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# Child Support

OBJECTIVES AND KEY RULES FOR BENEFIT RECIPIENTS

BACKGROUND PAPER

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# Purpose

This paper sets out the current purpose and principles of the child support scheme, with a focus on obligations for recipients of a main benefit. It also sets out some of the inconsistencies between carers receiving different benefits or other government support.

## Executive summary

The purpose of child support is to ensure that the financial needs of the child are being met. Currently, this is achieved by requiring both parents to contribute to the costs of raising the child when they are not living as a single household. Previously the focus was on the “absent” parent providing financial support, but this was recognised as outdated and amended by the child support reforms.

Ensuring children are supported by their parents after separation is an internationally recognised objective. This is enshrined in the United Nations Convention on the Rights of the Child, which states that in all actions concerning children, the best interests of the child should be paramount. Countries have agreed various reciprocal and multilateral agreements to recognise and enforce child support across borders.

The child support scheme is intended to be a backstop for separated parents who cannot agree on the financial support for their children. In the absence of such agreement, a set administrative arrangement is considered to be a more effective way to determine contributions than through a court order. Consequently, the Child Support Act 1991 replaced both the Liable Parent Contribution scheme for sole parents who were on benefits and (for most people) court-ordered maintenance.

Under the Act, carers in receipt of sole parent rates of benefits or the Unsupported Child’s Benefit must apply for child support. The child support payable must cover the full cost of the person’s benefit with anything above the benefit being passed on to the carer. There is no apportionment to recognise that some of the benefit is provided for the parent, rather than the child’s support. Generally, the benefit exceeds the child support so no pass-on of child support payments occurs.

These same rules do not apply to carers on a couple rate of benefit (for example Jobseeker Support at a couple rate), even if they have children in their care from previous relationships.

Also, although sole parent beneficiaries must apply for child support, this does not extend to other carers receiving Working for Families tax credits, even though any child support received is counted as “family scheme income” and reduces the cost of tax credits to the government.

Many countries have some form of child support scheme, although practice varies on whether reducing costs to the government is an objective. Many countries have full or partial pass-on of child support payments even when benefits are being paid to main carers. Some countries also have systems to guarantee or “advance” a child support payment if the liable parent fails to pay.

# Purpose of child support

The purpose of child support, and of various forms of payments that pre-dated child support, is to ensure that the financial needs of the child are being met. Currently, this is achieved by requiring both parents to contribute to the costs of raising the child when they are not living as a single household.<sup>1</sup> This purpose has been in place through court-ordered maintenance, liable parent contributions and now child support. Previously the focus was on the “absent” parent providing financial support, but this is now seen as outdated.

In 1990, Cabinet agreed that the establishment of the Child Support Agency at Inland Revenue was an “... important social policy initiative that will ensure that children continue to be supported financially by both their parents, according to their ability to provide, following separation of the parents, and that the cost to the State of providing support will be substantially reduced.”<sup>2</sup>

This purpose relates to a wider principle that people should use their own resources to look after themselves before looking to the government. This purpose was listed in the 1990 government priorities when the welfare system moved from a “participation” principle to a “genuine needs-based” principle.

## Child Support Act 1991

Child support is intended as a backstop for parents who are unable to reach agreement on financial support of their children when they are not living as a single household.

The Child Support Act 1991 (the Act) replaced the Liable Parent Contribution scheme for carers who were on benefits (designed to recover costs of those benefits), and (for most people) court-ordered maintenance for non-beneficiaries.<sup>3</sup>

Key requirements for the new child support scheme were<sup>4</sup>:

- Development of a simple administrative formula to determine child support amounts consistently and with few appeals (This would overcome the inconsistencies of court-ordered maintenance and ensure liable parents could not avoid their responsibilities through lengthy appeal procedures)
- A single system for both beneficiaries and non-beneficiaries
- Effective and low-cost enforcement.

The Act introduced a simple formula that assessed the contribution of the “absent” (or liable) parent based on their ability to provide support, without any regard to the capacity of the caring parent or the costs associated with raising a child.

