



Australian Capital Territory

# **Mental Health Act 2015**

**A2015-38**

**Republication No 8**

**Effective: 22 November 2018 – 1 March 2019**

Republication date: 22 November 2018

Last amendment made by [A2018-42](#)

## About this republication

### The republished law

This is a republication of the *Mental Health Act 2015* (including any amendment made under the [Legislation Act 2001](#), part 11.3 (Editorial changes)) as in force on 22 November 2018. It also includes any commencement, amendment, repeal or expiry affecting this republished law to 22 November 2018.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

### Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)):

- authorised republications to which the [Legislation Act 2001](#) applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

### Editorial changes

The [Legislation Act 2001](#), part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see [Legislation Act 2001](#), s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication does not include amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced, the symbol **U** appears immediately before the provision heading. Any uncommenced amendments that affect this republished law are accessible on the ACT legislation register ([www.legislation.act.gov.au](http://www.legislation.act.gov.au)). For more information, see the home page for this law on the register.

### Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see the [Legislation Act 2001](#), section 95.

### Penalties

At the republication date, the value of a penalty unit for an offence against this law is \$160 for an individual and \$810 for a corporation (see [Legislation Act 2001](#), s 133).



Australian Capital Territory

# Mental Health Act 2015

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Australian Capital Territory

## Mental Health Act 2015

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An Act to provide for the treatment, care or support, rehabilitation and protection of people with a mental disorder or mental illness and the promotion of mental health and wellbeing, and for other purposes

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## Chapter 1 Preliminary

### 1 Name of Act

This Act is the *Mental Health Act 2015*.

### 2 Dictionary

The dictionary at the end of this Act is part of this Act.

*Note 1* The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere.

For example, the signpost definition ‘*care and protection order*—see the [Children and Young People Act 2008](#), section 422.’ means that the term ‘care and protection order’ is defined in that section and the definition applies to this Act.

*Note 2* A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see [Legislation Act](#), s 155 and s 156 (1)).

### 3 Notes

A note included in this Act is explanatory and is not part of this Act.

*Note* See the [Legislation Act](#), s 127 (1), (4) and (5) for the legal status of notes.

## 4 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

*Note 1 Criminal Code*

The [Criminal Code](#), ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

*Note 2 Penalty units*

The [Legislation Act](#), s 133 deals with the meaning of offence penalties that are expressed in penalty units.

## Chapter 2      Objects and important concepts

### 5      Objects of Act

The objects of this Act are to—

- (a) promote the recovery of people with a mental disorder or mental illness; and
- (b) promote the capacity of people with a mental disorder or mental illness to determine, and participate in, their assessment and treatment, care or support, taking into account their rights in relation to mental health under territory law; and
- (c) ensure that people with a mental disorder or mental illness receive assessment and treatment, care or support in a way that is least restrictive or intrusive to them; and
- (d) facilitate access by people with a mental disorder or mental illness to services provided in a way that recognises and respects their rights, inherent dignity and needs; and
- (e) promote the inclusion of, and participation by, people with a mental disorder or mental illness in communities of their choice; and
- (f) facilitate access by people with a mental disorder or mental illness to assessment and treatment, care or support as far as practicable in communities of their choice; and
- (g) support improvements in mental health through mental health promotion, illness prevention and early intervention.

## **6 Principles applying to Act**

In exercising a function under this Act, the following principles must be taken into account:

- (a) a person with a mental disorder or mental illness has the same rights and responsibilities as other members of the community and is to be supported to exercise those rights and responsibilities without discrimination;
- (b) a person with a mental disorder or mental illness has the right to—
  - (i) consent to, refuse or stop treatment, care or support; and
  - (ii) be told about the consequences of consenting to, refusing or stopping treatment, care or support;
- (c) a person with a mental disorder or mental illness has the right to determine the person's own recovery;
- (d) a person with a mental disorder or mental illness has the right to have the person's will and preferences, to the extent that they are known or able to be known, taken into account in decisions made about treatment, care or support;
- (e) a person with a mental disorder or mental illness has the right to access the best available treatment, care or support relating to the person's individual needs;
- (f) a person with a mental disorder or mental illness has the right to be able to access services that—
  - (i) are sensitive and responsive to the person's individual needs, including in relation to age, gender, culture, language, religion, sexuality, trauma and other life experiences; and
  - (ii) observe, respect and promote the person's rights, liberty, dignity, autonomy and self-respect;

- (g) a person with a mental disorder or mental illness has the right to be given timely information, in a way that the person is most likely to understand, to allow the person to make decisions or maximise the person's contribution to decision-making about the person's assessment and treatment, care or support;
- (h) a person with a mental disorder or mental illness has the right to communicate, and be supported in communicating, in a way appropriate to the person;

**Examples**

- 1 aided augmentative and alternative communication including teletypewriter services, communication boards and communication books
- 2 unaided augmentative and alternative communication including sign language and facial expression
- 3 use of an interpreter or translation service
- 4 use of an independent advocacy service

*Note*      An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (i) a person with a mental disorder or mental illness has the right to be assumed to have decision-making capacity, unless it is established that the person does not have decision-making capacity;

*Note*      For principles of decision-making capacity, see s 8.

- (j) services provided to a person with a mental disorder or mental illness should—
  - (i) respect the informed consent of the person to the person's assessment and treatment, care or support including consent as expressed in an advance consent direction; and
  - (ii) support and allow the person to make the person's own decisions; and

- (iii) be provided in a way that considers and respects the preferences of the person, including those expressed in an advance agreement; and
- (iv) promote a person's capacity to determine the person's recovery from mental disorder or mental illness; and
- (v) seek to bring about the best therapeutic outcomes for the person and promote the person's recovery; and
- (vi) be therapeutic or diagnostic in nature for the benefit of the person, and never administered as punishment or for the benefit of someone other than the person; and
- (vii) be delivered in a way that takes account of, and continues to build on, evidence of effective assessment and treatment, care or support; and
- (viii) be provided in a way that ensures that the person is aware of the person's rights; and
- (ix) facilitate appropriate involvement of close relatives, close friends and carers in treatment, care or support decisions in partnership with medical professionals; and
- (x) acknowledge the impact of mental disorder and mental illness on the close relatives, close friends and carers of people with a mental disorder or mental illness; and
- (xi) recognise the experience and knowledge of close relatives, close friends and carers about a person's mental disorder or mental illness; and
- (xii) promote inclusive practices in treatment, care or support to engage families and carers in responding to a person's mental disorder or mental illness; and
- (xiii) promote a high standard of skill and training for the people providing treatment, care or support.

## **7      Meaning of *decision-making capacity***

For this Act, a person has capacity to make a decision in relation to the person's treatment, care or support for a mental disorder or mental illness (*decision-making capacity*) if the person can, with assistance if needed—

- (a) understand when a decision about treatment, care or support for the person needs to be made; and
- (b) understand the facts that relate to the decision; and
- (c) understand the main choices available to the person in relation to the decision; and
- (d) weigh up the consequences of the main choices; and
- (e) understand how the consequences affect the person; and
- (f) on the basis of paragraphs (a) to (e), make the decision; and
- (g) communicate the decision in whatever way the person can.

## **8      Principles of decision-making capacity**

- (1) In considering a person's decision-making capacity under this Act, the following principles must be taken into account:
  - (a) a person's decision-making capacity is particular to the decision that the person is to make;
  - (b) a person must be assumed to have decision-making capacity, unless it is established that the person does not have decision-making capacity;
  - (c) a person who does not have decision-making capacity must always be supported to make decisions about the person's treatment, care or support to the best of the person's ability;
  - (d) a person must not be treated as not having decision-making capacity unless all practicable steps to assist the person to make decisions have been taken;



- (e) a person must not be treated as not having decision-making capacity only because—
    - (i) the person makes an unwise decision; or
    - (ii) the person has impaired decision-making capacity under another Act, or in relation to another decision;
  - (f) a person must not be treated as having decision-making capacity to consent to the provision of treatment, care or support only because the person complies with the provision of the treatment, care or support;
  - (g) a person who moves between having and not having decision-making capacity must, if reasonably practicable, be given the opportunity to consider matters requiring a decision at a time when the person has decision-making capacity.
- (2) A person's decision-making capacity must always be taken into account in deciding treatment, care or support, unless this Act expressly provides otherwise.
  - (3) An act done, or decision made, under this Act for a person who does not have decision-making capacity must be done in the person's best interests.
  - (4) In considering a person's decision-making capacity under this Act, any approved code of practice under section 198 must be taken into account.

## **9      *Meaning of mental disorder***

In this Act:

***mental disorder***—

- (a) means a disturbance or defect, to a substantially disabling degree, of perceptual interpretation, comprehension, reasoning, learning, judgment, memory, motivation or emotion; but
- (b) does not include a condition that is a mental illness.

## 10      **Meaning of *mental illness***

In this Act:

***mental illness*** means a condition that seriously impairs (either temporarily or permanently) the mental functioning of a person in 1 or more areas of thought, mood, volition, perception, orientation or memory, and is characterised by—

- (a) the presence of at least 1 of the following symptoms:
  - (i) delusions;
  - (ii) hallucinations;
  - (iii) serious disorders of streams of thought;
  - (iv) serious disorders of thought form;
  - (v) serious disturbance of mood; or
- (b) sustained or repeated irrational behaviour that may be taken to indicate the presence of at least 1 of the symptoms mentioned in paragraph (a).

## 11      **People not to be regarded as having mental disorder or mental illness**

For this Act, a person is not to be regarded as having a mental disorder or mental illness only because of any of the following:

- (a) the person expresses or refuses or fails to express, or has expressed or has refused or failed to express, a particular political opinion or belief;
- (b) the person expresses or refuses or fails to express, or has expressed or has refused or failed to express, a particular religious opinion or belief;
- (c) the person expresses or refuses or fails to express, or has expressed or has refused or failed to express, a particular philosophy;

- (d) the person expresses or refuses or fails to express, or has expressed or has refused or failed to express, a particular sexual preference or sexual orientation;
- (e) the person engages in or refuses or fails to engage in, or has engaged in or has refused or failed to engage in, a particular political activity;
- (f) the person engages in or refuses or fails to engage in, or has engaged in or has refused or failed to engage in, a particular religious activity;
- (g) the person engages in or has engaged in sexual promiscuity;
- (h) the person engages in or has engaged in immoral conduct;
- (i) the person engages in or has engaged in illegal conduct;
- (j) the person takes or has taken alcohol or any other drug;
- (k) the person engages in or has engaged in antisocial behaviour.

## 12      **Meaning of *carer***

- (1) For this Act, a person is a ***carer*** if the person provides personal care, support or assistance to a person who has a mental disorder or mental illness.
- (2) However, a person is not a ***carer*** for another person—
  - (a) in relation to care, support or assistance that is provided—
    - (i) under a commercial arrangement, or an arrangement that is substantially commercial; or
    - (ii) in the course of doing voluntary work for a charitable, welfare or community organisation; or
    - (iii) as part of a course of education or training; or

- (b) just because the person is the domestic partner, parent, child or other relative, or guardian of the other person; or
- (c) just because the person lives with the other person.

**13      Proceedings relating to children**

A person who is the subject of a proceeding is a child for the proceeding if the person was a child when the proceeding began.

## **Chapter 3                      Rights of people with mental disorder or mental illness**

### **Part 3.1                      Rights in relation to information and communication**

#### **14                      Meaning of *responsible person*—pt 3.1**

In this part:

*responsible person* means—

- (a) for a mental health facility that is not conducted by the Territory—the owner of the facility; or
- (b) for a psychiatric facility conducted by the Territory—the chief psychiatrist; or
- (c) for any other mental health facility or community care facility conducted by the Territory—the director-general of the administrative unit responsible for the conduct of the facility.

#### **15                      Information to be given to people**

- (1) The responsible person for a mental health facility or community care facility must ensure that, as soon as practicable after it is decided to give treatment, care or support to a person at the facility, the person—
  - (a) is orally advised of their rights under this Act; and
  - (b) is given a written information statement including—
    - (i) a statement of the right to obtain a second opinion from an appropriate mental health professional; and
    - (ii) a statement of the right to obtain legal advice; and

- (iii) a statement that, if the person has decision-making capacity, the person has the right to—
    - (A) nominate someone else to be the person’s nominated person; and
    - (B) enter into an advance agreement; and
    - (C) make an advance consent direction; and
  - (iv) information about the role of a nominated person under this Act; and
  - (v) the location of the information required to be available at the facility under section 16; and
  - (vi) anything else prescribed by regulation.
- (2) A mental health professional giving treatment, care or support in the community to a person with a mental disorder or mental illness must ensure that the advice and information mentioned in subsection (1) (a) and (b) is given to the person as soon as practicable after it is decided to give the person treatment, care or support in the community.
- (3) The responsible person or mental health professional must ensure that the advice and information—
- (a) is provided in a way that the person is most likely to understand; and
  - (b) if the person appears to be unable to understand the advice or information, the public advocate is told of that fact.
- (4) The responsible person or mental health professional must also take reasonable steps to give a copy of the information to—
- (a) if the person has a nominated person—the nominated person; and
  - (b) if the person has a guardian under the *Guardianship and Management of Property Act 1991*—the guardian; and

- (c) if the person has an attorney under the *Powers of Attorney Act 2006*—the attorney; and
- (d) if a health attorney is involved in the treatment, care or support of the person—the health attorney; and
- (e) if the person is a child—each person with parental responsibility for the child under the *Children and Young People Act 2008*, division 1.3.2 (Parental responsibility); and
- (f) if the person has a legal representative—the legal representative; and
- (g) if the person has a carer—the carer.

## **16 Information to be available at facilities**

- (1) The responsible person for a mental health facility or community care facility must ensure that current copies of the following information are available at the facility in a place readily accessible to people admitted to or receiving treatment, care or support at the facility:
  - (a) this Act, the *Guardianship and Management of Property Act 1991* and any other relevant legislation;
  - (b) any publications prepared by the administrative unit responsible for that legislation for the purpose of explaining the legislation;
  - (c) information statements printed in different languages;
  - (d) a list of the names, addresses, telephone numbers and relevant functions of the entities prescribed by regulation.
- (2) The responsible person must also ensure that a notice indicating where the information is available is displayed in a prominent position at the facility.

## **17 Communication**

- (1) The responsible person for a mental health facility or community care facility must ensure that a person admitted to or receiving treatment, care or support at the facility—
  - (a) is given reasonable opportunities and facilities to communicate with people of the person's choice by means other than written communication; and
  - (b) is given, on request, reasonable opportunities and facilities for preparing written communications and for enclosing the communications in sealed envelopes.
- (2) The responsible person for a mental health facility or community care facility must ensure that any written communication addressed to or written by a person admitted to or receiving treatment, care or support at the facility is forwarded, without being opened and without delay, to the person to whom it is addressed.
- (3) Subsection (2) does not apply if the responsible person is complying with a limit imposed on communication between the admitted person and other people under section 115 (Limits on communication—forensic mental health order).

## **18 Failure by owner of facility to comply with pt 3.1**

- (1) The owner of a mental health facility that is not conducted by the Territory commits an offence if the owner fails to comply with this part.

Maximum penalty: 20 penalty units.
- (2) Subsection (1) does not apply if the owner has a reasonable excuse.
- (3) An offence against this section is a strict liability offence.



## Part 3.2 Nominated people

### 19 Nominated person

- (1) A person with a mental disorder or mental illness, who has decision-making capacity, may, in writing nominate someone else to be the person's nominated person.

**Examples**

- 1 a close relative or close friend
- 2 a carer
- 3 the person's neighbour

*Note 1* If a person makes an advance agreement under pt 3.3, the agreement may set out contact details for a nominated person (see s 26 (2) (c)).

*Note 2* If a form is approved under s 275 for this provision, the form must be used.

*Note 3* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (2) However, a person cannot be nominated under subsection (1) unless the person—
- (a) is an adult; and
  - (b) is able to undertake the functions of a nominated person; and
  - (c) is readily available; and
  - (d) agrees to the nomination.

### 20 Nominated person—functions

- (1) The main function of a nominated person for a person with a mental disorder or mental illness is to help the person by ensuring that the interests, views and wishes of the person are respected if the person requires treatment, care or support for a mental disorder or mental illness.

- (2) The other functions of a nominated person include—
- (a) receiving information under this Act; and
  - (b) being consulted about decisions in relation to treatment, care or support; and
  - (c) other functions given to the nominated person under this Act.

**21      Nominated person—obligations of person in charge of facility**

The person in charge of an approved mental health facility or approved community care facility must take all reasonable steps to ensure that—

- (a) a person receiving treatment, care or support at the facility is asked whether the person has a nominated person; and
- (b) if the person has a nominated person—
  - (i) details about the nominated person and a copy of the written nomination are kept with the person's record; and
  - (ii) a process is in place to periodically check the currency of the information kept under subparagraph (i); and
  - (iii) if the ACAT is involved in decisions about the person—the name of and contact information for the nominated person is given to the ACAT.

**22      Nominated person—end of nomination**

- (1) A person who has a nominated person and has decision-making capacity may end the nomination by telling a member of the person's treating team, orally or in writing, that they do not want the nominated person to continue to perform the functions of a nominated person.

- (2) A nominated person may end their nomination by telling a member of the person's treating team, orally or in writing, that they are not able to continue to perform the functions of a nominated person.

*Note* If a form is approved under s 273 for this provision, the form must be used.

- (3) A nomination ended by a person under subsection (1) or (2) ends on—
- (a) the day the person tells the member of the treating team; or
  - (b) if the person tells the member of the treating team in writing that the nomination ends on a later day—the later day.
- (4) The chief psychiatrist may end the nomination of a nominated person if—
- (a) the chief psychiatrist believes on reasonable grounds that—
    - (i) the nominated person is not able to continue to perform the functions of a nominated person under section 20 (Nominated person—functions); or
    - (ii) the nominated person no longer satisfies the criteria mentioned in section 19 (2) (Nominated person); or
    - (iii) it is in the best interest of the person who made the nomination that the nomination ends; and
  - (b) the chief psychiatrist consults with the person who made the nomination about the reasonable grounds for ending the nomination.
- (5) If the chief psychiatrist ends a nomination under subsection (4), the chief psychiatrist—
- (a) must make a record about the reason for ending the nomination; and

(b) must give written notice of the day that the nomination is to end to the following:

- (i) the person who made the nomination;
- (ii) the nominated person;
- (iii) a member of the person's treating team; and

*Note* If a form is approved under s 273 for this provision, the form must be used.

(c) may, if the person who made the nomination has decision-making capacity, ask the person whether there is someone else who can be nominated; and

(d) must advise the person who made the nomination about advocacy services that may be available to provide assistance to the person.

**Examples—par (d)**

- 1 the public advocate
- 2 ACT Disability, Aged and Carer Advocacy Service

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

(6) A member of a person's treating team who is told about a nomination ending under subsection (1), (2) or (4) must ensure that—

- (a) information about the nomination ending is entered in the person's record as soon as practicable; and
- (b) the person is told in a way that the person is most likely to understand that the information has been entered in the person's record; and
- (c) the person is given a copy of the information entered in the person's record.

*Note* If a form is approved under s 273 for this provision, the form must be used.

(7) In this section:

*treating team*, for a person with a mental disorder or mental illness—  
see section 24.

## **23 Nominated person—protection from liability**

- (1) A nominated person is not civilly liable for anything done or omitted to be done honestly and without recklessness—
- (a) in the exercise of a function under this Act; or
  - (b) in the reasonable belief that the act or omission was in the exercise of a function under this Act.

*Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see [Legislation Act](#), s 104).

- (2) Any civil liability that would, apart from subsection (1), attach to a nominated person attaches instead to the Territory.

## Part 3.3                      Advance agreements and advance consent directions

### 24                      Definitions—pt 3.3

In this part:

***representative***, of a treating team, means the member of the treating team nominated by the team to exercise the functions of a representative for this part.

***treating team***, for a person with a mental disorder or mental illness, means the mental health professionals involved in the treatment care or support of the person for a particular episode of treatment, care or support, and includes—

- (a) if the person names another mental health professional as the person's current mental health professional—that other mental health professional; and
- (b) if another mental health professional referred the person to the treating team for that episode of care—that other mental health professional.

### 25                      Rights in relation to advance agreements and advance consent directions

The representative of the treating team for a person with a mental disorder or mental illness must, as soon as practicable, ensure that the person—

- (a) is told that the person may enter into an advance agreement; and
- (b) is given the opportunity to enter into an advance agreement; and
- (c) is told that the person may make an advance consent direction;  
and
- (d) is given the opportunity to make an advance consent direction;  
and

- (e) is told that the person may have someone with them to assist in entering into an advance agreement or making an advance consent direction.

**Example—par (e)**

a nominated person could assist the person

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

## 26 Entering into advance agreement

- (1) A person with a mental disorder or mental illness who has decision-making capacity may enter into an agreement (an ***advance agreement***) with the person's treating team that sets out—

- (a) information the person considers relevant to their treatment, care or support for the mental disorder or mental illness (but not information more appropriate to include in an advance consent direction); and

*Note* See s 27 (1) for what an advance consent direction may be about.

- (b) any preferences the person has in relation to practical help the person may need as a result of the mental disorder or mental illness.

**Examples—practical help**

- 1 arranging for the payment of bills
- 2 arranging care or providing care for a close relative or close friend usually cared for by the person with the mental disorder or mental illness

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (2) An advance agreement for a person may also set out the following:
  - (a) if the person has an advance consent direction—a copy of the advance consent direction;

- (b) if the person has a nominated person—contact details for the nominated person;
- (c) if there is a person who is likely to provide practical help under the agreement—contact details for the person;
- (d) if the person has a carer—contact details for the carer;
- (e) if the person has a guardian under the *Guardianship and Management of Property Act 1991*—contact details for the guardian;
- (f) if the person has an attorney under the *Powers of Attorney Act 2006*—contact details for the attorney;
- (g) any other relevant details.

**Examples—par (g)**

- 1 that the person cannot speak, read or write English, but is fluent in another stated language (for example, AUSLAN or Italian)
  - 2 that the person cannot speak but can communicate using a stated communication device (for example, a communication book or board)
- (3) An advance agreement for a person must be—
- (a) in writing; and
  - (b) signed by—
    - (i) the person; and
    - (ii) the representative of the person’s treating team; and
    - (iii) if the person has a nominated person—the nominated person.

*Note* If a form is approved under s 273 for this provision, the form must be used.

- (4) If there is a person who is likely to provide practical help under the advance agreement, the agreement may also be signed by that person.



- (5) The representative of the person's treating team must ensure that—
- (a) the advance agreement is entered in the person's record; and
  - (b) a copy of the advance agreement is given to—
    - (i) the person; and
    - (ii) if the person has a nominated person—the nominated person; and
    - (iii) if there is a person who is likely to provide practical help under the agreement and the person consents to that person being given a copy—that person; and
    - (iv) if the person has a carer and the person consents to the carer being given a copy—the carer; and
    - (v) if the person has a guardian under the *Guardianship and Management of Property Act 1991*—the guardian and the ACAT; and
    - (vi) if the person has an attorney under the *Powers of Attorney Act 2006*—the attorney; and
    - (vii) any member of the person's treating team who does not have access to the person's record.

## 27 Making advance consent direction

- (1) A person with a mental disorder or mental illness may make a direction (an ***advance consent direction***) about 1 or more of the following:
- (a) the treatment, care or support that the person consents to receiving if the mental disorder or mental illness results in the person not having decision-making capacity;
  - (b) particular medications or procedures that the person consents to receiving if the mental disorder or mental illness results in the person not having decision-making capacity;

- (c) particular medications or procedures that the person does not consent to receiving if the mental disorder or mental illness results in the person not having decision-making capacity;
- (d) the people who may be provided with information about the treatment, care or support the person requires for a mental disorder or mental illness;
- (e) the people who are not to be provided with information about the treatment, care or support the person requires for a mental disorder or mental illness.

*Note* The disclosure of personal health information is subject to the [\*Health Records \(Privacy and Access\) Act 1997\*](#).

- (2) A person with a mental disorder or mental illness may make an advance consent direction only if the person—
  - (a) has decision-making capacity; and
  - (b) has consulted with the person’s treating team about options for treatment care and support in relation to the mental disorder or mental illness.
- (3) An advance consent direction that does not include advance consent for electroconvulsive therapy or psychiatric surgery must be—
  - (a) in writing; and
  - (b) signed by the person in the presence of a witness who is not a treating health professional for the person, and by the witness in the presence of the person; and
  - (c) signed by the representative of the person’s treating team in the presence of a witness who is not a treating health professional for the person, and by the witness in the presence of the representative.

*Note* If a form is approved under s 273 for this provision, the form must be used.

- (4) An advance consent direction that includes advance consent for electroconvulsive therapy must—
- (a) be in writing; and
  - (b) state the maximum number of times (not more than 9) that electroconvulsive therapy may be administered to the person under the consent; and
  - (c) be signed by the person in the presence of 2 witnesses who are not treating health professionals for the person, and by each witness in the presence of the other witness and the person; and
  - (d) be signed by the representative of the person's treating team in the presence of 2 witnesses who are not treating health professionals for the person, and by each witness in the presence of the other witness and the representative.

*Note* If a form is approved under s 273 for this provision, the form must be used.

- (5) An advance consent direction that includes advance consent for psychiatric surgery must be—
- (a) in writing; and
  - (b) signed by the person in the presence of 2 witnesses who are not treating health professionals for the person, and by each witness in the presence of the other witness and the person; and
  - (c) signed by the representative of the person's treating team in the presence of 2 witnesses who are not treating health professionals for the person, and by each witness in the presence of the other witness and the representative.

*Note* If a form is approved under s 273 for this provision, the form must be used.

- (6) The representative of the person's treating team must ensure that—
- (a) the advance consent direction is entered in the person's record; and

- (b) a copy of the advance consent direction is given to—
  - (i) the person; and
  - (ii) if the person has a nominated person—the nominated person; and
  - (iii) if the person has a carer and the person consents to the carer being given a copy—the carer; and
  - (iv) if the person has a guardian under the *Guardianship and Management of Property Act 1991*—the guardian and the ACAT; and
  - (v) if the person has an attorney under the *Powers of Attorney Act 2006*—the attorney; and
  - (vi) any member of the person’s treating team who does not have access to the person’s record.

**28 Giving treatment etc under advance agreement or advance consent direction**

- (1) A mental health professional must, before giving treatment, care or support to a person with a mental disorder or mental illness, take reasonable steps to find out whether an advance agreement or advance consent direction is in force in relation to the person.
- (2) If an advance agreement is in force and the person does not have decision-making capacity, a mental health professional—
  - (a) must, if reasonably practicable, give treatment, care or support to the person in accordance with the preferences expressed in the agreement; and
  - (b) must not apprehend, detain, restrain or use force to give effect to the agreement.

- (3) If an advance consent direction is in force and the person does not have decision-making capacity, a mental health professional—
  - (a) may give the person the treatment, care or support if the direction gives consent for the treatment, care or support; and
  - (b) may give a particular medication or procedure if the direction indicates that the person consents to the medication or procedure; and
  - (c) must not give a particular medication or procedure if the direction indicates that the person does not consent to the medication or procedure; and
  - (d) must not apprehend, detain, restrain or use force to give effect to the direction.
- (4) If an advance consent direction is in force in relation to a person but the person resists being given treatment, care or support to which they have consented under the direction, a mental health professional may give the treatment, care or support to the person only if the ACAT, on application by the mental health professional, orders that the treatment, care or support may be given.
- (5) If a mental health professional believes on reasonable grounds that giving treatment, care or support to a person with impaired decision-making capacity in accordance with an advance consent direction is unsafe or inappropriate, the mental health professional may give the person other treatment, care or support only if—
  - (a) both of the following apply:
    - (i) the person is willing to receive the treatment, care or support;

- (ii) the person has a guardian or health attorney under the *Guardianship and Management of Property Act 1991*, or attorney under the *Powers of Attorney Act 2006*, and the guardian, health attorney or attorney gives consent to the treatment, care or support in accordance with the guardian, health attorney or attorney's appointment; or
  - (b) the ACAT, on application by the mental health professional, orders that the treatment, care or support may be given.
- (6) The mental health professional must enter in the person's record the reasons for the treatment, care or support given under subsection (5) (a).

## **29 Ending advance agreement or advance consent direction**

- (1) A person who has decision-making capacity may end the person's advance agreement by—
  - (a) telling a member of the person's treating team, orally or in writing, that the person wants to end the agreement; or
  - (b) entering into another advance agreement.
- (2) A person who has decision-making capacity may end the person's advance consent direction by—
  - (a) telling a member of the person's treating team, orally or in writing, that the person wants to end the direction; or
  - (b) making another advance consent direction.
- (3) An advance agreement ended under subsection (1) (a) or an advance consent direction ended under subsection (2) (a) ends on—
  - (a) the day the person tells the member of the person's treating team; or
  - (b) if the person tells the member of the person's treating team in writing that agreement or direction ends on a later day—the later day.

- (4) A member of a person's treating team who is told about an advance agreement ending under subsection (1) (a) or an advance consent direction ending under subsection (2) (a) must ensure that—
- (a) information about the end of the agreement or direction—
    - (i) is entered in the person's record as soon as practicable; and
    - (ii) is given to—
      - (A) any member of the person's treating team who does not have access to the person's record; and
      - (B) if the person has a nominated person—the nominated person; and
      - (C) if there is a person who was likely to provide practical help under the agreement and the person consents to that person being given a copy—that person; and
      - (D) if the person has a carer and the person consents to the carer being given a copy—the carer; and
      - (E) if the person has a guardian under the *Guardianship and Management of Property Act 1991*—the guardian and the ACAT; and
      - (F) if the person has an attorney under the *Powers of Attorney Act 2006*—the attorney; and
  - (b) the person is told in a way that the person is most likely to understand that the information has been entered in the person's record; and
  - (c) the person is given a copy of the information entered in the person's record.

**30      Effect of advance agreement and advance consent direction on guardian with authority to give consent for treatment, care or support**

- (1) This section applies if—
  - (a) an advance agreement or an advance consent direction is in force in relation to a person; and
  - (b) the person has a guardian under the *Guardianship and Management of Property Act 1991* with authority to give consent for medical treatment involving treatment, care or support under this Act.
- (2) Any power of the guardian to consent to treatment, care or support for the person must be exercised taking into account the advance agreement or advance consent direction.
- (3) However, the guardian's consent is not required for any treatment, care or support for which consent is provided under the advance consent direction.

**31      Effect of advance agreement and advance consent direction on attorney with power to deal with health care matters**

- (1) This section applies if—
  - (a) an advance agreement or an advance consent direction is in force in relation to a person; and
  - (b) the person has an enduring power of attorney under the *Powers of Attorney Act 2006* that deals with health care matters under that Act.
- (2) The advance agreement or advance consent direction may be used by the attorney to work out a person's wishes or needs under the *Powers of Attorney Act 2006*, schedule 1, section 1.6 (Participation in decision making).



- (3) Any power of the attorney to consent to treatment, care or support for the person must be exercised taking into account the advance agreement or advance consent direction.
- (4) However, the attorney's consent is not required for any treatment, care or support for which consent is provided under the advance consent direction.

## **32      Effect of health direction on previous advance consent direction**

- (1) This section applies if—
  - (a) a person makes an advance consent direction; and
  - (b) after the direction is made the person makes a health direction under the *Medical Treatment (Health Directions) Act 2006*; and
  - (c) the health direction deals with a matter mentioned in the advance consent direction.
- (2) The advance consent direction has no effect to the extent that is inconsistent with the health direction.

## **Chapter 4 Assessments**

### **Part 4.1 Applications for assessment orders**

*Note* In addition to assessments under this chapter, a person may also be assessed as a result of apprehension and examination under ch 6 (Emergency detention).

#### **33 Applications by people with mental disorder or mental illness—assessment order**

- (1) This section applies if a person believes themselves to be, because of mental disorder or mental illness—
  - (a) unable to make reasonable judgments about matters relating to their own health or safety; or
  - (b) unable to do something necessary for their own health or safety; or
  - (c) likely to do serious harm to others.
- (2) The person may apply to the ACAT for an assessment order in relation to themselves.

*Note 1* Requirements for applications to the ACAT are set out in the [ACT Civil and Administrative Tribunal Act 2008](#), s 10.

*Note 2* If a form is approved under the [ACT Civil and Administrative Tribunal Act 2008](#), s 117 for the application, the form must be used.

## 34 Applications by other people—assessment order

- (1) This section applies if a person (the *applicant*) believes on reasonable grounds that—
  - (a) the health or safety of another person (the *subject person*) is, or is likely to be, substantially at risk because the subject person is unable, because of mental disorder or mental illness—
    - (i) to make reasonable judgments about matters relating to the subject person's health or safety; or
    - (ii) to do something necessary for the subject person's health or safety; or
  - (b) another person (the *subject person*) is doing, or is likely to do, because of mental disorder or mental illness, serious harm to others.
- (2) The applicant may apply to the ACAT for an assessment order in relation to the subject person.

*Note 1* Requirements for applications to the ACAT are set out in the [ACT Civil and Administrative Tribunal Act 2008](#), s 10.

*Note 2* If a form is approved under the [ACT Civil and Administrative Tribunal Act 2008](#), s 117 for the application, the form must be used.

## 35 Applications by referring officers—assessment order

- (1) This section applies if a referring officer believes on reasonable grounds that—
  - (a) a person alleged to have committed an offence has a mental disorder or mental illness; and
  - (b) because of the mental disorder or mental illness—
    - (i) the person's health or safety is, or is likely to be, substantially at risk; or

- (ii) the person is doing, or is likely to do, serious harm to others; and
- (c) it may not be appropriate to prosecute, or to continue to prosecute, the person considering—
  - (i) the nature and circumstances of the alleged offence; and
  - (ii) the person's apparent mental disorder or mental illness.
- (2) The referring officer may apply to the ACAT for an assessment order in relation to the person.

*Note* After an assessment is made, the ACAT may decide to make a mental health order in relation to a person (see pt 5.2). The ACAT is not able to make a forensic mental health order for a person unless the person is otherwise a person for whom a forensic mental health order can be made (see ch 7).
- (3) A referring officer who applies under subsection (2) and believes on reasonable grounds that there is a risk of serious danger to public safety from the person, must tell the ACAT, in writing, about the risk and the basis for the belief about the risk.
- (4) In this section:

***alleged to have committed an offence***—a person is ***alleged to have committed an offence*** if—

  - (a) the person is arrested in connection with an offence; or
  - (b) a police officer believes on reasonable grounds that there are sufficient grounds on which to charge the person in connection with an offence; or
  - (c) the person is charged in connection with an offence.

**36      Applicant and referring officer to tell ACAT of risks—  
assessment order**

- (1) This section applies if—
  - (a) a person (the *applicant*) applies under section 34 (Applications by other people—assessment order), or a referring officer applies under section 35, for an assessment order in relation to someone else; and
  - (b) the applicant or referring officer believes on reasonable grounds that anything to do with the application process is likely to substantially increase—
    - (i) the risk to the other person’s health or safety; or
    - (ii) the risk of serious harm to others.
- (2) The application must state—
  - (a) the applicant’s or referring officer’s belief about the substantially increased risk; and
  - (b) the basis for the belief.
- (3) The ACAT must give the chief psychiatrist a copy of the application.

## Part 4.2                      Assessment orders

### 37                      Assessment order

- (1) The ACAT may order an assessment of a person if—
- (a) an application for an assessment order is made under part 4.1 and the ACAT is satisfied on the face of the application that—
    - (i) the person appears to have a mental disorder or mental illness; and
    - (ii) either—
      - (A) the person's health or safety is, or is likely to be, substantially at risk; or
      - (B) the person is doing, or is likely to do, serious harm to others; or
  - (b) the ACAT reviews a mental health order in force in relation to the person under section 79 (Review of mental health order); or
  - (c) the person is required to submit to the jurisdiction of the ACAT under—
    - (i) an ACAT mental health provision in a care and protection order or interim care and protection order; or
    - (ii) an interim therapeutic protection order; or
  - (d) the person is required by a court to submit to the jurisdiction of the ACAT under the [Crimes Act](#), part 13 or the [Crimes Act 1914](#) (Cwlth), part 1B; or

- (e) the ACAT reviews an order for detention in force in relation to the person under section 180 (Review of detention under court order).

*Note* If a person is assessed under an assessment order as having a mental disorder or mental illness, the ACAT may make a mental health order or forensic mental health order in relation to the person (see s 58, s 66, s 101 and s 108).

- (2) In this section:

***ACAT mental health provision***, in a care and protection order or interim care and protection order—see the [Children and Young People Act 2008](#), section 491.

### **38 Consent for assessment order**

- (1) If the ACAT is considering ordering an assessment of a person under section 37 (a), (b) or (c), the ACAT must take reasonable steps to—
  - (a) tell the person in writing that—
    - (i) the ACAT is considering ordering an assessment; and
    - (ii) an assessment may lead to an order for treatment; and
    - (iii) if an order for treatment is made at a later time the person's rights in relation to treatment will be explained to the person at that time; and
  - (b) find out the person's opinion in relation to the assessment; and
  - (c) obtain the person's consent to the assessment.
- (2) However, subsection (1) does not prevent the ACAT from ordering an assessment without the person's consent.

### **39 Emergency assessment order**

- (1) This section applies if—
  - (a) the ACAT is considering ordering an assessment of a person under section 37 (a), (b) or (c); and

- (b) a presidential member of the ACAT has a serious concern about the immediate safety of the person, the applicant for the order or another person arising out of the application process.
- (2) The presidential member of the ACAT—
  - (a) must give the chief psychiatrist written notice of the serious concern; and
  - (b) may if necessary and reasonable order an assessment without complying with section 38 (Consent for assessment order).

*Note 1* For principles that must be taken into account when exercising a function under this Act, see s 6.

*Note 2* Section 188 (Notice of hearing) does not apply in relation to the making of an emergency assessment order (see s 188 (3)).

## **40 Content and effect of assessment order**

- (1) An assessment order (including an emergency assessment order) must—
  - (a) state the nature of the assessment to be conducted; and
  - (b) state the approved mental health facility or other place at which the assessment is to be conducted and, if appropriate, the person who is to conduct the assessment; and
  - (c) if the assessment is to be conducted at an approved mental health facility—
    - (i) direct the person to be assessed to attend the facility and, if necessary and reasonable, stay at the facility until the assessment has been conducted; and
    - (ii) direct the person in charge of the facility to—
      - (A) if appropriate, admit the person to be assessed to the facility to conduct the assessment; and



- (B) if necessary and reasonable, detain the person at the facility until the assessment has been conducted; and
  - (C) provide the assistance that is necessary and reasonable to conduct the assessment.
- (2) An assessment order (including an emergency assessment order) authorises—
  - (a) the conduct of the assessment stated in the order; and
  - (b) anything necessary and reasonable to be done to conduct the assessment.
- (3) In making an assessment order (other than an emergency assessment order), the ACAT must explain the effect of section 58 (Psychiatric treatment order) or section 66 (Community care order) to the person in relation to whom the order is to be made, in a way that the person is most likely to understand.

*Note* Under s 58 and s 66, an application is not required for a psychiatric treatment order or community care order in relation to a person who has been assessed under an assessment order as having a mental disorder or mental illness.

#### **41 Public advocate to be told about assessment order**

The ACAT must tell the public advocate, in writing, about an assessment order made in relation to a person immediately after the order is made.

#### **42 Time for conducting assessment**

- (1) The assessment of a person in relation to whom an assessment order is made must be conducted as soon as practicable, and not later than—
  - (a) 7 days after the day the order is made; or
  - (b) if an earlier day is stated in the order—the stated day; or
  - (c) if a removal order is made under section 43 (2) in relation to the assessment—7 days after the day the removal order is executed.

- (2) However, the ACAT may, on application, extend the period for conducting the assessment if satisfied, based on clinical evidence provided to it by the person conducting the assessment, that a satisfactory assessment cannot be completed within the period under subsection (1).
- (3) The extension must be for a period not longer than 7 days.

### 43 Removal order to conduct assessment

- (1) This section applies if the ACAT makes—
  - (a) an assessment order in relation to a person under section 37 (a), (b) or (c) (Assessment order) who—
    - (i) has not been served with a subpoena under the *ACT Civil and Administrative Tribunal Act 2008*, section 41 (Powers in relation to witnesses etc) for a reason stated in section 192 (3) (Subpoena to appear in person); or
    - (ii) does not appear at a proceeding in relation to the order under a subpoena given under the *ACT Civil and Administrative Tribunal Act 2008*, section 41; or
    - (iii) does not comply with the assessment order; or
  - (b) an assessment order in relation to a person under section 37 (d) or (e); or
  - (c) an emergency assessment order in relation to a person.
- (2) The ACAT may order (a **removal order**) the removal of the person to an approved mental health facility to conduct the assessment if satisfied that—
  - (a) the person has been made aware of the assessment order (unless the assessment order is an emergency assessment order); and

- (b) either—
  - (i) if the person does not comply with the assessment order—the person does not have a reasonable excuse for failing to comply with the order; or
  - (ii) in any other case—the ACAT is satisfied that it is appropriate in the circumstances.
- (3) The removal order must state—
  - (a) the day (not later than 1 month after the day the order is made) when the order stops having effect; and
  - (b) the mental health facility to which the person is to be removed; and
  - (c) the nature of the assessment to be conducted in relation to the person.
- (4) A removal order authorises—
  - (a) the apprehension of the person named in the order; and
  - (b) the removal of the person to the mental health facility stated in the order.

#### **44 Executing removal order**

- (1) A removal order made under section 43 (2) in relation to a person may be executed by a police officer, authorised ambulance paramedic, doctor or mental health officer.
- (2) The person executing the order must, before removing the person, explain to the person the purpose of the order.

*Note* See s 263 (Powers of entry and apprehension) and s 264 (Powers of search and seizure).

**45           Contact with others**

- (1) This section applies if a person is admitted to a mental health facility under an assessment order.
- (2) The person in charge of the mental health facility must, as soon as practicable after admitting the person to the facility, tell the public advocate in writing that the person has been admitted.
- (3) The person in charge of the mental health facility must ensure that, while at the facility, the person has access to facilities, and adequate opportunity, to contact each of the following:
  - (a) a relative or friend;
  - (b) the public advocate;
  - (c) a lawyer;
  - (d) if the person has a nominated person—the nominated person.

**46           Public advocate and lawyer to have access**

- (1) This section applies if a person is admitted to a mental health facility under an assessment order.
- (2) The public advocate and the person's lawyer are entitled to have access to the person at any time.
- (3) The person in charge of the mental health facility must, if asked by the public advocate or the person's lawyer, give the reasonable assistance necessary to allow the public advocate or lawyer to have access to the person.

**47           Person to be assessed to be told about order**

- (1) This section applies if an assessment is to be conducted at an approved mental health facility or other place under an assessment order.

- (2) The person in charge of the approved mental health facility or other place must, before the assessment is conducted, ensure that the person to be assessed is told about the assessment order, including the process of assessment and possible outcomes of an assessment, in a way that the person is most likely to understand.
- (3) This section applies even if the person to be assessed was present when the order was made.

#### **48 Copy of assessment**

- (1) This section applies if an assessment is conducted at a mental health facility or other place under an assessment order.
- (2) The person in charge of the mental health facility or other place must, as soon as practicable, but not later than 7 days after completing the assessment—
  - (a) give a copy of the assessment to—
    - (i) the person assessed; and
    - (ii) the ACAT; and
    - (iii) the public advocate; and
    - (iv) if the person is a child—each person with parental responsibility for the child under the *Children and Young People Act 2008*, division 1.3.2 (Parental responsibility); and
    - (v) if the person was assessed as a result of an application under section 35 (Applications by referring officers—assessment order)—the referring officer; and

- (b) tell the following people in writing about the outcome of the assessment:
  - (i) if the person has a nominated person—the nominated person;
  - (ii) if the person has a guardian under the *Guardianship and Management of Property Act 1991*—the guardian;
  - (iii) if the person has an attorney under the *Powers of Attorney Act 2006*—the attorney.

#### **49 Notice of outcome of assessment**

- (1) This section applies if an assessment is conducted as a result of an application under section 34 (Applications by other people—assessment order) or section 35 (Applications by referring officers—assessment order).
- (2) The ACAT must, as soon as practicable after it is given a copy of the assessment under section 48 (2), give written notice to the applicant or the referring officer of any recommendations made by the assessment.
- (3) An applicant or referring officer who receives notice under subsection (2) may, within 48 hours of receiving the notice, give the following to the ACAT:
  - (a) further information about the person’s mental disorder or mental illness;
  - (b) concerns about the implications for the person or for other people of not considering a mental health order in relation to the person.
- (4) In deciding whether to hold a hearing to consider making a mental health order in relation to a person, the ACAT must take into account the information provided under subsection (3).

## **Chapter 5            Mental health orders**

### **Part 5.1            Preliminary**

#### **50            Definitions—ch 5**

In this chapter:

*relevant official*, for a mental health order, means—

- (a) for a psychiatric treatment order—the chief psychiatrist; or
- (b) for a community care order—the care coordinator.

*relevant person*, for a mental health order application, means—

- (a) for a psychiatric treatment order—the chief psychiatrist or another person nominated by the chief psychiatrist; and
- (b) for a community care order—a person who can make the statement required under section 51 (3) (a) for the application.

## Part 5.2 Applications for mental health orders

### 51 Applications for mental health orders

- (1) This section applies if a relevant person believes on reasonable grounds that a person (the *subject person*) is a person in relation to whom the ACAT could reasonably make an order under section 58 (Psychiatric treatment order) or section 66 (Community care order).
- (2) The relevant person may apply to the ACAT for a mental health order in relation to the subject person.

*Note 1* An application is not required in relation to a person who has been assessed under an assessment order as having a mental disorder or mental illness (see s 58 and s 66).

*Note 2* Requirements for applications to the ACAT are set out in the [ACT Civil and Administrative Tribunal Act 2008](#), s 10.

*Note 3* If a form is approved under the [ACT Civil and Administrative Tribunal Act 2008](#), s 117 for the application, the form must be used.

- (3) The application must include—
  - (a) a written statement by the relevant person addressing the criteria the ACAT must consider in making an order under section 58 (Psychiatric treatment order) or section 66 (Community care order); and
  - (b) a plan setting out the proposed treatment, care or support of the subject person.

### 52 Applicant to tell ACAT of risks

- (1) This section applies if—
  - (a) a person (the *applicant*) applies under section 51 for a mental health order in relation to someone else (the *subject person*); and



- (b) the applicant believes on reasonable grounds that anything to do with the application process is likely to substantially increase—
  - (i) the risk to the subject person's health or safety; or
  - (ii) the risk of serious harm to others.
- (2) The application must state—
  - (a) the applicant's belief about the substantially increased risk; and
  - (b) the basis for the belief.

