

# EXPOSURE DRAFT

**Minister for Health**

(Prepared by Parliamentary Counsel's Office)

## **Mental Health (Treatment and Care) Amendment Bill 2013**

### **Contents**

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	Page
1 Name of Act	2
2 Commencement	2
3 Legislation amended	2
4 Long title	2
5 Part 1 heading	2
6 Section 1	3
7 Offences against Act—application of Criminal Code etc Section 4A, note 1	3

## Contents

---

	Page
8 Sections 5, 6 and part 2	3
9 New parts 3.2, 3.3 and chapter 4	10
10 Mental health orders	
Part 4	29
11 Division 4.1 heading	30
12 Sections 10 and 11	30
13 Applicant to tell ACAT of risks	
Section 12	32
14 Assessments	
Division 4.2	32
15 ACAT must consider assessment	
Section 23 (a)	32
16 New section 23 (2) and (3)	32
17 Section 24	33
18 Section 25	33
19 What ACAT must take into account	
New section 26 (aa)	34
20 Section 26 (a)	34
21 New section 26 (ba)	34
22 Section 26 (f) to (i)	34
23 Section 26 (k)	35
24 Section 26 (m)	35
25 Section 26 (n)	35
26 New section 26 (2)	35
27 Section 28	36
28 Content of psychiatric treatment order	
Section 29 (1) (a)	37
29 Section 29 (3)	38
30 Role of chief psychiatrist	
Section 32 (1)	38
31 Section 32 (2) (a)	38
32 New section 32 (4) (d) and (e)	38

## EXPOSURE DRAFT

## Contents

---

	Page
33 Section 32 (7)	39
34 Treatment to be explained	
Section 33	39
35 Sections 34 and 35	39
36 Section 36	43
37 Content of community care order	
Section 36A (1) (b)	45
38 Section 36A (3)	45
39 Content of restriction order	
Section 36C (a)	45
40 Role of care coordinator	
New section 36D (3) (b) (iii) and (iv)	46
41 New section 36D (5) (ba)	46
42 New section 36D (5) (e) and (f)	46
43 Section 36E heading	47
44 Section 36E	47
45 Section 36F	47
46 Section 36G	48
47 Limits on communication	
Section 36H (1) (c)	51
48 Section 36H (1) and (2)	51
49 New section 36H (2A)	51
50 Section 36H (7)	52
51 Section 36H (8)	52
52 Communication with public advocate and person's lawyer	
Section 36I (3)	52
53 Contravention of psychiatric treatment order or community care order	
Section 36K (3)	52
54 Section 36K (3) to (5)	53
55 Section 36K (4)	53
56 Section 36K (5) and (6)	53
57 Section 36K (7) and (8)	53

## EXPOSURE DRAFT

	Page
58	Review, variation and revocation of orders
	Section 36L (5) (c) 53
59	Divisions 4.3 to 4.7 (as amended) 54
60	Part 5 heading 54
61	Apprehension
	Section 37 (1) 54
62	Section 37 (1) and (2) 54
63	Section 37 (1) and (2) 54
64	Section 37 (2) (a) (i) 55
65	Section 37 (2) (a) (ii) 55
66	Section 37 (2) (a) (ii), (2) (b) and (2) (d) 55
67	Section 37 (4) 55
68	Detention Section 38 56
69	Circumstances in which copy of court order to be provided
	Section 38A 57
70	Statement of action taken
	Section 39 (1) 57
71	Section 39 (1) 57
72	Sections 40 and 41 58
73	Notification of Magistrates Court about emergency detention or release from emergency detention
	Section 41A 61
74	Section 43 61
75	Treatment during detention
	Section 44 (1) 61
76	Section 44 (1), note 61
77	Section 44 (as amended) 61
78	Section 48 62
79	Divisions 5A.1 to 5A.5 62
80	Section 48A heading 62
81	Section 48A 62
82	Section 48B heading 62

## EXPOSURE DRAFT

## Contents

	Page
83 Section 48B	62
84 Authority to enter into agreements Section 48C	63
85 Recognition of interstate laws and orders Section 48D	63
86 Section 48M (1)	63
87 Regulations relating to apprehension of persons Section 48R	64
88 Part 5A (as amended)	64
89 New chapters 7 and 8	64
90 Part 6 heading	119
91 Section 49 heading	119
92 Section 49, definition of <i>responsible person</i> , paragraph (c)	119
93 Statement of rights Section 50 (1) (b) (i)	120
94 Information to be provided New section 51 (d) (ix)	120
95 Communication Section 52 (1)	120
96 Section 52 (2)	120
97 Sections 49 to 53 (as amended)	120
98 Electroconvulsive therapy may be administered with consent New section 55A (2)	121
99 New section 55DA	121
100 Electroconvulsive therapy may be administered under electroconvulsive therapy order Section 55E	122
101 Section 55E (c)	122
102 Application for electroconvulsive therapy order Section 55F (1) (a)	122
103 Section 55F (2)	123
104 New section 55F (3)	123

## EXPOSURE DRAFT

	Page
105	Criteria for making electroconvulsive therapy order Section 55G
	123
106	Section 55G (a)
	124
107	Section 55G (b) (i)
	124
108	Content of electroconvulsive therapy order Section 55H (b)
	124
109	Offence—electroconvulsive therapy without electroconvulsive therapy order Section 55I (1) (a)
	125
110	Offence—electroconvulsive therapy on 10 or more occasions since electroconvulsive therapy order Section 55J (1) (a)
	125
111	Offence—electroconvulsive therapy after order consent withdrawn Section 55K (1) (a)
	125
112	Section 55K (1) (c)
	126
113	Application for emergency electroconvulsive therapy order Section 55M (1) (c)
	126
114	Section 55M (2) (a)
	126
115	New section 55M (2) (c)
	127
116	Criteria for making emergency electroconvulsive therapy order Section 55N (1) (c) and (d)
	127
117	Consent of Supreme Court New section 65 (ba)
	127
118	Electroconvulsive therapy and psychiatric surgery Part 7
	127
119	Divisions 7.1 to 7.3
	128
120	Subdivisions 7.2.1 to 7.2.6
	128
121	Part 8 heading
	128
122	Review of certain people found unfit to plead Section 68 (8)
	128
123	Recommendations about people with mental illness or mental dysfunction Section 70A
	128

## EXPOSURE DRAFT

---

		Page
124	Periodic review of orders for detention	
	Section 72 (1) (c)	129
125	Section 72 (3) (a)	129
126	Section 72 (4)	129
127	Section 72 (5)	129
128	Sections 73 and 74	130
129	Part 9 heading	131
130	Section 76 heading	131
131	Section 76	131
132	Sections 77 to 79	132
133	Appearance	
	Section 80 (1) (d)	134
134	Section 80 (1) (g)	134
135	Directions to registrar	
	Section 84 (2)	134
136	Notice of hearing	
	Section 85 (e)	135
137	Section 85 (i)	135
138	New section 85 (2)	135
139	Who is given a copy of the order? Section 87 (1) (g)	136
140	New section 87 (2) (ba)	136
141	New section 87 (3) (c)	136
142	Part 10 heading	137
143	Functions Section 113	137
144	New section 113 (c)	137
145	Section 116	138
146	Care coordinator	
	Part 10A	138
147	Functions	
	Section 120B	138
148	Section 120B (c)	139
149	Section 120B (e)	139

---

## EXPOSURE DRAFT

## Contents

---

	Page
150 New section 120B (f)	139
151 Section 120C	140
152 Official visitors	
Part 11	140
153 Appointment etc	
New section 121 (1A)	140
154 Section 121 (2) (d)	140
155 New section 121A	141
156 Official visitor—functions	
Section 122 (1) (b) (i)	141
157 Section 122 (1) (a) (ii), (iii) and (vi)	141
158 Section 122 (1) (b) (v)	142
159 Section 122 (2)	142
160 New section 122 (4)	142
161 Official visitor—powers etc	
Section 122A (1)	142
162 New part 12.4	143
163 Section 123 heading	144
164 Section 123	144
165 Section 123, definition of <i>psychiatric institution</i>	144
166 Issue of licence	
Section 125	144
167 Section 125 (4)	145
168 Effect of cancellation	
Section 131	145
169 Powers of inspection	
Section 134	145
170 Section 136 heading	145
171 Section 136	146
172 Unauthorised treatment	
Section 138	146
173 Private psychiatric institutions	
Part 12	146

## EXPOSURE DRAFT



	Page
174 Divisions 12.1 to 12.5	146
175 New chapter 14	147
176 Part 13 heading	149
177 Legal effect of certain sections Section 140	150
178 Relationship with Guardianship and Management of Property Act Section 142 (1) (a)	150
179 New section 142 (1A) and (1B)	151
180 New section 142 (3)	151
181 Relationship with Powers of Attorney Act Section 143 (a)	151
182 New section 143 (2) and (3)	152
183 Schedule 1 heading, reference	152
184 Dictionary, note 2	152
185 Dictionary, new definitions of <i>advance agreement</i> and <i>affected person</i>	152
186 Dictionary, definition of <i>agreement</i>	153
187 Dictionary, new definitions of <i>alleged offender</i> and <i>ambulance paramedic</i>	153
188 Dictionary, definitions of <i>applicant</i> and <i>application</i>	153
189 Dictionary, new definition of <i>approved community care facility</i>	153
190 Dictionary, definition of <i>approved health facility</i>	153
191 Dictionary, definitions of <i>approved mental health facility</i> and <i>assessment order</i>	154
192 Dictionary, new definition of <i>community-based sentence</i>	154
193 Dictionary, definition of <i>community care facility</i>	154
194 Dictionary, new definitions of <i>coordinating director-general</i> and <i>correctional patient</i>	154
195 Dictionary, definition of <i>corresponding law</i>	155
196 Dictionary, new definitions	155
197 Dictionary, definitions of <i>informed consent</i> , <i>inspector</i> , <i>interstate custodial patient</i> and <i>interstate non-custodial order</i>	156
198 Dictionary, definitions of <i>licence</i> , <i>licensed premises</i> , <i>licensee</i> and <i>mental disorder</i>	157

## EXPOSURE DRAFT

		Page
199	Dictionary, definition of <i>mental dysfunction</i>	157
200	Dictionary, definition of <i>mental health facility</i>	157
201	Dictionary, definition of <i>mental health professional</i>	157
202	Dictionary, definition of <i>mental illness</i>	158
203	Dictionary, new definition of <i>nominated person</i>	158
204	Dictionary, definition of <i>offender with a mental impairment</i>	158
205	Dictionary, definition of <i>official visitor</i>	158
206	Dictionary, new definitions of <i>ordinary search</i> and <i>principal official visitor</i>	159
207	Dictionary, definitions of <i>private psychiatric institution</i> and <i>proceeding</i>	159
208	Dictionary, definitions of <i>psychiatric institution</i>	159
209	Dictionary, definition of <i>referring officer</i>	160
210	Dictionary, new definitions	161
211	Dictionary, definitions of <i>responsible person</i> and <i>reviewable decision</i>	161
212	Dictionary, definitions of <i>State</i> and <i>subject person</i>	161
213	Dictionary, new definitions	162
214	Mental Health (Treatment and Care) Act 1994—renumbering	163
<b>Schedule 1</b>	<b>Legislation amended</b>	164
<b>Part 1.1</b>	<b>Children and Young People Act 2008</b>	164
<b>Part 1.2</b>	<b>Corrections Management Act 2007</b>	166
<b>Part 1.3</b>	<b>Crimes Act 1900</b>	167
<b>Part 1.4</b>	<b>Crimes (Child Sex Offenders) Regulation 2005</b>	173
<b>Part 1.5</b>	<b>Crimes (Sentence Administration) Act 2005</b>	173
<b>Part 1.6</b>	<b>Guardianship and Management of Property Act 1991</b>	174
<b>Part 1.7</b>	<b>Powers of Attorney Act 2006</b>	177
<b>Part 1.8</b>	<b>Public Advocate Act 2005</b>	178
<b>Part 1.9</b>	<b>Victims of Crime Act 1994</b>	179

## EXPOSURE DRAFT

# EXPOSURE DRAFT

**Minister for Health**

(Prepared by Parliamentary Counsel's Office)

## **Mental Health (Treatment and Care) Amendment Bill 2013**

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### **A Bill for**

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

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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 2013*.

