

1995

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

FAMILY LAW REFORM BILL 1994

SUPPLEMENTARY EXPLANATORY MEMORANDUM

(Circulated by the authority of the Attorney-General,
the Honourable Michael Lavarch, M.P.)

**AMENDMENTS AND NEW CLAUSES TO BE MOVED ON BEHALF OF THE
GOVERNMENT**



AMENDMENTS OF THE FAMILY LAW REFORM BILL 1994

GENERAL OUTLINE

The amendments proposed by the Government will amend the *Family Law Reform Bill 1994*. The purpose of the amendments is to:

amend the objects to Part III - Primary Dispute Resolution - to ensure that the encouragement to use non-litigious dispute resolution mechanisms is balanced by a recognition that these mechanisms are not appropriate in all circumstances, and that where they are used, proper regard must be paid to the protection of the safety of the parties;

extend the ability to advertise, in a Registry of the Family Court, the range of services that family and child counsellors and counselling organisations, family and child mediators and mediation organisations, and approved arbitrators operating under the Act will provide;

amend the objects to Part VII - Children to make explicit in those objects that the child's right of contact with parents and other people significant to the care, welfare and development of the child is not unqualified but is subject to that contact being in the best interests of the child;

provide that the best interests of the child are the paramount consideration for the court in making a parenting order, whether the order is made with or without the consent of the parties. Where the order is made by consent, the court will have a discretion as to the regard it will have to the listed factors which are to be taken into account in determining the best interests of the child;

give explicit recognition that consideration of the child's background, when determining the child's best interests, includes consideration of any need to maintain a connection with the lifestyle, culture and traditions of the Aboriginal or Torres Strait Islander peoples;

replace the term "special purpose order" wherever occurring with "specific issues order". These parenting orders deal with any aspect of parental responsibility other than with whom the child is to live, contact the child is to have with a parent or other person significant to the care, welfare and development of the child, or the maintenance of the child. The amendment removes any possible implication that these orders are available only in special or unusual circumstances;

clarify that, in considering whether to grant leave for the commencement of adoption proceedings in a State or Territory Court by a parent and/or the parent's spouse or de facto partner, the Family Court must consider the best interests of the child having regard to the effect of adoption in severing the legal tie with the other parent. The provisions by which parental responsibility and any parenting orders are severed are also clarified;

bring the provision in relation to variation of a maintenance order in line with the *Child Support (Assessment) Act 1989*, to include a change in circumstances of the person receiving payment under the order as a matter which may justify a variation of a maintenance order. Currently the Court may vary a maintenance order in certain circumstances, including a change in circumstances of the child, or the liable person, but not of the person receiving payment under the order;

make minor amendments to the presumptions of parentage to implement a decision of the Standing Committee of Attorneys General to enact uniform parentage presumptions across all Australian jurisdictions. These provisions replace references to a 10 month period with references to 44 weeks, and to remove the artificial threshold of a 6 month period of cohabitation, ;

strengthen the requirement upon the Family Court to make orders which are consistent with any family violence orders, while ensuring that the terms of its orders do not expose people to family violence;

- provide that, in proceedings in relation to contravention of a residence order, a contact order or a specific issues order, the existence of a reasonable excuse for breach of the order is a defence, with the onus of establishing that defence, on the balance of probabilities, on the defendant;

provide for the making of regulations in relation to parentage testing where an alleged parent is living overseas;

correct various technical and drafting matters.

FINANCIAL IMPACT STATEMENT

The amendments to the Bill contain no financial impact.

NOTES ON AMENDMENTS AND NEW CLAUSES

AMENDMENT 1

1 The amendment omits the reference to New Zealand from the definition of 'prescribed overseas jurisdiction' in subsection 4(1) of the Principal Act. This will allow New Zealand to be prescribed by Regulation and listed in Schedules to the Family Law Regulations along with other prescribed overseas jurisdictions.

