



The Research Director
Legal Affairs and Community Safety Committee
Parliament House
George Street
BRISBANE QLD 4000

24 October 2013

By email: lacsc@parliament.qld.gov.au

Dear Sir/Madam

Submission in relation to the *Identification Laws Amendment Bill 2013 (Qld)*

1. Australian Lawyers for Human Rights ('ALHR') is pleased to make the following comments in relation to the *Identification Laws Amendment Bill 2013 (Qld)*.
2. ALHR opposes this bill because we believe that it breaches human rights principles, is unnecessary and has potential to foster anti-Islamic prejudice in the broader Queensland community
3. ALHR argues that if the government opts to support the bill then the proposed amendments to the Police Powers and Responsibilities Act 2000 ('PPRA') (i.e. Clause 12 of the bill) should include a provision so that if a woman wearing an item of clothing that covers her face for religious reasons requests that a female officer be made available to check her identity, one will be made available if this is reasonably practicable under the circumstances.
4. ALHR further argues that if the government supports the bill that the observations and recommendations of the NSW Ombudsman's report be taken into account, particularly in relation to police policy and training, so as to encourage respectful and sensitive application of the provisions.
5. ALHR's submission is presented under the following headings:

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A Introduction

6. ALHR argues that the bill is unnecessary. Public comments by the current Police Commissioner Ian Stewart and former Commissioner Bob Atkinson indicate that they consider that there is no need for the proposed powers.¹ They have claimed that existing provisions are sufficient for the purpose of establishing identification.
7. It is argued that regardless of disclaimers, the bill targets Muslims and must be considered in the context of the high level of anti-Islamic racism in Australian society. Regardless of Mr Wellington's intention, the Bill will legitimise racist views.
8. It should be noted that some representatives of the Muslim community have expressed support for the Queensland bill and similar legislation passed in NSW.² The NSW Ombudsman in August 2013 observed that the use of similar provisions by the NSW police was to-date largely uncontroversial.³
9. Significantly the Islamic Council of NSW, in consultation with Muslim scholars and Islamic organisations, met in June 2011 to discuss the Matthews court case. Their press release stated:
"Collectively, representatives of Islamic organisations have considered the Islamic position in relation to face covering and unanimously resolved the following:
 - All Australians, irrespective of ethnicity or faith shall respect and abide by the constitutional law of this country.*
 - Islamically, for purposes of legally identifying an individual, a woman can remove her face covering, in the presence of a male.*
 - In an event where a woman refuses to remove the face covering the following could be considered:*
 - a) Woman offered to reveal face in front of a female officer if a female officer is available on site*
 - b) Where a female officer is not on site, and the individual refuses to cooperate, the woman could be escorted to the nearest police station where a female officer could verify her identity.**Furthermore, the Muslim community condemns any provocative behaviour that may result in inciting hatred in the community or provoking societal unrest on the basis of religious or ethnic stereotyping or vilification.*
*We are willing to consult with government departments to assist in further clarifying the Muslim position with the aim of reaching a practical solution to this matter."*⁴
10. The NSW Islamic Council statement came at the height of the talk back radio and newspaper furore in June 2011.⁵ The statement accords with the widespread view that community members should abide any legal requirement for the removal of a face covering for identification purposes.
11. The political environment in Queensland today is markedly different to that that existed in NSW at the height of the Carnita Matthews matter. The Attorney-General stated in June that "I will not be

¹ For example: 'Qld cops won't seek powers to remove veils', *The Sydney Morning Herald*, 5 July 2011 <http://news.smh.com.au/breaking-news-national/qld-cops-wont-see-powers-to-remove-veils-20110705-1gztn.html>. at 22 October 2013, and Kay Dibben, 'Expert claims court had right to demand woman remove her burqa', *The Courier Mail*, 14 June 2013 <<http://www.couriermail.com.au/news/queensland/expert-claims-court-had-right-to-demand-woman-remove-her-burqa/story-fnihsrf2-1226663403817> at 22 October 2013.

² For example: Lexi Metherell, 'Islamic leaders accept police burka powers', *Australian Broadcasting Commission*, 11 July 2011 <http://www.abc.net.au/news/2011-07-05/islamic-leaders-accept-police-burka-powers/2782648> at 22 October 2013.

³ New South Wales Ombudsman, Review of Division 4, Part 3 of Law Enforcement (Powers and Responsibilities) Act 2002: face coverings and identification report August 2013. http://www.ombo.nsw.gov.au/__data/assets/pdf_file/0014/11372/Review-of-Division-4,-Part-3-of-the-Law-Enforcement-Powers-and-Responsibilities-Act-2002-face-coverings-and-identification.pdf at 22 October 2013

⁴ *Press Release 23.06.11 ICNSW: Niqab* (2011) Muslimvillage.com <http://muslimvillage.com/forums/topic/64511-press-release-230611-icnsw-niqab/> at 22 October 2013.