**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 disorder or mental illness and the promotion of mental health and wellbeing, and for other purposes

**5 Part 1 heading**

*renumber as chapter 1*

## **6 Section 1**

*substitute*

### **1 Name of Act**

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

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

*insert*

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

## **8 Sections 5, 6 and part 2**

*substitute*

# **Chapter 2 Objects and important concepts**

## **5 Objects of Act**

The objects of this Act are to—

- (a) promote the capacity of people with a mental disorder or mental illness to determine, and participate in, their assessment and treatment, care or support, taking into account their rights in relation to mental health under territory law; and
- (b) ensure that people with a mental disorder or mental illness receive assessment and treatment, care or support in a way that is least restrictive or intrusive to them; and

# **EXPOSURE DRAFT**

- (c) facilitate access by people with a mental disorder or mental illness to services provided in a way that recognise and respect their rights, inherent dignity and needs; and
- (d) promote the inclusion of, and participation by, people with a mental disorder or mental illness in communities of their choice; and
- (e) support positive mental health through mental health promotion, illness prevention and early intervention; and
- (f) facilitate access by people with a mental disorder or mental illness to assessment and treatment, care or support as far as practicable in communities of their choice; and
- (g) acknowledge the impact of mental disorder and mental illness on the families and carers of people with a disorder or illness; and
- (h) recognise the experience and knowledge of families and carers about the individual and his or her mental disorder or mental illness; and
- (i) promote inclusive practices in treatment, care and support to engage families and carers in responding to an individual's mental disorder or mental illness.

## **6 Principles applying to Act**

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

- (a) a person with a mental disorder or mental illness has the same rights and responsibilities as other members of the community and is to be supported to exercise those rights and responsibilities without discrimination;

## **EXPOSURE DRAFT**

- (b) a person with a mental disorder 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 disorder or mental illness has the right to determine his or her own recovery;
- (d) a person with a mental disorder or mental illness has the right to access the best available treatment, care or support relating to his or her individual needs;
- (e) a person with a mental disorder or mental illness has the right to be able to access services that—
  - (i) are sensitive and responsive to 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 disorder 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 disorder 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

## EXPOSURE DRAFT

- (iii) be provided in a way that considers and respects 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
- (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) be provided in a way that ensures that the person is aware of his or her rights.

**7        *Meaning of decision-making capacity and impaired decision-making capacity***

- (1) For this Act, a person has *decision-making capacity* if the person can, with assistance if needed—
  - (a) understand the facts that relate to the decision; and
  - (b) understand the main choices available to the person in relation to the decision; and
  - (c) weigh up the consequences of the main choices; and
  - (d) understand how the consequences affect the person; and
  - (e) communicate the decision.
- (2) For this Act, a person has *impaired decision-making capacity* if the person cannot, with assistance if needed—
  - (a) understand the facts that relate to the decision; or

**EXPOSURE DRAFT**



- (b) understand the main choices available to the person in relation to the decision; or
- (c) weigh up the consequences of the main choices; or
- (d) understand how the consequences affect the person; or
- (e) communicate the decision.

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

- (1) In considering a person's decision-making capacity under this Act, the following principles must be taken into account:
  - (a) a person must be assumed to have decision-making capacity, unless it is established that he or she has impaired decision-making capacity;
  - (b) a person who has impaired decision-making capacity must always be supported to contribute to decisions about his or her treatment, care or support to the best of the person's ability;
  - (c) a person must not be treated as having impaired decision-making capacity 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 having impaired decision-making capacity 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 an emergency, a person's decision-making capacity must always be taken into account in deciding treatment, care or support.

## **EXPOSURE DRAFT**

- (3) In doing an act or making a decision under this Act for a person who has impaired decision-making capacity, the act must be done, or decision made, in his or her best interests.

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

In this Act:

***mental disorder***—

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

## **9A      *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).

# **EXPOSURE DRAFT**

**9B        People not to be regarded as having mental disorder or mental illness**

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

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

## **EXPOSURE DRAFT**

**9C Proceedings relating to children**

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

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

**Part 3.1 Rights of people in mental health facilities and community care facilities**

**9 New parts 3.2, 3.3 and chapter 4**

*insert*

**Part 3.2 Nominated people**

**9D Nominated person**

- (1) A person with a mental disorder or mental illness may, in writing, nominate another person to be his or her nominated person.

**Examples**

- family member
- carer
- neighbour

*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**

- (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.
- (3) The main function of a nominated person for a person with a mental disorder or mental illness is to help the person by ensuring that the interests of the person are respected if he or she requires treatment, care or support for his or her mental disorder 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.

*Note* A nominated person may be involved under the following sections:

- s 9Z (Contact with others)
- s 9ZC (Copies of assessments)
- s 25 (Consultation by ACAT etc)
- s 32 (Role of chief psychiatrist)
- s 36D (Role of care coordinator)
- s 48X (Consultation by ACAT—forensic mental health order)
- s 48ZD (Role of chief psychiatrist—forensic treatment order)
- s 48ZK (Role of care coordinator—forensic community care order)
- s 48ZZB (Information sharing protocol).

## EXPOSURE DRAFT

## Part 3.3                      Advance agreements

### 9E                      Definitions—pt 3.3

In this part:

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

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

***treating mental health professional***, for a person with a mental disorder 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.

***treating team***, for a person with a mental disorder 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.

**9F Person may make advance agreement**

- (1) A person with a mental disorder 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 disorder 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—
    - (i) the person while the person has the decision-making capacity to enter into the agreement; and
    - (ii) the representative of the person's treating team; and
    - (iii) if the advance agreement provides for treatment, care or support to be given by a stated person—the stated person.

**9G 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 disorder 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 disorder or mental illness;
- (c) any other wish the person may have in relation to treatment, care or support of the person's mental disorder or mental illness;

**EXPOSURE DRAFT**

- (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 disorder or mental illness.

## **9H 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 9J.

## **9I 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—
    - (i) the person while the person has the decision-making capacity to amend the agreement; and
    - (ii) signed by the representative of the person's treating team; and
    - (iii) if the amendment provides for treatment, care or support to be given by a stated person—the stated person.



- (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.

## **9J 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) However, a person may only end an advance agreement if the person has decision-making capacity to end the agreement.
- (3) 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.
- (4) Also, an advance agreement in force in relation to a person ends on the day the person enters into another advance agreement.

## **EXPOSURE DRAFT**

**9K 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).

**9L Treatment etc to be given under advance agreement**

- (1) Before giving treatment, care or support to a person with a mental disorder 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 give 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 giving 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
  - (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 9N. For the effect of an appointment of a guardian or attorney on an advance agreement, see s 9O.

**9M Treatment etc may be continued after end of advance agreement**

- (1) This section applies if—
  - (a) a mental health professional is giving treatment, care or support to a person with a mental disorder or mental illness under an advance agreement; and
  - (b) an advance agreement in force in relation to a person ends under section 9H (Duration of advance agreement) in the course of giving the treatment, care or support; and
  - (c) the person to whom the treatment, care or support is being given has impaired decision-making capacity for giving consent to the continuation of the treatment, care or support.
- (2) The mental health professional may continue to give 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 giving 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
  - (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).

## EXPOSURE DRAFT

**9N            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.

**9O            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*; or
  - (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.

- (3) However, in exercising a function as a guardian under an appointment provision that is inconsistent with an agreement provision, the guardian must—
  - (a) take into account the agreement provision; and
  - (b) if the guardian makes a decision that is inconsistent with the agreement provision—set out the guardian’s reasons in writing.

## **Chapter 4                      Assessments**

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

#### **9P                      Applications by people with mental disorder or mental illness—assessment order**

- (1) This section applies if a person believes himself or herself to be, because of mental disorder 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.

## **EXPOSURE DRAFT**

**9Q Applications by other people—assessment order**

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

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

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

**9R Applicant to tell ACAT of risks—assessment order**

- (1) This section applies if—
  - (a) a person (the *applicant*) applies under section 9Q for an assessment order in relation to someone else; and
  - (b) the applicant believes on reasonable grounds that anything to do with the application process is likely to substantially increase—
    - (i) the risk to the other person’s health or safety; or
    - (ii) the risk of serious harm to others.
- (2) The application must state the applicant’s belief about the substantially increased risk.
- (3) The ACAT must give the chief psychiatrist a copy of the application.

**Part 4.2 Assessment orders**

**9S Assessment orders**

The ACAT may order an assessment of a person if—

- (a) for an application made under part 4.1—the ACAT is satisfied on the face of the application that—
  - (i) the person appears to have a mental disorder or mental illness; and
  - (ii) either—
    - (A) the person’s health or safety is, or is likely to be, substantially at risk; or

**EXPOSURE DRAFT**

- (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 disorder 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 48ZI).

## **9T Consent for assessment orders**

- (1) This section applies if the ACAT is considering ordering an assessment of a person mentioned in section 9S (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.

## **EXPOSURE DRAFT**



- (4) If a presidential member of the ACAT becomes seriously concerned about the immediate safety of a person, the presidential member—
  - (a) must give the chief psychiatrist written notice of the concern; and
  - (b) may make an assessment order without notice to the person being assessed; and
  - (c) may require the person to be apprehended and taken to an approved mental health facility.

## **9U 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 to—
    - (i) if appropriate, admit the person to be assessed to the facility to conduct the assessment; and
    - (ii) if necessary and reasonable, detain the person at the facility until the assessment has been conducted; and
    - (iii) provide the assistance that is necessary and reasonable to conduct the assessment.
- (2) An assessment order authorises—
  - (a) the conduct of the assessment stated in the order; and

## **EXPOSURE DRAFT**

- (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.
- (4) In making an assessment order, the ACAT must explain the effect of section 28 or section 36 to the person in relation to whom the order is to be made.

*Note* Under s 28 and s 36, an application is not required for a psychiatric treatment order or community care order in relation to a person who has been assessed under an assessment order as having a mental disorder or mental illness.

**9V 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.

**9W 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 day the order is made; or
  - (b) if an earlier day is stated in the order—the stated day.
- (2) However, the ACAT may, on application, extend the period for conducting the assessment if satisfied, based on clinical evidence provided to it by the person conducting the assessment, that a satisfactory assessment cannot be completed within the period under subsection (1).

