13 May 2024

The Hon. Peter Malinauskas MP
Premier of South Australia
Parliament House
North Terrace
ADELAIDE SA 50000

The Justices of the Supreme Court of South Australia
Supreme Court House
1 Gouger Street
ADELAIDE SA 5000

By email: premier@sa.gov.au

By hand: Supreme Court of South Australia

Dear Premier and Justices of the Supreme Court of South Australia,

Re: Statutes Amendment (Attorney-General's Portfolio) Bill 2024

We the undersigned, write in relation to a number of statements reported in the Advertiser Newspaper and made during radio interviews on 7 and 8 May 2024.

The following has been publicly reported:

- *"What is offensive about that…they do it for personal reasons, for personal exploitation of an office that is in the public interest".* (5AA Radio)

- *"South Australia's top legal eagles are appointed 'silk' to serve the public and not 'exploit' clients by using a royal title to charge more money, the state's top judge says."* (The Advertiser)

1. We the undersigned, were appointed Queen's Counsel at a time when there was no office of Senior Counsel. We have not made the choice that has been described as offensive.

2. Barristers are appointed silk in the recognition by the courts of their integrity, ability and capacity for leadership in the profession.

3. Undoubtedly, the choice between the title of King's Counsel and the title of Senior Counsel is a matter of personal choice which may be motivated by many factors including a respect for the history of the institution of silk. Many at the Bar also consider that many in the community are confused by the title Senior Counsel.

4. However, it would be wrong to suggest that the choice is motivated by a belief that the post-nominals KC attract higher fees. Many who have made the choice in this State have done so having regard to client wishes, market dictates and intense competition with barristers interstate, where two of the three largest Bars at the top level are overwhelmingly comprised of King's Counsel.

5. Personal though the motives for the choice between titles may be, in our experience exploitation of clients so as to charge more money is not one of them.

6. It is part of the role expected of silk that, at the criminal Bar they will take briefs on legal aid and, at the civil Bar, they will take deserving cases for no fee, or at a reduced fee, or on a no win / no fee basis. And many at the Senior Bar do so.

7. Based on our experience, we know of no basis to suggest that barristers seek appointment to the position of King's Counsel in order to exploit their clients or otherwise are unethical in their behaviour.

8. We have worked with many of the persons at the South Australian Bar who have taken silk and chosen to request that they be appointed King's Counsel. We have found their ethics to be beyond reproach. We know of no basis to suggest any such choice has been driven by desire for personal gain.

9. As well, there have been a number of appointees to the Bench who took silk after October 2020 and chose to be appointed Queen's Counsel. They are all worthy appointments in both capacities.

10. When the *Legal Practitioners (Senior and Queen's Counsel) Amendment Act* was enacted (with Members of the Labor Party in the House of Assembly voting in support of it), the Justices of the Supreme Court determined to promulgate the Uniform Civil (No 3) Amending Rules 2020 that were published in Gazette No. 99 dated 24 December 2020, pursuant to which legal practitioners in South Australia could again make application to the Court for appointment as Senior Counsel. This was all preceded by extensive conferral between the Government, the Court, the South Australian Bar Association and the Law Society of South Australia.

11. We are aware of nothing that has changed since this legislation was enacted and the Rules reinstated that could justify the statements reported last week.

12. It is essential to the administration of justice in the State of South Australia that there be trust and confidence between the Bench and Bar. While we recognise that public debate on all aspects of the legal system is healthy in a democracy, it is our hope that any further debate on the question of the appointment of silk be conducted in a way which enhances respect for the administration of justice.

Yours sincerely

Frances Nelson KC

[redacted]

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Michael Abbott AO KC

[redacted]

Lindy Powell KC

[redacted]

Stephen Walsh KC

[redacted]

.....

Marie Shaw KC

[redacted]

.....

Dick Whitington KC

[redacted]

.....

Andrew Harris KC

[redacted]

.....

Maurine Pyke KC

[redacted]

.....

Mark Hoffmann KC

[redacted]

.....

David Edwardson KC

[redacted]

.....

