



issues backgrounder

August 2010

NSW Parliamentary Library

The Summary Offences Amendment (Full-Face Coverings Prohibition) Bill 2010

The Bill

The [Summary Offences Amendment \(Full-Face Coverings Prohibition\) Bill 2010](#) [the Bill] was introduced and read a second time in the New South Wales Legislative Council on 22 June 2010. It is a Private Member's Bill sponsored by the Reverend the Hon. Fred Nile MLC. The [Second Reading speech](#) stated:

While this legislation has become known as the burqa bill, the scope of the bill is much broader than just that one item of clothing.

Foreshadowing the introduction of the Bill, in a [speech](#) on 12 May 2010 the Reverend the Hon. Fred Nile endorsed the views expressed by Senator Cory Bernardi. These were to the effect that full-face coverings should be banned 'For safety and for society': 'for safety' because full-face coverings are used as a disguise in criminal activities; 'for society' because they are 'not consistent with the Australian culture and values', notably the equality of women.

The Bill would amend Division 2C of the *Summary Offences Act 1988* (NSW) by the insertion of a new section 11I, headed 'Wearing full-face coverings in public places'. The object of the Bill is to make it an offence (maximum penalty of \$550) for a person, without reasonable excuse, to wear a face covering while in a public place (clause 11I(1)). By clause 11I(2) a face covering is defined as any article of clothing or other thing (such as a helmet) that hides the face of a person in a way that conceals the person's identity. Further to this, clause 11I(5) makes it clear that the prohibition is intended to apply against the concealment of a person's identity, 'even though part of the person's face can still be seen'.

Clause 11I(3) provides:

Without limitation, it is a reasonable excuse for the purposes of this section if the wearing of the face covering is reasonably necessary in all the circumstances for any of the following purposes:

- (a) the lawful pursuit of the person's occupation,
- (b) participation in a lawful entertainment, recreation or sport,
- (c) such other purposes as may be prescribed by the regulations.

The phrase 'Without limitation' indicates that the Bill does not seek to define all those circumstances which may constitute a reasonable excuse for the purposes of the proposed section, thus leaving the application of the law to the discretion of the courts. However, there is one express restriction on the court's discretion, with clause 11(4) of the Bill providing that a person's 'religious or cultural belief does not constitute a reasonable excuse for the wearing of a face covering'.

A different kind of exclusion is also found in the Bill, specifically relating to what is meant by a 'public place'. For the purposes of the proposed section 11, churches or other places of worship are expressly excluded from the definition of 'public place'. The phrase 'public place' is defined by section 3 of the *Summary Offences Act 1988*, as follows:

public place means:

(a) a place (whether or not covered by water), or

(b) a part of premises,

that is open to the public, or is used by the public whether or not on payment of money or other consideration, whether or not the place or part is ordinarily so open or used and whether or not the public to whom it is open consists only of a limited class of persons, but does not include a school.

The Bill also makes it an offence (maximum penalty of \$1,100) to compel another person to wear a face covering in a public place. Clause 11(7) provides (in part):

A person who compels another person, by means of a threat that the other person could not reasonably be expected to resist, to commit an offence under subsection (1) is guilty of an offence.

The word 'threat' is defined to mean:

(a) a threat of physical force, or

(b) intimidatory or coercive conduct, or other threat, that does not involve a threat of physical force.

The first print of the Bill can be found [here](#).

The Second Reading Speech can be found [here](#).

The NSW Government Response

The NSW Premier Kristina Keneally has yet to release the Government's official position on the Bill, but the Premier has been quoted as saying:

...One of the great things about NSW is it is such an open and welcoming place and I don't support this legislation. I am opposed in principle to the idea that we should be banning the burqa and whilst this matter has yet to be considered by the Cabinet or the caucus, there have already been a number of my caucus members who have contacted me to express a similar view.

[[No Labor support for burqa ban bill](#), Illawarra Mercury 24 June 2010.]

Parliamentary Material

New South Wales

Legislative Council: Business of the House

Suspension of Standing and Sessional Orders: Order of Business

The debate: 'That standing and sessional orders be suspended to allow a motion to be moved forthwith that Private Members' Business item No. 201 outside the Order of Precedence, relating to the Summary Offences Amendment (Full-face Coverings Prohibition) Bill 2010, be called on forthwith.' can be found [here](#).

