

Child Support Legislation Amendment Act (No. 1) 1997

No. 84, 1997

**An Act to amend the law relating to child support,
and for related purposes**

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[Assented to 23 June 1997]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Child Support Legislation Amendment Act (No. 1) 1997*.

2 Commencement

- (1) Subject to subsection (2), this Act commences on the 28th day after the day on which it receives the Royal Assent.
- (2) Items 21 to 25 (inclusive) of Schedule 1 commence on a day to be fixed by Proclamation. However, if the items do not commence by Proclamation within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

4 Application of amendments relating to income estimates

The amendments made by items 21 to 25 (inclusive) of Schedule 1 apply in relation to elections made after the commencement of those items.

Schedule 1—Amendment of Acts

Child Support (Assessment) Act 1989

1 Section 5 (definition of *additional family payment*)

Repeal the definition.

Note: The heading to section 91A is altered by omitting “**additional**”.

2 Section 5 (definition of *claimant*)

Omit “**additional**”.

3 Section 5 (definition of *married person*)

Repeal the definition.

4 Section 5

Insert:

member of a couple means:

- (a) a person who is legally married to another person and is not living separately and apart from the other person on a permanent or indefinite basis; or
- (b) a person who is living with another person of the opposite sex as the partner of the other person on a genuine domestic basis although not legally married to the other person.

5 Section 5

Insert:

partner, in relation to a person who is a member of a couple, means the other member of the couple.

6 Section 5 (paragraph (b) of the definition of *relevant dependent child*)

Omit “**married person**”, substitute “**member of a couple**”.

7 Section 5 (definition of *relevant married rate of Social Security pension*)

Repeal the definition.

8 Section 5

Insert:

relevant partnered rate of Social Security pension, in relation to a child support year, means the maximum basic rate of a social security pension (within the meaning of the *Social Security Act 1991*) that was payable on 1 January immediately before the child support year to a person:

- (a) who was a member of a couple; and
- (b) who had turned 21; and
- (c) who was not permanently blind within the meaning of that Act.

Note: The relevant maximum basic rate on 1 January 1996 was \$7,285.20 per annum (see Module B, Pension Rate Calculator A, section 1064 of the *Social Security Act 1991*).

9 Section 5 (definition of ***relevant single rate of Social Security pension***)

Repeal the definition.

10 Section 5

Insert:

relevant unpartnered rate of Social Security pension, in relation to a child support year, means the maximum basic rate of a social security pension (within the meaning of the *Social Security Act 1991*) that was payable on 1 January immediately before the child support year to a person:

- (a) who was not a member of a couple; and
- (b) who had turned 21; and
- (c) who was not permanently blind within the meaning of that Act.

Note: The relevant maximum basic rate on 1 January 1996 was \$8,733.40 per annum (see Module B, Pension Rate Calculator A, section 1064 or Module B, Pension Rate Calculator C, section 1066, of the *Social Security Act 1991*).

11 Section 5 (definition of ***unmarried person***)

Repeal the definition.

12 Paragraph 12(1)(e)

Omit “married person”, substitute “member of a couple”.

13 Subparagraph 24(a)(iii)

Repeal the subparagraph, substitute:

(iii) not a member of a couple; and

14 Paragraph 25(1)(b)

Omit “spouse”, substitute “partner”.

15 Paragraph 29(2)(c)

Repeal the paragraph, substitute:

(c) that, whether before or after the commencement of this Act, a federal court, a court of a State or Territory or a court of a prescribed overseas jurisdiction has:

(i) found expressly that the person is a parent of the child;
or

(ii) made a finding that it could not have made unless the person was a parent of the child;

and the finding has not been altered, set aside or reversed; or

16 Paragraph 29(2)(f) and subparagraph 29(2)(g)(iv)

Omit “10 months”, substitute “44 weeks”.

17 Paragraph 29(2)(h)

Repeal the paragraph, substitute:

(h) that the person is a man and:

(i) the child was born to a woman who cohabited with the man at any time during the period beginning 44 weeks and ending 20 weeks before the birth; and

(ii) no marriage between the man and the woman subsisted during any part of the period of cohabitation.

