### Legislation table: Elements of the laws surrounding sexual assault, by jurisdiction

#### The offence of sexual assault: Definition

<table>
<thead>
<tr>
<th>Name of offence(s)</th>
<th>ACT</th>
<th>NSW</th>
<th>NT</th>
<th>Qld</th>
<th>SA</th>
<th>Tas.</th>
<th>Vic.</th>
<th>WA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legislation that establishes the offence(s)</td>
<td>CrimAct 1900 s54, read with s50</td>
<td>CrimAct 1900 s61</td>
<td>Criminal Code Act 1983: s182 s3 &amp; 1908</td>
<td>Criminal Code Act 1899 ss347–349, read with s51 &amp; s352</td>
<td>Criminal Law Consolidation Act 1935 ss48, read with ss51(1), (3) &amp; 48A</td>
<td>Criminal Code Act 1913 ss185, read with ss1 &amp; 127A</td>
<td>Criminal Code Act 1913 ss319, read with ss25–326</td>
<td></td>
</tr>
<tr>
<td>Definition of offence</td>
<td>1) A person who engages in sexual intercourse with another person without the consent of that other person and who is reckless as to whether that other person consents to the sexual intercourse is guilty of an offence punishable, on conviction, by imprisonment for 12 years.</td>
<td>Any person who has sexual intercourse with another person without the consent of the other person and who knows that the other person does not consent to the sexual intercourse is liable to imprisonment for 14 years.</td>
<td>A person is guilty of a crime if the person has sexual intercourse with another person: 1) without the other person's consent; or 2) knowing about or being reckless as to the lack of consent.</td>
<td>Coerced sexual self-manipulation (1928): 1) In this section, self-manipulation means the insertion, into the vagina or anus of a person, of an object manipulated by that person. 2) Any person who coerces another person to engage in self-manipulation in circumstances where the person so coerced cannot reasonably be expected to resist, is guilty of a crime and is liable to imprisonment for 17 years.</td>
<td>Rape: 1) Any person who rapes another person is guilty of a crime. Maximum penalty: Life imprisonment. 2) A person rapes another person if: a) the person has carnal knowledge with or of the other person without the other person's consent; b) the person penetrates the vagina, vagina or anus of the other person to any extent with a thing or a part of the person's body that is not a penis without the other person's consent; or c) the person penetrates the mouth of the other person to any extent with the person's penis without the other person's consent. 3) For this section, a child under the age of 12 years is incapable of giving consent.</td>
<td>352 Sexual assault: 1) Any person who: a) unlawfully and indecently assaults another person; or b) procures another person, without the person's consent i) to commit an act of gross indecency; or ii) to witness an act of gross indecency by the person or any other person; is guilty of a crime. Maximum penalty: 10 years imprisonment. 2) However, the offender is liable to a maximum penalty of 14 years imprisonment for an offence defined in subsection (1)(a) or (1)(b) if the indecent assault or act of gross indecency includes bringing into contact any part of the genitalia or the anus of a person with any part of the mouth of a person.</td>
<td>1) A person who has sexual intercourse with another person without that person's consent is guilty of a crime. 1) A person commits rape if: a) he or she intentionally sexually penetrates another person without that person's consent: i) while being aware that the person is not consenting or might not be consenting; or ii) while not giving any thought to whether the person is not consenting or might not be consenting; or b) has withdrawn consent to the sexual intercourse, and the offender knows, or is recklessly indifferent to, the fact that the other person does not so consent or has so withdrawn consent (as the case may be). Maximum penalty: Imprisonment for life 2) A person (the &quot;offender&quot;) is guilty of the offence of rape if he or she engages, or continues to engage, in sexual intercourse with another person who: a) does not consent to engaging in the sexual intercourse; or b) has withdrawn consent to the sexual intercourse, and the offender knows, or is recklessly indifferent to, the fact that the other person does not so consent or has so withdrawn consent (as the case may be). Maximum penalty: Imprisonment for 20 years. 3) A person who, acting in company with any other person, engages in sexual intercourse with another person without the consent of that other person and who is reckless as to whether that other person consents to the sexual intercourse is guilty of an offence punishable, on conviction, by imprisonment for 14 years. 3) A person who, acting in company with any other person, engages in sexual intercourse with another person without the consent of that other person and who is reckless as to whether that other person consents to the sexual intercourse is guilty of an offence punishable, on conviction, by imprisonment for 12 years.</td>
<td>Sexual penetration without consent</td>
</tr>
</tbody>
</table>