Chief Justice's Chambers
Supreme Court
1 Gouger Street
Adelaide SA 5001
Email: [redacted]
Phone: [redacted]

15 May 2024

Ms Frances Nelson KC
Mr Michael Abbott AO KC
Ms Lindy Powell KC
Mr Stephen Walsh KC
Mrs Marie Shaw KC
Mr Dick Whitington KC
Mr Andrew Harris KC
Ms Maurine Pyke KC
Mr Mark Hoffmann KC
Mr David Edwardson KC

Dear Ms Nelson KC, Mr Abbott AO KC, Ms Powell KC, Mr Walsh KC, Mrs Shaw KC, Mr Whitington KC, Mr Harris KC, Ms Pyke KC, Mr Hoffmann KC and Mr Edwardson KC

Statutes Amendment (Attorney-General's Portfolio) Bill 2024

I refer to your letter of 13 May 2024.

It is necessary to state at the outset that I agree that much needs to be done, and should be done, to restore trust and confidence between the Bench and the Bar. Public debate over the administration of justice is a necessary part of democratic discourse. On the other hand, I also agree that public debate should enhance respect for the administration of justice.

A tension between those two principles has arisen in recent years because of strong differences between this Court and the Bar on two issues in particular. The nature of those debates has shown a need to move beyond a mere hope that they will be better conducted in the future, and has exposed the need to agree on principles and protocols to govern future debates in a way which maintains public confidence in this Court and the profession. I return to that issue below.

I turn first to the criticisms you make of me by reference to statements reportedly made by me.

By way of introduction, I make the point that I was asked by some representatives of the media to comment publicly on the proposal to abolish the title of King's Counsel in response to extensive private and public campaigning by the Bar and some of its members against the Government's proposal to legislate to that effect. The Government's proposal reflects this Court's position, consistently held since 2008 that this Court alone should appoint Senior Counsel to an office bearing that title and no other.

I wish to emphasise the historical significance of the accord reached between this Court and the Executive Government in 2008. To that end, I attach a ministerial statement issued by the then Premier, and Acting Attorney-General, Mike Rann endorsing the proposal developed by the then Chief Justice, the Honourable John Doyle AC, and a committee of Judges, for the Court to appoint Senior Counsel under its Rules that did not involve any appointment by the Executive Government. The proposal included these features:

- Revocation of the existing regulation underpinning appointment of Queen's Counsel by the Governor;
- The title Queen's Counsel would no longer be conferred and all new appointees would be called Senior Counsel;
- An obligation by applicants to disclose disciplinary matters and disqualifying circumstances;
- More extensive and structured consultation;
- Revocation of the appointment by the Chief Justice for cause.

The then President of the Bar Association, who was consulted by the Chief Justice on the proposal, supported it. The President noted that a majority of its members supported retention of the title Queen's Counsel but that '(incongruously) at the same time members recognised that the title would have to go with the termination of Government involvement'. I attach his letter.

In light of that history, not surprisingly, I supported the present Government's proposal which brought me into conflict with the more recently adopted, different position of the Bar.

The underlying concern expressed in your letter, based as it is on an article in the Advertiser, is that I have said that those barristers who were appointed Senior Counsel by the Court, but chose to take the title of Queen's or King's Counsel instead, did so in order to exploit their *clients*. I said no such thing.

My consistent position has been that put, but subject to the limitations inherent in radio interviews, in a part of the interview with 5AA which is not reproduced in your letter. I attach it to this letter because it provides necessary context for the remarks quoted by you. I also attach a passage from an interview with the ABC, in which Mr Abbott KC also participated, which more clearly sets out my views but which is not mentioned in your letter.

Let me state emphatically that, in this debate, I have only used the verb 'exploit' in the sense of turning something to practical account, or utilising something [the office of Senior Counsel and the style of King's Counsel] for profit. I have not used it in the sense of doing something selfishly or unfairly to another's disadvantage. In short, and to be clear, the object of the verb has always been the office of Senior Counsel and the style of King's Counsel, and not the clients of those who choose that style.

I would like to take this opportunity briefly to explain my position. The foundation of my position is that the office of Senior Counsel was constituted under the Rules of this Court to further the public interest in the administration of justice by providing the public with an independent guide to those barristers who have exceptional knowledge and skills in the practice of the law, and to do so without any executive involvement. Indeed, in that respect, since 2020, there has been a single office of Senior Counsel, being the office constituted under the Rules of this Court, because the effect of the *Legal Practitioners (Senior and Queen's Counsel) Amendment Act 2020* was to abrogate the former office of Queen's Counsel but to allow a choice of two styles for the office of Senior Counsel so constituted. The 2020 Amendment provided that persons appointed to the singular office of Senior Counsel could choose, either to retain the style of that office prescribed by the Rules or to seek the style of Queen's (now King's) Counsel from the Governor.