## **Part 5.3                      Making of mental health orders— preliminary matters**

### **53                      ACAT must consider assessment—mental health order**

- (1) Before making a mental health order in relation to a person, the ACAT must consider—
  - (a) an assessment of the person conducted under an assessment order; or
  - (b) another assessment of the person that the ACAT considers appropriate.
- (2) In considering an assessment, the ACAT must take into account how recently the assessment was conducted.
- (3) The ACAT may consider making a mental health order even if an assessment recommends that the ACAT not consider making a mental health order.

### **54                      Consultation by ACAT—mental health order**

- (1) Before making a mental health order in relation to a person, the ACAT must, as far as practicable, consult—
  - (a) if the person is a child—each person with parental responsibility for the child under the *Children and Young People Act 2008*, division 1.3.2 (Parental responsibility); and
  - (b) if the person has a guardian under the *Guardianship and Management of Property Act 1991*—the guardian; and
  - (c) if the person has an attorney under the *Powers of Attorney Act 2006*—the attorney; and
  - (d) if the person has a nominated person—the nominated person; and

- (e) if a health attorney is involved in the treatment, care or support of the person—the health attorney; and
  - (f) if the chief psychiatrist or care-coordinator is likely to be responsible for providing the treatment, care or support proposed to be ordered—the chief psychiatrist or care-coordinator; and
  - (g) if the person is a detainee, a person released on parole or licence, or a person serving a community-based sentence—the corrections director-general; and
  - (h) if the person is covered by a bail order that includes a condition that the person accept supervision under the [Bail Act 1992](#), section 25 (4) (e) or section 25A—the director-general responsible for the supervision of the person under the [Bail Act 1992](#); and
  - (i) if the person is a child covered by a bail order that includes a condition that the child accept supervision under the [Bail Act 1992](#), section 26 (2)—the CYP director-general; and
  - (j) if the person is a young detainee or a young offender serving a community-based sentence—the CYP director-general; and
  - (k) if an assessment order under part 4.1 (Applications for assessment orders) gave rise to the ACAT consideration of the making of the mental health order—the applicant for the assessment order.
- (2) Before making a mental health order in relation to a person who has a carer, the ACAT must, as far as practicable, tell the carer in writing that—
- (a) a hearing will be held in relation to making a mental health order for the person; and

- (b) the carer may do either or both of the following:
  - (i) make a submission to the ACAT in relation to making a mental health order for the person;
  - (ii) apply to the ACAT to attend the hearing.

**55 ACAT must hold hearing—mental health order**

Before making a mental health order in relation to a person, the ACAT must hold a hearing into the matter.

**56 What ACAT must take into account—mental health order**

- (1) In making a mental health order in relation to a person, the ACAT must take into account the following:
  - (a) for a person the subject of an application under section 51 (Applications for mental health orders)—a plan for the proposed treatment, care or support of the person, mentioned in section 51 (3) (b);
  - (b) whether the person consents, refuses to consent or has the decision-making capacity to consent, to a proposed course of treatment, care or support;
  - (c) the views and wishes of the person, so far as they can be found out, including in—
    - (i) an advance agreement; and
    - (ii) an advance consent direction;
  - (d) the views of the people responsible for the day-to-day care of the person, so far as those views are made known to the ACAT;
  - (e) the views of the people appearing at the proceeding;
  - (f) the views of the people consulted under section 54 (Consultation by ACAT—mental health order);

- (g) that any restrictions placed on the person should be the minimum necessary for the safe and effective care of the person;
- (h) any alternative treatment, care or support available, including—
  - (i) the purpose of the treatment, care or support; and
  - (ii) the benefits likely to be derived by the person from the treatment, care or support; and
  - (iii) the distress, discomfort, risks, side effects or other disadvantages associated with the treatment, care or support;
- (i) any relevant medical history of the person;
- (j) for a person required by a court to submit to the jurisdiction of the ACAT under the [Crimes Act](#), part 13 or the [Crimes Act 1914](#) (Cwlth), part 1B—
  - (i) the nature and circumstances of the alleged offence or the offence in relation to which the person is charged; and
  - (ii) the nature and extent of the person's mental illness or mental disorder and the effect it is likely to have on the person's behaviour in the future; and
  - (iii) whether, if the person is not detained—
    - (A) the person's health or safety is, or is likely to be, substantially at risk; or
    - (B) the person is likely to do serious harm to others;
- (k) anything else prescribed by regulation.

*Note* For principles that must be taken into account when exercising a function under this Act, see s 6.

- (2) Before the ACAT makes a mental health order for the provision of particular treatment, care or support at a stated facility or by a stated person, the ACAT must be satisfied that the treatment, care or support can be provided at the stated facility or by the stated person.
- (3) The ACAT may ask the relevant person to provide information on the options that the relevant person considers are appropriate for the provision of particular treatment, care or support under the proposed mental health order.
- (4) The relevant person must respond to the ACAT within 7 days after receiving a request under subsection (3), or any longer time allowed by the ACAT.

**57 ACAT must not order particular treatment, care or support—mental health order**

In making a mental health order in relation to a person, the ACAT must not order a particular form of treatment, care or support.

## **Part 5.4                      Psychiatric treatment orders**

### **58                      Psychiatric treatment order**

- (1) This section applies to—
  - (a) a person assessed under an assessment order; or
  - (b) a person in relation to whom an application for a mental health order has been made under part 5.2; or
  - (c) a person in relation to whom an application for a forensic mental health order has been made under division 7.1.2; or
  - (d) a person required by a court to submit to the jurisdiction of the ACAT under the [Crimes Act](#), part 13 or the [Crimes Act 1914](#) (Cwlth), part 1B.
- (2) The ACAT may make a psychiatric treatment order in relation to the person if—
  - (a) the person has a mental illness; and
  - (b) either—
    - (i) the person does not have decision-making capacity to consent to the treatment, care or support and refuses to receive the treatment, care or support; or
    - (ii) the person has decision-making capacity to consent to the treatment, care or support, but refuses to consent; and
  - (c) the ACAT believes on reasonable grounds that, because of the mental illness, the person—
    - (i) is doing, or is likely to do, serious harm to themselves or someone else; or
    - (ii) is suffering, or is likely to suffer, serious mental or physical deterioration; and

- (d) in relation to a person mentioned in paragraph (b) (ii)—the ACAT is satisfied that the harm or deterioration, or likely harm or deterioration, mentioned in paragraph (c) is of such a serious nature that it outweighs the person’s right to refuse to consent; and
- (e) the ACAT is satisfied that psychiatric treatment, care or support is likely to—
  - (i) reduce the harm or deterioration, or the likelihood of the harm or deterioration, mentioned in paragraph (c); or
  - (ii) result in an improvement in the person’s psychiatric condition; and
- (f) if an application has been made for a forensic mental health order—the ACAT is satisfied that a psychiatric treatment order should be made instead; and
- (g) the ACAT is satisfied that the treatment, care or support to be provided under the psychiatric treatment order cannot be adequately provided in another way that would involve less restriction of the freedom of choice and movement of the person.

## **59 Content of psychiatric treatment order**

- (1) A psychiatric treatment order made in relation to a person may state 1 or more of the following:
  - (a) an approved mental health facility to which the person may be admitted;
  - (b) that the person must do either or both of the following:
    - (i) undergo psychiatric treatment, other than electroconvulsive therapy or psychiatric surgery;
    - (ii) undertake a counselling, training, therapeutic or rehabilitation program;



- (c) that limits may be imposed on communication between the person and other people.
- (2) A psychiatric treatment order made in relation to a person must—
  - (a) state that the person must comply with any determination made under section 62 (Role of chief psychiatrist—psychiatric treatment order); and
  - (b) be accompanied by a statement about how the person meets the criteria under section 58 (2) (Psychiatric treatment order).
- (3) A psychiatric treatment order must not include any requirement mentioned in section 61 (1) (Content of restriction order made with psychiatric treatment order).

## **60      Criteria for making restriction order with psychiatric treatment order**

In addition to making a psychiatric treatment order in relation to a person, the ACAT may make a restriction order in relation to the person if it believes on reasonable grounds that—

- (a) it is in the interests of the person's health or safety or the safety of someone else or the public to do so; and
- (b) the treatment, care or support to be provided under the psychiatric treatment order cannot be adequately provided in another way that would involve less restriction of the freedom of choice and movement of the person.

**61            Content of restriction order made with psychiatric treatment order**

- (1) A restriction order made under section 60 in relation to a person may state either or both of the following:
  - (a) that the person must—
    - (i) live (but not be detained) at a stated place; or
    - (ii) be detained at a stated place;
  - (b) that the person must not approach a stated person or stated place or undertake stated activities.
- (2) A restriction order does not prevent the chief psychiatrist from granting leave to a person detained at a stated place.

**62            Role of chief psychiatrist—psychiatric treatment order**

- (1) The chief psychiatrist is responsible for the treatment, care or support of a person to whom a psychiatric treatment order applies.
- (2) Within 5 working days after the day the order is made, the chief psychiatrist must determine, in writing—
  - (a) whether the person requires admission to an approved mental health facility to receive treatment, care or support under the order and, if so, whether the person can be given leave from the facility; and
  - (b) for a person living in the community—the times when and the place where the person is required to attend to receive treatment, care or support, in accordance with the order; and
  - (c) the nature of the psychiatric treatment to be given to the person.

*Note 1*    The power to make an instrument includes the power to amend or repeal the instrument (see [Legislation Act](#), s 46).

*Note 2*    If a form is approved under s 273 for a determination, the form must be used.

(3) If the chief psychiatrist forms a belief on reasonable grounds that a person subject to a psychiatric treatment order who is living in the community requires admission to an approved mental health facility to receive treatment, care or support under the order, the chief psychiatrist may determine, in writing—

- (a) the approved mental health facility that the person is to be admitted to; and
- (b) the nature of the psychiatric treatment to be given to the person; and
- (c) whether the person can be given leave from the facility.

*Note* If a form is approved under s 273 for a determination, the form must be used.

(4) For subsection (2) (c) or (3) (b), the chief psychiatrist must not determine treatment that has, or is likely to have, the effect of subjecting the person to whom it is given to undue stress or deprivation, having regard to the benefit likely to result from the treatment.

(5) Before making a determination in relation to a person, the chief psychiatrist must—

- (a) take all reasonable steps to consult the following:
  - (i) the person;
  - (ii) if the person is a child—each person with parental responsibility for the child under the *Children and Young People Act 2008*, division 1.3.2 (Parental responsibility);
  - (iii) if the person has a guardian under the *Guardianship and Management of Property Act 1991*—the guardian;
  - (iv) if the person has an attorney under the *Powers of Attorney Act 2006*—the attorney;
  - (v) if the person has a carer—the carer;

- (vi) if the person has a nominated person—the nominated person;
  - (vii) if a health attorney is involved in the treatment, care or support of the person—the health attorney;
  - (viii) if the person is a detainee, a person released on parole or licence, or a person serving a community-based sentence—the corrections director-general;
  - (ix) if the person is covered by a bail order that includes a condition that the person accept supervision under the *Bail Act 1992*, section 25 (4) (e) or section 25A—the director-general responsible for the supervision of the person under the *Bail Act 1992*;
  - (x) if the person is a child covered by a bail order that includes a condition that the child accept supervision under the *Bail Act 1992*, section 26 (2)—the CYP director-general;
  - (xi) if the person is a young detainee or a young offender serving a community-based sentence—the CYP director-general; and
- (b) take into account the views of the people consulted under this section.
- (6) After making a determination in relation to a person, the chief psychiatrist must record whether the person was consulted and—
- (a) if the person was consulted—what the person’s views were; or
  - (b) if the person was not consulted—the reasons why.

- (7) The chief psychiatrist must, as soon as practicable after making a determination, give a copy of the determination to—
- (a) the person; and
  - (b) if the person is a child—each person with parental responsibility for the child under the *Children and Young People Act 2008*, division 1.3.2 (Parental responsibility); and
  - (c) the ACAT; and
  - (d) the public advocate; and
  - (e) if the person has a guardian under the *Guardianship and Management of Property Act 1991*—the guardian; and
  - (f) if the person has an attorney under the *Powers of Attorney Act 2006*—the attorney; and
  - (g) if the person has a nominated person—the nominated person; and
  - (h) if a health attorney is involved in the treatment, care or support of the person—the health attorney.

**63 Treatment etc to be explained—psychiatric treatment order**

- (1) Before treatment, care or support is given to a person under a psychiatric treatment order, the chief psychiatrist must explain to the person, the nature and effects (including any side effects) of the treatment, care or support.
- (2) The explanation must be given in a way that the person is most likely to understand.

**64      Action if psychiatric treatment order no longer appropriate—no longer person in relation to whom ACAT could make order**

- (1) This section applies if—
- (a) a psychiatric treatment order is in force in relation to a person; and
  - (b) the chief psychiatrist is satisfied that—
    - (i) the person is no longer a person in relation to whom the ACAT could make a psychiatric treatment order; or
    - (ii) if a restriction order is also in force in relation to the person—it is no longer necessary for the restriction order to be in force.

*Note 1* For the criteria for making a psychiatric treatment order, see s 58. For the criteria for making a restriction order with a psychiatric treatment order, see s 60.

*Note 2* For principles that must be taken into account when exercising a function under this Act, see s 6.

- (2) The chief psychiatrist must take all reasonable steps to give notice to—
- (a) if the person has a carer—the carer; and
  - (b) if the person has a nominated person—the nominated person.
- (3) The notice must—
- (a) include the reasons why the chief psychiatrist is satisfied of the matter mentioned in subsection (1) (b); and
  - (b) ask whether the carer or nominated person is aware of any other information that may be relevant to whether the psychiatric treatment order or restriction order continues to be appropriate for the person; and

- (c) state that, subject to consideration of any information given under paragraph (b), the chief psychiatrist must tell the ACAT and public advocate of the matter mentioned in subsection (1) (b) and the ACAT must review the psychiatric treatment order or restriction order; and
- (d) tell the carer that the carer is entitled to do either or both of the following:
  - (i) make a submission to the ACAT review of the psychiatric treatment order or restriction order;
  - (ii) apply to the ACAT to attend the hearing; and
- (e) tell the nominated person that the nominated person is entitled to make a submission to the ACAT review of the psychiatric treatment order or restriction order.

*Note* If a form is approved under s 273 for this provision, the form must be used.

- (4) If, having taken into account any information given under subsection (3) (b), the chief psychiatrist is still satisfied of the matter mentioned in subsection (1) (b), the chief psychiatrist must tell the ACAT and the public advocate in writing about—
  - (a) the chief psychiatrist's opinion, including the reasons for the opinion; and
  - (b) the details of any information given under subsection (3) (b).

*Note* The ACAT must review the order within 72 hours after being notified under this section (see s 79 (3)).

## **65 Powers in relation to psychiatric treatment order**

- (1) This section applies if a psychiatric treatment order has been made in relation to a person and—
  - (a) a restriction order has also been made in relation to the person requiring the person to be detained at a stated place; or

- (b) the chief psychiatrist makes a determination under section 62 (Role of chief psychiatrist—psychiatric treatment order) requiring the person to be admitted to an approved mental health facility; or
  - (c) the person is detained at an approved mental health facility under section 77 (Contravention of mental health order).
- (2) The chief psychiatrist may—
  - (a) detain the person at an approved mental health facility; and
    - Note* See s 264 (Powers of search and seizure).
  - (b) subject the person to the minimum confinement or restraint that is necessary and reasonable to—
    - (i) prevent the person from causing harm to themselves or someone else; or
    - (ii) ensure that the person remains in custody under the order; and
  - (c) subject the person to involuntary seclusion if satisfied that it is the only way in the circumstances to prevent the person from causing harm to themselves or someone else; and
  - (d) determine that the person can be given leave from the facility.
  - Note* For principles that must be taken into account when exercising a function under this Act, see s 6.
- (3) If the chief psychiatrist subjects a person to involuntary seclusion, the chief psychiatrist must ensure that the person is examined by a relevant doctor of the relevant place at least once in each 4-hour period for which the person is in seclusion.



- (4) If the chief psychiatrist determines that a person be given medication for the treatment of the person's mental illness, the chief psychiatrist may—
- (a) approve the giving by appropriately trained people of medication prescribed by a doctor in accordance with the chief psychiatrist's determination; and
  - (b) use, or authorise someone else to use, the force and assistance that is necessary and reasonable to give the medication (***forcible giving of medication***).
- (5) If the chief psychiatrist subjects a person to restraint, involuntary seclusion or forcible giving of medication, the chief psychiatrist must—
- (a) enter in the person's record the fact of and the reasons for the restraint, involuntary seclusion or forcible giving of medication; and
  - (b) tell the public advocate in writing of the restraint, involuntary seclusion or forcible giving of medication; and
  - (c) keep a register of the restraint, involuntary seclusion or forcible giving of medication.
- (6) In this section:
- relevant doctor***, of a relevant place, means a person employed at the place as a consultant psychiatrist, psychiatric registrar in consultation with a consultant psychiatrist or another doctor in consultation with a consultant psychiatrist.

## **Part 5.5                      Community care orders**

### **66                      Community care order**

- (1) This section applies to—
  - (a) a person assessed under an assessment order; or
  - (b) a person in relation to whom an application for a mental health order has been made under part 5.2; or
  - (c) a person in relation to whom an application for a forensic mental health order has been made under division 7.1.2; or
  - (d) a person required by a court to submit to the jurisdiction of the ACAT under the [Crimes Act](#), part 13 or the [Crimes Act 1914](#) (Cwlth), part 1B.
- (2) The ACAT may make a community care order in relation to the person if—
  - (a) the person has a mental disorder; and
  - (b) either—
    - (i) the person does not have decision-making capacity to consent to the treatment, care or support and refuses to receive the treatment, care or support; or
    - (ii) the person has decision-making capacity to consent to the treatment, care or support, but refuses to consent; and
  - (c) the ACAT believes on reasonable grounds that, because of the mental disorder, the person—
    - (i) is doing, or is likely to do, serious harm to themselves or someone else; or
    - (ii) is suffering, or is likely to suffer, serious mental or physical deterioration; and

- (d) in relation to a person mentioned in paragraph (b) (ii)—the ACAT is satisfied that the harm or deterioration, or likely harm or deterioration, mentioned in paragraph (c) is of such a serious nature that it outweighs the person’s right to refuse to consent; and
- (e) the ACAT is satisfied that treatment, care or support is likely to reduce the harm or deterioration, or likelihood of harm or deterioration, mentioned in paragraph (c); and
- (f) the ACAT is satisfied that, in the circumstances, a psychiatric treatment order should not be made; and
- (g) if an application has been made for a forensic mental health order—the ACAT is satisfied that a community care order should be made instead; and
- (h) the ACAT is satisfied that the treatment, care or support to be provided under the community care order cannot be adequately provided in another way that would involve less restriction of the freedom of choice and movement of the person.

## **67      Content of community care order**

- (1) A community care order made in relation to a person may state 1 or more of the following:
  - (a) that the person is to be given treatment, care or support;
  - (b) that the person may be given medication for the treatment of the person’s mental disorder that is prescribed by a doctor;
  - (c) that the person is to undertake a counselling, training, therapeutic or rehabilitation program;
  - (d) that limits may be imposed on communication between the person and other people.

- (2) A community care order may not include any requirement mentioned in section 69 (Content of restriction order made with community care order etc).
- (3) A community care order made in relation to a person must—
  - (a) state that the person must comply with any determination made under section 70 (Role of care coordinator—community care order); and
  - (b) be accompanied by a statement about how the person meets the criteria under section 66 (2) (Community care order).

**68      Criteria for making restriction order with community care order**

In addition to making a community care order in relation to a person, the ACAT may make a restriction order in relation to the person if it believes on reasonable grounds that—

- (a) it is in the interests of the person's health or safety or the safety of someone else or the public to do so; and
- (b) the treatment, care or support to be provided under the community care order cannot be adequately provided in another way that would involve less restriction of the freedom of choice and movement of the person.

**69      Content of restriction order made with community care order etc**

- (1) A restriction order made under section 68 in relation to a person may state either or both of the following:
  - (a) that the person must—
    - (i) live (but not be detained) at a stated approved community care facility or another stated place; or
    - (ii) be detained at a stated approved community care facility;

- (b) that the person must not approach a stated person or stated place or undertake stated activities.
- (2) If the restriction order states that the person must be detained at a stated approved community care facility, the order may also state whether the person may be granted leave from the facility.
- (3) The ACAT may, on application, grant leave to a person detained at a stated approved community care facility (whether or not the order includes a statement about leave).

## **70 Role of care coordinator—community care order**

- (1) The care coordinator is responsible for coordinating the provision of treatment, care or support for a person to whom a community care order applies.
- (2) Within 5 working days after the day the order is made, the care coordinator must determine, in writing, the times when and the place where the person is required to attend to receive treatment, care or support, or undertake a counselling, training, therapeutic or rehabilitation program, in accordance with the order.

*Note* If a form is approved under s 273 for a determination, the form must be used.

- (3) Before making a determination in relation to a person, the care coordinator—
  - (a) must take all reasonable steps to consult the following:
    - (i) the person;
    - (ii) if the person is a child—each person with parental responsibility for the child under the *Children and Young People Act 2008*, division 1.3.2 (Parental responsibility);
    - (iii) if the person has a guardian under the *Guardianship and Management of Property Act 1991*—the guardian;

- (iv) if the person has an attorney under the *Powers of Attorney Act 2006*—the attorney;
  - (v) if the person has a carer—the carer;
  - (vi) if the person has a nominated person—the nominated person;
  - (vii) if a health attorney is involved in the treatment, care or support of the person—the health attorney;
  - (viii) if the person is a detainee, a person released on parole or licence, or a person serving a community-based sentence—the corrections director-general;
  - (ix) if the person is covered by a bail order that includes a condition that the person accept supervision under the *Bail Act 1992*, section 25 (4) (e) or section 25A—the director-general responsible for the supervision of the person under the *Bail Act 1992*;
  - (x) if the person is a child covered by a bail order that includes a condition that the child accept supervision under the *Bail Act 1992*, section 26 (2)—the CYP director-general;
  - (xi) if the person is a young detainee or a young offender serving a community-based sentence—the CYP director-general; and
- (b) may consult any other service provider the care coordinator considers relevant; and
- (c) must take into account the views of the people consulted under this section.
- (4) After making a determination in relation to a person, the care coordinator must record whether the person was consulted and—
- (a) if the person was consulted—what the person’s views were; or
  - (b) if the person was not consulted—the reasons why.

- (5) The care coordinator must, as soon as practicable after making a determination, give a copy of the determination to—
- (a) the person; and
  - (b) if the person is a child—each person with parental responsibility for the child under the *Children and Young People Act 2008*, division 1.3.2 (Parental responsibility); and
  - (c) the ACAT; and
  - (d) the public advocate; and
  - (e) if the person has a guardian under the *Guardianship and Management of Property Act 1991*—the guardian; and
  - (f) if the person has an attorney under the *Powers of Attorney Act 2006*—the attorney; and
  - (g) if the person has a nominated person—the nominated person; and
  - (h) if a health attorney is involved in the treatment, care or support of the person—the health attorney.

## **71 Treatment etc to be explained—community care order**

- (1) Before treatment, care or support is given to a person under a community care order, the care coordinator must ensure that the nature and effects (including any side effects) of the treatment, care or support are explained to the person.
- (2) The explanation must be given in a way that the person is most likely to understand.

**72      Action if community care order no longer appropriate—  
no longer person in relation to whom ACAT could make  
order**

- (1) This section applies if—
- (a) a community care order is in force in relation to a person; and
  - (b) the care coordinator forms the opinion that—
    - (i) the person is no longer a person in relation to whom the ACAT could make a community care order; or
    - (ii) if a restriction order is also in force in relation to the person—it is no longer necessary for the restriction order to be in force.

*Note 1* For the criteria for making a community care order, see s 66. For the criteria for making a restriction order with a community care order, see s 68.

*Note 2* For principles that must be taken into account when exercising a function under this Act, see s 6.

- (2) The care coordinator must give written notice to—
- (a) if the person has a carer—the carer; and
  - (b) if the person has a nominated person—the nominated person.
- (3) The notice must—
- (a) include the reasons why the care coordinator is satisfied of the matter mentioned in subsection (1) (b); and
  - (b) ask whether the carer or nominated person is aware of any other information that may be relevant to whether the community care order or restriction order continues to be appropriate for the person; and



- (c) state that, subject to consideration of any information given under paragraph (b), the care coordinator must tell the ACAT and public advocate of the matter mentioned in subsection (1) (b) and this will lead to an ACAT review of the community care order or restriction order; and
- (d) tell the carer that the carer is entitled to do either or both of the following:
  - (i) make a submission to the ACAT review of the community care order or restriction order;
  - (ii) apply to the ACAT to attend the hearing; and
- (e) tell the nominated person that the nominated person is entitled to make a submission to the ACAT review of the community care order or restriction order.

*Note* If a form is approved under s 273 for this provision, the form must be used.

- (4) If, having taken into account any information given under subsection (3) (b), the care coordinator is still satisfied of the matter mentioned in subsection (1) (b) the care coordinator must tell the ACAT and the public advocate in writing about—
  - (a) the care coordinator's opinion, including the reasons for the opinion; and
  - (b) the details of any information given under subsection (3) (b).

*Note* The ACAT must review the order within 72 hours after being notified under this section (see s 79 (3)).

## **73 Powers in relation to community care order**

- (1) This section applies if—
- (a) a community care order has been made in relation to a person; and
  - (b) either—
    - (i) a restriction order has also been made in relation to the person requiring the person to be detained at an approved community care facility; or
    - (ii) the care coordinator requires the person to be detained at an approved community care facility under section 77 (Contravention of mental health order).
- (2) The care coordinator may—
- (a) detain the person at the facility in the custody that the care coordinator considers appropriate; and
  - (b) subject the person to the minimum confinement or restraint that is necessary and reasonable to—
    - (i) prevent the person from causing harm to themselves or someone else; or
    - (ii) ensure that the person remains in custody under the order; and
  - (c) subject the person to involuntary seclusion if satisfied that it is the only way in the circumstances to prevent the person from causing harm to themselves or someone else.

*Note* For principles that must be taken into account when exercising a function under this Act, see s 6.

- (3) If the care coordinator subjects a person to involuntary seclusion, the care coordinator must ensure that the person is examined by a relevant doctor of the approved community care facility at least once in each 4-hour period for which the person is in seclusion.
- (4) If a community care order made in relation to a person authorises the giving of medication for the treatment of the person's mental disorder, the care coordinator may—
  - (a) approve the giving by appropriately trained people of medication prescribed by a doctor in accordance with the order; and
  - (b) use, or authorise someone else to use, the force and assistance that is necessary and reasonable to give the medication (***forcible giving of medication***).
- (5) If the care coordinator subjects a person to restraint, involuntary seclusion or the forcible giving of medication, the care coordinator must—
  - (a) enter in the person's record the fact of and reasons for the restraint, involuntary seclusion or forcible giving of medication; and
  - (b) tell the public advocate in writing of the restraint, involuntary seclusion or forcible giving of medication; and
  - (c) keep a register of the restraint, involuntary seclusion or forcible giving of medication.
- (6) In this section:

***relevant doctor***, of an approved community care facility, means a person employed at the facility as a consultant psychiatrist, psychiatric registrar in consultation with a consultant psychiatrist or another doctor in consultation with a consultant psychiatrist.

## **Part 5.6**

### **Limits on communication under mental health orders**

#### **74 Limits on communication—mental health order**

- (1) This section applies if—
  - (a) a mental health order is made in relation to a person; and
  - (b) the order states that a limit may be imposed on communication between the person and other people.
- (2) The relevant official for the order may impose a limit on communication by the person with other people if—
  - (a) the limit is consistent with the order; and
  - (b) the relevant official believes on reasonable grounds that the limit is necessary and reasonable to avoid prejudicing the effectiveness of the person's treatment, care or support.
- (3) The relevant official must not impose a limit on communication by the person with someone authorised under a territory law to communicate with the person.
- (4) As soon as practicable after imposing a limit on communication by a person, the relevant official must explain to the person, in a way the person is most likely to understand—
  - (a) the nature of the limit; and
  - (b) the period for which the limit will be in effect; and
  - (c) the reason for imposing the limit.
- (5) A limit must not be imposed for a period longer than 7 days.
- (6) Subsection (5) does not prevent a further limit being imposed immediately after the limit previously imposed ceases to be in effect.
- (7) This section has effect despite part 3.1 (Rights in relation to information and communication) but subject to section 75.

**75      Offence—limits on communication—mental health order**

- (1) A relevant official commits an offence if—
- (a) the relevant official imposes a limit on communication by a person subject to a mental health order; and
  - (b) the relevant official does not ensure that the person has reasonable access to facilities and adequate opportunity to contact the public advocate and the person's lawyer.

Maximum penalty: 20 penalty units.

- (2) A relevant official commits an offence if—
- (a) the relevant official imposes a limit on communication by a person subject to a mental health order; and
  - (b) the public advocate or the person's lawyer asks the relevant official to give any reasonable assistance necessary to allow the public advocate or lawyer to have access to the person; and
  - (c) the relevant official does not ensure that the assistance is given.

Maximum penalty: 50 penalty units.

- (3) An offence against this section is a strict liability offence.

## **Part 5.7**

### **Duration, contravention and review of mental health orders**

#### **76 Duration of mental health orders**

Unless sooner revoked—

- (a) a psychiatric treatment order or community care order has effect for—
  - (i) 6 months; or
  - (ii) if a shorter period is stated in the order—the shorter period; and
- (b) a restriction order has effect for—
  - (i) 3 months; or
  - (ii) if a shorter period is stated in the order—the shorter period.

#### **77 Contravention of mental health order**

- (1) This section applies if—
  - (a) a mental health order is in force in relation to a person; and
  - (b) the person contravenes the order; and
  - (c) section 78 (Contravention of mental health order—absconding from facility) does not apply to the contravention.

##### **Examples—contravention**

- 1 failure to return from leave granted by chief psychiatrist
- 2 not attending mental health facility for treatment, care or support

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (2) The relevant official for the order may—
- (a) within 7 days of the contravention, orally tell the person that failure to comply with the order may result in the person being apprehended and taken to an approved mental health facility or approved community care facility for treatment, care or support; and
  - (b) if the noncompliance continues after the taking of action under paragraph (a)—tell the person in writing that—
    - (i) failure to comply with a psychiatric treatment order will result in the person being apprehended and taken to an approved mental health facility; or
    - (ii) failure to comply with a community care order will result in the person being apprehended and taken to an approved community care facility for treatment, care or support; and
  - (c) if the noncompliance continues after the taking of action under paragraph (b)—require the person to be taken to an approved mental health facility or approved community care facility to ensure compliance with the order.
- Note* If a form is approved under s 273 for this provision, the form must be used.
- Note* The chief psychiatrist may make a determination requiring a person to be taken to a place for treatment, care or support—see s 62 (Role of chief psychiatrist—psychiatric treatment order).
- (3) If a person is required to be detained under subsection (2) (c), a police officer, authorised ambulance paramedic, mental health officer or doctor may apprehend the person and take the person to an approved mental health facility or approved community care facility.

*Note* See s 263 (Powers of entry and apprehension) and s 264 (Powers of search and seizure).

- (4) If the relevant official requires the detention of a person under subsection (2) (c), the relevant official must, within 24 hours of the person being detained, tell the ACAT and the public advocate in writing—
- (a) the name of the person detained; and
  - (b) the reasons for requiring the detention; and
  - (c) the name and address of the approved mental health facility or approved community care facility where the person is detained; and
  - (d) if the mental health order includes a restriction order that restricts the place where a person must live—whether the restriction order has been contravened.

*Note* The ACAT must review the order within 72 hours after being notified under this subsection (see s 79 (3)).

## **78 Contravention of mental health order—absconding from facility**

- (1) This section applies if—
- (a) a mental health order is in force in relation to a person; and
  - (b) a restriction order or a determination requires the person to be detained at an approved mental health facility or approved community care facility; and
  - (c) the person absconds from the facility.
- (2) A police officer, authorised ambulance paramedic, mental health officer or doctor may apprehend the person and take the person to an approved mental health facility or approved community care facility.

*Note* See s 263 (Powers of entry and apprehension) and s 264 (Powers of search and seizure).



- (3) A police officer, authorised ambulance paramedic, mental health officer or doctor who apprehends a person under this section must tell the person the reason for the apprehension.
- (4) If a person is detained under this section the relevant official for the order must, within 12 hours of the person being detained, tell the ACAT and the public advocate in writing—
  - (a) the name of the person detained; and
  - (b) the reasons for requiring the detention; and
  - (c) the name and address of the approved mental health facility or approved community care facility where the person is detained.

*Note* The ACAT must review the order within 72 hours after being notified under this subsection (see s 79 (3)).

## **79 Review of mental health order**

- (1) The ACAT may review a mental health order in force in relation to a person on its own initiative.

*Note* For principles that must be taken into account when exercising a function under this Act, see s 6.
- (2) The ACAT must review a mental health order in force in relation to a person if the person, or the person's representative, applies for the review on the basis that the order, or part of the order, is no longer required.
- (3) The ACAT must review each mental health order in force in relation to a person within 72 hours if the ACAT receives notice in relation to the person under any of the following:
  - (a) section 64 (Action if psychiatric treatment order no longer appropriate—no longer person in relation to whom ACAT could make order);

- (b) section 72 (Action if community care order no longer appropriate—no longer person in relation to whom ACAT could make order);
  - (c) section 77 (4) (Contravention of mental health order) and the notice indicates that a restriction order has been contravened;
  - (d) section 78 (4) (Contravention of mental health order—absconding from facility).
- (4) A review required under subsection (3)—
- (a) may be conducted without a hearing; and
  - (b) may include consulting a person mentioned in section 54 (1) (Consultation by ACAT—mental health order).
- Note* If the ACAT holds a hearing for the review, s 188 (1) (Notice of hearing) does not apply (see s 188 (3)).
- (5) If the ACAT is satisfied that a person in relation to whom a psychiatric treatment order or community care order is in force is no longer a person in relation to whom the ACAT could make a psychiatric treatment order or community care order, the ACAT must revoke all the mental health orders in force in relation to the person.
- (6) In any other case, the ACAT may, if appropriate, do any of the following:
- (a) confirm, amend or revoke any of the mental health orders in force in relation to the person;
  - (b) make additional mental health orders in relation to the person;
  - (c) make an assessment order in relation to the person.
- (7) In this section:

***representative***, of a person, means any of the following:

- (a) if the person has a guardian under the *Guardianship and Management of Property Act 1991*—the guardian;

- (b) if the person has an attorney under the *Powers of Attorney Act 2006*—the attorney;
- (c) if the person has a nominated person—the nominated person;
- (d) a close relative or close friend of the person;
- (e) a legal representative of the person.

## Chapter 6      Emergency detention

### 80      Apprehension

- (1) A police officer or authorised ambulance paramedic may apprehend a person and take the person to an approved mental health facility if the police officer or paramedic believes on reasonable grounds that—
    - (a) the person has a mental disorder or mental illness; and
    - (b) the person has attempted or is likely to attempt—
      - (i) suicide; or
      - (ii) to inflict serious harm on the person or another person.
- Note*      See s 263 (Powers of entry and apprehension) and s 264 (Powers of search and seizure).
- (2) A doctor or mental health officer may apprehend a person and take the person to an approved mental health facility if the doctor or mental health officer believes on reasonable grounds that—
    - (a) the person has a mental disorder or mental illness; and
    - (b) either—
      - (i) the person requires immediate treatment, care or support; or
      - (ii) the person's condition will deteriorate within 3 days to such an extent that the person would require immediate treatment, care or support; and
    - (c) the person has refused to receive that treatment, care or support; and
    - (d) detention is necessary for the person's health or safety, social or financial wellbeing, or for the protection of someone else or the public; and

- (e) adequate treatment, care or support cannot be provided in a less restrictive environment.

*Note* See s 263 (Powers of entry and apprehension) and s 264 (Powers of search and seizure).

- (3) The ACAT must, on application, review the decision of a doctor or mental health officer under subsection (2) (b) (ii) within 2 working days after the day the application is made.

## **81 Detention at approved mental health facility**

- (1) If a person is taken to an approved mental health facility under section 80 or the [Crimes Act](#), section 309 (1) (a) (Assessment whether emergency detention required), the person in charge of the facility must detain the person at the facility.
- (2) If a doctor or mental health officer believes on reasonable grounds that a person attending an approved mental health facility (voluntarily or otherwise) is a person to whom section 80 (2) (a) to (e) applies, the doctor or mental health officer may detain the person at the facility.
- (3) While a person is detained at a facility under subsection (1) or (2), the person in charge of the facility may—
  - (a) keep the person in the custody that the person in charge considers appropriate; and
  - (b) subject the person to the minimum confinement or restraint that is necessary and reasonable to—
    - (i) prevent the person from causing harm to themselves or someone else; or
    - (ii) ensure that the person remains in custody.

**82      Copy of court order**

A police officer or corrections officer who takes an accused person to an approved mental health facility for examination under the [Crimes Act](#), section 309 (1) (a) must give the person in charge of the facility a copy of the court order made under that section.

**83      Statement of action taken**

- (1) A police officer, authorised ambulance paramedic, doctor or mental health officer who takes a person to an approved mental health facility under section 80 must give the person in charge of the facility a written statement containing a description of the action taken under that section, including the following:
- (a) the name and address (if known) of the person taken to the facility;
  - (b) the date and time when the person was taken to the facility;
  - (c) detailed reasons for taking the action;
  - (d) the nature and extent of the force or assistance used to enter any premises, or to apprehend the person and take the person to the facility;
  - (e) the nature and extent of any restraint, involuntary seclusion or forcible giving of medication used when apprehending the person or taking the person to the facility;

- (f) anything else that happened when the person was being apprehended and taken to the facility that may have an effect on the person's physical or mental health.

**Examples—par (f)**

- 1 the person was subject to threats of violence from another person
- 2 a package of white powder fell out of the person's pocket
- 3 the person was in an agitated state and hit their head against the side of the transport vehicle

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (2) The person in charge of the approved mental health facility must—
- (a) enter the statement in the person's record; and
  - (b) tell the public advocate in writing of any restraint, involuntary seclusion or forcible giving of medication included in the statement; and
  - (c) keep a register of any restraint, involuntary seclusion or forcible giving of medication included in the statement.

## **84 Initial examination at approved mental health facility**

- (1) This section applies to a person (the *subject person*) detained at an approved mental health facility under section 81.
- (2) The person in charge of the approved mental health facility must ensure that a relevant doctor conducts an initial examination of the subject person within 4 hours after—
  - (a) for a person detained under section 81 (1)—arriving at the facility; or
  - (b) for a person detained under section 81 (2)—being detained at the facility.

- (3) However, the person in charge of the facility may continue to detain the subject person if the person believes on reasonable grounds that, if the subject person is released without an initial examination—
  - (a) the subject person’s health or safety would be, or be likely to be, substantially at risk; or
  - (b) the subject person would do, or be likely to do, serious harm to others; or
  - (c) the subject person would seriously endanger, or be likely to seriously endanger, public safety.
- (4) If the subject person continues to be detained under subsection (3)—
  - (a) the person in charge of the approved mental health facility must immediately tell the chief psychiatrist that the subject person has been at the facility for 4 hours without an initial examination; and
  - (b) the chief psychiatrist must arrange for an initial examination of the subject person to be conducted as soon as possible and within 2 hours of being told about the detention.
- (5) If the subject person is not given an initial examination within the time required under subsection (4) (b), the person in charge of the approved mental health facility must—
  - (a) release the subject person; or
  - (b) if the subject person was taken to the approved mental health facility under the [Crimes Act](#), section 309 (1) (a) (Assessment whether emergency detention required)—release the person into the custody of a police officer; or
  - (c) if a court order requires the subject person to be detained at a correctional centre—release the subject person into the custody of the corrections director-general; or



- (d) if a court order requires the subject person to be detained at a detention place—release the subject person into the custody of the CYP director-general.
- (6) The person in charge of the approved mental health facility must tell the public advocate, in writing, about any failure to give a subject person an initial examination within the time required under subsection (2) or (4) (b) and the reasons for the failure.
- (7) In this section:  
*initial examination* means—
  - (a) examining the subject person in person; and
  - (b) considering the observations arising from the examination; and
  - (c) considering any other reliable and relevant information about the subject person's condition.

*relevant doctor*, of an approved mental health facility, means a person employed at the facility as a consultant psychiatrist, a psychiatric registrar in consultation with a consultant psychiatrist or another doctor in consultation with a consultant psychiatrist.

## **85 Authorisation of involuntary detention**

- (1) A doctor may authorise the involuntary detention and treatment, care or support of a person at an approved mental health facility for a period not exceeding 3 days if—
  - (a) the doctor has conducted an initial examination of the person under section 84 and, on the basis of that examination and any other information the doctor is given, has reasonable grounds for believing that—
    - (i) the person requires immediate treatment, care or support; and
    - (ii) the person has refused to receive that treatment, care or support; and

- (iii) detention is necessary for the person's health or safety, social or financial wellbeing, or for the protection of someone else or the public; and
    - (iv) adequate treatment, care or support cannot be provided in a less restrictive environment; and
  - (b) another doctor has also examined the person and, on the basis of that examination and any other information the doctor is given, also has reasonable grounds for believing the matters mentioned in paragraph (a) (i) to (iv).
- (2) Before the end of the 3-day period of detention, the chief psychiatrist may apply to the ACAT to extend the period of detention if the chief psychiatrist believes on reasonable grounds that the person continues to meet the criteria mentioned in subsection (1) (a) (i) to (iv).
  - (3) If an application is made under subsection (2), the ACAT may order that the period of detention be extended by the period, not longer than 11 days, stated in the order.
  - (4) A person may apply to the ACAT for the review of involuntary detention under this section.
  - (5) If an application is made under subsection (4), the ACAT must conduct the review within 2 working days after the day the application is made.
  - (6) The ACAT may consider an application under subsection (2) or (4) without holding a hearing.

*Note*      If the ACAT holds a hearing for the application, s 188 (1) (Notice of hearing) does not apply (see s 188 (3)).

## **86      Medical examination of detained person**

- (1) The person in charge of an approved mental health facility must ensure that a person detained at the facility under section 85 (1) is given—
  - (a) a thorough physical examination by a doctor; and

- (b) a thorough psychiatric examination by a person employed at the facility as a consultant psychiatrist, a psychiatric registrar in consultation with a consultant psychiatrist or another doctor in consultation with a consultant psychiatrist.
- (2) The examination must, as far as reasonably practicable, be conducted within 24 hours of the person being detained at the mental health facility.
- (3) The examination must not be conducted by a doctor who conducted the initial examination of the person under section 84.
- (4) However, a thorough examination mentioned in subsection (1) (a) or (b) is not required if the chief psychiatrist is satisfied on reasonable grounds that—
  - (a) a doctor or psychiatrist recently gave the person such an examination; and
  - (b) the examination provides sufficient relevant information about the current physical or psychiatric condition of the person.

## **87 Notification of Magistrates Court about emergency detention or release from emergency detention**

- (1) The person in charge of an approved mental health facility must—
  - (a) notify the Magistrates Court of the results of an examination conducted by a doctor under an order under the [Crimes Act](#), section 309 (1); and
  - (b) if, after examination by the doctor—
    - (i) the person is to be detained for treatment, care or support—ensure that the person is detained for the purposes of receiving that treatment, care or support; or
    - (ii) the person is not to be detained for treatment, care or support, or is to be released after being detained—release the person into the custody of a police officer.

- (2) If the person is detained at the facility under section 81 or section 85, the person in charge of the facility must notify the court of the reasons for the detention.

*Note*      If a form is approved under s 273 for this provision, the form must be used.

## **88      Treatment during detention**

- (1) While a person is detained at a mental health facility under section 85, the person in charge of the facility—
- (a) may keep the person in the custody that the person in charge considers appropriate; and
  - (b) may subject the person to the minimum confinement or restraint that is necessary and reasonable to—
    - (i) prevent the person from causing harm to themselves or someone else; or
    - (ii) ensure that the person remains in custody; and
  - (c) may subject the person to involuntary seclusion if satisfied that it is the only way in the circumstances to prevent the person from causing harm to themselves or someone else; and
  - (d) must ensure that any treatment, care or support administered to the person is the minimum necessary to prevent any immediate and substantial risk of the person detained causing harm to themselves or someone else.

*Note*      Special provisions apply for the emergency administration of electroconvulsive therapy (see s 160).

- (2) Subsection (1) (c) does not apply if a person has a mental illness for which, in the opinion of a psychiatrist, the most appropriate treatment is long acting medication.

- (3) In deciding whether to administer long acting medication, the psychiatrist must take into account the likely deterioration in the person's condition within 3 days after the psychiatrist's examination of the person.
- (4) If a doctor believes on reasonable grounds that the detained person should be given medication for the treatment of the person's mental disorder or mental illness, the doctor may—
  - (a) approve the giving by appropriately trained people of medication prescribed by or under the authority of the doctor; and
  - (b) use, or authorise someone else to use, the force and assistance that is necessary and reasonable to give the medication (*forcible giving of medication*).
- (5) If the detained person is subjected to confinement, restraint, involuntary seclusion or forcible giving of medication, the person in charge of the facility must—
  - (a) enter in the detained person's record the fact of and the reasons for the confinement, restraint, involuntary seclusion or forcible giving of medication; and
  - (b) tell the public advocate in writing of the restraint, involuntary seclusion or forcible giving of medication; and
  - (c) keep a register of the restraint, involuntary seclusion or forcible giving of medication.

## **89 Notification of certain people about detention**

- (1) A doctor must, within 12 hours after authorising the involuntary detention of a person under section 85, give the required information about the detention to the public advocate and the ACAT.

Maximum penalty: 5 penalty units.

- (2) A doctor or mental health officer must also, as soon as practicable after authorising the involuntary detention of a person under section 81 or section 85, take all reasonable steps to give the required information about the detention to the following:
- (a) if the person is a child—each person with parental responsibility for the child under the *Children and Young People Act 2008*, division 1.3.2 (Parental responsibility);
  - (b) if the person has a guardian under the *Guardianship and Management of Property Act 1991*—the guardian;
  - (c) if the person has an attorney under the *Powers of Attorney Act 2006*—the attorney;
  - (d) if the person has a nominated person—the nominated person;
  - (e) if a health attorney is involved in the treatment, care or support of the person—the health attorney.

