

Overview of Bill

The objects of this Bill are as follows:

(a) to amend the *Law Enforcement (Powers and Responsibilities) Act 2002*:

(i) to allow a police officer to require, in certain circumstances, a person to remove a face covering so as to enable the officer or another police officer to see the person's face for identification purposes, and

(ii) to allow a police officer to request that a person disclose the person's identity to the officer where the officer proposes to give the person a direction under that Act to leave a place,

(b) to amend the *Court Security Act 2005* to allow a court security officer to require a person to remove a face covering if the person is seeking to enter court premises or the officer has arrested (or has grounds for arresting) the person under that Act,

(c) to amend the *Crimes (Administration of Sentences) Act 1999* and the *Crimes (Administration of Sentences) Regulation 2008* to allow an authorised officer to require a visitor to a correctional centre to remove a face covering so as to enable the officer and certain persons assisting the officer to see the visitor's face for identification purposes,

(d) to amend the *Children (Detention Centres) Act 1987* and the *Children (Detention Centres) Regulation 2010* to allow a juvenile justice officer to require a visitor to a detention centre to remove a face covering so as to enable the officer and certain persons assisting the officer to see the visitor's face for identification purposes,

(e) to amend the *Oaths Act 1900* to provide for identification procedures to be followed by persons taking or receiving statutory declarations or affidavits.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Law Enforcement (Powers and Responsibilities) Act 2002

No 103

The amendments to legislation made by the proposed Act rely on the definitions of **face**, **face covering** and **special justification** to be inserted in the *Law Enforcement (Powers and Responsibilities) Act 2002* by Schedule 1 to the proposed Act.

The term **face** will be defined to mean 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.

The term **face covering** will be defined to mean an item of clothing, helmet, mask or any other thing that is worn by a person and prevents the person's face from being seen (whether wholly or partly). This definition is limited to items or things that are worn (and therefore removable) by a person. However, it does not include any thing that is naturally growing (such as a beard).

A person will have a **special justification** for not removing a face covering if (and only if):

(a) the person has a legitimate medical reason for not removing the face covering, or

(b) the person has any other excuse for not removing the face covering that is an excuse of a kind prescribed by regulations made under the *Law Enforcement (Powers and Responsibilities) Act 2002*.

Schedule 1 [1] inserts the definitions of **face** and **face covering** set out above.

Schedule 1 [4] inserts a provision to allow a police officer to request that a person disclose the person's identity to the officer where the officer proposes to give the person a direction under the *Law Enforcement (Powers and Responsibilities) Act 2002* to leave a place. A failure or refusal by a person (without a reasonable excuse) to disclose his or her identity on such a request will be an offence, as will providing false or misleading information about the person's identity. The maximum penalty for each of these offences will be 2 penalty units (currently, \$220).

Schedule 1 [2] and [3] make consequential amendments.

Schedule 1 [5] inserts the following:

(a) provisions that allow a police officer to require a person to remove any face covering worn by the person so as to enable the officer or another police officer to see the person's face if:

(i) the person has been lawfully required (whether under the *Law Enforcement (Powers and Responsibilities) Act 2002* or any other Act or a statutory instrument) by the officer requiring the removal of the covering to provide photographic identification, or

(ii) the person has otherwise been lawfully required (whether under that or any other Act or a statutory instrument) by the officer requiring the removal of the covering to identify himself or herself or provide other identification particulars,

(b) provisions that make it an offence for a person to fail or refuse to comply with such a requirement without a special justification and provide for a maximum penalty of 50 penalty units or 12 months imprisonment, or both (in the case of a person who is required to remove a face covering following a request made to the person under section 14 of that Act) or 2 penalty units (in any other case).

Schedule 1 [6] makes an amendment that is consequential on the amendment made by Schedule 1 [5].

Schedule 1 [7] will require the Ombudsman to monitor the exercise by police officers of their new powers to require the removal of face coverings for a period of 12 months and to provide a report to the Minister following the end of that period for tabling in Parliament.

Schedule 1 [8] enables the Governor to make regulations of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 2 Amendment of other legislation

2.1 Children (Detention Centres) Act 1987 No 57

Schedule 2.1 enables the regulations under the *Children (Detention Centres) Act 1987* to provide for the identification of visitors to detention centres (including requiring the removal of face coverings for that purpose).

2.2 Children (Detention Centres) Regulation 2010

Schedule 2.2 inserts provisions to allow a juvenile justice officer to require a visitor to a detention centre to remove a face covering so as to enable the visitor's face to be seen for identification purposes by the officer and certain persons assisting the officer. A visitor who does not comply with the requirement may be refused a visit to the detention centre unless the visitor has a special justification for not removing the face covering.

2.3 Court Security Act 2005 No 1

Schedule 2.3 [3] inserts provisions to allow a court security officer to require a person who is wearing a face covering to remove the covering so as to enable the officer and certain persons assisting the officer to see the face of the person if:

(a) the person is seeking to enter court premises, or

(b) the officer arrests, or has grounds for arresting, the person under the *Court Security Act 2005*. A person who fails or refuses to comply with a requirement to remove a face covering, if it is repeated, may be guilty of an offence with a maximum penalty of 5 penalty units (currently, \$550). However, a security officer will not be able to require a person to remove a face covering if the person establishes to the officer's satisfaction that the person has a special justification for not removing the face covering.

Schedule 2.3 [1], [2], [4] and [5] make consequential amendments.

2.4 Crimes (Administration of Sentences) Act 1999 No 93

Schedule 2.4 enables the regulations under the *Crimes (Administration of Sentences) Act 1999* to provide for the identification of visitors to correctional centres (including requiring the removal of face coverings for that purpose).

2.5 Crimes (Administration of Sentences) Regulation 2008

Schedule 2.5 inserts provisions to allow an authorised officer to require a visitor to a correctional centre to remove a face covering to enable the visitor's face to be seen for identification purposes by the officer and certain persons assisting the officer. A visitor who does not comply with the requirement may be refused a visit to the correctional centre unless the visitor has a special justification for not removing the face covering.

2.6 Oaths Act 1900 No 20

Schedule 2.6 inserts a new Part which provides that a person who takes and receives a statutory declaration or affidavit in this State (an **authorised witness**):

- (a) must see the face of the person making the declaration or affidavit, and
- (b) must know the person who makes the declaration or affidavit or confirm the person's identity in accordance with the regulations, and
- (c) must certify on the declaration or affidavit in accordance with the regulations that the new requirements have been complied with.

The regulation-making powers under the new Part will enable procedures for confirming the identity of a person to be developed that conform with the procedures for witnessing other documents set out in legislation such as the *Real Property Act 1900*.