

Democracy in Australia – Protection of journalists and their sources

Journalists and their sources

Normally, it is a journalist's responsibility to share the source of their information with their readership. In this respect 'Australia's Right to Know', a coalition of news organisations, states:

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 are deterred from offering information.

Privilege for Australian journalists

Australian journalists have historically been 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 seven other journalists have been convicted or jailed in Australia for refusing to reveal their sources to courts.

Journalists who refuse to reveal their sources have 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 them.

Evidence Amendment (Journalists Privilege) Act

A bill was introduced by the Rudd Government in 2009, which would have provided some protection for journalists. Senator Faulkner recognised the role of journalist privilege when introducing the Bill in to the Senate, saying:

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.

This Bill, however, lapsed before it became law. In 2010, two Bills were introduced into the parliament, one by independent lower house member Andrew Wilkie and the other by Senator Brandis. The Bills were very similar and proposed identical privilege for journalists by allowing them to refuse to provide evidence in order to protect the confidential source of their information.

Based on these Bills, the *Evidence Amendment (Journalists Privilege) Act 2011* came into force in April 2011. It allows the court discretion to order that a journalist is not required to answer questions which might reveal a source. This Act applies to Federal and to ACT courts.

The Act does not provide comprehensive protection for journalists as it relies upon the discretion of the court. The courts have a discretion to order that evidence of the source is revealed where they are satisfied that the public interest in disclosure outweighs the adverse effect of disclosure on any person and the public interest in freedom of communication. In making this decision the court must decide if the public interest in the disclosure of the evidence revealing the informant's identity outweighs any likely adverse effect of the disclosure on the informant or any other person and the public interest in the communication of facts and opinion to the public by the news media and its ability to access sources.

There is better protection for journalists in New Zealand. 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.

Journalists also remain vulnerable in some State jurisdictions, though NSW, Victoria and WA now have shield laws in place. These shield laws still fail to provide protection to those giving evidence to anti-corruption bodies, including the Victorian Independent Broad-based Anti-corruption Commission, NSW Crime Commission and the Australian Building and Construction Commission.

A right for journalists to protect their sources is essential for true Government accountability. The new legislation goes some way to protecting journalists and their sources. Broader and more effective legislation would enhance government accountability and democracy.

Sources

Australia's Right to Know, Submission to the Inquiry into the Evidence Amendment (Journalist's Privilege) Bill 2009
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Last revised July 2013