

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The department will consider hardcopy submissions received by mail, but these submissions will not be published on the website.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

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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](mailto: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.

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?**

Only to the alleged perpetrator.

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?**

On application by alleged victim and by 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.**

Independent professional paid with DFV experience, appointed by Court no others.

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

Substantial DFV experience, Social or psychology degree. ... legal training, trauma informed practice, t, cultural competence, training in using interpreters

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.

All of the above.

**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?**

Training and payment and independent status need to be clear and adequate. Policy re any dispute process for either party where they are critical the court appointed person performance of their role.

**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?**

Victim must apply to lift automatic ban on cross examination.

**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?**

Automatic ban.

**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.

**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?**

Apply to proceedings after the law comes into effect need some time to organise and train court appointed people.

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

**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?**

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

**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?**

**21. Any general comments.**