Maximum penalty: 5 penalty units.

- (3) The ACAT must, as soon as practicable after ordering under section 85 (3) that a period of detention be extended, take all reasonable steps to give the required information about the detention to the people mentioned in subsection (2) (a) to (e).
- (4) Subsection (5) applies if, despite the doctor, mental health officer or ACAT taking all reasonable steps to give the required information about the detention under subsection (2) or (3), any of the following circumstances happens:
- (a) the required information is not given to anyone;
  - (b) the detained person is a child and the required information is not given to a person with parental responsibility for the child;
  - (c) the detained person is an adult who has a guardian under the *Guardianship and Management of Property Act 1991* and the required information is not given to the guardian;

- (d) the detained person has an enduring power of attorney under the *Powers of Attorney Act 2006*, and appears to have impaired decision-making capacity within the meaning of that Act, and the required information is not given to the attorney.
- (5) The doctor, mental health officer or ACAT must tell the public advocate—
  - (a) of the circumstance mentioned in subsection (4); and
  - (b) for subsection (4) (b), (c) or (d)—who (if anyone) the required information about the detention was given to.
- (6) The person in charge of a mental health facility where a person is detained under section 81 or section 85 must ensure that the person has adequate opportunity and assistance to notify a relative or friend of the person's detention.
- (7) In this section:  
***required information*** about the detention of a person means—
  - (a) the person's name; and
  - (b) the reasons for authorising the detention; and
  - (c) the name and address of the approved mental health facility where the person is being detained.

## **90 Offence—communication during detention**

- (1) A person commits an offence if—
  - (a) the person is in charge of a mental health facility; and
  - (b) a person (the ***detained person***) is detained at the facility; and

- (c) the person does not ensure that, during the detention, the detained person has reasonable access to facilities, and adequate opportunity, to contact the public advocate and the detained person's lawyer.

Maximum penalty: 20 penalty units.

- (2) A person commits an offence if—
  - (a) the person is in charge of a mental health facility; and
  - (b) a person (the *detained person*) is detained at the facility; and
  - (c) the public advocate or the detained person's lawyer asks the person to give any reasonable assistance necessary to allow the public advocate or lawyer to have access to the detained person; and
  - (d) the person does not ensure that the assistance is given.

Maximum penalty: 50 penalty units.

- (3) An offence against this section is a strict liability offence.

## **91      Order for release**

- (1) If a relevant entity is satisfied that the detention of a person under section 85 is no longer justified, the entity must, as soon as practicable, order the release of the person before the period of detention authorised under that subsection expires.
- (2) However, if the person detained under section 85 is an accused person to whom an order under the [Crimes Act](#), section 309 (1) (Assessment whether emergency detention required) applies, the relevant entity must, as soon as practicable, notify the person in charge of an approved mental health facility if satisfied that the detention of the person is no longer justified.



- (3) In this section:

*relevant entity* means—

- (a) a doctor who examined the person under section 86; or
- (b) the chief psychiatrist; or
- (c) the ACAT.

## **92 Duty to release**

- (1) A person in charge of an approved mental health facility must ensure that a person detained at the facility under section 85—
- (a) is released in accordance with an order under section 91; or
  - (b) if no order under section 91 is made and subject to any other order of the ACAT—is released at the end of the period of detention authorised under section 85.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) If the person in charge of an approved mental health facility is notified under section 91 (2), the person must, as soon as practicable, discharge the person to whom the notification relates into the custody of a police officer.

## Chapter 7 Forensic mental health

### Part 7.1 Forensic mental health orders

#### Division 7.1.1 Preliminary

##### 93 Definitions—pt 7.1

In this part:

*relevant official*, for a forensic mental health order, means—

- (a) for a forensic psychiatric treatment order—the chief psychiatrist; or
- (b) for a forensic community care order—the care coordinator.

*relevant person*, for a forensic mental health order application means—

- (a) for a forensic psychiatric treatment order—the chief psychiatrist; and
- (b) for a forensic community care order—a person who can make the statement required under section 94 (3) (a) for the application.

#### Division 7.1.2 Application for forensic mental health orders

##### 94 Applications for forensic mental health orders—detainees etc

- (1) This section applies to any of the following (a *subject person*):
  - (a) a detainee;
  - (b) a person serving a community-based sentence;
  - (c) a person released on parole;

- (d) a person released on licence under the *Crimes (Sentence Administration) Act 2005*, section 299;
  - (e) a young detainee;
  - (f) a young offender;
  - (g) a person covered by a bail order that includes a condition that the person accept supervision under the *Bail Act 1992*, section 25 (4) (e), section 25A or section 26 (2).
- (2) A relevant person may apply to the ACAT for a forensic mental health order in relation to a subject person if the relevant person believes on reasonable grounds that the subject person is a person in relation to whom the ACAT could reasonably make an order under section 101 (Forensic psychiatric treatment order) or section 108 (Forensic community care order).
- (3) The application must include—
- (a) a written statement by the relevant person addressing the criteria the ACAT must consider in making an order under section 101 (Forensic psychiatric treatment order) or section 108 (Forensic community care order); and
  - (b) a plan setting out the proposed treatment, care or support of the subject person.

## **95 Relevant person to tell ACAT of risks**

- (1) This section applies if—
- (a) a relevant person applies to the ACAT for a forensic mental health order for a person; and
  - (b) the relevant person believes on reasonable grounds that anything to do with the application process is likely to substantially increase—
    - (i) the risk to the person's health or safety; or

- (ii) the risk of serious harm to others.
- (2) The application must state—
  - (a) the relevant person’s belief about the substantially increased risk; and
  - (b) the basis for the belief.

### **Division 7.1.3 Making forensic mental health orders—preliminary matters**

#### **96 ACAT must consider assessment—forensic mental health order**

- (1) Before making a forensic mental health order in relation to a person, the ACAT must consider—
  - (a) an assessment of the person conducted under an assessment order; or
  - (b) another assessment of the person that the ACAT considers appropriate.
- (2) In considering an assessment, the ACAT must take into account how recently the assessment was conducted.

#### **97 Consultation by ACAT—forensic mental health order**

Before making a forensic mental health order in relation to a person, the ACAT must, as far as practicable, consult—

- (a) if the person is a child—each person with parental responsibility for the child under the *Children and Young People Act 2008*, division 1.3.2 (Parental responsibility); and
- (b) if the person has a guardian under the *Guardianship and Management of Property Act 1991*—the guardian; and
- (c) if the person has an attorney under the *Powers of Attorney Act 2006*—the attorney; and

- (d) if the person has a nominated person—the nominated person; and
- (e) if a health attorney is involved in the treatment care or support of the person—the health attorney; and
- (f) if the chief psychiatrist or care-coordinator is likely to be responsible for providing the treatment, care or support proposed to be ordered—the chief psychiatrist or care-coordinator; and
- (g) if the person is a detainee, a person serving a community-based sentence, a person released on parole, or a person released on licence under the *Crimes (Sentence Administration) Act 2005*, section 299—the corrections director-general and the director-general responsible for the *Crimes (Sentence Administration) Act 2005*; and
- (h) if the person is a young detainee or a young offender serving a community-based sentence—the CYP director-general.

**98 ACAT must hold hearing—forensic mental health order**

Before making a forensic mental health order in relation to a person, the ACAT must hold a hearing into the matter.

**99 What ACAT must take into account—forensic mental health order**

- (1) In making a forensic mental health order in relation to a person, the ACAT must take into account the following:
  - (a) a plan for the proposed treatment, care or support of the person, mentioned in section 94 (3);
  - (b) the views and wishes of the person, so far as they can be found out;

- (c) if an advance agreement or advance consent direction is in force in relation to the person—the person’s wishes in relation to the person’s treatment, care or support stated in the agreement or direction;
- (d) the views of the people responsible for the day-to-day care of the person, so far as those views are made known to the ACAT;
- (e) the views of each person appearing at the proceeding;
- (f) if the proceeding is on a forensic mental health order for which there is a registered affected person for an offence committed or alleged to have been committed by the person—any statement by the registered affected person;
- (g) the views of each person consulted under section 97 (Consultation by ACAT—forensic mental health order);
- (h) that any restrictions placed on the person should be the minimum necessary for the safe and effective care of the person and protection of public safety;
- (i) any alternative treatment, care or support available, including—
  - (i) the purpose of the treatment, care or support; and
  - (ii) the benefits likely to be derived by the person from the treatment, care or support; and
  - (iii) the distress, discomfort, risks, side effects or other disadvantages associated with the treatment, care or support;
- (j) any relevant medical history of the person;
- (k) for a person required by a court to submit to the jurisdiction of the ACAT under the [Crimes Act](#), part 13 or the [Crimes Act 1914](#) (Cwlth), part 1B—
  - (i) the nature and circumstances of the alleged offence or the offence in relation to which the person is charged; and

- (ii) the nature and extent of the person's mental illness or mental disorder and the effect it is likely to have on the person's behaviour in the future; and
- (iii) whether, if the person is not detained—
  - (A) the person's health or safety is, or is likely to be, substantially at risk; or
  - (B) the person is likely to do serious harm to others;
- (l) if the proceeding is on a forensic mental health order for which there is a registered affected person for the offence committed or alleged to have been committed by the subject person—the views of the victims of crime commissioner;
- (m) anything else prescribed by regulation.

*Note* For principles that must be taken into account when exercising a function under this Act, see s 6.

- (2) Before the ACAT makes a forensic mental health order for the provision of particular treatment, care or support at a stated facility or by a stated person, the ACAT must be satisfied that the treatment, care or support can be provided at the stated facility or by the stated person.
- (3) The ACAT may ask the relevant person to provide information on the options that the relevant person considers are appropriate for the provision of particular treatment, care or support under the proposed forensic mental health order.
- (4) The relevant person must respond to the ACAT within 7 days after receiving a request under subsection (3), or any longer time allowed by the ACAT.

## **100 ACAT must not order particular treatment, care or support—forensic mental health order**

In making a forensic mental health order in relation to a person, the ACAT must not order a particular form of treatment, care or support.

## **Division 7.1.4 Forensic psychiatric treatment orders**

### **101 Forensic psychiatric treatment order**

- (1) This section applies to—
  - (a) a detainee or a person serving a community-based sentence assessed under an assessment order; or
  - (b) a person referred to the ACAT for a forensic mental health order under division 7.1.2; or
  - (c) a person required by a court to submit to the jurisdiction of the ACAT under the [Crimes Act](#), part 13 or the [Crimes Act 1914](#) (Cwlth), part 1B.
- (2) The ACAT may make a forensic psychiatric treatment order in relation to the person if—
  - (a) the person has a mental illness; and
  - (b) the ACAT believes on reasonable grounds that, because of the mental illness, the person—
    - (i) is doing, or is likely to do, serious harm to themselves or someone else; or
    - (ii) is suffering, or is likely to suffer, serious mental or physical deterioration; and
  - (c) the ACAT believes on reasonable grounds that, because of the mental illness, the person has seriously endangered, is seriously endangering, or is likely to seriously endanger, public safety; and
  - (d) the ACAT is satisfied that psychiatric treatment, care or support is likely to—
    - (i) reduce the harm, deterioration or endangerment, or the likelihood of harm, deterioration or endangerment, mentioned in paragraph (b) or (c); or



- (ii) result in an improvement in the person's psychiatric condition; and
- (e) the ACAT is satisfied that, in the circumstances, a mental health order should not be made; and

*Note* For the making of a mental health order see ch 5.

- (f) the ACAT is satisfied that the treatment, care or support to be provided under the forensic psychiatric treatment order cannot be adequately provided in another way that would involve less restriction of the freedom of choice and movement of the person.
- (3) In making a forensic psychiatric treatment order in relation to a person, the ACAT is not required to take into account the person's decision-making capacity.

## **102 Content of forensic psychiatric treatment order**

- (1) A forensic psychiatric treatment order made in relation to a person may state 1 or more of the following:
- (a) an approved mental health facility to which the person may be taken;
  - (b) that the person must do either or both of the following:
    - (i) undergo psychiatric treatment, care or support, other than electroconvulsive therapy or psychiatric surgery;
    - (ii) undertake a counselling, training, therapeutic or rehabilitation program;
  - (c) that limits may be imposed on communication between the person and other people;
  - (d) that the person must—
    - (i) live (but not be detained) at a stated place; or
    - (ii) be detained at a stated approved mental health facility;

- (e) that the person must not approach a stated person or stated place or undertake stated activities.
- (2) A forensic psychiatric treatment order made in relation to a person must—
  - (a) state that the person must comply with any determination made under section 103 (Role of chief psychiatrist—forensic psychiatric treatment order); and
  - (b) be accompanied by a statement about how the person meets the criteria under section 101 (2) (Forensic psychiatric treatment order).

**103 Role of chief psychiatrist—forensic psychiatric treatment order**

- (1) The chief psychiatrist is responsible for the treatment, care or support of a person in relation to whom a forensic psychiatric treatment order is in force.
- (2) Within 5 working days after the day the order is made, the chief psychiatrist must determine, in writing—
  - (a) whether the person requires admission to an approved mental health facility to receive treatment, care or support under the order and, if so, whether the person can be given leave from the facility; and
  - (b) for a person living in the community—the times when and the place where the person is required to attend to receive treatment, care or support, in accordance with the order; and
  - (c) the nature of the psychiatric treatment, care or support to be given to the person.

*Note 1* The power to make an instrument includes the power to amend or repeal the instrument (see [Legislation Act](#), s 46).

*Note 2* If a form is approved under s 273 for a determination, the form must be used.

- (3) If the chief psychiatrist forms a belief on reasonable grounds that a person subject to a forensic psychiatric treatment order who is living in the community requires admission to an approved mental health facility to receive treatment, care or support under the order, the chief psychiatrist may determine, in writing—

- (a) the approved mental health facility that the person is to be admitted to; and
- (b) the nature of the psychiatric treatment to be given to the person; and
- (c) whether the person can be given leave from the facility.

*Note* If a form is approved under s 273 for a determination, the form must be used.

- (4) For subsection (2) (b) or (3) (c), the chief psychiatrist must not determine psychiatric treatment, care or support that has, or is likely to have, the effect of subjecting the person to whom it is given to undue stress or deprivation, having regard to the benefit likely to result from the treatment, care or support.
- (5) The chief psychiatrist must also determine, in writing, the place where the person must live if—
- (a) the forensic psychiatric treatment order does not state that the person live at a stated place; and
  - (b) the chief psychiatrist considers that the person should live at a place other than the place where the person usually lives.
- (6) Before making a determination in relation to a person, the chief psychiatrist must—
- (a) take all reasonable steps to consult the following:
    - (i) the person;

- (ii) if the person is a child—each person with parental responsibility for the child under the *Children and Young People Act 2008*, division 1.3.2 (Parental responsibility);
  - (iii) if the person has a guardian under the *Guardianship and Management of Property Act 1991*—the guardian;
  - (iv) if the person has an attorney under the *Powers of Attorney Act 2006*—the attorney;
  - (v) if the person has a nominated person—the nominated person;
  - (vi) if a health attorney is involved in the treatment, care or support of the person—the health attorney;
  - (vii) if the person is a detainee, a person released on parole or licence, or a person serving a community-based sentence—the corrections director-general;
  - (viii) if the person is covered by a bail order that includes a condition that the person accept supervision under the *Bail Act 1992*, section 25 (4) (e) or section 25A—the director-general responsible for the supervision of the person under the *Bail Act 1992*;
  - (ix) if the person is a child covered by a bail order that includes a condition that the child accept supervision under the *Bail Act 1992*, section 26 (2)—the CYP director-general;
  - (x) if the person is a young detainee or a young offender serving a community-based sentence—the CYP director-general; and
- (b) take into account the views of the people consulted under this section.
- (7) After making a determination in relation to a person, the chief psychiatrist must record whether the person was consulted and—
- (a) if the person was consulted—what the person’s views were; or

- (b) if the person was not consulted—the reasons why.
- (8) The chief psychiatrist must, as soon as practicable after making a determination, give a copy of the determination to—
  - (a) the people mentioned in subsection (6) (a); and
  - (b) the ACAT; and
  - (c) the public advocate.

**104 Treatment etc to be explained—forensic psychiatric treatment order**

- (1) Before treatment, care or support is given to a person under a forensic psychiatric treatment order, the chief psychiatrist must explain to the person the nature and effects (including any side effects) of the treatment, care or support.
- (2) The explanation must be given in a way that the person is most likely to understand.

**105 Action if forensic psychiatric treatment order no longer appropriate—no longer person in relation to whom ACAT could make order**

- (1) This section applies if—
  - (a) a forensic psychiatric treatment order is in force in relation to a person; and
  - (b) the chief psychiatrist forms the opinion that the person is no longer a person in relation to whom the ACAT could make a forensic psychiatric treatment order.

*Note 1* For the criteria for making a forensic psychiatric treatment order, see s 101.

*Note 2* For principles that must be taken into account when exercising a function under this Act, see s 6.

- (2) The chief psychiatrist must give written notice to the following (the *notified people*):
- (a) if the person has a carer—the carer;
  - (b) if the person has a nominated person—the nominated person;
  - (c) if the person is covered by a bail order that includes a condition that the person accept supervision under the *Bail Act 1992*, section 25 (4) (e), section 25A or section 26 (2)—the director-general responsible for the supervision of the person under the *Bail Act 1992*;
  - (d) if the person is a detainee, a person on parole or licence, or a person serving a community-based sentence—the corrections director-general;
  - (e) if the person is a young detainee or a young offender serving a community-based sentence—the CYP director-general;
  - (f) if the person is a child—each person with parental responsibility for the person under the *Children and Young People Act 2008*, division 1.3.2 (Parental responsibility).
- (3) The notice must—
- (a) include the reasons why the chief psychiatrist is satisfied of the matter mentioned in subsection (1) (b); and
  - (b) ask whether the notified people are aware of any other information that may be relevant to whether the forensic psychiatric treatment order continues to be appropriate for the person; and
  - (c) state that, subject to consideration of any information given under paragraph (b), the chief psychiatrist must tell the ACAT and public advocate of the matter mentioned in subsection (1) (b) and this will lead to an ACAT review of the forensic psychiatric treatment order; and

- (d) tell the carer that the carer is entitled to do either or both of the following:
  - (i) make a submission to the ACAT review of the forensic psychiatric treatment order;
  - (ii) apply to the ACAT to attend the hearing; and
- (e) tell the other notified people that they are entitled to make a submission to the ACAT review of the forensic psychiatric treatment order.

*Note* If a form is approved under s 273 for this provision, the form must be used.

- (4) If, having taken into account any information given under subsection (3) (b), the chief psychiatrist is still satisfied of the matter mentioned in subsection (1) (b) the chief psychiatrist must tell the ACAT and the public advocate in writing about—
  - (a) the chief psychiatrist's opinion, including the reasons for the opinion; and
  - (b) the details of any information given under subsection (3) (b).

*Note* The ACAT must review the order within 10 days after being notified under this section (see s 126 (3)).

## **106 Action if forensic psychiatric treatment order no longer appropriate—no longer necessary to detain person**

- (1) This section applies if—
  - (a) a forensic psychiatric treatment order is in force in relation to a person; and
  - (b) the forensic psychiatric treatment order requires the person to be detained at an approved mental health facility; and
  - (c) the chief psychiatrist forms the opinion that it is no longer necessary for the person to be detained.

- (2) The chief psychiatrist must give written notice to the following (the *notified people*):
- (a) if the person has a carer—the carer;
  - (b) if the person has a nominated person—the nominated person;
  - (c) if the person is covered by a bail order that includes a condition that the person accept supervision under the *Bail Act 1992*, section 25 (4) (e), section 25A or section 26 (2)—the director-general responsible for the supervision of the person under the *Bail Act 1992*;
  - (d) if the person is a detainee, a person on parole or licence, or a person serving a community-based sentence—the corrections director-general;
  - (e) if the person is a young detainee or a young offender serving a community-based sentence—the CYP director-general;
  - (f) if the person is a child—each person with parental responsibility for the person under the *Children and Young People Act 2008*, division 1.3.2 (Parental responsibility).
- (3) The notice must—
- (a) include the reasons why the chief psychiatrist is satisfied of the matter mentioned in subsection (1) (c); and
  - (b) ask whether the notified people are aware of any other information that may be relevant to whether the detention under the forensic psychiatric treatment order continues to be appropriate for the person; and
  - (c) state that, subject to consideration of any information given under paragraph (b), the chief psychiatrist must tell the ACAT and public advocate of the matter mentioned in subsection (1) (c) and this will lead to an ACAT review of the detention under forensic psychiatric treatment order; and



- (d) tell the carer that the carer is entitled to do either or both of the following:
  - (i) make a submission to the ACAT review of the forensic psychiatric treatment order;
  - (ii) apply to the ACAT to attend the hearing; and
- (e) tell the other notified people that they are entitled to make a submission to the ACAT review of the forensic psychiatric treatment order.

*Note 1* For principles that must be taken into account when exercising a function under this Act, see s 6.

*Note 2* If a form is approved under s 273 for this provision, the form must be used.

- (4) If, having taken into account any information given under subsection (3) (b), the chief psychiatrist is still satisfied of the matter mentioned in subsection (1) (c) the chief psychiatrist must tell the ACAT and the public advocate in writing about—
  - (a) the chief psychiatrist's opinion, including the reasons for the opinion; and
  - (b) the details of any information given under subsection (3) (b).

*Note* The ACAT must review the order within 10 days after being notified under this section (see s 126 (3)).

## **107 Powers in relation to forensic psychiatric treatment order**

- (1) This section applies if—
  - (a) a forensic psychiatric treatment order has been made in relation to a person; and
  - (b) either—
    - (i) the order requires the person to be detained at an approved mental health facility; or

- (ii) the chief psychiatrist has made a determination under section 103 (Role of chief psychiatrist—forensic psychiatric treatment order) requiring detention at an approved mental health facility.

(2) The chief psychiatrist may—

- (a) detain the person at an approved mental health facility; and

*Note* See s 263 (Powers of entry and apprehension) and s 264 (Powers of search and seizure).

- (b) subject the person to the minimum confinement or restraint that is necessary and reasonable to—

- (i) prevent the person from causing harm to themselves or someone else; or

- (ii) ensure that the person remains in custody under the order; and

- (c) subject the person to involuntary seclusion if satisfied that it is the only way in the circumstances to prevent the person from causing harm to themselves or someone else; and

- (d) determine that the person can be given leave from the facility.

*Note* For principles that must be taken into account when exercising a function under this Act, see s 6.

- (3) If the chief psychiatrist subjects a person to involuntary seclusion, the chief psychiatrist must ensure that the person is examined by a relevant doctor of the approved mental health facility at least once in each 4-hour period for which the person is in seclusion.

- (4) If the chief psychiatrist determines that a person be given medication for the treatment of the person's mental illness, the chief psychiatrist may—

- (a) approve the giving by appropriately trained people of medication prescribed by a doctor in accordance with the chief psychiatrist's determination; and

- (b) use, or authorise someone else to use, the force and assistance that is necessary and reasonable to give the medication (*forcible giving of medication*).
- (5) If the chief psychiatrist subjects a person to restraint, involuntary seclusion or forcible giving of medication, the chief psychiatrist must—
  - (a) enter in the person's record the fact of and the reasons for the restraint, involuntary seclusion or forcible giving of medication; and
  - (b) tell the public advocate in writing of the restraint, involuntary seclusion or forcible giving of medication; and
  - (c) keep a register of the restraint, involuntary seclusion or forcible giving of medication.
- (6) In this section:  
*relevant doctor*, of a relevant place, means a person employed at the place as a consultant psychiatrist, psychiatric registrar in consultation with a consultant psychiatrist or another doctor in consultation with a consultant psychiatrist.

## **Division 7.1.5      Forensic community care orders**

### **108      Forensic community care order**

- (1) This section applies to—
  - (a) a detainee or person serving a community-based sentence assessed under an assessment order; or
  - (b) a person referred to the ACAT for a forensic mental health order under division 7.1.2; or
  - (c) a person required by a court to submit to the jurisdiction of the ACAT under the [Crimes Act](#), part 13 or the [Crimes Act 1914](#) (Cwlth), part 1B.

- (2) The ACAT may make a forensic community care order in relation to the person if—
- (a) the person has a mental disorder; and
  - (b) the ACAT believes on reasonable grounds that, because of the mental disorder, the person—
    - (i) is doing, or is likely to do, serious harm to themselves or someone else; or
    - (ii) is suffering, or is likely to suffer, serious mental or physical deterioration; and
  - (c) the ACAT believes on reasonable grounds that, because of the mental disorder, the person has seriously endangered, is seriously endangering, or is likely to seriously endanger, public safety; and
  - (d) the ACAT is satisfied that treatment, care or support is likely to reduce the harm, deterioration or endangerment, or the likelihood of harm deterioration or endangerment, mentioned in paragraph (b) or (c); and
  - (e) the ACAT is satisfied that, in the circumstances, a forensic psychiatric treatment order should not be made; and
  - (f) the ACAT is satisfied that, in the circumstances, a mental health order should not be made; and
  - (g) the ACAT is satisfied that the treatment, care or support to be provided under the forensic community care order cannot be adequately provided in another way that would involve less restriction of the freedom of choice and movement of the person.
- (3) In making a forensic community care order in relation to a person, the ACAT is not required to take into account the person's decision-making capacity.

## **109 Content of forensic community care order**

- (1) A forensic community care order made in relation to a person may state 1 or more of the following:
  - (a) that the person is to be given treatment, care or support;
  - (b) that the person may be given medication for the treatment of the person's mental disorder that is prescribed by a doctor;
  - (c) that the person is to undertake a counselling, training, therapeutic or rehabilitation program;
  - (d) that limits may be imposed on communication between the person and other people;
  - (e) that the person must—
    - (i) live (but not be detained) at a stated approved community care facility or another stated place; or
    - (ii) be detained at a stated community care facility;
  - (f) that the person must not approach a stated person or stated place or undertake stated activities.
- (2) A forensic community care order made in relation to a person must—
  - (a) state that the person must comply with any determination made under section 110 (Role of care coordinator—forensic community care order); and
  - (b) be accompanied by a statement about how the person meets the criteria under section 108 (2) (Forensic community care order).

## **110 Role of care coordinator—forensic community care order**

- (1) The care coordinator is responsible for coordinating the provision of treatment, care or support for a person in relation to whom a forensic community care order is in force.

- (2) Within 5 working days after the day the forensic community care order is made, the care coordinator must determine, in writing, the times when and the place where the person is required to attend to receive treatment, care or support, or undertake a counselling, training, therapeutic or rehabilitation program, in accordance with the order.

*Note* If a form is approved under s 273 for a determination, the form must be used.

- (3) The care coordinator must not determine treatment, care or support that has, or is likely to have, the effect of subjecting the person to whom it is given to undue stress or deprivation, having regard to the benefit likely to result from the treatment, care or support.
- (4) Before making a determination in relation to a person, the care coordinator—
- (a) must take all reasonable steps to consult the following:
    - (i) the person;
    - (ii) if the person is a child—each person with parental responsibility for the child under the *Children and Young People Act 2008*, division 1.3.2 (Parental responsibility);
    - (iii) if the person has a guardian under the *Guardianship and Management of Property Act 1991*—the guardian;
    - (iv) if the person has an attorney under the *Powers of Attorney Act 2006*—the attorney;
    - (v) if the person has a nominated person—the nominated person;
    - (vi) if a health attorney is involved in the treatment, care or support of the person—the health attorney;
    - (vii) if the person is a detainee, a person released on parole or licence, or a person serving a community-based sentence—the corrections director-general;

- (viii) if the person is covered by a bail order that includes a condition that the person accept supervision under the *Bail Act 1992*, section 25 (4) (e) or section 25A—the director-general responsible for the supervision of the person under the *Bail Act 1992*;
  - (ix) if the person is a child covered by a bail order that includes a condition that the child accept supervision under the *Bail Act 1992*, section 26 (2)—the CYP director-general;
  - (x) if the person is a young detainee or a young offender serving a community-based sentence—the CYP director-general; and
- (b) may consult any other service provider the care coordinator considers relevant; and
- (c) must take into account the views of the people consulted under this section.
- (5) After making a determination in relation to a person, the care coordinator must record whether the person was consulted and—
  - (a) if the person was consulted—what the person’s views were; or
  - (b) if the person was not consulted—the reasons why.
- (6) The care coordinator must, as soon as practicable after making a determination, give a copy of the determination to—
  - (a) the people mentioned in subsection (4) (a); and
  - (b) the ACAT; and
  - (c) the public advocate.

**111 Treatment etc to be explained—forensic community care order**

- (1) Before treatment, care or support is given to a person under a forensic community care order, the care coordinator must ensure that the nature and effects (including any side effects) of the treatment, care or support are explained to the person.
- (2) The explanation must be given in a way that the person is most likely to understand.

**112 Action if forensic community care order no longer appropriate—no longer person in relation to whom ACAT could make order**

- (1) This section applies if—
  - (a) a forensic community care order is in force in relation to a person; and
  - (b) the care coordinator forms the opinion that the person is no longer a person in relation to whom the ACAT could make a forensic community care order.

*Note* For the criteria for making a forensic community care order, see s 108.

- (2) The care coordinator must give written notice to the following (the *notified people*):
  - (a) if the person has a carer—the carer;
  - (b) if the person has a nominated person—the nominated person;
  - (c) if the person is covered by a bail order that includes a condition that the person accept supervision under the [Bail Act 1992](#), section 25 (4) (e), section 25A or section 26 (2)—the director-general responsible for the supervision of the person under the [Bail Act 1992](#);



- (d) if the person is a detainee, a person on parole or licence, or a person serving a community-based sentence—the corrections director-general;
  - (e) if the person is a young detainee or a young offender serving a community-based sentence—the CYP director-general;
  - (f) if the person is a child—each person with parental responsibility for the person under the *Children and Young People Act 2008*, division 1.3.2 (Parental responsibility).
- (3) The notice must—
- (a) include the reasons why the care coordinator is satisfied of the matter mentioned in subsection (1) (b); and
  - (b) ask whether the notified people are aware of any other information that may be relevant to whether the forensic community care order continues to be appropriate for the person; and
  - (c) state that, subject to consideration of any information given under paragraph (b), the care coordinator must tell the ACAT and public advocate of the matter mentioned in subsection (1) (b) and this will lead to an ACAT review of the forensic community care order; and
  - (d) tell the carer that the carer is entitled to do either or both of the following:
    - (i) make a submission to the ACAT review of the forensic community care order;
    - (ii) apply to the ACAT to attend the hearing; and

- (e) tell the other notified people that they are entitled to make a submission to the ACAT review of the forensic community care order.

*Note 1* For principles that must be taken into account when exercising a function under this Act, see s 6.

*Note 2* If a form is approved under s 273 for this provision, the form must be used.

- (4) If, having taken into account any information given under subsection (3) (b), the care coordinator is still satisfied of the matter mentioned in subsection (1) (b) the care coordinator must tell the ACAT and the public advocate in writing about—

- (a) the care coordinator's opinion, including the reasons for the opinion; and

- (b) the details of any information given under subsection (3) (b).

*Note* The ACAT must review the order within 10 days after being notified under this section (see s 126 (3)).

## **113 Action if forensic community care order no longer appropriate—no longer necessary to detain person**

- (1) This section applies if—

- (a) a forensic community care order is in force in relation to a person; and

- (b) the forensic community care order requires the person to be detained at an approved community care facility; and

- (c) the care coordinator forms the opinion that it is no longer necessary for the person to be detained.

*Note 1* For the criteria for making a forensic community care order, see s 108. For detention powers in relation to a forensic community care order, see s 114.

*Note 2* For principles that must be taken into account when exercising a function under this Act, see s 6.

- (2) The care coordinator must give written notice to the following (the *notified people*):
- (a) if the person has a carer—the carer;
  - (b) if the person has a nominated person—the nominated person;
  - (c) if the person is covered by a bail order that includes a condition that the person accept supervision under the *Bail Act 1992*, section 25 (4) (e), section 25A or section 26 (2)—the director-general responsible for the supervision of the person under the *Bail Act 1992*;
  - (d) if the person is a detainee, a person on parole or licence, or a person serving a community-based sentence—the corrections director-general;
  - (e) if the person is a young detainee or a young offender serving a community-based sentence—the CYP director-general;
  - (f) if the person is a child—each person with parental responsibility for the person under the *Children and Young People Act 2008*, division 1.3.2 (Parental responsibility).
- (3) The notice must—
- (a) include the reasons why the care coordinator is satisfied of the matter mentioned in subsection (1) (c); and
  - (b) ask whether the notified people are aware of any other information that may be relevant to whether the detention under the forensic psychiatric treatment order continues to be appropriate for the person; and
  - (c) state that, subject to consideration of any information given under paragraph (b), the care coordinator must tell the ACAT and public advocate of the matter mentioned in subsection (1) (c) and this will lead to an ACAT review of the detention under forensic psychiatric treatment order; and

- (d) tell the carer that the carer is entitled to do either or both of the following:
  - (i) make a submission to the ACAT review of the forensic community care order;
  - (ii) apply to the ACAT to attend the hearing; and
- (e) tell the other notified people that they are entitled to make a submission to the ACAT review of the forensic community care order.

*Note* If a form is approved under s 273 for this provision, the form must be used.

- (4) If, having taken into account any information given under subsection (3) (b), the care coordinator is still satisfied of the matter mentioned in subsection (1) (c) the care coordinator must tell the ACAT and the public advocate in writing about—
  - (a) the care coordinator's opinion, including the reasons for the opinion; and
  - (b) the details of any information given under subsection (3) (b).

*Note* The ACAT must review the order within 10 days after being notified under this section (see s 126 (3)).

## **114 Powers in relation to forensic community care order**

- (1) This section applies if—
  - (a) a forensic community care order has been made in relation to a person; and
  - (b) either—
    - (i) the order requires the person to be detained at an approved community care facility; or

- (ii) the care coordinator requires the person to be detained at an approved community care facility under section 124 (Contravention of forensic mental health order).

(2) The care coordinator may—

- (a) detain the person at the facility in the custody that the care coordinator considers appropriate; and

*Note* See s 263 (Powers of entry and apprehension) and s 264 (Powers of search and seizure).

- (b) subject the person to the minimum confinement or restraint that is necessary and reasonable to—

- (i) prevent the person from causing harm to themselves or someone else; or

- (ii) ensure that the person remains in custody under the order; and

- (c) subject the person to involuntary seclusion if satisfied that it is the only way in the circumstances to prevent the person from causing harm to themselves or someone else.

*Note* For principles that must be taken into account when exercising a function under this Act, see s 6.

- (3) If the care coordinator subjects a person to involuntary seclusion, the care coordinator must ensure that the person is examined by a relevant doctor of the approved community care facility at least once in each 4-hour period for which the person is in seclusion.

- (4) If a community care order made in relation to a person authorises the giving of medication for the treatment of the person's mental disorder, the care coordinator may—

- (a) approve the giving by appropriately trained people of medication prescribed by a doctor in accordance with the order; and

- (b) use, or authorise someone else to use, the force and assistance that is necessary and reasonable to give the medication (*forcible giving of medication*).
- (5) If the care coordinator subjects a person to restraint, involuntary seclusion or forcible giving of medication, the care coordinator must—
  - (a) enter in the person’s record the fact of and the reasons for the restraint, involuntary seclusion or forcible giving of medication; and
  - (b) tell the public advocate in writing of the restraint, involuntary seclusion or forcible giving of medication; and
  - (c) keep a register of the restraint, involuntary seclusion or forcible giving of medication.
- (6) In this section:  
*relevant doctor*, of an approved community care facility, means a person employed at the facility as a consultant psychiatrist, a psychiatric registrar in consultation with a consultant psychiatrist or another doctor in consultation with a consultant psychiatrist.

## **Division 7.1.6 Limits on communication under forensic mental health orders**

### **115 Limits on communication—forensic mental health order**

- (1) This section applies if—
  - (a) a forensic mental health order is made in relation to a person; and
  - (b) the order states that a limit may be imposed on communication between the person and other people.

- (2) The relevant official for the order may impose a limit on communication by the person with other people if—
  - (a) the limit is consistent with the order; and
  - (b) the relevant official believes on reasonable grounds that the limit is necessary and reasonable to avoid prejudicing the effectiveness of the person's treatment, care or support.
- (3) The relevant official must not impose a limit on communication by the person with someone authorised under a territory law to communicate with the person.
- (4) As soon as practicable after imposing a limit on communication by a person, the relevant official must explain to the person, in a way the person is most likely to understand—
  - (a) the nature of the limit; and
  - (b) the period for which the limit will be in effect; and
  - (c) the reason for imposing the limit.
- (5) A limit must not be imposed for a period longer than 7 days.
- (6) Subsection (5) does not prevent a further limit being imposed immediately after a limit previously imposed ceases to be in effect.
- (7) This section has effect despite part 3.1 (Rights in relation to information and communication) but subject to section 116.

**116 Offence—limits on communication—forensic mental health order**

- (1) A relevant official commits an offence if—
- (a) the relevant official imposes a limit on communication by a person subject to a forensic mental health order; and
  - (b) the relevant official does not ensure that the person has reasonable access to facilities and adequate opportunity to contact the public advocate and the person’s lawyer.

Maximum penalty: 20 penalty units.

- (2) A relevant official commits an offence if—
- (a) the relevant official imposes a limit on communication by a person subject to a forensic mental health order; and
  - (b) the public advocate or the person’s lawyer asks the relevant official to give any reasonable assistance necessary to allow the public advocate or lawyer to have access to the person; and
  - (c) the relevant official does not ensure that the assistance is given.

Maximum penalty: 50 penalty units.

- (3) An offence against this section is a strict liability offence.

**Division 7.1.7 Duration of forensic mental health orders**

**117 Duration of forensic mental health orders**

- (1) Unless sooner revoked, a forensic mental health order in relation to a person remains in force for the period, not longer than the following, stated in the order:
- (a) 3 months;
  - (b) if consecutive forensic mental health orders have been in force in relation to a person for 1 year or more—1 year.



- (2) A relevant person must, in writing, tell a person in relation to whom a forensic mental health order has been in force if the order is no longer in force.

*Note 1* The director-general responsible for the *Crimes (Sentence Administration) Act 2005* must tell the director-general of a change in the person's status (see *Crimes (Sentence Administration) Act 2005*, s 321AA).

*Note 2* The chief psychiatrist or another relevant person may apply for a mental health order in relation to the person (see s 51).

## Division 7.1.8      Leave for detained people

### 118      Meaning of *corrections order*—div 7.1.8

In this division:

*corrections order* means any of the following:

- (a) a warrant of remand;
- (b) a warrant of imprisonment;
- (c) a bail order under the *Bail Act 1992*, with a condition to be supervised;
- (d) a community-based sentence under the *Crimes (Sentence Administration) Act 2005*, with a condition to be supervised;
- (e) release on licence under the *Crimes (Sentence Administration) Act 2005*, chapter 13.

## **119 Grant of leave for person detained by ACAT**

- (1) This section applies to a person detained at an approved mental health facility or approved community care facility under a forensic mental health order if the ACAT has ordered the detention.

*Note 1* The ACAT may order the detention of a person under a forensic mental health order under s 102 (1) (d) or s 109 (1) (e).

*Note 2* For principles that must be taken into account when exercising a function under this Act, see s 6.

- (2) The ACAT may grant the person a period of leave from the facility—
- (a) on application by the person; or
  - (b) on application by the relevant official for the order.
- (3) Before granting leave the ACAT must—
- (a) if the person is subject to a corrections order—
    - (i) if the person is a detainee—obtain the agreement of the corrections director-general; or
    - (ii) if the person is a young detainee—obtain the agreement of the CYP director-general; or
    - (iii) if the person is not a detainee or young detainee—consult the relevant director-general for the corrections order; and
  - (b) if the application is by the person—consult the relevant official for the order.
- (4) The ACAT may grant leave for any purpose the ACAT considers appropriate if satisfied that—
- (a) the consultation mentioned in subsection (3) does not raise a serious concern about the appropriateness of the leave; and
  - (b) the safety of the person, anyone else or the public will not be seriously endangered.

- (5) The ACAT may refuse to grant leave if satisfied that—
- (a) the person applied for leave for the same purpose in the previous 6 months; and
  - (b) the application was refused.

**Examples—purposes**

- 1 to attend a health or rehabilitation service
- 2 to take part in work or work-related activities
- 3 for compassionate reasons

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (6) A grant of leave must state—
- (a) the purpose for which the leave is granted; and
  - (b) the period for which the leave is granted.
- (7) A grant of leave may be subject to conditions, including in relation to any of the following:
- (a) accepting treatment, care or support as required;
  - (b) enrolling and participating in educational, rehabilitation, recreational, therapeutic or training programs;
  - (c) not using alcohol and other drugs;
  - (d) undergoing drug testing and other medical tests;
  - (e) the standard of conduct required;
  - (f) prohibitions or limits on association with stated people or kinds of people;
  - (g) prohibitions or limits on visiting stated places, or kinds of places;
  - (h) prohibitions or limits on travelling interstate or overseas;

- (i) any other condition the ACAT considers appropriate in the circumstances, taking into account the safety of the person, anyone else or the public.

*Note* For principles that must be taken into account when exercising a function under this Act, see s 6.

- (8) If leave is granted under this section, the ACAT must give written notice to—
  - (a) the person; and
  - (b) the relevant official for the order; and
  - (c) if the person is subject to a corrections order—
    - (i) if the person is a detainee—the corrections director-general; or
    - (ii) if the person is a young detainee—the CYP director-general; or
    - (iii) if the person is not a detainee or young detainee—the relevant director-general for the corrections order.

## **120 Revocation of leave granted by ACAT**

- (1) The ACAT may revoke leave granted under section 119 to a person—
  - (a) on application by the relevant official for the person's forensic mental health order; or
  - (b) if the person is subject to a corrections order—on application by the corrections director-general; or
  - (c) in any case—on its own initiative.
- (2) Before revoking a person's leave, the ACAT must give notice that the revocation is being considered to—
  - (a) the person; and

- (b) the relevant official for the person's forensic mental health order; and
  - (c) if the person is subject to a corrections order—
    - (i) if the person is a detainee—the corrections director-general; or
    - (ii) if the person is a young detainee—the CYP director-general; or
    - (iii) if the person is not a detainee or young detainee—the relevant director-general for the corrections order.
- (3) The ACAT may revoke a person's leave if—
- (a) the ACAT believes on reasonable grounds it is necessary to do so because the person—
    - (i) is doing, or is likely to do, serious harm to themselves or someone else; or
    - (ii) is suffering, or is likely to suffer, serious mental or physical deterioration; or
    - (iii) is seriously endangering, or is likely to seriously endanger, public safety; or
  - (b) the person contravenes a condition of the grant.
- (4) If a person's leave is revoked under this section, the ACAT must give written notice of the revocation to—
- (a) the person; and
  - (b) the relevant official for the person's forensic mental health order; and
  - (c) if the person is subject to a corrections order—
    - (i) if the person is a detainee—the corrections director-general; or

- (ii) if the person is a young detainee—the CYP director-general; or
  - (iii) if the person is not a detainee or young detainee—the relevant director-general for the corrections order.
- (5) If a person's leave is revoked under this section, a police officer, authorised ambulance paramedic, doctor or mental health officer may apprehend the person and take the person to a relevant facility.

*Note* See s 263 (Powers of entry and apprehension) and s 264 (Powers of search and seizure).
- (6) If a person is detained under subsection (5), the relevant official must, within 12 hours after the detention starts, give written notice to the ACAT and the public advocate of—
  - (a) the name of the person detained; and
  - (b) the reasons for the detention; and
  - (c) the name and address of the relevant facility where the person is detained.
- (7) In this section:

***relevant facility*** means—

  - (a) for a person in relation to whom a forensic psychiatric treatment order is in force—an approved mental health facility; or
  - (b) for a person in relation to whom a forensic community care order is in force—an approved community care facility.

## **121 Grant of leave for person detained by relevant official**

- (1) This section applies to a person detained at an approved mental health facility or approved community care facility under a forensic mental health order if the relevant official has detained the person at the facility.

*Note 1* The chief psychiatrist may make a determination under s 103 (Role of chief psychiatrist—forensic psychiatric treatment order) requiring detention of a person at an approved mental health facility.

*Note 2* The care coordinator may require a person to be detained at an approved community care facility (see s 114 and s 124).

- (2) The relevant official may grant a period of leave from the approved mental health facility or approved community care facility—
- (a) on application by the person; or
  - (b) on the relevant official's own initiative.
- (3) Before granting leave the relevant official must—
- (a) notify the ACAT of the application for leave; and
  - (b) if the person is subject to a corrections order—
    - (i) if the person is a detainee—obtain the agreement of the corrections director-general; or
    - (ii) if the person is a young detainee—obtain the agreement of the CYP director-general; or
    - (iii) if the person is not a detainee or young detainee—consult the relevant director-general for the corrections order.
- (4) The relevant official must not grant leave if satisfied that—
- (a) the person applied to the ACAT for leave for the same purpose in the previous 6 months; and
  - (b) the application was refused.

- (5) The relevant official may allow the person to take a period of leave for any purpose the relevant official considers appropriate if satisfied that—
- (a) the consultation mentioned in subsection (3) does not raise a serious concern about the appropriateness of the leave; and
  - (b) the safety of the person, anyone else or the public will not be seriously endangered.

**Examples—purposes**

- 1 to attend a health or rehabilitation service
- 2 to take part in work or work-related activities
- 3 for compassionate reasons

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (6) The grant of leave must state—
- (a) the purpose for which the leave is granted; and
  - (b) the period for which the leave is granted.
- (7) The grant of leave may be subject to conditions, including in relation to any of the following:
- (a) accepting treatment, care or support as required;
  - (b) enrolling and participating in educational, rehabilitation, recreational, therapeutic or training programs;
  - (c) not using alcohol and other drugs;
  - (d) undergoing drug testing and other medical tests;
  - (e) the standard of conduct required;
  - (f) prohibitions or limits on association with stated people or kinds of people;



- (g) prohibitions or limits on visiting stated places, or kinds of places;
- (h) prohibitions or limits on travelling interstate or overseas;
- (i) any other condition the relevant official considers appropriate in the circumstances taking into account the safety of the person, anyone else or the public.

*Note* For principles that must be taken into account when exercising a function under this Act, see s 6.

- (8) If leave is granted under this section, the relevant official must give written notice to—
  - (a) the person; and
  - (b) if the person is subject to a corrections order—
    - (i) if the person is a detainee—the corrections director-general; or
    - (ii) if the person is a young detainee—the CYP director-general; or
    - (iii) if the person is not a detainee or young detainee—the relevant director-general for the corrections order.

