

**FAMILY COURT OF AUSTRALIA**

**ATTORNEY-GENERAL'S DEPARTMENT  
FAMILY VIOLENCE TASKFORCE  
EXPOSURE DRAFT – FAMILY LAW AMENDMENT  
(FAMILY VIOLENCE AND CROSS-EXAMINATION  
OF PARTIES) BILL 2017**

**SUBMISSION BY  
THE HONOURABLE DIANA BRYANT AO  
CHIEF JUSTICE OF THE  
FAMILY COURT OF AUSTRALIA**

25 August 2017

## INTRODUCTION

1. The Family Court of Australia ('the Family Court' or 'the Court') welcomes the opportunity to comment on the proposed amendments to the *Family Law Act 1975* (Cth) ('the Family Law Act' or 'the Act') to address direct cross-examination of parties in proceedings involving family violence.
2. I make this submission in my capacity as Chief Justice of the Family Court of Australia and the views expressed herein, which have been developed in consultation with Justice Strickland, the Judge responsible for advising me on matters of law reform, and with input from several other Justices. Whilst they do not purport to represent those of all of the Family Court Justices or the Court as a whole, I anticipate that these views will be widely accepted by the judges.
3. This submission will aim to describe some of the legal, procedural or other issues that arise in relation to most of the questions asked, save for those questions which are too broad for me to comment on, or where a matter of Government policy is engaged. A number of questions give rise to similar issues, and I have conveniently grouped those questions under a more general heading.
4. At the outset I indicate that I am strongly of the view for reasons later expressed, that the intention and the aims expressed in the Public Consultation Paper and in the Draft Exposure Bill can be best achieved by providing the necessary resources to State Legal Aid bodies. The amendments specifically in relation to examining parties without legal representation need to be carefully considered. The Court has significant concerns about court-appointed representatives without guidelines and scope of what that person can do being included in the legislation. As outlined below, court-appointed persons should be from a state legal aid body with the necessary training and qualifications. The legal aid bodies, if funded, could establish specialist units for this purpose. If there is such a body from which appointments can be made by the Court, and if there is concern that some litigants may resist because they wish to personally cross examine, then there would be adequate justification for a judge to refuse to allow cross examination.
5. In the Court's submission to the Victorian Royal Commission we said the following which bears repetition:
  - (a) From time to time, suggestions have been made that governments fund an advocacy service similar to that which is used in certain states in criminal trials, where an advocate conducts the cross-examination of the alleged victim in place of a self-represented accused.
  - (b) In broad terms, we are not persuaded that such a suggestion recognises the significant difference between criminal and family law proceedings, even where the subject matter, violence, is the same. For example, in a criminal

trial, while violence may be the sole factual and legal issue for determination, often the alleged victim is but one of the witnesses in the case. In the family law context, the victim is a party to the proceedings and the issue of family violence is only one of the issues to be determined although it may permeate the whole of the factual matrix of the case. It is difficult to see how such a system would sensibly sequester the cross-examination of an alleged perpetrator as to family violence from the cross examination on other issues in the case.

- (c) Further, unlike in a criminal context, where the victim is a witness and is to a considerable degree protected by the fact that the proceedings are conducted by police or by the Office of the Director of Public Prosecutions, in family law, the victim is a party and, where self-represented, will have interaction with the perpetrator throughout the case, not merely while giving evidence.
- (d) While ultimately a matter for government funding, a better and more effective approach to the issue would be to provide sufficient resources to enable parties to have legal representation where there is an allegation of family violence at the upper end of severity.