**ACT** | Sexual intercourse without consent | Sexual assault | Sexual intercourse without consent | Rape | Sexual assault | Rape | Rape | Rape | Sexual penetration without consent

**NSW** | Sexual assault | Sexual intercourse without consent |  | Rape | Sexual assault | | | | |

**NT** | | | | | | | | | |

**Qld** | | | | | | | | | |

**SA** | | | | | | | | | |

**Tas.** | | | | | | | | | |

**Vic.** | | | | | | | | | |

**WA** | | | | | | | | | |
<table>
<thead>
<tr>
<th>Definitions of “sexual intercourse” or “sexual penetration”</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>ACT</strong></td>
</tr>
<tr>
<td>Genital sexual contact</td>
</tr>
<tr>
<td>Oral sexual contact</td>
</tr>
<tr>
<td>Insertion of any part of the penis of one person into the mouth of another; Cunnilingus</td>
</tr>
<tr>
<td>Continuation</td>
</tr>
<tr>
<td>Surgically constructed genitalia</td>
</tr>
<tr>
<td>Additional information</td>
</tr>
</tbody>
</table>
### Circumstances that invalidate consent

The law does not recognise consent if it is brought about by:

<table>
<thead>
<tr>
<th>Force</th>
<th>Threats</th>
<th>Fear/intimidation</th>
<th>Circumstances affecting consciousness</th>
<th>Fraud and deceit (generally)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Infliction of violence or force on the complainant or someone present or nearby</td>
<td>Threats of violence or force against complainant or someone present or nearby</td>
<td>As above</td>
<td>1. The effects of alcohol, drugs or anaesthetic</td>
<td>A fraudulent misrepresentation of any fact</td>
</tr>
<tr>
<td>Aggravated sexual assaults provisions apply</td>
<td>Threats of force or terror against the complainant or someone else</td>
<td>Fear of force, or fear of harm of any type to complainant or someone else</td>
<td>2. Drugs</td>
<td>Fraud on the part of the accused</td>
</tr>
<tr>
<td>Force used against complainant or someone else</td>
<td>1. Threats of force or terror against the complainant or someone else</td>
<td>1. Intimiation</td>
<td>3. Intoxication</td>
<td>Deceit, or any fraudulent means</td>
</tr>
<tr>
<td>Force</td>
<td>2. Intimidatory or coercive conduct, or any other threat, that does not involve a threat of force</td>
<td>2. Fear of bodily harm</td>
<td>4. Unconsciousness</td>
<td></td>
</tr>
<tr>
<td>Application of force on the complainant or someone else</td>
<td>Threats of any kind used against complainant or someone else</td>
<td>See above</td>
<td>5. Sleep</td>
<td></td>
</tr>
<tr>
<td>Force used against complainant or someone else</td>
<td>See fear/intimidation, below</td>
<td>Reasonable fear of force</td>
<td>6. Helplessness</td>
<td></td>
</tr>
<tr>
<td>Force</td>
<td>1. Express or implied threats of the application of force on the complainant or someone else</td>
<td>Fear of force or harm of any type to complainant or someone else</td>
<td>1. If complainant has sexual intercourse while substantially affected by alcohol or any drug</td>
<td></td>
</tr>
<tr>
<td>Force used against complainant or someone else</td>
<td>2. Express or implied threat to degrade or humiliate, disgrace or harass complainant or someone else</td>
<td>Intimidation</td>
<td>Complainant does not have the opportunity to consent because unconscious or asleep</td>
<td></td>
</tr>
</tbody>
</table>

#### Non-consent

<table>
<thead>
<tr>
<th>ACT</th>
<th>NSW</th>
<th>NT</th>
<th>Qld</th>
<th>SA</th>
<th>Tas</th>
<th>Vic.</th>
<th>WA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Consent standard</td>
<td>Legislation states circumstances in which consent is negated</td>
<td>Free and voluntary agreement (includes circumstance in which consent is negated)</td>
<td>Free and voluntary agreement</td>
<td>Free and voluntary consent by a person with cognitive capacity to consent</td>
<td>Free and voluntary agreement</td>
<td>Free agreement: A person does not freely agree if they do not say or do anything to communicate consent</td>
<td>Free agreement (see jury direction below)</td>
</tr>
</tbody>
</table>

#### Directions that must be given to the jury

A person has not consented only because:
- they did not say or do anything to indicate non-consent;
- they did not protest, physically resist or sustain physical injury; or
- they consented to sexual acts with the accused on this, or a previous, occasion.

