



**Redfern
Legal
Centre**

23 October 2023

Dr Amanda Cohn, MLC
Chair
Legislative Council – Portfolio Committee No. 2- Health
Parliament House, Macquarie Street

SYDNEY NSW 2000

By email: portfoliocommittee2@parliament.nsw.gov.au

Dear Amanda Cohn,

Thank you for the opportunity to make a submission to the Legislative Council inquiry into the equity, accessibility and appropriate delivery of outpatient and community mental health care in New South Wales. Enclosed is a submission prepared by Redfern Legal Centre.

Yours faithfully,

Camilla Pandolfini
Chief Executive Officer
Redfern Legal Centre

Table of Contents

1. Recommendations	3
2. Introduction	4
3. RLC's work in police accountability	4
4. Summary	5
5. RLC's responses to specific issues	5
(a) Background	5
(b) Experiences of our clients	6
(c) Mental illness is not a criminal offence	7
(d) Diversion from the criminal justice system	10
(e) Alternative models	10
(f) Mental health issues require mental health solutions	11
(g) Police ambulance clinicians Early Response ('PACER') Program	12

1. Recommendations

Recommendation 1

Police officers who respond to a person experiencing an acute mental health crisis, should attend the scene in unmarked vehicles without active sirens and should be dressed in plain clothes.

Recommendation 2

RLC supports the recommendation of the Justice Reform Initiative, Submission to Legislative Council Portfolio Committee No 2 – Health, Parliament of New South Wales, Inquiry into the Equity, Accessibility and Appropriate Delivery of Outpatient and Community Mental Health Care in New South Wales (6 September 2023) 11, for the introduction of a specific mental illness caution to manage low-level offending attributable to mental illness.

Recommendation 3

All NSW Police Force officers should complete comprehensive, mandatory, substantial training courses on how to manage situations involving people experiencing an acute mental health crisis, delivered in collaboration with suitably qualified mental health professionals.

Recommendation 4

Police contact with people experiencing an acute mental health crisis should only be a last resort after all other options have been exhausted.

Recommendation 5

Mental health professionals should lead a mental health-based response to people experiencing an acute mental health crisis.

Recommendation 6

PACER attendances on a person who has experienced an acute mental health crisis should be recorded in NSW Police Force databases and linked to the person's Criminal Name Index Numbers, and police officers should have regard to this when determining how to respond to future events that may involve the person.

Recommendation 7

The NSW Government should increase funding to and expand the PACER program across all New South Wales Police Area Commands and Districts.

2. Introduction

Thank you for the opportunity to make a submission to the Legislative Council inquiry into the equity, accessibility and appropriate delivery of outpatient and community mental health care in New South Wales.

Redfern Legal Centre (RLC) is a non-profit community legal centre that provides access to justice. Established in 1977, RLC was the first community legal centre in NSW and the second in Australia. We provide free legal advice, legal services and education to people experiencing disadvantage in our local area and statewide. We work to create positive change through policy and law reform work to address inequalities that cause disadvantage.

We provide effective and integrated free legal services that are client-focused, collaborative, non-discriminatory and responsive to changing community needs – to our local community as well as state-wide. Our specialist legal services focus on tenancy, credit, debt and consumer law, financial abuse, employment law, international students, First Nations justice, and police accountability, and we provide outreach services including through our health justice partnership.

3. RLC's work in police accountability

RLC's statewide police accountability practice has a long history of providing free and confidential legal advice to people living in New South Wales about police powers, access to police records, and police complaints. We also provide advice on decision-making by government agencies and complaints processes administered by government.

Our submission is informed by the experiences of our clients, the majority of whom experience socio-economic disadvantage. Many of our clients have also experienced an acute mental health crisis.

RLC's Police Accountability practice works with our clients, the community, academics and other organisations to inform our policy and law reform work.

We have contributed to submissions and reports relevant to this issue in the past including *Rethinking strip searches*,¹ the NSW Department of Justice *Review of the Surveillance Devices Amendment (Police Body-Worn Video) Act 2014*,² and the Australian Law Reform Commission *Pathways to Justice: An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander People*.³

In September 2023 we wrote an open letter to the NSW Government calling for mental health professionals

¹ Michael Grewcock and Vicki Sentas, *Rethinking Strip Searches by NSW Police* (Report, August 2019) <https://rlc.org.au/sites/default/files/attachments/Rethinking-strip-searches-by-NSW-Police-web_0.pdf>.

