

MENTAL HEALTH LEGISLATION AMENDMENT BILL
SECOND READING SPEECH

COUNCIL

MR PRESIDENT,

THE PURPOSE OF THE MENTAL HEALTH LEGISLATION AMENDMENT BILL IS TO INTRODUCE A RANGE OF IMPORTANT AMENDMENTS TO THE MENTAL HEALTH ACT AND THE MENTAL HEALTH (CRIMINAL PROCEDURE) ACT.

THE BILL IS THE CULMINATION OF A PROCESS OF REVIEW AND CONSULTATION WHICH HAS NOW SPANNED THE FIRST SIX YEARS OF OPERATION OF THE 1990 MENTAL HEALTH LEGISLATION.

AS HONOURABLE MEMBERS MAY BE AWARE, AN INDEPENDENT COMMITTEE CHAIRED BY PROFESSOR IAN WEBSTER MADE A SUBSTANTIAL NUMBER OF RECOMMENDATIONS FOR REFORM OF THE ACT IN 1992. THIS COMMITTEE, KNOWN AS THE MENTAL HEALTH ACT IMPLEMENTATION AND MONITORING COMMITTEE, DREW REPRESENTATION FROM A WIDE RANGE OF CONSUMER, CARER, AND HEALTH PROFESSIONAL AND PUBLIC INTEREST GROUPS.

WHILE SEVERAL MINOR AMENDMENTS PROPOSED BY THE COMMITTEE WERE ENACTED IN 1994 IN THE MENTAL HEALTH (AMENDMENT) BILL, AT THE TIME THIS GOVERNMENT CAME TO OFFICE A NUMBER OF THE COMMITTEE'S MORE IMPORTANT RECOMMENDATIONS FOR REFORM, INCLUDING IT'S RECOGNITION OF THE NEED FOR REVISION OF THE DEFINITION OF "MENTALLY ILL PERSON", HAD NOT BEEN ADDRESSED.

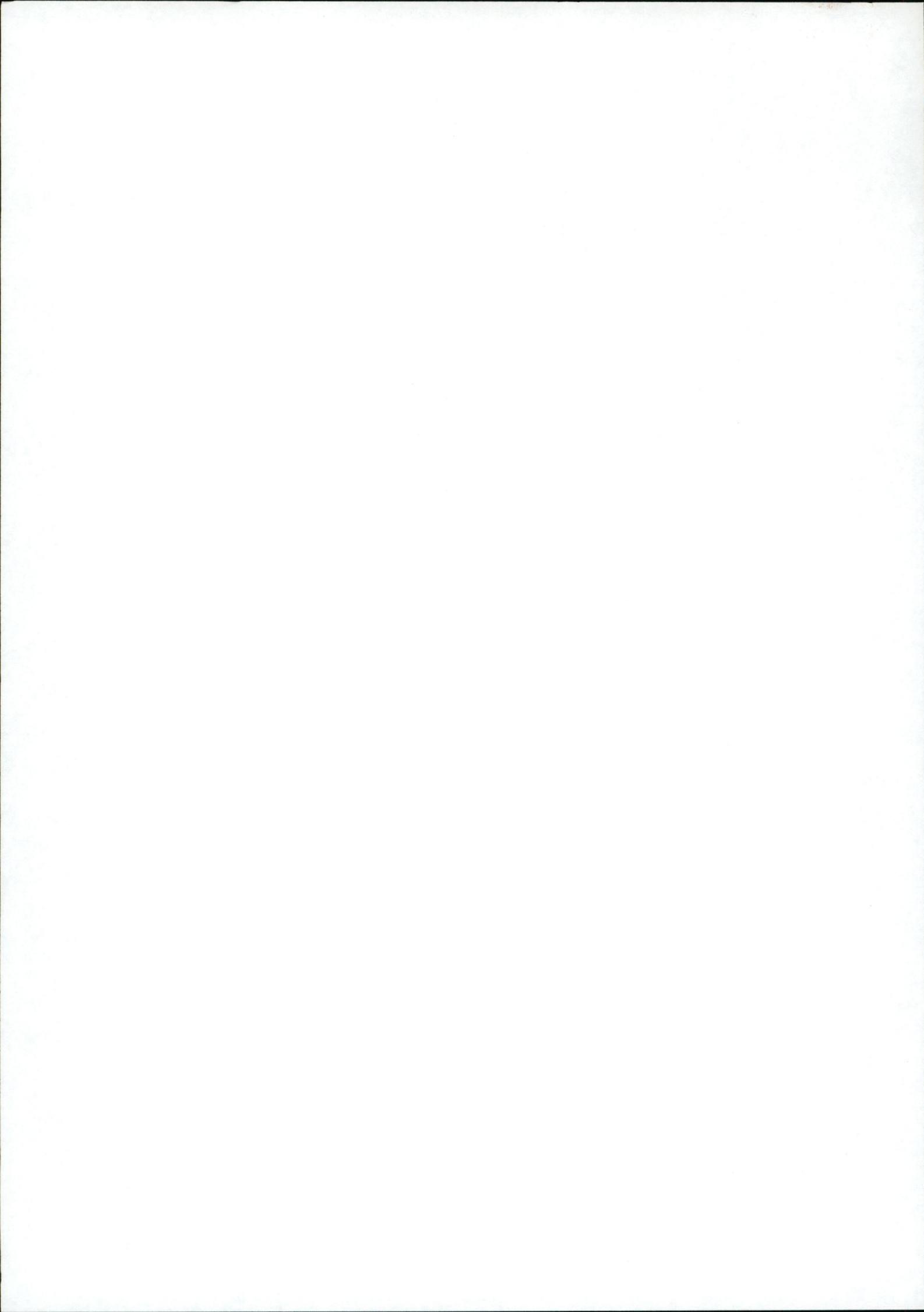
IN ADDITION, IN THE PERIOD SINCE 1992 REPORT, OTHER ISSUES WHICH THE COMMITTEE DID NOT HAVE AN OPPORTUNITY TO CONSIDER HAVE ARISEN, SUGGESTING THE NEED FOR FURTHER AMENDMENT OF THE ACT.

WIDE CIRCULATION OF DRAFT LEGISLATION IS THE MOST EFFECTIVE WAY OF ENSURING THOSE MEMBERS OF THE PUBLIC INTERESTED IN MENTAL HEALTH LAW CAN VIEW AND CONSIDER THE ACTUAL TERMS OF THE PROPOSED AMENDMENTS. SUCH A PROCESS ALSO ALLOWS THE GOVERNMENT TO CLEARLY AND SIMPLY SET OUT ITS INITIAL POSITION ON THE VARIOUS PROPOSALS FOR REFORM. GIVEN THESE FACTORS, AND THE HIGH DEGREE OF PUBLIC INTEREST IN MENTAL HEALTH REFORM, THE DEPUTY PREMIER AND MINISTER FOR HEALTH DR REFSHAUGE DETERMINED THAT THE BEST WAY TO ENSURE MAXIMUM PUBLIC INVOLVEMENT IN THE DEBATE ABOUT THESE ISSUES, WOULD BE BY THE RELEASE OF AN EXPOSURE DRAFT BILL AND DISCUSSION PAPER.

A "CARING FOR HEATH" DISCUSSION PAPER ON AMENDMENTS TO THE MENTAL HEALTH ACT, ATTACHING AN EXPOSURE DRAFT OF THE MENTAL HEALTH LEGISLATION AMENDMENT BILL WAS THEREFORE RELEASED BY THE DEPARTMENT OF HEALTH IN MAY 1996. THE DISCUSSION PAPER WAS WIDELY CIRCULATED AND ESTABLISHED A THREE MONTH CONSULTATION PERIOD, CALLING FOR SUBMISSIONS ON ALL THE ISSUES INCLUDED IN THE PAPER.

OVER 2000 COPIES OF THIS DISCUSSION PAPER WERE DISTRIBUTED IN THE COMMUNITY, TO PEAK MENTAL HEALTH BODIES, TO NON-GOVERNMENT ORGANISATIONS, AND TO RELEVANT PROFESSIONAL AND CONSUMER ASSOCIATIONS. THE PAPER WAS ALSO DISTRIBUTED THROUGHOUT THE NSW HEALTH SYSTEM.

IN RESPONSE TO THE DISCUSSION PAPER, THE DEPARTMENT OF HEALTH RECEIVED CLOSE TO 100 SEPARATE SUBMISSIONS ON DIFFERENT ASPECTS OF THE PROPOSALS. OVERALL THE SUBMISSIONS GENERALLY FAVOURED BOTH THE CONSULTATION PROCESS ADOPTED, AND THE



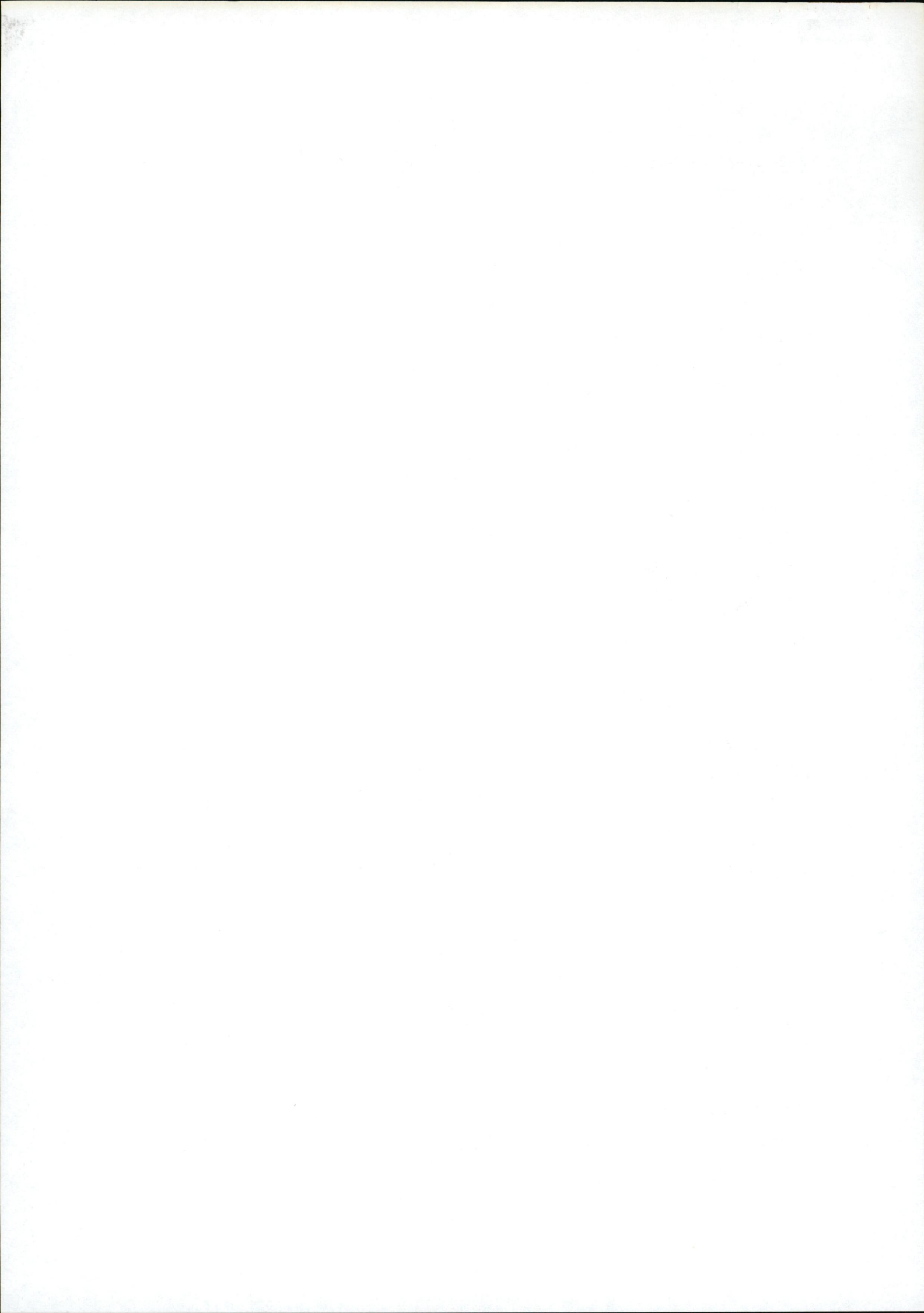
PROVISIONS PROPOSED IN THE BILL. THERE WERE HOWEVER A NUMBER OF PROPOSALS IN THE EXPOSURE DRAFT BILL WHICH RAISED CONSIDERABLE COMMUNITY INTEREST. SOME OF THE SUBMISSIONS RECEIVED BY THE DEPARTMENT OF HEALTH RAISED WELL FOUNDED, REASONABLE CONCERNS WITH CERTAIN OF THE ORIGINAL PROPOSALS, HIGHLIGHTING DIFFICULTIES AND SOME SHORTCOMINGS WITH THE WAY THE PROVISIONS WERE ORIGINALLY DRAFTED. THE GOVERNMENT HAS SOUGHT TO ADDRESS THESE CONCERNS, AND, AS I SHALL DETAIL, IN A NUMBER OF CASES THE ORIGINAL PROPOSALS HAVE BEEN AMENDED OR REMOVED, TO REFLECT THE VIEWS OF THE COMMUNITY OBTAINED DURING THE CONSULTATION PROCESS.

I WILL NOW TURN TO THE PROPOSALS IN THE MENTAL HEALTH LEGISLATION BILL CURRENTLY BEFORE THE HOUSE.

THE FIRST, AND MOST IMPORTANT MATTER ADDRESSED BY THE BILL IS THE DEFINITION OF "MENTALLY ILL PERSON" SET OUT IN SECTION 9 OF THE MENTAL HEALTH ACT. AS HONOURABLE MEMBERS WILL KNOW, THIS DEFINITION IS A PIVOTAL ISSUE IN MENTAL HEALTH LEGISLATION. INVOLUNTARY ADMISSION, CONTINUED DETENTION, AND TREATMENT OF AN INDIVIDUAL, AGAINST HIS OR HER WILL, IS ONLY POSSIBLE UNDER THE ACT IF THAT INDIVIDUAL IS FOUND TO BE A "MENTALLY ILL PERSON" WITHIN THE MEANING OF SECTION 9.

IT IS THEREFORE THIS DEFINITION WHICH MEDICAL PRACTITIONERS RELY ON WHEN THEY ARE CALLED ON TO CONSIDER IF A PERSON'S CONDITION IS SERIOUS ENOUGH TO REQUIRE ENFORCED TREATMENT.

THE DEFINITION IN SECTION 9 CURRENTLY REQUIRES FIRST, THAT A PERSON HAS A MENTAL ILLNESS, AS DEFINED IN THE ACT. SECOND, BECAUSE OF THAT ILLNESS, CARE TREATMENT OR CONTROL IS



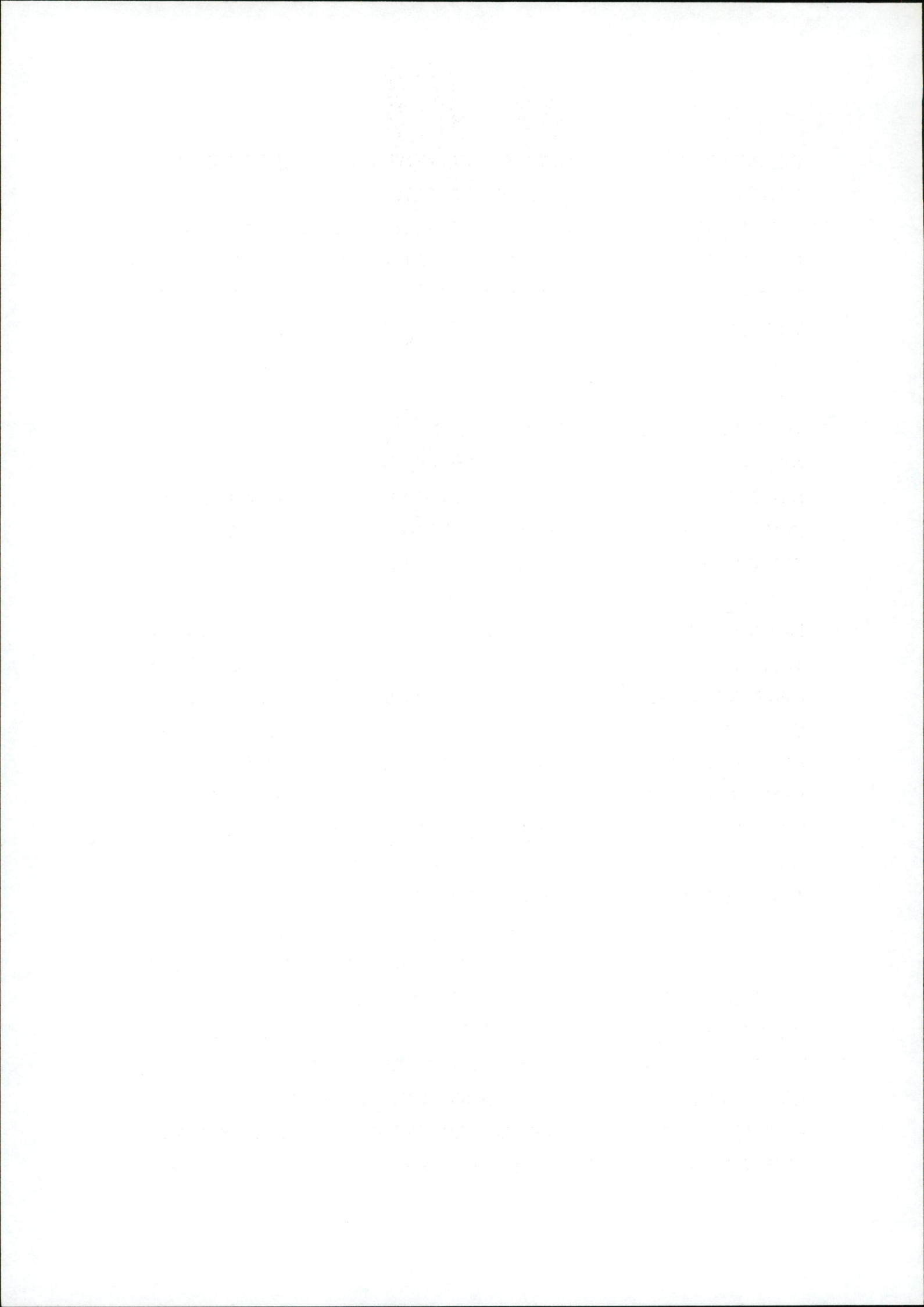
NECESSARY FOR THE PERSON'S OWN PROTECTION, OR FOR THE PROTECTION OF THE PUBLIC, "FROM SERIOUS PHYSICAL HARM". IN SITUATIONS WHERE A PERSON SUFFERS FROM A BI-POLAR DISORDER, THE DEFINITION ALSO ALLOWS ISSUES OF FINANCIAL HARM OR HARM TO THAT PERSON'S REPUTATION TO BE CONSIDERED. THIRDLY AND FINALLY, IN MAKING AN ASSESSMENT, A MEDICAL PRACTITIONER IS REQUIRED TO CONSIDER THE "CONTINUING CONDITION" OF THE PATIENT.

