



Inland Revenue
Te Tari Taake

Standard practice statement

SPS 16/02

Child Support and Domestic Maintenance – Amendments to Assessments

INTRODUCTION

Standard Practice Statements describe how the Commissioner of Inland Revenue (the Commissioner) will exercise a statutory discretion or deal with practical issues arising out of the administration of the Inland Revenue Acts.

This Standard Practice Statement (SPS) sets out how the Commissioner will exercise the discretion under s 87 of the Child Support Act 1991 (the Act) to amend assessments for child support and domestic maintenance to give effect to the Act. This includes assessments the Commissioner makes as a result of a voluntary agreement entered into by parties.

Throughout this SPS, references to “financial support” include child support and domestic maintenance. References to a “carer” includes both parent and non-parent carers.

Unless specified otherwise, all legislative references in this SPS are to the Child Support Act 1991.

APPLICATION

This SPS applies from 30 May 2016.

This SPS does not apply to requests to depart from the formula assessment of child support. If the parent or carer considers the formula assessment is not fair because it does not fit their particular circumstances, they can apply for an administrative review under Part 5A or 6A, or a departure under s 104. Section 87 cannot be used as an alternative to these processes.

This SPS also does not apply to the amendment of the amount of outstanding child support debt or penalties where the calculation of child support was itself correct.

This SPS should be read in conjunction with:

IR174 Helping you to understand child support and the Family Court
IR175 Helping you to understand child support reviews

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IS 10/07 *Care and management of the taxes covered by the Inland Revenue Acts – Section 6A(2) and (3) of the Tax Administration Act 1994* (Tax Information Bulletin Vol 22, No 10 (November 2010): 17)
Status of the Commissioner's advice (Tax Information Bulletin Vol 24, No 10 (December 2012): 86)

If a customer is not satisfied with the level of service they receive from Inland Revenue, they can obtain more information about the Complaints Procedure at:
<http://www.ird.govt.nz/aboutir/who-we-are/structure/complaints/>.

STANDARD PRACTICE

Summary

1. Section 87 of the Child Support Act 1991 gives the Commissioner a wide discretion to amend any assessment at any time where it is considered the changes are necessary to give effect to the Act. The amendments can apply to assessments for the current child support year, a future year, or to past years (in which case parties may receive, or be required to make, payments for previous years). A child support year runs from 1 April to 31 March of the following year.
2. The Commissioner is not limited as to the number of years for which past year assessments can be amended. In the past, Inland Revenue's practice has been to amend all incorrect assessments over a number of years. The Commissioner no longer considers this to be the best approach for dealing with s 87 amendments, as it uses considerable Inland Revenue resources and also has the potential to create uncertainty for parents or carers. Instead, the practice now is for the Commissioner to consider the circumstances of individual cases before making changes to past years. This is because any changes will generally result in opposite effects for the parties involved. The liable parent will be required to pay more (or less) than originally assessed and the receiving carer will receive more (or less) than originally assessed. Changes to assessments could also result in the obligations of the parties being reversed, so that the receiving carer becomes the liable parent and vice versa.
3. There are a number of sections in the Act that specifically allow, and in some cases require, the Commissioner to amend an assessment. Section 87(3) also sets out situations where an assessment may be amended. The Commissioner may amend assessments in all of these cases, although assessments may also be amended outside of these specially defined cases. Section 87(4) and the opening words of s 87(3) make it clear that the Commissioner's power to amend assessments is not limited. All that is required is that the amendment is necessary to give effect to the Act.
4. Sections 6 and 6A of the Tax Administration Act 1994 set out the Commissioner's duties and responsibilities for the care and management of the various taxes. These provisions apply to child support, and the interpretation statement IS 10/07: *Care and management of the taxes covered by the Inland Revenue Acts - section 6A(2) and (3) of the Tax Administration Act 1994* will also apply.
5. This SPS states that the Commissioner is to consider all amendment requests made by parents or carers and errors identified by Inland Revenue staff. Before an assessment is amended, the amendment must be considered necessary to give effect to the Act. When considering whether an assessment should be amended,

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the Commissioner will consider the principles set out in this SPS. Not all assessments will necessarily be amended.

6. The time that an assessment is amended from will be determined by specific rules discussed below in [25], [26] and [32(a)]. These apply where the Commissioner considers the assessment should be amended, and where there has been a cessation event, a change in living circumstances, or an estimate and subsequent discovery of the correct taxable income by the Commissioner.
7. In all other cases, the time that the assessment is amended from will generally depend on when the particular change, event or error occurred (and therefore the assessment that it affects). If the change or event occurred in the current child support year, amendments will generally be made from the date that the particular change or event occurs.
8. Aside from the rules set out in [25] – [27], if the assessment relates to a period before the current child support year, amendments will generally be made from the start of the current year (subject to specified exceptions set out in [32]). This ensures a consistent and impartial treatment to all child support customers.

Detailed Discussion

When can an assessment be amended under section 87?

9. Section 87 applies to assessments of child support and domestic maintenance.
10. An assessment of child support can arise from a formula assessment determined under Part 2 of the Act, the acceptance of a voluntary agreement entered into by parties under Part 3 of the Act, or a court maintenance order under Part 4 of the Act:
 - a) A formula assessment may be amended when any of the components of the formula assessment change, or when the child ceases to be a qualifying child. This includes, but is not limited to, situations where:
 - i. the income of one or both of the parents changes;
 - ii. the qualifying child moves into a different age bracket;
 - iii. the dependent child allowance changes (for example, if the number of dependent children changes, the care cost percentage changes, or the dependent children move into a different age bracket);
 - iv. the multi-group allowance changes (for example, when the number of children in a parent's other child support group changes);
 - v. a change to the proportion of care that each parent or carer provides for the child (the care percentage) results in a change to the care cost percentage;
 - vi. the qualifying child becomes financially independent;
 - vii. the qualifying child lives with another person in a marriage, civil union or de facto relationship.