Where relevant in determining a mistaken belief of consent the judge must direct that the jury may consider whether the belief was reasonable.

A person has not consented only because:
- they did not protest, physically resist or sustain physical injury; or
- they consented to sexual acts with the accused on this, or a previous occasion.

A person is not to be regarded as having consented merely because:
- they did not say or do anything to indicate non-consent;
- they did not protest, physically resist or sustain physical injury; or
- they consented to sexual activity:
  - of a different kind with the defendant; or
  - previously with the defendant or another person.

If (and only if) relevant to the facts in issues, the judge must direct the jury on:
- the meaning of consent;
- when the law deems consent not to apply: if jury is satisfied beyond a reasonable doubt that a circumstance existed that invalidates consent, then it must find the complainant was not consenting;
- the fact the complainant did not say or do anything to indicate consent is enough to show the act took place without free agreement;
- a person is not to be regarded to have consented just because the complainant:
  - did not protest or physically resist;
  - did not sustain physical injury; or
  - on an earlier occasion freely agreed to engage in another sexual act (some or not) with that person or another person.

#### Consent non-consent

**ACT** | **NSW** | **NT** | **Qld** | **SA** | **Tas** | **Vic.** | **WA**
---|---|---|---|---|---|---|---|
Free and voluntary agreement (includes circumstance in which consent is negated) | Free and voluntary agreement | Free and voluntary consent by a person with cognitive capacity to consent | Free and voluntary agreement | Free agreement: A person does not freely agree if they do not say or do anything to communicate consent | Free agreement (see jury direction below) | Freely and voluntarily given consent |
### Circumstances that invalidate consent

The law does not recognise consent if it is brought about by:

- **Fraud or mistake about the nature or purpose of the act**
  - See above
  - MISTAKEN BELIEF ABOUT THE NATURE OR PURPOSE OF THE ACT
  - FALSE AND FRAUDULENT MISREPRESENTATION ABOUT THE NATURE OR PURPOSE OF THE ACT
  - MISTAKE OR UNABLE TO UNDERSTAND THE NATURE OF THE ACT
  - COMPLAINANT BEING REASONABLY MISTAKEN ABOUT THE NATURE OR PURPOSE OF THE ACT
  - COMPLAINANT BEING MISTAKEN ABOUT THE SEXUAL NATURE OF THE ACT
  - See above

- **Fraud or mistake about medical or hygienic purposes**
  - See above
  - FRAUD ABOUT MEDICAL OR HYGIENIC PURPOSES FOR THE ACT
  - MISTAKE ABOUT THE MEDICAL OR HYGIENIC PURPOSES OF THE ACT
  - AGREEMENT ON THE BASIS THE ACT IS NEEDED FOR MEDICAL OR HYGIENIC PURPOSES IS NOT CONSENT FOR ANY OTHER PURPOSE
  - MISTAKEN BELIEF THE ACT IS NECESSARY FOR MEDICAL OR HYGIENIC PURPOSES
  - See above

- **Fraud or mistake about the identity of the person proposing intercourse**
  - A MISTAKEN BELIEF ABOUT THE IDENTITY OF THE PERSON PROPOSING INTERCOURSE
  - MISTAKE ABOUT THE IDENTITY OF THE PERSON PROPOSING INTERCOURSE
  - The accused bringing about a mistaken belief by the complainant that the accused was the complainant’s sexual partner
  - Fraud about the identity of the person proposing intercourse
  - Complainant being reasonably mistaken about the identity of the accused
  - Complainant being mistaken about the identity of the person proposing intercourse
  - See above

- **Inability to understand the nature of the act**
  - INABILITY TO UNDERSTAND THE NATURE OF THE SEXUAL ACT
  - INABILITY TO UNDERSTAND THE NATURE OR QUALITY OF THE ACT OR THE NATURE AND EFFECT OF CONSENT
  - INABILITY TO UNDERSTAND THE NATURE OF THE ACT
  - INABILITY TO UNDERSTAND THE NATURE OF THE ACT DUE TO YOUNG AGE OR COGNITIVE IMPAIRMENT
  - INABILITY TO UNDERSTAND THE NATURE OF THE ACT
  - INABILITY TO UNDERSTAND THE SEXUAL NATURE OF THE ACT
  - See Jury directions, above

