Research Brief

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Evidence Amendment (Journalist Privilege) Bill 2012

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NB: *Readers should note that this Research Brief was current at the time of its preparation prior to the conclusion of debate on the Bill by the Victorian Parliament. For further information please visit the Victorian Legislation and Parliamentary Documents website @ http://www.legislation.vic.gov.au.*

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Introduction

This current issues brief focuses on the Evidence Amendment (Journalist Privilege) Bill 2012. Some background information to the Bill is provided, including the Journalist Code of Ethics and significant court cases concerning journalist privilege. A summary of the second reading speech and an overview of the Bill are also provided. The final section of the paper reviews several jurisdictions that have legislated for a journalist privilege.

1. Background

Journalist Code of Ethics

In Australia the principle that journalists must protect their sources stems from the Code of Ethics developed by the Australian Journalists' Association[1] in 1944, which was revised in 1984 and then again in 1995.[2] The wording of the principle has undergone some changes in these periods of revision, particularly from 1984 to 1995. For example, in 1944 the wording was 'To respect all confidences received by him in the course of his calling', which slightly changed in 1984 to 'In all circumstances they shall respect confidences received in the course of their calling'.[3] However, in 1995, the clause was changed to the following:

> Aim to attribute as precisely as possible all information to its source. When a source seeks anonymity, do not agree without first considering the source's motive and any alternative attributable sources. Keep confidences given in good faith.[4]

According to Hirst, this modification was due to a court case involving journalist Deborah Cornwall and the NSW Independent Commission Against Corruption (ICAC).[5] In that case, Cornwall had been given information by a police officer that a certain person was a police informant. That information turned out to be incorrect and the ICAC subsequently insisted that Cornwall reveal the police source. However, Cornwall refused to reveal the source, citing a professional obligation under clause 3 of the Code of Ethics, and was charged with contempt.[6]

The case was then heard in the NSW Supreme Court where Abadee J found that the Code of Ethics could not be relied on as a defence. Cornwall was legally obligated to

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[1] The Australian Journalists' Association merged with other industry groups to form the Media, Entertainment and Arts Alliance (MEAA) in 1992.
[2] For a detailed history of the Code of Ethics see K. Elgar (1996) 'The MEAA's new code of ethics and practical workplace reform', *Australian Studies in Journalism*, vol. 5, pp. 3-16; M. Hirst (1997) 'MEAA Code of Ethics for Journalists: An Historical and Theoretical Overview', *Media International Australia*, vol. 83, pp. 63-77.
[3] M. Hirst (1997) op. cit., p. 72.
[4] Media, Entertainment & Arts Alliance (2012) 'Media Alliance Code of Ethics', MEAA website, viewed 1 August 2012, <http://www.alliance.org.au/code-of-ethics.html>.
[5] M. Hirst (1997) op. cit., p. 72.
[6] *ICAC v Cornwall* (1993) 38 NSWLR 207, 225.

provide the information to ICAC, and the Code of Ethics did not operate to nullify that obligation. Accordingly, his Honour held that 'where there is a conflict between obeying the Code and obeying the law, the law must prevail'.[7] The subsequent rewording of clause 3, as quoted above, reflects the need for a more nuanced approach to the obligation to protect sources.

Indeed, in its current form[8] the Code of Ethics is by no means absolute, but rather reflects the need for journalists to use their own judgement regarding what is appropriate in the circumstances.[9] For example, although there are four guiding principles – honesty, fairness, independence, and respect for the rights of others – and 12 specific clauses outlining obligations, these are all subject to a guidance clause that allows for considerable subjectivity with regard to the application of the Code:

> Basic values often need interpretation and sometimes come into conflict. Ethical journalism requires conscientious decision-making in context. Only substantial advancement of the public interest or risk of substantial harm to people allows any standard to be overridden.[10]

As a member of the International Federation of Journalists (IFJ) the Media, Entertainment and Arts Alliance (MEAA) is also a party to the IFJ Declaration of Principles on the Conduct of Journalists.[11] In the declaration, the obligation to protect sources is stated in the following terms: 'The journalist shall observe professional secrecy regarding the source of information obtained in confidence'.[12]

Despite these various professional codes, courts in Australia have been unsympathetic to journalist obligations to protect sources in instances where that obligation comes into conflict with a legal obligation.[13] The scope and applicability of professional privilege has been the subject of several high profile court cases, which will be briefly reviewed below.

Professional Privilege

At common law, the relationship between a lawyer and their client presumes that communications are protected, which is often referred to as legal professional privilege.[14] The privilege has existed for over 400 years in English law,[15] and continues

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[7] ibid., 238 (Abadee J).
[8] The Australian Press Council is preparing to review journalism standards and has appointed an advisory panel. See K. Simpson (2012) 'Journalism standards set for an updating', *The Age*, 20 July, p. 6.
[9] M. Hirst (1997) op. cit., p. 68.
[10] Media, Entertainment & Arts Alliance (2012) op. cit.
[11] International Federation of Journalists (2012) 'About the IFJ', IFJ website, viewed 2 August 2012, <http://www.ifj.org/en/pages/about-ifj>.
[12] ibid.
[13] See eg *R v Gerard Thomas McManus and Michael Harvey* [2007] VCC 619.
[14] Australian Law Reform Commission (2006) *Uniform Evidence Law*, ALRC Report 102, Canberra, ALRC, Ch. 14, viewed 2 August 2012, <http://www.alrc.gov.au/publications/report-102>.
[15] *Baker v Campbell* (1983) 49 ALR 385, 408 (Murphy J).

to be a fundamental principle of the administration of justice in a free society.[16] As noted by the High Court:

> The adequate protection according to law of the privacy and liberty of the individual is an essential mark of a free society and unless abrogated or abridged by statute the common law privilege attaching to the relationship of solicitor and client is an important element in that protection.[17]

