



Family Law Amendment Act 1987

No. 181 of 1987

TABLE OF PROVISIONS

PART I—PRELIMINARY

Section

1. Short title
2. Commencement
3. Principal Act

PART II—AMENDMENTS OF THE FAMILY LAW ACT 1975

4. Title
5. Interpretation
6. Repeal of sections 5 and 5A
7. Transitional
8. Repeal of section 10
9. Conciliation
10. Notice seeking counselling
11. Advice as to counselling
12. Conciliation counselling
13. Provision of certain documents
14. Original jurisdiction of Family Court
15. Delegation of powers to Registrars
16. Jurisdiction in matrimonial causes
17. Jurisdiction of Family Court
18. Principles to be applied by courts
19. Institution of proceedings
20. Transfer of proceedings from court of summary jurisdiction in certain cases
21. When decree becomes absolute
22. Insertion of new section:
55A. Decree absolute where children
23. Heading to Part VII
24. Repeal of sections 60, 60A and 61 and insertion of Divisions, heading and sections:

TABLE OF PROVISIONS—*continued*

Section

Division 1—General

- 60. Interpretation
- 60A. Certain children are children of marriage etc.
- 60B. Children born as a result of artificial conception procedures
- 60C. Application of Part in relation to void marriages
- 60D. Welfare of child to be paramount consideration

Division 2—Extension, application and additional operation of Part

- 60E. Extension and application of Part
- 60F. Additional application of Part
- 60G. Additional jurisdiction of courts
- 60H. Child welfare laws not affected

Division 3—Counselling

- 61. Notice seeking court counselling
 - 61A. Court counselling facilities to be made available
 - 61B. Conciliation counselling
 - 61C. Provision of certain documents
25. Repeal of section and insertion of Division, heading and sections:

Division 4—Jurisdiction of Courts

- 63. Jurisdiction of courts under Part
- 63A. Certain proceedings to be instituted only under Part
- 63B. Child to be present in Australia etc.
- 63C. Persons who may institute proceedings under Act
- 63D. Transfer of proceedings from courts of summary jurisdiction in certain cases

Division 5—Custody and guardianship of children

- 63E. Custody and guardianship
 - 63F. Rights of custody and guardianship of children
26. Powers of court
27. Separate representation of child
28. Insertion of Divisions and heading:

Division 6—Maintenance of children

- 66A. Objects of Division
- 66B. Duty of parents to maintain their children
- 66C. Approach to be adopted in child maintenance proceedings
- 66D. Matters to be taken into account in considering financial support necessary for maintenance of child
- 66E. Matters to be taken into account in determining contribution that should be made by party etc.
- 66F. Powers of court in child maintenance proceedings
- 66G. Step-parents to assist in maintenance of step-children in certain circumstances etc.
- 66H. Children who have attained 18 years of age
- 66J. General powers of court
- 66K. Urgent maintenance orders
- 66L. Specification in orders of payments etc. for child maintenance purposes
- 66M. Cessation of orders
- 66N. Modification of maintenance orders

TABLE OF PROVISIONS—*continued*

Section

Division 7—Presumptions of parentage

- 66P. Presumptions of parentage arising from marriage
- 66Q. Presumption of paternity arising from cohabitation
- 66R. Presumption of parentage arising from registration of birth
- 66S. Presumptions of parentage arising from findings of courts
- 66T. Presumption of paternity arising from acknowledgements
- 66U. Rebuttal of presumptions etc.

Division 8—Parentage evidence

- 66V. Evidence of parentage
- 66W. Medical procedures to determine parentage

Division 9—Child bearing expenses

- 66X. Father liable to contribute towards maintenance and expenses of mother
- 66Y. Matters to be taken into account in proceedings under Division
- 66Z. Powers of court in proceedings under Division
- 66ZA. Urgent orders
- 66ZB. Time limit for institution of proceedings

Division 10—Child agreements

- 66ZC. Registration of child agreements
- 66ZD. Child welfare provisions of registered child agreements
- 66ZE. Setting aside of registered child agreements

Division 11—State, Territory and overseas custody orders

- 29. Registration of State and Territory custody orders
- 30. Overseas custody orders
- 31. Insertion of heading:

Division 12—Enforcement of custody and access orders

- 32. Interfering with child subject to custody order
- 33. Certain children not to be taken out of Australia
- 34. Obligation of owners of vessels etc.
- 35. Insertion of Divisions:

Division 13—Injunctions

- 70C. Injunctions
- 70D. Powers of arrest

Division 14—Miscellaneous

- 70E. Institution of maintenance proceedings by authorised authority or person
- 36. Heading to Part VIII
- 37. Repeal of section 73
- 38. Power of court in spousal maintenance proceedings
- 39. Matters to be taken into consideration in relation to spousal maintenance
- 40. Repeal of section 76
- 41. Urgent spousal maintenance cases
- 42. Insertion of new section:
 - 77A. Specification in orders of payments etc. for spouse maintenance purposes
- 43. General powers of court
- 44. Cessation of spousal maintenance orders
- 45. Modification of spousal maintenance orders
- 46. Registered maintenance agreements

TABLE OF PROVISIONS—*continued*

Section

- 47. Operation of maintenance agreements entered into in substitution for rights under Act
- 48. Insertion of new section:
 - 87A. Specification in maintenance agreements of payments etc. for maintenance purposes
- 49. Institution of spousal maintenance proceedings by authority or person
- 50. Certain instruments not liable to duty
- 51. Intervention by other persons
- 52. Proceedings in absence of parties
- 53. Repeal of sections 99 and 99A
- 54. Repeal of section 102 and substitution of section:
 - 102. Proof of birth, parentage, death or marriage
- 55. Persons not to be imprisoned for failure to comply with certain orders
- 56. Inter-State enforcement of child bearing expenses orders
- 57. Overseas enforcement of maintenance orders etc.
- 58. Injunctions
- 59. Powers of arrest
- 60. Operation of State and Territory laws
- 61. Offers of settlement
- 62. Regulations
- 63. Formal amendments

PART III—TRANSITIONAL AND APPLICATION PROVISIONS

- 64. Application of relief from time limits applying in relation to institution of certain proceedings
- 65. Transitional provision in relation to section 46 of Family Law Act
- 66. Application of certain provisions in relation to children born before commencement of Act
- 67. Application of specification requirements in orders and agreements
- 68. Savings provisions in relation to injunctions

SCHEDULE

FORMAL AMENDMENTS



Family Law Amendment Act 1987

No. 181 of 1987

An Act to amend the *Family Law Act 1975*, and for related purposes

[Assented to 26 December 1987]

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Family Law Amendment Act 1987*.

Commencement

2. This Act shall come into operation on a day to be fixed by Proclamation.

Principal Act

3. In this Act, "Principal Act" means the *Family Law Act 1975*¹.

PART II—AMENDMENTS OF THE FAMILY LAW ACT 1975

Title

4. The title to the Principal Act is amended by inserting “and otherwise” after “thereto”.

Interpretation

5. Section 4 of the Principal Act is amended:

- (a) by omitting “subsection” from the definition of “financial or custodial proceedings” in subsection (1) and substituting “subsection or under Part VII”;
- (b) by omitting paragraphs (cb) to (ch) (inclusive) of the definition of “matrimonial cause” in subsection (1);
- (c) by omitting from paragraph (eb) of the definition of “matrimonial cause” in subsection (1) “(cb), (cc), (cd) or (ce)”;
- (d) by omitting from subsection (1) the definitions of “adopted” and “guardian”;
- (e) by inserting in subsection (1) the following definitions in their respective appropriate alphabetical positions (determined on a letter-by-letter basis):

“‘child of a marriage’ includes a child who is, under subsection 60A (1) or (2), a child of a marriage, but does not include a child who has, under subsection 60A (3), ceased to be a child of a marriage;

‘income tested pension, allowance or benefit’ means a pension, allowance or benefit prescribed, or included in a class of pensions, allowances or benefits prescribed, for the purposes of this definition;

‘police officer’ means:

- (a) a member or special member of the Australian Federal Police; or
- (b) a member, however described, of the police force of a State or Territory;

‘this Act’ includes the regulations and Rules of Court;”;

- (f) by omitting subsections (3) and (4).

Repeal of sections 5 and 5A

6. Sections 5 and 5A of the Principal Act are repealed.

Transitional

7. Section 9 of the Principal Act is amended by omitting from paragraphs (7) (b) and (7A) (a) and (b) “63” (wherever occurring) and substituting “55A”.

Repeal of section 10

8. Section 10 of the Principal Act is repealed.

Conciliation

9. Section 14 of the Principal Act is amended:

- (a) by omitting from subsection (4) “the children of the marriage” and substituting “their children”; and
- (b) by omitting from subsection (5) “and to any child of the marriage” and substituting “or to any of their children”.

Notice seeking counselling

10. Section 15 of the Principal Act is amended by omitting from subsection (2) “and to the children of the marriage” and substituting “or to any of their children”.

Advice as to counselling

11. Section 16 of the Principal Act is amended by omitting from subsection (2) “, or a child of, a marriage, or any party to” and substituting “a marriage, or to”.

Conciliation counselling

12. Section 16A of the Principal Act is amended:

- (a) by omitting from paragraph (a) “children of marriages” and substituting “their children”; and
- (b) by adding at the end the following subsection:
 - “(2) Subsection (1) does not apply in relation to:
 - (a) a court exercising jurisdiction under Part VII; or
 - (b) proceedings under Part VII.”.

Provision of certain documents

13. Section 17 of the Principal Act is amended:

- (a) by inserting “(other than under Part VII)” after “Act”; and
- (b) by omitting from paragraph (a) “the children of the marriage” and substituting “children whose welfare is likely to be affected by the proceedings”.

Original jurisdiction of Family Court

14. Section 31 of the Principal Act is amended by omitting subparagraphs (1) (c) (ii) and (iii).

Delegation of powers to Registrars

15. Section 37A of the Principal Act is amended by inserting in subparagraph (1) (f) (i) “66K, 66ZA or” after “section”.

Jurisdiction in matrimonial causes

16. Section 39 of the Principal Act is amended:

(a) by omitting paragraphs (4) (a), (b) and (c) and substituting the following paragraphs:

“(a) in the case of proceedings between the parties to a marriage or proceedings of a kind referred to in paragraph (b) of that definition in relation to a marriage—either party to the marriage is an Australian citizen, is ordinarily resident in Australia, or is present in Australia, at the relevant date; and

(b) in any other case—any party to the proceedings is an Australian citizen, is ordinarily resident in Australia, or is present in Australia, at the relevant date.”; and

(b) by omitting paragraphs (5) (c) and (6) (c).

Jurisdiction of Family Court

17. Section 40 of the Principal Act is amended by adding at the end the following subsection:

“(8) This section does not apply in relation to proceedings under Part VII.”.

Principles to be applied by courts

18. Section 43 of the Principal Act is amended:

(a) by omitting “or any other Act”; and

(b) by omitting from paragraph (d) “the children of the marriage” and substituting “their children”.

