



Australian Capital Territory

Mental Health (Treatment and Care) Amendment Act 2014

A2014-51

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Australian Capital Territory

Mental Health (Treatment and Care) Amendment Act 2014

A2014-51

An Act to amend the *Mental Health (Treatment and Care) Act 1994*, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 Name of Act

This Act is the *Mental Health (Treatment and Care) Amendment Act 2014*.

2 Commencement

- (1) This Act commences on a day fixed by the Minister by written notice.

Note 1 The naming and commencement provisions automatically commence on the notification day (see [Legislation Act](#), s 75 (1)).

Note 2 A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see [Legislation Act](#), s 77 (1)).

- (2) If this Act has not commenced within 12 months beginning on its notification day, it automatically commences on the first day after that period.
- (3) The [Legislation Act](#), section 79 (Automatic commencement of postponed law) does not apply to this Act.

3 Legislation amended

This Act amends the *Mental Health (Treatment and Care) Act 1994*.

Note This Act also amends other legislation (see sch 1).

4 Long title

substitute

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

5 Part 1 heading

renumber as chapter 1

6 Section 1

substitute

1 Name of Act

This Act is the *Mental Health (Treatment and Care) Act 1994*.

**7 Offences against Act—application of Criminal Code etc
Section 4A, note 1**

insert

- s 18 (Failure by owner of facility to comply with pt 3.1)

8 Section 4A, note 1

insert

- s 36ZM (Offence—limits on communication—mental health order)
- s 42 (Notification of certain people about detention)

9 Section 4A, note 1

omit

- s 45 (Communication during detention)

substitute

- s 45 (Offence—communication during detention)

10 Section 4A, note 1

insert

- s 48ZP (Offence—limits on communication—forensic mental health order)

11 Sections 5, 6 and parts 2 and 4

substitute

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 114 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) any other information relating to the treatment, care or support of the person that the director-general considers relevant; and
 - (vii) 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.

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 48ZO (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 146A 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 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 146A 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 146A 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 146A 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 146A 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) 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 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 146A for this provision, the form must be used.

- (4) An advance consent direction that includes advance consent for electroconvulsive therapy 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 146A for this provision, the form must be used.

- (5) 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 guardian under the *Guardianship and Management of Property Act 1991*—the guardian and the ACAT; and
 - (iv) if the person has an attorney under the *Powers of Attorney Act 2006*—the attorney; and
 - (v) 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 any member of the person's treating team who does not have access to the person's record; and
 - (iii) if the person has a nominated person—is given to the nominated person; 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**36A Assessment order**

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 36ZQ (Review, amendment or revocation 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 72 (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 36V, s 36ZD, s 48ZA and s 48ZH).

36B Consent for assessment order

- (1) If the ACAT is considering ordering an assessment of a person under section 36A (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.

36C Emergency assessment order

- (1) This section applies if—
- (a) the ACAT is considering ordering an assessment of a person under section 36A (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 36B (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 79A (Notice of hearing) does not apply in relation to the making of an emergency assessment order (see s 79A (3)).

36D 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 at which the assessment is to be conducted and, if appropriate, the person who is to conduct the assessment; and
 - (c) direct the person to be assessed to attend the mental health facility and, if necessary and reasonable, stay at the facility until the assessment has been conducted; and
 - (d) direct the person in charge of the mental health facility to—
 - (i) if appropriate, admit the person to be assessed to the facility to conduct the assessment; and
 - (ii) if necessary and reasonable, detain the person at the facility until the assessment has been conducted; and
 - (iii) 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 36V (Psychiatric treatment order) or section 36ZD (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 36V and s 36ZD, 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.

36E 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.

36F 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.
- (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.

36G Removal order to conduct assessment

- (1) This section applies if the ACAT makes—
 - (a) an assessment order in relation to a person under section 36A (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 82 (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 36A (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.

36H Executing removal order

- (1) A removal order made under section 36G (2) in relation to a person may be executed by a police officer.
- (2) The police officer must, before removing the person, explain to the person the purpose of the order.

Note See s 139F (Powers of entry and apprehension) and s 140 (Powers of search and seizure).

36I 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.

36J 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.

36K Person to be assessed to be told about order

- (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, before an assessment is conducted, ensure that the person to be assessed is told about the assessment order, including the process of assessment and possible outcome of an assessment, in a language and way of communicating that the person is likely to understand.
- (3) This section applies even if the person to be assessed was present when the order was made.

36L Copy of assessment

- (1) This section applies if an assessment is conducted at a mental health facility under an assessment order.
- (2) The person in charge of the mental health facility 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.

36M 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 36L (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

36N 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 with authority to give the treatment, care or support proposed to be given to the subject of the order.

Part 5.2 Applications for mental health orders

360 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 36V (Psychiatric treatment order) or section 36ZD (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 36V and s 36ZD).

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 36V (Psychiatric treatment order) or section 36ZD (Community care order); and
 - (b) a plan setting out the proposed treatment, care or support of the subject person.

36P Applicant to tell ACAT of risks

- (1) This section applies if—
 - (a) a person (the *applicant*) applies under section 36O 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

36Q 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.

36R 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 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, if the ACAT has contact details for the carer, 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.

36S 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.

36T 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 36O (Applications for mental health orders)—a plan for the proposed treatment, care or support of the person, mentioned in section 36O (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 36R (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.

36U 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

36V 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; 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.

36W 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 36Z (Role of chief psychiatrist—psychiatric treatment order); and
 - (b) be accompanied by a statement about how the person meets the criteria under section 36V (2) (Psychiatric treatment order).
- (3) A psychiatric treatment order must not include any requirement mentioned in section 36Y (1) (Content of restriction order made with psychiatric treatment order).

36X 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.

36Y Content of restriction order made with psychiatric treatment order

- (1) A restriction order made under section 36X 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.

36Z 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 If a form is approved under s 146A 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 146A 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 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.

36ZA 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.

36ZB 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 36V. For the criteria for making a restriction order with a psychiatric treatment order, see s 36X.

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 146A 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 36ZQ (3)).

36ZC 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 36Z (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 36ZO (Contravention of mental health order).
- (2) The chief psychiatrist may—
 - (a) detain the person at an approved mental health facility; and
 - Note* See s 140 (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 confinement or 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 confinement or restraint, involuntary seclusion or forcible giving of medication; and
 - (b) tell the public advocate in writing within 12 hours after the person is subjected to the confinement or restraint, involuntary seclusion or forcible giving of medication; and
 - (c) keep a register of the confinement or 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

36ZD 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.

36ZE 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 36ZG (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 36ZH (Role of care coordinator—community care order); and
 - (b) be accompanied by a statement about how the person meets the criteria under section 36ZD (2) (Community care order).

36ZF 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.

36ZG Content of restriction order made with community care order etc

- (1) A restriction order made under section 36ZF 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).

36ZH 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 146A 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 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.

36ZI 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.

36ZJ 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 36ZD. For the criteria for making a restriction order with a community care order, see s 36ZF.

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 146A 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 36ZQ (3)).

36ZK 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 36ZO (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
 - Note* See s 140 (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 confinement or 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 confinement or restraint, involuntary seclusion or forcible giving of medication; and
 - (b) tell the public advocate in writing within 12 hours after the person is subjected to the confinement or restraint, involuntary seclusion or forcible giving of medication; and
 - (c) keep a register of the confinement or 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

36ZL 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 36ZM.

36ZM 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**

36ZN **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.

36ZO **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 36ZP (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

Note If a form is approved under s 146A 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 taken to an approved mental health facility or approved community care facility to ensure compliance with the order.

Note The chief psychiatrist may make a determination requiring a person to be taken to a place for treatment, care or support—see s 36Z (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 139F (Powers of entry and apprehension) and s 140 (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 36ZQ (3)).

36ZP 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 139F (Powers of entry and apprehension) and s 140 (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 36ZQ (3)).