There is, therefore, a significant policy reason for protecting communications between a lawyer and their client: namely, that it is in the interests of justice for clients to make 'full disclosure' to their legal representation and in turn for them to receive fully informed legal advice.[18] Similarly, there are policy reasons for extending privilege by statute to other professional relationships. For example the *Evidence Act 1995* (Cth) contains a privilege for religious confessions (s 127), self-incrimination (s 128), and a journalist privilege with regard to protecting sources (s 126H). Mr Wilkie MP stated in his second reading speech for the Evidence Amendment (Journalists' Privilege) Bill 2010 (Cth) that in introducing such a privilege 'It is intended to foster freedom of the press and better access to information for the Australian public'.[19]

In the absence of legislative intervention, however, there is no journalist privilege in Victoria that entitles a journalist to withhold evidence from the courts on the grounds of protecting sources. In fact, the courts have consistently rejected the recognition of a journalist privilege to protect sources in court proceedings.[20] Indeed, in the 1940 case of *McGuinness v Attorney General of Victoria*[21], the High Court considered the policy grounds for allowing such a privilege, but rejected the argument in favour of the overriding need for courts to have access to information. Rich J made the following statement:

> Privilege from disclosure in courts of justice is exceptional and depends upon only the strongest considerations of public policy. The paramount principle of public policy is that the truth should be always accessible to the established courts of the country. It was found necessary to make exceptions in favour of state secrets, confidences between counsel and client, solicitor and client, doctor and patient, and priest and penitent, cases presenting the strongest possible reasons for silencing testimony. But hitherto no one has entertained a claim that courts should not be allowed to know what a journalist has discovered.[22]

The most high profile case in Victoria is likely that of Michael Harvey and Gerard McManus. In 2004 the *Herald Sun* published an article revealing Commonwealth government cutbacks to war veterans' entitlements, which was based mostly on Ministerial documents that were not in the public domain. During an investigation by

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[16] ibid., 417 (Wilson J).
[17] ibid.
[18] For further discussion on legal professional privilege see Australian Law Reform Commission (2006) op. cit., ch. 14.
[19] Commonwealth of Australia, House of Representatives (2010) *Debates*, 25 October, p. 1235.
[20] See e.g. *R v Gerard Thomas McManus and Michael Harvey* [2007] VCC 619.
[21] (1940) 63 CLR 73.
[22] *McGuinness v Attorney General of Victoria* (1940) 63 CLR 73 (Rich J).

the Australian Federal Police into the source of the leaked information the two journalists refused to reveal the source, citing their obligation under the Code of Ethics. At the criminal trial of the alleged source of the leak, the journalists again refused to reveal the source of their information and were subsequently charged with contempt.[23]

In the Victorian County Court, Rozenes J noted the 'conflict, both conceptually and pragmatically, between the necessity of discovering the truth in the interests of justice on the one hand and the obligations of maintaining confidentiality in the interests of a free and effective press on the other'.[24] However, the notion of a journalist's privilege was comprehensively rejected, citing the existing case law back to *McGuinness v Attorney General of Victoria* in support of this position. His Honour made the following statement, which sums up the relationship between the Code of Ethics and the law:

> Courts in Australia and England have made clear statements to the effect that journalists are not above the law and may not without penalty expect to be permitted to follow their personal collegiate standards where those standards conflict with the law of the land…Until that law is altered, if it is ever to be, then journalists remain in no different position than all other citizens.[25]

Uniform Evidence Legislation

One of the issues examined by the Australian Law Reform Commission (ALRC) in the 2006 review of Uniform Evidence Legislation was legal recognition of privileged communications. The ALRC acknowledged that there are many relationships in society within which confidential information is exchanged. However, the aim of Evidence Acts must be to ensure as much evidence is available to the courts as possible. Given the balancing that is required between these competing policy interests, the ALRC proposed introducing a confidential communication privilege that could be applied at the discretion of the courts.[26] According to the ALRC:

> A qualified professional confidential relationship privilege acknowledges that it *may* be in the interests of justice to protect the confidentiality of a particular relationship in the circumstances of that case…the Commissions believe that the fact that the privilege is discretionary, and that parties are able to make an argument as to why the material should be disclosed, will allow a judge to circumvent illegitimate attempts to claim the privilege.[27]

Following from the ALRC recommendations, the Standing Committee of Attorneys-General[28] produced the Model Uniform Evidence Bill in 2007, which contained a professional confidential relationship privilege (s 126B). These provisions were

[23] *R v Gerard Thomas McManus and Michael Harvey* [2007] VCC 619.
[24] ibid.
[25] ibid., [62].
[26] Australian Law Reform Commission (2006) op. cit.
[27] ibid., p. 509.
[28] Standing Committee of Attorneys-General (2012) 'Model Laws', SCAG website, viewed 6 August 2012, <http://www.scag.gov.au/lawlink/scag/ll_scag.nsf/pages/scag_model_laws>.

originally introduced in NSW by the *Evidence Amendment (Confidential Communications) Act 1997*, and were intended to cover relationships such as journalist/source in the Model Uniform Evidence Bill 2007.[29]

Despite the inclusion of the professional confidential relationship privilege in the Model Uniform Evidence Bill in 2007, several jurisdictions have subsequently introduced a specific journalist privilege, including: the Commonwealth, New South Wales, and the Australian Capital Territory. A Bill is currently before the Parliament in Western Australia. Each of these jurisdictions in addition to New Zealand, which introduced journalist shield laws in 2006, will be reviewed in the final section of this paper.[30]

The Changing Media Landscape

The Finkelstein Inquiry

In 2011 the Minister for Broadband, Communication and the Digital Economy issued terms of reference for an inquiry into certain aspects of the media and media regulation.[31] The inquiry was chaired by the Hon. R. Finkelstein QC and reported in February 2012.