It may also be necessary to amend an assessment where an independent decision has been made that an assessment should be amended. For example, an amendment may be necessary to comply with:

- viii. a court-ordered departure, or

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- ix. a departure made under an administrative review.
- b) An assessment may also be amended when the Commissioner accepts a voluntary agreement of child support that has been entered into by the parties. This includes, but is not limited to, situations where:
- i. the voluntary agreement between the parties is amended and the Commissioner accepts an application to administer the amended agreement;
 - ii. a court makes an order to cancel, vary, extend or suspend a voluntary agreement under s 32(2)(d) of the Property (Relationships) Act 1976;
 - iii. the payments under the voluntary agreement cease to be payable, for example, if the voluntary agreement expires.
11. An assessment of domestic maintenance can arise either from the acceptance of a voluntary agreement between parties, or from a court order. These assessments of domestic maintenance can be amended in various situations, including when:
- a) both parties agree to amend their voluntary agreement, or
 - b) a court orders the amendment.
12. Amendments to child support assessments can either be initiated when the Commissioner becomes aware of new information affecting a child support assessment, or be requested by parents or carers (for example, after a change in circumstances that affects the calculation of financial support).
13. If a parent or carer considers that the formula assessment does not adequately take into account their circumstances, they can apply for a review. This is not covered by s 87 or this SPS. See principle (c) in [23] below, and the Inland Revenue guide IR175 *Helping you to understand child support reviews* for more information.

Informing Inland Revenue about changes

14. A parent or receiving carer is required by law to advise Inland Revenue of any change in their living circumstances that may affect their care cost percentage, any allowances, or their multi-group cap (if applicable).
15. When a parent or carer becomes aware of any other change that may affect the amount of financial support they pay or receive, they should advise Inland Revenue at the earliest opportunity. This will ensure greater certainty for both parties. Furthermore, in some cases, failing to notify the Commissioner of changes is treated as an offence under s 208 of the Act. This includes failing to notify the Commissioner of changes in living circumstances or of a change of address.
16. It is best for all parties to inform Inland Revenue promptly regarding possible changes to assessments. Certainty works both ways. The Commissioner retains the discretion to amend (or not to amend) assessments at any time. This means that if Inland Revenue is advised of a change in circumstances well after the change or event took place, the Commissioner may consider the assessment should not be amended. Conversely, there may be good reason for the assessment to be amended and this could result in significant changes to an assessment at a later time. Advising Inland Revenue of changes as they come to light results in greater certainty of payments of financial support for all parties.

What information should be provided to Inland Revenue?

17. When advising the Commissioner about a change that could affect an assessment, the parent or carer should provide as much information and evidence as possible. Where relevant, the following information should be provided:
 - a. A description of the event or change, including the background circumstances.
 - b. The dates of events that affect the assessment.
 - c. How the change or event was identified.
 - d. If the amendment relates to a prior child support year and the Commissioner was not notified within 28 days of the change/event, an explanation of the delay in notifying Inland Revenue.

In addition, the parent or carer should provide any other evidence they consider relevant. This may help to ensure the amendment request progresses more efficiently as the Commissioner may not need to request further evidence from the parent or carer. What is relevant will depend on the amendment being requested. In some instances, the Commissioner may verify information provided by the requesting party with other sources of information.

18. The Commissioner has secrecy obligations under part 4 of the Tax Administration Act 1994 and s 240 of the Child Support Act 1991 and therefore may not be able to divulge information provided by another party (including other parents or carers in the child support relationship).
19. There are exceptions to this. For example, s 240(2) specifically sets out communications that are permitted. Another example is s 96H which applies under an administrative review and allows the Commissioner to send documentation to the other parties to the application for the administrative review.
20. To ensure the Commissioner has the correct information and is able to make an accurate assessment, it is important that all available relevant information and supporting evidence is provided. The Commissioner may also ask for evidence for specific periods of time.
21. The Commissioner is legally able to act on the basis of the documents and information held by Inland Revenue, and is not required to conduct any enquiries or investigations or to require that any further information be supplied. However, the Commissioner will not amend an assessment where it is reasonably suspected that the information provided by a parent or carer may be false. To ensure the Commissioner has complete information, parents or carers should, as far as possible, proactively provide all relevant information.

Principles

22. An amendment to an assessment can only be made under s 87 if the Commissioner considers the amendment necessary to give effect to the Act. This will include amendments required to give effect to a formula assessment, a voluntary agreement accepted by the Commissioner, a court order or a legislative exemption under Part 5A of the Act.
23. The Commissioner is not required to, and will not necessarily, amend all assessments that are incorrect. As part of the care and management obligations,

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the Commissioner will weigh up a number of principles to decide whether to amend an assessment. These principles are explained below. Note that these principles are not listed in order of importance. The principles that apply and the weighting that they are given will depend on the particular fact situation.

(a) Giving effect to the Act

This involves considering what provision of the Act the amendment would give effect to. In many instances, even where it requires an assessment to be amended, the Act also provides a discretion for the Commissioner as to when to make the amendment.

