

Family Court Amendment Bill 2021

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Western Australia

LEGISLATIVE ASSEMBLY

Family Court Amendment Bill 2021

A Bill for

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

The Parliament of Western Australia enacts as follows:

s. 1

1 **1. Short title**

2 This is the *Family Court Amendment Act 2021*.

3 **2. Commencement**

4 This Act comes into operation as follows —

5 (a) sections 1 and 2 — on the day on which this Act
6 receives the Royal Assent;

7 (b) the rest of the Act — on the day after that day.

8 **3. Act amended**

9 This Act amends the *Family Court Act 1997*.

10 **4. Part 8 Division 3 inserted**

11 At the end of Part 8 insert:

12

13 **Division 3 — Cross-examination of parties where**
14 **allegations of family violence**

15 **219AJ. Application of Division**

16 (1) In this section —

17 *commencement day* means the day on which the
18 *Family Court Amendment Act 2021* section 4 comes
19 into operation;

20 *specified day* means the day after the period of 90 days
21 beginning on commencement day.

22 (2) This Division applies to cross-examinations occurring
23 on or after the specified day in proceedings instituted
24 before, on or after the commencement day.

1 **219AK. Mandatory protections for parties in certain**
2 **cases — FLA s. 102NA**

- 3 (1) The requirements of subsection (2) apply if, in
4 proceedings under this Act —
- 5 (a) a party (the *examining party*) intends to
6 cross-examine another party (the *witness*
7 *party*); and
- 8 (b) there is an allegation of family violence
9 between the examining party and the witness
10 party; and
- 11 (c) any of the following are satisfied —
- 12 (i) either party has been convicted of, or is
13 charged with, an offence involving
14 violence, or a threat of violence, to the
15 other party;
- 16 (ii) a family violence order (other than an
17 interim order) applies to both parties;
- 18 (iii) an injunction under section 235 or 235A
19 for the personal protection of either
20 party is directed against the other party;
- 21 (iv) the court makes an order that the
22 requirements of subsection (2) are to
23 apply to the cross-examination.
- 24 (2) Both of the following requirements apply to the
25 cross-examination —
- 26 (a) the examining party must not cross-examine the
27 witness party personally;
- 28 (b) the cross-examination must be conducted by an
29 Australian legal practitioner acting on behalf of
30 the examining party.

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- 1 (3) The court may make an order under
2 subsection (1)(c)(iv) —
3 (a) on its own initiative; or
4 (b) on the application of —
5 (i) the witness party; or
6 (ii) the examining party; or
7 (iii) if an independent children’s lawyer has
8 been appointed for a child in relation to
9 the proceedings — that lawyer.

10 **219AL. Court-ordered protections in other cases — FLA**
11 **s. 102NB**

- 12 (1) Subsection (2) applies if, in proceedings under this
13 Act —
14 (a) a party (the *examining party*) intends to
15 cross-examine another party (the *witness party*)
16 personally; and
17 (b) there is an allegation of family violence
18 between the examining party and the witness
19 party; and
20 (c) section 219AK does not apply to prevent the
21 examining party cross-examining the witness
22 party personally.
- 23 (2) The court must ensure that during the
24 cross-examination there are appropriate protections for
25 the party who is the alleged victim of the family
26 violence.

1 **5. Section 243 amended**

2 (1) In section 243(1) delete the passage that begins with “A person”
3 and ends with “disseminate” and insert:
4

5 A person commits a crime if the person publishes in a
6 newspaper or periodical publication or by radio broadcast,
7 television or other electronic means, or otherwise disseminates
8

9 (2) In section 243(1) delete the Penalty and insert:
10

11 Penalty for this subsection:

- 12 (a) for an individual, imprisonment for
13 12 months and a fine of \$5 500;
14 (b) for a body corporate, a fine of \$11 000.

15 Summary conviction penalty for this subsection:

- 16 (a) for an individual, a fine of \$2 750;
17 (b) for a body corporate, a fine of \$5 500.
18

19 (3) In section 243(2) delete the passage that begins with “A person”
20 and ends with “disseminate” and insert:
21

22 A person commits a crime if the person, except as permitted by
23 the rules, publishes in a newspaper or periodical publication or
24 by radio broadcast, television or other electronic means, or
25 otherwise disseminates
26

27 (4) In section 243(2) delete the Penalty and insert:
28

29 Penalty for this subsection:

- 30 (a) for an individual, imprisonment for
31 12 months and a fine of \$5 500;

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1 (b) for a body corporate, a fine of \$11 000.

2 Summary conviction penalty for this subsection:

3 (a) for an individual, a fine of \$2 750;

4 (b) for a body corporate, a fine of \$5 500.

5

6 (5) Delete section 243(5).

7 (6) After section 243(8)(a) insert:

8

9 (aa) the communication of any pleading, transcript
10 of evidence or other document to an authority
11 of a State or Territory that has responsibilities
12 relating to the welfare of children and is
13 prescribed by the regulations for the purposes
14 of this paragraph; or

15

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