One of the specific issues canvassed in the report was the value of codes of conduct to the journalism profession. Two contrary points of view were noted in the report. On the one hand, codes of conduct are useful for drawing attention to the rules that journalists should follow. In doing so, they can 'reassure the public that news organisations are concerned with accuracy, fairness and honesty'.[32] However, on the other hand, codes are often used as a marketing tool to gloss over the 'demands of commerce' and give the impression that high standards are being adhered to.[33]

As the report notes, these conflicting views create a 'tension between proprietors, editors and journalists regarding the extent to which the codes should be promoted in newsrooms'.[34] For example, one study noted in the report found that 21 of the 61 admitted breaches of the code were due to 'pressure from superiors'.[35] Further, only seven per cent of the total respondents actually used the code in their decision making

[29] See ALRC (2006) op. cit. ch. 15.10.
[30] Queensland adopted the *Public Interest Disclosure Act 2010* (Qld), which operates in a similar way to the professional confidential relationship privilege, however this is not covered in the final section of the paper. For a full review see N. Dixon (2012) 'Shield Laws for Journalists', *Research Brief*, no. 3, Queensland Parliamentary Library, p. 15, viewed 8 August 2012, <http://www.parliament.qld.gov.au/documents/explore/ResearchPublications/ResearchBriefs/2012/RBR201203.pdf>.
[31] Department of Broadband, Communications and the Digital Economy (2012*) Independent Media Inquiry Report*, Canberra, DBCDE, viewed 2 August 2012, <http://www.dbcde.gov.au/digital_economy/independent_media_inquiry/>.
[32] ibid., p. 196.
[33] ibid.
[34] ibid.
[35] ibid., p. 197.

process.[36] Taking into account several other studies, the report concludes that there is limited consensus regarding how codes of conduct should be interpreted and applied:

> Many explanations have been advanced for this, including the highly individualistic culture of the profession and its strong competitive ethos. In this culture, how a story is obtained, and how people, events, organisations and ideas are portrayed is decided by what is likely to be favourably received by editors and audiences rather than by ethical considerations.[37]

Complicating the ethical choices that journalists face is the multiplicity of codes that they may be subject to, including the journalists' code,[38] a publisher's code,[39] and the Australian Press Council codes.[40] As the report concludes, this multiplicity 'makes life unnecessarily complicated for professionals and for the public'.[41] Nevertheless, journalists have staunchly adhered to the obligation to protect sources, irrespective of the legal consequences.[42] As noted by the Media, Entertainment and Arts Alliance (MEAA) federal secretary, Christopher Warren:

> Australian journalists take their Code very seriously and have demonstrated in the past that they would be willing to go to jail rather than reveal a confidential source. The public interest in keeping confidences is also clear: if journalists cannot protect their sources then the sorts of important stories to which these sources generally contribute will dry up and the Australian public will be the poorer. It is a clear free speech issue.[43]

Defining 'Journalism'

A further issue identified in the report is the changing nature of the media landscape, particularly regarding what constitutes 'journalism'. One of the challenges identified in the report is the shift away from print and towards online content. As the report notes, 'it shouldn't be assumed that the internet's effects on journalism and democracy are necessarily malign'. Rather, the reduced cost of production and distribution has allowed new forms of news and opinion to emerge.[44] The examples cited in the report include *Inside Story*[45], *Australian Policy Online*[46], *Online Opinion*[47], *The Drum*[48], *The Conversation*[49], *New Matilda*[50], *The Global Mail*[51], and *Crikey*[52].[53]

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[36] ibid.
[37] ibid., p. 198.
[38] See e.g. Media, Entertainment & Arts Alliance (2012) op. cit.
[39] See e.g. The Age (2012) 'The Age code of conduct', The Age website, viewed 2 August 2012, <http://www.theage.com.au/ethicsconduct.html>.
[40] Australian Press Council (2012) 'Standards', APC website, viewed 2 August 2012, <www.presscouncil.org.au/standards/>.
[41] Department of Broadband, Communications and the Digital Economy (2012) op. cit., p. 199.
[42] See e.g. *R v Gerard Thomas McManus and Michael Harvey* [2007] VCC 619.
[43] MEAA (2012) *Kicking at the Cornerstone of Democracy: The State of Press Freedom in Australia*, Redfern, MEAA, p. 30, viewed 2 August 2012, <http://issuu.com/meaa/docs/press_freedom_2012>.
[44] ibid., pp. 305-310.
[45] *Inside Story* (2012) 'About', *Inside Story* website, viewed 2 August 2012, <http://inside.org.au/about/>.
[46] Australian Policy Online (2012) 'About APO', APO website, viewed 2 August 2012 <http://apo.org.au/about>.
[47] *On Line Opinion* (2012) 'About On Line Opinion', *On Line Opinion* website, viewed 2 August 2012, <http://www.onlineopinion.com.au/display.asp?page=about>.

The shift occurring in the media as a result of the internet has significantly changed both the way news is produced and the way it is consumed. As the report concludes, 'there is a potential for interested and informed people to access information on a scale that has never existed before'.[54] Further, the report notes that with 'the increased demands placed on journalists and the increased complexity of their job, the result is that there is more recycling, less checking, more commentary and assertion'.[55] In summary, there is a notable shift away from traditional forms of news towards new and innovative modes and methods of communication. This raises the complex issue of what exactly is 'journalism' in this changing media landscape?

In a submission to the Senate Standing Committee on Legal and Constitutional Affairs,[56] Jack Herman from the Australian Press Council noted that the definition of journalism must be broad given the development of video, audio and online journalism, in addition to new and emerging sources.[57] Similar observations were made in a submission from the MEAA, which additionally cautioned against an overly prescriptive definition of journalism in the context of the rapidly evolving online tools for journalism.[58] The media coalition Australia's Right to Know (ARTK)[59] approved of the Commonwealth approach to defining journalism which allows a case-by-case analysis of what constitutes journalism:

> The concept of a journalist and journalism has and continues to change over time and it will continue to do so. It is important it applies in a technologically neutral way and

