

Western Australia

**Family Court Amendment (Family Violence and
Other Measures) Act 2013**

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No. 13 of 2013

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Family Court Amendment (Family Violence and Other Measures) Act 2013

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Western Australia

**Family Court Amendment (Family Violence and
Other Measures) Act 2013**

No. 13 of 2013

An Act to amend the *Family Court Act 1997*.

[Assented to 4 October 2013]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Family Court Amendment (Family Violence and Other Measures) Act 2013*.

2. Commencement

This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on the day after that day.

3. Act amended

This Act amends the *Family Court Act 1997*.

Part 2 — Amendments relating to family violence

4. Section 5 amended

- (1) In section 5(1) delete the definitions of:

abuse

family violence

member of the family

- (2) In section 5(1) insert in alphabetical order:

(FLA s. 4(1))

abuse, in relation to a child, means —

- (a) an assault, including a sexual assault, of the child; or
- (b) a person (the *first person*) involving the child in a sexual activity with the first person or another person in which the child is used, directly or indirectly, as a sexual object by the first person or the other person, and where there is unequal power in the relationship between the child and the first person; or
- (c) causing the child to suffer serious psychological harm, including (but not limited to) when that harm is caused by the child being subjected to, or exposed to, family violence; or
- (d) serious neglect of the child;

(FLA s. 4(1))

exposed to family violence, in relation to a child, has the meaning given in section 9A(3);

(FLA s. 4(1))

family violence has the meaning given in section 9A(1);

(FLA s. 4(1))

member of the family has the meaning given in section 6;

5. Section 6 amended

In section 6:

- (a) delete paragraph (a) and insert:
 - (a) the definition of *step-parent* in section 5(1); and
 - (ba) section 9A; and
- (b) delete paragraph (c) and insert:
 - (c) sections 66F, 66HA and 66HB,

6. Section 9A inserted

At the end of Part 1 insert:

9A. Meaning of “family violence” etc. — FLA s. 4AB

- (1) For the purposes of this Act, *family violence* means violent, threatening or other behaviour by a person that coerces or controls a member of the person’s family (the *family member*), or causes the family member to be fearful.
- (2) Examples of behaviour that may constitute family violence include (but are not limited to) —
 - (a) an assault; or
 - (b) a sexual assault or other sexually abusive behaviour; or
 - (c) stalking; or

- (d) repeated derogatory taunts; or
 - (e) intentionally damaging or destroying property;
or
 - (f) intentionally causing death or injury to an
animal; or
 - (g) unreasonably denying the family member the
financial autonomy that he or she would
otherwise have had; or
 - (h) unreasonably withholding financial support
needed to meet the reasonable living expenses
of the family member, or his or her child, at a
time when the family member is entirely or
predominantly dependent on the person for
financial support; or
 - (i) preventing the family member from making or
keeping connections with his or her family,
friends or culture; or
 - (j) unlawfully depriving the family member, or
any member of the family member's family, of
his or her liberty.
- (3) For the purposes of this Act, a child is *exposed* to family violence if the child sees or hears family violence or otherwise experiences the effects of family violence.
- (4) Examples of situations that may constitute a child being exposed to family violence include (but are not limited to) the child —
- (a) overhearing threats of death or personal injury by a member of the child's family towards another member of the child's family; or
 - (b) seeing or hearing an assault of a member of the child's family by another member of the child's family; or

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- (c) comforting or providing assistance to a member of the child's family who has been assaulted by another member of the child's family; or
- (d) cleaning up a site after a member of the child's family has intentionally damaged property of another member of the child's family; or
- (e) being present when police or ambulance officers attend an incident involving the assault of a member of the child's family by another member of the child's family.

7. Section 37 amended

- (1) In section 37(1)(d) delete "safety" and insert:

protection

- (2) In section 37:

- (a) after each of subsection (1)(a) to (c) insert:

and

- (b) after subsection (2)(a) insert:

or

8. Section 66 amended

After section 66(3) insert:

- (4) An additional object of this Part is to give effect to the Convention on the Rights of the Child done at New

York on 20 November 1989 as ratified by Australia at
17 December 1990.

