



Queensland
Human Rights
Commission

Current issues and good practices in prison management – Thematic report of the Special Rapporteur on Torture

Submission to Special Rapporteur on Torture

27 November 2023

Table of contents

Table of contents.....	1
About the Commission	2
Summary.....	2
Strip searches of women	2
Recent human rights review	2
Ineffective nature of strip searches	2
Negative impact on prisoners and staff.....	3
Marginalised prisoner populations	4
Disproportionate and inconsistent approaches to searches	4
Alternatives and recommendations.....	4
Use of spit hoods in prisons	5
In Queensland	5
Reasons for using spit hoods	7
Other jurisdictions.....	8
South Australia	8
Police	9
Interstate correctional facilities.....	10
Conclusion	10

About the Commission

1. The Queensland Human Rights Commission (QHRC) is a statutory body established under the Queensland *Anti-Discrimination Act 1991* (AD Act).
2. The QHRC deals with complaints of discrimination, sexual harassment, vilification, and other objectionable conduct under the AD Act, and with human rights complaints under the *Human Rights Act 2019* (HR Act).
3. The QHRC also has functions under the AD Act and the HR Act to promote an understanding and public discussion of human rights in Queensland, and to provide information and education about human rights.

Summary

4. Thank you for the opportunity to make submissions in relation to the Special Rapporteur's fourth report on current issues and good practices in the management of prisons.
5. The QHRC understands that this report, to be presented to the 55th session of the Human Rights Council, will consider challenges in preventing and responding to torture and other cruel, inhuman or degrading treatment or punishment in prison settings, and identify concrete solutions to these challenges.
6. In making this submission the QHRC seeks to highlight two issues for the Special Rapporteur to consider in compiling her report:
 - Strip searches of women in prison
 - Use of spit hoods in correctional settings.

Strip searches of women

Recent human rights review

7. *Stripped of our dignity* is the QHRC's recent report on our human rights review of the practice of strip searching women in Queensland prisons. In our report we conclude that strip searches fail to achieve improved prison safety and, at the same time, unreasonably limit the human rights of prisoners, their children and families, and prison staff.
8. The next section of this submission sets out some of the highlights of the QHRC's report.

Ineffective nature of strip searches

9. The primary objective of strip searches is to prevent the entry of contraband into prisons. However, the QHRC's report challenges the effectiveness of strip searches in achieving this objective. Despite being entrenched practice in prisons

worldwide, there is scant evidence supporting the efficacy of strip searches. Examining data from a range of sources, the QHRC identified that strip searches have a negligible contraband detection rate, ranging from 0.01% to 0.015%.

10. The perception that strip searches act as a deterrent is unsupported by empirical evidence. Prisons that have reduced the use of strip searches reported no increase in contraband smuggling, suggesting that alternative measures can maintain security without resorting to such intrusive methods.

Negative impact on prisoners and staff

11. The report outlines the severe psychological, emotional, and physical consequences of strip searches on female prisoners. Many incarcerated women have experienced trauma, and strip searches often trigger distressing memories. The process leads to vulnerability, shame, and discomfort, eroding bodily autonomy and perpetuating power imbalances. This, in turn, hinders rehabilitation efforts and undermines the confidence and self-esteem of female prisoners.
12. The drug testing process, which in Queensland incorporates a mandatory strip search prior to the prisoner providing a urine sample, causes serious humiliation and distress to female prisoners. Concerns include a lack of privacy, unhygienic conditions, and restrictions on using toilet paper during the process. The impact of trauma can lead to an inability for prisoners to provide a urine sample, which leads to an automatic 'positive' finding, disciplinary breaches and other adverse consequences.
13. Strip searching and urine testing have significant impacts on corrective services officers, including concerns for their physical safety, the potential for vicarious trauma, while causing strained relationships with prisoners. Reducing the frequency of strip searches and introducing body scanners and saliva swab testing would reduce the development of vicarious trauma for staff members and encourage mutually respectful relationships between staff members and prisoners.
14. Aside from the immediate psychological impacts on prisoners and staff, the report also explores the longer-term consequences of strip searches in reducing contact with children and family and in deterring medical treatment.
15. The report highlights that strip searches before and after personal visits in Queensland prisons act as a deterrent to receiving visitors, discouraging prisoners from maintaining crucial connections with their families and children. Additionally, the report addresses the negative impact of strip searches following visits by lawyers or service providers, deterring women from seeking legal assistance or counselling.
16. Further, the report explores how strip searching in women's prisons, particularly for low-security women, serves as a significant deterrent or cause of delayed treatment in prisoners seeking necessary medical care, including mental health treatment.

