

Serial 122
Criminal Code Amendment (Mental Impairment and Unfitness for Trial) Bill
2010
Ms Lawrie

A Bill for an Act to amend the Criminal Code

NORTHERN TERRITORY OF AUSTRALIA

CRIMINAL CODE AMENDMENT (MENTAL IMPAIRMENT AND UNFITNESS
FOR TRIAL) ACT 2010

Act No. [] of 2010

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NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2010

An Act to amend the Criminal Code

[Assented to [] 2010]
[Second reading [] 2010]

The Legislative Assembly of the Northern Territory enacts as follows:

1 Short title

This Act may be cited as the *Criminal Code Amendment (Mental Impairment and Unfitness for Trial) Act 2010*.

2 Act amended

This Act amends the Criminal Code.

3 Section 43A amended

(1) Section 43A

insert

CEO (Health) means the chief executive officer of the Agency administering the *Medical Services Act*.

(2) Section 43A, definition **appropriate person**

omit (all references)

the chief executive officer of the Department of Health and Community Services

insert

the CEO (Health)

- (3) Section 43A, definition ***appropriate person***, paragraph (d)

omit

Department of Justice

insert

Agency administering that Act

4 Section 43I amended

- (1) Section 43I(3)(b)

omit

other appropriate place

insert

another place the court considers appropriate

- (2) After section 43I(3)

insert

- (3A) The court must not make an interim order under subsection (3)(b) remanding the accused person in custody in a prison unless the court is satisfied there is no practical alternative given the circumstances of the accused person.

5 Section 43O amended

Section 43O(b)

omit

other appropriate place

insert

another place the court considers appropriate

6 Section 43R amended

Section 43R(5)(b)

omit

appropriate place

insert

place the Judge considers appropriate

7 Section 43Y amended

(1) Section 43Y

omit

If

insert

(1) If

(2) Section 43Y(1)(b)

omit

appropriate place

insert

place the court considers appropriate

(3) After section 43Y(1)

insert

(2) The court must not make an interim order under subsection (1)(b) remanding the accused person in custody in a prison unless the court is satisfied there is no practical alternative given the circumstances of the accused person.

8 Section 43ZA amended

(1) Section 43ZA(1)(a)(ii)

omit, insert

(ii) subject to subsection (3) – in another place (an **appropriate place**) the court considers appropriate; or

(2) After section 43ZA(2)

insert

(2A) Without limiting subsection (1), the court may decide a supervision order is subject to the condition that a person (an **authorised person**) authorised by the CEO (Health) may use any reasonable force and assistance:

(a) to enforce the order; and

(b) without limiting paragraph (a) – to take the accused person into custody, or to restrain the accused person, in order to prevent the accused person harming himself or herself or someone else.

(2B) The CEO (Health):

(a) must, by *Gazette* notice, make supervision directions about:

(i) the qualifications of an authorised person; and

(ii) the reporting by an authorised person of any use of force or assistance for subsection (2A); and

(b) may, in the supervision directions, provide for any other matters about the use of such force and assistance as decided by the CEO (Health).

(2C) An authorised person may use reasonable force or assistance as provided in subsection (2A) only in accordance with the supervision directions.

(3) Section 43ZA(3)

omit

the chief executive officer of the Department of Health and Community Services

insert

the CEO (Health)

9 Section 43ZB amended

Section 43ZB(2)

omit

the chief executive officer of the Department of Health and Community Services

insert

the CEO (Health)

10 Section 43ZD amended

(1) Section 43ZD(2)(a) and (b), at the end

insert

and

(2) After section 43ZD(3)

insert

(3A) The court may adjourn the hearing for the application if the court considers it appropriate to do so.

(3B) If the court adjourns the hearing under subsection (3A), the court may make interim orders for the supervised person (including, for example, an order that the supervised person be remanded in custody in a prison or another place the court considers appropriate).

(3C) The court must not make an interim order under subsection (3B) remanding the supervised person in custody in a prison unless the court is satisfied there is no practical alternative given the circumstances of the supervised person.

(3D) To avoid doubt:

(a) the making of an interim order under subsection (3B) does not revoke the supervision order; and

(b) subject to a direction by the court – the supervision order continues to have effect while an interim order under subsection (3B) is in force.