## **THE CURRENT POSITION**

- 6. It is common in trials in courts exercising jurisdiction under the Family Law Act that a witness is examined, cross-examined and sometimes re-examined. Generally, all witnesses are liable to cross-examination (see, for example, *Prentice v Cummins* (2003) 134 FCR 449 at [25]).
- 7. As part of a judge's overarching duty to ensure that all parties receive a fair trial, a judge has a discretion to prevent or restrict the examination and cross-examination of witnesses (see, for example, *GPI Leisure Corp Ltd v Herdsman Investments Pty Ltd (No 3)* (1990) 20 NSWLR 15 at 18, 22–23).
- 8. With the exception of the statutory restriction on the examination of children in the Family Law Act (s 102A), there is no express limitation in the Act on the ability of an unrepresented party to directly cross-examine another party in proceedings where there is an issue of family violence; such a restriction comes by way of the exercise of a court's discretion to limit the examination and cross-examination of a party.
- 9. The Family Law Act contains a broad, non-exhaustive definition of 'family violence' which provides that it is to mean 'violent, threatening or other behaviour by a person that coerces or controls a member of the person's family (the family member), or causes the family member to be fearful' (s 4AB(1)).

10. Generally, a family violence order or interim family violence order is made under the prescribed law of a State or Territory. Such orders can be made by consent. There are a variety of orders and injunctions that can be made by a court exercising jurisdiction under the Family Law Act which are related to issues involving family violence. Division 11 of Part VII of the Family Law Act recognises, however, that, to the extent that there is an inconsistency between an order or injunction made under the Family Law Act and a family violence order, the order or injunction made under the Family Law Act will render the family violence order invalid.
11. A court exercising jurisdiction under the Family Law Act has a range of powers to manage proceedings in order to secure a fair trial for the parties. In addition to a court's power to prevent or restrict the examination and cross-examination of witnesses in any given circumstance where it sees fit (ss 69ZX and 101 of the Family Law Act, ss 26 and 41 *Evidence Act 1995* (Cth)), a court has the power to direct the parties, where it is in their interests to do so, to give evidence out of sight of one another (see, for example, *R v Smellie* (1919) 14 Cr App R 128; *R v DJX* (1990) 91 Cr App R 36; *BUSB v R* (2011) 80 NSWLR 170). This power has subsequently extended to the use of 'video link, audio link or other appropriate means' in Division 2 of Part XI of the Act. I emphasise the discretionary powers that are given to a court under Part VII, Division 12A of the Act, particularly ss 69ZX(1)(c) and 69ZX(2)(i), and which courts can exercise in any given circumstance as they see fit.
12. For reference, I attach to this submission a chart of relevant provisions contained in the Act and the *Evidence Act 1995* (Cth) which I provided previously to the Department.

## THE QUESTIONS

### **Question 1: Should direct cross-examination only be automatically banned in specific circumstances?**

13. Most Australian jurisdictions have legislated to either ban or restrict the direct cross-examination of protected witnesses by an unrepresented party in prescribed criminal proceedings or in civil proceedings that either relate to a prescribed criminal offence or fall under certain State family violence provisions. Specifically:
  - (a) In New South Wales, the Northern Territory, the Australian Capital Territory and under the *Crimes Act 1914* (Cth) ('the *Crimes Act*'), an unrepresented defendant is prevented from directly cross-examining the alleged victim of an offence in certain criminal proceedings to which the respective statutory provisions apply. Rather, cross-examination in these circumstances may only occur through a court-appointed person. The role of the court-appointed person is limited solely to the cross-examination of the alleged victim and the questions that may be asked by the appointed person are only those that are an

accurate representation of the questions requested to be asked by the unrepresented defendant (see *Criminal Procedure Act 1986* (NSW) s 294A; *Sexual Offences (Evidence and Procedure) Act 1983* (NT) s 5; *Evidence (Miscellaneous Provisions) Act 1991* (ACT) s 38D; *Crimes Act 1914* (Cth) s 15YG). Notably, the *Crimes Act* differs slightly in comparison to the other statutory provisions requiring a court to appoint a person for the purpose of cross-examination in that a court exercising jurisdiction under the *Crimes Act* retains its discretion as to whether or not direct cross-examination will be permitted by an unrepresented defendant and the court may give leave to an unrepresented defendant as it sees fit.

