



# Women's Economic Security Package

## Family Violence and Cross-examination of Parties Scheme

November 2018

### What is the measure?

- The Family Law Amendment (Family Violence and Cross-examination of Parties) Bill 2018 will protect victims of family violence by banning direct cross-examination in certain circumstances, and require that cross-examination instead be conducted by a legal representative.
- The Australian Government will provide \$7m, over three years, to legal aid commissions (LACs) to provide legal representation to parties subject to the ban.
- This will remove the fear of being directly cross-examined by their perpetrator as a factor in a woman's decision whether to settle a matter, and encourage women who have experienced family violence to pursue their legal entitlements.
- The provision of legal assistance will also support the expeditious resolution of family law matters, assisting women to recover from abusive relationships and obtain economic security for themselves and their children sooner.

### Why is the Government funding this?

- A woman who has experienced family violence is three times more likely to receive a minority share of the relationship assets than a woman who has not. Some victims of family violence walk away from the relationship with nothing, or with an inadequate settlement, rather than try to fairly split the property.
- The prospect of direct cross-examination, in particular, can be a disincentive for victims to proceed to trial and can pressure some victims into agreeing to property and parenting arrangements that are unfavourable to themselves and/or their children (Women's Legal Services Australia, 2016).
- To address these issues, on 28 June 2018, the Attorney-General introduced the Family Law Amendment (Family Violence and Cross-examination of Parties) Bill 2018.
- Funding LACs to provide legal representation to parties subject to the ban on direct cross-examination will ensure the successful implementation of the measures in the Bill.

### What is the expected impact of the measure?

- The Scheme will fund LACs to provide representation in more than 134 final hearings per annum in the family law courts.
- The Scheme will benefit victims of family violence, who are predominantly women. It will be particularly important for women who may not have continued to final hearing due to fear of direct cross-examination and, as such, may have agreed to an inequitable property settlement.

## Case study

Fatima has recently separated from Mohammed. They have two young children together. During their relationship, Fatima cared for the children while Mohammed worked full-time. Prior to their separation, Mohammed was violent towards Fatima. He regularly beat her and denied her access to money. In 2016, Mohammed was convicted of assaulting Fatima. Since separating, Fatima and the children have been living with extended family and Mohammed has refused to provide them with any financial support. Fatima's sister convinces her to see a lawyer, and offers to help her with the legal fees. The lawyer advises Fatima to apply for property and parenting orders in the federal family law courts. Mohammed represents himself in the matter and, outside of court, tells Fatima that she'd better agree to his terms or he'll make her and the children's lives a nightmare. Fatima is extremely anxious about being cross-examined by Mohammed and thinks it might be easier just to agree to his terms. Fatima raises her concerns with her lawyer, who tells her that Mohammed will not be able to directly cross-examine her, as he has a conviction of violence against her. The court directs Mohammed to apply to Legal Aid under the 'Family Violence and Cross-examination of Parties Scheme', who provide a legal practitioner to conduct the cross-examination. Feeling much safer to proceed with the final hearing, Fatima gives clear evidence during cross-examination. The judge makes a property order dividing the property equitably between Mohammed and Fatima and a parenting order that protects the children.