



9 March 2022

[REDACTED]

Dear [REDACTED]

Thank you for your three requests made under the Official Information Act 1982 (OIA).

On 3 February 2022, you requested the following regarding student loan arrests at the border, and policies for collection of child support debt:

- 1. Please advise when you will be considering a border stop as per student loan debtors, or other course action, for this parent. Is it a time factor or an amount owned that has to be reached before this happens?*
- 2. Which new tools does IRD need to put in place or is actively developing policy on that will see a result for myself and the thousands of parents in the same position?*

On 7 February 2022, you requested the following regarding child support administrative reviews:

- 3. Can you please provide me with an understanding and some details about which tools officers use, who for example they would approach for a real world view about wages in the course of their enquiries.*
- 4. How IRD is making the assessments more realistic in the current disrupted operating environment? Or does this responsibility fall to me?*

Thirdly, on 9 February 2022, you requested the following regarding arrest warrants at the border for liable parents:

- 5. What amount of owing child support IRD classes as 'substantial' to pursue the border action you describe?*
- 6. How you assess what is substantial, what factors do you take into consideration, the needs/income of the family owed or an amount compared to other liable parents owed perhaps?*
- 7. Please forward the guidance/policy ird officers follow in assessing a course of action/recommendation to pursue collection or not.*

Question 1: Student loan and child support debt compliance

I cannot discuss any matters directly relating to the individual you have referenced as this would be a breach of their privacy. I am therefore refusing your request for information under section 18(c)(i) of the OIA, as this would be contrary to the provisions of the Tax Administration Act 1994.

Please note, the legislation under which the Commissioner of Inland Revenue can apply for a warrant for the arrest of a person, is different for the student loan and child support products. This is detailed in section 162B of the Student Loan Scheme Act 2011 and in section 199 of the Child Support Act 1991 (CSA).

In both cases they are a last resort for Inland Revenue after all other avenues to secure payment have been exhausted. Inland Revenue will always try to work with our customers directly before pursuing legal action.

Question 2: New process/policies for collecting child support payments

Inland Revenue is constantly reviewing current processes around debt collection to optimise what we do. However, there is no new, formal policy we can provide you at this time. Therefore, I am refusing your request under section 18(e) of the OIA – the document alleged to contain the information requested does not exist or cannot be found.

Question 3: Administrative review processes where the income, earning capacity, property and financial resources of either parent or the child (or children) isn't taken into account

Review Officers are bound by case law, and as part of the decision that is released to both parties, they are required to advise how the calculations were made. As per section 96(I)(5) of the CSA, Review Officers can use any information and tools that they believe are relevant, however there is no set guide because each case's facts are particular to that case. For example, a Review Officer could, as part of their tool set, use the MBIE wage calculator, but if they do so, they must inform both parties they are doing so.

If an applicant or respondent disagrees with the review decision, including whether the appropriate tools have been used by a review officer, a case can be heard in the Family Court. Further information is available at <https://www.ird.govt.nz/child-support/reviews-objections-exemptions/reviews/decisions> or by searching "IR174" in the search bar on Inland Revenue's website for the guide "Helping you understand child support and the Family Court".

Question 4: Child support assessments during COVID-19 pandemic

The CSA legislation has not been amended during the COVID-19 pandemic period. If a receiving carer or liable parent thinks their assessment does not take special circumstances into account, they have the option to apply for an administrative review. If following an administrative review, one party disagrees with the outcome of the review, including the income that has been set, they can apply to the Family Court for a section 104 departure order (applicant) or section 103B appeal (other party). Either party may apply for a further administrative hearing if a new matter arises that was not submitted in support of the initial hearing [section 96L(2)(a)], or under different grounds [section 96L(2)(b)].

I refer you to [REDACTED]

[REDACTED] where page 3 of 11 states:

Re- M [1993] NZFLR 74, also confirms that the onus is on the applicant to establish the grounds relied on and that they arose in special circumstances. The Commissioner may, but is not required to conduct any enquiries into the matter. A hearing is to be carried out as the Commissioner sees fit and the Commissioner is not bound by any rules of evidence. Any findings in this determination are based on the balance of probabilities.

