



Family Law Amendment (Family Violence and Cross-examination of Parties) Act 2018

No. 159, 2018

**An Act to amend the *Family Law Act 1975*, and for
related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation
(<https://www.legislation.gov.au/>)

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Family Law Amendment (Family Violence and Cross-examination of Parties) Act 2018

No. 159, 2018

An Act to amend the *Family Law Act 1975*, and for related purposes

[Assented to 10 December 2018]

The Parliament of Australia enacts:

1 Short title

This Act is the *Family Law Amendment (Family Violence and Cross-examination of Parties) Act 2018*.

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2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 3 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	10 March 2019

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Family Law Act 1975

1 At the end of Part XI

Add:

Division 4—Cross-examination of parties where allegations of family violence

102NA Mandatory protections for parties in certain cases

- (1) If, in proceedings under this Act:
 - (a) a party (the *examining party*) intends to cross-examine another party (the *witness party*); and
 - (b) there is an allegation of family violence between the examining party and the witness party; and
 - (c) any of the following are satisfied:
 - (i) either party has been convicted of, or is charged with, an offence involving violence, or a threat of violence, to the other party;
 - (ii) a family violence order (other than an interim order) applies to both parties;
 - (iii) an injunction under section 68B or 114 for the personal protection of either party is directed against the other party;
 - (iv) the court makes an order that the requirements of subsection (2) are to apply to the cross-examination;then the requirements of subsection (2) apply to the cross-examination.
- (2) Both of the following requirements apply to the cross-examination:
 - (a) the examining party must not cross-examine the witness party personally;
 - (b) the cross-examination must be conducted by a legal practitioner acting on behalf of the examining party.

Note 1: This section applies both in the case where the examining party is the alleged perpetrator of the family violence and the witness party is the alleged victim, and in the case where the examining party is the alleged victim and the witness party is the alleged perpetrator.

Note 2: This section does not limit other laws that apply to protect the witness party (for example, section 101 requires the court to forbid the asking of offensive questions and section 41 of the *Evidence Act 1995* requires the court to disallow certain questions, such as misleading questions).

Note 3: To avoid doubt, a reference to a party in this section includes a reference to a person who is a party because of the operation of a provision of this Act (for example, sections 92 and 92A, which are about intervening parties). This section only applies to an intervening party if the intervening party is involved in the allegation of family violence, whether as the alleged perpetrator or as the alleged victim.

- (3) The court may make an order under subparagraph (1)(c)(iv):
- (a) on its own initiative; or
 - (b) on the application of:
 - (i) the witness party; or
 - (ii) the examining party; or
 - (iii) if an independent children’s lawyer has been appointed for a child in relation to the proceedings—that lawyer.

102NB Court-ordered protections in other cases

If, in proceedings under this Act:

- (a) a party (the *examining party*) intends to cross-examine another party (the *witness party*) personally; and
- (b) there is an allegation of family violence between the examining party and the witness party; and
- (c) section 102NA does not apply to prevent the examining party cross-examining the witness party personally;

then the court must ensure that during the cross-examination there are appropriate protections for the party who is the alleged victim of the family violence.

Note 1: For example, the court may consider it appropriate to give a direction under subsection 102C(1) that the cross-examination be conducted by video link or audio link.

Note 2: This section does not limit other laws that apply to protect the witness party (for example, section 101 requires the court to forbid the asking

of offensive questions and section 41 of the *Evidence Act 1995* requires the court to disallow certain questions, such as misleading questions).

102NC Review of this Division

The Minister must cause a review of the operation of this Division to be commenced as soon as possible after:

- (a) the second anniversary of the commencement of this section;
or
- (b) if, before the second anniversary, the regulations prescribe a day that is after the second anniversary—that day.

2 Application of amendments

The amendments made by this Schedule apply to cross-examinations occurring 6 months after the commencement of this Schedule in proceedings instituted before or after that commencement.

*[Minister's second reading speech made in—
House of Representatives on 28 June 2018
Senate on 12 September 2018]*

(145/18)

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