The Act allowed the Crown to retain child-support payments, in relation to sole parent and Unsupported Child’s Benefit recipients (up to the value of the benefit), to reduce the costs of benefit payments to the government. Once the cost of the benefit is recovered, payments can be passed on to carers. There is no apportionment to recognise that some of the benefit is provided for the parent, rather than for the child’s support. For the majority, child support paid does not exceed the cost of the benefit.

1 Child support can also be paid when parents are still in the same household but the child is being cared for by a third party.

2 Cabinet paper *Child Support and Family Support Administration* CAB (90) M 46/32.

3 The Child Support Agency at Inland Revenue began assessing and collecting child support from 1 July 1992. People can continue to access court-order maintenance if they wish.

4 Cabinet paper *Report of the Working Group Reviewing the Maintenance and Liable Parent Contribution Systems* SEQ (90) M 11/1.

It was originally intended that the first 30% of a child support payment would be passed on to sole parent beneficiaries (none was to be passed on to Unsupported Child's Benefit recipients). It was thought this would provide a "better deal" for carers and their children and would incentivise liable parents to pay their child support as they could see it was directly benefitting their children. This measure was rescinded due to administrative and fiscal costs.<sup>5</sup>

Some parents (if they are not receiving certain benefits) can reach private agreements for the care of their child, which may or may not include a financial element. Under the Act, parents can use Inland Revenue to administer the privately agreed payments (referred to as a voluntary agreement in the Act). This bypasses the child support formula and allows parents to agree amounts that suit them.

## Child support reform

The reforms were intended to modernise the child support scheme and remove the outdated presumption of an absent father and an unemployed mother caring 100% for the child.

The underlying purpose of child support remained the same. The 2011 Regulatory Impact Statement (RIS) on the child support reforms stated the purpose of child support as "... payments are collected and delivered for the benefit of the children that they are intended for..." The 2011 RIS also stated "... ensure that parents do not pass their financial responsibilities to maintain their children onto other members of society."<sup>6</sup>

Child support was updated to reflect changes in society – in particular greater amounts of shared care, an increasing number of fathers or third parties with main caring responsibility<sup>7</sup> and increased earning ability and workforce participation of caring parents.

The focus of child support moved from the income of the liable parent to the costs of care for the child and the sharing of those costs between the parents, based on their relative abilities to pay for the care. These changes were consistent with the changes made earlier to the Australian child support scheme and is used in most states in the United States.

The new child support formula, introduced from 1 April 2015, brought in the income of the receiving carer, took greater account of the care provided by the liable parent and used average estimated expenditure to determine the costs of a child. Allowances for dependants were removed from the calculation if the children were not the legal responsibility of the parent (for example, if they were stepchildren). It was considered that these changes would make child support fairer and more balanced.

Rules to reduce costs by retaining child-support payments in relation to sole parent and Unsupported Child Benefit recipients remained unchanged.

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5 Cabinet paper *Child Support and Family Support Administration* CAB (90) M 46/32.

6 2011 Regulatory impact statement for child support scheme reform, page 2, accessible at [RIS - Child Support Amendment Bill | Tax Policy, Inland Revenue](#).

7 Carers may include other family members. In some cases, the parents may still be together but the child has been removed and placed in the care of the State or another person.

## International purpose

Ensuring children are supported by their parents after separation is an internationally recognised objective. This is enshrined in the United Nations Convention on the Rights of the Child (UNCROC).

Article 3 of UNCROC states “in all actions concerning children... the best interests of the child shall be a primary consideration”. Article 27 outlines that parents of a child have responsibility for securing “... within their abilities and financial capacities...” “... conditions of living necessary for the child’s development”. It also outlines government’s role in that “States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child...”

Internationally, countries have agreed various multilateral agreements to recognise and enforce child support across borders.

The purposes of these agreements are consistent. New Zealand’s primary international agreement is with Australia.<sup>8</sup> The preamble sets out that the agreement is made “considering the principle that parents have an obligation, according to their capacity to pay, to provide their children with a proper level of financial support” and “desiring... to provide for mutual co-operation in the collection and payment of monies in relation to child and spousal maintenance”.

