

2015

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Health)

Mental Health Bill 2015

Contents

	Page
Chapter 1	
Preliminary	
1 Name of Act	2
2 Commencement	2
3 Dictionary	2
4 Notes	2
4A Offences against Act—application of Criminal Code etc	3

Chapter 2	Objects and important concepts	
Chapter 3	Rights of people with mental disorder or mental illness	
Chapter 4	Assessments	
Chapter 5	Mental health orders	
Chapter 6	Emergency detention	
39	Statement of action taken	8
41A	Notification of Magistrates Court about emergency detention or release from emergency detention	9
41AB	Treatment during detention	10
46	Order for release	11
47	Duty to release	11
Chapter 7	Forensic mental health	
Chapter 8	Correctional patients	
Chapter 9	Electroconvulsive therapy and psychiatric surgery	
Part 9.1	Preliminary—ch 9	
49	Definitions	15
50	Form of consent	15

	Page
Part 9.2	Electroconvulsive therapy
Division 9.2.1	Administration of electroconvulsive therapy
51	When electroconvulsive therapy may be administered 17
52	Adult with decision-making capacity 17
53	Adult without decision-making capacity 18
54	Young person with decision-making capacity 18
55	Young person without decision-making capacity 19
55B	Offence—unauthorised administration of electroconvulsive therapy 20
Division 9.2.2	Electroconvulsive therapy orders
55C	Application for electroconvulsive therapy order 20
55D	Consultation by ACAT—electroconvulsive therapy order 21
55E	ACAT must hold hearing—electroconvulsive therapy order 22
55F	What ACAT must take into account—electroconvulsive therapy order 22
55G	Making of electroconvulsive therapy order 23
55H	Content of electroconvulsive therapy order 24
55I	Person to be told about electroconvulsive therapy order 24
Division 9.2.3	Emergency electroconvulsive therapy orders
55J	Application for emergency electroconvulsive therapy order 25
55JA	What ACAT must take into account—emergency electroconvulsive therapy order 26
55K	Making of emergency electroconvulsive therapy order 27
55L	Content of an emergency electroconvulsive therapy order 28
56	Effect of later order 29
Division 9.2.4	Records of electroconvulsive therapy
57	Doctor must record electroconvulsive therapy 29
58	Electroconvulsive therapy records to be kept for 5 years 29
Part 9.3	Psychiatric surgery
59	Performance on people subject to orders of ACAT 30
60	Psychiatric surgery not to be performed without approval or if person refuses 30
61	Application for approval 30
62	Application to be considered by committee 31

	Page
63	Requirement for further information 32
64	Application to be decided in accordance with committee's recommendation 33
65	Consent of Supreme Court 33
66	Refusal of psychiatric surgery 33
67	Appointment of committee 34
Chapter 10	Referrals by courts under Crimes Act and Children and Young People Act
Chapter 11	ACAT procedural matters
Chapter 12	Administration
Chapter 13	Private psychiatric facilities
Part 13.1	Preliminary
123	Definitions—ch 13 39
Part 13.2	Licences
124	Meaning of <i>eligible person</i> —pt 13.2 40
125	Licence—requirement to hold 41
126	Licence—application 41
127	Licence—decision on application 42
128	Licence—term and renewal of licence 43
129	Licence—transfer of licence 44
130	Licence—amendment initiated by Minister 45
131	Licence—amendment on application by licensee 45
132	Licence—surrender 46
133	Licence—cancellation by notice 46
134	Licence—emergency cancellation 47

	Page	
Part 13.3	Private psychiatric facilities—enforcement	
135	Appointment of inspectors	49
135A	Identity cards	49
135B	Powers of inspection	50
135C	Failing to comply with requirement of inspector	51
Chapter 14	Mental health advisory council	
Chapter 15	Interstate application of mental health laws	
Part 15.1	Preliminary	
139CA	Purpose—ch 15	53
139CB	Definitions—ch 15	53
139CC	Authority to enter into agreements	55
139CD	Authorised officer and interstate authorised person may exercise certain functions	55
139CE	Medication for person being transferred	55
Part 15.2	Apprehension of people in breach of certain orders	
139CF	Apprehension of interstate patient in breach of interstate involuntary treatment order	56
139CG	Apprehension of person in breach of mental health order or forensic mental health order	57
Part 15.3	Transfer of certain people from ACT	
139CH	Interstate transfer—person under psychiatric treatment order or community care order	59
139CI	Interstate transfer—person under forensic psychiatric treatment order or forensic community care order	62
139CJ	Transfer to interstate mental health facility—emergency detention	65
139CK	Interstate transfer—when ACT order stops applying	67

	Page
Part 15.4	Transfer of certain people to ACT
139CL	Transfer of interstate patient to approved mental health facility 68
139CM	Transfer of responsibility to provide treatment, care or support in the community for interstate patient 68
139CN	Transfer of person apprehended in another State to approved mental health facility 69
Part 15.5	Interstate operation of certain orders
139CO	Mental health order relating to interstate person 70
139CP	Implementing interstate involuntary treatment order for temporary ACT resident 70
Chapter 16	Notification and review of decisions
Chapter 17	Miscellaneous
Chapter 18	Repeals and consequential amendments
148	Legislation repealed 74
149	Legislation amended—sch 2 74
Chapter 40	Transitional
Part 40.1	General
400	Definitions—ch 40 75
401	Transitional regulations 75
402	Expiry—ch 40 75
Part 40.2	Transitional—rights of people with mental disorder or mental illness
403	Rights in relation to information and communication 76

	Page
Part 40.3	Transitional—mental health orders
Division 40.3.1	Applications
404	Application by person with mental illness or mental dysfunction— unfinished applications 77
405	Application by chief psychiatrist or care coordinator—unfinished applications 77
406	Application by certain other people—unfinished applications 78
407	Application by referring officers—unfinished referrals 78
Division 40.3.2	Psychiatric treatment orders
408	Psychiatric treatment order—in force before commencement day 79
409	Restriction order with psychiatric treatment order—in force before commencement day 79
410	Chief psychiatrist role—determination in force before commencement day 79
411	Action if psychiatric treatment order no longer appropriate—notice given but not considered by ACAT 80
Division 40.3.3	Community care orders
412	Community care order—in force before commencement day 80
413	Restriction order with community care order—in force before commencement day 81
414	Care coordinator role—determination in force before commencement day 81
415	Action if community care order no longer appropriate—notice given but not considered by ACAT 82
Division 40.3.4	Other matters
416	Forensic mental health orders—people required to submit to ACAT jurisdiction before commencement day 82
Part 40.4	Transitional—emergency detention
417	Apprehension before commencement day 83
418	Authorisation of involuntary detention before commencement day 83
Part 40.5	Transitional—interstate application of mental health laws
419	Interstate agreements notified before commencement day 85

		Page
Schedule 1	Reviewable decisions	86
Schedule 2	Legislation amended	87
Part 2.1	Mental Health (Treatment and Care) Act 1994	87
Division 2.1.1	Amendments	87
Division 2.1.2	Relocations	98
Part 2.2	Mental Health Act 2015	100
Part 2.3	Other legislation	101
Division 2.3.1	Bail Act 1992	101
Division 2.3.2	Children and Young People Act 2008	101
Division 2.3.3	Coroners Act 1997	103
Division 2.3.4	Corrections Management Act 2007	104
Division 2.3.5	Court Procedures Act 2004	104
Division 2.3.6	Crimes Act 1900	105
Division 2.3.7	Crimes (Child Sex Offenders) Regulation 2005	106
Division 2.3.8	Crimes (Sentence Administration) Act 2005	106
Division 2.3.9	Criminal Code 2002	107
Division 2.3.10	Guardianship and Management of Property Act 1991	108
Division 2.3.11	Medicines, Poisons and Therapeutic Goods Regulation 2008	109
Division 2.3.12	Official Visitor Act 2012	109
Division 2.3.13	Planning and Development Act 2007	111
Division 2.3.14	Powers of Attorney Act 2006	111
Division 2.3.15	Public Advocate Act 2005	112
Division 2.3.16	Victims of Crime Act 1994	113

Contents

	Page
Dictionary	114

2015

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Health)

Mental Health Bill 2015

A Bill for

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

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

1 **Chapter 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Mental Health Act 2015*.

4 **2 Commencement**

5 This Act commences immediately after the commencement of the
6 *Mental Health (Treatment and Care) Amendment Act 2014*,
7 section 3.

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

10 **3 Dictionary**

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

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

15 For example, the signpost definition ‘*care and protection order*—see
16 the *Children and Young People Act 2008*, section 422.’ means that the
17 term ‘care and protection order’ is defined in that section and the
18 definition applies to this Act.

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

23 **4 Notes**

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

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

- 1 **4A Offences against Act—application of Criminal Code etc**
- 2 Other legislation applies in relation to offences against this Act.
- 3 *Note 1 Criminal Code*
- 4 The [Criminal Code](#), ch 2 applies to all offences against this Act (see
- 5 Code, pt 2.1).
- 6 The chapter sets out the general principles of criminal responsibility
- 7 (including burdens of proof and general defences), and defines terms
- 8 used for offences to which the Code applies (eg *conduct*, *intention*,
- 9 *recklessness* and *strict liability*).
- 10 *Note 2 Penalty units*
- 11 The [Legislation Act](#), s 133 deals with the meaning of offence penalties
- 12 that are expressed in penalty units.

1 **Chapter 2** **Objects and important**
2 **concepts**

3 **Explanatory note**

4 The text for this chapter (sections 5 to 13) is relocated from the *Mental Health (Treatment and*
5 *Care) Act 1994* by schedule 2, amendment 2.33.

1 **Chapter 3** **Rights of people with mental**
2 **disorder or mental illness**

3 **Explanatory note**

4 The text for this chapter (parts 3.1 to 3.3) is relocated from the *Mental Health (Treatment and*
5 *Care) Act 1994* by schedule 2, amendment 2.34.

1 **Chapter 4 Assessments**

2 **Explanatory note**

3 The text for this chapter (parts 4.1 and 4.2) is relocated from the *Mental Health (Treatment and*
4 *Care) Act 1994* by schedule 2, amendment 2.35.

1 Chapter 5 Mental health orders

2 Explanatory note

3 The text for this chapter (parts 5.1 to 5.7) is relocated from the *Mental Health (Treatment and*
4 *Care) Act 1994* by schedule 2, amendment 2.36.

1 **Chapter 6 Emergency detention**

2 **Explanatory note**

3 The following sections are relocated to this chapter from the *Mental Health (Treatment and*
4 *Care) Act 1994* by schedule 2, amendment 2.37:

- 5 • section 37 (Apprehension)
6 • section 38 (Detention at approved mental health facility)
7 • section 38A (Copy of court order).

8 **39 Statement of action taken**

- 9 (1) A police officer, authorised ambulance paramedic, doctor or mental
10 health officer who takes a person to an approved mental health
11 facility under section 37 must give the person in charge of the
12 facility a written statement containing a description of the action
13 taken under that section, including the following:
- 14 (a) the name and address (if known) of the person taken to the
15 facility;
- 16 (b) the date and time when the person was taken to the facility;
- 17 (c) detailed reasons for taking the action;
- 18 (d) the nature and extent of the force or assistance used to enter
19 any premises, or to apprehend the person and take the person to
20 the facility;
- 21 (e) the nature and extent of any restraint, involuntary seclusion or
22 forcible giving of medication used when apprehending the
23 person or taking the person to the facility;
- 24 (f) anything else that happened when the person was being
25 apprehended and taken to the facility that may have an effect
26 on the person's physical or mental health.

- 1 (2) The person in charge of the approved mental health facility must—
- 2 (a) enter the statement in the person’s record; and
- 3 (b) keep a register of any restraint, involuntary seclusion or
- 4 forcible giving of medication included in the statement.

5 **Explanatory note**

6 The following sections are relocated to this chapter from the *Mental Health (Treatment and*

7 *Care) Act 1994* by schedule 2, amendment 2.38:

- 8 • section 40 (Initial examination at approved mental health facility)
- 9 • section 41 (Authorisation of involuntary detention)
- 10 • section 41AA (Medical examination of detained person).

11 **41A Notification of Magistrates Court about emergency**

12 **detention or release from emergency detention**

- 13 (1) The person in charge of an approved mental health facility must—
- 14 (a) notify the Magistrates Court of the results of an examination
- 15 conducted by a doctor under an order under the *Crimes Act*,
- 16 section 309 (1); and
- 17 (b) if, after examination by the doctor—
- 18 (i) the person is to be detained for treatment, care or
- 19 support—ensure that the person is detained for the
- 20 purposes of receiving that treatment, care or support; or
- 21 (ii) the person is not to be detained for treatment, care or
- 22 support, or is to be released after being detained—release
- 23 the person into the custody of a police officer.
- 24 (2) If the person is detained at the facility under section 38 or
- 25 section 41, the person in charge of the facility must notify the court
- 26 of the reasons for the detention.

1 **41AB Treatment during detention**

2 (1) While a person is detained at a mental health facility under
3 section 41, the person in charge of the facility—

4 (a) may keep the person in the custody that the person in charge
5 considers appropriate; and

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

8 (i) prevent the person from causing harm to the person or
9 someone else; or

10 (ii) ensure that the person remains in custody; and

11 (c) must ensure that any treatment, care or support administered to
12 the person is the minimum necessary to prevent any immediate
13 and substantial risk of the person detained causing harm to the
14 person or someone else.

15 *Note* Special provisions apply for the emergency administration of
16 electroconvulsive therapy (see s 55J).

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

20 (3) In deciding whether to administer long acting medication, the
21 psychiatrist must take into account the likely deterioration in the
22 person's condition within 3 days after the psychiatrist's examination
23 of the person.

24 **Explanatory note**

25 Section 42 (Notification of certain people about detention) is relocated to this chapter from the
26 *Mental Health (Treatment and Care) Act 1994* by schedule 2, amendment 2.39.

27 There is no section 43. It was omitted by the *Mental Health (Treatment and Care) Amendment*
28 *Act 2014*, section 17. Previous section 44 has been remade as section 41AB above.

29 Section 45 (Offence—communication during detention) is relocated to this chapter from the
30 *Mental Health (Treatment and Care) Act 1994* by schedule 2, amendment 2.40.

1 **46 Order for release**

2 (1) If a relevant entity is satisfied that the detention of a person under
3 section 41 is no longer justified, the entity must, as soon as
4 practicable, order the release of the person before the period of
5 detention authorised under that subsection expires.

6 (2) However, if the person detained under section 41 is an accused
7 person to whom an order under the [Crimes Act](#), section 309 (1)
8 (Assessment whether emergency detention required) applies, the
9 relevant entity must, as soon as practicable, notify the person in
10 charge of an approved mental health facility if satisfied that the
11 detention of the person is no longer justified.

12 (3) In this section:

13 *relevant entity* means—

14 (a) a doctor who examined the person under section 41AA; or

15 (b) the chief psychiatrist; or

16 (c) the ACAT.