² Aboriginal Legal Service (NSW/ACT) and Redfern Legal Centre, Submission to Department of Justice (NSW), *Review of the Surveillance Devices Amendment (Police Body-Worn Video) Act 2014* (14 June 2018) <<https://rlc.org.au/sites/default/files/attachments/Department-of-Justice-NSW-Surveillance-Device-Amendment-Act-14-June-2018.pdf>>

³ Australian Law Reform Commission, *Pathways to Justice: An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (Final Report No 133, December 2017) <https://www.alrc.gov.au/wp-content/uploads/2019/08/final_report_133_amended1.pdf>.

to be first responders rather than police.⁴

4. Summary

In our submission we have responded only to paragraph (i) of the Terms of Reference of the Inquiry into *the Equity, Accessibility and Appropriate Delivery of Outpatient and Community Mental Health Care in New South Wales*, 'Terms of Reference' (12 July 2023) which provides:

That Portfolio Committee No. 2 – Health inquire into and report on the equity, accessibility and appropriate delivery of outpatient and community mental health care in New South Wales, and in particular: ... (i) alternatives to police for emergency responses to people experiencing acute mental distress, psychosis, delirium, dementia or intoxication in the community, including but not limited to Police, Ambulance, Clinical, Early, Response (PACER)

RLC's police accountability practice has provided legal advice and assistance to numerous clients who have had an interaction with NSW police after police have been called to perform a welfare check. Many of these clients are transported by police to a mental health facility or arrested and taken into custody after their interaction with police. For many of our clients this interaction with police has caused them concern, potential injury, or trauma.

It is this client-based work that has informed our submission to the inquiry. In summary our key concerns are:

- There has been a historical and systemic failure in the response from the NSW Police Force to people who have experienced an acute mental health crisis is systemic which requires urgent reform.
- People who experience an acute mental health crisis are erroneously stigmatized and treated as dangerous offenders by police.
- The relationship between people who have experienced an acute mental health crisis, and the NSW Police Force is challenging and tense.
- People who have experienced an acute mental health crisis are incorrectly overrepresented in the criminal justice system and should not be criminalised for their mental health issues and mental illnesses.
- A police presence with a person experiencing an acute mental health crisis aggravates the situation.
- Police lack the training to properly respond to a person experiencing an acute mental health crisis.
- Mental health issues require mental health solutions managed and led by mental health professionals, not law enforcement personnel.
- The Police Ambulance Clinicians Early Response ('PACER') pilot program's advantages outweigh its disadvantages, and it should be expanded.

5. RLC's responses to specific issues

(a) Background

In the last five months alone, there have been four high profile cases where people experiencing an acute

⁴<https://rlc.org.au/sites/default/files/202309/230907%20Lawyers%20call%20for%20mental%20health%20professionals%20to%20be%20first%20responders%2C%20not%20police%20.pdf>.

mental health crisis have been killed by police.

In May 2023, Mrs Clare Nowland, aged 95, was fatally tasered by police in Cooma and Mr Steve Pampalian, aged 41, was fatally shot by police in North Willoughby. In July 2023, Mr Jesse Deacon, aged 43, was fatally shot by police in Glebe. In September 2023, Ms Krista Kach, aged 47, was fatally shot with a bean bag round by police in Newcastle.

Unfortunately, these are not isolated incidents. In 2018, NSW Police data revealed that 19 of 35 people shot dead by NSW Police had a mental illness.

The Australian Institute of Criminology collects and publishes data on 'Police shootings of People with a Mental Illness'. In the most recent data publication the AIC found, "*... since 1989–90, there have been 105 persons fatally shot by police, with available information indicating that in 44 (42%) incidents, the deceased had been identified as having some form of mental illness, with psychotic disorders such as schizophrenia being the most common.*"⁵

In May this year, the Law Enforcement Conduct Commission published a five-year review into NSW Police Force critical incident investigations.⁶ The report found that between 2017–22, 60% of NSW Police Force critical incidents involved a person self-inflicting harm, and at least 43% involved an interaction with a person experiencing a mental health crisis.

