

# **Identification Laws Amendment Bill 2013**

**Report No. 49**

**Legal Affairs and Community Safety Committee**

**February 2014**

## Legal Affairs and Community Safety Committee

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**Abbreviations**

ALHR	Australian Lawyers for Human Rights
Attorney-General	The Honourable Jarrod Bleijie MP, Attorney-General and Minister for Justice
Bill	Identification Laws Amendment Bill 2013
Committee	Legal Affairs and Community Safety Committee
CMC	Crime and Misconduct Commission Queensland
Department	Department of Justice and Attorney-General
Former Committee	Legal Affairs, Police, Corrective Services and Emergency Services Committee
OIC	Office of the Information Commissioner
2011 Bill	Identification Laws Amendment Bill 2011 (Lapsed)

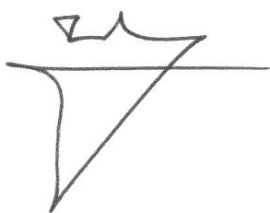
## Chair's foreword

This Report presents a summary of the Legal Affairs and Community Safety Committee's examination of the Identification Laws Amendment Bill 2013.

The Committee's task was to consider the policy outcomes to be achieved by the legislation, as well as the application of fundamental legislative principles – that is, to consider whether the Bill had sufficient regard to the rights and liberties of individuals, and to the institution of Parliament.

On behalf of the Committee, I thank those individuals and organisations who lodged written submissions on this Bill.

I commend this Report to the House.



Ian Berry MP

**Chair**

## Recommendations

### Recommendation 1

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The Committee recommends the Attorney-General and Minister for Justice, through the Justices of the Peace branch of the Department of Justice and Attorney-General – review the resource material available to JPs and C.Decs to address the cultural issues discussed in this Report and make any amendments considered necessary to address any deficiencies.

### Recommendation 2

**11**

The Committee recommends the Identification Laws Amendment Bill 2013 not be passed.

## 1. Introduction

### 1.1 Role of the Committee

The Legal Affairs and Community Safety Committee (Committee) is a portfolio committee of the Legislative Assembly which commenced on 18 May 2012 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.<sup>1</sup>

The Committee's primary areas of responsibility include:

- Department of Justice and Attorney-General;
- Queensland Police Service; and
- Department of Community Safety.

Section 93(1) of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for examining each bill and item of subordinate legislation in its portfolio areas to consider:

- the policy to be given effect by the legislation;
- the application of fundamental legislative principles; and
- for subordinate legislation – its lawfulness.

### 1.2 Referral

The Identification Laws Amendment Bill 2013 (Bill) is a Private Members' Bill introduced into the Legislative Assembly by the Member for Nicklin, Mr Peter Wellington MP and referred to the Committee on 8 August 2013.

As no reporting date was fixed by the Legislative Assembly or Committee of the Legislative Assembly, in accordance with the Standing Order 136(1), the Committee was required the Committee to report back to the Legislative Assembly by 10 February 2014.

### 1.3 Inquiry process

To assist with its examination of the Bill, the Committee wrote to Mr Wellington MP inviting further comments from him on the Bill. The Committee also identified and consulted with likely stakeholders on the Bill and wrote to the Premier seeking his assistance in coordinating a whole of Government submission on the Bill.

The Committee received written advice from Mr Wellington MP and received **three** submissions from stakeholders and members of the general public (see **Appendix A**).

The Premier advised the Committee the Government would not be providing a submission on the Bill.<sup>2</sup>

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<sup>1</sup> *Parliament of Queensland Act 2001*, section 88 and Standing Order 194.

<sup>2</sup> Letter from the Honourable Campbell Newman MP, Premier of Queensland, 15 October 2013.

#### 1.4 Policy objectives of the Identification Laws Amendment Bill 2013

The general policy objective of the Bill is to enable persons in a position of responsibility (such as lawyers, Justices of the Peace or Commissioners for Declarations) to lawfully require that a person removes any face coverings so that the person's face can be seen in order to identify that person.