The 2007 Hague Convention on the International Recovery of Child Support and other Forms of Family Maintenance (the Hague Convention) has the objective “... to ensure the effective international recovery of child support...” It recalls the rights and obligations to children under Articles 3 and 27 of UNCROC. New Zealand has agreed to the final version of the Hague Convention but has yet to ratify it.<sup>9</sup>

New Zealand is party to two other international child-support instruments: the Commonwealth Scheme and the United Nations Convention on the Recovery Abroad of Maintenance. These agreements are limited to court-ordered maintenance so are of no use in collecting child support assessed under New Zealand’s formula.

Many countries have some form of child support scheme, although practice varies on whether reducing costs to the government is an objective. Many countries have full or partial pass-on of child support payments even when benefits are being paid to main carers. For example, Australia has full child support pass-on to beneficiaries; however, child support payments may reduce entitlements to the Family Tax Benefit – Australia’s equivalent of Working for Families. Some countries guarantee or advance child support payments – this is particularly prevalent in European countries.<sup>10</sup>

8 New Zealand and Australia have operated under the Child Support (Reciprocal Agreement with Australia) Order 2000, since July 2000.

9 New Zealand is currently considering ratifying the Hague Convention. Its main benefit over the other multilateral agreements is that it provides for the recognition and enforcement of administrative assessments.

10 See table PF1.5: Child Support, OECD Family Database, Social Policy Division, for an overview of key aspects of OECD countries child support schemes accessible at: <http://www.oecd.org/els/family/41920285.pdf>

# Objectives of the Child Support Act 1991

Child support under the Liable Parent Contribution and court-maintenance systems were based on principals of family law; however, there was no explicit statement of principles or objectives. The Child Support Act 1991 set out the objectives of child support, which are mostly around the rights and obligations of parents to children and the child's carer. The exceptions are objectives (j) and (k), which are around cost reduction for the Crown and administration.

The objectives of the 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 and replaced by (fa)]*
- (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.

## Objectives A to I

Objectives (a) and (b) capture the broad purpose of child support – to affirm the rights of children to be financially supported by their parents. The remaining objectives inform the design of the scheme and support the broad purpose.

For example, objective (i) seeks to ensure that a parent’s obligation to their children should not be extinguished by obligations to stepchildren. This is supported by provisions in the Act that only provide allowances for children who are the legal child of the parent. This prevents the level of support reducing when a parent re-partners.

Objectives (d) to (h) are supported by an administrative formula that considers the income of both parents, recognises all carers and shares financial responsibility based on the costs of the child. The Act includes a review process so that when the formula results in an unjust or inequitable outcome, this can be challenged and the formula outcome can be departed from. The review process mimics court appeals but without the same level of costs and lengthy timeframes. Ultimately a parent can still challenge their child support assessment in the Family Court, however, this is rare.

## Objectives J and K

Objective (k) makes it clear that the government is responsible for ensuring payments are collected and paid to carers. As a result, the Act contains provisions to support enforcement where payments are not made. These are supported by Inland Revenue’s compliance strategy.

Objective (j) outlines the objective of reducing costs to the Crown. Practically this means that applying for child support is mandatory for some beneficiaries, and child support is only passed on to those beneficiaries after the full cost of their benefit has been recovered.

# Treatment of main benefit recipients

Under the Act, parents or carers receiving a sole parent rate of benefit or an Unsupported Child's Benefit (UCB) must apply for child support when they are applying for a benefit. The exceptions to this are when the sole parent rate of benefit is:

- a Supported Living Payment on the grounds of caring for a person who has a health condition or a disability that requires full-time care, or
- Jobseeker Support on the grounds of hardship payable to full-time students between academic years.

If a parent fails or refuses to apply for child support, this can result in their benefit being reduced under section 70A of the Social Security Act 1964.<sup>11</sup> This sanction does not apply to non-parent carers receiving the UCB.

Payments made by liable parents to beneficiaries are retained by the Crown in order to offset the full cost of the benefit. At any one time, about half of receiving carers are getting a UCB or other benefit at a sole parent rate.

