

MENTAL HEALTH ACT 1996 — SECTION 196 REFERRALS

4975. Mr P. Papalia to the Minister for Police

I refer to Division 2 Police Powers under the *Mental Health Act 1996*, and I ask, in the 12 months to 1 April 2011:

- (a) how many persons arrested in Western Australia have triggered a section 196 referral for examination and what were the outcomes of the section 196 referrals;
- (b) what is the police procedure for a section 195 and 196 referral;
- (c) what training, aids, and/or training procedures do police officers have to help them exercise their section 195 and section 196 powers reasonably and in a timely manner; and
- (d) what is the definition of ‘reasonable force’ under section 200 of the *Mental Health Act 1996* as provided to police in training?

Mr R.F. JOHNSON replied:

- (a) It would take a significant amount of resources to review each incident to determine if it meets the criteria of a section 196 referral. The Commissioner of Police has advised he is not prepared to divert valuable resources away from core policing activities to review this information and collate the data.
- (b)–(c) The following is the training/procedure provided to recruits in relation to Section 195 and 196 of the Mental Health Act 1996. This also includes reference to completing the task in a timely manner and using the powers conferred by the section as a last resort.

Section 195 of the Mental Health Act 1996 reads as follows:

- (1) A police officer may apprehend a person if the officer suspects on reasonable Grounds that the person -
  - (a) Has a mental illness; AND
  - (b) needs to be apprehended to –
    - (i) Protect the health or safety of the person or any other person; or
    - (ii) Prevent serious damage to property.
- (2) If a police officer apprehends a person under subsection (1), the officer, as soon as is practicable, is to arrange for the person to be examined by a medical practitioner or authorised mental health practitioner for the purposes of Section 29.
- (3) After the examination, the person is to be released unless he or she is referred under Section 29 for examination by a psychiatrist.

If a task regarding a mentally ill person is received or a person is encountered who is believed on reasonable grounds to be suffering a mental illness, the powers under Section 195 should not be used unless that action is required immediately to prevent injury to themselves or any other person or to prevent damage to any property by that person.

When a person appears to be suffering from a mental illness the police officer should contact Mental Health Emergency Team and seek their assistance to establish whether the person requires psychiatric assessment. Attendance by a Mental Health Emergency Team or community mental health worker can be requested should it be deemed necessary.

Once a person has been apprehended under section 195 they must be taken, as soon as practicable, to a medical practitioner or mental health practitioner who will assess them and decide if they should be committed for assessment.

Only use the powers of Section 195 if action is required urgently; otherwise make arrangements with the Psychiatric Emergency Team. The powers of police under Section 195 of the Mental Health Act are not to be used lightly and then only if no other option is available.

Section 196 of the Mental Health Act 1996 states:-

- (1) Where a police officer -
  - (a) Has arrested a person for an offence; and
  - (b) Suspects on reasonable grounds that the person has a mental illness that needs immediate treatment, the officer, as soon as is practicable, is to

arrange for the person to be examined by a medical practitioner or authorised mental health practitioner for the purposes of Section 29.

- (2) If the person is ordered to be detained in an authorised hospital as an involuntary patient, Section 55 applies when that detention ceases.
- (3) This section does not prevent a police officer from charging a person with an Offence.

It is reiterated to recruits that the section refers only to those people that require immediate intervention and that any examination must be conducted as soon as is practicable.

- (d) Section 200 of the Mental Health Act 1996 refers to reasonable force. Training on this topic is delivered at the Academy as follows:-

When looking at the provisions for use of force under the Criminal Code it is essential to have an understanding of the term 'reasonable force'. Reasonable force is defined by the Butterworth's Legal Dictionary as "that degree of force, which is not excessive but fair, proper and reasonably necessary in the circumstances"

To determine whether or not the force used was reasonable requires asking the question, "Would it be reasonable for a person with the characteristics of an ordinary man, placed into the same situation, to do the same thing?" In this way an objective standard is set by which a person's actions can be measured so that only sufficient force to overcome the threat is used.

Additionally, the Commissioners orders and procedures contains the following guidelines for officers in relation to the use of any force.

- Members shall not use more force on persons than is reasonably necessary to perform their lawful duties.
- In any circumstances where the use of force is permitted, members should decide whether the use of any force is reasonably necessary.
- In any circumstances where the use of force is reasonably necessary, members should use the minimal amount of force required to establish control. Once control has been achieved, lower force options are to be employed at the earliest opportunity.
- Members must ensure that they do not use excessive force and, in particular, do not use:
  - any force where none is needed;
  - more force than is needed;
  - any force or a greater level of force after the necessity for it has ended.