The Acts amended to achieve this aim are as follows:

- *Corrective Services Act 2006*;
- *Oaths Act 1867*;
- *Police Powers and Responsibilities Act 2000*;
- *State Buildings Protective Security Act 1983*; and
- *Youth Justice Act 1992*.

As explained by the Member for Nicklin in his introductory speech, the Bill has been drafted in response to events in New South Wales where a burqa-wearing woman, Carnita Matthews, had a charge of making a false statement dismissed because there was no evidence to prove that it had been her behind the burqa.<sup>3</sup>

The Bill is not however specifically directed at any particular face covering and as suggested by the Member for Nicklin would apply equally to anything that is used to cover a person's face and hide their identity, including such things as a Darth Vader mask.<sup>4</sup>

#### 1.5 Consultation on the Bill

As set out in the Explanatory Notes, the Bill is modelled on a New South Wales law, and is identical to an earlier Bill which was introduced into the Queensland Parliament by the Member for Nicklin in 2011 (2011 Bill).

The 2011 Bill was referred to the then Legal Affairs, Police, Corrective Services and Emergency Services Committee and submissions were sought from stakeholders. Six submissions were received.

Due to the dissolution of the 53<sup>rd</sup> Parliament, the 2011 Bill lapsed prior to the Committee reporting.

Prior consultation also occurred with the Office of the Information Commissioner (OIC) due to the privacy implications associated with the Bill. The Privacy Commission provided a submission to the Committee on this Bill which is referred to later in this Report.

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<sup>3</sup> *Record of Proceedings (Hansard)*, 8 August 2013, page 2531.

<sup>4</sup> *Record of Proceedings (Hansard)*, 8 August 2013, page 2531.



## 2. Examination of the Identification Laws Amendment Bill 2013

This section discusses issues raised during the Committee's examination of the Bill.

### 2.1 Policy reasons for the Bill

As set out in part one of this report, the policy reasons for the Bill are straightforward. The Bill is designed to enable persons in a position of responsibility to lawfully require that a person removes any face coverings so that the person's face can be seen in order to identify that person.

While the Bill amends five separate pieces of legislation, it will apply in three main situations:

1. When a police officer uses their power to demand to see photo identification or require a person's name or address;
2. When a person makes a declaration or swears/affirms and affidavit before a qualified witness; and
3. When a person enters a secure building, such as a court complex, a corrective services facility or a youth detention centre.<sup>5</sup>

### 2.2 Comparable laws

The provisions in the Bill are based on similar laws which are currently in force in both New South Wales<sup>6</sup> (from November 2011) and the Australian Capital Territory<sup>7</sup> (from April 2012).

The NSW Act applies generally to police officers providing them with the power to require removal of face coverings for identification purposes, while the ACT legislation is limited to the exercise of functions under the ACT's road transport laws and related drug and alcohol testing laws.

The Committee notes the *Criminal Investigation (Identifying People) Amendment Act 2013* (WA) was also recently passed by the Western Australian Parliament in November 2013.

The WA Act similarly applies to police officers only, empowering them to require a person to remove headwear for identification purposes.

While there are no similar laws in place in other jurisdictions within Australia, a recent publication by the NSW Ombudsman<sup>8</sup> helpfully summarises comparable laws in other states (than NSW) and sets out the actions taken in other jurisdictions which have not resulted in legislative change.

That report referred to a review undertaken in Victoria which concluded the existing powers of police in that state were '*sufficient to allow police to request a person to remove headwear for identification purposes*' and that '*if a person refuses to reveal their face, the police can currently arrest the person until they prove their identity*'.<sup>9</sup>

Where applicable, references to that above comparable laws are made throughout this report.

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<sup>5</sup> *Record of Proceedings (Hansard)*, 8 August 2013, page 2532.

<sup>6</sup> *Identification Legislation Amendment Act 2011* (NSW).

<sup>7</sup> *Road Transport (General) Amendment Act 2012* (ACT).

<sup>8</sup> Review of Division 4, Part 3 of the *Law Enforcement (Powers and Responsibilities) Act 2002*: face coverings and identification, Ombudsman New South Wales, August 2013, page 8 and Appendix C.

