# Analysis: NSW Mental Health Inquiry Final Report

Table of Contents



## NSW Mental Health Inquiry 2024:

The NSW Mental Health inquiry handed down its Final Report on June 4, 2024, having received 165 submissions, and hearing several panel presentations.[1]

This Report is disappointing as it does not confront the abuse faced by individuals with psychosocial challenges. Further, it does not align with the strong position taken by the Victorian Royal Commission in their Report three years ago, with Recommendations (42, 53 and 54) to eliminate seclusion and restraint when dealing with these individuals.

The Report accepted that Community Treatment Orders and consequential Forced Medication are most alarming but presented no effective recommendations to stop them. Mental Health Australia works on an international level to prevent coercion, with Special Rapporteur on the Right to Health to the UN, Mr Dainuis Pūras, affirming that 'mental health care… must be directed to rights-based supports, to non-coercive alternatives, and to

[1] New South Wales Legislative Council, *Equity, accessibility and appropriate delivery of outpatient and community mental health care in New South Wales* (Report No 64, June 2024) (*'Mental Health Inquiry Report 64*' https://www.parliament.nsw.gov.au/tp/files/188662/Report%20No.%2064%20-%20PC2%20-%20Equity,%20accessibility%20and%20appropriate%20delivery%20of%20outpatient%20and%20community%20mental%20health%20care%20in%20NSW.pdf

develop or strengthen practices that are non-violent, peer-led, trauma-informed, community-led, healing and culturally sensitive'.[2]

It is most alarming that the NSW Mental Health Inquiry Committee scarcely referred to any of the critical reform reports and frameworks that NSW is required to align with, let alone the significant national and global guidance for contemporary mental health :

- Health Actions recommended under the 2011 'Callan Park Plan of Management'. The vision for a wellness hub was detailed in the Callan Park Masterplan 2011 that was adopted by Leichhardt Council.[3]
- NSW Pre-Budget Submission by leading Mental Health organisations call for State Labor's Minns government in March 2024 to 'Fully Fund Mental Health in NSW'
- Global reforms showcased in 'WHO Guidance on Community Services' 2023
- NSW's Living Well Strategy (2014 & the 2020-2024 review)[4]
- National Mental Health Workforce Strategy Taskforce 2022-2032
- Royal Commission into Victoria's Mental Health System - final report, 2022
- Federal 10 year plan 'Vision 2030: Blueprint for Mental Health & Suicide Prevention'
- National Report Card 2023
- NSW Ministry of Health's Future Health report 2022-2032
- Chief Psychiatrist, Dr Wright's report 2017, Review of Seclusion, Restraint and Observation of Consumers with a Mental Illness in NSW Health Facilities.
- Inquiry into mental health services in New South Wales - Final Report by the Select Committee on Mental Health, 2002 recommendations
- Royal Commission into Victoria's Mental Health System - final report, 2022

The global, national and state calls are the same: for significant human rights based reforms to empower consumers as actively empowered participants, to be achieved by expansion from a crisis driven system by developing community led services to meet the 'missing middle', requires simultaneously more funding and to drive down coercive practices.

Living Well: A Strategic Plan for Mental Health in NSW 2014 – 2024 is the 10-year plan for mental health reform in NSW. The Commission conducted a mid-term review of the strategic plan with whole-of-government strategies in the next five years, in the Living Well in Focus 2020-2024: A strategic plan for community recovery, wellbeing and mental health in NSW[5]. The review foci are to: strengthen community recovery and wellbeing; strategically invest in community wellbeing and mental health; and ensure the right workforce for the future. It claims the underpinning principles orient to people with lived experience being

[2]https://www.ohchr.org/en/statements/2020/10/statement-mr-dainius-puras-special-rapporteur-right-everyone-enjoyment-highest

[3] https://www.innerwest.nsw.gov.au/develop/state-government-and-utility-works-and-projects/state-government-projects/callan-park-future/callan-park-masterplan?fbclid=IwZXh0bgNhZW0CMTEAAR3fJVmIaQ903Xis0fwMXZlEcgAAsdHtWdrVKwVBxqhxOUQ2RimUEz9FS7k_aem_ct75ctgvgRgO5w3gbtYgpA

[4] Living Well mid-term review: evidence and resources https://www.nswmentalhealthcommission.com.au/evidence/living-well-mid-term-review-evidence-and-resources

[5] https://www.nswmentalhealthcommission.com.au/living-well

engaged in service design,evaluation and improvement, is to align with the Strategic Framework for Suicide Prevention in NSW 2018–2023, and is to deliver on its commitments under the Fifth National Mental Health and Suicide Prevention Plan and the National Mental Health and Wellbeing Pandemic Response Plan.