The point that I have consistently emphasised is that, although that single office was constituted in the public interest, the reasons advanced by some in the Bar for retaining the choice in the style of that office are not related to matters of any public interest. Indeed, you will see from the attached extracts that I have made this point by reference to the reasons advanced by others in support of having a choice, and not by reference to my subjective understanding of why that choice might sometimes be made. The reasons advanced reflect personal preferences as to which style to adopt, or personal assessments on how best to advance the professional career

of the office holder. The former reason for the adoption is acknowledged and accepted in paragraph 3 of your letter. I would add that, whatever the reasons for the preference and their relative weight[1], they do not in any way advance the public interest any further than is inherent in the appointment by this Court to the office of Senior Counsel. The latter reason is acknowledged and accepted by paragraph 4 of your letter. I would only add that it is not obvious how a choice influenced by 'market dictates and intense competition' can be unrelated to financial considerations. In any event it is not a reason which advances any public interest.

Importantly, I accept that the choice of the style of King's Counsel is not motivated by a desire to exploit clients unfairly. I have never suggested otherwise. I also acknowledge the long and meritorious tradition of the South Australian Bar to take briefs on legal aid, or for no or a reduced fee, or on a contingency basis. Barristers at both the Senior and Junior Bar do so often. It is a practice which should be encouraged and extended given the presently relatively low fees paid by legal aid in criminal cases and the expensive nature of civil litigation. I also accept that there is no difference in the ethical standards of those Senior Counsel who retain that style and those who choose instead the style of King's Counsel. I have never suggested otherwise.

Turning to the future, I welcome discussions between the Court and the South Australian Bar Association as to the way in which any future debates between the Court and the Bar should be conducted. It should be possible to agree on principles and protocols which would govern any future debate. Those principles and protocols might deal with such matters as consultation between the Court and the Bar before a public position is taken by either and consultation about what, if any, public statements will be made.

In that respect, I have been concerned for some time by reports I have received about the lobbying of individual parliamentarians by members of the Bar against positions taken on proposed legislation by the Court. The Court, of course, is not in a position to engage in conduct of that kind and is limited to communicating its position to the Attorney-General of the day unless consent is given to publish it more widely. A protocol might place some guidelines around lobbying of that kind.

I look forward to progressing, in a practical way, the hope you express in the ultimate paragraph of your letter.

I am happy, indeed I would encourage, distribution of this letter to all members of the Bar, especially by you, the authors of the complaint about my engagement in this debate. I hope that discussions between you, as leaders of the Bar, and the junior members of the Bar, will foster a capacity to view the issue from different perspectives.

Yours sincerely

[redacted]

The Honourable Chris Kourakis
Chief Justice of South Australia

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1 I here repeat remarks I have made elsewhere. First, it is solicitors who must advise their clients on the engagement of counsel and they obviously know well the difference between Senior Counsel and Special Counsel. Secondly, it would be a serious breach of professional ethics for a solicitor to use the appellation special counsel in a way which misleads clients, for example by use only of the acronym, into a belief that a Special Counsel holds the office of Senior Counsel. I suspect that the concern is not well founded. I know of no finding to that effect in the 16 years since the creation of the office of Senior Counsel. However, I am more than willing to emphasise to any practitioner about whom any member of the Bar has concerns on the importance of not compromising the integrity of the office of Senior Counsel constituted under the Rules of this Court.

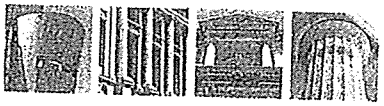
.... So once it's accepted that this office ... is created in the public interest, the question is, what is the public interest that's advanced by allowing some people a choice as to the title? I've seen lists of reasons presented to me over the years as to why Senior Counsel should be able to trade in the title we bestow on them for ... King's Counsel ... and in that list there has never been a single reason which advances the public interest. All of the reasons advanced – we want to compete with interstate lawyers, we prefer that title – are a matter of personal preference or personal interest in how they can best use the title for their professional advancement. That's the point that I was making. *(Bevan: Is there any difference between the pay rates for Senior Counsel and the pay rates for King's Counsels?)* I can only tell you that the court scale provides for no difference but ... the argument that's advanced is that by using the title King's Counsel they will compete more effectively with work interstate and advance their career. That is the argument they make. I don't think it's right because the state which leads Australia – query Victoria – in terms of their legal professional body is New South Wales. They have been Senior Counsel for decades. Four of their number as Senior Counsel, four of the seven High Court Justices, there is no suggestion that New South Wales is under some impediment in competing with work. Three quarters of the states of Australia appoint SCs and SCs only – states and territories – so the point I make is a court takes its job really seriously, consults extensively, is set high standards for this office in the public interest so the public can be assured that people who are entitled to charge that higher rate under our rules whether they're called Senior Counsel or choose to trade it in for King's Counsel are of the higher standard, that the only reasons advanced for giving barristers a choice as to which title ... the only reasons they advance for that are in terms of their personal advancement or personal preference as to the most post-nominal.

