



Child Support Legislation Amendment Act 1992

No. 13 of 1992

An Act to amend the legislation relating to child support

[Assented to 6 April 1992]

The Parliament of Australia enacts:

PART 1—PRELIMINARY

Short title

5 1. This Act may be cited as the *Child Support Legislation Amendment Act 1992*.

Commencement

2. This Act commences on the day on which it receives the Royal Assent.

PART 2—AMENDMENTS OF THE CHILD SUPPORT (ASSESSMENT) ACT 1989

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Principal Act

3. In this Part, “Principal Act” means the *Child Support (Assessment) Act 1989*¹.

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Persons who may apply

4. Section 25 of the Principal Act is amended:

- (a) by omitting from paragraph (1)(c) “and (3)” and substituting “, (3) and (4)”;
- (b) by adding at the end the following subsection: 5

“(4) If the child is under the guardianship of, in the custody of, or care and control of, a person under a child welfare law, the application may only be made by an eligible custodian of the child who is a parent, or relative, of the child.”

5. After Part 6 of the Principal Act the following Part is inserted: 10

“PART 6A—DEPARTURE FROM ADMINISTRATIVE ASSESSMENT OF CHILD SUPPORT

Object of Part

“98A.(1) The object of this Part is, subject to subsection (2), to give power to the Registrar to make a determination having the effect that the provisions of this Act relating to administrative assessment of child support will be departed from in relation to a child. 15

“(2) The Registrar is not empowered under this Part to make a determination in relation to child support payable in the child support year ending on 30 June 1992. 20

Application for determination under Part

“98B.(1) If, at any time when an administrative assessment is in force in relation to a child:

- (a) the liable parent concerned; or
- (b) the custodian entitled to child support concerned; 25

is of the view that, because of special circumstances that exist, the provisions of this Act relating to administrative assessment of child support should be departed from in relation to the child, the liable parent or custodian may, by written application, ask the Registrar to make a determination under this Part. 30

“(2) The parties to the application are the liable parent and the custodian entitled to child support.

Matters as to which Registrar must be satisfied before making determination

“98C.(1) Subject to this Part, if: 35

- (a) an application is made to the Registrar under section 98B; and
- (b) the Registrar is satisfied:
 - (i) that one, or more than one, of the grounds for departure referred to in subsection (2) exists; and

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(ii) that it would be:

(A) just and equitable as regards the child, the liable parent, and the custodian entitled to child support; and

5 (B) otherwise proper;

to make a particular determination under this Part;

the Registrar may make the determination.

“(2) For the purposes of subparagraph (1)(b)(i):

10 (a) the grounds for departure from the provisions of this Act relating to administrative assessment of child support in relation to the child are the same as the grounds for departure set out in subsection 117(2); and

(b) sub-subparagraph 117(2)(b)(i)(A) has effect subject to subsection 117(3).

15 “(3) Subsections 117(4) to (9) (inclusive) apply to the Registrar in the exercise of his or her powers under this section as if:

(a) any reference in those subsections to the court were a reference to the Registrar; and

(b) any reference to an order were a reference to a determination.

20 **Determinations that may be made under Part**

“98D.(1) The determinations that the Registrar may make under this Part are as follows:

(a) a determination varying the rate of child support payable by the liable parent concerned;

25 (b) a determination varying the child support percentage, adjusted income amount, child support income amount or exempted income amount of the liable parent;

30 (c) a determination making provision of a kind permitted under the regulations with respect to the calculation of any such amount in relation to the liable parent;

(d) a determination varying the child support income amount or disregarded income amount of the custodian entitled to child support concerned;

35 (e) a determination making provision of a kind permitted under the regulations with respect to the calculation of any such amount in relation to the custodian entitled to child support;

(f) a determination directing that one or more of the following provisions is not to apply:

40 (i) section 41 (Child support not payable if child support income amount does not exceed exempted income amount);

