

Magistrates Courts

Practice Direction No. 3 of 2021

Issued: 2 August 2021

Amended: 27 September 2024

Amended: 30 September 2024

Protected counselling communications

1. This Practice Direction applies
 - a. where it is likely protected counselling communications (“PCC”) as defined in s.14A of the *Evidence Act 1977* (Qld) (“the *Evidence Act*”), will be contained in documents intended to be obtained by summons, subpoena or otherwise (“subpoena application”)¹; and
 - b. where a party seeks to disclose, inspect or copy, produce to the Court, adduce evidence of or otherwise use PCC (“use application”).
2. This practice direction:
 - a. adopts the meaning given to words used in the *Evidence Act*; and
 - b. assumes the counselled person has legal representation. The Court is informed counselled persons may apply for a grant of legal aid for representation by solicitors and counsel in the application.²

Subpoena and Use Applications

3. A party who wishes to summons or subpoena and/or use PCC must file and serve on the other party:
 - a. an application for leave to do so;
 - b. an outline of submissions and the evidence upon which such submissions are based, addressing the criteria referred to in s.14H of the *Evidence Act*; and

¹ Note: A person cannot do any of the following things in connection with (a) a committal proceeding; or (b) a proceeding under the *Bail Act 1980* relating to bail for an offence, including a proceeding relation to the remand of a person in custody: (a) compel, whether by subpoena or otherwise, another person to produce a protected counselling communication to a court; (b) produce to a court, adduce evidence of or otherwise use, a protected counselling communication; (c) otherwise disclose, inspect or copy a protected counselling communication: see s.14C and s.14D of the *Evidence Act*.

² Legal Aid Queensland, in partnership with Women’s Legal Service, provides a service “Counselling Notes Protect” for sexual assault counselling privilege matters.

- c. for a subpoena application, a draft of the proposed summons or subpoena.

These documents are to accompany the notice required to be given by the applicant under s.14G(2) of the *Evidence Act*.

4. The applicant must inform the Registrar³ when the notice required under s.14G(2) of the *Evidence Act* has been given⁴.
5. The application will be listed not earlier than 14 days after the notice was given (“the application date”).
6. The prosecution – the Director of Public Prosecutions or the Queensland Police Service – as the case may be, is to give the counselled person a copy of the notice and other material served by the applicant as soon as practicable.
7. Any other party to the proceeding and, if they are not a party, any counsellor or counselled person, seeking to be heard on the application is to file and serve an outline of submissions two clear days before the application date.
8. On the application date the Court:
 - a. will decide the application; or
 - b. make orders or directions, including as to the further hearing of the application, as appropriate.
9. If the Court grants leave for the issue of a summons or subpoena compelling production of PCC, further orders may be made, for example:
 - a. setting a date for any use application;
 - b. making directions, including as to any further step to be taken in accordance with this practice direction withing a particular timeframe or as to the filing of further submissions addressing the matters set out in s.14H of the *Evidence Act* relevant to the use application.

Applications engaging s.14M of the *Evidence Act*

10. An applicant who seeks to engage s.14M of the *Evidence Act*, for a determination as to whether a document or evidence is a PCC, is to address this issue:
 - a. in the documents filed and served under paragraph 3; or
 - b. by separately filing and serving an application for such a determination, together with supporting affidavit material and submissions.

Paragraph 6 also applies to any such application.

11. If:

³ In Brisbane, by email sent to Courthouse.Brisbane@justice.qld.gov.au For email addresses in other districts, go to www.courts.qld.gov.au/contacts/courthouses.

⁴ The applicant may tell the Registrar dates that are mutually convenient for the parties and others who wish to appear and be heard on the application.

- a. an application is made for a determination under s.14M of the *Evidence Act*; and
- b. the Court grants leave to the lawyers for the counselled person to inspect and copy the documents in issue,

then, within 21 days of inspecting those documents, the lawyers for the counselled person must file and serve on the parties an outline of submissions:

- c. annexing a list of the documents claimed to be PCC;
- d. setting out the reasons why the documents are said to be PCC; and
- e. identifying whether privilege is waived. If privilege is claimed over only part of a document, the relevant portion should be identified with precision.

The submissions may be redacted, if necessary, to avoid disclosure of any material claimed to be PCC.

12. By midday on the day preceding the hearing of any application for a determination under s.14M of the *Evidence Act*, the lawyers for the counselled person must provide to the Court a paginated copy of the summonsed or subpoenaed material together with an unredacted version of the submissions which have been filed. These documents may be provided in electronic form, to the Registrar.

Other legislative requirements

13. In respect of any documents which come into the control of the Court or the possession of the counselled person:
 - a. by being produced pursuant to any order made under s.14H(2A)(a) of the *Evidence Act*; or
 - b. upon granting leave to a party to summons or subpoena such documents; or
 - c. pursuant to any order made to facilitate the consideration of any issue under s.14M(4) of the *Evidence Act*,

the relevant counsellor, each of the parties and the counselled person, are to assist the Court by identifying any other legislative restrictions which may be applicable to dealing with those documents, including but not limited to those in chapter 6, part 6, division 2 or division 3 of the *Child Protection Act 1999* (Qld).


Judge Janelle Brassington
Chief Magistrate
30 September 2024