The objects of the Act (set out in s 4) are:

- to affirm the right of children to be maintained by their parents
- to affirm the obligation of parents to maintain their children
- to provide that the level of financial support to be provided by parents for their children is to be determined according to their relative capacity to provide financial support and their relative levels of provision of care
- to ensure that parents with a like capacity to provide financial support for their children should provide like amounts of financial support
- to provide legislatively fixed standards in accordance with which the level of financial support to be provided by parents for their children should be determined
- to affirm the right of carers who provide significant care to children to receive financial support in respect of those children from a parent or parents of the children
- to enable carers of children to receive support in respect of those children from parents without the need to resort to court proceedings
- to ensure that equity exists between parents and, where applicable, carers, in respect of the costs of supporting children
- to ensure that obligations to birth and adopted children are not extinguished by obligations to stepchildren
- to ensure that the costs to the State of providing an adequate level of financial support for children and their carers is offset by the collection of a fair contribution from liable parents
- to provide a system whereby child support and domestic maintenance payments can be collected by the Crown, and paid by the Crown to those entitled to the money.

Therefore, the Commissioner must consider whether the objects will be met if either the status quo is retained and no amendment is made or the amendment is made to the assessment.

There are three situations where the current practice focuses on giving effect to the Act. First, where there has been a change in living circumstances, s 82 sets out the rules that must be applied for amending assessments. These rules are discussed further in [25].

Second, where the Commissioner has previously estimated taxable income under s 39 and later ascertains the correct amount of income, the assessment will be amended as if the correct amount is, and always has been, the person's taxable income. This is discussed further in [26].

Third, where there has been an event that means the liability to pay child support has ceased, the assessment must be amended. This applies to three situations: first, where there is a formula assessment and one of the events in s 25 of the Act has occurred; second, where there is a voluntary agreement and one of the events in s 62 of the Act has occurred; and third, where there is a court order in force and an event under s 71(c) or (d) of the Act has occurred. The Commissioner will amend from the date that the cessation event took place unless, after considering the other principles listed below, there are overriding reasons to amend from a different date.

(b) Length of time since the change or event

Generally, the older the period of reassessment, the less likely it is that an amendment will be made. This is because facts and circumstances are often harder to establish, making it difficult for the parties to provide reliable evidence to help substantiate a reassessment.

The Commissioner will consider the parent or carer's disclosure of information. In particular, where there has been a delay in informing Inland Revenue of the change or event, the Commissioner will consider the reasons for the delay. A parent or carer is expected to promptly notify the Commissioner of changes or events that affect a child support assessment.

(c) Other administrative options available

Where a parent or carer considers that the formula assessment calculated under the Act is not fair because it does not fit their particular circumstances, they can apply for an administrative review or a departure order. The rules relating to administrative reviews and departure orders are contained in Parts 6A, 6B and 7 of the Act. Section 87 cannot be used as an alternative to these processes. For further information on these processes, see the Inland Revenue publications IR174 *Helping you to understand child support and the Family Court*, and IR175 *Helping you to understand child support reviews*, available at www.ird.govt.nz (keywords: IR174 or IR175).

(d) Complexity

The law relating to the proposed or requested amendment must be clear and unambiguous. The Commissioner will not make an amendment where there is a complex, unresolved issue (for example, issues that are before a court or covered only by proposed new legislation yet to be passed by Parliament).

(e) Events or changes in the intervening years

When considering an amendment to a past-year assessment, the Commissioner will consider whether the parent or carer's situation is likely to have significantly changed over the period. For example, while an event requiring an assessment to be amended may have occurred five years ago, another change may have occurred three years ago that means the original amendment is not required to the same extent.

Making a retrospective amendment to a previous assessment might only be fair if the assessments for the intervening periods are also made.

(f) Voluntary compliance

Where possible, any decision to amend an assessment should not discourage the voluntary compliance of parents and carers with their legal obligations, including their obligations to provide information.

(g) Compliance costs

One of the care and management principles to be taken into account by the Commissioner when deciding whether to amend an assessment is the effect on compliance costs for the parents or carers.

(h) Vexatious requests

Amendment requests that relate to very small amounts of financial support, or requests that the Commissioner considers to be vexatious in nature, will not usually be agreed to. Whether an amount is a “very small amount” will depend on the facts of the case, the assessment period being considered and the circumstances of the individuals involved.

(i) Fraudulent or misleading behaviour

Assessments will be considered for amendment in all cases where it is suspected that the Commissioner has been fraudulently or wilfully misled in order to prevent the activity resulting in a benefit to the fraudulent party. This maintains the integrity of the tax system and adheres to the concept of fairness by treating all customers that fall into this category equally.

Where fraudulent or misleading behaviour is suspected, any proposed amendment will first be reviewed by a Team Leader or a Technical and Service Advisor (or higher) before it is made. This is to ensure that a stricter process is followed by Inland Revenue where an assertion of fraudulent or misleading behaviour exists, and because such cases typically involve more complicated facts.

(j) Effect of the error on future assessments

As far as possible, assessments should be correct. Where an error or a change in circumstances has occurred in the past that, if left uncorrected, would affect future assessments, this suggests the amendment should be made. Similarly, where an error occurred in the past, but the circumstances of the parents/carers have now changed so that the error is no longer applicable to their current assessment, this may suggest the amendment is less important.

(k) Inland Revenue communications

If the Commissioner is persuaded that the parent or carer has made an error as a direct result of relying on advice given to them by Inland Revenue officers, favourable consideration may be given to the exercise of the discretion.

(l) Party ultimately affected

Changes to assessments of child support will generally result in opposite effects for the two parties – eg, if the liable parent is required to pay more (or less) than originally assessed, then the receiving carer will receive more (or less) than originally assessed.

A consequence of the amendment may be that the obligations between the parties are reversed, so that the receiving carer becomes the liable parent, and the liable parent becomes the receiving carer.

On the other hand, it is not always the parent or carer themselves who are better or worse off. In some cases, where the parent or carer is the recipient of a benefit, the Government is the affected party. The Government is to be treated with no more or less importance than a natural person carer or parent.

