

Issues Paper

*Law Enforcement (Powers and
Responsibilities) Act 2002*
Part 3, Division 4: Removal of face
coverings for identification purposes.

December 2012

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Chapter 1. Introduction

1.1 Background

In 2011 the NSW Parliament passed a range of new laws related to face coverings and identification. One of the new laws authorised police officers to require that a person remove a face covering when officers are lawfully checking that person's identification. This new law, set out in Part 3 Division 4 of the *Law Enforcement (Powers and Responsibilities) Act 2002* (LEPRA) came into effect on 1 November 2011 (please see Annexure A).

Other new laws introduced at the same time gave juvenile justice officers, correctional services officers, court security officers and Justices of the Peace additional powers and responsibilities when these officers are establishing the identification of a person wearing a face covering (please see Annexure B for all of the new laws related to face coverings, as contained in the now repealed *Identification Amendment Act 2011*).

1.2 Our role and the purpose of this paper

The Parliament requires that the Ombudsman scrutinise how police officers exercise their new functions regarding face coverings for the first year of their operation (please see Annexure C). We are therefore reviewing how police have exercised their functions under Part 3 Division 4 of LEPRA ('the new law'), during the period 1 November 2011 to 31 October 2012.

Our review is examining whether police have applied the new law appropriately and whether any changes are necessary to the new law or to police policy and practice in this area. We are considering information from the NSW Police Force (NSWPF) regarding any issues that have arisen when officers have applied the new law and any relevant guidance provided to officers. We have also begun interviewing individual police officers regarding occasions where they have applied the new law.

As part of our review it is also important that we consider information from any individuals who have been directly affected by the new law and from other members of the public or representative groups who have a view regarding police use of the new law.

We are not reviewing how other public officers, such as juvenile justice officers, exercise their new functions regarding face coverings and identification as part of our review. However we will consider the experiences of those officers, and the relevant procedures adopted by their agencies, for comparative purposes as part of our review.

We have already begun the process of gathering information from all of these sources and we have drawn on this information to develop the questions contained in this Issues Paper. Members of the public, representative organisations or government agencies may wish to provide submissions or comments regarding these questions or any other issues they consider relevant to our review.

We will take all of the information that we receive into account when considering whether to recommend any changes to the new law, or to police policy and practice when we report to the Minister in 2013. Our report will also be tabled in Parliament and will be available to the public.

1.3 Invitation for submissions or information

An Arabic version of this Issues Paper will be available on the Ombudsman's website from early January 2013. Submissions are due by **Wednesday 20 February 2013** and can be sent to the postal or the email address below. An optional template for submissions, which contains a list of questions and space for any other comments, is also available on the Ombudsman website www.ombo.nsw.gov.au. If you would prefer to provide your comments through a telephone call or a meeting with Ombudsman staff, please contact us on the number below.

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Chapter 2. Objectives of the new law

The new law was introduced to NSW Parliament as part of the Identification Legislation Amendment Bill 2011. That Bill sought to amend a range of existing legislation to give new powers to police officers, juvenile justice officers, correctional services officers, court security officers and Justices of the Peace when they are establishing the identification of a person wearing a face covering.

Parliamentary debate regarding the proposed new laws indicated that they were introduced with the purpose of clarifying the powers of police and certain other public officials in relation to face coverings and identification. The Hon. Greg Smith MLC, Attorney General and Minister for Justice, described the purpose of the proposed new laws as:

... 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.¹

Other speakers during the Parliamentary debate regarding the proposed new laws noted the relevance of 'a high-profile case in New South Wales involving confusion over the identity of a woman wearing a burqa'.² In this 2010 case a woman wearing a face covering signed a statutory declaration which stated that a police officer had tried to 'forcibly remove' her face covering. The woman signed the statutory declaration with the name 'Carnita Matthews'. The Justice of the Peace who witnessed the woman's signature did not view her face.

Further details of the woman's complaint, which related to an incident involving a minor traffic offence, were contained in the statutory declaration as follows:

Then I gave him my license (sic) and he looked at it and then he stated to me 'I need to see your face', I felt very uncomfortable so I partly lifted the veil. He wasn't satisfied with that and then he moved closer to me in a threatening manner and moved his hand close to my veil where I felt he was going to rip it off my face. ... I then in fear before lifting up my veil, I stated 'that I'm not allowed to show you my' face but he insisted, I then lifted my veil and stated to him 'you're just being racist.'³

This statutory declaration was lodged at a police station by a woman wearing a face covering and a man. Police did not identify the man and the woman at that time, nor can a police officer require or direct a person to prove identity to lodge a complaint about police conduct.⁴ After police viewed recorded footage of the incident that was the subject of the complaint, Mrs Matthews was charged and then convicted of the offence of knowingly making a false complaint about the conduct of a police officer.⁵

In making his determination, the Magistrate noted that 'It was clearly Carnita Matthews who attended this police station, and I have no hesitation that she is the author of the statutory declaration'.⁶ He concluded that '...there is no issue of identification in my mind...'⁷ and that Mrs Matthew's account of events (as contained in the text above) was 'false'.⁸

The Hon. Judge Jeffreys later quashed Mrs Matthew's conviction as he could not conclude beyond a reasonable doubt that Mrs Matthews was the woman who signed the statutory declaration. He noted that the Justice of the Peace had not viewed the face of the woman who signed the statutory declaration and that the signature on the statutory declaration and the signature on Mrs Matthew's driver's licence were not identical. The Hon. Judge Jeffreys further commented that other circumstantial

¹ New South Wales Parliamentary Debates (NSWPD), (Hansard), Legislative Assembly, 25 August 2011, p.4716.

² Mr John Barilaro MP, NSWPD, (Hansard), Legislative Assembly, 14 September 2011, p.5634. See also Mr John Sidoti MP, NSWPD, (Hansard), Legislative Assembly, p.5462; The Hon. Paul Lynch MP, NSWPD, (Hansard), Legislative Assembly, 25 August 2011, p.5456 and The Hon. Shaoquett Moselmane MLC, NSWPD, (Hansard), Legislative Council, 15 September 2011, p.5763.

³ Transcript of Proceedings, *R v Carnita Matthews* (Campbelltown Local Court, Mr Rabbidge LCM, 19 Nov 2010), p.13.

⁴ see Part 8A *Police Act 1990*

⁵ see *Police Act 1990* s167A(1) 'A person must not make a complaint under this Part knowing the complaint to be false.'

⁶ Transcript of Proceedings *R v Carnita Matthews* (Local Court Campbelltown, Mr Rabbidge LCM, 19 November 2010) p.10.

⁷ *ibid.*

⁸ *ibid.*, p.13.

evidence as to the identity of the woman who signed the statutory declaration was not sufficient to establish that she was Carnita Matthews.⁹

Additionally, the Hon. Judge Jeffreys noted that even if he had been satisfied beyond a reasonable doubt that it was Mrs Matthews who had signed the statutory declaration, in order to prove the offence, the prosecution would still need to prove that Mrs Matthews knew that the complaint made was false. He suggested that from the evidence presented in court there was a possibility that Mrs Matthews believed that the officer was attempting to remove her veil. He therefore concluded that the prosecution had not proven beyond reasonable doubt that Mrs Matthews knew that the complaint was false.

During Parliamentary debate regarding the proposed new laws, some MPs suggested that legislation was required to prevent a similar case occurring in the future. For example, Mrs Tanya Davies MP noted that the Carnita Matthews case had demonstrated that 'the current legislation in relation to police powers regarding face coverings is not clear. The legislation will be clarified by the adoption of this bill'.¹⁰

9 Transcript of Proceedings *Carnita Matthews v R* (District Court of NSW, Jeffreys J, 22 June 2011) p.10.

10 NSWPD, (Hansard), Legislative Assembly, 13 September 2011, p.5512.

Chapter 3. Legislative Framework

3.1 NSW laws related to identification

Police in NSW can lawfully require or request that a person provide identification documents or details only in certain circumstances, for example during Random Breath Testing operations. A table available on the Ombudsman website¹¹ sets out a range of legal provisions that authorise NSW police to make this requirement or request. For example, section 11(2) of LEPR (introduced at the same time as the new law)¹² allows police officers to 'request' that a person disclose their identity when the officer proposes to give that person a move-on direction. It is an offence for a person to fail or refuse to comply with the officer's request in these circumstances (section 12 LEPR).

In all of the provisions that we have listed in the table referred to above a person may, similarly, be committing an offence if they do not comply with a police officer's request or requirement to provide certain identification. The list is not exhaustive but is provided to demonstrate the wide range of circumstances where police can make this requirement or request in relation to identification.

3.2 The new law on identification and face coverings

Under the new law, when police officers are lawfully requiring or requesting that a person provide identification they can, if needed, also require that the person remove a face covering (please see Annexure A).

A face covering can be a helmet, mask or any other clothing that is worn over the face and prevents it from being seen.¹³ A person is required to remove enough of their face covering so that a police officer may view from the top of their forehead to the bottom of their chin, and between (but not including) their ears in order to confirm their identification.

3.3 Safeguards

As far as reasonably practicable, police officers must apply the following safeguards when requiring that a person remove a face covering:

- the police officer must ask for the person's cooperation
- the police officer must view the person's face:
 - in a way that provides reasonable privacy if the person requests it, and
 - as quickly as reasonably practicable.