The rules applying to UCB or sole parent beneficiaries do not extend to other beneficiaries, even when they have children in their care from a previous relationship. For example, child support is not mandatory for a person who is on a couple rate of benefit that includes a dependent child. This is even when a Sole Parent Support recipient re-partners with another beneficiary and they qualify for, say, Jobseeker Support at a couple rate.

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<sup>11</sup> Under s70A the benefit is reduced by \$22 per child each week. If after 13 weeks the parent still has not applied for child support, an additional \$6 per week reduction applies (in total, not per child).

The table below provides a summary of the key rules of the scheme and how they apply to beneficiaries.

**Table 1: Rules around child support and benefit recipients**

Who must apply for child support?	Who can have their benefit reduced for not applying?	How is child support calculated?	Who receives child support?	When child support received is income that can abate an MSD benefit.		Who can end or "uplift"*** child support?
				Formula assessed	Voluntary agreement	
Beneficiaries receiving a UCB or sole parent rate of benefit <b>must</b> apply for child support.  Beneficiaries receiving an Orphan's Benefit or a couple rate of benefit (that includes children from previous relationships) can <b>choose</b> to apply for child support.	Beneficiaries receiving a sole parent rate of benefit <b>can</b> have their benefit reduced by \$22 per child each week.  Beneficiaries receiving a UCB, Orphan's Benefit or a couple rate of benefit <b>will not</b> have their benefit reduced if they refuse to apply.	<b>Voluntary agreement</b> –agreed by parents but must be at least \$10 per week. Available to any parent or carer except those receiving a sole parent rate of benefit or UCB.  <b>Formula assessment</b> – used by the majority of parents, and compulsory* for parents on a UCB or sole parent rate of benefit.	All parents and carers not on a benefit (even if receiving other support such as Working for Families).  All beneficiaries receiving an Orphan's Benefit or couple of rate benefit.  No beneficiaries receiving a UCB or sole parent rate of benefit unless it is in excess of the full cost of the benefit.	<b>Always</b> when the beneficiary is receiving a couple rate of benefit.  <b>Never</b> in cases when the beneficiary is receiving a UCB, Orphan's Benefit or sole parent rate of benefit.	<b>Always</b> regardless of benefit type.	All parents or carers not on a benefit.  All beneficiaries receiving an Orphan's Benefit or couple of rate benefit.  No beneficiaries receiving a UCB or sole parent rate of benefit.

\* The exception to this is when a parent already has a registered voluntary agreement with Inland Revenue before the benefit was granted and the voluntary agreement is greater than the amount that would be reached under a formula assessment.

\*\* A receiving carer can uplift or agree to take over the collection of a liable parent's payment from Inland Revenue if a payment is in arrears.

As outlined in the table above, child support is retained by the Crown up to the full value of the benefit for those receiving a sole parent rate of benefit or a UCB. There is no apportionment to recognise that some of a sole parent's benefit is provided for the parent (and would have been provided if they did not have care of the child) rather than for the child's support.

When a couple rate of benefit is being paid (that includes children from previous relationships), all child support paid is passed on to the carer. This difference in treatment appears to have come about because, at the time child support was being developed, benefits paid to a couple were not increased to recognise dependent children. From April 1992, this changed, and additional payments were made to couples with dependants; however, no consequential changes were made to the Child Support Act.

An Orphan's Benefit is generally granted in situations when a child's parents are deceased or when the child's parents are incapacitated or cannot be located. In these later situations, it is expected parents would be unable to contribute in any way to child support. However, some carers receiving Orphan's Benefit do apply for child support, and payments are collected from the child's parents.

When child support is passed on to a parent or carer, it is treated as income for the purposes of abating the person's benefit except when:

- the benefit is a UCB or Orphan's Benefit, or
- the parent is receiving child support payable under a formula assessment and it is a payment made after the full cost of the benefit has been recovered.

In the second case, abating the person's benefit for income received would in effect mean more than the cost of the benefit has been recovered by the government.

Beneficiaries, who must apply for child support, cannot cancel it unless their benefit has been cancelled. They are also unable to uplift (take over collection from Inland Revenue) payments owed by a liable parent, even if this can better suit the needs of the child. For example, an uplift of payment can be done in exchange for a liable parent paying one-off expenses or taking on extra care of a child on a temporary basis.