17 **47 Duty to release**

18 (1) A person in charge of an approved mental health facility must
19 ensure that a person detained at the facility under section 41—

20 (a) is released in accordance with an order under section 46; or

21 (b) if no order under section 46 is made and subject to any other
22 order of the ACAT—is released at the end of the period of
23 detention authorised under section 41.

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

Chapter 6 Emergency detention

Section 47

- 1 (2) If the person in charge of an approved mental health facility is
2 notified under section 46 (2), the person must, as soon as
3 practicable, discharge the person to whom the notification relates
4 into the custody of a police officer.

1 **Chapter 7 Forensic mental health**

2 **Explanatory note**

3 The text for this chapter (parts 7.1 and 7.2) is relocated from the *Mental Health (Treatment and*
4 *Care) Act 1994* by schedule 2, amendment 2.41.

1 **Chapter 8 Correctional patients**

2 **Explanatory note**

3 The text for this chapter (parts 8.1 to 8.4) is relocated from the *Mental Health (Treatment and*
4 *Care) Act 1994* by schedule 2, amendment 2.42.

1 **Chapter 9** **Electroconvulsive therapy and**
2 **psychiatric surgery**

3 **Part 9.1** **Preliminary—ch 9**

4 **49** **Definitions**

5 (1) In this Act:

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

8 *electroconvulsive therapy order* means an order under section 55G
9 for the administration of electroconvulsive therapy to a person.

10 *emergency electroconvulsive therapy order* means an order under
11 section 55K for the emergency administration of electroconvulsive
12 therapy to a person.

13 *psychiatric surgery* means specialised neurosurgery for psychiatric
14 conditions.

15 (2) In this section:

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

19 **50** **Form of consent**

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

23 (a) the person seeking to obtain the consent; or

1 (b) the doctor who is proposing to conduct the procedure.

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

4 (2) In this section:

5 *procedure* means—

6 (a) the administration of electroconvulsive therapy; or

7 (b) the performance of psychiatric surgery.

1 **Part 9.2** **Electroconvulsive therapy**

2 **Division 9.2.1** **Administration of electroconvulsive**
3 **therapy**

4 **51** **When electroconvulsive therapy may be administered**

- 5 (1) Electroconvulsive therapy may be administered to an adult only as
6 provided under section 52 and section 53.
- 7 (2) Electroconvulsive therapy may be administered to a person who is
8 at least 12 years old but under 18 years old only as provided under
9 section 54 and section 55.
- 10 (3) Electroconvulsive therapy must not be administered to a person who
11 is under 12 years old.

12 **52** **Adult with decision-making capacity**

- 13 (1) This section applies to a person who—
14 (a) is an adult; and
15 (b) has decision-making capacity to consent to the administration
16 of electroconvulsive therapy.
- 17 *Note* For principles of decision-making capacity, see s 8.
- 18 (2) Electroconvulsive therapy may be administered to the person if the
19 person—
20 (a) has given consent to the administration of electroconvulsive
21 therapy; and
22 (b) has not withdrawn the consent, either orally or in writing; and
23 (c) has not had electroconvulsive therapy administered—
24 (i) 9 or more times since the consent was given; or

- 1 (ii) if the consent was to the administration of
2 electroconvulsive therapy a stated number of times less
3 than 9—that number of times.

4 **53 Adult without decision-making capacity**

- 5 (1) This section applies to a person who—
6 (a) is an adult; and
7 (b) does not have decision-making capacity to consent to the
8 administration of electroconvulsive therapy.
- 9 (2) Electroconvulsive therapy may be administered to the person if—
10 (a) the person has an advance consent direction consenting to
11 electroconvulsive therapy; and
12 (b) it is administered in accordance with the direction; and
13 (c) the person does not refuse or resist.
- 14 (3) Also, electroconvulsive therapy may be administered to the person
15 if—
16 (a) it is administered in accordance with an electroconvulsive
17 therapy order or an emergency electroconvulsive therapy order
18 in force in relation to the person; and
19 (b) either—
20 (i) the person does not refuse or resist; or
21 (ii) a psychiatric treatment order or a forensic psychiatric
22 treatment order is also in force in relation to the person.

23 **54 Young person with decision-making capacity**

- 24 (1) This section applies to a person who—
25 (a) is at least 12 years old but under 18 years old; and

1 (b) has decision-making capacity to consent to the administration
2 of electroconvulsive therapy.

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

4 (2) Electroconvulsive therapy may be administered to the person if—

5 (a) it is administered in accordance with—

6 (i) for a 12 to 15 year old—an electroconvulsive therapy
7 order in force in relation to the person; or

8 (ii) for a 16 or 17 year old—an electroconvulsive therapy
9 order or an emergency electroconvulsive therapy order in
10 force in relation to the person; and

11 (b) the person has given consent to the administration of
12 electroconvulsive therapy; and

13 (c) the person has not withdrawn the consent, either orally or in
14 writing.

15 **55 Young person without decision-making capacity**

16 (1) This section applies to a person who—

17 (a) is at least 12 years old but under 18 years old; and

18 (b) does not have decision-making capacity to consent to the
19 administration of electroconvulsive therapy.

20 (2) Electroconvulsive therapy may be administered to the person if—

21 (a) it is administered in accordance with—

22 (i) for a 12 to 15 year old—an electroconvulsive therapy
23 order in force in relation to the person; or

24 (ii) for a 16 or 17 year old—an electroconvulsive therapy
25 order or an emergency electroconvulsive therapy order in
26 force in relation to the person; and

- 1 (b) either—
2 (i) the person does not refuse or resist; or
3 (ii) a psychiatric treatment order or a forensic psychiatric
4 treatment order is also in force in relation to the person.

5 **55B Offence—unauthorised administration of**
6 **electroconvulsive therapy**

- 7 (1) A person commits an offence if—
8 (a) the person administers electroconvulsive therapy to a person;
9 and
10 (b) the person is not a doctor.

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

- 13 (2) A doctor commits an offence if—
14 (a) the doctor administers electroconvulsive therapy to a person;
15 and
16 (b) the electroconvulsive therapy may not be administered to the
17 person under this division.

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

20 **Division 9.2.2 Electroconvulsive therapy orders**

21 **55C Application for electroconvulsive therapy order**

- 22 (1) This section applies if the chief psychiatrist or a doctor believes on
23 reasonable grounds that the ACAT could reasonably make an
24 electroconvulsive therapy order in relation to a person.
25 (2) The chief psychiatrist or doctor may apply to the ACAT for an
26 electroconvulsive therapy order in relation to the person.

- 1 (3) If the person is under 18 years old—
2 (a) the application must be supported by the evidence of another
3 doctor; and
4 (b) the applicant or the other doctor (or both) must be a child and
5 adolescent psychiatrist.

6 *Note* A psychiatric treatment order or forensic psychiatric treatment order is
7 also needed if electroconvulsive therapy is to be administered to the
8 person and the person refuses or resists (see s 53 (3) (b) (i) and
9 s 55 (2) (b) (i)).

- 10 (4) In this section:

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

14 **55D Consultation by ACAT—electroconvulsive therapy order**

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

- 18 (a) if the person is under 18 years old—each person with parental
19 responsibility for the person under the *Children and Young*
20 *People Act 2008*, division 1.3.2 (Parental responsibility); and
21 (b) if the person has a guardian under the *Guardianship and*
22 *Management of Property Act 1991*—the guardian; and
23 (c) if the person has an attorney under the *Powers of Attorney*
24 *Act 2006*—the attorney; and
25 (d) if the person has a nominated person—the nominated person;
26 and
27 (e) if a health attorney is involved in the treatment, care or support
28 of the person—the health attorney.

1 **55E ACAT must hold hearing—electroconvulsive therapy**
2 **order**

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

5 **55F What ACAT must take into account—electroconvulsive**
6 **therapy order**

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

- 9 (a) whether the person consents, refuses to consent or has the
10 decision-making capacity to consent to the electroconvulsive
11 therapy;
- 12 (b) the views and wishes of the person, so far as they can be found
13 out, including in—
- 14 (i) an advance agreement; and
15 (ii) an advance consent direction;
- 16 (c) the views of the people responsible for the day-to-day care of
17 the person, so far as those views are made known to the
18 ACAT;
- 19 (d) the views of the people appearing at the proceeding;
- 20 (e) the views of the people consulted under section 55D
21 (Consultation by ACAT—electroconvulsive therapy order);
- 22 (f) any alternative treatment, care or support reasonably available,
23 including—
- 24 (i) the purpose of the treatment, care or support; and
25 (ii) the benefits likely to be derived by the person from the
26 treatment, care or support; and

1 (iii) the distress, discomfort, risks, side effects or other
2 disadvantages associated with the treatment, care or
3 support;

4 (g) any relevant medical history of the person.

5 **55G Making of electroconvulsive therapy order**

6 (1) On application under section 55C, the ACAT may make an
7 electroconvulsive therapy order in relation to a person who is at
8 least 12 years old if satisfied that—

9 (a) the person has a mental illness; and

10 (b) the person does not have decision-making capacity to consent
11 to the administration of electroconvulsive therapy; and

12 (c) the person does not have an advance consent direction refusing
13 consent to electroconvulsive therapy; and

14 (d) the administration of electroconvulsive therapy is likely to
15 result in substantial benefit to the person; and

16 (e) either—

17 (i) all other reasonable forms of treatment available have
18 been tried but have not been successful; or

19 (ii) the treatment is the most appropriate treatment reasonably
20 available.

21 (2) Also on application under section 55C, the ACAT may make an
22 electroconvulsive therapy order in relation to a person who is at
23 least 12 years old but under 18 years old if satisfied that—

24 (a) the person has a mental illness; and

25 (b) the person has decision-making capacity to consent to the
26 administration of electroconvulsive therapy; and

27 (c) the person consents to the administration of electroconvulsive
28 therapy; and

- 1 (d) the administration of electroconvulsive therapy is likely to
2 result in substantial benefit to the person.
- 3 (3) The ACAT must, as soon as practicable after making an
4 electroconvulsive therapy order under this section, give a copy of
5 the order to the following:
- 6 (a) the person in relation to whom the order is made;
- 7 (b) the person who applied for the order;
- 8 (c) the people consulted under section 55D (Consultation by
9 ACAT—electroconvulsive therapy order).

10 **55H Content of electroconvulsive therapy order**

- 11 (1) An electroconvulsive therapy order made in relation to a person
12 must state—
- 13 (a) the matters under section 55G (1) or (2) of which the ACAT is
14 satisfied in relation to the person; and
- 15 (b) the maximum number of times electroconvulsive therapy may
16 be administered to the person under the order.
- 17 *Note* The ACAT must give a copy of the order to certain people (see s 87).
- 18 (2) For subsection (1) (b), the maximum number must be—
- 19 (a) if the person has an advance consent direction that includes
20 advance consent for electroconvulsive therapy—not more than
21 the maximum number of times stated in the direction; and
- 22 (b) in any other case—not more than 9.

23 **55I Person to be told about electroconvulsive therapy order**

- 24 (1) This section applies if electroconvulsive therapy is to be
25 administered to a person at a mental health facility under an
26 electroconvulsive therapy order.

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

7 **Division 9.2.3 Emergency electroconvulsive therapy**
8 **orders**

9 **55J Application for emergency electroconvulsive therapy**
10 **order**

- 11 (1) This section applies if the chief psychiatrist and a doctor believe on
12 reasonable grounds that the ACAT could reasonably make an
13 emergency electroconvulsive therapy order in relation to a person.
- 14 (2) The chief psychiatrist and doctor may jointly apply to the ACAT for
15 an emergency electroconvulsive therapy order in relation to the
16 person.
- 17 (3) The application must be accompanied by an application for an
18 electroconvulsive therapy order in relation to the person.
- 19 *Note 1* The ACAT must give a copy of the application to the following people
20 as soon as practicable (and not longer than 24 hours) after the
21 application is lodged:
- 22 • the public advocate
 - 23 • if the person is a child—the CYP director-general (see s 79).

- 1 *Note 2* Certain people are entitled to appear and give evidence, and be
2 represented, at the proceeding, including the following:
- 3 • the person who is the subject of the proceeding
 - 4 • the public advocate
 - 5 • the discrimination commissioner.
- 6 Other people are also entitled to appear (see s 80).
- 7 *Note 3* A psychiatric treatment order or forensic psychiatric treatment order is
8 also needed if electroconvulsive therapy is to be administered to the
9 person and the person refuses or resists (see s 53 (3) (b) and
10 s 55 (2) (b)).

11 **55JA What ACAT must take into account—emergency**
12 **electroconvulsive therapy order**

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

- 15 (a) the views and wishes of the person, so far as they can be found
16 out, including in—
- 17 (i) an advance agreement; and
 - 18 (ii) an advance consent direction;
- 19 (b) the views of the people appearing at the proceeding;
- 20 (c) the views of the following, so far as those views are made
21 known to the ACAT:
- 22 (i) the people responsible for the day-to-day care of the
23 person;
 - 24 (ii) if the person is under 18 years old—each person with
25 parental responsibility for the person under the *Children*
26 *and Young People Act 2008*, division 1.3.2 (Parental
27 responsibility);
 - 28 (iii) if the person has a guardian under the *Guardianship and*
29 *Management of Property Act 1991*—the guardian;

- 1 (iv) if the person has an attorney under the *Powers of Attorney*
2 *Act 2006*—the attorney;
- 3 (v) if the person has a nominated person—the nominated
4 person;
- 5 (vi) if a health attorney is involved in the treatment, care or
6 support of the person—the health attorney.

7 *Note* Section 79A (Notice of hearing) does not apply in relation to the
8 making of an emergency electroconvulsive therapy order (see
9 s 79A (3)).

10 **55K Making of emergency electroconvulsive therapy order**

- 11 (1) On application under section 55J, the ACAT may make an
12 emergency electroconvulsive therapy order in relation to a person
13 who is at least 16 years old if satisfied that—
- 14 (a) the person has a mental illness; and
- 15 (b) the person does not have decision-making capacity to consent
16 to the administration of electroconvulsive therapy; and
- 17 (c) the person does not have an advance consent direction refusing
18 consent to electroconvulsive therapy; and
- 19 (d) the administration of the electroconvulsive therapy is necessary
20 to—
- 21 (i) save the person’s life; or
- 22 (ii) prevent the likely onset of a risk to the person’s life
23 within 3 days; and
- 24 (e) either—
- 25 (i) all other reasonable forms of treatment available have
26 been tried but have not been successful; or
- 27 (ii) the treatment is the most appropriate treatment reasonably
28 available.

- 1 (2) Also on application under section 55J, the ACAT may make an
2 emergency electroconvulsive therapy order in relation to a person
3 who is at least 16 years old if the ACAT is satisfied that—
- 4 (a) the person has a mental illness; and
- 5 (b) the person has decision-making capacity to consent to the
6 administration of electroconvulsive therapy and consents to the
7 administration of electroconvulsive therapy; and
- 8 (c) the administration of the electroconvulsive therapy is necessary
9 to—
- 10 (i) save the person's life; or
- 11 (ii) prevent the likely onset of a risk to the person's life
12 within 3 days; and
- 13 (d) either—
- 14 (i) all other reasonable forms of treatment available have
15 been tried but have not been successful; or
- 16 (ii) the treatment is the most appropriate treatment reasonably
17 available.

