
Protection of Journalists' Sources Bill

09/12/2021

Submission on the Protection of Journalists' Sources Bill

1 Introduction

- 1.1 The New Zealand Law Society | Te Kāhui Ture o Aotearoa (the **Law Society**) welcomes the opportunity to comment on the Protection of Journalists' Sources Bill (the **Bill**).
- 1.2 The Bill's Explanatory Note explains that the purposes of the Bill are to amend the definition of journalist in the Evidence Act 2006 to explicitly include investigative journalists and to amend the Search and Surveillance Act 2012 to ensure a journalist's sources are protected in relation to production orders and Police searches, inserting requirements on the Police to ensure that the protections are understood and upheld.
- 1.3 The Law Society supports the Bill in principle but considers that some aspects, addressed in this submission, could be improved in order for it to better achieve its purpose.
- 1.4 The Law Society does not wish to be heard in relation to this submission but is happy to engage further with the select committee or officials if that would be of assistance

2 Summary and recommendations

- 2.1 In summary, the Law Society makes the following recommendations:
- i. Further thought is given as to how to protect the sources of journalists working on long works and books;
 - ii. Consideration be given to changing the wording in both clause 8 and 9 to clarify what the information 'relating to a journalist' is;

3 Protection of sources for long works and books

- 3.1 Clause 4 provides for the amendment of section 68 of the Evidence Act 2006 to replace the definition of journalist (s 68(5)). Clause 4 proposes the following definition of journalist:
- (a) 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; and
 - (b) includes an investigative journalist who publishes work including books, of in-depth inquiry and original research into matters of public interest that may not otherwise be disclosed.
- 3.2 It is the Law Society's view that the current definition of 'investigative journalist' is captured in the definition of journalist (the same as paragraph (a) above) and, although (b) is an extension of (a), it is ineffectual.

- 3.3 We understand the Bill's intent to be to ensure that journalists working on long works or books are given the same privilege as journalists working for a news medium. If that is so, consideration should be given to providing a clearer definition of 'news medium'.
- 3.4 'News medium' is currently defined as 'a medium for the dissemination to the public or a section of the public of news and observations on news'.¹ Amending that definition to include long works and books would better clarify the intent of the Bill. The inclusion of (b) is not sufficient to achieve this. It is simply an extension of the term 'journalist,' and continues to require (being drafted as an inclusion of (a)) the expectation of publication in a 'news medium'. It does not address the central issue, being whether long-form works and books produced by a journalist can be a 'news medium.'

4 Amend clauses 8 and 9

- 4.1 Clauses 8 and 9 should be amended. Currently they make reference to 'information relating to a journalist'. This is overly broad: the protection should extend to information relating to or arising out of (or derived from) *journalistic activities of a journalist*; it is not enough that they relate to a journalist personally.
- 4.2 For example, as it is currently drafted, in an instance where a journalist is charged with an unrelated criminal offence, information or documents relevant to that alleged offending could be treated differently because of the defendant's occupation.
- 4.3 It is the Law Society's view that the clauses be re-drafted to ensure that information relating to criminal activity, and which was not related to any journalistic activity, would not be privileged.



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¹ Evidence Act 200, section 68(5), 'news medium'