(ii) section 42 (Cap on child support if child support income

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- amount exceeds 2.5 times yearly equivalent or relevant AWE amount);
- (iii) section 52 (Cap on combined child support liabilities of 2 liable parents);
- (g) a determination varying a factor ascertained under paragraph 54(b). 5
- “(2) A determination under this section may make different provision in relation to different child support years and in relation to different parts of a child support year.
- “(3) The Registrar must give, in writing, the reasons for making the determination (including the reasons for which the Registrar is satisfied as required by paragraph 117(1)(b)). 10
- “(4) A contravention of subsection (3) in relation to a determination does not affect the validity of the determination.
- Formal requirements for application** 15
- “98E.(1) An application under section 98B must:
- (a) be in the appropriate approved form; and
- (b) set out the grounds on which the application is made.
- “(2) The application must be:
- (a) verified as required by the form of application; and 20
- (b) accompanied by such documents (if any) as are required by the form of application to accompany the application.
- “(3) A document that accompanies the application must also be verified as required by the form of application.
- Application disclosing no grounds etc. for making determination—how dealt with** 25
- “98F. If the Registrar is satisfied, after considering the application, that:
- (a) there are no grounds for departing from the provisions of this Act relating to administrative assessment of child support in relation to the child concerned; or 30
- (b) that it would not be:
- (i) just or equitable as regards the child or either party to the application; or
- (ii) otherwise proper; 35
- to make the determination;
- the Registrar may refuse to make the determination without taking any further action under this Part.

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Other party to be notified

“98G.(1) If section 98F does not apply, the Registrar must cause a copy of:

(a) the application; and

5 (b) any document accompanying it;

to be served on the other party to the application.

“(2) The Registrar must, at the same time, inform the other party to the application in writing that he or she may make any representation (in this section called a ‘reply’) regarding the application that he or she considers relevant.

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“(3) Any reply to an application must:

(a) be in the appropriate approved form; and

(b) be made to the Registrar.

“(4) The reply must be:

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(a) verified as required by the form of reply; and

(b) accompanied by such documents (if any) as are required by the form of reply to accompany the reply.

“(5) A document that accompanies the reply must also be verified as required by the form of reply.

20 **Procedure for dealing with application**

“98H.(1) In making a decision under this Part in relation to an application, the Registrar:

(a) may act on the basis of:

(i) the application and the documents accompanying it; and

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(ii) if action has been taken under section 98G—the reply (if any) to the application and the documents (if any) accompanying it; and

(b) may, but (subject to subsection (2)) is not required to, conduct any inquiry or investigation into the matter.

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“(2) The Registrar must give an opportunity to:

(a) the applicant; and

(b) if action has been taken under section 98G—the other party to the application;

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to appear before the Registrar, and be heard by him or her, if they so wish.

“(3) Nothing in subsection (2) empowers the Registrar to compel a party to an application to appear before the Registrar in the presence of the other party.

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“(4) Any hearing before the Registrar, and any inquiry or investigation carried out by the Registrar, is to be carried out as the

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Registrar thinks fit and the Registrar is not bound by any rules of evidence.

“(5) A party to the application may not be represented by another person before the Registrar.

Parties to application may enter into child support agreement 5

“98J. The parties to an application may, at any time before a determination is made in relation to the application, enter into an agreement, purporting to be a child support agreement, in relation to the child support payable for the child in relation to whom the determination was sought. 10

Decision on child support agreement

“98K.(1) Subject to subsection (2), if the Registrar is satisfied that an agreement entered into by the parties to an application is a child support agreement, the Registrar must accept the agreement.

“(2) If the custodian entitled to child support who is party to the agreement is in receipt of an income tested pension, allowance or benefit, the Registrar must not accept the agreement unless he or she is also satisfied that it would be: 15

- (a) just and equitable as regards the child, the liable parent, and the custodian entitled to child support; and 20
- (b) otherwise proper;

to accept the agreement.

