



15 September 2011

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RB; rp

The Honourable Tom Koutsantonis MP
Minister for Small Business
GPO Box 2832
ADELAIDE SA 5001

and by email: westtorrens@parliament.sa.gov.au

Dear Minister

Small Business Commissioner Bill 2011

I refer to the above Bill, which has been considered by Members of the Society's Commercial Law Committee. The Society prefaces this correspondence with an expression of support for a Bill that reflects the *Victorian Small Business Commissioner Act 2003*. The Bill now introduced into the South Australian Parliament differs from that in significant respects.

Additionally, we express concern that the proposed Bill goes considerably further than the Exposure Draft released for comment in February 2011. This drew detailed written submissions from a number of organisations including the Law Council of Australia, the Queensland Law Society and South Australian Law Society.

There are now a number of new provisions that allow the government to effectively "*legislate by regulation*". Section 28F allows the Minister to prescribe an industry code for the purposes of Part 3A. This means the government of the day can by regulation adopt any industry code, prescribed or not, as an industry code of South Australia. What may then have been a voluntary code would become, by executive decree without Parliament being consulted, law in South Australia as a mandatory code. It may then also amend the same without consulting Parliament.

Section 28F of the Bill then provides that the same regulation can declare the particular kinds of contraventions of industry codes are subject to a civil penalty, can fix expiation fees, and the regulation can direct that a "*specified activity*" to be taken to be an industry for the purposes of Part 3A and that persons of a particular class are taken to be participants in the industry.

The Society takes the strong view that any Bill that provides a pathway to avoid the normal process of introducing and passing an Act to make laws on any particular activity or industry should not be acceded to by any Parliament in Australia. We believe this is a fundamental principle which ought not to be transgressed.

The Society adopts the matters set out in the Law Council of Australia letter to you of today's date and also notes the letter from the Queensland Law Society of today's date.

The Society further expresses its concern at to the continuing existence of the powers given to the Commissioner to require disclosure of information in the absence of a complaint. Powers of disclosure should only be given where reasonable grounds exist to believe an infringement has occurred. Again, we hold this is a fundamental principle which ought not to be transgressed.

As already expressed, it is a pity that this revised Bill was not released for consultation. We are, as always, happy to discuss our position with you.

Yours faithfully



Ralph Bonig
PRESIDENT

cc Steven Griffiths MP
Hon David Ridgway MLC