

NORTHERN TERRITORY OF AUSTRALIA  
MENTAL HEALTH AND RELATED SERVICES (CONSEQUENTIAL  
AMENDMENTS) ACT 1999

---

No. 11 of 1999

---

TABLE OF PROVISIONS

Section

1. Short title
2. Commencement
3. Amendment of *Sentencing Act*
  - PART 4 – MENTAL HEALTH ORDERS
  - 78H. Interpretation
  79. Assessment orders
  80. Approved treatment facility orders
  81. Expiration of certain approved treatment facility orders
  82. Consent to treatment
  83. Treatment under this Part
  84. Custody of admitted person
  85. Variation of approved treatment facility orders
  86. Breach of approved treatment facility orders
4. Further amendments

**SCHEDULE**





# NORTHERN TERRITORY OF AUSTRALIA

No. 11 of 1999

## AN ACT

to amend various Acts consequential on the passing of the  
*Mental Health and Related Services Act*

[Assented to 25 March 1999]  
[Second reading 26 November 1998]

**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 (Consequential Amendments) Act 1999*.

**2. Commencement**

This Act comes into operation on the date the *Mental Health and Related Services Act 1998* commences.

**3. Amendment of *Sentencing Act***

Part 4 of the *Sentencing Act* is repealed and the following substituted:

**"PART 4 – MENTAL HEALTH ORDERS**

**"78H. Interpretation**

"(1) In this Part, "offence" includes a property offence.

"(2) A word or phrase used in this Part that is defined in the *Mental Health and Related Services Act* has the meaning given in that Act.

**"79. Assessment orders**

- "(1) Where a person is found guilty of an offence and the court –
- (a) is of the opinion of that the person –
    - (i) appears to be mentally ill or mentally disturbed; and
    - (ii) may benefit from being admitted to and treated in an approved treatment facility; and
  - (b) receives written advice from the Chief Health Officer that facilities are available to undertake an assessment of the person's suitability for an order under section 80,

it may make an order that the person be admitted to and detained in an approved treatment facility for a period not exceeding 72 hours as specified in the order to enable an assessment to be made of his or her suitability for an order under section 80.

"(2) At the expiry of an order made under subsection (1), or at any time before then, the court may –

- (a) in accordance with section 80, make an order under that section; or
- (b) pass sentence on the person according to law.

"(3) Where at any time before the expiry of an order made under subsection (1), the court receives written advice from the Chief Health Officer that the person is not mentally ill or mentally disturbed, or that the detention of the person in an approved treatment facility is unnecessary or inappropriate, the court must pass sentence on the person according to law.

**"80. Approved treatment facility orders**

- "(1) Where a person is found guilty of an offence and the court –
- (a) is satisfied by the production of a certificate, in the prescribed form, of the Chief Health Officer or by any other evidence that –
    - (i) the person appears to be mentally ill or mentally disturbed; and
    - (ii) the person may benefit from being treated in an approved treatment facility; and
  - (b) receives written advice from the Chief Health Officer that facilities are available at an approved treatment facility to treat the person and the admission, detention and treatment is appropriate,

it may –

- (c) order that the person be admitted to and detained at the discretion of the Chief Health Officer in an approved treatment facility to enable the diagnosis, assessment and treatment of the person under the *Mental Health and Related Services Act*;
- (d) order that the person be admitted to and detained in an approved treatment facility to enable the diagnosis, assessment and treatment of the person under the *Mental Health and Related Services Act* for a period, not exceeding 3 months, as specified in the order; or
- (e) order that the person be admitted to and detained in an approved treatment facility to enable the treatment of the person under the *Mental Health and Related Services Act* for a period specified in the order.

"(2) The court may, after consulting with the Chief Health Officer or an approved person, impose conditions on an order under subsection (1) to ensure the security and good order of the person.

"(3) Conditions under subsection (2) may include –

- (a) whether the person must be detained in a particular part of the approved treatment facility;
- (b) whether the person must be kept under guard at the approved treatment facility;
- (c) whether the person may be granted leave of absence from the approved treatment facility; and
- (d) whether the person, if the person is a prisoner, is to be subject to the same restrictions as applying to the person if he or she were in a prison.

"(4) An order made under subsection (1) is to be consistent with recommendations made in the report provided to the court under section 79.

"(5) Where an order is made under subsection (1), the person is to be treated under the *Mental Health and Related Services Act* and is entitled to exercise the rights conferred by that Act.

"(6) Unless the court orders otherwise, where –

- (a) an order made under subsection (1)(d) or (e) is in force in respect of a person; and

*Mental Health and Related Services (Consequential Amendments) Act 1999*

- (b) the person is discharged from an approved treatment facility under this Act or the *Mental Health and Related Services Act*,

the person must be –

- (c) taken to a prison in accordance with section 84; and
- (d) returned to the court on the first available sitting day.

"(7) A person returned to the court under subsection (6) may be dealt with by the court as if he or she were before the court on being found guilty of the offence in respect of which the order under subsection (1)(d) or (e) was made.

