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Investigation concerning the use of spit hoods in the
Adelaide Youth Training Centre | September 2019



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Investigation under section 13(2) of the
Ombudsman Act 1972 concerning the
Department of Human Services

Ombudsman ref: 2017/03135; 2017/05397

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Introduction

On 25 July 2016 a report on the ABC's Four Corners programme, 'Australia's Shame', aired disturbing footage of children and young people detained in the Don Dale Youth Detention Centre in the Northern Territory. That footage raised questions about several practices used in the Northern Territory's youth justice system, including the use of 'spit hoods' on children and young people within the juvenile detention setting.

The Four Corners report was the impetus for a Royal Commission and Board of Inquiry into the Northern Territory's child protection and youth detention systems (**the NT Commission**). In its final report the NT Commission recommended, among other things, that the use of spit hoods be prohibited in that jurisdiction.¹

During the course of the NT Commission, local media reports raised questions about the use of spit hoods in South Australia's youth detention system. Those reports included a call from the chairperson of the South Australian Council for Civil Liberties for an investigation into the use of spit hoods in the South Australian context.²

In light of the media reports, and following preliminary consultation with the Guardian for Children and Young People, I determined to commence an 'own initiative' investigation concerning the use of the practice using my powers under section 13(2) of the *Ombudsman Act 1972*.

My investigation sought a response from the department in charge of the AYTC and reviewed CCTV footage, incident reports and other records concerning the use of spit hoods over a sample period. The investigation also liaised with representatives of Australia's other states and territories concerning the practices and implements used in those jurisdictions.

The investigation ultimately concluded that the application of spit hoods to children and young people detained in the Adelaide Youth Training Centre was not consistent with the objects and guiding principles of the youth justice system and appeared contrary to the Charter of Rights for Youths Detained in Training Centres. The investigation recommended that the use of spit hoods be phased out over a period of 12 months and that, where practicable, additional protective equipment, training and other measures be made available to staff working in the Adelaide Youth Training Centre to mitigate against the risk of injuries caused by spitting and biting. The investigation also recommended that the South Australian government review the legislative provisions authorising the use of force within youth training centres.

The Department of Human Services, which now administers the Adelaide Youth Training Centre, provided a thoughtful response to my provisional report. Without necessarily accepting that the use of spit hoods was in contravention of the rights of children and young people, it acknowledged that there was insufficient emphasis on the use of alternatives to spit hoods during the period reviewed by the investigation. The department observed that its incident management and review processes had 'matured significantly' since the period in question and pointed to the significant reduction in the use of spit hoods within the Adelaide Youth Training Centre over the past 12 months.

The department and staff working in the Adelaide Youth Training Centre should be commended for what they have already achieved. With sufficient motivation and forethought, I am confident that the use of spit hoods within the Adelaide Youth Training Centre will soon become a thing of the past.

¹ *Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory*, Vol. 2A, p. 249 (recommendation 13.1).

² "Spit Hoods" Used on Youth SA Detainees, but Differ from Those in NT', *The Advertiser*, 3 August 2016; 'Spit Hoods Being Used at Alarming Rate in Youth Detention', *Seven News Adelaide*, 19 March 2017.

Terminology

The Adelaide Youth Training Centre is administered by the Department of Human Services. Prior to 17 May 2018, this agency was known as the Department for Communities and Social Inclusion. I have used the term **'the department'** to refer to the agency under both titles.

Both the department and the policy framework applicable to youth detention in South Australia use the term 'resident worn spit protection' to refer to the implements at issue in this investigation, whereas the Four Corners story and subsequent media reports have variously used the terms 'spit hoods', 'spit masks' and 'spit helmets'.

During the period examined by this investigation the Adelaide Youth Training Centre made use of two types of resident worn spit protection. The first type, now no longer in use, comprised a mesh hood with a kind of white, wrap-around sleeve that fitted below the eyes, covering the nose and mouth. The second type, still in use today, comprises a semi-transparent, flesh-coloured mesh hood, not dissimilar to a stocking, with a reinforced plastic area covering the nose and mouth. In this report, I have used the term **'spit hood'** to collectively refer to both types of implement.

In some cases, the Adelaide Youth Training Centre may accommodate individuals aged 18 years or older. In this report, I have used the term **'children'** to refer to residents under the age of 18 and **'young people'** to refer to residents aged 18 years or older or those of uncertain age. It should be noted that all of the incidents specifically reviewed by my investigation concerned children.

The Adelaide Youth Training Centre may in some circumstances place children and young people in areas designated as 'safe rooms'. I have used the term **'isolation cell'** to describe these areas of the facility.

Investigation

The investigation involved:

- seeking and assessing information from the department
- meeting with the Chief Executive of the department and officers of the Youth Justice unit
- reviewing CCTV footage concerning the use of spit hoods in 12 specific incidents
- analysing the department's records concerning the use of spit hoods and other instruments of restraint
- examining a spit hood of the type currently used in the Adelaide Youth Training Centre
- seeking and considering information from other Australian jurisdictions
- considering academic research and other materials relevant to the use of spit hoods and other restrictive practices within custodial settings
- considering local policies, South Australian legislation and domestic and international human rights instruments applicable to the treatment of children and young people deprived of their liberty, including:
 - the *Young Offenders Act 1993*
 - the *Youth Justice Administration Act 2016*
 - the *Youth Justice Administration Regulations*
 - the *Family and Community Services Regulations 2009*
 - the *Children and Young People (Oversight and Advocacy Bodies) Act 2016*
 - the Adelaide Youth Training Centre operational and security orders: *Use of Mechanical Restraint, Use of Reasonable Force and Incident Reporting*
 - the Charter of Rights for Youths Detained in Training Centres
 - the Principles of Youth Justice in Australia
 - the Convention on the Rights of the Child
 - the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
 - the United Nations Standard Minimum Rules for the Treatment of Prisoners
 - the United Nations Rules for the Protection of Juveniles Deprived of their Liberty
 - the United Nations Standard Minimum Rules for the Administration of Juvenile Justice
 - the United Nations Guidelines for the Prevention of Juvenile Delinquency
- preparing a provisional report and considering responses made by the department and the Guardian for Children and Young People
- preparing this final report.



Image 1: Promotional image depicting the type of spit hood formerly used within the AYTC



Image 2: Promotional image depicting the type of spit hood currently used within the AYTC



Image 3: Staff pin a child to the floor prior to the application of a spit hood



Image 4: After removing a spit hood and leg restraints, a 14 year-old child sits in the corner of an isolation cell

The Adelaide Youth Training Centre

1. The Adelaide Youth Training Centre (AYTC) is a youth detention facility located in Cavan, approximately 13 kilometres north of Adelaide. It is operated and managed by the department's Youth Justice division.
2. The AYTC is comprised of two campuses, Jonal Drive and Goldsborough Road. The Goldsborough Road campus was officially opened in September 2012 and replaced the former Magill Training Centre.
3. The AYTC generally accommodates children of both sexes between the ages of 10 and 17 years. In some circumstances the facility may continue to accommodate young people beyond their 18th birthday.³
4. According to the department, there were a total of 608 admissions to the AYTC during the 2018-19 period, down from 671 during the previous year. The AYTC accommodated an average of approximately 42 children and young people per day during this period.
5. According to data compiled by the Guardian for Children and Young People, of the children and young people admitted to the AYTC during the 2017-18 period:
 - 9.3 per cent were young women
 - 24.3 per cent were subject to a guardianship order at time of admission
 - 62.3 per cent were of Aboriginal or Torres Strait Islander cultural background.⁴

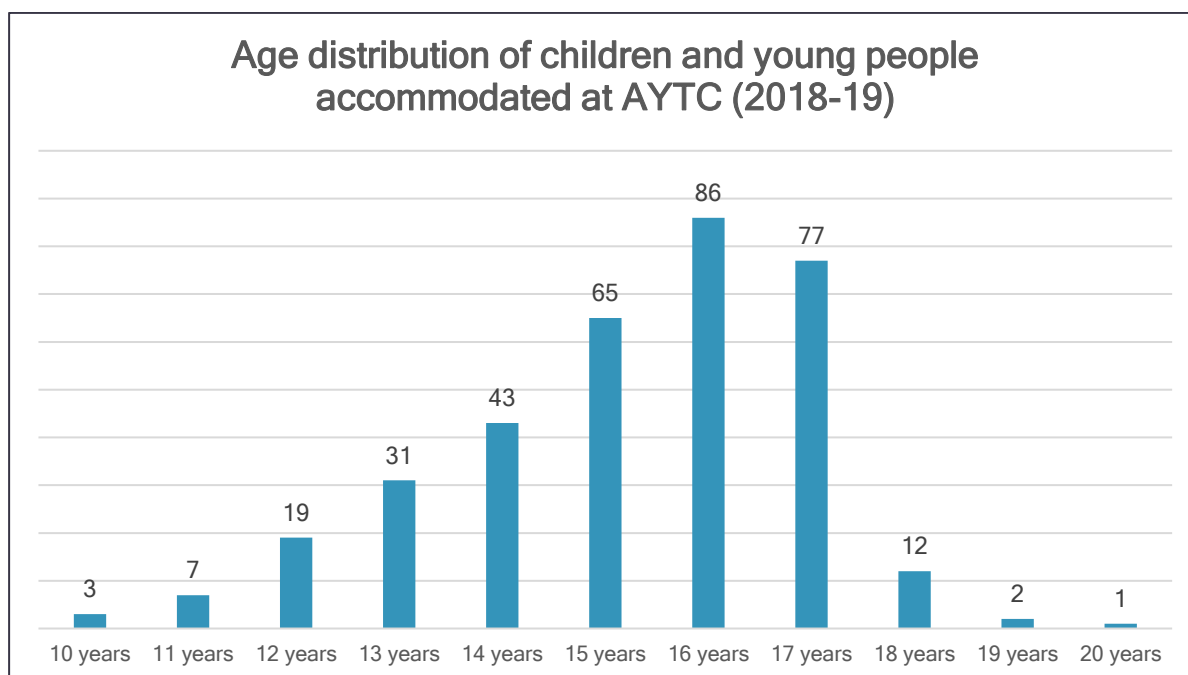


Figure 1: Age distribution of children and young people accommodated at AYTC during the 2018-19 period (Department of Human Services; Ombudsman SA)

³ See, e.g., Young Offenders Act, section 39(6).

⁴ Guardian for Children and Young People, *The Adelaide Youth Training Centre – Snapshot 2017-18*, available at <<http://www.gcyp.sa.gov.au/the-adelaide-youth-training-centre-snapshot-2017-18/>> last accessed 10 July 2019.

