

**Protections preventing the direct cross-examination of the victim/survivor by the alleged perpetrator and vice-versa in civil and family law proceedings and options for managing the giving and taking of evidence in other jurisdictions relevant to the proposed amendments to the *Family Law Act (Cth) 1975* consultation**

Country/ State	Type of proceeding	Relevant legislation	Available protection	Eligibility for protection
United States – New York	Family	<u>Family Court Act 1962</u> ss 261 and 262	<b>The court can assign counsel to a petitioner or respondent who is ‘indigent’, in any case involving family offences (including acts which would constitute disorderly conduct, harassment, sexual misconduct, forcible touching, sexual abuse, stalking, reckless endangerment, strangulation, assault) and certain child protection matters.</b>	<b>A petitioner or respondent who is financially unable to obtain counsel.</b>
United States - Alaska	Family Law		<p>In Alaska, people can opt for an informal trial in family law matters, instead of a formal trial. Both parties and the judge must agree to it. Informal trials are purportedly easier for people who are representing themselves as fewer rules apply and the judge asks questions and guides the process, while also trying to reduce conflict between the two sides and helping them to focus on the children or other issues.</p> <p>Features of the informal trial include:</p> <ul style="list-style-type: none"> <li>• Parties speak directly to the judge. The judge will ask questions to ensure parties cover everything they need to know to decide the case.</li> </ul>	

			<ul style="list-style-type: none"> <li>• The parties cannot question or interrupt each other directly. The judge asks the other party or their lawyer if there are questions that they think the judge should ask. The judge will ask the questions suggested if the judge agrees they would be helpful.</li> <li>• The <u>Rules of Evidence</u> do not apply so there are fewer concerns regarding admissibility of evidence.</li> </ul>	
<b>New Zealand</b>	<b>Criminal and civil</b>	<b><u>Evidence Act 2006</u> S 95</b>	<p>A defendant in a sexual case, or a defendant in or a party to criminal or civil proceedings concerning domestic violence or harassment, is not entitled to personally cross-examine a complainant, or a party who has made allegations of domestic violence or harassment.</p> <p>In other civil or criminal proceedings, the court may make an order that a party to the proceeding must not personally cross-examine the witness on grounds including the psychological or psychiatric impairment of the witness and the relationship of the witness to the unrepresented party. When considering whether or not to make an order, the court must have regard to the need to ensure the fairness of the proceeding and, in a criminal proceeding, that the defendant has a fair trial, and the need to minimise the stress on the</p>	<b>A complainant or a party who has made allegations of domestic violence or harassment.</b>

			<p>complainant or witness, and any other factor that is relevant to the just determination of the proceeding.</p> <p>A defendant who is precluded from personally cross-examining a witness may have his or her questions put to the witness by a lawyer engaged by the defendant, or if the defendant is unrepresented and fails or refuses to engage a lawyer for the purpose within a reasonable time specified by the court, a person appointed by the court for the purpose. In respect of each such question, the court may allow the question to be put to the witness, require the question to be put to the witness in a form rephrased by the court, or refuse to allow the question to be put to the witness.</p>	
<b>United Kingdom</b>	<b>Family Law</b>	<a href="#"><u>Prisons and Courts Bill 2017</u></a>	<p>A bill to amend the <i>Matrimonial and Family Proceedings Act 1984</i> to provide for a ban on direct cross-examination was put to the UK Parliament in early 2017 but lapsed due to the UK election.</p> <p>This Bill outlined the circumstances when an automatic ban on direct cross-examination applied, discretion to apply a ban applied and stipulated the payment of “proper fee or costs of a qualified legal representative appointed” for the purposes of cross-examination “out of central funds”.</p>	<b>Victim of Domestic Violence</b>

			We note since the election the <a href="#">UK Government has committed</a> to introducing a Courts Bill to “end direct cross examination of domestic violence victims by their alleged perpetrators in the family courts and allow more victims to participate in trials without having to meet their alleged assailant face-to-face.”	
		<a href="#">Practice Direction 12J</a>	The Practice Direction entitled ‘Child arrangements and contact orders: Domestic violence and harm’ currently provides for a judge or lay justice to conduct the questioning on behalf of the parties rather than allow direct-cross examination by the parties in a fact-finding hearing. (Paragraph 28)	<b>Allegation of domestic violence</b>
<b>United Kingdom (contd)</b>		<a href="#">Revised draft Practice Direction 12J</a>	<p>The Practice Direction is under review. The Revised Draft Practice Direction proposes additional requirements on the court. Paragraph 6 requires the court to “ensure that the court process is not used as a means to perpetuate coercion, control or harassment by an abusive parent”.</p> <p>Paragraph 28 which currently enables a judge or lay justice to conduct the questioning on behalf of the parties rather than allow direct-cross examination by the parties in a fact-finding hearing proposes this be extended to “other hearing[s]” and stipulates a ban on direct cross-examination.</p>	<b>Allegation of domestic violence</b>