

MALLESONS STEPHEN JAQUES

Ms Monika Sheppard
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Senate Standing Committee on Legal and
Constitutional Affairs
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Dear Ms Sheppard

Inquiry Into the Evidence Amendment (Journalists' Privilege) Bill 2009

I refer to the hearing before the Senate Standing Committee on Legal and Constitutional Affairs held on Tuesday 28 April 2009 at which I appeared on behalf of Australian Associated Press together with Ms Emma Cowdroy, AAP's General Counsel. You will recall that during the hearing Senator Fisher invited me to prepare a short note regarding the protections available to journalists in various jurisdictions in Australia. This letter constitutes that note.

New South Wales is currently the only State to have enacted legislation protecting journalists' confidential sources. This protection takes the form of a "professional confidential relationship privilege" in Division 1A of the *Evidence Act 1995 (NSW)*.

The terms of the NSW privilege are relevantly the same as those currently found in Division 1A of the *Evidence Act 1995 (Cth)* which the Bill presently before the Committee seeks to amend. The only pertinent difference is that the NSW privilege extends broadly to "*relationship[s] in which the confidant was acting in a professional capacity*" (section 126A(1)) while the Commonwealth privilege is targeted specifically to journalists.

In 1993 the Law Reform Commission of Western Australia in its *Report on Professional Privilege for Confidential Communications* of May 1993 recommended the enactment of a general discretion for courts to protect professionals against disclosure of confidential communications, along the same lines as the current NSW privilege. However this proposal has not been adopted to date.

In a 2005 joint report on the Uniform Evidence Law (ALRC 102), the Federal, New South Wales and Victorian Law Reform Commissions recommended that the Uniform Evidence Acts be amended to include a professional confidential relationship privilege modelled on the NSW privilege. The current Commonwealth privilege was enacted in response to this recommendation.

Yours sincerely



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