

INQUIRY INTO VIOLENCE AGAINST EMERGENCY SERVICES PERSONNEL

Organisation: Police Association of New South Wales

Name: Mr Scott Weber

Position: President

Date Received: 22 July 2016



POLICE ASSOCIATION OF NEW SOUTH WALES

A.B.N. 86 047 021 267
P.O. BOX A1097, SYDNEY SOUTH, N.S.W 1232
PHONE: (02) 9265 6777 FAX: (02) 9265 6789 EAGLENET 57071

22 July 2016

The Committee Manager
Legislative Assembly Committee on Law and Safety
Parliament House
Macquarie St
SYDNEY NSW 2000

Dear Sir / Madam

Inquiry into Violence Against Emergency Services Personnel

I would like to make the attached submission to the Legislative Assembly Committee on Law and Safety's *Inquiry into Violence Against Emergency Services Personnel*.

This submission is made in my capacity as President of the Police Association of New South Wales on behalf of the Association's members.

If the Committee has any questions in relation to this Submission or seeks the response of the Association to any matter related to the Inquiry, please do not hesitate to contact the Association Research Division on [REDACTED]

Yours sincerely

[REDACTED]

Scott Weber

Police Association of NSW Submission

NSW Parliament Committee on Law and Safety Inquiry into Violence against Emergency Services Personnel



The Police Association of New South Wales (PANSW) represents the professional and industrial interests of approximately 16,500 members, covering all ranks of NSW Police Officers in New South Wales.

This submission is written on behalf of our members and does not seek to represent the position of the NSW Police Force.

Terms of Reference of Inquiry

1. That the Legislative Assembly Committee on Law and Safety inquire into and report on:
 - a. The adequacy of current measures in place to protect emergency services personnel from violence including internal policies and procedures, training, and public education campaigns;
 - b. Whether current sentencing options for people who assault or murder emergency services personnel remain effective;
 - c. Possible options for reform;
 - d. Any other related matter.
2. In examining these issues the Committee should have regard to:
 - a. All emergency services personnel, including police; ambulance officers; fire fighters; protective services officers; SES workers; lifesavers; marine rescuers; and nurses, doctors and other hospital staff who provide or support emergency treatment;
 - b. The incidence of assaults on and homicides of emergency services personnel;
 - c. Current sentencing patterns for assaults on and homicides of emergency services personnel;
 - d. The experience of other jurisdictions.

Reader's Note

This submission will variously use terms including police officer, ambulance officer, law enforcement officers, emergency services personnel, workers and volunteers. In line with the Terms of Reference, and except where expressly differing, any reference to emergency services personnel should be taken to include ambulance officers, fire fighters, protective services officers, SES workers, lifesavers, marine rescuers, as well as nurses, doctors and other hospital staff who provide or support emergency treatment; all of whom are included whether employees or volunteers.

The Police Association of NSW (**PANSW**) also seeks inclusion within the scope of any defining of "emergency services personnel" where appropriate non-sworn NSW Police Force (**NSWPF**) employees and NSW Police Force Volunteers in Policing (**VIPs**). Non-sworn NSWPF employees undertake roles throughout the Force and VIPs undertake administrative roles and staff a number of police station counters. Additionally civilians employed within the Forensic Services Group (**FSG**) of the NSWPF collect and analyse exhibits at crime scenes and other incidents including car accidents and fires and also assist in disaster victim identification.

Submission

- Constable David Carty stabbed during an affray in April 1997
- Constable Peter Forsyth stabbed while effecting an arrest in February 1998
- Senior Constable James Affleck struck by a car whilst deploying road spikes in January 2001
- Constable Glenn McEnallay shot by an offender following a pursuit in April 2002
- Detective Constable William Crews shot during the execution of a search warrant in September 2010
- Senior Constable David Rixon shot whilst conducting a traffic stop in March 2012
- Detective Inspector Bryson Anderson stabbed at a siege in December 2012

Within the last twenty years, these seven officers all died in the line of duty taking on offenders.

Tragically these courageous officers are seven of the 252 NSW Police Force members who made the ultimate sacrifice in the execution of their duty.

In addition, the heart-breaking murder of NSW Police Force employee, Curtis Cheng, forever brought his family into the embrace of the police family who recognise his sacrifice.

Doing our utmost to protect police and emergency services personnel from the personal experience of violence is a duty shared by representative associations, including the Police Association of NSW, our elected representatives and the general community.

The Police Association of New South Wales (**PANSW**) represents the professional and industrial interests of approximately 16,500 members, covering all ranks of NSW Police Officers in New South Wales. As part of our services to members, we provide welfare programs, legal assistance and industrial advice and support to individual members and the membership as a whole.

Life Sentences for the Murder of our Police

On 20 June 2011 the NSW Parliament passed the *Crimes Amendment (Murder of Police Officers) Bill 2011*. The now Act provides under section 19B of the *Crimes Act 1900* that a mandatory life sentence is to be imposed by the court on a person convicted of murdering a police officer while the officer is executing his or her duties or as a consequence of, or in retaliation for, actions undertaken by any police officer in the execution of his or her duties.

It applies where the person knew, or ought reasonably to have known, the person killed was a police officer and where the person intended to kill the police officer or was engaged in criminal activity that risked serious harm to police officers. Section 19B does not apply to those under 18 years of age or who suffer from a significant cognitive impairment.

During his Second Reading Speech, then Minister for Police and Emergency Services, Hon. Michael Gallacher MLC said:

"A compulsory life sentence is to be imposed if the murder was committed while the police officer was executing his or her duties or as a consequence of, or in retaliation for, actions undertaken by any police officer.

In a perfect world this legislation would not be needed. I know that everyone hopes that it will never be needed. But the fact that we have had 12 officers killed while undertaking their duty since 1971 just shows us that something finally needs to be done to deter those who would even consider committing such an offence.

