liable person has acted in good faith and has altered his or her position in reliance on the error; and
- “(c) having regard to the circumstances of the case, it would be fair and reasonable to grant relief.

“135F Discretionary relief if debt uplifted

The Commissioner may grant relief to a liable person in the manner prescribed by **section 135A** if the Commissioner is satisfied that—

- “(a) the payee has uplifted the debt to which the penalty relates under section 180; and
- “(b) it would be fair and reasonable to grant relief.

“135G Discretionary relief for residual incremental penalty debt

- “(1) The Commissioner may grant relief to a liable person from the payment of incremental penalties in the manner prescribed by **section 135A** if—
- “(a) the liable person has paid all of the financial support debt and initial late payment penalties to which the incremental penalties relate; and
 - “(b) the Commissioner is satisfied that recovery of the incremental penalties—
 - “(i) would involve an inefficient use of the Commissioner’s resources; or
 - “(ii) would place the liable person in serious hardship.
- “(2) Before making a decision under **subsection (1)(b)**, the Commissioner must have regard to the matters referred to in sections 6 and 6A of the Tax Administration Act 1994.
- “(3) In this section,—
- “**serious hardship**, in relation to a liable person,—
 - “(a) includes significant financial difficulties that arise because of—
 - “(i) the liable person’s inability to meet minimum living expenses according to normal community standards; or
 - “(ii) the cost of medical treatment for an illness or injury of the liable person or the liable person’s dependant; or
 - “(iii) a serious illness suffered by the liable person or the liable person’s dependant; or
 - “(iv) the cost of education for the liable person’s dependant;
 - “(b) does not include significant financial difficulties that arise because—
 - “(i) the liable person is obligated to pay tax or financial support; or
 - “(ii) the liable person may become bankrupt; or
 - “(iii) the liable person’s, or the liable person’s dependant’s, social activities and entertainment may be limited; or
 - “(iv) the liable person is unable to afford goods or services that are expensive or of a high quality or

standard according to normal community standards.

“Mandatory relief in respect of initial late payment penalty

“135H Relief from initial late payment penalty if payment arrangement

- “(1) The Commissioner must write off an initial late payment penalty in relation to a financial support debt if the Commissioner is satisfied that—
- “(a) the initial late payment penalty relates to the first payment of financial support payable by the liable person; and
 - “(b) within the 3-month period beginning on the date that the Commissioner issues the assessment under which the first payment is payable, either—
 - “(i) the liable person enters into a payment agreement with the Commissioner to pay, in 2 or more instalments,—
 - “(A) the first payment; and
 - “(B) other payments of financial support that are or will become payable by the liable person; or
 - “(ii) the Commissioner gives a person a deduction notice under section 154 in relation to the liable person for the purpose of collecting, in 2 or more deductions and payments,—
 - “(A) the first payment; and
 - “(B) other payments of financial support that are or will become payable by the liable person; and
 - “(c) either,—
 - “(i) in the case of **paragraph (b)(i)**, every one of those instalments is paid in full in accordance with that payment agreement; or
 - “(ii) in the case of **paragraph (b)(ii)**, every one of those deductions and payments is made in accordance with that notice.
- “(2) If an initial late payment penalty is written off under this section, and that penalty has been paid in whole or in part, the Commissioner must refund to the liable person the whole or part of the initial late payment penalty that has been paid.

“(3) For the purposes of this section, **first payment** means the first amount of financial support that is required to be paid by a liable person under an assessment made by the Commissioner under section 24(1)(a).

“135I **Relief from initial late payment penalty if minimum amount**

“(1) The Commissioner must write off an initial late payment penalty in relation to a financial support debt if the Commissioner is satisfied that—

“(a) the amount of the penalty is no more than \$5; and

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

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

“(2) If an initial late payment penalty is written off under this section, and that penalty has been paid in whole or in part, the Commissioner must refund to the liable person the whole or part of the initial late payment penalty that has been paid.

