

# 'STATE OF SUPPRESSION'

The controversial power of courts in South Australia to make orders prohibiting the publication of evidence and/or names involved in court hearings is under inquiry and a final report on recommendations is being prepared by the State's Crown Solicitor's Office.

The Attorney-General, Mr Sumner, initiated the inquiry and invited submissions from the public.

A discussion paper notes that the present law in South Australia is that all evidence taken in civil proceedings in open court and all evidence taken upon proceedings for offences other than sexual offences or offences committed by children, may be published unless an order prohibiting the publication is made under Section 69 of the Evidence Act 1929-1982.

The Australian Journalists Association's Federal Council recently resolved:

"That Federal Council oppose censorship in all its overt and covert forms including the growing insidious practice of closing courts and suppressing names of defendants. Council instructs Branches to wage a strenuous campaign against any attempts to interfere with the freedom of the Press to report fully and accurately?"

The S.A. discussion paper sought submissions on the extent of the general power (if any) that South Australian courts should have to make suppression orders in civil proceedings and/or in criminal proceedings including committal proceedings, summary trials and trials on indictment.

The paper noted that:

"In Queensland and New South Wales the courts do not have any general power to prohibit the publication of evidence given before them or to prohibit the publication of material that would identify parties or witnesses in proceedings, or persons whose names are mentioned in the course of proceedings."

"In the United Kingdom special legislation has been passed with respect to the reporting of committal proceedings. The legislation is designed to ensure that any subsequent trial will be conducted fairly — i.e. that committal proceedings are not given publicity which might affect the impartiality of potential jurors. It does not prohibit, at any time, the publication of the name of an accused person or the description of the

offence with which he or she is charged?"

"It simply prohibits the publication of the evidence given at the committal hearing without the consent of the accused person."

According to the Discussion Paper, options being considered for South Australia include:

- (a) leaving the law unchanged;
- (b) removing section 69 from the Evidence Act thus leaving the courts without any general power to make suppression orders;
- (c) Amending section 69 of the Evidence Act to limit the ambit of the discretion given to the courts to make suppression orders by:
  - (i) providing that such orders may only be made in certain specific types of cases — e.g. cases involving indecency, blackmail, offences against children, etc.
  - (ii) providing that such orders may only be made where certain specified interests are threatened — e.g. personal safety, fairness in legal proceedings, protection of children, etc; or
  - (iii) providing that order may only be made in certain specified types of cases or where certain specified interests are threatened (i.e. a combination of (i) and (ii).
- (d) making provision for the suppression of certain evidence, and/or of the identities of the parties (or of the defendant only) as a matter of law — see, for example, the recommendations of the Criminal Law and Penal Methods Reform Committee of South Australia (the "Mitchell Committee"), the Evidence Act Amendment Bill, 1965 and the Magistrates' Courts Act, 1980 (U.K.)
- (e) Amending the Wrongs Act to provide either:
  - that where a newspaper has reported the trial of a person and has named that person, if he or

she is subsequently acquitted, the newspaper shall publish with equal prominence the fact of the acquittal; or

- that a newspaper which has reported the trial of a person and has named that person will lose the protection from defamation proceedings presently given in the Wrongs Act to the fair and accurate reporting of court proceedings if the person so named is acquitted and the newspaper does not report the fact of the acquittal with the same prominence as it reported the trial.

The Discussion Paper said other issues which could be addressed in submissions include:

- Whether it might be appropriate (and practical) for the Attorney-General to be notified of all applications for suppression orders, and, where he considers it proper, be heard in the public interest on the application?
- Whether it might be appropriate (and practical) for any other body, such as a body representing the press, to be notified of all applications for suppression orders and, where it considers it appropriate, be heard on the application?
- Whether appeals arising out of applications for suppression orders should involve the rehearing of the application (i.e. that the appeal court should be able to substitute its opinion for that of the court appealed from) or whether the appeal court should only be able to consider whether the court appealed from erred in principle, or acted in a way which could not be justified by the material before it?
- Whether any useful purpose is served by the requirement that the Attorney-General must be advised of all suppression orders made? If this requirement does serve a useful purpose what form should the report to the Attorney-General take?