- **Unlawful detention**
  - UNLAWFUL DETENTION OF THE COMPLAINANT
  - UNLAWFUL DETENTION OF THE COMPLAINANT
  - UNLAWFUL DETENTION OF THE COMPLAINANT
  - UNLAWFULLY DETAINED AT THE TIME OF ACTIVITY
  - UNLAWFULLY DETENTION OF COMPLAINANT OR SOMEONE ELSE
  - UNLAWFUL DETENTION

- **Abuse of authority or trust**
  - ABUSE OF A POSITION OF AUTHORITY OR TRUST IN RELATION TO THE COMPLAINANT
  - HAS INTERCourse BECAUSE THE ABUSE OF A POSITION OF AUTHORITY OR TRUST
  - EXERCISE OF AUTHORITY
  - COMPLAINANT BEING OVERRUN BY THE NATURE OR POSITION OF ANOTHER PERSON

- **Significance of physical resistance or physical injury (see also Jury instructions, above)**
  - A PERSON HAS NOT CONSENTED JUST BECAUSE THEY DID NOT PHYSICALLY RESIST
  - A PERSON HAS NOT CONSENTED JUST BECAUSE THEY DID NOT PHYSICALLY RESIST
  - SEE JURY DIRECTIONS, ABOVE
  - AN ACCUSED CAN BE FOUND GUILTY OF RAPE WHETHER OR NOT THE COMPLAINANT PHYSICALLY RESISTED
  - IF COMPLAINANT SUFFERS SERIOUS PHYSICAL HARM DUE TO, OR IN CONNECTION WITH, A SEXUAL OFFENCE THE INJURY IS EVIDENCE OF NON-CONSENT UNLESS THERE IS PROOF TO THE CONTRARY
  - SEE JURY DIRECTIONS, ABOVE
  - A PERSON HAS NOT CONSENTED JUST BECAUSE THEY DID NOT PHYSICALLY RESIST
### What mental state (if any) is required for a conviction?

- Knowledge of non-consent
- Recklessness as to whether the other person is consenting

### Legislative provisions

<table>
<thead>
<tr>
<th>ACT</th>
<th>NSW</th>
<th>NT</th>
<th>Qld</th>
<th>SA</th>
<th>Tas.</th>
<th>Vic.</th>
<th>WA</th>
</tr>
</thead>
</table>

### Name of offence

- Incest

### Sexual conduct addressed

- Sexual intercourse

### Relationships addressed

- Lineal descendant
- Sibling
- Half-sibling
- Step-child

### Mental state

- Knowledge of the family relationship
- None stated

### Defences

- Coercion

### Other

- No prosecution shall be commenced without the sanction of the Attorney-General
- A person on trial for sexual assault or aggravated sexual assault may be found not guilty of the sexual assault but guilty of incest
- Sexual offences against people under 16 covered by separate offences

---

### Sexual offences against close relatives

<table>
<thead>
<tr>
<th>ACT</th>
<th>NSW</th>
<th>NT</th>
<th>Qld</th>
<th>SA</th>
<th>Tas.</th>
<th>Vic.</th>
<th>WA</th>
</tr>
</thead>
</table>

### Name of offence

- Incest

### Sexual conduct addressed

- Sexual intercourse

### Mental state

- Knowledge of the family relationship
- None stated

### Defences

- Coercion

### Other

- No prosecution shall be commenced without the sanction of the Attorney-General
- A person on trial for sexual assault or aggravated sexual assault may be found not guilty of the sexual assault but guilty of incest
- Sexual offences against people under 16 covered by separate offences
### Protection of sexual assault counselling records

1. Queensland currently has no legislation protecting sexual assault counselling records, and therefore does not appear on this section of the table.

<table>
<thead>
<tr>
<th>ACT</th>
<th>NSW</th>
<th>NT</th>
<th>SA</th>
<th>Tas.</th>
<th>Vic.</th>
<th>WA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legislative provisions</td>
<td>Evidence (Misc Provisions) Act 1991; Div 4.5</td>
<td>Div 2</td>
<td></td>
<td>Evidence Act 1929; Part 5 Div 2</td>
<td>Evidence Act 2001; s 127B</td>
<td>Evidence Act 1958; Part 2 Division 2A</td>
</tr>
</tbody>
</table>

#### What is protected?

1. **Counselling communications made by, to or about a person against whom a sexual offence was, or is alleged to have been committed**

2. **Communications made in a context giving rise to a reasonable expectation or a duty of confidentiality**

#### What is specifically not protected?

1. **Information obtained by a doctor because of a physical examination of a complainant**

2. **Any communication made in the course, or because, of such an examination**

3. **Communications for criminal investigations or criminal proceedings arising from sexual offenses**