9. Part 5 Division 1 Subdivision 2 heading replaced

Delete the heading to Part 5 Division 1 Subdivision 2 and insert:

**Subdivision 2 — Best interests of the child:
court proceedings**

10. Section 66C amended

(1) After section 66C(2) insert:

(3A) In applying the considerations set out in subsection (2),
the court is to give greater weight to the consideration
set out in subsection (2)(b).

(2) In section 66C(3):

(a) delete paragraph (c) and insert:

(c) the extent to which each of the child's parents
has taken, or failed to take, the opportunity —
(i) to participate in making decisions about
major long-term issues in relation to the
child; and
(ii) to spend time with the child; and
(iii) to communicate with the child;
and

(da) the extent to which each of the child's parents
has fulfilled, or failed to fulfil, the parent's
obligations to maintain the child; and

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- (b) delete paragraph (k) and insert:
- (k) if a family violence order applies, or has applied, to the child or a member of the child's family — any relevant inferences that can be drawn from the order, taking into account the following —
- (i) the nature of the order;
 - (ii) the circumstances in which the order was made;
 - (iii) any evidence admitted in proceedings for the order;
 - (iv) any findings made by the court in, or in proceedings for, the order;
 - (v) any other relevant matter;
- and

- (3) Delete section 66C(4) and (5).

11. Sections 66HA and 66HB inserted

At the end of Part 5 Division 1 Subdivision 2 insert:

66HA. Informing court of care arrangements under child welfare laws — FLA s. 60CH

- (1) If a party to the proceedings is aware that the child, or another child who is a member of the child's family, is under the care (however described) of a person under a child welfare law, that party must inform the court of the matter.
- (2) If a person who is not a party to the proceedings is aware that the child, or another child who is a member

of the child's family, is under the care (however described) of a person under a child welfare law, that person may inform the court of the matter.

- (3) Failure to inform the court of the matter does not affect the validity of any order made by the court.
- (4) However, subsection (3) does not limit the operation of section 202.

66HB. Informing court of notifications to, and investigations by, prescribed government agencies — FLA s. 60CI

- (1) In this section —
prescribed government agency means an agency that is a prescribed government agency for the purposes of section 202K.
- (2) If —
 - (a) a party to the proceedings is aware that the child, or another child who is a member of the child's family, is or has been the subject of —
 - (i) a notification or report (however described) to a prescribed government agency; or
 - (ii) an investigation, inquiry or assessment (however described) by a prescribed government agency;and
 - (b) the notification, report, investigation, inquiry or assessment relates to abuse, or an allegation, suspicion or risk of abuse,that party must inform the court of the matter.
- (3) If —

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- (a) a person who is not a party to the proceedings is aware that the child, or another child who is a member of the child's family, is or has been the subject of —
 - (i) a notification or report (however described) to a prescribed government agency; or
 - (ii) an investigation, inquiry or assessment (however described) by a prescribed government agency;
- and
- (b) the notification, report, investigation, inquiry or assessment relates to abuse, or an allegation, suspicion or risk of abuse,

that person may inform the court of the matter.

- (4) Failure to inform the court of the matter does not affect the validity of any order made by the court.

12. **Part 5 Division 1 Subdivision 3A inserted**

Before Part 5 Division 1 Subdivision 3 insert:

**Subdivision 3A — Best interests of the child:
adviser's obligations**

**66HC. Adviser's obligations in relation to best interests of
child — FLA s. 60D**

- (1) In this section —
adviser means a person who is —
 - (a) a legal practitioner; or
 - (b) a family counsellor; or
 - (c) a family dispute resolution practitioner; or
 - (d) a family consultant.
- (2) If an adviser gives advice or assistance to a person about matters concerning a child and this Part, the adviser must —
 - (a) inform the person that the person should regard the best interests of the child as the paramount consideration; and
 - (b) encourage the person to act on the basis that the child's best interests are best met —
 - (i) by the child having a meaningful relationship with both of the child's parents; and
 - (ii) by the child being protected from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence; and
 - (iii) in applying the considerations set out in subparagraphs (i) and (ii) — by giving

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greater weight to the consideration set out in subparagraph (ii).

