



Inland Revenue
Te Tari Taake

IR174
August 2018

Helping you to understand child support and the Family Court



Introduction

A child support assessment is usually based on a formula which works out how much child support should be paid and who receives it.

In certain circumstances, if you thought the child support assessment or decision was unfair, you may have objected to it or asked for a review. Or you may have been the other party to a review.

This guide explains what to do if you disagree with a decision Inland Revenue has made about an objection or a review and you want to take the matter to the Family Court. It also covers what to do if you've received a notice naming you as the other party in court proceedings about child support.

This guide tells you:

- where to get help and advice
- when you can apply to the Family Court
- how and where to apply
- which forms to use and how to get them
- what will happen throughout the process.

We recommend you seek legal advice if you're considering applying or appealing to the Family Court or the High Court.

Help and advice

Inland Revenue can't give you legal advice, but we can talk to you about the Family Court process.

If you're applying to the Family Court and you need help or advice, you can:

- talk to a lawyer
- see your nearest Community Law Centre
- see your nearest Citizens Advice Bureau (CAB)
- phone your local Family Court (look for the number online or in the blue Government pages at the front of the phonebook)
- go to the Ministry of Justice website
www.justice.govt.nz/services/legal-help

Terms we use

The Commissioner: The Commissioner of Inland Revenue (CIR) is the Chief Executive of Inland Revenue and delegates powers and responsibilities to other Inland Revenue employees.

Applicant: The person who applies for a review or departure order, or appeals to the Family Court.

Court proceedings: what happens during the time someone applies to the Family Court or becomes a party to someone's application to the Family Court.

Decision, determination: The outcome of a review in the Family Court.

Respondent: The person an application is made against, and any other party who takes part in the review or court hearing who isn't the applicant.

Subject parent: A parent who is the subject of a Commissioner-initiated review.

Administrative review: A determination can be made to depart from some or all of the provisions relating to a formula assessment if certain grounds for departure are satisfied.

Commissioner-initiated review: A process to determine whether a parent's formula-assessed amount accurately reflects their ability to provide financial support for their children. The first step of this process is an investigation by us into the parent's income, earning capacity, property and financial resources.

Exemption review: A receiving carer can ask for a liable parent's exemption to be looked at and possibly overturned.

Liable parent: A qualifying child's parent, who is normally required to pay child support.

Receiving carer: A qualifying child's parent or non-parent carer, who is normally entitled to receive child support from a liable parent. They must have at least 35% care to receive child support.

www.ird.govt.nz/childsupport

If you'd like more information about child support, go to our website **www.ird.govt.nz/childsupport** This site offers general child support information and access to our forms and publications.

www.justice.govt.nz/family-justice

You can find all the forms mentioned in this guide at the Ministry of Justice website **www.justice.govt.nz/family-justice** or at your local Family Court.

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When you can apply to the Family Court

If you disagree with the Commissioner's decision about an objection, you may be able to appeal it.

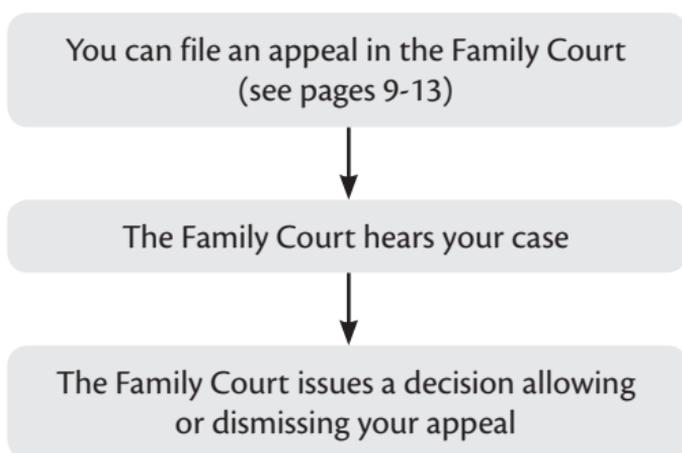
You can apply to the Family Court for an appeal:

- if you were the respondent (or other party) and you disagree with some decisions made by the Commissioner as the result of an objection, or with a decision made by Inland Revenue as the result of an administrative review, exemption review or Commissioner review
- for a departure order if you were the applicant and you disagree with some decisions made by the Commissioner as a result of an administrative review.

