

EXPOSURE DRAFT

Minister for Health

(Prepared by Parliamentary Counsel's Office)

Mental Health (Treatment and Care) Amendment Bill 2012

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Minister for Health

(Prepared by Parliamentary Counsel's Office)

Mental Health (Treatment and Care) Amendment Bill 2012

A Bill for

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

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

1 Name of Act

This Act is the *Mental Health (Treatment and Care) Amendment Act 2012*.

2 Commencement

This Act commences on a day fixed by the Minister by written notice.

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

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

Note 3 If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see Legislation Act, s 79).

3 Legislation amended

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

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

4 Long title

substitute

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

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5 Part 1 heading

renumber as chapter 1

**6 Offences against Act—application of Criminal Code etc
Section 4A**

insert

- s 55DA (Offence—administering electroconvulsive therapy to children)

7 Part 2

substitute

Chapter 2 Objects and important concepts

7 Objects of Act

The objects of this Act are to—

- (a) promote the capacity of people with a mental dysfunction or mental illness to determine, and participate in, their assessment and treatment, care or support, taking into account their rights in relation to mental health under territory law; and
- (b) ensure that people with a mental dysfunction or mental illness receive assessment and treatment, care or support in a way that is least restrictive or intrusive to them; and
- (c) facilitate access by people with a mental dysfunction or mental illness to services that recognise and respect their rights, inherent dignity and needs; and

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- (d) promote the inclusion of, and participation by, people with a mental dysfunction or mental illness in their communities of choice; and
- (e) promote mental health by promoting prevention, early intervention and support; and
- (f) facilitate access by people with a mental dysfunction or mental illness to assessment and treatment, care or support as far as practicable in their communities of choice.

8 Principles applying to Act

The following principles apply to this Act:

- (a) a person with a mental dysfunction or mental illness has the same rights and responsibilities as other members of the community and is to be supported to exercise those rights and responsibilities without discrimination;
- (b) a person with a mental dysfunction or mental illness has the right to consent to, refuse or stop treatment, care or support, and to be informed about the consequences of consenting to, refusing or stopping treatment, care or support;
- (c) a person with a mental dysfunction or mental illness has the right to determine his or her own recovery;
- (d) a person with a mental dysfunction or mental illness has the right to access the best available treatment, care or support relating to his or her individual needs;

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- (e) a person with a mental dysfunction or mental illness has the right to access services that—
 - (i) are sensitive and responsive to his or her individual needs, including in relation to age, gender, culture, language, religion, sexuality, trauma and individual life experiences; and
 - (ii) observe, respect and promote his or her rights, liberty, dignity, autonomy and self-respect;
- (f) a person with a mental dysfunction or mental illness has the right to be given timely information to allow him or her to make decisions or maximise his or her contribution to decision-making about his or her assessment and treatment, care or support;
- (g) services provided to a person with a mental dysfunction or mental illness should—
 - (i) promote the informed consent of the person to his or her assessment and treatment, care or support; and
 - (ii) support and allow the person to make his or her own decisions; and
 - (iii) consider and respect the preferences of the person, including those expressed in an advance agreement; and
 - (iv) seek to bring about the best therapeutic outcomes for the person and promote his or her recovery; and
 - (v) be therapeutic or diagnostic in nature for the benefit of the person, and never administered as punishment or for the benefit of someone other than the person; and

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- (vi) be delivered in a way that takes account of, and continues to build on, evidence of effective assessment and treatment, care or support; and
- (vii) ensure that the person is aware of his or her rights.

9 Principles of decision-making capacity

- (1) In considering a person's decision-making capacity under this Act, the following principles must be taken into account:
 - (a) a person must be assumed to have decision-making capacity, unless it is established that he or she does not have capacity;
 - (b) a person who has impaired decision-making capacity must always be supported to contribute to treatment, care or support decisions to the best of the person's ability;
 - (c) a person must not be treated as unable to make a decision unless all practicable steps to help him or her make the decision have been taken without success;
 - (d) a person must not be treated as unable to make a decision only because he or she makes an unwise decision;
 - (e) a person must not be treated as having decision-making capacity to consent to the provision of treatment, care or support only because the person complies with the provision of the treatment, care or support.
- (2) Other than in emergency circumstances, a person's decision-making capacity must always be taken into account in deciding treatment, care or support.
- (3) In doing an act or making a decision under this Act for a person who does not have decision-making capacity, the act must be done, or decision made, in his or her best interests.

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9A Meaning of *mental dysfunction*

In this Act:

mental dysfunction—

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

9B Meaning of *mental illness*

In this Act:

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

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

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Chapter 3 Assessments

Part 3.1 Applications and referrals for assessment orders

9C Applications by people with mental dysfunction or mental illness—assessment order

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

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

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

9D Applications by other people—assessment order

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

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

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

9E Applicant to tell ACAT of risks—assessment order

- (1) This section applies if—
 - (a) a person (the *applicant*) applies under section 9D for an assessment order in relation to someone else (the *subject person*); and
 - (b) the applicant believes on reasonable grounds that the appearance of the subject person before the ACAT is likely to substantially increase—
 - (i) the risk to the subject person’s health or safety; or

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- (ii) the risk of serious harm to others.
- (2) The application must state the belief.

9F Referrals to ACAT—assessment order

- (1) This section applies if the referring officer for an alleged offender or the director-general believes on reasonable grounds that—
 - (a) because of mental impairment—
 - (i) the alleged offender’s health or safety is, or is likely to be, substantially at risk; or
 - (ii) the alleged offender is doing, or is likely to do, serious harm to others; and
 - (b) it may not be appropriate to prosecute, or to continue to prosecute, the alleged offender, considering—
 - (i) the nature and circumstances of the offence; and
 - (ii) the alleged offender’s apparent mental condition.
- (2) The referring officer or director-general may refer the alleged offender to the ACAT for an assessment order.
- (3) In this section:
alleged offender means a person—
 - (a) who is arrested in connection with an offence; or
 - (b) in relation to whom a police officer believes on reasonable grounds that there are sufficient grounds on which to charge the person in connection with an offence; or

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- (c) who is charged in connection with an offence.

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

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

9G Referring officer to tell ACAT of risks—assessment order

- (1) This section applies if—
 - (a) a person (the *subject person*) is referred to the ACAT for an assessment order under section 9F; and
 - (b) the referring officer or director-general believes on reasonable grounds that the appearance of the subject person before the ACAT is likely to substantially increase—
 - (i) the risk to the subject person’s health or safety; or
 - (ii) the risk of serious harm to others.
- (2) The referral must state the belief.

Part 3.2 Assessment orders

9H Assessment orders

The ACAT may order an assessment of a person if—

- (a) for an application or referral made under part 3.1—the ACAT is satisfied on the face of the application that—
 - (i) the person appears to have a mental dysfunction or mental illness; and

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- (ii) either—
 - (A) the person's health or safety is, or is likely to be, substantially at risk; or
 - (B) the person is doing, or is likely to do, serious harm to others; or
- (b) the ACAT reviews a mental health order in force in relation to the person under section 36L (Review, variation and revocation of orders); or
- (c) the person is required to submit to the jurisdiction of the ACAT under—
 - (i) an ACAT mental health provision in a care and protection order or interim care and protection order; or
 - (ii) an interim therapeutic protection order; or
- (d) the person is required to submit to the jurisdiction of the ACAT under the Crimes Act, division 13.2; or
- (e) the ACAT reviews an order for detention in force in relation to the person under section 72 (Periodic review of orders for detention).

Note If a person is assessed under an assessment order as having a mental dysfunction or mental illness, the ACAT may make a mental health order or forensic mental health order in relation to the person (see s 28, s 36, s 48ZB and s 48ZH).

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9I Consent for assessment orders

- (1) This section applies if the ACAT is considering ordering an assessment of a person mentioned in section 9H (a), (b) or (c).
- (2) The ACAT must take reasonable steps to find out the opinion of the person in relation to the assessment and obtain the person's consent to the assessment.
- (3) However, subsection (2) does not prevent the ACAT from ordering an assessment without the person's consent.

9J Content and effect of assessment orders

- (1) An assessment order must—
 - (a) state the nature of the assessment to be conducted; and
 - (b) state the mental health facility at which the assessment is to be conducted and, if appropriate, the person who is to conduct the assessment; and
 - (c) direct the person to be assessed to attend the mental health facility and, if necessary and reasonable, stay at the facility until the assessment has been conducted; and
 - (d) direct the person in charge of the mental health facility—
 - (i) if appropriate, to admit the person to be assessed to the facility to conduct the assessment; and
 - (ii) if necessary and reasonable, to detain the person at the facility until the assessment has been conducted; and
 - (iii) to provide the assistance that is necessary and reasonable to conduct the assessment.

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- (2) An assessment order authorises—
 - (a) the conduct of the assessment stated in the order; and
 - (b) anything necessary and reasonable to be done to conduct the assessment.
- (3) Before making an assessment order for an assessment at a stated mental health facility or by a stated person, the ACAT must be satisfied that the assessment can be provided or performed at the facility or by the person.

9K Public advocate to be told about assessment orders

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

9L Time for conducting assessments

- (1) The assessment of a person in relation to whom an assessment order is made must be conducted as soon as practicable after the order is made, and not later than—
 - (a) 7 days after the order is made; or
 - (b) if another day stated in the order—the stated day.
- (2) However, the ACAT may, on application, extend the period for conducting the assessment if satisfied, based on clinical evidence provided to it by the person conducting the assessment, that a satisfactory assessment cannot be completed within the period under subsection (1).
- (3) The extension must be for a period not longer than 7 days.

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9M Removal order to conduct assessments

- (1) This section applies if the ACAT makes an assessment order in relation to—
 - (a) a person mentioned in section 9H (a), (b) or (c) who—
 - (i) has not been served with a subpoena under the *ACT Civil and Administrative Tribunal Act 2008*, section 41 for a reason stated in section 82 (3) (Subpoena to appear in person); or
 - (ii) does not appear at a proceeding in relation to the order under a subpoena given under the *ACT Civil and Administrative Tribunal Act 2008*, section 41; or
 - (iii) does not comply with the assessment order; or
 - (b) a person mentioned in section 9H (d) or (e).
- (2) The ACAT may order (a **removal order**) the removal of the person to an approved mental health facility to conduct the assessment if satisfied that—
 - (a) the person has been made aware of the assessment order; and
 - (b) either—
 - (i) if the person does not comply with the assessment order—the person does not have a reasonable excuse for failing to comply with the order; and
 - (ii) in any other case—the ACAT is satisfied that it is appropriate in the circumstances.

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- (3) The removal order must state—
 - (a) the day (not later than 1 month after the day the order is made) when the order stops having effect; and
 - (b) the mental health facility to which the person is to be removed; and
 - (c) the nature of the assessment to be conducted in relation to the person.
- (4) A removal order authorises—
 - (a) the arrest of the person named in the order; and
 - (b) the removal of the person to the mental health facility stated in the order.

9N Executing removal order

- (1) This section applies if the ACAT makes a removal order in relation to a person.
- (2) The removal order may be executed by a police officer.
- (3) The police officer—
 - (a) may, with necessary and reasonable assistance and force, enter any premises to arrest the person; and
 - (b) must use the minimum amount of force necessary to arrest the person and remove the person to the facility stated in the order; and
 - (c) must, before removing the person, explain to the person the purpose of the order.
- (4) In this section:
removal order—see section 9M (2).

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9O Contact with others

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

9P Public advocate and lawyer to have access

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

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9Q Person to be assessed to be told about the order

- (1) This section applies if a person is admitted to a mental health facility under an assessment order.
- (2) The person in charge of the mental health facility must, before an assessment is conducted, ensure that the person to be assessed is told about the assessment order.
- (3) This section applies even if the person to be assessed was present when the order was made.

9R Copies of assessments

- (1) This section applies to an assessment conducted at a mental health facility under an assessment order.
- (2) The person in charge of the mental health facility must, as soon as practicable after completing the assessment—
 - (a) give a copy of the assessment to—
 - (i) the person assessed; and
 - (ii) the ACAT; and
 - (iii) the public advocate; and
 - (iv) if the person assessed was referred to the ACAT under section 9F—the referring officer; and
 - (b) if the person has a nominated person—tell the nominated person about the outcome of the assessment.