<sup>9</sup> Review of Division 4, Part 3 of the *Law Enforcement (Powers and Responsibilities) Act 2002*: face coverings and identification, Ombudsman New South Wales, August 2013, page 8.

### 2.3 Terms used in the Bill

Throughout the Bill, two essential terms '**Face**' and '**Face Covering**' are used when the Bill operates.

**Face** means: a person's face (a) from the top of the forehead to the bottom of the chin; and (b) between (but not including) the ears.

**Face Covering** means: an item of clothing, a helmet, a mask or any other thing worn by a person that prevents the person's face [as defined above] from being seen (whether fully or partly).<sup>10</sup>

Consistent with the introductory speech by the Member for Nicklin, the Bill makes no reference to any particular type of face covering and is drafted broadly to apply to any item that covers a person's face.

The definitions of *face* and *face covering* are, apart from minor drafting changes, virtually identical to those terms used in the NSW Act.<sup>11</sup>

The ACT legislation does not define either term but enables a police officer to '*direct a person to remove anything that covers all or part of the person's face*' to allow the officer to identify the person.<sup>12</sup>

The WA Act uses the term '*headwear*' which is defined to mean: an item of clothing, hat, helmet, mask, sunglasses or any other thing worn by a person that totally or partially covers the person's head.<sup>13</sup> This could be considered broader than the definitions in other jurisdictions as it extends to the whole of a person's head, rather than just a person's face.

### 2.4 Discrimination concerns

This Bill along with the comparable laws in other states has received criticism on the basis that it breaches fundamental human rights principles and could be discriminatory against members of the community with particular religious beliefs.

The Amnesty International Human Rights in Law Group provided a submission to the Legal Affairs, Police, Corrective Services and Emergency Services Committee (former committee) on the 2011 Bill. Amnesty International considered the 2011 Bill (being identical to the current Bill) – '*places serious limitations upon the freedom to manifest religion. The Bill contains no acknowledgement of the appropriate test for imposing limitations on fundamental human rights, and in part, disproportionately restricts the freedom to manifest religion.*'<sup>14</sup>

Similarly, the Australian Lawyers for Human rights opposed the Bill on the basis that it considered the Bill breaches human rights principles and has potential to foster anti-Islamic prejudice in the broader Queensland community.<sup>15</sup>

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<sup>10</sup> *Identification Laws Amendment Bill 2013*, clause 6.

<sup>11</sup> *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW), section 3 (Interpretation).

<sup>12</sup> *Road Transport (General) Act 1999* (ACT), section 58B(1).

<sup>13</sup> *Criminal Investigation (Identifying People) Act 2002* (WA), section 16(1).

<sup>14</sup> Amnesty International Human Rights in Law Group, Submission No. 2, Identification Laws Amendment Bill 2011, Legal Affairs, Police, Corrective Services and Emergency Services Committee.

<sup>15</sup> Australian Lawyers for Human Rights, Submission No. 2, page 1.

The Anti-Discrimination Commissioner, Mr Kevin Cocks AM did not provide a submission on the Bill, however did provide a submission to the former committee on the 2011 Bill. The Committee has had the benefit of reading that submission in which Mr Cocks stated:

*Imposing a requirement that people must reveal their face (as defined in the Bill) has the potential to indirectly discriminate against people with certain religious beliefs and people who might chose to cover their face because of condition that falls within the definition of 'impairment'<sup>3</sup> in the Anti-Discrimination Act 1991.*

*Indirect discrimination is the imposition of a term, condition or requirement that has the effect of disadvantaging a person because of a protected attribute. Indirect discrimination is unlawful unless the term, condition or requirement is reasonable in the circumstances.*

*There will be circumstances where it is necessary to establish a person's identity, and where establishing identity involves seeing the person's face. These would include certain police matters, customs and other security matters. The requirement in those circumstances, if performed in an appropriately sensitive manner, would be reasonable and therefore not unlawful discrimination of the person.*

*It is my view that the terms of this Bill is unreasonable, both in the circumstances in which a person may be lawfully directed to reveal their face, and the definition of 'face'.<sup>16</sup>*

