

Serial 104
Mental Health and Related Services Amendment Bill 2019
Ms Fyles

A Bill for an Act to amend the *Mental Health and Related Services Act 1998*

NORTHERN TERRITORY OF AUSTRALIA

MENTAL HEALTH AND RELATED SERVICES AMENDMENT ACT 2019

Act No. [] of 2019

Table of provisions

| | | |
|----|---|---|
| 1 | Short title | 1 |
| 2 | Commencement | 1 |
| 3 | Act amended | 1 |
| 4 | Section 3 amended (Objects) | 1 |
| 5 | Section 4 amended (Definitions)..... | 1 |
| 6 | Section 44C amended (Application for order for involuntary admission) | 2 |
| 7 | Section 44E amended (Decision on application) | 2 |
| 8 | Section 44H amended (Discharge)..... | 2 |
| 9 | Section 99 amended (Withholding of certain correspondence) | 3 |
| 10 | Part 15 heading and Part 15, Division 1 replaced..... | 3 |
| | Part 15 Tribunal | |
| | Division 1 Jurisdiction of Tribunal | |
| | 118 Jurisdiction of Tribunal | |
| | 119 Review of original decision | |
| | Division 1A Constitution of Tribunal | |
| | 120 Requirements for constitution of Tribunal for proceeding | |
| | 121 Nomination of Tribunal members | |
| 11 | Section 129 amended (Hearings)..... | 5 |
| 12 | Section 129A inserted | 5 |
| | 129A Adjournment of hearings | |
| 13 | Section 131 amended (Right of appearance and representation) | 5 |
| 14 | Section 133 repealed (Evidence)..... | 6 |
| 15 | Section 135 amended (Hearing not open to public)..... | 6 |
| 16 | Section 135A repealed (Contempt of Tribunal)..... | 6 |
| 17 | Section 136 amended (Record of proceedings) | 6 |
| 18 | Section 137 replaced..... | 7 |
| | 137 Evidence not admissible in other proceedings | |
| 19 | Sections 139 to 141 replaced | 7 |
| | 141 Decisions and reasons for decisions | |
| | 141A Publication of decision | |
| 20 | Section 142 amended (Appeal to Supreme Court)..... | 8 |
| 21 | Part 22 inserted | 8 |

| | | | |
|-----------------|---------|---|----|
| | Part 22 | Transitional matters for Mental Health and Related Services Amendment Act 2019 | |
| | 180 | Definitions | |
| | 181 | Members of former Tribunal | |
| | 182 | Applications to former Tribunal | |
| | 183 | Ongoing proceedings of former Tribunal | |
| | 184 | Decisions, warrants and orders of former Tribunal | |
| | 185 | Practice directions | |
| 22 | | Act further amended | 10 |
| 23 | | Repeal of Act | 10 |
| Schedule | | Act further amended | |



NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2019

An Act to amend the *Mental Health and Related Services Act 1998*

[Assented to [] 2019]
[Introduced [] 2019]

The Legislative Assembly of the Northern Territory enacts as follows:

1 Short title

This Act may be cited as the *Mental Health and Related Services Amendment Act 2019*.

2 Commencement

This Act commences on the day fixed by the Administrator by *Gazette* notice.

3 Act amended

This Act amends the *Mental Health and Related Services Act 1998*.

4 Section 3 amended (Objects)

Section 3(k)

omit

5 Section 4 amended (Definitions)

(1) Section 4, definitions ***President*** and ***Tribunal***

omit

(2) Section 4

insert

Deputy President, see section 3 of the NTCAT Act.

NTCAT Act means the *Northern Territory Civil and Administrative Tribunal Act 2014*.

President, see section 3 of the NTCAT Act.

Tribunal means NTCAT.

6 Section 44C amended (Application for order for involuntary admission)

Section 44C, note

omit

Tribunal under section 129(2A)

insert

President under section 139 of the NTCAT Act

7 Section 44E amended (Decision on application)

Section 44E, note

omit

Tribunal under section 129(2A)

insert

President under section 139 of the NTCAT Act

8 Section 44H amended (Discharge)

Section 44H(2), note

omit

all words from "*Also*" to "*Division*."