“Mandatory relief in respect of incremental penalties

“135J **Relief from incremental penalties unpaid before agreement entered into**

“(1) For the purposes of this section,—

“**initial debt**, in relation to a payment agreement, means the amount the liable person owes at the time that the agreement is entered into in respect of financial support and related initial late payment penalties

“**payment agreement** means an agreement entered into after the commencement of this section between a liable person and the Commissioner that requires the liable person to pay, in 1 sum or 2 or more instalments of specified amounts,—

“(a) the amount of the initial debt; and

“(b) the amount of financial support (if any) that the person will become liable to pay during the term of the payment agreement

“**review date** means—

“(a) the day that is 26 weeks after the date that the liable person enters into the payment agreement; and

- “(b) each of the days on which there expire periods of 26 weeks that consecutively succeed the first period of 26 weeks described in **paragraph (a)**; and
- “(c) the day on which the payment agreement expires.
- “(2) If a liable person has entered into a payment agreement, and the person has complied with the payment agreement up until a particular review date in accordance with **subsection (3)**, the Commissioner must, on that review date,—
- “(a) review the incremental penalties in relation to the initial debt of the liable person that were unpaid at the time the payment agreement was entered into; and
- “(b) write off those penalties proportionally in accordance with **subsection (4)**.
- “(3) For the purposes of **subsection (2)**, a person has complied with the payment agreement up until a particular review date if—
- “(a) the person has paid every instalment in full that has fallen due in accordance with the agreement; or
- “(b) in the case of an agreement to pay 1 sum only, the person has paid that sum in accordance with the agreement.
- “(4) For the purposes of **subsection (2)**, the proportion of incremental penalties that must be written off must be calculated in accordance with the following formula:
- $$r = \frac{a}{b} \times c$$
- where—
- r is the amount of incremental penalty that is to be written off
- a is the amount of the initial debt that has been paid since the last review date or, if it is the first review date, since the payment agreement was entered into
- b is the initial debt
- c is the total amount of incremental penalties related to the initial debt of the liable person that were unpaid at the time that the payment agreement was entered into.
- “(5) If an incremental penalty that is written off under this section has been paid in whole or in part, the Commissioner must refund to the liable person the whole or part of the incremental penalty that has been paid.

“135K Relief from incremental penalties in relation to arrangements entered into or made before commencement

“(1) For the purposes of this section,—

“**initial debt** means the amount the liable person owes at the commencement of this section in respect of financial support and related initial late payment penalties

“**payment agreement** means an agreement entered into before the commencement of this section between a liable person and the Commissioner that—

“(a) requires the liable person to pay, in 1 sum or 2 or more instalments of specified amounts,—

“(i) the amount of the initial debt; and

“(ii) the amount of financial support (if any) that the person will become liable to pay during the term of the payment agreement; and

“(b) is still in force immediately before this section comes into force

“**review date** means—

“(a) the day that is 26 weeks after the commencement of this section; and

“(b) each of the days on which there expire periods of 26 weeks that consecutively succeed the first period of 26 weeks described in **paragraph (a)**; and

“(c) in relation to—

“(i) a payment agreement, the day on which the payment agreement expires; and

“(ii) a specified deduction notice, the day on which the deduction notice is revoked

“**specified deduction notice** means a deduction notice given by the Commissioner under section 154 in relation to a liable person before the commencement of this section—

“(a) for the purpose of collecting, in 1 sum or 2 or more deductions and payments,—

“(i) the amount of the initial debt; and

“(ii) the amount of financial support (if any) that the liable person will become liable to pay during the period in which the deduction notice is in force; and

“(b) that is still in force immediately before this section comes into force.

- “(2) If a liable person has entered into a payment agreement, and the person has complied with the payment agreement up until a particular review date in accordance with **subsection (3)**, the Commissioner must, on that review date,—
- “(a) review the incremental penalties in relation to the initial debt of the liable person that were unpaid at the commencement of this section; and
- “(b) write off those penalties proportionally in accordance with **subsection (6)**.
- “(3) For the purposes of **subsection (2)**, a person has complied with the payment agreement up until a particular review date if—
- “(a) the person has paid every instalment in full that has fallen due in accordance with the agreement; or
- “(b) in the case of an agreement to pay 1 sum only, the person has paid that sum in accordance with that agreement.
- “(4) If a specified deduction notice has been given to a person in relation to a liable person, and the person to whom that notice is given has complied with that notice up until a particular review date in accordance with **subsection (5)**, the Commissioner must, on that review date,—
- “(a) review the incremental penalties in relation to the initial debt of the liable person that were unpaid at the commencement of this section; and
- “(b) write off those penalties proportionally in accordance with **subsection (6)**.
- “(5) For the purposes of **subsection (4)**, a person has complied with a specified deduction notice up until a particular review date if all of the deductions and payments required to be made under the specified deduction notice by that date have been made in accordance with that notice.
- “(6) For the purposes of **subsections (2) and (4)**, the proportion of incremental penalties that must be written off must be calculated in accordance with the following formula:

$$r = \frac{a}{b} \times c$$

where—

r is the amount of incremental penalty that is to be written off

- a is the amount of the initial debt that has been paid since the last review date or, if it is the first review date, since the commencement of this section
- b is the initial debt
- c is the total amount of incremental penalties in relation to the initial debt of the liable person that were unpaid at the commencement of this section.