8 Mental health orders
Part 4

renumber as chapter 4

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9 Division 4.1 heading*substitute***Part 4.1 Preliminary****9S Meaning of *relevant official*—ch 4**

In this chapter:

relevant official, for a mental health order, means—

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

Part 4.2 Applications and referrals for mental health orders**10 Sections 10 and 11***substitute***10 Applications for mental health orders**

- (1) This section applies if a relevant person believes on reasonable grounds that—
 - (a) the health and safety of another person is, or is likely to be, substantially at risk because the person is unable, because of mental dysfunction or mental illness—
 - (i) to make reasonable judgments about matters relating to the person's health or safety; or
 - (ii) to do anything necessary for the person's health or safety; or

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- (b) the person is likely, because of mental dysfunction or mental illness, to do serious harm to others.

Note An application is not required in relation to a person who has been assessed under an assessment order as having a mental dysfunction or mental illness (see s 28 and s 36).

- (2) The relevant person may apply to the ACAT for a mental health order in relation to the person.

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

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

- (3) In this section:

relevant person means the chief psychiatrist, the care coordinator or another person nominated by the chief psychiatrist or care coordinator.

11 Referrals to ACAT Section 13 (3), new note

insert

Note 2 A referral is not required in relation to a person who has been assessed under an assessment order as having a mental dysfunction or mental illness (see s 28 and s 36).

12 Assessments Division 4.2

omit

13 Divisions 4.3 to 4.7

renumber as parts 4.3 to 4.7

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**14 ACAT must consider assessment
Section 23 (a)**

omit

under division 4.2

15 New section 23 (2) and (3)

insert

- (2) In considering an assessment, the ACAT must take into account how recently the assessment was conducted.
- (3) If an assessment in relation to a person does not indicate that the person has a mental dysfunction or mental illness, the ACAT may dismiss the application for the mental health order.

16 Section 25

substitute

25 Consultation by ACAT etc

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

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- (e) the person most likely to be responsible for providing the treatment, care or support proposed to be ordered.
- (2) Also, before the ACAT makes a mental health order for the provision of a particular treatment, care or support at a stated facility or by a stated person, the relevant official for the order must, in writing, tell the ACAT that the treatment, care or support can be performed at the stated facility or by the stated person.

**17 What ACAT must take into account
Section 26 (a)**

before

capacity

insert

decision-making

18 New section 26 (ba)

insert

- (ba) if an advance agreement is in force in relation to the person—the person’s wishes in relation to his or her treatment, care or support stated in the agreement;

19 Section 26 (f) to (i)

substitute

- (f) the matters stated in section 8 (Principles applying to Act);

20 Section 26 (m)

omit

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21 Section 26 (n)

omit

section 13

substitute

section 9F or section 13,

22 Section 28

substitute

28 Psychiatric treatment order

- (1) This section applies to—
 - (a) a person assessed under an assessment order; or
 - (b) a person in relation to whom an application or referral for a mental health order has been made under part 3.1.
- (2) The ACAT may make a psychiatric treatment order in relation to the person if—
 - (a) the person has a mental illness; and
 - (b) the ACAT believes on reasonable grounds that, because of the mental illness, the person—
 - (i) is doing, or is likely to do, serious harm to himself or herself or someone else; or
 - (ii) is suffering, or is likely to suffer, serious mental or physical deterioration; and

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- (c) the ACAT is satisfied that psychiatric treatment, care or support is likely to—
 - (i) reduce the harm or deterioration, or the likelihood of harm or deterioration, mentioned in paragraph (b); or
 - (ii) result in an improvement in the person's psychiatric condition; and
- (d) either—
 - (i) the person does not have decision-making capacity to consent to the treatment, care or support and refuses to receive the treatment; or
 - (ii) the person has decision-making capacity to consent to the treatment, care or support, but refuses to consent; and
- (e) in relation to a person mentioned in paragraph (d) (ii)—the ACAT is satisfied that the harm or deterioration, or likelihood of harm or deterioration, mentioned in paragraph (b) outweighs the right to consent or refuse to consent; and
- (f) the treatment, care or support cannot be adequately provided in a way that would involve less restriction of the freedom of choice and movement of the person that would result from the person being an involuntary patient.

23 **Content of psychiatric treatment order**
Section 29 (1) (a)

omit

a health facility

substitute

an approved mental health facility

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24 Section 29 (3)

substitute

- (3) A psychiatric treatment order made in relation to a person must include a statement about whether the person has decision-making capacity to consent, and whether the person has consented, to the treatment, care or support under the order.

**25 Role of chief psychiatrist
New section 32 (4) (d) and (e)**

insert

- (d) if the person has a nominated person—the nominated person;
and
- (e) if a health attorney is involved in the treatment, care or support of the person—the health attorney.

26 Section 32 (7)

substitute

- (7) The chief psychiatrist may also give a copy of the determination to—
- (a) any guardian consulted under subsection (4) (b); and
- (b) any attorney consulted under subsection (4) (c); and
- (c) any nominated person consulted under subsection (4) (d); and
- (d) any health attorney consulted under subsection (4) (e).

EXPOSURE DRAFT

**27 Powers in relation to detention, restraint etc
New section 35 (2A) and (2B)**

insert

- (2A) If the chief psychiatrist subjects a person to involuntary seclusion, the chief psychiatrist must ensure that the person is examined by a relevant doctor of the approved mental health facility in each 4-hour period that the person is in seclusion.
- (2B) If the chief psychiatrist determines that a person be given medication for the treatment of the person's mental illness, the chief psychiatrist may—
 - (a) approve the giving by appropriately trained people of medication prescribed by a doctor in accordance with the order; and
 - (b) use, or authorise someone else to use, the force and assistance necessary and reasonable to give the medication.

28 Section 35 (3)

omit

section 7 (Objectives of Act) and section 9 (Maintenance of freedom, dignity and self-respect)

substitute

section 7 (Objects of Act) and section 8 (Principles applying to Act)

29 Section 35 (4)

substitute

- (4) If the chief psychiatrist subjects a person to involuntary restraint, seclusion or the involuntary giving of medication, the chief psychiatrist must—
 - (a) enter in the person's record the fact of and the reasons for the involuntary restraint, seclusion or giving of medication; and
 - (b) tell the public advocate and the ACAT in writing within 24 hours after the person is subjected to the involuntary restraint, seclusion or giving of medication; and
 - (c) keep a record of the involuntary restraint, seclusion or giving of medication.

- (5) In this section:

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

30 Section 36

substitute

36 Community care orders

- (1) This section applies to—
 - (a) a person assessed under an assessment order; or
 - (b) a person in relation to whom an application or referral for a mental health order has been made under part 3.1.

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- (2) The ACAT may make a community care order in relation to the person if—
 - (a) the person has a mental dysfunction; and
 - (b) the ACAT believes on reasonable grounds that, because of the mental dysfunction, the person—
 - (i) is doing, or is likely to do, serious harm to himself or herself or someone else; or
 - (ii) is suffering, or is likely to suffer, serious mental or physical deterioration; and
 - (c) the ACAT is satisfied that treatment, care or support is likely to reduce the harm or deterioration, or likelihood of harm or deterioration, mentioned in paragraph (b); and
 - (d) either—
 - (i) the person does not have decision-making capacity to consent to the treatment, care or support and refuses to receive the treatment, care or support; or
 - (ii) the person has decision-making capacity to consent to the treatment, care or support, but refuses to consent; and
 - (e) in relation to a person mentioned in paragraph (d) (ii)—the ACAT is satisfied that the harm or deterioration, or likelihood of harm or deterioration, mentioned in paragraph (b) outweighs the right to consent or refuse to consent; and
 - (f) the ACAT is satisfied that, in the circumstances, a psychiatric treatment order should not be made; and

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- (g) the treatment, care or support cannot be adequately provided in a way that would involve less restriction of the freedom of choice and movement of the person than would result from the person being an involuntary patient.

**31 Content of community care order
Section 36A (3)**

substitute

- (3) A community care order made in relation to a person must include a statement about whether the person has the decision-making capacity to consent to the treatment, care or support under the order, and whether the person has consented.

**32 Content of restriction order
Section 36C (a)**

before

community care facility

insert

approved

**33 Role of care coordinator
New section 36D (3) (b) (iii) and (iv)**

insert

- (iii) if the person has a nominated person—the nominated person; and
- (iv) if a health attorney under that Act for the person has been involved in the treatment, care or support of the person—the health attorney; and

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34 New section 36D (5) (ba)

insert

(ba) any attorney consulted under subsection (3) (a) (ii); and

35 New section 36D (5) (e) and (f)

insert

(e) any nominated person consulted under subsection (3) (b) (iii);
and

(f) any health attorney consulted under subsection (3) (b) (iv).

**36 Powers in relation to detention, restraint etc
Section 36G (1)**

omit

a community care facility

substitute

an approved community care facility

37 New section 36G (2A)

insert

(2A) If the care coordinator subjects a person to involuntary seclusion, the care coordinator must ensure that the person is examined by a relevant doctor of the approved community care facility in each 4-hour period that the person is in seclusion.

38 Section 36G (4)

omit

section 7 (Objectives of Act) and section 9 (Maintenance of freedom, dignity and self-respect)

substitute

section 7 (Objects of Act) and section 8 (Principles applying to Act)

39 New section 36G (6)

insert

(6) In this section:

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

**40 Limits on communication
Section 36H (7)**

omit

part 6 (Rights of mentally dysfunctional or mentally ill persons)

substitute

part 8.1 (Rights of people with mental dysfunction or mental illness—general)

41 Section 36H (8)

omit

EXPOSURE DRAFT

**42 Communication with public advocate and person's
lawyer
Section 36I (2) and (3)**

omit

**43 Contravention of psychiatric treatment order or
community care order
Section 36K (3) to (5)**

after

approved mental health facility

insert

or approved community care facility

44 Section 36K (5) and (6)

after

police officer,

insert

ambulance paramedic,

45 Section 36K (8)

omit

**46 Review, variation and revocation of orders
Section 36L (5) (c)**

substitute

(c) make an assessment order in relation to the person.

EXPOSURE DRAFT

47 Part 5 heading

substitute

Chapter 5 Emergency detention

**48 Apprehension
Section 37 (1)**

after

police officer

insert

or ambulance paramedic

49 Section 37 (1) and (2)

omit

approved health facility

substitute

approved mental health facility

50 Section 37 (4)

after

police officer,

insert

ambulance paramedic,

EXPOSURE DRAFT

**51 Detention
Section 38**

omit

approved health facility

substitute

approved mental health facility

**52 Circumstances in which copy of court order to be
provided
Section 38A**

omit

approved health facility

substitute

approved mental health facility

**53 Statement of action taken
Section 39 (1)**

after

police officer,

insert

ambulance paramedic,

EXPOSURE DRAFT

54 Section 39 (1)

omit

approved health facility

substitute

approved mental health facility

55 Section 40

substitute

40 Examination at approved mental health facility

- (1) This section applies to a person (the *subject person*) detained at an approved mental health facility under section 38.
- (2) The person in charge of the approved mental health facility must ensure that the subject person is examined by a relevant doctor of the facility within 4 hours after—
 - (a) for a person detained under section 38 (1)—arriving at the facility; or
 - (b) for a person detained under section 38 (2)—being detained at the facility.
- (3) However, the person in charge of the facility may continue to detain the subject person if he or she believes on reasonable grounds that, if the subject person is released without examination—
 - (a) the subject person's health or safety is, or is likely to be, substantially at risk; or
 - (b) the subject person is doing, or is likely to do, serious harm to others; or

EXPOSURE DRAFT

- (c) the subject person is seriously endangering, or is likely to seriously endanger, public safety.
- (4) If the subject person is detained under subsection (3)—
 - (a) the person in charge of the approved mental health facility must tell the chief psychiatrist about the detention without examination; and
 - (b) the chief psychiatrist must examine the person as soon as possible and within 2 hours of being told about the detention.
- (5) If the subject person is not examined within the time required under subsection (4), the person in charge of the approved mental health facility must release the subject person.
- (6) The person in charge of the approved mental health facility must tell the public advocate, in writing, about any failure to examine a person within the time required under subsection (2) or (4) and the reasons for the failure.
- (7) In this section:
relevant doctor, of an approved mental health facility, means a person employed at the facility as a consultant psychiatrist, a psychiatric registrar in consultation with a consultant psychiatrist or another doctor in consultation with a consultant psychiatrist.

