

Evidence Law Review

Privileges: What the law protects

Background Paper 3

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Postal address: PO Box 13312, George Street Post Shop, Brisbane, QLD 4003

Telephone: (07) 3564 7777

Email: LawReform.Commission@justice.qld.gov.au

Website: [www.qlrc.qld.gov.au](http://www qlrc.qld.gov.au)

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Summary

Privilege is the legal justification to refuse to give evidence or produce documents relevant to a current proceeding. The focus of the law of privilege is the circumstances in which a person communicates information.

Privilege aims to strike an appropriate balance between two public interests. One is the public interest in protecting the confidentiality of specific communications and relationships. The other is the public interest in disclosing all relevant and admissible evidence to support courts in accurate fact finding and just determination of issues in dispute.

While the different types of privilege share this common rationale, they balance and promote these competing interests in distinct ways. Different privileges also respond to specific policy aims and pragmatic objectives. These include supporting the efficient and effective administration of justice, protecting and promoting particular interests and relationships, encouraging frank communication within those relationships, and minimising undue interference by the law. This creates notable differences between the types of privilege in their scope and application, the strength of their protection, and their exceptions and qualifications.

In this Background Paper, we explore the privileges currently available in Queensland and those recognised in other Australian jurisdictions. We consider their respective origin, rationale, scope, application, and interpretation. We also identify key issues with the privileges framework, and particular types of privilege, that we will explore in our review.

Introduction

1. This Background Paper explores the privileges recognised by Queensland law, as well as those of other Australian jurisdictions. It considers their nature, scope, policy intent, operation, and development.
2. While the legal framework for privilege has been relatively stable, it continues to evolve to reflect changing community attitudes and standards. The broader context also continues to evolve. Commentators have noted our growing determination to ensure the rules of evidence do not obstruct us from discovering the truth.¹ This reflects a broader trend towards greater openness, accountability, and proactive information-sharing, and only withholding information from decision-makers and the public where there is a compelling reason to do so.² The Government is increasingly prioritising positive reporting obligations and transparency in the absence of strong policy justifications to protect confidentiality. This is particularly evident where the information is relevant to offending against people with heightened vulnerabilities, such as children, or people who are experiencing domestic and family or sexual violence.³
3. We can observe a resulting shift towards a more nuanced approach to scoping, implementing, and interpreting privileges. Courts have been increasingly discerning in recognising privilege.⁴ This may reflect the view that Parliament, rather than the judiciary, should recognise new privileges. It may also reflect a reluctance to extend the privileges framework in a way that limits the relevant evidence available to courts. For example, the High Court referenced the social problems arising from fraud perpetrated behind a 'corporate veil' as a reason for refusing to extend the privilege against self-incrimination to corporations.⁵ Parliament has also abolished certain privileges, such as marital privilege generally,⁶ and the privilege against forfeiture,⁷ and title to land in criminal proceedings.⁸
4. Yet privileges remain an important and established part of the legal framework in Queensland and Australia.
5. This paper discusses the following privileges recognised by Queensland common law and/or statute:
 - **Privilege against self-incrimination**, which allows a person to refuse to give evidence tending to expose them to a criminal charge or civil penalty.
 - **Public interest immunity**, formerly known as 'Crown privilege', which protects information that would damage an important public interest from disclosure, such as information about national security, sensitive government deliberations, or current investigations.
 - **Legal professional ('client legal') privilege**, which protects confidential communications between a person and their lawyer made for the dominant purpose of obtaining legal advice or preparing for litigation.
 - **Settlement negotiations ('without prejudice') privilege**, which protects evidence of communications made in connection with attempts to resolve a dispute.
 - **Journalist privilege**, which protects the identity of a journalist's source of information.
 - **Sexual assault counselling privilege**, which protects communications between a person who has, or alleges to have, experienced sexual assault and their counsellor.
6. Our amended terms of reference exclude sexual assault counselling privilege from our review.⁹ We discuss the privilege in this paper as it is part of Queensland's privileges framework and is relevant to understanding other aspects of our review. However, we will not examine or make recommendations about sexual assault counselling privilege.

7. This paper also discusses the following privileges recognised by other Australian jurisdictions, but not under Queensland law:
 - **Professional confidential relationship privilege**, which protects confidential communications made in the context of certain professional relationships.
 - **Religious confessions privilege**, which protects confessions made by a person to a member of clergy of any religious denomination, acting in their professional capacity and in accordance with the rituals of their church or denomination.
 - **Doctor-patient privilege**, which protects information provided in a doctor-patient relationship.
8. **Table 1** (page 10) shows the privileges different Australian jurisdictions have recognised.
9. We do not explore parliamentary privilege in this paper. Parliamentary privilege is a distinct type of immunity which establishes special rights and legal immunities relevant to protecting the core functions and independence of Parliament.¹⁰ It protects members of Parliament from being compelled to give evidence without the permission of the House, and provides them with immunity from legal redress arising from anything said in Parliament. While Queensland law and the uniform evidence law (UEL) recognise this immunity, it is outside the core evidence law framework.¹¹ It is also not a true privilege, as it focuses on protecting the constitutional functions and institution of Parliament.
10. While the different types of privilege share common features and rationales, they differ in key ways. As we discuss below, primary differences relate to who holds the privilege, its strength, and the context in which it applies.

Human rights

11. Human rights law provides an important lens to explore and analyse the different types of privilege. Privilege engages key human rights considerations, centred around upholding the right to a fair hearing and the right to privacy.
12. The rules of privilege limit the right to a fair hearing, as they restrict the admissibility of evidence relevant to an issue in dispute. On the other hand, they promote the right to privacy by preventing the disclosure of personal information shared with an expectation of confidentiality.
13. Chief Justice Gageler stated that rules of privilege ‘reflect systemic values and individual interests (some in the nature of human rights) the protection of which our society treats as of sufficient importance as to always or sometimes outweigh the importance of ascertaining the truth in order to do justice in an individual case.’¹² His Honour cited the privilege against self-incrimination, client legal privilege, and public interest immunity as examples of this.¹³
14. Below, we explore human rights considerations relevant to different types of privilege.

The nature of privilege

What is privilege?

Privilege is a legal doctrine that gives a person the right to refuse to provide evidence that they would otherwise be compelled to provide. It is an exception to the general principle that courts should have access to all relevant evidence.

Understanding privilege

15. Privileges are rules of evidence. Some types of privilege are also substantive legal rights.¹⁴ This means they apply at common law, beyond the scope of evidence law, unless statute clearly and specifically alters or abrogates them. For example, Australian courts have recognised legal professional ('client legal') privilege as a substantive common law right, as it protects the confidentiality of communications created within lawyer-client relationships beyond, and independently of, litigation.¹⁵
16. Different types of privilege have different sources. Some, such as the privilege against self-incrimination and settlement negotiations privilege, have a long history of common law recognition. Others are only recognised in statute, such as professional confidential relationship privilege, journalist privilege, and sexual assault counselling privilege.
17. There is no general right to refuse to disclose relevant information. To refuse disclosure, a person must rely on a privilege recognised at common law or by statute. In 1940, Justice Dixon highlighted the critical importance of 'revealing the truth in the witness box', even in the face of an 'obligation of honour' or duty of non-disclosure 'arising from the nature of a pursuit or calling'.¹⁶ This remains an accurate reflection of the current Australian approach to recognising privilege.
18. While confidentiality is fundamental to privilege, confidentiality does not create privilege. Rather, privilege is the mechanism to legally enforce confidentiality within a relationship that arises in certain circumstances.
19. Privilege differs from other rules regulating witnesses giving evidence. It is distinct from, though sometimes overlaps with, competence and compellability.¹⁷
20. Competence is a person's capacity to lawfully give evidence. Where the court finds that a witness lacks capacity to understand and give an answer the court can understand about a fact, they are not competent and cannot give admissible evidence about it.¹⁸
21. Compellability is the legal compulsion to give evidence. It attaches to a person due to their status. Generally, a person who is legally competent is compellable to give evidence.¹⁹ When a person is non-compellable, a party cannot force them to attend court and testify, although a subpoena may still compel them to produce relevant documents. Under the UEL, classes of people, including people with reduced capacity, heads of state, judges and jurors, defendants in criminal trials, spouses, and other specific family members, are not compellable in certain circumstances.²⁰
22. A competent and compellable witness may claim privilege in refusing to answer a question(s) put to them, relying on a type of privilege recognised at common law or by statute. Privilege relates to the specific information or communications they are asked about, whereas competence and compellability relate to whether the person gives evidence at all.²¹ Despite their conceptual difference, they can have similar outcomes. For example, both spousal

incompetence and marital privilege can prevent the court from receiving the same information.

23. Privilege is also distinct from public interest immunity, although they operate in a similar way. Public interest immunity justifies withholding relevant information to protect matters of state or national security.²² It is not a privilege, as it has none of the following characteristics:
- It does not necessarily protect communications made in a relationship.
 - It is not dependent on a party claiming privilege.
 - It cannot be waived by the parties.
 - Secondary evidence of a document protected by it cannot be disclosed.²³
24. A person must usually claim privilege to rely on it and must claim privilege in response to specific questions or requests for information, rather than as a 'blanket objection'.²⁴ Only the person who holds the privilege can waive it, although, as we discuss below, the holder of the information is not necessarily the person who claims, invokes, or exercises the privilege.²⁵

Policy intent

25. The different types of privilege share a common core rationale of protecting the confidentiality of specific communications, relationships and institutions, and requiring parties to disclose all relevant and admissible evidence to support courts in accurate fact finding and determining just outcomes. They balance and promote the competing interests underpinning them in distinct ways. Different privileges also respond to specific policy aims, including promoting rights- and principles-based interests, and address pragmatic concerns, such as supporting efficient and effective court processes.
26. For example, all Australian jurisdictions recognise the privilege against self-incrimination, which is a right to refuse to answer questions that may result in a criminal charge or penalty. It operates broadly to support the presumption of innocence, protect the right to dignity, privacy and liberty, and promote fairness and equality in the justice system. It also encourages witnesses to cooperate with investigators and prosecutors, protects individuals from unlawful coercion, and reduces the incidence of false confessions and untruthful evidence. Other types of privilege, such as legal professional privilege and journalist privilege, are specific to certain relationships. Legal professional privilege protects communications or documents made during the lawyer-client relationship in court and pre-trial proceedings. It aims to facilitate access to legal advice, support our adversarial system to function, and promote the effective administration of justice. Journalist privilege protects journalists' freedom to investigate and report on public interest matters while protecting the anonymity of their sources, to encourage the free flow of information and reporting in a democratic society.
27. The types of public interest that the law protects through privileges and public interest immunity can change over time to reflect changing social attitudes.²⁶
28. We explore the policy intent of the different types of privilege further below.

Scope and application of privilege

29. Privileges have a wide scope and can apply in different types and stages of processes. At common law, some privileges are only rules of evidence. Others, such as legal professional privilege and privilege against self-incrimination, are also standalone legal rights.²⁷ This means they apply to any process where the body or entity has power to compel a person to disclose information.
30. The Queensland Evidence Act only legislates privileges not recognised at common law.²⁸ These privileges apply to the circumstances specified in the Act. For example, the Queensland Evidence Act legislates journalist privilege to apply to courts, pre-trial processes, and search warrants.²⁹
31. The UEL legislates privileges recognised at common law as well as those not recognised at common law. These privileges only apply to courts and their pre-trial processes.³⁰ In contexts outside the scope of the UEL, privileges that are standalone legal rights at common law still apply.

Privileges are seldom absolute

32. The law recognises privileges as absolute or qualified:
 - Absolute privilege provides complete protection from disclosure.
 - Qualified privilege provides discretionary protection from disclosure.
33. Some privileges, such as the privilege against self-incrimination, offer the claimant absolute protection at common law. Others, such as professional confidential relationship privilege, are not automatic and rely on the court recognising privilege in the exercise of its discretion. Still others, such as sexual assault counselling privilege, take a hybrid form, offering qualified and absolute protection at different stages of proceedings.
34. While the law broadly categorises privileges in this way, privileges are rarely watertight and even absolute privileges seldom offer a person unqualified immunity. The sources of vulnerability in their protection differ between the types of privilege and can arise from the court's balancing of competing public interests or from the application of recognised exceptions.
35. The common law also recognises exceptions to privilege, such as when the parties agree to the use of evidence.
36. A person can waive their right to certain types of privilege. Waiver occurs when a person entitled to privilege acts inconsistently with the confidence it preserves, with the effect that the normal disclosure requirements apply.³¹ Waiver does not apply to all types of privilege and immunity.³²
37. As we discuss below, legal professional privilege is one of the strongest forms of privilege as the court cannot order disclosure of materials covered by this privilege even if they are highly probative. However, it can still be waived, and the law recognises exceptions to the privilege, such as where communications are made to further a criminal or fraudulent purpose.
38. In practice, there can be a lack of clarity in the distinction between these concepts. Some commentators suggest that a qualified privilege is not a true privilege as the holder cannot definitively assert and rely on it.³³ Rather, its availability depends on the court substantiating the assertion of privilege, in circumstances where it is open to the court to order a party to give relevant evidence notwithstanding a claim of privilege.

