

Examined and certified:

Clerk of the House of Representatives

*In the name and on behalf of Her Majesty Queen Elizabeth
the Second I hereby assent to this Act this 25th day
of September 2006*

Governor-General.

Child Support Amendment Act 2006

Public Act 2006 No 42

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Child Support Amendment Act 2006.

2 Commencement

- (1) Sections 10 and 11 come into force on the day that is 1 month from the first day of the month following the month in which this Act receives the Royal assent.
- (2) Sections 33 and 34 come into force on the day that is 2 months from the first day of the month following the month in which this Act receives the Royal assent.

- (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 Principal Act amended

This Part amends the Child Support Act 1991.

4 Interpretation

- (1) Section 2(1) is amended by—
- (a) omitting from the definition of **income amount order** “an order under Part 6A or Part 7, being an order” and substituting “a determination under Part 5A, 6A, or 6B or an order under Part 7, being a determination or an order”; and
 - (b) omitting from the definition of **proceeding** “Part 6A of this Act” and substituting “Part 5A, 6A, or 6B”.
- (2) Section 2(1) is amended by inserting the following definition in its appropriate alphabetical order:
- “**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) are amended by omitting “specified” in each place where it appears.
- (2) Section 7(1)(e) is amended by omitting “specified court or public authority in a specified” and substituting “court or public authority in an”.
- (3) Section 7 is amended by repealing subsection (5).

6 New section 7A inserted

- (1) The following section is inserted after section 7:

“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) is amended by omitting “a specified overseas jurisdiction to which section 7(5) applies” and substituting “an overseas jurisdiction”.

8 This Part sets out rates of child support

Section 28(2) is amended by omitting “Part 6A” and substituting “Part 5A, or 6A, or 6B”.

9 Meaning of term living allowance

- (1) Section 30 is amended by repealing subsection (4B) and substituting the following subsection:
- “(4B) For the child support years commencing on and after 1 April 2007, 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 2007–08 and subsequent child support years.

10 New section 34 substituted

Section 34 is repealed and the following section substituted:

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

- “(1) This section applies if—

“(a) a parent (the **relevant liable parent**) is liable to pay child support to another parent under a formula assessment; and

“(b) the relevant liable parent has 2 or more qualifying children; and

“(c) the relevant liable parent has the ongoing daily care of any 1 or more of the children; and

“(d) another parent has the ongoing daily care of the other child or children; and

“(e) the relevant liable parent is not in receipt of a social security benefit.

- “(2) If this section applies, the annual rate of child support payable by the relevant liable parent to the other parent must be reduced (but not below zero) by the annual rate of child support that would (apart from this section) be payable by the other parent.”

11 Position where liable parent shares custody of child

- (1) Section 35 is amended by repealing subsection (1) and substituting the following subsection:

- “(1) This section applies if—

“(a) a parent (the **relevant liable parent**) is liable to pay child support to another person under a formula assessment; and

“(b) the relevant liable parent has 1 or more qualifying children; and

“(c) the relevant liable parent shares the ongoing daily care of 1 or more of the children substantially equally with the other person.”

- (2) Section 35(2) is amended by omitting “liable parent” in each place where it appears and substituting “relevant liable parent” in each case.
- (3) Section 35(2) is amended by omitting “paragraph (b)” and substituting “paragraph (c)”.
- (4) Section 35 is amended by repealing subsections (3) to (5) and substituting the following subsections:
 - “(3) In a case in which the relevant liable parent is not in receipt of a social security benefit and the other person is also a liable parent of the child or children, the annual rate of child support must be reduced (but not below zero) by the annual rate of child support that would (apart from this subsection) be payable by the other.
 - “(4) The annual rate of child support payable by a person to whom both this section and section 34 apply must be calculated in accordance with this section.”

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

Section 38(7) is amended by omitting “Part 6A” and substituting “Part 5A, 6A, or 6B”.

13 Effect of election

Section 41(6) is amended by omitting “Part 6A” and substituting “Part 5A, 6A, or 6B”.

14 Effect of revocation

Section 43(4)(aa) is amended by omitting “Part 6A” and substituting “Part 5A, 6A, or 6B”.

15 Sections 73 to 76 and heading above section 73 repealed

Sections 73 to 76 and the heading above section 73 are repealed.

16 Amendment of assessments

- (1) Section 87(3) is amended by inserting the following paragraph after paragraph (d):

“(da) giving effect to Part 5A; or”.
- (2) Section 87(3)(ea) is amended by inserting “or 6B” after “Part 6A”.

17 New Part 5A inserted

- (1) The following Part is inserted after Part 5:

**“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 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 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.

“(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, 89Q, or 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, 89Q, or 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 (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), (2), or (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 85K 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 (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 occurs before or after that date).
- (3) Subsection (2) does not limit section 89H, 89I, or 89Z.

18 Objections to appealable decisions

Section 90(1)(i) is amended by omitting “section 74(1)” and substituting “section 89I or 89Z”.

