Correspondence

The Editor, Bar Gazette

Dear Sir,

I have read the article published in "The Bar Gazette" of November, 1961—Number 3—headed "Notes on the Mental Health Act, 1958" by the Hon. F. G. Myers a Justice of the Supreme Court of New South Wales and although it is somewhat belated I am seeking the opportunity to reply.

In keeping with a determination which was made when I was first assigned the Portfolio of Health I appointed a Committee in 1958 to investigate and report on the need for amended legislation for the care and treatment of persons who are mentally ill. Professor Trethowan who then occupied the Chair of Psychiatry at the Sydney University was a member of the Committee. Subsequent to the Committee's report a Bill was prepared which as the Mental Health Act 1958 was assented to on 31st December and the Lunacy Act 1898 with all its anachronisms was repealed.

At the commencement of the article His Honour refers to the provisions of the new Act relating to the Estates of Persons detained in Mental Hospitals and states that they are archaic, clumsy and inefficient being virtually unchanged from the provisions of the Lunacy Act. It is said to be a tribute to the skill and patience shown in the Master's Office that they work as well as they do.

The facts are that when the Bill was being prepared the Master was requested, as would be expected, to furnish such amendments and additions to the Act as were considered to be required. These were submitted and all of the recommendations were incorporated in the Bill.

It is true as stated in the article that the provisions of the Lunacy Act for the making of general orders and rules for the carrying into effect of several objects of Part VII and VIII of the Act were omitted from the new Act because it was considered that authority at least as extensive as that provided in the Section was already held. However, in view of further representations, it was agreed that the Section should be re-enacted. Unfortunately there was not sufficient time to allow this to be done although a new Section had been drafted and it now remains to be introduced as soon as the opportunity presents itself.

The remainder of the article is for the most part critical, not so much of what is in the Act, but, of what was omitted that had been included in the Lunacy Act, of 1898. His Honour regards as a retrograde step the Magisterial Inquiries which are now held at the Admission Centres where previously there was a Lunacy Court and a person deemed to be insane had his name placed on a charge sheet in a similar way to all offenders against the law. The reason is advanced that when this latter course was followed a record had to be kept whereas today there need be nothing to record the fact that he was ever there.

In similar vein His Honour deprecates the fact that the provisions of the Act of 1898 relating to the keeping of certain registers, (the form of which was prescribed) and the requirements that certain notices should be furnished in regard to the admission and general movement of patients were not included in the Mental Health Act and sees in the omission that the best interest of the patients will not now be served or that the opportunity is given for wrong doing in the hospital administration.

These requirements were regarded as outmoded and were omitted after full consideration at the time the new Bill was being prepared. The view was held that the administration of a mental hospital or admission centre should conform to the practices of other organisations of the Public Services where the procedures are defined and the responsibilities to ensure they are properly carried out clearly delegated.

It is agreed with His Honour that too much reliance should not be placed on the "Infallibility of Administration" (if there is such a thing) but it is not agreed that the administration is rendered less fallible or more efficient merely because the required procedures are part of an Act or included in a Schedule to an Act.

The more serious, in their implications, are the opinions expressed by His Honour because of the omission from the Mental Health Act of a Section (S. 17) included in the Lunacy Act, 1898 which precluded the admission of any person to an admission centre or mental hospital without proper authority. Because of this omission, which again was made after full consideration, His Honour makes several references e.g. (a) It is now lawful to admit persons to mental hospitals whether they are mentally ill or not; (b) Under that Act (Mental Health Act, 1958) a person may now be received into a mental or authorised hospital without any evidence at all that he is mentally ill and even though he is known to be not mentally ill; and (c) There is now no such thing as improper admission into such hospitals because anyone may be admitted.

Nothing could be further from the truth and the provisions of Section 12 of the Mental Health Act relating to the admission of persons to admission centres, mental hospitals and authorised hospitals are accordingly brought to attention. Similar provisions exist in cases of persons who are under detention for various offences when admission to a mental hospital becomes necessary. In Part (1) (a) (b) (c) (d) and (e) of Section 12 the opinion of a medical practitioner that the person is mentally ill is given and in Parts (2) and (3) an Order of a Justice is required. These provisions, Parts (2) and (3), were taken from the old Act and cover exceptional circumstances. It will be noted further that the two Medical Recommendations which accompany the Direction of a Magistrate for admission of a person to a mental hospital through an admission centre are based on "Facts Indicating Mental Illness".

Other than the case of the admission of a voluntary patient, admissions to mental hospitals are universally effected on the Medical Recommendations referred to, accompanied by the direction of a Magistrate. These are temporary admissions which are authorised for a period not exceeding six months and, at the expiry of the period, such persons are brought before the Mental Health Tribunal.