Mr Cocks highlighted the point that it was not one singular religion or community group that would potentially be affected by the Bill, but that it would apply to a range of religions:

*It is also my understanding that in Queensland there are nuns of certain Orders of the Roman Catholic religion who wear headdress that extends below the top of their foreheads, and that turbans worn by people of the Sikh religion can extend below the top of their forehead. Also, some women of the Muslim religion wear a niqab that covers most of the face, or headdress that covers part of the forehead, and some women wear headdress that covers part of the face or forehead as part of their culture. Under the Bill, Mother Theresa would be required to remove her veil in order to establish her identity.*

*In the limited circumstances where it is truly necessary to remove a headdress to establish a person's identity, it must be done in circumstances that are sensitive to the person. For example, a Muslim woman who covers her face must only be required to reveal her face in private and to a woman. The person who is required to show their face must be given privacy and sensitivity as a matter of course, rather than having to request it.<sup>17</sup>*

Mr Cocks concluded:

*...it is my view that the amendments proposed in this Bill do not have sufficient regard to the rights and liberties of individuals, as it unreasonably discriminates against certain people contrary to the anti-discrimination laws. The amendments to the various pieces of legislation are not necessary as the anti-discrimination laws allow for identification in appropriate circumstances.<sup>18</sup>*

<sup>16</sup> Anti-Discrimination Commission Queensland, Submission No. 6, Identification Laws Amendment Bill 2011, Legal Affairs, Police, Corrective Services and Emergency Services Committee.

<sup>17</sup> Anti-Discrimination Commission Queensland, Submission No. 6, Identification Laws Amendment Bill 2011, Legal Affairs, Police, Corrective Services and Emergency Services Committee.

<sup>17</sup> Anti-Discrimination Commission Queensland, Submission No. 6, Identification Laws Amendment Bill 2011, Legal Affairs, Police, Corrective Services and Emergency Services Committee.

<sup>18</sup> Anti-Discrimination Commission Queensland, Submission No. 6, Identification Laws Amendment Bill 2011, Legal Affairs, Police, Corrective Services and Emergency Services Committee.

### Committee Comment

The Committee notes the concerns raised in submissions to this Bill and the 2011 Bill and considers the terms of the Bill do have the potential to significantly infringe on the rights and liberties of individuals. The above submissions cannot be dismissed lightly.

As highlighted by the Anti-Discrimination Commissioner, there are a number of religious groups who may be adversely affected by such laws and therefore to recommend that the Bill be passed, the Committee considers there must be a significant need identified or significant failings in the current laws that would warrant this Bill to become a law of Queensland.

The various parts of the Bill are examined below to determine whether such a need exists.

#### **2.5 Request by Police to confirm identity**

Part 4 of the Bill amends the *Police Powers and Responsibilities Act 2000* to enable a police officer to require a person to remove a face covering to enable the officer or another police officer to see the person's face if the person has been lawfully required by the officer requiring the removal of the covering to give the officer with photo ID; or give the officer the person's name, address or date of birth.<sup>19</sup>

This aspect of the Bill is similar to the comparable laws in other jurisdictions.

#### **General need for the amendments**

In considering whether there is a need for this aspect of the Bill, the submission from the Australian Lawyers for Human Rights (ALHR) has been helpful. The ALHR considered that the NSW law and the introduction of the Bill in Queensland could be considered knee-jerk reactions to a single incident.<sup>20</sup>

The ALHR argues the Carnita Matthews' incident fails to establish a pressing or public need for new identification laws in either NSW or Qld.<sup>21</sup>

While the Queensland Government chose not to provide a submission in relation to the Bill, both the current Commissioner of Police Mr Ian Stewart, and the former Commissioner, Mr Bob Atkinson are on the public record saying the power in the Bill is not necessary.

In 2011, the then Commissioner Atkinson was reported as being content with the existing police powers and believed they were adequate to deal with identity issues.<sup>22</sup>

Mr Atkinson was reported to have stated:

*I don't believe personally we need to go down this path in Queensland.*

*Our legislation is more than adequate, but we will watch with great interest what they do in NSW.*

*I have no intention to ask the Queensland government to do something similar here.*<sup>23</sup>

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<sup>19</sup> *Police Powers and Responsibilities Act 2000*, clause 12 – new section 41A,.