36ZQ Review, amendment or revocation 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 36ZB (Action if psychiatric treatment order no longer appropriate—no longer person in relation to whom ACAT could make order);

- (b) section 36ZJ (Action if community care order no longer appropriate—no longer person in relation to whom ACAT could make order);
 - (c) section 36ZO (4) (Contravention of mental health order) and the notice indicates that a restriction order has been contravened;
 - (d) section 36ZP (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 36R (1) (Consultation by ACAT—mental health order).
- Note* If the ACAT holds a hearing for the review, s 79A (1) (Notice of hearing) does not apply (see s 79A (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) 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.

12 Part 5 heading and sections 37 to 41

substitute

Chapter 6 Emergency detention

37 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 139F (Powers of entry and apprehension) and s 140 (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 139F (Powers of entry and apprehension) and s 140 (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.

38 Detention at approved mental health facility

- (1) If a person is taken to an approved mental health facility under section 37 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 37 (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.

38A 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.

39 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 37 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 extent of the force or assistance used to enter any premises, or to apprehend the person and take the person to the facility.
- (2) The person in charge of the approved mental health facility must enter the statement in the person's record.

40 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 38.
- (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 38 (1)—arriving at the facility; or
 - (b) for a person detained under section 38 (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 conduct an initial examination of the subject person 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.

41 Authorisation of involuntary detention

(1) A doctor may authorise the involuntary detention 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 40 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 79A (1) (Notice of hearing) does not apply (see s 79A (3)).

41AA 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 41 (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 40.
- (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.

**13 Notification of Magistrates Court about emergency detention or release from emergency detention
Section 41A**

omit

approved health facility

substitute

approved mental health facility

14 Section 41A

omit

treatment or care

substitute

treatment, care or support

15 New section 41A (2)

insert

- (2) If the person is detained at the facility under section 38 or section 41, the person in charge of the facility must notify the court of the reasons for the detention.

16 Section 42

substitute

42 Notification of certain people about detention

- (1) A doctor must, within 12 hours after authorising the involuntary detention of a person under section 41, 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 38 or section 41, take all reasonable steps to give the required information about the detention to at least 1 of 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) If a doctor or mental health officer does not give the required information about the detention of a person to at least 1 of the people mentioned in subsection (2) (a) to (e), the doctor or mental health officer must tell the public advocate of that fact.
- (4) The ACAT must, as soon as practicable after ordering under section 41 (3) that a period of detention be extended—
 - (a) take all reasonable steps to give the required information about the detention to at least 1 of the people mentioned in subsection (2) (a) to (e); and
 - (b) if the required information is not given to at least 1 of the people mentioned in subsection (2) (a) to (e), tell the public advocate of that fact.
- (5) The person in charge of a mental health facility where a person is detained under section 38 or section 41 must ensure that the person has adequate opportunity and assistance to notify a relative or friend of the person's detention.
- (6) 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.

**17 Medical examination
Section 43**

omit

**18 Treatment during detention
Section 44 (1)**

after

treatment

insert

, care or support

19 Section 44 (1), note

omit

(see subdiv 7.2.4)

substitute

(see div 9.2.4)

20 Section 44 (as amended)

relocate as section 41AB

21 Section 45 heading

substitute

45 Offence—communication during detention

22 Section 45

omit

(the *detainee*)

substitute

(the *detained person*)

23 Section 45

omit

detainee

substitute

detained person

24 Section 45

omit

detainee's lawyer

substitute

detained person's lawyer

**25 Orders for release
Section 46 (1)**

omit

may

substitute

must, as soon as practicable,

26 Section 46 (2)

omit

shall

substitute

must, as soon as practicable,

**27 Approved facilities
Section 48**

omit

28 Divisions 5A.1 to 5A.5

renumber as parts 15.1 to 15.5

29 Section 48A heading

substitute

48A Object of ch 15

30 Section 48A

omit

part

substitute

chapter

31 Section 48B heading

substitute

48B Definitions—ch 15

32 Section 48B

omit

part

substitute

chapter

**33 Authority to enter into agreements
Section 48C**

omit

part

substitute

chapter

**34 Recognition of interstate laws and orders
Section 48D**

omit

part

substitute

chapter

35 **Transfer of custodial patients from ACT
Section 48G (1) (b) (i) and (ii)**

substitute

- (i) a restriction order made under section 36X or section 36ZF; or
- (ii) action taken under a relevant provision;

36 **New section 48G (4)**

insert

- (4) In this section:

relevant provision means—

- (a) section 36ZC (Powers in relation to psychiatric treatment order); or
- (b) section 36ZO (Contravention of mental health order); or
- (c) section 36ZP (Contravention of mental health order—absconding from facility); or
- (d) section 48ZG (Powers in relation to forensic psychiatric treatment order); or
- (e) section 48ZX (Contravention of forensic mental health order); or
- (f) section 48ZY (Contravention of forensic mental health order—absconding from facility).

**37 Psychiatric treatment orders relating to interstate people
Section 48M (1)**

omit

division 4.4

substitute

part 5.4

38 Section 48M (2)

omit

section 31 (a) (ii)

substitute

section 36Y (1) (a) (ii) or section 36ZG (1) (a) (ii)

**39 Apprehension of interstate persons absent without leave
or in breach of orders
Section 48Q (3)**

omit

section 41

substitute

section 38

**40 Regulations relating to apprehension of persons
Section 48R**

omit

part

substitute

chapter

41 Sections 48A to 48R (as amended)

renumber as sections 139CA to 139CQ

**42 Interstate application of mental health laws
Part 5A (as amended)**

relocate as chapter 15

43 New chapters 7 and 8

insert

Chapter 7 Forensic mental health**Part 7.1 Forensic mental health orders****Division 7.1.1 Preliminary****48S Definitions—pt 7.1**

In this part:

community-based sentence—see the [Crimes \(Sentence Administration\) Act 2005](#), section 264.

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 with authority to give the treatment, care or support proposed to be given to the subject person.

Division 7.1.2 Application for forensic mental health orders

48T Applications for forensic mental health orders—detainees and people under community-based sentences

- (1) This section applies to a detainee or a person serving a community-based sentence (the *subject person*) if a 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 48ZA (Forensic psychiatric treatment order) or section 48ZH (Forensic community care order).
- (2) The relevant person may apply to the ACAT for a forensic mental health order in relation to the subject person.
- (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 48ZA (Forensic psychiatric treatment order) or section 48ZH (Forensic community care order); and
 - (b) a plan setting out the proposed treatment, care or support of the subject person.

48U 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

48V 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.

48W 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.

48X 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.

48Y 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 48T (3);

- (b) whether the person consents, refuses to consent or has the decision-making capacity to consent, to proposed treatment, care or support;
- (c) the views and wishes of the person, so far as they can be found out;
- (d) 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;
- (e) 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;
- (f) the views of each person appearing at the proceeding;
- (g) 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;
- (h) the views of each person consulted under section 48W (Consultation by ACAT—forensic mental health order);
- (i) 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;
- (j) 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;

- (k) any relevant medical history of the person;
- (l) 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;
- (m) 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;
- (n) 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.

48Z 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

48ZA 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 detainee or a person serving a community-based sentence 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.

48ZB 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 48ZC (Role of chief psychiatrist—forensic psychiatric treatment order); and
 - (b) be accompanied by a statement about how the person meets the criteria under section 48ZA (2) (Forensic psychiatric treatment order).

48ZC 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 If a form is approved under s 146A 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 146A 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 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 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.

48ZD 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.

48ZE 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 48ZA.

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—
 - (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 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 nominated person that the nominated person is entitled to make a submission to the ACAT review of the forensic psychiatric treatment order.

Note If a form is approved under s 146A 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 48ZZ (3)).

48ZF 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—
 - (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) (c); and
 - (b) ask whether the carer or nominated person is 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 nominated person that the nominated person is 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 146A 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 48ZZ (3)).

48ZG 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

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- (ii) the chief psychiatrist has made a determination under section 48ZC (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 139F (Powers of entry and apprehension) and s 140 (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 confinement or 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 confinement or restraint, involuntary seclusion or forcible giving of medication; and
 - (b) tell the public advocate in writing within 12 hours after the person is subjected to the confinement or restraint, involuntary seclusion or forcible giving of medication; and
 - (c) keep a register of the confinement or 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

48ZH 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 detainee or person serving a community-based sentence 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.