IN THE YEARS SINCE THE 1990 MENTAL HEALTH ACT COMMENCED OPERATION, CONCERNS HAVE BEEN EXPRESSED THAT THE DEFINITION SET OUT IN SECTION 9 IS TOO NARROW, AND EFFECTIVELY PREVENTS MANY PEOPLE IN NEED OF TREATMENT OBTAINING ACCESS TO CARE. THE CONCERNS ABOUT THE DEFINITION HAVE BEEN EXPRESSED BY BOTH HEALTH CARE PROFESSIONALS AND THOSE INVOLVED IN CARING FOR PERSONS WITH A MENTAL ILLNESS.

I AM ADVISED THAT THESE CONCERNS FALL INTO THREE AREAS.

FIRST, THERE IS SUBSTANTIAL PUBLIC CONCERN THAT THE REQUIREMENT THAT A PERSON REPRESENTS A RISK OF "SERIOUS PHYSICAL HARM" TO THEMSELVES OR TO OTHERS IS TOO RESTRICTIVE, AND CAN HINDER PREVENTATIVE ACTION BEING TAKEN AT THE TIME A PERSON PRESENTS TO A MEDICAL PRACTITIONER OR HOSPITAL .

THERE IS NO DOUBT THAT THIS CONCERN, AT LEAST IN PART, REFLECTS CONCERNS GENERATED BY THE 1983 MENTAL HEALTH ACT. THAT ACT SET THE CRITERIA FOR INVOLUNTARY ADMISSION VERY NARROWLY, REQUIRING THE PERSON TO EXHIBIT "DANGEROUS" BEHAVIOUR BEFORE THEY COULD BE DETAINED. THE 1990 ACT WAS CONSCIOUSLY DESIGNED TO MOVE AWAY FROM THIS STRICT TEST, BY APPLYING THE LOWER TEST OF "SERIOUS PHYSICAL HARM".

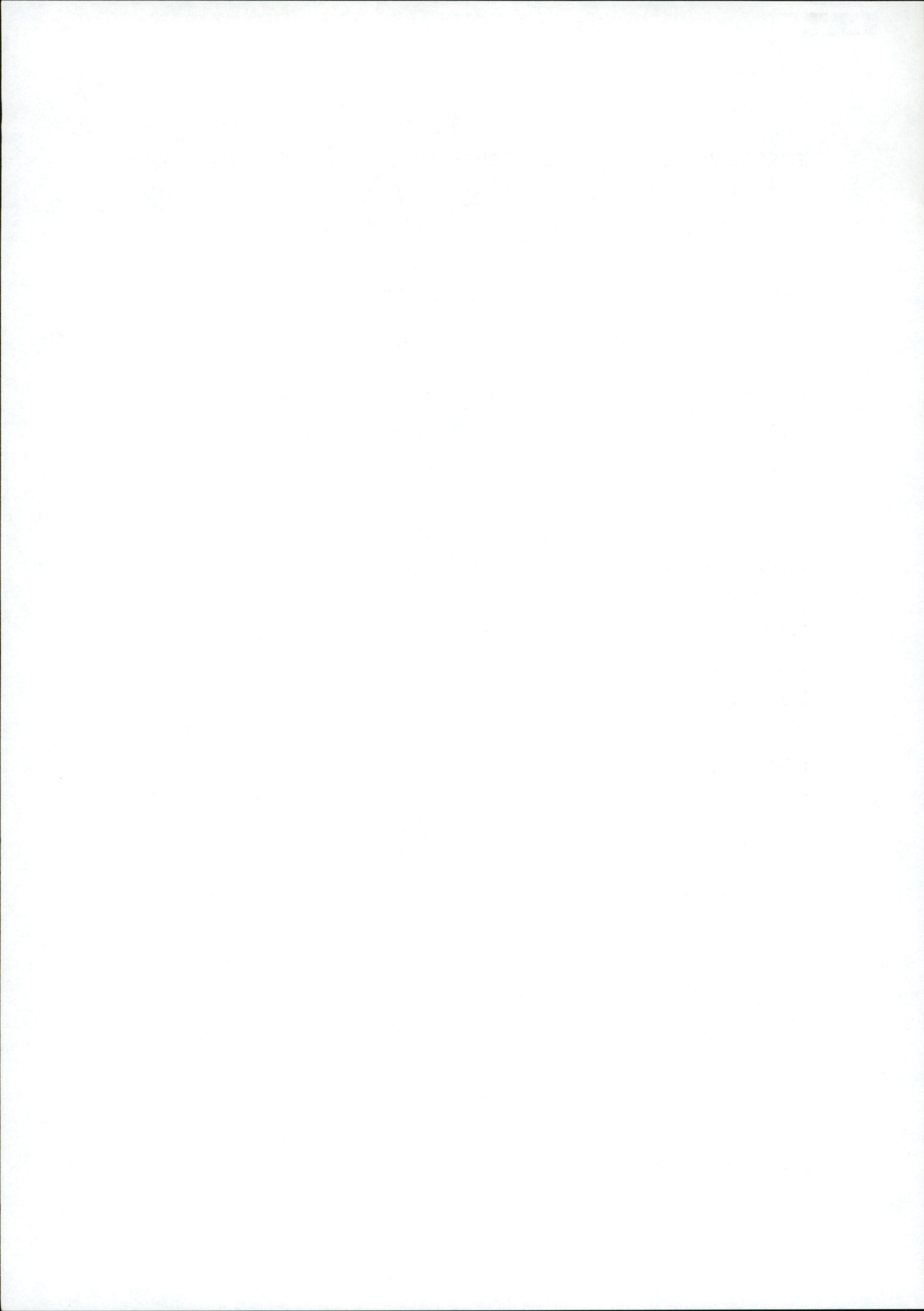


DESPITE SEVERAL EDUCATION CAMPAIGNS HOWEVER, PUBLIC AND PROFESSIONAL CONFUSION OVER THE CRITERIA HAS CONTINUED. THE DEFINITION CONTINUES TO BE INTERPRETED NARROWLY, SO THAT PERSONS CLEARLY IN NEED OF CARE CAN BE TURNED AWAY. IT IS CLEAR THAT IN THE FACE OF THESE CONTINUING PROBLEMS AN AMENDMENT TO THE DEFINITION IS NECESSARY.

A SECOND CONCERN OFTEN RAISED WITH THE DEFINITION ALSO RELATES TO THE TYPE OF RISK THE MENTALLY ILL PERSON HAS BEEN PLACED IN. AS I HAVE INDICATED, IN CASES WHERE A PERSON HAS A BI-POLAR DISORDER, SERIOUS HARM TO THAT PERSON'S REPUTATION AND FINANCIAL HARM CAN BE CONSIDERED, IN ADDITION TO SERIOUS PHYSICAL HARM.

I AM ADVISED HOWEVER, THAT HARM TO A PERSON'S REPUTATION OR THEIR FINANCIAL SITUATION CAN JUST AS READILY ARISE WHERE THE PERSON HAS ANOTHER FORM OF MENTAL ILLNESS, SUCH AS, FOR EXAMPLE, SCHIZOPHRENIA. THE DISTINCTION CURRENTLY SET OUT IN SECTION 9 BETWEEN BI-POLAR DISORDERS AND OTHER MENTAL ILLNESSES MERELY ACTS TO REINFORCE THE LIMITS IMPOSED BY THE "SERIOUS PHYSICAL HARM" TEST I HAVE ALREADY DESCRIBED.

A FINAL CONCERN WHICH HAS BEEN RAISED WITH THE DEFINITION OF "MENTALLY ILL PERSON", IS THAT IT FAILS TO TAKE ACCOUNT OF SITUATIONS WHERE A PERSON'S CONDITION CAN SERIOUSLY DECLINE OVER A SHORT PERIOD OF TIME IF TREATMENT IS NOT PROVIDED. THE DEPARTMENT OF HEALTH ADVISES THAT THIS CONCERN OFTEN ARISES WHERE A PERSON BECOMES INCAPABLE OF LOOKING AFTER THEMSELVES AS A DIRECT RESULT OF THEIR MENTAL ILLNESS. HEALTH PROVIDERS WILL BE AWARE OF THE GRADUAL DECLINE IN THEIR PATIENT'S CONDITION DUE TO THIS "SELF-NEGLECT", BUT WILL BE UNABLE TO STEP IN AND TAKE



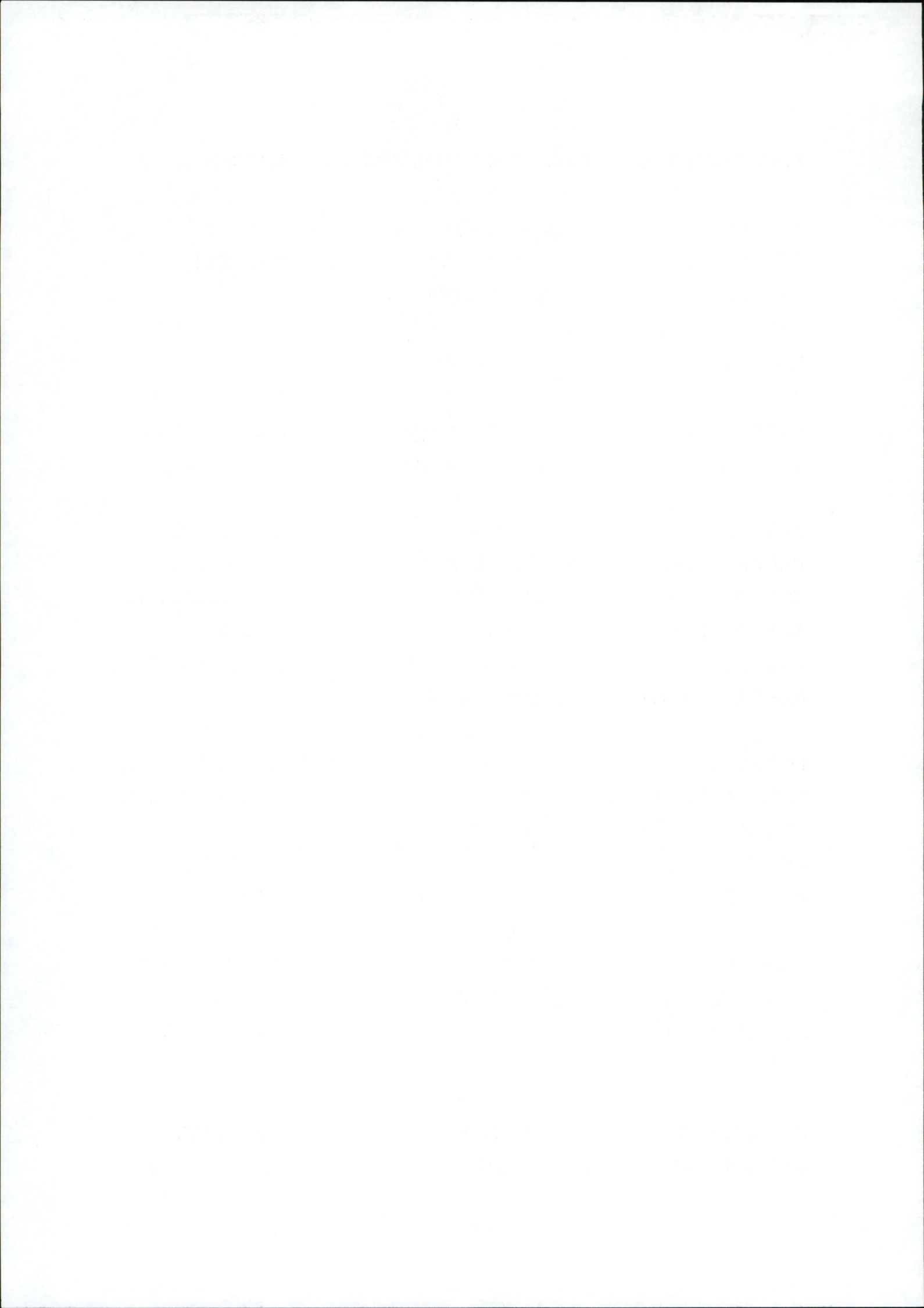
PREVENTATIVE ACTION UNTIL THE DETERIORATION IS VERY SERIOUS.

THE MENTAL HEALTH ACT IMPLEMENTATION MONITORING COMMITTEE CONSIDERED THE DEFINITION OF MENTALLY ILL PERSON AT SOME LENGTH. IT IS CLEAR FROM THEIR REPORT THAT THEY WERE AWARE SOME REVISION OF THE DEFINITION WAS NECESSARY. WHILE THE COMMITTEE WAS ULTIMATELY UNABLE TO REACH AGREEMENT AS THE BEST WAY TO PROCEED, THEIR DELIBERATIONS DID PROVIDE SOME GUIDANCE ON THE ISSUE, AND FORM THE BASIS OF THE AMENDMENTS TO THE DEFINITION OF "MENTALLY ILL PERSON" PROPOSED IN THIS BILL.

CLAUSE [1] OF PART 1.1 OF THE MENTAL HEALTH LEGISLATION AMENDMENT BILL WILL AMEND THE DEFINITION OF MENTALLY ILL PERSON TO ADDRESS EACH OF THE CONCERNS I HAVE OUTLINED. FIRST, IN LINE WITH ONE OF THE SUGGESTIONS MADE BY SOME MEMBERS OF THE MENTAL HEALTH ACT IMPLEMENTATION MONITORING COMMITTEE, THE CLAUSE WILL AMEND SECTION 9 BY REMOVING THE WORD "PHYSICAL" FROM THE PHRASE "SERIOUS PHYSICAL HARM". THE DISTINCTION BETWEEN BI-POLAR DISORDERS AND OTHER FORMS OF MENTAL ILLNESS WILL ALSO BE REMOVED.

AMENDING SECTION 9 IN THIS WAY WILL ALLOW OTHER FORMS OF HARM, SUCH AS DAMAGE TO REPUTATION, DAMAGE TO IMPORTANT PERSONAL RELATIONSHIPS AS WELL AS THE POSSIBILITY OF FINANCIAL HARM TO BE TAKEN INTO ACCOUNT NO MATTER WHAT FORM OF MENTAL ILLNESS A PERSON MAY HAVE.

SECTION 9(2) OF THE ACT WILL ALSO BE AMENDED TO CLARIFY THE MEANING OF THE PHRASE "CONTINUING CONDITION". THE NEW SUB-SECTION (2) WILL READ:



“IN CONSIDERING WHETHER A PERSON IS A MENTALLY ILL PERSON, THE CONTINUING CONDITION OF THE PERSON, INCLUDING ANY LIKELY DETERIORATION IN THE PERSON'S CONDITION AND THE LIKELY EFFECTS OF ANY SUCH DETERIORATION, ARE TO BE TAKEN INTO ACCOUNT.”

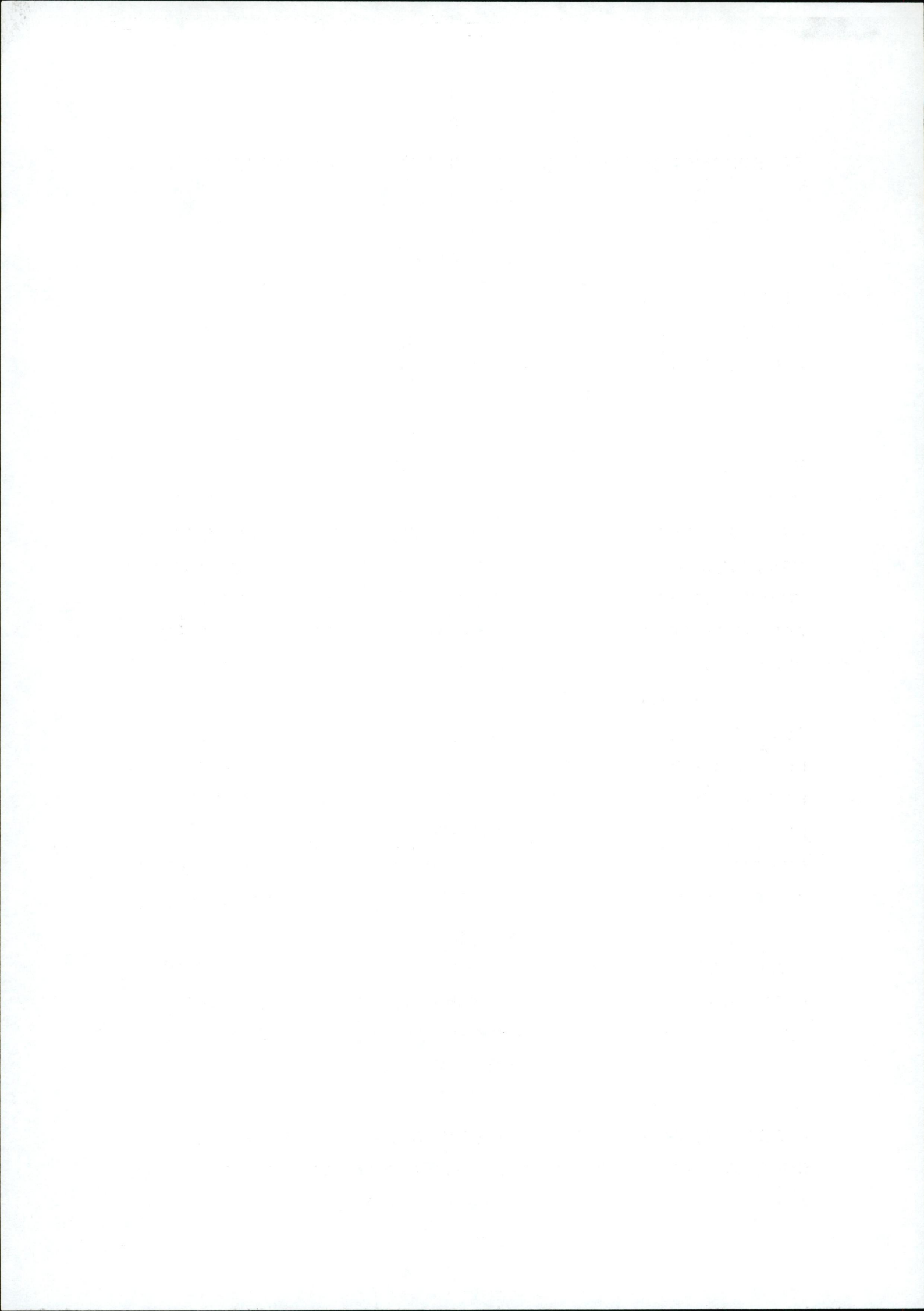
THIS WILL MAKE IT CLEAR THAT IN ASSESSING A PERSON'S CONTINUING CONDITION, REGARD CAN BE HAD TO THE POSSIBILITY OF DETERIORATION, THUS ALLOWING IMMEDIATE PREVENTATIVE ACTION TO BE TAKEN.

AS THE HOUSE WILL BE AWARE, THE FORMULATION OF THIS DEFINITION HAS OFTEN BEEN THE MOST DIFFICULT PART OF DEVELOPING MENTAL HEALTH LAW IN NSW. GIVEN THIS, THE GOVERNMENT'S PROPOSAL FOR REFORM IN THIS AREA WAS INITIALLY CANVASSED ONLY IN THE DISCUSSION PAPER ISSUED IN MAY OF 1996. IT WAS NOT INCLUDED IN THE EXPOSURE DRAFT BILL.

I AM HOWEVER ADVISED THAT NOTWITHSTANDING THE DIFFICULT ISSUES INVOLVED HERE, THE PUBLIC RESPONSE TO THE PROPOSED AMENDMENT OF THE DEFINITION HAS BEEN VERY POSITIVE. IN DEED, MANY SUBMISSIONS SUGGESTED THE VARIATION WAS LONG OVER DUE, AND WERE CRITICAL IT HAD NOT BEEN INCLUDED IN THE DRAFT BILL.