<sup>20</sup> Australian Lawyers for Human Rights, Submission No. 2, page 6.

<sup>21</sup> Australian Lawyers for Human Rights, Submission No. 2, page 7.

<sup>22</sup> *Queensland Police won't seek power to remove veils*, Brisbane Times, 5 July 2011.

<sup>23</sup> *Queensland Police won't seek power to remove veils*, Brisbane Times, 5 July 2011.

More recently, Commissioner Stewart was reported to have stated the current laws appeared to be adequate, but police would advise the government if a law change was considered warranted.<sup>24</sup>

The Committee is not aware of any such advice being presented to the Government from the Queensland Police Service.

### **Privacy Concerns generally**

The Committee notes due to the privacy implications associated with the Bill, the OIC was consulted on the proposal. As the Bill provides for (in limited circumstances and in limited environments) a person to remove a face covering for reasons of confirming identity – there are considerations for both the collection and disclosure of ‘personal information’.

The OIC advised the Committee that it provided advice on how to achieve the intended purpose of the Bill while maximising privacy protections, acknowledging that practicably, there is no other way of verifying a person’s face against a photo ID other than having a clear unobstructed sighting of the person’s face. The OIC considered the removal of a person’s face covering potentially discloses the person’s personal information to anyone viewing the uncovering.<sup>25</sup>

The OIC noted that respect for the privacy of the individual concerned had been built into the processes contained in the Bill insofar that:

- there are limits on the circumstances under which a person can be asked to remove a face covering;
- there are limits on who can request the removal of a face covering;
- there are limited circumstances under which a person can legitimately refuse to comply with a request for removal of a face covering; and
- if the person so requests, the removal of the face covering must occur in a way that provides the person with reasonable privacy.
- the OIC acknowledged that the last provision above relating to affording reasonable privacy to the person goes beyond strict compliance with the privacy principles governing disclosure.

While these are not privacy issues, OIC also acknowledges that the process has built in considerations for gender sensitivities and made special provision for children aged under 12 years of age. It also requires the uncovering to occur as ‘quickly as is practical’.

In summary, the OIC considered this legislation minimises the practical aspects of removal of a face covering and in doing so, incorporates respect for the privacy of the persons concerned.<sup>26</sup>

### **Safeguards in the Bill**

The Committee notes the Bill contains a requirement for the Crime and Misconduct Commission Queensland (CMC) to monitor the use of this power by the Queensland Police Service.<sup>27</sup> More particularly, to monitor the use by police for a period of one year and prepare a report for the Legislative Assembly.

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<sup>24</sup> *Expert claims court had right to demand woman remove her burqa*, Courier-Mail, 14 June 2013.

<sup>25</sup> Office of the Information Commissioner, Submission No. 1, page 1.

<sup>26</sup> Office of the Information Commissioner, Submission No. 1, page 2.

<sup>27</sup> Identification Laws Amendment Bill 2013, clause 12 – new section 41 B (Monitoring).

### Committee Comment

The Committee notes the Bill's compliance with privacy requirements and the fact that it is proposed the CMC monitor the use of the police powers by the CMC.

However the Committee is simply not convinced that these amendments are warranted. In absence of any support from the Queensland Police Service that the additional powers are needed, the Committee does not consider that any amendment is required to the *Police Powers and Responsibilities Act 2000*.

### **2.6 Witnessing requirements**

Part 3 of the Bill amends the *Oaths Act 1867* to make it a requirement for a person taking a statutory declaration or an affidavit (collectively referred to as a declaration in this part) to see the face of the person making the declaration.<sup>28</sup>

The Bill proposes a maximum penalty of 20 penalty units (currently \$2,200) if a person fails to ensure they see the face of the person making the declaration.<sup>29</sup>

The Bill enables the person taking the declaration to ask the person who is making it, to remove so much of a face covering worn by that person, which prevents the person taking the declaration from seeing the face of the other person. The Bills states the validity of the declaration is not affected if the person taking the declaration does not see the face of the other person.<sup>30</sup>

