

## Vulnerable or special witnesses

The approach to the protection of adult victims of domestic and family violence and sexual assault complainants / witnesses (sometimes called vulnerable or special witnesses) in family law matters, domestic violence protection order matters and criminal cases varies throughout Australia. Protections may include closed courtrooms, using closed circuit television rather than being in court, using a screen in court, pre-recording evidence in chief, allowing the presence of a support person and **disallowing direct cross-examination** of one party by another in certain proceedings. Below is a brief overview of relevant provisions.

Note that detailed information about children giving evidence in criminal proceedings can be found here:

[Bench Book For Children Giving Evidence In Australian Courts](#)

Place	Relevant statutes	General overview
C'th	<a href="#">Evidence Act 1995</a> (Cth) Part 2.1, Div 3, 5	The court has control over the questioning of witnesses and can make orders about the way evidence is given; can disallow questions etc.
ACT	<a href="#">Evidence (Miscellaneous Provisions) Act 1991</a> (ACT) Chapter 4: Part 4.2; 4.3	Protections are provided for complainants in a sexual or violent offence, generally for people with a cognitive impairment and for evidence in domestic violence proceedings.
	<a href="#">Evidence Act 2011</a> (ACT) Part 2.1, Div 2.1.3, 2.1.5	The court has control over the questioning of witnesses and can make orders about the way evidence is given; can disallow questions etc.
NSW	<a href="#">Criminal Procedure Act 1986</a> (NSW) Chapter 6: Parts 4B, 5, 6	Protections are provided for domestic violence complainants in proceedings for a domestic violence offence; complainants in sexual assault matters and cognitively impaired persons.
	<a href="#">Evidence Act 1995</a> (NSW) Part 2.1, Divs 3 and 5	The court has control over the questioning of witnesses and can make orders about the way evidence is given; can disallow questions etc.
	<a href="#">Crimes (Domestic and Personal Violence) Act 2007</a> (NSW) Part 9	Protections for children in protection order proceedings and right to presence of a support person for a party in protection order proceedings.
NT	<a href="#">Evidence Act 1939</a> (NT) Part 3, Part 3A.	<p>Protections are provided for a 'vulnerable witness' - includes a person who is a child, suffers from an intellectual disability, a victim of a sexual offence to which the proceedings relate, or in the opinion of the court is vulnerable. (Provisions apply to variety of criminal offence proceedings).</p> <p>Protections specific to domestic violence proceedings include a requirement for self-represented defendants to obtain leave to cross-examine vulnerable witnesses.</p>

	<p><i>Domestic and Family Violence Act 2007 (NT)</i> Chapter 4, Part 4.1, Div 4.</p>	<p>Protections are provided for a 'vulnerable witness' - an adult who is the protected person named in a Domestic Violence Order; or a child, an adult witness who suffers from an intellectual disability, who is the alleged victim of a sexual offence to which the proceedings relate or whom a court considers to be vulnerable. Applies to application, variation, revocation or confirmation proceedings related to domestic violence order.</p>
	<p><i>Sexual Offences (Evidence and Procedure) Act 1983 (NT)</i> Part 2, s5</p>	<p>Complainant (re: sexual offence) cannot be directly cross-examined by the defendant.</p>
Qld	<p><i>Evidence Act 1977 (QLD)</i> Part 2, Divs 4, 4A, 6</p>	<p>Protections are provided for a 'special witness' - includes a child under 16 years; or a person who, in the court's opinion would, as a result of a mental, intellectual or physical impairment or a relevant matter, be likely to be disadvantaged as a witness, or would be likely to suffer severe emotional trauma or would be likely to be so intimidated as to be disadvantaged whilst giving evidence.</p> <p>Protections are provided for 'affected children' – a child who is a witness in a relevant proceeding and who is not a defendant in the proceeding.</p> <p>Protections are provided for 'protected witness' – include a witness under 16 years, a witness who is a person with an impairment of the mind, for a proceeding for a prescribed special offence, an alleged victim of the offence, and for a proceeding for a prescribed offence, an alleged victim of the offence who the court considers would be likely to be disadvantaged as a witness, or to suffer severe emotional trauma, unless treated as a protected witness. Accused cannot directly cross-examine protected witness.</p>
	<p><i>Domestic and Family Violence Protection Act 2012 (Qld)</i> Part 5, Div 2, ss150, 151</p>	<p>For proceedings under this Act protections for the aggrieved, child or relative or associate of the aggrieved who is named in the application that relates to the proceeding. (Includes protection from cross-examination by unrepresented respondent in certain cases).</p>
SA	<p><i>Evidence Act 1929 (SA)</i> Part 2.</p>	<p>Protections are provided for a 'vulnerable witness'- includes a witness who is under 16 years of age, a person who suffers from a cognitive disability (including mental illness), a complainant in a sexual or serious offence, a complainant who, in the opinion of the court, would be specially disadvantaged if not treated as a vulnerable witness, a witness who has been subjected to threats of violence or retribution or has reasonable grounds to fear violence or retribution or any other case where the court deems the witness to be specially disadvantaged.</p>
	<p><i>Criminal Law (Legal Representation) Act 2001 (SA)</i> Part 2, s6</p>	<p>If unrepresented defendant applies for legal assistance for purpose of cross-examination of a witness, the commission must grant it.</p>
TAS	<p><i>Evidence (Children and Special Witnesses) Act 2001 (Tas)</i> Parts 3 and 4, ss8, 8A</p>	<p>Protections are provided for a 'special witness' - a person unable to give evidence satisfactorily because of their intellectual, mental or physical disability or a person who is likely to suffer severe emotional trauma or be so intimidated or distressed as to be unable to give evidence or give evidence satisfactorily. Note: an 'affected child' is defined as a victim of a sexual offence or a witness in family violence proceedings. Applies to criminal and family violence order proceedings.</p>

	<i>Evidence Act 2001</i> (Tas) Chapter 2, Divs 3 and 5	The court has control over the questioning of witnesses and can make orders about the way evidence is given; can disallow questions etc.
Vic	<i>Criminal Procedure Act 2009</i> (Vic) Part 4.7, s133; Part 8.2	There are special rules applicable to sexual offences and the giving of evidence in committal hearings.  Protections are provided for a 'protected witness' – includes a witness in a sexual offence or family violence proceeding.
	<i>Family Violence Protection Act 2008</i> (Vic) Part 4, ss69-72	The Court may direct alternative arrangements be made in respect of a family violence intervention order or a litigation restraint order proceeding. Protections provided for 'protected witnesses' (including affected family members, protected person, a child, people with a cognitive impairment or otherwise in need of protection) in relation to direct cross-examination.
	<i>Evidence Act 2008</i> (Vic) Part 2.1, ss26-36, ss40-46	The court has control over the questioning of witnesses and can make orders about the way evidence is given; can disallow questions etc.
WA	<i>Evidence Act 1906</i> (WA) ss25A, 106E-106G, 106R, 106RA	Protections are provided for a 'special witness' - a person who the court is satisfied would, by reason of a physical or mental impairment, be unlikely to be able to give evidence or to give evidence satisfactorily; or be likely to suffer severe emotional trauma or to be so intimidated or distressed as to be unable to give evidence satisfactorily; or a complainant to a 'serious sexual offence'. Includes protection of alleged victim from direct cross-examination by the offender in certain circumstances.