

ARTS INDUSTRY COUNCIL OF SOUTH AUSTRALIA

*an independent
voice for the arts*

PO Box 10334
Adelaide BC, SA 5000
ABN 65 728 182 104

0419 846 144
info@aicsa.net.au
www.aicsa.net.au

13 February 2024

The Hon Andrea Michaels MP
Minister for Small and Family Business
Minister for Consumer and Business Affairs
Minister for Arts
Kaurna Country
Adelaide SA 5000

By email only to: MinisterMichaels@sa.gov.au
Chad.Buchanan@sa.gov.au

Cc: Attorney-General AttorneyGeneral@sa.gov.au
Angas.Oehme@sa.gov.au

Dear Minister Michaels,

Re: *Work Health and Safety (Review Recommendations) Amendment Bill 2024*

We write to you in your capacity as Minister for Arts, and Minister for Small and Family Business.

The Arts Industry Council of South Australia proudly represents a broad cohort of workers and employers within the arts sector and arts community. This includes small businesses and their employees.

We have reviewed the proposed *Work Health and Safety (Review Recommendations) Amendment Bill 2024 (Bill)* and understand that the Bill seeks to provide a civil dispute resolution pathway alongside the existing criminal law regime.

The civil dispute resolution pathway, as presently contemplated, utilises workplace-based issue resolution processes, notification to the Regulator, and the considerable mediation and conciliation expertise of the specialist industrial commission.

The civil dispute resolution pathway appears to facilitate the resolution and determination of safety issues between employers and employees using the civil law; a pathway not presently available under the criminal law only regime contained within the *Work Health and Safety Act 2012 (SA) (Act)*.

It is our very strong view that small businesses and their employees, including those of our member organisations, would benefit greatly from the availability of a civil dispute resolution pathway alongside the existing regime.

In the arts sector, employers and employees benefit from a collaborative, rather than adversarial, approach to issue resolution. Employers and employees within our close-knit sector are adept at finding mutually agreeable solutions to difficulties that arise, and the unamended legislation offers them the capacity to do so.

We were, consequently, concerned to see a “small business exemption” within the Bill, without any prior consultation with AICSA or our members.

We can appreciate what we perceive to be the intention behind the “small business exemption”; that is, providing small employers with the reassurance and predictability of the “status quo”.

An unintended outcome of maintaining the “status quo” for small businesses, however, is that it will relegate and limit small employers to the criminal law only regime currently within the *Work Health and Safety Act 2012* (SA).

This means that safety issues within small businesses would continue to be dealt with under the existing criminal law regime, while larger businesses have the benefit of both the existing criminal regime and the new civil pathway, allowing consideration of the specific circumstances in determining the best avenue for safety matters to be dealt with.

Small businesses are required to adhere to the same safety standards and duties as large businesses – which is entirely appropriate and ensures equality in work health and safety. The employees of small businesses should not expect to receive lesser safety standards, merely because of the size of their employer. It is therefore unhelpful to exclude small businesses from the new civil dispute resolution pathway proposed by the Bill, as it creates a problematic inequality that does not currently exist within our safety laws.

Consequently, we consider the “small business exemption” to be contrary to the interests of, and disadvantageous to our small business members and their employees.

We write to seek your urgent reconsideration of the “small business exemption”.

In our respectful view, the “small business exemption” should not proceed. Rather, all employers and employees, including our member organisations and workers, should have equal access to the new civil dispute resolution pathway alongside the existing criminal law model.

Yours sincerely,

The Arts Industry Council of South Australia’s Executive Committee