At this point it is appropriate to refer to the criticism that "the patient has no right to be brought before it (the Tribunal) and the Tribunal has no right to require it" and no doubt His Honour has again in his mind what he called reliance upon infallibility of the

administration. In reply I must reiterate the safety valve that exists in the procedures followed in the local administration of the Hospitals and the disciplines that are exercised. It could not be imagined that there would be such collusion between the Medical, Nursing, and Clerical Services of the Hospitals that would result in a temporary patient not being brought before the Tribunal. There is, in addition, the inspection of Mental Hospitals by the Director and by the Board of Official Visitors (an independent body) who make regular visits of inspection to the hospitals and report accordingly to the Minister. One of their duties is the examination of newly admitted patients.

The discharge of patients from hospital is also reviewed by Mr. Justice Myers who says "The Mental Health Act may accurately be said to have made it much easier to be placed in a Mental Hospital and much harder for him to get out".

In this regard it must be pointed out that the avenues for a patient's discharge have been increased and not lessened because of the Mental Health Act. Authorities for discharge are now vested in the Medical Superintendent, the Director, and the Official Visitors individually where previously they acted conjointly. The rights of appeal still exist and the powers of the Judge have been retained. Additionally the Mental Health Tribunals may discharge patients.

Further precautions were taken in the new Act to ensure that the mental condition of patients is kept under review by inserting a Section (15) to provide for the regular examination of long term patients to determine whether continued detention is necessary. The regulations have prescribed the periods for examination as six monthly intervals.

The statement by His Honour that he had personal knowledge of a patient who claimed that he was improperly detained, having a sufficient estate and yet unable to make an effective application to the Court because his money could not be made available to him for the purpose, has been made the subject of inquiry, but the record of such case could not be traced. The position as stated would certainly be regarded as unsatisfactory and warranting further investigation.

Finally I wish to comment on the observation that the Mental Health Act may accurately be said to have made it much easier to be placed in a mental hospital.

It is hoped that this is so for it was one of the aims when the Bill was under consideration and led to the abolition of the Court procedures which were then followed. It was desired to remove the stigma that was oft times believed to accompany mental illness and not deal with the sufferer in a similar manner to persons who had offended against the law. It was desired to stress the great need that existed for persons stricken with a mental illness to receive early treatment and so it was necessary to make the way easier for them to receive such treatment.

As progress is made with the current objective to integrate the Mental Health Services with the Public Health and Hospital programmes of the State, designated Mental Hospitals will be discarded and there will tend to be less need to rely on legal procedures in the case of the mentally ill. The Department is pleased to refer to the report of the Director of State Psychiatric Services for the year ended 30th June, 1961 where it is disclosed that of 5,967 persons admitted to Mental Hospitals during the year more than one half, viz; 3,307 were admitted on their own application as Voluntary patients.

Such is the impact of the new Mental Health Act that after a little more than two years' operations i.e. as at 30th June, 1961, the numbers of Voluntary admissions to Mental Hospitals had increased from 2,068 to 3,307 or by 60% and there is no doubt they will continue to increase, thus bearing evidence of a growing confidence in the administration of the hospital and the treatment that is given there. It will be agreed, I feel sure, that the apprehensions which His Honour appears to have in regard to the care and treatment of the mentally ill, following the passage of the Mental Health Act, 1958, should be allayed by the confidence which 3,307 Voluntary patients expressed last year by their applications for admission.

Yours faithfully,

W. SHEAHAN

Minister for Health.

Editor's Note

Since the publication of the article mentioned in the Minister's letter, a sub-committee of the Bar Council has given consideration to the Act, the article and Mr. Sheahan's letter. The sub-committee has formed the view that the Act as it stands at the present time needs amendment to provide safeguards against the improper detention of persons who are alleged to have been suffering from mental illness. This is not the time or place to set out in full the views of the sub-committee, but it may be stated that among other things it suggests that a person alleged to be mentally ill should be brought before a magistrate within two days instead of "as soon as conveniently may be", that all evidence at inquiries before magistrates should be taken on oath; that the person alleged to be mentally ill should have the right to employ counsel or solicitor and to be examined by his own doctors; that all witnesses should be subject to cross-examination; that all proceedings should be recorded; and that there should be a right of appeal against an order for detention. Somewhat similar provisions should also apply to hearings before Mental Health Tribunals, which the sub-committee feels should consist of three members—one a psychiatrist who is a legally qualified medical practitioner, one a barrister or solicitor and the other a lay member i.e. neither a legal nor a medical man.

As well, it feels that the Act itself should provide for the recording and giving notice to the Chief Secretary and to the Master in the Protective Jurisdiction of admissions and for the prompt giving of notice of the death of patients, as well as the maintenance of case-books.

The Council is very interested in this problem and would welcome the opportunity to make representations relating to amendment of the Act if amending legislation is proposed. In the meantime the report of its sub-committee is to be sent to the Attorney-General for consideration by him and by the Minister. More detailed investigation of the whole problem is to be undertaken by the Bar Association's new Standing Committee on Law Reform.