Institution of proceedings

19. Section 44 of the Principal Act is amended by omitting subsection (4) and substituting the following subsection:

“(4) The court shall not grant leave under subsection (3) or (3A) unless it is satisfied:

(a) that hardship would be caused to a party to the relevant marriage or a child if leave were not granted; or

(b) in the case of proceedings in relation to the maintenance of a party to a marriage—that, at the end of the period within which the proceedings could have been instituted without the leave of the court, the circumstances of the applicant were such that the applicant would have been unable to support himself or herself without an income tested pension, allowance or benefit.”.

Transfer of proceedings from court of summary jurisdiction in certain cases

20. Section 46 of the Principal Act is amended:

(a) by omitting subsection (1) and substituting the following subsection:

“(1) Where proceedings are instituted in a court of summary jurisdiction in relation to property of a value exceeding the amount in relation to which the court has jurisdiction in an action for the recovery of a debt and the respondent, in answer to the application by which the proceedings are instituted, seeks an order different from that sought in the application:

- (a) the court shall, before proceeding to hear and determine the proceedings, inform the parties that, unless each of them consents to the court hearing and determining the proceedings, the court is required to transfer the proceedings to the Family Court or to the Supreme Court of a State or Territory; and
- (b) unless the parties consent to the court hearing and determining the proceedings—the court shall transfer the proceedings to the Family Court or to the Supreme Court of a State or Territory.”; and

(b) by omitting from subsection (3) “, including an order under section 62,”.

When decree becomes absolute

21. Section 55 of the Principal Act is amended by omitting from subsection (1) and subparagraph (5) (a) (ii) “63” and substituting “55A”.

22. After section 55 of the Principal Act the following section is inserted:

Decree absolute where children

“55A. (1) A decree *nisi* of dissolution of marriage does not become absolute unless the court has, by order, declared that it is satisfied:

- (a) that there are no children of the marriage who have not attained 18 years of age; or
- (b) that the only children of the marriage who have not attained 18 years of age are the children specified in the order and that:
 - (i) proper arrangements in all the circumstances have been made for the welfare of those children; or
 - (ii) there are circumstances by reason of which the decree *nisi* should become absolute even though the court is not satisfied that such arrangements have been made.

“(2) Where, in proceedings for a decree of dissolution of marriage, the court doubts whether the arrangements made for the welfare of a child of the marriage are proper in all the circumstances, the court may adjourn the proceedings until a report has been obtained from a court counsellor or welfare officer regarding those arrangements.

“(3) For the purposes of this section, a child (including an ex-nuptial child of either the husband or the wife, a child adopted by either of them or a child who is not a child of either of them) is a child of the marriage if the child was treated by the husband and wife as a child of their family at the relevant time.

“(4) For the purposes of subsection (3), the relevant time is the time immediately before the time when the husband and wife separated or, if they have separated on more than one occasion, the time immediately before the time when they last separated before the institution of the proceedings in which the decree *nisi* of dissolution of marriage was made.”.

Heading to Part VII

23. The heading to Part VII of the Principal Act is omitted and the following heading is substituted:

“PART VII—CHILDREN”.

24. Sections 60, 60A and 61 of the Principal Act are repealed and the following Divisions, heading and sections are substituted:

“Division 1—General

Interpretation

“60. In this Part, unless the contrary intention appears:

‘adopted’, in relation to a child, means adopted under the law of any place (whether in or out of Australia) relating to the adoption of children;

‘artificial conception procedure’ includes:

- (a) artificial insemination; and
- (b) the implantation of an embryo in the body of a woman;

‘birth’ includes stillbirth;

‘child’ includes an adopted child and a stillborn child;

‘child agreement’ means an agreement:

- (a) that is in writing;
- (b) that is made (whether before or after the commencement of this section and whether within or outside Australia) between the parents of a child (whether or not there are other parties to the agreement); and
- (c) that makes provision in relation to child welfare matters in relation to the child (whether or not it also makes provision in relation to other matters);

and includes such an agreement that varies an earlier child agreement;

‘childbirth maintenance period’, in relation to the birth of a child, means the period:

- (a) commencing:
 - (i) in a case where the mother:

Family Law Amendment No. 181, 1987

- (A) works in paid employment;
- (B) is advised by a medical practitioner to stop working for medical reasons related to her pregnancy; and
- (C) stops working after being so advised and more than 2 months before the child is due to be born;

on the day on which she stops working;

- (ii) in any other case—2 months before the child is due to be born; and

- (b) ending 3 months after the child's birth;

'child welfare law' means a law of a State or Territory prescribed, or included in a class of laws of a State or Territory prescribed, for the purposes of this definition;

'child welfare matters' means matters in relation to the custody, guardianship or welfare of, or access to, a child, but does not include matters in relation to the maintenance of a child;

'education' includes apprenticeship or vocational training;

'guardian', in relation to a child, includes a person who has been granted (whether alone or jointly with another person or other persons) guardianship of the child under:

- (a) this Act or another law of the Commonwealth; or
- (b) the law of a State or Territory;

'medical expenses' includes medical, surgical, dental, diagnostic, hospital, nursing, pharmaceutical and physiotherapy expenses;

'medical practitioner' means a person registered or licensed as a medical practitioner under a law of a State or Territory that provides for the registration or licensing of medical practitioners;

'overseas custody order' means an order made by a court of a prescribed overseas jurisdiction that is:

- (a) an order the effect of which is to grant to a person:
 - (i) the right to custody of a child who has not attained 18 years of age; or
 - (ii) a right of access to a child who has not attained 18 years of age;

whether or not the order also has the effect of granting to the person, or to another person, other rights and responsibilities; or

- (b) an order varying or discharging an order of the kind referred to in paragraph (a), including an order of that kind made under this Act;

'parent', in relation to a child who has been adopted, means an adoptive parent of the child;

'parentage testing procedure' means a medical procedure prescribed, or included in a class of medical procedures prescribed, for the purposes of this definition;

'step-parent', in relation to a child, means a person who:

- (a) is not a parent of the child;
- (b) is or has been married to a parent of the child; and
- (c) treats, or at any time during the marriage treated, the child as a member of the family formed with the parent.

Certain children are children of marriage etc.

"60A. (1) A reference in this Act to a child of a marriage includes, subject to subsection (3), a reference to each of the following children:

- (a) a child adopted since the marriage by the husband and wife or by either of them with the consent of the other;
- (b) a child of the husband and wife born before the marriage;
- (c) a child who is, under subsection 60B (1), the child of the husband and wife.

"(2) A reference in this Act to a child of a marriage includes a reference to a child of:

- (a) a marriage that has been dissolved or annulled, in Australia or elsewhere; or
- (b) a marriage that has been terminated by the death of one party to the marriage.

"(3) A child of a marriage who is adopted by a person who is not a party to the marriage ceases to be a child of the marriage for the purposes of this Act.

Children born as a result of artificial conception procedures

"60B. (1) Where:

- (a) a child is born to a woman as a result of the carrying out of an artificial conception procedure while the woman was married to a man; and
- (b) either of the following paragraphs apply:
 - (i) the procedure was carried out with their consent;
 - (ii) under a prescribed law of the Commonwealth or of a State or Territory, the child is a child of the woman and of the man;

then, whether or not the child is biologically a child of the woman and of the man, the child is their child.

"(2) Where:

- (a) a child is born to a woman as a result of the carrying out of an artificial conception procedure; and
- (b) under a prescribed law of the Commonwealth or of a State or Territory, the child is a child of the woman;

then, whether or not the child is biologically a child of the woman, the child is her child.

“(3) Where:

- (a) a child is born to a woman as a result of the carrying out of an artificial conception procedure; and
- (b) under a prescribed law of the Commonwealth or of a State or Territory, the child is a child of a man;

then, whether or not the child is biologically a child of the man, the child is his child.

“(4) Where a person lives with another person as the husband or wife of the first-mentioned person on a *bona fide* domestic basis although not legally married to that person, subsection (1) applies in relation to them as if:

- (a) they were married to each other; and
- (b) neither person were married to any other person.

“(5) For the purposes of subsection (1), a person shall be presumed to have consented to an artificial conception procedure being carried out unless it is proved, on the balance of probabilities, that the person did not consent.

Application of Part in relation to void marriages

“60C. This Part applies in relation to a purported marriage that is void as if:

- (a) the purported marriage were a marriage; and
- (b) the parties to the purported marriage were husband and wife.

Welfare of child to be paramount consideration

“60D. In proceedings under this Part in relation to a child, the court shall regard the welfare of the child as the paramount consideration.

“Division 2—Extension, application and additional operation of Part

Extension and application of Part

“60E. (1) Subject to subsections (4) and (5), this Part extends to New South Wales, Victoria, South Australia and Tasmania.

“(2) If:

- (a) the Parliament of Queensland or Western Australia refers to the Parliament of the Commonwealth the following matters or matters that include, or are included in, the following matters:

- (i) the maintenance of children and the payment of expenses in relation to children or child bearing;
- (ii) the custody and guardianship of, and access to, children; or

- (b) Queensland or Western Australia adopts this Part;

then, subject to subsections (4) and (5), this Part also extends to Queensland or Western Australia, as the case may be.

Family Law Amendment No. 181, 1987

“(3) This Part applies in and in relation to the Territories.

“(4) This Part extends to a State by virtue of subsection (1) or (2) only for so long as there is in force:

(a) an Act of the Parliament of the State by which there is referred to the Parliament of the Commonwealth:

(i) the matters referred to in subparagraphs (2) (a) (i) and (ii);
or

(ii) matters that include, or are included in, those matters; or

(b) a law of the State adopting this Part.

“(5) This Part extends to a State at any time by virtue of subsection (1) or paragraph (2) (a) only in so far as it makes provision with respect to:

(a) the matters that are at that time referred to the Parliament of the Commonwealth by the Parliament of the State; or

(b) matters incidental to the execution of any power vested by the Constitution in the Parliament of the Commonwealth in relation to those matters.

Additional application of Part

“60F. (1) Without prejudice to its effect apart from this section, this Part also has effect as provided by this section.

“(2) By virtue of this subsection, Divisions 3 to 6 (inclusive) (other than section 66G) and Divisions 10 and 13 have the effect that they would have if:

(a) each reference to a child were, by express provision, confined to a child of a marriage; and

(b) each reference to the parents of the child were, by express provision, confined to the parties to the marriage;

and have that effect only in so far as they make provision with respect to the rights and duties of the parties to the marriage in relation to the child, including, without limiting the generality of the foregoing, provision with respect to:

(c) the rights and duties of those parties in relation to:

(i) the maintenance of the child and the payment of expenses in relation to the child; or

(ii) the custody, guardianship and welfare of, and access to, the child; and

(d) other rights and duties in relation to the child:

(i) arising out of the marital relationship;

(ii) in relation to concurrent, pending or completed proceedings between those parties for principal relief; or

(iii) in relation to the dissolution or annulment of that marriage or the legal separation of the parties to that marriage, being

Family Law Amendment No. 181, 1987

a dissolution, annulment or legal separation effected in accordance with the law of an overseas jurisdiction, where the dissolution, annulment or legal separation is recognised as valid in Australia under section 104.

