



Family violence personal cross-examination ban

This fact sheet has information on the family violence personal cross examination ban and Commonwealth Family Violence and Cross-Examination of Parties Scheme.

What is the personal cross-examination ban?

Under new laws, personal cross-examination is banned in certain Family Court proceedings where allegations of family violence have been raised.

What is personal cross-examination?

Cross-examination is when you question the other side's witnesses about the evidence they have given. It usually happens at a final hearing or trial.

If you have a lawyer representing you at trial, the lawyer does the cross-examination. If you are representing yourself, you will ask questions of the other side and their witnesses yourself during the trial.

This is called personal cross-examination and will no longer be allowed in some cases where there are allegations of family violence.

What is family violence?

Family violence is when a family member uses behaviour that is violent, threatening, controlling, makes you do things you don't want to do, or makes you fearful.

Some examples of family violence include:

- » an assault,
- » stalking,
- » damaging or destroying property, and
- » intentionally harming an animal.

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When will personal cross-examination be banned?

Personal cross-examination is automatically banned in the Family Court when:

- » either party in the case has been charged or found guilty of a criminal offence involving violence (or a threat of violence) to the other party,
- » there is a final Family Violence Restraining Order in place, or
- » the Family Court has made a personal protection injunction for the safety of one party from the other.

The ban can apply in both children and property matters in the Family Court when the parties were married.

If the ban doesn't automatically apply, the Family Court can still decide to make a ban in cases where an allegation of family violence has been made.

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Does the personal cross-examination ban apply to both married and non-married parties?

At this stage, the ban only applies to parties who were married. It is expected the law will change soon so that it will apply to both married and non-married parties.

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What happens if personal cross-examination is banned?

If personal cross-examination is banned in your case, you and the other party will not be allowed to personally ask questions of each other at trial.

This means you and the other party will need to have a lawyer at trial to do the cross-examination.

If you do not have a lawyer at trial, you will not be allowed to cross-examine the other party.

How can you get a lawyer if personal cross-examination is banned?

If the ban applies, you can either arrange to be represented by a private lawyer or you can apply to the 'Commonwealth Family Violence and Cross-Examination of Parties Scheme' for a lawyer to represent you.

How can you apply for the 'Commonwealth Family Violence and Cross-Examination of Parties Scheme'?

If personal cross-examination is banned in your case, you can apply to Legal Aid WA for a lawyer under the 'Commonwealth Family Violence and Cross-Examination of Parties Scheme'.

You can apply by:

- » calling the Legal Aid WA Infoline on 1300 650 579,
- » visiting our Perth office at 32 St Georges Terrace, Perth, or
- » speaking to Family Court Services on Level 1 of the Family Court building.

Where can you get more information?

You can find more information on the family violence personal cross-examination ban, and how you can apply for the 'Commonwealth Family Violence and Cross-Examination of Parties Scheme' on the Legal Aid WA website www.legalaid.wa.gov.au