



20 October 2011

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

and via email: [minister.koutsantonis@sa.gov.au](mailto:minister.koutsantonis@sa.gov.au)

Dear Minister

***Small Business Commissioner Bill 2011***

I refer to your letter of 6 October 2011 given in response to my letter of 15 September 2011.

The Society does not accept that the brief reference to industry codes in the Explanatory Paper could properly be regarded as consultation as to the amended Bill introduced into Parliament. The brief mention to industry codes you refer to at pages 6 and 7 of the Explanatory Paper gives no indication as to the Government's intention to give significant and substantial powers of prosecution and investigation to the Commissioner. Furthermore, it could not be regarded as any consultation in respect to a Bill allowing for prescription by the Minister of Industry Codes for the purposes of Part 3A of the Bill.

We repeat paragraphs 3 and 4 of our letter of 15 September 2011, which read as follows:

*"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 strong objection to the suggestion that in any way the intention of the Government to introduce such powers is reflected on pages 5 and 6 of the Explanatory Paper.

The Society has had the opportunity of reading the Queensland Law Society's submission to you by letter of 17 October 2011 and endorses the proposed amendment to the Bill.

Obviously other jurisdictions in Australia have a relevant interest in the Bill insofar as that the Bill may have extra territorial effect beyond the State of South Australia. Further, any duplication of legislation as this Bill contemplates is of interest to any Law Society elsewhere in Australia.

In that respect we welcome the interest shown by the Queensland Law Society with respect to legislation that has the potential to affect business enterprise well beyond the borders of the State of South Australia.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Ralph Bönig', with a vertical line on the left and several loops on the right.

Ralph Bönig  
**PRESIDENT**