“(7) If an incremental penalty that is written off under this section has been paid in whole or in part, the Commissioner must refund to the liable person the whole or part of the incremental penalty that has been paid.

“135L **Writing-off of incremental penalties if non-compliance with arrangement**

“(1) **Subsection (2)** applies if,—

- “(a) at the time of a review date in relation to a payment agreement under **section 135J or section 135K**, the liable person has failed to pay any amount in accordance with the agreement; and
- “(b) the Commissioner is satisfied, in respect of each failure to make a payment in accordance with the payment agreement, that the circumstances in relation to the failure would, if they were related to the payment of a debt to which a penalty relates, entitle the Commissioner to grant relief under any of the provisions of **sections 135B to 135E**.

“(2) The Commissioner may disregard a failure to make a payment for the purpose of applying **section 135J or section 135K** as the case may be.

“(3) **Subsection (4)** applies if,—

- “(a) at the time of a review date in relation to a specified deduction notice under **section 135K**, there has been a failure to make any deduction and payment in accordance with the specified deduction notice; and
- “(b) the Commissioner is satisfied, in respect of each failure to make a deduction and payment in accordance with the specified deduction notice, that the circumstances in relation to the failure would, if they were related to the payment of a debt to which a penalty relates, entitle the Commissioner to grant relief under **section 135B, section 135C, or section 135E**.

“(4) The Commissioner may disregard a failure to make a deduction and payment for the purpose of applying **section 135K**.

“135M **Relief from ongoing incremental penalties if payment agreement in force**

“(1) This section applies if—

“(a) a person becomes liable for the payment of any incremental penalty; and

“(b) at the time liability for the incremental penalty arises, the financial support or the initial late payment penalty or the incremental penalty in relation to which the person becomes so liable is financial support or initial late payment penalty or incremental penalty that is payable in 1 sum, or in 2 or more instalments, in accordance with a payment agreement entered into between the person and the Commissioner; and

“(c) that sum or, as the case may be, every one of those instalments is paid in full in accordance with that payment agreement.

“(2) The Commissioner must grant relief to the liable person—

“(a) by writing off the incremental penalty referred to in **subsection (1)(a)**; or

“(b) if that incremental penalty has been paid, in whole or in part, by refunding to that person the whole or the part of that incremental penalty that has been paid, with or without writing off any part of that incremental penalty that has not been paid.

“135N **Relief from ongoing incremental penalties if deduction notice in force**

“(1) This section applies if—

“(a) a person becomes liable for the payment of an incremental penalty; and

“(b) at the time liability for the incremental penalty arises, the financial support or initial late payment penalty or the incremental penalty in relation to which the person becomes so liable is child support or initial late payment penalty or incremental penalty in respect of which deductions are required to be made, and paid to the Commissioner, under a notice issued under section 154; and

- “(c) every one of those deductions and payments is made in accordance with that notice.
- “(2) The Commissioner must grant relief to the liable person—
- “(a) by writing off the incremental penalty referred to in **subsection(1)(a)**; or
- “(b) if that incremental penalty has been paid, in whole or in part, by refunding to that person the whole or the part of that incremental penalty that has been paid, with or without writing off any part of that incremental penalty that has not been paid.

“Miscellaneous

“1350 Refunds paid out of Crown Bank Account without further appropriation

Any refund made under **sections 135A to 135N** must be paid out of a Crown Bank Account without further appropriation than this section.”

- (2) **Sections 135 to 1350** of the principal Act (as substituted by **subsection (1)**) apply to penalties that are imposed before or after the commencement of this section.

