

A Bill to ban spit hoods

Briefing note for governments & legislators

National Ban Spit Hoods Coalition | October 2022

The National Ban Spit Hoods Coalition calls on governments to immediately ban spit hoods **by law — for all persons, in all contexts**. Spit hoods must not be replaced with any cruel alternatives.

The use of spit hoods is a threat to human life and dignity. Their application is usually coupled with physical force as it is put over a person's head in order to purportedly prevent them spitting at others. If a spit hood is occluded with spit, vomit or sweat from a restrained person, it can pose a risk to breathing. The 'prone position', and other dangerous restraint manoeuvres that commonly apply use of physical force, have been observed in deaths of people where spit hoods have been implicated.

South Australia was the first Australian jurisdiction to prohibit the use of spit hoods in 2021 with 'Fella's Bill' / (*Statutes Amendment (Spit Hoods Prohibition) Act 2021 (SA)*) - following the 2016 death in custody of Wayne Fella Morrison. Since then, spit hoods have been further implicated in deaths in custody, and have been recorded in use against persons as young as 12 years old in Australia.

This briefing note outlines:

- why we need a legislative ban on spit hoods, and
- what a bill to ban spit hoods should include to ensure lives are saved.

Why is a legislative ban needed?

We have considered operational bans on spit hoods and to remove the availability of spit hoods as a restraint particularly in police and correctional facilities through policy and regulatory change across Australian jurisdictions. The National Ban Spit Hoods Coalition

believes that a legislative ban on spit hoods is the only avenue to ensure spit hoods are permanently banned across all settings.

A legislative ban is the only option which is:

- **Written into law**
Introducing state and territory Bills will ensure the ban on spit hoods is written into the highest law as the strongest positive protection governments can provide.
- **A safeguard against future policy reversal**
It would provide families of people at risk of being restrained using spit hoods, and families of those who have died, with the security of knowing that the changes introduced by the government of the day will not easily be reversed by subsequent governments. There is precedent for use of restraint changes in Australian jurisdictions being reversed a few years later. For example, following the public outcry over the treatment of young people in the Don Dale youth detention centre in the Northern Territory in 2016, policy and practice changes introduced to prevent specific types of restraint and control were later reinstated in 2019.
- **Transparent and open to scrutiny**
Changes to policies and regulation are easier to change or amend over time, with comparatively less notice or oversight than legislative change. We do not want to see decisions around spit hoods left to the discretion of staff or policies which can be easily changed. A legislative ban would ensure that any future attempts to re-introduce spit hoods would require parliamentary debate, scrutiny, and majority support. Legislative changes must be made publicly available and allow the public's input and media reporting, unlike departmental policy changes, where policy processes are often hidden from view.
- **A high level guidance for practice**
Legislation is the most authoritative source of guidance for police, correctional, mental health and security staff about the source of their power to use of force and restraint. In implementing training and practice, legislation is given more weight and priority over other rules which are only set out in regulation or policy.
- **Consistent with international law**
Spit hoods are torture devices. At international law, where spit hoods are inflicted deliberately by or on behalf of a public official, in an effort to punish, intimidate or coerce, this may amount to torture. The United Nations Convention Against Torture requires states to "take effective, legislative, administrative and judicial or other measures to prevent acts of torture". The Mandela Rules constitute internationally recognised minimum standards for the treatment of prisoners, and expressly prohibit the use of instruments of restraint which are inherently degrading or painful.
- **A demonstration of the seriousness of the issue**
Introducing a Spit Hoods Prohibition Bill serves an important symbolic function, along with a formal apology, to send a clear message to the community about the harm caused by spit hoods, and your commitment to never allow agents of the state to lawfully use them again.
- **What supporters have called for**
Wayne Fella Morrison's family, his community, and over 27,000 people who signed the petition to #BanSpitHoods in South Australia all supported a permanent legislative ban. Our current petition to extend the ban on spit hoods nationally is garnering even more support. Our calls for justice have received widespread media

attention, including across major Australian news outlets, ABC's 4 Corners program, and international news in TIME Magazine and the Washington Post. National Ban Spit Hoods Coalition member Latoya Rule has been invited to present at Massachusetts Institute of Technology (MIT) in Boston, United States this October on the need to ban spit hoods Australia-wide. Australian laws on spit hoods are in the spotlight nationally and globally, and we will continue to advocate for the ban on spit hoods in your jurisdiction until this change is made.

What should a Bill to ban spit hoods look like?

We have provided brief drafting instructions to inform you of the key elements that the National Ban Spit Hoods Coalition believes need to be included in a legislative ban on spit hoods in every jurisdiction. We can provide further information upon request.

We believe a legislative ban on spit hoods must include:

- **A clear purpose**
A Bill to prohibit the use of spit hoods by police, corrections, youth justice and other authorised officers in all detention contexts in every jurisdiction.
- **Clear and broad definitions**
The definition of a spit hood should apply broadly to any material (e.g. mesh, plastic) covering placed over a person's head. The definition should apply to 'spit hoods', 'spit masks', 'spit helmets' and 'safety hoods', but not apply to partial surgical face masks.
- **All ages**
The Bill should apply to people of any age (i.e. not just under 18-year-olds in youth justice contexts).
- **All institutional contexts**
New provisions explicitly limiting the use of force or use of restraints across all institutional contexts (e.g. for police officers, correctional officers, employees in mental health facilities, security guards, youth justice officers, or other authorised officers given power to use reasonable force against people in places of custody or detention, including transport to and from places of custody or detention).
- **Use of existing civil penalties**
The provisions should prohibit the use of spit hoods in the Bill, which would lead to civil sanctions if the laws were not followed (e.g. workplace disciplinary proceedings against employees). The Bill should not include criminal penalties or the introduction of new criminal offences.
- **Acts to be amended**
We consider that the Bill would need to amend any and all *Correctional Services Acts*, *Mental Health Acts*, *Sheriff's Acts*, and *Youth Justice Administration Acts*, and the like.