Police officers must also apply the following general LEPR safeguards (please see Annexure D) when requiring removal of a face covering:

- provide their name and place of duty (and proof they are an officer if not in uniform)
- provide their reason for requiring removal of the person's face covering
- if the person does not immediately comply, warn them that they are required by law to comply
- if the person continues to fail to comply, warn them that this is an offence.

3.4 Offence and penalties

Section 19B of LEPR makes it an offence for a person to fail or refuse to remove a face covering when lawfully required to do so by a police officer. A person can be fined \$220 for the general offence. The penalty increases to \$5500 or 12 months imprisonment if the person refusing to remove a face covering is a driver or passenger of a car that police suspect has been involved in an indictable offence.

11 Table of laws that authorise police officers to request or require a person to provide their identification particulars, www.ombo.nsw.gov.au.

12 We are not reviewing how police exercise their powers under Section 11 LEPR as part of this review, however a separate and ongoing Ombudsman review of section 9 of the *Summary Offences Act 1988* addresses some issues related to move-ons. Details of that review and Issues Paper are available on the Ombudsman website: www.ombo.nsw.gov.au.

13 s3 *Law Enforcement (Powers and Responsibilities) Act 2002*.

If a person can prove that they have a special justification for refusing to remove their face covering, then they have not committed an offence. Special justification includes a legitimate medical reason. There is scope for other special justifications to be added through regulation under the new law, but at present there are no other special justifications. The onus of proof of a special justification lies on the person claiming to have the special justification.

Chapter 4. Use of the new law by the NSWPF

4.1 Occasions where police officers have used the new law

The NSWPF has advised us that, according to the NSWPF Computerised Operational Policing System (COPS), section 19A LEPR has been applied on eight occasions between 1 November 2011 and 31 October 2012. Seven of these occasions involved a female driver in southwest Sydney who was wearing a face covering and was involved in either a minor traffic matter or a Random Breath Test.

We are not aware of any uses of the new law where the person wearing the face covering was a victim of a crime or a witness to a crime.

No person has been charged with an offence under section 19B of LEPR. The NSWPF and the Ombudsman have not received any complaints regarding how police officers have used the new law.

It is important to note that a separate category to record uses of the new law was introduced onto COPS in April 2012, approximately half way through our review period. Prior to that, officers had been directed to record any use of the new law in the narrative section of COPS. The changes to recording arrangements during the review period, combined with the relatively recent introduction of the new law, make it possible that police officers have not recorded all occasions where they have required removal of a face covering. It is therefore possible that we are not currently aware of all uses of the new law.

4.2 Types of face coverings involved

We are seeking further information regarding any of the occasions where the new law has been applied as part of our review. However, based on the information that we have assessed to date, it appears likely that most of the individuals who have been required to remove a face covering during the review period have been Muslim women who have been wearing a face covering such as a niqab¹⁴ for religious reasons.

As discussed in chapter five below, issues involving privacy and the sex of the officer viewing a person's face may be particularly important for women who wear a face covering such as a niqab. On some of the occasions where the new law has been used to date a woman wearing a niqab has requested, or been provided with, additional privacy or a female officer to view her face.

While there has only been one recorded instance of a police officer applying the new law to require removal of a different type of face covering,¹⁵ the law may also be used to require removal of face coverings such as motorcycle helmets, scarves and bandanas.

We are seeking views and the experiences of any person who has been asked or directed to remove a face covering by a police officer in NSW in the last few years (whether or not the officer referred to the new laws).

4.3 Guidance provided to police officers about using the new law

The NSWPF advises police officers of their responsibilities through directives that set out law and policy, such as Commissioners Policy Notices. Other directives such as Standard Operating Procedures (SOPs) provide officers with advice about how they must carry out their duties in a more operational context.

Police officers also receive guidance regarding how to exercise their powers through other documents that provide recommendations that they may wish to consider when carrying out their duties.

The NSWPF has provided police officers with various written directives regarding how they are required to apply the new law, including a Commissioners Policy Notice and a separate section in the NSW Police Force Handbook. These documents state

¹⁴ A niqab covers all of the face except the eyes. A burqa covers all of the face and body and includes a mesh screen that covers the eyes. Advice obtained from BBC website http://www.bbc.co.uk/religion/religions/islam/beliefs/niqab_1.shtml Accessed on 23 November 2012.

¹⁵ In this instance the person was wearing a t-shirt over their head so that their face was covered. We are seeking clarification from the NSWPF regarding the circumstances of this use of the new law.

the provisions of the new law and set out police officers' powers and responsibilities as strictly contained in the new law. They also provide the following additional information for officers when they are applying the new law:

- *there is no power for police to forcibly remove the face covering if the wearer refuses to do so...*
- *police should be mindful of cultural, religious or similar sensitivities when exercising this power.*¹⁶

There are no SOPs specifically for application of the new law.

Guidance regarding application of the new law in circumstances involving a Muslim woman wearing a niqab or burqa is also available to officers in a separate, recently completed, resource entitled the NSWPF *South West Sydney Islamic Information Guide* (the Guide). The Guide sets out factors that officers are recommended, but not required, to consider when requiring removal of a face covering such as a niqab.

According to the 'Commanders Welcome' section the Guide was prepared by employees of the NSWPF 'who are Muslims themselves or who have many years experience dealing with Islamic communities'.¹⁷ The Guide was also 'vetted by leading members of Sydney's Islamic communities'.¹⁸ The NSWPF has advised us that the Guide has been emailed directly to Education and Development Officers at every NSW Local Area Command (LAC). It is also available to all officers on the Police Intranet. The Guide has also been used during presentations at training days for certain operational units, where these units have identified the issues covered in the Guide as relevant to their work.

The Guide provides the following information regarding hair and face coverings:

The veil for Muslim women takes different shapes depending on the branch of Islam to which the woman belongs as well as her culture and individual beliefs. Not all Muslim women observe the Islamic dress code. However, those who do will want their choice respected.

The hijab ... is one of the most common items of Islamic clothing. It consists of a headscarf covering the hair and neck but not the face. It may be worn with flowing gowns or sometimes Western clothes which cover the whole body except for the hands.

The niqab ... is a piece of cloth used to cover the whole face except the eyes. Usually women who wear it cover their hands too. The burqa ... is a full length gown that covers the head, face and body.

Due to traditions followed by Muslim people, there may be resistance to police requests to remove items of clothing for identification or searching purposes. To assist this process it is recommended that police consider:

- *Clearly explaining the reasons for needing to remove any item of clothing. For example, if the purpose for removing a niqab or burqa is identification, clearly explain that it is for the purposes of comparing her face with that on the driver's licence photograph and that it will only take several seconds.*
- *Using a police officer of the same gender as the subject if possible when items of clothing need to be removed for identification or searching purposes.*
- *Ensuring that any removal of clothing for policing procedures is done in a private space and not in public. If you need to identify a Muslim woman in public, attempt to ensure that identification occurs out of the view of onlookers.*
- *Allowing, if requested and where appropriate, a close male relative to be present when identifying a Muslim woman.*
- *Respectfully handling jewellery, particularly those of Islamic symbolism or significance.*¹⁹

16 NSW Police Force Handbook, Chapter F.

17 NSW Police Force South West Sydney Islamic Information Guide, October 2012, p.1.

18 *ibid.*

19 NSW Police Force South West Sydney Islamic Information Guide, October 2012, pp.24-26.

Chapter 5. Issues

5.1 Personal experiences of removing a face covering for identification

Below we discuss a range of issues and concerns in relation to the new law. In addition, we are interested in hearing of any personal experiences in relation to a request or direction by a NSW police officer to remove a face covering during the last few years (and regardless of whether the police officer mentioned any law).

Questions for consideration:

1. Were you ever requested or required by a police officer to remove a face covering for identification purposes before the new law came into effect on 1 November 2011? If so, please provide an account of your experience and any issues or concerns that arose.
2. Have you been requested or required by a police officer to remove a face covering for identification purposes since 1 November 2011? If so, please provide an account of your experience and any issues or concerns that arose.

5.2 Standard Operating Procedures

As noted in section 4.3, the requirements and recommendations for police officers when using the new law are currently set out in various NSWPF documents. The NSWPF has not developed SOPs that draw all of this information together including, for example, information contained in the *South West Sydney Islamic Information Guide*, which is likely to be particularly relevant to officers exercising the new law in the future.

The new law has been used infrequently to date. However it is arguable that a SOP that clearly sets out requirements and recommendations for police officers to consider in an operational context may be a useful single point of reference for officers, particularly those in LACs or operational units that are most likely to use the new law.

Question for consideration:

3. Is there a need for the NSWPF to develop SOPs related to the new law. If yes, what matters should be addressed in the SOPs?

5.3 Safeguards relating to privacy

Section 19A(3)(b)(i) of LEPRA states that a police officer who requires a person to remove a face covering must, as far as is reasonably practicable, view the person's face in a way that provides reasonable privacy, if the person requests it. During Parliamentary debate, the Hon. Michael Gallacher, Minister for Police and Emergency Services, explained the reason for the privacy provision as follows:

For police, it is often necessary 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.²⁰

²⁰ NSWPD, (Hansard), Legislative Council, 25 August 2011, p.5752.