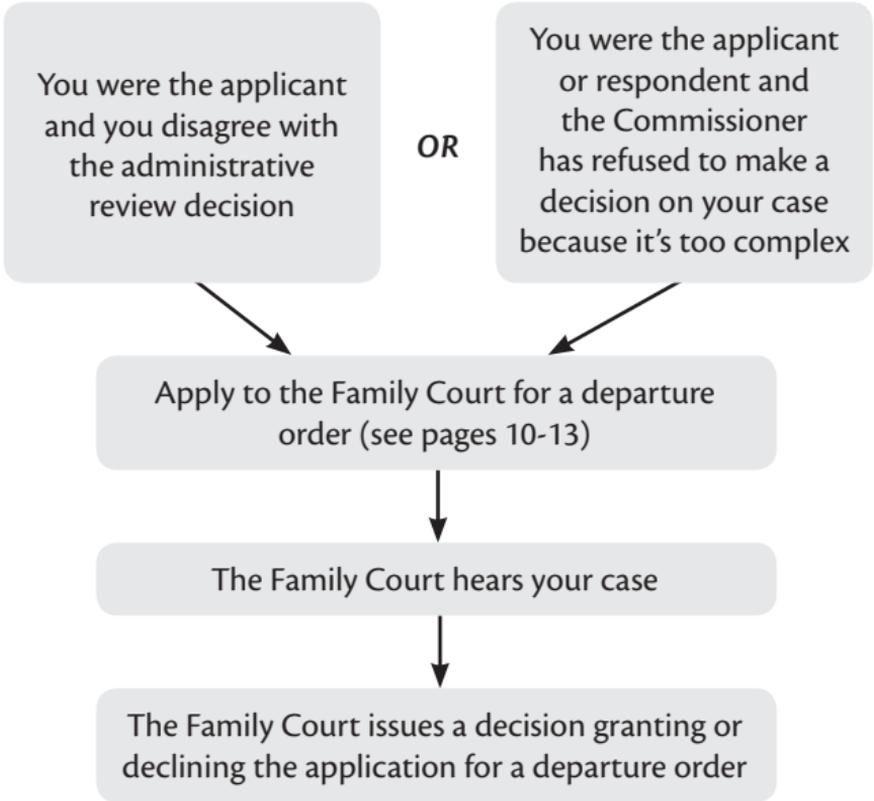
You'll need to apply to the High Court for a judicial review if you made a late objection and we didn't accept it.

Use the following to work out whether you should apply to the Family Court for a departure order or file an appeal.

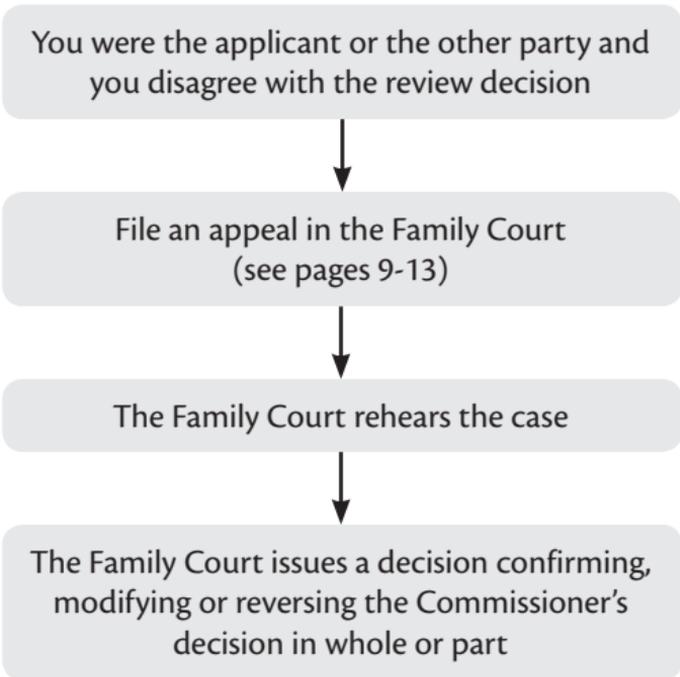
What if I disagree with the Commissioner's decision on my objection?



