



Northern Territory Legislative Assembly
Economic Policy Scrutiny Committee
c/- Mr Russell Keith
First Clerk Assistant
GPO Box 3721
DARWIN NT 0801

23 January 2018

Dear Mr Keith,

Re: Evidence (National Uniform Legislation) Amendment (Journalist Privilege) Bill

Thank you for the invitation to comment on the *Evidence (National Uniform Legislation) Amendment (Journalist Privilege) Bill*.

We welcome that the Bill recognises a fundamental ethical obligation for journalists to protect confidential sources. Clause 3 of the MEAA Journalist Code of Ethics states –

Aim to attribute information to its source. Where a source seeks anonymity, do not agree without first considering the source's motives and any alternative attributable source. Where confidences are accepted, respect them in all circumstances.

At its core, the Bill provides that a journalist may claim journalist privilege in order to protect a confidential source. This privilege can be waived if a judicial officer is satisfied that it is in the public interest to do so.

We note that the Explanatory Note states that ‘public interest refers to information which could assist and improve society and the wellbeing of its members, as opposed to information which the public may simply find interesting (for example, because it is salacious)’.

We further note that a court or tribunal will be required to consider: (i) ‘any likely adverse effect of requiring disclosure’ on the informant (and others); and (ii) ‘the public interest in the communication of facts and opinion to the public and the ability of journalists to access sources of information’.

The Bill also provides safeguards against purported misuse of the privilege in cases where, inter alia, the reportage contained unfair and untrue information and/or whether the journalist took reasonable steps to verify the information and use it in a manner that minimised personal harm. This is, in essence, a good faith provision.

In MEAA’s view, the Bill deals fairly with the definition of ‘journalist’ by not adopting the definition used in other jurisdictions, such as New South Wales, where a journalist is ‘a person engaged in the profession or occupation of journalism’. MEAA believe the formulation used in the Territory’s Bill is more practical and better accords with modern-day practices.

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Notwithstanding our concerns over a court or tribunal's ability to displace the privilege, MEAA strongly support the passage of this Bill into law.

The Australian legal system remains something of a patchwork when it comes to journalist shield laws. MEAA commend the Northern Territory Government for advancing this Bill and doing so in a way that provides sound protections for journalists' professional (and essential) use of confidential sources.

MEAA urge the Government to promote its efforts in all relevant national forums, not least the Standing Committee of Attorneys General (SCAG). By doing so, your Government can assist in securing nation-wide protection for journalists and improve the content of existing laws, which, in our opinion, too readily permit the displacement of a journalist's privilege.

MEAA would be pleased to respond to any questions or comments the Committee may have in relation to this submission.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Paul Murphy', written in a cursive style.

Paul Murphy
MEAA Chief Executive