

Legislative Council—No 8A

As reported with amendments, report adopted, Standing Orders suspended and passed remaining stages, 2 August 2018

South Australia

Evidence (Journalists) Amendment Bill 2018

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 2018*.

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

- (1) 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 (subject to a regulation made under subsection (2)) a person engaged in the profession or occupation of journalism in connection with the publication of information 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;

prescribed person, in respect of a journalist, means—

- (a) an employer of the journalist; or

- (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.

5 **72A—Application of Part**

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

10 **72B—No liability incurred for failure to disclose identity of informant in court proceedings**

- 10 (1) 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 Part applies, a person satisfies the court that—
- 15 (a) the person is—
 - (i) a journalist; or
 - 15 (ii) a prescribed person in respect of a journalist; and
 - 20 (b) —
 - (i) in the case of a journalist—the journalist; or
 - (ii) in the case of a prescribed person—the journalist in respect of whom the person is a prescribed person,
 - 20 has been given information by an informant; and
 - 25 (c) the informant gave the information to the journalist in the expectation that the information may be published in a news medium; and
 - 25 (d) the informant reasonably expected that the informant's 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.

- 30 (2) However, the court may, on the application of a party to the proceedings or (subject to subsection (2a)) on its own motion—
- 35 (a) order that subsection (1) does not apply to, or in relation to, a person; and
 - 35 (b) make any ancillary order the court thinks appropriate.
- 40 (2a) The court may only make orders on its own motion if—
- (a) all parties to the proceedings before the court are not legally represented; or
 - (b) the court is of a kind that does not make orders on application by parties.

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- (3) The court may only make an order under subsection (2)(a) 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.

10 **72C—Review of Part**

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- (1) The Minister must cause a review of the operation of this Part to be conducted and a report on the review to be prepared and submitted to the Minister.
 - (2) The review and the report must be completed after the third but before the fourth anniversary of the commencement of this Part.
 - (3) The Minister must cause a copy of the report submitted under subsection (1) to be laid before both Houses of Parliament within 6 sitting days after receiving the report.