



# WHO IS A JOURNALIST?

## THE LEGAL DEFINITIONS



# SUMMARY

---

## ➞ KEY POINTS

- Legal definitions of journalist operate in every Australian State and Territory, as well as under federal law.
- These definitions fall into six broad categories.
- They primarily underpin statutory protections for journalists' confidential sources.

## ➞ REFORM CONSIDERATIONS

- Is it possible to effectively define a journalist in law?
- How should journalist be defined?
- Should a uniform definition be adopted?



[law.uq.edu.au/research/press-freedom](http://law.uq.edu.au/research/press-freedom)

# WHO IS A JOURNALIST? THE LEGAL DEFINITIONS

Background Briefing 1/2021

This paper is the first in a series looking at the meaning of ‘journalist’ from a legal standpoint.

In this Policy Paper I examine the current definitions of journalist in Australian law, including how they are defined, where they are, and why they exist. These definitions arise in relation to legal protections and privileges intimately connected to press freedom and the democratic function of journalism.

## Is It Possible to Define ‘Journalist’ in Law?

Legal definitions of any kind necessitate drawing a line: including or excluding people or things from a group. Defining who is (and, therefore, who isn’t) a ‘journalist’ is one such exercise, with complex and important consequences. While defining ‘journalist’, ‘journalism’ or ‘the press’ has never been simple, it has become exponentially more difficult in the modern age. Debates around the definitions of these terms thrive across a range of disciplines from academic scholarship to the profession of journalism itself.

Despite the general consensus that defining ‘journalist’ and ‘journalism’ in concrete terms is difficult, definitions do exist.

The **first statutory definition** of journalist appeared in s 202(5) of the *Broadcasting Services Act 1992* (Cth) (‘Broadcasting Services Act’), which provided that:

**For the purposes of this section, ‘journalist’ means a person engaged in the profession or practice of reporting, photographing, editing, recording or making television or radio programs of a news, current affairs, information or documentary character.**

That definition has remained substantially unchanged, but for the addition of ‘datacasting content’ in 2001.

Before 1992, the closest relevant provisions defined a ‘financial journalist’ in now-outdated terms. For instance, the *Securities Industry Act 1970* (WA) s 24 and *Securities Industry Act 1971* (Qld) s 30 defined a financial journalist as ‘a person who contributes advice concerning securities or prepares analyses or reports concerning securities for publication in a bona fide newspaper or periodical.’ These definitions **gradually broadened** over the 1970s and 1980s, but remained narrowly focussed on the preparation of reports and advice ‘about securities for publication’.

Australian legislative definitions of journalist are largely a **21st century phenomenon**, developing alongside legal protections for journalistic sources<sup>1</sup>. Today, 16 definitions of journalist and 1 definition of journalism appear in Australian statutes.



“Journalist may be an indefinable occupation.”  
Clay Calvert<sup>2</sup>

“...there is ongoing debate and discussion about who is a journalist...”  
Janet Fulton<sup>3</sup>

“...the difficulty in defining journalism is undeniable...”  
Hannah Ryan<sup>4</sup>

## Definitions for Source Protection

Definitions of journalist are primarily found in laws that protect journalistic sources, namely, whistleblower protections and evidentiary shield laws.

**Whistleblower laws**, found in *Public Interest Disclosure Acts* across Australia as well as the federal *Corporations Act*<sup>5</sup>, encourage individuals to ‘blow the whistle’ on illegal, immoral, or illegitimate practices and protect them for doing so – provided certain conditions are met. These regimes create avenues for protected disclosures, not only within organisations or departments, but externally – including to ‘journalists’.

**Shield laws** are found in Evidence Acts across Australia, but for Queensland<sup>6</sup>. These laws create a limited form of privilege which allows a ‘journalist’ or their employer to refuse to disclose the identity of a confidential source.

Both whistleblower and shield laws are necessary in enabling the **free flow of information** in a democracy. Journalistic sources, including whistleblowers, are less likely to supply the media with information if they believe that journalists will be unable to maintain their anonymity, further emphasising the need for clarity of who and what a journalist is. The scope of the protection conferred by these laws varies between different jurisdictions, and the lack of a uniform definition of journalist has the potential to create confusion and complexity.

