



New South Wales

Criminal Procedure Amendment (Sexual Assault Communications Privilege) Bill 1999

Explanatory note

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

Overview of Bill

Division 1B of Part 3.10 of the *Evidence Act 1995* 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 was being treated (whether before or after the offence was committed or allegedly committed) by a counsellor for any emotional or psychological condition. In *R v Young* [1999] NSWCCA 166 the Court of Criminal Appeal held that Division 1B does not apply to the production of documents on subpoena so that the protection it gives does not enable a person to object to the production of a document on the ground that it would disclose such a communication.

The objects of this Bill are as follows:

- (a) to amend the *Criminal Procedure Act 1986* to re-enact the provisions of Division 1B of Part 3.10 of the *Evidence Act 1995* with modifications to ensure that the new provisions will apply to the production (whether required by subpoena or any other procedure) of such evidence,
- (b) to expand the types of counselling communications that under the re-enacted provisions will attract the privilege,
- (c) to clarify the parts of the contents of documents that will attract the privilege,
- (d) to make provision with respect to the requirements for notice and the waiver of the privilege under the re-enacted provisions,
- (e) to amend the *Evidence Act 1995* to provide for the contents of documents and other evidence that was protected by the privilege in criminal proceedings to be protected in civil proceedings in which substantially the same acts are in issue that were in issue in the criminal proceedings,
- (f) to make a related amendment to section 84 of the *Victims Compensation Act 1996* to ensure that certain evidence that is inadmissible under that section cannot be required to be produced by subpoena or any other procedure,
- (g) to amend Schedule 3 to the *Victims Compensation Act 1996* to make an amendment for a similar purpose so that a provision of the *Victims Compensation Act 1987* which the 1996 Act repealed but that continues to have application to some matters has the same effect.

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 or days 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.

Clause 4 is a formal provision giving effect to the amendments to the *Evidence Act 1995* and the *Victims Compensation Act 1996* set out in Schedule 2.

Schedule 1 inserts proposed Part 13 (sections 57–68) into the *Criminal Procedure Act 1986*. Part 13 sets out the grounds for claiming evidence should not be produced or adduced because it relates to a sexual assault communication.

Interpretation

Proposed section 57 (1) defines various terms used in the proposed Part, including *sexual assault offence*, *protected confider* and *principal protected confider*.

The definition of *sexual assault offence* substantially re-enacts the definition of sexual assault offence in Division 1B of Part 3.10 of the *Evidence Act 1995*. A *principal protected confider* is the victim or alleged victim of a sexual assault offence by, to or about whom a protected confidence is made. A *protected confider* is defined as a person who makes a protected confidence and, because of the expanded definition of protected confidence explained in more detail below, will cover not only the victim or alleged victim who is the principal protected confider and counsellors but also persons such as parents who are present to further the counselling process.

Proposed section 57 (2) is an interpretation provision that makes it clear that the part of the contents of a document recording a protected confidence that is protected by the proposed Part is that part that records the confidence or any report, observation, opinion, advice, recommendation or other matter that relates to the protected confidence, and that the protection extends to any copy, reproduction or duplicate of such a part of the contents of a document.

Proposed section 57 (3) makes provision with respect to documents recording protected confidences that are stored electronically. If a protected document is recorded on a computer disc, there could be doubt as to whether the document is the disc or a folder on the disc or a file in the folder or a part of a file. This provision (which is based on section 23 of the *Freedom of Information Act 1989*) makes provision for how such a document is to be treated.

Protected confidences

Proposed section 58 (1) defines *protected confidence* for the purposes of the new Part as a counselling communication that is made by, to or about a victim or alleged victim of a sexual assault offence. A protected confidence covers a wider ambit of counselling communications than are covered by the definition of protected confidence in Division 1B of Part 3.10 of the *Evidence Act 1995*. This is because of a new definition of *counselling communication* in proposed section 58 (4). It includes communications made in confidence by or to a parent, carer or other supportive person who is present to facilitate communication or to otherwise further the counselling process and to communications between counsellors. Proposed section 58 (2) makes it clear that a counselling communication is protected even if

it was made before the acts constituting the sexual assault offence occurred or are alleged to have occurred and although it does not relate to any condition arising from a sexual assault offence or alleged sexual assault offence. Section 58 (3) substantially re-enacts section 126G (2) of the *Evidence Act 1995*.