#### Are communications made prior to the charged sexual assault covered?

<table>
<thead>
<tr>
<th>ACT</th>
<th>NSW</th>
<th>NT</th>
<th>SA</th>
<th>Tas.</th>
<th>Vic.</th>
<th>WA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td></td>
<td>Not addressed*</td>
<td>No</td>
<td>Yes</td>
</tr>
</tbody>
</table>

#### Primary rules protecting sexual assault counselling communications

<table>
<thead>
<tr>
<th>ACT</th>
<th>NSW</th>
<th>NT</th>
<th>SA</th>
<th>Tas.</th>
<th>Vic.</th>
<th>WA</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. <strong>Counselling communications are never admissible in preliminary proceedings</strong></td>
<td>2. <strong>Evidence disclosing the content of sexual assault counselling is not admissible in other proceedings without permission of the court</strong></td>
<td>1. <strong>Counselling communications are never admissible in preliminary proceedings</strong></td>
<td>2. <strong>Evidence disclosing the content of sexual assault counselling is not admissible in other proceedings without permission of the court</strong></td>
<td>Evidence disclosing the content of sexual assault counselling is not admissible without permission of the court</td>
<td>1. <strong>Counselling communications are never admissible in preliminary proceedings and are not liable to probabilistic disclosure</strong></td>
<td>2. <strong>Evidence disclosing the content of sexual assault counselling is not admissible in other proceedings unless court grants permission and limits established by the court are complied with</strong></td>
</tr>
</tbody>
</table>

#### Standards that must be met for disclosure to be ordered

<table>
<thead>
<tr>
<th>ACT</th>
<th>NSW</th>
<th>NT</th>
<th>SA</th>
<th>Tas.</th>
<th>Vic.</th>
<th>WA</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. <strong>There must be a legitimate forensic purpose for disclosure</strong></td>
<td>2. <strong>Disclosure must be of significant assistance to applicant's case</strong></td>
<td>1. <strong>The evidence must have substantial probative value</strong></td>
<td>2. <strong>There must be no other evidence that could prove the disputed facts</strong></td>
<td>1. <strong>There must have substantial probative value</strong></td>
<td>2. <strong>There must be no other evidence that could prove the disputed facts</strong></td>
<td>1. <strong>There must be a legitimate forensic purpose for disclosure</strong></td>
</tr>
</tbody>
</table>

*continued on page 7*
Protection of sexual assault counselling records

Tab. Queensland currently has no legislation protecting sexual assault counselling records, and therefore does not appear on this section of the table.

<table>
<thead>
<tr>
<th>ACT</th>
<th>NSW</th>
<th>NT</th>
<th>SA</th>
<th>Tas.</th>
<th>Vic.</th>
<th>WA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Factors court must consider in deciding whether to order disclosure</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>Whether public interest in ensuring fair trial outweighs public interest in maintaining confidentiality</td>
<td>1</td>
<td>Whether public interest in disclosure substantially outweighs public interest in protection of confidential communications and the confidentiality of the “likelihood, nature and extent” of potential harm to the complainant</td>
<td>1</td>
<td>Probative value of the evidence and whether exclusion may lead to a miscarriage of justice</td>
<td>1</td>
</tr>
<tr>
<td>2</td>
<td>Whether disclosure is necessary for full defence</td>
<td>2</td>
<td>Whether public interest in maintaining confidentiality between complainant and therapist outweighs risk of miscarriage of justice from non-disclosure</td>
<td>2</td>
<td>Whether public interest in maintaining confidentiality is necessary for a full defence</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Public interest in ensuring complainants receive counselling</td>
<td>3</td>
<td>Complainant’s attitude to disclosure</td>
<td>3</td>
<td>The need to encourage victims of sexual assault to seek counselling and the extent to which victims may be discouraged to do so, or effectiveness of counselling may be diminished if protected evidence is produced</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Whether disclosure will allow proof of a disputed fact</td>
<td>4</td>
<td>Whether application for disclosure is being made on basis of discriminatory beliefs or bias</td>
<td>4</td>
<td>Whether disclosure is necessary for a full defence</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Whether disputed facts could be proved in another way</td>
<td>5</td>
<td>Need to encourage complainants to seek counselling, the effectiveness of which may depend on confidentiality</td>
<td>5</td>
<td>The need to encourage victims of sexual assault to seek counselling and the extent to which victims may be discouraged to do so, or effectiveness of counselling may be diminished if protected evidence is produced</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Probability disclosure will change outcome</td>
<td>6</td>
<td>Extent of infringement of reasonable expectation of privacy to anyone who would otherwise be protected by public interest immunity</td>
<td>6</td>
<td>Whether the party seeking the evidence is doing so because of a discriminatory or biased belief</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Whether request for disclosure was made on the basis of a “discriminatory belief or bias”</td>
<td>7</td>
<td>Nature and extent of a reasonable expectation of confidentiality and potential prejudice to privacy of any person</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Is court inspection of documents required or discretionary?

