



21 May 2018

The Hon Vickie Chapman MHA
Attorney-General
Level 11, 45 Pirie St
ADELAIDE SA 5000

By email: agd@agd.sa.gov.au
madeleine.church@sa.gov.au

Dear Attorney-General,

The Joint Media Organisations whose logos appear above write to you regarding the recently introduced *Evidence (Journalists) Amendment Bill 2018* (the Bill) – also known as the journalist shield law.

The Joint Media Organisations strongly support the enactment of a journalist shield law in South Australia. This finally aligns South Australia with the Commonwealth and other states that acknowledge the important role the media plays in democratic societies like Australia.

We thank you and the Premier as leaders of the Government for acting so quickly on your election commitment to provide a shield for journalists' sources.

As above, we support the enactment of a journalist shield law in South Australia. Notwithstanding this, we are united to ensuring the shield law is workable and fit for purpose.

We therefore we recommend the following changes to ensure the shield law is exactly that, a shield law in name and in operation:

– Section 72(1) – Definition of journalist

We believe that the definition of journalist in the Bill is unnecessarily narrower than the Commonwealth law.

We are also concerned that the Bill allows variation of the definition by regulation. As a point of principle we do not support such an approach as it leaves the amendment to a regulation making-power outside of the scope of the Parliament. It also introduces uncertainty and therefore increases the risk of the application and operation of the law.

We recommend

Delete the regulation making power and associated prescribed person (sections 72B(1)(a)(ii) and section 72B(1)(b)(ii)); and

Adopt the definition of journalist as per Section 126J of the Evidence Act 1995 (Cth), specifically: *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.*

- Section 72B(1) – employer of a journalist is not accommodated (as it is in Commonwealth law)

We note that the employer of the journalist is not accommodated in the law, however, it is accommodated in the Commonwealth law.

We recommend

The employer of the journalist be accommodated by adding the bold text at the end of section 72B(1) such that it says:

*"Subject to this section....then the person **or the person's employer** 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".*

- Section 72B – objective test at section 72B(1)(d) requires rectification

The Bill includes an objective test regarding the expectation of the informant regarding the confidentiality of their identity. The Bill states: *'the informant reasonably expected'* regarding the confidentiality. This is also inconsistent with the purpose for the shield law.

We recommend

Delete the word *'reasonably'* from section 72B(1)(d)

- **Section 72B(2) – *'on its own motion'* undermines the shield**

The Bill enables the Court to overrule the shield *'on its own motion'*.

This reaches far beyond the ability of one of the parties to the case to apply for the shield to not apply. This is an unacceptable overreach.

It enables the court to decide – for itself – that the shield should not apply. In doing so this undermines the shield law so that it is in fact not a shield at all. This is the case whether or not the court acts upon

the law, the fact that the law enables this 'own motion' by the court undermines the shield and makes it inoperable.

Importantly, this is also inconsistent with all other shield laws including the Commonwealth, NSW and Victoria.

We do not accept this inclusion and recommend in the strongest terms that this be removed from the Bill.

We recommend

Delete 'on its own motion' from section 72B(2) of the Bill

Again, we thank the Government for its commitment to public interest reporting in South Australia and ensuring that journalists and sources are provided with the appropriate legal framework that exists in Commonwealth law and in other states.

We look forward to working with the Government and other parties to ensure the law that is implemented in South Australia is fit-for-purpose.