

Criminal Procedure Amendment (Sexual Assault Communications Privilege) Bill 2002

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

Part 7 of the *Criminal Procedure Act 1986* protects certain evidence from disclosure on the ground that it concerns a confidential communication or a document recording such a communication made in the course of a relationship in which a victim, or alleged victim, of a sexual assault offence is or was being treated by a counsellor for any emotional or psychological condition.

In *R v Norman Lee* [2000] NSWCCA 444 the Court of Criminal Appeal held that the protection only applies to the provision of expert advice and procedures by counsellors skilled, by training or experience, in the treatment of mental or emotional disease or trouble. For the purposes of Part 7, counsellors do not include persons who merely seek to assist others suffering from an emotional or psychological condition or who are simply confidantes, friends or relatives.

The object of this Bill is to amend the *Criminal Procedure Act 1986* to make it clear that the protection against disclosure extends to confidential communications or documents recording such communications made in the course of counselling that takes the form of listening to and giving verbal or other support or encouragement to another person. The Bill also makes it clear that a person may be a counsellor even if the person lacks formal training, qualifications or experience in the diagnosis of psychiatric or psychological conditions.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Criminal Procedure Act 1986* set out in Schedule 1 and described in the Overview of the Bill.

Schedule 1 contains the amendments described in the Overview of the Bill.