



Our reference: BNE 0143600
Your reference: 11.1.7.c

2 March 2012

Ms Barbara Stone MP
Chair
Legal Affairs, Police, Corrective Services and
Emergency Services Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Ms Stone

IDENTIFICATION LAWS AMENDMENT BILL 2011

Thank you for your letter dated 23 December 2011 inviting submissions on the *Identification Laws Amendment Bill 2011*, which was introduced by Mr Peter Wellington MP and referred to the committee on 13 October 2011 for examination and report.

The Anti-Discrimination Commission Queensland (Commission) is an independent statutory authority established under the Queensland *Anti-Discrimination Act 1991* (the AD Act).

The scheme of the AD Act is to prohibit discrimination, both direct and indirect, on certain grounds in certain areas of activity, unless an exemption under the Act applies, and to provide a mechanism for resolving contraventions of the Act. The prohibited grounds of discrimination include race and religious belief or activity.

The functions of the Commission include promoting an understanding, acceptance and public discussion of human rights in Queensland, as well as inquiring into, and where possible effecting conciliation of, complaints of contraventions of the AD Act.

Under the *Legislative Standards Act 1992*, fundamental legislative principles include the requirement that legislation has sufficient regard to rights and liberties of individuals. Freedom from discrimination on the basis of race and/or religion is a

STATEWIDE
telephone 1300 130 670
teletypewriter 1300 130 680
www.adcq.qld.gov.au
info@adcq.qld.gov.au

BRISBANE
level 17 53 Albert Street
Brisbane Q 4000
City East Post Shop
PO Box 15565
City East Q 4002
DX 44037
FAX 07 3247 0960

CAIRNS
McLeod Chambers
78 Spence St
PO Box 4699
Cairns Q 4870
DX 41346
FAX 07 4039 8609

TOWNSVILLE
level 2 St James Place
155-157 Denham St
Townsville Q 4810
DX 41421
FAX 07 4799 7021

ROCKHAMPTON
level 1 James Larcombe Place
209 Bolsover St
PO Box 1390
Rockhampton Q 4700
DX 41168
FAX 07 4938 4459

fundamental human right recognised in international human rights instruments to which Australia is a party.¹

In passing the *Anti-Discrimination Act 1991* the Queensland Parliament supported the Commonwealth's ratification of the various international instruments, and was satisfied that there was a need to extend the Commonwealth legislation and apply anti-discrimination law consistently throughout Queensland.²

Imposing a requirement that people must reveal their face (as defined in the Bill) has the potential to indirectly discriminate against people with certain religious beliefs and people who might chose to cover their face because of condition that falls within the definition of 'impairment'³ in the *Anti-Discrimination Act 1991*. Indirect discrimination is the imposition of a term, condition or requirement that has the effect of disadvantaging a person because of a protected attribute. Indirect discrimination is unlawful unless the term, condition or requirement is reasonable in the circumstances.

There will be circumstances where it is necessary to establish a person's identity, and where establishing identity involves seeing the person's face. These would include certain police matters, customs and other security matters. The requirement in those circumstances, if performed in an appropriately sensitive manner, would be reasonable and therefore not unlawful discrimination of the person.

It is my view that the terms of this Bill is unreasonable, both in the circumstances in which a person may be lawfully directed to reveal their face, and the definition of 'face'.

For example, the proposed amendment to the *Oaths Act 1867* requires the person taking an affidavit or declaration to see the face of the person making the affidavit or declaration. It is my understanding that it is currently not necessary for a

¹ *International Convention on the Elimination of All Forms of Racial Discrimination*, Article 2;
International Covenant on Civil and Political Rights, Article 2

² Preamble to *Anti-Discrimination Act 1991*

³ See *Anti-Discrimination Act 1991*, Schedule

impairment, in relation to a person, means –

- (a) the total or partial loss of the person's bodily functions, including the loss of a part of the person's body; or
- (b) the malfunction, malformation or disfigurement of a part of the person's body; or
- (c) a condition or malfunction that results in the person learning more slowly than a person without the condition or malfunction; or
- (d) a condition, illness or disease that impairs a person's thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour; or
- (e) the presence in the body of organisms capable of causing illness or disease; or
- (f) reliance on a guide, hearing or assistance dog, wheelchair or other remedial device; whether or not arising from an illness, disease or injury or from a condition subsisting at birth, and includes an impairment that -
- (g) presently exists; or
- (h) previously existed but no longer exists.

person taking an affidavit or declaration to satisfy themselves as to the identity of person before them who wishes to make the affidavit or declaration. Similarly, a judge, magistrate or other person who takes an oath or affirmation from a witness in a court or other judicial or quasi-judicial hearing does not require the person to produce evidence of their identity. It is sufficient that witness states who they are under the oath or affirmation.

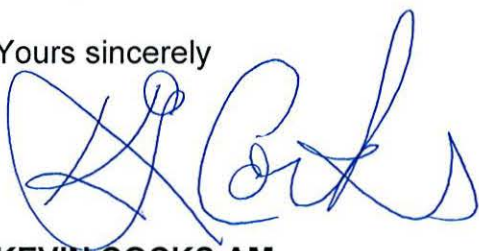
It is also my understanding that in Queensland there are nuns of certain Orders of the Roman Catholic religion who wear headdress that extends below the top of their foreheads, and that turbans worn by people of the Sikh religion can extend below the top of their forehead. Also, some women of the Muslim religion wear a niqab that covers most of the face, or headdress that covers part of the forehead, and some women wear headdress that covers part of the face or forehead as part of their culture. Under the Bill, Mother Theresa would be required to remove her veil in order to establish her identity.

In the limited circumstances where it is truly necessary to remove a headdress to establish a person's identity, it must be done in circumstances that are sensitive to the person. For example, a Muslim woman who covers her face must only be required to reveal her face in private and to a woman. The person who is required to show their face must be given privacy and sensitivity as a matter of course, rather than having to request it.

In conclusion, it is my view that the amendments proposed in this Bill do not have sufficient regard to the rights and liberties of individuals, as it unreasonably discriminates against certain people contrary to the anti-discrimination laws. The amendments to the various pieces of legislation are not necessary as the anti-discrimination laws allow for identification in appropriate circumstances.

Thank you for providing the Commission with the opportunity to make this further submission.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'K. Cocks', written in a cursive style.

KEVIN COCKS AM
Anti-Discrimination Commissioner Queensland