18 **55L Content of an emergency electroconvulsive therapy order**

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

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

25 *Note* The ACAT must give a copy of the order to certain people within
26 24 hours (see s 87).

1 **56** **Effect of later order**

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

6 **Division 9.2.4** **Records of electroconvulsive therapy**

7 **57** **Doctor must record electroconvulsive therapy**

8 (1) If a doctor administers electroconvulsive therapy to a person, the
9 doctor must make a record of the administration, including whether
10 the administration—

11 (a) was in accordance with an order of the ACAT; and

12 (b) was with the person's consent.

13 (2) The doctor must give the record to the person in charge of the
14 psychiatric facility where the therapy was administered.

15 (3) A doctor commits an offence if the doctor fails to comply with
16 subsection (1) or (2).

17 Maximum penalty: 20 penalty units.

18 **58** **Electroconvulsive therapy records to be kept for 5 years**

19 The person in charge of a psychiatric facility must keep a record of
20 electroconvulsive therapy given under section 57 (2) for at least
21 5 years after the day the record is given.

22 Maximum penalty: 20 penalty units.

1 **Part 9.3** **Psychiatric surgery**

2 **59** **Performance on people subject to orders of ACAT**

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

5 **60** **Psychiatric surgery not to be performed without approval**
6 **or if person refuses**

7 A doctor commits an offence if—

8 (a) the doctor performs psychiatric surgery on a person; and

9 (b) the doctor—

10 (i) does not have the chief psychiatrist's approval for
11 performance of the surgery; or

12 (ii) has been told under section 66 that the person refuses to
13 have the surgery performed.

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

16 **61** **Application for approval**

17 (1) A doctor who proposes to perform psychiatric surgery on a person
18 may apply to the chief psychiatrist for approval to perform the
19 surgery.

20 (2) The application must be in writing and be accompanied by—

21 (a) a copy of the consent of the person; or

22 (b) a copy of an order of the Supreme Court under section 65.

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

- 1 **62 Application to be considered by committee**
- 2 (1) The chief psychiatrist must, as soon as practicable after receiving an
- 3 application under section 61, give a copy of the application to the
- 4 chairperson of the committee appointed under section 67.
- 5 (2) The chairperson must as soon as practicable after receiving the
- 6 application—
- 7 (a) tell the following people, in writing, of the application:
- 8 (i) the person on whom the surgery is proposed to be
- 9 performed (the *subject person*);
- 10 (ii) if the subject person is a child—each person with parental
- 11 responsibility for the child under the *Children and Young*
- 12 *People Act 2008*, division 1.3.2 (Parental responsibility);
- 13 (iii) if the subject person has a guardian under the
- 14 *Guardianship and Management of Property Act 1991*—
- 15 the guardian;
- 16 (iv) if the subject person has an attorney under the *Powers of*
- 17 *Attorney Act 2006*—the attorney;
- 18 (v) if the subject person has a nominated person—the
- 19 nominated person;
- 20 (vi) if a health attorney is involved in the treatment, care or
- 21 support of the subject person—the health attorney; and
- 22 (b) convene a meeting of the committee to consider the
- 23 application; and
- 24 (c) give a written report to the chief psychiatrist that includes the
- 25 following:
- 26 (i) the committee’s recommendation about whether or not
- 27 the chief psychiatrist should approve the performance of
- 28 the psychiatric surgery;

- 1 (ii) if the committee recommends approval of the surgery—
2 the conditions (if any) to which the approval should be
3 subject;
- 4 (iii) the committee's reasons for making the recommendations
5 in the report.
- 6 (3) The committee must not recommend that the chief psychiatrist
7 approve the performance of psychiatric surgery unless—
- 8 (a) the committee believes on reasonable grounds that—
- 9 (i) the surgery will result in substantial benefit to the subject
10 person; and
- 11 (ii) all alternative forms of treatment reasonably available
12 have failed, or are likely to fail, to benefit the subject
13 person; and
- 14 (b) the recommendation is supported by the psychiatrist and the
15 neurosurgeon on the committee.
- 16 (4) The chief psychiatrist must ensure that a copy of the committee's
17 report is placed on the subject person's record.

18 **63 Requirement for further information**

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

1 **64** **Application to be decided in accordance with**
2 **committee's recommendation**

3 The chief psychiatrist must decide an application under section 61 in
4 accordance with the committee's recommendation.

5 **65** **Consent of Supreme Court**

6 (1) On application by a doctor, the Supreme Court may, by order,
7 consent to the performance of psychiatric surgery on a person.

8 (2) The Supreme Court may make the order only if satisfied that—

9 (a) the person has a mental illness; and

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

13 (c) there are grounds for believing that the performance of the
14 surgery is likely to result in substantial benefit to the person;
15 and

16 (d) all alternative forms of treatment reasonably available have
17 failed, or are likely to fail, to benefit the person.

18 **66** **Refusal of psychiatric surgery**

19 (1) This section applies in relation to a person—

20 (a) who has given consent to the performance of psychiatric
21 surgery; or

22 (b) in relation to whom the Supreme Court has made an order
23 consenting to the performance of psychiatric surgery under
24 section 65.

25 (2) The person may, before the psychiatric surgery is performed, tell the
26 chief psychiatrist or anyone else, either orally or in writing, that the
27 person refuses to have the surgery performed.

- 1 (3) A person (other than the chief psychiatrist) who is told under
2 subsection (2) that the person refuses to have psychiatric surgery
3 performed must tell the chief psychiatrist of the refusal.
- 4 Maximum penalty: 50 penalty units, imprisonment for 6 months or
5 both.
- 6 (4) If the chief psychiatrist has approved the performance of psychiatric
7 surgery on a person under section 64 and is told under this section
8 that the person refuses to have the surgery, the chief psychiatrist
9 must—
- 10 (a) immediately tell the doctor who is to perform the surgery of
11 the refusal; and
- 12 (b) ensure that written documentation of the refusal is placed on
13 the person's record.
- 14 (5) If the chief psychiatrist is told under this section that a person
15 refuses to have psychiatric surgery performed—
- 16 (a) any consent to the performance of the surgery given by the
17 person, or any order made by the Supreme Court under
18 section 65 in relation to the person, ceases to have effect; and
- 19 (b) if, immediately before the date of the refusal, an application for
20 the approval of the performance of the surgery has been made
21 but has not been decided, the application is taken to have been
22 withdrawn on that date; and
- 23 (c) any approval given by the chief psychiatrist for the
24 performance of the surgery ceases to have effect.

25 **67 Appointment of committee**

- 26 (1) For section 62, the Minister must appoint a committee consisting
27 of—
- 28 (a) a psychiatrist; and
- 29 (b) a neurosurgeon; and

- 1 (c) a lawyer; and
2 (d) a clinical psychologist; and
3 (e) a social worker.
- 4 *Note 1* For the making of appointments (including acting appointments), see
5 the [Legislation Act](#), pt 19.3.
- 6 *Note 2* In particular, a person may be appointed for a particular provision of a
7 law (see [Legislation Act](#), s 7 (3)) and an appointment may be made by
8 naming a person or nominating the occupant of a position (see
9 [Legislation Act](#), s 207).
- 10 *Note 3* Certain Ministerial appointments require consultation with an Assembly
11 committee and are disallowable (see [Legislation Act](#), div 19.3.3).
- 12 (2) The Minister must appoint a member of a committee to be the
13 chairperson of the committee.
- 14 (3) The chairperson of the committee must convene meetings of the
15 committee.
- 16 (4) Subject to section 62 (3) (b), a question arising at a meeting of a
17 committee must be decided in accordance with the opinion of a
18 majority of members of the committee.
- 19 (5) A member of a committee must be paid the remuneration and
20 allowances (if any) prescribed by regulation.

1 **Chapter 10 Referrals by courts under**
2 **Crimes Act and Children and**
3 **Young People Act**

4 **Explanatory note**

5 The text for this chapter (sections 68 to 75) is relocated from the *Mental Health (Treatment and*
6 *Care) Act 1994* by schedule 2, amendment 2.43.

1 **Chapter 11** **ACAT procedural matters**

2 **Explanatory note**

3 The text for this chapter (sections 76 to 87) is relocated from the *Mental Health (Treatment and*
4 *Care) Act 1994* by schedule 2, amendment 2.44.

1 **Chapter 12 Administration**

2 **Explanatory note**

3 The text for this chapter (parts 12.1 to 12.5) is relocated from the *Mental Health (Treatment and*
4 *Care) Act 1994* by schedule 2, amendment 2.45.

1 **Chapter 13 Private psychiatric facilities**

2 **Part 13.1 Preliminary**

3 **123 Definitions—ch 13**

4 In this chapter:

5 *inspector* means an inspector appointed under section 135.

6 *licence* means a licence issued under section 127.

7 *licensed premises* means the premises in relation to which a licence
8 is issued.

9 *licensee* means a person who holds a licence issued under
10 section 127.

11 *private psychiatric facility* means a hospital or other facility for the
12 treatment, care, support, rehabilitation or accommodation of people
13 with a mental illness other than—

14 (a) a recognised hospital within the meaning of the *Health*
15 *Insurance Act 1973* (Cwlth); or

16 (b) a facility conducted by the Territory.

1 **Part 13.2 Licences**

2 **124 Meaning of *eligible person*—pt 13.2**

3 (1) For this part, a person is an *eligible person* if—

4 (a) the Minister is satisfied on reasonable grounds that the person
5 is a suitable person to hold a licence; and

6 (b) if the person is an individual—the individual has not been
7 involved in a disqualifying act; and

8 (c) if the person is in a partnership that is to operate a private
9 psychiatric facility—each person in the partnership has not
10 been involved in a disqualifying act; and

11 (d) if the person is a corporation—the corporation and each person
12 involved in the management of the corporation has not been
13 involved in a disqualifying act.

14 (2) In this section:

15 ***disqualifying act***—a person has been involved in a ***disqualifying act***
16 if the person has in the last 5 years, whether in the ACT or
17 elsewhere—

18 (a) contravened a provision of this Act; or

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

22 (b) contravened a condition of a licence issued under this Act; or

23 (c) been convicted, or found guilty, of an offence involving fraud
24 or dishonesty, or punishable by imprisonment for at least
25 1 year; or

26 (d) been bankrupt or personally insolvent; or

27 *Note* ***Bankrupt or personally insolvent***—see the [Legislation Act](#),
28 dictionary, pt 1.

- 1 (e) been involved in the management of a corporation when the
2 corporation became the subject of a winding-up order or a
3 controller or administrator was appointed.

4 **125 Licence—requirement to hold**

- 5 (1) A person commits an offence if the person—

- 6 (a) operates a private psychiatric facility; and
7 (b) does not hold a licence to operate the facility.

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

- 10 (2) A person commits an offence if—

- 11 (a) the person is a partner in a partnership; and
12 (b) the partnership operates a private psychiatric facility; and
13 (c) no partner in the partnership holds a licence to operate the
14 facility.

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

17 **126 Licence—application**

- 18 (1) A person (the *applicant*) may apply to the Minister for a licence to
19 operate a private psychiatric facility.

- 20 (2) The application must—

- 21 (a) be in writing; and
22 (b) state the applicant's name and address; and
23 (c) if the applicant is a partner in a partnership that is to operate
24 the facility—state the name and address of each partner in the
25 partnership; and

- 1 (d) if the applicant is a corporation—state the name and address of
2 each director of the corporation; and
- 3 (e) state the address of the premises where the facility is to be
4 operated.
- 5 *Note 1* If a form is approved under s 146A for an application, the form
6 must be used.
- 7 *Note 2* A fee may be determined under s 146 for an application.
- 8 (3) The Minister may, in writing, ask the applicant to give the Minister
9 additional information or documents that the Minister reasonably
10 needs to decide the application.
- 11 (4) If the applicant does not comply with a request under subsection (3),
12 the Minister may refuse to consider the application further.

13 **127 Licence—decision on application**

- 14 (1) On application under section 126, the Minister may issue a licence if
15 satisfied on reasonable grounds that—
- 16 (a) the applicant is an eligible person; and
- 17 (b) the applicant complies with, and is likely to continue to comply
18 with, the requirements of this Act; and
- 19 *Note* A reference to an Act includes a reference to the statutory
20 instruments made or in force under the Act, including any
21 regulation (see [Legislation Act](#), s 104).
- 22 (c) the premises where the facility is to be operated are suitable
23 premises for the operation of a private psychiatric facility.
- 24 (2) A licence must include conditions about the maximum number of
25 people for whom treatment, care or support may be provided at the
26 licensed premises.
- 27 (3) A licence may also include conditions about the following:
- 28 (a) the minimum number of staff to be employed at the licensed
29 premises;

- 1 (b) the qualifications of the staff;
- 2 (c) the treatment, care or support that may be provided at the
3 licensed premises;
- 4 (d) the health and safety of people at the licensed premises;
- 5 (e) the insurance to be carried by the licensee against any liability
6 arising from the operation of a private psychiatric facility at the
7 licensed premises;
- 8 (f) the recreational and educational facilities to be provided at the
9 licensed premises;
- 10 (g) the management of the licensed premises;
- 11 (h) the keeping of records about the licensed premises and any
12 person who is treated in or from the premises;
- 13 (i) anything else that the Minister is satisfied on reasonable
14 grounds is appropriate.

15 **128 Licence—term and renewal of licence**

- 16 (1) A licence is issued for the period of up to 3 years stated in the
17 licence.
- 18 (2) A licensee may apply, in writing, to the Minister to renew the
19 licence.

20 *Note 1* If a form is approved under s 146A for an application, the form must be
21 used.

22 *Note 2* A fee may be determined under s 146 for an application.

- 23 (3) The Minister may renew the licence for a period of up to 3 years if
24 satisfied on reasonable grounds of the matters mentioned in
25 section 126 (2) in relation to the applicant and the premises.

1 **129 Licence—transfer of licence**

2 (1) A licensee may apply to the Minister to transfer a licence to
3 someone else (the *proposed new licensee*).

4 (2) The application must—

5 (a) be in writing; and

6 (b) state the proposed new licensee's name and address; and

7 (c) if the proposed new licensee is in a partnership—state the
8 name and address of each partner in the partnership; and

9 (d) if the proposed new licensee is a corporation—state the name
10 and address of each director of the corporation.

11 *Note 1* If a form is approved under s 146A for an application, the form must be
12 used.

13 *Note 2* A fee may be determined under s 146 for an application.

14 (3) The Minister may, in writing, ask the proposed new licensee to give
15 the Minister additional information or documents that the Minister
16 reasonably needs to decide the application.

17 (4) If the proposed new licensee does not comply with a request under
18 subsection (3), the Minister may refuse to consider the application
19 further.

20 (5) The Minister may transfer the licence if satisfied on reasonable
21 grounds that—

22 (a) the proposed new licensee is an eligible person; and

23 (b) the proposed new licensee complies with, and is likely to
24 continue to comply with, the requirements of this Act.

