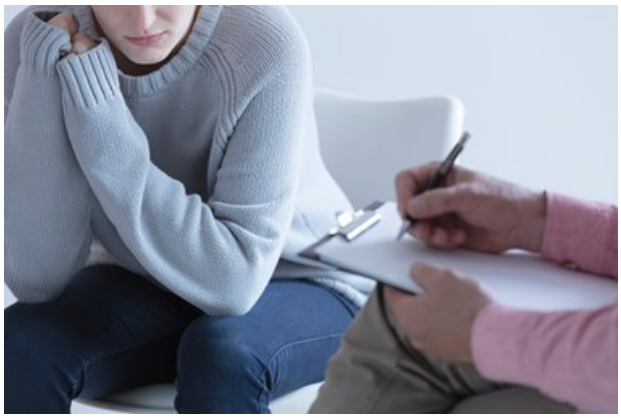
GILSHENAN & LUTON
LEGAL PRACTICE



Protected counselling communication privilege in criminal law Queensland

Author: Jessica Rosengren
Email: jrosengren@gnl.com.au
Phone: 0420 577 977
Date: Sunday January 18, 2026

Under Queensland's criminal law, communications with counsellors about sexual offending are subject to a 'protected counselling communication privilege' during the legal process.

This privilege governs what can and cannot be accessed from a complainant's confidential conversations with counsellors. While its stated purpose is to protect complainants and encourage them to seek help, it is crucial for defendants and their families to understand how this privilege works, when it applies, and what options are available to the defence.

What is protected counselling communication privilege?

Protected counselling communication privilege is a set of legal protections that limit the defence (and sometimes the prosecution) from accessing or using a complainant's counselling records in criminal cases. These rules aim to make sure that people who have experienced trauma (especially alleged victims) feel safe getting help, knowing their private disclosures to counsellors won't automatically be exposed in court.

The *Evidence Act 1977* (Qld), especially sections 14A to 14H, sets out these protections. The law recognises that privacy for complainants is important, but it also provides a process for courts to consider if it's fair and necessary to allow a defendant access in particular circumstances.

For defendants, this means there are hurdles to obtaining possible evidence contained in counselling records, but the law does not make access impossible.

What types of counselling communications are protected?

The privilege covers any communication made in confidence between a complainant and a counsellor, which relates to harm (physical, emotional, or psychological) suffered or feared by the complainant. For example, if the complainant spoke to a psychologist, social worker, or school counsellor about the incident or its effects, those conversations are likely protected.

Importantly, the privilege covers communications made before or after the offence alleged against a defendant. In other words, if a defendant is facing an allegation of rape, and it is known that the complainant has earlier made multiple similar allegations against others, the complainant's communications of those earlier incidents will be covered by the privilege.

Who counts as a counsellor?

Anyone providing professional or volunteer counselling services, such as psychologists, social workers, psychiatrists, or counsellors working for support agencies.

What does 'in confidence' mean?

The communication was made with the expectation that it would remain private, except for what's necessary for counselling.

What material is included?

Both spoken and written records, such as session notes, reports, emails, or recordings, when related to the harm in question.

Not every conversation with a health professional is privileged however. The protection applies only to those made in a counselling context about harm or risk of harm. This means some records, like routine medical notes, might not be covered.

In what cases does the privilege apply?

Whilst the privilege applies in all cases where applicable, defendants will usually encounter protected counselling communication privilege in criminal cases involving sexual offences, child abuse, or family violence.

The defence may wish to access the complainant's counselling records to challenge their credibility, explore inconsistencies, or find evidence relevant to the case. The law puts up a barrier to this access, primarily to protect the complainant's privacy and encourage people to seek help without fear.

The courts need to carefully weigh the need for privacy against the rights of the accused to a fair trial. The prosecution and defence must follow strict procedures before such material can be considered for use in court.

How does the privilege differ before and after the committal hearing?

In Queensland, criminal proceedings usually begin with a committal hearing in the Magistrates Court. You can read more about this in our earlier article, "What is a committal hearing?"

The way protected counselling communication privilege applies changes depending on whether the case is at the committal stage or has progressed to trial.

Before committal

The privilege is strongest before committal. Subpoenaing or accessing protected communications is generally not allowed unless the court grants special permission. This is because the law tries to avoid exposing sensitive material unless absolutely necessary at this early point.

After committal

Once the case moves beyond the committal hearing (for example, to the District or Supreme Court for trial), the privilege remains. However, courts may be more open to considering the defence's argument that access to these communications is necessary for a fair trial. Even so, privacy concerns for the complainant remain a top priority in the court's decision-making.

For defendants, this means that timing matters. Early in the process, it's almost impossible to obtain privileged material, but the law does not prevent such access entirely as the case progresses.

The two-step court process for accessing protected communications

There is a structured two-step process that defendants must follow to seek access to protected counselling communications after a matter has been committed to a higher court.

Step one: Seek permission ('leave') to obtain the communications

The defence must apply to the court for leave to issue a subpoena or obtain the protected records. They must show the material is likely to have substantial probative value to a fact in issue. That means establishing that the communications could be highly relevant to determining the truth about a key point in the case. Courts are careful to ensure the application isn't a 'fishing expedition', but is grounded in a specific reason why the material might matter.

Step two: Seek permission to use the communications in court

If the court gives permission at step one and the material is produced to the court, the defence must then make a further application to actually use or disclose the material in the proceedings. Courts will weigh:

- the public interest in keeping counselling communications confidential (to protect complainants and encourage victims to seek help);
- the public interest in ensuring a fair trial for the accused;
- the potential harm to the complainant if the information is disclosed;
- whether the evidence is available from other sources;
- the significance of the evidence to the case.

Only if the judge is convinced that disclosure is necessary and just will the material be used. Both steps require careful legal argument, and the court always keeps the rights of both the accused and the complainant in mind.

Practical advice for defendants in sexual offending and child abuse matters

Protected counselling communication privilege is an unavoidable feature of many cases under Queensland criminal law, especially in cases involving sexual offences or similar allegations. For families and individuals facing accusations, it's important to recognise that the law is designed, first and foremost, to protect complainants' privacy. This encourages alleged victims to seek help, knowing their personal disclosures will not be automatically exposed in court.

However, the law also provides a pathway for the defence to access such communications if there is a genuine need that serves the interests of justice. Understanding the types of communications covered, the process for requesting access and the court's careful balancing of competing interests can help defendants and their families navigate what can be a complex and stressful part of criminal proceedings.

Get help from a criminal lawyer

If you or someone close to you is facing criminal charges and believes that protected counselling communication might be relevant to the case, consult with an experienced lawyer to carefully consider the options and make the strongest, most respectful application possible.

Gilshenan &Luton are highly experienced criminal defence lawyers who regularly represent clients facing serious criminal charges.

if you have been charged with a criminal matter, you should contact Gilshenan &Luton for legal advice and assistance. We are available 24/7.

Contacting Gilshenan &Luton Lawyers

07 3361 0222 (24/7)

gnl@gnl.com.au

This blog is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.