

NEW LEGISLATION

This section of the *TIB* covers new legislation, changes to legislation including general and remedial amendments, and Orders in Council.

CHILD SUPPORT AMENDMENT ACT 2013

The Child Support Amendment Act 2013 introduces significant reforms to the child support scheme that will come into effect over the next two years. The intention is to make the child support scheme fairer, taking more factors into account and being more flexible. The changes will take into account a wider range of individual circumstances and reflect changes in family structure and involvement in child upbringing since the child support scheme was first introduced.

The reforms introduce:

- a comprehensive new formula that takes into account the estimated cost of raising children, a lower level of minimum shared care, and the income of both parents
- improvements to the administration of the scheme such as the compulsory deduction of child support from the employment income of liable parents, and
- a two-stage late payment penalty, reduction of the monthly incremental late payment penalties after a year, and relaxation of the circumstances under which debt can be written off.

The Child Support Amendment Act 2013 also replaces some sections of the Child Support Act 1991 to reflect changes in language and definitions.

There are some transitional provisions to allow the Commissioner to collect and update information required for the new child support formula and to allow assessments to be prepared in time for the child support year commencing 1 April 2014. Savings provisions also apply. The transitional and savings provisions came into effect from date of Royal assent.

Information relating to the formula assessment will be published on Inland Revenue's website and updated regularly. The website will also contain calculators to help people determine the level of shared care and child support liabilities.

Background

The Child Support Act 1991 is over two decades old. The child support scheme is primarily a back-up arrangement that operates when parents do not live together and cannot

reach agreement over the financial support of their children. In some cases where voluntary agreements are reached, the collection and distribution of child support can be administered by Inland Revenue. It also applies when the receiving carer is receiving a social security benefit.

In September 2010, the Minister of Revenue released a government discussion document entitled *Supporting children—a Government discussion document on updating the child support scheme*. The discussion document consulted on ways to update the child support scheme and make the scheme fairer to the parents involved. Over 2,000 people participated in the consultation.

In August 2011, Cabinet agreed to a number of changes and introduced the Child Support Amendment Bill 2011. Fifty-nine submissions were received by the Social Services Select Committee, which made a number of changes. Further minor changes were made at the Committee of the Whole House by Supplementary Order paper. The bill received its third reading on 9 April 2013 and received Royal assent on 16 April 2013.

Key features

The reforms have three key features:

- a comprehensive new formula for child support assessments
- improving the way the child support regime operates, and
- improving the way penalties and debt are managed.

Changes regarding the operation of the formula include:

- recognising the income of the receiving parent as well as the liable parent
- a new definition of income that includes most of the family scheme income adjustments in the Income Tax Act 2007 such as income in family trusts and some fringe benefits
- changing how allowances relating to the living costs of the parent and their children are determined, including a multi-group allowance, and no longer including an allowance for a new partner or children who are not legally dependent children of the parent, and

- recognising minimum care levels from 28% of nights (previously 40% was required) and allowing for daily care to be considered in some cases.

Other changes to the operation of the child support scheme have also been made. These include:

- recognising re-establishment costs as an administrative review ground in some circumstances
- allowing the Commissioner to rely on parenting orders and agreements when establishing care levels
- reducing the qualifying age of children subject to child support from under 19 to under 18, unless they are aged 18 and still in secondary education, and
- changes to the way estimations of income are calculated.

Changes to the rules relating to the payment of child support, the imposition of penalties and the writing-off of penalties and debt include:

- extending automatic deduction of child support from employment income of liable parents, except where automatic deduction is considered inappropriate by the Commissioner
- introducing a Commissioner discretion to allow various prescribed payments to be recognised for child support purposes, such as payment of the child's school fees
- a two-stage initial penalty, with the current full 10% penalty only applying if the debt remains unpaid after 7 days
- reducing the incremental monthly penalty from 2% to 1% after a year
- relaxing the circumstances in which penalties can be written-off, including when a liable parent enters into an instalment arrangement or is in financial hardship, or where debt recovery is an inefficient use of the Commissioner's resources
- allowing the Commissioner to write off assessed debt on serious hardship grounds where it is owed to the Crown, and
- allowing the Commissioner discretion for further offsetting of ongoing child support payments against child support arrears.

