

Example of essay on australias journalism shield law

[Law](#), [Evidence](#)



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How effective is it?

Journalism's place in the world is crucial to the capacity to bring information to the public eye. Australia's journalism shield law has become a topic of considerable debate with many arguing over efficacy of the instrument. This study will examine the inception of this law with a focus on the fundamental drivers behind the mechanism. Following this section with an analysis of modern application will illustrate to what extent the shield law has been deemed useful in modern practice. The combination of the first sections will create the capacity to produce a credible assessment as to the overall usefulness of the law as well as to what the associated future potential may be.

In the end this essay will have examined past inception, modern practice and future possibility with the stated goal of determining if Australia's Journalism Shield Law has been effective.

Journalism Shield Law

The Commonwealth of Australia (1994, p. ix), aptly illustrates the argument for the initial creation of the Australian Journalists shield Law by demonstrating the increasing number of contempt cases involving journalists and the courts. Over the course of the prior sessions, there was a continuous stream of litigation by journalists refusing to fully reveal their sources creating a decided need for legislative action. The high number of journalists having been determined to be in contempt has been found to be onerous, sparking the public outcry for a long term solution (Commonwealth of Australia 1994, p. ix). This action resulted in the debate and subsequent enacting of the shield laws for the journalists confidential sources.

The Evidence Act of 1995 was the legislative attempt to create a method of protection for the journalists (Pearson 1998, pp. 3). Working on the definition that a applicable instrument would be a law that offered the journalist a credible method of immunity for the forced revelation of associated sources, the Australian shield laws are similar to ones enacted in Britain and the United States (Pearson 1998, pp. 3). The recognition that a journalist needs the ability to protect a source in order to ethically illustrate a story compelled the Australian legislature to respond. Pearson (1998, pp. 4) argues that a journalist must be responsible to the public, professional and aware of the legal and ethical implications in order to protect themselves. This approach was aided by the regulatory acknowledgement that there was necessary elements of privilege given to the Fourth Estate in order for them to perform their social duty (Apps 2009, p. 117).

Unlike the United States, Australia included no constitutional protections for

journalist's right to free speech (Pearson 1998, pp. 31). With many early papers such as the Sydney Gazette citing heavy censorship on the part of the government, the formation of a series of protections was deemed essential. Price (2003, pp. 259) illustrates a basic pillar of the journalistic code in that the reporter has the inherent obligation to protect the source. This has long been recognized and acted upon, in some cases causing an ensuing ethical dilemma (Price 2003, pp. 259). The reputation of a journalist or an entire group may be comprised irredeemably if there is a sustained perception that there is no protection for those that supply evidence.

The modern evolution of the Australian journalist's shield law demands an element of disclosure if directed to do so by the court (Price 2003, pp. 294). Modern empirical evidence has illustrated the need for an accountability component for the media. The Evidence Amendment (Journalists Privilege) Act of 2011 was the latest amendment to law relating to the need to protect the freedom of the press (Parliament of Australia 2013, p. 1). The ability for the media to abuse a shield law, citing ethical or moral obligations will remain high if there is no perception of consequences. An example that many cite for the strengthening of the accountability laws regarding media rests in the publishing of the Anti-Terrorism Bill of 2005 (Nash 2005, p. 900). Despite the best efforts of the government to have the copy of the bill taken down, the refusal and subsequent lack of power of the regulators to enforce that directive has caused a substantial argument as to the amount of benefit to be gained by largely unchecked media freedom.

Ingham (2013, pp. 24) illustrates that while there is not an explicit guarantee of the right to free speech in Australia, the High Court has consistently ruled

for the perception of implied freedom for forms of political communication. This allows the government the capacity to act on a perceived threat to the nation (Ingham 2013, pp. 24). However, as compared with many of the other advanced nations, the rights and protections afforded to the Australian journalists are far behind the norm. There are several weaknesses that need to be addressed in order for current legislation to meet the needs of the population (Ingham 2013, pp. 24):

- Only New South Wales and the Commonwealth have enacted any real privileges for journalists. The others still neglect to do so.
- There is a continuous argument over who is under the Commonwealth Legislation. This is due to the fact that there is no clear definition of the term 'journalist'.
- Both of the jurisdictions in Australia lack a basic presumption that a journalist can protect his sources.
- The privilege afforded to journalists will not function correctly without an underlying whistle-blower protection regulation.

The current whistle-blower laws are not operating as intended (Dworkin and Brown 2013, pp. 712). This is an indication that the need to address the issue continues to loom large on the legislative agenda. The Commonwealth's 2009 reform proposal increases the perception of overall protection afforded to journalists, yet many argue that the regulations will do very little to protect the journalist once there has been a court directive issued (McNamara and McIntosh 2010, p. 81). There must be a consideration of the overall vulnerability of the journalists as well as the associated sources in order for there to be meaningful legislation.

Bacon (2012, p. 153) argues that there is an innovative method beginning to emerge in the manner in which the Australian government has begun to approach the area of free speech. The growing integration of the international community benefits the underlying drive to find a method of journalistic balance that serves to illustrate the needs and yet pays respect to the security considerations of the modern era.

In Conclusion

Does the efforts by the Australian legislature to create an effective method of protection for journalists work as intended? This essay has examined evidence that has illustrated both sides of the issue, illustrating many interesting results.

Australia has always had a press corps that is substantial. This consistently translates into a Fourth Estate that holds a vital place in the cornerstone of Australian society. The latest shield law goes a long ways towards balancing the needs of the legislature and the needs of the journalist. Without a method of consequence, there is the real potential for the media establishment to suffer a lack of ethics and abuse the privileges afforded them by the legislature. Yet, the underlying lack of a constitutional guarantee of free speech leaves only the implied acknowledgement of political freedom of speech, a very small comfort in a court of law.

In the end, the evidence presented credibly supports the effectiveness of current policy in Australia. However, the rapidly evolving nature of national and international media makes this issue one that must be continuously readdressed. Finally, diligent, ethical action on the part of the Fourth Estate

will build a perception of trust and integrity, which will in turn allow them more freedom to do their job.

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