



## Family Violence & Cross-Examination Scheme

# Family Violence Allegations in Family Law Proceedings — Personal Cross-examination Ban

**From 10 September 2019**, personal cross-examination will be banned in family law proceedings in certain circumstances where allegations of family violence have been raised.

Personal cross-examination is where a party asks questions of another party or witness directly, rather than having questions asked by a lawyer.

The ban exists because personal cross-examination by an alleged perpetrator can expose victims of family violence to re-traumatisation and affect their ability to give clear evidence.

### When does the ban apply?

The ban may apply in any family law proceeding where there is an allegation of family violence between the parties. The ban may be applied automatically or the court may use its discretion to impose a ban.

#### Automatic ban

If any of the following circumstances apply, the ban will apply automatically:

- either party has been convicted of, or is charged with, an offence involving violence, or a threat of violence, to the other party.
- a family violence order (other than an interim order) applies to both parties.
- an injunction for the personal protection of either party is directed against the other party under sections 68B or 114 of the Family Law Act.

#### Discretionary ban

The court can make an order to ban personal cross-examination even if those circumstances do not apply. The court can decide to ban personal cross-examination itself, or following an application by either party, or an independent children's lawyer.

If the court decides not to ban personal cross examination, the court must put in place other appropriate protections. The available protections are set out in the Family Violence Best Practice Principles.

### Legal Representation

When the ban applies, cross-examination of both parties must be conducted by a lawyer. Parties will need to hire a private lawyer or apply to their relevant state or territory legal aid commission for legal representation under the Commonwealth Family Violence and Cross-examination of Parties Scheme (the Scheme). If a party does not have legal representation, cross-examination **will not** take place.

Legal representation under the Scheme will be available for the hearing (generally the final hearing), including preparing for that hearing and for late-stage legally-assisted family dispute resolution, if appropriate.

Access to the Scheme is not means or merits tested, but parties may be asked to contribute to the cost of the legal representation depending on their ability to pay and their circumstances. Conditions will apply to legal representation under the Scheme and ongoing representation is not automatic.

**For more information**, contact the duty lawyer service in the family law courts or the Legal Services Commission of South Australia, 159 Gawler Place, Adelaide. **Phone** 1300 366 424