Table 1: Privileges currently recognised in Australian jurisdictions

Jurisdiction	Self-incrimination	Public interest immunity	Legal professional ('client legal')	Settlement ('Without prejudice') negotiations	Journalist	Sexual assault counselling	Professional confidential relationship	Religious confessions	Doctor-patient
Qld	✓	✓	✓	✓	✓	✓	X	X	X
Cth	✓	✓	✓	✓	✓	X	X	✓	X
NSW	✓	✓	✓	✓	✓	✓	✓	✓	X
Tasmania	✓	✓	✓	✓	X	✓	✓	✓	✓
Victoria	✓	✓	✓	✓	✓	✓* ³⁴	X	✓	✓* ³⁵
ACT	✓	✓	✓	✓	✓	✓* ³⁶	✓	✓	X ³⁷
NT	✓	✓	✓	✓	✓	✓* ³⁸	X	✓	✓* ³⁹
WA	✓	✓	✓	✓	✓	✓	✓	✓ ⁴⁰	X
SA	✓	✓	✓	✓	✓* ⁴¹	✓	X	X	X
Model Bill	✓	✓	✓	✓	X	✓	✓	✓	X

* = The privilege is available in a non-UEL Act.

^ = The privilege is available as part of another privilege.

Privileges recognised in Queensland

Privilege against self-incrimination

Key Facts

- Recognised at common law.
- In Queensland, the common law applies, subject to statutory modifications in certain contexts. A person may claim the privilege to refrain from answering a question or producing a document during court proceedings or in other circumstances when they are required to disclose information.
- The UEL modifies the privilege for judicial proceedings and civil search orders. Rather than providing an absolute privilege, it allows a person to object to giving incriminating evidence. If the court requires them to give the evidence, the court will grant them an immunity protecting that evidence.



- ✓ Model Bill
- ✓ Cth
- ✓ NSW
- ✓ Tas
- ✓ Vic
- ✓ Qld
- ✓ ACT
- ✓ NT
- ✓ WA
- ✓ SA

39. The privilege against self-incrimination is a fundamental rule of the common law.⁴² A person is entitled to refrain from answering a question or producing a document if to do so would expose them, directly or indirectly, to a criminal charge or civil penalty.⁴³
40. While the privilege against self-incrimination applies to all persons,⁴⁴ it has unique consequences for an accused person in criminal proceedings. They may elect to not give evidence at trial and remain silent, from which no adverse inference may be drawn against them.⁴⁵ If an accused person decides to give evidence, they forfeit the privilege against self-incrimination in respect of the charge currently against them.⁴⁶
41. There are differing views on the history of this privilege.⁴⁷ Traditionally, it was thought that it developed in opposition to the procedures of the Court of Star Chamber and Court of High

Commission.⁴⁸ During criminal proceedings in these courts, an accused was bound to take an oath to tell the truth and subjected to an examination. After this process was abolished, it was thought that the privilege emerged to safeguard against similar abuses in the future.⁴⁹

42. More recent research has doubted the accuracy of this view,⁵⁰ and proposed that the privilege emerged during the late 18th century, alongside changes to criminal procedure.⁵¹ During this time, the adoption of the presumption of innocence and the requirement of proof beyond a reasonable doubt, in conjunction with the rise of defence counsel, changed the nature of criminal trials.⁵² These and other changes shifted a criminal trial from one where the 'accused speaks', to one where the defence is 'testing the prosecution'.⁵³ It is argued that among these changes, the modern privilege against self-incrimination emerged.⁵⁴
43. Several rationales have been advanced for the privilege against self-incrimination. It is thought to prevent state abuses of power, protect an individual's privacy and human dignity, and avoid a person from being faced with the choice of confessing or facing perjury or contempt proceedings.⁵⁵ Not all commentary on the privilege is positive.⁵⁶
44. As with many privileges, the protection against self-incrimination means that evidence that may be highly probative is withheld from the court. In this way, the privilege can restrict the court's ability to accurately fact find. Where a witness other than the accused gives evidence, the public interest in receiving the relevant and probative evidence may outweigh the merits of upholding the privilege.
45. In Queensland, the common law governs the availability of the privilege against self-incrimination or self-exposure to civil penalty during judicial proceedings. If a judge determines that a witness has reasonable grounds to claim the privilege, the witness may refrain from answering a question or producing a requested document.⁵⁷ Queensland designates this privilege a fundamental legislative principle,⁵⁸ and the Human Rights Act 2019, and international law, specifically protect the privilege for accused persons.⁵⁹
46. As a common law principle, parliament may limit or abrogate the privilege by statute, provided it uses clear and unambiguous language.⁶⁰ Several statutes modify the privilege against self-incrimination in certain contexts.⁶¹ For example, a witness in a coronial inquest may be required by the coroner to give incriminating evidence, if it is in the public interest to obtain that information.⁶² Any evidence acquired in this way is granted use and derivative-use immunity.⁶³ This means it cannot be used directly against the witness and any other evidence obtained directly or indirectly as a result of the evidence is not admissible against the witness. A similar procedure applies to witnesses called before commissions of inquiry,⁶⁴ although only the witness' oral evidence is protected by a use immunity.⁶⁵
47. In contrast with Queensland, the Model Uniform Evidence Bill and all uniform evidence Acts have modified the privilege against self-incrimination as it applies in court proceedings and civil search orders.⁶⁶
48. A witness may object to giving evidence on a particular matter if it may tend to prove they have committed an offence or are liable to a civil penalty.⁶⁷ If there are reasonable grounds for that objection, the court must inform the witness that:
 - The witness does not have to give the evidence unless required by the court.
 - The court will grant the witness an immunity certificate, if they voluntarily give evidence or the court requires them to do so.⁶⁸
49. If the witness does not voluntarily decide to give incriminating evidence, the court may overrule the witness' objection to giving evidence and require the witness to give incriminating evidence.⁶⁹ This can be done only where the evidence does not tend to prove that the witness has committed an offence or is liable to a civil penalty under a foreign law and it is in the

interests of justice to receive the evidence.⁷⁰

50. Where a witness voluntarily gives incriminating evidence after the warning or is compelled to give such evidence, the court must issue the witness an immunity certificate.⁷¹ An immunity certificate grants use- and derivative-use immunity over the relevant evidence in all Australian courts.⁷² This means the witness' evidence cannot be used against them, nor can any evidence obtained directly or indirectly as a consequence of their incriminating evidence.
51. If an accused person elects to give evidence,⁷³ they cannot then refuse to give any incriminating evidence about the offence for which they are charged.⁷⁴
52. The UEL only modifies the privilege against self-incrimination and self-exposure to civil penalty in court proceedings and civil search orders. In other circumstances, such as executive investigation, the common law or relevant statutory provisions will apply.⁷⁵

Public interest immunity

Key Facts

- Recognised at common law.
- Not strictly a privilege, as a party does not have to claim it, parties cannot waive it, and secondary evidence cannot be received.
- In Queensland, the common law applies, subject to statutory modifications. The types of evidence it may apply to are not fixed and the courts may recognise new categories.
- The UEL is in different terms but interpreted consistently with the common law.



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| ✓ Model Bill | ✓ Qld |
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| ✓ Vic | ✓ SA |

53. Formerly and inaccurately known as Crown privilege,⁷⁶ public interest immunity is a principle of the common law that excludes otherwise relevant evidence if its disclosure would injure the state or public interest.⁷⁷
54. As noted above, public interest immunity is not strictly a privilege. A party does not necessarily need to assert the immunity,⁷⁸ it cannot be waived by the parties,⁷⁹ and the court cannot receive secondary evidence of the privileged documents.⁸⁰
55. The public interest immunity at common law applies in Queensland. As a common law rule, it may be modified or abrogated by clear statutory words.⁸¹
56. To determine whether public interest immunity should prohibit the production and disclosure of evidence at common law, the court must weigh two competing public interests. They are the administration of justice, which necessitates that courts should have access to all relevant information, and the injury to the public or state interest that may arise from producing or disclosing the evidence.⁸² The relevant public or state interests are those that are governmental in character.⁸³
57. While the following categories are not exhaustive, evidence that may attract public interest immunity include:
- Cabinet documents.⁸⁴
 - Documents relating to national security.⁸⁵
 - The identity of police informants.⁸⁶
58. There are other categories of public interest immunity and more may be established in the future.
59. A claim of public interest immunity may be made over a class of documents or the contents of

particular documents.⁸⁷

60. The Model Uniform Evidence Bill and all uniform evidence Acts have a provision that allows a court to exclude evidence that relates to matters of state.⁸⁸ While stated in different terms to the common law, the Australian Law Reform Commission (ALRC) has noted that the provision was intended to 'interfere as little as possible with the common law'.⁸⁹ The common law informs the interpretation of the provision.⁹⁰
61. For evidence to be excluded under this provision, it must relate to a matter of state.⁹¹ This is similar to, although not the same as, the common law concept of the evidence having a governmental character.⁹² The legislation includes a non-exhaustive list of examples, such as evidence that may prejudice national security or the proper functioning of the government.⁹³
62. Any person may apply, or the court may itself decide, to exclude such evidence.⁹⁴ The evidence cannot be adduced if the court finds that the public interest in preserving its confidentiality outweighs the public interest in admitting it.⁹⁵ The legislation provides non-exhaustive guidance about matters that may be important in determining whether evidence should be excluded.⁹⁶
63. Like at common law, a class of documents or the contents of documents may attract public interest immunity.⁹⁷
64. The UEL provision addressing public interest immunity only applies where the UEL operates. In other circumstances, the public interest immunity at common law will apply.⁹⁸

Legal professional ('client legal') privilege

Key Facts

- Recognised at common law.
- In Queensland, the common law applies. A person may claim the privilege during court proceedings or in other circumstances when they are required to disclose information.
- It derives from a substantive legal right, fundamental to the effective functioning of our legal system and offers absolute protection, unless a person waives their right to claim privilege or an exception applies.
- The UEL approach is similar, though it extends the privilege to self-represented litigants and allows one party to waive a joint privilege in civil proceedings.



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| ✓ Tas | ✓ WA |
| ✓ Vic | ✓ SA |

65. Legal professional privilege protects communications between a person and their lawyer.⁹⁹ It is a long-established principle of common law¹⁰⁰ that derives from the 'oath and ... [loyalty] of the lawyer not to betray the client's confidence'.¹⁰¹ It is also a rule of evidence and a substantive legal right.¹⁰² The ALRC has described legal professional privilege as a human right.¹⁰³ The High Court has acknowledged that the privilege helps to promote and preserve other human rights¹⁰⁴ and that it cannot be abrogated by statute 'except by express language or clear and unmistakable implication'.¹⁰⁵
66. Legal professional privilege is intended to foster trust between lawyers and their clients and encourage honest and free disclosure of relevant information between them.¹⁰⁶ The proper administration of justice relies on people being able to obtain accurate and tailored legal advice without fearing the consequences of its disclosure.¹⁰⁷ The privilege balances the public interest in having all relevant evidence before a court with the public interest in the proper application of the rule of law and is fundamental to the effective functioning of our legal system.¹⁰⁸

67. Queensland recognises legal professional privilege at common law.¹⁰⁹ It does not recognise it in the Queensland Evidence Act or other legislation. The privilege belongs to the client, not the lawyer, and extends beyond judicial proceedings to compulsory disclosure (pre-trial) processes.¹¹⁰
68. The party claiming privilege must prove the facts to establish it.¹¹¹ The High Court adopted the modern common law test for legal professional privilege in *Esso Australia Resources Ltd v Commissioner of Taxation* ('Esso').¹¹² It protects confidential communications¹¹³ or documents made for the dominant purpose of:
- Obtaining or giving legal advice (advice privilege).
 - Actual or contemplated litigation (litigation privilege).¹¹⁴
69. A communication will be confidential if it was made in circumstances where one of the parties was under an express or implied obligation not to disclose it. This may include an 'unspoken ... ethical, moral or social obligation'.¹¹⁵ Communications can be oral conversations or documents,¹¹⁶ and must be made within the scope of the lawyer's professional capacity.¹¹⁷ The privilege does not extend to items of real evidence, observations made by the lawyer, documents intended to be placed on the public record, or documents to be served on the other party during litigation.¹¹⁸
70. Legal advice is not simply telling someone the law but includes 'advice as to what should prudently and sensibly be done in the relevant legal context'.¹¹⁹ Privilege applies only where the legal adviser is competent and independent.¹²⁰ For legal advisers internal to an organisation, this includes a degree of independence from the interests of their employer.¹²¹ Provided this level of independence is satisfied, it can apply, for example, to communications between officials within a government department and their in-house lawyers.¹²² Litigation privilege applies where proceedings are 'highly probable'¹²³ and extends to communications shared with relevant third parties, such as expert witnesses.¹²⁴
71. The privilege is lost if the client expressly or impliedly waives it.¹²⁵ An implied waiver may occur, for example, when, without objection, a witness answers a question regarding the communication in court.¹²⁶ It may also occur when, 'by reason of some conduct on the privilege holder's part, it becomes unfair to maintain the privilege'.¹²⁷ The privilege will also be lost if the communication was made to further a fraudulent or otherwise unlawful purpose,¹²⁸ or if the privilege would 'frustrate the processes of law'.¹²⁹ Unless disclosure of a privileged document is inadvertent or the document is severable, partial disclosure generally has the effect of waiving privilege over the entire document.¹³⁰
72. Like Queensland, South Australia and Western Australia also recognise this privilege at common law, although Western Australia has legislated it in its Evidence Act 2025 (yet to fully commence).¹³¹ All other Australian jurisdictions have legislated the privilege in their uniform evidence Acts, which reflect the Model Uniform Evidence Bill.¹³²
73. The ALRC has observed that, while the common law and statutory forms of the privilege both encompass a communication privilege and a litigation privilege and have the same dominant purpose test, there are differences between the two approaches.¹³³ The common law privilege, as a substantive right, continues to operate in the jurisdictions that have legislated the privilege and applies beyond the scope of evidence law, 'in the absence of some legislative provision restricting its application ... to all forms of compulsory disclosure of evidence'.¹³⁴ This includes pre-trial contexts.¹³⁵
74. The UEL refers to the privilege as 'client legal privilege', emphasising that the privilege belongs to the client, not the lawyer.¹³⁶ The statutory test reflects the common law test in *Esso*, protecting communications made for the dominant purpose of giving or receiving legal advice, or in anticipation of litigation.¹³⁷ In addition to a person or body who engages a lawyer for legal

advice or employs a lawyer, the UEL defines 'client' to include, among other things, an 'employee' or 'agent' (third party) of a client.¹³⁸ Whether a person is an 'agent' will depend on whether 'the client has expressly or impliedly authorised the "agent" to act on behalf of the client in the context of obtaining legal advice (s 118) or professional legal services relating to ongoing or anticipated litigation (s 119)'.¹³⁹ The advice privilege may also extend to 'non-agent, third-party authored documentary communications'.¹⁴⁰

