

Submission to the Family Law Amendment (Family Violence and Cross-examination of Parties) Bill 2017— Public Consultation on Cross-examination Amendment

(Consultation closes **COB 25 AUGUST 2017**). Please send electronic submissions to familylawunit@ag.gov.au)

Publication of submissions

Submissions will be published on the Attorney-General's Department website. Please advise if you wish all or part of your submission to remain confidential.

Please prepare your submissions in this template and submit in Microsoft Word format (.doc or.docx) to familylawunit@ag.gov.au. Use of the submission template assists in meeting the Australian Government's commitment to enhancing the accessibility of published material.

The department will consider hardcopy submissions received by mail, but these submissions will not be published on the website.

Please also note that it is an offence under section 121 of the *Family Law Act 1975* (Cth) to disseminate to the public or to a section of the public by any means any account of any proceedings under the Act that identifies:

- a party to the proceedings;
- a person who is related to or associated with a party to the proceedings or is otherwise concerned in the matter to which the proceedings relate; or
- a witness in the proceedings.

Your details

Name/organisation *(if you are providing a submission on behalf of an organisation, please provide the name of a contact person)*

David Thorp

Contact details *(one or all of the following: postal address, email address or phone number)*

[contact details redacted]

Confidentiality

Submissions received will be made public on the Attorney-General's Department website unless otherwise specified. Submitters should indicate whether any part of the content should not be disclosed to the public. Where confidentiality is requested, submitters are encouraged to provide a public version that can be made available.

I would prefer this submission to remain confidential (please tick if yes)

Your submission

Insert your text here and send the completed submission to the Attorney-General's Department at familylawunit@ag.gov.au.

1. Should direct cross-examination only be automatically banned in specific circumstances?

It should never be automatically banned and preferably upheld as a right that the judge cannot deny.

2. Should direct cross-examination be banned in each of the specific circumstances set out in the new proposed subsection 102NA(1)?

No.

Being charged with an offence does not make a defendant guilty and someone who has served their sentence for a past conviction should have the same right to defend themselves as anyone else. Family violence orders are trivial to obtain based on lies or simply "fear" without reason.

A relatively trivial "threat of violence", perhaps made in self defence, could be used to deny the accused their right to be effectively defended.

3. Should direct cross-examination be banned in any additional circumstances not referred to in the new proposed subsection 102NA(1)? For example, in the courts' Notice of Risk/ Notice of Child Abuse, Family Violence or Risk of Family Violence.

No

4. Should any ban on direct cross-examination apply to both parties to the proceedings asking questions of each other, or only to the alleged perpetrator of the family violence asking questions of the alleged victim?

It should go both ways, but then, amazingly, we'd have a court system that even further restricts the ability to uncover the truth than the current one!

5. Should the discretionary power only be exercised on application by the alleged victim, or by the courts' own motion, or should the alleged perpetrator also be able to make an application to prevent direct cross-examination?

The latter would be fair, but see Q.4 response.

6. Which people would be most appropriate to be appointed by the court to ask questions on behalf of a self-represented person? For example, a court employee not involved in the proceedings, other professionals, lay people.

How about some mandatory useless [redacted] who can't get better work and neither knows nor cares about the defendant or what's really happening, and won't know how to respond to lies the accuser makes?

i.e. legal aid solicitors.

7. What qualifications, if any, should the court-appointed person have?

None. This is restrictive practices designed to shore up a corrupt self-serving monopoly. See also Q.6 response.

8. Should any requirements regarding who the court can appoint and their qualifications be included in the Family Law Act?

Yes, it should say anyone can, at the choice of the defendant (the accused).

9. Should any further information about the scope of the role of the court-appointed person be included in the Family Law Act? For example:

- **how the court-appointed person obtains questions from a self-represented party**
- **the level of engagement the court-appointed person should have with a self-represented party on whose behalf they are asking the questions**
- **whether the court-appointed person should be present in court for the whole of the proceedings or just during cross-examination**
- **what discretion the court-appointed person can exercise (if any) in relation to asking the questions they have been provided by a self-represented party**
- **whether the court-appointed person can ask any questions of their own (not provided by the self-represented party) during cross-examination**
- **whether they are under a duty to cooperate with other parties to the proceedings such as an Independent Children's Lawyer appointed in a case, and**
- **the intersection between the court-appointed person's role and that of the judicial officer.**

Why don't you create a massive new load of restrictive rules to further limit people's rights and the uncovering of information that might reveal the truth, whilst loading up the system with even more bureaucratic process inefficiency and costs than it already has (if that is at all possible)???!!!

10. Should a self-represented person be allowed to nominate the person who is appointed by the court to ask questions on their behalf?

Yes – themselves or anyone else!

11. Do you have any concerns about the court-appointed person model?

It stinks. This is denying the right to effectively defend yourself based on nothing more than accusations. It is further denial of Dad's rights (& kids' rights to see their Dad) in an already biased and self-serving, dysfunctional and inherently confrontational system that exists purely to line the pockets of lawyers and judges.

Who's going to pay for the incompetent and ignorant person (who couldn't care less about the outcome) that the defendant will inevitably be lumped with?

12. Should the court only grant leave for direct cross-examination to occur if both parties to the proceedings consent? i.e. where an alleged victim consents to being directly cross-examined or consents to conducting direct cross-examination, should the alleged perpetrator's consent also be required?

Seriously? The converse of what is suggested would let lying accusers have a veto to protect themselves from being exposed but they could conduct accusatory cross-examination of the accused (dressed up as questions – "I put it to you that you did XYZ, isn't that so?"), with no right to respond with any counter questions!

13. Should the court only grant leave for direct cross-examination to occur if it has considered whether the cross-examination will have a harmful impact on the party that is the alleged victim of the family violence?

What constitutes "harmful"? Being upset? If she turns on the water-works?? This is a sick joke. If this must happen, then yes – the more scope for allowing an accused to defend themselves through cross-examination the better.

14. Should the court only grant leave for direct cross-examination to occur if it has considered whether the cross-examination will adversely affect the ability of the party being cross-examined to testify under the cross-examination, and the ability of the party conducting the cross-examination to conduct that cross-examination?

Same as Q.13 response.

15. Are there any other issues the court should be required to consider before granting leave for direct cross-examination to occur?

Yes – the denial of justice and the common practice of false accusations made by women especially to deny Dad's and children their right to have a relationship after separation ("parental alienation").

16. Should the amendments apply to proceedings started before the law comes into effect, or should they only apply to proceedings started after the law comes into effect?

The less the better.

17. Should any changes be made to the proposed amendments to ensure that all parties receive a fair hearing?

Yes, scrap this appalling proposal.

18. Should any changes be made to the proposed amendments to ensure that the courts can be satisfied that any cross-examination of the parties that occurs through a court-appointed person will enable the judicial officer to accord procedural fairness to the parties?

Yes, although it will only be damage limitation.

19. Should any changes be made to the proposed amendments to ensure that the courts are able to make informed decisions?

Yes, scrap the current court system and start again with an efficient system that is accountable to society. Current practices are designed to restrict the revealing of information and the making of common-sense & timely decisions - slowing processes to a crawl so that lawyers and judges can collect more and more fees (until such time as the parties give up in despair).

20. Should any changes be made to the proposed amendments to ensure that they do not have any unintended consequences for victims of family violence?

Yes, scrap them.

21. Any general comments.

The court system is fundamentally confrontational, self-serving, grossly inefficient and corrupt in many areas. This is just going to make it worse. It needs replacing through fundamental reform to deliver an accountable, less-confrontational and efficient system that upholds all human rights.

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