

A COMPARATIVE STUDY OF CHILD MAINTENANCE REGIMES

Questionnaire for national informants

Focus of questionnaire

The questionnaire concerns your child maintenance (child support) regime. By this we mean the overall system in your country under which parents meet their financial obligations in respect of children with whom they do not live. These financial obligations arise when parents live apart following a divorce or separation, or when parents have never lived together.

Scope

The questionnaire is primarily concerned with regular payments for financial support, which we call here child maintenance. There are other forms of financial transactions between parents who do not live with each other including spouse maintenance (or alimony), lump sum payments, transfers of property, assets and pension rights. We are interested in these other forms of support only in so far as they affect child maintenance. We do not define a child. Please use those age related definitions of a child or children that are relevant in your country, throughout the questionnaire, with appropriate explanations when necessary.

The child maintenance regime includes arrangements for determination, enforcement and revision of payments. In most countries, the child maintenance regime will be some combination of private voluntary arrangements, formal arrangements made by courts, and formal arrangements made by other organisations or agencies. We seek information about all these.

The questionnaire is primarily concerned with entitlements to and liabilities for transfers of private resources. There are a few additional questions about the interaction of child maintenance with public resource transfers (for example maintenance guaranteed by the state and social benefits).

This questionnaire is not concerned with children for whom the state has assumed responsibility, and/or who live in foster homes, children's homes or other institutions. We seek information about child maintenance in respect of children living at home with one parent.

We are interested in three different groups of parents:

- separated married parents (whether formally divorced or not)
- separated cohabiters
- parents who have never lived together.

Core terms

We call the parent who has the main day-to-day responsibility for the child(ren) concerned, the parent with care. We call the parent who is not currently living with the child(ren) and their other parent, the non-resident parent. The amount of money the non-resident parent is required to pay (or agrees to pay) the parent with care is called the obligation. (In some literature or countries this may be called the award or the obligation.) Definitions of other terms are provided below.

Organisation of questionnaire

The questionnaire is organised in the following way.

- Part One seeks information about the history and general objectives of your child maintenance regime.
- Part Two asks how families enter the child maintenance system, including the general framework for divorce, separation, and the establishment of paternity for nonmarital children.
- Part Three covers detailed information about the determination of maintenance due. We ask how obligations are set, looking at rules, guidelines and discretionary components.
- The procedural aspects of collection and enforcement, and the implications of non-compliance are covered in Part Four.
- Part Five asks about the interactions of receipts and payments with other policies.

- *Administrative costs and quantitative data on outcomes are covered in Part Six.*
- *Part Seven asks you to draw on existing research in a brief evaluation of the child maintenance regime in your country; it also asks for the main topics of research and debate in your country.*
- *Part Eight presents two vignettes, or cases, in which we describe the circumstances of parents and children, and ask you to describe how they might be dealt with under your child maintenance regime.*

There are further instructions on how to fill in the questionnaire at the beginning of each part (with instructions presented in shaded text). We suggest that you read through the whole questionnaire thoroughly before you begin. We assume you will find it more convenient to complete the questionnaire directly onto the file. If you would prefer a paper copy, with space allowed after each question, please let us know.

We ask that you provide us with a list of the sources you consulted most frequently when answering this questionnaire.

When we ask for current information, this relates to the situation at 1 July 2006.

TERMS AND DEFINITIONS	
<i>Advance maintenance</i>	<i>Program in which child maintenance money is provided in advance of any payment made by the non-resident parent. In effect this guarantees an amount of child maintenance.</i>
<i>Child</i>	<i>We do not define a child. Please use those age related definitions of a child or children that are relevant in your country throughout the questionnaire.</i>
<i>Child maintenance</i>	<i>This refers to the money due to children from their liable parent (following the breakdown in the parental relationship). It may be paid to the parent with care or the child(ren); this varies by country.</i>
<i>Child maintenance regime</i>	<i>We include here all arrangements under which non-resident parents provide financial support for their children. We include voluntary arrangements, arrangements through the legal system, and arrangements through governmental agencies. We include both explicit and implicit governmental policies.</i>
<i>Cohabitees</i>	<i>We use this to refer to unmarried parents who live together</i>
<i>Guaranteed maintenance</i>	<i>Same as 'Advanced Maintenance' (see above)</i>
<i>New child or children</i>	<i>Where parents move on after separation or divorce and produce another child/children with a new partner.</i>
<i>New family</i>	<i>Where parents move on after separation or divorce and develop family relationships with a new partner. This may or may not also include children.</i>
<i>New partner</i>	<i>Where parents move on after separation or divorce and develop an intimate relationship with a new adult.</i>
<i>Non-resident parent</i>	<i>Refers to the parent with whom the children do not live a majority of the time. In many countries this is commonly the father.</i>
<i>Nonmarital child or children</i>	<i>Refers to a child or children from a relationship in which the parents are not married.</i>
<i>Obligation or 'child maintenance obligation'</i>	<i>This refers to any award of money made for child maintenance only. We use it as a general term to refer to all official and unofficial arrangements.</i>
<i>Prior child or children</i>	<i>Some parents have children from more than one relationship. We use "prior children" to refer to children from a previous relationship.</i>
<i>Parent with Care</i>	<i>This is the parent who has the main day-to-day responsibility for the children and the child(ren) live with this parent the majority of the time. In many countries this is commonly the mother.</i>
<i>Social assistance</i>	<i>By this we mean programs that provide income to low-income individuals or families. These programs have an income test, and often also have asset limits. This is one type of social benefit.</i>
<i>Social benefit</i>	<i>We intend this to be a very broad term. It includes all programs that provide income to individuals and families. This includes social assistance programs and programs that do not have an income test.</i>
<i>Step child</i>	<i>Where a parent has responsibility for a child living in their household who is not related to them biologically.</i>
<i>Tax benefit</i>	<i>We use this term broadly to refer to special features of the tax system that allow individuals in certain circumstances to pay less taxes. We also include programs that provide income through the tax system.</i>

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PART ONE: DEVELOPMENT OF CHILD MAINTENANCE REGIME

This part of the questionnaire seeks a broad overview of your current system.

Please remember that we are interested in three groups of parents:

- *separated married parents (whether formally divorced or not)*
- *separated cohabitantes*
- *parents who have never lived together.*

1.1 Consider the overall arrangements in your country for determining, enforcing and revising child maintenance payments. What are the broad policy objectives of these arrangements? We are interested in both explicit and implicit objectives.

In New Zealand, Child Maintenance is normally called Child Support. This child maintenance regime comes under the Child Support Act 1991 and subsequent amendments. The Child Support Act 1991 is administered by the Inland Revenue Child Support (IRCS, a section of the Inland Revenue Department). IRCS has access to all taxpayer information in respect of income returns and employer records and has wide powers in regard to requesting information from taxpayers and third parties.

The Child Support Act 1991 has eleven objectives, the main ones being the legislative determination of the level of child support (and thus the avoidance of Court proceedings), the dedicated role of the State in collecting (and paying) child support, and 'to ensure that the costs to the State of providing an adequate level of financial support for children and their custodians is offset by the collection of a fair contribution from non-custodial parents'. Other objectives include ensuring non-custodial parents contribute towards the cost of their children (though the majority of the collected money offsets the costs of the Domestic Purposes Benefit); and ensuring that paying parent's in similar circumstances pay similar amounts of child support.

IRCS assess and collect child support from parents not living with their children (paying parents). It then passes on these payments to the person caring for the child or children (custodians), or to the government if the person looking after the child is on a social security benefit (note the Child Support Act uses the term 'social security benefit' specifically to mean a benefit paid to a sole (lone) parent). The custodian does not have to be a parent of the child; they can be anyone who has the day to day care of the child – for example, a grandparent or other family member.

The main method of assessment is the formula assessment of child support. Either the paying parent or custodian may apply but the majority of applications are made by custodians. However, voluntary agreements can be entered into with the written agreement of both parties which may be registered with IRCS. If a voluntary agreement is registered then payments must be made to IRCS to pass on to the custodian.

Sole parent beneficiaries are required to apply for a formula assessment. However, if they have a voluntary agreement registered prior to going on benefit this can remain in place provided the payments are equal to or in excess of what would be payable under the formula assessment.

The Ministry of Social Development also plays a role in reducing the liability of the State for care of children. Section 70A of the Social Security Act 1964 requires the Ministry to reduce a sole parent benefit by \$22 per week per child if the client does not name the child's other parent and apply for child support. Since 1 July 2005, the total penalty is increased by \$6 per week after 13 weeks if actions are not taken to name the other parent and/or establish paternity despite information being given in an early intervention programme (officials do have discretion to waive these requirements in the cases of violence, rape etc.) About 20% of lone parents are subject to the S70A penalty.

IRCS also administers overseas maintenance orders which have been registered or confirmed in New

Zealand and maintenance orders made in New Zealand on behalf of custodians residing overseas. IRCS has the same enforcement powers in respect of formula assessments, voluntary agreements and court orders.

1.2 Please explain briefly the history and development of the current regime.

The Child Support Act 1991 (CSA) replaced a Liable Parent Contribution Scheme (LPC) that had been introduced in 1981. The LPC scheme was administered by the Department of Social Welfare. The Department argued that it had a conflict between the revenue collection duties and its responsibilities for the care and protection of children as well as a payment agency for social security benefits.

The primary objective of the LPC Scheme was 'to obtain a greater financial contribution towards the costs of the benefit from the income earning spouse.' The approach was to improve the enforcement of financial obligations on non-custodial parents. Prior to the LPC scheme, private maintenance proceedings were required as a condition for receipt of the DPB (introduced in 1973). Private child and spousal maintenance enforced by the judicial system was the main financial support for separated and divorced lone mothers prior to the introduction of the DPB. These mothers were eligible for emergency benefits, and these were required with a high degree of absconding to Australia by non-custodial parents.

The LPC scheme collected less maintenance money and there were higher administrative costs than the private proceedings. As the custodial parent was assured of their benefit income irrespective of the level of child support paid, they lacked incentives to name the non-custodial parent, who often ended up in a debtor relationship with the state.

The replacement of LPC with CSA drew heavily upon the Australian model. A single-purpose agency with clear operating rules, designed to generate money and offset welfare expenditure, with a formula for maintenance that provided certainty in contributions. However, the New Zealand system applied retrospectively, unlike the Australian system. A 1994 Review however indicated that the agency had failed in terms of revenue raising, getting only 10% of DPB expenditure. Some 58% of liable parents were paying at the minimum rate according to the 1994 review.

It is worth noting that the CSA came into force at the same time as a significant cut in all social security benefit rates in 1991, including the removal of a universal child benefit.

1.3 If there has been a major transfer of administrative responsibilities or any major change in approach since 1997, please describe the policy context and the process of creating and implementing the initiative. Were the changes controversial? (an example here might be the establishment of a new agency)

There have been 60 amendments to the Child Support Act since 1 April 1997, but no major reviews or overhauls of the legislation. Some of the amendments are consequential ones in relation to other legislation – for example, to take into account Civil Union and other tax legislation. Other are substantial amendments including giving effect to a reciprocal agreement with Australia, discretionary powers to remit penalties, and allowing parents to apply for liabilities to be offset in shared care arrangements, and changing the income year assessments are based on. The biggest single change was the introduction of administrative reviews in 1994, allowing IRCA adjustments to the formula assessment.

Men's groups have been vocal in opposing the CSA, but mainly because the money goes to the state to offset the cost of sole parent benefits rather than the money going to look after the children. Most of the argument of men's groups is against the Family Court in its decisions on access to children, rather than against CSA in particular.

1.4 Which of the following were explicit objectives of the change?

- Limiting public expenditures
- Enforcing obligations to biological children
- Reducing child poverty
- Influencing relationship formation and dissolution behaviour
- Influencing employment of lone parents
- Increasing voluntary arrangements for maintenance
- Other (please describe briefly)

PART TWO: ENTERING THE CHILD MAINTENANCE SYSTEM

In this part of the questionnaire we are interested in entrance into the child maintenance system, considering arrangements for couples who have been married, those who have cohabited, and those who have not lived together.

2.1 CHILD MAINTENANCE ARRANGEMENTS FOR COUPLES WHO HAVE BEEN MARRIED

2.1.1 In your country, who has primary responsibility for divorce proceedings?

Courts

Other (please list and describe)

The Court Registrar can deal with applications for marriage dissolution which are mutually agreed and where the applicants have been living apart for two years or more.

2.1.2 Please explain briefly the legislative, administrative and procedural framework for divorce in your country.

Divorce comes under the Family Proceedings Act 1980, and subsequent amendments. The Act applies to legally married couples and Civil Union couples. The Family Court is the responsible court.

While the Family Court (or High Court in cases of appeal) is ultimately responsible for divorce proceedings, it is not necessary for either spouse to appear in Court if both spouse agree to legally end the marriage and both agree not to appear in Court. For non-Court appearances, an affidavit must be signed, stating that the couple have been living apart for two years, and that satisfactory arrangements have been made for care, maintenance and the welfare of any children. A Court Registrar can deal with jointly agreed applications for dissolution. In disputed applications, a Family Court Judge will hear the application. The only ground for divorce is irreconcilable differences, which is proven by living apart for two years (though there is a provision for a trial reconciliation of up to three months). It is a no-fault procedure.

Couples thinking of separation can apply to the Family Court for free counselling. If they still agree to separate, they can take out a Separation Order (a rare occurrence) through the Family Court. Couples can go straight to the Separation Order, and then counselling is arranged. This agreement can cover issues of care of children and contact with them. Couples, or one partner, can apply straight for a Dissolution Order, signing an affidavit of separation for two years and that satisfactory arrangements for care of children have been made. With a single application, the affidavit will need to prove that the spouse was served with a copy of the application. Counselling is also triggered by a Care of Child Act application.

2.1.3 Explain how decision-making about child maintenance fits around the divorce process. Who has the main responsibility for deciding whether and how much child maintenance should be paid when a couple divorce?

As stated above, the Separation Order and the Dissolution Order both contain clauses stating that the satisfactory arrangements have been made for the care of children, including day-to-day care, maintenance and other aspects of the welfare of the child. However, the Family Court cannot make a maintenance order in respect of children in this context - the provisions in respect of child maintenance orders and agreements following divorce were repealed when the CSA was enacted.

The parties can make their own arrangements, register a Voluntary Agreement with IRCS or apply for a formula assessment. Under a formula assessment, either parent can apply for an Administrative Review of the amount paid, within the guidelines set out in the Act, with that review undertaken by review officers who are independent lawyers contracted by IRCS.