75. Under the UEL, a person loses the right to claim the privilege if:
 - They have died.¹⁴¹
 - Upholding the privilege would prevent the court from enforcing an order.¹⁴²
 - The communication or document affects their rights.¹⁴³
76. Like at common law, a person can waive privilege by consenting to disclosure of the communication or acting 'inconsistently' with the privilege.¹⁴⁴ This occurs when the person 'knowingly and voluntarily' discloses the substance of the communication, or if the substance of the communication is disclosed with their express or implied consent.¹⁴⁵ Fairness is the key consideration in determining implied waiver through inconsistency,¹⁴⁶ though there is limited guidance on how the test is applied.¹⁴⁷ Inadvertent disclosures,¹⁴⁸ or disclosures made under duress,¹⁴⁹ will not lead to a loss of privilege. Under common law and statute, a person can waive privilege by using a privileged document to refresh their memory.¹⁵⁰
77. Other circumstances that will result in the loss of privilege include where:
 - A defendant adduces the evidence in a criminal proceeding.¹⁵¹
 - Two or more parties have jointly retained a lawyer for a civil matter and one waives the privilege.¹⁵²
 - The communication or document is necessary to properly understand another communication or document in relation to which privilege has already been lost.¹⁵³
 - The person made the communication to help carry out a fraud, offence, or misconduct.¹⁵⁴
78. Commentators have expressed concerns about persons claiming privilege to conceal corporate crime, and the resulting impact on corporate governance, investigations, and prosecutions.¹⁵⁵
79. A notable difference between the statutory and common law privilege is that the UEL extends the privilege to self-represented litigants.¹⁵⁶ The UEL also allows one party to waive a joint privilege in civil proceedings, while common law requires all parties to jointly waive it.¹⁵⁷

Settlement negotiations ('without prejudice') privilege

Key Facts

- Recognised at common law.
- In Queensland, the common law applies, subject to statutory modifications in certain contexts. It is not a substantive right to refuse to disclose evidence, but a right to make statements that cannot be used against the maker. It is a joint privilege, and all parties must consent to waiver.
- The UEL approach is similar. It legislates the privilege and prescribes exceptions.



- | | |
|--------------|-------|
| ✓ Model Bill | ✓ Qld |
| ✓ Cth | ✓ ACT |
| ✓ NSW | ✓ NT |
| ✓ Tas | ✓ WA |
| ✓ Vic | ✓ SA |

80. Settlement negotiations privilege, sometimes referred to as 'without prejudice' privilege, is a rule of evidence that excludes evidence of communications between parties which they

engage in while genuinely attempting to settle a civil dispute.¹⁵⁸

81. While broadly considered a privilege, it differs from other forms of privilege in that it is not a substantive right to refuse to disclose evidence but a right to make statements that another party cannot prove or use against them. As a joint privilege, all parties must consent to waive the privilege.¹⁵⁹

82. While it is closely related to legal professional privilege in practice, the privileges are distinct and there is no requirement that the communication was with a lawyer.¹⁶⁰

83. The primary purpose of the privilege is to promote the resolution of disputes by agreement.¹⁶¹ As McNicol explains, it is 'clearly in the public interest to reduce the amount of litigation under the adversary system and to avoid the delays, expense, frustration, inconvenience and hostility which often accompany trials'.¹⁶² It enables parties to freely explore settlement of disputes and make admissions during those discussions, without concern that admissions they make will be tendered against them in court if the negotiations are ultimately unsuccessful. This aims to promote efficiency in the resolution of disputes, saving court time. Other justifications include:

- Fairness.
- Giving effect to an express or implied agreement between parties.
- Limiting the material before the courts to relevant evidence, with admissions made during negotiations irrelevant.¹⁶³

Settlement negotiations privilege does not apply to criminal proceedings.

However, in practice, directors of public prosecutions are unlikely to adduce evidence of pre-trial negotiations, and courts do not commonly receive such evidence.

84. In Queensland, the common law largely governs settlement negotiations privilege.¹⁶⁴ As we discuss below, certain legislation modifies the common law.

85. At common law, settlement negotiations privilege will protect communications between parties that are genuinely aimed at settling a dispute.¹⁶⁵ It is usually asserted by objecting to the admissibility of the evidence.¹⁶⁶ The privilege applies to all parties and can only be waived by mutual consent.¹⁶⁷ While common, the use of the words 'without prejudice' on communications is not strictly necessary.¹⁶⁸ Communications may be protected if litigation has commenced or is contemplated.¹⁶⁹ There are a number of exceptions to the privilege at common law.¹⁷⁰

86. In some circumstances, statute, rules or regulations apply. For example, when parties undergo mediation pursuant to the Civil Proceedings Act 2011, anything done or said will only be admissible if the parties consent.¹⁷¹ Similarly, the Uniform Civil Procedure Rules 1999 regulate offers to settle in a vast range of civil proceedings.¹⁷² In that context, offers to settle are not generally admissible,¹⁷³ other than to determine costs liability.¹⁷⁴

87. All uniform evidence Acts contain a provision excluding communications of settlement negotiations, reflecting the Model Uniform Evidence Bill.¹⁷⁵

88. A party cannot adduce any communications between the parties to a dispute, or a party to a dispute and a third party, in connection with an attempt to negotiate a settlement, unless an exception applies.¹⁷⁶ This includes disputes that are contemplated but not yet commenced.¹⁷⁷ The exceptions relate to:

- Consent by the parties.
- Explicitly non-confidential communications.
- Qualifying or contradictory evidence about settlement negotiations.

- Enforcing agreements.
- Determining liability for costs.
- Affecting the rights of persons.
- Criminal purposes or abuses of power.¹⁷⁸

Journalist privilege

Key Facts

- Not recognised at common law.
- Australian jurisdictions apply the privilege differently.
- Queensland's privilege, legislated in 2022, is the most protective and prescriptive. It applies to journalists and relevant persons who know the informant's identity. It extends to courts not bound by the rules of evidence. Like the Cth, ACT and NT, it reflects contemporary journalistic practice. Like Victoria, it applies to search warrants.



✗ Model Bill	✓ Qld
✓ Cth	✓ ACT
✓ NSW	✓ NT
✗ Tas	✓ WA
✓ Vic	✓* SA

* The privilege is available in a non-UEL Act.

89. Journalist privilege is a qualified privilege that makes a journalist or relevant person (for example, the journalist's employer) not compellable to give evidence in a proceeding where it would reveal the identity of an informant.¹⁷⁹
90. For the privilege to apply, the informant must have provided information to the journalist with the expectation that it would be published in a news medium and where there had been a promise to not disclose the informant's identity.¹⁸⁰ The privilege can be overridden if a court decides there is a stronger public interest in the informant being identified.¹⁸¹
91. In Queensland, the privilege also applies during the execution of search warrants.¹⁸² A separate journalist privilege applies in the Crime and Corruption Commission.¹⁸³
92. The key purpose of the privilege 'is to enable journalists to access sensitive information that would not be provided in the absence of a promise of confidentiality'.¹⁸⁴ The privilege recognises that journalists may need to promise to protect an informant's identity to perform 'their role as facilitators of free communication and report on matters of legitimate public concern'.¹⁸⁵ In this way, the privilege recognises that 'a free, independent, and effective media, and well-informed citizens, are crucial for a strong democracy'.¹⁸⁶
93. Journalist privilege is not recognised at common law. All Australian jurisdictions have implemented legislative protections that apply to journalists, though the approaches taken to implementing these protections vary.¹⁸⁷ The introduction of journalist privilege provisions reflects separate harmonisation efforts to protect the public interest in the free flow of information and a free press.¹⁸⁸
94. When introducing journalist privilege in 2022, Queensland Parliament recognised that all other jurisdictions offered protections for journalists against disclosure of informant identity.¹⁸⁹
95. Queensland's provisions are the most protective in Australia as they:
 - Apply the journalist privilege to the execution of search warrants.
 - Mandate a procedural framework for proceedings and search warrants.
 - Define 'journalist' based on their practice (rather than professional engagement).

- Apply the privilege to 'relevant persons', such as someone who works with the journalist.
96. Queensland and Victoria both extend the privilege to search warrants. However, commentators have argued that Victoria's model relies on a public interest that is difficult to apply and does not adequately consider the broader public interest and press freedom during media warrant applications.¹⁹⁰ In Queensland, when a court considers an application, it is directed to have regard to a number of matters, including whether the provided information is in the public interest.¹⁹¹
97. In Queensland, a mandated procedural framework supports the privilege.¹⁹² It includes orders that a court may make in relation to the privilege in the context of proceedings or the execution of a search warrant.
98. Queensland's definition of a 'journalist' focusses on the processes of journalism,¹⁹³ rather than the person's professional engagement.¹⁹⁴ Commentators have noted that this definition reflects contemporary practice and is designed to ensure the continuing relevance of the privilege as journalistic practice develops.¹⁹⁵ It also connects journalist practice to information of public interest.¹⁹⁶ The breadth of the meaning of 'journalist' may encourage broad interpretation of the term 'news medium'.¹⁹⁷
99. In Queensland, the privilege applies to journalists and 'relevant persons' who know the informant's identity.¹⁹⁸ This can include a current or previous employer of the journalist, a contractor engaged by the journalist, and any other person who has been involved in the publication of a news medium who has worked with the journalist. Examples of relevant persons are editors, producers, and camera operators.¹⁹⁹ South Australia has a similar, but narrower, provision.²⁰⁰ All uniform evidence Acts extend the privilege only to the journalist's employer.²⁰¹
100. Queensland courts have yet to test this privilege. However, courts in other jurisdictions have considered its scope and application.²⁰² The privilege provides strong protection as it:
- Applies to the journalist and their employer, though it does not prevent a party from asking another witness about the identity of the informant.²⁰³
 - Cannot be circumvented, and attempts to identify the informant can be an abuse of process.²⁰⁴
 - Places the onus of proof on the party alleging that the privilege has been waived or displaced and requires the displacement or waiver to be 'quite clear'.²⁰⁵
101. Victorian courts have identified a seven-step test for determining if there is a superior public interest in requiring disclosure of the identity of the informant:
- (1) Identify the issues in the proceeding that determine the context of the application.
 - (2) Identify the public interest in disclosure in the context of the identified issues advanced by the plaintiff.
 - (3) Assess the significance or weight to be attributed to that public interest.
 - (4) Identify the adverse effect of disclosure on the informant and others.
 - (5) Identify the public interest in a free and informed press and in investigative journalism.
 - (6) Assess the significance or weight to be attributed to that public interest.
 - (7) Weigh all considerations according to the assigned significance or weight to answer whether the public interest in disclosure is greater than other interests.²⁰⁶
102. The Supreme Court of Victoria recently applied the test in *Marshall v Nationwide News*,²⁰⁷

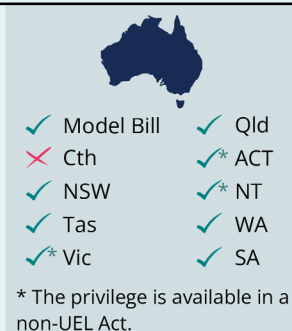
where the two parties had relatively evenly weighted interests. The court observed that the presumptive weight of protecting the public interest in a free and informed press and investigative journalism is undisputed. Accordingly, a party must establish compelling reasons for overturning the presumption.²⁰⁸ However, some commentary suggests that there may be a tendency for Australian courts to ‘under explore’ concepts of public interest and that a human rights framework could support further exploration of relevant interests.²⁰⁹

103. A claim of journalist privilege requires that the journalist provided a promise to the informant. The law is unsettled on the nature of this promise. Recent decisions suggest courts are increasingly prepared to consider the context of the promise, rather than strictly require an express and prior promise.²¹⁰ South Australia is the only jurisdiction that permits an ‘expectation’ from the informant that their identity will be protected.²¹¹
104. These interpretations provide insight into how Queensland’s journalist privilege may operate. Courts have also noted that variation in uniformity of journalist privilege across jurisdictions will result in different judicial approaches.²¹²

Sexual assault counselling privilege

Key Facts

- Not recognised at common law.
- Queensland legislated this privilege in 2017.
- Different Australian jurisdictions have implemented different models, which vary in the extent of their protection.
- Queensland law provides an absolute privilege for committal or bail hearings and a qualified privilege in trial and sentencing proceedings.