AMENDMENTS 2 - 4

2 These are the first of a number of amendments which replace the term "special purpose order" with "specific issues order" as announced in the Government Response to the Second Report of the Senate Legal and Constitutional Legislation Committee on the Family Law Reform Bill 1994 and the Exposure Family Law Reform Bill (No 2) 1994. The use of the amended term will clarify that the purpose of these orders is to deal with any aspect of parental responsibility, other than the child's residence, contact with parents and other people, and maintenance, and ensures that there is no inference that these orders may only be obtained in special or unusual circumstances.

AMENDMENT 5

3 The amendment to the objects of Part III "Primary Dispute Resolution" implements the Government's acceptance of recommendation 2 of the Second Report of the Senate Legal and Constitutional Legislation Committee on the Bill. The amendment adds a proviso to the encouragement of the use of primary dispute resolution mechanisms, to emphasise that decisions about the use of these mechanisms must reflect an awareness that they are not appropriate in all cases, and that where they are used regard must be paid to the need for proper protection for individuals.

AMENDMENTS 6 - 7

4 The amendments omit clause 23, which inserted new section 19JA into the Act, to allow, subject to any regulations, an approved mediation organisation to advertise in a Registry of the Family Court, and replaces it with new section 19P which is repositioned. The new section extends, subject to any regulations, the permission to advertise to family and child counsellors and counselling organisations, family and child mediators and mediation organisations, and approved arbitrators under the Family Law Act.

AMENDMENTS 8 - 9

5 These amendments also replace the term "special purpose order" with "specific issues order" as explained in respect of amendments 2 - 4 above.

AMENDMENT 10

6 This amendment implements the Government's acceptance of recommendation 3 of the Second Report of the Senate Legal and Constitutional Legislation Committee on the Bill. The amendment to proposed paragraph 60B(2)(b) adds a proviso to make it explicit in the Objects of Part VII - Children that children's right of contact with their

parents and other people significant to their care, welfare and development is not unqualified, but is subject to the paramountcy of the child's best interests.

AMENDMENTS 11 - 15

7 These amendments also replace the term "special purpose order" with specific issues order" as explained in respect of amendments 2 - 4 above.

AMENDMENT 16

8 New section 60G of the Bill as introduced reinserts existing section 60AA of the Family Law Act, providing that the Family Court may grant leave for proceedings to be commenced for the adoption of a child by a prescribed adopting parent, which is defined in new subsection 60D(1) as a parent and/or the parent's spouse or de facto partner. The amendment provides a new heading for the section, to clarify that the Court does not permit adoption, which is a matter within State jurisdiction, but rather may give leave for adoption proceedings to be commenced. The significance of this is that, if leave is given by the Court for the commencement of adoption proceedings, the subsequent State court order of the adoption severs the legal relationship between the child and the other parent.

9 New subsection 60G(2) provides guidance to the Court as to the matters which it is to consider when considering whether to grant leave for adoption proceedings. The subsection provides that the Court must consider whether granting leave would be in the child's best interests, having regard to the severance of parental responsibility effected by the Act.

AMENDMENT 17

10 The amendment inserts a new section 61E into Division 2 of Part VII, which deals with parental responsibility. The new section provides that a person's parental responsibility for a child ceases upon the adoption of a child, unless the adoption is by a parent and/or the parent's spouse or de facto partner and leave for the adoption proceedings was not given by the Court. The new section reinserts the effect of subsection 63F(4) of the Act, which provides for the cessation of rights of guardianship, custody or access, upon adoption, unless the adoption is by a parent and/or the parent's spouse or de facto partner and the Court did not give leave for the adoption proceedings to be commenced.

AMENDMENT 18

11 A new section 63CA is inserted which provides that a parenting plan may not be varied but may be revoked by a further agreement. The purpose of the new section 63CA is to ensure that there remains in existence only one document which would constitute a parenting plan. Accordingly, new subsection 63CA(1) provides that an agreement is not effective to vary a parenting plan regardless of the form of the agreement and how it is expressed. In addition, an agreement which purports to vary a parenting plan cannot be registered under proposed section 63D (which provides for registration of parenting plans in the court to make them have effect as if they were orders of the court).

