



Speech by

**Peter Wellington**

**MEMBER FOR NICKLIN**

Hansard Thursday, 13 October 2011

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## IDENTIFICATION LAWS AMENDMENT BILL

### Introduction and Referral to the Legal Affairs, Police, Corrective Services and Emergency Services Committee

 **Mr WELLINGTON** (Nicklin—Ind) (2.50 pm): I present a bill for an act to amend the Corrective Services Act 2006, the Oaths Act 1867, the Police Powers and Responsibilities Act 2000, the State Buildings Protective Security Act 1983 and the Youth Justice Act 1992 for particular purposes. I table the bill and the explanatory notes. I nominate the Legal Affairs, Police, Corrective Services and Emergency Services Committee to consider the bill.

*Tabled paper:* Identification Laws Amendment Bill 2011 [\[5626\]](#).

*Tabled paper:* Identification Laws Amendment Bill 2011, explanatory notes [\[5627\]](#).

My bill provides for specific circumstances that when a police officer, Corrective Services officer or similar officers, a lawyer, a justice of the peace or a commissioner for declarations needs to identify a person that that person can lawfully demand that the person remove any face covering so that the person's face can be seen. I have had this bill drafted as a response to events of last June in New South Wales where a burqa-wearing woman, Carnita Matthews, had a charge of making a false statement dismissed because there was no proof that it was her inside the burqa.

I emphasise that this bill is not directed against the wearing of burqas generally like the controversial law in France. It is not even specifically directed at burqa-wearing women, though the need for it was demonstrated by one such person playing silly tricks with the law. It could apply to a person wearing a Darth Vader mask or whatever people wear that covers their faces. I believe people should reveal their face to persons in the legal system who need to know who they are. I seek leave to have the remainder of my speech incorporated in *Hansard*.

Leave granted.

The case of Ms Matthews illustrates the absurdity that can arise when people can hide their faces—that is, their identity—from police and court officers. Someone alleged to be Ms Matthews was stopped by police for not displaying her P-plates while driving. She later alleged, on television and in a statutory declaration to police, that the officer who stopped her had attempted to tear the burqa off her face. When the police video recording showed that this was untrue, she was charged and convicted with making a false statement. She then appealed to the District Court, arguing—successfully—that there was no proof that she was the person in the burqa who made the statement. This is a ridiculous sequence of events. I even wonder how the District Court judge knew that she was the person who had been convicted in the Magistrate's Court or the person who lodged the appeal in his Court? There could, for all we know, have been a different person under the black burqa each time! Where people are interacting with the legal system, it is important that they should be made to show their face, even if briefly, so that people in the legal system can be sure who they are dealing with. New South Wales has now enacted a law similar to this Bill. We should do it before we have a similar case here in Queensland.

Although the Bill amends 5 Acts, it applies in 3 main situations. One is whenever a police officer's power to demand to see photo identification or a person's name or address is triggered. In those cases the officer can also demand to see the person's face. Another is when a person makes a declaration or affidavit—then the person taking the declaration or affidavit will be obliged to see the first person's face. The third situation is when a person is entering a secure building—a court complex, a corrective services facility or a youth detention centre. I will discuss each of these in more detail below.

But first, the common feature in all Parts of the Bill. "Face" is defined throughout to mean the face from the top of the forehead to the bottom of the chin and between, but not including, the ears. Most Muslim women, Sikh men wearing turbans, and Catholic nuns already display this much of themselves to the world, so the law will only impose an extra obligation on people masking more of their face than those three groups. Another common feature is that in parts 2, 4, 5 and 6 an exemption from the requirement to show the face is provided for those who have a special justification, such as being bandaged after an operation.

To take the group relating to secure buildings first, parts 2, 5 and 6 of the Bill add similar sets of provisions to the Corrective Services Act 2006, the State Buildings Protective Security Act 1983 and the Youth Justice Act 1992. In each case an officer may demand that someone in or about to enter the building remove a face covering to show their face for identification purposes. There are requirements that the person must be allowed to do this in as private a way as possible, and that if the person requests it, his or her face will be shown only to a person of the same sex. In case a child under 12 turns up at one of these facilities with a masked face the 3 parts provide that while the face is viewed the child must be accompanied by an adult and may request to be viewed by a female officer. In fact, this is unlikely to apply to Muslim girls because they have their heads uncovered until puberty anyway; it may be more likely to apply to children wearing Zorro or Darth Vader masks. Consequential amendments are made to existing provisions in the 3 Acts providing for penalties or compulsory removal from premises, to ensure that they apply to breaches of the new provisions. The provisions are not entirely consistent between the 3 Acts, but the drafters and I did not think it was our business to generally amend these Acts to make them more consistent.

The provisions amending the Oaths Act are simpler; they provide that a person taking an declaration or affidavit must see the face of the person signing the document. There is a penalty for non-compliance, but a failure to comply does not of itself invalidate the declaration or affidavit. It may in practice be open for another party to challenge an affidavit when tendered in evidence on the ground that there is no proof it was made by the supposed deponent—as Ms Matthews appears to have first made a declaration and then to have challenged its authenticity!

The amendments to the Police Powers and Responsibilities Act 2000 are different again. The power to see a person's face will only apply when existing powers to demand to see photo identification or to be given a person's name and address have been triggered—see existing sections 40-43A, 55 and 58 in particular. Then, if the person's face is covered, the officer may also demand to see the face; there is not much point, after all, in seeing a driver licence if the photo on the licence cannot be checked against the face of the driver. No specific penalty is provided for non-compliance because failure to comply with a direction or requirement of a police officer is already an offence under s 791. No provisions are included for viewing of the face by a person of the same sex, because it may be impractical where, for example, a lone motor-cycle officer pulls a driver over for an alleged infringement. It is still provided that the viewing of the face must be conducted in a way that gives the person reasonable privacy and as quickly as possible. A new section 41B is added to provide that the CMC must monitor the use of the section and report after one year.

I believe these provisions strike a reasonable balance between the need for law enforcement officers and similar persons to know who they are dealing with, and the religious or personal sensitivities of persons who believe they should not boldly display their faces to the world. I commend the Bill to the House.

### First Reading

**Mr WELLINGTON** (Nicklin—Ind) (2.52 pm): I move—

That the bill be now read a first time.

Question put—That the bill be now read a first time.

Motion agreed to.

Bill read a first time.

**Mr DEPUTY SPEAKER:** Order! In accordance with standing order 131, the bill is now referred to the Legal Affairs, Police, Corrective Services and Emergency Services Committee.