(m) Resources

It is important to recognise that Inland Revenue does not have unlimited resources. The Commissioner must balance the time spent considering amendments to financial support with the time spent on other activities, and thereby meet the obligation under s 6(1) of the Tax Administration Act 1994 to protect the integrity of the tax system.

The Commissioner will be reluctant to make amendments where they would require the use of disproportionate amounts of Inland Revenue's resources. This is not to say that the Commissioner will only use minimal resources to determine whether to make amendments or will never agree to complex amendment requests. The extent and relevance of a parent or carer's disclosure will help the Commissioner determine the amount of resources needed to consider amendment requests. Ultimately, the allocation of resources will be determined on a case-by-case basis.

As noted in principle (h), amendment requests that relate to very small amounts of financial support will not usually be agreed to. Whether an amount is a "very small amount" will depend on the facts of the case, the assessment period being considered and the circumstances of the individuals involved.

To assist in the consideration of any amendment request, parents or carers should provide sufficient relevant information with their request to ensure that the facts and laws relating to the errors are clear and unambiguous. Determining unresolved factual or legal issues may require disproportionate amounts of Inland Revenue's resources such that an amendment request might be declined irrespective of the dollar amounts involved.

(n) Applying consistency

In general, where a change is going to affect more than one assessment or have more than one effect on an assessment, these amendments should be made consistently.

(o) Agreement between the parties

In the case of a voluntary agreement of financial support, an assessment is likely to be amended where all parties to the agreement mutually agree on an amendment.

Similarly, where parties to a formula assessment of child support mutually agree that an amendment should or should not be made, and no Crown monies are at stake, this may be taken into account by the Commissioner.

24. After considering the principles above, when the Commissioner decides that an assessment will be amended, all parties to the child support relationship will be notified where possible. When a decision is made not to amend an assessment, generally only the party who made the request will be notified.

Date to amend assessment(s) from

Changes in living circumstances

25. Where there is a change in living circumstances, s 82 of the Act applies and the following rules apply.

Every receiving carer must advise the Commissioner of any change in their living circumstances if it affects the determination of their care cost percentage. Every parent must advise the Commissioner of any change in their living circumstances that affects the determination of their care cost percentage, their appropriate living allowance, any dependent child allowance, any person's multi-group allowance, or any person's multi-group cap. The rules for when these changes are treated as occurring are set out below.

Date to amend assessments for change in living circumstances - Ordinary rules

Where the Commissioner is satisfied that a change of living circumstances has occurred, the assessment will be amended with effect from *the date of the change* where:

- (i) the Commissioner was notified of the change within 28 days of the date on which the change occurred;
- (ii) the change relates to a liable parent and it has the effect of increasing the amount of the parent's child support liability; or
- (iii) the change relates to a receiving carer and it has the effect of decreasing the amount of child support payable in respect of that carer.

Where the Commissioner is satisfied that a change of living circumstances has occurred, the amendment will apply from *the date that the notice of the change was received* where:

- (i) the change relates to a liable parent and it has the effect of decreasing the amount of the parent's child support liability; or
- (ii) the change relates to a receiving carer and it has the effect of increasing the amount of child support payable in respect of that carer.

However, as noted above, if the Commissioner was notified within 28 days of the date on which the change occurred, then the change is treated as having occurred on the date of the change.

The application of the rules above may result in changes to assessments from previous years.

Conflicting dates

Where two or more parties notify the Commissioner outside the 28 day period and the application of the ordinary rules above would mean that the same change is treated as having occurred on different days for different people, the change will be

effective for all parties from *the first date that notice was given to the Commissioner*.

Where at least one party notifies the Commissioner within 28 days of the event and at least one party notifies the Commissioner outside the 28 day period and the application of the ordinary rules above would mean that the same change is treated as having occurred on different days for different people, the change will be effective from *the date of the change*.

Estimating taxable income

26. Section 39 provides that where the Commissioner has requested certain income information to be provided and the person has failed to provide that information, the Commissioner may estimate the taxable income for that person and make an assessment on the basis of that estimate. If the Commissioner later ascertains the person's correct taxable income, the Commissioner is required to amend the formula assessment as if the newly ascertained amount is, and always has been, the person's taxable income.

End of year reconciliations

27. Where a parent or carer has estimated their income, an end-of-year reconciliation will be performed that may result in previous years' assessments being amended.

General rules

28. The words *as the Commissioner considers necessary* in s 87 indicate that it is for the Commissioner to determine when an amendment is required and to what extent. It follows that there will be situations where the Commissioner does not consider an amendment necessary or that a partial amendment would be appropriate.
29. When considering whether to amend an assessment, emotive considerations cannot be taken into account. The Child Support Act considers financial considerations and is not directly concerned with welfare issues; these are dealt with by other legislation.
30. For all decisions whether to amend an assessment, Inland Revenue will record notes in its internal system that set out the reasons for the decision.
31. If the Commissioner considers an amendment should be made, the extent to which assessments will be amended depends on the period in which the change or event occurred (and therefore the assessment that it affects). Where the change or event occurred in the current child support year, amendments will generally be made from the date that the particular change or event occurred.
32. Aside from the rules set out in [25]–[27] above, where the change or event affects assessments that are prior to the current child support year, amendments will generally be made from the start of the current year, and only the current year assessment will be amended. This is to ensure a consistent and impartial treatment to all child support customers, but is subject to the exceptions below.
 - (a) Exception 1: Cessation event. Where the liability to pay financial support has ended after one of the events outlined in ss 25, 62, or 71(c) or (d) has occurred, the assessment will be amended from the date that the cessation event took place unless, after considering the other principles listed above,

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there are overriding reasons to amend from a different date. However, where the assessment is at the minimum level and, with the amendment, would remain at the minimum level, then the assessment will only be amended from the start of the current child support year.