13. Section 66J deleted

Delete section 66J.

14. Section 78A amended

(1) Before section 78A(1) insert:

(1A) The obligations of an adviser under this section are in addition to the adviser's obligations under section 66HC.

(2) Delete section 78A(2)(c).

15. Section 133 amended

(1) In section 133(c) after "child abuse" insert:

and family violence

(2) In section 133 after each of paragraphs (a) and (b) insert:

and

16. Part 5 Division 8 Subdivision 4 heading replaced

Delete the heading to Part 5 Division 8 Subdivision 4 and insert:

Subdivision 4 — Allegations of child abuse and family violence

17. Section 159 amended

(1) Before section 159(1) insert:

(1A) In this section —

interested person, in proceedings under this Act,
means —

- (a) a party to the proceedings; or
- (b) an independent children’s lawyer who represents the interests of a child in the proceedings; or
- (c) any other person prescribed by the regulations for the purposes of this paragraph;

prescribed form means the form approved by the Chief Judge of the Court for the purposes of this section.

(2) In section 159(1):

(a) delete “a party to” and insert:

an interested person in

(b) delete “the party” and insert:

the interested person

Note: The heading to amended section 159 is to read:

Where interested person in proceedings makes allegation of child abuse — FLA s. 67Z

18. Sections 162A and 162B inserted

At the end of Part 5 Division 8 Subdivision 4 insert:

162A. Where interested person makes allegation of family violence — FLA s. 67ZBA

(1) In this section —

interested person, in proceedings for an order under this Part in relation to a child, means —

- (a) a party to the proceedings; or
- (b) an independent children's lawyer who represents the interests of the child in the proceedings; or
- (c) any other person prescribed by the regulations for the purposes of this paragraph;

prescribed form means the form approved by the Chief Judge of the Court for the purposes of this section.

(2) This section applies if an interested person in proceedings for an order under this Part in relation to a child alleges, as a consideration that is relevant to whether the court should make or refuse to make the order, that —

- (a) there has been family violence by one of the parties to the proceedings; or
- (b) there is a risk of family violence by one of the parties to the proceedings.

(3) The interested person must file a notice in the prescribed form in the court hearing the proceedings, and serve a true copy of the notice upon the party referred to in subsection (2)(a) or (b).

- (4) If the alleged family violence (or risk of family violence) is abuse of a child (or a risk of abuse of a child) —
- (a) the interested person making the allegation must either file and serve a notice under subsection (3) or under section 159(1) (but does not have to file and serve a notice under both those provisions); and
 - (b) if the notice is filed under subsection (3), the registrar must deal with the notice as if it had been filed under section 159(1).

162B. Court to take prompt action in relation to allegations of child abuse or family violence — FLA s. 67ZBB

- (1) This section applies if —
- (a) a notice is filed under section 159(1) or 162A(3) in proceedings for an order under this Part in relation to a child; and
 - (b) the notice alleges, as a consideration that is relevant to whether the court should make or refuse to make the order, that —
 - (i) there has been abuse of the child by one of the parties to the proceedings; or
 - (ii) there would be a risk of abuse of the child if there were to be a delay in the proceedings; or
 - (iii) there has been family violence by one of the parties to the proceedings; or
 - (iv) there is a risk of family violence by one of the parties to the proceedings.