33 Payment of formula assessment child support to custodians who are social security beneficiaries

- (1) Section 142(1) of the principal Act is amended by inserting, before paragraph (e), the following paragraph:
- “(ea) pay to the qualifying custodian the amount of child support paid by a liable parent that is payable to the qualifying custodian and is payable by that liable parent for the periods when the qualifying custodian is not a recipient of a social security benefit; and”.
- (2) Section 142(1)(e) of the principal Act is amended by inserting, after the words “Aggregate all”, the word “remaining”.
- (3) Section 142(1)(f)(ii) of the principal Act is amended by inserting, after the word “custodian”, the words “(after any deductions have been made in accordance with **paragraph (ea)**)”.
- (4) Section 142(2)(a) of the principal Act is amended by inserting, before subparagraph (i), the following subparagraph:

“(ia) pay to the qualifying custodian the amount of child support paid by a liable parent that is payable to the qualifying custodian and is payable by that liable parent in respect of the child for periods when the qualifying custodian is not a recipient of an unsupported child’s benefit in respect of the child; and”.

- (5) Section 142(2)(a)(i) of the principal Act is amended by inserting, after the words “Aggregate all”, the word “remaining”.
- (6) Section 142(2)(a)(ii)(B) of the principal Act is amended by inserting, after the words “that child”, the words “(after any deductions have been made in accordance with **subparagraph (ia)**)”.
- (7) Section 142(2)(b) of the principal Act is amended by inserting, before subparagraph (i), the following subparagraph:

“(ia) pay to the qualifying custodian the amount of child support paid by a liable parent that is payable to the qualifying custodian and is payable by that liable parent in respect of that child or those children for the periods when the qualifying custodian is not a recipient of a social security benefit; and”.
- (8) Section 142(2)(b)(i) of the principal Act is amended by inserting, after the words “Aggregate all”, the word “remaining”.
- (9) Section 142(2)(b)(ii)(B) of the principal Act is amended by inserting, after the word “custodian”, the words “(after any deductions have been made in accordance with **subparagraph (ia)**)”.
- (10) Section 142 of the principal Act is amended by adding the following subsection:

“(3) This section does not limit the application of section 137 to the liable parent.”

34 Payment of voluntary agreement child support to custodians who are social security beneficiaries

- (1) Section 143(1) of the principal Act is amended by inserting, before paragraph (d), the following paragraph:

“(da) pay to the qualifying custodian the amount of child support paid by a liable parent that is payable to the qualifying custodian and is payable by that liable parent for the periods when the qualifying custodian is not a recipient of a social security benefit; and”.

(2) Section 143(1)(d) of the principal Act is amended by inserting, after the words “child support”, the words “(except to the extent that the amount has already been paid under **paragraph (da)**)”.

(3) Section 143(1)(f)(ii) of the principal Act is amended by omitting the words “paragraph (d) of this subsection”, and substituting the words “paragraphs **(da)** and (d)”.

(4) Section 143 of the principal Act is amended by repealing subsection (1A), and substituting the following subsection:

“(1A) If a qualifying custodian of more than 1 child receives an unsupported child’s benefit in respect of 1 or more children, then **subsection (1)** does not apply and the Commissioner must,—

“(a) in respect of each child for whom money is paid under a voluntary agreement, pay to the qualifying custodian—

“(i) the amount of child support paid by a liable parent that is payable to the qualifying custodian and is payable by that liable parent in respect of the child for periods when the qualifying custodian is not a recipient of a social security benefit; and

“(ii) the amount by which the money paid under the voluntary agreement in respect of the child exceeds the payment that would have been made under a formula assessment of child support (except to the extent that the amount has already been paid under **subparagraph (i)**); and

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

“(i) pay to the qualifying custodian the amount of child support paid by a liable parent that is payable to the qualifying custodian and is payable by that liable parent in respect of the child for periods when the qualifying custodian is not a recipient of an unsupported child’s benefit in respect of the child (except to the extent that the