105. Our terms of reference, as amended on 4 September 2026, ask us not to examine or make recommendations in relation to sexual assault counselling privilege.²¹³ We provide the following brief overview of the privilege because a discussion of the privileges framework would be incomplete without it, and because it is relevant to considering other types of privilege.
106. Sexual assault counselling (or ‘sexual assault communications’) privilege protects oral and written communications between a person who alleges they have been a victim of sexual assault and their counsellor, unless the court otherwise orders.²¹⁴ It seeks to promote and reconcile the underlying policy aims of:
 - Protecting the counselled person’s right to privacy.²¹⁵
 - Protecting the accused’s right to a fair trial, by ensuring all relevant and probative evidence is before the court.²¹⁶
 - Fostering trust and confidence in, promoting access to, and supporting the efficient and effective operation of counselling services for victims of sexual assault by protecting confidentiality within the relationship.²¹⁷
 - Encouraging victims of sexual assault to report the crime through access to confidential counselling supporting the prosecution of criminal offences.²¹⁸
107. Parliament amended Queensland evidence law to include sexual assault counselling privilege in 2017.²¹⁹ This reform responded to a recommendation of the Special Taskforce on Domestic and Family Violence.²²⁰ Queensland was the last Australian jurisdiction to adopt a sexual

assault counselling privilege.²²¹

108. Queensland modelled its privilege on New South Wales law, which provides an absolute privilege for committal or bail hearings and a qualified privilege in trial and sentencing proceedings.²²² A two-stage process applies to determine requests for disclosure of protected counselling communications, with the court determining whether to grant leave to:
 - Subpoena (access) the protected counselling communications.²²³
 - Use the protected counselling communications as evidence.²²⁴
109. The same statutory mechanism, and the same criteria, apply to both stages.²²⁵ To grant leave, the court must be satisfied that:²²⁶
 - The protected counselling communications will have substantial probative value.
 - Other documents or evidence concerning the matters to which the protected counselling communications relate are not available.
 - The public interest in admitting the protected counselling communications into evidence substantially outweighs the public interest in preserving confidentiality and protecting the counselled person from harm.²²⁷
110. Across Australia, the approach to restricting access to protected counselling communications varies. While many jurisdictions base their provisions on the model developed by the Model Criminal Code Officers Committee of the Standing Committee of Attorneys-General in 1999, substantive jurisdictional differences have arisen in implementation.
111. The key point of divergence is the scope and extent of the privilege. Tasmania is the only Australian jurisdiction with an absolute privilege for preliminary and substantive criminal proceedings.²²⁸ This means that counselling communications are protected unless the counselled person consents to their disclosure.
112. Western Australia has a qualified privilege for all stages and types of proceedings.²²⁹ This means that counselling communications are protected unless a court grants leave for disclosure. The court exercises this discretion having regard to competing interests.
113. All other Australian jurisdictions have an absolute privilege for preliminary proceedings, such as committal proceedings, and a qualified privilege for substantive proceedings, such as a criminal trial.
114. Other points of inconsistency across jurisdictions include:
 - The applicable test: whether the court must consider, based on its examination of the evidence, whether the public interest in disclosure substantially outweighs the public interest in protecting the confidentiality of the communication, or whether the court must be satisfied there is a legitimate forensic purpose before considering an application for disclosure.²³⁰
 - Whether the protection is a privilege or an immunity.²³¹

Privileges recognised in other Australian jurisdictions

Professional confidential relationship privilege

Key Facts

- Not recognised at common law.
- Operates through the exercise of judicial discretion, rather than as a true privilege.
- Relevant to relationships where confidentiality and trust are important features.



✓ Model Bill	✗ Qld
✗ Cth	✓ ACT
✓ NSW	✗ NT
✓ Tas	✓ WA
✗ Vic	✗ SA

115. Professional confidential relationship privilege allows the court to exclude evidence of a confidential communication from a proceeding.²³²
116. It is not strictly a privilege, but an exercise of judicial discretion where the court balances the desire to ensure all relevant evidence is admissible with maintaining privacy in relationships where confidentiality is an important feature.²³³
117. It is relevant to communications made in a professional relationship, where the confidant (the person to whom the communication is made) is under an express or implied obligation not to disclose its content.²³⁴
118. The types of professional relationships where it may apply include doctor-patient, nurse-patient, psychologist-client, social worker-client, accountant-client and journalist-source relationships.²³⁵ It may also include communications between a lawyer and client that fall outside the scope of legal professional privilege.²³⁶
119. A court must direct that the evidence is not adduced if it is satisfied that it is likely that harm would or might be caused to the confider (the person who made the communication) and that the nature and extent of the harm outweighs the desirability of the evidence being given.²³⁷ The harm is limited to the confider and does not include harm to the confidant, other potential confidants or the public in general.²³⁸
120. In exercising its discretionary power, the court must consider a non-exhaustive list of matters, including the:
- Probative value and importance of the evidence.
 - Nature of the proceeding.
 - Availability of other related evidence.
 - Likely consequences of disclosure.
 - Options available to the court to limit the harm likely to be caused by disclosure.
 - Public interest in preserving the confidentiality of the communication.²³⁹
121. Courts have also noted other relevant factors, including the capacity in which the professional was acting at the time of the disclosure,²⁴⁰ the type of information disclosed,²⁴¹ and the need to ensure that the child's best interests remain paramount.²⁴²
122. The court can make a direction on its own initiative or on the application of the confider or the confidant regardless of whether they are a party to the proceeding.²⁴³ The privilege can be

waived by consent, or through misconduct, for example, in the furtherance of a fraud or criminal offence.²⁴⁴

123. This privilege is not recognised at common law and only exists in statutory form in New South Wales, Tasmania, the Australian Capital Territory and Western Australia.
124. It is based on the ALRC's proposed discretionary approach to communications made within relationships where confidentiality and trust are fundamental. The privilege enables courts to consider competing public interests and the interests of justice in individual matters.²⁴⁵ Relevant public interests include having all relevant evidence available to the court, promoting positive public health outcomes by removing a potential deterrent to people seeking treatment, and avoiding undue hardship from the application of the law.²⁴⁶
125. There is some overlap between professional confidential relationship privilege and other privileges, including journalist privilege, doctor-patient privilege, and religious confessions privilege. As noted, their scope differs between jurisdictions. Some jurisdictions have adopted the professional confidential relationship privilege with the intention that it applies to communications made within some of these relationships,²⁴⁷ while others have enacted separate privileges for distinct relationship types.²⁴⁸
126. Despite the ALRC's recommendations, the Model Uniform Evidence Bill does not include a professional confidential relationship privilege. New South Wales introduced this privilege in 1997.²⁴⁹
127. Tasmania adopted the privilege in 2010,²⁵⁰ implementing relevant recommendations from the joint review of the UEL, undertaken by the ALRC, NSW Law Reform Commission and Victorian Law Reform Commission in 2005.²⁵¹ The Australian Capital Territory and Western Australia incorporated the professional confidential relationship privilege into their evidence law when they adopted the UEL in 2011 and 2025 respectively.²⁵²
128. Victoria does not have a professional confidential relationship privilege. This is despite the Victorian Law Reform Commission recommending recognition of the privilege in both the joint review of the UEL in 2005 and their 'Implementing the Uniform Evidence Act Report' in 2006.²⁵³ The Victorian Government advised the privilege was subject to further consideration, and that they were awaiting the Australian Government's response to the ALRC's 2008 report 'Privilege in Perspective', which was to include further consideration of the privilege.²⁵⁴
129. The Northern Territory Law Reform Committee recommended against adopting the professional confidential relationship privilege because it was concerned it would affect its doctor-patient privilege.²⁵⁵
130. Queensland law does not recognise this privilege. Reviewing the religious confessions privilege in 1991, the QLRC expressed the view that, should Queensland adopt the religious confessions privilege, it would be logical to extend the privilege to other professional groups, such as doctors and journalists. On balance, the QLRC felt this was neither necessary nor desirable.²⁵⁶
131. Professional confidential relationship privilege allows individual circumstances to be considered in a matter, avoiding a 'one size fits all' approach to specific relationship types.²⁵⁷ It also provides a process to respond to circumstances where a witness' reluctance to disclose information received by them in a professional capacity could otherwise amount to contempt or perjury.
132. However, it creates uncertainty, fails to guarantee confidentiality and can be difficult to apply in some cases.²⁵⁸ It also reduces the available evidence in a proceeding and could also be abused to withhold relevant evidence from a proceeding or investigation.

Religious confessions privilege

Key Facts

- Not recognised at common law.
- Protects the member of clergy, rather than the person who made the communication.
- Does not protect confessions made for a criminal purpose.
- Applies to bodies not bound by the rules of evidence.
- Rarely invoked in practice.



✓ Model Bill	✗ Qld
✓ Cth	✓ ACT
✓ NSW	✓ NT
✓ Tas	✓ [^] WA
✓ Vic	✗ SA

[^] The privilege is available as part of another privilege.

133. Religious confessions privilege preserves the confidentiality of confessions made by a person to a member of the clergy, of any religious denomination, who is acting in the member's professional capacity and in accordance with the rituals of their church or religious denomination.²⁵⁹
134. It entitles a member of the clergy of any church or religious domination to refuse to divulge that a religious confession was made or the contents of the confession.²⁶⁰ The privilege is distinct from other privileges in that it is held by the member of clergy, not the person making the confession. Unlike most other privileges the UEL recognises, religious confession privilege applies to bodies not bound by the rules of evidence.²⁶¹
135. Its rationale is to protect the freedom of religious practices and encourage frank confidential communications in the context of seeking spiritual guidance, without fear about their later disclosure.²⁶² Countering this is the policy intent, common to all privileges, that courts should have access to relevant evidence to support just outcomes.
136. Queensland law does not recognise this privilege. When the QLRC reviewed this topic in 1991, it critiqued its bespoke protection of confessions made within the relationship between a person and their religious or spiritual adviser, not available in other comparable contexts.²⁶³ The QLRC recommended against its introduction.²⁶⁴
137. The Standing Committee on Justice and Community Safety noted a similar concern when the the Australian Capital Territory Parliament included this privilege in the Evidence Act 2011 (ACT).²⁶⁵ They considered that the bespoke nature of the privilege, along with its limited protection to only the member of the clergy who received the confession rather than the person who made it, may limit the human right to equal protection of the law.²⁶⁶ However, the Explanatory Statement to the Evidence Bill 2011, noting the ALRC's view, stated that:

the absence of such a privilege could be criticised as an interference with the right of a citizen to practice his religious beliefs. In the absence of the privilege, the courts could compel disclosure and accordingly create a barrier to free and unfettered practice of religion.²⁶⁷
138. Cases involving religious confessions are relatively uncommon. While historically some judges refused to compel evidence of confessions from clergy, the common law does not recognise religious confessions as a type of privilege. Any recognition of the privilege must arise from statute.
139. In the original draft of the UEL, the ALRC did not consider a distinct religious confessions privilege necessary. Instead, the ALRC considered that it would fall within a proposed discretionary exclusion for confidential communications. Despite this, the Model Uniform Evidence Bill contains a distinct religious confessions privilege.²⁶⁸
140. All jurisdictions that have adopted the UEL recognise this privilege.²⁶⁹ The Commonwealth,

New South Wales, Tasmania and the Northern Territory have implemented the privilege in the form of the Model Uniform Evidence Bill. The privilege does not cover religious confession that were made for a criminal purpose.²⁷⁰

141. Victoria and the Australian Capital Territory have implemented the Model Uniform Evidence Bill approach with modifications to respond to the findings of the Royal Commission into Institutional Responses to Child Sexual Abuse.²⁷¹ These jurisdictions exclude information about offences or harm to a child from protection by the privilege.
142. Western Australia's law differs from the Model Uniform Evidence Bill. Instead of creating a standalone religious confessions privilege, it extends the professional confidential relationship privilege to encompass religious confessions.²⁷² This means that religious confessions are subject to a qualified privilege, where the court will balance factors and determine if a party can adduce the evidence.²⁷³ The person who made the communication, rather than the member of clergy, can waive the privilege.²⁷⁴ Like the other jurisdictions, an exception is made for communications furthering a criminal purpose.²⁷⁵ Like the Victorian and Australian Capital Territory statutes, there is an express exception to the privilege to respond to the Royal Commission into Institutional Responses to Child Sexual Abuse which explicitly excepts information concerning sexual offences or abuse against children from the privilege.²⁷⁶ Under this exception, a person is not entitled to claim the privilege in proceedings for a sexual offence or civil proceeding if the alleged victim was a child at the time.²⁷⁷
143. The Western Australian approach to the privilege most closely reflects the ALRC's original recommendations.²⁷⁸ The joint review of the UEL suggested that jurisdictions should reconsider the necessity of a separate religious confessions privilege if they adopt the professional confidential relationship privilege.²⁷⁹

Doctor-patient privilege

Key Facts

- Not recognised at common law.
- Not part of the UEL.
- Only applies to civil proceedings.
- Rarely invoked in practice.



✗ Model Bill	✗ Qld
✗ Cth	✗ ACT
✗ NSW	✓* NT
✓ Tas	✗ WA
✓* Vic	✗ SA

* The privilege is available in a non-UEL Act.