GIVEN THE STRENGTH OF THESE RESPONSES, THE DEPUTY PREMIER HAS INDICATED HE IS CONFIDENT THAT THE REVISED DEFINITION WILL ADDRESS VERY MANY OF THE CONCERNS WHICH HAVE BEEN RAISED ABOUT THE DEFINITION OVER RECENT YEARS.

CLAUSES [4] AND [5] OF PART 1.1 OF THE BILL MAKE CONSEQUENTIAL CHANGES TO THE DESCRIPTIONS OF THE DEFINITION OF “MENTALLY ILL



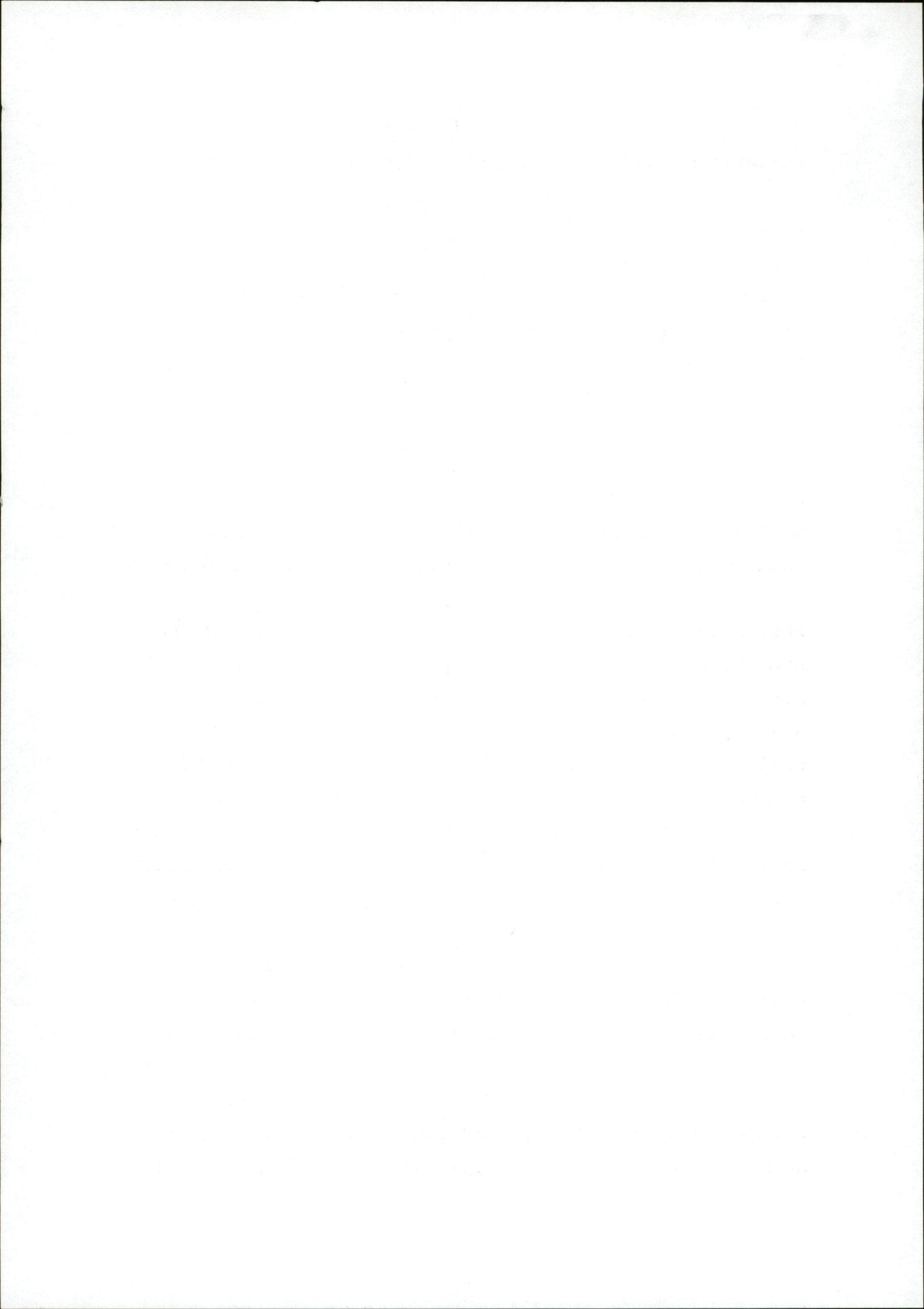
PERSONS SET OUT IN SCHEDULE 2 TO THE MENTAL HEALTH ACT.

CLAUSE [2] OF PART 1.1 OF THE MENTAL HEALTH LEGISLATION AMENDMENT BILL WILL REMOVE THE CURRENT QUALIFICATION IMPOSED ON POLICE POWERS UNDER SECTION 24 OF THE ACT.

SECTION 24 PROVIDES A MEANS WHEREBY POLICE CAN TAKE A PERSON WHO HAS A MENTAL ILLNESS TO A HOSPITAL. BEFORE THEY CAN RELY ON SECTION 24 HOWEVER, POLICE MUST HAVE REASONABLE GROUNDS TO BELIEVE THE PERSON IS COMMITTING OR HAS RECENTLY COMMITTED A CRIMINAL OFFENCE, OR THAT THE PERSON HAS, OR IS LIKELY TO ATTEMPT TO SERIOUSLY HURT THEMSELVES. AS THE LAW NOW STANDS, AN ADDITIONAL LIMITATION IS ALSO IMPOSED. THE POLICE CANNOT USE SECTION 24 UNLESS THE PERSON IS FOUND IN A PUBLIC PLACE.

AS A RESULT, POLICE ARE PRECLUDED FROM USING THESE SPECIAL POWERS WHEN A PERSON IS ON PRIVATE PREMISES. THEY MUST INSTEAD FALL BACK ON GENERAL POLICE POWERS TO RESPOND TO THE SITUATION, AND THE PERSON SUFFERING FROM A MENTAL ILLNESS WILL BE DEALT WITH IN THE SAME MANNER AS ANY OTHER ALLEGED CRIMINAL OFFENDER. THIS ORDINARILY MEANS THE PERSON WILL BE TAKEN INTO POLICE CUSTODY, WITH NO REFERRAL TO A HOSPITAL UNTIL THE PERSON IS SEEN BY A MAGISTRATE. THIS LENGTHY PROCESS WILL VERY OFTEN ONLY SERVE TO SUBSTANTIALLY INCREASE THE DISTRESS OF THE PERSON INVOLVED, AND DELAY THEIR ACCESS TO WHAT MAY OFTEN BE URGENTLY REQUIRED TREATMENT.

IN ORDER TO ADDRESS THIS, CLAUSE [2] OF PART 1.1 OF THE BILL REMOVES THE WORDS "A PUBLIC PLACE" FROM SECTION 24, AND



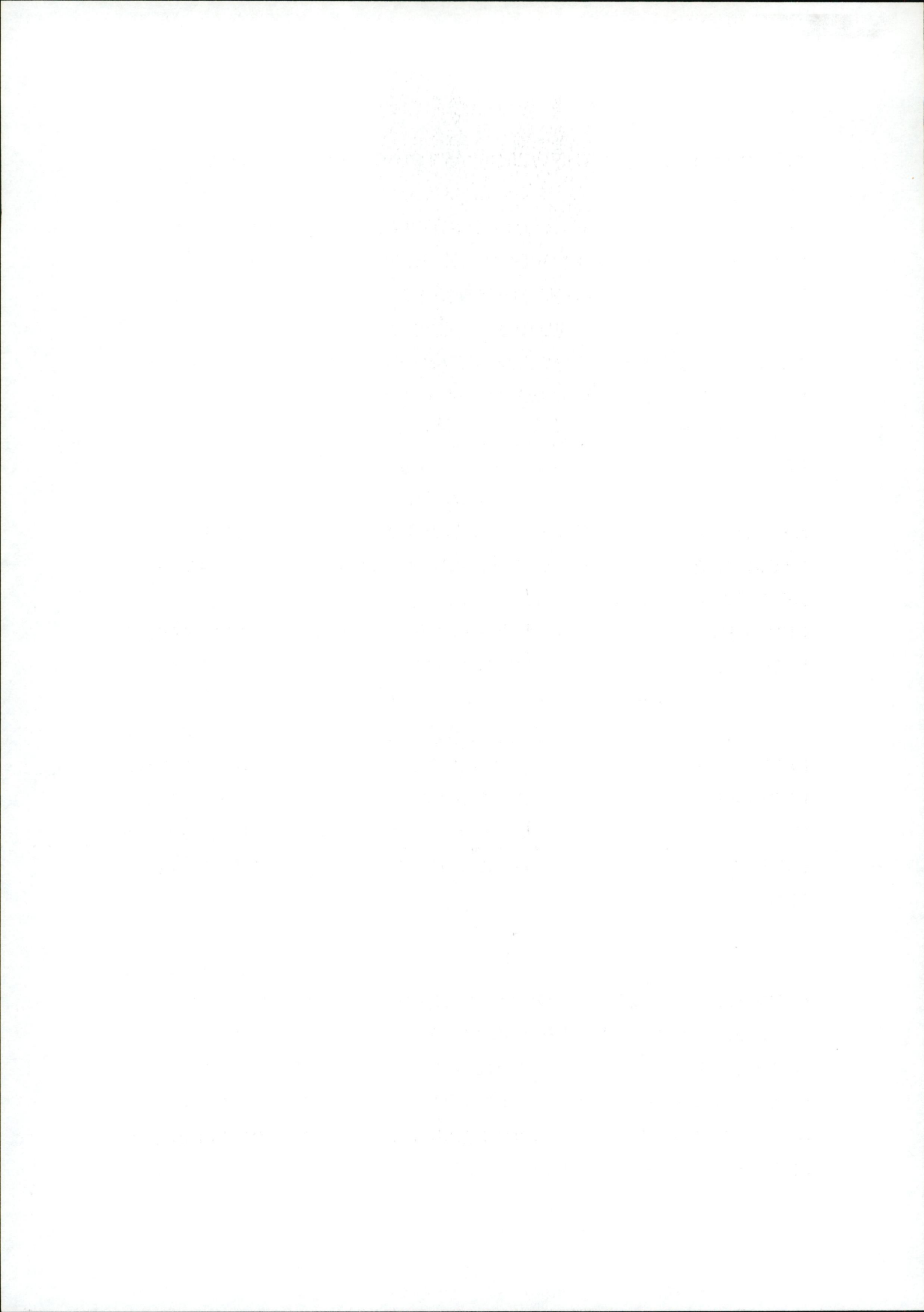
REPLACES THEM WITH THE WORDS "ANY PLACE".

WHILE THE MENTAL HEALTH ACT MONITORING AND REVIEW COMMITTEE DID NOT SUPPORT THIS PROPOSAL, THE DEPUTY PREMIER HAS ADVISED THAT HE IS CONVINCED THAT THE POSITIVE IMPACT IT WILL HAVE ON THE QUALITY OF CARE RECEIVED BY PERSONS SUFFERING FROM MENTAL ILLNESS, IS SUFFICIENT TO OVERRIDE ANY CONCERNS WHICH MAY EXIST IN RELATION TO THIS AMENDMENT.

CLAUSE [3] OF PART 1.1 OF THE MENTAL HEALTH LEGISLATION AMENDMENT BILL DEALS WITH THE POWER OF MAGISTRATES TO ADJOURN PROCEEDINGS BROUGHT BEFORE THEM UNDER THE MENTAL HEALTH ACT.

UNDER THE MENTAL HEALTH ACT, MAGISTRATES ARE REQUIRED TO VISIT HOSPITALS REGULARLY, USUALLY WEEKLY, TO REVIEW THE CASES OF PERSONS WHO HAVE BEEN INVOLUNTARILY ADMITTED. THIS JUDICIAL REVIEW IS DESIGNED TO PROTECT THE CIVIL LIBERTIES OF PERSONS DETAINED UNDER THE ACT. THE MAGISTRATE MAY ORDER DETENTION FOR FURTHER OBSERVATION OR TREATMENT, DISCHARGE - EITHER UNCONDITIONALLY OR ON A COMMUNITY TREATMENT ORDER - OR UNDER SECTION 42 OF THE ACT, MAY ORDER THE MATTER ADJOURNED FOR UP TO 14 DAYS.

THE ORIGINAL EXPOSURE DRAFT OF THE MENTAL HEALTH LEGISLATION AMENDMENT BILL SET OUT TWO AMENDMENTS TO SECTION 42. ONE, TO EXTEND THE PERIOD OF TIME SUCH AN ADJOURNMENT CAN BE MADE FROM 14 TO 28 DAYS. OVERALL, THE SUBMISSIONS RECEIVED IN RESPONSE TO THE DISCUSSION PAPER SHOWED SUBSTANTIAL OPPOSITION TO THIS PROPOSAL. IN PARTICULAR, CONCERNS WERE EXPRESSED THAT THIS CHANGE WOULD CREATE A SITUATION WHERE A



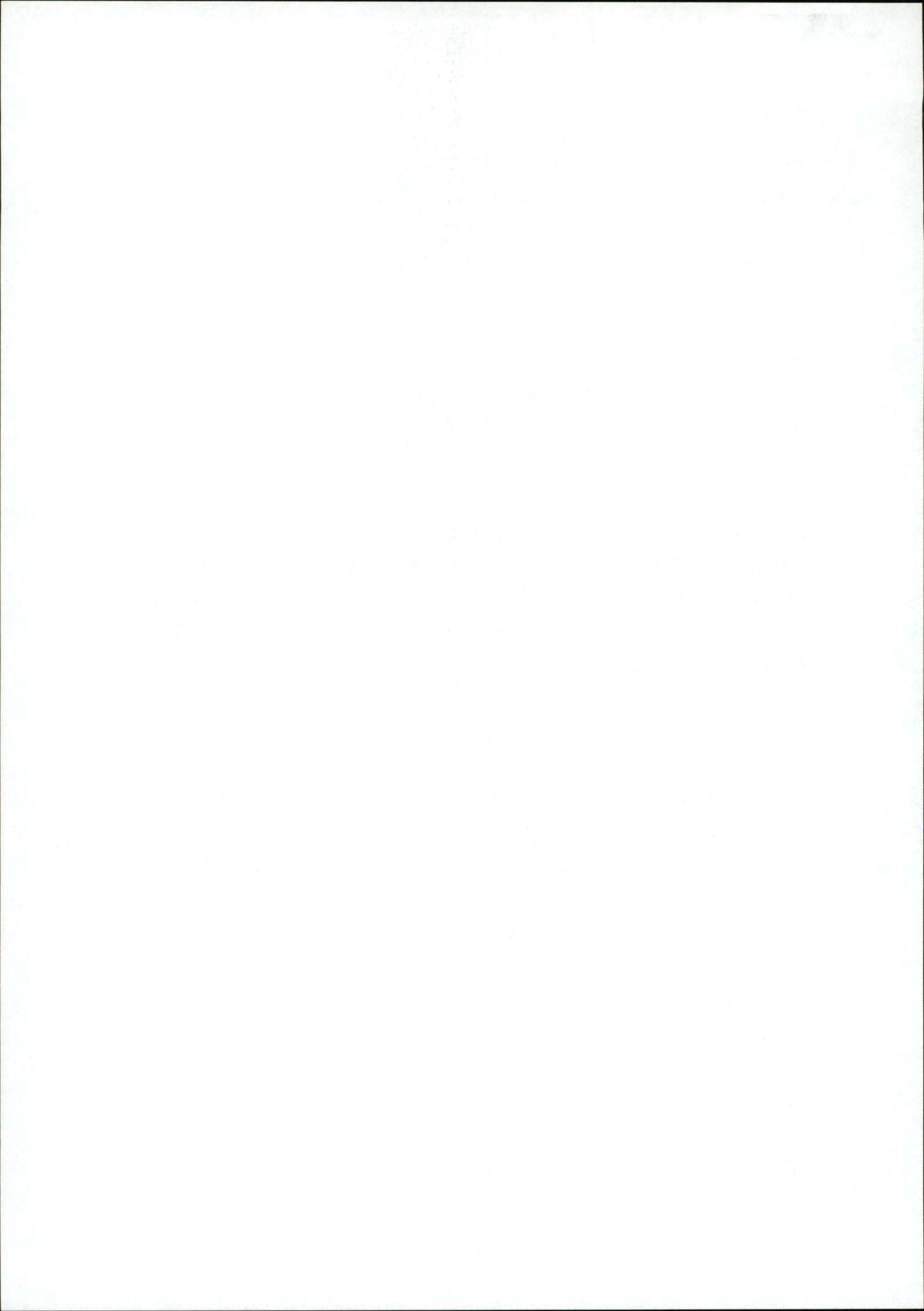
PERSON COULD AUTOMATICALLY BE DETAINED IN A HOSPITAL, WITHOUT A JUDICIAL DETERMINATION OR RECONSIDERATION OF THEIR SITUATION, FOR 28 DAYS. THIS RESULT IS CONTRARY THE OBJECTS OF THE ACT WHICH SEEK TO ENSURE SUCH A REVIEW OCCURS AS SOON AS POSSIBLE.

THE GOVERNMENT HAS TAKEN ON BOARD THESE CONCERNS AND THE BILL BEFORE THE HOUSE DOES NOT INCLUDE ANY AMENDMENT TO EXTEND THE LENGTH OF TIME A MAGISTRATE MAY ADJOURN PROCEEDINGS.

A SECOND AMENDMENT PROPOSED TO SECTION 42, TO REQUIRE A MAGISTRATE TO CONSIDER ALL CERTIFICATES OFFERED DURING THE HEARING AND TO ACT IN THE BEST INTERESTS OF THE PATIENT, RECEIVED SUBSTANTIAL COMMUNITY SUPPORT, AND HAS THEREFORE BEEN RETAINED IN CLAUSE [3] OF THE BILL.

PART 1.2 OF THE MENTAL HEALTH LEGISLATION AMENDMENT BILL DEALS WITH AMENDMENTS RELATING TO FORENSIC PATIENTS. AS HONOURABLE MEMBERS MAY BE AWARE, A FORENSIC PATIENT IS GENERALLY A PERSON WITH A MENTAL ILLNESS, WHO HAS ALSO BEEN SUBJECT TO CRIMINAL PROCEEDINGS.

THE MENTAL HEALTH ACT MONITORING AND REVIEW COMMITTEE MADE A NUMBER OF RECOMMENDATIONS DIRECTED AT REMOVING PROVISIONS IN THE MENTAL HEALTH ACT WHICH UNNECESSARILY DISCRIMINATE AGAINST FORENSIC PATIENTS. EACH OF THESE RECOMMENDATIONS WAS INCLUDED IN THE EXPOSURE DRAFT BILL, AND EACH WAS GENERALLY SUPPORTED IN THE SUBMISSIONS RECEIVED DURING THE CONSULTATION PERIOD.



AS HONOURABLE MEMBERS MAY BE AWARE, THE GOVERNMENT'S PROPOSALS TO ADDRESS THE ISSUES OF DISCRIMINATION AGAINST PERSONS IN THE CRIMINAL JUSTICE SYSTEM RESULTED IN CONSIDERABLE DEBATE IN THE OTHER PLACE.