12 New subsection 63CA(2) allows a parenting plan to be revoked by agreement in writing between the parties to the plan. This allows the parenting plan to be revoked

in full so that if a new parenting plan is to be made it replaces the former parenting plan in its entirety. This preserves the intent of having only one document which can purport to be a parenting plan.

13 By new subsection 63CA(3), any agreement which revokes a registered parenting plan may be registered, subject to the rules of court, under proposed section 63D. The agreement does not have effect to revoke the registered plan until the agreement is registered.

AMENDMENTS 19- 20

14 These amendments also replace the term “special purpose order” with “specific issues order” as explained in respect of amendments 2 - 4 above.

AMENDMENT 21

15 Proposed section 63E is amended by the omission of paragraph (c) of the note at the end of subsection (3) and substitutes new paragraphs (c) and (d).

16 Proposed section 63E provides, in general terms, for the effect of registration of a parenting plan that contains child welfare provisions. Subsection (3) provides that the child welfare provisions have effect as if they were a residence order if the provisions deal with a person or persons with whom the child is to live, a contact order to the extent that the provisions of a parenting plan deal with contact, or (as amended by amendment 19) a specific issues order to the extent that the provisions of the parenting plan deal with any other aspect of parental responsibility.

17 The note at the end of proposed subsection (3) sets out provisions of the Bill which may apply because the child welfare provisions of a parenting plan are registered and have effect as if they were orders of the court. The amendment adds to the note a reference to proposed subsection 65D(2) which provides for the discharge, variation, suspension and revival of parenting orders other than child maintenance orders.

AMENDMENT 22

18 The amendment inserts a new subsection (3A) into proposed section 63E, deeming the parties to a registered parenting plan which has effect as if it were a court order to be parties to the proceedings in which the order was made. This will ensure that the full range of provisions dealing with the obligations created by, and the enforcement of, court orders applies to the registered plan. Proposed section 65ZB, for example, prevents a party to the proceedings in which a residence order, a contact order or a care order were made from taking or sending the child concerned out of Australia except with the written consent of each person in whose favour the order was made, or in accordance with an order of the court. This amendment has the effect of applying that prohibition to the parties to a parenting plan.

AMENDMENT 23

19 Proposed section 63F deals with the effect of child maintenance provisions of a parenting plan. The note at the end of proposed subsection (2) refers to other provisions which are relevant to certain child maintenance provisions having effect as

if they were a court order. The amendment adds a reference to proposed section 66S, which provides for the discharge, variation, suspension and revival of child maintenance orders.

AMENDMENT 24

20 The amendment omits the words “and only if” from proposed subsection 63G(1), which deals with the setting aside of a registered parenting plan. Together with amendment 26, this will provide the court with an expanded range of circumstances in which it can set aside or otherwise affect a registered parenting plan.

AMENDMENT 25

21 The amendment makes a minor drafting change to proposed subsection 63G(2), to clarify that proceedings are brought under subsection 63G(2), on grounds stated in the paragraphs of the subsection.

AMENDMENT 26

22 The amendment adds two new subsections to proposed section 63G. Proposed subsection 63G(3) sets out other provisions which allow for the setting aside or affecting of parenting plans:

- Proposed subsection 63E(2): The variation of child welfare provisions in a parenting plan;
- Proposed subsection 65D(2): The making of a parenting order that discharges, varies, suspends or revives provisions of a parenting plan; and
- Proposed section 66S: The discharge, variation, suspension or revival of provisions of the parenting plan that have effect as if they were a child maintenance order.

23 Proposed subsection 63G(4) provides that a court must not set aside, discharge, vary, suspend or revive the whole or part of a parenting plan except as provided in subsection 63G(1), or one of the provisions referred to in subsection (3).