2.2 CHILD MAINTENANCE ARRANGEMENTS FOR COUPLES WHO HAVE LIVED TOGETHER WITHOUT BEING MARRIED

2.2.1 Please explain briefly the legislative, administrative and procedural framework (if there is one) in which unmarried parents who had lived together separate.

Since February 2002, unmarried parents who have lived together for three years as a de facto couple have the same rights and responsibilities as a married couple. The Property (Relationships) Act 1976 applies to *de facto* couples of more than three years. When there are children of the union present, the Courts may be able to specify a shorter time frame. Couples can contract out of this legislation. Civil unions are treated the same as marriage.

Counselling, free through the Family Court, is available to couples in a de facto arrangement as well as married couples, and can apply to disputes over the day to day care of the child (custody), contact with the child (access) or spousal maintenance (termed domestic maintenance in the CSA).

2.2.2 Explain how decision-making about child maintenance fits into this framework. Who has the main responsibility for deciding whether and how much child maintenance should be paid when an unmarried couple separate?

Child Support legislation applies in New Zealand when:

- a) A couple who have children split up, or
- b) Two people have children and aren't living together.

Thus the Child Support Act applies irrespective of marital or de facto status.

When parents who have not been living in a marriage or civil union separate, they can make their own arrangements for child maintenance, register a Voluntary Agreement with IRCS or apply for a formula assessment. (Note: the earliest a maintenance obligation to IRCS under a voluntary agreement or formula assessment can arise is the date the registration or application is received. It is not back dated to the date of separation.)

2.2.3 Please explain briefly what happens if paternity is disputed in couples who have lived together.

There is no presumption of parentage for couples who have been living in a civil union or de facto relationship. However, since 1 July 2005, changes to rules about natural guardianship have changed so that both parents are guardians of the child if the parents were living together at any time between the conception and birth of the child. Although being a guardian is not proof of parentage in the CSA (unless a Court has declared a person to be a guardian by virtue of the person being the child's natural parent), registration of the birth by a guardian is proof of parentage.

If there is a dispute about paternity of a child, the Family Court can be asked to resolve it. A child's mother may ask the Court to make a paternity order against a man who denies he is the child's father. A man may also ask the Court to declare that he is a child's father, or to declare that he is not the child's father. The Court can recommend that tests be done to help make a decision, and both the mother and the man have the right to ask the Court to recommend that these tests be done. A man may refuse the tests, but the Court can take that refusal into consideration in any deliberation.

If the dispute arises in relation to maintenance, the father can ask IRCS to determine whether the proof of parentage the application for maintenance relies on should be disregarded. IRCS has a broad

discretion and applies guidelines to determine disputes. If a party disagrees with IRCS's decision they can lodge an objection. If this is unsuccessful then the decision can be appealed in the Family Court. The Family Court can recommend parentage testing in this circumstance also and again either party can refuse to give consent for the testing to take place.

2.3 CHILD MAINTENANCE ARRANGEMENTS FOR THOSE WHO HAVE NEVER LIVED TOGETHER

2.3.1 In couples who have not lived together, explain how decision-making about child maintenance is made. Who has the main responsibility for deciding whether and how much child maintenance should be paid?

Child Support legislation applies in New Zealand when:

- a) a couple who have children split up, or
- b) two people have children and aren't living together.

Thus the Child Support Act applies irrespective of marital or de facto status, or whether the parents have ever lived together.

The parties can make their own arrangements, register a Voluntary Agreement with IRCS or apply for a formula assessment.

2.3.2 Please explain briefly the process for establishing legal paternity in couples who have not lived together when paternity is not in dispute. (For example, legal paternity is presumed if the father's name is on the birth certificate.)

An application for child support must include proof that the other person is in fact a parent of the child. The proof can include:

- a copy of the child's birth certificate naming the other person as parent;
- a written acknowledgement by the other person that they are the parent of the child;
- a declaration from a Court that the other person is a parent of the child.

Since 1 July 2005, rules about natural guardianship have changed so that both parents are guardians of the child if the parents were living together at any time between the conception and birth of the child.

A father can also become a guardian of the child if he was not living with the mother during the relevant period but may register his details as the father (with the mother's agreement). Although being a guardian is not proof in the CSA (unless the Court has declared a person to be a guardian by virtue of the person being the child's natural parent), registration of the birth by a guardian is regarded as proof.

2.3.3 Please explain briefly what happens if paternity is disputed in couples who have not lived together.

If there is a dispute about paternity of a child, the Family Court can be asked to resolve it. A child's mother may ask the Court to make a paternity order against a man who denies he is the child's father. A man may also ask the Court to declare that he a child's father, or to declare that he is not the child's father. The Court can recommend that tests be done to help make a decision, and both the mother and the man have the right to ask the Court to recommend that these tests be done. A man may refuse the tests, or the mother can refuse to give consent for the test to be carried out but the Court can take that refusal into consideration in any deliberation.

If the dispute arises in relation to maintenance, the father can ask IRCS to determine whether the proof of parentage the application for maintenance relies on should be disregarded. IRCS has a broad discretion and applies guidelines to determine disputes. If a party disagrees with IRCS's decision they can lodge an objection. If this is unsuccessful then the decision can be appealed in the Family Court. The Family Court can recommend parentage testing in this circumstance also and again either party can refuse to give consent for the testing to take place.

PART THREE: THE DETERMINATION OF CHILD MAINTENANCE DUE

Part Three of the questionnaire is concerned with determination of the child maintenance obligation and entitlement - the decision-making process by which child maintenance is agreed between parents, or decided by Courts or Agencies. This part of the questionnaire does not ask about arrangements for collection or enforcement of maintenance, which is dealt with in Part Four.

After an initial overview (Questions 3.1.1-3.1.5), we ask for detailed information about the determination of child maintenance due in three sections which address separately:

- *voluntary agreements between parents (Questions 3.2.1-3.2.3)*
- *obligations determined by Courts (Questions 3.3.1-3.4.4)*
- *obligations determined by other agencies/organisations (Questions 3.5.1-3.6.5)*

One of these three sections may not be relevant in your country (for example, if Courts are not involved in determination of maintenance obligations). Please complete the sections which are relevant to your country, and if you leave out a section please explain why.

Please remember that we are interested in three groups of parents:

- *separated married parents (whether formally divorced or not)*
- *separated cohabitants*
- *parents who have never lived together.*

3.1 OVERVIEW

3.1.1 Are parents who were married allowed to make a voluntary agreement as to the amount of maintenance? Are separated cohabitants? Are parents who have never lived together? For each group, please briefly discuss the circumstances in which they are allowed to make a voluntary agreement.

All parents, regardless of marital status, can register a voluntary agreement with IRCS as to the amount of child maintenance, subject to a minimum payment of \$10 per week.

If the custodian is in receipt of a sole parent social security benefit, the agreement must be for payments equivalent to or more than what would be payable under a formula assessment. The amount over and above the amount payable under the formula assessment is then paid directly to them. The amount which would be payable under a formula assessment is used to recoup the cost of the benefit.

3.1.2 If parents can make a voluntary agreement, does it have to be approved by someone else? By whom? What criteria are used? How often is the agreement approved, and what happens if it is not? (Again please answer each part of this question for separated married parents, separated cohabitants, and those who have never lived together.)

Voluntary agreements do not have to be approved by anyone but IRCS only administers voluntary agreements which are registered with them and meet the criteria in the CSA. If part of the agreement does not qualify, that part will not be administered.

The registered voluntary agreement must::

- be in writing
- signed by both parties

- require periodic payments to be made in weekly, fortnight or monthly instalments at a readily determined annual rate (note these will be converted to an annual rate and then to a monthly rate – payments can not be made weekly or fortnightly)
- be equivalent to weekly instalments of no less than \$10 a week,
- be accompanied by the approved IRCS form also signed by both parties
- and at the time the agreement is registered the parties must both be New Zealand citizens or ordinarily resident in New Zealand.

The parties do not have had to have been living in a marriage, civil union or de facto relationship at any time. The custodian does not need to be a parent of the child.

If the voluntary agreement is between non-beneficiaries, the agreement will last while the child is still eligible for child support. If the custodian starts to receive an income-tested benefit, then the voluntary agreement is automatically overturned if the payments under the formula would exceed the amount payable under the voluntary agreement.

3.1.3 Do courts play a role in determining maintenance amounts? If so, is it a primary role, or residual? Please briefly explain the circumstances and the types of cases in which the court is involved.

The Courts do not have a primary role in determining the amount of maintenance. The Family Court can hear applications for:

- urgent maintenance when an application for formula assessment has been made but IRCS has not made a decision on it (this is a rarely used provision)
- lump sum maintenance orders where there is a formula assessment in place (again seldom used but usually in conjunction with an application for departure)
- departure orders where there has been an Administrative Review in respect of the same matter. Departure orders occur when one party objects to the outcome of an Administrative Review. There are ten grounds for objection, and if it is agreed by the Family Court that one of these has been broken, and the outcome is deemed unfair, then the Court can alter the conditions of the formula through a departure order.
- maintenance where the respondent resides overseas
- maintenance where the payee resides overseas in a Convention country
- variation, suspension, discharge of overseas court orders from Commonwealth or Designated Countries which have been registered or confirmed in New Zealand

In all cases except where the respondent resides overseas, the orders must be forwarded to IRCS for enforcement.

(Note:

- Convention Country means a country which has signed or acceded to the United Nations Convention on the Recovery Abroad of Maintenance (UNCRAM) (but not Australia)
- Designated Country means the State of California, South Africa and Hong Kong Special Administrative Region of the People's Republic of China.)

3.1.4 Do agencies other than the court play a role in determining maintenance? If so, which agency/agencies? Please describe its functions, both in terms of functions related to child maintenance and functions related to other areas of responsibility. Please explain the circumstances and the types of cases in which the agency is involved.

IRCS is the only agency legally charged with determining child maintenance and related matters. Its functions include the determining the amount of child maintenance, registering voluntary agreements, receiving and payment of funds for formula entitlements, voluntary agreements and overseas court orders, enforcing payment, and undertaking administrative reviews.

3.1.5 For children of formerly married parents, is the child maintenance obligation in the child's name or in the name of the parent with care? Is this different for separated cohabittees or for children of parents who have never lived together? Does it differ depending on whether it is a voluntary agreement versus being determined by the court or an agency?

Irrespective of marital status, the child maintenance obligation is in the name of the parent with care. The nature of the agreement does not affect the recipient of the obligation.

We now ask more detailed questions about the three types of arrangements, voluntary, court-determined, and agency-determined.

3.2 VOLUNTARY AGREEMENTS ABOUT CHILD MAINTENANCE

3.2.1 Please provide information on voluntary agreements: are lawyers, agencies or other organisations involved in mediating or helping to negotiate voluntary child maintenance agreements? If so, please explain the processes. Are there any formal guidelines on deciding the amount?

There is no legal requirement for lawyers or agencies to be involved in the determination of the amount of child support for a voluntary agreement. In many cases, lawyers may be involved because they are dealing with associated care and property issues.

As explained in 3.1.2 above, once reached a voluntary agreement may be registered with IRCS in which payments must be made through Inland Revenue. Payments cannot be made directly to the custodian.

The agreement and any variation must be registered by both parties. However, only the custodian can ask IRCS to stop enforcing the arrangement. Either party may apply for a formula assessment of child support even though a voluntary agreement has been registered. The formula assessment will then overturn and supersede the voluntary agreement.

3.2.2 What happens if parents attempt to reach a voluntary agreement but are unable to do so?

Either party may apply for a formula assessment of child support.

3.3 COURT DETERMINATION OF CHILD MAINTENANCE

This section seeks detailed information about child maintenance determined by Courts. If Courts are not involved in determination of maintenance in your country, please go on to the section on agency determination (after question 3.4.4). If courts are involved, please provide copies of formulae, standards, schedules, tables or guidelines as appropriate in addition to answering the questions below. If the Court uses discretion to address any of the questions below, please discuss the criteria that are typically taken into account. As you answer questions in this section, please remember that we are interested in three groups of parents (separated married parents, separated cohabittees, and parents who have never lived together).

3.3.1 Please explain how lawyers, agencies or organisations are involved in mediating, supporting or helping parents involved in Court decisions about regular child maintenance. Does this differ for separated married parents, separated cohabittees, and parents who have

never lived together?

In general, the Family Court cannot determine child maintenance where the respondent lives in New Zealand unless there is a formula assessment in place or one has been applied for. If a formula assessment has been applied for but no decision has been made, the Court can make an order on application by the custodian for urgent maintenance to apply until the formula assessment takes effect.

If there is a formula assessment in place the Court can on application by either the custodian or paying parent make an order for lump sum child support which is, except in special circumstances, offset against the amount payable under the formula assessment.

The most common scenario where the Court will be required to determine maintenance is where a party to an administrative review is dissatisfied with the outcome. They may apply to the Court for a departure order. The Court can make a departure order which either replaces the formula assessment or the administrative review determination. The grounds for the departure order are the same as the administrative review (see below at 3.6.5C). Lawyers are likely to be involved, though individuals can go through the process themselves.

(Note: A Bill is currently before Parliament that will mean that only dissatisfied applicants to an administrative review will be able to apply for a departure order. Dissatisfied respondents will instead be able to appeal the decision in the Family Court. This means that in both cases, the proceedings will be dealt with as rehearing of the original application.)

The Family Court has a further role in:

- determining maintenance where the respondent resides overseas
- awarding maintenance on applications from custodians who are resident in other Convention Countries
- Registering and confirming Court orders from Commonwealth and Designated Countries – these are then forwarded to IRCS for enforcement.

(See 3.1.3)

3.3.2 How would you describe the main method of Court determination of the amount of maintenance on the following continuum:

- Full discretion
- Mostly discretion, but with informal guidelines
- Formal guidelines
- Rules/rigid formulae

If more than one method is used, please describe the circumstances that could lead to different methods.

Please report any differences between separated married parents, separated cohabitants, and parents who have not lived together.

None.

3.3.3 Is there a minimum amount of maintenance required?

- No
- Yes. How much? What are the circumstances in which it is used?

Departure orders, lump sum and urgent maintenance orders (which are all made under the CSA) cannot operate to reduce the liability below the relevant annual minimum amount (see 3.5.3).

If there is a maximum, please also provide information on its level and the circumstances in which it is used.

There is a maximum income amount which is annual adjusted but there is no explicit maximum amount of child support payable. When making a departure order, the Court is not bound by the maximum income amount.

3.3.4 These questions deal with how the Court takes account of the non-resident parent's resources in determining whether there is a child maintenance obligation and its amount.