- (b) In Queensland, s 151 of the *Domestic and Family Violence Protection Act 2012* (Qld) differs from the other Acts referred to in this submission in that it does not place an automatic ban or restriction on the direct cross-examination of a protected witness by an unrepresented party. Rather, the court retains its discretion and may order that an unrepresented party be prevented from cross-examining a protected witness if the court is of the view that such cross-examination is likely to cause the protected witness to ‘suffer emotional harm or distress’ or ‘be so intimidated as to be disadvantaged as a witness’. Where an order has been made so as to prohibit direct cross-examination of a protected witness, cross-examination may only then occur through a lawyer acting for the examining party generally, or acting for the examining party for the sole purpose of cross-examination.
- (c) In Victoria and Queensland, where an unrepresented party is prohibited from directly cross-examining a protected witness, the court will arrange for the unrepresented party to be given free legal assistance by the State Legal Aid body for the sole purpose of cross-examining the protected party (see *Criminal Procedure Act 2009* (Vic) s 257; *Family Violence Protection Act 2008* (Vic) ss 70-71; *Evidence Act 1977* (Qld) s 21O). Under the *Family Violence Protection Act 2008* (Vic) s 70, a protected party who is not a child may consent to being directly cross-examined by the unrepresented party.
- (d) In Western Australia, where an unrepresented party is prohibited from directly cross-examining a protected witness the questions are put to the protected witness by stating the questions to either the judge or a person approved by the court. The protected witness who is not a child may consent to being directly cross-examined (*Evidence Act 1906* (WA) s 106G) or request that an order prohibiting direct cross-examination not be made (*Restraining Orders Act 1997* (WA) s 44C).
- (e) In South Australia, where an unrepresented party is prohibited from directly cross-examining a protected witness in certain criminal or civil proceedings

the questions are put to the judge for the judge to then determine whether a question is allowable in cross-examination. The judge or the judge's delegate can then ask the allowable questions. The judge nevertheless retains a discretion in relation to how cross-examination may be undertaken, provided that it is not done directly by the unrepresented party (see *Evidence Act 1929* (SA) s 13B; *Intervention Orders (Prevention of Abuse) Act 2009* (SA) s 29).

14. As can be seen, there are observable differences in the ways in which Australian jurisdictions have approached the issue of direct cross-examination of a protected witness by an unrepresented party. The effect that any one approach has on the parties to the proceedings cannot be said, nor can it be said whether one approach is to be preferred over another. The differences that exist between the approaches are worthy of greater consideration in the context of proposed solutions to address the issues raised in the Public Consultation Paper as it is possible for those differences to impact the way in which proceedings are conducted and, perhaps more importantly, the parties to those proceedings personally.
15. If direct cross-examination is banned in specific circumstances, this submission supports an approach that is consistent with those comparable provisions referred to above which preserve a court's discretionary powers to manage the conduct of proceedings in any given circumstance.

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

16. Given the myriad of acts by an individual which might be defined, broadly, as acts of 'family violence', there will be a risk that a blanket ban where there is any allegation of family violence will restrict direct cross-examination in proceedings where it would have otherwise been appropriate for direct cross-examination to occur. In turn, this will significantly restrict a court's powers to manage proceedings in any given circumstance. In other words, s 102NA(3) may not provide a court with enough scope to permit cross-examination where it should be allowed.
17. In my view the legislation should differentiate between a person who has been convicted and a person who has been charged with an offence. Subsection 102NA(3) may not provide the court with the required flexibility.
18. Further, it cannot be the presence of all family violence orders which attracts the automatic ban. A distinction needs to be drawn between those matters in which there has been a trial before a State court which resulted in an order, and those matters where an application has been brought in a State court, and an order made by consent and without admissions.

19. That consideration also applies to s 102NA(c)(iii), and the same distinction needs to be recognised.
20. It is also necessary to appreciate the various types of injunctions that can be made pursuant to ss 114 and 68B of the Family Law Act. They may not necessarily be linked to family violence. For example, a party might be restrained from dealing with the property of the parties to the marriage, or from attending the children's school, or a place of employment. Thus, s 102NA(c)(iii) needs to be amended to cater for this circumstance.