⁵ NSW Ombudsman, (n3 above), p6.

held to ransom from someone trying to score political points,”⁶ adding that “he would consider further reform if the Police Commissioner felt it was necessary” and noted that neither the Police Commissioner, “the Chief Magistrate or the Chief Justice had asked for changes to be made in this area.”⁷

12. ALHR believes that opposition to the bill on the grounds that it breaches human rights principles and may legitimise racist views does not conflict with the interests of the Muslim community.
13. It is clear that if the Bill is passed members of the Islamic community have the expectation that it would be implemented with respect and sensitivity.⁸ A perception exists that the same-sex viewing procedures would be implemented by police if reasonably practicable.
14. ALHR further argues that if the government supports the bill:
 - that the observations and recommendations of the NSW Ombudsman’s report be taken into account, particularly in relation to police policy and training, so as to encourage respectful and sensitive application of the provisions;
 - that the proposed reporting by the CMC (Clause 12) be done on an annual basis so as to provide ongoing monitoring against possible incidents of abuse;
 - that all incidents, where the provisions are used by the police, must be recorded regardless of whether any offence is recorded;
 - that all incidents where the provisions are used in correctional facilities, youth detention centres and at State buildings must be recorded; and
 - that the Attorney-General report annually to parliament on the use of the provisions in correctional facilities, youth detention centres and at State buildings.

B Relevant Human Rights Instruments

15. There are a number of instruments which recognise the right of individuals to manifest their religion without discrimination. Relevant instruments include:
 - *Charter of the United Nations*;⁹
 - *Universal Declaration of Human Rights, Art 18*;¹⁰
 - *International Covenant on Civil and Political Rights, Art 18*;¹¹
 - *International Covenant on Economic, Social and Cultural Rights*;¹²
 - *International Convention on the Elimination of All Forms of Racial Discrimination*;¹³
 - *Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)*;¹⁴
 - *Declaration on the Elimination of All Forms of Racial Discrimination*;¹⁵

⁶ R McCarty-O’Kane, ‘Bleijie digs in over MP’s push for new laws to limit burqas’, *Sunshine Coast Daily*, 16 June 2013 <http://www.sunshinecoastdaily.com.au/news/burqa-id-bid-riles-bleijie-wellington/1909136/> at 22 October 2013.

⁷ Ibid.

⁸ See for example comments by Ikebal Patel, President of the Australian Federation of Islamic Councils, in relation to the NSW legislation in: , Rod McGuirk, ‘Australia Muslim Veil Law Requires Women To Remove Face-Covering Niqab In New South Wales’, *The Huffington Post*, 3 May 2012 http://www.huffingtonpost.com/2012/03/05/australia-veil-law-burqa-ban_n_1320811.html at 22 October 2013.

⁹ *Charter of the United Nations and Statute of the International Court of Justice*, 26 June 1945, [1945] ATS 1

¹⁰ *Universal Declaration of Human Rights* (1948) United Nations, <http://www.un.org/en/documents/udhr/> at 22 October 2013.

¹¹ *International Covenant on Civil and Political Rights*, 18 December 1972, [1980] ATS 23

¹² *International Covenant on Economic, Social and Cultural Rights*, 8 December 1972, [1976] ATS 5.

¹³ *International Convention on the Elimination of All Forms of Racial Discrimination*, 13 October 1966, [1975] ATS 40

¹⁴ *Convention on the Elimination of All Forms of Discrimination against Women*, 18 December 1979, [1983] ATS 9

¹⁵ United Nations General Assembly, *United Nations Declaration on the Elimination of All Forms of Racial Discrimination*, 20 November 1963, A/RES/18/1904

- *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, Art 2,*¹⁶ and
- *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.*¹⁷

16. The *International Covenant on Civil and Political Rights* (ICCPR) was ratified by Australia on 13 August 1980 and Article 18 provides a useful framework for consideration of the Bill. Article 18 of the ICCPR states that:
1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
 2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
 3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others....

C Is a requirement to remove of a niqab, burqa or chador a limitation of the person's human rights?

17. Article 18, sub-paragraph 1 of the ICCPR states that everyone shall have the right to manifest their religion or belief. If the burqa and similar items of clothing are worn as a manifestation of Islamic religion or belief then a requirement that they be removed is a limitation of a right.
18. In France the enforcement of the ban on wearing the burqa in public has resulted in the deterioration of police relations with the Muslim community.¹⁸ It is arguably the case that Muslims in such circumstances view legal requirements to remove religious face coverings as violation of their right to manifest their religious beliefs.
19. There is a diversity of opinion amongst Muslim scholars as to dress requirements for Muslim women. Different levels of support for exist for the idea of the hijab, niqab or abaya.¹⁹
20. Some members of the French Muslim community have identified the burqa as part of religious practice, others labelling it as a cultural practice.²⁰
21. The covering of the face is, for many Muslim women, 'an important act of their spirituality'.²¹ Mehmet Ozalp has described the theological basis for covering as follows:
It is deemed a command of God in the Qur'an and was part of the practice of the Prophet ﷺ and his companions. The obligation to cover the body for both males and females, and additionally the hair for women, is a position that has met with consensus among most Muslim

¹⁶ United Nations General Assembly, *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*, 18 December 1992, A/RES/47/135

¹⁷ United Nations General Assembly, *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, 25 November 1981, A/RES/36/55.