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[48] *The Drum* (2012) 'The Drum', ABC website, viewed 2 August 2012, <http://www.abc.net.au/news/thedrum/>.
[49] *The Conversation* (2012) 'Who We Are', *The Conversation* website, viewed 2 August 2012, <http://theconversation.edu.au/who_we_are>.
[50] *New Matilda* (2012) 'About Us', *New Matilda* website, viewed 2 August 2012, <http://newmatilda.com/about/>.
[51] *The Global Mail* (2012) 'Our Mission', *The Global Mail* website, viewed 2 August 2012, <http://www.theglobalmail.org/>.
[52] *Crikey* (2012) 'About Crikey', *Crikey* website, viewed 2 August 2012, <http://www.crikey.com.au/>.
[53] Department of Broadband, Communications and the Digital Economy (2012) op. cit., pp. 305-310.
[54] ibid., p. 306.
[55] ibid., p. 321.
[56] Senate Standing Committee on Legal and Constitutional Affairs (2010) *Evidence Amendment (Journalists' Privilege) Bill 2010 and Evidence Amendment (Journalists' Privilege) Bill 2010 (No. 2)*, The Committee, November, p. 11, viewed 2 August 2012, <http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=legcon_ctte/evidenceamendment_journalistsprivilege_billd/report/index.htm>.
[57] J. Herman (2010) Submission to the Senate Standing Committee on Legal and Constitutional Affairs, *Evidence Amendment (Journalists' Privilege) Bill 2010 and Evidence Amendment (Journalists' Privilege) Bill 2010 (No. 2)*, November, p. 11, viewed 2 August 2012, <http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=legcon_ctte/evidenceamendment_journalistsprivilege_billd/report/index.htm>.
[58] MEAA (2010) Submission to the Senate Standing Committee on Legal and Constitutional Affairs, *Evidence Amendment (Journalists' Privilege) Bill 2010 and Evidence Amendment (Journalists' Privilege) Bill 2010 (No. 2)*, November, viewed 2 August 2012, <http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=legcon_ctte/evidenceamendment_journalistsprivilege_billd/report/index.htm>.
[59] ARTK formed in 2007 to address issues surrounding freedom of speech in Australia. The group is a coalition of 12 media companies including: News Limited, Fairfax Media, ABC, FreeTV, Commercial Radio Australia, SBS, ASTRA, APN, The West Australian, MEAA, AAP and Sky News.

> that a journalist would be included in the definition regardless of who they are or in what medium they publish.[60]

However, one of the issues that may arise from an overly broad definition of 'journalism' is that otherwise probative evidence may be excluded from trials, an issue raised with the Committee by the then Director of Public Prosecutions Victoria, Jeremy Rapke Q.C.[61] Similarly, legal academic Ken Parish argued for a more restricted definition of journalist, stating that:

> In my view it is the reasonable expectation that journalists will act ethically in pursuit of the public interest in exposing public sector wrongdoing which properly permits Parliament to extend a legally enforceable immunity to relationships of confidence into which they may enter. No such expectation exists in relation to bloggers, nor can they be regarded in any meaningful sense as a profession or even an identifiable group let alone "community of practice" with common ethical or professional standards.[62]

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[60] Senate Standing Committee on Legal and Constitutional Affairs (2010) op. cit., p. 11.

[61] J. Rapke Q.C. (2010) Submission to the Senate Standing Committee on Legal and Constitutional Affairs, *Evidence Amendment (Journalists' Privilege) Bill 2010 and Evidence Amendment (Journalists' Privilege) Bill 2010 (No. 2)*, November, viewed 2 August 2012, <http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=legcon_ctte/evidenceamendment_journalistsprivilege_billd/report/index.htm>.

[62] K. Parish (2010) Submission to the Senate Standing Committee on Legal and Constitutional Affairs, *Evidence Amendment (Journalists' Privilege) Bill 2010 and Evidence Amendment (Journalists' Privilege) Bill 2010 (No. 2)*, November, viewed 2 August 2012, <http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=legcon_ctte/evidenceamendment_journalistsprivilege_billd/report/index.htm>.

2. Second Reading

In the second reading speech the Attorney-General, the Hon. Robert Clark, noted the ethical dilemma journalists face in balancing their professional obligations under the Code of Ethics with legal requirements to give evidence regarding a confidential source. In this context, the purpose of the amendment is to 'introduce a shield law to protect journalists from being compelled to give evidence in court proceedings that would reveal their confidential sources'. Further, such a privilege 'recognises the important role that journalists play in a democracy'.[63]

The Attorney-General highlighted that the privilege is a rebuttable presumption with the courts taking into account whether the public interest in disclosing the source outweighs other concerns. According to the Attorney-General this approach 'strikes the right balance between the public's right to know and the capacity of our courts to access the information needed to uphold justice'.[64]

The Attorney-General outlined the scope of the privilege as applying only to the specific definition of 'journalist' as 'a person engaged in the profession or occupation of journalism in connection with the publication of information in a news medium'.[65] The definition is not intended to cover amateur bloggers due to the range of factors the court must consider in determining if a person is a journalist: in particular 'accountability to a recognised professional standard'.[66] Further, the privilege only applies when the information is received in the person's capacity as a journalist on the condition of anonymity. According to the Attorney-General these provisions reflect the logic of the policy:

> …to provide an appropriate balance between support for the capacity of journalists to investigate and report on matters of legitimate public interest, and the public interest in a court having before it all relevant and probative evidence.[67]

The Attorney-General then noted that the privilege is not absolute and the courts will need to determine on a case-by-case basis whether it applies. After noting the various amendments to other Acts, the Attorney-General made some concluding remarks regarding the importance of freedom of the press in a democratic society:

> The bill recognises the public interest in the communication of facts and opinion and the need for the media to be able to access information. The introduction of a journalist privilege adds to a healthy democracy in Victoria.[68]

[63] Victoria, Legislative Assembly (2012) *Debates*, Book 8, 7 June, p. 2659-2661.
[64] ibid., pp. 2659-2660.
[65] ibid., p. 2660.
[66] ibid.
[67] ibid.
[68] ibid., p. 2661.

3. The Bill

Part 1 - Preliminary

In Part 1 of the Bill the purpose and commencement are outlined. The main purpose of the Bill is to amend the *Evidence Act 2008* to provide for a journalist privilege. In addition, the Bill will provide for mutual recognition of self-incrimination certificates and provide other amendments to bring the Evidence Act 2008 in line with the Model Uniform Evidence Bill.

The provisions in the Bill will come into operation on the day it is proclaimed or by 1 January 2013.