A. How much of the non-resident parent's earnings are considered?

- All
 Some (explain)
 None (go to 3.3.4 C)

Na – for the following questions the Family Court's information requirements and assessments are based on the same criteria as the formula assessment (3.5) and the administrative review, (3.6.5C) but they may come up with different judgements on the amount of Child Support.

B. If some or all of the non-resident parents earnings are considered, is this based on gross or net earnings?

- Gross
 Net (What is deducted?)

n/a

C. Are other sources of income (for example, benefit income, asset income, etc.) of the non-resident parent considered?

- All ignored
 All considered
 Some ignored, some considered. Which ones?

n/a

D. Are the non-resident parent's basic living expenses taken into account?

- No
 Only in certain circumstances. Please describe the circumstances in which this would occur and the way in which it affects the obligation.
 Yes. Please describe the way in which it affects the obligation.

E. Are the non-resident parent's other personal expenses considered? (For example, work expenses, sickness/health expenses). In what type of circumstances? Are debts considered?

n/a

How?

F. Are any allowances made for expenses involved in maintaining a relationship with the child? (For example, consider transportation, housing, etc.) How are these expenses considered?

n/a

3.3.5 The following questions deal with how the Court takes account of the non-resident parent's family relationships in determining whether there is an obligation and its amount.

A. Is the obligation affected by whether the non-resident parent has a new partner with whom he lives? How does it affect the obligation? Do a new partner's resources (income) matter? How? Does a new partner's own child (the non-resident parent's stepchild) matter to the obligation? How?

n/a

B. Is the obligation affected by whether the non-resident parent had prior children? In what way?

n/a

C. Is the obligation to the children affected by whether the non-resident parent has a new child that he lives with? In what way?

n/a

D. Is the obligation to the children affected by whether the non-resident parent has a new child that he does not live with? In what way?

n/a

3.3.6 These questions deal with how the Court takes account of the parent with care's resources in determining whether there is an obligation and its amount.

A. How much of the parent with care's earnings are considered?

- All
- Some (explain)
- None (go to 3.3.6 C)

n/a

B. If some or all of the parent with care's earnings are considered, is this based on gross or net earnings?

- Gross
- Net (What is deducted?)

n/a

C. Are other sources of income (for example, benefit income, asset income, etc.) of the parent with care considered?

- All ignored
- All considered
- Some ignored, some considered. Which ones?

n/a

D. Are the parent with care's basic living expenses taken into account?

- No
- Only in certain circumstances. Please describe the circumstances in which this would occur and the way in which it affects the obligation.

n/a ___ Yes. Please describe the way it which it affects the obligation.

- E. Are the parent with care's other personal expenses considered? (For example, work expenses, sickness/health expenses). In what type of circumstances? Are debts considered? How?

n/a

3.3.7 These questions deal with how the Court takes account of the parent with care's family relationships in determining whether there is an obligation and its amount.

- A. Is the obligation affected by whether the parent with care has a new partner? How is the obligation affected? Do a new partner's resources (income) matter? How? Does a new partner's own child (the parent with care's stepchild) matter to the obligation? How?

n/a

- B. Is the obligation affected by whether the parent with care had children prior to this relationship? In what way?

n/a

- C. Is the obligation affected by whether the parent with care has a new child that she lives with? In what way?

n/a

3.3.8 These questions deal with how the Court takes into account the amount of time the non-resident parent spends with the child in determining whether there is an obligation and its amount.

- A. If a child will spend approximately equal time living with each parent, how would this affect the maintenance obligation?

n/a

- B. If a child will not spend equal time living with each parent, would the amount of time spent with the non-resident parent affect whether there is an obligation and its amount? How?

n/a

3.3.9 These questions deal with the way the obligation relates to characteristics of the child/children and special expenses for them in determining whether there is an obligation and its amount.

- A. Does the child's age affect the amount of the obligation? If yes, what are the age groups? Do obligations increase or decrease with age?

n/a

- B. Does the number of children affect the amount of the obligation? How?

n/a

- C. Is there a minimum desirable amount set per child?

n/a

- D. What other characteristics of the child/children can affect the amount? (An example may be a child with a disability).**

n/a

- E. What expenses for children can affect the amount of the obligation? (For example, child care expenses, school expenses, special health expenses, etc.)**

N/a

3.3.10 These questions deal with the way the obligation is related to other financial circumstances of the parents. (Please note that we are only interested in these issues as they relate to child maintenance.)

- A. Please explain how the Court treats owner-occupied housing owned by parents, and other assets, such as land and vehicles, in making decisions about regular child maintenance.**

n/a

- B. Please explain how the Court treats other financial transactions and settlements that may be made in making decisions about regular child maintenance. We include here:**

- lump sum payments
- previous voluntary child maintenance payments
- spouse maintenance (alimony) or other financial transfers to ex-partners
- transfer of pension rights

3.4 PROBLEMS AND REVISIONS FOR COURT DETERMINATIONS

3.4.1 Please discuss any problems that arise in gathering information necessary for the Court to determine maintenance, and how such problems are dealt with.

n/a

3.4.2 Approximately how long does it usually take for the Court to make the financial decisions about child maintenance?

Except for the cases listed in 3.1.3, the Family Court has no role in making financial decisions about child maintenance.

However, once an application for a departure order has been filed, copies will be delivered to the other party, who has 21 days to file a defence. A hearing is then arranged, will normally be dealt with in about 8 weeks. If a departure order is made, the Court will send a copy of the order to Child Support within 14 days, and Child Support will then issue a new assessment notice, which will take effect immediately.

3.4.3 When does obligation for and entitlement to Court-determined child maintenance end for divorced and separated parents and their children?

Please explain with reference to:

- child's age/education level
- marriage/cohabitation of child
- any other characteristics of child
- cohabitation/remarriage of parent with care
- cohabitation/remarriage of non-resident parent
- any other characteristics of either parent.

n/a

3.4.4 These questions deal with revisions to the amount due.

- A. Does the Court do an automatic adjustment of existing obligations? If so, what adjustment mechanism is used? (An example would be updating annually to take account of inflation.)**

n/a

- B. If there is not an automatic adjustment, is there a regular review? How often? What criteria are used to determine if the obligation should be changed?**

n/a

- C. Can all parents (parents with care and non-resident parents) request an adjustment? If not, are there any types of parents who can? What factors are considered in whether an adjustment is made?**

Only if the parents satisfy the grounds for an administrative review then a departure order.

3.5 AGENCY DETERMINATION OF CHILD MAINTENANCE

This section seeks detailed information about child maintenance determined by agencies or organisations other than the Court. In some countries there are no such agencies involved in the determination of child maintenance liabilities and entitlements, because such matters are handled solely by the Court. If this applies to your country, please go straight on to Question 3.7.1. If agencies are involved, please provide copies of formulae, standards, schedules, tables or guidelines as appropriate in addition to answering the questions below. If the agency uses discretion to address any of the questions below, please discuss the criteria that are typically taken into account. As you answer questions in this section, please remember that we are interested in three groups of parents (separated married parents, separated cohabitants, and parents who have never lived together).

3.5.1 Please explain how lawyers, agencies or organisations are involved in mediating, supporting or helping parents involved in Agency decisions about regular child maintenance. Does this differ for separated married parents, separated cohabitants, and parents who have never lived together?

The IRCS makes decisions about child maintenance according to the provisions of the Child Support Act.

IRCS Administrative Review Officers who are contracted to conduct administrative reviews are often experienced family lawyers but their role is to recommend a decision to the Commissioner and they do not mediate or support the parties. Although parties to a Review may, with the Commissioner's approval, be represented or supported during the hearing, their representative or support person cannot be or have been a barrister, solicitor or a person involved in advocacy work before other tribunals.

Community law centres and family lawyers provide advice on how the system works, but cannot determine the amount.

3.5.2 How would you describe the main method of Agency determination of the amount of

maintenance on the following continuum:

- ___ Full discretion
 ___ Mostly discretion, but with informal guidelines
 ___ Formal guidelines
 __X__ Rules/rigid formulae

If more than one method is used, please describe the circumstances that could lead to different methods.

The starting point for the maintenance determination is the formula assessment which is specified in the Child Support Act 1991. The formula uses the paying parent's taxable income, deducts a living allowance and then applies a percentage. The taxable income used will be either:

- the previous year's income if this was derived solely from New Zealand sourced wages, salary, benefit, interest and dividends (eg 2007 child support is based on 2006 earnings); or
- the income from two years previous if the income in the previous year included income other than from New Zealand sourced wages, salary, benefit, interest and dividends such as rental or overseas dividends (eg 2007 child support is based on 2005 earnings).

Where income from two years previous is used, an inflation factor is applied to the income based on the Consumer Price Index movement during the period 1 January to 31st December in the year prior to the child support year being assessed (eg if the 2006/2007 year is being assessed and income from the period 1 April 2004 to 31 March 2005 is being used, the inflation factor is based on the CPI movement during the period 1 January 2005 to 31 December 2005).

The inflation factors for the current and previous years are:

Year	Inflation percentage
2006/2007	3.2%
2005/2006	2.7 %
2004/2005	1.6 %
2003/2004	2.7 %
2002/2003	1.8 %
2001/2002	4 %

(Note: for the years 1993 to 2001, in all cases the starting point was income from two years previous to the current year. No inflation factor was applied).

The living allowance is described at 3.5.4 D below.

The basic formula can be varied through the Administrative Review process. In order to succeed, the applicant must meet at least one of 10 grounds which all require a special circumstances test to be met (see 3.6.5C). The formula will only be varied if the ground is met, and it is just and equitable and otherwise proper for the variation to be made. The grounds and matters which must be considered are set out in the CSA but Administrative Review officers also use case law on departure orders.

Please report any differences between separated married parents, separated cohabitants, and parents who have not lived together.

No differences.

3.5.3 Is there a minimum amount of maintenance required? **No** **Yes. How much? What are the circumstances in which it is used?**

For formula assessments, there is a minimum amount that has to be paid even if the paying parent earns no income unless they qualify for an exemption. These are available in limited circumstances where a paying parent is a long term prisoner or hospital patient and certain income criteria are met (note: A bill currently before Parliament extends these provisions to paying parents under 16 years of age). The minimum applies to the basic formula assessment and also to Administrative Review determinations and is a minimum liability, not minimum payment per custodian.

For the child support years from 1993 to 2002, this amount was \$520 per annum (or \$10 a week). Since 2003, the amount has been adjusted each year by the movement in the Consumer Price Index. The minimums for the current and past years under the formula assessment are:

Year	Amount per year
2006/2007	\$730
2005/2006	\$707
2004/2005	\$688
2003/2004	\$677
2002/2003	\$663

For voluntary agreements, the minimum is \$10 per week.

If there is a maximum, please also provide information on its level and the circumstances in which it is used.

There is no maximum child support but there is a maximum income amount which can be used. This can however be overturned by an Administrative Review determination or Departure Order.

The paying parent's formula assessment will be based on either

- their taxable income from the previous year if their earnings in the previous year were derived solely from New Zealand sourced wages, salary, benefit, interest or dividends (eg child support for the 2007 years will be based on 2006 earnings); or
- their taxable income from two years previous if their earnings in the previous year included income other than New Zealand sourced wages, salary, benefit, interest or dividends such as self employed income, rents, and overseas income (eg child support for the 2007 year will be based on 2005 earnings). An inflation factor is applied to this figure.

(Note: for the 2001 year and previous years, the taxable income from two years previous was used and was not inflation adjusted.)

For the 2002 and subsequent years, the highest taxable income used is 2.5 times the average ordinary time New Zealand salary and wages (in NZ, average earnings are a composite of male and female earnings). For the 2001 and previous years, this amount was set at twice the average earnings.

The maximum income amounts for each year are as follows:

Child Support Year	Amount
1992/93	\$55,057

1993/94	\$57,141
1994/95	\$57,795
1995/96	\$58,606
1996/97	\$60,122
1997/98	\$62,133
1998/99	\$64,478
1999/00	\$65,891
2000/01	\$68,436
2001/02	\$67,569
2002/03	\$86,684
2003/04	\$90,823
2004/05	\$93,522
2005/06	\$97,167
2006/07	\$100,157

The net amount payable varies as that depends on the formula allowance for living expenses (varies with non-resident parent circumstances) and the percent payment (varies with number of children to support).

3.5.4 These questions deal with how the Agency takes account of the non-resident parent's resources in determining whether there is a child maintenance obligation and its amount.

A. How much of the non-resident parent's earnings are considered?

- All**
 Some (explain)
 None (go to 3.5.4 C)

B. If some or all of the non-resident parent's earnings are considered, is this based on gross or net earnings?

- Gross**
 Net (What is deducted?)

Though there is a maximum based on total taxable income of 2.5 times the average NZ income.

C. Are other sources of income (for example, benefit income, asset income, etc.) of the non-resident parent considered?

- All ignored**
 All considered
 Some ignored, some considered. Which ones?

All taxable income is taken into account including benefit income, interest, dividends. IRCS also has the discretion to take into account income earned overseas which is not taxable in New Zealand (eg when assessing customers living in Australia). Assets are not taken into account in the formula assessment but can be taken into account by way of the Administrative Review/ Departure process.

D. Are the non-resident parent's basic living expenses taken into account?

- No**

___ **Only in certain circumstances. Please describe the circumstances in which this would occur and the way in which it affects the obligation.**

__X__ **Yes. Please describe the way in which it affects the obligation.**

The basic formula uses the paying parent's taxable income, deducts a living allowance and then applies a percentage.

The living allowance depends upon the paying parent's personal circumstances. If the paying parent lives with a partner or dependent child their living allowance is higher than if they are living alone. The living allowance increases with the number of children, up to a maximum of 4.

The living allowances are based on a combination of benefit rates and:

- for the 1993 to 2005 years, a flat amount for each child in the paying parent's care based on family assistance (government targeted assistance for low/middle income caregivers);
- for the 2006 and subsequent years, an annually adjusted amount for each child in the paying parent's care.

The 2007 living allowances (applicable from 1 April 2006 to 31 March 2007) are as follows:

L1 – Single person with no dependents	\$13,149
L2 – Partnered with no dependents	\$17,772
L3 - Single/ Partnered with one dependent	\$24,919
L4 – Single/ Partnered with two dependents	\$27,441
L5 – Single/ Partnered with three dependents	\$29,963
L6 – Single/ Partnered with four dependents	\$32,485

(Partner includes couples who are living in a marriage, civil union or de facto relationship and includes same sex couples).

The partner does not need to be dependent on the paying parent in order to be included in the living allowance. However, the partner can be excluded from the living allowance by way of an Administrative Review determination/Departure order if the Review Officer/Court considers it is appropriate to do so in the special circumstances of the case because the partner is financially independent.