¹⁸ See for example 'French girl attempts suicide after 'veil attack'', *France 24*, 2 September 2013
<http://www.france24.com/en/20130827-french-muslim-girl-veil-attack-suicide-skinheads-islamophobia-paris-police> at 22 October 2013.

¹⁹ Samina Yasmeen, Australia and the burqa and niqab debate: the society, the state and cautious activism, (2013) *Global Change, Peace & Security* 5

²⁰ *Ibid* p8.

²¹ M Ozalp, *Islam between tradition and modernity: an Australian perspective*, (Barton Books, Canberra 2012) p193.

jurists....The current practice for the majority of Muslims does not include covering the face. Some women might choose to do so as an expression of greater piety.²²

22. Many Australian Muslim women associate their dress with religion.²³ In response to a complaint to the Northern Territory Anti-Discrimination Commission in 2010, NT Islamic Society president Adil Jamil said it was offensive to ask a woman to take off her hijab because "It's against their religious beliefs." Mr Jamil said a few Territory-born Muslim women wore a veil. "They see it as reinforcing their religious beliefs and inner satisfaction," he said.²⁴
23. Such views contrast with those of Mr Haset Ali, former president of the Australian Federation of Islamic Councils who recently claimed "In this country, the idea of wearing the full burqa is a primitive, Bedouin culture and has nothing to do with Islam."²⁵
24. In the UK it has been judicially recognised that there is not universal agreement within Islam as to whether there is an obligation to wear the niqab, but that the choice to do so must be respected as a manifestation of religion or belief.²⁶ Termination of employment because of the wearing of a hijab is unlawful discrimination in the US.²⁷
25. Anne Hewitt and Cornelia Koch argue that "even if a court was not convinced that the wearing of this type of dress constituted religious activity, it could clearly be regarded as either a characteristic of Muslim women, or as a characteristic which is imputed to Muslim women. Discrimination based on being dressed in a burqa or niqab is thus probably prohibited in all jurisdictions except SA, NSW and the Commonwealth."²⁸
26. The Committee which monitors the implementation of CEDAW has observed that that requires State parties 'to take all necessary steps to protect women wearing the hijab (veil) from harassment by public and private individuals'.²⁹
27. ALHR suggests that it is arguable that the wearing of a niqab etc must be respected as a manifestation of a person's religion or belief and that requiring the removal of such items is discriminatory and a limitation of a human right.
28. Article 18 subparagraph 3 of the ICCPR allows for such limitations where they are "necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others."

²² *Ibid*, p193-194.

²³ Ghena Krayem, Freedom of Religion, Belief and Gender: A Muslim Perspective, Supplementary Paper for the Australian Human Rights Commission Project, Freedom of Religion and Belief in the 21st century, Jan 2010.

²⁴ 'Northern Territory Muslim woman banned from wearing hijab to interview', *Herald Sun*, 21 June 2010, <http://www.heraldsun.com.au/news/northern-territory-muslim-woman-banned-from-wearing-hijab-to-job-interview/story-e6frf7jo-1225882156494> at 22 October 2013.

²⁵ R McCarty-O'Kane, 'Bleijie digs in over MP's push for new laws to limit burqas', *Sunshine Coast Daily*, 16 June 2013 <http://www.sunshinecoastdaily.com.au/news/burqa-id-bid-riles-bleijie-wellington/1909136/> at 22 October 2013, and Damien Bathersby, 'MP reignites burqa debate', *The Gympie Times*, 16 June 2013 <http://www.gympietimes.com.au/news/mp-reignites-burka-debate-coast-mp-pushes-for-law-/1908947/> at 22 October 2013.

²⁶ *The Queen v D(R)* [2013] Blackfriars Crown Court (H.H. Judge Peter Murphy on Wearing of Niqab) 16/09/13

²⁷ For example: U.S. Equal Employment Opportunity Commission and Umme-Hani Khan vs. Abercrombie & Fitch Stores 2013 U.S. Dist. LEXIS 125628 (September 3, 2013).

²⁸ Anne Hewitt and Cornelia Koch, Can and should burqas be banned? The legality and desirability of bans of the full veil in Europe and Australia, (2011) 36:1 *Alternative Law Journal*, 16, 19.

²⁹ Committee on the Elimination of Discrimination against Women, *Concluding observations: Tunisia*, 5 Nov 2010, UN doc CEDAW/C/TUN/CO/6 <http://daccess-ods.un.org/access.nsf/Get?Open&DS=CEDAW/C/TUN/CO/6&Lang=E> at 23 October 2013.

29. Note that it is generally accepted within the Muslim community that the removal of face coverings for purposes such as obtaining drivers' licences, certain bank transactions and ID checks at airports are acceptable limitations upon the right to don face coverings as a manifestation of religious belief.

D Is the requirement an acceptable limitation?