9 Section 99 amended (Withholding of certain correspondence)

Section 99(2)(g)

omit

or a Deputy Registrar

10 Part 15 heading and Part 15, Division 1 replaced

Part 15, heading and Part 15, Division 1

repeal, insert

Part 15 Tribunal

Division 1 Jurisdiction of Tribunal

118 Jurisdiction of Tribunal

The Tribunal has jurisdiction to deal with matters under this Act.

119 Review of original decision

Section 140 of the NTCAT Act does not apply to a decision of the Tribunal under this Act.

Division 1A Constitution of Tribunal

120 Requirements for constitution of Tribunal for proceeding

- (1) For a proceeding under this Act, the Tribunal must, as far as reasonably practicable, be constituted by members:
 - (a) of diverse gender; and
 - (b) from diverse backgrounds including Aboriginal and Torres Strait Islander backgrounds.
- (2) A member cannot be nominated to constitute the Tribunal for a proceeding under this Act if the member is any of the following:
 - (a) a medical practitioner in charge of, or having principal responsibility for providing medical services at, the hospital;
 - (b) the principal community visitor;
 - (c) a community visitor;

-
- (d) a member of a community visitors panel;
 - (e) a member of a special community visitors panel;
 - (f) a designated mental health practitioner;
 - (g) an authorised psychiatric practitioner;
 - (h) the Chief Health Officer;
 - (i) the CEO;
 - (j) an authorised officer;
 - (k) the person-in-charge of an approved mental health facility or approved treatment agency;
 - (l) an employee of the Health and Community Services Complaints Commission.
- (3) When nominating members to constitute the Tribunal, the President may take into account any suitable qualifications or suitable knowledge or experience of a member for the constitution of the Tribunal.

121 Nomination of Tribunal members

- (1) When the Tribunal is to exercise any of its powers or perform any of its functions, the President must, subject to this Act, nominate 3 members of the Tribunal to exercise the power or perform the function.
- (2) Of the persons nominated under subsection (1):
- (a) one is to be:
 - (i) the President; or
 - (ii) the Deputy President; or
 - (iii) a member appointed with reference to section 16(2)(a) of the NTCAT Act; and
 - (b) one is to be a medical practitioner appointed as a member with reference to section 16(2)(b) of the NTCAT Act; and
 - (c) one is to be a person with special interest or expertise in mental illness, mental disturbance or complex cognitive impairment appointed as a member with reference to section 16(2)(b) of the NTCAT Act.

-
- (3) Despite subsection (1), if the President is satisfied exceptional circumstances exist, the President may nominate 2 members of the Tribunal to exercise the powers and perform the functions of the Tribunal.
 - (4) One of the persons nominated under subsection (3) must be a member mentioned in subsection (2)(a).

11 Section 129 amended (Hearings)

- (1) Section 129(2) to (5A)

omit

- (2) Section 129(6)

omit

his or her

insert

the person's

12 Section 129A inserted

After section 129

insert

129A Adjournment of hearings

If a hearing is adjourned under section 57 of the NTCAT Act, an order that is in force at the adjournment remains in force during the adjournment despite any earlier date that was fixed for its expiry.

13 Section 131 amended (Right of appearance and representation)

Section 131(1) and (2)

omit, insert

- (2) The Tribunal must appoint a legal practitioner to represent a person who is the subject of a review or involuntary detention application if:
 - (a) the person is unrepresented at the hearing; and
 - (b) the Tribunal considers the person should be represented at the hearing.

14 Section 133 repealed (Evidence)

Section 133

repeal

15 Section 135 amended (Hearing not open to public)

(1) Section 135(1)

omit, insert

(1) Despite section 60 of the NTCAT Act, a hearing of the Tribunal is not to be held in public unless the Tribunal orders otherwise.

(2) Section 135(2)

omit

a direction

insert

an order

(3) Section 135(3)

omit

A direction

insert

An order

16 Section 135A repealed (Contempt of Tribunal)

Section 135A

repeal

17 Section 136 amended (Record of proceedings)

(1) Section 136(2)

omit

Subject

insert

Despite section 85 of the NTCAT Act and subject

(2) Section 136(5)

omit

he or she

insert

the adult guardian, decision maker or representative

18 Section 137 replaced

Section 137

repeal, insert

137 Evidence not admissible in other proceedings

(1) Except for an appeal to the Supreme Court under section 142, evidence before the Tribunal cannot be used in civil or criminal proceedings.