E. Are the non-resident parent's other personal expenses considered? (For example, work expenses, sickness/health expenses). In what type of circumstances? Are debts considered?

Expenses are not considered under the formula but could be considered to be a legitimate reason for an administrative review (see 3.6.5C). For example, costs relating to the paying parent's special health needs may fall under ground 3 – 'necessary commitments in supporting the parent' if the costs significantly affect the parent's ability to pay child support.

How?

By an administrative review.

F. Are any allowances made for expenses involved in maintaining a relationship with the child? (For example, consider transportation, housing, etc.) How are these expenses considered?

If the parent shares care of the child, then this is taken into account in the formula assessment (see 3.5.8 A). In addition, access costs may be grounds for an administrative review

under ground 5 (see 3.6.5C). If the access costs are more than 5% of the paying parent's taxable income used in the formula assessment, then a determination can be made to take into account the additional costs provided there are special circumstances and that it is just and equitable and otherwise proper to do so. "Access costs" include only the costs of enabling access (eg travel, accommodation, toll calls) and not enjoyment of access (eg entertainment).

3.5.5 The following questions deal with how the Agency takes account of the non-resident parent's family relationships in determining whether there is an obligation and its amount.

A. Is the obligation affected by whether the non-resident parent has a new partner with whom he lives? How does it affect the obligation? Do a new partner's resources (income) matter? How? Does a new partner's own child (the non-resident parent's stepchild) matter to the obligation? How?

Yes – the obligation is reduced by the increase in living allowance for both the partner and the child (see 3.5.4D).

As noted above, a new partner's resources do not affect the obligation, but the partner can be excluded from the living allowance by way of an Administrative Review determination/ departure order if the Review Officer/Court considers it is appropriate to do so in the special circumstances of the case because the partner is financially independent.

The new partner's children from a previous relationship can be claimed in the living allowance. However, the children can be excluded by the Review Officer/Court if it is considered that the partner is able to financially support themselves and their children independent of the paying parent.

A formal step parent relationship is not necessary for the child to be claimed in the living allowance.

B. Is the obligation affected by whether the non-resident parent had prior children? In what way?

The amount of child support is also affected by the number of children the paying parent pays child support for. The basic formula uses the paying parent's income, deducts a living allowance and then applies a child support percentage.

The percentages are:

1 child 18%

2 children 24%

3 children 27%

4 or more children 30%

(Note: These multipliers are reduced with shared care).

If the paying parent is paying child support to children from multiple previous relationships, this is also taken into account in the formula assessment. For example, if the paying parent is liable to pay child support in respect of two children to two custodians, the child support percentage remains 18%. However, each custodian will receive half the amount. Therefore although the total obligation is not affected, the amount received by each custodian is affected.

C. Is the obligation to the children affected by whether the non-resident parent has a new child that he lives with? In what way?

Yes – the obligation is reduced by the increase in living allowance for the child (see 3.5.4D).

- D. Is the obligation to the children affected by whether the non-resident parent has a new child that he does not live with? In what way?**

Yes, as explained in 3.5.5A&B.

3.5.6 These questions deal with how the Agency takes account of the parent with care's resources in determining whether there is an obligation and its amount.

- A. How much of the parent with care's earnings are considered?**

All
 Some (explain)
 None (go to 3.5.6 C)

The parent with care's resources are not considered in the formula assessment. However, their resources can be considered under the Administrative Review/Departure process under ground 8 (see 3.6.5C)

- B. If some or all of the parent with care's earnings are considered, is this based on gross or net earnings?**

Gross
 Net (What is deducted?)

- C. Are other sources of income (for example, benefit income, asset income, etc.) of the parent with care considered?**

All ignored
 All considered
 Some ignored, some considered. Which ones?

Except to the extent they may be taken into account in the Administrative Review/Departure process.

- D. Are the parent with care's basic living expenses taken into account?**

No
 Only in certain circumstances. Please describe the circumstances in which this would occur and the way in which it affects the obligation.
 Yes. Please describe the way in which it affects the obligation.

- E. Are the parent with care's other personal expenses considered? (For example, work expenses, sickness/health expenses). In what type of circumstances? Are debts considered? How?**

No

3.5.7 These questions deal with how the Agency takes account of the parent with care's family relationships in determining whether there is an obligation and its amount.

- A. Is the obligation affected by whether the parent with care has a new partner? How**

is the obligation affected? Do a new partner's resources (income) matter? How? Does a new partner's own child (the parent with care's stepchild) matter to the obligation? How?

No- except to the extent that the Administrative Review/Departure process can take into account the partner's resources if in the special circumstances of the case it is appropriate to do so.

B. Is the obligation affected by whether the parent with care had children prior to this relationship? In what way?

No

C. Is the obligation affected by whether the parent with care has a new child that she lives with? In what way?

No

3.5.8 These questions deal with how the Agency takes into account the amount of time the non-resident parent spends with the child in determining whether there is an obligation and its amount.

A. If a child will spend approximately equal time living with each parent, how would this affect the maintenance obligation?

The maintenance obligation is affected if the paying parent 'shares care substantially equally' with another person. This in general means that the child is in the paying parent's care for at least 40% of the nights of the child support year (but see below at 3.5.8B).

The maintenance is affected in three ways. The:

- paying parent can claim the shared care child in their living allowance
- child support percentage changes with each child treated as 0.5 of a child
- paying parent can apply for child support from the custodian (if the custodian is also a parent of the child).

The percentages change as follows:

No. of children	% if shared care	% if not shared
1	12% (0.5)	18%
2	18% (1)	24%
3	21% (1.5)	27%
4	24% (2)	30%
5	25.5% (2.5)	30%
6	27% (3)	30%
7	28.5% (3.5)	30%
8	30% (4)	30%

Example:

Paying parent liable for three children not living with a partner, taxable income \$50,000:

$(\$50,000 - \$13,149) \times 27\% = \$9,950$ per annum

If the paying parent shares care of the three children, they can claim the full living allowance for a person with 3 dependent children and the percentage is also changed as the three children are counted as 1.5 children:

$(\$50,000 - \$29,963) \times 21\% = \$4,208$ per annum

B. If a child will not spend equal time living with each parent, would the amount of time spent with the non-resident parent affect whether there is an obligation and its amount? How?

A parent is only considered to share care of a child 'substantially equally' with another person if they have care of the child for at least 40% of nights of the child support year. If this threshold is not met, the person can still be deemed to have shared care. The factors that need to be considered include:

- the periods the child is in the care of each person – this is the primary test
- how the responsibility for decisions about the daily activities of the child is shared
- who is responsible for taking the child to and from school and supervising that child's leisure activities
- how decisions about the education or health care of the child are made
- the financial arrangements for the child's material support
- which parent pays for which expenses of the child.

If the paying parent meets the shared care criteria then the formula is varied in the same way as above (see 3.5.8 A).

3.5.9 These questions deal with the way the obligation relates to characteristics of the child/children and special expenses for them in determining whether there is an obligation and its amount.

A. Does the child's age affect the amount of obligation? If yes, what are the age groups? Do obligations increase or decrease with age?

No

B. Does the number of children affect the amount of obligation? How?

Yes – as explained in 3.5.5B and 3.5.8

C. Is there a minimum desirable amount set per child?

See in regard to the minimum amount. This is the minimum *liability* not minimum amount per child. For example, a non-resident parent who is paying for 1 child at the minimum formula assessment amount of \$730 per year who becomes liable for a second child to another custodian will not have his payments increased. The \$730 will be split between the custodians.

D. What other characteristics of the child/children can affect the amount? (An example may be a child with a disability).

Disability etc. does not affect the initial formula amount. However, there are grounds for an administrative review, with one ground being 'child's special needs' (ground 6) and disability could fit under this ground (see 3.6.5). However, the costs of maintaining the child must be **significantly** affected and the administrative review/departure can only be granted if there are special circumstances and varying the formula assessment would be just and equitable and otherwise proper.

E. What expenses for children can affect the amount of the obligation? (For example, child care expenses, school expenses, special health expenses, etc.)

See D above. Again, this does not affect the initial formula assessment. However, a ground for an administrative review is 'that the child is being cared for, educated or trained in a particular way that was expected by either parent so matters such as private school fees could be taken into account under this ground. Ground 6 which deals with the special needs of the child in respect of whom the formula assessment is made can also be used where costs such as orthodontic or medical costs are an issue. However, the costs of maintaining the child must be **significantly** affected and the administrative review/departure can only be granted if there are special circumstances and varying the formula assessment would be just and equitable and otherwise proper.

3.5.10 These questions deal with the way the obligation is related to other financial circumstances of the parents. (Please note that we are only interested in these issues as they relate to child maintenance.)

A. Please explain how the Agency treats owner-occupied housing owned by parents, and other assets, such as land and vehicles, in making decisions about regular child maintenance.

Not part of the standard assessment formula. They can form part of the basis of the administrative review (see 3.6.5 C). Grounds 8 & 10 cover: a formula assessment is unfair because of

- the income, earning capacity, property or other financial resources of either parent or the child;
- the non-resident has a financial interest in the property that the custodian is entitled to live in.

B. Please explain how the Agency treats other financial transactions and settlements that may be made in making decisions about regular child maintenance. We include here:

- lump sum payments
- previous voluntary child maintenance payments
- spouse maintenance (alimony) or other financial transfers to ex-partners
- transfer of pension rights.

These are not included in the formula assessment. They can form part of the basis of the administrative review (see 3.6.5C). Ground 9 deals with the situation where a formula assessment is unfair because of any payments, transfer of settlement or property previously made by the non-resident parent to the child, custodian or any other person for the benefit of the child.

3.6 PROBLEMS AND REVISIONS FOR AGENCY DETERMINATIONS

3.6.1 Please discuss any problems that arise in gathering information necessary for the Agency to determine maintenance, and how such problems are dealt with.

IRCS has access to all information regarding income from salary, wage earners and benefit recipients as employers and the Ministry of Social Development (the agency responsible for paying social security benefits) are required by law to provide this information monthly. IRCS also has automatic access to income tax returns. IRCS has wide powers to require third parties to provide information include address details.

3.6.2 Approximately how long does it usually take for the Agency to make the financial decisions about child maintenance?

After IRCS has received an application for child support, they contact the paying parent and an

acceptance letter and notice of assessment will be issued. The paying parent has 30 days from the date the notice is issued to make the first payment. The custodian will receive their first payment in about 8 weeks after the application is received as long as the paying parent makes their first payment on time. In cases where the custodian is a sole parent beneficiary, the government receives the money, not the custodian.

3.6.3 Please explain any circumstances in which Agency-determined child maintenance obligations are overridden by other legal requirements.

The formula assessment can be overridden by an administrative review, or by the Family Court by way of a departure order (see 3.3.1)

3.6.4 When does liability for and entitlement to Agency-determined child maintenance end for divorced and separated parents and their children?

Please explain with reference to:

- **child's age/education level**

The child must be under 19, financially dependent, not working full-time, or receiving a benefit or student allowance.

- **marriage/cohabitation of child**

The child must not living in a marriage, civil union or de facto relationship. "De facto relationship" is legally defined as a relationship between two people, including same sex partners, who

- live together in a relationship in the nature of a marriage or civil union; and
- are not married to, or in a civil union, with each other; and
- are both aged 18 years or over.

(Note: A person who is aged 16 or 17 is only considered to be in a de facto relationship if they have the written consent of their guardians (or former guardians) or the Family Court has consented to the relationship.)

- **any other characteristics of child**

The child must be a NZ citizen or ordinarily resident in NZ.

- **cohabitation/remarriage of parent with care**

Not applicable

- **cohabitation/remarriage of non-resident parent**

Not applicable though will affect amount of assessment by way of the living allowance component.

- **any other characteristics of either parent.**

The paying parent must be a parent of the child in terms of the Child Support Act and either:

- a New Zealand citizen: or
- ordinarily resident in New Zealand or in a country with which New Zealand has a reciprocal agreement.

There are no residency or citizenship requirements in regard to the custodian. However, the Reciprocal Agreement with Australia means that IRCS has no jurisdiction make an assessment of child support when the custodian is habitually resident in Australia.

3.6.5 These questions deal with revisions to the amount due.

- A. Does the Agency do an automatic adjustment of existing obligations? If so, what adjustment mechanism is used? (An example would be updating annually to take**

account of inflation.)

Formula assessments are issued annually before the start of the child support year. These are based on the paying parent's income from the previous year or from two years previous according to the income source.

The following adjustments are made annually at the same time:

- Living allowances are adjusted each year as benefit rates change each year (as the rates are inflation adjusted)
- An inflation factor derived from the Consumer Price Index is applied to assessments based on income from two years previous
- The inflation factor is applied to the minimum amount and the child component of the living allowance
- The maximum income is adjusted in line with the change in the average earnings

B. If there is not an automatic adjustment, is there a regular review? How often? What criteria are used to determine if the obligation should be changed?

C. Can all parents (parents with care and non-resident parents) request an adjustment? If not, are there any types of parents who can? What factors are considered in whether an adjustment is made?

It is possible for paying parents to challenge errors in the original determination. This is done by sending a Notice of Objection form, or a letter, stating the incorrect information used, or how the CSA provisions have not been taken into account. IRCS will advise the paying parent of the outcome.

If you still disagree with the level of child support paid (or received) it is possible to have a free administrative review, managed by IRCS staff, and then based on the grounds set out for that review. The grounds are:

- That by virtue of special circumstances, the capacity of either parent to provide financial support for the child is significantly reduced because of:
 - their duty to maintain any other child or person (ground 1)
 - their duty to support any other child or person with special needs (ground 2)
 - necessary commitments to support themselves (ground 3)
 - necessary commitments to support another child or person the parent has a duty to maintain (ground 4)
- That in the special circumstances of the case, the cost of maintain the child are significantly affected because
 - of high access costs incurred by the paying parent or custodian to enable the paying parent to have access (ground 5)
 - the child has special needs (ground 6)
 - the child is being cared for, educated or trained in a manner that was expected by either parent (ground 7)
- That by virtue of special circumstances, the formula assessment results in an unjust and inequitable level of support because of:
 - the income, earning capacity, property and financial resources of either parent or the child (ground 8)
 - any payments and any transfer or settlement of property previously made by the paying parent to the child, custodian or any other person for the child's benefit (ground 9)
 - an entitlement of the custodian to continued occupancy of a property in which the paying parent has a financial interest. (ground 10)

In all cases, the application can only succeed if it would be just and equitable in regards to the custodian, child and paying parent and otherwise proper to make the order. The legislation also provides for what must be considered under these tests.