30. The then Special Rapporteur on Freedom of Religion or Belief, Asma Jahangir, in response to the issue of the wearing of religious symbols in Europe stated:
"However, any limitation must be based on the grounds of public safety, order, health, or morals, or the fundamental rights and freedoms of others, it must respond to a pressing public or social need, it must pursue a legitimate aim and it must be proportionate to that aim. Furthermore, the burden of justifying a limitation upon the freedom to manifest one's religion or belief lies with the State. Consequently, a prohibition of wearing religious symbols which is based on mere speculation or presumption rather than on demonstrable facts is regarded as a violation of the individual's religious freedom."³⁰
31. Acceptable limitations may arise then where:
- there is "a pressing public or social need"; or
 - the limitation is "necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others"; and
 - the limitation is proportionate.
32. The argument that justifications for limitations should be based upon demonstrable facts rather than on mere speculation or presumption is relevant to discussion on the bill.

E Is there a pressing public or social need?

33. In the second reading Mr Wellington states that the bill was drafted "in a response to events in New South Wales where a burqa-wearing woman, Carnita Matthews, had a charge of making a false statement dismissed because there was no proof that it had been her inside the burqa..."³¹
34. The Carnita Matthews matter involved a driver who alleged that a police officer had tried to rip her veil off. A woman wearing a niqab and purporting to be Ms Matthews made a statement to a Justice of the Peace regarding the incident. Ms Matthews was subsequently charged with having made a false complaint against a police officer. The appeal judge could not conclude that the woman who signed the statutory declaration was the appellant.³² The case prompted legislative change in NSW.³³
35. It is arguable that the NSW law and Peter Wellington's Bill are knee-jerk reactions. This one incident is usually cited as the reason for such legislative responses. The Carnita Matthews matter would not have escalated if the Justice of the Peace had done an adequate identification check.³⁴ Photo identification is not necessary to establish identity in such circumstances.

³⁰ UN Economic and Social Council, Commission on Human Rights, Civil and Political Rights, , *Report of the Special Rapporteur on freedom of religion or belief*, Asma Jahangir, E/CN.4/2006/5, 9 January 2006 at [53].

³¹ Queensland, *Parliamentary Debates*, Legislative Assembly, 8 August 2013, 2526, Hon P Wellington, Identification Laws Amendment Bill, second reading, 2526, 8 Aug 2013.

³² NSW Ombudsman, (n3 above), p5-6.

³³ *Identification Legislation Amendment Bill 2011* (NSW).

³⁴ NSW Ombudsman, (n3 above), iii.

36. Civil liberties groups were reported as criticising the NSW bill as a “needless political stunt”.³⁵ David Bernie, Vice-President of the NSW Council of Civil Liberties also observed that the NSW law “has all been a result of one court case that wasn’t even about the traffic incident itself”. He added “[t]here just doesn’t seem to be much of a case for bringing in new laws.”³⁶
37. It is argued that the Carnita Matthews’ case fails to establish a pressing or public need for new identification laws in either NSW or Queensland.

F Are the proposed amendments necessary for G20?

38. Mr Wellington has made the suggestion that the removal of Muslim face-coverings is “an issue that needs to be reconsidered with the G20 summit being held in Brisbane next year.”³⁷
39. The assertion that the bill may contribute to security at G20 is misplaced given the extent of the powers proposed under the *G20 (Safety and Security) Bill 2013*.

G Are the proposed amendments necessary at all?

Proposed Amendment of Police Powers and Responsibilities Act (Clause 12)

40. The primary amendment is the insertion of a new section 41A. Under this amendment a police officer may require a person to remove a face covering, where there is a lawful requirement to produce a driver’s licence, give a correct name and address or state a correct date of birth.³⁸
41. In the Explanatory Notes it is stated that there are no alternate means of achieving policy objectives relating to identification.³⁹ This is incorrect.
42. The media has reported that neither the Attorney-General, Police Commissioner, Chief Magistrate nor Chief Justice had sought the kind of changes being sought by Mr Wellington.⁴⁰ Serving Police Commissioner, Ian Stewart, has indicated that the existing law is sufficient in relation to establishing the identification of someone arrested on suspicion of having committed a criminal offence.⁴¹
43. Former Police Commissioner, Bob Atkinson, had stated that he was content with existing police powers, believing that they were adequate to deal with identity issues. Commissioner Atkinson claimed that “[o]ur legislation is more than adequate...” and that “...police have the power to search a person if they think an offence has been committed or the belief the person may have a weapon or drugs.” He commented that under “the traffic legislation that we have here, the police officer has the right to try and get evidence of the correctness of a person’s name and address.”⁴²

³⁵ S Lunn, ‘Facing up to questions of identity’, *The Australian*, 6 July 2011 <http://www.theaustralian.com.au/news/features/facing-up-to-questions-of-identity/story-e6frg6z6-1226088349667> at 22 October 2013.

³⁶ *Ibid* at 22 October 2013.