Legislation and policies governing the use of spit hoods in the AYTC

6. The Youth Justice Administration Act requires that the administration and day-to-day operation of youth training centres be informed by the need to 'promote the wellbeing and best interests' of children and young people.⁵
7. The Act requires that the management of children and young people detained in training centres 'be designed to achieve their rehabilitation and development into responsible members of the community and the proper realisation of their potential.'⁶
8. Section 29(f) of the Act generally prohibits the use of mechanical restraints to restrict a child or young person's free movement in a training centre.
9. The prohibition is qualified by the Youth Justice Administration Regulations. Under the Regulations, the free movement of a child or young person in a training centre may be restricted by use of mechanical restraints in circumstances where:
 - the mechanical restraint is of a kind approved by the Chief Executive for the purpose; and
 - staff believe on reasonable grounds that:
 - the child or young person is about to harm themselves or another person; or
 - it is necessary to restrain the child or young person to preserve the security of the centre, to prevent the resident from escaping from custody or to preserve community safety.⁷
10. The Chief Executive of the department has approved 'resident worn spit protection' as a kind of mechanical restraint for use on children and young people in the AYTC.⁸
11. Under the Regulations, mechanical restraints, including spit hoods, may only be used as a last resort following an assessment of the risks associated with using, or not using, a mechanical restraint to restrain the child or young person's free movement.⁹
12. The Regulations expressly prohibit the use of mechanical restraints, including spit hoods, to punish a child or young person or in circumstances that would contravene the child or young person's rights under the Charter of Rights for Youths Detained in Training Centres.¹⁰
13. The Regulations make the use of mechanical restraints, including spit hoods, subject to several safeguards:
 - the use of the restraint must be reasonable, justified and proportionate in the circumstances
 - the restraint may only be used by an employee of the centre who has been trained in the use of the restraint
 - the manager of the centre must be notified of the use of the restraint as soon as reasonably practicable
 - the restraint may only be used for as long as is necessary in the circumstances
 - the child or young person must not be left unsupervised and the child or young person and restraint are to be checked at regular intervals of not more than 15 minutes

⁵ Youth Justice Administration Act, section 3(2)(a).

⁶ Youth Justice Administration Act, section 3(2)(c).

⁷ Youth Justice Administration Regulations, regulation 8(2). Prior to 1 December 2016, regulation 8(1) of the Family and Community Services Regulations authorised the use of force against children and young people detained in youth training centres where 'reasonably necessary in any particular case (a) to prevent the resident from harming himself or herself or another person; or (b) to prevent the resident from causing significant damage to property; or (c) to ensure that the resident complies with a reasonable direction given by an employee of the centre; or (d) to maintain order in the centre; or (e) to preserve the security of the centre.'

⁸ AYTC Security Order 26, *Use of Mechanical Restraint*, clause 3.1.

⁹ Youth Justice Administration Regulations, regulation 8(3)(a).

¹⁰ Youth Justice Administration Regulations, regulation 8(3)(b).

- the manager of the centre must ensure that a record is made containing information including the name and age of the child or young person, the date and time of the incident, the reason for the use of the restraint and the name of the person who ordered the use of the restraint.¹¹
14. The Regulations require the Chief Executive of the department to establish procedures for the use of mechanical restraints on children and young people accommodated in training centres.¹²
15. The AYTC security order, *Use of Mechanical Restraints*, relevantly provides:
- The use of resident worn spit protection in the management of an incident is authorised where:
- Staff are responding to an incident where a resident is spitting
 - The resident has a history of spitting at staff or the resident has (through their actions or verbally) given reasonable grounds to do so [sic]
 - The resident remains under constant observation whilst the spit protection is applied
 - The spit protection is in place only as long as is necessary.
- The application of resident worn spit protection is authorised in combination with the use of other mechanical restraints where their use is in accordance with this Security Order.
16. The use of mechanical restraints, including spit hoods, is also subject to the AYTC operational order, *Use of Reasonable Force*, which defines 'reasonable force' as 'the minimum amount of force that is considered necessary to control a situation.'
17. Under this operational order, AYTC officers are authorised to 'only use such force as is reasonably necessary in any particular case' to:
- prevent the child or young person from harming themselves, a staff member or another person
 - prevent the child or young person from causing significant damage to property
 - maintain order in the AYTC
 - preserve the security of the AYTC.¹³
18. Under the operational order, any application of force, if to be considered reasonable must:
- be used as a last resort
 - be justifiable and proportionate in the circumstances
 - not use pain for compliance
 - be used with consideration for the safety and wellbeing of all residents and staff involved.

¹¹ Youth Justice Administration Regulations, regulation 8(5).

¹² Youth Justice Administration Regulations, regulation 8(4).

¹³ See also section 33(1) of the Youth Justice Administration Act.

Use of spit hoods within the AYTC

19. According to the department, spit hoods were first made available to staff at the AYTC in approximately 2014. The department submitted that use of the implements 'occurs primarily during an incident, and allows staff to safely respond and intervene in a dynamic situation and avoid contact with bodily fluids.'
20. The department has submitted that personal protective equipment such as gloves and protective visors are also made available to unit staff and, 'in many instances, this would be the method used.'
21. According to the department, the circumstances in which a spit hood may be used include 'incidents where a young person spits or attempts to spit at staff, or incidents where a young person involved has previously spat at staff.'
22. The department has acknowledged that there are some children and young people, whom, owing to their behaviours, 'are more likely to have [spit hoods] applied.'
23. The department has submitted that both AYTC procedures and training provided to staff 'seek to ensure that the use of [a spit hood] on a young person is for the shortest time possible and that staff are cognisant of the young person's welfare at all times.'
24. According to the department, the current type of spit hood was first introduced alongside the former type in early 2017. After this, both types of spit hood were used until stock of the former type was exhausted. The department has submitted that the current type, comprising a pale mesh sleeve, was 'selected due to its transparency and the fact it does not obscure the resident's vision.'
25. The department first began recording the use of spit hoods in its use of force register in October 2016. Data supplied by the department demonstrates that there were 57 reported incidents involving the use of spit hoods at the AYTC between October 2016 and June 2019, concerning a total of 22 unique children and young people.
26. The reported use of spit hoods has fallen considerably since the final quarter of 2017. According to the data, spit hoods were used on just one occasion during the first quarter of the present year; down from 12 such incidents in the final quarter of 2017.
27. Of 459 reported incidents involving the use of force between October 2016 and June 2019, approximately 48 per cent involved the use of one or more forms of mechanical restraint, including 12 per cent which involved the use of a spit hood.
28. One third of all reported incidents involving the use of a spit hood concerned the same young person. According to the data, this individual was made to wear a spit hood on 19 occasions within a nine-month period.
29. According to the data, most incidents involving the use of a spit hood also involved the use of one or more other forms of mechanical restraint.

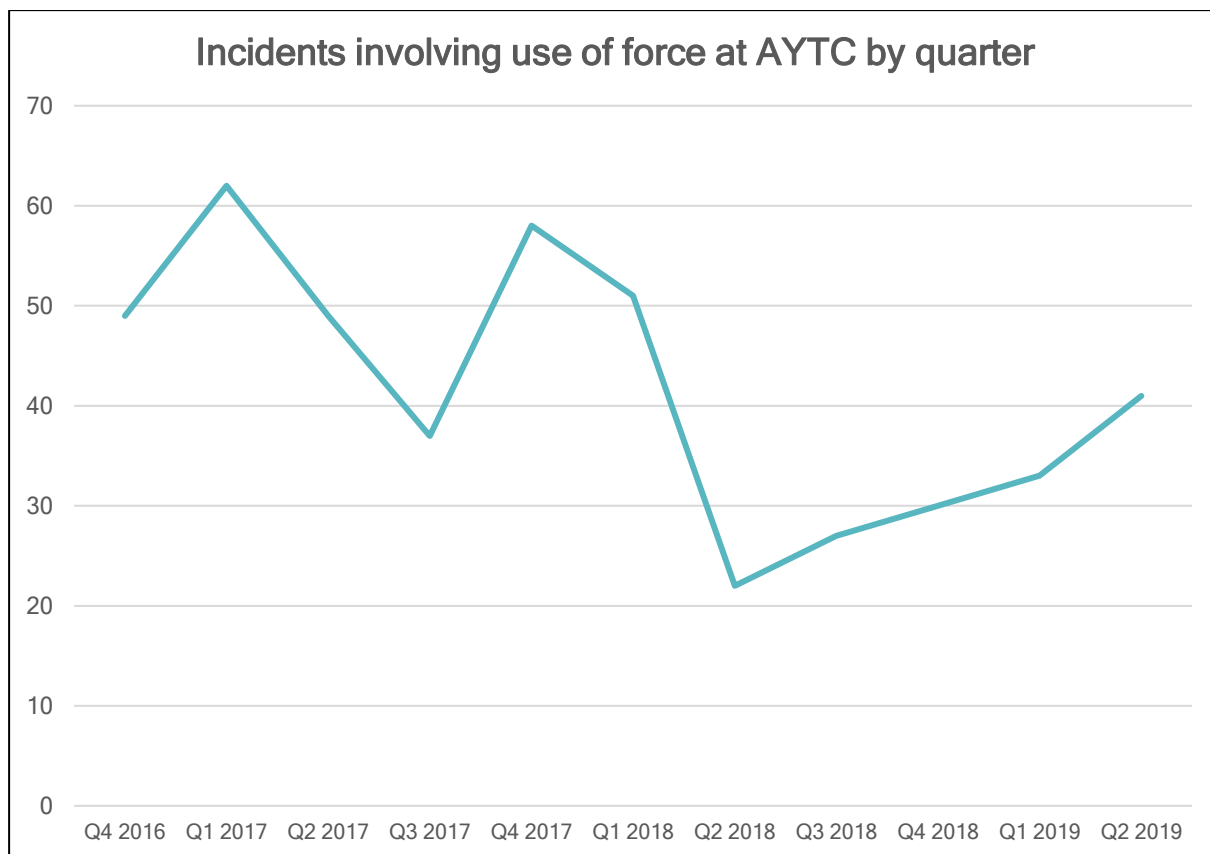


Figure 2: Reported incidents involving the use of force at AYTC between October 2016 and June 2019 by quarter (Department of Human Services; Ombudsman SA)

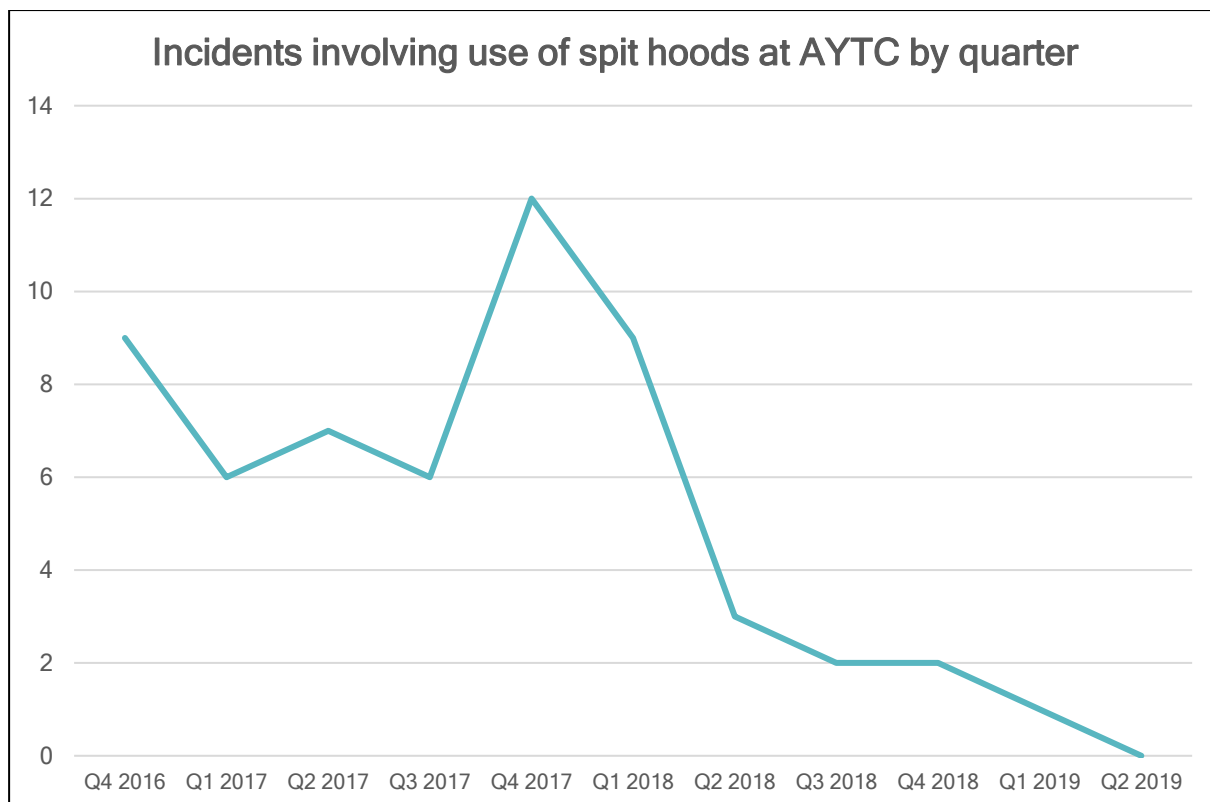


Figure 3: Reported incidents involving the use of spit hoods at AYTC between October 2016 and June 2019 by quarter (Department of Human Services; Ombudsman SA)

