

Legislative Council—No 67

As introduced and read a first time, 14 October 2015

South Australia

Evidence (Journalists) Amendment Bill 2015

A BILL FOR

An Act to amend the *Evidence Act 1929*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Evidence (Journalists) Amendment Act 2015*.

5 2—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Evidence Act 1929*

3—Insertion of Part 8A

10 After Part 8 insert:

Part 8A—Journalists

72—Interpretation

In this Part—

15 *informant* means a person who gives information to a journalist in the normal course of the journalist's work;

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

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

72A—Application of Part

This Part applies to proceedings commenced before or after the commencement of this Part.

72B—No liability incurred for failure etc to disclose identity of informant in court proceedings etc

(1) This section applies in relation to the following proceedings:

- (a) criminal or civil proceedings in a court;
- (b) a commission of inquiry under the *Royal Commissions Act 1917*.

(2) Subject to this section, but despite any other provision of this Act or any other Act or law, if, in the course of proceedings to which this section applies, a person satisfies the court or commission that—

- (a) he or she is—
 - (i) a journalist; or
 - (ii) a prescribed person in respect of a journalist; and
 - (b) —
 - (i) in the case of a journalist—he or she; or
 - (ii) in the case of a prescribed person—the journalist in respect of whom he or she is a prescribed person,
- has been given information by an informant; and
- (c) the informant gave the information to the journalist in the expectation that the information may be published in a news medium; and
 - (d) the informant reasonably expected that his or her identity would be kept confidential (whether because of an express undertaking given by the journalist or otherwise),

then the person does not incur any criminal or civil liability for failing or refusing to answer any question, or to produce any document or other material, that may directly or indirectly disclose the identity of the informant.

(3) However, the court or commission may, on the application of a party to the proceedings or on its own motion—

- (a) order that subsection (2) does not apply to, or in relation to, a person; and
- (b) make any ancillary order the court or commission thinks appropriate.

- (4) The court or commission may only make an order under subsection (3)(a) if it is satisfied that, having regard to the circumstances of the case, the public interest in disclosing the identity of the informant—
- 5 (a) outweighs any likely adverse effect of the disclosure on the informant or any other person; and
- (b) outweighs the public interest relating to the communication of information by the news media generally; and
- 10 (c) outweighs the need of the news media to be able to access information held by potential informants.
- (5) In this section—
- prescribed person*, in respect of a journalist, means—
- (a) an employer of the journalist; or
- 15 (b) a person who engaged the journalist under a contract for services; or
- (c) any other person prescribed by the regulations for the purposes of this definition.

72C—No liability incurred for failure etc to disclose identity of informant in other proceedings

- 20 (1) This section applies in relation to any proceedings comprising a hearing, examination or other proceeding at which a person may, but for this section, be compelled to answer questions or produce documents (other than proceedings to which section 72B applies).
- 25 (2) Subject to this section, but despite any other provision of this Act or any other Act or law, a prescribed person does not incur any criminal or civil liability if, in the course of proceedings to which this section applies, he or she fails or refuses to answer any question, or to produce any document or other material, that may directly or indirectly disclose the identity of an informant who has given
- 30 information to the prescribed person, or a journalist employed or engaged by the prescribed person, in circumstances where—
- (a) the informant gave the information to the journalist in the expectation that the information may be published in a news medium; and
- 35 (b) the informant reasonably expected that his or her identity would be kept confidential (whether because of an express undertaking given by the journalist or otherwise).
- (3) However, the person or body conducting the proceedings, or any party to the proceedings, may apply to the Supreme Court for an order that subsection (2) does not apply to the prescribed person.
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- (4) The Supreme Court may only make an order under subsection (3) if it is satisfied that, having regard to the circumstances of the case, the public interest in disclosing the identity of the informant—
- (a) outweighs any likely adverse effect of the disclosure on the informant or any other person; and
 - (b) outweighs the public interest relating to the communication of information by the news media generally; and
 - (c) outweighs the need of the news media to be able to access information held by potential informants.
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- (5) If the Supreme Court makes an order under subsection (3), it may make any ancillary order it thinks appropriate.
- (6) In proceedings to which this section applies, or an application for an order under this section, the onus is on a prescribed person to prove that—
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- (a) he or she is a prescribed person; and
 - (b) the person whose identity should not be disclosed is an informant.
- (7) In this section—
- prescribed person* means—
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- (a) a journalist; or
 - (b) an employer of a journalist; or
 - (c) a person who engaged a journalist under a contract for services; or
 - (d) any other person prescribed by the regulations for the purposes of this definition.
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