The 24 actions (Table 1) focus on what government agencies planning and investment in: monitoring and reporting, data collecting; develop and embed a consumer peer workforce; and workforce training. Included in the Strategic priority 2 stated aim is to invest in evidence-based community supports, and investing in expanding housing and transitional support under the Pathways to Community Living Initiative for residents post discharge from two hospitals, such as investing in inpatient services and in providing peer workers in step up/down services. Focus 2.2 is about increasing the mental health workforce, and planning to invest into improving pathways in forensic mental health services and custody sector, including the forensic peer workforce [6].

More planning for investment, data collection, and research. However the implications of any alignments of various framework/strategic planning for NSW was not addressed during the Inquiry. Nor the urgent call from many other NSW, Australian and global expert evidence on necessary mental health reforms. No sign of implementation.

It is quite significant that Dr Amanda Cohn wrote her dissenting statement within the NSW Inquiry final report, and expressed her deep frustration on reform delays, where the extent of the government's commitment to the Inquiry was only in 'exploring' and 'watering down' the Inquiry's recommendations - not on implementation.

The NSW Inquiry's Committee Chair, Dr Cohn called out the NSW government as '*gutless*':

> *"Mental health is a health problem, not a police problem….*
>
> *In my work as a GP, it was clear that the mental health system is failing. People who need help do not know where or have nowhere to access care, overworked carers and health workers are burning out, and first responders and emergency departments are being used as a last resort.*
>
> *"Months of submissions have shown that the mental health system is so under-resourced that it's reactive and crisis-driven rather than able to provide assertive continuous care to people with complex and chronic illnesses.*
>
> *"The strength of findings and recommendations from this Greens-led inquiry is a testament to both the scale of the change needed in the mental health system as well as the quality of evidence heard by the committee.*

[6] https://www.nswmentalhealthcommission.com.au/sites/default/files/2021-08/Living%20Well%20in%20Focus%20LWiF%20Monitoring%20and%20Reporting%20Framework%20-%20FINAL%2019%20May.pdf p 9

*"The evidence was both unanimous and compelling that police should not be primary responders to mental health emergencies - from consumers and carers, from service providers, mental health professionals and from the police themselves.*

*"This inquiry demonstrated how NSW can better respond to mental health crises based on programs already working interstate. We don't need to reinvent the wheel when we know that a health-led response can be implemented safely for workers, and with much better outcomes for patients and their families.*

*"It's gutless for the government to water down recommendations so that they are able to say they've been implemented when really, all they're committing to is 'exploring' them.*

*"This is not the time for further investigation, exploration, or consideration. The time for this reform is now. The Greens will be holding the NSW government to account to ensure all of the report's recommendations are implemented," said Dr Cohn.* [7]

Most notably, stopping coercion is supported by Mental Health Australia and adopted internationally. This is represented by Mr Dainuis Pūras, Special Rapporteur on the right to health to the UN, in his statement, '*Mental health care…must be directed to rights-based supports, to non-coercive alternatives, and to develop or strengthen practices that are non-violent, peer-led, trauma-informed, community-led, healing and culturally sensitive'*. ???

Mr Puras, from the Office of the High Commissioner, United Nations Human Rights was also scathing on biased governments and their failures, and the urgent necessity for reforms that require a paradigm shift:

*Today, there is unequivocal evidence that the dominance of and the overreliance upon the biomedical paradigm, including the front-line and excessive use of psychotropic medicines, is a failure. Yet, around the world, biomedical interventions dominate mental health investment and services. When resources appear to scale up mental health services, particularly in low and middle income countries, investments tend to be dominated by medicalized service models. I see this not only as a failure to integrate evidence and the voices of those most affected into policy, but as a failure to respect, protect, and fulfil the right to health.*

*Power and decision-making in mental health policy, services, and care structures is concentrated in the hands of biomedical gatekeepers, particularly biological psychiatry. These gatekeepers, reinforced by the pharmaceutical industry, maintain this power based on two outdated and scientifically unsound concepts: that people experiencing mental distress and diagnosed with "mental disorders" are dangerous, and that biomedical interventions in most cases are medically necessary. These*

