



THEIR PRIVACY IS YOUR PRIORITY.

.SACPS

Sexual Assault
Communications Privilege
Service

Client Privacy and Sexual Assault

Communications Privilege

Legal Aid 
NEW SOUTH WALES



Why does privacy matter?

Disclosure of confidential and sensitive information in court proceedings can be a traumatic experience for victims of sexual assault. It can undermine their recovery and compromise the relationship with their counsellor, health practitioner or support worker.

NSW law strikes a balance between a victim's right to privacy and an accused person's right to a fair trial. There are special rules restricting the release of confidential records in court.

What if I get a subpoena for client records?

If you get a subpoena, or any other demand or request for confidential client information (from police or a lawyer, for example), stop, think and get advice before you respond. Your client's records could be protected by Sexual Assault Communications Privilege.

What is a subpoena?

A subpoena is a formal court order to produce documents or give oral evidence (or both) in a court case. You must comply with a subpoena unless the information is 'privileged' and the court says it can remain confidential.

What is Sexual Assault

Communications Privilege?

Sexual Assault Communications Privilege limits disclosure of counselling, health and other therapeutic information about a victim of sexual assault.

It applies in all criminal and AVO cases in NSW, and some civil matters. It does not protect the confidentiality of client information in family law or child protection cases (although you may be able to use other legal arguments to limit the release of information).

What information is protected?

Sexual Assault Communications Privilege protects the confidentiality of a broad range of therapeutic information about any client who has ever been a victim of indecent or sexual assault. This can include counselling or caseworker notes, health files, some school records, drug and alcohol records and more.

What are the rules?

Anyone (defence, prosecution or police) who wants to access or use a victim's records must get the court's permission ('leave') before they:

- issue a subpoena
- look at the information in court
- use the information as evidence

Not everyone is familiar with these rules. If you get a subpoena, it's very important that you check if the court has given permission for it to be issued.

What if the client consents?

A victim of sexual assault can consent to the release of the information in court but this must be done in writing and only after they have been formally advised about Sexual Assault Communications Privilege.

Top Tips: What to do if you get a subpoena?

1. Where possible, check if your client has ever been sexually assaulted. It does not matter if they used your service to get help for sexual assault or for other reasons.
2. Check what type of case it is. If it's a criminal or AVO matter, Sexual Assault Communications Privilege probably applies.
3. Check that the subpoena is valid (issued with the court's permission).
4. Contact your client. Find out what they want to do.
5. If your client wants to consent to release, refer them to the Sexual Assault Communications Privilege Service at Legal Aid NSW.
6. If in doubt, talk to us.

Where do I get help?

The Sexual Assault Communications Privilege Service is a specialist unit in the Civil Law Division at Legal Aid NSW.

Our service provides free legal advice and sometimes representation to victims of sexual assault who want to stop or restrict the disclosure of their confidential records in criminal proceedings. We also assist victims to give informed consent to the release of private information.

We give advice to sexual assault counsellors, case workers, health professionals, medical records staff and others on how to respond to subpoenas in cases where Sexual Assault Communications Privilege might apply.



STOP.
THINK.
PROTECT.

Contact Us

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