

Family Violence and Cross-examination of Parties Scheme Information for Family Law Courts and Legal Aid NSW

Purpose

Legal aid commissions are administering a scheme on behalf of the Commonwealth Government to prevent the personal cross-examination of parties in matters involving allegations of family violence. Legal Aid NSW will provide funding under the scheme in matters which are listed for final hearing in courts located in NSW.

The purpose of this document is to outline the process for the Family Law Courts and Legal Aid NSW to follow where orders have been made pursuant to section 102NA *Family Law Act 1975* (Cth).

Trial directions

- Where the ban applies automatically the Court will provide an order with a notation stating that the ban applies.
- Where the Court has determined that the ban applies, the court will make an order to this effect.
- Where a ban applies, the Court will provide a notice/fact sheet annexed to an order of the Court.
- The notice will advise unrepresented parties of the options of retaining private legal representation or making an application to the Commonwealth Family Violence and Cross-examination of Parties Scheme (the Scheme) administered by legal aid commissions.

Orders

- Where the Court identifies that the ban applies, it will email the order/notation, the completed coversheet, and any other relevant order/directions to CrossExamScheme@legalaid.nsw.gov.au.
- The coversheet to be attached to the order/notation should include the following information:
 - the name of the matter
 - the name and date of birth of the party/parties not permitted to cross-examine and their contact details including email
 - the names and dates of birth of the other parties
 - the date and location of the hearing the order relates to
 - the reason the ban applies and
 - the specific sub-section of section 102NA relevant to the matter.
- If the matter is listed for final hearing in a court located in NSW this information and the order/notation should be provided to Legal Aid NSW at least 16 weeks before the final hearing. Once all of the information is received, Legal Aid NSW will action the order/notation within a reasonable period (maximum of 12 weeks) before the final hearing date.

Once an order is received by Legal Aid NSW

Legal Aid NSW will maintain a register of all orders received from the Court.

How a party can apply to the Scheme

- A party must apply to the Scheme by completing the Family Violence and Cross-examination Scheme application form (the application). The application can be obtained from the Family Advocacy and Support Service (FASS) at the Court. The completed form can be submitted:

In person to: a FASS solicitor or support worker at the Family Law Courts

By email to: CrossExamScheme@legalaid.nsw.gov.au

Or deliver it to: any Legal Aid NSW office

Or post it to: Legal Aid NSW

PO Box K847 Haymarket NSW 1240

- Legal Aid NSW does not apply a means test, merit test or other eligibility policies to applications received under the Scheme. The funding provided under the Scheme is not the same as a grant of legal aid.
- Upon receipt of a completed application, Legal Aid NSW will:
 - match the application from the party to our Court order register;
 - approve funding for legal representation under the Scheme; and
 - allocate the matter to a solicitor.

Party fails to apply

Where the party fails to apply to the Scheme, Legal Aid NSW will advise the Court 6 to 8 weeks prior to the hearing date.

Allocation of funding to a solicitor

Legal Aid NSW will allocate matters to solicitors who are included on a list of solicitors created for this work. Funding under the scheme will be limited to a solicitor's preparation from the date they are allocated the matter and all court hearings where cross-examination is likely to occur.

Approval of funding under the Scheme

Once a solicitor is allocated Legal Aid NSW will:

- write to the solicitor confirming the funding approved under the Scheme and any conditions imposed and instruct the solicitor to file a notice of address for service with the Court before the next court event
- write to the party confirming the funding provided under the Scheme and any conditions attached to this funding
- email the Judge's associate to confirm that funding has been provided under the Scheme.

What work will be funded under the Scheme?

The purpose of the funding is to prevent personal cross-examination at the final hearing of the matter. The funding provided will be limited to reasonable preparation of the matter for hearing, attendance at the hearing with counsel, attendance at family dispute resolution and some reasonable disbursements, including counsel. It will in most circumstances be limited to the work undertaken in the 12 weeks before the final hearing. It will not generally cover correcting material already filed in the matter and solicitors undertaking the work will be expected to proceed on the date of the final hearing.

Under the Scheme, representation will be available for Commonwealth family law matters listed in the Family Law Courts for:

- reasonable hearing preparation
- attendance at a case management hearing held just prior to the final hearing
- hearing days
- interim hearing preparation and attendance (in rare instances where personal cross-examination may occur)
- contravention and enforcement proceedings (in instances where personal cross-examination may occur)
- reasonable disbursements such as process server fees, travel fees.

Fees payable under the Scheme will be in accordance with the applicable Legal Aid NSW scale of fees.

What costs will not be funded by the Scheme?

- Substantial disbursements relating to non-legal services such as expert reports or witness costs (unless exceptional circumstances exist)
- Transcripts
- Filing and hearing fees
- Appearances in procedural hearings such as mentions, directions hearing, call-overs
- Appearances or the preparation of submissions in relation to costs applications brought against the party unless the costs applications can be dealt with during the hearing
- Payment of costs awarded against the party.

If funding is terminated

- Legal Aid NSW may terminate funding under the Scheme where the applicant advises they no longer want assistance or breaches any of the standard terms and conditions of funding, including failing to follow his or her solicitor's or counsel's advice.
- In the event that the solicitor files a notice of ceasing to act and the party becomes unrepresented the Court will implement a process to trigger a mention before a judicial officer.