

# EXPLANATORY STATEMENT

## Mental Health and Related Services Amendment Bill 2019

### SERIAL NO. 104

LEGISLATIVE ASSEMBLY OF THE  
NORTHERN TERRITORY

ATTORNEY-GENERAL AND MINISTER FOR JUSTICE

#### **GENERAL OUTLINE**

The Bill amends the *Mental Health and Related Services Act 1998*.

The purpose of the Bill is to confer the jurisdiction of the Mental Health Review Tribunal on the Northern Territory Civil and Administrative Tribunal. The Mental Health Review Tribunal will then cease to exist.

#### **NOTES ON CLAUSES**

##### **Clause 1. Short title**

This is a formal clause, which provides for the citation of the Bill. The Bill when passed, may be cited as the *Mental Health and Related Services Amendment Act 2019*.

##### **Clause 2. Commencement**

This is a formal clause that provides that the commencement of the Act will occur on a day or days fixed by the Administrator by way of a notice published in the Gazette.

##### **Clause 3. Act amended**

This clause provides that this Act amends the *Mental Health and Related Services Act 1998*.

##### **Clause 4. Section 3 amended (Objects)**

This clause removes section 3(k) which provided for the establishment of the Mental Health Review Tribunal from the objects of the *Mental Health and Related Services Act 1998* (MH&RS Act).

##### **Clause 5. Section 4 amended (Definitions)**

This clause omits the definitions of President and Tribunal from section 4 once the provisions of the *Northern Territory Civil and Administrative Act 2014* (NTCAT Act) apply under the MH&RS Act.

The clause then inserts the following definitions:

**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.

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

This clause makes a consequential amendment to the note following section 44C to refer to the President and the relevant provision in the NTCAT Act rather than the repealed provisions of the MH&RS Act.

**Clause 7. Section 44E amended (Decision on application)**

This clause makes a consequential amendment to the note following section 44E to refer to the President and the relevant provision in the NTCAT Act rather than the repealed provisions of the MH&RS Act.

**Clause 8. Section 44H amended (Discharge)**

This clause makes a consequential amendment to the note following section 44H to remove a reference to a Division that will be repealed.

**Clause 9. Section 99 amended (Withholding of certain correspondence)**

This clause removes a reference to the position of Deputy Registrar that will no longer exist under the MH&RS Act (see comments in relation to section 121 below).

**Clause 10. Part 15 heading and Part 15, Division 1 replaced**

This clause repeals the heading for, and then all of, Part 15, Division 1. The clause then inserts a new Part 15, Division 1 which contains much of the substance of the former and re-orders the provisions and concepts.

The sections repealed from the MH&RS Act are sections 118, 119, 120 and 121. These were the operative provisions that established the MHRT, set out the required qualifications for members, process for appointment of and the term of office of members and then to provide for the resignation and removal from office of members.

The clause inserts a new section 118 which confirms the Tribunal (now meaning the NTCAT) has jurisdiction to deal with matters under the MH&RS Act. This is the method of conferral of jurisdiction on the NTCAT.

The clause then inserts a new section 119 which provides that section 140 of the NTCAT Act does not apply to a decision of the NTCAT under the MH&RS Act. Section 140 of the NTCAT Act provides that a person aggrieved by a decision of the NTCAT in its original jurisdiction may apply for a review of the decision. Appeals from a decision of the NTCAT under the MH&RS Act will continue to be to the Supreme Court for a rehearing (see section 142 of the MH&RS Act).

The clause then inserts a new Division 1A for the 'Constitution of the Tribunal'. Section 120(1) preserves the requirement formerly in section 118(4) that for a proceeding, the members of the Tribunal be of diverse gender and from diverse backgrounds. New section 120(1) promotes the requirement that diverse backgrounds includes Aboriginal and Torres Strait Islander backgrounds.

New section 120(2) preserves the requirements formerly in section 118(5) that in order to avoid any perceived or actual conflicts of interest, members are not able to be nominated to

constitute the NTCAT for a proceeding under the MH&RS Act if they hold any of the positions listed.

New section 120(3) rounds out the ability of the President to take suitable qualifications, knowledge or experience into consideration when making a nomination to the NTCAT for matters under the MH&RS Act.

