

Serial 129
Mental Health and
Related Services
(Consequential
Amendments)
Mr Burke

NORTHERN TERRITORY OF AUSTRALIA

MENTAL HEALTH AND RELATED SERVICES
(CONSEQUENTIAL AMENDMENTS) BILL 1998

TABLE OF PROVISIONS

Clause

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

A BILL for AN ACT

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

BE it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

1. SHORT TITLE

This Act may be cited as the *Mental Health and Related Services (Consequential Amendments) Act 1998*.

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Part 4 of the *Sentencing Act* is repealed and the following substituted: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

*Mental Health and Related Services
(Consequential Amendments)*

"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

*Mental Health and Related Services
(Consequential Amendments)*

(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.

*Mental Health and Related Services
(Consequential Amendments)*

"(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
- (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.

Mental Health and Related Services
(Consequential Amendments)

"(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.

Mental Health and Related Services
(Consequential Amendments)

"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

*Mental Health and Related Services
(Consequential Amendments)*

(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.

"(4) Where, on the hearing of an application under this section, a court is satisfied, by evidence on oath or by affidavit or by the admission of the offender, that the offender has failed without reasonable excuse to comply with the order, it may -

(a) vary the order; or

(b) cancel the order and deal with the offender for the offence with respect to which the order 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."

4. FURTHER AMENDMENTS

The Acts specified in the Schedule are amended as set out in the Schedule.

*Mental Health and Related Services
(Consequential Amendments)*

SCHEDULE

Section 4

Provision	Amendment	
	omit	substitute
<i>Administration and Probate Act</i>		
Section 6(1) — definition of "committee"	"means the committee of the estate of that person continued by the <i>Mental Health Act</i> and"	
<i>Companies (Trustees and Personal Representatives) Act</i>		
Section 5 — definition of "statutory manager"	"and includes a committee continued in existence under the <i>Mental Health Act</i> "	
<i>Consumer Affairs and Fair Trading Act</i>		
Schedule 1 — Clause 1(1)(f)	"benefit;"	"benefit; or"
Schedule 1 — Clause 1(1)(g)	the whole paragraph	
<i>Coroners Act</i>		
Section 12(1) — definition of "person held in care"	"Mental Health Act"	
		"Mental Health and Related Services Act"

*Mental Health and Related Services
(Consequential Amendments)*

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 *Mental Health and Related Services Act*, 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 *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

*Mental Health and Related Services
(Consequential Amendments)*

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 *Mental Health and Related Services Act*, 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"

"Mental Health Act"

"Mental Health and Related Services Act"

Limitation Act

Section 38(1) "section 16 of the Mental Health Act 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,

Mental Health and Related Services
(Consequential Amendments)

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
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

*Mental Health and Related Services
(Consequential Amendments)*

*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

*Mental Health and Related Services
(Consequential Amendments)*

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 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
(Consequential Amendments)*

*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)*

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;"

