ACT DPP

Understanding ‘Protected Confidence Material’

Information for victims and complainants in family violence and/or sexual violence proceedings in the ACT.

Facts sheet prepared by the ACT DPP, November 2026

WHAT DOES “PROTECTED CONFIDENCE MATERIAL” MEAN?

You might hear the term “protected confidence material” during a criminal matter, if it relates to family violence and/or sexual violence charges

In simple terms, this usually refers to private conversations you have had with support professionals, often called “counselling communications.” These may include conversations with:

- psychologists or counsellors
- doctors or psychiatrists
- social workers or other allied health professionals

As a starting point, conversations are protected by law, which means solicitors or prosecutors cannot access them without permission from the Court.

WHY ARE THESE CONVERSATIONS PROTECTED?

The reason behind this is very important.

People need safe, confidential spaces where they can talk openly about what they’re going through. When you speak with a counsellor or health professional, there is usually a shared understanding that what you say will remain private (except in specific situations, like serious safety concerns).

These protections exist:

- to support you as an individual, and
- to make sure everyone in the community feels safe seeking help

If people were worried that their most personal conversations could easily be used in court, it could make it much harder to be open and get real support.

WHAT DOES THIS MEAN LEGALLY?

In criminal proceedings, counselling communications are highly protected.

This means:

- They cannot be requested, accessed, or used by the prosecution or defence without permission from the Court.
- If a party wants access, they must make a formal application to the Court.

This process is in place to make sure your privacy is taken seriously.

IMPORTANT: TALKING WITH THE DPP

The Office of the Director of Public Prosecutions (DPP) has a duty to ensure a fair process, which includes sharing relevant evidence with the defence.

Because of this:

- We will not ask you about counselling communications from you.
- If protected information is accidentally shared with us, we may be legally required to disclose this fact to the defence. We would not automatically share details but would usually let defence know and it is possible an application to access protected confidence material would follow. You have rights (see below) if an application is brought.

If you're unsure whether something might be protected, we would encourage you to check with us first before sharing details.

THE PROTECTED CONFIDENCE APPLICATION PROCESS

If someone wants access to your counselling communications, the Court process usually happens in three stages:

1. Asking for the material to be provided to the Court

A party applies for the Court to obtain the counselling records.

➔ One of the parties is asking for your counselling communications. Neither the prosecution or defence can ask for your counselling communications without the permission of the Court (they cannot, for example, issue a subpoena to your counsellor for their notes without the Court allowing this).

The first application is for the Court to consider whether to give permission for a party to ask for your counselling notes.

If the Court gives permission, the party will then arrange for the Court to get a copy of your counselling communications. At this stage, only the Court can see this copy.

2. Asking to see the material

The Court will look at the material first and decide whether either party should be allowed to see it.

➔ The party must get separate permission to see the counselling communications. Once the Court gets a copy of your counselling communications, they will then have a look at them and decide if the parties should see them. At this stage, the Court will consider lots of things, including what you think about the parties seeing the counselling communications.

You can provide a confidential, written statement to the Court to tell them about any harm you might suffer if the parties can see your counselling communications. Neither party is allowed to see this written statement. It is important you do not show your statement to the prosecution, as they may then have to show defence.

3. Asking to use the material

Even if the material is seen, permission is still needed to use it as evidence.

➔ If the parties are allowed to see the counselling communications, they must then get permission if they want to use it as evidence. Generally, here, the Court will consider the relevance of the counselling communications to the criminal proceedings.

UNDERSTANDING YOUR RIGHTS IN THE PROTECTED CONFIDENCE APPLICATION PROCESS

At each stage:

- You have the right to have your views considered
- You can attend court (with your own lawyer, if you choose)
- Or you can provide your views through the prosecutor

The prosecutor will tell the Court what you think, even if they are not always able to argue for the outcome you want.

SHARING YOUR CONCERNS WITH THE COURT

If you're worried about harm that could come from your counselling records being accessed, you can:

- Provide a confidential written statement to the Court
- Explain how it might affect you if the material is shared

This statement:

- Is only seen by the Court
- Is not shared with the prosecution or defence
- ➔ It's important you don't show this statement to the prosecution, because they may then be required to disclose it.

WHAT TO DO IF YOU WANT TO SHARE SOMETHING WITH THE DPP THAT MAY BE PROTECTED

If this happens, you have a few options:

- Get independent legal advice (this is the best option if available)
- Speak in general terms first and ask:
  "I have something I'd like to share that might be protected-what's the best way to do this?"
- ➔ The prosecutor can help guide you, without you needing to share details straight away.

A FINAL NOTE

These protections are there to protect the community's privacy, wellbeing, and your ability to access support safely.

At the same time, the Court may sometimes need to carefully balance this with ensuring a fair trial process.

If you have questions at any stage, please reach out. We're here to support you through this.

GETTING HELP

If you are a complainant in a sexual offence proceeding, you may be able to receive free, independent legal advice from the Sexual Violence Legal Service (SVLS) at Women's Legal Centre ACT. They provide advice to women, trans and gender diverse people, including in relation to your counselling communications and may be able to appear on your behalf in any related applications. You can request their assistance by calling 02 6257 4377/1800 634 669 or by visiting their website at: https://wlc.org.au/get-help/request-for-legal-assistance/

If you require independent legal advice on protected confidence material and it is not available to you, please let your prosecutor know as it may be possible for the office to assist to arrange this.