The Minister also commented on the issue of privacy when a person is wearing 'a single all enveloping garment so that the face – that is, hairline to chin and between the ears, not the whole head – cannot be exposed without removing the whole garment'.²¹ In these circumstances, he suggested that:

...the only option is to take the person to a convenient place of privacy, probably a police station, so that the face can be displayed without having the person disrobe in public.....Any decision to take the person somewhere, such as a police station, to facilitate removal of a one-piece garment would be discretionary....This procedure will be covered in the standard operating procedures of the New South Wales Police Force once the legislation has been passed.²²

5.3.1 Comparative information

Other laws that were introduced at the same time as the new law allow authorised public officials working at Juvenile Justice Centres, Correctional Centres or courts to require a person to remove a face covering (please see Annexure B). The provisions regarding privacy in these other laws are similar to that in the new law, requiring that once a person actively requests privacy, an officer must provide privacy, as far as is reasonably practicable. The policies that support officers in applying these other laws in juvenile justice centres and correctional centres similarly require officers to provide privacy, as far as reasonably practicable, when it is requested.

A Policy on Identification and Full Face Coverings for NSW Public Sector Agencies (the policy) was issued by the Department of Premier and Cabinet in January 2012 (please see Annexure E). The policy was developed by the Community Relations Commission 'in consultation with community and religious leaders and relevant public sector agencies'²³ and is particularly relevant to agencies such as the Roads and Maritime Service (RMS), that provide services that require the photographing of individuals for licences.

The policy notes that while police and some other public officials can lawfully require removal of a face covering, other public officers cannot make this requirement in the course of providing a service to members of the public. For these other officials, the policy notes that:

... a person who wishes to access a service or facility where it is necessary to ascertain their identity may be requested to remove a face covering. It should be explained to the person that they may choose not to remove a face covering, however they may be denied access to that service or facility.²⁴

In relation to privacy, the policy states:

Where operationally feasible, a face covering worn for reasons of modesty should only be removed in the presence of persons of the same gender, preferably in a place where only the identifier can view the face of the person to be identified.²⁵

The Australian Customs and Border Protection Service (ACBPS) is an example of a commonwealth government agency that, in the course of its operations, may require a person to remove a face covering. The ACBPS, when completing an immigration clearance for a female traveller with a cultural or religious face covering, will offer the traveller a number of options. These include the option of the traveller being escorted to a private room with an officer of the same sex so that the identity check may occur. The option of having a 'significant other' male person present for the identity check in a private room is also offered. The offering of these options is not dependent on an initial request for privacy from the female traveller wearing the face covering.²⁶

5.3.2 Preliminary information from community consultations

Our preliminary consultations to date, and the recorded uses of the new law, indicate that the issue of privacy is particularly relevant to Muslim women who wear a face covering such as a niqab. The issue of a female officer being made available to view a woman's face is also particularly relevant to this group of women, as discussed in section 5.4 below.

21 NSWPD, (Hansard), Legislative Council, 15 September 2011, p.5769.

22 *ibid.*

23 Department of Premier and Cabinet, Policy on Identification and Full Face Coverings for NSW Public Sector Agencies (M2012-01), January 2012.

24 *ibid.*

25 *ibid.*

26 Correspondence from Australian Customs and Border Protection Service to the Deputy Ombudsman, July 2012.

We have not been able to establish the exact number of women in NSW who wear a niqab, burqa or other similar face covering (though one estimate we are aware of is 3000 in total in Australia), but this group of women appears to be a small proportion of the total number of Muslim women in NSW. It also appears that the niqab is much more commonly worn in NSW than the burqa.

It has been suggested to us during our consultations to date that it might be preferable for a woman wearing a face covering such as a niqab to be offered privacy as an option immediately she is requested or required to remove the niqab. The reason for this suggestion was that a woman wearing a niqab might not be comfortable asking a male officer for privacy while he is viewing her face, particularly if she is not aware of the safeguards regarding privacy in the new law. As many interactions with police officers may be in situations involving heightened emotions or distress, this may also affect a woman's willingness or confidence to request privacy, despite any strong religious beliefs that she may have.

5.3.3 Information from NSWPF

We are aware of a number of occasions where police, when requiring removal of a face covering, have provided privacy when requested in a variety of ways. Officers that we have interviewed have put forward various options for providing privacy but noted that these options will be limited by the situation in the field, whereas at a police station privacy is much more easily provided by moving the person to an interview room.

We are not aware of any occasions during the review period where police have required a person to remove a full length one-piece garment such as a burqa, in order to verify their identification.

Case Study One is an example of a male police officer (initially patrolling alone) interacting with a woman in niqab who has raised the issue of privacy.

Case study 1

A male police officer pulled over a car which was seen to avoid a Random Breath Testing operation. The officer then became aware that the driver was a woman wearing niqab, that there were 3 adults and 7 children travelling in the sedan-sized car and that only two people in the car were wearing seatbelts. The woman got out of the car and the officer advised her that the interaction was being recorded on NSWPF in-car video (ICV). The woman gave her licence to the officer and the officer stated 'can you show me your face'. She stated 'Ah not here' and appeared to suggest they go somewhere near a house for this to occur (though her words are unclear on the ICV). The officer stated 'I'm not going behind some house'.

The officer then began to ask the woman other questions regarding the people in the car and the lack of a P plate displayed on the back of the car, but returned to the question of the woman raising her face covering about five minutes later. By this time a person on the street had also begun to provide some help with translating the officer's questions and the woman's answers.

The officer was now sitting in the driver's seat of the police car and the woman was outside the passenger window looking into the police car. The officer stated 'It's law that you show your face so that I can see that your face matches this' (the woman's licence photo). The woman stated 'alright can you close the window one minute'. The officer quickly viewed her face while she looked through the passenger window. Other male police officers attended the scene in the following 20 minutes and discussed the best course of action in relation to the traffic offences. The woman was issued with a Court Attendance Notice (CAN) for various traffic offences and her fingerprints were taken on a field identification device.

Question for consideration:

4. In your view, should police officers be required, as a matter of policy, to offer privacy to a woman wearing a face covering for religious reasons, as far as reasonably practicable, when officers require removal of such a face covering under section 19A LEPR?

5.4 Viewing of a person's face by an officer of the same sex

5.4.1 Background

There is no reference in the new law to the issue of whether a person with a face covering may request to have their face viewed by a police officer of the same sex and, where a person makes this request, how police officers should respond. During our consultations to date this issue has been raised with us. We are also aware that both prior to, and after, the new law was introduced some women wearing niqab have requested that a female police officer be made available to view their face when this was required for identification purposes.

5.4.2 Comparative laws

As noted above, other laws that were introduced at the same time as the new law allow authorised public officials working at Juvenile Justice Centres, Correctional Centres or courts to require that a person remove a face covering (please see Annexure B). Unlike the provisions in the new law, however, these laws include a requirement that, if requested and where reasonably practicable, a person's face must be viewed by an officer of the same sex.

For example, section 34A(2) of the Children (Detention Centres) Regulation 2010 states that a juvenile justice officer who requires a visitor to remove a face covering, must, as far as is reasonably practicable ensure that:

(d) if the visitor is 12 years old or older and requests it—the viewing of the visitor's face is to be conducted by a juvenile justice officer of the same sex as the visitor or, if a juvenile justice officer of that sex is unavailable, by another person of that sex at the direction of a juvenile justice officer,

(e) if the visitor is a child under 12 years old and the responsible person for the child requests it—the viewing of the child's face is to be conducted by a female juvenile justice officer or, if a female juvenile justice officer is unavailable, by another female person at the direction of a juvenile justice officer.

During Parliamentary debate regarding the proposed new laws the Minister for Police and Emergency Services provided an example of how court security officers, Juvenile Justice officers and Correctional Services officers might respond in this situation:

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.²⁷

An Australian Capital Territory (ACT) law, effective from April 2012, provides a further point of comparison. This law addresses the issue of face coverings and identification in relation to road transport issues (please see Annexure F). It states that where a police officer requires that a person remove a face covering, and the person requests that an officer of the same sex view their face, the officer must take reasonable steps to comply with this request.

Finally, the LEPR provisions in relation to the preservation of privacy and dignity during a personal search also refer to the issue of requests for an officer of the same sex. The relevant section 37 of LEPR states that a police officer must, as far as is reasonably practicable in the circumstances, comply with the following requirement:

A search must be conducted by a police officer or other person of the same sex as the person searched or by a person of the same sex under the direction of the police officer or other person concerned.²⁸

It should be noted that the new law specifically states that any requirement to remove a face covering under this section is not a search of a person.²⁹ Nevertheless the search provision may be useful comparative information regarding this issue, noting that the removal of a face covering may be considered as a potentially invasive process by some individuals who wear such coverings for religious reasons.

²⁷ The Hon. Michael Gallacher MLC, NSWPD, (Hansard), Legislative Council, 15 September 2012, p.5752.

²⁸ s32(7) *Law Enforcement (Powers and Responsibilities) Act 2002*.

²⁹ s19A(5) *Law Enforcement (Powers and Responsibilities) Act 2002*.