Detailed analysis

Assumptions about parents

New section 7B says the Commissioner is entitled to assume, when making a formula assessment, that a qualifying child has two parents and that those parents are living apart. The Child Support Amendment Act 2013 is

written on the basis of this assumption; however, there are situations when these assumptions will be incorrect. For example, there may be three legal parents of a qualifying child and two of those parents may be living together. The Commissioner may make any necessary modifications to the provisions of the Child Support Act 1991 to reflect the true position.

Who is a liable parent and receiving carer under a formula assessment?

The new legislation has changed some of the terminology and the associated definitions in the Child Support Act 1991. This is particularly relevant for determining, under a formula assessment, who is a liable parent and who is a receiving carer.

A parent of a qualifying child is a liable parent if the parent's income percentage is greater than or equal to their care cost percentage for that child. Likewise, a parent of a qualifying child is a receiving carer if the parent's income percentage is less than their care cost percentage for the child.

A non-parent carer of a qualifying child can also be a receiving carer if they provide at least 35% of ongoing daily care to the child. A non-parent carer is not assessed on their level of income as they cannot be liable for child support payments. A care cost percentage will be established to help determine how much child support they receive.

A liable parent may have their liability assessed as nil. This may occur if:

- (a) the liable parent provides more than 65% of ongoing daily care to the child, or
- (b) the liable parent provides at least 28% of ongoing daily care to the child and the liable parent's income percentage is equal to their care cost percentage, or
- (c) no receiving carer provides at least 35% of ongoing daily care to the child.

A receiving carer will receive child support payments, unless they provide less than 35% of the ongoing daily care to the child.

A reassessment of child support components, for example, a change in the levels of ongoing care or income, can result in a person changing from being a liable parent to a receiving carer and vice versa.

Formula assessment of child support

The formula for assessing child support is being replaced to recognise the income levels and care levels of *both* parents, and the estimated average expenditure of raising children in New Zealand.

The current formula will be replaced, from 1 April 2014, by the following:

$$(i\% - c\%) \times p$$

where –

i% is the parent's share of the combined child support income of the parents for a child

c% is the care cost percentage based on the recognised care levels of the person, and

p is the child expenditure amount for a qualifying child.

The liability is determined by the parent's income percentage minus the parent's care cost percentage, multiplied by the child expenditure amount for the child.

The cost of raising children is apportioned between parents according to the difference between their respective share of combined child support income as adjusted by their share of each child's care (if at least 28%). If their care cost percentage (where the care percentage is at least 28%) is the same as their income percentage, a parent is assumed to have met their financial contribution to costs for the child under the child support scheme, unless the Child Support Act 1991 says otherwise. For example, a minimum amount of child support may be payable.

Income of both parents

The child support income of the parents of a qualifying child is added together to determine the combined child support income. A parent's income percentage is derived by dividing their child support income amount by the combined child support income of all the parents of the child.

The child support income for a parent is determined by calculating the parent's adjusted taxable income and deducting:

- a living allowance
- any dependent child allowances, and
- any multi-group allowance.

When a parent has other dependent children, or is paying or receiving child support (administered by Inland Revenue) for children in other relationships, that parent's income will be reduced for their assumed expenditure on those other children.

A negative amount is not allowed, so if the allowances are greater or equal to the adjusted taxable income then the child support income for the parent is treated as being nil. This could arise with parents who are solely reliant on social security benefits.

Definition of Adjusted Taxable Income

The income used to calculate child support will be more closely aligned to the definition of family scheme income used for Working for Families tax credits. A person's adjusted taxable income is defined in new section 35, as replaced by the Child Support Amendment Act 2013. It is their taxable income adjusted as necessary to determine the person's family scheme income under subpart MB of the Income Tax Act 2007, with the following exceptions:

- child support and spousal maintenance received will not be counted as income
- income derived by a dependent child, such as interest, dividends, royalties and rent will not be counted, and
- income of a spouse who is non-resident will not be counted.

This means that the definition of adjusted taxable income for calculating child support income will now include:

- wages and salary that is exempt from income tax under a specified Act or regulation, such as the Consular Privileges and Immunities Act 1971
- PIE income that is not "locked in"
- overseas pensions that are tax exempt in New Zealand
- business and investment losses, such as losses from rental property, which have been used to reduce net income for tax purposes
- income retained in a close company where the person is a major shareholder
- distributions from superannuation schemes and retirement savings schemes (other than KiwiSaver schemes) where the person is still employed and their employer had recently made contributions to the scheme
- income derived by a trustee of a person's trust, where the person is a settlor of the trust
- fringe benefits received where the person is a major shareholder-employee
- deposits into main income equalisation accounts
- tax exempt pensions and annuities, and
- other payments received by the person and used to replace lost income or to meet their usual living expenses, where the total exceeds \$5,000 a year. This can include distributions from a trust that the parent is not a settlor of.