48ZI 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
 - (ii) be detained at a stated approved community care facility or another stated place;
 - (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 48ZJ (Role of care coordinator—forensic community care order); and
 - (b) be accompanied by a statement about how the person meets the criteria under section 48ZH (2) (Forensic community care order).

48ZJ 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 146A for a determination, the form must be used.

- (3) The care coordinator 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.
- (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 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 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.

48ZK 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.

48ZL 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 48ZH.

- (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 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

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- (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 nominated person that the nominated person is 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 146A 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 48ZZ (3)).

48ZM 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 48ZH. For detention powers in relation to a forensic community care order, see s 48ZN.

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) (c); and
 - (b) ask whether the carer or nominated person is 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 nominated person that the nominated person is entitled to make a submission to the ACAT review of the forensic community care order.

Note If a form is approved under s 146A 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 chief psychiatrist 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 48ZZ (3)).

48ZN 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 48ZX (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 139F (Powers of entry and apprehension) and s 140 (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 confinement or 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 confinement or restraint, involuntary seclusion or forcible giving of medication; and
 - (b) tell the public advocate in writing within 12 hours after the person is subjected to the confinement or restraint, involuntary seclusion or forcible giving of medication; and
 - (c) keep a register of the confinement or 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

48ZO 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 48ZP.

48ZP 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

48ZQ 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 36O).

Division 7.1.8 Leave for detained people

48ZR 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.

48ZS 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 48ZB (1) (d) or s 48ZI (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—consult the corrections director-general; 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—the corrections director-general.

48ZT Revocation of leave granted by ACAT

- (1) The ACAT may revoke leave granted under section 48ZS 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—the corrections director-general.
- (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—the corrections director-general.

- (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 139F (Powers of entry and apprehension) and s 140 (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.

48ZU 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 48ZC (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 48ZN and s 48ZX).

- (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—consult with the corrections director-general.
- (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—the corrections director-general.

48ZV 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) 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 48ZS (Grant of leave for person detained by ACAT), section 48ZU (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.

- (4) 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—the corrections director-general.

Note The function of granting leave under this section must not be delegated (see s 118 (2) (Delegation by chief psychiatrist) and s 120D (2) (Delegation by care coordinator)).

48ZW Revocation of leave granted by relevant official

- (1) The relevant official may revoke leave granted under section 48ZU or section 48ZV 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—the corrections director-general.
- (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—the corrections director-general.
- (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 139F (Powers of entry and apprehension) and s 140 (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**

48ZX 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 48ZY (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 146A 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 139F (Powers of entry and apprehension) and s 140 (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 48ZZ (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.

48ZY 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) 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 139F (Powers of entry and apprehension) and s 140 (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 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 48ZZ (5)).

48ZZ Review, amendment or revocation 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 48ZE (Action if forensic psychiatric treatment order no longer appropriate—no longer person in relation to whom ACAT could make order);
 - (b) section 48ZF (Action if forensic psychiatric treatment order no longer appropriate—no longer necessary to detain person);
 - (c) section 48ZL (Action if forensic community care order no longer appropriate—no longer person in relation to whom ACAT could make order);
 - (d) section 48ZM (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 48W.
- (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 48ZX (4) (Contravention of forensic mental health order); or
 - (b) section 48ZY (4) (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 48W.

Note If the ACAT holds a hearing for the review, s 79A (1) (Notice of hearing) does not apply (see s 79A (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) 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

48ZZA Definitions—pt 7.2

In this part:

affected person register—see section 48ZZD.

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.

48ZZB 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.

48ZZC 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 48ZZD.

48ZZD 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.

48ZZE 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 48ZZH; and
 - (b) the requirement for an affected person to sign an undertaking not to publish the information received under section 48ZZH 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 146A 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*.

48ZZF 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 48ZZH; 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 48ZZH.
- (3) Subsection (2) does not apply if the director-general has given the affected person written notice under section 48ZZE.

- (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.

48ZZG 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 48ZZH.

- (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.

48ZZH 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 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.
- (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—publishing the disclosed information is an offence under the *Criminal Code*, section 712A.
- (8) In this section:
domestic violence offence—see the *Domestic Violence and Protection Orders Act 2008*, section 13 (2).
personal violence offence means—
 - (a) an offence that involves causing harm, or threatening to cause harm, to anyone; or
 - (b) a domestic violence offence.

Chapter 8 Correctional patients

Part 8.1 Preliminary

48ZZI Meaning of *correctional patient*

In this Act:

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

Part 8.2 Transfer of correctional patients

48ZZJ Transfer to mental health facility

- (1) This section applies if—
 - (a) the chief psychiatrist is satisfied that a 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 request the corrections director-general to direct that the detainee be transferred from a correctional centre to a stated approved mental health facility, and be detained at the facility.
- (3) The corrections director-general must make the direction requested (the *transfer direction*) under the *Corrections Management Act 2007*, section 54 (Transfers to health facilities).
- (4) The corrections director-general may, at the request of the chief psychiatrist and at any time before the transfer takes place, revoke the direction.

48ZZK Return to correctional centre unless direction to remain

- (1) A correctional patient must be returned to a correctional centre within 7 days after the day the person is transferred to an approved mental health facility under a transfer direction.
- (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.
- (3) The chief psychiatrist may direct that a correctional patient be returned to the correctional centre 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.

Note The corrections director-general may give a direction for removal and return of the person at any time (see *Corrections Management Act 2007*, s 54).

48ZZL 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 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 must tell the director-general of any change in a person's status as a detainee (see [Corrections Management Act 2007](#), s 54A).

- (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.

48ZZM ACAT may return people to correctional centre

- (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.

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 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 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 if the ACAT considers it appropriate.

Part 8.3 Review of correctional patients

48ZZN 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, correctional centre or other place.

48ZZO 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; 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 or correctional centre.

48ZZP 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 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 facility or place 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, treatment, care or support in, or transfer to, an approved mental health facility, correctional centre or other place.

- (6) The ACAT must tell the following, in writing, about a review under this section:
 - (a) the director-general;
 - (b) the corrections director-general.

Part 8.4 Leave for correctional patients

48ZZQ Grant of leave for correctional patients

- (1) The 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) 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.
- (3) 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.

- (4) The director-general must, at least 72 hours before the leave starts, tell the corrections director-general about the leave, in writing.

48ZZR Revocation of leave for correctional patients

- (1) The 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) 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 139F (Powers of entry and apprehension) and s 140 (Powers of search and seizure).

- (3) If a person is detained under subsection (2), 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.

**44 Rights of mentally dysfunctional or mentally ill persons
Part 6**

omit

**45 Informed consent
Section 54**

omit

part

substitute

chapter

46 Section 62*substitute***62 Application to be considered by committee**

- (1) The chief psychiatrist must, as soon as practicable after receiving an application under section 61, give a copy of the application to the chairperson of the committee appointed under section 67.
- (2) The chairperson must as soon as practicable after receiving the application—
 - (a) tell the following people in writing of the application:
 - (i) if the person on whom the surgery is proposed to be performed (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);
 - (ii) if the subject person has a guardian under the *Guardianship and Management of Property Act 1991*—the guardian;
 - (iii) if the subject person has an attorney under the *Powers of Attorney Act 2006*—the attorney;
 - (iv) if the subject person has a nominated person—the nominated person;
 - (v) 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 of the surgery—the conditions (if any) to which the approval should be subject;
 - (iii) the committee's reasons for making the recommendations in the report.
- (3) 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.
- (4) The chief psychiatrist must ensure that a copy of the committee's report is placed on the subject person's record.

47 **Consent of Supreme Court**
Section 65 (b)

substitute

- (b) the person does not have decision-making capacity to consent to the surgery and has not refused to consent to the surgery; and

**48 Refusal of surgery
Section 66 (3)**

substitute

- (3) If the chief psychiatrist has approved psychiatric surgery under section 64 and is informed under this section that the person refuses to have the surgery, the chief psychiatrist must—
- (a) immediately inform 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.