This ends the sections of the questionnaire that have detailed questions on the way maintenance amounts are determined in voluntary, Court-based, and agency-based arrangements. The final section of this part asks broader questions.

3.7 REVIEW AND SUMMARY

3.7.1 Please review all your answers in Part Three, “The Determination of Child Maintenance Due.” Please summarize the key differences in the ways in which separated married parents, separated cohabitants, and parents who have never lived together are treated differently. What is the rationale for these differences in treatment?

There is no difference in the treatment by marital status.

3.7.2 What are the perceived advantages associated with voluntary agreements about child maintenance, and by/for whom are these perceived? What are the perceived disadvantages and problems, and by/for whom?

Couples make voluntary agreements because they want to go beyond the formula assessment. This indicates that they perceive this to be a better arrangement, either for themselves, or for their children. The arrangement gives greater flexibility to the types of coverage, level and forms of payments, and this is a benefit when both parents are in work and have some degree of shared care. Registering an agreement means that the custodian has more surety that payments will be collected because IRCS has the same enforcement powers in relation to voluntary agreements as formula assessments.

If problems or disadvantages arise, only the custodian is able to ask IRCS not to enforce the agreement. However, either the custodian or paying parent can apply for a formula assessment which will automatically overturn and supersede the voluntary agreement.

The main disadvantage is that in practice a voluntary agreement is only viable while the custodian is not in receipt of a sole parent benefit. A voluntary agreement may be made in good faith at the outset of the separation but is in effect overturned once the custodian applies for a sole parent benefit.

One advantage with registering a voluntary agreement is that if the paying parent is already paying child support to another custodian, the voluntary agreement will be taken into account when determining the amount payable under the formula assessment.

Example:

The paying parent is paying child support for 1 child under the formula assessment as follows:

$$(\$40,000 - \$13,149) \times 18\% = \$4,833 \text{ per annum}$$

They have a voluntary agreement which is not registered with IRCS to pay child support for another 2 children at the rate of \$1,500 per year. They are therefore paying a total of \$6,333 per year in child support.

If the custodian and the paying parent agree and register the agreement with IRCS, then the liability under the formula to the other custodian is modified as follows:

$$(\$40,000 - \$13,149) \times 27\% = \$7,249 \text{ per annum} \times 1/3 = \$2,416.$$

By registering the voluntary agreement, the paying parent's total liability is reduced to \$3,916.

Voluntary agreements are generally the exception in regard to maintenance obligations. At June 2005 there were approximately 3,200 voluntary agreements registered with child support which is a very small proportion of the total number of cases administered by IRCS (at the same date, there were 157,817 current formula assessments in place).

3.7.3 What are the perceived advantages associated with Court-based agreements about child maintenance, and by/for whom are these perceived? What are the perceived disadvantages, and by/for whom?

A Court based agreement can only be achieved if the parties are able to apply to the Court for a departure order in which case departure to the formula assessment can be made by consent. Clearly there needs to be a formula assessment in place already and as noted the Family Court cannot make maintenance orders.

There is probably greater acceptance of the fairness of the Court determined outcome, although men's groups have been quite vocal in complaining about the biases of the Family Court, though normally in relation to custody.

3.7.4 What are the perceived advantages associated with Agency-based agreements about child maintenance, and by/for whom are these perceived? What are the perceived disadvantages, and by/for whom?

The standard formula gives a degree of consistency and fairness across similar cases, and does take into consideration other expenses that the paying parent has to make. It is also simple to understand and administer. Either party can apply and does not need the agreement of the other party to do so. It therefore ensures that children receive support even where one party is unwilling. The ability to undertake an administrative review to account for differences in circumstances is appreciated, although some participants do not feel that all issues are considered. The disadvantage is that parents are removed from the process of deciding on the level of the obligation, and feel it is imposed on them.

3.7.5 Please comment on the way that voluntary agreements, Court agreements and Agency agreements interact. What happens if later a voluntary agreement breaks down? Can the parent with care seek assistance from the Court or Agency? Would they recalculate the amount of the obligation?

Formula assessments are regarded as the norm, with voluntary agreements being a possibility when both partners are in work.

If a registered voluntary agreement breaks down, IRCS has the same powers to enforce the agreements as in respect of formula assessments.

PART FOUR: COLLECTION, PAYMENT AND ENFORCEMENT OF CHILD MAINTENANCE

This part of the questionnaire is concerned with the way in which child maintenance monies are transferred from the non-resident parent to the parent with care and/or child. For some people, this may be achieved entirely by their own arrangements, including the direct transference of monies from non-resident parent to the parent with care, or arrangements through a bank. For others, transfer of monies may involve an intermediary (for example, a collecting agency), which has responsibility for receiving child maintenance from non-resident parents, and forwarding payments to parents with care/children. We seek information on collection and forwarding, non-payment, and guaranteed or advance payment schemes.

4.1 DIRECT ARRANGEMENTS FOR COLLECTING MAINTENANCE

4.1.1 Under what circumstances may non-resident parents choose to pay child maintenance directly? We mean direct transfers of money from the non-resident parent to the parent with care or a private bank transaction.

Non-registered voluntary agreements cannot be enforced by IRCS, and probably would have to go through the normal court processes rather than the family Court.

All payments must be made to the IRCS including payments under registered voluntary agreements. . Any payments made directly to the custodian **must** by law be disregarded by IRCS.

The Court has the power in departure order, lump sum or urgent maintenance proceedings to direct that the money is paid to a third party (for example, in settlement of school fees).

4.1.2 Are these direct payments monitored, and if so, how?

For non-registered agreements, no.

4.1.3 If direct payments are not made, can parents with care seek enforcement of payment? How? What steps would occur?

N/A

4.1.4 Please discuss the perceived advantages of direct payment arrangements, and the perceived problems.

If there are any non-registered direct payments, they give greater flexibility, would have to go through the general courts, and would not be recognised in the setting of child support for other children.

4.2 MEDIATED ARRANGEMENTS FOR COLLECTING MAINTENANCE

4.2.1 Is there an organisation/agency that has primary responsibility for collecting and forwarding child maintenance? Which organisation? If this is a different organisation than the agency that assesses maintenance, please provide information on its functions.

Inland Revenue Child Support has the responsibility for collecting and forwarding child maintenance. It is the same organisation that assesses the level of maintenance.

4.2.2 Please provide information about the administrative and procedural arrangements for

collecting and transferring maintenance. If you have more than one scheme, please deal with these separately. Please explain any difference in arrangements for different groups of parents (separated married parents, separated cohabitantes and parents who have never lived together). Please explain any differences for whether the amount was set voluntarily, through a Court, or through an Agency.

Inland Revenue Child Support has the responsibility for collecting and forwarding all child maintenance, whether through formula assessment, voluntary agreements, or overseas child maintenance orders. The same arrangements occur irrespective of marital status.

Payments can be made through deductions from a social security benefit; from wages and salary each pay day; by automatic payments from a bank account; posting cheques to either IRD or to any Westpac Bank Branch (the Government banker); or online. If the non-resident parent is receiving a social security benefit then the deduction must be from the benefit. Arrangements are also made for payees living overseas.

When the money has been received, it is either passed to the government if the custodian is on sole parent benefit, though if the payment is more than the benefit, the extra amount will be paid to the custodian. Otherwise all of what the paying parent pays (except for any penalty payments) passes to the custodian.

(Note: if the custodian is in receipt of a married social security benefit, they are treated as 'voluntary' custodians – that is, they are not obliged to apply for child support in respect of a child from a previous relationship but if they do so, the payments are made directly to them).

4.2.3 Please describe any types of circumstances in which payments are automatically withheld from wages (that is, prior to any problem with non-payment).

IRCS can place a deduction notice on a paying parent's wages if they are in default or have ever been in default of child support obligations. The same power can be used in respect of any money payable to the paying parent – for example, bank accounts.

4.2.4 In Section 4.4 below we ask for information on schemes that forward maintenance due in advance of collection. Other than these schemes, what is the usual timescale for delivering payments to parents with care/children?

Child support payments can only be passed on when the agency has received the payment from the paying parent.

Child support is normally paid out on the 7th of each month. For example, August's child support payments has to be received by 20 September, and this is then paid out on 7 October. If the paying parent is late, the pay out is equivalently late. IRCS provides weekly 'catch up' payments to ensure that even where a paying parent pays late the custodian receives their payment as early as possible.

4.2.5 What are the perceived advantages of your collection and forwarding scheme(s), and what are the main problems?

The main advantage is that there is an agency operating as an intermediary between the parents. It then becomes a function of the agency to resolve issues such as non-payment, not for the parents. The agency prefers on-line or automatic deductions for the greater certainty that provides. It also empowers the custodian in that payments can not be withheld by the paying parent as a means of coercion.

The main problems are:

- paying parents with uncertain work patterns
- custodians who would prefer to receive payments weekly, fortnightly or in a lump sum

- no guarantee of payment where the paying parent does not meet their obligation.
- From the perspective of the paying parent, the removal of the direct link from non-resident parent to the child. Operating through the agency makes many men feel that all they are doing is reducing government expenditure rather than helping their child.

4.3 NON-COMPLIANCE

4.3.1 For parents with mediated arrangements for collecting and transferring maintenance, we are interested in what happens when non-resident parents do not pay the amount due. Which of the following could happen?

- Attachment of earnings
- Deductions from bank accounts/savings/pensions
- Deductions from benefits (only Accident Compensation payments, as deductions occur automatically from other benefits)
- Recovery through tax
- Seizing and selling assets
- Driving licenses revoked
- Passport confiscation
- Criminal prosecution
- Imprisonment
- Interest charged on debt
- Other

(Interest as such is not charged but late payment penalties are applied to the debt. A penalty of either \$5 or 10% of the unpaid amount, whichever is the greater, is charged. A further penalty of 2% is added for each extra month the amount remains unpaid. IRCS has the ability to write off penalties if certain criteria are met provided the defaulted payment is made.)

4.3.2 Of the interventions marked in 4.3.1, which are most likely? Please comment on whether these typically occur in a particular sequence, that is, differentiate between any that are routinely used at the first instance of non-payment and those only used for persistent non-payment. Finally, please comment on the timing of collection interventions; how soon after non-payment would something happen? (If different types of cases have different steps or different timing, please explain.)

The penalty in 4.3.1 will occur automatically if a payment is behind schedule. For someone in work, an attachment on earnings is most likely. If the person is self employed, then an agreement may be negotiated for manual payments or a deduction notice placed on the person's bank account. The frequency of each type of action is reflected in the following figures which show that as at June 2005 there were:

- 123,096 paying parents with a child support debt
- 74,000 have some arrangements to make regular repayments
- 6,740 (5%) had entered into manual instalment arrangements to repay their debt
- 1,059 (1%) had forced deductions from their bank accounts
- 46,235 (38%) had no arrangement in place to repay their debt
- 11,315 (9%) had their debt suspended for reasons including that they were overseas in a non-reciprocal country, or were in prison or hospital

There would normally be consultation between IRCS and the paying parent with education and communication to encourage payment and come to an agreed arrangement.

4.3.3 When parents with care and their children do not receive the child maintenance due to

them as a result of non-compliance by non-resident parents, what steps could the parent with care take? Who would they complain to? What happens when a complaint is made? (Arrangements by which child maintenance due (or some part of it) is guaranteed by the state are covered in the next section, so do not need to be covered here.)

If IRCS is unsuccessful in obtaining payment through the options in 4.3.1, they make take legal action against the paying parent such as applying to the Family Court for an Examination, Distress Warrant, Charging Order, or an arrest warrant if the paying parent is about to leave the country with the intent of avoiding paying their child support.

IRCS may contact the custodian for further information about the paying parent as well as other third parties – for example, former employers, Ministry of Social Development, Internal Affairs.

A custodian is also entitled to take over collection of the debt owed to them and recover the amount through the District Court. If they take over the debt, the debt is no longer enforceable by IRCS. The custodian's decision cannot be revoked and the debt cannot be transferred back to IRCS at any time. (Note: although uplifts of debt are fairly common as a method of expunging the paying parent's debt, IRCS is not aware of any cases that are proceed to the District Court for recovery action).

4.4 GUARANTEED MAINTENANCE PROGRAMS

4.4.1 We are specially interested in schemes which forward maintenance due to the parent with care/child in advance of collection from the non-resident parent, thus guaranteeing that something is received. (We do not include here general social assistance programs available to all low-income parents.) Does your country have such a guaranteed maintenance program?

Yes (continue)

No (go to Part Five)

4.4.2 Please describe eligibility for the guaranteed maintenance program. For example, are all parents with care eligible, or only those in which non-payment has occurred? Is there an income test? Is this available only for those with certain court or agency agreements, or can those with voluntary agreements also participate?

4.4.3 Please describe the amount guaranteed. Is this a proportion of the amount owed or a flat amount? Is there a minimum or a maximum? Does the amount vary across parents? Is the amount ever adjusted (for inflation or for changes in individual situations)? Under what circumstances is it adjusted?

4.4.4 We are interested in the interaction between the guaranteed maintenance program and other parts of your social benefits system. Is the guaranteed maintenance program intended to be an alternative to other benefits or is it intended to supplement them?

4.4.5 Please describe the administration of the program. Who administers it? Who is responsible for recovery of the amounts forwarded?

4.4.6 What are the perceived advantage and disadvantages of the scheme?

PART FIVE: FINANCIAL INTERACTIONS

This part of the questionnaire is concerned with the interactions between child maintenance amounts and other policies in your country.

5.1 TREATMENT OF MAINTENANCE RECEIVED

5.1.1 Do child maintenance payments received by the parent with care/child count as taxable income, for purposes of both central and local taxation? How? If, in your child maintenance regime, child maintenance is in the child's name (rather than the name of the parent with care), please explain how this income is dealt with for tax purposes. Does it matter if child maintenance was agreed on a voluntary basis, or determined by the Courts or Agency? How? Please also explain any differences in tax treatments which depend on the current marital status of the parent with care (whether married to a new partner or not).

Child maintenance payments received do not count as taxable income for central government. Local government rates are based on property values. Child maintenance is always paid to the parent with care, not the child. The tax arrangements are the same for type of agreement and marital status.

5.1.2 Do child maintenance payments received affect any social benefits of the parent with care and/or child? How? If maintenance counts as assessable income for purposes of social assistance, please explain any disregards that operate. Also, if some portion of child maintenance is retained by the government and not sent to the parent with care, please explain this as well.

Child maintenance payments received do not affect the level of any social security benefits received. However, non-disclosure of paternity can result in a \$22 per week reduction in the level of income-tested benefits for the caring partner for each child in their care. If after a further 13 weeks of non-payment, the benefit will be reduced by a further \$6 a week in total.