- (b) Exception 2: This exception applies if a change took place in a child support year up to and including the year ending 31 March 2015 and that change relates to a dependent child who was included in a living allowance and who has now turned 19. Unless there are exceptional circumstances that warrant a different date to be used, the assessment will be amended from the date the child turned 19. Inland Revenue considers that it is reasonable to expect that, where a child included in a living allowance turns 19, the parents should notify Inland Revenue. They should not benefit where they have failed to do so. However, where the assessment is at the minimum level and, with the amendment would remain at the minimum level, then the assessment will only be amended from the start of the current child support year.
- (c) Exception 3: Where there are exceptional or special circumstances that justify a different amendment date. The Commissioner would need a good reason to be satisfied that the circumstances are in fact exceptional to justify deviating from the ordinary process, and higher internal processes would need to be followed (eg, higher delegations, written submission required). One example of an exceptional circumstance is where there are multiple changes that affect the same assessment and, individually, not all the changes result in the same amendments or not from the same point in time.

This Standard Practice Statement is signed on 30 May 2016.

APPENDIX: Selected sections of legislation

Child Support Act 1991

Note: The following provisions may have changed since this SPS was published. For the most up-to-date legislation see www.legislation.govt.nz and search: "Child Support Act 1991".

Section 4: Objects

The objects of this Act are—

- (a) to affirm the right of children to be maintained by their parents:
- (b) to affirm the obligation of parents to maintain their children:
- (c) [Repealed]
- (d) to provide that the level of financial support to be provided by parents for their children is to be determined according to their relative capacity to provide financial support and their relative levels of provision of care:
- (e) to ensure that parents with a like capacity to provide financial support for their children should provide like amounts of financial support:
- (f) to provide legislatively fixed standards in accordance with which the level of financial support to be provided by parents for their children should be determined:
- (fa) to affirm the right of carers who provide significant care to children to receive financial support in respect of those children from a parent or parents of the children:
- (g) to enable carers of children to receive support in respect of those children from parents without the need to resort to court proceedings:
- (h) to ensure that equity exists between parents and, where applicable, carers, in respect of the costs of supporting children:
- (i) to ensure that obligations to birth and adopted children are not extinguished by obligations to stepchildren:
- (j) to ensure that the costs to the State of providing an adequate level of financial support for children and their carers is offset by the collection of a fair contribution from liable parents:
- (k) to provide a system whereby child support and domestic maintenance payments can be collected by the Crown, and paid by the Crown to those entitled to the money.

Section 25: When liability to pay child support ceases

- (1) A liable parent ceases to be liable to pay child support in respect of a qualifying child under a formula assessment on the day before the date on which the child—
 - (a) ceases to be a qualifying child; or
 - (b) is adopted; or
 - (c) dies.
- (2) A liable parent ceases to be liable to pay child support under a formula assessment on the day the parent ceases to be a liable parent under section 17, or on the day before the date on which the parent—
 - (a) becomes a person who is none of the following:
 - (i) a New Zealand citizen:

- (ii) a person who is ordinarily resident in New Zealand;
 - (iii) a person who is ordinarily resident in a country with which New Zealand has entered into a reciprocal agreement for the enforcement of child support; or
 - (b) becomes a person from whom child support may not be sought in respect of the child by reason of section 6(2); or
 - (c) dies.
- (3) A liable parent ceases to be liable to pay child support in respect of a particular receiving carer of a qualifying child under a formula assessment on the earliest of the following:
- (a) if the receiving carer dies, on the earlier of the following:
 - (i) the 28th day after the date of death;
 - (ii) the day before the date on which a properly completed application for formula assessment is received by the Commissioner from a carer in place of the carer who has died;
 - (b) the day before the date on which the receiving carer ceases to provide at least 35% of ongoing daily care to the child;
 - (c) the day before the date on which the receiving carer starts to live, or resumes living, with the liable parent of the child in a marriage, civil union, or de facto relationship;
 - (d) in any case to which section 8(2) applies, the day before the date on which the carer ceases to be under a duty to make payments under section 363 of the Children, Young Persons, and Their Families Act 1989 in respect of the child;
 - (e) [Repealed]
 - (f) in a case where a voluntary agreement made in relation to the child between the liable parent and the carer is accepted by the Commissioner, the day before the date on which that voluntary agreement first applies, in accordance with section 59.
- (4) Subsection (5) applies if the Commissioner accepts an election under section 27 to end a formula assessment as it applies in respect of a qualifying child.
- (5) A liable parent ceases to be liable to pay child support in respect of the qualifying child under the formula assessment on –
- (a) the day on which the Commissioner received the notice of election; or
 - (b) if the notice of election specified a later day on which the formula assessment as it applies in respect of the qualifying child is to end, that later day.

Section 39: Position where taxable income not readily ascertainable

- (1) Where—
- (a) the Commissioner is unable to readily ascertain a person’s taxable income for the last relevant tax year; and
 - (b) the Commissioner has requested or required that person—
 - (i) to supply a return of income for the last relevant tax year; or
 - (ii) to supply an estimate of income for the last relevant tax year; or
 - (iii) to supply an estimate of the income expected to be derived in the child support year; or
 - (iv) to give information (whether orally or in writing), or to produce a document,—

(whether the requirement was made under this Act, or under the Income Tax Act 1976 or the Tax Administration Act 1994 or otherwise) for the purposes of ascertaining that taxable income; and

(c) the person has refused or failed to comply with the request or requirement,—
the Commissioner may, in making a formula assessment, estimate the taxable income derived by that person in the last relevant tax year.