[7] https://greens.org.au/nsw/news/media-release/greens-led-mental-health-inquiry-hands-down-final-report p 182

*concepts perpetuate stigma and discrimination, as well as practices of coercion that are widely accepted in mental health systems today.*

*The biased use of evidence has tainted our knowledge about mental health, and this is a serious human rights issue. Power asymmetries and the dominance of the biomedical paradigm distort how evidence is used in policy making and service delivery hampering progress towards rights-based mental health services around the world today'...*

*Such change also requires bold action from within the corridors of power, specifically from within the psychiatric profession. The position and access that the profession has to policymaking establishes a responsibility to use their influence to support the process of transforming mental health systems from isolated silos of mistrust, paternalism and coercion into integrated community models that foster empowerment, resilience, and inclusion.*

*Psychosocial distress will always be a part of the human experience, particularly in the face of growing emergencies, inequalities and discrimination. Outdated paternalistic concepts of treatment that pave the way to systemic and serious human rights abuses must be replaced with psychosocial care and support in the community and at the primary care level. Low cost, effective options are possible and being used around the world today.* [8]

He also said in 2020, as 'Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health':

*"A paradigm shift is urgently needed. Mental health-care should advance towards rights-based support. Treatment and distress must move beyond the biomedical understanding of mental health and acknowledge that, for the majority of mental health conditions, psychosocial and other social interventions are the essential option for treatment.*

*Mental health care action and investment must be directed to rights-based supports, to non-coercive alternatives that address the psychosocial determinants of health, and to develop or strengthen practices that are non-violent, peer-led, trauma-informed, community-led, healing and culturally sensitive. Key principles in these efforts are, first and foremost dignity and autonomy, followed by social inclusion, participation, equality and non-discrimination, diversity of care for the development of acceptable and quality responses, as well and the importance of the determinants of mental health."*[9]

[8] https://www.ohchr.org/en/statements/2017/09/statement-mr-dainius-puras-special-rapporteur-right-everyone-enjoyment-highest
[9] https://www.ohchr.org/en/statements/2020/10/statement-mr-dainius-puras-special-rapporteur-right-everyone-enjoyment-highest

Stated in 2017, NSW and indeed Australia is yet to heed his call for human-rights based mental health care system. Our country's power-mongering mental health leadership - including the psychiatric profession who control its siloed 'multidisciplinary teams' - continue to resist his and many others cry for evidence-based and responsible '*bold action*'.

# Justice Action's Submission & the NSW Inquiry Process

Justice Action addressed the Portfolio Committee 2 tendered 5 papers in its submission calling for the withdrawal of the Chief Psychiatrist's Communiqué 2014 on coercive practices, and proposals about Community Treatment Orders (CTOs), Forced Medication, Chemical Restraint, and Crisis Intervention.[10] On a panel with Legal Aid NSW, Justice Action raised the urgent need to activate Rozelle's Callan Park as a 'Wellness Hub' as a step towards ensuring all individuals are provided with 'legal fairness,' irrespective of their engagement with Legal Aid assistance. These issues form the body of Justice Action's analysis of the NSW Mental Health Inquiry Report.

After receiving 165 submissions and hearing several panel presentations, the NSW Mental Health inquiry handed down its Final Report on June 4, 2024.[11] Disappointingly, the Report does not confront the abuse faced by individuals with psychosocial challenges. Further, it does not align with the strong position taken by the Victorian Royal Commission in their 2021 Report, which provided recommendations (see Recommendations 42, 53 and 54) to eliminate seclusion and restraint when dealing with these individuals.[12]

The Report accepted that CTOs and consequential forced medication are most alarming but presented no effective resolutions. Mental Health Australia works on an international level to prevent coercion, with Special Rapporteur on the Right to Health to the UN, Mr Dainuis Pūras, affirming that "mental health care… must be directed to rights-based supports, to non-coercive alternatives, and to develop or strengthen practices that are non-violent, peer-led, trauma-informed, community-led, healing and culturally sensitive."[13]

The Committee ignored the issue of withdrawing the misleading Chief Psychiatrist's Communiqué 2014. The Report reiterated the value of peer workers in effectively dealing with clinical issues and "different experiences and presentations,"noting that their role in