“(3) By virtue of this subsection, Divisions 1, 7, 8, 11, 12 and 14, and this Division, have effect according to their tenor.

Additional jurisdiction of courts

“60G. In addition to the jurisdiction that, apart from this section, is invested in or conferred on a court under this Part, the court is invested with jurisdiction or jurisdiction is conferred on the court, as the case requires, in matters arising between residents of different States, being matters with respect to:

- (a) the maintenance of children and the payment of expenses in relation to children or child bearing; or
- (b) the custody, guardianship and welfare of, and access to, children.

Child welfare laws not affected

“60H. (1) A court having jurisdiction under this Act shall not make an order under this Act in relation to a child who is in the custody of, or under the guardianship, care and control or supervision of, a person under a child welfare law unless the order is expressed to come into effect when the child ceases to be in such custody or under such guardianship, care and control or supervision, as the case may be.

“(2) Nothing in this Act, and no decree made under this Act, affects:

- (a) the jurisdiction of a court, or the power of an authority, under a child welfare law to make an order, or to take any other action, by which a child is placed in the custody of, or under the guardianship, care and control or supervision of, a person;
- (b) any such order made or action taken;
- (c) the jurisdiction of a court under a child welfare law to make an order in relation to the maintenance of the child;
- (d) an order of the kind referred to in paragraph (c); and
- (e) the operation in relation to the child of a child welfare law.

“(3) Where it appears to a court having jurisdiction under this Act that another court or an authority proposes to make an order, or to take any other action, of the kind referred to in paragraph (2) (a) in relation to a child, the first-mentioned court may adjourn any proceedings before it that relate to the child.

“Division 3—Counselling

Notice seeking court counselling

“61. (1) A party to proceedings under this Part, or a person representing a child under an order made under section 65, may file in the Family Court

or a Family Court of a State a notice stating that he or she wishes to have the assistance of the counselling facilities of that Court.

“(2) On the filing of the notice, the Principal Director of Court Counselling of the Family Court or an appropriate officer of the Family Court of the State, as the case may be, shall arrange for parties to the proceedings (with or without the child) to be interviewed by a court counsellor or welfare officer:

- (a) to discuss the welfare of the child; and
- (b) if there are differences between the parties in relation to matters affecting the welfare of the child, to endeavour to resolve those differences.

Court counselling facilities to be made available

“61A. (1) A parent of a child, a child or a party to proceedings under this Part may seek the assistance of the counselling facilities of the Family Court or a Family Court of a State.

“(2) The Principal Director of Court Counselling of the Family Court or an appropriate officer of the Family Court of the State, as the case may be, shall, as far as practicable, make those facilities available.

Conciliation counselling

“61B. The Family Court and any other court exercising jurisdiction under this Part, and any legal practitioner acting in proceedings under this Part or consulted by a person who is considering instituting proceedings under this Part, shall have regard to the need to direct the attention of parties to such proceedings, and persons considering such proceedings:

- (a) to the facilities provided by courts exercising jurisdiction under this Part for counselling to assist children and parties to adjust to the consequences of orders under this Part; and
- (b) to the procedures available for the resolution by conciliation of matters arising in the proceedings.

Provision of certain documents

“61C. The Rules of Court shall provide for the furnishing to a person proposing to institute proceedings under this Part in relation to a child, and in appropriate cases to any other person who may be interested in the welfare of the child, of documents setting out:

- (a) the legal and possible social effects of the proposed proceedings; and
- (b) the counselling and welfare facilities available within the Family Court and elsewhere.”.

25. Section 63 of the Principal Act is repealed and the following Division, heading and sections are substituted:

“Division 4—Jurisdiction of Courts

Jurisdiction of courts under Part

“63. (1) Jurisdiction is conferred on the Family Court and, subject to subsection (7), the Supreme Court of the Northern Territory, and each Family Court of a State is invested with federal jurisdiction in relation to matters arising under this Part (including proceedings under sections 70C and 70D).

“(2) Subject to subsections (5) and (7), each court of summary jurisdiction of each State is invested with federal jurisdiction, and jurisdiction is conferred on each court of summary jurisdiction of each Territory, in relation to matters arising under this Part (including proceedings under sections 70C and 70D).

“(3) The Governor-General may, by Proclamation, fix a day as the day on and after which proceedings in relation to matters arising under this Part (including proceedings under sections 70C and 70D) may not be instituted in, or transferred to, a court of summary jurisdiction in a specified State or Territory.

“(4) A Proclamation under subsection (3) may be expressed to apply only in relation to:

- (a) proceedings of specified classes; or
- (b) the institution of proceedings in, or the transfer of proceedings to, a court of summary jurisdiction in a specified part of a State or Territory.

“(5) A court of summary jurisdiction shall not hear or determine proceedings under this Part otherwise than in accordance with any Proclamation in force under subsection (3).

“(6) The Governor-General may, by Proclamation, declare that a Proclamation made under subsection (3) is revoked on and from a specified day and, on and from the specified day, this Part (including subsection (3)) has effect as if the revoked Proclamation had not been made, but without prejudice to the effect of the revoked Proclamation in relation to the jurisdiction of courts before the specified day.

“(7) Jurisdiction in relation to a matter arising under this Part in relation to which a proceeding is instituted under this Part is not conferred on a court of a Territory unless at least one of the parties to the proceedings is, on the day of the institution of the proceedings or the day of the transfer of the proceedings to that court, ordinarily resident in the Territory.

“(8) The jurisdiction conferred on or invested in a court by this section includes jurisdiction in relation to matters arising under any law of the Commonwealth in relation to which proceedings are transferred to that court under this Act.

Family Law Amendment No. 181, 1987

“(9) The jurisdiction conferred on or invested in a court by this section is in addition to any jurisdiction conferred on or invested in the court apart from this section.

Certain proceedings to be instituted only under Part

“63A. Proceedings that may be instituted under this Part shall not, after the commencement of this section, be instituted otherwise than under this Part.

Child to be present in Australia etc.

“63B. (1) Proceedings may be instituted under this Act in relation to a child only if:

- (a) the child is present in Australia on the relevant day;
- (b) the child is an Australian citizen, or is ordinarily resident in Australia, on the relevant day;
- (c) a parent of the child is an Australian citizen, is ordinarily resident in Australia, or is present in Australia, on the relevant day;
- (d) a party to the proceedings is an Australian citizen, is ordinarily resident in Australia, or is present in Australia, on the relevant day; or
- (e) it would be in accordance with a treaty or arrangement in force between Australia and an overseas jurisdiction, or the common law rules of private international law, for the court to exercise jurisdiction in the proceedings.

“(2) In subsection (1), ‘relevant day’, in relation to proceedings, means:

- (a) if the application instituting the proceedings is filed in a court, the day on which the application is filed; or
- (b) in any other case—the day on which the application instituting the proceedings is made.

Persons who may institute proceedings under Act

“63C. (1) Proceedings under this Act in relation to a child may be instituted by:

- (a) either or both of the parents;
- (b) the child; or
- (c) any other person who has an interest in the welfare of the child.

“(2) Proceedings under Division 9 in relation to the mother of a child may be instituted by the mother.

Transfer of proceedings from courts of summary jurisdiction in certain cases

“63D. (1) Where:

- (a) proceedings in relation to the custody or guardianship of, or access to, a child are instituted in a court of summary jurisdiction; and

- (b) the respondent, in answer to the application by which the proceedings were instituted, seeks an order different from that sought in the application;

the court shall, before proceeding to hear and determine the proceedings, inform the parties that, unless each of them consents to the court hearing and determining the proceedings, the court is required to transfer the proceedings to the Family Court, a Family Court of a State or the Supreme Court of the Northern Territory.

“(2) If the parties do not consent to the court hearing and determining the proceedings, the court shall transfer the proceedings accordingly.

“(3) Before transferring the proceedings, the court may make such orders (including an order under subsection 62 (1)) as it considers necessary pending the disposal of the proceedings by the court to which they are transferred.

“(4) If the parties consent to the court hearing and determining the proceedings:

- (a) a party is not entitled, without the leave of the court, subsequently to object to the proceedings being heard and determined by the court; and
- (b) the court may nevertheless, of its own motion, transfer the proceedings to the Family Court, a Family Court of a State or the Supreme Court of the Northern Territory.

“(5) If the court subsequently gives leave to a party to object to the proceedings being heard and determined by the court, the court shall transfer the proceedings to the Family Court, a Family Court of a State or the Supreme Court of the Northern Territory.

“(6) Where proceedings are transferred to a court under this section, the court shall proceed as if the proceedings had been instituted in the court.

“(7) Failure by a court of summary jurisdiction to comply with this section in relation to proceedings does not invalidate any order made by the court in the proceedings.

“(8) Subsection (7) does not affect the duty of a court of summary jurisdiction to comply with this section.

“Division 5—Custody and guardianship of children

Custody and guardianship

“63E. (1) A person who is the guardian of a child under this Act has responsibility for the long-term welfare of the child and has, in relation to the child, all the powers, rights and duties that are, apart from this Act, vested by law or custom in the guardian of a child, other than:

- (a) the right to have the daily care and control of the child; and

- (b) the right and responsibility to make decisions concerning the daily care and control of the child.

“(2) A person who has or is granted custody of a child under this Act has:

- (a) the right to have the daily care and control of the child; and
- (b) the right and responsibility to make decisions concerning the daily care and control of the child.

“(3) The operation of subsection (1) or (2) in relation to a child may be varied by an order made in relation to the child by a court exercising jurisdiction under this Part.

“(4) An order made under this Act or the repealed Act:

- (a) that was in force immediately before the commencement of section 26 of the *Family Law Amendment Act 1983*; and
- (b) that granted to a person the care and control of a child;

has effect for the purposes of this Act as if it were an order granting to the person the custody of the child.

“(5) An order made under this Act or the repealed Act:

- (a) that was in force immediately before the commencement of section 26 of the *Family Law Amendment Act 1983*; and
- (b) that granted to a person the custody of a child;

has effect for the purposes of this Act:

- (c) in a case where, by that order or another order in force immediately before the commencement of that section, the care and control of the child had been granted to another person—as if the first-mentioned order were an order granting to the first-mentioned person the guardianship of the child; or
- (d) in any other case—as if the first-mentioned order were an order granting to the first-mentioned person the guardianship and the custody of the child.

Rights of custody and guardianship of children

“63F. (1) Subject to any order of a court for the time being in force (whether or not made under this Act and whether made before or after the commencement of this section), each of the parents of a child who has not attained 18 years of age is a guardian of the child, and the parents have the joint custody of the child.

“(2) An order shall not be made under this Part in relation to the custody or guardianship of, or access to, a child who has attained 18 years of age or is or has been married.

“(3) An order made under this Part in relation to the custody or guardianship of, or access to, a child ceases to be in force when the child attains 18 years of age or marries.

