

**CRIMINAL INVESTIGATION (IDENTIFYING PEOPLE) AMENDMENT BILL 2013**

*Council's Amendments — Consideration in Detail*

The following amendments made by the Council now considered —

No 1

Page 6, lines 11 to 13 — To delete the lines and insert —

***face covering*** means an item of clothing, hat, helmet, mask or sunglasses, or any other thing worn by a person, that totally or partially covers the person's face;

No 2

Page 6, line 25 — To delete “any headwear” and insert —  
or adjust any face covering

No 3

Page 6, line 27 — To delete “head” and insert —  
face

No 4

Page 7, line 1 — To delete “headwear” and insert —  
face covering

No 5

Page 7, line 2 — To delete “head is removed.” and insert —  
face is removed or adjusted.

No 6

Page 12, line 1 — To insert after “51(2)” —  
and (3)

Leave granted for amendments 1 to 5 to be considered together.

**Mr J.H.D. DAY:** I move —

That amendments 1 to 5 made by the Council be agreed to.

The effect of these amendments to the bill is to give police the power to request a person to remove their headwear while police are requesting details under powers given to them by virtue of section 16 of the Criminal Investigation (Identifying People) Act 2002. I understand that the definition in the bill requiring people to remove all headwear caused some concerns in some communities. I am acting Minister for Police at the moment on account of an illness in the Minister for Police's family. The Minister for Police undertook consultation with the Muslim and Sikh communities after concerns were raised by them to the minister and her office. Those concerns have been taken into account and a reasonable alternative has been found that means people will be required to remove whatever is covering their face rather than removing all headwear. That is the purpose of these amendments. I am also advised that WA Police are happy with the amendments as they will not adversely affect the way in which they operate; therefore a reasonable compromise was found to ally community concerns. I think I am right in saying that concerns were also raised in debate in this house. We are about to be elucidated on that by one or two members opposite, but the Minister for Police certainly has taken into account the concerns of those particular communities and resolved to agree to this modification.

**Ms J.M. FREEMAN:** I rise to support these amendments. I congratulate the Minister for Police, if not belatedly, for recognising that she received false information from her department. It is really important in this place, when someone from the opposition raises a genuine concern, that they are listened to in the first instance. The minister's advisers may say, “No; these are the issues”, and they say to them, “I have foreseen that this will be an issue for a particular community in Western Australia.” Members of Parliament would not be doing their jobs if they did not stand to represent their communities. Advisers may say, “No; we have consulted” or “No; that's okay”, but ministers must have some confidence that what they are being told is correct.

Let us get this clear: the police department put the word “headwear” instead of “face covering” into the bill to identify a person's face. That was outside what the review found. This legislation was introduced in 2002. It has since been reviewed. The review suggested that the act should be amended so that police can clearly see that a person's face matches the photograph on the licence. The advisers should have been asked why they went a step further than the review. They may say, “That is really necessary because this is actually about helmets for motorcyclists.” That is fine, but it has an adverse impact on a particular section of the community that we respect. As part of the Abrahamic faith, or Muslim belief—which is the basis of many religious faiths in the

world—Muslims cover their hair but their face is shown. Their face is on a licence; it is what should be used to identify them. The member for Gosnells raised this issue during his second reading contribution, and I think he will speak about this again. The minister responded by saying, “Consultation has been undertaken.” That is recorded in *Hansard*. During consideration in detail I put things quite specifically. We talked about the case being relied upon to justify this amendment bill. I said, “It actually hasn’t got anything to do with this.” The case related to a burqa and not to a hijab. In fact it did not relate to what we talked about because the woman pulled back her burqa to reveal her face. It was about a separate issue. The Minister for Police then stood and, despite me asking her to put it on record that this is not about removing the hijab for identification, she commented, “They might have a distinguishing mark somewhere and we have to remove their hijab.” I replied, “I might have a distinguishing mark underneath my T-shirt but no-one is going to ask me to remove my T-shirt!” The minister only listened to her advisers. I pass on my best wishes to the Minister for Police at this time because I know it is a really difficult time for her; I truly do not believe she intended to mislead Parliament. She told us that the community had been consulted, but they had not been consulted. Ministers need to be really clear when they stand in this place and take their advisers’ word that the community has been consulted, that it will not have an adverse impact; or, if it will, a conscious decision is made that it will have an adverse impact. In this case it was, “No; it’s not having an adverse impact. It’s okay because we’ve consulted and people are okay about that.” Despite me asking the minister to put it on the record that no-one will be asked to remove their hijab—because that is an important aspect that would be evident on their licence—the minister would not do that. The minister would not go back and make changes to that provision.