**49 Committees
New section 67 (6)**

insert

- (6) The chairperson and each member of the committee must take all reasonable steps to avoid being placed in a position where a conflict of interest arises during the exercise of the committee's functions.

**50 Electroconvulsive therapy and psychiatric surgery
Part 7**

renumber as chapter 9

51 Divisions 7.1 to 7.3

renumber as parts 9.1 to 9.3

52 Subdivisions 7.2.1 to 7.2.6

renumber as divisions 9.2.1 to 9.2.6

53 Part 8 heading

substitute

**Chapter 10 Referrals by courts under
Crimes Act and Children and
Young People Act 2008**

**54 Review of certain people found unfit to plead
Section 68 (8)**

after

mental health order

insert

or forensic mental health order

**55 Recommendations about people with mental illness or
mental dysfunction
Section 70A**

omit

mental illness or mental dysfunction

substitute

mental disorder or mental illness

56 Sections 72 to 74

substitute

72 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 79A, 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.

73 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 72 (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.

74 Review of conditions of release

- (1) The ACAT must review a condition under section 72 (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 72 (4), to which an order for release of a person is subject within 72 hours after receiving notice under section 73 (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 79A (1) (Notice of hearing) does not apply (see s 79A (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.

57 Part 9 heading

substitute

Chapter 11 ACAT procedural matters**58 Section 76 heading**

substitute

76 Meaning of *subject person*—ch 11**59 Section 76**

omit

part

substitute

chapter

60 Sections 77 to 79

substitute

77 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 36G (2) (Removal order to conduct assessment);
 - (c) an order for the extension of a person's detention under section 41 (3) (Authorisation of involuntary detention);
 - (d) an order for a person's release under section 46 (Orders for release);
 - (e) a grant of leave under section 48ZV (Leave in emergency or special circumstances);
 - (f) a review of a transfer direction under section 48ZZN (Review of correctional patient awaiting transfer to mental health facility);
 - (g) a review of a transfer direction under section 48ZZO (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 general 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).

78 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 36ZQ (Review, amendment or revocation of mental health order);
 - (c) a forensic mental health order;
 - (d) a grant of leave under section 48ZS (Grant of leave for person detained by ACAT);
 - (e) revocation of leave under section 48ZT (Revocation of leave granted by ACAT);

- (f) a review of a forensic mental health order under section 48ZZ (Review, amendment or revocation of forensic mental health order);
 - (g) an electroconvulsive therapy order under section 55G (Criteria for making electroconvulsive therapy order);
 - (h) an emergency electroconvulsive therapy order under section 55N (Criteria for making emergency electroconvulsive therapy order);
 - (i) a review of a person's fitness to plead under section 68 (Review of certain people found unfit to plead);
 - (j) a recommendation under section 70 (Recommendations about people with mental impairment) or section 70A (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 72 (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 general 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).

79 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.

79A 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 82 (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 36C;
 - (b) a review required under section 36ZQ (3) (Review, amendment or revocation of mental health order);
 - (c) an application under section 41 (2) or (4) (Authorisation of involuntary detention);
 - (d) a review required under section 48ZZ (5) (Review, amendment or revocation of forensic mental health order);
 - (e) the making of an emergency electroconvulsive therapy order under section 55N;
 - (f) a review required under section 74 (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.

**61 Appearance
Section 80 (1) (b) to (d)**

substitute

- (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;
- (da) if the subject person has a nominated person—the nominated person;
- (db) the applicant (if any);
- (dc) if the subject person is referred to the ACAT under section 35 (Applications by referring officers—assessment order)—the referring officer;
- (dd) 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;

62 Section 80 (1) (g)

omit

dysfunction

substitute

disorder

63 Section 81

substitute

81 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.

**64 Directions to registrar
Section 84 (2)**

after

care

insert

or support

65 Section 84 (as amended)

relocate as section 79B

**66 Notice of hearing
Section 85**

omit

67 Section 86

substitute

86 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.

**68 Who is given a copy of the order?
Section 87 (1) (c)**

substitute

- (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);

69 Section 87 (1) (g)

substitute

- (g) if the subject person is referred to the ACAT under section 35 (Applications by referring officers—assessment order)—the referring officer;
- (ga) if the subject person is referred to the ACAT under section 48T (Applications for forensic mental health orders—detainees and people under community-based sentences)—
 - (i) the chief psychiatrist; and
 - (ii) the corrections director-general.

70 Section 87 (1) (i)

omit

or institution

71 New section 87 (1) (k)

insert

- (k) if the subject person has a nominated person—the nominated person.

72 New section 87 (2) (ba)

insert

- (ba) a forensic psychiatric treatment order;

73 New section 87 (3) (c)

insert

- (c) a forensic community care order.

74 Part 10 heading

substitute

Chapter 12 Administration

Part 12.1 Chief psychiatrist and mental health officers

**75 Functions
Section 113**

after

care

insert

or support

76 New section 113 (c)

insert

(c) any other function given to the chief psychiatrist under this Act.

77 New section 114

insert

114 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](#).

78 Section 116

substitute

116 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.

79 Delegation by chief psychiatrist New section 118 (2)

insert

- (2) However, the function of granting leave under section 48ZV (Leave in emergency or special circumstances) must not be delegated.

**80 Mental health officers
Section 119 (3), new definitions**

insert

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.

**81 Chief psychiatrist's annual report
Section 120 (b)**

omit

New South Wales

substitute

other States

**82 Care coordinator
Part 10A**

renumber as part 12.2

83 Sections 120B and 120C

substitute

120B 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.

120C 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.

**84 Delegation by care coordinator
Section 120D (2)**

substitute

- (2) However—
- (a) the function of granting leave under section 48ZV (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.

**85 Care coordinator's annual report
Section 120E**

omit

dysfunction

substitute

disorder

**86 Official visitors
Part 11**

renumber as part 12.3

**87 Meaning of *official visitor* etc
Section 121**

omit

treatment or care

substitute

treatment, care or support

88 Section 121

omit

dysfunction

substitute

disorder

**89 Appointment of official visitors—additional suitability requirement
Section 122 (d)**

omit

dysfunction

substitute

disorder

90 New section 122AA

before section 122A, insert

122AA Appointment of principal official visitor

The Minister may appoint 1 official visitor as the principal official visitor.

**91 Official visitor's functions
Section 122A**

omit

dysfunction

substitute

disorder

92 Section 122A

omit

treatment or care

substitute

treatment, care or support

93 New section 122A (d)

insert

(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.

94 New section 122BB

before section 122B, insert

122BB 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.

**95 Notice to official visitor of detainee receiving mental health treatment or care in correctional centre
Section 122B**

omit

treatment or care

substitute

treatment, care or support

96 Section 122B

omit

dysfunction

substitute

disorder

**97 Complaint about treatment or care provided at a place other than visitable place
Section 122C**

omit

treatment or care

substitute

treatment, care or support

98 Section 122C

omit

dysfunction

substitute

disorder

99 New parts 12.4 and 12.5*insert***Part 12.4 Coordinating director-general****122D 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).

122E 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.

122F 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

122G 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 122J.

information sharing protocol—see section 122H.

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.

122H 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.

122I 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](#).

122J 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](#).

100 Part 12 heading

substitute

Chapter 13 Private psychiatric facilities**101 Section 123**

substitute

123 Definitions—ch 13

In this chapter:

inspector means an inspector appointed under section 132.

licence means a licence issued under this chapter.

licensed premises means the premises at which a psychiatric facility is, or is proposed to be, conducted and in relation to which a licence is issued.

licensee means a person to whom a licence is issued under this chapter.

psychiatric facility means a hospital or other facility for the treatment, care or support, rehabilitation or accommodation of people who have 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.

