

Family Law Act amendment bans personal cross-examination where domestic violence in family law proceedings

The Family Law Amendment (Family Violence and Cross-examination of Parties) Act 2018 protects victims of family violence from personal cross-examination by the other party. In certain circumstances, cross examination will be required to be conducted by a legal representative.

The amendments will apply to cross examinations that occur after 11 September 2019, in proceedings instituted before or after that commencement.

The circumstances in which personal cross-examination will be prohibited in family law proceedings are where there is an allegation of family violence between two parties and at least one of the following applies:

- either party has been convicted of or is charged with an offence involving violence or a threat of violence to the other party; or
- a family violence order (other than an interim order) applies to both parties; or
- 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.

When the ban on personal cross-examination applies, cross examination of both parties must be conducted by a lawyer.

The order to prevent personal cross-examination can be made:

- by the court on its own initiative; or
- on the application of one of the parties; or
- on the application of an independent children's lawyer.

The section only applies to an intervening party if the intervening party is involved in the allegation of family violence, whether as the alleged perpetrator or as the alleged victim.

Parties will need to hire a private lawyer or apply to their relevant state or territory legal aid commission for legal representation under the Commonwealth Family Violence and Cross-examination of Parties Scheme (the "Scheme").

The legislation sets out the processes and directions to be followed in order to facilitate the retention of a legal practitioner by parties subject to the ban on personal cross-examination and to provide for situations where parties are represented and unrepresented.

Where a court considers a ban on cross-examination mandatorily applies or makes an order to ban personal cross-examination, the parties will be given information about the steps that can be taken, including options of retaining private legal representation or applying under the Scheme.

Access to the Scheme will not be means or merit tested but parties may be asked to contribute to the cost of legal representation where appropriate. Conditions will also apply.

If a party does not have legal representation, they will not be permitted to cross-examine the other party.

While these measures apply in family law proceedings, they also have relevance for family violence matters in state and territory courts as the presence of a conviction or a final family violence order will now result in parties being unable to personally cross-examine one another in a family law proceeding where there are allegations of family violence.

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, such as requiring that cross-examination be conducted by video or audio link

The Act Commenced on 11 March 2019.

[Click Here to access the Information Sheet issued by the Attorney-General's Department](#)