Marginalised prisoner populations

17. The QHRC's report highlights the intersectional nature of the impact of strip searches on marginalised prisoners. Aboriginal and Torres Strait Islander women, prisoners with disabilities, religious minorities, pregnant women, prisoners with children residing with them in custody, and transgender or gender diverse prisoners experience additional challenges and trauma during strip searches. The review calls for specific, sensitive approaches to address the needs of these groups.

Disproportionate and inconsistent approaches to searches

18. The report identifies the inadequacy of information and guidance for prisoners prior to and during strip searches, exacerbating the already traumatic nature of the experience. Prisoners, particularly those with limited proficiency in English, face challenges in comprehending and coping with the process. To address this, the report recommends that corrective services officers verbally communicate information about the strip search process and its expectations. Moreover, multilingual signs containing relevant information should be prominently displayed where strip searches occur, promoting transparency and respect.
19. The report addresses significant concerns regarding inconsistencies in strip searching methods and practices. Differences in the interpretation and application of policies result in varying levels of invasiveness during strip searches, causing heightened anxiety for prisoners, unaware of what to expect.
20. Regarding the use of force, the report recommends that it should only be employed when absolutely necessary, emphasizing the importance of de-escalation techniques in corrective services officer training. The report strongly discourages forced strip searches due to non-compliance unless there is a real and present risk to the prisoner. Instead, alternative measures such as pat-down or scanning searches are recommended, urging an update of policies to reflect these less restrictive options.
21. The use of surveillance and body-worn cameras during strip searches raises privacy concerns for prisoners, particularly when male officers are perceived to have access to monitoring devices. The report highlights the serious infringement on the right to privacy and the potential exacerbation of trauma and humiliation when prisoners feel observed during strip searches. While some corrective services officers take steps to protect privacy, and we recommend clearer policies and guidelines to ensure a consistent approach to the use of surveillance and body-worn cameras during strip searches.

Alternatives and recommendations

22. During the review, the QHRC conducted a comprehensive analysis of policies and procedures across Australian and comparable jurisdictions to identify best practice options for the use of searches on women.

23. The report advocates for the adoption of less intrusive alternatives, such as body scanners and saliva swab testing, which have proven to be successful in other Australian jurisdictions.
24. The recommendations of the QHRC's report aim to ensure the search procedures in Queensland prisons are more trauma-informed and compatible with human rights. The QHRC recommends that most routine strip searches immediately cease, except for when a prisoner enters into prison custody for the first time, and no scanner is available in the centre.
25. While recommending that strip searches occur only in rare circumstances, the report includes a suggested step-by-step search methodology in the cases where strip searches occur because there are no less restrictive options available.

Progress of report implementation

26. At the time of writing, Queensland Corrective Services is still in the process of considering the report in detail, but made some initial policy changes in September 2023:
 - to cease routine searches of women who are leaving for returning from low security settings
 - to confirm that pregnant prisoners, regardless of how far their pregnancy has progressed, will not be searched before attending medical appointments or returning from appointments
 - restricting the use of force to only 'immediate risk that endangers life' and escalated approval protocols.
27. The QHRC understands that women's prisons will be equipped with body scanners, and the implementation of policy changes will occur alongside the roll out of scanning technology.
28. The QHRC will continue to monitor progress in the implementation of our recommendations in the coming months.