In addition to the above rules, a person receiving a benefit at a sole parent rate or a UCB can be compelled to be a witness against a liable parent in court proceedings relating to child support. If they refuse, a sole parent beneficiary can be subject to a section 70A benefit sanction – under current legislation, once the benefit has been reduced for this reason, it cannot be increased again.<sup>12</sup>

Effectively, beneficiaries receiving a benefit at a couple rate (that includes children from previous relationships) or an Orphan's Benefit are treated the same as non-beneficiaries. Child support is not mandatory, and all payments are passed on to the receiving carer if they choose to apply, but child support received is treated as income and may abate the person's benefit. They are free to register voluntary agreements, end child support whenever they choose and take over the collection of payments.

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12 Inland Revenue is not aware of any situation in which a benefit reduction has been applied as a result of a parent refusing to be a witness against a liable parent.

## Section 70A

This section discusses section 70A of the Social Security Act 1964.<sup>13</sup>

### What is Section 70A?

Section 70A sets out a sanction for sole parents receiving a main benefit if they fail or refuse to name the other parent and to apply for child support. The requirement to apply for child support exists in the Child Support Act 1991.

Section 70A imposes a sanction on sole parents if they fail to meet these obligations and if none of the exemptions apply.<sup>14</sup> The sanction is a reduction in the benefit rate of \$22 a week for each dependent child. After 13 weeks, a further \$6 a week reduction may be applied once per person, regardless of how many children the \$22 applies to.

Recipients of UCB are also required to apply for child support, but the sanction does not apply to them if they fail to meet their obligation.

The sanction can be removed once the sole parent complies or is granted an exemption. The exemptions include:

- there is insufficient evidence available to establish who is in law the other parent
- they are taking active steps to identify who in law is the other parent
- they or their child(ren) would be at risk of violence if they carried out or took steps to meet their child support obligations
- there is another compelling circumstance for their failure to meet their child support obligations and there is no real likelihood of child support being collected (such as if the other parent has died), or
- the child was conceived as a result of incest or sexual violation.

The Labour Party included the repeal of Section 70A in its manifesto. Some submitters to the Social Security Rewrite Bill also asked for Section 70A to be removed.

### Purpose

The sanction is intended to encourage sole parents to apply for child support and to encourage the establishment of paternity. The child support application requires the name of the other parent and allows the government to potentially<sup>15</sup> collect child support payments from the liable parent, which would be retained to offset the cost of the sole parent benefit.

In some reports, it has been stated that a purpose of Section 70A is to ensure the other parent takes responsibility and contributes to the cost of raising their child. This is not a purpose of Section 70A per se and is more a purpose of child support. In some cases, the other parent is already taking responsibility and contributing outside the child support system. However, the government cannot retain money from private contributions and so requires compulsory applications for child support assessments.

<sup>13</sup> The Social Security Bill has had its third reading and will shortly become law. The new Act will come into effect from 26 November 2018. Section 70A will become sections 176 to 178 of the new Act.

<sup>14</sup> If the exemptions apply, the person is also not required to apply for child support.

<sup>15</sup> Some liable parents do not pay and Inland Revenue may not be able to collect the debt, especially if they live overseas. Some liable parents may also be exempt for a time, such as if they are in prison or in long-term hospital care.

## Evidence of impact of the sanction

There were 21,800 sole parents who had a reduction in a year, affecting 45,500 children (around 13,000 sole parents at any point). They represent about 20% of all Sole Parent Support recipients. Based on November 2017 figures, 79.7% of sole parents were registered for child support.

Looking over a longer period, the proportion of children ever in families affected is much larger. Among children born in 2010 and 2011, an estimated 11% of all children ever present in New Zealand by age six, were in a family affected by Section 70A benefit reductions at some time. Around four in ten of the children ever affected by reductions were affected for less than a year; a quarter were affected for three or more of their first six years. The proportion affected at any given month-end was highest in early childhood.

MSD do not have sufficient evidence to say whether the sanction is achieving its purpose. No evaluations of whether the benefit reduction encourages applications for child support have been conducted that we are aware of, and the data does not show what effect the reduction has on child support applications.