How protected confidences are protected

Criminal proceedings is defined for the purposes of the proposed Part in section 57 (1) as proceedings relating to the trial or sentencing of a person for an offence (whether or not a sexual assault offence), other than preliminary criminal proceedings, or proceedings relating to an order under Part 15A (Apprehended violence) of the *Crimes Act 1900*. *Preliminary criminal proceedings* is defined as committal proceedings or proceedings relating to bail (whether or not in relation to a sexual assault offence).

The Bill draws a distinction between the protection to be provided for protected confidences and the contents of documents recording such confidences in preliminary criminal proceedings and protection to be provided in criminal proceedings.

Preliminary criminal proceedings

Proposed section 59 provides an absolute prohibition against requiring (whether by subpoena or any other procedure) a person to produce a document recording a protected confidence in, or in connection with, preliminary criminal proceedings and against the adducing of evidence in such proceedings if it would disclose a protected confidence or the contents of a document recording a protected confidence.

Criminal proceedings

Proposed section 60 (1) provides a prohibition against requiring (whether by subpoena or any other procedure) a person to produce a document recording a protected confidence for inspection by a party if the person objects to production on the ground that the document is privileged under the proposed Part unless the document is first inspected by the court and the court is satisfied (applying a balancing or weighing process based on that currently set out in section 126H (3) of the *Evidence Act 1995* in respect of the adducing of evidence) that:

- (a) the contents of the document will, either by themselves or having regard to other evidence adduced or to be adduced by the party seeking production of the document, have substantial probative value, and
- (b) other evidence of the protected confidence or the contents of the document recording the protected confidence is not available, and

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- (c) the public interest in preserving the confidentiality of protected confidences and protecting the principal protected confider from harm is substantially outweighed by the public interest in allowing inspection of the document.

The court need not rule on the objection when it inspects the document. If, for example, there is insufficient evidence at that time for the court to perform the balancing or weighing process described in paragraph (a) the court may postpone its ruling until a later stage in the proceedings when the position is clearer.

Proposed section 60 (2)–(4) substantially re-enact section 126H (1)–(3) of the *Evidence Act 1995*. The proposed subsections prohibit the adducing of evidence that would disclose a protected confidence or that is the contents of a document recording a protected confidence unless the court gives leave. The court cannot give leave unless it is satisfied that:

- (a) the evidence will, either by itself or having regard to other evidence adduced or to be adduced by the party seeking to adduce the evidence, have substantial probative value, and
- (b) other evidence of the protected confidence or the contents of the document recording the protected confidence is not available, and
- (c) the public interest in preserving the confidentiality of protected confidences and protecting the principal protected confider from harm is substantially outweighed by the public interest in admitting into evidence information or the contents of a document of substantial probative value.

Notice

Section 126H (2) of the *Evidence Act 1995* sets out the notice requirements that must be complied with before evidence disclosing a protected confidence or the contents of a document recording a protected confidence is adduced. Proposed section 61 (2) substantially re-enacts section 126H (2). Proposed section 61 (1) extends the requirements to cover notice of the production of a document recording a protected confidence. It is not intended that service of a subpoena amount to notice for the purposes of this subsection.

Proposed section 61 (3) requires certain advice to be included in a notice given under the section to a protected confider who is not a party.

Proposed section 61 (4) and (6) facilitate the giving of notice when a principal protected confider is not a party to proceedings in respect of an offence and the defendant has no knowledge of the principal protected confider's address or whereabouts. They provide that the notice requirement is satisfied in these circumstances if notice is given to the informant (the police officer who preferred the charge or laid the information for the offence) and the informant gives, or uses

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his or her best endeavours to give, a copy of the notice to the principal protected confider.

