



3 September 2010

H16, 71.4
JM; rp

The Honourable Stephen Wade MLC
Shadow Attorney-General
Parliament House
North Terrace
ADELAIDE SA 5000

Dear Mr Shadow Attorney

Facial Identification Bill 2010

I refer to your letter of 4 August 2010 seeking comment on the Private Members' Bill. The Society's Criminal Law Committee has considered the Bill and provides comment as follows:-

It is difficult to discern the rationale for this Bill. The nature and extent of the conduct sought to be committed is not at all significant. That conduct is concerned with the wearing of clothing such that an owner/occupier of prescribed premises cannot discern the facial features or identification of the person concerned. If it is concerned with persons wearing a disguise (a balaclava or helmet or other item) for the purposes of committing a criminal offence then that is already covered by Section 15(1)(c) of the Summary Offences Act 1953.

The Bill is clearly not concerned with criminal conduct. Rather it is concerned with empowering an owner/occupier of prescribed premises to prohibit the entry to those premises of a person who is wearing something covering their face.

The real prospect for such legislation is that it will be applied in a prejudicial or discriminatory manner. It will certainly be applied in respect of persons wearing a burqa or the hijab. It should not be used for that purpose at all.

Furthermore, the breadth of the nature of premises that can apply such restrictions goes well beyond any purpose strictly concerned with security. The definition of premises by which any such entry could be refused should be tightly identified. As it is the owner/occupier of such premises would be able to already refuse service or entry on any conditions that would be appropriate, including those concerned with security. The Bill would apparently enable many places of business to refuse entry when security was never an issue.

The Committee considers that there is not any sufficient justification or rationale for the Bill. It is introduced at a time when the only controversy arises in context of the recent debate concerning wearers of the burqa or the hijab. Otherwise, there is not any basis for the Bill that has been demonstrated or articulated.

Such legislation would be open to abuse and arbitrary or discriminatory application. Indeed to refuse service or entry on the basis that a person is wearing an item that does not permit facial identification is not reasonable. Such a power should only arise and be strictly confined to those situations where it is a matter of security at a serious and significant community level. The Bill being of such general application leaves it open to widespread abuse.

Yours sincerely



Jan Martin
EXECUTIVE DIRECTOR