

NOTICE TO WITNESS

The recipient of this Summons should obtain legal advice as to the effect of the following provisions:

Protected Communications as defined in *Evidence Act 1906 (WA)*

19A. Terms used

(1) In this section and sections 19B to 19M —

application for leave means an application for leave to disclose or require disclosure of a protected communication in, or in connection with, any criminal proceedings;

counselling communication means a communication —

- (a) made in confidence by a person upon or in respect of whom sexual assault was committed or is alleged to have been committed (the ***complainant***) to another person (the ***counsellor***) who is counselling the complainant in relation to any harm the complainant may have suffered;
- (b) made in confidence to or about the complainant by the counsellor in the course of the counselling process;
- (c) made in confidence about the complainant by a support person in the course of the counselling process; or
- (d) made in confidence by or to the counsellor to or by another person who is counselling, or has at any time counselled, the complainant,

and includes a communication made through an interpreter;

counsels has the meaning given to that term in subsection (2);

disclose a protected communication means to disclose, or adduce or produce anything that would disclose —

- (a) the protected communication; or
- (b) the contents of a document recording the protected communication;

harm includes actual physical bodily harm, financial loss, stress or shock, damage to reputation or emotional or psychological harm (such as shame, humiliation and fear);

protected communication means a counselling communication made by, to or about a complainant and includes —

- (a) a counselling communication made before the commission, or alleged commission, of sexual assault;
- (b) a counselling communication not made in connection with sexual assault or alleged sexual assault or any condition arising from sexual assault or alleged sexual assault; and
- (c) a counselling communication made before the protection provisions were inserted into this Act;

protected person, in relation to a protected communication, means —

- (a) the complainant;

- (b) any person who made the protected communication; or
- (c) an interpreter through whom the protected communication was made;

require disclosure of a protected communication includes —

- (a) to require (whether by the issue of a subpoena or any other process or procedure) the production of a document recording the protected communication; and
- (b) to seek an order of the court that will, if made, result in the disclosure of the protected communication or the production of a document recording the protected communication;

support person means a parent, carer or other supportive person who is present when a person counsels the complainant to facilitate communication between the complainant and the counsellor or to further the counselling process in some other way;

supporting affidavit means the affidavit accompanying an application for leave;

the protection provisions means this section and sections 19B to 19M.

- (2) A person **counsels** another person if —
- (a) the person has undertaken training or study or has experience that is relevant to the process of counselling persons who have suffered harm; and
 - (b) the person —
 - (i) listens to and gives verbal or other support or encouragement to the other person; or
 - (ii) advises, gives therapy to or treats the other person,whether or not for fee or reward.
- (3) In the protection provisions, a reference to a document recording a protected communication —
- (a) is a reference to any part of the document that records a protected communication or any report, observation, opinion, advice, recommendation or other matter that relates to the protected communication made by a protected person; and
 - (b) includes a reference to any copy, reproduction or duplicate of that part of the document.
- (4) For the purposes of the definition of **counselling communication** in subsection (1), a communication can be regarded as being made in confidence even if it is made in the presence of a support person or through or in the presence of an interpreter.

19B. Protected communications recorded electronically

For the purposes of the protection provisions, if —

- (a) a document recording a protected communication is stored electronically; and
- (b) a written document recording the protected communication could be created by use of equipment that is usually available for retrieving or collating such stored information,

the document stored electronically is to be dealt with as if it were a written document so created.