



New South Wales

# Detention Legislation Amendment (Prohibition on Spit Hoods) Bill 2023

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The object of this Bill is to amend various Acts relating to the detention of persons to prohibit the use of spit hoods, which are coverings intended to be placed over a person's head to prevent the person from spitting on, or biting, another person. For the purposes of this Bill, a spit hood does not include a helmet designed to prevent self-harm, even if the helmet incorporates a part designed to stop spittle.

## Outline of provisions

**Clause 1** sets out the name, also called the short title, of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on the date of assent to the proposed Act.

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

**Schedule 1** prohibits the use of spit hoods by a juvenile justice officer, correctional officer and police officer in exercising functions under the *Children (Detention Centres) Act 1987*.

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

**Schedule 2** prohibits a correctional officer or police officer exercising functions under the *Crimes (Administration of Sentences) Act 1999* from using a spit hood in the exercise of the functions.

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

**Schedule 3** provides that a person exercising functions under the *Drug and Alcohol Treatment Act 2007* must not use a spit hood in the exercise of the functions

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

**Schedule 4** provides that a police officer or other detention officer exercising functions under the *Law Enforcement (Powers and Responsibilities) Act 2002* must not use a spit hood in the exercise of the functions.

**Schedule 5      Amendment of Mental Health Act 2007 No 8**

**Schedule 5** provides that an authorised medical officer, or another person employed at a mental health facility, exercising functions under the *Mental Health Act 2007* must not use a spit hood in the exercise of the functions.

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

**Schedule 6** amends the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020* to ensure the prohibition on the use of spit hoods by an authorised medical officer, or another person, exercising functions under the *Mental Health Act 2007* also applies to forensic patients and correctional patients.



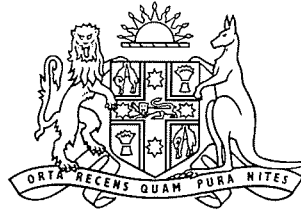
New South Wales

# Detention Legislation Amendment (Prohibition on Spit Hoods) Bill 2023

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New South Wales

# Detention Legislation Amendment (Prohibition on Spit Hoods) Bill 2023

No. , 2023

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## **A Bill for**

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

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**The Legislature of New South Wales enacts—**

1

**1 Name of Act**

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This Act is the *Detention Legislation Amendment (Prohibition on Spit Hoods) Act 2023*.

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**2 Commencement**

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

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<b>Schedule 1</b>	<b>Amendment of Children (Detention Centres) Act</b>	1
	<b>1987 No 57</b>	2
<b>Section 22A</b>		3
Insert after section 22—		4
<b>22A</b>	<b>Prohibition on use of spit hoods</b>	5
(1)	Each of the following officers exercising functions under this Act must not use a spit hood in the exercise of the functions—	6
	(a) a juvenile justice officer,	7
	(b) a correctional officer,	8
	(c) a police officer.	9
	<b>Note—</b> A contravention of this subsection may constitute an unauthorised or unreasonable use of force.	10
(2)	Subsection (1)—	11
	(a) applies despite any other provision of this Act or another Act or law, and	12
	(b) does not limit section 22.	13
(3)	In this section—	14
	<b>spit hood—</b>	15
	(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	16
	(b) does not include a helmet designed to prevent self-harm, even if the helmet incorporates a part designed to stop spittle.	17
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<b>Schedule 2</b>	<b>Amendment of Crimes (Administration of Sentences) Act 1999 No 93</b>	1
		2
<b>Part 11 Administration</b>		3
Insert after section 236Q—		4
<b>Division 9</b>	<b>Miscellaneous</b>	5
<b>236R</b>	<b>Prohibition on use of spit hoods</b>	6
(1)	Each of the following persons exercising functions under this Act must not use a spit hood in the exercise of the functions—	7
	(a) a correctional officer,	8
	(b) a police officer,	9
	(c) a person employed for the purposes of a management agreement or submanagement agreement.	10
	<b>Note—</b> A contravention of this subsection may constitute an unauthorised or unreasonable use of force.	11
		12
(2)	Subsection (1) applies despite any other provision of this Act or another Act or law.	13
		14
(3)	In this section—	15
	<b>spit hood—</b>	16
	(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	17
		18
	(b) does not include a helmet designed to prevent self-harm, even if the helmet incorporates a part designed to stop spittle.	19
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<b>Schedule 3</b>	<b>Amendment of Drug and Alcohol Treatment Act</b>	1
	<b>2007 No 7</b>	2
<b>Section 49A</b>		3
Insert after section 49—		4
<b>49A Prohibition on use of spit hoods</b>		5
(1)	A person exercising functions under this Act must not use a spit hood in the exercise of the functions.	6
	<b>Note—</b> A contravention of this subsection may constitute an unauthorised or unreasonable use of force.	7
		8
		9
(2)	Subsection (1) applies despite any other provision of this Act or another Act or law.	10
		11
(3)	In this section—	12
	<i>spit hood—</i>	13
(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	14
		15
		16
(b)	does not include a helmet designed to prevent self-harm, even if the helmet incorporates a part designed to stop spittle.	17
		18



<b>Schedule 4</b>	<b>Amendment of Law Enforcement (Powers and Responsibilities) Act 2002 No 103</b>	1
		2
<b>Section 231A</b>		3
Insert before section 232—		4
<b>231A Prohibition on use of spit hoods</b>		5
(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.	6
	<b>Note—</b> A contravention of this subsection may constitute an unauthorised or unreasonable use of force.	7
		8
(2)	Subsection (1) applies despite any other provision of this Act or another Act or law.	9
		10
(3)	In this section—	11
	<i>authorised place of detention</i> has the same meaning as in Part 16.	12
	<i>detention officer</i> has the same meaning as in Part 16.	13
	<i>spit hood</i> —	14
(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	15
		16
(b)	does not include a helmet designed to prevent self-harm, even if the helmet incorporates a part designed to stop spittle.	17
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<b>Schedule 5</b>	<b>Amendment of Mental Health Act 2007 No 8</b>	1
<b>Section 69A</b>		2
Insert after section 69—		3
<b>69A Prohibition on use of spit hoods</b>		4
(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.		5 6
<b>Note—</b> A contravention of this subsection may constitute an unauthorised or unreasonable use of force.		7 8
(2) Subsection (1)—		9
(a) applies despite any other provision of this Act or another Act or law, and		10
(b) does not limit section 69.		11
(3) In this section—		12
<b>spit hood—</b>		13
(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		14 15 16
(b) does not include a helmet designed to prevent self-harm, even if the helmet incorporates a part designed to stop spittle.		17 18

<b>Schedule 6</b>	<b>Amendment of Mental Health and Cognitive Impairment Forensic Provisions Act 2020 No 12</b>	1
		2
<b>Section 71</b>	<b>Application of provisions of Mental Health Act 2007 to forensic patients and correctional patients</b>	3
		4
Insert before section 71(a)—		5
(a1)	section 69A prohibiting the use of spit hoods,	6