**Question 3: Should direct cross-examination be banned in any additional circumstances not referred to in the new proposed ss 102NA(1)? For example, in the Courts' Notice of Risk/Notice of Child Abuse, family violence or risk of family violence.**

21. The short answer to this question is no. There are no additional circumstances, and to include the filing of a Notice would inevitably raise the same issues that I have identified in my response to Question 2.

**Question 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?**

22. Where a legislative ban on direct cross-examination seeks to prevent any continuation of alleged abusive behaviour, there does not appear to be any reason to suggest that the alleged victim should then be prevented from directly cross-examining the alleged perpetrator. Although, from the perspective of the alleged victim, it may be unreasonable for them to be obliged to directly cross-examine an alleged perpetrator. As I have long advocated, it is more important that the alleged victim be represented as incapacity to cross-examine will likely lead to an inability to prosecute the case at all. At present judges can at least suggest that legal aid be granted but this is an opportunity for the legislation to make some provision for the representation of those alleged victims falling within the class as defined.

**Question 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?**

23. There would be serious questions of procedural unfairness if one party was prevented from making an application to affect the way in which proceedings are run and another party was permitted to make such an application. A court's discretionary powers should remain exercisable on the court's own motion or on an application by a party to the proceedings, so as to enable the court to retain maximum flexibility in the exercise of that discretion.

**Question 6: Which people would be the 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**

24. In those comparable legislative provisions referred to above which require a court to appoint a person to put to the witness the questions requested to be asked by the examining party, it is not a requirement that the appointed person be legally qualified. Although, it should be noted that the effect of the legislative provisions in New South Wales, the Northern Territory and the Australian Capital Territory may cause significant difficulties for the appointment of a legal practitioner in that the respective legislative provisions require that the appointed person not give the accused person 'legal or other advice' (see *Clark v R* [2008] NSWCCA 122 at [42]–[43] ("*Clark*"). Who may be appointed by the court and how the public might view that individual's impartiality will vary from case to case, but it should be noted that the New South Wales Criminal Court of Appeal in *Clark* rejected the submission that 'the appointment of the registrar was inappropriate and unfair because he was not a legal practitioner' (at [43]).
25. Nevertheless, it is undoubted that despite any discretion that a judge might have in terms of who may be appointed, it is of greatest importance that a fair trial is secured and justice is seen to be done. It follows that the interests of an appointed person in the proceeding or the parties to the proceeding and the way in which the appointment is viewed from the public's perspective should weigh heavily in determining who can act as a court-appointed person.
26. I suggest that there are numerous significant challenges associated with any proposal for a court-appointed representative who is an employee. Firstly, any such proposal would need to be accompanied by commensurate funding for the Court – court employees and resources are stretched, with no capacity for current employees to take on this additional work or the have the required training in order for them to perform such roles. Secondly, the issue of the appropriateness of court employees performing such roles from the stance of impartiality and issues of partisanship arises. As such the representative should be from legal aid.
27. There may also be health and occupational safety issues from an employee's perspective (and the commensurate duty of care an employer has) in respect of any negative effects that direct exposure to the dispute between the parties might have on their health and wellbeing. One can imagine that informed consent would need to be given on each occasion an appointment was to be made.
28. As for other professionals, lawyers are the only realistic option. However, that would entail funding to be provided presumably through the various Legal Aid Commissions.

29. It is suggested in the consultation paper that “a court-appointed person will not be a legal representative for a party and they will not provide any legal advice to a party”. I rhetorically ask, how can that be prevented? If a lawyer is appointed and receives remuneration, then surely they will be that person’s legal representative with all that entails. The idea that a lawyer would undertake the cross-examination but outside the complete framework of ethical and legal responsibilities and protections that apply to those admitted to practice is of great concern.
30. The Court would need clear policy and ideally legislative parameters around who could be appointed. (for example, not a relative, clear about remuneration etc).
31. Further, if a non-lawyer receives remuneration then that may be a breach of the legislation that governs the legal profession. Indeed, breaches of that legislation may arise in many of the circumstances contemplated by this proposal.
32. There also needs to be far more clarity around the process of asking the questions. For example, what if a question is objected to? What if the person being cross-examined asks for more information or clarity around the question? Also, how will follow-up questions be asked? Will there need to be an adjournment after each question and answer?
33. Where the appointed person is not a lawyer, presumably the questions would have to be written by the party and then read by the appointed person. However, how s 41 of the *Evidence Act 1995* (Cth) is not offended as a result is problematic and depends on whether the appointed person is bound to ask the question in the form provided by the party. Further, it seems unreasonable that an unrepresented perpetrator would have the advantage of having a person ask questions that a lawyer would be prevented from asking because of ethical obligations.