## **122 Leave in emergency or special circumstances**

- (1) This section applies to a person detained at an approved mental health facility or approved community care facility under a forensic mental health order if—
  - (a) the ACAT has ordered the detention; or
  - (b) the relevant official has detained the person at the facility.

- (2) The relevant official may grant the person a period of leave from the approved mental health facility or approved community care facility if satisfied that—

- (a) there are emergency or special circumstances for granting the leave; and

**Examples**

- 1 to attend a relative's funeral  
2 to attend an urgent medical appointment

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (b) the safety of the person, someone else or the public will not be seriously endangered by the leave.

- (3) Before granting leave the relevant official must—

- (a) if the person is a detainee—obtain the agreement of the corrections director-general; and  
(b) if the person is a young detainee—obtain the agreement of the CYP director-general; and  
(c) if the person is not a detainee or young detainee—consult the relevant director-general for the corrections order.

- (4) The relevant official must not grant leave under this section if the person—

- (a) has applied for leave based on the same emergency or special circumstances under section 119 (Grant of leave for person detained by ACAT), section 121 (Grant of leave for person detained by relevant official) or this section; and  
(b) the ACAT or the relevant official has refused to grant the leave.

- (5) If leave is granted under this section, the relevant official must give written notice to—
- (a) the person; and
  - (b) if the person is subject to a corrections order—
    - (i) if the person is a detainee—the corrections director-general; or
    - (ii) if the person is a young detainee—the CYP director-general; or
    - (iii) if the person is not a detainee or young detainee—the relevant director-general for the corrections order.

*Note* The function of granting leave under this section must not be delegated (see s 200 (2) (Delegation by chief psychiatrist) and s 207 (2) (Delegation by care coordinator)).

## **123 Revocation of leave granted by relevant official**

- (1) The relevant official may revoke leave granted under section 121 or section 122 to a person—
- (a) if the person is subject to a corrections order—on application by the corrections director-general; or
  - (b) in any case—on its own initiative.
- (2) Before revoking a person's leave, the relevant official must give notice that the revocation is being considered to—
- (a) the person; and
  - (b) if the person is subject to a corrections order—
    - (i) if the person is a detainee—the corrections director-general; or
    - (ii) if the person is a young detainee—the CYP director-general; or

- (iii) if the person is not a detainee or young detainee—the relevant director-general for the corrections order.
- (3) The relevant official may revoke a person’s leave if—
  - (a) the relevant official believes on reasonable grounds it is necessary to do so because the person—
    - (i) is doing, or is likely to do, serious harm to themselves or someone else; or
    - (ii) is suffering, or is likely to suffer, serious mental or physical deterioration; or
    - (iii) is seriously endangering, or is likely to seriously endanger, public safety; or
  - (b) the person contravenes a condition of the grant.
- (4) If a person’s leave is revoked under this section, the relevant official must give written notice of the revocation to—
  - (a) the person; and
  - (b) if the person is subject to a corrections order—
    - (i) if the person is a detainee—the corrections director-general; or
    - (ii) if the person is a young detainee—the CYP director-general; or
    - (iii) if the person is not a detainee or young detainee—the relevant director-general for the corrections order.
- (5) If a person’s leave is revoked under this section, a police officer, authorised ambulance paramedic, doctor or mental health officer may apprehend the person and take the person to a relevant facility.

*Note* See s 263 (Powers of entry and apprehension) and s 264 (Powers of search and seizure).

- (6) If a person is detained under subsection (5), the relevant official must, within 12 hours after the detention starts, give written notice to the ACAT and the public advocate of—
- (a) the name of the person detained; and
  - (b) the reasons for the detention; and
  - (c) the name and address of the relevant facility where the person is detained.
- (7) In this section:
- relevant facility* means—
- (a) for a person in relation to whom a forensic psychiatric treatment order is in force—an approved mental health facility; or
  - (b) for a person in relation to whom a forensic community care order is in force—an approved community care facility.

## **Division 7.1.9      Contravention and review of forensic mental health orders**

### **124      Contravention of forensic mental health order**

- (1) This section applies if—
- (a) a forensic mental health order is in force in relation to a person; and
  - (b) the person contravenes the order; and
  - (c) section 125 (Contravention of forensic mental health order—absconding from facility) does not apply to the contravention.

**Examples—contravention**

- 1    failure to return from leave granted by ACAT

- 2 not attending mental health facility for treatment, care or support

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (2) The relevant official for the order may—

- (a) within 7 days of the contravention, orally tell the person that failure to comply with the order may result in the person being apprehended and taken to a relevant facility for treatment, care or support; and
- (b) if the noncompliance continues after the taking of action under paragraph (a)—tell the person in writing that failure to comply with the order will result in the person being apprehended and taken to a relevant facility for treatment, care or support; and

*Note* If a form is approved under s 273 for this provision, the form must be used.

- (c) if the noncompliance continues after the taking of action under paragraph (b)—require the person to be detained at a relevant facility to ensure compliance with the order.

- (3) If a person is required to be detained under subsection (2) (c), a police officer, authorised ambulance paramedic, doctor or mental health officer may apprehend the person and take the person to a relevant facility.

*Note* See s 263 (Powers of entry and apprehension) and s 264 (Powers of search and seizure).

- (4) If a person is detained under this section the relevant official must, within 12 hours after the detention starts, give written notice to the ACAT and the public advocate of—

- (a) the name of the person detained; and
- (b) the reasons for the detention; and

- (c) the name and address of the relevant facility where the person is detained.

*Note* The ACAT must review the order within 72 hours after being notified under this subsection (see s 126 (5)).

- (5) In this section:

*relevant facility* means—

- (a) for a person in relation to whom a forensic psychiatric treatment order is in force—an approved mental health facility; or
- (b) for a person in relation to whom a forensic community care order is in force—an approved community care facility.

## **125 Contravention of forensic mental health order— absconding from facility**

- (1) This section applies if—
  - (a) a forensic mental health order is in force in relation to a person; and
  - (b) the forensic mental health order requires the person to be detained at an approved mental health facility or an approved community care facility; and
  - (c) the person absconds from the facility.
- (2) The person in charge of the facility must immediately tell the police that the person has absconded.
- (3) A police officer, authorised ambulance paramedic, mental health officer or doctor may apprehend the person and take the person to an approved mental health facility or approved community care facility.

*Note* See s 263 (Powers of entry and apprehension) and s 264 (Powers of search and seizure).

- (4) A police officer, authorised ambulance paramedic, mental health officer or doctor who apprehends a person under this section must tell the person the reason for the apprehension.
- (5) If a person is detained under this section the relevant official must, within 12 hours after the detention starts, give written notice to the ACAT and the public advocate of—
  - (a) the name of the person detained; and
  - (b) the reasons for the detention; and
  - (c) the name and address of the facility where the person is detained.

*Note* The ACAT must review the order within 72 hours after being notified under this subsection (see s 126 (5)).

## **126 Review of forensic mental health order**

- (1) The ACAT may review a forensic mental health order in force in relation to a person on its own initiative.

*Note* For principles that must be taken into account when exercising a function under this Act, see s 6.

- (2) The ACAT must review a forensic mental health order in force in relation to a person if the person, or the person's representative, applies for the review on the basis that the order, or part of the order, is no longer required.
- (3) The ACAT must review each forensic mental health order in force in relation to a person within 10 days if the ACAT receives notice in relation to the person under any of the following:
  - (a) section 105 (Action if forensic psychiatric treatment order no longer appropriate—no longer person in relation to whom ACAT could make order);
  - (b) section 106 (Action if forensic psychiatric treatment order no longer appropriate—no longer necessary to detain person);



- (c) section 112 (Action if forensic community care order no longer appropriate—no longer person in relation to whom ACAT could make order);
    - (d) section 113 (Action if forensic community care order no longer appropriate—no longer necessary to detain person).
  - (4) A review of a matter under subsection (3) must include, as far as practicable, consulting a person mentioned in section 97.
  - (5) The ACAT must review each forensic mental health order in force in relation to the person within 72 hours if the ACAT receives notice in relation to the person under—
    - (a) section 124 (4) (Contravention of forensic mental health order);  
or
    - (b) section 125 (5) (Contravention of forensic mental health order—absconding from facility).
  - (6) A review required under subsection (5)—
    - (a) may be conducted without a hearing; and
    - (b) may include consulting a person mentioned in section 97.
- Note* If the ACAT holds a hearing for the review, s 188 (1) (Notice of hearing) does not apply (see s 188 (3)).
- (7) If the ACAT is satisfied that a person in relation to whom a forensic mental health order is in force is no longer a person in relation to whom the ACAT could make a forensic mental health order, the ACAT must revoke all the forensic mental health orders in force in relation to the person.
  - (8) In any other case, the ACAT may, if appropriate, do any of the following:
    - (a) confirm, amend or revoke any of the forensic mental health orders in force in relation to the person;

- (b) make additional forensic mental health orders in relation to the person;
  - (c) make a mental health order in relation to the person;
  - (d) make an assessment order in relation to the person.
- (9) In this section:

***representative***, for a person, means any of the following:

- (a) if the person has a guardian under the *Guardianship and Management of Property Act 1991*—the guardian;
- (b) if the person has an attorney under the *Powers of Attorney Act 2006*—the attorney;
- (c) if the person has a nominated person—the nominated person;
- (d) a close relative or close friend of the person;
- (e) a legal representative of the person.

## Part 7.2 Affected people

### 127 Definitions—pt 7.2

In this part:

*affected person register*—see section 130.

*director-general* means the director-general responsible for the [ACT Civil and Administrative Tribunal Act 2008](#).

*forensic patient* means a person in relation to whom a forensic mental health order may be made or is in force.

*publish* means communicate or disseminate information in a way or to an extent that makes it available to, or likely to come to the notice of, the public or a section of the public or anyone else not lawfully entitled to the information.

### 128 Meaning of *affected person*

(1) In this Act:

*affected person*, in relation to a forensic patient, means a person who suffers harm because of an offence committed, or alleged to have been committed, by the forensic patient, and includes—

- (a) a person (the *primary affected person*) who suffers harm—
  - (i) in the course of, or as a result of, the commission of the offence; or
  - (ii) as a result of witnessing the offence; and
- (b) a family member of the primary affected person who suffers harm because of the harm to the primary affected person; and
- (c) a person who is financially or psychologically dependent on the primary affected person and who suffers harm because of the harm to the primary affected person; and

- (d) if a person mentioned for this definition is a child or legally incompetent person—a guardian of the child or legally incompetent person.

*Note* An affected person may also be entitled to information and assistance as a victim of crime under the *Victims of Crime Act 1994*.

- (2) In this section:

***enduring power of attorney***—see the *Powers of Attorney Act 2006*, section 8.

***guardian*** means—

- (a) for a child—a parent, a legally appointed guardian of the child or someone else with parental responsibility for the child under the *Children and Young People Act 2008*, division 1.3.2 (Parental responsibility); or
- (b) for a legally incompetent person—a person who is—
- (i) a legally appointed guardian of the legally incompetent person; or
- (ii) an attorney, appointed under an enduring power of attorney that has become operative, for the legally incompetent person.

***harm*** includes 1 or more of the following:

- (a) physical injury;
- (b) mental injury or emotional suffering (including grief);
- (c) pregnancy;
- (d) economic loss;
- (e) substantial impairment of a person's legal rights.

***legally appointed guardian*** means a guardian under the *Guardianship and Management of Property Act 1991*.

***legally incompetent person*** means an adult who is subject to—

- (a) an enduring power of attorney that has become operative; or
- (b) a guardianship order.

**129      *Meaning of registered affected person***

In this Act:

***registered affected person***, in relation to a forensic patient, means an affected person in relation to the forensic patient whose information is entered in the register kept under section 130.

**130      *Affected person register***

The director-general must maintain a register (the ***affected person register***) of affected people in relation to offences committed or alleged to have been committed by forensic patients.

**131      *Notifying people about the affected person register***

- (1) The director-general must take reasonable steps to notify affected people in relation to forensic patients about the affected person register.
- (2) The notice must set out—
  - (a) the rights of a registered affected person under section 134; and
  - (b) the requirement for an affected person to sign an undertaking not to publish the information received under section 134 if the person wants to be registered as an affected person.

- (3) The notice may seek the consent of the affected person to include the person's information on the register if the director-general considers that it is necessary for the person's safety and wellbeing.

*Note 1* If a form is approved under s 273 for this provision, the form must be used.

*Note 2* A person who is the victim of a crime may also be entitled to information and assistance under the [Children and Young People Act 2008](#), the [Crimes \(Sentence Administration\) Act 2005](#), and the [Victims of Crime Act 1994](#).

## **132 Including person in affected person register**

- (1) The director-general must enter in the register information about an affected person if—
- (a) the person, or someone acting for the person—
    - (i) asks the director-general to enter the information; or
    - (ii) gives consent to the director-general entering the information; and
  - (b) the person signs an undertaking not to publish information disclosed under section 134; and
  - (c) the director-general is satisfied that entering the information is necessary for the affected person's safety and wellbeing.
- (2) As soon as practicable after entering the affected person's information in the register, the director-general must give the registered affected person, orally or in writing, information about the person's rights as a registered affected person under section 134.
- (3) Subsection (2) does not apply if the director-general has given the affected person written notice under section 131.
- (4) If the registered affected person is a child under 15 years old, the director-general may give the information to a person who has parental responsibility for the person under the [Children and Young People Act 2008](#), division 1.3.2 (Parental responsibility).

- (5) The director-general must not disclose the information in the register about a registered affected person to—
- (a) a forensic patient; or
  - (b) any other entity except the following:
    - (i) the registered affected person;
    - (ii) a person mentioned in subsection (4);
    - (iii) a person with legal authority to act for the registered affected person;
    - (iv) if disclosure of the information is or may be relevant for a matter before a court—the court.

### **133 Removing person from affected person register**

- (1) The director-general must remove a registered affected person's information from the affected person register on request by the person or someone with legal authority to act for the person.
- (2) The director-general may, at any time, remove a registered affected person's information from the register if—
  - (a) the ACAT considers that it is no longer necessary for the person's wellbeing and safety to be a registered affected person; or
  - (b) the person breaches an undertaking not to publish information disclosed under section 134.
- (3) However, before removing a person's information from the register under subsection (2), the director-general must give the person and the victims of crimes commissioner written notice of the director-general's intention to remove the information.

- (4) The notice must include a statement to the effect that the person or the victims of crime commissioner has 28 days to tell the director-general in writing why it is necessary for the person's wellbeing and safety to remain on the register.

### **134 Disclosures to registered affected people**

- (1) This section applies if a forensic mental health order has been made in relation to a forensic patient.
- (2) The director-general must disclose to a registered affected person in relation to the forensic patient information about any of the following happening in relation to the forensic patient:
  - (a) an application for a forensic mental health order has been made;
  - (b) a forensic mental health order is in force;
  - (c) the patient absconds, or fails to return after leave, from a mental health facility or community care facility;
  - (d) the patient is transferred to or from another jurisdiction;
  - (e) the patient is released from a mental health facility or community care facility.
- (3) The director-general may disclose any other information about the forensic patient to a registered affected person in relation to the patient that the director-general considers necessary for the registered affected person's safety and wellbeing.
- (4) However, the director-general must not disclose identifying information about a child, or a person who was a child when the offence was committed or alleged to have been committed, unless the offence was a personal violence offence and the director-general believes that the registered affected person, or a family member of the affected person, may come into contact with the child or person.



- (5) If the registered affected person is a child under 15 years old, the director-general may give the information to a person who has parental responsibility for the affected person under the [Children and Young People Act 2008](#), division 1.3.2 (Parental responsibility).
- (6) Subsection (5) does not limit the cases in which the director-general may give information to a person acting for a registered affected person.
- (7) The director-general must ensure that every disclosure under this section is accompanied by a written statement that—
  - (a) the registered affected person must not publish the disclosed information; and
  - (b) publishing disclosed information may result in a registered affected person being removed from the register of affected people; and
  - (c) if the disclosed information relates to a forensic patient who is a child or young person, or was a child or young person when the offence was committed or alleged to have been committed—publishing the disclosed information is an offence under the [Criminal Code](#), section 712A.
- (8) In this section:
  - family violence offence*—see the [Family Violence Act 2016](#), dictionary.
  - personal violence offence* means—
    - (a) an offence that involves causing harm, or threatening to cause harm, to anyone; or
    - (b) a family violence offence.

## Chapter 8      Correctional patients

### Part 8.1      Preliminary

#### 135      **Meaning of *correctional patient***

In this Act:

***correctional patient*** means a person in relation to whom a transfer direction has been made.

*Note*      ***Transfer direction*** is defined in s 136 (3). Transfer directions for correctional patients are made by the corrections director-general or the CYP director-general. They can only be made for people for whom a mental health order or forensic mental health order cannot be made (see s 136 (1) (b)).

## Part 8.2                      Transfer of correctional patients

### 136              Transfer to mental health facility

- (1) This section applies if—
  - (a) the chief psychiatrist is satisfied that a detainee or young detainee has a mental illness for which treatment, care or support is available in an approved mental health facility; and
  - (b) a mental health order or forensic mental health order cannot be made in relation to the person.
- (2) The chief psychiatrist may ask the corrections director-general or the CYP director general to direct that the detainee or young detainee be transferred from a correctional centre or detention place to a stated approved mental health facility, and be detained at the facility.
- (3) If the corrections director-general or the CYP director-general decides to make the direction requested, the direction (the ***transfer direction***) must be made—
  - (a) for the corrections director-general—under the *Corrections Management Act 2007*, section 54 (Transfers to health facilities); and
  - (b) for the CYP director-general—under the *Children and Young People Act 2008*, section 109 (Transfers to health facilities).
- (4) Before making a transfer direction, the CYP director-general must, as far as practicable, consult each person with parental responsibility for the young detainee under the *Children and Young People Act 2008*, division 1.3.2 (Parental responsibility).
- (5) The corrections director-general or the CYP director-general may, at the request of the chief psychiatrist and at any time before the transfer takes place, revoke the direction.

**137      Return to correctional centre or detention place unless direction to remain**

- (1) A correctional patient must, within 7 days after the day the patient is transferred to an approved mental health facility under a transfer direction, be returned or transferred—
  - (a) if the patient is a detainee—to a correctional centre; or
  - (b) if the patient is a young detainee—to a detention place.
- (2) However, the chief psychiatrist may direct that a correctional patient remain at an approved mental health facility for longer than 7 days if the chief psychiatrist is satisfied that—
  - (a) the person has a mental illness for which treatment, care or support is available in the approved mental health facility; and
  - (b) other care of an appropriate kind would not be reasonably available to the person in the correctional centre or detention place.
- (3) The chief psychiatrist may direct that a correctional patient be returned or transferred to the correctional centre or detention place at any time if the chief psychiatrist is satisfied that—
  - (a) the person no longer has a mental illness for which treatment, care or support is available in an approved mental health facility; or
  - (b) other care of an appropriate kind would be reasonably available to the person in a correctional centre or detention place.

*Note*      The corrections director-general and the CYP director-general may give a direction for removal and return of the person at any time (see [Corrections Management Act 2007](#), s 54 and [Children and Young People Act 2008](#), s 109).

## **138 Release etc on change of status of correctional patient**

(1) This section applies if—

- (a) the director-general is told by the corrections director-general or CYP director-general, or otherwise becomes aware, of any of the following in relation to a person who is a correctional patient:
  - (i) the person's sentence of imprisonment ends;
  - (ii) the person is released on parole;
  - (iii) the person is otherwise released from detention on the order of a court;
  - (iv) the relevant charge against the person is dismissed;
  - (v) the director of public prosecutions notifies the ACAT or a court that the relevant charge against the person will not proceed; and
- (b) the person is not required to be detained under another court order.

*Note* The corrections director-general and the CYP director-general must tell the director-general of any change in a person's status as a detainee or young detainee (see [Corrections Management Act 2007](#), s 54A and [Children and Young People Act 2008](#), s 109A).

(2) The director-general must—

- (a) at the person's request, continue the treatment, care or support in the approved mental health facility; or
- (b) make any other decision that the director-general may make in relation to the person under this Act; or
- (c) release the person from the approved mental health facility.

*Note* For principles that must be taken into account when exercising a function under this Act, see s 6.

**139      ACAT may return people to correctional centre or detention place**

- (1) This section applies to a correctional patient who has been transferred to an approved mental health facility.
- (2) The correctional patient may, at any time, apply to the ACAT to be returned to a correctional centre or detention place.

*Note 1*    Requirements for applications to the ACAT are set out in the [ACT Civil and Administrative Tribunal Act 2008](#), s 10.

*Note 2*    If a form is approved under the [ACT Civil and Administrative Tribunal Act 2008](#), s 117 for the application, the form must be used.

- (3) On application, the ACAT—
  - (a) must order the correctional patient be returned to a correctional centre or detention place if satisfied that the patient does not have a mental illness for which treatment, care or support is available in the approved mental health facility; and
  - (b) may order the correctional patient be returned to a correctional centre or detention place if the ACAT considers it appropriate.
- (4) The ACAT may, at any time on its own initiative, order the correctional patient be returned to a correctional centre or detention place if the ACAT considers it appropriate.

## **Part 8.3                      Review of correctional patients**

### **140                      Review of correctional patient awaiting transfer to mental health facility**

- (1) This section applies to a correctional patient who has not been transferred to an approved mental health facility under a transfer direction.
- (2) The ACAT must review the transfer direction—
  - (a) at the end of 1 month after the direction is made; and
  - (b) at the end of each subsequent month until the person is transferred to an approved mental health facility or the transfer direction is revoked.
- (3) For each review, the chief psychiatrist must give the ACAT a report about—
  - (a) the person's condition; and
  - (b) the reasons for the delay in transferring the person to an approved mental health facility; and
  - (c) the availability of an approved mental health facility with capacity to accept the transfer and provide the treatment, care or support.
- (4) On review, the ACAT may, as it considers appropriate, make an order in relation to the detention or treatment, care or support of the person in an approved mental health facility.

### **141                      Review of correctional patient transferred to mental health facility**

- (1) This section applies to a correctional patient who has been transferred to an approved mental health facility under a transfer direction.
- (2) The ACAT must review the transfer direction as soon as practicable after the correctional patient has been transferred.

- (3) On review, the ACAT—
- (a) must determine—
    - (i) whether the person has a mental illness for which treatment, care or support is available in an approved mental health facility; and
    - (ii) whether the approved mental health facility has capacity to continue the detention and treatment, care or support under the transfer direction; and
    - (iii) whether other treatment, care or support of an appropriate kind would not be reasonably available to the person in the correctional centre or detention place; and
  - (b) may, as it considers appropriate, make an order in relation to the person's continued detention or treatment, care or support in an approved mental health facility.

**142      Review of correctional patient detained at mental health facility**

- (1) This section applies to a correctional patient transferred to an approved mental health facility under a transfer direction and detained at the facility for at least 6 months.
- (2) The ACAT must review the transfer—
  - (a) at the end of each 12-month period for which the correctional patient is detained at the approved mental health facility; and
  - (b) at any other time on request by any of the following:
    - (i) the Minister;
    - (ii) the Attorney-General;
    - (iii) the director-general;
    - (iv) the corrections director-general;



- (v) the CYP director-general;
  - (vi) the person in charge of the approved mental health facility at which the person is detained.
- (3) Also, the ACAT may, at any time on its own initiative, review the transfer.
- (4) For a review, the chief psychiatrist must give the ACAT a report about—
  - (a) the person's condition; and
  - (b) the capacity of the approved mental health facility to continue, and the availability of any other approved mental health facility to accept a transfer for, the detention or treatment, care or support.
- (5) On review, the ACAT may, as it considers appropriate, make an order in relation to the person's continued detention at, or treatment care or support in, an approved mental health facility.
- (6) The ACAT must tell the following, in writing, about a review under this section:
  - (a) the director-general;
  - (b) the corrections director-general;
  - (c) the CYP director-general.

## Part 8.4      Leave for correctional patients

### 142A      Definitions—pt 8.4

In this part:

*health director-general* means the director-general responsible for this chapter.

*relevant director-general* means—

- (a) for a correctional patient who is taken to be in the custody of the director-general under chapter 8A (Transfer of custody—secure mental health facility)—the health director-general; and
- (b) for any other correctional patient—
  - (i) if the patient is a detainee—the corrections director-general; and
  - (ii) if the patient is a young detainee—the CYP director-general.

### 143      Grant of leave for correctional patients

- (1) The relevant director-general may grant a correctional patient a period of leave from an approved mental health facility if satisfied that—

- (a) there are special circumstances for granting the leave; and

**Example**

to attend a relative's funeral

*Note*      An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (b) the safety of the correctional patient, someone else or the public will not be seriously endangered.

- (2) Before granting leave, the relevant director-general must consult—
  - (a) the chief psychiatrist; and
  - (b) if the relevant director-general is the health director-general—the corrections director-general or the CYP director-general.
- (3) The grant of leave must state—
  - (a) the purpose for which the leave is granted; and
  - (b) the period for which the leave is granted.
- (4) The grant of leave may be subject to conditions, including in relation to any of the following:
  - (a) accepting treatment, care or support as required;
  - (b) enrolling and participating in educational, rehabilitation, recreational, therapeutic or training programs;
  - (c) not using alcohol and other drugs;
  - (d) undergoing drug testing and other medical tests;
  - (e) the standard of conduct required;
  - (f) prohibitions or limits on association with stated people or kinds of people;
  - (g) prohibitions or limits on visiting stated places, or kinds of places;
  - (h) prohibitions or limits on travelling interstate or overseas;
  - (i) any other condition the director-general considers appropriate in the circumstances taking into account the safety of the person, anyone else or the public.

*Note* For principles that must be taken into account when exercising a function under this Act, see s 6.

## **144 Revocation of leave for correctional patients**

- (1) The relevant director-general may revoke a grant of leave in relation to a correctional patient if—
- (a) the patient contravenes a condition of the grant; or
  - (b) the chief psychiatrist considers it is necessary to revoke the grant because the patient—
    - (i) is doing, or is likely to do, serious harm to themselves or someone else; or
    - (ii) is suffering, or is likely to suffer, serious mental or physical deterioration; or
    - (iii) seriously endangers, or is likely to seriously endanger, public safety.

*Note* For principles that must be taken into account when exercising a function under this Act, see s 6.

- (2) Before revoking a grant of leave under subsection (1), the relevant director-general must consult—
- (a) the chief psychiatrist; and
  - (b) if the relevant director-general is the health director-general—the corrections director-general or the CYP director-general.
- (3) If a person's leave is revoked under this section, a police officer, authorised ambulance paramedic, doctor or mental health officer may apprehend the person and take the person to an approved mental health facility.

*Note* See s 263 (Powers of entry and apprehension) and s 264 (Powers of search and seizure).

- (4) If a person is detained under subsection (3), the person in charge of the approved mental health facility must, within 12 hours after the detention starts, give written notice to the ACAT and the public advocate of—
- (a) the name of the person detained; and
  - (b) the reasons for the detention; and
  - (c) the name and address of the approved mental health facility where the person is detained.

## Chapter 8A      Transfer of custody—secure mental health facility

### 144A      Transfer of custody if person admitted to secure mental health facility

- (1) A person is taken to be in the custody of the director-general if the person is admitted to a secure mental health facility under—
- (a) the *Children and Young People Act 2008*, section 109 (Transfers to health facilities); or
  - (b) the *Corrections Management Act 2007*, section 54 (Transfers to health facilities); or
  - (c) part 8.2 (Transfer of correctional patients).

*Note*      See also the *Children and Young People Act 2008*, s 245 and the *Corrections Management Act 2007*, s 217.

- (2) However, a person admitted to a secure mental health facility is taken to be in the custody of the director-general only until the person is discharged from the facility.
- (3) If custody of a person is transferred to the director-general, the director-general must—
- (a) immediately give written notice of the transfer of custody to—
    - (i) if the person is a detainee—the corrections director-general; and
    - (ii) if the person is a young detainee—the CYP director-general; and
  - (b) as soon as practicable give written notice of the transfer of custody to the following:
    - (i) the ACAT;
    - (ii) the public advocate;

- (iii) the person;
  - (iv) if the person has a nominated person—the nominated person;
  - (v) if the person is a child—each person with parental responsibility for the child under the *Children and Young People Act 2008*, division 1.3.2 (Parental responsibility).
- (4) The director-general must, as soon as practicable, give written notice of an intention to discharge a person from a secure mental health facility to the following people:
  - (a) if the person is a detainee—the corrections director-general;
  - (b) if the person is a young detainee—the CYP director-general.
- (5) A person who takes a detainee or young detainee to a secure mental health facility must give the director-general a written statement containing any of the following relevant information:
  - (a) the nature and extent of any force, restraint, involuntary seclusion or forcible giving of medication used when, or in relation to, taking the person to the facility;
  - (b) anything else that happened when, or in relation to, taking the person to the facility that may have an effect on the person's physical or mental health.

**Examples—par (b)**

- 1 the person was subject to threat of violence from another person
- 2 a package of white powder fell out of the person's pocket
- 3 the person was in an agitated state and hit their head against the side of the transport vehicle

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (6) The director-general must—
- (a) enter the statement in the person's record; and
  - (b) keep a register of any restraint, involuntary seclusion or forcible giving of medication included in the statement; and
  - (c) tell the public advocate, in writing, of any restraint, involuntary seclusion or forcible giving of medication included in the statement.
- (7) In this section:

*admitted* to a secure mental health facility includes transferred to the facility.

**Example**

A person is transferred to a secure mental health facility from another unit at the Canberra Hospital.

**144B      Taking person to appear before court**

- (1) This section applies if a person taken to be in the custody of the director-general is required to appear before a court.
- (2) The corrections director-general or the CYP director-general must tell the director-general about the requirement as soon as practicable after becoming aware of it.
- (3) When the person is transferred from a secure mental health facility for the purpose of attending court, the person is taken to be in the custody of—
  - (a) if the person is a detainee—the corrections director-general; and
  - (b) if the person is a young detainee—the CYP director-general.
- (4) When the person is returned to the secure mental health facility, the person is taken to be in the custody of the director-general.



**144C Release etc on change of status of person**

- (1) This section applies if—
- (a) the director-general is told by the corrections director-general, the CYP director-general or otherwise becomes aware of any of the following in relation to a person who is taken to be in the director-general's custody:
    - (i) the person's sentence of imprisonment ends;
    - (ii) the person is released on parole;
    - (iii) the person is otherwise released on the order of a court;
    - (iv) the relevant charge against the person is dismissed;
    - (v) the director of public prosecutions notifies the ACAT or a court that the relevant charge against the person will not proceed; and
  - (b) the person is not required to be detained under another court order.
- (2) The director-general must—
- (a) at the person's request, continue the treatment, care or support in an approved mental health facility; or
  - (b) if the person is a child who does not have decision-making capacity to make the request—at the request of a person with parental responsibility for the person under the *Children and Young People Act 2008*, division 1.3.2 (Parental responsibility), continue the treatment, care or support in an approved mental health facility; or

- (c) make any other decision that the director-general may make in relation to the person under this Act; or
- (d) release the person from the secure mental health facility.

*Note*      For principles that must be taken into account when exercising a function under this Act, see s 6.

- (3) The director-general must give written notice of a decision made under subsection (2) to the following:
  - (a) the ACAT;
  - (b) the public advocate;
  - (c) the person;
  - (d) if the person has a nominated person—the nominated person;
  - (e) if the person is a child—each person with parental responsibility for the child under the *Children and Young People Act 2008*, division 1.3.2 (Parental responsibility);
  - (f) if the person has a guardian under the *Guardianship and Management of Property Act 1991*—the guardian and the ACAT;
  - (g) if the person has an attorney under the *Powers of Attorney Act 2006*—the attorney.

**144D      Power to apprehend if person escapes from secure mental health facility**

- (1) This section applies if a person taken to be in the custody of the director-general escapes from a secure mental health facility.
- (2) The person in charge of the secure mental health facility must immediately tell the police that the person has escaped.

- (3) The person in charge of the secure mental health facility must also give written notice of the person escaping to the following:
- (a) the ACAT;
  - (b) the public advocate;
  - (c) if the person has a nominated person—the nominated person;
  - (d) if the person is a child—each person with parental responsibility for the child under the *Children and Young People Act 2008*, division 1.3.2 (Parental responsibility);
  - (e) if the person is a young detainee—the CYP director-general;
  - (f) if the person is a detainee—the corrections director-general;
  - (g) if there is a registered affected person in relation to the person—the director-general responsible for the *ACT Civil and Administrative Tribunal Act 2008*.
- (4) A police officer, authorised ambulance paramedic, mental health officer or doctor may apprehend the person and return the person to the secure mental health facility.

*Note* See s 263 (Powers of entry and apprehension) and s 264 (Powers of search and seizure).

- (5) A police officer, authorised ambulance paramedic, mental health officer or doctor who apprehends and returns the person to a secure mental health facility must give the director-general a written statement containing any of the following relevant information:
- (a) the nature and extent of the force or assistance used to enter any premises, or to apprehend the person and take the person to the facility;
  - (b) the nature and extent of any restraint, involuntary seclusion or forcible giving of medication used when apprehending the person or taking the person to the facility;

- (c) anything else that happened when the person was being apprehended and taken to the facility that may have an effect on the person's physical or mental health.

**Examples—par (c)**

- 1 the person was subject to threat of violence from another person
- 2 a package of white powder fell out of the person's pocket
- 3 the person was in an agitated state and hit their head against the side of the transport vehicle

*Note*      An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (6) The director-general must—
  - (a) enter the statement in the person's record; and
  - (b) keep a register of any restraint, involuntary seclusion or forcible giving of medication included in the statement; and
  - (c) tell the public advocate, in writing, of any restraint, involuntary seclusion or forcible giving of medication included in the statement.

**144E      Transfers to health facilities**

- (1) The director-general may direct that a person taken to be in the director-general's custody be transferred to a health facility if the director-general believes on reasonable grounds that it is necessary or prudent for the person to receive health services at the facility.
- (2) The director-general must, if practicable, have regard to the advice of the person's treating doctor when considering whether to make a direction under subsection (1).
- (3) The director-general may direct an escort officer to escort the person to or from the health facility, or while at the facility.

- (4) The person may be discharged from the health facility only if—
- (a) the health practitioner in charge of the person's care approves the discharge; or
  - (b) the director-general directs that the person be removed from the facility.

**Example—par (b)**

where the person is a danger to the safety of people at the facility

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (5) The director-general must have regard to the health of the person when considering whether to make a direction under subsection (4).
- (6) The director-general may give a direction for ensuring that a person discharged from a health facility under subsection (4) is returned to the secure mental health facility.
- (7) In this section:

*escort officer*—see section 144F (Escort officers).

*health facility* means a hospital or other facility where health services are provided.

## **144F Escort officers**

- (1) The director-general may direct an escort officer to escort a person who is taken to be in the director-general's custody to or from a secure mental health facility, other than to or from a court.

*Note* For transfers to or from a court, see s 144B.

- (2) To remove any doubt—
- (a) the escort officer is authorised to have custody of the person for the purposes of escorting the person; and

- (b) the person is also taken to be in the custody of the director-general; and
  - (c) this section is additional to, and does not limit, any other provision relating to the escorting of a person under a territory law or a law of the Commonwealth, a State or another territory.
- (3) In this section:

***escort officer***, in relation to a person, means—

- (a) an authorised health practitioner under the *Mental Health (Secure Facilities) Act 2016*; or
- (b) an authorised person under the *Mental Health (Secure Facilities) Act 2016*; or
- (c) a police officer; or
- (d) a corrections officer if the corrections director-general has agreed to the officer having the function of escorting the person under this chapter; or
- (e) a youth detention officer if the CYP director-general has agreed to the officer having the function of escorting the person under this chapter.

***youth detention officer***—see the *Children and Young People Act 2008*, section 96.

## **144G      Crimes Act escape provisions**

A person who is taken to be in the custody of the director-general under this chapter is taken, for the *Crimes Act 1900*, part 7 (Escape provisions), to be in lawful custody in relation to an offence.

## Chapter 9                      Electroconvulsive therapy and    psychiatric surgery

### Part 9.1                      Preliminary—ch 9

#### 145                      Definitions

- (1) In this Act:

*electroconvulsive therapy* means a procedure for the induction of an epileptiform convulsion in a person.

*electroconvulsive therapy order* means an order under section 157 for the administration of electroconvulsive therapy to a person.

*emergency electroconvulsive therapy order* means an order under section 162 for the emergency administration of electroconvulsive therapy to a person.

*psychiatric surgery* means specialised neurosurgery for psychiatric conditions.

- (2) In this section:

*neurosurgery* means surgery on the brain of a person for the purpose of treating a pathological condition of the physical structure of the brain.

#### 146                      Form of consent

- (1) For this chapter, consent to a procedure (other than consent given in an advance consent direction) must be given in writing signed by the person giving the consent and witnessed by a person other than—

- (a) the person seeking to obtain the consent; or
- (b) the doctor who is proposing to conduct the procedure.

*Note*                      For requirements for the form of advance consent for electroconvulsive therapy, see s 27 (4) (Making advance consent direction).

(2) In this section:

*procedure* means—

- (a) the administration of electroconvulsive therapy; or
- (b) the performance of psychiatric surgery.



## **Part 9.2                      Electroconvulsive therapy**

### **Division 9.2.1              Administraction of electroconvulsive therapy**

#### **147                      When electroconvulsive therapy may be administered**

- (1) Electroconvulsive therapy may be administered to an adult only as provided under section 148 and section 149.
- (2) Electroconvulsive therapy may be administered to a person who is at least 12 years old but under 18 years old only as provided under section 150 and section 151.
- (3) Electroconvulsive therapy must not be administered to a person who is under 12 years old.

#### **148                      Adult with decision-making capacity**

- (1) This section applies to a person who—
  - (a) is an adult; and
  - (b) has decision-making capacity to consent to the administration of electroconvulsive therapy.

*Note*        For principles of decision-making capacity, see s 8.

- (2) Electroconvulsive therapy may be administered to the person if the person—
  - (a) has given consent to the administration of electroconvulsive therapy; and
  - (b) has not withdrawn the consent, either orally or in writing; and

- (c) has not had electroconvulsive therapy administered—
  - (i) 9 or more times since the consent was given; or
  - (ii) if the consent was to the administration of electroconvulsive therapy a stated number of times less than 9—that number of times.

## **149 Adult without decision-making capacity**

- (1) This section applies to a person who—
  - (a) is an adult; and
  - (b) does not have decision-making capacity to consent to the administration of electroconvulsive therapy.
- (2) Electroconvulsive therapy may be administered to the person if—
  - (a) the person has an advance consent direction consenting to electroconvulsive therapy; and
  - (b) it is administered in accordance with the direction; and
  - (c) the person does not refuse or resist.
- (3) Also, electroconvulsive therapy may be administered to the person if—
  - (a) it is administered in accordance with an electroconvulsive therapy order or an emergency electroconvulsive therapy order in force in relation to the person; and
  - (b) either—
    - (i) the person does not refuse or resist; or
    - (ii) a psychiatric treatment order or a forensic psychiatric treatment order is also in force in relation to the person.

**150 Young person with decision-making capacity**

- (1) This section applies to a person who—
- (a) is at least 12 years old but under 18 years old; and
  - (b) has decision-making capacity to consent to the administration of electroconvulsive therapy.

*Note* For principles of decision-making capacity, see s 8.

- (2) Electroconvulsive therapy may be administered to the person if—
- (a) it is administered in accordance with—
    - (i) for a 12 to 15 year old—an electroconvulsive therapy order in force in relation to the person; or
    - (ii) for a 16 or 17 year old—an electroconvulsive therapy order or an emergency electroconvulsive therapy order in force in relation to the person; and
  - (b) the person has given consent to the administration of electroconvulsive therapy; and
  - (c) the person has not withdrawn the consent, either orally or in writing.

**151 Young person without decision-making capacity**

- (1) This section applies to a person who—
- (a) is at least 12 years old but under 18 years old; and
  - (b) does not have decision-making capacity to consent to the administration of electroconvulsive therapy.

- (2) Electroconvulsive therapy may be administered to the person if—
- (a) it is administered in accordance with—
    - (i) for a 12 to 15 year old—an electroconvulsive therapy order in force in relation to the person; or
    - (ii) for a 16 or 17 year old—an electroconvulsive therapy order or an emergency electroconvulsive therapy order in force in relation to the person; and
  - (b) either—
    - (i) the person does not refuse or resist; or
    - (ii) a psychiatric treatment order or a forensic psychiatric treatment order is also in force in relation to the person.

**152 Offence—unauthorised administration of electroconvulsive therapy**

- (1) A person commits an offence if—
- (a) the person administers electroconvulsive therapy to a person; and
  - (b) the person is not a doctor.
- Maximum penalty: 100 penalty units, imprisonment for 1 year or both.
- (2) A doctor commits an offence if—
- (a) the doctor administers electroconvulsive therapy to a person; and
  - (b) the electroconvulsive therapy may not be administered to the person under this division.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

## Division 9.2.2 Electroconvulsive therapy orders

### 153 Application for electroconvulsive therapy order

- (1) This section applies if the chief psychiatrist or a doctor believes on reasonable grounds that the ACAT could reasonably make an electroconvulsive therapy order in relation to a person.
- (2) The chief psychiatrist or doctor may apply to the ACAT for an electroconvulsive therapy order in relation to the person.
- (3) If the person is under 18 years old—
  - (a) the application must be supported by the evidence of another doctor; and
  - (b) the applicant or the other doctor (or both) must be a child and adolescent psychiatrist.

*Note* A psychiatric treatment order or forensic psychiatric treatment order is also needed if electroconvulsive therapy is to be administered to the person and the person refuses or resists (see s 149 (3) (b) (i) and s 151 (2) (b) (i)).

- (4) In this section:

***child and adolescent psychiatrist*** means a psychiatrist who is a member of the Faculty of Child and Adolescent Psychiatry of the Royal Australian and New Zealand College of Psychiatrists.

### 154 Consultation by ACAT—electroconvulsive therapy order

Before making an electroconvulsive therapy order in relation to a person who is not subject to a mental health order, the ACAT must, as far as practicable, consult—

- (a) if the person is under 18 years old—each person with parental responsibility for the person under the *Children and Young People Act 2008*, division 1.3.2 (Parental responsibility); and

- (b) if the person has a guardian under the *Guardianship and Management of Property Act 1991*—the guardian; and
- (c) if the person has an attorney under the *Powers of Attorney Act 2006*—the attorney; and
- (d) if the person has a nominated person—the nominated person; and
- (e) if a health attorney is involved in the treatment, care or support of the person—the health attorney.

**155 ACAT must hold hearing—electroconvulsive therapy order**

Before making an electroconvulsive therapy order in relation to a person, the ACAT must hold a hearing into the matter.

**156 What ACAT must take into account—electroconvulsive therapy order**

In making an electroconvulsive therapy order in relation to a person, the ACAT must take into account the following:

- (a) whether the person consents, refuses to consent or has the decision-making capacity to consent to the electroconvulsive therapy;
- (b) the views and wishes of the person, so far as they can be found out, including in—
  - (i) an advance agreement; and
  - (ii) an advance consent direction;
- (c) the views of the people responsible for the day-to-day care of the person, so far as those views are made known to the ACAT;
- (d) the views of the people appearing at the proceeding;

- (e) the views of the people consulted under section 154 (Consultation by ACAT—electroconvulsive therapy order);
- (f) any alternative treatment, care or support reasonably available, including—
  - (i) the purpose of the treatment, care or support; and
  - (ii) the benefits likely to be derived by the person from the treatment, care or support; and
  - (iii) the distress, discomfort, risks, side effects or other disadvantages associated with the treatment, care or support;
- (g) any relevant medical history of the person.

## **157 Making of electroconvulsive therapy order**

- (1) On application under section 153, the ACAT may make an electroconvulsive therapy order in relation to a person who is at least 12 years old if satisfied that—
  - (a) the person has a mental illness; and
  - (b) the person does not have decision-making capacity to consent to the administration of electroconvulsive therapy; and
  - (c) the person does not have an advance consent direction refusing consent to electroconvulsive therapy; and
  - (d) the administration of electroconvulsive therapy is likely to result in substantial benefit to the person; and
  - (e) either—
    - (i) all other reasonable forms of treatment available have been tried but have not been successful; or
    - (ii) the treatment is the most appropriate treatment reasonably available.

- (2) Also on application under section 153, the ACAT may make an electroconvulsive therapy order in relation to a person who is at least 12 years old but under 18 years old if satisfied that—
- (a) the person has a mental illness; and
  - (b) the person has decision-making capacity to consent to the administration of electroconvulsive therapy; and
  - (c) the person consents to the administration of electroconvulsive therapy; and
  - (d) the administration of electroconvulsive therapy is likely to result in substantial benefit to the person.
- (3) The ACAT must, as soon as practicable after making an electroconvulsive therapy order under this section, give a copy of the order to the following:
- (a) the person in relation to whom the order is made;
  - (b) the person who applied for the order;
  - (c) the people consulted under section 154 (Consultation by ACAT—electroconvulsive therapy order).

## **158 Content of electroconvulsive therapy order**

- (1) An electroconvulsive therapy order made in relation to a person must state—
- (a) the matters under section 157 (1) or (2) of which the ACAT is satisfied in relation to the person; and
  - (b) the maximum number of times electroconvulsive therapy may be administered to the person under the order.

*Note* The ACAT must give a copy of the order to certain people (see s 195).



- (2) For subsection (1) (b), the maximum number must be—
  - (a) if the person has an advance consent direction that includes advance consent for electroconvulsive therapy—not more than the maximum number of times stated in the direction; and
  - (b) in any other case—not more than 9.

**159 Person to be told about electroconvulsive therapy order**

- (1) This section applies if electroconvulsive therapy is to be administered to a person at a mental health facility under an electroconvulsive therapy order.
- (2) The person in charge of the facility must ensure that the person is told about the order, and the procedures authorised under the order, before the therapy is administered and in a language and way of communicating that the person is most likely to understand.
- (3) This section applies even if the person was present when the order was made.

**Division 9.2.3 Emergency electroconvulsive therapy orders**

**160 Application for emergency electroconvulsive therapy order**

- (1) This section applies if the chief psychiatrist and a doctor believe on reasonable grounds that the ACAT could reasonably make an emergency electroconvulsive therapy order in relation to a person.
- (2) The chief psychiatrist and doctor may jointly apply to the ACAT for an emergency electroconvulsive therapy order in relation to the person.

- (3) The application must be accompanied by an application for an electroconvulsive therapy order in relation to the person.