**EXPOSURE DRAFT**

- (3) The extension must be for a period not longer than 7 days.

## **9X 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 9S (a), (b) or (c) (Assessment orders) who—
    - (i) has not been served with a subpoena under the *ACT Civil and Administrative Tribunal Act 2008*, section 41 (Powers in relation to witnesses etc) for a reason stated in section 82 (3) (Subpoena to appear in person); or
    - (ii) does not appear at a proceeding in relation to the order under a subpoena given under the *ACT Civil and Administrative Tribunal Act 2008*, section 41; or
    - (iii) does not comply with the assessment order; or
  - (b) a person mentioned in section 9S (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; or
    - (ii) in any other case—the ACAT is satisfied that it is appropriate in the circumstances.

## **EXPOSURE DRAFT**

- (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.

**9Y      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 mental health facility stated in the order; and
  - (c) may carry out a frisk search or ordinary search of the person if there are reasonable grounds for believing that the person is carrying anything—
    - (i) that would present a danger to the police officer or another person; or

**EXPOSURE DRAFT**

- (ii) that could be used to assist the person to escape from the police officer's custody.
- (d) must, before removing the person, explain to the person the purpose of the order.
- (4) The police officer may seize and detain a thing mentioned in subsection (3) (c) found in a search conducted under that subsection.
- (5) In this section:  
*removal order*—see section 9X (2).

## **9Z      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.

## **EXPOSURE DRAFT**

**9ZA Public advocate and lawyer to have access**

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

**9ZB 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, including the process of assessment and possible outcome of an assessment, in a language or way of communicating that the person is likely to understand.
- (3) This section applies even if the person to be assessed was present when the order was made.

**9ZC 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 was an alleged offender assessed as a result of an application under section 9Q—the director-general responsible for the *Corrections Management Act 2007*; and
  - (b) if the person has a nominated person—tell the nominated person about the outcome of the assessment.
- (3) If a person other than an alleged offender is assessed as a result of an application under section 9Q—the person in charge of the mental health facility may, as soon as practicable after completing the assessment, give a copy of the assessment to the applicant.

## **10 Mental health orders Part 4**

*renumber as chapter 5*

# **EXPOSURE DRAFT**

**11 Division 4.1 heading**

*substitute*

**Part 5.1 Preliminary**

**9ZF Meaning of *relevant official*—ch 5**

In this chapter:

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

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

**Part 5.2 Applications for mental health orders**

**12 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 person (the *subject person*) is a person in relation to whom the ACAT could reasonably make an order under section 28 (Psychiatric treatment order) or section 36 (Community care order).

**EXPOSURE DRAFT**



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

*Note 1* An application is not required in relation to a person who has been assessed under an assessment order as having a mental disorder or mental illness (see s 28 and s 36).

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

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

- (3) An application must be accompanied by—

- (a) a statement of the relevant person's belief addressing the criteria that the ACAT must consider in making an order under section 28 (Psychiatric treatment order) or section 36 (Community care order); and
- (b) a plan setting out the proposed treatment, care or support of the subject person.

- (4) In this section:

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

- (a) for a psychiatric treatment order—the chief psychiatrist or another person nominated by the chief psychiatrist; and
- (b) for a community care order—a person with authority to give the treatment, care or support proposed to be given to the subject person.

## EXPOSURE DRAFT

**13      Applicant to tell ACAT of risks  
Section 12**

*omit*

section 11

*substitute*

section 10

**14      Assessments  
Division 4.2**

*omit*

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

*omit*

under division 4.2

**16      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 disorder or mental illness, the ACAT must dismiss the application for the mental health order.

## EXPOSURE DRAFT

**17      Section 24***substitute***24      ACAT must hold hearing—mental health order**

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

**18      Section 25***substitute***25      Consultation by ACAT etc**

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 (Parental responsibility); and
- (b) if the person has a guardian under the *Guardianship and Management of Property Act 1991*—the guardian; and
- (c) if the person has an attorney appointed under the *Powers of Attorney Act 2006*—the attorney; and
- (d) if the person has a nominated person—the nominated person; and
- (e) if a health attorney is involved in the treatment, care or support of the person—the health attorney; and
- (f) the person most likely to be responsible for providing the treatment, care or support proposed to be ordered.

**EXPOSURE DRAFT**

**19      What ACAT must take into account**  
**New section 26 (aa)**

*before paragraph (a), insert*

- (aa) for a person the subject of an application under section 10—a plan for the proposed treatment, care or support of the person, mentioned in section 10 (3);

**20      Section 26 (a)**

*before*

capacity

*insert*

decision-making

**21      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;

**22      Section 26 (f) to (i)**

*substitute*

- (f) the matters stated in section 6 (Principles applying to Act);

## EXPOSURE DRAFT

**23      Section 26 (k)**

*substitute*

- (k) 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;

**24      Section 26 (m)**

*omit*

**25      Section 26 (n)**

*omit*

for a person referred to the ACAT under section 13

*substitute*

an alleged offender

**26      New section 26 (2)**

*insert*

- (2) Before the ACAT makes a mental health order for the provision of particular treatment, care or support at a stated facility or by a stated person, the 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.

## EXPOSURE DRAFT

**27      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 for a mental health order has been made under part 4.2; or
  - (c) a person in relation to whom an application for a forensic mental health order has been made under division 7.1.2.
- (2) The ACAT may make a psychiatric treatment order in relation to the person if—
  - (a) the person has a mental illness; and
  - (b) either—
    - (i) the person has impaired decision-making capacity for giving consent to the treatment, care or support and refuses to receive the treatment; or
    - (ii) the person has decision-making capacity to consent to the treatment, care or support, but refuses to consent; and
  - (c) the ACAT believes on reasonable grounds that, because of the mental illness, the person—
    - (i) is doing, or is likely to do, serious harm to himself or herself or someone else; or
    - (ii) is suffering, or is likely to suffer, serious mental or physical deterioration; and

**EXPOSURE DRAFT**

- (d) the ACAT is satisfied that psychiatric treatment, care or support is likely to—
  - (i) reduce the harm or deterioration, or the likelihood of the harm or deterioration, mentioned in paragraph (c); or
  - (ii) result in an improvement in the person's psychiatric condition; and
- (e) in relation to a person mentioned in paragraph (b) (ii)—the ACAT is satisfied that the harm or deterioration, or likelihood of the harm or deterioration, mentioned in paragraph (c) outweighs the right to refuse to consent; and
- (f) if an application has been made for a forensic mental health order—the ACAT is satisfied that a psychiatric treatment order should be made instead; and
- (g) the 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.

<b>28</b>	<b>Content of psychiatric treatment order</b> <b>Section 29 (1) (a)</b>
-----------	--

*omit*

a health facility

*substitute*

an approved mental health facility

## EXPOSURE DRAFT

**29      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.

**30      Role of chief psychiatrist  
Section 32 (1)**

*omit*

treatment and care

*substitute*

treatment, care or support

**31      Section 32 (2) (a)**

*omit*

, or undertake a counselling, training, therapeutic or rehabilitation program,

**32      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.



**33      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).

**34      Treatment to be explained  
Section 33**

*after*

treatment

*insert*

, care or support

**35      Sections 34 and 35**

*substitute*

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

- (1) This section applies if—
- (a) a psychiatric treatment order is in force in relation to a person;  
and

**EXPOSURE DRAFT**

(b) the chief psychiatrist is satisfied that—

- (i) the person is no longer a person in relation to whom the ACAT could make a psychiatric treatment order; or
- (ii) if a restriction order is also in force in relation to the person—it is no longer necessary for the restriction order to be in force.

*Note* For the criteria for making a psychiatric treatment order, see s 28.  
For the criteria for making a restriction order for a psychiatric treatment order, see s 30.

(2) The chief psychiatrist must tell the ACAT and the public advocate in writing about his or her opinion, including the reasons for the opinion.

*Note* The ACAT must review the order within 72 hours after being notified under this section (see s 36L).

## **35 Powers in relation to detention, restraint etc—psychiatric treatment order**

(1) This section applies if—

- (a) a psychiatric treatment order has been made in relation to a person; and
- (b) either—
  - (i) a restriction order has also been made in relation to the person requiring the person to be detained at a stated place; or
  - (ii) the chief psychiatrist requires the person to be detained at an approved mental health facility under section 36K (Contravention of psychiatric treatment order or community care order); or

## **EXPOSURE DRAFT**

- (iii) the chief psychiatrist otherwise considers that it is necessary for the treatment, care or support of the person to detain the person at an approved mental health facility.
- (2) The chief psychiatrist may—
  - (a) take, or authorise someone else (an *authorised person*) to take, the person to the place stated in the order or a place mentioned in subsection (1) (b) (ii) or (iii) (the *relevant place*) and for that purpose—
    - (i) use the force and assistance 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
    - (iii) carry out a frisk search or ordinary search of the person if there are reasonable grounds for believing that the person is carrying anything—
      - (A) that would present a danger to the chief psychiatrist, authorised person or another person; or
      - (B) that could be used to assist the person to escape from the chief psychiatrist’s or authorised person’s custody; and
  - (b) keep the person at the relevant place in the custody that the chief psychiatrist considers appropriate; and

## EXPOSURE DRAFT

- (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 or authorised person may seize and detain a thing mentioned in subsection (2) (a) (iii) found in a search conducted under that subsection.
  - (4) If the chief psychiatrist subjects a person to involuntary seclusion, the chief psychiatrist must ensure that the person is examined by a relevant doctor of the relevant place in each 4-hour period that the person is in seclusion.
  - (5) If the chief psychiatrist determines that a person be given medication for the treatment of the person’s mental illness, the chief psychiatrist may—
    - (a) approve the giving by appropriately trained people of medication prescribed by a doctor in accordance with the chief psychiatrist’s determination; and
    - (b) use, or authorise someone else to use, the force and assistance that is necessary and reasonable to give the medication (*forcible giving of medication*).
  - (6) In acting under this section, the chief psychiatrist must have regard to the matters stated in section 5 (Objects of Act) and section 6 (Principles applying to Act).

## EXPOSURE DRAFT

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

- (8) In this section:

***relevant doctor***, of a relevant place, means a person employed at the place as a consultant psychiatrist, psychiatric registrar in consultation with a consultant psychiatrist or another doctor in consultation with a consultant psychiatrist.

## **36 Section 36**

*substitute*

## **36 Community care order**

- (1) This section applies to—
- (a) a person assessed under an assessment order; or
  - (b) a person in relation to whom an application for a mental health order has been made under part 4.2; or
  - (c) a person in relation to whom an application for a forensic mental health order has been made under division 7.1.2.

# **EXPOSURE DRAFT**

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

## EXPOSURE DRAFT

- (h) 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.

**37**      **Content of community care order**  
**Section 36A (1) (b)**

*omit*

or amelioration of the person's mental dysfunction

*substitute*

of the person's mental disorder

**38**      **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.

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

*before*

community care facility

*insert*

approved

## EXPOSURE DRAFT

**40      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 is involved in the treatment, care or support of the person—the health attorney; and

**41      New section 36D (5) (ba)**

*insert*

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

**42      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).



**43 Section 36E heading**

*substitute*

**36E Treatment, care or support to be explained**

**44 Section 36E**

*after*

treatment

*insert*

, care or support

**45 Section 36F**

*substitute*

**36F Action if community care order no longer appropriate—  
no longer person in relation to whom ACAT could make  
order**

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

*Note* For the criteria for making a community care order, see s 36. For the criteria for making a restriction order with a community care order, see s 36B.

