



Journalist Source Protection Inches Closer

Moves for legal protection of journalists' sources appeared to make some progress in November, but legislative action remains distant.

Since 1989, five journalists have been found guilty of contempt for refusing to name sources.

The Standing Committee of Attorneys-General (SCAG) was reported to have agreed to a proposal for a limited protection.

But the Attorneys' agreement appears to be conditional on the journalists' code of ethics being made enforceable. Some will await the outcome of the Media Alliance's inquiry into the code and its enforcement (Brennan Committee, *CU* 93, page 10). If that produces more rigorous and public enforcement, they might proceed with legislation.

But other Attorneys are adamant that they will provide a statutory protection only if the journalists code is

enforceable by a tribunal with some sort of statutory basis, a condition sure to be resisted by the Alliance and the media proprietors.

The public forum in which these differences are being argued out is the hearings of the Senate Standing Committee on Legal and Constitutional Affairs (Cooney Committee), which began its inquiry into media rights and responsibilities by examining the source protection issue.

Among supporters of a limited protection, a consensus seems to be developing in favour of the West Australian Law Reform Commission's recent legislative model, or variations on it.

The Commission recommended that where a witness in a 'special relationship' with another person risked breaching a confidence, a court may excuse the witness from answering. In exercising the discretion, the court would weigh the competing interests

in disclosure and in withholding with regard to:

- likely significance of the evidence to resolution of the proceedings;
- nature of the confidence and the special relationship;
- likely effect of disclosure on the confidant or others, taking account of 'ethical, moral or religious dictates of those professions or vocations which unequivocally demand non-disclosure';
- means available to limit adverse consequences of required disclosure;
- alternative means of proving relevant facts.

This provision is based on s. 35 of the New Zealand Evidence Amendment Act No. 2 1980, which in turn was the model for the proposal which Queensland Attorney-General Dean Wells put to the other Attorneys at SCAG.

In a considerable concession from its traditional view, the Media Alliance has accepted that any legal protection should be qualified, not absolute.

This creates an apparent clash with the absolute terms of clause 3 of the Code of Ethics, which requires of journalists that 'in all circumstances they shall respect all confidences received in the course of their calling'.

The matter is aired in the issues paper prepared by the Brennan Committee and available in December from the Media Alliance, 245 Chalmers Street, Redfern, NSW 2016, Tel: (02) 333 0999. Submissions to the Committee should be sent to the same address. □

Paul Chadwick

