

Statement of compatibility with human rights

Prepared in accordance with the Thirteenth Assembly Sessional Orders (Part 12.3) as adopted on 24 August 2017.

Evidence (National Uniform Legislation) Amendment (Journalist Privilege) Bill 2017 Serial 37

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth).

Overview of the Bill

The Evidence (National Uniform Legislation) Amendment (Journalist Privilege) Bill 2017 (the Bill) amends the *Evidence (National Uniform Legislation) Act* to provide that a journalist may claim journalist privilege in order to protect a confidential source of information. The privilege is a qualified one, in that the court can require the journalist to identify the informant if this is justified by overriding public interest considerations.

The Bill also extends the time in which the courts will presume a person receives a letter (or other postal article) by post, to reflect the extended postal delivery timeframes that have been adopted by Australia Post.

Human rights implications

The Bill engages the following right of freedom of expression referred to in the International Covenant on Civil and Political Rights (ICCPR) in a positive way.

Article 19 of the ICCPR provides that:

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as provided by law and are necessary:
 - (a) For respect of the rights or reputations of others;
 - (b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

The Bill furthers the right to freedom of expression by protecting informants from unreasonable retaliation for imparting information. It also protects journalists who are exercising the right to freedom of expression, and who are engaged in seeking information and assisting people to impart that information.

As recognised by paragraph 3 of article 19, the right to freedom of expression is not an absolute right. The Bill recognises that obscuring an informant's identity may negatively impact an individual's ability to protect their rights and reputations. Accordingly, the privilege allows a court to order that an informant's identity be disclosed when satisfied that this is required in the public interest. The Bill also recognises that the protection of public order requires that the protection should not encourage dissemination of information that is misleading or unduly harmful to a person. The factors that the court must consider when evaluating whether journalist privilege applies are consistent with the restrictions contemplated by paragraph 3 of article 19.

Conclusion

This Bill is compatible with human rights as it supports the right to freedom of expression with appropriate qualifications to limit harm to individuals and to public order.