Proposed section 61 (5) enables documents to be produced for inspection or evidence adduced with the leave of the court although a protected confider (other than the principal protected confider) who is not a party has not been given the notice required by section 61 (1) and (2).

Effect of consent

Proposed section 62 provides that Part 13 will not prevent the production of a document recording a protected confidence, or adducing of evidence of a protected confidence or the contents of a document recording a protected confidence, with the consent of the principal protected confider concerned. It re-enacts section 126I of the *Evidence Act 1995* with modifications intended to ensure that the consent is clearly and expressly given. Consent must be given in writing and expressly relate to the production of the document or adducing of the evidence.

Loss of privilege: misconduct

Proposed section 63 substantially re-enacts section 126J of the *Evidence Act 1995* but extends its application to privilege against production of documents recording a protected confidence. It provides for loss of the privilege for protected confidences for communications made and documents prepared in furtherance of a fraud, an offence or an act that renders a person liable to a civil penalty.

Ancillary orders

Proposed section 64 substantially re-enacts section 126K of the *Evidence Act 1995* (which enables a court to make various orders to limit the harm, or extent of the harm, that may be caused if evidence of a protected confidence is disclosed, including orders to ensure that protected identity information is not disclosed) but extends the ambit of orders that may be made to cover orders relating to harm caused by production of documents recording a protected confidence.

Miscellaneous

Proposed sections 65–67 include provisions in Part 13 that correspond to sections 132–134 of the *Evidence Act 1995*. They relate to the duty of a court to inform witnesses and parties of their right to object or make applications under the proposed Part, its powers to inspect documents and to the admissibility of evidence that cannot be adduced or given under the Part.

Proposed section 68 provides for the application of the Part. Among other things, it makes it clear that the Part does not apply in relation to proceedings the hearing

of which began before the commencement of the Part and that the existing Division 1B of Part 3.10 of the *Evidence Act 1995* will continue to apply to such proceedings.

Proposed section 69 makes it clear that the proposed Part will affect the operation of the principles and rules of the common law relating to criminal proceedings only to the extent provided expressly or by necessary intendment by the Part.

Schedule 2.1 contains the amendments to the *Evidence Act 1995* described in the Overview.

Schedule 2.2 contains the amendments to the *Victims Compensation Act 1996* described in the Overview.

First print



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Criminal Procedure Amendment (Sexual Assault Communications Privilege) Bill 1999

No. , 1999

A Bill for

An Act to amend the *Criminal Procedure Act 1986* with respect to preservation of the confidentiality of counselling communications made by, to or in relation to victims and alleged victims of certain sexual assault offences; to make related amendments to the *Evidence Act 1995* and to the *Victims Compensation Act 1996*; and for other purposes.

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 1999</i> .	3 4
2 Commencement	5
This Act commences on a day or days to be appointed by proclamation.	6 7
3 Amendment of Criminal Procedure Act 1986 No 209	8
The <i>Criminal Procedure Act 1986</i> is amended as set out in Schedule 1.	9 10
4 Amendment of other Acts	11
The Acts specified in Schedule 2 are amended as set out in that Schedule.	12 13