**102 Owner or manager to be licensed
Section 124**

omit

institution

substitute

facility

**103 Issue of licence
Section 125 (3) (a)**

omit

treatment or reside

substitute

treatment, care or support, or reside,

104 Section 125 (4)

after

care

insert

or support

105 Section 125 (5) (e)

omit

institution

substitute

facility

**106 Effect of cancellation
Section 131**

after

care

insert

or support

**107 Appointment of inspectors
Section 132**

omit

part

substitute

chapter

**108 Powers of inspection
Section 134 (1) (a)**

after

care

insert

or support

109 Section 134 (1) (b) and (c)

omit

institution

substitute

facility

110 Divisions 12.1 to 12.3

renumber as parts 13.1 to 13.3

111 Section 136 heading

substitute

136 Meaning of *reviewable decision*—ch 16

112 Section 136

omit

division

substitute

chapter

113 Sections 136 to 137A

renumber as sections 139CR to 139CT

**114 Notification and review of decisions
Division 12.4 (as amended)**

relocate as chapter 16

**115 Unauthorised treatment
Section 138**

after

treatment

insert

, care or support

116 Section 138

omit

institution

substitute

facility

**117 Miscellaneous
Division 12.5 (as amended)**

renumber as part 13.4

118 New chapter 14

insert

Chapter 14 Mental health advisory council

139 Establishment of mental health advisory council

The mental health advisory council is established.

139A 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.

139B 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 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*).

139C 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.

119 Section 140

substitute

139D 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).

139E 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).

139F 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 36H (Executing removal order);
 - (b) section 36ZO (Contravention of mental health order);
 - (c) section 36ZP (Contravention of mental health order—absconding from facility);
 - (d) section 37 (Apprehension);
 - (e) section 48ZG (Powers in relation to forensic psychiatric treatment order);
 - (f) section 48ZN (Powers in relation to forensic community care order);
 - (g) section 48ZT (Revocation of leave granted by ACAT);
 - (h) section 48ZW (Revocation of leave granted by relevant official);
 - (i) section 48ZX (Contravention of forensic mental health order);
 - (j) section 48ZY (Contravention of forensic mental health order—absconding from facility);
 - (k) section 48ZZR (Revocation of leave for correctional patients).

-
- (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.

140 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 36H (Executing removal order);
 - (b) section 36ZC (Powers in relation to psychiatric treatment order);
 - (c) section 36ZK (Powers in relation to community care order);
 - (d) section 36ZO (Contravention of mental health order);
 - (e) section 36ZP (Contravention of mental health order—absconding from facility);
 - (f) section 37 (Apprehension);
 - (g) section 41 (Authorisation of involuntary detention);
 - (h) section 48ZG (Powers in relation to forensic psychiatric treatment order);

- (i) section 48ZN (Powers in relation to forensic community care order);
 - (j) section 48ZT (Revocation of leave granted by ACAT);
 - (k) section 48ZW (Revocation of leave granted by relevant official);
 - (l) section 48ZX (Contravention of forensic mental health order);
 - (m) section 48ZY (Contravention of forensic mental health order—absconding from facility);
 - (n) section 48ZZR (Revocation of leave for correctional patients).
- (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.

**120 Relationship with Guardianship and Management of Property Act
Section 142 (1) (a)**

omit

treatment for mental illness,

121 Section 142 (2) (a)

omit

treatment for mental illness,

122 Section 142, new note

after subsection (2), insert

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).

**123 Relationship with Powers of Attorney Act
Section 143 (a)**

omit

treatment for mental illness,

124 Section 143, new note

insert

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).

125 **Certain rights unaffected**
Section 145 (a)

omit

treatment or care

substitute

treatment, care or support

126 **New section 145A**

insert

145A **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 36V (Psychiatric treatment order);
 - (b) section 36ZD (Community care order);
 - (c) section 48ZA (Forensic psychiatric treatment order);
 - (d) section 48ZB (Content of forensic psychiatric treatment order);
 - (e) section 48ZH (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 41 (5) (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.

**127 Miscellaneous
Part 13 (as amended)**

relocate as chapter 17

**128 Reviewable decisions
Schedule 1 heading, reference**

substitute
(see ch 16)

129 Schedule 1, new items 1A to 1E

before item 1, insert

1A	48ZU	refuse to grant leave	applicant for leave
1B	48ZV	refuse to grant leave in emergency or special circumstances	applicant for leave
1C	48ZW	revoke leave	applicant for leave

1D	48ZZQ	refuse to grant leave	applicant for leave
1E	48ZZR	revoke leave for correctional patient	applicant for leave

130 Dictionary, note 2

insert

- adult
- detention place

131 Dictionary, new definitions

insert

advance agreement—see section 26.

advance consent direction—see section 27.

affected person, in relation to a forensic patient—see section 48ZZB.

affected person register, for part 7.2 (Affected people)—see section 48ZZD.

132 Dictionary, definition of *agreement*

substitute

agreement, for chapter 15 (Interstate application of mental health laws)—see section 139CB.

133 Dictionary, definitions of *applicant* and *application*

omit

134 Dictionary, new definition of *approved community care facility*

insert

approved community care facility means a facility approved under section 139E.

135 Dictionary, definition of *approved health facility*

omit

136 Dictionary, definitions of *approved mental health facility* and *assessment order*

substitute

approved mental health facility means a facility approved under section 139D.

assessment order means an order under section 36A.

137 Dictionary, new definitions

insert

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.

carer—see section 12.

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.

close relative or close friend, of a person—see the *Guardianship and Management of Property Act 1991*, section 32A.

community-based sentence, for part 7.1 (Forensic mental health orders)—see the *Crimes (Sentence Administration) Act 2005*, section 264.

138 Dictionary, definition of ***community care facility***

substitute

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.

139 Dictionary, new definitions

insert

coordinating director-general means the director-general appointed under section 122D.

correctional patient—see section 48ZZI.

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 48ZR.

140 Dictionary, definition of *corresponding law*

substitute

corresponding law, for chapter 15 (Interstate application of mental health laws)—see section 139CB.

141 Dictionary, new definitions

insert

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 48ZZA.

emergency assessment order means an order under section 36C.

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 48ZZA.

health attorney—see the [Guardianship and Management of Property Act 1991](#), section 32B (1).

information sharing entity, for part 12.5 (Sharing information—government agencies)—see section 122G.

information sharing protocol, for part 12.5 (Sharing information—government agencies)—see section 122H.

142 Dictionary, definitions of *information statement* etc

substitute

information statement means an information statement mentioned in section 15 (1) (b).

informed consent, for chapter 9 (Electroconvulsive therapy and psychiatric surgery)—see section 54.

inspector, for chapter 13 (Private psychiatric facilities)—see section 123.

interstate custodial patient, for chapter 15 (Interstate application of mental health laws)—see section 139CB.

interstate non-custodial order, for chapter 15 (Interstate application of mental health laws)—see section 139CB.

licence, for chapter 13 (Private psychiatric facilities)—see section 123.

licensed premises, for chapter 13 (Private psychiatric facilities)—see section 123.

licensee, for chapter 13 (Private psychiatric facilities)—see section 123.

143 Dictionary, new definition of *mental disorder*

insert

mental disorder—see section 9.

144 Dictionary, definition of *mental dysfunction*

omit

145 Dictionary, definitions of *mental health facility*, *mental health professional* and *mental illness*

substitute

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 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 illness—see section 10.

146 Dictionary, new definition of *nominated person*

insert

nominated person means a person nominated under section 19.

147 Dictionary, definition of *offender with a mental impairment*

omit

148 Dictionary, definition of *official visitor*

omit

section 121

substitute

section 121 (1)

149 Dictionary, new definitions

insert

principal official visitor means the principal official visitor appointed under section 122AA.

private psychiatric facility means a facility in relation to which a licence is issued under chapter 13 (Private psychiatric facilities).

150 Dictionary, definition of *private psychiatric institution*

omit

151 Dictionary, definition of *proceeding*

substitute

proceeding means a proceeding on an application, or other proceeding in, the ACAT.