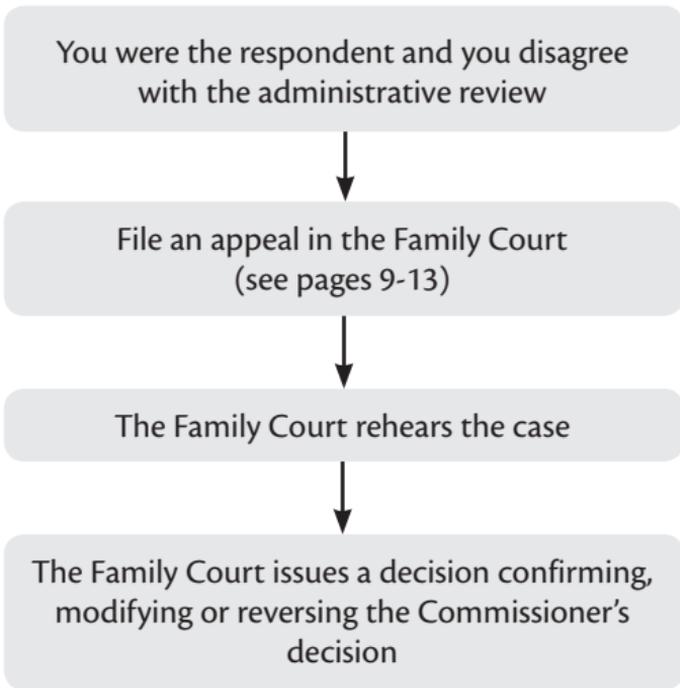
Applying for a departure order - when your administrative review failed