Schedule 1	Amendment of Criminal Procedure Act 1986	1
		2
	(Clause 3)	3
Part 13		4
Insert after Part 12:		5
Part 13	Sexual assault communications privilege	6
57	Interpretation	7
(1)	Definitions	8
	In this Part:	9
	<i>court</i> means:	10
(a)	the Supreme Court, or	11
(b)	the Court of Criminal Appeal, or	12
(c)	the District Court, or	13
(d)	a Local Court, or	14
(e)	any other court which, or person who, exercises criminal jurisdiction.	15
	<i>criminal proceedings</i> means:	16
(a)	proceedings relating to the trial or sentencing of a person for an offence (whether or not a sexual assault offence), other than preliminary criminal proceedings, or	17
(b)	proceedings relating to an order under Part 15A (Apprehended violence) of the <i>Crimes Act 1900</i> .	18
	<i>harm</i> includes actual physical bodily harm, financial loss, stress or shock, damage to reputation or emotional or psychological harm (such as shame, humiliation and fear).	19
	<i>preliminary criminal proceedings</i> means any of the following:	20
(a)	committal proceedings,	21
(b)	proceedings relating to bail (including proceedings during the trial or sentencing of a person),	22
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whether or not in relation to a sexual assault offence.	1
<i>principal protected confider</i> means the victim or alleged victim of a sexual assault offence by, to or about whom a protected confidence is made.	2 3 4
<i>protected confidence</i> —see section 58.	5
<i>protected confider</i> , in relation to a protected confidence, means:	6 7
(a) the principal protected confider, or	8
(b) any other person who made the protected confidence.	9
<i>sexual assault offence</i> means:	10
(a) an offence referred to in section 578 of the <i>Crimes Act 1900</i> , or	11 12
(b) any other offence prescribed by the regulations for the purposes of this definition.	13 14
(2) Document recording a protected confidence	15
In this Part, a reference to a document recording a protected confidence:	16 17
(a) is a reference to any part of the document that records a protected confidence or any report, observation, opinion, advice, recommendation or other matter that relates to the protected confidence made by a protected confider, and	18 19 20 21 22
(b) includes a reference to any copy, reproduction or duplicate of that part of the document.	23 24
(3) Electronic documents	25
For the purposes of this Part, if a document recording a protected confidence is stored electronically and a written document recording the protected confidence could be created by use of equipment that is usually available for retrieving or collating such stored information, the document stored electronically is to be dealt with as if it were a written document so created.	26 27 28 29 30 31 32
58 What is a protected confidence?	33
(1) In this Part:	34

protected confidence means a counselling communication that
is made by, to or about a victim or alleged victim of a sexual
assault offence. 1
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(2) A counselling communication is a protected confidence for the
purposes of this Part even if it: 4
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(a) was made before the acts constituting the relevant
sexual assault offence occurred or are alleged to have
occurred, or 6
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(b) was not made in connection with a sexual assault
offence or alleged sexual assault offence or any
condition arising from a sexual assault offence or
alleged sexual assault offence. 9
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(3) For the purposes of this section, a communication may be made
in confidence even if it is made in the presence of a third party
if the third party is present to facilitate communication or to
otherwise further the counselling process. 13
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(4) In this section: 17

counselling communication means a communication: 18

(a) made in confidence by a person (the ***counselled person***)
to another person (the ***counsellor***) in the course of a
relationship in which the counsellor is counselling,
giving therapy to or treating the counselled person for
any emotional or psychological condition, or 19
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(b) made in confidence to or about the counselled person by
the counsellor in the course of that relationship, or 24
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(c) made in confidence about the counselled person by a
counsellor or a parent, carer or other supportive person
who is present to facilitate communication between the
counselled person and the counsellor or to otherwise
further the counselling process, or 26
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(d) made in confidence by or to the counsellor by another
counsellor or by a person who is or has counselled or
otherwise treated the counselled person for any
emotional or psychological condition of the person. 31
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59	Evidence of sexual assault communications not to be required to be produced, or adduced in or in connection with, preliminary criminal proceedings	1 2 3
(1)	A person cannot be required (whether by subpoena or any other procedure) to produce a document recording a protected confidence in, or in connection with, any preliminary criminal proceedings.	4 5 6 7
(2)	Evidence is not to be adduced in any preliminary criminal proceedings if it would disclose:	8 9
(a)	a protected confidence, or	10
(b)	the contents of a document recording a protected confidence.	11 12
60	Evidence of sexual assault communications may be required to be produced in, or in connection with, criminal proceedings, or adduced, with leave	13 14 15
(1)	A person who objects to production of a document recording a protected confidence on the ground that it is privileged under this Part cannot be required (whether by subpoena or any other procedure) to produce the document for inspection by a party in, or in connection with, any criminal proceedings unless:	16 17 18 19 20
(a)	the document is first produced for inspection by the court for the purposes of ruling on the objection, and	21 22
(b)	the court is satisfied (whether on inspection of the document or at some later stage in the proceedings) that:	23 24
(i)	the contents of the document will, either by themselves or having regard to other evidence adduced or to be adduced by the party seeking production of the document, have substantial probative value, and	25 26 27 28 29
(ii)	other evidence of the protected confidence or the contents of the document is not available, and	30 31
(iii)	the public interest in preserving the confidentiality of protected confidences and protecting the principal protected confider from harm is substantially outweighed by the public interest in allowing inspection of the document.	32 33 34 35 36