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- (2) The court must —
 - (a) consider what interim or procedural orders (if any) should be made —
 - (i) to enable appropriate evidence about the allegation to be obtained as expeditiously as possible; and
 - (ii) to protect the child or any of the parties to the proceedings;
 - and
 - (b) make such orders of that kind as the court considers appropriate; and
 - (c) deal with the issues raised by the allegation as expeditiously as possible.
- (3) The court must take the action required by subsection (2)(a) and (b) —
 - (a) as soon as practicable after the notice is filed; and
 - (b) if it is appropriate having regard to the circumstances of the case — within 8 weeks after the notice is filed.
- (4) Without limiting subsection (2)(a)(i), the court must consider whether orders should be made under section 202K to obtain documents or information from prescribed government agencies in relation to the allegation.
- (5) Without limiting subsection (2)(a)(ii), the court must consider whether orders should be made, or an injunction granted, under section 235.
- (6) A failure to comply with a provision of this section does not affect the validity of any order made in the proceedings for the order.

19. Section 202B amended

Delete section 202B(6)(a) and insert:

- (a) the child concerned from being subjected to, or exposed to, abuse, neglect or family violence; and

20. Section 202E amended

Before section 202E(1)(a) insert:

- (aa) ask each party to the proceedings —
 - (i) whether the party considers that the child concerned has been, or is at risk of being, subjected to, or exposed to, abuse, neglect or family violence; and
 - (ii) whether the party considers that he or she, or another party to the proceedings, has been, or is at risk of being, subjected to family violence;
- and

21. Section 237 amended

- (1) In section 237(1) delete “205SB, 237A” and insert:

205SB

- (2) In section 237(2) delete “(5) and (6)” and insert:

(5), (6A) and (6)

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(3) After section 237(5) insert:

(6A) If —

- (a) under section 207, the CEO intervenes in proceedings; and
- (b) the CEO acts in good faith in relation to the proceedings,

the court must not, because of the intervention, make an order under subsection (2) of this section against the CEO, the Department (as defined by the *Children and Community Services Act 2004* section 3) or the State.

(4) In section 237(3) after each of paragraphs (a) to (e) insert:

and

22. Section 237A deleted

Delete section 237A.

Part 3 — Other amendments

23. Section 65 amended

Delete section 65(1) and insert:

- (1) A court exercising jurisdiction in proceedings under this Act may make either or both of the following kinds of order —
- (a) an order directing one or more parties to the proceedings to attend an appointment (or a series of appointments) with a family consultant;
 - (b) an order directing one or more parties to the proceedings to arrange for a child to attend an appointment (or a series of appointments) with a family consultant.

Note: The heading to amended section 65 is to read:

Court may order parties to attend, or arrange for child to attend, appointments with family consultant — FLA s. 11F

24. Section 65A amended

Delete section 65A(2) and insert:

- (2A) If —
- (a) a person fails to comply with an order under section 65 that he or she arrange for a child to attend an appointment with a family consultant;
or
 - (b) a child fails to attend an appointment with a family consultant as arranged in compliance with an order under section 65,

the consultant must report the failure to the court.

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- (2) On receiving a report under subsection (1) or (2A), the court may make any further orders it considers appropriate.

25. Section 73 amended

- (1) In section 73(5) delete “a party to proceedings, or the child, attend” and insert:

one or more parties to the proceedings attend, or arrange for the child to attend,

- (2) Delete section 73(6) and insert:

- (6) If —

- (a) a person fails to comply with an order or direction under subsection (5); or
(b) a child fails to attend an appointment with a family consultant as arranged in compliance with an order or direction under subsection (5),

the family consultant must report the failure to the court.

26. Section 84 amended

After section 84(1) insert:

- (1A) However, a declaration or order under Division 11 Subdivision 4 is not a parenting order.

27. Section 113 amended

- (1) In section 113:
- (a) in paragraph (e) delete “(Subdivision 6).” and insert:

(Subdivision 6); and
 - (b) after paragraph (e) insert:

(f) deals with the recovery of amounts paid under maintenance orders (Subdivision 7).
- (2) In section 113 after each of paragraphs (a) to (d) insert:

and

28. Section 202I deleted

Delete section 202I.