Some advocates have reported that some sole parents are unaware they have a sanction on their benefit and some say that the sanction has applied beyond the time they had the relevant dependent child in their care.

A 2004 review of the policy identified a lack of knowledge among clients and case managers. A team of specialists interviewed every person with a benefit reduction, which led to a significant increase in compliance with child support obligations. This team ceased operating in 2009. This suggests that education and awareness are important in ensuring compliance with the obligations.

Recent evaluations (as yet unpublished) have looked at the impact of the sanction on income adequacy and child wellbeing. Section 70A reductions disproportionately affect children already at high risk of persistent poverty and adverse experiences. Compared with other children born from 2010 to 2011 who are supported by a main benefit at some time before age six, children who were in a family affected by Section 70A reductions were more likely to:

- have a caregiver who was aged under 25 when the child was born (54% versus 43%)
- have been included in benefit before reaching two months of age (76% versus 53%)
- have spent three or more years supported by a main benefit by age six (72% versus 42%).

Children in a family affected by Section 70A were more likely to have a Māori caregiver than all children in the 2010–2011 cohort supported by a main benefit at some time (53% compared with 36%).

It is less clear whether children with Pacific caregivers are over-represented, relative to other children supported by benefit at some time. Children in a family affected by Section 70A were slightly less likely to have a Pacific caregiver than all children in the group supported by a benefit (16% compared with 17%). However, when MSD looked at those in a family affected by Section 70A for three or more of their first six years, they were slightly more likely to have a Pacific caregiver (18% compared with 17%).

## Working for Families tax credits

The suite of rules that apply to beneficiaries do not apply to a person who is receiving Working for Families tax credits (WFF). This includes a person who was receiving a Sole Parent Support payment but who cancelled their benefit and began to receive the Minimum Family Tax Credit (MFTC). MFTC is a “top up” to ensure a person is paid at the same or higher amount as the benefit to encourage people off benefits and into work.

There is no requirement to apply for child support or to seek private payments despite the fact that this could reduce costs to the government. However, if a person is receiving child support or equivalent private payments, it will be counted as income for WFF. Depending on the total family income, the child support received may reduce the amount of WFF they receive at 25 cents per dollar.

## International rules

Australia’s equivalent of WFF is the Family Tax Benefit. If a person (or their partner) is receiving the Family Tax Benefit, they must apply for child support if they have children in their care from a previous relationship – regardless of whether they receive other income support.<sup>16</sup>

In the UK, there is no obligation to apply for child support. However, child support is not a free service; fees and charges apply to have child support administered through the Child Maintenance Service.<sup>17</sup>

In the United States, states can take over the rights to child support from parents receiving government support. If child support is not applied for, government support can be reduced. The types of government support that can be affected include food stamps, Medicaid, child care assistance and TANF (or temporary assistance for needy families).

In Norway, parents, whether receiving government support or not, must pay contributions toward the support of their children if living separately from them. These contributions can be agreed and paid outside the child support system, but the government will intervene (effectively on behalf of the child) and establish an order if no agreement is in place.

<sup>16</sup> Refer to: [Child support and your Family Tax Benefit Part A - Australian Government Department of Human Services](#).

<sup>17</sup> Some UK child support cases are still administered under their Child Support Agency and fees do not apply. The Child Support Maintenance Service was established in 2012. Refer [Statutory child maintenance service – Child Maintenance Options](#).

# Child support: passing on money received to carers

## Purpose

This section discusses the issue of the Crown retaining some money collected from child support payments.

## Introduction

As discussed above, an objective of the Child Support Act 1991 is “to ensure that the costs to the State of providing an adequate level of financial support for children and their carers are offset by the collection of a fair contribution from liable parents”.

This objective sits aside others such as “to affirm the right of children to be maintained by their parents” and “to affirm the obligation of parents to maintain their children” and “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... without the need to resort to court proceedings”.

## Why does the Child Support Act have an objective of cost recovery for the child and for the carer?

It appears to be a leftover from when the Crown collected domestic maintenance payments for the carer<sup>18</sup> and a reflection of the principles of welfare in 1991 of ensuring people needing support accessed their own resources first (and that liable parents should not shift the costs of caring for the child to the government).

