

Passed by both Houses



New South Wales

Detention Legislation Amendment (Prohibition on Spit Hoods) Bill 2024

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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney,*

, 2024



New South Wales

Detention Legislation Amendment (Prohibition on Spit Hoods) Bill 2024

Act No _____, 2024

An Act to amend various Acts relating to the detention of persons to prohibit the use of spit hoods.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts—

1 Name of Act

This Act is the *Detention Legislation Amendment (Prohibition on Spit Hoods) Act 2024*.

2 Commencement

This Act commences on the date of assent to this Act.

Schedule 1 **Amendment of Children (Detention Centres) Act 1987 No 57**

Section 22A

Insert after section 22—

22A Prohibition on use of spit hoods

- (1) Each of the following officers exercising functions under this Act must not use a spit hood in the exercise of the functions—
- (a) a juvenile justice officer,
 - (b) a correctional officer,
 - (c) a police officer.

Note— A contravention of this subsection may constitute an unauthorised or unreasonable use of force.

- (2) Subsection (1)—
- (a) applies despite any other provision of this Act or another Act or law, and
 - (b) does not limit section 22.

- (3) In this section—

spit hood—

- (a) means a covering, however described, intended to be placed over a person's head to prevent the person from spitting on, or biting, another person, but
- (b) does not include a helmet designed to prevent self-harm, even if the helmet incorporates a part designed to stop spittle.

Schedule 2 **Amendment of Crimes (Administration of Sentences) Act 1999 No 93**

Part 11 Administration

Insert after section 236Q—

Division 9 **Miscellaneous**

236R Prohibition on use of spit hoods

- (1) Each of the following persons exercising functions under this Act must not use a spit hood in the exercise of the functions—
- (a) a correctional officer,
 - (b) a police officer,
 - (c) a person employed for the purposes of a management agreement or submanagement agreement.

Note—A contravention of this subsection may constitute an unauthorised or unreasonable use of force.

- (2) Subsection (1) applies despite any other provision of this Act or another Act or law.
- (3) In this section—
- spit hood***—
- (a) means a covering, however described, intended to be placed over a person's head to prevent the person from spitting on, or biting, another person, but
 - (b) does not include a helmet designed to prevent self-harm, even if the helmet incorporates a part designed to stop spittle.

Schedule 3 **Amendment of Drug and Alcohol Treatment Act 2007 No 7**

Section 49A

Insert after section 49—

49A Prohibition on use of spit hoods

- (1) A person exercising functions under this Act must not use a spit hood in the exercise of the functions.

Note— A contravention of this subsection may constitute an unauthorised or unreasonable use of force.

- (2) Subsection (1) applies despite any other provision of this Act or another Act or law.

- (3) In this section—

spit hood—

- (a) means a covering, however described, intended to be placed over a person's head to prevent the person from spitting on, or biting, another person, but
- (b) does not include a helmet designed to prevent self-harm, even if the helmet incorporates a part designed to stop spittle.

Schedule 4 **Amendment of Law Enforcement (Powers and Responsibilities) Act 2002 No 103**

Section 231A

Insert before section 232—

231A Prohibition on use of spit hoods

- (1) A police officer or other detention officer exercising functions under this Act, including under Part 16, must not use a spit hood in the exercise of the functions.

Note—A contravention of this subsection may constitute an unauthorised or unreasonable use of force.

- (2) Subsection (1) applies despite any other provision of this Act or another Act or law.

- (3) In this section—

authorised place of detention has the same meaning as in Part 16.

detention officer has the same meaning as in Part 16.

spit hood—

- (a) means a covering, however described, intended to be placed over a person's head to prevent the person from spitting on, or biting, another person, but
- (b) does not include a helmet designed to prevent self-harm, even if the helmet incorporates a part designed to stop spittle.

Schedule 5 Amendment of Mental Health Act 2007 No 8

Section 69A

Insert after section 69—

69A Prohibition on use of spit hoods

- (1) An authorised medical officer, or another person, exercising functions under this Act must not use a spit hood in the exercise of the functions.

Note— A contravention of this subsection may constitute an unauthorised or unreasonable use of force.

- (2) Subsection (1)—
- (a) applies despite any other provision of this Act or another Act or law, and
 - (b) does not limit section 69.

- (3) In this section—

spit hood—

- (a) means a covering, however described, intended to be placed over a person's head to prevent the person from spitting on, or biting, another person, but
- (b) does not include a helmet designed to prevent self-harm, even if the helmet incorporates a part designed to stop spittle.

Schedule 6 Amendment of Mental Health and Cognitive Impairment Forensic Provisions Act 2020 No 12

Section 71 Application of provisions of Mental Health Act 2007 to forensic patients and correctional patients

Insert before section 71(a)—

- (a1) section 69A prohibiting the use of spit hoods,