56 Authorisation of involuntary detention

Section 41 (2) and note

substitute

- (2) Before the end of the 3-day period of detention, the chief psychiatrist may apply to the ACAT to extend the period of detention if the chief psychiatrist believes on reasonable grounds that the person does not have the decision-making capacity to consent to the treatment, care or support.

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- (2A) On application, the ACAT may order that the period of detention be extended by the period, not longer than 11 days, stated in the order.

57 Section 41 (4)

substitute

- (4) The ACAT must, on application, review an order made under subsection (2A) within 2 working days after the day the application is lodged.
- (5) The Minister must, 18 months after the day this subsection commences, review the maximum further period for detaining a person under subsection (2A).
- (6) The Minister must present a report of the review to the Legislative Assembly not later than 2 years after the day this subsection commences.
- (7) This subsection and subsections (5) and (6) expire 3 years after the day this subsection commences.

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

omit

approved health facility

substitute

approved mental health facility

EXPOSURE DRAFT

**59 Treatment during detention
Section 44 (1), note**

omit

(see subdiv 7.2.4)

substitute

(see div 9.2.4)

60 Section 48

omit

**61 Interstate application of mental health laws
Part 5A**

relocate as chapter 15

62 Divisions 5A.1 to 5A.5

renumber as parts 15.1 to 15.5

63 Section 48A heading

substitute

48A Object of ch 15

64 Section 48A

omit

part

substitute

chapter

EXPOSURE DRAFT

65 Section 48B heading

substitute

48B Definitions—ch 15

66 Section 48B

omit

part

substitute

chapter

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

omit

part

substitute

chapter

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

omit

part

substitute

chapter

EXPOSURE DRAFT

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

omit

part

substitute

chapter

70 New chapters 6 and 7

insert

Chapter 6 Forensic mental health

Part 6.1 Forensic mental health orders

Division 6.1.1 Preliminary

48S Definitions—pt 6.1

In this part:

community-based sentence—see the *Crimes (Sentence Administration) Act 2005*, section 264.

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

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

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Division 6.1.2 Referrals for forensic mental health orders

48T Referrals to ACAT for forensic mental health order—alleged offenders

- (1) This section applies to an alleged offender if the chief psychiatrist believes on reasonable grounds that—
 - (a) because of mental impairment—
 - (i) the alleged offender's health or safety is, or is likely to be, substantially at risk; or
 - (ii) the alleged offender has done, is doing, or is likely to do, serious harm to others; and
 - (b) because of mental impairment, the person has seriously endangered, is seriously endangering or is likely to seriously endanger, public safety; and
 - (c) it may not be appropriate to prosecute, or to continue to prosecute, the alleged offender, considering—
 - (i) the nature and circumstances of the offence; and
 - (ii) the alleged offender's apparent mental condition.
- (2) The chief psychiatrist may refer the alleged offender to the ACAT for a forensic mental health order.
- (3) In this section:
alleged offender means—
 - (a) a person who is arrested in connection with an offence; or
 - (b) a person who is charged in connection with an offence; or

EXPOSURE DRAFT

- (c) a person in relation to whom a police officer believes on reasonable grounds there are sufficient grounds on which to charge the person in connection with an offence.

Note Requirements for applications to the ACAT are set out in the *ACT Civil and Administrative Tribunal Act 2008*, s 10.

**48U Referrals to ACAT for forensic mental health order—
detainees and people under community-based sentences**

- (1) This section applies to a detainee or a person serving a community-based sentence if—
 - (a) the chief psychiatrist believes on reasonable grounds that the subject person has a mental dysfunction or mental illness; and
 - (b) because of the mental dysfunction or mental illness—
 - (i) the subject person's health or safety is, or is likely to be, substantially at risk; or
 - (ii) the subject person is doing, or is likely to do, serious harm to others; and
 - (c) because of mental illness, the person has seriously endangered, is seriously endangering, or is likely to seriously endanger, public safety.
- (2) The chief psychiatrist may refer the subject person to the ACAT for a forensic mental health order.

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48V Chief psychiatrist to tell ACAT of risks

- (1) This section applies if—
 - (a) the chief psychiatrist refers a person to the ACAT for a forensic mental health order; and
 - (b) the chief psychiatrist believes on reasonable grounds that the appearance of the person before the ACAT is likely to substantially increase—
 - (i) the risk to the person’s health or safety; or
 - (ii) the risk of serious harm to others.
- (2) The referral must state the belief.

Division 6.1.3 Making forensic mental health orders—preliminary matters

48W ACAT must consider assessment—forensic mental health order

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

48X ACAT must hold inquiry—forensic mental health order

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

EXPOSURE DRAFT

48Y Consultation by ACAT etc—forensic mental health order

- (1) Before making a forensic mental health order in relation to a person, the ACAT must, as far as practicable, consult—
 - (a) if the person is a child—each person with parental responsibility for the child under the *Children and Young People Act 2008*, division 1.3.2; and
 - (b) if the person has a guardian under the *Guardianship and Management of Property Act 1991*—the guardian; and
 - (c) if the person has an attorney appointed under the *Powers of Attorney Act 2006*—the attorney; and
 - (d) if the person has a nominated person—the nominated person; and
 - (e) the person most likely to be responsible for providing the treatment, care or support proposed to be ordered; and
 - (f) if the person is a detainee—the director-general responsible for the *Corrections Management Act 2007*.
- (2) Also, before the ACAT makes a forensic mental health order for the provision of a particular treatment, care or support at a stated facility or by a stated person, the relevant official for the order must, in writing, tell the ACAT that the treatment, care or support can be performed at the stated facility or by the stated person.

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48Z What ACAT must take into account—forensic mental health order

In making a forensic mental health order in relation to a person, the ACAT must take into account the following:

- (a) whether the person consents, refuses to consent or has the decision-making capacity to consent, to proposed treatment, care or support;
- (b) the views and wishes of the person, so far as they can be found out;
- (c) if an advance agreement is in force in relation to the person—the person’s wishes in relation to his or her treatment, care or support stated in the agreement;
- (d) the views and wishes of the people responsible for the day-to-day care of the person, to the extent that those views and wishes are made known to the ACAT;
- (e) the views of each person appearing at the proceeding;
- (f) if the proceeding is on a forensic mental health order for which there is a registered affected person for an offence committed or alleged to have been committed by the person—any statement by the registered affected person;
- (g) the views of each person consulted under section 48Y (Consultation by ACAT etc—forensic mental health order);
- (h) the matters stated in section 8 (Principles applying to Act);
- (i) that any restrictions placed on the person should be the minimum necessary for the safe and effective care of the person and protection of public safety;

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- (j) any alternative treatment, care or support available, including—
 - (i) the purpose of the treatment, care or support; and
 - (ii) the benefits likely to be derived by the person from the treatment, care or support; and
 - (iii) the distress, discomfort, risks, side effects or other disadvantages associated with the treatment, care or support;
- (k) any relevant medical history of the person;
- (l) the nature and circumstances of the offence in relation to which the person has been sentenced, arrested, or may be or has been charged;
- (m) for an offender with a mental impairment—the nature and extent of the person’s mental impairment, including the effect it is likely to have on the person’s behaviour in the future;
- (n) whether, if the person is not detained—
 - (i) the person’s health or safety is, or is likely to be, substantially at risk; or
 - (ii) the person is likely to do serious harm to others;
- (o) whether, if the person is not detained, public safety is likely to be seriously endangered;
- (p) if the proceeding is on a forensic mental health order for which there is a registered affected person for the offence committed or alleged to have been committed by the subject person—the victims of crime commissioner;
- (q) anything else prescribed by regulation.

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**48ZA ACAT must not order particular drugs or procedures—
forensic mental health order**

In making a forensic mental health order, the ACAT must not order the giving of a particular drug or make an order about the way a particular clinical procedure is to be carried out.

Division 6.1.4 Forensic psychiatric treatment orders**48ZB Forensic psychiatric treatment order**

- (1) This section applies to—
 - (a) a detainee or a person serving a community-based sentence assessed under an assessment order; or
 - (b) a detainee or a person serving a community-based sentence referred to the ACAT for a forensic mental health order under division 6.1.2; or
 - (c) a person required to submit to the jurisdiction of the ACAT for a forensic mental health order under the Crimes Act, division 13.2.
- (2) The ACAT may make a forensic psychiatric treatment order in relation to the person if—
 - (a) the person has a mental illness; and
 - (b) the ACAT believes on reasonable grounds that, because of the mental illness, the person—
 - (i) is doing, or is likely to do, serious harm to himself or herself or someone else; or
 - (ii) is suffering, or is likely to suffer, serious mental or physical deterioration; and

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- (c) the ACAT believes on reasonable grounds that, because of the mental illness, the person has seriously endangered, is seriously endangering, or is likely to seriously endanger, public safety; and
- (d) the ACAT is satisfied that psychiatric treatment, care or support is likely to—
 - (i) reduce the harm, deterioration or endangerment, or the likelihood of harm, deterioration or endangerment, mentioned in paragraph (b) or (c); or
 - (ii) result in an improvement in the person's psychiatric condition; and
- (e) the ACAT is satisfied that, in the circumstances, a mental health order should not be made; and
- (f) the treatment, care or support cannot be adequately provided in a way that would involve less restriction of the freedom of choice and movement of the person than would result from the person being an involuntary patient.

48ZC Content of forensic psychiatric treatment order

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

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- (c) that limits may be imposed on communication between the person and other people;
 - (d) that the person must live (but not be detained) at a stated place;
 - (e) that the person must not approach a stated person or stated place or undertake stated activities;
 - (f) that the person must be detained at a stated approved mental health facility or correctional centre.
- (2) A forensic psychiatric treatment order made in relation to a person must include a statement about whether the person has the decision-making capacity to consent to the treatment, care or support under the order, and whether the person consents.

48ZD Role of chief psychiatrist for forensic psychiatric treatment order

- (1) The chief psychiatrist is responsible for the treatment, care or support of a person to whom a forensic psychiatric treatment order is in force.
- (2) Within 5 working days after the day the forensic psychiatric treatment order is made, the chief psychiatrist must determine, in writing—
- (a) the times when and the place where the person is required to attend to receive treatment, care or support, or undertake a counselling, training, therapeutic or rehabilitation program, in accordance with the order; and
 - (b) the nature of the psychiatric treatment, care or support to be given to the person.

Note If a form is approved under s 146A for a determination, the form must be used.

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- (3) The chief psychiatrist must also determine, in writing, the place where the person must live if—
 - (a) the forensic psychiatric treatment order does not state that the person live at a stated place; and
 - (b) the chief psychiatrist considers that the person should live at a place other than the place where he or she usually lives.
- (4) Before making a determination, the chief psychiatrist must, if practicable, consult—
 - (a) the person; and
 - (b) if the person has a guardian under the *Guardianship and Management of Property Act 1991*—the guardian; and
 - (c) if the person has an attorney appointed under the *Powers of Attorney Act 2006*—the attorney; and
 - (d) if the person has a nominated person—the nominated person.
- (5) For subsection (2) (b), the chief psychiatrist must not determine treatment, care or support that has, or is likely to have, the effect of subjecting the person to whom it is given to undue stress or deprivation, having regard to the benefit likely to result from the treatment, care or support.
- (6) As soon as practicable after making a determination, the chief psychiatrist must give a copy of the determination to the ACAT and the public advocate.
- (7) The chief psychiatrist may also give a copy of the determination to—
 - (a) any guardian consulted under subsection (4) (b); and
 - (b) any attorney consulted under subsection (4) (c); and

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- (c) any nominated person consulted under subsection (4) (d).

48ZE Treatment etc under forensic psychiatric treatment order to be explained

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

48ZF Action if forensic psychiatric treatment order no longer appropriate

- (1) This section applies if—
 - (a) a forensic psychiatric treatment order is in force in relation to a person; and
 - (b) the chief psychiatrist forms the opinion that—
 - (i) the person is no longer a person in relation to whom the ACAT could make a forensic psychiatric treatment order; or
 - (ii) if the order requires the person to be detained at an approved mental health facility or correctional centre—it is no longer necessary for the person to be detained.
- (2) The chief psychiatrist must tell the ACAT and the public advocate in writing about his or her opinion.