“(3) Subsections 117(4) to (9) (inclusive) apply to the Registrar in the exercise of his or her functions under subsection (2) as if:

- (a) any reference in those subsections to the court were a reference to the Registrar; and 25
- (b) any reference to the making of a particular order under Division 4 of Part 7 were a reference to the acceptance of an agreement.

“(4) If the Registrar accepts the agreement:

- (a) sections 94, 95 and 96 apply; and 30
- (b) the Registrar may not make a determination under this Part in relation to the application.

“(5) If the Registrar is not satisfied as required by subsections (1) and (2), the Registrar must refuse to accept the agreement.

“(6) If the Registrar refuses to accept the agreement: 35

- (a) section 96 applies; and
- (b) the Registrar must proceed to make a determination under this Part.

Subsequent applications

5 “98L.(1) A person who has made an application for a determination under this Part in respect of an administrative assessment of child support is not, for that reason, precluded from subsequently making another application in respect of that assessment if, because of circumstances existing at the time when the subsequent application is made, there are grounds for departing from the administrative assessment.

“(2) If:

10 (a) a person has made an application for a determination under this Part; and

(b) the Registrar has refused to make a determination on the application; and

15 (c) the person subsequently makes an application for a determination under this Part; and

(d) the Registrar is satisfied, after considering:

(i) the application last made and the documents (if any) accompanying it; and

20 (ii) the previous application and the documents (if any) accompanying it and any matter taken into account by the Registrar in refusing to make a determination in relation to that application;

25 that no new matter has been submitted in support of the claim that there are grounds for departing from the provisions of this Act relating to administrative assessment of child support in relation to the child;

the Registrar may refuse to make a determination, without taking any further action under this Part.”.

30 6. Section 115 of the Principal Act is repealed and the following section is substituted:

Cases to which Division applies

“115. This Division applies in the following 2 cases:

(a) if, after the Registrar has, on application made under section 98B:

35 (i) made a determination under Part 6A relating to an administrative assessment of child support in relation to a child; or

(ii) refused to do so;

40 the custodian entitled to child support or the liable parent wants a court having jurisdiction under this Act to make an order having the effect that the provisions of this Act relating to administrative assessment of child support will be departed

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from in relation to the child in the special circumstances of the case;

(b) if an administrative assessment is in force in relation to a child and:

(i) the custodian entitled to child support or the liable parent is party to an application made to a court having jurisdiction under this Act (other than an application for an order under this Division in relation to the child); and 5

(ii) the court is satisfied that it would be in the interest of the custodian entitled to child support and the liable parent for the court to consider, at the same time as it hears that application, whether an order should be made having the effect that the provisions of this Act relating to administrative assessment of child support will be departed from in relation to the child in the special circumstances of the case.”. 10 15

Application for order under Division

7. Section 116 of the Principal Act is amended by omitting subsection (2) and substituting the following subsection: 20

“(2) An application may be made by the custodian entitled to child support, or the liable parent, in relation to the child.”.

Orders that may be made under Division

8. Section 118 of the Principal Act is amended by omitting subsection (4) and substituting the following subsection: 25

“(4) Subsection (3) does not apply in relation to an order if:

(a) it is an order made by consent; and

(b) the custodian entitled to child support concerned is not in receipt of an income tested pension, allowance or benefit.”.

Court to give reasons for order 30

9. Section 126 of the Principal Act is amended by omitting subsection (2) and substituting the following subsection:

“(2) Subsection (1) does not apply in relation to an order if:

(a) it is an order made by consent; and

(b) the custodian entitled to child support concerned is not in receipt of an income tested pension, allowance or benefit.”. 35

Appeals

10. Section 132 of the Principal Act is amended by inserting in subsection (1) “or 98K” after “92”.

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Urgent maintenance orders

11. Section 139 of the Principal Act is amended by omitting subsection (2) and substituting the following subsections:

5 “(2) Subject to subsection (2A) and section 152, an order under subsection (1) has effect for the period specified in the order.