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

- 1 (6) The Minister may amend the licence if satisfied on reasonable
2 grounds that the amendment is in the best interests of people for
3 whom treatment, care or support is provided under the licence.

4 **130 Licence—amendment initiated by Minister**

- 5 (1) The Minister may, by written notice (an *amendment notice*), amend
6 a licence on the Minister’s own initiative if satisfied on reasonable
7 grounds that the amendment is in the best interests of people for
8 whom treatment, care or support is provided under the licence.

- 9 (2) However, the Minister may amend a licence on the Minister’s own
10 initiative only if—

11 (a) the Minister gives the licensee written notice of the proposed
12 amendment (a *proposed amendment notice*); and

13 (b) the proposed amendment notice states that written comments
14 on the proposal may be made to the Minister before the end of
15 a stated period of at least 28 days after the day the notice is
16 given to the licensee; and

17 (c) the Minister considers any comments made in response to the
18 proposed amendment notice.

- 19 (3) Subsection (2) does not apply if the licensee agrees, in writing, to
20 the amendment.

- 21 (4) The amendment takes effect on—

22 (a) the day the amendment notice is given to the licensee; or

23 (b) a later day stated in the notice.

24 **131 Licence—amendment on application by licensee**

- 25 (1) A licensee may apply to the Minister to amend a licence.

26 *Note 1* If a form is approved under s 146A for an application, the form must be
27 used.

28 *Note 2* A fee may be determined under s 146 for an application.

- 1 (2) The Minister must, not later than 28 days after receiving the
2 application—
- 3 (a) decide the application for amendment; and
4 (b) give the licensee written notice of the decision.
- 5 (3) The Minister may amend the licence if satisfied on reasonable
6 grounds that the amendment is in the best interests of people for
7 whom treatment, care or support is provided under the licence.
- 8 (4) The amendment takes effect on—
- 9 (a) the day the written notice of amendment is given to the
10 licensee; or
11 (b) a later day stated in the notice.

12 **132 Licence—surrender**

- 13 (1) A licensee may surrender a licence by giving the Minister—
- 14 (a) written notice of the surrender; and
15 (b) the licence.
- 16 *Note* If a form is approved under s 146A for this provision, the form must be
17 used.
- 18 (2) A surrender takes effect on—
- 19 (a) the day the notice is given to the Minister; or
20 (b) a later day stated in the notice.

21 **133 Licence—cancellation by notice**

- 22 (1) The Minister may, by written notice (a *cancellation notice*), cancel
23 a licence if satisfied on reasonable grounds that the licensee has
24 failed to comply with a condition of the licence.

- 1 (2) However, the Minister may cancel a licence only if—
- 2 (a) the Minister gives the licensee written notice of the proposed
- 3 cancellation (a *proposed cancellation notice*); and
- 4 (b) the proposed cancellation notice states that written comments
- 5 on the proposal may be made to the Minister before the end of
- 6 a stated period of at least 28 days after the day the notice is
- 7 given to the licensee; and
- 8 (c) the Minister considers any comments made in response to the
- 9 proposed cancellation notice.
- 10 (3) Subsection (2) does not apply if the licensee agrees, in writing, to
- 11 the cancellation.
- 12 (4) The cancellation takes effect on—
- 13 (a) the day the cancellation notice is given to the licensee; or
- 14 (b) a later day stated in the cancellation notice.

15 **134 Licence—emergency cancellation**

- 16 (1) Despite section 133, the Minister may, by written notice (an
- 17 *emergency cancellation notice*), cancel a licence if satisfied on
- 18 reasonable grounds that circumstances exist in relation to the licence
- 19 that give rise to an immediate risk of harm to the health or safety of
- 20 people for whom treatment, care or support is provided under the
- 21 licence.
- 22 (2) An emergency cancellation notice must state—
- 23 (a) the reasons for the cancellation; and
- 24 (b) the facts that form the basis for the reasons; and

1 (c) the details of the emergency cancellation.

2 **Example—details**

3 how and where the people who receive treatment, care or support under the
4 licence are to receive the treatment, care or support after the cancellation

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

8 (3) The cancellation takes effect on the day after the day the emergency
9 cancellation notice is given to the licensee.

1 **Part 13.3** **Private psychiatric facilities—**
2 **enforcement**

3 **135 Appointment of inspectors**

- 4 (1) The director-general may appoint a person as an inspector for this
5 chapter.

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

8 *Note 2* In particular, a person may be appointed for a particular provision of a
9 law (see [Legislation Act](#), s 7 (3)) and an appointment may be made by
10 naming a person or nominating the occupant of a position (see
11 [Legislation Act](#), s 207).

- 12 (2) An inspector must exercise functions under this chapter in
13 accordance with the conditions of the appointment and any
14 directions given to the inspector by the chief psychiatrist.

15 **135A Identity cards**

- 16 (1) The director-general must give an inspector an identity card stating
17 the person's name and that the person is an inspector.

- 18 (2) The identity card must show—

- 19 (a) a recent photograph of the inspector; and
20 (b) the card's date of issue and expiry; and
21 (c) anything else prescribed by regulation.

- 22 (3) A person commits an offence if the person—

- 23 (a) stops being an inspector; and
24 (b) does not return the person's identity card to the
25 director-general as soon as practicable (but not later than
26 7 days) after the day the person stops being an inspector.

27 Maximum penalty: 1 penalty unit.

1 **135B Powers of inspection**

2 (1) An inspector may, at any reasonable time, enter licensed premises
3 and do 1 or more of the following in relation to the premises or
4 anything at the premises:

5 (a) inspect the premises and equipment used at the premises in
6 connection with the treatment, care or support of a person;

7 (b) inspect any book, document or other record that is in the
8 possession of the occupier of the premises, or to which the
9 occupier has access, relating to the conduct of the private
10 psychiatric facility at the premises;

11 (c) require the occupier of the premises to give the inspector,
12 within a reasonable time, a copy of any information, book,
13 document or other record that is in the possession of the
14 occupier, or to which the occupier has access, relating to the
15 conduct of the private psychiatric facility at the premises.

16 *Note* The [Legislation Act](#), s 170 deals with the application of the privilege
17 against self-incrimination.

18 (2) An inspector who enters licensed premises under subsection (1) is
19 not authorised to remain on the premises if, when asked to do so by
20 the occupier of the premises, the inspector does not show the
21 inspector's identity card to the occupier.

22 (3) A person is not required to give records to an inspector under
23 subsection (1) (c) if, when asked to do so by the person, the
24 inspector does not show the inspector's identity card to the person.

25 (4) In this section:

26 ***occupier***, of licensed premises, includes—

27 (a) a person reasonably believed to be an occupier of the licensed
28 premises; and

29 (b) a person apparently in charge of the licensed premises.

1 **135C** **Failing to comply with requirement of inspector**

2 A person commits an offence if—

3 (a) an inspector requires the person to give the inspector a copy of
4 any information, book, document or other record under
5 section 135B (1) (c); and

6 (b) the person fails to comply with the requirement, within the
7 time required.

8 Maximum penalty: 50 penalty units.

1 **Chapter 14 Mental health advisory council**

2 **Explanatory note**

3 The text for this chapter (sections 139 to 139C) is relocated from the *Mental Health (Treatment*
4 *and Care) Act 1994* by schedule 2, amendment 2.46.

1 **Chapter 15 Interstate application of mental**
2 **health laws**

3 **Part 15.1 Preliminary**

4 **139CA Purpose—ch 15**

5 The purpose of this chapter is to provide for—

6 (a) the apprehension of people who are subject to certain interstate
7 warrants or orders, or may otherwise be apprehended, under
8 mental health legislation; and

9 (b) the interstate transfer of people under mental health legislation;
10 and

11 (c) the treatment, care or support in the ACT of people subject to
12 mental health orders or similar orders made in other States; and

13 (d) the interstate operation of certain mental health orders.

14 **139CB Definitions—ch 15**

15 In this chapter:

16 *authorised officer* means—

17 (a) an authorised ambulance paramedic; or

18 (b) a doctor; or

19 (c) a mental health officer; or

20 (d) a police officer.

21 *community care service* means a service in the ACT that provides
22 treatment, care or support for a person with a mental disorder who is
23 living in the community.

1 ***corresponding law***—

2 (a) means a law of another State that provides for the treatment,
3 care or support of a person with a mental disorder or mental
4 illness; and

5 (b) includes a law of another State prescribed by regulation.

6 ***interstate authorised person*** means a person prescribed by
7 regulation.

8 ***interstate community care facility*** means a facility in another State
9 that, under a corresponding law, provides treatment, care or support
10 for a person with a mental disorder.

11 *Note* See s 9 (Meaning of *mental disorder*).

12 ***interstate community care service*** means a service in another State
13 that, under a corresponding law, provides treatment, care or support
14 for a person with a mental disorder who is living in the community.

15 ***interstate involuntary treatment order*** means an order made under a
16 corresponding law for the involuntary treatment of a person with a
17 mental disorder or mental illness at an interstate mental health
18 facility or in the community.

19 ***interstate mental health facility*** means a hospital or other mental
20 health facility in another State to which a person may be admitted
21 under a corresponding law for treatment, care or support for mental
22 illness.

23 ***interstate mental health service*** means a service in another State
24 that, under a corresponding law, provides treatment, care or support
25 for a person with mental illness who is living in the community.

26 ***interstate patient*** means a person who is subject to an interstate
27 involuntary treatment order.

28 ***mental health service*** means a service in the ACT that provides
29 treatment, care or support for a person with mental illness who is
30 living in the community.

1 **139CC Authority to enter into agreements**

2 (1) The Minister may enter into an agreement with a Minister of another
3 State about any matter relating to the operation of this chapter or a
4 corresponding law.

5 (2) An agreement is a notifiable instrument.

6 *Note* A notifiable instrument must be notified under the [Legislation Act](#).

7 **139CD Authorised officer and interstate authorised person may**
8 **exercise certain functions**

9 (1) An authorised officer or an interstate authorised person may, in
10 relation to an interstate patient in the ACT, exercise any function
11 conferred on the officer or person under a corresponding law or
12 under an interstate involuntary treatment order.

13 (2) A regulation may impose limits on—

14 (a) the people who may act under this section; and

15 (b) the treatment that may be given or functions that may be
16 exercised under this section.

17 **139CE Medication for person being transferred**

18 (1) A person being transferred under this chapter may be given
19 medication by an appropriately trained person if the appropriately
20 trained person believes on reasonable grounds that—

21 (a) giving the medication is in the best interests of the safe and
22 effective treatment, care or support of the person; and

23 (b) the medication has been prescribed by a doctor.

24 (2) Details about medication given under this section must be included
25 in the person's record.

1 **Part 15.2** **Apprehension of people in**
2 **breach of certain orders**

3 **139CF Apprehension of interstate patient in breach of interstate**
4 **involuntary treatment order**

5 (1) An interstate patient who is in breach of an interstate involuntary
6 treatment order may be apprehended in the ACT if—

7 (a) the interstate patient would be subject to apprehension under a
8 corresponding law of the State that issued the interstate
9 involuntary treatment order for the patient; or

10 (b) a warrant or other document issued under a corresponding law
11 authorises the apprehension of the patient.

12 (2) A person may be apprehended under this section by—

13 (a) an authorised officer; or

14 (b) an interstate authorised person.

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

17 (3) A person who apprehends an interstate patient under this section
18 must as soon as reasonably practicable—

19 (a) tell the patient the reason for the apprehension; and

20 (b) ensure that the patient has adequate opportunity and assistance
21 to notify a relative or friend of the apprehension; and

22 (c) tell an interstate mental health facility in the State that issued
23 the interstate involuntary treatment order about the
24 apprehension; and

- 1 (d) transfer the patient to—
2 (i) an interstate mental health facility in the State that issued
3 the interstate involuntary treatment order for the patient;
4 or
5 (ii) an approved mental health facility to determine whether
6 the patient requires treatment before being transferred.

7 **139CG Apprehension of person in breach of mental health order**
8 **or forensic mental health order**

- 9 (1) A person (an *ACT patient*) who is in breach of a mental health order
10 or forensic mental health order may be apprehended in another State
11 if—
12 (a) the ACT patient would be subject to apprehension under this
13 Act if the patient were in the ACT; and
14 (b) the apprehension is allowed under a corresponding law of the
15 other State.
16 (2) The ACT patient may be apprehended in the other State by—
17 (a) an authorised officer; or
18 (b) an interstate authorised person.
19 *Note* See s 139F (Powers of entry and apprehension) and s 140 (Powers of
20 search and seizure).
21 (3) A person who apprehends an ACT patient under this section must as
22 soon as reasonably practicable—
23 (a) tell the patient the reason for the apprehension; and
24 (b) transfer the patient to—
25 (i) an approved mental health facility or approved
26 community care facility in the ACT; or
27 (ii) an interstate mental health facility to determine whether
28 the patient requires treatment before being transferred.

- 1 (4) As soon as reasonably practicable after an ACT patient is
2 transferred under subsection (3) (b) (i), the person in charge of the
3 facility must—
- 4 (a) ensure that the patient has adequate opportunity and assistance
5 to notify a relative or friend of the apprehension and transfer;
6 and
- 7 (b) take all reasonable steps to tell at least 1 of the following of the
8 apprehension and transfer:
- 9 (i) if the patient has a nominated person—the nominated
10 person;
- 11 (ii) if the patient has a guardian under the *Guardianship and*
12 *Management of Property Act 1991*—the guardian;
- 13 (iii) if the patient has an attorney under the *Powers of Attorney*
14 *Act 2006*—the attorney;
- 15 (iv) if a health attorney is involved in the treatment, care or
16 support of the patient—the health attorney;
- 17 (v) if the patient is a child—a person with parental
18 responsibility for the child under the *Children and Young*
19 *People Act 2008*.