**Mr W.J. JOHNSTON:** I am interested to hear further from the member for Mirrabooka.

**The ACTING SPEAKER (Mr P. Abetz):** Thank you for your interest!

**Ms J.M. FREEMAN:** Despite this, because ministers are in the house they think that they cannot take into account that we are raising legitimate concerns. The Leader of the House is one of the exceptions to the rule; I have raised things with him on previous occasions and he has allowed amendments that take my concerns into account. I recognise that. However, this is a salutary lesson for all of us. When we stand in this place, we are not necessarily standing up to point-score, although that might be part of the issue. However, when we raise legitimate concerns, ministers should not just brush us off by saying, “Oh, no, we’re okay; we’ve consulted”, because then it goes to the other house where, suddenly, they realise people are clearly talking to that stakeholder group that says, “No, you haven’t consulted.” Everyone starts saying, “Actually, this is not a good piece of legislation; it goes beyond what was required in the review.” Beyond what was required! Therefore, we have a department that took it beyond what was required and a minister who did not question why. The minister basically accepted the department’s view that it had talked to those stakeholders.

I think that this is a serious issue. A minister just stood in this place and blithely accepted something that would have an adverse effect on a particular community group. We all want to make sure, because it is our job as representatives of our community, that all of our community voices are heard—not just specific sections and areas. That is our job. This matter did not have to go to the other house and then come back to this place and have me rail. This job sometimes feels like we are yelling into the wind! It just comes back at us when we sit in this place thinking, “I was trying to be rational; I was trying to be reasonable. I was trying to raise something that was pertinent and I was dismissed.” How does it make us feel? People might say it is a small issue, but if it is such a small issue, why are we back in this place dealing with it? If it is such a small issue, why was the Criminal Investigation (Identifying People) Amendment Bill 2013 changed in the other place? The bill was changed because it raised a serious concern for members of a particular group in our community who deserve to be listened to and who deserve that respect. They deserve to be acknowledged that they are law-abiding citizens who in no way want to undermine the law but who want their rights. They respect their responsibilities in the community, but they want their rights to be protected as well.

It is with some regret that I stand to support this bill. I have some regret that ministers cannot be ministers of the state; instead, they are political apparatchiks who say, “The amendment is from the other side; therefore, it can’t be right. We must have done it right.” Ministers should say, “Actually, why don’t I get my ministerial office to just check what my department’s telling me.” If the minister had bothered to do that, this bill would not be back in this place today with changes. From the point of view of someone who often tries to put a positive slant on how we do this job, these sorts of things are completely frustrating. It was not the first time that I raised an issue about legislation in this house with a minister. The previous minister for consumer affairs and his advisers said, “No, no, no; we’re right”, but when the legislation got to the other house, suddenly, it was changed and the bill came back to this place.

I hope other ministers follow the Minister for Planning’s lead; namely, when someone from the opposition raises a legitimate concern from their area, they return to their advisers and department with the question, “Why isn’t that reasonable?” Given that there was a review and the legislation was taken beyond the review, why were my

comments not reasonable? If a minister is told that the department has consulted, they should ask who was consulted. What did they say? The minister should have thought that maybe she could meet with them. It might be a really good thing for a minister of the state to do. Maybe ministers could make sure that they respect people's rights, because they know their responsibilities.