Note The ACAT must review the order within 72 hours after being notified under this section (see s 48ZU (2)).

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48ZG Powers in relation to detention, restraint etc—forensic psychiatric treatment order

- (1) This section applies if—
 - (a) a forensic psychiatric treatment order has been made in relation to a person; and
 - (b) either—
 - (i) the order requires the person to be detained at an approved mental health facility or correctional centre; or
 - (ii) the chief psychiatrist considers that it is necessary for the treatment, care or support of the person to detain the person at a particular place.
- (2) The chief psychiatrist may—
 - (a) take, or authorise someone else to take, the person to the approved mental health facility stated in the order or particular place under subsection (1) (b) (ii) (the *relevant place*) and for that purpose—
 - (i) use the force and assistance that is necessary and reasonable to apprehend the person and take him or her to the place; and
 - (ii) if there are reasonable grounds for believing that the person is at particular premises—enter the premises using the force and assistance that is necessary and reasonable; and
 - (b) keep the person at the relevant place in the custody that the chief psychiatrist considers appropriate; and

- (c) subject the person to the confinement or restraint that is necessary and reasonable to—
 - (i) prevent the person from causing harm to himself or herself or someone else; or
 - (ii) ensure that the person remains in custody under the order; and
 - (d) subject the person to involuntary seclusion if satisfied that it is the only way in the circumstances to prevent the person from causing harm to himself or herself or someone else.
- (3) The chief psychiatrist must not subject a person to involuntary seclusion for longer than 4 hours without examination by a relevant doctor of the approved mental health facility.
 - (4) If the chief psychiatrist determines that a person be given medication for the treatment of the person's mental illness, the chief psychiatrist may—
 - (a) approve the giving by appropriately trained people of medication prescribed by a doctor in accordance with the order; and
 - (b) use, or authorise someone else to use the force and assistance that is necessary and reasonable to give the medication.
 - (5) In acting under this section, the chief psychiatrist must have regard to the matters stated in section 7 (Objectives of Act) and section 8 (Principles applying to Act).
 - (6) If the chief psychiatrist subjects a person to involuntary restraint, seclusion or the involuntary giving of medication, the chief psychiatrist must—
 - (a) enter in the person's record the fact of and the reasons for the involuntary restraint, seclusion or giving of medication; and

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- (b) tell the public advocate and the ACAT in writing within 24 hours after the person is subjected to the involuntary restraint, seclusion or giving of medication; and
 - (c) keep a record of the involuntary restraint, seclusion or giving of medication.
- (7) In this section:

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

Division 6.1.5 Forensic community care orders

48ZH Forensic community care order

- (1) This section applies to—
- (a) a detainee or person serving a community-based sentence assessed under an assessment order; or
 - (b) a detainee or person serving a community-based sentence referred to the ACAT for a forensic mental health order under division 6.1.2; or
 - (c) a person required to submit to the jurisdiction of the ACAT for a forensic mental health order under the Crimes Act, division 13.2.
- (2) The ACAT may make a forensic community care order in relation to the person if—
- (a) the person has a mental dysfunction; and

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- (b) the ACAT believes on reasonable grounds that, because of the mental dysfunction, the person—
 - (i) is doing, or is likely to do, serious harm to himself or herself or someone else; or
 - (ii) is suffering, or is likely to suffer, serious mental or physical deterioration; and
 - (c) the ACAT believes on reasonable grounds that, because of the mental dysfunction, the person is seriously endangering, or is likely to seriously endanger, public safety; and
 - (d) the ACAT is satisfied that treatment, care or support is likely to reduce the harm, deterioration or endangerment, or the likelihood of harm deterioration or endangerment, mentioned in paragraph (b) or (c); and
 - (e) the ACAT is satisfied that, in the circumstances, a forensic psychiatric treatment order should not be made; and
 - (f) the ACAT is satisfied that, in the circumstances, a mental health order should not be made; and
 - (g) the treatment, care or support cannot be adequately provided in a way that would involve less restriction of the freedom of choice and movement of the person than would result from the person being an involuntary patient.
- (3) Without limiting subsection (2) (c), grounds for belief that a person is likely to seriously endanger public safety may include that the person has previously seriously endangered public safety.

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48ZI Content of forensic community care order

- (1) A forensic community care order made in relation to a person may state 1 or more of the following:
 - (a) that the person is to be given treatment, care or support;
 - (b) that the person may be given medication for the treatment of the person's mental dysfunction that is prescribed by a doctor;
 - (c) that the person is to undertake a counselling, training, therapeutic or rehabilitation program;
 - (d) that limits may be imposed on communication between the person and other people;
 - (e) that the person must live (but not be detained) at a stated approved community care facility or another stated place;
 - (f) that the person must not approach a stated person or stated place or undertake stated activities;
 - (g) that the person must be detained at an approved community care facility.
- (2) A forensic community care order made in relation to a person must include a statement about whether the person has the decision-making capacity to consent to the treatment, care or support under the order, and whether the person consents.

48ZJ Role of care coordinator—forensic community care order

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

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

Note If a form is approved under s 146A for a determination, the form must be used.

- (3) Before making a determination in relation to a person, the care coordinator—
- (a) must consult—
 - (i) the ACAT; and
 - (ii) if the person has a guardian under the *Guardianship and Management of Property Act 1991*—the guardian; and
 - (iii) if the person has an attorney appointed under the *Powers of Attorney Act 2006*—the attorney; and
 - (iv) if the person has a nominated person—the nominated person; and
 - (b) if practicable, must consult the person; and
 - (c) may consult any other service provider the care coordinator considers relevant.
- (4) After making a determination in relation to a person, the care coordinator must record whether the person was consulted and—
- (a) if the person was consulted—what the person's views were; or
 - (b) if the person was not consulted—the reasons why.

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- (5) As soon as practicable after making a determination, the care coordinator must give a copy of the determination to—
 - (a) the ACAT; and
 - (b) the public advocate; and
 - (c) any guardian consulted under subsection (3) (a) (ii); and
 - (d) any attorney consulted under subsection (3) (a) (iii); and
 - (e) any nominated person consulted under subsection (3) (a) (iv).
- (6) The care coordinator may also give a copy of the determination to—
 - (a) anyone consulted under subsection (3) (c); and
 - (b) anyone providing treatment, care or support to the person.

48ZK Treatment etc to be explained—forensic community care order

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

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48ZL Action if forensic community care order no longer appropriate

- (1) This section applies if—
 - (a) a forensic community care order is in force in relation to a person; and
 - (b) the care coordinator forms the opinion that—
 - (i) the person is no longer a person in relation to whom the ACAT could make a forensic psychiatric treatment order; or
 - (ii) if the order requires the person to be detained at an approved community care facility—it is no longer necessary for the person to be detained.
- (2) The care coordinator must tell the ACAT and the public advocate in writing about his or her opinion.

Note The ACAT must review the order within 72 hours after being notified under this section (see s 48ZU (2)).

48ZM Powers in relation to detention, restraint etc—forensic community care order

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

- (ii) the care coordinator requires the person to be detained at an approved community care facility under section 48ZT (Contravention of forensic mental health order).
- (2) The care coordinator may—
 - (a) take, or authorise someone else to take, the person to the approved community care facility and, for that purpose—
 - (i) use the force and assistance that is necessary and reasonable to apprehend the person and take him or her to the facility; and
 - (ii) if there are reasonable grounds for believing that the person is at particular premises—enter those premises using the force and assistance that is necessary and reasonable; and
 - (b) keep the person at the facility in the custody that the ACAT considers appropriate; and
 - (c) subject the person to the confinement or restraint that is necessary and reasonable—
 - (i) to prevent the person from causing harm to himself or herself or someone else; or
 - (ii) to ensure that the person remains in custody under the order; and
 - (d) subject the person to involuntary seclusion if satisfied that it is the only way in the circumstances to prevent the person from causing harm to himself or herself or someone else.
- (3) The care coordinator must not subject a person to involuntary seclusion for longer than 4 hours without an examination by a relevant doctor of the approved community care facility.

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- (4) If a community care order made in relation to a person authorises the giving of medication for the treatment of the person's mental dysfunction, the care coordinator may—
 - (a) approve the giving by appropriately trained people of medication prescribed by a doctor in accordance with the order; and
 - (b) for that purpose, use (or authorise someone else to use) the force and assistance that is necessary and reasonable.
- (5) In acting under this section, the care coordinator must have regard to the matters stated in section 7 (Objectives of Act) and section 8 (Principles applying to Act).
- (6) If the care coordinator subjects a person to involuntary restraint or seclusion, or the involuntary giving of medication prescribed by a doctor, the care coordinator must—
 - (a) enter in the person's record the fact of and the reasons for the involuntary restraint, seclusion or giving of medication; and
 - (b) tell the ACAT and the public advocate in writing within 24 hours after the person is subjected to the involuntary restraint, seclusion or giving of medication; and
 - (c) keep a record of the involuntary restraint, seclusion or giving of medication.
- (7) In this section:
relevant doctor, of an approved community care facility, means a person employed at the facility as a consultant psychiatrist, a psychiatric registrar in consultation with a consultant psychiatrist or another doctor in consultation with a consultant psychiatrist.

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Division 6.1.6 Limits on communication under forensic mental health orders

48ZN Limits on communication—forensic mental health order

- (1) This section applies if—
 - (a) a forensic mental health order is made in relation to a person; and
 - (b) the ACAT orders, under section 48ZC (1) (c) or section 48ZI (1) (d), that limits may be imposed on communication between the person and other people; and
 - (c) the relevant official for the person believes on reasonable grounds that it is necessary, in the interests of the effective treatment, care or support of the person, that communication between the person and other people be limited.
- (2) The relevant official may, subject to the order mentioned in subsection (1) (b), impose limits on communication by the person with other people that are necessary and reasonable to avoid prejudicing the effectiveness of the treatment, care or support.
- (3) As soon as practicable after imposing limits on communication by a person, the relevant official must explain to the person—
 - (a) the nature of the limits; and
 - (b) the period for which the limits will be in effect; and
 - (c) the reasons for imposing the limits.
- (4) The explanation must be given in the language or way of communicating that the person is most likely to understand.
- (5) Limits must not be imposed for a period longer than 7 days.

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- (6) Subsection (5) does not prevent further limits being imposed immediately after a limit previously imposed under subsection (2) ends.
- (7) This section has effect despite part 8.1 (Rights of people with mental dysfunctional or mental illness—general) but subject to section 48ZO.

48ZO Communication with public advocate and person's lawyer

- (1) If a relevant official for a person has imposed limits on communication by the person under section 48ZN, the official must ensure that the person has reasonable access to facilities, and adequate opportunity, to contact the public advocate or the person's lawyer.
- (2) The relevant official must, if asked by the public advocate or the person's lawyer, give any reasonable assistance necessary to allow the public advocate or lawyer to have access to the person.

Division 6.1.7 Duration of forensic mental health orders

48ZP Duration of forensic mental health orders

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

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- (2) A forensic mental health order in relation to a person ends if the person stops being a detainee or a person serving a community-based sentence.
- (3) The chief psychiatrist must tell a person who has been subject to a forensic mental health order if the order is no longer in force.

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

Note 2 The chief psychiatrist or another relevant person may apply for a mental health order in relation to the person (see s 10).

Division 6.1.8 Leave for detained people

48ZQ Grant leave for detained person

- (1) This section applies to a person detained at a correctional centre, approved mental health facility or approved community care facility under a forensic mental health order.
- (2) The relevant official for the forensic mental health order may apply to the ACAT for the person to take a period of leave from the correctional centre, approved mental health facility or approved community care facility.
- (3) The ACAT may allow a person to take a period of leave for any purpose the ACAT considers appropriate if satisfied that the safety of the person, anyone else or the public will not be seriously endangered.

Examples—purposes

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

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3 for compassionate reasons

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

- (4) The grant of leave must state—
 - (a) the purpose for which the leave is granted; and
 - (b) the period for which the leave is granted.
- (5) The grant of leave may be subject to conditions the ACAT considers appropriate in the circumstances, taking into account—
 - (a) section 8 (Principles applying to Act); and
 - (b) the safety of the person, anyone else or the public.