“(2A) If:

(a) the Registrar has made a decision refusing to accept the application for administrative assessment of child support; and

10 (b) the order under subsection (1) has not sooner ceased to have effect under subsection (2);

the order ceases to have effect:

(c) if the decision of the Registrar becomes final—at the time when that decision becomes final; or

15 (d) if paragraph (c) does not apply—at the time when a decision of a court (whether under section 106 or on appeal from a decision of a court under that section) that the applicant was not entitled to administrative assessment of child support becomes final.

20 “(2B) For the purposes of subsection (2A), a decision of the Registrar refusing to accept an application for administrative assessment of child support becomes final at the end of the period within which an application could have been made to a court under section 106, if the application has not been made within that period.”.

25 **Election by custodian entitled to child support to end administrative assessment**

12. Section 151 of the Principal Act is amended by adding at the end the following subsection:

30 “(4) Subsection (1) does not apply to a custodian entitled to child support if he or she is in receipt of an income tested pension, allowance or benefit.”.

13. Section 152 of the Principal Act is repealed and the following section is substituted:

Court order etc. to cease to have effect where child support becomes payable

35 “152. Where:

(a) at any time an amount of child support for a child becomes payable by a liable parent to another person under an administrative assessment; and

40 (b) immediately before that time, a court order or a court registered maintenance agreement had effect under which child support or maintenance for the child was payable by the liable parent to the other person;

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the court order or maintenance agreement ceases, at that time, to have effect.”.

**PART 3—AMENDMENTS OF THE CHILD SUPPORT
(REGISTRATION AND COLLECTION) ACT 1988**

Principal Act

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14. In this Part, “**Principal Act**” means the *Child Support (Registration and Collection) Act 1988*².

Registrar to register liability in Child Support Register on making of child support assessment

15. Section 24A of the Principal Act is amended by omitting paragraph (2)(a). 10

16. After section 30 of the Principal Act the following section is inserted:

Enforcement action, and entitlement to payment, in respect of registered maintenance liability when payer not present in Australia

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“30A.(1) If the payer of a registered maintenance liability is not physically present in Australia, then, in spite of section 30, the following provisions have effect.

“(2) Only the Commonwealth, acting as agent for the payee, may apply to a court or authority of a country that is (within the meaning of the *Family Law Act 1975*) a reciprocating jurisdiction or a jurisdiction with restricted reciprocity requesting that the registered maintenance liability be made enforceable in that country against the payer. 20

“(3) If, apart from this subsection, the payee would be a party to any subsequent proceedings before a court or authority of that country for the purpose of securing the enforcement of the liability, the Commonwealth, acting as agent for the payee, is to be a party to the proceedings. 25

“(4) If a court or authority of that country has made an order enforcing the liability, any amount payable under that order is a debt due by the payer to the payee. 30

“(5) Any amount in payment of a debt due under subsection (4) is to be remitted to the Commonwealth acting as agent for the payee.”.

17. After section 71 of the Principal Act the following section is inserted: 35

Payments to third persons by payer

“71A. If:

(a) the payer of an enforceable maintenance liability pays a third

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party an amount that partially or completely satisfies a debt owed by:

(i) the payee of the enforceable maintenance liability; or

(ii) the payer; or

5 (iii) both the payer and payee; and

(b) the Registrar is satisfied, on application made to him or her by the payer or payee in the approved form:

10 (i) that the amount paid, or part of the amount paid, was intended by both the payer and payee to be paid in complete or partial satisfaction of an amount payable under the enforceable maintenance liability in relation to the child support enforcement period; and

15 (ii) that, in the special circumstances of the particular case, the amount, or part of the amount, received by the third party should be treated as having been paid to the Registrar;

20 the Registrar must, in spite of section 30, credit the amount, or part of the amount, received by the third party against the liability of the payer to the Commonwealth in relation to the amount payable under the enforceable maintenance liability.”