| Preliminary examination must be made if court is satisfied the applicant has a legitimate forensic purpose and evidence would significantly assist the applicant’s case | If the court needs to rule on an objection concerning a confidential document, the document must be produced for inspection by the court | Preliminary examination may be made only if court is satisfied the applicant has a legitimate forensic purpose and there is an arguable case the evidence would significantly assist the applicant’s case | For the purpose of determining an application for leave, the court may inspect the document | Preliminary examination may be made only if court is satisfied the applicant has proved a legitimate forensic purpose |

Is notice required?

| Applicant must give reasonable notice in writing to all other parties and the protected confider if they are not a party | Consent of complainant is required | The applicant must give 14 days’ written notice to other parties, the informant and the medical practitioner or counsellor if not a party | Court must notify the applicant and all other parties when the application is going to be heard in court |

Significance of complainant’s consent to disclosure

| These provisions apply whether or not the confider has consented or has not objected to disclosure | Disclosure permitted with express consent of an adult complainant in writing | Disclosure permitted with consent of the confider, or of an appropriate person where complainant is under 14 | Permission for disclosure cannot be granted by the counsellor, the complainant or their guardian | The confidential communication cannot be admitted as evidence unless the alleged victim consents to disclosure |
| Disclosure permitted with express consent of an adult complainant in writing | Permission for disclosure cannot be granted by the counsellor, the complainant or their guardian | The confidential communication cannot be admitted as evidence unless the alleged victim consents to disclosure | Disclosure permitted with consent of the confider, or of an appropriate person where complainant is under 14 |

continued on page 8
### Protection of sexual assault counselling records

<table>
<thead>
<tr>
<th>ACT</th>
<th>NSW</th>
<th>NT</th>
<th>SA</th>
<th>Tas.</th>
<th>Vic.</th>
<th>WA</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Circumstances in which protection can be lost</strong></td>
<td>Communications in the commission of a criminal offence, fraud or civil wrong</td>
<td>Communications in the commission of fraud, or an act giving rise to a civil penalty</td>
<td>Where there is evidence of criminal fraud or perjury</td>
<td>Communications providing evidence of a criminal fraud, perjury or other offence</td>
<td>Not addressed</td>
<td>Communications in the commission of a fraud, perjury or an act giving rise to a civil penalty</td>
</tr>
<tr>
<td><strong>Additional orders the court can make if disclosure is ordered</strong></td>
<td>Orders designed to limit harm to complainant, including: 1. orders closing the court to the public while the protected evidence is disclosed; 2. orders that the document be edited or a copy be disclosed instead of the original; 3. orders suppressing publication; and 4. orders about disclosure of information about the identity of the protected confider</td>
<td>Orders designed to limit harm to complainant, including: 1. orders closing the court to the public while the protected evidence is disclosed; 2. orders for production, inspection and copying, which may be necessary for safety and welfare; 3. orders suppressing publication; and 4. orders restricting access to identities of people mentioned in documents</td>
<td>Orders designed to limit harm to complainant, including: 1. orders closing the court to the public while the protected evidence is disclosed; 2. orders for production and inspection, which may be necessary for safety and welfare; 3. orders suppressing publication; and 4. orders restricting access to identities of people mentioned in documents</td>
<td>Orders to prevent publication or dissemination of the evidence, or for any other purpose the court considers appropriate</td>
<td>Not addressed</td>
<td>Orders designed to limit the harm caused by disclosure, including: 1. orders closing the court to the public while protected evidence is disclosed; 2. orders for production, inspection and copying, which may be necessary for safety and welfare; 3. orders suppressing publication; and 4. orders restricting access to identities of people mentioned in documents</td>
</tr>
</tbody>
</table>

Note: *Wilson v Magistrates Court of South Australia and Anor* [2004] SASC 297 found that the provisions could apply to records of counselling prior to a disclosure of sexual assault, but found it unnecessary to decide whether counselling prior to the commission of an alleged offence would be protected.