Legislative Council: Adjournment Debate

Cultural Restriction of Women by Hon Linda Voltz on 13 May 2010 can be found [here](#).

Legislative Council: Questions without Notice

Identity Concealment QWN asked by Revd Hon Nile MLC on 24 June 2010 can be found [here](#).

2010 NSW Press Releases

[Dr Gordon Moyes suggests "a better way to deal with the confronting burqa."](#) Media Release 14 July 2010.

[Burqa used to defame police](#). Media Release by Rev Hon F. Nile, 14 July 2010.

[Upper House censors burqa debate](#). Media Release by Rev Hon F. Nile, 20 May 2010.

Other Relevant Australian Parliamentary Material

South Australia

The *Facial Identification Bill 2010* (SA) was introduced into the House of Assembly on 22 July 2010. The text of the Bill can be found [here](#). The Second Reading Speech by Hon R.B. Such may be found [here](#).

Muslim Task Force, QWN asked by Mr Sibbons MP in the House of Assembly on 25 May 2010 can be found [here](#).

News Articles

Below are some selected Australian media articles on the issue.

[Keneally won't back burqa ban](#). *Sydney Morning Herald*, 25 August 2010.

[Nile says burqa ban will cost votes](#). *The Illawarra Mercury*, 25 August 2010

[Court ban on burqa](#). *Daily Telegraph*, 20 August 2010.

[Judge bans burqa from perth court](#). *WA Today*, 19 August 2010.

[Burqa defenders' paradox of injustice](#). *Sydney Morning Herald*, 13 August 2010.

[Burgas become vital election issue](#). *Daily Telegraph*, 7 August 2010.

[Muslim attacked over burqa: court](#). *The Illawarra Mercury*, 7 August 2010.

[Veiling the real issue](#). *Newcastle Herald*, 7 August 2010.

[Offer of CCTV to veiled witness](#). *The Australian* 6 August 2010.

[MPs differ on burqa in court](#). *Sydney Morning Herald* 5 August 2010.

[Muslim woman wants ruling on burqa in court](#). *The Australian*, 5 August 2010.

[Witness wants to hide her face behind Burqa](#). *Daily Telegraph* 4 August 2010.

[Let's not go totally beserker over burqa](#). *Daily Telegraph* July 20, 2010

[Muslims told to shun democracy](#), *The Australian*, 5 July 2010.

[Burqa war](#). *Bankstown Canterbury Torch*, 30 June 2010.

[Burqa is our choice](#), *St George and Sutherland Leader*, Sutherland ed 29 June 2010.

[Burqa ban blasted by local Muslims](#), *Canterbury Bankstown Express*, 29 June 2010.

[Full-face burka lifts the veil on Western feminists insecurities](#). *The Australian*, 26 June 2010.

[No Labor support for burqa ban bill](#), *Illawarra Mercury* 24 June 2010.

[Nile unveils bill to ban people hiding their faces](#), *Sydney Morning Herald*, 23 June 2010.

[Burqa ban robs women](#), *Fairfield City Champion*, 26 May 2020.

[Upper house quashes Nile's burqa ban](#), *Maitland Mercury*, 21 May 2010.

[Right says Fred, ban the burqa](#). *Daily Telegraph*, 14 May 2010.

Audio-visual Clips

[2NR Radio National Law Report, Wearing a Niqab in the Witness Box](#). 31 August 2010.

[Sunrise - French Burqa Ban 14 July 2010](#)

[A Current Affair - Burqa Ban 29 June 2010](#)

[ABC news 'Burqa Ban' 23 June 2010.](#)

[2GB news 'Nile Burqa Ban' 23 June 2010](#)

[ABC Australia Network interview with Hon S. Moselmane MLC 31 May 2010](#)

[Sixty Minutes – Veil of Suspicion 23 May 2010](#)

[2GB Morrison/Brown 'Burqa Ban' 20 May 2010](#)

Journal Articles

[What Can Multicultural Theory Tell Us about Integrating Muslims in Europe?](#) *Political Studies Review*, September 2010.

[A Bad Idea](#). *The Economist*. 15 May 2010.

[France Moves Closer to Banning the Burqa](#), *Time* 23 April 2010.

[Beneath the Veil: Muslim Girls and the Islamic Headscarf in Secular France](#). *Macquarie Law Journal*, Vol 9, 2009.