*An attack on a police officer undertaking their duty is an assault on the very heart of our system of law enforcement and our democracy."*¹

Since the Act passed we have tragically lost Senior Constable David Rixon and Detective Inspector Bryson Anderson in circumstances where the legislation could potentially be enlivened.

Due to ongoing legal processes the PANSW is not in a position to comment on the use of the legislation within this Submission.

The 2011 Bill was not the first time the NSW Parliament had seen legislation with the same intent. The Bill was the culmination of many years of effort, and numerous Bills, intended to provide this protection to police officers.

¹ Hon. Michael Gallacher MLC, *Hansard*, Legislative Council, NSW Parliament, 26 May 2011. Available at: <https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/HANSARD-1820781676-43290>

Assaults on Police Officers

According to the Bureau of Crime Statistics and Research, in the twelve months to March this year, 2,469 incidents of Assault Police were recorded on the NSW Police Force's Computerised Operational Policing System (COPS).

It is extremely disappointing to NSW Police Officers that statistically we are not seeing a drop in the number of assaults, which remain stable on the 12 months to March 2015 - reported by BOCSAR as 2,511 incidents. Indeed, across the 17 years between April 1999 and March 2016 the average annual percentage drop in Assault Police charges was only 0.8%.

The latest statistics (of 2,469) translates to more than 6 NSW Police Force Officers a day being assaulted.

Assaulting a Police Officer or other law enforcement officer has long been seen by elected Members of Parliament as important to recognise as particularly heinous.

Division 8 and Division 8A of the *Crimes Act 1900* (NSW) contain provisions relating to assaults and other actions against police and other law enforcement officers. Law enforcement officers as defined in section 60AA includes, amongst others, a police officer, Corrective Services officers, a sheriff's officer, a special constable and a recognised law enforcement officer within the meaning of the *Police Act 1990*.

Section 58 of the Crimes Act makes it an offence to assault an officer in the execution of his or her duty or to prevent lawful apprehension. The maximum penalty is 5 years imprisonment. An officer includes among other professions "a constable or other peace officer...prison officer, sheriff's officer..."

Section 60 of the *Crimes Act 1900* sets out particularised offences relating to the assault of police officers while in the execution of their duty being:

- assault, throw missile at, stalk, harass or intimidate a police officer — maximum penalty of 5 years, increasing to 7 years if committed during a public disorder.
- assault occasioning actual bodily harm — maximum penalty of 7 years, increasing to 9 years if committed during a public disorder.
- wound or inflict grievous bodily harm — maximum penalty of 12 years, increasing to 14 years if committed during a public disorder.

Under s60, "...an action is taken to be carried out in relation to a police officer while in the execution of the officer's duty, even though the police officer is not on duty at the time, if it is carried out: (a) as a consequence of, or in retaliation for, actions undertaken by that police officer in the execution of the officer's duty, or (b) because the officer is a police officer."

Division 1A of the *Crimes (Sentencing Procedure) Act 1999* sets standard non-parole periods of three years for s60(2) assault of police officer occasioning bodily harm offences and five years for s60(3) wounding or inflicting grievous bodily harm on police officer².

Section 60A of the Crimes Act sets out particularised offences for attacks on law enforcement officers (other than police officers) while in the execution of their duty being:

- assault, throw missile at, stalk, harass or intimidate a police officer — imprisonment for 5 years.
- assault occasioning actual bodily harm — imprisonment of 7 years.
- Recklessly wound or cause grievous bodily harm — imprisonment of 12 years.

Again, as under s60, *"...an action is taken to be carried out in relation to a law enforcement officer while in the execution of the officer's duty, even though the officer is not on duty at the time, if it is carried out: (a) as a consequence of, or in retaliation for, actions undertaken by that officer in the execution of the officer's duty, or (b) because the officer is a law enforcement officer."*

Section 60B and 60C of the Crimes Act provides for 5 year penalties for actions against third parties connected with law enforcement officers and obtaining personal information about officers. These laws are designed to protect the family members of law enforcement officers and from having them and their family member's personal information collected for the purpose of engendering fear of physical and mental harm, through assault, stalking, harassment or intimidation.

When introducing into the Legislative Council the *Crimes Amendment (Police and Other Law Enforcement Officers) Bill 2002*, which inserted sections 60AA, 60A, 60B and 60C into the *Crimes Act 1900*, the Minister for Police Hon. Michael Costa MLC, told the Parliament:

"...It is a sad fact that many law enforcement officers and their families are subject to threats and harassment as a result of their duties. These threats are designed to influence police investigations or the progress of court matters, or they may be issued simply because the person does not like police in general. For example, officers working at some police stations have been targeted for death threats following the murder of one of their colleagues..."

The Minister went on to say:

"...Police and Crime Commission officers have reported receiving death threats against them and their families; threats to assault officers and their families; bomb threats; threats to rape officers' children; and reports of efforts by violent criminals to obtain officers' home addresses, telephone numbers and other information. Such intimidation is extremely serious. It not only has the potential to pervert the course of justice in relation to a particular investigation or court matter, but leaves officers and their families living in a state of fear..."

² These standard non-parole periods apply to offences committed on or after 1 February 2003.

Sentencing Offenders

Police Officers and emergency services personnel devote their lives to serving our community, and in the case of Police Officers preventing crime, or bringing perpetrators to justice.

Far too often they become victims of crime themselves when interacting with the community while undertaking their duties.

Police Officers rightly feel betrayed if they take the step of charging someone with Assault Police only to have the legal process fail to stand beside them. They ask themselves why when someone is charged with assaulting someone who is doing their job protecting the community the offender does not receive a sentence that meets the expectations of the community, and does not act as a deterrent to the potential perpetrators of these offences.

It benefits no one if the police and the public lose faith in the justice system if while the victims of these crimes receive a 'life sentence' of pain, injury or anguish, the perpetrators receive sentences well below what represents justice.

The PANSW seeks the Committee's consideration of and support for the addition to the Standard Non-Parole Period scheme of offences specifically related to assaults against Police Officers and emergency services personnel.