[10] https://justiceaction.org.au/wp-content/uploads/2023/09/SubmissionMentalHealthinquiry092023.pdf
[11] New South Wales Legislative Council, *Equity, accessibility and appropriate delivery of outpatient and community mental health care in New South Wales* (Report No 64, June 2024) (*'Mental Health Inquiry Report 64*' https://www.parliament.nsw.gov.au/tp/files/188662/Report%20No.%2064%20-%20PC2%20-%20Equity,%20accessibility%20and%20appropriate%20delivery%20of%20outpatient%20and%20community%20mental%20health%20care%20in%20NSW.pdf
[12]
[13] https://www.ohchr.org/en/statements/2020/10/statement-mr-dainius-puras-special-rapporteur-right-everyone-enjoyment-highest

community mental health multidisciplinary teams should be clearly defined as they are "currently underutilised."[14]

The Report maintained a heavy focus on funding, indicating the greater responsiveness of the inquiry to the mental health industry than the consumers. Admittedly, NSW is falling behind other jurisdictions – investing the lowest amount of funding per capita into the mental health sector than any other state or territory in Australia. These recommendations were direct unlike the lack of recommendations confronting coercion in the mental health sector.

**Forced Medication**

The Committee was highly critical of the "overuse" of community treatment orders (CTO), describing them as "greatly concerning" and "some of the most alarming of the inquiry,"[15] recognising that police involvement in enforcing CTO compliance negatively escalated situations.[16] However, the Committee's vague recommendations fail to provide meaningful direction towards developing solutions. Further analysis and scrutiny of medical professionals' reliance on medication is required.

Recommendation 36 addresses the need for the NSW Government to review the *Mental Health Act* 2007 (NSW) with regards to CTOs.[17] Use of the term 'review' in the recommendations is disappointing. Reviewing the Act is essential but the wording does not hold the Government accountable or promote the implementation of an updated amendment that better reflects community needs.

The Committee implied criticism of the Mental Health Tribunal hearings and recommended that NSW Health increase their "support to patients and carers in the lead up to hearings before the Mental Health Review Tribunal."[18] Section 53 of the *Mental Health Act* 2007 states that "less restrictive and alternative treatments need to be considered before relying on a CTO."[19]

Findings 6, 10, 12 and 19 highlight a systematic promotion of CTO use and CTO misuse in under-resourced community mental health systems.[20] Ensuring adequate resourcing of these services requires grants to non-governmental organisations (6), increased pay for NSW public mental health clinicians (10), the provision of quality service (12), and increased investment in community bases mental health services (19).[21]

The Report stated that "some stakeholders were critical of the 'coercive' nature of community treatment orders, particularly that they often result in the administration of

[14] p. x, finding 6
[15] s. 5.36, p.117
[16] s. 5.27, p. 115
[17] p. xv
[18] p. xv
[19] MHA 2007 s 53
[20] findings 6, 10, 12, 19
[21] p. x-xi

medication without a person's consent."[22] There are "serious concerns regarding… human rights violations in requiring those subject to a CTO to accept 'forced treatment.'"[23]

Recommendation 12 states the need for medical professionals to "explore mechanisms to enable the greater application of therapeutic services and discipline."[24] It is disappointing to only see one recommendation vaguely addressing an issue which is an ongoing concern in the mental health system.

**Peer mentoring**

Peer mentoring was highlighted in two major findings. Firstly, "peer workers…are currently underutilised in community mental health multidisciplinary teams."[25] Secondly, that "The Peer Workforce Framework, which is currently under development by NSW Health, is essential and eagerly anticipated."[26]

In response to these findings, Recommendation 18 stated "the NSW Government look for ways to integrate peer workers into the broader mental health workforce, determine clear role definitions, framework and qualifications" in the area of a professional framework and role definition for peer workers.[27] Additionally, it noted that "the development of role definitions should include a consideration… of different experiences and presentations, different peer support needs will be required."[28] The Report states that "even once [the framework] was established, there was still significant work to do" and "the presence of peer workers could assist with this issue."[29]

**Crisis Intervention**

The Committee recommended that the NSW Police Force explore being a "secondary response to mental health emergencies" to "support the safety of primary responders."[30] Justice Action agrees that police officers should not be primary responders to mental health emergencies, similar to Cohen's dissenting statements within this report. The report recommended to adopt the principles behind the South Australian Mental Health Co-Responder program.[31] While this proposal is a significant improvement, it does not utilise the community based structure of Justice Action's CAHOOTS model.