[Humanism and the Burqa Bugaboo](#), *The Humanist* Sept 2009

[Making Sense of Hijab and Niqab in Contemporary Western Societies](#), *Intellectual Discourse* 2009

['Not another Hijab row'. New Conversations on gender, race, religion and the making of communities](#). *Transforming Cultures eJournal*, November 2007

['B' is for Burqa, 'C' is for censorship: The miseducative effects of censoring Muslim girls and women's sartorial discourse](#). *Educational Studies*, 2008.

[Veil of Fears](#). *The Nation* June 14 2010.

[Hijab in an age of fear. Security, Secularism and Human Rights](#). *ARSR* 2006

[The Limits of Choice/Force, Discourses in Discussing Muslim Women's Dress Codes](#). *Transforming Cultures eJournal* 2007.

[Pluralism and the Law: New Zealand Accommodates the Burqa](#). *Otago Law Review*, 2006.

Islamic / Muslim Associations

[Forum on Australia's Islamic Relations](#)

[Lebanese Muslim Association](#)

[Islamic Council of NSW](#)

[Islamic Friendship Association of Australia](#)

[Australian New Muslim Association](#)

[Muslim Women's National Network Australia](#)

International

United Nations

UN *Universal Declaration of Human Rights* (1948) may be found [here](#).

The Office of the United Nations High Commissioner for Human Rights *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief* may be found [here](#).

Parliament of Canada

Freedom of Religion and Religious Symbols in the Public Sphere Parliamentary Information and Research Service Briefing Paper (2008) can be found [here](#).

United States

The United States Department of State releases an *Annual Report on International Religious Freedom*. The report contains an introduction, executive summary, and a chapter describing the status of religious freedom in each of 195 countries throughout the world. The 2009 report may be found [here](#).

European Union

The EU Charter of Fundamental Rights of the European Union may be found [here](#). Article 10 deals with Freedom of Thought, Conscience and Religion.

Developments in Europe

The wearing of veils or similar garments that cover the face of women is the subject of debate and legislative proposals in several European countries, including the United Kingdom, France, Belgium and Spain.

In the United Kingdom, a Private Member's Bill titled the [Face Coverings \(Regulation\) Bill](#) was read a first time on 30 June 2010. The Government has indicated that it will not support the Bill, with Immigration Minister Damian Green quoted in the [Jurist](#) as saying that it would 'not be consistent with British society, where mutual respect for differences among cultures is important'.

In respect to Spain, it was reported in the [Sydney Morning Herald](#) on 22 July 2010 that:

Spanish MPs have rejected an opposition proposal that women be banned from wearing Islamic veils in public places. However, the Socialist government favours including a ban on burqas in government buildings in a bill to be debated after parliament's summer break.

The position in France is that on 13 July 2010 the National Assembly, the lower House of Parliament, approved a Bill to ban the wearing of full-face coverings in public spaces, with 335 voting for the proposal from a total of 577 MPs. Only one 'no' vote was cast, but there were many abstentions from left wing MPs. As reported in the [Jurist](#) on 18 July 2010:

The National Assembly began debate on the Bill earlier this month, after the French cabinet approved the legislation in May. The Bill will now proceed to a vote in the Senate, which is currently scheduled for September.

According to the [Financial Times](#):

The bill does not specifically ban the face veil but prohibits anyone from wearing an item of clothing to hide his or her face in open spaces, including streets, shops, parks or cafés as well as in public services such as town halls, schools and hospitals. Offenders face a fine of €150 (\$191).

To this the [Jurist](#) added that 'The proposed legislation would also make it a crime to force a woman to cover her face'. It was also reported in the [Financial Times](#) that:

France's Conseil d'Etat, a body that advises on the constitutionality of laws, warned the government earlier this year that 'no uncontested legal basis can be found for an outright and generalised ban on the wearing of the full veil'.

Similar legislation is also being considered in [Belgium](#), where, in April, the Belgian House of Representatives voted 136-0 to approve a Bill that would ban full face veils in public.

An article in the [New Statesman](#) reviewing the debate in Europe commented that 'support for a ban cuts across the left-right divide'. The article continued:

On the right, the veil is seen as a threat to European and in particular Christian culture...On the left, it is seen as a repressive garment that subjugates women and violates their rights.

