

## Journos in Vic and WA get shields

By Rhys Michie\*

The Victorian and Western Australian Parliaments recently passed new laws to protect journalist's confidential source. CLA welcomes the Victorian legislation, the *Evidence Amendment (Journalist Privilege) Bill 2012*, and the Western Australian *Evidence and Public Interest Disclosure Legislation Amendment Bill*.

Shield laws mean that journalists don't have to reveal the identity of their sources in court. In the future, whistleblowers can be more confident that they will remain anonymous if they provide a journalist with information. Consequently, the theory goes, investigative journalists will break more stories about poor governance, corruption or maladministration, enabling the voting public to make more informed voting choices and participate in political activity.

The journalist shield laws in Victoria and Western Australia have addressed the same problem, slightly differently. In Victoria, a privilege specifically for journalists has been created. It creates a rebuttable presumption that a journalist cannot be compelled to reveal the identity of a confidential source. However, public sector whistleblowers are specifically excluded.

In contrast, Western Australia has created a general professional confidential communications protection (which applies to professions such as accountants and sexual assault counsellors) and an extra protection specifically for journalists. Interestingly, whistleblowers are specifically included in the WA law. The confidential communication protection creates a protection that can be invoked. Journalists have an added protection that is presumed to apply.

In both states the shield is not absolute; a court can order the journalist reveal their source where the public interest in the administration of justice outweighs the harm to the source.

The parliaments in both states took a significant length of time to develop these laws, and bi-partisan passing of legislation, unanimously in WA, proves that our elected representatives are willing and capable of improving our democracy. Who exactly is a journalist and when the shield applies was a predominant feature of debate. To meet the definition of a 'journalist' in either state, a person must be engaged in the profession or occupation of journalism, *and* this constitutes a significant proportion of the person's work *and* they are regularly published in a news medium. The shield applies where a source provides information and the journalist gives an undertaking to keep their identity secret. *And* it must happen in a professional context. *And* journalists must also be ethical; in Victoria they must comply with the Journalists' Codes of Ethics. WA widened the scope for misconduct by a journalist that will drop their shield.

Neither state will protect amateur bloggers. The shield will not protect journalists who appear before curial inquiries; although in WA it applies to tribunals and judicial inquiries. The information must be collected with the intention of being published in media which are

capable of disseminating news to the public. All of these restrictions limit the overall scope of the shield.

The passing of journalist shield laws in Victoria and Western Australia are welcomed by CLA and brings these states into line with the Federal jurisdiction, NSW, the ACT and Tasmania. However, Queensland, South Australia and the NT continue to lag.

ENDS



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