18 Paragraph 39(1)(a)

Omit “single”, substitute “unpartnered”.

19 Subparagraph 39(1)(b)(i)

Omit “married”, substitute “partnered”.

20 Subsection 39(2)

Repeal the subsection, substitute:

- (2) The additional amount for a child who is a relevant dependent child of the liable parent is:
- (a) if the child will be 16 or over at the end of the child support year—50% of the annual amount of the relevant partnered rate of social security pension (within the meaning of the *Social Security Act 1991*) for the child support year; or
 - (b) if the child will be under 16 at the end of the child support year—the amount worked out using the formula:
$$\left[\text{Standard FP rate} - \text{Minimum FP child rate} \right] \times 26$$

where:

standard FP rate means the standard family payment rate, within the meaning of the *Social Security Act 1991*, that was payable for that child on 1 January immediately before the child support year.

minimum FP child rate means the minimum FP child rate, within the meaning of the *Social Security Act 1991*, that was payable for that child on 1 January immediately before the child support year.

21 Paragraph 60(3)(b)

Repeal the paragraph, substitute:

- (b) within the previous 2 months, a child support income amount determined by subsection 61(1) or 63(1) has started to apply to the person in relation to the child support year; or

22 Sections 61 and 61A

Repeal the sections, substitute:

61 Effect of election

- (1) If a person makes an election under section 60 for a child support year, the person's child support income amount:
 - (a) is the amount of the person's estimate of his or her taxable income under the *Income Tax Assessment Act 1936* for the child support year, as specified in the election; and

- (b) applies in relation to the days in the child support year that occur on or after a day determined in accordance with the regulations, which may be earlier than the day on which the person made the election.
- (2) If an income amount order made after the making of the election applies in relation to the person and any part of the child support year, subsection (1) has effect subject to the order.
- (3) The Registrar must immediately take such action as is necessary to give effect to subsection (1) in relation to any administrative assessment that has been made in relation to the person and the child support year (whether by amending the assessment or otherwise).
- (4) Subject to section 63, in subsequently making any administrative assessment in relation to the person and the child support year, the Registrar must act in accordance with this section.
- (5) This section does not prevent:
 - (a) a court making any order under Division 4 of Part 7; or
 - (b) the making, and acceptance by the Registrar, of a child support agreement that includes provisions that have effect, for the purposes of this Part, as if they were such an order made by consent.

23 Subsection 62(1)

Repeal the subsection.

24 Subsection 62(1A)

Omit “beginning after 30 June 1993”.

25 Sections 63 and 63A

Repeal the sections, substitute:

63 Effect of revocation

- (1) If a person who made an election under section 60 for a child support year revokes the election under section 62 and substitutes a new election, the person’s child support income amount:

- (a) is the amount of the person's estimate of his or her taxable income under the *Income Tax Assessment Act 1936* for the child support year, as specified in the new election; and
 - (b) applies in relation to the days in the child support year that occur on or after a day determined in accordance with the regulations, which may be earlier than the day on which the person made the new election.
- (2) Subsection (1) does not apply in relation to any day in the child support year in relation to which an income amount order made after the making, but before the revocation, of the election applies in relation to the person.
 - (3) The Registrar must immediately take such action as is necessary to give effect to subsection (1) in relation to any administrative assessment that has been made in relation to the person and any part of the child support year (whether by amending the assessment or otherwise).
 - (4) Subject to any further election made under section 60, in subsequently making any administrative assessment in relation to the person and the child support year, the Registrar must act in accordance with subsection (1).
 - (5) This section does not prevent:
 - (a) a court making any order under Division 4 of Part 7; or
 - (b) the making, and acceptance by the Registrar, of a child support agreement that includes provisions that have effect, for the purposes of this Part, as if they were such an order made by consent.

26 Paragraph 155(b)

Omit "married", substitute "partnered".

27 Paragraph 155(c)

Omit "single", substitute "unpartnered".

28 Paragraph 155(d)

Omit "paragraphs 39(2)(a) and (b)", substitute "paragraph 39(2)(b)".