If the parent with care is not receiving the sole parent benefit, then all of the money paid by the paying parent is transferred across. If the parent with care is receiving a sole parent benefit, then the all of the money received is retained by the government up to the level of the social security benefit payment. Any money above that level is transferred to the custodian.

5.1.3 Do child maintenance payments received affect any tax benefit for the parent with care and child? Do they affect any other formal financial liability or entitlement for the parent with care and child?

Child maintenance received is counted as income for Family Assistance. Child maintenance must be included in the principal caregiver's household income for determining the level of Family Assistance they are entitled to receive.

(Note: Family assistance is financial help that Inland Revenue pays to qualifying families with dependent children. A "family" means the person or people who have the main permanent responsibility for caring for a child. This usually means a parent or parents, but can also include other permanent guardians or caregivers. The family assistance itself is paid to the parent or caregiver who has main responsibility for caring for the children on a day-to-day basis. It is available to all low/middle income earners whether they are working or on a benefit)

5.2 TREATMENT OF MAINTENANCE PAID

5.2.1 How does child maintenance paid interact with the tax system, in both central and local tax regimes? Can the amount paid be deducted from income, thereby lowering tax liabilities? Does the amount paid affect any tax benefits for the non-resident parent? If there are different tax treatments according to whether the child maintenance is agreed on a voluntary basis, or determined by the Courts or Agency, please explain this. Explain any differences in tax treatments which depend on the non-resident parents' current marital status (whether married to a new partner or not).

Maintenance paid does not affect taxable income, and is not a basis for tax relief. The amount paid does not affect tax benefits of the non-resident partner. The tax arrangements are the same for type of agreement and marital status.

5.2.2 Does child maintenance paid (or not paid) affect any social benefits of the non-resident parent?

No

5.2.3 Does child maintenance paid (or not paid) affect any other formal financial liability or entitlement of the non-resident parent?

Child maintenance paid affects Family Assistance as it reduces the household income – (see 5.1.3). Family assistance for other children with the non-resident parent can increase.

PART SIX: COSTS AND QUANTITATIVE DATA ON OUTCOMES

The first section focuses on costs of the child maintenance regime, beginning with governmental costs of any targeted child maintenance agency (if any). We then also ask you to estimate, if possible, costs for court and agencies that may deal with assessment and enforcement. The final section asks for quantitative data on outcomes that are available in your country.

6.1 COSTS OF THE CHILD MAINTENANCE REGIME

6.1.1 If your country has an agency (or more than one agency) that is primarily responsible for assessing, collecting or enforcing child maintenance, what are its administrative costs? If possible, identify any categories of costs, either by function (costs of assessment versus enforcement) or for different types of cases. Please provide information about the types of costs included and not included (for example, whether these costs are net of any fees or any amounts retained by the government). Finally, if the amount of maintenance collected per unit of administrative cost is available in your country, please provide this information here.

For 2004-05, administration costs for the assessment and collection of child support were calculated at NZ\$59m, or 14% of administration costs of Inland Revenue Department. This expenditure was broken down by:
in NZ\$000

Customer information services - \$6,182

Registration and assessment - \$14,625

Collection of payments - \$10,445

Disbursement to custodians - \$1,995

Management of debt - \$23,914

Child support administrative reviews - \$2,147

IRCS collected \$317.654M during the 2005 year – this works out at a collection cost of 21.3 cents per dollar or alternatively IRCS collected \$4.69 for every \$1 spent.

6.1.2 If your country has any child maintenance functions within the courts, please provide, if possible, estimates of the administrative costs associated with assessing, collecting or enforcing child maintenance. Note that we are interested only in the portion of court costs directly related to the assessment, collection and enforcement of child maintenance, not to divorce or separation in general.

A small proportion of administrative reviews of child support are challenged, and then go to the Family Court. The Family Court does not seem to allocate its budget by work function, but the expenditure is probably fairly small.

In 2005, the Child Support Agency took 127 cases to the Family Court over non-payment of debt, resulting in \$2.6m being received – again the administration costs are unknown.

6.1.3 If your country has any child maintenance functions within an agency other than an agency primarily responsible for child maintenance, please provide, if possible, estimates of the administrative costs associated with these functions. Again, note that we are interested only in the portion of costs directly related to child maintenance, not to other benefits due to all children or even all low-income children.

There will be a small cost to Work and Income New Zealand for administering the penalty for non-reporting of paternity. More than 19,000 sole parents are currently subject to this penalty, or just under 20% of those receiving the sole parent benefit. The administrative cost of this has not been separately made.

6.1.4 If your country has an advanced or guaranteed maintenance programme, please provide any details of costs that are available. If possible, differentiate between administrative costs and monies paid to parents with care that are not reimbursed.

N/a.

6.1.5 Please list any financial costs to parents that are associated with assessing, collecting, or enforcing child maintenance (for both parents with care and non-resident parents). For example, there may be legal fees associated with enforcement, fees for a mediator who assists with voluntary arrangements, fees charged to non-resident parents for forwarding child maintenance to the parent with care, or interest charged to non-resident parents who are behind in their payments. (We do not intend for you to include financial debt that parents with care incur because of non-payment.)

There is no direct cost to either parent in regard to child support, with the services of officers of Inland Revenue Child Support provided free of charge. Most of the services of the Family Court are also free at point of usage, though there is a charge of \$175 for dissolution of marriage. However, there are indirect charges – proof of birth, which may require a birth certificate (cost \$26) or proof of (non-)paternity. Lawyers can be involved in the process, and their charge-out rate varies by lawyer and location. Legal Aid is not available for marriage dissolution, but legal aid can be available for other Family Court activities.

There are penalties for getting behind in payments. The penalty is \$5 or 10% of the outstanding amount, whichever is greater, and a further penalty of 2% of the total overdue amount, including penalties, will be added each month that the amount is overdue.

(Note: These penalties probably fall under the 'financial debt' criteria above, rather than interest, but the 2% penalty per month has the same characteristics as interest.)

6.1.6 Are there any programs that assist parents in meeting any of these costs? Please provide a short overview of these programs and any estimates of the costs of these programs.

As most of the programmes and services operate without direct user charge, there is no specific programme set up to assist parents in meeting costs. Legal Aid is available for legal fees for Court related events, and these are income-tested as well as being based on merit. Community Law Centres offer advice free, and some law firms provide a basic service cheaply for these items.

6.2 QUANTITATIVE DATA ON CHILD MAINTENANCE

In this section, please provide information on child maintenance outcomes. (Note that we will be conducting analyses of the Luxembourg Income Study, so you do not need to report these here.) We are interested in information collected by the government as part of the administrative records of courts or agencies, information that comes from household surveys that include questions on child maintenance, and information that comes from any other source. Please provide information from all sources that are available.

6.2.1 Please provide the percentage of parents with care who have child maintenance agreements. Of those that have agreements, what percentage of parents have voluntary agreements; what percentage have court agreements, and what percentage have agency agreements? If you can provide these answers separately for separated married parents, separated cohabitantes, and parents who have never lived together, please do so.

In 2005, there were 3200 registered voluntary agreements and 157,817 formula assessments. There is an unknown number of non-registered agreements (but estimated to be very few).

Note: not really answer to Q. In 2005, there were 175,000 paying parents and 185,000 custodians, compared to about 110,000 households declaring they are lone-parent households (2006 Census data still to be finalised). There is a high turnover in cases – 26,500 new cases came onto the register in 2005 and 25,500 went off.

61% of custodians with a current year entitlement receive a benefit – they must have a formula assessment with IRCS.

6.2.2 What is known about the main reasons a parent with care would not have an agreement?

There is no research on this topic. Several reasons could be hypothesised.

- 1) The parent with care is not on the lone parent benefit – the DPB. If working, they may not have gone through any of the formal process requiring either a voluntary or formula agreement.
- 2) Either naming the other parent or taking a formula agreement with them could lead to other problems. Cases of rape, incest, violent relationships are all recognised as reasons why the non-custodial parent is not named, and thus an agreement is not reached.
- 3) In the 2006 amendment to the Child Support Act, a new clause permitting a non-custodial parent who is under 16 to be exempt from making child support payments. This waiver only lasts while the person is under 16.
- 4) Those in prison or hospital still have an agreement, but payment is waived.

6.2.3 Please provide whatever information is available on amounts paid by non-resident parents, including the proportion paying anything, the proportion paying the full amount due, and the proportion paying part of the amount due.

In 2005, CSA collected \$309.1m net child support, 15% of which was for assessment arrears and penalties. Of the \$309m, CSA paid \$135.8m to custodians and \$173.3m to the Crown.

In 2005, assessment for current child support was \$364m, of which 72.4% (\$263.4m) was collected. Since the scheme began in 1992, CS has collected 86.3% of child assessed (compared to 40.7% for the Liable Parent Contribution Scheme). This compares favourably with other international jurisdictions.

61.2% of the amount collected was paid in full and on time.

About 70% of paying parents have a child support debt, indicating that at some stage they have not paid on time, or the full amount. Of those with a debt, 32% owe less than \$500, and 42% less than \$1000. Some 19% owe more than \$10,000. About 54% of debtors (74680 people) have an arrangement to repay debt, 13% improvement on the previous year.

Components of debt:

Uncollectable - \$332m – can't be located, in prison, hospital.

Under instalment arrangements - \$282m;

Not under arrangement - \$237m;

Reciprocal agreement (with Australia) - \$137m, 10,461 paying parents are in Australia, with total debt of \$231m.

6.2.4 What is known about the characteristics of the non-resident parents who are not making payments or who are paying only a portion of the amount due? What is known about reasons for non-payment?

Not available

6.2.5 Is there data available on the proportion of cases in which children spend roughly equal time with both parents? What is known about the types of cases that have this type of arrangement?

Not available

6.2.6 Consider parents with care who have an agreement in which child maintenance is to be paid. In what proportion are payments to be made directly (that is, directly from the non-resident parent to the parent with care, rather than through a collecting agency)?

All payments made under registered voluntary agreements and all formula assessments go through Inland Revenue Child Support.

There is no information on the number of cases where separated parents have made their own financial arrangements.

Source: Inland Revenue Department (2005) Annual Report.
Inland Revenue Child Support Agency.

Please provide references to any sources you consulted for this part of the questionnaire.

PART SEVEN: THE OVERALL CONTEXT

In this section we examine two topics: current topics of debate and research, and your own evaluation of how well the regime works along several dimensions.

7.1 TOPICS OF DEBATE AND RESEARCH

7.1.1 Consider the following potential topics of research:

- the impact of your child maintenance regime on relationships between the parents, and relationships of the parents with their children
- the impact of your child maintenance regime on 'new' relationships or marriages, or stepchildren
- the impact of child maintenance on the labour market behaviour of parents with care
- the impact of child maintenance on the labour market behaviour of non-resident parents
- (if there is a guaranteed maintenance program) the effect of guaranteed maintenance on non-resident parents payment of child maintenance
- (if some or all child maintenance is retained by the state for parents with care that receive means-tested benefits) the effect of this retention on non-resident parents payment of child maintenance?

On which of these topics has there been research? What are the main conclusions of this research? Are there any other main areas of research on child maintenance in your country? Please provide citations of what you view as the 2-5 most important pieces of published research.

There has been very little published research, or even recent administrative review, of child maintenance in New Zealand. There is quite a lot of advocacy, sometimes masquerading as research. There are several short pieces by lawyers looking at how the Family Court considers 'departures' from the formula, and indicate that there is a discrepancy between the operation of Court proceedings and the way IRD carries out its reviews.

One vocal critic of both the Act and the way the Agency interprets the Act has been Stuart Birks, Centre or Public Policy Evaluation at Massey University. He has done little research though there is some analysis of the discrepancy between the overall objective of the Act and the individual objectives set out in the Act. He makes claims on the first 4 points above, but they are just assertions and have no supporting evidence.

Chapple and Cronin have just completed (last few days) an exploratory piece on the impact of child support on labour supply and poverty. Much of the paper looks at data limitations, and how existing income and expenditure surveys do not accurately capture child maintenance payments or receipts. Neither do tax models. As about 12% of the New Zealand population is involved in the child maintenance system, either as children, custodial parent or non-custodial parent, the potential impact is large. Existing poverty and income distributional studies do not consider child maintenance, and thus may have biased estimates.

They argue that the amount transferred to custodial parents is comparatively small and makes little impact on poverty alleviation. Marginal incentives to work are changed. Custodial parent labour supply is probably increased, especially for existing beneficiaries (minimal income effect, positive substitution effect), while non-beneficiaries have ambiguous effects (positive income effect, negative substitution effect). The impact on non-custodial parents is ambiguous (positive income effect, negative substitution effect).

Uttley, S. (1999) 'Child Support: The Limits of Social Policy Based on Assumptions of Knavery' *Social Policy and Administration*, 33(5), December, 552-566.

- Atkin, B. (1992) 'Financial support: the bureaucratization of personal responsibility'. In Heneghan, M. and Atkin, B. (eds.) *Family Law Policy in New Zealand*, Auckland, Oxford University Press.
- Caldwell, J. (2005) 'Shaky Support' *New Zealand Family Law Journal*, 2005(3).
- Birks, S. (2000) 'Objectives and Fairness in Family Law' *New Zealand Law Journal*, August.
- Chapple, S. and Cronin, J. (2006) 'A preliminary economic analysis of the impact of the Child Support scheme on labour supply and poverty in New Zealand', Ministry of Social Development, July 26.

7.1.2 What are the current main topics of interest and debate about your child maintenance regime?

This is a surmise, based on discussions, policy developments, internet searches, rather than a systematic review.

- a) From the perspective of the Child Support Agency, and probably reflecting government priorities, issues surrounding the level of child support debt. Whilst the CSA has reduced the growth rate of debt from about 30% pa to under 20% pa, there is considerable policy work being done to reduce the debt incurred each year.
- b) From the perspective of non-resident parents, especially as expressed through Men's Groups, a major issue is that child support payments often contribute to reducing state expenditure rather than assisting the child. This then leads those groups to argue (with no real empirical support) that fathers have no incentive to contribute, leading to non-payment and underpayment.
- c) Several lawyers are debating the role of departure orders as issued through the Family Courts, looking at individual case law, but coming to no overall evaluation based on the total number of departure orders. From my perspective, the fact that they consider relatively few of the departure orders indicates that in general the court must interpret the 'special circumstances' ground adequately, but there are instances where judges have stated 'very hard to apply the special circumstances clause'.
- d) The major potential issue for debate, given a recent Australian review of its regime, is the working of the formula for assessing child support payment from the non-custodial parent. There are two issues: one is the extent to which the custodial parent's income should be considered in the calculation, rather than just the non-resident parent, with the costs of child upkeep then being shared between the parents in accordance with their income levels. The other issue is the parent's level of contact – at present there is no allowance up to the 40% threshold, then joint custody takes over. The argument is that the level of contact should be a continuum, and this acknowledged in the formula. The result would be a far more complex calculation, with less certainty of the result, greater administration costs and far greater number of reviews, partly because circumstances will change, and partly because there is far more room for dispute over custody and income levels. From the perspective of non-custodial parents, especially fathers, the result would be seen as more equitable, taking greater account of individual circumstances, but greater variations in the amount paid between cases.