(2) This section applies in addition to section 71 of the NTCAT Act.

19 Sections 139 to 141 replaced

Sections 139 to 141

repeal, insert

141 Decisions and reasons for decisions

Section 105(2) to (4) of the NTCAT Act does not apply to a decision made by the Tribunal under this Act.

141A Publication of decision

(1) For section 106 of the NTCAT Act, before deciding to publish its final decision in a proceeding, the Tribunal must take into account whether or not:

(a) the privacy of the parties to the review or involuntary detention application will be adversely affected by the publication; and

(b) the publication of the decision will result in serious harm to the health of the person who is the subject of the review or involuntary detention application or will place at risk the safety of other persons; and

(c) the publication of the decision is in the public interest.

-
- (2) If the Tribunal publishes its final decision under section 106 of the NTCAT Act, the Tribunal must not include the name of the person who is the subject of the decision under this Act or any other material that may disclose the identity of the person in the publication.

20 Section 142 amended (Appeal to Supreme Court)

Section 142(1)

omit

A

insert

Despite section 141 of the NTCAT Act, a

21 Part 22 inserted

After section 179

insert

Part 22 Transitional matters for Mental Health and Related Services Amendment Act 2019

180 Definitions

In this Part:

commencement means the commencement of section 10 of the *Mental Health and Related Services Amendment Act 2019*.

former Act means this Act as in force immediately before the commencement.

former Tribunal means the Mental Health Tribunal as it was established immediately before the commencement.

181 Members of former Tribunal

- (1) This section applies to a person who was, immediately before the commencement, a member of the former Tribunal.
- (2) The person continues to be entitled to the same entitlements determined under the *Assembly Members and Statutory Officers (Remuneration and Other Entitlements) Act 2006* to which the person was entitled immediately before the commencement.

-
- (3) A person appointed with reference to section 118(3)(a) of the former Act is taken to have been appointed as a member of NTCAT under section 16(2)(a) of the NTCAT Act until the day the person's appointment would have expired under the former Act.
 - (4) A person appointed with reference to section 118(3)(b) or (c) of the former Act is taken to have been appointed as a member of NTCAT under section 16(2)(b) of the NTCAT Act until the day the person's appointment would have expired under the former Act.

182 Applications to former Tribunal

An application to the former Tribunal that has not yet been heard becomes an application to NTCAT on the commencement.

183 Ongoing proceedings of former Tribunal

- (1) Proceedings currently before the former Tribunal become proceedings before NTCAT on the commencement.
- (2) Those proceedings continue uninterrupted and, subject to subsections (3) and (4), are not affected by the enactment of the *Mental Health and Related Services Amendment Act 2019*.
- (3) If, as a result of the enactment of the *Mental Health and Related Services Amendment Act 2019*, the procedure applicable to the proceedings after the commencement (the **new procedure**) is different from that which would have applied before the commencement (the **old procedure**), the proceedings are to be conducted in accordance with the new procedure.
- (4) However, if NTCAT is satisfied that conducting the proceedings in accordance with the new procedure would be unfair on a party to the proceedings, NTCAT may conduct the proceedings in accordance with the old procedure to the extent NTCAT thinks fit.

184 Decisions, warrants and orders of former Tribunal

A decision, warrant or order of the former Tribunal before the commencement and having ongoing effect, becomes a decision, warrant or order of NTCAT on the commencement.

185 Practice directions

Any practice directions issued under section 129(2A) of the former Act, become practice directions for NTCAT under section 139 of the NTCAT Act on the commencement.

22 Act further amended

The Schedule has effect.

23 Repeal of Act

This Act is repealed on the day after it commences.

Schedule Act further amended

section 22

| Provision | Amendment | |
|---|--------------------------|--|
| | <i>omit</i> | <i>insert</i> |
| sections 54(1)(b), 63(3)(c), 64(2)(b), 66(1)(b) and 80A(1)(b)(ii)(A) | Civil and Administrative | |
| section 132(1) | his or her | the person's |
| section 132(4) | he or she | the adult guardian, decision maker or representative |