## The Definitions

The 17 existing definitions can be approached as **six broad categories** based on textual variations.

These are:

1. A **Leading Definition**: the most commonly adopted definition in law.
2. A **Process-Based Definition** that emphasises the process of publication.
3. A **Concise Definition** that focuses on the person being engaged in the publication of news.
4. A **Material-Based Definition** which focuses on the material produced in the practice of journalism.
5. An **Activity-Based Definition** which lists the activities that may constitute the general activities of a journalist.
6. An **Organisation-Based Definition** emphasising a professional affiliation to an industry entity.

	CTH	QLD	NSW	VIC	WA	SA	TAS	ACT	NT
<b>Evidence Acts</b> (shield laws)	3		1	1	1	1		3	2
<b>Public Interest Disclosure Acts</b> (whistleblower protections)		1	1		1	1			
<b>Court Security Acts</b> (rights on court premises)			5				6		
<b>Corporations Act</b> (whistleblower protections)	6								
<b>Broadcasting Service Act</b> (shield laws)	5								
<b>Police Act</b> (provision and use of agency photographs)				4					
<b>Right to Information Act</b> (waiver of application fees)							6		

Table 1: Legislation Defining Journalist or Journalism.





## 1. The Leading Definition

**Journalist** means a person engaged in the profession or occupation of journalism in connection with the publication of information in a *news medium*.

The 'Leading Definition' includes eight definitions found across the shield laws of NSW, Victoria, WA and SA<sup>7</sup>, and whistleblower laws in the Public Interest Disclosure Acts ('PIDA') of Queensland, NSW, WA and SA<sup>8</sup>. The most common variant of the Leading Definition constrains journalists to a particular professional or employment status but allows 'publication' to be made through a broadly framed 'news medium'.

A close variant on this is found in the whistleblower laws of Queensland (s 20(4)) and New South Wales (s 4):

**Journalist** means a person engaged in the occupation of writing or editing material intended for publication in the print or electronic news media.

Under this definition, a journalist continues to be constrained to a particular form of employment but is limited to 'writing and editing' and can only publish through 'print or electronic' news media (though this may be capable of a more expansive meaning).

A further variant, found in s 126J of *Victoria's Evidence Act 2008*, includes a list of additional factors to be considered when determining if someone is 'engaged in the profession or occupation of journalism'.

These factors include:

- whether a 'significant proportion' of a person's time is spent collecting information or commenting on 'news or current affairs' (s 126J(2)(a));
- the regularity by which the person's collected information or opinions are published (s 126J(2)(b)-(c)); and
- whether the process of that person's work is subject to 'recognised journalistic or media professional standards or codes of practice.' (s 126J(2)(a)).



“A journalist is trained, a journalist is skilled, a journalist abides by a code and abides by the obligations of a high journalistic standard ...

A journalist is there to inform the public about what’s important to them and a journalist exercises due diligence in the way that they go about doing it ... And a journalist operates to a standard of objective journalism, and a journalist is also trained in how to exercise their obligations as a journalist.”

**David Anderson**

Managing Director of the ABC<sup>9</sup>.

## NEWS MEDIUM

‘News medium’ is an important element of legislative definitions of ‘journalist’. It is the platform or dissemination method by a hypothetical journalist uses to publish information. It may include television, newspaper, blogs, radio or, potentially, twitter feeds. Variant 1 is used by the Leading Definition and the Concise Definition, while Variant 2 is used by the Process-Based definition.

### Variant 1:

**news medium** means any medium for the dissemination to the public or a section of the public of news and observations on news.

### Variant 2:

**Evidence (National Uniform Legislation) Act 2011** s 127A

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

In *Kumova v Davison* [2021] FCA 753, Justice Flick elaborated on the Variant 1 definition to hold that a news medium ‘must remain a medium which is routinely or regularly used by journalists as a medium primarily, or at least substantially, for the publication of “news” as opposed to a medium which may from time to time be the source of “news”’ (at [44]). This elaboration means any medium purported to be a ‘news medium’ must now meet yet to be defined thresholds of regularity of publication, normative use by ‘journalists’ and character of material.