**Mr W.J. JOHNSTON:** I rise to make a couple of comments on the amendments to the Criminal Investigation (Identifying People) Amendment Bill 2013 as well. Firstly, it would appear that members of Parliament have not been told the truth in this respect. During the process of dealing with the debate in this chamber, members were told that the agency had consulted with representatives of the various communities impacted. But when those community representatives came to see the opposition, they said that they had had no consultation on the bill when it went through the Legislative Assembly.

Clearly, there is a major problem here that members of Parliament—not necessarily in the Parliament, but in the process of the agency talking to opposition members—were not telling the truth. I know that the amendments to the bill are under the acting minister, and I appreciate the special circumstances we have today. Perhaps at some later date, if the Leader of the House is not able to today—because I appreciate that he is only acting in his position—it would be good to get an indication of the actual dates of the consultation with the community groups that, in the end, were consulted with following the opposition's raising of these issues in the other chamber. Given that they had asked for the bill to be delayed so it could be changed, I think that is quite important. When I am dealing with a government agency, I accept that when it tells me something it is true. However, on this occasion, there appears to have been a gap between what the opposition was told—as I said, not necessarily in this chamber, but in the process of coming to a conclusion on the bill—and what took place.

When this legislation came through, sometimes it was colloquially known as the “burqa bill”. The member for Mirrabooka talked about women wearing the hijab. One interesting thing to note is that this bill also affected men of the Sikh faith because they wear turbans. Hon Kate Doust, who everybody knows is my wife, was the opposition spokesperson dealing with this matter in the other chamber. Therefore, she was the one being approached by community groups. Although I did not attend any of those briefings or discussions, obviously she and I talked about this matter. She said that Sikh men were very upset by this proposed law because they do not remove their turban outside their house. They were to be required to do something that they would find very distressing.

In the Sikh community, there is a gorgeous young woman who represented the seat of Cannington in the youth Parliament last year. Members can find her speech on the internet, but she gave a very emotional account about her experience as a Sikh woman. She stated how difficult it is sometimes to cope in the more old-fashioned Australian-European style of culture. Many Sikh men shave or trim their beard, which they would not do in strict adherence to their religion, to try to fit in more with the demands of employers et cetera; however, we were passing legislation that made breaching their religion part of the law. I remember that back in the 1990s when the three waves of workplace reforms went through this chamber—years before I was here—a special provision was included in the workplace relations legislation at that time to exempt the Exclusive Brethren from having to show their employment records to a union official. We had the extraordinary situation that one very small group of people living in the far hills was exempted from commercial arrangements that everybody else had to deal with, yet nobody thought to talk to Sikh men about the impact of this legislation upon them. Therefore, we need to really think about the way these things occur.

I fully understand the minister's problems with the special circumstances he finds himself in and perhaps he will not know the answer, but at some time it would be great to have a time line of when those consultations actually took place.

**Mr C.J. TALLENTIRE:** I am delighted to see these amendments eventually come through. As the member for Mirrabooka said so well, the opposition spotted this issue before the introduction of this legislation into this place. We raised this issue with the minister's advisers, who were either deaf to, or dismissive of, our suggestions. The advisers said that they had done their consultation. During the extended process of this bill, I was able to speak to people whom I had thought would have been consulted but I found that they had not been approached by police officials to give their views. In this place we hear from members representing the great Abrahamic faiths on all kinds of issues. Therefore, I find it odd that in this instance one of those great Abrahamic faiths was forgotten and not properly consulted. That is disappointing. The member for Cannington raised the issue of Sikhs, who were forgotten in the process as well. This legislation is better crafted thanks to a tortuous process involving the review in the Legislative Council that changed “headwear” to “face covering”.

