

IDENTIFICATION LEGISLATION AMENDMENT BILL 2011

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Bill introduced on motion by Mr Greg Smith.

Agreement in Principle

Mr GREG SMITH (Epping—Attorney General, and Minister for Justice) [11.10 a.m.]: I move:

That this bill be now agreed to in principle.

The Government is pleased to introduce the Identification Legislation Amendment Bill 2011. This bill is about ensuring that police, juvenile justice officers, officers authorised by Corrective Services and court security officers have the power to require that a person remove a face covering to enable the person's face to be seen for the purpose of identification. The new powers are designed so that these officers are able to function effectively to ensure the security and safety of our community and its citizens. The bill also provides that a police officer can request a person to identify himself or herself when the officer proposes to give that person a move-on direction.

The Government has consulted with members of the community on how these powers are to be exercised and is committed to working with and educating the community about the new powers, and individual rights and responsibilities regarding their application. The bill contains appropriate safeguards and a monitoring mechanism to ensure that the application of the power to require the removal of a face covering is both sensitive and accountable. The bill also requires a person witnessing a statutory declaration or affidavit to identify the person swearing the declaration or affidavit and to certify that they have done so.

I turn now to the detail of the bill. Schedule 1 to the bill amends the Law Enforcement (Powers and Responsibilities) Act 2002 to provide that a police officer may, when requiring identification—whether that is name and address or a form of photographic identification such as a drivers licence—also require that the person remove any item that is concealing or obscuring part or all of that person's face. The intention behind giving police this power is so that police may see the person's face for the purpose of identification. It will be sufficient compliance with the requirement if the person removes only so much of the face covering as prevents the person's face from being seen, or the person removes the face covering only for so long as is reasonably necessary in the circumstances to enable an officer to see the person's face.

A person also will be compliant if they enable a police officer other than the officer who has given them the direction to see their face. This provides for a person to be compliant in circumstances where, for example, they reveal their face to a female officer notwithstanding that a male officer may have given them the direction. "Face" is defined to mean the area from the top of the forehead to the bottom of the chin and between, but not including the ears. "Face covering" means 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.

The bill creates an offence of failing to comply with a direction by a police officer to remove a face covering. The maximum penalty will match the maximum penalty applicable for failing to provide identification under the Law Enforcement (Powers and Responsibilities)

Act 2002. In most cases, the penalty for failing to comply with a police requirement to remove a face covering will be a maximum fine of \$220, or two penalty units. Where police are exercising the power when requesting identification in relation to vehicles used in or in connection with indictable offences, as provided by section 14 of the Law Enforcement (Powers and Responsibilities) Act, the penalty matches the higher penalty that non-compliance with section 14 attracts, which is a maximum fine of \$5,500 or 12 months' imprisonment.

The bill recognises that there may be limited circumstances where a person cannot remove a face covering. It provides that a person may refuse to remove a face covering if they have a "special justification", which is defined as being a legitimate medical reason for not removing the face covering. This may apply, for example, where a person has recently had surgery and is required to have their face or eyes bandaged. Police exercising these new powers will be required to comply with requirements that are set out in section 201 of the Law Enforcement (Powers and Responsibilities) Act 2002. These already apply to a range of other activities that police engage in when exercising their functions.

Section 201 requires police to provide the person with evidence that they are a police officer, their name and place of duty, the reason for the exercise of the power and warnings and notification that non-compliance may be an offence. Police are required to do this if it is practicable to do so before or at the time of exercising the power or if it is not practicable to do so as soon as is reasonably practicable after exercising the power. Additionally, the bill provides that police must, as far as is reasonably practicable, ensure that they request that the person cooperate with the requirement to remove the face covering, provide the person with reasonable privacy if the person requests it and conduct the viewing of the person's face as quickly as is reasonably practicable.

It is often necessary for police to ascertain a person's identity in the course of carrying out their functions. There may be times when a person who is required to remove a face covering requests a degree of privacy. The bill provides that, as far as is reasonably practicable, police will endeavour to meet requests for privacy. For example, police may be investigating a serious assault in a public space. A witness, who is required to remove a face covering may request that they be taken back to a police station to afford them some privacy. This may or may not be reasonably practicable, depending on the circumstances. The scene may not be contained and police may be required to remain at the scene.

