

Passed by both Houses



New South Wales

Evidence Amendment (Journalist Privilege) Bill 2011

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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2011*



New South Wales

Evidence Amendment (Journalist Privilege) Bill 2011

Act No , 2011

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.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Evidence Amendment (Journalist Privilege) Act 2011*.

2 Commencement

This Act commences on the date of assent to this Act.

Schedule 1 Amendment of Evidence Act 1995 No 25

[1] Section 126A Definitions

Omit the note to the definition of *protected confidence* in section 126A (1).

[2] Section 126B Exclusion of evidence of protected confidences

Insert at the end of section 126B (4):

- (i) the public interest in preserving the confidentiality of protected confidences,
- (j) the public interest in preserving the confidentiality of protected identity information.

[3] Part 3.10, Division 1C

Insert after Division 1B:

Division 1C Journalist privilege

126J Definitions

In this Division:

informant 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.

journalist means a person engaged in the profession or occupation of journalism in connection with the publication of information in a news medium.

news medium means a medium for the dissemination to the public or a section of the public of news and observations on news.

126K Journalist privilege relating to identity of informant

- (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.
- (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:
 - (a) any likely adverse effect of the disclosure on the informant or any other person, and

- (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.
- (3) An order under subsection (2) may be made subject to such terms and conditions (if any) as the court thinks fit.

126L Application of Division

- (1) This Division extends to information given by an informant before the commencement of this Division.
- (2) This Division does not apply in relation to a proceeding the hearing of which began before the commencement of this Division.
- (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.

[4] Section 131A Application of Part to preliminary proceedings of courts

Insert “, 1C” after “1A” in section 131A (1) (a).

[5] Schedule 2 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

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