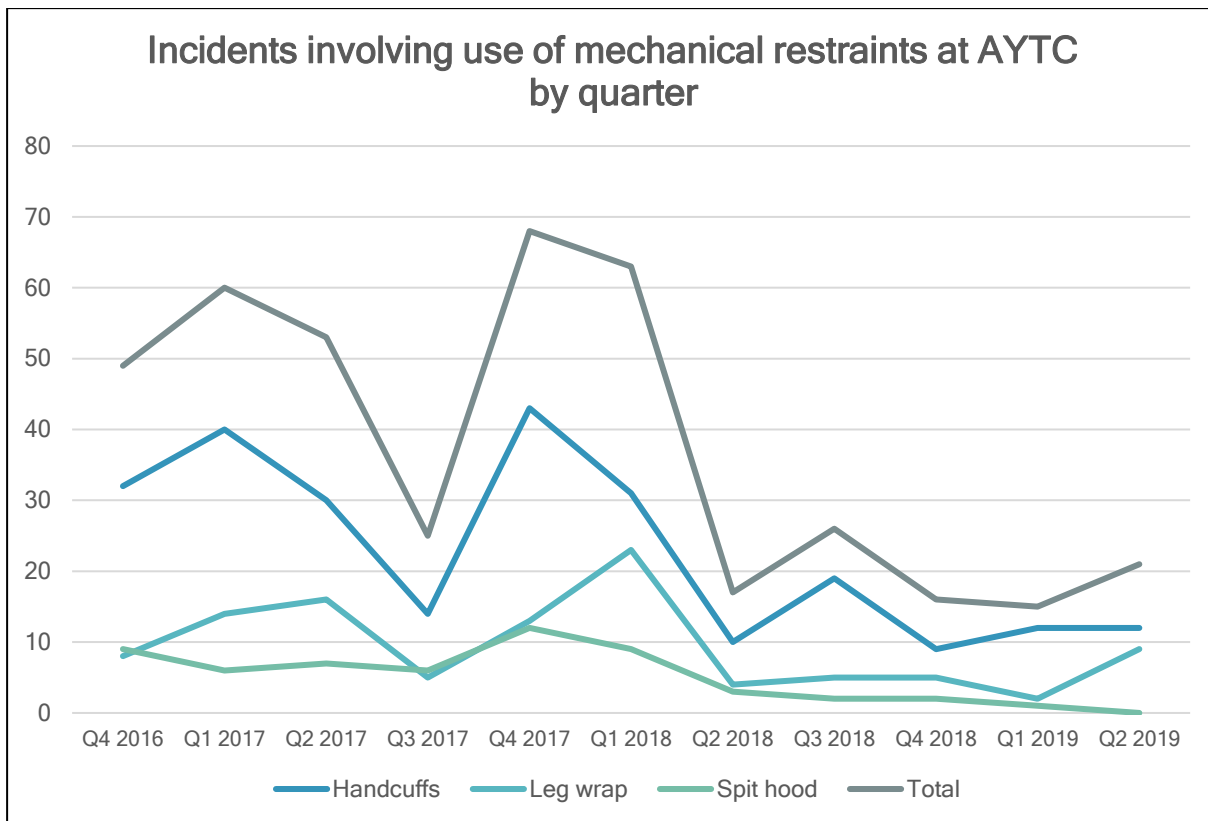


Figure 4: Reported incidents involving use of mechanical restraints at AYTC between October 2016 and June 2019 by quarter (Department of Human Services; Ombudsman SA)

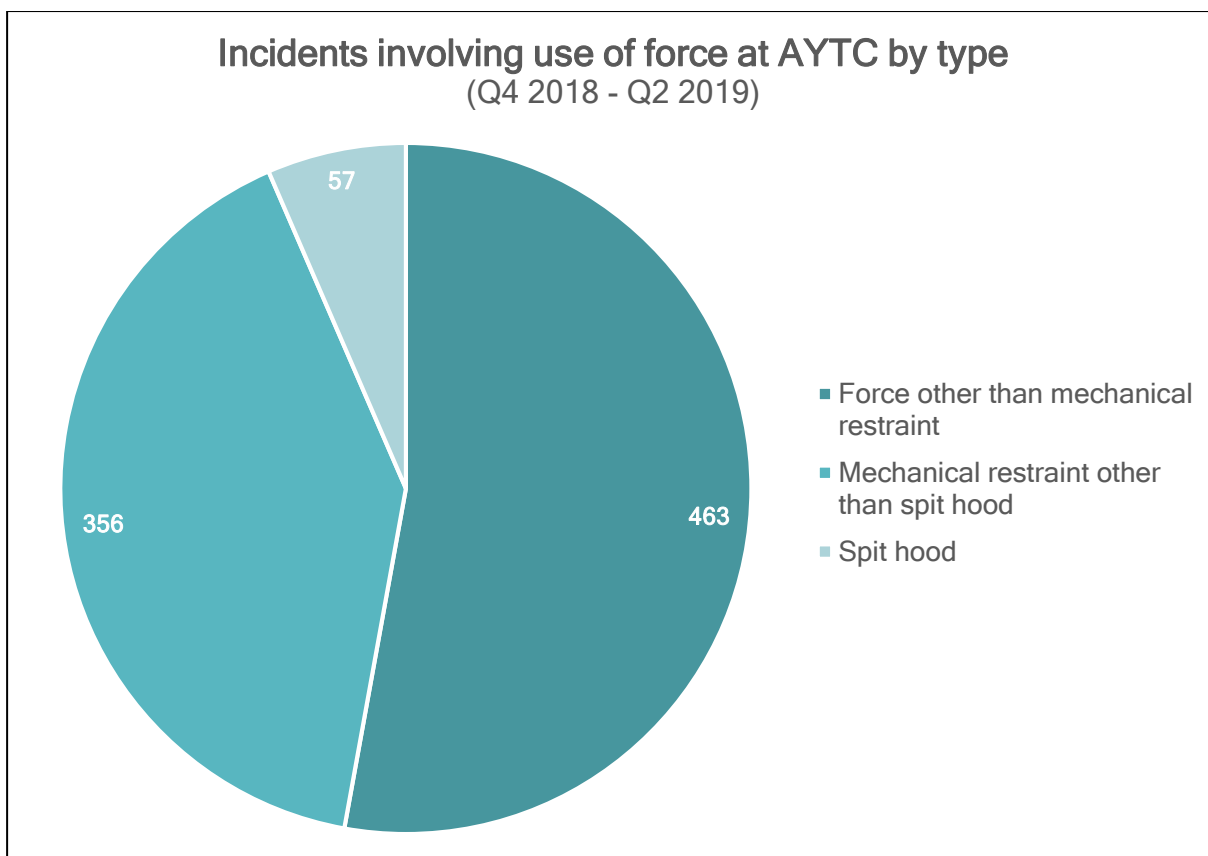


Figure 5: Reported incidents involving use of force at AYTC between October 2016 and June 2019 by type of force used (Department of Human Services; Ombudsman SA)

Incidents reviewed by the investigation

30. The following case studies have been compiled from CCTV footage and other records supplied to my investigation. I have assigned pseudonyms to the children involved. Images have been manipulated to obscure the faces of children and staff.

Incident 6547

According to an official report, Alex, aged 17 years, became angry at a member of unit staff during a discussion about his family contact arrangements. Alex is alleged to have struck the worker to the face, causing a slight mark.

CCTV footage depicts Alex exiting his cell and attempting to strike the worker. A second worker then rushes to restrain Alex from behind. Alex falls backwards; a third worker arrives and together staff move Alex onto his stomach and pin him against the floor. More staff arrive to assist; the workers apply handcuffs to Alex's wrists and a leg wrap to Alex's legs.

In total, ten workers surround Alex. One worker takes out a spit hood; Alex appears to struggle. Five members of staff hold Alex down while the spit hood is applied. Alex is then held against the floor for several further minutes.

Approximately 14 minutes after first being restrained, several workers carry Alex, face-down, into a cell. Alex is placed on his mattress in the prone position. Four workers continue to hold Alex down while others linger at the door. Staff appear to speak to Alex. A worker appears to adjust the wrist and leg restraints. Staff appear to substitute the spit hood with another. Twelve minutes pass before staff remove Alex's handcuffs. The workers quickly exit the cell, closing the door behind them. Alex is left wearing a spit hood, face-down, with his legs restrained. Once staff have exited, Alex turns over and begins removing the restraints.

According to the incident report, a spit hood was applied due to Alex's 'history of spitting at staff'.