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- (2) Without limiting the matters that the court may take into account for the purposes of subsection (1) (b) (iii), the court must take into account the likelihood, and the nature or extent, of harm that would be caused to the principal protected confider if the document is produced for inspection. 1
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- (3) Evidence is not to be adduced in any criminal proceedings if it would disclose: 6
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- (a) a protected confidence, or 8
 - (b) the contents of a document recording a protected confidence, 9
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- unless the court gives leave to adduce the evidence. 11
- (4) The court must not give leave to adduce evidence that discloses a protected confidence or the contents of a document recording a protected confidence unless the court is satisfied that: 12
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- (a) the evidence will, either by itself or having regard to other evidence adduced or to be adduced by the party seeking to adduce the evidence, have substantial probative value, and 15
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 - (b) other evidence of the protected confidence or the contents of the document recording the protected confidence is not available, and 19
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 - (c) the public interest in preserving the confidentiality of protected confidences and protecting the principal protected confider from harm is substantially outweighed by the public interest in admitting into evidence information or the contents of a document of substantial probative value. 22
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- (5) Without limiting the matters that the court may take into account for the purposes of subsection (4) (c), the court must take into account the likelihood, and the nature or extent, of harm that would be caused to the principal protected confider if the evidence that discloses the protected confidence or the contents of the document recording the protected confidence is adduced. 28
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- (6) The court must state its reasons for requiring production or giving or refusing to give leave under this section. 35
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- (7) A protected confider who is not a party to proceedings may, with the leave of the court, appear in the proceedings. 1
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- (8) If there is a jury, the court is to hear and determine any objection or application referred to in subsection (1) or (3) in the absence of the jury. 3
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- 61 Notice required before evidence is produced for inspection or adduced** 6
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- (1) A document recording a protected confidence is not to be required to be produced for inspection by a party in, or in connection with, any criminal proceedings unless the party seeking production of the document has given reasonable notice in writing that production has been sought to: 8
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- (a) each other party, and 13
- (b) if the protected confider is not a party—the protected confider. 14
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- (2) Evidence disclosing a protected confidence or the contents of a document recording a protected confidence is not to be adduced in any criminal proceedings unless the party adducing the evidence has given reasonable notice in writing of the party's intention to adduce the evidence to: 16
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- (a) each other party, and 21
- (b) if the protected confider is not a party—the protected confider. 22
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- (3) Notice given under this section to a protected confider who is not a party must: 24
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- (a) advise the protected confider that he or she may, with the leave of the court, appear in the proceedings concerned, and 26
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- (b) in the case of notice given under subsection (1) (b)—advise the protected confider of the day on which the document is (by the subpoena or other procedure concerned) to be produced, and 29
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- (c) in the case of notice given under subsection (2) (b)—advise the protected confider of the day (if known) when the proceedings are to be heard. 33
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- (4) It is sufficient compliance with a requirement under subsection
(1) (b) or (2) (b) to give notice to a protected confider who is
not a party and who is the principal protected confider if the
party gives reasonable notice that the party has sought
production, or of the party's intention to adduce the evidence,
to the informant and the informant gives, or uses the
informant's best endeavours to give, a copy of the notice to the
principal protected confider within a reasonable time after the
informant receives the notice. 1
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- (5) Despite subsections (1) and (2), a document recording a
protected confidence may, with the leave of the court, be
required to be produced for inspection, or evidence disclosing
a protected confidence or the contents of a document recording
a protected confidence adduced, although notice has not been
given to a protected confider who is not a party (not being the
principal protected confider) as required by those subsections. 10
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- (6) In this section: 17
informant, in relation to criminal proceedings with respect to 18
an offence, means the police officer who preferred the charge 19
or laid the information for the offence. 20
- 62 Effect of consent** 21
- (1) This Part does not prevent the production of any document
recording a protected confidence or the adducing of evidence
disclosing a protected confidence or the contents of a document
recording a protected confidence, in, or in connection with, any
proceedings, if the principal protected confider to whom the
proceedings relate has consented to the production of the
document or adducing of the evidence. 22
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- (2) Consent is not effective for the purposes of this section unless: 29
- (a) the consent is given in writing, and 30
- (b) the consent expressly relates to the production of a
document or adducing of evidence that is privileged
under this Part or would be so privileged except for a
limitation or restriction imposed by this Part. 31
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63	Loss of sexual assault communications privilege: misconduct	1
(1)	This Part does not prevent the adducing of evidence of a communication made, or the production or adducing of a document prepared, in the furtherance of the commission of a fraud or an offence or the commission of an act that renders a person liable to a civil penalty.	2 3 4 5 6
(2)	For the purposes of this section, if the commission of the fraud, offence or act is a fact in issue and there are reasonable grounds for finding that:	7 8 9
(a)	the fraud, offence or act was committed, and	10
(b)	a communication was made or document prepared in furtherance of the commission of the fraud, offence or act,	11 12 13
	the court may find that the communication was so made or document so prepared.	14 15
64	Ancillary orders	16
(1)	Without limiting any action the court may take to limit the possible harm, or extent of the harm, likely to be caused by the disclosure of evidence of, or the contents of a document recording, a protected confidence, the court may:	17 18 19 20
(a)	order that all or part of the evidence be heard or document produced in camera, and	21 22
(b)	make such orders relating to the production and inspection of the document as, in the opinion of the court, are necessary to protect the safety and welfare of any protected confider, and	23 24 25 26
(c)	make such orders relating to the suppression of publication of all or part of the evidence given before the court as, in its opinion, are necessary to protect the safety and welfare of any protected confider, and	27 28 29 30
(d)	make such orders relating to disclosure of protected identity information as, in the opinion of the court, are necessary to protect the safety and welfare of any protected confider.	31 32 33 34