18. After section 72 of the Principal Act the following sections are inserted in Part V:

Registrar may collect child support related debts from a third person

“72A.(1) The Registrar may give written notice to a person:

25 (a) by whom money is due or accruing, or may become due, to a child support debtor; or

(b) who holds, or may subsequently hold, money for or on account of a child support debtor; or

30 (c) who holds, or may subsequently hold money on account of some other person for payment to a child support debtor; or

(d) who has authority from some other person to pay money to a child support debtor;

requiring that person to pay to the Registrar:

35 (e) if the amount of money is more than the amount specified in the notice as the amount of the debtor’s support debt—an amount equal to the amount of the support debt; or

(f) if the amount of money is equal to or less than the amount of the support debt—that amount of money; or

40 (g) if the notice specifies an amount of money that is to be paid out of each payment that the notified person becomes liable, from time to time, to make to the debtor—that amount until the support debt is satisfied.

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“(2) A person who, without reasonable excuse, refuses or fails to comply with a notice under subsection (1) is guilty of an offence.

Penalty: \$1,000.

“(3) A notice:

- (a) must specify a day, not being a day before the money becomes due or is held, on or before which the money is to be paid; and 5
- (b) may be varied by the Registrar specifying a later day for making a payment under the notice.

“(4) Subsection 4K(1) of the *Crimes Act 1914* does not apply in relation to anything required to be done under subsection (1). 10

“(5) If the Registrar gives a notice under subsection (1), the Registrar must provide a copy of the notice to the child support debtor.

“(6) A notice is taken to be provided under subsection (5) if the Registrar sends the notice to the last address of the person known to the Registrar. 15

“(7) A notice is taken to have been given to the Commonwealth, a State or a Territory if it is served on a prescribed person.

“(8) If a person is convicted of an offence against subsection (1), the court may, in addition to imposing a penalty on the person, order the person to pay to the Registrar an amount that is not more than the amount, or sum of the amounts (as the case may be), that the person refused or failed to pay to the Registrar. 20

“(9) A person who makes a payment in compliance with a notice under subsection (1) is taken to have made the payment under the debtor’s authority or the authority of any other person concerned and is indemnified in respect of that payment. 25

“(10) If:

- (a) the Registrar gives a notice under subsection (1); and
 - (b) before the person to whom the notice is given complies with it, payment of the amount due by the debtor is made; 30
- the Registrar must immediately give the person written notice of that payment.

“(11) For the purposes of this section, where:

- (a) a person has paid money to a building society in respect of the issue of withdrawable shares in the capital of the society; and 35
 - (b) the building society has not repaid the money;
- the money is taken to be:
- (c) if the money is repayable on demand—due by the building society to the person; and
 - (d) in any other case—money that may become due by the building society to the person. 40

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“(12) For the purposes of this section, if, apart from this subsection, money is not due, or repayable on demand to a person unless a condition is fulfilled, the money is taken to be due, or repayable on demand (as the case may be), to the person even though the condition
5 has not been fulfilled.

“(13) In this section:

‘building society’ means a society registered or incorporated as a building society, co-operative housing society or other similar society under a law relating to such societies that is in force in a State or Territory;

10 **‘child support debtor’** means a person who is liable to pay a child support debt or a child support related debt;

‘child support related debt’, in relation to a person, includes:

- (a) the amount of penalty (if any) imposed under section 67 in respect of that debt; and
- 15 (b) any costs ordered by a court to be paid to the Commonwealth in respect of an offence committed by the person against this Act or the *Child Support (Assessment) Act 1989*; and
- (c) any amount ordered by a court, upon the conviction of a person for an offence against this Act or the *Child Support (Assessment)*
20 *Act 1989*, to be paid by the person to the Registrar;

‘person’ includes a partnership and any Commonwealth, State or Territory public authority (whether incorporated or unincorporated);

‘support debt’ means a child support debt or a child support related debt.