The clause inserts a new section 121 which retains the substance of former sections 118(3), 120(1), (2) and (4) as to the composition of the Tribunal by reference to the provisions of the NTCAT Act. In order to only effect minimal changes with the conferral of jurisdiction it is preferred that the composition of the NTCAT remain one member who is a legal practitioner, one who is a medical practitioner and one who has a special interest or expertise in mental illness, mental disturbance or complex cognitive impairment.

The clause inserts section 120(3) which mirrors former section 120(4) so that the President may, if satisfied that exceptional circumstances exist, nominate 2 rather than 3 members to perform the functions of the Tribunal, so long as one is either a lawyer or who holds suitable qualifications or knowledge or experience relating to the jurisdiction of the NTCAT under the MH&RS Act.

The repeal of former section 120(3) is a consequential change given the powers of the President under section 14 of the NTCAT Act to nominate a series of members.

In a similar fashion former section 120(5) is repealed and replaced with section 121(4) a clause referring to the new provisions of the Act.

As noted above this clause repeals former section 121 which provided for the Minister to appoint a Registrar and a Deputy Registrar of the Tribunal. Under section 143 of the NTCAT Act the Minister may appoint a Registrar of the Tribunal. With the repeal of section 121, section 143 of the NTCAT Act will be able to operate.

#### **Clause 11. Section 129 amended (Hearings)**

The clause will omit sections 129(2) to (5A). Section 129(5A) will be re-inserted as a new section 129A (see clause 12 below). The clause then makes a consequential amendment to section 129(6) in order to modernise the wording replacing 'his or her' with the words 'the person's'.

Under the NTCAT Act the NTCAT has a range of powers to conduct hearings and make its own rules of procedure that mirror or are more expansive than sections 129(2) to (5) of the MH&RS Act including:

- the issue of practice directions (section 139 of the NTCAT Act),
- the referral of a question of law to the President (section 28 of the NTCAT Act),
- to summon a person or evidence before itself (section 89 of the NTCAT Act), and
- to appoint persons to assist it to inform itself on any matter (sections 73 and 74 of the NTCAT Act)

Sections 129(1) and (1A) are retained to confirm that the NTCAT may undertake a review by conducting a hearing and to decide an application for an involuntary detention order.

#### **Clause 12. Section 129A inserted**

This clause will insert after section 129, a new section 129A. New section 129A is in much the same terms as the repealed 129(5A) with an additional reference to section 57 of the NTCAT Act to confirm that when the NTCAT adjourns a hearing under the MH&RS Act, an order in force at the adjournment remains in force despite any earlier date fixed for its expiry.

**Clause 13. Section 131 amended (right of appearance and representation)**

This clause will omit section 131(1) from the MH&RS Act. This section provided for a person's right of appearance and representation in the Tribunal when subject to a review or involuntary detention application. Section 130 of the NTCAT Act provides how a party may appear before the NTCAT.

This clause will also omit section 131(2) and then replace it with a provision in substantially the same terms to provide that if the NTCAT considers a person subject to a review or involuntary detention application should be represented at the hearing then a legal practitioner must be appointed.

The balance of section 131 is to be retained including the sections which provide when it may be ordered that the Territory will meet the cost of the legal practitioner at section 131(4). It should also be noted that sections 131(5), (6) and (7) provide for the circumstances in which the NTCAT may where a person is subject to a review or involuntary detention application, conduct a hearing in the absence of the person or the person's representative. Such matters are not provided for in the NTCAT Act.

**Clause 14. Section 133 repealed (Evidence)**

This clause repeals section 133 of the MH&RS Act, to enable complementary provisions of the NTCAT Act to operate. Section 133(1) of the MH&RS Act provided that parties may call and produce evidence and request a person to attend and give evidence at a hearing. Section 89 of the NTCAT Act permits the NTCAT to issue a summons for a party to produce evidence or appear to give evidence. Section 90 of the NTCAT Act then goes on to create an offence for a failure to comply with a summons, an offence not created under the MH&RS Act. Section 91 of the NTCAT Act provides for the production, copying or keeping of evidence and section 92 provides that a witness may be required to take an oath before giving evidence. Again these are matters not provided for in the section 133 or otherwise of the MH&RS Act.

