

SEMINAR ON PROPOSED NEW MENTAL HEALTH ACTOPENING REMARKS

The ideal achievement in any mental health legislation will be to afford the mentally ill the maximum advantage that care and treatment can offer, but to guarantee the minimum interference with their rights, dignity and self respect. At the same time, adequate protection must be given to society as a whole.

In coming to the conclusion that a new Act be framed to replace the present Mental Health Act, the Committee appointed by the Honourable the Minister of Health had to consider a number of factors:-

- (a) It had to relate its recommendations to modern treatment in psychiatry and to the changing patterns of health services.
- (b) It had to consider widely opposing views concerning the rights of the individual: from the demand that involuntary commitment should occur only after a trial by jury to the belief that an informal method must be available for ensuring a sick person is given the right to prompt and effective treatment. The civil liberties of the individual had to be set against the rights of the spouse, the family and the community to reasonable protection from stress and harassment.
- (c) It had to give careful consideration to that small group of patients who, by reason of mental illness, are considered to be a significant danger to themselves or others. Most thinking people accept that a person who is clearly a danger to others should be under detention and control. Differences arise in regard to patients who are considered only to be a danger to themselves. Some have argued that individuals should have the right to commit suicide if they wish; others have pointed out there is enough evidence that bereavement is always a source of danger to the human being and should not therefore be lightly disposed of.

These matters are considered in some detail in pages 1 to 5 of the Report. Attention is drawn to the fact that, because of the likely formation of a Health Commission and the integration of Mental Health Services into a total Health Service, the concept of the separate mental hospital will disappear. It is proposed therefore that new legislation should be applicable to any hospital with facilities to treat the patient. There will be a need for a few special units such as the maximum care hospital referred to and the Security Hospital for mentally ill offenders.

The final recommendation on page 5 is that the proposed Act be divided into two parts. Division I considers a mentally ill person who is in need of treatment; Division II considers the mentally ill person, the intellectually retarded person, or the person mentally infirm because of age, decay of his faculties or damage to the brain from whatever cause, who is socially dependent or behaves in an anti-social manner and requires oversight, care and control for his own good or in the public interest.

The two Divisions are not mutually exclusive. For example, a mildly demented, traumatically brain-damaged adult may need treatment for a psychotic episode; a mentally ill person who fails to respond to treatment in the short time envisaged in Division I may need to be brought to the attention of the Guardianship Board proposed in Division II for consideration of longer-term custodial care.

In drawing up its Report, the Committee has sought to remove all responsibility for the detention and control of mentally ill offenders from the proposed Act and to place this responsibility elsewhere. Amendments to other Acts will be required. No reference is made to the treatment of alcoholism or drug dependence.

Division I deals with the treatment and protection of the mentally ill. The ideal is that treatment should be sought voluntarily from a doctor of the patient's own choosing, and that if necessary he be admitted informally to a hospital of his choice. Every effort should

be made to respect the dignity and the freedom of the individual. Protection here means protection of the right as a patient to receive adequate and appropriate treatment, protection from the consequences of actions arising solely out of mental illness, protection of property from exploitation, and protection of human rights and civil liberties.

Because mental illness alone has not been considered sufficient grounds for involuntary admission to hospital, no definition of mental illness has been attempted. It is not the diagnosis of mental illness that is important, but the disturbing behaviour of the patient who is mentally ill and his need for inpatient treatment that are significant. Involuntary commitment on the certificate of a legally qualified medical practitioner is permitted then only if three criteria are met and these are stated in Section 2. Because the Committee recognised the possible infringement of civil liberties inherent in this medical determination, an aspect of the ^{existing} present Act which has been severely criticised, the Report recommends that the maximum period of detention possible on this first individual recommendation should be three days. Also the diagnosis and grounds on which involuntary admission has been recommended must be confirmed by a second opinion, that of a registered specialist psychiatrist.

With modern treatment, the majority of mentally ill persons will respond within three to four weeks. Where a patient lacks insight to seek treatment for himself and involuntary commitment is necessary for the patient's own welfare and for the protection of others, there is therefore a need to extend the initial emergency order, and Section 7 permits an extension of 21 days on the authority of a registered psychiatrist who must not be the doctor who signed the initial emergency order.

It will be noted that Section 8 allows detention beyond 24 days and transfer to a more secure, maximum care hospital only if the patient is considered a danger to others. The decision has been taken

that the great majority of mentally ill persons with suicidal tendencies will have responded sufficiently to treatment in 24 days as no longer to need protection from themselves. If suicidal impulses remain, the patient should be encouraged to remain in hospital informally. If he insists on leaving, it is considered to be in the interests of the vast majority of patients that he should not be detained. Section 8 provides that where further involuntary detention is required for the protection of others, transfer can be made only on the certificate of two registered psychiatrists, or one registered psychiatrist and the medical superintendent of the hospital.

Adequate safeguards against wrongful detention have been suggested from a clear multi-lingual printed statement describing the facilities and provisions of the psychiatric ward and of the patient's rights in relation to hospitalisation, to the provision for regular and frequent review procedures, appeals to an independent mental health review tribunal, and, ultimately, if still dissatisfied to a court presided over by a judge. Legal aid would be freely available.

Division II is seen as a way of bringing together a group of mentally disordered persons who, by reason of anti-social behaviour or social dependence and incapacity to manage their own affairs, need care and protection. The intellectually retarded and the senile demented are obvious cases. Cases of brain damage from head injury or disease and some types of chronic mental illness, have also to be considered. The proposed Guardianship Board will thus assess and make appropriate orders in regard to all forms of mental handicap. It is anticipated that the Board will have a whole range of options:- From financial management of a person's estate to control over certain important life decisions, such as permission for an anaesthetic or operation; to delegation of caring responsibility, to a responsible person or officer in charge of a hostel, foster home or large institution; and even to custody in maximum protective care.

It has been suggested a person subject to a compulsory order should be able to obtain the necessary treatment from an out-patient department or a private practitioner so long as procedures were laid down that a person liable to detention and not carrying out the conditions set would be liable to apprehension and segregation in an institution such as the proposed maximum care hospital. The Committee gave thought to this view and wondered if it could be an option given to the Guardianship Board.

It is noted that rights of appeal to the Minister and to a court presided over by a judge are written into the proposed Act. Legal aid would be freely available. It should also be noted that, in suggesting the constitution of a Guardianship Board, Section 16 specifically refers to "three other persons of whom one at least should be a woman". The all-male Committee feels this is an error and that the words should be "three other persons". One comment received is that this Section could be seen as discriminatory in favour of women.

Sections 11 and 12 discuss the role of the Police Force. A submission from the Police Department recommended that procedures should be adopted which allow Police stations to be bypassed except in certain circumstances, such as in remote country areas, where temporary detention at a Police station may be unavoidable. It was asserted that the proper place for assessment or inquiry as to a patient's mental condition is a properly equipped and staffed centre. The concept of a "place of safety" which would preferably be a hospital is recommended by the Committee.

The aim of these sections is to allow the Police to act in a helpful and supportive manner, when assisting a person who appears to be either mentally ill or mentally handicapped, and to be seen as such rather than as agents of detention and control. They will need power to act as temporary custodians if a person is to be conveyed to and

held in a suitable place until examined by a doctor and a recommendation made either that the person be discharged, admitted to hospital for treatment on an emergency order or referred to the Guardianship Board for assessment and decision.

This Report, which has attempted to take into consideration as many points of view as possible, is presented to you for your consideration and discussion.