*Note 1* The ACAT must give a copy of the application to the following people as soon as practicable (and not longer than 24 hours) after the application is lodged:

- the public advocate
- if the person is a child—the CYP director-general (see s 187).

*Note 2* Certain people are entitled to appear and give evidence, and be represented, at the proceeding, including the following:

- the person who is the subject of the proceeding
- the public advocate
- the discrimination commissioner.

Other people are also entitled to appear (see s 190).

*Note 3* A psychiatric treatment order or forensic psychiatric treatment order is also needed if electroconvulsive therapy is to be administered to the person and the person refuses or resists (see s 149 (3) (b) and s 151 (2) (b)).

## **161 What ACAT must take into account—emergency electroconvulsive therapy order**

In making an emergency electroconvulsive therapy order in relation to a person, the ACAT must take into account the following:

- (a) the views and wishes of the person, so far as they can be found out, including in—
  - (i) an advance agreement; and
  - (ii) an advance consent direction;
- (b) the views of the people appearing at the proceeding;

- (c) the views of the following, so far as those views are made known to the ACAT:
- (i) the people responsible for the day-to-day care of the person;
  - (ii) if the person is under 18 years old—each person with parental responsibility for the person under the *Children and Young People Act 2008*, division 1.3.2 (Parental responsibility);
  - (iii) if the person has a guardian under the *Guardianship and Management of Property Act 1991*—the guardian;
  - (iv) if the person has an attorney under the *Powers of Attorney Act 2006*—the attorney;
  - (v) if the person has a nominated person—the nominated person;
  - (vi) if a health attorney is involved in the treatment, care or support of the person—the health attorney.

*Note* Section 188 (Notice of hearing) does not apply in relation to the making of an emergency electroconvulsive therapy order (see s 188 (3)).

## **162 Making of emergency electroconvulsive therapy order**

- (1) On application under section 160, the ACAT may make an emergency electroconvulsive therapy order in relation to a person who is at least 16 years old if satisfied that—
- (a) the person has a mental illness; and
  - (b) the person does not have decision-making capacity to consent to the administration of electroconvulsive therapy; and
  - (c) the person does not have an advance consent direction refusing consent to electroconvulsive therapy; and

- (d) the administration of the electroconvulsive therapy is necessary to—
    - (i) save the person's life; or
    - (ii) prevent the likely onset of a risk to the person's life within 3 days; and
  - (e) either—
    - (i) all other reasonable forms of treatment available have been tried but have not been successful; or
    - (ii) the treatment is the most appropriate treatment reasonably available.
- (2) Also on application under section 160, the ACAT may make an emergency electroconvulsive therapy order in relation to a person who is at least 16 years old if the ACAT is satisfied that—
- (a) the person has a mental illness; and
  - (b) the person has decision-making capacity to consent to the administration of electroconvulsive therapy and consents to the administration of electroconvulsive therapy; and
  - (c) the administration of the electroconvulsive therapy is necessary to—
    - (i) save the person's life; or
    - (ii) prevent the likely onset of a risk to the person's life within 3 days; and
  - (d) either—
    - (i) all other reasonable forms of treatment available have been tried but have not been successful; or
    - (ii) the treatment is the most appropriate treatment reasonably available.

**163 Content of an emergency electroconvulsive therapy order**

An emergency electroconvulsive therapy order made in relation to a person must state that—

- (a) electroconvulsive therapy may be administered to the person a stated number of times (not more than 3); and
- (b) the order expires a stated number of days (not more than 7) after it is made.

*Note* The ACAT must give a copy of the order to certain people within 24 hours (see s 195).

**164 Effect of later order**

If an emergency electroconvulsive therapy order is in force in relation to a person and the ACAT makes an electroconvulsive therapy order in relation to the person, the emergency electroconvulsive therapy order ceases to be in force.

**Division 9.2.4 Records of electroconvulsive therapy**

**165 Doctor must record electroconvulsive therapy**

- (1) If a doctor administers electroconvulsive therapy to a person, the doctor must make a record of the administration, including whether the administration—
  - (a) was in accordance with an order of the ACAT; and
  - (b) was with the person's consent.
- (2) The doctor must give the record to the person in charge of the psychiatric facility where the therapy was administered.
- (3) A doctor commits an offence if the doctor fails to comply with subsection (1) or (2).

Maximum penalty: 20 penalty units.

**166      Electroconvulsive therapy records to be kept for 5 years**

The person in charge of a psychiatric facility must keep a record of electroconvulsive therapy given under section 165 (2) for at least 5 years after the day the record is given.

Maximum penalty: 20 penalty units.

## **Part 9.3                      Psychiatric surgery**

### **167                      Performance on people subject to orders of ACAT**

Psychiatric surgery may be performed on a person under this part despite any order of the ACAT in force in relation to the person.

### **168                      Psychiatric surgery not to be performed without approval or if person refuses**

A doctor commits an offence if—

- (a) the doctor performs psychiatric surgery on a person; and
- (b) the doctor—
  - (i) does not have the chief psychiatrist's approval for performance of the surgery; or
  - (ii) has been told under section 174 that the person refuses to have the surgery performed.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

### **169                      Application for approval**

- (1) A doctor may apply to the chief psychiatrist for approval for a stated neurosurgeon to perform psychiatric surgery on a person.
- (2) The doctor who makes the application must be a psychiatrist.
- (3) The application must be in writing and be accompanied by—
  - (a) a copy of the consent of the person; or
  - (b) if the consent is in an advance consent direction—a copy of the advance consent direction; or
  - (c) a copy of an order of the Supreme Court under section 173.

- (4) The doctor must, as soon as practicable after giving the application to the chief psychiatrist, give a copy of the application to the person on whom the surgery is proposed to be performed.

**170 Application to be considered by committee**

- (1) The chief psychiatrist must, as soon as practicable after receiving an application under section 169, give a copy of the application to the chairperson of the committee appointed under section 175.
- (2) The chairperson must as soon as practicable after receiving the application—
- (a) tell the following people, in writing, of the application:
    - (i) the person on whom the surgery is proposed to be performed (the *subject person*);
    - (ii) if the subject person is a child—each person with parental responsibility for the child under the *Children and Young People Act 2008*, division 1.3.2 (Parental responsibility);
    - (iii) if the subject person has a guardian under the *Guardianship and Management of Property Act 1991*—the guardian;
    - (iv) if the subject person has an attorney under the *Powers of Attorney Act 2006*—the attorney;
    - (v) if the subject person has a nominated person—the nominated person;
    - (vi) if a health attorney is involved in the treatment, care or support of the subject person—the health attorney; and
  - (b) convene a meeting of the committee to consider the application; and



- (c) give a written report to the chief psychiatrist that includes the following:
  - (i) the committee's recommendation about whether or not the chief psychiatrist should approve the performance of the psychiatric surgery;
  - (ii) if the committee recommends approval for the surgery—
    - (A) the conditions (if any) to which the approval should be subject; and
    - (B) a statement that the committee is satisfied that the neurosurgeon has the necessary qualifications and experience to perform the surgery;
  - (iii) the committee's reasons for making the recommendations in the report.
- (3) The committee must—
  - (a) ensure that the people told of the application under subsection (2) (a) are given an opportunity to make an oral or written submission to the committee; and
  - (b) consider any submissions received.
- (4) The committee must not recommend that the chief psychiatrist approve the performance of psychiatric surgery unless—
  - (a) the committee believes on reasonable grounds that—
    - (i) the surgery will result in substantial benefit to the subject person; and
    - (ii) all alternative forms of treatment reasonably available have failed, or are likely to fail, to benefit the subject person; and
  - (b) the recommendation is supported by the psychiatrist and the neurosurgeon on the committee.

- (5) The chief psychiatrist must ensure that a copy of the committee's report is placed on the subject person's record.

**171 Requirement for further information**

- (1) On request by the committee considering an application, the chief psychiatrist must, by written notice given to the doctor who made the application, require the doctor to give the chief psychiatrist further stated information or documents relevant to the application.
- (2) The committee need not consider the application further until the required information or documents are given to the chief psychiatrist.
- (3) The chief psychiatrist must give the chairperson of the committee any information or documents given to the chief psychiatrist in compliance with a requirement under subsection (1).

**172 Application to be decided in accordance with committee's recommendation**

The chief psychiatrist must decide an application under section 169 in accordance with the committee's recommendation.

**173 Consent of Supreme Court**

- (1) This section applies if a doctor proposes that psychiatric surgery be performed on a person but the person does not have decision-making capacity to consent or an advance consent direction consenting to the surgery.
- (2) The doctor and the neurosurgeon who is to perform the surgery may jointly apply to the Supreme Court for an order consenting to the performance of psychiatric surgery on the person.

*Note* The order is needed for an application for the chief psychiatrist's approval for performance of the surgery (see s 169 (3) (c)).

- (3) The Supreme Court may make the order only if satisfied on reasonable grounds that—
- (a) the person has a mental illness; and
  - (b) the person—
    - (i) does not have decision-making capacity to consent to the surgery; and
    - (ii) does not have an advance consent direction consenting to the surgery; and
    - (iii) has not refused to consent to the surgery (in an advance consent direction or otherwise); and
  - (c) there are grounds for believing that the performance of the surgery is likely to result in substantial benefit to the person; and
  - (d) all alternative forms of treatment reasonably available have failed, or are likely to fail, to benefit the person.

#### **174 Refusal of psychiatric surgery**

- (1) This section applies in relation to a person—
- (a) who has given consent to the performance of psychiatric surgery; or
  - (b) in relation to whom the Supreme Court has made an order consenting to the performance of psychiatric surgery under section 173.
- (2) The person may, before the psychiatric surgery is performed, tell the chief psychiatrist or anyone else, orally or in writing or by indicating in any other way, that the person refuses to have the surgery performed.

- (3) A person (other than the chief psychiatrist) who is told under subsection (2) that the person refuses to have psychiatric surgery performed must tell the chief psychiatrist of the refusal.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (4) If the chief psychiatrist has approved the performance of psychiatric surgery on a person under section 172 and is told under this section that the person refuses to have the surgery, the chief psychiatrist must—
- (a) immediately tell the doctor who is to perform the surgery of the refusal; and
  - (b) ensure that written documentation of the refusal is placed on the person's record.
- (5) If the chief psychiatrist is told under this section that a person refuses to have psychiatric surgery performed—
- (a) any consent to the performance of the surgery given by the person, or any order made by the Supreme Court under section 173 in relation to the person, ceases to have effect; and
  - (b) if, immediately before the date of the refusal, an application for the approval of the performance of the surgery has been made but has not been decided, the application is taken to have been withdrawn on that date; and
  - (c) any approval given by the chief psychiatrist for the performance of the surgery ceases to have effect.

## **175 Appointment of committee**

- (1) For section 170, the Minister must appoint a committee consisting of—
- (a) a psychiatrist; and
  - (b) a neurosurgeon; and

- (c) a lawyer; and
- (d) a clinical psychologist; and
- (e) a social worker.

*Note 1* For the making of appointments (including acting appointments), see the [Legislation Act](#), pt 19.3.

*Note 2* In particular, a person may be appointed for a particular provision of a law (see [Legislation Act](#), s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see [Legislation Act](#), s 207).

*Note 3* Certain Ministerial appointments require consultation with an Assembly committee and are disallowable (see [Legislation Act](#), div 19.3.3).

- (2) The Minister must appoint a member of a committee to be the chairperson of the committee.
- (3) The chairperson of the committee must convene meetings of the committee.
- (4) Subject to section 170 (4) (b), a question arising at a meeting of a committee must be decided in accordance with the opinion of a majority of members of the committee.
- (5) A member of a committee must be paid the remuneration and allowances (if any) prescribed by regulation.

## Chapter 10      Referrals by courts under Crimes Act and Children and Young People Act

### 176      Review of certain people found unfit to plead

- (1) This section applies if—
  - (a) the Supreme Court or the Magistrates Court makes a decision under the [Crimes Act](#), section 315A (3) or section 315D (7) that a person is unfit to plead to a charge; and
  - (b) the charge is for an offence punishable by imprisonment for 5 years or longer; and
  - (c) an order is made in relation to the charge under any of the following provisions of the [Crimes Act](#):
    - section 318 (2) (Non-acquittal at special hearing—non-serious offence);
    - section 319 (2) or (3) (Non-acquittal at special hearing—serious offence);
    - section 335 (2), (3) or (4) (Fitness to plead—Magistrates Court).
- (2) The ACAT may (on application or on its own initiative) review the person's fitness to plead at any time.
- (3) However, the ACAT must review the person's fitness to plead—
  - (a) as soon as practicable (but within 3 months) after the end of 12 months after the day the order is made; and
  - (b) at least once every 12 months after each review.
- (4) Subsection (3) does not apply if—
  - (a) the person has already been found fit to plead; or

- (b) the director of public prosecutions has told the ACAT, in writing, of the director's intention not to take further proceedings against the person in relation to the offence.
- (5) On a review, the ACAT must decide on the balance of probabilities whether the person is unfit to plead.
- (6) The ACAT must decide that the person is unfit to plead if satisfied that the person's mental processes are disordered or impaired to the extent that the person cannot—
  - (a) understand the nature of the charge; or
  - (b) enter a plea to the charge and exercise the right to challenge jurors or the jury; or
  - (c) understand that the proceeding is an inquiry about whether the person committed the offence; or
  - (d) follow the course of the proceeding; or
  - (e) understand the substantial effect of any evidence that may be given in support of the prosecution; or
  - (f) give instructions to the person's lawyer.
- (7) The person is not unfit to plead only because the person is suffering from memory loss.
- (8) To remove any doubt, this section applies even if the person is no longer in custody or under a mental health order or forensic mental health order.

*Note* A person who is the subject of a proceeding may be subpoenaed to appear at the proceeding (see [ACT Civil and Administrative Tribunal Act 2008](#), s 41).

**177 Recommendations about people with mental impairment**

- (1) This section applies if—
  - (a) the Supreme Court makes an order under the [Crimes Act](#), division 13.3 requiring a person to submit to the jurisdiction of the ACAT to enable the ACAT to make recommendations to the court about how the person should be dealt with; or
  - (b) a court makes an order under the [Crimes Act](#), division 13.5 (Referral of mentally impaired people to ACAT after conviction) or division 13.6 (Summary proceedings against mentally impaired people), requiring a person to submit to the jurisdiction of the ACAT to enable the ACAT—
    - (i) to determine whether the person has a mental impairment; and
    - (ii) if the ACAT determines that the person has a mental impairment—to make recommendations to the court about how the person should be dealt with.
- (2) After an inquiry, and as the ACAT thinks appropriate in relation to the person—
  - (a) the ACAT must determine on the balance of probabilities, whether or not the person has a mental impairment; and
  - (b) if the ACAT determines that the person has a mental impairment, the ACAT must make recommendations to the court about how the person should be dealt with.



**178 Recommendations about people with mental disorder or mental illness**

- (1) This section applies if the Childrens Court makes a care and protection order, interim care and protection order with a mental health ACAT provision or interim therapeutic protection order, under the *Children and Young People Act 2008* requiring a person to submit to the jurisdiction of the ACAT to enable the ACAT—
  - (a) to determine whether the person has a mental disorder or mental illness; and
  - (b) if the ACAT determines that the person has a mental disorder or mental illness—to make recommendations to the court about how the person should be dealt with.
- (2) After an inquiry, and as the ACAT thinks appropriate in relation to the person—
  - (a) the ACAT must determine on the balance of probabilities, whether or not the person has a mental disorder or mental illness; and
  - (b) if the ACAT determines that the person has a mental disorder or mental illness, the ACAT must make recommendations to the court about how the person should be dealt with.

**179 Service of decisions etc**

The ACAT must serve a copy of a decision, determination or recommendation made under section 176, section 177 or section 178 on—

- (a) the person about whom the decision, determination or recommendation is made; and
- (b) the representative of that person (if any); and
- (c) the public advocate; and

- (d) the director of public prosecutions; and
- (e) if the person about whom the decision, determination or recommendation is made is a child—the CYP director-general.

### **180 Review of detention under court order**

- (1) This section applies if, under the [Crimes Act](#), part 13, a court orders that a person be detained in custody for immediate review by the ACAT.
- (2) The ACAT must review the detention and consider the release of the person—
  - (a) as soon as practicable, and not later than 7 days after the day of the order; and
  - (b) if the ACAT does not order the release of the person—at least monthly while the detention continues.

*Note* Under s 188, the ACAT must give notice of the hearing to certain people and may give notice to anyone else it considers appropriate.

- (3) In reviewing the detention and considering the release of a person, the ACAT must have regard to the following:
  - (a) that detention in custody is to be regarded as a last resort and ordered only in exceptional circumstances;
  - (b) the nature and extent of the person's mental disorder or mental illness, including the effect it is likely to have on the person's behaviour in the future;
  - (c) whether or not, if released—
    - (i) the person's health or safety would be, or would be likely to be, substantially at risk; or
    - (ii) the person would be likely to do serious harm to others;
  - (d) if the court nominated a term under the [Crimes Act](#), part 13—the nominated term.

- (4) An order for the release of a person may be made subject to the conditions (if any) the ACAT considers appropriate, including a requirement to comply with a stated mental health order or forensic mental health order.
- (5) If, on a review, the ACAT does not order the release of a person, the ACAT may—
  - (a) make mental health orders (including additional orders) in relation to the person; or
  - (b) make forensic mental health orders (including additional orders) in relation to the person; or
  - (c) vary or revoke any of the mental health orders or forensic mental health orders in force in relation to the person.
- (6) If, on a review, the ACAT does not order the release of a person, the ACAT must tell the following that the detention continues:
  - (a) the person;
  - (b) the chief psychiatrist;
  - (c) if the person is a child—
    - (i) each person with parental responsibility for the child under the *Children and Young People Act 2008*, division 1.3.2 (Parental responsibility); and
    - (ii) the CYP director-general;
  - (d) the public advocate;
  - (e) the human rights commission;
  - (f) if the person has a guardian under the *Guardianship and Management of Property Act 1991*—the guardian;
  - (g) if the person has an attorney under the *Powers of Attorney Act 2006*—the attorney;
  - (h) if the person has a nominated person—the nominated person;

- (i) if a health attorney is involved in the treatment, care or support of the person—the health attorney;
- (j) if the person is detained in a correctional centre—the corrections director-general;
- (k) if the person is detained in a detention place—the CYP director-general.

**181 Contravention of conditions of release**

- (1) This section applies if—
  - (a) the ACAT orders the release of a person subject to a condition under section 180 (4); and
  - (b) the person contravenes the condition.
- (2) The chief psychiatrist must tell the ACAT of the contravention, in writing, as soon as practicable after becoming aware of the contravention.

**182 Review of conditions of release**

- (1) The ACAT must review a condition under section 180 (4) to which an order for release of a person is subject at least every 6 months while the order is subject to the condition.
- (2) The ACAT must review each condition under section 180 (4), to which an order for release of a person is subject within 72 hours after receiving notice under section 181 (2).
- (3) A review required under subsection (2) may be conducted without a hearing.

*Note* If the ACAT holds a hearing for the review, s 188 (1) (Notice of hearing) does not apply (see s 188 (3)).

- (4) The ACAT may, as it considers appropriate—
  - (a) amend or revoke any condition of the order, including any requirement to comply with a stated mental health order or forensic mental health order; or
  - (b) impose any other condition the ACAT considers appropriate, including a requirement to comply with a stated mental health order or forensic mental health order.
- (5) Also, if a person contravenes a condition of an order of release, the ACAT may order that the person be detained in custody until the ACAT orders otherwise.

### **183 Limit on detention**

- (1) Nothing in section 180 or section 182 permits the ACAT to require a person to remain in custody for a period that is, or for periods that in the aggregate are, greater than the limiting period.
- (2) In subsection (1):

*limiting period*, in relation to a person, means a period that is equivalent to the period—

  - (a) commencing on the day on which an order of the relevant court under the [Crimes Act](#), part 13 is made requiring the person to be detained in custody until the ACAT orders otherwise; and
  - (b) ending on the day on which, if the person had been sentenced to a term of imprisonment for a period equivalent to the term nominated under that [Act](#), section 301, section 302, section 304 or section 305 (as the case may be) that sentence would have expired.

## Chapter 11 ACAT procedural matters

### 184 Meaning of *subject person*—ch 11

In this chapter:

*subject person*—see section 190.

### 185 When ACAT may be constituted by presidential member

- (1) This section applies to a proceeding on any of the following:
  - (a) an assessment order;
  - (b) a removal order under section 43 (2) (Removal order to conduct assessment);
  - (c) an order for the extension of a person's detention under section 85 (3) (Authorisation of involuntary detention);
  - (d) a review of involuntary detention under section 85 (5);
  - (e) an order for a person's release under section 91 (Orders for release);
  - (f) a grant of leave under section 122 (Leave in emergency or special circumstances);
  - (g) a review of a transfer direction under section 140 (Review of correctional patient awaiting transfer to mental health facility);
  - (h) a review of a transfer direction under section 141 (Review of correctional patient transferred to mental health facility).
- (2) The ACAT may be made up by a presidential member alone, but not a non-presidential member alone.

*Note* The president of the ACAT is responsible for allocating members to the ACAT for an application (see [ACT Civil and Administrative Tribunal Act 2008](#), s 89).

**186 When ACAT must be constituted by more members**

- (1) This section applies to a proceeding on any of the following:
- (a) a mental health order;
  - (b) a review of a mental health order under section 79 (Review of mental health order);
  - (c) a forensic mental health order;
  - (d) a grant of leave under section 119 (Grant of leave for person detained by ACAT);
  - (e) revocation of leave under section 120 (Revocation of leave granted by ACAT);
  - (f) a review of a forensic mental health order under section 126 (Review of forensic mental health order);
  - (g) an electroconvulsive therapy order under section 157 (Making of electroconvulsive therapy order);
  - (h) an emergency electroconvulsive therapy order under section 162 (Making of emergency electroconvulsive therapy order);
  - (i) a review of a person's fitness to plead under section 176 (Review of certain people found unfit to plead);
  - (j) a recommendation under section 177 (Recommendations about people with mental impairment) or section 178 (Recommendations about people with mental disorder or mental illness) about a person who has a mental impairment, mental disorder or mental illness;
  - (k) a review of detention under section 180 (Review of detention under court order).

- (2) The ACAT must include—
- (a) a presidential member; and
  - (b) a non-presidential member with a relevant interest, experience or qualification.

*Note* The president of the ACAT is responsible for allocating members to the ACAT for an application (see [ACT Civil and Administrative Tribunal Act 2008](#), s 89).

## **187 Applications**

- (1) This section applies to an application to the ACAT under this Act.

*Note* Requirements for applications to the ACAT are set out in the [ACT Civil and Administrative Tribunal Act 2008](#), s 10.

- (2) The ACAT must, as soon as practicable but not longer than 24 hours after the application is lodged, give a copy of the application to—
- (a) the public advocate; and
  - (b) if the subject person is a child—the CYP director-general.

## **188 Notice of hearing**

- (1) At least 3 days before the ACAT holds a hearing in relation to a matter under this Act, the ACAT—
- (a) must give written notice of the hearing to the following people:
    - (i) if the subject person is not required to appear by a subpoena under the [ACT Civil and Administrative Tribunal Act 2008](#), section 41 for a reason other than because section 192 (3) (Subpoena to appear in person) applies in relation to the person—the subject person;
    - (ii) the representative of the subject person (if any);



- (iii) if the subject person is a child—
  - (A) each person with parental responsibility for the child under the *Children and Young People Act 2008*, division 1.3.2 (Parental responsibility); and
  - (B) the CYP director-general;
- (iv) if the subject person has a guardian under the *Guardianship and Management of Property Act 1991*—the guardian;
- (v) if the subject person has an attorney under the *Powers of Attorney Act 2006*—the attorney;
- (vi) if the subject person is referred to the ACAT under section 35 (Applications by referring officers—assessment order)—the referring officer;
- (vii) the applicant (if any);
- (viii) if the hearing is on a proceeding on a forensic mental health order for which there is a registered affected person for the person—
  - (A) the registered affected person; or
  - (B) the victims of crime commissioner;
- (ix) the public advocate;
- (x) the chief psychiatrist;
- (xi) the care coordinator;
- (xii) the director-general of the administrative unit that has responsibility for providing care, support and protection for people with a mental disorder; and

- (b) may give written notice to anyone else the ACAT considers appropriate.

**Example—par (b)**

an official visitor

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (2) Subsection (1) does not apply to a matter under this Act if—
  - (a) the chief psychiatrist gives the ACAT written notice that the chief psychiatrist believes on reasonable grounds that anything to do with the notification process is likely to substantially increase—
    - (i) the risk to the subject person’s health or safety; or
    - (ii) the risk of serious harm to others; and
  - (b) a presidential member of the ACAT is satisfied that the risks mentioned in paragraph (a) make the giving of notice under subsection (1) undesirable for the matter; and
  - (c) the ACAT—
    - (i) tells the public advocate that notice under subsection (1) has not been given; and
    - (ii) gives the public advocate a copy of the written notice mentioned in paragraph (a).
- (3) Also, subsection (1) does not apply in relation to a hearing to be held for any of the following:
  - (a) the making of an emergency assessment order under section 39;
  - (b) a review required under section 79 (3) (Review of mental health order);
  - (c) an application under section 85 (2) or (4) (Authorisation of involuntary detention);

- (d) a review required under section 126 (5) (Review of forensic mental health order);
- (e) the making of an emergency electroconvulsive therapy order under section 162 (Making of emergency electroconvulsive therapy order);
- (f) a review required under section 182 (2) (Review of conditions of release).

*Note* Requirements in relation to hearings are set out in the [ACT Civil and Administrative Tribunal Act 2008](#), div 5.4. Those requirements apply unless this Act provides otherwise.

## **189 Directions to registrar**

- (1) After considering an assessment of the subject person for a proceeding, but before holding an inquiry or review, the president of the ACAT may give to the registrar the directions the president considers appropriate to—
  - (a) define and limit the relevant matters in the proceeding, including—
    - (i) the alternative treatments, programs and other services that are available and may be appropriate for the subject person; and
    - (ii) the evidence that appears to be relevant to the proper disposition of the matter; and
    - (iii) any unusual or urgent factors requiring special attention; and
  - (b) ensure all necessary measures are taken to allow the inquiry or review to proceed as quickly as possible, including ensuring that—
    - (i) all relevant particulars have been provided; and

- (ii) people who may be entitled to appear and give evidence in the proceeding have been notified, the people's availability confirmed and any related matters requiring special attention have been dealt with; and
  - (iii) people who may wish to apply for leave to appear and give evidence in the proceeding have been notified; and
  - (iv) people not entitled to appear in the proceeding but who may be interested in making written submissions about the matter have been given an opportunity to do so; and
  - (v) issues (if any) that may be decided before the inquiry or review have been identified.
- (2) However, the president of the ACAT must not give a direction under subsection (1) in a proceeding in relation to—
- (a) the treatment, care or support, control, rehabilitation and protection of a person found unfit to plead; or
  - (b) the treatment, care or support, control, rehabilitation and protection of a person found not guilty of a criminal offence because of mental impairment; or
  - (c) a request by a court to provide advice in relation to the sentencing of a person before the court.

## 190 Appearance

- (1) The following people may appear and give evidence at the hearing of a proceeding:
- (a) the person (the *subject person*) who is the subject of the proceeding;
  - (b) if the subject person is a child—
    - (i) each person with parental responsibility for the child under the *Children and Young People Act 2008*, division 1.3.2 (Parental responsibility); and

- (ii) the CYP director-general;
  - (c) if the subject person has a guardian under the *Guardianship and Management of Property Act 1991*—the guardian;
  - (d) if the subject person has an attorney under the *Powers of Attorney Act 2006*—the attorney;
  - (e) if the subject person has a nominated person—the nominated person;
  - (f) the applicant (if any);
  - (g) if the subject person is referred to the ACAT under section 35 (Applications by referring officers—assessment order)—the referring officer;
  - (h) if the proceeding is on a forensic mental health order for which there is a registered affected person for the offence committed or alleged to have been committed by the subject person—the victims of crime commissioner;
  - (i) the public advocate;
  - (j) the chief psychiatrist;
  - (k) the director-general who has control of the administrative unit to which responsibility for the provision of treatment, care and protection for people with a mental disorder (other than people with a mental illness) is allocated;
  - (l) the discrimination commissioner.
- (2) Other people may appear and give evidence at the hearing with the leave of the ACAT.
  - (3) This section does not prevent a person from making a written submission to the ACAT in relation to a proceeding.

**191 Separate representation of children etc**

- (1) This section applies in relation to a proceeding if—
  - (a) the subject person is a child or a person the ACAT considers is unable to represent themselves; and
  - (b) the person is not separately represented; and
  - (c) the ACAT considers that the person should be separately represented.
- (2) The ACAT may, on its own initiative or on the application of a person—
  - (a) adjourn the proceeding to allow the subject person to obtain representation; and
  - (b) give reasonably necessary advice and assistance to the person to enable the person to obtain representation.

**192 Subpoena to appear in person**

- (1) This section applies if the ACAT is satisfied that it is necessary for the subject person to be present at the hearing of the proceeding.
- (2) The ACAT may require the person to appear at the hearing by subpoena given under the *ACT Civil and Administrative Tribunal Act 2008*, section 41.
- (3) However, the ACAT must not require the person to appear at the hearing by subpoena if satisfied that the appearance of the subject person before the ACAT is likely to increase substantially—
  - (a) any risk to the subject person's health or safety; or
  - (b) the risk of serious harm to others.

*Note* If a person who is subpoenaed does not appear before the ACAT, the ACAT may issue a warrant to arrest the person (see *ACT Civil and Administrative Tribunal Act 2008*, s 42).

**193 Person subpoenaed in custody**

- (1) This section applies if the subject person—
  - (a) is given a subpoena under the *ACT Civil and Administrative Tribunal Act 2008*, section 41; and
  - (b) is in the custody of another person.
- (2) The ACAT may order the other person ensure that the subject person appears before the ACAT in accordance with the subpoena.

**194 Hearings to be in private**

- (1) A hearing of a proceeding in relation to a subject person must be held in private.
- (2) However, a hearing of a proceeding in relation to a subject person who is not a child may be held in public if—
  - (a) the subject person asks for the hearing to be held in public; or
  - (b) the ACAT orders the hearing be held in public.
- (3) A private hearing is taken to be a hearing to which the *ACT Civil and Administrative Tribunal Act 2008*, section 39 (Hearings in private or partly in private) applies.

*Note* Requirements for keeping private hearings secret are set out in the *ACT Civil and Administrative Tribunal Act 2008*, s 40.

**195 Who is given a copy of the order?**

- (1) The ACAT must give a copy of an ACAT order to the following people:
  - (a) the subject person;
  - (b) if the subject person has a representative—the representative;
  - (c) if the subject person is a child—each person with parental responsibility for the child under the *Children and Young People Act 2008*, division 1.3.2 (Parental responsibility);

- (d) if the subject person has a guardian—the guardian;
  - (e) if the subject person has made a power of attorney under the *Powers of Attorney Act 2006*—the attorney under the power of attorney;
  - (f) the public advocate;
  - (g) if the subject person is referred to the ACAT under section 35 (Applications by referring officers—assessment order)—the referring officer;
  - (h) if the subject person is referred to the ACAT under section 94 (Applications for forensic mental health orders—detainees etc)—
    - (i) the chief psychiatrist; and
    - (ii) the corrections director-general.
  - (i) if the person was ordered to submit to the jurisdiction of the ACAT by a court—the court;
  - (j) if the order requires the person to be admitted to a facility—the person in charge of the facility;
  - (k) anyone else ordered by the ACAT;
  - (l) if the subject person has a nominated person—the nominated person.
- (2) The ACAT must also give a copy of the following orders of the ACAT to the chief psychiatrist:
- (a) a psychiatric treatment order;
  - (b) a restriction order in relation to a person subject to a psychiatric treatment order;
  - (c) a forensic psychiatric treatment order;
  - (d) an electroconvulsive therapy order;



- (e) an emergency electroconvulsive therapy order.
- (3) The ACAT must also give a copy of the following orders of the ACAT to the care coordinator:
  - (a) a community care order;
  - (b) a restriction order in relation to a person subject to a community care order;
  - (c) a forensic community care order.
- (4) The ACAT must give a copy of an emergency electroconvulsive therapy order to the people mentioned in subsection (1) and (2) in relation to the order within 24 hours after the order is made.

*Note* For how documents may be served, see the [Legislation Act](#), pt 19.5.

## **Chapter 12 Administration**

### **Part 12.1 Chief psychiatrist and mental health officers**

#### **196 Chief psychiatrist**

- (1) The Minister must appoint a public servant as Chief Psychiatrist.

*Note 1* For the making of appointments (including acting appointments), see [Legislation Act](#), pt 19.3.

*Note 2* In particular, a person may be appointed for a particular provision of a law (see [Legislation Act](#), s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see [Legislation Act](#), s 207).

- (2) A person is not eligible for appointment as the chief psychiatrist unless the person is a psychiatrist.

#### **197 Functions**

The chief psychiatrist has the following functions:

- (a) to provide treatment, care or support, rehabilitation and protection for persons who have a mental illness;
- (b) to make reports and recommendations to the Minister with respect to matters affecting the provision of treatment, care or support, control, accommodation, maintenance and protection for persons who have a mental illness;
- (c) any other function given to the chief psychiatrist under this Act.

**198 Approved code of practice**

- (1) The chief psychiatrist may approve a code of practice to provide guidance on assessing whether a person has decision-making capacity.

*Note* Power given under an Act to make a statutory instrument (including a code of practice) includes power to amend or repeal the instrument (see [Legislation Act](#), s 46 (1)).

- (2) An approved code of practice may apply, adopt or incorporate an instrument as in force from time to time.
- (3) An approved code of practice is a notifiable instrument.

*Note* A notifiable instrument must be notified under the [Legislation Act](#).

**199 Ending appointment—chief psychiatrist**

- (1) The Minister may end the appointment of the chief psychiatrist—
- (a) for misbehaviour; or
  - (b) for physical or mental incapacity, if the incapacity substantially affects the exercise of the person's functions.
- (2) The Minister must end the appointment of the chief psychiatrist if the chief psychiatrist stops being eligible to hold the office of chief psychiatrist.

**200 Delegation by chief psychiatrist**

- (1) The chief psychiatrist may delegate the chief psychiatrist's functions under this Act to a psychiatrist who is a public employee or is engaged by the Territory.
- (2) However, the function of granting leave under section 122 (Leave in emergency or special circumstances) must not be delegated.

*Note* For the making of delegations and the exercise of delegated functions, see [Legislation Act](#), pt 19.4.

## 201 Mental health officers

- (1) The Minister may appoint a person as a mental health officer.

*Note 1* For the making of appointments (including acting appointments), see [Legislation Act](#), pt 19.3.

*Note 2* In particular, a person may be appointed for a particular provision of a law (see [Legislation Act](#), s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see [Legislation Act](#), s 207).

*Note 3* Certain Ministerial appointments require consultation with an Assembly committee and are disallowable (see [Legislation Act](#), div 19.3.3).

- (2) A person is not eligible for appointment as a mental health officer unless the person is a nurse, nurse practitioner, psychologist, occupational therapist or social worker.

- (3) In this section:

**occupational therapist** means a person registered under the [Health Practitioner Regulation National Law \(ACT\)](#) to practise in the occupational therapy profession (other than as a student).

**psychologist** means a person registered under the [Health Practitioner Regulation National Law \(ACT\)](#) to practise in the psychology profession (other than as a student).

**social worker** means a person with a social work qualification that provides eligibility for membership of the Australian Association of Social Workers.

## 202 Functions of mental health officers

The functions of a mental health officer for this Act are the functions that the chief psychiatrist directs.

*Note* **Function** includes authority, duty and power (see [Legislation Act](#), dict, pt 1).

**203 Identity cards for mental health officers**

- (1) The director-general must give a mental health officer an identity card that states the person is a mental health officer for this Act and shows—
  - (a) the name of the person; and
  - (b) a recent photograph of the person.
- (2) A person commits an offence if—
  - (a) the person was appointed as a mental health officer; and
  - (b) the person ceases to be a mental health officer; and
  - (c) the person does not return the person's identity card to the director-general as soon as practicable (but within 7 days) after the day the person ceases to be a mental health officer.

Maximum penalty: 1 penalty unit.

- (3) An offence against subsection (2) is a strict liability offence.

## Part 12.2                      Care coordinator

### 204                      Care coordinator

- (1) The Minister must appoint a public servant as care coordinator.

*Note 1*      For the making of appointments (including acting appointments), see [Legislation Act](#), pt 19.3.

*Note 2*      In particular, a person may be appointed for a particular provision of a law (see [Legislation Act](#), s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see [Legislation Act](#), s 207).

- (2) The Minister may only appoint a person as care coordinator if satisfied that the person has the training, experience and personal qualities necessary to exercise the care coordinator's functions.
- (3) An appointment is a notifiable instrument.

*Note*              A notifiable instrument must be notified under the [Legislation Act](#).

### 205                      Functions

The care coordinator has the following functions:

- (a) to coordinate the provision of treatment, care or support to people with a mental disorder in accordance with community care orders made by the ACAT;
- (b) to coordinate the provision of appropriately trained people for the treatment, care or support of people with a mental disorder who are subject to community care orders;
- (c) to coordinate the provision of appropriate residential or detention facilities for people with a mental disorder in relation to whom any of the following orders are in force:
  - (i) a community care order;

- (ii) a restriction order with a community care order;
- (iii) a forensic community care order;
- (d) to coordinate the provision of medication and anything else required to be done for people with a mental disorder in accordance with community care orders and restriction orders made by the ACAT;
- (e) to make reports and recommendations to the Minister about matters affecting the provision of treatment, care or support, control, accommodation, maintenance and protection for people with a mental disorder;
- (f) any other function given to the care coordinator under this Act.

## **206 Ending appointment—care coordinator**

- (1) The Minister may end the appointment of the care coordinator—
  - (a) for misbehaviour; or
  - (b) for physical or mental incapacity, if the incapacity substantially affects the exercise of the person's functions.
- (2) The Minister must end the appointment of the care coordinator if the care coordinator stops being eligible to hold the office of care coordinator.

## **207 Delegation by care coordinator**

- (1) The care coordinator may delegate the care coordinator's functions under this Act to anyone else.

*Note* For the making of delegations and the exercise of delegated functions, see [Legislation Act](#), pt 19.4.

(2) However—

- (a) the function of granting leave under section 122 (Leave in emergency or special circumstances) must not be delegated; and
- (b) the care coordinator may delegate a function to a person only if the care coordinator is satisfied that the person has the training, experience and personal qualities necessary to exercise the function.



## Part 12.3                      Official visitors

*Note*            At least 1 official visitor must be appointed for this Act under the [Official Visitor Act 2012](#) (the *OV Act*).

The [OV Act](#) sets out the functions of official visitors which includes visiting visitable places, handling complaints from entitled people and reporting on those matters.

This part defines what is an *entitled person* and a *visitable place* for the [OV Act](#). This part also prescribes other matters for the [OV Act](#).

### 208                      Meaning of *official visitor* etc

In this Act:

*entitled person* means a person—

- (a) receiving treatment, care or support for mental disorder or a mental illness—
  - (i) at a visitable place; or
  - (ii) at a place other than a visitable place under an order under this Act; or
- (b) prescribed by regulation.

*official visitor* means an official visitor for this Act appointed under the [Official Visitor Act 2012](#), section 10.

*visitable place* means—

- (a) a mental health facility; or
- (b) a long-term residential accommodation facility or respite facility at which a person receiving treatment, care or support for mental disorder or a mental illness may stay; or

- (c) a place in a correctional centre where a detainee is receiving treatment or care for mental disorder or a mental illness for the period in which the treatment, care or support is given to the detainee.

*Note* A visitable place mentioned in par (c) is also a visitable place for an official visitor under the [Corrections Management Act 2007](#) (see that [Act](#), s 57).

## **209 Appointment of official visitors—additional suitability requirement**

A person must not be appointed as an official visitor unless the person—

- (a) is a legal practitioner who has not less than 5 years practising experience; or
- (b) is a medical practitioner; or
- (c) has been nominated by a body representing consumers of mental health services; or
- (d) has experience and skill in the care of persons with a mental disorder or mental illness.

## **210 Appointment of principal official visitor**

The Minister may appoint 1 official visitor as the principal official visitor.

## **211 Official visitor's functions**

Without limiting the [Official Visitor Act 2012](#), section 14 (Functions), an official visitor must enquire into—

- (a) the adequacy of services provided at a visitable place for the assessment and treatment of people with mental disorder or a mental illness; and

- (b) the appropriateness and standard of facilities at a visitable place for the recreation, occupation, education, training and rehabilitation of people receiving treatment, care or support for mental disorder or a mental illness; and
- (c) the extent to which people receiving treatment, care or support for mental disorder or a mental illness at a visitable place are being provided the best possible treatment, care or support appropriate to their needs in the least possible restrictive environment and least possible intrusive manner consistent with the effective giving of that treatment, care or support; and
- (d) any other matter that an official visitor considers appropriate.

*Note* For principles that must be taken into account when exercising a function under this Act, see s 6.

## **212 Principal official visitor's functions**

In addition to the functions of an official visitor, the principal official visitor has the following functions:

- (a) to oversee the exercise of the functions of official visitors;
- (b) to report to the Minister, as requested, on the official visitor's functions and how they are exercised;
- (c) any other function given to the principal official visitor under this Act.

## **213 Notice to official visitor of detainee receiving mental health treatment, care or support in correctional centre**

- (1) This section applies if a detainee in a correctional centre is receiving treatment, care or support for mental disorder or a mental illness in a visitable place in a correctional centre.

- (2) The doctor for the correctional centre must give an official visitor for this Act written notice that a detainee is receiving treatment, care or support for mental disorder or a mental illness in the visitable place as soon as practicable, but not later than 24 hours after the detainee starts receiving treatment, care or support in the place.

*Note* A visitable place in a correctional centre is also a visitable place for an official visitor under the [Corrections Management Act 2007](#) (see that [Act](#), s 57).

- (3) In this section:

**doctor**, for a correctional centre, means the doctor appointed under the [Corrections Management Act 2007](#), section 21 (1) for the centre.

## **214 Complaint about treatment, care or support provided at place other than visitable place**

- (1) An entitled person may make a complaint to an official visitor under the [Official Visitor Act 2012](#), section 22 about treatment, care or support for mental disorder or a mental illness that is—
- (a) wholly or partly funded by the Territory; and
  - (b) provided at a place other than a visitable place.
- (2) The official visitor may—
- (a) investigate the complaint; and
  - (b) visit the place where the service is provided.
- (3) However, the official visitor may only visit a place that is not a visitable place—
- (a) with the entitled person's consent; and
  - (b) after giving the owner of, or entity operating, the place at least 24 hours written notice; and
  - (c) at a reasonable time unless the director-general otherwise consents.

## **Part 12.4                      Coordinating director-general**

### **215                      Coordinating director-general**

The Chief Minister may appoint a director-general to be a coordinating director-general.

*Note 1*    For the making of appointments (including acting appointments), see the [Legislation Act](#), pt 19.3.

*Note 2*    In particular, a person may be appointed for a particular provision of a law (see [Legislation Act](#), s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see [Legislation Act](#), s 207).

### **216                      Functions of coordinating director-general**

A coordinating director-general has the function of working with other government agencies to promote cooperation in achieving the objects of this Act and to coordinate activities undertaken by agencies that relate to the objects.

### **217                      Coordinating director-general policies and operating procedures**

- (1) The coordinating director-general may make policies and operating procedures, consistent with this Act, for the effective and efficient management or operation of any administrative function under this Act.
- (2) A person exercising an administrative function under this Act must comply with policies and operating procedures.

- (3) A policy or operating procedure made under subsection (1) is a notifiable instrument.

*Note 1*    A notifiable instrument must be notified under the [Legislation Act](#).

*Note 2*    The power to make an instrument includes the power to amend or repeal the instrument. The power to amend or repeal the instrument is exercisable in the same way, and subject to the same conditions, as the power to make the instrument (see [Legislation Act](#), s 46).

## Part 12.5                      Sharing information— government agencies

### 218                      Definitions—pt 12.5

In this part:

***information sharing entity***—each of the following is an ***information sharing entity***:

- (a) the director-general;
- (b) the CYP director-general;
- (c) the corrections director-general;
- (d) the director-general responsible for the *Disability Services Act 1991*;
- (e) the director-general responsible for the *Health Act 1993*;
- (f) the chief police officer;
- (g) the chief officer (ambulance service);
- (h) an agency of another jurisdiction approved by the director-general under section 221.

***information sharing protocol***—see section 219.

***relevant information*** means information needed for the safe and effective care of a person who has, or may have, a mental illness or mental disorder.

## 219 Information sharing protocol

- (1) An information sharing entity may enter into an arrangement (an *information sharing protocol*) with another information sharing entity to allow each entity—
  - (a) to request and receive relevant information held by each other entity; and
  - (b) to disclose relevant information to each other entity.
- (2) An information sharing entity may share relevant information under an information sharing protocol only if satisfied, and to the extent, it is reasonably necessary for the safe and effective treatment, care or support of the person to whom the information relates.
- (3) Relevant information about a person in relation to whom a forensic mental health order is in force may be shared under an information sharing protocol without the consent of the person.
- (4) If an information sharing entity shares relevant information without the consent of the person to whom the information relates, the entity must tell the following people in writing about the information shared and reasons for sharing the information:
  - (a) if the person has a guardian under the *Guardianship and Management of Property Act 1991*—the guardian;
  - (b) if the person has an attorney under the *Powers of Attorney Act 2006*—the attorney;
  - (c) if the person has a nominated person—the nominated person.



- (5) Subsection (4) applies to information shared about any person other than information about a detainee or young detainee that is shared—
- (a) because of a request for information under—
    - (i) the *Corrections Management Act 2007*, section 77 (Health reports); or
    - (ii) the *Children and Young People Act 2008*, section 186 (Health reports); or
  - (b) between the CYP director-general, the corrections director-general and the director-general.

## **220 Information sharing guidelines**

- (1) The Minister may make guidelines about the operation of information sharing protocols.
- (2) A guideline is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

## **221 Information sharing—approval of agency**

- (1) The director-general may approve an agency from another jurisdiction as an information sharing entity for this part.
- (2) An approval is a notifiable instrument.

*Note* A notifiable instrument must be notified under the [Legislation Act](#).

## Chapter 13 Private psychiatric facilities

### Part 13.1 Preliminary

#### 222 Definitions—ch 13

In this chapter:

*inspector* means an inspector appointed under section 234.