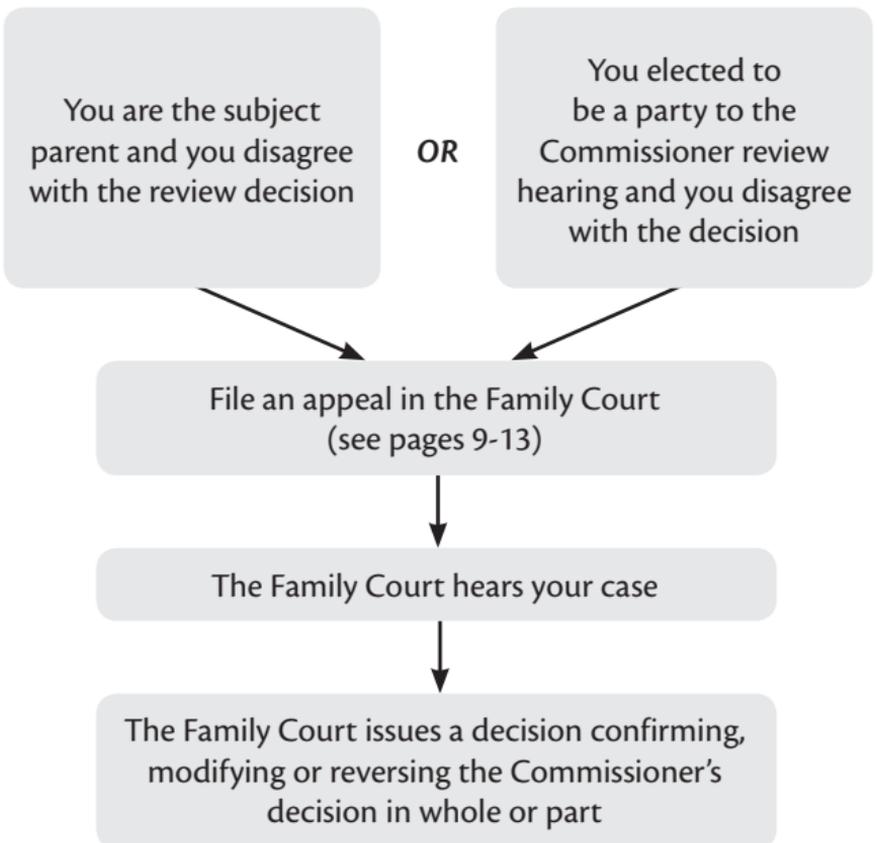
Appealing - after an exemption review



Appealing - when your administrative review failed



Appealing - after a Commissioner initiated review



Appeals and departure orders

Appeals

Who can appeal?

This depends on the objection considered or the type of review held and the decision the Commissioner has made. Appeals are heard in the Family Court.

Appealing an objection decision

If you objected to a decision the Commissioner made or to the child support assessment and the objection was disallowed, or allowed in part, you can appeal as follows:

- **an appealable decision** under section 102 of the Child Support Act 1991, or
- **a child support assessment** under section 103 of the Child Support Act 1991.

For information on how to apply to the Family Court see page 12.

Appealing a review decision

Only respondents to an **administrative review** may appeal a decision.

An **administrative review** applicant can't file an appeal. They must apply to the Family Court for a departure order instead.

You can appeal against a decision made by the Commissioner in relation to:

- a **child support review** (under sections 103A to 103C of the Child Support Act 1991) if:
 - you were the applicant in an **exemption review** and the Commissioner refused to make a decision because the matter was too complex or there were no grounds for making a decision
 - you were the applicant or respondent in an **exemption review** and you disagree with the Commissioner's decision following the review hearing
 - you were the respondent in an **administrative review** and you disagree with the Commissioner's decision following the review hearing
 - you were the subject parent or respondent who elected to take part in a **Commissioner-initiated review** and you disagree with the Commissioner's decision.

For information on how to apply to the Family Court see page 12.

How much time do I have to appeal?

If you want to apply to the Family Court for an appeal, you have **two months** from the date we disallowed your objection or made the decision relating to the child support review.

Departure orders

A departure order is a written decision from either a review officer appointed by the Commissioner or from the Family Court, authorising a departure from an existing formula assessment.

The same grounds are used when considering applications for administrative reviews and departure orders.

Who can apply?

You can apply for a departure order (under section 104 of the Child Support Act 1991) only if the Commissioner has:

- made a decision about your application for an administrative review, you're the applicant and you disagree with that decision
- decided the case was too complex to make a decision and you're the applicant for or respondent to an administrative or Commissioner-initiated review.

You can apply for the Family Court to reconsider the same grounds or reasons.

You can apply for a departure order at any time after an **administrative review decision**.

For information on administrative reviews read our guide *Helping you to understand child support reviews (IR175)*.

If you're a liable parent, you can't apply for an assessment of less than the minimum weekly payment of child support.

What does the Court consider?

The Family Court must be satisfied that:

- at least one of the reasons (grounds) for altering the formula exists
- an altered formula would be just and equitable for the child, for you and the other party
- it would be proper to make the departure order.

The Court will also determine the special circumstances of your case. Each person's circumstances will be considered individually. In considering what is just and equitable, the Court will look at:

- the duty of a parent to maintain the child
- the needs of the child (including special needs)
- the income, financial resources and assets of each parent who is a party to the application
- the income, financial resources and assets of the child
- the financial commitments required for each parent who is a party to the application to support themselves and/or other people
- the costs incurred by the receiving carer in bringing up the child, including what could have been earned if the receiving carer had not been caring for the child
- any hardship caused to you or the other party by not making the order.

