

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The department will consider hardcopy submissions received by mail, but these submissions will not be published on the website.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

Mount Druitt Family Violence Service

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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?**

Yes

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

Yes

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.**

Yes

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?**

Yes. Any expectation that the victim may cross examine the perpetrator should be removed as this could add to the trauma experienced. An impact statement may be a better use of the victims resources.

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?**

Courts' discretion should be used by the courts' own motion.

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.**

A qualified independent person such as a court employee not involved.

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

We are not sure what qualifications are available but there should be something perhaps at C4 or diploma level such as mediation skills.

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

Yes

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.

There needs to be clear guidelines on how the questions can be devised and by who. It needs to be made clear the scope of involvement by the court appointed person such as if they are in court through the whole proceedings, the information that they gain should not influence the questions that they ask, they should take instruction only from the self represented party. In fact it may be better if they are only present in court when they are required to cross examine.

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

No, otherwise it is open to question whether the person is truly independent.

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

There needs to be further clarity about the role and model as in Q9.

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?

No.

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?

Yes. This may in certain circumstances enable the victim to have a voice in court.

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?

Yes

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

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?

Yes

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

Consideration needs to be given to who is in the court at the time of the cross examination. It may be better for the court to be closed at the time so that there for instance, are no other family members, friends who may be intimidating to the witness.

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?

[Response here]

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

[Response here]

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?

[Response here]

21. Any general comments.

[Response here]