25 **Person receiving or controlling money of a debtor who is outside Australia**

“72B.(1) If:

- (a) a child support debtor is not physically present in Australia; and
- 30 (b) the debtor either:
 - (i) derives income, or profits or gains of a capital nature, from a source in Australia; or
 - (ii) is a shareholder, debenture holder or depositor in a company deriving income, or profits or gains of a capital
35 nature, from a source in Australia; and
- (c) another person in Australia receives, controls or disposes of, any of the debtor’s money;

the following provisions apply:

- (d) the other person must, when notified by the Registrar under
40 subsection (2), pay the debtor’s support debt;
- (e) the person is authorised and required, when notified by the Registrar under subsection (2), to retain from time to time, out of any money that comes to him or her on behalf of the debtor,

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enough to pay the debtor's support debt or any amount that may become payable by the debtor as a child support debt;

- (f) the person is personally liable for the debtor's support debt to the extent of any amount that he or she retained, or should have retained, under paragraph (e);
- (g) the person is taken to be authorised by the debtor, or any other person concerned, to make any payments under this section.

“(2) If the Registrar requires a person referred to in paragraph (1)(c) to do a thing referred to in paragraph (1)(d) or (e), the Registrar must give that person written notice of:

- (a) that requirement; and
- (b) the amount of the debtor's support debt; and
- (c) the day by which the person should pay the amount required to be paid.

“(3) If the person who receives, controls or disposes of any of a debtor's money is:

- (a) the Commonwealth or a Commonwealth authority; or
- (b) a State or a State authority; or
- (c) a Territory or a Territory authority;

paragraph (1)(f) does not apply to or in relation to that body.

“(4) For the purposes of this section:

- (a) a person is taken to have control of a debtor's money if the person is liable to pay money to the debtor; and
- (b) money, other than money that is a natural resource payment or a royalty payment within the meaning of Division 3B of Part VI of the *Income Tax Assessment Act 1936*, due by the person to the debtor is taken to be money that comes to the person on behalf of the debtor.

“(5) Words and expressions used in this section that are defined in:

- (a) the *Income Tax Assessment Act 1936*; or
- (b) in section 72A;

have, in this section, the meaning given by that Act or that section.

Transaction to defeat maintenance liability

“72C.(1) The court may, of its own volition or on application by the Registrar:

- (a) set aside an instrument or disposition that has been made; or
- (b) restrain the making of an instrument or disposition that is proposed to be made;

by or on behalf of, or by direction or in the interest of, a payer of an enforceable maintenance liability.

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“(2) If the court is satisfied that the instrument or disposition has been made or is proposed to be made (as the case may be) to reduce or defeat the payer’s ability:

(a) to pay child support; or

5 (b) if there is an enforceable maintenance liability in respect of the payer:

(i) to pay any child support debt under the enforceable maintenance liability; or

(ii) to meet the enforceable maintenance liability;

10 the court may set aside the instrument or disposition or restrain the making of the proposed instrument or disposition as the case requires.

“(3) The court may order:

(a) that any money or any real or personal property dealt with by any such instrument or disposition may be taken in execution, or charged with the payment, of such amounts for costs or child support as the court directs; or

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(b) that the proceeds of a sale must be paid into court to abide by its order.

“(4) The court must have regard to the interests of a bona fide purchaser or other interested person and must make any order it considers proper for the protection of those persons.

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“(5) The court may order:

(a) the payer; or

(b) if a person has colluded with the payer in the making or proposed making of the instrument or disposition—that person;

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to pay the costs incurred by:

(c) the payee of the enforceable maintenance liability; or

(d) a bona fide purchaser or other person for whose protection an order is made under subsection (4); or

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(e) the Registrar;

in relation to the making, or the proposed making, of the instrument or disposition or the proceedings under this section.

“(6) In this section, ‘**disposition**’ includes a sale and a gift.”.

NOTES

1. No. 124, 1989, as amended. For previous amendments, see No. 163, 1989; and No. 138, 1990.

2. No. 3, 1988, as amended. For previous amendments see No. 132, 1988; Nos. 124 and 163, 1989; and No. 138, 1990.

[*Minister’s second reading speech made in—
House of Representatives on 27 February 1992
Senate on 4 March 1992*]