48ZR Revoke leave for detained person

The ACAT may, on application by the relevant official for a forensic mental health order in relation to a person or on its own initiative, revoke a grant of leave in relation to the person if—

- (a) the ACAT considers it is necessary to do so because the person—
 - (i) is doing, or is likely to do, serious harm to himself or herself or someone else; or
 - (ii) is suffering, or is likely to suffer, serious mental or physical deterioration; or
 - (iii) seriously endangers, or is likely to seriously endanger, public safety; or
- (b) the person contravenes a condition of the grant.

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Division 6.1.9 Contravention and review of forensic mental health orders

48ZS Abscond from facility or fail to return from leave

- (1) This section applies to a person detained at a correctional centre, approved mental health facility or approved community care facility under a forensic mental health order.
- (2) The ACAT may issue a warrant for a person's arrest if—
 - (a) satisfied by information on oath that—
 - (i) the person has absconded from the correctional centre, approved mental health facility or approved community care facility; or
 - (ii) the person has failed to return to the correctional centre, approved mental health facility or approved community care facility after a period of leave, granted under section 48ZQ (Grant leave for detained person), ends; or
 - (b) the ACAT revokes a grant of leave in relation to the person under section 48ZR (Revoke leave for detained person).
- (3) The warrant must—
 - (a) be in writing signed by a presidential member of the ACAT; and
 - (b) be directed to all police officers or a named police officer; and
 - (c) state briefly the matter on which the information is based; and
 - (d) order the person's arrest and bringing of the person before the ACAT.

- (4) A police officer who arrests the person under the warrant must, as soon as practicable, return the person to the correctional centre, approved mental health facility or approved community care facility.

48ZT Contravention of forensic mental health order

- (1) This section applies if—
 - (a) a forensic mental health order is in force in relation to a person; and
 - (b) the person contravenes a condition of the order.
- (2) However, this section does not apply to a contravention to which section 48ZS applies.
- (3) The relevant official for the order may—
 - (a) orally tell the person that failure to comply with the order may result in the person being apprehended and taken to a relevant facility for treatment, care or support; and
 - (b) if the noncompliance continues after the taking of action under paragraph (a)—tell the person in writing that failure to comply with the order will result in the person being apprehended and being taken to a relevant facility for treatment, care or support; and
 - (c) if the noncompliance continues after the taking of action under paragraph (b)—require the person to be detained at a relevant facility to ensure compliance with the order.
- (4) If the relevant official requires the detention of a person under subsection (3) (c), the relevant official must tell the ACAT and the public advocate—
 - (a) the name of the person detained; and

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- (b) the reasons for requiring the detention; and
 - (c) the name and address of the where the person is to be detained.
- (5) If a person is required to be detained under subsection (3) (c), a police officer, mental health officer or doctor may apprehend the person and take the person to a relevant facility.
- (6) For subsection (5), a police officer, mental health officer or doctor—
 - (a) may use the force and assistance that is necessary and reasonable to apprehend the person and take the person to the relevant facility; and
 - (b) if there are reasonable grounds for believing that the person is at particular premises—may enter those premises using the force and assistance that is necessary and reasonable.
- (7) If a person is detained under subsection (3) (c), the relevant official must tell the ACAT and the public advocate within 72 hours.
- (8) In this section:
relevant facility means—
 - (a) for a person in relation to whom a forensic psychiatric treatment order is in force—an approved mental health facility or correctional centre; or
 - (b) for a person in relation to whom a forensic community care facility is in force—an approved community care facility.

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48ZU Review, variation and revocation of forensic mental health order

- (1) The ACAT may, on application or on its own initiative, review a forensic mental health order in force in relation to a person.
- (2) The ACAT must review each forensic mental health order in force in relation to the person within 72 hours if the ACAT receives notice under any of the following sections in relation to the person:
 - (a) section 48ZF (Action if forensic psychiatric treatment order no longer appropriate);
 - (b) section 48ZL (Action if forensic community care order no longer appropriate);
 - (c) section 48ZT (2) (Contravention of forensic mental health order).
- (3) Subsection (2) has effect despite section 85 (Notice of hearing).
- (4) If the ACAT is satisfied that a person in relation to whom a forensic mental health order is in force is no longer a person in relation to whom the ACAT could make a forensic mental health order, the ACAT must revoke all the forensic mental health orders in force in relation to the person.
- (5) In any other case, the ACAT may, if appropriate to do so—
 - (a) amend or revoke any of the forensic mental health orders in force in relation to the person; or
 - (b) make additional forensic mental health orders in relation to the person; or
 - (c) make an assessment order in relation to the person.

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Part 6.2 Sharing information about forensic mental health orders— government agencies

48ZV Definitions—pt 6.2

In this part:

information sharing entity means each of the following:

information sharing protocol—see section 48ZW.

- (a) the director-general;
- (b) the director-general responsible for the *Disability Services Act 1991*;
- (c) the director-general responsible for the *Corrections Management Act 2007*.

relevant information means—

- (a) information about a person in relation to whom a forensic mental health order is in force; or
- (b) information prescribed by regulation.

48ZW Information sharing protocol

- (1) An information sharing entity may enter into an arrangement (an *information sharing protocol*) with another information sharing entity to allow each entity—
 - (a) to request and receive relevant information held by each other entity; and
 - (b) to disclose relevant information to each other entity.

- (2) An information sharing entity must only share relevant information under an information sharing protocol if satisfied, and to the extent, it is reasonably necessary for the safe and effective care of the person to whom the information relates.
- (3) An information sharing entity may share relevant information under an information sharing protocol without the consent of the person to whom the information relates.
- (4) If an information sharing entity shares information without the consent of the person to whom the information relates, the entity must tell the following people in writing about the information shared and reasons for sharing the information:
 - (a) if the person has a guardian under the *Guardianship and Management of Property Act 1991*—the guardian;
 - (b) if the person has an attorney appointed under the *Powers of Attorney Act 2006*—the attorney;
 - (c) if the person has a nominated person—the nominated person.

Part 6.3 Affected people

48ZX Meaning of *affected person*

- (1) For this Act, each of the following is an *affected person* in relation to an offence committed, or alleged to have been committed, by a person in relation to whom a forensic mental health order may be made or is in force:
 - (a) a person (a *primary affected person*) who suffers harm because of the offence;

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(b) if a primary affected person dies because of the offence—a person who was financially or psychologically dependent on the primary affected person immediately before the primary affected person's death.

(2) In this section:

because of, an offence—see the *Crimes (Sentencing) Act 2005*, section 47.

harm—see the *Crimes (Sentencing) Act 2005*, section 47.

48ZY Meaning of *registered affected person*

In this Act:

registered affected person, in relation to an offence committed or alleged to have been committed by an adult in relation to whom a forensic mental health order may be made or is in force, means an affected person in relation to the offence whose information is entered in the register kept under section 48ZZ.

48ZZ Affected person register

- (1) The director-general must maintain a register of affected people in relation to offences committed or alleged to have been committed in relation to whom forensic mental health orders may be made or are in force.
- (2) The director-general must enter in the register information about an affected person that the person, or someone acting for the person, asks the director-general to enter in the register.
- (3) As soon as practicable after entering the affected person's information in the register, the director-general must give the affected person, orally or in writing, information about the person's rights as a registered affected person under section 48ZZA.

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- (4) If the affected person is a child under 15 years old, the director-general may give the information to a person who has parental responsibility for the affected person under the *Children and Young People Act 2008*.
- (5) Subsection (4) does not limit the cases in which the director-general may give information to a person acting for a affected person.
- (6) In this section:

director-general means the director-general responsible for the *ACT Civil and Administrative Tribunal Act 2008*.

48ZZA Disclosures to registered affected people

- (1) This section applies if a forensic mental health order has been made in relation to a person who has committed or is alleged to have committed an offence.
- (2) The director-general may disclose information about a person to a registered affected person in relation to the offence if satisfied the disclosure is necessary for the affected person's safety and wellbeing.

Examples—disclosures

- 1 an application for a forensic mental health order in relation to the person
- 2 a forensic mental health order in force in relation to the person
- 3 if the person absconds from a mental health facility or community care facility
- 4 if the person is transferred to or from another jurisdiction
- 5 if the person is released from a mental health facility or community care facility

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

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- (3) However, the director-general must not disclose identifying information about a child unless the offence was a personal violence offence and the director-general believes that the registered affected person, or a family member of the affected person, may come into contact with the child.
- (4) If the registered affected person is a child under 15 years old, the director-general may give the information to a person who has parental responsibility for the affected person under the *Children and Young People Act 2008*.
- (5) Subsection (4) does not limit the cases in which the director-general may give information to a person acting for a registered affected person.
- (6) In this section:
 - domestic violence offence***—see the *Domestic Violence and Protection Orders Act 2008*, section 13 (2).
 - personal violence offence*** means—
 - (a) an offence that involves causing harm, or threatening to cause harm, to anyone; or
 - (b) a domestic violence offence.

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Chapter 7 Correctional patients

Part 7.1 Preliminary

48ZZB Meaning of *correctional patient*

In this Act:

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

Part 7.2 Transfer of correctional patients

48ZZC Transfer to mental health facility or community care facility

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

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48ZZD Return to correction centre unless direction to remain

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

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

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48ZZE Release etc on change of status of correctional patient

- (1) This section applies if the director-general is told by the director-general responsible for the *Corrections Management Act 2007*, or otherwise becomes aware, of any of the following in relation to a person who is a correctional patient:
- (a) the person's sentence of imprisonment ends;
 - (b) the person is released on parole;
 - (c) the person is otherwise released from detention on the order of a court;
 - (d) the relevant charge against the person is dismissed;
 - (e) the director of public prosecutions notifies the ACAT or a court that the relevant charge against the person will not proceed.
- Note* The director-general responsible for the *Corrections Management Act 2007* must tell the director-general of a change in the person's status (see *Corrections Management Act 2007*, s 54A).
- (2) The director-general must—
- (a) at the person's request, continue the detention or treatment, care or support in the approved mental health facility or approved community care facility; or
 - (b) make any other decision that the director-general may make in relation to the person under this Act; or
 - (c) release the person from the approved mental health facility or approved community care facility.

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48ZZF ACAT may return people to correctional centre

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

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

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

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

48ZZG Review of correctional patient awaiting transfer to mental health facility or community care facility

- (1) This section applies to a correctional patient who has not been transferred to an approved mental health facility or approved community care facility under a transfer direction during the period prescribed by regulation.

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- (2) The ACAT must review the transfer direction—
 - (a) at the end of 1 month after the direction is made; and
 - (b) at the end of each subsequent month until the person is transferred to an approved mental health facility or approved community care facility or the transfer direction is revoked.
- (3) For each review, the chief psychiatrist must give the ACAT a report about—
 - (a) the person's condition; and
 - (b) the reasons for the delay in transferring the person to an approved mental health facility or approved community care facility; and
 - (c) the availability of an approved mental health facility or approved community care facility with capacity to accept the transfer and provide the treatment, care or support.
- (4) On review, the ACAT may, as it considers appropriate, make an order in relation to the detention or treatment, care or support of the person in an approved mental health facility, approved community care facility, correctional centre or other place.

48ZZH Review of correctional patient transferred to mental health facility or community care facility

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

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

Part 7.3 Review of correctional patients

48ZZI Review of correctional patient detained at mental health facility or community care facility

- (1) This section applies to a correctional patient transferred to an approved mental health facility or approved community care facility under a transfer direction and detained at the facility for at least 6 months.

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- (2) The ACAT must review the transfer—
 - (a) at the end of each 12-month period that the correctional patient is detained at the approved mental health facility or approved community care facility; and
 - (b) at any other time on request by any of the following:
 - (i) the Minister;
 - (ii) the Attorney-General;
 - (iii) the director-general;
 - (iv) the person in charge of the approved mental health facility or approved community care facility at which the person is detained.
- (3) Also, the ACAT may, at any time on its own initiative, review the transfer.
- (4) For a review, the chief psychiatrist must give the ACAT a report about—
 - (a) the person's condition; and
 - (b) the capacity of the approved mental health facility or approved community care facility to continue, and the availability of any other facility or place to accept a transfer for, the detention or treatment, care or support.
- (5) On review, the ACAT may, as it considers appropriate, make an order in relation to the person's continued detention at, treatment, care or support in, or transfer to, an approved mental health facility, approved community care facility, correctional centre or other place.
- (6) The ACAT must tell the director-general responsible for the *Corrections Management Act 2007* in writing, about a review under this section.