While sentencing is a highly complex process, it also needs to recognise the importance of NSW Police Officers knowing if they place their safety at risk to protect the community the justice system will judge those who assault an officer with appropriate resolution.

The Attorney General in 2002 sought a guideline judgement for offences under s60(1) of the Crimes Act. While the court declined to make such a judgement Spigelman CJ³ highlighted deterrence as an important consideration in the sentencing of offenders for assault against police officers:

"Offences involving assault of police officers in the execution of their duty are serious offences requiring a significant element of deterrence in the sentences to be imposed. The community is dependent to a substantial extent upon the courage of police officers for protection of lives, personal security and property. The Courts must support the police in the proper execution of their duties and must be seen to be supporting the police, and their authority in maintaining law and order, by the imposition of appropriate sentences in cases where assaults are committed against police."

³ Attorney General's Application under s 37 of the Crimes (Sentencing Procedure) Act 1999 (No 2 of 2002) (2002) 137 A Crim R 196 at [64]. See paragraph [22].

Long Term Employment within the NSW Police Force

Where a Police Officer is injured on the job, the PANSW wants to see them afforded every opportunity to seek and obtain ongoing suitable employment within the NSW Police Force.

Cultural change within the Police Force from a medical discharge culture to a culture which supports injured officers in ongoing suitable employment within the Force is integral to the sustainability of the Death and Disability Scheme.

Injured officers must be properly provided with permanent meaningful roles within the organisation. This will enable injured officers with some restrictions to be utilised to their fullest potential whilst achieving organisation objectives. The officer continuing to perform meaningful duties is the optimal outcome for the health and wellbeing of the officer, the cost efficacy and productivity of the NSW Police Force, and the reduction of insurance premiums.

This will require modification and reasonable adjustment of pre-injury positions, and improved access to suitable positions for injured officers. There are many duties and functions in a position that could be performed by a non-operational officer. The circumstances and the officer's individual restrictions may permit much of their pre injury role to be performed just with some reasonable adjustment. With appropriate division of tasks, injured officers could be utilised in many more positions.

The PANSW is more than willing to provide further details on how to improve access to suitable duties and better utilise injured officers if requested by the Inquiry.

Testing for Biological hazards

Day and night police and emergency services personnel face the threat of exposure to bodily fluids as they undertake their duties. For health professionals, including ambulance officers and medical staff it is a constant presence. For police, fire fighters, protective service officers and rescuers it is a frequent occurrence.

The bodily fluid may be blood from the victim of a violent crime or accident they are treating, the saliva of an offender police are seeking to arrest, or the unknown contents of a needle puncture.

Police officers and emergency services personnel exposed to another's bodily fluids currently face an uncertain future. The circumstances of exposure are often traumatic and can leave the exposed person with significant unknown health risks for months as those exposed are only able to test themselves - not the other person - and communicable diseases can take months from initial exposure to be detected in their system.

Understandably as they sit and wait for their results, an exposed officer remains acutely concerned for their own health and that of their loved ones to whom they may inadvertently spread any disease.

At the same time, they may have to undergo preventative treatment, such as Post-Exposure Prophylaxis, PEP, which may have a preventative effect on the contraction of diseases such as HIV, but also has very serious side effects on the health of the patient, including nausea, vomiting, diarrhoea, prolonged headaches, weakness and negative impact on the patient's liver and kidneys. This may require the patient to spend time off work on sick leave.

The PANSW seeks the Committee's support for the following actions to protect police and emergency services personnel:

- **The creation of an offence of deliberately/negligently applying bodily fluid to a NSW Police Officer or any other emergency services personnel acting in the execution of their duty, through amendment of the *NSW Crimes Act 1900*, with a maximum penalty of 14 years imprisonment where said person is found guilty; and**
- **Legislated powers to order mandatory testing for prescribed infectious diseases of any person where it is reasonably suspected their bodily fluids have been transferred, intentionally or accidentally, on to or in to a police officer or emergency services personnel.**

Until relatively recent years communicable diseases spread through blood, saliva and other bodily fluids have been relatively difficult to contract. However as diseases become more virulent and previously little-known diseases spread, this difficulty has diminished.

In a world of acceptance of the public naming of someone in a foreign country who tests positive to Ebola it seems incongruous that police and emergency services personnel have to wait months for test results to provide them confidentially with the answer of whether they have been infected with serious diseases including HIV, Hepatitis B and Hepatitis C from a known individual.

Immediate testing of the individual to whom the bodily fluid belonged would provide officers with answers, providing significant peace of mind, saving them from agonising months of waiting, fear and a reluctance to have contact with their loved ones.

A positive result would see the officer able to take immediate action to access medical advice, optimal treatment and counselling aimed at either minimising the chances of contracting the disease or preparing for the possibility of testing positive themselves once the disease is detectable. Treatment, including antiviral medications, can immediately commence, rather than continuing the current scatter-gun approach to treatment.

The PANSW seeks the Committee's support for a legislated power to obtain an order for mandatory testing of a person to whose bodily fluid an officer was exposed.

Such a legislative power to obtain blood and urine samples from the relevant person will require their attendance, either voluntarily or under direction or arrest, at an appropriate facility for the collection of the samples for testing for prescribed communicable diseases, with the confidential results disclosed to the police officer or emergency services personnel exposed to the bodily fluid.

A comparable power exists in Queensland, Western Australia and South Australia and recently passed the Northern Territorial Parliament with respect to police officers.

Queensland's legislation provides for blood and urine testing of persons suspected of committing sexual or other serious assault offences, including those upon law enforcement officers and emergency service workers and volunteers.

In Western Australia the *Mandatory Testing (Infectious Diseases) Bill 2014*⁴ passed the Parliament in October 2014 providing for "...the mandatory testing for certain infectious diseases of persons reasonably suspected of having transferred bodily fluids to police and other related public officers acting in the course of duty"⁵.