1 **Part 15.3** **Transfer of certain people from**
2 **ACT**

3 **139CH Interstate transfer—person under psychiatric treatment**
4 **order or community care order**

- 5 (1) This section applies if—
- 6 (a) a psychiatric treatment order or a community care order is in
7 force in relation to a person; and
- 8 (b) the person is receiving treatment, care or support under the
9 order—
- 10 (i) in an approved mental health facility or from a mental
11 health service; or
- 12 (ii) in an approved community care facility or from a
13 community care service.
- 14 (2) The relevant person may apply to the ACAT for an interstate
15 transfer order if the relevant person believes on reasonable grounds
16 that the ACAT could reasonably make the order under
17 subsection (5).
- 18 (3) The ACAT must hear and decide the application as soon as
19 practicable.
- 20 (4) Before making an interstate transfer order in relation to a person, the
21 ACAT must take into account—
- 22 (a) the views and wishes of the person in relation to the proposed
23 order, so far as they can be found out; and
- 24 (b) as far as practicable, the views in relation to the proposed order
25 of the following:
- 26 (i) if the person has a nominated person—the nominated
27 person;

- 1 (ii) if the person has a guardian under the *Guardianship and*
2 *Management of Property Act 1991*—the guardian;
- 3 (iii) if the person has an attorney under the *Powers of Attorney*
4 *Act 2006*—the attorney;
- 5 (iv) if a health attorney is involved in the treatment, care or
6 support of the person—the health attorney;
- 7 (v) if the person is a child—each person with parental
8 responsibility for the child under the *Children and Young*
9 *People Act 2008*, division 1.3.2 (Parental responsibility);
- 10 (vi) if the person has a carer—the carer.
- 11 (5) The ACAT may make an interstate transfer order if—
- 12 (a) the ACAT believes on reasonable grounds that the order is in
13 the best interests of the safe and effective treatment, care or
14 support of the person; and
- 15 (b) either—
- 16 (i) transferring the person to an interstate mental health
17 facility or interstate community care facility is allowed
18 under a corresponding law; or
- 19 (ii) transferring the responsibility to provide treatment, care
20 or support for the person to an interstate mental health
21 service or interstate community care service is allowed
22 under a corresponding law; and
- 23 (c) the person in charge of the interstate facility or service agrees
24 to the transfer.
- 25 (6) As soon as practicable after making an order under subsection (5),
26 the ACAT must—
- 27 (a) give a copy of the order to—
- 28 (i) the person; and

- 1 (ii) the chief psychiatrist; and
- 2 (iii) the person in charge of the interstate mental health facility
- 3 or service; and
- 4 (b) as far as practicable, notify the people mentioned in
- 5 subsection (4) (b) that an order has been made.
- 6 (7) When the chief psychiatrist is given a copy of the order under
- 7 subsection (6), the chief psychiatrist must ensure that a copy of the
- 8 person's record is given to the person in charge of the interstate
- 9 mental health facility or service.
- 10 (8) A person may be taken to an interstate mental health facility or
- 11 service under an order under subsection (5) by—
- 12 (a) an authorised officer; or
- 13 (b) an interstate authorised person.
- 14 *Note* See s 139F (Powers of entry and apprehension) and s 140 (Powers of
- 15 search and seizure).
- 16 (9) In this section:
- 17 *interstate transfer order* means an order to—
- 18 (a) transfer a person to an interstate mental health facility or an
- 19 interstate community care facility; or
- 20 (b) transfer the responsibility to provide treatment, care or support
- 21 for a person to an interstate mental health service or interstate
- 22 community care service.
- 23 *relevant person*, means—
- 24 (a) if a psychiatric treatment order is in force in relation to a
- 25 person—the chief psychiatrist; or
- 26 (b) if a community care order is in force in relation to a person—
- 27 the care coordinator.

- 1 **139CI Interstate transfer—person under forensic psychiatric**
2 **treatment order or forensic community care order**
- 3 (1) This section applies if—
- 4 (a) a forensic psychiatric treatment order or a forensic community
5 care order is in force in relation to a person; and
- 6 (b) the person is receiving treatment, care or support under the
7 order—
- 8 (i) in an approved mental health facility or from a mental
9 health service; or
- 10 (ii) in an approved community care facility or from a
11 community care service.
- 12 (2) The relevant person may apply to the ACAT for an interstate
13 transfer order if the relevant person believes on reasonable grounds
14 that the ACAT could reasonably make the order under
15 subsection (5).
- 16 (3) The ACAT must hear and decide the application as soon as
17 practicable.
- 18 (4) Before making an interstate transfer order in relation to a person, the
19 ACAT must take into account—
- 20 (a) the views and wishes of the person in relation to the proposed
21 order, so far as they can be found out; and
- 22 (b) as far as practicable, the views in relation to the proposed order
23 of the following:
- 24 (i) if the person has a nominated person—the nominated
25 person;
- 26 (ii) if the person has a guardian under the *Guardianship and*
27 *Management of Property Act 1991*—the guardian;
- 28 (iii) if the person has an attorney under the *Powers of Attorney*
29 *Act 2006*—the attorney;

- 1 (iv) if a health attorney is involved in the treatment, care or
2 support of the person—the health attorney;
- 3 (v) if the person is a child—each person with parental
4 responsibility for the child under the *Children and Young*
5 *People Act 2008*, division 1.3.2 (Parental responsibility);
- 6 (vi) if the person is a detainee, a person released on licence, or
7 a person serving a community-based sentence—the
8 corrections director-general;
- 9 (vii) if the person is covered by a bail order that includes a
10 condition that the person accept supervision under the
11 *Bail Act 1992*, section 25 (4) (e) or section 25A—the
12 director-general responsible for the supervision of the
13 person under the *Bail Act 1992*;
- 14 (viii) if the person is a child covered by a bail order that
15 includes a condition that the child accept supervision
16 under the *Bail Act 1992*, section 26 (2)—the CYP
17 director-general;
- 18 (ix) if the person is a young detainee or a young offender
19 serving a community-based sentence—the CYP
20 director-general;
- 21 (x) if the person has a carer—the carer.
- 22 (5) The ACAT may make an interstate transfer order if—
- 23 (a) the ACAT believes on reasonable grounds that the proposed
24 order is in the best interests of the safe and effective treatment,
25 care or support of the person; and
- 26 (b) either—
- 27 (i) transferring the person to an interstate mental health
28 facility or interstate community care facility is allowed
29 under a corresponding law; or

- 1 (ii) transferring the responsibility to provide treatment, care
2 or support for the person to an interstate mental health
3 service or interstate community care service is allowed
4 under a corresponding law; and
- 5 (c) the person in charge of the interstate facility or service agrees
6 to the transfer.
- 7 (6) As soon as practicable after making an order under subsection (5),
8 the ACAT must—
- 9 (a) give a copy of the order to—
- 10 (i) the person; and
11 (ii) the relevant person; and
12 (iii) the person in charge of the interstate facility or service;
13 and
- 14 (b) as far as practicable, notify the people mentioned in
15 subsection (4) (b) that an order has been made.
- 16 (7) When the relevant person is given a copy of the order under
17 subsection (6), the relevant person must ensure that a copy of the
18 person's record is given to the person in charge of the interstate
19 facility or service.
- 20 (8) A person may be taken to an interstate facility or service under an
21 order under subsection (5) by—
- 22 (a) an authorised officer; or
23 (b) an interstate authorised person.
- 24 *Note* See s 139F (Powers of entry and apprehension) and s 140 (Powers of
25 search and seizure).

- 1 (9) In this section:
- 2 *interstate transfer order* means an order to—
- 3 (a) transfer a person to an interstate mental health facility or an
- 4 interstate community care facility; or
- 5 (b) transfer the responsibility to provide treatment, care or support
- 6 for a person to an interstate mental health service or interstate
- 7 community care service.
- 8 *relevant person*, means—
- 9 (a) if a forensic psychiatric treatment order is in force in relation to
- 10 a person—the chief psychiatrist; or
- 11 (b) if a forensic community care order is in force in relation to a
- 12 person—the care coordinator.
- 13 **139CJ Transfer to interstate mental health facility—emergency**
- 14 **detention**
- 15 (1) This section applies if—
- 16 (a) a person is detained under chapter 6 (Emergency detention);
- 17 and
- 18 (b) the person is being assessed or receiving treatment, care or
- 19 support under that chapter.
- 20 (2) The chief psychiatrist may direct that the person be transferred to an
- 21 interstate mental health facility if—
- 22 (a) the chief psychiatrist believes on reasonable grounds that the
- 23 transfer is in the best interests of the safe and effective
- 24 treatment, care or support of the person; and
- 25 (b) transferring the person to an interstate mental health facility is
- 26 allowed under a corresponding law; and
- 27 (c) the person in charge of the interstate mental health facility
- 28 agrees to the transfer.

- 1 (3) Before giving a direction under subsection (2), the chief psychiatrist
2 must—
- 3 (a) as far as practicable, notify the following that a direction under
4 this section is being considered:
- 5 (i) if the person has a nominated person—the nominated
6 person;
- 7 (ii) if the person has a guardian under the *Guardianship and*
8 *Management of Property Act 1991*—the guardian;
- 9 (iii) if the person has an attorney under the *Powers of Attorney*
10 *Act 2006*—the attorney;
- 11 (iv) if a health attorney is involved in the treatment, care or
12 support of the person—the health attorney;
- 13 (v) if the person is a child—each person with parental
14 responsibility for the child under the *Children and Young*
15 *People Act 2008*, division 1.3.2 (Parental responsibility);
- 16 (vi) if the person has a legal representative—the person’s
17 legal representative;
- 18 (vii) if the person has a carer—the carer; and
- 19 (b) take into account—
- 20 (i) the views and wishes of the person in relation to the
21 proposed direction, so far as they can be found out; and
- 22 (ii) as far as practicable, the views in relation to the proposed
23 direction of the people notified under paragraph (a).
- 24 (4) As soon as practicable after giving a direction under subsection (2),
25 the chief psychiatrist must—
- 26 (a) give a copy of the direction to—
- 27 (i) the person; and

- 1 (ii) the person in charge of the interstate mental health
2 facility; and
- 3 (b) as far as practicable, notify the people mentioned in
4 subsection (3) (a) that a direction has been given; and
- 5 (c) ensure that a copy of the person's record is given to the person
6 in charge of the interstate mental health facility.
- 7 (5) A person may be taken to an interstate mental health facility under a
8 direction under subsection (2) by—
- 9 (a) an authorised officer; or
- 10 (b) an interstate authorised person.

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

13 **139CK Interstate transfer—when ACT order stops applying**

14 If a person or responsibility for a person is transferred under this
15 part, the person stops being subject to a psychiatric treatment order
16 or community care order made under this Act if—

- 17 (a) the person is admitted to an interstate mental health facility or
18 an interstate community care facility; or
- 19 (b) the person is accepted into the care of an interstate mental
20 health service or an interstate community care service; or
- 21 (c) an interstate involuntary treatment order is made in relation to
22 the person.

1 **Part 15.4 Transfer of certain people to ACT**

2 **139CL Transfer of interstate patient to approved mental health**
3 **facility**

- 4 (1) An application may be made to the chief psychiatrist for an
5 interstate patient, who is subject to an interstate involuntary
6 treatment order that allows for detention at an interstate mental
7 health facility, to transfer the interstate patient to an approved
8 mental health facility in the ACT.
- 9 (2) The chief psychiatrist may agree to the transfer if the chief
10 psychiatrist believes on reasonable grounds that the transfer to the
11 ACT is—
- 12 (a) in the best interests of the safe and effective treatment, care or
13 support of the interstate patient; and
- 14 (b) allowed under a corresponding law.

15 **139CM Transfer of responsibility to provide treatment, care or**
16 **support in the community for interstate patient**

- 17 (1) An application may be made to the chief psychiatrist to transfer the
18 responsibility to provide treatment, care or support for an interstate
19 patient, who is subject to an interstate involuntary treatment order
20 that allows treatment in the community, to the chief psychiatrist.
- 21 (2) The chief psychiatrist may agree to the transfer if the chief
22 psychiatrist believes on reasonable grounds that the transfer of
23 responsibility is—
- 24 (a) in the best interests of the safe and effective treatment, care or
25 support of the interstate patient; and
- 26 (b) allowed under a corresponding law.

1 **139CN Transfer of person apprehended in another State to**
2 **approved mental health facility**

3 (1) A person apprehended in another State under a corresponding law
4 may be taken to an approved mental health facility in the ACT by an
5 authorised officer or interstate authorised person if the authorised
6 officer or person believes on reasonable grounds that being taken to
7 an approved mental health facility in the ACT is—

8 (a) in the best interests of the safe and effective treatment, care or
9 support of the person; and

10 (b) allowed under a corresponding law.

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

13 (2) Chapter 6 (Emergency detention) applies in relation to a person who
14 is apprehended under this section, as if the person had been
15 apprehended under section 37 (Apprehension).

1 **Part 15.5** **Interstate operation of certain**
2 **orders**

3 **139CO** **Mental health order relating to interstate person**

- 4 (1) A mental health order under this Act may be made in relation to a
5 person even though the person does not usually live in the ACT,
6 if—
7 (a) the facility or service providing treatment, care or support to
8 the person is located in the ACT; and
9 (b) the order is allowed under a corresponding law of the State in
10 which the person usually lives.
11 (2) However, a restriction order mentioned in section 36X (Criteria for
12 making restriction order with psychiatric treatment order) may only
13 be made for a person who does not usually live in the ACT in
14 relation to the person's actions within the ACT.

15 **139CP** **Implementing interstate involuntary treatment order for**
16 **temporary ACT resident**

- 17 (1) This section applies in relation to a person who—
18 (a) temporarily lives in the ACT; and
19 (b) is subject to an interstate involuntary treatment order that
20 makes provision for treatment, care or support in the
21 community.
22 (2) The person may be given treatment, care or support in the ACT
23 under the interstate involuntary treatment order if the chief
24 psychiatrist is satisfied on reasonable grounds that—
25 (a) the person has a mental illness; and
26 (b) the person accepts the treatment, care or support; and

- 1 (c) treatment, care or support in the ACT—
- 2 (i) is expected to be needed for a period of not more than
- 3 4 weeks at a time; and
- 4 (ii) is in the best interests of the person.
- 5 (3) Treatment, care or support under subsection (2) may be given by—
- 6 (a) an authorised officer if allowed to do so under a corresponding
- 7 law of the State that issued the interstate involuntary treatment
- 8 order; or
- 9 (b) an interstate authorised person.

1 **Chapter 16 Notification and review of**
2 **decisions**

3 **Explanatory note**

4 The text for this chapter (sections 139CR to 139CT) is relocated from the *Mental Health*
5 *(Treatment and Care) Act 1994* by schedule 2, amendment 2.47.

1 **Chapter 17** **Miscellaneous**

2 **Explanatory note**

3 The text for this chapter (sections 139D to 147) is relocated from the *Mental Health (Treatment*
4 *and Care) Act 1994* by schedule 2, amendment 2.48.

1 **Chapter 18 Repeals and consequential**
2 **amendments**

3 **148 Legislation repealed**

- 4 (1) The *Mental Health (Treatment and Care) Act 1994* (A1994-44) is
5 repealed.
- 6 (2) All legislative instruments under the *Mental Health (Treatment and*
7 *Care) Act 1994* (other than the notifiable instruments mentioned in
8 section 419) are repealed.

9 **149 Legislation amended—sch 2**

10 This Act amends the legislation mentioned in schedule 2.

1 **Chapter 40** **Transitional**

2 **Part 40.1** **General**

3 **400** **Definitions—ch 40**

4 In this chapter:

5 *commencement day* means the day this chapter commences.

6 *repealed Act* means the *Mental Health (Treatment and Care)*
7 *Act 1994* as in force immediately before the commencement day.

8 **401** **Transitional regulations**

9 (1) A regulation may prescribe transitional matters necessary or
10 convenient to be prescribed because of the enactment of this Act or
11 the *Mental Health (Treatment and Care) Amendment Act 2014*.

12 (2) A regulation may modify this chapter (including in relation to
13 another territory law) to make provision in relation to anything that,
14 in the Executive's opinion, is not, or is not adequately or
15 appropriately, dealt with in this chapter.

16 (3) A regulation under subsection (2) has effect despite anything
17 elsewhere in this Act.