EXPOSURE DRAFT

48ZZJ Extension of time for review of correctional patient

- (1) The ACAT may, on application by a correctional patient or on its own initiative, extend the time for undertaking a review under section 48ZZI by not more than 12 months.
- (2) However, the ACAT may only extend the time under subsection (1) if satisfied that—
 - (a) there are reasonable grounds for the extension; or
 - (b) an earlier review is not required because—
 - (i) there has been no change in the patient's circumstances since the last review; and
 - (ii) there is no apparent need for any change in the existing arrangements for the correctional patient; and
 - (iii) an earlier review may be detrimental to the condition of the correctional patient.

Part 7.4 Leave for correctional patients

48ZZK Grant of leave for correctional patients

- (1) The director-general may allow a correctional patient to take a period of leave from an approved mental health facility or approved community care facility if satisfied that—
 - (a) there are special circumstances for granting the leave; and

Example

to attend a relative's funeral

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

EXPOSURE DRAFT

- (b) the safety of the correctional patient, someone else or the public will not be seriously endangered.
- (2) The grant of leave must state—
 - (a) the purpose for which the leave is granted; and
 - (b) the period for which the leave is granted.
- (3) The grant of leave may be subject to conditions the director-general considers appropriate in the circumstances, taking into account—
 - (a) section 8 (Principles applying to Act); and
 - (b) the safety of the person, anyone else or the public.
- (4) The director-general must, at least 72 hours before allowing leave under this section, tell the director-general responsible for the *Corrections Management Act 2007* about the leave.

48ZZL Revoke leave for correctional patients

The director-general may revoke a grant of leave in relation to a correctional patient if—

- (a) the patient contravenes a condition of the grant; or
- (b) the chief psychiatrist considers it is necessary to revoke the grant because the patient—
 - (i) is doing, or is likely to do, serious harm to himself or herself or someone else; or
 - (ii) is suffering, or is likely to suffer, serious mental or physical deterioration; or
 - (iii) seriously endangers, or is likely to seriously endanger, public safety.

EXPOSURE DRAFT

71 Part 6 heading

substitute

**Chapter 8 Rights of people with mental
dysfunction or mental illness**

**Part 8.1 Rights of people with mental
dysfunction or mental illness—
general**

72 New parts 8.2 and 8.3

after section 53, insert

Part 8.2 Nominated people

53A Nominated person

- (1) A person with a mental dysfunction or mental illness may, in writing, nominate another person to be his or her nominated person.
- (2) However, a person cannot nominate another person to be his or her nominated person unless the proposed nominated person—
 - (a) is an adult; and
 - (b) is able to undertake the functions of a nominated person; and
 - (c) is readily available; and
 - (d) agrees to be nominated as the person's nominated person.

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- (3) The main function of a nominated person for a person with a mental dysfunction or mental illness is to help the person by ensuring that the interests of the person are respected if he or she requires treatment, care or support for his or her mental dysfunction or mental illness.
- (4) Without limiting subsection (3), the functions of a nominated person include—
 - (a) receiving information under this Act; and
 - (b) being consulted about decisions in relation to treatment, care or support; and
 - (c) other functions given to the nominated person under this Act.

Part 8.3 Advance agreements

53B Definitions—pt 8.3

In this part:

administer, treatment, care or support to a person, includes plan treatment, care or support for the person.

nominated member, of a treating team, means a member of the treating team for a person with a mental dysfunction or mental illness nominated by the team to exercise the functions of a nominated member for this part.

treating mental health professional, for a person with a mental dysfunction or mental illness, means a mental health professional who is involved in the assessment or treatment, care or support of the person to improve or maintain the person's mental health.

EXPOSURE DRAFT

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

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

53C Person may make advance agreement

- (1) A person with a mental dysfunction or mental illness may enter into an agreement (an ***advance agreement***) with the person's treating team that sets out the person's preferences in relation to his or her treatment, care or support for the mental dysfunction or mental illness.

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

- (2) An advance agreement for a person must be—
 - (a) in writing; and
 - (b) signed by the person while the person has the decision-making capacity to enter into the agreement; and
 - (c) signed by the nominated member of the person's treating team.

EXPOSURE DRAFT

53D Content of advance agreement

An advance agreement for a person may include the following:

- (a) the ways in which the person wishes to be treated or cared for, or supported in relation to, the person's mental dysfunction or mental illness;
- (b) the ways in which the person does not wish to be treated or cared for, or supported in relation to, the person's mental dysfunction or mental illness;
- (c) any other wish the person may have in relation to treatment, care or support of the person's mental dysfunction or mental illness;
- (d) whether the person consents to the views of his or her family members or carers being obtained in relation to treatment, care or support of the person's mental dysfunction or mental illness.

53E Duration of advance agreement

An advance agreement for a person remains in force for 1 year, starting on—

- (a) the day stated in the agreement; or
- (b) if no day is stated in the agreement—the day the last person signs the agreement.

Note A person in relation to whom an advance agreement is in force may end the agreement under s 53G.

EXPOSURE DRAFT

53F Amending advance agreement

- (1) A person in relation to whom an advance agreement is in force may, by agreement with the person's treating team, amend the advance agreement.
- (2) An amendment of an advance agreement must be—
 - (a) in writing; and
 - (b) signed by the person while the person has the decision-making capacity to amend the agreement; and
 - (c) signed by the nominated member of the person's treating team.
- (3) The amendment takes effect on—
 - (a) the day stated in the amendment; or
 - (b) if no day is stated in the amendment—the day the last person signs the amendment.

53G Ending advance agreement

- (1) A person in relation to whom an advance agreement is in force may end the agreement by telling any mental health professional involved in his or her treatment, care or support, either orally or in writing, that the person wishes to end the agreement.
- (2) The agreement ends on—
 - (a) the day the person tells the mental health professional under subsection (1); or
 - (b) if the person tells the mental health professional that the agreement ends on a later date or time—that date or time.
- (3) Also, an advance agreement in force in relation to a person ends on the day the person enters into another advance agreement.

53H Decisions about treatment etc must consider advance agreement

A person involved in making a decision about treatment, care or support of a person in relation to whom an advance agreement is in force must consider the advance agreement.

Examples—person involved in making a decision

guardian, attorney under a power of attorney

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

53I Treatment etc to be administered under advance agreement

- (1) Before administering treatment, care or support to a person with a mental dysfunction or mental illness, a mental health professional must take reasonable steps to find out if an advance agreement is in force in relation to the person.
- (2) If an advance agreement is in force in relation to a person, a mental health professional may administer treatment, care or support to the person only in accordance with the agreement.
- (3) Subsection (2) does not apply if the mental health professional is administering treatment, care or support to the person in accordance with—
 - (a) a mental health order or forensic mental health order in force in relation to the person; or

EXPOSURE DRAFT

- (b) a decision of a guardian under the *Guardianship and Management of Property Act 1991* or attorney under the *Powers of Attorney Act 2006* made in accordance with the guardian or attorney's appointment.

Note For the effect of a mental health order or forensic mental health order on an advance agreement, see s 53K. For the effect of an appointment of a guardian or attorney on an advance agreement, see s 53L.

53J Treatment etc may be continued after end of advance agreement

- (1) This section applies if—
 - (a) a mental health professional is administering treatment, care or support to a person with a mental dysfunction or mental illness under an advance agreement; and
 - (b) an advance agreement in force in relation to a person ends under section 53E (Duration of advance agreement) in the course of administering the treatment, care or support; and
 - (c) the person to whom the treatment, care or support is being administered does not have the decision-making capacity to consent to the continuation of the treatment, care or support.
- (2) The mental health professional may continue to administer the treatment, care or support to the person under the advance agreement as if it was still in force.
- (3) However, the mental health professional must stop administering the treatment, care or support to the person if asked to stop by—
 - (a) the person; or
 - (b) a guardian appointed for the person under the *Guardianship and Management of Property Act 1991*; or

EXPOSURE DRAFT

- (c) an attorney appointed for the person under the *Powers of Attorney Act 2006*.

Note The mental health professional may apply for a mental health order in relation to the person (see s 10).

53K Effect of mental health order or forensic mental health order on advance agreement

- (1) This section applies if—
 - (a) a mental health order or forensic mental health order is in force in relation to a person; and
 - (b) an advance agreement is also in force in relation to the person.
- (2) If a provision of the mental health order or forensic mental health order (an ***order provision***) is inconsistent with a provision of the advance agreement (an ***agreement provision***), the order provision prevails over the agreement provision to the extent of the inconsistency.

53L Effect of guardian or power of attorney on advance agreement

- (1) This section applies if 1 of the following is appointed for a person in relation to whom an advance agreement is in force:
 - (a) a guardian under the *Guardianship and Management of Property Act 1991*;
 - (b) an attorney under the *Powers of Attorney Act 2006*.
- (2) If a provision of the appointment (an ***appointment provision***) is inconsistent with a provision of the advance agreement (an ***agreement provision***), the appointment provision prevails over the agreement provision to the extent of the inconsistency.

EXPOSURE DRAFT

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

renumber as chapter 9

74 Divisions 7.1 to 7.3

renumber as parts 9.1 to 9.3

75 Subdivisions 7.2.1 to 7.2.6

renumber as divisions 9.2.1 and 9.2.6

**76 Electroconvulsive therapy may be administered with
consent
New section 55A (2)**

insert

- (2) However, if the person is a child who is 12 years old or older, the therapy must not be administered unless—
- (a) an electroconvulsive therapy order is in force in relation to the person; or
 - (b) an emergency electroconvulsive therapy order is in force in relation to the person.

Note Electroconvulsive therapy must not be administered to a child under 12 years old (see s 55DA).

77 New section 55DA

in subdivision 7.2.2, insert

55DA Offence—administering electroconvulsive therapy to children

A person commits an offence if the person administers electroconvulsive therapy to a child who is under 12 years old.

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

**78 Application for electroconvulsive therapy order
Section 55F (2)**

substitute

- (2) The application must be supported by the evidence of—
- (a) a psychiatrist other than the applicant; and
 - (b) if the person is not an adult—a psychiatrist, other than the applicant, who specialises in the treatment of children and young people.

**79 Criteria for making electroconvulsive therapy order
Section 55G (a)**

substitute

- (a) the person, (or, if the person is not an adult, a parent or guardian of the person)—
 - (i) has given informed consent to the administration of electroconvulsive therapy; and
 - (ii) has not withdrawn the consent either orally or in writing;
or

EXPOSURE DRAFT

80 Section 55G (b) (i)

substitute

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

**81 Criteria for making emergency electroconvulsive therapy order
Section 55N (1) (c)**

substitute

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

**82 Consent of Supreme Court
New section 65 (ba)**

insert

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

83 Part 8 heading

substitute

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

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

after

mental health order

insert

or forensic mental health order

**85 Periodic review of orders for detention
Section 72 (1) (c)**

after

section 74

insert

(5)

86 Section 72 (4)

omit

specified mental health orders

substitute

a stated mental health order or forensic mental health order

87 Section 72 (5)

after

mental health orders

insert

or forensic mental health orders

EXPOSURE DRAFT

88 Sections 73 and 74

substitute

73 Contravention of conditions of release

- (1) This section applies if—
 - (a) the ACAT orders the release of a person subject to a condition under section 72 (4); and
 - (b) the person contravenes the condition.
- (2) The chief psychiatrist must tell the ACAT of the contravention as soon as practicable after becoming aware of the contravention.

74 Review of conditions of release

- (1) The ACAT may, on application or on its own initiative, review a condition under section 72 (4) to which an order for release of a person is subject.
- (2) The ACAT must review each condition under section 72 (4), to which an order for release of a person is subject within 72 hours after receiving notice under section 73 (2).
- (3) Subsection (2) has effect despite section 85 (Notice of hearing).
- (4) The ACAT may, as it considers appropriate—
 - (a) amend or revoke any condition of the order, including any requirement to comply with a stated mental health order or forensic mental health order; or
 - (b) impose any other condition the ACAT considers appropriate, including a requirement to comply with a stated mental health order or forensic mental health order.

