

AUSTRALIA'S RIGHT TO KNOW

Peter Hallahan
Committee Secretary
Senate Standing Legal and Constitutional Affairs Committee
Parliament House
CANBERRA ACT 2600

By email: LegCon.Sen@aph.gov.au

Dear Mr Hallahan

Inquiry into the Evidence Amendment (Journalists' Privilege) Bill 2009

Further to the Committee's public hearing on Tuesday 28th April, I undertook to provide the Committee with some additional material.

Impact on journalists when refusing to reveal their source

Attached is an extract from The Law Reform Commission of Western Australia Project Number 90: Professional Privilege for Confidential Communications May 1993. The extract outlines the situations where journalists have been requested to reveal their sources.

Since Report Number 90, the Harvey and McManus case¹ has been decided.

In 2004 the *Herald Sun* published an article "Cabinet's \$500 million rebuff to veterans" by journalists Harvey and McManus. It suggested the government had agreed to only five of the 65 recommendations of a review of veterans' entitlements and appeared to contain information from confidential Department of Veterans Affairs' documents. The article was acutely embarrassing for the government. A DVA investigation revealed that during the three days before publication, calls had been made from telephones associated with DVA officer Desmond Kelly to telephones connected to Harvey.

Harvey and McManus were called to give evidence in the prosecution of Kelly and both refused to answer questions on the grounds that to do so might disclose the identity of a confidential source. Both were charged with contempt of court.

Kelly was later convicted but his conviction was quashed on appeal. Harvey and McManus pleaded guilty to contempt and Judge Rozens convicted them and, after contemplating a custodial sentence, fined each \$7,000.

¹ *R v Gerard Thomas McManus and Michael Harvey* [2007] VCC 609

Shield laws - United Kingdom.

Pages 16 and 17 of the paper titled *Australian Shield Laws for Journalists: A Comparison with New Zealand, the United Kingdom and the United States* by Lorraine Ingham (Australian National University, College of Law Internship Program, Intern with the Special Broadcasting Service (SBS) provides a concise and useful summary of the state of the law in the United Kingdom.

The paper is at: <http://www.cla.asn.au/Article/ShieldLaws.pdf>.

Drafting to introduce a presumption in favour of non-disclosure

Attached is suggested re-drafting of the *Evidence Act* which incorporates the rebuttable presumption found in the New Zealand legislation.

I have attached a copy that has the suggested changes marked-up to the current *Evidence Act* (as it would be amended by the 2009 Bill if passed in its current form) and a clean copy.

Please do not hesitate to contact me on (02) 9288 1215 if you have any questions in relation to any of these issues.

Yours sincerely



Creina Chapman
Manager, Corporate Affairs News Limited

