



New South Wales

Evidence Amendment (Protection of Journalists' Sources) Bill 2011

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Evidence Act 1995* to protect journalists' sources from disclosure in legal proceedings and, in so doing, enhance the ability of journalists to undertake investigative work. As a result of the proposed Act, a journalist will not be compelled to answer any question or produce any document that would disclose an informant's identity if the journalist has promised not to disclose the informant's identity. However, such protection will not apply if the court is satisfied that the public interest in having the informant's identity disclosed outweighs both any likely adverse effect of the disclosure on the informant (or any other person) and the public interest in the communication of facts and opinion by the news media to the public (including the ability of the news media to access sources of facts).

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

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Explanatory note

Schedule 1 amends the *Evidence Act 1995* in the manner described in the above overview.

Introduced by Mr David Shoebridge, MLC

First print



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Evidence Amendment (Protection of Journalists' Sources) Bill 2011

No. , 2011

A Bill for

An Act to amend the *Evidence Act 1995* to protect journalists' sources from disclosure; and for related purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Evidence Amendment (Protection of Journalists' Sources) Act 2011</i> .	3 4
2 Commencement	5
This Act commences on the date of assent to this Act.	6

Schedule 1	Amendment of Evidence Act 1995 No 25	1
[1]	Section 126A Definitions	2
	Omit the note following the definition of <i>protected confidence</i> in section 126A (1).	3 4
[2]	Section 126F Application of Division	5
	Insert after section 126F (4):	6
	(5) This Division does not limit the operation of Division 1C.	7
[3]	Part 3.10, Division 1C	8
	Insert after Division 1B:	9
	Division 1C Journalists' privilege	10
126J	Protection of journalists' sources	11
	(1) If a journalist has promised an informant not to disclose the informant's identity, neither the journalist nor his or her employer is compellable to answer any question or produce any document that would disclose the identity of the informant or enable that identity to be ascertained.	12 13 14 15 16
	(2) The court may, on application by a party to a proceeding, order that subsection (1) is not to apply if it is satisfied that, having regard to the issues to be determined in that proceeding, the public interest in the disclosure of evidence of the identity of the informant outweighs:	17 18 19 20 21
	(a) any likely adverse effect of the disclosure on the informant or any other person, and	22 23
	(b) the public interest in the communication of facts and opinion to the public by the news media and, accordingly also, in the ability of the news media to access sources of facts.	24 25 26 27
	(3) An order under subsection (2) may be made subject to such terms and conditions (if any) as the court thinks fit.	28 29
	(4) If, in response to a disclosure requirement, a person claims that they are not compellable to answer any question or produce any document that would disclose the identity of an informant or enable that identity to be ascertained, a party that is seeking disclosure pursuant to the disclosure requirement may apply to	30 31 32 33 34

	the court for an order under subsection (2) to the effect that subsection (1) does not apply in relation to the information or document concerned.	1 2 3
(5)	This section extends to information given by an informant before the commencement of this section.	4 5
(6)	This section does not apply in relation to a proceeding the hearing of which began before the commencement of this section.	6 7
(7)	In this section:	8
	<i>disclosure requirement</i> has the same meaning as in section 131A.	9 10
	<i>informant</i> means a person who gives information to a journalist in the normal course of the journalist's activities in the expectation that the information may be published in a news medium.	11 12 13 14
	<i>journalist</i> means a person who is engaged and active in the publication of news and who may be given information by an informant in the expectation that the information may be published in a news medium.	15 16 17 18
	<i>news medium</i> means any medium for the dissemination to the public or a section of the public of news and observations on news.	19 20 21