Family Law Amendment No. 181, 1987

“(4) An order made under this Part in relation to the custody or guardianship of, or access to, a child ceases to be in force if the child is adopted by a person who is not a parent of the child.

“(5) On the death of a parent in whose favour an order has been made under this Part for the custody of a child:

- (a) the other parent is entitled to the custody of the child only if the court so orders;
- (b) the other parent or another person may make an application to the court for an order placing the child in the custody of the applicant; and
- (c) in an application under paragraph (b) by a person who does not, at the time of the application, have the care and control of the child, any person who, at that time, has the care and control of the child is entitled to be a party to the proceedings.”.

Powers of court

26. Section 64 of the Principal Act is amended:

- (a) by omitting from subsections (1), (1B) and (2) “of a marriage”;
- (b) by omitting paragraph (1) (a);
- (c) by omitting from paragraph (1) (ba) “paragraphs (a) and (b)” and substituting “section 60D and paragraph (b) of this subsection”;
- (d) by omitting from paragraph (1) (c) “paragraphs (a),” and substituting “section 60D and paragraphs”;
- (e) by omitting from subsection (2) “party to the marriage” (wherever occurring) and substituting “parent”; and
- (f) by omitting from subsection (9) and (10) and paragraphs (11A) (b) and (11B) (b) “Act” and substituting “Part”.

Separate representation of child

27. Section 65 of the Principal Act is amended by omitting “of a marriage”.

28. After section 66 of the Principal Act the following Divisions and heading are inserted:

“Division 6—Maintenance of children

Objects of Division

“66A. (1) The principal object of this Division is to ensure that children receive a proper level of financial support from their parents.

“(2) Particular objects of this Division include ensuring:

- (a) that children have their proper needs met from reasonable and adequate shares in the income, earning capacity, property and financial resources of both of their parents; and
- (b) that parents share equitably in the support of their children.

Duty of parents to maintain their children

“66B. (1) The parents of a child have, subject to this Division, the primary duty to maintain the child.

“(2) Without limiting the generality of subsection (1), the duty of a parent to maintain a child:

- (a) is not of lower priority than the duty of the parent to maintain any other child or another person;
- (b) has priority over all commitments of the parent other than commitments necessary to enable the parent to support:
 - (i) himself or herself; and
 - (ii) any other child or another person that the parent has a duty to maintain; and
- (c) is not affected by:
 - (i) the duty of any other person to maintain the child; or
 - (ii) any entitlement of the child or another person to an income tested pension, allowance or benefit.

Approach to be adopted in child maintenance proceedings

“66C. In proceedings in relation to the maintenance of a child, the court shall:

- (a) consider the financial support necessary for the maintenance of the child; and
- (b) determine the financial contribution, or respective financial contributions, towards the financial support necessary for the maintenance of the child, that should be made by a party, or by parties, to the proceedings.

Matters to be taken into account in considering financial support necessary for maintenance of child

“66D. (1) In considering the financial support necessary for the maintenance of a child, the court shall take into account, in addition to the matters referred to in sections 60D and 66A, the following matters only:

- (a) the proper needs of the child;
- (b) the income, earning capacity, property and financial resources of the child.

“(2) In taking into account the proper needs of the child, the court shall have regard to:

- (a) the age of the child;
- (b) the manner in which the child is being, and in which the parents expected the child to be, educated or trained; and
- (c) any special needs of the child;

and may also have regard, to the extent to which it considers it appropriate in the circumstances of the case, to any relevant findings of published research in relation to the maintenance of children.

Family Law Amendment No. 181, 1987

“(3) In taking into account the income, earning capacity, property and financial resources of the child, the court shall:

- (a) have regard to the capacity of the child to earn or derive income, including any assets of, under the control of or held for the benefit of the child that do not produce, but are capable of producing, income; and
- (b) disregard:
 - (i) the income, earning capacity, property and financial resources of any other person unless, in the special circumstances of the case, the court considers it appropriate to have regard to them; or
 - (ii) any entitlement of the child or any other person to an income tested pension, allowance or benefit.

“(4) Subsections (2) and (3) shall not be taken to limit by implication the matters to which the court may have regard in taking into account the matters referred to in subsection (1).

Matters to be taken into account in determining contribution that should be made by party etc.

“66E. (1) In determining the financial contribution, or respective financial contributions, towards the financial support necessary for the maintenance of a child, that should be made by a party, or by parties, to the proceedings, the court shall take into account, in addition to the matters referred to in sections 60D, 66A and 66B, the following matters only:

- (a) the income, earning capacity, property and financial resources of the party or each of those parties;
- (b) the commitments of the party, or each of those parties, that are necessary to enable the party to support:
 - (i) himself or herself; or
 - (ii) any other child or another person that the person has a duty to maintain;
- (c) the direct and indirect costs incurred by the parent or other person who has the custody of the child in providing care for the child;
- (d) any special circumstances which, if not taken into account in the particular case, would result in injustice or undue hardship to any person.

“(2) In taking into account the income, earning capacity, property and financial resources of a party to the proceedings, the court shall have regard to the capacity of the party to earn and derive income, including any assets of, under the control of or held for the benefit of the party that do not produce, but are capable of producing, income.

“(3) In taking into account the direct and indirect costs incurred by the parent or other person who has custody of the child in providing care for the child, the court shall have regard to the income and earning capacity foregone by the parent or other person in providing that care.

Family Law Amendment No. 181, 1987

“(4) In determining the financial contribution, or respective financial contributions, that should be made by a party, or by parties, to the proceedings, the court shall disregard:

- (a) any entitlement of the child, or the person who has the custody of the child, to an income tested pension, allowance or benefit; and
- (b) the income, earning capacity, property and financial resources of any person who does not have a duty to maintain the child, or has such a duty but is not a party to the proceedings, unless, in the special circumstances of the case, the court considers it appropriate to have regard to them.

“(5) In determining the financial contribution, or respective financial contributions, that should be made by a party, or by parties, to the proceedings, the court shall consider the capacity of the party, or each of those parties, to provide maintenance by way of periodic payments before considering the capacity of the party, or each of those parties, to provide maintenance:

- (a) by way of lump sum payment;
- (b) by way of transfer or settlement of property; or
- (c) in any other way.

“(6) Subsections (2) to (5) (inclusive) shall not be taken to limit by implication the matters to which the court may have regard in taking into account matters referred to in subsection (1).

Powers of court in child maintenance proceedings

“66F. In proceedings in relation to the maintenance of a child, the court may, subject to this Division, make such order in relation to the maintenance of the child as is proper.

Step-parents to assist in maintenance of step-children in certain circumstances etc.

“66G. (1) The step-parent of a child has, subject to this Division, the duty of maintaining the child only if:

- (a) the step-parent:
 - (i) is a guardian of the child; or
 - (ii) has custody of the child under an order of a court (whether or not made under this Act and whether made before or after the commencement of this section); or
- (b) a court having jurisdiction under this Part, by order, determines that it is proper for the step-parent to have that duty.

“(2) In determining whether it is proper for a step-parent to have the duty of maintaining a step-child, the court shall take into account, in addition to the matters referred to in sections 60A, 66A and 66B, the following matters only:

- (a) the length and circumstances of the marriage to the relevant parent of the child;

- (b) the relationship that has existed between the step-parent and the child;
- (c) the arrangements that have existed for the maintenance of the child;
- (d) any special circumstances which, if not taken into account in the particular case, would result in injustice or undue hardship to any person.

“(3) Any duty of a step-parent to maintain a step-child:

- (a) is a secondary duty subject to the primary duty of the parents of the child to maintain the child; and
- (b) does not derogate from the primary duty of the parents to maintain the child.

“(4) In determining the financial contribution, or respective financial contributions, towards the financial support necessary for the maintenance of a child, that should be made by a party to the proceedings who is a step-parent of the child or by parties to the proceedings (one or more of whom is a step-parent of the child), the court shall take into account, in addition to the matters referred to in sections 60A, 66A, 66B and 66E, the extent to which the primary duty of the parents to maintain the child is being, and can be, fulfilled.

Children who have attained 18 years of age

“66H. (1) The court shall not make an order for the maintenance of a child who has attained 18 years of age unless the court is satisfied that the provision of the maintenance is necessary:

- (a) to enable the child to complete his or her education; or
- (b) because of a mental or physical disability of the child.

“(2) The court shall not make an order for the maintenance of a child for a period that extends beyond the day on which the child will attain 18 years of age unless the court is satisfied that the provision of the maintenance beyond that day is necessary:

- (a) to enable the child to complete his or her education; or
- (b) because of a mental or physical disability of the child.

“(3) An order for the maintenance of a child ceases to be in force on the day on which the child attains 18 years of age unless the order is expressed to continue in force for a period ending after that day.

General powers of court

“66J. (1) In exercising its powers under this Division, a court may do all or any of the following:

- (a) order payment of a lump sum, whether in one amount or by instalments;
- (b) order payment of a weekly, monthly, yearly or other periodic amount;

- (c) order that a specified transfer or settlement of property be made by way of maintenance for a child;
- (d) order that payment of an amount ordered to be paid be wholly or partly secured as the court specifies;
- (e) order that any necessary deed or instrument be executed, and that such documents of title be produced and such other things be done, as are necessary to enable an order to be carried out effectively or to provide security for the due performance of an order;
- (f) order that payment be made to a specified person or public authority or into court;
- (g) make a permanent order, an order pending the disposal of proceedings, an order for a fixed period, an order until a child attains a specified age or until further order;
- (h) make an order imposing terms and conditions;
- (j) make an order by consent;
- (k) make any other order (whether or not of the same nature as those referred to in paragraphs (a) to (j) (inclusive)) that it considers appropriate;
- (m) make an order under this Division at any time.

“(2) The making of an order of a kind referred to in paragraph (1) (c), or of any other order under this Division, in relation to the maintenance of a child does not prevent a court from making a subsequent order in relation to the maintenance of the child.

“(3) The Rules of Court may make provision with respect to the making of orders under this Division (whether as to their form or otherwise) for the purpose of facilitating their enforcement and the collection of maintenance payable under them.

Urgent maintenance orders

“66K. Where, in proceedings in relation to the maintenance of a child:

- (a) the court is of the opinion that the child is in immediate need of financial assistance; but
- (b) it is not practicable in the circumstances to determine immediately what order (if any) should be made;

the court may order the payment, pending the disposal of the proceedings, of such periodic or other amount as the court considers appropriate.

Specification in orders of payments etc. for child maintenance purposes

“66L. (1) Where:

- (a) a court makes an order under this Act (whether or not the order is made in proceedings in relation to the maintenance of a child, is made by consent or varies an earlier order), and the order has the effect of requiring:
 - (i) payment of a lump sum, whether in one amount or by instalments; or

Family Law Amendment No. 181, 1987

- (ii) the transfer or settlement of property; and
- (b) the purpose, or one of the purposes, of the payment, transfer or settlement is to make provision for the maintenance of a child or children;

the court shall:

- (c) express the order to be an order to which this section applies; and
- (d) specify:
 - (i) the child or children for whose maintenance provision is made by the payment, transfer or settlement; and
 - (ii) the portion of the payment, or the value of the portion of the property, attributable to the provision of maintenance for the child or each child, as the case may be.