144. The doctor-patient privilege withholds otherwise relevant information from being given in evidence when it is obtained in a doctor-patient relationship.
145. This form of privilege is relatively uncommon in Australia and subject to debate. Those in support of recognising the privilege focus on the patient's privacy, encouraging people to seek medical treatment, the necessity of trust and candour in the relationship, promoting positive public health outcomes, and the robust ethical duties of doctors.²⁸⁰
146. There are concerns that the privilege prevents the court from accessing relevant information, unjustifiably prioritises the doctor-patient relationship over other professional relationships, has definitional issues, and that it may be unnecessary to have a privilege to encourage persons to seek medical assistance.²⁸¹
147. Courts have held that, at common law, the doctor-patient relationship does not attract any privilege.²⁸² Any relevant evidence that is obtained during such relationship, while it may be confidential, is not immune to disclosure and use in the courts. Consequently, any recognition of a doctor-patient privilege must arise from statute.

148. Three Australian jurisdictions have a form of medical privilege: Victoria, Tasmania and the Northern Territory. Only the Tasmanian privilege appears in their uniform evidence Act.²⁸³ The Model Uniform Evidence Bill does not include this privilege.²⁸⁴
149. Victoria was the first Australian jurisdiction to enact a form of medical privilege.²⁸⁵ It prohibits a physician or surgeon from giving evidence about any information that they have acquired in attending the patient and that was necessary to prescribe or act for the patient, without the patient's consent.²⁸⁶ It is the broadest privilege, protecting 'any information' acquired.²⁸⁷
150. In Tasmania and the Northern Territory, legislation prohibits a medical practitioner from giving evidence about any communication made to them in their professional capacity by a patient, that was necessary to prescribe or act for the patient, without the patient's consent.²⁸⁸ In Tasmania, the privilege also covers records of communications between medical practitioners and patients.²⁸⁹
151. All legislated forms of the privilege apply only in civil proceedings.²⁹⁰ In each jurisdiction, specific exemptions prevent a person from claiming the privilege in certain contexts.²⁹¹

Key issues

152. In [Background Paper 1](#), we note that there are key issues with the scope and application of certain privileges and with the inconsistent approach different Australian jurisdictions have taken to their adoption.²⁹²
153. As the preceding discussion shows, privileges have, and are continuing to, evolve in response to different drivers. They are distinct in their scope, application, and protection. While we can identify aims common to the different types of privilege, they lack a unified and coherent core rationale.
154. The differences between privileges reflect social attitudes about the type of communications, relationships, and claimants most deserving of protection. Views on this differ and evolve over time.
155. A review of privileges raises issues for consideration, including whether the different forms of privilege, and our approaches to recognising privilege, have stood the test of time, and whether they continue to reflect social and community attitudes.
156. We must also consider how privileges operate in the current legal context, both throughout the course of a proceeding and in different contexts. As we note in [Background Paper 1](#), the ALRC conducted its initial review when evidence law was usually considered in the context of trials, and its terms of reference restricted its focus accordingly.²⁹³ The nature of litigation and the manner of resolving disputes has changed in recent decades, bringing increased focus on the appropriate scope and role of evidence law across the continuum of the justice process.
157. Courts have grappled with the application of privileges to discovery (disclosure) and inspection of documents in UEL jurisdictions. While appellate courts initially took an expansive view,²⁹⁴ the High Court rejected this approach and found that, in the jurisdictions that have adopted it, the UEL only applies to the adducing of evidence in relevant proceedings and does not modify the common law of privileges outside this scope.²⁹⁵
158. There are also inherent challenges stemming from the application of common law privileges to contexts in which the rules of evidence do not apply.²⁹⁶ Most administrative and non-curial bodies, including tribunals, royal commissions and commissions of inquiry, are not bound by the rules of evidence but have powers to compel production of documents and witnesses to attend and answer questions.²⁹⁷ They can order sanctions for non-compliance.²⁹⁸ In these forums, witnesses can rely on common law privileges to refuse to produce documents or answer questions, unless a statute removes this right. For example, statute abrogates the

privilege against self-incrimination for commissions of inquiry.²⁹⁹

159. The joint review of the UEL responded to these challenges by identifying three primary options for extending legislative privilege provisions beyond the operation of the UEL:

- Repealing the privilege provisions of the UEL and replacing them with a provision preserving the common law.³⁰⁰
- Repealing the privilege provisions of the UEL and legislating a separate Privileges Act to codify both common law and statutory privileges.³⁰¹
- Amending the UEL to extend privileges to cover all contexts where the common law applies, including pre-trial disclosure, warrants, executive hearings, and compulsory powers of government agencies.³⁰²

160. Exploring the limitations of these options, the joint review of the UEL noted that they did not address statutory privileges with no common law equivalent, such as professional confidential relationship privilege and sexual assault communications privilege.³⁰³ The joint review described the options as imperfect and did not draft a recommended solution, suggesting it should be left to individual jurisdictions. The joint review concluded:

There are a number of imperfect options available to achieve varying degrees of uniformity in the law of privilege. The Commissions are of the view that the best way to achieve uniformity is to enact mirror legislation at the Commonwealth, state and territory levels. Clearly, as more jurisdictions enact a uniform Evidence Act, there will be greater scope for uniformity in areas, such as the law of privilege, where significant difference now exists. In the interim, uniform Evidence Act jurisdictions will have to determine the means and extent to which uniform Evidence Act privileges are to apply in pre-trial and other contexts.³⁰⁴

161. In exploring mechanisms to amend the UEL, the law reform Commissions proposed a ‘mirroring’ provision that would replicate the process for claiming privilege for preliminary proceedings with a disclosure requirement.³⁰⁵ While they identified issues with this approach,³⁰⁶ it is the mechanism most jurisdictions have chosen to extend the application of privileges.³⁰⁷

162. As our [Background Paper 2](#) highlights, drafting new evidence legislation requires us to carefully consider its architecture and content.³⁰⁸ It also requires us to adhere to principles of good legislative design to ensure the law is coherent, durable, comprehensible, and navigable.

163. Other law reform bodies have offered substantial reform proposals that would fundamentally alter the laws of privilege. For example, the UK Law Commission recently considered the appropriate treatment of personal records of complainants in sexual offence cases.³⁰⁹ They recommended a bespoke regime covering requests for access and production of all types of personal records held by a professional third party in which the complainant has a reasonable expectation of privacy.³¹⁰ They considered this approach, which reflects Canada’s current regime for similar offences,³¹¹ preferable to privileging specific categories of personal records based on the relationship in which they were created.³¹²

164. While there are challenges in practice, the law’s traditional approach has been to recognise types of privilege based on confidential relationships that there is a public interest in protecting.³¹³ This approach is deeply entrenched in Australian law.

165. Through our initial research and consultations we have become aware of a range of issues with how privileges operate in practice. For example:

- Determining issues of privilege can create delay and inefficiencies in court and pre-trial processes.

- The laws of privilege are complex, which can create challenges for all users of the law, particularly self-represented litigants, witnesses and third parties, and increase the need for legal assistance.
- Inconsistencies in the scope and application of the laws can impact the law's accessibility.
- Inconsistencies in interpretation of laws can be a barrier to just outcomes.

166. We will continue to explore these issues in our review, informed by our ongoing research and consultation. We will assess the suitability of different options for reform through the lens of our guiding principles for reform: fair, clear, effective, and enduring.

References

- ¹ See for example David Field, William van Caenegem, and Clair Duffy, *Queensland Evidence Law* (LexisNexis, 6th edn, 2022) 135 [5.1].
- ² The Coaldrake report noted the rising expectation that our politicians and their officials be more accountable and transparent in their dealings: Professor Peter Coaldrake AO, *Let the Sunshine in: Review of Culture and Accountability in the Queensland Public Sector* (Final Report, June 2022) 1.
- ³ For example, Criminal Code Act 1899 (Qld) sch 1 (the 'Criminal Code') s 229BC, inserted in 2020 and amended in 2024, created a criminal offence, punishable by up to three years imprisonment, for an adult who gained information that caused them to believe on reasonable grounds, or ought reasonably to cause them to believe, that a child sexual offence is being, or has been, committed against a child under 16 years of age or a person with impairment of the mind by another adult: Criminal Code (Child Sexual Offences Reform) and Other Legislation Amendment Act 2020 (Qld) s 25; as amended by Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Act 2024 (Qld) s 9. Amendments, in 2017, to the Domestic and Family Violence Protection Act 2012 (Qld) require certain Government agencies and organisations such as the Queensland Police Service, health and child protection authorities and other prescribed entities to take proactive steps to share information about serious domestic and family violence risks.
- ⁴ *Daniels Corporation International Pty Ltd v Australian Competition and Consumer Commission* (2002) 213 CLR 543, 553; *Australian Crime Commission v Stoddart* (2011) 244 CLR 554.
- ⁵ *Environment Protection Authority v Caltex Refining Co Pty Ltd* (1993) 178 CLR 477, 500.
- ⁶ Evidence (Protection of Children) Amendment Act 2003 (Qld) s 56, amending ss 8(2)–(7). Queensland law previously recognised marital privilege, but amendments to the Evidence Act 1977 (Qld) abolished it in 2003. See Evidence (Protection of Children) Amendment Act 2003 (Qld) s 58.
- ⁷ Evidence Act 1977 (Qld) s 14(1)(a).
- ⁸ Evidence Act 1977 (Qld) s 14(1)(b).
- ⁹ Attorney-General and Minister for Justice (Qld), *Terms of Reference: A Review of Evidence Law in Queensland* (Amended) 4 September 2026, [4A].
- ¹⁰ Andru Isac, *Cross on Evidence* (LexisNexis New Zealand, 12th edn, 2024) 1065 [27095].
- ¹¹ The Parliament of Queensland Act 2001 (Qld) section 8 recognises and protects parliamentary privilege.
- ¹² Stephen Gageler, 'Evidence and Truth' (2017) 13(3) *The Judicial Review* 1, 3.
- ¹³ Stephen Gageler, 'Evidence and Truth' (2017) 13(3) *The Judicial Review* 1, 3.
- ¹⁴ *Australian Crime Commission v Stoddart* (2011) 244 CLR 554, 623 [186].
- ¹⁵ *Esso Australia Ltd v Federal Commissioner of Taxation* (1999) 201 CLR 49, 92 [111].
- ¹⁶ *McGuinness v Attorney-General (Vic)* (1940) 63 CLR 73, 102–3.
- ¹⁷ Andru Isac, *Cross on Evidence* (LexisNexis New Zealand, 12th edn, 2024) 423 [13001]; Suzanne McNicol, *Law of Privilege* (The Law Book Company, 1992) 11.
- ¹⁸ Andru Isac, *Cross on Evidence* (LexisNexis New Zealand, 12th edn, 2024) 423 [13001]; Suzanne McNicol, *Law of Privilege* (The Law Book Company, 1992) 11.
- ¹⁹ Andru Isac, *Cross on Evidence* (LexisNexis New Zealand, 12th edn, 2024) 423 [13001]; Suzanne McNicol, *Law of Privilege* (The Law Book Company, 1992) 11.
- ²⁰ Evidence Act 1995 (Cth) ss 14–18.
- ²¹ Andru Isac, *Cross on Evidence* (LexisNexis New Zealand, 12th edn, 2024) 423–4 [13001].
- ²² Suzanne McNicol, *Law of Privilege* (The Law Book Company, 1992) 3.
- ²³ Andru Isac, *Cross on Evidence* (LexisNexis New Zealand, 12th edn, 2024) 956 [27005]; Suzanne McNicol, *Law of Privilege* (The Law Book Company, 1992) 3.
- ²⁴ *National Crime Authority v S* (1991) 29 FCR 203, 159–60; *C v National Crime Authority* (1987) 78 ALR 338, 343; *R v The Coroner; Ex parte Alexander* [1982] VR 731.
- ²⁵ Suzanne McNicol, *Law of Privilege* (The Law Book Company, 1992) 25.

26 D v National Society for the Prevention of Cruelty to Children [1978] AC 171 230; Suzanne McNicol, Law of Privilege (The Law Book Company, 1992) 3.

27 Baker v Campbell (1983) 153 CLR 52, 71–2, 88, 94–5, 116–18, 132; Sorby v Commonwealth (1983) 152 CLR 281, 288–9, 309, 311.

28 Note, however, that the privilege against self-incrimination is affirmed by the Evidence Act 1977 (Qld) s 10.

29 Evidence Act 1977 (Qld) ss 14S(1), 14ZC.

30 Australasian Parliamentary Counsel's Committee, Model Uniform Evidence Bill (29 November 2019) cl 4. The Dictionary pt 1 defines a 'court' as a Supreme Court, court created by Parliament, or any other person or body required to apply the laws of evidence. Note that the Victorian Act extends privileges to search warrants: Evidence Act 2008 (Vic) s 131A(2)(g).

31 Mann v Carnell (1999) 201 CLR 1, [28]–[29]; Glenmont Investments Pty Ltd v O'Loughlin (2000) 79 SASR 185, 254 [302].

32 For example a waiver of public interest immunity is not possible: Rogers v Home Department State Secretary [1973] AC 388, 406, 407; Victoria v Seal Rocks Victoria (Australia) Pty Ltd (2001) 3 VR 1, 7 [18]; Australian Securities Commission v Zarro (No 2) (1992) 34 FCR 427, 431.

33 John Henry Wigmore, Evidence in Trials at Common Law, ed John T McNaughton (Little, Brown and Company, rev ed, 1961) vol 8, 289–90 §2250; Leonard W Levy, Origins of the Fifth Amendment: The Right Against Self-Incrimination (Oxford University Press, 1968) 313–25.