The LECC found that police training on how to respond to someone in mental health crisis is currently extremely limited. The LECC supports increasing the training for Police and expanding the Police Ambulance Clinician Early Response Program.⁷

(b) Experiences of our clients

The relationship between our clients who have experienced an acute mental health crisis and the NSW Police Force is often challenging and tense. Many of them report being distrustful and scared of police because of their interaction with them during their mental health episode.

Our clients have told us that the police response to them during their mental health crisis was aggravating, combative, confrontational, fear inducing, hostile, inflammatory, provocative, threatening, traumatic, violent, and caused further psychological harm. This was mainly due to the heavy-handed tactics and the excessive use of force by the police officers involved.

Some of our clients who have experienced an acute mental health crisis have also reported that they avoid social situations and venturing outside their homes out of fear that they may have adverse contact with the police. This has caused them to become isolated and, in some cases, contributed to subsequent mental health episodes. Others have reported that they were threatened with physical force into taking

⁵ Australian Institute of Criminology, 30 May 2013, 'Police shootings of people with a mental illness', Research in practice 34.

⁶ Law Enforcement Conduct Commission, *Critical Incident Investigation Monitoring Report* <<https://www.lecc.nsw.gov.au/oversight/critical-incident-monitoring/critical-incident-investigation-monitoring-report>>

⁷ Ibid at 6, page (ii) in Foreword.

medication by police officers, which is wholly inappropriate.

Clients have also been traumatised using force by police officers. One client reported that up to eight police officers attended to respond to their mental health crisis. Many clients also report that they became confused, dazed, and triggered, felt embarrassed and intimidated, and reacted poorly to the sight and sound of police sirens, uniforms, and weapons. This is understandable given the presence of police is indicative that someone is in trouble with the law.

Case Study: Lorrie

In July 2023, Lorrie, a 64-year-old female therapist, noticed an ambulance and police vehicle at the front gate of her property. When Lorrie went out to see why they were there, the police said: 'You need to come with us ... We can do this the hard way or the easy way' while an ambulance officer held out medication for Lorrie to take.

When Lorrie refused and explained that there must have been a mistake, the police physically restrained her and transported her to a hospital. After Lorrie was discharged, she had no way of getting home because she did not have any of her possessions.

Case Study: Liam

In September 2023, Liam, a 47-year-old homeless male, suffered from a medical episode involving suicidal ideation. Police contacted him and directed him to attend the police station. When Liam attended the police station, five police officers proceeded to detain, search, and taunt him while he was in the holding cell. Liam enquired as to whether he was under arrest, but the police did not respond to him.

Later when Liam complained about the police's conduct, the complaint was not sustained because he was not under arrest and had not sustained any physical injury at the hands of the police. Liam considers that this interaction with the police caused him more psychological harm.

Recommendation 1

Police officers who are required to respond to a situation involving a person experiencing an acute mental health crisis should attend the scene in unmarked vehicles without active sirens and should be dressed in plain clothes.

(c) Mental illness is not a criminal offence

NSW Police are often called to incidents after either a neighbour, family member or a doctor has called '000' because they have welfare concerns for the person. This triple 0 call is then transferred to NSW police.

The NSW police will then go and conduct what is known as a "welfare check". Welfare checks are different from other police checks because the person is not alleged to have committed an offence. Welfare checks usually mean police are responding to a call due to immediate concerns about a person's wellbeing.

Through our casework, clients who have experienced an acute mental health episode have informed us

that when they see police at their door, and they are in an acute mental health state, they become terrified and think the police are going to hurt them or take them away somewhere unknown.

Some clients who have a mental health condition deeply believe police have them under surveillance. They are of the view that they are being followed all the time by NSW police and their phone, computer and house is tapped. When they see the police at their door it can feed into this enormous sense of fear and anxiety that they have about being watched by the police. For some clients it is the presence of the police that makes them panic and want to protect themselves.

There are several policies, guidelines and legislation that guide NSW Police about how to deal with mental health situations.

Under Section 9 of *The Act*, "Powers to Enter in an Emergency," police can enter a private property without a warrant or invitation if they believe on reasonable grounds that someone has "suffered significant physical injury" or there is "imminent danger of a significant injury" to an individual. The police then have the "authority to enter the premise in order to prevent further significant injury."