## EXPOSURE DRAFT

- (2) The care coordinator must tell the ACAT and the public advocate in writing about his or her opinion, including the reasons for the opinion.

*Note* The ACAT must review the order within 72 hours after being notified under this section (see s 36L).

## **46 Section 36G**

*substitute*

### **36G Powers in relation to detention, restraint etc—community care order**

- (1) This section applies if—
- (a) a community care order has been made in relation to a person; and
  - (b) either—
    - (i) a restriction order has also been made in relation to the person requiring the person to be detained at an approved community care facility; or
    - (ii) the care coordinator requires the person to be detained at an approved community care facility under section 36K (Contravention of psychiatric treatment order or community care order).
- (2) The care coordinator may—
- (a) take, or authorise someone else (an ***authorised person***) 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

## **EXPOSURE DRAFT**

- (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
    - (iii) carry out a frisk search or ordinary search of the person if there are reasonable grounds for believing that the person is carrying anything—
      - (A) that would present a danger to the care coordinator, authorised person or another person; or
      - (B) that could be used to assist the person to escape from the care coordinator’s or authorised person’s custody; and
  - (b) keep the person at the approved community care facility in the custody that the ACAT 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 care coordinator or authorised person may seize and detain a thing mentioned in subsection (2) (a) (iii) found in a search conducted under that subsection.

## EXPOSURE DRAFT

- (4) 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.
- (5) If a community care order made in relation to a person authorises the giving of medication for the treatment of the person's mental disorder, the care coordinator may—
  - (a) approve the giving by appropriately trained people of medication prescribed by a doctor in accordance with the order; and
  - (b) use, or authorise someone else to use, the force and assistance that is necessary and reasonable to give the medication (*forcible giving of medication*).
- (6) In acting under this section, the care coordinator must have regard to the matters stated in section 5 (Objects of Act) and section 6 (Principles applying to Act).
- (7) If the care coordinator subjects a person to confinement or restraint, involuntary seclusion or the forcible giving of medication, the care coordinator must—
  - (a) enter in the person's record the fact of and reasons for the confinement or restraint, involuntary seclusion or forcible giving of medication; and
  - (b) tell the public advocate in writing within 24 hours after the person is subjected to the confinement or restraint, involuntary seclusion or forcible giving of medication; and
  - (c) keep a register of the confinement or restraint, involuntary seclusion or forcible giving of medication.

## EXPOSURE DRAFT

(8) In this section:

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

**47 Limits on communication  
Section 36H (1) (c)**

*after*

relevant official

*insert*

for the order

**48 Section 36H (1) and (2)**

*after*

treatment

*insert*

, care or support

**49 New section 36H (2A)**

*insert*

(2A) However, the relevant official must not impose limits on communication by the person with someone authorised under a territory law to communicate with the person.

## EXPOSURE DRAFT

**50      Section 36H (7)**

*omit*

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

*substitute*

part 3.1 (Rights of people in mental health facilities and community care facilities)

**51      Section 36H (8)**

*omit*

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

*omit*

**53      Contravention of psychiatric treatment order or  
community care order  
Section 36K (3)**

*omit*

treatment or care

*substitute*

treatment, care or support

## EXPOSURE DRAFT

**54      Section 36K (3) to (5)**

*after*

approved mental health facility

*insert*

or approved community care facility

**55      Section 36K (4)**

*after*

must

*insert*

, within 72 hours of the person being detained,

**56      Section 36K (5) and (6)**

*after*

police officer,

*insert*

ambulance paramedic,

**57      Section 36K (7) and (8)**

*omit*

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

*substitute*

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

## EXPOSURE DRAFT

**59 Divisions 4.3 to 4.7 (as amended)**

*renumber as parts 5.3 to 5.7*

**60 Part 5 heading**

*substitute*

## **Chapter 6            Emergency detention**

**61 Apprehension  
Section 37 (1)**

*after*

police officer

*insert*

or ambulance paramedic

**62 Section 37 (1) and (2)**

*omit*

approved health facility

*substitute*

approved mental health facility

**63 Section 37 (1) and (2)**

*omit*

is mentally dysfunctional or mentally ill

*substitute*

has a mental disorder or mental illness

## **EXPOSURE DRAFT**



**64 Section 37 (2) (a) (i)**

*omit*

treatment or care

*substitute*

treatment, care or support

**65 Section 37 (2) (a) (ii)**

*after*

care;

*insert*

and

**66 Section 37 (2) (a) (ii), (2) (b) and (2) (d)**

*omit*

treatment or care

*substitute*

treatment, care or support

**67 Section 37 (4)**

*substitute*

- (4) For subsections (1) and (2), a police officer, ambulance paramedic, doctor or mental health officer may—
- (a) use the force and assistance that is necessary and reasonable to apprehend the person and take him or her to the facility; and

## EXPOSURE DRAFT

- (b) 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
- (c) carry out a frisk search or ordinary search of the person if there are reasonable grounds for believing that the person is carrying anything—
  - (i) that would present a danger to the police officer, ambulance paramedic, doctor, mental health officer or another person; or
  - (ii) that could be used to assist the person to escape from police officer's, ambulance paramedic's, doctor's or mental health officer's custody.
- (5) The police officer, ambulance paramedic, doctor or mental health officer may seize and detain a thing mentioned in subsection (4) (c) found in a search conducted under that subsection.

<b>68</b>	<b>Detention Section 38</b>
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*omit*

approved health facility

*substitute*

approved mental health facility

## EXPOSURE DRAFT

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

*omit*

approved health facility

*substitute*

approved mental health facility

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

*after*

police officer,

*insert*

ambulance paramedic,

**71**      **Section 39 (1)**

*omit*

approved health facility

*substitute*

approved mental health facility

## **EXPOSURE DRAFT**

**72 Sections 40 and 41**

*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
  - (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

**EXPOSURE DRAFT**

- (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.

#### **41 Authorisation of involuntary detention**

- (1) A doctor may authorise the involuntary detention and care of a person at an approved mental health facility for a period not exceeding 3 days if—
  - (a) the doctor has examined the person under section 40 and has reasonable grounds for believing that—
    - (i) the person has a mental disorder or mental illness and—
      - (A) as a consequence, requires immediate treatment, care or support; or
      - (B) the person's condition will deteriorate within 3 days to such an extent that the person would require immediate treatment, care or support; and

## **EXPOSURE DRAFT**

- (ii) the person has refused to receive that treatment, care or support; and
  - (iii) detention is necessary for—
    - (A) the person's own health, safety, social or financial wellbeing; or
    - (B) the protection of members of the public; and
  - (iv) adequate treatment, care or support cannot be provided in a less restrictive environment; or
- (b) the doctor has not been able to examine the person because the person is unconscious or intoxicated.
- (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 has impaired decision-making capacity for giving consent to the treatment, care or support.
- (3) If an application is made under subsection (2) the ACAT may order that the period of detention be extended by the period, not longer than 11 days, stated in the order.
- (4) A person may apply to the ACAT for the review of involuntary detention—
  - (a) based on an opinion formed under subsection (1) (a) (i) (B); or
  - (b) under subsection (1) (b).
- (5) If an application is made under subsection (4) the ACAT must conduct the review within 2 working days after the day the application is made.

## EXPOSURE DRAFT

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

*omit*

approved health facility

*substitute*

approved mental health facility

**74 Section 43**

*relocate before section 41A as section 41AA*

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

*after*

treatment

*insert*

, care or support

**76 Section 44 (1), note**

*omit*

(see subdiv 7.2.4)

*substitute*

(see div 9.2.4)

**77 Section 44 (as amended)**

*relocate as section 41AB*

## EXPOSURE DRAFT

**78      Section 48**

*omit*

**79      Divisions 5A.1 to 5A.5**

*renumber as parts 15.1 to 15.5*

**80      Section 48A heading**

*substitute*

**48A     Object of ch 15**

**81      Section 48A**

*omit*

part

*substitute*

chapter

**82      Section 48B heading**

*substitute*

**48B     Definitions—ch 15**

**83      Section 48B**

*omit*

part

*substitute*

chapter

## EXPOSURE DRAFT



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

*omit*

part

*substitute*

chapter

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

*omit*

part

*substitute*

chapter

**86 Section 48M (1)**

*omit*

division

*substitute*

part

## EXPOSURE DRAFT

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

*omit*

part

*substitute*

chapter

**88 Part 5A (as amended)**

*relocate as chapter 15*

**89 New chapters 7 and 8**

*insert*

## **Chapter 7 Forensic mental health**

### **Part 7.1 Forensic mental health orders**

#### **Division 7.1.1 Preliminary**

**48S Definitions—pt 7.1**

In this part:

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

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

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

## **EXPOSURE DRAFT**

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

- (a) for a forensic psychiatric treatment order—the chief psychiatrist; and
- (b) for a forensic community care order—a person with authority to give the treatment, care or support proposed to be given to the subject person.

### **Division 7.1.2      Applications for forensic mental health orders**

#### **48T      Applications to ACAT for forensic mental health order—alleged offender**

- (1) This section applies to an alleged offender if a relevant person 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.

## **EXPOSURE DRAFT**

- (2) The relevant person may apply to the ACAT for a forensic mental health order in relation to the alleged offender.
- (3) An application must be accompanied by a plan setting out the proposed treatment, care or support of the alleged offender.

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

**48U Applications 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 (the *subject person*) if a relevant person believes on reasonable grounds that—
  - (a) the subject person has a mental disorder or mental illness; and
  - (b) because of the mental disorder 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 relevant person may apply to the ACAT for a forensic mental health order in relation to the subject person.
- (3) An application must be accompanied by a plan setting out the proposed treatment, care or support of the alleged offender.

## EXPOSURE DRAFT

**48V Relevant person to tell ACAT of risks**

- (1) This section applies if—
  - (a) a relevant person applies to the ACAT for a forensic mental health order for a person; and
  - (b) the relevant person believes on reasonable grounds that 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 application must state the belief.

**Division 7.1.3 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.

**EXPOSURE DRAFT**

**48X Consultation by ACAT—forensic mental health order**

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

- (a) if the person is a child—each person with parental responsibility for the child under the *Children and Young People Act 2008*, division 1.3.2 (Parental responsibility); and
- (b) if the person has a guardian under the *Guardianship and Management of Property Act 1991*—the guardian; and
- (c) if the person has an attorney 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*; and
- (g) if a health attorney is involved in the treatment care or support of the person—the health attorney.