A more extensive description of the adjustments under family scheme income can be found on Inland Revenue's website and in previous *Tax Information Bulletins*.

For the period between 1 April 2014 and 1 April 2015, a person's adjusted taxable income for a child support year will be their taxable income without any adjustments. This reflects that taxable income for a child support year usually relates to past tax year periods and the deferral of the use of adjustments for an extra year reduces the degree of effective retrospectivity that could arise from the change in definition.

If a person has no adjustments to their income, and their taxable income is solely derived from withholding income (wages, salary, interest or dividends), then a person's taxable income will be determined by their employment income in the calendar year immediately preceding the start of the child support year.

Otherwise, a person's taxable income in the tax year immediately preceding the most recent tax year will be used and inflated by the inflation percentage for the child support year. Likewise, the adjustments to the taxable income will be those relating to the tax year immediately preceding the most recent tax year.

Living allowance

A living allowance is provided for a parent based on the annual gross rate of various social security benefits. If the person has been granted a domestic purposes benefit (for care at home of the sick or infirm) at the sole parent rate or an invalid's benefit at the sole parent rate, then the appropriate rate is the living allowance for that parent. For everyone else the living allowance is set at the rate for a sole parent on the domestic purposes benefit. The living allowances will be updated annually in line with changes to the benefit rates.

The living allowances that apply to child support years will be available on Inland Revenue's website.

The names of the benefits have recently been changed by the Social Security (Benefit Categories and Work Focus) Amendment Act 2013. The name changes take effect in the Child Support Act 1991 in July 2013. The old benefit names will be reintroduced by the Child Support Amendment Act 2013 on 1 April 2014. References to old benefit names in the child support legislation, however, can be read as a reference to the new benefit names, and likewise for section references. Names and references will be updated in the Child Support Amendment Act 2013 at a later date.

Dependent child allowances

A child allowance is provided for each dependent child of the parent. A dependent child is a child of whom:

- the person is a parent under section 7 of the Child Support Act 1991, and

- who is maintained as a member of the parent's family and for whom the parent provides at least 28% of the on-going daily care, and
- is not a child for whom child support is to be paid, and
- meets the other requirements of a dependent child such as being under 19/18, not financially independent and not married, or in a civil union or a defacto relationship.

The allowance is based on the same method for calculating child support for a qualifying child. It is the parent's care cost percentage for the dependent child multiplied by the appropriate amount taken from the child expenditure table for that child based on the adjusted taxable income, less living allowance, of that parent alone.

The amount of a dependent child allowance is determined by the formula:

$$c\% \times \frac{e}{n}$$

where –

- c% is the care cost percentage of the parent in relation to the dependent child
- e is the amount determined by the child expenditure table in respect of the dependent child on the basis of:
 - the child support income amount of the parent alone, with that amount being treated as the adjusted taxable income of the parent, minus the parent's living allowance
 - the total number of the parent's dependent children, and
 - the age group of those children
- n is the total number of the parent's dependent children.

Multi-group allowance

A liable parent may have child support liabilities for more than one group of children. This is referred to as multi-group. A multi-group allowance is calculated based on the same method of calculation for child support and the dependent child allowance. A multi-group allowance is the sum of the multi-group costs of each child of the parent who is not in the same child support group as the child being assessed. This recognises that the parent has financial responsibility for other children outside the child support group.

Multi-child cap and multi-group cost

The amount of child support liability of a parent can be capped where a parent has qualifying children in more than one child support group. This is referred to as the multi-group cap. The purpose of the multi-group cap is to avoid liable parents paying more in child support than they would

pay if all the children for whom they are liable to pay child support were living together.

The multi-group cap for a child is the amount determined as:

$$(100\% - c\%) \times m$$

where –

c% is the parent's care cost percentage in relation to the child

m is the multi-group cost of the child

The multi-group cost of a child is the amount determined by the child support expenditure table in respect of that child divided by the number of all the children in all of the parent's child support groups. When determining the amount in the child expenditure table, the income amount is the income of that parent alone, the number of children is the total number of children of the parent in all child support groups, and as if all those children were the same age as the child being assessed.