be KCs. *(**Penberthy**: So is that the issue Chief Justice that it's not a question of just being some republican push, was your issue more about the fact that barristers could go to the government to upgrade their title... that in a way offended the authority of the Supreme Court in dishing out the appointment in the first place?)* What is offensive about that... they do it for personal reasons, for personal exploitation of an office that is in the public interest. The opposition to having the government have anything to do with these appointments and having those titles QC/KC is not a republican monarchist issue, it's a question of government interference in the affairs of the independent court and the independent profession, that's the issue of principal that shouldn't be confused with republican versus monarchist and if you go to people and say... let the public ask... why have some people chosen to go and get the KC title, some of them are monarchists, some of them do so because they think they can get more work interstate, can charge more money, some of them like the cache of the title King's Counsel instead of any counsel. The important point to make is... those reasons, and they are the only reasons that have been advanced of giving some people that choice are personal reasons, they are not public interest reasons, that's the opposition to allowing some people to go and trade in the [unclear] Senior Counsel which is... not for their personal exploitation and advantage.

26·3·2008

Circ. June 2019

SOUTH AUSTRALIAN BAR ASSOCIATION
MEMBER OF THE AUSTRALIAN BAR ASSOCIATION



26 March 2008

The Hon The Chief Justice
Supreme Court of South Australia
1 Gouger Street
ADELAIDE SA 5000

Dear Chief Justice

I refer to our previous discussions about procedures for the appointment of silk.

I apologise for the delay in responding. The matter was dealt with in my absence at the February meeting of the Executive, but because of the nature of the approach taken, I wished to review and clarify the position at the March meeting.

The Executive has also felt a little constrained in how it can respond owing to resolutions which were passed at an extraordinary general meeting of the Association on this subject in mid 2006.

The upshot can be fairly put as follows.

1. The SABA would wish to move away from a Government appointment system and therefore would support a model whereby the appointments were made by the Judges of the Supreme Court under the ultimate supervision of the Chief Justice.

2. The Association sees appropriate consultation as a vital part of the selection process and would wish to see the consultation between the relevant representatives of stakeholders take place at a confidential meeting at which there could be an exchange of views so that each representative might have the benefit of the views of the others before the ultimate recommendations were taken back to the Judges of the Supreme Court. It is envisaged that you would chair the consultation meeting and that, while the other individuals would attend as representatives, they would not come with any binding instructions to take any particular position.

South Australian Bar Association Inc. ABN 35 957 544 113 | *PO Box 6052, Halifax Street, Adelaide, SA 5000*
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26.3.2008

3. There was a majority inclination on the Executive for the retention of the title "Queen's Counsel", although (incongruously) at the same time members recognized that the title would have to go with the termination of Government involvement.

The Association of course has seen the article in last Thursday's Australian Financial Review attributing a proposal for a new system of appointments to the Attorney General. The Association had no prior notice of that proposal, despite receiving an assurance from the Premier at the beginning of 2007 that it would be consulted in the Attorney-General's review process.

Obviously, if the Judges do proceed down the path of an independent appointments system, the Attorney-General's comments raise the spectre of a dual appointment system, which the Association considers would be highly undesirable. It also raises the question of whether and how the Government appointees would be accorded recognition in the face of a judicial appointments system.

Yours sincerely

[redacted]

for DICK WHITINGTON
PRESIDENT

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Ministerial Statement

Government of South Australia

21-4-2008

Premier Mike Rann
Minister for Economic Development
Minister for Social Inclusion
Minister for the Arts
Minister for Sustainability and Climate Change

Wednesday 30 April 2008

REFORM OF APPOINTMENT AND DESIGNATION OF QUEEN'S COUNSEL

On Monday April 21, 2008, as Acting Attorney-General, I met with Chief Justice John Doyle on the issue of the procedures for the appointment of Queen's Counsel and designation of Queen's Counsel itself.

