



8 September 2011

C62, 78.15  
RB;rp

The Honourable Bob Such MP  
Member for Fisher  
Shop 11, Aberfoyle Hub Shopping Centre  
ABERFOYLE PARK SA 5159

Dear Mr Such

**Proposed amendment to the *Facial Identification Bill 2010***

I refer your letter of 1 August 2011 and thank you for referring the Bill to the Society for consideration. The Bill has been considered by the Society's Criminal Law Committee. A copy of the comments that the Society provided to the Shadow Attorney-General on 3 September 2010 is attached. The Society maintains those submissions. Other than clause 1B of the Amendment Bill (which we comment on below), the original Bill is relatively unchanged.

The Society maintains its previous submissions, and accordingly, we do not support the Bill. We provide the following additional comments.

***Discrimination on the basis of religion***

- This Bill promotes an intolerant attitude. Although not specifically targeting women wearing the burqa or niqab, it is obviously directed at such individuals and may indirectly discriminate on the basis of religion and sex and may be in breach of, anti-discrimination legislation and s 116 of the Constitution.
- Under s 2, erecting signs indicating that a person whose face is obscured may be refused entry into premises, refused services or removed from premises could be considered unnecessary; banks already prohibit wearing helmets into branches.
- Section 2(3)(b) could be considered discriminatory. It is not desirable or necessary to deny access to State or Federal Government Agencies to women who wear the burqa or other facial covering.
- Section 2(3)(c) is very broad and possibly open to abuse.
- the Bill may lead to the isolation of women.
- Australia is a signatory to the *International Covenant on Civil and Political Rights* (ICCPR) which sets out the right to freedom of religion, including the freedom to manifest this religion through observance and practice. Although we are yet to enact a statute, such as a



*purpose of law enforcement*". The term "*law enforcement*" is so wide that it covers the most minor of offences, including strict liability offences punishable only by a modest fine, and many other situations.

If a provision such as cl 1B is to be introduced, and we repeat our submission that it should not, then it should be by way of amendment to the *Summary Offences Act*, for example s74AB. If so, it should only be introduced if all the necessary safeguards along the lines of s81 (power to search, examine and take particulars of a person) are included given that the removal of objects such as a burqa without consent are a significant trespass on the individual.

Thank you for providing the Society with the opportunity to consider this matter. Please do not hesitate to contact me should you wish to discuss any aspect of this submission.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ralph Bönig', written in a cursive style.

Ralph Bönig  
**PRESIDENT**



**THE LAW SOCIETY  
OF SOUTH AUSTRALIA**

THE VOICE OF THE SOUTH AUSTRALIAN LEGAL PROFESSION

124 Wymouth Street, Adelaide, South Australia, 5000  
GPO Box 2066, Adelaide, South Australia, 5001, DX 333  
Phone 08 8229 0200 • Fax 08 8231 1929  
Email [email@lawsocietysa.asn.au](mailto:email@lawsocietysa.asn.au) • [www.lawsocietysa.asn.au](http://www.lawsocietysa.asn.au)

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.

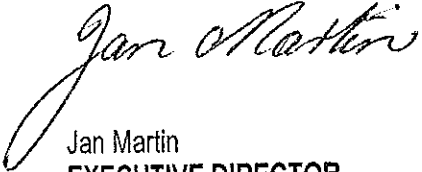
The real prospect for such legislation is that it will be applied in a prejudicial or discriminatory manner. It will certainly be applied in respect of persons wearing a burqa or the hijab. It should not be used for that purpose at all.

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

A handwritten signature in cursive script that reads "Jan Martin". The signature is written in black ink and is positioned above the printed name and title.

Jan Martin  
**EXECUTIVE DIRECTOR**