Care percentage

The Commissioner must establish the proportion of ongoing daily care for a qualifying child. Shared care for child support purposes is currently set at a minimum of 40% of nights during the year. This has been replaced by a minimum of 28% of nights during the year. This equates to two nights per week on average. For this purpose a year is assumed to be 365 days. The proportion of care is set as a whole percentage figure, with figures rounded as set out in section 15 as replaced by the Child Support Amendment Act 2013.

The Commissioner must rely on the content of any care order or agreement relating to a qualifying child when establishing the proportion of ongoing care. This may be challenged by a parent or carer if they have evidence that the care order or agreement should not be relied upon.

If there is no care order or agreement, the Commissioner must establish the proportion of care primarily on the basis of the number of nights that the child spends with a carer. If the number of nights is not a true reflection of the proportion of care actually provided by a carer, the Commissioner can use the amount of time that the carer is the person responsible for the daily care of the child.

To be a receiving carer, a person must have at least 35% of ongoing daily care. This means that there can be no more than two receiving carers for a qualifying child at the same time.

Care cost percentage

The care cost percentage reflects the amount of costs a parent incurs supporting the care of a child, relative to the amount of time that child is in their care. The care

percentage is converted into a care cost percentage using a table in Schedule 2 as inserted by the Child Support Amendment Act 2013. The table has a tiered series of thresholds determining the person's care cost percentage based on their level of ongoing recognised care. A proportion of care that is less than 28% results in a care cost percentage of 0% and a proportion of care of 73% or more results in a care cost percentage of 100%. Between 28% and 73% is a tiered level of care cost percentage. For example, if the proportion of ongoing daily care is 30% the care cost percentage is 24%. If a carer's proportion of ongoing daily care is 37% their care cost percentage is 29%.

Child expenditure amount

The amount of child support is based on the estimated average cost of children in New Zealand. The cost of children varies based on age, number of children in a child support group and the combined income of the parents. The new scale of costs reflects up to date information on the expenditure involved in raising children, after allowing for likely tax credits. The cost of children is set as a percentage of income and differs based on the level of income. Income levels are grouped in bands set relative to the annualised amount of the average weekly earnings as published by Statistics NZ. These bands will be updated annually.

As incomes rise the percentages in the table decline to reflect that the proportion of income spent on children declines as income rises. The new formula also has a cap on the amount of expenditure for a child when child support income is more than two and a half times the average weekly earnings.

The child expenditure table will be published by Inland Revenue and will be available on Inland Revenue's website.

The child expenditure amount for a qualifying child in a child support year is the relevant amount determined in the child expenditure table divided by the number of children in the same child support group as the child.

A child support group describes the qualifying children (where there is more than one) of a parent who all share the same other parent and in relation to whom child support for that time has been or is being assessed. A parent could have qualifying children in more than one child support group.

Examples

Calculators and examples will be available on Inland Revenue's website to help people understand how the new formula works and the potential impact of the new formula on their own situation. The following examples demonstrate how the new formula works in some different situations.

Example 1: Paul and Ally's situation

Paul and Ally have recently split up. They have two children, Dylan aged 10 and Nathan aged 6. Ally is the main carer for Dylan and Nathan and she is not in paid employment. She receives a benefit from Work and Income for herself and the children. When Work and Income granted Ally a benefit she was required to apply for a child support assessment.

Paul spends time looking after his children but this is not enough to be recognised for child support purposes. Ally receives a benefit of \$17,429 a year before tax. Paul is currently in full time employment and earns \$72,610.40 a year before tax.

Calculation	Ally	Paul
Taxable income	\$17,429	\$72,610.40
Less living allowance	-\$17,429	-\$17,429.00
Child support income	\$ 0	\$55,181.40
Ally and Paul's combined child support income is \$55,181.40 and this will be used to calculate child support liability.		
Percentage share of combined child support income	0%	100%
Care cost percentage	100%	0%
Percentage of income less care cost percentage	-100%	100%

Because Paul's income percentage less care cost percentage is positive, he is assessed as the liable parent, and is required to pay 100% of the annual cost of raising Dylan and Nathan. The annual cost of raising Dylan and Nathan based on Ally and Paul's combined child support income and using the expenditure on children table is \$12,880.