34 Evidence (Miscellaneous Provisions) Act 1958 (Vic) pt 2 div 2A.

35 Evidence (Miscellaneous Provisions) Act 1958 (Vic) pt 2 div 2.

36 Evidence (Miscellaneous Provisions) Act 1991 (ACT) ch 4 pt 4 div 4.4.3.

37 Evidence (Miscellaneous Provisions) Act 1991 (ACT) s 79K.

38 Evidence Act 1939 (NT) pt 7.

39 Evidence Act 1939 (NT) s 12.

40 Evidence Bill 2025 (WA) cl 158(2).

41 Evidence Act 1929 (SA) pt 8A.

42 Pyneboard Pty Ltd v Trade Practices Commission; Dunlop Olympic Ltd v Trade Practices Commission (1983) 152 CLR 328, 340.

43 Sorby v Commonwealth (1983) 152 CLR 281, 288–90, 310, 312–13.

44 The privilege against self-incrimination is not available for corporations or bodies corporate: Environment Protection Authority v Caltex Refining Co Pty Ltd (1993) 178 CLR 477, 508, 522, 556. See also, Australasian Parliamentary Counsel's Committee, Model Uniform Evidence Bill (29 November 2019) cl 187; Corporations Act 2001 (Cth) s 1316A.

45 An accused is not competent for or compellable by the prosecution to give evidence: Evidence Act 1977 (Qld) s 8(1); Australasian Parliamentary Counsel's Committee, Model Uniform Evidence Bill (29 November 2019) cls 17(1)–(2). No adverse inference may be drawn from an accused electing to not give evidence: Azzopardi v The Queen (2001) 205 CLR 50, 64–5 [34]–[35], 70 [51]; Australasian Parliamentary Counsel's Committee, Model Uniform Evidence Bill (29 November 2019) cl 20.

46 Evidence Act 1977 (Qld) s 15.

47 The differing views are discussed by McHugh J in Azzopardi v The Queen (2001) 205 CLR 50, 90–100 [118]–[145].

48 Queensland Law Reform Commission, The Abrogation of the Privilege Against Self-Incrimination (Report 59, December 2004) 8 [2.5].

49 John Henry Wigmore, Evidence in Trials at Common Law, ed John T McNaughton (Little, Brown and Company, rev ed, 1961) vol 8, 289–90 §2250; Leonard W Levy, Origins of the Fifth Amendment: The Right Against Self-Incrimination (Oxford University Press, 1968) 313–25.

50 John Langbein, 'The Privilege and Common Law Criminal Procedure: The Sixteenth to the Eighteenth Centuries' in Helmholz RH et al, The Privilege Against Self-Incrimination: Its Origins and Development (University of Chicago Press, 1997) 82.

51 John Langbein, 'The Privilege and Common Law Criminal Procedure: The Sixteenth to the Eighteenth Centuries' in Helmholz RH et al, The Privilege Against Self-Incrimination: Its Origins and Development (University of Chicago Press, 1997) 82–3.

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- 52 John Langbein, 'The Privilege and Common Law Criminal Procedure: The Sixteenth to the Eighteenth Centuries' in Helmholz RH et al, *The Privilege Against Self-Incrimination: Its Origins and Development* (University of Chicago Press, 1997) 82–100.
- 53 John Langbein, 'The Privilege and Common Law Criminal Procedure: The Sixteenth to the Eighteenth Centuries' in Helmholz RH et al, *The Privilege Against Self-Incrimination: Its Origins and Development* (University of Chicago Press, 1997) 82, 83, 95–100.
- 54 John Langbein, 'The Privilege and Common Law Criminal Procedure: The Sixteenth to the Eighteenth Centuries' in Helmholz RH et al, *The Privilege Against Self-Incrimination: Its Origins and Development* (University of Chicago Press, 1997) 82, 82–100, 108.
- 55 Suzanne McNicol, *Law of Privilege* (The Law Book Company, 1992) 139.
- 56 See the summary of criticisms in RH Helmholz, 'Introduction' in Helmholz RH et al, *The Privilege Against Self-Incrimination: Its Origins and Development* (University of Chicago Press, 1997) 1, 2–4.
- 57 For a Queensland affirmation of the principle, see *Anderson v Australian Securities and Investments Commission* [2013] 2 Qd R 401, 401–2 [15].
- 58 *Legislative Standards Act 1992* (Qld) s 4(3)(f).
- 59 *Human Rights Act 2019* (Qld) s 32(2)(k); *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 14(3)(g).
- 60 *Daniels Corporation International Pty Ltd v Australian Competition and Consumer Commission* (2002) 213 CLR 543, 553 [11]; *Sorby v Commonwealth* (1983) 152 CLR 281, 294–5, 309. In the Queensland context, refer to *Hamdan v Callanan* [2014] 1 Qd R 128, 140–1 [11]–[19].
- 61 *Criminal Code 1899* (Qld) s 644A; *Coroners Act 2003* (Qld) s 39; *Commissions of Inquiry Act 1950* (Qld) ss 14–14A; *Crime and Corruption Act 2001* (Qld) ss 185–186, 189–190, ch 4A.
- 62 *Coroners Act 2003* (Qld) ss 39(1)–(2).
- 63 *Coroners Act 2003* (Qld) ss 39(3)–(5).
- 64 *Commissions of Inquiry Act 1950* (Qld) s 14(1A).
- 65 *Commissions of Inquiry Act 1950* (Qld) s 14A(1).
- 66 Australasian Parliamentary Counsel's Committee, *Model Uniform Evidence Bill* (29 November 2019) cls 128–128A. This includes other court processes prior to proceedings: cl 131A.
- 67 Australasian Parliamentary Counsel's Committee, *Model Uniform Evidence Bill* (29 November 2019) cl 128(1).
- 68 Australasian Parliamentary Counsel's Committee, *Model Uniform Evidence Bill* (29 November 2019) cls 128(2)–(3).
- 69 Australasian Parliamentary Counsel's Committee, *Model Uniform Evidence Bill* (29 November 2019) cl 128(4).
- 70 Australasian Parliamentary Counsel's Committee, *Model Uniform Evidence Bill* (29 November 2019) cl 128(4).
- 71 Australasian Parliamentary Counsel's Committee, *Model Uniform Evidence Bill* (29 November 2019) cls 128(5)–(6).
- 72 Australasian Parliamentary Counsel's Committee, *Model Uniform Evidence Bill* (29 November 2019) cls 128(7)–(8).
- 73 An accused cannot be compelled to give evidence and if they elect not to, no adverse inference may be drawn: Australasian Parliamentary Counsel's Committee, *Model Uniform Evidence Bill* (29 November 2019) cls 17, 20; *Azzopardi v The Queen* (2001) 205 CLR 50, 69–70 [50]–[51].
- 74 Australasian Parliamentary Counsel's Committee, *Model Uniform Evidence Bill* (29 November 2019) cls 128(10)–(11).
- 75 Australasian Parliamentary Counsel's Committee, *Model Uniform Evidence Bill* (29 November 2019) cl 4; Stephen Odgers, Thomson Reuters, *Uniform Evidence Law* (Online at 25 September 2026) [EA.128.90].
- 76 *Sankey v Whitlam* (1978) 142 CLR 1, 38, 95; *Alister v The Queen* (1983) 154 CLR 404, 412.
- 77 *Sankey v Whitlam* (1978) 142 CLR 1, 38; Suzanne McNicol, *Law of Privilege* (The Law Book Company, 1992) 375.
- 78 *R v Lipton* (2011) 82 NSWLR 123, 148 [85]; *Sankey v Whitlam* (1978) 142 CLR 1, 44, 58–9, 100–1.

79 Victoria v Seal Rocks Victoria (Australia) Pty Ltd (2001) 3 VR 1, 6–7 [16]–[18]; JD Heydon, LexisNexis, Cross on
 Evidence (Online at 25 September 2026) [27005].
 80 David Field, William van Caenegem, and Clair Duffy, Queensland Evidence Law (LexisNexis, 6th edn, 2022)
 163 [5.62]; Jaffarie v Director General of Security (2014) 226 FCR 505, 515 [30].
 81 McQueen v Parole Board Queensland (2022) 11 QR 481, 516 [119]; Commissioner of Police v Attorney-
 General (NSW) (2024) 114 NSWLR 281, 295–6 [71]–[78], 305 [125], 309–10 [147]–[148], 312 [161];
 Commissioner of Police (NSW) v GUO (2016) 332 ALR 236, 254 [72].
 82 Commonwealth v Northern Land Council (1993) 176 CLR 604, 616.
 83 R v Young (1999) 46 NSWLR 681, 693–4 [55]–[58], 721 [217], 748 [349]–[350]; JD Heydon, LexisNexis, Cross on
 Evidence (online at 18 September 2026) [27055].
 84 Commonwealth v Northern Land Council (1993) 176 CLR 604, 615–16; Sankey v Whitlam (1978) 142 CLR 1,
 39, 41, 62–3, 96–7.
 85 Alister v The Queen (1983) 154 CLR 404, 411–12, 435–6, 452.
 86 Attorney-General (NSW) v Stuart (1994) 34 NSWLR 667, 674–5; AB (a pseudonym) v CD (a pseudonym)
 (2018) 93 ALJR 59, 62 [12].
 87 Sankey v Whitlam (1978) 142 CLR 1, 39, 43, 62, 95; Commonwealth v Northern Land Council (1993) 176 CLR
 604, 616.
 88 Australasian Parliamentary Counsel’s Committee, Model Uniform Evidence Bill (29 November 2019) cl 130;
 Evidence Act 1995 (Cth) s 130; Evidence Act 1995 (NSW) s 130; Evidence Act 2001 (Tas) s 130; Evidence Act
 2011 (ACT) s 130; Evidence (National Uniform Legislation) Act 2011 (NT) s 130; Evidence Bill 2025 (WA) cl
 193.
 89 Australian Law Reform Commission, Evidence (Interim Report No 26, 1985) vol 1, 490 [864].
 90 Ku-ring-gai Council v West (2017) 95 NSWLR 1, 24–5 [84]–[87]; Madafferi v The Queen (2021) 287 Crim R 380,
 387 [31].
 91 Australasian Parliamentary Counsel’s Committee, Model Uniform Evidence Bill (29 November 2019) cl
 130(1).
 92 Stephen Odgers, Thomson Reuters, Uniform Evidence Law (Online at 25 September 2026) [EA.130.120].
 93 Australasian Parliamentary Counsel’s Committee, Model Uniform Evidence Bill (29 November 2019) cl
 130(4).
 94 Australasian Parliamentary Counsel’s Committee, Model Uniform Evidence Bill (29 November 2019) cl
 130(2).
 95 Australasian Parliamentary Counsel’s Committee, Model Uniform Evidence Bill (29 November 2019) cl
 130(1). As to the effect of this, see cl 134.
 96 Australasian Parliamentary Counsel’s Committee, Model Uniform Evidence Bill (29 November 2019) cl
 130(5).
 97 SBEG v Secretary, Department of Immigration and Citizenship (2012) 291 ALR 281, 286 [15]–[16].
 98 Commissioner of Police (NSW) v GUO (2016) 332 ALR 236, 254 [71]–[72]; Stephen Odgers, Thomson Reuters,
 Uniform Evidence Law (online at 18 September 2026) [EA.130.90].
 99 Ronald Desiatnik, Legal Professional Privilege in Australia (LexisNexis, 4th edn, 2025) 1.
 100 Attorney-General for the Northern Territory v Maurice (1986) 161 CLR 475, 490.
 101 Paul Latimer, ‘Legal Professional Privilege and the Fight Against Corporate Misconduct’ (2025) 56
 Australian Bar Review 12, 13.
 102 Crittenden & Collins [2017] FamCA 716, 10 [48].
 103 Australian Law Reform Commission, NSW Law Reform Commission, and Victorian Law Reform Commission,
 Uniform Evidence Law (Report No 102, December 2005) 466 [14.44].
 104 Carter v Managing Partner, Northmore Hale Davey & Leake (1995) 183 CLR 121, 127.
 105 Daniels Corporation International Pty Ltd v Australian Competition and Consumer Commission (2002) 213
 CLR 543, 576 [88].
 106 Suzanne McNicol, Law of Privilege (The Law Book Company, 1992) 46–7.
 107 Australian Law Reform Commission, NSW Law Reform Commission, and Victorian Law Reform Commission,
 Uniform Evidence Law (Report No 102, December 2005) 466 [14.44].

Australian Law Reform Commission, NSW Law Reform Commission, and Victorian Law Reform Commission, Uniform Evidence Law (Report No 102, December 2005) 466 [14.45], 485 [14.121].

Queensland Law Reform Commission, A Review of the Uniform Evidence Acts (Report 60, September 2005) 230–32 [7.27]–[7.33].

Baker v Campbell (1983) 153 CLR 52, 85, 127.

Grant v Downs (1976) 135 CLR 674, 689; Sanrus Pty Ltd v Monto Coal 2 Pty Ltd [2019] QSC 144 [28].

Esso Australia Ltd v Federal Commissioner of Taxation (1999) 201 CLR 49, 54, 73.

O’Shea v Wood [1891] P 286, 289.

David Field, William van Caenegem, and Clair Duffy, Queensland Evidence Law (LexisNexis, 6th edn, 2022) 147 [5.29].

New South Wales v Jackson [2007] NSWCA 279, [41].