19 Heading to Part 6A amended

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

20 Determinations that may be made

Section 96D(1) 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) is amended by omitting “96L(2)” and substituting “96L(5)”.

22 Procedure for dealing with application

Section 96I(3)(b) is amended by omitting “96L(2)” and substituting “96L(5)”.

23 New section 96L substituted

Section 96L is repealed and the following section substituted:

“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 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 following Part is inserted after Part 6A:

“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 (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 heading and sections 103A to 103E inserted

The following heading and sections are inserted after section 103:

“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) is amended by adding “and the person who applies under this section is the person who applied for that determination”.
- (2) Section 104(2)(b)(ii) is amended by omitting “that Part” and substituting “Part 6A”.
- (3) Section 104(2)(b) is amended by inserting the following subparagraph after subparagraph (ii):
 - “(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) is amended by omitting “Part 6A” and substituting “Part 5A, or 6A, or 6B”.

29 Discharge, suspension, revival, and variation of orders

- (1) Section 112(1) is amended by inserting “section 103D or” after “under”.
- (2) Section 112(2) is amended by inserting “section 103D or” after “If an order under”.

30 Pending appeal or application not to affect assessment

Section 115(1) is amended by omitting “section 103” and substituting “section 103, 103A, 103B, or 103C”.

31 Cessation of orders under Act

Section 119(1) is amended by inserting the following paragraph before paragraph (a):

- “(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 and headings substituted

- (1) Sections 135 to 135B are repealed and the following headings and sections are substituted:

“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:

$$r = \frac{(a \times c)}{b} - d$$

where—

- r is the amount of incremental penalty that is to be written off
- a is the total amount of the initial debt that has been paid 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
- d is the total amount of incremental penalties related to the initial debt of the liable person that have already been written off in accordance with this section since 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:

$$r = \frac{(a \times c)}{b} - d$$

where—

- r is the amount of incremental penalty that is to be written off
- a is the total amount of the initial debt that has been paid 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
- d is the total amount of incremental penalties related to the initial debt of the liable person that have already been written off in accordance with 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 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 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, 135C, or 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

“135O 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 135O (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) is amended by inserting the following paragraph before paragraph (e):

- “(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) is amended by inserting “remaining” after “aggregate all”.
- (3) Section 142(1)(f)(ii) is amended by inserting “(after any deductions have been made in accordance with paragraph (ea))” after “custodian”.
- (4) Section 142(2)(a) is amended by inserting the following subparagraph before subparagraph (i):
- “(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) is amended by inserting “remaining” after “aggregate all”.
- (6) Section 142(2)(a)(ii)(B) is amended by inserting “(after any deductions have been made in accordance with subparagraph (ia))” after “that child”.
- (7) Section 142(2)(b) is amended by inserting the following subparagraph before subparagraph (i):
- “(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) is amended by inserting “remaining” after “aggregate all”.
- (9) Section 142(2)(b)(ii)(B) is amended by inserting “(after any deductions have been made in accordance with subparagraph (ia))” after “custodian”.
- (10) Section 142 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) is amended by inserting the following paragraph before paragraph (d):

“(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) is amended by inserting “(except to the extent that the amount has already been paid under paragraph (da))” after “child support”.

(3) Section 143(1)(f)(ii) is amended by omitting “paragraph (d)” and substituting “paragraphs (da) and (d)”.

(4) Section 143 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 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 following section is inserted after section 152:

“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 is amended by omitting “**parent**” and substituting “**person**”.

(2) Section 156(2) is amended by omitting “parent” and substituting “person”.

37 Amounts paid where no liability to pay exists, etc

Section 207 is amended by adding the following subsection:

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

38 Offences

Section 208 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) is amended by omitting “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 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 is amended by adding the following subsection as subsection (2):

- “(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 following sections are inserted after section 216A:

“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) is amended by inserting “or order” after “purporting to be a decree”.

44 Regulations

Section 235(1)(a) and (b) and (2) are repealed.

45 Secrecy

(1) Section 240(2) is amended by inserting the following paragraphs after paragraph (d):

“(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) is amended by omitting “paragraph (e) of subsection (2)” and substituting “subsection (2)(db) or (e)”.

(3) Section 240(6) is amended by inserting the following paragraph after paragraph (b):

“(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.

Part 2**Amendments to Tax Administration Act 1994****50 Principal Act amended**

This Part amends the Tax Administration Act 1994.

51 Officers to maintain secrecy

- (1) Section 81(4)(f)(ii) is amended by adding “or section 85K”.
- (2) Section 81(4) is amended by adding the following paragraph:
 - “(s) 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 85K.”

52 New sections 85K and 85L inserted

The following sections are inserted after section 85J:

“85K 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 85L 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 85L, 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 any of sections 127 to 144C of the Crimes Act 1961
- “**victim** means the person against whom an offence is committed by another person.
- “**85L Use of information supplied under section 85K**
- “(1) If information is supplied to the Commissioner under section 85K, 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 85K and this section apply despite any other provision of this Act.”

Legislative history

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