

Your details

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

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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?**

NO

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. Where allegations of Family Violence exist and a family violence order has been sought by one party but successfully contested by the other party (i.e. order not granted); and
(a) neither the applicant party (or the respondent party) had been assessed with an evidence-based family violence risk assessment framework/tool (e.g. the CRAF) conducted by a specialist Family Violence assessor; or
(b) if an evidence-based family violence risk assessment had been conducted on *either* the applicant or respondent party, the Court did not have access to the results of this assessment at the time the family violence order was sought.

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?**

A ban should apply to both parties to the proceedings asking questions of each other regardless of which is the alleged perpetrator or victim.

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?**

Any party (examining party, witness party, intervening parties) to the proceedings should be able to apply to prevent direct cross examination occurring where there is an allegation of family violence but none of the specific circumstances set out in the proposed subsection 102NA(1) (as it currently stands) are satisfied.

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.**

(If the court-appointed model must be adopted) A professional person with:

- (a) legal training to a level adequate to understand the procedural rules and requirements of the applicable law and of the Court; (and)
- (b) family violence training to a level adequate to recognise family violence tactics and risk factors

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

A minimum of graduate level qualifications:

- (a) in a law-related field; and where additional (recognised) specialist family violence training in identification and response to family violence had also been completed; or
- (b) in a health/mental health/public health-related field; and where additional (recognised) specialist family violence training in identification and response to family violence had been completed; and

additional legal training to a level adequate to understand the procedural rules and requirements of the applicable law and of the Court had been completed

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.**

YES (If the court-appointed model must be adopted):

The self-represented party should supply the court appointed person with a list of questions in either written or verbal format prior to cross-examination (and prior to entry to the Courtroom). The self-represented party should then be able to supply further questions (outside the Courtroom) in either written or verbal format to the court-appointed person in response to the witness' responses during cross-examination.

The court-appointed person should be present in court for the whole of the proceedings.

The court-appointed person should be competent to recognise questions (independantly or in series) that constitute verbal abuse or denigration of the witness, or the use of family violence tactics, and to use their discretion to either substantially reword or omit such questions.

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

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

YES. The court-appointed person model is a dangerous and unsatisfactory response to the lack of adequate legal representation for all parties in matters where allegations of family violence exist. In situations where allegations of family violence exist and either party does not have access to adequate legal representation for all hearings, the dynamics of family violence are perpetuated and family violence will remain a major public health crisis in Australia.

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. Direct cross-examination should *never* occur when allegations of family violence exist.

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?

NO. The court is not a specialist family violence assessor and is therefore not qualified to assess whether direct cross examination will have a harmful impact on the party that is the alleged victim of the family violence.

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?

NO. Direct cross-examination should **never** occur when allegations of family violence exist. Adequate legal representation for all parties must be ensured in matters where allegations of family violence exist

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

See above

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?

Amendments should apply immediately

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

YES. Where allegations of Family Violence exist an evidence-based family violence risk assessment framework/tool (e.g. the CRAF) should be conducted by a specialist Family Violence assessor and the results of this assessment made available to the court.

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?

Procedural fairness can never be guaranteed in matters where allegations of family violence exist and a court-appointed person model is applied instead of ensuring adequate legal representation for both parties.

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

YES. See above

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. See above

21. Any general comments.

It is the right of every person to have their basic human rights protected through access to a fair and impartial legal system. When vulnerable or disadvantaged persons are unable to access fair and impartial legal justice then the society in which they live is fundamentally failing to recognise their human rights. Without access to adequate legal representation vulnerable and disadvantaged groups such as those who have experienced family violence do not have access to a fair and impartial legal system.