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

34. If it is a lawyer then the qualifications are obvious. If it is a non-lawyer, then it is impossible to see what qualifications would be necessary.
35. If it is a non-lawyer, the necessary qualifications of any court appointed person would at the least have to include suitability to the situation in which they would be placed. This would include an understanding of court process and potentially the rules of evidence.
36. There are of course many other concerns that arise if it is a non-lawyer. For example, the Court would have no way of verifying that the question was faithfully conveyed.

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

37. Whilst a court must retain its discretion as to who is actually appointed, there should be some legislative framework within which a court can operate. Where a court-appointed person does not possess legal qualifications, it should be for the examining-party to satisfy a court, for example, that:
- The appointed person has a sufficient understanding of the court process to be able to conduct cross-examination;
  - The appointed person is able to conduct themselves in an appropriate manner;
  - The appointed person has had an opportunity to obtain adequate instructions from the cross-examining party;
  - The appointed person will not personally intimidate or cause the witness to be fearful;
  - The appointed person is not closely related to the cross-examining party and is sufficiently disinterested in the outcome of the proceedings.

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

38. The model whereby questions pass through the court-appointed person does not, by itself, provide a safeguard against improper questions. The Court is required to ensure the appropriateness of the questions asked in cross-examination (s 41 of the *Evidence Act 1995* (Cth)), but the Court's responsibility to intervene only arises once an improper question has been put to a witness.
39. In relation to the procedure to be followed by a court-appointed person, the Criminal Court of Appeal in *Clark* approved the following statements by the trial judge (at [27]):

... A complainant may only be so examined by a person appointed by the Court. The person appointed may only ask the complainant those questions which you request that person to put to the complainant and must not give legal or other advice to you.

I will advise the jury of what is to happen. The practice we will adopt, subject to hearing any submissions you or the Crown wish to make, will be:

- (a) You would write out a list of questions, which would be given to me, in the absence of the complainant and the jury (if applicable).
- (b) I will rule on whether each of the questions is permissible. Consistent with my obligations with respect to a self-represented accused, I will advise you as to why a question is not permissible,

and will explain the proposed procedure for cross-examination of the complainant to you.

- (c) I will give you the opportunity to re-formulate the questions in accordance with my rulings. You will also be advised to write down any further questions to be asked of the complainant, at any time during the course of the cross-examination and at any stage during the course of the cross-examination and at any stage during the course of the trial and to seek permission to ask those questions, including the recall of the complainant for those questions.
- (d) The intermediary will ask the complainant the questions ruled permissible by me.
- (e) After the complainant has answered the questions, I will [ask] you if you have any further questions arising from the complainant's answers, or any questions previously overlooked.
- (f) If you have any further questions, the procedures set out in paragraphs (a) to (e) would be repeated.

- 40. It is essential that the role of a court-appointed person is made clear, otherwise there is a significant risk that the individual might deviate from the questions requested to be asked by the examining party, ask other questions not expressly requested by the examining party, give advice to the examining party or otherwise advocate for the examining party. The question is whether the scope of the role is included in the Family Law Act or left to be explained to the appointed person by the trial judge during the proceeding. I would suggest the former because it allows the parties to know from the outset the parameters of the role.
- 41. If the scope of the role is to be specified, an emphasis needs to be placed on the appointed person accurately putting to the witness only those questions that are expressly requested to be asked by the examining party. Further, it may be that the approach taken in *Clark* requiring that questions pass through a judge prior to being put to the witness is the best way to ensure that an appointed person only asks those questions requested to be put to a witness or as otherwise allowed by a court.
- 42. It is clear that a court-appointed non-lawyer will not have the same legal and ethical obligations as a practicing lawyer. Where an approach is taken which does not require a court to approve a question requested to be put to a witness by an examining party prior to it being put to a witness, it may not be possible for a court to verify that a question has been faithfully conveyed by that person.