In 2018, the NSW Police Force and NSW Health signed a Memorandum of Understanding (MOU) that sets out the principles to guide NSW Police and Health agencies on how to work together when delivering services to people with mental health problems.⁸

The NSW Police Handbook⁹ also guides police about practice regarding the conduct of welfare checks on someone who might be mentally unwell. Again, it needs to be emphasized that when police attend a place for just a welfare check at that point there is no view that a crime has been committed. Within the NSW Police Handbook it states that police are to "apply the least restrictive actions possible upon a person suffering from mental illness. The use of force, whilst justifiable in appropriate circumstances, should be utilised as a last resort."¹⁰

Under section 22 of the *Mental Health Act 2007* police have the power to detain or apprehend the person to transport them to a mental health facility. If such power is used, the officer is required to complete a section 22 form. Under s.81 (4) of the same Act, police have the power to search for the person.

The *NSW Mental Health Act 2007* s 22 sets out that:

- (1) A police officer who, in any place, finds a person who appears to be mentally ill or mentally disturbed may apprehend the person and take the person to a declared mental health facility if the officer believes on reasonable grounds that--
 - (a) the person is committing or has recently committed an offence or that the person has recently attempted to kill himself or herself or that it is probable that the person will attempt to kill himself or herself or any other person or attempt to cause serious physical harm to himself or herself or any other person, and

⁸ NSW Government & NSW Police Force, March 2018, 'NSW Health – NSW Police Force Memorandum of Understanding 2018, Incorporating provisions of the *Mental Health Act 2007* (NSW) No 8 and the *Mental Health Forensic Provisions Act 1990* (NSW):

<https://www.health.nsw.gov.au/mentalhealth/resources/Publications/mou-health-police-2018.pdf>

⁹ NSW Police Force Handbook, October 2019. NSW Police Force.

¹⁰ Ibid at 8, page 174.

(b) it would be beneficial to the person's welfare to be dealt with in accordance with this Act, rather than otherwise in accordance with law.

(2) A police officer may apprehend a person under this section without a warrant and may exercise any powers conferred by section 81 on a person who is authorised under that section to take a person to a mental health facility or another health facility.

In the NSW Police Handbook, it instructs police to “use alternate means of intervention” if police hold concerns of person’s mental health but they may not need to be taken to a mental health facility. These alternatives include referral to Community Mental Health Team, Contacting the Mental Health Lines, Ambulance NSW or engaging a member of the person’s family.

There is no doubt that attending a place for a ‘welfare check’ and the person then becomes extremely upset is a very difficult scenario for NSW police, especially in response to seeing police the person may reach for a weapon. But it is the view of RLC that sometimes it is the presence of the NSW police that creates escalation in the circumstances, and for this reason there needs to be an examination of alternative to police as the first responders or as the only responders.

A police officer’s attendance to a person experiencing an acute mental health crisis itself can, and often does, set off a chain of events and exacerbate the situation and cause the person experiencing the mental health crisis to respond in an adverse way which they may otherwise not have had a suitably trained mental health professional attended to them instead.

The symptoms of an acute mental health crisis are complex and are often wrongly conflated with criminal offending, for example, domestic and family violence situations. Our casework regularly involves clients who have experienced an acute mental health crisis and are either named as defendants or persons in need of protection in provisional apprehended domestic violence orders made by police, despite none of the parties wanting that outcome, none of the parties contacting the police because they were fearful of the other party or apprehended domestic violence, no evidence of a crime having been committed, and despite the ongoing harm to family relationships this can cause. There must be a greater emphasis on appropriate health intervention, not criminalisation and potential incarceration.

Case Study: Andrew and Lauren

In August 2023, Lauren, a 35-year-old female, noticed that her husband, Andrew, a 35-year-old male, was about to have a mental health episode. Neither the beginning, middle nor end of this episode were violent and Lauren was not fearful of Andrew. However, Lauren contacted the police to conduct a welfare check on Andrew because he had a history of mental health issues and made a serious suicide attempt just two years prior.

When the police arrived at the property, Lauren only consented to them entering so that they could conduct a welfare cheque on Andrew. The police then searched the property, causing significant damage, and blamed this on Andrew.

This ‘welfare check’ resulted in the police arresting Andrew, conveying him to the police station in a police vehicle, charging him with domestic violence related offences, and making a provisional apprehended domestic violence order against him with Lauren named as the person in need of protection. Despite this, the police then telephoned Lauren and requested that she collect Andrew from the police station.