"(8) Where the court makes an order under subsection (1)(c), the person cannot be detained for longer than 3 months but may be discharged by the Chief Health Officer before the 3 months expires.

"(9) A court must not make an order under subsection (1)(e) unless, but for the mental illness or mental disturbance of the person, it would have sentenced the person to a term of imprisonment.

"(10) Where a court makes an order under subsection (1)(e), it –

- (a) must not specify a period of detention in an approved treatment facility that is longer than the period of imprisonment to which the person would have been sentenced had the order not been made; and
- (b) must, subject to Subdivision 3 of Division 5 of Part 3, fix a non-parole period in accordance with that Subdivision as if the order were a term of imprisonment.

"(11) At any time before the end of the period specified in an order under subsection (1)(e) an authorised psychiatric practitioner nominated by the Chief Health Officer or the Tribunal may in pursuance of the *Mental Health and Related Services Act* order the discharge of the person named in the order from the approved treatment facility and the order has effect as a sentence of imprisonment for the unexpired portion of it and that unexpired portion must be served in a prison unless the person is released on parole.

"(12) A non-parole period fixed under subsection (10) is only relevant in the circumstances referred to in subsection (11).

**"81. Expiration of certain approved treatment facility orders**

"(1) At the expiry of an order made under section 80(1)(d), or at any time before then, the court after considering a report from an authorised psychiatric practitioner nominated by the Chief Health Officer specifying the results of the diagnosis, assessment and treatment of the person may –

- (a) make a further order in respect of the person under section 80(1)(d);  
or
- (b) pass sentence, including by way of an order under section 80(1)(e),  
on the person according to law.

"(2) Where at any time before the expiry of an order made under section 80(1)(d), the court receives advice in writing from an authorised psychiatric practitioner nominated by the Chief Health Officer that the person is not mentally ill or mentally disturbed, or that the detention of the person in an approved treatment facility is unnecessary or inappropriate, the court must pass sentence on the person according to law.

"(3) Where a court in passing sentence under subsection (1)(b) imposes a term of imprisonment on the person or makes an order that the person be detained in an approved treatment facility under section 80(1)(e), it must deduct the period of time that the person was detained under the order made under section 80(1)(d).

## **"82. Consent to treatment**

"Subject to section 83, a court must not make an order under this Part relating to the treatment of a person unless the consent of the person to the treatment is obtained.

## **"83. Treatment under this Part**

"A person is not to receive treatment without his or her consent except under the *Mental Health and Related Services Act* relating to involuntary admission and treatment.

## **"84. Custody of admitted person**

"(1) A court, when making an order under this Part, may include in the order the name of the person who is to be responsible for taking the offender –

- (a) to the approved treatment facility named in the order; and
- (b) from the approved treatment facility to the court in connection with the exercise by the court of its powers under this Part.

"(2) A copy of the order and the advice or report, as the case may be, of the Chief Health Officer is to accompany the offender to the approved treatment facility named in the order.

**"85. Variation of approved treatment facility orders**

"(1) A court that has made an order under section 80 may, on application under this subsection, if satisfied that the offender is no longer willing to comply with the order or a condition to which the order is subject, vary or cancel the order and deal with the offender for the offence with respect to which it was made in any manner in which the court could deal with the offender if it had just found the offender guilty of the offence.

"(2) An application under subsection (1) may be made at any time while the order is in force by –

- (a) the offender;
- (b) a prescribed person or a member of a prescribed class of persons;
- (c) the prosecutor; or
- (d) an authorised psychiatric practitioner nominated by the Chief Health Officer.

"(3) Notice of an application under subsection (1) must be given to –

- (a) the offender; and
- (b) where the sentencing court was –
  - (i) the Supreme Court – the Director of Public Prosecutions; or
  - (ii) the Court of Summary Jurisdiction – the complainant or informant.

"(4) A court may order that a warrant to arrest the offender be issued where the offender does not attend before the court on the hearing of the application.

**"86. Breach of approved treatment facility orders**

"(1) Where, it appears to a prescribed person or a member of a prescribed class of persons, that an offender has failed to comply with an order made under section 80, he or she may apply, in the prescribed form, to the court that made the order for the making of an order under this section.

"(2) Notice of an application under subsection (1) must be given to the offender.

"(3) A court may order that a warrant to arrest the offender be issued where the offender does not attend before the court on the hearing of the application.