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

43. As discussed earlier in this submission, the impartiality of the appointed individual and how the public perceives that person is fundamental to the administration of justice.
44. If a party was permitted to nominate an individual, the Court must nevertheless retain its discretion as to who is actually appointed.

**Question 11: Do you have any concerns about the court-appointed person model?**

45. The Court's concerns are well explained throughout this submission.

**Questions 12 to 15: When direct cross-examination can occur**

46. Those comparable provisions referred to earlier which permit a party being examined to consent to being directly cross-examined or to request that an order not be made to ban direct cross-examination, do not require the consent of the other party, and that should be the same here. However, in circumstances where both parties are the victims of family violence, it would seem appropriate, given the issues sought to be addressed in the Public Consultation Paper, that each party be required to consent to direct cross-examination by the other party.
47. If a court is specifically required to form a view that cross-examination could have a harmful impact on a party or affect the cross-examination itself, as opposed to a court exercising the discretion that it has to manage the examination and cross-examination of parties in any given circumstance, the issue arises as to what evidence a court will have before it in order to form such a view, especially in circumstances where there is no conviction for family violence or family violence is being alleged.

**Question 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?**

48. The amendments should only apply to proceedings commenced after the law comes into effect. That will prevent difficulties with trials that are running at the time, trials that are part-heard, and pending trials where all necessary directions have been made.

**Questions 17 to 20: Evidence and procedural fairness**

49. These are questions that are inappropriate for me to answer, save and except to say that for many of the reasons that I have already expressed, the Draft Exposure Bill does not ensure:

- (a) That all parties receive a fair hearing.
- (b) 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.
- (c) That the courts are able to make informed decisions.
- (d) That they do not have any unintended consequences for victims of family violence.

50. The answers to these questions are matters for the Government.

## **CONCLUSION**

- 51. Whatever model is adopted, if any, to address the issues referred to in the Public Consultation Paper, there are real issues in relation to the possible restriction that any given approach might have on a court's power to manage proceedings and secure a fair trial in any given circumstance.
- 52. What is clear is that if a court-appointed person model is adopted, that person should be strictly limited to only asking those questions requested to be put to the witness by the examining party or as otherwise allowed by the trial judge. Furthermore, in addition to other issues that arise in relation to the administration of justice and how the administration of justice is perceived by the public, the Court does not receive sufficient funds to expand the roles of its employees to act as court-appointed persons. If the court-appointed person model is put into effect, it necessarily requires consideration as to how that model would operate and how individuals would be appointed, with the aim of not placing an unnecessary burden on the courts and increasing their already large workload.
- 53. Importantly, if a view is taken that there should be an amendment to the Family Law Act, any proposed amendment must necessarily be weighed against the existing powers of a court exercising jurisdiction under the Family Law Act to be satisfied that any proposed amendment better secures a fair trial and protects the parties to the proceedings.
- 54. Finally, I reiterate that given the deficiencies which I have highlighted in the proposal as it currently stands, its harmful effect on the administration of justice, and the ability of courts to secure a fair trial, the intention and the aims expressed in the Public Consultation Paper and in the Draft Exposure Bill can be very effectively achieved by providing the necessary resources to State Legal Aid bodies as I have outlined in paragraph 4.

55. These proposals, whilst superficially akin to what occurs in some other courts, when transposed into complex family law disputes involving parenting, property, maintenance and child support issues, in reality constitute a foray into very uncharted waters. I think it is important to consider that it might be money very well spent to resource a proper advocacy unit for this purpose within the state legal aid bodies and do so right from the start.