“(2) Where:

- (a) a court makes an order of a kind referred to in paragraph (1) (a); and
- (b) the order:
 - (i) is not expressed to be an order to which this section applies; or
 - (ii) is expressed to be an order to which this section applies, but does not comply with paragraph (1) (d);

any payment, transfer or settlement of a kind referred to in paragraph (1) (a), that the order has the effect of requiring, shall be taken not to make provision for the maintenance of a child.

Cessation of orders

“66M. (1) An order for the maintenance of a child ceases to be in force on the death of the child.

“(2) An order for the maintenance of a child ceases to be in force on the death of the person liable to make payments under the order.

“(3) Subsection (2) does not apply in relation to an order made before the commencement of section 38 of the *Family Law Amendment Act 1983* if the order was expressed to continue in force throughout the life of the person for whose benefit the order was made or for a period that had not expired at the death of the person liable to make payments under the order and, in that case, the order is binding on the legal personal representative of the deceased person.

“(4) An order for the maintenance of a child ceases to be in force on the adoption or marriage of the child.

“(5) Where a child for whose maintenance an order has been made under this Act dies, is adopted or marries, the person entitled to receive payments under the order shall, without delay, inform the person liable to make payments under the order.

“(6) Any amounts paid in relation to a period after the death, adoption or marriage, as the case may be, may be recovered in a court having jurisdiction under this Part.

“(7) Nothing in this section affects the recovery of arrears due under an order when the order ceased to be in force.

“(8) This section applies in relation to orders made under this Act (whether before or after the commencement of this section).

Modification of maintenance orders

“66N. (1) In proceedings in relation to the maintenance of a child, if there is in force an order for the maintenance of the child:

- (a) made by the court; or
- (b) made by another court and registered in the court under the Rules of Court;

the court may, by order:

- (c) discharge the order if there is just cause for so doing;
- (d) suspend its operation wholly or in part and either until further order or until a fixed time or the happening of a future event;
- (e) if the operation of the order has been suspended under paragraph (d), revive its operation wholly or in part; or
- (f) subject to subsection (2), vary the order:
 - (i) so as to increase or decrease any amount ordered to be paid by the order; or
 - (ii) in any other way.

“(2) The court shall not vary the order so as to increase or decrease any amount ordered to be paid by the order unless it is satisfied:

- (a) that, since the order was made or last varied:
 - (i) the circumstances of the child have so changed;
 - (ii) the circumstances of the person liable to make payments under the order have so changed; or
 - (iii) in the case of an order that operates in favour of, or is binding on, a legal personal representative—the circumstances of the estate are such;

as to justify its so doing;

- (b) that, since the order was made or last varied, the cost of living has changed to such an extent as to justify its so doing;
- (c) in a case where the order was made by consent—that the amount ordered to be paid is not proper or adequate; or
- (d) that material facts were withheld from the court that made the order or from a court that varied the order, or material evidence previously given before such a court was false.

“(3) In satisfying itself for the purposes of paragraph (2) (b), the court shall have regard to any changes that have occurred in the Consumer Price Index published by the Australian Statistician.

“(4) The court shall not, in considering the variation of an order, have regard to a change in the cost of living unless at least 12 months have elapsed since the order was made or last varied having regard to a change in the cost of living.

“(5) In satisfying itself for the purposes of paragraph (2) (c), the court shall have regard to any payments, and any transfer or settlement of property, previously made to the child, or to any other person for the benefit of the child, by the person against whom the order was made.

“(6) An order decreasing a periodic amount payable under an order, or discharging an order, may be expressed to be retrospective to such day as the court considers appropriate.

“(7) Where an order (in this subsection called the ‘subsequent order’) decreasing a periodic amount payable under an order (in this subsection called the ‘earlier order’) is expressed to be retrospective, amounts paid under the earlier order that are not payable under the earlier order as varied by the subsequent order may be recovered in a court having jurisdiction under this Part.

“(8) Where an order discharging an order is expressed to be retrospective to a specified day, amounts paid under the second-mentioned order since the specified day may be recovered in a court having jurisdiction under this Part.

“(9) For the purposes of this section, the court shall have regard to the provisions of section 60D, sections 66A to 66E (inclusive) and section 66G (if applicable).

“(10) The discharge of an order does not affect the recovery of arrears due under the order when the discharge takes effect.

“(11) This section applies in relation to orders whether or not they were made under this Act and whether they were made before or after the commencement of this section.

“Division 7—Presumptions of parentage

Presumptions of parentage arising from marriage

“66P. (1) A child born to a woman during a marriage to which the woman is a party shall be presumed to be a child of the marriage.

“(2) A child born to a woman within 10 months after:

(a) a marriage to which the woman is a party is terminated by death;
or

(b) a purported marriage to which the woman is a party is annulled;
shall be presumed to be a child of the marriage.

“(3) Where:

- (a) after the parties to a marriage separated, they resumed cohabitation on one occasion;
- (b) within a period of 3 months after the resumption of cohabitation, they again separated and thereafter lived separately and apart; and
- (c) a child is born to the woman within 10 months after the period of cohabitation but after the dissolution of the marriage;

the child shall be presumed to be a child of the marriage.

Presumption of paternity arising from cohabitation

“66Q. A child born to a woman who, for a period of at least 6 months ending not more than 10 months before the birth, cohabited with a man to whom she was not married shall be presumed to be a child of that man.

Presumption of parentage arising from registration of birth

“66R. A person whose name is entered in a register of births or parentage information, kept under the law of the Commonwealth or of a State, Territory or prescribed overseas jurisdiction, as a parent of a child shall be presumed to be a parent of the child.

Presumptions of parentage arising from findings of courts

“66S. (1) Where, whether before or after the commencement of this section, an Australian court or a court of a prescribed overseas jurisdiction has found, or could reasonably be inferred to have found, during the lifetime of a man, that the man is the father of a particular child, and the finding has not been altered, set aside or reversed, the man shall be presumed to be the father of the child.

“(2) Where, whether before or after the commencement of this section, an Australian court or a court of a prescribed overseas jurisdiction has found, or could reasonably be inferred to have found, during the lifetime of a woman, that the woman is the mother of a particular child, and the finding has not been altered, set aside or reversed, the woman shall be presumed to be the mother of the child.

Presumption of paternity arising from acknowledgements

“66T. Where, under the law of the Commonwealth or of a State, Territory or prescribed overseas jurisdiction:

- (a) a man has, whether before or after the commencement of this section, executed an instrument acknowledging that he is the father of a specified child; and

(b) the instrument has not been annulled or otherwise set aside;
the man shall be presumed to be the father of the child.

Rebuttal of presumptions etc.

“66U. (1) A presumption arising under this Division is rebuttable by proof on a balance of probabilities.

“(2) Where:

- (a) 2 or more presumptions arising under this Division are relevant in any proceedings; and
- (b) those presumptions, or some of those presumptions, conflict with each other and are not rebutted in the proceedings;

the presumption that appears to the court to be the more or most likely to be correct prevails.

“Division 8—Parentage evidence

Evidence of parentage

“66V. Where the parentage of a child is a question in issue in proceedings under this Act, the court may make an order requiring any person to give such evidence as is material to the question.

Medical procedures to determine parentage

“66W. (1) Without limiting the generality of section 66V, where the parentage of a child is in issue in proceedings under this Act, the court may, on the request of a party to the proceedings, on the request of a person representing the child under an order made under section 65 or of its own motion, make an order requiring a parentage testing procedure to be carried out in relation to a person referred to in subsection (2) for the purpose of obtaining information to assist in determining the parentage of the child.

“(2) The order under subsection (1) may be made in relation to:

- (a) the child;
- (b) a person known to be the mother of the child; or
- (c) any other person where the court is of the opinion that the information that could be obtained if the parentage testing procedure were to be carried out in relation to the person might assist in determining the parentage of the child.

“(3) The order under subsection (1) may be made subject to terms and conditions.

“(4) Where the court makes an order under subsection (1), the court may:

- (a) make such other orders as it considers necessary or desirable:
 - (i) to enable the parentage testing procedure to be carried out; or
 - (ii) to make the parentage testing procedure more effective or reliable;

including, without limiting the generality of the following, orders requiring a person to submit to a medical procedure, to provide a bodily sample or to furnish information relevant to the person’s medical or family history; and

- (b) may make such orders as it considers just in relation to costs incurred in relation to:

- (i) the carrying out of the parentage testing procedure or other orders made by the court in relation to the parentage testing procedure; or
- (ii) the preparation of reports in relation to the information obtained as a result of the carrying out of the parentage testing procedure.

“(5) Where a person who has attained 18 years of age contravenes an order under this section, the person is not liable to any penalty in relation to the contravention, but the court may draw such inferences as appear just in the circumstances.

“(6) Where an order under this section is directed to a child who has not attained 18 years of age, a medical procedure or other act shall not be carried out in relation to the child under the order unless a guardian of the child consents to the medical procedure or act being carried out, but the court may draw such inferences from a failure or refusal to consent as appear just in the circumstances.

“(7) If a guardian of the child consents to a medical procedure or other act being carried out in relation to the child under the order, a person who carries out, or assists in the carrying out of, the medical procedure or act is not liable to any civil or criminal action in relation to the proper carrying out of the medical procedure or act.

“(8) Nothing in subsection (7) affects any liability of a person for an act done negligently, or negligently omitted to be done, in relation to the carrying out of the medical procedure or act.

“(9) The regulations may make provision with respect to:

- (a) the carrying out of parentage testing procedures under orders made under subsection (1); and
- (b) the preparation of reports in relation to the information obtained as the result of the carrying out of such procedures.

“(10) A report made in accordance with regulations made under paragraph (9) (b) may be received in evidence in any proceedings under this Act.

“(11) Where a report referred to in subsection (10) is received in evidence in any proceedings under this Act, the court may, on the request of a party to the proceedings, on the request of a person representing the relevant child under an order made under section 65 or of its own motion, make an order requiring the person who made the report, or any person whose evidence may be relevant in relation to the report, to appear before the court, and give evidence in relation to the report.

“Division 9—Child bearing expenses

Father liable to contribute towards maintenance and expenses of mother

“66X. The father of a child who is not married to the mother of the child is, subject to this Division, liable to make a proper contribution towards:

- (a) the maintenance of the mother for the childbirth maintenance period in relation to the birth of the child;
- (b) the mother's reasonable medical expenses in relation to the pregnancy and birth;
- (c) if the mother dies and the death is as a result of the pregnancy or birth, the reasonable expenses of the mother's funeral; and
- (d) if the child is stillborn, or dies and the death is related to the birth, the reasonable expenses of the child's funeral.