*Mental Health and Related Services (Consequential Amendments) Act 1999*

*Consumer Affairs and Fair Trading Act*

Schedule 1 – Clause 1(1)(f)	"benefit;"	"benefit; or"
-----------------------------	------------	---------------

Schedule 1 – Clause 1(1)(g)	the whole paragraph	
-----------------------------	---------------------	--

*Coroners Act*

Section 12(1) – definition of "person held in care"	" <i>Mental Health Act</i> "	" <i>Mental Health and Related Services Act</i> "
---	------------------------------	---

*Dental Act*

Section 30(h)	the whole paragraph	"(h) is the subject of a report of the Chief Health Officer, based on advice from 2 medical practitioners, that as a result of the registered person's mental illness, as defined in the <i>Mental Health and Related Services Act</i> , he or she has become incapable of practising dentistry and is unlikely to be able to practise in the future."
---------------	---------------------	--

*Education Act*

Section 47(2)(c)	the whole paragraph	"(c) is the subject of a report of the Chief Health Officer, based on advice from 2 medical practitioners, that as a result of the member's mental illness, as defined in the <i>Mental Health and Related Services Act</i> , he or she has become incapable of performing his or her
------------------	---------------------	---

*Mental Health and Related Services (Consequential Amendments) Act 1999*

duties as a member and is unlikely to be able to perform them for the remainder of his or her term of appointment;"

*Jabiru Town Development Act*

Section 28H(c)	the whole paragraph	"(c) is the subject of a report of the Chief Health Officer, based on advice from 2 medical practitioners, that as a result of the auditor's mental illness, as defined in the <i>Mental Health and Related Services Act</i> , he or she has become incapable of performing his or her duties as auditor;"
----------------	---------------------	--

*Juries Act*

Section 10(3)(d)	"hospital"	"hospital or an approved treatment facility"
	" <i>Mental Health Act</i> "	" <i>Mental Health and Related Services Act</i> "

*Limitation Act*

Section 38(1)	"section 16 of the <i>Mental Health Act</i> or"
---------------	---

*Local Government Act*

Section 9(1)(k)	the whole paragraph	"(k) is the subject of a report of the Chief Health Officer, based on advice from 2 medical practitioners, that as a result of the member's mental illness, as defined in the <i>Mental Health and Related</i>
-----------------	---------------------	--

*Mental Health and Related Services (Consequential Amendments) Act 1999*

*Services Act*, he or she has become incapable of performing his or her duties as a member and is unlikely to be able to perform them for the remainder of his or her term of appointment."

section 178(3)(b)

the whole paragraph

"(b) is the subject of a report of the Chief Health Officer, based on advice from 2 medical practitioners, that as a result of the member's mental illness, as defined in the *Mental Health and Related Services Act*, he or she has become incapable of performing his or her duties as a member and is unlikely to be able to perform them for the remainder of his or her term of appointment;"

*Medical Act*

Section 38(1)(d)

the whole paragraph

*Menzies School of Health Research Act*

Section 15(c)

the whole paragraph

"(c) if the Administrator receives a report from the Chief Health Officer, based on advice from 2 medical practitioners, that as a result of the member's mental illness, as defined in the *Mental Health and Related Services Act*, he or she has become incapable of

performing his or her duties as a member and is unlikely to be able to perform them for the remainder of his or her term of appointment;"

*Northern Territory  
Aboriginal Sacred Sites  
Act*

Section 7(4)(c)                      the whole paragraph

"(c) is the subject of a report of the Chief Health Officer, based on advice from 2 medical practitioners, that as a result of the member's mental illness, as defined in the *Mental Health and Related Services Act*, he or she has become incapable of performing his or her duties as a member and is unlikely to be able to perform them for the remainder of his or her term of appointment; or"

*Northern Territory  
University Act*

Section 12(1)(c)                      the whole paragraph

"(c) the Administrator receives a report from the Chief Health Officer, based on advice from 2 medical practitioners, that as a result of the member's mental illness, as defined in the *Mental Health and Related Services Act*, he or she has become incapable of performing his or her duties as a member and is unlikely to be able to

*Mental Health and Related Services (Consequential Amendments) Act 1999*

perform them for the remainder of his or her term of appointment;"

*Pharmacy Act*

Section 7A(b)                      the whole paragraph

"(b) the Minister receives a report from the Chief Health Officer, based on advice from 2 medical practitioners, that as a result of the member's mental illness, as defined in the *Mental Health and Related Services Act*, he or she has become incapable of performing his or her duties as a member and is unlikely to be able to perform them for the remainder of his or her term of appointment;"

Section 29(1)(d)                      the whole paragraph

"(d) who is the subject of a report of the Chief Health Officer, based on advice from 2 medical practitioners, that as a result of the person's mental illness, as defined in the *Mental Health and Related Services Act*, he or she has become incapable of practising pharmacy and is unlikely to be able to practise pharmacy in the future; or"

*Sentencing Act*

Section 63(3)(a)                      "*Mental Health Act*"

"*Mental Health Act* as in force before the commencement of the *Mental Health and Related Services Act*"

*Mental Health and Related Services (Consequential Amendments) Act 1999*

*Strehlow Research  
Centre Act*

Section 12(c)

the whole paragraph

"(c) if the Minister receives a report from the Chief Health Officer, based on advice from 2 medical practitioners, that as a result of the member's mental illness, as defined in the *Mental Health and Related Services Act*, he or she has become incapable of performing his or duties as a member and is unlikely to be able to perform them in the future;"

---

---

---