South Australia's *Criminal Law (Forensic Procedures) (Blood Testing for Diseases) Amendment Bill 2015*⁶ passed in May 2015 providing for any offender who is reasonably suspected of having committed a specified offence of violence against a police officer or other state category of emergency worker can be compelled to undertake a blood test for the presence of infectious diseases where the emergency worker was exposed to the offender's bodily fluids and there is a risk the emergency worker, in being so exposed, could have contracted an infectious disease. The specified offences are assault, causing harm, causing serious harm, acts endangering life or creating a risk of serious harm, riot, affray, assaulting or hindering police, violent disorder and any other serious offence or violence prescribed by Regulation. Orders can be authorised by a senior police officer at or above the rank of Inspector.

The Act delivered on an election commitment of the Government to protect Police Officers and received support from the Opposition, including adoption of an Opposition amendment to extend coverage of the legislation to include a range of emergency service workers and volunteers, hospital accident and emergency department staff and Surf Life Saving and Volunteer Marine Rescue.

In his Address in Reply South Australian Deputy Premier and Attorney-General the Hon. John Rau said to Parliament:

*"Particularly for those members who have not been here for as long as some others have been, this is one of those moments I hope you will treasure for the rest of your parliamentary career. This is one of those ecumenical moments, where,...we are all basically joining hands and singing Kumbaya. It does not happen very often...
...Just for those people who have not been here as long, can I say: savour this moment. At some point later in your career, when you are trying desperately to find that happy*

⁴ Access at:
<http://www.parliament.wa.gov.au/parliament/bills.nsf/BillProgressPopup?openForm&ParentUNID=6B1A16DDBAAA760548257CD800824E5D>

⁵ Page 1 of *Mandatory Testing (Infectious Diseases) Bill 2014*. Ibid.

⁶ Access at:
[https://www.legislation.sa.gov.au/LZ/B/CURRENT/CRIMINAL%20LAW%20\(FORENSIC%20PROCEDURES\)%20\(BLOOD%20TESTING%20FOR%20DISEASES\)%20AMENDMENT%20BILL%202015/UNOFFICIAL%20ROYAL%20ARMS/CRIMINAL%20DISEASES%20AMENDMENT%20BILL%202015.UN.PDF](https://www.legislation.sa.gov.au/LZ/B/CURRENT/CRIMINAL%20LAW%20(FORENSIC%20PROCEDURES)%20(BLOOD%20TESTING%20FOR%20DISEASES)%20AMENDMENT%20BILL%202015/UNOFFICIAL%20ROYAL%20ARMS/CRIMINAL%20DISEASES%20AMENDMENT%20BILL%202015.UN.PDF)

*psychological thing that you can put in your head to move you to the other higher place, try this one, because it is going to be good: there will not be many of them...*⁷

In the Northern Territory the Chief Minister, the Hon. Adam Giles MLA, introduced the *Police Administration Amendment Bill 2016* providing new powers to allow the taking of blood from a person who has assaulted a police officer, or in the course of arrest or detention, is suspected of transferring a substance to an officer through penetration of a mucus membrane or broken skin. The Chief Minister has also publicly indicated his Government would move to extend the protection to other frontline workers such as paramedics, doctors, nurses and fire fighters⁸ after the August 2016 Territorian election.

The Medical Risks

Each year a significant number of NSW Police Officers, as well as civilians working within the Forensic Services Group of the NSW Police Force, are potentially exposed to communicable diseases through accidental and intentional exposure to bodily fluids.

As indicated below in 2012/2013 on 441 occasions NSW Police Officers had contact or exposure to body fluid, a needle-stick injury or suffered a human bite. Over three financial years, 2,553 NSW Police Officers experienced the trauma of an exposure or near miss to bodily fluid and potential contraction of a communicable disease.

	Reporting Year					
	2010-11		2011-12		2012-13	
Cause of Incident	Incident	Near Miss	Incident	Near Miss	Incident	Near Miss
Contact/exposure to body fluid	688	44	633	113	380	479
Needle-stick injury	24	1	16	3	16	13
Human bites	53	1	40	0	45	4
Bodily Fluids Total Incidents	765	46	689	116	441	496

The table above provides the number of incidents recorded by the NSW Police Force in which a police officer could have been exposed to bodily fluid. It includes the number of 'incidents', which is defined as: "an unplanned event resulting in injury, illness, damage or loss", and the number of 'near misses', defined as: "an accident or incident that did not result in immediate injury or illness but had the potential to do so".

These incidents are leading in many cases to workers' compensation claims being lodged.

The 2013/2014 and 2014/2015 NSW Police Force Annual Reports quote Treasury Managed Fund data from July 2014 and 2015 showing the workers' compensation claim rate sighting the mechanism of injury as *biological factors* has increased from 0.93 per 100 full time equivalent

⁷ <http://hansardpublic.parliament.sa.gov.au/Pages/IndexResult.aspx#/MemberIndex/HANSARD-6-24/HANSARD-11-19647>

⁸ See: http://www.territorystories.nt.gov.au/bitstream/10070/262111/1/Giles-180516-Greater_protection_for_nt_police_officers.pdf

employees in 2009/2010⁹ to 1.40 in 2014/2015¹⁰. These figures include sworn and non-sworn employee claims.

Deterring Offenders

Significant deterrents need to exist for those who may apply any bodily fluid to police and emergency services personnel. Such exposure has significant health risks and also causes distress and trauma, and violates the safety of those who protect the people of NSW.

The PANSW seeks the Committee's support for the creation of an offence of deliberately/negligently applying bodily fluid to a NSW Police Officer or emergency services personnel through amendment to the *NSW Crimes Act 1900* to provide for any person who deliberately/negligently applies any bodily fluid to such an officer acting in the execution of their duty to be guilty of an offence, with a maximum penalty of 14 years imprisonment.

A similar offence exists in Queensland under the Criminal Code s340 Serious Assaults, attracting a sentence of up to 14 years imprisonment. There is a mandatory minimum sentence of 1 year imprisonment if the offender is a participant in a criminal organisation.

