



Adam Bogiatzis
Consumer and Corporations Policy Division
The Treasury
Langton Crescent
Parkes ACT 2600

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By email: ASICFunding@treasury.gov.au

Dear Mr Bogiatzis,

Treasury Laws Amendment (ASIC Cost Recovery and Fees) Regulations 2019

MEAA welcome the opportunity to provide comment on the draft Treasury Laws Amendment (ASIC Cost Recovery and Fees) Regulations 2019 (the draft Regulations). We further welcome the exemption of journalists from paying a range of registry search fees, as promised by the Government in July 2018.

Schedule 2 to the draft Regulations provide, at items 6, 9, 10, 11, 12, 14, 17, and 18, that journalists be exempt from paying certain search fees in relation to ASIC registry searches.

The explanatory materials accompanying the draft Regulations state that 'the term "journalist" is not defined for the purposes of the Regulations, so will take on its ordinary meaning'.

The explanatory materials go on to state that this approach will:

'cover journalists working in a professional capacity for media organisations and freelance journalists who regularly sell stories to media organisations or publish stories on a commercial basis.

'The ordinary meaning of journalist does not cover bloggers who blog in their free time or as a hobby and does not include non-journalistic entities including social media platforms.

'ASIC may also issue guidance in relation to how ASIC will administer the exemption for journalists from ASIC search fees. ASIC will have a process to periodically review the journalists' credentials.

'Certain news organisations such as the ABC, SBS, ABS and commercial broadcasters and newspaper organisation are exempt from paying certain search fees, these arrangements continue to be place.'

MEAA urges Treasury and the Government to adopt a broader, more practical definition of journalist that reflects the contemporary media environment and the increasingly multi-faceted manner in which journalistic work is performed. For the avoidance of doubt and misinterpretation, we also urge that a definition of journalist be incorporated in the Regulations.

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The practice of journalism is increasingly diffuse. Although Treasury has properly made no distinction between employed journalists and contractors (i.e. freelancers), the proposed approach requires either employment by a media organisation or the sale of news content by a contractor. This would mean that journalists who were neither employed nor could establish a commercial imperative for their work would be required to pay registry search fees. In the area of business journalism, it is increasingly the case that individuals seeking to report on business activities cannot establish or are disinterested in monetary returns. This includes those who operate their own blog sites.

MEAA do not view coverage of bloggers as diminishing the craft of journalism; it is simply the (growing) reality of how journalistic work is performed. It should also be remembered that journalists who do not observe appropriate checks and balances when covering newsworthy matters face the same range of sanctions as any other individual who publishes false information.

In the context of bloggers and other freelance journalists, we are not sure what the phrase in the explanatory materials, that 'ASIC will have a process to periodically review the journalists' credentials', means and how it may be enforced. We would welcome your advice on this matter.

Although there is no agreed definition of journalist in any statute, nation or dictionary, we propose that Treasury give strong consideration to the examples set out below.

Section 4 of the New South Wales *Court Security Act 2005* defines a journalist as:

a person engaged in the profession or practice of reporting, photographing, editing or recording for a media report¹ of a news, current affairs, information or documentary character.

All Australian jurisdictions other than Queensland also permit courts to afford journalists the right to refuse to disclose the identity of confidential sources in legislation generally known as journalist 'shield laws'.

The Commonwealth *Evidence Act 1995*, at section 126J, states that a journalist is:

a person who is engaged and active in the publication of news and who may be given information by an informant in the expectation that the information may be published in a news medium.²

¹ **media report**" means an article, program or other report for publication in or broadcast on any of the following:

- (a) a newspaper, magazine, journal or other periodical,
- (b) a radio or television broadcasting service,
- (c) an electronic service (including a service provided by the Internet) that is similar to a newspaper, magazine, radio broadcast or television broadcast.

² **"news medium"** means any medium for the dissemination to the public or a section of the public of news and observations on news.

In the Northern Territory, the recently commenced *Evidence (National Uniform Legislation) Amendment (Journalist Privilege) Act 2017* defines a journalist as a person who:

- (a) *obtains new or noteworthy information about matters of public interest; and*
- (b) *deals with the information by:*

- (i) preparing the information for a news medium; or*
- (ii) providing comment, opinion or analysis of the information for a news medium.*

Last year (2018), the South Australian Parliament amended the *Evidence Act 1929* to incorporate shield laws. Section 72 of this Act states that a journalist is a person:

engaged in the profession or occupation of journalism in connection with the publication of information in a news medium;

Outside the scope of Australian legislation and industrial instruments, the Oxford Dictionary defines a journalist as:

A person who writes for newspapers, magazines, or news websites or prepares news to be broadcast.³

It can be seen from the above examples that it is becoming more important to (i) adopt a workable and clear definition of journalist; and (ii) embrace a more flexible definition of those who practise journalism.

We urge Treasury and the Government to follow both principles when finalising these Regulations.

Yours sincerely,



Paul Murphy
MEAA Chief Executive

³ see <http://www.oxforddictionaries.com/definition/english/journalist>