**48Y ACAT must hold hearing—forensic mental health order**

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

**EXPOSURE DRAFT**

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

- (1) In making a forensic mental health order in relation to a person, the ACAT must take into account the following:
- (a) a plan for the proposed treatment, care or support of the person, mentioned in section 48T (3) or section 48U (3);
  - (b) whether the person consents, refuses to consent or has the decision-making capacity to consent, to proposed treatment, care or support;
  - (c) the views and wishes of the person, so far as they can be found out;
  - (d) if an advance agreement 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;
  - (e) 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;
  - (f) the views of each person appearing at the proceeding;
  - (g) if the proceeding is on a forensic mental health order for which there is a registered affected person for an offence committed or alleged to have been committed by the person—any statement by the registered affected person;
  - (h) the views of each person consulted under section 48X (Consultation by ACAT—forensic mental health order);
  - (i) the matters stated in section 6 (Principles applying to Act);

**EXPOSURE DRAFT**

- (j) 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;
- (k) 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;
- (l) any relevant medical history of the person;
- (m) the nature and circumstances of the offence in relation to which the person has been sentenced, arrested, or may be or has been charged;
- (n) 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;
- (o) 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;
- (p) whether, if the person is not detained, public safety is likely to be seriously endangered;

## EXPOSURE DRAFT



- (q) if the proceeding is on a forensic mental health order for which there is a registered affected person for the offence committed or alleged to have been committed by the subject person—the views of the victims of crime commissioner;
  - (r) anything else prescribed by regulation.
- (2) Also, before the ACAT makes a forensic mental health order for the particular treatment, care or support at a stated facility or by a stated person, the ACAT must request a certificate from the relevant director-general that the treatment, care or support can be provided at the stated facility or by the stated person.
  - (3) If the treatment, care or support cannot be performed at the stated facility or by the stated person, the certificate may include options that the relevant director-general considers appropriate for the ACAT to consider in making the forensic mental health order.
  - (4) A certificate must be given to the ACAT within 7 days after the ACAT makes the request, or longer time allowed by the ACAT.
  - (5) In this section:

*relevant director-general* means—

- (a) the director-general responsible for the *Corrections Management Act 2007*; or
- (b) if the person in relation to whom an order is to be made is a child—the CYP director-general.

**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.

## EXPOSURE DRAFT

## **Division 7.1.4 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 7.1.2; 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
  - (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

## **EXPOSURE DRAFT**

- (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;
  - (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;

**EXPOSURE DRAFT**

- (e) that the person must be detained at a stated approved mental health facility or correctional centre;
  - (f) that the person must not approach a stated person or stated place or undertake stated activities.
- (2) A forensic psychiatric treatment order made in relation to a person must 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—forensic psychiatric treatment order**

- (1) The chief psychiatrist is responsible for the treatment, care or support of a person in relation to whom a forensic psychiatric treatment order is in force.
- (2) Within 5 working days after the day the 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.
- (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

## **EXPOSURE DRAFT**

- (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; and
  - (e) if a health attorney is involved in the treatment care or support of the person—the health attorney.
- (5) For subsection (2) (b), the chief psychiatrist must not determine psychiatric treatment, care or support that has, or is likely to have, the effect of subjecting the person to whom it is given to undue stress or deprivation, having regard to the benefit likely to result from the treatment, care or support.
- (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) or subsection (4) (e); and
  - (c) any nominated person consulted under subsection (4) (d).

## EXPOSURE DRAFT

**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—no longer person in relation to whom ACAT could make order**

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

*Note* For the criteria for making a forensic psychiatric treatment order, see s 48ZB.

- (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 48ZZ (2)).

## **EXPOSURE DRAFT**

**48ZG      Action if forensic psychiatric treatment order no longer appropriate—no longer necessary to detain person**

- (1) This section applies if—
  - (a) a forensic psychiatric treatment order is in force in relation to a person; and
  - (b) the forensic psychiatric treatment order requires the person to be detained at an approved mental health facility or correctional centre; and
  - (c) the chief psychiatrist forms the opinion that it is no longer necessary for the person to be detained.
- (2) The chief psychiatrist must 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 48ZZ (2)).

**48ZH      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 an approved mental health facility.

**EXPOSURE DRAFT**

- (2) The chief psychiatrist may—
- (a) take, or authorise someone else (an *authorised person*) to take, the person to the approved mental health facility or correctional centre 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
    - (iii) carry out a frisk search or ordinary search of the person if there are reasonable grounds for believing that the person is carrying anything—
      - (A) that would present a danger to the chief psychiatrist, authorised person or another person; or
      - (B) that could be used to assist the person to escape from the chief psychiatrist's or authorised person's custody; 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

## EXPOSURE DRAFT



- (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 or authorised person may seize and detain a thing mentioned in subsection (2) (a) (iii) found in a search conducted under that subsection.
- (4) 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.
- (5) If the chief psychiatrist determines that a person be given medication for the treatment of the person's mental illness, the chief psychiatrist may—
  - (a) approve the giving by appropriately trained people of medication prescribed by a doctor in accordance with the chief psychiatrist's determination; and
  - (b) use, or authorise someone else to use, the force and assistance that is necessary and reasonable to give the medication (*forcible giving of medication*).
- (6) In acting under this section, the chief psychiatrist must have regard to the matters stated in section 5 (Objects of Act) and section 6 (Principles applying to Act).

## EXPOSURE DRAFT

- (7) If the chief psychiatrist subjects a person to confinement or restraint, involuntary seclusion or forcible giving of medication, the chief psychiatrist must—
- (a) enter in the person's record the fact of and the reasons for the confinement or restraint, involuntary seclusion or forcible giving of medication; and
  - (b) tell the public advocate in writing within 24 hours after the person is subjected to the confinement or restraint, involuntary seclusion or forcible giving of medication; and
  - (c) keep a register of the confinement or restraint, involuntary seclusion or forcible giving of medication.
- (8) In this section:
- relevant doctor***, of a relevant place, means a person employed at the place as a consultant psychiatrist, psychiatric registrar in consultation with a consultant psychiatrist or another doctor in consultation with a consultant psychiatrist.

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

### **48ZI Forensic community care order**

- (1) This section applies to—
- (a) a detainee or person serving a community-based sentence assessed under an assessment order; or
  - (b) a detainee or person serving a community-based sentence referred to the ACAT for a forensic mental health order under division 7.1.2; or
  - (c) a person required to submit to the jurisdiction of the ACAT for a forensic mental health order under the Crimes Act, division 13.2.

## **EXPOSURE DRAFT**

- (2) The ACAT may make a forensic community care order in relation to the person if—
- (a) the person has a mental disorder; and
  - (b) the ACAT believes on reasonable grounds that, because of the mental disorder, the person—
    - (i) is doing, or is likely to do, serious harm to 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 disorder, 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.

## EXPOSURE DRAFT

**48ZJ      Content of forensic community care order**

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

**48ZK      Role of care coordinator—forensic community care order**

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

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

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

- (3) 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
  - (b) if practicable, must consult—
    - (i) the person; and
    - (ii) if the person has a nominated person—the nominated person; and
    - (iii) if a health attorney is involved in the treatment, care or support of the person—the health attorney; and
  - (c) may consult any other service provider the care coordinator considers relevant.

## EXPOSURE DRAFT

- (4) After making a determination in relation to a person, the care coordinator must record whether the person was consulted and—
  - (a) if the person was consulted—what the person’s views were; or
  - (b) if the person was not consulted—the reasons why.
- (5) 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).
- (6) The care coordinator may also give a copy of the determination to—
  - (a) any nominated person consulted under subsection (3) (b) (ii); and
  - (b) any health attorney consulted under subsection (3) (b) (iii); and
  - (c) anyone consulted under subsection (3) (c); and
  - (d) anyone providing treatment, care or support to the person.

**48ZL 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.

## **EXPOSURE DRAFT**

**48ZM      Action if forensic community care order no longer appropriate—no longer person in relation to whom ACAT could make order**

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

*Note*      For the criteria for making a forensic community care order, see s 48ZI.

- (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 48ZZ (2)).

**48ZN      Action if forensic community care order no longer appropriate—no longer necessary to detain person**

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

*Note*      For the criteria for making a forensic community care order, see s 48ZI. For detention powers in relation to a forensic community care order, see s 48ZO.

## EXPOSURE DRAFT

- (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 48ZZ (2)).

**48ZO 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 48ZW (Contravention of forensic mental health order).
- (2) The care coordinator may—
- (a) take, or authorise someone else (an *authorised person*) 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

**EXPOSURE DRAFT**



- (iii) carry out a frisk search or ordinary search of the person if there are reasonable grounds for believing that the person is carrying anything—
      - (A) that would present a danger to the care coordinator, authorised person or another person; or
      - (B) that could be used to assist the person to escape from the care coordinator’s or authorised person’s custody; 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 or authorised person may seize and detain a thing mentioned in subsection (2) (a) (iii) found in a search conducted under that subsection.
  - (4) 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.

## EXPOSURE DRAFT

- (5) If a community care order made in relation to a person authorises the giving of medication for the treatment of the person's mental disorder, the care coordinator may—
  - (a) approve the giving by appropriately trained people of medication prescribed by a doctor in accordance with the order; and
  - (b) use (or authorise someone else to use) the force and assistance that is necessary and reasonable to give the medication.
- (6) In acting under this section, the care coordinator must have regard to the matters stated in section 5 (Objects of Act) and section 6 (Principles applying to Act).
- (7) 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 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 register of the involuntary restraint, seclusion or giving of medication.
- (8) 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.

## EXPOSURE DRAFT

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

### **48ZP        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 48ZJ (1) (d), that limits may be imposed on communication between the person and other people; and
  - (c) the relevant official for the order 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) However, the relevant official must not impose limits on communication by the person with someone authorised under a territory law to communicate with the person.
- (4) 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.

## **EXPOSURE DRAFT**

- (5) The explanation must be given in the language or way of communicating that the person is most likely to understand.
- (6) Limits must not be imposed for a period longer than 7 days.
- (7) Subsection (5) does not prevent further limits being imposed immediately after a limit previously imposed ends.
- (8) This section has effect despite part 3.1 (Rights of people in mental health facilities and community care facilities) but subject to section 48ZQ.

**48ZQ      Communication with public advocate and person's lawyer**

- (1) If a relevant official for an order has imposed limits on communication by the person under section 48ZP, 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.

## **EXPOSURE DRAFT**

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

### **48ZR      Duration of forensic mental health orders**

- (1) Unless sooner revoked, a forensic mental health order in relation to a person remains in force for the period, not longer than the following, stated in the order:
  - (a) 3 months;
  - (b) if consecutive forensic mental health orders have been in force in relation to a person for 1 year or more—1 year.
- (2) A 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 in relation to whom a forensic mental health order has been in force if the order is no longer in force.

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

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

## **EXPOSURE DRAFT**

## **Division 7.1.8      Leave for detained people**

### **48ZS      Grant leave for person detained by ACAT**

- (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 if the ACAT has ordered the detention.

*Note*      The ACAT may order the detention of a person under a forensic mental health order under s 48ZC (1) (e) or s 48ZJ (1) (f).

- (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
- 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.

## **EXPOSURE DRAFT**

- (5) The grant of leave may be subject to conditions the ACAT considers appropriate in the circumstances, taking into account—
- (a) section 6 (Principles applying to Act); and
  - (b) the safety of the person, anyone else or the public.

**48ZT Revoke leave granted by ACAT**

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) is seriously endangering, or is likely to seriously endanger, public safety; or
- (b) the person contravenes a condition of the grant.

**48ZU Grant leave for person detained by chief psychiatrist**

- (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 if the chief psychiatrist considers that it is necessary for the treatment, care or support of the person to detain the person at the place.

