



VICTORIAN BAR

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## ETHICS COMMITTEE BULLETIN

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### BRIEFS UNDER SECTION 102NA OF THE FAMILY LAW ACT 1975 (CTH)

The Ethics Committee publishes this bulletin for the assistance of members of counsel who are briefed to appear under a grant made by Victoria Legal Aid (VLA) pursuant to the Commonwealth Family Violence and Cross-Examination of Parties Scheme (the **Scheme**), in circumstances to which s 102NA of the *Family Law Act 1975* (Cth) (FLA) applies.

This bulletin responds to difficulties that some barristers have encountered when briefed under the Scheme. It follows extensive consultation between VLA, the Presidents of the Victorian Bar and the Family Law Bar Association, and the Chair of the Ethics Committee.

Many members of counsel will be familiar with limited retainer briefs to cross examine under ss 71 and 72 of the *Family Violence Protection Act 2008* (Vic) (FLPA). Briefs of this kind are addressed in Bulletin 1 of 2020, which can be found [here](#).

Briefs to counsel under s 102NA of the FLA are of a different nature. VLA has informed the Bar that grants are **not** made for limited retainer briefs. When a grant is made under the Scheme and a barrister is briefed to appear, VLA's policy is that the scope of the barrister's retainer extends to preparation for and appearance at the whole of the hearing. Unlike briefs under ss 71 and 72 of the FLPA, when counsel is briefed in accordance with VLA's policy, counsel may not seek to be excused at the conclusion of cross examination of the protected witness.

Briefs to counsel under s 102NA of the FLA should be treated by counsel in the same manner as any other legally aided brief to appear in the Family and Federal Circuit Court of Australia.

Historically, many members of counsel have been briefed by instructing solicitors under s 102NA on a limited retainer that is expressed to be confined to cross-examination. If this occurs, counsel should clarify the position with the instructor as early as possible by requesting a copy of the grant of legal aid and seeking a retainer that accords with the VLA policy, as the extent of counsel's authority to represent the client is dictated by the terms of the retainer.

VLA is working to bring this issue to the attention of its panel firms, in an effort to minimise any further confusion as to the extent of the funding available to counsel retained to appear under the Scheme. An information sheet which makes clear the scope of the Scheme, fees available to both solicitors and counsel and answers commonly asked questions will be made available later this year.

The Ethics Committee is available to assist should any issue arise in dealing with instructing solicitors or the Courts over the scope of counsel's retainer in respect of



either briefs to appear under s 102NA of the FLA, or limited retainer briefs to cross examine under ss 71 and 72 of the FLPA.

Lisa Hannon KC  
Chair, Ethics Committee

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