## Is child support compulsory?

The government does not require separated parents to pay child support by default – people can reach their own agreements. Child support legislation acts as a back-up when a private agreement cannot be reached and as an alternative to court proceedings. It can also be used as a template or guide for people’s private negotiations. Child support can be seen as a low(er) cost framework for resolving disputes on the financial support for children.

Child support is compulsory if a person is receiving from the government:

- Unsupported Child’s Benefit
- Any main benefit at the sole parent rate, including sole parent support.

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18 Part 16 of the Child Support Act includes savings provisions for maintenance liabilities and liable parent contributions.

## Government recovery of costs

In some cases, the receiving carer (and the child by default) will be reliant on government support, such as a Sole Parent Support payment.

The government has a principle that it should recover the costs by a “fair contribution” from liable parents. In this same principle, the assumption is that the government is doing this as it has provided “an adequate level of financial support for children and their carers”.<sup>19</sup> Recovery of the full cost of UCB and sole parent rates of main benefits are sought.

There are various inconsistencies in the ways the government recovers the costs of other benefits:

- WFF tax credits are paid at a full rate if the family income is below \$42,700. Child support received is treated as income and abates assistance at 25% over the threshold.
- Sole parent rates of student allowance do not require a child support application. Child support received is ignored and is not treated as income. The level of payment for a sole parent on student allowance is the same as the sole parent rate on a main benefit.
- The sole parent rate of Jobseeker Support (student hardship grounds), when there is an expectation the person will resume study the next year, does not require child support application and has the same treatment as a student allowance.
- A couple on welfare caring for a child from a previous relationship have no compulsory requirement to complete a child support application and any child support received is treated as income of the couple, and the benefit abates at 70% if their total income is over \$80 a week.
- The Winter Energy Payment is higher if the person has a partner or dependent children. It is received by those on a main benefit or New Zealand Superannuation. There is no requirement to apply for child support and any child support received does not reduce the payment.
- Child support received is counted as income for the purpose of Childcare Assistance.

A person on UCB is not able to apply for the Family Tax Credit (FTC), but a Sole Parent Support recipient is able to apply. The argument at the time was that the UCB and the FTC are both payments to help with the cost of raising the child, and a person should not receive two payments for the same thing. However, this results in an inconsistent treatment between UCB and sole parents on benefit.

In general, the cost of social welfare is not recovered from the individuals concerned or from those whose actions give rise to it. For example, the Jobseeker Support is not paid for by an individual payroll tax or levy (like ACC). Rather, the payments are provided by general taxes and income is targeted so that, as the person finds an independent source of income, the government support is withdrawn.

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<sup>19</sup> Child Support Act 1991, as at 30 August 2018, Section 4(j).

## Is there a reason for cost recovery?

The cost-recovery part of the Act appears inconsistent with the treatment of other people in need of welfare.

When child support was introduced, there was a child supplement paid to sole parents. This was recovered as part of child support payments. In 2004, most of the child component of the benefits was carved out and included in FTC. As indicated earlier, the WFF tax credits are not recovered from liable parents but are income tested, with child support treated as income.<sup>20</sup> In effect, the Crown went from full cost recovery to no or partial cost recover for the former child component of the main benefits.

It is possible to argue that a part of the sole parent rate continues to relate to the child given that it is paid at a level that's much higher than the single person rate. The implication is that if child support recovered should only be about the cost of the child, provided through main benefits, then the amount recovered should be no more than the difference between the single and sole parent rates, with any additional amount of child support passed on. It is assumed that the UCB relates solely to the costs of raising a child, in line with the policy preventing UCB recipients claiming FTC.

## Is cost recovery a way of preventing liable parents from forgoing their financial obligations to their children?

Child support legislation allows for the collection of child support from liable parents regardless of whether the receiving carer is on a main benefit or not. Any parent can apply for a child support formula assessment. The legislation allows for compulsory deductions from wage and bank accounts of liable parents who do not pay, as well as powers to arrest at the border. Cost recovery of benefits is separate from ensuring liable parents are financially supporting their children.