18 **402** **Expiry—ch 40**

19 This chapter expires 2 years after the commencement day.

20 *Note* Transitional provisions are kept in the Act for a limited time.
21 A transitional provision is repealed on its expiry but continues to have
22 effect after its repeal (see *Legislation Act*, s 88).

1 **Part 40.2** **Transitional—rights of people**
2 **with mental disorder or mental**
3 **illness**

4 **403** **Rights in relation to information and communication**

5 (1) To remove any doubt, the responsible person for a facility must
6 comply with section 15 (Information to be given to people) in
7 relation to a person who is to be given treatment, care or support at
8 the facility even if the person received treatment, care or support at
9 the facility before the commencement day.

10 (2) In this section:
11 *responsible person*—see section 14.

1 **Part 40.3** **Transitional—mental health**
2 **orders**

3 **Division 40.3.1** **Applications**

4 **404** **Application by person with mental illness or mental**
5 **dysfunction—unfinished applications**

- 6 (1) This section applies if—
- 7 (a) before the commencement day, an application for a mental
8 health order is made under the [repealed Act](#), section 10
9 (Application by mentally dysfunctional or mentally ill people);
10 and
- 11 (b) immediately before the commencement day, the ACAT has not
12 decided the application.
- 13 (2) The application is taken to be an application for an assessment order
14 under this Act, section 33 (Applications by people with mental
15 disorder or mental illness—assessment order).

16 **405** **Application by chief psychiatrist or care coordinator—**
17 **unfinished applications**

- 18 (1) This section applies if—
- 19 (a) before the commencement day, the chief psychiatrist or the
20 care coordinator makes an application for a mental health order
21 under the [repealed Act](#), section 11 (Applications by other
22 people); and
- 23 (b) immediately before the commencement day, the ACAT has not
24 decided the application.
- 25 (2) The application is taken to be an application for a mental health
26 order under this Act, section 36O (Applications for mental health
27 orders).

- 1 **406** **Application by certain other people—unfinished**
2 **applications**
- 3 (1) This section applies if—
- 4 (a) before the commencement day, a person other than the chief
5 psychiatrist or the care coordinator makes an application for a
6 mental health order under the [repealed Act](#), section 11
7 (Applications by other people); and
- 8 (b) immediately before the commencement day, the ACAT has not
9 decided the application.
- 10 (2) The application is taken to be an application for an assessment order
11 under this Act, section 34 (Applications by other people—
12 assessment order).
- 13 **407** **Application by referring officers—unfinished referrals**
- 14 (1) This section applies if—
- 15 (a) before the commencement day, a referral to the ACAT for a
16 mental health order is made under the [repealed Act](#), section 13
17 (Referrals to ACAT); and
- 18 (b) immediately before the commencement day, the ACAT has not
19 decided the referral.
- 20 (2) The referral is taken to be an application for an assessment order
21 under this Act, section 35 (Applications by referring officers—
22 assessment order).

1 **Division 40.3.2 Psychiatric treatment orders**

2 **408 Psychiatric treatment order—in force before**
3 **commencement day**

- 4 (1) This section applies if, immediately before the commencement day,
5 a psychiatric treatment order under the [repealed Act](#), section 28
6 (Criteria for making psychiatric treatment order) is in force for a
7 person.
- 8 (2) On and after the commencement day, the psychiatric treatment order
9 is taken to be, in accordance with its terms, a psychiatric treatment
10 order under this Act, section 36V (Psychiatric treatment order).

11 **409 Restriction order with psychiatric treatment order—in**
12 **force before commencement day**

- 13 (1) This section applies if, immediately before the commencement day,
14 a restriction order under the [repealed Act](#), section 30 (Criteria for
15 making restriction order with psychiatric treatment order) is in force
16 for a person.
- 17 (2) On and after the commencement day, the restriction order is taken to
18 be, in accordance with its terms, a restriction order under this Act,
19 section 36X (Criteria for making restriction order with psychiatric
20 treatment order).

21 **410 Chief psychiatrist role—determination in force before**
22 **commencement day**

- 23 (1) This section applies if, immediately before the commencement
24 day—
- 25 (a) a psychiatric treatment order under the [repealed Act](#), section 28
26 (Criteria for making psychiatric treatment order) is in force for
27 a person; and
- 28 (b) a determination under the [repealed Act](#), section 32 (Role of
29 chief psychiatrist) is also in force for the person.

- 1 (2) On and after the commencement day, the determination is taken to
2 be, in accordance with its terms, a determination under this Act,
3 section 36Z (Role of chief psychiatrist—psychiatric treatment
4 order).

5 **411 Action if psychiatric treatment order no longer**
6 **appropriate—notice given but not considered by ACAT**

- 7 (1) This section applies if—
8 (a) before the commencement day, the chief psychiatrist has given
9 notice under the [repealed Act](#), section 34 (Action if psychiatric
10 treatment order no longer appropriate) in relation to a person’s
11 psychiatric treatment order; and
12 (b) immediately before the commencement day, the ACAT has not
13 finalised the review of the psychiatric treatment order under
14 the [repealed Act](#), section 36L (Review, variation and
15 revocation of orders).
16 (2) On the commencement day, the notice given under the [repealed Act](#),
17 section 34 ceases to have effect.
18 (3) As soon as practicable after the commencement day, the chief
19 psychiatrist must give notice under this Act, section 36ZB (Action if
20 psychiatric treatment order no longer appropriate—no longer person
21 in relation to whom ACAT could make order) in relation to the
22 person’s psychiatric treatment order.

23 **Division 40.3.3 Community care orders**

24 **412 Community care order—in force before commencement**
25 **day**

- 26 (1) This section applies if, immediately before the commencement day,
27 a community care order under the [repealed Act](#), section 36 (Criteria
28 for making community care order) is in force for a person.

- 1 (2) On and after the commencement day, the community care order is
2 taken to be, in accordance with its terms, a community care order
3 under this Act, section 36ZD (Community care order).

4 **413 Restriction order with community care order—in force**
5 **before commencement day**

- 6 (1) This section applies if, immediately before the commencement day,
7 a restriction order under the [repealed Act](#), section 36B (Criteria for
8 making restriction order with community care order) is in force for a
9 person.
10 (2) On and after the commencement day, the restriction order is taken to
11 be, in accordance with its terms, a restriction order under this Act,
12 section 36ZF (Criteria for making restriction order with community
13 care order).

14 **414 Care coordinator role—determination in force before**
15 **commencement day**

- 16 (1) This section applies if, immediately before the commencement
17 day—
18 (a) a community care order is in force for a person; and
19 (b) a determination under the [repealed Act](#), section 36D (Role of
20 care coordinator) is also in force for the person.
21 (2) On and after the commencement day, the determination is taken to
22 be, in accordance with its terms, a determination under this Act,
23 section 36ZH (Role of care coordinator—community care order).

- 1 **415 Action if community care order no longer appropriate—**
2 **notice given but not considered by ACAT**
- 3 (1) This section applies if—
- 4 (a) before the commencement day, the care coordinator has given
5 notice under the [repealed Act](#), section 36F (Action if
6 community care order no longer appropriate) in relation to a
7 person’s community care order; and
- 8 (b) immediately before the commencement day, the ACAT has not
9 finalised the review of the community care order under the
10 [repealed Act](#), section 36L (Review, variation and revocation of
11 orders).
- 12 (2) On the commencement day, the notice given under the [repealed Act](#),
13 section 36F ceases to have effect.
- 14 (3) As soon as practicable after the commencement day, the care
15 coordinator must give notice under this Act, section 36ZJ (Action if
16 community care order no longer appropriate—no longer person in
17 relation to whom ACAT could make order) in relation to the
18 person’s community care order.

19 **Division 40.3.4 Other matters**

- 20 **416 Forensic mental health orders—people required to**
21 **submit to ACAT jurisdiction before commencement day**
- 22 (1) This section applies to a person required by a court, before the
23 commencement day, to submit to the jurisdiction of the ACAT
24 under the [Crimes Act](#), part 13 (Unfitness to plead and mental
25 impairment) or the [Crimes Act 1914](#) (Cwlth), part 1B (Sentencing,
26 imprisonment and release of federal offenders).
- 27 (2) To remove any doubt, section 48ZA (Forensic psychiatric treatment
28 order) and section 48ZH (Forensic community care order) apply in
29 relation to the person.

1 **Part 40.4** **Transitional—emergency**
2 **detention**

3 **417** **Apprehension before commencement day**

- 4 (1) This section applies if, before the commencement day, a person is
5 apprehended under the [repealed Act](#), section 37 (Apprehension).
6 (2) On and after the commencement day, the apprehension is taken to
7 be an apprehension under this Act, section 37 (Apprehension).

8 **418** **Authorisation of involuntary detention before**
9 **commencement day**

- 10 (1) Subsection (2) applies if, before the commencement day, a person is
11 involuntarily detained at an approved mental health facility under an
12 authorisation under the [repealed Act](#), section 41 (1) (Authorisation
13 of involuntary detention).
14 (2) On and after the commencement day, the authorisation is taken to
15 be, in accordance with its terms, an authorisation under this Act,
16 section 41 (1) (Authorisation of involuntary detention).
17 (3) Subsection (4) applies if—
18 (a) before the commencement day, an application for further
19 detention has been made under the [repealed Act](#),
20 section 41 (2) (b) (Authorisation of involuntary detention); and
21 (b) immediately before the commencement day, the ACAT has not
22 decided the application.
23 (4) On and after the commencement day, the application is taken to be
24 an application under this Act, section 41 (2) (Authorisation of
25 involuntary detention).

- 1 (5) Subsection (6) applies if, before the commencement day, the ACAT
2 has ordered a further period of involuntary detention under the
3 repealed Act, section 41 (2) (Authorisation of involuntary
4 detention).
- 5 (6) On and after the commencement day, the order is taken to be, in
6 accordance with its terms, an order made under this Act,
7 section 41 (3) (Authorisation of involuntary detention).

1 **Part 40.5** **Transitional—interstate**
2 **application of mental health laws**

3 **419 Interstate agreements notified before commencement day**

4 The agreements entered into under the [repealed Act](#), section 48C
5 and notified by the following instruments are taken to be agreements
6 entered into and notified under this Act, section 139CC (Authority
7 to enter into agreements):

- 8 • *Mental Health (Treatment and Care) (Interstate Application of*
9 *Mental Health Laws) Agreement 2002 (No 1)* (NI2002-405)
- 10 • *Mental Health (Treatment and Care) (Interstate Application of*
11 *Mental Health Laws) Agreement 2002 (No 2)* (NI2002-406)
- 12 • *Mental Health (Treatment and Care) (Interstate Application of*
13 *Mental Health Laws) Agreement 2003* (NI2003-523)
- 14 • *Mental Health (Treatment and Care) (Interstate Application of*
15 *Mental Health Laws) Agreement 2004* (NI2004-500)
- 16 • *Mental Health (Treatment and Care) Interstate Application of*
17 *Mental Health Laws Agreement 2011* (NI2011-196).

Schedule 1 Reviewable decisions

(see ch 16)

column 1 item	column 2 section	column 3 decision	column 4 entity
1	48ZU	refuse to grant leave	applicant for leave
2	48ZV	refuse to grant leave	applicant for leave
3	48ZW	revoke leave	applicant for leave
4	48ZZQ	refuse to grant leave	applicant for leave
5	48ZZR	revoke leave	applicant for leave
6	127	refuse to issue licence	applicant for licence
7	128	refuse to renew licence	applicant for renewal of licence
8	129	refuse to transfer licence	licensee proposed new licensee
9	130	amend licence	licensee
10	131	refuse to amend licence	licensee
11	133	cancel licence	licensee
12	134	cancel licence	licensee

1 **Schedule 2** **Legislation amended**

2 (see s 149)

3 **Part 2.1** **Mental Health (Treatment and**
4 **Care) Act 1994**

5 **Division 2.1.1** **Amendments**

6 **[2.1]** **Section 15 (1) (b) (vi)**

7 *omit*

8 **[2.2]** **New section 15 (4) (g)**

9 *insert*

10 (g) if the person has a carer—the carer.

11 **[2.3]** **Section 27 (4) and note**

12 *substitute*

13 (4) An advance consent direction that includes advance consent for
14 electroconvulsive therapy must—

15 (a) be in writing; and

16 (b) state the maximum number of times (not more than 9) that
17 electroconvulsive therapy may be administered to the person
18 under the consent; and

19 (c) be signed by the person in the presence of 2 witnesses who are
20 not treating health professionals for the person, and by each
21 witness in the presence of the other witness and the person; and

1 (d) be signed by the representative of the person's treating team in
2 the presence of 2 witnesses who are not treating health
3 professionals for the person, and by each witness in the
4 presence of the other witness and the representative.

5 *Note* If a form is approved under s 146A for this provision, the form must be
6 used.

7 **[2.4] Section 36H**

8 *substitute*

9 **36H Executing removal order**

10 (1) A removal order made under section 36G (2) in relation to a person
11 may be executed by a police officer, authorised ambulance
12 paramedic, doctor or mental health officer.

13 (2) The person executing the order must, before removing the person,
14 explain to the person the purpose of the order.

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

17 **[2.5] Section 36M (2)**

18 *omit*

19 ACAT, must

20 *substitute*

21 ACAT must,

22 **[2.6] Section 36R (1) (g)**

23 *before*

24 licence

25 *insert*

26 parole or

1 **[2.7] Section 36R (1) (h)**

2 *omit*

3 a covered

4 *substitute*

5 covered

6 **[2.8] Section 36R (2)**

7 *omit*

8 , if the ACAT has contact details for the carer,

9 *substitute*

10 , as far as practicable,

11 **[2.9] Section 36Z (5) (a) (viii)**

12 *before*

13 licence

14 *insert*

15 parole or

16 **[2.10] Section 36ZC (5)**

17 *omit*

18 confinement or

19 **[2.11] Section 36ZH (3) (a) (viii)**

20 *before*

21 licence

22 *insert*

23 parole or

1 **[2.12] Section 36ZK (5)**

2 *omit*
3 confinement or

4 **[2.13] Section 42 (2)**

5 *omit*
6 at least 1 of

7 **[2.14] Section 42 (3) and (4)**

8 *substitute*

- 9 (3) The ACAT must, as soon as practicable after ordering under
10 section 41 (3) that a period of detention be extended, take all
11 reasonable steps to give the required information about the detention
12 to the people mentioned in subsection (2) (a) to (e).
- 13 (4) Subsection (4A) applies if, despite the doctor, mental health officer
14 or the ACAT taking all reasonable steps to give the required
15 information about the detention under subsection (2) or (3), any of
16 the following circumstances happens:
- 17 (a) the required information is not given to anyone;
- 18 (b) the detained person is a child and the required information is
19 not given to a person with parental responsibility for the child;
- 20 (c) the detained person is an adult who has a guardian under the
21 *Guardianship and Management of Property Act 1991* and the
22 required information is not given to the guardian;
- 23 (d) the detained person has an enduring power of attorney under
24 the *Powers of Attorney Act 2006*, and appears to have impaired
25 decision-making capacity within the meaning of that Act, and
26 the required information is not given to the attorney.