Models for the testing order

The PANSW appreciates the significance of ordering a person to provide a blood and urine sample.

We also recognise the need to protect our police and emergency services personnel.

Ideally where a person's bodily fluid has come into contact with an emergency services worker or police officer, that person would voluntarily provide informed consent to submit to a disease test, however, this will regularly not be so.

The PANSW supports the development and introduction of clear procedures to obtain and enforce a testing order for the collection of samples to ensure the integrity of the testing process and the appropriate protections for the privacy of individuals.

There are two possible models that could be utilised in creating a testing power:

1. The power is enlivened by a predicate offence (the "**predicate offence**" model) in which possible exposure takes place, or
2. The power is enlivened by the possible exposure.

The PANSW believes the second model is the most appropriate.

⁹ NSW Police Force 2013/2014 Annual Report. Page 87.

¹⁰ NSW Police Force 2014/2015 Annual Report. Page 91.

Under the **predicate offence** model the power to obtain an order is dependent on the relevant person being suspected of specified offences, such as assault or sexual offences, or others in which bodily fluids have been applied to a person; and being either charged or arrested for that offence.

While this model is not supported by the PANSW, if adopted to be fully effective it should be supported through the introduction of an offence of applying bodily fluid to police officers/emergency services personnel as outlined earlier. It should also cover situations in which a person, by omission or negligence, allows an emergency service worker to be exposed, such as leaving uncapped syringes in their pocket and not informing a police officer conducting a search of its presence.

There are important deficiencies in a predicate offence model. The purpose of a testing power is to provide peace of mind, learn of possible contraction of diseases and decide upon the best course of action after exposure to bodily fluids. These purposes are relevant after exposure regardless of whether an offence may have occurred.

While large numbers of police exposures to bodily fluid occur during the restraint of an offender, it can also occur when they assist an injured person, during mental health intervention, crowd control duties and other activities. Other emergency service personnel also experience exposure which is not normally the result of an offence.

Additionally, if testing is based on a person being under arrest for a predicate offence, it would be an unwarranted outcome if any incentive was created for an arrest or charge to occur in order to enliven the testing power if, for example, an exposure occurs in a situation such as a mental health intervention, when otherwise charges would not have been pursued.

For these reasons, the PANSW believes a model in which testing can be conducted on the basis of exposure, rather than predicate offences, is optimal as it is the exposure that lies at the core of the interest that police/emergency services personnel have in seeking testing.

This is why the PANSW supports the second model to achieve a balance between individual rights of the person subjected to the order, and the need to quickly obtain results.

The PANSW believes through consideration of the experience of other Australian states and territories, New South Wales can develop the necessary legislative and procedural framework to implement an enforceable order scheme for mandatory testing.

To design this system appropriately, all affected agencies¹¹, and all employee and volunteer association representatives of each affected Agency, including the Police Association of NSW and Public Service Association of NSW, must be thoroughly consulted and given the opportunity to provide feedback which has a meaningful impact on the design of the legislative and procedural framework.

¹¹ Including: the NSW Police Force, the Ambulance Service of NSW, NSW Health, Fire and Rescue NSW, the NSW Rural Fire Service, the State Emergency Service, Corrective Services NSW, Juvenile Justice NSW and NSW court officers, as well as volunteer groups.

Any model adopted should not unnecessarily obstruct the underlying interest of quickly obtaining an answer as to whether a police officer or emergency services personnel has been exposed to a communicable disease.

The Police Association of NSW is keen to see an expedited resolution to these important issues for all emergency service workers as they undertake their duty to protect and serve the people of New South Wales.

Dignified Transport for People with a Mental Illness

If a family member or friend of any member of this Committee were to suffer from a mental illness, the PANSW is certain they would be horrified to find out they had been transported in the back of a police vehicle when they need to be transported to a mental health facility under section 22 of the Mental Health Act 2007.

How we care for those with a mental illness has to change.

Transporting someone with a mental illness in a police vehicles brings with it an unacceptable risk to the individual's safety, causes distress to them and their family, and is a significant concern to the police officers of New South Wales, who play a vital role in mental health support.

The PANSW seeks the Committee's support for the following actions to protect those with a mental illness, police and emergency services personnel:

- **Provide NSW Health with the staffing, funding and resources to conduct all mental health transport;**
- **Ensure NSW Police only undertakes such transport when no other options are available;**
- **Reduce the travel times required to transport a person to an appropriate health facility;**
- **As an interim risk mitigation measure, remove the requirement that Police Officers transport those with a mental illness to a declared mental health facility, allowing transport to the nearest health facility until an ambulance can relocate them onto a declared mental health facility; and**
- **Further increase the number of declared mental health facilities, selecting sites based on needs, so distances between communities and their nearest declared facility is minimised.**

Section 22 of the *Mental Health Act 2007* permits police officers to apprehend a person who appears to be mentally ill 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
- (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.

A person apprehended under this section must be taken to a 'declared mental health facility'. Ideally, transporting someone apprehended under this section should be carried out in a NSW Health vehicle or an ambulance which have staff with training and equipment better suited to meet the medical and welfare needs of persons with a mental illness, and transport them by the least restrictive means.

While police are highly trained, professional and genuinely seeking to provide support to all community members, the fact remains a police vehicle is neither a safe nor dignified way to transport a person with a mental illness, particularly over long distances. This is because:

- police vehicles are not designed or equipped for transporting people with a mental illness, instead they are designed to detain offenders. Prolonged time in a police vehicle exposes persons with a mental illness to serious injury or worse, and in attempting to mitigate these risks, may expose officers to injury,
- police are not health professionals and do not have the same skill set as health workers or ambulance officers to assess the risk of someone committing self-harm, whether they have suffered injury, or are at risk of further injury or illness,
- in rural and isolated communities, police are forced to drive hours to reach a declared facility, often passing a number of non-declared health facilities, exacerbating the other problems associated with transport in police vehicles,
- involuntary transport in a police vehicle can be a traumatic experience for someone with a mental illness. It may intensify the distress they are already experiencing that brought them within the scope of section 22,
- over-reliance on police creates a stigma around mental illness. When transporting persons with a mental illness in police vehicles becomes common practice, it effectively criminalises mental illness,
- unless safety concerns demand the use of a police vehicle, people with a mental illness should not be treated as criminals requiring police intervention.