## THE NEW ZEALAND DEFINITION

**Journalist** means 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.

New Zealand's statutory definition of 'journalist', found in s 68 of their *Evidence Act 2006* (NZ), reflects similar elements as Australian definitions but is slightly more constrained, highlighting especially a journalist's role as the recipient of information by an informant. This reception must be 'in the normal course of [the journalist's] work' and information must be disclosed in the expectation that it be disseminated to the public.

## 2. The Process-Based Definition

**Journalist** means a person who obtains new or noteworthy information about matters of public interest; and deals with the information by:

- a. preparing the information for a news medium; or
- b. providing comment, opinion or analysis of the information for a news medium.

This definition, found in s 127A of the Northern Territory's *Evidence (National Uniform Legislation) Act 2011*, eschews reference to a profession, occupation or practice and instead defines a journalist as a person who engages in a two-step process. First, they must obtain 'new or noteworthy information about matters of public interest'. Second, the person must deal with the information by: preparing it for a news medium (bringing to mind the work of editors, photo-journalists and support staff as well as traditional journalists), or providing comment, opinion or analysis of the information for a 'news medium'.

### 3. The Concise Definition

**Journalist** means a person who is engaged and active in the publication of news and who may be given information by an informant in the expectation that the information may be published in a news medium

By using broader language and fewer qualifying terms, this Concise Definition, found in s 126J(1) of the *Evidence Act 1995* (Cth) and *Evidence Act 2011* (ACT), extends the scope of ‘journalist’ individuals who would potentially fall outside the scope of other definitions. This definitional breadth helps to ensure potential sources may disclose to a wide array of journalists – including those who, while lacking professional status or industry affiliation, are nonetheless ‘engaged and active’ in publishing news.

However, the breadth of the Concise Definition was arguably narrowed by the Court’s approach in the recent case of *Kumova*.

### 4. The Material-Based Definition

**Journalism** is the practice of collecting, preparing for dissemination or disseminating any of the following material for the purpose of making it available to the public—

- a. material having the character of news or current affairs;
- b. material consisting of commentary or opinion on or analysis of news or current affairs;

In many ways the Material-Based Definition resembles the Concise Definition: it neither constrains journalism to a profession or occupation, nor makes reference to professional affiliations. The Material-Based Definition appears to limit journalism by reference to the character of the material the journalist is dealing with, namely: news, current affairs, or commentary, opinion or analysis of such. The Concise Definition requires that the journalist be ‘engaged and active in the publication of news’ – which arguably includes current affairs and reflections on such.

As the only definition of ‘journalism’ in Australia (found in s 235 of Victoria’s *Police Act 2013*), this definition may assist anyone attempting to navigate the definitions of ‘journalist’ as it identifies the nature of material that journalistic processes should possess: ‘news or current affairs’, ‘commentary’, ‘opinion[s]’ or ‘analys[es]’.

#### **KUMOVA V DAVISON [2021] FCA 753**

The Concise Definition of journalist was given judicial consideration in the case of *Kumova* and stands as the only reported Australian case giving substantive judicial consideration to a statutory definition of journalist. The case concerned alleged defamatory statements made by Davison through his Twitter account ‘@stockswami’. Davison, in attempts to rely on the federal shield law, argued unsuccessfully that he was a ‘journalist’ whose twitter feed was a ‘news medium’.

Justice Flick considered the federal definition in light of the additional factors set out in the *Victorian Evidence Act*. This arguably served to constrain the definition in ways the actual text of the definition did not; by, for example, introducing considerations of profession and occupation, and the individual’s compliance with established professional standards and/or codes of practice (at [33]).