³⁷ ‘Queensland MP Peter Wellington wants courts to get power to remove face veils’, *ABC News*, 16 June 2013 <http://www.abc.net.au/news/2013-06-15/mp-wants-courts-to-get-power-to-remove-face-veils/4756232> at 22 October 2013, and Damien Bathersby, ‘MP reignites burqa debate’, *The Gympie Times*, 16 June 2013 <http://www.gympietimes.com.au/news/mp-reignites-burka-debate-coast-mp-pushes-for-law-/1908947/> at 22 October 2013.

³⁸ Identification Laws Amendment Bill 2013 (Qld), cl 12

³⁹ Explanatory notes, Identification Laws Amendment Bill 2013 (Qld).

⁴⁰ R McCarty-OKane, ‘Bleijie digs in over MP’s push for new laws to limit burqas’, *Sunshine Coast Daily*, 16 June 2013 <http://www.sunshinecoastdaily.com.au/news/burqa-id-bid-riles-bleijie-wellington/1909136/> at 22 October 2013.

⁴¹ *Ibid* at 22 October 2013.

⁴² ‘Qld cops won’t seek powers to remove veils’, *The Sydney Morning Herald*, 5 July 2011 <http://news.smh.com.au/breaking-news-national/qld-cops-wont-look-for-powers-to-remove-veils-20110705-1gztn.html>. at 22 October 2013, Kate Sikora, ‘WA could follow NSW in granting police powers to lift the veil’, *news.com.au*, 5 July 2011 <http://www.news.com.au/national-news/new-nsw-police-powers-to-lift-the-veil-is-political-discrimination-says-hizb-ut-tahrir/story-e6frfkvr-1226087603010> at 22 October 2013,

44. "Our policy says we should respect religious customs of the individual as well" he claimed.⁴³
45. Both former Commissioner Atkinson and serving Commissioner Stewart have indicated that existing laws are adequate, and that there is no need to change legislation.
46. Statements made to the media by officers following an alleged incident of anti-Muslim racism at a BP service⁴⁴ station bear out the Commissioners' comments. Detective Inspector Rodd Kemp said Queensland police had the power to search a person provided they believed an offence had been committed. Senior-Sergeant Michael Maat from the Strategic and Cultural Policy unit said police searches were conducted sensitively with respect for a person's religious beliefs. "If we need to remove an item of clothing that has religious significance then we treat the removal of that clothing in the same way as an intimate search conducted by a same-sex officer in a private room," he said. "We've never had an issue where someone has refused to take off their veil and if someone is wearing something that covers their hair and ears it's not an issue."⁴⁵

Proposed Amendments to the Corrective Services Act 2006 (Qld)

47. Proposed section 160A would facilitate the requirement for a visitor to remove a face covering.⁴⁶ Non-compliance may result in the visitor being directed to leave.⁴⁷
48. However existing proof of identity procedures that a visitor may be subjected to at a correctional centre are extensive.⁴⁸
49. A biometric system is in general use. It records the following personal information for each visitor in a secure computer database—
 - a mathematical template that represents the relationship between key points in each visitor's index finger prints (note that a fingerprint image cannot be recreated from this template);
 - a photograph (optional);
 - name;
 - address;
 - date of birth; and
 - other identification verification details such as a driver's licence number.
50. This system is in use at Townsville, Lotus Glen, Maryborough, Capricornia, Borallon, Brisbane Women's and Brisbane correctional centres.⁴⁹
51. Non-photo ID can be used to establish identity pursuant to the Regulations.⁵⁰

and Janet Fife-Yeomans, 'States to consider new laws on burqa', *The Daily Telegraph*, 6 July 2011

<http://www.dailytelegraph.com.au/states-to-consider-new-laws-on-burqa/story-e6freuy9-1226088383783> at 22 October 2013.

⁴³ 'Qld cops won't seek powers to remove veils', *The Sydney Morning Herald*, 5 July 2011 <http://news.smh.com.au/breaking-news-national/qld-cops-wont-see-powers-to-remove-veils-20110705-1gztn.html>. at 22 October 2013.

⁴⁴ Angela Ranke, 'Australian Muslim teenager claims she was held against her will by a service station worker in a perceived racist attack', *news.com.au*, 29 April 2013 <http://www.heraldsun.com.au/news/an-australian-muslim-claims-she-was-held-against-her-will-by-a-service-station-worker-in-a-perceived-racist-attack/story-e6fr7jo-1226630251394> at 22 October 2013.

⁴⁵ *Ibid*

⁴⁶ *Identification Laws Amendment Bill 2013* (Qld), Cl 4

⁴⁷ *Identification Laws Amendment Bill 2013* (Qld), Cl 5

⁴⁸ *Corrective Services Act 2006* (Qld), ss 160 – 162; Queensland, Department of Community Safety, *Custodial Operations Standard Operating Procedure - Personal Visitors to Prisoners* http://www.correctiveservices.qld.gov.au/Resources/Procedures/Safety_and_Security/documents/sasprovisitpris.shtml#13.3 cl 13.3 at 22 October 2013.