The Queensland Justices Association submitted the following to the Committee:

*As you are aware, Justices of the Peace and Commissioners for Declarations are required to satisfy themselves as to the identity of a person when witnessing their signature. They are required to further identify that the person also has the relevant interest in property for land title documents and determine a person's capacity for Powers of Attorney.*

*In principle, we support that a person must remove face coverings for the purpose of identification.*

*If the face covering is there for religious or cultural reasons, we support the provision of a Justice of the Peace of Commissioner for Declarations who is able to see the person without the face covering.*

*For example, in a public signing facility, a female JP or C.Dec should have access to a discreet location where they can take a female client with the face covering to see their face matches their photo ID, and then return to the public facility to sign the document. If none are available at that time, then an appointment should be made with a suitable JP or C. Dec.*

*We do not support JPs and C.Decs being forced to sign documents where they cannot feel satisfied as to the identity of the person, or their relevant interest in property or if there is doubt that a person has capacity or they are being unduly influenced by others.*

*We are aware that NSW Statutory Declarations provide options where a JP can declare they have NOT seen the person's face.*

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<sup>28</sup> Identification Laws Amendment Bill 2013, clauses 8 and 9.

<sup>29</sup> Identification Laws Amendment Bill 2013, clauses 8 and 9.

<sup>30</sup> Identification Laws Amendment Bill 2013, clauses 8 and 9.

*As JPs and C.Decs in Queensland not only witness statutory declarations, but also land title and Power of Attorney documents, it may be impractical to add these clauses to all of those documents, whilst also expecting a JP or C.Dec to determine capacity (which is based on being able to speak clearly to a person, see their facial expressions and body language etc.).<sup>31</sup>*

The Committee notes the following provisions from the Justices of the Peace (Qualified) Handbook in relation to the general requirements for witnessing documents:

***Ask for proof of identity.*** *It is advisable, but not always mandatory, to ask for proof of identity. It is particularly important to do so if you are not satisfied as to the identity of the person claiming to be the signatory, or where the document relates to ownership of property. (Note that you can only request, not demand, proof of identity unless it is one of the requirements of the document itself, or unless you have good grounds for doubting the signatory's identity.)<sup>32</sup>*

The Handbook also states:

***What should I accept as proof of identity?***

*Unless the proof required is specified on the document, this is entirely up to you. Normally a driver's licence, 18+ card or passport would be sufficient. Photographic identification is ideal; however, this may not always be possible. Be wary of Service Club ID cards.<sup>33</sup>*

In relation to this aspect of the Bill, the Anti-Discrimination Commissioner provided to the former committee:

*For example, the proposed amendment to the Oaths Act 1867 requires the person taking an affidavit or declaration to see the face of the person making the affidavit or declaration. It is my understanding that it is currently not necessary for a person taking an affidavit or declaration to satisfy themselves as to the identity of person before them who wishes to make the affidavit or declaration.<sup>34</sup>*

### Committee Comment

Again, the Committee is not convinced the amendments to the *Oaths Act 1867* are necessary. There does not appear to be any widespread mischief in Queensland that is deserving of such a legislative response.

The Committee notes a person taking a declaration must satisfy themselves of the identity of the person making the declaration and in some instances proof of Identity is required. Further, if a person taking a declaration is not satisfied of the other person's identity, or has any doubt, they may simply refuse to witness the document.

As highlighted by the Queensland Justices Association, if the need arose, a person with specific religious beliefs can quite easily make an appointment with a suitable JP or C. Dec to ensure the declaration is taken without incident.

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<sup>31</sup> Queensland Justices Association, Submission No. 3.

<sup>32</sup> *The Duties of Justices of the Peace (Qualified)*, page 20. [www.justice.qld.gov.au/jps](http://www.justice.qld.gov.au/jps), accessed Feb 2014.

<sup>33</sup> *The Duties of Justices of the Peace (Qualified)*, page 25. [www.justice.qld.gov.au/jps](http://www.justice.qld.gov.au/jps), accessed Feb 2014.