Paul's liability $\$12,880 \times 100\%$ is \$12,880

Paul is assessed to pay an annual amount of \$12,880 or \$1,073.35 per month, for the care of Dylan and Nathan. Because Ally receives a sole parent benefit, this payment will be used to help cover the cost of this benefit.

Example 2: Liam and Kirsty's situation—shared care

Liam and Kirsty are separated. Together they have two children, Joshua aged 12 and Olivia aged 10. They have always agreed to share the responsibility of caring for their children. Joshua and Olivia both spend alternate

weeks (Monday to Friday) at each parent's house, but they spend every weekend and the school holidays with Liam.

Liam has care of the children for 65% of the time and Kirsty has them for the remaining 35%. Because both Kirsty and Liam look after their children for more than 28% of the time, these percentages will be used when working out the child support assessment.

Calculation	Liam	Kirsty
Taxable income	\$53,152	\$50,292
Less living allowance	-\$17,429	-\$17,429
Child support income	\$35,723	\$32,863
Liam and Kirsty's combined child support income is \$68,586		
Percentage share of combined child support income	52%	48%
Care cost percentage	75%	25%
Percentage of income less care cost percentage	-23%	23%

Because Kirsty's income percentage less care cost percentage is positive, she is assessed as the liable parent, and is required to pay 23% of the annual cost of raising Joshua and Olivia. The annual cost of raising Joshua and Olivia based on Liam and Kirsty's combined child support income and using the expenditure on children table is \$15,561.

Kirsty's liability $\$15,561 \times 23\%$ is \$3,579

Kirsty is assessed to pay an annual amount of \$3,579 or \$298.25 per month, for the care of Joshua and Olivia.

Example 3: Valerie, Lee and Jan's situation: non-parent receiving carer

Lee and Jan have one child together from their relationship, Sam aged 4. Lee and Jan have separated and they have asked Valerie, Sam's grandmother, to look after Sam. Valerie applies for child support for Sam. She must apply for it from both Lee and Jan.

Lee and Jan both work full-time and have no other children. Lee earns \$35,212 a year before tax and Jan earns \$45,092 a year before tax. Because Valerie isn't Sam's parent, her income is not used when working out the child support calculation.

Calculation	Lee	Jan
Taxable income	\$35,212	\$45,092
Less living allowance	-\$17,429	-\$17,429
Child support income	\$17,783	\$27,663
Lee and Jan's combined child support income is \$45,446		
Percentage share of combined child support income	39%	61%
Care cost percentage	0%	0%
Percentage of income less care cost percentage	39%	61%

Both Lee and Jan's income percentage less care cost percentage is positive, so they are both assessed as liable parents. Lee is required to pay 39% of the annual cost of raising Sam and Jan is required to pay 61%. The annual cost of raising Sam based on Lee and Jan's combined child support income and using the expenditure on children table is \$7,343.90.

Lee's liability $\$7,343.90 \times 39\%$ is \$2,864.10

Lee is assessed to pay an annual amount of \$2,864.10 or \$238.70 per month, for Sam's care.

Jan's liability $\$7,343.90 \times 61\%$ is \$4,479.80

Jan is assessed to pay an annual amount of \$4,479.80 or \$373.30 per month, for Sam's care.

Valerie will receive the amounts that both Lee and Jan have been assessed to pay. Note that Valerie can ask for either of these amounts not to be collected.

Example 4: John's situation—multi group allowance

John has two children from a previous relationship, Jade aged 16 and Emma aged 11. John looks after Jade and Emma some of the time during the year, but not enough for it to be recognised for child support purposes. John earns \$82,714 a year before tax.

Because John has children with more than one other parent, he is a multi-group child support customer, so is entitled to a "multi-group allowance" for Jade and Emma. The child support for each of his children is calculated separately, but must take into account that he has another child in a separate child support calculation.

Note: Before working out the child support formula for each of John's children, we must first work out his multi-

group costs for each child. This is used for the multi group allowance.

John's multi-group allowance

John earns \$82,714 a year before tax. After subtracting his living allowance, John's child support income for calculating the multi group allowance is \$65,285.

We use the child expenditure table to work out the multi-group allowance based on \$65,285.

Annual cost of raising two children (aged 0 – 12):

\$14,901 divided by two children is \$7,450.50

Emma is 11 so John's multi-group allowance for Emma is \$7,450.50.

