



LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

13th Assembly

SOCIAL POLICY SCRUTINY COMMITTEE

Public Briefing Transcript

Mental Health and Related Services Act 2019

11.00 am, Monday 23 September 2019

Litchfield Room, Level 3, Parliament House, Darwin

Members: Ms Ngaree Ah Kit MLA, Chair, Member for Karama
Mrs Lia Finocchiaro MLA, Member for Spillett
Mr Chansey Paech MLA, Member for Namatjira
Mrs Kate Worden MLA, Member for Sanderson

Witnesses: *Department of the Attorney-General and Justice*
Jenni Daniel-Yee: Director, Legal Policy
Josine Wynberg: Principal Policy Lawyer

MENTAL HEALTH AND RELATED SERVICES AMENDMENT BILL 2019

Department of the Attorney-General and Justice

Madam CHAIR: Good morning everyone, thank you for joining us. I am Ngaree Ah Kit the Member for Karama and Chair of the Social Policy Scrutiny Committee.

On behalf of the committee I welcome everyone to this public briefing on the Mental Health and Related Services Amendment Bill 2019.

I acknowledge my fellow committee members in attendance today, Member for Sanderson, Kate Worden, Member for Spillett, Lia Finocchiaro and via teleconference Member for Namatjira, Chansey Paech.

I welcome to the table to give evidence to the committee, from the Department of the Attorney-General and Justice: Jenni Daniel-Yee, Director, Legal Policy; and Josine Wynberg, Principal Policy Lawyer. Thank you for coming before the committee. We appreciate you taking the time to speak to the committee and look forward to hearing from you today.

This is a formal proceeding of the committee and the protection of parliamentary privilege and the obligation not to mislead the committee applies. This is a public hearing which is being webcast through the Assembly's website. A transcript will be made for use of the committee and may be put on the committee's website.

If, at any time during the briefing, you are concerned that what you will say should not be made public, you may ask that the committee go into a closed session and take your evidence in private.

I will ask each witness to state their name for the record and the capacity in which they appear. I will then invite you to make an opening statement before proceeding to the committee's questions.

Could you please each state your name and capacity in which you are appearing?

Ms DANIEL-YEE: Jenni Daniel-Yee, Director, Legal Policy, Department of the Attorney-General and Justice.

Ms WYNBERG: Josine Wynberg, Principal Policy Lawyer, Department of the Attorney-General and Justice.

Thank you to the committee for the opportunity to attend today and provide you with this opening statement.

The bill that we are considering today is the Mental Health and Related Services Amendment Bill 2019, serial number 104. To assist the committee in its consideration of this bill, it is helpful to draw your attention to the following points.

The purpose of this bill is to transfer the work of the Mental Health Review Tribunal to the Northern Territory Civil and Administrative Tribunal. Once transferred, the MHRT will cease to exist.

The NTCAT does not have its own jurisdiction. To take on a jurisdiction it must be conferred by other legislation. Since the creation of the NTCAT in 2014, the department, being the Department of the Attorney-General and Justice, has been working to confer jurisdiction on the NTCAT. Other examples include, certain native title matters, small claim disputes formerly dealt with by the local court and jurisdiction of certain matters under the *Residential Tenancies Act*.

I should note at this point that as with other conferral matters, not all but some, due to the technical nature of this bill, there has not been any public consultation undertaken as part of its development. There has been consultation between the department and the president of the NTCAT, Judge Richard Bruxner, who is also the president of the MHRT. He wears both hats.

There has also been consultation between the department and the Department of Health, which is the other government agency that most commonly deals with the MHRT arranging for practitioners and patients to appear before the MHRT.

It is important when conferring a jurisdiction such as this on to the NTCAT, to where ever possible, use or prefer the existing processes and procedures of the NTCAT. To do otherwise would impact the efficiency and the accessibility of the NTCAT. The NTCAT, as you might expect, also has existing officers and staff, including the president, deputy president and registrar and those members who sit to make up the NTCAT. In order to effect this transfer, this bill amends references in the *Mental Health and Related Services Act 1998* from the MHRT to the NTCAT. The bill provides for the president, deputy president and registrar of the NTCAT to carry out roles and functions under the act. It does away with roles and titles that will no longer have a place, for example, the role of the deputy registrar of the MHRT.

The bill provides for the members of, applications to, proceedings before, decisions, warrants and orders of and practice directions of the MHRT to transition to the NTCAT. Members will transfer with their existing entitlements.