AMENDMENTS 27 - 30

24 These amendments also replace the term “special purpose order” with “specific issues order” as explained in respect of amendments 2 - 4 above.

AMENDMENT 31

25 The amendment adds a new subsection (2) to proposed section 65D, which allows the court, subject to the provisions of the Division, including the paramountcy of the best interests of the child, to make such parenting order as it thinks proper. Proposed new subsection 65D(2) makes it clear that a court may make a parenting order that discharges, varies, suspends or revives some or all of an earlier parenting order, and is not required to remake a parenting order in its entirety.

AMENDMENT 32

26 The amendment removes the exclusion of consent orders from the requirement in proposed section 65E that the court, in deciding whether to make a parenting order, must regard the best interests of the child as the paramount consideration.

AMENDMENT 33

27 Proposed section 65F requires the court not to make a parenting order other than an interim or consent order unless the parties have attended a counselling conference, or the court is satisfied that there is an urgent need for the order, or some other circumstance that makes it appropriate to make the order without the parties having attended counselling, or it is not practicable for the parties to attend counselling. The amendment makes a minor drafting change, substituting “the” for “a” in the reference in proposed paragraph 63F(2)(b) to the conference referred to in subsection 63F(2)(a).

AMENDMENT 34

28 The amendment makes it explicit that an example of a circumstance in which it is appropriate to make a parenting order without the parties having attended a counselling conference is in situations of family violence.

AMENDMENT 35

29 The amendment also replaces the term “special purpose order” with “specific issues order” as explained in respect of amendments 2 - 4 above.

AMENDMENT 36

30 The amendment inserts proposed section 65HA into Division 6 - Parenting orders other than child maintenance orders. The proposed new section replaces proposed section 70Q, and provides that the effect of any parenting orders under the Act ceases upon the adoption of the child, unless the adoption is by a parent and/or the parent’s spouse or de facto partner and the court has not given leave for the adoption proceedings to be commenced. The provision has been moved into Division 6 so that the effect of adoption upon parenting orders is stated within that Division.

AMENDMENT 37

31 The amendment removes the exclusion of consent orders from the requirement in proposed subsection 65K(2) that the court, in deciding whether to make an order for supervision or assistance in relation to compliance with a parenting order by a family and child counsellor or welfare officer, must regard the best interests of the child as the paramount consideration.

AMENDMENT 38 - 40

32 The amendments also replace the term “special purpose order” with “specific issues order” as explained in respect of amendments 2 - 4 above.

AMENDMENT 41

33 Proposed section 66S provides power for the court to modify child maintenance orders (Stage 1 of the Child Support Scheme). The amendment replaces proposed subsection 66S(1) with a new subsection to provide a threshold for the application of this provision. That threshold is where there is in force an order providing for maintenance for the child that is made by a court or is registered in a court under the rules of court and a person applies to the court for an order under this section. This makes it clear that it is not necessary for the proceedings to be proceedings for a child maintenance order, but can be proceedings for the variation of an existing child maintenance order.

AMENDMENT 42

34 The amendment inserts a new subparagraph 66S(3)(a)(ia), so that the court may vary a maintenance order where the circumstances of the person entitled to receive payment under the order have changed so as to justify the variation. This brings the circumstances in which a maintenance order may be varied in line with those in subsection 129(3) of the *Child Support (Assessment) Act 1989*.

AMENDMENT 43

35 The amendment also replaces the term “special purpose order” with “specific issues order” as explained in respect of amendments 2 - 4 above.

AMENDMENT 44

36 The amendment removes the exclusion of consent orders from the requirement in proposed section 67L that the court, in deciding whether to make a location order, must regard the best interests of the child as the paramount consideration.