Annual cost of raising two children (aged 13 and older):

\$18,165 divided by two children is \$9,082.50

Jade is 16 so John's multi-group allowance for Jade is \$9,082.50.

Child support for Emma

Emma's mother is Kim, she is Emma's main carer. Kim earns \$65,112 a year before tax.

Calculation	John	Kim
Taxable income	\$82,714	\$65,112
Less living allowance	-\$17,429	-\$17,429
Sub-total	\$65,285.00	\$47,683.00
Multi-group child allowance	-\$9,082.50	\$0
Child support income	\$56,202.50	\$47,683
John and Kim's combined child support income is \$103,885.50		
Percentage share of combined child support income	54%	46%
Care cost percentage	0%	100%
Percentage of income less care cost percentage	54%	-54%

Because John's income percentage less care cost percentage is positive he is assessed as the liable parent, and should pay 54% of the annual cost of raising Emma. The annual cost of raising Emma based on John and Kim's combined child support income and using the child expenditure table is \$14,076.45.

John's formula assessed child support for Emma
 $\$14,076.45 \times 54\%$ is $\$7,601.30$

John's liability for Emma will be the lesser of the amount we calculated in the formula, or the multi-group cap.

Multi-group cap for Emma

$\$7,450.50 \times (100\% \text{ minus } 0\%)$ is $\$7,450.50$

John's annual liability for Emma is $\$7,450.50$ because the multi-group cap is less than the formula amount calculated.

Child support for Jade

Jade's mother is Mary; she is Jade's main carer. Mary earns $\$45,092$ a year before tax.

Calculation	John	Mary
Taxable income	\$82,714	\$45,092
Less living allowance	-\$17,429	-\$17,429
Sub-total	\$65,285	\$27,663
Multi-group child allowance	-\$7,450.50	\$0
Child support income	\$57,834.50	\$27,663
John and Mary's combined child support income is \$85,497.50		
Percentage share of combined child support income	68%	32%
Care cost percentage	0%	100%
Percentage of income less care cost percentage	68%	-68%

Because John's income percentage less care cost percentage is positive, he is assessed as the liable parent and should pay 68% of the annual cost of raising Jade. The annual cost of raising Jade based on John and Mary's combined child support income and using the child expenditure table is $\$15,661.65$.

John's formula assessed child support for Jade is
 $\$15,661.65 \times 68\%$ is $\$10,649.90$

Multi-group cap for Jade

$\$9,082.50 \times (100\% \text{ minus } 0\%)$ is $\$9,082.50$

John's annual liability for Jade is $\$9,082.50$ because the multi-group cap is less than the formula amount calculated.

Summary

John's annual liability for both children is $\$16,533$ or $\$1,377.75$ per month.

Estimation of taxable income

The provisions for providing an estimation of taxable income will be replaced to reflect the new formula assessment.

A person can elect to provide an estimate of taxable income when calculating the adjusted taxable income amount if they expect their taxable income to reduce by 15% or more. An estimate may be for a full child support year or for part of the year. The Commissioner may refuse an estimate on a variety of grounds, including if the annualised estimated income is more than the original taxable income.

If the Commissioner accepts an estimate of taxable income for a period, the adjusted taxable income is recalculated for the period and the formula assessment is adjusted.

A person can give notice to revoke an estimate or can make a subsequent estimate.

Where estimates have been provided, there is an end of year reconciliation to determine if child support has been overpaid or underpaid in the estimation period. The Commissioner must take whatever steps are necessary to ensure that the correct amount of child support is assessed for the child support year.

A person will be liable to a penalty if their year to date income and their estimated taxable income for the elected period is less than 80% of their actual taxable income for the child support year. The penalty is set at 10% of the difference between the child support payable for the period under the estimated taxable income and the child support assessed for the same period through the end of year reconciliation.

Minimum annual rate of child support

The legislation sets out a minimum annual rate of child support, where a liable parent has been assessed as having to pay child support in relation to any qualifying children. The rate is currently set at $\$871$ for the child support year commencing on 1 April 2013. The rate is adjusted each year by inflation.

Payment of child support to receiving carers

The legislation sets out how child support payments in respect of a qualifying child are distributed to receiving carers.

