



25 February 2013

Summary Offences Amendment Review
NSW Ombudsman
Level 24, 580 George St
Sydney NSW 2000

Email: review@ombo.nsw.gov.au

Dear Ombudsman,

Submission – Ombudsman review of police powers related to face coverings and identification

1. Women's Legal Services New South Wales (WLS NSW) is a community legal centre that aims to achieve access to justice and a just legal system for women in the state of New South Wales. We seek to promote women's human rights, redress inequalities experienced by women and to foster legal and social change through strategic legal services, community development, community legal education and law and policy reform work. We prioritise women who are disadvantaged by their cultural, social and economic circumstances. We provide specialist legal services relating to domestic and family violence, sexual assault, family law, discrimination, victims compensation, care and protection, human rights and access to justice.
2. We welcome the opportunity to provide a written submission to the Ombudsman on its review of police powers relating to face coverings and identification.
3. This submission is addressed to questions 4, 5, and 7 of the questions for consideration outlined in the Ombudsman's Issues Paper.

Question 4: Should a police officer be required as a matter of policy to offer privacy to a woman wearing a face covering?

4. Section 19(3)(b)(i) of the *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW) ('LEPRA') states that a police officer who requires a person to remove their face covering must, as far as is reasonably practicable, offer a person privacy if the person requests it.
5. We endorse the findings of the Ombudsman's preliminary consultation suggesting that women should be offered privacy as an option immediately upon being requested to remove a facial covering, rather than having to request it. The reasons for this are fairly straightforward. The experience of our clients demonstrates that many people in the community are unaware of their rights when they come into contact with the police. Additionally, women, particularly culturally and linguistically diverse (CALD) women, or women who have had previous negative engagement with authorities, may be reluctant to assert their rights by requesting privacy, even if they are aware that the law provides for such an entitlement.



6. We believe there will be little foreseeable burden placed upon police by making it a policy to offer privacy to people wearing face coverings as a matter of course, as far as is reasonably practicable.
7. We note that the NSW Police Force *South West Sydney Islamic Information Guide* provides that privacy is a recommended factor for police to consider when requiring a person to remove a facial covering. We would welcome such a consideration being a mandatory one for police and included in the abovementioned Standing Operating Procedures. We believe that such a change would standardise police procedure in this regard.
8. We also encourage ongoing consultation by police with those likely to be affected by the new laws regarding what should be considered 'reasonably practicable'. We believe this will help build better understanding of the new law and appropriate ways to apply the new law.

Question 5: Where a person requests that a police officer of the same sex be available to view their face, should this be made available if reasonably practicable?

9. We endorse the results of the Ombudsman's preliminary consultations, which reported that some women who wear a niqab would not be comfortable with a male police officer viewing their face. While we acknowledge that Muslim organisations have different views on the circumstances in which it is appropriate for a woman to reveal her face for identification purposes, ensuring that female officers view women's faces for identification purposes is a clear manner of avoiding embarrassment and difficulty for women in at least some situations.
10. There appears to be no good reason not to make an officer of the same sex available for the purposes of identifying women wearing face coverings if reasonably practicable.

Question 7: Should the law be amended to provide an additional warning to a person who refuses to remove their face covering that the person's failure to comply may result in their arrest?

11. Although no person has yet been charged with an offence under s 19B of *LEPRA* and no complaints have been made to the Ombudsman about police use of powers under the Act, we recommend that an additional warning be provided about arrest in circumstances where such an arrest is imminent.
12. Currently a person who refuses to remove their face covering for identification purposes is given two warnings. The first warning is that a person has to comply with the request to remove their face covering. The second warning is that refusal to comply with the request is an offence. We agree with the comments in the Issues Paper that people may not necessarily understand these warnings to mean that 'arrest, and time in custody, might also follow'. We therefore support the inclusion of this third warning specifically stating that a person's failure to comply may result in arrest.
13. Arrest may result in serious consequences for a person, both personally and professionally. It is good public policy to avoid arrests and charges being laid where it is reasonably practicable to do so.
14. It does not appear that requiring police to give such an additional warning prior to an arrest places any heavy burden on police in carrying out their duties. This is particularly so, given the relatively low number of times police have so far relied on their new powers under *LEPRA*.

Conclusion

15. Thank you for the opportunity to make a submission to this review. If you would like to discuss any aspect of this submission, please contact Julia Mansour, Solicitor or Liz Snell, Law Reform and Policy Co-ordinator on 02 8745 6900.

Yours faithfully,

Women's Legal Services NSW

Julia Mansour
Solicitor