⁴⁹ Queensland, Department of Community Safety, *Biometric Identification System*

http://www.correctiveservices.qld.gov.au/About_Us/The_Department/Biometric_identification/index.shtml at 22 October 2013.

52. There are no grounds for arguing that the proposed amendments will improve visitor identification procedures, or that existing rules and regulations pertaining to visitors' identification are inadequate.

Proposed Amendments to Oaths Act 1867 (Qld)

53. A penalty of up to 20 penalty units would apply under proposed amendments if the person who takes a declaration or affidavit does not see the face of the person making the declaration or affidavit.⁵¹
54. Currently non-photo ID may be used, at the discretion of the Justice of the Peace taking the declaration or affidavit, in order to establish identity.
55. There is no requirement currently to remove religious veils when taking declarations and affidavits. While photo ID may be convenient it is not necessary to establish a person's identity. Call centre staff frequently establish callers' identities in relation to billing, finance and welfare matters.
56. The proposed amendments of the Oaths Act are not necessary.

Visitors to Youth Detention Centres

57. Under the proposed amendments visitors to Youth Detention Centres may be refused entry if unable to prove their identity.
58. Youth Detention Centre staff currently have the power to deny entry, and use reasonable and necessary force to remove visitors. Entry to a detention centre can be refused if a person cannot establish identity.⁵²
59. Identification can be established using sufficient non-photo ID and the proposed laws are not necessary in relation to Youth Detention Centres.

Not Necessary

60. The *Identification Laws Amendment Bill* provisions are not necessary. If alternate POI is available, there is no blanket need for the removal of a face veil to establish identification. Queensland Police Commissioners have said the changes are not necessary. And there is arguably no proven need to remove face coverings "to protect public safety, order, health, or morals or the fundamental rights and freedoms of others" as required by Article 18(3) of the ICCPR. Existing laws and administrative provisions are generally sufficient for the purpose of establishing identity. The *Identification Laws Amendment Bill* is not compatible with Article 18 of the ICCPR.

H Inconsistency with Fundamental Legislative Principles

61. Section 4(2)(a) of the *Legislative Standards Act 1992* states that the "principles include requiring that legislation has sufficient regard to ...rights and liberties of individuals..."

⁵⁰ *Corrective Services Regulation 2006* (Qld) s 24(1).

⁵¹ *Identification Laws Amendment Bill 2013* (Qld), Clauses 8 and 9.

⁵² *Youth Justice Act 1992* (Qld), s 272.

62. The Queensland Legislation Handbook states that former Scrutiny of Legislation Committee “took an expansive approach in identifying rights and liberties” and that the former Committee made comment about the treatment of all persons affected by legislation being reasonable and fair.⁵³
63. The bill is arguably inconsistent with the Fundamental Legislative Principles.

I Inconsistency with the Rule of Law

64. The Right Honourable Lord Bingham stated that “the law must afford adequate protection of fundamental human rights”.⁵⁴ The right to manifest one’s religion is a fundamental human right. The bill is inconsistent with the protections of human rights afforded by the rule of law.

J Islamophobia

65. Muslim educationalist, Dr Jasmin Zine, has defined Islamophobia as “a fear or hatred of Islam and its adherents that translates into individual, ideological and systemic forms of oppression and discrimination.” She adds that “Islamophobia has been constructed as an ideological tool to legitimate campaigns of political, social, economic, and military domination.”⁵⁵
66. Evidence of racist attacks against Muslims following the 1991 Gulf War was heard by the 1991 National Inquiry into Racist Violence in Australia.⁵⁶ HREOC noted another increase in the level of discrimination and vilification following 9/11.⁵⁷ There has been widespread discrimination and violence directed at Muslims, particularly women who are identified as Muslim by their clothing.⁵⁸
67. A recent Brisbane case involved a Muslim teenager who wears a veil in public. She alleged that a BP service station attendant locked the doors when she tried to leave.⁵⁹
68. Islamophobia may be understood as an example of the ‘new racism’ based upon the ‘insurmountability of cultural differences’,⁶⁰ which has partially supplanted traditional notions of racial hierarchy. Now ethnic minorities are no longer viewed as inferior; rather they are differentiated as threats to ‘social cohesion’ and ‘national unity’, i.e. to the cultural values and integrity of the dominant (Anglo-Celtic) ‘host’ society.⁶¹ The racialised “other” today is commonly distinguished on the basis of culture rather than socio-biological grounds.