(2) [Repealed]

(3) If—

(a) the Commissioner has applied subsection (1) in making a formula assessment;
and

(b) the Commissioner subsequently ascertains the person's taxable income for the last relevant tax year (whether or not an assessment has been made under the Income Tax Act 1976 or the Tax Administration Act 1994 in respect of that year),—

the Commissioner shall, as soon as practicable, amend the formula assessment on the basis that the person's taxable income for the last relevant tax year is, and has always been, the subsequently ascertained taxable income.

Section 62: When payments under voluntary agreement cease to be payable

(1) A party to a voluntary agreement that has been accepted by the Commissioner under this Act shall cease to be liable under this Act to make payments under the agreement from whichever is the earliest of the following days:

(a) in relation to an agreement for the payment of child support in respect of a qualifying child to a carer of the child,—

(i) the day that the agreement expires:

(ii) the day before the day on which the liable parent would cease to be liable to pay child support in respect of that child under section 25:

(iii) the day before the day on which the agreement ceases to qualify for acceptance by the Commissioner in terms of section 48:

(iv) the day before the day on which a notice of election under section 64 takes effect:

(b) in relation to an agreement for the payment of domestic maintenance—

(i) the day that the agreement expires:

(ii) the day before either party to the agreement becomes a person who is neither a New Zealand citizen nor a person who is ordinarily resident in New Zealand:

(iii) the day before the day on which a notice of election under section 64 takes effect:

(iv) the day before the day either party dies.

(2) Nothing in this section affects the contractual liability of any party to a voluntary agreement.

Section 70: Election that Commissioner is not to enforce order

(1) The person to whom any money is payable in accordance with any order to which this Part applies may, by written notice given to the Commissioner, elect that the order be one to which this Part does not apply.

(2) The notice must be—

- (a) in the appropriate approved form; and
 - (b) verified as required in the form of notice; and
 - (c) accompanied by such documents (if any) as are required by the form of notice to accompany the notice.
- (3) If any such election is made,—
- (a) nothing in this Part or any other provision of this Act shall apply to any money that becomes payable in accordance with the order after the date of the election; and
 - (b) any money payable in accordance with the order after the date of the election may, without prejudice to any mode of recovery, be enforceable in the same manner as a judgment given by the District Court in civil proceedings.
- (4) An election made under subsection (1) shall be irrevocable.

Section 71: Period for which money payable under this Act

Any money payable under this Act in accordance with an order to which this Part applies is payable in relation to the days in the period commencing on the later of—

- (a) 1 July 1992; and
 - (b) the day on which the order comes into force,—
- and ending with the earlier of the following days:
- (c) the day on which the order ceases to be in force; and
 - (d) the day on which an election made under section 70 takes effect.

Section 82: Parents and receiving carers to advise Commissioner of changes

- (1) For the purpose of enabling the Commissioner to make or amend a calculation of child support payable in respect of a child in any child support year under a formula assessment, every parent and every receiving carer of the child must advise the Commissioner of any change in the parent's or carer's living circumstances occurring during the child support year that affects, or may affect, any of the following:
- (a) in relation to parents and non-parent carers, the determination of the person's care cost percentage:
 - (b) in relation only to parents, the following:
 - (i) the person's appropriate living allowance:
 - (ii) the application or calculation of any dependent child allowance (if any):
 - (iii) the application or calculation of any person's multi-group allowance (if any):
 - (iv) the application or calculation of any person's multi-group cap (if applicable).
- (2) If the Commissioner is satisfied that a relevant change of living circumstances has occurred, the change is to be treated as having occurred—
- (a) on the date on which the change occurred, in any of the following cases:
 - (i) in relation to a liable parent, where the change has the effect of increasing the amount of the parent's child support liability:
 - (ii) in relation to a receiving carer, where the change has the effect of decreasing the amount of child support payable in respect of that carer:
 - (iii) where notice of the change is received by the Commissioner within 28 days after the date on which the change occurred; or
 - (b) on the date on which the Commissioner receives notice of the change, in either of the following cases (unless paragraph (a)(iii) applies):

- (i) in relation to a liable parent, where the change has the effect of decreasing the amount of the parent's child support liability;
 - (ii) in relation to a receiving carer, where the change has the effect of increasing the amount of child support payable in respect of that carer.
- (3) Every notification of a change must be accompanied by such documentation as the Commissioner requires.
- (4) The Commissioner may disregard subsection (2), and may determine the date on which a particular change in living circumstances is to be treated as having occurred, in any case where 2 or more people give notice under this section relating to the same change, and the application of subsection (2) would result in the same change having to be treated as having occurred on different days in relation to different people.

Section 86: Commissioner to give effect to changed circumstances

- (1) Where child support is payable in respect of a qualifying child and the Commissioner is notified, or otherwise becomes aware,—
 - (a) that the liability of a liable parent to pay child support to a carer in respect of the child has ceased in accordance with section 25 or 62; or
 - (b) that an event or change of circumstances has occurred that alters the respective liability or entitlement of any parent or carer of the qualifying child,—
the Commissioner shall, as soon as practicable, take such action as is necessary to take account of the event or change in circumstances (whether by amending any assessment or otherwise).
- (2) Where domestic maintenance is payable by a liable spouse or partner under a voluntary agreement or an order of the court and either—
 - (a) payment is to cease, or the rate of payment is to reduce, on a particular day in accordance with that agreement or order; or
 - (b) the Commissioner is notified, or otherwise becomes aware,—
 - (i) of the death of either party to the agreement; or
 - (ii) that an event or change of circumstances has occurred that affects the annual rate at which domestic maintenance is payable under this Act,—
the Commissioner shall, as soon as practicable, take such action as is necessary to take account of the event or change in circumstances (whether by amending any assessment or otherwise).
- (3) Nothing in subsection (1) or subsection (2) is to be taken to prevent the Commissioner from taking such action as the Commissioner considers appropriate to take account of the likely occurrence of an event or change of circumstances of which the Commissioner is notified or otherwise becomes aware (whether by amending any assessment or otherwise).

