



Ban on personal cross examination in family law court proceedings

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Personal cross-examination of other parties is not permitted in certain circumstances in family law proceedings where allegations of [family violence](#) have been raised. Where the ban applies, any cross-examination must be undertaken by a lawyer. In this article, we define personal cross-examination, the criteria required for the ban to apply and your options for banning personal cross-examination where you do not meet the specific criteria.

What is personal cross-examination?

Personal cross-examination is where a party (the witness) in court proceedings is asked questions directly by the other party as a self-represented litigant (that is, a person who is not represented by a lawyer) instead of by a legal practitioner.

The ban on personal cross-examination was introduced in September 2019 to:

protect victims of family violence from the re-traumatisation of being cross-examined by the alleged preparator during family law proceedings; and

allow victims of family violence the ability to provide clear evidence during their proceedings.

What is family violence?

The *Family Law Act 1975* defines family violence as violent, threatening or other behaviour by a person that coerces or controls a member of the person's family or causes them to be fearful.

It may include acts such as:

repeated derogatory taunts;

assault;

sexual assault or sexually abusive behaviour;

intentionally damaging or destroying property;

unreasonably withholding financial support;

preventing a family member from remaining connected to their family, friends or culture.

When does the personal cross-examination ban apply?

An alleged preparator of family violence will be banned from personal cross-examination of the other party in family law proceedings if any of the following apply:

Either party has been convicted of, or 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 is in place for the personal protection of a party, directed against the other party.

Where any of the above circumstances do not apply, the Family Court retains discretionary power to order personal cross-examination. Parties can also make an application to the Family Court seeking Orders to ban personal cross-examination.

What is the effect of the ban?

If the ban on personal cross-examination applies, the cross-examination of the other party must be conducted by a legal representative. Therefore, the party will need to privately engage a lawyer or, if eligible, seek representation through Legal Aid.

What happens if the ban does not apply?

If circumstances arise that the ban does not apply and allegations of family violence exist, the Court must ensure there are appropriate protections in place for the alleged victim of family violence.

Some of the protections the court may put in place include:

allowing a party to give testimony by video or audio link so they are not in the same room as the alleged perpetrator; or

closing the court to the public; or

excluding specific persons from the courtroom.

Get help from a family lawyer

Meillon & Bright's team of experienced family lawyers can provide you with advice about your options for your family law matter, including if there are allegations of family violence.

The information contained in this article is of general nature and should not be construed as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.