In such instances, police may have to decline the specific request but, to a practicable extent, may afford that privacy. They may be able to shield the person at the scene or find somewhere close where privacy can be provided. These legislative safeguards will be supported by a commissioner's direction explaining the bill and reinforcing the need to respect an individual's right to dignity and privacy. The bill also provides a monitoring mechanism, which will require the NSW Ombudsman to review the operation of the police powers for a 12-month period from when the legislation commences. This review will ensure that the exercise of the powers is independently scrutinised and accountable, as the final review will be reported back to Parliament.

Schedule 1 to the bill also amends section 11 of the Law Enforcement (Powers and Responsibilities) Act 2002 to allow a police officer to request that a person disclose their identity to the officer where the officer proposes to issue a move-on direction to that person. A failure or refusal by a person to disclose their identity without a reasonable excuse will be

an offence, as will providing false or misleading information about the person's identity. The maximum penalty for each offence will be a fine of two penalty units or \$220. This will enable police to identify people to whom they propose to issue a move-on direction and also to require that person to remove a face covering, as the new general power in the Law Enforcement (Powers and Responsibilities) Act 2002 will apply.

Schedule 2 to the bill provides for amendments to various Acts and regulations to provide powers to Juvenile Justice officers, officers authorised by Corrective Services, and court security officers to require that a person remove a face covering to enable the officer to see that person's face. These amendments recognise that juvenile justice officers, officers authorised by Corrective Services, and court security officers are responsible for ensuring that people who are seeking entry to, or are on, particular regulated premises—that is, courts, juvenile detention centres and correctional centres—are properly identified to ensure the secure and proper operation of those facilities. The definitions of face, face covering and special justification that will be inserted into the Law Enforcement (Powers and Responsibilities) Act 2002 will apply to the amendments in schedule 2.

Schedule 2.3 to the bill amends the Court Security Act 2005 to provide that court security officers, that is, sheriff's officers, will have the power to require that a person who is seeking to enter court premises, or who the officer has arrested or has grounds for arresting, remove a face covering to allow the officer, or another person at the direction of the officer, to see that person's face for the purpose of identification. A person will be compliant with the requirement if they remove only so much of the face covering as prevents the features of their face from being seen. A person may refuse to remove a face covering if they have a special justification. The bill prescribes a range of safeguards that are to be applied as far as is reasonably practicable.

These safeguards require court security officers exercising the power to ask for the person's cooperation; to conduct the viewing of the person's face in a way that provides reasonable privacy if the person requests this; to conduct the viewing of the person's face as quickly as reasonably practicable; to conduct the viewing of the face of a child under 12 years of age only in the presence of a responsible person for the child; and to ensure the viewing of the person's face is carried out by a security officer of the same gender if the person requests this, or where the person is a child under 12 years of age, where the child's responsible person requests this. If a person entering the court does not remove their face covering when a security officer requires them to do so, the security officer must warn them that it is an offence not to remove their face covering, or to leave the premises. The maximum penalty for non-compliance will be the same as the existing maximum penalty for non-compliance with other requirements of a court security officer, which is five penalty units or a fine of \$550.

Schedule 2 to the bill amends the Children (Detention Centres) Act 1987 and the Crimes (Administration of Sentences) Act 1999 to provide that regulations made under these Acts can provide for the identification of visitors to juvenile detention centres and correctional centres respectively, and that this can include provision for the removal of face coverings. The bill also amends the Children (Detention Centres) Regulation 2010 and the Crimes (Administration of Sentences) Regulation 2008 to provide that Juvenile Justice officers and officers authorised by Corrective Services may require visitors to detention centres, correctional centres or compulsory drug treatment detention facilities to remove a face covering to enable the officer, or another person directed by the officer, to see the face of the visitor. A visitor may be asked to identify himself or herself as they attempt to enter the

facility for the purpose of a visit, at any time during the visit or as they finish the visit and proceed to exit the facility. A person may refuse to remove a face covering if they have a special justification, being a legitimate medical reason.

