



Information Sheet: Changes to the *Family Law Act 1975* under the *Family Law Amendment (Family Violence and Cross-examination of Parties) Act 2018*

The *Family Law Amendment (Family Violence and Cross-examination of Parties) Act 2018* (the Act) received Royal Assent on 10 December 2018.

A copy of the Bill and Explanatory Memorandum can be obtained at www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r6152.

The Act bans personal cross-examination in family law proceedings involving allegations of family violence in specific circumstances, and requires the court to use other protections for victims where allegations of family violence are made but the specific circumstances do not apply.

Commencement

The Act commenced on 11 March 2019. The amendments will apply to cross-examinations that occur six months after commencement of the amendments (11 September 2019), in proceedings instituted before or after that commencement. This is intended to ensure parties have adequate time to retain a legal practitioner and prevent any unnecessary delays to their court proceedings.

Legislative ban on personal cross-examination

The Act amends the *Family Law Act 1975* by inserting a new 'Division 4—Cross-examination of parties where allegations of family violence' into Part XI of the Family Law Act. The new section 102NA — mandatory protection for parties in certain cases — prohibits personal cross-examination in family law proceedings where there is an allegation of family violence between two parties (new paragraph 102NA(1)(b)) and any of the following circumstances, set out in new paragraph 102NA(1)(c), apply:

- either party has been convicted of, or is charged with, an offence involving violence, or a threat of violence, to the other party
- a family violence order (other than an interim order) applies to both parties
- an injunction under sections 68B or 114 for the personal protection of either party is directed against the other party, or
- the court makes an order that the mandatory requirements apply to the cross-examination.

The court may make an order to prevent personal cross-examination on its own initiative or on the application of either the examining party, the witness party, or an independent children's lawyer (subsection 102NA(3)).

Where these conditions are met, new subsection 102NA(2) provides that the examining party must not cross-examine the witness party personally and the cross-examination must be conducted by a legal practitioner acting on behalf of the examining party. If the self-represented examining party does not have legal representation, they will not be permitted to cross-examine the other party.

New section 102NA applies to all parties to proceedings where there is an allegation of family violence between those parties and one or more of the circumstances are satisfied. This includes intervening parties, but only if the intervening party is involved in the allegation of family violence, whether as the alleged perpetrator or as the alleged victim.

Commonwealth Family Violence and Cross-examination of Parties Scheme

The retention of a legal practitioner by parties subject to the ban on personal cross-examination will generally be facilitated according to the following process.

1. When a court is making directions for trial it will consider if a ban on cross-examination mandatorily applies or whether an order to ban personal cross-examination should be made under the Act. If the ban mandatorily applies and/or an order is made the parties will be informed of the implications of the ban and the steps that parties can take in light of the ban. That information will include the options of unrepresented parties retaining private legal representation, or making an application to the Commonwealth Family Violence and Cross-examination of Parties Scheme (the Scheme) administered by Legal Aid Commissions.
2. The court will provide the relevant Legal Aid Commission with a copy of any order or notation which confirms a ban on personal cross-examination applies and a copy of other relevant orders and directions, unless the affected party indicates they will obtain private representation or objects to their information being provided.
3. Prior to the next return date, and in any event within six weeks of the Legal Aid Commission receiving notice of a ban being in place, the Commission will confirm to the court whether an application has been made to the Scheme by any party, and if so, the status of the application/s.
4. If a party is to be assisted under the Scheme, the lawyer allocated to the matter will be required to file a Notice of Address for Service, thereby alerting the court that the party has obtained representation.
5. If any assistance under the Scheme is terminated for any reason, the Legal Aid Commission will inform the court as soon as practicable.
6. In the event a party becomes unrepresented after trial directions have been made, that party should promptly advise the court they are unrepresented.

Eligibility and contributions

Access to the Scheme will not be means or merit tested. However, parties may be asked to contribute to the cost of their legal representation where appropriate, depending on their circumstances and ability to pay.

Conditions will apply to legal representation under the Scheme and ongoing representation is not automatic. If a party is no longer represented under the Scheme, and they do not retain a private legal practitioner, cross-examination will not take place as the ban will remain in place.

Insertion of a new section 102NB – Court-ordered protections in other cases

The Act also provides that, if there is an allegation of family violence but personal cross-examination is not prohibited, the court must apply other appropriate protections.

New section 102NB states that if, in proceedings under the Family Law Act:

- a party intends to cross-examine another party personally,
- there is an allegation of family violence between the parties, and
- new section 102NA does not apply to prevent the party from personally cross-examining the other party

then the court must ensure that during cross-examination there are appropriate protections for the party who is the alleged victim of the family violence.

'Protections' in new section 102NB refers to the range of existing protections available to the court under the Family Law Act, the *Evidence Act 1995*, and the court's general power to control proceedings. The [Family Violence Best Practice Principles](#) set out the available protections.