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24 APR 2009

Mr Peter Hallahan
Committee Secretary
Standing Committee on Legal and Constitutional Affairs
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Mr Hallahan

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

Your letter dated 25 March 2009 in relation to this matter has been passed onto me by my predecessor, David Llewellyn. I understand that the closing date for submissions is now 21 April 2009.

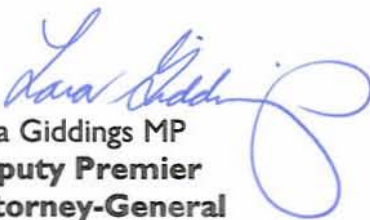
This matter was discussed at the Standing Committee of Attorneys General meeting last week. The Tasmanian Government has the following concerns with the Commonwealth approach to journalists privilege as set out in the Bill.

- Introducing a specific journalists privilege may not be the best way to protect a journalist's source who discloses information in the public interest. The privilege does nothing to protect the source from prosecution if an offence has been committed and the source's identity is discovered from other sources. The protection of the source from prosecution is a matter for whistle blower legislation not the law of evidence.
- By removing the automatic loss of privilege where a communication was made in furtherance of the commission of an offence, the privilege that a journalist might claim is potentially greater than the legal professional privilege that might be claimed by the source's lawyer. For example, a public servant whistleblower may impart the same information to a journalist (for publication) and a lawyer (for the purpose of seeking legal advice), thereby committing the offence of disclosing official secrets. Under the proposed Commonwealth Bill, the legal professional privilege is automatically lost (section 125) but the journalists privilege, which is within the discretion of the court, may remain. Removing automatic loss of privilege only for journalists could be perceived as giving them a higher level of protection.

- There is considerable difficulty in defining who will fall into the category of “journalist”. It is difficult to define a journalist, as they are not required to comply with professional registration and standards in order to practice journalism - for example web-based writers may consider themselves journalists. This stands in contrast to legal practitioners who must be admitted to practice and are subject to specific legal obligations regarding disclosure, accountability and professional conduct

Thank you for providing me with the opportunity to comment on this matter.

Yours sincerely



Lara Giddings MP
Deputy Premier
Attorney-General
Minister for Justice