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Cross-examination of domestic violence survivors: Committee calls for legal aid funding guarantee

The Law Council is urging the Australian Government to accept the recommendation of a bipartisan report, which last night found a guarantee of additional funding for legal aid is necessary before a bill to ban the direct cross-examination of domestic violence survivors can pass.

The [report of the Senate Legal and Constitutional Affairs Legislation Committee](#) cited the Law Council's advice, noting that concerns regarding the funding of the bill's proposed measures were a consistent theme throughout evidence provided. The report stated that:

- *The committee believes there should be a commitment to additional funding for legal aid before the bill is put to a vote in the Senate, including the amount, timeline for distribution and method of distribution; and in any additional funding for legal aid that is announced, the government make clear the eligibility of litigants who do not meet regular eligibility requirements but could not otherwise afford a private lawyer; and*
- *Details regarding the funding of the measures contained in the bill be made public prior to the commencement of debate on the bill in the Senate. (Recommendation 1).*

Law Council of Australia President, Morry Bailes, who [appeared](#) before the committee earlier this month, said that the bill's aims were worthy and needed to be appropriately funded.

“The prospect of being cross-examined by a violent ex-partner can cause significant emotional distress and trauma, and discourage individuals from exercising their legal rights,” Mr Bailes said.

“It is reasonable and appropriate to reform the system to allow for a lawyer to perform cross-examination instead. However, there is considerable uncertainty over how legal aid commissions would deal with the extra demand from people who cannot afford a lawyer to act for them.

“There is further uncertainty about what is to occur if a party cannot afford a lawyer and is not eligible for legal aid. The Law Council is particularly concerned that situations may arise where a perpetrator of family violence is legally represented, but the victim is unable to secure legal representation.”

Mr Bailes said half-measures, like parachuting a lawyer in for cross-examination, would not work.

“Cross-examination plays a critical role in the justice process, by testing the credibility and the veracity of the witness. Effective cross-examination requires the cross-examiner to have an understanding of all of the evidence and the central issues in the case, and for that person to be present to observe the evidence of the other party,” Mr Bailes said.

“For this important reform to work, we need clarity regarding the proposed model for participation of a lawyer to perform a cross-examination. That means extra funding must be provided to legal aid commissions to enable them to perform their vital role under the proposed scheme.

“The Law Council strongly supports the Committee's funding recommendation and calls on the government to adopt it as a matter of priority,” Mr Bailes said.

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