EXPOSURE DRAFT

- (5) Also, if a person contravenes a condition of an order of release, the ACAT may order the person be detained in custody until the ACAT orders otherwise.

89 Part 9 heading

substitute

Chapter 11 ACAT procedural matters

90 Section 76 heading

substitute

76 Meaning of *subject person*—ch 11

91 Section 76

omit

part

substitute

chapter

92 Sections 77 to 79

substitute

77 When ACAT may be constituted by presidential member

- (1) This section applies to a proceeding on any of the following:
- (a) an assessment order;
 - (b) a removal order under section 9M (2);

EXPOSURE DRAFT

- (c) an order for the extension of a person's detention under section 41 (2A);
 - (d) an order for a person's release under section 46;
 - (e) a review of a transfer direction under section 48ZZG;
 - (f) a review of a transfer direction under section 48ZZH.
- (2) The ACAT may be made up by a presidential member alone, but not a non-presidential member alone.

Note The general president of the ACAT is responsible for allocating members to the ACAT for an application (see *ACT Civil and Administrative Tribunal Act 2008*, s 89).

78 When ACAT must be constituted by more members

- (1) This section applies to a proceeding on any of the following:
- (a) a mental health order;
 - (b) a review of a mental health order under section 36L;
 - (c) a forensic mental health order;
 - (d) a review of a forensic mental health order under section 48ZU;
 - (e) an electroconvulsive therapy order under section 55G;
 - (f) an emergency electroconvulsive therapy order under section 55N;
 - (g) a review of a person's fitness to plead under section 68;
 - (h) a recommendation under section 70 or section 70A about a person who has a mental impairment, mental dysfunction or mental illness;
 - (i) a review of an order for detention under section 72;

EXPOSURE DRAFT

- (j) a review of a condition in force in relation to a person released from detention under section 74.
- (2) The ACAT must include—
 - (a) a presidential member; and
 - (b) a non-presidential member with a relevant interest, experience or qualification.

Note The general president of the ACAT is responsible for allocating members to the ACAT for an application (see *ACT Civil and Administrative Tribunal Act 2008*, s 89).

79 Applications and referrals

- (1) This section applies to an application or referral to the ACAT under this Act.

Note Requirements for applications to the ACAT are set out in the *ACT Civil and Administrative Tribunal Act 2008*, s 10.

- (2) The ACAT must, as soon as practicable but not longer than 24 hours after the application or referral is lodged, give a copy of the application or referral to—
 - (a) the public advocate; and
 - (b) if the subject person is a child—the CYP director-general.

93 Appearance **New section 80 (1) (ca)**

insert

- (ca) if the subject person has made a power of attorney under the *Powers of Attorney Act 2006*—the attorney under the power of attorney;

EXPOSURE DRAFT

94 Section 80 (1) (d)

substitute

- (d) the applicant or referring officer (if any);
- (da) if the proceeding is on a forensic mental health order for which there is a registered affected person for the offence committed or alleged to have been committed by the subject person—the victims of crime commissioner;

**95 Notice of hearing
New section 85 (da)**

insert

- (da) if the subject person has an attorney appointed under the *Powers of Attorney Act 2006*—the attorney;

96 Section 85 (e)

substitute

- (e) the applicant or referring officer (if any);
- (ea) if the hearing is on a proceeding on a forensic mental health order for which there is a registered affected person for the offence committed or alleged to have been committed by the subject person—
 - (i) the registered affected person; or
 - (ii) the victims of crime commissioner;

**97 Who is given a copy of the order?
Section 87 (1) (g)**

substitute

- (g) if the subject person was referred to the ACAT under section 9F, section 13, section 48T or section 48U—the referring officer;
- (ga) if the subject person was referred to the ACAT under section 48U—the director-general responsible for the *Corrections Management Act 2007*;

98 New section 87 (2) (ba)

insert

- (ba) a forensic psychiatric treatment order;

99 New section 87 (3) (c)

insert

- (c) a forensic community care order;

100 Part 10 heading

substitute

Chapter 12 Administration

Part 12.1 Chief psychiatrist and mental health officers

EXPOSURE DRAFT

**101 Functions
New section 113 (c)**

insert

(c) any other function given to the care coordinator under this Act.

**102 Care coordinator
Part 10A**

renumber as part 12.2

**103 Functions
Section 120B (c)**

substitute

- (c) to coordinate the provision of appropriate residential or detention facilities for people with a mental dysfunction in relation to whom any of the following orders are in force:
- (i) a community care order;
 - (ii) a restriction order with a community care order;
 - (iii) a forensic community care order;

104 New section 120B (f)

insert

(f) any other function given to the care coordinator under this Act.

**105 Official visitors
Part 11**

renumber as part 12.3

**106 Appointment etc
New section 121 (1A)**

after the notes, insert

- (1A) The Minister may appoint 1 official visitor as the principal official visitor.

107 New section 121A

insert

121A Principal official visitor—functions

In addition to the functions of an official visitor, the principal official visitor has the following functions:

- (a) to oversee the exercise of the functions of official visitors, including reporting to the Minister and the public advocate under section 122B;
- (b) to report to the Minister, as requested, on the exercise of his or her functions and the functions of official visitors;
- (c) any other function given to the principal official visitor under this Act.

**108 Official visitor—functions
Section 122 (1) (b) (v)**

substitute

- (v) any other matter that an official visitor considers appropriate taking into account section 7 (Objects of Act) and section 8 (Principles applying to Act); and

EXPOSURE DRAFT

109 Section 122 (2)

omit

(within the meaning of part 6)

110 New section 122 (4)

insert

(4) In this section:

responsible person—see section 49.

111 New part 12.4

insert

Part 12.4 Coordinating director-general

122C Coordinating director-general

The Chief Minister may appoint a director-general to be a coordinating director-general.

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

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

122D Functions of coordinating director-general

A coordinating director-general has the function of working with other government agencies to promote cooperation in achieving the objects of this Act and to coordinate activities undertaken by agencies that relate to the objects.

122E Coordinating director-general instructions

- (1) The coordinating director-general may make instructions, consistent with this Act, for the management or operation of any administrative function under this Act.
- (2) A person exercising an administrative function under this Act must comply with an instruction.

**112 Private psychiatric institutions
Part 12**

renumber as chapter 13

113 Divisions 12.1 to 12.5

renumber as parts 13.1 to 13.5

114 Section 123 heading

substitute

123 Definitions—ch 13

115 Section 123

omit

part

substitute

chapter

EXPOSURE DRAFT

116 Section 136 heading

substitute

136 Meaning of *reviewable decision*—pt 13.4

117 Section 136

omit

division

substitute

part

118 New chapter 14

insert

Chapter 14 Mental health advisory council

139 Establishment of mental health advisory council

The mental health advisory council is established.

139A Mental health advisory council functions

The mental health advisory council has the following functions:

- (a) advising the Minister about—
 - (i) emerging or urgent mental health issues; and
 - (ii) mental health service reforms; and
 - (iii) mental health policy; and
 - (iv) mental health legislative change;

EXPOSURE DRAFT

- (b) any other function given to the council under this Act.

139B Membership of mental health advisory council

- (1) The mental health advisory council is made up of at least 5, and not more than 7, members appointed by the Minister.

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

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

Note 3 Certain Ministerial appointments require consultation with an Assembly committee and are disallowable (see Legislation Act, div 19.3.3).

- (2) In appointing members to the mental health advisory council, the Minister must, unless it is not reasonably practicable, ensure that the council includes—

- (a) someone who is or has been—
 - (i) a person with a mental dysfunction or mental illness; or
 - (ii) a carer of a person with a mental dysfunction or mental illness; and
- (b) someone with experience or expertise in mental health; and
- (c) someone with current knowledge of scientific, evidence-based mental health research and practice; and
- (d) someone with experience or expertise in mental health promotion and mental illness prevention and treatment, care or support.

EXPOSURE DRAFT

- (3) A person must be appointed to the mental health advisory council for not longer than 3 years.

Note A person may be reappointed to a position if the person is eligible to be appointed to the position (see Legislation Act, s 208 and dict, pt 1, def *appoint*).

139C Mental health advisory council procedure

- (1) Meetings of the mental health advisory council are to be held when and where it decides.
- (2) However, the mental health advisory council must meet at least once each quarter.
- (3) The mental health advisory council may conduct its proceedings (including its meetings) as it considers appropriate.
- (4) The mental health advisory council may publish its considerations as it considers appropriate.

119 Part 13 heading

substitute

Chapter 16 Miscellaneous

139D Approved mental health facilities

- (1) The Minister may approve a mental health facility (an *approved mental health facility*) for this Act.
- (2) An approval is a notifiable instrument.

Note 1 A notifiable instrument must be notified under the Legislation Act.

Note 2 Power to make a statutory instrument includes power to make different provision for different categories (see Legislation Act, s 48).

EXPOSURE DRAFT

139E Approved community care facilities

- (1) The Minister may approve a community care facility (an *approved community care facility*) for this Act.
- (2) An approval is a disallowable instrument.

Note 1 A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

Note 2 Power to make a statutory instrument includes power to make different provision for different categories (see Legislation Act, s 48).

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

substitute

- (a) is not entitled to give consent to electroconvulsive therapy or psychiatric surgery; and

121 New section 142 (1A)

insert

- (1A) However, the guardian may make decisions for a person with a mental dysfunction or mental illness, and give consent to treatment for mental illness (other than electroconvulsive therapy or psychiatric surgery) in relation to the person if the person—
 - (a) has impaired decision-making ability; but
 - (b) expresses willingness to receive the treatment.

EXPOSURE DRAFT

122 New section 142 (3)

insert

- (3) In this section:

impaired decision-making ability—see the *Guardianship and Management of Property Act 1991*, section 5.

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

substitute

- (a) is not entitled to give consent to treatment for electroconvulsive therapy or psychiatric surgery; and

124 New section 143 (2) and (3)

insert

- (2) However, the attorney may make decisions for a person with a mental dysfunction or mental illness, and give consent to treatment for mental illness (other than electroconvulsive therapy or psychiatric surgery) in relation to the person if the person—
- (a) has impaired decision-making capacity; but
- (b) expresses willingness to receive the treatment.
- (3) In this section:
- impaired decision-making capacity*—see the *Powers of Attorney Act 2006*, section 9 (2).

125 Schedule 1 heading, reference

substitute

(see pt 13.4)

126 Dictionary, note 2

insert

- adult

127 Dictionary, new definitions

insert

administer, treatment, care or support to a person, for part 8.3 (Advance agreements)—see section 53B.

advance agreement—see section 53C.

affected person—see section 48ZX.

128 Dictionary, definition of *agreement*

substitute

agreement, for chapter 15 (Interstate application of mental health laws)—see section 48B.

129 Dictionary, new definition of *ambulance paramedic*

insert

ambulance paramedic means a member of the ambulance service employed as a paramedic.

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

omit

EXPOSURE DRAFT

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

insert

approved community care facility—see section 139E.

132 Dictionary, definition of *approved health facility*

omit

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

substitute

approved mental health facility—see section 139D.

assessment order means an order under section 9H.

134 Dictionary, new definitions

insert

community-based sentence, for part 6.1 (Forensic mental health orders)—see the *Crimes (Sentence Administration) Act 2005*, section 264.

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

correctional patient—see section 48ZZB.

135 Dictionary, definition of *corresponding law*

substitute

corresponding law, for chapter 15 (Interstate application of mental health laws)—see section 48B.

EXPOSURE DRAFT

136 Dictionary, new definitions

insert

decision-making capacity, of a person, means the person's decision-making capacity, taking into account the decision-making capacity principles in section 9.

detainee—see the *Corrections Management Act 2007*, section 6.

forensic mental health order means a forensic psychiatric treatment order or a forensic community care order.

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

information sharing entity, for part 6.2 (Sharing information about forensic mental health orders—government agencies)—see section 48ZV.

information sharing protocol, for part 6.2 (Sharing information about forensic mental health orders—government agencies)—see section 48ZW.

137 Dictionary, definitions of *informed consent*, *inspector*, *interstate custodial patient* and *interstate non-custodial order*

substitute

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

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

interstate custodial patient, for chapter 15 (Interstate application of mental health laws)—see section 48B.

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interstate non-custodial order, for chapter 15 (Interstate application of mental health laws)—see section 48B.