On the other side of the debate, the same article cited opposition to the ban from Amnesty International, which criticised developments in Belgium as 'an attack on religious freedom'. Likewise, a spokesperson for Human Rights Watch is reported as saying that 'restrictions on women wearing the veil in public life are as much a violation of the rights of women as is forcing them to wear a veil'.

Canada - Quebec

The European debate is echoed in the Canadian province of Quebec. There a Bill was introduced in March 2010 by the Minister of Justice, Kathleen Weil, basically

prohibiting persons receiving or administering government services from wearing full-face coverings. The ban would extend to all government departments and would include educational institutions, health and social services and childcare centres that receive funding from provincial authorities. This is Quebec's [Bill 94](#), *An Act to establish guidelines governing accommodation requests within the Administration and certain institutions*. It asserts that 'a general practice' operates whereby persons receiving or administering government services 'show their face during the delivery of services'. It further provides that any exception (or 'accommodation') must comply with the Quebec Charter of Human Rights and Freedoms:

in particular as concerns the right to gender equality and the principle of religious neutrality of the State whereby the State shows neither favour nor disfavour towards any particular religion or belief.

Explaining the proposal, Quebec's Premier Jean Charest is [quoted](#) as saying: 'If you are someone employed by the state and you deliver a service, you will deliver it with your face uncovered. If you are a citizen who receives services, you will receive them with your face uncovered'. Another [report](#) quotes the Premier as saying:

This is a symbol of affirmation and respect -- first of all, for ourselves, and also for those to whom we open our arms...This is not about making our home less welcoming, but about stressing the values that unite us...An accommodation cannot be granted unless it respects the principle of equality between men and women, and the religious neutrality of the state.

Bill 94 is currently under consideration by the parliamentary Committee on Institutions. It is [reported](#) that:

There have been protests...on both sides of the debate. And the Muslim community is also divided. The Muslim Council of Montreal argues that 'all Canadians, whether Muslim or not, are guaranteed by the Charter of Rights and Freedoms the freedom of religion and conscience. The state has no business in the wardrobes of the nation'. And there are those like the Muslim Canadian Congress, which wants Canada to ban the burqa.

In October 2009, the [Muslim Canadian Congress](#), which calls itself a 'grassroots' organisation believing in a 'liberal, pluralistic, democratic, and secular society where everyone has the freedom of religion', asked the Canadian Parliament 'to introduce legislation to ban the wearing of masks, niqabs and the burka in all public dealings'. Describing the wearing of a face mask as a 'security hazard', the organisation said 'there is no requirement in the Quran for Muslim women to cover their faces'. They also 'dismissed the argument that wearing of a face-mask by Muslim women is protected' by the guarantee of religious freedom in the Canadian Charter of Rights and Freedoms.

In its [submission](#) to the Committee on Institutions, the Canadian Council of Muslim Women, which describes itself as an 'inclusive organization of Muslim women of diverse ethnicity, race and schools of thought', stated that:

the face coverings (face veil or niqab), though not a religious requirement in Islam, is worn by some individual women who have decided that the face

covering is an expression of their faith. We are concerned that those women who want to wear the face covering will become further isolated and marginalized if they are refused services. Their active role as parents may also be restricted and this will harm their children. This does not bode well for integration and participation for women and their children. We acknowledge that it is reasonable to expect an individual to show the face for identification, health, safety and security purposes when accessing services. This can be accomplished by a well thought-out accommodation policy. There is no need for legislation or regulation.

Other International Media

[Burqa Ban in Europe](#), *Asian Tribune* 18 July 2010

[Niqab](#) *BBC – Religions* 3 September 2009.

Last updated: 31 August 2010

For further information please contact the Library on 9230 2382

Issues Backgrounders are prepared by the NSW Parliamentary Library for Members of Parliament on Bills or subjects of topical importance.

This Issues Backgrounder provides links to parliamentary material, journal articles, media articles and interest group web sites to provide Members with detailed information relating to matters under consideration by the NSW Parliament. Although every attempt is made to ensure that the information provided is correct at the time of publication, no guarantee can be made as to its ongoing relevancy or accuracy. This Issues Backgrounder should not be considered a comprehensive guide to this particular subject and is only a representative sample of the information available. This Issues Backgrounder does not constitute a professional legal opinion.