AMENDMENT 45

37 Proposed section 67N deals with Commonwealth information orders. The amendment expands the application of subsection 67N(8) so that, at the time of providing information about the whereabouts of a child, a Government Department or instrumentality is required to provide information contained in its records about actual or threatened violence to the child concerned, to a parent or another person with whom the child is living.

AMENDMENT 46 - 48

38 These amendments also replace the term “special purpose order” with “specific issues order” as explained in respect of amendments 2 - 4 above.

AMENDMENTS 49 - 50

39 These amendments remove the exclusion of consent orders from the requirement in proposed section 67V and proposed subsection 67ZC(2) that the court, in deciding

whether to make a recovery order, or an order relating to the welfare of the child must regard the best interests of the child as the paramount consideration.

AMENDMENT 51

40 The amendment also replaces the term “special purpose order” with “specific issues order” as explained in respect of amendments 2 - 4 above.

AMENDMENT 52

41 The amendment adds to the circumstances provided in proposed subsection 68C(1) in which the police may arrest a person without warrant, to allow for arrest without warrant where an injunction for the personal protection of a person has been breached by harassing or molesting the protected person.

AMENDMENT 53

42 The amendment adds a new subsection (1A) to proposed section 68C - Powers of Arrest. The new subsection makes it clear that an injunction granted under proposed section 68B is an injunction for personal protection only if it is expressed to be so. This addresses the concern that police may be required to interpret injunctions where the terms of the injunction are not entirely clear.

43 This amendment ensures that when a court issues an injunction for personal protection, it is expressed to be such an injunction and therefore provides greater certainty to the police as to their authority to arrest without warrant.

AMENDMENT 54

44 The amendment makes a minor drafting correction to replace the reference to Division in proposed subsection 68E(1) with “Subdivision”. The effect of this amendment is that Subdivision B - Determining the best interests of a child - of Division 10 applies to any proceedings under Part VII in which the best interests of the child are the paramount consideration.

AMENDMENT 55

45 The amendment inserts a reference to proposed new subsection 60G(2), which is inserted by amendment 16, into sub section 68R(2), and replaces the reference to Division with “Subdivision”. The effect of this amendment is that Subdivision B - Determining the best interests of a child - of Division 10 applies to proceedings in which the Court is required to consider the best interests of the child.

AMENDMENT 56

46 The amendment provides that the requirement in subsection 68F(1) that the Court consider the matters set out in subsection 68F(2) in determining the best interests of the child is subject to proposed subsection 68F(3), to be inserted by amendment 59.

AMENDMENT 57

47 Proposed subsection 68F(2) sets out matters to be taken into account by the Court when it is determining the best interests of the child. The amendment makes it explicit that the reference in paragraph 68F(2)(e) to background includes any need to maintain a connection with the lifestyle, culture or traditions of Aboriginal peoples or Torres Strait Islanders. This will require the Court, where it is relevant, to consider whether there is any such connection, and whether there is a need to maintain it, as one of the factors to be considered in determining the best interests of the child.

AMENDMENT 58

48 Proposed paragraph 68F(2)(f) deals with the need to protect the child from physical or psychological harm caused by being subjected or exposed to abuse, ill-treatment, violence or other behaviour. Subparagraph 68F(2)(f)(ii) is amended to remove the requirement that the child be physically present while a third person is subjected or exposed to such behaviour.

AMENDMENT 59

49 The amendment inserts two new subsections into proposed section 68F. New subsection 68F(3) complements the removal of the exclusion of consent orders from the references to the best interests of the child being the paramount consideration. The new subsection provides the court with a discretion, in the case of consent orders, so that it may, but is not required to, consider all the matters set out in subsection 68F(2). As consent orders are made on the basis of agreement between the parents, the new subsection provides a balance which allows consideration of all relevant matters by the Court in determining the best interests of the child, while ensuring that the Court is not required to undertake extensive enquiries where it is satisfied on the material before it that the orders sought to be made by consent are in the child's best interests.