Use of spit hoods in prisons

In Queensland

29. The use of spit hoods in Queensland prisons is authorised under the *Corrective Services Act 2006*. Under section 143 of that Act, a corrective services officer may use force, other than lethal force, against a prisoner that is reasonably necessary to compel compliance with an order, restrain a prisoner from committing an offence or breach of discipline, or prevent self-harm. However, force may only be used if the officer –
 - reasonably believes the act or omission permitting the use of force cannot be stopped in another way; and

- gives a clear warning of the intention to use force if the act or omission does not stop; and
 - gives sufficient time for the warning to be observed; and
 - attempts to use the force in a way that is unlikely to cause death or grievous bodily harm.¹
30. Queensland Corrective Services publish custodial operations practice directives (COPDs) intended to provide a consistent framework to direct staff in undertaking their duties.² The COPD on *Tactical Options Response – Use of Force* is not publicly available. However, safety hoods are referred to in the COPD for *Case Management*, which requires the recording of certain information on the electronic Integrated Offender Management System (IOMS) for every incident a safety hood is used.³
31. In 2018-19, there were 51 incidents of spit hood use in Queensland correctional centres. This increased to 114 incidents in 2020-21, and to 122 incidents on 89 prisoners in 2021-22. For the 2021-22 financial year, more than half of the prisoners subject to spit hoods were First Nations people.⁴
32. In its December 2022 newsletter, Queensland Corrective Services noted the announcement of an operational review of safety hoods examining current practices and systems governing their use. A number of workshops were held around the state to provide corrective services staff the opportunity to contribute to the review.⁵ No further information on this project has been made publicly available.
33. The Queensland Coroners Court is currently conducting an inquest into the death in custody of 44-year-old Samoan woman Selesa Tafaifa. Selesa died in Townsville Women’s Correctional Centre in November 2021 shortly after force was used against her, including physical restraint and a spit hood. Issues before the coroner include the adequacy and appropriateness of her diabetes and

¹ *Corrective Services Act 2006* (Qld) ss 143(1) and (2).

² Queensland Corrective Services, ‘Custodial operations practice directives’ (Web Page, 6 October 2023) < <https://corrections.qld.gov.au/documents/procedures/custodial-operations-practice-directives/>>.

³ Queensland Corrective Services, Practice Direction, *Custodial Operation Practice Directives (COPD): Daily Operations Case Management*, Ver 07, 02/02/2023.

⁴ Emma Pollard, ‘Inquest begins for Selesa Tafaifa who said ‘I can’t breathe’ before dying with a spit hood over her head in Queensland prison’, *ABC News* (9 October 2023) <<https://www.abc.net.au/news/2023-10-09/qld-prisoner-selesa-tafaifa-died-spit-hood-inquest/102944660>>; Queensland Parliament, Question on Notice, 1 September 2022 (M Berkman, Question No 978 ‘Spit hoods’ to the Minister for Police and Corrective Services and Minister for Fire and Emergency Services).

⁵ Queensland Corrective Services, ‘Messages from the Deputy Commissioners’, *Corrections News* (December 2022) 4 < https://corrections.qld.gov.au/wp-content/uploads/2022/12/20221223_DECEMBER_small-sizetest7.pdf>.

insulin management, the appropriateness of the use of safety hoods in corrective services custody, and the adequacy and appropriateness of mental health care in the year prior to Selesa's death. Further evidence on the inquest is scheduled to be heard in May 2024. The QHRC has intervened in the inquest to raise issues relevant to the application of Queensland's HR Act.

34. Under Queensland coronial legislation, all deaths in custody must be investigated by inquest hearing and have the findings published.⁶ In appropriate cases, the coroner may also comment on anything connected with a death investigated at an inquest that relates to public health or safety, the administration of justice or ways to prevent deaths from happening in similar circumstances in the future.⁷

Reasons for using spit hoods

35. Queensland Corrective Services advise that safety hoods are in use to prevent or minimise risk to officers of contracting a blood-borne virus (BBV) resulting from a prisoner spitting on or biting an officer.⁸

36. There are a limited number of studies in Australia that outline the risk of transmitting BBV through spitting or biting. The few studies that are available have shown there is a low to no risk of frontline workers contracting BBVs from contact with sweat, saliva, sputum, urine, vomit or faeces if not contaminated with blood. The risk increases to low to medium where there is visible blood and comes into contact with broken skin. The risk of transmission can also be reduced where the person with the BBV is on treatment, and in the case of Hepatitis B, where the worker is vaccinated.⁹

37. In view of the existing evidence, it is difficult to justify the continued use of spit hoods in prisons and other settings given their use has been viewed as 'inherently dehumanising'¹⁰ and an 'archaic practice that amount[s] to ill-treatment'.¹¹ The Australian Federal Police concluded just that in their review of

⁶ *Coroners Act 2003* (Qld) ss 27(1)(a), 46A.

