

**Ask
LOIS** 

New developments in family law and family violence: A law reform update

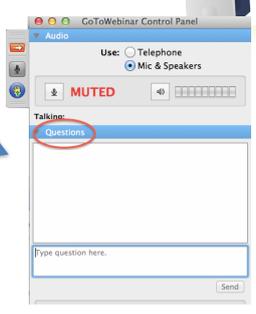
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Welcome

- Use your control panel to ask questions by typing in the question box.
- Participate & enjoy!

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Disclaimer

All care has been taken in the presentation of information in this workshop.

This workshop is not intended to take the place of legal advice given by a qualified legal practitioner.

No responsibility is taken for any loss suffered as a result of the information given at this workshop.

What we are discussing today are proposals – they are not yet law.

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What we will cover today 

- Ban on direct cross-examination in family law
- Parenting Management Hearings
- Proposed merging of Family Court and Federal Circuit Court
- ALRC Review of the family law system
- WLS NSW Sense and Sensitivity: Family Law, Family Violence and Confidentiality paper

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Ban on direct cross-examination in family law 

- Bill introduced proposes an **automatic ban** on direct cross examination where allegations of family violence and:
 - Either party has been **convicted** of, or is **charged** with, an offence involving violence, or a threat of violence, to the other party; or
 - A **family violence order** (other than an interim order) applies to both parties; or
 - A family law **injunction for personal protection** applies (s68B or s114 order)

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Ban on direct cross-examination in family law 

- Where the automatic ban does not apply, **courts** will have **discretion** to apply the ban. They can do this on their own initiative or by application of the Independent Children’s Lawyer or other party
- Where the ban applies cross-examination must be undertaken by a **legal representative** acting for the party wanting to ask the questions

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Ban on direct cross-examination in family law **Ask LOIS** 

- The Bill is significant as:
 - It will apply to both **parenting and property matters**
 - The protections extend to **intervening parties**
 - The person undertaking cross-examination will be a **legal practitioner**
 - Where there are allegations of family violence and the ban does not apply, the court must ensure **other “appropriate protections” apply** during cross-examination
 - It recognises that **procedural fairness** must also extend to **victims-survivors**

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Ban on direct cross-examination in family law **Ask LOIS** 

- AIFS, [Direct cross-examination in family law matters report, 2018](#)
- The Bill needs to be accompanied by:
 - Funding for legal representation
 - Ongoing training for everyone working in the family law system in family violence, child abuse and trauma informed practice; working with vulnerable clients; cultural competency; disability awareness
- Other “appropriate protections” should be applied to all victims-survivors
- The Bill is being reviewed by a [Senate Committee](#). Due to report 13 August. The Bill has not yet been passed by Parliament.

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Question 1 **Ask LOIS** 

Where there are allegations of family violence the ban on direct cross-examination in family law proceedings is now law.

A. True
B. False

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Parenting Management Hearings **Ask LOIS** 

- Family Law Amendment (Parenting Management Hearings) Bill 2017
- A pilot in 2 sites – one in Parramatta; another TBA
- WLSA has been advocating for further discussion within the current ALRC review and stronger protections relating to family violence & child abuse
- The Bill has been reviewed by a [Senate committee](#). The Bill is yet to pass.

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Parenting Management Hearings **Ask LOIS** 

- Each hearing has a panel of at least 2 panel members, at least one lawyer and one non-lawyer
- Inquisitorial process
- Consent by all parties required to opt in
- No legal representation without leave
- WLSA has advocated for stronger protections for family violence including legal representation, on-going risk assessment. See [WLSA submission on Parliament website](#)

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Need for specialisation **Ask LOIS** 

- On 30 May 2018 the federal government announced its intention to merge the Family Court of Australia and Federal Circuit Court of Australia
- The new court proposed will have two divisions and a new Family Law Appeal Division in the Federal Court
 - Div 1: existing Family Court judges
 - Div 2: existing Federal Circuit Court judges
- To improve safety for women and children **increased** (not decreased) **specialisation** is required in both **family law and domestic violence**.

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ALRC Inquiry – Review of the family law system

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- In September 2017 former Federal AG Brandis announced the broad terms of reference of the Australian Law Reform Commission (ALRC) Inquiry into family law system– a system review not just a legislative review
- Professor Helen Rhoades appointed full time Commissioner to lead the Inquiry
- Issues Paper was released in March 2018. Submissions closed in May 2018.

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ALRC Inquiry – Review of the family law system

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- We advocate for elevating safety through:
 - Changes to the law
 - Changes to practice and attitudes
 - Increased funding to reduce delays
- See: [WLSA submission](#)
- See: [WLS NSW submission](#)

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Next steps in ALRC Inquiry – Review of the family law system

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- 2 October 2018 - Discussion Paper released & call for submissions. Consultations
- 13 November 2018 - Submissions to Discussion Paper close
- 31 March 2019 - Report delivered to the Attorney-General

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Question 2



Your next opportunity to have your say in response to the ALRC review of the family law system will be from 2 October 2018 when the Discussion Paper is released.

- A. True
- B. False



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Sense and Sensitivity: Family Law, Family Violence and Confidentiality



- WLS NSW [research paper](#), authored by Carolyn Jones, with funding from Law and Justice Foundation of NSW.
- Sets out the case for **protection of counselling records** when subpoenaed in **family law cases** to protect the therapeutic nature of counselling relationships and reduce intrusive information gathering when alternatives are available



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Any Questions?



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