Matters to be taken into account in proceedings under Division

"66Y. (1) In proceedings under this Division in relation to the birth of a child, the court shall, in determining the contribution that should be made by the father of the child, take into account the following matters only:

- (a) the income, earning capacity, property and financial resources of the mother and the father of the child;
- (b) commitments of each of those persons that are necessary to enable the person to support:
 - (i) himself or herself; or
 - (ii) any other child or another person that the person has a duty to maintain;
- (c) any special circumstances which, if not taken into account in the particular case, would result in injustice or undue hardship to any person.

"(2) In taking into account the income, earning capacity, property and financial resources of a person, the court shall have regard to the capacity of the person to earn and derive income, including any assets of, under the control of or held for the benefit of the person that do not produce, but are capable of producing, income.

"(3) In taking into account the income, earning capacity, property and financial resources of the mother, the court shall disregard any entitlement of the mother to an income tested pension, allowance or benefit.

"(4) Subsections (2) and (3) shall not be taken to limit by implication the matters to which the court may have regard in taking into account matters referred to in subsection (1).

Powers of court in proceedings under Division

"66Z. (1) In proceedings under this Division in relation to the birth of a child, the court may make such order as is proper.

"(2) In exercising its powers under this Division, a court may do all or any of the following:

- (a) order payment of a lump sum, whether in one amount or by instalments;
- (b) order payment of a weekly, monthly or other periodic amount;

Family Law Amendment No. 181, 1987

- (c) order that payment of an amount ordered to be paid be wholly or partly secured as the court specifies;
- (d) order that any necessary deed or instrument be executed, and that such documents of title be produced and such other things be done, as are necessary to enable an order to be carried out effectively or to provide security for the due performance of an order;
- (e) order that payment be made to a specified person or public authority or into court;
- (f) make a permanent order, an order pending the disposal of proceedings, an order for a fixed period or until further order;
- (g) make an order imposing terms and conditions;
- (h) make an order by consent;
- (j) make any other order (whether or not of the same nature as those referred to in paragraphs (a) to (h) (inclusive)) that it considers appropriate;
- (k) make an order under this Division at any time (whether before or after the birth of the relevant child).

“(3) The Rules of Court may make provision with respect to the making of orders under this Division (whether as to their form or otherwise) for the purpose of facilitating their enforcement and the collection of amounts payable under them.

Urgent orders

“66ZA. Where, in proceedings under this Division in relation to the birth of a child:

- (a) the court is of the opinion that the applicant is in immediate need of financial assistance; but
- (b) it is not practicable in the circumstances to determine immediately what order (if any) should be made (whether because the applicant has not yet given birth to the child or otherwise);

the court may order the payment, pending the disposal of the proceedings, of such periodic or other amount as the court considers appropriate.

Time limit for institution of proceedings

“66ZB. (1) Proceedings under this Division in relation to the birth of a child may be instituted:

- (a) at any time during the pregnancy of the applicant; or
- (b) after the birth of the child, but not later than 12 months after the birth except by leave of the court.

“(2) The court shall not grant leave under paragraph (1) (b) unless it is satisfied that refusal to grant leave would cause hardship to the applicant, the child or another person.

“Division 10—Child agreements

Registration of child agreements

“66ZC. Subject to the regulations, a child agreement may be registered, as prescribed by the Rules of Court, in a court having jurisdiction under this Part.

Child welfare provisions of registered child agreements

“66ZD. (1) Where a child agreement is registered under section 66ZC, a party to the agreement may not institute proceedings under this Part seeking an order under section 64 in relation to child welfare matters dealt with in the agreement.

“(2) A court in which a child agreement is registered under section 66ZC may, by order, vary the agreement, in so far as it makes provision in relation to child welfare matters, if it considers the welfare of a child requires the variation.

“(3) Subject to subsection (4), a child agreement registered under section 66ZC, in so far as it makes provision in relation to child welfare matters, has effect as if it were an order made under this Part by the court in which the agreement is registered.

“(4) Where a child agreement is registered under section 66ZC, a court having jurisdiction under this Part shall not enforce the agreement or shall not enforce the agreement in a particular respect, in so far as the agreement makes provision in relation to child welfare matters, if it considers that to do so would be contrary to the best interests of a child.

“(5) In exercising its powers under this section, a court shall have regard to the provisions of sections 60D and 64.

Setting aside of registered child agreements

“66ZE. (1) The court in which a child agreement is registered under section 66ZC may set aside the registration of the agreement under that section if, and only if, the court is satisfied:

- (a) that the concurrence of a party was obtained by fraud or undue influence;
- (b) that the parties desire the agreement to be set aside; or
- (c) that the welfare of a child requires the setting aside of the agreement.

“(2) In exercising its power to set aside a child agreement under paragraph (1) (c), the court shall have regard to the provisions of sections 60D and 64.

“Division 11—State, Territory and overseas custody orders”.

Registration of State and Territory custody orders

29. Section 67 of the Principal Act is amended:

- (a) by omitting subsection (1) and substituting the following subsections:

“(1) In this section, ‘custody order’ means an order for custody of, or access to, a child who has not attained 18 years of age made under the law of a State or Territory.

“(1A) The Rules of Court may make provision for and in relation to the registration in a court having jurisdiction under this Part of custody orders made under a law of a prescribed State or a Territory.”; and

- (b) by omitting from subsection (3) “Act” and substituting “Part”.

Overseas custody orders

30. Section 68 of the Principal Act is amended by omitting from subsections (2) and (6) “Act” (wherever occurring) and substituting “Part”.

31. Before section 70 of the Principal Act the following heading is inserted:

“Division 12—Enforcement of custody and access orders”.

Interfering with child subject to custody order

32. Section 70 of the Principal Act is amended:

- (a) by omitting from subsections (1), (2), (3), (4) and (6) “Act” and substituting “Part”; and
- (b) by omitting from subsections (1), (2) and (3) “of a marriage”.

Certain children not to be taken out of Australia

33. Section 70A of the Principal Act is amended:

- (a) by omitting from subsections (1) and (2) “(including an ex-nuptial child)”; and
- (b) by omitting from paragraphs (1) (b) and (2) (b) “Act” and substituting “Part”.

Obligation of owners of vessels etc.

34. Section 70B of the Principal Act is amended:

- (a) by omitting from paragraphs (1) (a) and (2) (a) “(including an ex-nuptial child)”; and
- (b) by omitting from paragraphs (1) (d) and (2) (d) “Act” and substituting “Part”.

35. After section 70B of the Principal Act the following Divisions are inserted in Part VII:

“Division 13—Injunctions

Injunctions

“70C. (1) Where proceedings are instituted in a court having jurisdiction under this Part for an injunction in relation to a child, the court may make such order or grant such injunction as it considers appropriate for the welfare of the child, including:

- (a) an injunction for the personal protection of the child;
- (b) an injunction for the personal protection of a person who is entitled to the custody or guardianship of, or to access to, the child;
- (c) an injunction restraining a person from entering or remaining in:
 - (i) a place of residence, employment or education of the child;
or
 - (ii) a specified area that contains a place of a kind referred to in subparagraph (i); and
- (d) an injunction restraining a person from entering or remaining in:
 - (i) a place of residence, employment or education of a person who is entitled to the custody or guardianship of, or to access to, the child; or
 - (ii) a specified area that contains a place of a kind referred to in subparagraph (i).

“(2) A court exercising jurisdiction under this Act in any proceedings (other than proceedings to which subsection (1) applies) may grant an injunction in relation to a child, by interlocutory order or otherwise, in any case in which it appears to the court to be just or convenient to do so.

“(3) An injunction under this section may be granted unconditionally or on such terms and conditions as the court considers appropriate.

“(4) Subsections 114 (4), (5) and (6) apply in relation to injunctions and orders made under this section as if they were injunctions and orders made under section 114.

Powers of arrest

“70D. (1) Where, on the application of a person (in this subsection and subsections (2) and (4) called the ‘applicant’), a court having jurisdiction under this Part grants an injunction under subsection 70C (1), the applicant may:

- (a) in the course of the proceedings in which the injunction is granted or subsequently, apply to that court for an order under subsection (2); or
- (b) at any time after the injunction has been granted, apply to another court having jurisdiction under this Part for an order under subsection (2).

“(2) If the court is satisfied:

- (a) that the person against whom the injunction was granted (in this subsection and subsection (3) called the ‘respondent’) has caused, or threatened to cause, bodily harm to the applicant or:
 - (i) in a case where the applicant is a child who has not attained 18 years of age—any of the following persons:
 - (A) a person who is entitled to the custody or guardianship of, or to access to, the applicant;
 - (B) any other child who is living with the person first-mentioned in sub-subparagraph (A), of whom that

Family Law Amendment No. 181, 1987

- person is entitled to custody or guardianship or to whom that person is entitled to access; or
- (ii) in any other case—any child who is living with the applicant, of whom the applicant is entitled to custody or guardianship, or to whom the applicant is entitled to access; and
- (b) that the respondent is likely to cause bodily harm to the applicant or a person referred to in subparagraph (a) (i) or (ii);
- (c) that:
- (i) notice of the intention of the applicant to apply for an order under this subsection has been served on the respondent; or
 - (ii) in a case where the respondent has caused bodily harm to the applicant or a person referred to in subparagraph (a) (i) or (ii)—it is appropriate, in the circumstances of the case, to make an order under this subsection even though such notice has not been served on the respondent;

the court may, by order, authorise the arrest of the respondent under this section.

“(3) Where the court authorises the arrest of the respondent under this section, a police officer may arrest the respondent without warrant if the police officer believes, on reasonable grounds, that the respondent has, since the order was made, breached the injunction:

- (a) by causing bodily harm to a person for whose protection the injunction was granted; or
- (b) by entering or remaining in any place or area specified in the injunction.

“(4) Subsections 114AA (3), (4), (5) and (7) apply in relation to a person arrested under subsection (3) of this section as if the person had been arrested under subsection 114AA (2), an order had previously been made in relation to the person under subsection 114AA (1) and the applicant were the person on whose application that order had been made.

“(5) An order made by a court under subsection (2) expires:

- (a) if an expiration day earlier than 6 months after the making of the order is specified in the order— on that day; or
- (b) in any other case—6 months after the making of the order.

“Division 14—Miscellaneous

Institution of maintenance proceedings by authorised authority or person

“70E. The regulations may make provision with respect to authorising a prescribed authority of the Commonwealth or of a State or Territory, or the person from time to time holding or acting in a prescribed office established under a law of the Commonwealth or of a State or Territory, to institute and prosecute, in the discretion of the authority or person, proceedings in relation to the maintenance of a child on behalf of the child.”.

Heading to Part VIII

36. The heading to Part VIII of the Principal Act is omitted and the following heading is substituted:

“PART VIII—PROPERTY, SPOUSAL MAINTENANCE AND MAINTENANCE AGREEMENTS”.

Repeal of section 73

37. Section 73 of the Principal Act is repealed.

Power of court in spousal maintenance proceedings

38. Section 74 of the Principal Act is amended by omitting “or of a child of a marriage”.

Matters to be taken into consideration in relation to spousal maintenance

39. Section 75 of the Principal Act is amended:

(a) by omitting paragraph (2) (d) and substituting the following paragraph:

“(d) commitments of each of the parties that are necessary to enable the party to support:

(i) himself or herself; and

(ii) a child or another person that the party has a duty to maintain;”;

(b) by inserting at the beginning of paragraph (2) (f) “subject to subsection (3),”; and

(c) by adding at the end the following subsection:

“(3) In exercising its jurisdiction under section 74, a court shall disregard any entitlement of the party whose maintenance is under consideration to an income tested pension, allowance or benefit.”.