(3) Section 43ZD(4)(a), at the end

insert

or

11 Section 43ZE amended

(1) After section 43ZE(3)

insert

(3A) The court may adjourn the hearing for the application if the court considers it appropriate to do so.

(3B) If the court adjourns the hearing under subsection (3A), the court may make interim orders for the supervised person (including, for example an order that the supervised person be remanded in custody in a prison or another place the court considers appropriate).

(3C) The court must not make an interim order under subsection (3B) remanding the supervised person in custody in a prison unless the court is satisfied there is no practical alternative given the circumstances of the supervised person.

(3D) To avoid doubt:

(a) the making of an interim order under subsection (3B) does not revoke the supervision order; and

(b) subject to a direction by the court – the supervision order continues to have effect while an interim order under subsection (3B) is in force.

(2) Section 43ZE(4)(a), at the end

insert

or

12 Section 43ZG amended

(1) Section 43ZG(3)(b)

omit

charged,

insert

charged;

(2) After section 43ZG(4)

insert

(4A) A reference in subsection (2) to a period of supervision is a reference to a period of custody or any other form of supervision of a person under a court order (including, for example, a home detention order) on the court finding the person guilty of an offence.

(4B) The court may decide the term fixed under subsection (1) is taken to have commenced from a specified time that was:

(a) before the making of the supervision order; and

(b) at or after the time the supervised person was first taken into custody for an offence because of which the court may make the supervision order.

(3) After section 43ZG(5)

insert

(5A) The court may adjourn the proceedings for the review to a time that is after the expiry of the term fixed under subsection (1) if the court considers it appropriate to do so.

(5B) If the court adjourns the proceedings under subsection (5A):

(a) the court may make interim orders for the supervised person (including, for example, an order that the supervised person be remanded in custody in a prison or another place the court considers appropriate); and

(b) subject to a direction by the court – the supervision order continues to have effect until the completion of the review.

(5C) The court must not make an interim order under subsection (5B)(a) remanding the supervised person in custody in a prison unless the court is satisfied there is no practical alternative given the circumstances of the supervised person.

(4) Section 43ZG(7)(a) and (b), at the end

insert

or

13 Section 43ZK amended

Section 43ZK(1)

omit

or expires (and the supervised person is released unconditionally)

14 Section 43ZLA amended

(1) Section 43ZLA, definition **order**, paragraph (d), after "person"

insert

or supervised person

(2) Section 43ZLA, definition **order**, paragraphs (a) to (d), at the end

insert

or

15 Section 43ZN amended

Section 43ZN(1)(a) and (f), after "whether the"

insert

accused person or

16 Section 43ZO replaced

repeal, insert

43ZO Legal counsel to have independent discretion

If an accused person or supervised person is unable to instruct his or her legal counsel on questions relevant to an investigation or proceedings under this Part, the legal counsel may exercise an independent discretion and act as he or she reasonably believes to be in the person's best interests.

17 Section 43ZPA inserted

After section 43ZP

insert

43ZPA Protection from liability

(1) A person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith in the exercise of a power or performance of a function under this Act as a person authorised for section 43ZA(2A).

(2) Subsection (1) does not affect any liability the Territory would, apart from that subsection, have for the act or omission.

(3) In this section:

exercise, of a power, includes the purported exercise of the power.

performance, of a function, includes the purported performance of the function.

18 Part XIII inserted

After section 445

insert

Part XIII Transitional matters for Criminal Code Amendment (Mental Impairment and Unfitness for Trial) Act 2010

446 Application to pending matters

(1) Section 43ZD(3A) to (3D) as inserted by the amending Act applies in relation to an application to vary or revoke a supervision order made, but not decided, before the commencement.

(2) Section 43ZE(3A) to (3D) as inserted by the amending Act applies in relation to an application to vary a non-custodial supervision order made, but not decided, before the commencement.

(3) Section 43ZG(5A) to (5C) as inserted by the amending Act applies in relation to a review of a supervision order started, but not completed, before the commencement.

(4) Section 43ZO as inserted by the amending Act applies to any proceedings under Part IIA started, but not completed, before the commencement.

(5) In this section:

amending Act means the *Criminal Code Amendment (Mental Impairment and Unfitness for Trial) Act 2010*.

commencement means the commencement of the amending Act.