[22] s. 5.32 p. x
[23] ???
[24] Rec 12
[25] p. x, finding 6
[26] p. x, finding 10
[27] p. xiii
[28] s. 3.119, p. 66
[29] ???
[30] p. xV, recommendation 30 and 31
[31] p. xV, recommendation 33

# Detailed analysis

This analysis provides the findings and recommendations that the *Equity, accessibility and appropriate delivery of outpatient and community mental health care in New South Wales Report* highlighted,[32] in relation to Justice Action foci:

- Withdrawal of Chief Psychiatrist's Communiqué 2014 on coercive practices;
- Mental Health Tribunal Hearing Procedures;
- Community Treatment Orders;
- Forced Medication;
- Chemical Restraint;
- Crisis Intervention;
- Peer workers/mentoring.

Justice Action was quoted twice (pages 59 & 116) in the final report and cited six times in reference to promoting peer workforce and detailing the coercive nature of CTOs.[33]

The committee's chair Dr Amanda Cohn, Greens spokesperson for Health, in the Chair's Forward, commented on the interconnecting factors negatively affecting individuals mental health outcomes, problems of police attendance at mental health emergencies, the need for a holistic care approach, unmet needs within priority populations, and the urgent necessity for transformative reforms:

> "It is clear that mental health care in NSW has become reactive and crisis-driven, and is letting down people seeking help, carers, as well as those working within the mental health sector. This report confirms what advocates have been saying for a long time – mental health care is chronically and severely underfunded and fragmented. Immediate action is needed to make sure people can access the care they deserve.
>
> [...]
>
> There is much work to be done across many areas of the NSW mental health system, but it is clear that there isn't a moment to waste before significant reform is implemented. Moving forward, the question shouldn't be whether or not the NSW government can afford to implement the transformative change that is needed – but what will the cost be to us all if they don't, and how can revenue be raised to fund what is required?"[34]

[32] New South Wales Legislative Council, *Equity, accessibility and appropriate delivery of outpatient and community mental health care in New South Wales* (Report No 64, June 2024) ('*Mental Health Inquiry Report 64*').
[33] p. 59, 116
[34] *Mental Health Inquiry Report 64* p. viii.

Justice Action had identified the key drivers to reinforcing coercive practices, such as the Chief Psychiatrist's Communiqué of 2014, the Mental Health Tribunal Hearing Procedures and use of chemical restraint that fail to protect consumer rights. The abuse of CTOs and their concomitant overuse of forced medication, and the opacity and misuse of chemical restraint that deprives people of their human rights.

While solutions were proposed by Justice Action, it was largely the problematic nature of coercive practice that was commented on during the inquiry. These were consistent with and at least partially supported by other key stakeholders' presentations.

While many recommendations did receive tripartisan support, the most damning criticism of the Inquiry came from the Greens Party, Chair Dr Amanda Cohn:

> "It is clear that unsafe caseloads are contributing to poor quality care and inability to provide assertive outreach as well as staff burnout
>
> […]
>
> Seven important recommendations were watered down by the Labor government, with the support of the Liberal/National opposition, so that instead of implementing these changes, the government is only recommended to "explore" them. It is gutless for the government to water down recommendations so that they are able to say they've been implemented when they consider or explore something (and potentially then recommit to the status quo!).
>
> […]
>
> The evidence is clear and unanimous that funding cycles shorter than 5 years leave community and not-for-profit organisations in a desperate cycle of constantly using their resources to apply for funding, and unable to give their staff job security or opportunities for growth…
>
> … evidence was both unanimous and compelling that police should not be primary responders to mental health emergencies - from consumers and carers, from service providers, mental health professionals and from the police themselves. People experiencing a mental health crisis need care, not law enforcement. The committee examined in detail successful health-led alternatives such as the South Australian Mental Health Co-Response program…
>
> This is not the time for further investigation, exploration, or consideration. The time for this reform is now."[35]

[35] p. 182

## Withdrawal of Chief Psychiatrist's Communiqué 2014 on Coercive Practices

The Chief Psychiatrist, Dr Murray Wright's 2014 Communiqué has failed to address the impact on individuals in the community and overall lacks clarity in providing guidance to clinicians. This is in regards to what qualifies as serious harm, as it showed broad considerations. Adopting a broad interpretation has been problematic, as it fails to address the direct impact individuals face, deeming it misleading and ultimately illegal. A burden has been placed on individuals and organisations seeking direct changes from the Chief Psychiatrist, due to the lack of transparency, accessibility and valuable contact with him.