(2) Nothing in this section limits the power of a court to make an order under section 577A, 578 or 578A of the <i>Crimes Act 1900</i> .	1 2 3
(3) In this section: <i>protected identity information</i> means information about, or enabling a person to ascertain, the private, business or official address, email address or telephone number of a protected confider.	4 5 6 7 8
65 Court to inform of rights to make applications and objections	9
If it appears to a court that a witness or a party may have grounds for making an application or objection under a provision of this Part, the court must satisfy itself (if there is a jury, in the absence of the jury) that the witness or party is aware of the effect of that provision.	10 11 12 13 14
66 Court may inspect documents	15
If a question arises under this Part relating to a document, a court may order that the document be produced to it and may inspect the document for the purpose of determining the question.	16 17 18 19
67 Inadmissibility of evidence that must not be adduced or given	20
Evidence that, because of this Part, must not be adduced or given in proceedings is not admissible in the proceedings.	21 22
68 Application of Part	23
(1) This Part does not apply in relation to criminal proceedings the hearing of which began before the commencement of this Part. Division 1B of Part 3.10 of the <i>Evidence Act 1995</i> , as in force immediately before the commencement of this subsection, continues to apply in relation to such proceedings.	24 25 26 27 28
(2) This Part applies, subject to subsection (1), in relation to a requirement (whether by subpoena or other procedure) to produce a document on or after the commencement of this subsection even if the requirement was issued before that commencement.	29 30 31 32 33