Part 2 – Amendments to the Evidence Act 2008

In Part 2 the main amendments regarding the proposed journalist privilege are outlined in addition to other amendments to the Evidence Act 2008. Three important definitions are provided in the proposed section 276J setting out the scope of the journalist privilege:

> **Informant** means a person who gives information to a journalist in the normal course of the journalist's work on the expectation that the information may be publicised in a news medium.
>
> **Journalist** means a person engaged in the profession or occupation of journalism in connection with the publication of information, comment, opinion or analysis 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.

A detailed test is contained in subsection (2) for determining whether a person falls within the definition of 'journalist'. The test essentially requires that a significant proportion of the person's professional activity relates to the publication of information in a news medium. Importantly, the person must be accountable to comply with 'recognised journalistic or media professional standards or codes of practice'.

If a person satisfies this test then they can rely on the privilege outlined in section 126K, which provides that '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' (s 126K(1)). However, the privilege is qualified in subsection (2) if, upon application of a party, the court determines that the public interest in disclosure of the source outweighs any adverse effect on the informant, and also outweighs the public interest in the ability of the news media to access sources of facts.

The court will apply this test by taking into account the relevant factors on a case-by-case basis. However, the factors which may be relevant include 'the nature of the

proceeding (whether it is criminal or civil), the seriousness of the charge in a criminal proceeding, the accused's or defendant's right to know all relevant information to protect his or her right to a fair hearing, the nature of the information obtained from the informant, the manner in which it was obtained, and whether the relevant evidence can be obtained without compelling the journalist to give evidence'.[69]

Clause 4 amends the Evidence Act 2008 in line with the provisions in the Model Uniform Evidence Bill pertaining to self-incrimination certificates. Section 128 of the Evidence Act 2008 provides for when a witness objects to giving information on the grounds that it may incriminate them, the court may issue them with a certificate preventing that information from being used against them in other proceedings. The amendments in clause 4 provide greater clarity regarding the process the court must follow in issuing such certificates, and for mutual recognition of certificates issued in other Australian jurisdictions. Clause 5 provides for mutual recognition of certificates issued in civil proceedings in other Australian jurisdictions with comparable provisions.

Clause 6 expands the scope of section 131A(1)(a) of the Evidence Act 2008 to include the proposed journalist privilege. Section 131A essentially provides a process for the court to follow when a person is required by a disclosure notice to give information that is subject to client legal privilege or privileged because of public interest concerns.

Clauses 7, 8 and 9 make minor amendments to the Dictionary contained in the Evidence Act 2008 to fix oversights from previous amending legislation and to provide consistency with the Model Uniform Evidence Bill.

Clause 10 inserts a new Part 2 of Schedule 2 in the Evidence Act 2008 outlining the transitional provisions for the *Evidence Amendment (Journalist Privilege) Act 2012*. In summary the journalist privilege will apply to proceedings, or parts of proceedings, that commence on or after the date on which the provisions come into force. However, the privilege will not apply to parts of proceedings that are either ongoing when the privilege comes into force, or were adjourned prior to the commencement of the section coming into force and later recommenced. The schedule also contains transitional provisions for disclosure notices and certificates issued under sections 128 and 128A.

Part 3 – Amendments to the Coroners Act 2008

Part 3 of the Bill amends the *Coroners Act 2008*. Clause 11 inserts a new section to provide for journalist privilege to apply to the investigation of deaths and fires. Clause 12 was inserted to provide certainty that the new journalist privilege extends to inquests under the Coroners Act 2008.

A new schedule is inserted into the Act containing the transitional provisions. In summary, the journalist privilege will apply to the investigation of deaths and fires from the commencement of the Act. If an investigation is ongoing, the provisions will apply to the investigation on and from the commencement of the relevant sections.

[69] Evidence Amendment (Journalist Privilege) Bill 2012, *Explanatory Memorandum*, pp. 4-5.

However, the privilege will not apply to inquests that have already commenced when the provisions come into force, or to inquests that were initiated before the provisions came into force and are subsequently reopened.

Part 4 – Amendments to the Evidence (Miscellaneous Provisions) Act 1958

Part 4 amends the *Evidence (Miscellaneous Provisions) Act 1958* to exclude the operation of the journalist privilege provisions from commissions of inquiry, such as royal commissions, issued by the Governor in Council.

Part 5 – Amendments to the Independent Broad-Based Anti-Corruption Commission Act 2011

Part 5 makes various amendments to the IBAC Act. Clause 17 excludes journalist privilege from the definition of privilege in the Act. Clause 18 excludes journalist privilege from IBAC investigations, and clause 19 excludes the privilege in relation to the examination of witnesses under the IBAC Act. In summary, a journalist will not be able to rely on the journalist privilege in the context of an IBAC investigation.

Part 6 – Amendments to the Major Crime (Investigative Powers) Act 2004

Part 6 excludes the operation of the journalist privilege from a requirement by the Special Investigations Monitor to supply information.

Part 7 – Amendments to the Ombudsman Act 1973

Part 7 excludes the operation of the journalist privilege from investigations by the Ombudsman.

Part 8 – Amendments to the Police Integrity Act 2008

Part 8 excludes the operation of the journalist privilege from an examination or witnesses summons under the *Police Integrity Act 2008*.

Part 9 – Amendments to the Road Safety Act 1986

Part 9 amends the *Road Safety Act 1986* to fix some oversights from previous amending legislation. These amendments do not pertain to the introduction of the journalist privilege, and therefore readers are directed to the Explanatory Memorandum for further information.

Part 10 – Amendments to the Victorian Inspectorate Act 2011

Part 10 amends the Victorian Inspectorate Act 2011 to exclude the journalist privilege from the definition of 'privilege' in that Act.

Part 11 – Amendments to the Whistleblowers Protection Act 2001

Part 11 makes amendments to the *Whistleblowers Protection Act 2001* to exclude the journalist privilege in relation to a power exercised under Part 5, which pertains to investigations by the Ombudsman conducted in the public interest.