All stakeholders in mental health transport are aware of these problems, and have recognised mental health transport should be conducted in NSW Health vehicles.

Consistent with practice in other jurisdictions, and with the position of mental health advocacy groups, the 2007 Memorandum of Understanding (MoU) between NSW Health, the Ambulance Service of NSW, and the NSW Police Force, states that:

The use of Police vehicles to transport people with a mental illness or mental disorder should only occur in extreme circumstances relating to securing safety, and as a last resort.¹²
and

¹² NSW Health, Ambulance Service of NSW, NSW Police Force, Memorandum of Understanding, Mental Health Emergency Response, July 2007, para 6.2, page 9.

Police role in other transport of mentally ill persons is limited to situations where there is assessed serious risk to the person or others such that Police presence (as escort or transport) is required¹³.

The intent of the MoU is to have the use of police vehicles a last resort where risks to the person or others requires a police presence.

Unfortunately, while the MoU makes this recognition, in practice, there is still an excessive reliance on police officers. Police regularly request an ambulance only to be told there are none currently available, and waiting times are too long to be a viable option, with the onus falling on police to conduct the transport.

The PANSW seeks the Committee's support for sufficient resourcing for NSW Health to meet the MoU to attend and transport section 22 interventions except where the risks to safety require the use of a police vehicle.

The role of police in mental health support

The primary agency providing support to persons with mental illness is NSW Health.

NSW Police Officers have a valuable and legitimate role to play in supporting mental health and people with mental illness as they build links with the community, and provide services to every individual.

If persons with a mental illness have high rates of interaction with police, especially when involving some crisis or risk to safety, it suggests a systemic failure to provide people with appropriate and adequate support services to prevent crises.

The Inquiry into Mental Health Services in New South Wales 2001, conducted by the Legislative Council Select Committee on Mental Health, found that *"police, charities and support groups, carers and families, have been left attempting to support deficiencies or 'gaps' in the system"*¹⁴.

Police have to be the 24/7 problem solvers picking up the pieces when systems fail.

Police respond to more mental health related incidents each year, growing continuously since the year 2000. In 2012 NSW Police Officers responded to 38,534 mental health related incidents, this grew to 42,830 in 2013 and the figure was around 49,000 incidents in 2014.

This over-reliance on police to respond to mental health related incidents results in:

- Persons with mental illness having avoidable interactions with police,
- Distress for the persons involved as regardless of the professionalism and training of police, it can be distressing or embarrassing if police intervention is required,

¹³ Ibid, para 5.5, page 8.

¹⁴ Select Committee on Mental Health, *Mental Health Service in New South Wales: Final Report*, Dec 2002, page 17.

- Stigma around mental illness develops and the perception mental illness requires police intervention or leads to anti-social behaviour; effectively criminalising mental illness,
- People with mental illness and police interact in moments of crisis, increasing the risk of injury or death to both,
- Police resources are redirected away from other policing roles and instead utilised on functions NSW Health should be providing to people with mental illness.

The NSW Police Force has recognised the need to provide world-class training on mental health interaction for their Officers. The PANSW strongly commends the good work of the NSWPF Mental Health Intervention Team (MHIT) in providing this training to officers with the following objectives:

- Reducing the risk of injury to police and mental health consumers when dealing with mental health related incidents;
- Improving awareness amongst front line police of the risks involved in the interaction between police and mental health consumers;
- Improved collaboration with other government and non-government agencies in the response to, and management of, mental health crisis incidents; and,
- Reducing the time taken by police in the handover of mental health consumers into the health care system.

Every police officer can be required at any time to provide services to a person with a mental illness, or their family. Therefore, every officer needs to receive appropriate training. The PANSW applauds the hard work of the MHIT in rolling out state-wide an intensive one day version of the mental health training, as well as it being integrated into the core curriculum for recruits at the NSW Police Force Academy.

Stakeholder views

As part of public consultation for the Mental Health Act Statutory Review, *“Overwhelming feedback from the consultation was that transportation is a critical matter, given that in rural areas of NSW a person may require several hours transportation which can often be dangerous and traumatic in itself, before any treatment has been provided...”*¹⁵

The *National safety priorities in mental health: a national plan for reducing harm* (National Plan) is a plan endorsed by the Australian Health Ministers' Advisory Council. It identifies *“Safe transport of people experiencing mental disorders”* as one of the *“priority areas agreed for first attention nationally”*.¹⁶

It states that *“mental health consumers have the right to safe transport that minimises interference with their rights, dignity and self-respect and that avoids traumatising family members, particularly children. This right, however, needs to be balanced with the safety of the transport provider.”*¹⁷

¹⁵ NSW Ministry of Health, Review of the NSW Mental Health Act 2007, Report for NSW Parliament: May 2013, Summary of Consultation Feedback and Advice, page 49.

¹⁶ *National safety priorities in mental health: a national plan for reducing harm*, page 3.

¹⁷ Ibid, page 24.

The plan goes on to identify “known problem areas”, including:

- Emergency transportation in mental health crisis situations.
- Reliance on police to apprehend and transport consumers known to mental health services when alternative means are available.
- Police transporting consumers without the support of clinical staff.
- Transport from and within rural/remote settings¹⁸.

Unfortunately these problems identified by the National Plan in 2005 are still widespread in NSW mental health transport practices today.