(d) Diversion from the criminal justice system

It is clear from our casework that clients who have experienced an acute mental health crisis which has been responded to by the police are overrepresented in the criminal justice system. However, it is in the public interest that low level offending attributable to mental illness should not result in charges and the criminalisation of mental illness.

Individual police officers can change this with the power they already have available to them by using their discretion to caution, warn, call on other emergency services providers and mental health services for assistance, and divert people away from this system, instead of their powers to use force, arrest, and charge people unnecessarily. Police officers should be aware that such responses can have a snowball effect on a person's life and thrust vulnerable people into homelessness, substance abuse, and a system that is insufficiently resourced, overworked, underfunded, and incapable of treating them properly.

Case Study: Susan

In June 2023, Susan, a 63-year-old female with a history of mental health issues, suffered from a non-physical, acute mental health crisis at a shopping centre. This resulted in the police being called and a patron calling her offensive names and physically assaulting her. Susanna told the police that she had been assaulted and told them to look at the CCTV footage. The police refused to do this and charged Susan with a criminal offence. Fortunately, the court dismissed the charge and discharged Susan under the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020 (NSW)*.

Recommendation 2

RLC supports the recommendation of the Justice Reform Initiative, Submission to Legislative Council Portfolio Committee No 2 – Health, Parliament of New South Wales, *Inquiry into the Equity, Accessibility and Appropriate Delivery of Outpatient and Community Mental Health Care in New South Wales* (6 September 2023) 11, for the introduction of a specific mental illness caution to manage low-level offending attributable to mental illness.

(e) Alternative models

It is the view of RLC that it is time to look at alternative first responder models to ensure the safety of those suffering from acute mental health condition and first responders.

There are several co-responder programs implemented in the United States that Australia can learn from. These programs include:

- Cahoots (Eugene, Oregon) – In 2019, police backup was needed during less than 1% of the 24,000 calls they responded to. [Click here](#) for article about program.
- STAR (Denver, Colorado) – This is a new program to Denver that started in 2020. In the program's first six months, they responded to 2,500 calls, only 748 of which required police assistance. [Click here](#) for an independent evaluation of program.
- MCAT (Indianapolis, Indiana) – This program helped respond to mental health emergencies and relieve other first responders whose services were not needed for the remainder of the call.

- Policing Alternatives & Diversion Initiative (PAD) (Atlanta) - PAD partner with the City of Atlanta's 311 non-emergency services line to accept community referrals for issues of concern related to mental health, substance use or extreme poverty.

Case Study: Chloe

In 2016, Chloe, a young female, experienced an acute mental health crisis and made serious threats of self-harm. When police located Chloe at The Gap, Watsons Bay, they proceeded to call her an offensive name, forced her onto the ground, handcuffed her and searched both her and her smartphone, and seized her property. Chloe was then required to sit on the ground while handcuffed for more than 90 minutes until an ambulance arrived at the scene.

Recommendation 3

Until more sweeping reforms are implemented, the NSW Police Force should ensure that all police officers complete comprehensive, mandatory, substantial training courses on how to manage situations involving people experiencing an acute mental health crisis, delivered in collaboration with NSW Health by suitably qualified mental health professionals.

(f) Mental health issues require mental health solutions

The NSW Government, *NSW Health – NSW Police Force Memorandum of Understanding 2018: Incorporating Provisions of the Mental Health Act 2007 (NSW) No 8 and the Mental Health Forensic Provisions) Act 1990 (NSW)* (March 2018) 10 [3.2.3]

<https://www.police.nsw.gov.au/data/assets/pdf_file/0003/560289/MOU_NSWH_NSWPF_Mar18_V5.pdf> provides:

The NSWPF primary responsibility in relation to its response to incidents is to ensure public safety. A request for police assistance is to be limited to situations which pose a threat to public safety or where there is significant or imminent risk to staff involved. Officers have the training, equipment and resources to manage these situations. Police may also be called upon by other agencies to assist them in fulfilling their role, including under the MHA. If there is actual or imminent danger to a person then police should be notified immediately through 000. Where a less urgent attendance is required, contact with the nearest police station is suggested. For general enquiries, the Station Supervisor (Sergeant) or Duty Officer (Inspector) at the nearest station are the best points of contact. For the most part, attendance by police at nonurgent mental health related incidents is associated with poor outcomes for mental health consumers and should be a last resort. Resourcing issues at another agency should not be the sole reason for the involvement of police.

