

POLICE — MOVE-ON NOTICES ISSUE

8755. Ms M.M. Quirk to the Minister for Police

I refer to move on notices issued pursuant to section 27 of the *Criminal Investigation Act 2006*, and ask:

- (a) since 20 September 2011:
  - (i) how many move on notices were issued;
  - (ii) how many move on notices had ethnicity recorded;
  - (iii) of the move on notices where ethnicity was recorded, how many were issued against each category of ethnic appearance that is available on the recording system;
  - (iv) how many move on notices were issued for a period longer than 20 hours;
  - (v) how many move on notices were issued against a person under 18 years of age;
  - (vi) how many people were charged with breach of a move on notice;
  - (vii) how many of these had ethnicity recorded;
  - (viii) of the charges for breach of a move on notice where ethnicity was recorded, how many were laid against each category of ethnic appearance that is available on the recording system;
  - (ix) how many people under 18 years of age were charged with breach of a move on notice;
  - (x) how many move on notices were issued against people attending a protest, march or rally; and
  - (xi) how many people attending a protest, march or rally were charged with breach of a move on notice;
- (b) what training do police officers receive in respect of move on notices:
  - (i) generally;
  - (ii) in relation to issuing a move on notice against a person of non-caucasian ethnicity;
  - (iii) in relation to the length of time specified in a move on notice;
  - (iv) in relation to the geographical boundaries specified in a move on notice;
  - (v) in relation to issuing a move on notice where breach of the notice would expose a person to a higher penalty than that for the conduct for which the move on notice would be issued; and
  - (vi) in relation to issuing, or declaring an intention to issue, a move on notice against a person attending a protest, march or rally; and
- (c) how often is training provided to police officers in respect of move on notices?

Mrs L.M. HARVEY replied:

Questions (a), (i) to (iv) Move on Notice data extracted from IMS 8/10/2012

- (a) (i) Between 20 September 2011 and 30 September 2012, 28,812 move on notices were issued pursuant to section 27
- (ii) Of the 28 812 move on notices issued 19,899 had ethnicity recorded
- (iii) [See paper 5540.]
- (iv) Since 20 September 2011, 6,020 move on notices were issued for a period longer than 20 hours
- (v) Since 20 September 2011, 3,510 move on notices were issued against a person under 18 years of age
- (vi)–(xi) Unable to determine answer to part (a) (vi) to (xi).

Persons who “Fail to comply with a Move on Notice” issued under section 27 “Suspects and others may be ordered to move on”, are charged under Section 153 (1) of the Criminal Investigation Act (CIA). Section 153(1) states

153. Order by officer, offence to not obey

(1) A person who, without reasonable excuse, does not comply with an order given by an officer under this Act commits an offence.

Penalty: a fine of \$12 000 and imprisonment for 12 months.

Section 153 (1) of the CIA applies to Failure to comply with orders issued under various sections of the CIA including section 27 Suspects and others may be ordered to move on.

Briefcase database identifies only failure to comply with police orders. Section 153(1) does not identify the section the person has failed to comply with.

- (b) (i) Foundation Training Unit The subject of move on notices is dealt with during the “general offences” section of Recruit legal training which encompasses 4 X 40 minute sessions

In Service Training Unit The subject of move on notices is dealt with during the Appointment Exams Law and Procedures 2 Distance Learning Module 7, delivered on-line to Constables prior to the Officer Enhancement Course and requirement of promotion to the rank of 1/C Constable.

- (ii) Foundation Training Unit: Ethnicity is not mentioned at all during the training.

In-Service Training Unit: Definitions referred to include; Public Place and Vehicle as described in the Criminal Investigation Act, and as described in the Criminal Code. Public Place as described in the Criminal Code and Public Officer as described in the Criminal Code. There is no mention of ethnicity in any training module.

- (iii) Foundation Training Unit As per s.27(2) of the Criminal Investigation Act 2006, recruits are taught that a move on notice may be issued for a reasonable period of up to 24 hours. This may vary dependant on the circumstances but cannot exceed 24 hours.

In-Service Training Unit: At page 17/37 Appointment Exams Law and Procedures 2 Distance Learning Module 7:

The authority under Section 27(1) can only be used in public places or in vehicles which are used for public transport.

Section 27(2) provides additionally that the Police Officer can specify a person go a reasonable distance from the place and can order the person not to return for a reasonable period of up to 24 hrs.

Section 27(7) provides a defence for a person who has been served with a move on notice, and allows that a person is not in breach of an order where they are taking reasonable steps to comply. An example of this would be where a person is ordered from an area but that area has the only reasonable access to public transport and the person is waiting for public transport so they can comply with the order to leave.

Questions and Answers related to the length of time are:

Q. You attend a local shopping centre on Sunday for an offender being held after being caught red-handed for a graffiti offence on an outer wall. When you arrive at the shopping centre you find that the 18 year old offender has caused minor damage but the centre manager is concerned that the offender might return over the weekend as there’s been lots of graffiti caused at the shopping centre over the previous years.

Which of the following actions would be the most appropriate action to take? Answer is B

A. Summons the offender for the damage and issue an interim police restraining order for the offender to leave and not return to the centre for 48 hours.

B. Summons the offender for the damage and issue a move on notice for the offender not to return to the shopping centre for 24 hours.

C. Arrest the offender in order to impose bail conditions that the offender not return to the shopping centre until the matter is dealt with so as to appease the centre manager.

D. Any of the listed answers would be appropriate to achieve the desired result of easing the concerns of the centre manager by keeping the offender away from the shopping centre over the weekend.

Q. In relation to ‘Move on Notices’ which of the following statements is TRUE Answer is B

A. All ‘Move on Notices’ are strictly in force for a 24 hour period

B. Move on Notices’ are not to be issued in relation to domestic disputes

C. Move on Notices’ should be issued to prevent trouble makers from arriving at a destination where it is believed on reasonable grounds that they will go to cause a disturbance.

If you have cause to arrest a person and you fear that person may return to the place you should issue a 'Move on Notice' prior to granting the person bail.

Q. You decide to issue a 'Move on Notice' to a juvenile that is in the Northbridge area on a Saturday night.

What is NOT correct in relation to a 'Move on Notice'? Answer is C

- A. You can issue a move on notice for a person to leave a place they are at, at the time.
- B. You can issue a move on notice for a period of up to 24 hours
- C. You can issue a move on notice to a person at a rally or protest that has a permit.
- D. You can issue more than one move on notice to a single person.

- (iv) Foundation Training Unit: Recruits are taught to specify actual boundaries (usually streets) when issuing orders and that this must be reasonable taking into account the persons needs and right to access places as per section 27(3) of the Criminal Investigation Act 2006. Notwithstanding this method, recent application of MORROW -v- UJC [2012] WASC 114 is being applied to recruits, detectives and in service training recipients. MORROW at [28], HALL J said:

"...The question is not whether the boundary is known, but whether the boundary is reasonably ascertainable by the person who is subject of the notice."

The effect of this decision is that 'Move On Notices' may prescribe a distance by reference to streets or units of measurement provided the distance is reasonable and can reasonably be ascertained by the person on whom the notice is served.

Points taught to recipients include:

- s.27(2)(a) — distance must be reasonable from the place where the order is issued;
- s.27(2)(b) — access to accommodation, shops, employment, public transport, health, education and essential services must be considered; and
- Do not charge people with breaches of move on notices when they make take reasonable steps to comply with the order.

The points provided here are not exhaustive. A full reading of the decision in MORROW and a review of the lesson plans provided by the Academy is required for any reviewing authority to ascertain the significant scope of training relating to s.27 Criminal Investigation Act 2006.

In addition, WAPOL Broadcast General\_101013 Move On Orders — Requesting Name and Address Under Section 16 of the Criminal Investigation Act 2006 provides direction to all WAPOL personnel.

In Service Training Unit: Appointment Exams Law and Procedures 2 Distance Learning Module 7:

#### INTRODUCTION

Many of the offences in this category must be committed in a public place (for example, Behave in a Disorderly Manner, Obscene Acts), or on a vehicle used for public transport (move on orders). It is, therefore, important to know the definition of a public place.

#### DEFINITIONS

"Public Place" Section 1 of the Criminal Code;-

The term "public place" includes —

- (a) place to which the public, or any section of the public, has or is permitted to have access, whether on payment or otherwise;
- (b) a privately owned place to which the public has access with the express or implied approval of, or without interference from, the owner, occupier or person who has the control or management of the place; and
- (c) a school, university or other place of education, other than a part of it to which neither students nor the public usually have access.

Public place Section 3 of the Criminal Investigation Act 2006.

"public place" includes —

- (a) a place to which the public, or any section of the public, has or is permitted to have access, whether on payment or not;
- (b) a place to which the public has access with the express or implied approval of, or without interference from, the occupier of the place; and
- (c) a school, university or other place of education, other than a part of it to which neither students nor the public usually has access;

Although the definitions of public place in the Criminal Code and Criminal Investigation Act 2006 are similar, there are some differences and an officer should be aware of the particular Act under which they are operating at the time.

The two Acts are, however, sufficiently similar for the following case law to apply to both.

In the case of *Ward v Marsh* (1959) ALR 233 at p.234 per Lowe J, public place was defined as 'any place to which members of the public may, at the relevant time, go.' He further stated the following;

"All that is necessary is that at the time in question members of the public may, because they are members of the public, go to the place if they choose.

A place will ordinarily be a 'public place' if at the relevant time members of the public are lawfully entitled, invited or permitted to be there in their capacity as members of the public, whether or not subject to conditions and irrespective of the number of persons present at the relevant time.

Example: A shopping centre or a hotel, while these premises are open for business, they are public places as any member of the public may enter if they wish. Once the premises are closed, they cease to be public places.

A place will ordinarily be a 'public place' if the place is one to which significant numbers of members of the public, in their capacity as such, are in the habit of going, whether by legal right or authority, either at all hours which include the relevant time, and even if the relevant time none or only a few persons are present.

Example: A short cut across private land to a bus-stop which is regularly used by school children. Even though the land is private property, it could be deemed to be a public place because a large number of persons are in the habit of using it.

A place will ordinarily be a 'public place' if at the relevant time a large number of persons are there, whether or not by legal right or authority.

Example: The car park of the Maylands Bowling Club is a private place and not for members of the public but when the Avon descent goes through, members of the public use the car park to watch the race. They were not allowed to be there but were there at the time. The car park becomes a public place because of the large number of persons who go there, but for the time they are present only.

Section 27 (6) requires that an order given under this section must be on a prescribed form.

Section 27(7) provides a defence for a person who has been served with a move on notice, and allows that a person is not in breach of an order where they are taking reasonable steps to comply. An example of this would be where a person is ordered from an area but that area has the only reasonable access to public transport and the person is waiting for public transport so they can comply with the order to leave.

This section gives Police the power to intervene and move people on from an area when they are suspected of committing offences, or about to commit an offence, when there may be insufficient evidence to charge a person.

Move on orders should not be used in relation to domestic disputes. Police should use the offences and powers afforded them under the Restraint Orders Act.

Similarly, the Move on orders are not to be used in situations of protests or rallies/ picket lines etc. The powers under the Public Meetings and Processions Act should be used in these situations.

- (v) Foundation Training Unit: Offence of not Obeying an Order by an officer

Section 153 of the Criminal Investigation Act 2006 provides that if a person does not obey an order given under this Act, they commit an offence.

It is under this Section that a person would be charged where they failed to comply with a move on order issued under Section 27.

The Section carries a penalty of \$12 000.00 or 12 Months Imprisonment.

The consideration as to whether a penalty of Breach of Move On Notice provides a higher penalty to the substantive offence which draws police attention is not raised as a significant consideration to Police. The purpose of the order is clearly expressed in s.27(1).

27. Suspects and others may be ordered to move on

(1) A police officer may order a person who is in a public place, or in a vehicle used for public transport, to leave it, or a part of it specified by the officer, if the officer reasonably suspects that the person —

(a) is doing an act —

(i) that involves the use of violence against a person; or

(ii) that will cause a person to use violence against another person; or

(iii) that will cause a person to fear violence will be used by a person against another person; or

(b) is just about to do an act that is likely to —

(i) involve the use of violence against a person; or

(ii) cause a person to use violence against another person; or

(iii) cause a person to fear violence will be used by a person against another person; or

(c) is committing any other breach of the peace; or

(d) is hindering, obstructing or preventing any lawful activity that is being, or is about to be, carried out by another person; or

(e) intends to commit an offence; or

(f) has just committed or is committing an offence.

The need to arrive at a reasonable suspicion (as defined in s.4 Criminal Investigation Act 2006) that a person is about to commit an offence or is committing an offence is paramount. The purpose of issuance of a Move On Notice is attached to the attempt by Police to stop people committing acts of violence, stop persons committing breaches of the peace or to intervene and prevent offences. It is a measure designed to afford potential or actual offenders alternatives to arrest and charge.

Subsequent continued breaches of the peace (or offences) attract penalties prescribed by Parliament.

In Service Training Unit: Appointment Exams Law and Procedures 2 Distance Learning Module 7:

Offence of not Obeying an Order by an officer

Section 153 of the Criminal Investigation Act 2006 provides that if a person does not obey an order given under this Act, they commit an offence.

It is under this Section that a person would be charged where they failed to comply with a move on order issued under Section 27.

The Section carries a penalty of \$12 000.00 or 12 Months Imprisonment.

- (vi) Foundation Training Unit : Recruits are taught not to use move on notices to persons at protests, marches or rallies and are instructed to use the powers contained under the Public Meetings and Processions Act.

In Service Training Unit: The Move on orders are not to be used in situations of protests or rallies/ picket lines etc. The powers under the Public Meetings and Processions Act should be used in these situations.

Q. You decide to issue a 'Move on Notice' to a juvenile that is in the Northbridge area on a Saturday night.

What is NOT correct in relation to a 'Move on Notice'? Answer is C

A. You can issue a move on notice for a person to leave a place they are at, at the time.

B. You can issue a move on notice for a period of up to 24 hours

- C. You can issue a move on notice to a person at a rally or protest that has a permit.
  - D. You can issue more than one move on notice to a single person.
- (c)
- Recruit training
  - Detective Training
  - Electronic Self Directed Learning (Criminal Investigation Act 2006).