*licence* means a licence issued under section 226.

*licensed premises* means the premises in relation to which a licence is issued.

*licensee* means a person who holds a licence issued under section 226.

*private psychiatric facility* means a hospital or other facility for the treatment, care, support, rehabilitation or accommodation of people with a mental illness other than—

- (a) a recognised hospital within the meaning of the [Health Insurance Act 1973](#) (Cwlth); or
- (b) a facility conducted by the Territory.

## Part 13.2 Licences

### 223 Meaning of *eligible person*—pt 13.2

- (1) For this part, a person is an *eligible person* if—
- (a) the Minister is satisfied on reasonable grounds that the person is a suitable person to hold a licence; and
  - (b) if the person is an individual—the individual has not been involved in a disqualifying act; and
  - (c) if the person is in a partnership that is to operate a private psychiatric facility—each person in the partnership has not been involved in a disqualifying act; and
  - (d) if the person is a corporation—the corporation and each person involved in the management of the corporation has not been involved in a disqualifying act.

- (2) In this section:

***disqualifying act***—a person has been involved in a ***disqualifying act*** if the person has in the last 5 years, whether in the ACT or elsewhere—

- (a) contravened a provision of this Act; or

*Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see [Legislation Act](#), s 104).

- (b) contravened a condition of a licence issued under this Act; or

- (c) been convicted, or found guilty, of an offence involving fraud or dishonesty, or punishable by imprisonment for at least 1 year; or

- (d) been bankrupt or personally insolvent; or

*Note* ***Bankrupt or personally insolvent***—see the [Legislation Act](#), dictionary, pt 1.

- (e) been involved in the management of a corporation when the corporation became the subject of a winding-up order or a controller or administrator was appointed.

## **224      Licence—requirement to hold**

- (1) A person commits an offence if the person—
  - (a) operates a private psychiatric facility; and
  - (b) does not hold a licence to operate the facility.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) A person commits an offence if—
  - (a) the person is a partner in a partnership; and
  - (b) the partnership operates a private psychiatric facility; and
  - (c) no partner in the partnership holds a licence to operate the facility.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

## **225      Licence—application**

- (1) A person (the *applicant*) may apply to the Minister for a licence to operate a private psychiatric facility.
- (2) The application must—
  - (a) be in writing; and
  - (b) state the applicant's name and address; and
  - (c) if the applicant is a partner in a partnership that is to operate the facility—state the name and address of each partner in the partnership; and

- (d) if the applicant is a corporation—state the name and address of each director of the corporation; and
- (e) state the address of the premises where the facility is to be operated.

*Note 1* If a form is approved under s 273 for an application, the form must be used.

*Note 2* A fee may be determined under s 272 for an application.

- (3) The Minister may, in writing, ask the applicant to give the Minister additional information or documents that the Minister reasonably needs to decide the application.
- (4) If the applicant does not comply with a request under subsection (3), the Minister may refuse to consider the application further.

## **226 Licence—decision on application**

- (1) On application under section 225, the Minister may issue a licence if satisfied on reasonable grounds that—

- (a) the applicant is an eligible person; and
- (b) the applicant complies with, and is likely to continue to comply with, the requirements of this Act; and

*Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see [Legislation Act](#), s 104).

- (c) the premises where the facility is to be operated are suitable premises for the operation of a private psychiatric facility.
- (2) A licence must include conditions about the maximum number of people for whom treatment, care or support may be provided at the licensed premises.

- (3) A licence may also include conditions about the following:
- (a) the minimum number of staff to be employed at the licensed premises;
  - (b) the qualifications of the staff;
  - (c) the treatment, care or support that may be provided at the licensed premises;
  - (d) the health and safety of people at the licensed premises;
  - (e) the insurance to be carried by the licensee against any liability arising from the operation of a private psychiatric facility at the licensed premises;
  - (f) the recreational and educational facilities to be provided at the licensed premises;
  - (g) the management of the licensed premises;
  - (h) the keeping of records about the licensed premises and any person who is treated in or from the premises;
  - (i) anything else that the Minister is satisfied on reasonable grounds is appropriate.

## **227 Licence—term and renewal of licence**

- (1) A licence is issued for the period of up to 3 years stated in the licence.
- (2) A licensee may apply, in writing, to the Minister to renew the licence.

*Note 1* If a form is approved under s 273 for an application, the form must be used.

*Note 2* A fee may be determined under s 272 for an application.

- (3) The Minister may renew the licence for a period of up to 3 years if satisfied on reasonable grounds of the matters mentioned in section 225 (2) in relation to the applicant and the premises.

## 228 Licence—transfer of licence

- (1) A licensee may apply to the Minister to transfer a licence to someone else (the *proposed new licensee*).
- (2) The application must—
  - (a) be in writing; and
  - (b) state the proposed new licensee's name and address; and
  - (c) if the proposed new licensee is in a partnership—state the name and address of each partner in the partnership; and
  - (d) if the proposed new licensee is a corporation—state the name and address of each director of the corporation.

*Note 1* If a form is approved under s 273 for an application, the form must be used.

*Note 2* A fee may be determined under s 272 for an application.

- (3) The Minister may, in writing, ask the proposed new licensee to give the Minister additional information or documents that the Minister reasonably needs to decide the application.
- (4) If the proposed new licensee does not comply with a request under subsection (3), the Minister may refuse to consider the application further.
- (5) The Minister may transfer the licence if satisfied on reasonable grounds that—
  - (a) the proposed new licensee is an eligible person; and
  - (b) the proposed new licensee complies with, and is likely to continue to comply with, the requirements of this Act.

*Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see [Legislation Act](#), s 104).

- (6) The Minister may amend the licence if satisfied on reasonable grounds that the amendment is in the best interests of people for whom treatment, care or support is provided under the licence.

## **229 Licence—amendment initiated by Minister**

- (1) The Minister may, by written notice (an *amendment notice*), amend a licence on the Minister's own initiative if satisfied on reasonable grounds that the amendment is in the best interests of people for whom treatment, care or support is provided under the licence.
- (2) However, the Minister may amend a licence on the Minister's own initiative only if—
- (a) the Minister gives the licensee written notice of the proposed amendment (a *proposed amendment notice*); and
  - (b) the proposed amendment notice states that written comments on the proposal may be made to the Minister before the end of a stated period of at least 28 days after the day the notice is given to the licensee; and
  - (c) the Minister considers any comments made in response to the proposed amendment notice.
- (3) Subsection (2) does not apply if the licensee agrees, in writing, to the amendment.
- (4) The amendment takes effect on—
- (a) the day the amendment notice is given to the licensee; or
  - (b) a later day stated in the notice.



## **230      Licence—amendment on application by licensee**

- (1) A licensee may apply to the Minister to amend a licence.

*Note 1*    If a form is approved under s 273 for an application, the form must be used.

*Note 2*    A fee may be determined under s 272 for an application.

- (2) The Minister must, not later than 28 days after receiving the application—
- (a) decide the application for amendment; and
  - (b) give the licensee written notice of the decision.
- (3) The Minister may amend the licence if satisfied on reasonable grounds that the amendment is in the best interests of people for whom treatment, care or support is provided under the licence.
- (4) The amendment takes effect on—
- (a) the day the written notice of amendment is given to the licensee;  
or
  - (b) a later day stated in the notice.

## **231      Licence—surrender**

- (1) A licensee may surrender a licence by giving the Minister—
- (a) written notice of the surrender; and
  - (b) the licence.

*Note*      If a form is approved under s 273 for this provision, the form must be used.

- (2) A surrender takes effect on—
- (a) the day the notice is given to the Minister; or
  - (b) a later day stated in the notice.

## **232 Licence—cancellation by notice**

- (1) The Minister may, by written notice (a ***cancellation notice***), cancel a licence if satisfied on reasonable grounds that the licensee has failed to comply with a condition of the licence.
- (2) However, the Minister may cancel a licence only if—
  - (a) the Minister gives the licensee written notice of the proposed cancellation (a ***proposed cancellation notice***); and
  - (b) the proposed cancellation notice states that written comments on the proposal may be made to the Minister before the end of a stated period of at least 28 days after the day the notice is given to the licensee; and
  - (c) the Minister considers any comments made in response to the proposed cancellation notice.
- (3) Subsection (2) does not apply if the licensee agrees, in writing, to the cancellation.
- (4) The cancellation takes effect on—
  - (a) the day the cancellation notice is given to the licensee; or
  - (b) a later day stated in the cancellation notice.

## **233 Licence—emergency cancellation**

- (1) Despite section 232, the Minister may, by written notice (an ***emergency cancellation notice***), cancel a licence if satisfied on reasonable grounds that circumstances exist in relation to the licence that give rise to an immediate risk of harm to the health or safety of people for whom treatment, care or support is provided under the licence.
- (2) An emergency cancellation notice must state—
  - (a) the reasons for the cancellation; and
  - (b) the facts that form the basis for the reasons; and

- (c) the details of the emergency cancellation.

**Example—details**

how and where the people who receive treatment, care or support under the licence are to receive the treatment, care or support after the cancellation

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (3) The cancellation takes effect on the day after the day the emergency cancellation notice is given to the licensee.

## **Part 13.3                      Private psychiatric facilities—    enforcement**

### **234                      Appointment of inspectors**

- (1) The director-general may appoint a person as an inspector for this chapter.

*Note 1*    For the making of appointments (including acting appointments), see the [Legislation Act](#), pt 19.3.

*Note 2*    In particular, a person may be appointed for a particular provision of a law (see [Legislation Act](#), s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see [Legislation Act](#), s 207).

- (2) An inspector must exercise functions under this chapter in accordance with the conditions of the appointment and any directions given to the inspector by the chief psychiatrist.

### **235                      Identity cards**

- (1) The director-general must give an inspector an identity card stating the person's name and that the person is an inspector.
- (2) The identity card must show—
  - (a) a recent photograph of the inspector; and
  - (b) the card's date of issue and expiry; and
  - (c) anything else prescribed by regulation.
- (3) A person commits an offence if the person—
  - (a) stops being an inspector; and
  - (b) does not return the person's identity card to the director-general as soon as practicable (but not later than 7 days) after the day the person stops being an inspector.

Maximum penalty: 1 penalty unit.

## 236 Powers of inspection

- (1) An inspector may, at any reasonable time, enter licensed premises and do 1 or more of the following in relation to the premises or anything at the premises:
  - (a) inspect the premises and equipment used at the premises in connection with the treatment, care or support of a person;
  - (b) inspect any book, document or other record that is in the possession of the occupier of the premises, or to which the occupier has access, relating to the conduct of the private psychiatric facility at the premises;
  - (c) require the occupier of the premises to give the inspector, within a reasonable time, a copy of any information, book, document or other record that is in the possession of the occupier, or to which the occupier has access, relating to the conduct of the private psychiatric facility at the premises.

*Note* The [Legislation Act](#), s 170 deals with the application of the privilege against self-incrimination.

- (2) An inspector who enters licensed premises under subsection (1) is not authorised to remain on the premises if, when asked to do so by the occupier of the premises, the inspector does not show the inspector's identity card to the occupier.
- (3) A person is not required to give records to an inspector under subsection (1) (c) if, when asked to do so by the person, the inspector does not show the inspector's identity card to the person.
- (4) In this section:  
**occupier**, of licensed premises, includes—
  - (a) a person reasonably believed to be an occupier of the licensed premises; and
  - (b) a person apparently in charge of the licensed premises.

**237 Failing to comply with requirement of inspector**

A person commits an offence if—

- (a) an inspector requires the person to give the inspector a copy of any information, book, document or other record under section 236 (1) (c); and
- (b) the person fails to comply with the requirement, within the time required.

Maximum penalty: 50 penalty units.

## Chapter 14      Mental health advisory council

### 238      Establishment of mental health advisory council

The mental health advisory council is established.

### 239      Functions of mental health advisory council

The mental health advisory council has the following functions:

- (a) advising the Minister about—
  - (i) emerging or urgent mental health issues; and
  - (ii) mental health service reforms; and
  - (iii) mental health policy; and
  - (iv) mental health legislative change; and
  - (v) anything else in relation to mental health requested by the Minister;
- (b) any other function given to the council under this Act.

### 240      Membership of mental health advisory council

- (1) The mental health advisory council is made up of at least 5, and not more than 7, members appointed by the Minister.

*Note 1* For the making of appointments (including acting appointments), see the [Legislation Act](#), pt 19.3.

*Note 2* In particular, a person may be appointed for a particular provision of a law (see [Legislation Act](#), s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see [Legislation Act](#), s 207).

*Note 3* Certain Ministerial appointments require consultation with an Assembly committee and are disallowable (see [Legislation Act](#), div 19.3.3).

- (2) In appointing members to the mental health advisory council, the Minister must, unless it is not reasonably practicable, ensure that the council includes—
- (a) someone who is or has been a person with a mental disorder or mental illness; and
  - (b) someone who is or has been a carer of a person with a mental disorder or mental illness; and
  - (c) someone with experience or expertise in primary mental health; and
  - (d) someone with current knowledge of scientific, evidence-based mental health research and practice; and
  - (e) someone with experience or expertise in mental health promotion and mental illness prevention and treatment, care or support.
- (3) A person must be appointed to the mental health advisory council for not longer than 3 years.

*Note* A person may be reappointed to a position if the person is eligible to be appointed to the position (see [Legislation Act](#), s 208 and dict, pt 1, def *appoint*).

## **241 Procedures of mental health advisory council**

- (1) Meetings of the mental health advisory council are to be held when and where it decides.
- (2) However, the mental health advisory council must meet at least once each quarter.
- (3) The mental health advisory council may conduct its proceedings (including its meetings) as it considers appropriate.
- (4) The mental health advisory council may publish its considerations as it considers appropriate.



## **Chapter 15      Interstate application of mental health laws**

### **Part 15.1      Preliminary**

#### **242      Purpose—ch 15**

The purpose of this chapter is to provide for—

- (a) the apprehension of people who are subject to certain interstate warrants or orders, or may otherwise be apprehended, under mental health legislation; and
- (b) the interstate transfer of people under mental health legislation; and
- (c) the treatment, care or support in the ACT of people subject to mental health orders or similar orders made in other States; and
- (d) the interstate operation of certain mental health orders.

#### **243      Definitions—ch 15**

In this chapter:

*authorised officer* means—

- (a) an authorised ambulance paramedic; or
- (b) a doctor; or
- (c) a mental health officer; or
- (d) a police officer.

*community care service* means a service in the ACT that provides treatment, care or support for a person with a mental disorder who is living in the community.

***corresponding law***—

- (a) means a law of another State that provides for the treatment, care or support of a person with a mental disorder or mental illness; and
- (b) includes a law of another State prescribed by regulation.

***interstate authorised person*** means a person prescribed by regulation.

***interstate community care facility*** means a facility in another State that, under a corresponding law, provides treatment, care or support for a person with a mental disorder.

*Note* See s 9 (Meaning of *mental disorder*).

***interstate community care service*** means a service in another State that, under a corresponding law, provides treatment, care or support for a person with a mental disorder who is living in the community.

***interstate involuntary treatment order*** means an order made under a corresponding law for the involuntary treatment of a person with a mental disorder or mental illness at an interstate mental health facility or in the community.

***interstate mental health facility*** means a hospital or other mental health facility in another State to which a person may be admitted under a corresponding law for treatment, care or support for mental illness.

***interstate mental health service*** means a service in another State that, under a corresponding law, provides treatment, care or support for a person with mental illness who is living in the community.

***interstate patient*** means a person who is subject to an interstate involuntary treatment order.

***mental health service*** means a service in the ACT that provides treatment, care or support for a person with mental illness who is living in the community.

**244 Authority to enter into agreements**

- (1) The Minister may enter into an agreement with a Minister of another State about any matter relating to the operation of this chapter or a corresponding law.
- (2) An agreement is a notifiable instrument.

*Note* A notifiable instrument must be notified under the [Legislation Act](#).

**245 Authorised officer and interstate authorised person may exercise certain functions**

- (1) An authorised officer or an interstate authorised person may, in relation to an interstate patient in the ACT, exercise any function conferred on the officer or person under a corresponding law or under an interstate involuntary treatment order.
- (2) A regulation may impose limits on—
  - (a) the people who may act under this section; and
  - (b) the treatment that may be given or functions that may be exercised under this section.

**246 Medication for person being transferred**

- (1) A person being transferred under this chapter may be given medication by an appropriately trained person if the appropriately trained person believes on reasonable grounds that—
  - (a) giving the medication is in the best interests of the safe and effective treatment, care or support of the person; and
  - (b) the medication has been prescribed by a doctor.
- (2) Details about medication given under this section must be included in the person's record.

## **Part 15.2                      Apprehension of people in breach of certain orders**

### **247                      Apprehension of interstate patient in breach of interstate involuntary treatment order**

- (1) An interstate patient who is in breach of an interstate involuntary treatment order may be apprehended in the ACT if—
  - (a) the interstate patient would be subject to apprehension under a corresponding law of the State that issued the interstate involuntary treatment order for the patient; or
  - (b) a warrant or other document issued under a corresponding law authorises the apprehension of the patient.
- (2) A person may be apprehended under this section by—
  - (a) an authorised officer; or
  - (b) an interstate authorised person.

*Note*        See s 263 (Powers of entry and apprehension) and s 264 (Powers of search and seizure).
- (3) A person who apprehends an interstate patient under this section must as soon as reasonably practicable—
  - (a) tell the patient the reason for the apprehension; and
  - (b) ensure that the patient has adequate opportunity and assistance to notify a relative or friend of the apprehension; and
  - (c) tell an interstate mental health facility in the State that issued the interstate involuntary treatment order about the apprehension; and
  - (d) transfer the patient to—
    - (i) an interstate mental health facility in the State that issued the interstate involuntary treatment order for the patient; or

- (ii) an approved mental health facility to determine whether the patient requires treatment before being transferred.

**248      Apprehension of person in breach of mental health order  
or forensic mental health order**

- (1) A person (an *ACT patient*) who is in breach of a mental health order or forensic mental health order may be apprehended in another State if—
  - (a) the ACT patient would be subject to apprehension under this Act if the patient were in the ACT; and
  - (b) the apprehension is allowed under a corresponding law of the other State.
- (2) The ACT patient may be apprehended in the other State by—
  - (a) an authorised officer; or
  - (b) an interstate authorised person.

*Note*      See s 263 (Powers of entry and apprehension) and s 264 (Powers of search and seizure).
- (3) A person who apprehends an ACT patient under this section must as soon as reasonably practicable—
  - (a) tell the patient the reason for the apprehension; and
  - (b) transfer the patient to—
    - (i) an approved mental health facility or approved community care facility in the ACT; or
    - (ii) an interstate mental health facility to determine whether the patient requires treatment before being transferred.

- (4) As soon as reasonably practicable after an ACT patient is transferred under subsection (3) (b) (i), the person in charge of the facility must—
- (a) ensure that the patient has adequate opportunity and assistance to notify a relative or friend of the apprehension and transfer; and
  - (b) take all reasonable steps to tell at least 1 of the following of the apprehension and transfer:
    - (i) if the patient has a nominated person—the nominated person;
    - (ii) if the patient has a guardian under the *Guardianship and Management of Property Act 1991*—the guardian;
    - (iii) if the patient has an attorney under the *Powers of Attorney Act 2006*—the attorney;
    - (iv) if a health attorney is involved in the treatment, care or support of the patient—the health attorney;
    - (v) if the patient is a child—a person with parental responsibility for the child under the *Children and Young People Act 2008*.

## Part 15.3                      Transfer of certain people from ACT

### 249            Interstate transfer—person under psychiatric treatment order or community care order

- (1) This section applies if—
  - (a) a psychiatric treatment order or a community care order is in force in relation to a person; and
  - (b) the person is receiving treatment, care or support under the order—
    - (i) in an approved mental health facility or from a mental health service; or
    - (ii) in an approved community care facility or from a community care service.
- (2) The relevant person may apply to the ACAT for an interstate transfer order if the relevant person believes on reasonable grounds that the ACAT could reasonably make the order under subsection (5).
- (3) The ACAT must hear and decide the application as soon as practicable.
- (4) Before making an interstate transfer order in relation to a person, the ACAT must take into account—
  - (a) the views and wishes of the person in relation to the proposed order, so far as they can be found out; and
  - (b) as far as practicable, the views in relation to the proposed order of the following:
    - (i) if the person has a nominated person—the nominated person;
    - (ii) if the person has a guardian under the *Guardianship and Management of Property Act 1991*—the guardian;

- (iii) if the person has an attorney under the *Powers of Attorney Act 2006*—the attorney;
  - (iv) if a health attorney is involved in the treatment, care or support of the person—the health attorney;
  - (v) if the person is a child—each person with parental responsibility for the child under the *Children and Young People Act 2008*, division 1.3.2 (Parental responsibility);
  - (vi) if the person has a carer—the carer.
- (5) The ACAT may make an interstate transfer order if—
  - (a) the ACAT believes on reasonable grounds that the order is in the best interests of the safe and effective treatment, care or support of the person; and
  - (b) either—
    - (i) transferring the person to an interstate mental health facility or interstate community care facility is allowed under a corresponding law; or
    - (ii) transferring the responsibility to provide treatment, care or support for the person to an interstate mental health service or interstate community care service is allowed under a corresponding law; and
  - (c) the person in charge of the interstate facility or service agrees to the transfer.
- (6) As soon as practicable after making an order under subsection (5), the ACAT must—
  - (a) give a copy of the order to—
    - (i) the person; and
    - (ii) the chief psychiatrist; and



- (iii) the person in charge of the interstate mental health facility or service; and
  - (b) as far as practicable, notify the people mentioned in subsection (4) (b) that an order has been made.
- (7) When the chief psychiatrist is given a copy of the order under subsection (6), the chief psychiatrist must ensure that a copy of the person's record is given to the person in charge of the interstate mental health facility or service.
- (8) A person may be taken to an interstate mental health facility or service under an order under subsection (5) by—
  - (a) an authorised officer; or
  - (b) an interstate authorised person.

*Note* See s 263 (Powers of entry and apprehension) and s 264 (Powers of search and seizure).

- (9) In this section:

***interstate transfer order*** means an order to—

- (a) transfer a person to an interstate mental health facility or an interstate community care facility; or
- (b) transfer the responsibility to provide treatment, care or support for a person to an interstate mental health service or interstate community care service.

***relevant person***, means—

- (a) if a psychiatric treatment order is in force in relation to a person—the chief psychiatrist; or
- (b) if a community care order is in force in relation to a person—the care coordinator.

**250 Interstate transfer—person under forensic psychiatric treatment order or forensic community care order**

- (1) This section applies if—
  - (a) a forensic psychiatric treatment order or a forensic community care order is in force in relation to a person; and
  - (b) the person is receiving treatment, care or support under the order—
    - (i) in an approved mental health facility or from a mental health service; or
    - (ii) in an approved community care facility or from a community care service.
- (2) The relevant person may apply to the ACAT for an interstate transfer order if the relevant person believes on reasonable grounds that the ACAT could reasonably make the order under subsection (5).
- (3) The ACAT must hear and decide the application as soon as practicable.
- (4) Before making an interstate transfer order in relation to a person, the ACAT must take into account—
  - (a) the views and wishes of the person in relation to the proposed order, so far as they can be found out; and
  - (b) as far as practicable, the views in relation to the proposed order of the following:
    - (i) if the person has a nominated person—the nominated person;
    - (ii) if the person has a guardian under the *Guardianship and Management of Property Act 1991*—the guardian;
    - (iii) if the person has an attorney under the *Powers of Attorney Act 2006*—the attorney;

- (iv) if a health attorney is involved in the treatment, care or support of the person—the health attorney;
  - (v) if the person is a child—each person with parental responsibility for the child under the *Children and Young People Act 2008*, division 1.3.2 (Parental responsibility);
  - (vi) if the person is a detainee, a person released on licence, or a person serving a community-based sentence—the corrections director-general;
  - (vii) if the person is covered by a bail order that includes a condition that the person accept supervision under the *Bail Act 1992*, section 25 (4) (e) or section 25A—the director-general responsible for the supervision of the person under the *Bail Act 1992*;
  - (viii) if the person is a child covered by a bail order that includes a condition that the child accept supervision under the *Bail Act 1992*, section 26 (2)—the CYP director-general;
  - (ix) if the person is a young detainee or a young offender serving a community-based sentence—the CYP director-general;
  - (x) if the person has a carer—the carer.
- (5) The ACAT may make an interstate transfer order if—
- (a) the ACAT believes on reasonable grounds that the proposed order is in the best interests of the safe and effective treatment, care or support of the person; and
  - (b) either—
    - (i) transferring the person to an interstate mental health facility or interstate community care facility is allowed under a corresponding law; or

- (ii) transferring the responsibility to provide treatment, care or support for the person to an interstate mental health service or interstate community care service is allowed under a corresponding law; and
    - (c) the person in charge of the interstate facility or service agrees to the transfer.
  - (6) As soon as practicable after making an order under subsection (5), the ACAT must—
    - (a) give a copy of the order to—
      - (i) the person; and
      - (ii) the relevant person; and
      - (iii) the person in charge of the interstate facility or service; and
    - (b) as far as practicable, notify the people mentioned in subsection (4) (b) that an order has been made.
  - (7) When the relevant person is given a copy of the order under subsection (6), the relevant person must ensure that a copy of the person's record is given to the person in charge of the interstate facility or service.
  - (8) A person may be taken to an interstate facility or service under an order under subsection (5) by—
    - (a) an authorised officer; or
    - (b) an interstate authorised person.
- Note* See s 263 (Powers of entry and apprehension) and s 264 (Powers of search and seizure).
- (9) In this section:  
***interstate transfer order*** means an order to—
  - (a) transfer a person to an interstate mental health facility or an interstate community care facility; or

- (b) transfer the responsibility to provide treatment, care or support for a person to an interstate mental health service or interstate community care service.

***relevant person***, means—

- (a) if a forensic psychiatric treatment order is in force in relation to a person—the chief psychiatrist; or
- (b) if a forensic community care order is in force in relation to a person—the care coordinator.

## **251      Transfer to interstate mental health facility—emergency detention**

- (1) This section applies if—
  - (a) a person is detained under chapter 6 (Emergency detention); and
  - (b) the person is being assessed or receiving treatment, care or support under that chapter.
- (2) The chief psychiatrist may direct that the person be transferred to an interstate mental health facility if—
  - (a) the chief psychiatrist believes on reasonable grounds that the transfer is in the best interests of the safe and effective treatment, care or support of the person; and
  - (b) transferring the person to an interstate mental health facility is allowed under a corresponding law; and
  - (c) the person in charge of the interstate mental health facility agrees to the transfer.

- (3) Before giving a direction under subsection (2), the chief psychiatrist must—
- (a) as far as practicable, notify the following that a direction under this section is being considered:
    - (i) if the person has a nominated person—the nominated person;
    - (ii) if the person has a guardian under the *Guardianship and Management of Property Act 1991*—the guardian;
    - (iii) if the person has an attorney under the *Powers of Attorney Act 2006*—the attorney;
    - (iv) if a health attorney is involved in the treatment, care or support of the person—the health attorney;
    - (v) if the person is a child—each person with parental responsibility for the child under the *Children and Young People Act 2008*, division 1.3.2 (Parental responsibility);
    - (vi) if the person has a legal representative—the person’s legal representative;
    - (vii) if the person has a carer—the carer; and
  - (b) take into account—
    - (i) the views and wishes of the person in relation to the proposed direction, so far as they can be found out; and
    - (ii) as far as practicable, the views in relation to the proposed direction of the people notified under paragraph (a).
- (4) As soon as practicable after giving a direction under subsection (2), the chief psychiatrist must—
- (a) give a copy of the direction to—
    - (i) the person; and

- (ii) the person in charge of the interstate mental health facility;  
and
  - (b) as far as practicable, notify the people mentioned in subsection (3) (a) that a direction has been given; and
  - (c) ensure that a copy of the person's record is given to the person in charge of the interstate mental health facility.
- (5) A person may be taken to an interstate mental health facility under a direction under subsection (2) by—
- (a) an authorised officer; or
  - (b) an interstate authorised person.

*Note* See s 263 (Powers of entry and apprehension) and s 264 (Powers of search and seizure).

## **252 Interstate transfer—when ACT order stops applying**

If a person or responsibility for a person is transferred under this part, the person stops being subject to a psychiatric treatment order or community care order made under this Act if—

- (a) the person is admitted to an interstate mental health facility or an interstate community care facility; or
- (b) the person is accepted into the care of an interstate mental health service or an interstate community care service; or
- (c) an interstate involuntary treatment order is made in relation to the person.

## **Part 15.4                      Transfer of certain people to ACT**

### **253                      Transfer of interstate patient to approved mental health facility**

- (1) An application may be made to the chief psychiatrist for an interstate patient, who is subject to an interstate involuntary treatment order that allows for detention at an interstate mental health facility, to transfer the interstate patient to an approved mental health facility in the ACT.
- (2) The chief psychiatrist may agree to the transfer if the chief psychiatrist believes on reasonable grounds that the transfer to the ACT is—
  - (a) in the best interests of the safe and effective treatment, care or support of the interstate patient; and
  - (b) allowed under a corresponding law.

### **254                      Transfer of responsibility to provide treatment, care or support in the community for interstate patient**

- (1) An application may be made to the chief psychiatrist to transfer the responsibility to provide treatment, care or support for an interstate patient, who is subject to an interstate involuntary treatment order that allows treatment in the community, to the chief psychiatrist.
- (2) The chief psychiatrist may agree to the transfer if the chief psychiatrist believes on reasonable grounds that the transfer of responsibility is—
  - (a) in the best interests of the safe and effective treatment, care or support of the interstate patient; and
  - (b) allowed under a corresponding law.



**255      Transfer of person apprehended in another State to  
approved mental health facility**

- (1) A person apprehended in another State under a corresponding law may be taken to an approved mental health facility in the ACT by an authorised officer or interstate authorised person if the authorised officer or person believes on reasonable grounds that being taken to an approved mental health facility in the ACT is—
- (a) in the best interests of the safe and effective treatment, care or support of the person; and
  - (b) allowed under a corresponding law.

*Note*      See s 263 (Powers of entry and apprehension) and s 264 (Powers of search and seizure).

- (2) Chapter 6 (Emergency detention) applies in relation to a person who is apprehended under this section, as if the person had been apprehended under section 80 (Apprehension).

## **Part 15.5                      Interstate operation of certain orders**

### **256                      Mental health order relating to interstate person**

- (1) A mental health order under this Act may be made in relation to a person even though the person does not usually live in the ACT, if—
  - (a) the facility or service providing treatment, care or support to the person is located in the ACT; and
  - (b) the order is allowed under a corresponding law of the State in which the person usually lives.
- (2) However, a restriction order mentioned in section 60 (Criteria for making restriction order with psychiatric treatment order) may only be made for a person who does not usually live in the ACT in relation to the person's actions within the ACT.

### **257                      Implementing interstate involuntary treatment order for temporary ACT resident**

- (1) This section applies in relation to a person who—
  - (a) temporarily lives in the ACT; and
  - (b) is subject to an interstate involuntary treatment order that makes provision for treatment, care or support in the community.
- (2) The person may be given treatment, care or support in the ACT under the interstate involuntary treatment order if the chief psychiatrist is satisfied on reasonable grounds that—
  - (a) the person has a mental illness; and
  - (b) the person accepts the treatment, care or support; and
  - (c) treatment, care or support in the ACT—
    - (i) is expected to be needed for a period of not more than 4 weeks at a time; and

- (ii) is in the best interests of the person.
- (3) Treatment, care or support under subsection (2) may be given by—
  - (a) an authorised officer if allowed to do so under a corresponding law of the State that issued the interstate involuntary treatment order; or
  - (b) an interstate authorised person.

## Chapter 16 Notification and review of decisions

### 258 Meaning of *reviewable decision*—ch 16

In this chapter:

*reviewable decision* means a decision mentioned in schedule 1, column 3 under a provision of this Act mentioned in column 2 in relation to the decision.

### 259 Reviewable decision notices

If a person makes a reviewable decision, the person must give a reviewable decision notice to each entity mentioned in schedule 1, column 4 in relation to the decision.

*Note 1* The person must also take reasonable steps to give a reviewable decision notice to any other person whose interests are affected by the decision (see [ACT Civil and Administrative Tribunal Act 2008](#), s 67A).

*Note 2* The requirements for reviewable decision notices are prescribed under the [ACT Civil and Administrative Tribunal Act 2008](#).

### 260 Applications for review

The following may apply to the ACAT for a review of a reviewable decision:

- (a) an entity mentioned in schedule 1, column 4 in relation to the decision;
- (b) any other person whose interests are affected by the decision.

*Note* If a form is approved under the [ACT Civil and Administrative Tribunal Act 2008](#) for the application, the form must be used.

## Chapter 17      Miscellaneous

### 261      Approval of mental health facilities

- (1) The Minister may approve a facility as a mental health facility for this Act.
- (2) An approval is a notifiable instrument.

*Note 1*    A notifiable instrument must be notified under the [Legislation Act](#).

*Note 2*    Power to make a statutory instrument includes power to make different provision for different categories (see [Legislation Act](#), s 48).

### 262      Approval of community care facilities

- (1) The Minister may approve a facility as a community care facility for this Act.
- (2) Before approving a community care facility, the Minister must consult with any other Minister responsible for the operation of the facility.
- (3) An approval is a notifiable instrument.

*Note 1*    A notifiable instrument must be notified under the [Legislation Act](#).

*Note 2*    Power to make a statutory instrument includes power to make different provision for different categories (see [Legislation Act](#), s 48).

### 263      Powers of entry and apprehension

- (1) This section applies to a person (an *authorised person*) who is authorised to apprehend, remove, detain or take a person to a place under any of the following provisions:
  - (a) section 44 (Executing removal order);
  - (b) section 77 (Contravention of mental health order);
  - (c) section 78 (Contravention of mental health order—absconding from facility);

- (d) section 80 (Apprehension);
  - (e) section 120 (Revocation of leave granted by ACAT);
  - (f) section 123 (Revocation of leave granted by relevant official);
  - (g) section 124 (Contravention of forensic mental health order);
  - (h) section 125 (Contravention of forensic mental health order—absconding from facility);
  - (i) section 144 (Revocation of leave for correctional patients);
  - (j) section 144D (Power to apprehend if person escapes from secure mental health facility);
  - (k) section 247 (Apprehension of interstate patient in breach of interstate involuntary treatment order);
  - (l) section 248 (Apprehension of person in breach of mental health order or forensic mental health order);
  - (m) section 249 (Interstate transfer—person under psychiatric treatment order or community care order);
  - (n) section 250 (Interstate transfer—person under forensic psychiatric treatment order or forensic community care order);
  - (o) section 251 (Transfer to interstate mental health facility—emergency detention);
  - (p) section 255 (Transfer of person apprehended in another State to approved mental health facility).
- (2) The authorised person—
- (a) may, with necessary and reasonable assistance and minimum force, enter any premises to apprehend, remove or take the person to a place; and
  - (b) may use necessary and reasonable assistance to enter premises and apprehend the person; and

- (c) must use the minimum amount of force necessary to apprehend the person and remove the person to—
  - (i) an approved mental health facility; or
  - (ii) another place where the person may be detained for treatment, care or support.

## **264 Powers of search and seizure**

- (1) This section applies to a person (an *authorised person*) who is authorised to apprehend, remove, detain or take a person to a place under any of the following provisions:
  - (a) section 44 (Executing removal order);
  - (b) section 65 (Powers in relation to psychiatric treatment order);
  - (c) section 73 (Powers in relation to community care order);
  - (d) section 77 (Contravention of mental health order);
  - (e) section 78 (Contravention of mental health order—absconding from facility);
  - (f) section 80 (Apprehension);
  - (g) section 85 (Authorisation of involuntary detention);
  - (h) section 107 (Powers in relation to forensic psychiatric treatment order);
  - (i) section 114 (Powers in relation to forensic community care order);
  - (j) section 120 (Revocation of leave granted by ACAT);
  - (k) section 123 (Revocation of leave granted by relevant official);
  - (l) section 124 (Contravention of forensic mental health order);
  - (m) section 125 (Contravention of forensic mental health order—absconding from facility);

- (n) section 144 (Revocation of leave for correctional patients);
  - (o) section 144D (Power to apprehend if person escapes from secure mental health facility);
  - (p) section 247 (Apprehension of interstate patient in breach of interstate involuntary treatment order);
  - (q) section 248 (Apprehension of person in breach of mental health order or forensic mental health order);
  - (r) section 249 (Interstate transfer—person under psychiatric treatment order or community care order);
  - (s) section 250 (Interstate transfer—person under forensic psychiatric treatment order or forensic community care order);
  - (t) section 251 (Transfer to interstate mental health facility—emergency detention);
  - (u) section 255 (Transfer of person apprehended in another State to approved mental health facility).
- (2) The authorised person—
- (a) may carry out a scanning search, frisk search or ordinary search of the person if there are reasonable grounds for believing that the person is carrying anything—
    - (i) that would present a danger to the authorised person or another person; or
    - (ii) that could be used to assist the person to escape the authorised person’s custody; and
  - (b) may seize and detain a thing found in a search conducted under paragraph (a).
- (3) The authorised person must make a written record of anything seized under this section.



- (4) A thing seized under this section must be returned to its owner, or reasonable compensation must be paid to the owner by the Territory for the loss of the thing, unless—
- (a) a prosecution for an offence against a territory law in connection with the thing is begun within 1 year after the day the seizure is made and the thing is required to be produced in evidence in the prosecution; or
  - (b) an application for the forfeiture of the thing is made to a court under the *Confiscation of Criminal Assets Act 2003* or another territory law within 1 year after the day the seizure is made; or
  - (c) all proceedings in relation to the offence with which the seizure was connected have ended and the court has not made an order about the thing.
- (5) However, subsection (4) does not apply to a thing if the authorised person believes on reasonable grounds that—
- (a) the only practical use of the thing in relation to the premises where it was seized would be an offence against this Act; or
  - (b) possession of the thing would be an offence; or
  - (c) possession of the thing would present a serious risk or threat to a person.
- (6) In this section:
- frisk search*** means—
- (a) a search of a person conducted by quickly running the hands over the person's outer garments; and
  - (b) an examination of anything worn or carried by the person that is conveniently and voluntarily removed by the person.

***ordinary search*** means a search of a person, or of articles in a person's possession, that may include—

- (a) requiring the person to remove the person's overcoat, coat or jacket and any gloves, shoes, hat or bag; and
- (b) an examination of those items.

***scanning search*** means a search of a person by electronic or other means that does not require the person to remove the person's clothing or to be touched by someone else.

## **265      Protection of officials from liability**

- (1) An official is not civilly liable for conduct engaged in honestly and without recklessness—
  - (a) in the exercise of a function under this Act; or
  - (b) in the reasonable belief that the conduct was in the exercise of a function under this Act.
- (2) Any civil liability that would, apart from this section, attach to the official attaches instead to the Territory.
- (3) In this section:

***conduct*** means an act or omission to do an act.

***official*** means—

- (a) the chief psychiatrist; or
- (b) the care coordinator; or
- (c) a mental health officer; or

- (d) anyone else exercising a function under this Act.

*Note 1* An official visitor exercising a function under this Act is protected from civil liability by the [Official Visitor Act 2012](#), s 24.

*Note 2* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see [Legislation Act](#), s 104).

## **266 Report and record of use of restraint etc**

- (1) This section applies if—
- (a) an authorised person exercises a power under section 263 or section 264 in relation to a person (the ***subject person***); and
  - (b) in the course of exercising the power the authorised person—
    - (i) restrains, involuntarily secludes or forcibly gives medication to the subject person; or
    - (ii) becomes aware of anything else that may have an adverse effect on the subject person’s physical or mental health; and
  - (c) the subject person is taken to a facility.
- (2) The authorised person must give a report about the matter mentioned in subsection (1) (b) to the person in charge of the facility.
- Note* If a form is approved under s 273 for this provision, the form must be used.
- (3) The person in charge of the facility must—
- (a) enter the report in the subject person’s record; and
  - (b) if the facility is a community care facility or mental health facility—keep a register of any restraint, involuntary seclusion or forcible giving of medication included in the report.

- (4) In this section:

***facility*** means a community care facility, mental health facility and an interstate facility.

***interstate facility*** means an interstate community care facility and an interstate mental health facility under chapter 15 (Interstate application of mental health laws).

## **267      Appeals from ACAT to Supreme Court**

- (1) An appeal to the Supreme Court from a decision of the ACAT in a proceeding may be brought by—
- (a) someone in relation to whom the decision was made; or
  - (b) someone who appeared, or was entitled to appear under section 190 (1) (Appearance), before the ACAT in the proceeding; or
  - (c) the discrimination commissioner; or
  - (d) anyone else with the court's leave.

*Note*      See the [ACT Civil and Administrative Tribunal Act 2008](#), pt 8.

- (2) The [Magistrates Court Act 1930](#), section 214 (3) and (4) (Appeals in cases other than civil cases) applies in relation to an appeal under this section as if it were an appeal mentioned in that Act, section 214 (1).
- (3) The [ACT Civil and Administrative Tribunal Act 2008](#), section 86 (Appeal to Supreme Court) and section 87 (Sending documents and things to Supreme Court) do not apply to a decision or appeal to which this section applies.

**268 Relationship with Guardianship and Management of Property Act**

- (1) Despite anything in the *Guardianship and Management of Property Act 1991* or an order appointing a guardian, a guardian appointed for a person under that Act—
  - (a) is not entitled to give consent to electroconvulsive therapy or psychiatric surgery; and
  - (b) if the person is subject to a community care order—is not entitled to decide anything for the person contrary to any determinations or decisions made in relation to the person by the care coordinator under the community care order (or any related restriction order).
- (2) Despite anything in the *Guardianship and Management of Property Act 1991*, section 70 (ACAT may consent to prescribed medical procedures), the ACAT must not, while exercising its jurisdiction under the Act—
  - (a) make an order in relation to any consent to electroconvulsive therapy or psychiatric surgery; and
  - (b) make an order in relation to a person contrary to any community care order (or restriction order) made in relation to the person.

*Note* In certain circumstances a guardian can consent to a person's treatment, care or support for mental illness (see *Guardianship and Management of Property Act 1991*, s 70A).

**269 Relationship with Powers of Attorney Act**

Despite anything in the *Powers of Attorney Act 2006* or an instrument creating a power of attorney, an attorney of a person appointed under a power of attorney under that Act—

- (a) is not entitled to give consent to electroconvulsive therapy or psychiatric surgery; and

- (b) if the person is subject to a community care order—is not entitled to decide anything for the person contrary to any determinations or decisions made in relation to the person by the care coordinator under the community care order (or any related restriction order).

*Note*      In certain circumstances an attorney can consent to a person's treatment, care or support for mental illness (see [Powers of Attorney Act 2006](#), s 46A).

## **270      Certain rights unaffected**

Nothing in this Act prevents a person in relation to whom no ACAT order is in force—

- (a) refusing to receive particular treatment, care or support at a mental health facility; or
- (b) discharging himself or herself from the facility.

## **271      Review of certain provisions**

- (1) The Minister must invite public submissions and review the operation of the following provisions of this Act 3 years after the day this section commences:
  - (a) section 58 (Psychiatric treatment order);
  - (b) section 66 (Community care order);
  - (c) section 101 (Forensic psychiatric treatment order);
  - (d) section 102 (Content of forensic psychiatric treatment order);
  - (e) section 108 (Forensic community care order).
- (2) The Minister must present a report of the review to the Legislative Assembly not later than 4 years after the day this section commences.
- (3) Subsections (1) and (2) and this subsection expire 5 years after the day this section commences.

- (4) The Minister must—
- (a) 18 months after the day this section commences, invite public submissions and review the maximum further period of detention under section 85 (3) (Authorisation of involuntary detention); and
  - (b) present a report of the review to the Legislative Assembly not later than 1 year after the day the review commences.
- (5) Subsection (4) and this subsection expire 3 years after the day this section commences.

## **272 Determination of fees**

- (1) The Minister may determine fees for this Act.

*Note* The [Legislation Act 2001](#) contains provisions about the making of determinations and regulations relating to fees (see pt 6.3).

- (2) A determination is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act 2001](#).

## **273 Approved forms**

- (1) The Minister may approve forms for this Act.
- (2) If the Minister approves a form for a particular purpose, the approved form must be used for that purpose.

*Note* For other provisions about forms, see the [Legislation Act](#), s 255.

- (3) An approved form is a notifiable instrument.

*Note* A notifiable instrument must be notified under the [Legislation Act 2001](#).

## **274 Regulation-making power**

The Executive may make regulations for this Act.

*Note* Regulations must be notified, and presented to the Legislative Assembly, under the [Legislation Act 2001](#).

## Schedule 1      Reviewable decisions

(see ch 16)

column 1 item	column 2 section	column 3 decision	column 4 entity
1	121	refuse to grant leave	applicant for leave
2	122	refuse to grant leave	applicant for leave
3	123	revoke leave	applicant for leave
4	143	refuse to grant leave	applicant for leave
5	144	revoke leave	applicant for leave
6	226	refuse to issue licence	applicant for licence
7	227	refuse to renew licence	applicant for renewal of licence
8	228	refuse to transfer licence	licensee proposed new licensee
9	229	amend licence	licensee
10	230	refuse to amend licence	licensee
11	232	cancel licence	licensee
12	233	cancel licence	licensee



## Dictionary

(see s 3)

*Note 1* The [Legislation Act](#) contains definitions and other provisions relevant to this Act.

*Note 2* For example, the [Legislation Act](#), dict, pt 1, defines the following terms:

- ACAT
- adult
- child
- correctional centre
- corrections officer
- detention place
- director-general (see s 163)
- director of public prosecutions
- discrimination commissioner
- doctor
- domestic partner (see s 169 (1))
- expire
- lawyer
- Magistrates Court
- nurse
- nurse practitioner
- parent
- police officer
- proceeding
- public advocate
- registrar
- reviewable decision notice
- State
- Supreme Court
- victims of crime commissioner
- writing.

***advance agreement***—see section 26.

***advance consent direction***—see section 27.

***affected person***, in relation to a forensic patient—see section 128.

***affected person register***, for part 7.2 (Affected people)—see section 130.

***approved community care facility*** means a facility approved under section 262.

***approved mental health facility*** means a facility approved under section 261.

***assessment*** means a psychiatric or psychological assessment.

***assessment order*** means an order made under section 37.

***authorised ambulance paramedic*** means a member of the ambulance service—

- (a) employed as a paramedic; and
- (b) authorised by the chief officer (ambulance service) to apprehend people with a mental disorder or mental illness.