David Field, William van Caenegem, and Clair Duffy, Queensland Evidence Law (LexisNexis, 6th edn, 2022) 148 [5.33].

R v Williams [1999] QSC 185.

David Field, William van Caenegem, and Clair Duffy, Queensland Evidence Law (LexisNexis, 6th edn, 2022) 148 [5.33].

AWB Ltd v Cole (2006) 152 FCR 382, 410 [100].

Waterford v The Commonwealth of Australia (1987) 163 CLR 54, 70.

Seven Network Limited v News Limited [2005] FCA 142, [5].

Waterford v The Commonwealth of Australia (1987) 163 CLR 54.

Collins v London General Omnibus Co (1893) 68 LT 831, 833.

David Field, William van Caenegem, and Clair Duffy, Queensland Evidence Law (LexisNexis, 6th edn, 2022) 147 [5.29].

JRS Forbes, Evidence Law in Queensland (Thomson Reuters, 14th edn, 2023) 154 [A.175].

David Field, William van Caenegem, and Clair Duffy, Queensland Evidence Law (LexisNexis, 6th edn, 2022).

Attorney-General (NT) v Maurice (1986) 161 CLR 475, 487.

R v Cox (1884) 14 QBD 153, 153.

R v Bell; Ex parte Lees (1980) 146 CLR 141, 156.

JRS Forbes, Evidence Law in Queensland (Thomson Reuters, 14th edn, 2023) 155 [A.175].

Evidence Bill 2025 (WA) part 4, div 1.

Australasian Parliamentary Counsel’s Committee, Model Uniform Evidence Bill (29 November 2019) ch 3 part 3.10 div 1; Evidence Act 1995 (Cth) ch 3 part 3.10 div 1; Evidence Act 1995 (NSW) ch 3 part 3.10 div 1; Evidence Act 2001 (Tas) ch 3 part 10 div 1; Evidence Act 2011 (ACT) ch 3 part 3.10 div 1; Evidence (National Uniform Legislation) Act 2011 (NT) part 3.10 div 1; Evidence Bill 2025 (WA) part 4 div 1.

Australian Law Reform Commission, Review of the Evidence Act 1995 (Issue Paper No 28, 2004) [11.23].

Baker v Campbell (1983) 153 CLR 52, 132.

Australian Law Reform Commission, NSW Law Reform Commission, and Victorian Law Reform Commission, Uniform Evidence Law (Report No 102, December 2005) 470 [14.63].

Baker v Campbell (1983) 153 CLR 52, 85; Australian Law Reform Commission, Evidence (Interim Report No 26, 1985) [438].

Evidence Act 1995 (Cth) ss 118–119; Evidence Act 1995 (NSW) ss 118–119; Evidence Act 2001 (Tas) ss 118–119; Evidence Act 2008 (Vic) ss 118–119; Evidence Act 2011 (ACT) ss 118–119; Evidence (National Uniform Legislation) Act 2011 (NT) ss 118–119.

Evidence Act 1995 (Cth) s 117(1)(b); Evidence Act 1995 (NSW) s 117(1)(b); Evidence Act 2001 (Tas) s 117(1)(b); Evidence Act 2008 (Vic) s 117(1)(b); Evidence Act 2011 (ACT) s 117(1)(b); Evidence (National Uniform Legislation) Act 2011 (NT) s 117(1)(b).

Stephen Odgers, Uniform Evidence Law (Thomson Reuters, 20th edn, 2025) [EA.117.90].

Pratt Holdings Pty Ltd v Commissioner of Taxation (2004) 136 FCR 357, 369 [49].

- 141 Evidence Act 1995 (Cth) s 121(1); Evidence Act 1995 (NSW) s 121(1); Evidence Act 2001 (Tas) s 121(1); Evidence Act 2008 (Vic) s 121(1); Evidence Act 2011 (ACT) s 121(1); Evidence (National Uniform Legislation) Act 2011 (NT) s 121(1).
- 142 Evidence Act 1995 (Cth) s 121(2); Evidence Act 1995 (NSW) s 121(2); Evidence Act 2001 (Tas) s 121(2); Evidence Act 2008 (Vic) s 121(2); Evidence Act 2011 (ACT) s 121(2); Evidence (National Uniform Legislation) Act 2011 (NT) s 121(2).
- 143 Evidence Act 1995 (Cth) s 121(3); Evidence Act 1995 (NSW) s 121(3); Evidence Act 2001 (Tas) s 121(3); Evidence Act 2008 (Vic) s 121(3); Evidence Act 2011 (ACT) s 121(3); Evidence (National Uniform Legislation) Act 2011 (NT) s 121(3). The courts have narrowly interpreted this limb to mean a communication that discusses the actual existence or extent of a person's rights, rather than something that is merely relevant to them: *Talbot v NRMA Ltd* [2000] NSWSC 602, [3].
- 144 Evidence Act 1995 (Cth) s 122; Evidence Act 1995 (NSW) s 122; Evidence Act 2001 (Tas) s 122; Evidence Act 2008 (Vic) s 122; Evidence Act 2011 (ACT) s 122; Evidence (National Uniform Legislation) Act 2011 (NT) s 122.
- 145 Evidence Act 1995 (Cth) s 122(3); Evidence Act 1995 (NSW) s 122(3); Evidence Act 2001 (Tas) s 122(3); Evidence Act 2008 (Vic) s 122(3); Evidence Act 2011 (ACT) s 122(3); Evidence (National Uniform Legislation) Act 2011 (NT) s 122(3).
- 146 *Mann v Carnell* (1999) 201 CLR 1, 13.
- 147 Ahmed Terzic, 'Implied Waiver of Legal Professional Privilege: A Search for Consistency' 45 *Australian Bar Review* 287, 287.
- 148 For an example of inadvertent disclosure, see *Hamersley Iron Pty Ltd v Metal and Engineering Workers' Union of WA* [1998] WASC 289; *Unsworth v Tristar Steering and Suspension Australia Ltd* [2007] FCA 1081.
- 149 Evidence Act 1995 (Cth) s 122(5)(a)(ii); Evidence Act 1995 (NSW) s 122(5)(a)(ii); Evidence Act 2001 (Tas) s 122(5)(a)(ii); Evidence Act 2008 (Vic) s 122(5)(a)(ii); Evidence Act 2011 (ACT) s 122(5)(a)(ii); Evidence (National Uniform Legislation) Act 2011 (NT) s 122(5)(a)(ii).
- 150 Evidence Act 1995 (Cth) s 122(6); Evidence Act 1995 (NSW) s 122(6); Evidence Act 2001 (Tas) s 122(6); Evidence Act 2008 (Vic) s 122(6); Evidence Act 2011 (ACT) s 122(6); Evidence (National Uniform Legislation) Act 2011 (NT) s 122(6) and common law; JD Heydon, LexisNexis, *Cross on Evidence* (Online at 25 September 2026) [17245].
- 151 Evidence Act 1995 (Cth) s 123; Evidence Act 1995 (NSW) s 123; Evidence Act 2001 (Tas) s 123; Evidence Act 2008 (Vic) s 123; Evidence Act 2011 (ACT) s 123; Evidence (National Uniform Legislation) Act 2011 (NT) s 123.
- 152 Evidence Act 1995 (Cth) s 124; Evidence Act 1995 (NSW) s 124; Evidence Act 2001 (Tas) s 124; Evidence Act 2008 (Vic) s 124; Evidence Act 2011 (ACT) s 124; Evidence (National Uniform Legislation) Act 2011 (NT) s 124.
- 153 Evidence Act 1995 (Cth) s 126; Evidence Act 1995 (NSW) s 126; Evidence Act 2001 (Tas) s 126; Evidence Act 2008 (Vic) s 126; Evidence Act 2011 (ACT) s 126; Evidence (National Uniform Legislation) Act 2011 (NT) s 126.
- 154 Evidence Act 1995 (Cth) s 125; Evidence Act 1995 (NSW) s 125; Evidence Act 2001 (Tas) s 125; Evidence Act 2008 (Vic) s 125; Evidence Act 2011 (ACT) s 125; Evidence (National Uniform Legislation) Act 2011 (NT) s 125.
- 155 Paul Latimer, 'Legal Professional Privilege and the Fight Against Corporate Misconduct' (2025) 56 *Australian Bar Review* 12, 17.
- 156 Evidence Act 1995 (Cth) s 120; Evidence Act 1995 (NSW) s 120; Evidence Act 2001 (Tas) s 120; Evidence Act 2008 (Vic) s 120; Evidence Act 2011 (ACT) s 120; Evidence (National Uniform Legislation) Act 2011 (NT) s 120.
- 157 JD Heydon, LexisNexis, *Cross on Evidence* (Online at 25 September 2026) [25210].
- 158 Suzanne McNicol, *Law of Privilege* (The Law Book Company, 1992) 435.
- 159 *Re Turf Enterprises Pty Ltd* [1975] Qd R 266, 267.
- 160 Suzanne McNicol, *Law of Privilege* (The Law Book Company, 1992) 435, citing *Rush and Tompkins Ltd v Greater London Council* [1988] 3 All ER 737, 740 and *Field v Commissioner for Railways (NSW)* (1955) 99 CLR 285, 291.
- 161 Australian Law Reform Commission, *Evidence* (Interim Report No 26, 1985) vol 1, 502–3 [890]–[891].
- 162 Suzanne McNicol, *Law of Privilege* (The Law Book Company, 1992) 437.
- 163 David Vaver, '“Without Prejudice” Communications — Their Admissibility and Effect' (1974) 9 *University of British Columbia Law Review* 85, 96–104.
- 164 *Glengallan Investments Pty Ltd v Arthur Andersen* [2002] 1 Qd R 233, 248–9 [27]–[28].
- 165 *Field v Commissioner for Railways (NSW)* (1957) 99 CLR 285, 291–2.

Field v Commissioner for Railways (NSW) (1957) 99 CLR 285, 292.

Re Turf Enterprises Pty Ltd [1975] Qd R 266, 267.

Rodgers v Rodgers (1964) 114 CLR 608, 614.

Harrington v Lowe (1996) 190 CLR 311, 323; Glengallan Investments Pty Ltd v Arthur Andersen [2002] 1 Qd R 233, 249 [29].

JD Heydon, LexisNexis, Cross on Evidence (Online at 25 September 2026) [25350], [25375]–[25385].

Civil Proceedings Act 2011 (Qld) s 53.

Uniform Civil Procedure Rules 1999 (Qld) ch 9 pt 5.

Uniform Civil Procedure Rules 1999 (Qld) r 357.

Uniform Civil Procedure Rules 1999 (Qld) r 357(3).

Australian Law Reform Commission, Evidence (Report No 38, 1987) 125 [223], 187–9 cl 113; Australasian Parliamentary Counsel’s Committee, Model Uniform Evidence Bill (29 November 2019) cl 131. The implementation of this clause is substantially equivalent across all uniform evidence jurisdictions.

Australasian Parliamentary Counsel’s Committee, Model Uniform Evidence Bill (29 November 2019) cls 131(1)–(2).

Korean Airlines v Australian Competition and Consumer Commission (No 3) (2008) 247 ALR 781, 788 [67].

Australasian Parliamentary Counsel’s Committee, Model Uniform Evidence Bill (29 November 2019) cl 131(2).

Evidence Act 1977 (Qld) s 14V.

Evidence Act 1977 (Qld) s 14Q(1).

Evidence Act 1977 (Qld) ss 14Y, 14ZF.

Evidence Act 1977 (Qld) div 2B, sub-div 3. Victoria also applies a journalist privilege to search warrants: Evidence Act 2008 (Vic) ss 126K, 131A(2)(g).

Crime and Corruption Act 2001 (Qld) s 205D.

Explanatory Notes, Evidence and Other Legislation Amendment Bill 2021 (Qld) 4.

Explanatory Notes, Evidence and Other Legislation Amendment Bill 2021 (Qld) 1.

Explanatory Notes, Evidence and Other Legislation Amendment Bill 2021 (Qld) 1.

Tasmania is the only jurisdiction not to expressly protect journalists and their sources, however their professional relationship privilege may be relevant for journalists: Evidence Act 2001 (Tas) s 126B.

The Commonwealth first enacted a journalist privilege in 2011, subsequent jurisdictions followed however in 2020 the Parliamentary Joint Committee on Intelligence and Security recommended these provisions would benefit from further harmonisation, see recommendation 15: Parliamentary Joint Committee on Intelligence and Security, Parliament of Australia, Inquiry into the Impact of the Exercise of Law Enforcement and Intelligence Powers on the Freedom of the Press (Report, August 2020) xxii [3.313].

Explanatory Notes, Evidence and Other Legislation Amendment Bill 2021 (Qld) 1.

Rebecca Ananian-Welsh and Jason Bosland, ‘Protecting the Press from Search and Seizure: Comparative Lessons for the Australian Reform Agenda’ (2023) 46(3) Melbourne University Law Review 602, 14–17.

Evidence Act 1977 (Qld) s 14Y(2).

Evidence Act 1977 (Qld) ss 14W, 14ZC–14ZE.

As well as Commonwealth, ACT, and New Zealand: Evidence Act 1995 (Cth) s 126j; Evidence Act 2011 (ACT) s 126j; Evidence Act 2006 (NZ) s 68.

The latter definition was adopted in most jurisdictions: Evidence Act 1929 (SA) s 72; Evidence Act 2008 (Vic) s 126j; Evidence Bill 2025 (WA) cl 179.