⁵³ Queensland, Department of Premier and Cabinet, *Legislation Handbook*

<http://www.premiers.qld.gov.au/publications/categories/policies-and-codes/handbooks/legislation-handbook/fund-principles/rights-and-freedoms.aspx>

⁵⁴ Honourable Lord Bingham, ‘The Rule of Law’ The Sixth Sir David Williams Lecture, (2006) p16 and p20

<http://www.cpl.law.cam.ac.uk/Media/THE%20RULE%20OF%20LAW%202006.pdf>

⁵⁵ Dr Jasmin Zine, Dealing with September 12th: the challenge of anti-Islamophobia education, (2003) *Orbit* 33(3)

<http://search.proquest.com.ezp01.library.qut.edu.au/docview/213739425/abstract/140F20319567E58ADED/1?accountid=13380>

⁵⁶ Human Rights and Equal Opportunity Commission, *Isma - Listen: National consultations on eliminating prejudice against Arab and Muslim Australians*, 2003,

36.http://www.humanrights.gov.au/sites/default/files/content/racial_discrimination/isma/report/pdf/ISMA_complete.pdf

⁵⁷ Ibid p43; See also Scott Poynting & Victoria Mason, “Tolerance, Freedom, Justice and Peace”?: Britain, Australia and Anti-Muslim Racism since September 2001. (2006) 27:4 *Journal of Intercultural Studies*, 376-8.

⁵⁸ HREOC *Isma* (n56 above)

⁵⁹ ‘Muslim teen accuses service station worker of ‘racist attack’ in Australia’, Yahoo! News, 29 April 2013

<http://in.news.yahoo.com/muslim-teen-accuses-station-worker-racist-attack-australia-120827616.html> at 22 October 2013.

⁶⁰ Dr Kevin Dunn, Associate Professor James Forrest, Professor Ian Burnley, and Ms Amy McDonald, ‘Constructing Racism in Australia’, (2004) 39:4 *Australian Journal of Social Issues*, 409,410.

⁶¹ Ibid, 410 – 411; Note Martin Barker, *The New Racism: Conservatives and the Ideology of the Tribe*. . (Aletheia, United States, 1981).

K Will the Bill legitimise racist views?

69. In the second reading Mr Wellington stated that “the Bill is not directed against the wearing of burqas generally – like the controversial law in France.”⁶² He goes on to say that the Bill’s provisions may “apply to children wearing Zorro or Darth Vader masks.”⁶³ However the signal sent by the second reading is unambiguous. In the same breath as denying that the Bill is directed against Muslim women he states that the Bill is a response to the Carnita Matthews matter.⁶⁴
70. The backdrop is that since May 2010 there have been calls for bans or restrictions on Muslim face-coverings. This includes repeated calls by Senator Cory Bernardi and the tabling of private members bills by Fred Nile MP (NSW) and Bob Such MP (South Australia). Coalition MPs Sophie Panopoulos and Bronwyn Bishop have previously urged the banning of the hijab in schools.⁶⁵ Senator Bernardi had claimed that the burqa is a security hazard, a symbol of “the repressive domination of men over women”, and that it’s “un-Australian”.⁶⁶
71. French and Belgian legislation targeting Muslim attire is also worded in a general manner. It was claimed for example that the people who may be affected by French legislation include wearers of balaclavas or scarves covering the face during political rallies. However the public discussion clearly revealed that the intended targets of the legislation were fully veiled Muslim women.⁶⁷
72. The environment in which Mr Wellington is tabling his Bill is one of pervasive anti-Islamic racism. And while the wording of the Bill avoids specifying Muslims, the media debate on Mr Wellington’s bill and the earlier NSW legislation has focussed exclusively on Muslims.
73. The NSW Ombudsman’s review of the application of the NSW laws noted that there were eight recorded uses of the new law. Seven of the eight were women wearing a niqab while driving a car. The actual application of laws, such as those Mr Wellington is seeking to introduce, target Muslim women.⁶⁸
74. Mr Wellington has claimed that this was “an issue that needs to be reconsidered with the G20 summit being held in Brisbane next year.”⁶⁹ Such statements link concepts of threats to ‘social cohesion’ and ‘national unity’ with attributes of Islam. Such views can only feed common prejudices.

⁶² Queensland, *Parliamentary Debates*, Legislative Assembly, 8 August 2013, 2526, Hon P Wellington; also Damien Bathersby, ‘MP reignites burqa debate’, *The Gympie Times*, 16 June 2013 <http://www.gympietimes.com.au/news/mp-reignites-burka-debate-coast-mp-pushes-for-law-/1908947/>.

⁶³ Queensland, *Parliamentary Debates*, Legislative Assembly, 8 August 2013, 2526, Hon P Wellington .

⁶⁴ *Ibid.*

⁶⁵ Louise Yaxley, ‘Bronwyn Bishop calls for hijab ban in schools’, ABC - The World Today, 29 August 2005, <http://www.abc.net.au/worldtoday/content/2005/s1448343.htm> at 22 October 2013; ‘Panopoulos stands by ban on hijab’, *Sydney Morning Herald*, 5 September 2005 <http://www.smh.com.au/news/National/Panopoulos-stands-by-ban-on-hijab/2005/09/05/1125772467956.html> at 22 October 2013.

⁶⁶ Shakira Hussein, ‘Here We Go Again... This Time It’s Burqa Bandits’, *New Matilda*, 11 May 2010 <https://newmatilda.com/2010/05/11/here-we-go-again-time-its-burqa-bandits>

⁶⁷ Anne Hewitt and Cornelia Koch, Can and should burqas be banned? The legality and desirability of bans of the full veil in Europe and Australia, (2011) 36(1) *Alternative Law Journal* , 16.