29. Section 205F amended

Before section 205F(3)(a) insert:

- (aa) section 205O(1)(ea); or
- (ab) section 205QA(3)(a); or

30. Section 205O amended

After section 205O(1)(d) insert:

- (ea) if the person who committed the current contravention fails, without reasonable excuse, to enter into a bond as required by an order

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under paragraph (d), impose a fine not exceeding \$1 100 on the person;

31. Section 205QA inserted

After section 205P insert:

205QA. Procedure for enforcing bonds — FLA s. 70NECA

- (1) If a court has made an order under section 205O(1)(d) requiring a person to enter into a bond in accordance with section 205P, the following provisions have effect.
- (2) If the court (whether or not constituted by the judge or magistrate who required the bond to be entered into in accordance with section 205P) is satisfied that the person has, without reasonable excuse, failed to comply with the bond, the court may take action under subsection (3).
- (3) The court may —
 - (a) without prejudice to the continuance of the bond entered into in accordance with section 205P, impose a fine not exceeding \$1 100 on the person; or
 - (b) revoke the bond entered into in accordance with section 205P and, subject to subsection (4), deal with the person, for the contravention in respect of which the bond was entered into, in any manner in which the person could have been dealt with for the contravention if —
 - (i) the bond had not been entered into; and
 - (ii) the person was before the court under section 205O in respect of the contravention.

- (4) In dealing with the person as mentioned in subsection (3)(b), the court must, in addition to any other matters that it considers should be taken into account, take into account —
- (a) the fact that the bond was entered into; and
 - (b) anything done pursuant to the bond; and
 - (c) any fine imposed, and any other order made, for or in respect of the contravention.

32. Section 211B replaced

Delete section 211B and insert:

211B. Appeal may be dismissed if no reasonable prospect of success

- (1) If —
- (a) an appeal has been instituted in a court under this Part; and
 - (b) having regard to the grounds of appeal as disclosed in the notice of appeal, it appears to the court that the appeal has no reasonable prospect of success (whether generally or in relation to a particular ground of appeal),
- the court may, at any time, order that the proceedings on the appeal be dismissed (either generally or in relation to that ground).
- (2) This section does not limit any powers that the court has apart from this section.

33. Sections 214B and 214C inserted

After section 214A insert:

214B. Oaths and affirmations

- (1) The executive manager may, in writing, authorise —
 - (a) a registrar; or
 - (b) a member of the staff of the Court or the Magistrates Court,to administer oaths and affirmations for the purposes of the Court and the Magistrates Court.
- (2) The following persons are authorised to administer oaths and affirmations for the purposes of the Court or the Magistrates Court —
 - (a) a person who is authorised to administer oaths and affirmations in that court under the *Oaths, Affidavits and Statutory Declarations Act 2005*;
 - (b) a person authorised under subsection (1).
- (3) This section does not limit the *Oaths, Affidavits and Statutory Declarations Act 2005*.
- (4) This section applies to the Magistrates Court exercising —
 - (a) its federal jurisdiction under section 38; or
 - (b) its non-federal jurisdictions under section 39; or
 - (c) any other jurisdiction under a law of the Commonwealth, where that law confers jurisdiction on both the Court and the Magistrates Court.

214C. Swearing of affidavits etc.

- (1) An affidavit to be used in a proceeding in the Court or the Magistrates Court may be sworn or affirmed in Australia before —
 - (a) a person before whom that affidavit may be sworn or affirmed under the *Oaths, Affidavits and Statutory Declarations Act 2005*; or
 - (b) a person authorised under section 214B(1); or
 - (c) a person to whom the Family Law Act section 98AB(1) applies.
- (2) An affidavit to be used in a proceeding in the Court or the Magistrates Court may be sworn or affirmed outside Australia before —
 - (a) a person before whom that affidavit may be sworn or affirmed under the *Oaths, Affidavits and Statutory Declarations Act 2005*; or
 - (b) a person to whom the Family Law Act section 98AB(2) applies.
- (3) This section does not limit the *Oaths, Affidavits and Statutory Declarations Act 2005*.
- (4) This section applies to the Magistrates Court exercising —
 - (a) its federal jurisdiction under section 38; or
 - (b) its non-federal jurisdictions under section 39; or
 - (c) any other jurisdiction under a law of the Commonwealth, where that law confers jurisdiction on both the Court and the Magistrates Court.

