

Democracy in Australia – Protection of journalists and their sources

Journalists and their sources

Normally, it is journalists' responsibility to share the source of their information with their readership. "Australia's Right to Know", a coalition of news organisations, writes,

"It makes the source, the journalist and the media outlet accountable for their reports, makes the process of reporting more transparent and is likely to help the consumer of the information to evaluate the integrity and credibility of the information."

The exception is if a journalist is offered information in the public interest from a person who must keep his or her identity confidential. In some cases, a source may offer information that is genuinely in the public interest but fears for his or her safety, career or reputation, and requests anonymity.

The Australian Journalist's Code of Ethics states that journalists should:

"Aim to attribute information to its source. Where a source seeks anonymity, do not agree without first considering the source's motives and any alternative attributable source. Where confidences are accepted, respect them in all circumstances."

The practice of keeping anonymous sources confidential is essential for journalists who rely on the trust of informants to publicise information that is genuinely in the public interest. If journalists cannot offer protection of the source's identity, people will be deterred from offering information.

Privilege for Australian Journalists

Currently Australian journalists are vulnerable to prosecution if they protect their sources.

In 2005, Gerard McManus and Michael Harvey from the Herald Sun were convicted and fined for not revealing their confidential source. At least four other journalists have been convicted or jailed in Australia for refusing to reveal their sources to courts.

These journalists refused to reveal their sources and suffered personal and professional harms. Gerald McManus, after being convicted of contempt of court, was refused a visa to enter the United States because of that conviction. This has clearly had an impact on his career. Furthermore, when it is clear that journalists have to choose between protecting their sources and suffering personal and professional harm, possible informants may be deterred from providing information to journalists.

Since the conviction of McManus and Harvey, the Federal Government has introduced legislative changes under the *Evidence Amendment (Journalists' Privilege) Act 2007*. This legislation gives the court discretion to order that a journalist is not required to answer questions which might reveal a source. This currently applies to Federal and ACT courts. The New South Wales Government has introduced similar legislation but is the only State to do so.

Evidence Amendment (Journalists Privilege) Bill 2009

The bill introduced by the Rudd Government which would provide some protection for journalists. Senator Faulkner recognised the role of journalist privilege when introducing the Bill in to the Senate, saying:

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Protection of journalists' sources is one of the basic conditions of free press. As recognized by the European Court of Human Rights in 1966, without such protection, sources may be deterred from assisting the press in informing the public on matters of public interest.

But the Bill does not provide comprehensive protection for the press. Commentators note that several flaws leave journalists still vulnerable;

- the Bill covers “the media”, and a narrow interpretation of this definition might exclude freelance journalists or those who write for online only publications
- journalists may still be forced to disclose the fact of communication with a source, but not the content of that communication
- the information contained in protected communication is limited to “facts”. The Public Interest Advocacy Centre point out that some confidential information may be opinion or information, rather than fact but should still be protected. Likewise, information which is provided to journalists and is background or context information rather than facts directly communicated for publication should be protected.
- The protection offered by court discretion is weak. A claim to privilege can be made by a journalist if he or she is called to give evidence in a case. There is no presumption of the right to protect the source and a decision on privilege is made by the judge hearing the case in which the evidence is demanded. The onus rests with the journalist to prove that harm would be caused to the source, and that that harm would outweigh the importance of the evidence in the case to hand.
- Privilege outside Australia

Legislation in New Zealand gives strong and balanced protection to journalists. Section 68 of their Evidence Act 2006 defines a journalist broadly as;

“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.”

The presumption is of non-disclosure, but a Judge of the High Court may order disclosure. The Act instructs judges to take into account likely damage to the informant, and the ability of the news media to access sources of facts.

Summary

A right for journalists to protect their sources is essential for true Government accountability. The current law and proposed new legislation leave journalists vulnerable and may deter potential sources coming forward with important information. The adoption of legislation similar to the New Zealand model across all jurisdictions would enhance government accountability and democracy.

Sources

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