4. Stakeholder Opinion

In 2007 the major media organisations in Australia started the 'Right to Know' campaign for greater press freedom in Australia.[70] In a media release announcing the campaign, with reference to Australia's poor performance in global rankings[71] of press freedom, the coalition of media organisations made the following statement:

> Australia risks undermining one of its main pillars of democracy if erosions to free speech continue…To combat the situation, Australia's largest media organisations have united to form a new coalition to run a public campaign, Australia's Right to Know.[72]

In response to the Bill the Herald and Weekly Times (HWT, a member of the Right to Know Campaign) editor-in-chief, Phil Gardiner stated that: 'This is a significant step forward because it will encourage members of the public to come forward with a great deal more confidence their identities will be protected'.[73]

In an editorial piece the *Herald Sun* 'strongly supported' the rebuttable presumption model of journalist privilege adopted in the Bill, and pointed out that it is wrong to assume journalists want an absolute privilege. Further, the piece noted that *Herald Sun* journalists Michael Harvey and Gerard McManus would likely have been protected under the new laws.[74]

Media lawyer Justin Quill supported the legislation and was reported as saying that journalists should not have to face jail or other sanctions simply for doing their job and disclosing information in the public interest.[75] He further stated that the legislation should extend to the new IBAC because 'it is in the IBAC forum, as it was in the OPI, where journalists are most often put in the firing line'.[76]

The MEAA gave general support for the proposed laws in Victoria stating that the changes were 'welcome steps'.[77] The MEAA made the following comment:

> The Alliance believes that shield laws, along with whistleblower protection, are a fundamental guarantor of transparency and accountability in public life. We agree with

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[70] Australia's Right to Know (2012) 'Media Releases and Reports', ARTK website, viewed 2 August 2012, <http://www.australiasrighttoknow.com.au/>.

[71] The media release referred to the 2006 Reporters Without Borders ranking (35th) and the 2007 Freedom House Ranking (39th). See: Reporters Without Borders (2006) 'Press Freedom Index 2006', Reporters Without Borders website, viewed 3 August 2012, <http://en.rsf.org/press-freedom-index-2006,35.html>; Freedom House (2007) 'Australia', Freedom House website, viewed 3 August 2012, <http://www.freedomhouse.org/country/australia>.

[72] Australia's Right to Know (2007) *Australia's Right to Know*, Media Release, 10 May, viewed 3 August 2012, <http://www.australiasrighttoknow.com.au/media>.

[73] A. Gardiner (2012) 'HWT chief applauds new law for journalists', *Herald Sun*, June 6, viewed 3 August 2012, <http://www.heraldsun.com.au/news/victoria/hwt-chief-applauds-new-law-for-journalists/story-fn7x8me2-1226385395037>.

[74] Editorial (2012) 'Striking a balance', *Herald Sun*, 6 June, p. 30.

[75] Gardiner (2012) op. cit.

[76] J. Quill (2012) 'Journalists deserve this protection', *Herald Sun*, 7 June, p. 31.

[77] MEAA (2012) op. cit., pp. 8-9.

the Commonwealth shield law model, which extends protection beyond the narrow definition of 'journalist' to effectively protect an act of journalism rather than create an argument about who may or may not be a journalist. Further, the same presumption in favour of a journalist's right to protect his or her sources ought to be extended to the various state anti-corruption watchdogs.[78]

[78] ibid., p. 31.

5. Other Jurisdictions

This section of the Research Brief provides information on journalists' shield laws used in other jurisdictions. Magarey describes two models of shield laws: one in which the onus is on the journalist to prove that they should be given the privilege (the 'judicial discretion' model); and one in which the person seeking the evidence has to prove why the journalist should not be given an otherwise automatic exemption (the 'rebuttable presumption' model).[79]

Commencing with New Zealand, which implemented new shield laws in 2006, the jurisdictions covered in this section have all adopted (or proposed to adopt) a rebuttable presumption model of journalists' privilege. Australian jurisdictions described below include the Commonwealth, New South Wales, the Australian Capital Territory and Western Australia.

New Zealand

In 2006, as part of its new *Evidence Act 2006*, New Zealand adopted a rebuttable presumption model of journalists' privilege. Section 68 of the Act states:

> (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 in a civil or criminal proceeding to answer any question or produce any document that would disclose the identity of the informant or enable that identity to be discovered.
> (2) A Judge of the High Court may order that subsection (1) is not to apply if satisfied by a party to a civil or criminal proceeding 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) The Judge may make the order subject to any terms and conditions that the Judge thinks appropriate.
> (4) This section does not affect the power or authority of the House of Representatives.
> (5) In this section,—
> **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 in the normal course of that person's work may be given information by an informant in the expectation that the information may be published in a news medium

[79] K. Magarey (2010) 'Evidence Amendment (Journalists' Privilege) Bill 2010 (No. 2) & Evidence Amendment (Journalists' Privilege) Bill 2010', Bills Digest Nos. 38-39, Australian Parliamentary Library, pp. 4-5, viewed 12 July 2012, <http://parlinfo.aph.gov.au/parlInfo/download/legislation/billsdgs/352449/upload_binary/352449.pdf;fileType=application/pdf#search=%22evidence%20amendment%22>.

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

As can be seen from the above, subsection (1) provides for a general presumption that a journalist or a journalist's employer is not compellable in civil or criminal proceedings to disclose the identity of a source, or allow for the source's identity to be discovered. However, as indicated by the inclusion of a public interest 'balancing test' in subsection (2), this privilege is qualified.

Subsection (2) provides for a High Court Judge to order that journalist privilege does not apply if satisfied that the public interest outweighs: any likely adverse effect of the disclosure on the source or any other person; and the public interest in the communication of facts and opinion by the news media and in the ability of the news media to access sources of facts.

Subsection (4) is included 'simply to make it clear that [section 68] does not affect whatever entitlement the House of Representatives may have in this regard'.[80]

The definition of 'journalist' in subsection (5) restricts the application of the privilege to 'a person who in the normal course of that person's work may be given information by an informant in the expectation the information may be published in a news medium'.

