

## CTO & Form 47

The OAAF has received many enquiries over the years with respect to whether police are obliged to forcibly enter the residence of a client who has been placed on a Form 47 in order to apprehend the person and satisfy the conditions of the Form 47.

A Form 47 says, "I hereby issue this Order for Examination for any of you (police) to take such person in custody forthwith to (designated place)." A person may be taken into custody when they are accessible. If they are within their residence behind a locked door there are rules that apply.

Following discussion with a recognized legal expert on this matter we offer the following interpretation of the legislation:

1. Police may enter a private residence for 3 reasons:
  - i) Invited in, or given permission by the resident to enter
  - ii) Acting on a warrant
  - iii) Police have reasonable cause to believe murder, mayhem, fire, or injury is occurring
2. Otherwise entry occurs at the "discretion of the constable". This means that when providing the police with the Form 47 the onus is on the ACT Psychiatrist /ACT Staff to provide information that can support a decision by the police to enter the residence uninvited. Examples of information that would influence an officer would be statements that you believe the person is off medication and has not eaten in many days (injury), or that the person has a history of violence and you believe they are possibly harming family members in the house (murder, mayhem).
3. Note that a Form 47 says right on it that, "I have reasonable cause to believe that such person meets the criteria for the completion of a Form 1". If the police are informed of likelihood of harm to self or others, or substantial mental or physical deterioration of the person, or serious physical impairment of the person, this should substantively inform their decision and allow the exercise of appropriate discretion.
4. So in answer to the question, "**Must** police enter a locked residence to take the person in custody?" the answer is **no**. However, if given the appropriate information, they **can and should** enter a locked residence even when entry is refused.
5. Note that a Form 47 is a stronger legal instrument than a Form 1 because it contains additional criteria for its satisfaction. If the police would have entered a locked residence if presented with a Form 1 in the same circumstances then they should certainly enter if presented with a Form 47.
6. A final point: even though the Form 47 is in effect for 30 days from issuance, the direction is that the person be taken into custody "**forthwith**" which is legalese for **immediately**. The police are not allowed to proceed at leisure or when convenient.