Where child support payment is to a sole receiving carer who is a parent

The child support liability and the amount payable to the receiving carers is usually determined by the standard formula or under the multi-group cap. Where, in respect of a qualifying child, there is only one receiving carer and that carer is a parent of the child, then the annual amount of child support payment can be calculated by reference to the receiving parent's care cost and income percentages. This only applies if the amount will be less than the amount calculated under the standard formula or under the multi-group cap.

If the criteria are met, the amount of child support payable in respect of this receiving parent is a proportion of the cost of raising the child; determined by how much their care cost percentage exceeds their income percentage. In the legislation this is expressed as an amount that the receiving parent would pay if the difference between their income percentage and the care cost percentage were a positive percentage.

Example

Alisa has 46% of the combined child support income and her care cost percentage is 100%. She is a receiving carer as the percentage of income less care cost percentage is -54%. As the sole receiving carer for the child, the amount she could receive would be 54% of the relevant annual cost of raising the qualifying child (if this is less than the amount under the standard formula or the multi-group cap).

Where child support payment is to a sole receiving carer who is not a parent

The amount payable where there is only one non-parent receiving carer is the amount of child support determined by the formula assessment.

Where there are two receiving carers and neither are parents of the child

If there are two receiving carers of a qualifying child and neither are parents of the child, the child support payment will be distributed to them based on the relative care cost percentage of each receiving carer.

Example

Patrick is assessed as having to pay child support of \$5,000. His child is being cared for by Jo and Lyn. Jo provides 40% of the care cost and receives \$2,000 and Lyn provides 60% of the care cost and receives \$3,000.

Where one receiving carer is a parent and the other is a non-parent receiving carer

In this situation, the legislation determines how much is payable to the receiving parent, and any remaining amount of the child support payment in respect of the child goes to the non-parent receiving carer.

The amount that goes to the receiving parent is the amount that the receiving parent would pay if the difference between their income percentage and the care cost percentage were a positive percentage. If the multi-group cap applies, the amount is determined by multiplying the difference between the receiving parent's income percentage and care cost percentage (expressed as a positive percentage) by the amount payable under the liable parent's multi-group cap.

Example

William is assessed as having to pay child support of \$3,000. Care of his child is being shared between the child's mother, Lisa and grandmother Kiri. Both provide more than 35% of ongoing daily care. Lisa is assessed based on the difference between her income percentage and the care cost percentage as receiving \$1,900. Kiri receives the remaining \$1,100.

Where the minimum annual rate is payable

Where a minimum annual rate is set as a parent's child support liability, the proportion payable in respect of each receiving carer is to be on the basis of the number of qualifying children of the liable parent that each carer provides care for.

Example

Harry is assessed as having to pay the minimum annual rate of child support of \$871. He has three qualifying children. The eldest is being cared for by Belinda and the other two are cared for by Alison. Belinda will receive 1/3 of the minimum annual rate and Alison will receive 2/3 of the minimum annual rate.

Age of a qualifying child

The age at which a qualifying child ceases to qualify, and at which point child support is no longer payable, has changed. Currently the age is set at when the child turns 19 years old. This is being reduced to 18 years old, unless the child is 18 years and still enrolled at and attending a registered or overseas school. An 18 year old who is at a registered school until the end of the school's academic year will continue to be a qualifying child until 31 December in that year, as long as they continue to meet other

requirements such as not being financially independent. This change brings the definition of a qualifying child closer to the maximum age for a dependent child under the Working for Families tax credits scheme.

The change takes effect from 1 April 2015, as the Child Support Amendment Act 2013 requires that in relation to the child support year commencing 1 April 2014, a qualifying child is to be read as referring to a child aged under 19 years.

Waiver of right to payment

A non-parent receiving carer may give notice to waive their right to receive child support payments yet to be paid by a liable parent for that child. This might arise, for example, where the non-parent receiving carer is a relative of one of the liable parents and does not wish to collect child support from their family member, but wishes to collect child support from the other liable parent. The non-parent receiving carer cannot waive their right if they are receiving an unsupported child's benefit for the child. Similarly, the waiver is revoked if the non-parent receiving carer begins to receive an unsupported child's benefit for the child.

Departure from formula assessment: re-establishment costs

There are currently several grounds on which a parent can seek an administrative review. The legislation will allow parents to seek an administrative review to have re-establishment costs taken into account when calculating liability. This addresses situations where a parent works additional hours to earn more income to pay costs to re-establish a home for themselves and others they have a duty to maintain. The additional income would usually lead to an additional child support liability or reduced child support entitlement, but re-establishment costs may now be taken into account through an administrative review.