- amount has already been paid under **paragraph (a)**);
and
- “(ii) aggregate all remaining payments of child support payable to the custodian in respect of each such child; and
 - “(iii) deduct an amount equal to whichever is the lesser of the following amounts:
 - “(A) the net of tax amount of the unsupported child’s benefit; or
 - “(B) the aggregate of all payments of child support received by the Commissioner that are payable to the custodian in respect of that child (after any deductions have been made in accordance with **paragraphs (a) and (b)(i)**); and
 - “(iv) pay any remaining child support in respect of that child to the qualifying custodian; and
- “(c) in respect of any other child or children,—
- “(i) pay to the qualifying custodian the amount of child support paid by a liable parent that is payable to the qualifying custodian and is payable by that liable parent in respect of that child or those children for the periods when the qualifying custodian is not a recipient of a social security benefit (except to the extent that the amount has already been paid under **paragraph (a)**); and
 - “(ii) aggregate all remaining payments of child support payable to the custodian in respect of that child or children; and
 - “(iii) deduct an amount equal to whichever is the lesser of the following amounts:
 - “(A) the net of tax amount of social security benefit (other than unsupported child’s benefit) receivable by the qualifying custodian; or
 - “(B) the aggregate of all payments of child support received by the Commissioner in respect of that child or children that are payable to the custodian (after any deductions have been made in accordance with **paragraphs (a) and (c)(i)**); and

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

(5) Section 143 of the principal Act is amended by adding the following subsection:

“(3) This section does not limit the application of section 137 to the liable parent.”

35 New section 152A inserted

The principal Act is amended by inserting, after section 152, the following section:

“152A Relief in case of exemption granted to liable person

“(1) The Commissioner must write off the whole of a debt, and may make alterations in the assessment that are necessary for that purpose, if the debt—

“(a) is an amount that is repayable by the payee to the Commissioner under section 151; and

“(b) arises solely as a result of the liable person being granted an exemption under **subpart 2 of Part 5A**.

“(2) The Commissioner must, if the debt has been paid in whole or in part, refund to the payee the part of the debt that has been paid.

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

36 Copy of deduction notice to be given to liable parent

(1) The heading to section 156 of the principal Act is amended by omitting the word “**parent**”, and substituting the word “**person**”.

(2) Section 156(2) of the principal Act is amended by omitting the word “parent”, and substituting the word “person”.

37 Amounts paid where no liability to pay exists, etc.

Section 207 of the principal Act is amended by adding the following subsection:

“(3) This section is subject to **section 89J**.”

38 Offences

Section 208 of the principal Act is amended by repealing paragraph (a), and substituting the following paragraph:

“(a) fails to notify the Commissioner, as required by **section 89ZC**, of the matters referred to in that section; or”.

39 Adoption of reciprocal agreement with other countries

- (1) Section 215(1)(a) of the principal Act is amended by omitting the words “or in any other Act”.
- (2) Despite **subsection (1)**, clause 4 of the Child Support (Reciprocal Agreement with Australia) Order 2000 (SR 2000/85) as in force immediately before the commencement of this section continues in force until it is revoked.

40 Refund of excess financial support

Section 216 of the principal Act is amended by adding the following subsection:

- “(6) This section and sections 216A to **216D** are subject to **section 89J**.”

41 Method of application for refund of excess financial support paid

Section 216A of the principal Act is amended by adding, as subsection (2), the following subsection:

- “(2) Subsection (1) does not apply if all of the refund referred to in section 216(3) is to be transferred under **sections 216B to 216D**.”

42 New sections 216B to 216D inserted

- (1) The principal Act is amended by inserting, after section 216A, the following sections:

“216B Transfer of refund

- “(1) A person may request that the Commissioner transfer all or part of the refund that is payable to the person under section 216(3) towards the satisfaction of—
 - “(a) a tax liability or other amount due of the person for the purposes of the Tax Administration Act 1994; or
 - “(b) a tax liability or other amount due of another person for the purposes of the Tax Administration Act 1994; or
 - “(c) another person’s financial support liability.
- “(2) The person may choose the date on which all or part of the refund is transferred, being a date that occurs on or after the date of the request.

“(3) A request cannot be withdrawn or amended after the transfer has been made.

“216C **Form of request for transfer of refund**

A request made under **section 216B** must—

“(a) be in writing; and

“(b) specify—

“(i) the amount of the refund that is to be transferred; and

“(ii) the tax type or financial support in relation to which the refund is to be transferred; and

“(iii) the name of the person who is to be credited with the amount (if that person is not the person who is making the request); and

“(iv) any other information that the Commissioner may require.

“216D **Commissioner must transfer refund**

“(1) On receiving a request under **section 216B**, the Commissioner must transfer—

“(a) all of the amount of the refund in accordance with the request if the person neither has, nor is known to have at some future time, liability to make further payments of financial support under this Act; or

“(b) in any other case, so much of the amount of the refund in accordance with the request as has not been paid to the payee.