Four case studies were explored in Justice Action's paper which provide examples of the cultural and systemic issues of mental health consumers. These demonstrated the continuous failure of the NSW Health Department to provide appropriate support and care. Justice Action has declared that a reform of NSW mental health system is needed, beginning with the withdrawal of the Chief Psychiatrist's Communiqué. Justice Action has proposed that including a more precise definition of serious harm helps reduce the number of individuals placed under involuntary treatment as well as providing autonomy for them to make their own healthcare decisions.

However, despite the need to withdraw the Chief Psychiatrist's Communiqué, these recommendations are absent from Report 64. Justice Action has regarded this withdrawal as necessary for any future change.

## Mental Health Tribunal Hearing Procedures

The Mental Health Tribunal is a specialist tribunal that deals with the treatment and care of mentally ill persons in New South Wales. It is a quasi-judicial body constituted under the Mental Health Act 2007 with a wide jurisdiction covering both civil and forensic hearings. It holds hearings (inquires and reviews) to make decisions or orders about care and treatments that hospitals and health services must follow.

Justice Action has argued that the parties should have the right to access their relevant documents two weeks before tribunal proceedings. This procedure ensures that people have time to read the report prepared by the Health Department for the CTO application, can get sufficient advice, prepare evidence or create an alternative plan in response. It was recommended that increased support be given to patients and carers ahead of their hearings before the Mental Health Review Tribunal.[36] Justice Action also argued for people who would affected by an application for a CTO to be granted access to their relevant documents two weeks ahead.

[36] Recommendation 35:118

## Community Treatment Orders

A Community Treatment Order (CTO) is a legal requirement for a person to receive compulsory mental health treatment. These are often reduced to nothing more than the forceful consumption of medication and being detained.

The report spoke to several key submissions referencing Justice Action. Justice Action gave "evidence about the negative physical impact of treatment under CTOs, particularly the severe side effects of mandated medication,"[37] as well as an increasing, 'overuse' of CTOs occurring in NSW[38] and concern that police involvement to enforce CTO compliance negatively escalated situations.[39] Justice Action was quoted in regards to the coercive nature of CTOs being illegal and having a retrograde impact:

> "In issuing Community Treatment Orders (CTO), mental health consumers are often forced to take medications against their expressed desires and without taking into consideration other less restrictive alternatives. This a violation of section 53 of the Mental Health Act 2007, and actively worsens the current problem."[40]

Finding 16 of the report states that in the context of an under-resourced community mental health system, CTOs have the capacity to be overused or misused to involuntarily facilitate engagement in care. Instead of using CTOs as a last resort, they are being used as a safety net reflecting the failing mental health system. One of the positive recommendations (36) that the report offers, is the need for the NSW Government to review the *Mental Health Act* 2007 (NSW) with regards to CTOs.[41] The recommendation (39) also highlights the importance in ensuring that CTOs, when necessary, are conducted by mental health services that are allocated proper resources and do not involve the police unless absolutely essential.

The findings and recommendations on CTOs in the NSW Mental Health Report also reflects the findings in the Royal Commission into Victoria's Mental Health System (2021). The Victorian Royal Commission (VRC) had similarly reported the excessive use of CTOs on patients and had recommended (55) that the usage and duration of CTOs be reduced.[42] Furthermore, the VRC recommended that non-coercive treatment alternatives be offered to patients and that patient protection should be increased by choosing the least restrictive treatment possible as well as increasing their access to legal representation (56).

Although the NSW Mental Health Report acknowledges potential benefits as recorded by the families of individuals, the negative experiences of those subjected far outweigh the positive experiences. There is also no evidence given by the report as to individuals who have had a

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[37] 5.22, p. 113
[38] 5.13, p. 111
[39] 5.27, p. 115
[40] 5.32, p. 116
[41] *Mental Health Act 2007* (NSW).
[42] Justice Action, 'Royal Commission into Victoria's Mental Health System' (Web Page) <https://justiceaction.org.au/vicroyalcommission/>

positive experience, as the report only mentions people or organisations who view CTOs as effective.

There are several stakeholders that are critical of CTOs, including the Mental Health Commission, UNSW IHEU and Illawarra IANS. Justice Action has also argued that CTOs raise 'serious concerns regarding ethical, legal and human rights violations.'

## Chemical Restraint

Chemical restraint is the use of medication to control a person's behaviour and is not a treatment for mental illness or physical condition.[43] Tasmania's Mental Health Act states that treatments and medical restraints differ depending on the intentions; but if the intention is to control the patient's movements or behaviour, it is then classified as chemical restrain. They also argue that chemical restraint is present if the patient is given higher doses of their regular medication or if a patient with no diagnosed mental illness is being medicated (but a CTO requires a previous diagnosis of mental illness and for care and treatment to be the least restrictive alternative with safe and effective care).