7.1.3 Please describe any impending changes in legislation, or policy developments that are likely to affect your child maintenance regime in the coming five years.

A bill is currently before Parliament which amongst other things:

- provides relief from penalties previously incurred when the paying parent makes and complies with a payment arrangement
- extension of the administrative review provisions to allow the Commissioner of Inland Revenue to initiate a review in limited circumstances (presently only a custodian or paying parent may initiate a review).

The UK Henshaw Report and the outcome of this review may initiate further discussion and debate. The 2005 Australian review has led to some non-government discussion as to whether the formula should be altered to take account of both partner's income and degree of custody.

7.1.4 What are the public's attitudes towards your child maintenance regime? Please refer to any evidence for your replies.

For the majority of the public, there is no attitude, as child support is not an issue for the media at present. There seems to be general acceptance of the need for non-resident parents to contribute to the cost of their children, and for the issue of the level of maintenance to be removed from individual negotiations and court determination. There is probably acceptance of a rule based system, but there are debates from those affected as to whether the rules are fair.

There is only circumstantial evidence for these comments.

7.1.5 Please describe any organised opposition in your country to the determination and enforcement of child maintenance, and the issues of contention.

The main organised opposition is MENZ, a grouping of people advocating for greater rights for men, especially over child custody issues, and thus debates over the operation of the Family Court. This debate then spreads over to Child Support as they argue that the option of shared custody is then removed. They also contend that there would be greater willingness to pay child support if the money went to the Court rather than to the state to offset the cost of the DPB. The DPB is seen as an outcome of the feminist movement, encouraging women to leave relationships and take custody of the children.

This view is being put forward at the same time that New Zealand has a high and increasing level of reported domestic violence and child abuse, with significant policy development to offset this reported level

7.2 YOUR EVALUATION OF THE CHILD MAINTENANCE REGIME

This section provides several criteria that one might use to evaluate the child maintenance regime as a whole. We ask for your expert assessment of areas that your regime is working well and not working well.

7.2.1 Please consider the following criteria that could be used to evaluate a child maintenance regime.

- a. Maintenance is regularly provided to children and/or parents with care
- b. Children who need (or desire) maintenance have a formal entitlement
- c. Maintenance policies do not negatively influence relationships between children and their non-resident parents
- d. Those in similar circumstances are treated similarly
- e. Those who need more child maintenance, receive more
- f. Parents easily understand how amounts of maintenance are calculated
- g. Child maintenance obligations are determined promptly
- h. Parents with care feel the amount of maintenance is adequate
- i. Nonresident parents feel the amount of obligation is affordable given their costs of living
- j. The child maintenance regime is administered efficiently and effectively
- k. Non-compliance with maintenance obligations does not add a substantial amount to governmental costs

Select one or two of these in which your assessment is that your regime is performing well. (If your assessment is that your regime works well on multiple criteria, please select the most

important one or two.) In one paragraph, explain.

j) Whilst administrative costs are high as a percentage of revenue collected, especially when compared with other activities of Inland Revenue, the system itself is very streamlined, as many decisions are taken automatically rather than requiring individual discretion. Quite a high proportion of payments are received automatically, and on-line payments and texting are using modern communication methods to ensure payment. Many reviews of the level of assessment can be done quickly if circumstances alter, on provision of the relevant information to IRCS. The proportion of assessments collected is high by international standards, again indicating efficiency in operation.

g) There is usually a fairly quick determination of obligations, once the assessment procedure has started. Most cases are resolved quickly – 75% of assessments are made within two weeks and 95% within 6 weeks from application. Almost all (97%) assessments are correct when made based on information received.

7.2.2 Select one or two of the above criteria in which your assessment is that your regime is not performing well. (If your assessment is that your regime does not work well on multiple criteria, please select the most important one or two.) In one paragraph, explain.

e). In New Zealand there is no relationship between need for child maintenance and the amount received. For a start, if the custodial parent is receiving an income-tested benefit, then generally all of the money will go to the state, and none to offset the cost of the child. In general, women on the DPB with dependent children have the highest poverty rates in the country, and thus perceived to have the highest level of need. Custodial parents who are in the workforce generally have lower poverty rates (Whiteford and Adema 2006, Stephens 2005). Even there the amount of child support received depends upon the level of the non-resident parent's income and living arrangements, rather than the needs of the child and custodial parent. It is likely that the amount that is paid to custodians will be going to those in work, and especially to those on higher income, given a degree of assortative mating where custodial and non-custodial parents have similar education levels and wage rates.

b) Children do not have a formal entitlement to child maintenance in New Zealand. Any child maintenance goes to the custodial parent, not the child. More importantly, there is no relationship between payment and receipt (see e) above), and even whether the family will actually receive any support. Just under 56% of child support goes to the Crown, and only 44% to custodians. Chapple and Cronin (2006) indicate that there is little income redistribution through the scheme and the impact on poverty among custodial parents is likely to be very small.

7.2.3 Is there another criteria (not listed) on which you think your regime does particularly well or is a particular problem? What? In one paragraph, explain.

The growing level of debt is probably the big issue here, with pluses and minuses. Although the system has been relatively effective at containing the rate of growth of child support debt, its continued growth puts a lot of administrative burden on IRCS, as well as being a political issue. Repayment of debt is seen as a significant problem by many who pay child support, both in terms of the impact on their current living standards as well as the seeming bureaucratic procedures of enforcing the debt repayments. The problem of debt has been acknowledged in the latest amendments to the CSA, with provisions for the waiver of debt being introduced.

This concludes Parts 1-7 of the questionnaire. If you have additional comments, please write them here:

PART EIGHT: VIGNETTES

In these vignettes, we provide a basic situation and ask the likely outcome given the child maintenance policies in your country. We then vary a selected characteristic and ask whether the outcome would differ. We then ask you to report on what would happen if various circumstances changed over time.

8.1 BASE CASE 'A': MISS FIELD AND MR HILL

Miss Field is 25 years old and has never been married. She has a daughter, Susan, who is three months old. Miss Field lives with Susan in a small rented flat in the town centre. Miss Field has not had paid work since Susan's birth, and is claiming the social benefits available to a person in her position.

Susan's father, Mr Hill, is 27 years old. He has never lived with Miss Field. He lives locally and sees Miss Field and Susan quite often. He is fond of his daughter, and remains a friend of Miss Field's, although they do not want to set up a home together. He bought baby clothes and equipment when Susan was born but he makes no regular financial contribution.

He is unemployed but sometimes takes temporary, low-paid work. He currently depends on the out-of-work social benefits available to a person in his position. He rents a small flat. He has no other children, or major financial responsibilities. He has begun to talk recently about a serious effort to re-train, possibly in engineering.

Miss Field knows he has very little money. However, she feels that, in view of Mr Hill's interest in re-training, and the possibility that he will be able to earn more in the future, she thinks it might be sensible to make a formal arrangement regarding child maintenance.

8.1.1 Please discuss the process by which decisions about child maintenance would be made in this type of case. First, explain whether Miss Field has a free choice in deciding to seek a formal arrangement.

- A. If she has free choice, please describe the options available to her in establishing a formal child maintenance arrangement. Which of these options would be most likely? What is the likely time-scale for a decision being reached if she decides to go forward?**

As Miss Field is claiming the social benefit (the Domestic Purposes Benefit available to sole parents), she does not really have a free choice in this situation. She could refuse to name Mr Hill, and suffer a \$22 per week financial penalty – which would be increased to \$28 after 13 weeks. Even though the scenario enacted here would indicate Mr. Hill would have acknowledged paternity on the birth certificate, Miss Field still has to actually make the child support application and name the father.

- B. If she does not have free choice, please describe what happens, explaining the likely procedures and time-scale for a decision on child maintenance being reached.**

In NZ, Miss Field would be claiming the Domestic Purposes Benefit, an income-tested benefit for sole parents. In making that claim she would be asked to apply for Child Support from the other parent, Mr Hill. If she refuses to apply for child support, or provide details, then she would have a penalty of \$22 per week, with a further penalty of \$6 per week if she refuses to establish paternity or apply for child support after being given information and taken through an Early Intervention Programme. If there are 'compelling circumstances' – e.g. risk of violence – then the Ministry of Social Development can waive the paternity requirement. As there is evidence of a good relationship, the compelling circumstances

clause could not be invoked.

When Miss Field makes her application, IRCS decides whether to accept it. If it is accepted then Mr Hill would be notified in writing that IRCS has accepted an application from Miss Field and provided with his rights to object to that decision. He would be asked about his living circumstances (i.e., if he has a partner or children living with him). An assessment would then be automatically issued (this is the case even if Mr Hill could not be contacted) based on the previous year's income if his income from that year was solely from NZ sourced wages, salary, benefit, interest or dividends. The assessment notice includes objection rights and information about applying for an administrative review.

IRCS would set up automatic deductions from Mr Hill's unemployment benefit after confirming details with MSD. Mr Hill does have 30 days from the date of the assessment to the date of the first child support payment but in practice it is likely to be the next Unemployment Benefit payment date.

Mr Hill does not automatically pay the minimum amount of child support because he is on a benefit; if his current income is at least 15% less than the income used in his assessment, he is entitled to make an estimation of his current income which will then be used in the assessment. If he does this then the amount paid will be the minimum amount for a formula assessment of \$730 per year or \$60.85 per month.

Discuss the criteria considered in reaching decisions, referring to the information you have already provided in the questionnaire about guidelines or discretion.

In this case there would be limited discretion as both parents are receiving income-tested benefits. The formula assessment method would apply. Miss Field does have some discretion, with financial penalty, in naming Mr. Hill as the father, but if Mr. Hill is listed on the birth certificate, this discretion has disappeared. The discretion relating to 'compelling circumstances' would be very unlikely to apply in this case.

In your account please explain what further information might be needed to determine the obligation level, and how this would be collected.

Income information is automatically available in IRCS computer system. These details are used automatically when the assessment is processed. The only information required is whether Mr Hill is living with a partner or children. If this information is not provided, Mr Hill would be assessed as a single person.

As Mr. Hill is on the Unemployment Benefit for a single person, his child support would be deducted directly from his benefit. Because his living allowance exceeds his income, he would have to pay the minimum obligation of \$730 per year.

Please indicate what kind of problems might arise in setting an obligation, and how these might be tackled.

It is unlikely that any problems would arise in this case as set out.

8.1.2 Please discuss the outcome in terms of whether there would be a formal child maintenance obligation, and if so, the amount that would be awarded. (Please provide the amount in your own currency.) It may be necessary to introduce quantitative information or new facts into your account. For example, you may need to introduce amounts of money, for rent or living expenses, in order to demonstrate the use of standard guidelines. Please use those amounts that would be typical in your country, and explain the basis for these decisions.

The formal child maintenance obligation would be determined by IRCS. The flat rate payment would be \$730 per year, deducted from the Unemployment Benefit, provided MR Hill's income has not changed from the amount used in the assessment. Otherwise he will need to make an estimation of income.

8.1.3 If an obligation for child maintenance is set, please describe how monies be collected from Mr Hill? How would the money be transferred to Miss Field or Susan (if at all)?

The obligation would be deducted from Mr. Hill's Unemployment Benefit at source. Miss Field would not receive any of the money herself, neither would Susan. The money would be transferred to the state.

8.1.4 If Mr Hill does not pay, what would happen?

This is very unlikely as the obligation would be deducted at source. If there are arrears, these could be deducted at source as well.

8.2 BASE CASE 'A', VARIANT 1: MR HILL HAS REGULAR EMPLOYMENT

We would like to understand how the outcomes would change if one of the circumstances in this case were slightly different (Variant 1).

The situation is exactly the same as Base Case A except that at the time Miss Field pursues maintenance, Mr Hill has just completed his training course, and just gotten a job at which he earns 75% of median full-time male earnings.

8.2.1 Would the maintenance obligation differ from what you reported in 8.1.2? Please explain.

Probably. Miss Field would still have to apply for child support. Mr Hill would be assessed on his income from the previous year or two years previous, not his current income. If he had estimated his income on the basis of being on unemployment benefit, then his subsequent increase in earnings would mean that he would need to cancel his estimate. If he does not then he will be penalised at the end of the year.

Because the income use is lagged income, the fact that Mr Hill is now earning does not affect the current assessment. It would be picked up in the following year's assessment.

In the following year, given the same information, Mr. Hill would be earning 75% of median adult male earnings (estimated to be \$27,000 in 2005). His single person living allowance of \$13149 would be deducted, giving \$13851, and the one child percentage share of child support rate is 18%. The annual amount of child support is then \$13851 multiplied by 0.18, giving \$2493, or \$207.75 per week.

8.2.2 Would any other outcomes likely differ? Please explain.

No. As Miss Field's weekly sole parent benefit is \$249.10, which is greater than the amount of child support paid by Mr. Hill, the government will take all of the contribution from Mr. Hill, and Miss Field will still just get the Domestic Purposes Benefit.

8.3 BASE CASE 'A', CHANGE IN CIRCUMSTANCES 1: MR HILL FINDS EMPLOYMENT THREE YEARS LATER

We now explore how your system would deal with a change in Mr Hill's circumstances. Return to the base case (Mr Hill is currently unemployed but is considering training), and assume the maintenance obligation has been set as you have described in 8.1.2.

Three years later, Mr Hill completes the training course, and accepts a job at which he earns 75% of median full-time male earnings. Miss Field feels the maintenance amount should be increased.

8.3.1 Please explain the options and procedures for adjustment to the previous child maintenance arrangement. Is it likely the maintenance obligation would change? To what? Please explain.

As stated above, Mr Hill's current earnings have no impact on the formula assessment. They **will** affect his assessment for the following year. Miss Field may feel that Mr. Hill's circumstances have sufficiently improved for him to pay more child support and she may wish to apply for an administrative review under ground 8. However, unless there was something special about the circumstances (eg Mr Hill gave up a very high paying job to undertake retraining) it is unlikely to succeed. In the subsequent year, the results would be the same as in the latter part of 8.2.1.