⁶⁸ NSW Ombudsman, (n3 above), p15.

⁶⁹ ‘Queensland MP Peter Wellington wants courts to get power to remove face veils’, *ABC News*, 16 June 2013 <http://www.abc.net.au/news/2013-06-15/mp-wants-courts-to-get-power-to-remove-face-veils/4756232>; Damien Bathersby, ‘MP reignites burqa debate’, *The Gympie Times*, 16 June 2013 <http://www.gympietimes.com.au/news/mp-reignites-burka-debate-coast-mp-pushes-for-law-/1908947/>.

L Permission to Hate

75. "Permission to hate" is an expression coined by Barbara Perry who described a process where discriminatory treatment of racial minorities by governments generates an ideological and moral licence for hate crime.⁷⁰
76. The process has been written on widely,⁷¹ and might be summed up by Ghassan Hage's argument that "[v]iolent racists are always a tiny minority. However, their breathing space is determined by the degree of ordinary "non-violent" racism a government and culture will allow".⁷²
77. It is suggested that if the Bill is passed it will have the effect of legitimising anti-Islamic sentiment and will foster racist attitudes in the community.

M The Value of Respectful Policing

78. The police have every interest in maintaining the trust of the Muslim community. The arguments of Inspector Hanniman of the Royal Canadian Mounted Police are relevant. He argues that a "lack of confidence or trust in the police results in a decline in reported crimes and willingness to cooperate with police, testify in court etc." A diminishing of police community relationships may result in a tendency to generalise risk and suspicion to a whole community rather than limit it to identifiable individuals. Hanniman continues "Police officer respect of members of the public must include a valuing of diversity and an understanding of the differences in ethnicity, culture religion etc."⁷³
79. The implementation of laws or policing practises that discriminate against religious or ethnic minorities tend to lead to a diminution of the relationship between the police and the religious or ethnic community. That can only be unwelcome from a policing perspective.
80. Identification laws that target Muslims can, particularly in the absence of adequate monitoring and reporting, have the potential to be abused or cause disquiet. This potential is recognised in the NSW Ombudsman's report.⁷⁴
81. Police Commissioner Ian Stewart has said "The QPS values its relationship with the Muslim community and continues to work closely with community leaders and members."⁷⁵ The bill does nothing to preserve that relationship.

⁷⁰ Poynting & Mason (n57 above), p367

⁷¹ Scott Poynting and Barbara Perry, *Climates of Hate, Media and State Inspired Victimisation of Muslims in Canada and Australia since 9/11'* (2007) 19(2) *Current Issues in Criminal Justice* p161; Reem Bahdi, *No Exit: Racial Profiling and Canada's War Against Terrorism*, (2003) 41 *Osgoode Hall Law Journal* p 293, 315. Mike Grewcock, *Border Crimes: Australia's War on illicit migrants* (Institute of Criminology, Sydney 2009), p267; Maleiha Malik, *Full-face veils aren't barbaric – but our response can be*, *The Guardian*, 17 Sept 2013, <http://www.theguardian.com/commentisfree/2013/sep/17/full-face-veil-not-barbaric-debate-muslim-women> at 22 October 2013.

⁷² Hage, Ghassan. "Against Paranoid Nationalism: Searching for Hope in a Shrinking Society", (Sydney, Pluto Press) 2003 p247.

⁷³ Wayne Hanniman, *Canadian Muslims, Islamophobia and national security*, (2008) 36 *International Journal of Law, Crime and Justice* 276-7.

⁷⁴ NSW Ombudsman, (n3 above), iii.

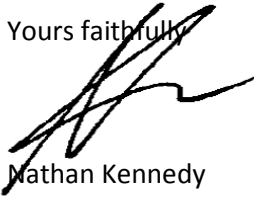
⁷⁵ Kay Dibben, 'Expert claims court had right to demand woman remove her burqa', *The Courier Mail*, 14 June 2013, <http://www.couriermail.com.au/news/queensland/expert-claims-court-had-right-to-demand-woman-remove-her-burqa/story-fnihsrf2-1226663403817#ixzz2WHEqdlSk> at 22 October 2013.

N Australian Lawyers for Human Rights

82. We would like to make this letter available through our website. This is a standard practice for all our work, wherever possible. If you do not want this letter to be made publically available, please can you advise us within 10 business days of receipt of this letter.
83. ALHR was established in 1993. ALHR is a network of Australian law students and lawyers active in practising and promoting awareness of international human rights. ALHR has a national membership of almost 3000 people, with active National, State and Territory committees. Through training, information, submissions and networking, ALHR promotes the practice of human rights law in Australia. ALHR has extensive experience and expertise in the principles and practice of international law, and human rights law in Australia.

If you have any questions in relation to this submission, please contact John Southalan who is ALHR's President, by e-mail <alhr@alhr.asn.au> .

Yours faithfully



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On behalf of:

John Southalan
President
Australian Lawyers for Human Rights