Section 87: Amendment of assessments

- (1) The Commissioner may, at any time, amend any assessment by making such alterations and additions as the Commissioner considers necessary to give effect to this Act.
- (2) Subsection (1) has effect despite the fact that—
 - (a) child support or, as the case may be, domestic maintenance has been paid under the assessment; or
 - (b) the child support year, or the part of the child support year, to which the assessment relates has ended; or
 - (c) proceedings are pending in a court having jurisdiction under this Act against or in relation to the assessment.
- (3) Without limiting subsection (1), the Commissioner may amend any assessment for the purpose of—
 - (a) correcting any error or mistake (whether or not made by the Commissioner); or
 - (b) correcting the effect of any false or misleading statement made to the Commissioner; or
 - (c) giving effect to the happening of an event or change of circumstances to which the provisions of section 86 apply; or
 - (d) giving effect to a formula assessment of child support by the Commissioner; or
 - (da) giving effect to Part 5A; or
 - (e) giving effect to the acceptance of a voluntary agreement by the Commissioner; or
 - (ea) giving effect to a determination of the Commissioner under Part 6A or 6B; or
 - (f) giving effect to a decision or order of a court under Part 7.
- (4) Where a provision of this Act expressly authorises the Commissioner to amend an assessment, that provision does not by implication limit the power of the Commissioner (whether under this section or otherwise) to amend the assessment.
- (5) Except as otherwise expressly provided in this Act, every amended assessment is to be taken to be an assessment for all the purposes of this Act.
- (6) In any case where—
 - (a) child support or domestic maintenance payable under an amended assessment is increased after the due date; and
 - (b) the Commissioner is satisfied that the matter giving rise to the increase did not result from any neglect or default by the person who is required to pay that child support or that domestic maintenance under the amended assessment,—
that person—
 - (c) shall pay by the due date the amount that would have been payable if the increase had not taken effect; and
 - (d) shall pay the amount of the increase within 30 days after the date of the amended assessment,—
and the Commissioner shall fix that date as the new due date for payment.

Section 208: Offences

Every person commits an offence against this Act who—

- (a) fails to notify the Commissioner, as required by section 89ZC, of the matters referred to in that section; or
- (b) fails to notify the Commissioner, as required by section 82, of changes in living circumstances; or
- (c) makes a deduction that contravenes section 165; or
- (d) [Repealed]
- (e) fails to notify the Commissioner, as required by section 239(1), of any change to that person's address; or
- (f) fails to comply with any requirement of the Commissioner pursuant to section 239(2); or
- (g) provides any false document or any false statement or any false declaration or gives any false information, knowing it to be false, or being reckless as to whether it was false, or intentionally misleads or attempts to mislead the Commissioner or any other officer of the Inland Revenue Department in relation to any matter under this Act; or
- (h) knowingly falsifies any records required to be kept under this Act; or
- (i) obstructs any officer of the Inland Revenue Department acting in the discharge of that officer's duties or in the exercise of that officer's powers under this Act; or
- (j) aids, abets, incites, or conspires with any person to commit any offence against this Act or against any regulation made under this Act.

Section 240: Secrecy

(1) For the purposes of this section,—

(2) For the purposes of the Tax Administration Act 1994, the following communications shall be deemed to be communications of matters made for the purpose of carrying into effect the provisions of this Act:

- (a) the communication of such information as is necessary for the purpose of any prosecution under any Act of the Parliament of New Zealand or under the law of any country or territory outside New Zealand, or such information as the Commissioner considers desirable for the purpose of any investigation into any suspected offence being a prosecution or, as the case may be, an investigation in relation to—
 - (i) any threat made by a liable parent against the welfare of any carer of any child of that person or the welfare of that child; or
 - (ii) any threat made by a liable spouse or partner against the welfare of the person to whom the liable spouse or partner is required to make payments under this Act; or
 - (iii) any threat made by a liable person against the welfare of an officer of the Inland Revenue Department:
- (b) the communication, to the person who, in relation to any liable person and to any financial support payable by the liable person under this Act, is the payee, of such information as the Commissioner considers desirable for the purpose of informing that person of the amount of any such financial support that is in arrear and

unpaid by the liable person and the enforcement actions that have been taken or are proposed for the purpose of securing payment of that amount:

- (ba) the communication from time to time, to the person who, in relation to any liable person and to any financial support payable by the liable person under this Act, is the payee, of such information as the Commissioner considers desirable for the purpose of informing that person, in relation to any period, of the amount of any such financial support that has been paid by the liable person for or during that period, and the date or dates on which the payment or payments have been made:
 - (c) the communication, to the chief executive of the department for the time being responsible for the administration of the Social Security Act 1964 or any officer of that department authorised in that behalf, of information for the purpose of—
 - (i) carrying into effect the provisions of this Act; or
 - (ii) carrying into effect the provisions of section 70A of the Social Security Act 1964:
 - (iii) [Repealed]
 - (d) the communication, to the chief executive of the department for the time being responsible for the administration of the Social Security Act 1964 or any officer of that department authorised in that behalf or the General Manager of Veterans' Affairs New Zealand, of information relating to the amount of financial support paid by the Commissioner pursuant to Part 9 of this Act to any person whose income is required to be determined for the purposes of the Social Security Act 1964 or the Social Welfare (Reciprocity Agreements, and New Zealand Artificial Limb Service) Act 1990 or Part 6 of the Veterans' Support Act 2014 or the New Zealand Superannuation and Retirement Income Act 2001:
 - (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 Police employee authorised in that behalf, of information for the purpose of carrying into effect subpart 4 of Part 5A:
 - (e) 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 purposes of—
 - (i) the enforcement outside New Zealand of—
 - (A) child support liabilities; or
 - (B) maintenance liabilities,—that arose under this Act or under the Family Proceedings Act 1980; or
 - (ii) the enforcement within New Zealand of child support or maintenance liabilities that arose under the law of a foreign country.
- (3) Any person to whom this section applies—
- (a) shall, if and when required by the Commissioner to do so, certify in the manner prescribed in subsection (5) that he or she has been shown, has read, and has understood the provisions of this section; and
 - (b) thereafter shall be bound to maintain and aid in maintaining the secrecy of all matters relating to the Inland Revenue Acts, including all Acts (whether repealed or not) at any time administered by or in the Inland Revenue Department or

relating to such other functions as may from time to time be, or have been, lawfully conferred on the Commissioner which come to his or her knowledge; and

(c) shall not at any time communicate such matters to any person except for any purpose or purposes for which the Commissioner authorises such disclosure and to the extent that the Commissioner authorises such disclosure.

(4) Without limiting the generality of subsection (3), it is hereby declared that no person to whom this section applies shall be required to produce in any court or tribunal any book or document, or to divulge or communicate to any court or tribunal any matter or thing which that person may acquire or have access to or be given by way of information to which this section applies.

(5) The certificate referred to in subsection (3) shall be given in the form prescribed by the Commissioner, and shall include the full name, address, and signature of the person giving the certificate and the date on which the certificate is given.

(6) The certificate referred to in subsection (3) and subsection (5) shall,—

(a) where it is given by any persons referred to in paragraph (c) or paragraph (d) of subsection (2), be kept by the department for the time being responsible for the administration of the Social Security Act 1964 as a permanent record; and

(b) where it is given by any persons referred to in subsection (2)(db) or (e), be kept by the Ministry of Justice as a permanent record; or

(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

(c) where it is given by any other person referred to in subsection (2), be kept by the Inland Revenue Department as a permanent record.

(7) Every person to whom this section applies who knowingly acts in contravention of any provision of this section commits an offence against this section and is liable on conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding \$15,000.

(8) Notwithstanding anything in any other Act, nothing shall prevent the Commissioner or any officer of the Inland Revenue Department from—

(a) using information obtained under this Act for the purposes of carrying into effect the provisions of any of the Inland Revenue Acts; or

(b) using information obtained under any of the Inland Revenue Acts for the purposes of carrying into effect the provisions of this Act.

(9) Sections 81 to 87 of the Tax Administration Act 1994 shall not prevent officers of the Inland Revenue Department from advising persons who potentially are liable persons of the amount of child support that is likely to be payable by that person, based on the income of that person.

(10) No obligation as to secrecy or other restriction upon the disclosure of information imposed by any enactment or otherwise shall prevent the chief executive of the department for the time being responsible for the administration of the Social Security Act 1964 or any officer of that department authorised in that behalf from disclosing to the Commissioner—

(a) information obtained for any purpose and which is required to be disclosed by the persons authorised by this subsection for the purposes of carrying into effect the provisions of this Act:

(b) information held in relation to any person who is required to make liable parent contributions assessed under the Social Security Act 1964:

- (c) the name and address of any person who is in receipt of a benefit under the Social Security Act 1964 and who is a liable person or a payee under this Act.
- (11) Information obtained pursuant to subsection (10) shall not be disclosed except—
- (a) to the Commissioner or any officer of the Inland Revenue Department authorised in that behalf; or
 - (b) for the purposes of any proceeding connected with a matter in relation to which those persons so authorised perform their duties.

Tax Administration Act 1994

Section 6: Responsibility on Ministers and officials to protect integrity of tax system

- (1) Every Minister and every officer of any government agency having responsibilities under this Act or any other Act in relation to the collection of taxes and other functions under the Inland Revenue Acts are at all times to use their best endeavours to protect the integrity of the tax system.
- (2) Without limiting its meaning, **the integrity of the tax system** includes—
- (a) taxpayer perceptions of that integrity; and
 - (b) the rights of taxpayers to have their liability determined fairly, impartially, and according to law; and
 - (c) the rights of taxpayers to have their individual affairs kept confidential and treated with no greater or lesser favour than the tax affairs of other taxpayers; and
 - (d) the responsibilities of taxpayers to comply with the law; and
 - (e) the responsibilities of those administering the law to maintain the confidentiality of the affairs of taxpayers; and
 - (f) the responsibilities of those administering the law to do so fairly, impartially, and according to law.

Section 6A: Commissioner of Inland Revenue

- (1) The person appointed as chief executive of the department under the State Sector Act 1988 is designated the Commissioner of Inland Revenue.
- (2) The Commissioner is charged with the care and management of the taxes covered by the Inland Revenue Acts and with such other functions as may be conferred on the Commissioner.
- (3) In collecting the taxes committed to the Commissioner's charge, and notwithstanding anything in the Inland Revenue Acts, it is the duty of the Commissioner to collect over time the highest net revenue that is practicable within the law having regard to—
- (a) the resources available to the Commissioner; and
 - (b) the importance of promoting compliance, especially voluntary compliance, by all taxpayers with the Inland Revenue Acts; and
 - (c) the compliance costs incurred by taxpayers.