It is important to note that Justice Flick’s interpretation of the Concise Definition is not determinative of how courts will interpret the other definitions, given the textual difference between categories. Justice Flick himself lamented the perhaps ‘inevitable’ divergence of judicial approaches to defining ‘journalist’ (at [16]).





## 5. The Activity-Based Definition

**Journalist** means a person engaged in the profession or practice of reporting, photographing, editing or recording for a media report of a news, current affairs, information or documentary character.

The NSW Court Security Act 2005 s 4 and the federal *Broadcasting Service Act 1992* s 202(5) contain the Activity-Based Definition. This definition lists specific activities that, in the absence of judicial interpretation, may be part of a journalist's normal course of work or the entirety of their profession. If the former, the definition serves to include more than the listed activities including writing, researching and, as in New Zealand, even blogging<sup>10</sup>. If the latter, then the definition requires an individual to engage in a listed activity to be afforded journalistic status.

"If you're going to just dump documents into the world and go, 'Oh well, I'm conducting some kind of public duty,' and people's lives are in danger because of that, that's not journalism; that's irresponsibility."

Campbell Reid,  
*News Corp Australia*<sup>11</sup>.



## 6. The Organisation-Based Definition

**Journalist** means a person who –

- a. is engaged in the profession or practice of reporting, photographing, editing or recording for a media report of a news, current affairs, information or documentary nature;
- b. is paid to perform that profession or practice by a person, or body, that –
  - i. is subject to a code of ethics and a procedure for the Australian Press Council, or for another person or body that is prescribed, to deal with complaints about persons engaging in such a profession or practice; or
  - ii. is the holder of a licence under the *Broadcasting Services Act 1992* of the Commonwealth.

The Organisation-Based Definition, in the Tasmanian *Right to Information Act 2009* s 5(1) and *Court Security Act 2017* s 3, require journalists to have a professional affiliation to an industry entity. They make direct reference to an entity's ethical obligations and licensing. Under this definition, the nature of a journalist's publication and the processes they engage in are secondary to the status of their employer. A more recent definition, this perhaps reflects a greater trust in institutional self-regulation than in the individuals who may claim to be journalists.



## Reform Considerations

It has taken almost 30 years for these six broad categories of ‘journalist’ to manifest in law. Whilst more recent definitions reflect lawmakers’ recognition of definitional evolution and the rapidly changing modern media landscape, they also highlight a **lack of uniformity** and **openness to experimentation** in definitional approaches across Australia. This gives rise to issues around clarity and **complexity**.

Potentially difficult questions arise for potential **informants and whistleblowers**, having to weigh their own welfare against the public’s ‘right to know’ as they try to assess who is a ‘journalist’ capable of offering them legally supported **assurances of confidentiality**.

A lack of clarity also undermines confidence in who the press might be and creates a potential ‘chilling effect’ through **self-censorship** by sources and media actors. This, in turn, implicates the democratic function of the press.

Whilst this survey has demonstrated that defining journalist and journalism is possible, important considerations arise as to the future of defining ‘journalist’: Should a **uniform definition** be adopted? What are the essential characteristics of a ‘journalist’? And what makes an **effective definition** of journalist?





## About the Author

### Dominic Frost

Dominic is a Research Assistant for the UQ School of Law where he is involved in UQ's Press Freedom Project led by Dr Rebecca Ananian-Welsh and Professor Peter Greste. Dominic's research interests are in areas of Public Law and Information Security.

## About the Series

Press Freedom Policy Papers offer short, evidence-based insights and recommendations informed by scholarship and consultation.

**Background Briefings** outline important events and context to inform policy development and law reform in the area of media freedom.

**Reform Briefings** present targeted, balanced and evidence-based recommendations for law reform to support press freedom.

The Press Freedom Policy Papers are made possible by a donation from the Estate of Douglas Slatter and Elizabeth Chambers and from David and Diane Brown.

## Read More

This Press Freedom Policy Paper is based on research which contributed to the article by Rebecca Ananian-Welsh: 'Who is a Journalist? A Critical Analysis of Australian Statutory Definitions' which will be published in a forthcoming issue of the *Federal Law Review*.

