

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* with respect to the disclosure of the identity of persons who give information to journalists. If a journalist has promised not to reveal an informant's identity, the Bill provides that the journalist (and his or her employer) will not be compelled to disclose the informant's identity in any proceedings in a NSW court, unless the court determines otherwise in accordance with a specified public interest test.

The Bill also makes an amendment to the general provisions relating to professional confidential relationship privilege that was agreed to by the Standing Committee of Attorneys General as part of the Model Uniform Evidence Bill.

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.

Schedule 1 Amendment of Evidence Act 1995 No 25

Schedule 1 [3] inserts proposed Division 1C into Part 3.10 of the *Evidence Act 1995* relating to journalist privilege. A journalist (and his or her employer) will not be compelled to give evidence in any court proceeding that would disclose an informant's identity if the journalist has promised not to disclose the informant's identity. However, the 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 on any other person) and the public interest in the communication of facts and opinion to the public by the news media (including the ability of the news media to access sources of facts). Journalist privilege is limited to persons who are engaged in the profession or occupation of journalism. The proposed provisions extend to information given by an informant before the commencement of the proposed Act but will not apply in relation to a proceeding the hearing of which has already commenced.

Schedule 1 [4] amends section 131A of the *Evidence Act 1995* to extend it to journalist privilege. The Act generally applies to the giving or adducing of evidence in court proceedings (including evidence of the contents of documents).

Section 131A extends privileges in relation to the giving or adducing of evidence in court proceedings to the disclosure requirements made by subpoenas, pre-trial discovery and other pre-trial court processes.

Schedule 1 [2] amends the general provisions relating to professional confidential relationship privilege, which also apply to journalists, in accordance with the agreement of the Standing Committee of Attorneys General. A court will be required to take into account the public interest in preserving the confidentiality of protected confidences and protected identity information when it is deciding whether to make a direction that evidence may not be adduced because of professional confidential relationship privilege.

Schedule 1 [1] omits a redundant note.

Schedule 1 [5] enables savings and transitional regulations to be made as a consequence of the enactment of the proposed Act.