“(2) For the purposes of the Inland Revenue Acts (as defined in section 3(1) of the Tax Administration Act 1994),—

“(a) a refund transferred on the request of a person is treated as a refund made to the person on the date of transfer; and

“(b) a refund transferred to the account of a person is treated,—

“(i) in the case of a transfer under **section 216B(1)(a) or (b)**, as tax paid by the person on the date of transfer, except for the purpose of imposing a shortfall penalty under Part 9 of the Tax Administration Act 1994; and

“(ii) in the case of a transfer under **section 216B(1)(c)**, as the payment of financial support by the person on the date of transfer.”

- (2) This section applies to amounts to be refunded on and after the commencement of this section.

43 Proof of certain matters

Section 230(2) of the principal Act is amended by inserting, after the words “purporting to be a decree”, the words “or order”.

44 Regulations

Section 235 of the principal Act is amended by repealing subsection (1)(a) and (b) and subsection (2).

45 Secrecy

- (1) Section 240(2) of the principal Act is amended by inserting, after paragraph (d), the following paragraphs:

“(db) the communication, to the chief executive of the Ministry of Justice or any officer of the Ministry of Justice authorised in that behalf, of information for the purpose of carrying into effect **subpart 4 of Part 5A**:

“(dc) the communication, to the Commissioner of Police or any member of the New Zealand Police authorised in that behalf, of information for the purpose of carrying into effect **subpart 4 of Part 5A**.”

- (2) Section 240(6)(b) of the principal Act is amended by omitting the words “paragraph (e) of subsection (2) of this section”, and substituting the words “**subsection (2)(db) or (e)**”.

- (3) Section 240(6) of the principal Act is amended by inserting, after paragraph (b), the following paragraph:

“(bb) if it is given by any persons referred to in **subsection (2)(dc)**, be kept by the New Zealand Police as a permanent record; or”.

Transitional provisions

46 Pending applications for exemptions

- (1) This section applies to an application for an exemption made under section 73 of the principal Act before the commencement of this section if, before the commencement of this

- section, the Commissioner has not made a decision under section 74(1) of the principal Act in relation to the application.
- (2) The Commissioner must consider and make a decision on an application to which this section applies as if this Act had not been enacted.
 - (3) Despite the amendment of section 90(1)(i) of the principal Act by **section 18**, that paragraph of the principal Act (as it read immediately before the commencement of this section) continues to apply to an application to which this section applies.
 - (4) **Subsection (2)** does not prevent a person who has made an application to which this section applies from withdrawing the application before the Commissioner has made a decision on it and making a new application to the Commissioner under **Part 5A** of the principal Act.
 - (5) **Subsection (4)** does not limit **section 89H** of the principal Act.

47 Continuation of exemptions

- (1) This section applies to—
 - (a) an exemption granted under section 74(1) of the principal Act if, immediately before the commencement of this section, the period of exemption has not ended; and
 - (b) an exemption granted under section 74(1) of the principal Act on an application to which **section 46** applies.
- (2) Despite the repeal of sections 73 to 76 of the principal Act by **section 15**,—
 - (a) those sections of the principal Act (as they read immediately before the commencement of **section 15**) continue to apply to an exemption to which this section applies; and
 - (b) the period of exemption of an exemption to which this section applies ends on the earlier of—
 - (i) the day that the exemption would have ended if this Act had not been enacted; or
 - (ii) the day on which the period of exemption ends in accordance with a determination made under **subpart 3 of Part 5A**.
- (3) Despite the amendment of section 208 of the principal Act by **section 38**, section 208(a) of the principal Act (as it read immediately before the commencement of **section 38**) continues to apply to an exemption to which this section applies.

48 Pending objections

Every objection made under Part 6 of the principal Act before the commencement of this section that has not, before the commencement of this section, been determined by the Commissioner must be determined by the Commissioner as if this Act had not been enacted.