5.4.3 Preliminary information from community consultations

As noted above, our preliminary consultations to date, and the recorded uses of the new law, indicate that the issue of a person's face being viewed by a police officer of the same sex is particularly important for Muslim women who wear a face covering such as a niqab or burqa. Some women who wear a niqab have expressed concern to us that they would not feel comfortable with a male police officer viewing their face. They have explained that they are very willing to be identified by police but feel strongly that a female officer should be available for this process.

A number of Muslim organisations are of the view that it in some circumstances it is appropriate for a male police officer to view a woman's face for the purposes of identification. While not representative of the opinions of all Muslim Australians on this issue, the following Australian National Imams Council press statement is an example of this view:

In a situation where there is no officer of the same gender to perform security and identification checks then the Shariah (Islamic Law) allows a Muslim woman to remove her face veil as needed in order to have her identity verified. For instance, 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 officer(s) present then she may remove the face covering for the purpose and duration of identification. However, fixed points where identity checks are required, such as airports and so on, there should be female officers employed to perform the necessary checks.³⁰

5.4.4 Information from NSWPF

As noted in Section 4.3 above, the NSWPF *South West Sydney Islamic Information Guide* is the only police policy that directly addresses the issue of requests for an officer of the same sex to view a person's face when they have been required to remove a face covering. Officers are recommended, but not required, to consider the advice provided in the Guide in these circumstances. The Guide states that police officers may consider 'using a police officer of the same gender as the subject if possible when items of clothing need to be removed for identification or searching purposes'.³¹

During interviews that we have conducted with individual police officers as part of our consultations to date, all police officers have indicated that if they were at a Police Station they would arrange, if possible, for an officer of the same sex to view a person's face, if the person requested this. Similarly, they have indicated that if they were in the field and a person wearing a face covering requested that an officer of the same sex view their face, and there was such an officer present at the scene, they would arrange for this to occur if practicable.

The individual police officers we have interviewed to date have expressed more varied views regarding how they might respond in the field where a person requests that an officer of the same sex view their face, but there is no such officer present at the scene. Factors that officers noted that would affect their response to this type of request included safety issues (particularly if they were patrolling alone and there were a number of people at the scene), whether they viewed the requirement to remove a face covering as particularly invasive or not and whether a female officer was likely to be able to attend the scene within a reasonable timeframe.

Questions for consideration:

5. In your view, should LEPRA be amended to require that, where a person requests that an police officer of the same sex be made available to view their face, such an officer should be made available, if reasonably practicable.
6. In your view, what further guidance or directive, if any, should be provided to police officers regarding whether to offer an officer of the same sex to view a person's face and how to respond if a person makes such a request?

5.5 Warnings

5.5.1 Current safeguards

Section 2.3 above describes the safeguards that apply when police officers are using section 19A of LEPRA to require that a person remove a face covering. These include that, as far as reasonably practicable, an officer must ask for the person's cooperation, provide reasonable privacy where it is requested and view the person's face as quickly as possible.

³⁰ Australian National Imams Council, Press Statement, *Re: niqab*, 24 June 2011. Obtained from http://www.crescentsofbrisbane.org/00%20Files%20&%20Images/CCN347/110624%20ANIC_Press_Release_Niqab.pdf Accessed on 23 November 2012.

³¹ NSW Police Force *South West Sydney Islamic Information Guide*, October 2012, p.26.

In addition to these safeguards, other general LEPRSA safeguards must be applied when a police officer uses section 19A LEPRSA to require that a person remove their face covering (please see Annexure D). Before exercising the power, the officer must provide the person with:

- evidence that they are a police officer (unless they are in uniform),
- their name and place of duty, and
- the reason that they are exercising the power (for example, to compare a person's face to a photo on a driver's licence).

If the person does not immediately comply, or begin to comply, with the police officer's request that they remove their face covering, the officer must also provide the person with the following two warnings:

- warn the person that they are required by law to comply with the request to remove their face covering, and
- warn the person that a failure to comply with the request is an offence, if the person still refuses to comply after being given the first warning.

5.5.2 Continued refusal or failure to remove a face covering

If an officer provides a person with the safeguards and warnings above and the person continues to fail or refuse to remove their face covering when required, the officer may then consider:

- issuing the person with a CAN for a section 19B offence (and any other preceding offence), or
- arresting the person for a section 19B and any other offence.

5.5.3 Arrest powers

Arrest, particularly when dealing with minor criminal offences, is generally viewed as a measure of last resort. Police officers are not permitted to arrest without a warrant for the purpose of taking proceedings in court unless they suspect on reasonable grounds that the arrest is necessary to achieve one or more of the following purposes (please see section 99(3) LEPRSA, Annexure G):

- to ensure the appearance of the person before a court in respect of the offence
- to prevent a repetition or continuation of the offence or the commission of another offence
- to prevent the concealment, loss or destruction of evidence relating to the offence
- to prevent harassment of, or interference with, a person who may be required to give evidence in proceedings in respect of the offence
- to prevent the fabrication of evidence in respect of the offence
- to preserve the safety or welfare of the person.

5.5.4 Court Attendance Notice

Given the relatively minor penalty for a section 19B LEPRSA offence and the restrictions on arrest as outlined above, an officer is more likely to first consider issuing a CAN for a section 19B offence. However, an officer needs to be satisfied as to the identity of the person who has committed the offence before they can issue a CAN.

One of the primary methods that police use to verify a person's identification is to compare the person's face with their photo on an identification document such as a licence. Without the opportunity to use this method, an officer may not be satisfied of the person's identity. The officer will also be aware that a court would require that a person's identity be established beyond reasonable doubt before finding them guilty of any offence.

5.5.5 Arrest for a section 19B offence

If a police officer is unable to issue a CAN for a section 19B offence, they may have no option but to arrest the person under section 99(3)(a) LEPRSA, in order to ensure the person's appearance before a court in respect of the offence. The result of this possible chain of events might therefore be the arrest of a person for an offence that carries the relatively minor penalty of \$220. The initial event in this chain may have been a traffic offence with a similarly minor penalty.

5.5.6 Possible additional warning

A person refusing to remove a face covering in these circumstances would have been warned, as above, that they were required to comply with an initial direction to remove a face covering. They would also have been warned that a refusal or failure to comply was an offence. However, it may not have been apparent to the person that arrest, and time in custody, might

also follow. Police officers are currently under no obligation to explain this potential outcome, although some officers may provide this information as part of their communication with a person in these circumstances.

While arrest for a section 19B offence may be justifiable in some circumstances in order to ensure that the correct person appears before a court, it is possible that an additional warning by a police officer may be warranted before this course of action is taken. Such an additional warning could provide for the person to be advised that refusal or failure to remove a face covering may result in their arrest.

One comparable additional warning might be that provided to a person when a police officer has given them a move-on direction for being intoxicated and disorderly in a public place (see s201(2D) LEPR, please see Annexure D). In that circumstance, a police officer must provide the person with the general LEPR warnings if the person initially fails or refuses to leave the public place when so directed. The police officer must then also provide the person with a further warning that it is an offence to be intoxicated and disorderly in that or any other public place at any time in a specified period (up to 6 hours later).

A further comparison may be the warning provided by police officers when they are obtaining fingerprints from a person who is not under arrest. In those circumstances, a police officer is not required to provide the general LEPR warnings (s201), but must provide the person with:

- evidence that they are a police officer (unless they are in uniform)
- their name and place of duty
- the reason for the exercise of the power
- a warning that, if the person fails to comply with the requirement, the person may be arrested for the offence concerned and that, while in custody, the person's finger-prints and palm-prints may be taken without the person's consent (please see Annexure H).

Question for consideration:

7. In your view, should LEPR be amended to provide an additional warning to a person who refuses to remove their face covering (when required under section 19A) that the person's failure to comply with this requirement may result in their arrest?

Chapter 6. Questions for consideration

Following is a list of all questions that we have included in this Issues Paper for consideration. These questions are not meant to be exhaustive and we welcome comments and submissions on any other issues individuals, organisations or agencies may wish to raise regarding how police have applied the new law, or might apply it in the future.

Personal accounts of police requiring removal of a face covering

1. Were you ever requested or required by a police officer to remove a face covering for identification purposes before the new law came into effect on 1 November 2011? If so, please provide an account of your experience and any issues or concerns that arose.
2. Have you been requested or required by a police officer to remove a face covering for identification purposes since 1 November 2011? If so, please provide an account of your experience and any issues or concerns that arose.

Standard Operating Procedures

3. In your view, is there a need for the NSWPF to develop SOPs related to the new law. If yes, what matters should be addressed in the SOPs?

Safeguards relating to privacy

4. In your view, should police officers be required, as a matter of policy, to offer privacy to a woman wearing a face covering for religious reasons, as far as reasonably practicable, when officers require removal of such a face covering under section 19A LEPRA?

Viewing of a person's face by an officer of the same sex

5. In your view, should LEPRA be amended to require that, where a person requests that a police officer of the same sex be made available to view their face, such an officer should be made available, if reasonably practicable.
6. In your view, what further guidance or directive, if any, should be provided to police officers regarding whether to offer an officer of the same sex to view a person's face and how to respond if a person makes such a request?

Warnings

7. In your view, should LEPRA be amended to provide an additional warning to a person who refuses to remove their face covering (when required under section 19A) that the person's failure to comply with this requirement may result in their arrest?