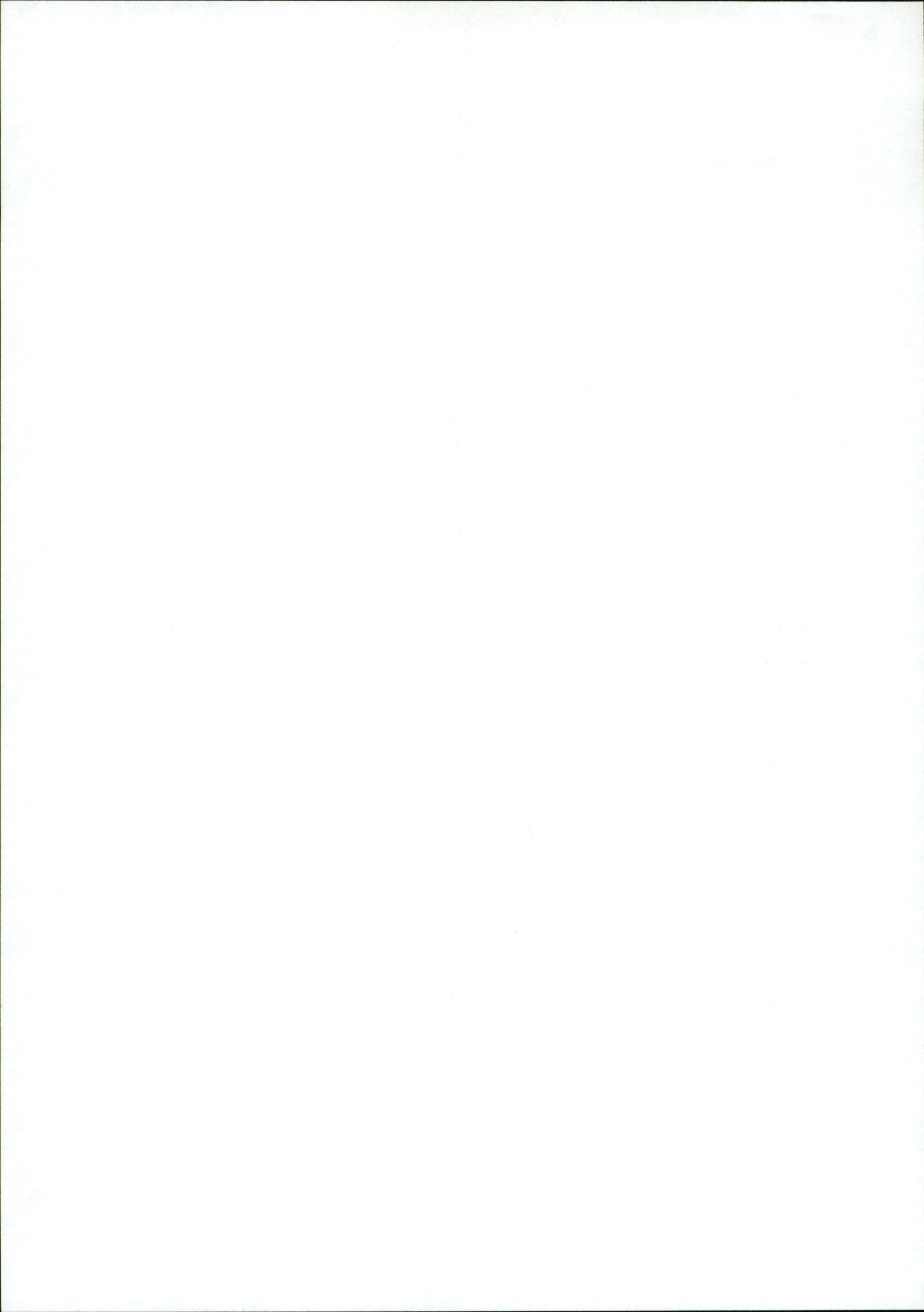
IN PARTICULAR CONCERNS WERE RAISED THAT THE AMENDMENT SOME HOW IMPEDED OR REMOVED THE RIGHT OF THE EXECUTIVE TO FINALLY DETERMINE THE ISSUE OF WHEN SUCH INDIVIDUALS SHOULD BE RELEASED FROM CUSTODY.

WHILE ULTIMATELY I AM ADVISED AND WITH THE ADVICE OF THE PARLIAMENTARY COUNSEL, IT WAS ACCEPTED THAT THIS WAS NOT THE CASE, AND THAT THE RIGHTS OF THE EXECUTIVE REMAIN INTACT, THE LEVEL OF CONCERN WAS SUCH THAT MY COLLEAGUE, THE DEPUTY PREMIER INTRODUCED AMENDMENTS WHICH ENSURED THAT THE STATUS QUO WILL BE MAINTAINED, THIS BEING IT SEEMED, THE ONLY BASIS ON WHICH THE IMPORTANT PRINCIPLE OF BIPARTISAN SUPPORT FOR THESE PROPOSALS COULD BE RETAINED.

PART 1.3 OF THE BILL MAKES AMENDMENTS TO PROVISIONS RELATING TO HEALTH CARE AGENCIES AND COMMUNITY TREATMENT ORDERS. CLAUSE [1] MAKES A MINOR AMENDMENT TO ENSURE CONSISTENCY BETWEEN THE PROVISIONS RELATING TO THE INITIAL APPOINTMENT OF A DIRECTOR OF A HEALTH CARE AGENCY AND SUBSEQUENT RE-APPOINTMENTS.

CLAUSES [2], [3] AND [4] OF THIS PART IMPLEMENT THE RECOMMENDATIONS MADE BY THE MENTAL HEALTH ACT IMPLEMENTATION MONITORING COMMITTEE IN RESPECT OF THE DURATION OF, AND REVIEW OF COMMUNITY TREATMENT ORDERS.

THE PRIMARY AMENDMENT PROPOSED HERE IS TO EXTEND THE MAXIMUM

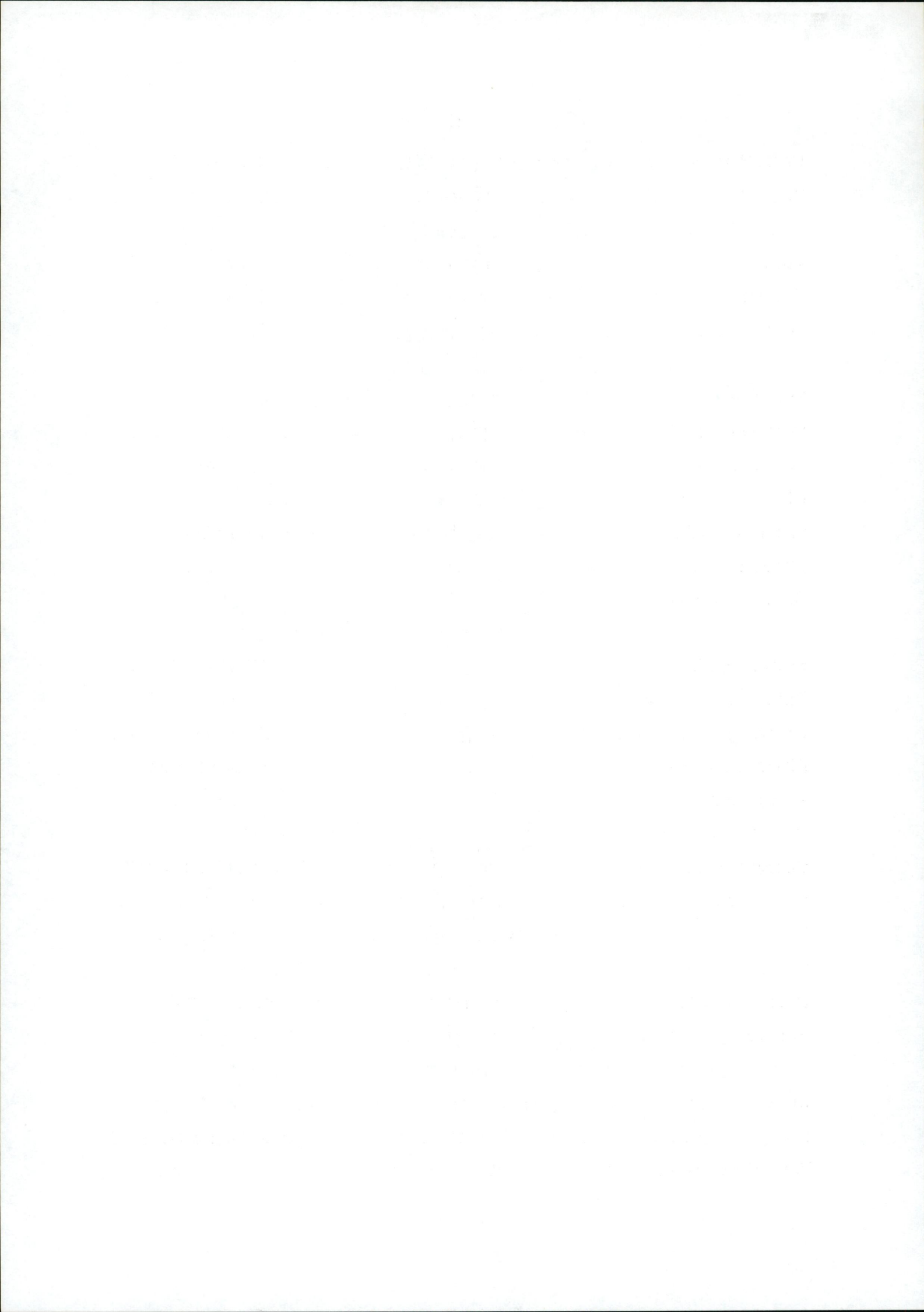


PERIOD OVER WHICH A COMMUNITY TREATMENT ORDER CAN OPERATE FROM 3 TO 6 MONTHS. THIS WILL MAKE THE MAXIMUM LENGTH OF COMMUNITY TREATMENT ORDERS CONSISTENT WITH THE MAXIMUM PERIOD A COMMUNITY COUNSELLING ORDER CAN BE MADE. THE MONITORING COMMITTEE MADE THEIR RECOMMENDATION IN RESPONSE TO SUBMISSIONS WHICH INDICATED THAT A 3 MONTH ORDER WAS OFTEN FAR TOO SHORT A TIME FOR EFFECTIVE TREATMENT IN THE COMMUNITY. THE COMMITTEE'S AMENDMENT, INCLUDED IN FULL IN THE PROVISIONS IN THE BILL, ALSO CONTAINS PROVISIONS ENSURING ANY PATIENT DETAINED AFTER A BREACH OF A COMMUNITY TREATMENT ORDER WILL HAVE THE SAME RIGHT OF REVIEW OF THEIR CASE BY THE MENTAL HEALTH REVIEW TRIBUNAL AS PATIENTS DETAINED AFTER A MAGISTRATE'S ENQUIRY.

PART 1.4 OF THE BILL DEALS WITH EMERGENCY ELECTRO CONVULSIVE THERAPY AND SPECIAL MEDICAL TREATMENT.

AT PRESENT EMERGENCY ECT MAY BE AUTHORISED WHERE TWO DOCTORS, ONE OF WHOM MUST BE A PSYCHIATRIST, BELIEVE IT TO BE NECESSARY.

WHILE THE MONITORING COMMITTEE CONCLUDED THAT A CLINICAL NEED FOR EMERGENCY ECT REMAINED, THEY ALSO EXPRESSED CONCERN THAT THE ONLY INVOLVEMENT FOR THE MENTAL HEALTH REVIEW TRIBUNAL IN THE EMERGENCY PROCESS WAS *EX POST FACTO*. THEIR RECOMMENDATIONS, INCLUDED IN THE EXPOSURE DRAFT BILL RELEASED IN MAY 1996, PROVIDED AN ADDITIONAL PROTECTION BY REQUIRING THAT BEFORE EMERGENCY ECT COULD BE GIVEN, THE TREATMENT SHOULD BE APPROVED BY THE PRESIDENT OR DEPUTY PRESIDENT OF THE TRIBUNAL, OR A FULL PANEL OF THE TRIBUNAL WHERE ASSEMBLING A FULL PANEL WAS "PRACTICABLE".

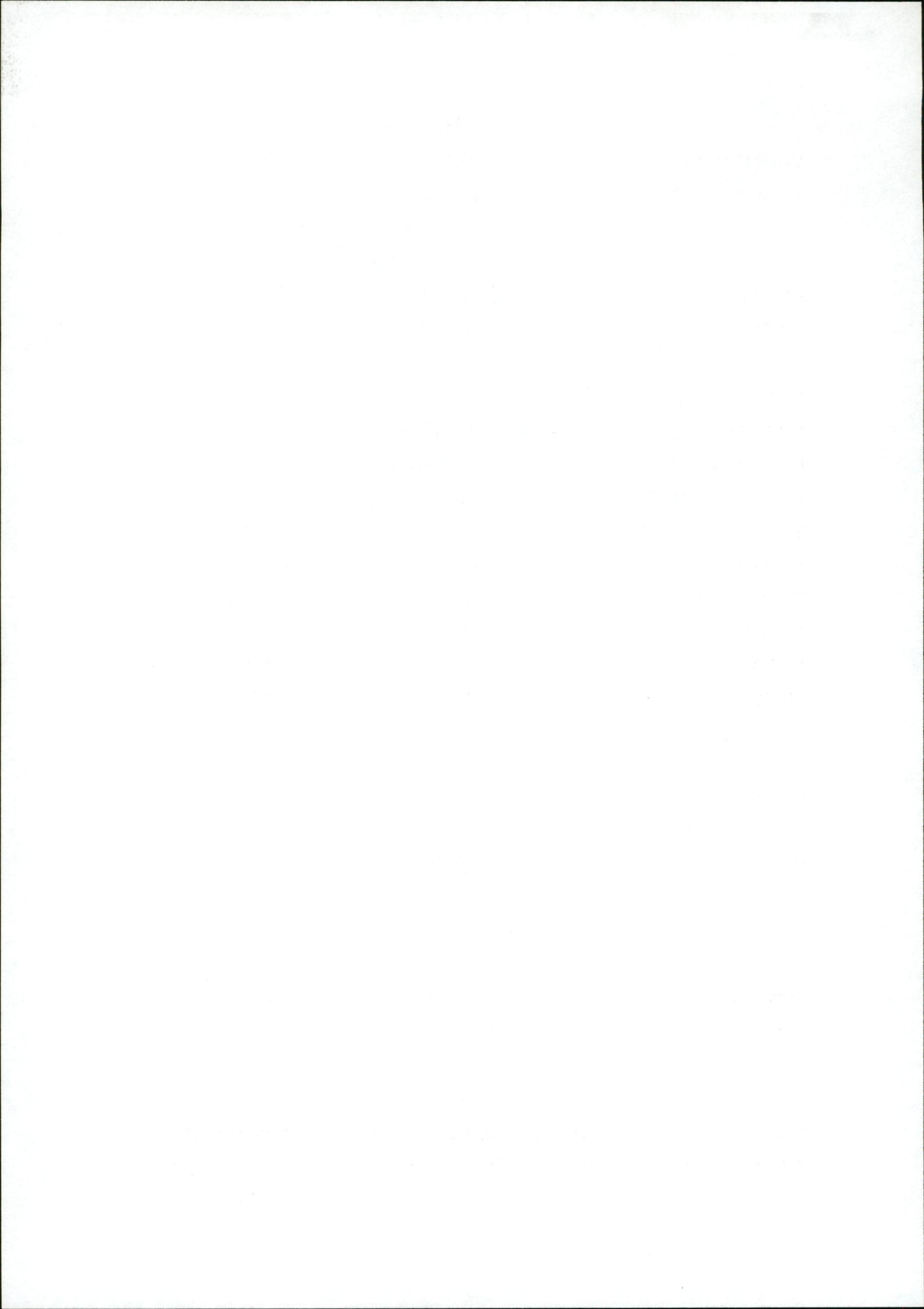


UNDER THIS PROPOSAL, THE ONLY DIFFERENCE BETWEEN "NORMAL" AND "EMERGENCY" ECT WOULD BE THE ABILITY TO TAKE THE MATTER BEFORE A SINGLE MEMBER OF THE TRIBUNAL RATHER THAN THE WHOLE PANEL. THIS ALTERNATIVE WAS PROPOSED IN RECOGNITION OF THE FACT THAT WHERE A MATTER IS URGENT, DIFFICULTIES MAY ARISE IN CONVENING A FULL PANEL TO HEAR THE MATTER IN THE TIME AVAILABLE.

FEW SUBMISSIONS RECEIVED ON THE DISCUSSION PAPER FULLY SUPPORTED THIS RECOMMENDATION. SOME SUBMISSIONS SUGGESTED A BETTER APPROACH WOULD BE TO CONSIDER REDEFINING THE MEANING OF "EMERGENCY". OTHER SUBMISSIONS, GENERALLY FROM CLINICIANS WITH EXPERIENCE IN THE AREA, OPPOSED THE INVOLVEMENT OF A SINGLE TRIBUNAL MEMBER IN WHAT WAS SEEN AS ESSENTIALLY A CLINICAL DECISION.

SINCE THE EXPOSURE DRAFT WAS RELEASED, DISCUSSIONS HAVE ALSO BEEN HELD BETWEEN THE DEPARTMENT OF HEALTH AND THE PRESIDENT OF THE TRIBUNAL, MR ROBERT HAYES. I AM ADVISED THAT MR HAYES HAS INDICATED THAT THE MAJORITY OF ECT MATTERS NOW DEALT WITH BY THE TRIBUNAL ARE MANAGED PROMPTLY BY MEANS OF TELEPHONE HEARINGS. THE TRIBUNAL HAS ALSO RECENTLY ACQUIRED VIDEO-CONFERENCING FACILITIES, FURTHER ENHANCING THEIR FLEXIBILITY TO DEAL QUICKLY WITH URGENT SITUATIONS. AS A RESULT OF RELIANCE ON THIS TECHNOLOGY, A FULL PANEL OF THE TRIBUNAL WILL BE ABLE TO DEAL WITH ANY EMERGENCIES PROMPTLY, MEANING THE NEED TO DISTINGUISH BETWEEN "EMERGENCY" AND "OTHER" ECT NO LONGER EXISTS.