138 Dictionary, definitions of *licence*, *licensed premises*, *licensee* and *mental dysfunction*

substitute

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

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

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

mental dysfunction—see section 9A.

139 Dictionary, definition of *mental illness*

substitute

mental illness—see section 9B.

140 Dictionary, new definitions of *nominated member* and *nominated person*

insert

nominated member, of a treating team, for part 8.3 (Advance agreements)—see section 53B.

nominated person means the person nominated as the nominated person for a person with a mental dysfunction or mental illness under section 53A.

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

before

mental health order

insert

forensic

142 Dictionary, definition of *official visitor*

omit

section 121

substitute

section 121 (1)

143 Dictionary, new definition of *principal official visitor*

insert

principal official visitor means the principal official visitor appointed under section 121 (1A).

144 Dictionary, definitions of *private psychiatric institution, proceeding* and *psychiatric institution*

substitute

private psychiatric institution means an institution in relation to which a licence is issued under chapter 13 (Private psychiatric institutions).

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

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psychiatric institution—

- (a) for this Act generally— means a hospital or other institution for the treatment, care, rehabilitation or accommodation of people who have a mental illness, that is—
 - (i) an institution conducted by the Territory; or
 - (ii) a private psychiatric institution; and
- (b) for chapter 13 (Private psychiatric institutions)—see section 207.

145 Dictionary, new definitions

insert

registered affected person—see section 48ZY.

relevant information, for part 6.2 (Sharing information about forensic mental health orders—government agencies)—see section 48ZV.

relevant official—

- (a) for chapter 4 (Mental health orders)—see section 9S; or
- (b) for part 6.1 (Forensic mental health orders)—see section 48S.

146 Dictionary, definitions of *responsible person* and *reviewable decision*

substitute

responsible person, for chapter 8 (Rights of people with mental dysfunctional or mental illness)—see section 49.

reviewable decision, for part 13.4 (Notification and review of decisions)—see section 136.

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147 Dictionary, definitions of *State* and *subject person*

substitute

State, for chapter 15 (Interstate application of mental health laws)—see section 48B.

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

148 Dictionary, new definitions

insert

transfer direction—see section 48ZZC (3)

treating mental health professional, for a person with a mental dysfunction or mental illness, for part 8.3 (Advance agreements)—see section 53B.

treating team, for a person with a mental dysfunction or mental illness, for part 8.3 (Advance agreements)—see section 53B.

treatment, care or support, for a mental dysfunction or mental illness—

- (a) means things done in the course of the exercise of professional skills to remedy the dysfunction or illness or lessen its ill effects or the pain or suffering it causes; and
- (b) includes the giving of medication and counselling, training, therapeutic and rehabilitation programs, care or support; but
- (c) does not include electroconvulsive therapy or psychiatric surgery unless expressly provided for under this Act.

Examples—rehabilitation support

- 1 support to improve social confidence and integration

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2 assistance to improve work skills

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

victims of crime commissioner means the victims of crime commissioner appointed under the *Victims of Crime Act 1994*.

**149 Mental Health (Treatment and Care) Act 1994—
renumbering**

renumber provisions when Act is next republished under Legislation Act.

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Schedule 1 Legislation amended

(see s 3)

Part 1.1 Children and Young People Act 2008

[1.1] Section 530 (1), definitions of *mental dysfunction* and *mental illness*

substitute

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

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

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

Note The *Mental Health (Treatment and Care) Act 1994*, s 9B defines ***mental illness*** as a condition that seriously impairs (either temporarily or permanently) the mental functioning of a person in 1 or more areas of thought, mood, volition, perception, orientation or memory, and is characterised by—

- (a) the presence of at least 1 of the following symptoms:
 - (i) delusions;
 - (ii) hallucinations;
 - (iii) serious disorders of streams of thought;
 - (iv) serious disorder of thought form;
 - (v) serious disturbance of mood; or

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- (b) sustained or repeated irrational behaviour that may be taken to indicate the presence of at least 1 of the symptoms mentioned in par (a).

[1.2] Section 863 (2), example 2

substitute

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

**Part 1.2 Corrections Management Act
2007**

[1.3] New section 54A

insert

54A Transfer to mental health facility—transfer direction

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

Examples

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

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

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(3) In this section:

approved community care facility—see the *Mental Health (Treatment and Care) Act 1994*, section 139E.

approved mental health facility—see the *Mental Health (Treatment and Care) Act 1994*, section 139D.

Part 1.3 Crimes Act 1900

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

insert

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

[1.5] Section 301 (2)

after

term

insert

(a *limiting term*)

[1.6] New section 301 (3) to (5)

insert

- (3) If the Supreme Court indicates that it would not have imposed a sentence of imprisonment, the court may impose any other penalty or make any other order it might have made on conviction of the person for the offence in normal criminal proceedings.

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- (4) In nominating a limiting term in relation to an offence, the Supreme Court may, as it considers appropriate, take into account the periods (if any) the person has been detained in relation to the offence, before or after the special hearing.
- (5) A limiting term nominated in relation to an offence takes effect on—
 - (a) the day the Supreme Court nominates the term; or
 - (b) if, after taking into account any periods mentioned in subsection (4), the Supreme Court nominates an earlier day—the earlier day; or
 - (c) if the Supreme Court nominates a later day to allow the term to be served consecutively (or partly concurrently and partly consecutively) with some other limiting term or sentence of imprisonment—the later day.

[1.7] Section 302 (2)

after

term

insert

(a *limiting term*)

[1.8] New section 302 (3) to (5)

insert

- (3) If the Supreme Court indicates that it would not have imposed a sentence of imprisonment, the court may impose any other penalty or make any other order it might have made on conviction of the person for the offence in normal criminal proceedings.

EXPOSURE DRAFT

- (4) In nominating a limiting term in relation to an offence, the Supreme Court may, as it considers appropriate, take into account the periods (if any) the person has been detained in relation to the offence, before or after the special hearing.
- (5) A limiting term nominated in relation to an offence takes effect on—
 - (a) the day the Supreme Court nominates the term; or
 - (b) if, after taking into account any periods mentioned in subsection (4), the Supreme Court nominates an earlier day—the earlier day.

[1.9] Section 304 (2)

after

term

insert

(a *limiting term*)

[1.10] New section 304 (3) to (5)

insert

- (3) If the Magistrates Court indicates that it would not have imposed a sentence of imprisonment, the court may impose any other penalty or make any other order it might have made on conviction of the person for the offence in normal criminal proceedings.
- (4) In nominating a limiting term in relation to an offence, the Magistrates Court may, as it considers appropriate, take into account the periods (if any) the person has been detained in relation to the offence, before or after the special hearing.

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- (5) A limiting term nominated in relation to an offence takes effect on—
- (a) the day the Magistrates Court nominates the term; or
 - (b) if, after taking into account any periods mentioned in subsection (4), the Magistrates Court nominates an earlier day—the earlier day.

[1.11] Section 305 (2)

after

term

insert

(a *limiting term*)

[1.12] New section 305 (3) to (5)

insert

- (3) If the Magistrates Court indicates that it would not have imposed a sentence of imprisonment, the court may impose any other penalty or make any other order it might have made on conviction of the person for the offence in normal criminal proceedings.
- (4) In nominating a limiting term in relation to an offence, the Magistrates Court may, as it considers appropriate, take into account the periods (if any) the person has been detained in relation to the offence, before or after the special hearing.
- (5) A limiting term nominated in relation to an offence takes effect on—
- (a) the day the Magistrates Court nominates the term; or

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(b) if, after taking into account any periods mentioned in subsection (4), the Magistrates Court nominates an earlier day—the earlier day.

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

omit

approved health facility

substitute

approved mental health facility

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

omit

approved health facility or

[1.15] Section 309 (3)

before paragraph (a), omit

approved health facility

substitute

approved mental health facility

[1.16] Section 309 (3) (a)

omit

approved health facility or, if detailed in for care, an approved mental health

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[1.17] Section 309 (3) (b)

omit

approved health facility or approved mental health

[1.18] Section 309 (4), definitions of *approved health facility* and *approved mental health facility*

substitute

approved mental health facility—see the *Mental Health (Treatment and Care) Act 1994*, section 139D.

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

after

mental health order

insert

or forensic mental health order

in

- section 315D
- section 318
- section 319
- section 323
- section 324
- section 328
- section 329
- section 331
- section 334
- section 335

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Part 1.4 Crimes (Child Sex Offenders) Regulation 2005

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

substitute

- (ii) for an offender released from detention under the *Mental Health (Treatment and Care) Act 1994*, chapter 4 (Mental health orders), chapter 5 (Emergency detention) or part 6.1 (Forensic mental health orders)—the ACAT; or

Part 1.5 Crimes (Sentence Administration) Act 2005

[1.21] New section 321AA

before section 321A, insert

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

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

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Part 1.6 Guardianship and Management of Property Act 1991

[1.22] Section 70 heading

substitute

70 Consent to prescribed medical procedures

[1.23] Section 70 (1)

omit

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

substitute

(other than treatment for electroconvulsive therapy or psychiatric surgery)

[1.24] Section 70 (1), note

omit

[1.25] New section 70 (1A)

insert

(1A) The guardian may consent to treatment for mental illness (other than electroconvulsive therapy or psychiatric surgery) in relation to the person if the person—

- (a) has impaired decision-making ability; but
- (b) expresses willingness to receive the treatment.

Note Electroconvulsive therapy and psychiatric surgery are dealt with under the *Mental Health (Treatment and Care) Act 1994*.

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[1.26] Section 70 (2)

omit

the consent

substitute

an order for consent under subsection (1)

[1.27] New section 70A

insert

70A Restrictions on consent by guardian to prescribed medical procedures

- (1) This section applies if consent to treatment for mental illness is given in relation to a person under section 70 (1A).
- (2) The consent must be for a stated period, of not longer than 6 months, taking into account—
 - (a) if, and when, the person is likely to no longer have impaired decision-making ability; and
 - (b) the likely duration of the treatment required.
- (3) The guardian must tell the ACAT and the public advocate in writing about the consent to treatment including the stated period.
- (4) The ACAT must review the treatment given in accordance with the consent within the stated period.
- (5) The consent ends if—
 - (a) the ACAT directs that the consent be withdrawn; or

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(b) section 70 (1A) no longer applies to the person.

Examples—par (b)

- 1 the person no longer has impaired decision-making ability and can decide to receive the treatment
- 2 the person expresses unwillingness to receive the treatment

Note 1 The chief psychiatrist or another relevant person may apply for a mental health order in relation to the person (see *Mental Health (Treatment and Care) Act 1994*, s 10).

Note 2 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

[1.28] Dictionary, definition of *mental illness*

omit

dictionary

substitute

section 9B

Part 1.7 Powers of Attorney Act 2006

[1.29] Section 37 (1) (e)

omit

[1.30] New section 46 (3) to (7)

insert

- (3) An attorney under the enduring power of attorney may consent to treatment for mental illness (other than electroconvulsive therapy or psychiatric surgery) if the principal expresses willingness to receive the treatment.

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- (4) The consent must be for a stated period, of not longer than 6 months, taking into account—
 - (a) if, and when, the person is likely to regain decision-making capacity; and
 - (b) the likely duration of the treatment required.
- (5) The attorney must tell the ACAT and the public advocate in writing about the consent to treatment including the stated period.
- (6) The ACAT must review the treatment given in accordance with the consent within the stated period.
- (7) The consent ends if—
 - (a) the ACAT directs that the consent be withdrawn; or
 - (b) the principal—
 - (i) has decision-making capacity; or
 - (ii) expresses unwillingness to receive the treatment.

Examples

- 1 the person regains decision-making capacity and can decide to receive the treatment
- 2 the person expresses willingness to receive the treatment

Note 1 The chief psychiatrist or another relevant person may apply for a mental health order in relation to the person (see *Mental Health (Treatment and Care) Act 1994*, s 10).

Note 2 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

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Part 1.8 Public Advocate Act 2005

[1.31] Dictionary, definitions of *mental dysfunction* and *mental illness*

substitute

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

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

Part 1.9 Victims of Crime Act 1994

[1.32] New section 11 (ba)

insert

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

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Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 2012.

2 Notification

Notified under the Legislation Act on 2012.

3 Republications of amended laws

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

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