

MENTAL HEALTH ACT 1996 — ASSISTANCE REQUESTS TO POLICE

4974. Mr P. Papalia to the Minister for Police

I refer to police receiving requests for help under sections 34, 41, 58(1)(c), 71 or 84 of the *Mental Health Act 1996* to apprehend a person and take them to a place for examination, to an authorised hospital in Perth, anywhere else in Western Australia or outside the jurisdiction, in the 12 months to 1 April 2011, and I ask:

- (a) what do police guidelines say about use of force in such circumstances;
- (b) what mode of transport is used to carry out each of these requests;
- (c) if air transport is required, what are the requirements of the air service used to transport such patients;
- (d) has any patient transferred in such circumstances required heavy sedation for the transfer; and
 - (i) if so, how many, and who accompanied each of the patients; and
- (e) has any patient transferred in such circumstances required another form of restraint for the transfer, and
 - (i) if so, what type of restraint?

Mr R.F. JOHNSON replied:

- (a) The following sections provide officers with the power to use force when dealing with mentally ill persons.

Section 200 of the Mental Health Act 1996 states:-

"A police officer may use such force as may be necessary for the purposes of -

- (b) Apprehending a person under this Act; or
- (c) Doing anything authorised by this Division."

Additionally, Section 243 of the Criminal Code states:-

"It is lawful for any person to use such force as is reasonably necessary in order to prevent a person whom he believes, on reasonable grounds, to be mentally impaired from doing violence to any person or property".

The sections refer to the use of reasonable force or force that may be necessary. Police officers are provided with the following training in relation to reasonable force.

‘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 Butterworths 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 Commissioner's orders and procedures contain 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.

If, during the apprehension of a person under the Mental Health Act, a police officer is required to use force, the use of such force will be recorded in the station occurrence book or in the officer's notebook.

- (b) Police vehicles are only used to transport mentally ill persons when there are no other alternatives available and a risk assessment has determined the person is an extreme or high risk to themselves or others.
- (c) This is not under the jurisdiction of the Western Australia Police, and should be referred to the Minister for Health.
- (d) This is not information maintained by Western Australia Police.
 - (i) See above.
- (e) This information is not maintained electronically by Western Australia Police. It would require a manual search of records to determine if any restraint was used.
 - (i) Handcuffs may be used and are the only other form of restraint carried by police officers on an aircraft.