**Clause 15. Section 135 amended (Hearing not open to public)**

This clause makes a small amendment to section 135(1) to disapply section 60 of the NTCAT Act. Hearings under the MH&RS Act are not to be held in public unless the NTCAT orders otherwise. This is contrary to the provisions of section 60 of the NTCAT Act where a hearing is to be held in public unless the NTCAT orders otherwise.

The clause also makes consequential amendments to sections 135(2) and 135(3) to remove references to 'a direction' of the Tribunal and replace that with 'an order'. This will ensure consistency with the language of the NTCAT Act.

**Clause 16. Section 135A repealed (Contempt of Tribunal)**

The clause will repeal section 135A of the MH&RS Act so that sections 86, 87 and 88 of the NTCAT Act which provide that contempt is an offence and sets out what conduct will constitute contempt are able to operate.

**Clause 17. Section 136 (Record of proceedings)**

This clause amends section 136 to make it clear that its provisions apply despite section 85 of the NTCAT Act. Section 85 of the NTCAT Act allows a person to inspect or copy the NTCAT's records, transcript of evidence, evidentiary material, or any decision or order made by the Tribunal. Section 136 of the MH&RS Act is more expansive requiring that the Tribunal must make a record of all proceedings by electronic means that is then to be retained for 12 months. A person who is the subject of a review by the Tribunal or involuntary detention application may be provided with a copy of that record of the proceedings at no cost.

The NTCAT may also refuse to provide a copy of the record where to do so may cause serious harm to a person or put the safety of a person at risk.

This clause also makes a consequential change to section 136(5) to modernise the language removing the reference to 'he or she' and replacing it with the capacity in which the person has made the request.

### **Clause 18. Section 137 replaced**

In its present form section 137 provides that evidence before the Tribunal cannot be used in civil or criminal proceedings. This might lead to an argument that on an appeal to the Supreme Court under section 142 of the MH&RS Act, the Court would not be able to inform itself in any respect as to the evidence that was before the Tribunal.

A revised section 137(1) is to be inserted in the MH&RS Act to clarify that on appeal under section 142, evidence before the NTCAT can be used but not otherwise.

Section 137(2) references section 71 of the NTCAT Act. That provision of the NTCAT Act confirms that the privilege against self-incrimination applies for a witness of a proceeding as if the NTCAT was a Territory Court. New section 137(2) of the MH&RS Act will confirm that position will apply in the NTCAT for proceedings under the MH&RS Act.

### **Clause 19. Sections 139 to 141 replaced**

This clause repeals sections 139, 140 and 141 of the MH&RS Act. It then inserts a new section 141 and 141A.

Section 139 of the MH&RS Act created an offence if a person obtains information in the course of carrying out functions under the Act and makes a copy of or uses that information resulting in the disclosure of the information to someone else. This offence and other obligations exist in section 149 of the NTCAT Act. Section 139 is repealed to allow section 149 of the NTCAT to operate.

Section 140 of the MH&RS Act imposed an obligation on the Tribunal to provide the Minister with a report on the exercise of the powers and functions under the Act during each financial year. Section 151 of the NTCAT Act imposes an obligation on the President to prepare and give to the Minister a report on the administration and operation of the NTCAT during the financial year including the requirements that the report is to contain. Section 140 of the MH&RS Act is repealed to enable section 151 of the NTCAT Act to operate.

Former section 141 of the MH&RS Act set out the need to prepare and publish reports of decisions and the considerations that are to be made before publication occurs. Section 105(1) of the NTCAT Act requires all decisions to be issued under the seal of the Tribunal. This will apply in this jurisdiction. New section 141 makes it clear that the balance of section 105(2) –to (4) of the NTCAT Act which require reasons to be delivered within 28 days if no extension is sought, will not apply.