Rather, it appears from anecdotal stories that some liable parents are less likely to voluntarily pay because of the cost recovery principle – because they know the money is not going to the child but to the government.

## Administrative and efficiency grounds

The current child support system is expensive to administer, although it is considerably cheaper than a solely court-based process. It is more expensive per person than general taxation.

Part of the costs is determining which receiving carers are on a benefit and the amount they are paid each month, and then withholding that amount of child support. This requires information sharing between Inland Revenue and MSD.

There are unintended consequences from the benefit cost recovery. As it only applies where a person is receiving a benefit, and the child support payments are collected in arrears, as a person moves into and out of the benefit system, they either receive or no longer receive payments. Due to the time lags in the system, this means the recipient has periods of high payments coming onto a benefit and periods of low income coming off. Combined with wage payment delays, this can lead to barriers to exit into work and create "poverty traps". For example, a child support liability for March is payable in April and passed on or retained in May. So if a person leaves the benefit at the end of March, they will not receive a child support payment until June.

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20 Child support paid is also treated as a reduction in income for a liable parent for WFF purposes.

## What about other countries?

Australia's equivalent of WFF is the Family Tax Benefit, which has two parts. If a person (or their partner) is receiving the Family Tax Benefit, they must apply for child support if they have children in their care from a previous relationship – regardless of whether they receive other income support. Child support can reduce the Family Tax Benefit (by 50 cents for every dollar received) if it is over a certain amount. Currently for one child, a person can receive up to \$1,620.60 in child support per year before their Family Tax Benefit starts to reduce. Rules are in place to ensure the Family Tax Benefit does not get fully abated.

In the UK, there is no obligation to apply for child support, and child support is not treated as income for the purposes of reducing any government support.

In the United States, individual states can “take over the rights to child support” from parents receiving government support. If child support is not applied for, government support can be reduced. The types of government support that can be affected include food stamps, Medicaid, child care assistance and TANF (or temporary assistance for needy families). How these rules are applied vary from state to state.

In Norway, child support is explicitly for the welfare for the child and is “owed to the child” although paid to the child’s carer, but it can be paid directly to the child (generally if they are over 18 and still in education). Parents, whether receiving government support or not, must pay contributions toward the support of their children if they are living separately from them. These contributions can be agreed and paid outside the child support system, but the government will intervene (effectively on behalf of the child) and establish an order if no agreement is in place.

Norway also offers an “advance” of child support in cases where the liable parent does not meet their obligations. This advance can be made when the child support has yet to be finalised and may even exceed the amount of child support the liable parent is assessed to pay. For a carer to qualify for the advance, the child support must be paid through the child support system, and the level of the advance is means tested on the carer’s income. Only when payments have been “advanced” is child support retained – and only to cover the amount of the advance. If the advance is greater than the child support paid, this is considered a public contribution, and the cost is not passed on to the liable parent. Child support does not reduce any other support provided to carers by the government.<sup>21</sup>

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<sup>21</sup> Refer [Child support \(child maintenance\) - www.nav.no](http://www.nav.no), and [The Children Act 1981 The Children Act - regjeringen.no](http://www.regjeringen.no).

# Appendix: Child support data

## Child support customer database as at March 2017

Receiving carers (including 30,000 with debt only owed)	Children (with any payment, including arrears only)	Liabe parents (including 30,000 with debt only)	% child support paid on time by liable parents
158,300	255,000	161,500	70%

## Beneficiary receiving carer population as at March 2017

Beneficiary receiving carers (ongoing only)	Children living with beneficiaries (ongoing only)
66,000	80,000

## Child support retained to cover the costs of benefits for the year ending 30 June 2017

Total collecting during the year (including for arrears)	Total distributed to receiving carers (including for arrears)	Total retained to cover the cost of benefits
\$468m	\$279m	\$189m

## Child support passed on to beneficiaries for the year ending 31 March 2017

Beneficiary receiving carers with child support in excess of their benefit	Total retained for these carers to cover cost of benefits	Total distributed to these receiving carers (ongoing only)	Average distributed (per carer each month)
9,700	\$12.5m	\$4.6m	\$39.50