In its submission to the 2012 Review of the Mental Health Act, the Mental Health Coordinating Council identified the National Plan as “good principles for safe transport of people experiencing mental disorders”, and specifically identified the right to safe transport¹⁹. It goes on to express the following concerns in relation to transport practices in NSW:

- “The experience of significant stigma that adds to psychological distress and creates a negative perception of care”,
- “When consumers are transported long distances in order to be assessed, by police rather than the ambulance service, this can be particularly distressing and every effort must be made to avoid adverse events”,
- “People should not be transported long distances without a suitably trained member of staff, strictly adhering to clear policies and protocols to ensure that the least restrictive, and safe transport of people experiencing a mental illness is used.”²⁰

The NSW Consumer Advisory Group – Mental Health Inc. (NSW CAG) is the state-wide, non-government peak body representing people who use mental health services (mental health consumers). In its submission to the recent Review of the Mental Health Act, it identified that consumers experienced prolonged detention and difficulties getting home due to the transport over long distances to get to a declared mental health facility²¹.

What is clear from consultation and stakeholder input is mental health consumers and their families do not want them to be transported in a police vehicle for long periods of time. The safest and least distressing means is to be transported in a health service vehicle with appropriately trained staff, or an ambulance.

¹⁸ Ibid, page 25.

¹⁹ Mental Health Coordinating Council, Submission to the Review of the NSW *Mental Health Act 2007*, December 2012, page 16, para [11.33].

²⁰ Ibid.

²¹ NSW Consumer Advisory Group – Mental Health Inc., *Stepping into the 21st Century: Submission on the review of the Mental Health Act 2007 (NSW)*, 17 December 2012, page 17.

Why police vehicles should be a last resort

Safety

Identified in the MoU, the role of the Ambulance Service of NSW includes responding “to mental health situations in the community”, and providing “clinical risk assessment, preliminary mental health assessment, clinical stabilisation, behavioural management and safe transport”.²²

Ambulances are designed and equipped to provide health assessments, stabilisation, and safe transport. In stark contrast someone being transported in a police vehicle under section 22 is transported in a police caged truck²³.

The *National safety priorities in mental health: a national plan for reducing harm* identified the absence of clinical staff during police transport as a known problem area.²⁴

Long Distances Travelled

Accessing some parts of NSW sees police driving hours to reach a declared mental health facility, often driving past multiple hospitals or health facilities that are not declared. Long travel times exacerbate the problems associated with the inappropriateness of the police vehicles, and the difficulty for police in assessing the medical needs of the person.

Dignity

The *National safety priorities in mental health: a national plan for reducing harm* states that “mental health consumers have the right to safe transport that minimises interference with their rights, dignity and self-respect and that avoids traumatising family members, particularly children.”²⁵ The over-use of police vehicles is interfering with that dignity and self-respect. The Mental Health Coordinating Council states “[w]hen consumers are transported long distances in order to be assessed, by police rather than the ambulance service, this can be particularly distressing and every effort must be made to avoid adverse events”.²⁶

Resolutions

The best outcome is for all mental health transport to be performed by a properly equipped NSW Health vehicle unless safety concerns for the person or others require the use of a police vehicle.

²² NSW Health, Ambulance Service of NSW, NSW Police Force, Memorandum of Understanding, Mental Health Emergency Response, July 2007, para 5.2, page 6.

²³ Ibid, page 24.

²⁴ *National safety priorities in mental health: a national plan for reducing harm*, page 25.

²⁵ *National safety priorities in mental health: a national plan for reducing harm*, page 24.

²⁶ Mental Health Coordinating Council, Submission to the Review of the NSW *Mental Health Act 2007*, December 2012, page 16, para [11.33].

Clearly, the circumstances giving rise to apprehension and transport under section 22 of the Mental Health Act may require police involvement where the commission of an offence or the risk of self-harm or harm to others requires the skills, capabilities and powers of police officers.

In any proposed model, the apprehension and restraint of people meeting these criteria would be carried out by police, and police may still be required to provide assistance or act as an escort throughout the process of transport, assessment and early treatment in order to ensure the safety of the person and those around them.

However, this is still compatible with transport being conducted by a health service vehicle or an ambulance; the ideal scenario is one in which police, when required, apprehend and restrain a person. They then request the assistance of a health service vehicle with appropriately trained staff, or an ambulance. These vehicles arrive promptly, so the officers and apprehended person are not left waiting without appropriate facilities. The person would then be transported in a health service vehicle or an ambulance. If there is a risk of harm to the person or others, police officers can still escort them in order to protect the person and health or ambulance personnel. This addresses the problems associated with transporting persons in police vehicles outlined above, while still ensuring the safety of all persons.

How to achieve this outcome

As outlined above, the Memorandum of Understanding between NSW Health, the Ambulance Service of NSW, and the NSW Police Force, should provide for an improved and benchmarked process. However, unless the low availability of NSW health vehicles or ambulances is addressed the MoU cannot be enforced, and police officers will be left to conduct the transport.

The solution is to properly resource NSW Health to conduct all mental health transport.

The PANSW acknowledges while this may require significant financial resources for NSW Health, the use of police resources to conduct this type of transport is not resource-efficient and the cost to the community of redirecting police officers away from core policing functions in their community is significant. More importantly, the risk of injury or death under current practices is unacceptable, and cannot continue indefinitely.

The PANSW also believes the Mental Health Act should be amended to specify that NSW Health is responsible for all mental health transport, and that police vehicles are only to be used when reasonably necessary to mitigate serious concerns relating to the safety of the person, the public, or NSW Health and NSW Police Force personnel.

A provision for financial payments from NSW Health to NSW Police Force when their obligations relating to mental health transport are not met, would promote positive cultural change to encourage compliance with these obligations.

Start by reducing travel times

Until NSW Health is properly resourced to provide this support, NSW Police will have to continue to conduct mental health transport. To mitigate risk while these practices remain in place, every effort must be made to reduce the time spent transporting people with mental illness in police vehicles.

Options to achieve this include:

- Allow police to take a person to *any* health facility, rather than just *declared* mental health facilities, or
- Increase the number of declared mental health facilities.