Adam Lukacs, ‘Evaluating the Merits of Queensland’s New Shield Law: Reform Lessons for the Rest of Australia’ (2023) 42(1) University of Queensland Law Journal 65, 77; Department of Justice and Attorney General, Public Briefing to Legal Affairs and Safety Committee, Parliament of Queensland, Inquiry into the Evidence and Other Legislation Amendment Bill 2021 (29 November 2021) 2 (Robertson); Legal Affairs and Safety Committee, Parliament of Queensland, Evidence and Other Legislation Amendment Bill 2021 (Report 23, February 2022) 8–9.

Evidence Act 1977 (Qld) s 14R(1)(a).

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Evidence Act 1977 (Qld) s 14T (definition of 'relevant person').

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Evidence Act 1929 (SA) s 72 (definition of 'prescribed person').

Stephen Odgers, Thomson Reuters, Uniform Evidence Law (Online at 25 September 2026) [EA.126K.120].

Ashby v Commonwealth (No 2) (2012) 203 FCR 440; Madaffer v The Age Company Ltd (2015) 50 VR 492; Australian Broadcasting Corp v Kane (No 2) (2020) 377 ALR 711; Roberts-Smith v Fairfax Media Publications Pty Ltd (No 3) [2020] FCA 2; Kumova v Davison [2021] FCA 753; Roberts-Smith v Fairfax Media Publications Pty Ltd (No 27) [2022] FCA 79; Roberts-Smith v Fairfax Media Publications Pty Ltd (No 28) [2022] FCA 115; Al Muderis v Nine Network Australia Pty Ltd [2023] FCA 1623; Al Muderis v Nine Network Australia Pty Ltd (No 2) [2024] FCA 136; Marshall v Nationwide News [2026] VSC 427.

Roberts-Smith v Fairfax Media Publications Pty Ltd (No 28) [2022] FCA 115, 9 [20].

Roberts-Smith v Fairfax Media Publications Pty Ltd (No 27) [2022] FCA 79, 9 [27], 10 [31]; Al Muderis v Nine Network Australia Pty Ltd (No 2) [2024] FCA 136, 25 [84], 26 [86].

Roberts-Smith v Fairfax Media Publications Pty Ltd (No 3) [2020] FCA 2, 20 [81].

Madaffer v The Age Company Ltd (2015) 50 VR 492, 506 [44].

Marshall v Nationwide News [2026] VSC 427, 56 [204].

Marshall v Nationwide News [2026] VSC 427, 56 [204], 58 [218], 57 [220], 60 [223].

Hannah Ryan, 'The Half-Hearted Protection of Journalists' Sources: Judicial Interpretation of Australia's Shield Laws' (2014) 19 Media and Arts Law Review 325, 338.

Kumova v Davison [2021] FCA 753, 19 [51]; see especially Al Muderis v Nine Network Australia Pty Ltd [2023] FCA 1623, 17–18 [37], [40]–[42], 20–21 [52]–[53]. Compare Ashby v Commonwealth (No 2) (2012) 203 FCR 440, 446 [19]–[21], 447 [23].

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Kumova v Davison [2021] FCA 753, 6 [16].

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Evidence Act 1977 (Qld) s 14F(a).

Evidence Act 1977 (Qld) s 14F(b).

225 Evidence Act 1977 (Qld) ss 14F–14H.
 226 The burden is on the applicant for leave: *SWN v CJA & Ors* [2025] QSC 218, 243 [94].
 227 Evidence Act 1977 (Qld) s 14H(1).
 228 Evidence Act 2001 (Tas) s 127B.
 229 Evidence Act 1906 (WA) ss 19A–19M, to be replaced by Evidence Bill 2025 (WA) pt 4, div 3.
 230 In the ACT, WA and SA, the Court must be satisfied there is a legitimate forensic purpose before considering an application for disclosure: Evidence (Miscellaneous Provisions) Act 1991 (ACT) ss 79F, 79G; Evidence Bill 2025 (WA) ss 167, 169; Evidence Act 1929 (SA) s 67F. In Queensland, NSW, and Victoria, the court must consider, based on its examination of the evidence, whether the public interest in disclosure substantially outweighs the public interest in protecting the confidentiality of the communication: Evidence Act 1977 (Qld) s 14H, Criminal Procedure Act 1986 (NSW) s 299D; Evidence (Miscellaneous Provisions) Act 1958 (Vic) s 32D.
 231 The Queensland and NSW provisions operate as a privilege, establishing the right for a person to object to producing a protected counselling communication, but allowing them to consent to its disclosure: Evidence Act 1977 (Qld) ss 14D, 14F; Criminal Procedure Act 1986 (NSW) ss 297–298. In contrast, the South Australian provisions operate as an immunity, with the effect that a person cannot waive the protection: Evidence Act 1929 (SA) s 67E.
 232 This includes a protected confidence, or the contents of a document recording a protected confidence or protected identity information: Evidence Act 1995 (NSW) s 126B(1); Evidence Act 2001 (Tas) s 126B(1); Evidence Act 2011 (ACT) s 126B(1); Evidence Bill 2025 (WA) cl 159(1).
 233 New South Wales, Parliamentary Debates, Legislative Council, 22 October 1997, 1121–22 (Hannaford). See also *Director-General, Department of Community Services v D* (2006) 66 NSWLR 582, 590 [24].
 234 Evidence Act 1995 (NSW) s 126A; Evidence Act 2001 (Tas) s 126A; Evidence Act 2011 (ACT) s 126A; Evidence Bill 2025 (WA) cl 158.
 235 Stephen Odgers, Thomson Reuters, Uniform Evidence Law (Online at 25 September 2026) [EA.126A.30].
 236 Andru Isac, Cross on Evidence (LexisNexis New Zealand, 12th edn, 2024) [25340].
 237 Evidence Act 1995 (NSW) s 126B(3); Evidence Act 2001 (Tas) s 126B(3); Evidence Act 2011 (ACT) s 126B(3); Evidence Bill 2025 (WA) cl 159(3).
 238 Stephen Odgers, Thomson Reuters, Uniform Evidence Law (Online at 25 September 2026) [EA.126B.120].
 239 Evidence Act 1995 (NSW) s 126B(4); Evidence Act 2001 (Tas) s 126B(4); Evidence Act 2011 (ACT) s 126B(4); Evidence Bill 2025 (WA) cl 159(4).
 240 For example, in *R v Woutersz* (No 2) [2016] ACTSC 397, 398 [4], the court distinguished between a psychologist conducting a risk assessment and acting in a therapeutic capacity.
 241 In *R v Kelsall* (No 3) (2015) 249 A Crim R 148 the court found that information related to the potential harm of others was admissible.
 242 In *Adoption of AT* [2015] NSWSC 1995, the court considered the welfare of a child a significant factor that outweighed the interest of a party in a protected confidence.
 243 Evidence Act 1995 (NSW) s 126B(2); Evidence Act 2001 (Tas) s 126B(2); Evidence Act 2011 (ACT) s 126B(2); Evidence Bill 2025 (WA) cl 159(2).
 244 Evidence Act 1995 (NSW) ss 126C, 126D; Evidence Act 2001 (Tas) ss 126C, 126D; Evidence Act 2011 (ACT) ss 126C, 126D; Evidence Bill 2025 (WA) cls 160, 161.
 245 Australian Law Reform Commission, Evidence (Interim Report No 26, 1985) 514 [918].
 246 Australian Law Reform Commission, Evidence (Interim Report No 26, 1985) 515–16 [921]–[931].
 247 For example, Tasmania’s professional confidential relationship privilege may apply to communications made between sources and journalists: Evidence Act 2001 (Tas) ss 126A(1), 126B(1). Western Australia’s professional confidential relationship privilege includes confessions made to ministers of religion: Evidence Bill 2025 (WA) s 158(2).
 248 For example, Victoria and the Northern Territory do not have a professional confidential relationship privilege but have a journalist privilege, doctor-patient privilege and religious confessions privilege.
 249 Evidence Amendment (Confidential Communications) Act 1997 (NSW) sch 1 following publication of Attorney General’s Department (NSW), Protecting Confidential Communications from Disclosure in Court Proceedings (Discussion Paper, 1996).

250 Evidence Amendment Act 2010 (Tas) s 35.
 251 Australian Law Reform Commission, NSW Law Reform Commission, and Victorian Law Reform Commission, Uniform Evidence Law (Report No 102, December 2005) 511–12 [15.37].
 252 Evidence Act 2011 (ACT) pt 310, div 1A; Evidence Bill 2025 (WA) pt 4, div 2.
 253 Victorian Law Reform Commission, Implementing the Uniform Evidence Act (Report, February 2006) 31.
 254 Victoria, Parliamentary Debates, Legislative Council, 31 July 2008, 2937 (Madden).
 255 Northern Territory Law Reform Committee, Report on the Uniform Evidence Act (Report 30, September 2006) 21 n 27.
 256 Queensland Law Reform Commission, The Protection of Statements Made to Religiously Ordained Officials (Report 41, 2 April 1991) 3.
 257 Australian Law Reform Commission, Privilege in Perspective: Client Legal Privilege in Federal Investigations (Report No 107, December 2007) 284 [6.194].
 258 Australian Law Reform Commission, Privilege in Perspective: Client Legal Privilege in Federal Investigations (Report No 107, December 2007) 284 [6.195].
 259 Evidence Act 1995 (Cth) s 127; Evidence Act 1995 (NSW) s 127; Evidence Act 2001 (Tas) s 127; Evidence (National Uniform Legislation) Act 2011 (NT) s 127; Evidence Act 2008 (Vic) 127; Evidence Act 2011 (ACT) 127.
 260 Evidence Act 1995 (Cth) s 127(1); Evidence Act 1995 (NSW) s 127(1); Evidence Act 2001 (Tas) s 127(1); Evidence (National Uniform Legislation) Act 2011 (NT) s 127(1); Evidence Act 2008 (Vic) 127(1); Evidence Act 2011 (ACT) 127(1).
 261 Evidence Act 1995 (Cth) s 127(3); Evidence Act 1995 (NSW) s 127(3); Evidence Act 2001 (Tas) s 127(3); Evidence (National Uniform Legislation) Act 2011 (NT) s 127(3); Evidence Act 2008 (Vic) 127(3); Evidence Act 2011 (ACT) 127(3).
 262 Australian Law Reform Commission, Evidence (Interim Report No 26, 1985) vol 1 506–508 [903]–[908]; Queensland Law Reform Commission, The Protection of Statements Made to Religiously Ordained Officials (Report 41, 2 April 1991) 1.
 263 Queensland Law Reform Commission, The Protection of Statements Made to Religiously Ordained Officials (Report 41, 2 April 1991) 2.
 264 Queensland Law Reform Commission, The Protection of Statements Made to Religiously Ordained Officials (Report 41, 2 April 1991) 3.
 265 Standing Committee on Justice and Community Safety, ACT Legislative Assembly, Scrutiny Report (Report 34, 21 March 2011) 5.
 266 Standing Committee on Justice and Community Safety, ACT Legislative Assembly, Scrutiny Report (Report 34, 21 March 2011) 5.
 267 Explanatory Statement, Evidence Bill 2011 (ACT) 51–2.
 268 Australasian Parliamentary Counsel’s Committee, Model Uniform Evidence Bill (29 November 2019) cl 127.
 269 Evidence Act 1995 (Cth) s 127; Evidence Act 1995 (NSW) s 127; Evidence Act 2001 (Tas) s 127; Evidence (National Uniform Legislation) Act 2011 (NT) s 127; Evidence Act 2008 (Vic) s 127; Evidence Act 2011 (ACT) s 127; Evidence Bill 2025 (WA) part 4 div 2.
 270 Evidence Act 1995 (Cth) s 127(2); Evidence Act 1995 (NSW) s 127(2); Evidence Act 2001 (Tas) s 127(2); Evidence (National Uniform Legislation) Act 2011 (NT) s 127(2).
 271 Royal Commission into Institutional Responses to Child Sexual Abuse, Criminal Justice Report (Report, 14 August 2017) pts I–II, 47–56, 123–125; Explanatory Notes, Royal Commission Criminal Justice Legislation Amendment Bill 2020 (ACT) 4; Victoria, Parliamentary Debates, Legislative Assembly, 15 August 2019, 2692–95 (Mr Donnellan); Children Legislation Amendment Act 2019 (Vic) 18.
 272 Evidence Bill 2025 (WA) pt 4 div 2.
 273 Evidence Bill 2025 (WA) cl 159.
 274 Evidence Bill 2025 (WA) cl 160.
 275 Evidence Bill 2025 (WA) cl 161.
 276 Evidence Bill 2025 (WA) cl 200.
 277 Evidence Bill 2025 (WA) cl 200.
 278 Australian Law Reform Commission, Evidence (Interim Report No 26, 1985) 506–508, [903]–[909]; Australian

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Evidence Act 2001 (Tas) s 127A. For Victoria and the Northern Territory respectively: Evidence (Miscellaneous Provisions) Act 1958 (Vic) s 28; Evidence Act 1939 (NT) s 12.

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Evidence (Miscellaneous Provisions) Act 1958 (Vic) s 28(2).

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Queensland Law Reform Commission
Level 30, 400 George Street, Brisbane QLD 4000
PO Box 13312, George Street Post Shop, Brisbane QLD 4003
P: (07) 3564 7777 | E: LawReform.Commission@justice.qld.gov.au
www.qlrc.qld.gov.au