In that meeting I reaffirmed my view to the Chief Justice that reform of the longstanding arrangements was due. Under protocols established in 1970 by the then Premier Don Dunstan, appointments to Queen's Counsel are made by the Governor in Executive Council following recommendations by the Chief Justice to the Attorney General. The procedure does not provide for the Government or the Attorney-General to vary the recommendations of the Chief Justice.

The Government now acts as a virtual 'post box'. In those circumstances I do not consider it appropriate in a modern age for the Executive Government to maintain an involvement in the process.

The Chief Justice raised with me at our meeting a reform proposal, developed by him and a committee of the Supreme Court Judges, that did not involve appointment by the Executive Government.

The Chief Justice presented to me, as Acting Attorney-General, a proposal for a new appointment process that would not involve the Executive Government. Instead, it is proposed that appointments would be made by the Chief Justice after consulting the Attorney-General, the Solicitor-General, the Judges and the profession. Future appointees would no longer be called 'Queen's Counsel' and instead the designation of 'Senior Counsel' would apply. The process would be set out in a new Practice Direction to replace Practice Direction 12.

The Chief Justice gave me a detailed draft of the proposed Practice Direction. He also advised that the adoption of the new Practice Direction is within the current powers of the Court. No new regulation or legislation is proposed.

The Government fully endorses the Chief Justice's proposal.

The government will recommend to the Governor that the existing regulation underpinning the current arrangements be revoked upon which the Chief Justice will issue the new Practice Direction establishing the revised arrangements. It is anticipated that the new arrangements will come into effect as soon as practicable and all future applications for appointment to Senior Counsel will be considered under these arrangements.

The Chief Justice does not propose to change the present rule that the title is limited to persons practising as barristers and cannot be used by members of law firms.

The Chief Justice's proposal addresses the Government's concerns. The title 'Queen's Counsel' would not be conferred in future. All new appointees would be called 'Senior Counsel'. The proposal provides that those Queen's Counsel who prefer in future to be known as Senior Counsel may do so by resigning as Queen's Counsel and adopting the title Senior Counsel instead. A person's place in the order of precedence will not be affected by doing so. Those Queen's Counsel who wish to retain their present title are free to do so.

Importantly the proposal also provides that any pending disciplinary matters must be disclosed, as must any other facts that might disqualify the person from appointment as Senior Counsel. Further, the Chief Justice proposes that the appointment may be revoked by the Chief Justice if the Court, the Legal Practitioners Disciplinary Tribunal or the Legal Practitioners Conduct Board finds the person to be guilty of conduct that, in the opinion of the Chief Justice, is incompatible with the office of Senior Counsel. Further, the Chief Justice can revoke the appointment if he considers that the person has acted or practised in a manner incompatible with the office of Senior Counsel or that the person is otherwise unfit to hold the office.

Before exercising this power, the Chief Justice would give the person affected an opportunity to show cause why the appointment should not be revoked.

The Chief Justice also plans to widen the range of persons consulted on these appointments and to change the consultation process. In addition to the persons who are now consulted, the Chief Justice proposes to consult the Chief Magistrate, the Supreme Court Masters, the senior resident member of the Administrative Appeals Tribunal, the Solicitor-General and the President of the Women Lawyers' Association. Consultation will take the form of group meetings, first with a group consisting of the Attorney-General, the Solicitor-General, the President of the Law Society, the President of the Bar Association and the President of the Women Lawyers' Association (or their nominees) and then with a group representing the judiciary. In addition, the Judges and Masters of the Supreme Court will be entitled to comment and the Chief Justice will meet with those who do.

The Chief Justice also proposes that a person who applies unsuccessfully for appointment should be entitled to request a meeting with the Chief Justice to discuss the reasons.

South Australia is the last State to use the term 'Queens Counsel'. The new arrangements will bring South Australia into line with all other states where the term 'Senior Counsel' has been adopted. I am advised that the appointment procedures are consistent with all other states, all of which do not involve Executive Government in the appointment process.

