

# EXPOSURE DRAFT

2016-2017

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES/THE SENATE

**EXPOSURE DRAFT (July 2017)**

If you have any comments on this exposure draft, they should be sent to  
[familylawunit@ag.gov.au](mailto:familylawunit@ag.gov.au) by 25 August 2017.

## **Family Law Amendment (Family Violence and Cross-examination of Parties) Bill 2017**

**No.     , 2017**

*(Attorney-General)*

**A Bill for an Act to amend the *Family Law Act  
1975*, and for related purposes**

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## 2 **A Bill for an Act to amend the *Family Law Act*** 3 ***1975, and for related purposes***

4 The Parliament of Australia enacts:

### 5 **1 Short title**

6 This Act is the *Family Law Amendment (Family Violence and*  
7 *Cross-examination of Parties) Act 2017.*

### 8 **2 Commencement**

9 (1) Each provision of this Act specified in column 1 of the table  
10 commences, or is taken to have commenced, in accordance with  
11 column 2 of the table. Any other statement in column 2 has effect  
12 according to its terms.

13

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#### **Commencement information**

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<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. The whole of this Act	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	

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14 Note: This table relates only to the provisions of this Act as originally  
15 enacted. It will not be amended to deal with any later amendments of  
16 this Act.

17 (2) Any information in column 3 of the table is not part of this Act.  
18 Information may be inserted in this column, or information in it  
19 may be edited, in any published version of this Act.



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## Schedule 1—Amendments

### *Family Law Act 1975*

#### **1 After subsection 69ZX(2)**

Insert:

(2A) If the court allows cross-examination of a particular witness who is a party and section 102NA or 102NB applies to the cross-examination, then the cross-examination must be conducted in accordance with that section.

Note: Sections 102NA and 102NB deal with the cross-examination of a party where there is an allegation of family violence.

#### **2 At the end of Part XI**

Add:

### **Division 4—Cross-examination of parties where allegations of family violence**

#### **102NA Mandatory requirements in specific cases**

*When this section applies to cross-examination*

(1) If, in proceedings under this Act:

- (a) a party (the *examining party*) intends to cross-examine another party (the *witness party*); and
- (b) there is an allegation of family violence between the examining party and the witness party; and
- (c) one or more of the following is satisfied:
  - (i) either party has been convicted, or is charged with, an offence involving violence, or a threat of violence, to the other party;
  - (ii) a family violence order (other than an interim order) applies to both parties;

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## Schedule 1 Amendments

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1 (iii) an injunction under section 68B or 114 applies to both  
2 parties;  
3 then this section applies to the cross-examination.

4 Note 1: This section applies both in the case where the examining party is the  
5 alleged perpetrator of the family violence and the witness party is the  
6 alleged victim, and in the case where the examining party is the  
7 alleged victim and the witness party is the alleged perpetrator.

8 Note 2: To avoid doubt, a reference to a party in this section includes a  
9 reference to a person who is a party because of the operation of a  
10 provision of this Act (for example, sections 92 and 92A, which are  
11 about intervening parties). This section only applies to an intervening  
12 party if the intervening party is involved in the allegation of family  
13 violence, whether as the alleged perpetrator or as the alleged victim.

14 *Where examining party does not have legal representation*

15 (2) If the examining party is not represented by a legal practitioner,  
16 then:  
17 (a) the examining party must not cross-examine the witness  
18 party personally; and  
19 (b) any questions that the examining party would like to ask the  
20 witness party in cross-examination must instead be asked by  
21 a person appointed by the court;  
22 unless the court grants leave.

23 Note: Despite paragraph (2)(b), there are other laws that apply to protect the  
24 witness party (for example, section 101 requires the court to forbid the  
25 asking of offensive questions and section 41 of the *Evidence Act 1995*  
26 requires the court to disallow certain questions, such as misleading  
27 questions).

28 (3) The court must not grant leave under subsection (2) unless:  
29 (a) both parties consent to the cross-examination by the  
30 examining party of the witness party personally; and  
31 (b) the court has considered whether the cross-examination will  
32 adversely affect the ability of:  
33 (i) the witness party to testify under the cross-examination;  
34 and  
35 (ii) the examining party to conduct the cross-examination;  
36 and



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- 1 (c) the court has considered whether the cross-examination will  
2 have a harmful impact on the party who is the alleged victim  
3 of the family violence.

4 *Where examining party has legal representation*

- 5 (4) If the examining party is represented by a legal practitioner, then:  
6 (a) the examining party must not cross-examine the witness  
7 party personally; and  
8 (b) the cross-examination must be conducted by the examining  
9 party's legal practitioner.

## 10 **102NB Mandatory requirements at court's discretion**

11 *When this section applies to cross-examination*

- 12 (1) If, in proceedings under this Act:  
13 (a) a party (the *examining party*) intends to cross-examine  
14 another party (the *witness party*); and  
15 (b) there is an allegation of family violence between the  
16 examining party and the witness party; and  
17 (c) section 102NA does not apply to the cross-examination;  
18 then:  
19 (d) the court may, if it thinks it appropriate to do so, make an  
20 order that the cross-examination must be conducted in  
21 accordance with this section; and  
22 (e) if the court makes such an order, then this section applies to  
23 the cross-examination.

24 Note 1: This section applies both in the case where the examining party is the  
25 alleged perpetrator of the family violence and the witness party is the  
26 alleged victim, and in the case where the examining party is the  
27 alleged victim and the witness party is the alleged perpetrator.

28 Note 2: To avoid doubt, a reference to a party in this section includes a  
29 reference to a person who is a party because of the operation of a  
30 provision of this Act (for example, sections 92 and 92A, which are  
31 about intervening parties). This section only applies to an intervening  
32 party if the intervening party is involved in the allegation of family  
33 violence, whether as the alleged perpetrator or as the alleged victim.

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## Schedule 1 Amendments

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*Where examining party does not have legal representation*

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- (2) If the examining party is not represented by a legal practitioner,  
then:

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- (a) the examining party must not cross-examine the witness  
party personally; and

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- (b) any questions that the examining party would like to ask the  
witness party in cross-examination must instead be asked by  
a person appointed by the court.

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Note: Despite paragraph (2)(b), there are other laws that apply to protect the  
witness party (for example, section 101 requires the court to forbid the  
asking of offensive questions and section 41 of the *Evidence Act 1995*  
requires the court to disallow certain questions, such as misleading  
questions).

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*Where examining party has legal representation*

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- (3) If the examining party is represented by a legal practitioner, then:

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- (a) the examining party must not cross-examine the witness  
party personally; and

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- (b) the cross-examination must be conducted by the examining  
party's legal practitioner.

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*Court order*

21

- (4) The court may make an order under paragraph (1)(d):

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- (a) on its own initiative; or

23

- (b) on the application of the examining party or the witness  
party.

24

25

### **102NC Review of this Division**

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The Minister must cause a review of the operation of this Division  
to be commenced as soon as possible after:

27

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- (a) the second anniversary of the commencement of this section;  
or

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- (b) if, before the second anniversary, the regulations prescribe a  
day that is after the second anniversary—that day.

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*Family Law Amendment (Family Violence and Cross-examination of  
Parties) Bill 2017* No. , 2017

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