The safeguards that apply to court security officers will also apply to Juvenile Justice officers and officers authorised by Corrective Services when they are exercising the power. A failure or refusal to comply with a requirement made by a Juvenile Justice officer or an officer authorised by Corrective Services may result in the person being refused permission to visit. This could include refusing access to the centre or terminating the visit. Where permission to remain on the premises is withdrawn a person will be required to leave the premises. The powers and safeguards that apply to court security officers, Juvenile Justice officers and officers authorised by Corrective Services recognise that those officers are responsible for ensuring and maintaining the security and integrity of the facilities in which they operate. Wherever it is reasonably practicable, officers will endeavour to meet these requests.

In some cases it will be possible to take a person aside to another room or to have an officer of the same sex attend. It may be, on occasion, that a person may have to wait until a room is available or for a person of the same sex to attend. However, in some instances it may not be reasonably practicable to comply with the request. For example, there may be times when officers at male correctional centres are unable to locate a female to assist with a visitor's request for a female to conduct the inspection, as there are fewer female staff working in those facilities. The inability of an officer to meet such a request does not invalidate the requirement to remove the face covering.

Schedule 2.6 to the bill amends the Oaths Act 1900 to place an obligation on a person witnessing a statutory declaration or affidavit to identify the person making the declaration or affidavit. An authorised witness will be required to see the face of a person making a statutory declaration or affidavit. If the witness does not know the person they must confirm their identity in accordance with the regulations. Regulations under the Oaths Act will prescribe the kinds of documentation to be relied upon to confirm a person's identity. A witness will need to certify on the document that they have met these requirements, and there is a maximum penalty of two penalty units for not complying with the requirements. These amendments introduce new safeguards to ensure the identity of persons making statutory declarations or affidavits.

Affidavits and statutory declarations are written statements of fact sworn or affirmed or declared by the person to be true in the presence of a person authorised to be a witness—usually a justice of the peace, a legal practitioner or a notary public. Affidavits are used in court proceedings and statutory declarations are usually used in other situations. A person who makes a false statement in an affidavit commits perjury and a person who makes a false declaration in a statutory declaration also commits a serious offence. People need to be confident that affidavits and statutory declarations have been made by the person whose signature appears on them. Requiring a witness to see the face of the person who is making the affidavit or statutory declaration will ensure that the witness can later identify the person if there is any dispute about that.

If a person who wishes to make an affidavit or statutory declaration refuses to remove a face covering to allow the authorised witness to see their face the witness will not be able to witness the document. This bill recognises that there are various circumstances where it is necessary for police and other officers to be able to see a person's face to assist them to

identify that person. The bill is not specific in its application to any particular group in the community and the provisions apply to any person wearing a face covering of any type that falls within the definition. However, the Government recognises that there are members of our community who wear face coverings for religious, cultural or personal reasons, and the Government is committed to working with these groups and the broader community to ensure that people understand not only their obligations but also the extent to which safeguards can reasonably be expected to apply.

In this regard, the Government has consulted with members of the Islamic community on the content of this bill and is committed to ongoing work through the Community Relations Commission on the development of guidelines that will apply to government agencies. The guidelines will assist to ensure that the Government is responsive and sensitive to individual wishes for privacy and flexibility in the provision of quality services and support. This bill is premised on the foundation that people will comply with a lawful request to remove a face covering. It is about ensuring that our police officers, and other specified officers, have the powers they need to exercise their functions and to ensure the protection of everyone in our community, while respecting and being responsive to the different reasons that people may wear face coverings, be they sunglasses, masks, balaclavas, religious headwear or motorcycle helmets. The legislative safeguards provided by the bill, the monitoring mechanism, the community consultation and development of guidelines demonstrate the Government's commitment to ensuring that it strikes a balance between the need for certain officers to have the power and the appropriate exercise of them with respect to the diverse needs and wishes of everyone in our society. I commend the bill to the House.