



New South Wales

Identification Legislation Amendment Act 2011 No 45

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New South Wales

Identification Legislation Amendment Act 2011 No 45

Act No 45, 2011

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. [Assented to 20 September 2011]

The Legislature of New South Wales enacts:

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,

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- (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:

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- (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.

[Agreement in principle speech made in Legislative Assembly on 25 August 2011
Second reading speech made in Legislative Council on 14 September 2011]

BY AUTHORITY