*Note* The chief psychiatrist may detain a person at a particular place if the chief psychiatrist considers that it is necessary for the treatment, care or support of a person (see s 48ZH).

## EXPOSURE DRAFT

- (2) The relevant official for the forensic mental health order may apply to the chief psychiatrist for the person to take a period of leave from the correctional centre, approved mental health facility or approved community care facility.
- (3) The chief psychiatrist may allow a person to take a period of leave for any purpose the chief psychiatrist 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
- 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 chief psychiatrist considers appropriate in the circumstances, taking into account—
  - (a) section 6 (Principles applying to Act); and
  - (b) the safety of the person, anyone else or the public.

## EXPOSURE DRAFT



**48ZV      Revoke leave granted by chief psychiatrist**

The chief psychiatrist 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 chief psychiatrist 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) is seriously endangering, or is likely to seriously endanger, public safety; or
- (b) the person contravenes a condition of the grant.

**Division 7.1.9      Contravention and review of forensic mental health orders****48ZW      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 48ZX or section 48ZY applies.

**EXPOSURE DRAFT**

- (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, within 72 hours, tell the ACAT and the public advocate—
  - (a) the name of the person detained; and
  - (b) the reasons for requiring the detention; and
  - (c) the name and address of the relevant facility where the person is to be detained.
- (5) If a person is required to be detained under subsection (3) (c), a police officer, doctor or mental health officer may apprehend the person and take the person to a relevant facility.
- (6) For subsection (5), a police officer, doctor or mental health officer may—
  - (a) use the force and assistance that is necessary and reasonable to apprehend the person and take the person to the relevant facility; and

## EXPOSURE DRAFT

- (b) 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.
- (7) In this section:
  - relevant facility* means—
    - (a) for a person in relation to whom a forensic psychiatric treatment order is in force—an approved mental health facility or correctional centre; or
    - (b) for a person in relation to whom a forensic community care order is in force—an approved community care facility.

**48ZX      Abscond from facility or fail to return from leave granted by ACAT**

- (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 under an order of the ACAT if—
  - (a) the person has absconded from the correctional centre, approved mental health facility or approved community care facility; or
  - (b) 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 48ZS (Grant leave for person detained by ACAT), ends; or
  - (c) the ACAT revokes a grant of leave in relation to the person under section 48ZT (Revoke leave granted by ACAT).
- (2) A police officer may arrest the person and return the person to the correctional centre, approved mental health facility or approved community care facility.

## EXPOSURE DRAFT

- (3) A police officer who arrests a person under this section may—
  - (a) carry out a frisk search or ordinary search of the person if there are reasonable grounds for believing that the person is carrying anything—
    - (i) that would present a danger to the police officer or another person; or
    - (ii) that could be used to assist the person to escape from the police officer's custody; and
  - (b) seize and detain a thing mentioned in paragraph (a) found in the search.
- (4) A police officer who arrests a person under this section must notify the ACAT and the public advocate of the arrest within 72 hours.

**48ZY      Abscond from facility or fail to return from leave granted by chief psychiatrist**

- (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 if 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.

*Note*      The chief psychiatrist may detain a person at a particular place if the chief psychiatrist considers that it is necessary for the treatment, care or support of a person (see s 48ZG).

- (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

## **EXPOSURE DRAFT**

- (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 48ZU (Grant leave for person detained by chief psychiatrist), ends; or
  - (b) the ACAT revokes a grant of leave in relation to the person under section 48ZV (Revoke leave granted by chief psychiatrist).
- (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.
- (5) A police officer who arrests a person under this section may—
  - (a) carry out a frisk search or ordinary search of the person if there are reasonable grounds for believing that the person is carrying anything—
    - (i) that would present a danger to the police officer or another person; or
    - (ii) that could be used to assist the person to escape from the police officer's custody; and

## EXPOSURE DRAFT

- (b) seize and detain a thing mentioned in paragraph (a) found in the search.

**48ZZ 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—no longer person in relation to whom ACAT could make order);
  - (b) section 48ZG (Action if forensic psychiatric treatment order no longer appropriate—no longer necessary to detain person);
  - (c) section 48ZM (Action if forensic community care order no longer appropriate—no longer person in relation to whom ACAT could make order);
  - (d) section 48ZN (Action if forensic community care order no longer appropriate—no longer necessary to detain person);
  - (e) section 48ZW (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.

**EXPOSURE DRAFT**

- (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.

## **Part 7.2                      Sharing information about forensic mental health orders— government agencies**

### **48ZZA    Definitions—pt 7.2**

In this part:

*information sharing entity* means each of the following:

- (a) the director-general;
- (b) the director-general responsible for the *Children and Young People Act 2008*;
- (c) the director-general responsible for the *Corrections Management Act 2007*;
- (d) the director-general responsible for the *Disability Services Act 1991*;
- (e) the director-general responsible for the *Health Act 1993*.

*information sharing protocol*—see section 48ZZB.

## **EXPOSURE DRAFT**

***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.

**48ZZB 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.

**EXPOSURE DRAFT**



## Part 7.3                      Affected people

### 48ZZC    Meaning of *affected person*

(1) In this Act:

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

- (a) a person (the *primary affected person*) who suffers harm—
    - (i) in the course of, or as a result of, the commission of the offence; or
    - (ii) as a result of witnessing the offence; and
  - (b) a family member of the primary affected person who suffers harm because of the harm to the primary affected person; and
  - (c) a person who is financially or psychologically dependent on the primary affected person and who suffers harm because of the harm to the primary affected person; and
  - (d) if a person mentioned for this definition is a child or legally incompetent person—a guardian of the child or legally incompetent person.
- (2) However, an *affected person* does not include a person who suffers harm because of an offence he or she committed or is alleged to have committed.

## EXPOSURE DRAFT

(3) In this section:

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

**guardian** means—

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

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

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

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

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

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

## EXPOSURE DRAFT

**48ZZD    Meaning of *registered affected person***

In this Act:

*registered affected person*, in relation to a forensic patient, means an affected person in relation to the forensic patient whose information is entered in the register kept under section 48ZZF.

**48ZZE    Meaning of *forensic patient*—pt 7.3**

In this part:

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

**48ZZF    Affected person register**

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

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

**48ZZG    Notifying people about the affected person register**

- (1) The director-general must take reasonable steps to notify affected people in relation to forensic patients about the affected person register.
- (2) The notice—
  - (a) must set out the rights of a registered affected person under section 48ZZJ; and

**EXPOSURE DRAFT**

- (b) if the director-general considers that it is necessary for the person's safety and wellbeing—may seek the consent of the person to include the person's information on the register.
- (3) In this section:

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

#### **48ZZH Including person in affected person register**

- (1) 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, or gives consent to the director-general entering, in the register if the director-general is satisfied that it is necessary for the person's safety and wellbeing.
- (2) As soon as practicable after entering the affected person's information in the register, the director-general must give the affected person, orally or in writing, information about the person's rights as a registered affected person under section 48ZZJ.
- (3) The director-general need not comply with subsection (2) in relation to an affected person to whom the director-general has given notice under section 48ZZG.
- (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](#), division 1.3.2 (Parental responsibility).

## **EXPOSURE DRAFT**

- (5) The director-general must not disclose the information in the register about an affected person to—
- (a) a forensic patient; or
  - (b) anyone else except the following:
    - (i) the registered affected person;
    - (ii) a person mentioned in subsection (4);
    - (iii) a person with legal authority to act for the registered affected person.
- (6) In this section:

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

#### **48ZZI Removing person from affected person register**

- (1) The director-general must remove a registered affected person's information from the affected person register on request by the person or someone acting for the person.
- (2) The director-general may, at any time, remove a registered affected person's information from the register if the ACAT considers that it is no longer necessary for the person's wellbeing and safety to be a registered affected person.
- (3) However, before removing a person's information from the register under subsection (2), the director-general must give the person and the victims of crimes commissioner written notice of the director-general's intention to remove the information.
- (4) The notice must include a statement to the effect that the person or the victims of crime commissioner has 28 days to tell the director-general in writing why it is necessary for the person's wellbeing and safety to remain on the register.

## **EXPOSURE DRAFT**

- (5) In this section:

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

**48ZZJ Disclosures to registered affected people**

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

## EXPOSURE DRAFT

- (5) If the registered affected person is a child under 15 years old, the director-general may give the information to a person who has parental responsibility for the affected person under the *Children and Young People Act 2008*, division 1.3.2 (Parental responsibility).
- (6) Subsection (5) does not limit the cases in which the director-general may give information to a person acting for a registered affected person.
- (7) In this section:

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

***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.

## EXPOSURE DRAFT

## Chapter 8                      Correctional patients

### Part 8.1                      Preliminary

#### 48ZZL      **Meaning of *correctional patient***

In this Act:

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

### Part 8.2                      Transfer of correctional patients

#### 48ZZM      **Transfer to mental health facility or community care facility**

- (1) This section applies if—
  - (a) the chief psychiatrist is satisfied that a detainee has a mental disorder or mental illness for which treatment, care or support is available in an approved mental health facility or approved community care facility; and
  - (b) a mental health order or forensic mental health order cannot be made in relation to the person.
- (2) The chief psychiatrist may request the 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).

## EXPOSURE DRAFT



- (4) The director-general may, at the request of the chief psychiatrist and at any time before the transfer takes place, revoke the direction.

**48ZZN 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 disorder 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 disorder 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).

## EXPOSURE DRAFT

**48ZZO 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.

**48ZZP 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 disorder 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.

**48ZZQ 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.

**EXPOSURE DRAFT**

- (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.

**48ZZR 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.

- (3) On review, the ACAT—
- (a) must determine—
    - (i) whether the person has a mental disorder 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 8.3                      Review of correctional patients**

### **48ZZS      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.

## **EXPOSURE DRAFT**

- (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.

## EXPOSURE DRAFT

- (6) The ACAT must tell the following, in writing, about a review under this section:
  - (a) the director-general;
  - (b) the director-general responsible for the *Corrections Management Act 2007*.

**48ZZT 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 48ZZS 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.

**EXPOSURE DRAFT**

## Part 8.4 Leave for correctional patients

### 48ZZU 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).

- (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 6 (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.



**48ZZV    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.

**90        Part 6 heading**

*omit*

**91        Section 49 heading**

*substitute*

**49        Meaning of *responsible person*—pt 3.1****92        Section 49, definition of *responsible person*, paragraph (c)**

*substitute*

- (c) in relation to any other mental health facility or community care facility conducted by the Territory—the director-general of the administrative unit responsible for the conduct of the facility.