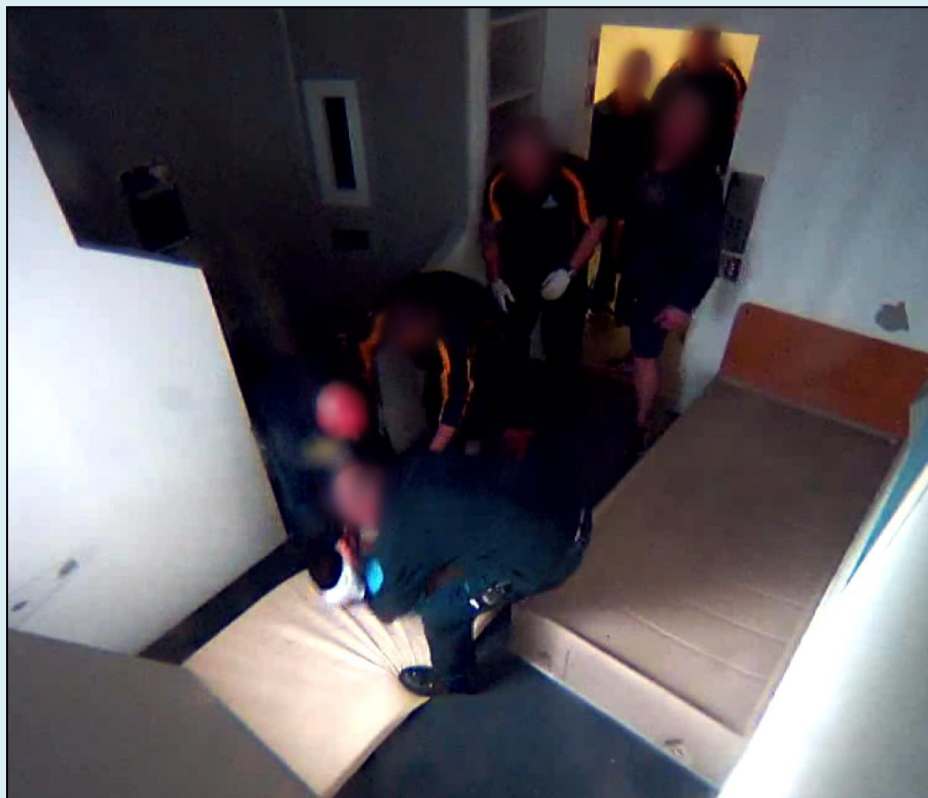


Image 5: A child is carried into a cell and placed on a mattress. He is restrained at the wrists and legs and is wearing a spit hood

Incident 7394

According to an official report, Jamie, aged 17 years, was restrained by staff when he refused to exit his cell for the purposes of a unit transfer.

CCTV footage depicts several members of staff speaking to Jamie through his cell door over a period of about 15 minutes. More staff continue to arrive at the scene until there are a total of 12 workers present outside the cell.

After some time, all 12 workers file into Jamie's cell. Staff enter and exit the cell during this period; what takes place inside is not captured in the footage.

After about four minutes, staff escort Jamie into the corridor; Jamie's wrists are restrained behind his back and he is wearing a spit hood.

According to the incident report, staff made several attempts to convince Jamie to exit the cell before a determination was made to undertake a forcible extraction.

The incident report states that Jamie was restrained to the ground after he threatened to throw an object at a member of staff. According to the incident report, Jamie 'then commenced spitting at staff so the Duty Supervisor authorised the use of a spit hood.' The incident report states that both Jamie and a member of staff were later taken to a hospital for assessment.

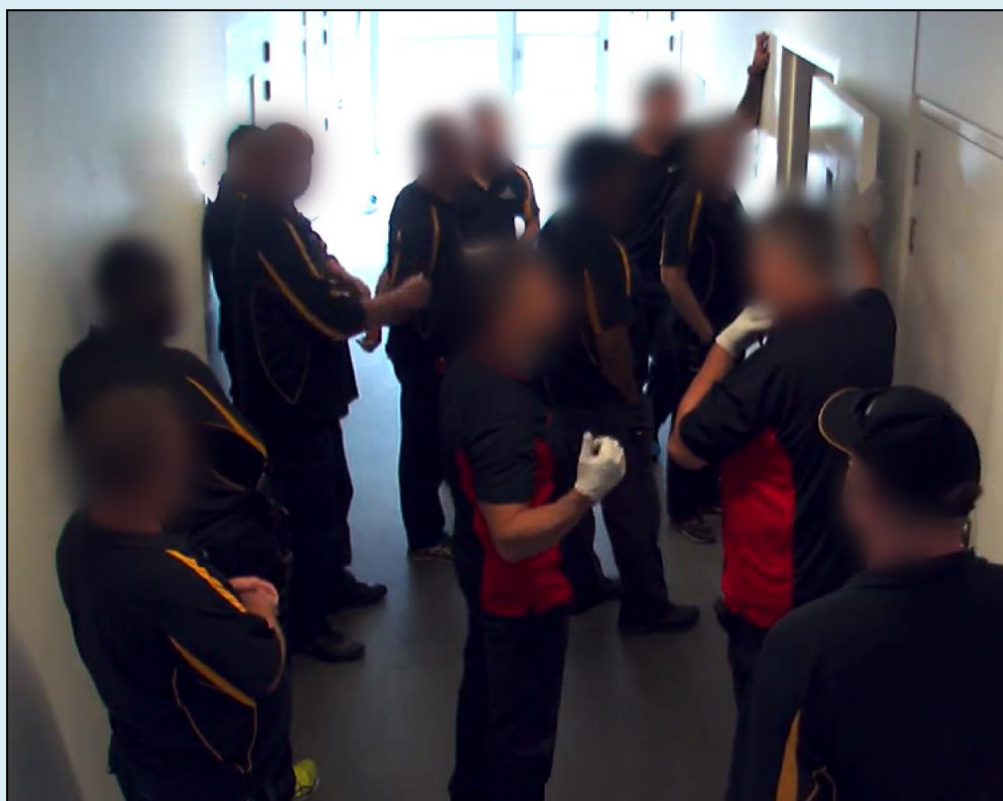


Image 6: Staff congregate outside a child's cell prior to an incident involving the application of a spit hood

Incident 7865

According to an official report, staff activated a duress alarm when, Lee, aged 14 years, became agitated during recreational activities and started to swing a phone about.

CCTV footage depicts Lee walking towards the phone and lifting it from the cradle; at this point, there are no other people in the immediate vicinity. A member of staff immediately starts walking towards Lee from a distance. As Lee begins to swing the phone in a circular motion, the worker rushes at Lee. Lee drops the phone and begins to run from the worker. The worker then wraps his arms around Lee and brings him to the floor. Two other members of staff assist the worker to pin Lee down. Four workers hold Lee, face-down, against the floor for several minutes. Several other workers congregate around Lee. One worker appears to handcuff Lee's wrists behind his back. Staff place a spit hood over Lee's head.

Staff lift Lee from the ground; Lee can be seen thrashing about. Two members of staff hold Lee under each shoulder and walk him backwards from the area. As Lee attempts to break away, staff bring him to the floor a second time. Four members of staff pin Lee to the floor while another worker applies leg shackles to Lee's legs. Staff then lift Lee from the floor and lead him out of the room; Lee can be seen attempting to kick his legs about.

Seven members of staff escort Lee to an isolation cell. Once in the cell, four members of staff hold Lee against the floor while another staff member replaces the leg shackles with a leg wrap. Three members of staff then appear to drag Lee on his stomach towards the far end of the cell. Staff quickly exit the cell, closing the door behind Lee.

Lee turns himself over and removes the spit hood and leg wrap. Lee then removes his shirt and tears it apart, fashioning a ligature which he places around his neck. He hurls the leg wrap around the cell before retreating to a corner and sitting down.

Shortly afterwards, Lee repeatedly strikes his face and appears to write or draw on the walls with his blood. When Lee attempts to fashion another ligature, a member of staff opens the door and appears to speak to him. Staff appear to make several other attempts to speak to Lee over the next few minutes. Approximately 25 minutes after entering the cell, a member of staff tosses Lee a smock to wear. Lee shakes the worker's hand and is permitted to exit the cell.

The incident report states that Lee was made to wear a spit hood and handcuffs '[d]ue to [his] continual thrashing and attempting to hit and spit at staff'. The incident report states that Lee was constantly monitored via CCTV while in the isolation cell. According to the incident report, Lee spat at staff when they attempted to speak with him through the isolation cell door.

When later asked to give his account of the incident, Lee declined to comment. Lee told his case coordinator that the incident 'didn't worry him'.

Incident 7082

According to an official report, Damien, aged 15 years, became upset when told that he would need to be handcuffed during transfer to another unit.

CCTV footage depicts Damien being escorted down a hallway by seven members of staff. Damien's wrists appear to be restrained behind his back. On arrival at the new cell, Damien extends his leg and manages to close the cell door before he can be made to enter. A scuffle ensues and Damien is pinned to the ground by several members of staff. Staff hold Damien to the floor while a member of staff applies a spit hood.

Several members of staff lift Damien from the ground and carry him, face-down, into the cell. Damien thrashes about. One worker loses balance and Damien's face appears to make contact with the floor. Staff then pin Damien to the floor and administer a leg wrap. Staff remove Damien's handcuffs and quickly exit the cell. Damien lifts himself up off the floor and removes the spit hood and leg wrap. He then appears to examine his face in the mirror.

The incident report states that a spit hood was applied because Damien 'was attempting to spit on staff.' Damien later told staff that he was upset about what happened.



Image 7: A child makes contact with the ground as he is carried into a cell by staff

Incident 7080

According to an official report, staff activated a duress alarm when Ali, aged 12 years, refused to return to his cell following an incident of misbehaviour.

CCTV footage depicts Ali arguing with a member of staff. Ali then picks up a plastic dust-pan and throws it in the direction of the worker. Two workers take hold of Ali. Five more members of staff arrive at the scene. Staff attempt to escort Ali from the area. Ali resists and positions his body against a couch. Staff lift Ali again and walk him out of the room.

Staff position Ali in a corner and apply a spit hood. Staff then manoeuvre Ali down a corridor and into an isolation cell. Staff immediately close the door behind Ali. Ali removes the spit hood and flings it against the floor.

The incident report states that prior to application of the spit hood Ali spat at a window and attempted to spit at staff.

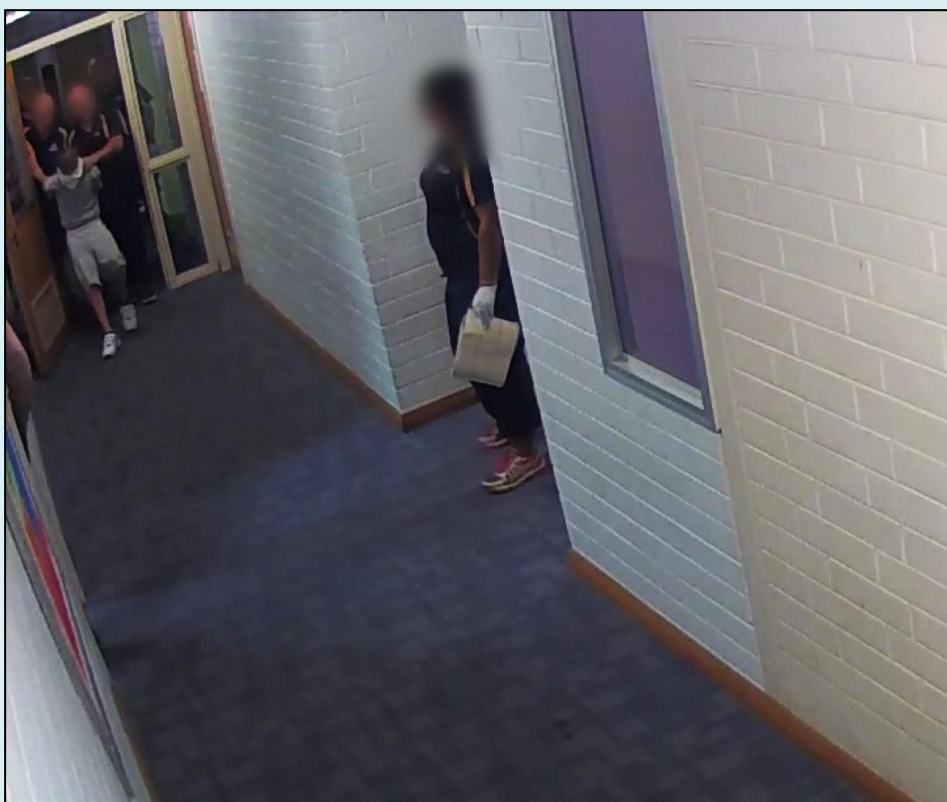


Image 8: A 12 year-old child is made to walk down a corridor wearing a spit hood

Incident 6577

According to an official report, Alex, aged 17 years, became upset when mopping the floor of his unit.