## Series Editors

Dr Rebecca Ananian-Welsh: [rebecca.aw@law.uq.edu.au](mailto:rebecca.aw@law.uq.edu.au)

Associate Editor: Renato S. M. Costa: [r.costa@uq.edu.au](mailto:r.costa@uq.edu.au)

## References

- 1 *Broadcasting Services Act 1992* (Cth) s 202(5); *Evidence Act 1995* (Cth) s 126J(1); *Corporations Act 2001* (Cth) s 1317AAD(3); *Public Interest Disclosure Act 2010* (Qld) s 20(4); *Public Interest Disclosure Act 1994* (NSW) s 4; *Court Security Act 2005* (NSW) s 4; *Evidence Act 1995* (NSW) s 126J(1); *Evidence Act 2008* (Vic) s 126J(1); *Evidence Act 1906* (WA) s 20G; *Public Interest Disclosure Act 2003* (WA) s 7A(1); *Evidence Act 1929* (SA) s 72; *Public Interest Disclosure Act 2018* (SA) s 4; *Court Security Act 2017* (Tas) s 3; *Right To Information Act 2009* (Tas) s 5(1); *Evidence Act 2011* (ACT) s 126(1); *Evidence (National Uniform Legislation) Act 2011* (NT) s 127A(6).
- 2 Clay Calvert, 'And You Call Yourself a Journalist: Wrestling with a Definition of Journalist in Law' (1998) 103(2) *Dickinson Law Review* 411, 450.
- 3 Janet Fulton, 'Are You A Journalist? New Media Entrepreneurs and Journalists in the Digital Space' (2015) 22(4) *Javnost - The Public* 362, 371.
- 4 Hannah Ryan, 'What's in a Name? Bloggers, Journalism, and Shield Laws' [2014] 33(4) *Communications Law Bulletin* 10, 12.
- 5 *Corporations Act 2001* (Cth) s 1317AAD; *Public Interest Disclosure Act 2012* (ACT) s 27; *Public Interest Disclosure Act 1994* (NSW) s 4; *Public Interest Disclosure Act 2010* (Qld) s 20(4); *Public Interest Disclosure Act 2018* (SA) s 4; *Public Interest Disclosure Act 2003* (WA) s 7A.
- 6 *Evidence Act 1995* (Cth) s 126K; *Evidence Act 1995* (NSW) s 126K; *Evidence Act 1929* (SA) s 72B; *Evidence (National Uniform Legislation) Act 2011* (NT) s 127A; *Evidence Act 2011* (ACT) s 126K; *Evidence Act 1906* (WA) s 20I; *Evidence Act 2001* (Tas) s 126B; *Evidence Act 2008* (Vic) s 126K.
- 7 *Evidence Act 1995* (NSW) s 126K; *Evidence Act 2008* (Vic) s 126K; *Evidence Act 1906* (WA) s 20I; *Evidence Act 1929* (SA) s 72B.
- 8 *Public Interest Disclosure Act 2010* (Qld) s 20(4); *Public Interest Disclosure Act 1994* (NSW) s 4; *Public Interest Disclosure Act 2003* (WA) s 7A(1); *Public Interest Disclosure Act 2018* (SA) s 4.
- 9 See *Slater v Blomfield* [2014] NZHC 222.
- 10 Mr David Anderson, Managing Director, Australian Broadcasting Corporation (ABC), Committee Hansard, Sydney, 13 August 2019, 3.
- 11 Mr Campbell Reid, Group Executive, Corporate Affairs, Policy and Government Relations, News Corp Australia, Committee Hansard, Sydney, 13 August 2019, 13.



---

CREATE CHANGE

For more information,  
please contact

**T:** +61 7 3365 2218

**E:** [rebecca.aw@law.uq.edu.au](mailto:rebecca.aw@law.uq.edu.au)

**W:** [law.uq.edu.au](http://law.uq.edu.au)

**A:** Level 3, Forgan Smith Building (1)  
The University of Queensland  
St Lucia QLD 4072, Australia

CRICOS Provider 00025B