<sup>34</sup> Anti-Discrimination Commission Queensland, Submission No. 6, Identification Laws Amendment Bill 2011, Legal Affairs, Police, Corrective Services and Emergency Services Committee.

The Committee does not support the proposed penalty in the Bill and notes this could apply in the circumstance where a person is satisfied with the other person's identity through long standing personal affiliation or otherwise, but fails to see the whole face of the person making the declaration. Further the fact that the declaration would still be valid appears to defeat the purpose of the provision in the first place.

While the Committee does not support the amendments in the Bill, the Committee notes the Justices of the Peace handbook does not fully address this issue and does not provide any information on cultural sensitivities in relation to witnessing documents of a person who wears a religious face covering or similar.

Instead of a legislative response, the Committee considers the Justices of the Peace branch of the Department of Justice and Attorney-General could conduct a review of their resource material which is made available to Justices of the Peace and Commissioners for Declarations to ensure that sufficient information is made available to JPs and C.Decs to deal with situations as they arise. It is possible that this could be incorporated into professional development sessions or on-line training.

#### **Recommendation 1**

The Committee recommends the Attorney-General and Minister for Justice, through the Justices of the Peace branch of the Department of Justice and Attorney-General – review the resource material available to JPs and C.Decs to address the cultural issues discussed in this Report and make any amendments considered necessary to address any deficiencies.

## **2.7 Entry to secure buildings**

Parts 2, 5 and 6 of the Bill amend the *Corrective Services Act 2006*, *State Buildings Protective Security Act 1983* and the *Youth Justice Act 1992* respectively to enable a person responsible for security in a relevant building to require a person visiting such a building to remove a face covering prior to entry.

This requirement in the Bill applies in relation to Correctional Service facilities, State buildings used for courts and youth justice detention centres.

In each of the three cases the Bill appropriately provides that the viewing of the visitor's face must be conducted in a way that gives them reasonable privacy if requested and as quickly as reasonably practicable.<sup>35</sup>

Further, the Committee notes the Bill makes specific provision for children under the age of 12 and also enables viewing of a person's face by someone of the same sex.<sup>36</sup>

#### Committee Comment

While the Committee recognises these amendments have been drafted carefully taking into consideration, cultural sensitivities relating to women and children, for the reasons outlined earlier in this report, the Committee is not satisfied that the proposed amendments are necessary.

The Committee considers that security personnel providing access to these buildings have sufficient powers to deny entry, including use of reasonable and necessary force to remove visitors from premises if required.

The Committee is not satisfied that the above Acts require amendment.

<sup>35</sup> Identification Laws Amendment Bill 2013, clauses 4, 17 and 22.

<sup>36</sup> Identification Laws Amendment Bill 2013, clauses 4, 17 and 22.



## **2.8 Should the Bill be passed?**

Standing Order 132(1) requires the Committee to determine whether to recommend the Bill should be passed.

The Committee has considered the form and policy intent of the Bill and for the reasons outlined in this Report does not consider that the Bill is necessary. There has been no evidence put forward suggesting the amendments are required and accordingly, the Committee recommend the Bill not be passed.

### **Recommendation 2**

The Committee recommends the Identification Laws Amendment Bill 2013 not be passed.

### 3. Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* states that 'fundamental legislative principles' are the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals, and
- the institution of Parliament.

The Committee has examined the application of the fundamental legislative principles to the Bill. The Committee brings the following to the attention of the House.

#### 3.1 Rights and liberties of individuals

Section 4(2)(a) of the *Legislative Standards Act 1992* requires that legislation has sufficient regard to the rights and liberties of individuals.

The Explanatory Notes observe that infringement of a person's rights to privacy or religious beliefs might be raised as an objection to this Bill, but do not concede that there will be an infringement.

As highlighted in part 2 of this report, the provisions in the Bill are particularly relevant to potential FLP issues in connection with freedom of religion, specifically, the right to manifest religion, and also privacy, which in substance, could be considered a single issue.

Although it has received focus in the media, the Bill does not specifically refer to a Muslim women's attire, known as a burqa and more particularly the facial veil worn with it called a niqab. Neither does the Bill propose to ban the wearing of a burqa in public and there is no prohibition imposed or interference by the Bill with the wearing of the hijab (Muslim head scarf).

