

# Family violence allegations in family law proceedings – personal cross-examination ban

**Personal cross-examination is sometimes banned in family law proceedings 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 re-traumatise victims of family violence and affect their ability to give clear evidence.**

## When does the ban apply?

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The ban may apply in any family law proceedings where there is an **allegation of family violence** between the parties. The ban may be applied automatically or the court may impose a ban.

### Automatic ban

The ban will apply automatically if:

- 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 or
- 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.

### Court-imposed ban

The court can make an order to ban personal cross-examination even if these 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, it must put in place other appropriate protections. The available protections are set out in the [Family Violence Best Practice Principles](#).

### Legal representation

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When the ban applies, cross-examination of both parties must be conducted by a lawyer. Both 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 is 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 merit tested. Conditions will apply to legal representation under the scheme and ongoing representation is not automatic.

For more information, contact the Family Advocacy and Support Service on 1800 979 529. For general enquiries please contact Legal Aid NSW at: [CrossExamScheme@legalaid.nsw.gov.au](mailto:CrossExamScheme@legalaid.nsw.gov.au).