Chapter 7. Lodging submissions or information

The Ombudsman invites submissions or comments regarding the NSWPF's exercise of the new law. Submissions are welcome from members of the public, community or representative organisations and government agencies. Submissions are due by **Wednesday 20 February 2013** and can be sent to the postal or the email address below.

An optional template for submissions, which contains a list of questions and space for any other comments, is also available on the Ombudsman website www.ombo.nsw.gov.au.

If you would prefer to provide your comments through a telephone call or a meeting with Ombudsman staff, please contact us on the number below.

Review of Part 3 Division 4, LEPR
NSW Ombudsman
Level 24, 580 George St
Sydney 2000

review@ombo.nsw.gov.au
Ph: 9286 1000

Chapter 8. Annexures

Annexure A

Law Enforcement (Powers and Responsibilities) Act 2002 No 103

Part 3 Powers to require identity to be disclosed

Division 4 Removal of face coverings for identification purposes

19A Power of police officer to require removal of face coverings for identification purposes

- (1) A police officer may 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:
- (a) the person has been lawfully required (whether under this or any other Act or a statutory instrument) by the officer requiring the removal of the covering to provide photographic identification, or
 - (b) the person has otherwise been lawfully required (whether under this 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.

Note. Section 201 and subsection (3) set out safeguards relating to such a requirement.

- (2) A requirement may be made of a person under this section based on a lawful requirement of a kind referred to in subsection (1) (a) or (b) whether or not the person has complied with that lawful requirement.
- (3) A police officer who requires a person to remove a face covering under this section must, as far as is reasonably practicable, ensure that the following procedures are followed:
- (a) the police officer must ask for the person's co-operation,
 - (b) the viewing of the person's face must be conducted:
 - (i) in a way that provides reasonable privacy for the person if the person requests privacy, and
 - (ii) (as quickly as is reasonably practicable).
- (4) It is sufficient compliance with a requirement made under this section if only so much of the face covering as prevents the person's face from being seen is removed.
- (5) The removal of a face covering in compliance with a requirement made under this section, or the viewing of a person's face following any such removal, does not constitute the carrying out of a search of a person for the purposes of this Act.
- (6) In this section:

lawfully required means lawfully required or requested to provide the identification or information concerned in circumstances where a failure or refusal to comply with a requirement or request of that kind may constitute an offence.

photographic identification includes (but is not limited to) any of the following:

- (a) a driver licence (within the meaning of Part 2 of the Road Transport (Safety and Traffic Management) Act 1999),
- (b) a Photo Card (within the meaning of the Photo Card Act 2005) or any other kind of photo identity card (wherever issued),
- (c) a passport (wherever issued),

- (d) *any other licence, permit or authority bearing a photograph of its holder (wherever issued),*
- (e) *any other identification with a photograph that is identification of a kind prescribed by the regulations.*

19B Failure of person to remove face covering when required

- (1) *A person who is required by a police officer in accordance with sections 19A and 201 to remove a face covering must not, without special justification, fail or refuse to comply with the requirement. *

Maximum penalty:

- (a) *in the case of a person who is required to remove a face covering following a request made to the person under section 14 (Power of police officer to request disclosure of driver or passenger identity)—50 penalty units or 12 months imprisonment, or both, or*
 - (b) *in any other case—2 penalty units.*
- (2) *A person has 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 the regulations.*
 - (3) *The onus of proof of a special justification lies on the person claiming to have the special justification.*

19C Division does not limit other police powers

The provisions of this Division do not limit any power that a police officer may have (apart from this Division) to require a person to remove a face covering.

Annexure B

Identification Legislation Amendment Act 2011 No 45

An Act to amend certain legislation to enable police officers and certain other public officials to require the removal of face coverings for identification purposes; to enable police officers to request the identities of persons in connection with the giving of move on directions; and to provide for identification procedures in connection with statutory declarations and affidavits.

1. Name of Act

This Act is the Identification Legislation Amendment Act 2011.

2. Commencement

This Act commences on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Law Enforcement (Powers and Responsibilities) Act 2002 No 103

[1] Section 3 Interpretation

Insert in alphabetical order in section 3 (1):

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, 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).

[2] Part 3, Division 1, heading

Omit "power" from the heading. Insert instead "powers".

[3] Section 11 Identity may be required to be disclosed

Omit the note at the end of the section.

[4] Section 11 (2)

Insert at the end of the section:

- (2) *A police officer may request a person whose identity is unknown to the officer to disclose his or her identity if the officer proposes to give a direction to the person in accordance with Part 14 for the person to leave a place.*

Note. Section 201 sets out safeguards relating to requests made under this section.

[5] Part 3, Division 4

Insert after Division 3:

Division 4 Removal of face coverings for identification purposes

19A Power of police officer to require removal of face coverings for identification purposes

- (1) *A police officer may 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:*

- (a) *the person has been lawfully required (whether under this or any other Act or a statutory instrument) by the officer requiring the removal of the covering to provide photographic identification, or*
- (b) *the person has otherwise been lawfully required (whether under this 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.*

Note. Section 201 and subsection (3) set out safeguards relating to such a requirement.

- (2) *A requirement may be made of a person under this section based on a lawful requirement of a kind referred to in subsection (1) (a) or (b) whether or not the person has complied with that lawful requirement.*
- (3) *A police officer who requires a person to remove a face covering under this section must, as far as is reasonably practicable, ensure that the following procedures are followed:*
 - (a) *the police officer must ask for the person's co-operation,*
 - (b) *the viewing of the person's face must be conducted:*
 - (i) *in a way that provides reasonable privacy for the person if the person requests privacy, and*
 - (ii) *as quickly as is reasonably practicable.*
- (4) *It is sufficient compliance with a requirement made under this section if only so much of the face covering as prevents the person's face from being seen is removed.*
- (5) *The removal of a face covering in compliance with a requirement made under this section, or the viewing of a person's face following any such removal, does not constitute the carrying out of a search of a person for the purposes of this Act.*
- (6) *In this section:*

lawfully required means lawfully required or requested to provide the identification or information concerned in circumstances where a failure or refusal to comply with a requirement or request of that kind may constitute an offence.

photographic identification includes (but is not limited to) any of the following:

- (a) *a driver licence (within the meaning of Part 2 of the Road Transport (Safety and Traffic Management) Act 1999),*
- (b) *a Photo Card (within the meaning of the Photo Card Act 2005) or any other kind of photo identity card (wherever issued),*
- (c) *a passport (wherever issued),*
- (d) *any other licence, permit or authority bearing a photograph of its holder wherever issued),*
- (e) *any other identification with a photograph that is identification of a kind prescribed by the regulations.*

19B Failure of person to remove face covering when required

- (1) *A person who is required by a police officer in accordance with sections 19A and 201 to remove a face covering must not, without special justification, fail or refuse to comply with the requirement.*

Maximum penalty:

- (a) *in the case of a person who is required to remove a face covering following a request made to the person under section 14 (Power of police officer to request disclosure of driver or passenger identity)—50 penalty units or 12 months imprisonment, or both, or*
- (b) *in any other case—2 penalty units.*
- (2) *A person has 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 the regulations.*
- (3) *The onus of proof of a special justification lies on the person claiming to have the special justification.*

19C Division does not limit other police powers

The provisions of this Division do not limit any power that a police officer may have (apart from this Division) to require a person to remove a face covering.

[6] Section 201 Supplying police officer's details and giving warnings

Insert "(including a power to require the removal of a face covering for identification purposes)" after "another person" in section 201 (3) (g).

[7] Section 242B

Insert after section 242A:

242B Monitoring of operation of Division 4 of Part 3 by Ombudsman

- (1) For the period of 12 months after the commencement of Division 4 of Part 3, the Ombudsman is to keep under scrutiny the exercise of the functions conferred on police officers under that Division.*
- (2) For that purpose, the Ombudsman may require the Commissioner of Police to provide information about the exercise of those functions.*
- (3) The Ombudsman must, as soon as practicable after the expiration of that 12-month period, prepare a report of the Ombudsman's work and activities under this section and furnish a copy of the report to the Minister, the Minister for Police and Emergency Services and the Commissioner of Police.*
- (4) The Ombudsman may in the report identify, and include recommendations for consideration by the Minister about, amendments that might appropriately be made to Division 4 of Part 3 with respect to the exercise of functions conferred on police officers under that Division.*
- (5) The Ombudsman may at any time make a special report on any matter arising out of the operation of Division 4 of Part 3 to the Minister.*
- (6) The Minister is to lay (or cause to be laid) a copy of any report made or furnished to the Minister under this section before both Houses of Parliament as soon as practicable after the Minister receives the report.*
- (7) If a House of Parliament is not sitting when the Minister seeks to furnish a report to it, the Minister may present copies of the report to the Clerk of the House concerned.*
- (8) A report presented to the Clerk of a House:*
 - (a) is, on presentation and for all purposes, taken to have been laid before the House, and*
 - (b) may be printed by authority of the Clerk of the House, and*
 - (c) if printed by authority of the Clerk, is for all purposes taken to be a document published by or under the authority of the House, and*
 - (d) is to be recorded:*
 - (i) in the case of the Legislative Council—in the Minutes of the Proceedings of the Legislative Council, and*
 - (ii) in the case of the Legislative Assembly—in the Votes and Proceedings of the Legislative Assembly, on the first sitting day of the House after receipt of the report by the Clerk.*