How to apply to the Family Court

About applying

We recommend you get legal advice before filing an appeal or applying for a departure order. Your lawyer will be able to:

- help you decide whether you should apply
- help you complete the application form
- explain to you what will happen throughout the process.

If you can't afford to hire a lawyer, you may qualify for legal aid. For information, go to the Ministry of Justice website www.justice.govt.nz/services/legal-help

If you don't want to consult a lawyer, you can apply to the Family Court yourself, by following these three steps:

Step 1

Objection

If you're filing an appeal in relation to an objection disallowed by the Commissioner, complete a CS1 form and **one** of the following forms, whichever applies to your situation:

- *Notice of appeal against other administrative decisions of the Commissioner (CS9)*
- *Notice of appeal against assessment (CS11)*
- *Notice of appeal against Commissioner's decision to accept application for formula assessment of child support (CS5)*
- *Notice of appeal against Commissioner's decision to refuse to accept an application for formula assessment of child support (CS7).*

Reviews

If you're applying for a departure order or appealing a review decision, complete the Family Court G1 form and one of the following forms, whichever applies to your situation:

Administrative review

- *Notice of appeal against Commissioner's decision in relation to a specified exemption (CS12C)*

Exemption review

- *Notice of appeal by respondent against Commissioner's decision (CS12A)*

Commissioner-initiated review

- *Notice of appeal against Commissioner's decision (CS12E)*

Departure order

- *Application for departure from formula assessment in special circumstances (CS13).*

Step 2

You must supply an affidavit.

An affidavit is a written statement setting out the facts of the case and sworn or affirmed that the information you've provided in your application is true and correct.

An affidavit must be signed and sworn or affirmed before one of the following:

- a registrar or deputy-registrar of the District Court
- a justice of the peace (JP)
- a barrister or solicitor (not your own).

Step 3

Take or post these items to your nearest Family Court:

- the completed forms
- the affidavit
- copies of the review decision, or
- your notice of objection and a copy of the Commissioner's decision disallowing the objection.

You'll need to provide enough copies of all the documents to send one to all the other parties involved.

Go to **www.justice.govt.nz** for a list of courts that deal with Family Court matters. Please note that Inland Revenue or Court staff can't complete or lodge an application for you.

Who else is involved?

Who the other party or respondent is depends on the type of application you make.

Type of application or appeal and relevant form	Relevant section of Child Support Act 1991	The respondent will be
Appeal against other administrative decisions of the Commissioner (you objected to a decision of the Commissioner under section 90) <i>Form CS9</i>	Section 102	The Commissioner
Appeal against assessments (you objected to an assessment under section 91) <i>Form CS11</i>	Section 103	The Commissioner
Application for departure from formula assessment in special circumstances (you were the applicant in an administrative review and disagree with the outcome, or you were either the applicant or the other party in an administrative review and the Commissioner decided the case was too complex to make a decision) <i>Form CS13</i>	Section 104	The liable parent or receiving carer
Appeal against an exemption review decision <i>Form CS12A</i>	Section 103A	The Commissioner and the other party to the exemption review
Appeal against an administrative review decision (you were the respondent in that review) <i>Form CS12C</i>	Section 103B	The administrative review applicant
Appeal against a Commissioner-initiated review decision <i>Form CS12E</i>	Section 103C	The Commissioner and any other party to the review

Intervening in a proceeding

The following person(s) may intervene in, and contest and argue any question arising in a proceeding under the Child Support Act 1991 to which she or he is not otherwise a party:

- the Commissioner
- any parent or carer of a child, for whom child support is sought, or
- any person by whom, or from whom, financial support is sought.

If a person intervenes in a proceeding under the Child Support Act 1991, the person is considered to be a party to the proceedings with all the rights, duties and liabilities of a party.