Whether the Bill's provisions have sufficient regard to an individual's right to freedom of religion and privacy and/or are necessary to protect public safety and order, are raised for the consideration of the Legislative Assembly.

#### 3.2 Institution of Parliament

Section 4(2)(b) of the *Legislative Standards Act 1992* requires legislation to have sufficient regard to the institution of Parliament.

#### **Delegation of legislative power- Section 4(4)(a) *Legislative Standards Act 1992***

Does the bill allow the delegation of legislative power only in appropriate cases and to appropriate persons?

As noted in the Office of the Queensland Parliamentary Counsel FLP Handbook, this matter is concerned with the level at which delegated legislative power is used. Generally, the greater the level of political interference with individual rights and liberties, the greater the likelihood that the power should be presented in an Act of Parliament and not delegated legislation.

Clauses 4, 12, 17, 22 provide that a 'special justification' for not removing a face covering may be prescribed under a regulation.

Only one special justification for not removing the face covering is contained in the Bill i.e. – that the visitor has a genuine medical reason for not removing the face covering. No other eventualities or examples are provided.

If the Bill were to be passed, the question is would it be appropriate to allow future regulations to expand 'special justification' exemptions to the offence.

Allowing future regulations affords greater flexibility without the need to bring the matter before Parliament; however, this may be seen as an inappropriate delegation of legislative authority. The Committee considers that, on balance, exemptions to the proposed requirements should form part of the Bill and not be left to regulation.

As the Committee has recommended the Bill not be passed for policy reasons, no recommendation for amendment in relation to the above is proposed.

**Appendix A – List of Submissions**

Sub #	Submitter
001	Office of the Information Commissioner
002	Australian Lawyers for Human Rights
003	Queensland Justices Association

# Dissenting Report



## **Peter Wellington MP**

**Member for Nicklin**

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7 February 2014

Mr Brook Hastie,  
Legal Affairs and Community Safety Committee  
Parliament House  
George Street  
BRISBANE QLD 4000

Dear Brook

### **Dissenting Report by Peter Wellington Member for Nicklin for the Identification Laws Amendment Bill 2013 Report No 49.**

I recommend the Identification Laws Amendment Bill 2013 be passed.

I note the Premier's advice to the committee that the Government would not be providing a submission on the Bill

It is noted that the office of the Information Commissioner found that the proposed Bill minimizes the practical aspects of the removal of a face covering and doing so, incorporates respect for the privacy of the person concerned.

I note that Former President of the Australian Federation of Islamic Councils, Haset Sali, in 2013, gave his support for the Bill, stating that wearing of the burqa had nothing to with Islam.

In early in 2011, I am advised the then Grand Mufti of Australia Sh. Fehmi Naji El Imam, when speaking on this matter issued a Fatwa (a religious edict) extolling Australia's multi-ethnic multi-religious society and our respect for religious freedom. The Fatwa continued to say:

"In a situation where there is no officer of the same gender to perform a security and identification check, then the Shariah allows a Muslim woman to remove her Face veil as needed in order to have her identity verified. For example, if an

officer has to verify the identity of a woman who wears the Niqab whilst she is travelling in the street and there is no female officers present, then she may remove the face-covering for the purposes and duration of identification. However, fixed points where identity checks are required, such as those mentioned in the previous paragraph, there should be female officers employed to perform the necessary checks.

"When it comes to giving evidence in a court proceeding, a woman may remove her face covering and her face may be observable by the judge and jury regardless of their gender for the duration of her interrogation in the witness box. When the interrogation is finished, she should be entitled to make the choice to cover her face." [the fixed points to which the first paragraph refers include airports, court buildings and the like]

I believe if the Bill was passed it would make it very clear people must remove any face covering for the purpose of identification and that the certainty provided by this requirement outweighs any possible infringement on a person's rights and liberties.

Yours sincerely

A handwritten signature in black ink that reads "Peter Wellington". The signature is written in a cursive style with a large, sweeping initial 'P'.

**Peter Wellington MP**  
**Member for Nicklin**