CCTV footage depicts Alex angrily addressing a member of staff. As a worker turns his back to the scene, Alex starts to walk towards the worker, holding the mop. Another member of staff rushes to intercept Alex. Alex appears to jab the worker in the face with the end of the mop handle. A third member of staff arrives at the scene. Alex drops the mop and backs away. The staff member takes hold of Alex and then appears to slip on the wet floor; both parties fall down. Four members of staff then pin Alex to the floor while another fits Alex with a spit hood and handcuffs. Several members of staff come and go from the scene; at one point, eleven workers congregate around Alex.

Staff lift Alex from the ground. The spit hood appears to be covering Alex's eyes, obscuring his vision. Staff place Alex in a cell, closing the door behind him. Alex stands with his back to the door while staff remove the handcuffs through the door trap. Alex then removes the spit hood.



Image 9: Staff remove a child's handcuffs through a door trap. A spit hood of the type no longer used by the department appears to cover the child's eyes.

Incident 6591

According to an official report, Kaylee, aged 13 years, refused to return to her cell for evening lock-up, saying that she wanted to stay up for another half-hour.

CCTV footage depicts Kaylee sitting on a chair while several members of staff congregate in the area. Two workers position themselves on either side of Kaylee and attempt to take hold of Kaylee's arms. Kaylee resists as the workers lift her up from the chair; she then falls to the floor. Five members of staff pin Kaylee to the floor, face-down, while another makes several unsuccessful attempts to apply a spit hood to her face. Kaylee appears visibly distressed.

Another worker steps in and manages to work the spit hood over Kaylee's face from behind; Kaylee struggles. Staff then handcuff Kaylee's wrists behind her back. The workers lift Kaylee from the floor and walk her, backwards, to a cell. Kaylee makes several attempts to kick at staff from behind. Once in the cell, staff place Kaylee, face-down, on a mattress and apply a leg wrap. Staff then remove Kaylee's handcuffs and exit the room. Kaylee pulls off the spit hood and leg wrap; she bangs on the door before examining her face in the mirror.

The incident report states that staff attempted to convince Kaylee to return to her cell for approximately ten minutes before determining to make use of force. According to the incident report, the spit hood was applied because Kaylee attempted to bite a worker's hand when held against the ground. The incident report states that Kaylee later 'started to bash her head on the wall' in her cell.

When later asked for her account of the incident, Kaylee told a case worker that she thought it was unfair that she had to go to bed so early. She said she was upset about the use of the handcuffs and spit hood. She told the worker, '[I] hate things being put over my head.'



Image 10: Five workers pin a 13 year-old child to the floor as a spit hood is applied.

Incident 6617

According to an official report, Reese, aged 16 years, told staff that he was not willing to transfer units following an incident of misbehaviour.

CCTV footage depicts Reese speaking with several members of staff in a recreational area. Reese appears to become upset and gestures angrily with his hands. He starts to walk away from the conversation when a worker takes hold of his arm. Three other workers close in on Reese as he struggles. The workers force Reese to the floor. More workers arrive at the scene and assist to hold Reese to the floor in the prone position. Staff handcuff Reese's wrists behind his back. A staff member appears to speak to Reese at length.

Staff lift Reese into a sitting position and speak with him. Reese is then allowed to stand; he does not appear to be resisting. Staff walk Reese backwards through a courtyard area. Reese appears cooperative during the journey. As Reese reaches the destination unit, a member of staff approaches from behind and applies a spit hood to his face. The workers walk Reese backwards into the unit.

Reese is led into an isolation cell; at this point, Reese appears to kick out his legs. Five workers pin Reese to the floor and apply a leg wrap to Reese's legs. Staff remove Reese's handcuffs; Reese appears to struggle. He reaches forward and rips off the spit hood, throwing it away. Staff exit the room, closing the door behind them; Reese appears to turn around and spit in the direction of the door. He removes the leg wrap and appears to remonstrate with staff through the door.

According to the incident report, staff determined to make use of force when Reese 'lunged towards' a worker. The incident report alleges that Reese threatened staff and spat at a worker when moving through the courtyard area. The incident report states that the spit hood was applied to 'prevent any further spitting'.

When later asked to give his account of the incident, Reese said, 'I felt crowded by staff who ignored my request to move to a better position with space.' Reese said he was still upset about the incident, 'but it's over with now'.

Incident 6673

According to an official report, Luke, aged 16 years, became upset when left alone in a games area.

CCTV footage depicts Luke tearing paper and throwing games pieces on the floor. A member of staff opens the door and addresses Luke. Luke's behaviour appears to deteriorate further and he lifts a table, throwing it in the direction of the open door. Luke begins to damage a television while staff congregate outside the door.

Two members of staff enter the room and address Luke. Luke appears to adopt a fighting stance. Staff retreat from the room. Moments later, workers fitted with protective visors enter the room. They clear the area around the door while Luke stands in a corner; Luke appears to be breathing heavily. Staff position themselves around the room and speak to Luke for several minutes.

In a moment, several workers rush towards Luke and pin him to the floor. Staff apply a spit hood and handcuff Luke's wrists. Staff lift Luke up and walk him backwards from the room and into an isolation cell; the workers then pin Luke to the floor. By this time, the spit hood has fallen from Luke's face; he appears visibly distressed. Staff apply a leg wrap to Luke's legs and remove his handcuffs. The workers then exit the room, closing the door behind them.

The incident report states that the spit hood was applied because Luke was 'threatening to spit at staff'.



Image 11: Staff manoeuvre a child to the floor; some are wearing protective visors. The child's spit hood has fallen from his face.

Incident 6950

According to an official report, Nate, aged 15 years, was restrained after he began to throw items at staff in a kitchen area.

CCTV footage depicts Nate pacing in the kitchen. Nate appears to throw an object at a member of staff and two workers rush towards him. Owing to the location of the camera the footage does not capture most of what follows, although staff can be seen coming and going from the area. After approximately five minutes, staff lift Nate up and walk him, backwards, out of the area; Nate is wearing a spit hood and his wrists are handcuffed behind his back.

Staff lead Nate into an isolation cell. Nate is made to kneel while staff remove his handcuffs. The workers exit the room and Nate pulls off the spit hood.

According to the incident report, the spit hood was applied after Nate spat in the face of a member of staff. According to the incident report, this was the second occasion that Nate had spat at a staff member.



Image 12: Once in an isolation cell, staff remove a child's handcuffs. The child is wearing a spit hood.

Incident 6549

According to an official report, Alex, aged 17 years, attempted to assault a mental health worker during a consultation in his cell.

CCTV footage depicts Alex speaking with the mental health worker in the presence of unit staff. Alex appears to suddenly rush towards the worker, who then retreats from the cell. A member of staff initially holds Alex at bay with an outstretched arm. Alex manages to slip through the cell door and appears to strike at the mental health worker and members of unit staff. Other staff move in to assist and Alex is brought to the floor. Staff handcuff Alex's wrists behind his back and apply a spit hood to his face. After several minutes, staff lift Alex from the floor and lead him, backwards, away from the area.

The incident report states that Alex was subsequently placed in an isolation cell. According to the incident report, the spit hood was applied 'due to [Alex's] history of spitting on staff.'



Image 13: Staff lead a child away from the scene of an incident. The child is wearing a spit hood.

Incident 6573

According to an official report, Alex, aged 17 years, became upset during a non-contact visit with a family member.

CCTV footage depicts Alex speaking with a woman in a visiting cubicle. After a moment, Alex stands up and throws his plastic chair against the wall. Alex then kicks at the door, bangs on the window and gestures and shouts in the direction of staff; he is visibly upset.

Alex paces around the cubicle area; he continues to kick at the walls and door and shout at staff. After approximately 14 minutes, five members of staff, some wearing protective visors, gloves and surgical masks, rush through the door and bring Alex to the floor. The workers then appear to carry Alex out of the room. One worker's protective visor is knocked off in the scuffle.

Once out of the room, several workers pin Alex to the floor. One staff member handcuffs Alex's wrists behind his back. Another staff member applies a spit hood; Alex appears to thrash about as the implement passes over his face. Some of the workers then remove their protective equipment. A member of staff pats and strokes Alex's back in a motion that appears intended to calm or reassure Alex. After several minutes, staff lift Alex from the floor and walk him away from the area; Alex does not appear to resist this movement.

According to the incident report, staff formed the view that it was necessary to extract Alex from the visiting cubicle because it was not designed to safely contain a child. The incident report states that the spit hood was applied 'due to [Alex]'s history of spitting on/at staff.'



Image 14: A child is restrained prior to the application of a spit hood.

Interstate practice

31. My investigation sought and obtained information concerning the use of spit hoods in other Australian jurisdictions.
32. The Australian Capital Territory, New South Wales, Queensland, Tasmanian, Victorian and Western Australian governments advised my investigation that their youth detention facilities do not authorise or otherwise make use of spit hoods.
33. The New South Wales, Queensland and Tasmanian governments advised that their youth detention facilities have never made use of spit hoods.
34. New South Wales informed my investigation that operational staff in some of its youth detention facilities have access to protective helmets and masks, which can be worn when dealing with children or young people with a proclivity to spit.
35. New South Wales otherwise observed that ‘forcibly trying to place an item over a young person’s face has the potential to cause harm to both the young person and staff members.’
36. Queensland informed my investigation that staff in its youth detention centres have access to surgical masks, which ‘have been used sparingly’ to date. Queensland’s Youth Detention Centre Operations Manual expressly prohibits the application of these implements to children and young people.
37. Tasmania informed my investigation that it has ‘never considered’ the use of spit hoods within its youth detention centre. Tasmania advised that following an increase in spitting incidents in 2017 its staff were issued safety glasses and disposable surgical masks, which are carried as part of issued equipment.
38. Western Australia advised my Office that its youth detention centre made use of spit hoods until 8 September 2016. The practice was halted in the wake of the Four Corners report and as part of Western Australia’s attempt to transition its youth detention centre ‘to a more therapeutic model of care’.
39. Western Australia advised that response staff within its youth detention centre make use of face and body shields to protect themselves from children and young people who spit or bite. Western Australia noted that these implements ‘do not provide full protection as spittle can run down the face inside the visor.’
40. The Northern Territory government temporarily banned the use of spit hoods following publication of the Four Corners report. The NT Commission recommended on 17 November 2017 that the use of spit hoods continue to be prohibited in that jurisdiction.
41. The Northern Territory government recently publicly affirmed that the use of spit hoods remains prohibited in the youth detention setting.¹⁴ It advised my investigation that it no longer considers use of spit hoods to be consistent with a ‘trauma informed care framework.’

