

WESTERN AUSTRALIA

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# FAMILY COURT AMENDMENT ACT

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No. 41 of 1988

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

*[Assented to 30 November 1988]*

The Parliament of Western Australia enacts as follows:

## **Short title**

1. This Act may be cited as the *Family Court Amendment Act 1988*.

## **Principal Act**

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

*[\*Reprinted as at 1 March 1988.]*

### Commencement

3. (1) Subject to subsection (2), this Act shall come into operation on such day as is fixed by proclamation.

(2) Section 9 shall be deemed to have come into operation immediately after section 23 of the *Family Court Act Amendment and Acts Repeal Act 1979* came into operation.

### Section 4 amended

4. Section 4 of the principal Act is amended by—

(a) deleting the definitions of “District Court”, “Part”, “Schedule”, “section” and “subsection”;

(b) inserting after the definition of “financial matters” the following definition—

“ “income tested pension, allowance or benefit” has the meaning given by the Family Law Act; ”;

(c) inserting after the definition of “order” the following definitions—

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

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

and

(d) inserting before the definition of “ward” the following 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; ”.

**Section 54 amended**

5. Section 54 of the principal Act is amended by—

(a) inserting after “54.” the following—

“ (1) ”;

(b) deleting “, according to their respective financial resources,”;  
and

(c) inserting after the existing section the following subsections—

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

(3) Particular objects of this Division include ensuring that—

(a) 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) parents share equitably in the support of their children.

(4) 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. ”.

**Section 56 amended**

6. Section 56 of the principal Act is amended in paragraph (b) by inserting after "parent" the following—

“ or step-parent ”.

**Section 58 amended**

7. Section 58 of the principal Act is amended—

- (a) in subsection (1) by deleting the passage beginning with “section 75(2) of the Family Law Act” and ending with “educated and trained.” and substituting the following—

“ sections 58A, 58B and 58C so far as they are relevant. ”;  
and

- (b) by repealing subsection (2) and substituting the following subsection—

“ (2) Where the term “party” or “parties” appears in section 58A, 58C or 58D (4), that term includes a guardian or guardians, as the case requires, and the matters referred to in sections 58A, 58B, 58C and 58D shall be taken into account in relation to a party who is a guardian. ”.

**Sections 58A, 58B, 58C and 58D inserted**

8. The principal Act is amended by inserting after section 58 the following sections—

Approach to be adopted in child maintenance proceedings

“ 58A. 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

58B. (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 28 (2) and 54, the following matters only—

- (a) the proper needs of the child; and
- (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.

(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 financial contribution that should be made by party, etc.

58C. (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 28 (2) and 54, 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; and
- (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.

(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).

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

58D. (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) the Court, 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 28 (2) and 54, 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; and
- (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 or are a step-parent or step-parents of the child), the Court shall take into account, in addition to the matters referred to in sections 28 (2), 54 and 58C, the extent to which the primary duty of the parents to maintain the child is being, and can be, fulfilled. ”.

## **Section 59 amended**

**9.** Section 59 of the principal Act is amended by deleting “a child” where it occurs for the second time and substituting the following—

“ the child ”.



**Section 62 amended**

**10.** Section 62 of the principal Act is amended by repealing subsection (3) and substituting the following subsection—

“ (3) On the hearing of an application under subsection (2), the Court may make an order containing provision for the payment by the respondent to the Collector of Maintenance or an officer of the Court for disbursement to a person or persons named in that order of such preliminary expenses as the Court—

- (a) having regard to the means of both the respondent and the woman; but
- (b) disregarding any entitlement of the woman to an income tested pension, allowance or benefit,

considers reasonable in all the circumstances of the case. ”.

**Section 82D amended**

**11.** Section 82D of the principal Act is amended by deleting “paternity” and substituting the following—

“ parentage ”.

**Section 82E repealed and substituted**

**12.** Section 82E of the principal Act is repealed and the following section is substituted—

**Medical procedures to determine parentage**

“ 82E. (1) Without limiting the generality of section 82D, when 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 82 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 when 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) When 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 medical or family history of the person; and

- (b) 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) When 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) When 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 parentage testing procedures.

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

(11) When 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 82 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. ”.

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