CLAUSE [1] OF PART 1.4 OF THE BILL THEREFORE REMOVES THE PROVISIONS RELATING TO EMERGENCY ECT CURRENTLY IN THE ACT. THIS WILL MEAN THAT APPLICATIONS FOR EMERGENCY ECT WILL BE DEALT



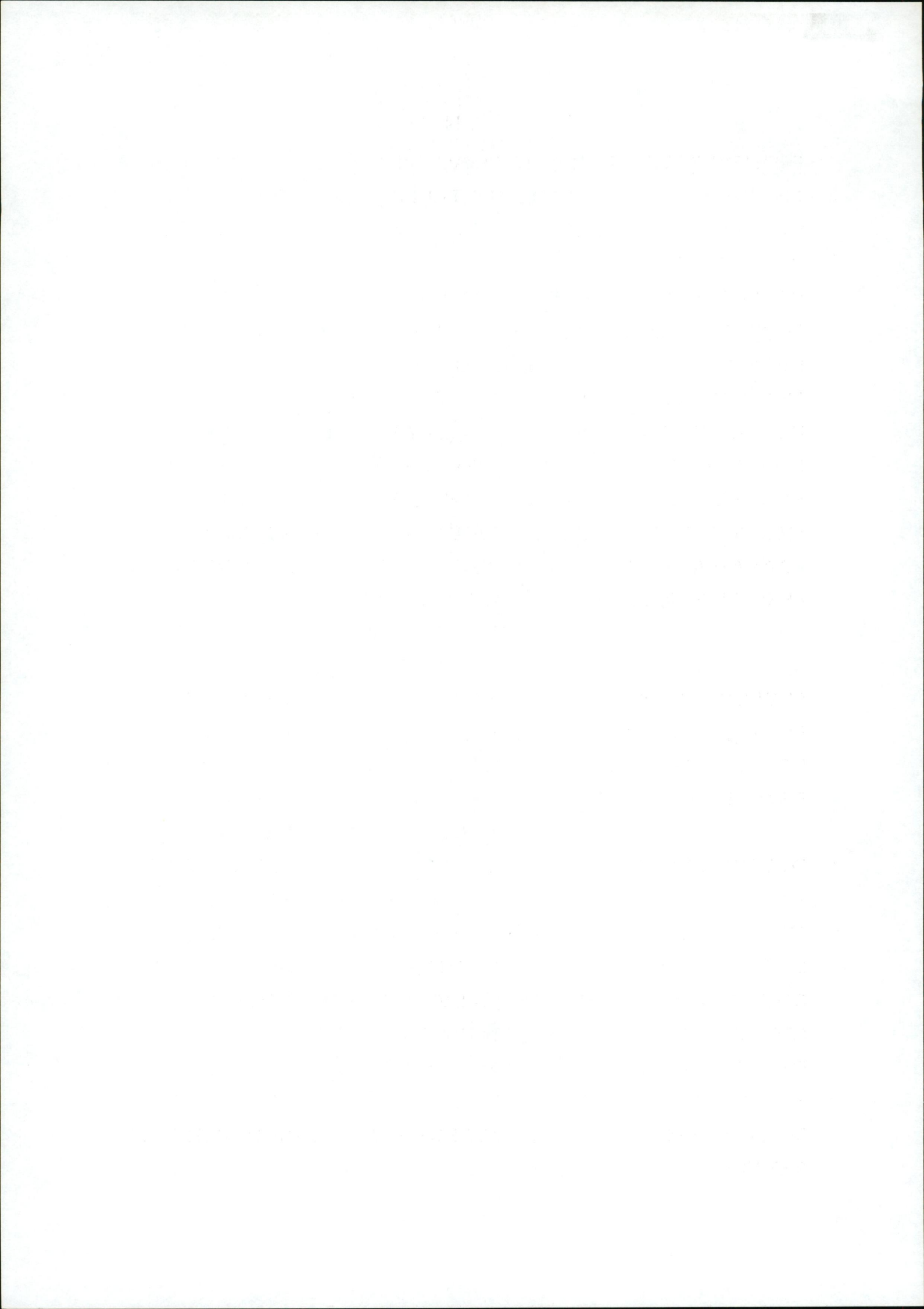
WITH UNDER THE GENERAL ECT PROVISIONS, AND SUBJECT TO THE SAME REQUIREMENTS, AND ACCOUNTABILITY MECHANISMS.

CLAUSES [2] AND [3] OF PART 1.4 OF THE BILL INSERT PROVISIONS IN THE ACT TO ENSURE THE POWERS OF THE TRIBUNAL TO CONSENT TO SPECIAL MEDICAL TREATMENT, ARE GENERALLY THE SAME AS THOSE EXERCISED BY THE GUARDIANSHIP BOARD FOR PERSONS WHO ARE NOT DETAINED IN HOSPITAL. THESE AMENDMENTS REFLECT THE OVERALL THRUST OF THE MONITORING COMMITTEE RECOMMENDATIONS IN THIS AREA. I WOULD HOWEVER, DRAW THE HONOURABLE MEMBERS ATTENTION TO THE FACT THAT THE MONITORING COMMITTEE ALSO RECOMMENDED THAT THE ACTUAL POWER TO CONSENT TO SPECIAL MEDICAL TREATMENT SHOULD BE REMOVED FROM THE TRIBUNAL AND VESTED EXCLUSIVELY IN THE GUARDIANSHIP BOARD. THIS AMENDMENT HAS NOT BEEN INCLUDED, IN RECOGNITION OF THE SPECIALIST KNOWLEDGE AND UNDERSTANDING OF TRIBUNAL IN RELATION TO PERSONS WITH MENTAL ILLNESSES.

I NOW TURN TO PARTS 1.5 OF THE BILL, WHICH SET OUT AMENDMENTS TO THE OFFICIAL VISITOR PROVISIONS, AND 1.6, WHICH CREATES A PROCESS FOR INTERSTATE TRANSFER OF PATIENTS.

THESE AMENDMENTS DID NOT ARISE FROM THE DELIBERATIONS OF THE MENTAL HEALTH ACT IMPLEMENTATION MONITORING COMMITTEE. THE AMENDMENTS RELATING TO OFFICIAL VISITORS RESULT FROM A SEPARATE REVIEW AND CONSULTATION PROCESS CONDUCTED BY THE PRINCIPAL OFFICIAL VISITOR OVER THE LAST 12 MONTHS.

THE DEPUTY PREMIER HAS INDICATED THAT HE IS CONFIDENT THE CHANGES PROPOSED HERE WILL RESULT IN A MORE EFFECTIVE AND

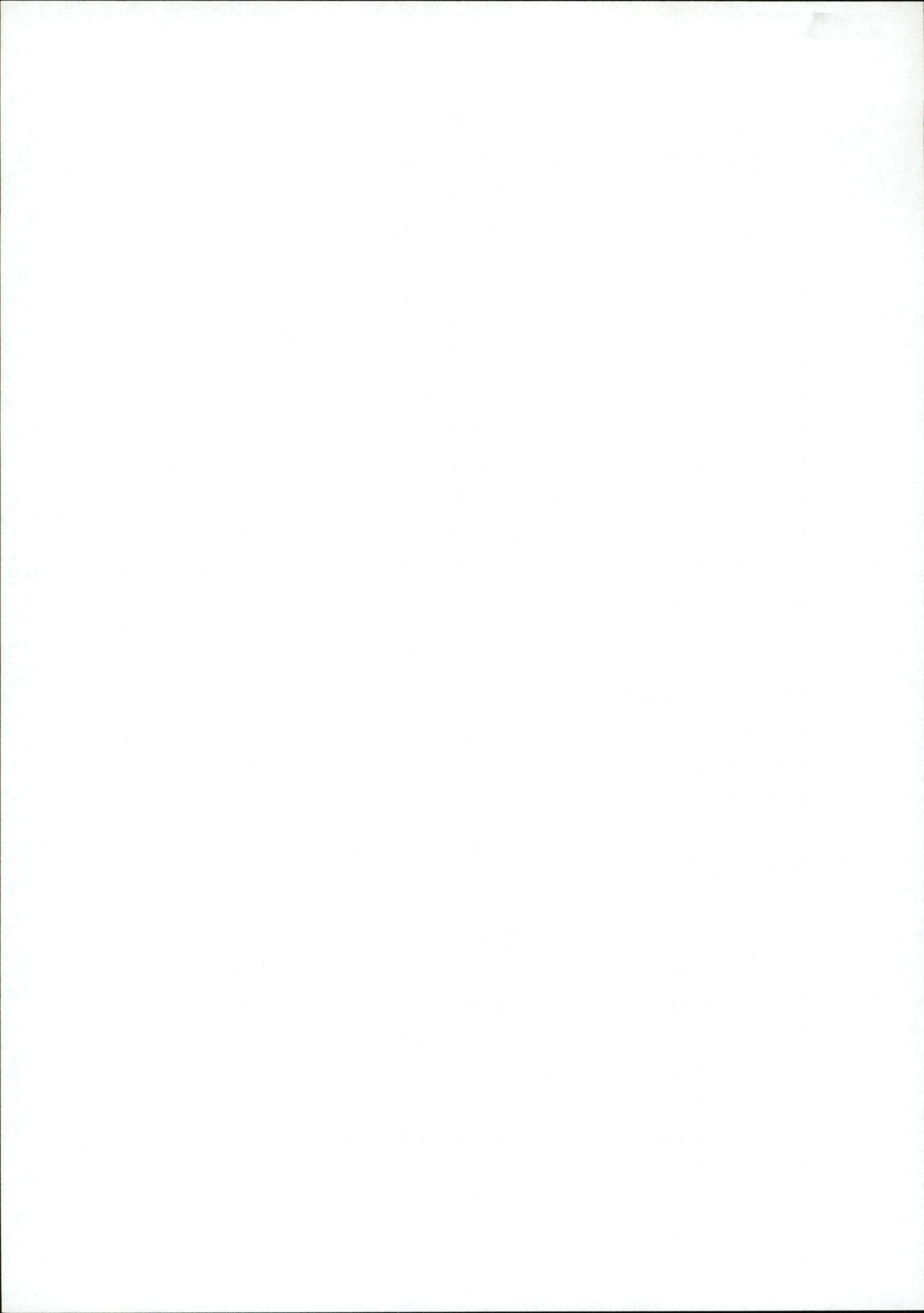


EFFICIENT SERVICE FROM OFFICIAL VISITORS.

CLAUSE [1] OF PART 1.5 DEALS WITH THE APPOINTMENT OF OFFICIAL VISITORS. THE 1990 ACT REPEATED PROVISIONS FROM 1983 AND 1958 MENTAL HEALTH LEGISLATION APPOINTING OFFICIAL VISITORS TO SPECIFIC HOSPITALS. THIS REFLECTS THE HISTORICAL POSITION OF PSYCHIATRIC HOSPITALS WHICH, UNTIL 1987 WERE ADMINISTERED AS SEPARATE INSTITUTIONS. SINCE THAT TIME HOWEVER, PSYCHIATRIC UNITS HAVE BEEN INCORPORATED INTO AREA AND RURAL HEALTH SERVICES, BETTER REFLECTING THE PRACTICAL REALITIES OF HOW STATE HEALTH SERVICES ARE ADMINISTERED. THE PROPOSED AMENDMENT WILL EFFECTIVELY APPOINT A PANEL OF OFFICIAL VISITORS TO AN AREA OR RURAL HEALTH SERVICE THUS ENSURING FLEXIBILITY IN ARRANGING VISITS TO GAZETTED UNITS IN ANY AREA.

CLAUSES [2] AND [3] OF PART 1.5 AMENDS SECTION 230 OF THE ACT TO REQUIRE VISITS TO HEALTH CARE AGENCIES ONLY ONCE EVER SIX MONTHS. THE REQUIREMENT FOR MONTHLY VISITS TO HOSPITALS REMAINS.

THIS AMENDMENT RECOGNISES THE PRACTICAL DIFFERENCES BETWEEN THE OPERATION OF A HOSPITAL - WHERE PATIENTS ARE SUBJECT TO SUBSTANTIAL INTERFERENCE WITH THEIR RIGHTS AND WISHES, BEING INVOLUNTARILY DETAINED IN INSTITUTIONALISED CARE - AND HEALTH CARE AGENCIES - RESPONSIBLE FOR ADMINISTERING ORDERS OF 3-6 MONTHS FOR PERSONS WHO ARE NOT OTHERWISE SUBJECT TO RESTRAINT, AND WHO LIVE IN THE COMMUNITY. REQUIRING LESS FREQUENT VISITS TO HEALTH CARE AGENCIES REFLECTS THE PRACTICAL DIFFERENCES IN THE OPERATION OF HOSPITALS AND THE HEALTH CARE AGENCIES.



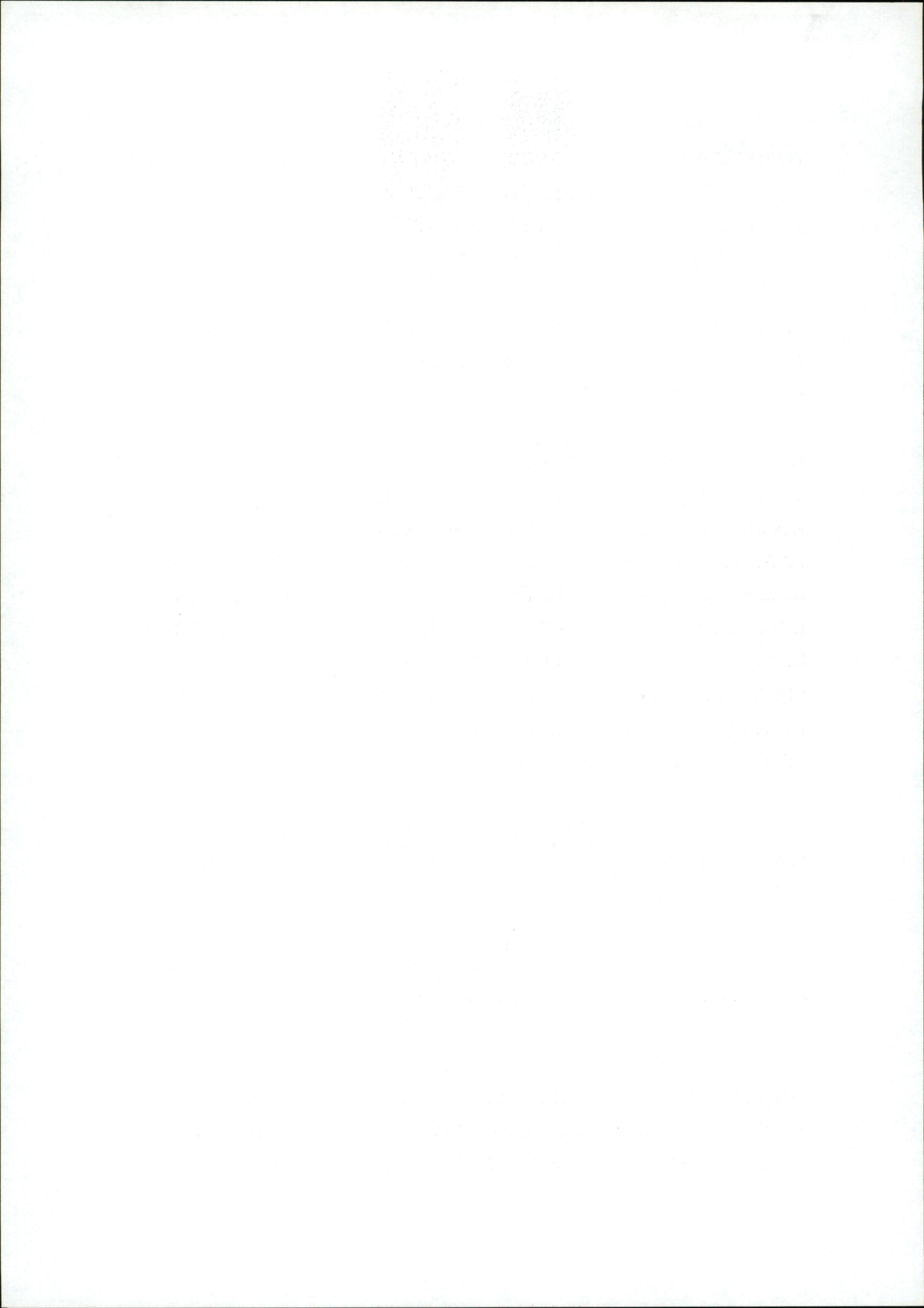
CURRENTLY SECTION 234 REQUIRES THAT A PATIENT'S REQUEST TO SEE AN OFFICIAL VISITOR MUST BE ADDRESSED WITHIN 7 DAYS. THE AMENDMENT WILL REDUCE THIS TO 2 DAYS, CREATING A MORE MEANINGFUL RESPONSE TIME FRAME.

FINALLY CLAUSES [5] AND [6] OF PART 1.5 VARY THE PROVISIONS RELATING TO THE TERMINATION OF THE APPOINTMENT OF AN OFFICIAL VISITOR.

CURRENTLY CLAUSE 3 OF SCHEDULE 5 TO THE ACT AUTOMATICALLY REMOVES AN OFFICIAL VISITOR FROM OFFICE IF THAT PERSON BECOMES A "MENTALLY INCAPACITATED PERSON". THE OFFICIAL VISITORS PROGRAM IS A CONSUMER ADVOCACY PROGRAM WITH A LARGE NUMBER OF APPOINTEES BEING CONSUMERS OF MENTAL HEALTH SERVICES. SOME OF THESE APPOINTEES MAY, FROM TIME TO TIME, HAVE A RELAPSE IN THEIR ILLNESS WHICH MAKES THEM "MENTALLY INCAPACITATED" FOR A SHORT PERIOD. THE EXISTING PROVISIONS IN THE ACT COMPLETELY REMOVE SUCH INDIVIDUALS FROM THEIR OFFICIAL VISITORS APPOINTMENT IRRESPECTIVE OF THE LENGTH OR NATURE OF THEIR ILLNESS. THIS AMENDMENT IS INTENDED TO PRESERVE THESE APPOINTMENTS, BY SIMPLY SUSPENDING THEM FOR THE PERIOD OF THE "MENTAL INCAPACITY".

PART 1.6 OF THE BILL INSERTS A NEW CHAPTER 10A INTO THE MENTAL HEALTH ACT TO ALLOW FOR THE TRANSFER OF PATIENTS BETWEEN STATES.

THE NEED FOR SOME SORT OF MECHANISM TO ALLOW PATIENTS TO BE TRANSFERRED BETWEEN STATES, OR IN BORDER AREAS, TO ALLOW THEM TO OBTAIN TREATMENT ACROSS STATE BORDERS HAS BEEN



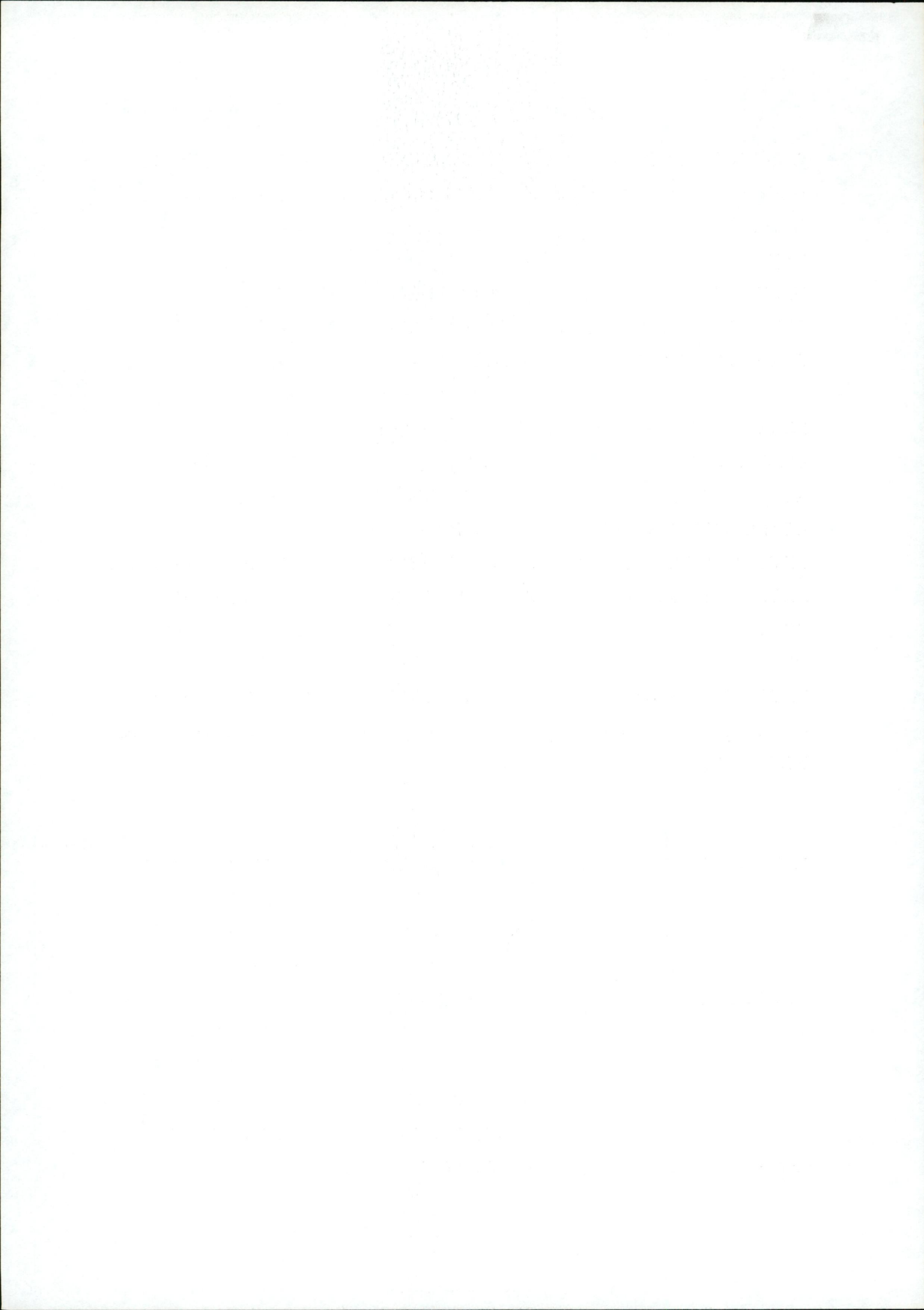
ACKNOWLEDGED FOR SOME TIME. CONSIDERABLE EFFORT HAS BEEN EXPENDED BY THE AUSTRALIAN HEALTH MINISTER'S COUNCIL TO ACHIEVE SOME SORT OF UNIFORM SCHEME.