The bill makes a number of other changes to the Act and seeks to preserve where possible the more beneficial provisions offered in the MHRT and ones that are more suited to its work. If you would like, I can take you through those provisions, or perhaps at the end of the opening statement?

The MHRT came in to being on 1 February 2000 and that was when it held its first hearings. The primary role of the MHRT has been to Act as an independent decision-making body to protect the interests of persons who cannot do so for themselves due to mental illness. The exercise of that primary function largely involves the review of decisions made by mental health services under the Act relating to the admission, detention and treatment of persons admitted involuntarily to an approved treatment facility and determinations in relation to the involuntary treatment of patients in the community.

The membership of the MHRT is comprised of three members. A legal member, a medical member and a community member with special interest or expertise in mental illness or mental disturbance with a legal member to preside. That make up will continue in the NTCAT.

Initially, the MHRT was co-located with the Magistrates Court in Nichols Place sharing staff and office space. In 2000 when the MHRT first held hearings they were conducted in Darwin at the Cowdy Ward, at the Royal Darwin Hospital and then also in Alice Springs on a Friday in Ward One at the Alice Springs Hospital.

Over time, arrangements changed and the MHRT had come to be co-located and share staff with the Lands, Planning and Mining Tribunal. The practice of conducting hearings on a Wednesday in Darwin and Friday in Alice Springs remained. The MHRT has been co-located with the NTCAT since 2015, not long after the NTCAT was created.

The NTCAT has managed the administrative and quasi-judicial responsibilities of the MHRT since that time. Administration and management of the MHRT is carried out from the head office of the NTCAT and the tribunals share registry facilities in Casuarina, in Darwin and also in Alice Springs, and this has led to some administrative inefficiencies as different processes apply in each tribunal.

In 2016 the NTCAT appointed its first full-time Alice Springs member who was then also appointed as a legal member of the MHRT. This enabled the MHRT to hold Alice Springs hearings with a legal member physically present in Alice Springs Hospital rather than appearing by some remote means.

Due to an increasing work load in Darwin in late 2017, the Darwin hearings came to be spread over two days, Mondays at the Tamarind Centre and Wednesdays at the Royal Darwin Hospital. This has increased the ability of the MHRT to deal with the matters coming before it. There is no intention to change the pattern or location of the hearings to be held once the transfer is complete. On passage of this bill that will complete the combination of the two tribunals.

That was all I had to say by way of an opening statement unless you wanted me to take you through the detail of the bill?

Madam CHAIR: I might just check in with the committee for any questions first.

Mrs WORDEN: It is good to hear that you are going to retain the legal medical community make-up. Can you tell me how that will be enshrined in the legislation to make sure that continues and it does not just happen as a matter of practice to begin with but then it slips away?

Ms WYNBERG: Certainly, and thank you for that question. I will turn briefly to the bill which preserves the process of the nomination and the constitution of the tribunal.

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Mrs WORDEN: ...to make sure that continues and it does not just happen as a matter of practice to begin with but then it slips away?

Ms WYNBERG: Certainly. Thank you for the question. The bill preserves the process of the nomination and the constitution of the tribunal. The new section will be section 121. The way that clause is structured is that of the persons to be nominated to the NTCAT, the first of the persons is to be the legal member so either the President, the Deputy President or a member who is appointed under section 16(2)(a) of the NTCAT Act. That provision of the NTCAT Act is for the appointment of a legal member.

The following two subsections, subsection (b) is for the medical practitioner appointed as a member with reference to subsection (2)(b) of the NTCAT Act which is where the general community members are appointed. You may or may not be familiar with the NTCAT Act but it has a structure where under subsection (2)(a) they appoint legal members and under (2)(b) they appoint community members.

Subsection (3) of the new bill will ensure that the third person is one with special interest or expertise in mental illness, mental disturbance or complex cognitive impairment, appointed as a member again with reference to that community

section of the NTCAT Act. The obligation will be on the President, when he or she is compiling the tribunal to ensure that he has each of those different categories.

Mrs WORDEN: So it is enshrined.

Ms WYNBERG: Yes.

Madam CHAIR: Thank you very much for that. I think it is going to be an interesting bill. NTCAT is already co-located with the Mental Health Review Tribunal so it is not going to change the make-up or the membership of the people who are hearing these important matters so thank you very much for appearing before us and sharing that information this morning.