Child Support (Registration and Collection) Act 1988

29 Paragraph 26(2)(b)

Omit “automatic”, substitute “employer”.

30 Division 1 of Part IV (heading)

Repeal the heading, substitute:

Division 1—Employer withholding

31 Subsection 43(2)

Omit “automatic” (wherever occurring), substitute “employer”.

32 Subsections 44(1), (1A), (2), (3) and (4)

Repeal the subsections, substitute:

(1) If:

- (a) the payer of an enforceable maintenance liability elects that employer withholding is not to apply in relation to the liability; and
- (b) the Registrar is satisfied that the payer is likely to make timely payments to the Registrar under the liability;

the Registrar must, within 28 days after receiving the election, vary the particulars of the entry in the Child Support Register in relation to the liability so that they contain a statement that employer withholding does not apply in relation to the liability.

(2) If:

- (a) the Registrar is about to register a registrable maintenance liability; and
- (b) either before or after becoming the payer, the person who is the payer elected that employer withholding is not to apply in relation to the liability; and
- (c) the Registrar is satisfied that the payer is likely to make timely payments to the Registrar under the liability;

the Registrar must, when registering the liability, include a statement that employer withholding does not apply in relation to the liability.

(3) An election under subsection (1) or (2) must be made by giving to the Registrar a duly completed approved form.

Note: The heading to section 44 is altered by omitting “**automatic**” and substituting “**employer**”.

33 Subsection 44(5)

Repeal the subsection, substitute:

(5) If:

- (a) because of subsection (1) or (2), the particulars of the entry in the Child Support Register in relation to an enforceable maintenance liability contain a statement that employer withholding does not apply in relation to the liability; and
- (b) the payer does not make timely payments to the Registrar under the liability;

the Registrar must vary those particulars so that they contain a statement that employer withholding applies in relation to the liability.

(5A) The Registrar is not required to vary particulars under subsection (5) if the Registrar is satisfied that:

- (a) the collection of payments due under the liability by deduction from the salary or wages of the payer under this Part would not be an efficient method of collecting those payments; or
- (b) the payer is likely to recommence timely payments to the Registrar under the liability in the near future.

34 Subsection 44(6)

Omit “automatic”, substitute “employer”.

35 Subsection 44(7)

Repeal the subsection, substitute:

(7) If:

- (a) because of subsection (6), the particulars of the entry in the Child Support Register in relation to an enforceable maintenance liability contain a statement that employer withholding does not apply in relation to the liability; and
- (b) the payer does not make timely payments to the Registrar under the liability;

the Registrar must vary those particulars so that they contain a statement that employer withholding applies in relation to the liability.

- (7A) The Registrar is not required to vary particulars under subsection (7) if the Registrar is satisfied that:
- (a) the collection of payments due under the liability by deduction from the salary or wages of the payer under this Part would not be an efficient method of collecting those payments; or
 - (b) that the payer is likely to recommence timely payments to the Registrar under the liability in the near future.
- (7B) A payer of an enforceable maintenance liability may not make an election under subsection (1) if, within the previous 6 months, employer withholding started to apply in relation to the liability because of a variation made under subsection (5) or (7).
- (7C) If a payer of an enforceable maintenance liability has made an election under subsection (1) or (2) in relation to the liability that has been rejected by the Registrar, the payer may not make an election under subsection (1) in relation to the liability within 2 months after that rejection.

36 Subsection 44(8)

Omit “automatic” (wherever occurring), substitute “employer”.

37 Subsection 44(9)

Omit “regular and”.

38 Subsection 44(10)

Omit “automatic”, substitute “employer”.

39 Paragraph 59(1)(b)

Omit “7 years”, substitute “5 years”.

Family Law Act 1975

40 Paragraph 75(2)(na)

Omit “or is to provide,”, substitute “is to provide, or might be liable to provide in the future,”.

41 Paragraph 79(4)(g)

Omit “or is to provide,”, substitute “is to provide, or might be liable to provide in the future,”.

*[Minister’s second reading speech made in—
Senate on 27 June 1996
House of Representatives on 25 March 1997]*

(84/96)