

DETENTION LEGISLATION AMENDMENT (PROHIBITION ON SPIT HOODS) BILL 2023

STATEMENT OF PUBLIC INTEREST

Need: Why is the policy needed based on factual evidence and stakeholder input?

A spit hood is a hood that covers the face or mouth of the wearer and can typically be secured at the base around the wearer's neck. Spit hoods prevent the person from spitting on, or biting, another person but can also cause trauma, injury or death to the wearer.

The Detention Legislation Amendment (Prohibition on Spit Hoods) Bill 2023 (the Bill) amends legislation governing places of detention in NSW to prohibit the use of spit hoods by officers exercising functions under those Acts. The Bill amends the following Acts:

- *Children (Detention Centres) Act 1987* – this captures youth detention centres
- *Crimes (Administration of Sentences) Act 1999* – this captures correctional centres and court cells
- *Drug and Alcohol Treatment Act 2007* – this captures treatment centres
- *Law Enforcement (Powers and Responsibilities) Act 2002* – this captures police cells and the NSW Police Force generally; and
- *Mental Health Act 2007* and *Mental Health and Cognitive Impairment Forensic Provisions Act 2020* – this captures mental health facilities.

The statutory prohibition on the use of spit hoods will also apply when officers are exercising functions under the respective Acts outside of the place of detention.

Although spit hoods are not currently used in NSW, there is nothing preventing spit hoods being authorised for use in the future. The Bill will enshrine the current operational decision by agencies administering places of detention in NSW to not use spit hoods into law and ensure that only Parliament can authorise future use of spit hoods.

Objectives: What is the policy's objective couched in terms of the public interest?

It is in the public interest to ensure that detention practices in NSW are safe, secure and align with community expectations, and that the use of spit hoods in places of detention be prohibited. Spit hoods present a risk of choking and asphyxiation and can cause trauma, injury, or death to the wearer.

Options: What alternative policies and mechanisms were considered in advance of the bill?

The reforms implement recommendations arising from the Standing Council of Attorneys-General (SCAG) to consider the feasibility of nationally coordinated action to prohibit the use of spit hoods, including legislative prohibition, and for Attorneys General to review individually any residual authorities to use spit hoods in their jurisdictions. Introducing a statutory prohibition on the use of spit hoods in places of



detention can only be done through legislative amendment. As places of detention in NSW are not governed by one single Act, the Bill amends various Acts to ensure the use of spit hoods is prohibited in all relevant settings.

Analysis: What were the pros/cons and benefits/costs of each option considered?

Spit hoods present a risk of choking and asphyxiation and can cause trauma, injury, or death to the wearer. The NSW Government considers it appropriate that legislation governing places of detention in NSW be amended to prohibit the use of spit hoods by officers exercising functions under those Acts.

Protection of people who work with detainees from spitting can be achieved in ways other than using spit hoods. For example, by using personal protective equipment, such as face shields, or by using other appropriate risk mitigation strategies.

Pathway: What are the timetable and steps for the policy's rollout and who will administer it?

The Bill will commence on assent. The statutory prohibition on the use of spit hoods legislates existing operational practice in places of detention in NSW and agencies do not need to take steps to implement the statutory prohibition.

Consultation: Were the views of affected stakeholders sought and considered in making the policy?

The detention settings in NSW are governed by multiple Acts across various Ministerial portfolios. The Ministers for Health, Police and Counter-terrorism, Corrections, and Youth Justice endorsed the introduction of a statutory prohibition on the use of spit hoods in places of detention as part of the consideration of this issue by the SCAG. Affected NSW Government agencies were consulted as part of the SCAG consideration and during drafting of the Bill.