- 1 (4A) The doctor, mental health officer or the ACAT must tell the public
2 advocate—
3 (a) of the circumstance mentioned in subsection (4); and
4 (b) for subsection (4) (b), (c) or (d)—who (if anyone) the required
5 information about the detention was given to.

6 **[2.15] Section 48S, definition of *community-based sentence***

7 *omit*

8 **[2.16] Section 48T heading**

9 *substitute*

10 **48T Applications for forensic mental health orders—detainees**
11 **etc**

12 **[2.17] Section 48T (1) and (2)**

13 *substitute*

- 14 (1) This section applies to any of the following (a *subject person*):
15 (a) a detainee;
16 (b) a person serving a community-based sentence;
17 (c) a person released on parole;
18 (d) a person released on licence under the *Crimes (Sentence*
19 *Administration) Act 2005*, section 299;
20 (e) a young detainee;
21 (f) a young offender.

1 (2) A relevant person may apply to the ACAT for a forensic mental
2 health order in relation to a subject person if the relevant person
3 believes on reasonable grounds that the subject person is a person in
4 relation to whom the ACAT could reasonably make an order under
5 section 48ZA (Forensic psychiatric treatment order) or
6 section 48ZH (Forensic community care order).

7 **[2.18] Section 48Y (1) (b)**

8 *omit*

9 **[2.19] Section 48ZA (1) (b)**

10 *substitute*

11 (b) a person referred to the ACAT for a forensic mental health
12 order under division 7.1.2; or

13 **[2.20] Section 48ZC (6) (a) (vii)**

14 *before*

15 licence

16 *insert*

17 parole or

18 **[2.21] Section 48ZG (5)**

19 *omit*

20 confinement or

21 **[2.22] Section 48ZH (1) (b)**

22 *substitute*

23 (b) a person referred to the ACAT for a forensic mental health
24 order under division 7.1.2; or

1 **[2.23] Section 48ZJ (4) (a) (vii)**

2 *before*

3 licence

4 *insert*

5 parole or

6 **[2.24] Section 48ZN (5)**

7 *omit*

8 confinement or

9 **[2.25] New section 72 (6)**

10 *insert*

11 (6) If, on a review, the ACAT does not order the release of a person, the
12 ACAT must tell the following that the detention continues:

13 (a) the person;

14 (b) the chief psychiatrist;

15 (c) if the person is a child—

16 (i) each person with parental responsibility for the child
17 under the *Children and Young People Act 2008*,
18 division 1.3.2 (Parental responsibility); and

19 (ii) the CYP director-general;

20 (d) the public advocate;

21 (e) the human rights commission;

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

24 (g) if the person has an attorney under the *Powers of Attorney*
25 *Act 2006*—the attorney;

- 1 (h) if the person has a nominated person—the nominated person;
2 (i) if a health attorney is involved in the treatment, care or support
3 of the person—the health attorney;
4 (j) if the person is detained in a correctional centre—the
5 corrections director-general;
6 (k) if the person is detained in a detention place—the CYP
7 director-general.

8 **[2.26] Section 78 (1) (g) and (h)**

- 9 *substitute*
10 (g) an electroconvulsive therapy order under section 55G (Making
11 of electroconvulsive therapy order);
12 (h) an emergency electroconvulsive therapy order under
13 section 55K (Making of emergency electroconvulsive therapy
14 order);

15 **[2.27] Section 79A (3) (e)**

- 16 *substitute*
17 (e) the making of an emergency electroconvulsive therapy order
18 under section 55K (Making of emergency electroconvulsive
19 therapy order);

20 **[2.28] Section 87 (1) (ga)**

- 21 *omit*
22 detainees and people under community-based sentences
23 *substitute*
24 detainees etc

1 **[2.29] Section 139F (1) (e) and (f)**

2 *omit*

3 **[2.30] New section 139F (1) (l) to (q)**

4 *insert*

- 5 (l) section 139CF (Apprehension of interstate patient in breach of
6 interstate involuntary treatment order);
- 7 (m) section 139CG (Apprehension of person in breach of mental
8 health order or forensic mental health order);
- 9 (n) section 139CH (Interstate transfer—person under psychiatric
10 treatment order or community care order);
- 11 (o) section 139CI (Interstate transfer—person under forensic
12 psychiatric treatment order or forensic community care order);
- 13 (p) section 139CJ (Transfer to interstate mental health facility—
14 emergency detention);
- 15 (q) section 139CN (Transfer of person apprehended in another
16 State to approved mental health facility).

17 **[2.31] New section 140 (1) (o) to (t)**

18 *insert*

- 19 (o) section 139CF (Apprehension of interstate patient in breach of
20 interstate involuntary treatment order);
- 21 (p) section 139CG (Apprehension of person in breach of mental
22 health order or forensic mental health order);
- 23 (q) section 139CH (Interstate transfer—person under psychiatric
24 treatment order or community care order);
- 25 (r) section 139CI (Interstate transfer—person under forensic
26 psychiatric treatment order or forensic community care order);

1 (s) section 139CJ (Transfer to interstate mental health facility—
2 emergency detention);

3 (t) section 139CN (Transfer of person apprehended in another
4 State to approved mental health facility).

5 **[2.32] New section 140AA**

6 *insert*

7 **140AA Report and record of use of restraint etc**

8 (1) This section applies if—

9 (a) an authorised person exercises a power under section 139F or
10 section 140 in relation to a person (the *subject person*); and

11 (b) in the course of exercising the power the authorised person—

12 (i) restrains, involuntary secludes or forcibly gives
13 medication to the subject person; or

14 (ii) becomes aware of anything else that may have an adverse
15 effect on the subject person’s physical or mental health;
16 and

17 (c) the subject person is taken to a facility.

18 (2) The authorised person must give a report about the matter
19 mentioned in subsection (1) (b) to the person in charge of the
20 facility.

21 *Note* If a form is approved under s 146A for this provision, the form must be
22 used.

23 (3) The person in charge of the facility must—

24 (a) enter the report in the subject person’s record; and

25 (b) if the facility is a community care facility or mental health
26 facility—keep a register of any restraint, involuntary seclusion
27 or forcible giving of medication included in the report.

1 (4) In this section:

2 *facility* means a community care facility, mental health facility and
3 an interstate facility.

4 *interstate facility* means an interstate community care facility and an
5 interstate mental health facility under chapter 15 (Interstate
6 application of mental health laws).

1 **Division 2.1.2 Relocations**

2 **[2.33] Sections 5 to 13**

3 *relocate to Mental Health Act 2015, chapter 2*

4 **[2.34] Parts 3.1 to 3.3**

5 *relocate to Mental Health Act 2015, chapter 3*

6 **[2.35] Parts 4.1 and 4.2**

7 *relocate to Mental Health Act 2015, chapter 4*

8 **[2.36] Parts 5.1 to 5.7**

9 *relocate to Mental Health Act 2015, chapter 5*

10 **[2.37] Sections 37, 38 and 38A**

11 *relocate to Mental Health Act 2015, chapter 6*

12 **[2.38] Sections 40, 41 and 41AA**

13 *relocate to Mental Health Act 2015, chapter 6*

14 **[2.39] Section 42**

15 *relocate to Mental Health Act 2015, chapter 6*

16 **[2.40] Section 45**

17 *relocate to Mental Health Act 2015, chapter 6*

18 **[2.41] Parts 7.1 and 7.2**

19 *relocate to Mental Health Act 2015, chapter 7*

20 **[2.42] Parts 8.1 to 8.4**

21 *relocate to Mental Health Act 2015, chapter 8*

- 1 **[2.43] Sections 68 to 75**
- 2 *relocate to Mental Health Act 2015, chapter 10*
- 3 **[2.44] Sections 76 to 87**
- 4 *relocate to Mental Health Act 2015, chapter 11*
- 5 **[2.45] Parts 12.1 to 12.5**
- 6 *relocate to Mental Health Act 2015, chapter 12*
- 7 **[2.46] Sections 139 to 139C**
- 8 *relocate to Mental Health Act 2015, chapter 14*
- 9 **[2.47] Sections 139CR to 139CT**
- 10 *relocate to Mental Health Act 2015, chapter 16*
- 11 **[2.48] Sections 139D to 147**
- 12 *relocate to Mental Health Act 2015, chapter 17*

1 **Part 2.2 Mental Health Act 2015**

2 **[2.49] Act—renumbering**

3 *renumber provisions when Act next republished under the*
4 *Legislation Act*

1 **Part 2.3** **Other legislation**

2 **Division 2.3.1** **Bail Act 1992**

3 **[2.50] Section 2, note 1**

4 *substitute*

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

8 For example, the signpost definition '*bail order*, for part 4 (Grant of
9 bail)—see section 19 (1).' means that the term 'bail order' is defined in
10 that section for part 4.

11 **Division 2.3.2** **Children and Young People Act 2008**

12 **[2.51] Section 491, definition of ACAT mental health provision**

13 *omit*

14 has a mental illness or mental dysfunction

15 *substitute*

16 has a mental disorder or mental illness

17 **[2.52] Section 545**

18 *omit*

19 is suffering from a mental illness or mental dysfunction

20 *substitute*

21 has a mental disorder or mental illness

1 **[2.53] Section 545, note**

2 *omit*

3 is not suffering from a mental illness or mental dysfunction

4 *substitute*

5 does not have a mental disorder or mental illness

6 **[2.54] Section 549 (e) (i)**

7 *substitute*

8 (i) does not have a mental disorder or mental illness; or

9 **[2.55] Section 549 (e) (ii) and note**

10 *omit*

11 is suffering from a mental illness or mental dysfunction

12 *substitute*

13 has a mental disorder or mental illness

14 **[2.56] Section 562 (1) (d)**

15 *omit*

16 is suffering from a mental illness or mental dysfunction

17 *substitute*

18 has a mental disorder or mental illness

19 **[2.57] Dictionary, new definition of *mental disorder***

20 *insert*

21 ***mental disorder***—see the *Mental Health Act 2015*, section 9.

1 **[2.58] Dictionary, definition of *mental dysfunction***

2 *omit*

3 **[2.59] Further amendments**

4 *omit*

5 *Mental Health (Treatment and Care) Act 1994*

6 *substitute*

7 *Mental Health Act 2015*

8 *in*

- 9 • section 161 (2), note
10 • section 186 (8), definition of *relevant director-general*
11 • section 530 (1)
12 • section 863 (2)

13 **Division 2.3.3 Coroners Act 1997**

14 **[2.60] Section 3C (1) (d)**

15 *omit*

16 *Mental Health (Treatment and Care) Act 1994*

17 *substitute*

18 *Mental Health Act 2015*

19 **[2.61] Dictionary, definitions of *chief psychiatrist* and *mental health officer***

20 *omit*

21 *Mental Health (Treatment and Care) Act 1994*

22 *substitute*

23 *Mental Health Act 2015*

Schedule 2	Legislation amended
Part 2.3	Other legislation
Division 2.3.4	Corrections Management Act 2007

Amendment [2.62]

1 **Division 2.3.4** **Corrections Management Act 2007**

2 **[2.62]** **Section 54A etc**

3 *omit*

4 *Mental Health (Treatment and Care) Act 1994*

5 *substitute*

6 *Mental Health Act 2015*

7 *in*

- 8 • section 54A
- 9 • section 68 (3), note 2
- 10 • section 77 (8), definition of *relevant director-general*

11 **Division 2.3.5** **Court Procedures Act 2004**

12 **[2.63]** **Section 15 (2) (c)**

13 *omit*

14 *Mental Health (Treatment and Care) Act 1994*

15 *substitute*

16 *Mental Health Act 2015*

1 **Division 2.3.6 Crimes Act 1900**

2 **[2.64] Section 300 (1) etc**

3 *omit*

4 *Mental Health (Treatment and Care) Act 1994*

5 *substitute*

6 *Mental Health Act 2015*

7 *in*

- 8 • section 300 (1)
9 • section 309 (4)
10 • section 318 (2)
11 • section 319 (2)
12 • section 319A (1), note
13 • section 323 (3)
14 • section 324 (2)
15 • section 328 (3)
16 • section 329 (2)

17 **[2.65] Section 334 (3) (d)**

18 *substitute*

19 (d) whether the ACAT could make an order under the *Mental*
20 *Health Act 2015*, section 48ZA (Forensic psychiatric treatment
21 order) or section 48ZH (Forensic community care order); and

Schedule 2 Legislation amended
Part 2.3 Other legislation
Division 2.3.7 Crimes (Child Sex Offenders) Regulation 2005

Amendment [2.66]

1 **[2.66] Section 335A (1), note**

2 *omit*

3 *Mental Health (Treatment and Care) Act 1994*, s 68

4 *substitute*

5 *Mental Health Act 2015*, s 68

6 **Division 2.3.7 Crimes (Child Sex Offenders)**
7 **Regulation 2005**

8 **[2.67] Section 12 (1) (d) (ii)**

9 *omit*

10 *Mental Health (Treatment and Care) Act 1994*

11 *substitute*

12 *Mental Health Act 2015*

13 **Division 2.3.8 Crimes (Sentence Administration)**
14 **Act 2005**

15 **[2.68] Sections 57A (1) (b) and 92 (3) (b) (ii)**

16 *omit*

17 *Mental Health (Treatment and Care) Act 1994*

18 *substitute*

19 *Mental Health Act 2015*

1 **[2.69] Section 321AA**

2 *omit*

3 a detainee or

4 *substitute*

5 a detainee, a person released on parole, a person released on licence
6 or

7 **[2.70] Section 321AA (2)**

8 *omit*

9 *Mental Health (Treatment and Care) Act 1994*

10 *substitute*

11 *Mental Health Act 2015*

12 **Division 2.3.9 Criminal Code 2002**

13 **[2.71] Section 712A (5), definition of *childrens proceeding***

14 *omit*

15 *Mental Health (Treatment and Care) Act 1994*

16 *substitute*

17 *Mental Health Act 2015*

1 **Division 2.3.10 Guardianship and Management of**
2 **Property Act 1991**

3 **[2.72] Section 7 (3) etc**

4 *omit*

5 *Mental Health (Treatment and Care) Act 1994*

6 *substitute*

7 *Mental Health Act 2015*

8 *in*

- 9 • section 7 (3)
10 • section 19 (2A)
11 • section 32A
12 • section 32D
13 • section 32J (1)
14 • section 32JA (1)
15 • section 70A

16 **[2.73] Dictionary, definitions of *electroconvulsive therapy*,**
17 ***mental illness* and *psychiatric surgery***

18 *substitute*

19 *electroconvulsive therapy*—see the *Mental Health Act 2015*,
20 section 49.

21 *mental illness*—see the *Mental Health Act 2015*, section 10.

22 *psychiatric surgery*—see the *Mental Health Act 2015*, section 49.

