



Evidence Amendment (Journalists' Privilege) Act 2011

No. 21, 2011

An Act to amend the *Evidence Act 1995*, and for related purposes

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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[Assented to 12 April 2011]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Evidence Amendment (Journalists' Privilege) Act 2011*.

2 Commencement

This Act commences on the day after it receives the Royal Assent.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments relating to journalists' privilege

Evidence Act 1995

1 Division 1A of Part 3.10

Repeal the Division, substitute:

Division 1A—Journalists' privilege

126G Definitions

- (1) 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 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.

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

126H Protection of journalists' sources

- (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.
- (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 that proceeding, the public interest in the disclosure of evidence 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.

2 Subsection 131A(1)

Repeal the subsection, substitute:

- (1) This section applies 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 the informant (within the meaning of section 126H) or enable that identity to be ascertained.
- (1A) A party that seeks disclosure pursuant to a disclosure requirement may apply to the court for an order, under section 126H, that subsection 126H(1) does not apply in relation to the information or document.

3 After section 131A

Insert:

131B Extended application of Division 1A etc. to all proceedings for Commonwealth offences

In addition to their application under section 4 to all proceedings in a federal court or an ACT court, Division 1A and section 131A apply to all proceedings in any other Australian court for an offence against a law of the Commonwealth, including proceedings that:

- (a) relate to bail; or
- (b) are interlocutory proceedings or proceedings of a similar kind; or
- (c) are heard in chambers; or
- (d) relate to sentencing.

Family Law Act 1975

4 Subsection 69ZX(4)

Repeal the subsection, substitute:

- (4) In proceedings under this Part in which the court is required to regard the best interests of the child as the paramount consideration:
- (a) subsection 126H(1) of the *Evidence Act 1995* does not apply in relation to information that would:
 - (i) reveal the identity of a journalist's source; or
 - (ii) enable that identity to be discovered;if the court considers that it is in the best interests of the child for the information to be disclosed; and
 - (b) the court must not direct, under a law of a State or Territory relating to professional confidential relationship privilege specified in the regulations, that evidence not be adduced if the court considers that adducing the evidence would be in the best interests of the child.

5 Section 100C

Repeal the section.

*[Member's statement on introduction made in—
House of Representatives on 18 October 2010
Second reading speech made in—
Senate on 15 November 2010]*

(256/10)

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