***authorised officer***, for chapter 15 (Interstate application of mental health laws)—see section 243.

***care and protection order***—see the [Children and Young People Act 2008](#), section 422.

***care coordinator*** means the care coordinator appointed under section 204.

***carer***—see section 12.

***chief psychiatrist*** means the Chief Psychiatrist appointed under section 196.

***close relative or close friend***, of a person—see the [Guardianship and Management of Property Act 1991](#), section 32A.

***community-based sentence***—see the [Crimes \(Sentence Administration\) Act 2005](#), section 264.

***community care facility***—

## (a) means—

- (i) a facility, or part of a facility, for the treatment, care or support, protection, rehabilitation or accommodation of people with a mental disorder; or
- (ii) a prescribed psychiatric facility or a prescribed part of a psychiatric facility; but

## (b) does not include a correctional centre or detention place.

***community care order*** means an order made under section 66.

***community care service***, for chapter 15 (Interstate application of mental health laws)—see section 243.

***coordinating director-general*** means the director-general appointed under section 215.

***correctional patient***—see section 135.

***corrections director-general*** means the director-general responsible for the [Corrections Management Act 2007](#).

***corrections order***, for division 7.1.8 (Leave for detained people)—see section 118.

***corresponding law***, for chapter 15 (Interstate application of mental health laws)—see section 243.

***Crimes Act*** means the [Crimes Act 1900](#).

***CYP director-general*** means the director-general responsible for the [Children and Young People Act 2008](#).

***decision-making capacity***—see section 7.

***detainee***—see the [Corrections Management Act 2007](#), section 6.

***director-general***, for part 7.2 (Affected people)—see section 127.

***electroconvulsive therapy***—see section 145.

***electroconvulsive therapy order***—see section 145.

***eligible person***, for part 13.2 (Licences)—see section 223.

***emergency assessment order*** means an order made under section 39.

***emergency electroconvulsive therapy order***—see section 145.

***entitled person***—see section 208.

***forensic community care order*** means an order made under section 108.

***forensic mental health order*** means a forensic psychiatric treatment order or a forensic community care order.

***forensic patient***, for part 7.2 (Affected people)—see section 127.

***forensic psychiatric treatment order*** means an order made under section 101.

***health attorney***—see the [Guardianship and Management of Property Act 1991](#), section 32B (1).

***health director-general***, for part 8.4 (Leave for correctional patients)—see section 142A.

***information sharing entity***, for part 12.5 (Sharing information—government agencies)—see section 218.

***information sharing protocol***, for part 12.5 (Sharing information—government agencies)—see section 219.

***information statement*** means an information statement mentioned in section 15 (1) (b).

***inspector***, for chapter 13 (Private psychiatric facilities)—see section 222.

***interim care and protection order***—see the [Children and Young People Act 2008](#), section 433.

***interim therapeutic protection order***—see the [Children and Young People Act 2008](#), section 543.

***interstate authorised person***, for chapter 15 (Interstate application of mental health laws)—see section 243.

***interstate community care facility***, for chapter 15 (Interstate application of mental health laws)—see section 243.

***interstate community care service***, for chapter 15 (Interstate application of mental health laws)—see section 243.

***interstate involuntary treatment order***, for chapter 15 (Interstate application of mental health laws)—see section 243.

***interstate mental health facility***, for chapter 15 (Interstate application of mental health laws)—see section 243.

***interstate mental health service***, for chapter 15 (Interstate application of mental health laws)—see section 243.

***interstate patient***, for chapter 15 (Interstate application of mental health laws)—see section 243.

***licence***, for chapter 13 (Private psychiatric facilities)—see section 222.

***licensed premises***, for chapter 13 (Private psychiatric facilities)—see section 222.

***licensee***, for chapter 13 (Private psychiatric facilities)—see section 222.

***mental disorder***—see section 9.

***mental health facility***—

- (a) means a facility for the treatment, care or support, rehabilitation or accommodation of people with a mental illness; and
- (b) includes a psychiatric facility.

***mental health officer*** means a person appointed as a mental health officer under section 201.

***mental health order*** means a psychiatric treatment order, a community care order or a restriction order.

***mental health professional*** means a doctor, nurse, psychiatrist, psychologist, social worker or therapist (including occupational therapist) or other person who provides services for people with a mental disorder or mental illness.

***mental health service***, for chapter 15 (Interstate application of mental health laws)—see section 243.

***mental illness***—see section 10.

***mental impairment***—see the [Criminal Code](#), section 27.

***nominated person*** means a person nominated under section 19.

***non-presidential member***, of the ACAT—see the [ACT Civil and Administrative Tribunal Act 2008](#), dictionary.

***official visitor***—see section 208.

***president***, of the ACAT—see the [ACT Civil and Administrative Tribunal Act 2008](#), dictionary.

***presidential member***, of the ACAT—see the [ACT Civil and Administrative Tribunal Act 2008](#), dictionary.

***principal official visitor*** means the principal official visitor appointed under section 210.

***private psychiatric facility***, for chapter 13 (Private psychiatric facilities)—see section 222.

***psychiatric facility*** means—

- (a) a hospital or other facility conducted by the Territory for the treatment, care, support, rehabilitation or accommodation of people who have a mental illness; or
- (b) a private psychiatric facility licensed under chapter 13.

***psychiatric surgery***—see section 145.

***psychiatric treatment order*** means an order made under section 58.

**psychiatrist** means a doctor who—

- (a) is registered under the [Health Practitioner Regulation National Law \(ACT\)](#) to practise in the specialty of psychiatry; or
- (b) meets the requirements prescribed by regulation.

**publish**, for part 7.2 (Affected people)—see section 127.

**registered affected person**, in relation to a forensic patient—see section 129.

**referring officer**, in relation to a person, means—

- (a) the police officer—
  - (i) who arrests the person in connection with an offence; or
  - (ii) who is satisfied that there are sufficient grounds on which to charge the person in connection with an offence; or
  - (iii) who charges the person in connection with an offence; or
- (b) a member of the staff of the director of public prosecutions who is responsible for the prosecution of an offence against the person; or
- (c) if the person is required to accept supervision by someone else as a condition of bail under the [Bail Act 1992](#)—that other person.

*Note* Under the [Bail Act 1992](#), s 25 (4) and s 26 (2), an adult may be supervised by the corrections director-general and a child may be supervised by the CYP director-general.

**relative**, in relation to a person, means a domestic partner, parent, guardian, grandparent, uncle, aunt, brother, sister, half-brother, half-sister, cousin or child (being a child over the age of 18 years) of the person.

*Note* **Domestic partner**—see the [Legislation Act](#), s 169.

**relevant director-general**, for part 8.4 (Leave for correctional patients)—see section 142A.

**relevant information**, for part 12.5 (Sharing information—government agencies)—see section 218.

**relevant official**—

- (a) for a mental health order, for chapter 5 (Mental health orders)—see section 50; or
- (b) for a forensic mental health order, for part 7.1 (Forensic mental health orders)—see section 93.

**relevant person**—

- (a) for a mental health order application, for chapter 5 (Mental health orders)—see section 50; and
- (b) for a forensic mental health order application, for part 7.1 (Forensic mental health orders)—see section 93.

**representative**, of a treating team, for part 3.3 (Advance agreements and advance consent directions)—see section 24.

**responsible person**, for part 3.1 (Rights in relation to information and communication)—see section 14.

**restriction order** means an order made under section 60 or section 68.

**reviewable decision**, for chapter 16 (Notification and review of decisions)—see section 258.

**secure mental health facility**—see the [Mental Health \(Secure Facilities\) Act 2016](#), section 7.

**subject person**, for chapter 11 (ACAT procedural matters)—see section 190.

**transfer direction**—see section 136 (3).

**treating team**, for a person with a mental disorder or mental illness, for part 3.3 (Advance agreements and advance consent directions)—see section 24.



***treatment, care or support***, for a mental disorder or mental illness—

- (a) means things done in the course of the exercise of professional skills to remedy the disorder or illness or lessen its ill effects or the pain or suffering it causes; and
- (b) includes the giving of medication and counselling, training, therapeutic and rehabilitation programs, care or support.

**Examples—rehabilitation support**

- 1 support to improve social confidence and integration
- 2 assistance to improve work skills

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

***visitable place***—see section 208.

***young detainee***—see the [Children and Young People Act 2008](#), section 95.

***young offender***—see the [Children and Young People Act 2008](#), dictionary.

***young person***—see the [Children and Young People Act 2008](#), section 12.

## Endnotes

1 About the endnotes

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## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the [Legislation Act 2001](#), part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws are not included in the republished law. The details of these laws are underlined in the legislation history. Uncommenced expiries are underlined in the legislation history and amendment history.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

### 2 Abbreviation key

A = Act	NI = Notifiable instrument
AF = Approved form	o = order
am = amended	om = omitted/repealed
amdt = amendment	ord = ordinance
AR = Assembly resolution	orig = original
ch = chapter	par = paragraph/subparagraph
CN = Commencement notice	pres = present
def = definition	prev = previous
DI = Disallowable instrument	(prev...) = previously
dict = dictionary	pt = part
disallowed = disallowed by the Legislative Assembly	r = rule/subrule
div = division	reloc = relocated
exp = expires/expired	renum = renumbered
Gaz = gazette	R[X] = Republication No
hdg = heading	RI = reissue
IA = Interpretation Act 1967	s = section/subsection
ins = inserted/added	sch = schedule
LA = Legislation Act 2001	sdiv = subdivision
LR = legislation register	SL = Subordinate law
LRA = Legislation (Republication) Act 1996	sub = substituted
mod = modified/modification	<u>underlining</u> = whole or part not commenced or to be expired

### 3 Legislation history

#### **Mental Health Act 2015 A2015-38**

notified LR 7 October 2015  
s 1, s 2 commenced 7 October 2015 (LA s 75 (1))  
sch 2 pt 2.2 (amdt 2.54) commenced 8 October 2015 (s 2 (2))  
remainder commenced 1 March 2016 (s 2 (1) and see [Mental Health \(Treatment and Care\) Act 1994](#) A2014-51, s 2 (as am by A2015-38 amdt 2.54))

as amended by

#### **[Protection of Rights \(Services\) Legislation Amendment Act 2016 \(No 2\) A2016-13 sch 1 pt 1.28](#)**

notified LR 16 March 2016  
s 1, s 2 commenced 16 March 2016 (LA s 75 (1))  
sch 1 pt 1.28 commenced 1 April 2016 (s 2 and see [Protection of Rights \(Services\) Legislation Amendment Act 2016](#) A2016-1 s 2)

#### **[ACT Civil and Administrative Tribunal Amendment Act 2016 \(No 2\) A2016-28 sch 1 pt 1.6](#)**

notified LR 15 June 2016  
s 1, s 2 commenced 15 June 2016 (LA s 75 (1))  
sch 1 pt 1.6 commenced 16 June 2016 (s 2 (1))

#### **[Mental Health Amendment Act 2016 A2016-32](#)**

notified LR 20 June 2016  
s 1, s 2 commenced 20 June 2016 (LA s 75 (1))  
s 86, s 96, s 97, s 101 commenced 21 June 2016 (s 2 (2))  
remainder commenced 21 June 2016 (s 2 (1))

#### **[Family Violence Act 2016 A2016-42 sch 3 pt 3.16 \(as am by A2017-10 s 7\)](#)**

notified LR 18 August 2016  
s 1, s 2 commenced 18 August 2016 (LA s 75 (1))  
sch 3 pt 3.16 commenced 1 May 2017 (s 2 (2) as am by [A2017-10](#) s 7)

## Endnotes

3 Legislation history

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### **Family and Personal Violence Legislation Amendment Act 2017**

#### **A2017-10 s 7**

notified LR 6 April 2017

s 1, s 2 commenced 6 April 2017 (LA s 75 (1))

s 7 commenced 30 April 2017 (s 2 (1))

*Note* This Act only amends the Family Violence Act 2016  
[A2016-42](#).

### **Statute Law Amendment Act 2017 (No 2) A2017-28 sch 3 pt 3.9**

notified LR 27 September 2017

s 1, s 2 commenced 27 September 2017 (LA s 75 (1))

sch 3 pt 3.9 commenced 11 October 2017 (s 2)

### **Statute Law Amendment Act 2018 A2018-42 sch 1 pt 1.3**

notified LR 8 November 2018

s 1, s 2 taken to have commenced 1 July 2018 (LA s 75 (2))

sch 1 pt 1.3 commenced 22 November 2018 (s 2 (1))

## 4 Amendment history

### Dictionary

s 2 **orig s 2**  
om LA s 89 (4)  
**pres s 2**  
(prev s 3) renum as s 2 R1 LA (see A2015-38 amdt 2.55)

### Notes

s 3 **orig s 3**  
renum as s 2  
**pres s 3**  
(prev s 4) renum as s 3 R1 LA (see A2015-38 amdt 2.55)

### Offences against Act—application of Criminal Code etc

s 4 **orig s 4**  
renum as s 3  
**pres s 4**  
(prev s 4A) renum as s 4 R1 LA (see A2015-38 amdt 2.55)

### Offences against Act—application of Criminal Code etc

s 4A renum as s 4

### Objects of Act

s 5 reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 5  
by A2015-38 amdt 2.38

### Principles applying to Act

s 6 reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 6  
by A2015-38 amdt 2.38

### Meaning of *decision-making capacity*

s 7 reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 7  
by A2015-38 amdt 2.38

### Principles of decision-making capacity

s 8 reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 8  
by A2015-38 amdt 2.38

### Meaning of *mental disorder*

s 9 reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 9  
by A2015-38 amdt 2.38

### Meaning of *mental illness*

s 10 reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 10  
by A2015-38 amdt 2.38

### People not to be regarded as having mental disorder or mental illness

s 11 reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 11  
by A2015-38 amdt 2.38

## Endnotes

4 Amendment history

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### **Meaning of carer**

s 12                      reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 12  
by A2015-38 amdt 2.38

### **Proceedings relating to children**

s 13                      reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 13  
by A2015-38 amdt 2.38

### **Rights in relation to information and communication**

pt 3.1 hdg              reloc from [Mental Health \(Treatment and Care\) Act 1994](#) pt 3.1  
by A2015-38 amdt 2.39

### **Meaning of responsible person—pt 3.1**

s 14                      reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 14  
by A2015-38 amdt 2.39

### **Information to be given to people**

s 15                      reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 15  
by A2015-38 amdt 2.39  
pars renum R1 LA

### **Information to be available at facilities**

s 16                      reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 16  
by A2015-38 amdt 2.39

### **Communication**

s 17                      reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 17  
by A2015-38 amdt 2.39

### **Failure by owner of facility to comply with pt 3.1**

s 18                      reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 18  
by A2015-38 amdt 2.39

### **Nominated people**

pt 3.2 hdg              reloc from [Mental Health \(Treatment and Care\) Act 1994](#) pt 3.2  
by A2015-38 amdt 2.39

### **Nominated person**

s 19                      reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 19  
by A2015-38 amdt 2.39

### **Nominated person—functions**

s 20                      reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 20  
by A2015-38 amdt 2.39  
am [A2016-32](#) s 4

### **Nominated person—obligations of person in charge of facility**

s 21                      reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 21  
by A2015-38 amdt 2.39

**Nominated person—end of nomination**

s 22 reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 22  
by A2015-38 amdt 2.39

**Nominated person—protection from liability**

s 23 reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 23  
by A2015-38 amdt 2.39

**Advance agreements and advance consent directions**

pt 3.3 hdg reloc from [Mental Health \(Treatment and Care\) Act 1994](#) pt 3.3  
by A2015-38 amdt 2.39

**Definitions—pt 3.3**

s 24 reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 24  
by A2015-38 amdt 2.39  
def **representative** reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 24 by A2015-38 amdt 2.39  
def **treating team** reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 24 by A2015-38 amdt 2.39

**Rights in relation to advance agreements and advance consent directions**

s 25 reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 25  
by A2015-38 amdt 2.39

**Entering into advance agreement**

s 26 reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 26  
by A2015-38 amdt 2.39  
am [A2016-32](#) s 5; pars renum R4 LA

**Making advance consent direction**

s 27 reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 27  
by A2015-38 amdt 2.39  
ss renum R1 LA  
am [A2016-32](#) s 6; pars renum R4 LA

**Giving treatment etc under advance agreement or advance consent direction**

s 28 reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 28  
by A2015-38 amdt 2.39

**Ending advance agreement or advance consent direction**

s 29 reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 29  
by A2015-38 amdt 2.39  
am [A2016-32](#) s 7

**Effect of advance agreement and advance consent direction on guardian with authority to give consent for treatment, care or support**

s 30 reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 30  
by A2015-38 amdt 2.39

## Endnotes

4 Amendment history

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**Effect of advance agreement and advance consent direction on attorney with power to deal with health care matters**

s 31                      reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 31  
by A2015-38 amdt 2.39

**Effect of health direction on previous advance consent direction**

s 32                      reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 32  
by A2015-38 amdt 2.39

**Applications for assessment orders**

pt 4.1 hdg              reloc from [Mental Health \(Treatment and Care\) Act 1994](#) pt 4.1  
by A2015-38 amdt 2.40

**Applications by people with mental disorder or mental illness—assessment order**

s 33                      reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 33  
by A2015-38 amdt 2.40

**Applications by other people—assessment order**

s 34                      reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 34  
by A2015-38 amdt 2.40

**Applications by referring officers—assessment order**

s 35                      reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 35  
by A2015-38 amdt 2.40

**Applicant and referring officer to tell ACAT of risks—assessment order**

s 36                      reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 36  
by A2015-38 amdt 2.40

**Assessment orders**

pt 4.2 hdg              reloc from [Mental Health \(Treatment and Care\) Act 1994](#) pt 4.2  
by A2015-38 amdt 2.40

**Assessment order**

s 36A                    renum as s 37

**Consent for assessment order**

s 36B                    renum as s 38

**Emergency assessment order**

s 36C                    renum as s 39

**Content and effect of assessment order**

s 36D                    renum as s 40

**Public advocate to be told about assessment order**

s 36E                    renum as s 41

**Time for conducting assessment**

s 36F                    renum as s 42



**Removal order to conduct assessment**

s 36G renum as s 43

**Executing removal order**

s 36H renum as s 44

**Contact with others**

s 36I renum as s 45

**Public advocate and lawyer to have access**

s 36J renum as s 46

**Person to be assessed to be told about order**

s 36K renum as s 47

**Copy of assessment**

s 36L renum as s 48

**Notice of outcome of assessment**

s 36M renum as s 49

**Definitions—ch 5**

s 36N renum as s 50

**Applications for mental health orders**

s 36O renum as s 51

**Applicant to tell ACAT of risks**

s 36P renum as s 52

**ACAT must consider assessment—mental health order**

s 36Q renum as s 53

**Consultation by ACAT—mental health order**

s 36R renum as s 54

**ACAT must hold hearing—mental health order**

s 36S renum as s 55

**What ACAT must take into account—mental health order**

s 36T renum as s 56

**ACAT must not order particular treatment, care or support—mental health order**

s 36U renum as s 57

**Psychiatric treatment order**

s 36V renum as s 58

**Content of psychiatric treatment order**

s 36W renum as s 59

**Criteria for making restriction order with psychiatric treatment order**

s 36X renum as s 60

## Endnotes

4 Amendment history

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**Content of restriction order made with psychiatric treatment order**

s 36Y renum as s 61

**Role of chief psychiatrist—psychiatric treatment order**

s 36Z renum as s 62

**Treatment etc to be explained—psychiatric treatment order**

s 36ZA renum as s 63

**Action if psychiatric treatment order no longer appropriate—no longer person in relation to whom ACAT could make order**

s 36ZB renum as s 64

**Powers in relation to psychiatric treatment order**

s 36ZC renum as s 65

**Community care order**

s 36ZD renum as s 66

**Content of community care order**

s 36ZE renum as s 67

**Criteria for making restriction order with community care order**

s 36ZF renum as s 68

**Content of restriction order made with community care order etc**

s 36ZG renum as s 69

**Role of care coordinator—community care order**

s 36ZH renum as s 70

**Treatment etc to be explained—community care order**

s 36ZI renum as s 71

**Action if community care order no longer appropriate—no longer person in relation to whom ACAT could make order**

s 36ZJ renum as s 72

**Powers in relation to community care order**

s 36ZK renum as s 73

**Limits on communication—mental health order**

s 36ZL renum as s 74

**Offence—limits on communication—mental health order**

s 36ZM renum as s 75

**Duration of mental health orders**

s 36ZN renum as s 76

**Contravention of mental health order**

s 36ZO renum as s 77

**Contravention of mental health order—absconding from facility**

s 36ZP renum as s 78

**Review, amendment or revocation of mental health order**

s 36ZQ renum as s 79

**Assessment order**

s 37 **orig s 37**  
renum as s 80  
**pres s 37**  
(prev s 36A) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 36A by A2015-38 amdt 2.40  
renum as s 37 R1 LA (see A2015-38 amdt 2.55)  
am [A2016-32](#) s 8; [A2017-28](#) amdt 3.26

**Consent for assessment order**

s 38 **orig s 38**  
renum as s 81  
**pres s 38**  
(prev s 36B) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 36B by A2015-38 amdt 2.40  
renum as s 38 R1 LA (see A2015-38 amdt 2.55)

**Copy of court order**

s 38A renum as s 82

**Emergency assessment order**

s 39 **orig s 39**  
renum as s 83  
**pres s 39**  
(prev s 36C) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 36C by A2015-38 amdt 2.40  
renum as s 39 R1 LA (see A2015-38 amdt 2.55)

**Content and effect of assessment order**

s 40 **orig s 40**  
renum as s 84  
**pres s 40**  
(prev s 36D) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 36D by A2015-38 amdt 2.40  
renum as s 40 R1 LA (see A2015-38 amdt 2.55)  
am [A2016-32](#) s 9

**Public advocate to be told about assessment order**

s 41 **orig s 41**  
renum as s 85  
**pres s 41**  
(prev s 36E) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 36E by A2015-38 amdt 2.40  
renum as s 41 R1 LA (see A2015-38 amdt 2.55)

**Medical examination of detained person**

s 41AA renum as s 86

## Endnotes

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### **Notification of Magistrates Court about emergency detention or release from emergency detention**

s 41A renum as s 87

### **Treatment during detention**

s 41AB renum as s 88

### **Time for conducting assessment**

s 42 **orig s 42**  
renum as s 89  
**pres s 42**  
(prev s 36F) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 36F by A2015-38 amdt 2.40  
renum as s 42 R1 LA (see A2015-38 amdt 2.55)  
am [A2016-32](#) s 10

### **Removal order to conduct assessment**

s 43 (prev s 36G) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 36G by A2015-38 amdt 2.40  
renum as s 43 R1 LA (see A2015-38 amdt 2.55)

### **Executing removal order**

s 44 (prev s 36H) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 36H by A2015-38 amdt 2.40  
renum as s 44 R1 LA (see A2015-38 amdt 2.55)

### **Contact with others**

s 45 **orig s 45**  
renum as s 90  
**pres s 45**  
(prev s 36I) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 36I by A2015-38 amdt 2.40  
renum as s 45 R1 LA (see A2015-38 amdt 2.55)

### **Public advocate and lawyer to have access**

s 46 **orig s 46**  
renum as s 91  
**pres s 46**  
(prev s 36J) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 36J by A2015-38 amdt 2.40  
renum as s 46 R1 LA (see A2015-38 amdt 2.55)

### **Person to be assessed to be told about order**

s 47 **orig s 47**  
renum as s 92  
**pres s 47**  
(prev s 36K) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 36K by A2015-38 amdt 2.40  
renum as s 47 R1 LA (see A2015-38 amdt 2.55)  
am [A2016-32](#) s 11

**Copy of assessment**

s 48 (prev s 36L) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 36L by A2015-38 amdt 2.40  
renum as s 48 R1 LA (see A2015-38 amdt 2.55)  
am [A2016-32](#) s 12

**Definitions—pt 7.1**

s 48S renum as s 93

**Applications for forensic mental health orders—detainees etc**

s 48T renum as s 94

**Relevant person to tell ACAT of risks**

s 48U renum as s 95

**ACAT must consider assessment—forensic mental health order**

s 48V renum as s 96

**Consultation by ACAT—forensic mental health order**

s 48W renum as s 97

**ACAT must hold hearing—forensic mental health order**

s 48X renum as s 98

**What ACAT must take into account—forensic mental health order**

s 48Y renum as s 99

**ACAT must not order particular treatment, care or support—forensic mental health order**

s 48Z renum as s 100

**Forensic psychiatric treatment order**

s 48ZA renum as s 101

**Content of forensic psychiatric treatment order**

s 48ZB renum as s 102

**Role of chief psychiatrist—forensic psychiatric treatment order**

s 48ZC renum as s 103

**Treatment etc to be explained—forensic psychiatric treatment order**

s 48ZD renum as s 104

**Action if forensic psychiatric treatment order no longer appropriate—no longer person in relation to whom ACAT could make order**

s 48ZE renum as s 105

**Action if forensic psychiatric treatment order no longer appropriate—no longer necessary to detain person**

s 48ZF renum as s 106

**Powers in relation to forensic psychiatric treatment order**

s 48ZG renum as s 107

## Endnotes

4 Amendment history

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**Forensic community care order**

s 48ZH renum as s 108

**Content of forensic community care order**

s 48ZI renum as s 109

**Role of care coordinator—forensic community care order**

s 48ZJ renum as s 110

**Treatment etc to be explained—forensic community care order**

s 48ZK renum as s 111

**Action if forensic community care order no longer appropriate—no longer person in relation to whom ACAT could make order**

s 48ZL renum as s 112

**Action if forensic community care order no longer appropriate—no longer necessary to detain person**

s 48ZM renum as s 113

**Powers in relation to forensic community care order**

s 48ZN renum as s 114

**Limits on communication—forensic mental health order**

s 48ZO renum as s 115

**Offence—limits on communication—forensic mental health order**

s 48ZP renum as s 116

**Duration of forensic mental health orders**

s 48ZQ renum as s 117

**Meaning of *corrections order*—div 7.1.8**

s 48ZR renum as s 118

**Grant of leave for person detained by ACAT**

s 48ZS renum as s 119

**Revocation of leave granted by ACAT**

s 48ZT renum as s 120

**Grant of leave for person detained by relevant official**

s 48ZU renum as s 121

**Leave in emergency or special circumstances**

s 48ZV renum as s 122

**Revocation of leave granted by relevant official**

s 48ZW renum as s 123

**Contravention of forensic mental health order**

s 48ZX renum as s 124

**Contravention of forensic mental health order—absconding from facility**

s 48ZY renum as s 125

**Review, amendment or revocation of forensic mental health order**

s 48ZZ renum as s 126

**Definitions—pt 7.2**

s 48ZZA renum as s 127

**Meaning of *affected person***

s 48ZZB renum as s 128

**Meaning of *registered affected person***

s 48ZZC renum as s 129

**Affected person register**

s 48ZZD renum as s 130

**Notifying people about the affected person register**

s 48ZZE renum as s 131

**Including person in affected person register**

s 48ZZF renum as s 132

**Removing person from affected person register**

s 48ZZG renum as s 133

**Disclosures to registered affected people**

s 48ZZH renum as s 134

**Meaning of *correctional patient***

s 48ZZI renum as s 135

**Transfer to mental health facility**

s 48ZZJ renum as s 136

**Return to correctional centre unless direction to remain**

s 48ZZK renum as s 137

**Release etc on change of status of correctional patient**

s 48ZZL renum as s 138

**ACAT may return people to correctional centre**

s 48ZZM renum as s 139

**Review of correctional patient awaiting transfer to mental health facility**

s 48ZZN renum as s 140

**Review of correctional patient transferred to mental health facility**

s 48ZZO renum as s 141

**Review of correctional patient detained at mental health facility**

s 48ZZP renum as s 142

**Grant of leave for correctional patients**

s 48ZZQ renum as s 143

## Endnotes

4 Amendment history

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### Revocation of leave for correctional patients

s 48ZZR renum as s 144

### Notice of outcome of assessment

s 49 **orig s 49**  
renum as s 145  
**pres s 49**  
(prev s 36M) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 36M by A2015-38 amdt 2.40  
renum as s 49 R1 LA (see A2015-38 amdt 2.55)

### Preliminary

pt 5.1 hdg reloc from [Mental Health \(Treatment and Care\) Act 1994](#) pt 5.1  
by A2015-38 amdt 2.41

### Definitions—ch 5

s 50 **orig s 50**  
renum as s 146  
**pres s 50**  
(prev s 36N) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 36N by A2015-38 amdt 2.41  
renum as s 50 R1 LA (see A2015-38 amdt 2.55)  
def **relevant official** reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 36N by A2015-38 amdt 2.41  
def **relevant person** reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 36N by A2015-38 amdt 2.41  
am [A2016-32](#) s 13

### Applications for mental health orders

pt 5.2 hdg reloc from [Mental Health \(Treatment and Care\) Act 1994](#) pt 5.2  
by A2015-38 amdt 2.41

### Applications for mental health orders

s 51 **orig s 51**  
renum as s 147  
**pres s 51**  
(prev s 36O) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 36O by A2015-38 amdt 2.41  
renum as s 51 R1 LA (see A2015-38 amdt 2.55)

### Applicant to tell ACAT of risks

s 52 **orig s 52**  
renum as s 148  
**pres s 52**  
(prev s 36P) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 36P by A2015-38 amdt 2.41  
renum as s 52 R1 LA (see A2015-38 amdt 2.55)



**Making of mental health orders—preliminary matters**

pt 5.3 hdg      reloc from [Mental Health \(Treatment and Care\) Act 1994](#) pt 5.3  
by A2015-38 amdt 2.41

**ACAT must consider assessment—mental health order**

s 53      **orig s 53**  
renum as s 149  
**pres s 53**  
(prev s 36Q) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 36Q by A2015-38 amdt 2.41  
renum as s 53 R1 LA (see A2015-38 amdt 2.55)

**Consultation by ACAT—mental health order**

s 54      **orig s 54**  
renum as s 150  
**pres s 54**  
(prev s 36R) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 36R by A2015-38 amdt 2.41  
renum as s 54 R1 LA (see A2015-38 amdt 2.55)

**ACAT must hold hearing—mental health order**

s 55      **orig s 55**  
renum as s 151  
**pres s 55**  
(prev s 36S) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 36S by A2015-38 amdt 2.41  
renum as s 55 R1 LA (see A2015-38 amdt 2.55)

**Offence—unauthorised administration of electroconvulsive therapy**

s 55B      renum as s 152

**Application for electroconvulsive therapy order**

s 55C      renum as s 153

**Consultation by ACAT—electroconvulsive therapy order**

s 55D      renum as s 154

**ACAT must hold hearing—electroconvulsive therapy order**

s 55E      renum as s 155

**What ACAT must take into account—electroconvulsive therapy order**

s 55F      renum as s 156

**Making of electroconvulsive therapy order**

s 55G      renum as s 157

**Content of electroconvulsive therapy order**

s 55H      renum as s 158

**Person to be told about electroconvulsive therapy order**

s 55I      renum as s 159

## Endnotes

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### **Application for emergency electroconvulsive therapy order**

s 55J renum as s 160

### **What ACAT must take into account—emergency electroconvulsive therapy order**

s 55JA renum as s 161

### **Making of emergency electroconvulsive therapy order**

s 55K renum as s 162

### **Content of an emergency electroconvulsive therapy order**

s 55L renum as s 163

### **What ACAT must take into account—mental health order**

s 56  
**orig s 56**  
renum as s 164  
**pres s 56**  
(prev s 36T) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 36T by A2015-38 amdt 2.41  
renum as s 56 R1 LA (see A2015-38 amdt 2.55)

### **ACAT must not order particular treatment, care or support—mental health order**

s 57  
**orig s 57**  
renum as s 165  
**pres s 57**  
(prev s 36U) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 36U by A2015-38 amdt 2.41  
renum as s 57 R1 LA (see A2015-38 amdt 2.55)

### **Psychiatric treatment orders**

pt 5.4 hdg reloc from [Mental Health \(Treatment and Care\) Act 1994](#) pt 5.4  
by A2015-38 amdt 2.41

### **Psychiatric treatment order**

s 58  
**orig s 58**  
renum as s 166  
**pres s 58**  
(prev s 36V) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 36V by A2015-38 amdt 2.41  
renum as s 58 R1 LA (see A2015-38 amdt 2.55)  
am [A2016-32](#) s 14

### **Content of psychiatric treatment order**

s 59  
**orig s 59**  
renum as s 167  
**pres s 59**  
(prev s 36W) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 36W by A2015-38 amdt 2.41  
renum as s 59 R1 LA (see A2015-38 amdt 2.55)

**Criteria for making restriction order with psychiatric treatment order**

s 60

**orig s 60**

renum as s 168

**pres s 60**(prev s 36X) reloc from [Mental Health \(Treatment and Care\)](#)[Act 1994](#) s 36X by A2015-38 amdt 2.41

renum as s 60 R1 LA (see A2015-38 amdt 2.55)

**Content of restriction order made with psychiatric treatment order**

s 61

**orig s 61**

renum as s 169

**pres s 61**(prev s 36Y) reloc from [Mental Health \(Treatment and Care\)](#)[Act 1994](#) s 36Y by A2015-38 amdt 2.41

renum as s 61 R1 LA (see A2015-38 amdt 2.55)

**Role of chief psychiatrist—psychiatric treatment order**

s 62

**orig s 62**

renum as s 170

**pres s 62**(prev s 36Z) reloc from [Mental Health \(Treatment and Care\)](#)[Act 1994](#) s 36Z by A2015-38 amdt 2.41

renum as s 62 R1 LA (see A2015-38 amdt 2.55)

am [A2016-32](#) s 15**Treatment etc to be explained—psychiatric treatment order**

s 63

**orig s 63**

renum as s 171

**pres s 63**(prev s 36ZA) reloc from [Mental Health \(Treatment and Care\)](#)[Act 1994](#) s 36ZA by A2015-38 amdt 2.41

renum as s 63 R1 LA (see A2015-38 amdt 2.55)

**Action if psychiatric treatment order no longer appropriate—no longer person in relation to whom ACAT could make order**

s 64

**orig s 64**

renum as s 172

**pres s 64**(prev s 36ZB) reloc from [Mental Health \(Treatment and Care\)](#)[Act 1994](#) s 36ZB by A2015-38 amdt 2.41

renum as s 64 R1 LA (see A2015-38 amdt 2.55)

## Endnotes

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### **Powers in relation to psychiatric treatment order**

s 65                      **orig s 65**  
renum as s 173  
**pres s 65**  
(prev s 36ZC) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 36ZC by A2015-38 amdt 2.41  
renum as s 65 R1 LA (see A2015-38 amdt 2.55)  
am [A2016-32](#) s 16

### **Community care orders**

pt 5.5 hdg              reloc from [Mental Health \(Treatment and Care\) Act 1994](#) pt 5.5  
by A2015-38 amdt 2.41

### **Community care order**

s 66                      **orig s 66**  
renum as s 174  
**pres s 66**  
(prev s 36ZD) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 36ZD by A2015-38 amdt 2.41  
renum as s 66 R1 LA (see A2015-38 amdt 2.55)

### **Content of community care order**

s 67                      **orig s 67**  
renum as s 175  
**pres s 67**  
(prev s 36ZE) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 36ZE by A2015-38 amdt 2.41  
renum as s 67 R1 LA (see A2015-38 amdt 2.55)

### **Criteria for making restriction order with community care order**

s 68                      **orig s 68**  
renum as s 176  
**pres s 68**  
(prev s 36ZF) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 36ZF by A2015-38 amdt 2.41  
renum as s 68 R1 LA (see A2015-38 amdt 2.55)

### **Content of restriction order made with community care order etc**

s 69                      (prev s 36ZG) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 36ZG by A2015-38 amdt 2.41  
renum as s 69 R1 LA (see A2015-38 amdt 2.55)

### **Role of care coordinator—community care order**

s 70                      **orig s 70**  
renum as s 177  
**pres s 70**  
(prev s 36ZH) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 36ZH by A2015-38 amdt 2.41  
renum as s 70 R1 LA (see A2015-38 amdt 2.55)

**Recommendations about people with mental disorder or mental illness**

s 70A renum as s 178

**Treatment etc to be explained—community care order**

s 71 **orig s 71**  
renum as s 179  
**pres s 71**  
(prev s 36ZI) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 36ZI by A2015-38 amdt 2.41  
renum as s 71 R1 LA (see A2015-38 amdt 2.55)

**Action if community care order no longer appropriate—no longer person in relation to whom ACAT could make order**

s 72 **orig s 72**  
renum as s 180  
**pres s 72**  
(prev s 36ZJ) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 36ZJ by A2015-38 amdt 2.41  
renum as s 72 R1 LA (see A2015-38 amdt 2.55)

**Powers in relation to community care order**

s 73 **orig s 73**  
renum as s 181  
**pres s 73**  
(prev s 36ZK) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 36ZK by A2015-38 amdt 2.41  
renum as s 73 R1 LA (see A2015-38 amdt 2.55)  
am [A2016-32](#) s 17

**Limits on communication under mental health orders**

pt 5.6 hdg reloc from [Mental Health \(Treatment and Care\) Act 1994](#) pt 5.6  
by A2015-38 amdt 2.41

**Limits on communication—mental health order**

s 74 **orig s 74**  
renum as s 182  
**pres s 74**  
(prev s 36ZL) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 36ZL by A2015-38 amdt 2.41  
renum as s 74 R1 LA (see A2015-38 amdt 2.55)

**Offence—limits on communication—mental health order**

s 75 **orig s 75**  
renum as s 183  
**pres s 75**  
(prev s 36ZM) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 36ZM by A2015-38 amdt 2.41  
renum as s 75 R1 LA (see A2015-38 amdt 2.55)

## Endnotes

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#### **Duration, contravention and review of mental health orders**

pt 5.7 hdg      reloc from [Mental Health \(Treatment and Care\) Act 1994](#) pt 5.7  
by A2015-38 amdt 2.41

#### **Duration of mental health orders**

s 76      **orig s 76**  
renum as s 184  
**pres s 76**  
(prev s 36ZN) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 36ZN by A2015-38 amdt 2.41  
renum as s 76 R1 LA (see A2015-38 amdt 2.55)

#### **Contravention of mental health order**

s 77      **orig s 77**  
renum as s 185  
**pres s 77**  
(prev s 36ZO) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 36ZO by A2015-38 amdt 2.41  
renum as s 77 R1 LA (see A2015-38 amdt 2.55)

#### **Contravention of mental health order—absconding from facility**

s 78      **orig s 78**  
renum as s 186  
**pres s 78**  
(prev s 36ZP) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 36ZP by A2015-38 amdt 2.41  
renum as s 78 R1 LA (see A2015-38 amdt 2.55)

#### **Review of mental health order**

s 79 hdg      sub [A2016-32](#) s 18  
s 79      **orig s 79**  
renum as s 187  
**pres s 79**  
(prev s 36ZQ) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 36ZQ by A2015-38 amdt 2.41  
renum as s 79 R1 LA (see A2015-38 amdt 2.55)  
am [A2016-32](#) s 19

#### **Notice of hearing**

s 79A      renum as s 188

#### **Directions to registrar**

s 79B      renum as s 189

**Apprehension**

s 80

**orig s 80**

renum as s 190

**pres s 80**(prev s 37) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 37 by A2015-38 amdt 2.42

renum as s 80 R1 LA (see A2015-38 amdt 2.55)

**Detention at approved mental health facility**

s 81

**orig s 81**

renum as s 191

**pres s 81**(prev s 38) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 38 by A2015-38 amdt 2.42

renum as s 81 R1 LA (see A2015-38 amdt 2.55)

**Copy of court order**

s 82

**orig s 82**

renum as s 192

**pres s 82**(prev s 38A) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 38A by A2015-38 amdt 2.42

renum as s 82 R1 LA (see A2015-38 amdt 2.55)

**Statement of action taken**

s 83

**orig s 83**

renum as s 193

**pres s 83**(prev s 39) renum as s 83 R1 LA (see A2015-38 amdt 2.55)  
am [A2016-32](#) s 20; pars renum R4 LA**Initial examination at approved mental health facility**

s 84

(prev s 40) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 40 by A2015-38 amdt 2.43

renum as s 84 R1 LA (see A2015-38 amdt 2.55)

am [A2016-32](#) s 21**Authorisation of involuntary detention**

s 85

(prev s 41) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 41 by A2015-38 amdt 2.43

renum as s 85 R1 LA (see A2015-38 amdt 2.55)

am [A2016-32](#) s 22**Medical examination of detained person**

s 86

**orig s 86**

renum as s 194

**pres s 86**(prev s 41AA) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 41AA by A2015-38 amdt 2.43

renum as s 86 R1 LA (see A2015-38 amdt 2.55)

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### **Notification of Magistrates Court about emergency detention or release from emergency detention**

s 87                      **orig s 87**  
renum as s 195  
**pres s 86**  
(prev s 41A) renum as s 87 R1 LA (see A2015-38 amdt 2.55)

### **Treatment during detention**

s 88                      (prev s 41AB) renum as s 88 R1 LA (see A2015-38 amdt 2.55)  
am [A2016-32](#) s 23, s 24

### **Notification of certain people about detention**

s 89                      (prev s 42) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 42 by A2015-38 amdt 2.44  
renum as s 89 R1 LA (see A2015-38 amdt 2.55)  
ss renum R1 LA

### **Offence—communication during detention**

s 90                      (prev s 45) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 45 by A2015-38 amdt 2.45  
renum as s 90 R1 LA (see A2015-38 amdt 2.55)

### **Order for release**

s 91                      (prev s 46) renum as s 91 R1 LA (see A2015-38 amdt 2.55)

### **Duty to release**

s 92                      (prev s 47) renum as s 92 R1 LA (see A2015-38 amdt 2.55)

### **Forensic mental health orders**

pt 7.1 hdg              reloc from [Mental Health \(Treatment and Care\) Act 1994](#) pt 7.1  
by A2015-38 amdt 2.46

### **Preliminary**

div 7.1.1 hdg              reloc from [Mental Health \(Treatment and Care\) Act 1994](#)  
div 7.1.1 by A2015-38 amdt 2.46

### **Definitions—pt 7.1**

s 93                      (prev s 48S) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 48S by A2015-38 amdt 2.46  
renum as s 93 R1 LA (see A2015-38 amdt 2.55)  
def **relevant official** reloc from [Mental Health \(Treatment and Care\) Act 1994](#) by A2015-38 amdt 2.46  
def **relevant person** reloc from [Mental Health \(Treatment and Care\) Act 1994](#) by A2015-38 amdt 2.46  
am [A2016-32](#) s 25

### **Application for forensic mental health orders**

div 7.1.2 hdg              reloc from [Mental Health \(Treatment and Care\) Act 1994](#)  
div 7.1.2 by A2015-38 amdt 2.46



**Applications for forensic mental health orders—detainees etc**

s 94 (prev s 48T) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 48T by A2015-38 amdt 2.46  
renum as s 94 R1 LA (see A2015-38 amdt 2.55)  
am [A2016-32](#) s 26

**Relevant person to tell ACAT of risks**

s 95 (prev s 48U) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 48U by A2015-38 amdt 2.46  
renum as s 95 R1 LA (see A2015-38 amdt 2.55)

**Making forensic mental health orders—preliminary matters**

div 7.1.3 hdg reloc from [Mental Health \(Treatment and Care\) Act 1994](#) div 7.1.3 by A2015-38 amdt 2.46

**ACAT must consider assessment—forensic mental health order**

s 96 (prev s 48V) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 48V by A2015-38 amdt 2.46  
renum as s 96 R1 LA (see A2015-38 amdt 2.55)

**Consultation by ACAT—forensic mental health order**

s 97 (prev s 48W) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 48W by A2015-38 amdt 2.46  
renum as s 97 R1 LA (see A2015-38 amdt 2.55)

**ACAT must hold hearing—forensic mental health order**

s 98 (prev s 48X) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 48X by A2015-38 amdt 2.46  
renum as s 98 R1 LA (see A2015-38 amdt 2.55)

**What ACAT must take into account—forensic mental health order**

s 99 (prev s 48Y) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 48Y by A2015-38 amdt 2.46  
renum as s 99 R1 LA (see A2015-38 amdt 2.55)  
pars renum R1 LA

**ACAT must not order particular treatment, care or support—forensic mental health order**

s 100 (prev s 48Z) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 48Z by A2015-38 amdt 2.46  
renum as s 100 R1 LA (see A2015-38 amdt 2.55)

**Forensic psychiatric treatment orders**

div 7.1.4 hdg reloc from [Mental Health \(Treatment and Care\) Act 1994](#) div 7.1.4 by A2015-38 amdt 2.46

**Forensic psychiatric treatment order**

s 101 (prev s 48ZA) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 48ZA by A2015-38 amdt 2.46  
renum as s 101 R1 LA (see A2015-38 amdt 2.55)

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### **Content of forensic psychiatric treatment order**

s 102 (prev s 48ZB) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 48ZB by A2015-38 amdt 2.46  
renum as s 102 R1 LA (see A2015-38 amdt 2.55)

### **Role of chief psychiatrist—forensic psychiatric treatment order**

s 103 (prev s 48ZC) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 48ZC by A2015-38 amdt 2.46  
renum as s 103 R1 LA (see A2015-38 amdt 2.55)  
am [A2016-32](#) s 27, s 28

### **Treatment etc to be explained—forensic psychiatric treatment order**

s 104 (prev s 48ZD) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 48ZD by A2015-38 amdt 2.46  
renum as s 104 R1 LA (see A2015-38 amdt 2.55)

### **Action if forensic psychiatric treatment order no longer appropriate—no longer person in relation to whom ACAT could make order**

s 105 (prev s 48ZE) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 48ZE by A2015-38 amdt 2.46  
renum as s 105 R1 LA (see A2015-38 amdt 2.55)  
am [A2016-32](#) ss 29-31

### **Action if forensic psychiatric treatment order no longer appropriate—no longer necessary to detain person**

s 106 (prev s 48ZF) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 48ZF by A2015-38 amdt 2.46  
renum as s 106 R1 LA (see A2015-38 amdt 2.55)  
am [A2016-32](#) ss 32-34

### **Powers in relation to forensic psychiatric treatment order**

s 107 (prev s 48ZG) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 48ZG by A2015-38 amdt 2.46  
renum as s 107 R1 LA (see A2015-38 amdt 2.55)  
am [A2016-32](#) s 35

### **Forensic community care orders**

div 7.1.5 hdg reloc from [Mental Health \(Treatment and Care\) Act 1994](#) div 7.1.5 by A2015-38 amdt 2.46