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Schedule 1 Amendment of Criminal Procedure Act 1986

- (3) This Part applies, subject to subsection (1), in respect of a protected confidence whether made before or after the commencement of this subsection. 1
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- (4) The court may, subject to subsection (1), give leave under this Part in respect of a protected confidence whether or not the confidence is privileged under Part 3.10 of the *Evidence Act 1995* or would be so privileged except for a limitation or restriction imposed by that Part. 4
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- 69 Application of common law** 9
- (1) This Part does not affect the operation of a principle or rule of the common law in relation to evidence in criminal proceedings, except so far as this Part provides otherwise expressly or by necessary intendment. 10
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- (2) Without limiting subsection (1), this Part does not affect the operation of such a principle or rule so far as it relates to the inspection of a document required to be produced in, or in connection with, criminal proceedings. 14
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Schedule 2	Amendment of other Acts	1
	(Clause 4)	2
2.1	Evidence Act 1995 No 25	3
[1]	Section 126F Application of Division	4
	Insert “or Part 13 of the <i>Criminal Procedure Act 1986</i> ” after “Division 1B” in section 126F (3).	5 6
[2]	Part 3.10, Division 1B	7
	Omit the Division. Insert instead:	8
	Division 1B Sexual assault communications privilege	9
	Note. The Commonwealth Act does not include this Division.	10
126G	Definitions	11
	In this Division:	12
	<i>criminal proceeding</i> has the same meaning as criminal proceedings has in Part 13 of the <i>Criminal Procedure Act 1986</i> .	13 14 15
	<i>principal protected confider</i> has the same meaning as it has in Part 13 of the <i>Criminal Procedure Act 1986</i> .	16 17
	<i>protected confidence</i> has the same meaning as it has in Part 13 of the <i>Criminal Procedure Act 1986</i> .	18 19
	<i>sexual assault offence</i> has the same meaning as it has in Part 13 of the <i>Criminal Procedure Act 1986</i> .	20 21
126H	Exclusion of evidence of protected sexual assault communications	22 23
	(1) This section applies only in a civil proceeding in which substantially the same acts are in issue as the acts that were in issue in relation to a criminal proceeding.	24 25 26

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Schedule 2 Amendment of other Acts

(2) If evidence was found to be privileged in a criminal proceeding under Part 13 of the <i>Criminal Procedure Act 1986</i> , the evidence may not be adduced in a civil proceeding to which this section applies.	1 2 3 4
126I Application of Division	5
(1) This Division does not apply in relation to a civil proceeding the hearing of which began before the commencement of this section.	6 7 8
(2) This Division applies, subject to subsection (1), in respect of a protected confidence whether made before or after the commencement of this section.	9 10 11
2.2 Victims Compensation Act 1996 No 115	12
[1] Section 84 Inadmissibility of certain evidence in subsequent criminal proceedings	13 14
Insert at the end of the section:	15
(2) A person cannot be required (whether by subpoena or any other procedure) to produce any application, document or transcript of evidence that is not admissible in evidence in criminal proceedings under subsection (1) in, or in connection with, any criminal proceeding.	16 17 18 19 20
[2] Schedule 3 Savings, transitional and other provisions	21
Insert after clause 3:	22
3A Inadmissibility of certain evidence in subsequent criminal proceedings	23 24
Despite clause 3 (1), section 25 of the repealed Act applies in relation to evidence given in connection with an application for compensation referred to in that subclause as if the following subsection were inserted at the end of the section:	25 26 27 28

Criminal Procedure Amendment (Sexual Assault Communications
Privilege) Bill 1999

Amendment of other Acts

Schedule 2

“(2) A person cannot be required (whether by subpoena or 1
any other procedure) to produce any application, 2
document or transcript of evidence that is not admissible 3
in evidence in criminal proceedings under subsection 4
(1) in, or in connection with, any criminal proceeding.” 5