<b>Jurisdiction</b>	<b>Who is protected?</b>	<b>How are they protected?</b>	<b>Relevant legislation</b>
Cth	Any witness involved in child-related proceedings	<p>Less adversarial trial process — the principles for conducting child-related proceedings include:</p> <ul style="list-style-type: none"> <li>• The court is to actively direct, control and manage the conduct of proceedings and is to conduct proceedings in a way that will safeguard parties to proceedings against family violence.</li> <li>• The court can give directions or make orders about how particular evidence is to be given.</li> <li>• The court can make orders limiting, or not allowing, cross-examination of a particular witness.</li> <li>• The court can receive into evidence the transcript of evidence in any other proceedings before the court or another court or tribunal, and can draw from that transcript any conclusions of fact that it thinks proper, and adopt any of the recommendations, findings, decisions or judgments of those bodies.</li> </ul>	<p>Family Law Act 1975 (Cth) Pt VII, Div. 12A</p> <ul style="list-style-type: none"> <li>• s. 69ZN</li> <li>• s. 69ZX(1)(c)</li> <li>• s. 69ZX(2)(i)</li> <li>• s. 69ZX(3)</li> </ul>
Cth	Any witness in family law proceedings	<p>General matters concerning procedure and evidence:</p> <ul style="list-style-type: none"> <li>• Parties to a marriage are competent and compellable to disclose communications made between them during the marriage.</li> <li>• A child (other than a child who is or is seeking to become a party to the proceedings) is prevented from swearing an affidavit for the purposes of proceedings unless the court makes an order allowing them to do so.</li> <li>• A child cannot be called as a witness or be present in court unless the court makes an order to the contrary.</li> <li>• The court must forbid the asking of, or excuse a witness from answering, offensive, scandalous, insulting, abusive or humiliating questions, unless it is essential in the interests of justice that the question be answered.</li> <li>• The court must forbid the examination of a witness that it regards as oppressive, repetitive or hectoring, or excuse a witness from answering questions asked during such an examination, unless it is essential in the interests of justice for the examination to continue or for the questions to be answered.</li> </ul>	<p>Family Law Act 1975 (Cth) Pt XI, Div. 1</p> <ul style="list-style-type: none"> <li>• s. 100(2)</li> <li>• s. 100B(1)</li> <li>• s. 100B(2)</li> <li>• s. 101(1)</li> <li>• s. 101(2)</li> </ul>
Cth	Any witness in family law proceedings	Use of video link, audio link or other means to give testimony, make appearances and give submissions etc. The court may direct or allow a person to give testimony and/or appear before the court by video or audio link, or other appropriate means. This power may be exercised on	<p>Family Law Act 1975 (Cth) Pt XI, Div. 2 ss. 102C–102D</p>

<b>Jurisdiction</b>	<b>Who is protected?</b>	<b>How are they protected?</b>	<b>Relevant legislation</b>
		application of a party to the proceedings, or on the court's own initiative.	
Cth	Any witness in proceedings to which the Act applies	The court has control over the questioning of witnesses and can make orders in relation to, inter alia, the way in which witnesses are to be questioned as well as the presence and behaviour of any person in connection with the questioning of a witness.	<i>Evidence Act 1995 (Cth)</i> s. 26
Cth	Any witness in proceedings to which the Act applies	The court is required to disallow a question, or inform the witness that the question need not be answered, if the court is of the opinion that the question is misleading or confusing, unduly annoying, harassing, intimidating, offensive, oppressive, humiliating or repetitive; is put to the witness, in a manner or tone that is belittling, insulting or otherwise inappropriate; or has no basis other than a stereotype.	<i>Evidence Act 1995 (Cth)</i> s.41
Cth	Any witness in proceedings to which the Act applies	Evidence of an admission is not admissible unless the court is satisfied that the admission, and the making thereof, were not influenced by violent, oppressive, inhuman or degrading conduct, whether towards the person who made the admission or towards another person; or a threat of that kind.	<i>Evidence Act 1995 (Cth)</i> s.84