¹⁴ ‘Physical Restraints “Used in Youth Detention Centres” After Changes Rushed by NT Government’, ABC News Online, 28 March 2019, available at <<https://www.abc.net.au/news/2019-03-27/physical-restraints-back-in-nt-youth-detention,-lawyers-say/10942110>> last accessed 10 July 2019.

	Use of spit hoods currently authorised or permitted in youth detention	Use of spit hoods previously authorised or permitted
Australian Capital Territory	No	Unclear
New South Wales	No	No
Northern Territory	No	Yes (until July 2016)
Queensland	No	No
Tasmania	No	No
Victoria	No	Unclear
Western Australia	No	Yes (until September 2016)

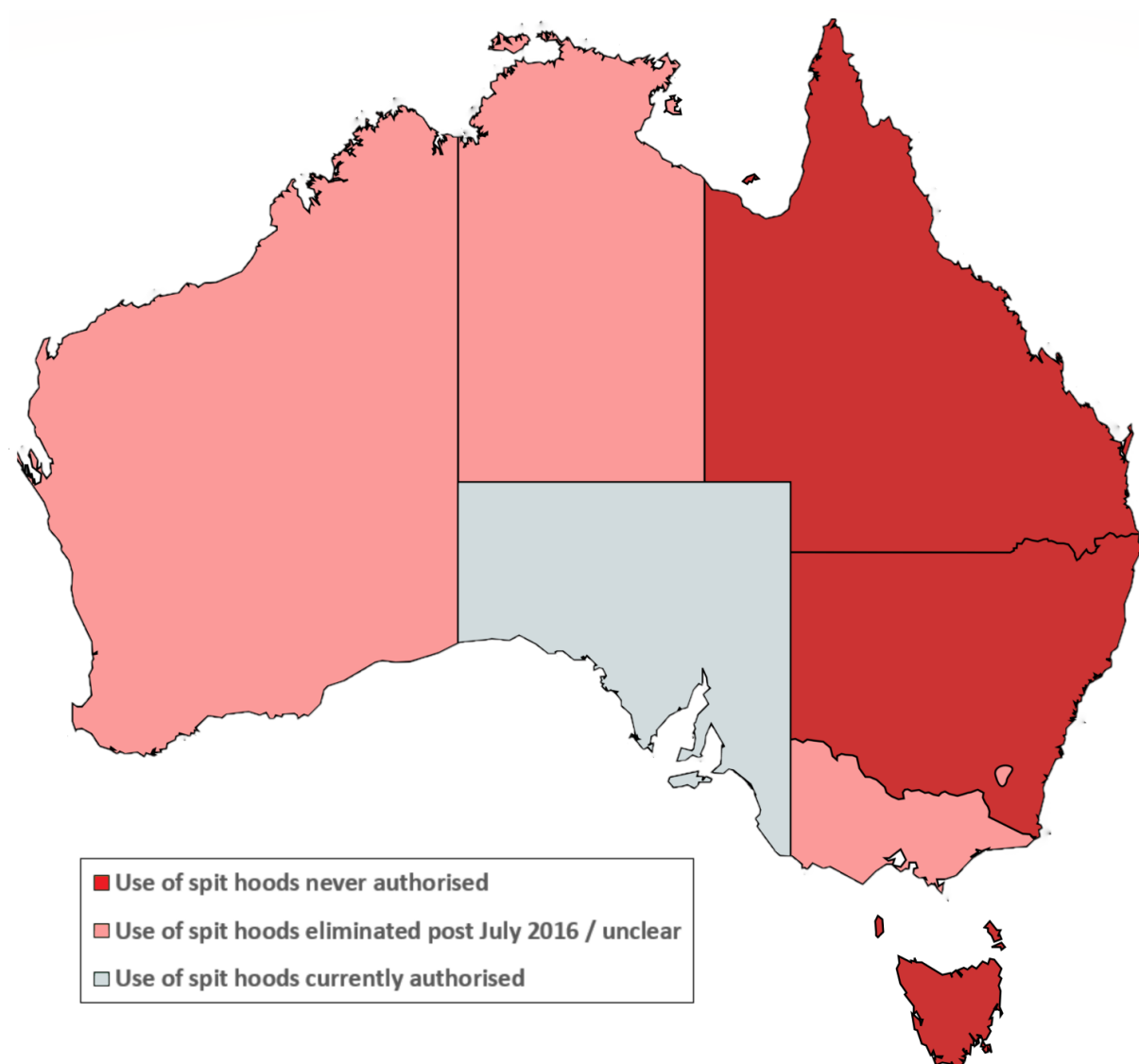


Figure 6: Use of spit hoods in youth detention across Australia's states and territories (Ombudsman SA)

Domestic and international human rights standards

The Charter of Rights for Youths Detained in Training Centres

42. Section 22(1) of the Youth Justice Administration Act provides for a Charter of Rights for Youths Detained in Training Centres. The Charter was approved by the Minister for Communities and Social Inclusion on 6 December 2015.¹⁵
43. Under the Youth Justice Administration Act, departmental officers must have regard to the Charter and seek to implement its terms to the fullest extent possible in any dealings with or in relation to children and young people in detention.¹⁶
44. The Charter recognises that children and young people in detention have various rights, including:
 - to be treated with respect and dignity by staff and to be kept safe in detention
 - not to be punished unfairly, and only in accordance with the rules of the centre or the law
 - not to have force used against them, or restraints used on them, unless absolutely necessary, and never as a punishment.

International human rights standards

45. Australia has signed and ratified several international agreements which identify and protect the rights of children and young people, including:
 - the Convention on the Rights of the Child
 - the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (**the Convention Against Torture**)
 - the International Covenant on Economic, Social and Cultural Rights (**ICESCR**)
 - the International Covenant on Civil and Political Rights (**ICCPR**).
46. In addition, the following United Nations rules and guidelines apply to the treatment of children and young people in detention:
 - the United Nations Standard Minimum Rules for the Treatment of Prisoners (**the Mandela Rules**)
 - the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (**the Havana Rules**)
 - the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (**the Beijing Rules**)
 - the United Nations Guidelines for the Prevention of Juvenile Delinquency (**the Riyadh Guidelines**).
47. Section 5 of the Children and Young People (Oversight and Advocacy Bodies) Act 2016 generally requires state authorities (including government departments) to 'protect, respect and seek to give effect to' the rights set out in the Convention on the Rights of the Child and other relevant human rights instruments concerning children and young people. I have otherwise had regard to the above instruments insofar as they are reflective of accepted international human rights standards.
48. I have set out some of the most pertinent international standards below.

The Convention on the Rights of the Child

49. Article 3(1) of the Convention on the Rights of the Child recognises that the best interests of the child should be the primary consideration in all actions concerning

¹⁵ Letter from the Minister to the Guardian for Children and Young People dated 6 December 2015.

¹⁶ Youth Justice Administration Act, section 22(3).

children ‘whether undertaken by [...] courts of law, administrative authorities or legislative bodies’.

50. Article 37(b) of the Convention recognises that children deprived of their liberty should ‘be treated with humanity and respect for the inherent dignity of the human person’, and in a manner which takes into account the needs of their particular age.

The Convention Against Torture

51. The Convention Against Torture requires state parties to ‘take effective legislative, administrative and judicial or other measures to prevent acts of torture’ and ‘undertake to prevent [...] other acts of cruel, inhuman or degrading treatment or punishment’ in territories within their jurisdiction.¹⁷

The Mandela Rules

52. The Mandela Rules constitute internationally recognised minimum standards for the treatment of prisoners, including children deprived of their liberty.
53. The Mandela Rules require that prisoners ‘be treated with the respect due to their inherent dignity and value as human beings.’ The Rules provide that prisoners should not be subjected to, and should be protected from, ‘torture and other cruel, inhuman or degrading treatment or punishment.’¹⁸
54. The Mandela Rules provide that ‘[d]iscipline and order shall be maintained with no more restriction than is necessary to ensure safe custody, the secure operation of the prison and a well ordered community life.’¹⁹
55. The Mandela Rules expressly prohibit ‘the use of chains, irons or other instruments of restraint which are inherently degrading or painful’.²⁰
56. Under the Mandela Rules, other instruments of restraint may only be used when authorised by law, and:
- as a precaution against escape during transfer
 - by order of the facility manager, where other methods of control fail, in order to prevent a prisoner from injuring themselves or others or from damaging property.²¹
57. Under the Mandela Rules, the use of instruments of restraint is subject to the following principles:
- instruments of restraint should only be imposed when no lesser form of control would be effective to address the risks posed by unrestricted movement
 - the method of restraint should be the least intrusive method that is necessary and reasonably available to control the prisoner’s movement, based on the level and nature of the risks posed
 - instruments of restraint should be imposed only for the time period required, and are to be removed as soon as possible after the risks posed by unrestricted movement are no longer present.²²

¹⁷ Convention Against Torture, articles 2(1) and 16(1). ‘Torture’ is defined in article 1 of the Convention as ‘any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.’

¹⁸ Mandela Rules, rule 1.

¹⁹ Mandela Rules, rule 36.

²⁰ Mandela Rules, rule 47(1).

²¹ Mandela Rules, rule 47(2).

²² Mandela Rules, rule 48(1).

The Havana Rules

58. The Havana Rules constitute internationally recognised standards for the treatment and protection of children deprived of their liberty.
59. The Havana Rules provide that instruments of restraint and force must only be used in child detention facilities ‘in exceptional cases, where all other methods have been exhausted and failed, and only as explicitly authorized and specified by law and regulation.’²³
60. The Havana Rules provide that instruments of restraint and force in child detention facilities should:
 - not cause humiliation or degradation
 - be used restrictively
 - be used only for the shortest possible period of time.²⁴
61. The Havana Rules require that staff at child detention facilities ‘respect and protect the human dignity and fundamental rights of all juveniles’. Staff are prohibited from inflicting, instigating or tolerating ‘any act of torture or any form of harsh, cruel, inhuman or degrading treatment, punishment, correction or discipline under any pretext or circumstance whatsoever’.²⁵

The Beijing Rules

62. The Beijing Rules constitute internationally recognised standards for the administration of juvenile justice systems.
63. The Beijing Rules require that such systems ‘emphasize the wellbeing of the juvenile and [...] ensure that any reaction to juvenile offenders [is] always in proportion to the circumstances of both the offenders and the offence.’²⁶
64. The Beijing Rules otherwise provide that children in institutions should ‘receive care, protection and all necessary assistance – social, educational, vocational, psychological, medical and physical – that they may require because of their age, sex and personality and in the interest of their wholesome development.’²⁷

The Riyadh Guidelines

65. The Riyadh Guidelines constitute internationally recognised standards for the prevention of juvenile offending.
66. The Riyadh Guidelines recognise that ‘[n]o child or young person should be subjected to harsh or degrading correction or punishment measures’, whether ‘at home, in schools or in any other institutions.’²⁸

²³ Havana Rules, rule 64.

²⁴ Havana Rules, rule 64.

²⁵ Havana Rules, rule 87.

²⁶ Beijing Rules, rule 5.1.

²⁷ Beijing Rules, rule 26.2.

²⁸ Riyadh Guidelines, guideline 54.