152 Dictionary, new definition of *psychiatric facility*

insert

psychiatric facility—

- (a) for this Act generally—means a hospital or other facility for the treatment, care or support, rehabilitation or accommodation of people who have a mental illness, that is—
 - (i) a facility conducted by the Territory; or
 - (ii) a private psychiatric facility; and
- (b) for chapter 13 (Private psychiatric facilities)—see section 123.

153 Dictionary, definition of *psychiatric institution*

omit

154 Dictionary, new definitions

insert

publish, for part 7.2 (Affected people)—see section 48ZZA.

registered affected person, in relation to a forensic patient—see section 48ZZC.

relevant information, for part 12.5 (Sharing information—government agencies)—see section 122G.

relevant official—

- (a) for a mental health order, for chapter 5 (Mental health orders)—see section 36N; or
- (b) for a forensic mental health order, for part 7.1 (Forensic mental health orders)—see section 48S.

relevant person—

- (a) for a mental health order application, for chapter 5 (Mental health orders)—see section 36N; and
- (b) for a forensic mental health order application, for part 7.1 (Forensic mental health orders)—see section 48S.

representative, of a treating team, for part 3.3 (Advance agreements and advance consent directions)—see section 24.

155 Dictionary, definitions of *responsible person* etc

substitute

responsible person, for chapter 3 (Rights of people with mental disorder or mental illness)—see section 14.

restriction order means an order made under section 36X or section 36ZF.

reviewable decision, for chapter 16 (Notification and review of decisions)—see section 139CR.

State, for chapter 15 (Interstate application of mental health laws)—see section 139CB.

subject person, for chapter 11 (ACAT procedural matters)—see section 80.

156 Dictionary, new definitions

insert

transfer direction—see section 48ZZJ (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).

victims of crime commissioner means the victims of crime commissioner appointed under the [Victims of Crime Act 1994](#).

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.

Schedule 1 Other amendments

(see s 3)

Part 1.1 Children and Young People Act 2008

[1.1] Section 530 (1), new definition of *mental disorder*

insert

mental disorder—see the [Mental Health \(Treatment and Care\) Act 1994](#), section 9.

Note The [Mental Health \(Treatment and Care\) Act 1994](#), s 9 defines *mental disorder* as a disturbance or defect, to a substantially disabling degree, of perceptual interpretation, comprehension, reasoning, learning, judgment, memory, motivation or emotion, other than a mental illness.

[1.2] Section 530 (1), definition of *mental dysfunction*

omit

[1.3] Section 530 (1), definition of *mental illness*

substitute

mental illness—see the [Mental Health \(Treatment and Care\) Act 1994](#), section 10.

Note The [Mental Health \(Treatment and Care\) Act 1994](#), s 10 defines *mental illness* as 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 par (a).

[1.4] Section 863 (2), example 2

substitute

- 2 administration of a mental health order or forensic mental health order under the [Mental Health \(Treatment and Care\) Act 1994](#)

Part 1.2 Corrections Management Act 2007

[1.5] New section 54A

insert

54A Transfer to mental health facility—transfer direction

- (1) This section applies if the director-general has made a direction under section 54 for the transfer of a detainee from a correctional centre to an approved mental health facility or approved community care facility.
- (2) The director-general must tell the director-general responsible for the [Mental Health \(Treatment and Care\) Act 1994](#) in writing about any change in the detainee's status as a detainee.

Examples

- 1 the person's sentence of imprisonment ends
- 2 the person is released on parole
- 3 the person is otherwise released from detention

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) In this section:

approved community care facility—see the *Mental Health (Treatment and Care) Act 1994*, dictionary.

approved mental health facility—see the *Mental Health (Treatment and Care) Act 1994*, dictionary.

Part 1.3 Crimes Act 1900

[1.6] Section 300 (1), new definition of *forensic mental health order*

insert

forensic mental health order—see the *Mental Health (Treatment and Care) Act 1994*, dictionary.

[1.7] Section 301 (1)

omit

that the accused be detained in custody until the ACAT orders otherwise, the court shall

substitute

that the accused be detained in custody for immediate review by the ACAT, the court must

[1.8] Section 301 (2)

omit

shall nominate a term

substitute

must nominate a term (a *nominated term*)

[1.9] New section 301 (3) and (4)

insert

- (3) In nominating a term in relation to an offence, the Supreme Court may, as it considers appropriate, take into account the periods (if any) for which the person has been detained in relation to the offence, before or after the special hearing.
- (4) A nominated term in relation to an offence takes effect on the day the Supreme Court nominates the term unless the court—
 - (a) after taking into account any periods mentioned in subsection (3), nominates an earlier day; or
 - (b) orders that the term take effect on a later day so as to be served consecutively with (or partly concurrently and partly consecutively with) another term nominated for the person under this part or a sentence of imprisonment imposed on the person.

[1.10] Section 302 (1)

omit

that the accused be detained in custody until the ACAT orders otherwise, the court shall

substitute

that the accused be detained in custody for immediate review by the ACAT, the court must

[1.11] Section 302 (2)

omit

shall nominate a term

substitute

must nominate a term (a *nominated term*)

[1.12] New section 302 (3) and (4)

insert

- (3) In nominating a term in relation to an offence, the Supreme Court may, as it considers appropriate, take into account the periods (if any) for which the person has been detained in relation to the offence, before or after the special hearing.
- (4) A nominated term in relation to an offence takes effect on the day the Supreme Court nominates the term unless the court—
 - (a) after taking into account any periods mentioned in subsection (3), nominates an earlier day; or
 - (b) orders that the term take effect on a later day so as to be served consecutively with (or partly concurrently and partly consecutively with) another term nominated for the person under this part or a sentence of imprisonment imposed on the person.

[1.13] Section 303

omit

shall not order that an accused be detained for a period greater than the term nominated by it under section 301 or 302, as the case may be.

substitute

must not order that an accused be detained for a period greater than the nominated term under section 301 or 302.

[1.14] Section 304 (1)

omit

that the accused be detained in custody until the ACAT orders otherwise, the Magistrates Court shall

substitute

that the accused be detained in custody for immediate review by the ACAT, the Magistrates Court must

[1.15] Section 304 (2)

omit

shall nominate a term

substitute

must nominate a term (a *nominated term*)

[1.16] New section 304 (3) and (4)

insert

- (3) In nominating a term in relation to an offence, the Magistrates Court may, as it considers appropriate, take into account the periods (if any) for which the person has been detained in relation to the offence, before or after the special hearing.
- (4) A nominated term in relation to an offence takes effect on the day the Magistrates Court nominates the term unless the court—
 - (a) after taking into account any periods mentioned in subsection (3), nominates an earlier day; or
 - (b) orders that the term take effect on a later day so as to be served consecutively with (or partly concurrently and partly consecutively with) another term nominated for the person under this part or a sentence of imprisonment imposed on the person.

[1.17] Section 305 (1)

omit

that the accused be detained in custody until the ACAT orders otherwise, the Magistrates Court shall

substitute

that the accused be detained in custody for immediate review by the ACAT, the Magistrates Court must

[1.18] Section 305 (2)

omit

shall nominate a term

substitute

must nominate a term (a *nominated term*)

[1.19] New section 305 (3) and (4)

insert

- (3) In nominating a term in relation to an offence, the Magistrates Court may, as it considers appropriate, take into account the periods (if any) for which the person has been detained in relation to the offence, before or after the special hearing.
- (4) A nominated term in relation to an offence takes effect on the day the Magistrates Court nominates the term unless the court—
 - (a) after taking into account any periods mentioned in subsection (3), nominates an earlier day; or
 - (b) orders that the term take effect on a later day so as to be served consecutively with (or partly concurrently and partly consecutively with) another term nominated for the person under this part or a sentence of imprisonment imposed on the person.