In my view, the proposed new system addresses the Government's concerns about the present system. In particular, it improves consumer protection by ensuring that disciplinary matters are disclosed and that a person who is unfit to hold the office will lose it. It also improves transparency, both in that consultations will be conducted in groups, and in that disappointed applicants can seek a meeting with the Chief Justice to discuss the matter.

In conclusion I congratulate the Chief Justice for this initiative.

Settled

South Australia

Revocation of Regulations as to Queen's Counsel Regulations 2008

Contents

Part 1—Preliminary

1—Short title

These regulations may be cited as the *Revocation of Regulations as to Queen's Counsel Regulations 2008*.

2—Commencement

These regulations come into operation on the day on which they are made.

Part 2—Revocation of *Regulations as to Queen's Counsel*

3—Revocation of regulations

The *Regulations as to Queen's Counsel* made on 26 March 1970 (Gazette 26.3.1970 p1246) are revoked.

Made by the Governor

with the advice and consent of the Executive Council
on

No of 2008

31 May 2024

The Honourable Chris Kourakis, Chief Justice of
South Australia
Chief Justice's Chambers
Supreme Court
1 Gouger Street
ADELAIDE SA 5001

By Hand

Dear Chief Justice,

Re: Statutes Amendment (Attorney-General's Portfolio) Bill 2024

Thank you for your letter of 15 May 2024.

We have carefully considered the contents of your letter. We particularly acknowledge the matters addressed in the second paragraph and reaffirm the importance we place upon the encouragement of respect for the legal profession and the judiciary in the interests of the administration of justice.

Our letter was not intended to address, and nor did it address, the merits or otherwise of the provision in the Bill by which the prerogative or power of the Crown to confer upon legal practitioners the title or style of King's Counsel or Queen's Counsel is to be abrogated. We are aware that your Honour holds strong views in relation to the abrogation of the institution of silk so described. We do not intend to debate those views in this letter not only because that was not the point of the concern we raised but also because, as you would expect from a group of individuals as fiercely independent as barristers, views on policy issues will not always be uniformly held.

The point of our letter was to raise the very real concern that statements attributed to you in *The Advertiser* newspaper and statements you made on 5AA Radio, quoted in our letter, conveyed the imputation that persons who made the choice to seek appointment as King's Counsel or Queen's Counsel, as the case may be, made that choice to exploit clients by using the ("royal") title to unfairly charge more money.

We understand your acknowledgment that the verb "exploit" may be understood in different senses and that you did not intend to use it in a derogatory sense. However, we have no doubt that a significant proportion of the members of the public who heard or read your comments would not have appreciated the subtlety of that use of the word "exploit", nor would they have understood that what was reported and attributed to you should not be taken as a suggestion that the choice of a barrister to employ the title "King's Counsel" was not motivated by a desire to exploit clients unfairly. That is, indeed, one of the well-recognised meanings, and sometimes the primary meaning, attributed to the verb "exploit". It is also a meaning which would likely be latched onto by many who read *The Advertiser* article and its juxtaposition of "exploit" and "using a royal title to charge more money".

It is notorious that equivocal or ambiguous public statements can be misconstrued and then the grapevine effect goes to work.

Some of us have reviewed the online comments made in respect of *The Advertiser* article and the numerous comments made by listeners of the interviews on 5AA and ABC Radio and they evidence that members of the public took your statements to reflect adversely on the personal motives of senior barristers to the effect that they use their preferred title or style of King's Counsel to exploit clients to charge more money than they otherwise could. Obviously, such a perceived imputation arising from a public statement of the highest judicial officer in the State would be taken by many to accord with the fact.

As you are aware from our earlier letter, we all dispute that that is the fact of the matter and we acknowledge that in your letter you do likewise.

We would respectfully suggest, in the interests of the administration of justice and the pursuit of trust and confidence between Bench and Bar, that your position be placed on the public record in a way which hopefully will go some way to counteracting any adverse view of the character of senior barristers which may have affected public perceptions as a result of the recent public debate.

Yours sincerely

Frances Nelson KC

[redacted]

.....

Michael Abbott AO KC

[redacted]

Brian Hayes KC

[redacted]

.....