**EXPOSURE DRAFT**

**93      Statement of rights  
Section 50 (1) (b) (i)**

*substitute*

- (i) a statement of rights prescribed by regulation; and

**94      Information to be provided  
New section 51 (d) (ix)**

*insert*

- (ix) health services commissioner;

**95      Communication  
Section 52 (1)**

*after*

opportunities

*insert*

and facilities

**96      Section 52 (2)**

*after*

facilities

*insert*

and opportunities

**97      Sections 49 to 53 (as amended)**

*relocate to part 3.1 as sections 9CA to 9CE*

## EXPOSURE DRAFT

**98 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).

**99 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.

**EXPOSURE DRAFT**

**100      Electroconvulsive therapy may be administered under  
electroconvulsive therapy order  
Section 55E**

*after*

psychiatric treatment order

*insert*

or forensic psychiatric treatment order

**101      Section 55E (c)**

*before*

capacity

*insert*

decision-making

**102      Application for electroconvulsive therapy order  
Section 55F (1) (a)**

*after*

psychiatric treatment order

*insert*

or forensic psychiatric treatment order

## **EXPOSURE DRAFT**

**103 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 child and adolescent psychiatrist, other than the applicant.

**104 New section 55F (3)**

*insert*

- (3) In this section:
- child and adolescent psychiatrist*** means a psychiatrist who is a member of the Faculty of Child and Adolescent Psychiatry of the Royal Australian and New Zealand College of Psychiatrists.

**105 Criteria for making electroconvulsive therapy order  
Section 55G**

*after*

psychiatric treatment order

*insert*

or forensic psychiatric treatment order

**EXPOSURE DRAFT**

**106 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

**107 Section 55G (b) (i)**

*substitute*

- (i) the person has impaired decision-making capacity for giving consent to the administration of electroconvulsive therapy; and

**108 Content of electroconvulsive therapy order  
Section 55H (b)**

*before*

capacity

*insert*

decision-making

**109      Offence—electroconvulsive therapy without  
electroconvulsive therapy order  
Section 55I (1) (a)**

*after*

psychiatric treatment order

*insert*

or forensic psychiatric treatment order

**110      Offence—electroconvulsive therapy on 10 or more  
occasions since electroconvulsive therapy order  
Section 55J (1) (a)**

*after*

psychiatric treatment order

*insert*

or forensic psychiatric treatment order

**111      Offence—electroconvulsive therapy after order consent  
withdrawn  
Section 55K (1) (a)**

*after*

psychiatric treatment order

*insert*

or forensic psychiatric treatment order

## EXPOSURE DRAFT

**112      Section 55K (1) (c)**

*before*

capacity

*insert*

decision-making

**113      Application for emergency electroconvulsive therapy  
order  
Section 55M (1) (c)**

*substitute*

(c) the administration of the electroconvulsive therapy is necessary  
to—

(i) save the person's life; or

(ii) prevent an immediate risk of serious harm to the person;  
and

**114      Section 55M (2) (a)**

*after*

psychiatric treatment order

*insert*

or forensic psychiatric treatment order



**115 New section 55M (2) (c)**

*before the notes, insert*

- (c) an application for both a forensic psychiatric treatment order and an electroconvulsive therapy order in relation to the person.

**116 Criteria for making emergency electroconvulsive therapy order  
Section 55N (1) (c) and (d)**

*substitute*

- (c) the person has impaired decision-making capacity for giving consent to the administration of electroconvulsive therapy; and
- (d) the administration of the electroconvulsive therapy is necessary to—
  - (i) save the person's life; or
  - (ii) prevent an immediate risk of serious harm to the person; and

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

*insert*

- (ba) the person has impaired decision-making capacity for giving to consent to the surgery; and

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

*renumber as chapter 9*

## EXPOSURE DRAFT

**119 Divisions 7.1 to 7.3**

*renumber as parts 9.1 to 9.3*

**120 Subdivisions 7.2.1 to 7.2.6**

*renumber as divisions 9.2.1 and 9.2.6*

**121 Part 8 heading**

*substitute*

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

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

*after*

mental health order

*insert*

or forensic mental health order

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

*omit*

mental illness or mental dysfunction

*substitute*

mental disorder or mental illness

## **EXPOSURE DRAFT**

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

*after*

section 74

*insert*

(5)

**125      Section 72 (3) (a)**

*omit*

dysfunction

*substitute*

disorder

**126      Section 72 (4)**

*omit*

specified mental health orders

*substitute*

a stated mental health order or forensic mental health order

**127      Section 72 (5)**

*after*

mental health orders

*insert*

or forensic mental health orders

## EXPOSURE DRAFT

**128      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).

**EXPOSURE DRAFT**

- (4) The ACAT may, as it considers appropriate—
- (a) amend or revoke any condition of the order, including any requirement to comply with a stated mental health order or forensic mental health order; or
  - (b) impose any other condition the ACAT considers appropriate, including a requirement to comply with a stated mental health order or forensic mental health order.
- (5) Also, if a person contravenes a condition of an order of release, the ACAT may order the person be detained in custody until the ACAT orders otherwise.

**129      Part 9 heading**

*substitute*

## **Chapter 11      ACAT procedural matters**

**130      Section 76 heading**

*substitute*

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

**131      Section 76**

*omit*

part

*substitute*

chapter

## **EXPOSURE DRAFT**

**132 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 9X (2);
  - (c) an order for the extension of a person's detention under section 41 (3);
  - (d) an order for a person's release under section 46;
  - (e) a review of a transfer direction under section 48ZZQ;
  - (f) a review of a transfer direction under section 48ZZR.
- (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 48ZZ;
  - (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 disorder or mental illness;
  - (i) a review of an order for detention under section 72;
  - (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**

- (1) This section applies to an application to the ACAT under this Act.
- Note* Requirements for applications to the ACAT are set out in the [ACT Civil and Administrative Tribunal Act 2008](#), s 10.
- (2) The ACAT must, as soon as practicable but not longer than 24 hours after the application is lodged, give a copy of the application to—
- (a) the public advocate; and
  - (b) if the subject person is a child—the CYP director-general.

## **EXPOSURE DRAFT**

**133      Appearance**  
**Section 80 (1) (d)**

*substitute*

- (d) if the subject person has made a power of attorney under the [\*Powers of Attorney Act 2006\*](#)—the attorney under the power of attorney;
- (da) the applicant or referring officer for an alleged offender (if any);
- (db) 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;

**134      Section 80 (1) (g)**

*omit*

dysfunction

*substitute*

disorder

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

*after*

care

*insert*

or support



**136 Notice of hearing  
Section 85 (e)**

*substitute*

- (e) if the subject person has an attorney appointed under the *Powers of Attorney Act 2006*—the attorney;
- (ea) the applicant or referring officer of the alleged offender (if any);
- (eb) if the hearing is on a proceeding on a forensic mental health order for which there is a registered affected person for the person—
  - (i) the registered affected person; or
  - (ii) the victims of crime commissioner;

**137 Section 85 (i)**

*omit*

care and protection for people with a mental dysfunction

*substitute*

care or support and protection for people with a mental disorder

**138 New section 85 (2)**

*insert*

- (2) Subsection (1) does not apply to a matter under this Act if—
  - (a) the chief psychiatrist gives the ACAT written notice that there are exceptional circumstances relating to the matter; and

## EXPOSURE DRAFT

- (b) a presidential member of the ACAT is satisfied that the exceptional circumstances make the giving of notice under subsection (1) undesirable for the matter; and
- (c) the ACAT gives the public advocate written notice about the exceptional circumstances.

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

*substitute*

- (g) if the subject person was an alleged offender referred to the ACAT under section 9F, section 13, section 48T—the referring officer for the alleged offender;
- (ga) if the subject person was referred to the ACAT under section 48U—
  - (i) the chief psychiatrist; and
  - (ii) the director-general responsible for the *Corrections Management Act 2007*;

**140      New section 87 (2) (ba)**

*insert*

- (ba) a forensic psychiatric treatment order;

**141      New section 87 (3) (c)**

*insert*

- (c) a forensic community care order.

**142      Part 10 heading**

*substitute*

**Chapter 12      Administration**

**Part 12.1      Chief psychiatrist and mental  
health officers**

**143      Functions  
Section 113**

*after*

care

*insert*

or support

**144      New section 113 (c)**

*insert*

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

**EXPOSURE DRAFT**

**145      Section 116**

*substitute*

**116      Ending appointment—chief psychiatrist**

- (1) The Minister may end the appointment of the chief psychiatrist—
  - (a) for misbehaviour; or
  - (b) for physical or mental incapacity, if the incapacity substantially affects the exercise of the person's functions.
- (2) The Minister must end the appointment of the chief psychiatrist if the chief psychiatrist stops being eligible to hold the office of chief psychiatrist.

**146      Care coordinator  
Part 10A**

*renumber as part 12.2*

**147      Functions  
Section 120B**

*omit*

mentally dysfunctional people

*substitute*

people with a mental disorder

**EXPOSURE DRAFT**

**148 Section 120B (c)**

*substitute*

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

**149 Section 120B (e)**

*after*

care

*insert*

or support

**150 New section 120B (f)**

*insert*

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

## EXPOSURE DRAFT

**151      Section 120C**

*substitute*

**120C      Ending appointment—care coordinator**

- (1) The Minister may end the appointment of the care coordinator—
  - (a) for misbehaviour; or
  - (b) for physical or mental incapacity, if the incapacity substantially affects the exercise of the person's functions.
- (2) The Minister must end the appointment of the care coordinator if the care coordinator stops being eligible to hold the office of chief psychiatrist.

**152      Official visitors  
Part 11**

*renumber as part 12.3*

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

*after the notes, insert*

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

**154      Section 121 (2) (d)**

*omit*

dysfunction

*substitute*

disorder

## EXPOSURE DRAFT

**155 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.

**156 Official visitor—functions  
Section 122 (1) (b) (i)***omit*

persons with mental dysfunction

*substitute*

people with a mental disorder

**157 Section 122 (1) (a) (ii), (iii) and (vi)***omit*

treatment or care for mental dysfunction or a

*substitute*

treatment, care or support for a mental disorder or

**EXPOSURE DRAFT**

**158      Section 122 (1) (b) (v)**

*substitute*

- (v) any other matter that an official visitor considers appropriate taking into account section 5 (Objects of Act) and section 6 (Principles applying to Act); and

**159      Section 122 (2)**

*omit*

(within the meaning of part 6)

**160      New section 122 (4)**

*insert*

- (4) In this section:

***responsible person***—see section 9CA.

**161      Official visitor—powers etc  
Section 122A (1)**

*omit*

treatment or care for mental dysfunction or a

*substitute*

treatment, care or support for a mental disorder or



**162      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.

**EXPOSURE DRAFT**

**163      Section 123 heading**

*substitute*

**123      Definitions—ch 13**

**164      Section 123**

*omit*

part

*substitute*

chapter

**165      Section 123, definition of *psychiatric institution***

*substitute*

***psychiatric institution*** means a hospital or other institution providing treatment, care or support, rehabilitation or accommodation for people who have a mental illness, other than—

- (a) a recognized hospital within the meaning of the [Health Insurance Act 1973](#) (Cwlth); or
- (b) an institution conducted by the Territory.

**166      Issue of licence  
Section 125**

*omit*

treatment or reside

*substitute*

treatment, care or support, or reside,

## EXPOSURE DRAFT

**167 Section 125 (4)**

*after*

care

*insert*

or support

**168 Effect of cancellation  
Section 131**

*after*

care

*insert*

or support

**169 Powers of inspection  
Section 134**

*after*

care

*insert*

or support

**170 Section 136 heading**

*substitute*

**136 Meaning of *reviewable decision*—pt 13.4**

## EXPOSURE DRAFT

**171      Section 136**

*omit*

division

*substitute*

part

**172      Unauthorised treatment  
Section 138**

*after*

treatment

*insert*

, care or support

**173      Private psychiatric institutions  
Part 12**

*renumber as chapter 13*

**174      Divisions 12.1 to 12.5**

*renumber as parts 13.1 to 13.5*

## EXPOSURE DRAFT

**175 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; and
  - (v) anything else in relation to mental health requested by the Minister;
- (b) any other function given to the council under this Act.