'Overuse' and 'medication'

- NSW has the highest usage rate of CTOs in Australia and usage is increased to a point of 'overuse' (5.36, p. 117)
- "In the context of an under-resourced community mental health system, community treatment orders have the capacity to be overused or misused to involuntarily facilitate engagement in care" (5.39, p. 117)
- "A CTO can be made irrespective of whether the affected person has the capacity to consent to the treatment" (5.1, p 109)
- "The Australian Clinical Psychology Association (ACPA) called for a reduction in their use, describing them as depriving individuals of 'choice and control', as well as emphasising medication and hospitalisation – often at significant expense. The ACPA, along with a number of other stakeholders, stressed that CTOs must only ever be used as a last resort." (5.21, pg 113)
- "Coercive nature of CTOs often result in the administration of medication without a person's consent" (5.32 pg 116). JA argued that there are serious concerns ethically and legally and human rights violations requiring those subjects to a CTO to accept 'forced treatment'
    - "In issuing Community Treatment Orders (CTO), mental health consumers are often forced to take medications against their expressed desires and without taking into consideration other less restrictive alternatives. This a violation of section 53 of the Mental Health Act 2007, and actively worsens the current problem." submission 51, JA

[43]Tasmania Health, 'Chemical Restraint; Chief Forensic Psychiatrist Clinical Guideline 10; *Mental Health Act 2013*'. (Web Page) https://www.health.tas.gov.au/sites/default/files/2021-12/CFP_Clinical_Guideline_10_Chemical_Restraint_DoHTasmania.pdf

Similar to findings within Report 64, The Royal Commission into Victoria's Mental Health System (2021) also describes the misuse of CTOs in the mental health system. The VRC recommended (54) eliminating seclusion and restraint to treat mental health consumers, as its abusive measures can contribute to re-traumatisation and lead to long-term negative health effects.[44]

## Crisis Intervention

Finding 14 shows the committee's acknowledgement that the "attendance of police in mental health emergencies can escalate emotional and psychological distress and has been harmful in a significant number of cases."[45]

Stakeholders reported feeling as though police responses to mental health crises were "inappropriate and dangerous,"[46] and the committee provided evidence of stakeholders who have expressed fear of calling emergency services due police involvement concerns.[47]

Stakeholders also argue that police are not best equipped to respond to mental health crises based on their role to maintain peace. Instead, the role of ambulance and mental health workers are to care for the community and therefore, they are more equipped to respond to mental health crises.[48] Mr Shane Sturgiss, of the Aboriginal Corporation, explained instead of allocating resources to training the police to deal with mental health crises, they should be allocated to creating mental health ambulance paramedic teams.

Justice Action recommends that a ban be placed on all police interventions in mental health situations. However, recommendation 30 calls for all police officers should have comprehensive mental health training which would allow them to intervene in a safe approach. Recommendation 31 further elaborates on this point by suggesting that officers are only to be responders if there poses a danger to the safety of primary responders.

The committee stated that one way of improving emergency response approaches is to have teams to respond with police (4.79, p. 86). This is in line with Justice Action's submission (no. 152) on Crisis Assistance Helping Out On The Streets (CAHOOTS) which only dispatches police as co-responders when the situation involves a crime, violence or life-threatening emergencies.

Recommendation 31 lightly addresses this issue suggesting that the NSW Health and NSW police department "explore being activated as a secondary response to mental health emergencies only where required to support the safety of primary responders".

Recommendation 33 108 states that the NSW Government continue to explore the implementation of a health-led response to mental health emergencies, informed by the

[44] Justice Action (n. )
[45] p. xv
[46] 4.68, p. 83
[47] 4.67, p. 82
[48] 4.76, p. 85

experiences of the successful South Australian Mental Health Co-Responder program, the Western Sydney Mental Health Acute Assessment Team and PACER, including informed risk assessment through access to medical records, as well as support for carers of the person experiencing crisis.

However, The Greens NSW spokesperson Dr Amanda Cohn has expressed disappointment regarding this recommendation stating that “this is not the time for further investigation, exploration, or consideration”. She commented that mental health emergencies should not be responded to by the police but rather by mental health professionals. She calls for a reform to be made and states that The Greens ‘will not stop advocating for this until it is implemented across NSW’.