Information given to the other parties involved

If you're a party to any of the proceedings outlined in the table on page 14, information provided for a review or objection can be used by any party to those proceedings when they prepare their affidavits or give evidence. This means information the review officer gives you, the other party or the Commissioner during the review may be used in Court.

You're allowed to discuss information from a review with your lawyer (if you have one) if you're considering:

- an application to the Family Court, or
- responding to an application.

This isn't a breach of privacy because the proceedings are private between the parties and members of the legal profession.

You're **not** allowed to disclose information from a review to any other person without written permission from the Family Court or Inland Revenue.

What happens next?

1. A copy of the application for a departure order or an appeal against a review decision is served (delivered to) the other party or parties and/or Inland Revenue.

Inland Revenue will receive a copy of the application for an appeal relating to an objection.

2. The other party has 21 days (or another period of time set by the Court) to file a notice of defence. For details see pages 18-20.
3. The Court will then arrange a date and time for the lawyers/parties to attend a meeting (a judicial conference). At this meeting the judge tries to find out what the issues are and tells the lawyers/parties what, if anything, needs to happen and when before the case goes any further.
4. If you don't have a lawyer you can either complete an *Application for fixture (G17)* form, or wait for the Court to set a hearing date.
5. The Court will let you or your lawyer (if you have one) know the time and date of the hearing.
6. If a departure order is made or the appeal is granted, the Court will issue its decision. Any order the Court makes will be issued after this. A copy of the decision and the order is then sent to Inland Revenue.
7. We then do whatever the Court orders. We can't change an assessment until we get a copy of the order.

Do I still pay child support while I'm waiting for a hearing?

Yes, you should still pay the amount on your notice of assessment until the Family Court makes its decision. If it will cause you hardship to pay that amount, you can apply separately to the Court to suspend or reduce payments until the Court makes a decision. You'll need to complete an *Application for suspension order (CS23)* form and an affidavit to support your application. You may want to complete this form at the same time you complete your application for a departure order or appeal.

Exception

If a person is appealing on the grounds that they aren't the parent of a child, their liability to pay child support for that child will be suspended until the Court makes its final decision. You don't need to apply for a suspension order in this situation.

How long does a Court order last?

The decision made by the Court will state the date the Court order begins. This applies to both a departure order and an order resulting from an appeal. It may also give a date or event (eg, the child's birthday) when the order ends.

The order will also end if the:

- liable parent or receiving carer dies
- receiving carer or child ceases to qualify for child support
- liable parent ceases to be liable.

If a later application restarts the formula for the same parties, the departure order starts again. It's not necessary to go back to the Court for a new order if there's a short break in liability, if liability recommences during the period covered by the order.

If you have a change in circumstances after the departure order is made, Inland Revenue may take this into account without asking the Family Court to vary it (see page 21).

Filing a defence

Receiving a document naming you as the other party

This could be an application for a departure order, a notice of appeal against a review, an objection decision, or an assessment.

Departure order

This document will be an *Application for departure from formula assessment in special circumstances (CS13)*, filed in the Family Court by the child's liable parent or receiving carer.

The person applying for the departure order will have stated the special circumstances that affect the amount of child support the liable parent has to pay.

You have a right to state in Court why you think the formula assessment should remain as it is or change. You can do this by filing a *Notice of defence (G12)*.

Appeal

This document will be a notice of appeal, filed in the Family Court by the child's liable parent or receiving carer (see pages 9-13).

Review appeals

The person filing the appeal will have stated that there are reasons why the amount of child support the liable parent pays should change.

You have the right to state in Court why you think the formula assessment should remain as it is or change. You can do this by filing a *Notice of defence (G12)*.

Objection appeals

If the party who objected to a decision or assessment isn't satisfied with the Commissioner's decision, they may appeal the decision in the Family Court. The Commissioner may advise the other party of the appeal and that they may elect to intervene as a party.

What does “filing a notice of defence” mean?

Filing a notice of defence means advising the Family Court in writing that you want to state your side of the case in Court. Even if you defended the application for a child support review, your comments won't be passed on to the Court. You'll need to defend the application for a departure order or appeal as though it's a brand new case.

