

Commonwealth Family Violence and Cross-Examination of Parties Scheme

On 11 March 2019, the *Family Law Act 1975* was amended to include s102NA and s102NB which sees direct cross examination banned in certain circumstances.

The Act bans a party from being able to personally cross-examine another party in certain circumstances. The changes require that cross-examination be conducted by a lawyer. This lawyer can be either a privately retained lawyer or one funded by the Commonwealth Government through the Family Violence and Cross-Examination of Parties Scheme that is being administered by Legal Aid NSW.

Under the Act, personal cross-examination is prohibited in proceedings where there is **an allegation of family violence** between two parties **and** one or more of the following applies:

- 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 under section 68B or 114 of the *Family Law Act 1975* for the personal protection of either party is directed against the other party, or
- the court makes an order that the mandatory requirements apply to the cross-examination.

The section applies both in the case where the examining party is the alleged perpetrator of family violence and the witness party is the alleged victim and where the examining party is the alleged victim and the witness party is the alleged perpetrator.

The court may make an order to prevent personal cross-examination on its own initiative or on the application of a party or an independent children's lawyer.

If personal cross-examination is prohibited, the parties will be told by the court that they must have a lawyer if cross-examination is to take place. The court will inform the parties of their options in terms of instructing a private lawyer or apply to the Scheme. The Court will refer parties to the Family Advocacy and Support Service (FASS) or other appropriate service to complete an application form. The application is expected to be completed and lodged with Legal Aid NSW within six weeks of the of the ban.

Legal Aid NSW will allocate a lawyer to each party who makes an application to the scheme and is subject to the ban. These lawyers have been selected from Legal Aid NSW family law panels and have undertaken specialist training.

Funding provided under the Scheme is not the same as a grant of legal aid. Legal Aid NSW does not apply a means, merit test or other eligibility policies to applications for Scheme funding.

Lawyers will be funded to attend for the final hearing (and interim hearings where cross-examination is to occur) for both parenting and property proceedings. This funding will include preparing for that hearing and for late-stage legally assisted family dispute resolution, if appropriate, as well as the cost of counsel for the hearing.

Any questions about the Scheme can be directed to CrossExamScheme@legalaid.nsw.gov.au.