



New South Wales

# Evidence Amendment (Journalist Privilege) 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* 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.

First print



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New South Wales

# Evidence Amendment (Journalist Privilege) Bill 2011

No. , 2011

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## A Bill for

An Act to amend the *Evidence Act 1995* with respect to the disclosure of the identity of persons who give information to journalists; and for other purposes.

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

<b>Schedule 1</b>	<b>Amendment of Evidence Act 1995 No 25</b>	1
<b>[1]</b>	<b>Section 126A Definitions</b>	2
	Omit the note to the definition of <i>protected confidence</i> in section 126A (1).	3
<b>[2]</b>	<b>Section 126B Exclusion of evidence of protected confidences</b>	4
	Insert at the end of section 126B (4):	5
	(i) the public interest in preserving the confidentiality of protected confidences,	6
	(j) the public interest in preserving the confidentiality of protected identity information.	9
<b>[3]</b>	<b>Part 3.10, Division 1C</b>	10
	Insert after Division 1B:	11
	<b>Division 1C Journalist privilege</b>	12
<b>126J</b>	<b>Definitions</b>	13
	In this Division:	14
	<i>informant</i> means a person who gives information to a journalist in the normal course of the journalist's work in the expectation that the information may be published in a news medium.	15
	<i>journalist</i> means a person engaged in the profession or occupation of journalism in connection with the publication of information in a news medium.	18
	<i>news medium</i> means a medium for the dissemination to the public or a section of the public of news and observations on news.	21
<b>126K</b>	<b>Journalist privilege relating to identity of informant</b>	24
	(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 give evidence that would disclose the identity of the informant or enable that identity to be ascertained.	25
	(2) The court may, on the application of a party, order that subsection (1) is not to apply if it is satisfied that, having regard to the issues to be determined in the proceeding, the public interest in the disclosure of the identity of the informant outweighs:	29
	(a) any likely adverse effect of the disclosure on the informant or any other person, and	34

	(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.	1 2 3 4
	(3) An order under subsection (2) may be made subject to such terms and conditions (if any) as the court thinks fit.	5 6
<b>126L</b>	<b>Application of Division</b>	7
	(1) This Division extends to information given by an informant before the commencement of this Division.	8 9
	(2) This Division does not apply in relation to a proceeding the hearing of which began before the commencement of this Division.	10 11 12
	(3) This Division (as applied by section 131A) does not apply to a disclosure requirement referred to in that section made before the commencement of this Division.	13 14 15
<b>[4]</b>	<b>Section 131A Application of Part to preliminary proceedings of courts</b>	16
	Insert “, 1C” after “1A” in section 131A (1) (a).	17
<b>[5]</b>	<b>Schedule 2 Savings, transitional and other provisions</b>	18
	Insert at the end of clause 1 (1):	19
	<i>Evidence Amendment (Journalist Privilege) Act 2011</i>	20