New section 141A(1) is to be inserted into the MH&RS Act which retains the substance of the considerations to be made by the President in former section 141(2) removing the need for the express wishes of the person to be considered. The new provision places a positive obligation on the NTCAT to ensure that publication will not adversely affect the privacy of parties, will not result in serious harm to the health or safety of a person and is in the public interest. The policy intent is to, while balancing the interests of those involved in the proceedings, make it easier for the NTCAT to publish its decisions under the Act and so develop its jurisprudence. The requirement to remove the name of or any material that may identify the person from the publication in former section 141(2) remains in section 141A(2).

**Clause 20. Section 142 amended (Appeal to Supreme Court)**

This clause amends section 142 of the MH&RS Act so that an appeal to the Supreme Court lies despite section 141 of the NTCAT Act. Section 141 of the NTCAT Act limits an appeal to the Supreme Court against a decision of the NTCAT to only a question of law and only with leave having been granted. Section 142 of the MH&RS Act is a broader provision enabling a person aggrieved by a decision of the NTCAT, without leave, to appeal to the Supreme Court by way of a rehearing (see section 142(3)).

**Clause 21. Part 22 inserted**

This clause, in order to provide for the transitional matters provides that Part 22 is to be inserted following section 179.

New section 180 introduces relevant definitions for use in the Part as follows:

**commencement** means the commencement of section 3 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.

New section 181 applies to a person who was immediately before the commencement a member of the former Tribunal. Section 181(2) provides that the person will continue to remain entitled to statutory entitlements and allowances received. Sections 181(3) and (4) then provide that the a person appointed with reference to section 118(3)(a), (b) or (c) of the former Act, is taken to be appointed as a member of the NTCAT with reference to the equivalent provision of section 16 of the NTCAT Act until their appointment would have expired under the former Act.

New section 182 confirms that any application to the former Tribunal and not yet heard by it becomes an application to the NTCAT.

New section 183 provides that proceedings before the former Tribunal become proceedings before NTCAT and are not interrupted by the coming into force of the amending Act. Section 183(3) notes that there may be differences between the procedures applicable after the commencement (new procedure) from that which would have applied before commencement (old procedure). Section 183(4) enables NTCAT if satisfied that conducting the proceedings in accordance with any new procedures would be unfair to a party, to conduct the proceedings in accordance with the old procedures as it sees fit.

New section 184 provides that a decision, warrant or order of the former Tribunal will have ongoing effect as a decision, warrant or order of NTCAT.

New section 185 provides that any practice directions of the former Tribunal made under former section 129(2A) of the former Act will continue in force in the NTCAT.

**Clause 22. Act further amended**

The Schedule sets out ancillary amendments to be made to the MH&RS Act to ensure consistent references to the Tribunal and remove old fashioned references to a person's gender for example 'his or her'.

**Clause 23. Repeal of Act**

This is a standard clause for legislation which consists entirely of amendments to other legislation. It provides that the Act ceases to have effect on the day after it commences. As this is an amending Act, there is no need to retain it on the statute book once the amendments to the MH&RS Act have been effected.

## STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with the Thirteenth Assembly Sessional Orders (part 12.3) as adopted on 24 August 2017.

### MENTAL HEALTH AND RELATED SERVICES AMENDMENT BILL 2019

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth).

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth) – namely the International Covenant on Civil and Political Rights done at New York on 16 December 1966.

### OVERVIEW OF THE BILL

The Mental Health and Related Services Amendment Bill 2019 (the Bill) amends the *Mental Health and Related Services Act 1998* (the Act) to confer the jurisdiction of the Mental Health Review Tribunal (MHRT) under the Act onto the Northern Territory Civil and Administrative Tribunal (NTCAT). The MHRT will then cease to exist. The intention in drafting the Bill was to make as few substantive amendments to the jurisdiction.

There are no substantive changes made to the practice or procedure under the Act. The appointment and composition of members remains unchanged. While some powers and functions conferred on the MHRT by the Act are removed by the Bill that is because the *Northern Territory Civil and Administrative Act 2014* (NTCAT Act) has equivalent or more beneficial provisions than the Act. The Bill does not reform the process for making or approving procedures and forms under the Act. It preserves the need for a hearing of a review of an involuntary admission order that has been made.

The more significant changes in the Bill are to enable the Supreme Court to consider evidence in the NTCAT below when it is hearing an appeal.