We recommend you see a lawyer as your first step. A lawyer will know what to do and can represent you in Court.

If you think you can't afford a lawyer you may qualify for legal aid. For information about legal aid, go to the Ministry of Justice website www.justice.govt.nz/services/legal-help

If you don't want to hire a lawyer you can file a notice of defence yourself.

How much time do I have to file a notice of defence?

You should file your notice of defence within 21 days of receiving your copy of the application for a departure order or appeal.

How do I file a defence?

If you have a lawyer, they'll arrange this for you.

If you're filing a defence yourself, follow these steps:

1. You need to complete:
 - a *Notice of defence (G12)* form stating the facts as you see them, and an affidavit, see page 13 for details.
2. Take or post the completed forms and affidavit to the Family Court where the application was filed. You'll also have to arrange for a copy of the notice of defence to be delivered to the:
 - person applying for the appeal or the departure order
 - Commissioner if they are a respondent.

Please note, Inland Revenue or Court staff can't complete or lodge a notice of defence for you.

What happens next?

The Court will tell you the date and time the hearing will be held. You may be required to appear before the judge at the hearing.

What if I don't file a defence?

The Family Court will make a decision based on the information provided by the applicant and the respondent and the Commissioner, if they are a respondent. The judge may still want to discuss some matters with you. If they do, you'll be asked to appear before the judge at the hearing.

Change in circumstances

What if my personal circumstances change?

If your circumstances change at any time call us immediately on 0800 221 221.

You should tell us, if, for example:

- you get back together with the person you pay child support to or receive it from
- any children come into or leave your care.

A change of circumstances may:

- affect your existing departure order, or
- give you grounds to apply for an administrative review.

Let the Family Court know

If your circumstances change before your application has been heard by the Court, you can update any information before the hearing.

You can amend any errors, or change the name, address, or occupation of either party named in the application, by writing down the change(s) and handing it to the Registrar of the Court.

You can also file and give the other party an amended application:

- at any time before a hearing date has been set, or
- if the Court agrees, at any time before the hearing.

Family Court locations

You'll find the location and contact details of Family Courts at www.justice.govt.nz

Where to get more help

For more information about child support reviews go to www.ird.govt.nz/childsupport or call us on 0800 371 333.

If you're overseas, call us on 64 9 984 2531.

If you're in prison, call us on 0800 387 782.

For general child support enquiries, call us on 0800 221 221.

0800 self-service numbers

This service is available to callers seven days a week except between 5 am and 6 am each day. Just make sure you have your IRD number ready when you call.

For access to your account-specific information, you'll need to be enrolled with voice ID or have a PIN. Registering for voice ID is easy and only takes a few minutes. Call 0800 257 843 to enrol.

Order publications and taxpacks	0800 257 773
Request a summary of earnings	0800 257 778
Request a personal tax summary	0800 257 444
Confirm a personal tax summary	0800 257 771
All other services	0800 257 777

When you call, just confirm what you want from the options given. If you need to talk with us, we'll re-direct your call to someone who can help you.

Postal addresses

Payments

Inland Revenue
PO Box 39050
Wellington Mail Centre
Lower Hutt 5045

Returns

Inland Revenue
PO Box 39090
Wellington Mail Centre
Lower Hutt 5045

General correspondence

Inland Revenue
PO Box 39010
Wellington Mail Centre
Lower Hutt 5045

For a full list of addresses go to www.ird.govt.nz/contact-us/

If you have a complaint about our service

We're committed to providing you with a quality service. If there's a problem, we'd like to know about it and have the chance to fix it. Call us on 0800 221 221 to see if we can resolve your issue. If your complaint is still unresolved you can contact our Complaints Management Service. For more information go to www.ird.govt.nz (search keyword: complaint) or call us on 0800 274 138 between 8 am and 5 pm weekdays.

New Zealand Government