## Forced Medication

Medication is often a forceful treatment of people who are sentenced to Community Treatment Orders. Medication is a form of coercion and can leave patients feeling numb as well as leaving them mentally and physically restrained. The Australian Clinical Psychology Association called for a reduction in the use of medication describing them as depriving individuals of 'choice and control'.

The Committee gives evidence from stakeholders about the severe physical impacts that certain medications can have on people who have CTOs. It also mentions the significant withdrawals experienced when treatment is abruptly stopped without appropriate planning. Along with this evidence of the negative impacts that medication has on individuals with CTOs, a number of stakeholders also describe the feeling of experiencing burnout as a consequence of feeling like they had nowhere to send consumers to receive the help they needed. This is due to a lack of available services or pathways and consequently the lack of funding that the mental health sector faces. Consultant psychiatrist Dr Karen Williams articulates this in the difficult situation of bonding with a consumer and having 'nowhere to send them', with the only option being able to dispense medication and not provide or recommend holistic care options.

It is disappointing to see that there was only one recommendation that briefly addressed the issue of medication, recommendation 12. Throughout the report it was highlighted there are several negatives to having medication forcefully imposed on individuals through CTOs as well as having to give medication for treatment as the system is spread so thin that medical professionals believe it is the only treatment option. Our organisation has undertaken research which can be found on our website, which offers a multitude of alternative forms of treatment to medication. There is no mention of alternative treatment methods to allow for individuals to recover and gain control of their treatment process mentioned in the findings.

## Peer Mentoring

Peer workers are people with lived experience as well as qualifications in providing mental health support. There are around 200 peer workers in NSW, yet the inquiry found they were significantly underutilised.

In the NSW mental health system there is a large scarcity of peer workers in regional and rural areas, due to the time and funding needed to travel out to these areas. Peer workers are essential and throughout the report they are described in positive terms, “having a personal narrative of understanding” as well as having and “additional perspective” and having a “resounding impact on the community”.

Recommendation 18 highlights the qualifications and training required for a peer worker. ‘Peer workforce framework is still in development however should be made a priority as they are a crucial component of providing care and support for people with mental health issues’. Individuals can relate to peer workers as they have shared experiences and have a deeper understanding of the effects and experiences of a mental illness.

The report also calls for peer workers to be introduced across the entirety of the mental health system, including emergency departments, hospital wards, inpatient care and community settings. In doing so this would allow for peer workers to be better utilised and provide a better quality of services to individuals in the mental health sector and allow for an increased accessibility to a larger range of services.  Following other witnesses in the inquiry who promoted peer workers, a recommendation from Justice Action spokesperson was quoted: “peer workers be more utilised to support people people experiencing mental health crises.”[49]

Recommendation 23 104 states that NSW Health examine opportunities for peer workers in emergency departments to support patients and staff.

## Funding community mental health servicing

The lack of funding throughout the mental health sector is identified in the report but there is a lack of specificity as to where the funding will be sourced from and what it will be used for. NSW is falling behind other jurisdictions with the state investing the lowest amount of funding per capita into the mental health sector than any other state or territory in Australia. While funding issues are prevalent, its foundations lie in the societal response to the mental health sector.

[49] 3.89, p. 58

Lack of funding affects a number of people and organisations involved in the mental health sector, including peer workers and mental health workers and services in rural areas of NSW.

As already stated, the lack of funding in the mental health sector is a prominent issue. The recommendations that the report offers mentions several times the need for funding however does not offer solutions as to where the funding will come from. The report mentions a Mental Health Tax Surcharge that was implemented in Victoria in 2022. This levy imposes a 0.5% surcharge on employers whose taxable wages were above ten million dollars and 1% surcharge for employers whose taxable wages were more than one hundred million dollars. The money received by this tax levy is only to be used to fund mental heath related services. In the 2023-2024 financial year the Victorian Government raised nine hundred and twelve million dollars for mental health services.

There is a similar levy established in Queensland to assist in raising money to support the current mental health crisis. Organisations such as Black Dog Institute, Mental Health Coordinating Council, and One Door Mental Health all recommended a similar levy to be implemented in NSW. The report mentions this levy and includes the opinions that the organisations have to implement something similar but fails to include it in the recommendations. For a report with the major theme being the lack of funding, it is disappointing to see that there are no recommendations on where to source money from even though there are opinions expressed throughout the report.