49 Transitional provision relating to certain pending applications made under principal Act

- (1) This section applies to an application to a Family Court under section 104(2)(b)(i) of the principal Act that was made before the commencement of this section if—
 - (a) the application has not been heard by the Court before the commencement of this section; and
 - (b) the person who made the application did not apply for the determination referred to in that subparagraph.
- (2) The person who made the application to which this section applies may, subject to **subsection (3)**, elect to withdraw the application and to appeal to the Court under **section 103B** of the principal Act.
- (3) However, the person does not have a right of election if—
 - (a) that person is a party to another application pending in a Family Court, and the Family Court is satisfied that it would be appropriate for a Family Court to consider the application made under section 104 of the principal Act at the same time as it hears the other application; or
 - (b) the application relates, wholly or in part, to child support payable in the child support year ending on 31 March 1994 or any earlier child support year.
- (4) If an election is not made under this section before a Family Court commences hearing an application then, despite the amendment of section 104 of the principal Act by **section 26**, that person's application must be determined by a Family Court as if this Act had not been enacted.

50 Corrections Act 2004 consequentially amended

The Corrections Act 2004 is amended by omitting from Schedule 2 the item relating to the Child Support Act 1991.

Part 2

Amendments to Tax Administration Act 1994

51 Tax Administration Act 1994 called principal Act in this Part

In this Part, the Tax Administration Act 1994² is called “the principal Act”.

² 1994 No 166

52 Officers to maintain secrecy

(1) Section 81(4)(f)(ii) of the principal Act is amended by adding the words “or **section 85H**”.

(2) Section 81(4) of the principal Act is amended by adding the following paragraph:

“(q) communicating to any person, being a member of the New Zealand Police, any information, being information—

“(i) that the person is authorised by the Commissioner of Police to receive; and

“(ii) that is communicated to that person for the purposes of **section 85H**.”.

53 New sections 85H and 85I inserted

The principal Act is amended by inserting, after section 85G, the following sections:

“85H New Zealand Police and Ministry of Justice to provide information concerning sex offences for purposes of child support exemptions

“(1) The purpose of this section and **section 85I** is to facilitate the exchange of information between the Inland Revenue Department and the New Zealand Police and between the Inland Revenue Department and the Ministry for the purpose of determining whether a person is eligible for an exemption under **subpart 4 of Part 5A** of the Child Support Act 1991.

“(2) For the purposes of this section,—

“(a) the Commissioner of Police, or any authorised officer of the police, must, within 10 working days of a request by the Commissioner, provide the Commissioner with the information specified in **subsection (3)** that is requested by the Commissioner in connection with the exercise or

- performance of any of the Commissioner's duties, powers, or functions under **subpart 4 of Part 5A** of the Child Support Act 1991; and
- “(b) the chief executive of the Ministry, or any authorised officer of the Ministry, must, within 10 working days of a request by the Commissioner, provide the Commissioner with the information specified in **subsection (3)** that is requested by the Commissioner in connection with the exercise or performance of any of the Commissioner's duties, powers, or functions under **subpart 4 of Part 5A** of the Child Support Act 1991.
- “(3) For the purposes of **subsection (2)**, the information that may be provided is—
- “(a) whether a particular person—
- “(i) has been convicted of a sex offence; or
- “(ii) has been proved to have committed a sex offence before a Youth Court; and
- “(b) details of that offence, including the type of offence and the date, or approximate date, when that offence was committed; and
- “(c) whether a particular person is the victim of that offence; and
- “(d) whether a conviction for that offence has been quashed; and
- “(e) whether a finding of a Youth Court that a sex offence has been committed has been reversed or set aside; and
- “(f) whether any court has ordered a new trial in relation to the matter; and
- “(g) any other particulars that the Commissioner considers relevant to the purpose of this section.
- “(4) The information specified in **subsection (3)** must be provided to the best of the knowledge and belief of the person who provides the information if the person does not have certain knowledge of the relevant matters.
- “(5) In this section and in **section 85I**, unless the context otherwise requires,—
- “**authorised officer of the Ministry** means an officer of the Ministry who is authorised by the chief executive of the Ministry to provide information under this section

“**authorised officer of the police** means a member of the New Zealand Police who is authorised by the Commissioner of Police to provide information under this section

“**Ministry** means the Ministry of Justice

“**sex offence** means an offence under sections 127 to 144C of the Crimes Act 1961

“**victim** means the person against whom an offence is committed by another person.

“85I **Use of information supplied under section 85H**

“(1) If information is supplied to the Commissioner under **section 85H**, the Commissioner may use the information in connection with the exercise or performance of any of the Commissioner’s duties, powers, or functions under **subpart 4 of Part 5A** of the Child Support Act 1991.

“(2) **Section 85H** and this section apply despite any other provision of this Act.”