⁷ *Coroners Act 2003* (Qld) s 46.

⁸ Queensland Parliament, Question on Notice, 1 September 2022 (Mr M Berkman, Question No 978 'Spit hoods' to the Minister for Police and Corrective Services and Minister for Fire and Emergency Services).

⁹ Eg, ASHM Health, *Police and Blood-Borne Viruses 2023* (2023) < https://ashm.org.au/wp-content/uploads/2023/09/ASHM-Police-BBV_v4.pdf>, Australian Federal Police Review, *Review of the use of spit hoods by the AFP* (2023) < <https://www.afp.gov.au/sites/default/files/2023-09/LEX%201561%20-%20Documents.pdf>>.

¹⁰ Lorraine Finlay (Human Rights Commissioner, Australian Human Rights Commission), 'CAT Opening Statement', *Human Rights Commissioner to raise juvenile and immigration detention concerns with UN torture committee in Geneva* (Web Page, 14 November 2022) < <https://humanrights.gov.au/about/news/media-releases/human-rights-commissioner-raise-jvenile-and-immigration-detention>>.

¹¹ United Nations Office of the High Commissioner for Human Rights 'Experts of the Committee against Torture Comment Australia's Comprehensive Responses and Statistical Data, Raise Questions on High Imprisonment Rates and Immigration Detention Policies' (Web

the use of spit hoods and on 14 April 2023 announced that the Australian Federal Police and ACT police will no longer use spit hoods.¹²

38. Further, the lack of publicly available information on the governance and training in the use of spit hoods within Queensland Corrective Services does not allow for external oversight and scrutiny of the practice. For example, it is not known if officers are educated on the actual risks of transmission, what focus is given to alternative de-escalation techniques, or whether there are prohibitions or adjustments on the use of spit hoods for prisoners with particular medical, physical or psychological conditions which increase the risk of harm.
39. The newly established Queensland Inspector of Detention Services has published inspection standards for Queensland prisons.¹³ Standard 33 states that ‘Spit hoods are never used on prisoners. If spitting by prisoners is a concern, other practical alternatives are available to prevent exposure by staff.’
40. The Guiding Principles for Corrections in Australia, which represents a statement of national intent, also provides:

3.1.5 All appropriate measures are taken to ensure no injuries or unnatural deaths occur to staff, visitors or prisoners/ offenders.

3.1.14 Prison staff are trained in appropriate methods of restraint and control, based on the principle of de-escalation and using the minimum level of force required to maintain good order, the safety of the public, staff and other prisoners.

3.1.15 Use of force and security measures, including instruments of restraint, weapons and chemical agents, are lawful but used as a last resort with the minimum force necessary used to manage the situation.

3.1.16 Instruments of restraint are not used on prisoners receiving treatment for significant medical conditions, such as end of life care or pregnancy, unless there is a serious risk to themselves or others, a substantial risk of escape, or they cannot be restrained by any other means.

Other jurisdictions

South Australia

41. South Australia is the only Australian state with an absolute legislative ban on spit hoods. Spit hoods were banned in 2021 from being used in mental health

Page, 16 November 2022) < <https://www.ohchr.org/en/news/2022/11/experts-committee-against-torture-commend-australias-comprehensive-responses-and>>.

¹² Australian Federal Police Review, Review of the use of spit hoods by the AFP (2023) < <https://www.afp.gov.au/sites/default/files/2023-09/LEX%201561%20-%20Documents.pdf>>; Australian Human Rights Commission, ‘Commission welcomes banning of spit hoods by AFP’ (Media release, 14 April 2023) <<https://humanrights.gov.au/about/news/media-releases/commission-welcomes-banning-spit-hoods-afp>>.

