



New South Wales

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.

First print



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New South Wales

Criminal Procedure Amendment (Sexual Assault Communications Privilege) Bill 2002

No. , 2002

A Bill for

An Act to amend the *Criminal Procedure Act 1986* to make further provision with respect to sexual assault communications privilege.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Criminal Procedure Amendment (Sexual Assault Communications Privilege) Act 2002</i> .	3 4
2 Commencement	5
This Act commences on a day to be appointed by proclamation.	6
3 Amendment of Criminal Procedure Act 1986 No 209	7
The <i>Criminal Procedure Act 1986</i> is amended as set out in Schedule 1.	8

Schedule 1 Amendments

	1
(Section 3)	2
[1] Section 148 What is a protected confidence?	3
Omit paragraph (a) from the definition of <i>counselling communication</i> in section 148 (4).	4
Insert instead:	5
(a) made in confidence by a person (the <i>counselled person</i>) to another person (the <i>counsellor</i>) who is counselling the person in relation to any harm the person may have suffered, or	6
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[2] Section 148 (4), definition of “counselling communication”	11
Omit “relationship” from paragraph (b).	12
Insert instead “counselling”.	13
[3] Section 148 (4), definition of “counselling communication”	14
Omit “who is counselling or otherwise treating, or has counselled or otherwise treated, the counselled person at any time for any emotional or psychological condition of the person” from paragraph (d).	15
Insert instead “who is counselling, or has at any time counselled, the person”.	16
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[4] Section 148 (5)	20
Insert after section 148 (4):	21
(5) For the purposes of this section, a person <i>counsels</i> another person if:	22
(a) the person has undertaken training or study or has experience that is relevant to the process of counselling persons who have suffered harm, and	23
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(b) the person:	27
(i) listens to and gives verbal or other support or encouragement to the other person, or	28
	29

(ii) advises, gives therapy to or treats the other person,	1
	2
whether or not for fee or reward.	3
[5] Schedule 2 Savings, transitional and other provisions	4
Insert after clause 24:	5
Part 6 Provisions consequent on Criminal Procedure Amendment (Sexual Assault Communications Privilege) Act 2002	6
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25 Application of Part 7	9
(1) The amended Part does not apply in relation to criminal proceedings the hearing of which began before it was amended. The Part, as in force before it was amended, continues to apply in relation to such proceedings.	10
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(2) The amended Part applies in relation to a requirement (whether by subpoena or other procedure) to produce a document on or after its amendment even if the requirement was issued before it was amended.	14
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(3) The amended Part applies in respect of a protected confidence whether made before or after it was amended.	18
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(4) In this clause:	20
<i>amended Part</i> means Part 7 as amended by the amending Act.	21
<i>amending Act</i> means the <i>Criminal Procedure Amendment (Sexual Assault Communications Privilege) Act 2002</i> .	22
	23
<i>protected confidence</i> has the meaning it has in Part 7.	24