50 New subsection 68F(4) provides a definition of Aboriginal peoples, and of Torres Strait Islanders, for the purpose of the reference to them included by amendment 57.

AMENDMENT 60

51 This amendment implements the Government's acceptance of recommendation 4 of the Second Report of the Senate Legal and Constitutional Legislation Committee that proposed section 68K be redrafted to express in positive terms that the court, in making an order, must have regard to safeguards to avoid exposure to family violence. The new section strengthens the requirement upon the Family Court to make orders which are consistent with any family violence orders, while ensuring that the terms of its orders do not expose people to family violence.

52 New subsection 68K(2) makes it explicit that the court, in ensuring that there is not an unacceptable risk of family violence, may include in the order safeguards (for example requirements for supervision of handover and contact visits) to protect those affected by the order.

AMENDMENT 61

53 The amendment also replaces the term “special purpose order” with “specific issues order” as explained in respect of amendments 2 - 4 above.

AMENDMENT 62

54 The amendment inserts into the note to section 68N, which refers to other sections which deal with family violence and family violence orders, a reference to paragraph 65F(2)(b), as a result of the reference to circumstances of family violence inserted into that paragraph by amendment 34.

AMENDMENTS 63 - 64

55 These amendments also replace the term “special purpose order” with “specific issues order” as explained in respect of amendments 2 - 4 above.

AMENDMENT 65

56 Proposed section 69D allows for the institution on behalf of the child of maintenance proceedings by persons holding or acting in specified offices. The amendment is consequential upon the amendment to proposed section 66S which makes it clear that the proceedings may be with respect to the maintenance of a child rather than proceedings for a child maintenance order. The amendment makes it clear that an authorised authority or person will be able to enforce an existing maintenance order on behalf of a child.

AMENDMENT 66

57 This amendment replaces proposed Division 12, Subdivision D - Presumptions of parentage with a new Subdivision D. The amendments implement decisions of the Standing Committee of Attorneys General to enact uniform presumptions of parentage in State, Territory and Commonwealth legislation, to provide for greater consistency across jurisdictions and to avoid forum shopping.

58 Proposed section 69P continues the existing presumptions arising from marriage, with certain minor amendments. The new subsection 69P(1) provides that where a child is born to a woman while she is married, the child is presumed to be a child of the woman and her husband.

59 New subsection 69P(2) provides that where a child is born to a woman within 44 weeks after a marriage, to which the woman is a party, is terminated by death or a purported marriage to which the woman is a party is annulled, the child is presumed to be a child of the marriage. The period of 44 weeks has been substituted for the period of 10 months (which is approximately 43 weeks).

60 New subsection 69P(3) deals with the situation where cohabitation is resumed temporarily after separation. It provides that where the parties to a marriage have separated and have resumed cohabitation on one occasion, separating again within 3 months and then living separately and apart, and a child is born to the woman within

44 weeks after the period of cohabitation, but after the dissolution of the marriage, the child is presumed to be a child of the woman and her husband.

61 Proposed section 69Q presumes a child born to a woman to be the child of a man with whom the woman cohabited at any time during the period between 44 weeks and 20 weeks before the birth. The new section will attribute parentage on the basis of biological requirements rather than the duration of the relationship between the mother and the putative father, with the presumption arising from cohabitation during the time when conception is most likely to occur.

62 Proposed section 69R continues the existing presumption arising from the entry of a person's name as a parent of a child in a register of births or parentage information kept under the law of the Commonwealth, a State, a Territory or a prescribed overseas jurisdiction. There are no overseas jurisdictions currently prescribed.

63 Proposed section 69S deals with presumptions arising from findings made by courts of the Commonwealth, a State or Territory or a prescribed overseas jurisdiction. Proposed subsection 69S(1) provides for a conclusive presumption arising from an finding of a court that a person is a parent of a particular child, or a finding that could not have been made unless the person was a parent of a particular child, if made during that person's lifetime. The presumption arises only if the finding has not been altered, set aside or reversed. This provision is designed to prevent forum shopping, as the court which dealt with the issue is the appropriate one in which such a finding should be reconsidered, if appropriate.

