



ANALYSIS

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1999, No. 81

An Act to amend the Child Support Act 1991

[23 July 1999]

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement—(1) This Act may be cited as the Child Support Amendment Act 1999, and is part of the Child Support Act 1991 (“the principal Act”).

(2) Except as provided in subsections (3) to (5), this Act comes into force on the day after the date on which it receives the Royal assent.

(3) Section 5 (meaning of term “living allowance”) comes into force on 1 October 1999.

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

(5) Part 2 (amendment to Family Proceedings Act 1980) comes into force on a date to be appointed by the Governor-General by Order in Council.

PART 1**AMENDMENTS TO PRINCIPAL ACT**

2. Interpretation—(1) Section 2 (1) of the principal Act is amended by repealing the definition of the term “last relevant income year”, and substituting the following definition:

“‘Last relevant income year’ means,—

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

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

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

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

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

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

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

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

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

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

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

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

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

“‘Child support income amount’ means,—

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

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

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

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

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

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

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

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

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

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

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

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

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

“(a) The sum of—

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

- “(ii) An amount that is equal to one-fifth of that taxable income; or
- “(b) An amount equal to twice the yearly equivalent of the relevant average weekly earnings amount for the most recent income year.
- “(3) The Commissioner must, as soon as practicable, amend a formula assessment if—
- “(a) The Commissioner applies subsection (2) in making the formula assessment; and
- “(b) The Commissioner subsequently ascertains the liable parent’s taxable income for the most recent income year (whether or not an assessment has been made under the Income Tax Act 1976 or the Tax Administration Act 1994 in respect of that year); and
- “(c) The subsequently ascertained income is more than \$500 in excess of, or less than, the figure calculated for the purposes of subsection (2)(a).
- “(4) An assessment amended under subsection (3) must be amended on the basis that the liable parent’s taxable income for the most recent income year is, and always has been, the subsequently ascertained income.”

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

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

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

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

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

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

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

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

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

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

“(d) Section 38 applies in respect of assessments and amended assessments of taxable income that are made by the Government of the relevant country as if made by the Commissioner, if the Commissioner has information as to the assessment or amended assessment:

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

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

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

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

“(2) The notice must—

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

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

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

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

“(ba) The person—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“(6) For the purposes of this section, ‘reasonable cause’ means a circumstance that, on application being made by the person under section 37 (3) of the Tax Administration Act 1994, results in the Commissioner extending the time for furnishing the return.

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

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

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

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

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

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

“(b) The Commissioner making public, during the period commencing on the 1st day of the last month in that child support year and ending with the due

date for payments in respect of that month, any ruling in relation to any provision of the Income Tax Act 1994 and that ruling is different from a ruling previously made public by the Commissioner in relation to that provision; or”.

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

17. Interest to be charged on underestimations—

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

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

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

(4) This section is deemed to apply with respect to child support payable in relation to the child support year that commenced on 1 April 1999, and subsequent years.

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

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

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

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

“(i) Income from investments; or

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

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

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

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

“(2) The notice must—

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

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

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

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

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

“ ‘Hospital patient’ means a person who is—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- “(a) The day on which the person ceases to be a prison inmate or hospital patient; or
- “(b) The day on which the person receives any gross income other than from investments or social security benefits payable at the rate specified in the Twenty-second Schedule of the Social Security Act 1964; or
- “(c) The day on which the person receives gross income from investments of more than an average of \$10 per week in a child support year.

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

22. Notice of assessment to be given to liable person—The principal Act is amended by repealing section 88, and substituting the following section:

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

- “(a) After making the 1st assessment of financial support payable by the person in respect of a child support year; and
- “(b) After making an assessment that changes the amount of financial support payable by the person.

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

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

- “(a) A statement that specifically draws the attention of the person required to make payments under the assessment to the right to object to the assessment

under section 91 if he or she is aggrieved by any of the particulars of the assessment; and

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

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

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

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

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

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

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

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

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

(1) For the purposes of this section,—

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

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

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

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

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

- “(i) The first payment; and
- “(ii) Other payments of financial support that are or will become payable by the liable person; and
- “(c) Every instalment is paid in full pursuant to the terms of that arrangement.
- “(3) The Commissioner must write-off a liable person’s liability to pay an initial late payment penalty in relation to a financial support debt if the Commissioner is satisfied that—
 - “(a) The amount of the penalty is no more than the minimum amount specified in section 134 (1) (a) (ii); and
 - “(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.
- “(4) Where an initial late payment penalty is written-off under subsection (2) or subsection (3), and that penalty has been paid in whole or in part, the Commissioner must refund to the liable person the whole or part of the initial late payment penalty that has been paid.
- “(5) Any refund made under this section must be paid out of the Crown Bank Account without further appropriation than this section.

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

- “(a) There was a reasonable cause for the delay in payment of the debt, and the liable person remedied the default as soon as practicable; or
- “(b) The delay in payment of the debt was due to an error made by an officer of the Department, and—
 - “(i) The liable person has acted in good faith and has altered his or her position in reliance on the error; and
 - “(ii) Having regard to the circumstances of the case, it would be fair and reasonable to write-off all or part of the penalty; or
- “(c) The delay in payment of the debt was due to an honest oversight by a liable person who—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“(2) Without limiting the generality of subsection (1) (b), where a liable person has more than 1 employer, the Commissioner may, under that subsection and on the request of the liable person, disregard, and instruct an employer of the liable person to disregard, the provisions of section 165 (1) provided that the total deductions made under deduction notices by all employers of the liable person must not reduce the person’s total net earnings in respect of a pay period to an amount that is less than 60% of the residue that remains after

deducting from the source deduction payments the amount of any tax deductions made under the PAYE rules of the Income Tax Act 1994.”

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Repealing subsection (3).

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

36. Changes in published statistics to be disregarded—

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

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

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

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

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

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

“(b) The statistics corrected are—

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

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

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

PART 2

AMENDMENT TO FAMILY PROCEEDINGS ACT 1980

37. Amendment to Family Proceedings Act 1980—

Section 2 of the Family Proceedings Act 1980 is amended by

repealing the definition of the term “Convention country”, and substituting the following definition:

“‘Convention country’—

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

“(b) Does not include Australia.”.

This Act is administered in the Inland Revenue Department.