Repeal of section 76

40. Section 76 of the Principal Act is repealed.

Urgent spousal maintenance cases

41. Section 77 of the Principal Act is amended by omitting “or a child of a marriage” and “or child”.

42. After section 77 of the Principal Act the following section is inserted:

Specification in orders of payments etc. for spouse maintenance purposes

“77A. (1) Where:

(a) a court makes an order under this Act (whether or not the order is made in proceedings in relation to the maintenance of a party to a marriage, is made by consent or varies an earlier order), and the order has the effect of requiring:

Family Law Amendment No. 181, 1987

- (i) payment of a lump sum, whether in one amount or by instalments; or
 - (ii) the transfer or settlement of property; and
- (b) the purpose, or one of the purposes, of the payment, transfer or settlement is to make provision for the maintenance of a party to a marriage;

the court shall:

- (c) express the order to be an order to which this section applies; and
- (d) specify the portion of the payment, or the value of the portion of the property, attributable to the provision of maintenance for the party.

“(2) Where:

- (a) a court makes an order of a kind referred to in paragraph (1) (a); and
- (b) the order:
 - (i) is not expressed to be an order to which this section applies; or
 - (ii) is expressed to be an order to which this section applies, but does not comply with paragraph (1) (d);

any payment, transfer or settlement of a kind referred to in paragraph (1) (a), that the order has the effect of requiring, shall be taken not to make provision for the maintenance of a party to the relevant marriage.”.

General powers of court

43. Section 80 of the Principal Act is amended:

- (a) by inserting after paragraph (b) the following paragraph:

“(ba) order that a specified transfer or settlement of property be made by way of maintenance for a party to a marriage;”;
- (b) by omitting paragraph (g); and
- (c) by adding at the end the following subsections:

“(2) The making of an order of a kind referred to in paragraph (1) (ba), or of any other order under this Part, in relation to the maintenance of a party to a marriage does not prevent a court from making a subsequent order in relation to the maintenance of the party.

“(3) The Rules of Court may make provision with respect to the making of orders under this Part in relation to the maintenance of parties to marriages (whether as to their form or otherwise) for the purpose of facilitating their enforcement and the collection of maintenance payable under them.”.

Cessation of spousal maintenance orders

44. Section 82 of the Principal Act is amended:

- (a) by omitting from subsection (1) “or a child of a marriage” and “or child”;
- (b) by omitting from subsection (2) “or a child of a marriage”;
- (c) by omitting subsection (5);
- (d) by omitting from subsection (6) “or a marriage referred to in subsection (5)” and “or marriage”; and
- (e) by omitting from subsection (7) “or (5)”.

Modification of spousal maintenance orders

45. Section 83 of the Principal Act is amended:

- (a) by omitting from subsection (1) “or of a child of a marriage” and “or child”;
- (b) by omitting from paragraph (2) (b) “or” (last occurring);
- (c) by inserting after paragraph (2) (b) the following paragraph:
 - “(ba) in a case where the order was made by consent—that the amount ordered to be paid is not proper or adequate;”;
- (d) by inserting after subsection (5) the following subsection:
 - “(5A) In satisfying itself for the purposes of paragraph (2) (ba), the court shall have regard to any payments, and any transfer or settlement of property, previously made by a party to the marriage to:
 - (a) the other party; or
 - (b) any other person for the benefit of the other party.”; and
- (e) by omitting from subsection (7) “, 73, 75 and 76” and substituting “and 75”.

Registered maintenance agreements

46. Section 86 of the Principal Act is amended by omitting subsection (2) and substituting the following subsections:

“(2) Section 66N applies in relation to the variation of a maintenance agreement registered under subsection (1), in so far as the agreement makes provision for the maintenance of a child of the relevant marriage, as if the agreement were an order made by consent under Part VII by the court in which the agreement is registered.

“(2A) Section 83 applies in relation to the variation of a maintenance agreement registered under subsection (1), in so far as the agreement makes provision for the maintenance of a party to the relevant marriage, as if the agreement were an order made by consent under this Act by the court in which the agreement is registered.”.

Operation of maintenance agreements entered into in substitution for rights under Act

47. Section 87 of the Principal Act is amended:

- (a) by omitting from paragraph (4) (b) “subsections (13) and (14)” and substituting “subsections (4A) to (4C) (inclusive)”;
- (b) by inserting after subsection (4) the following subsections:

“(4A) The approval, after the commencement of this subsection, of a maintenance agreement under this section does not exclude or limit the power of a court having jurisdiction under this Act to make an order in relation to the maintenance of a party to the relevant marriage if the court is satisfied that, at the time the agreement was approved, the circumstances of the party were such that, taking into account the terms and effect of the agreement, the party would have been unable to support himself or herself without an income tested pension, allowance or benefit.

“(4B) Where subsection (4A) applies in relation to an approved maintenance agreement, section 83 applies in relation to the variation of the agreement, in so far as the agreement makes provision for the maintenance of a party to the marriage, as if the agreement were an order made by consent under this Act by a court in which the agreement is registered or deemed to be registered.

“(4C) The approval, whether before or after the commencement of this subsection, of a maintenance agreement under this section does not exclude or limit the power of a court having jurisdiction under Part VII to make any order under that Part in relation to a child of the relevant marriage and, where the agreement makes provision for the maintenance of a child of the marriage, section 66N applies in relation to the variation of the agreement, in so far as it makes that provision, as if the agreement were an order made by consent under that Part by a court in which the agreement is registered or deemed to be registered.”;

- (c) by inserting in subsection (11) “(4A), (4C),” after “subsections (2),”; and
- (d) by omitting subsections (13) and (14).

48. After section 87 of the Principal Act the following section is inserted:

Specification in maintenance agreements of payments etc. for maintenance purposes

“87A. (1) Where:

- (a) a maintenance agreement (whether or not registered under section 86 or approved under section 87) has the effect of requiring:
 - (i) payment of a lump sum, whether in one amount or by instalments; or
 - (ii) the transfer or settlement of property; and

Family Law Amendment No. 181, 1987

- (b) the purpose, or one of the purposes, of the payment, transfer or settlement is to make provision for the maintenance of a party to a marriage or a child or children of a marriage;
- the agreement shall:
- (c) state that the agreement is an agreement to which this section applies; and
 - (d) specify:
 - (i) the person or persons for whose maintenance provision is made by the payment, transfer or settlement; and
 - (ii) the portion of the payment, or the value of the portion of the property, attributable to the provision of maintenance for that person or each of those persons, as the case may be.

“(2) Where a maintenance agreement of a kind referred to in paragraph (1) (a):

- (a) does not state that the agreement is an agreement to which this section applies; or
 - (b) states that the agreement is an agreement to which this section applies, but does not comply with paragraph (1) (d);
- any payment, transfer or settlement of a kind referred to in paragraph (1) (a), that the agreement has the effect of requiring, shall be taken not to make provision for the maintenance of a party to the relevant marriage or of a child of the relevant marriage.”.

Institution of spousal maintenance proceedings by authority or person

49. Section 89A of the Principal Act is amended by omitting “or of a child of a marriage” and “or child”.

Certain instruments not liable to duty

50. Section 90 of the Principal Act is amended by inserting in paragraph (1) (a) “or Part VII” after “Part”.

Intervention by other persons

51. Section 92 of the Principal Act is amended by omitting subsection (1A) and substituting the following subsection:

“(1A) In proceedings for principal relief, a person in relation to whom an order has been made under subsection 66W (1) requiring a parentage testing procedure (within the meaning of Part VII) to be carried out may apply for leave to intervene in the proceedings, and the court may make an order entitling the person to intervene in the proceedings.”.

Proceedings in absence of parties

52. Section 98A of the Principal Act is amended by adding at the end the following subsections:

“(3) For the purposes of this section, a child (including an ex-nuptial child of either the husband or the wife, a child adopted by either of them

or a child who is not a child of either of them) is a child of the marriage if the child was treated by the husband and wife as a child of their family at the relevant time.

“(4) For the purposes of subsection (3), the relevant time is the time immediately before the time when the husband and wife separated or, if they have separated on more than one occasion, the time immediately before the time when they last separated before the institution of the proceedings for dissolution of the marriage.”.

Repeal of sections 99 and 99A

53. Sections 99 and 99A of the Principal Act are repealed.

54. Section 102 of the Principal Act is repealed and the following section is substituted:

Proof of birth, parentage, death or marriage

“102. In proceedings under this Act, the court may receive as evidence of the facts stated in it a document purporting to be either the original or a certified copy of:

- (a) a certificate, entry or record of a birth, death or marriage alleged to have taken place, whether in Australia or elsewhere; or
- (b) an entry in a register of parentage information kept under the law of the Commonwealth or of a State, Territory or prescribed overseas jurisdiction.”.

Persons not to be imprisoned for failure to comply with certain orders

55. Section 107 is amended by omitting subsections (1) and (2) and substituting the following subsection:

“(1) A person shall not be imprisoned or otherwise placed in custody by reason of a contravention of an order for the payment of money made:

- (a) in a matrimonial cause; or
- (b) in proceedings under Part VII.”.

Inter-State enforcement of child bearing expenses orders

56. Section 109 of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:

“(1) This section applies to the following orders made under the law of a State or Territory:

- (a) orders of a kind that may be made under section 66Z;
- (b) orders for the payment of an amount in relation to the maintenance of a child.”.

Overseas enforcement of maintenance orders etc.

57. Section 110 of the Principal Act is amended:

- (a) by omitting from paragraphs (b) and (c) of the definition of “maintenance order” in subsection (1) “of a marriage”;
- (b) by omitting from paragraph (d) of the definition of “maintenance order” in subsection (1) “of the marriage”; and
- (c) by omitting from paragraph (e) of the definition of “maintenance order” in subsection (1) “the kind referred to in section 109” and substituting “a kind that may be made under section 66Z”.

Injunctions

58. Section 114 of the Principal Act is amended:

- (a) by omitting from paragraph (1) (a) “or of a child of the marriage”; and
- (b) by omitting from paragraph (1) (c) all the words after “marriage” (second occurring).

Powers of arrest

59. Section 114AA of the Principal Act is amended by omitting from subsection (7) the definition of “police officer”.

Operation of State and Territory laws

60. Section 114AB of the Principal Act is amended:

- (a) by inserting in subsection (1) “70C, 70D,” after “Sections”; and
- (b) by inserting in subsection (2) “70C, 70D,” after “section”.

Offers of settlement

61. Section 117C of the Principal Act is amended by omitting from subsection (1) “VII or proceedings to enforce a decree made under Part VII” and substituting “Division 5, 11, 12 or 13 of Part VII or proceedings to enforce a decree or injunction made under Division 5, 11, 12 or 13 of Part VII”.