The current requirement that the MHRT seek out and act on the wishes of the parties before publishing its reports has been removed and replaced with a positive obligation to take them into account. In the future the NTCAT will be able to do publish its reports under the Act only once it has considered the needs of the parties and if that is in the public interest. The Bill maintains the requirement to not hold a hearing in public under the Act unless the NTCAT orders otherwise.

### HUMAN RIGHTS IMPLICATIONS

The Bill engages the right to equality before courts and tribunals referred to in Article 14(1) of the International Covenant on Civil and Political Rights (ICCPR) and the right to effective access to justice referred to in Article 13(1) of the Convention on the Rights of Persons with Disabilities (CRPD):

#### **Fair trial and fair hearing rights – Article 14(1) of the ICCPR**

Article 14 of the ICCPR provides that:

All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals public order (order public) or national security in a democratic

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society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

Article 13(1) of the CRPD provides that:

States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.

### **Independent and impartial tribunal established by law**

The Bill repeals and replaces the entirety of Part 15, Division 1 of the Act as to the establishment of the MHRT. While this may appear a substantive change, that is not the case as the new provisions contain much of the substance of the former repealed provisions.

The Bill provides that the members of the NTCAT exercising jurisdiction under the Act must as far as reasonably practical be constituted by members of diverse gender and from diverse backgrounds including Aboriginal and Torres Strait Islander backgrounds. This ensures that the NTCAT is impartial and does not suffer from bias.

New section 120(2) will ensure, by restating the many and various positions that a member nominated to constitute the NTCAT is not able to hold, that the members are impartial and will not potentially have come into contact with the person subject to the review or the application for involuntary detention beforehand.

Section 121 requires the NTCAT be comprised of three members, a legal member, medical member and community member in order to exercise a function under the Act. This mix of members aids in ensuring that the NTCAT is independent and impartial to the matters that will come before it.

What the new provisions of the Bill reference is that in the future members will be appointed under the provisions of the NTCAT Act, a process that involves for the President and Deputy President appointment by the Administrator and then publication of a Notice in the Gazette ensuring a robust and transparent process. This change advances the right to an independent and transparently appointed Tribunal from the former position where members were simply appointed by the Administrator without any requirement for publication.

### **The press and public may be excluded**

The new section 135 to be inserted by the Bill empowers the NTCAT not to hold a hearing of the NTCAT under the Act in public unless the NTCAT orders otherwise. This is not a change in the process for proceedings under the Act, but is contrary to the usual practice of the NTCAT where hearings are to be conducted in public. The Act sets out the matters to be taken into consideration by the NTCAT when making a decision under the Act to hold a hearing in public in order to balance the interests of the person against the interests of the public or justice remain the same namely (from section 135(2) of the Act):

- (a) the consent has been obtained of the person who is the subject of the review or the involuntary detention application;
- (b) the privacy of the parties to the review or the involuntary detention application will not be adversely affected; and



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- (c) the public hearing will not result in serious harm to the health of the person who is the subject of the review or involuntary detention application or will not place the safety of other persons at risk.

### **Any judgement rendered in a criminal case or in a suit at law shall be made public**

The Bill repeals section 141 of the Act which set out the process and consideration for the MHRT to prepare and publish a report of the reasons for its decisions. That provision required that the report not include the name of the person who is the subject of the decision or any other material that may disclose the identity of the person. It further provided that the President must only publish a report of the reasons for its decision after giving due consideration to the wishes of the person to ensure that the privacy of the parties to the proceedings will not be adversely affected by the publication nor will the health of the person be harmed nor place at risk the safety of other persons.

The Bill engages with this right that a judgment rendered shall be made public positively by presuming that the NTCAT will now publish a final decision under the Act. The new section 141A provides that before deciding to publish a decision the NTCAT must take into account similar considerations as repealed as to whether or not the privacy of the parties will be adversely affected by the publication, whether the publication will result in serious harm to the health of the person or will place at risk the safety of other persons and that the publication of the decision is in the public interest. The ability of the NTCAT to be able to consider that publication of the decision is in the public interest engages further with this right and will enable the development of relevant jurisprudence in relation to the Act. The obligation to not disclose identifying information about involved persons will also be re-inserted into the Act by new section 141A(2).