[1.20] Section 306

omit

shall not order that an accused be detained for a period greater than the term nominated by it

substitute

must not order that an accused be detained for a period greater than the nominated term

[1.21] Section 309 (1) (a) and (b) (i)

omit

approved health facility

substitute

approved mental health facility

[1.22] Section 309 (1) (b) (ii)

omit

approved health facility or

[1.23] Section 309 (3)

before paragraph (a), omit

approved health facility

substitute

approved mental health facility

[1.24] Section 309 (3) (a)

omit

approved health facility or, if detained for care, an approved mental health

[1.25] Section 309 (3) (b)

omit

approved health facility or approved mental health

[1.26] Section 309 (4), definition of *approved health facility*

omit

[1.27] Section 309 (4), definition of *approved mental health facility*

substitute

approved mental health facility—see the *Mental Health (Treatment and Care) Act 1994*, dictionary.

[1.28] Section 318 (2)

substitute

- (2) The Supreme Court may make the orders that it considers appropriate, including—
- (a) that the accused be detained in custody for immediate review by the ACAT under the *Mental Health (Treatment and Care) Act 1994*, section 72; or
 - (b) that the accused submit to the jurisdiction of the ACAT to allow the ACAT to make a mental health order or a forensic mental health order under the *Mental Health (Treatment and Care) Act 1994*.

[1.29] Section 319 (2) and (3)

substitute

- (2) The Supreme Court must—
- (a) order that the accused be detained in custody for immediate review by the ACAT under the *Mental Health (Treatment and Care) Act 1994*, section 72; or
 - (b) if, taking into account the criteria for detention in section 308, it is more appropriate—order that the accused submit to the jurisdiction of the ACAT to allow the ACAT to make a mental health order or a forensic mental health order under the *Mental Health (Treatment and Care) Act 1994*.

[1.30] Section 323 (3)

substitute

- (3) The Supreme Court may make the orders that it considers appropriate, including—
- (a) that the accused be detained in custody for immediate review by the ACAT under the *Mental Health (Treatment and Care) Act 1994*, section 72; or
 - (b) that the accused submit to the jurisdiction of the ACAT to allow the ACAT to make a mental health order or a forensic mental health order under the *Mental Health (Treatment and Care) Act 1994*.

[1.31] Section 324

substitute

324 Supreme Court orders following special verdict of not guilty because of mental impairment—serious offence

- (1) This section applies if an accused is charged with a serious offence and a special verdict of not guilty because of mental impairment is returned or entered by the Supreme Court.
- (2) The Supreme Court must—
 - (a) order that the accused be detained in custody for immediate review by the ACAT under the *Mental Health (Treatment and Care) Act 1994*, section 72; or
 - (b) if, taking into account the criteria for detention in section 308, it is more appropriate—order that the accused submit to the jurisdiction of the ACAT to allow the ACAT to make a mental health order or a forensic mental health order under the *Mental Health (Treatment and Care) Act 1994*.

[1.32] Section 328 (3)

substitute

- (3) The orders that the Magistrates Court may make under subsections (1) and (2) include—
 - (a) that the accused be detained in custody for immediate review by the ACAT under the *Mental Health (Treatment and Care) Act 1994*, section 72; or
 - (b) that the accused submit to the jurisdiction of the ACAT to allow the ACAT to make a mental health order or a forensic mental health order under the *Mental Health (Treatment and Care) Act 1994*.

[1.33] Section 329

substitute

329 Magistrates Court orders following finding of not guilty because of mental impairment—serious offence

- (1) This section applies if an accused is charged and the Magistrates Court makes a finding of not guilty because of mental impairment.
- (2) The Magistrates Court must—
 - (a) order that the accused be detained in custody for immediate review by the ACAT under the *Mental Health (Treatment and Care) Act 1994*, section 72; or
 - (b) if, taking into account the criteria for detention in section 308, it is more appropriate—order that the accused submit to the jurisdiction of the ACAT to allow the ACAT to make a mental health order or a forensic mental health order under the *Mental Health (Treatment and Care) Act 1994*.

[1.34] Further amendments, mentions of *mental health order*

after

mental health order

insert

or forensic mental health order

in

- section 315D
- section 331
- section 334
- section 335

Part 1.4 Crimes (Child Sex Offenders) Regulation 2005

[1.35] Section 12 (1) (d) (ii)

substitute

- (ii) for an offender released from detention under the *Mental Health (Treatment and Care) Act 1994*, chapter 5 (Mental health orders), chapter 6 (Emergency detention) or part 7.1 (Forensic mental health orders)—the ACAT; or

Part 1.5 Crimes (Sentence Administration) Act 2005

[1.36] New section 321AA

before section 321A, insert

321AA Director-general to give information—detainees etc subject to forensic mental health orders

- (1) This section applies if a forensic mental health order is in force in relation to a detainee or a person serving a community-based sentence.
- (2) The director-general must tell the director-general responsible for the *Mental Health (Treatment and Care) Act 1994* in writing if the person stops being a detainee or a person serving a community-based sentence.
- (3) In this section:
community-based sentence—see section 264.
detainee—see the *Corrections Management Act 2007*, section 6.

Part 1.6 Criminal Code 2002

[1.37] Section 712A (5), definition of *childrens proceeding*, new paragraph (h)

insert

- (h) either of the following orders is or was in force under the *Mental Health (Treatment and Care) Act 1994* for the child or young person:
- (i) a forensic mental health order;
 - (ii) a forensic community care order.

Part 1.7 Guardianship and Management of Property Act 1991

[1.38] Section 7 (3) (e)

omit

(other than a prescribed medical procedure);

substitute

(other than a prescribed medical procedure or medical treatment mentioned in paragraph (ea));

[1.39] New section 7 (3) (ea)

insert

- (ea) to give, for the person, a consent required for medical treatment involving treatment, care or support under the *Mental Health (Treatment and Care) Act 1994* (other than a prescribed medical procedure);

Note For provisions relevant to a guardian with power under this paragraph, see s 70A (Restrictions on consent by guardian to mental health treatment, care or support).

[1.40] Section 19 heading

substitute

19 Review of guardians and managers

[1.41] Section 19 (2)

omit

consider

substitute

review

[1.42] New section 19 (2A)

insert

- (2A) The ACAT must review an order appointing a guardian for a person if—
- (a) the guardian tells the ACAT under section 70A (6) that a consent to treatment is not to be renewed; or
 - (b) an advance consent direction made by the person is given to the ACAT under the *Mental Health (Treatment and Care) Act 1994*, section 27 (5).

[1.43] Section 32A, definition of *health professional*

substitute

health professional means—

- (a) in relation to medical treatment involving treatment, care or support under the *Mental Health (Treatment and Care) Act 1994*—a mental health professional under that Act; and
- (b) in any other case—a doctor or dentist.

[1.44] Section 32A, definition of *medical treatment*, paragraph (a) (iii)

substitute

- (iii) a series of procedures or courses of treatment; and
- (iv) medical treatment involving treatment, care or support under the *Mental Health (Treatment and Care) Act 1994*; but

[1.45] Section 32A, definition of *protected person*, paragraph (c)

substitute

- (c) for whom the ACAT has not appointed a guardian under this Act with authority to—
 - (i) give consent to medical treatment not involving consent for treatment, care or support under the *Mental Health (Treatment and Care) Act 1994*; or
 - (ii) give consent for medical treatment involving treatment, care or support under the *Mental Health (Treatment and Care) Act 1994*.

[1.46] New section 32D (1) (c)

insert

- (c) the person does not have an advance consent direction under the *Mental Health (Treatment and Care) Act 1994* authorising the treatment.

[1.47] New section 32D (4)

insert

- (4) However, for medical treatment involving consent for treatment, care or support under the *Mental Health (Treatment and Care) Act 1994*, the health professional may rely on the consent to provide the treatment care or support only for the period allowed under section 32JA.

Note Special requirements apply for notifying the ACAT if the consent involved mental health treatment, care or support (see s 32JA).