¹³ Inspector of Detention Services, *Inspection standards for Queensland prisons* (August 2023).

institutions, police custody and correctional centres. The ban came five years after the death of Wayne Fella Morrison who died in custody and had been wearing a spit hood (referred to as a spit mask). The coroner's findings in that case included:

- It was necessary to use a spit hood.
- The Department of Correctional Services provided no training to correctional officers in the use of spit hood and/or the dangers associated with incorrect use.
- The spit hood was potentially one of many factors that contributed to the death, but it cannot be said on the evidence that it was the primary causative factor.¹⁴

42. The South Australian amendment was assented on 25 November 2021 under *Statutes Amendment (Spit Hood Prohibition) Act 2021 (SA)*. The Act describes a spit hood as 'a covering (however described) that is intended to be placed over a person's head to prevent the person from spitting at or biting another person'. A person who is found guilty of applying a spit hood on the head of another person may face a maximum penalty of 2 years imprisonment.

Police

43. The Queensland Police Service have made a policy decision to ban the use of spit hoods as of 16 September 2022 following an internal review. Alternative safety measures for police include 'increased [personal protective equipment], additional protective screens and rolling out a new operational skills training program for watch house staff.'¹⁵ Police are commonly in contact with people whose BBV status is unknown.
44. The Australian Federal Police and the ACT Police announced a formal ban on 14 April 2023.
45. Spit hoods are not used by police in New South Wales, Victoria and Tasmania, although no formal bans are in place. Western Australian police continue to use spit hoods as a 'last resort.'¹⁶
46. In October 2022, the Northern Territory police agreed to end the use of spit hoods on young people. In a 2023 investigation report, the Northern Territory

¹⁴ *Inquest into death of Wayne Fella Morrison* (Findings of Inquest, Coroners Court of South Australia, 12 May 2023).

¹⁵ Queensland Police Service, 'QPS discontinues use of safety hoods in watchhouses', *myPolice Queensland Police News* (Web Page, 19 September 2022) <<https://mypolice.qld.gov.au/news/2022/09/19/qps-discontinues-use-of-safety-hoods-in-watchhouses/>>.

¹⁶ Alicia Bridges, 'WA police, prisons to keep using spit hoods banned by Australian Federal Police', *ABC News* (20 April 2023) <<https://www.abc.net.au/news/2023-04-20/wa-to-keep-using-spit-hoods-after-afp-ban/102243588>>.

Ombudsman recommended that the state government legislate to preclude the future use of spit hoods.¹⁷ However, no ban has been legislated, and there are no plans to ban Northern Territory police from using spit hoods on adults ‘in exceptional circumstances with mandatory reporting requirements’..¹⁸

Interstate correctional facilities

47. It has been difficult to identify the approach to spit hoods in prisons outside of Queensland.
48. It appears that spit hoods are not in use in New South Wales correctional facilities.¹⁹
49. Corrections Victoria amended policy in 2023 to prohibit the use of spit hoods on children in adult custody.²⁰

Conclusion

50. In conclusion, the QHRC recommends that prisons should:
 - reduce and ultimately eradicate the use of strip searches and urine tests in prisons, particularly those involving women.
 - critically evaluate the use of spit hoods, with a view to eradicating their use, including through a legislative ban.
51. The QHRC appreciates the opportunity to comment on specific issues regarding the management of prisons, and are available to answer any further questions in relation to this submission.

¹⁷ Ombudsman NT, *Extraordinary restraint: Spit Hood & Emergency Restraint Chair Use on Children in Police Custody* (Investigation Report, June 2023) <https://www.ombudsman.nt.gov.au/sites/default/files/downloads/restraints_report_final.pdf>.

¹⁸ Amanda Parkinson, *Activists want NT to make spit hoods illegal after report found they were used on children 27 times* (5 September 2023) *The Guardian* <<https://www.theguardian.com/australia-news/2023/sep/05/nt-police-watchdog-calls-for-ban-on-spit-hoods-on-children-northern-territory>>.

¹⁹ Parliament of New South Wales, Questions and Answers No 732, Legislative Council, 2 May 2022 (Tara Moriarty, question 8754 'Spit hood use in NSW' to the Minister for Families and Communities, and Minister for Disability Services).

²⁰ Adeshola Ore, ‘Dehumanising’: Aboriginal teen subjected to spit hood at Victorian prison’, *The Guardian* (9 November 2023) <<https://www.theguardian.com/australia-news/2023/nov/08/aboriginal-teenager-spit-hood-adult-prison-dehumanising>>.