It is important that we nurture our community groups so that they can become actively involved in issues. In this case they were. I spoke with people from the Muslim Women's Support Centre of WA during the course of this discussion who pointed out that they do not have a base for their activities. They are constantly struggling to find a little bit of office space. That is a great shame because it would actually help with the consideration of

legislation like this if organisations like this had recognised offices. Perhaps that would have made it easier for the police to seek out these people. Two representatives I spoke to from the support centre, Shamin Samani and Sabah Ibrahim, pointed out that their centre works with all sorts of challenges. Sometimes they work on very difficult issues, ranging from domestic violence to settlement program arrangements. I note that the Minister for Citizenship and Multicultural Interests is in the chamber; and I put a plea to the Parliament that we should consider providing good office space for groups such as the Muslim Women’s Support Centre. This will enable them to be organised and to have a presence, which is a reminder to organisations such as the police department that they can consult with them.

I am pleased to see these amendments come forward at last. I think it will be far better legislation than that which was initially presented to us. However, I share the member for Mirrabooka’s concerns about the process that we have gone through with this legislation, and the lack of accuracy in the accounts of those who advised the Minister for Police.

**Mrs M.H. ROBERTS:** I thank my colleagues for their comments about these amendments passed in the upper house. I think that this is indicative of very poor management by the government. It is also indicative of a Minister for Police who does not listen, and who has, on this matter, actually misled the Legislative Assembly. I look forward to her explaining those matters when she returns to Parliament.

At the time, questions were raised by my colleagues in this house about whether consultation had occurred. At the briefings on this bill, my colleagues actually raised this issue, repeatedly asking why the bill could not refer to “face covering” rather than “head covering” or “headwear”. The member for Gosnells repeatedly raised that issue. The opposition was told that no concession could be made. When I was present at the briefing, we were told that consultation had occurred. The opposition was told a number of times by the Minister for Police, the member for Scarborough, that consultation had occurred with those communities. As we know from the responses from various communities, consultation plainly had not occurred. We asked for these amendments to be made in the Legislative Assembly, yet the government arrogantly used its numbers to steamroll this legislation through this house unamended. It was only when those communities made it very loud and clear—not just to Labor members; they also got in touch with Liberal members of Parliament—that they had not been consulted that the Minister for Police’s misleading of members of this house was exposed and consultation belatedly occurred. What we see today is a result that should have happened when the bill was debated in this house. We should not need to deal with this amendment today; it should have been made and agreed to in this house before it ever went to the Legislative Council.

This highlights that the member for Scarborough is not up to the job of being the Minister for Police. She repeatedly misleads us and mishandles the little legislation that does come before this house. I understand from talking to people in the corridor that the member for Scarborough attempted to blame the former Minister for Police for this provision. That is quite a nonsense. This legislation was not brought forward by him; it was brought forward by the member for Scarborough, and she should take responsibility for it. The member for Scarborough should also apologise to this house for having misled members about the consultation because she was unable to demonstrate the consultation she had undertaken, and the relevant persons advised that they had not been consulted. Fortunately, because of the process and the amendments accepted in the upper house, at last, commonsense has prevailed. I indicate full support for the amendments.

**Mr J.H.D. DAY:** I thank members of the opposition for their support for these amendments. Obviously, I cannot make any comments about specific issues regarding the process on behalf of the Minister for Police, but I am sure that at an appropriate time she will consider the comments that have been made.

**Question put and passed; the Council’s amendments agreed to.**

**Mr J.H.D. DAY:** I move —

That amendment 6 made by the Council be agreed to.

The purpose of this amendment is to correct a drafting oversight. The effect of the amendment is to simply add the words “and (3)” in line 1 on page 12 of the bill. The effect of this amendment is to delete sections 51(2) and 51(3) of the existing act and replace them with a new section 51(2). The words that were omitted should have been included in the bill initially, and it is fortuitous that there is an opportunity to correct this drafting oversight.

**Mrs M.H. ROBERTS:** I thank the acting Minister for Police for his explanation. It does appear to have been a drafting issue and it is good that it was picked up before the bill finally went through both houses of Parliament.

**Question put and passed; the Council’s amendment agreed to.**

**The Council acquainted accordingly.**

**Extract from *Hansard***

[ASSEMBLY — Thursday, 31 October 2013]

p5789b-5792a

Mr John Day; Ms Janine Freeman; Mr Bill Johnston; Mr Chris Tallentire; Mrs Michelle Roberts

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