

From: Heidi Yates
Sent: Monday, 25 July 2011 3:46 PM
To: 'Richard Griggs'
Subject: Women's Legal Centre - Comments on Evidence Bill

Dear Richard,

Thank you for requesting the Centre's views on the proposed extension of restrictions relating to disclosure of sexual assault counselling communications, to civil proceedings. The Centre strongly supports this aspect of the Evidence (Miscellaneous Provisions) Amendment Bill 2001 ('the Bill').

In the Centre's experience, it is common in situations where a subpoena is issued to a service like the Canberra Rape Crisis Service, in criminal *or* civil proceedings, for the client to strongly object to production of her records. It is likely that the client has developed a relationship of trust with the counsellors at such a service, perhaps over an extended period of time, and disclosed extensive details relating to past or current trauma. For such clients, disclosure of these very personal records brings the threat of re-traumatisation. Further, in some cases, the very threat of such disclosure, or a past experience of disclosure, may prevent a woman from accessing support services and/or therapeutic interventions crucial to her ongoing physical and mental health, and possibly the health of her children.

It is our understanding that provisions practically identical to those proposed by the Bill have been operating successfully in civil proceedings in New South Wales, South Australia and Victoria for some time. In those jurisdictions, determining the appropriate balance between excluding counselling notes of a sexual assault victim, and disclosing such evidence where it is in the public interest to do so, has been carefully achieved on a case-by-case basis. Importantly, in determining whether protected confidence evidence should be disclosed, the court has had regard to matters including:

- the public interest in ensuring that victims of sexual offences receive effective counselling or other treatment (s62(3)(b)); and
- the extent to which disclosure of protected confidences may dissuade victims of sexual offences from seeking counselling or other treatment or diminish the value of counselling or other treatment (s62(3)(c)).

As noted above, these are crucial matters in relation to ensuring the mental, physical and emotional health of sexual assault victims and their families.

We believe that providing ACT Courts with the discretion to exclude counselling notes in civil cases, as they have had the discretion to do in criminal proceedings for almost 8 years, will substantially contribute to ensuring access to justice for vulnerable parties in civil proceedings.

Please do not hesitate to contact the Centre if you would like to discuss our views on the Bill in more detail. Once again, thank you for the opportunity to provide our comments in relation to this important legislative development.

Yours sincerely,

Heidi Yates
Solicitor
Women's Legal Centre (ACT & Region)
Ph: (02) 6257 4377

Please note that I only work at the Centre on Mondays and Wednesdays

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From: Heidi Yates
Sent: Wednesday, 13 July 2011 1:58 PM
To: 'Richard Griggs'
Subject: RE: consultation on Evidence Bill

Hi Richard,

Thanks for your email. I only work part-time but will be back in the office on Monday, and will get back to you with some of our thoughts in relation to the Bill as soon as practicable. Many thanks for seeking the Centre's input, and hope all is well with your office whilst Helen is off frolicking in New York!

Regards,
Heidi

Heidi Yates
Solicitor
Women's Legal Centre (ACT & Region)
Ph: (02) 6257 4377

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From: Griggs, Richard [mailto:Richard.Griggs@parliament.act.gov.au]
Sent: Monday, 11 July 2011 11:03 AM
To: Carol Benda
Subject: RE: consultation on Evidence Bill

We cannot advise when the Bill will be brought on for debate. However, there is a double sitting week in August (weeks starting 15th and 22nd August) and it is likely the Government will debate it then.

From: Griggs, Richard
Sent: Monday, 11 July 2011 11:01 AM
To: 'Carol Benda'
Subject: consultation on Evidence Bill

Hello Carol

The Government recently presented the *Evidence (Misc Provisions) Amendment Bill*. This Bill appears to make a number of relatively straightforward updates to the ACT's evidence law

However, we were particularly interested to ask if the Women's Legal Centre had any views on the proposal relating to sexual assault counselling communications. The Bill proposes to extend the existing restrictions on disclosure of communications to civil proceedings.

The Bill can be found here: http://www.legislation.act.gov.au/b/db_42140/default.asp and I have attached the presentation speech given by the Attorney. I note from the speech that the Women's Legal Centre have previously been consulted by the Government on this Bill.

Regards

Richard

Richard Griggs

Adviser to Shane Rattenbury MLA, Speaker of the ACT Legislative Assembly

ACT Greens Spokesperson for Attorney General, Environment, Climate Change and Water, Energy, Police and Emergency Services, and Tourism, Sport and Recreation.

TEL: 02 6205 2381 | FAX: 02 6205 0007 | MOB: 0438 252 387

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