The inclusion of section 68 in the Evidence Act was recommended by the New Zealand Law Commission in 1999 following a ten year review of the country's evidence legislation. The Commission's final report stated that 'the protection of journalists' confidential sources of information is justified by the need to promote the free flow of information, a vital component of any democracy'.[81]

The Commission had originally recommended that a general confidential relationship privilege, which relied on judicial discretion, would be sufficient to protect journalists' sources from compulsory disclosure.[82] However, this recommendation was later amended, in response to commentary that an express qualified privilege for journalists, which would put the onus on the person seeking to have the source revealed, would 'give greater confidence to a source that his or her identity would not be revealed'.[83]

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[80] New Zealand Law Commission (1999) *Evidence – Evidence Code and Commentary*, Report 55, vol. 2, Wellington, NZLC, p. 173, viewed 24 July 2012, <http://www.lawcom.govt.nz/sites/default/files/publications/1999/08/Publication_58_178_R55%20Vol%202.pdf>.

[81] New Zealand Law Commission (1999) *Evidence – Reform of the Law*, Report 55, vol. 1, Wellington, NZLC, p. 82, viewed 16 July 2012, <http://www.lawcom.govt.nz/sites/default/files/publications/1999/08/Publication_58_177_R55%20Vol%201.pdf>.

[82] New Zealand Law Commission (1994) *Evidence Law: Privilege – A Discussion Paper*, Wellington, NZLC, p. 115, viewed 16 July 2012, <http://www.lawcom.govt.nz/sites/default/files/publications/1994/05/Publication_58_176_PP23.pdf>.

[83] New Zealand Law Commission (1999) *Evidence – Reform of the Law*, op. cit., p. 82.

Commonwealth of Australia

The Commonwealth of Australia implemented its current journalist shield laws in 2011 through amendments to the *Evidence Act 1995* (Cth) made by the Evidence Amendment (Journalists' Privilege) Bill 2010 (Cth).

The Independent Member for Denison, the Hon. Andrew Wilkie, introduced the Evidence Amendment (Journalists' Privilege) Bill 2010 – which he had drawn up together with Senator Nick Xenophon and the Gillard Government – into the House of Representatives in October 2010.[84] Mr Wilkie said that 'The Evidence Act in its current form rests on the premise that journalists should normally be expected to reveal their confidential sources and in doing so breach their code of ethics. That is wrong and this bill will rectify the problem'.[85] He explained that the Bill would replace the existing provisions in Division 1A of the Evidence Act, with new provisions (based on the New Zealand Evidence Act 2006) that would provide for a rebuttable presumption that a journalist is not required to disclose the identity of a source.[86]

Notably, Coalition Member the Hon. George Brandis had introduced a similar bill – to provide for Commonwealth journalist shield laws – into the Senate in September 2010.[87] The Brandis Bill was similar to the Wilkie Bill in that it provided for the introduction of a rebuttable presumption in favour of journalists modelled on the New Zealand legislation. But it differed in the respect that it also recognised a more general 'confidential professional relationship privilege' (subject to judicial discretion).[88]

In November 2010, the Senate referred the two bills to the Senate Legal and Constitutional Affairs Legislation Committee for inquiry and report.[89] The Committee found the Wilkie Bill to be preferable[90] and recommended that it be passed by the Senate.[91] Wilkie's Bill passed the Senate in March 2011.

During the committee stage, Greens Senator, Scott Ludlam, secured amendments to Wilkie's Bill that expanded the definition of 'journalist' to include 'citizen-journalists, bloggers and independent media organisations as well as news professionals from the mainstream media'.[92] Senator Ludlam stated during the debate that: 'At the moment we have some definitions in schedule 1 of the bill which provide that 'journalist' means

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[84] For prior legislative history see the Senate Legal and Constitutional Affairs Legislation Committee (2010) op. cit. See also: Magarey (2010) op. cit.
[85] Commonwealth of Australia, House of Representatives (2010) *Debates*, 18 October, p. 387.
[86] Commonwealth of Australia, House of Representatives (2010) *Debates*, 25 October, p. 1236.
[87] The Brandis Bill was titled 'Evidence Amendment (Journalists' Privilege) Bill 2010 (No. 2). For a detailed comparison of the two Bills, see the Senate Legal and Constitutional Affairs Legislation Committee (2010) op. cit.; Magarey (2010) op. cit.
[88] Magarey (2010) op. cit., pp. 19-21. See also: Senate Legal and Constitutional Affairs Legislation Committee (2010) op. cit., pp. 7-8.
[89] Senate Legal and Constitutional Affairs Legislation Committee (2010) op. cit.
[90] For an explanation of the Committee's reasons see ibid., p. 16.
[91] ibid., p. 17.
[92] S. Ludlam, Australian Greens (2011) *Greens Hail New Federal Journalist Shield Laws*, Media Release, 3 March, viewed 11 July 2012, <http://greensmps.org.au/content/media-releases/greens-hail-new-federal-journalist-shield-laws>.

a person 'who is engaged and active in the publication of news in the normal course of that person's work''. He went on to say that this definition was 'effectively drafted for a 20th century interpretation of who qualifies as a journalist' and proposed that the words 'in the normal course of that person's work' be deleted so that:

> …if you are engaged and active in the publication of news then you might have put yourself in a position where an informant would have contacted you and expected the kind of protections that this bill seeks to provide, and as far as I am concerned it should not matter whether you work for the *Age* or for the ABC, whether it is a piece that you put on *Crikey*, or whether it is a piece that you have even put up on your own blog, for that matter. What we are trying to do here is make sure that it does not matter who you work for, or whether you were paid; if it is an act of journalism you should be offered the protection of the court and it should be up to the court to decide, not necessarily whether the protection applies but whether it is in the public interest that the disclosure should occur or not.[93]

The new Commonwealth journalists' shield laws came into operation in April 2011. Division 1A of Part 3.10 of Chapter 3 of the Commonwealth Evidence Act 1995 now provides as follows:

> **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.

[93] Commonwealth of Australia, Senate (2011) *Debates*, 3 March, p. 1095.