### **Forensic community care order**

s 108 (prev s 48ZH) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 48ZH by A2015-38 amdt 2.46  
renum as s 108 R1 LA (see A2015-38 amdt 2.55)

### **Content of forensic community care order**

s 109 (prev s 48ZI) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 48ZI by A2015-38 amdt 2.46  
renum as s 109 R1 LA (see A2015-38 amdt 2.55)  
am [A2016-32](#) s 36

**Role of care coordinator—forensic community care order**

s 110 (prev s 48ZJ) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 48ZJ by A2015-38 amdt 2.46  
renum as s 110 R1 LA (see A2015-38 amdt 2.55)  
am [A2016-32](#) s 37

**Treatment etc to be explained—forensic community care order**

s 111 (prev s 48ZK) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 48ZK by A2015-38 amdt 2.46  
renum as s 111 R1 LA (see A2015-38 amdt 2.55)

**Action if forensic community care order no longer appropriate—no longer person in relation to whom ACAT could make order**

s 112 **orig s 112**  
renum as s 196  
**pres s 112**  
(prev s 48ZL) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 48ZL by A2015-38 amdt 2.46  
renum as s 112 R1 LA (see A2015-38 amdt 2.55)  
am [A2016-32](#) ss 38-40

**Action if forensic community care order no longer appropriate—no longer necessary to detain person**

s 113 **orig s 113**  
renum as s 197  
**pres s 113**  
(prev s 48ZM) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 48ZM by A2015-38 amdt 2.46  
renum as s 113 R1 LA (see A2015-38 amdt 2.55)  
am [A2016-32](#) ss 41-43

**Powers in relation to forensic community care order**

s 114 **orig s 114**  
renum as s 198  
**pres s 114**  
(prev s 48ZN) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 48ZN by A2015-38 amdt 2.46  
renum as s 114 R1 LA (see A2015-38 amdt 2.55)  
am [A2016-32](#) s 44

**Limits on communication under forensic mental health orders**

div 7.1.6 hdg reloc from [Mental Health \(Treatment and Care\) Act 1994](#) div 7.1.6 by A2015-38 amdt 2.46

**Limits on communication—forensic mental health order**

s 115 (prev s 48ZO) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 48ZO by A2015-38 amdt 2.46  
renum as s 115 R1 LA (see A2015-38 amdt 2.55)

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### **Offence—limits on communication—forensic mental health order**

s 116                      **orig s 116**  
renum as s 199  
**pres s 116**  
(prev s 48ZP) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 48ZP by A2015-38 amdt 2.46  
renum as s 116 R1 LA (see A2015-38 amdt 2.55)

### **Duration of forensic mental health orders**

div 7.1.7 hdg            reloc from [Mental Health \(Treatment and Care\) Act 1994](#)  
div 7.1.7 by A2015-38 amdt 2.46

### **Duration of forensic mental health orders**

s 117                      (prev s 48ZQ) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 48ZQ by A2015-38 amdt 2.46  
renum as s 117 R1 LA (see A2015-38 amdt 2.55)

### **Leave for detained people**

div 7.1.8 hdg            reloc from [Mental Health \(Treatment and Care\) Act 1994](#)  
div 7.1.8 by A2015-38 amdt 2.46

### **Meaning of *corrections order*—div 7.1.8**

s 118                      **orig s 118**  
renum as s 200  
**pres s 118**  
(prev s 48ZR) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 48ZR by A2015-38 amdt 2.46  
renum as s 118 R1 LA (see A2015-38 amdt 2.55)

### **Grant of leave for person detained by ACAT**

s 119                      **orig s 119**  
renum as s 201  
**pres s 119**  
(prev s 48ZS) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 48ZS by A2015-38 amdt 2.46  
renum as s 119 R1 LA (see A2015-38 amdt 2.55)  
am [A2016-32](#) s 45, s 46

### **Functions of mental health officers**

s 119A                    renum as s 202

### **Identity cards for mental health officers**

s 119B                    renum as s 203

### **Revocation of leave granted by ACAT**

s 120                      (prev s 48ZT) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 48ZT by A2015-38 amdt 2.46  
renum as s 120 R1 LA (see A2015-38 amdt 2.55)  
am [A2016-32](#) s 47, s 48

**Care coordinator**

s 120A renum as s 204

**Functions**

s 120B renum as s 205

**Ending appointment—care coordinator**

s 120C renum as s 206

**Delegation by care coordinator**

s 120D renum as s 207

**Grant of leave for person detained by relevant official**

s 121 **orig s 121**  
 renum as s 208  
**pres s 121**  
 (prev s 48ZU) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 48ZU by A2015-38 amdt 2.46  
 renum as s 121 R1 LA (see A2015-38 amdt 2.55)  
 am [A2016-32](#) s 49, s 50

**Leave in emergency or special circumstances**

s 122 **orig s 122**  
 renum as s 209  
**pres s 122**  
 (prev s 48ZV) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 48ZV by A2015-38 amdt 2.46  
 renum as s 122 R1 LA (see A2015-38 amdt 2.55)  
 am [A2016-32](#) s 51, s 52; ss renum R4 LA

**Appointment of principal official visitor**

s 122AA renum as s 210

**Official visitor's functions**

s 122A renum as s 211

**Principal official visitor's functions**

s 122BB renum as s 212

**Notice to official visitor of detainee receiving mental health treatment, care or support in correctional centre**

s 122B renum as s 213

**Complaint about treatment, care or support provided at place other than visitable place**

s 122C renum as s 214

**Coordinating director-general**

s 122D renum as s 215

**Functions of coordinating director-general**

s 122E renum as s 216

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### **Coordinating director-general policies and operating procedures**

s 122F renum as s 217

### **Definitions—pt 12.5**

s 122G renum as s 218

### **Information sharing protocol**

s 122H renum as s 219

### **Information sharing guidelines**

s 122I renum as s 220

### **Information sharing—approval of agency**

s 122J renum as s 221

### **Revocation of leave granted by relevant official**

s 123  
**orig s 123**  
renum as s 222  
**pres s 123**  
(prev s 48ZW) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 48ZW by A2015-38 amdt 2.46  
renum as s 123 R1 LA (see A2015-38 amdt 2.55)  
am [A2016-32](#) s 53, s 54

### **Contravention and review of forensic mental health orders**

div 7.1.9 hdg reloc from [Mental Health \(Treatment and Care\) Act 1994](#)  
div 7.1.9 by A2015-38 amdt 2.46

### **Contravention of forensic mental health order**

s 124  
**orig s 124**  
renum as 223  
**pres s 124**  
(prev s 48ZX) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 48ZX by A2015-38 amdt 2.46  
renum as s 124 R1 LA (see A2015-38 amdt 2.55)

### **Contravention of forensic mental health order—absconding from facility**

s 125  
**orig s 125**  
renum as s 224  
**pres s 125**  
(prev s 48ZY) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 48ZY by A2015-38 amdt 2.46  
renum as s 125 R1 LA (see A2015-38 amdt 2.55)  
am [A2016-32](#) s 55; ss renum R4 LA

**Review of forensic mental health order**

s 126 hdg sub [A2016-32](#) s 56  
 s 126 **orig s 126**  
 renum as s 225  
**pres s 126**  
 (prev s 48ZZ) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 48ZZ by A2015-38 amdt 2.46  
 renum as s 126 R1 LA (see A2015-38 amdt 2.55)  
 am [A2016-32](#) s 57

**Affected people**

pt 7.2 hdg reloc from [Mental Health \(Treatment and Care\) Act 1994](#) pt 7.2  
 by A2015-38 amdt 2.46

**Definitions—pt 7.2**

s 127 **orig s 127**  
 renum as s 226  
**pres s 127**  
 (prev s 48ZZA) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 48ZZA by A2015-38 amdt 2.46  
 renum as s 127 R1 LA (see A2015-38 amdt 2.55)  
 def **affected person register** reloc from [Mental Health \(Treatment and Care\) Act 1994](#) by A2015-38 amdt 2.46  
 def **director-general** reloc from [Mental Health \(Treatment and Care\) Act 1994](#) by A2015-38 amdt 2.46  
 def **forensic patient** reloc from [Mental Health \(Treatment and Care\) Act 1994](#) by A2015-38 amdt 2.46  
 def **publish** reloc from [Mental Health \(Treatment and Care\) Act 1994](#) by A2015-38 amdt 2.46

**Meaning of affected person**

s 128 **orig s 128**  
 renum as s 227  
**pres s 128**  
 (prev s 48ZZB) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 48ZZB by A2015-38 amdt 2.46  
 renum as s 128 R1 LA (see A2015-38 amdt 2.55)

**Meaning of registered affected person**

s 129 **orig s 129**  
 renum as s 228  
**pres s 129**  
 (prev s 48ZZC) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 48ZZC by A2015-38 amdt 2.46  
 renum as s 129 R1 LA (see A2015-38 amdt 2.55)

## Endnotes

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### **Affected person register**

s 130                    **orig s 130**  
renum as s 229  
**pres s 130**  
(prev s 48ZZD) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 48ZZD by A2015-38 amdt 2.46  
renum as s 130 R1 LA (see A2015-38 amdt 2.55)

### **Notifying people about the affected person register**

s 131                    **orig s 131**  
renum as s 230  
**pres s 131**  
(prev s 48ZZE) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 48ZZE by A2015-38 amdt 2.46  
renum as s 131 R1 LA (see A2015-38 amdt 2.55)

### **Including person in affected person register**

s 132                    **orig s 132**  
renum as s 231  
**pres s 132**  
(prev s 48ZZF) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 48ZZF by A2015-38 amdt 2.46  
renum as s 132 R1 LA (see A2015-38 amdt 2.55)

### **Removing person from affected person register**

s 133                    **orig s 133**  
renum as s 232  
**pres s 133**  
(prev s 48ZZG) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 48ZZG by A2015-38 amdt 2.46  
renum as s 133 R1 LA (see A2015-38 amdt 2.55)

### **Disclosures to registered affected people**

s 134                    **orig s 134**  
renum as s 233  
**pres s 134**  
(prev s 48ZZH) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 48ZZH by A2015-38 amdt 2.46  
renum as s 134 R1 LA (see A2015-38 amdt 2.55)  
am [A2016-32](#) ss 58-60; [A2016-42](#) amdt 3.87, amdt 3.88

### **Preliminary**

pt 8.1 hdg                    reloc from [Mental Health \(Treatment and Care\) Act 1994](#) pt 8.1  
by A2015-38 amdt 2.47



**Meaning of *correctional patient***

s 135

**orig s 135**

renum as s 234

**pres s 135**(prev s 48ZZI) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 48ZZI by A2015-38 amdt 2.47

renum as s 135 R1 LA (see A2015-38 amdt 2.55)

am [A2016-32](#) s 61**Identity cards**

s 135A

renum as s 235

**Powers of inspection**

s 135B

renum as s 236

**Failing to comply with requirement of inspector**

s 135C

renum as s 237

**Transfer of correctional patients**

pt 8.2 hdg

reloc from [Mental Health \(Treatment and Care\) Act 1994](#) pt 8.2 by A2015-38 amdt 2.47**Transfer to mental health facility**

s 136

(prev s 48ZZJ) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 48ZZJ by A2015-38 amdt 2.47

renum as s 136 R1 LA (see A2015-38 amdt 2.55)

am [A2016-32](#) s 62, s 63**Return to correctional centre or detention place unless direction to remain**

s 137 hdg

sub [A2016-32](#) s 64

s 137

(prev s 48ZZK) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 48ZZK by A2015-38 amdt 2.47

renum as s 137 R1 LA (see A2015-38 amdt 2.55)

am [A2016-32](#) ss 65-69**Release etc on change of status of correctional patient**

s 138

(prev s 48ZZL) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 48ZZL by A2015-38 amdt 2.47

renum as s 138 R1 LA (see A2015-38 amdt 2.55)

am [A2016-32](#) s 70, s 71**ACAT may return people to correctional centre or detention place**

s 139 hdg

am [A2016-32](#) s 72

s 139

**orig s 139**

renum as s 238

**pres s 139**(prev s 48ZZM) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 48ZZM by A2015-38 amdt 2.47

renum as s 139 R1 LA (see A2015-38 amdt 2.55)

am [A2016-32](#) s 72

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**Functions of mental health advisory council**

s 139A renum as s 239

**Membership of mental health advisory council**

s 139B renum as s 240

**Procedures of mental health advisory council**

s 139C renum as s 241

**Purpose—ch 15**

s 139CA renum as s 242

**Definitions—ch 15**

s 139CB renum as s 243

**Authority to enter into agreements**

s 139CC renum as s 244

**Authorised officer and interstate authorised person may exercise certain functions**

s 139CD renum as s 245

**Medication for person being transferred**

s 139CE renum as s 246

**Apprehension of interstate patient in breach of interstate involuntary treatment order**

s 139CF renum as s 247

**Apprehension of person in breach of mental health order or forensic mental health order**

s 139CG renum as s 248

**Interstate transfer—person under psychiatric treatment order or community care order**

s 139CH renum as s 249

**Interstate transfer—person under forensic psychiatric treatment order or forensic community care order**

s 139CI renum as s 250

**Transfer to interstate mental health facility—emergency detention**

s 139CJ renum as s 251

**Interstate transfer—when ACT order stops applying**

s 139CK renum as s 252

**Transfer of interstate patient to approved mental health facility**

s 139CL renum as s 253

**Transfer of responsibility to provide treatment, care or support in the community for interstate patient**

s 139CM renum as s 254

**Transfer of person apprehended in another State to approved mental health facility**

s 139CN renum as s 255

**Mental health order relating to interstate person**

s 139CO renum as s 256

**Implementing interstate involuntary treatment order for temporary ACT resident**

s 139CP renum as s 257

**Meaning of *reviewable decision*—ch 16**

s 139CR renum as s 258

**Reviewable decision notices**

s 139CS renum as s 259

**Applications for review**

s 139CT renum as s 260

**Approval of mental health facilities**

s 139D renum as s 261

**Approval of community care facilities**

s 139E renum as s 262

**Powers of entry and apprehension**

s 139F renum as s 263

**Review of correctional patients**pt 8.3 hdg reloc from [Mental Health \(Treatment and Care\) Act 1994](#) pt 8.3 by A2015-38 amdt 2.47**Review of correctional patient awaiting transfer to mental health facility**

s 140 **orig s 140**  
renum as s 264  
**pres s 140**  
(prev s 48ZZN) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 48ZZN by A2015-38 amdt 2.47  
renum as s 140 R1 LA (see A2015-38 amdt 2.55)  
am [A2016-32](#) s 73

**Protection of officials from liability**

s 140A renum as s 265

**Report and record of use of restraint etc**

s 140AA renum as s 266

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### **Review of correctional patient transferred to mental health facility**

s 141

#### **orig s 141**

renum as s 267

#### **pres s 141**

(prev s 48ZZO) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 48ZZO by A2015-38 amdt 2.47

renum as s 141 R1 LA (see A2015-38 amdt 2.55)

am [A2016-32](#) s 74, s 75

### **Review of correctional patient detained at mental health facility**

s 142

#### **orig s 142**

renum as s 268

#### **pres s 142**

(prev s 48ZZP) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 48ZZP by A2015-38 amdt 2.47

renum as s 142 R1 LA (see A2015-38 amdt 2.55)

am [A2016-32](#) ss 76-79; pars renum R4 LA

### **Leave for correctional patients**

pt 8.4 hdg

reloc from [Mental Health \(Treatment and Care\) Act 1994](#) pt 8.4 by A2015-38 amdt 2.47

### **Definitions—pt 8.4**

s 142A

ins [A2016-32](#) s 80

def *health director-general* ins [A2016-32](#) s 80

def *relevant director-general* ins [A2016-32](#) s 80

### **Grant of leave for correctional patients**

s 143

#### **orig s 143**

renum as s 269

#### **pres s 143**

(prev s 48ZZQ) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 48ZZQ by A2015-38 amdt 2.47

renum as s 143 R1 LA (see A2015-38 amdt 2.55)

am [A2016-32](#) ss 81-83; ss renum R4 LA

### **Revocation of leave for correctional patients**

s 144

(prev s 48ZZR) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 48ZZR by A2015-38 amdt 2.47

renum as s 144 R1 LA (see A2015-38 amdt 2.55)

am [A2016-32](#) s 84, s 85; ss renum R4 LA

### **Transfer of custody—secure mental health facility**

ch 8A hdg

ins [A2016-32](#) s 86

### **Transfer of custody if person admitted to secure mental health facility**

s 144A

ins [A2016-32](#) s 86

### **Taking person to appear before court**

s 144B

ins [A2016-32](#) s 86

**Release etc on change of status of person**s 144C ins [A2016-32](#) s 86**Power to apprehend if person escapes from secure mental health facility**s 144D ins [A2016-32](#) s 86**Transfers to health facilities**s 144E ins [A2016-32](#) s 86**Escort officers**s 144F ins [A2016-32](#) s 86**Crimes Act escape provisions**s 144G ins [A2016-32](#) s 86**Definitions**

s 145 **orig s 145**  
 renum as s 270  
**pres s 145**  
 (prev s 49) renum as s 145 R1 LA (see A2015-38 amdt 2.55)

**Review of certain provisions**

s 145A renum as s 271

**Form of consent**

s 146 **orig s 146**  
 renum as s 272  
**pres s 146**  
 (prev s 50) renum as s 146 R1 LA (see A2015-38 amdt 2.55)

**Approved forms**

s 146A renum as s 273

**When electroconvulsive therapy may be administered**

s 147 **orig s 147**  
 renum as s 274  
**pres s 147**  
 (prev s 51) renum as s 147 R1 LA (see A2015-38 amdt 2.55)

**Adult with decision-making capacity**

s 148 **orig s 148**  
 om LA s 89 (3)  
**pres s 148**  
 (prev s 52) renum as s 148 R1 LA (see A2015-38 amdt 2.55)

**Adult without decision-making capacity**

s 149 **orig s 149**  
 om LA s 89 (3)  
**pres s 149**  
 (prev s 53) renum as s 149 R1 LA (see A2015-38 amdt 2.55)

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**Young person with decision-making capacity**

s 150 (prev s 54) renum as s 150 R1 LA (see A2015-38 amdt 2.55)

**Young person without decision-making capacity**

s 151 (prev s 55) renum as s 151 R1 LA (see A2015-38 amdt 2.55)

**Offence—unauthorised administration of electroconvulsive therapy**

s 152 (prev s 55B) renum as s 152 R1 LA (see A2015-38 amdt 2.55)

**Application for electroconvulsive therapy order**

s 153 (prev s 55C) renum as s 153 R1 LA (see A2015-38 amdt 2.55)

**Consultation by ACAT—electroconvulsive therapy order**

s 154 (prev s 55D) renum as s 154 R1 LA (see A2015-38 amdt 2.55)

**ACAT must hold hearing—electroconvulsive therapy order**

s 155 (prev s 55E) renum as s 155 R1 LA (see A2015-38 amdt 2.55)

**What ACAT must take into account—electroconvulsive therapy order**

s 156 (prev s 55F) renum as s 156 R1 LA (see A2015-38 amdt 2.55)

**Making of electroconvulsive therapy order**

s 157 (prev s 55G) renum as s 157 R1 LA (see A2015-38 amdt 2.55)

**Content of electroconvulsive therapy order**

s 158 (prev s 55H) renum as s 158 R1 LA (see A2015-38 amdt 2.55)

**Person to be told about electroconvulsive therapy order**

s 159 (prev s 55I) renum as s 159 R1 LA (see A2015-38 amdt 2.55)

**Application for emergency electroconvulsive therapy order**

s 160 (prev s 55J) renum as s 160 R1 LA (see A2015-38 amdt 2.55)

**What ACAT must take into account—emergency electroconvulsive therapy order**

s 161 (prev s 55JA) renum as s 161 R1 LA (see A2015-38 amdt 2.55)

**Making of emergency electroconvulsive therapy order**

s 162 (prev s 55K) renum as s 162 R1 LA (see A2015-38 amdt 2.55)

**Content of an emergency electroconvulsive therapy order**

s 163 (prev s 55L) renum as s 163 R1 LA (see A2015-38 amdt 2.55)

**Effect of later order**

s 164 (prev s 56) renum as s 164 R1 LA (see A2015-38 amdt 2.55)

**Doctor must record electroconvulsive therapy**

s 165 (prev s 57) renum as s 165 R1 LA (see A2015-38 amdt 2.55)

**Electroconvulsive therapy records to be kept for 5 years**

s 166 (prev s 58) renum as s 166 R1 LA (see A2015-38 amdt 2.55)

**Performance on people subject to orders of ACAT**

s 167 (prev s 59) renum as s 167 R1 LA (see A2015-38 amdt 2.55)

**Psychiatric surgery not to be performed without approval or if person refuses**

s 168 (prev s 60) renum as s 168 R1 LA (see A2015-38 amdt 2.55)

**Application for approval**

s 169 (prev s 61) renum as s 169 R1 LA (see A2015-38 amdt 2.55)  
am [A2016-32](#) s 87

**Application to be considered by committee**

s 170 (prev s 62) renum as s 170 R1 LA (see A2015-38 amdt 2.55)  
am [A2016-32](#) s 88

**Requirement for further information**

s 171 (prev s 63) renum as s 171 R1 LA (see A2015-38 amdt 2.55)

**Application to be decided in accordance with committee's recommendation**

s 172 (prev s 64) renum as s 172 R1 LA (see A2015-38 amdt 2.55)

**Consent of Supreme Court**

s 173 (prev s 65) renum as s 173 R1 LA (see A2015-38 amdt 2.55)  
am [A2016-32](#) s 89

**Refusal of psychiatric surgery**

s 174 (prev s 66) renum as s 174 R1 LA (see A2015-38 amdt 2.55)

**Appointment of committee**

s 175 (prev s 67) renum as s 175 R1 LA (see A2015-38 amdt 2.55)

**Review of certain people found unfit to plead**

s 176 (prev s 68) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 68 by A2015-38 amdt 2.48  
renum as s 176 R1 LA (see A2015-38 amdt 2.55)

**Recommendations about people with mental impairment**

s 177 (prev s 70) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 70 by A2015-38 amdt 2.48  
renum as s 177 R1 LA (see A2015-38 amdt 2.55)

**Recommendations about people with mental disorder or mental illness**

s 178 (prev s 70A) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 70A by A2015-38 amdt 2.48  
renum as s 178 R1 LA (see A2015-38 amdt 2.55)

**Service of decisions etc**

s 179 (prev s 71) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 71 by A2015-38 amdt 2.48  
renum as s 179 R1 LA (see A2015-38 amdt 2.55)

**Review of detention under court order**

s 180 (prev s 72) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 72 by A2015-38 amdt 2.48  
renum as s 180 R1 LA (see A2015-38 amdt 2.55)

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### **Contravention of conditions of release**

s 181 (prev s 73) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 73 by A2015-38 amdt 2.48  
renum as s 181 R1 LA (see A2015-38 amdt 2.55)

### **Review of conditions of release**

s 182 (prev s 74) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 74 by A2015-38 amdt 2.48  
renum as s 182 R1 LA (see A2015-38 amdt 2.55)

### **Limit on detention**

s 183 (prev s 75) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 75 by A2015-38 amdt 2.48  
renum as s 183 R1 LA (see A2015-38 amdt 2.55)

### **Meaning of *subject person*—ch 11**

s 184 (prev s 76) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 76 by A2015-38 amdt 2.49  
renum as s 184 R1 LA (see A2015-38 amdt 2.55)

### **When ACAT may be constituted by presidential member**

s 185 (prev s 77) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 77 by A2015-38 amdt 2.49  
renum as s 185 R1 LA (see A2015-38 amdt 2.55)  
am [A2016-28](#) amdt 1.14; [A2016-32](#) s 90; pars renum R4 LA

### **When ACAT must be constituted by more members**

s 186 (prev s 78) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 79 by A2015-38 amdt 2.49  
renum as s 186 R1 LA (see A2015-38 amdt 2.55)  
am [A2016-28](#) amdt 1.15; [A2016-32](#) s 91, s 92

### **Applications**

s 187 (prev s 79) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 79 by A2015-38 amdt 2.49  
renum as s 187 R1 LA (see A2015-38 amdt 2.55)

### **Notice of hearing**

s 188 (prev s 79A) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 79A by A2015-38 amdt 2.49  
renum as s 188 R1 LA (see A2015-38 amdt 2.55)  
am [A2016-32](#) s 93, s 94

### **Directions to registrar**

s 189 (prev s 79B) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 79B by A2015-38 amdt 2.49  
renum as s 189 R1 LA (see A2015-38 amdt 2.55)  
am [A2016-28](#) amdt 1.16



**Appearance**

s 190 (prev s 80) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 80 by A2015-38 amdt 2.49  
renum as s 190 R1 LA (see A2015-38 amdt 2.55)  
pars renum R1 LA

**Separate representation of children etc**

s 191 (prev s 81) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 81 by A2015-38 amdt 2.49  
renum as s 191 R1 LA (see A2015-38 amdt 2.55)

**Subpoena to appear in person**

s 192 (prev s 82) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 82 by A2015-38 amdt 2.49  
renum as s 192 R1 LA (see A2015-38 amdt 2.55)

**Person subpoenaed in custody**

s 193 (prev s 83) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 83 by A2015-38 amdt 2.49  
renum as s 193 R1 LA (see A2015-38 amdt 2.55)

**Hearings to be in private**

s 194 (prev s 86) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 86 by A2015-38 amdt 2.49  
renum as s 194 R1 LA (see A2015-38 amdt 2.55)

**Who is given a copy of the order?**

s 195 (prev s 87) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 87 by A2015-38 amdt 2.49  
renum as s 195 R1 LA (see A2015-38 amdt 2.55)  
pars renum R1 LA

**Chief psychiatrist and mental health officers**

pt 12.1 hdg reloc from [Mental Health \(Treatment and Care\) Act 1994](#)  
pt 12.1 by A2015-38 amdt 2.50

**Chief psychiatrist**

s 196 (prev s 112) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 112 by A2015-38 amdt 2.50  
renum as s 196 R1 LA (see A2015-38 amdt 2.55)

**Functions**

s 197 (prev s 113) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 113 by A2015-38 amdt 2.50  
renum as s 197 R1 LA (see A2015-38 amdt 2.55)

**Approved code of practice**

s 198 (prev s 114) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 114 by A2015-38 amdt 2.50  
renum as s 198 R1 LA (see A2015-38 amdt 2.55)

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### Ending appointment—chief psychiatrist

s 199 (prev s 116) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 116 by A2015-38 amdt 2.50  
renum as s 199 R1 LA (see A2015-38 amdt 2.55)

### Delegation by chief psychiatrist

s 200 (prev s 118) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 118 by A2015-38 amdt 2.50  
renum as s 200 R1 LA (see A2015-38 amdt 2.55)

### Mental health officers

s 201 (prev s 119) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 119 by A2015-38 amdt 2.50  
renum as s 201 R1 LA (see A2015-38 amdt 2.55)  
am [A2018-42](#) amdt 1.3, amdt 1.4

### Functions of mental health officers

s 202 (prev s 119A) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 119A by A2015-38 amdt 2.50  
renum as s 202 R1 LA (see A2015-38 amdt 2.55)

### Identity cards for mental health officers

s 203 (prev s 119B) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 119B by A2015-38 amdt 2.50  
renum as s 203 R1 LA (see A2015-38 amdt 2.55)

### Care coordinator

pt 12.2 hdg reloc from [Mental Health \(Treatment and Care\) Act 1994](#) pt 12.2 by A2015-38 amdt 2.50

### Care coordinator

s 204 (prev s 120A) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 120A by A2015-38 amdt 2.50  
renum as s 204 R1 LA (see A2015-38 amdt 2.55)

### Functions

s 205 (prev s 120B) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 120B by A2015-38 amdt 2.50  
renum as s 205 R1 LA (see A2015-38 amdt 2.55)

### Ending appointment—care coordinator

s 206 (prev s 120C) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 120C by A2015-38 amdt 2.50  
renum as s 206 R1 LA (see A2015-38 amdt 2.55)

### Delegation by care coordinator

s 207 (prev s 120D) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 120D by A2015-38 amdt 2.50  
renum as s 207 R1 LA (see A2015-38 amdt 2.55)

**Official visitors**

pt 12.3 hdg      reloc from [Mental Health \(Treatment and Care\) Act 1994](#)  
pt 12.3 by A2015-38 amdt 2.50

**Meaning of *official visitor* etc**

s 208      (prev s 121) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 121 by A2015-38 amdt 2.50  
renum as s 208 R1 LA (see A2015-38 amdt 2.55)

**Appointment of official visitors—additional suitability requirement**

s 209      (prev s 122) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 122 by A2015-38 amdt 2.50  
renum as s 209 R1 LA (see A2015-38 amdt 2.55)

**Appointment of principal official visitor**

s 210      (prev s 122AA) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 122AA by A2015-38 amdt 2.50  
renum as s 210 R1 LA (see A2015-38 amdt 2.55)

**Official visitor's functions**

s 211      (prev s 122A) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 122A by A2015-38 amdt 2.50  
renum as s 211 R1 LA (see A2015-38 amdt 2.55)

**Principal official visitor's functions**

s 212      (prev s 122BB) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 122BB by A2015-38 amdt 2.50  
renum as s 212 R1 LA (see A2015-38 amdt 2.55)

**Notice to official visitor of detainee receiving mental health treatment, care or support in correctional centre**

s 213      (prev s 122B) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 122B by A2015-38 amdt 2.50  
renum as s 213 R1 LA (see A2015-38 amdt 2.55)

**Complaint about treatment, care or support provided at place other than visitable place**

s 214      (prev s 122C) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 122C by A2015-38 amdt 2.50  
renum as s 214 R1 LA (see A2015-38 amdt 2.55)

**Coordinating director-general**

pt 12.4 hdg      reloc from [Mental Health \(Treatment and Care\) Act 1994](#)  
pt 12.4 by A2015-38 amdt 2.50

**Coordinating director-general**

s 215      (prev s 122D) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 122D by A2015-38 amdt 2.50  
renum as s 215 R1 LA (see A2015-38 amdt 2.55)

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### Functions of coordinating director-general

s 216 (prev s 122E) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 122E by A2015-38 amdt 2.50  
renum as s 216 R1 LA (see A2015-38 amdt 2.55)

### Coordinating director-general policies and operating procedures

s 217 (prev s 122F) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 122F by A2015-38 amdt 2.50  
renum as s 217 R1 LA (see A2015-38 amdt 2.55)

### Sharing information—government agencies

pt 12.5 hdg reloc from [Mental Health \(Treatment and Care\) Act 1994](#)  
pt 12.5 by A2015-38 amdt 2.50

### Definitions—pt 12.5

s 218 (prev s 122G) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 122G by A2015-38 amdt 2.50  
renum as s 218 R1 LA (see A2015-38 amdt 2.55)  
def **information sharing entity** reloc from [Mental Health \(Treatment and Care\) Act 1994](#) by A2015-38 amdt 2.50  
def **information sharing protocol** reloc from [Mental Health \(Treatment and Care\) Act 1994](#) by A2015-38 amdt 2.50  
def **relevant information** reloc from [Mental Health \(Treatment and Care\) Act 1994](#) by A2015-38 amdt 2.50

### Information sharing protocol

s 219 (prev s 122H) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 122H by A2015-38 amdt 2.50  
renum as s 219 R1 LA (see A2015-38 amdt 2.55)

### Information sharing guidelines

s 220 (prev s 122I) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 122I by A2015-38 amdt 2.50  
renum as s 220 R1 LA (see A2015-38 amdt 2.55)

### Information sharing—approval of agency

s 221 (prev s 122J) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 122J by A2015-38 amdt 2.50  
renum as s 221 R1 LA (see A2015-38 amdt 2.55)

### Definitions—ch 13

s 222 (prev s 123) renum as s 222 R1 LA (see A2015-38 amdt 2.55)

### Meaning of *eligible person*—pt 13.2

s 223 (prev s 124) renum as s 223 R1 LA (see A2015-38 amdt 2.55)

### Licence—requirement to hold

s 224 (prev s 125) renum as s 224 R1 LA (see A2015-38 amdt 2.55)

### Licence—application

s 225 (prev s 126) renum as s 225 R1 LA (see A2015-38 amdt 2.55)

**Licence—decision on application**

s 226 (prev s 127) renum as s 226 R1 LA (see A2015-38 amdt 2.55)

**Licence—term and renewal of licence**

s 227 (prev s 128) renum as s 227 R1 LA (see A2015-38 amdt 2.55)

**Licence—transfer of licence**

s 228 (prev s 129) renum as s 228 R1 LA (see A2015-38 amdt 2.55)

**Licence—amendment initiated by Minister**

s 229 (prev s 130) renum as s 229 R1 LA (see A2015-38 amdt 2.55)

**Licence—amendment on application by licensee**

s 230 (prev s 131) renum as s 230 R1 LA (see A2015-38 amdt 2.55)

**Licence—surrender**

s 231 (prev s 132) renum as s 231 R1 LA (see A2015-38 amdt 2.55)

**Licence—cancellation by notice**

s 232 (prev s 133) renum as s 232 R1 LA (see A2015-38 amdt 2.55)

**Licence—emergency cancellation**

s 233 (prev s 134) renum as s 233 R1 LA (see A2015-38 amdt 2.55)

**Appointment of inspectors**

s 234 (prev s 135) renum as s 234 R1 LA (see A2015-38 amdt 2.55)

**Identity cards**

s 235 (prev s 135A) renum as s 235 R1 LA (see A2015-38 amdt 2.55)

**Powers of inspection**

s 236 (prev s 135B) renum as s 236 R1 LA (see A2015-38 amdt 2.55)

**Failing to comply with requirement of inspector**

s 237 (prev s 135C) renum as s 237 R1 LA (see A2015-38 amdt 2.55)

**Establishment of mental health advisory council**

s 238 (prev s 139) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 139 by A2015-38 amdt 2.51  
renum as s 238 R1 LA (see A2015-38 amdt 2.55)

**Functions of mental health advisory council**

s 239 (prev s 139A) reloc from [Mental Health \(Treatment and Care\) Act 1999](#) s 139A by A2015-38 amdt 2.51  
renum as s 239 R1 LA (see A2015-38 amdt 2.55)

## Endnotes

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### **Membership of mental health advisory council**

s 240 (prev s 139B) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 139B by A2015-38 amdt 2.51  
renum as s 240 R1 LA (see A2015-38 amdt 2.55)  
am [A2016-32](#) s 95

### **Procedures of mental health advisory council**

s 241 (prev s 139C) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 139C by A2015-38 amdt 2.51  
renum as s 241 R1 LA (see A2015-38 amdt 2.55)

### **Purpose—ch 15**

s 242 (prev s 139CA) renum as s 242 R1 LA (see A2015-38 amdt 2.55)

### **Definitions—ch 15**

s 243 (prev s 139CB) renum as s 243 R1 LA (see A2015-38 amdt 2.55)

### **Authority to enter into agreements**

s 244 (prev s 139CC) renum as s 244 R1 LA (see A2015-38 amdt 2.55)

### **Authorised officer and interstate authorised person may exercise certain functions**

s 245 (prev s 139CD) renum as s 245 R1 LA (see A2015-38 amdt 2.55)

### **Medication for person being transferred**

s 246 (prev s 139CE) renum as s 246 R1 LA (see A2015-38 amdt 2.55)

### **Apprehension of interstate patient in breach of interstate involuntary treatment order**

s 247 (prev s 139CF) renum as s 247 R1 LA (see A2015-38 amdt 2.55)

### **Apprehension of person in breach of mental health order or forensic mental health order**

s 248 (prev s 139CG) renum as s 248 R1 LA (see A2015-38 amdt 2.55)

### **Interstate transfer—person under psychiatric treatment order or community care order**

s 249 (prev s 139CH) renum as s 249 R1 LA (see A2015-38 amdt 2.55)

### **Interstate transfer—person under forensic psychiatric treatment order or forensic community care order**

s 250 (prev s 139CI) renum as s 250 R1 LA (see A2015-38 amdt 2.55)

**Transfer to interstate mental health facility—emergency detention**

s 251 (prev s 139CJ) renum as s 251 R1 LA (see A2015-38 amdt 2.55)

**Interstate transfer—when ACT order stops applying**

s 252 (prev s 139CK) renum as s 252 R1 LA (see A2015-38 amdt 2.55)

**Transfer of interstate patient to approved mental health facility**

s 253 (prev s 139CL) renum as s 253 R1 LA (see A2015-38 amdt 2.55)

**Transfer of responsibility to provide treatment, care or support in the community for interstate patient**

s 254 (prev s 139CM) renum as s 254 R1 LA (see A2015-38 amdt 2.55)

**Transfer of person apprehended in another State to approved mental health facility**

s 255 (prev s 139CN) renum as s 255 R1 LA (see A2015-38 amdt 2.55)

**Mental health order relating to interstate person**

s 256 (prev s 139CO) renum as s 256 R1 LA (see A2015-38 amdt 2.55)

**Implementing interstate involuntary treatment order for temporary ACT resident**

s 257 (prev s 139CP) renum as s 257 R1 LA (see A2015-38 amdt 2.55)

**Meaning of *reviewable decision*—ch 16**

s 258 (prev s 139CR) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 139CR by A2015-38 amdt 2.52  
renum as s 258 R1 LA (see A2015-38 amdt 2.55)

**Reviewable decision notices**

s 259 (prev s 139CS) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 139CS by A2015-38 amdt 2.52  
renum as s 259 R1 LA (see A2015-38 amdt 2.55)

**Applications for review**

s 260 (prev s 139CT) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 139CT by A2015-38 amdt 2.52  
renum as s 260 R1 LA (see A2015-38 amdt 2.55)

**Approval of mental health facilities**

s 261 (prev s 139D) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 139D by A2015-38 amdt 2.53  
renum as s 261 R1 LA (see A2015-38 amdt 2.55)

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### **Approval of community care facilities**

s 262 (prev s 139E) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 139E by A2015-38 amdt 2.53  
renum as s 262 R1 LA (see A2015-38 amdt 2.55)

### **Powers of entry and apprehension**

s 263 (prev s 139F) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 139F by A2015-38 amdt 2.53  
renum as s 263 R1 LA (see A2015-38 amdt 2.55)  
pars renum R1 LA  
am [A2016-32](#) s 96; pars renum R4 LA

### **Powers of search and seizure**

s 264 (prev s 140) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 140 by A2015-38 amdt 2.53  
renum as s 264 R1 LA (see A2015-38 amdt 2.55)  
am [A2016-32](#) s 97; pars renum R4 LA

### **Protection of officials from liability**

s 265 (prev s 140A) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 140A by A2015-38 amdt 2.53  
renum as s 265 R1 LA (see A2015-38 amdt 2.55)

### **Report and record of use of restraint etc**

s 266 (prev s 140AA) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 140AA by A2015-38 amdt 2.53  
renum as s 266 R1 LA (see A2015-38 amdt 2.55)

### **Appeals from ACAT to Supreme Court**

s 267 (prev s 141) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 141 by A2015-38 amdt 2.53  
renum as s 267 R1 LA (see A2015-38 amdt 2.55)

### **Relationship with Guardianship and Management of Property Act**

s 268 (prev s 142) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 142 by A2015-38 amdt 2.53  
renum as s 268 R1 LA (see A2015-38 amdt 2.55)

### **Relationship with Powers of Attorney Act**

s 269 (prev s 143) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 143 by A2015-38 amdt 2.53  
renum as s 269 R1 LA (see A2015-38 amdt 2.55)

### **Certain rights unaffected**

s 270 (prev s 145) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 145 by A2015-38 amdt 2.53  
renum as s 270 R1 LA (see A2015-38 amdt 2.55)



**Review of certain provisions**

s 271 (prev s 145A) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 145A by A2015-38 amdt 2.53  
renum as s 271 R1 LA (see A2015-38 amdt 2.55)  
am [A2017-28](#) amdt 3.27  
(1)-(3) exp 1 March 2021 (s 271 (3))  
(4), (5) exp 1 March 2019 (s 271 (5))

**Determination of fees**

s 272 (prev s 146) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 146 by A2015-38 amdt 2.53  
renum as s 272 R1 LA (see A2015-38 amdt 2.55)

**Approved forms**

s 273 (prev s 146A) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 146A by A2015-38 amdt 2.53  
renum as s 273 R1 LA (see A2015-38 amdt 2.55)

**Regulation-making power**

s 274 (prev s 147) reloc from [Mental Health \(Treatment and Care\) Act 1994](#) s 147 by A2015-38 amdt 2.53  
renum as s 274 R1 LA (see A2015-38 amdt 2.55)

**Repeals and consequential amendments**

ch 18 hdg om LA s 89 (4)

**Transitional**

ch 40 hdg exp 1 March 2018 (s 402)

**General**

pt 40.1 hdg exp 1 March 2018 (s 402)

**Definitions—ch 40**

s 400 exp 1 March 2018 (s 402)  
def **commencement day** exp 1 March 2018 (s 402)  
def **repealed Act** exp 1 March 2018 (s 402)

**Transitional regulations**

s 401 exp 1 March 2018 (s 402)

**Expiry—ch 40**

s 402 exp 1 March 2018 (s 402)

**Transitional—rights of people with mental disorder or mental illness**

pt 40.2 hdg exp 1 March 2018 (s 402)

**Rights in relation to information and communication**

s 403 exp 1 March 2018 (s 402)

**Transitional—mental health orders**

pt 40.3 hdg exp 1 March 2018 (s 402)

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### **Applications**

div 40.3.1 hdg exp 1 March 2018 (s 402)

### **Application by person with mental illness or mental dysfunction—unfinished applications**

s 404 exp 1 March 2018 (s 402)

### **Application by chief psychiatrist or care coordinator—unfinished applications**

s 405 exp 1 March 2018 (s 402)

### **Application by certain other people—unfinished applications**

s 406 exp 1 March 2018 (s 402)

### **Application by referring officers—unfinished referrals**

s 407 exp 1 March 2018 (s 402)

### **Psychiatric treatment orders**

div 40.3.2 hdg exp 1 March 2018 (s 402)

### **Psychiatric treatment order—in force before commencement day**

s 408 exp 1 March 2018 (s 402)

### **Restriction order with psychiatric treatment order—in force before commencement day**

s 409 exp 1 March 2018 (s 402)

### **Chief psychiatrist role—determination in force before commencement day**

s 410 exp 1 March 2018 (s 402)

### **Action if psychiatric treatment order no longer appropriate—notice given but not considered by ACAT**

s 411 exp 1 March 2018 (s 402)

### **Community care orders**

div 40.3.3 hdg exp 1 March 2018 (s 402)

### **Community care order—in force before commencement day**

s 412 exp 1 March 2018 (s 402)

### **Restriction order with community care order—in force before commencement day**

s 413 exp 1 March 2018 (s 402)

### **Care coordinator role—determination in force before commencement day**

s 414 exp 1 March 2018 (s 402)

### **Action if community care order no longer appropriate—notice given but not considered by ACAT**

s 415 exp 1 March 2018 (s 402)

### **Other matters**

div 40.3.4 hdg exp 1 March 2018 (s 402)

**Forensic mental health orders—people required to submit to ACAT jurisdiction before commencement day**

s 416 exp 1 March 2018 (s 402)

**Transitional—emergency detention**

pt 40.4 hdg exp 1 March 2018 (s 402)

**Apprehension before commencement day**

s 417 exp 1 March 2018 (s 402)

**Authorisation of involuntary detention before commencement day**

s 418 exp 1 March 2018 (s 402)

**Transitional—interstate application of mental health laws**

pt 40.5 hdg exp 1 March 2018 (s 402)

**Interstate agreements notified before commencement day**

s 419 exp 1 March 2018 (s 402)

**Legislation amended**

sch 2 om LA s 89 (3)

**Dictionary**

dict am [A2016-13](#) amdt 1.96  
 def **ACAT mental health provision** om [A2017-28](#) amdt 3.28  
 def **affected person register** sub [A2017-28](#) amdt 3.29  
 def **general president** om [A2016-28](#) amdt 1.17  
 def **health director-general** ins [A2016-32](#) s 98  
 def **president** ins [A2016-28](#) amdt 1.18  
 def **psychiatrist** am [A2016-32](#) s 99  
 def **relevant director-general** ins [A2016-32](#) s 100  
 def **secure mental health facility** ins [A2016-32](#) s 101  
 def **victims of crime commissioner** om [A2016-13](#) amdt 1.97

## Endnotes

### 5 Earlier republishings

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#### 5 Earlier republishings

Some earlier republishings were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republishings have also been published in printed format. These republishings are marked with an asterisk (\*) in column 1. Electronic and printed versions of an authorised republication are identical.

Republication No and date	Effective	Last amendment made by	Republication for
R1 1 Mar 2016	1 Mar 2016– 31 Mar 2016	not amended	new Act, relocation of provisions from the <a href="#">Mental Health (Treatment and Care) Act 1994</a> and general renumbering
R2 1 Apr 2016	1 Apr 2016– 15 June 2016	<a href="#">A2016-13</a>	amendments by <a href="#">A2016-13</a>
R3 16 June 2016	16 June 2016– 20 June 2016	<a href="#">A2016-28</a>	amendments by <a href="#">A2016-28</a>
R4 21 June 2016	21 June 2016– 30 Apr 2017	<a href="#">A2016-32</a>	amendments by <a href="#">A2016-32</a>
R5 1 May 2017	1 May 2017– 10 Oct 2017	<a href="#">A2017-10</a>	amendments by <a href="#">A2016-42</a> as amended by <a href="#">A2017-10</a>
R6 11 Oct 2017	11 Oct 2017– 1 Mar 2018	<a href="#">A2017-28</a>	amendments by <a href="#">A2017-28</a>
R7 2 Mar 2018	2 Mar 2018– 21 Nov 2018	<a href="#">A2017-28</a>	expiry of transitional provisions (ch 40)

## 6 Expired transitional or validating provisions

This Act may be affected by transitional or validating provisions that have expired. The expiry does not affect any continuing operation of the provisions (see [Legislation Act 2001](#), s 88 (1)).

Expired provisions are removed from the republished law when the expiry takes effect and are listed in the amendment history using the abbreviation ‘exp’ followed by the date of the expiry.

To find the expired provisions see the version of this Act before the expiry took effect. The ACT legislation register has point-in-time versions of this Act.

## 7 Renumbered provisions

This Act was renumbered under the [Legislation Act 2001](#), in R1 (see [A2015-38 sch 2 amdt 2.55](#)). Details of renumbered provisions are shown in endnote 4 (Amendment history). For a table showing the renumbered provisions, see R7.

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