Lindy Powell KC

[redacted]

Stephen Walsh KC

[redacted]

Marie Shaw KC

[redacted]

Dick Whitington KC

[redacted]

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Andrew Harris KC

[redacted]

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Maurine Pyke KC

[redacted]

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Mark Hoffmann KC

[redacted]

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David Edwardson KC

[redacted]

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Chief Justice's Chambers
Supreme Court
1 Gouger Street
Adelaide SA 5001
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Phone: [redacted]

5 June 2024

Ms Frances Nelson KC
Mr Michael Abbott AO KC
Mr Brian Hayes KC
Ms Lindy Powell KC
Mr Stephen Walsh KC
Mrs Marie Shaw KC
Mr Dick Whitington KC
Mr Andrew Harris KC
Ms Maurine Pyke KC
Mr Mark Hoffmann KC
Mr David Edwardson KC

Dear Ms Nelson KC, Mr Abbott AO KC, Ms Powell KC, Mr Walsh KC, Mrs Shaw KC, Mr Whitington KC, Mr Harris KC, Ms Pyke KC, Mr Hoffmann KC and Mr Edwardson KC

Statutes Amendment (Attorney-General's Portfolio) Bill 2024

Thank you for your letter of 31 May 2024.

It would appear to me to be a barren exercise to exchange correspondence which treats this matter as a defamation proceeding. You have acknowledged that my letter expresses the same position as you on the high ethical standards of all Senior Counsel. I, therefore, permit and encourage you to distribute it as widely as you see fit.

I repeat my call, to which you have not responded, that the judges and the leadership of the Bar should meet and agree on principles and protocols which ensure that future debates are conducted in a respectful and principled manner which advances the public interest in the administration of justice.

Yours sincerely

[redacted]

The Honourable Chris Kourakis
Chief Justice of South Australia

21 June 2024

The Honourable Chief Justice Kourakis
Supreme Court of South Australia

By email: chambers.chiefjustice@courts.sa.gov.au

Dear Chief Justice

Statutes Amendment (Attorney-General's Portfolio) Bill 2024

I write on behalf of the South Australian Bar Association ("the Association") pursuant to a unanimous resolution of the Bar Council of Wednesday 19 June 2024.

We are deeply concerned about the comments and statement made by your Honour on 5AA on 7 May 2024, ABC on 8 May 2024 and reported in the Advertiser on several occasions.

It is fundamentally incorrect to say, as your Honour did on 5AA radio on 7 May 2024, that persons who exercise the choice to request that they be appointed King's Counsel, do so for the personal exploitation of an Office bestowed in the public interest.

We ask that your Honour publicly retract the comments made.

The Association will be making a public statement.

Your sincerely

[redacted]

Marie Shaw KC
President

CC: Justices of the Court of Appeal and Supreme Court

Chief Justice's Chambers
Supreme Court
1 Gouger Street
Adelaide SA 5001
Email: [redacted]
Phone: [redacted]

24 June 2024

Mrs Marie Shaw KC
Frank Moran Chambers
Ground Floor
329 King William Street
Adelaide SA 5000

Email: marieshawqc@gmail.com

Dear Mrs Marie Shaw KC

Statutes Amendment (Attorney-General's Portfolio) Bill 2024

I refer to your letter dated 21 June 2024.

The opinion I expressed on the occasions to which you refer was that the reasons given by those who advocated for a retention of the privilege to choose a different style for the office of Senior Counsel to which they had been appointed by the Judges pursuant to the Rules of this Court reflected personal preferences on the exploitation of that office and were not connected to the public interest reasons for the establishment of that office. I genuinely held that opinion and arrived at it after much reflection and discussion with colleagues.

Plainly, the Bar Council takes the view that my opinion is not only wrong but 'fundamentally so' such that I had no right to express it and have no right to maintain it. In the face of the strident moral certainty of your opinion, I have reflected again on the question. After conscientiously doing so, I am not persuaded to change my opinion.

Unfortunately, I did not anticipate the widespread misunderstanding of my use of the word 'exploit'. However, it is not obvious to me on what purported authority the Bar Council demands that I recant my genuinely held opinion and it is even less obvious to me why the Council thinks it is productive to, once again, publicly condemn me for expressing it if I do not accede to its demand.

Finally, I note that no-one from the Bar Council has sought to meet me to discuss our differences of opinion face-to-face. Nor has there been a response to the calls I have made to meet to agree upon principles and protocols to ensure future debates are conducted respectfully and in a way which advances confidence in the administration of the law. I remain open to meet to discuss those matters but cannot, in good conscience, retract the opinions I genuinely and reasonably hold.

I permit and encourage you to disclose this letter.

Yours sincerely

[redacted]

The Honourable Chris Kourakis
Chief Justice of South Australia