[8] Schedule 5 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Identification Legislation Amendment Act 2011

Schedule 2 **Amendment of other legislation**

2.1 **Children (Detention Centres) Act 1987 No 57**

Section 32A Regulations

Insert at the end of section 32A (j) (v):

and

- (vi) *without limiting subparagraphs (iv) and (v), the identification of visitors (including the removal of face coverings within the meaning of the Law Enforcement (Powers and Responsibilities) Act 2002 for that purpose),*

2.2 **Children (Detention Centres) Regulation 2010**

Clause 34A

Insert after clause 34:

34A Removal of face coverings by visitors

- (1) *A juvenile justice officer may require a visitor to remove any face covering worn by the visitor so as to enable the visitor's face to be seen by the officer or another juvenile justice officer or person assisting in following the procedures set out in subclause (2).*
- (2) *A juvenile justice officer who requires a visitor to remove a face covering under this clause must, as far as is reasonably practicable, ensure that the following procedures are followed:*
 - (a) *the juvenile justice officer must ask for the visitor's co-operation,*
 - (b) *the viewing of the visitor's face must be conducted:*
 - (i) *in a way that provides reasonable privacy for the visitor if the visitor requests privacy, and*
 - (ii) *as quickly as is reasonably practicable,*
 - (c) *the viewing of the face of a child under 12 years of age may only be conducted if a responsible person for the child is present during the viewing,*
 - (d) *if the visitor is 12 years old or older and requests it—the viewing of the visitor's face is to be conducted by a juvenile justice officer of the same sex as the visitor or, if a juvenile justice officer of that sex is unavailable, by another person of that sex at the direction of a juvenile justice officer,*
 - (e) *if the visitor is a child under 12 years old and the responsible person for the child requests it—the viewing of the child's face is to be conducted by a female juvenile justice officer or, if a female juvenile justice officer is unavailable, by another female person at the direction of a juvenile justice officer.*
- (3) *It is sufficient compliance with a requirement made under this clause if only so much of the face covering as prevents the visitor's face from being seen is removed.*
- (4) *A juvenile justice officer may not require a visitor to remove a face covering under this clause if the visitor establishes, to the officer's satisfaction, that the visitor has a special justification for not removing the face covering. Note. A special justification includes having a legitimate medical reason for not removing the face covering.*
- (5) *A visitor who does not comply with a requirement under this clause may be refused a visit to the detention centre.*
- (6) *In this clause:*

face and **face covering** have the same meanings as they have in the Law Enforcement (Powers and Responsibilities) Act 2002.

responsible person for a child has the same meaning as it has in section 10 of the Court Security Act 2005.

special justification has the same meaning as it has in section 19B of the Law Enforcement (Powers and Responsibilities) Act 2002.

2.3 Court Security Act 2005 No 1

[1] Section 4 Definitions

Insert in alphabetical order in section 4 (1):

face and **face covering** have the same meanings as they have in the Law Enforcement (Powers and Responsibilities) Act 2002.

[2] Section 4 (1), definition of “personal search”

Omit “things.” from paragraph (c). Insert instead:

things,

but does not include requiring a person to remove a face covering.

[3] Section 13A

Insert after section 13:

13A Power to require removal of face coverings

(1) A security officer may require a person who is wearing a face covering to remove the covering so as to enable the officer, or another security officer or person assisting in following the procedures set out in subsection (2), to see the person’s face if:

- (a) the person is seeking to enter court premises, or
- (b) the officer arrests, or has grounds for arresting, the person under this Act.

Note. Section 16 sets out the circumstances in which a security officer may arrest a person.

(2) A security officer who requires a person to remove a face covering under this section must, as far as is reasonably practicable, ensure that the following procedures are followed:

- (a) the security officer must ask for the person’s co-operation,
- (b) the viewing of the person’s face must be conducted:
 - (i) in a way that provides reasonable privacy for the person if the person requests privacy, and
 - (ii) as quickly as is reasonably practicable,
- (c) the viewing of the face of a child under 12 years of age may only be conducted if a responsible person for the child is present during the viewing,
- (d) if the person is 12 years old or older and requests it—the viewing of the person’s face is to be conducted by a security officer of the same sex as the person or, if a security officer of that sex is unavailable, by another person of that sex at the direction of a security officer,
- (e) if the person is a child under 12 years old and the responsible person for the child requests it—the viewing of the child’s face is to be conducted by a female security officer or, if a female security officer is unavailable, by another female person at the direction of a security officer.

(3) If a security officer:

- (a) makes a requirement of a person under subsection (1) (a) and the person fails immediately to comply with that requirement or to leave the court premises, or
- (b) makes a requirement of a person under subsection (1) (b) and the person fails immediately to comply with that requirement,

the security officer may again make the requirement and, in that case, must:

- (c) where the requirement being repeated was made under subsection (1) (a)—warn the person that a failure immediately to comply with the requirement or leave the court premises may be an offence, and

- (d) where the requirement being repeated was made under subsection (1) (b)—warn the person that a failure immediately to comply with the requirement may be an offence, and
 - (e) provide the person with the information referred to in section 20 (2) (a)–(c).
- (4) A security officer may not make a requirement in accordance with subsection (3) if the person establishes, to the officer's satisfaction, that the person has a special justification for not removing the face covering.

Note. A special justification includes having a legitimate medical reason for not removing the face covering.

- (5) If a security officer makes a requirement of a person in accordance with subsection (3), the person must immediately:
- (a) comply with the requirement, or
 - (b) in the case of a requirement made of a person seeking to enter court premises—leave the court premises.

Maximum penalty (subsection (5)): 5 penalty units.

- (6) It is sufficient compliance with a requirement made under this section if only so much of the face covering as prevents the person's face from being seen is removed.
- (7) This section does not limit any other power that a security officer may have under section 14 or any other provision of this Act.
- (8) In this section:

responsible person for a child has the same meaning as it has in section 10.

special justification has the same meaning as it has in section 19B of the Law Enforcement (Powers and Responsibilities) Act 2002.

[4] Section 20 Safeguards concerning exercise of relevant powers

Omit "10 or 11" from section 20 (1) (a). Insert instead "10, 11 or 13A".

[5] Section 20 (1), note

Omit "10 and 11". Insert instead "10, 11 and 13A".

2.4 Crimes (Administration of Sentences) Act 1999 No 93

[1] Section 79 Regulations

Insert at the end of section 79 (i) (v):

and

- (vi) without limiting subparagraphs (iv) and (v), the identification of visitors (including the removal of face coverings within the meaning of the Law Enforcement (Powers and Responsibilities) Act 2002 for that purpose),

[2] Section 106ZA Regulations

Insert at the end of section 106ZA (e) (v):

and

- (vi) without limiting subparagraphs (iv) and (v), the identification of visitors (including the removal of face coverings within the meaning of the Law Enforcement (Powers and Responsibilities) Act 2002 for that purpose),

2.5 Crimes (Administration of Sentences) Regulation 2008

[1] Clause 89 Proof of identity of visitor and purpose of visit may be required

Insert after clause 89 (2):

- (2A) An authorised officer may require a visitor to remove any face covering worn by the visitor so as to enable the visitor's face to be seen by the officer or another authorised officer or person assisting in following the procedures set out in subclause (2B).
- (2B) An authorised officer who requires a visitor to remove a face covering under subclause (2A) must, as far as is reasonably practicable, ensure that the following procedures are followed:
 - (a) the authorised officer must ask for the visitor's co-operation,
 - (b) the viewing of the visitor's face must be conducted:
 - (i) in a way that provides reasonable privacy for the visitor if the visitor requests privacy, and
 - (ii) as quickly as is reasonably practicable,
 - (c) the viewing of the face of a child under 12 years of age may only be conducted if a responsible person for the child is present during the viewing,
 - (d) if the visitor is 12 years old or older and requests it—the viewing of the visitor's face is to be conducted by an authorised officer of the same sex as the visitor or, if an authorised officer of that sex is unavailable, by another person of that sex at the direction of an authorised officer,
 - (e) if the visitor is a child under 12 years old and the responsible person for the child requests it—the viewing of the child's face is to be conducted by a female authorised officer or, if a female authorised officer is unavailable, by another female person at the direction of an authorised officer.
- (2C) It is sufficient compliance with a requirement made under subclause (2A) if only so much of the face covering as prevents the visitor's face from being seen is removed.
- (2D) An authorised officer may not require a visitor to remove a face covering under subclause (2A) if the visitor establishes, to the officer's satisfaction, that the visitor has a special justification for not removing the face covering.

Note. A special justification includes having a legitimate medical reason for not removing the face covering.

[2] Clause 89 (3)

Insert "or (2A)" after "subclause (1)".

[3] Clause 89 (4)

Insert after clause 89 (3):

- (4) In this clause:

face and **face covering** have the same meanings as they have in the Law Enforcement (Powers and Responsibilities) Act 2002.

responsible person for a child has the same meaning as it has in section 10 of the Court Security Act 2005.

special justification has the same meaning as it has in section 19B of the Law Enforcement (Powers and Responsibilities) Act 2002.

