

# Family Violence and Personal Cross-Examination

Judge Kate Hughes  
Federal Circuit Court of Australia  
March 2019

# Family Law Act 1975

## Definition of Family Violence

- ▶ *Family violence* means violent, threatening or other behaviour by a person that coerces or controls a member of the person's family, or causes the family member to be fearful (s 4AB(1))
- ▶ Examples include (s 4AB(2)):
  - ▶ Assault
  - ▶ Sexual assault
  - ▶ Stalking
  - ▶ Repeated derogatory taunts
  - ▶ Damaging property
  - ▶ Harming animals
  - ▶ Denying financial autonomy
  - ▶ Withholding financial support
  - ▶ Preventing connections with family, friends or culture
  - ▶ Deprivation of liberty

# Definition of Child Abuse

- ▶ Abuse in relation to a child means:
  - ▶ (a) Assault, including sexual assault
  - ▶ (b) A person involving the child in a sexual activity with that person or another person in which the child is used, directly or indirectly, as a sex object and where there is unequal power between the child and the person
  - ▶ **(c) Serious psychological harm, including the child being subjected or exposed to family violence**
  - ▶ (d) Serious neglect

# Definition of a child's exposure to family violence

*Family Law Act 1975 s 4AB(3)*

- ▶ A child is *exposed* to family violence if the child sees or hears family violence or otherwise experiences the effects of family violence
- ▶ Examples include (s 4AB(4)):
  - ▶ Overhearing threats of death or personal injury
  - ▶ Seeing or hearing an assault of a family member by another family member
  - ▶ Comforting or providing assistance to a family member who has been assaulted by another family member
  - ▶ Cleaning up a site after a family member has intentionally damaged another family member's property
  - ▶ Being present when police or ambulance officers attend a family violence incident

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

- ▶ In force from 11 March 2019
- ▶ Provisions apply from 11 September 2019
- ▶ Inserts new Division 4 into Part XI of the *Family Law Act 1975*:
  - ‘Cross-examination of parties where allegations of family violence’
- ▶ The provisions apply to all proceedings under the *Family Law Act*, not just parenting proceedings

# s.102NA - Mandatory Protections

- ▶ Unrepresented parties will not be permitted to personally cross-examine another party if:
  - ▶ either party has been charged with or convicted with an offence involving violence or threat of violence involving the other party (s.102NA(1)(c)(i);
  - ▶ a final Family Violence Order applies to both parties (s.102NA(1)(c)(ii);
  - ▶ an injunction has been made under section 68B or section 114 of the Family Law Act for the personal protection of one party against another (s.102NA(1)(c)(iii); or
  - ▶ the Court orders the prohibition should apply (s.102NA(1)(c)(iv).

# s.102NB - Court-ordered protections

- ▶ Applies to matters involving family violence which do not fall into the 102NA categories
- ▶ The Court may permit personal cross-examination by an unrepresented party, but must ensure alternative protections e.g. cross-examination via video link