

Legislative Council—No 123

As introduced and read a first time, 20 February 2013

South Australia

**Evidence (Protections for Journalists) Amendment
Bill 2013**

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 (Protections for Journalists) Amendment Act 2013*.

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—Protections for journalists etc

72—Interpretation

In this Part—

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

professional journalist means a person engaged in the profession of journalism (whether on a paid or unpaid basis);

20 *news medium* means any medium (whether printed, electronic or otherwise) used to disseminate news, or commentary on news, to members of the public.

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 prescribed 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 prescribed court or commission that—

(a) he or she is—

- (i) a professional journalist; or
- (ii) a prescribed person in respect of a professional journalist; and

(b) —

- (i) in the case of a professional journalist—he or she; or
- (ii) in the case of a prescribed person—the professional journalist in respect of whom he or she is a prescribed person,

has been given information by an informant in the expectation that the information may be published in a news medium,

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 prescribed court or commission may, on the application of a party to the proceedings or on its own motion, order that subsection (2) does not apply to, or in relation to, the person if satisfied—

- (a) that it is, in all of the circumstances, in the public interest to make the order; and
- (b) that the disclosure of the identity of the informant is necessary in the interests of justice as it pertains to the proceedings; and

- (c) that the benefit of disclosing the identity of the informant, or of answering the question or producing the document or other material, outweighs any prejudicial effect such disclosure may have on an informant, professional journalist or any other person,

and may make any ancillary order the prescribed court or commission thinks appropriate.

- (4) In this section—

prescribed court—each of the following is a prescribed court:

- (a) the Supreme Court;
(b) the District Court;
(c) the Magistrates Court;
(d) the Youth Court;
(e) the Coroners Court;
(f) the Environment, Resources and Development Court;
(g) the Industrial Court;
(h) any other court prescribed by the regulations for the purposes of this definition;

prescribed person, in respect of a professional journalist, means—

- (a) an employer of the professional journalist; or
(b) a person who engaged the professional 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

- (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 under the *Independent Commissioner Against Corruption Act 2012* or proceedings to which section 72B applies).
- (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 information to the prescribed person, or a professional journalist employed or engaged by the prescribed person, in the expectation that the information may be published in a news medium.

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- (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.
- (4) The Supreme Court may only order that subsection (2) does not apply to, or in relation to, the prescribed person if satisfied—
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- (a) that it is, in all of the circumstances, in the public interest to make the order; and
- (b) that the disclosure of the identity of the informant is necessary in the interests of justice as it pertains to the proceedings; and
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- (c) that the benefit of disclosing the identity of the informant, or of answering the question or producing the document or other material, outweighs any prejudicial effect such disclosure may have on an informant, professional journalist or any other person.
- (5) If the Supreme Court makes an order under this section, 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—
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- prescribed person*** means—
- (a) a professional journalist; or
- (b) an employer of a professional journalist; or
- (c) a person who engaged a professional journalist under a contract for services; or
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- (d) any other person prescribed by the regulations for the purposes of this definition.