2.6 Oaths Act 1900 No 20

Part 6

Insert after Part 5:

Part 6 Miscellaneous

34 Identification of person making statutory declaration or affidavit

(1) 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 this section has been complied with.

Maximum penalty (on summary conviction before the Local Court): 2 penalty units.

- (2) An authorised witness may request a person who is seeking to make a statutory declaration or affidavit to remove so much of any face covering worn by the person as prevents the authorised witness from seeing the person's face.
- (3) The regulations may make provision for or with respect to compliance with this section and, in particular, may:
 - (a) provide that a person is not known to an authorised witness unless the authorised witness has known the person for a minimum specified period, and
 - (b) provide for the steps that will satisfy the requirement to confirm the identity of a person making a statutory declaration or affidavit (including prescribing the kinds of documentation that may or must be relied on for that purpose), and
 - (c) exempt an authorised witness from the requirement to comply with subsection (1) (a) for medical or other reasons.
- (4) A failure to comply with this section does not affect the validity of any statutory declaration or affidavit.
- (5) In this section:

face and **face covering** have the same meanings as they have in the Law Enforcement (Powers and Responsibilities) Act 2002.

35 Regulations

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Annexure C

Law Enforcement (Powers and Responsibilities) Act 2002 No 103

242B Monitoring of operation of Division 4 of Part 3 by Ombudsman

- (1) *For the period of 12 months after the commencement of Division 4 of Part 3, the Ombudsman is to keep under scrutiny the exercise of the functions conferred on police officers under that Division.*
- (2) *For that purpose, the Ombudsman may require the Commissioner of Police to provide information about the exercise of those functions.*
- (3) *The Ombudsman must, as soon as practicable after the expiration of that 12-month period, prepare a report of the Ombudsman's work and activities under this section and furnish a copy of the report to the Minister, the Minister for Police and Emergency Services and the Commissioner of Police.*
- (4) *The Ombudsman may in the report identify, and include recommendations for consideration by the Minister about, amendments that might appropriately be made to Division 4 of Part 3 with respect to the exercise of functions conferred on police officers under that Division.*
- (5) *The Ombudsman may at any time make a special report on any matter arising out of the operation of Division 4 of Part 3 to the Minister.*
- (6) *The Minister is to lay (or cause to be laid) a copy of any report made or furnished to the Minister under this section before both Houses of Parliament as soon as practicable after the Minister receives the report.*
- (7) *If a House of Parliament is not sitting when the Minister seeks to furnish a report to it, the Minister may present copies of the report to the Clerk of the House concerned.*
- (8) *A report presented to the Clerk of a House:*
 - (a) *is, on presentation and for all purposes, taken to have been laid before the House, and*
 - (b) *may be printed by authority of the Clerk of the House, and*
 - (c) *if printed by authority of the Clerk, is for all purposes taken to be a document published by or under the authority of the House, and*
 - (d) *is to be recorded:*
 - (i) *in the case of the Legislative Council—in the Minutes of the Proceedings of the Legislative Council, and*
 - (ii) *in the case of the Legislative Assembly—in the Votes and Proceedings of the Legislative Assembly, on the first sitting day of the House after receipt of the report by the Clerk.*

Annexure D

Law Enforcement (Powers and Responsibilities) Act 2002 No 103

201 Supplying police officer's details and giving warnings (cf Crimes Act 1900, s 563, Police Powers (Vehicles) Act 1998, s 6)

- (1) A police officer must provide the person subject to the exercise of a power referred to in subsection (3) with the following:
- (a) evidence that the police officer is a police officer (unless the police officer is in uniform),
 - (b) the name of the police officer and his or her place of duty,
 - (c) the reason for the exercise of the power.
 - (d) (Repealed)
- (2) A police officer must comply with subsection (1) in relation to a power referred to in subsection (3) (other than subsection (3) (g), (i) or (j)):
- (a) if it is practicable to do so, before or at the time of exercising the power, or
 - (b) if it is not practicable to do so before or at that time, as soon as is reasonably practicable after exercising the power.
- (2A) A police officer must comply with subsection (1) in relation to a power referred to in subsection (3) (g), (i) or (j) before exercising the power, except as otherwise provided by subsection (2B).
- (2B) If a police officer is exercising a power to give a direction to a person (as referred to in subsection (3) (i)) by giving the direction to a group of 2 or more persons, the police officer must comply with subsection (1) in relation to the power:
- (a) if it is practicable to do so, before or at the time of exercising the power, or
 - (b) if it is not practicable to do so, as soon as is reasonably practicable after exercising the power.
- (2C) If a police officer exercises a power that involves the making of a request or direction that a person is required to comply with by law, the police officer must, as soon as is reasonably practicable after making the request or direction, provide the person the subject of the request or direction with:
- (a) a warning that the person is required by law to comply with the request or direction (unless the person has already complied or is in the process of complying), and
 - (b) if the person does not comply with the request or direction after being given that warning, and the police officer believes that the failure to comply by the person is an offence, a warning that the failure to comply with the request or direction is an offence.
- (2D) In addition, if a police officer exercises a power that involves the making of a direction under section 198 on the grounds that a person is intoxicated and disorderly in a public place, the police officer must provide the person the subject of the direction with a warning that it is an offence to be intoxicated and disorderly in that or any other public place at any time within 6 hours after the direction is given.
- Note.** See section 9 of the Summary Offences Act 1988.
- (3) This section applies to the exercise of the following powers (whether or not conferred by or under this Act):
- (a) a power to search or arrest a person,
 - (b) a power to search a vehicle, vessel or aircraft,
 - (c) a power to enter premises (not being a public place),
 - (d) a power to search premises (not being a public place),
 - (e) a power to seize any property,

- (f) a power to stop or detain a person (other than a power to detain a person under Part 16) or a vehicle, vessel or aircraft,
 - (g) a power to request a person to disclose his or her identity or the identity of another person (including a power to require the removal of a face covering for identification purposes),
 - (h) a power to establish a crime scene at premises (not being a public place),
 - (i) a power to give a direction to a person,
 - (j) a power under section 21A to request a person to open his or her mouth or shake or move his or her hair,
 - (k) a power under section 26 to request a person to submit to a frisk search or to produce a dangerous implement or metallic object.
- (3AA) Despite subsection (3), this section does not apply to the exercise of a power to enter premises or to search premises or a vehicle, vessel or aircraft that is conferred by a covert search warrant.
- (3A) If a police officer is exercising more than one power to which this section applies on a single occasion, and in relation to the same person, the police officer is required to comply with subsection (1) (a) and (b) in relation to that person only once on that occasion.
- (4) If 2 or more police officers are exercising a power to which this section applies, only one officer present is required to comply with this section.
- (5) However, if a person asks another police officer present for information as to the name of the police officer and his or her place of duty, the police officer must give to the person the information requested.
- (6) This section does not apply to the exercise of a power that is conferred by an Act or regulation specified in Schedule 1.

Note. See section 5 (1), which provides that this Act does not limit the functions of a police officer under an Act or regulation specified in Schedule 1.

Annexure E

M2012-01 Policy on Identity and Full Face Coverings for NSW Public Sector Agencies³²

In November 2011 the Law Enforcement (Powers and Responsibilities) Act 2002 and other laws were amended to confer powers on police officers, juvenile justice officers, court security staff and authorised correctional officers to request the removal of face coverings in certain circumstances.

The Police Commissioner has issued Commissioner's Instruction 11/21 "Power to Require Removal of Face Coverings for Identification Purposes" outlining the changes to the law and procedural requirements.

A policy on Identity and Full Face Coverings (attached) was developed by the Community Relations Commission in consultation with community and religious leaders, and relevant public sector agencies. The policy explains circumstances in which a person may be requested to remove a face covering to establish identity and sensitivities that may apply.

This policy has been endorsed by the NSW Government.

Ministers should ensure that all agencies within their administration are aware of the contents of this Memorandum and comply with the attached policy.

Barry O'Farrell MP

Premier

Issued: Department of Premier and Cabinet

Contact: Stepan Kerkyasharian, Chairperson, Community Relations Commission

Email: executive.mail@crc.nsw.gov.au

Telephone: (02) 8255 6789

Date: 12 January 2012

This Memorandum has not superseded any other Memoranda.

Policy on Identity and Full Face Coverings

Policy Background

We live in a society in which we are free to signal our individuality, communicate our culture and express our faith in many different ways. Individuals can choose to wear garments, equipment and accoutrements, such as helmets, masks, scarves, veils and niqāb, which cover the face. At the same time, we are concerned individually with our safety, and collectively with our security. In order to improve our safety and security we cooperate.

By belonging to a society that provides us with security, works to keep us safe, and will generally assist us as we tackle the trials and tribulations of life, we undertake to cooperate in the work required to achieve these public goods. Individuals therefore share in the benefits and the burdens, the rights and the responsibilities, of collective life.

Identity, the distinguishing characteristics of an individual by which that person is definitively recognisable or known, enables full participation in social life. Knowing who someone is in order to allocate a benefit, extract a due, make a complaint, allege an offence, deliver a good or service, hand over a trust, establish a right, check bona fides, and repay a good turn, is integral to the trust, reciprocity and goodwill necessary to a collective life.