**EXPOSURE DRAFT**

### **139B Membership of mental health advisory council**

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

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

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

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

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

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

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

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

## **EXPOSURE DRAFT**

**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.

**176 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).

**177      Legal effect of certain sections  
Section 140**

*omit*

section 7 or 8

*substitute*

section 5 (Objects of Act) or section 6 (Principles applying to Act)

**178      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



**179 New section 142 (1A) and (1B)**

*insert*

- (1A) However, the guardian may make decisions for a person with a mental disorder 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.
- (1B) If a guardian, other than the public advocate, makes a decision under subsection (1A), the treating mental health practitioner must notify the public advocate about the decision not later than 48 hours after the mental health practitioner is told of the decision.

**180 New section 142 (3)**

*insert*

- (3) In this section:
- impaired decision-making ability*—see the [Guardianship and Management of Property Act 1991](#), section 5.

**181 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

## EXPOSURE DRAFT

**182 New section 143 (2) and (3)**

*insert*

- (2) However, the attorney may make decisions for a person with a mental disorder 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).

**183 Schedule 1 heading, reference**

*substitute*

(see pt 13.4)

**184 Dictionary, note 2**

*insert*

- adult

**185 Dictionary, new definitions of *advance agreement* and *affected person***

*insert*

*advance agreement*—see section 9F.

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

## EXPOSURE DRAFT

**186 Dictionary, definition of *agreement***

*substitute*

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

**187 Dictionary, new definitions of *alleged offender* and *ambulance paramedic***

*insert*

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

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

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

*omit*

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

*insert*

***approved community care facility***—see section 139E.

**190 Dictionary, definition of *approved health facility***

*omit*

## EXPOSURE DRAFT

**191 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 9U.

**192 Dictionary, new definition of *community-based sentence***

*insert*

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

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

*omit*

mentally dysfunctional persons

*substitute*

people with a mental disorder

**194 Dictionary, new definitions of *coordinating director-general* and *correctional patient***

*insert*

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

*correctional patient*—see section 48ZZL.

## EXPOSURE DRAFT

**195 Dictionary, definition of *corresponding law***

*substitute*

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

**196 Dictionary, new definitions**

*insert*

***decision-making capacity***—see section 7 (1).

***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.

***forensic patient***, for part 7.3 (Affected people)—see section 48ZZE.

***frisk search*** means—

- (a) a search of a person conducted by quickly running the hands over the person's outer garments; and
- (b) an examination of anything worn or carried by the person that is conveniently and voluntarily removed by the person.

***give***, treatment, care or support to a person, for part 3.3 (Advance agreements)—see section 9E.

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

***impaired decision-making capacity***—see section 7 (2).

## EXPOSURE DRAFT

*information sharing entity*, for part 7.2 (Sharing information about forensic mental health orders—government agencies)—see section 48ZZA.

*information sharing protocol*, for part 7.2 (Sharing information about forensic mental health orders—government agencies)—see section 48ZZB.

**197 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.

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

## EXPOSURE DRAFT

**198 Dictionary, definitions of *licence*, *licensed premises*, *licensee* and *mental disorder***

*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 disorder***—see section 9.

**199 Dictionary, definition of *mental dysfunction***

*omit*

**200 Dictionary, definition of *mental health facility***

*omit*

mentally dysfunctional or mentally ill persons

*substitute*

people with a mental disorder or mental illness

**201 Dictionary, definition of *mental health professional***

*substitute*

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

# EXPOSURE DRAFT

**202 Dictionary, definition of *mental illness***

*substitute*

*mental illness*—see section 9A.

**203 Dictionary, new definition of *nominated person***

*insert*

*nominated person* means the person nominated as the nominated person for a person with a mental disorder or mental illness under section 9D.

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

*before*

mental health order

*insert*

forensic

**205 Dictionary, definition of *official visitor***

*omit*

section 121

*substitute*

section 121 (1)

## EXPOSURE DRAFT



**206 Dictionary, new definitions of *ordinary search* and *principal official visitor***

*insert*

***ordinary search*** means a search of a person, or of articles in a person's possession, that may include—

- (a) requiring the person to remove the person's overcoat, coat or jacket and any gloves, shoes or hat; and
- (b) an examination of those items.

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

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

*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 other proceeding in, the ACAT.

**208 Dictionary, definitions of *psychiatric institution***

*substitute*

***psychiatric institution***—

- (a) for this Act generally—means a hospital or other institution for the treatment, care or support, rehabilitation or accommodation of people who have a mental illness, that is—
  - (i) an institution conducted by the Territory; or

## EXPOSURE DRAFT

- (ii) a private psychiatric institution; and
- (b) for chapter 13 (Private psychiatric institutions)—see section 123.

## **209 Dictionary, definition of *referring officer***

*substitute*

***referring officer***, for an alleged offender, means—

- (a) the police officer—
  - (i) who arrests the alleged offender in connection with an offence; or
  - (ii) who is satisfied that there are sufficient grounds on which to charge the alleged offender in connection with an offence; or
  - (iii) who charges the alleged offender in connection with an offence; or
- (b) a member of the staff of the director of public prosecutions who is responsible for the prosecution of an offence against the alleged offender; or
- (c) if the alleged offender is required to accept supervision by someone else as a condition of bail under the [Bail Act 1992](#)—that other person.

*Note* Under the [Bail Act 1992](#), s 25 (4) and s 26 (2), an adult may be supervised by the director of corrective services and a child may be supervised by the director-general under the [Children and Young People Act 2008](#).

## **EXPOSURE DRAFT**

**210 Dictionary, new definitions**

*insert*

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

**relevant information**, for part 7.2 (Sharing information about forensic mental health orders—government agencies)—see section 48ZZA.

**relevant official**—

(a) for chapter 5 (Mental health orders)—see section 9ZF; or

(b) for part 7.1 (Forensic mental health orders)—see section 48S.

**representative**, of a treating team, for part 3.3 (Advance agreements)—see section 9E.

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

*substitute*

**responsible person**, for chapter 3 (Rights of people with mental disorder or mental illness)—see section 9CA.

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

**212 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.

## EXPOSURE DRAFT

## **213 Dictionary, new definitions**

*insert*

***transfer direction***—see section 48ZZM (3).

***treating mental health professional***, for a person with a mental disorder or mental illness, for part 3.3 (Advance agreements)—see section 9E.

***treating team***, for a person with a mental disorder or mental illness, for part 3.3 (Advance agreements)—see section 9E.

***treatment, care or support***, for a mental disorder or mental illness—

- (a) means things done in the course of the exercise of professional skills to remedy the disorder or illness or lessen its ill effects or the pain or suffering it causes; and
- (b) includes the giving of medication and counselling, training, therapeutic and rehabilitation programs, care or support; 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
- 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](#).

## **EXPOSURE DRAFT**

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

*renumber provisions when Act next republished under [Legislation Act](#)*

## **EXPOSURE DRAFT**

## Schedule 1      Legislation amended

(see s 3)

### Part 1.1      Children and Young People Act 2008

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

*insert*

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

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

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

*omit*

## EXPOSURE DRAFT

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

*substitute*

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

*Note* The *Mental Health (Treatment and Care) Act 1994*, s 9A 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
- (b) sustained or repeated irrational behaviour that may be taken to indicate the presence of at least 1 of the symptoms mentioned in par (a).

**[1.4] Section 863 (2), example 2**

*substitute*

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

## Part 1.2 Corrections Management Act 2007

### [1.5] New section 54A

*insert*

#### 54A Transfer to mental health facility—transfer direction

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

##### Examples

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

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

- (3) In this section:

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

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

## EXPOSURE DRAFT



## Part 1.3 Crimes Act 1900

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

*insert*

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

### [1.7] Section 301 (2)

*after*

term

*insert*

(a *limiting term*)

### [1.8] 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.
- (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

## EXPOSURE DRAFT

- (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.

**[1.9] Section 302 (2)**

*after*

term

*insert*

(a *limiting term*)

**[1.10] 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.
- (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

## **EXPOSURE DRAFT**

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

**[1.11] Section 304 (2)**

*after*

term

*insert*

(a *limiting term*)

**[1.12] 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.
- (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.

## EXPOSURE DRAFT

**[1.13] Section 305 (2)**

*after*

term

*insert*

(a *limiting term*)

**[1.14] 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
  - (b) if, after taking into account any periods mentioned in subsection (4), the Magistrates Court nominates an earlier day—the earlier day.

**[1.15] Section 309 (1) (a) and (b) (i)**

*omit*

approved health facility

*substitute*

approved mental health facility

**[1.16] Section 309 (1) (b) (ii)**

*omit*

approved health facility or

**[1.17] Section 309 (3)**

*before paragraph (a), omit*

approved health facility

*substitute*

approved mental health facility

**[1.18] Section 309 (3) (a)**

*omit*

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

**[1.19] Section 309 (3) (b)**

*omit*

approved health facility or approved mental health

## EXPOSURE DRAFT

**[1.20] 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.

**[1.21] 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

## **Part 1.4                      Crimes (Child Sex Offenders) Regulation 2005**

### **[1.22]      Section 12 (1) (d) (ii)**

*substitute*

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

## **Part 1.5                      Crimes (Sentence Administration) Act 2005**

### **[1.23]      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.

## **EXPOSURE DRAFT**

## Part 1.6                      Guardianship and Management of Property Act 1991

### [1.24]      Section 70 heading

*substitute*

### 70              Consent to prescribed medical procedures

### [1.25]      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)

### [1.26]      Section 70 (1), note

*omit*

### [1.27]      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](#).

## EXPOSURE DRAFT



**[1.28] Section 70 (2)**

*omit*

the consent

*substitute*

an order for consent under subsection (1)

**[1.29] 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.

**EXPOSURE DRAFT**

(5) The consent ends if—

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

**[1.30] Dictionary, definition of *mental illness***

*omit*

dictionary

*substitute*

section 9A

## **Part 1.7                      Powers of Attorney Act 2006**

### **[1.31]      Section 37 (1) (e)**

*omit*

### **[1.32]      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.
- (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

## **EXPOSURE DRAFT**

- (b) the principal—
- (i) has decision-making capacity; or
  - (ii) expresses unwillingness to receive the treatment.

**Examples—s (7)**

- 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).

## Part 1.8      Public Advocate Act 2005

### [1.34]      Dictionary, new definition of *mental disorder*

*insert*

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

### [1.33]      Dictionary, definition of *mental dysfunction*

*omit*

### [1.35]      Dictionary, definition of *mental illness*

*substitute*

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

## EXPOSURE DRAFT

## **Part 1.9**                      **Victims of Crime Act 1994**

### **[1.36]      New section 11 (ba)**

*insert*

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

## **EXPOSURE DRAFT**

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 2013.

**2 Notification**

Notified under the [Legislation Act](#) on 2013.

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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## EXPOSURE DRAFT