MOST RECENTLY THE DEPARTMENT OF HEALTH HAS BEEN NEGOTIATING THESE ISSUES DIRECTLY WITH THE VICTORIAN HEALTH AUTHORITIES. THE AMENDMENTS IN THIS BILL ARE LARGELY A RESULT OF THOSE NEGOTIATIONS. I AM ADVISED THAT THE VICTORIAN PARLIAMENT HAS ALREADY PASSED SIMILAR PROVISIONS, ONCE THE BILL HAS BEEN ENACTED. THE DEPUTY PREMIER HAS ALSO INDICATED THAT HE INTENDS TO WRITE TO HEALTH MINISTERS IN OTHER STATES TO SEEK COMPLEMENTARY LEGISLATION IN OTHER JURISDICTIONS.

FINALLY, I WOULD DRAW THE HOUSE'S ATTENTION TO SCHEDULE 2 OF THE BILL, WHICH SEEKS TO AMEND SECTION 39 OF THE MENTAL HEALTH (CRIMINAL PROCEDURE) ACT 1990. UNDER SECTION 39 OF THE MENTAL HEALTH (CRIMINAL PROCEDURE) ACT, A PERSON FOUND NOT GUILTY OF A CRIMINAL OFFENCE ON THE BASIS OF MENTAL ILLNESS, MUST BE HELD "IN STRICT CUSTODY" UNTIL THEIR CASE IS REVIEWED BY THE MENTAL HEALTH REVIEW TRIBUNAL.

MEMBERS OF THE MENTAL HEALTH ACT IMPLEMENTATION AND MONITORING COMMITTEE WERE CONCERNED THAT THIS COULD HAVE EXTREMELY UNFAIR CONSEQUENCES WHERE THE PERSON IN QUESTION HAD PREVIOUSLY BEEN ON BAIL IN THE COMMUNITY. THE COMMITTEE THEREFORE RECOMMENDED SUBSTANTIAL CHANGES TO THE LAW, TO ALLOW BAIL TO CONTINUE AFTER THE COURT FINDING.

THE AIM OF THE MONITORING COMMITTEE'S RECOMMENDATION WAS TO RELIEVE THE DISTRESS WHICH MAY OCCUR WHERE A PERSON ON BAIL PRIOR TO THE COURT FINDING, CAN BE SUDDENLY REMOVED TO PRISON PENDING THE OUTCOME OF REVIEW BY THE TRIBUNAL OF THEIR CARE



AND TREATMENT NEEDS. AT THE SAME TIME, HOWEVER, COMPETING INTERESTS MUST ALSO BE RECOGNISED. ONCE A COURT HAS DETERMINED THE PERSON IS NOT GUILTY ON THE BASIS OF MENTAL ILLNESS, THE QUESTION IS RAISED AS TO THE CURRENT CARE NECESSARY FOR THE PERSON. STRONG ARGUMENTS EXIST THAT THE PERSON SHOULD BE HELD UNTIL AN EXPERT ASSESSMENT OF THIS ISSUE CAN BE MADE BY THE TRIBUNAL.

IN ORDER TO BALANCE THESE INTERESTS, THE AMENDMENT IN BOTH THE EXPOSURE DRAFT AND THE BILL CURRENTLY BEFORE THE HOUSE, SIMPLY REMOVES THE REQUIREMENT THAT THE PERSON BE ORDERED TO BE KEPT IN "STRICT CUSTODY". WHILE A PERSON WILL STILL BE REQUIRED TO BE DETAINED UNTIL THE TRIBUNAL CAN ACT, COURTS WILL HAVE GREATER FLEXIBILITY TO ORDER A PERSON HELD IN A HOSPITAL, RATHER THAN A PRISON.

CLAUSES [1] AND [4] OF PART 1.2 OF THE MENTAL HEALTH LEGISLATION AMENDMENT BILL MAKE COGNATE CHANGES TO SECTIONS REFERRING TO SECTION 39.

AS I INDICATED AT THE BEGINNING OF THIS SPEECH, THE CURRENT BILL HAS BEEN DEVELOPED AS PART OF A PROCESS OF REVIEW AND REFORM THAT HAS BEEN ONGOING SINCE THE NEW MENTAL HEALTH LEGISLATION WAS INTRODUCED IN 1990. MENTAL HEALTH LAW THROUGHOUT AUSTRALIA REMAINS AN AREA SUBJECT TO CONTINUING DEVELOPMENT AND REFORM, AND IS AN AREA WHERE NEW SOUTH WALES CAN BE SEEN AS ONE OF THE LEADERS IN THE REFORM PROCESS. THIS BILL IS CONSIDERED TO BE ANOTHER STEP IN THIS PROCESS. THE DEPUTY PREMIER HAS GIVEN AN ASSURANCE THAT A COMPREHENSIVE EDUCATION PROGRAM WILL ALSO ACCOMPANY THESE CHANGES.

I COMMEND THE BILL TO THE HOUSE.



New South Wales

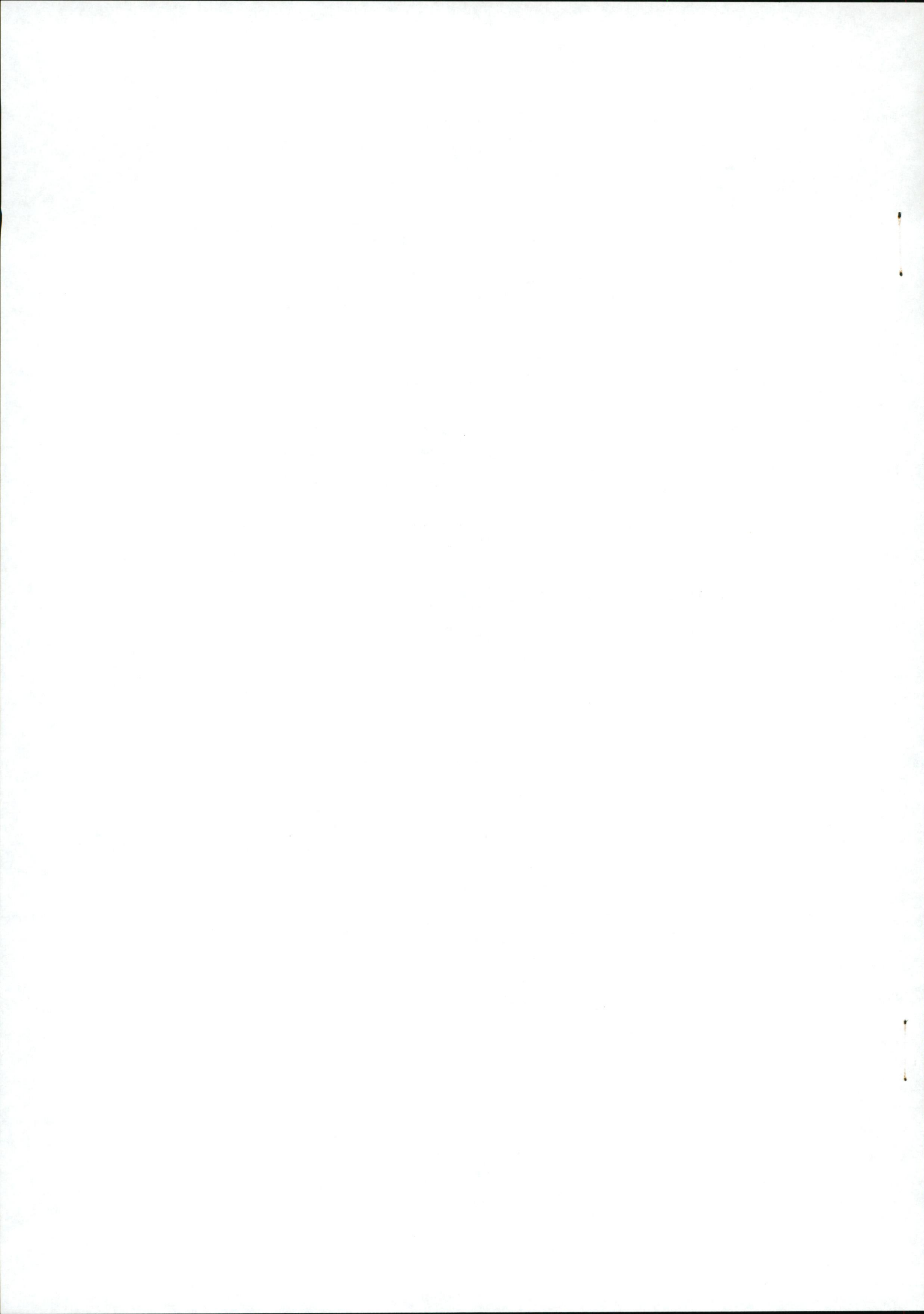
Mental Health Legislation Amendment Bill 1997

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This PUBLIC BILL, originated in the LEGISLATIVE ASSEMBLY and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

*Clerk of the Legislative Assembly.
Legislative Assembly*



New South Wales

Mental Health Legislation Amendment Bill 1997

Act No , 1997

An Act to amend the *Mental Health Act 1990* with respect to mentally ill persons, police detention powers, Magistrates' hearings, the release of patients from hospitals, community treatment orders and health care agencies, official visitors, the interstate transfer of patients, treatment under interstate orders, the treatment of interstate persons and the apprehension of interstate persons, and for other purposes; and to amend the *Mental Health (Criminal Procedure) Act 1990* to remove the requirement for certain offenders to be held in strict custody.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Mental Health Legislation Amendment Act 1997*.

2 Commencement

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

3 Amendment of Mental Health Act 1990 No 9

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

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

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

5 Explanatory notes

The matter appearing under the heading "Explanatory note" in Schedules 1 and 2 does not form part of this Act. 15

Schedule 1 Amendment of Mental Health Act 1990

(Section 3)

1.1 Amendments relating to involuntary detention of persons 5

[1] Section 9

Omit the section. Insert instead:

9 Mentally ill persons

- (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 harm, or
 - (b) for the protection of others from serious harm. 15
- (2) In considering whether a person is a mentally ill person, the continuing condition of the person, including any likely deterioration in the person's condition and the likely effects of any such deterioration, are to be taken into account. 20

Explanatory note (Schedule 1.1 [1])

A person may not be involuntarily detained under the Act unless the person is a mentally ill person or a mentally disordered person. The amendment inserts a new definition of *mentally ill person* that removes the existing requirement that a person suffering from a mental illness is such a person if the person requires care, treatment or control for the protection of the person or others from serious physical harm and replaces it with a requirement that such a person requires care, treatment or control for protection of the person or others from serious harm. The effect of this is to enable other kinds of harm, such as financial harm or harm to reputation, to be considered when determining whether a person can be detained as a mentally ill person. The new definition omits the existing provisions classifying persons suffering from certain mental illnesses characterised by 25 30

Mental Health Legislation Amendment Bill 1997

Schedule 1 Amendment of Mental Health Act 1990

severe disturbance of mood or sustained or repeated irrational behaviour as mentally ill if they require care, treatment or control for protection from serious financial harm or serious damage to reputation. The new definition also makes it clear that, in assessing whether a person is a mentally ill person, any likely deterioration in the person's condition and its effects is to be taken into account. 5

[2] Section 24 Detention after apprehension by police

Omit "a public place" from section 24 (1).
Insert instead "any place".

Explanatory note (Schedule 1.1 [2])

Currently, police may apprehend persons for the purpose of detention in a hospital if the persons appear to be mentally disturbed and have, or appear to have, committed an offence and are in a public place. The amendment extends this power of apprehension under the Act to such persons in any place. 10

[3] Section 42 Adjournments

Insert after section 42 (2): 15

- (3) The Magistrate may adjourn an inquiry under this section only if:
- (a) the Magistrate is of the opinion that it is in the best interests of the person in respect of whom the inquiry is held to do so, and 20
 - (b) the Magistrate has considered any certificates given under this Act available to the Magistrate.
- (4) If an inquiry is adjourned, the person in respect of whom the inquiry is held is to continue to be detained in the hospital unless the person is discharged or allowed to be absent from the hospital under another provision of this Act. 25

Explanatory note (Schedule 1.1 [3])

The Act currently permits an adjournment of an inquiry before a Magistrate (to determine whether a person should continue to be detained in a hospital) for a maximum of 14 days at any one time. The amendment restricts the circumstances in which an adjournment may be granted by requiring the Magistrate to believe that it is in the best interests of the patient to grant an adjournment and provides for the patient to continue to be detained unless released under another provision of the Act. 30
35

[4] Schedule 2 Medical certificate as to examination or observation of person

Omit item 1 in Part 1. Insert instead:

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: 5
10
 - (a) in the case of a mentally ill person:
 - (i) for the person's own protection from serious harm, or
 - (ii) for the protection of others from serious harm, or 15
 - (b) 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

[5] Schedule 2

Omit the matter relating to section 9 from the notes to the Schedule. Insert instead:

9 Mentally ill persons

- (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: 25
 - (a) for the person's own protection from serious harm, or 30
 - (b) for the protection of others from serious harm.

- (2) In considering whether a person is a mentally ill person, the continuing condition of the person, including any likely deterioration in the person's condition and the likely effects of any such deterioration, are to be taken into account. 5

Explanatory note (Schedule 1.1 [4] and [5])

The amendments are consequential on the substitution of section 9 by item [1].

1.2 Amendments relating to release of forensic patients

- [1] Section 81 Tribunal to review cases of persons found not guilty by reason of mental illness** 10

Omit "in strict custody" wherever occurring in section 81 (1).

Explanatory note (Schedule 1.2 [1])

The amendment removes references to detention in strict custody. (That requirement is to be abolished by Schedule 2.)

- [2] Section 101 Termination of classification as forensic patient of person found not guilty by reason of mental illness** 15

Omit "in strict custody" wherever occurring in section 101 (1).

Explanatory note (Schedule 1.2 [2])

The amendment removes references to detention in strict custody. (That requirement is to be abolished by Schedule 2.) 20

1.3 Amendments relating to health care agencies and community treatment orders

- [1] Section 115 Directors and Deputy Directors**

Omit ", by order published in the Gazette" from section 115 (4).

Explanatory note (Schedule 1.3 [1]) 25

Currently, the Director-General of the Department of Health may appoint the holders of specified offices as Directors and Deputy Directors of health care agencies. The revocation of any such appointment is required to be published in the Gazette, as is the appointment of a new Deputy Director where one has not been originally appointed. The amendment removes the requirement to publish the revocation or appointment in the Gazette. 30

[2] Section 135 Duration of community treatment orders

Omit section 135 (1). Insert instead:

- (1) A community treatment order expires:
 - (a) on a date stated in the order that is not later than 6 months after the date of the order, or 5
 - (b) if an expiry date is not stated in the order—6 months after the date of the order, or
 - (c) if the affected person is detained in a hospital under this Act (except this Part) or becomes a forensic patient. 10

Explanatory note (Schedule 1.3 [2])

This amendment extends the maximum duration of a community treatment order from 3 months to 6 months.

[3] Section 143 Effect of review by medical superintendent

Omit section 143 (1) (a). Insert instead: 15

- (a) in the case of a mentally ill person, a direction is to be taken to have been given under section 51 (3) for detention of the person in the hospital until the expiration of the community treatment order or the person is released under section 143A, whichever is the earlier, or 20

[4] Section 143A

Insert after section 143:

143A Review by Tribunal of detained persons

- (1) A person detained in a hospital under section 143 (1) (a) must be brought before the Tribunal not later than 3 months after the person was detained. The Tribunal must determine whether the person is a mentally ill person. 25

- (2) In the course of making its determination, the Tribunal must:
 - (a) inquire as to the administration of any medication to the person, and
 - (b) take account of the effect of the administration of the medication on the person's ability to communicate, and 5
 - (c) consider such other information as may be placed before it.
- (3) If the Tribunal determines that the person is a mentally ill person and is of the opinion that no other care of a less restrictive kind is appropriate and reasonably available to the person, the Tribunal must determine whether the person should be detained in the hospital until the expiration of the community treatment order. 10 15
- (4) If the Tribunal does not determine that the person is a mentally ill person or is of the opinion that other care of a less restrictive kind is appropriate and reasonably available to the person, the person must be released from the hospital. However, the Tribunal may also defer the release of the person for up to 14 days. 20
- (5) Release from the hospital does not affect the continuity of the community treatment order.
- (6) This section does not apply if the community treatment order expires less than 3 months after the person is detained in hospital. 25

Explanatory note (Schedule 1.3 [3] and [4])

Because the length of community treatment orders has been extended to 6 months, it is necessary to enable review by the Mental Health Review Tribunal of persons detained in hospitals as a result of breach of community treatment orders (proposed section 143A). Currently the length of detention for this reason is the remaining duration of the order (unless the person becomes well or other treatment is considered appropriate). If an order's duration is more than 3 months, a person could be detained without his or her condition being reviewed for that period. Other patients who are temporarily detained must be reviewed by the Tribunal every 3 months. These amendments are consistent with that right to review. 30 35

Item [3] makes a consequential amendment.

1.4 Amendments relating to emergency electro convulsive therapy and other treatments

[1] Section 186 Circumstances in which treatment may be administered without consent to patients—emergencies

Omit the section. 5

Explanatory note (Schedule 1.4 [1])

Section 186 authorises emergency electro convulsive therapy to be given to involuntary patients without first obtaining the Mental Health Review Tribunal's order that treatment is reasonable and proper and necessary or desirable. The provision is being omitted as a result of improvements in available technology enabling the Tribunal to deal promptly with emergency applications. 10

[2] Section 204 Special medical treatment

Omit section 204 (2) (b). Insert instead:

- (b) if the Tribunal consents to the carrying out of the treatment in accordance with this section. 15

[3] Section 204 (2A) and (2B)

Insert after section 204 (2):

(2A) The Tribunal must not consent to the carrying out of special medical treatment on a patient unless:

- (a) the treatment is necessary in order to save the patient's life or to prevent serious damage to the patient's health, or 20
- (b) the Tribunal is authorised to give that consent under subsection (2B).

