

WESTERN AUSTRALIA

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# FAMILY COURT AMENDMENT ACT

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No. 64 of 1990

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**AN ACT to amend the *Family Courts Act 1975*.**

[Assented to 17 December 1990.]

The Parliament of Western Australia enacts as follows:

## **Short title**

1. This Act may be cited as the *Family Court Amendment Act 1990*.

## **Commencement**

2. This Act shall come into operation on the day on which the *Child Support (Adoption of Laws) Act 1990* comes into operation.

### Principal Act

3. In this Act the *Family Court Act 1975\** is referred to as the principal Act.

[\*Reprinted as at 1 March 1988 and amended by Acts Nos. 41 and 49 of 1988 and 37 of 1989.]

### Section 4 amended

4. Section 4 of the principal Act is amended by inserting in the appropriate alphabetical positions the following definitions—

“ “child agreement” means an agreement in writing between the parents of a child, whether made before or after the commencement of section 4 of the *Family Court Amendment Act 1990*, that relates to child welfare matters in respect of the child, whether or not it makes provision with respect to other matters, and includes such an agreement that varies an earlier child agreement;

“Child Support (Assessment) Act” means the *Child Support (Assessment) Act 1989* of the Commonwealth as adopted by the *Child Support (Adoption of Laws) Act 1990*;

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

### Section 41 inserted

5. After section 40 of the principal Act the following section is inserted—

#### Registration of child agreements

“ 41. (1) A child agreement may be registered in any court having jurisdiction under this Act.

(2) Where a child agreement is registered in a court—

- (a) a party to the agreement shall not institute proceedings under this Division seeking an order in relation to child welfare matters;
- (b) subject to subsection (4), the agreement, in so far as it relates to child welfare matters, is enforceable as if the agreement were an order of the Court; and
- (c) the court may, by order, vary the agreement, in so far as it relates to child welfare matters, if it considers that the welfare of a child requires variation of the agreement.

(3) Paragraphs (a) and (b) of subsection (2) do not apply to a child agreement to the extent, if any, that the agreement purports to confer the custody or guardianship of the child concerned upon a person who is not a parent of the child.

(4) The court in which a child agreement is registered under subsection (1) shall not enforce the agreement, in so far as it relates to child welfare matters, if it considers that to do so would be contrary to the best interests of a child.

(5) The court in which a child agreement is registered under subsection (1) may set aside the agreement if, and only if, the court is satisfied that—

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

(6) In exercising powers under this section, a court shall have regard to the provisions of sections 28 (2) and 39A. ”.

**Section 55A amended**

6. Section 55A of the principal Act is amended by deleting “On” and substituting the following—

“ Subject to section 55B, on ”.

**Section 55B inserted**

7. After section 55A of the principal Act the following section is inserted—

**Orders in respect of children to whom  
Child Support (Assessment) Act applies**

“ 55B. In exercising jurisdiction under this Part, the Court shall not, at any time, make, revive or vary an order for the maintenance of a child on the application of a person (in this section called “the applicant”) against, or in favour of, a person (in this section called “the respondent”) if an application could properly be made, at that time, under the Child Support (Assessment) Act for administrative assessment of child support (within the meaning of that Act)—

- (a) by the applicant seeking payment of child support for the child from the respondent; or
- (b) by the respondent seeking payment of child support for the child from the applicant,

whether or not such an application under that Act has in fact been made by the applicant, the respondent or another person. ”.

**Section 63 amended**

8. Section 63 of the principal Act is amended in subsection (1) by inserting after “the Court may,” the following—

“ subject to section 55B, ”.

**Section 69 amended**

9. Section 69 of the principal Act is amended in subsection (1)—

- (a) in paragraph (c), by inserting before “revive” the following—  
“ subject to section 55B, ”; and
- (b) in paragraph (d), by inserting after “subject to” the following—  
“ section 55B and ”.

**Section 70 amended**

10. Section 70 of the principal Act is amended—

- (a) in subsection (2), by deleting “Where” and substituting the following—  
“ Subject to subsection (4), where ”; and
- (b) by inserting after subsection (3) the following subsection—  
“ (4) Where—
  - (a) a maintenance agreement is, at any time, registered under subsection (1);
  - (b) the maintenance agreement makes provision for the maintenance of a child; and
  - (c) an application could properly be made, at that time, under the Child Support (Assessment) Act by one of the parties to the agreement for administrative assessment of child support (within the meaning of that Act) for the child, seeking payment of the child support by the other party to the agreement (whether or not such an application has in fact been made by the party or by another person),

the maintenance agreement, in so far as it makes provision for the maintenance of the child, has no effect and is not enforceable in any way. ”.