Allow police to take a person to any health facility

It is not in the interests of those with a mental illness for officers to drive past several health facilities on their way to a declared mental health facility. The PANSW maintains if Police were allowed to transport a person to any health facility, rather than a declared mental health facility, it would reduce overall travelling times, and ensure the person has immediate access to medical care if needed.

The PANSW seeks the Committee's support for an amendment to Section 22 of the *Mental Health Act 2007* to provide a police officer may take a person:

- (a) to a declared mental health facility when doing so does not cause unreasonable delay, or
- (b) in any other circumstances, the officer may take the person to another health facility.

Where someone is taken to another health facility this process can be facilitated accordingly:

- Police officers could remain at the health facility for a reasonable time to assist where particular risks or concerns for the safety of the person or facility staff exist, until those risks can be addressed.
- Health facilities can be improved to accommodate persons apprehended under section 22.
- The person need only be there until a health vehicle or an ambulance can attend to transport them to a declared mental health facility. This will minimise the time spent in a police vehicle without medical treatment and the person can be transported to a declared mental health facility when clinically appropriate to do so.

There are additional measures which would support such an approach, including the use of audio-visual links between health facilities to allow clinicians to conduct initial assessments. By allowing police to transport a person to health facilities where the person could be assessed by an authorised medical officer via audio-visual link it removes the need to travel to a declared facility. The Mental Health Coordinating Council acknowledged while this situation was "less than desirable" it would still be "preferable to transportation of people long distances."²⁷ The NSW Consumer Advisory Group –

²⁷ Mental Health Coordinating Council, Submission to the Review of the NSW *Mental Health Act 2007*, December 2012, page 16, para [11.33].

Mental Health Inc. also recommended this strategy as preferable, due to the risks associated with long travel times to a declared mental health facility²⁸.

Increase the number of declared mental health facilities

Long travel times result from vast distances between some towns and the nearest declared mental health facility. This can be addressed by declaring more mental health facilities based on the needs of remote communities. Under section 109(1) of the *Mental Health Act 2007*, the Secretary of the Ministry for Health can make such declarations.

While the need for additional declared mental health facilities has been recognised since 2007 issues remain with patients still transported vast distances from many locations, while new facilities were selected based on them volunteering for declaration rather than selection being based on need.

Reducing travel times to declared facilities requires a consultative approach between the NSW Police Force and the Ministry for Health to identify regions where current travel times to declared facilities pose a risk to the safety of the person or police officers. Once regions are identified, additional health facility locations should be identified, declared and properly resourced to accept and treat persons apprehended under section 22 at the earliest opportunity.

Critical Police Security Infrastructure and Equipment

The PANSW seeks the Committee's support for additional NSW Treasury funding for the NSW Police Force to expedite the delivery of the following critical infrastructure and equipment:

- **Vital Police Station security upgrades.**
- **Purchase additional body worn video devices to deliver them to all frontline Police Officers, and purchase necessary IT and other technology support systems for these devices.**
- **Expedite the rollout of Integrated Light Armoured Vests.**

Police Station Security Upgrades

There is currently a considerable risk of violence to officers and members of the public in or around police stations. This was demonstrated only recently, when a man set himself and his vehicle on fire, and rammed the vehicle into the police station. Thankfully no one else was injured, but as the incident occurred in a busy area, there could have been serious injuries or worse to police and members of the public. In the past 5 years, there has also been multiple incidents involved the discharge of firearms in the vicinity of police stations.

The risk to police officers and members of the community attending police stations is significantly heightening in the context of the terror threat level facing our country today, and for the foreseeable future. The National Terrorism Threat Advisory System has the current threat level at "Probable". Police are identified as one of the likely targets of a terror attack. Australian sworn and

²⁸ NSW Consumer Advisory Group – Mental Health Inc., *Stepping into the 21st Century: Submission on the review of the Mental Health Act 2007 (NSW)*, 17 December 2012, Recommendation 14, page 17.

unsworn police force personnel have been the victims of terrorist related violence on three occasions since September 2014.

There is a significant disparity of infrastructure and security at the police stations around the State. Many stations fail to provide officers, unsworn staff and visitors with sufficient security to ensure their safety.

The PANSW requests this Inquiry recommend the Government provide the capital funding to ensure all police stations are upgraded to have:

- Safety screens at front counters,
- Electronically controlled front doors to enable station lockdowns,
- Adequate security lighting around the perimeter of stations,
- Closed Circuit TV so that persons can be seen approaching stations,
- Duress alarms,
- All furniture in public foyers to be fixed,
- Video intercoms at the front of stations,
- No parking for the public beneath any police station unless access to the parking area is security controlled.

Body Worn Video Devices

In July 2013 the NSW Police Force commenced trialling body-worn video (BWV) devices on police officers across four Commands. It is understood the trial results were very positive.

BWV reduces the risk of police being assaulted, as the presence of the cameras is successful in:

- De-escalating the demeanor and aggression of persons interacting with police,
- Deterring and reducing violent conduct,
- Providing police and members of the public with an independent and accurate recording of events.

The 2014/2015 State Budget allocated \$4 million over two years to the NSW Police Force to fund the BWV devices in selected Commands. Roll-out across NSW is intended.

The PANSW requests this Inquiry recommend the State-wide roll-out of BWV devices and the requisite technology support systems be expedited, and the NSW Government provide the funding necessary for the State-wide roll-out.

Expedite the rollout of Integrated Light Armoured Vests

In May 2016, the Deputy Premier, the Hon Troy Grant, announced police officers would be equipped with Integrated Light Armoured Vests (ILAVs), to protect police from assaults with weapons. In the 2016-17 Budget, \$6 million was allocated to providing these ILAVs.

The PANSW seeks the roll-out of these vital pieces of safety equipment occur as soon as possible, to ensure police have the best protection from potentially fatal attacks.

The PANSW thanks this Inquiry for the opportunity to demonstrate the significant risks police officers face every day, and to present some options to mitigate those risks. The PANSW is more than willing to provide any further information, or to appear before the Inquiry if so requested.