More recently, the NSW Police Force again reiterated that it should not be the default agency used to respond to a person experiencing an acute mental health crisis and called for 'the responsibility for the appropriate management of those with mental health issues being returned to NSW Health Services': *NSW Police Response to Recommendations Made in Law Enforcement Conduct Commission, Five Years (2017 – 2022) of Independent Monitoring of NSW Police Force Critical Incident Investigations (May 2023)* 6 <<https://www.lecc.nsw.gov.au/news-and-publications/publications>>.

Recommendation 4

Police contact with people experiencing an acute mental health crisis should be minimised and used as a last resort after all other options have been exhausted.

Recommendation 5

There should be a mental health-based response to people experiencing an acute mental health crisis, led by mental health professionals from NSW Health.

(g) Police ambulance clinicians Early Response ('PACER') Program

It is clear that a health-focused response rather than a law and order-focused one is necessary when dealing with people experiencing an acute mental health crisis. While RLC's preference is that such response does not include police officers at all, we are aware of the multidisciplinary, Police Ambulance Clinicians Early Response ('PACER') pilot program launched in 2018 and acknowledge 13 of 45 New South Wales Police Area Commands or Districts have collaborated with NSW Health to deliver the program to people in need of it since 2020: *LECC Report 44* [4.3.1].

While the PACER program is in its infancy, our clients who have experienced acute mental health crisis and have been dealt with under it, have reported that it is producing positive outcomes for them by reducing trauma and preventing further physical and psychological harm. These clients have reported feeling safer in the presence of police with a PACER clinician present, and that their transportation to a hospital or mental health facility in an unmarked PACER vehicle, instead of in the back of a paddy wagon with flashing sirens at the front of their home for their neighbours and passersby to see, was a more dignifying experience for them.

Such outcomes are also beneficial to the families of people who have experienced acute mental health crisis. These family members should not be placed in the dilemma of worrying about whether calling police for help will place them or their family member experiencing the mental health crisis in harm's way or legal jeopardy. The program curtails this by facilitating early intervention and allowing the person experiencing the acute mental health crisis to get the help and treatment that they instead of being detained and restrained by police, and it diverts them to hospitals and mental health facilities instead of police stations and courtrooms.

The benefits of the program should also be flowing through to the various government agencies that the PACER professionals belong to, with limited resources not being inappropriately or unnecessarily used, reduced admissions to emergency departments, reduced intakes into police station holding cells and reduced court attendances.

Despite these benefits, some of our clients have reported that the PACER teams attending to them did not work together in a cohesive way, with the police officer perceived to be the officer in command of the situation, and that they still experienced an excessive and heavy-handed response by the police.

Given the program is usually initiated by a telephone call to the police, this means that police decide whether the person experiencing an acute mental health crisis should be attended to by a PACER team or the police alone. The obvious problem with this is that they may not best suited to determine what is in the best interest of the person experiencing an acute mental health crisis.

RLC also understands that the police only call a PACER team once all risks have been contained and that PACER attendances on a person who has experienced an acute mental health crisis may not be recorded in a way that enables police attending future call outs to determine that the person has been dealt with under

the program in the past. By the time all risks have been contained by police it may be too late for the benefits of the program to be realised, and if PACER call outs are not being recorded so that police can easily identify past interactions, the benefits of the program may not be applied to future interactions.

Despite this, RLC's view is that the program's advantages outweigh its disadvantages. The funding to it should be extended and increased, the program should be expanded across all of New South Wales, and there should be more collaboration between Health NSW and the NSW Police Force in line with the *MOU 4* [1.1] which provides:

The purpose of this MOU is to assist staff of NSW Health (including NSW Ambulance) and the NSW Police Force to work collaboratively in responding to situations involving people with mental health problems in a manner that best meets the clinical and safety needs of the person and the safety of staff and others. This MOU provides an overarching framework for local MOU committees to develop local operational protocols to meet local needs and resource availability and which are consistent with this MOU.

Recommendation 6

PACER attendances on a person who has experienced an acute mental health crisis should be recorded in the NSW Police Force databases and linked to the person's Criminal Name Index Numbers, and police officers should have regard to this when determining how to respond to future events that may involve the person.

Recommendation 7

The NSW Government should increase funding to and expand the PACER program across all New South Wales Police Area Commands and Districts.

Authors

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Date

23 October 2023