



**THE LAW SOCIETY
OF SOUTH AUSTRALIA**

THE VOICE OF THE SOUTH AUSTRALIAN LEGAL PROFESSION

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28 April 2011

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Mr Laurie Glanfield
Secretary, Standing Committee of Attorneys General
NSW Department of Justice and Attorney General
GPO Box 6
SYDNEY NSW 2001

Dear Mr Glanfield

Reform of the uniform Commercial Arbitration Acts – section 27D mediation clause

I refer to your letter of 5 April 2011 in which you invited submissions on the proposed Section 27D of the model *Commercial Arbitration Bill 2010*.

The Society's Alternative Dispute Resolution Committee has reviewed the proposed Section 27D. The Society takes the view that Section 27D should not currently be amended. We consider, at this time, that the desirability of consistent uniform Acts outweighs any benefits to be gained from minor alterations.

Our responses to the specific questions proposed in the request for submissions dated 5 April 2011 are as follows:

- Question 1: The model Bill should not be amended to deal differently with conciliation or other non-arbitral processes that do not involve private meetings with the parties.
- Question 2: The time period in which consent must be obtained, to comply with Section 27D(4), need not be specified.
- Question 3: Section 27D should not require the arbitrator to disclose to the parties any confidential information they consider material to the arbitration proceedings for the purposes of Section 27D(7), before a party consents to the arbitrator resuming their arbitral functions.

We consider Section 27D should not be amended prior to the passage of the model Bill. To do so would over-engineer the Bill. However, we feel that the matters raised by the above questions may be appropriate for reconsideration in due course (for example, at the time of the three year review of the legislation).

The Society considers that given the introduction of the Bill in NSW, the more pressing concern is the expeditious implementation of uniform legislation throughout Australia.

Thank you for providing the Society with the opportunity to consider this matter. Please contact the Chair of the ADR Committee, Ms Joanne Staugas, on 08 8239 7153, if you would like to discuss these comments.

Yours sincerely

Ralph Bonig
PRESIDENT