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34. Section 244 amended

(1) After section 244(3)(d) insert:

(ea) proceedings transferred to the Court under the
Bankruptcy Act 1966 (Commonwealth)
sections 35A and 35B; and

(2) After section 244(1)(a) insert:

and

Part 4 — Transitional provisions

35. Section 247 replaced

Delete section 247 and insert:

247. Transitional and savings

- (1) Schedule 2 Division 1 has effect in relation to the repeal effected by section 246.
- (2) Schedule 2 Division 2 has effect in relation to the amendments made by the *Family Court Amendment (Family Violence and Other Measures) Act 2013*.

36. Schedule 2 Division 1 heading inserted

Before Schedule 2 clause 1 insert:

Division 1 — Provisions for repeal of *Family Court Act 1975*

37. Schedule 2 clause 1 amended

In Schedule 2 clause 1 delete “Schedule,” and insert:

Division,

38. Schedule 2 clause 2 amended

In Schedule 2 clause 2 delete “Schedule” and insert:

Division

39. Schedule 2 Division 2 inserted

At the end of Schedule 2 insert:

Division 2 — Provisions for *Family Court Amendment (Family Violence and Other Measures) Act 2013*

11. Application of amendments relating to family violence

(1) In this clause —

commencement means the commencement of the *Family Court Amendment (Family Violence and Other Measures) Act 2013* Part 2;

old Act means this Act as in force immediately before commencement.

(2) The amendments made by the *Family Court Amendment (Family Violence and Other Measures) Act 2013* sections 4 to 8, 10, 11 and 17 to 22 apply in relation to proceedings instituted at or after commencement.

(3) The amendments made by the *Family Court Amendment (Family Violence and Other Measures) Act 2013* Part 2 do not affect an order made under the old Act or a certificate given under section 66H(7) of the old Act.

(4) The amendments made by the *Family Court Amendment (Family Violence and Other Measures) Act 2013* Part 2 are taken not to constitute changed circumstances that would justify the making of an order to discharge or vary, or to suspend or revive the operation of, some or all of a parenting order that was made before commencement.

12. Application of other amendments

(1) In this clause —

commencement means the commencement of the *Family Court Amendment (Family Violence and Other Measures) Act 2013* Part 3;

old Act means this Act as in force immediately before commencement.

- (2) An order or direction under section 65(1) or 73(5) of the old Act, or an application for such an order or direction, has effect after commencement as if it were an order or direction, or an application for an order or direction, under that section as in force after commencement.
- (3) The amendment made by the *Family Court Amendment (Family Violence and Other Measures) Act 2013* section 26 applies in relation to orders under Part 5 Division 11 Subdivision 4, whether made before, at or after commencement.
- (4) The amendment made by the *Family Court Amendment (Family Violence and Other Measures) Act 2013* section 28 applies in relation to a court, after commencement, taking an opinion expressed by a family consultant into account, whether that opinion was expressed before, at or after commencement.
- (5) The amendment made by the *Family Court Amendment (Family Violence and Other Measures) Act 2013* section 30 applies in relation to orders requiring persons to enter into bonds, whether made before, at or after commencement.
- (6) The amendment made by the *Family Court Amendment (Family Violence and Other Measures) Act 2013* section 31 applies in relation to bonds entered into whether before, at or after commencement.
- (7) Subject to subclause (8), the amendment made by the *Family Court Amendment (Family Violence and Other Measures) Act 2013* section 32 applies in relation to appeals whether instituted before, at or after commencement.
- (8) The amendment made by the *Family Court Amendment (Family Violence and Other Measures) Act 2013* section 32 does not affect the dismissal or stay of proceedings on an appeal before commencement.

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- (9) The amendment made by the *Family Court Amendment (Family Violence and Other Measures) Act 2013* section 34 applies in relation to proceedings transferred to the Court whether before, at or after commencement.

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