Question 5 & 6: Arrest warrants at the border of liable parents

In my reply to your OIA request dated 3 September 2021, I answered your question; *What criteria were applied to the decision by IRD/CSA to apply for a border stop?* with the following response:

In order to be able to apply for an arrest warrant under section 199(1) of the CSA, Inland Revenue must meet the criteria set out in the legislation:

Where a District Court Judge or, if a District Court Judge is not available and the case appears to be one of urgency, any Registrar (not being a constable), is satisfied on application in writing made by the Commissioner that there is reasonable cause to believe that any liable person is about to leave New Zealand with intent to avoid payment of any liability under this Act, the District Court Judge or Registrar may issue a warrant for the arrest of the person.

I answered a further question from you in my reply on 14 February 2022; *Why do you not make border stops, even when you have clear information about a liable parent owing thousands transitioning in and out of NZ?*

Inland Revenue is required to prove to the courts that a liable parent is leaving the country with the intention of avoiding payment of their child support liability. The legislation does not allow us to apply for an arrest warrant simply because the liable parent is travelling. There is also no requirement for the liability or arrears to be at a specific level, and we do not have any internal policy around minimum amounts before we deem a case eligible for consideration of legal action.

We consider each case on its own merits, including factors such as, but not limited to, payment history, amount of arrears and recent contacts. We then decide if taking legal action will achieve the right outcome for all parties involved, as well as being an efficient use of the Commissioner's resources.

Question 7: Guidance/policies for collection of child support debt

Inland Revenue examines the merits of each parent's ability to pay child support on a case-by-case basis. When a liable parent fails to pay child support, we attempt to contact them to establish why payment has not been made and to encourage them to pay voluntarily. When we are unable to secure funds through all voluntary channels, we look to enforce payments from liable parents by placing a deduction notice, under section 154 of the CSA, on any funds payable to that person. This includes income from salary or wages or from a bank account in the name of the liable parent.

From November 2020, new liable parents (as well as parents re-entering the system) who are receiving salary and wages will have the child support deducted directly from their pay through their employer. This arrangement will be set up as soon as a child support application is received.

If these collection actions are unsuccessful, Inland Revenue may also pursue other legal avenues to secure payment, set out in Part 11 of the CSA. These avenues include, but are not limited to, issuing summons for examination of financial means, applying to the courts for charging orders against property, warrants to seize property or warrants to arrest. We take these actions as a last resort after taking into account all information we hold, as mentioned above.

Inland Revenue has no set policy around debt collection of child support, instead focusing on dealing with each case on its own merits. As mentioned in my reply on 14 February 2022, we have a Child Support Reciprocal Agreement with Australia, which is a legally binding document between the governments of Australia and New Zealand, which came into effect on 1 July 2000. This agreement provides the framework to allow enforcement of child support and spousal or domestic maintenance between the two countries.

Further, in my response to you dated 3 September 2021 I provided information to you regarding The Hague Convention on the International Recovery of Child Support and other Forms of Family Maintenance 2007 (the Convention). This came into force in New Zealand on 1 November 2021. As previously mentioned, Article 23 of the Convention outlines the standard process that needs to be followed for recognition and enforcement when an application made under the Convention is received.

Right of Review

If you disagree with my decisions on your OIA request, you can ask an Inland Revenue review officer to review my decisions. To ask for an internal review, please email the Commissioner of Inland Revenue at: CommissionersCorrespondence@ird.govt.nz.

Alternatively, under section 28(3) of the OIA, you have the right to ask the Ombudsman to investigate and review my decision. You can contact the office of the Ombudsman by email at: info@ombudsman.parliament.nz.

Publishing of OIA response

Please note that Inland Revenue regularly publishes responses to requests that may be of interest to the wider public on its website. We consider this response is of public interest so will publish this response in due course. Your personal details or any information that would identify you will be removed prior to it being published.

Thank you for your request.

Yours sincerely



Sue Gillies

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