

FACTSHEET:

Direct cross-examination in court of domestic violence complainants by alleged perpetrators



Unrepresented people accused of domestic violence are now prohibited from directly questioning complainants in many court hearings following changes to the law around cross-examination.

What are the changes?

A new section in the *Criminal Procedure Act 1986* now prevents unrepresented defendants from directly cross-examining complainants in domestic violence *criminal* proceedings and related apprehended violence order proceedings. If a self-represented accused seeks to question a complainant, the court will instead appoint a suitable person to ask the questions on the accused's behalf. Court appointed questioners cannot give the accused legal or other advice.

This protection commences on 1 September 2021.

What do the changes mean?

Domestic violence complainants will no longer have to endure the trauma of being directly cross-examined in court by an unrepresented accused person. Instead, any examination of a complainant must be done by a suitable person appointed by the court, who will ask questions on behalf of the unrepresented accused. Similar protections exist for complainants in sexual offence proceedings and other vulnerable witnesses. Court staff currently perform the role of the court appointed questioner in these matters and will now do so for domestic violence matters too.

Why were the changes made?

Cross-examination is an important part of the justice process because it safeguards convictions for crimes of domestic violence by ensuring a fair trial.

However, giving evidence can be highly stressful for any witness. Being directly questioned by an alleged perpetrator, sometimes at length, can exacerbate that stress and inflict further trauma on domestic violence victim-survivors.

The changes support complainants by ensuring the complainant is not exposed to an accused's questioning directly, including hearing the tone and tenor of their voice, which may be triggering and can be a version of control.

This change builds on other protections passed by the Parliament in the *Stronger Communities Legislation Amendment (Domestic Violence) Act 2020*. Those additional reforms allow complainants in domestic violence criminal proceedings to give evidence in a closed court, and to appear remotely via an audio-visual link for the duration of their evidence.

Together, these important reforms aim to assist complainants to give their best evidence; increase complainant attendance rates at court proceedings; promote fair trials to safeguard convictions for domestic violence; help curb recidivism due to greater legal action rates; and shield complainants from unnecessary trauma that could affect their testimony.