Consideration

67. South Australia has the dubious honour of being the only jurisdiction in Australia that authorises the use of spit hoods in its youth detention centres.
68. All other states and territories have banned the use of spit hoods or otherwise have never made use of the implements.
69. Youth justice workers work with some of South Australia's most vulnerable children and young people. It is no doubt an enormously difficult job. They must regularly balance considerations of care and authority, often under the threat of occupational violence. Like all workers, they are entitled to feel safe in the workplace.
70. There is a relatively high rate of blood-borne illnesses within Australia's adult custodial population,²⁹ although the risk of transmission from bloody saliva or bites to the skin ranges from very low to non-existent, depending on the illness.³⁰
71. The Australasian Society for HIV Medicine nevertheless recommends that correctional staff vaccinate themselves for hepatitis B and wear protective equipment such as gloves, eyewear and face shields when exposed to blood or bodily fluids containing blood.³¹
72. This is the approach that has been adopted in other Australian jurisdictions. I accept that staff-worn protective equipment will not always be completely effective in preventing contact with blood and saliva, although no doubt the same could be said of the use of spit hoods.
73. In response to my provisional report, the department observed:
- [T]here are other illnesses, such as influenza, where direct exposure to saliva increases the likelihood of infection. Further, the necessary medical response to exposure may be extensive, affecting the staff member and potentially the staff member's partner.
74. The question is whether the use of spit hoods amounts to an appropriate limitation on the rights and freedoms of children and young people in the AYTC when taking into account, among other things, the ostensible purpose of protecting staff from injury and the availability of other, less restrictive, practices capable of achieving that purpose.
75. I am concerned by the number of staff and level of force used in several of the incidents reviewed by my investigation. A dispute over bedtime should not result in a 13 year-old child being pinned to the floor and handcuffed – at the very least, that child's behaviour did not present an immediate threat to the safety of others. It also should not be necessary for 12 members of staff to congregate around and then enter a child's cell for the purpose of enforcing a unit transfer.
76. In response to my provisional report, the department observed:

²⁹ A 2016 national study observed that, among a sample of 431 prisoners, 22 per cent showed signs of hepatitis C infection and 16 per cent showed signs of hepatitis B infection. There were no cases of HIV infection amongst the participants. See Kirby Institute, *National Prison Entrants' Bloodborne Virus and Risk Behaviour Survey Report, 2004, 2007, 2010, 2013 and 2016* (November 2017).

³⁰ Australasian Society for HIV Medicine, *Correctional Officers and Blood-Borne Viruses*, p. 5, Table 2: Risk of Hepatitis B, Hepatitis C and HIV Transmission From a Known Positive Source. See also Joyce P and Wendy L, 'Spit Guards, Ethical Policing and the Need for an Evidence-Based Approach' (2018) 17(3) 145, 147. See also 'Police Accused of Exaggerating Risks of HIV to Introduce Spit Guards', *The Guardian*, 18 November 2017, available at <<https://www.theguardian.com/uk-news/2017/nov/17/police-accused-of-exaggerating-risks-of-hiv-to-introduce-spit-guards>> last accessed 11 July 2019 ('Hepatitis C is a blood-borne virus and is therefore only transmitted through blood-to-blood contact. The virus cannot be transmitted via spit' (quoting the Deputy Chief Executive of the Hepatitis C Trust (UK)); "HIV is irrelevant to the debate about spit hoods because spitting simply is not an HIV transmission route [...] In the history of the epidemic, there has never been a case of HIV being passed on through spitting, even when the spit contains blood." (quoting the Director of Policy and Campaigns for the National Aids Trust (UK)).

³¹ Australasian Society for HIV Medicine, *Correctional Officers and Blood-Borne Viruses*, p. 6.

When an incident response is called, all units on campus are locked down and all available staff attend the location of the incident. Whilst initially there may appear to be large numbers of staff present for incident management, this is deliberate to safeguard the AYTC in the case of managing a major disturbance, ensuring there is the best opportunity to manage the incident before loss of control occurs[.]

77. I make it clear that I am not suggesting that staff acted unlawfully on any of the occasions described in this report. There is, however, a question of whether some of the practices depicted in the CCTV footage served to escalate, rather than de-escalate, incidents of misbehaviour.
78. In particular, the use of force in incidents 6591, 6617 and 7865 does not appear to have been as a last resort or necessarily proportionate to the risk presented by the child's behaviour.
79. I query whether the management of those incidents was consistent with the objects and guiding principles of the youth justice system, including the promotion of the rehabilitation of children and young people through the provision of 'care, correction and guidance necessary for their development into responsible members of the community and the proper realisation of their potential.'³²
80. I also query whether the Youth Justice Administration Act currently strikes the right balance in respect of the use of force on children and young people accommodated in training centres.
81. In particular, the provision authorising the use of force where 'reasonably necessary [...] to maintain order in the centre' appears to be out of step with most other Australian jurisdictions and inconsistent with international best practice, which generally prohibits the use of force against children and young people unless necessary to prevent a risk of injury or serious property damage.³³ I note that the use of mechanical restraints on considerations of good order is also arguably incompatible with the Mandela Rules.³⁴

³² Youth Justice Administration Act, section 3(1)(e). Similar considerations are enshrined in section 3 of the Young Offenders Act and have applied throughout the period relevant to the investigation.

³³ South Australia is alone in authorising the use of force on children and young people in detention centres on considerations of 'good order', although both the Australian Capital Territory and New South Wales authorise the use of force to enforce certain directions given by youth justice workers. See *Children and Young People Act 2008* (ACT), section 224(b)(i); *Children (Detention Centres) Regulation 2015* (NSW), regulation 65(2). See also *Youth Justice Act 2005* (NT), section 154(1); *Youth Justice Regulation 2016* (Qld), regulation 16(5); *Youth Justice Act 1997* (Tas), section 132; *Children, Youth and Families Act 2005* (Vic), section 487; *Young Offenders Act 1995* (WA), section 11C and *Young Offenders Regulations 1995* (WA), regulation 72(1). See Havana Rules, rule 64. See also Coyle, A, *A Human Rights Approach to Prison Management* (2nd ed., 2009.), p. 61 (concerning adult prisons) ('[o]nly in extreme circumstances, when there is a complete breakdown in order and all other interventions have failed, either individually or collectively, can use of force be justified as a legitimate method of restoring order.')

³⁴ Mandela Rules, rule 47(2).

SO I CAME OUT FOR MY EXERCISE TO PRAY A BOARD
 IS THERE ANYTHING YOU WOULD LIKE TO SAY ABOUT THE INCIDENT? AND THAT TRY TO MAKE
 ME CLEAN FOR MY EXERCISE AND SO I ARGUED ABOUT IT
 THEN I DID IT THEN WACK UP

Did you sustain any physical injuries? YES NO.

If yes, please describe:

How do you feel now?
 fine

What can be done to prevent this from happening again?
 DON'T PUT ME OUT TO CLEAN FOR MY EXERCISE

Image 15: A child's account of an incident leading to the use of a spit hood (Department of Human Services)

82. All but one incident reviewed by my investigation involved a child being pinned to the floor by several members of staff. One incident involved a child being held and handcuffed in the prone position for a cumulative period of 26 minutes.
83. Restraining an individual in the prone position introduces a risk of asphyxiation.³⁵ It is a practice that is expressly prohibited within the South Australian disability sector.³⁶ Practice advice provided to Tasmanian youth detention workers recommends that staff avoid this form of restraint and ensure that children and young people are kept on the floor 'for the shortest period of time and for the central reason of gaining control of the situation.'³⁷
84. In response to my provisional report, the Guardian for Children and Young People observed that she also held 'serious concerns' about the prevalence of prone restraint in the AYTC, particularly when used in conjunction with mechanical restraints.
85. I am concerned that the application of spit hoods and other mechanical restraints unnecessarily extends the amount of time in which children and young people are held to the floor. If nothing else, the amount and nature of force required to apply a spit hood appears to militate against their use.
86. In response to my provisional report, the department observed:
- Alternatively, the department would suggest that the application of [spit hoods] or other mechanical restraints are less likely to impact on the period of time a resident is held in prone restraint, than the time deemed necessary by staff to calm the resident prior to safe movement to a bedroom or safe room.
87. I am also concerned that the department's operational and security orders make no specific reference to the risk of asphyxiation presented by forcibly covering a child or

³⁵ Allen, D, 'Risk and Prone Restraint: Reviewing the Evidence', *For Our Own Safety: Examining the Safety of High-Risk Interventions for Children and Young People* (2008) 87, 93 ('prone restraint is clearly the most common restraint form reported in [positional asphyxia] fatalities').

³⁶ Department for Communities and Social Inclusion, *Restrictive Practices Reference Guide for the South Australian Disability Service Sector*, (2017), p. 27.

³⁷ Department of Health and Human Services (Tas), *Practice Advice: Minimising the Use of Physical Force and Restraint*, (2017), p. 4. See also Allen, D, 'Risk and Prone Restraint: Reviewing the Evidence', *For Our Own Safety: Examining the Safety of High-Risk Interventions for Children and Young People* (2008) 87, 100 ('protracted [prone] restraint is likely to heighten any physiological concerns').

young person's mouth and nose. Media reports have linked the use of spit hoods to deaths in custody in the United Kingdom and the United States.³⁸

88. In response to my provisional report, the department observed:

[R]eference is made in AYTC Orders to the Maybo training package which includes information about the risks associated with physical interventions.

89. At the very least, the application of spit hoods to children and young people appears likely to exacerbate the risks associated with the use of prone restraint, as is the handcuffing of a child or young person's hands behind their back.³⁹

90. It has been observed that the decision to introduce spit hoods or to continue with their use 'should be founded on a sound evidential basis'.⁴⁰

91. My investigation was unable to locate any empirical research purporting to evaluate the effectiveness of spit hoods in preventing staff injury when compared with other forms of protective equipment or the impact of their use upon children and young people.

92. One expert who gave evidence to the NT Commission submitted that the use of spit hoods was not consistent with good practice:

Good practice is that you don't put spit hoods over the client, [...] staff wear protective visors to protect their face from being spat upon. There's pretty strong evidence, which I think we can all appreciate, if somebody puts a spit hood over your head and you are a bit claustrophobic, it's quite [...] distressing and it's a pretty inhumane practice.

So it was very unusual to find that was occurring [in the Don Dale centre] when it has been longstanding practice, certainly in adult corrections, to have protection for staff rather than put spit hoods on young people.⁴¹

93. This echoed a submission to the NT Commission by Amnesty International Australia, which argued that the excessive use of restraints against children, including spit hoods, was a form of treatment that could constitute cruel, inhuman or degrading treatment or punishment.⁴²

94. Studies in Australia 'consistently show' that individuals in youth detention 'are among the most socially disadvantaged and potentially vulnerable young people in the community'.⁴³ A substantial proportion of children and young people in detention have previously been exposed to childhood abuse, neglect and other forms of trauma.⁴⁴

95. Domestic and international studies have also tended to observe that restrictive practices such as those used in the youth detention setting are likely to trigger or re-traumatise children and young people with experiences of trauma and in turn prompt other challenging and dangerous behaviours.⁴⁵ It is therefore important that youth

³⁸ See, e.g., 'Lawsuit over Michigan Man's Death in Jail Focuses on Officers' Use of "Spit Hood"', *The Guardian*, 11 January 2016; 'Inquest Jury Condemns Surrey Police over Death of Man Placed in Spit Hood', *The Guardian*, 6 July 2018.

