

Identification Laws Amendment Bill 2011

Explanatory Notes

Short Title

The short title of the Bill is the *Identification Laws Amendment Bill 2011*.

General Policy Objectives of the Bill

The objective of the Bill is to amend the:

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

to ensure in each case that, where officers or other persons in a position of responsibility (such as lawyers, Justices of the Peace or Commissioners for Declarations) have a responsibility or need to check the identity of a person, they can insist that the person removes any face coverings that may hamper the recognition of the person.

Alternatives to achieve policy objectives

There is no alternative way to achieve these policy objectives.

Estimated Cost for Government Implementation

It is not expected that the Bill will increase the administrative costs of the affected agencies.

Consistency with Fundamental Legislative Principles

It may be suggested that the Bill will interfere with persons' right to privacy or religious beliefs, but it should be noted that it will only require people to show their faces in places or circumstances where it is important that officers or responsible persons should know the identity of the persons they are dealing with. Safeguards have been included to ensure that any breach of privacy or religious belief is minimised.

In clause 12, the proposed new s 41A(8) of the *Police Powers and Responsibilities Act 2000* provides for a reverse onus of proof on the specific issue of whether a person has a special justification for not removing a face covering, and there are similar provisions referring to 'a reasonable excuse' or 'special justification' in clauses 4, 17 and 22. It is considered that these are justifiable because they throw the onus of proof or justification onto a person only in respect of matters where the person will have special knowledge unavailable to the officer or responsible person.

Consultation

The Bill is based on one that has recently been enacted into an Act of the New South Wales Parliament. There has been no community consultation prior to the presentation of this Bill, but it is anticipated that there will be ample opportunity for consultation once the Bill is referred to a portfolio committee.

Notes on Provisions

Clause 1 provides for the short title of the Bill

Clause 2 provides that it will commence on proclamation.

Part 2 (Clauses 3- 6) amends the *Corrective Services Act 2006*. *Clause 4* makes the principal amendments. It proposes to insert 4 new sections providing a code balancing the need for a corrective services officer to be able to identify a person entering a corrective facility with the person's religious or personal need to avoid showing their face to strangers. Proposed ss 160A-C provide a corrective services officer with the power to require that a visitor must show their face, but provide the following limits:

- That the visitor may request reasonable privacy and must be granted it;
- That a visitor with special reasons (such as a face bandaged after an operation) may use those reasons as an excuse not to show their face;
- That a person over 12 may ask for the viewing of their face to be done by a corrective services officer, or person assisting the corrective services officer, of the same sex as the person; and
- That where the person with a covered face is under 12 years, the viewing of the face may only be conducted in the presence of an accompanying adult and, if the adult requires it, that the viewing be conducted by a female.

Clause 6 adds definitions to the Dictionary in the Act to make it clear that the area that needs to be viewed for identification purposes is the face as strictly defined to mean the face from the top of the forehead to the bottom of the chin, and between (but not including) the ears.

Clause 5 makes consequential amendments to add a person's refusal to show their face to the reasons, already listed in s 161, for which a person may be directed to leave a corrective services facility and, if necessary, forcibly removed. In addition, proposed new s 160D (in *clause 4*) provides that the visitor may be warned that failure to comply with a direction is an offence, and then the offence provision in s 163 will apply.

Part 3 (Clauses 7- 9) amends the *Oaths Act 1867*. *Clause 8* adds a section that requires a person taking a (statutory) declaration to see the face of the person making it, and *clause 9* adds a section imposing the same duty on a person taking an affidavit. In each case 'face' is defined, as above, to mean the area from the top of the forehead to the bottom of the chin and between (but not including) the ears. A penalty is imposed on the person taking the declaration or affidavit for not complying with the requirement to see the face of the person before them, but a contravention does not affect the validity of the declaration or affidavit.

Part 4 (Clauses 10-14) amends the *Police Powers and Responsibilities Act 2000*.

Clause 11 amends the title of Ch 2, pt 4, div 1 from ‘Powers relating to name and address’ to ‘Powers relating to name, address and identity’. The following clauses add the new provisions about identity.

Clause 12 adds a new section 41A which provides that in cases where a police officer has power to inspect a person’s driver licence or to ask for the person’s name and date of birth the officer may also demand to see the person’s face. ‘Face’ is defined, in a new definition added by *clause 14*, as in the sections discussed above, and, as for the *Corrective Services Act*, above, there is a provision that a person may have a reasonable excuse for not showing the face on medical or other prescribed grounds. New sub-s (3) will provide that the viewing of the face must be conducted in a way that gives the person reasonable privacy, but in view of the circumstances in which the power is likely to be exercised (eg, a motor-cycle officer checking a driver’s details by the roadside) the provisions for viewing by a person of the same sex have not been included. A failure to comply with the direction under this section will be an offence under existing s 791 (Offence to contravene direction or requirement of police officer); this is noted in a Note to the section. The new section provides (in sub-s (8)) for a reverse onus of proof as to a special justification for not removing a face covering, as discussed above. New section 41B provides for monitoring of the use of the new power by the CMC and for a report to be made by the CMC after a year.

Clause 13 adds a reference to the new power under s 41A to the existing list of occasions on which a police officer must provide his or her details to the person affected by the exercise of the power.

Part 5 (clauses 15-20) amends the *State Buildings Protective Security Act 1983*. The wording of the sections inserted by *clauses 16 and 17* is almost identical to the amendments to the *Corrective Services Act 2006*, discussed above.

Clauses 18 and 20 make consequential amendments to the enforcement provisions of the Act by ensuring that refusal by a person to allow a security officer is included in the grounds for directing a person to leave a building (s 21D) or refusal of entry to or removal from a building (s 23). S 21D provides for a penalty for non-compliance with a direction, and s 23 authorises a senior protective security officer to remove the person by force if necessary.

Clause 19 does not relate to the power to see a person’s face, but clarifies that the power to direct a person to remove outer garments, qualified in s 21H, has its source only in s 21A.

Part 6 (clauses 21-23) amends the *Youth Justice Act 1992*. The wording of the sections inserted by *clauses 22 and 23* is almost identical to the amendments to the *Corrective Services Act 2006*, discussed above. The power to remove a person who refuses to comply with a direction is included specifically in the new sections, in proposed sub-s 272A(7).