Regulations

62. Section 125 of the Principal Act is amended by inserting in paragraph (1) (f) “VII or” after “Part”.

Formal amendments

63. The Principal Act is further amended as set out in the Schedule.

PART III—TRANSITIONAL AND APPLICATION PROVISIONS

Application of relief from time limits applying in relation to institution of certain proceedings

64. Subsection 44 (4) of the Principal Act as amended by this Act does not apply in relation to proceedings if the period within which the proceedings could have been instituted without the leave of the court had expired before the commencement of this Act.

Transitional provision in relation to section 46 of Family Law Act

65. If section 18 of the *Family Court of Australia (Additional Jurisdiction and Exercise of Powers) Act 1987* does not come into operation before this Act comes into operation, section 20 of this Act has effect, until immediately after the commencement of the first-mentioned section, as if paragraph (a) were omitted and the following paragraph were substituted:

“(a) by omitting paragraph (1) (a); and”.

Application of certain provisions in relation to children born before commencement of Act

66. Sections 60B, 63F and 66P to 66T (inclusive) of the Principal Act as amended by this Act apply in relation to children whether they were born before, or are born after, the commencement of this Act.

Application of specification requirements in orders and agreements

67. (1) Sections 66L and 77A of the Principal Act as amended by this Act apply only in relation to orders made after the commencement of this Act.

(2) Section 87A of the Principal Act as amended by this Act applies only in relation to maintenance agreements entered into after the commencement of this Act.

Savings provisions in relation to injunctions

68. (1) Notwithstanding the amendments of section 114 of the Principal Act made by this Act, that section continues to apply in relation to proceedings instituted before the commencement of this Act as if those amendments had not been made.

(2) Notwithstanding the amendments of section 114 of the Principal Act made by this Act, sections 114 and 114AA of the Principal Act continue to apply in relation to injunctions granted under the first-mentioned section (whether before or after the commencement of this Act) as if those amendments had not been made.

SCHEDULE

Section 63

FORMAL AMENDMENTS

Subsection 4 (1) (definition of “made”):

Omit “, and ‘make’ has a corresponding meaning”.

Subsection 4 (1) (definition of “repealed Act”):

Omit “and includes that Act as amended at any time”.

Section 11:

Omit “he” (twice occurring), substitute “the Attorney-General”.

Subsection 12 (2):

Omit “he”, substitute “the Attorney-General”.

Subsection 13 (2):

- (a) Omit “he”, substitute “the Attorney-General”.
- (b) Omit “under his hand”.

Subsection 14 (2A):

Omit “he may, if he”, substitute “the Judge or magistrate may, if he or she”.

Subsection 14 (5):

Omit “thinks”, substitute “considers”.

Subsection 15 (1):

Omit “he or she intends to seek”, substitute “the party wishes to have”.

Subsection 19 (1):

Omit “his”, substitute “the”.

Paragraph 22 (1) (b):

Omit “his”, substitute “the Judge’s”.

Paragraphs 22 (2) (a) and (b):

Omit “he” (wherever occurring), substitute “the person”.

Subsection 22 (2B):

Insert “or her” after “his” (wherever occurring).

Section 26:

Omit “his”, substitute “the”.

Subsection 28 (4):

Insert “or her” after “his” (wherever occurring).

SCHEDULE—continued

Subsection 34 (1):

Omit “thinks”, substitute “considers”.

Subsection 36 (1):

Omit “he”, substitute “the Governor-General”.

Paragraph 37 (5) (a):

Omit “him”, substitute “the Marshal”.

Paragraph 37 (5) (b):

Insert “or her” after “his”.

Subsection 37 (7):

(a) Insert “or she” after “he”.

(b) Omit “him”.

Paragraph 37 (9) (a):

Omit “he”, substitute “the person”.

Paragraph 37 (9) (b):

(a) Omit “his”, substitute “the”.

(b) Omit “he”, substitute “the person”.

Subsection 37A (10):

Omit “thinks fit”, substitute “considers appropriate”.

Subsection 37B (4):

(a) Insert “or her” after “his”.

(b) Omit “he”, substitute “the Registrar”.

Paragraphs 39 (5) (d) and (6) (d):

Omit “106,”.

Subsection 41 (4):

Omit “he”, substitute “the Governor-General”.

Subsection 45 (1):

Omit “thinks fit”, substitute “considers appropriate”.

Subsections 64 (1), (1B) and (2):

Omit “with respect to” (wherever occurring), substitute “in relation to”.

Paragraph 64 (1) (c):

Omit “thinks”, substitute “considers”.

SCHEDULE—continued

Subsection 64 (1A):

- (a) Insert “or her” after “his” (wherever occurring).
- (b) Insert “or her” after “him”.

Subsections 64 (5):

Omit “thinks”, substitute “considers”.

Subsections 64 (6):

Omit “thinks fit”, substitute “considers appropriate”.

Paragraphs 64 (9) (a) and (10) (a):

Insert “or she” after “he”.

Subsection 64 (11B):

Omit “Permanent Head of” (wherever occurring), substitute “Secretary to”.

Section 65:

Omit “thinks”, substitute “considers”.

Paragraphs 70 (6) (b) and (c):

Omit “thinks fit”, substitute “considers appropriate”.

Subsection 70B (6):

- (a) Omit “by him”.
- (b) Omit “his obligations under”.

Section 74:

Omit “thinks”, substitute “considers”.

Subsection 79 (1):

Omit “thinks fit”, substitute “considers appropriate”.

Subsection 79 (1B):

- (a) Omit “thinks fit”, substitute “considers appropriate”.
- (b) Omit “thinks” (last occurring), substitute “considers”.

Paragraph 79 (7) (b):

Insert “or her” after “his”.

Paragraph 79A (1) (c):

Omit “him”, substitute “the person”.

Subsections 79A (1) and (1A):

Omit “thinks fit”, substitute “considers appropriate”.

SCHEDULE—continued

Subsection 82 (4):

Omit “the court having jurisdiction”, substitute “a court having jurisdiction under this Act”.

Subsection 83 (4):

Omit “Commonwealth”, substitute “Australian”.

Subsection 83 (6):

Omit “thinks fit”, substitute “considers appropriate”.

Paragraph 84 (1) (a):

Omit “, under the regulations or under the Rules of Court”.

Paragraph 84 (1) (b):

Omit “thinks”, substitute “considers”.

Paragraph 84 (1A) (b):

Omit “thinks”, substitute “considers”.

Subsection 84 (3):

Omit “thinks”, substitute “considers”.

Section 89A:

Omit “in its or his discretion”, substitute “in the discretion of the authority or person”.

Paragraph 91 (1) (a):

Omit “him”, substitute “the Attorney-General”.

Subsection 91 (2):

Omit “he”, substitute “the Attorney-General”.

Subsection 91A (1):

(a) Omit “under his hand”.

(b) Insert “or her” after “his” (last occurring).

Subsection 91A (4):

Omit “he”, substitute “the Attorney-General of the State”.

Subsection 92 (2):

Omit “thinks fit”, substitute “considers appropriate”.

Subsection 92 (3):

Omit “he”, substitute “the person”.

SCHEDULE—continued

Subsection 94 (2):

Omit “thinks fit” (wherever occurring), substitute “considers appropriate”.

Paragraph 96 (4) (b):

Omit “thinks fit”, substitute “considers appropriate”.

Subsection 104 (6):

Omit “or of that Act as amended”.

Subsection 105 (3):

Omit “thinks fit”, substitute “considers appropriate”.

Subsection 108 (6):

Omit “his”, substitute “the person’s”.

Paragraph 110 (2) (aa):

Insert “, her” after “his”.

Subsection 112 (1):

Omit “, under the regulations or under the Rules of Court”.

Subsection 114 (1):

Omit “thinks”, substitute “considers”.

Subsection 114 (3):

Omit “thinks”, substitute “considers”.

Paragraph 114 (4) (b):

- (a) Omit “thinks fit”, substitute “considers appropriate”.
- (b) Omit “he” (wherever occurring), substitute “the person”.
- (c) Omit “him”, substitute “the person”.

Paragraph 114 (4) (c):

Omit “thinks fit”, substitute “considers appropriate”.

Subsection 114AA (2):

Omit “he”, substitute “the police officer”.

Subsection 114AA (3):

- (a) Omit “he” (first occurring), substitute “the police officer”.
- (b) Omit “he” (last occurring), substitute “the person”.

Subsection 114AB (2):

Omit “he”, substitute “the person”.

SCHEDULE—continued

Subsection 114E (1):

Omit “his”.

Subsection 114E (2):

Omit “he”, substitute “the person”.

Subsection 114F (1):

Omit “he”, substitute “the member”.

Section 114H:

(a) Omit “his office”.

(b) Omit “under his hand”, substitute “signed and”.

Paragraphs 114J (2) (a) and (b):

Insert “or her” after “his” (wherever occurring).

Subsection 114J (2):

Omit “him”, substitute “the member”.

Paragraph 114K (1) (b):

Omit “his”, substitute “the”.

Subsection 114K (4):

(a) Omit “he”, substitute “the person”.

(b) Omit “his”, substitute “the”.

(c) Omit “signed by him and”.

Subsection 114K (5):

Omit “he”, substitute “the person”.

Subsection 115 (1):

Omit “him”, substitute “the Attorney-General”.

Subsection 115 (5):

Omit “he”, substitute “the member”.

Subsection 115 (5C):

Omit “his”.

Subsection 115 (6):

(a) Omit “his office”.

(b) Omit “by him”.

Subsection 115 (6B):

Insert “or her” after “his” (wherever occurring).

SCHEDULE—continued

Subsection 115 (10):

Omit “to him”.

Subsection 116C (2):

Omit “, under the regulations or under the Rules of Court”.

Subsection 116C (5) (definition of “relevant funding”):

Omit “, under the regulations or under the Rules of Court”.

Subsection 117 (1):

Insert “or her” after “his”.

Subsection 117 (2):

Omit “thinks”, substitute “considers”.

Paragraph 117 (2A) (g):

Omit “thinks”, substitute “considers”.

Paragraph 118 (1) (b):

Omit “thinks”, substitute “considers”.

Paragraph 118 (1) (c):

Omit “thinks fit”, substitute “considers appropriate”.

Section 122:

Omit “-1973”.

Subsection 124 (3):

Omit “him”, substitute “the Attorney-General”.

Subsection 124 (6):

(a) Omit “his office”.

(b) Omit “by him”.

Paragraph 125 (1) (f):

Insert “, her” after “his”.

NOTE

1. No. 53, 1975, as amended. For previous amendments, see Nos. 63, 95 and 209, 1976; No. 102, 1977; No. 23, 1979; No. 2, 1982; Nos. 67 and 72, 1983; Nos. 63, 72 and 165, 1984; Nos. 65, 166 and 193, 1985; and Nos. 76 and 168, 1986.

[*Minister's second reading speech made in—
House of Representatives on 29 October 1987
Senate on 17 November 1987*]