Automatic deduction of child support from wages and salary

All liable parents receiving employment income will have child support deducted from their employment income. Automatic deduction of child support currently occurs where a parent has been in default or receives a social security benefit. The amendments will extend automatic deduction to parents who are:

- PAYE or ACC income recipients, which covers most wage and salary earners, or
- a student allowance recipient.

The Commissioner may consider that it is inappropriate to use automatic deductions for a person due to administrative, cultural, privacy or other exceptional

reasons. Other acceptable methods must be used to pay child support.

Qualifying payments

Liable parents may be able to have some or all of their child support liability offset in recognition of qualifying payments having been made for the child's direct benefit.

Qualifying payments are payments made by or on behalf of the liable parent to a person for goods and services that directly benefit the child. An example would be the payment of school fees for the child.

Conditions exist for the recognition of a qualifying payment. These are where:

- child support is paid on time and there is no outstanding debt
- the liable parent does not qualify for shared care
- the liable parent and the receiving carer agree on the qualifying payment
- the receiving carer is not a social security beneficiary;
- the qualifying payment is at least 10% of the child support liability for the child, and
- the liable parent does not have at least 28% care of the child.

Penalty provisions

The penalty provisions have been changed. Penalties play an important role in encouraging parents to meet their child support obligations. However, excessive penalties can discourage the payment of child support to the detriment of the children concerned.

Initial late payment penalty

Currently, the initial late penalty payment applies as the greater of \$5 or a 10% charge applying the day after the due date. This appears excessive if the lateness resulted from an oversight. The new provision is to apply the initial late penalty payment as the greater of \$5 or a 2% charge on the overdue amount of financial support on the day after the due date. There would be a further 8% charge on the overdue amount (excluding the \$5 or 2% penalty) seven days after the due date. This will provide liable parents a little bit more time to ensure their child support is paid before the full 10% penalty is applied.

Incremental late payment penalty

Currently, the incremental late payment penalty applies a 2% charge every month until the debt (including penalties) is cleared. The new provision will charge the incremental late payment penalty in two steps:

- 2% of the overdue amount each month for up to 12 months after the due date, and
- 1% of the overdue amount each month from 12 months after the due date until the debt is cleared.

The provisions relating to a liable person's financial support debt can also apply to a payee's debts arising from overpayments.

Write-off provisions

The circumstances under which penalties and debt can be written off have been expanded from 1 April 2015. The starting position for writing off penalties recognises that a liable parent who comes to Inland Revenue to arrange the payment of a debt is trying to comply.

Penalties can be fully or partly written off where a paying parent has agreed and adhered to an instalment arrangement and/or paid off the financial support debt, and where recovery of penalties would place the liable person in serious hardship or involve an inefficient use of the Commissioner's resources. The Commissioner can also decline to enter into a payment agreement where the liable person has not complied with earlier payment agreements and no reasonable cause existed for the non-compliance.

The Commissioner will be able to write off some, or all, of the benefit component of assessed child support debt (where the receiving carer was in receipt of a social security benefit). Debt would be able to be written-off on serious hardship grounds or if it was an inefficient use of the Commissioner's resources.

The Commissioner may also write off debt that is payable by the estate of a liable person if the liable person's estate is insufficient to pay the debt. Similarly, the Commissioner may write off debt that is payable by a liable person if the receiving carer has died and the Commissioner is satisfied that the amount is for any reason unlikely to be recovered.

Offsetting child support payments

Currently, if two parents are each liable to pay the other an amount of child support, the Commissioner may offset one liability against the other. In future, the Commissioner will have discretion to offset monthly child support liability against child support arrears. Offsetting of liability cannot occur for a parent, if their child support entitlement is owed to the Crown—that is, they are a social security beneficiary.

Application date(s)

Sections 6, 31, 32 and new Schedule 1 came into force on the day after the date of Royal assent. These contain transitional and savings provisions.

The rest of the Child Support Amendment Act 2013, except Part 2, comes into force on 1 April 2014; and relates mainly to the new child support formula.

Part 2 of the Child Support Amendment Act 2013 comes into force on 1 April 2015; and relates mainly to changes in penalties and debt.