### **Self-incrimination**

Article 14(3) of the ICCPR provides minimum guarantees in relation to the determination of criminal charges brought against a person. Article 14(3)(g) provides a right against self-incrimination in respect of not being compelled to testify against oneself.

Matters under this Act are not criminal, although they may result in the involuntary detention of a person in order to prevent them from causing harm to themselves or others in the community.

The proposed amendment to section 137(2) seeks to provide witnesses who may be giving evidence in a matter under the Act the same privilege against self-incrimination that would be available if the witness gave evidence in a Territory Court. This is of particular relevance in respect of the potential for a person subject to an involuntary detention order to provide evidence in an NTCAT proceeding that may prove to be self-incriminating in any subsequent criminal proceeding perhaps relating to their conduct whilst suffering a psychotic episode.

The proposed amendment to section 137(2) balances the tension between civil and criminal proceedings over the same subject matter in a fair, reasonable and objective manner.

While the new section 137(2) removes the ability for a person to refuse to provide evidence on the grounds that it may incriminate them, it deliberately retains the protection sought under Article 14(3)(g) through prohibiting the use of evidence obtained during the NTCAT proceeding against the person in subsequent criminal proceedings.

### **Right to legal assistance**

Article 14(3)(d) of the ICCPR sets out the right in a criminal matter to appear at a trial, to seek to defend yourself or engage legal assistance and if unable to afford legal assistance to have it assigned without cost if the person does not have sufficient means to pay for it.

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As noted above, matters under this Act are not criminal, although they may result in the involuntary detention of a person in order to prevent them from causing harm to themselves or others in the community.

In this respect the Bill engages positively with this human right. The Bill omits sections 131(1) and (2) of the Act. Section 131 is a general right of appearance or to have a legal practitioner or another appear. That this section is omitted is not a negative engagement with this right as by omitting section 131(1), the mirror and more comprehensive provision of the NTCAT Act, section 130 will apply. Section 131(2) is then reinserted into the Act and engages positively with this right as it ensures that if a person is unrepresented at the hearing and the NTCAT considers the person should be represented at the hearing, the NTCAT must appoint a legal practitioner to represent the person. Following provisions confirm that the NTCAT may order the Territory to pay all or part of the costs of the legal practitioner so appearing.

### **Examination of witnesses**

Article 14(3)(e) of the ICCPR provides, again in a criminal context, the right to examine or have examined the witnesses against a person and obtain the attendance and examination of witnesses on the persons behalf.

Again, matters under the Act are not criminal, although they may result in the involuntary detention of a person in order to prevent them from causing harm to themselves or others in the community.

The Bill omits section 133 from the Act, which provided for the calling and production of evidence before the MHRT. In this respect the Bill engages positively with this human right and will ensure a more robust manner in which it may be exercised. By repealing section 133 of the Act, what will instead apply will be section 89 of the NTCAT Act which permits the NTCAT to issue a summons for a party to produce evidence or appear to give evidence. Section 90 of the NTCAT Act then goes on to create an offence for a failure to comply with a summons, an offence not created under the Act. Section 91 of the NTCAT Act provides for the production, copying or keeping of evidence and section 92 provides that a witness may be required to take an oath before giving evidence. Again these are matters not otherwise provided for in the Act and so will afford a better protection of this right to examine a witness and obtain evidence.

### **Freedom from interference with privacy**

Article 17(1) of the ICCPR provides that persons shall not ‘...be subjected to arbitrary or unlawful interference with ...privacy...’. The Bill omits section 139 of the Act which created an offence if a person who is a member of the MHRT, Registrar or Deputy Registrar, authorised officer or person employed to provide administrative support to the MHRT disclosed information obtained in the course of their duties.

The Bill engages positively with this human right as by omitting section 139 of the Act, it will enable section 149 of the NTCAT Act with its more comprehensive provisions to operate.

## **CONCLUSION**

This Bill is compatible with human rights. Where it does engage with human rights it does so in a positive manner increasing the protections provided.