

Serial 37
Evidence (National Uniform Legislation) Amendment (Journalist Privilege)
Bill 2017
Ms Fyles

A Bill for an Act to amend the *Evidence (National Uniform Legislation) Act* in
relation to journalist privilege

NORTHERN TERRITORY OF AUSTRALIA

EVIDENCE (NATIONAL UNIFORM LEGISLATION) AMENDMENT
(JOURNALIST PRIVILEGE) ACT 2017

Act No. [] of 2017

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NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2017

An Act to amend the *Evidence (National Uniform Legislation) Act* in relation to journalist privilege

[Assented to [] 2017]
[Second reading [] 2017]

The Legislative Assembly of the Northern Territory enacts as follows:

1 Short title

This Act may be cited as the *Evidence (National Uniform Legislation) Amendment (Journalist Privilege) Act 2017*.

2 Commencement

This Act commences on the day after the day on which the Administrator's assent to this Act is declared.

3 Act amended

This Act amends the *Evidence (National Uniform Legislation) Act*.

4 Section 10A inserted

After section 10

insert

10A Application of section 127A

Despite any provision to the contrary in this Act or in any other Act, section 127A applies to all proceedings before the court or a judicial entity, irrespective of whether the judicial entity is required to apply the rules or laws of evidence.

5 Section 127A inserted

After section 127

insert

127A Journalist privilege

- (1) If a journalist has promised an informant not to disclose the informant's identity, neither the journalist nor the journalist's 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 or a judicial entity 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 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 and, accordingly also, in the ability of journalists to access sources of information.
- (3) Without limiting the matters that may be taken into account by the court or judicial entity for the purposes of subsection (2)(b), it is to take into account:
 - (a) whether the information provided by the informant is a matter of public interest; and
 - (b) how the journalist used the information provided by the informant, including whether the journalist:
 - (i) verified the information before using the information (if reasonably practicable); and
 - (ii) used the information in a manner that minimised any undue harm to any person; and
 - (iii) used the information in a fair and accurate manner.
- (4) An order under subsection (2) may be made subject to any conditions the court or judicial entity thinks fit.

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- (5) This section applies even if an Act provides:
- (a) that the rules or laws of evidence do not apply or that a judicial entity is not bound by the rules or laws of evidence; or
 - (b) that a person is not excused from answering any question or producing any document or other thing on the ground of privilege or any other ground.

(6) In this section:

informant means a person who provides new or noteworthy information to a journalist for use in a news medium.

journalist means a person who:

- (a) obtains new or noteworthy information about matters of public interest; and
- (b) deals with the information by:
 - (i) preparing the information for a news medium; or
 - (ii) providing comment, opinion or analysis of the information for a news medium.

news medium means any medium for the dissemination of information to the public or a section of the public.

6 Part 3.10, Division 1A, note amended

Part 3.10, Division 1A, note

omit

Commonwealth Act and NSW Act include

insert

NSW Act includes

7 Section 160 amended

Section 160(1)

omit

fourth

insert

seventh

8 Chapter 8 inserted

After section 215

insert

Chapter 8 Transitional matters for Evidence (National Uniform Legislation) Amendment (Journalist Privilege) Act 2017

216 Definitions

amending Act means the *Evidence (National Uniform Legislation) Amendment (Journalist Privilege) Act 2017*.

commencement means the day on which the amending Act commences.

217 Application of section 127A

- (1) Section 127A, as inserted by the amending Act, applies to information given by an informant before the commencement.
- (2) However, section 127A does not apply in relation to a proceeding commenced before the commencement.
- (3) In this section:

informant, see section 127A(6).

218 Application of section 160

Section 160, as amended by the amending Act, applies in relation to postal articles sent after the commencement.

9 Dictionary amended

Dictionary, Part 1

insert (in alphabetical order)

judicial entity means the following:

- (a) the Civil and Administrative Tribunal;
- (b) any other person or body prescribed by the regulations.

10 Repeal

This Act is repealed on the day after it commences.