³⁹ Allen, D, 'Risk and Prone Restraint: Reviewing the Evidence', *For Our Own Safety: Examining the Safety of High-Risk Interventions for Children and Young People* (2008) 87, 100. Allen identifies four physical actions that can exacerbate the risks associated with prone restraint, being 'the immobilization of the hands behind the back; the application of additional pressure/weight to the back, neck, or trunk area; the obstruction of the mouth or nose; and specific pressure on the vagus or carotid nerve.'

⁴⁰ See Joyce P and Wendy L, 'Spit Guards, Ethical Policing and the Need for an Evidence-Based Approach' (2018) 17(3) 145, 153.

⁴¹ NT Commission, transcript at 328:29 (5 December 2016).

⁴² Amnesty International Australia, 'Submission to the Royal Commission into the Protection and Detention of Children in the Northern Territory', 28 October 2016, p. 8.

⁴³ Royal Australian College of Physicians, *The Health and Well-being of Incarcerated Adolescents* (2011), p. 16.

⁴⁴ *Id.* See also New South Wales Government, *2015 Young People in Custody Health Survey: Full Report* (2015); Abram, K et al. 'Posttraumatic Stress Disorder and Trauma in Juvenile Detention' (2004) 61(4) *Arch Gen Psychiatry* 403.

⁴⁵ Ford J et al. 'Psychosocial Interventions for Traumatized Youth in the Juvenile Justice System: Research, Evidence Base and Clinical/Legal Challenges' (2016) 5(1) *OJJDP Journal of Juvenile Justice* 31, 32; Owen, B, et al., *Gendered Violence and Safety: A Contextual Approach to Improving Security in Women's Facilities* (2008), p. 24; Miller N and Najavits L, 'Creating

justice systems adapt their processes to align with 'a sensitive understanding of traumatised young people', ensuring that they 'can both accommodate and assist violent and traumatised young people.'⁴⁶

96. The CCTV footage reviewed by my investigation certainly makes for confronting viewing. Out of apparent necessity, the spit hood is frequently fitted over the child's face from behind while the child is made to lie on the floor in the prone position. Children thrash about at the sight of the implement; some appear to be taken by surprise as it passes over their eyes; many appear to be crying when it is finally removed.

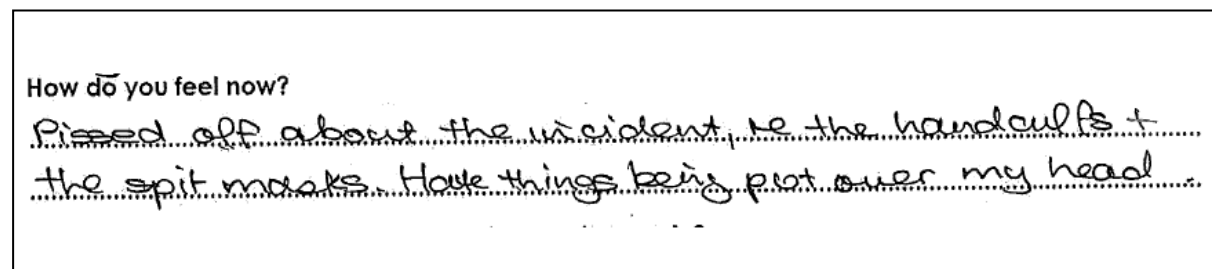


Image 16: A child's feedback following an incident involving the use of a spit hood, as transcribed by an intermediary (Department of Human Services)

97. Any use of force in the youth detention setting risks further traumatising children and young people. Having reviewed the footage supplied to my investigation, I have no doubt that the application of a spit hood is an inherently traumatic event for the child or young person involved.
98. Having regard to the relative risk posed to staff by spitting and biting, the apparent lack of evidence demonstrating that spit hoods are more effective at mitigating that risk than other, less restrictive, measures, and the extent to which application of the implement may further traumatise or harm a child or young person, I am not satisfied that a sufficiently compelling case has been made for the use of spit hoods at the AYTC.
99. In my view, the application of spit hoods to children and young people detained within the AYTC is not consistent with the objects and guiding principles of the youth justice system.
100. The use of spit hoods in the AYTC also appears contrary to the Charter of Rights for Youths Detained in Training Centres, insofar as their application does not appear 'absolutely necessary' when considering the availability of other, less restrictive, means of protecting staff from injury.
101. In response to my provisional report, the department observed:

Noting that AYTC practice has matured since the incidents under review, the department would argue that its responsibilities to staff under Work Health and Safety legislation, at times, need to be balanced and considered with the extent to which the Charter could be implemented[.]

[...]

With regard to [the incidents which took place after commencement of the *Youth Justice Administration Act 2016*], the department believes that the prescribed circumstances for mechanical restraint were met in both instances. The restraints were used because the employee assessed that the resident was about to harm himself or another person (Reg

Trauma-Informed Correctional Care: A Balance of Goals and Environment' (2012) 3(2) *European Journal of Psychotraumatology* 17246, 2.

⁴⁶ Welfare H and Hollin C, 'Involvement in Extreme Violence and Violence-Related Trauma: A Review with Relevance to Young People in Custody' (2012) 17(1) *Legal and Criminal Psychology* 89, 10.

8(2)(b)(i). The department also believes that the restriction of the residents' free movement was justified and was a last resort considering the difficulty and complexity in managing these residents (static and dynamic risk factors).

102. I accept that the department has a duty of care towards staff working in the AYTC. As already stated, however, I am not convinced that the use of spit hoods is 'absolutely necessary' for the department to meet its work, health and safety obligations or to otherwise mitigate the risk presented by spitting and biting.
103. I am also concerned that the use of spit hoods against children and young people at the AYTC risks contravening several accepted international human rights standards, including the prohibition against the use of instruments of restraint that are inherently degrading (Mandela Rules, rule 47(1)), the obligation to ensure that instruments of restraint are only used when no lesser form of control would be effective (Mandela Rules, rule 48(1)), and the prohibition against the use of instruments of restraint and force on children in circumstances causing humiliation or degradation (Havana Rules, rule 64).
104. In my view, this is especially the case where spit hoods are applied as a precautionary measure, based on a child's past behaviour alone, and in the absence of any immediate threat to staff safety.
105. I note that the department appears to be making encouraging progress in reducing the use of mechanical restraints within the AYTC, including spit hoods. Staff and management deserve praise for those efforts.
106. If the use of spit hoods within the AYTC is to be eliminated, as I have recommended, the department and the South Australian government should ensure that staff are adequately supported in the transition.

Opinion and recommendations

It is my view that the use of spit hoods by the department in the incidents reviewed by my investigation involved the unnecessary application of force and restraints to children detained in the AYTC, contrary to the Charter of Rights for Youths Detained in Training Centres.

It is my view that the department's actions in this regard were in accordance with a practice (being the application of spit hoods to children and young people detained in the AYTC) that is unreasonable and unjust for the purposes of section 25(1)(c) of the *Ombudsman Act 1972*.

It also follows that I am of the view that the department's actions in connection with incidents 7394 and 7865 (being the incidents which took place after commencement of the *Youth Justice Administration Act 2016*) were:

- contrary to regulation 8(3)(b)(ii) of the *Youth Justice Regulations 2016*, insofar as the use of spit hoods involved the application of mechanical restraints in circumstances which contravened the resident's rights under the Charter of Rights for Youths Detained in Training Centres
- contrary to section 29(f) of the *Youth Justice Administration Act 2016*, insofar as the use of spit hoods involved the application of mechanical restraints in circumstances that were not prescribed by law
- contrary to law for the purposes of section 25(1)(a) of the *Ombudsman Act 1972*.

In the circumstances, I make the following recommendations under section 25(2) of the Ombudsman Act:

Recommendation 1:

That the department continue to reduce the use of spit hoods within the AYTC, ceasing all use of the implements by 5 September 2020.

The department's response:

The department indicated that it supports this recommendation in principle. The department observed:

Noting that the use of RWSP [resident worn spit protection] at the AYTC has significantly reduced in the last financial year, the department will continue to work on reducing their use with a view to ceasing use through replacement with alternative management methods.

The department is confident in its capacity to manage all but the most extreme incidents of residents spitting on staff without RWSP and is transitioning to a position where RWSP is no longer in use. However, the removal of RWSP as an option for protecting staff in the very specific and limited circumstances at this time of transition where other methods such as personal protective equipment [...] are not viable or available is problematic to cover the full suite of circumstances.

The time for implementation of this recommendation and the other recommendations below has been extended to 12 months (from a period of six months foreshadowed in the provisional report) at the request of the department, to allow it further time to research best practice alternatives and consult with staff in respect of the transition.

Recommendation 2:

That the Chief Executive of the department remove spit hoods from the list of approved forms of mechanical restraint for use within the AYTC by 5 September 2020.

The department's response:

The department indicated that it supports this recommendation in principle. The department observed:

As noted above, the removal of RWSP as an option for protecting staff in the very specific and limited circumstances where other methods such as personal protective equipment are not viable or available is problematic at this time.

Recommendation 3:

That, prior to 5 September 2020, the department:

- a. Investigate whether additional protective equipment, training or other measures consistent with trauma-informed practice can be provided to staff to further mitigate against the risk of injuries caused by spitting and biting; and
- b. Take reasonable steps to ensure that such measures are made available to staff in the AYTC.

The department's response:

The department indicated that it supports this recommendation. The department observed:

Youth Justice continues to explore options for alternatives and to investigate new approaches to ensure that use of force and use of mechanical restraint are actions of last resort.

[Regarding recommendation 3(b):] supported; noting that implementation of proposed changes may be subject to funding approval and/or resource availability.

Recommendation 4:

That the South Australian government review section 33 of the *Youth Justice Administration Act 2016* and consider whether the provision authorising the use of force to maintain order in a training centre should be repealed.

The department's response:

The department indicated that it does not support this recommendation. The department observed:

[Use of force] exists as a last resort within the continuum of possible responses in the management of incidents involving residents within the AYTC.

The department is concerned that a complete removal of this clause from the Act would significantly compromise the Chief Executive's ability to provide a safe and secure facility for residents, staff and visitors, on behalf of the South Australian Government.

The Guardian for Children and Young People's response:

The Guardian for Children and Young People said that she welcomed all four recommendations made in this report. She indicated that she would also like to see the use of spit hoods eliminated in other places of detention affecting children and young people, including court cells and custodial transport settings.

The Guardian said that she would also support the review of the legislative provision authorising the use of force to 'preserve the security' of a training centre, which she observed was also frequently used to justify the application of mechanical restraints and other restrictive practices.

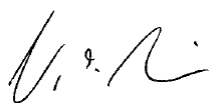
Further action

A copy of this report has been supplied to the Minister for Human Services, as required by section 25(3) of the *Ombudsman Act 1972*.

In accordance with section 24(4) of the *Ombudsman Act 1972* the department should report to the Ombudsman by **5 December 2019** and again by **5 September 2020** as to what steps have been taken to give effect to the recommendations in this report, including:

- details of any actions that have been commenced or completed; and
- relevant dates of actions taken to implement the recommendations.

In the event that no action has been taken, reasons for the inaction should be provided to the Ombudsman.



Wayne Lines
SA OMBUDSMAN

5 September 2019