Establishing identity is, in the course of day to day life, relatively easy. We recognise faces, voices, places, things, uniforms and the like. In special circumstances we can identify individuals through palm-prints, fingerprints, eye-scans and DNA. However, in our day to day activities – picking up kids from day care, sitting for an exam, obtaining a driver's licence and travelling internationally – we mostly rely on face recognition.

Each person is unique and identity is a passport to being treated with the respect and consideration that is due to all human beings. Some people closely guard their identity and privacy is often highly valued. Proof of identity should only be required when circumstances compel. A person's privacy and any choice to wear partial and full face

³² Policy on Identity and Full Face Coverings for NSW Public Sector Agencies, January 2012. Obtained from http://www.dpc.nsw.gov.au/announcements/ministerial_memoranda/2012/m2012-01_policy_on_identity_and_full_face_coverings_for_nsw_public_sector_agencies. Accessed on 18 December 2012.

covering garments or equipment for health, safety, cultural, religious or other reasons must be treated with respect and consideration.

Policy Intent

In our society, individuals need to be able to be identified; both those representing the government and those accessing or receiving government-provided, identity-dependant goods and services. There are different ways of establishing a person's identity and the most suitable method varies, depending on the situation.

In some circumstances, a person's facial features are used to identify them. In these situations, individuals wearing full and partial face covering garments may be requested to reveal their face for the purposes of identification.

A request to remove a face covering to establish a person's identity must be balanced with respect for the person's decision to wear a full or partial face covering garment or equipment.

For the purpose of this policy "the face" is defined as the area from the bottom of the chin to the top of the forehead and to both edges as determined by the ears.

Policy

A person may be required to remove garments, equipment and accoutrements, such as helmets, masks, scarves, veils, niqāb and balaclava, that obscure the face when requested by a police officer, court security officer, or other officer with the power under legislation to do so.

In other circumstances, a person who wishes to access a service or facility where it is necessary to ascertain their identity may be requested to remove a face covering. It should be explained to the person that they may choose not to remove a face covering, however they may be denied access to that service or facility. This includes

- *when sitting for a photograph for the purposes of licensing or permits issued by any New South Wales government agency;*
- *when accessing services from a New South Wales government agency where it is necessary to ascertain a person's identity;*
- *when accessing any government office, place, space or facilities where it is necessary to ascertain a person's identity;*
- *when having a document witnessed by a Justice of the Peace;*
- *when required to provide proof of age;*
- *as part of an accepted medical procedure.*

Health, safety, cultural and religious considerations should be taken into account before requesting someone to remove a helmet, mask, scarf, veil, niqāb, balaclava or other face covering. Where appropriate, other means of identification should be considered.

Only a person with the authority to establish identity should request the removal of a face covering. The request should only be for a face covering to be removed for the period of time needed, and to the extent necessary, to establish identity. A person should not be requested to remove garments or equipment that cover the person's hair if their face is otherwise visible.

Where operationally feasible, a face covering worn for reasons of modesty should only be removed in the presence of persons of the same gender, preferably in a place where only the identifier can view the face of the person to be identified.

Implementation

The Community Relations Commission and Principles of Multiculturalism Act 2000 (the "Act") sets out the principles of multiculturalism, including the principle that institutions should respect and make provision for the culture, language and religion of others within an Australian legal and institutional framework (section 3(1)(d)).

Public authorities are required under section 3(4) of the Act to observe the principles of multiculturalism in conducting their affairs, and the Community Relations Commission assesses agencies' effectiveness in this regard through agencies' Multicultural Policies and Services Plans and annual reporting requirements.

Accordingly, agencies are required to incorporate the provisions of this policy into their respective Multicultural Policies and Services Plans.

Annexure F

Road Transport (General) Act 1999 (ACT)

Part 4 Enforcement of road transport legislation

Division 4.1 Production of licences and identification of people

58B Police officer or authorised person may direct removal of thing covering person's face

- (1) A police officer or authorised person may direct a person (the directed person) to remove anything that covers all or part of the person's face to allow the officer or authorised person to—
 - (a) identify the directed person in the execution of the officer's or authorised person's functions under the road transport legislation; or
 - (b) carry out a test or analysis under the Road Transport (Alcohol and Drugs) Act 1977, part 2 (Examination of people for alcohol or drugs).
- (2) Subsection (3) applies if a thing a person is directed to remove is worn by the person for genuine religious or cultural reasons.
- (3) The directed person may ask the officer or authorised person to allow the person to remove the thing in either or both of the following ways:
 - (a) in front of a police officer or an authorised person who is the same sex as the directed person;
 - (b) at a place or in a way (or both) that gives the directed person reasonable privacy to remove the thing.
- (4) If a request is made under subsection (3), the police officer or authorised person must take reasonable steps to comply with the request.
- (5) A failure to comply with subsection (4) does not affect—
 - (a) the validity of a thing done or not done by a police officer or authorised person under this section; or
 - (b) the liability of a person under subsection (6).
- (6) A person commits an offence if the person—
 - (a) is given a direction under subsection (1); and
 - (b) fails to comply with the direction.

Maximum penalty: 30 penalty units.

- (7) Strict liability applies to subsection (6) (b).
- (8) It is a defence to a prosecution for an offence against subsection (6) if the defendant proves that the defendant had a medical reason for not removing the thing covering all or part of the person's face.

Note. A defendant has a legal burden in relation to the matters mentioned in s (8) (see Criminal Code, s 59).

Annexure G

Law Enforcement (Powers and Responsibilities) Act 2002 No 103

99 Power of police officers to arrest without warrant (cf Crimes Act 1900, s 352, Cth Act, s 3W)

- (1) A police officer may, without a warrant, arrest a person if:
- (a) the person is in the act of committing an offence under any Act or statutory instrument, or
 - (b) the person has just committed any such offence, or
 - (c) the person has committed a serious indictable offence for which the person has not been tried.
- (2) A police officer may, without a warrant, arrest a person if the police officer suspects on reasonable grounds that the person has committed an offence under any Act or statutory instrument.
- (3) A police officer must not arrest a person for the purpose of taking proceedings for an offence against the person unless the police officer suspects on reasonable grounds that it is necessary to arrest the person to achieve one or more of the following purposes:
- (a) to ensure the appearance of the person before a court in respect of the offence,
 - (b) to prevent a repetition or continuation of the offence or the commission of another offence,
 - (c) to prevent the concealment, loss or destruction of evidence relating to the offence,
 - (d) to prevent harassment of, or interference with, a person who may be required to give evidence in proceedings in respect of the offence,
 - (e) to prevent the fabrication of evidence in respect of the offence,
 - (f) to preserve the safety or welfare of the person.
- (4) A police officer who arrests a person under this section must, as soon as is reasonably practicable, take the person, and any property found on the person, before an authorised officer to be dealt with according to law.

Annexure H

Law Enforcement (Powers and Responsibilities) Act 2002 No 103

Part 10 Other powers relating to persons in custody and other offenders

Note. For searches of persons in custody, see Division 2 of Part 4.

...

Division 3 Taking of identification particulars from other offenders

Note. Sections 138A, 138B and 138C are transferred from Part 10 of the Crimes Act 1900.

138A Taking of finger-prints and palm-prints from persons issued penalty notices

- (1) A police officer who serves a penalty notice on a person under the Criminal Procedure Act 1986 may (whether before or after the penalty notice has been served) require the person to submit to having his or her finger-prints or palm-prints, or both, taken and may, with the person's consent, take the person's finger-prints or palm-prints, or both.
- (2) A requirement under this section must not be made of a person who is under the age of 18 years and any such person is not required to comply with a requirement under this section.
- (3) The Commissioner must ensure that a finger-print or palm-print taken under this section is destroyed:
 - (a) on payment of the penalty under the penalty notice, or
 - (b) if the relevant penalty notice offence is dealt with by a court and the court dismisses the charge in relation to the penalty notice or arrives at a finding of not guilty for the charge, or
 - (c) if the penalty notice is withdrawn.

138B Taking of finger-prints and palm-prints from persons required to attend court

- (1) A police officer who serves a court attendance notice personally on a person who is not in lawful custody for an offence may require the person to submit to having his or her finger-prints or palm-prints, or both, taken and may, with the person's consent, take the person's finger-prints or palm-prints, or both.
- (2) A requirement under this section must not be made of a person who is under the age of 18 years and any such person is not required to comply with a requirement under this section.

138C Safeguards for exercise of powers to obtain finger-prints and palm-prints without arrest

- (1) A police officer must, at the time of exercising a power to require finger-prints or palm-prints, or both, to be taken under section 138A or 138B, provide the person subject to the exercise of the power with the following:
 - (a) evidence that the police officer is a police officer (unless the police officer is in uniform),
 - (b) the name of the police officer and his or her place of duty,
 - (c) the reason for the exercise of the power,
 - (d) a warning that, if the person fails to comply with the requirement, the person may be arrested for the offence concerned and that, while in custody, the person's finger-prints and palm-prints may be taken without the person's consent.
- (2) If 2 or more police officers are exercising a power, only one officer present is required to comply with this section.
- (3) However, if a person asks another police officer present for information as to the name of the police officer and his or her place of duty, the police officer must give to the person the information requested.

NSW Ombudsman
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