1 **Division 2.3.11 Medicines, Poisons and Therapeutic**
2 **Goods Regulation 2008**

3 **[2.74] Schedule 3, part 3.2, item 3, column 2**

4 *omit*

5 *Mental Health (Treatment and Care) Act 1994*

6 *substitute*

7 *Mental Health Act 2015*

8 **Division 2.3.12 Official Visitor Act 2012**

9 **[2.75] Section 7 (e) etc**

10 *omit*

11 *Mental Health (Treatment and Care) Act 1994*

12 *substitute*

13 *Mental Health Act 2015*

14 *in*

- 15 • section 7 (e)
16 • section 10 (1) (e)
17 • section 50, definition of *operational Act*, paragraph (c)

1 **[2.76] New part 11**

2 *insert*

3 **Part 11 Transitional—Mental Health**
4 **Act 2015**

5 **60 Definitions—pt 11**

6 In this part:

7 *commencement day* means the day the *Mental Health Act 2015*,
8 section 3 commences.

9 *repealed Act* means the *Mental Health (Treatment and Care)*
10 *Act 1994*.

11 **61 Continued appointment**

12 (1) This section applies to a person appointed under section 10 (1) (e) as
13 an official visitor for the *repealed Act* if the appointment is in force
14 immediately before the commencement day.

15 (2) On and after the commencement day, the person is taken to be
16 appointed under section 10 (1) (e) as an official visitor for the
17 *Mental Health Act 2015* on the same conditions that applied to the
18 person's appointment immediately before the commencement day.

19 **62 Expiry—pt 11**

20 This part expires 6 months after the commencement day.

21 *Note* Transitional provisions are kept in the Act for a limited time. A
22 transitional provision is repealed on its expiry but continues to have
23 effect after its repeal (see *Legislation Act*, s 88).

1 **Division 2.3.13 Planning and Development Act 2007**

2 **[2.77] Section 85A, definition of *mental health facility***

3 *omit*

4 *Mental Health (Treatment and Care) Act 1994*

5 *substitute*

6 *Mental Health Act 2015*

7 **Division 2.3.14 Powers of Attorney Act 2006**

8 **[2.78] Section 37 (2), definitions of *electroconvulsive therapy***
9 **and *psychiatric surgery***

10 *substitute*

11 *electroconvulsive therapy*—see the *Mental Health Act 2015*,
12 section 49.

13 *psychiatric surgery*—see the *Mental Health Act 2015*, section 49.

14 **[2.79] Section 46A**

15 *omit*

16 *Mental Health (Treatment and Care) Act 1994*

17 *substitute*

18 *Mental Health Act 2015*

19 **[2.80] Dictionary, definition of *mental health facility***

20 *omit*

21 *Mental Health (Treatment and Care) Act 1994*

22 *substitute*

23 *Mental Health Act 2015*

1 **Division 2.3.15 Public Advocate Act 2005**

2 **[2.81] Section 10 (j)**

3 *omit*

4 *Mental Health (Treatment and Care) Act 1994*

5 *substitute*

6 *Mental Health Act 2015*

7 **[2.82] Dictionary, definition of *forensic patient*, paragraph (a)**

8 *omit*

9 be suffering from a mental dysfunction or mental illness

10 *substitute*

11 have a mental disorder or mental illness

12 **[2.83] Dictionary, definition of *forensic patient*, paragraph (d)**

13 *substitute*

14 (d) found guilty of a criminal offence and is, or while serving a
15 sentence of imprisonment has become, a person with a mental
16 disorder or mental illness.

17 **[2.84] Dictionary, definitions of *mental disorder* and *mental*
18 *illness***

19 *omit*

20 *Mental Health (Treatment and Care) Act 1994*

21 *substitute*

22 *Mental Health Act 2015*

1 **Division 2.3.16** **Victims of Crime Act 1994**

2 **[2.85]** **Section 11 (ba)**

3 *omit*

4 *Mental Health (Treatment and Care) Act 1994*

5 *substitute*

6 *Mental Health Act 2015*

Dictionary

(see s 3)

Note 1 The [Legislation Act](#) contains definitions and other provisions relevant to this Act.

Note 2 For example, the [Legislation Act](#), dict, pt 1, defines the following terms:

- ACAT
- adult
- child
- correctional centre
- corrections officer
- detention place
- director-general (see s 163)
- director of public prosecutions
- discrimination commissioner
- doctor
- domestic partner (see s 169 (1))
- expire
- lawyer
- Magistrates Court
- nurse
- nurse practitioner
- parent
- police officer
- proceeding
- public advocate
- registrar
- reviewable decision notice
- State
- Supreme Court
- writing.

ACAT mental health provision, for a child or young person—see the [Children and Young People Act 2008](#), section 491.

- 1 **advance agreement**—see section 26.
- 2 **advance consent direction**—see section 27.
- 3 **affected person**, in relation to a forensic patient—see section 48ZZB.
- 4 **affected person register**—see section 48ZZD.
- 5 **approved community care facility** means a facility approved under
6 section 139E.
- 7 **approved mental health facility** means a facility approved under
8 section 139D.
- 9 **assessment** means a psychiatric or psychological assessment.
- 10 **assessment order** means an order made under section 36A.
- 11 **authorised ambulance paramedic** means a member of the
12 ambulance service—
- 13 (a) employed as a paramedic; and
- 14 (b) authorised by the chief officer (ambulance service) to
15 apprehend people with a mental disorder or mental illness.
- 16 **authorised officer**, for chapter 15 (Interstate application of mental
17 health laws)—see section 139CB.
- 18 **care and protection order**—see the [Children and Young People
19 Act 2008](#), section 422.
- 20 **care coordinator** means the care coordinator appointed under
21 section 120A.
- 22 **carer**—see section 12.
- 23 **chief psychiatrist** means the Chief Psychiatrist appointed under
24 section 112.
- 25 **close relative or close friend**, of a person—see the [Guardianship
26 and Management of Property Act 1991](#), section 32A.
- 27 **community-based sentence**—see the [Crimes \(Sentence
28 Administration\) Act 2005](#), section 264.

- 1 **community care facility**—
- 2 (a) means—
- 3 (i) a facility, or part of a facility, for the treatment, care or
- 4 support, protection, rehabilitation or accommodation of
- 5 people with a mental disorder; or
- 6 (ii) a prescribed psychiatric facility or a prescribed part of a
- 7 psychiatric facility; but
- 8 (b) does not include a correctional centre or detention place.
- 9 **community care order** means an order made under section 36ZD.
- 10 **community care service**, for chapter 15 (Interstate application of
- 11 mental health laws)—see section 139CB.
- 12 **coordinating director-general** means the director-general appointed
- 13 under section 122D.
- 14 **correctional patient**—see section 48ZZI.
- 15 **corrections director-general** means the director-general responsible
- 16 for the [Corrections Management Act 2007](#).
- 17 **corrections order**, for division 7.1.8 (Leave for detained people)—
- 18 see section 48ZR.
- 19 **corresponding law**, for chapter 15 (Interstate application of mental
- 20 health laws)—see section 139CB.
- 21 **Crimes Act** means the [Crimes Act 1900](#).
- 22 **CYP director-general** means the director-general responsible for the
- 23 [Children and Young People Act 2008](#).
- 24 **decision-making capacity**—see section 7.
- 25 **detainee**—see the [Corrections Management Act 2007](#), section 6.
- 26 **director-general**, for part 7.2 (Affected people)—see
- 27 section 48ZZA.
- 28 **electroconvulsive therapy**—see section 49.

- 1 ***electroconvulsive therapy order***—see section 49.
- 2 ***eligible person***, for part 13.2 (Licences)—see section 124.
- 3 ***emergency assessment order*** means an order made under
4 section 36C.
- 5 ***emergency electroconvulsive therapy order***—see section 49.
- 6 ***entitled person***—see section 121.
- 7 ***forensic community care order*** means an order made under
8 section 48ZH.
- 9 ***forensic mental health order*** means a forensic psychiatric treatment
10 order or a forensic community care order.
- 11 ***forensic patient***, for part 7.2 (Affected people)—see section 48ZZA.
- 12 ***forensic psychiatric treatment order*** means an order made under
13 section 48ZA.
- 14 ***general president***, of the ACAT—see the [ACT Civil and
15 Administrative Tribunal Act 2008](#), dictionary.
- 16 ***health attorney***—see the [Guardianship and Management of
17 Property Act 1991](#), section 32B (1).
- 18 ***information sharing entity***, for part 12.5 (Sharing information—
19 government agencies)—see section 122G.
- 20 ***information sharing protocol***, for part 12.5 (Sharing information—
21 government agencies)—see section 122H.
- 22 ***information statement*** means an information statement mentioned
23 in section 15 (1) (b).
- 24 ***inspector***, for chapter 13 (Private psychiatric facilities)—see
25 section 123.
- 26 ***interim care and protection order***—see the [Children and Young
27 People Act 2008](#), section 433.

- 1 ***interim therapeutic protection order***—see the *Children and Young*
2 *People Act 2008*, section 543.
- 3 ***interstate authorised person***, for chapter 15 (Interstate application
4 of mental health laws)—see section 139CB.
- 5 ***interstate community care facility***, for chapter 15 (Interstate
6 application of mental health laws)—see section 139CB.
- 7 ***interstate community care service***, for chapter 15 (Interstate
8 application of mental health laws)—see section 139CB.
- 9 ***interstate involuntary treatment order***, for chapter 15 (Interstate
10 application of mental health laws)—see section 139CB.
- 11 ***interstate mental health facility***, for chapter 15 (Interstate
12 application of mental health laws)—see section 139CB.
- 13 ***interstate mental health service***, for chapter 15 (Interstate
14 application of mental health laws)—see section 139CB.
- 15 ***interstate patient***, for chapter 15 (Interstate application of mental
16 health laws)—see section 139CB.
- 17 ***licence***, for chapter 13 (Private psychiatric facilities)—see
18 section 123.
- 19 ***licensed premises***, for chapter 13 (Private psychiatric facilities)—
20 see section 123.
- 21 ***licensee***, for chapter 13 (Private psychiatric facilities)—see
22 section 123.
- 23 ***mental disorder***—see section 9.
- 24 ***mental health facility***—
- 25 (a) means a facility for the treatment, care or support,
26 rehabilitation or accommodation of people with a mental
27 illness; and
- 28 (b) includes a psychiatric facility.

1 **mental health officer** means a person appointed as a mental health
2 officer under section 119.

3 **mental health order** means a psychiatric treatment order, a
4 community care order or a restriction order.

5 **mental health professional** means a doctor, nurse, psychiatrist,
6 psychologist, social worker or therapist (including occupational
7 therapist) or other person who provides services for people with a
8 mental disorder or mental illness.

9 **mental health service**, for chapter 15 (Interstate application of
10 mental health laws)—see section 139CB.

11 **mental illness**—see section 10.

12 **mental impairment**—see the [Criminal Code](#), section 27.

13 **nominated person** means a person nominated under section 19.

14 **non-presidential member**, of the ACAT—see the [ACT Civil and](#)
15 [Administrative Tribunal Act 2008](#), dictionary.

16 **official visitor**—see section 121.

17 **presidential member**, of the ACAT—see the [ACT Civil and](#)
18 [Administrative Tribunal Act 2008](#), dictionary.

19 **principal official visitor** means the principal official visitor
20 appointed under section 122AA.

21 **private psychiatric facility**, for chapter 13 (Private psychiatric
22 facilities)—see section 123.

23 **psychiatric facility** means—

24 (a) a hospital or other facility conducted by the Territory for the
25 treatment, care, support, rehabilitation or accommodation of
26 people who have a mental illness; or

27 (b) a private psychiatric facility licensed under chapter 13.

28 **psychiatric surgery**—see section 49.

1 **psychiatric treatment order** means an order made under
2 section 36V.

3 **psychiatrist** means a doctor who is registered under the [Health
4 Practitioner Regulation National Law \(ACT\)](#) in the specialist area of
5 psychiatry.

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

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

9 **referring officer**, in relation to a person, means—

10 (a) the police officer—

11 (i) who arrests the person in connection with an offence; or

12 (ii) who is satisfied that there are sufficient grounds on which
13 to charge the person in connection with an offence; or

14 (iii) who charges the person in connection with an offence; or

15 (b) a member of the staff of the director of public prosecutions
16 who is responsible for the prosecution of an offence against the
17 person; or

18 (c) if the person is required to accept supervision by someone else
19 as a condition of bail under the [Bail Act 1992](#)—that other
20 person.

21 *Note* Under the [Bail Act 1992](#), s 25 (4) and s 26 (2), an adult may be
22 supervised by the corrections director-general and a child may be
23 supervised by the CYP director-general.

24 **relative**, in relation to a person, means a domestic partner, parent,
25 guardian, grandparent, uncle, aunt, brother, sister, half-brother,
26 half-sister, cousin or child (being a child over the age of 18 years) of
27 the person.

28 *Note* **Domestic partner**—see the [Legislation Act](#), s 169.

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

- 1 **relevant official**—
- 2 (a) for a mental health order, for chapter 5 (Mental health
- 3 orders)—see section 36N; or
- 4 (b) for a forensic mental health order, for part 7.1 (Forensic mental
- 5 health orders)—see section 48S.
- 6 **relevant person**—
- 7 (a) for a mental health order application, for chapter 5 (Mental
- 8 health orders)—see section 36N; and
- 9 (b) for a forensic mental health order application, for part 7.1
- 10 (Forensic mental health orders)—see section 48S.
- 11 **representative**, of a treating team, for part 3.3 (Advance agreements
- 12 and advance consent directions)—see section 24.
- 13 **responsible person**, for part 3.1 (Rights in relation to information
- 14 and communication)—see section 14.
- 15 **restriction order** means an order made under section 36X or
- 16 section 36ZF.
- 17 **reviewable decision**, for chapter 16 (Notification and review of
- 18 decisions)—see section 139CR.
- 19 **subject person**, for chapter 11 (ACAT procedural matters)—see
- 20 section 80.
- 21 **transfer direction**—see section 48ZZJ (3).
- 22 **treating team**, for a person with a mental disorder or mental illness,
- 23 for part 3.3 (Advance agreements and advance consent directions)—
- 24 see section 24.

- 1 ***treatment, care or support***, for a mental disorder or mental illness—
- 2 (a) means things done in the course of the exercise of professional
- 3 skills to remedy the disorder or illness or lessen its ill effects or
- 4 the pain or suffering it causes; and
- 5 (b) includes the giving of medication and counselling, training,
- 6 therapeutic and rehabilitation programs, care or support.
- 7 **Examples—rehabilitation support**
- 8 1 support to improve social confidence and integration
- 9 2 assistance to improve work skills
- 10 *Note* An example is part of the Act, is not exhaustive and may extend,
- 11 but does not limit, the meaning of the provision in which it
- 12 appears (see [Legislation Act](#), s 126 and s 132).
- 13 ***victims of crime commissioner*** means the victims of crime
- 14 commissioner appointed under the [Victims of Crime Act 1994](#),
- 15 section 7.
- 16 ***visitable place***—see section 121.
- 17 ***young detainee***—see the [Children and Young People Act 2008](#),
- 18 section 95.
- 19 ***young offender***—see the [Children and Young People Act 2008](#),
- 20 dictionary.
- 21 ***young person***—see the [Children and Young People Act 2008](#),
- 22 section 12.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 4 June 2015.

2 Notification

Notified under the [Legislation Act](#) on 2015.

3 Republications of amended laws

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

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