(2B) In the case of special medical treatment declared by the regulations to be special medical treatment, the Tribunal may consent to the carrying out of the treatment if it is satisfied that: 25

- (a) the treatment is the only or most appropriate way of treating the patient and is manifestly in the best interests of the patient, and 30

- (b) in so far as the National Health and Medical Research Council has prescribed guidelines that are relevant to the carrying out of the treatment—those guidelines have been or will be complied with as regards the patient. 5

Explanatory note (Schedule 1.4 [2] and [3])

Section 204 sets out the only circumstances in which special medical treatment is permitted to be carried out on a patient. The amendments bring the powers of the Mental Health Review Tribunal to consent to special medical treatment for patients into line with those of the Guardianship Board to consent to such treatment for persons who are under guardianship but who are not patients. Currently there are no statutory restrictions on the Tribunal's power to consent to the treatment. 10

1.5 Amendments relating to official visitors

[1] Section 228 15

Omit the section. Insert instead:

228 Appointment of official visitors

- (1) The Minister must, by instrument in writing, appoint official visitors for an area health service.
- (2) A person may be appointed as an official visitor if the person is a medical practitioner or is otherwise a suitably qualified or interested person. 20
- (3) At least one of the official visitors for an area health service must be a medical practitioner.
- (4) In this section: 25

area health service means:

- (a) an area health service constituted under the *Area Health Services Act 1986*, or
- (b) any of the following: 30
- Far West Health Service
- Greater Murray Health Service

| | |
|--------------------------------|---|
| Macquarie Health Service | |
| Mid North Coast Health Service | |
| Mid Western Health Service | |
| New England Health Service | |
| Northern Rivers Health Service | 5 |
| Southern Health Service | |

[2] Section 230 Inspection of hospitals

Omit section 230 (1). Insert instead:

- (1) Any 2 or more official visitors, one being a medical practitioner, must visit: 10
 - (a) each hospital under the control of the area health service concerned, and each authorised hospital situated in the area of the area health service, at least once a month, and
 - (b) each health care agency under the control of the area health service concerned, and each other health care agency situated in the area of the area health service, at least once every 6 months, 15
- with or without any previous notice, at such time of the day or night and for such length of time as they think fit. 20

[3] Section 230 (2)

Omit "month". Insert instead "visit".

[4] Section 234 Request by patient or other person to see official visitor

Omit "7" from section 234 (2). Insert instead "2". 25

[5] Schedule 5 Provisions relating to principal official visitor and official visitors

Omit clause 3 (1) (f).

[6] Schedule 5, clause 3A

Insert after clause 3:

3A Suspension of office

- (1) An official visitor is suspended from office if the official visitor becomes a mentally incapacitated person. 5
- (2) The suspension from office ceases when the official visitor ceases to be a mentally incapacitated person or the period of the official visitor's appointment expires, whichever is the earlier.

Explanatory note (Schedule 1.5 [1]–[6]) 10

The amendments enable official visitors to be appointed for area health services rather than to individual hospitals or health care agencies, as is presently the case (item [1]). The frequency for visits to a health care agency by an official visitor is also reduced from once a month to once every 6 months (items [2] and [3]). The time within which an official visitor must be informed of a patient's request to see an official visitor is to be reduced from 7 days to 2 days (item [4]). In addition, rather than losing office if they become mentally incapacitated (that is, are involuntarily detained in a hospital under the Act) official visitors will have their offices suspended until their terms expire or they are no longer mentally incapacitated, whichever is the earlier (items [5] and [6]). 15
20

1.6 Amendment relating to interstate application of mental health laws

Chapter 10A

Insert after Chapter 10:

Chapter 10A Interstate application of mental health laws 25

Part 1 Preliminary

286A Object of Chapter

The object of this Chapter is to provide for the interstate transfer of patients under mental health legislation, the interstate recognition of documents enabling detention of persons under mental health legislation, the treatment of 30

interstate persons and persons in this State subject to community treatment orders or similar orders made in other States and the apprehension of persons subject to certain interstate warrants or orders, or otherwise liable to apprehension, under mental health legislation. 5

286B Definitions

In this Chapter:

agreement means an agreement under section 286C.

corresponding law means a law declared by the regulations to be a law corresponding to this Act for the purposes of this Chapter. 10

interstate community treatment order means an order made under a corresponding law and declared by the regulations to be an interstate community treatment order for the purposes of this Chapter. 15

State includes Territory.

286C Authority to enter into agreements

- (1) The Minister may enter into an agreement with a Minister of another State for or with respect to the application of mental health laws of this State or the other State, the transfer, detention and apprehension of persons in this State and the other State under mental health laws and administrative matters and other matters ancillary to, or consequential on, any such matters or any matters contained in this Chapter. 20
25
- (2) Nothing in this section limits the power of the Minister to enter into any agreement relating to mental health laws.

286D Corresponding laws, documents and interstate community treatment orders 30

- (1) The regulations may declare that a specified law of another State relating to mental health is a law corresponding to this Act for the purposes of this Chapter.

- (2) The regulations may declare that a specified class of order relating to the treatment of persons outside hospitals under a corresponding law of another State is an interstate community treatment order for the purposes of this Chapter. 5

286E New South Wales officers may exercise functions under corresponding laws

Subject to the provisions of any agreement under section 286C, a medical superintendent or other person authorised by the Minister for the purposes of this section, may exercise any function conferred on him or her by or under a corresponding law or an agreement under section 286C. 10

Part 2 Transfer of patients and persons

Division 1 Transfer of persons from this State 15

286F Admission of persons to hospitals in other States

- (1) A person who may be taken to and detained in a hospital under section 21, 22 or 24 may be taken to a hospital in another State instead of a hospital in this State, if this is permitted by or under a corresponding law of the other State. 20
- (2) A person may be taken to a hospital in another State under this section by:
- (a) a person who is authorised by this Act to take a person to a hospital, or to apprehend a person and take the person to a hospital, if this is permitted by or under the law of the other State, or 25
 - (b) any other person who is authorised to do so by the regulations or under a provision of a corresponding law of the other State. 30
- (3) The regulations may make provision for or with respect to:
- (a) the handing over of custody of a person referred to in subsection (1) by persons in this State, and

-
- (b) the persons (including interstate persons) who may take any such person to a hospital in another State under this section, and
 - (c) the hospitals to which a person may be taken under this section and the places taken to be hospitals for the purposes of this section. 5

286G Effect of certificates

A certificate under section 21 ceases to have any effect under this Act if the person concerned is taken to and detained in a hospital in another State. 10

286H Transfer of patients from this State

- (1) A person who is involuntarily detained as a temporary patient or a continued treatment patient in a hospital in this State may be transferred to a hospital in another State, if the transfer is permitted by or under a provision of a corresponding law of the other State and is in accordance with the regulations. 15
- (2) A person who is transferred to a hospital in another State under this section ceases to be a temporary patient or a continued treatment patient on admission to the hospital. 20
- (3) A person may be taken to a hospital in another State under this section by a person who is authorised to do so by the regulations or under a provision of a corresponding law of the other State.
- (4) The regulations may make provision for or with respect to: 25
 - (a) procedures for authorising the transfer of a patient under this section and for notifying any such transfer or proposed transfer, and
 - (b) criteria for authorising the transfer of a patient under this section, and 30
 - (c) the handing over of custody of any such patient by persons in this State, and

- (d) the persons (including interstate persons) who may take a patient to a hospital in another State under this section, and
- (e) the hospitals to which a patient may be taken under this section and the places taken to be hospitals for the purposes of this section. 5

(5) Section 78 does not apply to a transfer under this section.

Division 2 Transfer of persons to this State

286I Admission of interstate persons to hospitals in this State 10

- (1) A person who may be taken to and detained in a hospital in another State under a corresponding law of that State may instead be taken to and detained in a hospital in this State.
- (2) A person may be taken to a hospital in this State under this section by: 15
 - (a) a person who is authorised by this Act to take a person to a hospital, or to apprehend a person and take the person to a hospital, if this is permitted by or under the law of the other State, or 20
 - (b) any other person who is authorised to do so by the regulations or under a provision of a corresponding law of the other State.
- (3) The regulations may make provision for or with respect to: 25
 - (a) the handing over of custody of a person referred to in subsection (1) to persons in this State, and
 - (b) the persons (including interstate persons) who may take any such person to a hospital in this State under this section, and 30
 - (c) the hospitals to which a person may be taken under this section and the places taken to be hospitals for the purposes of this section.

286J Application of Act to persons brought to hospital from outside this State

This Act applies to a person who is taken to and detained in a hospital under this Division in the same way as it applies to a person taken to and detained in a hospital under Part 2 of Chapter 4.

5

286K Transfer of interstate persons to hospitals in this State

- (1) A person who is involuntarily detained as a patient in a hospital in another State under a corresponding law may be transferred to a hospital in this State, if the transfer is authorised under a provision of a corresponding law of the other State and accepted by the medical superintendent of the hospital in this State. 10
- (2) A person may be taken to a hospital in this State under this section by a person who is authorised to do so by the regulations or under a provision of a corresponding law of the other State. 15
- (3) However, a medical superintendent may not accept the transfer of a person to a hospital in this State unless the medical superintendent is of the opinion that it is likely that the person is a mentally ill person. 20
- (4) The regulations may make provision for or with respect to:
 - (a) the procedures for authorising and arranging the receipt of a person under this section, and 25
 - (b) the persons (including interstate persons) who may take a patient to a hospital in this State under this section, and
 - (c) the receiving of custody of any such person by persons in this State, and 30
 - (d) the period within which any such person must be reviewed by the Tribunal after being transferred to a hospital in this State.

286L Application of Act to persons brought to hospital from outside this State

- (1) A person transferred to a hospital under section 286K is taken to be a continued treatment patient and the provisions of this Act apply as if the person became a continued treatment patient on the date of the person's transfer to a hospital in this State. 5
- (2) Despite subsection (1), the regulations may provide for the circumstances when a transferred person is to be taken to be a temporary patient. 10

Part 3 Community treatment orders and other orders

286M Community treatment orders relating to interstate persons

A community treatment order may be made under Part 3 of Chapter 6 even though the affected person does not reside in this State, if the health care agency implementing the order is located in this State. 15

286N Orders relating to New South Wales residents

- (1) A member of staff of an interstate health care agency may treat a person subject to an interstate community treatment order in this State, and exercise other functions in this State, for the purposes of implementing the interstate community treatment order. 20
- (2) The regulations may make provision for or with respect to: 25
 - (a) the bodies that are taken to be interstate health care agencies for the purposes of this section, and
 - (b) limitations on the treatment that may be given or functions that may be exercised under subsection (1). 30

Part 4 Apprehension of persons absent from hospital or in breach of orders

286O Recognition of warrants and orders

A warrant or an order, or other document authorising the apprehension of a person, under a corresponding law is recognised in this State if the conditions for recognition set out in the regulations are met.

5

286P Apprehension of interstate persons absent without leave or in breach of corresponding orders

(1) A person who is the subject of a warrant or an order or other document recognised in this State, or who is otherwise liable to be apprehended, under a provision of a corresponding law under which the person may be apprehended and taken to a hospital or a health care agency may be apprehended at any time:

10

(a) by a police officer, or

15

(b) by a person who is authorised to do so by the regulations or under a provision of a corresponding law of the other State.

(2) On being apprehended the person may be conveyed to and detained in a hospital in this State or the other State (if this is permitted by or under a provision of a corresponding law of the other State).

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(3) This Act applies to a person conveyed to and detained in a hospital under this section as if the person had been taken to and detained in a hospital under Part 2 of Chapter 4.

25

286Q Regulations relating to apprehension of persons

The regulations may make provision for or with respect to:

30

(a) the kinds of warrants, orders or other documents that may be recognised in this State for the purposes of this Part, and

- (b) the conditions (if any) to be met before a warrant, order or other document can be recognised in this State, and
- (c) the circumstances when a person is taken to be liable to be apprehended under a corresponding law, and 5
- (d) the persons (including interstate persons) who may apprehend a person under this section, and
- (e) the hospitals and places to which a person can be taken under this Part (whether in this State or another State), and 10
- (f) the actions (including transfer to the other State) that may be taken in respect of a person detained under this Part.

Explanatory note (Schedule 1.6) 15

The proposed Chapter provides for agreements to be made with other States or Territories relating to the interstate application of mental health laws. The provisions authorise agreements to be entered into by the relevant Ministers and provide for the legislative implementation of matters that may be the subject of such agreements. The Chapter: 20

- (a) enables persons who may be taken to and detained in hospitals in this State to be taken to and detained in hospitals in other States or Territories (Part 2, Division 1), and
- (b) enables involuntary patients in hospitals in this State to be transferred to hospitals in other States or Territories (Part 2, Division 1), and 25
- (c) enables persons who may be taken to and detained in hospitals in other States or Territories to be taken to and detained in hospitals in this State (Part 2, Division 2), and
- (d) enables involuntary patients to be transferred to hospitals in this State from hospitals in other States and Territories (Part 2, Division 2), and 30
- (e) enables community treatment orders made in this State to be made in relation to persons in other States (Part 3), and
- (f) enables treatment in this State of persons in this State subject to interstate orders like our community treatment orders (Part 3), and
- (g) enables the apprehension in this State of persons the subject of warrants, orders or other documents for apprehension issued under the mental health laws of another State or Territory, or who are otherwise liable to apprehension under such a law, for example when a patient is absent from a hospital without leave or when a person breaches the equivalent of a community treatment order (Part 4). 35 40

1.7 Amendments relating to savings and transitional provisions

[1] Schedule 7 Savings, transitional and other provisions

Insert at the end of clause 2 (1A):

Mental Health Legislation Amendment Act 1997 5

[2] Schedule 7, Part 7

Insert after Part 6:

Part 7 Provisions consequent on Mental Health Legislation Amendment Act 1997

41 Mentally ill persons 10

Section 9, as amended by the *Mental Health Legislation Amendment Act 1997*, applies to persons detained before the commencement of that amendment and who continue to be detained.

42 Detention after breach of orders 15

Section 143A, as inserted by the *Mental Health Legislation Amendment Act 1997*, applies to a person detained after the commencement of that section, whether or not the community treatment order was made before or after the commencement of that section. 20

43 Official visitors

(1) A person who held office as an official visitor for a hospital or health care agency immediately before the commencement of Schedule 1.5 [1] to the *Mental Health Legislation Amendment Act 1997*: 25

(a) ceases to hold that office, and

(b) is eligible (if otherwise qualified) to be reappointed as an official visitor.

Mental Health Legislation Amendment Bill 1997

Schedule 1 Amendment of Mental Health Act 1990

- (2) A person who so ceases to hold office is not entitled to any remuneration or compensation because of the loss of that office.

Explanatory note (Schedule 1.7 [1] and [2])

The amendments insert transitional provisions consequent on other amendments made by the proposed Act and enable transitional regulations to be made if required.

5

**Schedule 2 Amendment of Mental Health
(Criminal Procedure) Act 1990**

(Section 4)

Section 39 Effect of finding and declaration of mental illness

Omit "in strict custody".

5

Explanatory note

Currently a person who is found not guilty of an offence by reason of mental illness must be detained in strict custody. The amendment removes the requirement for such detention while retaining the requirement for the person to be detained.

10



New South Wales

Mental Health Legislation Amendment Act 1997 No 28

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New South Wales

Mental Health Legislation Amendment Act 1997 No 28

Act No 28, 1997

An Act to amend the *Mental Health Act 1990* with respect to mentally ill persons, police detention powers, Magistrates' hearings, the release of patients from hospitals, community treatment orders and health care agencies, official visitors, the interstate transfer of patients, treatment under interstate orders, the treatment of interstate persons and the apprehension of interstate persons, and for other purposes; and to amend the *Mental Health (Criminal Procedure) Act 1990* to remove the requirement for certain offenders to be held in strict custody. [Assented to 25 June 1997]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Mental Health Legislation Amendment Act 1997*.

2 Commencement

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

3 Amendment of Mental Health Act 1990 No 9

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

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

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

5 Explanatory notes

The matter appearing under the heading "Explanatory note" in Schedules 1 and 2 does not form part of this Act.

Schedule 1 Amendment of Mental Health Act 1990

(Section 3)

1.1 Amendments relating to involuntary detention of persons

[1] Section 9

Omit the section. Insert instead:

9 Mentally ill persons

- (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 harm, or
 - (b) for the protection of others from serious harm.
- (2) In considering whether a person is a mentally ill person, the continuing condition of the person, including any likely deterioration in the person's condition and the likely effects of any such deterioration, are to be taken into account.

Explanatory note (Schedule 1.1 [1])

A person may not be involuntarily detained under the Act unless the person is a mentally ill person or a mentally disordered person. The amendment inserts a new definition of *mentally ill person* that removes the existing requirement that a person suffering from a mental illness is such a person if the person requires care, treatment or control for the protection of the person or others from serious physical harm and replaces it with a requirement that such a person requires care, treatment or control for protection of the person or others from serious harm. The effect of this is to enable other kinds of harm, such as financial harm or harm to reputation, to be considered when determining whether a person can be detained as a mentally ill person. The new definition omits the existing provisions classifying persons suffering from certain mental illnesses characterised by

severe disturbance of mood or sustained or repeated irrational behaviour as mentally ill if they require care, treatment or control for protection from serious financial harm or serious damage to reputation. The new definition also makes it clear that, in assessing whether a person is a mentally ill person, any likely deterioration in the person's condition and its effects is to be taken into account.

[2] Section 24 Detention after apprehension by police

Omit "a public place" from section 24 (1).

Insert instead "any place".

Explanatory note (Schedule 1.1 [2])

Currently, police may apprehend persons for the purpose of detention in a hospital if the persons appear to be mentally disturbed and have, or appear to have, committed an offence and are in a public place. The amendment extends this power of apprehension under the Act to such persons in any place.

[3] Section 42 Adjournments

Insert after section 42 (2):

- (3) The Magistrate may adjourn an inquiry under this section only if:
 - (a) the Magistrate is of the opinion that it is in the best interests of the person in respect of whom the inquiry is held to do so, and
 - (b) the Magistrate has considered any certificates given under this Act available to the Magistrate.
- (4) If an inquiry is adjourned, the person in respect of whom the inquiry is held is to continue to be detained in the hospital unless the person is discharged or allowed to be absent from the hospital under another provision of this Act.

Explanatory note (Schedule 1.1 [3])

The Act currently permits an adjournment of an inquiry before a Magistrate (to determine whether a person should continue to be detained in a hospital) for a maximum of 14 days at any one time. The amendment restricts the circumstances in which an adjournment may be granted by requiring the Magistrate to believe that it is in the best interests of the patient to grant an adjournment and provides for the patient to continue to be detained unless released under another provision of the Act.

[4] Schedule 2 Medical certificate as to examination or observation of person

Omit item 1 in Part 1. Insert instead:

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:
 - (a) in the case of a mentally ill person:
 - (i) for the person's own protection from serious harm, or
 - (ii) for the protection of others from serious harm, or
 - (b) 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.

[5] Schedule 2

Omit the matter relating to section 9 from the notes to the Schedule. Insert instead:

9 Mentally ill persons

- (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 harm, or
 - (b) for the protection of others from serious harm.
-

- (2) In considering whether a person is a mentally ill person, the continuing condition of the person, including any likely deterioration in the person's condition and the likely effects of any such deterioration, are to be taken into account.