64 Proposed subsection 69S(2) provides for a rebuttable presumption based on an express finding of a court that a person was a parent of a particular child, or a finding that could not have been made unless the person was a parent of the particular child, made after that person's death. The presumption arises only if the finding has not been altered, set aside or reversed.

65 Proposed section 69T continues the existing presumption whereby if, under a law of the Commonwealth, a law of a State or a Territory or a prescribed overseas jurisdiction, a man has executed an instrument acknowledging that he is the father of a child, the man is presumed to be the father of the child, provided the instrument has not been annulled or otherwise set aside.

66 Proposed section 69U allows for the rebuttal of a presumption on the balance of probabilities. Where 2 or more presumptions arise in any proceedings, and are not rebutted, proposed subsection 69U(2) provides that the presumption that appears to the court to be the more or most likely prevails. Proposed subsection 69U(3) excludes a presumption arising under subsection 69S(1), which provides for a conclusive presumption arising from a finding of a court during a person's lifetime, from the operation of section 69U.

AMENDMENTS 67 - 68

67 These amendments also replace the term "special purpose order" with "specific issues order" as explained in respect of amendments 2 - 4 above.

AMENDMENT 69

68 The amendment inserts new section 69ZDA in proposed Subdivision E of Division 12. The new section provides for regulations to be made providing for parentage testing for the purposes of Australia's obligations under reciprocal maintenance arrangements with certain overseas countries or under the multilateral United Nations Convention on the Recovery Abroad of Maintenance.

69 Regulations could be made under the provision to enable an Australian court may make an order requiring parentage testing procedures to be carried out at the request of a court or authority in a foreign country or the Secretary of the Attorney-General's Department or a person authorised by the Secretary. The regulations will also be able to make provision for the carrying out of parentage testing procedures and the preparation of a report in relation to information obtained as a result of those procedures and for the admissibility in legal proceedings in Australia of a report resulting from a parentage testing procedure received from an authority in a foreign country.

AMENDMENTS 70 - 72

70 These amendments also replace the term "special purpose order" with "specific issues order" as explained in respect of amendments 2 - 4 above.

AMENDMENT 73

71 The amendment omits proposed section 70Q, which has been replaced by proposed section 65HA (see amendment 36).

AMENDMENTS 74 - 80

72 These amendments also replace the term "special purpose order" with "specific issues order" as explained in respect of amendments 2 - 4 above.

AMENDMENT 81

73 Section 112AD provides for the court to take action as it thinks appropriate where it is satisfied that a person has, without reasonable excuse, contravened an order under the Family Law Act. The amendment implements the Government's acceptance of recommendation 48 of the Joint Select Committee on Certain Aspects of the Operation and Interpretation of the Family Law Act, and provides that, in proceedings relating to non-compliance with a residence order, a contact order or a specific issues order, proof of reasonable excuse is a defence, with the onus of establishing such reasonable excuse on the balance of probabilities being with the defendant.

AMENDMENTS 82 - 83

74 These amendments also replace the term "special purpose order" with "specific issues order" as explained in respect of amendments 2 - 4 above.

AMENDMENT 84 - 86

75 The amendments insert a new clause 6A into Schedule 2. The new clause provides that the parentage presumptions contained in Division 7 of Part VII of the Family Law Act before enactment of the Family Law Reform Bill 1994 continue to apply in proceedings commenced before the commencement of the amendments to Part VII contained in this Bill. This ensures that the applicable presumptions, and therefore issues relating to whether or not evidence of parentage is necessary, do not change while the proceedings are underway. Subclause 7(1) and the table at the end of clause 7 are also amended to give effect to this transitional provision.

NOTES RELATING TO SECTION HEADINGS

76 The notes set out amendments to section headings which are required as a consequence of the preceding amendments.