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

New South Wales

New South Wales implemented journalist shield laws in 2011 through amendments to the *Evidence Act 1995* (NSW) made by the Evidence Amendment (Journalist Privilege) Bill 2011 (NSW). The NSW shield laws provide for a rebuttable presumption that a journalist's source is to be protected, in the same manner as the Commonwealth shield laws. However, NSW differs from the Commonwealth in its definition of 'journalist'.

The NSW Attorney General and Minister for Justice, the Hon. Greg Smith, introduced the Evidence Amendment (Journalist Privilege) Bill 2011 into the NSW Parliament in May 2011. In his introductory speech, Mr Smith stated that while the nature of the journalists' privilege established by the NSW bill is similar to provisions enacted by the Commonwealth, it does have important differences. He said that the definition of 'journalist' in the NSW Bill as 'a person engaged in the profession or occupation of journalism in connection with the publication of information in a news medium' relies on 'the ordinary plain English meanings of the words "profession", "occupation" and "journalism"' and that:

> This will allow the bill to reflect contemporary journalistic practices in determining by whom the privilege may be claimed, but ensures that the privilege applies only to persons who are recognisably engaged in working as a journalist, and their employers. Consequently, the privilege would not apply, for example, to amateur bloggers or users of social networking media who happen to obtain and publish information or opinion that may be of some public interest.[94]

Mr Smith additionally stated that the NSW Bill also reforms the existing Professional Confidential Relationship Privilege which extends to professional relationships in NSW more broadly.[95] Importantly, Mr Smith noted that there are circumstances where a journalist would be covered by the professional confidential relationships privilege but not the more specific journalist privilege. For example, the journalist privilege would not apply unless 'there is an expectation that the information will be published'.[96] In such a case, a journalist would need to rely on the more general professional privilege to protect their source. Nevertheless, Mr Smith said that in 'most instances, journalists will seek to rely on the new qualified journalists' privilege rather than the professional confidential relationships privilege'.[97]

The NSW Bill was assented to on 21 June 2011. Division 1C of Part 3.10 of Chapter 3 of the NSW Evidence Act 1995 now provides as follows:

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[94] New South Wales, Legislative Assembly (2011) *Debates*, 27 May, p. 1319.
[95] The amendments added a public interest test to the professional confidential relationship privilege in s 126B(4) of the *Evidence Act 1995*. The professional confidential relationship privilege was originally introduced by the *Evidence Amendment (Confidential Communications) Act 1997*.
[96] New South Wales, Legislative Assembly (2011) *Debates*, 27 May, p. 1320.
[97] ibid. See Evidence Act 1995, Part 3.10, Division 1A Professional Confidential Relationship Privilege.

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.

Australian Capital Territory

Journalist shield laws, modelled on the Commonwealth provisions, were incorporated into the ACT's *Evidence Act 2011* by the Evidence Amendment Bill 2011.[98] The Evidence Amendment Bill inserted new sections 126J to 126L to provide for a rebuttable presumption that a journalist is not compellable to reveal a source in court.

Although the ACT used the broader definition of 'journalist', as used in the Commonwealth legislation, Mr Simon Corbell, Attorney-General, stated that 'the ACT's privilege will also be largely consistent in operation with New South Wales...'.[99]

Western Australia

A Bill to provide journalists with an express qualified privilege was introduced into Western Australia's Parliament last year. However, at the time of writing, the Bill is yet to be passed.

[98] ACT, Legislative Assembly (2011) *Debates*, 25 August, p. 3857.
[99] ibid.

The Evidence and Public Interest Disclosure Legislation Amendment Bill 2011 (WA) was introduced into the WA Legislative Council on 20 October 2011. Similar to the Commonwealth and New South Wales legislation, the Bill proposed to amend the *Evidence Act 1906* to introduce 'a presumption that a journalist is not compellable to give identifying evidence when they have promised not to disclose the identity of their source'.[100] The Bill included a narrow definition of journalist similar to the definition used in New South Wales.

However, whereas the Commonwealth and New South Wales provisions provide for a *court* to determine, on the application of a party, whether the journalist's source should be identified, the WA Bill proposes that such a determination be made by a *person acting judicially*.

The term 'person acting judicially' is defined in s 3 of the WA Evidence Act and refers to 'any person having, in Western Australia, by law or by consent of parties, authority to hear, receive, and examine evidence'. In the second reading speech, the Hon. Michael Mischin, Parliamentary Secretary to the Attorney-General, stated that the purpose of using this terminology was to:

> ensure that the protection, and the qualification to the protection, afforded to journalists applies not only in courts and tribunals, but also to inquiries, such as hearings before the Legislative Assembly or Legislative Council, or committee hearings of both houses of Parliament. The protection will apply in this manner regardless of whether the empowering statute of the relevant tribunal or inquiry excludes the application of the Evidence Act 1906, which is the act that the bill amends.[101]

However, in early November 2011, following the second reading debate, the Legislative Council referred the Bill's provisions relating to journalists' privilege to the Standing Committee on Procedure and Privileges. The Committee was asked to investigate whether the provisions, if passed, would affect parliamentary privilege.

The Committee report, tabled on 29 November 2011, found that the provisions, as debated, 'may qualify the privileges of the Legislative Council'.[102] The majority recommendation of the Committee included to: adopt a prohibitive clause, providing that the Bill (Act) did not apply to the proceedings of both Houses of Parliament; and to adopt a Standing Order(s) to provide for the protection of the identity of journalists' sources in relation to the proceedings of the Legislative Council.[103]

As indicated earlier, the Bill is yet to be debated again in the Parliament.

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[100] Western Australia, Legislative Council (2011) *Debates*, 20 October, p. 8435.
[101] ibid., p. 8436.
[102] Western Australian Standing Committee on Procedure and Privileges (2011) *Reference from the House – Evidence and Public Interest Disclosure Legislation Amendment Bill*, Perth, The Committee, p. 5, viewed 23 July 2012, <http://www.parliament.wa.gov.au/publications/tabledpapers.nsf/displaypaper/3814133cdc50a21e245e9c46482579580007934 5/$file/4133.pdf>.
[103] ibid., p. 10.

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