8.3.2 Would any other outcomes likely differ? Please explain.

No. The results would be the same as in 8.2.2, with Miss Field getting no child support from Mr. Hill as the government would take the full contribution from Mr. Hill. As she is still on the DPB, she and Mr. Hill would not be allowed to make a voluntary agreement.

8.4 BASE CASE 'A', CHANGE IN CIRCUMSTANCES 2: MISS FIELD FINDS EMPLOYMENT THREE YEARS LATER

We now explore how your system would deal with a change in Miss Field's circumstances. Return to the base case (Mr Hill is currently unemployed but is considering training), and assume the maintenance obligation has been set as you have described in 8.1.2.

Three years later, Miss Field finds employment. She begins to work part-time and earns median female wages for part-time work. Mr. Hill feels his obligation should be reduced if not eliminated, now that she is working.

8.4.1 Please explain the options and procedures for adjustment to the previous child maintenance arrangement. Is it likely the maintenance obligation change? To what? Please explain.

There is no change to Mr. Hill's obligation. As Mr. Hill is still on the Unemployment Benefit, there would be an automatic deduction from his Unemployment Benefit. The amount paid will still be the minimum amount for a formula assessment of \$730 per year or \$60.85 per month.

If Miss Field is no longer receiving a sole parent benefit then she would receive the child support directly. If she was receiving an income-abated sole parent benefit (she would still have a small, residual eligibility) then the money would initially go to the government to offset the DPB. She would

receive any additional amount.

If she was working for than 20 hours per week, the value of the new In-work benefit would exceed her abated DPB, so she would be better off receiving the In-work benefit. The In-work benefit of \$60 per week would not affect her receipt of Mr. Hill's obligation.

NOTE: NZ does not actually provide data on median part-time earnings, though median hourly earnings for part-time workers are published – the number of hours will determine eligibility for both the In-work benefit (20 hours a week) and for income-abated DPB.

8.4.2 Would any other circumstances likely differ? Please explain

Miss Field can choose to withdraw from the child support formula assessment.

8.5 BASE CASE 'B': MR AND MRS COAST

Mrs Coast is about to start divorce proceedings after having been married for ten years. The couple are in their early 40s, and have two children, Anne aged six years and John, aged nine years. Both children attend school.

Mrs Coast and the children have remained in the rented accommodation they shared when they were together, while Mr Coast has moved away to another town 100 km away where he rents a small flat.

Mr Coast has a secure job, and earns one-and-a-half median male full-time earnings. Mrs Coast has a part-time job, earning median female part-time earnings. There are no child care expenses.

Mr Coast collects both children every other weekend, and cares for them in his new home from Friday evening to Sunday evening. This involves a long journey by car (100km each way). While the children are in his home he has full financial responsibility, and has bought stocks of clothes, bedding, equipment and toys, which he keeps at his home.

Mrs Coast believes her husband should make significant child maintenance payments. She feels that most of the additional expenditure made by Mr Coast for the children (on clothes and toys) only benefits them when they are at his home. She finds she cannot meet her fuel and telephone bills. She welcomes the chance to formalise their financial situation, and believes it will be in her favour.

Mr Coast points to his additional housing expenses, his need to run a car in order to share the care of his children, and the money he already spends on their weekend stays. He does not want to be divorced, anyway, and he is bitter about what has happened. He very much wants to maintain relationships with his children, and is worried that a formal financial arrangement will be made that will leave him in financial difficulties.

8.5.1 Please discuss the process by which decisions about child maintenance would be made in this type of case. First, what are the options for formalising arrangements about child maintenance, under the circumstances described above. Explain the likely procedures and timescale for reaching a decision.

Couples separating are likely to have a separation agreement or a Family Court Separation Order. In both cases, the Family Court will provide counselling services, which require that satisfactory arrangements have been made for the care of children, including day-to-day care, child maintenance and other aspects of the welfare of the child.

Mr and Mrs Coast can make a voluntary agreement which they can register with IRCS. However, IRCS can only enforce the maintenance aspect of the agreement.

Either party could apply for a formula assessment. Mr Coast does not meet the 40% of nights criteria to qualify for shared care. He will have to prove that he meets the shared criteria in relation to the factors described in 3.5.8 B if he wants to reduce his financial commitment.

The permutations as to eligibility for the DPB or the In-Work benefit, as set out in 8.4.1, determine Mrs. Coast's likely receipt of the obligation.

Discuss the criteria considered in reaching decisions, referring to the information you have already provided in the questionnaire about guidelines or discretion.

The first criteria would be if Mrs. Coast applied for the DPB. If she did, then the formulaic assessment would commence.

If she did not apply for the DPB, then they could reach a voluntary agreement. IRCS is not involved in determining the level of payment under a voluntary agreement. Mr. Coast's willingness to take the

children each weekend may affect the voluntary agreement option, and the agreed payment. The agreement can be registered with the Child Support Agency.

They could proceed with the formula assessment, which would certainly apply if the couple could not agree on a voluntary agreement. If either part applies for a formula assessment then the legislatively set formula will apply.

The formula provides no discretion, either to the amount paid or to the route by which funds are transferred from Mr. to Mrs. Coast – both payments to CSA and from CSA go through the agency. A check would also be made to see if there was 'shared care'. In this case they would not satisfy the minimum 40% rule, so shared care would probably not be an option (see above).

In your account please explain what further information might be needed to determine the obligation level, and how this would be collected.

IRCS is not involved in determining the level of payment under a voluntary agreement. If the agreement is registered with IRCS then payments go through that agency. The actual method of payment would vary, but with a preference for an automatic system, such as employer deduction from wages, or automatic payment.

If either party applies for a formula assessment, this will automatically use the income details which will have been previously provided by his employer. Mr Coast would need to advise whether he has a partner or child in his care to determine the living allowance. If this information is not given, he will be entitled to the living allowance for a single person. Again, the actual method of payment would vary, but with a preference for an automatic system, such as employer deduction from wages, or automatic payment.

Please indicate what kind of problems might arise in setting an obligation, and how these might be tackled.

Problems in setting the level of obligation would probably mean that a voluntary agreement would not be reached, and the formula would then apply, irrespective of Mrs. Coast beneficiary status.

8.5.2 Please discuss the outcome in terms of whether there would be a formal child maintenance obligation, and if so, the amount that would be awarded. As before, it may be necessary to introduce quantitative information or invent new facts or life circumstances for the couple. You may need to decide how much Mr Coast now pays to rent his new flat. Please use those situations and amounts which would be typical in your country.

There will only be a formal maintenance obligation if both Mr and Mrs Coast register a voluntary agreement or one party applies for a formula assessment.

Mrs. Coast's part-time earnings would not be relevant for the decision on the level of child maintenance if they were deciding on a formula assessment.

At 1.5 times median earnings, Mr. Coast would be receiving roughly \$54,000pa. From this would be subtracted his single living allowance of \$13,149 giving \$40,851, and this would be multiplied by the two children percentage (no sharing) of 24%, giving \$9804 child support to be paid annually, or \$817 per month.

Mr. Coast's weekly travel costs to collect and return the children would be very close to allowing him to invoke one ground five (5% of child support payment) for an administrative review of the child support. The application would only succeed if it was just and equitable for the custodian, the child and paying parent.

8.5.3 If an obligation for child maintenance is set, how would monies be collected from Mr

Coast? How would the money be transferred to Mrs Coast or the children?

Mr Coast can choose how to make payments. This payment could take the form of a standing order, deduction from wages by the employer, payment by money order or through postage of a cheque. They would be paid to IRCS.

If Mrs. Coast is receiving a social security benefit, there would be a deduction to offset the cost of the DPB, and she would receive any money left over.

If Mrs. Coast is not receiving a social security benefit, the money would held in trust until paid out to Mrs Coast. She would nominate a bank account for the payments– this can be in any person's name. Mr Coast would need to make his payment by the 20th of the month and these would be made into Mrs Coast's bank account on the 7th of the following month.

8.5.4 If Mr Coast does not pay, what would happen?

If Mr. Coast does not pay either a formula assessment or a registered voluntary agreement, then IRCS has a range of legal actions that it can take. As a new customer, Mr Coast would have a case manager who would contact him to follow up the missed payment. Mr Coast loses the right to choose his method of payment once in default so the most likely outcome is that a deduction notice for the arrears and future child support payments would be placed on Mr Coast's wages.

IRCS could alternatively arrange for deduction of child support (including penalties and debt) from tax refunds, bank accounts, Accident Compensation Commission payments (outside of normal benefit system) or trust funds as well as wages.

When child support is not paid on time, there is a penalty of either \$5 or 10% of the unpaid amount, whichever is the greater. There is a further penalty of 2% added for each month the amount remains unpaid. IRCS may be able to waive some of the penalties incurred. For the waiver of the penalty, some explanation would be required as to why Mr. Coast was not able to make payments (this would seem unlikely in the scenario to date).

Following this, there are several legal options: 1) examinations, where a court determines the parent's ability to pay the debt or find a new way to pay. 2) court order, allowing the court to seize and sell Mr. Coast's goods such as a car and other property. 3) arrest warrants can be issued to prevent Mr. Coast from leaving NZ if the intention is to avoid paying child support. 4) bankruptcy, with sale of assets to help clear the debt.

8.6 BASE CASE 'B', VARIANT 1: CHILDREN LIVE WITH BOTH PARENTS EQUALLY

We would like to understand how the outcomes would change if one of the circumstances in this case were different (Variant 1).

The situation is exactly the same as Base Case B except Mr Coast lives in the same town as Mrs Coast and the children. The Coasts decide that the children will spend an equal amount of time living with each parent, alternating one week with Mrs Coast and one week with Mr Coast.

8.6.1 Would the maintenance obligation differ from what you reported in 8.5.2? Please explain.

If a formula assessment is in place, then Mr Coast's liability would differ because the shared care provision is operative. This shared care provision means that:

- he would be entitled to the full living allowance for 2 dependent children rather than a single living

allowance

- the child support percentage would change from 24% to 18%
- Mr Coast is entitled to apply for child support from Mrs Coast.

Example:

Under the first scenario, assume Mr Coast's earnings were \$54,000 in the previous year and Mrs Coasts were \$27,000 in the previous year.

Mr Coast would need to pay:

$$\$54,000 - \$13,149 \times 24\% = \$9804 \text{ per annum}$$

Under the second scenario, he would pay:

$$\$54,000 - \$27,441 \times 18\% = \$4780 \text{ per annum}$$

If he applied for child support from Mrs Coast, she would be required to pay:

$$\$27,000 - \$27,441 \times 18\% = \$730 \text{ (minimum).}$$

The liabilities would be offset against each other so that Mrs Coast physically pays nothing and Mr Coast would pay \$4050 per annum.

8.6.2 Would any other outcomes likely differ? Please explain.

No differences.

8.7 BASE CASE 'B', CHANGE IN CIRCUMSTANCES 1: MRS COAST HAS A NEW PARTNER THREE YEARS LATER

We now explore how your system would deal with a change in Mrs Coast's family circumstances. Return to the base case (Mr Coast lives in another town and has the children with him every other weekend). Assume the divorce is final and that the maintenance obligation has been set at the amount you have described in 8.5.2.

Three years later, Mrs Coast tells her husband that she has a new partner who has moved into the house. Mr Coast knows the man personally, and knows he has earnings comparable to his own. He feels that the arrival of this new partner for Mrs Coast should count in the financial decisions that have to be made during the divorce.

8.7.1 How would Mr Coast go about trying to change the obligation?

If there is a voluntary agreement, Mr. Coast could approach Mrs. Coast to change the nature of the voluntary agreement. If she agrees, then the new agreement can be registered with the IRCS, and payments would be changed.

With the formula assessment, Mr Coast could possibly apply for an administrative review – ground 8. Otherwise there is no change to the liability for Mr. Coast.

8.7.2 What would result -- is it likely the obligation would change? To what? Please explain.

The whole circumstances of the case would need to be considered. The new partner is not included in the living allowance and the children in the living allowance are Mrs Coast's so cannot be excluded

from the living allowance. Mr Coast would need to show that the partner's financial resources are available to Mrs Coast and that in the special circumstances of the case that the formula would therefore be unfair. However, given that the Review Officer is bound to disregard the income of a person who is not a party or who does not have an obligation to support the child unless there are special circumstances, it is unlikely Mr Coast's application for review could succeed.

8.7.3 Would any other outcomes likely differ? Please explain.

If Mrs. Coast had been on the Domestic Purposes Benefit for sole parents, she would no longer be eligible for that benefit. There would no longer be any payment to the state, and all of the child support would be paid to Mrs. Coast.

If she had not been on the DPB, then there would be no change.

8.8 BASE CASE 'C', CHANGE IN CIRCUMSTANCES 2: MR COAST HAS A NEW PARTNER AND NEW CHILD THREE YEARS LATER

We now explore how your system would deal with a change in Mr Coast's family circumstances. Return to the base case (Mr Coast lives in another town and has the children with him every other weekend; Mrs Coast does not have a partner). Assume the divorce is final and that the maintenance obligation has been set at the amount you have described in 8.5.2.

Three years time later, Mr Coast has formed a new relationship with a woman and they have a ten month old child. He wants to maintain contact with his own children, whom he loves dearly, but his own household expenses have now gone up considerably. His new partner does not have paid work herself.

8.8.1 How would Mr Coast go about trying to change the obligation?

The approach depends on whether it is a voluntary agreement or formula assessment. If the former, then the parents could come to new agreement and that could then be registered with IRCS etc. If Mrs. Coast disagreed, they would revert to a formula assessment.

If it is a formula assessment, Mr. Coast would inform IRCS of his changed circumstances, and this would alter the level of his living expenses and thus obligation. Mrs. Coast would be informed of the change in contribution (but not the reason).

Mr Coast could possible apply for an administrative review on ground 1, 3 and/or 4.

8.8.2 What would result -- is it likely the obligation would change? To what? Please explain.

On verification of the change in circumstances, which have to be provided in writing, a new formula assessment would be undertaken. Mr Coast would receive an automatic reduction in his obligation by way of the living allowance (reducing his liability under scenario 2 with the figures previously provided from \$9804 per annum to \$6980).

It is therefore unlikely that his application for an administrative review could succeed as there would be nothing special about his circumstances.

8.8.3 Would any other outcomes likely differ? Please explain.

As noted, Mr Coast's obligation under the formula would be automatically adjusted and reduced when written notification of his change in circumstances is received.

This concludes the vignettes (Part Eight). If you have additional comments on either of these vignettes, please write them here: