

MENTAL HEALTH (AMENDMENT) ACT 1994 No. 25

NEW SOUTH WALES



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MENTAL HEALTH (AMENDMENT) ACT 1994 No. 25

NEW SOUTH WALES



Act No. 25, 1994

An Act to amend the Mental Health Act 1990 and the Mental Health (Criminal Procedure) Act 1990 to implement recommendations of the Mental Health Act Implementation Monitoring Committee relating to the detention and treatment of patients, community counselling and community treatment orders, hospital administration and management, court orders and other matters; and for other purposes. [Assented to 30 May 1994]

Mental Health (Amendment) Act 1994 No. 25

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Mental Health (Amendment) Act 1994.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Amendment of Mental Health Act 1990 No. 9

3. The Mental Health Act 1990 is amended as set out in Schedule 1.

Amendment of Mental Health (Criminal Procedure) Act 1990 No. 10

4. The Mental Health (Criminal Procedure) Act 1990 is amended as set out in Schedule 2.

Explanatory notes

5. Matter appearing under the heading "Explanatory note" in the Schedules does not form part of this Act.

**SCHEDULE 1—AMENDMENT OF MENTAL HEALTH ACT
1990**

(Sec. 3)

Amendments: detention of patients in hospitals

- (1) Section 18 (**Other functions of medical superintendent concerning informal patients**):

From section 18 (b), omit "admitted to and detained in a", insert instead "detained in the".

- (2) Section 18A:

After section 18, insert:

Procedures for detaining patients

18A. If the medical superintendent decides under section 18 (b) to take action to detain an informal patient in the hospital under Part 2, the patient:

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1990—*continued***

- (a) must be dealt with as if the patient has been admitted to and detained in the hospital under section 21; and
- (b) must be examined under section 29 not later than 12 hours after the medical superintendent decides to take action to detain the patient.

Explanatory note

Items (1) and (2) enable the medical superintendent of a hospital to detain a patient who is in hospital voluntarily (ie an informal patient) as an involuntary patient if the medical superintendent considers it proper to do so having regard to the condition of the patient. In such a case, the patient must be medically examined not later than 12 hours after the medical superintendent decides to detain the patient as an involuntary patient. This amendment streamlines existing admission procedures.

(3) Section 21 (Detention on certificate of medical practitioner or accredited person):

After “medical practitioner” wherever occurring, insert “or an accredited person”.

(4) Section 22 (Assistance by police):

In section 22 (1), after “medical practitioner”, insert “or an accredited person”.

(5) Section 27 (Detention following order for medical examination or observation):

- (a) In section 27 (1), after “a medical practitioner”, insert “or an accredited person”.
- (b) In section 27 (1), after “the medical practitioner”, insert “or accredited person”.
- (c) In section 27 (4), after “A medical practitioner”, insert “or an accredited person”.

Explanatory note

Items (3), (4) and (5) enable accredited persons as well as medical practitioners to authorise the detention of a person in a hospital (other than an authorised hospital) and to carry out other related functions. See item (14) for the appointment of accredited persons.

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1990—*continued*

(6) Section 29 (**Examination on detention at hospital**):

(a) Omit section 29 (1), insert instead:

(1) A person taken to and detained in a hospital under this Division must be examined, as soon as practicable (but not more than 12 hours) after the person's arrival at the hospital, by the medical superintendent.

(b) In section 29 (2), after "section 37", insert "or 37A".

(c) After section 29 (2), insert:

(3) A medical practitioner on whose certificate or request a person has been admitted to a hospital must not examine the person for the purposes of this section.

Explanatory note

Item (6) relates to procedures for dealing with persons who have been brought to hospital involuntarily. Item (6) (a) increases from 4 hours to 12 hours the maximum time for which a person may be detained in a hospital before being examined by the medical superintendent to determine whether the person is a mentally ill person or a mentally disordered person. Item (6) (c) makes it clear that a medical practitioner on whose certificate or request a person has been admitted to a hospital must not examine the person for the purposes of determining whether the person is a mentally ill person or a mentally disordered person.

(7) Section 30:

Omit the section, insert instead:

Information to be given to detained person

30. (1) The medical superintendent must, as soon as practicable after a person is taken to a hospital under this Division, give to the person an oral explanation and a written statement (in the form prescribed by the regulations) of the person's legal rights and other entitlements under this Act.

(2) The medical superintendent must, as soon as practicable after it is decided to do all such things as may be necessary to cause a person who is an informal patient to be detained in a hospital under this Division, give to the person an oral explanation and a written statement (in the form prescribed by the regulations) of the person's legal rights and other entitlements under this Act.

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1990—*continued*

(3) If the medical superintendent is of the opinion that a person is not capable of understanding the explanation or statement when it is first given, another explanation or statement must be given to the person not later than 24 hours before an inquiry is held before a Magistrate in respect of the person.

(4) The medical superintendent must, if the person is unable to communicate adequately in English but is able to communicate adequately in another language, arrange for an oral explanation under this section to be given in that other language.

Explanatory note

Item (7) makes sure that a person who is admitted to a hospital as an involuntary patient, or whose status changes from an informal patient to an involuntary patient, is given information about his or her rights by the medical superintendent (orally and in writing) as soon as practicable. An interpreter is to be provided for those persons who are unable to communicate adequately in English. If a medical superintendent is of the opinion that a person is not capable of understanding the oral or written information given, then another explanation or statement must be given to the person not later than 24 hours before an inquiry is held before a Magistrate. At the inquiry the Magistrate determines whether the person is a mentally ill person and the action to be taken in respect of the person.

(8) Section 33 (**Consequence of further examination**):

In section 33 (2), after "section 37", insert "or 37A".

(9) Section 35 (**Limited detention of mentally disordered persons**):

(a) Omit section 35 (1), insert instead:

(1) A person who has, under section 29, been certified to be a mentally disordered person and who has not subsequently, on examination under section 32, been found to be a mentally ill person must not be detained in the hospital for a continuous period of more than 3 days (not including weekends and public holidays).

(b) In section 35 (3), after "mentally disordered person" wherever occurring, insert "or a mentally ill person".

(c) In section 35 (3), after "section 37", insert "or 37A".

SCHEDULE 1—AMENDMENT OF MENTAL HEALTH ACT
1990—*continued*

- (10) Section 36 (**Persons detained after apprehension by police or brought to hospital on Magistrate's order**):

In section 36 (2), (3), (4) and (5), after "section 37" wherever occurring, insert "or 37A, in the case of a person who is ordered under section 33 (1) (b) of the Mental Health (Criminal Procedure) Act 1990 to be brought back before the court following assessment at a hospital if not detained at the hospital".

- (11) Section 37A:

After section 37, insert:

Persons ordered to be brought back before Court

37A. (1) This section applies to a person who is ordered under section 33 (1) (b) of the Mental Health (Criminal Procedure) Act 1990 to be brought back before the court following assessment at a hospital if not detained at the hospital and who is, by virtue of section 36, to be dealt with in accordance with this section.

(2) If a police officer is present at the hospital to ascertain the results of any examination or examinations when the decision not to certify a person is made or the relevant opinions or opinion are or is known to the medical superintendent, the medical superintendent must release the person into the custody of the police officer.

(3) If a police officer is not so present, the medical superintendent must, as soon as practicable after that decision is made or the relevant opinions or opinion are or is known to the medical superintendent, notify a police officer at the police station nearest to the hospital, or a police station nominated for the purposes of this section by the Commissioner of Police, that the person will not be further detained.

(4) It is the duty of the police officer notified by the medical superintendent to ensure that a police officer attends the hospital and apprehends the person as soon as practicable after the notification.

(5) The medical superintendent must detain the person pending the apprehension of the person by a police officer.

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1990—*continued*

(12) Section 38 (Notice of inquiry and other matters):

Omit section 38 (1), insert instead:

(1) A medical superintendent must, after receiving advice under section 33 (1) that a person is a mentally ill person or that a person detained under section 29 as a mentally ill person is a mentally disordered person, and after complying with this section, bring the person before a Magistrate as soon as practicable.

(13) Section 40 (Termination of detention):

(a) In section 40 (1) (a), after “person” where secondly occurring, insert “or a mentally disordered person”.

(b) After section 40 (1), insert:

(1A) If, at any time before a person is brought before a Magistrate under section 38, the medical superintendent is of the opinion that the person has ceased to be a mentally ill person but is a mentally disordered person, the person must not be further detained for a period of more than 3 days (not including weekends and public holidays).

Explanatory note

Items (9), (12) and (13) contain amendments which clarify procedures where a person who is detained in a hospital as a mentally ill person is found on a second or later examination to be a mentally disordered person and where a person who is detained as a mentally disordered person is found on a second examination to be a mentally ill person. Currently, a person who is found to be a mentally ill person for the purposes of the Act on more than one examination must be taken before a Magistrate to determine whether the person is to stay in hospital involuntarily and for how long. This will also apply where a person who is detained as a mentally ill person is found on a second examination to be a mentally disordered person and where a person who is detained as a mentally disordered person is found on a second examination to be a mentally ill person (Item (12)). The amendments make it clear that the limited detention period (3 days) for persons found to be mentally disordered persons applies only to a person who is detained as a mentally disordered person and who is not on subsequent examination found to be a mentally ill person (Item (9)). However, other persons detained in the hospital, and not yet brought before a Magistrate, will be subject only to the limited detention period if the medical superintendent forms the opinion that they are mentally disordered persons (Item (13)).

Item (11) inserts a new provision resulting from amendments to orders which may be made by Magistrates under section 33 of the Mental Health (Criminal Procedure) Act 1990 (see explanation in Schedule 2). Items (6) (b), (8) and (10) make consequential amendments.

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1990—*continued*

(14) Section 287A:

After section 287, insert:

Accredited persons

287A. (1) The Director-General may, by order published in the Gazette, appoint a person as an accredited person for the purpose of giving certificates under section 21 or acting under section 27.

(2) An order may appoint the holder of an office as an accredited person and may limit the area in which, or specify the circumstances in which, a person or office holder may act as an accredited person.

(15) Schedule 1 (Dictionary of terms used in Act):

Insert, in appropriate order:

accredited person means a person appointed under section 287A to be an accredited person;

Explanatory note

Item (14) provides for the appointment of "accredited persons" by the Director-General of the Department of Health by order published in the Government Gazette. Amendments made by Items (3), (4) and (5) confer functions on accredited persons. Item (15) makes a consequential amendment.

Amendment: transfers from hospitals to prison

(16) Section 96 (Requests for transfer to prison):

After section 96 (2), insert:

(2A) The Tribunal must make the recommendation if it is satisfied that the person is not a mentally ill person.

Explanatory note

Currently, a forensic patient detained in a hospital may request the Mental Health Review Tribunal to be transferred from the hospital to a prison. The Tribunal has power to recommend the transfer to the Minister, who may in turn order the transfer.

Item (16) requires the Tribunal to recommend the return to prison of a forensic patient who is detained in a hospital and makes such a request, if the Tribunal is satisfied that the patient is not a mentally ill person.

SCHEDULE 1—AMENDMENT OF MENTAL HEALTH ACT
1990—*continued*

Amendments: transfers from prisons to hospitals

- (17) Section 97 (**Transfer of mentally ill prisoners to hospitals**):
From section 97 (1), omit “mentally ill (whether or not the person is suffering from a mental illness within the meaning of this Act)”, insert instead “a mentally ill person”.
- (18) Section 98 (**Transfer of other prisoners to hospitals**):
From section 98 (3), omit “suffering from mental illness”, insert instead “who is a mentally ill person”.

Explanatory note

Currently, the Chief Health Officer of the Department of Health may order the transfer of a person from a prison to a hospital if there are 2 certificates by medical practitioners stating that the person is mentally ill even though the person may not be suffering from a mental illness within the meaning of the Act.

Item (17) changes this so that a prisoner may be involuntarily transferred from a prison to a hospital only if the prisoner is a mentally ill person within the meaning of the Act. This makes the position of such a person closer to that of other persons who may be detained in hospitals under the Act. Item (18) makes a consequential amendment.

Amendments: community counselling orders and community treatment orders

- (19) Section 115 (**Directors and Deputy Directors**):
Omit section 115 (1), insert instead:
(1) The Director-General must appoint the holder of a specified office as the Director of a health care agency declared under this Part and may appoint the holder of a specified office as the Deputy Director of the health care agency.
- (20) Section 124 (**Duration of community counselling orders**):
From section 124 (1) (c), omit “or an informal patient”.
- (21) Section 124A:
After section 124, insert:
Effect on order of informal admission to hospital
124A. (1) A community counselling order has no effect while an affected person is an informal patient but (if it does not otherwise expire or is not revoked) has effect if the person ceases to be an informal patient.

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1990—*continued*

(2) A community counselling order affected by this section expires on the date it would have otherwise expired under this Act despite any period during which it has no effect.

(22) Section 131 (**Making of community treatment orders**):

From section 131 (1), omit "Part 3 of".

(23) Section 135 (**Duration of community treatment orders**):

From section 135 (1) (c), omit "or an informal patient".

(24) Section 135A:

After section 135, insert:

Effect on order of informal admission to hospital

135A. (1) A community treatment order has no effect while an affected person is an informal patient but (if it does not otherwise expire or is not revoked) has effect if the person ceases to be an informal patient.

(2) A community treatment order affected by this section expires on the date it would have otherwise expired under this Act despite any period during which it has no effect.

(25) Section 142:

Omit the section, insert instead:

Procedure at hospital

142. On arrival at a hospital of an affected person taken there by virtue of an order under section 139 or under section 141 after refusing treatment at a health care agency:

- (a) the person is to be given notice (in the form prescribed by the regulations) of his or her right to apply for a review of the order, to lodge an appeal and to apply for discharge from the hospital; and
- (b) the medical superintendent must review the person's mental condition; and
- (c) if the medical superintendent considers it appropriate, the person is to be given treatment in accordance with the community treatment order.

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**SCHEDULE 1—AMENDMENT OF MENTAL HEALTH ACT
1990—continued**
Explanatory note

The Act establishes both a scheme for treatment of persons who are mentally ill in hospitals and a scheme for treatment in the community in accordance with community counselling orders and community treatment orders. Such orders are of limited duration. The Committee recommended changes relating to the effect of hospitalisation on such orders.

Item (19) omits the requirement to publish in the Government Gazette the appointment of a Director or Deputy Director of a health care agency (orders are administered by health care agencies).

Items (21) and (24) provide that a community counselling order or a community treatment order has no effect while the person the subject of the order is in hospital as an informal patient (ie voluntarily). Such an order continues to have effect if the person ceases to be an informal patient unless the order has not otherwise expired or been revoked. The period during which the community counselling or treatment order has no effect because of the person's admission as an informal patient is not taken into account in determining when the order expires. Items (20) and (23) make consequential amendments.

Item (22) enables the Mental Health Review Tribunal to make community treatment orders for all detained patients (other than forensic patients) appearing before the Tribunal for their regular review by it.

Item (25) substitutes the provision relating to persons brought to hospitals because of breaches of community treatment orders, or refusal of treatment at health care agencies. In such cases, no treatment (eg medication) is to be given to a person until the person's mental condition has been reviewed by the medical superintendent.

Amendments: electro convulsive therapy and other prescribed treatments

- (26) Section 185 (**Circumstances in which treatment may be administered with consent—persons other than involuntary patients**):

At the end of section 185, insert:

- (2) A medical superintendent who is unsure whether a person is capable of giving informed consent may apply to the Tribunal to have the Tribunal determine whether the person is capable of giving informed consent and has given that consent.

SCHEDULE 1—AMENDMENT OF MENTAL HEALTH ACT
1990—*continued*

(27) Section 188:

Omit the section, insert instead:

Application to Tribunal to administer treatment to involuntary patients

188. (1) If at least 2 medical practitioners, at least one of whom is a psychiatrist, certify, in writing, that, after considering the clinical condition and history of treatment of, and any appropriate alternative treatments for, a patient (not being an informal patient) or any other person under detention in a hospital, they are of the opinion that treatment to which this Division applies is:

- (a) a reasonable and proper treatment to be administered to the patient or person; and
- (b) necessary or desirable for the safety or welfare of the patient or person,

the medical superintendent may apply to the Tribunal to determine the matters set out in subsection (2).

(2) The matters to be determined are:

- (a) whether or not the patient or person is capable of giving informed consent to the administration to the patient or person of the treatment and has given that consent; and
- (b) in the case of proposed electro convulsive therapy, if the patient is incapable of giving informed consent or capable of giving informed consent but has refused, or has neither consented nor refused, to the administration of the treatment, whether its administration is reasonable and proper and is necessary or desirable for the safety or welfare of the person.

(28) Section 189 (**Application to Tribunal to administer electro convulsive therapy without consent to patient**):

Omit the section.

SCHEDULE 1—AMENDMENT OF MENTAL HEALTH ACT
1990—*continued*

(29) Section 190:

Omit the section, insert instead:

Notice of inquiry to obtain or determine consent

190. (1) On making an application to the Tribunal under section 185 or 188 in respect of a person or patient, the medical superintendent must, in accordance with the regulations, do all such things as are reasonably practicable to give notice to the following persons of the application:

- (a) the nearest relative, if there is one, of the person or patient or a relative nominated by the person or patient;
- (b) the person's or patient's guardian, if any;
- (c) any personal friend or friends of the person or patient, up to 2 in number, who are known as his or her personal friends.

(2) The medical superintendent must not, however, give notice to any person of an application under section 185 unless the person the subject of the application consents.

(30) Section 191:

Omit the section, insert instead:

Inquiry

191. (1) On an application under section 185 or 188, the Tribunal must, as soon as practicable, hold an inquiry to determine the matters set out in the section concerned.

(2) The medical superintendent must ensure that, so far as is reasonably practicable, the person or patient the subject of the application is, when appearing before the Tribunal, dressed in street clothes.

(31) Section 192 (**Matters to be checked by Tribunal**):

In section 192 (2), after "given", insert "(if required)".

(32) Section 193 (**Matters which must be considered by Tribunal**):

Omit section 193 (1), insert instead:

(1) In the course of the inquiry, the Tribunal must consider the certificates of the medical practitioners under section 185 or 188 concerning the person or patient the subject of the application and must consider the person's or patient's views

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1990—*continued*

about the treatment and such other information as may be placed before the Tribunal.

(33) Section 194:

Omit the section, insert instead:

Result of inquiry

194. (1) The Tribunal may, after holding an inquiry on an application under section 185 or 188 concerning a person or patient, determine that the person or patient:

- (a) is capable of giving informed consent to the administration to the person or patient of a treatment to which this Division applies; and
- (b) has given that consent.

(2) After holding an inquiry on an application under section 188 concerning the administration of electro convulsive therapy to a person or patient, the Tribunal may determine:

- (a) that the person or patient is incapable of giving informed consent to the administration to the person or patient of electro convulsive therapy, or is capable of giving that consent but has refused, or has neither consented nor refused, to have the treatment administered to the person or patient; and
- (b) that, after considering the medical opinions and any other information placed before it, the Tribunal is satisfied the electro convulsive therapy is a reasonable and proper treatment and is necessary or desirable for the safety or welfare of the person or patient.

Explanatory note

Currently the Act specifies the circumstances in which electro convulsive therapy and other prescribed treatments may be administered without consent to an involuntary patient (in emergencies or after an inquiry by the Mental Health Review Tribunal). The Act provides that in any other case such treatment is to be given only after informed consent is given by the patient.

Item (26) enables the medical superintendent to apply to have the Tribunal determine whether a person who is not detained in a hospital has given informed consent to electro convulsive therapy or any other prescribed treatment.

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**SCHEDULE 1—AMENDMENT OF MENTAL HEALTH ACT
1990—continued**

Items (27) and (28) simplify procedures relating to treatment of patients by omitting the formal requirement for the medical superintendent concerned to form an opinion as to whether a patient is able to give informed consent to the treatment before the matter goes to the Tribunal. That question is to be determined by the Tribunal. Items (29)–(31) and (33) make consequential amendments.

Item (32) requires the Tribunal to take into consideration, when deciding whether to authorise electro convulsive therapy or other prescribed treatments, the views of the person as well as the views of the medical practitioners concerned and any other relevant information placed before it. At present the Tribunal is not required to consider the person's views. The Tribunal is to make its decision only on the material placed before it.

Amendments: hospital administration and management

(34) Section 209 (**Appointment of medical superintendents**):

Omit “may”, insert instead “must”.

(35) Section 219:

Omit the section, insert instead:

Medical services in authorised hospitals

219. The holder of a licence must make such arrangements as may be approved by the Director-General for the provision of medical services to patients in the authorised hospital.

(36) Section 222:

Omit the section, insert instead:

Appointment of deputy medical superintendent

222. (1) The holder of a licence may appoint a medical practitioner as deputy medical superintendent of the authorised hospital.

(2) The appointment of the medical practitioner must be approved by the Director-General before it takes effect.

(37) Section 231 (**Access to be given to official visitors and other matters**):

(a) After “superintendent”, insert “of a hospital (other than an authorised hospital), the administrator of an authorised hospital”.

(b) In section 231 (c), after “superintendent’s”, insert “, administrator’s”.

SCHEDULE 1—AMENDMENT OF MENTAL HEALTH ACT
1990—*continued*

(c) At the end of section 231, insert:

(2) The administrator of an authorised hospital must, at the end of each month, report in writing to the medical superintendent as to the functions exercised under this section by the administrator during that month.

(38) Section 293 (**Information as to follow-up care after discharge**):

(a) After “superintendent”, insert “or the administrator (if it is an authorised hospital)”.

(b) At the end of section 293, insert:

(2) The administrator of an authorised hospital must, at the end of each month, report in writing to the medical superintendent as to the functions exercised under this section by the administrator during that month.

Explanatory note

The Act provides for the establishment, administration and management of hospitals (both private and public) which treat persons who are mentally ill. In the Act, private hospitals are referred to as authorised hospitals. They are licensed under the Act.

Item (34) makes it mandatory that the Director-General of the Department of Health appoint a medical superintendent for a hospital that is not an authorised hospital (a public hospital).

Item (35) replaces specific requirements of the Act relating to the number of medical practitioners in authorised hospitals with a wider discretion for the licence holder to provide such medical services as the Director-General may approve.

Item (36) provides that a deputy medical superintendent may, but need not, be appointed for an authorised hospital and that such an appointment must be approved by the Director-General before it is made. Currently, the hospital must have a deputy medical superintendent.

Items (37) and (38) enable an administrator of an authorised hospital to perform duties now imposed on the medical superintendent, relating to enabling access to official visitors and the provision of information to patients about follow up care.

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SCHEDULE 1—AMENDMENT OF MENTAL HEALTH ACT
1990—*continued*

Other amendments

(39) Section 234A:

After section 234, insert:

Official visitors not personally liable

234A. A matter or thing done or omitted by an official visitor does not, if the matter or thing was done or omitted in good faith for the purpose of executing this Act, subject the official visitor personally to any action, liability, claim or demand.

Explanatory note

Item (39) provides for the protection of official visitors to hospitals from personal liability for acts done in good faith in carrying out their duties under the Act.

(40) Section 288 (**Legal representation of mentally ill persons and other persons**):

After “mental illness” where firstly occurring, insert “or a developmental disability of mind”.

Explanatory note

Item (40) makes it clear that persons suffering from a developmental disability of the mind are able to obtain legal representation and to instruct legal representatives in respect of matters arising under the Act.

(41) Schedule 1 (**Dictionary of terms used in the Act**):

In paragraph (a) of the definition of “forensic patient”, after “10 (3) (c)”, insert “, 14”.

Explanatory note

Item (41) amends the definition of “forensic patient” (in the Dictionary of terms used in the Mental Health Act 1990—Schedule 1) to include persons who have been found unfit to be tried for an offence.

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SCHEDULE 1—AMENDMENT OF MENTAL HEALTH ACT
1990—*continued*

(42) Schedule 2:

Omit the Schedule, insert instead:

**SCHEDULE 2—MEDICAL CERTIFICATE AS TO
EXAMINATION OR OBSERVATION OF PERSON**

(Secs. 21, 22)

MENTAL HEALTH ACT 1990

PART 1

I, (Medical Practitioner/accredited person)
(name in full—use block letters)

of certify that

on 19.....

immediately before or shortly before completing this
certificate,

at

(state place where examination/observation took place)

I personally examined/personally observed.....

.....for a period of

(name of person in full)

.....

(state length of examination/observation)

I certify the following matters:

1. I am of the opinion that the person examined/observed by me is a mentally ill person suffering from mental illness/or a mentally disordered person and that there are reasonable grounds for believing the person's behaviour for the time being is so irrational as to justify a conclusion on reasonable grounds that temporary care, treatment or control of the person is necessary:

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***(a)** (in the case of any mentally ill person):

- (i) for the person's own protection from serious physical harm; or
- (ii) for the protection of others from serious physical harm; or

***(b)** (in the case of a mentally ill person who is suffering from mental illness which is characterised by the presence in the person of the symptom of sustained disturbance of mood or the symptom of sustained or repeated irrational behaviour indicating the presence of that symptom) for the person's own protection from serious financial harm or serious damage to the person's reputation; or

***(c)** in the case of a mentally disordered person:

- (i) for the person's own protection from serious physical harm; or
- (ii) for the protection of others from serious physical harm.

2. I have satisfied myself, by such inquiry as is reasonable having regard to the circumstances of the case, that the person's involuntary admission to and detention in a hospital are necessary and that no other care of a less restrictive kind is appropriate and reasonably available to the person.

3. Incidents and/or abnormalities of behaviour and conduct (a) observed by myself and (b) communicated to me by others (state name, relationship and address of each informant) are:

- (a)
-
-
-
-

* delete whichever is not applicable

Mental Health (Amendment) Act 1994 No. 25

SCHEDULE 1—AMENDMENT OF MENTAL HEALTH ACT
1990—*continued*

(b)
.....
.....
.....

4. The general medical and/or surgical condition of the person is as follows:

.....
.....
.....
.....

5. The following medication (if any) has been administered for purposes of psychiatric therapy or sedation:

.....
.....
.....
.....

6. I am not a near relative of the person.

7. I have/do not have a pecuniary interest, directly or indirectly, in an authorised hospital. I have/do not have a near relative/partner/assistant who has such an interest. Particulars of the interest are as follows:

.....
.....
.....
.....

Made and signed this..... day of 19.....

Signature:

Mental Health (Amendment) Act 1994 No. 25

SCHEDULE 1—AMENDMENT OF MENTAL HEALTH ACT
1990—*continued*

PART 2

If the assistance of a Police Officer is required, this part of the Form should be completed.

YOU SHOULD NOT REQUEST THIS ASSISTANCE UNLESS IT IS NECESSARY AND THERE ARE NO OTHER MEANS OF TAKING THE PERSON TO HOSPITAL REASONABLY AVAILABLE.

I am of the opinion, in relation to

(name of person in full)

- (a) that the condition of the person is such that the assistance of a Police Officer is required in order to take the person to a hospital; and
- (b) that no other means of taking the person to a hospital are reasonably available.

Made and signed 19.....

Signature:.....

NOTES:

1. Chapter 3 of the Mental Health Act 1990 states:

Criteria for involuntary admission etc. as mentally ill person or mentally disordered person

8. A person is a mentally ill person or a mentally disordered person for the purpose of:

- (a) the involuntary admission of the person to a hospital or the detention of the person in a hospital under this Act; or
- (b) determining whether the person should be subject to a community treatment order or be detained or continue to be detained involuntarily in a hospital,

Mental Health (Amendment) Act 1994 No. 25

SCHEDULE 1—AMENDMENT OF MENTAL HEALTH ACT
1990—*continued*

if, and only if, the person satisfies the relevant criteria set out in this Chapter.

Mentally ill persons

9. (1) A person is a mentally ill person if the person is suffering from mental illness and, owing to that illness, there are reasonable grounds for believing that care, treatment or control of the person is necessary:

- (a) for the person's own protection from serious physical harm; or
- (b) for the protection of others from serious physical harm,

and a person is also a mentally ill person if the person is suffering from mental illness which is characterised by the presence in the person of the symptom of a severe disturbance of mood or the symptom of sustained or repeated irrational behaviour indicating the presence of that symptom and, owing to that illness, there are reasonable grounds for believing that care, treatment or control of the person is necessary for the person's own protection from serious financial harm or serious damage to the person's reputation.

(2) In considering whether a person is a mentally ill person, the continuing condition of the person is to be taken into account.

(3) In this section, "damage to the person's reputation" includes damage to the person's reputation among those with whom the person has important personal relationships, where the damage is likely to cause lasting or irreparable harm to any such relationship.

Mentally disordered persons

10. A person (whether or not the person is suffering from mental illness) is a mentally disordered person if the person's behaviour for the time being is so irrational as to justify a conclusion on reasonable grounds that temporary care, treatment or control of the person is necessary:

- (a) for the person's own protection from serious physical harm; or
- (b) for the protection of others from serious physical harm.

Certain words or conduct may not indicate mental illness or disorder

11. (1) A person is not a mentally ill person or a mentally disordered person merely because of any one or more of the following:

- (a) that the person expresses or refuses or fails to express or has expressed or refused or failed to express a particular political opinion or belief;

Mental Health (Amendment) Act 1994 No. 25

SCHEDULE 1—AMENDMENT OF MENTAL HEALTH ACT
1990—*continued*

- (b) that the person expresses or refuses or fails to express or has expressed or refused or failed to express a particular religious opinion or belief;
- (c) that the person expresses or refuses or fails to express or has expressed or refused or failed to express a particular philosophy;
- (d) that the person expresses or refuses or fails to express or has expressed or refused or failed to express a particular sexual preference or sexual orientation;
- (e) that the person engages in or refuses or fails to engage in, or has engaged in or refused or failed to engage in, a particular political activity;
- (f) that the person engages in or refuses or fails to engage in, or has engaged in or refused or failed to engage in, a particular religious activity;
- (g) that the person engages in or has engaged in sexual promiscuity;
- (h) that the person engages in or has engaged in immoral conduct;
- (i) that the person engages in or has engaged in illegal conduct;
- (j) that the person has developmental disability of mind;
- (k) that the person takes or has taken alcohol or any other drug;
- (l) that the person engages in or has engaged in anti-social behaviour.

(2) Nothing in this Chapter prevents, in relation to a person who takes or has taken alcohol or any other drug, the serious or permanent physiological, biochemical or psychological effects of drug taking from being regarded as an indication that a person is suffering from mental illness or other condition of disability of mind.

2. In addition to matters ascertained as a consequence of personally examining or observing the person, account may be taken of other matters not so ascertained where those matters:

- (a) arise from a previous personal examination of the person; or
- (b) are communicated by a reasonably credible informant.

3. In the Mental Health Act 1990 “mental illness” is defined as follows:

mental illness means a condition which seriously impairs, either temporarily or permanently, the mental functioning of a person and is characterised by the presence in the person of any one or more of the following symptoms:

- (a) delusions;
- (b) hallucinations;
- (c) serious disorder of thought form;

Mental Health (Amendment) Act 1994 No. 25

SCHEDULE 1—AMENDMENT OF MENTAL HEALTH ACT
1990—*continued*

- (d) a severe disturbance of mood;
- (e) sustained or repeated irrational behaviour indicating the presence of any one or more of the symptoms referred to in paragraphs (a)–(d).

4. In the Mental Health Act 1990 “near relative” is defined as follows:

near relative, in relation to a **person**, means a parent, brother, sister or child or the spouse of the person and such other person or persons as may be prescribed as a near relative of the person.

5. For admission purposes, this certificate is valid only for a period of 5 days, in the case of a person who is a mentally ill person, or 1 day, in the case of a person who is a mentally disordered person, after the date on which the certificate is given.

Explanatory note

Item (42) replaces the current form of certificate for use for the detention of persons in a hospital with one in simpler language. Part 2 of the new form of certificate clearly states that police assistance to take the person concerned to hospital should only be requested if it is necessary and no other means of taking the person to hospital are reasonably available.

(43) Schedule 7 (**Savings, transitional and other provisions**):

(a) After clause 2 (1), insert:

(1A) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following:

Mental Health (Amendment) Act 1994

(b) From clause 2 (4), omit “this Act”, insert instead “the Act concerned”.

(c) After clause 38, insert:

**Part 6—Provisions consequent on Mental Health
(Amendment) Act 1994**

Detention of persons in hospitals

39. Sections 35, 38 and 40, as amended by the Mental Health (Amendment) Act 1994, do not apply to any person taken to a hospital before the commencement of the relevant amendment and not released before that commencement.

Mental Health (Amendment) Act 1994 No. 25

**SCHEDULE 1—AMENDMENT OF MENTAL HEALTH ACT
1990—*continued***

Electro convulsive therapy and prescribed treatments

40. Sections 188, 190, 191, 193 and 194, as amended by the Mental Health (Amendment) Act 1994, do not apply to any person in respect of whom an application is made under section 188 or 189, and not finally determined, before the commencement of the relevant amendment.

Explanatory note

Item (43) makes amendments of a savings or transitional nature consequent on the enactment of the proposed Act.

**SCHEDULE 2—AMENDMENT OF MENTAL HEALTH
(CRIMINAL PROCEDURE) ACT 1990**

(Sec. 4)

Section 33 (Mentally ill persons):

(a) Omit section 33 (1) (a) and (b), insert instead:

- (a) may order that the defendant be taken by a police officer to, and detained in, a hospital for assessment; or
- (b) may order that the defendant be taken by a police officer to, and detained in, a hospital for assessment and that, if the defendant is found on assessment at the hospital not to be a mentally ill person or mentally disordered person, the person be brought by a police officer back before the court; or
- (c) may discharge the defendant, unconditionally or subject to conditions, into the care of a responsible person.

(b) After section 33, insert:

- (5) The regulations may prescribe the form of an order under this section.

Explanatory note

The amendment extends the orders that a Magistrate may make in proceedings if it appears to the Magistrate that the defendant is mentally ill. Currently, the Magistrate may order the person be detained in a hospital for assessment or be discharged unconditionally or subject to conditions, into the care of a responsible person. The amendment enables the Magistrate to order that the defendant be brought back before

Mental Health (Amendment) Act 1994 No. 25

SCHEDULE 2—AMENDMENT OF MENTAL HEALTH
(CRIMINAL PROCEDURE) ACT 1990—*continued*

the court if, on assessment at the hospital, the defendant is found not to be a mentally ill person or a mentally disordered person. Schedule 1 (11) makes a consequential amendment to the Mental Health Act 1990 to enable a medical superintendent to detain a person until apprehended by a police officer, if the person is subject to an order to be brought back before the Magistrate and is not admitted as an involuntary patient.

[*Minister's second reading speech made in—
Legislative Assembly on 14 April 1994
Legislative Council on 10 May 1994*]

FIRST PRINT

MENTAL HEALTH (AMENDMENT) BILL 1994

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to implement recommendations of the Mental Health Act Implementation Monitoring Committee with respect to the following matters:

- (a) the detention of patients in hospital;
- (b) the transfer of persons between prisons and hospitals;
- (c) the procedures for obtaining approval for the treatment of patients by electroconvulsive therapy and other prescribed treatments;
- (d) the duration and effect of community counselling and community treatment orders;
- (e) hospital administration and management;
- (f) orders made by Magistrates in criminal proceedings.

The Committee was established on the commencement of the Mental Health Act 1990 to monitor the new Act, as the Act contained several new initiatives concerning the rights of patients and their treatment inside and outside hospitals.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 gives effect to the Schedule of amendments to the Mental Health Act 1990.

Clause 4 gives effect to the Schedule of amendments to the Mental Health (Criminal Procedure) Act 1990.

Clause 5 makes it clear that explanatory notes appearing in the Schedules do not form part of the proposed Act.

Mental Health (Amendment) 1994

SCHEDULE 1—AMENDMENT OF MENTAL HEALTH ACT 1990

This Schedule contains the amendments to the Mental Health Act 1990 referred to above. An explanation of each amendment is set out in the Schedule.

SCHEDULE 2—AMENDMENT OF MENTAL HEALTH (CRIMINAL PROCEDURE) ACT 1990

This Schedule contains the amendments to the Mental Health (Criminal Procedure) Act 1990 referred to above. An explanation of each amendment is set out in the Schedule.

FIRST PRINT

MENTAL HEALTH (AMENDMENT) BILL 1994

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Mental Health Act 1990 No. 9
4. Amendment of Mental Health (Criminal Procedure) Act 1990 No. 10
5. Explanatory notes

SCHEDULE 1—AMENDMENT OF MENTAL HEALTH ACT 1990

Detention of patients in hospitals

- Item (1)—section 18
- Item (2)—section 18A
- Item (3)—section 21
- Item (4)—section 22
- Item (5)—section 27
- Item (6)—section 29
- Item (7)—section 30
- Item (8)—section 33
- Item (9)—section 35
- Item (10)—section 36
- Item (11)—section 37A
- Item (12)—section 38
- Item (13)—section 40
- Item (14)—section 287A
- Item (15)—Schedule 1

Transfers from hospitals to prisons

- Item (16)—section 96

Mental Health (Amendment) 1994

Transfers from prisons to hospitals

- Item (17)—section 97
- Item (18)—section 98

Community counselling orders and community treatment orders

- Item (19)—section 115
- Item (20)—section 124
- Item (21)—section 124A
- Item (22)—section 131
- Item (23)—section 135
- Item (24)—section 135A
- Item (25)—section 142

Electro convulsive therapy and other prescribed treatments

- Item (26)—section 185
- Item (27)—section 188
- Item (28)—section 189
- Item (29)—section 190
- Item (30)—section 191
- Item (31)—section 192
- Item (32)—section 193
- Item (33)—section 194

Hospital administration and management

- Item (34)—section 209
- Item (35)—section 219
- Item (36)—section 222
- Item (37)—section 231
- Item (38)—section 293

Other amendments

- Item (39)—section 234A
- Item (40)—section 288
- Item (41)—Schedule 1
- Item (42)—Schedule 2
- Item (43)—Schedule 7

SCHEDULE 2—AMENDMENT OF MENTAL HEALTH (CRIMINAL
PROCEDURE) ACT 1990

Section 33

MENTAL HEALTH (AMENDMENT) BILL 1994

NEW SOUTH WALES



No. , 1994

A BILL FOR

An Act to amend the Mental Health Act 1990 and the Mental Health (Criminal Procedure) Act 1990 to implement recommendations of the Mental Health Act Implementation Monitoring Committee relating to the detention and treatment of patients, community counselling and community treatment orders, hospital administration and management, court orders and other matters; and for other purposes.

*Mental Health (Amendment) 1994***The Legislature of New South Wales enacts:****Short title**

1. This Act may be cited as the Mental Health (Amendment) Act 1994.

Commencement

- 5 2. This Act commences on a day or days to be appointed by proclamation.

Amendment of Mental Health Act 1990 No. 9

3. The Mental Health Act 1990 is amended as set out in Schedule 1.

Amendment of Mental Health (Criminal Procedure) Act 1990 No. 10

- 10 4. The Mental Health (Criminal Procedure) Act 1990 is amended as set out in Schedule 2.

Explanatory notes

5. Matter appearing under the heading "Explanatory note" in the Schedules does not form part of this Act.

15 **SCHEDULE 1—AMENDMENT OF MENTAL HEALTH ACT
1990**

(Sec. 3)

Amendments: detention of patients in hospitals

- 20 (1) Section 18 (**Other functions of medical superintendent concerning informal patients**):

From section 18 (b), omit "admitted to and detained in a", insert instead "detained in the".

- (2) Section 18A:

After section 18, insert:

25 **Procedures for detaining patients**

18A. If the medical superintendent decides under section 18 (b) to take action to detain an informal patient in the hospital under Part 2, the patient:

Mental Health (Amendment) 1994

 SCHEDULE 1—AMENDMENT OF MENTAL HEALTH ACT
 1990—*continued*

- (a) must be dealt with as if the patient has been admitted to and detained in the hospital under section 21; and
- (b) must be examined under section 29 not later than 12 hours after the medical superintendent decides to take action to detain the patient. 5

Explanatory note

Items (1) and (2) enable the medical superintendent of a hospital to detain a patient who is in hospital voluntarily (ie an informal patient) as an involuntary patient if the medical superintendent considers it proper to do so having regard to the condition of the patient. In such a case, the patient must be medically examined not later than 12 hours after the medical superintendent decides to detain the patient as an involuntary patient. This amendment streamlines existing admission procedures. 10

- (3) **Section 21 (Detention on certificate of medical practitioner or accredited person):** 15

After “medical practitioner” wherever occurring, insert “or an accredited person”.

- (4) **Section 22 (Assistance by police):**

In section 22 (1), after “medical practitioner”, insert “or an accredited person”. 20

- (5) **Section 27 (Detention following order for medical examination or observation):**

(a) In section 27 (1), after “a medical practitioner”, insert “or an accredited person”. 25

(b) In section 27 (1), after “the medical practitioner”, insert “or accredited person”.

(c) In section 27 (4), after “A medical practitioner”, insert “or an accredited person”.

Explanatory note 30

Items (3), (4) and (5) enable accredited persons as well as medical practitioners to authorise the detention of a person in a hospital (other than an authorised hospital) and to carry out other related functions. See item (14) for the appointment of accredited persons.

Mental Health (Amendment) 1994

SCHEDULE 1—AMENDMENT OF MENTAL HEALTH ACT
1990—*continued*

(6) Section 29 (**Examination on detention at hospital**):

(a) Omit section 29 (1), insert instead:

5 (1) A person taken to and detained in a hospital under this Division must be examined, as soon as practicable (but not more than 12 hours) after the person's arrival at the hospital, by the medical superintendent.

(b) In section 29 (2), after "section 37", insert "or 37A".

10 (c) After section 29 (2), insert:

(3) A medical practitioner on whose certificate or request a person has been admitted to a hospital must not examine the person for the purposes of this section.

Explanatory note

15 Item (6) relates to procedures for dealing with persons who have been brought to hospital involuntarily. Item (6) (a) increases from 4 hours to 12 hours the maximum time for which a person may be detained in a hospital before being examined by the medical superintendent to determine whether the person is a mentally ill person or a mentally disordered person. Item (6) (c) makes it clear that a medical practitioner on
20 whose certificate or request a person has been admitted to a hospital must not examine the person for the purposes of determining whether the person is a mentally ill person or a mentally disordered person.

(7) Section 30:

Omit the section, insert instead:

25 **Information to be given to detained person**

30 30. (1) The medical superintendent must, as soon as practicable after a person is taken to a hospital under this Division, give to the person an oral explanation and a written statement (in the form prescribed by the regulations) of the person's legal rights and other entitlements under this Act.

35 (2) The medical superintendent must, as soon as practicable after it is decided to do all such things as may be necessary to cause a person who is an informal patient to be detained in a hospital under this Division, give to the person an oral explanation and a written statement (in the form prescribed by the regulations) of the person's legal rights and other entitlements under this Act.

Mental Health (Amendment) 1994

SCHEDULE 1—AMENDMENT OF MENTAL HEALTH ACT
1990—*continued*

(3) If the medical superintendent is of the opinion that a person is not capable of understanding the explanation or statement when it is first given, another explanation or statement must be given to the person not later than 24 hours before an inquiry is held before a Magistrate in respect of the person. 5

(4) The medical superintendent must, if the person is unable to communicate adequately in English but is able to communicate adequately in another language, arrange for an oral explanation under this section to be given in that other language. 10

Explanatory note

Item (7) makes sure that a person who is admitted to a hospital as an involuntary patient, or whose status changes from an informal patient to an involuntary patient, is given information about his or her rights by the medical superintendent (orally and in writing) as soon as practicable. An interpreter is to be provided for those persons who are unable to communicate adequately in English. If a medical superintendent is of the opinion that a person is not capable of understanding the oral or written information given, then another explanation or statement must be given to the person not later than 24 hours before an inquiry is held before a Magistrate. At the inquiry the Magistrate determines whether the person is a mentally ill person and the action to be taken in respect of the person. 15
20

(8) Section 33 (**Consequence of further examination**): 25
In section 33 (2), after “section 37”, insert “or 37A”.

(9) Section 35 (**Limited detention of mentally disordered persons**):

(a) Omit section 35 (1), insert instead:

(1) A person who has, under section 29, been certified to be a mentally disordered person and who has not subsequently, on examination under section 32, been found to be a mentally ill person must not be detained in the hospital for a continuous period of more than 3 days (not including weekends and public holidays). 30

(b) In section 35 (3), after “mentally disordered person” wherever occurring, insert “or a mentally ill person”. 35

(c) In section 35 (3), after “section 37”, insert “or 37A”.

Mental Health (Amendment) 1994

SCHEDULE 1—AMENDMENT OF MENTAL HEALTH ACT
1990—*continued*

(10) **Section 36 (Persons detained after apprehension by police or brought to hospital on Magistrate's order):**

5 In section 36 (2), (3), (4) and (5), after "section 37"
wherever occurring, insert "or 37A, in the case of a person
who is ordered under section 33 (1) (b) of the Mental Health
(Criminal Procedure) Act 1990 to be brought back before the
10 court following assessment at a hospital if not detained at the
hospital".

(11) **Section 37A:**

After section 37, insert:

Persons ordered to be brought back before Court

15 37A. (1) This section applies to a person who is ordered
under section 33 (1) (b) of the Mental Health (Criminal
Procedure) Act 1990 to be brought back before the court
following assessment at a hospital if not detained at the
hospital and who is, by virtue of section 36, to be dealt with
in accordance with this section.

20 (2) If a police officer is present at the hospital to ascertain
the results of any examination or examinations when the
decision not to certify a person is made or the relevant
opinions or opinion are or is known to the medical
superintendent, the medical superintendent must release the
25 person into the custody of the police officer.

30 (3) If a police officer is not so present, the medical
superintendent must, as soon as practicable after that decision
is made or the relevant opinions or opinion are or is known
to the medical superintendent, notify a police officer at the
police station nearest to the hospital, or a police station
nominated for the purposes of this section by the
Commissioner of Police, that the person will not be further
detained.

35 (4) It is the duty of the police officer notified by the
medical superintendent to ensure that a police officer attends
the hospital and apprehends the person as soon as practicable
after the notification.

(5) The medical superintendent must detain the person
pending the apprehension of the person by a police officer.

Mental Health (Amendment) 1994

SCHEDULE 1—AMENDMENT OF MENTAL HEALTH ACT
1990—*continued*

(12) Section 38 (**Notice of inquiry and other matters**):

Omit section 38 (1), insert instead:

(1) A medical superintendent must, after receiving advice under section 33 (1) that a person is a mentally ill person or that a person detained under section 29 as a mentally ill person is a mentally disordered person, and after complying with this section, bring the person before a Magistrate as soon as practicable.

5

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(13) Section 40 (**Termination of detention**):

(a) In section 40 (1) (a), after “person” where secondly occurring, insert “or a mentally disordered person”.

(b) After section 40 (1), insert:

(1A) If, at any time before a person is brought before a Magistrate under section 38, the medical superintendent is of the opinion that the person has ceased to be a mentally ill person but is a mentally disordered person, the person must not be further detained for a period of more than 3 days (not including weekends and public holidays).

15

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Explanatory note

Items (9), (12) and (13) contain amendments which clarify procedures where a person who is detained in a hospital as a mentally ill person is found on a second or later examination to be a mentally disordered person and where a person who is detained as a mentally disordered person is found on a second examination to be a mentally ill person. Currently, a person who is found to be a mentally ill person for the purposes of the Act on more than one examination must be taken before a Magistrate to determine whether the person is to stay in hospital involuntarily and for how long. This will also apply where a person who is detained as a mentally ill person is found on a second examination to be a mentally disordered person and where a person who is detained as a mentally disordered person is found on a second examination to be a mentally ill person (Item (12)). The amendments make it clear that the limited detention period (3 days) for persons found to be mentally disordered persons applies only to a person who is detained as a mentally disordered person and who is not on subsequent examination found to be a mentally ill person (Item (9)). However, other persons detained in the hospital, and not yet brought before a Magistrate, will be subject only to the limited detention period if the medical superintendent forms the opinion that they are mentally disordered persons (Item (13)).

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Item (11) inserts a new provision resulting from amendments to orders which may be made by Magistrates under section 33 of the Mental Health (Criminal Procedure) Act 1990 (see explanation in Schedule 2). Items (6) (b), (8) and (10) make consequential amendments.

40

Mental Health (Amendment) 1994

SCHEDULE 1—AMENDMENT OF MENTAL HEALTH ACT
1990—*continued*

(14) Section 287A:

After section 287, insert:

5 **Accredited persons**

287A. (1) The Director-General may, by order published in the Gazette, appoint a person as an accredited person for the purpose of giving certificates under section 21 or acting under section 27.

10 (2) An order may appoint the holder of an office as an accredited person and may limit the area in which, or specify the circumstances in which, a person or office holder may act as an accredited person.

(15) Schedule 1 (**Dictionary of terms used in Act**):

15 Insert, in appropriate order:

accredited person means a person appointed under section 287A to be an accredited person;

Explanatory note

20 Item (14) provides for the appointment of "accredited persons" by the Director-General of the Department of Health by order published in the Government Gazette. Amendments made by Items (3), (4) and (5) confer functions on accredited persons. Item (15) makes a consequential amendment.

Amendment: transfers from hospitals to prison(16) Section 96 (**Requests for transfer to prison**):

25 After section 96 (2), insert:

(2A) The Tribunal must make the recommendation if it is satisfied that the person is not a mentally ill person.

Explanatory note

30 Currently, a forensic patient detained in a hospital may request the Mental Health Review Tribunal to be transferred from the hospital to a prison. The Tribunal has power to recommend the transfer to the Minister, who may in turn order the transfer.

Item (16) requires the Tribunal to recommend the return to prison of a forensic patient who is detained in a hospital and makes such a request, if the Tribunal is satisfied that the patient is not a mentally ill person.

Mental Health (Amendment) 1994

SCHEDULE 1—AMENDMENT OF MENTAL HEALTH ACT
1990—*continued*

Amendments: transfers from prisons to hospitals

- (17) Section 97 (**Transfer of mentally ill prisoners to hospitals**):
From section 97 (1), omit “mentally ill (whether or not the person is suffering from a mental illness within the meaning of this Act)”, insert instead “a mentally ill person”. 5
- (18) Section 98 (**Transfer of other prisoners to hospitals**):
From section 98 (3), omit “suffering from mental illness”, insert instead “who is a mentally ill person”. 10

Explanatory note

Currently, the Chief Health Officer of the Department of Health may order the transfer of a person from a prison to a hospital if there are 2 certificates by medical practitioners stating that the person is mentally ill even though the person may not be suffering from a mental illness within the meaning of the Act. 15

Item (17) changes this so that a prisoner may be involuntarily transferred from a prison to a hospital only if the prisoner is a mentally ill person within the meaning of the Act. This makes the position of such a person closer to that of other persons who may be detained in hospitals under the Act. Item (18) makes a consequential amendment.

Amendments: community counselling orders and community treatment orders 20

- (19) Section 115 (**Directors and Deputy Directors**):
Omit section 115 (1), insert instead:
(1) The Director-General must appoint the holder of a specified office as the Director of a health care agency declared under this Part and may appoint the holder of a specified office as the Deputy Director of the health care agency. 25
- (20) Section 124 (**Duration of community counselling orders**):
From section 124 (1) (c), omit “or an informal patient”. 30
- (21) Section 124A:
After section 124, insert:
Effect on order of informal admission to hospital
124A. (1) A community counselling order has no effect while an affected person is an informal patient but (if it does not otherwise expire or is not revoked) has effect if the person ceases to be an informal patient. 35

Mental Health (Amendment) 1994

SCHEDULE 1—AMENDMENT OF MENTAL HEALTH ACT
1990—*continued*

5 (2) A community counselling order affected by this section expires on the date it would have otherwise expired under this Act despite any period during which it has no effect.

(22) Section 131 (**Making of community treatment orders**):
From section 131 (1), omit “Part 3 of”.

(23) Section 135 (**Duration of community treatment orders**):
From section 135 (1) (c), omit “or an informal patient”.

10 (24) Section 135A:
After section 135, insert:

Effect on order of informal admission to hospital

15 135A. (1) A community treatment order has no effect while an affected person is an informal patient but (if it does not otherwise expire or is not revoked) has effect if the person ceases to be an informal patient.

(2) A community treatment order affected by this section expires on the date it would have otherwise expired under this Act despite any period during which it has no effect.

20 (25) Section 142:
Omit the section, insert instead:

Procedure at hospital

25 142. On arrival at a hospital of an affected person taken there by virtue of an order under section 139 or under section 141 after refusing treatment at a health care agency:

- 30 (a) the person is to be given notice (in the form prescribed by the regulations) of his or her right to apply for a review of the order, to lodge an appeal and to apply for discharge from the hospital; and
- (b) the medical superintendent must review the person’s mental condition; and
- (c) if the medical superintendent considers it appropriate, the person is to be given treatment in accordance with the community treatment order.

Mental Health (Amendment) 1994

**SCHEDULE 1—AMENDMENT OF MENTAL HEALTH ACT
1990—continued**
Explanatory note

The Act establishes both a scheme for treatment of persons who are mentally ill in hospitals and a scheme for treatment in the community in accordance with community counselling orders and community treatment orders. Such orders are of limited duration. The Committee recommended changes relating to the effect of hospitalisation on such orders. 5

Item (19) omits the requirement to publish in the Government Gazette the appointment of a Director or Deputy Director of a health care agency (orders are administered by health care agencies). 10

Items (21) and (24) provide that a community counselling order or a community treatment order has no effect while the person the subject of the order is in hospital as an informal patient (ie voluntarily). Such an order continues to have effect if the person ceases to be an informal patient unless the order has not otherwise expired or been revoked. The period during which the community counselling or treatment order has no effect because of the person's admission as an informal patient is not taken into account in determining when the order expires. Items (20) and (23) make consequential amendments. 15

Item (22) enables the Mental Health Review Tribunal to make community treatment orders for all detained patients (other than forensic patients) appearing before the Tribunal for their regular review by it. 20

Item (25) substitutes the provision relating to persons brought to hospitals because of breaches of community treatment orders, or refusal of treatment at health care agencies. In such cases, no treatment (eg medication) is to be given to a person until the person's mental condition has been reviewed by the medical superintendent. 25

Amendments: electro convulsive therapy and other prescribed treatments

(26) Section 185 (**Circumstances in which treatment may be administered with consent—persons other than involuntary patients**): 30

At the end of section 185, insert:

(2) A medical superintendent who is unsure whether a person is capable of giving informed consent may apply to the Tribunal to have the Tribunal determine whether the person is capable of giving informed consent and has given that consent. 35

Mental Health (Amendment) 1994

SCHEDULE 1—AMENDMENT OF MENTAL HEALTH ACT
1990—*continued*

(27) Section 188:

Omit the section, insert instead:

5 **Application to Tribunal to administer treatment to
involuntary patients**

10 188. (1) If at least 2 medical practitioners, at least one of
whom is a psychiatrist, certify, in writing, that, after
considering the clinical condition and history of treatment of,
and any appropriate alternative treatments for, a patient (not
being an informal patient) or any other person under
detention in a hospital, they are of the opinion that treatment
to which this Division applies is:

- 15 (a) a reasonable and proper treatment to be administered to
the patient or person; and
- (b) necessary or desirable for the safety or welfare of the
patient or person,

the medical superintendent may apply to the Tribunal to
determine the matters set out in subsection (2).

20 (2) The matters to be determined are:

- (a) whether or not the patient or person is capable of
giving informed consent to the administration to the
patient or person of the treatment and has given that
consent; and
- 25 (b) in the case of proposed electro convulsive therapy, if
the patient is incapable of giving informed consent or
capable of giving informed consent but has refused, or
has neither consented nor refused, to the administration
of the treatment, whether its administration is
reasonable and proper and is necessary or desirable for
30 the safety or welfare of the person.

(28) Section 189 (**Application to Tribunal to administer electro
convulsive therapy without consent to patient**):

Omit the section.

Mental Health (Amendment) 1994

 SCHEDULE 1—AMENDMENT OF MENTAL HEALTH ACT
 1990—*continued*

(29) Section 190:

Omit the section, insert instead:

Notice of inquiry to obtain or determine consent

5

190. (1) On making an application to the Tribunal under section 185 or 188 in respect of a person or patient, the medical superintendent must, in accordance with the regulations, do all such things as are reasonably practicable to give notice to the following persons of the application:

10

(a) the nearest relative, if there is one, of the person or patient or a relative nominated by the person or patient;

(b) the person's or patient's guardian, if any;

(c) any personal friend or friends of the person or patient, up to 2 in number, who are known as his or her personal friends.

15

(2) The medical superintendent must not, however, give notice to any person of an application under section 185 unless the person the subject of the application consents.

(30) Section 191:

20

Omit the section, insert instead:

Inquiry

191. (1) On an application under section 185 or 188, the Tribunal must, as soon as practicable, hold an inquiry to determine the matters set out in the section concerned.

25

(2) The medical superintendent must ensure that, so far as is reasonably practicable, the person or patient the subject of the application is, when appearing before the Tribunal, dressed in street clothes.

(31) Section 192 (**Matters to be checked by Tribunal**):

30

In section 192 (2), after "given", insert "(if required)".

(32) Section 193 (**Matters which must be considered by Tribunal**):

Omit section 193 (1), insert instead:

(1) In the course of the inquiry, the Tribunal must consider the certificates of the medical practitioners under section 185 or 188 concerning the person or patient the subject of the application and must consider the person's or patient's views

35

Mental Health (Amendment) 1994

 SCHEDULE 1—AMENDMENT OF MENTAL HEALTH ACT
 1990—*continued*

about the treatment and such other information as may be placed before the Tribunal.

5 (33) Section 194:

Omit the section, insert instead:

Result of inquiry

10 194. (1) The Tribunal may, after holding an inquiry on an application under section 185 or 188 concerning a person or patient, determine that the person or patient:

(a) is capable of giving informed consent to the administration to the person or patient of a treatment to which this Division applies; and

(b) has given that consent.

15 (2) After holding an inquiry on an application under section 188 concerning the administration of electro convulsive therapy to a person or patient, the Tribunal may determine:

20 (a) that the person or patient is incapable of giving informed consent to the administration to the person or patient of electro convulsive therapy, or is capable of giving that consent but has refused, or has neither consented nor refused, to have the treatment administered to the person or patient; and

25 (b) that, after considering the medical opinions and any other information placed before it, the Tribunal is satisfied the electro convulsive therapy is a reasonable and proper treatment and is necessary or desirable for the safety or welfare of the person or patient.

30 **Explanatory note**

35 Currently the Act specifies the circumstances in which electro convulsive therapy and other prescribed treatments may be administered without consent to an involuntary patient (in emergencies or after an inquiry by the Mental Health Review Tribunal). The Act provides that in any other case such treatment is to be given only after informed consent is given by the patient.

Item (26) enables the medical superintendent to apply to have the Tribunal determine whether a person who is not detained in a hospital has given informed consent to electro convulsive therapy or any other prescribed treatment.

Mental Health (Amendment) 1994

**SCHEDULE 1—AMENDMENT OF MENTAL HEALTH ACT
1990—continued**

Items (27) and (28) simplify procedures relating to treatment of patients by omitting the formal requirement for the medical superintendent concerned to form an opinion as to whether a patient is able to give informed consent to the treatment before the matter goes to the Tribunal. That question is to be determined by the Tribunal. Items (29)–(31) and (33) make consequential amendments. 5

Item (32) requires the Tribunal to take into consideration, when deciding whether to authorise electro convulsive therapy or other prescribed treatments, the views of the person as well as the views of the medical practitioners concerned and any other relevant information placed before it. At present the Tribunal is not required to consider the person's views. The Tribunal is to make its decision only on the material placed before it. 10

Amendments: hospital administration and management

(34) Section 209 (**Appointment of medical superintendents**): 15
Omit "may", insert instead "must".

(35) Section 219:

Omit the section, insert instead:

Medical services in authorised hospitals

219. The holder of a licence must make such arrangements as may be approved by the Director-General for the provision of medical services to patients in the authorised hospital. 20

(36) Section 222:

Omit the section, insert instead:

Appointment of deputy medical superintendent

222. (1) The holder of a licence may appoint a medical practitioner as deputy medical superintendent of the authorised hospital. 25

(2) The appointment of the medical practitioner must be approved by the Director-General before it takes effect. 30

(37) Section 231 (**Access to be given to official visitors and other matters**):

(a) After "superintendent", insert "of a hospital (other than an authorised hospital), the administrator of an authorised hospital". 35

(b) In section 231 (c), after "superintendent's", insert "administrator's".

Mental Health (Amendment) 1994

 SCHEDULE 1—AMENDMENT OF MENTAL HEALTH ACT
1990—*continued*

(c) At the end of section 231, insert:

5 (2) The administrator of an authorised hospital must, at the end of each month, report in writing to the medical superintendent as to the functions exercised under this section by the administrator during that month.

(38) Section 293 (**Information as to follow-up care after discharge**):

10 (a) After “superintendent”, insert “or the administrator (if it is an authorised hospital)”.

(b) At the end of section 293, insert:

15 (2) The administrator of an authorised hospital must, at the end of each month, report in writing to the medical superintendent as to the functions exercised under this section by the administrator during that month.

Explanatory note

The Act provides for the establishment, administration and management of hospitals (both private and public) which treat persons who are mentally ill. In the Act, private hospitals are referred to as authorised hospitals. They are licensed under the Act.

20 Item (34) makes it mandatory that the Director-General of the Department of Health appoint a medical superintendent for a hospital that is not an authorised hospital (a public hospital).

25 Item (35) replaces specific requirements of the Act relating to the number of medical practitioners in authorised hospitals with a wider discretion for the licence holder to provide such medical services as the Director-General may approve.

Item (36) provides that a deputy medical superintendent may, but need not, be appointed for an authorised hospital and that such an appointment must be approved by the Director-General before it is made. Currently, the hospital must have a deputy medical superintendent.

30 Items (37) and (38) enable an administrator of an authorised hospital to perform duties now imposed on the medical superintendent, relating to enabling access to official visitors and the provision of information to patients about follow up care.

Mental Health (Amendment) 1994

SCHEDULE 1—AMENDMENT OF MENTAL HEALTH ACT
1990—*continued*

Other amendments

(39) Section 234A:

After section 234, insert:

Official visitors not personally liable

234A. A matter or thing done or omitted by an official visitor does not, if the matter or thing was done or omitted in good faith for the purpose of executing this Act, subject the official visitor personally to any action, liability, claim or demand.

5

10

Explanatory note

Item (39) provides for the protection of official visitors to hospitals from personal liability for acts done in good faith in carrying out their duties under the Act.

(40) Section 288 (**Legal representation of mentally ill persons and other persons**):

After “mental illness” where firstly occurring, insert “or a developmental disability of mind”.

15

Explanatory note

Item (40) makes it clear that persons suffering from a developmental disability of the mind are able to obtain legal representation and to instruct legal representatives in respect of matters arising under the Act.

20

(41) Schedule 1 (**Dictionary of terms used in the Act**):

In paragraph (a) of the definition of “forensic patient”, after “10 (3) (c)”, insert “, 14”.

25

Explanatory note

Item (41) amends the definition of “forensic patient” (in the Dictionary of terms used in the Mental Health Act 1990—Schedule 1) to include persons who have been found unfit to be tried for an offence.

Mental Health (Amendment) 1994

**SCHEDULE 1—AMENDMENT OF MENTAL HEALTH ACT
1990—continued**

(42) Schedule 2:

Omit the Schedule, insert instead:

5 **SCHEDULE 2—MEDICAL CERTIFICATE AS TO
EXAMINATION OR OBSERVATION OF PERSON**
(Secs. 21, 22)

MENTAL HEALTH ACT 1990

PART 1

10 I, (Medical Practitioner/accredited person)
(name in full—use block letters)

of certify that
on 19.....

15 immediately before or shortly before completing this
certificate,

at
(state place where examination/observation took place)

I personally examined/personally observed.....
..... for a period of

20 (name of person in full)
.....

(state length of examination/observation)

I certify the following matters:

- 25 1. I am of the opinion that the person examined/observed
by me is a mentally ill person suffering from mental
illness/or a mentally disordered person and that there
are reasonable grounds for believing the person's
behaviour for the time being is so irrational as to
justify a conclusion on reasonable grounds that
30 temporary care, treatment or control of the person is
necessary:

Mental Health (Amendment) 1994

SCHEDULE 1—AMENDMENT OF MENTAL HEALTH ACT
1990—*continued*

- * (a) (in the case of any mentally ill person):
 - (i) for the person's own protection from serious physical harm; or 5
 - (ii) for the protection of others from serious physical harm; or

- * (b) (in the case of a mentally ill person who is suffering from mental illness which is characterised by the presence in the person of the symptom of sustained disturbance of mood or the symptom of sustained or repeated irrational behaviour indicating the presence of that symptom) for the person's own protection from serious financial harm or serious damage to the person's reputation; or 10
15

- * (c) in the case of a mentally disordered person:
 - (i) for the person's own protection from serious physical harm; or
 - (ii) for the protection of others from serious physical harm. 20

2. I have satisfied myself, by such inquiry as is reasonable having regard to the circumstances of the case, that the person's involuntary admission to and detention in a hospital are necessary and that no other care of a less restrictive kind is appropriate and reasonably available to the person. 25

3. Incidents and/or abnormalities of behaviour and conduct (a) observed by myself and (b) communicated to me by others (state name, relationship and address of each informant) are: 30

- (a)
-
-
-
-

* delete whichever is not applicable

Mental Health (Amendment) 1994

SCHEDULE 1—AMENDMENT OF MENTAL HEALTH ACT
1990—*continued*

(b)
.....
.....
.....

5 4. The general medical and/or surgical condition of the person is as follows:

.....
.....
.....
.....

5. The following medication (if any) has been administered for purposes of psychiatric therapy or sedation:

.....
.....
.....
.....

10 6. I am not a near relative of the person.

7. I have/do not have a pecuniary interest, directly or indirectly, in an authorised hospital. I have/do not have a near relative/partner/assistant who has such an interest. Particulars of the interest are as follows:

.....
.....
.....
.....

Made and signed this..... day of 19.....

15

Signature:

Mental Health (Amendment) 1994

SCHEDULE 1—AMENDMENT OF MENTAL HEALTH ACT
1990—*continued*

PART 2

If the assistance of a Police Officer is required, this part of the Form should be completed.

5

YOU SHOULD NOT REQUEST THIS ASSISTANCE UNLESS IT IS NECESSARY AND THERE ARE NO OTHER MEANS OF TAKING THE PERSON TO HOSPITAL REASONABLY AVAILABLE.

I am of the opinion, in relation to

10

.....

(name of person in full)

(a) that the condition of the person is such that the assistance of a Police Officer is required in order to take the person to a hospital; and

(b) that no other means of taking the person to a hospital are reasonably available.

15

Made and signed 19.....

Signature:

NOTES:

1. Chapter 3 of the Mental Health Act 1990 states:

20

Criteria for involuntary admission etc. as mentally ill person or mentally disordered person

8. A person is a mentally ill person or a mentally disordered person for the purpose of:

(a) the involuntary admission of the person to a hospital or the detention of the person in a hospital under this Act; or

25

(b) determining whether the person should be subject to a community treatment order or be detained or continue to be detained involuntarily in a hospital,

Mental Health (Amendment) 1994

**SCHEDULE 1—AMENDMENT OF MENTAL HEALTH ACT
1990—continued**

if, and only if, the person satisfies the relevant criteria set out in this Chapter.

5 **Mentally ill persons**

9. (1) A person is a mentally ill person if the person is suffering from mental illness and, owing to that illness, there are reasonable grounds for believing that care, treatment or control of the person is necessary:

- 10 (a) for the person's own protection from serious physical harm; or
(b) for the protection of others from serious physical harm,

and a person is also a mentally ill person if the person is suffering from mental illness which is characterised by the presence in the person of the symptom of a severe disturbance of mood or the symptom of sustained or repeated irrational behaviour indicating the presence of that symptom and, owing to that illness, there are reasonable grounds for believing that care, treatment or control of the person is necessary for the person's own protection from serious financial harm or serious damage to the person's reputation.

20 (2) In considering whether a person is a mentally ill person, the continuing condition of the person is to be taken into account.

(3) In this section, "damage to the person's reputation" includes damage to the person's reputation among those with whom the person has important personal relationships, where the damage is likely to cause lasting or irreparable harm to any such relationship.

25 **Mentally disordered persons**

10. A person (whether or not the person is suffering from mental illness) is a mentally disordered person if the person's behaviour for the time being is so irrational as to justify a conclusion on reasonable grounds that temporary care, treatment or control of the person is necessary:

- 30 (a) for the person's own protection from serious physical harm; or
(b) for the protection of others from serious physical harm.

Certain words or conduct may not indicate mental illness or disorder

35 11. (1) A person is not a mentally ill person or a mentally disordered person merely because of any one or more of the following:

- (a) that the person expresses or refuses or fails to express or has expressed or refused or failed to express a particular political opinion or belief;

Mental Health (Amendment) 1994

 SCHEDULE 1—AMENDMENT OF MENTAL HEALTH ACT
 1990—*continued*

- (b) that the person expresses or refuses or fails to express or has expressed or refused or failed to express a particular religious opinion or belief; 5
- (c) that the person expresses or refuses or fails to express or has expressed or refused or failed to express a particular philosophy;
- (d) that the person expresses or refuses or fails to express or has expressed or refused or failed to express a particular sexual preference or sexual orientation; 10
- (e) that the person engages in or refuses or fails to engage in, or has engaged in or refused or failed to engage in, a particular political activity;
- (f) that the person engages in or refuses or fails to engage in, or has engaged in or refused or failed to engage in, a particular religious activity; 15
- (g) that the person engages in or has engaged in sexual promiscuity;
- (h) that the person engages in or has engaged in immoral conduct;
- (i) that the person engages in or has engaged in illegal conduct; 20
- (j) that the person has developmental disability of mind;
- (k) that the person takes or has taken alcohol or any other drug;
- (l) that the person engages in or has engaged in anti-social behaviour.
- (2) Nothing in this Chapter prevents, in relation to a person who takes or has taken alcohol or any other drug, the serious or permanent physiological, biochemical or psychological effects of drug taking from being regarded as an indication that a person is suffering from mental illness or other condition of disability of mind. 25
2. In addition to matters ascertained as a consequence of personally examining or observing the person, account may be taken of other matters not so ascertained where those matters: 30
- (a) arise from a previous personal examination of the person; or
- (b) are communicated by a reasonably credible informant.
3. In the Mental Health Act 1990 “mental illness” is defined as follows: 35
- mental illness** means a condition which seriously impairs, either temporarily or permanently, the mental functioning of a person and is characterised by the presence in the person of any one or more of the following symptoms: 35
- (a) delusions;
- (b) hallucinations; 40
- (c) serious disorder of thought form;

Mental Health (Amendment) 1994

 SCHEDULE 1—AMENDMENT OF MENTAL HEALTH ACT
1990—*continued*

- 5 (d) a severe disturbance of mood;
(e) sustained or repeated irrational behaviour indicating the presence of any one or more of the symptoms referred to in paragraphs (a)–(d).

10 4. In the Mental Health Act 1990 “near relative” is defined as follows:
near relative, in relation to a **person**, means a parent, brother, sister or child or the spouse of the person and such other person or persons as may be prescribed as a near relative of the person.

5. For admission purposes, this certificate is valid only for a period of 5 days, in the case of a person who is a mentally ill person, or 1 day, in the case of a person who is a mentally disordered person, after the date on which the certificate is given.

15 **Explanatory note**

Item (42) replaces the current form of certificate for use for the detention of persons in a hospital with one in simpler language. Part 2 of the new form of certificate clearly states that police assistance to take the person concerned to hospital should only be requested if it is necessary and no other means of taking the person to hospital are reasonably available.

20 (43) **Schedule 7 (Savings, transitional and other provisions):**

- (a) After clause 2 (1), insert:
25 (1A) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following:

Mental Health (Amendment) Act 1994

- (b) From clause 2 (4), omit “this Act”, insert instead “the Act concerned”.
- (c) After clause 38, insert:

30 **Part 6—Provisions consequent on Mental Health (Amendment) Act 1994****Detention of persons in hospitals**

35 39. Sections 35, 38 and 40, as amended by the Mental Health (Amendment) Act 1994, do not apply to any person taken to a hospital before the commencement of the relevant amendment and not released before that commencement.

*Mental Health (Amendment) 1994***SCHEDULE 1—AMENDMENT OF MENTAL HEALTH ACT 1990**
*—continued***Electro convulsive therapy and prescribed treatments**

40. Sections 188, 190, 191, 193 and 194, as amended by the Mental Health (Amendment) Act 1994, do not apply to any person in respect of whom an application is made under section 188 or 189, and not finally determined, before the commencement of the relevant amendment.

5

Explanatory note

Item (43) makes amendments of a savings or transitional nature consequent on the enactment of the proposed Act.

10

**SCHEDULE 2—AMENDMENT OF MENTAL HEALTH
(CRIMINAL PROCEDURE) ACT 1990**

(Sec. 4)

Section 33 (Mentally ill persons):

15

(a) Omit section 33 (1) (a) and (b), insert instead:

(a) may order that the defendant be taken by a police officer to, and detained in, a hospital for assessment; or

(b) may order that the defendant be taken by a police officer to, and detained in, a hospital for assessment and that, if the defendant is found on assessment at the hospital not to be a mentally ill person or mentally disordered person, the person be brought by a police officer back before the court; or

20

(c) may discharge the defendant, unconditionally or subject to conditions, into the care of a responsible person.

25

(b) After section 33, insert:

(5) The regulations may prescribe the form of an order under this section.

30

Explanatory note

The amendment extends the orders that a Magistrate may make in proceedings if it appears to the Magistrate that the defendant is mentally ill. Currently, the Magistrate may order the person be detained in a hospital for assessment or be discharged unconditionally or subject to conditions, into the care of a responsible person. The amendment enables the Magistrate to order that the defendant be brought back before

35

Mental Health (Amendment) 1994

SCHEDULE 2—AMENDMENT OF MENTAL HEALTH
(CRIMINAL PROCEDURE) ACT 1990—*continued*

5 the court if, on assessment at the hospital, the defendant is found not to be a mentally ill person or a mentally disordered person. Schedule 1 (11) makes a consequential amendment to the Mental Health Act 1990 to enable a medical superintendent to detain a person until apprehended by a police officer, if the person is subject to an order to be brought back before the Magistrate and is not admitted as an involuntary patient.

MENTAL HEALTH (AMENDMENT) BILL 1994

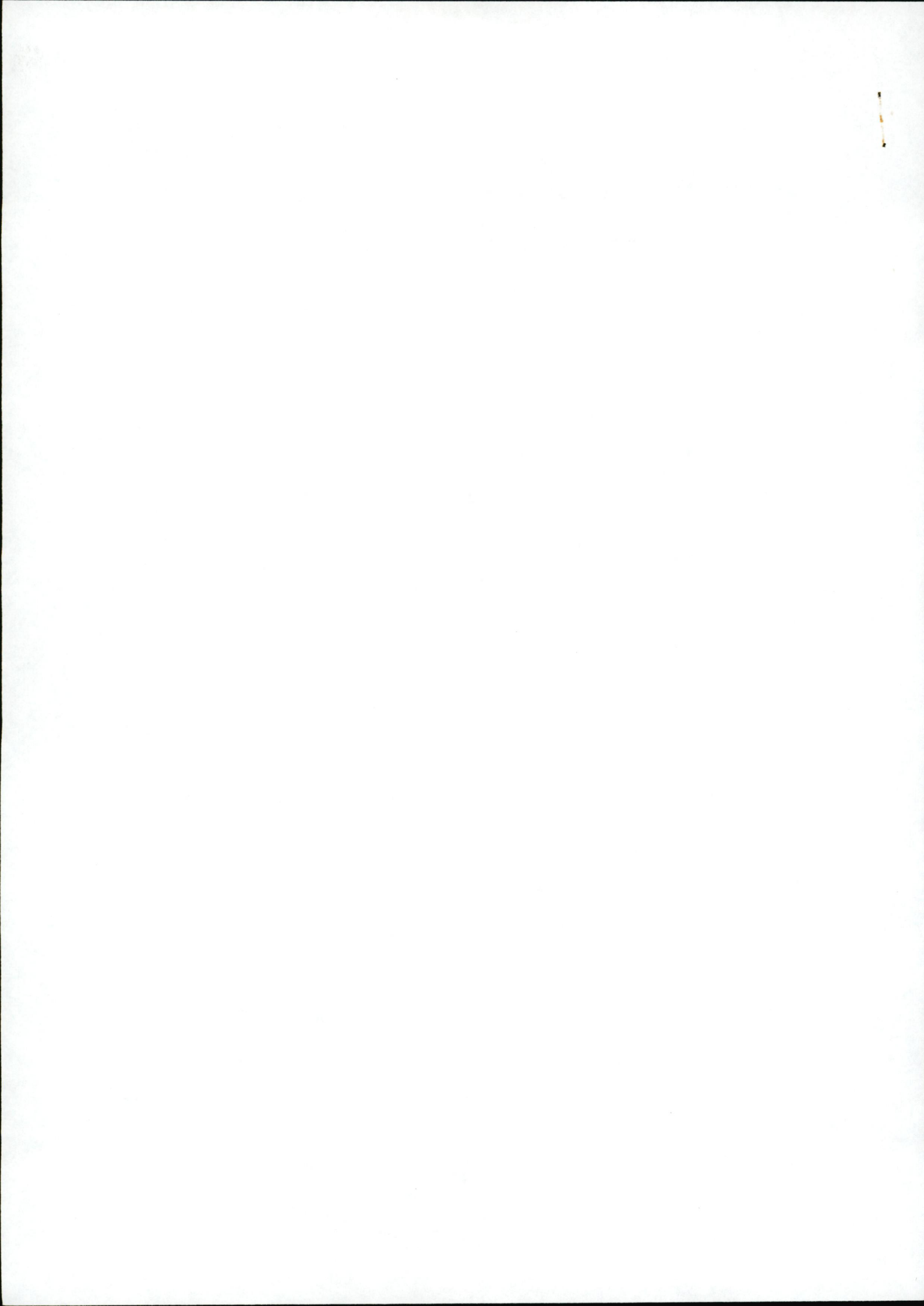
SECOND READING SPEECH

MR PRESIDENT,

THE PURPOSE OF THIS BILL IS TO IMPLEMENT A NUMBER OF RECOMMENDATIONS CONTAINED IN THE 1992 REPORT OF THE MENTAL HEALTH ACT IMPLEMENTATION MONITORING COMMITTEE, IN ORDER TO SIMPLIFY THE OPERATION OF MENTAL HEALTH LEGISLATION AND, CONSEQUENTLY, TO IMPROVE THE ADMINISTRATION OF MENTAL HEALTH SERVICES IN NEW SOUTH WALES.

THE BILL AMENDS THE MENTAL HEALTH ACT 1990 AND THE MENTAL HEALTH (CRIMINAL PROCEDURE) ACT 1990. BEFORE OUTLINING THE MAIN PROVISIONS OF THE BILL, I WISH TO INFORM HONOURABLE MEMBERS OF THE PROCESS UNDERTAKEN BY THE MENTAL HEALTH ACT IMPLEMENTATION MONITORING COMMITTEE WHICH HAS LED TO THE DEVELOPMENT OF THE BILL CURRENTLY BEFORE THE HOUSE.

THE MENTAL HEALTH ACT 1990 PROVIDES THE LEGISLATIVE FRAMEWORK FOR THE OPERATION OF MENTAL HEALTH SERVICES IN NEW SOUTH WALES. THE 1990 ACT REPLACED THE OUTDATED MENTAL HEALTH ACT 1958 AND THE PARTIALLY PROCLAIMED MENTAL HEALTH ACT 1983.

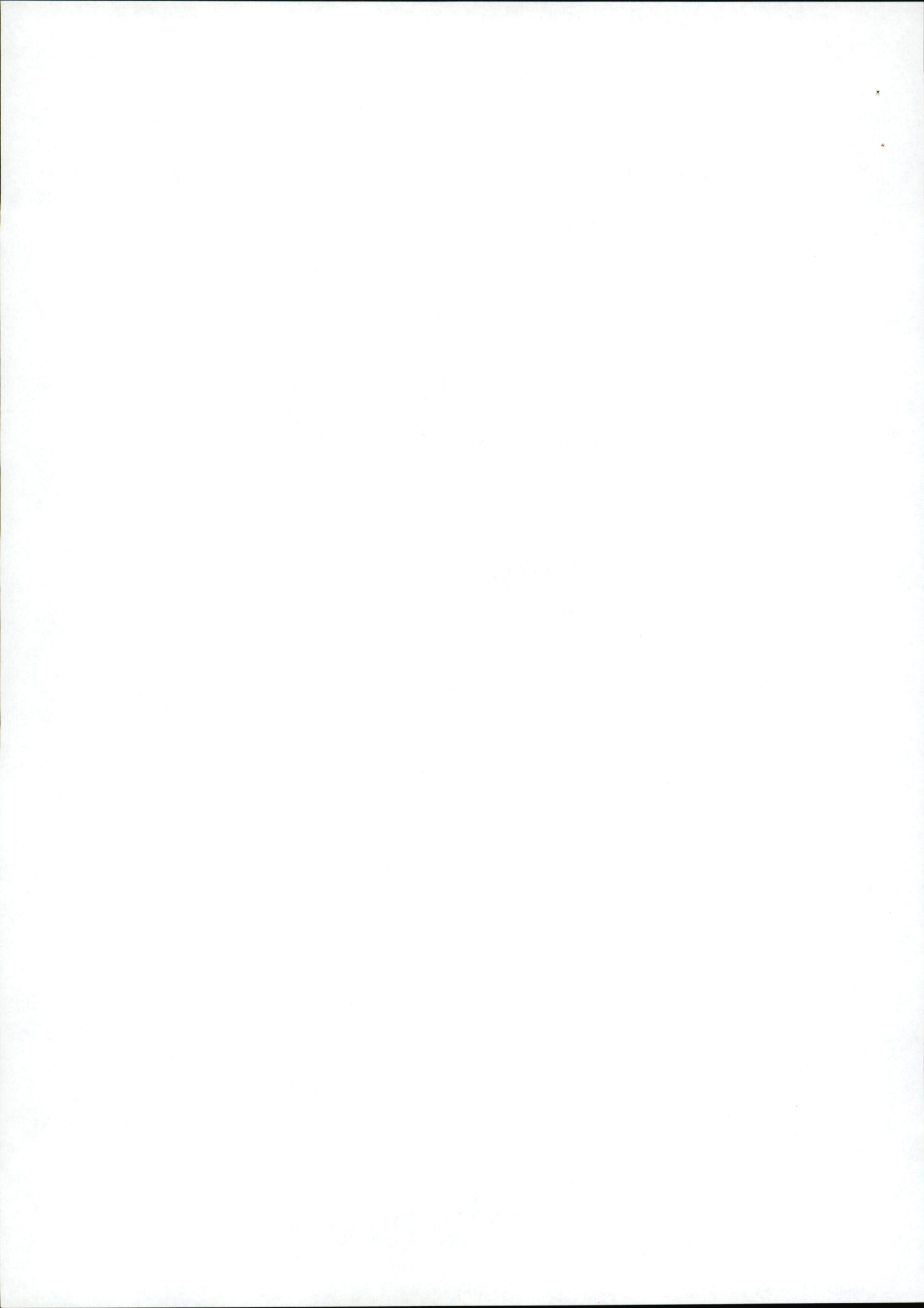


WHEN THE ACT WAS COMMENCED IN 1990, THE THEN MINISTER FOR HEALTH, THE HON. PETER COLLINS MP, ESTABLISHED THE MENTAL HEALTH ACT IMPLEMENTATION MONITORING COMMITTEE TO MONITOR THE IMPACT OF THE NEW LEGISLATION OVER THE FIRST TWO YEARS OF ITS OPERATION.

THE FORMAL TERMS OF REFERENCE OF THE COMMITTEE WERE AS FOLLOWS:

1. TO MONITOR THE IMPLEMENTATION AND OPERATION OF THE MENTAL HEALTH ACT 1990;
2. TO ADVISE ON PROCESSES AND STRATEGIES THAT WILL ASSIST AND EASE THE IMPLEMENTATION PROCESS;
3. TO ADVISE AND RECOMMEND ACTION FOR OVERCOMING ANY DIFFICULTIES OR PROBLEMS ASSOCIATED WITH THE IMPLEMENTATION OF THE NEW ACT.

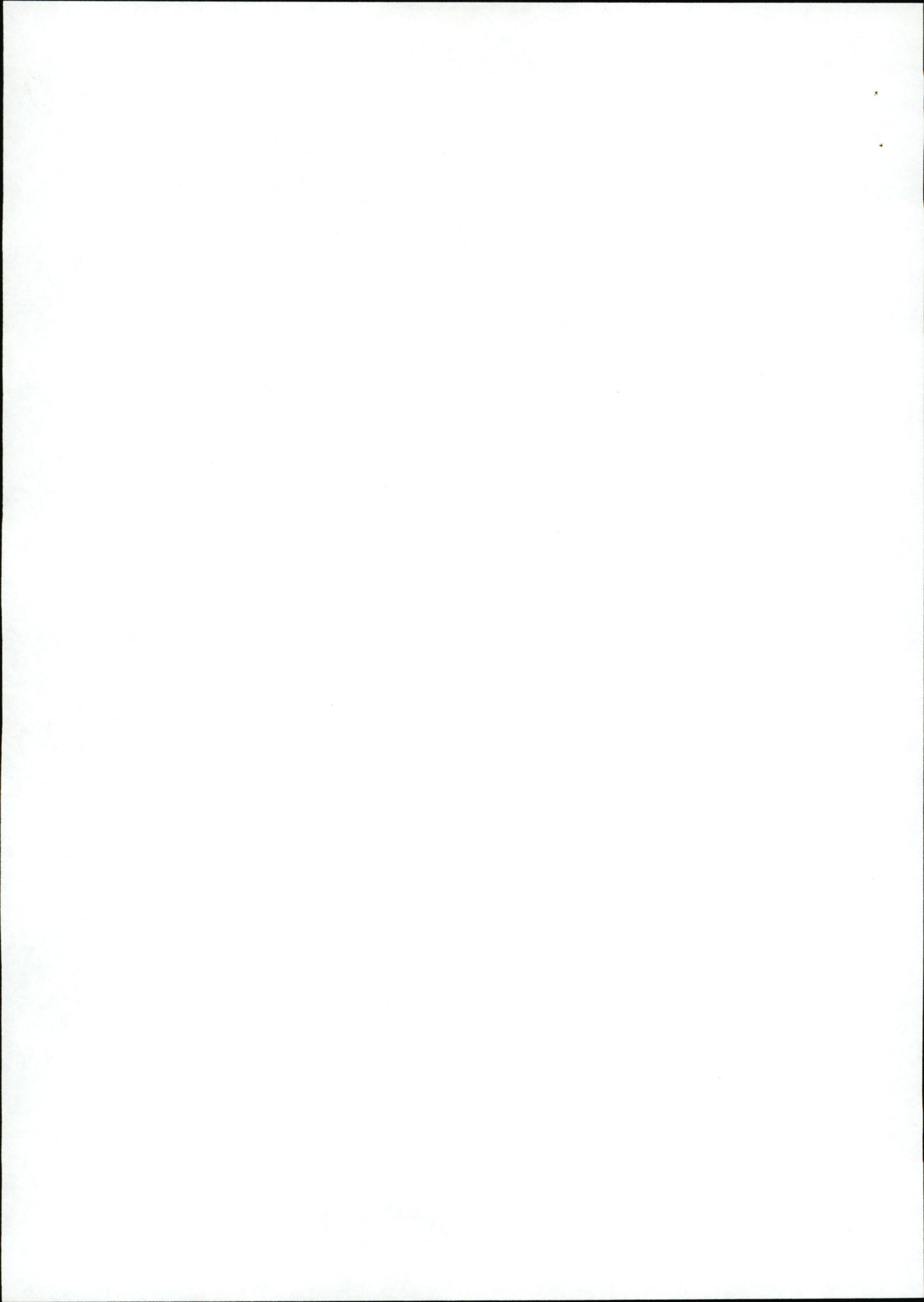
THE COMMITTEE WAS CHAIRED BY MS ANNE DEVESON UNTIL FEBRUARY 1992. FROM FEBRUARY 1992 UNTIL THE COMMITTEE COMPLETED ITS REPORT IN AUGUST 1992, THE COMMITTEE WAS CHAIRED BY PROFESSOR IAN WEBSTER.



THE COMMITTEE COMPRISED 21 MEMBERS REPRESENTING A WIDE RANGE OF INTERESTS AFFECTED BY THE LEGISLATION, INCLUDING SERVICE PROVIDERS, MENTAL HEALTH ADVOCACY GROUPS, AND COMMUNITY REPRESENTATIVES. PUBLIC CONSULTATIONS WERE HELD THROUGHOUT THE STATE AND THE COMMITTEE RECEIVED 124 WRITTEN SUBMISSIONS FROM GOVERNMENT AGENCIES, SERVICE PROVIDERS, COMMUNITY GROUPS AND INDIVIDUALS.

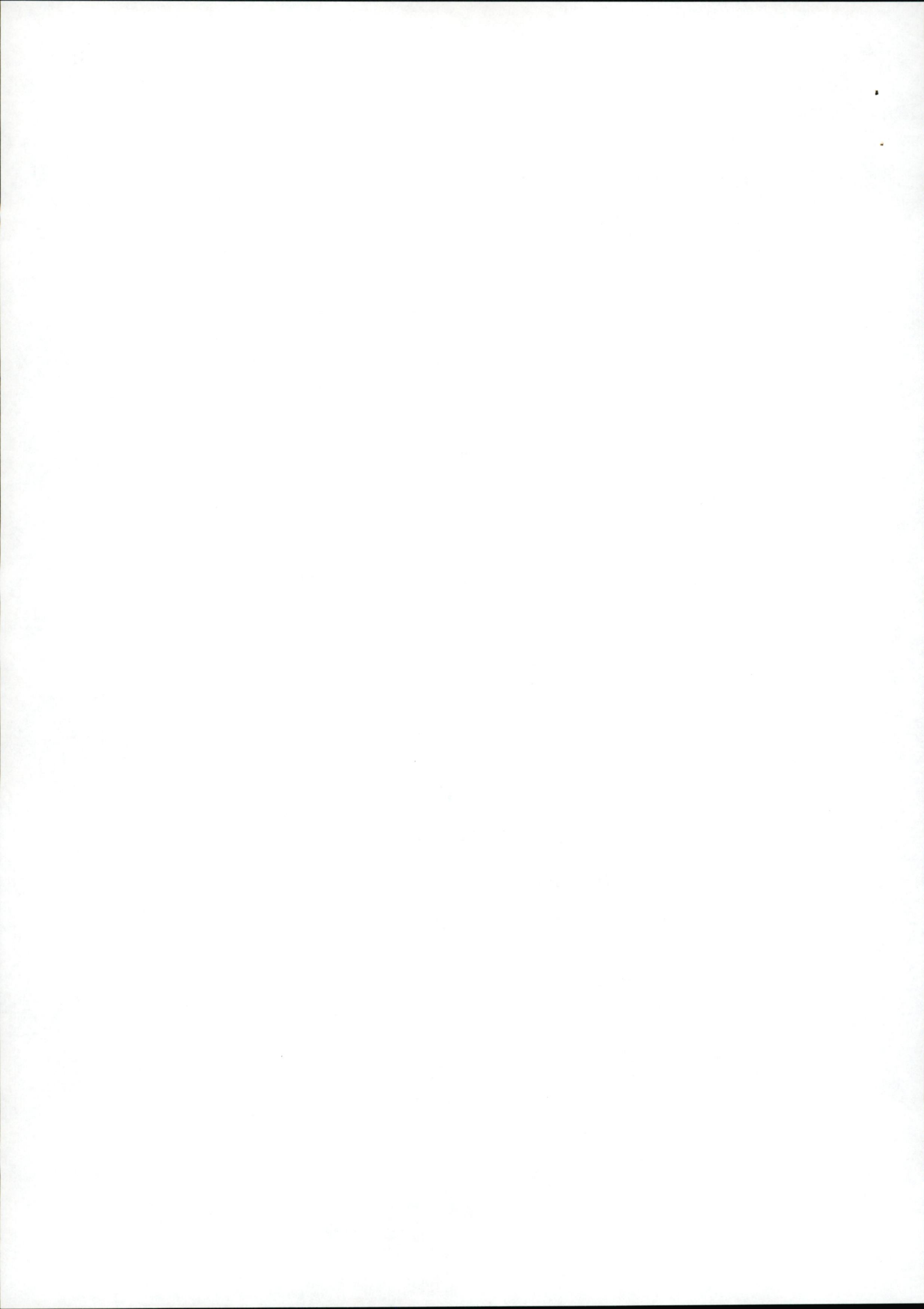
THE COMMITTEE'S TASK WAS COMPLEX AND DEMANDING, PARTICULARLY IN VIEW OF THE MAJOR CHANGES TO THE OPERATION OF MENTAL HEALTH SERVICES INCORPORATED IN THE 1990 LEGISLATION AND THE NEED TO TAKE ACCOUNT OF THE WIDE RANGE OF COMMUNITY INTERESTS RELATING TO THE OPERATION OF MENTAL HEALTH LEGISLATION. THE COMMITTEE IS TO BE COMMENDED FOR ITS THOROUGH, COMPASSIONATE AND DEDICATED WORK.

THE REPORT OF THE COMMITTEE WAS TABLED IN PARLIAMENT ON 24 NOVEMBER 1992. THE REPORT'S GENERAL CONCLUSIONS WERE THAT THE 1990 ACT IS EFFECTIVE AND HUMANE IN ITS ATTEMPT TO BALANCE THE PROVISION OF INVOLUNTARY TREATMENT FOR THOSE PEOPLE WHOSE STATE OF MIND REQUIRES INTERVENTION, AND THE NEED TO PROTECT THE CIVIL LIBERTIES OF ALL PERSONS IN THE COMMUNITY.

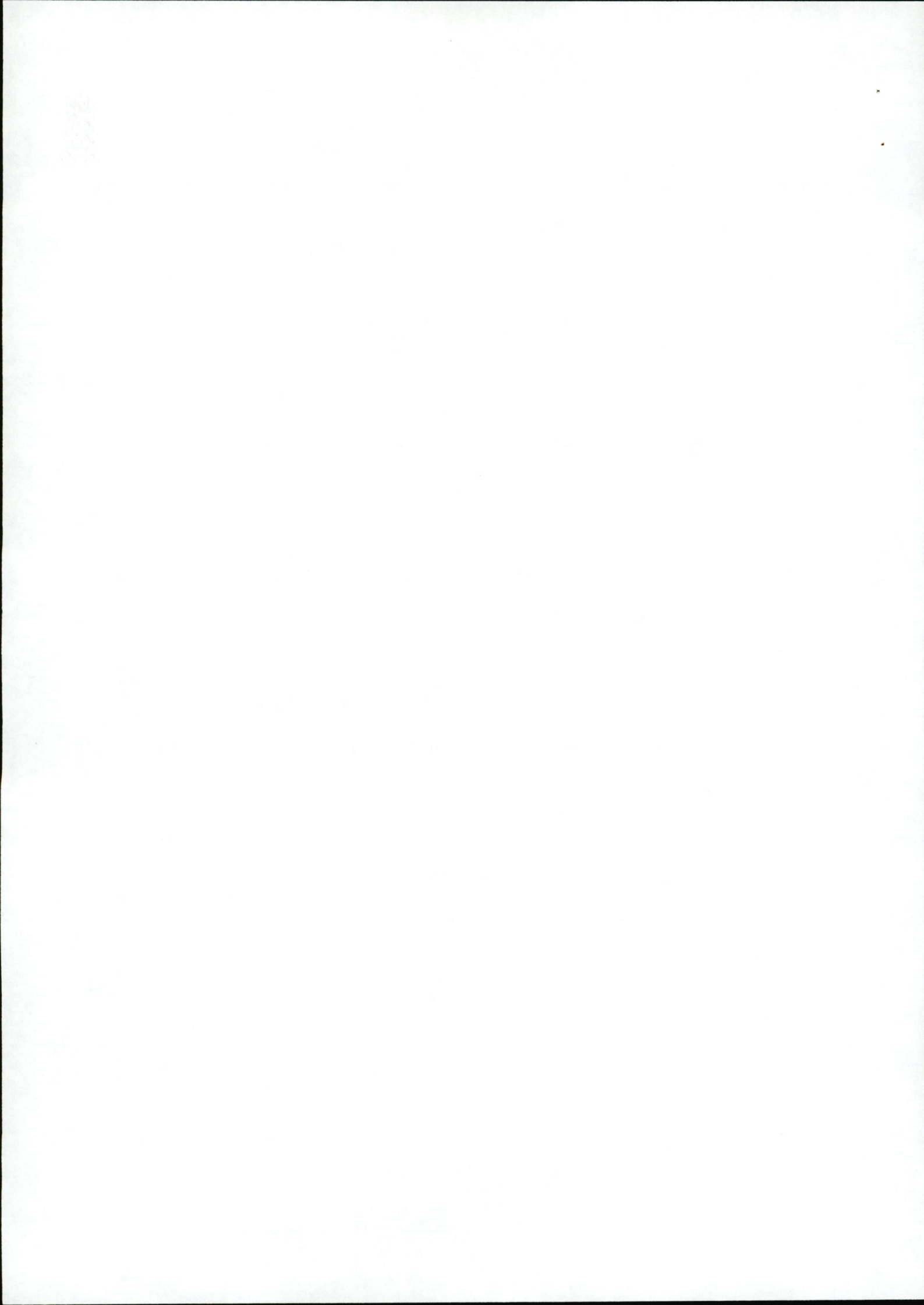


AS HONOURABLE MEMBERS WOULD BE AWARE, THE MAIN FEATURES OF THE MENTAL HEALTH ACT 1990 INCLUDE:

- ESTABLISHING DEFINITIONS OF THE TERMS "MENTAL ILLNESS", "MENTALLY ILL PERSON" AND "MENTALLY DISORDERED PERSON" FOR THE PURPOSE OF DETERMINING INVOLUNTARY ADMISSION TO HOSPITAL;
- PROVIDING FOR DETAILED REGULATION OF ADMISSION TO AND CARE IN HOSPITALS, WITH EMPHASIS ON THE RIGHTS OF VOLUNTARY PATIENTS (TERMED "INFORMAL" PATIENTS IN THE ACT) AND INVOLUNTARY PATIENTS AND PROCESSES TO REVIEW PATIENTS;
- EMPHASISING THAT TREATMENT SHOULD BE PROVIDED EFFECTIVELY BUT IN THE LEAST RESTRICTIVE ENVIRONMENT AND WITH A VIEW TO ACKNOWLEDGING THE RIGHTS, DIGNITY AND SELF-RESPECT OF PERSONS SUBJECT TO THE ACT;
- ALLOWING INVOLUNTARY TREATMENT OUTSIDE THE HOSPITAL ENVIRONMENT UNDER COMMUNITY TREATMENT ORDERS AND COMMUNITY COUNSELLING ORDERS;



- PROVIDING FOR THE CARE, TREATMENT AND CONTROL OF FORENSIC PATIENTS;
- REGULATING PSYCHOSURGERY AND ELECTRO-CONVULSIVE THERAPY;
- MONITORING PRIVATE HOSPITALS WHICH PROVIDE PSYCHIATRIC TREATMENT, (TERMED "AUTHORISED HOSPITALS" IN THE ACT);
- DELINEATING THE FUNCTIONS AND RESPONSIBILITIES OF OFFICIAL VISITORS TO PSYCHIATRIC HOSPITALS;
- ESTABLISHING THE MENTAL HEALTH REVIEW TRIBUNAL, TO PROVIDE AN INDEPENDENT REVIEW PROCESS FOR PATIENTS UNDER THE ACT;
- ESTABLISHING THE PSYCHOSURGERY REVIEW BOARD, TO APPROVE AND REVIEW PSYCHOSURGERY.



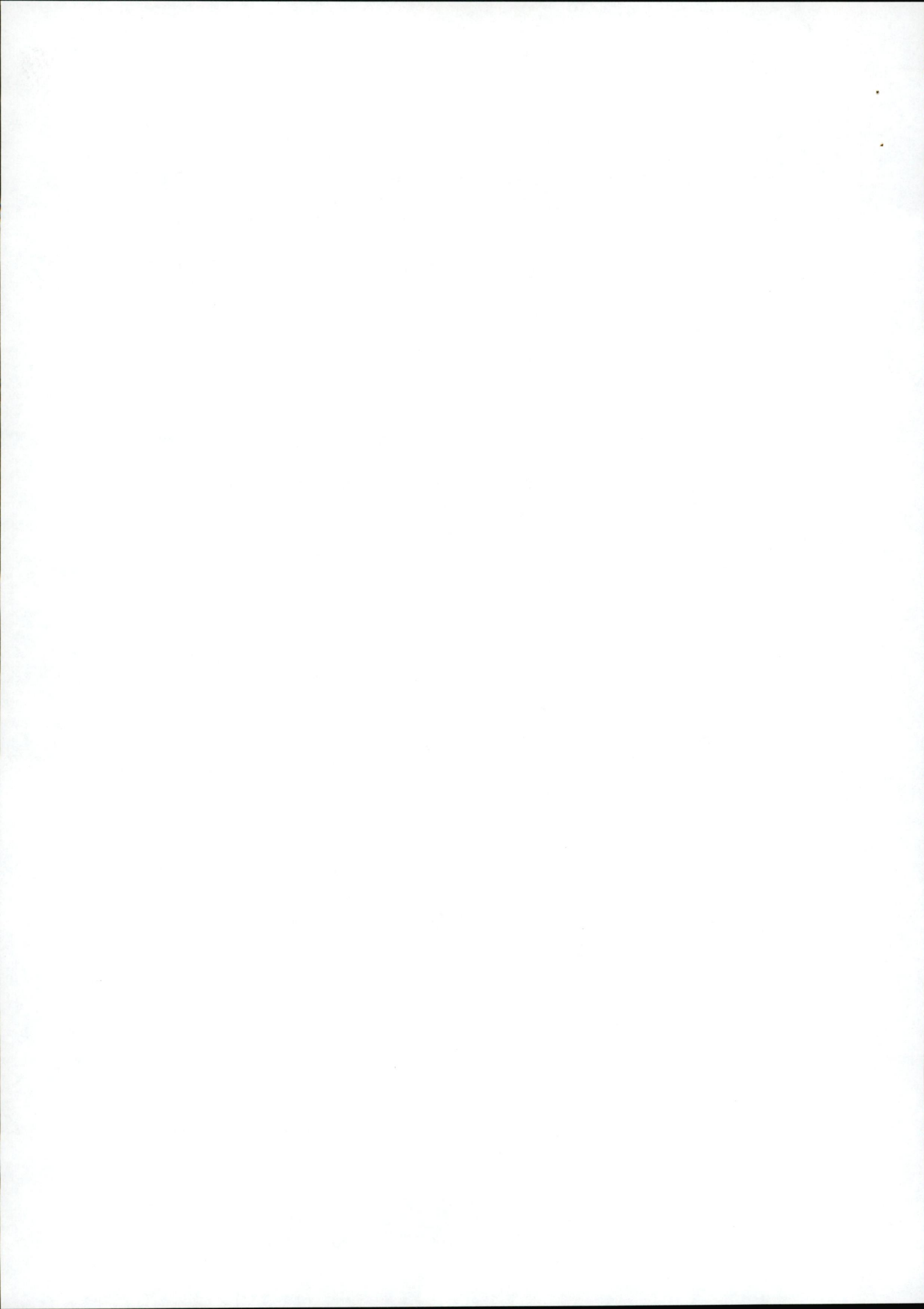
THE MAJORITY OF THE REPORT'S RECOMMENDATIONS PROPOSED EITHER NO LEGISLATIVE CHANGE OR MINOR CHANGES TO CLARIFY THE MEANING OF THE 1990 ACT, TO SIMPLIFY THE OPERATION OF THIS LEGISLATION AND TO GIVE LEGAL SANCTION TO ROUTINE ADMINISTRATIVE PRACTICES IN THE DELIVERY OF MENTAL HEALTH SERVICES.

THE BILL BEFORE THE HOUSE CONTAINS AMENDMENTS TO IMPLEMENT THOSE OF THE COMMITTEE'S RECOMMENDATIONS WHICH WOULD REQUIRE RELATIVELY SIMPLE ADJUSTMENT OF THE ACT AND BE CONSISTENT WITH THE ACT'S PHILOSOPHY RELATING TO THE CARE, TREATMENT AND PROTECTION OF RIGHTS OF PEOPLE SUBJECT TO THE ACT.

MR PRESIDENT, I NOW WISH TO OUTLINE FOR HONOURABLE MEMBERS DETAILS OF THE MAIN PROVISIONS OF THE BILL.

THE OBJECT OF THE BILL IS TO IMPLEMENT RECOMMENDATIONS OF THE MENTAL HEALTH ACT IMPLEMENTATION MONITORING COMMITTEE WITH RESPECT TO THE FOLLOWING MATTERS:

- THE DETENTION OF PATIENTS IN HOSPITAL;
- THE TRANSFER OF PERSONS BETWEEN PRISONS AND HOSPITALS;



- THE OPERATION OF COMMUNITY COUNSELLING AND COMMUNITY TREATMENT ORDERS;
- THE PROCEDURES FOR OBTAINING APPROVAL FOR THE TREATMENT OF PATIENTS BY ELECTRO-CONVULSIVE THERAPY AND OTHER PRESCRIBED TREATMENTS;
- HOSPITAL ADMINISTRATION AND MANAGEMENT; AND
- ORDERS MADE BY MAGISTRATES IN CRIMINAL PROCEEDINGS.

THE AMENDMENTS TO THE MENTAL HEALTH ACT ARE CONTAINED IN SCHEDULE 1 OF THE BILL. SCHEDULE 2 CONTAINS AN AMENDMENT TO THE MENTAL HEALTH (CRIMINAL PROCEDURE) ACT.

THE FIRST SET OF AMENDMENTS I WISH TO OUTLINE RELATE TO INVOLUNTARY ADMISSION AND DETENTION IN HOSPITAL UNDER THE MENTAL HEALTH ACT.

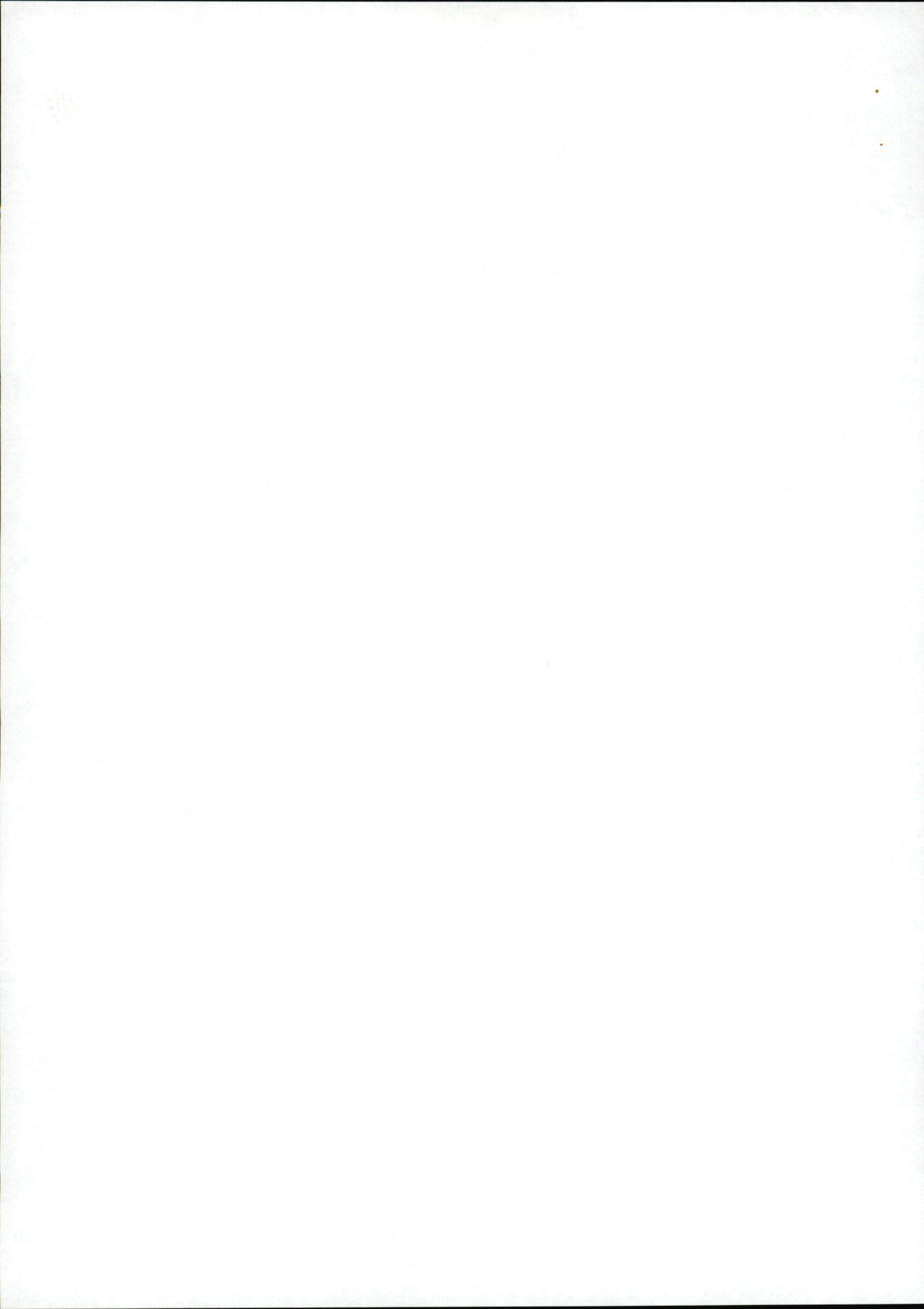
ITEMS 1 AND 2 OF SCHEDULE 1 AMEND SECTION 18 OF THE ACT TO PROVIDE A CLEAR METHOD TO CHANGE THE STATUS OF A PATIENT IN HOSPITAL FROM INFORMAL TO INVOLUNTARY.

CURRENTLY, THE SAME PROCEDURE MUST BE APPLIED IN BOTH THIS PROCESS AND IN SITUATIONS WHERE A PERSON IS BROUGHT INTO A HOSPITAL FROM THE COMMUNITY, DESPITE THE FACT THAT THE PATIENT ALREADY IN HOSPITAL WILL HAVE BEEN UNDER CONSTANT MEDICAL SUPERVISION AND REVIEW.

UNDER THE PROPOSED AMENDMENT TO SECTION 18, THERE WILL BE NO NEED TO FORMALLY WRITE A CERTIFICATE TO DETAIN AND ADMIT A PERSON WHO IS ALREADY AN INFORMAL PATIENT IN THE HOSPITAL. ALL CURRENT SAFEGUARDS RELATING TO THE EXAMINATION OF PATIENTS ADMITTED TO HOSPITAL INVOLUNTARILY, BY WHATEVER MEANS PROVIDED UNDER THE ACT, WILL BE RETAINED.

SPECIFICALLY, ITEM 2 PROVIDES THAT THE MECHANISM TO CHANGE A PATIENT'S STATUS DOES NOT ALTER THE REVIEW PROCEDURES FOLLOWING DETENTION, INCLUDING PATIENT PROTECTION MECHANISMS UNDER PART 2 OF CHAPTER 4 OF THE ACT.

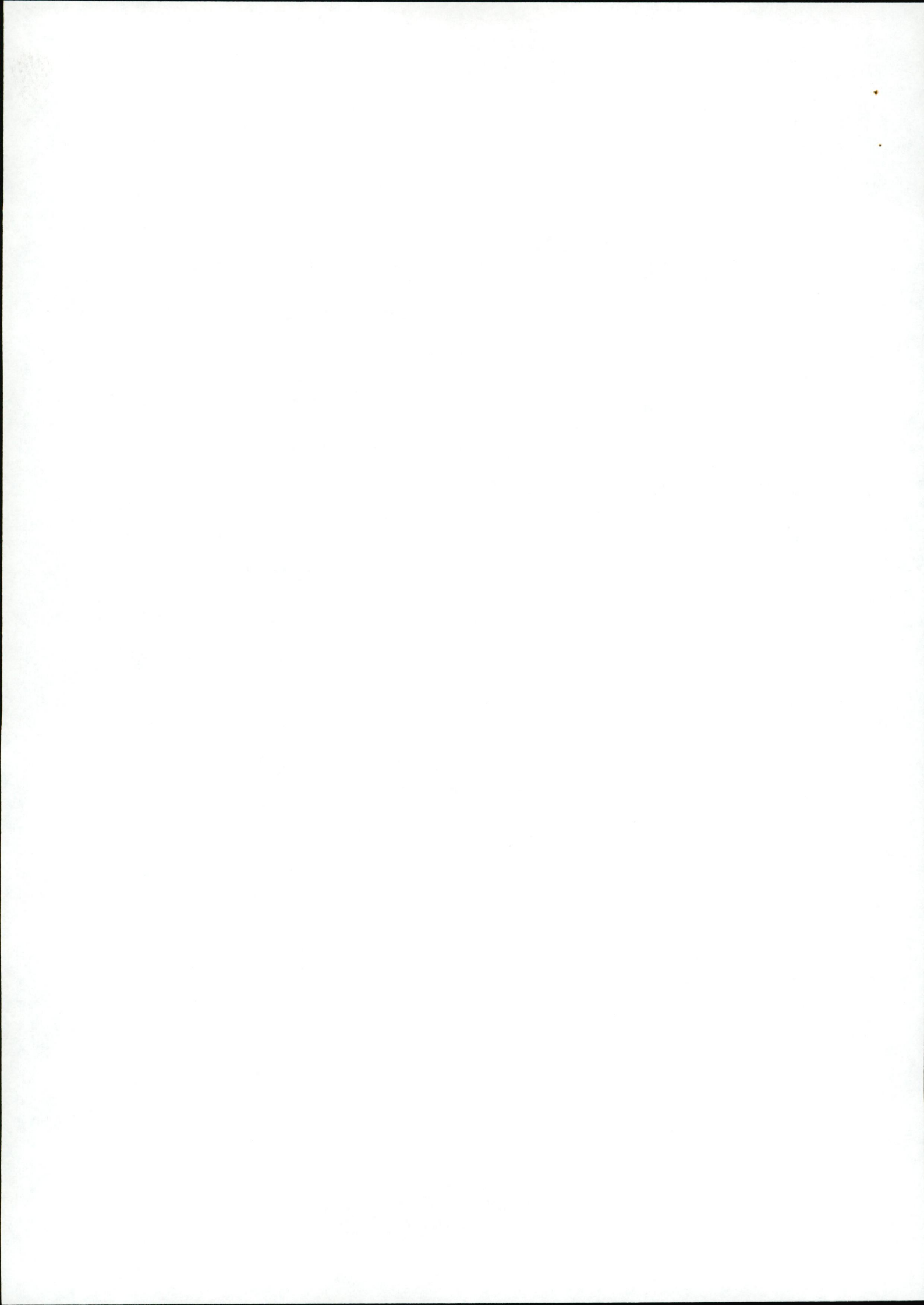
ITEM 3 AMENDS SECTION 21, AS PART OF A PROPOSAL TO EMPOWER THE DIRECTOR-GENERAL OF THE DEPARTMENT OF HEALTH TO ACCREDIT SPECIFIC PERSONS TO WRITE A CERTIFICATE UNDER SECTION 21 OF THE ACT FOR THE PURPOSE OF TAKING A PERSON TO A HOSPITAL AND DETAINING THE PERSON FOR ASSESSMENT.



ITEMS 4, 5, 14 AND 15 ALSO RELATE TO THIS PROPOSAL.

THE COMMITTEE FOUND THAT, IN MANY CASES, PARTICULARLY IN RURAL COMMUNITIES, LOCAL GENERAL PRACTITIONERS MAY BE UNABLE TO PROVIDE THIS SERVICE. ACCREDITATION OF EXPERIENCED PERSONS TO WRITE SCHEDULES UNDER SECTION 21 WOULD ADDRESS SUCH DIFFICULTIES AND WOULD ACKNOWLEDGE THAT, IN SOME CIRCUMSTANCES, OTHER MENTAL HEALTH PROFESSIONALS ARE WELL EQUIPPED TO PERFORM THIS SCHEDULING FUNCTION. IT IS ENVISAGED THAT APPROPRIATE PERSONS WOULD INCLUDE SOME MEMBERS OF MENTAL HEALTH CRISIS TEAMS, WHO MOST OFTEN DEAL WITH URGENT SITUATIONS WHERE PERSONS MAY NEED TO BE SCHEDULED FOR THEIR OWN PROTECTION.

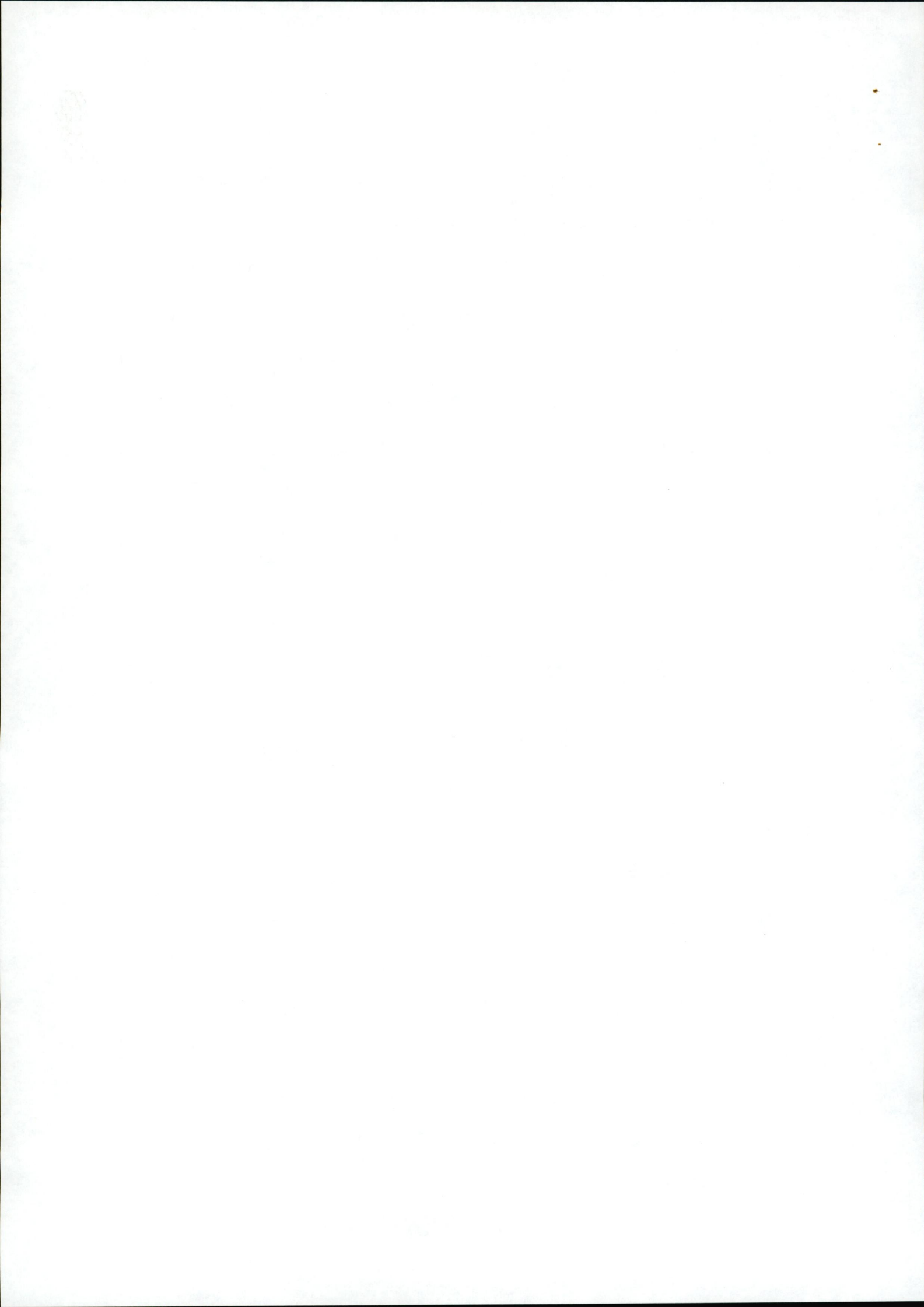
I WISH TO STRESS THAT SUCH ACCREDITATION WOULD OCCUR ON A CASE BY CASE BASIS AND THAT THOSE ACCREDITED WOULD BE REGULARLY REVIEWED AND/OR REAPPLY FOR ACCREDITATION WITHIN A SPECIFIC TIME FRAME. THE NSW DEPARTMENT OF HEALTH WILL DEVELOP, IN CONSULTATION WITH RELEVANT INTEREST GROUPS, SPECIFIC GUIDELINES AND PROCESSES TO ESTABLISH AND MONITOR SUCH ACCREDITATION.



ITEMS 4 AND 5 ARE REQUIRED AS A CONSEQUENCE OF THE PROPOSAL TO EMPOWER THE DIRECTOR-GENERAL TO ACCREDIT SPECIFIC PERSONS TO WRITE A SCHEDULE UNDER SECTION 21. ITEM 4 WILL ALLOW ACCREDITED PERSONS TO SEEK THE ASSISTANCE OF POLICE, WHERE NECESSARY, TO BRING A PERSON TO HOSPITAL FOR ASSESSMENT. THE CIRCUMSTANCES UNDER WHICH ACCREDITED PERSONS MAY SEEK SUCH ASSISTANCE FROM POLICE AND THE PROCEDURES TO BE FOLLOWED BY ACCREDITED PERSONS TO REQUEST POLICE ASSISTANCE WILL BE IDENTICAL TO THOSE WHICH CURRENTLY APPLY TO MEDICAL PRACTITIONERS UNDER THE ACT.

ITEM 6 OF SCHEDULE 1 SUBSTITUTES A PERIOD OF 12 HOURS INSTEAD OF 4 HOURS, UNDER SECTION 29(1) OF THE ACT, AS THE MAXIMUM TIME THAT CAN ELAPSE BEFORE A PERSON PRESENTED FOR DETENTION IN A HOSPITAL IS EXAMINED BY A MEDICAL PRACTITIONER.

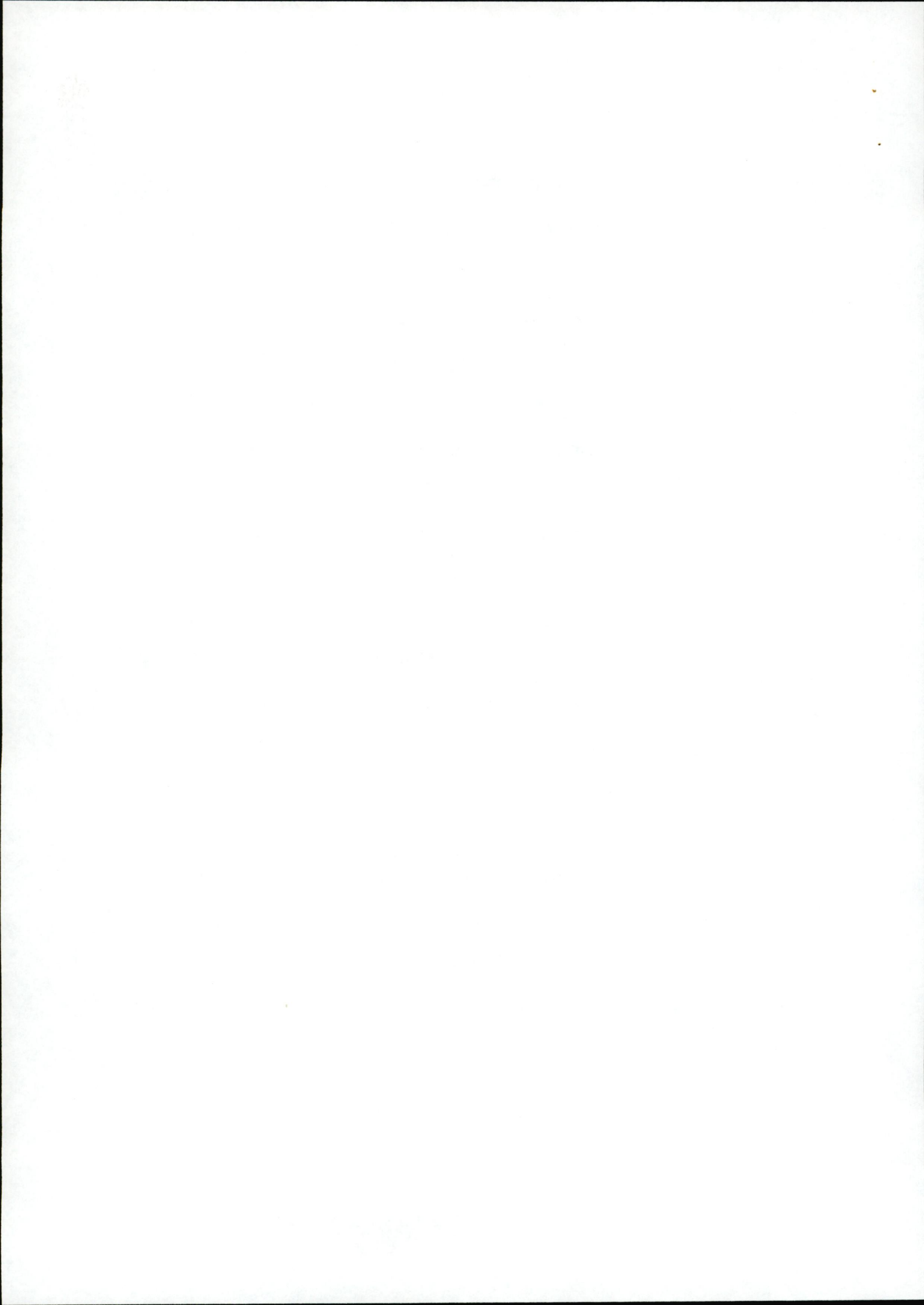
IT SHOULD BE EMPHASISED THAT THE PROPOSED AMENDMENT SEEKS TO ADDRESS CERTAIN PRACTICAL DIFFICULTIES IMPOSED BY THE CURRENT 4 HOUR LIMIT. IT WOULD NOT ESTABLISH 12 HOURS AS THE "AVERAGE" TIME BEFORE PATIENTS ARE EXAMINED BUT WOULD SET THAT TIME AS A MAXIMUM LIMIT, ENSURING PERSONS DETAINED IN A HOSPITAL ARE NOT REQUIRED TO BE RELEASED WITHOUT PROPER ASSESSMENT OF THEIR NEED FOR CARE DUE TO THE TEMPORARY UNAVAILABILITY OF A MEDICAL SUPERINTENDENT.



ITEM 6 ALSO CLARIFIES THE INTENTION OF SECTION 29 SO THAT A MEDICAL PRACTITIONER WHO CERTIFIES THAT A PERSON SHOULD BE ADMITTED TO HOSPITAL UNDER SECTION 21 MAY NOT PROVIDE ANY OF THE INDEPENDENT EXAMINATIONS NECESSARY AT THE HOSPITAL TO DETAIN THAT PERSON. THIS INCLUDES A MEDICAL SUPERINTENDENT OF A HOSPITAL WHO ACTS UNDER THE PROPOSED SECTION 18A TO CHANGE THE STATUS OF AN INFORMAL PATIENT TO AN INVOLUNTARY PATIENT.

ITEM 7 AMENDS THE REQUIREMENTS UNDER SECTION 30 TO PROVIDE THAT INFORMATION ON PATIENTS' RIGHTS IS TO BE GIVEN TO A PERSON AS SOON AS PRACTICABLE AFTER THAT PERSON IS TAKEN TO A HOSPITAL; AND, IF THE MEDICAL SUPERINTENDENT CONSIDERS THAT THE PERSON WAS NOT ABLE TO UNDERSTAND THE EXPLANATION GIVEN AT THAT TIME, ANOTHER EXPLANATION MUST BE GIVEN NOT LATER THAN 24 HOURS BEFORE A MAGISTRATE'S INQUIRY.

ITEMS 9, 12 AND 13 CLARIFY PROCEDURES UNDER SECTIONS 35(1), 38 AND 40(1) OF THE ACT WHERE ONE MEDICAL PRACTITIONER FINDS A PERSON TO BE A MENTALLY ILL PERSON AND ANOTHER MEDICAL PRACTITIONER FINDS THAT PERSON TO BE A MENTALLY DISORDERED PERSON.



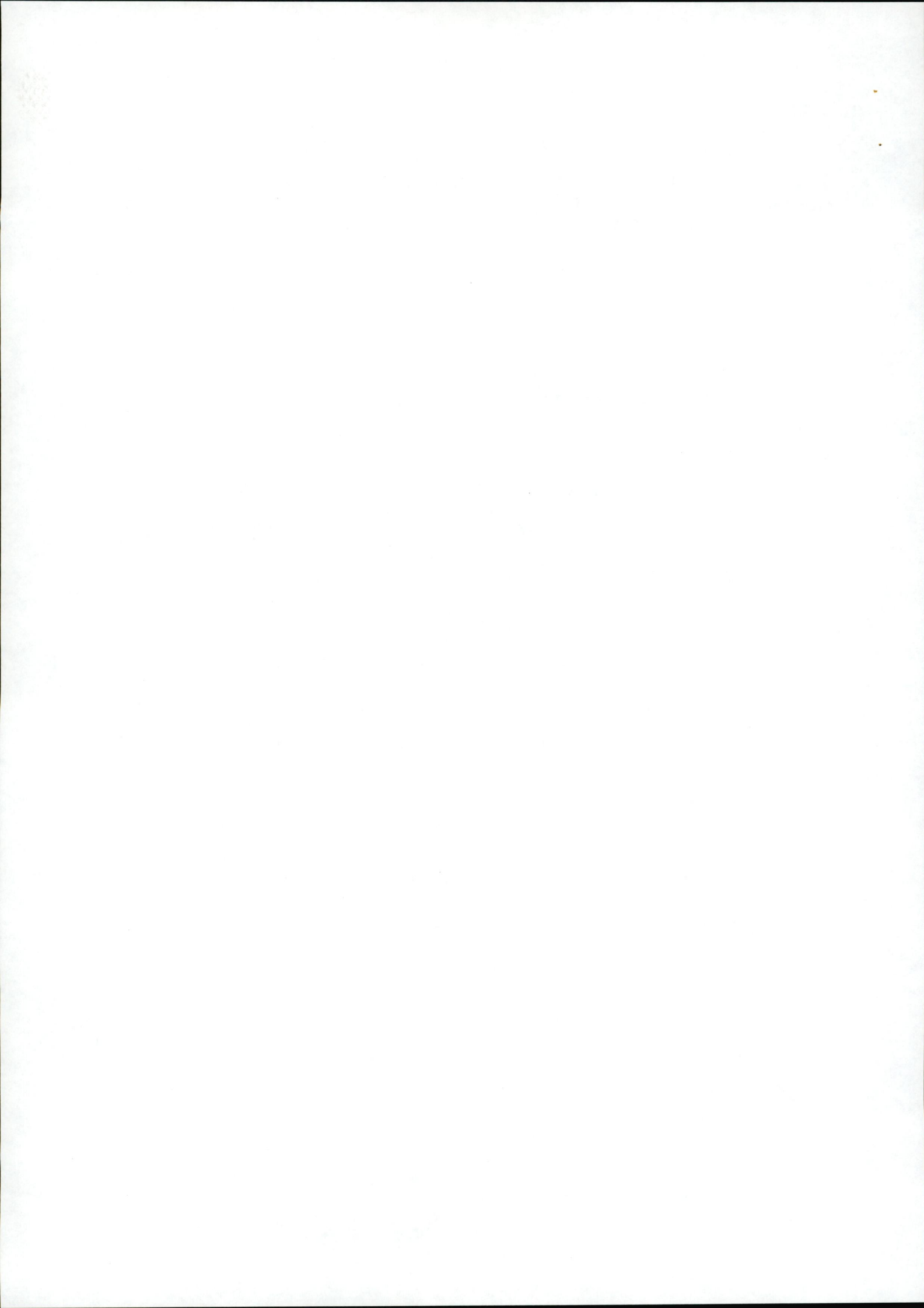
ITEM 14 RELATES TO ITEMS 3, 4 AND 5 WHICH I HAVE ALREADY MENTIONED. SPECIFICALLY, ITEM 14 EMPOWERS THE DIRECTOR-GENERAL OF THE DEPARTMENT OF HEALTH TO ACCREDIT SPECIFIC PERSONS TO WRITE A CERTIFICATE UNDER SECTION 21 OF THE ACT FOR THE PURPOSE OF TAKING A PERSON TO HOSPITAL AND DETAINING THE PERSON FOR ASSESSMENT. ITEM 15 IS A CONSEQUENTIAL AMENDMENT.

MR PRESIDENT, THE SECOND SET OF AMENDMENTS IN SCHEDULE 1 OF THE BILL RELATE TO THE TRANSFER OF PERSONS BETWEEN PRISONS AND HOSPITALS.

ITEMS 16, 17 AND 18 PROVIDE THAT PRISONERS ARE SUBJECT TO THE SAME DEFINITION OF A "MENTALLY ILL PERSON" AS THE GENERAL COMMUNITY FOR THE PURPOSES OF INVOLUNTARY HOSPITALISATION AND TREATMENT UNDER THE ACT.

THE THIRD SET OF AMENDMENTS DEAL WITH THE OPERATION OF COMMUNITY COUNSELLING ORDERS AND COMMUNITY TREATMENT ORDERS.

ITEM 19 CORRECTS AN OVERSIGHT IN THE ACT BY CLARIFYING THAT THE APPOINTMENT OF DIRECTORS AND DEPUTY DIRECTORS OF HEALTH CARE AGENCIES ARE NOT REQUIRED TO BE GAZETTED.



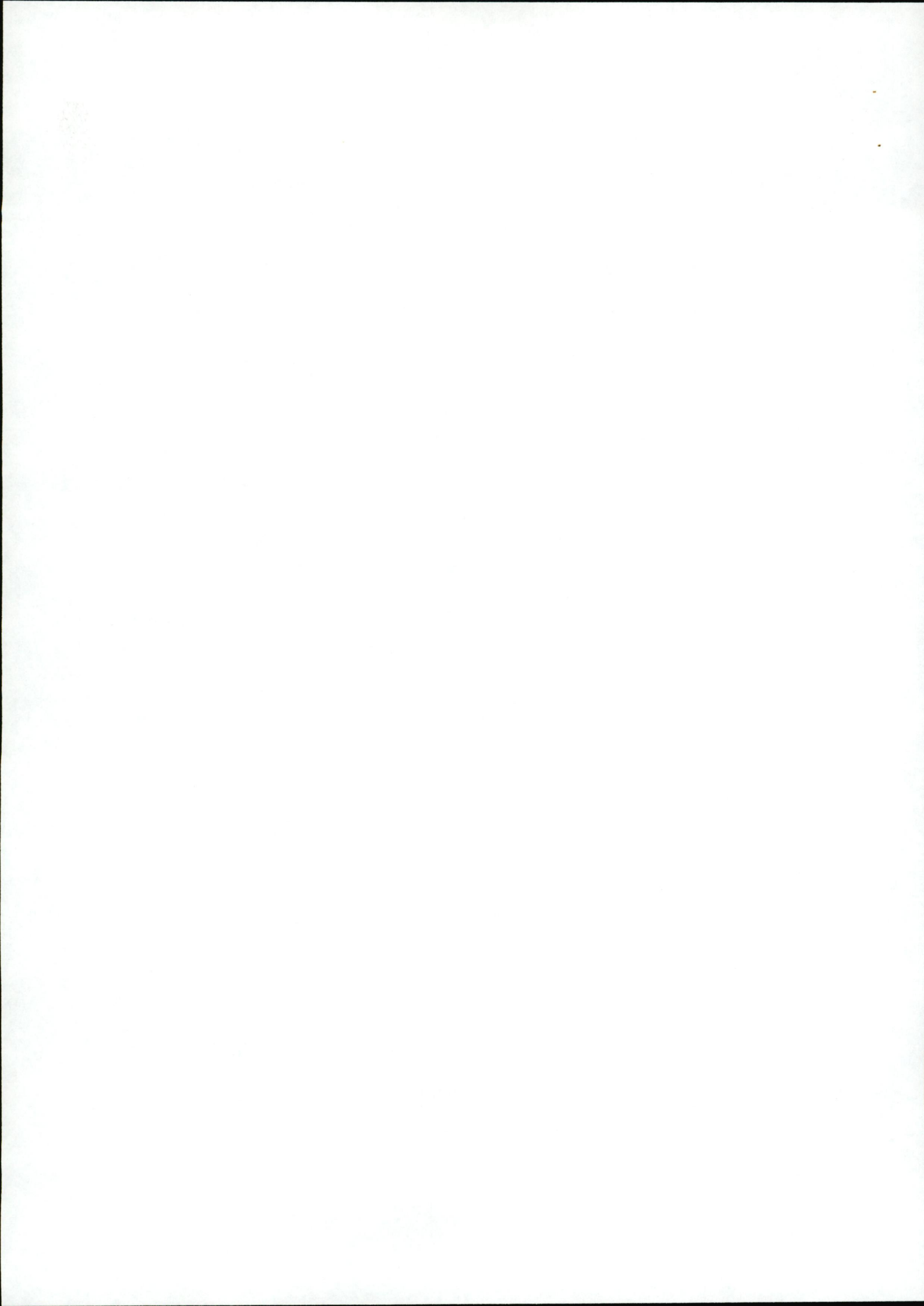
ITEMS 20, 21, 23 AND 24 WILL IMPROVE THE EFFECTIVENESS OF COMMUNITY COUNSELLING ORDERS AND COMMUNITY TREATMENT ORDERS UNDER SECTION 124(1)(C) AND SECTION 135(1)(C) RESPECTIVELY, BY PROVIDING THAT SUCH ORDERS CAN BE MADE OR CAN CONTINUE WHEN THE PERSON WHO IS THE SUBJECT OF THE ORDER IS IN HOSPITAL.

ITEM 22 WILL PERMIT THE MENTAL HEALTH REVIEW TRIBUNAL TO INITIATE COMMUNITY TREATMENT ORDERS AT ITS REVIEWS OF TEMPORARY PATIENTS.

ITEM 25 REVISES PROCEDURES UNDER SECTION 142, SO THAT WHEN A PATIENT IN BREACH OF A COMMUNITY TREATMENT ORDER IS TAKEN TO A HOSPITAL, THE MEDICAL SUPERINTENDENT MUST REVIEW THE PATIENT PRIOR TO THE ADMINISTRATION OF MEDICATION.

MR PRESIDENT, I NOW TURN TO AMENDMENTS WHICH RELATE TO PROCEDURES FOR OBTAINING APPROVAL FOR THE TREATMENT OF PATIENTS BY ELECTRO-CONVULSIVE THERAPY AND OTHER PRESCRIBED TREATMENTS.

ITEM 26 OF SCHEDULE 1 ALLOWS THE MENTAL HEALTH REVIEW TRIBUNAL TO REVIEW THE CAPACITY OF INFORMAL PATIENTS TO GIVE INFORMED CONSENT TO ELECTRO-CONVULSIVE THERAPY WHERE A PATIENT'S CAPACITY TO CONSENT IS IN DOUBT.

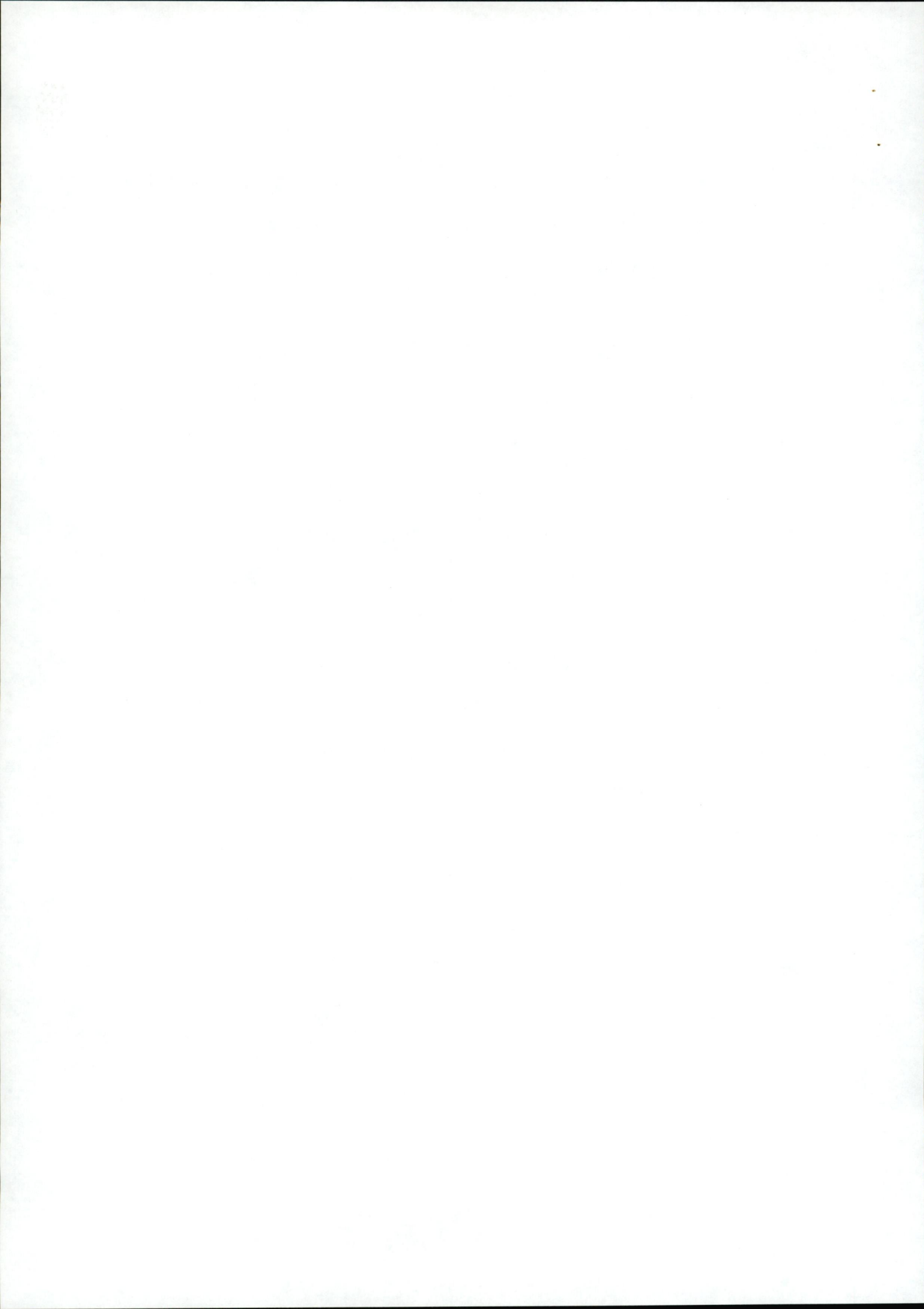


ITEMS 27 TO 33 STREAMLINE PROCEDURES UNDER SECTIONS 188 TO 194 FOR AUTHORISING ELECTRO-CONVULSIVE THERAPY FOR INVOLUNTARY PATIENTS, BY REMOVING THE CURRENT REQUIREMENT THAT THE MEDICAL SUPERINTENDENT CERTIFY THE PATIENT'S CAPACITY TO CONSENT. THE MENTAL HEALTH REVIEW TRIBUNAL'S CURRENT RESPONSIBILITY TO DETERMINE THE PATIENT'S CAPACITY TO CONSENT IS TO REMAIN UNCHANGED.

IN PARTICULAR, ITEM 32 PROVIDES THAT IN THE COURSE OF AN INQUIRY BY THE MENTAL HEALTH REVIEW TRIBUNAL ABOUT THE PROPOSED ADMINISTRATION TO A PATIENT OF ELECTRO-CONVULSIVE THERAPY, THE TRIBUNAL MUST CONSIDER THE VIEWS OF THE PATIENT ABOUT THE PROPOSED TREATMENT IN ADDITION TO THE VIEWS OF THE RELEVANT MEDICAL PRACTITIONERS AND ANY OTHER INFORMATION PLACED BEFORE THE TRIBUNAL.

ITEM 33 ENSURES THAT A DECISION BY THE MENTAL HEALTH REVIEW TRIBUNAL TO AUTHORISE ELECTRO-CONVULSIVE THERAPY, AS A RESULT OF AN INQUIRY UNDER SECTION 194, IS BASED EXCLUSIVELY ON THE EVIDENCE PRESENTED TO THE TRIBUNAL DURING THE INQUIRY.

THE NEXT SET OF AMENDMENTS DEAL WITH HOSPITAL ADMINISTRATION AND MANAGEMENT.



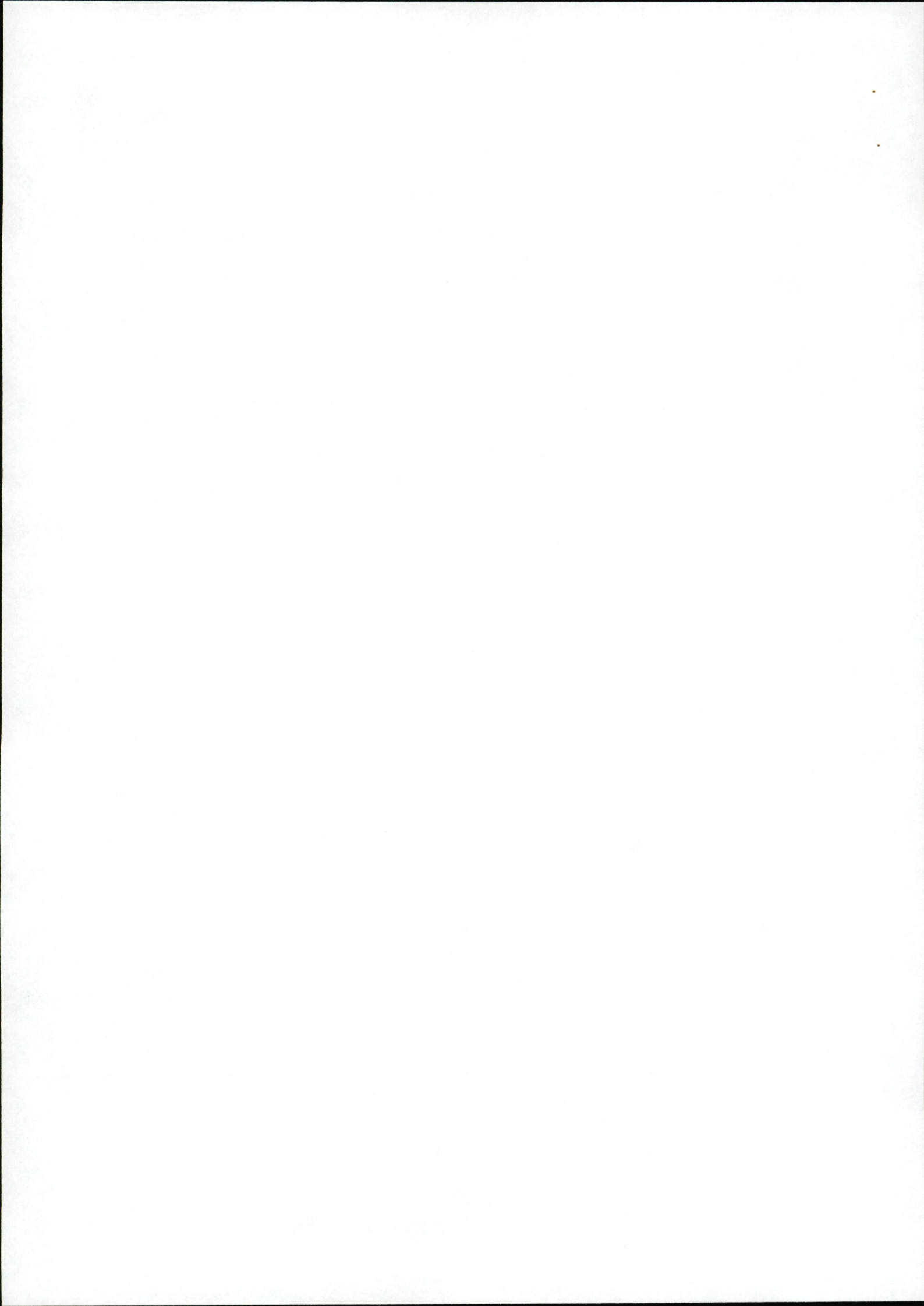
ITEM 35 ALLOWS THE DIRECTOR-GENERAL OF THE DEPARTMENT OF HEALTH A DISCRETION IN RELATION TO THE ARRANGEMENTS WHICH THE DIRECTOR-GENERAL REQUIRES TO BE MADE BY AN AUTHORISED HOSPITAL UNDER SECTION 219 FOR THE PROVISION OF MEDICAL SERVICES TO PATIENTS IN THAT HOSPITAL.

ITEMS 37 AND 38 CLARIFY THE ADMINISTRATIVE RESPONSIBILITIES OF THE ADMINISTRATOR AND MEDICAL SUPERINTENDENT OF AN AUTHORISED HOSPITAL UNDER SECTION 231 AND SECTION 293.

MR PRESIDENT, OTHER AMENDMENTS IN SCHEDULE 1 ARE AS FOLLOWS:

ITEM 40 ALLOWS A FORENSIC PATIENT SUFFERING FROM A DEVELOPMENTAL DISABILITY TO BE DEEMED CAPABLE OF INSTRUCTING A SOLICITOR UNDER SECTION 288 OF THE ACT FOR PROCEEDINGS BEFORE THE MENTAL HEALTH REVIEW TRIBUNAL.

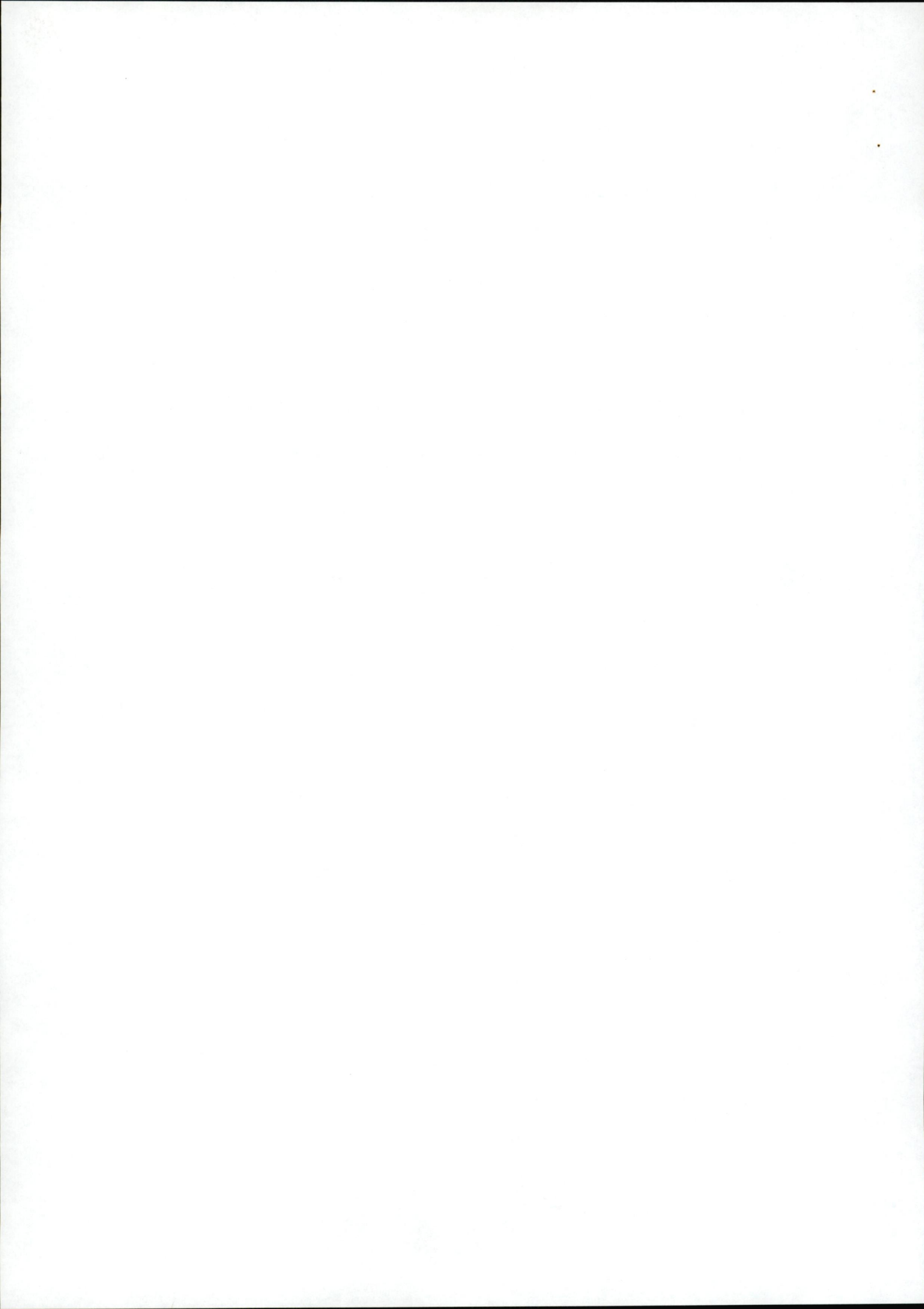
ITEM 41 ENSURES THAT PERSONS DETAINED PURSUANT TO SECTION 14(B)(III) AND 14(B)(IV) OF THE MENTAL HEALTH (CRIMINAL PROCEDURE) ACT 1990 ARE AFFORDED THE FULL PROTECTION OF THE MENTAL HEALTH ACT 1990 BY INCLUDING SUCH PERSONS IN THE DEFINITION OF "FORENSIC PATIENT" IN THE MENTAL HEALTH ACT.



ITEM 42 OF SCHEDULE 1 REDRAFTS SCHEDULE 2 OF THE MENTAL HEALTH ACT IN ORDER TO ASSIST PRACTITIONERS USING THE SCHEDULE AND TO CLARIFY THAT THE ASSISTANCE OF POLICE SHOULD BE SOUGHT ONLY WHERE NECESSARY. CIRCUMSTANCES WHERE THIS MAY ARISE INCLUDE WHERE THE BEHAVIOUR OF THE PERSON BEING SCHEDULED IS DANGEROUS OR ERRATIC OR THREATENING THE SAFETY OF CARE-GIVERS, SUCH THAT THE ONLY SAFE MANNER OF TAKING THE PERSON TO HOSPITAL IS WITH THE ASSISTANCE OF THE POLICE.

MR PRESIDENT, IN ADDITION TO THESE AMENDMENTS ARISING FROM RECOMMENDATIONS MADE BY THE MENTAL HEALTH ACT IMPLEMENTATION MONITORING COMMITTEE, SCHEDULE 1 CONTAINS THREE ADDITIONAL MINOR AMENDMENTS TO THE MENTAL HEALTH ACT 1990, WHICH WERE NOT CONSIDERED BY THE COMMITTEE BUT WHICH HAVE BEEN BROUGHT TO ATTENTION DURING THE NEW SOUTH WALES HEALTH DEPARTMENT'S CONSIDERATION OF THE PROPOSED AMENDMENTS TO THE ACT.

FIRSTLY, ITEM 34 OF SCHEDULE 1 REMOVES THE DISCRETION OF THE DIRECTOR-GENERAL OF THE DEPARTMENT OF HEALTH TO APPOINT A MEDICAL SUPERINTENDENT TO A HOSPITAL UNDER SECTION 209 OF THE ACT AND MAKES SUCH AN APPOINTMENT MANDATORY.



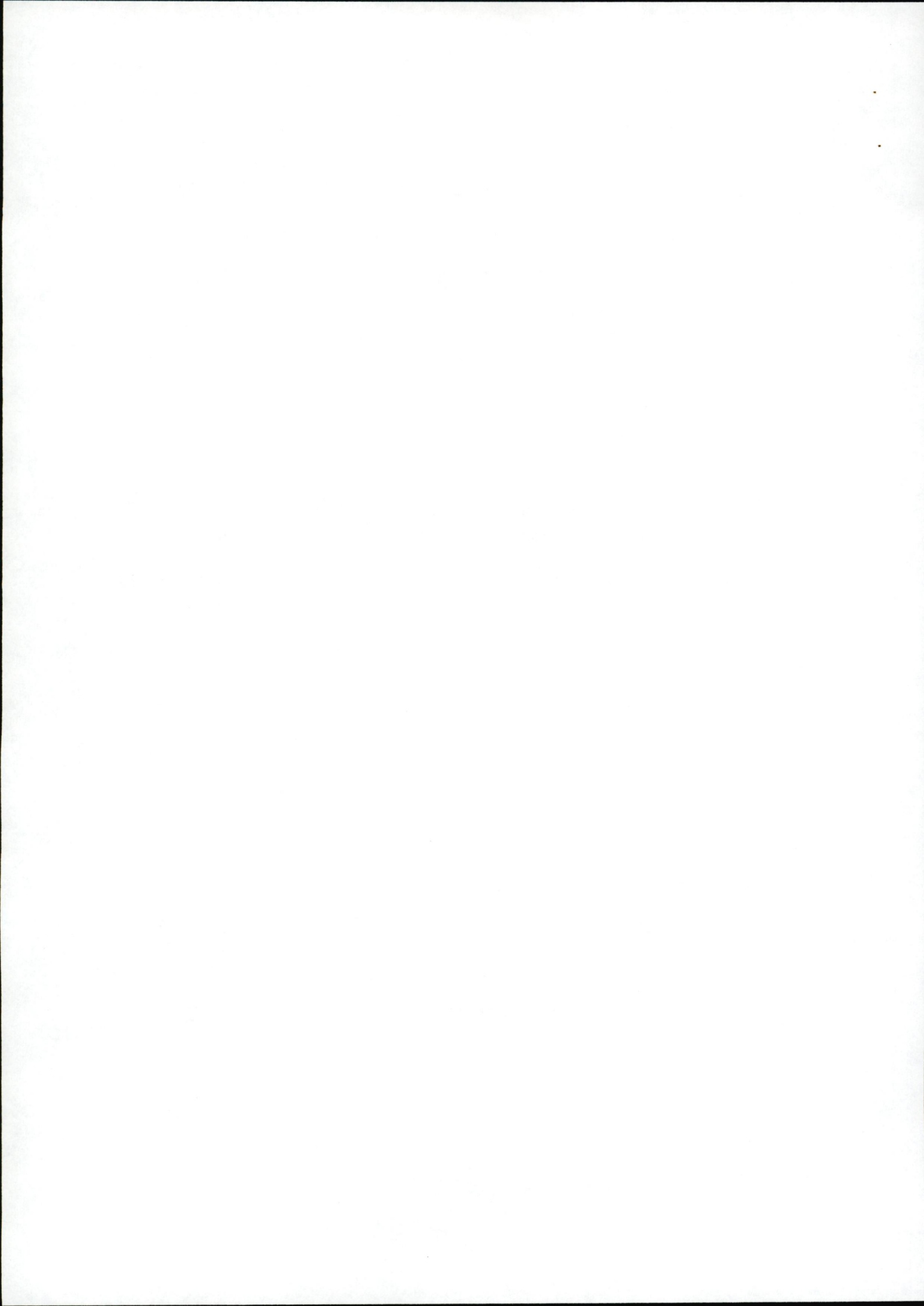
IN ADDITION, ITEM 36 ALLOWS THE LICENSEE OF AN AUTHORISED HOSPITAL THE DISCRETION TO APPOINT A DEPUTY MEDICAL SUPERINTENDENT UNDER SECTION 222 OF THE ACT AND INTRODUCES A PROVISION TO REQUIRE THAT ANY SUCH APPOINTMENT IS SUBJECT TO THE APPROVAL OF THE DIRECTOR-GENERAL OF THE DEPARTMENT OF HEALTH.

ITEMS 34 AND 36 ARE REQUIRED TO CORRECT ANOMALIES UNDER THE CURRENT ACT IN PROVISIONS DEALING WITH THE APPOINTMENT OF MEDICAL SUPERINTENDENTS AND DEPUTY MEDICAL SUPERINTENDENTS.

THE THIRD MINOR AMENDMENT IS ITEM 39 OF SCHEDULE 1, WHICH CLARIFIES THAT OFFICIAL VISITORS ARE PROTECTED FROM LIABILITY FOR ANY ACTIONS TAKEN IN GOOD FAITH FOR THE PURPOSE OF PERFORMING THE FUNCTIONS OF OFFICIAL VISITORS UNDER THE ACT.

THIS AMENDMENT WAS REQUESTED BY THE ANNUAL SEMINAR OF OFFICIAL VISITORS. IT WILL BE EQUIVALENT TO THE PROTECTION FROM LIABILITY ALREADY PROVIDED UNDER THE ACT TO MEMBERS OF THE PSYCHOSURGERY REVIEW BOARD AND THE MENTAL HEALTH REVIEW TRIBUNAL.

THE FINAL IMPORTANT SET OF AMENDMENTS RELATE TO ORDERS MADE BY MAGISTRATES IN CRIMINAL PROCEEDINGS.

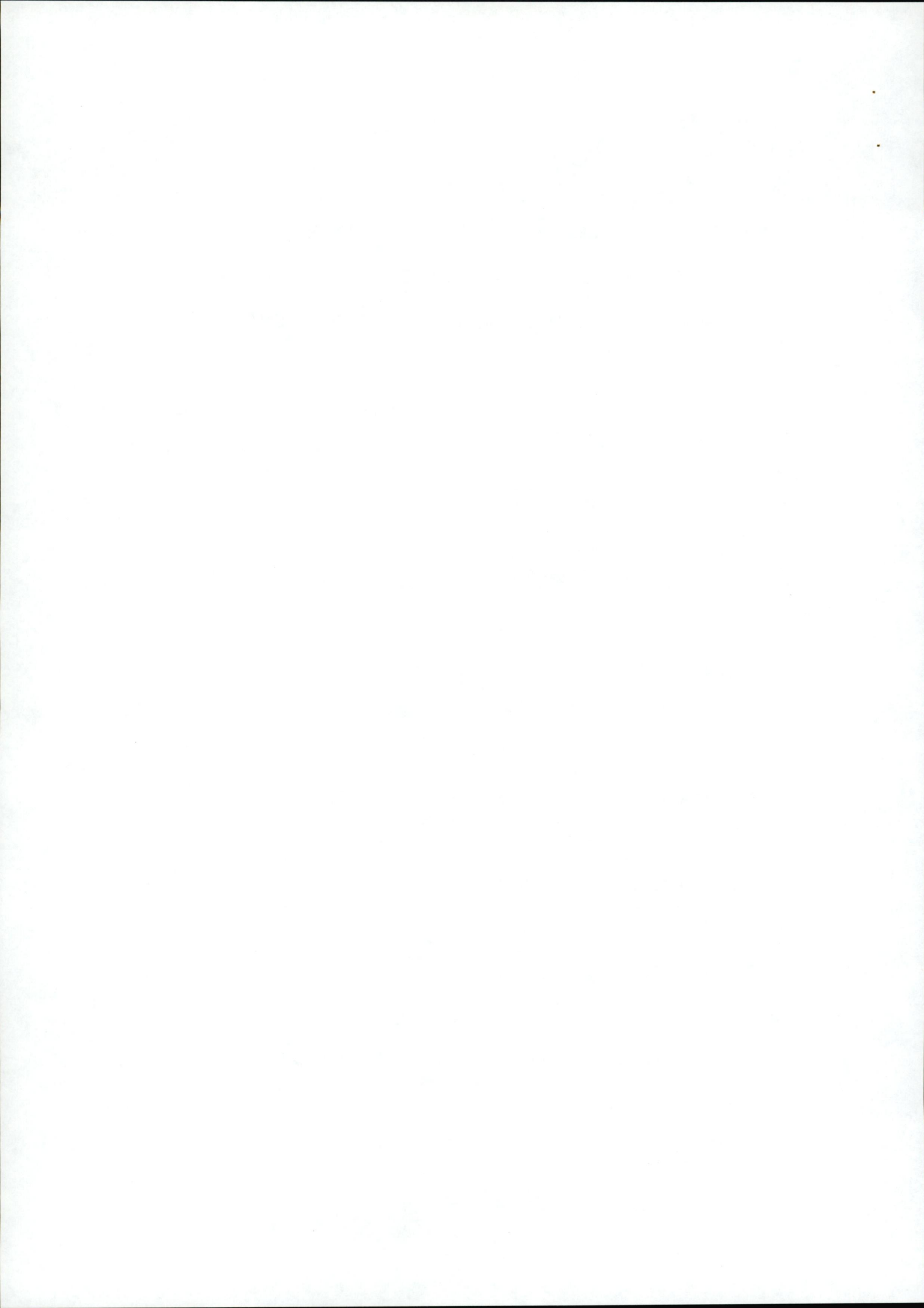


SCHEDULE 2 OF THE BILL AMENDS THE MENTAL HEALTH (CRIMINAL PROCEDURE) ACT 1990 TO IMPROVE PROCEDURES UNDER SECTION 33 FOR THE TRANSFER OF MENTALLY ILL PERSONS BETWEEN A LOCAL COURT AND HOSPITAL. SPECIFICALLY, THIS AMENDMENT:

- EMPOWERS A MAGISTRATE TO MAKE FURTHER ORDERS AS TO THE DISPOSITION OF A PERSON WHO IS NOT DETAINED IN HOSPITAL FOLLOWING ASSESSMENT; AND
- PROVIDES FOR A FORM TO RECORD SUCH FURTHER ORDERS.

IN ADDITION, AS PART OF THESE IMPROVED PROCEDURES, ITEM 11 OF SCHEDULE 1 INTRODUCES A NEW SECTION 37A OF THE MENTAL HEALTH ACT, TO CLARIFY THAT POLICE ARE TO COLLECT THE PERSON FROM HOSPITAL AND RETURN THE PERSON TO COURT, IF REQUIRED BY THE MAGISTRATE, ON NON ADMISSION BY THE HOSPITAL. ITEMS 8 AND 10 ARE CONSEQUENTIAL AMENDMENTS.

MR PRESIDENT, I ALSO WISH TO INFORM HONOURABLE MEMBERS ABOUT THE ESTABLISHMENT OF A FURTHER REVIEW PROCESS RELATING TO SEVERAL RECOMMENDATIONS FOR LEGISLATIVE CHANGE MADE BY THE MENTAL HEALTH ACT IMPLEMENTATION MONITORING COMMITTEE, WHICH ARE NOT INCLUDED IN THE BILL BEFORE THE HOUSE.



THE COMMITTEE'S REPORT MADE SEVERAL RECOMMENDATIONS FOR LEGISLATIVE CHANGE WHICH RELATE TO ON-GOING DEBATES ABOUT THE MOST APPROPRIATE LEVELS OF CARE AND CONTROL WITHIN THE MENTAL HEALTH SYSTEM.

IN SEVERAL CASES, THE COMMITTEE DID NOT AGREE ON THE EXTENT OF DIFFICULTIES UNDER THE CURRENT ACT OR THE BEST WAY TO ADDRESS SUCH DIFFICULTIES. THE COMMITTEE HAS ALSO SUGGESTED SEVERAL AMENDMENTS WHICH HAVE SIGNIFICANT RAMIFICATIONS FOR PATIENTS' RIGHTS AND CIVIL LIBERTIES. THESE ISSUES INCLUDE:

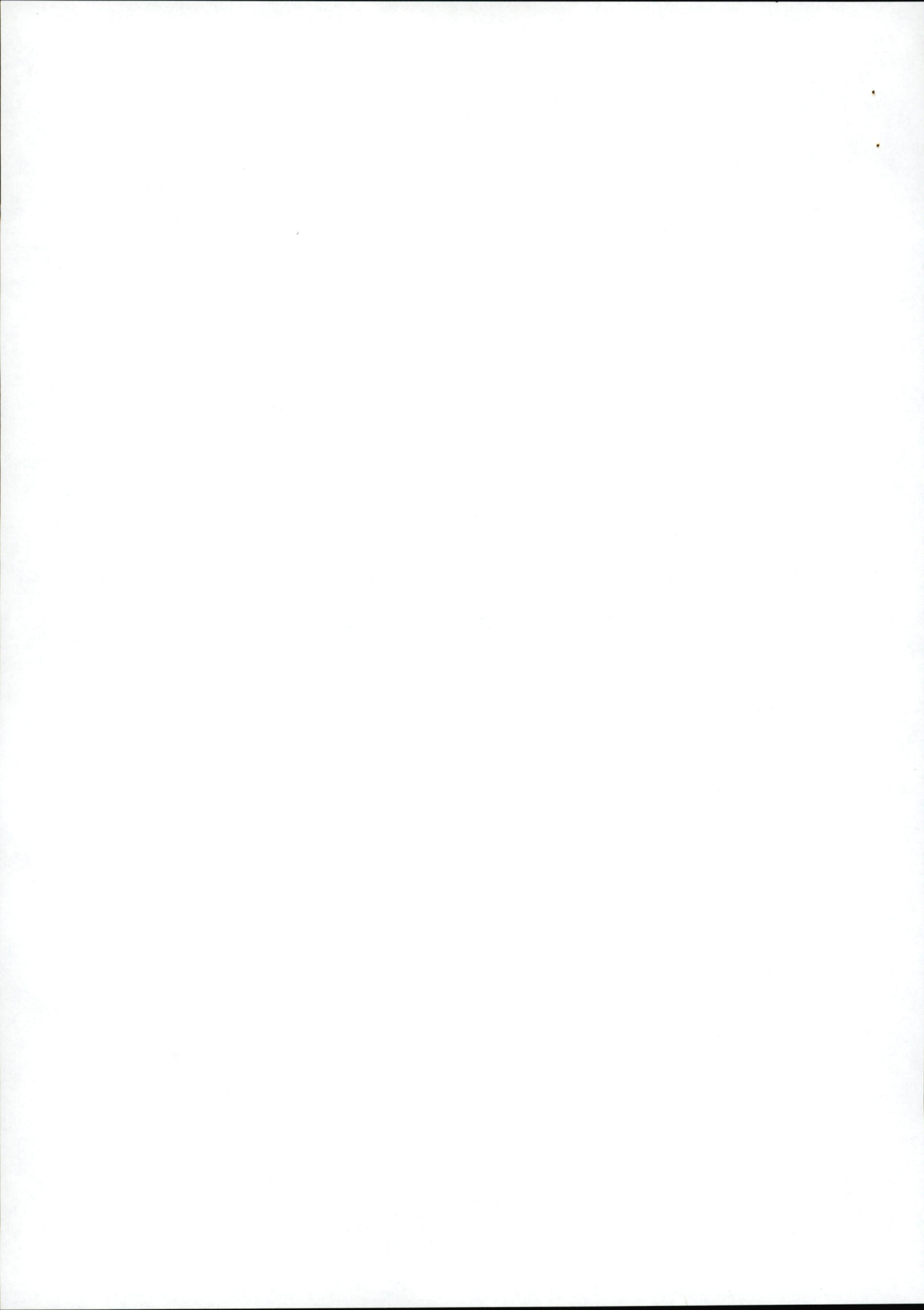
- THE POSSIBLE EXPANSION OF THE DEFINITION OF MENTAL ILLNESS CONTAINED IN THE MENTAL HEALTH ACT 1990;
- A PROPOSAL TO ALLOW FURTHER DETENTION OF A MENTALLY DISORDERED PERSON WHERE THE PERSON IS CONSIDERED LIKELY TO COMMIT SUICIDE;
- A PROPOSAL TO REQUIRE THAT AN INFORMAL PATIENT GIVE 24 HOURS NOTICE OF INTENTION TO LEAVE HOSPITAL;
- THE EXTENSION OF THE DURATION OF COMMUNITY TREATMENT ORDERS FROM THREE TO SIX MONTHS; AND

- THE PROPOSED VARIATION OF REQUIREMENTS FOR APPROVAL OF APPLICATIONS FOR EMERGENCY ELECTRO-CONVULSIVE THERAPY TREATMENT.

I AM PLEASED TO ADVISE THAT THE MINISTER FOR HEALTH HAS REQUESTED THE NEW SOUTH WALES HEALTH DEPARTMENT TO PREPARE A DISCUSSION PAPER FOR WIDE CONSULTATION WITH RELEVANT GOVERNMENT AUTHORITIES AND COMMUNITY GROUPS, WHICH WILL DEAL WITH A NUMBER OF THE COMMITTEE'S RECOMMENDATIONS FOR FURTHER LEGISLATIVE CHANGE, INCLUDING THE PROPOSALS WHICH I HAVE JUST MENTIONED. THE DISCUSSION PAPER WILL SEEK TO IDENTIFY ADDITIONAL INFORMATION AND PROMOTE COMMUNITY DEBATE PRIOR TO FURTHER GOVERNMENT CONSIDERATION OF THESE ISSUES.

IT IS ANTICIPATED THAT THE DISCUSSION PAPER WILL BE RELEASED IN MAY 1994.

THE MINISTER FOR HEALTH HAS AGREED TO ESTABLISH AN ON-GOING COMMITTEE TO MONITOR THE UTILISATION AND EFFECTIVENESS OF THE MENTAL HEALTH ACT, WHICH WILL BE REQUIRED TO REPORT TO THE MINISTER ON ITS ACTIVITIES AND ANY RECOMMENDATIONS IT MAY WISH TO MAKE FOR FURTHER IMPROVEMENTS TO THE MENTAL HEALTH ACT. IN PARTICULAR, THE COMMITTEE WILL REVIEW THE REPLIES RECEIVED IN RESPONSE TO THE RELEASE OF THE DISCUSSION PAPER.

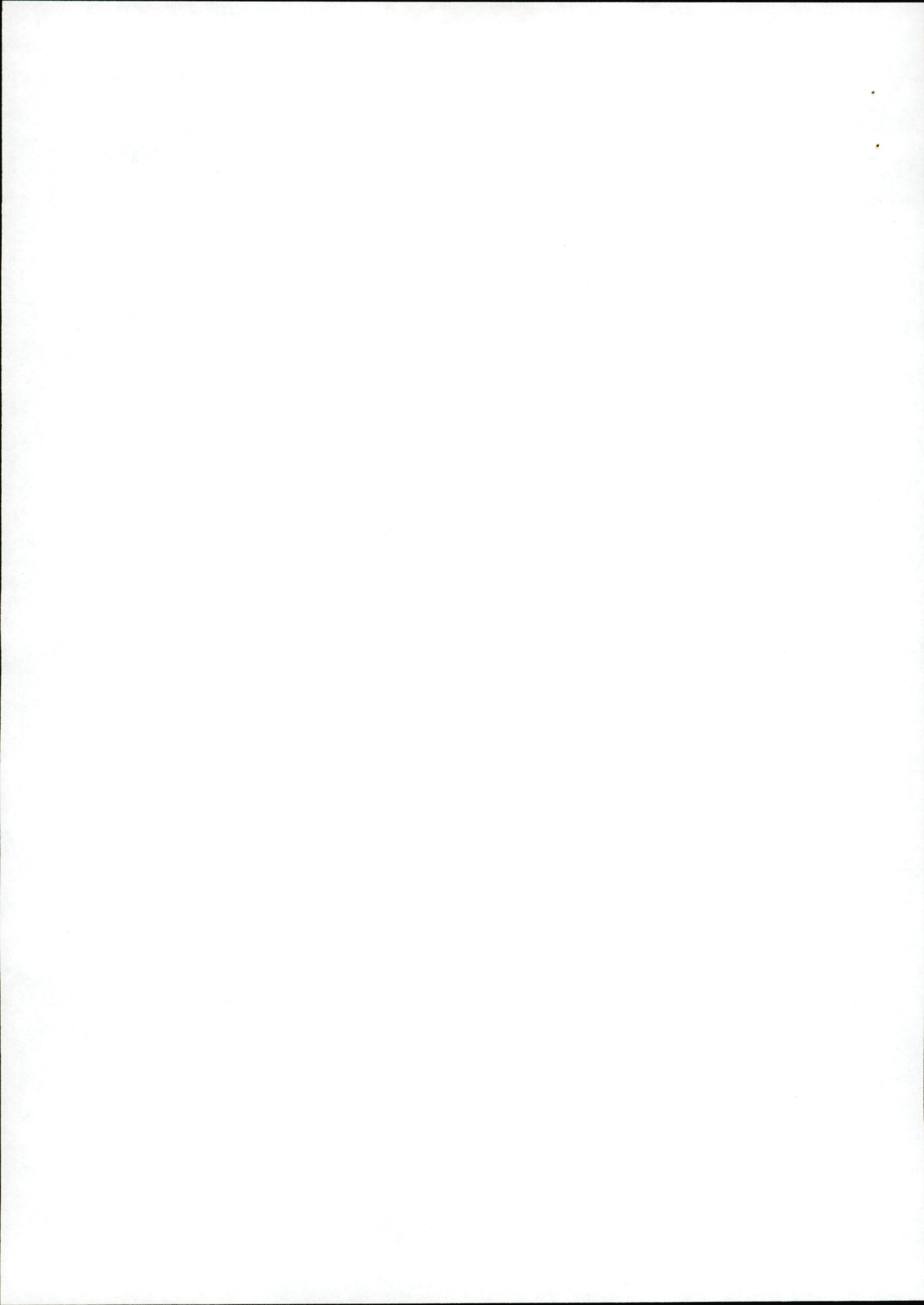


THE TWO-PHASE LEGISLATIVE PROCESS, COMPRISING THE CONSIDERATION OF THE LEGISLATIVE AMENDMENTS CONTAINED IN THE BILL BEFORE THE HOUSE AND THE RELEASE OF THE DISCUSSION PAPER ON ADDITIONAL LEGISLATIVE ISSUES, WILL ALLOW THE GOVERNMENT TO IMPLEMENT MANY WORTHWHILE LEGISLATIVE INITIATIVES WITHOUT DELAY, WHILE SEEKING TO RESOLVE MORE COMPLEX MATTERS WHICH CONTINUE TO GENERATE WIDELY DIVERGENT VIEWS.

FINALLY, MR PRESIDENT, I WISH TO EMPHASISE THAT THE BILL BEFORE THE HOUSE AND THE DECISION TO RELEASE A DISCUSSION PAPER ON SEVERAL OTHER LEGISLATIVE ISSUES ARE EVIDENCE OF THE GOVERNMENT'S STRONG COMMITMENT TO IMPROVE THE LEGAL FRAMEWORK FOR PEOPLE AFFECTED BY MENTAL ILLNESS AND TO IMPROVE MENTAL HEALTH SERVICES IN NEW SOUTH WALES.

IMPROVING SERVICES FOR PEOPLE WITH MENTAL ILLNESS AND ADDRESSING PREVIOUS NEGLECT HAS BEEN A PRIORITY OF THIS GOVERNMENT SINCE ASSUMING OFFICE.

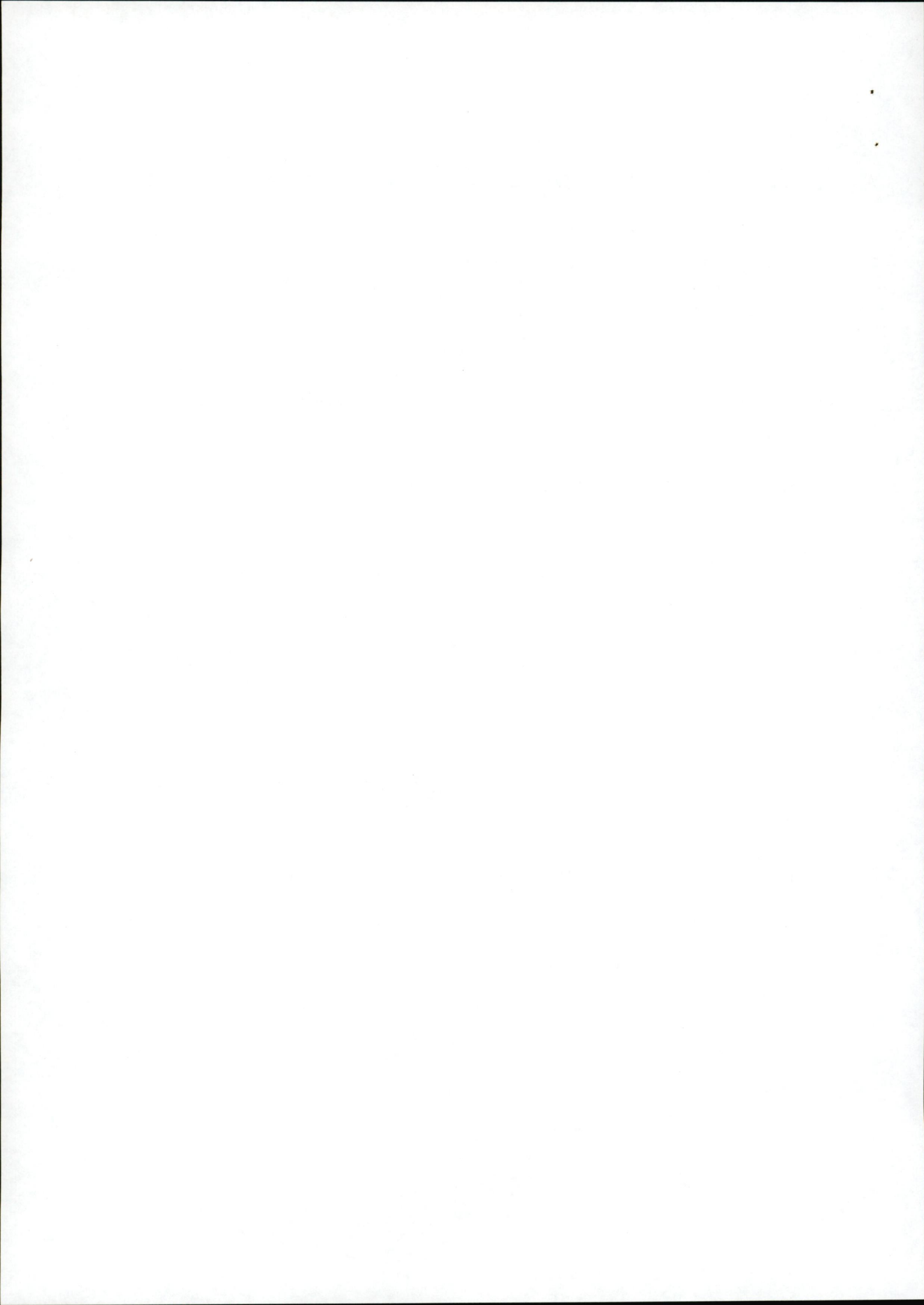
SINCE 1988, OVER \$86 MILLION IN CAPITAL HAS BEEN SPENT ON UPGRADING FACILITIES IN HOSPITALS AND IN ESTABLISHING NEW HOSPITAL AND COMMUNITY SERVICES.



RECURRENT SPENDING ON MENTAL HEALTH IN THIS STATE CURRENTLY STANDS AT OVER \$289 MILLION, A TOTAL INCREASE OF \$104 MILLION SINCE THE 1988/89 FINANCIAL YEAR.

IN VIEW OF THIS COMMITMENT TO IMPROVING MENTAL HEALTH SERVICES IN NEW SOUTH WALES, THE GOVERNMENT WELCOMED THE REPORT OF THE NATIONAL INQUIRY INTO THE HUMAN RIGHTS OF PEOPLE WITH MENTAL ILLNESS, WHICH WAS RELEASED LATE LAST YEAR. THE REPORT WAS PARTICULARLY HELPFUL IN RAISING COMMUNITY AWARENESS OF THE DIFFICULTIES FACED BY THIS MOST DISADVANTAGED GROUP OF PEOPLE AND IN DOING SO, HAS PROVIDED VALUABLE ASSISTANCE IN ADVANCING THE REFORM PROGRAM ALREADY UNDER WAY IN NEW SOUTH WALES.

THE MINISTER FOR HEALTH IS CURRENTLY CO-ORDINATING A DETAILED WHOLE OF GOVERNMENT RESPONSE TO THE REPORT OF THE NATIONAL INQUIRY INTO THE HUMAN RIGHTS OF PEOPLE WITH A MENTAL ILLNESS. AS PART OF OUR ACTION PLAN, THE MINISTER FOR HEALTH HAS ALREADY ANNOUNCED HIS COMMITMENT TO FURTHER INCREASE FUNDING FOR MENTAL HEALTH SERVICES. THE ADDITIONAL FUNDING WILL BE DIRECTED TO PROGRAMS FOR ABORIGINAL PEOPLE, THOSE LIVING IN HOSTELS AND BOARDING HOUSES, THE ELDERLY, YOUNG PEOPLE AND THOSE LIVING IN ISOLATED COMMUNITIES.



THIS BILL IS AN IMPORTANT STRATEGY IN THE GOVERNMENT'S ON-GOING PROCESS OF REFORM TO IMPROVE MENTAL HEALTH LEGISLATION IN THIS STATE AND TO IMPROVE MENTAL HEALTH SERVICES.

I COMMEND THE BILL.