[1.48] Section 32J (1) (a)

after

protected person

insert

(other than medical treatment involving treatment, care or support under the *Mental Health (Treatment and Care) Act 1994*)

[1.49] New section 32JA

insert

32JA Notice and duration of consent—mental health treatment, care or support

- (1) This section applies if consent has been given under this part for medical treatment for a protected person that involves treatment, care or support under the *Mental Health (Treatment and Care) Act 1994*.
- (2) A health professional who is giving the treatment, care or support must within 7 days after the consent is given—
 - (a) tell the public advocate in writing that treatment, care or support is being given to the protected person in accordance with the consent; and
 - (b) give the public advocate a copy of the plan for the proposed treatment, care or support.
- (3) The health professional may rely on the consent for 21 days after it is given (the *initial consent period*).
- (4) If treatment, care or support in accordance with the consent is likely to be required for longer than the initial consent period, the health professional must, before the end of that period—
 - (a) apply to the ACAT for approval to continue providing treatment, care or support in accordance with the consent; and
 - (b) unless the health professional believes on reasonable grounds that someone else has applied to the ACAT for an order appointing a guardian for the person—apply to the ACAT under part 2 for an order appointing a guardian for the person.

- (5) The ACAT may give approval for the health professional to continue to provide treatment, care or support in accordance with the consent for a stated period of not longer than 8 weeks after the end of the initial consent period.
- (6) The ACAT must tell the public advocate of any approval given under subsection (5).

[1.50] Section 70 (1)

omit

(other than treatment for mental illness, electroconvulsive therapy or psychiatric surgery)

substitute

(other than electroconvulsive therapy or psychiatric surgery)

[1.51] Section 70 (1), note

omit

[1.52] Section 70 (2)

omit

the consent

substitute

an order for consent under subsection (1)

[1.53] New section 70A

insert

70A Restrictions on consent by guardian to mental health treatment, care or support

- (1) A guardian who has power to give for a person a consent required for medical treatment involving treatment, care or support under the *Mental Health (Treatment and Care) Act 1994* may consent to that treatment only if the person—
 - (a) does not have decision-making capacity under that Act; and
 - (b) does not have an advance consent direction under that Act authorising the treatment; and
 - (c) expresses willingness to receive the treatment.
- (2) A consent must be in writing.

Note If a form is approved under s 75A for this provision, the form must be used.
- (3) A consent must be for a stated period, of not longer than 6 months, but can be renewed (and further renewed) for another stated period of not longer than 6 months.
- (4) In considering the stated period necessary for a consent to treatment, a health professional who is giving the treatment must take into account—
 - (a) whether, and when, the person is likely to regain decision-making capacity under the *Mental Health (Treatment and Care) Act 1994*; and
 - (b) the likely duration of the treatment, care or support required; and
 - (c) the content of any advance consent direction in force for the person.

- (5) The health professional must tell the ACAT and the public advocate in writing about a consent, including the stated period.

Note If a form is approved under s 75A for this provision, the form must be used.

- (6) If a consent is not renewed at the end of its stated period, the health professional must tell the ACAT in writing.

- (7) The ACAT—

- (a) must, on application, review a consent; and
- (b) may, at any time on its own initiative, review a consent.

- (8) A consent ends before the end of its stated period if—

- (a) the ACAT directs that the consent be withdrawn; or
- (b) subsection (1) (a), (b) or (c) no longer apply to the person.

Note The chief psychiatrist or another relevant person may apply for a mental health order in relation to the person (see *Mental Health (Treatment and Care) Act 1994*, s 36O).

[1.54] Dictionary, definition of *mental illness*

omit

dictionary

substitute

section 10

[1.55] Dictionary, definition of *prescribed medical procedure*, paragraph (f)

omit

treatment for mental illness,

Part 1.8 **Mental Health (Treatment and Care) Regulation 2003**

[1.56] Section 6 (a)

substitute

- (a) the *Mental Health Act 2007* (NSW);

[1.57] Section 7 (a)

omit

chapter 4, part 2 (Involuntary admission to hospitals), division 1 (Admission to and detention in hospitals);

substitute

chapter 3, part 2 (Involuntary detention and treatment in mental health facilities);

[1.58] Section 7 (b) and (c)

substitute

- (b) a person who is an involuntary patient as defined in the *NSW Act*, section 4;

[1.59] Section 7 (f) (i)

omit

Sentencing Act 1986 (Vic)

substitute

Sentencing Act 1991 (Vic)

[1.60] Section 9

substitute

9 Interstate non-custodial orders—Act, s 48D (4)

For the [Act](#), chapter 15, an order under the [NSW Act](#), section 51 (Community treatment orders) is an interstate non-custodial order.

[1.61] Dictionary, definition of *interstate agreement*, new note

after paragraph (d), insert

Note The [NSW Act](#), sch 6 (Savings, transitional and other provisions) provides for the continued force and effect of the NSW agreement.

[1.62] Dictionary, definition of *NSW Act*

substitute

NSW Act means the [Mental Health Act 2007](#) (NSW).

Part 1.9 Powers of Attorney Act 2006

[1.63] Section 12, new example

insert

5 consenting to treatment for a mental illness (other than electroconvulsive therapy or psychiatric surgery) necessary for the principal's wellbeing

[1.64] Section 16 (1), new example

insert

4 if I do not have capacity to make a decision that needs to be made about my treatment, care or support for a mental illness

[1.65] Section 37 (1) (e)

omit

[1.66] Section 37 (2), definition of *mental illness*

omit

[1.67] New section 46A

insert

46A Restrictions on consent by attorney to mental health treatment, care or support

- (1) An attorney under an enduring power of attorney may consent to treatment for mental illness (other than electroconvulsive therapy or psychiatric surgery) only if the principal—
 - (a) does not have decision-making capacity; and
 - (b) does not have an advance consent direction under the *Mental Health (Treatment and Care) Act 1994* authorising the treatment; and
 - (c) expresses willingness to receive the treatment.
- (2) A consent must be in writing.

Note If a form is approved under s 96 for this provision, the form must be used.
- (3) A consent must be for a stated period, of not longer than 6 months, but can be renewed (and further renewed) for another stated period of not longer than 6 months.
- (4) In considering the stated period necessary for a consent to treatment, a health professional who is giving the treatment must take into account—
 - (a) whether, and when, the principal is likely to regain decision-making capacity; and
 - (b) the likely duration of the treatment required; and

(c) the content of any advance consent direction in force for the principal.

(5) The health professional must tell the ACAT and the public advocate in writing about a consent, including the stated period.

Note If a form is approved under s 96 for this provision, the form must be used.

(6) If a consent is not renewed at the end of its stated period, the health professional must tell the ACAT in writing.

(7) The ACAT—

(a) must, on application, review a consent; and

(b) may, at any time on its own initiative, review a consent.

(8) A consent ends before the end of its stated period if—

(a) the ACAT directs that the consent be withdrawn; or

(b) subsection (1) (a), (b) or (c) no longer apply to the principal.

Note The chief psychiatrist or another relevant person may apply for a mental health order in relation to the principal (see *Mental Health (Treatment and Care) Act 1994*, s 36O).

(9) In this section:

decision-making capacity—see the *Mental Health (Treatment and Care) Act 1994*, section 7.

mental illness—see the *Mental Health (Treatment and Care) Act 1994*, section 10.

[1.68] Dictionary, definition of *health care facility*

substitute

health care facility means a hospital, mental health facility, residential aged care facility or residential disability care facility.

[1.69] Dictionary, new definition of *mental health facility*

insert

mental health facility—see the *Mental Health (Treatment and Care) Act 1994*, dictionary.

Part 1.10 Public Advocate Act 2005

[1.70] Dictionary, new definition of *mental disorder*

insert

mental disorder—see the *Mental Health (Treatment and Care) Act 1994*, section 9.

[1.71] Dictionary, definition of *mental dysfunction*

omit

[1.72] Dictionary, definition of *mental illness*

substitute

mental illness—see the *Mental Health (Treatment and Care) Act 1994*, section 10.

Part 1.11 Victims of Crime Act 1994

[1.73] New section 11 (ba)

insert

(ba) to advocate for the interests of affected people under the *Mental Health (Treatment and Care) Act 1994*;

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 15 May 2014.

2 Notification

Notified under the [Legislation Act](#) on 12 November 2014.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Mental Health (Treatment and Care) Amendment Bill 2014, which was passed by the Legislative Assembly on 30 October 2014.

Clerk of the Legislative Assembly

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