Explanatory note (Schedule 1.1 [4] and [5])

The amendments are consequential on the substitution of section 9 by item [1].

1.2 Amendments relating to release of forensic patients

[1] Section 81 Tribunal to review cases of persons found not guilty by reason of mental illness

Omit "in strict custody" wherever occurring in section 81 (1).

Explanatory note (Schedule 1.2 [1])

The amendment removes references to detention in strict custody. (That requirement is to be abolished by Schedule 2.)

[2] Section 101 Termination of classification as forensic patient of person found not guilty by reason of mental illness

Omit "in strict custody" wherever occurring in section 101 (1).

Explanatory note (Schedule 1.2 [2])

The amendment removes references to detention in strict custody. (That requirement is to be abolished by Schedule 2.)

1.3 Amendments relating to health care agencies and community treatment orders

[1] Section 115 Directors and Deputy Directors

Omit ", by order published in the Gazette" from section 115 (4).

Explanatory note (Schedule 1.3 [1])

Currently, the Director-General of the Department of Health may appoint the holders of specified offices as Directors and Deputy Directors of health care agencies. The revocation of any such appointment is required to be published in the Gazette, as is the appointment of a new Deputy Director where one has not been originally appointed. The amendment removes the requirement to publish the revocation or appointment in the Gazette.

[2] Section 135 Duration of community treatment orders

Omit section 135 (1). Insert instead:

- (1) A community treatment order expires:
 - (a) on a date stated in the order that is not later than 6 months after the date of the order, or
 - (b) if an expiry date is not stated in the order—6 months after the date of the order, or
 - (c) if the affected person is detained in a hospital under this Act (except this Part) or becomes a forensic patient.

Explanatory note (Schedule 1.3 [2])

This amendment extends the maximum duration of a community treatment order from 3 months to 6 months.

[3] Section 143 Effect of review by medical superintendent

Omit section 143 (1) (a). Insert instead:

- (a) in the case of a mentally ill person, a direction is to be taken to have been given under section 51 (3) for detention of the person in the hospital until the expiration of the community treatment order or the person is released under section 143A, whichever is the earlier, or

[4] Section 143A

Insert after section 143:

143A Review by Tribunal of detained persons

- (1) A person detained in a hospital under section 143 (1) (a) must be brought before the Tribunal not later than 3 months after the person was detained. The Tribunal must determine whether the person is a mentally ill person.

- (2) In the course of making its determination, the Tribunal must:
 - (a) inquire as to the administration of any medication to the person, and
 - (b) take account of the effect of the administration of the medication on the person's ability to communicate, and
 - (c) consider such other information as may be placed before it.
- (3) If the Tribunal determines that the person is a mentally ill person and is of the opinion that no other care of a less restrictive kind is appropriate and reasonably available to the person, the Tribunal must determine whether the person should be detained in the hospital until the expiration of the community treatment order.
- (4) If the Tribunal does not determine that the person is a mentally ill person or is of the opinion that other care of a less restrictive kind is appropriate and reasonably available to the person, the person must be released from the hospital. However, the Tribunal may also defer the release of the person for up to 14 days.
- (5) Release from the hospital does not affect the continuity of the community treatment order.
- (6) This section does not apply if the community treatment order expires less than 3 months after the person is detained in hospital.

Explanatory note (Schedule 1.3 [3] and [4])

Because the length of community treatment orders has been extended to 6 months, it is necessary to enable review by the Mental Health Review Tribunal of persons detained in hospitals as a result of breach of community treatment orders (proposed section 143A). Currently the length of detention for this reason is the remaining duration of the order (unless the person becomes well or other treatment is considered appropriate). If an order's duration is more than 3 months, a person could be detained without his or her condition being reviewed for that period. Other patients who are temporarily detained must be reviewed by the Tribunal every 3 months. These amendments are consistent with that right to review.

Item [3] makes a consequential amendment.

1.4 Amendments relating to emergency electro convulsive therapy and other treatments

[1] Section 186 Circumstances in which treatment may be administered without consent to patients—emergencies

Omit the section.

Explanatory note (Schedule 1.4 [1])

Section 186 authorises emergency electro convulsive therapy to be given to involuntary patients without first obtaining the Mental Health Review Tribunal's order that treatment is reasonable and proper and necessary or desirable. The provision is being omitted as a result of improvements in available technology enabling the Tribunal to deal promptly with emergency applications.

[2] Section 204 Special medical treatment

Omit section 204 (2) (b). Insert instead:

- (b) if the Tribunal consents to the carrying out of the treatment in accordance with this section.

[3] Section 204 (2A) and (2B)

Insert after section 204 (2):

(2A) The Tribunal must not consent to the carrying out of special medical treatment on a patient unless:

- (a) the treatment is necessary in order to save the patient's life or to prevent serious damage to the patient's health, or
- (b) the Tribunal is authorised to give that consent under subsection (2B).

(2B) In the case of special medical treatment declared by the regulations to be special medical treatment, the Tribunal may consent to the carrying out of the treatment if it is satisfied that:

- (a) the treatment is the only or most appropriate way of treating the patient and is manifestly in the best interests of the patient, and

- (b) in so far as the National Health and Medical Research Council has prescribed guidelines that are relevant to the carrying out of the treatment—those guidelines have been or will be complied with as regards the patient.

Explanatory note (Schedule 1.4 [2] and [3])

Section 204 sets out the only circumstances in which special medical treatment is permitted to be carried out on a patient. The amendments bring the powers of the Mental Health Review Tribunal to consent to special medical treatment for patients into line with those of the Guardianship Board to consent to such treatment for persons who are under guardianship but who are not patients. Currently there are no statutory restrictions on the Tribunal's power to consent to the treatment.

1.5 Amendments relating to official visitors

[1] Section 228

Omit the section. Insert instead:

228 Appointment of official visitors

- (1) The Minister must, by instrument in writing, appoint official visitors for an area health service.
- (2) A person may be appointed as an official visitor if the person is a medical practitioner or is otherwise a suitably qualified or interested person.
- (3) At least one of the official visitors for an area health service must be a medical practitioner.
- (4) In this section:

area health service means:

- (a) an area health service constituted under the *Area Health Services Act 1986*, or
- (b) any of the following:
 - Far West Health Service
 - Greater Murray Health Service

Macquarie Health Service
Mid North Coast Health Service
Mid Western Health Service
New England Health Service
Northern Rivers Health Service
Southern Health Service

[2] Section 230 Inspection of hospitals

Omit section 230 (1). Insert instead:

- (1) Any 2 or more official visitors, one being a medical practitioner, must visit:
 - (a) each hospital under the control of the area health service concerned, and each authorised hospital situated in the area of the area health service, at least once a month, and
 - (b) each health care agency under the control of the area health service concerned, and each other health care agency situated in the area of the area health service, at least once every 6 months,

with or without any previous notice, at such time of the day or night and for such length of time as they think fit.

[3] Section 230 (2)

Omit "month". Insert instead "visit".

[4] Section 234 Request by patient or other person to see official visitor

Omit "7" from section 234 (2). Insert instead "2".

[5] Schedule 5 Provisions relating to principal official visitor and official visitors

Omit clause 3 (1) (f).

[6] Schedule 5, clause 3A

Insert after clause 3:

3A Suspension of office

- (1) An official visitor is suspended from office if the official visitor becomes a mentally incapacitated person.
- (2) The suspension from office ceases when the official visitor ceases to be a mentally incapacitated person or the period of the official visitor's appointment expires, whichever is the earlier.

Explanatory note (Schedule 1.5 [1]–[6])

The amendments enable official visitors to be appointed for area health services rather than to individual hospitals or health care agencies, as is presently the case (item [1]). The frequency for visits to a health care agency by an official visitor is also reduced from once a month to once every 6 months (items [2] and [3]). The time within which an official visitor must be informed of a patient's request to see an official visitor is to be reduced from 7 days to 2 days (item [4]). In addition, rather than losing office if they become mentally incapacitated (that is, are involuntarily detained in a hospital under the Act) official visitors will have their offices suspended until their terms expire or they are no longer mentally incapacitated, whichever is the earlier (items [5] and [6]).

1.6 Amendment relating to interstate application of mental health laws

Chapter 10A

Insert after Chapter 10:

Chapter 10A Interstate application of mental health laws

Part 1 Preliminary

286A Object of Chapter

The object of this Chapter is to provide for the interstate transfer of patients under mental health legislation, the interstate recognition of documents enabling detention of persons under mental health legislation, the treatment of

interstate persons and persons in this State subject to community treatment orders or similar orders made in other States and the apprehension of persons subject to certain interstate warrants or orders, or otherwise liable to apprehension, under mental health legislation.

286B Definitions

In this Chapter:

agreement means an agreement under section 286C.

corresponding law means a law declared by the regulations to be a law corresponding to this Act for the purposes of this Chapter.

interstate community treatment order means an order made under a corresponding law and declared by the regulations to be an interstate community treatment order for the purposes of this Chapter.

State includes Territory.

286C Authority to enter into agreements

- (1) The Minister may enter into an agreement with a Minister of another State for or with respect to the application of mental health laws of this State or the other State, the transfer, detention and apprehension of persons in this State and the other State under mental health laws and administrative matters and other matters ancillary to, or consequential on, any such matters or any matters contained in this Chapter.
- (2) Nothing in this section limits the power of the Minister to enter into any agreement relating to mental health laws.

286D Corresponding laws, documents and interstate community treatment orders

- (1) The regulations may declare that a specified law of another State relating to mental health is a law corresponding to this Act for the purposes of this Chapter.

- (2) The regulations may declare that a specified class of order relating to the treatment of persons outside hospitals under a corresponding law of another State is an interstate community treatment order for the purposes of this Chapter.

286E New South Wales officers may exercise functions under corresponding laws

Subject to the provisions of any agreement under section 286C, a medical superintendent or other person authorised by the Minister for the purposes of this section, may exercise any function conferred on him or her by or under a corresponding law or an agreement under section 286C.

Part 2 Transfer of patients and persons

Division 1 Transfer of persons from this State

286F Admission of persons to hospitals in other States

- (1) A person who may be taken to and detained in a hospital under section 21, 22 or 24 may be taken to a hospital in another State instead of a hospital in this State, if this is permitted by or under a corresponding law of the other State.
- (2) A person may be taken to a hospital in another State under this section by:
- (a) a person who is authorised by this Act to take a person to a hospital, or to apprehend a person and take the person to a hospital, if this is permitted by or under the law of the other State, or
 - (b) any other person who is authorised to do so by the regulations or under a provision of a corresponding law of the other State.
- (3) The regulations may make provision for or with respect to:
- (a) the handing over of custody of a person referred to in subsection (1) by persons in this State, and

- (b) the persons (including interstate persons) who may take any such person to a hospital in another State under this section, and
- (c) the hospitals to which a person may be taken under this section and the places taken to be hospitals for the purposes of this section.

286G Effect of certificates

A certificate under section 21 ceases to have any effect under this Act if the person concerned is taken to and detained in a hospital in another State.

286H Transfer of patients from this State

- (1) A person who is involuntarily detained as a temporary patient or a continued treatment patient in a hospital in this State may be transferred to a hospital in another State, if the transfer is permitted by or under a provision of a corresponding law of the other State and is in accordance with the regulations.
- (2) A person who is transferred to a hospital in another State under this section ceases to be a temporary patient or a continued treatment patient on admission to the hospital.
- (3) A person may be taken to a hospital in another State under this section by a person who is authorised to do so by the regulations or under a provision of a corresponding law of the other State.
- (4) The regulations may make provision for or with respect to:
 - (a) procedures for authorising the transfer of a patient under this section and for notifying any such transfer or proposed transfer, and
 - (b) criteria for authorising the transfer of a patient under this section, and
 - (c) the handing over of custody of any such patient by persons in this State, and

- (d) the persons (including interstate persons) who may take a patient to a hospital in another State under this section, and
 - (e) the hospitals to which a patient may be taken under this section and the places taken to be hospitals for the purposes of this section.
- (5) Section 78 does not apply to a transfer under this section.

Division 2 Transfer of persons to this State

286I Admission of interstate persons to hospitals in this State

- (1) A person who may be taken to and detained in a hospital in another State under a corresponding law of that State may instead be taken to and detained in a hospital in this State.
- (2) A person may be taken to a hospital in this State under this section by:
 - (a) a person who is authorised by this Act to take a person to a hospital, or to apprehend a person and take the person to a hospital, if this is permitted by or under the law of the other State, or
 - (b) any other person who is authorised to do so by the regulations or under a provision of a corresponding law of the other State.
- (3) The regulations may make provision for or with respect to:
 - (a) the handing over of custody of a person referred to in subsection (1) to persons in this State, and
 - (b) the persons (including interstate persons) who may take any such person to a hospital in this State under this section, and
 - (c) the hospitals to which a person may be taken under this section and the places taken to be hospitals for the purposes of this section.

286J Application of Act to persons brought to hospital from outside this State

This Act applies to a person who is taken to and detained in a hospital under this Division in the same way as it applies to a person taken to and detained in a hospital under Part 2 of Chapter 4.

286K Transfer of interstate persons to hospitals in this State

- (1) A person who is involuntarily detained as a patient in a hospital in another State under a corresponding law may be transferred to a hospital in this State, if the transfer is authorised under a provision of a corresponding law of the other State and accepted by the medical superintendent of the hospital in this State.
- (2) A person may be taken to a hospital in this State under this section by a person who is authorised to do so by the regulations or under a provision of a corresponding law of the other State.
- (3) However, a medical superintendent may not accept the transfer of a person to a hospital in this State unless the medical superintendent is of the opinion that it is likely that the person is a mentally ill person.
- (4) The regulations may make provision for or with respect to:
 - (a) the procedures for authorising and arranging the receipt of a person under this section, and
 - (b) the persons (including interstate persons) who may take a patient to a hospital in this State under this section, and
 - (c) the receiving of custody of any such person by persons in this State, and
 - (d) the period within which any such person must be reviewed by the Tribunal after being transferred to a hospital in this State.

286L Application of Act to persons brought to hospital from outside this State

- (1) A person transferred to a hospital under section 286K is taken to be a continued treatment patient and the provisions of this Act apply as if the person became a continued treatment patient on the date of the person's transfer to a hospital in this State.
- (2) Despite subsection (1), the regulations may provide for the circumstances when a transferred person is to be taken to be a temporary patient.

Part 3 Community treatment orders and other orders

286M Community treatment orders relating to interstate persons

A community treatment order may be made under Part 3 of Chapter 6 even though the affected person does not reside in this State, if the health care agency implementing the order is located in this State.

286N Orders relating to New South Wales residents

- (1) A member of staff of an interstate health care agency may treat a person subject to an interstate community treatment order in this State, and exercise other functions in this State, for the purposes of implementing the interstate community treatment order.
- (2) The regulations may make provision for or with respect to:
 - (a) the bodies that are taken to be interstate health care agencies for the purposes of this section, and
 - (b) limitations on the treatment that may be given or functions that may be exercised under subsection (1).

**Part 4 Apprehension of persons absent from
 hospital or in breach of orders**

286O Recognition of warrants and orders

A warrant or an order, or other document authorising the apprehension of a person, under a corresponding law is recognised in this State if the conditions for recognition set out in the regulations are met.

**286P Apprehension of interstate persons absent without leave
 or in breach of corresponding orders**

- (1) A person who is the subject of a warrant or an order or other document recognised in this State, or who is otherwise liable to be apprehended, under a provision of a corresponding law under which the person may be apprehended and taken to a hospital or a health care agency may be apprehended at any time:
 - (a) by a police officer, or
 - (b) by a person who is authorised to do so by the regulations or under a provision of a corresponding law of the other State.
- (2) On being apprehended the person may be conveyed to and detained in a hospital in this State or the other State (if this is permitted by or under a provision of a corresponding law of the other State).
- (3) This Act applies to a person conveyed to and detained in a hospital under this section as if the person had been taken to and detained in a hospital under Part 2 of Chapter 4.

286Q Regulations relating to apprehension of persons

The regulations may make provision for or with respect to:

- (a) the kinds of warrants, orders or other documents that may be recognised in this State for the purposes of this Part, and

- (b) the conditions (if any) to be met before a warrant, order or other document can be recognised in this State, and
- (c) the circumstances when a person is taken to be liable to be apprehended under a corresponding law, and
- (d) the persons (including interstate persons) who may apprehend a person under this section, and
- (e) the hospitals and places to which a person can be taken under this Part (whether in this State or another State), and
- (f) the actions (including transfer to the other State) that may be taken in respect of a person detained under this Part.

Explanatory note (Schedule 1.6)

The proposed Chapter provides for agreements to be made with other States or Territories relating to the interstate application of mental health laws. The provisions authorise agreements to be entered into by the relevant Ministers and provide for the legislative implementation of matters that may be the subject of such agreements. The Chapter:

- (a) enables persons who may be taken to and detained in hospitals in this State to be taken to and detained in hospitals in other States or Territories (Part 2, Division 1), and
- (b) enables involuntary patients in hospitals in this State to be transferred to hospitals in other States or Territories (Part 2, Division 1), and
- (c) enables persons who may be taken to and detained in hospitals in other States or Territories to be taken to and detained in hospitals in this State (Part 2, Division 2), and
- (d) enables involuntary patients to be transferred to hospitals in this State from hospitals in other States and Territories (Part 2, Division 2), and
- (e) enables community treatment orders made in this State to be made in relation to persons in other States (Part 3), and
- (f) enables treatment in this State of persons in this State subject to interstate orders like our community treatment orders (Part 3), and
- (g) enables the apprehension in this State of persons the subject of warrants, orders or other documents for apprehension issued under the mental health laws of another State or Territory, or who are otherwise liable to apprehension under such a law, for example when a patient is absent from a hospital without leave or when a person breaches the equivalent of a community treatment order (Part 4).

1.7 Amendments relating to savings and transitional provisions

[1] Schedule 7 Savings, transitional and other provisions

Insert at the end of clause 2 (1A):

Mental Health Legislation Amendment Act 1997

[2] Schedule 7, Part 7

Insert after Part 6:

Part 7 Provisions consequent on Mental Health Legislation Amendment Act 1997

41 Mentally ill persons

Section 9, as amended by the *Mental Health Legislation Amendment Act 1997*, applies to persons detained before the commencement of that amendment and who continue to be detained.

42 Detention after breach of orders

Section 143A, as inserted by the *Mental Health Legislation Amendment Act 1997*, applies to a person detained after the commencement of that section, whether or not the community treatment order was made before or after the commencement of that section.

43 Official visitors

- (1) A person who held office as an official visitor for a hospital or health care agency immediately before the commencement of Schedule 1.5 [1] to the *Mental Health Legislation Amendment Act 1997*:
 - (a) ceases to hold that office, and
 - (b) is eligible (if otherwise qualified) to be reappointed as an official visitor.

- (2) A person who so ceases to hold office is not entitled to any remuneration or compensation because of the loss of that office.

Explanatory note (Schedule 1.7 [1] and [2])

The amendments insert transitional provisions consequent on other amendments made by the proposed Act and enable transitional regulations to be made if required.

Schedule 2 Amendment of Mental Health (Criminal Procedure) Act 1990

(Section 4)

Section 39 Effect of finding and declaration of mental illness

Omit "in strict custody".

Explanatory note

Currently a person who is found not guilty of an offence by reason of mental illness must be detained in strict custody. The amendment removes the requirement for such detention while retaining the requirement for the person to be detained.

[Minister's second reading speech made in—
Legislative Assembly on 9 April 1997
Legislative Council on 20 May 1997]

BY AUTHORITY

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